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**In the Supreme Court of the State of Utah**

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League of Women Voters of Utah,  
Mormon Women for Ethical Government,  
Stefanie Condie, Malcom Reid, Victoria Reid,  
Wendy Martin, Eleanor Sundwall,  
Jack Markman, Dale Cox,

*Plaintiffs-Respondents,*

v.

Utah State Legislature, Utah Legislative  
Redistricting Committee, Sen. Scott Sandall,  
Rep. Brad Wilson, Sen. J. Stuart Adams,  
Lt. Gov. Deidre Henderson,

*Defendants-Petitioners.*

No. 20240965-SC

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**Petition for Permission to Appeal an Interlocutory Order**  
(subject to assignment to the Court of Appeals)

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On petition for permission to appeal an interlocutory order  
from the Third Judicial District Court  
Honorable Dianna M. Gibson  
No. 220901712

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## INTRODUCTION

People decide elections; courts don't. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Utah is no exception to that rule. "The history of the struggle of freedom-loving men" and women "to obtain and to maintain such rights is so well known that it is not necessary to dwell thereon." *Rothfels v. Southworth*, 11 Utah 2d 169, 176, 356 P.2d 612 (1960).

A handful of plaintiffs and special interest groups want to squelch that precious right. They went to court to stop all Utahns from voting on a proposed constitutional amendment, rather than fight their cause at the ballot box. And the court obliged. All Utahns' votes on proposed Amendment D will "not [be] counted." The amendment is "void." **Exhibit A-15**. The Utah Legislature seeks this Court's immediate interlocutory review of that unprecedented order. Without this Court's intervention, a single district court gets to decide for all Utahns whether their votes for or against Amendment D will count.

Time is of the essence. The district court's order has cast a shadow over the election—in particular, whether Utahns should be learning about, campaigning for, and voting on Amendment D. Hasty election-related orders like the one below create an intolerable "incentive to remain away from the polls" and destroy "[c]onfidence in the integrity of our electoral processes." *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). It denigrates "[t]he overriding importance of the public's interest in the integrity of the election process and the breadth of a court of equity's discretion" to keep Utahns from voting. *In re Cook*, 882 P.2d 656, 659 (Utah 1994). "Even seemingly innocuous late-in-the-day judicial alterations" can have "unanticipated consequences." *DNC v. Wis. State Leg.*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring).

To remove that shadow from the election as soon as practicable, the Legislature asks for this Court’s immediate interlocutory review and has simultaneously filed an emergency Rule 23C motion to expedite proceedings. The Legislature requests that Plaintiffs respond by **September 17, 2024**, and that this Court vacate the preliminary injunction by **September 24, 2024**. That would leave six weeks before the election to reassure Utahns that their votes on Amendment D do in fact matter and will in fact count. It gives the State time to put Amendment D in Voter Information Pamphlets. And it gives supporters and opponents necessary time to campaign for and against Amendment D. In short, it gives the people the chance to debate and weigh in on their government through the Constitution, the very essence of the right to vote. These filings are abbreviated given the breakneck pace of Plaintiffs’ extraordinary motions and proceedings below. But the stakes could not be clearer. Utahns have a fundamental right to vote—whether for or against Amendment D—and this Court’s intervention is necessary to preserve that right.

## **BACKGROUND**

1. In 2022, Plaintiffs sued, challenging Utah’s four congressional districts as a “gerrymander.” See *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶¶48-50, — P.3d— (*LWV*). This Court granted cross-petitions for an interlocutory appeal. *Id.* ¶57. In July, the Court announced it would retain jurisdiction over Plaintiffs’ gerrymandering claims but remanded Plaintiffs’ claim that redistricting legislation that amended an earlier citizens’ initiative violated Plaintiffs’ right to “alter or reform” their government. Utah Const. art. I, §2; *LWV*, 2024 UT 21, ¶¶76, 220.

2. After this Court’s decision, Pro-Life Utah, Worldwide Organization for Women, Republicans, and local officials joined an open letter calling for a constitutional amendment in response to language in the Court’s opinion about the nature of citizens’ initiatives. **Exhibit**

**C-53-55.** The Sutherland Institute echoed their call. **Exhibit C-57-60.** They wrote that the *LWV* ruling “creates a rigid and unmanageable system that disrupts our republican form of government” and “leav[es] Utah vulnerable to the whims of special interests and fleeting majorities.” *Id.* at 53.<sup>1</sup> They said, “The people of Utah should have the opportunity to vote on a constitutional amendment this fall that would *clarify the legislative powers* vested in the people as well as their elected representatives ....” *Id.* at 60 (emphasis added).

In August 2024, the Utah Legislature answered that call and proposed an amendment. The enrolled copy of the legislation is attached at **Exhibit C-66-68.** The legislative proceedings were live-blogged,<sup>2</sup> the Legislature made the proposed amendment available on its website and it remains there today,<sup>3</sup> and newspapers have discussed the amendment, published its text, or hyperlinked to the Legislature’s website with the text since August.<sup>4</sup>

Proposed Amendment D would revise Article VI as follows:

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<sup>1</sup> For example, the Proposition 4 at issue in *LWV* passed by a 0.6% margin, or a mere 6,944 votes. A majority of voters in 25 of Utah’s 29 counties voted *against* it. *See* 2018 Election Results at 54, Utah Office of the Lieutenant Governor, [vote.utah.gov/wp-content/uploads/sites/42/2023/09/2018-General-Election-Canvass.pdf](https://vote.utah.gov/wp-content/uploads/sites/42/2023/09/2018-General-Election-Canvass.pdf). Out-of-state special-interest groups and California labor unions financed Proposition 4, providing \$1.5 million of the \$2 million raised. *See* Utahns for Responsive Government Disclosures, [disclosures.utah.gov/Search/PublicSearch/FolderDetails/1414774](https://disclosures.utah.gov/Search/PublicSearch/FolderDetails/1414774). Its biggest donor was Houston-based Action Now Initiative, funded by Texans John and Laura Arnold, contributing more than \$1.1 million in actual and in-kind donations. *Id.*

<sup>2</sup> Ben Winslow, *BLOG: Utah legislature puts constitutional amendment on citizen initiatives on the November Ballot*, Fox 13 (Aug. 21, 2024), [www.fox13now.com/news/politics/blog-utah-legislature-meets-in-special-session-on-citizen-ballot-initiatives](https://www.fox13now.com/news/politics/blog-utah-legislature-meets-in-special-session-on-citizen-ballot-initiatives).

<sup>3</sup> Utah S.J.R. 401, [le.utah.gov/~2024S4/bills/static/SJR401.html](https://le.utah.gov/~2024S4/bills/static/SJR401.html).

<sup>4</sup> *See, e.g.*, Hanna Seariac, What to know about Utah’s special session over changing state constitution, *Deseret News* (Aug. 21, 2024), [www.deseret.com/politics/2024/08/21/utah-special-session-initiative-amendment/](https://www.deseret.com/politics/2024/08/21/utah-special-session-initiative-amendment/); Hanna Seariac, *Ballot language on Utah initiative constitutional amendment released*, *Deseret News* (Sept. 5, 2024), [www.deseret.com/politics/2024/09/05/amendment-d-utah/](https://www.deseret.com/politics/2024/09/05/amendment-d-utah/); Katie McKellar, *Opponents of Utah constitutional amendment on voter initiatives decry ‘deceptive’ ballot language*, *Utah News Dispatch* (Sept. 4, 2024), reprinted in Yahoo! News, [www.yahoo.com/news/opponents-utah-constitutional-amendment-voter-231734615.html](https://www.yahoo.com/news/opponents-utah-constitutional-amendment-voter-231734615.html).

**(3)(a) Foreign individuals, entities, or governments may not, directly or indirectly, influence, support, or oppose an initiative or a referendum.**

**(b) The Legislature may provide, by statute, definitions, scope, and enforcement of the prohibition under Subsection (3)(a).**

**(4) Notwithstanding any other provision of this Constitution, the people’s exercise of their Legislative power as provided in Subsection (2) does not limit or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature, or by a law making body of a county, city, or town, on behalf of the people whom they are elected to represent.**

Utah S.J.R. 401 §2. The amendment would further revise Article I, §2 to state that the people “have the right to alter or reform their government **through the processes established in Article VI, Section 1, Subsection (2) or through Article XXIII** as the public welfare may require.” Utah S.J.R. 401 §1.<sup>5</sup>

The Legislature charged the Lieutenant Governor to get the amendment to voters as “provided by law”:

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

Utah S.J.R. 401 §3. The Legislature further assured that the Lieutenant Governor would have sufficient non-lapsing funds to cover the estimated \$8,600 cost to do so.<sup>6</sup>

Along with the amendment, the Legislature passed legislation contingent on the amendment’s passage. Utah S.B. 4003 §7 (2024). The legislation would amend Utah’s existing statute governing citizens’ initiatives as follows:

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<sup>5</sup> Plaintiffs’ motions target the language amending Article VI and do not discuss or appear to target the language amending Article I, §2, which simply reiterates this Court’s repeated statements that citizens’ initiatives cannot amend the Utah Constitution. *See LWW*, 2024 UT 21, ¶¶10 n.4, 68 n.16, 135-36, 157, 160-61.

<sup>6</sup> Utah Legislature, Fiscal Note – S.J.R. 401, [le.utah.gov/~2024S4/bills/static/SJR401.html](https://le.utah.gov/~2024S4/bills/static/SJR401.html).

(3)(a) The governor may not veto a law adopted by the people.

~~(b) The Legislature may amend any initiative approved by the people at any legislative session.~~

**(b) If, during the general session next following the passage of a law submitted to the people by initiative petition, the Legislature amends the law, the Legislature:**

**(i) shall give deference to the initiative by amending the law in a manner that, in the Legislature's determination, leaves intact the general purpose of the initiative; and**

**(ii) notwithstanding Subsection 3(b)(i), may amend the law in any manner determined necessary by the Legislature to mitigate an adverse fiscal impact of the initiative.**

Utah S.B. 4003 §2 (amending §20A-7-212). The proposed legislation also extended deadlines for referenda. *See id.* §§1, 3, 4-6 (amending Utah Code §§20A-7-105(5)(a)(ii)(B), 20A-7-307(3)(a), §20A-7-311, 20A-7-705, 20A-7-706).

As required by Utah Code §20A-7-103(3), the Speaker of the House and the President of the Senate later submitted a ballot title and summary for Amendment D that states:

#### **Constitutional Amendment D**

Should the Utah Constitution be changed to strengthen the initiative process by:

- Prohibiting foreign influence on ballot initiatives and referendums.
- Clarifying the voters and legislative bodies' ability to amend laws.

If approved, state law would also be changed to:

- Allow Utah citizens 50% more time to gather signatures for a statewide referendum.
- Establish requirements for the legislature to follow the intent of a ballot initiative.

3. The Lieutenant Governor certified Utah ballots with the Amendment D summary.<sup>7</sup> She later issued a Class A Public Notice with the amendment text.<sup>8</sup> It remains the first item on the Lieutenant Governor’s state website.

4. The State will publish the full text of Amendment D in Voter Information Pamphlets, which also include arguments for and against the amendment. *See* Utah Code §§20A-7-701(1), 20A-7-702.5. They are widely read. “[A]lmost nine out of ten voters” report that “they read all or part of [the Pamphlets] prior to the election.” Peter Brien, *Voter Pamphlets: The Next Best Step in Election Reform*, 28 J. Legis. 87, 102 (2002).

At polling locations, the full text of proposed amendments must be posted. County clerks must display the full text of proposed amendments “on cards in large clear type with the changes.” Utah Code §20A-5-103(1)(a).

5. Since the special session through today, there has been a deluge of news coverage about Amendment D. *See* **Exhibit C-14, 86-353**. Opponents have already held a “Vote No” rally at the capitol,<sup>9</sup> while other Utah voices have explained their support.<sup>10</sup> As a result, some voters are actively considering the amendment; they are not confused by it; and they see it as

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<sup>7</sup> *See* 2024 General Election Certification at 34-35, Utah Office of the Lieutenant Governor, [vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf](https://vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf).

<sup>8</sup> Public Notice, Full Text of Proposed Const’l Amendments, Utah Lt. Gov., [ltgovernor.utah.gov/2024/09/09/public-notice-full-text-of-proposed-constitutional-amendments/](https://ltgovernor.utah.gov/2024/09/09/public-notice-full-text-of-proposed-constitutional-amendments/).

<sup>9</sup> Saige Miller, *‘Vote no’ rally at the Utah capitol launches opposition to ballot initiative amendment*, KUER (Aug. 26, 2024), <https://www.kuer.org/politics-government/2024-08-26/vote-no-rally-at-the-utah-capitol-launches-opposition-to-ballot-initiative-amendment>; Katie McKellar, *‘Vote no’: Anti-gerrymandering groups launch campaign against Utah constitutional amendment*, Utah News Dispatch (Aug. 26, 2024), [utahnewsdispatch.com/2024/08/26/utah-anti-gerrymandering-groups-campaign-against-constitutional-amendment/](https://utahnewsdispatch.com/2024/08/26/utah-anti-gerrymandering-groups-campaign-against-constitutional-amendment/).

<sup>10</sup> Rob Bishop, *Voices: To prevent Utah from becoming California, we must pass the ballot initiatives amendment*, Salt Lake Tribune (Sept. 9, 2024), <https://www.sltrib.com/opinion/commentary/2024/09/09/rob-bishop-prevent-utah-becoming/>.

a chance to “alter or reform” their government as the Constitution promises, art. I, §2; *see* **Exhibit C-364-93**.

6. And still, late last week and over the weekend, Plaintiffs filed two emergency motions to take Amendment D off the ballot or deem it “void.” Plaintiffs—Amendment D opponents—believe the ballot summary for Amendment D is misleading. And they believe that the Legislature failed to cause the amendment to be published. *See generally* **Exhibit B**.

The Lieutenant Governor’s Office immediately responded, saying it was too late to take the amendment off already certified ballots. **Exhibit C**. The Legislature responded to Plaintiffs’ motions early Wednesday. **Exhibit B**. The Court held oral argument Wednesday and issued a ruling yesterday. **Exhibit A**.

7. In the face of Plaintiffs’ extraordinary motions, the Legislature took additional steps departing from its historical practice. The Legislature purchased advertising space “in 35 newspapers to publish the ballot title and full text of each proposed constitutional amendment” next week. **Exhibit C-398-99** (listing all newspapers). Explained below, those additional steps were not necessary to satisfy Article XXIII, but the Legislature still took them to try to keep a few plaintiffs and special interest groups from keeping Amendment D off the ballot for all voters. This is new ground, believed to be “the first time the Legislature has purchased space in a newspaper to publish a proposed constitutional amendment.” **Exhibit C-400**.

7. As of today, Amendment D will remain on already-certified ballots, but Utahns’ votes will not count. **Exhibit A-15**. The district court’s order contains three rulings at issue here. *First*, the court ruled that Plaintiffs were likely to succeed on the claim that the ballot summary violated some combination of Article XXIII, Utah Code §20A-7-103(3), and Article IV, §2 because the verbs it used (“strengthen” and “clarify”) were misleading. **Exhibit A-8-11**. The court said declarations from Utah voters stating they were not confused (**Exhibit-C-**



**364-93)** were “subjective[]” and didn’t disclose whether the “average voter” was confused. **Exhibit A-10 n.9.** The court did not address the Legislature’s arguments that courts generally reject such claims, that the standard is what the “reasonably intelligent voter” would think, and that §20A-7-103(3) provides no private right of action. *See* **Exhibit C-29-38.**

**Second,** the court said Amendment D was void because the Legislature did not comply with Article XXIII’s requirement to “cause” amendments to be published in newspapers. **Exhibit A-12.** It was not enough that the Legislature directed the Lieutenant Governor to act in accordance with Utah law. *See* Utah S.J.R. 401 §4. Nor was extensive Amendment D news coverage or the Legislature’s paying for ad space for Amendment D. And while the court acknowledged that some States require only “substantial compliance” with publication requirements, the court said “[n]o legal authority was submitted to support substantial compliance.” *Id.* at 13 n.14. That’s not true. The Legislature’s brief said “Utah courts have never adopted a literal-compliance requirement” and provided a string cite of authorities requiring only substantial compliance, so as not to void amendments unnecessarily. **Exhibit C-46-47.**

**Third,** the court said that the equities supported a preliminary injunction to “void” Amendment D and to “ensure” votes “are not counted.” **Exhibit A-15.** The court copied Plaintiffs’ brief: “inaccurate ballot language would have Utahns unwittingly *eliminate* a fundamental constitutional right.” *Id.* at 14; *compare* **Exhibit B-32.** The court then said passage of the amendment “will moot Plaintiffs’ [Art. I, §2] claims on remand.” **Exhibit A-14.** And the court asserted “Defendants will not be harmed by being unable to advance an inaccurate description of the proposed Amendment in the November 2024 election.” *Id.* The court said nothing of the 1.73 million Utah voters who now cannot vote on Amendment D and decide for themselves their constitutional rights—not even those voters who submitted declarations to the Court about that substantial and irreparable harm.

## ISSUES PRESENTED

1. Is the ballot summary a basis for voiding Amendment D?
2. Did “the Legislature” fail to “cause” Amendment D to be published as required by Article XXIII, §1?
3. If not, what equitable basis could justify a court order that Utahns’ votes on Amendment D cannot be counted?

*Preservation:* The Legislature raised all issues in its opposition to Plaintiffs’ preliminary injunction motions. *See generally* **Exhibit C**.

*Standard of review:* This Court reviews the district court’s decision to grant a preliminary injunction for an abuse of discretion, *Osguthorpe v. SC Utah, Inc.*, 2015 UT 89, ¶37, 365 P.3d 1201, but questions of law are reviewed “de novo, affording no deference to the lower court[’s] analysis,” *Martin v. Kristensen*, 2021 UT 17, ¶19, 489 P.3d 198.

## REASONS WHY INTERLOCUTORY APPEAL SHOULD BE PERMITTED

An interlocutory appeal may be granted when an order “involves substantial rights and may materially affect the final decision” or when immediate review “will better serve the administration and interests of justice.” Utah R. App. P. 5(g). That standard is met. The district court’s order implicates the substantial rights of every Utah voter. Without this Court’s review, more than 1 million Utahns’ votes will not be counted on Amendment D. Interlocutory review is the only way to obtain review before it is too late. Until yesterday, campaigns for and against Amendment D were underway. The district court has cast a shadow over those efforts. Voters do not know if their votes will count for Amendment D, or whether their First Amendment protected conduct is worth it. Ballots will be mailed to overseas voters in seven days; remaining ballots will be sent to voters in October. *See* **Exhibit D**. Confidence in the integrity of the forthcoming election must be restored as soon as practicable.

## I. The ballot summary is not a basis for “voiding” Amendment D.

The district court ordered Amendment D removed from the ballot based on its conclusion that “ballot language does not fairly and accurately ‘summarize’ the issue to be decided.” **Exhibit A-9**. The district court said “strengthen” and “clarify” were unacceptable verbs because, echoing Plaintiffs, Amendment D “eliminates” a right and would make “[t]he people’s Legislative power ... no longer co-equal to the Legislature” or local lawmakers. *Id.* at 9-10 (emphasis added). The court misread the amendment.<sup>11</sup> But more fundamentally, the court didn’t grapple with the questions of law that decide Plaintiffs’ claims.

The question here is not whether Utah courts, or Amendment D opponents, or anyone else would have written a different ballot summary, or whether Amendment D’s text alters other rights in the constitution. The question is whether the ballot summary violates an actual constitutional right or statute in such a way that the amendment itself must be declared void. It does not.

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<sup>11</sup> Amendment D does not “eliminate” anything. Citizens may still “initiate any desired legislation.” Utah Const. art. VI, §1(2). Amendment D does not tell citizens that they cannot legislate directly. All it says is that the Legislature may continue to legislate too. The powers are co-equal, *contra* **Exhibit A-9-10**. The amendment “clarifies”—as Utah citizens called for after *LWV* (**Exhibit C-53-60**)—and reflects how shared legislative power has long been understood. *E.g.*, *Grant v. Herbert*, 2019 UT 42, ¶5, 449 P.3d 122 (“The bill amended many of the provisions of Proposition 2.”). Amendment D “strengthens” the initiative process by ensuring that it is reserved for Utahns and not infected by “foreign influence” and triggering the replacement of the existing initiative statute with new provisions requiring deference to initiatives’ intent. *Supra* pp. 4-5. The amendment’s clarification is consistent with our form of representative democracy. Utahns have the right to “alter or reform” their government not only through citizens’ initiatives but also through their elected legislators, or through constitutional amendments. *See LWV*, 2024 UT 21, ¶192. It should come as no surprise that the 49.7% of Utahns who voted against Proposition 4 in 2018 were interested in clarifying that their legislators retain a voice in the legislative process. *Supra* pp. 2-3 & n.1. Utahns consider a vote on Amendment D to be an exercise of their right to alter or reform their government, and they are not confused. *See* **Exhibit C-364-93**. Their rights are not second-class to Plaintiffs’ rights.

**A. Article XXIII, §1 presentment.** There is no dispute here that amendments can be presented by ballot summary as they historically have been in Utah. **Exhibit A-8.** The question is instead whether Utah voters—presumed to be “reasonably intelligent”—understand what they are voting on based not only on the ballot summary but also all “the immediately surrounding circumstances of the election.” *Nowers v. Oakden*, 110 Utah 25, 39, 169 P.2d 108 (1946). That question answers itself. It demeans the State and its voters to conclude that they cannot read, cannot think, and cannot ultimately cast an informed vote on Amendment D. Courts are loathe to assume that voters cannot understand the amendment. *Dutton v. Tawes*, 171 A.2d 688, 692 (Md. 1961) (refusing to “assume” that the “people who voted ... did not understand the issue on which they voted” given extensive news coverage about a ballot measure); *Commw. Tel. Co. v. Pub. Serv. Comm’n*, 263 N.W. 665, 668 (Wis. 1935) (rejecting an election challenge when “information actually given to the electors by the notices ... in other unofficial publications and circulars” was “undoubtedly” “widespread and ample”).

The court had no basis for presuming—without any cited authority or evidence—that ballot summaries are the only information Utahns will see. **Exhibit A-10** (presuming “the only real knowledge a voter may have on an issue is when the voter enters the polling location and reads the description of the proposed amendment on the ballot”). That ignores what the Legislature has shown in these proceedings. The State will prepare Voter Information Pamphlets with the full text of amendments and statements from proponents and opponents. *Supra* pp.6-7. The Lieutenant Governor has issued a public notice with the full text of the amendment. *Id.* When a voter sits with her mail-in ballot, she has access to both, in addition to extensive news coverage. And when a voter comes to a polling place, the State will have posted the full text of amendments. *Id.* And if that all weren’t enough, here Utahns submitted declarations that they’ve already been able to learn about Amendment D and read its full text with “virtually

no effort.” See **Exhibit C-364-93**. They were not confused by the ballot summary and thought it fairly and accurately described the amendment. *Id.* Their knowledge of Amendment D is no surprise; there has been an onslaught of Amendment D news and no shortage of criticism from its opponents. See **Exhibit C-14 & n.18, 86-353**. It blinks reality to ignore those “surrounding circumstances,” *contra Nowers*, 110 Utah at 39, and presume Utah voters will have no idea what they are voting on in November. Utah courts have *never* voided an amendment by assuming such a thing.

Neither this Court nor other state supreme courts would have reached the same decision as the district court. In *Nowers*, this Court observed that there was “no general legislative mandate as to how a proposition must be worded on the ballot.” 110 Utah at 39. Other state supreme courts agree legislatures have “significant deference” “in explaining the proposal to the people.” *Wis. Just. Initiative, Inc. v. Wis. Elections Comm’n*, 2023 WI 38, ¶53, 990 N.W.2d 122; *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 646-47, 648 (Minn. 2012) (giving the legislature “a high degree of deference” and requiring plaintiffs to meet a “rigorous standard”); *Knight v. Martin*, 556 S.W.3d 501, 507 (Ark. 2018) (“liberal construction” given to the legislature’s summary); *Kahalekai v. Doi*, 590 P.2d 543, 549 (Haw. 1979) (“manifest beyond a reasonable doubt”); *Advisory Op.*, 384 So. 3d 122, 127 (Fla. 2024) (“a deferential standard of review”). Plaintiffs’ cited cases *reject* claims challenging ballot summaries under this deferential review, which credits voters for being the reasonably intelligent people that they are. *Wis. Just. Initiative*, 2023 WI 38, ¶57; *Ritchie*, 819 N.W.2d at 651; *Knight*, 556 S.W.3d at 509; *Breza v. Kiffmeyer*, 723 N.W.2d 633, 636 (Minn. 2006); *Opinion of the Justices*, 283 A.2d 234, 236 (Me. 1971). In *Kahalekai*, 590 P.2d at 553-54, for example, the court examined “extensive coverage before the election” and whether ballot issues were “the subject of widespread publicity in the newspapers, and on radio and television”; whether voters could obtain the summary of the constitutional

convention; and whether the voter informational booklet “contained a digest of the amendments.” *Id.* Even Florida law, cited by the district court as though it were Utah’s (**Exhibit A-9**), has changed. A more recent decision rejects a ballot-summary challenge, over the dissent’s repeated invocation of *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000), cited by the district court here. *See Advisory Op.*, 384 So. 3d at 137.

This Court should not make the same demeaning assumptions about Utahns. Utah voters read, think, and vote for themselves. Amendment D is no state secret. Its text has been widely published and will be reproduced in full in Voter Information Pamphlets and at polling places. And its effect has already been widely debated. The failure to credit “surrounding circumstances of the elections” and to appreciate Utahns as “reasonably intelligent voters[]” is reversible error. *Nowers*, 110 Utah at 39. No court should “assume” that Utahns will “not understand the issue.” *Dutton*, 171 A.2d at 692.

**B. Utah Code §20A-7-103(3).** To the extent the district court concluded that the ballot summary violates §20A-7-103(3)—the opinion is not clear—that too was wrong and reversible error. Section 20A-7-103(3) tasks the Legislature’s “presiding officers” to “summarize[] the subject matter of the amendment in question.” The ballot summary did so by identifying “the initiative process” and specifying that it would “clarify[]” the Legislature’s “ability to amend laws.” *Supra* pp. 6. For all the reasons Plaintiffs’ Article XXIII presentment claim fails, this statutory claim fails too. *Supra* I.A; *see Rothfels*, 11 Utah 2d at 176 (statutory “doubts should be resolved in favor of the right to vote”). And the statutory claim fails for another obvious reason. The statute contains no private right of action, nor did Plaintiffs cite any. *But see Bleazard v. City of Erda*, 2024 UT 17, ¶47, 552 P.3d 183 (“In the absence of language expressly granting a private right of action in the statute itself, the courts of this state are reluctant to

imply a private right of action based on state law.”). The Legislature made this argument below. The district court never acknowledged it.

**C. Article IV, §2.** The district court, paradoxically, concluded that counting votes on Amendment D would violate Utahns’ right to vote. **Exhibit A-11.** The constitution promises that “[e]very citizen of the United States, eighteen years of age or over, who makes proper proof of residence in this state for thirty days next preceding any election, or for such other period as required by law, shall be entitled to vote in the election.” Utah Const. art. IV, §2. There is no logic to the district court’s conclusion that the status quo—holding a vote on Amendment D—denies qualified voters the opportunity to cast votes. But the injunction does. The district court just declared votes will “not count[.]” **Exhibit A-15.** Actual voters had educated themselves and were ready to vote on Amendment D, and now they cannot. **Exhibit C-364-93.** Against that evidence, the district court presumed that Utahns’ vote will not be “meaningful,” perpetuating the same wrong assumption that Utahns don’t understand. **Exhibit A-11.** That flies in the face of this Court’s correct view of the Utah voter as “reasonably intelligent.” *Nowers*, 110 Utah at 39; *accord Dutton*, 171 A.2d at 692.

## **II. The Legislature “cause[d]” Amendment D to be published.**

The district court also voided Amendment D because of Article XXIII’s publishing requirement. It states that “*the Legislature shall cause* the [amendment] to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election.” Utah Const. art. XXIII, §1 (emphasis added). The district court’s order ignored that text and what the Legislature has done.

**A.** For starters, Article XXIII’s term “newspaper” is not limited to physical newspapers that existed in 1895. And yet, Plaintiffs argued that—because the “internet did not exist in 1895”—“the original public meaning of ‘newspaper’ could only mean a physical, printed

newspaper.” **Exhibit B-48**. That argument “border[s] on the frivolous.” *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008). That’s like saying the First Amendment doesn’t protect the Salt Lake Tribune’s First Amendment press or speech rights because the Tribune is now online and not on the framers’ printing press. Or that the Second Amendment protects only muskets and firelocks because those were the only “arms” used in 1791. All those arguments fail because they assume constitutional language—“speech” or “press” or “arms” or “newspaper”—do not apply to modern forms of those nouns. “[W]e do not interpret” constitutions “that way.” *Id.*; see also *Reno v. ACLU*, 521 U.S. 844, 849 (1997); see, e.g., *Matter of Gray*, 2021 UT 13, ¶31, 487 P.3d 96. Giving “newspaper” its natural meaning here, the Deseret News published—admittedly online—the text of Amendment D that Plaintiffs challenge as early as August. *Supra*, p. 3; see **Exhibit C-14, 86-353**. The public discourse on Amendment D has proliferated since, *id.*, all because the Legislature took steps to facilitate that discussion.

**B.** The more fundamental problem is that the court asked the wrong question with respect to Plaintiffs’ publishing claim. Article XXIII asks what “the Legislature” has done—not what other government officials or the newspapers did. And Article XXIII asks what the Legislature has done to “cause” the amendment to be published—not whether the Legislature *itself* has published the amendment. It contains no “Legislature Must Publish Newspapers” Clause, or “Legislature Must Buy Ads in Newspapers” Clause. *Contra* **Exhibit A-12** (stating that the Constitution (mandates “that the *Legislative Defendants publish* the full text ...” (emphasis added)). After all, the Legislature is running a government, not a newsroom. In simplest terms, Article XXIII asks the Legislature to take steps to make Amendment D available to the people in their newspapers—even if online ones (as they almost all now are). And the Legislature took those steps. The Legislature publicly announced it would hold a special session to consider the constitutional amendment. Legislators then introduced S.J.R. 401 with the full



text of that proposed amendment. Its full text has been available on the Legislature’s website since then.<sup>12</sup> At any time, news outlets could—and did—publish the text and/or provide a link to the Legislature’s website. **Exhibit C-14, 86-353**. What’s more, the Legislature expressly “directed” the Lieutenant Governor on August 22, 2024, “to submit [Amendment D] to the voters of the state ... in the manner provided by law,” Utah S.J.R. 401, §3, and ensured sufficient funding to do so.<sup>13</sup> And she did, issuing a public notice to voters on September 9, 2024, which can be reproduced in newspapers across the state.<sup>14</sup>

Then the Legislature took additional and unprecedented steps. As of Wednesday, the Legislature has substantially complied with even the district court’s gloss on Article XXIII—requiring the Legislature itself to publish, rather than take steps to “cause” others to publish—by buying ad space in 35 newspapers across the state. **Exhibit C-398-400**. The Legislature has never taken that step before, *id.*—compelling evidence that the court’s read of the Legislature’s particular Article XXIII duty is wrong. *See Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶65, 140 P.3d 1235 (grounding “constitutional construction” in “long histor[ical]” practice); *cf. Snow v. Keddington*, 195 P.2d 234, 235 (Utah 1948) (noting the Legislature “directed” the “secretary of state” to publish). The district court had no basis to conclude that the Legislature has not substantially complied (indeed, it has actually complied) with publication. And the Legislature told the district court that “substantial compliance” is the common rule with plenty of authorities, **Exhibit C-46-47**,<sup>15</sup> but the court missed it, **Exhibit A-13 n.14** (“No legal authority was

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<sup>12</sup> Utah Legislature, S.J.R. 401 (2024), [le.utah.gov/~2024S4/bills/static/SJR401.html](https://le.utah.gov/~2024S4/bills/static/SJR401.html)

<sup>13</sup> Utah Legislature, Fiscal Note – S.J.R. 401, [le.utah.gov/~2024S4/bills/static/SJR401.html](https://le.utah.gov/~2024S4/bills/static/SJR401.html).

<sup>14</sup> *See* Public Notice, Full Text of Proposed Constitutional Amendments, Utah Lieutenant Governor, [ltgovernor.utah.gov/2024/09/09/public-notice-full-text-of-proposed-constitutional-amendments/](https://ltgovernor.utah.gov/2024/09/09/public-notice-full-text-of-proposed-constitutional-amendments/)

<sup>15</sup> *E.g., Opinion of the Justices*, 275 A.2d 558, 561 (Del. 1971) (“mandatory” publication requirement “subject to substantial compliance rule”); *see also Cooper v. Caperton*, 470 S.E.2d 162, 173-74 (W. Va. 1996) (“untimely publications [do] not warrant declaring the amendment

submitted”).<sup>16</sup> After Wednesday, the district court had no evidentiary basis to declare a violation of Article XXIII and strip Utahns of their right to vote on Amendment D.

**C.** The district court cited *Snow*, 195 P.2d 234, but *Snow* only illustrates the foregoing arguments. In *Snow*, this Court considered whether voters could be presumed not to understand an amendment’s effective date because the notice at the polling place was defective. *Id.* at 238. The Court said no because the publishing requirement was enough to ensure that voters understood, despite the error. *Id.* The Court observed the “importance” that amendments are published “in the newspapers prior to the general election” because “that permits the voter time to consider the merits or demerits of the proposed change.” *Id.* at 238. Utahns have already had that opportunity to learn about and consider Amendment D’s merits and demerits in droves, with “virtually no effort.” *E.g.*, **Exhibit C-365**. Utah news outlets with statewide reach are replete with Amendment D coverage. And now, the Legislature itself will have paid for more in apparently unprecedented fashion. **Exhibit C-398-400**. No Utahn can claim that Amendment D is a state secret. There is no justification for *voiding* its effect without considering those “immediately surrounding circumstances of the election” and crediting the voter as a “reasonably intelligent” one. *Nowers*, 110 Utah at 39.

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unconstitutional” if there’s “substantial compliance”); *Opinion of the Justices*, 104 So. 2d 696, 698 (Ala. 1958) (“a proposed constitutional amendment is validly adopted when there has been substantial compliance with” the publication requirement); 16 Am. Jur. 2d Const. L. §32 (2024) (only “[s]ubstantial compliance” is required; “a failure to make publication during a small portion of the prescribed period or in every county will not necessarily invalidate the amendment”).

<sup>16</sup> As for the declaration itself, the district court said it only “noticed” the filing at 5:00 a.m. Thursday. **Exhibit A-13 n.14**. But the Court has been communicating with the parties rapidly by email during these expedited proceedings. And the Legislature both emailed and filed the declaration to chambers before 7:00 p.m. Wednesday, about two hours after the lengthy afternoon hearing ended.

Plaintiffs' publication claim is a Trojan horse. And the district court just opened the gates not just for Amendment D but for others. Contrary to what Plaintiffs led the district court to believe, Utahns do not live under a rock. Utahns are not confused. And Utahns are not waiting to read Amendment D on largely defunct newsprint. The Legislature has made Amendment D available to the world, enough to "cause" it to be published. Plaintiffs' claims are no basis for ordering all Utahns' votes "not counted." **Exhibit A-15.**

### **III. There is no equitable basis to order that Utahns' votes won't count.**

The district court's conclusion that Plaintiffs showed likely success is a reversible abuse of discretion. *See Aquagen Int'l, Inc. v. Calrae Tr.*, 972 P.2d 411, 413 (Utah 1998). So too is the district court's wholly inadequate discussion of the equities and the public interest, which are not an afterthought. *See, e.g., Cook*, 882 P.2d at 659 (denying an injunction in a ballot-related case based on the "overriding public interest"); *Winter v. NRDC*, 555 U.S. 7, 24 (2008) (vacating injunction based on equities and public interest).

The district court never grappled with the effect of its order: depriving 1.7 million Utahns from voting on Amendment D. Amendment D's opponents took a short cut. They used a court case to cancel an election, rather than let the vote on Amendment D happen at the ballot box. The district court opinion is *silent* on those ramifications. It is *silent* on Utahns' declarations explaining that their fundamental rights are violated by the order. **Exhibit C-365, 368, 371, 374, 377, 380, 383, 386, 389, 392** (removing Amendment D will "deprive me of my opportunity to express my political and policy views" and "my right to alter or reform the government"). A court cannot simply ignore that "robust defense evidence of the harm" before issuing an injunction like the district court did here. *Moore v. Lee*, 644 S.W.2d 59, 67 (Tenn. 2022); *see Winter*, 555 U.S. at 27, 29 (rebuking lack of "serious consideration" to, and "ignor[ing]," the public-interest concerns described in the Navy's declarations).

More perniciously, the district court’s order erodes “the functioning of our participatory democracy.” *Purvell*, 549 U.S. at 4. By declaring Amendment D void, the injunction “incentiv[izes]” Utah voters “to remain away from the polls.” *Id.* at 5; *accord Moore*, 644 S.W.2d at 67. Voters don’t know if they should be learning about, campaigning for, and voting on Amendment D. Leaving “voters”—in particular Amendment D supporters—“unsure” leading up to Election Day is manifestly “contrary to the public interest.” *Peck v. Monson*, 652 P.2d 1325, 1328 (Utah 1982) (Oaks, J., concurring). So is leaving Utah voters “feel[ing] disenfranchised.” *Purvell*, 549 U.S. at 4; **Exhibit C-365, 368, 371, 374, 377, 380, 383, 386, 389, 392**.

Nothing on Plaintiffs’ side of the ledger justifies an injunction affecting all Utah voters. Had the district court properly applied this Court’s “reasonably intelligent” voter standard and properly considered the “surrounding circumstances of the election,” *Nowers*, 110 Utah at 39, it would have concluded Plaintiffs’ likely success is anything but “substantial.” *Contra* Utah R. P. 65A(e)(1); *see Aquagen*, 972 P.2d at 413. For related reasons, Plaintiffs made no adequate showing of irreparable harm. Plaintiffs’ conjecture about what other Utahns might “unwittingly” do, *supra*, is belied by declarations and other “surrounding circumstances” of the election. *Nowers*, 110 Utah at 39; *see, e.g., MAID v. State*, 2024 MT 200, ¶19 (mere “possibility” of harm insufficient to outweigh the public interest (quoting *Winter*, 555 U.S. 22)); *compare Exhibit A-14* (speculating voters “may” vote “without being fully informed”), *with Exhibit C-365, 368, 371, 374, 377, 380, 383, 386, 389, 392* (testifying they are “not confused”). And still, the district court simply lifted Plaintiffs’ conjecture word-for-word from Plaintiffs’ brief. *See Exhibit A-14; compare Exhibit B-27* (same sentence).

Plaintiffs’ worry that they will lose an election (or this case) does not save them. **Exhibit A-14**. It simply exposes their Trojan horse. They proposed canceling the vote on Amendment D and elaborate remedies like forcing county clerks “to mail notices along with the

ballots informing that the Court has ordered Amendment D void” (**Exhibit B-57 n.5**), but no remedy to effectively allow the vote. Courts are not a political opponent’s or legal adversary’s tool to stop elections. *Cf. Peck*, 652 P.2d at 1328 (Oaks, J., concurring); *see also Cook*, 882 P.2d at 659. Furthermore, Amendment D is not just about Plaintiffs’ one court case, but a question for the voters on all initiatives. Litigation by a few cannot cancel the votes of all.

### **INTERLOCUTORY REVIEW MATERIALLY ADVANCES THE TERMINATION OF THIS LITIGATION**

For the reasons explained in the Rule 23C motion, this Court’s immediate interlocutory review is necessary given the election timing. This Court’s review will also conclude litigation over Plaintiffs’ novel claims—all intended to stop the rapidly impending vote that will soon occur, or not, on Amendment D.

### **THE SUPREME COURT SHOULD DECIDE THIS MATTER**

For the reasons explained in the simultaneously filed Rule 23C motion, there is no time to proceed any other way. Every Utahn deserves this Court’s final word about whether their votes will be counted. The election is weeks away. Building in an additional layer of review by the Court of Appeals will effectively preclude the opportunity for appellate review. The only course is for this Court to decide definitively the questions presented in this interlocutory appeal, including deciding definitively whether Utahns’ votes can be ignored.

### **CONCLUSION**

For the foregoing reasons, the Court should grant the petition for permission to appeal and vacate the preliminary injunction. All Utahns should be heard on Amendment D.

Dated: September 13, 2024

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### **CERTIFICATE OF COMPLIANCE**

1. This petition does not exceed 20 pages, excluding any tables or attachments, in compliance with Utah Rule of Appellate Procedure 5(d).
2. This petition has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Garamond font in compliance with the typeface requirements of Utah Rule of Appellate Procedure 27(a).
3. This brief contains no non-public information and complies with Utah Rule of Appellate Procedure 21(h).

/s/ Tyler R. Green

## CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2024, a true, correct and complete copy of the foregoing Petition for Permission to Appeal from an Interlocutory Order was filed with the Court and served via United States Mail or electronic mail to the following:

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## **Attachments**

- (A) Preliminary Injunction Order & Opinion
- (B) Plaintiffs' First and Second Preliminary Injunction Motions
- (C) Legislature's Response to Plaintiffs' Preliminary Injunction Motions
- (D) Utah Lieutenant Governor's Response to Plaintiffs' Preliminary Injunction Motion & Declaration of Shelly Jackson



# Exhibit A

SEP 12 2024

Salt Lake County

Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR  
SUNDWALL, JACK MARKMAN, and  
DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH  
LEGISLATIVE REDISTRICTING  
COMMITTEE; SENATOR SCOTT  
SANDALL, in his official capacity;  
REPRESENTATIVE BRAD WILSON, in his  
official capacity; SENATOR J. STUART  
ADAMS, in his official capacity; and  
LIEUTENANT GOVERNOR DEIDRE  
HENDERSON, in her official capacity,

Defendants.

**RULING AND ORDER  
GRANTING PLAINTIFFS' MOTION  
FOR LEAVE TO FILE SUPPLEMENTAL  
AND FIRST SUPPLEMENTAL  
COMPLAINT**

**AND**

**GRANTING MOTION FOR  
PRELIMINARY INJUNCTION ON  
COUNTS 9-14 AND 15**

Case No. 220901712

Judge Dianna M. Gibson

Plaintiffs filed two motions for preliminary injunction on September 5, 2024, and September 7, 2024, requesting this court either remove Amendment D from the ballot entirely or rule that it is void and to be given no effect. The Lieutenant Governor's Office represents that the proofs of the final ballots must be sent to the printers as soon as possible before or no later than Thursday, September 11, 2024.

This court has reviewed the parties' written submissions and heard oral argument on September 9, 2024. For the reasons stated below, Plaintiffs' two Motions for Preliminary Injunction are GRANTED. Amendment D is declared void.

**BACKGROUND**

On July 11, 2024, the Supreme Court issued a decision in *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, affirmed that Utah citizens have the fundamental

constitutional right to alter or reform their government through the citizen initiative process and, importantly, that the Utah Legislature cannot amend or repeal a law passed by citizen initiative that alters or amends government unless it does so in a way “narrowly tailored to further a compelling government interest.” *Id.* ¶74. On the heels of that decision, the Utah Legislature quickly moved to propose a constitutional amendment to the citizen initiative process, specifically Article I, Section 2 and Article VI, Section 1, Subsection (2) of the Utah Constitution and took steps to ensure that the proposed amendment would appear on the November 2024 Ballot for the General Election.

To place the constitutional amendment on the ballot, an emergency legislative session was called. A new statute was created.<sup>1</sup> Statutory timelines were shortened and certain statutory processes were deemed not to apply.

### **The Proposed Constitutional Amendment**

In August 2024, the Utah Legislature announced it would hold a special session to introduce a proposed constitutional amendment. “Lawmakers to Convene to Restore and Strengthen the Initiative Process,” Utah State Legislature (Aug. 19, 2024), [house.utleg.gov/wp-content/uploads/2024/08/Special-Session-Statement\\_Press-Release.pdf](https://house.utleg.gov/wp-content/uploads/2024/08/Special-Session-Statement_Press-Release.pdf). The announcement stated the Legislature would “*[r]estore* and strengthen the long-standing practice that voters, the Legislature, and local bodies may amend or repeal legislation.” *Id.* (emphasis added.)

On August 21, 2024, the Legislature proposed amendments to Article I, Section 2 and Article VI, Section 1, Subsection (2). The proposed amendments are underlined and are set forth below:

#### **Article I, Section 2. All political power inherent in the people.**

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government through the processes established in Article VI, Section 1, Subsection (2) or through Article XXIII as the public welfare may require.

#### **Article VI, Section 1. Power vested in Senate, House, and People— Prohibition on foreign influence on initiatives and referenda.**

(1) The Legislative power of the State shall be vested in:

(a) a Senate and House of Representatives which shall be designated the

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<sup>1</sup> The Legislature enacted Utah Code Section 20A-7-103.1, which provided special rules and a different, expedited and truncated process to get this specific constitutional amendment on the ballot. Section 20A-7-103.1 exempts the proposed Amendment from established requirements for constitutional amendments and specifically eliminated the opportunity to present arguments in favor of and opposition to the proposed amendment, before final approval for the ballot. S.B. 4002, Ballot Proposition Amendments, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), <https://le.utah.gov/~2024S4/bills/static/SB4002.html>.

Legislature of the State of Utah; and

(b) the people of the State of Utah as provided in Subsection (2).

(2)(a)(i) The legal voters of the State of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:

(A) initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute; or

(B) require any law passed by the Legislature, except those laws passed by a two-thirds vote of the members elected to each house of the Legislature, to be submitted to the voters of the State, as provided by statute, before the law may take effect.

(ii) Notwithstanding Subsection (2)(a)(i)(A), legislation initiated to allow, limit, or prohibit the taking of wildlife or the season for or method of

taking wildlife shall be adopted upon approval of two-thirds of those voting.

(b) The legal voters of any county, city, or town, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:

(i) initiate any desired legislation and cause it to be submitted to the people of the county, city, or town for adoption upon a majority vote of those voting on the legislation, as provided by statute; or

(ii) require any law or ordinance passed by the law-making body of the county, city, or town to be submitted to the voters thereof, as provided by statute, before the law or ordinance may take effect.

(3)(a) Foreign individuals, entities, or governments may not, directly or indirectly, influence, support, or oppose an initiative or a referendum.

(b) The Legislature may provide, by statute, definitions, scope, and enforcement of the prohibition under Subsection (3)(a).

(4) Notwithstanding any other provision of this Constitution, the people's exercise of their Legislative power as provided in Subsection (2) does not limit or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature, or by a law-making body of a county, city, or town, on behalf of the people whom they are elected to represent.

The Legislature also enacted contingent legislation that will take effect if voters approve the

proposed Amendment. That legislation, among other things, does add 20 days to the time voters have to submit referendum signatures. It also amends Utah Code Ann. Section 20A-7-212(3)(b) to now state:

(3)(b) *If, during the general session next following the passage of a law submitted to the people by initiative petition, the Legislature amends the law, the Legislature:*

(i) *shall give deference to the initiative by amending the law in a manner that, in the Legislature's determination, leaves intact the general purpose of the initiative; and*

(ii) *notwithstanding Subsection (3)(b)(i), may amend the law in any manner determined necessary by the Legislature to mitigate an adverse fiscal impact of the initiative.*

S.B. 4003, Statewide Initiative and Referendum Amendments, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), <https://le.utah.gov/~2024S4/bills/static/SB4003.html> (emphasis added). The language does represent that the Legislature will give deference to the initiative if any amendments are made, but this deference is limited in time (to the next general session following the initiative's adoption), is subject to the Legislature's discretion, and subject to amendment to mitigate *any* "adverse fiscal impact." Notably, this statute is trumped by the amendment to Article VI, Section 1, subpart (4) which states that the Legislature's authority to amend, enact or repeal a citizen initiative is not limited, in any way, including by any other constitutional provisions.

The proposed constitutional amendment and contingent enabling legislation was voted on and passed on August 22, 2024. Since that time, the full text of the proposed amendments has been posted on the Lieutenant Governor's official website.

### **The Proposed Ballot Language**

Utah law requires the Speaker of the House and the President of the Senate to "draft and designate a ballot title for each proposed amendment or question submitted by the Legislature that: (i) *summarizes the subject matter of the amendment* or question; and (ii) for a proposed constitutional amendment, *summarizes any legislation that is enacted and will become effective upon the voters' adoption of the proposed constitutional amendment.*" Utah Code Ann. § 20A-7-103(3)(c)(i), (ii) (emphasis added).

On September 3, 2024, the ballot language for the constitutional amendment, titled Amendment D, was certified, and the certified language was published on either September 3 or 4, 2024. Amendment D and a summary of the constitutional amendments appearing on the November 5, 2024 General Election ballots describes that the amendments will "strengthen" and "clarify" the citizen initiative process and "establish requirements for the legislature to follow the intent of a ballot initiative."

The certified ballot language states:

## **Constitutional Amendment D**

Should the Utah Constitution be changed to strengthen the initiative process by:

- Prohibiting foreign influence on ballot initiatives and referendums.
- Clarifying the voters and legislative bodies' ability to amend laws.

If approved, state law would also be changed to:

- Allow Utah citizens 50% more time to gather signature for a statewide referendum.
- Establish requirements for the legislature to follow the intent of a ballot initiative.

For ( ) Against ( ).

Office of the Lieutenant Governor, 2024 General Election Certification at 34-35, <https://vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf>.

## **Publication Requirements**

Article XXIII, Section 1 of the Utah Constitution provides that after the Legislature approves a proposed constitutional amendment, “the Legislature shall cause the same to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election.” Utah Const. art. XXIII, § 1.

Separately, Utah Code § 20A-7-103(2) provides that “[t]he lieutenant governor shall, not more than 60 days or less than 14 days before the date of the election, publish the full text of the amendment . . . as a class A notice under Section 63G-30-102, through the date of the election. Utah Code § 20A-7-103(2). Section 63G-30-102 requires “class A notices” for matters affecting the entire state to be (1) published on the Utah Public Notice Website and (2) published on the relevant official’s website if that official maintains one and has “an annual operating budget of \$250,000 or more.” Utah Code § 63G-30-102(1)(a)-(b) & 4(a).

## **Pending Motions**

Plaintiffs filed two Motions for Preliminary Injunction, asserting that Amendment D violates the Utah Constitution.<sup>2</sup> Plaintiffs first argue that the certified ballot language for Amendment D fails to accurately submit the proposed constitutional amendment to the voters, preventing voters from making an informed decision about whether to vote for or against the Amendment. Plaintiffs assert the summary as presented in Amendment D is not accurate, fails to disclose the impact on each citizen’s fundamental rights, and is actually misleading. Plaintiffs assert that Amendment D does not actually “strengthen” citizen initiatives; rather it weakens the

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<sup>2</sup> Because the events surrounding the proposed constitutional Amendment D arose entirely after Plaintiffs filed their initial complaint in 2022 and after the Supreme Court’s 2024 ruling, Plaintiffs have filed two motions to supplement the original complaint to add additional claims. The two pending motions are based on these new claims.

power of citizen initiatives under Utah’s constitution, as that right was recognized and affirmed by the Utah Supreme Court on July 11, 2024, in *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21 . . . the ruling that initiated the emergency legislative session to amend the Constitution. Plaintiffs assert Amendment D violates the Utah Constitution, specifically Article XXIII, § 1 and Utah Code Section 20A-7-103(c)(Presentation / Summary of Constitutional Amendments to Voters), Article 1, § 17 (Free Elections), Article I, § 1 (Free Speech and Expression), Article IV§2 (Right to Vote), and Article 1, Section 2 (Free Government). Plaintiffs filed a Motion to Supplement Counts 9-14 to add these new claims.

Plaintiffs assert Amendment D has not been published as required by the Utah Constitution and therefore voters will not have sufficient time to review the actual text of the proposed constitutional amendment in advance of the election. The Publication Clause, under Article XXIII, § 1, requires a proposed constitutional amendment to be “published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election.” They assert this mandatory publication requirement cannot now be complied with; therefore, voters will not have adequate opportunity to become informed. Plaintiffs filed a Motion to Supplement count 15 to include Article XXIII, §1.

## **ANALYSIS**

### **Defendant’s Justiciability and Redressability Arguments**

Before the court addresses the legal requirements for a preliminary injunction, Defendants raise two arguments that the Court must address.

First, Defendants argue that the issue before the court, specifically, reviewing the Amendment D ballot language is not justiciable. The Court disagrees. There is Utah precedent for reviewing ballot language. *See Nowers v. Oakden*, 110 Utah 25, 29, 169 P.2d 108, 116 (1946). Defendants also assert that it is outside of the court’s jurisdiction to line-edit the Amendment D summary. That relief has not been requested.

Second, this matter is redressable. Defendants argue that Plaintiffs’ failure to name county officials as defendants makes Plaintiff’s requested relief a nonstarter. The Legislative Defendants argue that the Lieutenant Governor does not have authority over the county clerks. The Court disagrees. Under Utah Code Section 20A-1-403(1) it states: “The election officer shall, without delay, correct any errors in ballots that the election officer discovers, or that are brought to the election officer’s attention, if those errors can be corrected without interfering with the timely distribution of the ballots.” Section 20A-1-102 (23)(a), (b) defines an “election officer” as the Lieutenant Governor, for all statewide ballots and elections, and the county clerk, for county ballots and elections. Section 20A-5-405(3)(a) also confirms again that election officers shall, without delay, correct any error discovered in a ballot. The statutes make clear that election officers have an independent duty to ensure the ballots contain no errors. Finally, Section 20A-1-105, details the duties, authority and enforcement obligations of the Lieutenant Governor as the “Chief election officer of the state.” Under this statute, it makes clear that all election officers have the obligation to fully assist and cooperate with the Lieutenant Governor. *Id.* § 20A-1-105(3). In addition, she has the authority to issue orders,

that have the effect of law, if it is determined that any election officer is not complying with any law or rule. Under Utah law, the Lieutenant Governor has full authority over county clerks for purposes of administering an election and the ballots.

### **Motions to Supplement**

Plaintiffs filed two Motions to Supplement and two Motions for Preliminary Injunction. Plaintiffs seeks to add new events and claims that have happened post-July 11, 2024. Under Rule 15(d) of the Utah Rules of Civil Procedure, “[t]he court may, on just terms, permit a party to file a supplemental pleading.” Utah R. Civ. P. 15(d). In addition, this court has broad discretion in granting a motion to supplement. *Rowley v. Milford City*, 10 Utah 2d 299, 301, 352 P.2d 225, 226 (1960). A motion to file a supplemental pleading “should be freely granted,” if doing so would not be “unjust.” *Harvey v. Ute Indian Tribe of Uintah & Ouray Rsrv.*, 2017 UT 75, ¶ 56. Additionally, “the fundamental purpose” of Utah’s liberalized pleading rules “is to afford parties the privilege of presenting whatever legitimate contentions they have pertaining to their dispute.” *Williams v. State Farm Ins. Co.*, 656 P.2d 966, 971 (Utah 1982) (internal citation omitted). Typically, motions to supplement are “liberally” granted unless it includes “untimely, unjustified, and prejudicial factors.” *Daniels v. Gamma W. Brachytherapy, LLC*, 2009 UT 66, ¶ 58. Here, the Court concludes that Plaintiffs’ motions are timely, justified and not futile. Therefore both Motions to Supplement Complaint to add counts 9-14 and count 15 are GRANTED.<sup>3</sup>

### **Preliminary Injunction**

A court may issue a preliminary injunction if Plaintiffs show that: (1) “there is a substantial likelihood that [Plaintiffs] will prevail on the merits of the underlying claim,” (2) “[Plaintiffs] will suffer irreparable harm unless the . . . injunction issues,” (3) “the threatened injury to [Plaintiffs] outweighs whatever damage the proposed . . . injunction may cause the party . . . enjoined,” and (4) “the . . . injunction, if issued, would not be adverse to the public interest.” Utah R. Civ. P. 65A(e). Plaintiffs have met their burden.

- 1. There is a substantial likelihood that Plaintiffs will succeed on the merits of their claim that Amendment D violates the Utah Constitution, specifically Article XXIII, § 1 (Presentation of Constitutional Amendments to Voters), the Article IV§2 (Right to Vote) and Article XXIII (the Publication Clause).**

The Legislature has placed on the ballot a proposal to amend the Utah Constitution in a way that will change each citizen’s fundamental right to alter or amend their government through citizen initiatives. This constitutional right has existed since the Utah Constitution was ratified and, on July 11, 2024, the Utah Supreme Court interpreted the provision to impose limits on the Legislature’s ability to amend or repeal a law passed by citizen initiative, unless it is narrowly tailored to advance a compelling state interest. The Legislature now requests that Utah’s citizens vote on whether to modify their fundamental right to alter or amend their government, as set forth in *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, to give the Legislature unlimited power to

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<sup>3</sup> Note, in this Order Granting Preliminary Injunction, the Court substantively addressed three of the six claims. In order to grant this Motion, the Court did not need more than one claim.



amend, repeal and enact any law. While the Legislature has every right to request the amendment, it has the duty and the obligation to accurately communicate the “subject matter” of the proposed amendment to voters and to publish the text of the amendment in a newspaper in each county two months before the election. It has failed to do both.

**a. Article XXIII, § 1 and Utah Code Ann. § 20A-7-103(3) (Presentation of Constitutional Amendment to Voters)**

Under Article XXIII, Section 1 of the Utah Constitution, a constitutional amendment requires two-thirds of all members elected to each house of the Legislature to vote in favor of the proposed amendment. Once the amendment passes, “the Legislature shall cause *the same* to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election, *at which time the said amendment or amendments shall be submitted to the electors of the state for their approval or rejection*, and if a majority of the electors voting thereon shall approve the same, such amendment or amendments shall become part of this Constitution.” Utah Const. art. XXIII, § 1 (emphasis added).<sup>4</sup> The plain language of Article XXIII requires that the proposed amendment presented to the Legislature must be “submitted to the electors of the state for their approval or rejection.” Utah Const. art. XXIII, § 1. The most straightforward reading of Article XXIII is that the *actual text* of the amendment must be presented to voters. The actual text of the amendment, however, is not typically presented on the ballot.<sup>5</sup> Instead, Utah Code Section 20A-7-103(3) requires that each proposed amendment appear on the ballot by title, with language “summarizing the subject matter of the amendment.” Utah Code § 20A-7-103(3)(c). “Implicit in th[ese] provision[s] is the requirement that the proposed amendment be accurately represented on the ballot; otherwise, voter approval would be a nullity.” *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000) (interpreting similar Florida constitutional language).

In the only Utah case addressing ballot language, the Utah Supreme Court in *Nowers v. Oakden*, 169 P.2d 108 (Utah 1946) requires the court evaluate ballot language “in the light of the circumstances of its submission,” and determine if it is “framed with such clarity as to enable the voters to express their will.” *Id.* 116 (stating the ballot should use “words in such form that the voters are not confused thereby”). Ballot language should ensure that “no reasonably

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<sup>4</sup> When interpreting constitutional language, Utah courts “start with the meaning of the text as understood when it was adopted.” *LWVUT*, 2024 UT 21, ¶ 101 (cleaned up). The focus is on “the objective meaning of the text, not the intent of those who wrote it.” *Id.* (cleaned up). The Court thus “interpret[s] the [C]onstitution according to how the words of the document would have been understood by a competent and reasonable speaker of the language at the time of the document’s enactment.” *Id.* (cleaned up). “When [courts] interpret the Utah Constitution, the ‘text’s plain language may begin and end the analysis.’” *State v. Barnett*, 2023 UT 20, ¶ 10 (quoting *South Salt Lake City v. Maese*, 2019 UT 58, ¶ 23).

<sup>5</sup> See Utah Const. art. XXIV, § 14 (providing for submission of the Constitution to the voters for ratification and specifying that “[a]t the said election the ballot shall be in the following form: For the Constitution. Yes. No,” with instructions to the voters to erase Yes or No depending upon their vote).

intelligent voter [is] misled as to what he is voting for or against.” *Id.* The integrity of the voting process requires that ballot language fairly and accurately present the issue to be decided in order to assure a “free, intelligent and informed vote by the average citizen.” *State ex rel. Voters First v. Ohio Ballot Bd.*, 978 N.E.2d 119, 126 (Ohio 2012). The ballot language “ought to be free from any misleading tendency, whether of amplification, or omission.” *Id.* (cleaned up). And “any omitted substance of the proposal must not be material, i.e., its absence must not affect the fairness or accuracy of the text.” *Id.*; *see also Askew v. Firestone*, 421 So.2d 151, 154–55 (Fla.1982) (“What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot.”). In addition, “where a proposed constitutional revision results in the loss or restriction of an independent fundamental state right, the loss must be made known to each participating voter at the time of the general election.” *Armstrong v. Harris*, 773 So. 2d 7, 17–18 (Fla. 2000) (citing *People Against Tax Revenue Mismanagement v. County of Leon*, 583 So.2d 1373, 1376 (Fla.1991) (“This is especially true if the ballot language gives the appearance of creating new rights or protections, when the actual effect is to reduce or eliminate rights or protections already in existence.”)).<sup>6</sup>

In light of these considerations, the Amendment D ballot language does not fairly and accurately “summarize” the issue to be decided to assure a free, intelligent and informed vote by the average citizen. The “summary” both amplifies by using “strengthen”<sup>7</sup> and simultaneously omits the material and consequential constitutional change, that the Legislature will have the unlimited right to change law passed by citizen initiative. The omission entirely eliminates the voter’s fundamental constitutional right.<sup>8</sup> The omission:

Notwithstanding any other provision of this Constitution, the people's exercise of their Legislative power as provided in Subsection (2) does not limit or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature, or by a law-making body of a county, city, or town, on behalf of the people whom they are elected to represent.

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<sup>6</sup> In Plaintiffs’ Motion for Preliminary Injunction Counts 9-14, p. 9-17, Plaintiffs cite numerous cases supporting their argument that inaccurate, misleading and deceptive ballot language justifies removal from the ballot and/or voiding the proposed amendment. The cases are persuasive authority from numerous states, which this Court incorporates by reference as additional authority. (

<sup>7</sup> Plaintiffs suggest that including in the short summary the adjective “strengthen” is suggestive and encourages voters to vote in favor of the proposed amendment, but without fully summarizing all of the amendments on the ballot.

<sup>8</sup> Counsel for the Legislative defendants argued that the constitutional amendments did not change anything. But they did. In August 2024, the Utah Legislature announced it would hold a special session to introduce a proposed constitutional amendment. “Lawmakers to Convene to Restore and Strengthen the Initiative Process,” Utah State Legislature (Aug. 19, 2024), [house.utleg.gov/wp-content/uploads/August-2024-Special-Session-Statement\\_Press-Release.pdf](https://house.utleg.gov/wp-content/uploads/August-2024-Special-Session-Statement_Press-Release.pdf). The announcement stated the Legislature would “[r]estore and strengthen the long-standing practice that voters, the Legislature, and local bodies may amend or repeal legislation.” *Id.* (emphasis added.) Based on the Legislature’s representation, its intention was to use the legislation to change or in its words, “restore” the initiative process to its pre-July 11, 2024 status.

This provision does *strengthen* and *clarifies* the *Legislature's* power to change laws passed by citizen initiative for any reason, but at the expense of the people's Legislative power. The plain language of the proposed amendment provides no limitation on Legislative power. Notably, that power is limited today. By modifying Article I, Section 2 of the Constitution ("All Power Inherent in the People"), the people's Legislative power to alter and amend their government is now limited to a specific process, which it was not before. The people's Legislative power is no longer co-equal to the Legislature or to any other "law-making body of a county, city or town" as well, based on the Utah Constitution. And, the first clause - "notwithstanding any other provisions of this Constitution" - it effectively states that any other constitutional right or protection provided in the Constitution effectively gives way to the Legislative power of the Legislature. This significantly impacts and weakens the people's fundamental rights under the Utah Constitution.

Amendment D also states that "Utah citizens [will] have 50% more time to gather signatures for a statewide referendum" and it will "[e]stablish requirements for the legislature to follow the intent of a ballot initiative." While these additions are beneficial, they are not additions to the Utah constitution. Rather, they are proposed as new statutory amendments, which can be amended or repealed by the Legislature at any time for any reason.

Defendants argue that the language certified in Amendment D is not inaccurate or misleading. They argue the Legislature has broad discretion to describe the amendments. The Court does not disagree. But this is not a situation where the language used is ambiguous. The Court is not asserting that it would have chosen different words. Rather, the short summary the Legislature chose does not disclose the chief feature, which is also the most critical constitutional change - that the Legislature will have the unlimited right to change laws passed by citizen initiative. Given this glaring omission, the ballot is "counterfactual." *See Lane v. Lukens*, 283 P. 532, 533 (Idaho 1929) (holding ballot fundamentally counterfactual when it told voters terms limited to four years when they were actually extended.)

It is the Legislature's duty and obligation to inform voters and accurately describe constitutional amendments that impact a citizen's fundamental rights. Only the Legislature can propose constitutional amendments. If Amendment D passes, and citizens don't like it, only the Legislature change the constitution. Citizens cannot.

A voter has a right to know what they are being asked to vote upon. In many instances, the only real knowledge a voter may have on an issue is when the voter enters the polling location and reads the description of the proposed amendment on the ballot. This court cannot say that the Amendment D ballot language fairly and accurately summarizes the proposed constitutional amendments for the average voter.<sup>9</sup> Therefore, there is a substantial likelihood that Amendment D violates Article XXIII, § 1 of the Utah Constitution.

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<sup>9</sup> The parties submitted competing affidavits from citizens verifying that they either were or were not misled. Whether the language is *subjectively* clear or confusing is not the issue. The question is whether objectively the ballot language accurately summarizes the proposed amendment for the average voter.

**b. Article IV § 2 (Right to Vote)**

The Right to Vote Clause provides that “[e]very citizen of the United States, eighteen years of age or over, who makes proper proof of residence in this state for thirty days next preceding any election, or for such other period as required by law, *shall be entitled to vote in the election.*” Utah Const. art. IV, § 2 (emphasis added).<sup>10</sup> Utah law unequivocally acknowledges that the right to vote is fundamental to our democracy and our representative form of government. *Rothfels v. Southworth*, 11 Utah 2d 169, 176, 356 P.2d 612, 617 (1960).<sup>11</sup> In fact, it is said to be “more precious in a free country” than any other right. *Gallivan*, 2002 UT 89, ¶ 24 (quoting *Reynolds*, 377 U.S. at 560). If the right “of having a voice in the election of those who make the laws under which, as good citizens, we must live,” is undermined, “[o]ther rights, even the most basic, are illusory. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges that right.” *Id.*

This Clause guarantees “more than the physical right to cast a ballot.” Utah law has recognized that the right to vote must be “meaningful.” *Shields v. Toronto*, 16 Utah 2d 61, 66, 395 P.2d 829, 832-33 (1964) (explaining the foundation and structure our democratic system of government depends upon participation of the citizenry in all aspects of its operation.”). And it “cannot be abridged, impaired, or taken away, even by an act of the Legislature.” *Earl v. Lewis*, 28 Utah 116, 77 P. 235, 237-38 (Utah 1904). The goal of an election “is to ascertain the popular will, and not to thwart it,” and “aid” in securing “a fair expression at the polls.” *Id.*<sup>12</sup> The Amendment D ballot language does not accurately summarize the proposed amendments. In fact, it shifts power from the people to the Legislature without full disclosure. Without transparent, accurate and complete disclosure about the amendments, there can be no meaningful right to vote. Plaintiffs are likely to succeed on their right to vote claim.

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<sup>10</sup> The Court notes that neither party presented any arguments regarding the plain meaning of this clause, historical evidence regarding the drafting or adoption of this clause or discussed any particular test to be applied.

<sup>11</sup> “The right to vote and to actively participate in its processes is among the most precious of the privileges for which our democratic form of government was established. The history of the struggle of freedom-loving men to obtain and to maintain such rights is so well known that it is not necessary to dwell thereon. But we re-affirm the desirability and the importance, not only of permitting citizens to vote but of encouraging them to do so.” *Rothfels v. Southworth*, 11 Utah 2d 169, 176, 356 P.2d 612, 617 (1960).

<sup>12</sup> There is only one Utah case specifically addressing the Right to Vote Clause. See *Dodge v. Evans*, 716 P.2d 270, 273 (Utah 1985). In *Dodge*, a prison inmate challenged a law requiring him to vote in the county in which he resided prior to incarceration rather than in the county in which he was incarcerated. Plaintiff alleged that his right to vote under the Right to Vote Clause was in effect denied. *Id.* at 272-73. In analyzing that claim, the Utah Supreme Court stated, “Dodge made no contention that his right to vote was improperly burdened, conditioned or diluted.” *Id.* at 273. The implication is that a claim under the right to vote clause may include an allegation that the right was “improperly burdened, conditioned or diluted.”

**c. Article XXIII, § 1 (the Publication Clause).**

Article XXIII, § 1 of the Utah Constitution mandates that, prior to submitting a proposed amendment for approval or rejection by the people, “the Legislature shall cause the [proposed amendment] to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election...”

Plaintiffs argue that the Legislative Defendants failed to fulfill their constitutional duty to publish the full text of the amendment in a newspaper for two months immediately preceding the next general election. The Legislative Defendants argue that, despite the language requiring publication in a newspaper, the requirements of Art. XXIII, § 1 were satisfied when the legislature “caused” the amendment to be published by directing the Lieutenant Governor to publish the text of Amendment D on the Lieutenant Governor’s website, since August 2024 and more recently since September 9, 2024.<sup>13</sup> In addition, they appear to argue that they have substantially complied, given the numerous news stories related to this case. Under the circumstances presented here, the court disagrees.

The Court is not persuaded by the Legislative Defendants’ argument that it has either complied by posting on the Lieutenant Governor’s website or that Utah recognizes or that the facts support substantial compliance in this case. Article I, Section 26 of the Utah Constitution expressly states that all constitutional provisions are “mandatory and prohibitory, unless by express words that are declared to be otherwise.” Utah Const. art. I, § 26. The Utah Supreme Court interpreted this provision to mean that “courts are not free to pick and choose which parts of the constitution they will enforce.” *State v. Barnett*, 2023 UT 20, ¶ 27, 537 P.3d 212, 217. It follows that this court cannot simply ignore the explicit requirement in Article XXIII, § 1 of the Utah Constitution mandating that the Legislative Defendants publish the full text of Amendment D in a “newspaper” for at least two months prior to the November 5, 2024 general election. In addition, given Utah’s rules of constitutional construction, it is unclear how the court could interpret “newspaper” to mean an “on-line website.”

In *Snow v. Keddington*, 195 P.2d 234 (Utah 1948), the Utah Supreme Court considered the validity of a constitutional amendment where a county clerk posted the text of the proposed amendment, as required by statute, but did not include the effective date of the amendment on the poster. The Court found that the exclusion of the effective date of the amendment did not render the amendment void because the legislature had complied with the notice requirements in Article XXIII, § 1. As stated in *Snow*, “all voters throughout the state are entitled to notice.” *Id.* at 238. And “the notice of importance to the voter is the publication in the newspapers prior to the general

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<sup>13</sup> Separately, Utah Code § 20A-7-103(2) provides that “[t]he lieutenant governor shall, not more than 60 days or less than 14 days before the date of the election, publish the full text of the amendment . . . as a class A notice under Section 63G-30-102, through the date of the election. Utah Code § 20A-7-103(2). Section 63G-30-102 requires “class A notices” for matters affecting the entire state to be (1) published on the Utah Public Notice Website and (2) published on the relevant official’s website if that official maintains one and has “an annual operating budget of \$250,000 or more.” Utah Code § 63G-30-102(1)(a)-(b) & 4(a). There is no indication that the Lieutenant Governor will not comply with these publication requirements. And, as of September 9, 2024, Defendants proffer that the proposed amendments currently appear on the Lieutenant Governor’s website. They, however, do not satisfy the Legislature’s constitutional requirement.

election. This is the publication that permits the voter time to consider the merits of demerits of the proposed change. At most, the card in the voting booth could only be a helpful reminder of the general sense of the proposed change.” *Id.* The court continued, “[u]nder our constitutional requirements, notice must be carried in the newspapers.” *Id.* (finding that “the probabilities and possibilities of the voter being fully informed of the context of an amendment are reasonably assured if the publication is in the newspapers.”). Accordingly, the *Snow* court concluded that the “method of notice prescribed by the constitution is one reasonably calculated to give notice to the voters.” *Id.* The constitutional requirement has not changed and *Snow* remains good law.

Election day is November 5, 2024. As of September 11, 2024, it was 55 days to the election. No evidence has been presented that either the Legislature or the Lieutenant Governor “has caused” the proposed constitutional amendment to appear in any newspaper in Utah.<sup>14</sup> The parties do not dispute that there are numerous new articles about the Legislature’s emergency session and this dispute and that the text of the amendment, along with the Amendment D ballot language, has been published by various news outlets. The fact that there are news reports and stories, offering pros and cons and opinions, about Amendment D does not satisfy the constitutional publication requirement. Further, the voter information pamphlet will be published, but made available only on-line. It will not be printed nor mailed to voters along with the ballot. The complete text of the amendment will only be printed and posted at polling locations on Election Day. However, it was noted that most Utah voters vote by mail. While more opportunities to provide notice of the actual text of the proposed amendment is better for voters, these additional opportunities to provide notice do not satisfy the constitutional publication requirement.

Finally, the Legislative Defendants argue against this interpretation because “[t]he Legislature has no way to force an unwilling publisher to post the proposed amendment because doing so would constitute compelled speech under the First Amendment.” (*Legislative Defendants’ Combined Opposition to Plaintiffs’ Motions for Preliminary Injunction*, Docket No. 352, p. 39.) The Court finds this argument to be completely unpersuasive because, even if true, the Legislative Defendants have failed to establish that forcing publishers to print the text of the amendment against their will is the only way by which the legislature could cause publication of the amendment in a newspaper. Furthermore, the Legislative Defendants’ argument on this point is undermined by their acknowledgment that Utah newspapers and other media outlets have printed numerous stories about the proposed amendment and by its recent update, despite the fact that the legislature took no independent steps to publish the text of the amendment. In addition, this argument is now moot, given the recent representation that the Legislative Defendants have contacted 35 newspapers to publish the text.

Plaintiffs will likely succeed on its claim that Defendants violated Article XXIII, § 1 of the

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<sup>14</sup> At 5:00 a.m. the Court noticed a supplemental filing from the Legislative Defendants, with an affidavit submitted by Abby Osborne. The supplemental filing was filed sometime after the 3:00 hearing on 9/11/2024. Ms. Osborne represents that she has purchased space in 35 papers to publish the ballot title and the full text of each proposed constitutional amendment certified to appear on the November 2024 general ballot. This information was not presented during the hearing. The Court considers it, however, given the plain language of both Articles 23, Section 1 and Article 1, Section 26, the requirement is mandatory. No legal authority was submitted to support substantial compliance. The Court does not suggest that there is no possible argument for it, however, the facts of this case do not support it.

Utah Constitution.

**2. Plaintiffs will suffer irreparable harm in the absence of an injunction.**

Plaintiffs will suffer irreparable harm in the absence of an injunction against the proposed Amendment. Irreparable harm “is that which cannot be adequately compensated in damages” and is “fundamentally preventative in nature.” *Zagg, Inc. v. Hammer*, 2015 UT App 52, ¶¶ 6, 8 (quotation omitted). Without a preliminary injunction, Defendants’ inaccurate ballot language would have Utahns unwittingly *eliminate* a fundamental constitutional right that has existed since 1895. Subjecting Plaintiffs and other Utahns to this outcome is irreparable harm. *See Williams v. Rhodes*, 393 U.S. 23, 30 (1968) (“[T]he right of qualified voters ... to cast their votes effectively ... rank[s] among our most precious freedoms”).

**3. The threatened injury to Plaintiffs outweighs whatever damage the proposed injunction may cause the party enjoined.**

The balance of the equities, which “considers whether the applicant’s injury exceeds the potential injury to the defendant,” favors Plaintiffs. *Planned Parenthood Assoc. of Utah v. State*, 2024 UT 28, ¶ 210. The harm that Plaintiffs would suffer from the proposed Amendment’s ballot language, which omits the impact on Utah citizens’ fundamental constitutional rights but appears to represent to the people that it *strengthens* rights, outweighs any harm Defendants may suffer if the requested injunction is granted. *See, e.g., United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) (there can be “no harm from the state’s nonenforcement of invalid legislation”). If Amendment D proceeds to vote, Utah citizens may vote based on the ballot language, without being fully informed, and the proposal could pass. The proposed constitutional amendments will become effective and in fact will be retroactive, which will moot Plaintiffs’ claims on remand.

In attempting to balance the equities, Defendants are somewhat responsible for the impact on ballot printing for the November 2024 election. They truncated the deadlines, sidestepped normal processes, and proposed in short order a constitutional amendment, with inaccurate descriptions, to shift power from the people to the Legislature. Under the circumstances, the court cannot say that Defendants will be harmed by being unable to advance an inaccurate description of the proposed Amendment in the November 2024 election.

**4. The injunction will not be adverse to the public interest.**

The injunction promotes the public interest. The people of Utah are entitled to an accurate summary of any proposed constitutional amendment that impacts their fundamental rights and they are entitled to the constitutionally required notice, by publication in a newspaper two months before the election. These requirements are fundamental to the integrity of our democracy.

**CONCLUSION**

The injunctive relief requested – to either strike Amendment D or rule that it is void – is an extraordinary remedy. The court’s discretion “should be exercised within the purview of sound equitable principles, taking into account all the facts and circumstances of the case.” *System Concepts, Inc. v. Dixon*, 669 P.2d 421, 425 (Utah 1983) (citation omitted). “A

preliminary injunction is an anticipatory remedy purposed to prevent the perpetration of a threatened wrong or to compel the cessation of a continuing one.” *Hunsaker v. Kersh*, 1999 UT 106, ¶ 8 991 P.2d 67. (Internal citations omitted.) Plaintiffs have established that they are entitled to a preliminary injunction.


A preliminary injunction should serve “to preserve the status quo pending the outcome of the case.” *Id.* In addition the Court must consider all of the facts and circumstances in the case and should attempt to mitigate the associated risks and impact of the court’s ruling on all parties and non-parties, including all the voters of Utah. While striking Amendment D is legally justifiable, it may jeopardize Utah’s ability to comply with all election deadlines and may significantly increase the parties’ exposure to legal, financial and timing risks associated with the November 5, 2024 election.

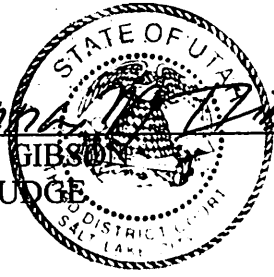
For the reasons discussed above, Plaintiffs’ preliminary injunction is GRANTED. The Court ORDERS as follows:

1. Amendment D is void and shall be given no effect.
2. Ballots may be printed as certified.
3. The Lieutenant Governor’s Office represented that a process is in place for handling matters removed from the ballot, pre-election, to ensure that they are not counted. That process shall be applied to Amendment D.
4. The Lieutenant Governor’s Office shall notify all County Clerks of the injunction and ensure that they are bound by these terms, subject to further order of this or another court.

DATED September 12, 2024.

BY THE COURT:

  
DIANNA M. GIBSON  
DISTRICT JUDGE





### **CERTIFICATE OF NOTIFICATION**

I certify that a copy of the attached document was sent to the following people for case 220901712 by the method and on the date specified.

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09/12/2024

/s/ KACI BOBO

Date: \_\_\_\_\_

\_\_\_\_\_

Signature

# Exhibit B

**This motion requires you to respond.  
Please see the Notice to Responding Party.**

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR  
SUNDWALL, and JACK MARKMAN,

Plaintiffs,

v.

UTAH STATE LEGISLATURE, UTAH  
LEGISLATIVE REDISTRICTING  
COMMITTEE; SENATOR SCOTT  
SANDALL, in his official capacity;  
REPRESENTATIVE MIKE SCHULTZ, in his  
official capacity; SENATOR J. STUART  
ADAMS, in his official capacity; and  
LIEUTENANT GOVERNOR DEIDRE  
HENDERSON, in her official capacity,

Defendants.

**PLAINTIFFS' MOTION FOR A  
PRELIMINARY INJUNCTION ON  
COUNTS 9-14 OF THEIR FIRST  
SUPPLEMENTAL COMPLAINT**

**(Expedited consideration requested)**

Case No. 220901712

Honorable Dianna Gibson

**HEARING REQUESTED**

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## RELIEF REQUESTED AND GROUNDS

Pursuant to Rule 65A of the Utah Rules of Civil Procedure, Plaintiffs League of Women Voters of Utah, Mormon Women for Ethical Government, Stefanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, and Jack Markman hereby move for a preliminary injunction on Counts 9-14 of their First Supplemental Complaint. Plaintiffs are entitled to a preliminary injunction because the certified ballot language fails to accurately submit the Amendment to the voters. Instead, it seeks through deception to mislead Utah voters into surrendering their constitutional rights. In doing so, the ballot language violates (1) the Constitution's and Code's requirements for submitting amendments to voters, Utah Const. art. XXIII, § 1; Utah Code § 20A-7-103(3); (2) the Free Election Clause, *id.* art. I, § 17; (3) Plaintiffs' right to "communicate freely their thoughts and opinions," *id.* art. I §§ 1 & 15; (4) Plaintiffs' right to vote, Utah Const. art. IV, § 2; and (5) Plaintiffs' right to be ensured a free government, *id.* art. I, §§ 2 & 27. Plaintiffs are likely to succeed on the merits of their claims, will suffer irreparable harm in the absence of an injunction, that harm outweighs any to Defendants, and an injunction is in the public interest. *See* Utah R. Civ. P. 65A(e).

**Expedited Relief Requested:** Plaintiffs seek to enjoin Defendants from placing proposed Amendment D on the November 2024 election ballot and if any ballots are issued to voters that include proposed Amendment D, seek for the Court to declare and enjoin Amendment D as void. *See supra* Part III. The relief Plaintiffs seek can be obtained without regard to the printing and mailing of ballots. But the public interest is best served by adjudicating the matter before ballots are mailed with a void Amendment included on them. Ballots will start being mailed to overseas and military voters on **September 20, 2024**. *See* Utah Code § 20A-16-403(1). Ballots are mailed



to most other voters beginning on **October 15, 2024**. *See* Utah Code § 20A-3a-202(2)(a). Plaintiffs thus respectfully request that the Court order expedited briefing and a hearing.

## **INTRODUCTION**

In a rushed special session on August 21, the Legislature declared it an “emergency” that the Supreme Court vindicated Plaintiffs’ and all Utahns’ fundamental constitutional right to alter or reform the government without legislative impairment. It hurriedly changed statutory election deadlines, stifled the ability of citizens to petition the Legislature during the special session proceedings, and quickly approved a proposed constitutional amendment that would eliminate Utahns’ constitutional right to reform their government without legislative interference. In doing so, it proposed text that would *exempt* the Legislature from complying with *any* provision of the Constitution when it acts to repeal or amend citizen initiatives.

Undoubtedly aware of the optics, the House Speaker and Senate President—Defendants in this case—then devised an ballot summary that not only will fail to inform voters that the proposed Amendment eliminates their fundamental constitutional right, but brazenly asserts that the amendment would “strengthen” the initiative process and “require[] . . . the legislature to follow the intent of a ballot initiative.” This is the definition of Orwellian doublespeak; the Amendment does the opposite on both counts. By seeking to mislead Utah voters into surrendering their fundamental constitutional rights by deception, Defendants have violated multiple provisions of the Utah Constitution.

## **FACTUAL BACKGROUND**

1. On July 11, 2024, the Utah Supreme Court held that, under Article I, Section 2 and Article VI of the Utah Constitution, the people have a fundamental constitutional right to alter or reform the government through initiatives and that the Legislature cannot subsequently act to

impair such a reform initiative unless it does so in a way that is narrowly tailored to further a compelling government interest. *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 74 (“*LWVUT*”).

2. On August 21, 2024, the Utah Legislature convened its Fourth Special Session of the 65th Legislature, proclaiming that the *LWVUT* decision was an “emergency in the affairs of the state.” Utah State Legislature, *Legislative Special Session Proclamation*, <https://le.utah.gov/session/2024S4/Proclamation.pdf?r=1>; Utah Const. art. VI, § 2(3)(a).

3. At the Special Session, the Legislature adopted S.J.R. 401, which proposes a constitutional amendment. The proposed Amendment modifies Article I, Section 2 of the Constitution as follows, with the added language underlined: “All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government through the processes established in Article VI, Section 1, Subsection (2), or through Article XXIII as the public welfare may require.” S.J.R. 401, Proposal to Amend Utah Constitution – Voter Legislative Power, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), <https://le.utah.gov/~2024S4/bills/static/SJR401.html>. Likewise, the proposed Amendment modifies Article VI, Section 1 of the Utah Constitution to (1) prohibit foreign individuals, entities, and governments from supporting or opposing initiatives or referenda and (2) provides that

Notwithstanding any other provision of this Constitution, the people’s exercise of their Legislative power as provided in Subsection (2) does not limit or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature, or by a law making body of a county, city, or town, on behalf of the people whom they are elected to represent.

*Id.* S.J.R. 401 provides that the amendment will be proposed to the voters at the next general election, that if approved it takes effect January 1, 2025, and purports to establish that the changes other than the foreign influence prohibition have retrospective operation. *Id.*

4. The Legislature also enacted special rules that apply only to this proposed Amendment to rush it onto the November 2024 ballot. Section 20A-7-103.1 was enacted to apply only to this proposed Amendment and it exempted the Amendment from various Code provisions regulating the timing and process for drafting and presenting arguments in favor and opposition to the voters. S.B. 4002, Ballot Proposition Amendments, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), <https://le.utah.gov/~2024S4/bills/static/SB4002.html>.

5. The Legislature also enacted contingent legislation that takes effect if voters approve the proposed Amendment. That legislation, *inter alia*, adds 20 days to the time voters have to submit referendum signatures and provides that the Legislature should give deference to initiatives by amending them “in a manner that, *in the Legislature’s determination*, leaves intact the general purpose of the initiative.” S.B. 4003, Statewide Initiative and Referendum Amendments, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), <https://le.utah.gov/~2024S4/bills/static/SB4003.html> (emphasis added). But that deference only applies to amendments that occur during the next general session following the initiative’s adoption, and the next clause exempts the Legislature from deferring if it decides that the initiative has an “adverse fiscal impact.” *Id.*

6. Governor Cox signed both S.B. 4002 and 4003 on August 22, 2024. 2024 4th Spec. Sess. Bills Passed, Utah State Legislature (Sept. 5, 2024), <https://le.utah.gov/asp/passedbills/passedbills.asp?session=2024S4>.

7. The Utah Code requires the Speaker of the House and the President of the Senate to “draft and designate a ballot title for each proposed amendment . . . that [] summarizes the subject matter of the amendment . . . and [] summarizes any legislation that is enacted and will become effective upon the voters’ adoption of the proposed constitutional amendment.” Utah Code § 20A-7-103(3). S.B. 4002 required the presiding officers to submit the ballot title and summary language to the Lieutenant Governor “no later than September 1, 2024.” S.B. 4002, Ballot Proposition Amendments, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), <https://le.utah.gov/~2024S4/bills/static/SB4002.html>. The Lieutenant Governor must certify the ballot title by that same date, and S.B. 4002 offers no time or opportunity for revisions. *See id.*

8. On the evening of September 3, 2024, two days after the deadline, Lieutenant Governor Henderson signed the 2024 General Election Certification, which certified the ballot language for Constitutional Amendment D—the amendment proposed by S.J.R. 401. Office of the Lieutenant Governor, 2024 General Election Certification, <https://vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf>.

9. The Certification was not published on the Lieutenant Governor’s website until mid-day September 4, 2024. Office of the Lieutenant Governor, 2024 Election Information, <https://vote.utah.gov/current-election-information/>.

10. The certified ballot language—written by the Speaker and Senate President—reads:

#### **Constitutional Amendment D**

Should the Utah Constitution be changed to strengthen the initiative process by:

- Prohibiting foreign influence on ballot initiatives and referendums.
- Clarifying the voters and legislative bodies’ ability to amend laws.

If approved, state law would also be changed to:

- Allow Utah citizens 50% more time to gather signature for a statewide referendum.
- Establish requirements for the legislature to follow the intent of a ballot initiative.

For ( ) Against ( ).

Office of the Lieutenant Governor, 2024 General Election Certification at 34-35, <https://vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf>.

11. The Uniform Military and Overseas Voters Act requires the first ballots for the November 2024 election to be mailed on the 45th day before the election—this year that date is September 20, 2024. Utah Code § 20A-16-403.

### **LEGAL STANDARD**

A preliminary injunction is appropriate if Plaintiffs show that (1) “there is a substantial likelihood that [they] will prevail on the merits of the underlying claim,” (2) “[they] will suffer irreparable harm unless the . . . injunction issues,” (3) “the threatened injury to [them] outweighs whatever damage the proposed . . . injunction may cause the party . . . enjoined,” and (4) “the . . . injunction, if issued, would not be adverse to the public interest.” Utah R. Civ. P. 65A(e).

### **ARGUMENT**

#### **I. There is a substantial likelihood Plaintiffs will succeed on the merits of their claims.**

##### **A. Plaintiffs are likely to succeed on the merits of their Article XXIII Amendment Submission claim.**

Plaintiffs are likely to succeed on the merits of their Amendment Submission claim. Article XXIII, Section 1 of the Utah Constitution provides that if two-thirds of all members elected to each house of the Legislature vote in favor of a proposed amendment, “the said amendment . . . shall be submitted to the electors of the state for their approval or rejection, and if a majority of the electors voting thereon shall approve the same, such amendment . . . shall become part of this Constitution.” Utah Const. art. XXIII, § 1. The plain language of Article XXIII, as it would have

been understood at the time of the Constitution’s ratification and today, requires that *the amendment*—and not a misleading and false summary of it—be submitted to voters for approval.

When interpreting constitutional language, Utah courts “start with the meaning of the text as understood when it was adopted.” *LWVUT*, 2024 UT 21, ¶ 101 (cleaned up). The focus is on “the objective meaning of the text, not the intent of those who wrote it.” *Id.* (cleaned up). The Court thus “interpret[s] the [C]onstitution according to how the words of the document would have been understood by a competent and reasonable speaker of the language at the time of the document’s enactment.” *Id.* (cleaned up). “When [courts] interpret the Utah Constitution, the ‘text’s plain language may begin and end the analysis.’” *State v. Barnett*, 2023 UT 20, ¶ 10 (quoting *South Salt Lake City v. Maese*, 2019 UT 58, ¶ 23).

The plain language of Article XXIII requires that “the said amendment” be “submitted to the electors of the state for their approval or rejection.” Utah Const. art. XXIII, § 1. The most straightforward reading of Article XXIII is that the *actual text* of the amendment must be presented to the voters on the ballot. Indeed, while the 1895 Constitution included the same language as today regarding submission of “the said amendment” to the voters, it also provided that the Constitution’s text itself need not be on the ratification ballot. *See* Utah Const. art. XXIV, § 14 (providing for submission of the Constitution to the voters for ratification and specifying that “[a]t the said election the ballot shall be in the following form: For the Constitution. Yes. No,” with instructions to the voters to erase Yes or No depending upon their vote). Given the contrast, voters in 1895 likely understood Article XXIII—which does not allow a summarized presentation for proposed amendments—to require the amendment’s text to appear on the ballot.

Historically, however—and likely for practical reasons related to ballot printing—the actual amendment text has not appeared on the ballot. *See LWVUT*, 2024 UT 21, ¶ 103 (noting that

“historical context” in which constitutional provisions were ratified may be relevant to understanding original public meaning). The Legislature has apparently interpreted Article XXIII to permit for the ballot to include “a ballot title for each proposed amendment . . . submitted by the Legislature that [] summarizes the subject matter of the amendment.” Utah Code § 20A-7-103(3)(c). Perhaps Article XXIII can be interpreted as flexible enough to permit a summary of the amendment as opposed to the text of the amendment itself. But the plain meaning of Article XXIII’s requirement that “the said amendment” be “submitted to the electors of the state for their approval or rejection” cannot plausibly encompass submitting a summary of the amendment that *falsely* and *misleadingly* describes the effect of the amendment as doing the opposite of what its text accomplishes. A false and misleading ballot summary in no way represents the submission of “the said amendment” to the electorate. Utah Const. art. XXIII, § 1.

Although Utah courts have not previously considered this issue, other state Supreme Courts interpreting similar provisions of their Constitutions have held that misleading ballot language is unconstitutional. For example, Article XI, Section 5 of the Florida Constitution requires that “[a] proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election . . . .” Fla. Const. art. XI, § 5. The Florida Supreme Court has held that “[i]mplicit in this provision is the requirement that the proposed amendment be *accurately* represented on the ballot; otherwise, voter approval would be a nullity.” *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000); *see also Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982) (“[T]he voter should not be misled . . . . [T]he Constitution requires . . . that the ballot be fair and

advise the voter sufficiently to enable him intelligently to cast his ballot.” (quoting *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954) (cleaned up))); *Smathers v. State*, 338 So. 2d 825, 829 (Fla. 1976).<sup>1</sup>

In *Askew*, the Florida Supreme Court considered a ballot summary for a proposed amendment that would have banned former legislators from lobbying for two years after leaving office unless they fully disclosed their financial interests. 421 So. 2d at 156. Although the ballot summary was consistent with the amendment’s text, the Florida Supreme Court struck the proposed amendment from the ballot because the summary failed to disclose that the Constitution prohibited lobbying by former legislators for a two-year period, with no exception for financial disclosures. *Id.* “The problem, therefore, lies not with what the summary says, but, rather, with what it does not say.” *Id.* The Court reasoned that had the amendment been a “totally new provision,” the ballot summary might have been permissible. But the ballot summary, by failing to explain the *existing* constitutional provision, “fails to give fair notice of an exception to a present prohibition.” *Id.* The purpose of the amendment, the Court reasoned, was to “remove the two-year ban on lobbying by former legislators,” but the ballot summary was “disguised as something else” and impermissibly “fl[ew] under false colors.” *Id.* Because the ballot summary was “so misleading to the public concerning material changes to an existing constitutional provision,” the Court ordered that the proposed amendment be stricken from the ballot. *Id.*

Likewise, in *Armstrong*, the Florida Supreme Court struck a proposed constitutional amendment from the ballot where the ballot summary was misleading. The ballot summary said that the proposed amendment would conform the state’s “prohibition against cruel and/or unusual

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<sup>1</sup> Although the Florida legislature codified more specific requirements that the ballot contain “clear and unambiguous language” that identifies the “chief purpose” of the amendment, Fla. Stat. § 101.161(1), the Florida Supreme Court made clear the “accuracy” requirement stemmed directly from the Constitution’s requirement that the amendment be submitted to the voters. *Armstrong*, 773 So.2d at 12-13, 21.



punishment” to the United States Supreme Court’s interpretation of the Eighth Amendment and would “preserve the death penalty.” 773 So. 2d at 17-18. In fact, the Court held, the summary hid from voters that the existing Constitution prohibited cruel *or* unusual punishment—not “and”—and that the “simple, clear-cut” purpose of the amendment was to “nullify the Cruel or Unusual Punishment Clause” and not to “preserve the death penalty.” *Id.* at 18. “Nowhere in the summary, however, is this effect mentioned—or even hinted at. The main effect of the amendment is *not* stated anywhere on the ballot.” *Id.* (emphasis in original). The Court thus invalidated the amendment *after its adoption by the voters* because it violated the implicit accuracy requirement of the Florida Constitution that amendments be submitted to the voters. *Id.* at 21. In doing so, the Court explained that the purpose of the accuracy requirement “is to ensure that each voter will cast a ballot based on the *full* truth. To function effectively—and to remain viable—a constitutional democracy must require no less.” *Id.* The misleading ballot summary, the Court explained, would have caused voters to favor the amendment “on the false premise that the amendment will promote the basic rights of Florida citizens” and gave “no hint of the radical change in state constitutional law that the text actually foments.” *Id.*

Moreover, strict judicial enforcement of the accuracy requirement was particularly necessary, the Court explained, because “the amendment’s main effect is to nullify a fundamental state right that has existed in the Declaration of Rights *since this state’s birth* over a century and half ago.” *Id.* (emphasis in original). The court reasoned that it must be especially vigilant with respect to ballot summaries affecting “the Declaration of Rights.” *Id.* When “citizens are being called upon to nullify an original act of the Founding Fathers, each citizen is entitled—indeed, each is duty-bound—to cast a ballot with eyes wide open.” *Id.* at 22. Because the amendment “fl[ew] under false colors” and the Legislature “hid[] the ball,” the amendment was stricken. *Id.*

State supreme courts across the country have taken the same approach. Much like Utah, the Hawaii Constitution requires that proposed constitutional amendments be “submitted to the electorate for approval or rejection.” Haw. Const. art. XVII, §§ 3 & 4. That provision, the Hawaii Supreme Court held, requires that “the ballot must enable the voters to express their choice on the amendments presented and be in such a form and language as not to deceive or mislead the public.” *Kahalekai v. Doi*, 590 P.2d 543, 546, 552-53 (Haw. 1979). The Idaho Supreme Court too voided a constitutional amendment, after the election, when the ballot question did not, “attributing to the words employed their usual meaning in common parlance,” communicate the effect of the proposed amendment. *Lane v. Lukens*, 283 P. 532, 533-34 (Idaho 1929). And the Maine Supreme Court has held that “an amendment presented to the voters by means of a question which is clearly misleading is void and of no effect.” *Opinion of the Justices*, 283 A.2d 234, 236 (Me. 1971). Likewise, the South Carolina Supreme Court invalidated a “voter approved” amendment when “the ballot did not submit the question in the language prescribed by the proposing resolution, but submitted instead the misleading title of the resolution.” *Ex parte Tipton*, 93 S.E.2d 640, 642 (S.C. 1956). In doing so, the court explained that “where the question, on its face, is manifestly erroneous and misleading, there is no room for presumption, nor is evidence, other than the ballot itself, needed to demonstrate the deception.” *Id.* at 643.

Other cases abound. The Wisconsin Supreme Court held that its Constitution’s requirement that amendments be “submitted” to the voters for ratification is violated “when the ballot question fails to present the real question or is contrary to the amendment itself.” *Wis. Justice Initiative, Inc. v. Wis. Elections Comm’n*, 990 N.W.2d 122, 140 (Wis. 2023). “In other words, voters have not been given the opportunity to vote for or against a proposal when the ballot question is fundamentally counterfactual. When a ballot question is factually inaccurate in a fundamental way,

it cannot be said that the amendment was actually submitted to the people for ratification.” *Id.* at 140-41; *see also State ex rel. Thomson v. Zimmerman*, 60 N.W.2d 416, 423 (Wis. 1953) (“If the subject matter is important enough to be mentioned on the ballot it is so important that it must be mentioned in accord with the fact” and not with “misinformation”).

Similarly, the Minnesota Constitution requires that proposed amendments be “submitted to the people for their approval or rejection at a general election.” Minn. Const. art. IX, § 1. The Minnesota Supreme Court has held that this provision is violated when “the ballot question as framed is ‘so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.’” *League of Women Voters of Minn. v. Ritchie*, 819 N.W.2d 636, 647 (Minn. 2012) (quoting *Breza v. Kiffmeyer*, 723 N.S.2d 633, 636 (Minn. 2006)); *see also Knight v. Martin*, 556 S.W.3d 501, 506-07 (Ark. 2018) (providing that a “ballot title must be an impartial summary of the proposed amendment, and it must give the voters a fair understanding of the issues presented and the scope and significance of the proposed changes in the law” (cleaned up)); *see also Dacus v. Parker*, 466 S.W.3d 820, 823, 826 (Tex. 2015) (recognizing common law protection from misleading ballot question and noting that ballots “may affirmatively misrepresent the measure’s character and purpose or its chief features” or “omit[] certain chief features that reflect its character and purpose”).

Amendment D’s summary should suffer the same fate. The language violates the inherent accuracy requirement of Article XXIII, § 1 because it fails to submit the amendment to the voters for a popular vote. The Amendment drastically weakens Utah’s right to alter or reform their government—a fundamental right contained in the Declaration of Rights since 1895—by eliminating the Constitution’s prohibition on the Legislature impairing government reform initiatives absent a compelling justification furthered by narrowly tailored means. *See* S.J.R. 401,

Proposal to Amend Utah Constitution – Voter Legislative Power, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), <https://le.utah.gov/~2024S4/bills/static/SJR401.html>; *see also* *LWVUT*, 2024 UT 21, ¶ 104.<sup>2</sup> The certified ballot summary for Amendment D flagrantly fails to disclose the effect of the Amendment and misleads and deceives voters. Indeed, the ballot summary voters deceptively asks votes to surrender a fundamental constitutional right they have possessed since 1895 by encouraging them to vote “yes” in order to supposedly *strengthen* their initiative rights.

*First*, even though Legislature’s stated purpose in calling the “emergency” special session was to eliminate the fundamental constitutional right recognized in *LWVUT*, *see* Utah State Legislature, *Legislative Special Session Proclamation*, <https://le.utah.gov/session/2024S4/Proclamation.pdf?r=1>, the ballot summary says *nothing* about how the Amendment would eliminate the public’s constitutional right to alter or reform the government without legislative interference. Instead, the ballot summary asks voters: “Should the Utah Constitution be changed to *strengthen* the initiative process by . . . [c]larifying the voters and legislative bodies’ ability to amend laws.” Office of the Lieutenant Governor, 2024 General Election Certification at 34-35, <https://vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf> (emphasis added).

The ballot summary plainly does not communicate that the Amendment *eliminates* a fundamental constitutional right that has existed since 1895. Nor does the Amendment “clarify” the ability of voters or the Legislature to amend laws because, as this Court held in *LWVUT*, the Constitution is already clear on that question. The ballot summary never mentions this existing

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<sup>2</sup> Although the Supreme Court’s opinion in this case holding that “the Alter or Reform Clause enshrined a fundamental right of the people to alter or reform their government” was issued this year, the Court’s opinion interprets the original public meaning of the Constitution. *LWVUT*, 2024 UT 21, ¶¶ 104, 199. The Constitution has always protected this right.

constitutional right or that the Amendment would eliminate it entirely. *See Askew*, 421 So. 2d at 156 (striking Florida constitutional amendment where ballot summary fails to disclose that amendment would eliminate an existing constitutional provision); *Armstrong*, 773 So. 2d at 17-18, 21 (striking Florida constitutional amendment where ballot summary fails to disclose that amendment would nullify fundamental constitutional right). No voter reading the ballot summary would have any idea that the Amendment *eliminates* an existing, fundamental constitutional right by reading text stating that it “[c]larify[ies] the voters and legislative bodies’ ability to amend laws.” Office of the Lieutenant Governor, 2024 General Election Certification at 34-35, <https://vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf>. By failing to disclose the fact that Amendment D would nullify an existing constitutional right, the ballot summary “is so misleading to the public concerning material changes to an existing constitutional provision” that the Court must “remove [it] from the vote of the people.” *Askew*, 421 So. 2d at 156.

*Second*, somehow worse than failing to disclose that the Amendment eliminates a fundamental right, the ballot summary misleads voters into believing a vote in favor will *strengthen* their constitutional right to initiate legislation. The purpose of the Amendment is to *weaken* voters’ constitutional right to initiate government reform measures by authorizing the Legislature to amend or repeal them as it sees fit. Indeed, the text of the Amendment—in sweeping language—*wholesale exempts* the Legislature from complying with *any* constitutional provision when it acts to amend, repeal, or enact laws in relation to voter-approved initiatives. *See* S.J.R. 401, Proposal to Amend Utah Constitution – Voter Legislative Power, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), <https://le.utah.gov/~2024S4/bills/static/SJR401.html> (“*Notwithstanding any other provision of this Constitution*, the people’s exercise of their Legislative power . . . does not limit

or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature . . . .”) (emphasis added). This Constitution-free zone created by the Amendment’s text is a far cry from the existing constitutional provision, which strictly limits the Legislature’s power to impair voter-initiated government reforms. And it is an even further cry from “strengthen[ing]” the initiative process. Nowhere does the ballot summary disclose to voters that the Amendment would make legislative action lawful “*notwithstanding any other provision of th[e] Constitution.*”

Moreover, the ballot summary misleads voters by asserting that “[i]f approved, state law would also be changed to . . . [e]stablish requirements for the legislature to follow the intent of a ballot initiative.” Office of the Lieutenant Governor, 2024 General Election Certification at 34-35, <https://vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf>. As it stands today, the *current* Constitution establishes requirements for the legislature to follow the intent of a ballot initiative—it cannot impair government reform initiatives if it does so in a manner that is not narrowly tailored to serve a compelling government interest—a requirement voters can judicially enforce. *LWVUT*, 2024 UT 21, ¶ 74.

The Amendment does not “establish” that requirement; *it eliminates it*. In its place, the Legislature enacted a contingent *statute* that takes effect if the Amendment is approved that provides that if the Legislature amends an initiative, it shall—but only in the general session following the adoption of an initiative—“give deference to the initiative by amending the law in a manner that, *in the Legislature’s determination*, leaves intact the general purpose of the initiative.” Yet the Legislature can ignore the initiative’s purpose if “determined necessary by the Legislature to mitigate an adverse fiscal impact of the initiative.” S.B. 4003, Statewide Initiative and Referendum Amendments, 65th Leg., 2024 4th Spec. Sess. (Utah 2024),

<https://le.utah.gov/~2024S4/bills/static/SB4003.html> (emphasis added). The Amendment does not change state law to establish requirements that the Legislature follow the intent of a ballot initiative. It changes state law to eliminate such a requirement and replace it with a *non-requirement*—leaving it to the Legislature’s determination as to what the purpose of the initiative is, how to respect it, or whether to respect it at all if it requires the expenditure of any funds. Moreover, the Amendment itself renders this “deference” statute unconstitutional by expressly freeing the Legislature from any constraint in undoing initiatives. The ballot summary does not explain any of this.

*Third*, the ballot summary misleads voters about the effect of the Amendment regarding a fundamental right contained since Utah’s founding in the Declaration of Rights. As the Florida Supreme Court held in *Armstrong*, courts must be especially vigilant in guarding against deceptive ballot summaries where “the amendment’s main effect is to nullify a fundamental state right that has existed in the Declaration of Rights *since the state’s birth . . .*” 773 So.2d at 21 (emphasis in original). Such is the case here. Although the People’s right to alter or reform their government without government infringement was recently analyzed by the Utah Supreme Court in this case, it is still a right that has existed since 1895. This Court must act with extra vigilance and scrutiny of the ballot summary because the Amendment eliminates a fundamental constitutional right.

In sum, Plaintiffs are likely to succeed on the merits of their claim that the ballot summary violates Article XXIII, Section 1’s requirement that “the said amendment . . . shall be submitted to the electors of the state for their approval or rejection,” because it fails to notify voters that the Amendment eliminates an existing fundamental constitutional right and misleads voters about the purpose and content of the Amendment. *See Armstrong*, 773 So.2d at 22 (striking amendment from ballot where “[t]he ballot title and summary ‘fly under false colors’ and ‘hide the ball’ as to the

amendment’s true effect”); *see also Wis. Justice Initiative, Inc.*, 990 N.W.2d at 140 (“[V]oters have not been given the opportunity to vote for or against a proposal when the ballot question is fundamentally counterfactual. When a ballot question is factually inaccurate in a fundamental way, it cannot be said that the amendment was actually submitted to the people for ratification.”); *League of Women Voters of Minn.*, 819 N.W.2d at 647 (holding that ballot language may not be “so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote” (internal quotation marks omitted)).

Amendment D’s ballot summary would deceive Utah voters into surrendering a fundamental constitutional right under the false pretense of *strengthening* those rights. It is as an anti-democratic suppression tactic. Because the certified ballot summary fails to submit the Amendment to the voters, it violates Article XXIII, Section 1 of the Constitution and must be struck from the November 2024 ballot.

**B. Plaintiffs are likely to succeed on their statutory Amendment Summarization Claim.**

Plaintiffs are also likely to succeed on their statutory Amendment Summarization claim. Under Utah Code § 20A-7-103(3)(c), the Speaker of the House and Senate President must “draft and designate a ballot title for each proposed amendment . . . that [] summarizes the subject matter of the amendment.” Courts must “interpret[] statutes according to the ‘plain’ meaning of their text.” *Olsen v. Eagle Mtn. City*, 2011 UT 10, ¶ 9, 248 P.3d 465. In doing so, courts rely frequently on dictionary definitions. *See, e.g., Hi-Country Property Rights Grp. v. Emmer*, 2013 UT 33, ¶ 17. “Summary” is defined as “short, concise” and “[w]ithout the usual formalities.” *Summary*, Black’s Law Dictionary (12th ed. 2024). “Subject matter” is defined as “[t]he issue presented for consideration, the thing in which a right or duty has been asserted; the thing in dispute.” *Subject Matter*, Black’s Law Dictionary (12th ed. 2024).



For the reasons explained above, Amendment D’s ballot language fails to “summarize the subject matter of the amendment,” Utah Code § 20A-7-103(3), because it fails to disclose the actual subject matter of the Amendment: eliminating voter’s fundamental constitutional right to alter or reform their government without infringement. The language instead tells voters that the Amendment does what it expressly does *not* do: strengthen the initiative process and change law to require respect for the purpose of voter’s initiatives. Ballot language that lies about the Amendment’s effect to deceive voters into forfeiting a constitutional right does not in any sense of the words “summarize the subject matter of the amendment.”

**C. Plaintiffs are likely to succeed on the merits of their Free Elections Clause Claim.**

Plaintiffs are likely to succeed on the merits of their Free Elections Clause claim. The Free Elections Clause provides that “[a]ll elections shall be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Utah Const. art. I, § 17. As this Court has already explained in rejecting Defendants’ motion to dismiss Plaintiffs’ partisan gerrymandering Free Elections Clause claim, there are no early Utah common law cases interpreting this provision and little debate from the constitutional convention. Order on Mot. to Dismiss at 26-27. But the plain meaning of “free” and “elections” aids in understanding the original public meaning of the Clause.

As this Court has explained, “[t]he term ‘free’ as defined in the 1891 Black’s Law Dictionary meant “[u]nconstrained; having power to follow the dictates of his own will,’ ‘[e]njoying full civic rights,’ and ‘[n]ot despotic; assuring liberty; defending individual rights against encroachment by an person or class; instituted by a free people; said of governments, institutions, etc.’” *Id.* (quoting *Free*, Black’s Law Dictionary, 1st ed. 1891). In turn, “unconstrained” means “not held back or constrained,” *Id.* at 28 (quoting *Unconstrained*, Merriam-

Webster Dictionary, <https://www.merriam-webster.com/dictionary/unconstrained> (noting definition first used in 14th century)). “Constrained,” this Court noted, “means ‘to force by imposed structure, restriction or limitation;’ ‘to force or produce in an unnatural or strained manner.’” *Id.* at 28 (quoting *Constrained*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/constrain> (noting definition used in the 14th century)). This Court likewise relied upon the definition of “despotic,” which means, *inter alia*, “a ruler with absolute power and authority; one exercising power tyrannically; a person exercising absolute power in a brutal or oppressive way.” *Id.* at 29 (quoting *Despot*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/despot> (noting this definition arose with beginning of democracy at the end of the 18th century)). Moreover, this Court has analyzed the meaning of “election” to be “the ‘act or process of electing.’” *Id.* at 27 (quoting *Election*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/elections> (noting definition arose from 13th century)).

From the plain meaning of the Clause, this Court explained that

The first clause ‘all elections shall be free’ guarantees to Utah citizens an election *process* that is free from despotic and tyrannical government control and manipulation. A ‘free election’ involves an unconstrained process, that does not ‘produce’ results ‘in an unnatural or strained manner.’ And it prohibits governmental manipulation of the election process to either ensure continued control or to attain an electoral advantage. This right given to Utah citizens, necessarily imposes a limit on the legislature’s authority when overseeing the election process.

*Id.* at 29. Likewise, the “second clause . . . prohibits a civil or military power from interfering with the free exercise of suffrage.” *Id.* The Court likewise noted that the historical understanding from the English Bill of Rights supported this understanding. *See id.* at 31-33.

Even Defendants—who dispute that the Free Elections Clause prohibits partisan gerrymandering<sup>3</sup>—have conceded in their Supreme Court briefing that the Clause “guarantees free elections by prohibiting external or controlling civil or military interference that would hinder voters from voting according to the dictates of their will” such as through “*undue influence* (such as bribery) that act as an external controlling factor.” Br. of Petitioners at 40, *LWVUT*, No. 20220991-SC (Mar. 31, 2023), <https://campaignlegal.org/document/petitioners-brief> (emphasis added). As Defendants have noted, “English common law prohibited voter intimidation and undue influence. Blackstone affirmed that ‘elections should be absolutely free’—a guarantee designed to ‘strongly prohibit[]’ ‘all undue influences upon the electors.’” *Id.* at 42 (quoting 1 Blackstone, *Commentaries on the laws of England* 172).

Other state courts have confirmed that their Constitutions’ guarantees of free elections prohibits the government from exercising undue influence or coercion at the ballot box. *See, e.g., Oughton v. Black*, 61 A. 346, 347 (Pa. 1905) (explaining that constitutional requirement that elections be free and equal was a guarantee not only that voters be allowed to cast ballots but rather may do so “by no intimidation, threat, improper influence, or coercion of any kind”); *Wallbrecht v. Ingram*, 175 S.W. 1022, 1026 (Ky. 1915) (interpreting Kentucky Constitution’s Free and Equal Elections Clause to require elections that “obtain a full, fair, and free expression of the popular will upon a matter” that can be violated even in the absence of “fraud, intimidation, violence, bribery, or other wrongdoing that prevented a full and free expression of the will of the people”); *People v. Hoffman*, 5 N.E. 596, 601 (Ill. 1886) (interpreting Illinois Constitution’s Free and Equal Election Clause such that “[e]lections are free when the voters are subjected to no intimidation or

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<sup>3</sup> They remain wrong. That the Free Elections Clause prohibits the government from publishing misleading ballot language to unduly influence how voters cast ballots does not minimize the fact that it also prohibits partisan gerrymandering.

improper influence, and when every voter is allowed to cast his ballot as his own judgment and conscience dictate”); *Young v. Red Clay Consolidated Sch. Dist.*, 159 A.3d 713, 764-65 (Del. Ch. 2017) (concluding that School District violated Delaware Constitution’s Free Elections Clause by holding events at polling stations for families as a way to induce voters favorable to school funding ballot measure to vote); *Davidson v. Rhea*, 256 S.W. 2d 744, 746 (Ark. 1953) (explaining that that Free and Equal Elections Clause means that “[e]ach individual voter as he enters the booth is given an opportunity to freely express his will . . . and from the face of the ballot he is instructed how to mark it” (internal quotation marks omitted) (emphasis added)).

Here, the proposed Amendment’s ballot summary violates the Free Elections Clause. On its face, the language exerts undue influence and coercion upon Utah’s voters by omitting the central effect of the Amendment—eliminating voters’ fundamental constitutional right to alter or reform the government free of government infringement—and misleading voters into believing that the Amendment would “strengthen” the initiative right and require that the purpose of initiatives was respected by the Legislature. *See supra* Part I.A. Because of the deceptive nature of the ballot summary, Utah voters cannot cast their ballots freely according to their own conscience, but rather would be deceived into surrendering existing constitutional rights by language that says they are protecting those rights. Such an election is not free. Even by *Defendants’* own proffered meaning of the Free Elections Clause, the ballot summary is constitutionally infirm. This is especially so because voting is a fundamental right, and thus the burdens Defendants have placed on Utahns’ exercise of their right to a free election are subject to heightened scrutiny. Order on Mot. to Dismiss at 51. Defendants have no compelling interest in deceiving Utah voters as to the content of the proposed Amendment.

**D. Plaintiffs are likely to succeed on their free speech and expression claims.**

Plaintiffs are likely to succeed on their free speech and expression claims. Utah's Constitution provides that "[a]ll persons have the inherent and inalienable right to...communicate freely their thoughts and opinions," Utah Const. art. I, § 1, while commanding that "[n]o law shall be passed to abridge or restrain the freedom of speech." *Id.* art. I, § 15. The plain language of these provisions prohibits government constraint of free speech through deceptive ballot language.

Safeguarding free speech and association in the electoral process is critical. These freedoms are "not only the hallmark of a free people, but [are], indeed, an essential attribute of the sovereignty of citizenship." *Cox v. Hatch*, 761 P.2d 556, 558 (Utah 1988). As such, this court held that "voting is a fundamental right, and its exercise is a form of protected speech," Order on Mot. to Dismiss at 48. Numerous other courts have also recognized the constitutionally protected expressive interest in voting. *See, e.g., Burdick v. Takushi*, 504 U.S. 428, 438 (1992) (noting that "voters express their views in the voting booth"); *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1993) (noting "the right of qualified voters, regardless of their political persuasion, to cast their votes effectively") (citing *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968)). Article I, sections 1 and 15 protect the expression of free speech through voting and guarantee the "healthy political exchange [that] is the foundation of our system of free speech and free elections." *Jacob v. Bezzant*, 2009 UT 37, ¶ 29.<sup>4</sup>

Utah's citizens also originally understood voting to be speech. At the time of the adoption of the Constitution, "speech" meant "as expressing ideas," and "vote" meant "to express or signify

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<sup>4</sup> Moreover, Utah's speech protections are broader than their federal counterpart, *see, e.g., West v. Thompson Newspapers*, 872 P.2d 999, 1007 (Utah 1994); *Provo City Corp. v. Willden*, 768 P.2d 455, 456 n.2 (Utah 1989), and protect rights not found in the First Amendment, such as the right to "communicate freely their thoughts and opinions."

the mind, will, or preference,” and to provide an “opinion of a person.” Webster’s Practical Dictionary (1884). Defendants themselves emphasized that voting is how a voter “express[es]...his will, preference, or choice.” Br. of Petitioners at 52, *LWVUT*, No. 20220991-SC (Mar. 31, 2023), <https://campaignlegal.org/document/petitioners-brief> (quoting *Vote*, Black’s Law Dictionary (1891)). Moreover, the history of Article I, Sections 1 and 15 support their application here. At the provisions’ core is the belief that “the framers of Utah’s constitution saw the will of the people as the source of constitutional limitations upon our state government,” with free speech being essential to “guard . . . against the encroachments of tyranny.” *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 13; *Stromberg v. California*, 283 U.S. 359, 369 (1931) (describing purpose of free speech as to keep the government “responsive to the will of the people”). As this Court found, “[t]he role of free speech is central to our representative democracy.” Order on Mot. to Dismiss at 45.

Free speech has long been understood to safeguard a political system that facilitates dissent and a neutral forum for political debate—not one that deceives voters into giving up their fundamental constitutional rights. For that reason, Defendants’ ballot language violates the Constitution’s plain language by hindering Utahns’ free speech. The Utah Constitution guards against both “abridge[ment]” and “restrain[t]” of speech, and “prohibit[s] laws which either directly limit protected rights or indirectly inhibit the exercise of those rights.” *Am. Bush*, 2006 UT 40, ¶¶ 17-18, 21. Under the plain language of the Constitution, voters cannot “communicate freely their thoughts and opinions” if the ballot language presented to them says the *opposite* of the text of the actual amendment at issue and is instead designed to deceive them while voting. And there can be no “healthy political exchange,” *Jacob*, 2009 UT 37, ¶ 29, when the ballot language itself

is created to “effectively stifle[]” voters in casting their ballots. *McCullen v. Coakley*, 573 U.S. 464, 489-90 (2014).

By putting an oversized thumb on the scale, Defendants’ ballot language “deviat[es] from neutrality [to] undermine[] the competitive mechanism that undergirds the democratic process,” and unconstitutionally burdens Plaintiffs’ rights. Order on Mot. to Dismiss at 49. Because voting is a fundamental right, these burdens are subject to heightened scrutiny. *Id.* at 51; *Reed v. Town of Gilbert*, 576 U.S. 155, 164 (2015). Defendants’ ballot language tricks Utahns into voting *for* the proposed Amendment by presenting a false image of the Amendment, which particularly burdens voters who would vote to *reject* the Amendment (and convince others to do the same) if they were presented an accurate image. This is unconstitutional viewpoint discrimination—of the blatant Orwellian variety—driving Utahns to unwittingly express *Defendants’* preferred opinion on the proposed Amendment rather than their own.

Defendants cannot show a compelling, let alone legitimate, justification for submitting the misleading ballot language to the voters, nor is the ballot language narrowly tailored to achieve any such purpose. Because the proposed Amendment’s deceptive ballot language restrains Plaintiffs’ speech and fails heightened scrutiny, it violates Article I, Sections 1 and 15 of the Constitution and must be removed from the ballot.

**E. Plaintiffs are likely to succeed on their right to vote claim.**

Plaintiffs are likely to succeed on their right to vote claim. The Right to Vote Clause provides that “[e]very citizen of the United States, eighteen years of age or over, who makes proper proof of residence in this state for thirty days next preceding any election, or for such other period as required by law, *shall be entitled to vote in the election.*” Utah Const. art. IV, § 2 (emphasis added). This Court has held that this Clause guarantees “more than the physical right to cast a

ballot,” but rather guarantees a “meaningful” right to vote that cannot be “unnecessarily abridged.” Order on Mot. to Dismiss at 54 (cleaned up). Government action with respect to elections that prevents “the true public will” from being “ascertained” and causes it to be “distorted,” this Court has explained, *id.* at 55, violates the Right to Vote Clause.

Because the ballot summary would deceptively cause voters to cast ballots contrary to their true will and will unduly influence and distort the election outcome, *see supra*, it violates the Right to Vote Clause.

**F. Plaintiffs are likely to succeed on their right to free government claims.**

Plaintiffs are likely to succeed on their right to free government claims. Article I, Section 2, of the Constitution—in addition to guaranteeing to the people the right to alter or reform the government—provides that “[a]ll political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit.” Utah Const. art. I, § 2. Likewise, Article I, Section 27 of the Constitution provides that “[f]requent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.” Utah Const. art. I, § 27. As the Supreme Court has explained in enforcing Article I, Sections 2 and 27, “[t]he cornerstone of democratic government is the conviction that governments exist at the sufferance of the people, in whom ‘[a]ll political power is inherent.’” *In re J.P.*, 648 P.2d 1364, 1372 (Utah 1982) (quoting Utah Const. art. I, § 2); *see also LWVUT*, 2024 UT 21, ¶ 133 (citing Article I, Section 27’s “frequent recurrence” requirement and observing that “[t]hese declarations are not mere metaphors . . . but a vital princip[le] adhered to in the formation of the government of this state. . . . The people set up the state as their agent or servant through which they might for convenience *express their sovereign will.*” (quoting *Utah Power & Light Co v. Ogden City*, 95 Utah 161, 79 P.2d 61, 74 (1938) (Larson, J., concurring in part and dissenting in



part) (cleaned up))). Utah is not alone in enforcing its constitutional guarantee to free government through frequent adherence to fundamental principles. *See, e.g., Stierle v. Rohmeyer*, 260 N.W. 647, 655 (Wis. 1935) (invalidating provision under frequent adherence/free government clause and noting that “when things so monstrous as this are contemplated as within the language of the statutory provision under consideration, it behooves us to heed the admonition of section 22, art. 1, of our state Constitution.”).

Together, Article I, Sections 2 and 27 guarantee free government consistent with fundamental principles of democratic governance, political primacy of the people, and the free expression of the people’s will at the ballot box. A government is not “free” if its Constitution is amended by deception. The people are not sovereign in a free government if the government enhances its own power and limits that of the people by electoral deceit. Lying to voters to extinguish fundamental constitutional rights at the ballot box is antithetical to fundamental democratic principles. The ballot summary violates the guarantees of free government and democracy guaranteed by Article I, Sections 2 and 27 of the Utah Constitution.

## **II. The remaining factors favor entry of an injunction.**

Plaintiffs are also likely to prevail on the remaining preliminary injunction factors that (1) “[they] will suffer irreparable harm unless the . . . injunction issues,” (2) “the threatened injury to [them] outweighs whatever damage the proposed . . . injunction may cause the party . . . enjoined,” and (3) “the . . . injunction, if issued, would not be adverse to the public interest.” Utah R. Civ. P. 65A(e) (2-4).

First, Plaintiffs will suffer irreparable harm in the absence of an injunction against the proposed Amendment. Irreparable harm “is that which cannot be adequately compensated in damages” and is “fundamentally preventative in nature.” *Zagg, Inc. v. Hammer*, 2015 UT App 52,

¶¶ 6, 8 (quotation omitted). Without a preliminary injunction, Defendants’ misleading and inaccurate ballot language would have Utahns unwittingly *eliminate* a fundamental constitutional right that has existed since 1895. Subjecting Plaintiffs and other Utahns to such deception constitutes irreparable harm that must be remedied. *See Williams v. Rhodes*, 393 U.S. 23, 30 (1968) (“[T]he right of qualified voters ... to cast their votes effectively ... rank[s] among our most precious freedoms”).

Second, the balance of the equities, which “considers whether the applicant’s injury exceeds the potential injury to the defendant,” favors Plaintiffs. *Planned Parenthood Assoc. of Utah v. State*, 2024 UT 28, ¶ 210. The harm that Plaintiffs would suffer from the proposed Amendment’s ballot language, which tricks voters into surrendering a fundamental constitutional right under the false pretense of *strengthening* that right, outweighs any harm Defendants may suffer if the requested injunction is granted. *See, e.g., United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) (there can be “no harm from the state’s nonenforcement of invalid legislation”). Utahns have possessed the fundamental constitutional right discussed in *LWWUT* since the founding; Defendants are not harmed by being unable to advance a false description of the proposed Amendment in the November 2024 election.

Finally, the public interest weighs in favor of an injunction. The “purpose of a preliminary injunction is ‘to preserve the status quo pending the outcome of the case.’” *Planned Parenthood*, 2024 UT 28, ¶ 224 (internal citation omitted) (upholding a preliminary injunction as in public interest where it “would maintain the status quo...as it has been legally permitted for nearly fifty years”). Without an injunction here, a fundamental constitutional right that has existed since 1895 would be in jeopardy. Moreover, Defendants deceptive ballot language will impact the over 1.7

million registered Utah voters. The public interest favors removing proposed Amendment D from the November 5, 2024 ballot.

**III. The Court should grant a preliminary injunction striking the proposed Amendment from the November 2024 election ballot.**

The Court should grant a preliminary injunction that (1) enjoins Defendants from placing proposed Amendment D on the November 2024 election ballot; (2) provides that if any ballots are issued to voters that include proposed Amendment D, Amendment D is declared void and enjoined; and (3) orders the Lieutenant Governor to notify all County Clerks of the injunction such that they are bound by its terms, *see* Utah R. Civ. P. 65A(d). This relief is consistent with the relief state supreme courts in sister states have ordered when ballot questions are unconstitutionally misleading, both in pre-election and post-election challenges. Although the public interest would be served by resolution of this matter before ballots are mailed to voters, relief voiding the Amendment—which Defendants have acted to unconstitutionally place before voters—is effective regardless of whether an injunction is entered pre- or post-election. *See supra* Part I.A (collecting cases).

**CONCLUSION**

For the foregoing reasons, and as detailed above, the Court should grant a preliminary injunction.

September 5, 2024

Respectfully submitted,

/s/ David C. Reymann

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### **CERTIFICATE OF COMPLIANCE**

Pursuant to Utah R. Civ. P. 7(q)(3), I hereby certify that the foregoing **PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ON COUNTS 9-14 OF THEIR FIRST SUPPLEMENTAL COMPLAINT** complies with the word limits in Utah R. Civ. P. 7(q)(1) and contains 8,651 words, excluding the items identified in Utah R. Civ. P. 7(q)(2).

/s/ Kade N. Olsen

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5th day of September, 2024, I filed the foregoing **PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ON COUNTS 9-14 OF THEIR FIRST SUPPLEMENTAL COMPLAINT** via electronic filing, which served all counsel of record.

/s/ Kade N. Olsen

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You have a limited amount of time to respond to this motion. In most cases, you must file a written response with the court and provide a copy to the other party:

- within 14 days of this motion being filed, if the motion will be decided by a judge, or
- at least 14 days before the hearing, if the motion will be decided by a commissioner.

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**This motion requires you to respond.  
Please see the Notice to Responding Party.**

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR  
SUNDWALL, and JACK MARKMAN,

Plaintiffs,

v.

UTAH STATE LEGISLATURE, UTAH  
LEGISLATIVE REDISTRICTING  
COMMITTEE; SENATOR SCOTT  
SANDALL, in his official capacity;  
REPRESENTATIVE MIKE SCHULTZ, in his  
official capacity; SENATOR J. STUART  
ADAMS, in his official capacity; and  
LIEUTENANT GOVERNOR DEIDRE  
HENDERSON, in her official capacity,

Defendants.

**PLAINTIFFS' MOTION FOR A  
PRELIMINARY INJUNCTION ON  
COUNT 15 OF THEIR SECOND  
SUPPLEMENTAL COMPLAINT**

**(Expedited consideration requested)**

Case No. 220901712

Honorable Dianna Gibson

**HEARING REQUESTED**

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## RELIEF REQUESTED AND GROUNDS

Pursuant to Rule 65A of the Utah Rules of Civil Procedure, Plaintiffs League of Women Voters of Utah, Mormon Women for Ethical Government, Stefanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, and Jack Markman hereby move for a preliminary injunction on Count 15 of their Second Supplemental Complaint. In addition to the grounds stated in Plaintiffs' motion for a preliminary injunction on Counts 9-14 of their First Supplemental Complaint, Plaintiffs are also entitled to a preliminary injunction on Count 15.

Defendants have now indisputably also violated the Publication Clause of Article XXIII, Section 1 of the Utah Constitution. This Clause requires that "the Legislature shall cause [proposed constitutional amendments] to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election." Utah Const. art. XXIII, § 1. By any conceivable definition of "two months immediately preceding the next general election," Defendants have now failed to timely publish proposed Amendment D. For that reason, the Amendment must be stricken from the November 2024 ballot and otherwise declared void regardless of whether it remains a question on the ballot given ballot printing and mailing deadlines.

**Expedited Relief Requested:** For the same reasons set forth in Plaintiffs' motion for a preliminary injunction with respect to Counts 9-14, Plaintiffs respectfully request that the Court order expedited briefing and a hearing.

## INTRODUCTION

The Utah Constitution mandates that before a constitutional amendment can be submitted to the voters, its text must be published in at least one newspaper in every county of the state for a two-month period. As the Utah Supreme Court has held, the purpose of this requirement is to

ensure that voters have sufficient time with, and access to, the actual text of proposed amendments in advance of the election. The requirement is mandatory, and the Legislature's failure to follow it renders the submission to the voters on the ballot invalid. The deadline for the Legislature to comply with the publication requirement has now passed, and the Legislature has not caused proposed Amendment D's text to be published in a single newspaper anywhere in Utah.

Instead, in 2023, the Legislature amended the publication *statute* to trade the newspaper publication requirement for publication on an obscure website called the Utah Public Notice website. That statute likewise shrinks the publication time from two months to potentially just two *weeks*. But the Legislature cannot evade the *Constitution's* commands by *statutory* enactment.

The Legislature's shortcomings are not some technicality. As of today, the *text* of proposed Amendment D has not been published, either in a newspaper or even on the Utah Public Notice website. If and when the text is published, the Lieutenant Governor has indicated—consistent with the statute passed by the Legislature but in violation of the Constitution—that it will appear on an obscure website that few voters know exists: [www.utah.gov/pmn](http://www.utah.gov/pmn). Even if a voter got that far, she would need to know that the Lieutenant Governor's office is tasked with posting the text of constitutional amendments in order to navigate the website to locate the proposed Amendment. Below is a screenshot of the relevant section of the website, which is at the bottom of the homepage.

Browse for Notices

First select Government Type, then Entity, and finally Public Body. Results will appear below.

Government Type	Entity	Public Body
State Agency	Budget	Not a Public Body
County	Governor's Office > Office of Economic Opportunity	Lieutenant Governor's Office
Municipality	Independent Executive Branch Ethics Commission	Lieutenant Governor's Office Incorporation Hearing
Special Service District	Insurance Department	Lieutenant Governor's Office Rules
College or University	Judicial Conduct Commission	Lt. Governor's Office Fees
Interlocal	Labor Commission	Municipal Incorporation
Judicial Branch	Lieutenant Governor	Olympic/Paralympic Exploratory Committee
Associations of Government	National Guard	Point of the Mountain State Land Authority Board

Lieutenant Governor's Office Notices

Please Note: We are only displaying notices that are upcoming or have occurred in the past 6 months. For more results and older notices, please use the [Search](#) feature.

Notice Title	Event Date	Attachments
<a href="#">Soliciting Arguments Against Constitutional Amendments</a>	2024/06/03 02:47 PM	<ul style="list-style-type: none"> <li><a href="#">Constitutional Amendments Notice.pdf</a> (Public Information Handout)</li> </ul>

Utah Archives and Records Service, *Public Notice Website*, <https://www.utah.gov/pmn/>.

As the screenshot illustrates, voters would first need to know to click “State Agency” under “Government Type,” then to scroll down under “Entity” and click “Lieutenant Governor,” then finally scroll down under “Public Body” to click “Lieutenant Governor’s Office.” Even if they figure that out, they will have to just keep checking this website until the day it is posted—which may come any time between now and two weeks before the election.

This website demonstrates why our Constitution has a two-month newspaper publication requirement. Defendants plan to bury the text of *proposed amendments to the foundational governing document of the state* on an obscure website in a messy navigational pane, which in turn requires advanced knowledge of the innerworkings of state agencies. Even then, it may not be posted for another month and a half under Defendants’ planned approach. The Defendant’s own actions show that the Constitution’s two-month newspaper publication requirement is not some procedural technicality, but rather a core, substantive requirement in the constitutional amendment process. As the Utah Supreme Court held in *Snow v. Keddington*, “[a]ll voters throughout the state

are entitled to notice,” and the two-month newspaper notice requirement “permits the voter time to consider the merits or demerits of the proposed change.” 195 P.2d 234, 238 (Utah 1948).

This is especially problematic here given the deceptive and misleading ballot summary language Defendants have certified, that has been widely distributed, and that will appear on the actual ballots. To prevent voters from learning about the Amendments’ *actual language*, the Legislature is not even complying with the basic constitutional requirement to inform Utahns of the text of the proposed amendment it has rushed onto the ballot. Complying with the Constitution is not optional, its commands cannot be ignored, and its publication requirements are critical to ensuring an informed citizenry who can freely and fairly cast their ballots.

### **FACTUAL BACKGROUND**

1. On August 21, 2024, at an “emergency” special session, two-thirds of legislators in both the Utah House and Senate approved S.J.R. 401, which proposed a constitutional amendment to eliminate Utah voters’ constitutional right to alter or reform their government without infringement by the Legislature and instead grant the Legislature unfettered power to repeal voters’ initiatives. S.J.R. 401, Proposal to Amend Utah Constitution – Voter Legislative Power, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), <https://le.utah.gov/~2024S4/bills/static/SJR401.html>; see Utah Const. art. I, § 2; *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 74 (“*LWWUT*”). It has been designated proposed Amendment D for the November 5, 2024 ballot.

2. Article XXIII, Section 1 of the Utah Constitution provides that after the Legislature approves a proposed constitutional amendment, “the Legislature shall cause the same to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election.” Utah Const. art. XXIII, § 1.

3. Separately, Utah Code § 20A-7-103(2) provides that “[t]he lieutenant governor shall, not more than 60 days or less than 14 days before the date of the election, publish the full text of the amendment . . . as a class A notice under Section 63G-30-102, through the date of the election. Utah Code § 20A-7-103(2).

4. In turn, Utah Code § 63G-30-102 requires “class A notices” for matters affecting the entire state to be (1) published on the Utah Public Notice Website and (2) published on the relevant official’s website if that official maintains one and has “an annual operating budget of \$250,000 or more.” Utah Code § 63G-30-102(1)(a)-(b) & 4(a).

5. The next general election is November 5, 2024, which—including that date in the count—is 59 days from the date of the filing of this Motion.

6. To date, the Legislature has not caused proposed Amendment D to be published in a single Utah newspaper, notwithstanding that November 5, 2024 election is less than two months away under any definition of “two months.”

### **LEGAL STANDARD**

A preliminary injunction is appropriate if Plaintiffs show that (1) “there is a substantial likelihood that [they] will prevail on the merits of the underlying claim,” (2) “[they] will suffer irreparable harm unless the . . . injunction issues,” (3) “the threatened injury to [them] outweighs whatever damage the proposed . . . injunction may cause the party . . . enjoined,” and (4) “the . . . injunction, if issued, would not be adverse to the public interest.” Utah R. Civ. P. 65A(e).

### **ARGUMENT**

#### **I. Plaintiffs are likely to prevail on the merits of their Article XXIII, Section 1 publication claim.**

Plaintiffs are likely to prevail on the merits of their Article XXIII, Section 1 Publication Clause claim. The Utah Constitution provides that after approving a proposed amendment,

[T]he Legislature shall cause the same to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election, at which time the said amendment or amendments shall be submitted to the electors of the state for their approval or rejection, and if a majority of the electors voting thereon shall approve the same, such amendment or amendments shall become part of this Constitution.

Utah Const. art. XXIII, § 1.

When interpreting constitutional language, Utah courts “start with the meaning of the text as understood when it was adopted.” *LWVUT*, 2024 UT 21, ¶ 101 (cleaned up). The focus is on “the objective meaning of the text, not the intent of those who wrote it.” *Id.* (cleaned up). The Court thus “interpret[s] the [C]onstitution according to how the words of the document would have been understood by a competent and reasonable speaker of the language at the time of the document’s enactment.” *Id.* (cleaned up). “When [courts] interpret the Utah Constitution, the ‘text’s plain language may begin and end the analysis.’” *State v. Barnett*, 2023 UT 20, ¶ 10, 537 P.3d 212 (quoting *South Salt Lake City v. Maese*, 2019 UT 58, ¶ 23, 450 P.3d 1092). But if any doubt exists, courts “can and should consider all relevant materials.” *Maese*, 2019 UT 58, ¶ 23 (quoting *In re Young*, 1999 UT 6, ¶ 15, 976 P.2d 581). This includes “the historical context in which [constitutional provisions] were ratified.” *LWVUT*, 2024 UT 21, ¶ 103; *see also Salt Lake City Corp. v. Haik*, 2020 UT 29, ¶ 12, 466 P.3d 178 (noting that determining original public meaning requires analyzing the provision’s “text, historical evidence of the state of the law when it was drafted, and Utah’s particular traditions at the time of drafting.” (cleaned up)). One historical source the Utah Supreme Court has found particularly instructive for ascertaining the original public meaning of the Constitution is the 1898 Code. This is so, the Court has explained, because it was the “first effort to codify the law after adoption of our constitution” and thus while it is not a “perfect enshrinement of constitutional principles,” it “may help us understand the



contemporaneous public meaning of certain constitutional terms and concepts.” *Id.* ¶ 35 (quoting *Maese*, 2019 UT 58, ¶¶ 45-46).

Article I, Section 26 provides that “[t]he provisions of this Constitution are mandatory and prohibitory, unless by express words that are declared to be otherwise.” Utah Const. art. I, § 26. The Supreme Court has explained that “Section 26 means that . . . courts cannot ignore the constitution. That is, courts are not free to pick and choose which parts of the constitution they will enforce.” *State v. Barnett*, 2023 UT 20, ¶ 27. This is all the more important when the provision at issue regulates how the Constitution may be amended.

The Utah Supreme Court has only once addressed the Publication Clause of Article XXIII, Section 1. In *Snow v. Keddington*, a statute required county clerks to post at polling stations the existing constitutional text along with the proposed amendment’s text, but a county clerk failed to include the proposed amendment’s effective date on the poster. 195 P.2d 234, 237-38 (Utah 1948). The Court observed that the Legislature had delegated to the Secretary of State the requirement in Article XXIII, Section 1 to publish the amendment in newspapers for two months preceding the election and that “the amendment was published as required.” *Id.* at 238. The Court observed that because the text of the amendment is not printed on the ballot in full, “the notice of importance to the voter is the publication in the newspapers prior to the general election. This is the publication that permits the voter time to consider the merits or demerits of the proposed change.” *Id.* The Court reasoned that “[a]ll voters throughout the state are entitled to notice,” and that “[u]nder our constitutional requirements, notices *must* be carried in the newspapers.” *Id.* (emphasis added). The Court further explained that

the probabilities and possibilities of the voter being fully informed of the context of an amendment are reasonably assured if the publication is in the newspapers. Accordingly, the method of notice prescribed by the constitution is one reasonably calculated to give notice to the voters, and this method was here complied with.

This is sufficient to sustain a finding that the proposed amendment . . . was submitted to the voters for approval or disapproval.

*Id.*

*Snow* thus makes clear that compliance with the Publication Clause is mandatory and a proposed amendment that fails to comply has not been “submitted to the electors of the state” as Article XXIII, Section 1 requires.

*Snow* did not address the original public meaning of the components of the Publication Clause, however, because it was undisputed that it had been satisfied. But under any plausible conception of the Clause’s original public meaning, Defendants in this case have failed to comply with respect to proposed Amendment D. Plaintiffs nevertheless address the meaning of the Clause to illustrate Defendants’ failure and why it requires the Court to strike Amendment D from the November 2024 ballot and/or otherwise declare and enjoin it as void regardless of whether it remains on the ballots because of printing and mailing deadlines.

***Published in one newspaper in every county.*** There can be no doubt as to what the phrase “published in at least one newspaper in every county of the state, where a newspaper is published” meant to Utahns in 1895. The internet did not exist in 1895, and thus the original public meaning of “newspaper” could only mean a physical, printed newspaper—thus the word newspaper. Moreover, the balance of the Clause requires not merely the publication in one newspaper with statewide circulation, but rather publication in at least one newspaper that physically publishes its papers within each county. There would be no purpose to the phrase “where a newspaper is published” were it otherwise. Moreover, this understanding accords with the practice of the day, where small local newspapers delivered news and information in communities across the State. *See, e.g.*, Utah Digital Newspapers, <https://digitalnewspapers.org/browse/holdings> (project of the University of Utah, Brigham Young University, Utah State University, and Salt Lake Community

College digitizing historic newspapers) (listing historic Utah newspapers by county of publication).

***For two months immediately preceding the next general election.*** Unlike the newspaper publication requirement, the temporal requirement of the Publication Clause is susceptible to more than one plausible meaning. Are the two months immediately preceding the next general election the two *calendar* months that do so—*i.e.*, September and October? Or does the phrase refer to a quantity of days that immediately precede election day itself (*e.g.*, either 60 days before the election or beginning on the same date in September as the relevant date in November)?

There is textual support for both interpretations. The text of the Publication Clause supports the former interpretation—the full two calendar months of September and October—because a “month” is not a precise number of days. In even-numbered years, a month can be 28 days (February), 29 days (February in leap years), 30 days, or 31 days. In this regard, the text supports counting two calendar months that precede the election. On the other hand, the phrase “immediately preceding the next general election” suggests proximity to election day itself, while the former interpretation leaves one to six “extra” days depending on when election day falls in November.

The historical record likewise provides mixed evidence. The “Rules of Construction” provision of the 1898 Code provides that “[t]he word ‘month’ means a calendar month unless otherwise expressed.” Utah Code § 65-2-2498(1) (1898). This understanding of the word “month” as used in the law at the time “provide[s] persuasive evidence about what the people of Utah would have understood our state constitution to mean.” *Haik*, 2020 UT 29, ¶ 35 (cleaned up).

On the other hand, there is mixed evidence from the early Legislatures’ practice of publishing proposed amendments in newspapers. The 1899 Legislature approved the first three

proposed amendments to Utah’s Constitution for submission to the voters at the November 6, 1900 election. It appears that the initial publication date effectuated by the Legislature in 1900 depended upon the circulation frequency of the newspapers. For the weekly newspapers, the publication began in either late August or September 1.<sup>1</sup> By contrast, the initial publication for newspapers with more frequent circulation, however, began after September 1, starting September 3 in the Cache County’s *Logan Nation* and September 5 in Weber County’s *Ogden Daily Standard*.<sup>2</sup> Given the election date of November 6 and the initial publication of September 5 in the *Ogden Daily Standard*—as its name suggests, a daily circulation newspaper—one could deduce that the Legislature at the time interpreted “two months immediately preceding the next general election” as meaning the same numbered date in September as the date immediately preceding the election date in November. For the weekly publications with editions that were issued either before or after that date, the Legislature began publication in the earlier issue to ensure a full two months of publication occurred.

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<sup>1</sup> Utah Digital Newspapers, *Park Record* (Summit County), [https://newspapers.lib.utah.edu/search?page=2&facet\\_paper=%22Park+Record%22&facet\\_type=issue&date\\_tdt=%5B1900-01-01T00%3A00%3A00Z+TO+1900-12-31T00%3A00%3A00Z%5D](https://newspapers.lib.utah.edu/search?page=2&facet_paper=%22Park+Record%22&facet_type=issue&date_tdt=%5B1900-01-01T00%3A00%3A00Z+TO+1900-12-31T00%3A00%3A00Z%5D); *id.*, *Eastern Utah Advocate* (Carbon County), [https://newspapers.lib.utah.edu/search?page=2&facet\\_paper=%22Eastern+Utah+Advocate%22&facet\\_type=issue&date\\_tdt=%5B1900-01-01T00%3A00%3A00Z+TO+1900-12-31T00%3A00%3A00Z%5D](https://newspapers.lib.utah.edu/search?page=2&facet_paper=%22Eastern+Utah+Advocate%22&facet_type=issue&date_tdt=%5B1900-01-01T00%3A00%3A00Z+TO+1900-12-31T00%3A00%3A00Z%5D); *id.*, *Beaver County Blade* (Beaver County), [https://newspapers.lib.utah.edu/search?page=2&facet\\_paper=%22Beaver+County+Blade%22&facet\\_type=issue&date\\_tdt=%5B1900-01-01T00%3A00%3A00Z+TO+1900-12-31T00%3A00%3A00Z%5D](https://newspapers.lib.utah.edu/search?page=2&facet_paper=%22Beaver+County+Blade%22&facet_type=issue&date_tdt=%5B1900-01-01T00%3A00%3A00Z+TO+1900-12-31T00%3A00%3A00Z%5D).

<sup>2</sup> *Id.*, *Logan Nation* (Cache County), [https://newspapers.lib.utah.edu/search?facet\\_paper=%22Logan+Nation%22&facet\\_type=issue&date\\_tdt=%5B1900-01-01T00%3A00%3A00Z+TO+1900-12-31T00%3A00%3A00Z%5D](https://newspapers.lib.utah.edu/search?facet_paper=%22Logan+Nation%22&facet_type=issue&date_tdt=%5B1900-01-01T00%3A00%3A00Z+TO+1900-12-31T00%3A00%3A00Z%5D); *id.*, *Ogden Daily Standard* (Weber County), [https://newspapers.lib.utah.edu/search?page=5&facet\\_paper=%22Ogden+Daily+Standard%22&facet\\_type=issue&date\\_tdt=%5B1900-01-01T00%3A00%3A00Z+TO+1900-12-31T00%3A00%3A00Z%5D](https://newspapers.lib.utah.edu/search?page=5&facet_paper=%22Ogden+Daily+Standard%22&facet_type=issue&date_tdt=%5B1900-01-01T00%3A00%3A00Z+TO+1900-12-31T00%3A00%3A00Z%5D).

The interpretation reflected in the publication practice for the first three amendments in 1900 perhaps best accords with the constitutional text among the potential meanings, by giving a harmonized meaning to both the phrase “two months” and the phrase “immediately preceding the next general election.” Utah Const. art. XXIII, § 1.

*At which time said amendment . . . shall be submitted to the electors.* Structurally, this phrase makes clear that only after the Publication Clause’s requirements have been satisfied may the amendments be submitted to the electors. Article XXIII, Section 1 is written as a series of necessary steps, with each subsequent step dependent upon satisfaction of the prior step. First, proposed amendments must be approved by two-thirds of each house of the legislature, then they must be entered in the respective chambers’ journals, then they must be published in newspapers, then they must be submitted to the voters, and only then—if a majority of voters approve—do they become part of the Constitution. *See* Utah Const. art. XXIII, § 1. The only time the text of Article XXIII, Section 1 permits amendments to be submitted to the electors is “[a]t which time” they have completed being published in newspapers for two months immediately preceding the election day. *Id.* Publication is thus a mandatory condition precedent to submission to the voters. Indeed, the *Snow* Court made clear that publication in the newspapers was a mandatory requirement and necessary in order for the amendment to be considered to have been lawfully “submitted to the voters for approval or disapproval.” *Snow*, 195 P.2d at 238.

But in this case, the Court need not decide the precise original public meaning of Article XXIII, Section 1’s Publication Clause. It is indisputable that Defendants have failed to comply with it under *any* plausible interpretation—whether “two months” means (1) the full calendar months of September and October, (2) the period commencing on September 4, 2024 (consistent with the 1900 Legislature’s practice given the November 5, 2024 election date), (3) the period

commencing on September 5, 2024 (including election day in the count), or (4) 60 days before November 5, 2024 (*i.e.*, September 6, 2024).

This is because each of these potential trigger dates for the Publication Clause’s requirements has now come and gone and Defendants have failed to cause the text of Amendment D to be published in *any* newspaper in *any* county in Utah, let alone in at least one newspaper in each county in Utah. *See* Utah Const. art. XXIII, § 1. For example, there is one print edition newspaper that published in Washington County—*The St. George Spectrum*. *See The Spectrum*, <https://www.thespectrum.com/>; *see also* Utah’s Online School Library, *Utah’s Local Newspapers by County*, <https://utahsonlinelibrary.org/countynews/> (identifying newspapers that are currently in circulation across Utah’s counties). *The Spectrum* publishes print editions on Thursdays and Sundays.<sup>3</sup> Under any definition of “two months,” Defendants were required to publish the text of Amendment D in *The Spectrum* beginning with the Thursday, September 5 edition, given that the next publication was not until Sunday, September 8. Yet Defendants did not do so. *See The Spectrum*, Utah Public Notices, <https://www.thespectrum.com/public-notice> (showing no publication of proposed Amendment D’s text). Likewise, the text of proposed Amendment D has not appeared in either of Salt Lake County’s printed newspapers—the *Salt Lake Tribune* and the *Deseret News*. Indeed, the Utah Press Association provides a free public database of the Legal and Public Notices that are published in Utah’s newspapers. *See* Utah Press Association, *Utah Legals & Public Notices*, [https://www.utahlegals.com/\(S\(oy51nxsefg1gf5u5gjbnmey2\)\)/default.aspx](https://www.utahlegals.com/(S(oy51nxsefg1gf5u5gjbnmey2))/default.aspx). A search for “constitution,” “amendment,” “amend,” and “resolution” reveals no publication of

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<sup>3</sup> *See The Spectrum*, Choose Your Plan, [https://subscribe.thespectrum.com/offers?gps-source=CPTOPNAVBAR&itm\\_campaign=2024LOCFLSHSEPT&itm\\_medium=ONSITE&itm\\_content=bluebutton&gnt-eid=control](https://subscribe.thespectrum.com/offers?gps-source=CPTOPNAVBAR&itm_campaign=2024LOCFLSHSEPT&itm_medium=ONSITE&itm_content=bluebutton&gnt-eid=control).

Amendment D's text in any Utah newspaper. Under no conception of the Publication Clause's meaning have Defendants complied with the Constitution.

Indeed, the Legislature has, over time, seemingly ignored the Publication Clause's central requirements in the enacting *statutory* requirements related to the publication of proposed amendments. In 2002, the Legislature amended § 20A-7-103(2) as follows, with strikethrough showing deletions and underline showing additions:

§ 20A-7-103

(2) The In addition to the publication in the voter information pamphlet required by Section 20A-7-702, the lieutenant governor shall, not ~~later~~ more than 60 days or less than ten days before the regular general election, publish the full text of the amendment, question, or statute in at least one newspaper in every county of the state where a newspaper is published.

2002 Utah Laws Ch. 127, § 1 (H.B. 86), 54th Leg., 2002 Gen. Sess. With this amendment, the Legislature by *statute* permitted the Lieutenant Governor to choose to publish amendments for only *ten days* prior to the election, rather than the two months required by the Constitution.

In 2008, the Legislature amended § 20A-7-103(2) again to increase the ten-day minimum publication period to a fourteen-day minimum period. *See* 2008 Utah Laws Ch. 225, § 11 (S.B. 12), 57th Leg., 2008 Gen. Sess. And in 2020, the Legislature again amended § 20A-7-103(2) to delete the first sentence regarding the publication of the voter information pamphlet but left the remainder of the provision unchanged. *See* 2020 Utah Laws 5th Sp. Sess. Ch. 20, § 4 (S.B. 5012), 63d Leg., 5th Sp. Sess.

Then, in 2023, the Legislature amended § 20A-7-103(2) as follows:

§ 20A-7-103

(2) The lieutenant governor shall, not more than 60 days or less than 14 days before the date of the election, publishes the full text of the amendment, question, or statute ~~in at least one newspaper in every county of the state where a newspaper is~~

published for the state, as a class A notice under Section 63G-28-102, through the date of the election.

2023 Utah Laws Ch. 435, § 136 (S.B. 43), 65th Leg., 2023 Gen. Sess. Having previously taken the statute out of compliance with the Constitution’s two-month publication requirement, the Legislature in 2023 dealt the final blow to the statute’s conformity with the Constitution—eliminating the newspaper publication requirement entirely. An attorney for the Utah Office of Legislative Research and General Counsel spoke at the committee hearing, noting that he drafted the bill (which affected a number of different notice requirements across the Code), and observing that it was designed to make the Code’s various notice provisions uniform and to modernize the format to eliminate all newspaper publication requirements and move all notices to a central state-run website. *See* House Gov’t Operations Comm. Mt’g Video (S.B. 43), 65th Leg., 2023 Gen. Sess., at 1:57:22, <https://le.utah.gov/av/committeeArchive.jsp?timelineID=218312>. It does not appear that any legislator or staff mentioned or discussed the *Constitution’s* contrary requirement for proposed constitutional amendments.<sup>4</sup>

Unsurprisingly then, in her response to Plaintiffs’ Motion for a Preliminary Injunction on Counts 9-14 of Plaintiffs’ First Supplemental Complaint, the Lieutenant Governor says nothing about publishing the text of the proposed Amendment in at least one newspaper in every county for the two months preceding the election, as the Publication Clause of Article XXIII, § 1 plainly requires. She instead explains that her office will “publish the full text of the amendment not more than 60 days or less than 14 days before the date of the election in accordance with Utah Code

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<sup>4</sup> Because this change occurred in 2023, the four proposed amendments on the November 2024 ballot—including proposed Amendment D—are the first ones in Utah history where the Legislature has failed to cause publication in newspapers entirely.



§ 63G-30-102.” Resp. of Lt. Governor to Mot. for Prelim. Inj. at 3; *see also id.* (Declaration of Shelly Jackson, Exhibit 1, ¶ 8).

It is axiomatic, of course, that the publication *statute* cannot trump the *Constitution’s* Publication Clause requirements. The Constitution mandates that the Legislature cause the text of proposed Amendment D to be published in at least one newspaper in every county of the state (other than those lacking a newspaper), and that it do so for two months prior to the election. Defendants have indisputably failed to satisfy this mandatory constitutional requirement.

In *Snow*, it was precisely *because* the Legislature complied with the newspaper publication requirement that the amendment at issue was not invalidated by the Court post-election for failing to “submit[] [it] to the voters for approval or disapproval” as required by Article XXIII, § 1. 195 P.2d at 283. As *Snow* recognizes and as the plain text of Article XXIII provides, compliance with the Publication Clause’s requirements is the mandatory condition precedent for a proposed amendment to “be submitted to the electors of the state.” Utah Const. art. XXIII, § 1. Because Defendants have violated this straightforward, plain text requirement of the Constitution, Amendment D is void.

## **II. The remaining factors favor entry of an injunction.**

The remaining factors favor entry of an injunction. *See* Utah R. Civ. P. 65A(e). Plaintiffs—who seek to persuade other Utah voters to oppose Amendment D—are stymied in their efforts by Defendants’ failure to comply with the constitutionally prescribed publication requirements, especially because of the misleading nature of the ballot language. Defendants’ failure to publish the text in conformity with the Constitution irreparably harms Plaintiffs. The double-effect of Defendants’ failure to publicize the proposed Amendment’s text along with Defendants’ misleading ballot language means that like-minded Utahns who would oppose the Amendment if

they *were told what it said* might be duped into voting in favor of Amendment D. Increasing the likelihood of Amendment D being approved by the voters through deceit in turn irreparably harms Plaintiffs by threatening their chances of success in the underlying litigation, which challenges their placement in congressional districts that are severe partisan gerrymanders. *See* Exhibit A (Declarations of Plaintiffs). These harms are irreparable in the absence of an injunction barring Amendment D from the November 2024 ballot or, if altering the ballot printing and mailing is not feasible, absent an order declaring and enjoining Amendment D as void.

The public interest clearly favors an injunction. The public has a strong interest in not being forced to vote on a misleading ballot question where Defendants have failed to provide them the notice of the *text* of the Amendment as the Constitution requires.

In her response to Plaintiffs’ Motion for a Preliminary Injunction on Counts 9-14, filed on September 6, the Lieutenant Governor states that “county clerks will submit ballot proofs to third-party printing vendors beginning Monday, September 9, 2024 so that they may print ballots.” Resp. of Lt. Gov. at 2. The Lieutenant Governor contends that it is too late to stop the presses on printing the ballots because doing so would be costly and may jeopardize the timely preparation for the election. For that reason, the Lieutenant Governor contends that “the harms to the State and the harms to the public interest far exceed the alleged harm suffered by Plaintiffs.” *Id.* at 6. Of course, to the extent the State suffers any harm, that is harm of its own making. Putting that aside, it is hard to understand how reprinting ballots—or briefly delaying the printing of ballots—qualifies as “irreparable harm.” Indeed, on Friday the North Carolina Court of Appeals—on the day ballots were to begin being mailed under North Carolina law—enjoined the dissemination of ballots and ordered the removal of Robert F. Kennedy, Jr. from the ballot. *See Robert F. Kennedy, Jr. v. N.C. State Bd of Elections*, No. P24-624 (N.C. Ct. App. Sept. 6, 2024),

[https://appellate.nccourts.org/dockets.php?court=2&docket=2-P2024-0624-](https://appellate.nccourts.org/dockets.php?court=2&docket=2-P2024-0624-001&pdf=1&a=0&dev=1)

[001&pdf=1&a=0&dev=1](https://appellate.nccourts.org/dockets.php?court=2&docket=2-P2024-0624-001&pdf=1&a=0&dev=1). North Carolina has substantially more ballots to print than does Utah, yet North Carolina election officials report they will be able to comply notwithstanding having to reprint 2.9 million ballots. *See* N.C. State Bd. of Elections, Press Release (Sept. 6, 2024), <https://www.ncsbe.gov/news/press-releases/2024/09/06/state-board-appeals-decision-take-robert-f-kennedy-jr-nc-ballots>; *see also DeMora v. LaRose*, 217 N.E.3d 715, 726 (Ohio 2022) (“[W]e will not hesitate to order that a wrongly excluded candidate be added to the ballot, notwithstanding the UOCAVA date.”). Here, the “proof” for the ballots has not yet been sent to printers in Utah and the upcoming deadline for overseas ballots involves only 4,451 ballots statewide. *See* Resp. of Lt. Gov. at 5.

But in any event, the Lieutenant Governor does not address Plaintiffs’ request that Amendment D be declared and enjoined as void regardless of whether it is included on the ballot. None of the Lieutenant Governor’s arguments have any bearing on that requested relief. And that relief is consistent with a substantial body of case law, where unlawfully presented proposed Amendments are stricken whether pre- or post-election. *See, e.g., Askew v. Firestone*, 421 So. ~~2d~~ 151, 155 (Fla. 1982); *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000); *Lane v. Lukens*, 283 P. 532, 533-34 (Idaho 1929); *Ex parte Tipton*, 93 S.E.2d 640, 642 (S.C. 1956); *State ex rel. Thomson v. Zimmerman*, 60 N.W.2d 416, 423 (Wis. 1953).

Regardless of whether time permits the removal of Amendment D from the physical ballots (it does), Plaintiffs are entitled to an injunction voiding Amendment D such that it will have no effect. It violates every conceivably applicable constitutional provision and cannot stand.<sup>5</sup>

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<sup>5</sup> If deemed desirable for the public interest, the Court could order the Lieutenant Governor to direct county clerks to post notices at polling places and to mail notices along with the ballots informing voters that the Court has ordered Amendment D void for failing to comply with the

## CONCLUSION

For the foregoing reasons, the motion for a preliminary injunction should be granted.

September 7, 2024

Respectfully submitted,

/s/ David C. Reymann

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constitutional requirements for presenting a proposed amendment to voters for approval or rejection.

### **CERTIFICATE OF COMPLIANCE**

Pursuant to Utah R. Civ. P. 7(q)(3), I hereby certify that the foregoing **PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ON COUNT 15 OF THEIR SECOND SUPPLEMENTAL COMPLAINT** complies with the word limits in Utah R. Civ. P. 7(q)(1) and contains 5,139 words, excluding the items identified in Utah R. Civ. P. 7(q)(2).

/s/ Kade N. Olsen

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 7th day of September, 2024, I filed the foregoing **PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ON COUNT 15 OF THEIR SECOND SUPPLEMENTAL COMPLAINT** via electronic filing, which served all counsel of record.

/s/ Kade N. Olsen

# Exhibit C

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID, WENDY  
MARTIN, ELEANOR SUNDWALL, JACK  
MARKMAN, and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH  
LEGISLATIVE REDISTRICTING COMMITTEE;  
SENATOR SCOTT SANDALL, in his official  
capacity; REPRESENTATIVE BRAD WILSON,  
in his official capacity; SENATOR J. STUART  
ADAMS, in his official capacity; and LIEUTENANT  
GOVERNOR DEIDRE HENDERSON, in her  
official capacity,

Defendants.

**LEGISLATIVE DEFENDANTS'  
COMBINED OPPOSITION TO  
PLAINTIFFS' MOTIONS FOR  
PRELIMINARY  
INJUNCTION**

Case No.: 220901712

Honorable Dianna Gibson

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## INTRODUCTION

Plaintiffs ask this Court to remove proposed constitutional Amendment D from Utah voters' ballots. The Lieutenant Governor has already certified those ballots and sent them to Utah's 29 counties for printing. Plaintiffs suggest, falsely, that the language of Amendment D is a state secret. Its text has been and will continue to be widely published, including in the Utah Voter Information Pamphlet. Plaintiffs demean the State and its voters by suggesting that they are incapable of considering the amendment. Plaintiffs also say, paradoxically, that the ballot is a "suppression tactic." The only suppression tactic is Plaintiffs' demand to deny 1.73 million Utahns the right to vote. Litigation by a few cannot preclude voting by all in Utah. Plaintiffs' eleventh-hour motion is a dangerous invitation to sow confusion and destroy confidence in the election. It must be denied.

Legislative Defendants ask the Court to **order during today's hearing** that Amendment D will remain on the ballot. The alternative—an order to remove Amendment D—would inject confusion and potential catastrophic errors into the nearly final ballot-printing process. Such an order would also almost certainly preclude appellate review. Ballot printing starts tomorrow; an order striking Amendment D would leave virtually no recourse for Utah's 1.73 million registered voters. Should the Court need additional time to consider Plaintiffs' alternative requested remedy—allowing Amendment D to remain on the ballot but ignoring Utahns' votes cast on Amendment D—Legislative Defendants ask the Court to enter an order on that request **by Friday, September 13, 2024**. That timing is necessary to allow an immediate and expedited appeal, if necessary, to remove any cloud of doubt over the election and to give Utahns the confidence that their votes matter and will count.

## BACKGROUND

1. In 2018, a citizens' initiative about Utah redistricting was on the ballot. Proposition 4's self-described intent was to stop "gerrymandering," install an "Independent Redistricting Commission," and impose mandatory redistricting requirements on the Legislature.<sup>1</sup>

Out-of-state special-interest groups and labor unions financed Proposition 4, providing \$1.5 million of the \$2 million raised by Proposition 4's sponsors.<sup>2</sup> Contributions from Washington-based organizations including the National Education Association,<sup>3</sup> California-based labor and other organizations,<sup>4</sup> and other East Coast groups including the ACLU<sup>5</sup> totaled more than \$400,000. Proposition 4's biggest donor was Houston-based Action Now Initiative, funded by Texans John and Laura Arnold, which contributed more than \$1.1 million in actual and in-kind donations.<sup>6</sup>

Proposition 4 passed by a 0.6% margin. A majority of voters in 25 of Utah's 29 counties voted *against* it. The proposition carried only in Salt Lake, Summit, Grand, and Carbon counties.<sup>7</sup> Statewide,

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<sup>1</sup> 2018 Utah Voter Information Pamphlet at 78, Utah Office of the Lieutenant Governor, [vote.utah.gov/wp-content/uploads/sites/42/2023/09/2018-VIP.pdf](http://vote.utah.gov/wp-content/uploads/sites/42/2023/09/2018-VIP.pdf).

<sup>2</sup> Disclosure reports for Better Boundaries, registered as Utahns for Responsive Government, are publicly available at [disclosures.utah.gov/Search/PublicSearch/FolderDetails/1414774](http://disclosures.utah.gov/Search/PublicSearch/FolderDetails/1414774).

<sup>3</sup> Contributions came from NEA, Independent Lines Advocacy, Ballot Initiative Strategy Center, and Election Reformers Network. *See* Utahns for Responsive Government Disclosure, "2018 Convention Report Due 4/16/18," [disclosures.utah.gov/Search/PublicSearch/FolderDetails/1414774](http://disclosures.utah.gov/Search/PublicSearch/FolderDetails/1414774); Utahns for Responsive Government Disclosure, "2018 September 30th Report"; Utahns for Responsive Government Disclosure, "2018 General Report."

<sup>4</sup> Contributions came from SEIU United Healthcare Workers, Southwest Regional Council of Carpenters, Operating Engineers Local Union No. 3, and Campaign for Democracy. *See* Utahns for Responsive Government Disclosure, "2018 Convention Report Due 4/16/18," [disclosures.utah.gov/Search/PublicSearch/FolderDetails/1414774](http://disclosures.utah.gov/Search/PublicSearch/FolderDetails/1414774); Utahns for Responsive Government Disclosure, "2018 September 30th Report"; Utahns for Responsive Government Disclosure, "2018 General Report"; Utahns for Responsive Government Disclosure, "2018 Year End Report."

<sup>5</sup> Utahns for Responsive Government Disclosure, "2018 Convention Report Due 4/16/18," [disclosures.utah.gov/Search/PublicSearch/FolderDetails/1414774](http://disclosures.utah.gov/Search/PublicSearch/FolderDetails/1414774); Utahns for Responsive Government Disclosure, "2018 Primary Report"; Utahns for Responsive Government Disclosure, "2018 September 30th Report"; Utahns for Responsive Government Disclosure, "2018 General Report"; Utahns for Responsive Government Disclosure, "2018 Year End Report."

<sup>6</sup> Utahns for Responsive Government Disclosure, "2018 Convention Report Due 4/16/18," [disclosures.utah.gov/Search/PublicSearch/FolderDetails/1414774](http://disclosures.utah.gov/Search/PublicSearch/FolderDetails/1414774); Utahns for Responsive Government Disclosure, "2018 September 30th Report"; Utahns for Responsive Government Disclosure, "2018 General Report"; Utahns for Responsive Government Disclosure, "2018 Year End Report."

<sup>7</sup> 2018 Election Results at 54, Utah Office of the Lieutenant Governor (Nov. 26, 2018), [vote.utah.gov/wp-content/uploads/sites/42/2023/09/2018-General-Election-Canvass.pdf](http://vote.utah.gov/wp-content/uploads/sites/42/2023/09/2018-General-Election-Canvass.pdf).

more than 512,000 Utahns voted against Proposition 4, or 49.7% of votes cast.<sup>8</sup> A mere 6,944 more Utahns voted in favor of it, or 50.3% of votes cast.<sup>9</sup>

2. In 2020, the Legislature passed Senate Bill 200 with further redistricting reforms. SB200 was the product of 15 months of negotiation with Proposition 4’s proponent, Better Boundaries.<sup>10</sup> It was described as a “compromise” bill that kept the redistricting commission while “preserv[ing] the constitutional prerogatives of the Legislature to do the redistricting consistent with [its] constitutional mandate” by converting mandatory provisions in Proposition 4 to discretionary provisions.<sup>11</sup> It was widely supported—including by Better Boundaries.<sup>12</sup> No senator voted against SB200.<sup>13</sup> Only four house members—three from Salt Lake area districts—voted against it.<sup>14</sup>

3. In November 2021, the Legislature redistricted. The redistricting committee chairs announced that Utah’s four congressional districts would continue to include urban areas in the Wasatch Front along with rural areas, as past districts did.<sup>15</sup>

4. In March 2022, Plaintiffs sued the Utah Legislature. Counts I through IV of their complaint alleged that the congressional districts were unconstitutionally “gerrymandered.” Count V of their complaint alleged that S.B. 200’s redistricting reforms violated Plaintiffs’ right to “alter or reform their government,” Utah Const. art. I, §2, through initiatives, art. VI, §1. Defendants moved to dismiss. This Court denied the motion with respect to Counts I through IV but dismissed Count V. *See* Doc. 140, MTD-Op. (Nov. 22, 2022). Relying on *Grant v. Herbert*, 2019 UT 42, 449 P.3d 122, this Court

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *See* Utah Sen. Floor Debate at 36:39-37:17, 2020 Gen. Sess. (2020) (Sen. Bramble); House Floor Debate at 1:32:20-1:33:55, 2020 Gen. Sess. (2020) (Rep. Moss).

<sup>11</sup> Utah Sen. Floor Debate at 35:44-36:38, 2020 Gen. Sess. (2020) (Sen. Bramble).

<sup>12</sup> Bethany Rodgers, Utah Lawmakers, Better Boundaries Explain How They’ve Compromised on the Anti-Gerrymandering Law (Feb. 28, 2020), [perma.cc/PY4D-MRPH](https://perma.cc/PY4D-MRPH).

<sup>13</sup> Vote Status, Utah Legislature (Mar. 3, 2020), [le.utah.gov/DynaBill/svotes.jsp?sessionid=2020GS&voteid=932&house=S](https://le.utah.gov/DynaBill/svotes.jsp?sessionid=2020GS&voteid=932&house=S)

<sup>14</sup> Vote Status, Utah Legislature (Mar. 3, 2020), [le.utah.gov/DynaBill/svotes.jsp?sessionid=2020GS&voteid=1039&house=H](https://le.utah.gov/DynaBill/svotes.jsp?sessionid=2020GS&voteid=1039&house=H)

<sup>15</sup> Doc. 1, Compl. ¶158 (Mar. 17, 2022). The 2001, 2011, and 2021 plans are available at [gis.utah.gov/data/political-political-districts](https://gis.utah.gov/data/political-political-districts).

observed that the Legislature’s changes to Proposition 4 were “in line with historical practice.” MTD-Op. at 59.

5. In January 2023, the Utah Supreme Court granted the parties’ cross-petitions for an interlocutory appeal of all issues. In July 2024, the Utah Supreme Court decided the interlocutory appeal. *See League of Women Voters of Utah v. Utah State Legis.*, 2024 UT 21, --- P.3d --- (“*LWV*”). The Court “retained jurisdiction” over Counts I through IV. *Id.* ¶220. As for Count V, the Court “introduced [a] formulation for the first time” for Plaintiffs’ Article I, §2 arguments. *Id.* ¶76. The Court held that when a citizens’ initiative is one to “alter or reform” government, the Legislature may amend such initiatives but cannot “impair” them, *id.* ¶162, unless the Legislature satisfies strict scrutiny, *id.* ¶215. Many times over, the Court repeated that initiatives are *not* constitutional amendments, *id.* ¶161, that initiatives “cannot violate any other provision of the constitution,” *id.*, that initiatives must be “within the bounds of the constitution,” *id.* ¶¶157, 160, that initiatives must be “exercised in harmony with the rest of the constitution,” *id.* ¶157, and so on. *See also id.* ¶¶10 n.4, 68 n.16, 135-36 (same). The Court issued a limited remand for the parties and this Court to apply that new “formulation.” *Id.* ¶76.

6. Following the decision, Pro-Life Utah, Worldwide Organization for Women, many local officials, and Republican party officials joined an open letter calling for a constitutional amendment. *See Exhibit A*.<sup>16</sup> The Sutherland Institute echoed their call. *See Exhibit B*.<sup>17</sup> They wrote that the ruling “creates a rigid and unmanageable system that disrupts our republican form of government” and “leav[es] Utah vulnerable to the whims of special interests and fleeting majorities.” **Exhibit A at 1**. They said, “The people of Utah should have the opportunity to vote on a constitutional

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<sup>16</sup> Letter to Governor Spencer Cox, President J. Stuart Adams, and Speaker Mike Schultz (Aug. 16, 2024), [ut-gop.org/wp-content/uploads/2024/08/Open-Letter-Regarding-Utah-Ballot-Initiatives\\_Updated-1.pdf](https://ut-gop.org/wp-content/uploads/2024/08/Open-Letter-Regarding-Utah-Ballot-Initiatives_Updated-1.pdf).

<sup>17</sup> Rick B. Larsen & Scott Anderson, “Opinion: Call for Utah constitutional amendment is about safeguarding checks and balances in lawmaking,” *Deseret News* (Aug. 24, 2024), [www.deseret.com/opinion/2024/08/24/utah-constitutional-amendment-safeguards-checks-balances/](https://www.deseret.com/opinion/2024/08/24/utah-constitutional-amendment-safeguards-checks-balances/) (reprinted on Sutherland Institute’s website, [sutherlandinstitute.org/call-for-utah-constitutional-amendment-is-about-safeguarding-checks-and-balances-in-lawmaking/](https://sutherlandinstitute.org/call-for-utah-constitutional-amendment-is-about-safeguarding-checks-and-balances-in-lawmaking/)).



amendment this fall that would clarify the legislative powers vested in the people as well as their elected representatives ....” **Exhibit B at 4.**

In August 2024, the Utah Legislature announced it would hold a special session to introduce a proposed constitutional amendment. “Lawmakers to Convene to Restore and Strengthen the Initiative Process,” Utah State Legislature (Aug. 19, 2024), [house.utleg.gov/wp-content/uploads/2024-Special-Session-Statement\\_Press-Release.pdf](https://house.utleg.gov/wp-content/uploads/2024-Special-Session-Statement_Press-Release.pdf). The announcement stated the Legislature would “[r]estore and strengthen the long-standing practice that voters, the Legislature, and local bodies may amend or repeal legislation.” *Id.*

The enrolled copy of the proposed amendment is attached as **Exhibit C**. It has been readily available on the Legislature’s website since August. *See* Utah S.J.R. 401, [le.utah.gov/~2024S4/bills/static/SJR401.html](https://le.utah.gov/~2024S4/bills/static/SJR401.html). The amendment would revise Article VI of the Utah Constitution as follows:

**Article VI, Section 1. Power vested in Senate, House, and People—Prohibition on foreign influence on initiatives and referenda.**

- (1) The Legislative power of the State shall be vested in:
  - (a) a Senate and House of Representatives which shall be designated the Legislature of the State of Utah; and
  - (b) the people of the State of Utah as provided in Subsection (2).
- (2)(a)(i) The legal voters of the State of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:
  - (A) initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute; or
  - (B) require any law passed by the Legislature, except those laws passed by a two-thirds vote of the members elected to each house of the Legislature, to be submitted to the voters of the State, as provided by statute, before the law may take effect.
- (ii) Notwithstanding Subsection (2)(a)(i)(A), legislation initiated to allow, limit, or prohibit the taking of wildlife or the season for or method of

taking wildlife shall be adopted upon approval of two-thirds of those voting.

(b) The legal voters of any county, city, or town, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:

- (i) initiate any desired legislation and cause it to be submitted to the people of the county, city, or town for adoption upon a majority vote of those voting on the legislation, as provided by statute; or
- (ii) require any law or ordinance passed by the law making body of the county, city, or town to be submitted to the voters thereof, as provided by statute, before the law or ordinance may take effect.

**(3)(a) Foreign individuals, entities, or governments may not, directly or indirectly, influence, support, or oppose an initiative or a referendum.**

**(b) The Legislature may provide, by statute, definitions, scope, and enforcement of the prohibition under Subsection (3)(a).**

**(4) Notwithstanding any other provision of this Constitution, the people's exercise of their Legislative power as provided in Subsection (2) does not limit or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature, or by a law making body of a county, city, or town, on behalf of the people whom they are elected to represent.**

**Exhibit C at 2-3** (Utah S.J.R. 401 §2).

The amendment would revise Article I, §2 as follows:

**Article I, Section 2. All political power inherent in the people.**

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government **through the processes established in Article VI, Section 1, Subsection (2) or through Article XXIII** as the public welfare may require.

**Exhibit C at 2** (Utah S.J.R. 401 §1).

The joint resolution proposing the amendment contains the following charge to publish the amendment:

**Section 3. Submittal to voters.**

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

**Exhibit C at 3** (Utah S.J.R. 401 §3).

Along with the amendment, the Legislature passed related legislation contingent on the amendment's passage. *See* Utah S.B. 4003 §7 (2024), [le.utah.gov/~2024S4/bills/static/SB4003.html](https://leg.utah.gov/~2024S4/bills/static/SB4003.html). The enrolled copy of the legislation is attached as **Exhibit D**. It has been readily available on the Legislature's website since August. *Id.* That legislation would amend Utah's existing statute governing citizens' initiatives as follows:

**20A-7-212. Effective date of initiative – Deference given to law passed by initiative.**

...

(3)(a) The governor may not veto a law adopted by the people.

~~(b) The Legislature may amend any initiative approved by the people at any legislative session.~~

**(b) If, during the general session next following the passage of a law submitted to the people by initiative petition, the Legislature amends the law, the Legislature:**

**(i) shall give deference to the initiative by amending the law in a manner that, in the Legislature's determination, leaves intact the general purpose of the initiative; and**

**(ii) notwithstanding Subsection 3(b)(i), may amend the law in any manner determined necessary by the Legislature to mitigate an adverse fiscal impact of the initiative.**

**Exhibit D at 8-9** (Utah S.B. 4003 §2). That legislation also extended deadlines for referenda. *See id.* §§1, 3 (amending Utah Code §20A-7-105(5)(a)(ii)(B) from 40 days to 60 days and amending Utah Code §20A-7-307(3)(a) to give the Lieutenant Governor a corresponding extension of time). And the legislation advanced internal deadlines and processes for state officials in response to referenda and proposed amendments. *See id.* §§5-6 (amending deadlines in Utah Code §20A-7-705 and -706); *id.* §4 (adding deadline in §20A-7-311 to require Lieutenant Governor to report on referenda signatures).

**Exhibit D at 10-15** (Utah S.B. 4003 §2).

7. Statewide news outlets covered the amendment's proposal and passage beginning in August—and they have covered it extensively ever since. A non-exhaustive compilation of press

coverage is attached as **Exhibit E** and is also publicly available online.<sup>18</sup> National sites including Ballotpedia also reported on the amendment and reprinted its full text.<sup>19</sup> The Deseret News reproduced

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<sup>18</sup> See Hanna Seariac, *Utah legislators considering a constitutional amendment on ballot initiatives*, Deseret News (Aug. 16, 2024), [www.deseret.com/politics/2024/08/16/utah-constitutional-amendment-ballot-initiatives/](http://www.deseret.com/politics/2024/08/16/utah-constitutional-amendment-ballot-initiatives/); Hanna Seariac, *Constitutional amendment over ballot initiatives would help Utah avoid ‘nightmare scenario,’ says Derek Monson*, Deseret News (Aug. 17, 2024), [www.deseret.com/politics/2024/08/17/ballot-initiatives-constitutional-amendment/](http://www.deseret.com/politics/2024/08/17/ballot-initiatives-constitutional-amendment/); Hanna Seariac, *Utah majority leaders say amendment needed so Utah doesn’t become California*, Deseret News (Aug. 20, 2024), [www.deseret.com/politics/2024/08/20/utah-constitutional-amendment-initiatives/](http://www.deseret.com/politics/2024/08/20/utah-constitutional-amendment-initiatives/); Robert Gehrke, *Legislative leaders say fear of California-style laws, foreign influence cause to rush constitutional amendment*, Salt Lake Tribune (Aug. 20, 2024), [www.sltrib.com/news/politics/2024/08/20/why-legislature-is-rushing-amend/](http://www.sltrib.com/news/politics/2024/08/20/why-legislature-is-rushing-amend/); Ben Winslow, *BLOG: Utah legislature puts constitutional amendment on citizen initiatives on the November Ballot*, Fox 13 (Aug. 21, 2024), [www.fox13now.com/news/politics/blog-utah-legislature-meets-in-special-session-on-citizen-ballot-initiatives/](http://www.fox13now.com/news/politics/blog-utah-legislature-meets-in-special-session-on-citizen-ballot-initiatives/); Robert Gehrke, *GOP lawmakers vote for power to amend, repeal ballot initiatives. Now Utahns get final say*, Salt Lake Tribune (Aug. 21, 2024), [www.sltrib.com/news/politics/2024/08/21/utah-republicans-pass/](http://www.sltrib.com/news/politics/2024/08/21/utah-republicans-pass/); Hanna Seariac, *Constitutional amendment will now go to Utah voters*, Deseret News (Aug. 21, 2024), [www.deseret.com/politics/2024/08/21/what-is-utah-constitutional-amendment-on-initiatives/](http://www.deseret.com/politics/2024/08/21/what-is-utah-constitutional-amendment-on-initiatives/); Clayre Scott & Becky Bruce, *Cox signs measure, voters to decide on ballot initiative changes in November*, KSL (Aug. 21, 2024), [kslnnewsradio.com/2128577/special-session-ballot-initiative/](http://kslnnewsradio.com/2128577/special-session-ballot-initiative/); Saige Miller & Sean Higgins, *GOP supermajority votes for more power over ballot initiatives, sends it to Utah voters*, KUER 90.1 (Aug. 21, 2024), [www.kuer.org/politics-government/2024-08-21/gop-supermajority-votes-for-more-power-over-ballot-initiatives-sends-it-to-utah-voters/](http://www.kuer.org/politics-government/2024-08-21/gop-supermajority-votes-for-more-power-over-ballot-initiatives-sends-it-to-utah-voters/); Hanna Seariac, *What to know about Utah’s special session over changing state constitution*, Deseret News (Aug. 21, 2024), [www.deseret.com/politics/2024/08/21/utah-special-session-initiative-amendment/](http://www.deseret.com/politics/2024/08/21/utah-special-session-initiative-amendment/); Emily Anderson Stern, *How Utah lawmakers voted on a constitutional amendment to gut voter initiative power*, Salt Lake Tribune (Aug. 21, 2024), [www.sltrib.com/news/politics/2024/08/21/how-utah-lawmakers-voted/](http://www.sltrib.com/news/politics/2024/08/21/how-utah-lawmakers-voted/); Jackie Mitchell, *Utah voters to decide on constitutional amendment granting legislature power to amend or repeal initiatives and banning foreign influence on ballot measures*, Ballotpedia News (Aug. 23, 2024), [news.ballotpedia.org/2024/08/23/utah-voters-to-decide-on-constitutional-amendment-granting-legislature-power-to-amend-or-repeal-initiatives-and-banning-foreign-influence-on-ballot-measures/](https://news.ballotpedia.org/2024/08/23/utah-voters-to-decide-on-constitutional-amendment-granting-legislature-power-to-amend-or-repeal-initiatives-and-banning-foreign-influence-on-ballot-measures/); Katie McKellar, *‘Vote no’: Anti-gerrymandering groups launch campaign against Utah constitutional amendment*, Utah News Dispatch (Aug. 26, 2024), [utahnewsdispatch.com/2024/08/26/utah-anti-gerrymandering-groups-campaign-against-constitutional-amendment/](http://utahnewsdispatch.com/2024/08/26/utah-anti-gerrymandering-groups-campaign-against-constitutional-amendment/); Saige Miller, *‘Vote no’ rally at the Utah capitol launches opposition to ballot initiative amendment*, KUER 90.1 (Aug. 26, 2024), [www.kuer.org/politics-government/2024-08-26/vote-no-rally-at-the-utah-capitol-launches-opposition-to-ballot-initiative-amendment/](http://www.kuer.org/politics-government/2024-08-26/vote-no-rally-at-the-utah-capitol-launches-opposition-to-ballot-initiative-amendment/); Ethan Rice, *Utah constitutional amendment would allow Legislature to repeal initiatives to prohibit foreign influence*, Ballotpedia News (Aug. 27, 2024), [news.ballotpedia.org/2024/08/27/utah-constitutional-amendment-would-allow-legislature-to-repeal-initiatives-prohibit-foreign-influence/](https://news.ballotpedia.org/2024/08/27/utah-constitutional-amendment-would-allow-legislature-to-repeal-initiatives-prohibit-foreign-influence/); Hanna Seariac, *The cases for and against a Utah constitutional amendment*, Deseret News (Sept. 2, 2024), [www.deseret.com/politics/2024/09/02/what-is-initiative-amendment-utah/](http://www.deseret.com/politics/2024/09/02/what-is-initiative-amendment-utah/); Katie McKellar, *Opponents of Utah constitutional amendment on voter initiatives decry ‘deceptive’ ballot language*, Utah News Dispatch (Sept. 4, 2024), reprinted in Yahoo! News, [www.yahoo.com/news/opponents-utah-constitutional-amendment-voter-231734615.html](http://www.yahoo.com/news/opponents-utah-constitutional-amendment-voter-231734615.html); Robert Gehrke, *‘Deceptive’ and ‘misleading’: Ballot language to limit voters’ initiative power thrashed by critics—including Republicans*, Salt Lake Tribune (Sept. 4, 2024), [www.sltrib.com/news/politics/2024/09/04/ballot-language-limit-voters/](http://www.sltrib.com/news/politics/2024/09/04/ballot-language-limit-voters/); Hanna Seariac, *Ballot language on Utah initiative constitutional amendment released*, Deseret News (Sept. 5, 2024), [www.deseret.com/politics/2024/09/05/amendment-d-utah/](http://www.deseret.com/politics/2024/09/05/amendment-d-utah/); Bridger Beal-Cvetko, *Critics say text of proposed Utah constitutional amendment is ‘misleading’*, KSL.com (Sept. 5, 2024), [www.ksl.com/article/51118655/critics-say-text-of-proposed-utah-constitutional-amendment-is-misleading](http://www.ksl.com/article/51118655/critics-say-text-of-proposed-utah-constitutional-amendment-is-misleading); Bridger Beal-Cvetko, *Groups sue to block ‘misleading’ constitutional amendment from being put on the ballot*, KSL.com (Sept. 6, 2024), [www.ksl.com/article/51120781/groups-sue-to-block-misleading-constitutional-amendment-from-being-put-on-the-ballot](http://www.ksl.com/article/51120781/groups-sue-to-block-misleading-constitutional-amendment-from-being-put-on-the-ballot); Katie McKellar, *‘Orwellian doublespeak’: Lawsuit asks judge to scrap ‘misleading’ Utah constitutional amendment*, Utah News Dispatch (Sept. 6, 2024), [utahnewsdispatch.com/2024/09/06/lawsuit-asks-judge-scrap-misleading-utah-constitutional-amendment-d/](http://utahnewsdispatch.com/2024/09/06/lawsuit-asks-judge-scrap-misleading-utah-constitutional-amendment-d/); Rob Bishop, *Voices: To prevent Utah from becoming California, we must pass the ballot initiatives amendment*, Salt Lake Tribune (Sept. 9, 2024), [www.sltrib.com/opinion/commentary/2024/09/09/rob-bishop-prevent-utah-becoming/](http://www.sltrib.com/opinion/commentary/2024/09/09/rob-bishop-prevent-utah-becoming/); “Utah Amendment D,” Ballotpedia, [ballotpedia.org/Utah\\_Amendment\\_D\\_Provide\\_for\\_Legislative\\_Alteration\\_of\\_Ballot\\_Initiatives\\_and\\_Ban\\_Foreign\\_Contributions\\_Measure\\_\(2024\)](https://ballotpedia.org/Utah_Amendment_D_Provide_for_Legislative_Alteration_of_Ballot_Initiatives_and_Ban_Foreign_Contributions_Measure_(2024)).

<sup>19</sup> See Ex. E at 134-36 (Jackie Mitchell, *Utah voters to decide on constitutional amendment granting legislature power to amend or repeal initiatives and banning foreign influence on ballot measures*, Ballotpedia News (Aug. 23, 2024), [news.ballotpedia.org/2024/08/23/utah-voters-to-decide-on-constitutional-amendment-granting-legislature-power-to-amend-or-repeal-initiatives-and-banning-foreign-influence-on-ballot-measures/](https://news.ballotpedia.org/2024/08/23/utah-voters-to-decide-on-constitutional-amendment-granting-legislature-power-to-amend-or-repeal-initiatives-and-banning-foreign-influence-on-ballot-measures/)); Ex. E at 151-54 (Ethan Rice, *Utah constitutional*

the Article VI amendment text—the target of Plaintiffs’ preliminary injunction motions—on August 21, 2024, along with proponents’ and opponents’ commentary,<sup>20</sup> and again on September 5, 2024.<sup>21</sup> Similarly, Fox 13, Ballotpedia, and other entities hyperlinked or reproduced the amendment text in August and September.<sup>22</sup>

8. The Speaker of the House and the President of the Senate submitted a ballot title and summary for the proposed Amendment D, as required by Utah Code §20A-7-103(3). The summary states<sup>23</sup>:

**Constitutional Amendment D**

Should the Utah Constitution be changed to strengthen the initiative process by:

- Prohibiting foreign influence on ballot initiatives and referendums.
- Clarifying the voters and legislative bodies’ ability to amend laws.

If approved, state law would also be changed to:

- Allow Utah citizens 50% more time to gather signatures for a statewide referendum.
- Establish requirements for the legislature to follow the intent of a ballot initiative.

For ( ) Against ( )

9. The Lieutenant Governor certified Amendment D for ballot printing, along with all candidates and other ballot issues, to county clerks on Tuesday, September 3, 2024. *See* Doc. 339,

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*amendment would allow Legislature to repeal initiatives to prohibit foreign influence*, Ballotpedia News (Aug. 27, 2024), [news.ballotpedia.org/2024/08/27/utah-constitutional-amendment-would-allow-legislature-to-repeal-initiatives-prohibit-foreign-influence/](https://news.ballotpedia.org/2024/08/27/utah-constitutional-amendment-would-allow-legislature-to-repeal-initiatives-prohibit-foreign-influence/); Ex. E at 254-68 (“Utah Amendment D,” Ballotpedia, [ballotpedia.org/Utah\\_Amendment\\_D\\_Provide\\_for\\_Legislative\\_Alteration\\_of\\_Ballot\\_Initiatives\\_and\\_Ban\\_Foreign\\_Contributions\\_Measure\\_\(2024\)](https://ballotpedia.org/Utah_Amendment_D_Provide_for_Legislative_Alteration_of_Ballot_Initiatives_and_Ban_Foreign_Contributions_Measure_(2024))).

<sup>20</sup> *See* Ex. E at 47-52 (Hanna Seariac, *What to know about Utah’s special session over changing state constitution*, Deseret News (Aug. 21, 2024), [www.deseret.com/politics/2024/08/21/utah-special-session-initiative-amendment/](https://www.deseret.com/politics/2024/08/21/utah-special-session-initiative-amendment/)).

<sup>21</sup> *See* Ex. E at 218-25 (Hanna Seariac, *Ballot language on Utah initiative constitutional amendment released*, Deseret News (Sept. 5, 2024), [www.deseret.com/politics/2024/09/05/amendment-d-utah/](https://www.deseret.com/politics/2024/09/05/amendment-d-utah/)).

<sup>22</sup> *See, e.g.*, Ex. E at 96-119 (Ben Winslow, *BLOG: Utah legislature puts constitutional amendment on citizen initiatives on the November Ballot*, Fox 13 (Aug. 21, 2024), [www.fox13now.com/news/politics/blog-utah-legislature-meets-in-special-session-on-citizen-ballot-initiatives/](https://www.fox13now.com/news/politics/blog-utah-legislature-meets-in-special-session-on-citizen-ballot-initiatives/)); Ex. E at 254-68 (“Utah Amendment D,” Ballotpedia, [ballotpedia.org/Utah\\_Amendment\\_D\\_Provide\\_for\\_Legislative\\_Alteration\\_of\\_Ballot\\_Initiatives\\_and\\_Ban\\_Foreign\\_Contributions\\_Measure\\_\(2024\)](https://ballotpedia.org/Utah_Amendment_D_Provide_for_Legislative_Alteration_of_Ballot_Initiatives_and_Ban_Foreign_Contributions_Measure_(2024))); Ex. E at 192-204 (Katie McKellar, *Opponents of Utah constitutional amendment on voter initiatives decry ‘deceptive’ ballot language*, Utah News Dispatch (Sept. 4, 2024), reprinted in Yahoo! News, [www.yahoo.com/news/opponents-utah-constitutional-amendment-voter-231734615.html](https://www.yahoo.com/news/opponents-utah-constitutional-amendment-voter-231734615.html)); Ex. E at 210-14 (Bridger Beal-Cvetko, *Critics say text of proposed Utah constitutional amendment is ‘misleading’*, KSL.com (Sept. 5, 2024), [www.ksl.com/article/51118655/critics-say-text-of-proposed-utah-constitutional-amendment-is-misleading](https://www.ksl.com/article/51118655/critics-say-text-of-proposed-utah-constitutional-amendment-is-misleading)); Ex. E at 230-33 (Bridger Beal-Cvetko, *Groups sue to block ‘misleading’ constitutional amendment from being put on the ballot*, KSL.com (Sept. 6, 2024), [www.ksl.com/article/51120781/groups-sue-to-block-misleading-constitutional-amendment-from-being-put-on-the-ballot](https://www.ksl.com/article/51120781/groups-sue-to-block-misleading-constitutional-amendment-from-being-put-on-the-ballot)).

<sup>23</sup> 2024 General Election Certification at 34-35, Utah Office of the Lieutenant Governor, [vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf](https://vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf).

Decl. of Shelly Jackson ¶12. After the Lieutenant Governor certifies the ballot, it is up to Utah’s 29 counties to proceed with preparing, proofing, printing, and mailing ballots. *Id.* ¶¶13-19.

Plaintiffs contend that the Lieutenant Governor’s certification was not available on the website until “mid-day September 4, 2024.” 1st-Mot. 5. Defendants have not had sufficient time to investigate or verify that statement.

10. Late into the evening on September 5, without any prior notice to Defendants or to the Court, Plaintiffs filed a motion for preliminary injunction to take Amendment D off the ballot. Plaintiffs’ motion “seek[s] to enjoin Defendants from placing proposed Amendment D on the November 2024 election ballot and if any ballots are issued to voters that include proposed Amendment D, seek for the Court to declare and enjoin Amendment D as void.” 1st-Mot. 1. Plaintiffs raised the following claims:

- The ballot violates the Utah Constitution’s amendment provision, art. XXIII, §1, because of the “misleading and false” summary of Amendment D. 1st-Mot. 6-17.
- The ballot summary violates Utah Code §20A-7-103(3)(c) because it “fails to disclose the actual subject matter of the amendment,” which Plaintiffs say is “eliminating a voter’s fundamental constitutional right to alter or reform their government without infringement.” 1st-Mot. 17-18.
- The ballot summary violates the Utah Constitution’s Free Elections Clause, art. I, §17, because “the language exerts undue influence and coercion upon Utah’s voters by omitting the central effect of the amendment” and “misleading voters.” 1st-Mot. 18-21.
- The ballot summary violates the Utah Constitution’s free speech and expression provisions, art. I, §§1, 15, because it “tricks Utahns into voting *for* the proposed amendment by presenting a false image of the Amendment.” 1st-Mot. 21-24.
- The ballot summary violates the Utah Constitution’s right to vote provision, art. IV, §2, because “the ballot summary would deceptively cause voters to cast ballots contrary to their true will and will unduly influence the election outcome.” 1st-Mot. 24-25.
- The ballot summary violates Utah Constitution art. I, §2’s text that “all free governments are founded on their authority for [the people’s] equal protection and benefit” and art. I, §27’s similar text because the “government is not ‘free’ if its Constitution is amended by deception.” 1st-Mot. 25-26.

Then on Saturday, September 7, Plaintiffs filed a second preliminary motion raising an additional claim:

- The ballot violates the Utah Constitution art. XXIII, §1's text regarding publication because the amendment text was not printed in "a physical, printed newspaper" in "the full two calendar months of September and October." 2d-Mot. 5-15.

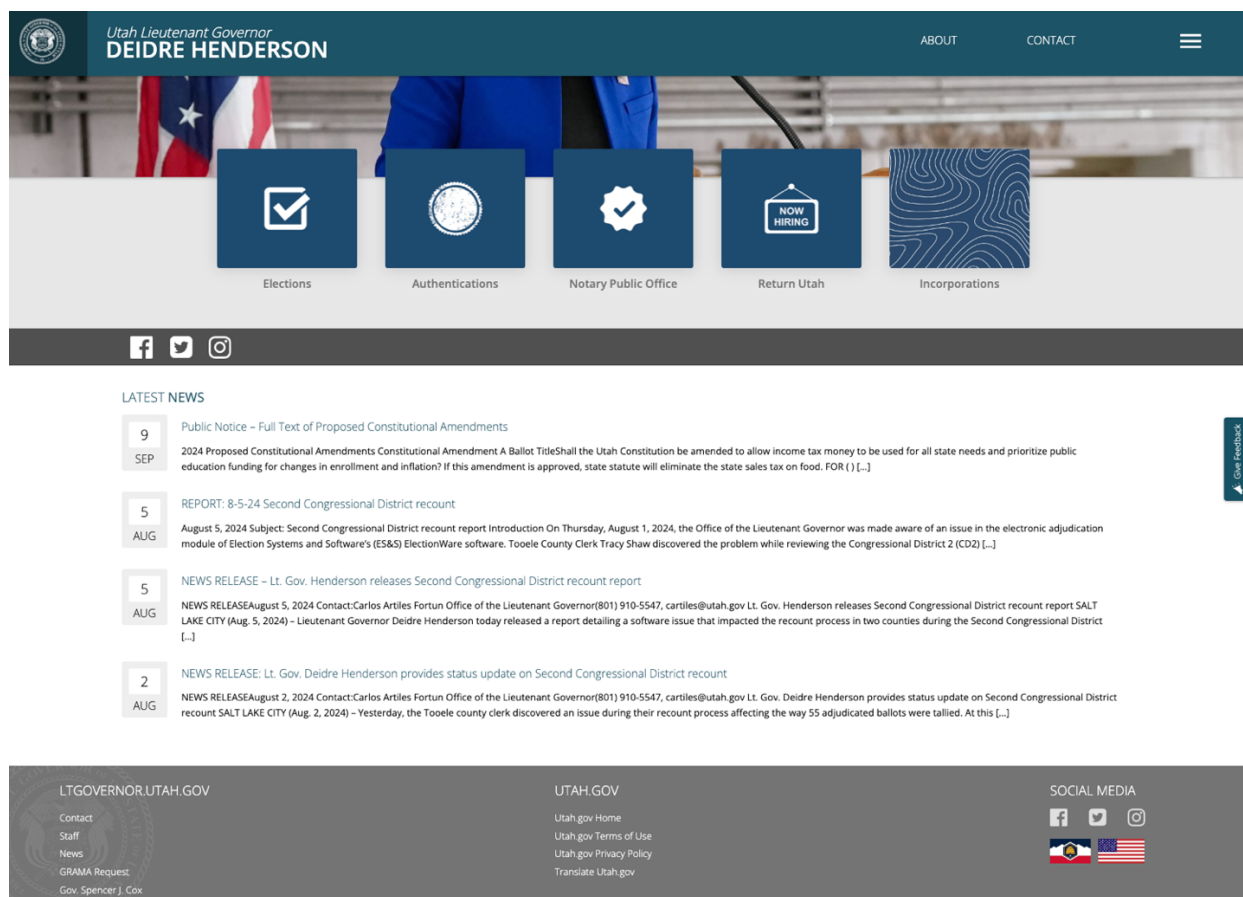
Both motions contend that the equities favor an injunction because the ballot will cause irreparable harm by leading voters to vote for Amendment D. 1st-Mot. 26-27. They also contend that "[i]ncreasing the likelihood of Amendment D being approved by the voters through deceit in turn irreparably harms Plaintiffs by threatening their chances of success in the underlying litigation." 2d-Mot. 16. Plaintiffs contend that "Defendants are not harmed by being unable to advance a false description of the proposed Amendment in the November 2024 election." 1st-Mot. 27. Plaintiffs contend that the serious timing concerns raised by their motion, *infra*, and any resulting harms were of the State's "own making" and speculated that there was enough time for "briefly delaying." 2d-Mot. 16. And Plaintiffs contend that the public interest favors an injunction because, without an injunction, "a fundamental constitutional right that has existed since 1895 would be in jeopardy." 1st-Mot. 27.

Noted above, both motions ask the Court to "enjoin Defendants from placing proposed Amendment D on the November 2024 election ballot." 1st-Mot. 28. Alternatively, they ask the Court to keep the amendment on the ballot but to forbid counting the votes: "if any ballots are issued to voters that include proposed Amendment, Amendment D is declared void and enjoined." *Id.*; *see* 2d-Mot. 17. For either form of relief, they ask the Court to order "the Lieutenant Governor to notify all County Clerks of the injunction such that they are bound by its terms." 1st-Mot. 28; *see also* 2d-Mot. 17 n.5 ("the Court could order the Lieutenant Governor to direct county clerks to post notices at polling places and to mail notices along with the ballots informing voters that the Court has ordered Amendment D void"). Plaintiffs did not name even one of Utah's 29 county clerks as a defendant.

11. The Lieutenant Governor’s office immediately responded to Plaintiffs’ first preliminary injunction motion with a declaration about the timing exigencies and the disruption that Plaintiffs’ motion would cause. The declaration explained Utah’s decentralized process for ballot printing and elections administration, whereby Utah counties prepare and print ballots. Jackson Decl. ¶¶13-19. The declaration explained that the Lieutenant Governor had already certified the ballot on September 3 and sent it to the counties for printing. *Id.* ¶12. The declaration explained that counties use designated printing vendors who “collectively print ballots for over 160 counties throughout the United States,” *id.* ¶15, that “reprinting ballots is estimated to cost up to \$3 million,” *id.* ¶27, and that “[r]eprinting may not even be possible given all of the other jurisdictions in the country who are also printing ballots at the same time,” *id.*, to say nothing of the “costs associated with re-certifying, re-programming ballots, and re-proofing,” *id.* The declaration stated that “[a]ltering the ballot on the eve of an election jeopardizes the State’s ability to meet the UOCAVA deadline”—a nonnegotiable federal deadline that requires the States to mail ballots no later than September 20, 2024—“and to otherwise run an orderly election that protects Utahns’ right to vote.” *Id.* ¶28. The declaration emphasized that Amendment D is not the only item on the ballot in this presidential election year and that “[a]ltering the ballot, after all of these things have already been certified for the ballot, jeopardizes the orderly election for all candidates and issues, not just Amendment D.” *Id.* ¶29.

12. On September 9, 2024, the Lieutenant Governor posted the full text of all constitutional amendments, including Amendment D. A copy of the public notice is attached as **Exhibit F**. It is also readily available online. *See* Public Notice, Full Text of Proposed Constitutional Amendments, Utah Lieutenant Governor, [ltgovernor.utah.gov/2024/09/09/public-notice-full-text-of-proposed-constitutional-amendments/](https://ltgovernor.utah.gov/2024/09/09/public-notice-full-text-of-proposed-constitutional-amendments/). Shown below, the public notice currently appears as the first item in the “Latest News” section on the Lieutenant Governor’s homepage:





Utah Lieutenant Governor, [ltgovernor.utah.gov/](http://ltgovernor.utah.gov/) (last visited Sept. 9, 2024). As of September 10, 2024, the public notice is the first Google search result when searching “Utah amendment D full text.”

13. Leading up to the election, the State will publish Utah’s Voter Information Pamphlet. Plaintiffs have relied on past Voter Information Pamphlets already in this remanded litigation. *See* Doc. 293, Pls.’ Mot. for Summ. J. at 4, 10, 11, 14 (citing *Proposition 4*, Utah Voter Information Pamphlet (Sept. 3, 2018), [vote.utah.gov/wp-content/uploads/sites/42/2023/09/2018-VIP.pdf](http://vote.utah.gov/wp-content/uploads/sites/42/2023/09/2018-VIP.pdf)). The Voter Information Pamphlet will include the full text of Amendment D and arguments for and against the amendment. *See* Utah Code §§20A-7-701(1), 20A-7-702.5. The Voter Information Pamphlets are widely read and familiar to Utah Voters. According to the most recent available study, “almost nine out of ten voters” report that “they read all or part of [the Pamphlets] prior to the election.” Peter Brien, *Voter Pamphlets: The Next Best Step in Election Reform*, 28 J. Legis. 87, 102 (2002).

13. On September 9, this Court granted Plaintiffs’ request for a status conference and ordered responses no later than Wednesday, September 11, 2024, at 10:30 A.M. Counsel for the Legislative Defendants agreed to the expedited schedule with the reservation that the schedule would not afford Defendants enough time to research and exhaust all arguments to Plaintiffs’ seven new claims.

### STANDARD OF REVIEW

Preliminary injunctions are an extraordinary remedy. They are an exception, not the rule. Plaintiffs must prove (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm, and that (3) the balance of the equities and (4) the public interest favor them. Utah R. Civ. P. 65A(e). In elections cases such as this one, the Court must be cognizant of “[t]he overriding importance of the public’s interest in the integrity of the election process and the breadth of a court of equity’s discretion.” *In re Cook*, 882 P.2d 656, 659 (Utah 1994). Even if a court “find[s] merit” in a claim, a preliminary injunction must nonetheless be denied if it will “cause a ‘serious disruption of election process,’ including risk of interference with the rights of absentee and other voters.” *Id.* at 658-59 (quoting *Williams v. Rhodes*, 393 U.S. 23, 35 (1968)). And where, as here, Plaintiffs seek a “disfavored” mandatory preliminary injunction that would “mandat[e] action” by the Lieutenant Governor (and county election officials who are not even parties to this case), “chang[e] the status quo,” and “gran[t] all the relief [Plaintiffs] would expect from a trial win,” Plaintiffs face “a heavier burden on the likelihood-of-success and the balance-of-harms factors.” *FTN-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019).<sup>24</sup> “A mandatory injunction will never be granted where it might operate inequitably or oppressively.” *Salt Lake County v. Kartchner*, 552 P.2d 136, 140 (Utah 1976).

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<sup>24</sup> See *PPAU v. State*, 2024 UT 28, ¶86, —P.3d— (“Since we borrowed the preliminary injunction standards from the Tenth Circuit, we look to Tenth Circuit caselaw for guidance.”).

## SUMMARY OF ARGUMENT

**I.** This Court can deny Plaintiffs’ motions without reaching the merits. An order to remove Amendment D from the ballot will “cause a ‘serious disruption of election process,’ including risk of interference with the rights of absentee and other voters.” *Cook*, 882 P.2d at 659 (quoting *Williams*, 393 U.S. at 35). Any such relief would undercut “[t]he overriding importance of the public’s interest in the integrity of the election process.” *Id.* That alone is grounds for denying relief, even if claims have some “merit.” *Id.* at 658-59.

**II.** The motions must also be denied for Plaintiffs’ failure to name county officials. The Court lacks jurisdiction to order those non-parties to remove Amendment D from their soon-to-be-printed ballots, or alternatively order them not to count votes. *See Carlton v. Brown*, 2014 UT 6, ¶¶30-32, 323 P.3d 571.

**III.A.** Even if the Court were to reach the merits, Plaintiffs cannot show likely success. Plaintiffs’ various claims related to the ballot summary are subjective and one-sided, contrary to other evidence, and contrary to law. Those claims require this Court to assume that Utah voters live under a rock—that Utahns are oblivious to extensive press coverage about the amendment and that they are unable to read the amendment, which has been widely publicized, will be reprinted in Utah’s 2024 Voter Information Pamphlet, and will be posted in voting precincts.

**B.** Likewise, Plaintiffs’ claim that the amendment has not been properly published fails. Plaintiffs never answer the right constitutional question: did “*the Legislature*” comply with its obligation to “*cause*” the amendment to be published? Utah Const. art. XXIII, §1 (emphasis added). The Legislature complied beginning in August, making the amendment text widely accessible on its own website and directing the Lieutenant Governor to submit the proposed amendment to the voters “in the manner provided by law.” **Exhibit C at 3** (Utah S.J.R. 401 §3). Plaintiffs cannot seriously maintain that a proposed amendment is “void” unless the Legislature insists that it be reprinted for two continuous

months in hard-copy newspapers that no longer exist. Nor can Plaintiffs seriously maintain that the proposed amendment is a state secret when it has been widely published in newspapers and online since the August special session.

**IV.** Plaintiffs give this Court no basis for taking the extraordinary action of removing an amendment from the ballot. Such an order would deny 1.73 million registered voters their right to vote. Defendants request that this Court so order **by today** to avoid “jeopardiz[ing] the State’s ability to meet the UOCAVA deadline and to otherwise run an orderly election that protects Utahns’ right to vote.” Jackson Decl. ¶¶28-29. Nor do Plaintiffs give this Court any basis for concluding that Utahns’ votes shouldn’t count. Defendants request that this Court so order **by today or no later than Friday, September 13**. Plaintiffs’ litigation by a few cannot suppress the votes of all Utahns. Given “[t]he overriding importance of the public’s interest in the integrity of the election process,” *Cook*, 882 P.2d at 659, the baseless shadow Plaintiffs have cast over Utah’s 2024 election must be cleared immediately.

## **ARGUMENT**

### **I. The equities alone preclude an order removing Amendment D from nearly final ballots.**

**A.** Plaintiffs seek an eleventh-hour change to 1.73 million ballots. Preliminary injunctions are always “extraordinary and drastic.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). And where, as here, Plaintiffs are halting the orderly election processes, there are “considerations specific to election cases” that will foreclose injunctive relief. *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (rejecting last-minute election changes while expressing “no opinion” on the merits). This is referred to as the *Purcell* principle in federal courts. And that same rule is firm in Utah courts too.

“The overriding importance of the public’s interest of the election process” will command denial of injunctive relief regardless of the “merit” of a plaintiff’s claim. *Cook*, 882 P.2d at 259. In *Cook*, plaintiffs challenged ballots in September after the ballot preparation process was well underway. *Id.* at 258-59. The Utah Supreme Court refused to “halt the distribution of the voter information

pamphlets in current form” or change ballots even though there was “merit to petitioners’ claims.” *Id.* at 258-59. Likewise in *Williams v. Rhodes*, 393 U.S. 23 (1968)—relied upon by the Utah Supreme Court in *Cook*—plaintiffs established a serious constitutional violation. *Id.* at 34 (holding Ohio laws restricting third-party candidates “impose[] a burden on voting and associational rights, which we hold is an invidious discrimination, in violation of the Equal Protection Clause”). Nonetheless, the U.S. Supreme Court refused to require last-minute changes to ballots because that would cause a “serious disruption of election process.” *Id.* at 35. The Court relied on the State’s representation to the Court that changing the ballots was no longer possible. *Id.* at 34-35. The Court concluded that “it would be extremely difficult, if not impossible, for Ohio to provide still another set of ballots.” *Id.* at 35. The Court emphasized that “the confusion that would attend such a last-minute change poses a risk of interference with the rights of other Ohio citizens, for example, absentee voters.” *Id.*

Defendants have established that the same risk of “serious disruption” will occur here if the Court orders Amendment D removed from nearly final ballots. The election process has already begun. *See* Jackson Decl. ¶¶10-23. The Lieutenant Governor already certified the ballots to county clerks for printing on September 3. *Id.* ¶10. As the Lieutenant Governor’s counsel explained at the status conference, ballot preparation and proofing is occurring in real time *today* and ballot printing starts *tomorrow*. That timing is required because county clerks must finalize all ballots for all counties so all UOCAVA ballots statewide can be mailed in 9 days. Missing that deadline violates federal law, with disastrous consequences. *Id.* ¶¶19-23. Simply put—the ballots are no longer even in the Lieutenant Governor’s hands. *Id.* ¶13. They are with Utah’s 29 counties. *Id.* ¶14. Counties are submitting ballot proofs to three “extremely busy” ballot printers who service the entire United States and have fixed deadlines. *Id.* ¶¶15-19. Removing Amendment D would require coordination among all of the counties and their separate printers, cost the State “up to \$3 million,” risk serious violations of federal law, and otherwise “jeopardiz[e] the orderly election for all candidates and issues, not just Amendment D.” *Id.*

¶¶17-29. Ballots are already certified, proofs are already out and, after tomorrow, “[r]eprinting may not even be possible given all of the other jurisdictions in the country who are also printing ballots at the same time.” *Id.* ¶¶12, 20, 25.

*Cook* requires deference to the Lieutenant Governor’s conclusion: “Altering the ballot on the eve of an election jeopardizes the State’s ability to meet the UOCAVA deadline and to otherwise run an orderly election that protects Utahns’ right to vote.” *Id.* ¶28. There is simply not sufficient time to order Amendment D removed from nearly final ballots.

**B.** Plaintiffs’ response forgets that we are in Utah. *See* 2d-Mot. 16-17. And in Utah, when an injunction would “cause ‘a serious disruption of election process,’ including the risk of interference with the rights of absentee and other voters,” it must be rejected. *Cook*, 882 P.2d at 259. Plaintiffs do not grapple with Utah law, nor with analogous federal *Purcell* principles, which the Utah Supreme Court has relied upon, *see id.*, nor with other States abiding by the same election integrity standards. *See, e.g., League of United Latin Am. Citizens of Iowa v. Pate*, 950 N.W.2d 204, 215-16 (Iowa 2020) (applying *Purcell* principle); *All. for Retired Americans v. Sec’y of State*, 240 A.3d 45, 50 (Me. 2020) (same); *Fay v. Merrill*, 256 A.3d 622, 638 n.21 (Conn. 2021) (same); *Moore v. Lee*, 644 S.W.3d 59, 65-66 (Tenn. 2022) (same). Plaintiffs instead rely on two out-of-state decisions that are inapplicable. *See* 2d-Mot. 16-17. The first case said that “*Purcell* is inapplicable” in that state “when the relief sought is *not injunctive*,” and it was inapplicable in that case where the plaintiffs did not seek injunctive relief. *State ex rel. DeMora v. LaRose*, 217 N.E.3d 715, 725 (Ohio 2022) (emphasis added). Here, of course, Plaintiffs seek a mandatory injunction: take Amendment D off the ballot and don’t count any Amendment D votes. *See* 1-Mot. 28. Plaintiffs’ second case involved the State’s refusal to remove a candidate from the ballot well before the state-law deadline for candidates to request removal from the ballot, *see* N.C.G.S. §163-113, and “neither party in this case dispute[d]” that “a vote for plaintiff in this election will not count,” *Kennedy v. N.C. State Bd. of Elections*, No. 235P24 (N.C. Sept. 9, 2024). Neither decision is a basis for

ignoring Utah’s concern for the “overriding importance of the public’s interest in the integrity of the election process.” *Cook*, 882 P.2d at 259.

**C.** Nor can Plaintiffs distinguish *Cook* based on its particular facts. In *Cook*, plaintiffs waited a month to challenge language in voter information pamphlets. 882 P.2d at 658. Here, Plaintiffs will say they waited less. But the concern in *Cook* was a concern about “serious disruption,” and that concern is dispositive here. The Lieutenant Governor has established that an order to remove Amendment D from the ballot will jeopardize “an orderly election.” Jackson Decl. ¶¶28-29.

*Cook*, moreover, requires that “one who seeks to challenge the election process must do so *at the earliest possible opportunity*.” 882 P.2d at 659 (citing *Clegg v. Bennion*, 247 P.2d 614 (Utah 1952)) (emphasis added). Plaintiffs did not do so here. Press coverage about the ballot language, including critical coverage, was immediate.<sup>25</sup> But Plaintiffs did not alert either Defendants or the Court to the possibility of a preliminary injunction motion. Their refusal to do so is especially baffling when the parties were engaged in ongoing negotiations and briefing about scheduling issues. Plaintiffs instead waited until late on Thursday—after this Court rejected Plaintiffs’ arguments about the summary judgment briefing schedule—to demand that Amendment D be removed from already-certified ballots that had been sent to the counties. Then they surprised Defendants with a second preliminary injunction motion Saturday evening—*after* the Lieutenant Governor advised it was too late to make changes.

**D.** Finally, an order removing Amendment D from the ballot would effectively deprive 1.73 million Utah voters from any further review. Once ballot printing begins tomorrow, returning Amendment D to the ballot would entail up to \$3 million in costs and risk violating federal law. Jackson Decl. ¶¶27-28. Given those unrebutted timing constraints, Plaintiffs cannot insist on an order today that

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<sup>25</sup> Ex. E at 180-88 (Robert Gehrke, ‘Deceptive’ and ‘misleading’: Ballot language to limit voters’ initiative power thrashed by critics—including Republicans, Salt Lake Tribune (Sept. 4, 2024), [www.sltrib.com/news/politics/2024/09/04/ballot-language-limit-voters/](http://www.sltrib.com/news/politics/2024/09/04/ballot-language-limit-voters/)); Ex. E at 218-25 (Hanna Seariac, *Ballot language on Utah initiative constitutional amendment released*, Deseret News (Sept. 5, 2024), [www.deseret.com/politics/2024/09/05/amendment-d-utah/](http://www.deseret.com/politics/2024/09/05/amendment-d-utah/)).

would deny 1.73 million Utahns their fundamental right to vote on Amendment D without any further recourse. Granting such relief would create a “cascade of election chaos” in the eyes of the public. *Pierce v. N.C. State Bd. of Elections*, 97 F.4th 194, 227 (4th Cir. 2024). As the attached declarations establish, Plaintiffs do not represent all voters. See **Exhibit G** (Declarations of Kimball Willard, Jody Valentine, Bonnie Hyer, Alexis Ence, Eugene Domingo Garate, Chad Saunders, Lesa Sandberg, Vernita Brown, Richard Hyer, Stafford Palmieri Sievert). Far from it. Other Utahns are ready to vote on Amendment D in the forthcoming election. **Exhibit G at 1, 5, 7, 10, 13, 16, 19, 22, 25, 28**. They are not confused by Amendment D. **Exhibit G at 2, 5, 8, 11, 14, 17, 20, 23, 26, 29**. They do not find the ballot summary to be misleading. **Exhibit G at 2, 5, 10, 11, 14, 17, 20, 23, 26, 29**. And they have their own fundamental right to “alter or reform” their government by voting on Amendment D. **Exhibit G at 2, 5-6, 8, 11, 14, 17, 20, 23, 26, 29**. Removing Amendment D from the ballots today—leaving no real meaningful opportunity for further judicial review—will undoubtedly undermine “[c]onfidence in the integrity of our electoral processes.” *Purcell*, 549 U.S. at 4. “Popular election[s]” are “[t]he great source of free government.” *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 795 (1995). Yet here, Plaintiffs insist on canceling it.

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Defendants ask this Court to deny that Plaintiffs’ request to remove Amendment D from 1.73 million ballots as soon as practicable. Any changes to the already certified and nearly final ballots “jeopardizes the State’s ability to meet the UOCAVA deadline and to otherwise run an orderly election that protects Utahns’ right to vote.” Jackson Decl. ¶28. That threat of “serious disruption” alone is sufficient grounds for denying Plaintiffs’ motion. *Cooke*, 882 P.2d at 258.

## **II. Plaintiffs’ failure to name county officials as defendants makes Plaintiffs’ requested relief a nonstarter.**

Plaintiffs cannot establish that their alleged harms will be “redressable by a favorable ruling.” *Carlton*, 2014 UT 6, ¶31 (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013)). That



redressability requirement is jurisdictional. *Id.* ¶30. Here, because of Utah’s de-centralized elections processes, even if a court “were to agree with” plaintiffs, it “could not grant the relief [they] request.” *Id.* ¶32. As Plaintiffs acknowledge, they want the Court to change *the counties’* behavior. *See* 1st-Mot. 1-2; 2d-Mot. 17. The Lieutenant Governor certified the ballots two days before Plaintiffs’ first preliminary injunction motion. Jackson Decl. ¶12. Ballots are in the counties’ hands, not the Lieutenant Governor’s. *Id.* ¶¶13-14. And by Plaintiffs’ own choice, neither the counties nor county officials are parties here.

That fatal redressability problem is analogous to *Carlton*. There, a putative biological father—who belatedly learned that his putative daughter was given up for an adoption without his knowledge—challenged the Utah Adoption Act’s constitutionality and sought to overturn the adoption and reinstate his parental rights. *Id.* ¶¶1, 4-11, 32. The Supreme Court concluded that the biological father lacked standing “because his injury—the termination of his parental rights—is not redressable by a favorable ruling from [the] court.” *Id.* ¶32. The named defendants (the biological mother and the adoption agency) didn’t have “any rights to relinquish,” and the adoptive parents were “not parties to [the] proceedings.” *Id.* The Court held “[b]ecause of the Adoptive Parents’ absence, [it] cannot grant the relief that [the plaintiff] seeks.” *Id.* Similarly, in *Jacobson v. Florida Secretary of State*, voters and organizations sued the Florida Secretary of State to challenge “the order in which candidates appear on the ballot in Florida’s general elections.” 974 F.3d 1236, 1241 (11th Cir. 2020) (en banc). Plaintiffs failed to make “the 67 county Supervisors of Elections” parties and still asked the court to stop them “from preparing ballots in accordance with [Florida’s] law.” *Id.* The Eleventh Circuit held that plaintiffs could not establish redressability. *Id.* at 1253-54. An injunction against the Secretary, who was only responsible for certifying, would “not bind the [county] Supervisors who [were] not parties to [the] action.” *Id.* at 1253-54 (cleaned up).

Nor can Plaintiffs overcome the redressability problem by asking this Court to “orde[r] the Lieutenant Governor to notify all County Clerks such that they are bound by [an injunction’s] terms.” *Contra* 1st-Mot. 28. In *Jacobson*, the appellate court contemplated such an order and concluded it did not overcome the redressability problem. 974 F.3d at 1254. This “‘notice’ theory of redressability contravene[d] the settled principle that it must be the effect of the court’s judgment on the defendant—not an absent third party—that addresses the plaintiff’s injury.” *Id.* (cleaned up). It wasn’t enough that an injunction against the Secretary would have “the persuasive effect ... on the nonparty Supervisors.” *Id.* “If a plaintiff sues the wrong defendant, an order enjoining the correct official who has not been joined as a defendant cannot suddenly make the plaintiff’s injury redressable.” *Id.* at 1255.

The same principles apply here. Plaintiffs’ claimed harms are that the ballot summary misleads, and Amendment D hasn’t been adequately published. They ask this Court to “enjoin Defendants from placing proposed Amendment D on the November 2024 election ballot and if any ballots are issued to voters that include proposed Amendment D, ... to declare and enjoin Amendment D as void.” 1st-Mot. 1. But Legislative Defendants do not prepare, print, or mail ballots. Plaintiffs don’t allege otherwise. The Lieutenant Governor also “does not prepare, print, or mail ballots to voters.” Jackson Decl. ¶13. And while she has statutory authority to “exercise oversight, and general supervisory authority, over all elections,” Utah Code §67-1a-2(2)(a), she “may not assume the responsibilities assigned to the county clerks,” *id.* §67-1a-2(2)(b)(iii), such as providing the ballots for respective counties, *id.* §20A-5-405(1)(h). As the Lieutenant Governor’s office has plainly explained, in Utah, elections are run at the county level. Jackson Decl. ¶14. And an injunction against Defendants will not bind nonparty county clerks to stop ongoing preparation, proofing, printing, mailing, or counting the ballots. This Court cannot “infringe upon” Utah’s 29 counties’ ballot printing, preparation, or counting processes “since they are not parties to this proceeding.” *Carlton*, 2014 UT 6, ¶32; *see id.* ¶28; *Jacobson*, 974 F.3d at 1254;

*Fink v. Miller*, 896 P.2d 649, 654 n.6 (Utah Ct. App. 1995) (the “trial court exceeded the bounds of its authority by directing the actions of a nonparty”).

Plaintiffs’ contrary arguments—that this Court can order the Lieutenant Governor to “notify all County Clerks of the injunction such that they are bound by its terms,” 1st-Mot. 28—would “direct[] the actions of a nonparty” and “exceed[] the bounds of” this Court’s “authority.” *Fink*, 896 P.2d at 654 n.6; *see also Jacobson*, 974 F.3d at 1254. And it is contrary to Utah law to make the Lieutenant Governor “assume the responsibilities assigned to the county clerks.” Utah Code §67-1a-2(2)(b)(iii). This Court simply “cannot enjoin the actions [of] any person or entity which has not been properly served or made a party to this matter.” *Karren v. Karren*, 2012 UT App. 359, ¶3, 293 P.3d 1100.

### **III. Plaintiffs cannot show they are likely to succeed on the merits.**

In their first motion, Plaintiffs raise five constitutional claims and one statutory claim that all depend on Plaintiffs’ contention that ballot summaries are “mislead[ing].” 1st-Mot. 1. In the second motion, Plaintiffs raise an additional constitutional claim that the Legislature did not properly publish the proposed constitutional amendment. 2d-Mot. 1. Even if the Court were to reach the merits of those claims, Plaintiffs cannot show likely success required for a preliminary injunction.

#### **A. Plaintiffs’ claims regarding the ballot summary will likely fail.**

Plaintiffs contend that the ballot summary violates Article XXIII, Utah Code §20A-7-103, the Free Elections Clause, the Free Speech and Expression Clauses, the Voter Qualification Clause, and the Free Government Clause. *See generally* 1st-Mot. Plaintiffs describe each claim as turning on their contention that Amendment D’s ballot summary is “misleading” or “deceptive.” *See* 1st-Mot. 6-26. Legislative Defendants address each claim’s failings in turn.

##### **1. The ballot summary does not violate Article XXIII (Count 9).**

When the Legislature proposes a constitutional amendment, the Constitution requires the Legislature to submit it “to the electors of the state for their approval or rejection.” Utah Const. art.

XXIII, §1. Plaintiffs concede that “Article XXIII can be interpreted as flexible enough to permit a summary of the amendment as opposed to the text of the amendment itself” to appear on the ballot. 1st-Mot. 8. That happens now under state law: “the presiding officers” of the House and the Senate “summarize[] the subject matter of the amendment” and “deliver” the “ballot title to the lieutenant governor” to be placed on the ballot, Utah Code §20A-7-103(3)(a), (d).

To Defendants’ knowledge, no Utah court has removed an amendment from the ballot before an election—or invalidated votes for that amendment after an election—because the ballot summary was allegedly false and misleading. Nor would there be any basis to do so with respect to Amendment D. Plaintiffs’ contrary arguments **(a)** are undermined by their cited cases, including one from the Utah Supreme Court; **(b)** ignore the actual language of the ballot summary; and **(c)** assume that the full text of Amendment D is a state secret. Given those shortcomings, **(d)** Plaintiffs’ declarations deserve no weight. And **(e)** declarations submitted with Legislative Defendants’ opposition brief confirm that the ballot summary is clear, in plain English, and not confusing or misleading.

**a.** As Plaintiffs concede (at 8), no Utah court has ever understood Article XXIII to allow courts to line-edit or strike a ballot summary for a constitutional amendment for being misleading. The best Plaintiffs could do is a case involving a county ordinance—which *rejected* a ballot-summary challenge. *Nowers v. Oakden*, 169 P.2d 108 (Utah 1946). In *Nowers*, the Utah Supreme Court observed that there was “no general legislative mandate as to how a proposition must be worded on the ballot.” *Id.* at 116. The Court only asked whether “[t]he ballot together with the immediately surrounding circumstances of the election must be such that a reasonably intelligent voter knows what the question is and where he must mark his ballot in order to indicate his approval or disapproval.” *Id.* This wasn’t a hard test to meet: The Court approved the ballot summary—which said only “Fence Yes” and “Fence No”—after “considering all the surrounding circumstances.” *Id.*

Other states’ cases reinforce *Nowers*. Plaintiffs’ cited cases show that legislatures receive “significant deference” “in explaining the proposal to the people.” *Wis. Just. Initiative, Inc. v. Wis. Elections Comm’n*, 2023 WI 38, ¶53, 990 N.W.2d 122; *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 646-47, 648 (Minn. 2012) (giving the legislature “a high degree of deference” and requiring plaintiffs to meet a “rigorous standard”); *Knight v. Martin*, 556 S.W.3d 501, 507 (Ark. 2018) (“liberal construction” given to the legislature’s summary); *Kahalekai v. Doi*, 590 P.2d 543, 549 (Haw. 1979) (“manifest beyond a reasonable doubt”); *see also Advisory Op.*, 384 So. 3d 122, 127 (Fla. 2024) (“a deferential standard of review”).

Plaintiffs’ cited cases *reject* claims challenging ballot summaries under this deferential review. *Wis. Just. Initiative*, 2023 WI 38, ¶57 (challenge “do[es] not succeed”); *Ritchie*, 819 N.W.2d at 651 (“have not met their burden”); *Knight*, 556 S.W.3d at 509 (“has not met his burden”); *Breza v. Kiffmeyer*, 723 N.W.2d 633, 636 (Minn. 2006) (“ballot question is not misleading”); *Opinion of the Justices*, 283 A.2d 234, 236 (Me. 1971) (“the language of the amendment ... is not in conflict with the language of the question placed before the voters”); *cf. Kahalekai*, 590 P.2d at 332 (“disagree[ing]” that “that form of the ballot was so irregular as to require the invalidation of the election,” and only finding a handful of amendments that were omitted from the ballot and informational booklet defective). Even Plaintiffs’ Florida cases have been subsequently limited by a more recent decision rejecting a ballot-summary challenge. *Advisory Op.*, 384 So. 3d at 137 (limiting *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982), to challenges presenting counterfactual ballot summaries and rejecting a challenge over the dissent’s repeated citation to *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000)); *cf. 1st-Mot. 8-10* (relying on *Askew* and *Armstrong*).

Plaintiffs’ cited cases set an exceptionally high bar. They say summaries cannot be “fundamentally counterfactual,” *Wis. Just. Initiative*, 2023 WI 38, ¶51. For instance, a ballot summary cannot say that the amendment would “prohibit something” when it would, in reality, “permit” it. *Advisory Op.*,

384 So. 3d at 137 (cleaned up) (quoting *Asken*, 421 So. 2d at 153). Or that the government would be mandated to do something when “the actual amendment ... has no such mandate at all.” *Wis. Just. Initiative*, 2023 WI 38, ¶44 (quoting *Thompson v. Zimmerman*, 60 N.W.2d 416, 423 (Wis. 1953)). Thus a ballot summary was fundamentally counterfactual when it told voters that an amendment would make executive officials’ terms “limited” to four years when the amendment would, in reality, “extend[] [them] from the then period of two years.” *Lane v. Lukens*, 283 P. 532, 533 (Idaho 1929). So too a ballot summary that said a proposed amendment would “provide a debt limitation” when it would in fact “remove” it. *Ex parte Tipton*, 93 S.E.2d 640, 644 (S.C. 1956). So too here—Amendment D’s ballot summary is not counterfactual. It identifies Amendment D’s “chief features.” *Contra* Mot. 12 (citing *Dacus v. Parker*, 466 S.W.3d 820, 823, 826 (Tex. 2015))—limiting foreign influences and clarifying the people’s and elected representatives’ respective legislative powers. There is no basis to invalidate it because Plaintiffs would have said it differently. *See Wis. Just. Initiative*, 2023 WI 38, ¶51; *Advisory Op.*, 384 So. 3d at 137.

**b.** At bottom, Plaintiffs fault the ballot summary for not saying that Amendment D “eliminates” a constitutional right. 1st-Mot. 13-14. They fault the summary for using verbs like “strengthen” and “clarif[y]” instead. *Id.*

The ballot summary is not required to say it “eliminates” a constitutional right. Plaintiffs’ subjective view that Amendment D “eliminates” a right is not grounds for removing or voiding the amendment. Courts refuse to “strike a proposal from the ballot based upon an argument concerning ‘the ambiguous legal effect of the amendment’s text rather than the clarity of the ballot title and summary.’” *Advisory Op.*, 384 So. 3d at 134; *see also Ritchie*, 819 N.W.2d at 650-51 (“the effects of the amendment at issue” need not be “included on the ballot” “as a condition of upholding the ballot question”). The summary was not required to take Plaintiffs’ view. *See Wis. Just. Initiative*, 2023 WI 38, ¶54 (rejecting argument that the proposed amendment “could reduce the rights of the accused” where

“voters were told [the rights] would be left intact”). Nor is Plaintiffs’ view accurate. *Infra* 27-28 (discussing use of “clarif[y]”).

The ballot summary permissibly uses the verb “strengthen.” Plaintiffs’ contrary arguments contradict their own cited cases, giving legislatures “significant deference.” *Wis. Just. Initiative*, 2023 WI 38, ¶53; *see Ritchie*, 819 N.W.2d at 646-47, 648; *Knight*, 556 S.W.3d at 507; *Kahalekai*, 590 P.2d at 549. Plaintiffs’ critique ignores that, if approved, Amendment D will necessarily strengthen the initiative process by prohibiting “foreign individuals, entities, or governments” from “influenc[ing], support[ing], or oppos[ing] an initiative or a referendums.” **Exhibit C at 2** (S.J.R. 401, §2). Plaintiffs don’t dispute this fact. Limiting foreign influence will “strengthen the initiative process” by ensuring that Utahns’ voices in direct democracy aren’t drowned out. 2024 General Election Certification at 34-35. The amendment would also “strengthen” how the initiative process had long been understood. State law had said that initiatives could be amended freely by the Legislature. *See* Utah Code §20A-7-212(3)(b) (2019); *cf. Grant*, 2019 UT 42, ¶23. If Amendment D passes, state law will be expressly changed to “give deference to the initiative by amending the law in a manner that, in the Legislature’s determination, leaves intact the general purpose of the initiative.” **Exhibit D at 8-9** (S.B. 4003, §4). Plaintiffs cannot dispute that the passage of Amendment D will alter express provisions in state law to “strengthen” initiatives.

The ballot summary permissibly uses the verb “clarif[y].” Describing the amendment to “clarify” is more accurate than describing the amendment to “eliminate” any right. *Contra* 1st-Mot. 14. Because the inquiry is whether “[t]he ballot together with the immediately surrounding circumstances of the election” disclose to “a reasonably intelligent voter” “what the question is and where he must mark his ballot in order to indicate his approval or disapproval,” context is critical. *Nowers*, 169 P.2d 116. That includes the Supreme Court’s recent decision in *LWV*, which “introduced” a new “formulation” regarding the initiative power “for the first time in [that] opinion.” 2024 UT 21, ¶76. The Court

acknowledged its prior decision in *Grant*, in which the Legislature substantially amended a citizens’ initiative. *Id.* ¶¶94 n.18; *see also* MTD-Op. 59 (applying settled understanding of initiative power). And the Court “d[id] not resolve”—but has left open—the questions about whether elected representatives can amend certain initiatives without implicating strict-scrutiny review, *LWV*, 2024 UT 21, ¶70, and others that will be resolved by further litigation in this Court. The Court said its decision did not apply to initiatives with “no reform element.” *Id.* ¶63 n.15. It declined to say that the Initiative Clause “cannot form the basis of stand-alone claims” and “[left] that issue for another day.” *Id.* ¶70. And still the Court insisted repeatedly that initiatives must be “within the bounds of the constitution.” *Id.* ¶92; *see id.* ¶¶10 n.4, 68 n.16, 135-36, 157, 160-61. Following that decision, the Legislature responded to Utahns’ call for clarity. *See* **Exhibit A & B**. Amendment D does that.

c. Most fundamentally, Plaintiffs’ quibbling with the ballot summary ignores that voters have full and unfettered access to the full amendment text now, in the forthcoming 2024 Voter Information Pamphlet, and posted at voting precincts. That is a reason for rejecting Plaintiffs’ invitation to line-edit the summary. Again, *Nowers* requires examining not just the ballot summary, but also “all the surrounding circumstances” to see whether “a reasonably intelligent voter knows what the question.” 169 P.2d at 116.

Other States agree. *See Dacus*, 466 S.W.3d 827 (“pre-election notices” can “ensur[e] the voters were ‘familiar with the amendments and its purposes’” (quoting *R.R. Comm’n v. Sterling Oil & Refin. Co.*, 218 S.W.2d 415, 418 (Tex. 1949)). One of Plaintiffs’ cited cases is instructive and undermines their claim. In *Kahalekai*, 590 P.2d at 340, the court examined whether the amendments at issue “were given extensive coverage before the election”; whether they were “the subject of widespread publicity in the news papers, and on radio and television”; whether voters could obtain the summary of the constitutional convention; and whether the voter informational booklet “contained a digest of the amendments.” *Id.* This Court should refuse to “assume” that Utahns will “not understand the issue,” as other



courts have done. *Dutton v. Taves*, 171 A.2d 688, 692 (Md. 1961) (refusing to “assume” that the “people who voted ... did not understand the issue on which they voted” when there was extensive news coverage in major news outlets about a ballot measure); *Commw. Tel. Co. v. Pub. Serv. Comm’n*, 263 N.W. 665, 668 (Wis. 1935) (rejecting an election challenge when “information actually given to the electors by the notices ... in other unofficial publications and circulars” were “undoubtedly” “widespread and ample”).

Here, the “surrounding circumstances” confirm that Amendment D’s summary is valid. *Nowers*, 169 P.2d at 116; *see also Kahalekai*, 590 P.2d at 340. Utah voters have full access to the full text of Amendment D. The text has been available on the Legislature’s website at least since August 2024. Utah Legislature, S.J.R. 401, [le.utah.gov/~2024S4/bills/static/SJR401.html](http://le.utah.gov/~2024S4/bills/static/SJR401.html) (attached as **Exhibit C**). The Legislature’s widely publicized special session kicked off extensive and continuous press coverage regarding Amendment D. Major news outlets reported on Amendment D, hyperlinked or reproduced its text, and gave arguments for and against its passage in great detail. *See supra* 7-10. On September 5, 2024, the Deseret News published Amendment D’s amendment to Article VI, which Plaintiffs are faulting here. *See Exhibit E at 218-25* (Hanna Seariac, *Ballot language on Utah initiative constitutional amendment released*, Deseret News (Sept. 5, 2024), [perma.cc/T634-BCLX](https://perma.cc/T634-BCLX) (“What the text of the proposed amendment says”)). The Deseret News also included arguments for and against the Amendment, the context in which the Legislature proposed the Amendment, and ballot summary in full. *Id.* On September 4, 2024, Utah News Dispatch published an article that included Amendment D’s text, a link to the Legislature’s website pertaining to the Amendment, ballot summary, and arguments for and against the Amendment. Katie McKellar, *Opponents of Utah constitutional amendment on voter initiatives decry ‘deceptive’ ballot language*, Utah News Dispatch (Sept. 4, 2024), [perma.cc/QE3T-GDR8](https://perma.cc/QE3T-GDR8); *see also Exhibit E at 192-99* (reprinted on Yahoo! News). And in covering Plaintiffs’ latest maneuver in this case, Utah News Dispatch—on September 6, 2024—again published an article that described Amendment

D and the accompanying law in great detail, extensively quoted the Amendment’s language, included a link to its text, explained the arguments for and against the Amendment, and posted the ballot summary. **Exhibit E at 237-42** (Katie McKellar, *‘Orwellian doublespeak’: Lawsuit asks judge to scrap ‘misleading’ Utah constitutional amendment*, Utah News Dispatch (Sept. 6, 2024), [perma.cc/88KV-CHH8](https://perma.cc/88KV-CHH8)). On September 5, 2024, KSL similarly published an article that included a link to the Amendment’s full text, quoted the Amendment extensively, provided the context of the Amendment, and included arguments for and against it. **Exhibit E at 210-14** (Bridger Beal-Cvetko, *Critics say text of proposed Utah constitutional amendment is ‘misleading’*, KSL.com (Sept. 5, 2024), [perma.cc/JPU4-DNXH](https://perma.cc/JPU4-DNXH)). Ballotpedia similarly published an extensive analysis that included Amendment D’s full text, ballot summary, context of the Amendment, and arguments for and against the Amendment. **Exhibit E at 254-68** (“Utah Amendment D,” Ballotpedia, [perma.cc/M9RT-FD3A](https://perma.cc/M9RT-FD3A)). And on September 9, 2024, the Lieutenant Governor issued a public notice with the full text of the Amendment. **Exhibit F**.

In addition, the Lieutenant Governor will soon prepare a Voter Information Pamphlet, which will include the full text of the Amendment, an analysis of the Amendment, and any arguments for or against its adoption. *See* Utah Code §§20A-7-701(1), (7), 20A-7-702.5. Voter Information Pamphlets have been used in Utah since 1917 to inform the voters about ballot measures and proposed constitutional amendments. *See* 1917 Utah Laws 202, §2 (requiring pamphlets to contain “a complete copy of all constitutional amendments”); *see also* Utah Lt. Governor, Historical Voter Information Pamphlet, [vote.utah.gov/historical-voter-information-pamphlets-2/](https://vote.utah.gov/historical-voter-information-pamphlets-2/). Voter Information Pamphlets serve an important function in informing Utah voters. According to the most recent available study, “almost nine out of ten voters” report that “they read all or part of [the Pamphlets] prior to the election.” Brien, *Voter Pamphlets*, 28 J. Legis. at 102. Utah voters don’t just “[take] a cursory glance through the pamphlet or pa[y] minimal amount of attention to [them].” *Id.* Voter Information Pamphlets will be accessible for every Utahn online, and the Lieutenant Governor may make them available at

“location[s] frequented by a person who cannot easily access” the internet. Utah Code §20A-7-702.5; *see also Kabalekai*, 590 P.2d at 343 (finding amendments to be “validly ratified” to the extent “the informational booklet ... fairly and sufficiently advised the voter of the substance and effect of the proposed amendment”).

Furthermore, the full text of Amendment D will be available to Utah voters at their precincts. “Whenever a constitutional amendment is submitted to a vote of the people for their approval or rejection,” county clerks must display “in large clear type” the amendment’s full text, showing “the original section of the constitution” and “indicat[ing] ... any language proposed.” Utah Code §20A-5-103(1)(a). Utah voters have full access to—and are already intimately familiar with—the text, context, effect, and arguments for or against Amendment D and its accompanying law. Plaintiffs’ claims that Utah voters will somehow be misled is unfounded.

**d.** Plaintiffs’ declarations, asserting they are confused, deserve no weight. *See State v. Wallace*, 2005 WL 1530798, at \*2 (Utah Ct. App. June 30) (“self-serving affidavits are insufficient”). The Amendment’s text is widely available now and its effect will continue to be debated in the press and in forthcoming Voter Information Pamphlets. *Supra* 28-29. Plaintiffs’ Declarants say they have “read” the ballot summary; it strains credulity that they cannot also “read” Amendment D, the full text of which has been publicly available on the Legislature’s website since August.

**e.** Legislative Defendants submit with this brief declarations confirming that Amendment D’s ballot summary isn’t misleading. Those declarants—registered Utah voters—explain that that they intend to vote on Amendment D and have had no trouble finding and reading the full text and considering its implications. **Exhibit G at 1, 5, 7, 10, 13, 16, 19, 22, 25, 29.** Nor did they find the ballot summary to be misleading or confusing. **Exhibit G at 2, 5, 10, 11, 14, 17, 20, 23, 26, 29.** These voters also explain that they found the ballot summary to be “in clear and in plain English” and they were “not confused by either Amendment D’s text or the summary description.” **Exhibit G at 2, 5, 8, 11,**

**14, 17, 20, 23, 26, 29.** The voters’ declarations confirm that Amendment D’s ballot summary was “framed with such clarity as to enable [them] to express their will.” *Nowers*, 169 P.2d at 116.

**2. The ballot summary does not violate §20A-7-103(3)(c) (Count 10).**

**a.** Utah Code §20A-7-103(3)(c) directs the Speaker of the House and Senate President to:

- (c) draft and designate a ballot title for each proposed amendment or question submitted by the Legislature that:
  - (i) summarizes the subject matter of the amendment or question; and
  - (ii) for a proposed constitutional amendment, summarizes any legislation that is enacted and will become effective upon the voters’ adoption of the proposed constitutional amendment

Plaintiffs contend that the ballot summary does not lawfully summarize the “subject matter” “because it fails to disclose the actual subject matter of the Amendment: eliminating voter’s fundamental constitutional right to alter or reform their government without infringement.” 1st-Mot. 18. For all the reasons argued in Part III.A.1, the amendment was not required to say it “eliminates” a constitutional right to comply with §20A-7-103(3)(c).

**b.** Additionally, Plaintiffs’ statutory claim fails because §20A-7-103 does not create a private right of action, nor do Plaintiffs cite any. *See* 1st-Suppl.-Comp. ¶¶67-77 in 1st-Mot.-Suppl. (Sept. 5, 2024); *see also Bleazard v. City of Erda*, 2024 UT 17, ¶47, 552 P.3d 183 (“In the absence of language expressly granting a private right of action in the statute itself, the courts of this state are reluctant to imply a private right of action based on state law.”).

**3. The ballot summary does not violate the Free Elections Clause (Count 11).**

For the reasons argued in Part III.A.1, the ballot summary is not misleading, let alone in a way that would implicate other constitutional provisions, including the Free Elections Clause. That Clause states that “[a]ll elections shall be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Utah Const. art. I, §17.

Plaintiffs claim fails because the Free Elections Clause is not self-executing. The Utah Supreme Court already held that this Clause is “not ... self-executing” and “requires the legislature to provide by law for the conduct of elections, and the means of voting, and the methods of selecting nominees [for offices].” *Anderson v. Cook*, 130 P.2d 278, 285 (Utah 1942). By the same token, the Clause requires the Legislature to create an enforcement mechanism. But Plaintiffs cite to no private right of action that allows them to enforce the Free Elections Clause.

Even if it were enforceable, Plaintiffs’ claim fails. The Free Elections Clause prohibits intimidation of and undue influence (i.e., bribery) upon voters. *See Adams v. Lansdon*, 110 P. 280, 282 (Idaho 1910) (the free elections clause prohibited only “officers, civil or military,” from “meddl[ing] with or intimidat[ing] electors”); *see also* 1 Blackstone, *Commentaries on the Laws of England* 172 (the free-elections analogue in English common law prohibited “executive magistrate[s]” from “employ[ing] the force, treasure, and offices of the society, to corrupt the representatives”). Amendment D’s ballot summary does none of that. Plaintiffs’ ballot-summary claim also fails even under this Court’s test in the motion-to-dismiss opinion. Plaintiffs’ voting power isn’t “dilut[ed]” by the ballot summary. MTD-Op. 36. And the Utah voters’ declarations confirm that they are able to participate in the election freely with full knowledge of the Amendment’s text and summary. *See Exhibit G at 1-2, 5-6, 7-8, 10-11, 13-14, 16-17, 20, 23, 26, 28-29.*

**4. The ballot summary does not violate Free Speech or Association rights (Count 12).**

For the reasons argued in Part III.A.1, the ballot summary is not misleading, let alone in a way that would implicate Free Speech or Association rights. The ballot summary doesn’t compel Utahns to vote altogether or vote in a certain way. The ballot summary imposes “no restrictions on speech, association, or any other [protected] activities.” *Rucho v. Common Cause*, 588 U.S. 684, 713-14 (2019). As continuous press coverage exemplifies (*see generally* **Exhibit E**), Plaintiffs remain “free to engage in [free speech or free association] activities no matter what the effect” of the ballot summary “may be.”

*Id.*; cf. *Rivera v. Schwab*, 512 P.3d 168, 192 (Kan. 2022) (no violation of “a stand-alone right to vote, the right to free speech, or the right to peaceful assembly” found by a redistricting legislation).

**5. The ballot summary does not violate the Voter Qualification Clause (Count 13).**

For the reasons argued in Part III.A.1, the ballot summary is not misleading, let alone in a way that would implicate the Voter Qualification Clause. This Clause simply governs what qualifies a voter to vote (U.S. citizenship, age of 18 or older, and Utah residence)—nothing more. *See Earl v. Lewis*, 77 P. 235, 238 (Utah 1904) (the Clause “entitles” qualified voters “to vote in the election”). The ballot summary does not prevent a qualified voter from casting his vote. *See Dodge v. Evans*, 716 P.2d 270 (Utah 1985) (a right to vote not violated when the plaintiff could have “received an absentee ballot and cast his vote”). Though Plaintiffs suggests (at 25) that Utahns’ vote will not be ““meaningful,”” they simply “assume” erroneously that Utahns would “not understand the issue on which they [will] vot[e].” *Dutton*, 171 A.2d at 692. And again, the Utah voters’ declarations show that the voters can cast their ballot in a meaningful way with the full knowledge of Amendment D’s text and summary. In fact, they are concerned that removing Amendment D off the ballot, as Plaintiffs want, “will deprive [them] of [their] ability to express [their] support for Amendment D even though both the amendment’s text and the summary of it are clear and not misleading.” **Exhibit G at 2, 5-6, 8, 11, 14, 17, 20, 23, 26, 29.**

**6. The ballot summary does not violate the Free Government Clause (Count 14).**

For the reasons argued in Part III.A.1, the ballot summary is not misleading, let alone in a way that would implicate the Free Government Clause. Additionally, the Free Government Clause is not self-executing. It “identifies only a general principle with no justiciable standard or means for putting it into effect.” *Tesla Motors UT, Inc. v. Utah Tax Comm’n*, 2017 UT 18, ¶53, 398 P.3d 55 (rejecting claims based on the Free Market Clause). Fundamentally, the Free Government Clause cannot be used to weaponize the judicial process to impede the constitutional-amendment process in the way Plaintiffs

seek to do here. It is Plaintiffs who are seeking to impede Utahns from having a chance to exercise their right to alter and reform through an up-or-down vote on a constitutional amendment. The Utah voters' declarations confirm this point. They want to exercise their right to alter or reform the government by voting on Amendment D. **Exhibit G at 2, 5-6, 8, 11, 14, 17, 20, 23, 26, 29.** Removing Amendment D from the ballot would deprive the voters of their right to alter or reform the government and to a free government.

**7. Entertaining Plaintiffs' assertions raises serious justiciability questions.**

Time and again, the Utah Supreme Court has confirmed that the exercise of judicial power is not something broadly defined by “preference or whim,” “regardless of how interesting or important the matter presented for [the Court’s] consideration.” *Utah Transit Auth. v. Loc. 382 of Amalgamated Transit Union*, 2012 UT 75, ¶20, 289 P.3d 582 ; *accord Ogden City v. Stephens*, 21 Utah 2d 336, 445 P.2d 703, 705 (1968) (concluding dispute was a “political question”); *State ex rel. Skeen v. Ogden Rapid Transit Co.*, 38 Utah 242, 112 P. 120, 126 (1910) (directing district court to dismiss dispute “to be regulated by the Legislature”). Only some disputes are “efficiently and effectively resolved through the judicial process.” *Jenkins v. Swan*, 675 P.2d 1145, 1149 (Utah 1983); *see Utah Transit Auth.*, 2012 UT 75, ¶26 (court must “vigilantly ... with particular care and all humility” assure itself that matter before it is within its jurisdiction). Plaintiffs’ desire to line-edit the Amendment D summary is not a dispute to be resolved by courts—denying the 1.73 million registered voters any say in the matter. To Defendants’ knowledge, Utah courts have never adjudicated such a claim.

There are no judicially manageable standards for Plaintiffs’ request for a line-level edit of the ballot summary. Plaintiffs’ attack on the language—despite extensive and continuous press coverage about Amendment D and forthcoming Voter Information Pamphlets—is entirely subjective. Proponents of the amendment immediately described the amendment as one that would clarify the legislative

powers vested in the people as well as their elected representatives.<sup>26</sup> The ballot summary uses the same language. *Supra* 9. Other voters have now submitted declarations saying they are not confused or misled. *See Exhibit G at 2, 5, 10, 11, 14, 17, 20, 23, 26, 29.* There are no judicially manageable standards to second-guess that summary and decide one set of voters' views is right and the others' are wrong. *See Goldwater v. Carter*, 444 U.S. 996, 1003-04 (1979) (plurality op.); *see also Ogden City*, 21 Utah 2d at 339 (refusing to resolve dispute that would require judicial policymaking). Particularly problematic here, there is no way to assess whether the ballot summary would have any material effect on voters in ways that implicate Plaintiffs' claims when Utah (1) disseminates Voter Information Pamphlets with the full amendment language and (2) posts the full amendment language at precincts—to say nothing of the deluge of press coverage about the amendment text and copious criticism by Plaintiffs themselves and their counsel. *Supra* 8-9. Nor can Plaintiffs ask the Court to second-guess a task committed to a different branch of government, as the ballot summaries are. *See Utah Code* §20A-7-103(3); *see, e.g., Luther v. Borden*, 48 U.S. (7 How.) 1, 43 (1849).<sup>27</sup>

**B. Plaintiffs' publication claim will likely fail.**

Plaintiffs contend that the Legislature violated the constitutional requirement that it “shall cause” a proposed amendment to be published:

... the Legislature shall cause the [amendment] to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election.

Utah Const. art. XXIII, §1. In Plaintiffs' telling, Amendment D—and any other proposed amendment—is void unless the Legislature insists the amendment is published in “a physical, printed newspaper” continuously for “full two calendar months.” Mot. 8-9. Plaintiffs' argument is baseless

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<sup>26</sup> *See* Ex. B at 4.

<sup>27</sup> Utah's standard for determining whether a controversy presents a non-justiciable political question mirrors the federal standard. *See Matter of Childers-Gray*, 2021 UT 13, ¶64, 487 P.3d 96 (citing *Baker v. Carr*, 369 U.S. 186, 217 (1962)).



**1. Article XXIII’s term “newspaper” is not limited to physical newspapers.**

Plaintiffs contend that, because the “internet did not exist in 1895,” “the original public meaning of ‘newspaper’ could only mean a physical, printed newspaper.” 2d-Mot. 8. That argument “border[s] on the frivolous.” *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008). That’s like saying the First Amendment doesn’t protect the *Salt Lake Tribune’s* First Amendment press or speech rights because the *Tribune* is now exclusively online and the framers in 1791 and 1896 (for obvious reasons) could not have understood “speech” or “press” to include online publications. Or that the Second Amendment protects only muskets and firelocks because those were the only “arms” used in 1791. All those arguments fail because they assume a specific word—“speech” or “press” or “arms” or “newspaper”—do not apply to modern forms of those nouns. “[W]e do not interpret” constitutions “that way.” *Heller*, 554 U.S. at 582; *see also Reno v. ACLU*, 521 U.S. 844, 849 (1997); *see, e.g., Matter of Childers-Gray*, 2021 UT 13, ¶31, 487 P.3d 96 (explaining that “while sex-change petitions were not specifically contemplated at the time of statehood, the judicial power nonetheless includes the power to hear such petitions because they ‘resemble other matters our state courts handled at the time of statehood’”). The existence of “a new and different medium for communication” by traditional newspapers matters here. *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786, 790 (2011). What’s more, the current version of Article XXIII was readopted in 1969. S.J.R. (1969). During that period, “newspaper” meant “[a] publication ... intended for general circulation,” “usually in sheet form,” but not always. *Newspaper*, Black’s Law Dictionary (4th rev. ed. 1968). So the phrase “published in ... [a] newspaper,” Utah Const. art. XXIII, §1, naturally encompasses publishing in, for example, the Salt Lake Tribune, Deseret News, or the Utah News Dispatch. These are publications of general circulation under any fair reading of that term. All these news outlets have published stories about the Amendment, including its text, links to it, and analysis. *See generally* **Exhibit E**.

**2. Article XXIII asks what “the Legislature” has done, not what others have done.**

Plaintiffs’ more fundamental problem is that they fail to answer the right question. They contend, for example, that Amendment D has not appeared in third parties’ public notices and that the Lieutenant Governor’s website is too hard to navigate. *See* 2d-Mot. 3-4, 12. But to establish a violation of Amendment XXIII, Plaintiffs must identify what “*the Legislature*” failed to do to “cause” the amendment to be published. Art. XXIII, §1; *see* Cause, *Webster’s Third New Int’l Dictionary* (1966) (defining “cause” as “to serve as a cause ... of”); *accord* Cause, *Black’s Law Dictionary* (4th rev. ed. 1968). Plaintiffs cannot do so.

a. The Legislature took steps to “cause” Amendment D to be published from day one. The Legislature publicly announced it would hold a special session to consider a constitutional amendment that would “[r]estore and strengthen the long-standing practice that voters, the Legislature, and local bodies may amend or repeal legislation.”<sup>28</sup> Legislators then introduced S.J.R. 401 with the full text of that proposed amendment. Its full text has been available on the Legislature’s website since then. *See* Utah Legislature, S.J.R. 401, [le.utah.gov/~2024S4/bills/static/SJR401.html](https://le.utah.gov/~2024S4/bills/static/SJR401.html). The enrolled resolution with the final language remains on the Legislature’s website today. *Id.* At any time, news outlets could—and did—publish the text and/or provide a link to the Legislature’s website. *Supra* 8-9.

What’s more, the Legislature expressly “directed” the Lieutenant Governor on August 22, 2024, “to submit [Amendment D] to the voters of the state ... in the manner provided by law.” **Exhibit C at 3** (S.J.R. 401, §3). That directive fully complied with the requirement to “cause” Amendment D to be published. Utah law, in turn, requires the Lieutenant Governor to publish a proposed amendment in “Class A notice.” Utah Code §20A-7-103(2). She did so on September 9, 2024. *See* Lt. Governor, 2024 Election Information, [vote.utah.gov/current-election-information/](https://vote.utah.gov/current-election-information/) (“Class A Notice

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<sup>28</sup> “Lawmakers to Convene to Restore and Strengthen the Initiative Process,” Utah State Legislature (Aug. 19, 2024), [house.utleg.gov/wp-content/uploads/August-2024-Special-Session-Statement\\_Press-Release.pdf](https://house.utleg.gov/wp-content/uploads/August-2024-Special-Session-Statement_Press-Release.pdf).

for 2024 Proposed Constitutional Amendments”); *See* Public Notice, Full Text of Proposed Constitutional Amendments, Utah Lieutenant Governor, [ltgovernor.utah.gov/2024/09/09/public-notice-full-text-of-proposed-constitutional-amendments/](https://ltgovernor.utah.gov/2024/09/09/public-notice-full-text-of-proposed-constitutional-amendments/). That Class A notice will notify the public about various state and local matters, as Plaintiffs acknowledge (*see* 2d-Mot. 12). *See, e.g.*, Utah Code §17-27a-1204 (zoning); *id.* §11-17-16 (bond issuance); *id.* §§10-9a-204, 17-27a-404 (public meetings and hearings); *id.* §17C-1-1003 (interlocal agreements); *id.* §10-9a-208 (public streets); *id.* §10-3-711 (adoption of ordinances).

Furthermore, the Legislature confirmed that the Lieutenant Governor’s office had sufficient non-lapsing funds available in its budget to cover the estimated \$8,600 cost “to submit the proposed amendment to voters.” Utah Legislature, Fiscal Note – S.J.R. 401, [le.utah.gov/~2024S4/bills/static/SJR401.html](https://le.utah.gov/~2024S4/bills/static/SJR401.html).

**b.** Plaintiffs’ contrary arguments—that the Legislature did not sufficiently “cause” Amendment D to be published because of the Lieutenant Governor’s timing or newspapers’ (un)willingness to publish—ignore Article XXIII’s text. That text is directed at the Legislature, and it asks about what “the Legislature” did—not about what others beyond the Legislature’s control did. That is—did the Legislature adequately set the Amendment’s publishing into motion? Yes. It announced the intent of the special session; it posted the proposed amendment on its website; and it “directed” the Lieutenant Governor to submit Amendment D to the people. **Exhibit C at 3** (S.J.R. 401 §3).

Plaintiffs cannot seriously argue that an Amendment is void if it does not print in newspapers. *See* 2d-Mot. 1. The Legislature has no way to force an unwilling publisher to post the proposed amendment because doing so would constitute compelled speech under the First Amendment. *See Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2402 (2024) (“The editorial function is an aspect of speech” (cleaned up)). Surely, a constitutional amendment doesn’t get “defeat[ed]” just because “a newspaper publisher” either “intentionally” refuses or “negligently” fail to publish. *Bd. of Fund Comm’rs v. Holman*, 296

S.W.2d 482, 495 (Mo. 1956). And although the Lieutenant Governor *has* published Amendment D in a Class A Notice, Plaintiffs’ critique of her actions are not arguments that can invalidate Amendment D. Even her noncompliance wouldn’t “thwart” the Amendment. *Morgan v. O’Brien*, 60 S.E.2d 722, 727 (W. Va. 1948); *cf. id.* at 727-28 (compliance with publication doesn’t depend on executive branch officials who may fail to act “through inadvertence” or seek to defeat an amendment for “personal or political reasons”).

c. For similar reasons, Plaintiffs’ arguments about the requirement to publish for “full two calendar months of September and October,” 2d-Mot. 9, also fail. The Legislature made Amendment D’s text available as early as August. And on August 22, 2024, the Legislature directed the Lieutenant Governor to publish the amendment. Meanwhile, the Deseret News published articles quoting or linking to the proposed Amendment’s text, plus analysis as early as August 2024. *See Exhibit E at 47-52, 75-86.* Other major news outlets made the text of the Amendment—and arguments for and against it—accessible in early September and continue to do so. *See supra* 8-9.

**3. The Court cannot declare an amendment void because the Lieutenant Governor’s notice issued on September 9, 2024, versus on September 6, 2024.**

Defendants anticipate Plaintiffs will argue that the amendment is void because the Lieutenant Governor’s public notice with the full text of the amendment issued on September 9, 2024, not on September 6, 2024. For the foregoing reasons, what the Lieutenant Governor did does not answer whether “the Legislature” complied with Article XXIII’s requirements of “the Legislature.” Even if the Court disagrees with those arguments, Plaintiffs’ claim still fails.

Utah courts have never adopted a literal-compliance requirement. “States across this country “generally agre[e] that it is sufficient if there is substantial compliance with such publication requirements” in their states’ constitutions. *Opinion of the Justices*, 275 A.2d 558, 561 (Del. 1971); *see also, e.g., Cooper v. Caperton*, 470 S.E.2d 162, 173 (W. Va. 1996) (“untimely publications [do] not warrant declaring

the amendment unconstitutional” if there’s “substantial compliance”); *Holman*, 296 S.W.2d at 495 (“substantial compliance is sufficient”); *State v. State Bd. of Educ. of Fla.*, 467 So. 2d 294, 296 (Fla. 1985) (“Publication of proposed amendments” is “not an essential element” for “amending the Florida Constitution,” and “substantial compliance” is sufficient.”); *Lucas v. Berkett*, 98 So. 2d 229, 232 (La. 1957) (“a substantial compliance ... is sufficient”); *Opinion of the Justices*, 104 So. 2d 696, 668 (Ala. 1958) (“a proposed constitutional amendment is validly adopted when there has been substantial compliance with” the publication requirement); 16 Am. Jur. 2d Const. L. §32 (2024) (only “[s]ubstantial compliance” is required; “a failure to make publication during a small portion of the prescribed period or in every county will not necessarily invalidate the amendment”). Thus, the substantial-compliance rule is “the prevailing view among other state courts.” *Caperton*, 470 S.E.2d at 175.

Applied here, the Lieutenant Governor’s public notice constitutes more than substantial compliance. On September 9, 2024, she issued Class A Notices on the Election Information website and a separate public notice on her official website. *Supra* 38. The public notice will be available “for two months immediately” before the November 5, 2024, election. Utah Const. art. XXIII, §1. In addition, Voter Information Pamphlets will soon be published, which will include the full text of the Amendment and the arguments for and against its adoption. Utah Code §20A-7-702.5. And each precinct will also have the text of the Amendment available. *Id.* §20A-5-103(1)(a). All the while, press coverage has been voluminous and continuous. *See generally Exhibit E*; *see Kahalekai*, 590 P.2d at 340 (considering “widespread publicity in the news papers, and on radio and television”). Whatever minor deviations Plaintiffs allege, they are harmless based on “information actually given to the electors” and the “widespread and ample” news coverage of Amendment D and its text. *Commv. Tel. Co.*, 263 N.W. at 668; *see also State Bd. of Educ.*, 467 So. 2d at 296 (finding amendment valid because any “error” was “harmless”). Indeed, no Plaintiff asserts they had any trouble finding the Amendment’s full text. The attached declarations from Utah voters remove any doubt that Utahns can find Amendment D’s text and

consider its implications. **Exhibit G at 2, 5, 10, 11, 14, 17, 20, 23, 26, 29.** Plaintiffs cannot demand that a constitutional amendment be declared void based on the demeaning assumption that Utah voters live under a rock and cannot “understand the issue on which they [will] vot[e].” *Dutton*, 171 A.2d at 692. Plaintiffs’ publication claim is likely to fail on the merits and is no basis for Plaintiffs’ extraordinary preliminary-injunction request.

**IV. The Court must refuse Plaintiffs’ request to declare Amendment D votes “void” because the balance of the equities and public interest weights strongly against that extraordinary remedy.**

In the light of the foregoing, there is no conceivable basis for ordering Amendment D removed from the ballot now. *Supra* Part I. Also in the light of the foregoing, there is no equitable basis to declare Amendment D—and all Utahns’ votes—“void” later. *Contra* 1st-Mot. 28.

Plaintiffs request, as alternative relief, that “if any ballots are issued to voters that include proposed Amendment D, Amendment D is declared void and enjoined ... post-election.” 1st-Mot. 28. They claim that the Court “could order the Lieutenant Governor to direct county clerks to post notices at polling place and to mail notices along with the ballots informing voters that the Court has ordered Amendment D void....” 2d-Mot. 17 n.5. Simply put, Plaintiffs want this Court to order state and local officials to *ignore* up to 1.73 million Utahns’ votes on Amendment D.

Plaintiffs cannot establish the stringent preliminary injunction standard is met for that extraordinary relief. *See* Utah R. Civ. P. 65A(e). Plaintiffs face “a heavier burden” on those factors because of the mandatory injunction they seek. *FTN-Fort Collins*, 916 F.3d at 797. On Plaintiffs’ side of the ledger, they have not established likely success on the merits. *Supra* Part III. Nor can they establish irreparable harm based on the same arguments about alleged “deception.” *Contra* 1st-Mot. 26.<sup>29</sup> To conclude

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<sup>29</sup> Plaintiffs’ second motion adds that they will be irreparably harmed because “the likelihood of Amendment D being approved by the voters through deceit ... irreparably harms Plaintiffs by threatening their chances of success in the underlying litigation.” 2d-Mot. 16. That argument exemplifies the overarching flaw in Plaintiffs’ motion—they want litigation by a few to preclude voting by all Utahns.

otherwise assumes Utahns are unable to read, unable to read news, unable to use the internet, and unable to think for themselves. *E.g. supra* Part III.A.1.c-d; *see generally* **Exhibit E**; *see also, e.g., Dutton*, 171 A.2d at 692 (refusing to “assume” such things about Maryland voters).

On the other side of the ledger, the election interference that Plaintiffs seek undermines “the functioning of our participatory democracy.” *Purcell*, 549 U.S. at 4. It would destroy “[c]onfidence in the integrity of our electoral processes,” *id.*, especially for those voters who are ready to cast an informed vote on Amendment D. *See* **Exhibit G at 1, 5, 7, 10, 13, 16, 16, 19, 22, 25, 28**. A court order that creates any uncertainty that Utahns’ votes will not count creates an intolerable “incentive to remain away from the polls.” *Purcell*, 549 U.S. at 4. “Even seemingly innocuous late-in-the-day judicial alterations ... can interfere ... and cause unanticipated consequences.” *DNC v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring). There is no basis for such a catastrophic blow to Utah’s election. Amendment D has been widely published and widely debated, and there is no basis for presuming reasonably intelligent Utah voters will be confused. *Supra* III.A.1. The balance of harms and public interest demand leaving Amendment D on the ballot and counting Utahns’ votes.

Tellingly, Plaintiffs propose no remedy other than *canceling* the vote on Amendment D—either by removing it from ballots pre-election or ignoring votes post-election. They would deny Utahns their fundamental right to vote in “election[s]”—“[t]he great source of free government.” *U.S. Term Limits*, 514 U.S. at 795. Plaintiffs are willing to propose elaborate mandatory injunctions “order[ing] the Lieutenant Governor to direct county clerks” to “post notices at polling places and to mail notices along with the ballots” explaining the procedural history of this case. 2d-Mot. 17-18 n.5. But they propose nothing to effectively *allow* the vote. Nothing could more undermine “the public’s interest in the integrity of the election process,” *Cook*, 882 P.2d at 659, than denying Utahns their fundamental right to vote on Amendment D.

## **CONCLUSION**

For these reasons, the Court should deny Plaintiffs' motions for preliminary injunction.



Dated: September 11, 2024

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Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I filed this brief on the Court's electronic filing system, which will email everyone requiring notice.

Dated: September 11, 2024

/s/ Tyler R. Green

## **Exhibit A**



August 16, 2024

420 E S Temple St, Suite 390  
Salt Lake City, UT 84111

**Sent via email**

Dear Governor Cox, President Adams, and Speaker Schultz,

We, leaders from various groups across Utah, representing a wide array of backgrounds, regions, and political beliefs, unite to express our profound alarm regarding the recent Utah Supreme Court decision on initiatives. This ruling represents an existential threat to the values, culture, and way of life that define our state.

The Utah Supreme Court decision deviates starkly from the principles that have guided our state so effectively. By allowing initiatives to become immutable "super laws," the Court has opened the door to potentially devastating consequences. Utah now faces the risk of becoming like California, where large sums of outside money influence laws that do not reflect the values of our citizens and undermine our cultural integrity.

While past legislative overreach has understandably led to some distrust among the people, the voice of the people in governance remains crucial and cannot be overstated. Although the intent of initiatives is to amplify that voice, this ruling creates a rigid and unmanageable system that disrupts our republican form of government. We believe grassroots-led initiatives can have value when they garner strong support and can be refined as necessary through the legislative process. We also believe the right of the people to provide a check on the legislature, through a referendum process—a people's veto of legislative actions—remains essential.

Our founders wisely designed a representative republic to prevent the chaos of direct democracy. This ruling disrupts that balance, leaving Utah vulnerable to the whims of special interests and fleeting majorities. If we do not act to mitigate the consequences of this decision, Utah's strong community and quality of life will be severely jeopardized, impacting our future and generations to come.

Given these exigent circumstances, we believe it is imperative that the legislature be immediately called into special session to propose a constitutional amendment. This amendment should safeguard our laws from being unduly influenced by outside groups while simultaneously respecting the role of properly balanced grassroots-led initiatives and strengthening the people's right to veto laws through a referendum process.

We, the undersigned, urge you to protect the integrity and future of Utah and we call upon our fellow Utahns to join us in calling for the same.

Signed,

- Robert Axson, Utah Republican Party Chairman
- Kim Coleman, Utah Republican Party Vice Chair, Utah Republican Party National Committeewoman
- Brad Bonham, Utah Republican Party National Committeeman
- Stafford Palmieri Sievert, Utah Republican Party Secretary
- McKay Newell, Utah Republican Party Treasurer
- Utah Citizens for the Constitution
- Path Forward Utah
- Pro-Life Utah
- Utah Legislative Watch
- Worldwide Organization for Women
- Derek Brown, Republican Nominee for Attorney General and former Utah Republican Party Chair
- Nicholeen Peck, Republican Nominee for HD 28
- Joann Brinton, Republican Nominee for State School Board, Washington County Eagle Forum President, WCRW member
- Celeste Meyers, Kane County Commissioner
- Kress Staheli, Mayor of Washington City
- Bill Hoster, Mayor of Leeds
- Nanette Billings, Mayor of Hurricane, WCRW member
- Tami Tran, Mayor of Kaysville, UTGOP State Central Committee Member
- Trent Staggs, Mayor of Riverton, former candidate for US Senate
- Andy Pierucci, Riverton City Councilman
- Tawnee McCay, Riverton City Councilwoman
- Kurt Ivie, Washington City Councilman
- Michelle Tanner, St. George City Councilwoman
- Bret Henderson, Washington City Councilman
- Kim Casperson, Washington City Councilwoman
- Sheldon Stewart, Salt Lake County Councilman
- Janene Burton, WCRW Secretary and Santa Clara City Council Member
- Chris Null, Salt Lake County Republican Party Chair
- Yemi Arunsi, Davis County Republican Party Chair
- Lesa Sandberg, Washington County Republican Party Chair and Utah Federation of Republican Women Treasurer
- Barry Sawyer, Washington County Party Vice Chair
- Chad Saunders, UTGOP State Central Committee Member and CD2 Executive Committee Member
- Wendy Hart, UTGOP State Central Committee Member and Chair of the Audit Committee

- Haylee Caplin, Washington County Republican Women President and UTGOP State Central Committee Member
- Alexis Ence, Washington County Republican Women Vice President and UTGOP State Central Committee Member
- Aaron Bullen, UTGOP State Central Committee Member and Chair of the Constitution and Bylaws (C&B) Committee
- Mac Sims, UTGOP State Central Committee Member and former Utah County GOP Vice Chair
- Gunnar Thorderson, UTGOP State Central Committee Member
- Gloria Vindas, UTGOP State Central Committee Member
- Corinne Johnson, President of Utah Parents United and UTGOP State Central Committee Member
- Jordan Hess, Former Utah GOP Vice Chair, Current Southern Utah Elephant Club Chair
- Gayle Ruzicka, Utah Eagle Forum
- Merrilee Boyack, Abortion-Free Utah Coalition Chair and Strengthen Utah Families President
- Dalane England, United Women's Forum Vice President
- Larry Meyers, Platform Republicans PAC Treasurer
- Kristen Chevrier, Your Health Freedom Utah
- Tenna Hartman, United Women's Forum President
- Janice Legler, Former UTGOP State Central Committee C&B Chair, Platform Republican PAC Officer & Board Member
- Carolyn Phippen, Board Member, Utah Citizens for the Constitution and former candidate for US Senate
- Jen Brown, Board Member, Utah Citizens for the Constitution
- Marion Kohte, WCRW Member
- Linda Anderschat, WCRW Member
- Emily Butler, WCRW Member
- Jennifer Nelson, WCRW Member
- Raelie Trent, WCRW Member
- Lori Colyar, WCRW Member
- Laurie Abshier, WCRW Member
- Adena McCahgren, WCRW Member
- Sharon Simmons, WCRW Member
- Mitzie Rogers, WCRW Member
- Darlene Cooley, WCRW Member
- Cathy Percefull, WCRW Member

*Signatories last updated on August 17, 2024.*

## **Exhibit B**

GUEST OPINION OPINION

# Opinion: Call for Utah constitutional amendment is about safeguarding checks and balances in lawmaking

Published: Aug 24, 2024, 9:00 a.m. MDT



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The Capitol is pictured in Salt Lake City on Monday, Jan. 29, 2024. | Kristin Murphy, Deseret News

PURCHASE IMAGE

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## By Rick Larsen & Scott Anderson, Sutherland Institute

---

In a recent statement, Sutherland Institute called for legislative action in a special session, preparatory to a constitutional amendment on the ballot in November. The catalyst is the peril created by the recent Utah Supreme Court ruling stating that when citizens pass initiatives, those initiatives are protected from “unfettered legislative amendment, repeal or replacement.”

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RELATED

### Constitutional amendment will now go to Utah voters

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In an election year, any hint of action designed to protect the Legislature can quickly devolve into partisan reactions. To be clear, this call for constitutional action is not based on any single ballot initiative. Rather, it is because — in a nation founded on an expressed desire to accommodate both the will of the majority and the rights of the minority — we should always seek the highest possible level of consensus when it comes to the rules under which we make rules. That level of consensus is not a feature of the ballot initiative process.

According to many advocates, the increase in ballot initiatives over the last five years is a result of increasing frustration with the effectiveness of state and federal legislative bodies, and an eroding trust in elected officials generally. Arguably, initiatives are a safety net against a legislature unresponsive to the will of the people.

That point about trust is important — but granting status to laws enacted by initiative such that they are immune from “unfettered legislative amendment, repeal or replacement” is not the correct solution to the erosion of trust.

The process of refining and reforming law — and sometimes changing it wholesale — is not a flaw within our form of government; it is an indispensable feature. It was designed to protect the rights of the majority and the minority — a balance that James Madison



addressed. “The tyranny of the majority is an inherent weakness to majority rule in which the majority of an electorate pursues exclusively its own objectives at the expense of those of the minority factions.”

In practical terms, the debate between opposing views is fundamental to the deliberative lawmaking process that occurs in the Utah Legislature, wherein a threshold of consensus must be achieved to pass a law, often requiring amendment and compromise to the original proposed law. Under the initiative process, there is no practical equivalent, and so disagreements — as well as details of budget and compliance — are never fully addressed. To remove the ability of the Legislature to reconcile and refine such omissions does not serve the interest of the people.

An Oregon news story by Christina Williams offers experienced insights from a state that has heavily adopted the initiative process. Initiatives passed since 1990 have negatively impacted the state budget, “to the detriment ... of public schools and public safety,” she writes. “At their best, ballot initiatives are an effective form of direct democracy, giving voice and real power to voters. At their worst they are co-opted by deep-pocketed sloganeers eager to push a national agenda (in reference to out-of-state money) and adept at using the voters’ distrust of local politicians to their advantage.”

Kelsey Piper of Vox adds, “A system that funnels lots of issues, both big and small, directly to the voters leads to bad policy judgments, because under-informed voters don’t have time to research and form opinions on all the issues. It leads to a handicapped legislature that can’t do its job, because large sections of state law are untouchable.”

The reality is many of the process-driven checks and balances within the legislative process are missing from the ballot initiative process. Despite Utah Code requirements, initiatives typically bypass important debates that regularly occur in the Legislature. As an example, recall Prop 3, which proposed expanding Medicaid eligibility and implementing a 0.15% nonfood sales tax that would have been inadequate to cover initial costs — and the future increase of expenses was virtually uncapped.

We should not do away with the important tool that is the ballot initiative. However, we also should not cloud the ability and clearly enumerated constitutional authority of an

elected legislature to refine and amend. The initiative process should be available, but it should recognize the essential balance between majoritarian democracy and sufficient consensus and consistency under state law. Applicable guidelines should be clear and reside at the state constitution level rather than being decided by judicial opinions. And we should not allow debate over such a beneficial protective structure to rest on any single partisan issue.

63

 [Comments](#)

The voice of the people should be heard — both in elections and, at times, even distinct from Utah’s elected Legislature on matters of substance when following the right process. But that voice cannot supersede the necessary stability of balanced budgets, prioritized services and programs and compliance with existing commitments and laws. That is why Sutherland issued the call for a state constitutional amendment.

The people of Utah should have the opportunity to vote on a constitutional amendment this fall that would clarify the legislative powers vested in the people as well as their elected representatives in a way that remains true to a representative partnership built on trust. The principles and structures of Utah’s — and America’s — system of government demand no less.

*Rick B. Larsen is the president of Sutherland Institute, a nonprofit public policy think tank that advocates for faith, family and freedom. Scott Anderson is a Utah native and resident of Salt Lake City.*

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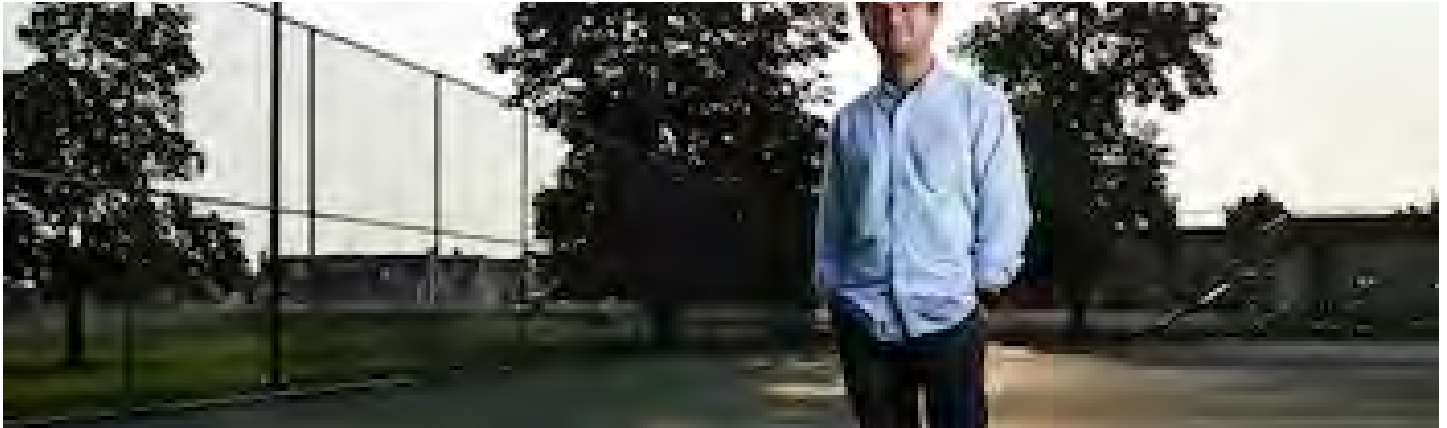
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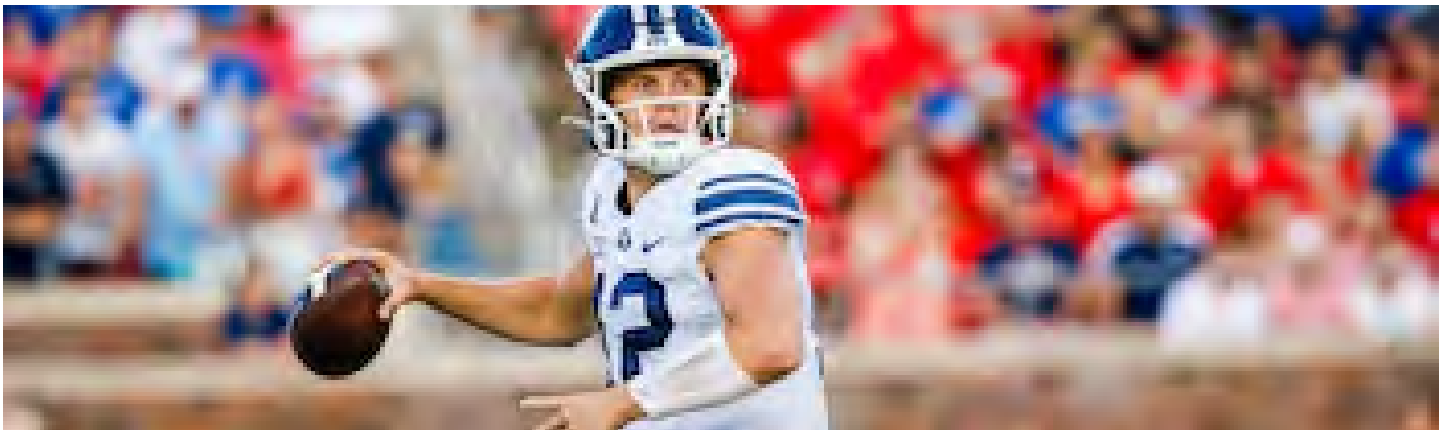
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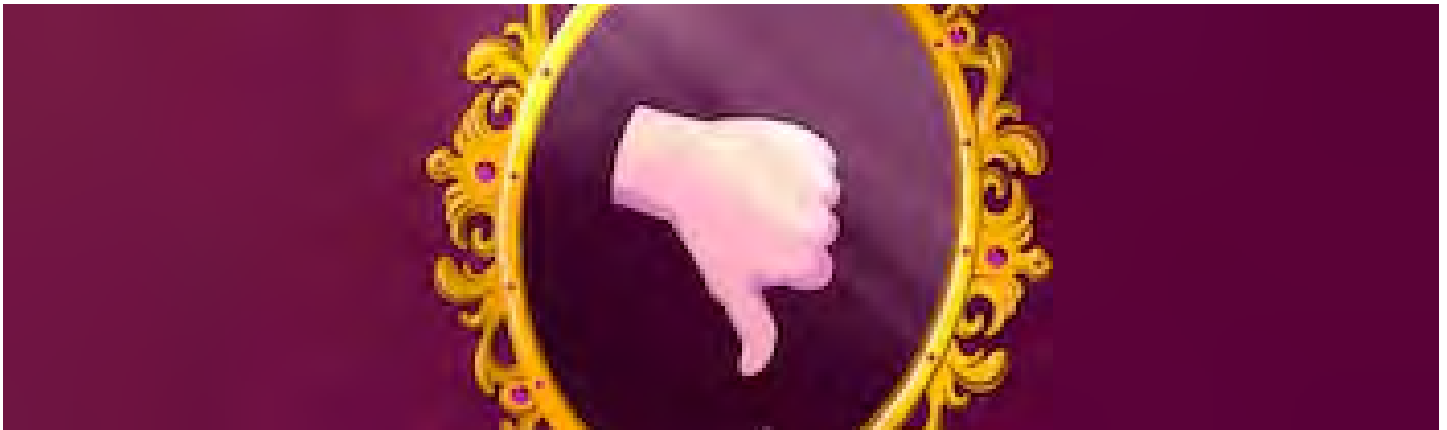
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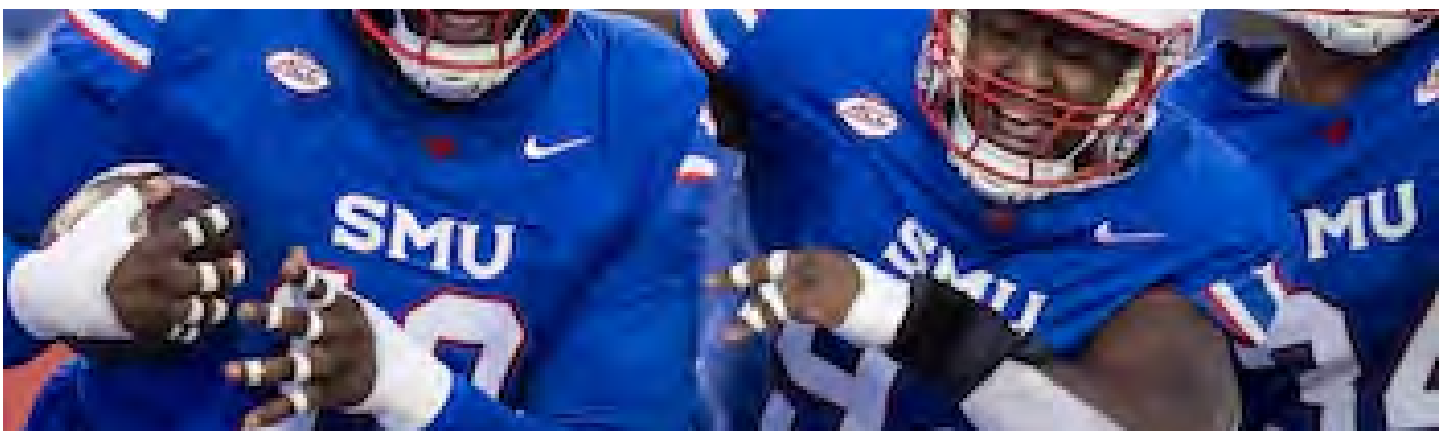
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## **Exhibit C**

**Proposal to Amend Utah Constitution - Voter Legislative Power**

2024 FOURTH SPECIAL SESSION

STATE OF UTAH

**Chief Sponsor: Kirk A. Cullimore**

Sponsor: Jordan D. Teuscher

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**LONG TITLE**

**General Description:**

This joint resolution of the Utah Legislature proposes to amend the Utah Constitution to modify provisions relating to voter powers.

**Highlighted Provisions:**

This resolution proposes to amend the Utah Constitution to:

- provide the scope of the people's powers to alter or reform government;
- prohibit foreign individuals, entities, and governments from influencing, supporting, or opposing an initiative or a referendum;
- authorize the Legislature to provide for enforcement of the prohibition by statute; and
- provide the circumstances for amendment, enactment, or repeal of law passed, adopted, or rejected by the voters.

**Other Special Clauses:**

This resolution directs the lieutenant governor to submit this proposal to voters.

This resolution provides a contingent effective date of January 1, 2025 for this proposal.

This resolution provides retrospective operation.

**Utah Constitution Sections Affected:**

AMENDS:

**Article I, Section 2**

**Article VI, Section 1**

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*Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:*

Section 1. It is proposed to amend Utah Constitution, Article I, Section 2, to read:

**Article I, Section 2 . All political power inherent in the people.**



27 All political power is inherent in the people; and all free governments are founded  
28 on their authority for their equal protection and benefit, and they have the right to alter or  
29 reform their government through the processes established in Article VI, Section 1, Subsection  
30 (2), or through Article XXIII as the public welfare may require.

31 Section 2. It is proposed to amend Utah Constitution, Article VI, Section 1, to read:

**Article VI, Section 1 . Power vested in Senate, House, and People -- Prohibition of foreign  
influence on  
initiatives and referenda.**

33 (1) The Legislative power of the State shall be vested in:

34 (a) a Senate and House of Representatives which shall be designated the Legislature of  
35 the State of Utah; and

36 (b) the people of the State of Utah as provided in Subsection (2).

37 (2)(a)(i) The legal voters of the State of Utah, in the numbers, under the conditions,  
38 in the manner, and within the time provided by statute, may:

39 (A) initiate any desired legislation and cause it to be submitted to the people for  
40 adoption upon a majority vote of those voting on the legislation, as provided by  
41 statute; or

42 (B) require any law passed by the Legislature, except those laws passed by a  
43 two-thirds vote of the members elected to each house of the Legislature, to be  
44 submitted to the voters of the State, as provided by statute, before the law may  
45 take effect.

46 (ii) Notwithstanding Subsection (2)(a)(i)(A), legislation initiated to allow, limit, or  
47 prohibit the taking of wildlife or the season for or method of taking wildlife shall  
48 be adopted upon approval of two-thirds of those voting.

49 (b) The legal voters of any county, city, or town, in the numbers, under the conditions, in  
50 the manner, and within the time provided by statute, may:

51 (i) initiate any desired legislation and cause it to be submitted to the people of the  
52 county, city, or town for adoption upon a majority vote of those voting on the  
53 legislation, as provided by statute; or

54 (ii) require any law or ordinance passed by the law making body of the county, city,  
55 or town to be submitted to the voters thereof, as provided by statute, before the  
56 law or ordinance may take effect.

57 (3)(a) Foreign individuals, entities, or governments may not, directly or indirectly,  
58 influence, support, or oppose an initiative or a referendum.

(b) The Legislature may provide, by statute, definitions, scope, and enforcement of the prohibition under Subsection (3)(a).

(4) Notwithstanding any other provision of this Constitution, the people's exercise of their Legislative power as provided in Subsection (2) does not limit or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature, or by a law making body of a county, city, or town, on behalf of the people whom they are elected to represent.

**Section 3. Submittal to voters.**

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

**Section 4. Contingent effective date.**

If the amendment proposed by this joint resolution is approved by a majority of those voting on it at the next regular general election, the amendment shall take effect on January 1, 2025.

**Section 5. Retrospective operation.**

The actions affecting Article I, Section 2 and Article VI, Section 1, Subsection (4) have retrospective operation.

8-21-24 7:39 PM

## **Exhibit D**

**Statewide Initiative and Referendum Amendments**

2024 FOURTH SPECIAL SESSION

STATE OF UTAH

**Chief Sponsor: Kirk A. Cullimore**

Sponsor: Jason B. Kyle

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**LONG TITLE**

**General Description:**

This bill, contingent on the passage of a constitutional amendment, addresses statewide initiatives and referendums.

**Highlighted Provisions:**

This bill:

- addresses the deference given to a law passed by initiative;
- extends the amount of time that the sponsors of a referendum petition have to gather signatures to qualify the referendum for the ballot;
- makes conforming timeline changes to accommodate the extension of the signature-gathering period;
- amends provisions regarding the effective date of legislation that may be subject to a referendum; and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

**20A-7-105**, as last amended by Laws of Utah 2024, Chapters 442, 465

**20A-7-212**, as last amended by Laws of Utah 2019, Chapter 206

**20A-7-307**, as last amended by Laws of Utah 2023, Chapters 107, 116 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 116

**20A-7-311**, as last amended by Laws of Utah 2023, Chapter 107

28        **20A-7-705**, as last amended by Laws of Utah 2019, Chapters 217, 255

29        **20A-7-706**, as last amended by Laws of Utah 2019, Chapter 255

30        

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31        *Be it enacted by the Legislature of the state of Utah:*

32        Section 1. Section **20A-7-105** is amended to read:

33        **20A-7-105 . Manual petition processes -- Obtaining signatures -- Verification --**  
34        **Submitting the petition -- Certification of signatures -- Transfer to lieutenant governor --**  
35        **Removal of signature.**

36        (1) This section applies only to the manual initiative process and the manual referendum  
37        process.

38        (2) As used in this section:

39        (a) "Local petition" means:

40        (i) a manual local initiative petition described in Part 5, Local Initiatives -  
41        Procedures; or

42        (ii) a manual local referendum petition described in Part 6, Local Referenda -  
43        Procedures.

44        (b) "Packet" means an initiative packet or referendum packet.

45        (c) "Petition" means a local petition or statewide petition.

46        (d) "Statewide petition" means:

47        (i) a manual statewide initiative petition described in Part 2, Statewide Initiatives; or

48        (ii) a manual statewide referendum petition described in Part 3, Statewide Referenda.

49        (3)(a) A Utah voter may sign a statewide petition if the voter is a legal voter.

50        (b) A Utah voter may sign a local petition if the voter:

51        (i) is a legal voter; and

52        (ii) resides in the local jurisdiction.

53        (4)(a) The sponsors shall ensure that the individual in whose presence each signature  
54        sheet was signed:

55        (i) is at least 18 years old;

56        (ii) verifies each signature sheet by completing the verification printed on the last  
57        page of each packet; and

58        (iii) is informed that each signer is required to read and understand:

59        (A) for an initiative petition, the law proposed by the initiative; or

60        (B) for a referendum petition, the law that the referendum seeks to overturn.

61        (b) An individual may not sign the verification printed on the last page of a packet if the

individual signed a signature sheet in the packet.

(5)(a) The sponsors, or an agent of the sponsors, shall submit a signed and verified packet to the county clerk of the county in which the packet was circulated before 5 p.m. no later than the earlier of:

(i) for a statewide initiative:

(A) 30 days after the day on which the first individual signs the initiative packet;

(B) 316 days after the day on which the application for the initiative petition is filed; or

(C) the February 15 immediately before the next regular general election immediately after the application is filed under Section 20A-7-202;

(ii) for a statewide referendum:

(A) 30 days after the day on which the first individual signs the referendum packet; or

(B) ~~[40]~~ 60 days after the day on which the legislative session at which the law passed ends;

(iii) for a local initiative:

(A) 30 days after the day on which the first individual signs the initiative packet;

(B) 316 days after the day on which the application is filed;

(C) the April 15 immediately before the next regular general election immediately after the application is filed under Section 20A-7-502, if the local initiative is a county initiative; or

(D) the April 15 immediately before the next municipal general election immediately after the application is filed under Section 20A-7-502, if the local initiative is a municipal initiative; or

(iv) for a local referendum:

(A) 30 days after the day on which the first individual signs the referendum packet; or

(B) 45 days after the day on which the sponsors receive the items described in Subsection 20A-7-604(3) from the local clerk.

(b) A person may not submit a packet after the applicable deadline described in Subsection (5)(a).

(c) Before delivering an initiative packet to the county clerk under this Subsection (5), the sponsors shall send an email to each individual who provides a legible, valid email address on the signature sheet that includes the following:

(i) the subject of the email shall include the following statement, "Notice Regarding Your Petition Signature"; and

(ii) the body of the email shall include the following statement in 12-point type:

"You signed a petition for the following initiative:

[insert title of initiative]

To access a copy of the initiative petition, the initiative, the fiscal impact statement, and information on the deadline for removing your signature from the petition, please visit the following link: [insert a uniform resource locator that takes the individual directly to the page on the lieutenant governor's or county clerk's website that includes the information referred to in the email]."

(d) For a statewide initiative, the sponsors shall, no later than 5 p.m. on the day on which the sponsors submit the last initiative packet to the county clerk, submit to the lieutenant governor:

(i) a list containing:

(A) the name and email address of each individual the sponsors sent, or caused to be sent, the email described in Subsection (5)(c); and

(B) the date the email was sent;

(ii) a copy of the email described in Subsection (5)(c); and

(iii) the following written verification, completed and signed by each of the sponsors:

"Verification of initiative sponsor State of Utah, County of \_\_\_\_\_ I, \_\_\_\_\_, of \_\_\_\_\_, hereby state, under penalty of perjury, that:

I am a sponsor of the initiative petition entitled \_\_\_\_\_; and

I sent, or caused to be sent, to each individual who provided a legible, valid email address on a signature sheet submitted to the county clerk in relation to the initiative petition, the email described in Utah Code Subsection 20A-7-105(5)(c).

\_\_\_\_\_  
(Name) (Residence Address) (Date)".

(e) For a local initiative, the sponsors shall, no later than 5 p.m. on the day on which the sponsors submit the last initiative packet to the local clerk, submit to the local clerk the items described in Subsection (5)(d).

(f) Signatures gathered for an initiative petition are not valid if the sponsors do not comply with Subsection (5)(c), (d), or (e).

(6)(a) Within 21 days after the day on which the county clerk receives the packet, the county clerk shall:

- 130 (i) use the procedures described in Section 20A-1-1002, or 20A-7-106 if applicable,  
131 to determine whether each signer is a legal voter and, as applicable, the  
132 jurisdiction where the signer is registered to vote;
- 133 (ii) for a statewide initiative or a statewide referendum:
- 134 (A) certify on the petition whether each name is that of a legal voter;
- 135 (B) post the name, voter identification number, and date of signature of each legal  
136 voter certified under Subsection (6)(a)(ii)(A) on the lieutenant governor's  
137 website, in a conspicuous location designated by the lieutenant governor; and
- 138 (C) deliver the verified packet to the lieutenant governor;
- 139 (iii) for a local initiative or a local referendum:
- 140 (A) certify on the petition whether each name is that of a legal voter who is  
141 registered in the jurisdiction to which the initiative or referendum relates;
- 142 (B) post the name, voter identification number, and date of signature of each legal  
143 voter certified under Subsection (6)(a)(iii)(A) on the lieutenant governor's  
144 website, in a conspicuous location designated by the lieutenant governor; and
- 145 (C) deliver the verified packet to the local clerk.
- 146 (b) For a local initiative or local referendum, the local clerk shall post a link in a  
147 conspicuous location on the local government's website to the posting described in  
148 Subsection (6)(a)(iii)(B):
- 149 (i) for a local initiative, during the period of time described in Subsection 20A-7-507  
150 (3)(a); or
- 151 (ii) for a local referendum, during the period of time described in Subsection  
152 20A-7-607(2)(a)(i).
- 153 (7) The county clerk may not certify a signature under Subsection (6):
- 154 (a) on a packet that is not verified in accordance with Subsection (4); or
- 155 (b) that does not have a date of signature next to the signature.
- 156 (8)(a) A voter who signs a statewide initiative petition may have the voter's signature  
157 removed from the petition by, in accordance with Section 20A-1-1003, submitting to  
158 the county clerk a statement requesting that the voter's signature be removed no later  
159 than the earlier of:
- 160 (i) for an initiative packet received by the county clerk before December 1:
- 161 (A) 30 days after the day on which the voter signs the signature removal  
162 statement; or
- 163 (B) 90 days after the day on which the lieutenant governor posts the voter's name



- 164 under Subsection 20A-7-207(2); or
- 165 (ii) for an initiative packet received by the county clerk on or after December 1:
- 166 (A) 30 days after the day on which the voter signs the signature removal
- 167 statement; or
- 168 (B) 45 days after the day on which the lieutenant governor posts the voter's name
- 169 under Subsection 20A-7-207(2).
- 170 (b) A voter who signs a statewide referendum petition may have the voter's signature
- 171 removed from the petition by, in accordance with Section 20A-1-1003, submitting to
- 172 the county clerk a statement requesting that the voter's signature be removed no later
- 173 than the earlier of:
- 174 (i) 30 days after the day on which the voter signs the statement requesting removal; or
- 175 (ii) 45 days after the day on which the lieutenant governor posts the voter's name
- 176 under Subsection 20A-7-307(2).
- 177 (c) A voter who signs a local initiative petition may have the voter's signature removed
- 178 from the petition by, in accordance with Section 20A-1-1003, submitting to the
- 179 county clerk a statement requesting that the voter's signature be removed no later than
- 180 the earlier of:
- 181 (i) 30 days after the day on which the voter signs the signature removal statement;
- 182 (ii) 90 days after the day on which the local clerk posts the voter's name under
- 183 Subsection 20A-7-507(2);
- 184 (iii) 316 days after the day on which the application is filed; or
- 185 (iv)(A) for a county initiative, April 15 immediately before the next regular
- 186 general election immediately after the application is filed under Section
- 187 20A-7-502; or
- 188 (B) for a municipal initiative, April 15 immediately before the next municipal
- 189 general election immediately after the application is filed under Section
- 190 20A-7-502.
- 191 (d) A voter who signs a local referendum petition may have the voter's signature
- 192 removed from the petition by, in accordance with Section 20A-1-1003, submitting to
- 193 the county clerk a statement requesting that the voter's signature be removed no later
- 194 than the earlier of:
- 195 (i) 30 days after the day on which the voter signs the statement requesting removal; or
- 196 (ii) 45 days after the day on which the local clerk posts the voter's name under
- 197 Subsection 20A-7-607(2)(a).

(e) In order for the signature to be removed, the county clerk must receive the statement described in this Subsection (8) before 5 p.m. no later than the applicable deadline described in this Subsection (8).

(f) A county clerk shall analyze a signature, for purposes of removing a signature from a petition, in accordance with Subsection 20A-1-1003(3).

(9)(a) If the county clerk timely receives a statement requesting signature removal under Subsection (8) and determines that the signature should be removed from the petition under Subsection 20A-1-1003(3), the county clerk shall:

(i) ensure that the voter's name, voter identification number, and date of signature are not included in the posting described in Subsection (6)(a)(ii)(B) or (iii)(B); and

(ii) remove the voter's signature from the signature packets and signature packet totals.

(b) The county clerk shall comply with Subsection (9)(a) before the later of:

(i) the deadline described in Subsection (6)(a); or

(ii) two business days after the day on which the county clerk receives a statement requesting signature removal under Subsection (8).

(10) A person may not retrieve a packet from a county clerk, or make any alterations or corrections to a packet, after the packet is submitted to the county clerk.

Section 2. Section **20A-7-212** is amended to read:

**20A-7-212 . Effective date of initiative -- Deference given to law passed by initiative.**

(1) A proposed law submitted to the Legislature by initiative petition and passed by the Legislature takes effect 60 days after the last day of the session of the Legislature in which the law passed, unless:

(a) a later effective date is included in the proposed law; or

(b) an earlier effective date is included in the proposed law and the proposed law passes the Legislature by a two-thirds vote of the members elected to each house of the Legislature.

(2) A proposed law submitted to the people by initiative petition that is approved by the voters at an election takes effect:

(a) except as provided in Subsections (2)(b) through (e), on the day that is 60 days after the last day of the general session of the Legislature next following the election;

(b) except as provided in Subsection (2)(d) or (e), if the proposed law effectuates a tax increase:

- 232 (i) except as provided in Subsection (2)(b)(ii), January 1 of the year after the general  
233 session of the Legislature next following the election; or
- 234 (ii) at the beginning of the applicable taxable year that begins on or after January 1 of  
235 the year after the general session of the Legislature next following the election, for  
236 a tax described in:
- 237 (A) Title 59, Chapter 6, Mineral Production Tax Withholding;
- 238 (B) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
- 239 (C) Title 59, Chapter 8, Gross Receipts Tax on Certain Corporations Not Required  
240 to Pay Corporate Franchise or Income Tax Act; or
- 241 (D) Title 59, Chapter 10, Individual Income Tax Act;
- 242 (c) except as provided in Subsection (2)(d) or (e), if the proposed law effectuates a tax  
243 decrease:
- 244 (i) except as provided in Subsection (2)(c)(ii), April 1 immediately following the  
245 election; or
- 246 (ii) for a tax described in Subsection (2)(b)(ii)(A) through (D), at the beginning of the  
247 applicable taxable year that begins on or after January 1 immediately following  
248 the election;
- 249 (d) except as provided in Subsection (2)(e), January 1 of the year after the general  
250 session of the Legislature next following the election, if the proposed law effectuates  
251 a change in a tax described in:
- 252 (i) Title 59, Chapter 2, Property Tax Act;
- 253 (ii) Title 59, Chapter 3, Tax Equivalent Property Act; or
- 254 (iii) Title 59, Chapter 4, Privilege Tax; or
- 255 (e) if the proposed law specifies a special effective date that is after the otherwise  
256 applicable effective date described in Subsections (2)(a) through (d), the date  
257 specified in the proposed law.
- 258 (3)(a) The governor may not veto a law adopted by the people.
- 259 ~~[(b) The Legislature may amend any initiative approved by the people at any legislative~~  
260 ~~session.]~~
- 261 (b) If, during the general session next following the passage of a law submitted to the  
262 people by initiative petition, the Legislature amends the law, the Legislature:
- 263 (i) shall give deference to the initiative by amending the law in a manner that, in the  
264 Legislature's determination, leaves intact the general purpose of the initiative; and  
265 (ii) notwithstanding Subsection (3)(b)(i), may amend the law in any manner

266 determined necessary by the Legislature to mitigate an adverse fiscal impact of the  
267 initiative.

268 Section 3. Section **20A-7-307** is amended to read:

269 **20A-7-307 . Evaluation by the lieutenant governor.**

270 (1) In relation to the manual referendum process, when the lieutenant governor receives a  
271 referendum packet from a county clerk, the lieutenant governor shall record the number  
272 of the referendum packet received.

273 (2) The county clerk shall:

274 (a) in relation to the manual referendum process:

275 (i) post the names, voter identification numbers, and dates of signatures described in  
276 Subsection 20A-7-105(6)(a)(iii) on the lieutenant governor's website, in a  
277 conspicuous location designated by the lieutenant governor, for at least 45 days;  
278 and

279 (ii) update on the lieutenant governor's website the number of signatures certified as  
280 of the date of the update; or

281 (b) in relation to the electronic referendum process:

282 (i) post the names, voter identification numbers, and dates of signatures described in  
283 Subsection 20A-7-315(4) on the lieutenant governor's website, in a conspicuous  
284 location designated by the lieutenant governor, for at least 45 days; and

285 (ii) update on the lieutenant governor's website the number of signatures certified as  
286 of the date of the update.

287 (3) The lieutenant governor:

288 (a) shall, except as provided in Subsection (3)(b), declare the referendum petition to be  
289 sufficient or insufficient [~~106~~] 126 days after the end of the legislative session at  
290 which the law passed; or

291 (b) may declare the referendum petition to be insufficient before the day described in  
292 Subsection (3)(a) if:

293 (i) in relation to the manual referendum process, the total of all valid signatures on  
294 timely and lawfully submitted referendum packets that have been certified by the  
295 county clerks, plus the number of signatures on timely and lawfully submitted  
296 referendum packets that have not yet been evaluated for certification, is less than  
297 the number of names required under Section 20A-7-301;

298 (ii) in relation to the electronic referendum process, the total of all timely and  
299 lawfully submitted valid signatures that have been certified by the county clerks,

- 300 plus the number of timely and lawfully submitted valid signatures received under  
301 Subsection 20A-21-201(6)(b) that have not yet been evaluated for certification, is  
302 less than the number of names required under Section 20A-7-301; or  
303 (iii) a requirement of this part has not been met.
- 304 (4)(a) If the total number of names certified under Subsection (3) equals or exceeds the  
305 number of names required under Section 20A-7-301, and the requirements of this  
306 part are met, the lieutenant governor shall mark upon the front of the referendum  
307 petition the word "sufficient."
- 308 (b) If the total number of names certified under Subsection (3) does not equal or exceed  
309 the number of names required under Section 20A-7-301 or a requirement of this part  
310 is not met, the lieutenant governor shall mark upon the front of the referendum  
311 petition the word "insufficient."
- 312 (c) The lieutenant governor shall immediately notify any one of the sponsors of the  
313 lieutenant governor's finding.
- 314 (d) After a referendum petition is declared insufficient, a person may not submit  
315 additional signatures to qualify the referendum for the ballot.
- 316 (5)(a) If the lieutenant governor refuses to declare a referendum petition sufficient that a  
317 voter believes is legally sufficient, the voter may, no later than 10 days after the day  
318 on which the lieutenant governor declares the petition insufficient, apply to the  
319 appropriate court for an order finding the referendum petition legally sufficient.
- 320 (b) If the court determines that the referendum petition is legally sufficient, the  
321 lieutenant governor shall mark the referendum petition "sufficient" and consider the  
322 declaration of sufficiency effective as of the date on which the referendum petition  
323 should have been declared sufficient by the lieutenant governor's office.
- 324 (c) If the court determines that a referendum petition filed is not legally sufficient, the  
325 court may enjoin the lieutenant governor and all other officers from certifying or  
326 printing the ballot title and numbers of that measure on the official ballot.
- 327 (6) A referendum petition determined to be sufficient in accordance with this section is  
328 qualified for the ballot.

329 Section 4. Section **20A-7-311** is amended to read:

330 **20A-7-311 . Temporary stay -- Effective date -- Effect of repeal by Legislature.**

- 331 (1)(a) Within 35 calendar days after the day on which the legislative session at which  
332 the law passed ends, the lieutenant governor shall:  
333 (i) determine whether, within 30 calendar days after the day on which the legislative

- session at which the law passed ends, the sponsors have submitted signatures to the county clerks equal to at least 25% of the number of signatures required to qualify the referendum for placement on the ballot; and
- (ii) issue a written statement of the results of the determination.
- (b) If the lieutenant governor determines that the sponsors have met the 25% threshold described in Subsection (1)(a), the effective date of the law challenged by the referendum changes to the later of:
- (i) the effective date of the law; or
- (ii) the day after the day on which the lieutenant governor declares the referendum petition sufficient or insufficient under Section 20A-7-307.
- ~~[(1)]~~ (2) ~~[H]~~ Notwithstanding Subsection (1), if, at the time during the counting period described in Section 20A-7-307, the lieutenant governor determines that, at that point in time, an adequate number of signatures are certified to comply with the signature requirements, the lieutenant governor shall:
- (a) issue an order temporarily staying the law from going into effect; and
- (b) continue the process of certifying signatures and removing signatures as required by this part.
- ~~[(2)]~~ (3) The temporary stay described in Subsection ~~[(1)]~~ (2) remains in effect, regardless of whether a future count falls below the signature threshold, until the day on which:
- (a) if the lieutenant governor declares the referendum petition insufficient, five days after the day on which the lieutenant governor declares the referendum petition insufficient; or
- (b) if the lieutenant governor declares the referendum petition sufficient, the day on which governor issues the proclamation described in Section 20A-7-310.
- ~~[(3)]~~ (4) A law submitted to the people by referendum that is approved by the voters at an election takes effect the later of:
- (a) five days after the date of the official proclamation of the vote by the governor; or
- (b) the effective date specified in the approved law.
- ~~[(4)]~~ (5) If, after the lieutenant governor issues a temporary stay order under Subsection ~~[(1)]~~ (a) (2)(a), the lieutenant governor declares the referendum petition insufficient, the law that is the subject of the referendum petition takes effect the later of:
- (a) five days after the day on which the lieutenant governor declares the referendum petition insufficient; or
- (b) the effective date specified in the law that is the subject of the referendum petition.

[~~(5)~~] (6)(a) The governor may not veto a law approved by the people.

(b) The Legislature may amend any laws approved by the people at any legislative session after the people approve the law.

[~~(6)~~] (7) If the Legislature repeals a law challenged by referendum petition under this part, the referendum petition is void and no further action on the referendum petition is required.

Section 5. Section **20A-7-705** is amended to read:

**20A-7-705 . Measures to be submitted to voters and referendum measures --**

**Preparation of argument of adoption.**

(1)(a) Whenever the Legislature submits any measure to the voters or whenever an act of the Legislature is referred to the voters by referendum petition, the presiding officer of the house of origin of the measure shall appoint the sponsor of the measure or act and one member of either house who voted with the majority to pass the act or submit the measure to draft an argument for the adoption of the measure.

(b)(i) The argument may not exceed 500 words in length, not counting the information described in Subsection (4)(e).

(ii) If the sponsor of the measure or act desires separate arguments to be written in favor by each person appointed, separate arguments may be written but the combined length of the two arguments may not exceed 500 words, not counting the information described in Subsection (4)(e).

(2)(a) If a measure or act submitted to the voters by the Legislature or by referendum petition was not adopted unanimously by the Legislature, the presiding officer of each house shall, at the same time as appointments to an argument in its favor are made, appoint one member who voted against the measure or act from their house to write an argument against the measure or act.

(b)(i) The argument may not exceed 500 words, not counting the information described in Subsection (4)(e).

(ii) If those members appointed to write an argument against the measure or act desire separate arguments to be written in opposition to the measure or act by each person appointed, separate arguments may be written, but the combined length of the two arguments may not exceed 500 words, not counting the information described in Subsection (4)(e).

(3)(a) The legislators appointed by the presiding officer of the Senate or House of Representatives to submit arguments shall submit the arguments to the lieutenant

governor not later than the day that falls ~~[150]~~ 130 days before the date of the election.

(b) Except as provided in Subsection (3)(d), the authors may not amend or change the arguments after they are submitted to the lieutenant governor.

(c) Except as provided in Subsection (3)(d), the lieutenant governor may not alter the arguments in any way.

(d) The lieutenant governor and the authors of an argument may jointly modify an argument after it is submitted if:

(i) they jointly agree that changes to the argument must be made to correct spelling or grammatical errors; and

(ii) the argument has not yet been submitted for typesetting.

(4)(a) If an argument for or an argument against a measure submitted to the voters by the Legislature or by referendum petition has not been filed by a member of the Legislature within the time required by this section:

(i) the lieutenant governor shall immediately:

(A) send an electronic notice that complies with the requirements of Subsection (4)(b) to each individual in the state for whom the Office of the Lieutenant Governor has an email address; or

(B) post a notice that complies with the requirements of Subsection (4)(b) on the home page of the lieutenant governor's website; and

(ii) any voter may, before 5 p.m. no later than seven days after the day on which the lieutenant governor provides the notice described in Subsection (4)(a)(i), submit a written request to the presiding officer of the house in which the measure originated for permission to prepare and file an argument for the side on which no argument has been filed by a member of the Legislature.

(b) A notice described in Subsection (4)(a)(i) shall contain:

(i) the ballot title for the measure;

(ii) instructions on how to submit a request under Subsection (4)(a)(ii); and

(iii) the deadlines described in Subsections (4)(a)(ii) and (4)(d).

(c)(i) The presiding officer of the house of origin shall grant permission unless two or more voters timely request permission to submit arguments on the same side of a measure.

(ii) If two or more voters timely request permission to submit arguments on the same side of a measure, the presiding officer shall, no later than four calendar days after the day of the deadline described in Subsection (4)(a)(ii), designate one of the



- 436 voters to write the argument.
- 437 (d) Any argument prepared under this Subsection (4) shall be submitted to the lieutenant  
438 governor before 5 p.m. no later than seven days after the day on which the presiding  
439 officer grants permission to submit the argument.
- 440 (e) The lieutenant governor may not accept a ballot argument submitted under this  
441 section unless the ballot argument lists:
- 442 (i) the name and address of the individual submitting the argument, if the argument is  
443 submitted by an individual voter; or
- 444 (ii) the name and address of the organization and the names and addresses of at least  
445 two of the organization's principal officers, if the argument is submitted on behalf  
446 of an organization.
- 447 (f) Except as provided in Subsection (4)(h), the authors may not amend or change the  
448 arguments after they are submitted to the lieutenant governor.
- 449 (g) Except as provided in Subsection (4)(h), the lieutenant governor may not alter the  
450 arguments in any way.
- 451 (h) The lieutenant governor and the authors of an argument may jointly modify an  
452 argument after it is submitted if:
- 453 (i) they jointly agree that changes to the argument must be made to:
- 454 (A) correct spelling or grammatical errors; or
- 455 (B) properly characterize the position of a state entity, if the argument  
456 mischaracterizes the position of a state entity; and
- 457 (ii) the argument has not yet been submitted for typesetting.
- 458 (i) If, after the lieutenant governor determines that an argument described in this section  
459 mischaracterizes the position of a state entity, the lieutenant governor and the authors  
460 of the argument cannot jointly agree on a change to the argument, the lieutenant  
461 governor:
- 462 (i) shall publish the argument with the mischaracterization; and
- 463 (ii) may, immediately following the argument, publish a brief description of the  
464 position of the state entity.

465 Section 6. Section **20A-7-706** is amended to read:

466 **20A-7-706 . Copies of arguments to be sent to opposing authors -- Rebuttal**  
467 **arguments.**

- 468 (1) When the lieutenant governor has received the arguments for and against a measure to  
469 be submitted to the voters, the lieutenant governor shall immediately send copies of the

arguments in favor of the measure to the authors of the arguments against and copies of the arguments against to the authors of the arguments in favor.

(2) The authors may prepare and submit rebuttal arguments not exceeding 250 words, not counting the information described in Subsection 20A-7-705(4)(e).

(3)(a) The rebuttal arguments shall be filed with the lieutenant governor:

(i) for constitutional amendments and referendum petitions, before 5 p.m. no later than ~~[120]~~ 100 days before the date of the election; and

(ii) for initiatives, before 5 p.m. no later than July 30.

(b) Except as provided in Subsection (3)(d), the authors may not amend or change the rebuttal arguments after they are submitted to the lieutenant governor.

(c) Except as provided in Subsection (3)(d), the lieutenant governor may not alter the arguments in any way.

(d) The lieutenant governor and the authors of a rebuttal argument may jointly modify a rebuttal argument after it is submitted if:

(i) they jointly agree that changes to the rebuttal argument must be made to correct spelling or grammatical errors; and

(ii) the rebuttal argument has not yet been submitted for typesetting.

(4) The lieutenant governor shall ensure that:

(a) rebuttal arguments are printed in the same manner as the direct arguments; and

(b) each rebuttal argument follows immediately after the direct argument which it seeks to rebut.

**Section 7. Effective date.**

This bill takes effect on January 1, 2025, if the amendment to the Utah Constitution proposed by S.J.R. 401, Proposal to Amend Utah Constitution - Voter Legislative Power, 2024 4th Special Session, passes the Legislature and is approved by a majority of those voting on it at the next regular general election.

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## **Exhibit E**



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# Utah legislators considering a constitutional amendment on ballot initiatives

The Utah Legislature could consider meeting as soon as Wednesday

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 VIEW 131 COMMENTS

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Attorney Taylor Meehan presents an argument for the state for a case challenging the state's congressional districts before the Utah Supreme Court in Salt Lake City on Tuesday, July 11, 2023. | Leah Hogsten



**By Hanna Seariac**

Hanna is a reporter for the Deseret News where she covers courts, crime, policy and faith.

The Utah Republican Party, Sutherland Institute and other conservative groups and leaders are calling for a constitutional amendment to give the Utah Legislature veto power over initiatives after a Utah Supreme Court ruling allowed a lawsuit over redistricting to move forward.

Lawmakers may meet to vote to put the constitutional amendment on the ballot as soon as Wednesday, though Utah House and Senate leadership have not announced an official date for a session. Utah Gov. Spencer Cox's office did not immediately return a request for comment.

The call for an amendment to the state's constitution is in response to a unanimous decision handed down in July by the state's highest court. The court ruled when citizens pass initiatives, those initiatives are protected from "unfettered legislative amendment, repeal or replacement."

"I think that the ruling from the Utah Supreme Court establishes an expectation that is so out of line with the principles of a constitutional republic that we need to make the correction," Utah GOP chair Rob Axson said in a phone interview with the Deseret News.

An open letter calling for a constitutional amendment was signed by several different groups and leaders including Pro-Life Utah, Gayle Ruzicka of Utah Eagle Forum and Worldwide Organization for Women.

Axson said the call for a constitutional amendment did not have to do with redistricting, but was in response to the language around initiatives in the Utah Supreme Court decision. The Sutherland Institute released a separate call for a constitutional amendment on Friday as well.

The state supreme court's decision was in response to a lawsuit filed by the League of Women Voters of Utah, Mormon Women for Ethical Government and a group of Salt Lake voters. They challenged a congressional map lawmakers had drawn and implemented after Utah voters approved a ballot measure to create an independent redistricting commission. The commission proposed several maps, but the Utah Legislature went with a map drawn by the Legislative Redistricting Committee consisting of five Democrats and 15 Republicans.

"I appreciate Utahns and stakeholders engaging and expressing their concerns on this important issue," said Utah Senate President J. Stuart Adams in a statement to the Deseret News. "There has been significant discussion about a special session, and we are carefully considering their requests."

"There are discussions about the possibility of (a) special session, but no decisions have been made," a spokesperson for the Utah House Majority said.

A member of the Utah Senate told the Deseret News the vote could come as soon as Wednesday. The senator said the vote will likely be close because a two-thirds vote is required to put a constitutional amendment on the ballot.

## Why amend the Utah Constitution?

After the Utah Supreme Court issued the ruling in the redistricting case, reactions fell mostly along party lines.

Utah Republicans widely criticized the Utah Supreme Court decision. Adams and Utah House Speaker Mike Schultz called it “one of the worst outcomes” they have ever seen and said “the court punted and made a new law about the initiative power, creating chaos and striking at the very heart of our republic.”

Adams and Schultz said the court created “supreme laws” and stripped away the ability of state, county and municipal authorities to enact policies. Cox expressed disagreement with some of the court’s analysis and determination at the time.

“The Senate Democrats applaud the court’s recognition of these constitutional protections, including the right to fair and impartial redistricting processes,” said Utah Senate Democrats when the decision was handed down. “We stand firmly with the authority of Utah’s voters and their right to shape a transparent and just government that truly represents the voice of all Utahns.”

Now almost a month has passed since the ruling and Axson said he thinks the consequences of what could happen if an amendment is not passed are dire, which drove the decision to call for the amendment.

“I think the core issue is that in a republic you are electing folks to represent you and they are most closely accountable to the voters while also being positioned to make necessary judgments and adjustments,” said Axson, explaining there is sometimes a need to change law quickly and the Legislature is in the position to do that.

The ruling means if there is a ballot initiative, even if it is well-meaning, it could create a bad situation and there would be no speedy way to fix it, said Axson.



“That makes zero sense in a day and age when we need to be nimble to respond to changes in the needs of our population,” he said.

When asked to respond to the potential criticism that some citizens may see this as vetoing their voice, Axson said there should always be a back and forth. He said he thinks there is a difference between petitioning your elected officials and putting out a referendum.

“It removes deliberative dialogue necessary for good policy,” said Axson, adding he thinks there needs to be room for nuance, adjustment and collaboration.

“What we are calling for is the Legislature to take action, not to remove the rights of people, but instead, to enshrine the principles of a constitutional republic where dialogue and engagement is permitted,” he said.

Axson said not just in Utah, but across the country, special interest groups fund ballot initiatives. He does not think “the project of some billionaire” or foreign influence should prevent the Utah Legislature from acting in the best interest of citizens.

The decision to call for a constitutional amendment does not have to do with redistricting, said Axson, it has to do with Utah’s future.

“We will find massive amounts of money coming into Utah from outside groups and individuals to impact public policy,” said Axson. “And at best, we would be in a space of constant pendulum swinging one way or the other.”

“We should always be deferring to what Utahns want Utah to be,” said Axson. He thinks a constitutional amendment would allow that.

The Sutherland Institute also issued a statement recommending a constitutional amendment “to correct the flawed understanding of the Utah Constitution’s principle of proper exercise of legislative power reflected in the Utah Supreme Court’s recent ruling in *League of Women Voters v. Utah State Legislature*.”

“Any amount of experience with lawmaking quickly shows that good public policy is rarely fully established when a law is initially enacted,” said the Sutherland Institute.

“Unforeseen consequences are a natural feature of our system of government – making



the power to reform any new law an essential aspect of the reasonable understanding of the proper exercise of legislative power in our republic.”

Utah Minority Leader Angela Romero has not seen text of a proposed amendment, but in the case the amendment allows the Utah Legislature the ability to veto a citizen-driven initiative, she said she has major concerns.

“For truly a citizen legislature, we should be listening to the people of our state,” Romero said. “And I don’t think a majority of people in Utah would want to do anything that jeopardizes their voice.”

Romero said she has concerns about putting an amendment on the ballot, but she also thinks the effort might “backfire.”

Another concern Romero raised was the impact this could have with abortion laws. “When abortion has been put on the ballot, even in red states, the people have spoken and they don’t want the laws that are currently on the book,” she said, adding she thinks legislators having the ability to override that is “problematic.”

Romero said as a policymaker she is “very, very progressive,” but she finds value in seeking out commonality and looking for answers in the middle — that is what she thinks most Utahns want.

“I think of a lot of Utahs would be very frustrated if this was to be put on the ballot, and I hope if it is put on the ballot that they would come out in numbers and vote it down,” she said.

**131** Comments

## The process of amending the Utah Constitution

The first step to amend the Utah Constitution is the introduction of the text of a proposed constitutional amendment. It has to be proposed in either the Utah House or the Utah Senate.

Two-thirds of both the House and the Senate have to vote in favor of the amendment. If approved, the amendment would be put on the ballot. The Legislature has to ensure the public has the opportunity to see the amendment “in at least one newspaper in every county of the state, where a newspaper is published.”

**Ex. C - 91**

Utah voters then decide whether or not to amend the state constitution.

## On the Trail 2024 with Samuel Benson

Deseret News reporter Samuel Benson follows the candidates ahead of the 2024 presidential election.



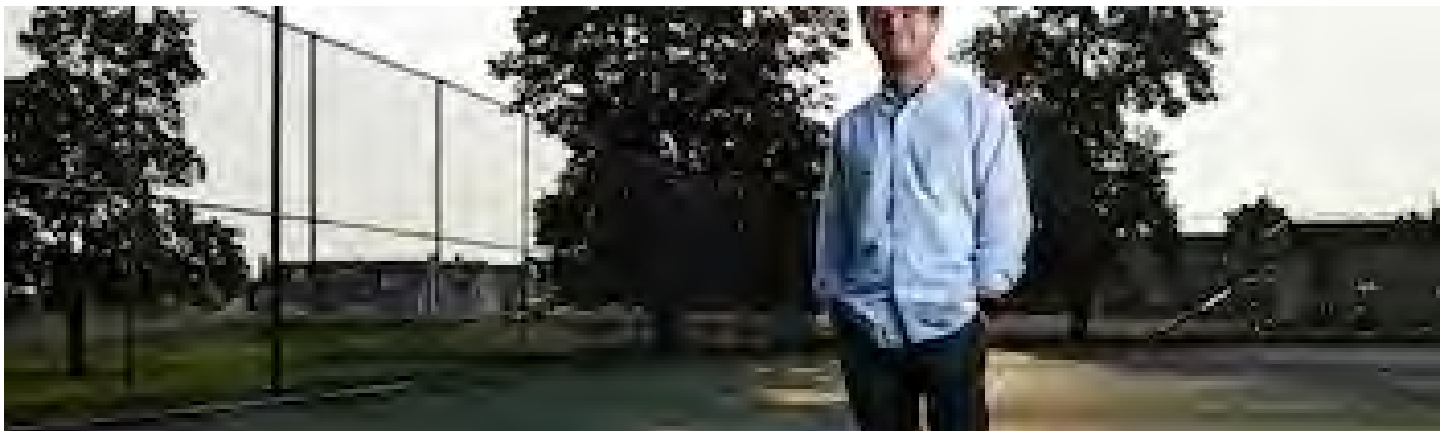
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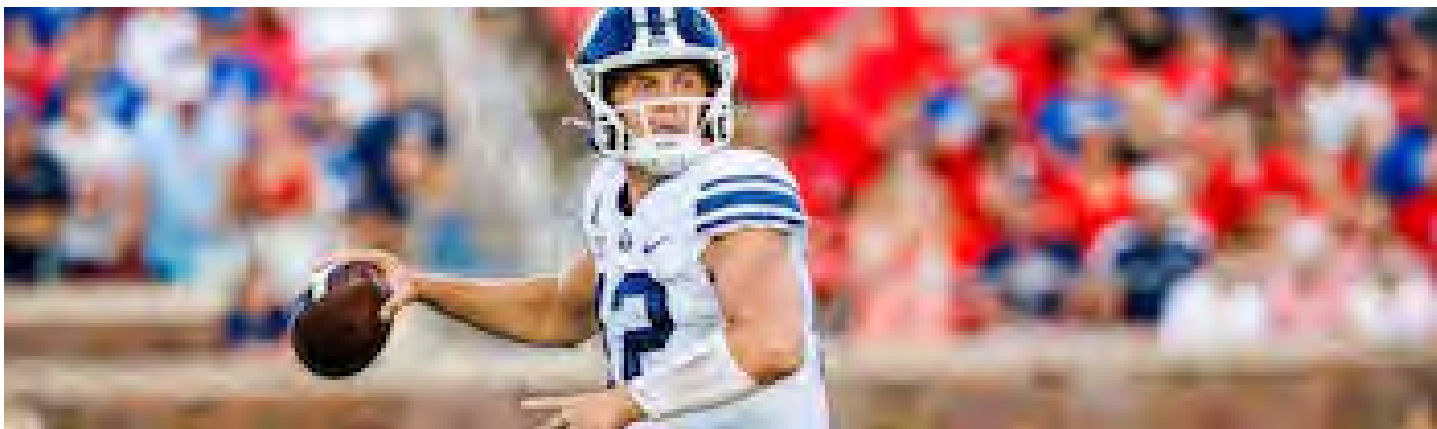
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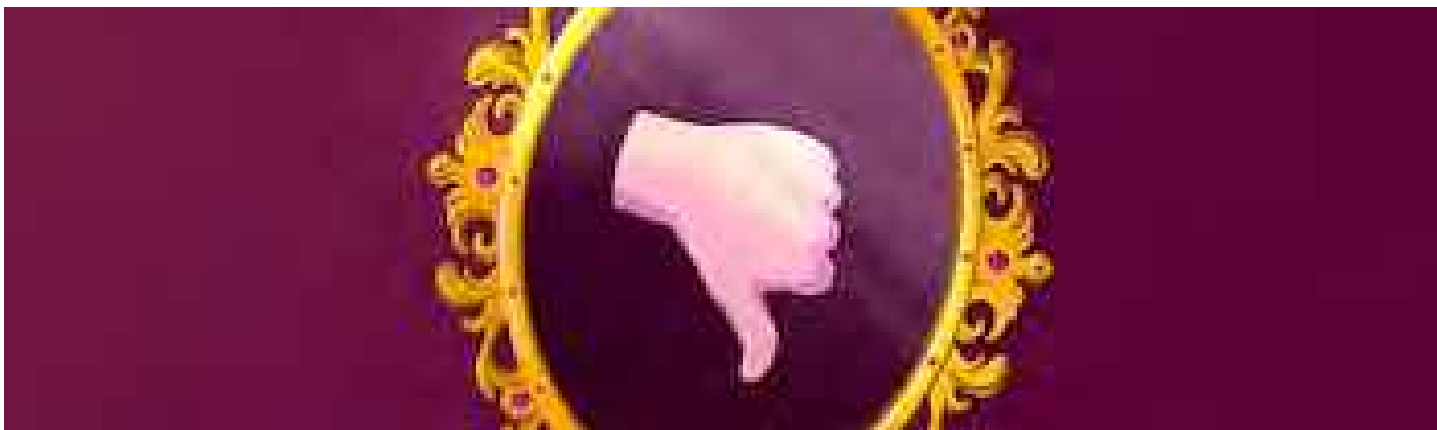
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POLITICS   UTAH POLICE/COURTS   UTAH

# Constitutional amendment over ballot initiatives would help Utah avoid ‘nightmare scenario,’ says Derek Monson

The ruling from the Utah Supreme Court created uncertainty, said Monson. A constitutional amendment could change that

Published: Aug 17, 2024, 11:41 a.m. MDT



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A voter places her ballot into a secure ballot drop box at the Salt Lake County Government Center in Salt Lake City on Wednesday, Nov. 21, 2023. | Laura Seitz, Deseret News



**By Hanna Seariac**

Hanna is a reporter for the Deseret News where she covers courts, crime, policy and faith.

Derek Monson wants to avoid a “nightmare scenario” where a law passed by ballot initiative has negative consequences and lawmakers cannot amend or override it.

That is why he wants a constitutional amendment to give the Utah Legislature the ability to amend and veto laws passed by initiatives, he said.

“That’s the extreme scenario,” said Monson, chief growth officer at Sutherland Institute, adding he did not think the court would smile upon that situation. But he also does not think the Utah Supreme Court made its position clear in a July ruling.



The state's highest court allowed a lawsuit over redistricting to move forward, and in that ruling the court said when citizens pass initiatives, those initiatives are protected from "unfettered legislative amendment, repeal or replacement." Lawmakers are weighing if they will call a special session to attempt to put a constitutional amendment on the ballot, which could come as soon as Wednesday.

The Sutherland Institute, along with the Utah Republican Party and other conservative groups and leaders, all called for a constitutional amendment on Friday afternoon. Utah GOP chair Rob Axson told the Deseret News the language in the decision conflicted with the principles of a constitutional republic and removed the process for good lawmaking.

In a phone call with the Deseret News Saturday morning, Monson also explained his reasoning. One of his concerns was that the language in the ruling could give the court a kind of lawmaking power because it hampers the ability of the Utah Legislature to amend or veto laws passed by ballot initiatives.

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The Utah Supreme Court ruling created two types of laws, said Monson. One category of laws which can be amended and reformed in a deliberative process for the public good, and a then second category — law passed by initiatives — where the amendment process is unclear and perhaps not possible.

"Ultimately, you have a lot of uncertainty created by the court in ballot-issued laws," said Monson. This could create a situation in which after an initiative passes, if it has negative consequences Utahns would have to suffer through them because the amendment process is not possible.

But there is another issue Monson sees. He thinks the decision does not reflect the reality of legislative power.

When speaking to a legislator on Friday, Monson said this lawmaker made a comment to him about not a single law he has ever passed has not been amended at some level.

He said the Utah Legislature needs to retain the amending power for initiatives, too.

Monson asked if the choice is between having to live with negative consequences from ballot initiatives or giving lawmakers veto and amendment power, which would people really prefer?

“Do you want to give anybody who has money the power to enact a law, however good or bad it may be?” asked Monson. “Or do you want the laws to be determined by a deliberative process where you are forced to make compromises in order to get the support to enact laws?”

California has a lot of ballot initiatives, said Monson. “There’s a reason people are leaving California, it’s not the weather.”

Limiting the ability of the Utah Legislature to amend ballot initiatives will incentivize more of them, said Monson.

“If you’re going to enact a law for a ballot initiative, you have to have some money,” he said, explaining the threshold for signatures is such that it is difficult to gather enough just through volunteers. Interest groups also spend money to put out materials about initiatives they support.

“So, in many instances, a ballot initiative proposal has backing of some special interest group, many times it is out of state,” he said. As it happens, if your ballot initiative is part of a larger push, then you might be able to get more national money that way.

## **Monson: It’s different from national criticisms of the U.S. Supreme Court**

Monson said the push for a constitutional amendment in response to a court ruling is different from advocacy to change certain aspects of the way the U.S. Supreme Court operates.

“Because on the local level, what this is about is basically a fundamental disagreement with the view of the (Utah) Supreme Court when it comes to the court’s interpretation

of the (Utah) Constitution,” said Monson. On the national level, he said there are attacks on the legitimacy of the institution and even the institution itself.

It is not a reasonable disagreement on the law while still upholding the institution of the court, Monson said.

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The decision is “clearly a weakening of the institution of the legislature,” he said. A facet of authority has been taken away from the legislature and this “is going to ultimately kind of enshrine harmful public policies.”

Monson said this decision forces the Utah Legislature into the same boat as Congress — in the sense that Congress is seen by some as ineffective.

“Now the court is having to decide public policy,” said Monson, explaining this decision will lead to more litigation. “They’re kind of inserting themselves into a lawmaking role because of how they chose to interpret the Constitution.”

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Deseret News reporter Samuel Benson follows the candidates ahead of the 2024 presidential election.



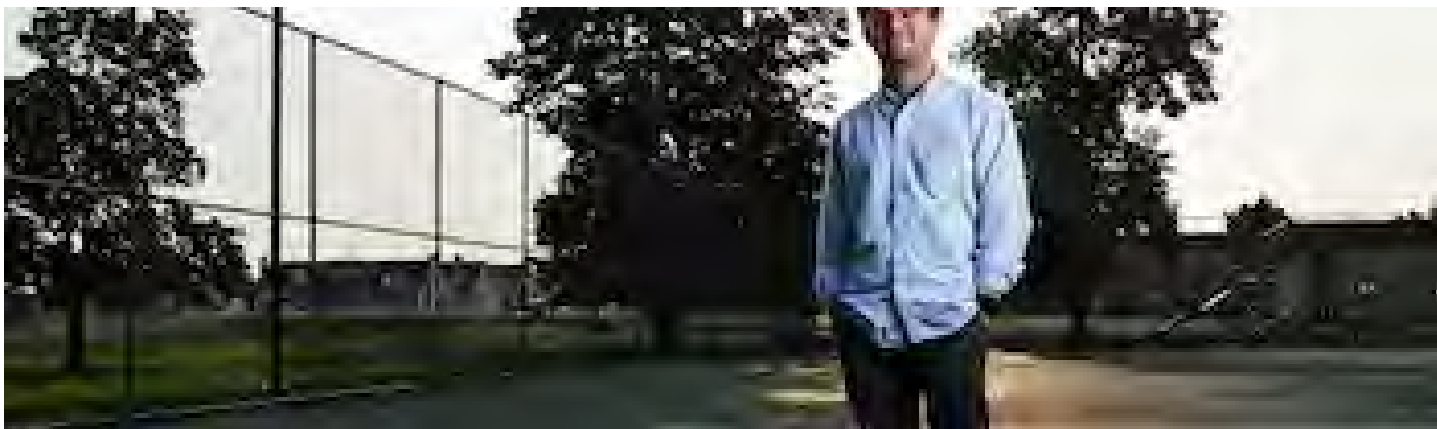
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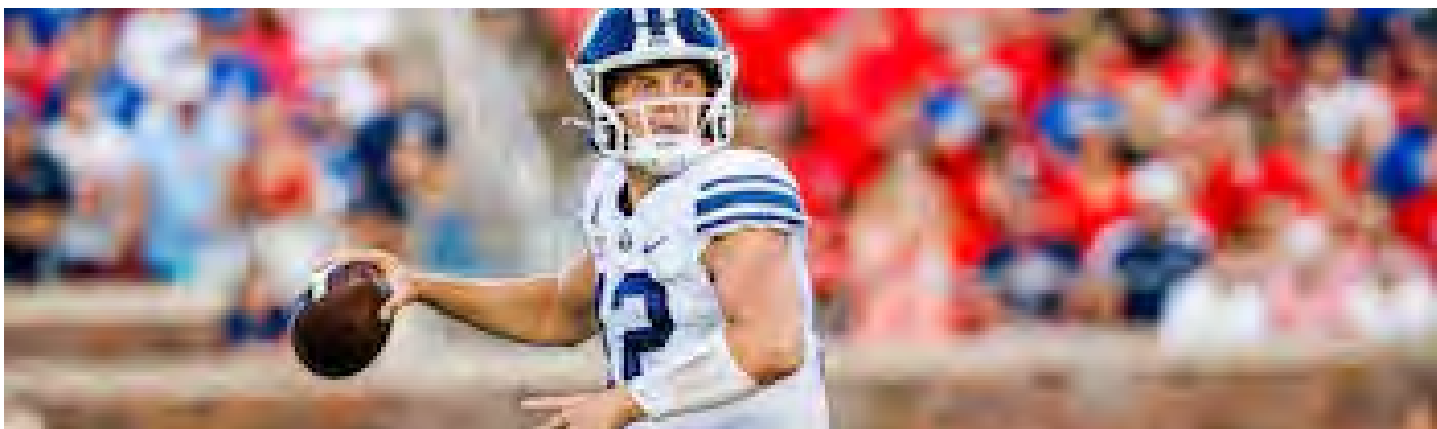
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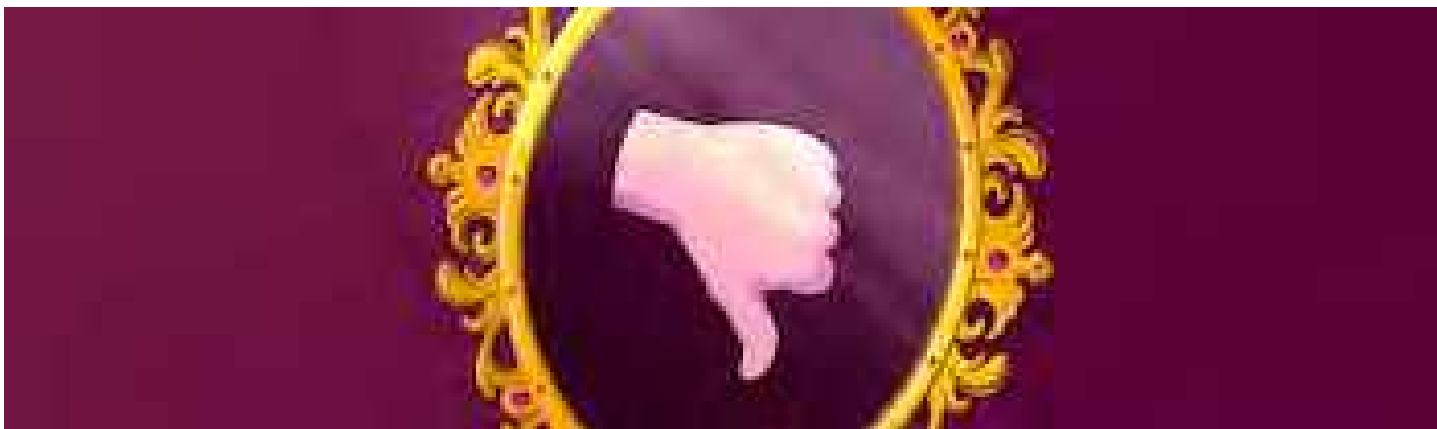
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POLITICS   UTAH POLITICS   UTAH

# Utah majority leaders say amendment needed so Utah doesn’t become California

Senate President Stuart Adams and House Speaker Mike Schultz said with the amendment, they are fighting for Utahns to retain control and maintain their voice

Published: Aug 20, 2024, 4:51 p.m. MDT



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House Speaker Mike Schultz, R-Hooper, and Senate President Stuart Adams, R-Layton, listen to the State of the Judiciary in the House chamber at the Capitol in Salt Lake City on Tuesday, Jan. 16, 2024. | Kristin Murphy, Deseret News PURCHASE IMAGE

**By Hanna Seariac**

Hanna is a reporter for the Deseret News where she covers courts, crime, policy and faith.

The constitutional amendment giving the Utah Legislature the ability to amend ballot initiatives preserves the voice of the people and allows lawmakers to deliberate to make good policy, said Utah Senate President Stuart Adams and House Majority Leader Mike Schultz.

Lawmakers are holding a special session Wednesday — if two-thirds vote in favor of advancing the amendment, then it will appear on Utahns' November ballots.

Schultz and Adams spoke to the Deseret News in separate interviews Tuesday ahead of the special session. They answered questions about why they think the amendment is

important and responded to concerns related about the move.

“We’re going to make our best case to the voters,” said Schultz, adding one misconception he has seen is that lawmakers are trying to change the initiative process. “All we’re saying is we would like to take it back to the way it’s been for the last 130 years.”

What we are fighting for is Utahns having control over the process, said Adams. “We’re not trying to take away any of their rights or any of their abilities. The initiative process has not changed at all. We just want to make sure that we keep Utah, Utah.”

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## The constitutional amendment explained

The amendment would “restore and strengthen the longstanding practice that voters, the Legislature, and local bodies may amend or repeal legislation,” a press release announcing it said.

The Utah Constitution would explicitly give the legislature the ability to amend or veto laws passed by citizen initiatives.

The amendment would also extend the signature collection period for the referendum process — this is the process where Utah citizens can take an existing law and put it up for rejection or appeal. It would allot 20 more days to the process for gathering the requisite signatures (8% of active voters for statewide initiatives in 15 of the 29 state senate districts).

The change to the constitution would also prohibit foreign entities from contributing to ballot initiatives or referenda.

The conversation surrounding the amendment was kicked off by a letter from the Utah Republican Party and another letter from the Sutherland Institute. Both advocated for an amendment after language allowing a lawsuit on redistricting to move forward —

the Utah Supreme Court said in the ruling that initiatives could be amended in limited circumstances. The Utah GOP letter was signed by many conservative groups, politicians and candidates for office.

Adams, R-Layton, said he has talked to lawmakers in other states about the foreign money they have seen come in to bolster support for initiatives. “One was Maine and they’ve had foreign money or foreign influences come in to try to influence their initiative process. And they’ve taken action to block that.”

“We want some more time to study that,” said Schultz, R-Hooper, explaining putting it into the Utah Constitution would be the first step. Lawmakers would then determine what options they have to prevent this kind of influence over time rather than rush the process.

The amendment has its critics.

Better Boundaries along with Mormon Women for Ethical Government, the chairs of the Utah Democratic Party and the United Utah Party signed a letter saying the amendment “would severely undermine the balance of power between the legislative, executive, and judicial branches that our founders wisely established.”

The group opened up the letter for signatures from everyday Utahns and more than 2,000 signed on.

Rep. Brian King, D-Salt Lake City, who is also the Democratic nominee for governor, said lawmakers were “rewriting the rules of the game.”

“This proposed state constitutional amendment is a blatant abuse of authority, and we must stand in firm opposition to it,” said King. “I will fight to protect the rights of Utahns and uphold freedom and liberty.”

Both Schultz and Adams said the amendment would preserve the voice of Utahns.

“This has given the citizens an opportunity to decide if they want the unelected justices to make that decision for them, or if they want to be able to make it for themselves,” said Schultz, adding he disagreed with the characterization of the effort a “power grab.”

“We just want to keep things the way it’s been for the last 130 years in the state of Utah and to show that we’re sincere in that we opened up the back end of that for referenda, making it easier for citizens of the state to hold the legislature accountable,” said Schultz.

Adams said he does not see the amendment as taking away the voice of the people or a power grab move because it does not change the initiative process or make it harder. He said sometimes initiatives need to be changed to comport with the constitution.

He gave the Better Boundaries initiative as an example.

“They came to us because when they drafted it, they had an unconstitutional provision in it,” said Adams, explaining the provision said if the House speaker and the Senate president did not appoint people to the commission, it would default to the Supreme Court.

That was considered an unconstitutional provision, said Adams, and Better Boundaries asked for changes.

“We actually made those changes, had a press conference in the Gold Room, and they needed it, or they would have lost their initiative on constitutional grounds,” Adams said.

This is the process of a democratic republic, he said. The Founding Fathers put elected representatives in place to be accountable to the people — they can be fired if they are not. They have the responsibility of expending effort to work hand-in-hand with constituents to find the best policy.

Sometimes amendments to bills are necessary to do that.

“When somebody says we’re taking away the right of the people, we’re taking their ideas and making them functional for them,” said Adams.

## **Why Adams and Schultz support the amendment**

Both Adams and Schultz pointed toward the Utah Legislature’s history working with stakeholders after initiatives become law to make better policy. Schultz said the

Legislature has left the core of initiatives remain in law and has only made amendments to reflect what the voters wanted.

Schultz said when voters passed the medical marijuana initiative, they were unaware recreational marijuana would be decriminalized, as that part was “buried” in the discussions.

“When it passed, lawmakers got together and worked with the groups, we were able to keep true medical marijuana,” said Schultz, adding those groups stood to benefit financially from removing penalties for recreational marijuana, but it was not best for Utah voters.

The marijuana initiative has been changed every legislative session since 2018, Adams said. “And it hasn’t just been Republicans changing it.” During the last session, the change was sponsored by two Democrats.

“We have changes every year that we have to make to our statute to make it fit,” he said, explaining there are consequences and new issues that emerge.

The core reasons Schultz and Adams expressed for amending the Utah Constitution were allowing Utah voters to keep their autonomy and preserving the state’s constitutional republic.

Schultz said he was concerned about the money that would come into the state even though Utah voters may not want it.

Pointing toward the Medicaid expansion, Schultz said the focus was on the actual expansion, but not the automatic increases that would have caused the state financial issues.

“When the voters passed that, the Legislature took some time. We worked through it very carefully and we left intact what the voters thought they were passing — the Medicaid expansion,” said Schultz. “But we took out all the special interest groups’ money that went to fund it.”

Schultz said he did not want Utah to become like California and be governed by initiatives that voters did not fully understand when they passed them.

“That’s why California has budget problems and all sorts of other problems,” he said.

Adams said initiatives in California were “not necessarily a grassroots effort,” explaining groups spend big money to gather signatures and do PR campaigns to sway voters.

If the amendment makes it onto the ballot, Schultz said Utahns should be proud of the process.

“This is something we should be proud of because ultimately it’s the voters, it’s the citizens of the state that get to make that decision.”

“We live in the greatest state in the nation,” said Adams, listing off several metrics that offer evidence of that ranging from Utah’s management to economy to the rate of happiness.

“We don’t want it to be California with initiatives and out-of-state money and out-of-state influences determining policies that affect the citizens of Utah,” said Adams.

“That’s what we’re fighting for.”

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## Not the end of the conversation

The amendment is not the end of the conversation, said Schultz. “I think we’re even going to broaden it out a little bit.”

Schultz expressed openness to having a conversation on changing Utah’s process of judicial appointments — from appointments to elections.

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“If our judges are going to have this big of consequences on the policy of the state, maybe they ought to be held accountable to the voters as well,” he said, adding he wanted the voice of the people to be more representative of the people.



“Perhaps the people ought to have some say on what decisions their judges are making,” said Adams. He said it might be a better process.

Schultz said lawmakers would go through a process and look into the issue, adding he did not know if electing judges was the right answer. But over the next one to two years, they would consider it.

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Deseret News reporter Samuel Benson follows the candidates ahead of the 2024 presidential election.



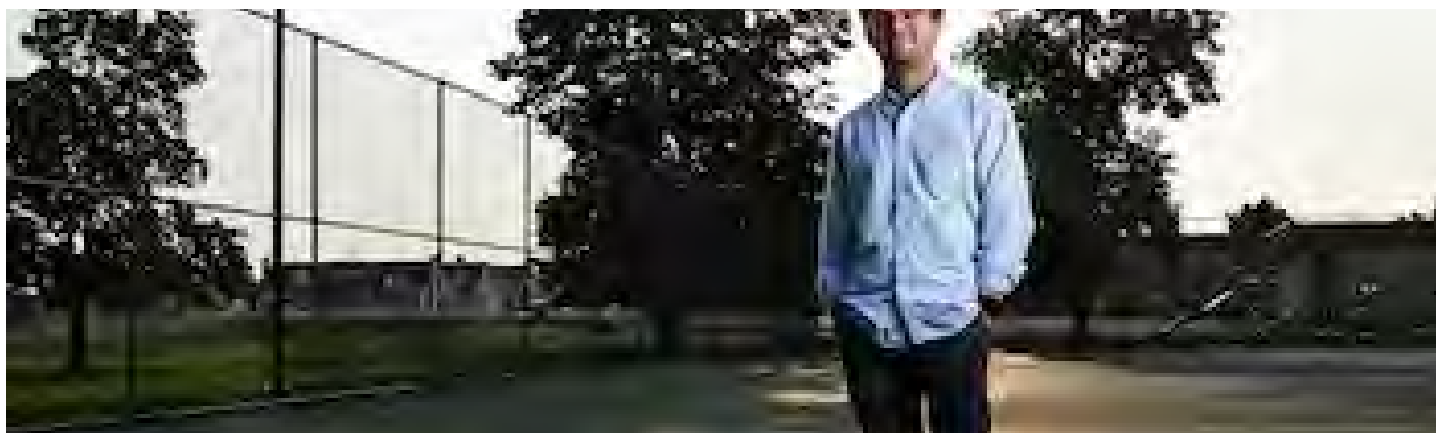
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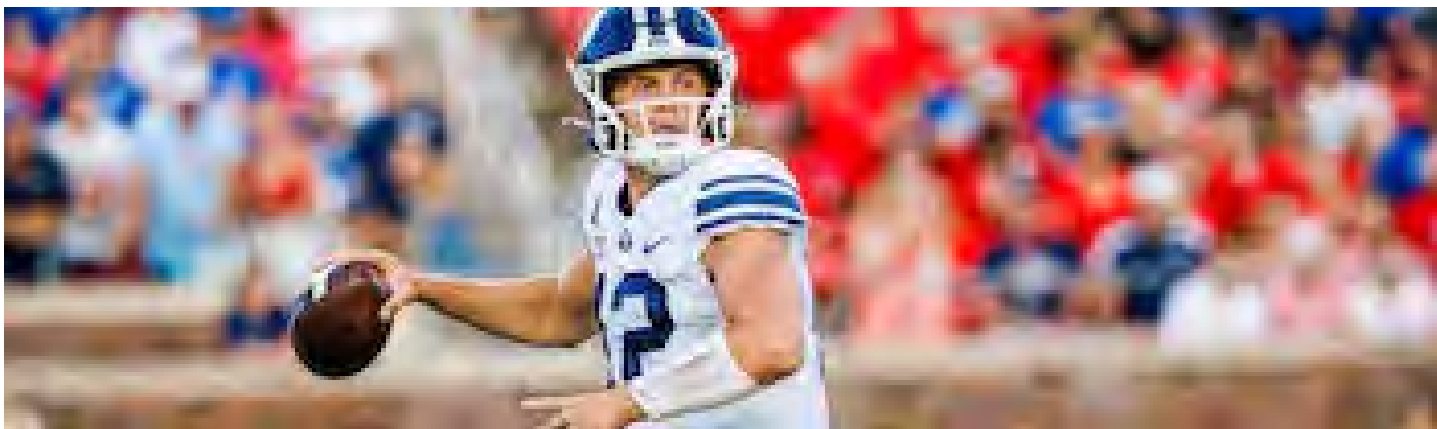
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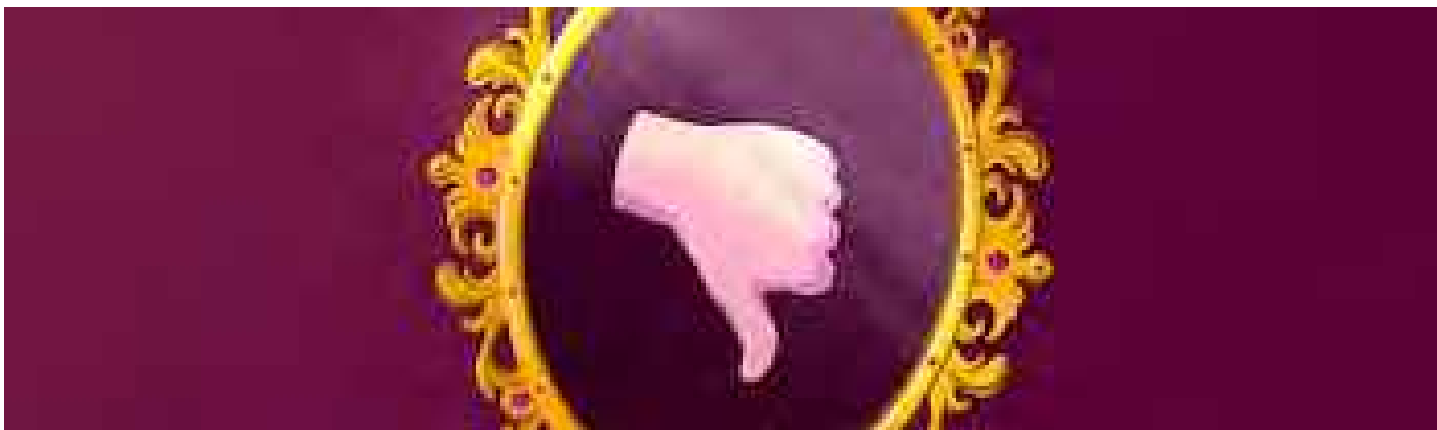
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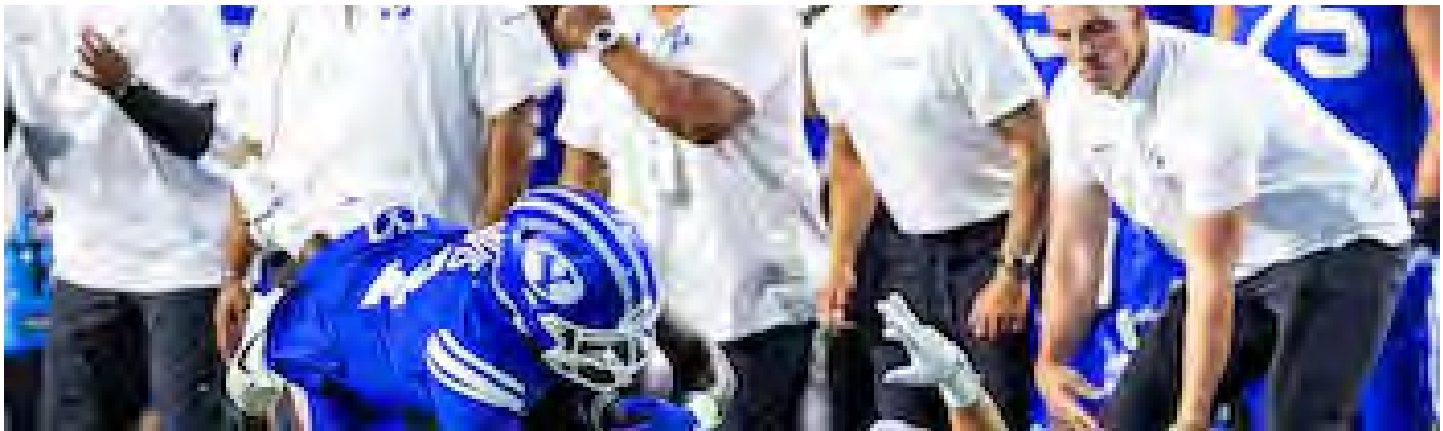
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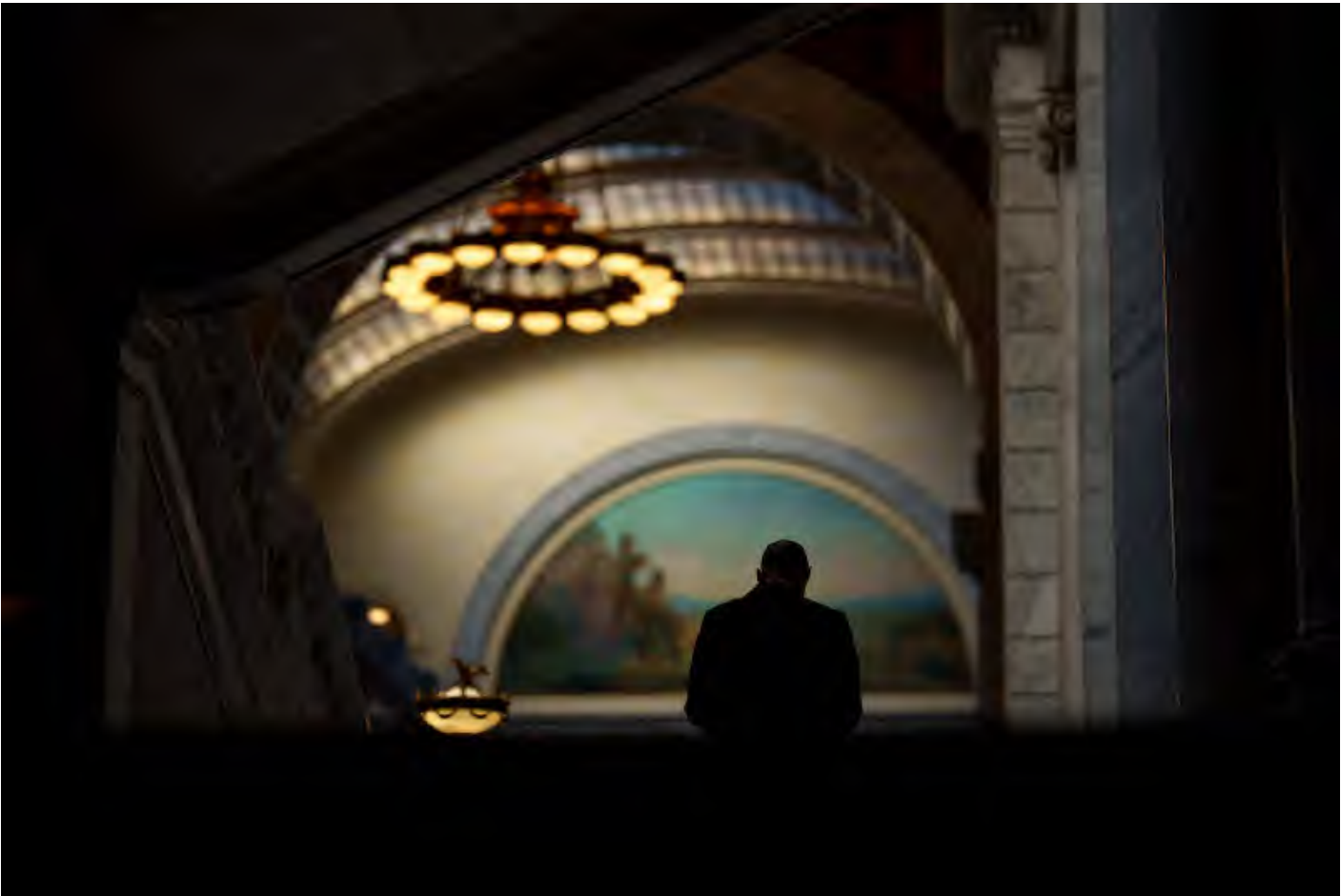
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# Legislative leaders say fear of California-style laws, foreign influence cause to rush constitutional amendment

Lawmakers look to overturn a unanimous Utah Supreme Court ruling and assert their ability to rewrite or repeal voter initiatives in Wednesday special session



(Trent Nelson | The Salt Lake Tribune) The Utah Capitol in Salt Lake City on Wednesday, Feb. 28, 2024. The Utah Legislature will host a special session on Wednesday in hopes of amending the Utah Constitution.

By Robert Gehrke | Aug. 20, 2024, 7:05 p.m. | Updated: 7:59 p.m.

■ Comment



Utah lawmakers are scheduled to meet Wednesday afternoon when a Republican supermajority is expected to approve a constitutional amendment undoing a recent Utah Supreme Court ruling that limited the Legislature's ability to amend or repeal citizen ballot initiatives.

The amendment, which had not been published as of Tuesday evening but was obtained by The Salt Lake Tribune, would add language to the Utah Constitution that clarifies that “the people’s exercise of their legislative power ... does not limit or preclude the exercise of legislative power, including through amending, enacting or repealing a law, by the Legislature or a law making body of a county, city or town, on behalf of the people whom they are elected to represent.”

If it passes and is approved by a majority of voters in November, it would give the Legislature the power to significantly rewrite voter-approved ballot initiatives — as they did with two 2018 ballot initiatives legalizing medical marijuana and another expanding health coverage to low-income Utahns through Medicaid — or undo the intent of the voters, as they did with an initiative aimed at prohibiting partisan gerrymandering.

In 2018, a [majority of Utah voters approved Proposition 4](#), a ballot initiative that created an independent redistricting commission and prohibited partisan gerrymandering. Then, in the 2020 legislative session, [lawmakers passed SB200](#), which changed the law and stripped out the ban on partisan gerrymandering. Lawmakers later passed [congressional maps that split Salt Lake County](#) — the most liberal part of the state — into four congressional districts.

The League of Women Voters, Mormon Women for Ethical Government and several individuals impacted by the maps sued, saying that splitting the county diluted the liberal vote, effectively denying them a voice in Congress.

Additionally, plaintiffs argued that the passage of SB200 effectively usurped the will o

The justices agreed, [basing their decision on language in the Utah Constitution](#) that states, “All political power is inherent in the people ... and they have the right to alter or reform their government as the public welfare may require.”

Their ruling was unanimous, with all five Republican-appointed justices agreeing that voter initiatives that reform government are entitled to deference from the Legislature.

Now, lawmakers, upset at the court’s decision, are using their emergency powers to call a special legislative session to amend the Utah Constitution to undo the Utah Supreme Court’s ruling.



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In their proclamation calling the special session, legislative leaders cite the need to address a decision “upending over 100 years of representative democracy” and “leaving the state vulnerable to laws advanced by foreign interests through ballot propositions” that cannot be amended.

In a statement Tuesday, House Democrats accused Republican leaders of “keeping everyone in the dark” and using the pretense of an emergency to “once again disregard the will of the people.”

“Let’s be clear: this is not an emergency — it’s a blatant power grab following the Utah Supreme Court’s ruling that the Legislature overstepped,” the Democratic leaders said.

Better Boundaries, the group that ran the anti-gerrymandering ballot initiative, sent a letter to Gov. Spencer Cox and legislative leaders expressing their concern. The letter was signed by dozens of community groups and political leaders, including former Utah Supreme Court Justice Christine Durham.

“The right of citizens to propose and enact laws through ballot initiatives is not a threat,” the letter reads. “It’s a vital expression of our shared values of self-governance and civic engagement. We stand ready to work with you to protect and enhance these democratic principles that make Utah strong.”

## **What does the proposed amendment actually do?**

In 1900, four years after gaining statehood, Utah became the second state to adopt a process whereby voters can change or enact laws through an initiative process — although the Legislature didn’t actually establish a process for how citizens could put an initiative on the ballot until 1916.

Since then, there have been successful ballot initiatives to prohibit the fluoridation of water, making English the state’s official language, legalizing medical marijuana and prohibiting partisan gerrymandering, among others.

In many instances, the Legislature changes the law after the initiative passes — like changing how the state’s medical marijuana program is administered.

But the Utah Supreme Court’s ruling put limits on the extent to which legislators are able to tinker with initiatives passed by voters who seek to “reform their government.” This was hailed as a win by initiative backers, who no longer would have to put vast amounts of time, and in some cases millions of dollars, into passing an initiative, only to see their work undone.

Legislative leaders, however, chafed at the courts restricting their authority. In a joint statement after the Supreme Court ruling, House Speaker Mike Schultz, R-Hooper and Senate President Stuart Adams, R-Layton, called it “one of the worst outcomes we’ve ever seen from the Utah Supreme Court,” adding it “made a new law about the initiative power, creating chaos and striking at the very heart of our republic.”

Adams contends that the amendment does not change the initiative process.

“You can gather signatures and do one initiative or 100 initiatives before what we do tomorrow,” Adams said in an interview on Tuesday. “Same thing after. No change to the initiative process.”

The amendment will, however, make Utah’s Constitution explicit that the Legislature has the right to change or repeal any ballot initiative it sees fit, wiping out the protections the justices said in their ruling exist for government-reform initiatives.

(Rick Egan | The Salt Lake Tribune) Utah Senate President Stuart Adams talks about a new public lands lawsuit during a news conference at the Capitol, on Tuesday, Aug. 20, 2024.

## **Why is the Legislature convening now?**

In 2018, lawmakers put a constitutional amendment on the ballot that was approved l



itself into special session in instances of a “persistent fiscal crisis, war, natural disaster, or emergency in the affairs of the state.”

Before that passed, only the governor could convene a special session.

The term “emergency” is not defined, and lawmakers used the power twice during the COVID pandemic to adjust budgets, change various laws and restrict the emergency powers of the governor.

Adams says the reason to do it now is that constitutional amendments have to be voted up or down by voters in a general election and he wants the initiative amendment in place this year. The reason, he said, is that he has heard there is a “boatload” of initiatives preparing for the 2026 ballot and the ground rules should be clear going into that effort.

“It’s not fair to let people move forward on this initiative process thinking that they can’t be changed,” he said. “If we’re going to do this, we need to do it now before people move forward with the anticipation [that] one policy is in place when it’s not.”

Lawmakers are already going to have to change the deadlines to get an amendment on the ballot in order for it to make the initiative amendment eligible for the November election.

“It’s now or never,” Adams said.

## **Are initiatives now “super laws” that can never be altered?**

One of the main arguments for the amendment is that the court’s ruling has tied the Legislature’s hands and made it impossible for them to fix or change [what have been called “super laws,”](#) or “supreme laws.”

On Tuesday, Adams said not being able to revise future initiatives would be devastatir

“How can you function as a government without being able to change your statute?” he said. “When those initiatives are passed, they become part of our statute. They aren’t an initiative anymore. To not be able to change the law is absolutely unconscionable. And the Supreme Court didn’t define what they meant by general government. ... It doesn’t make sense.”

Here is what justices said of their ruling last month:

First, the ruling was narrow. It only applied to ballot initiatives in which citizens “reform their government.” It is not clear from the ruling if the other 2018 ballot initiatives — legalizing medical marijuana and expanding health care access to low-income Utahns through Medicaid — would fall into that category. The ruling was silent on those issues.

Second, the justices were explicit that the Legislature can pass laws and change initiatives to help implement what voters expressed that they wanted in a ballot initiative. Passing laws that improve access to medical marijuana, for example, may fall into that category.

“This does not mean that the Legislature cannot amend a government-reform initiative at all,” the justices wrote. “Rather, legislative changes that facilitate or support the reform, or at least do not impair the reform enacted by the people, would not implicate the people’s rights under the Alter or Reform Clause.”

It’s when the Legislature passes laws that undo what voters wanted — allowing partisan gerrymandering when voters wanted to prohibit it — that problems are raised, the court said. The justices did not explicitly prohibit such acts, and only said that type of legislation would be held to strict scrutiny — meaning the state has to show there is a compelling state interest in changing the law and that it was as narrowly tailored as possible, so as not to infringe on the public’s right to reform government.

In the gerrymandering case, it will be up to a trial court to decide if the state can meet

(Francisco Kjolseth | The Salt Lake Tribune) Supporters of the Better Boundaries Ballot Initiative gather at the Utah Capitol celebrate a Utah Supreme Court ruling that the Legislature overstepped its authority when it rewrote a 2018 voter-approved ballot initiative in drawing new congressional districts on Thursday, July 11, 2024.

## Lawmakers say Utah is at risk of becoming like California.

Legislative leaders have said that the court's ruling protecting initiatives from being changed opens the door for a California-style system of government, where "big money and outside interest groups ... run initiatives to alter the government and push their own agendas."

California is frequently pointed to as a dystopian, democracy-run-amok state by lawmakers.

Like Utah, California has both an initiative and a referendum law. A referendum is like an initiative but allows citizens to gather signatures to try to overturn all or part of a law passed by the legislature.

Since California residents got the right to an initiative and referendum in 1912, [there have been 401 initiatives and 54 referenda that have made it onto the ballot](#). Of those, 138 of the initiatives and 22 of the referenda passed.

In Utah, it has been a different story.

In the 124 years since Utahns gained access to the ballot initiative and referendum, 23 initiatives have made it to the ballot, [according to the National Conference of State Legislatures](#). Just seven initiatives have passed, including the last three that passed in 2018. At least two referenda have also passed — one in 2007, when voters overturned a school voucher bill, the other 30 years earlier.

One reason for the difference is Utah has a much higher threshold for initiatives and referenda to qualify for the ballot. In California, voters only need to gather signatures

In Utah, the percentage is double California's — [currently 134,298 out of fewer than 2 million voters](#). Moreover, supporters have to get those signatures proportionally in at least 26 of the state's 29 counties — meaning if they fail to reach the 10% threshold in four counties, the initiative doesn't qualify.

Utah also has a law that allows opponents of the initiative to contact voters who signed petitions and try to convince them to remove their names and keep an initiative off the ballot.

## **Are foreign interests dumping money into Utah initiatives?**

The short answer is: No.

State and federal law already prohibits foreign entities from donating money to candidates. It does not, however, prohibit foreign entities from spending money to promote or oppose a ballot initiative.

Adams said Tuesday that he does not know of any examples where foreign interests have spent money on Utah initiatives, but said the state wants to cut off the possibility before Utah sees something similar to what happened with an initiative in Maine.

"I think most people believe that ... Utahns need to decide what we do in Utah, and it shouldn't be decided by people with foreign interests," he said.

Maine officials were pursuing a \$1 billion electricity transmission project in the western part of the state that [was opposed by Hydro-Quebec](#), the company that produced the power to be shipped, Maine Public reported. Maine legislators tried to ban spending by entities owned by foreign governments, but the state's governor vetoed it over constitutional concerns. Hydro-Quebec, which is owned by the Canadian government, spent \$22.3 million urging voters to oppose it and [voters ended up rejecting the project](#).

Last year, 86% of [Maine voters backed a ballot initiative that bans electioneering](#) by

States like [Colorado, Minnesota and Alaska](#) have passed statutes that ban foreign [nationals](#) or companies from spending money on ballot measures, according to Reuters. Similar bills have been considered in Hawaii, Massachusetts, New York, Virginia, Washington and Connecticut. There is some question as to whether such bans violate the First Amendment.

Utah law does not prohibit foreign entities from lobbying Utah legislators.

Last year, [The Associated Press](#) published an investigation about the effectiveness of efforts by the Chinese government to lobby the Utah Legislature. State lawmakers have frequently visited China, and after a senator introduced a resolution in 2020 supporting China during the coronavirus pandemic, he was interviewed by FBI agents.

Adams has also traveled internationally, including a trip to Qatar in 2022 [to watch the World Cup soccer tournament with his grandchildren](#).

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# What to know about Utah’s special session over changing state constitution

The proposed amendment aims to clarify legislative authority over citizen initiatives

Published: Aug 21, 2024, 1:03 p.m. MDT



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A voter approaches a ballot drop box during primary election voting held at the Lehi Public Safety Building in Lehi on Tuesday, June 25, 2024. | Isaac Hale, Deseret News PURCHASE IMAGE

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**By Hanna Seariac**

Hanna is a reporter for the Deseret News where she covers courts, crime, policy and faith.

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The Utah Legislature is meeting for a special session Wednesday to determine if they will put a constitutional amendment on voters' November ballot.

The amendment says that lawmakers have the ability to amend or veto laws that originated as ballot initiatives.

Lawmakers do not have much time remaining if they would like this amendment to appear on the ballot. County clerks start mailing out ballots on Oct. 15, but ballots need to be finalized by Sept. 3.

Wednesday is the final interim day scheduled before this deadline.

If two-thirds of lawmakers advance the constitutional amendment on Wednesday, Utah voters will see it on their November ballots. Here is a closer look at what the amendment does (and does not) say and what people on both sides of the amendment have said about it.

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## What does the amendment say?

The proposal to amend the Utah Constitution is sponsored by Sen. Kirk A. Cullimore, R-Draper, and Rep. Jordan D. Teuscher, R-South Jordan.

The following text would be added to the state constitution if the resolution passes and voters approve it.

**“(3) (a) Foreign individuals, entities, or governments may not, directly or indirectly, influence support, or oppose an initiative or a referendum.”**

**(b) The Legislature may provide, by statute, definitions, scope, and enforcement of the prohibition under Subsection (3) (a).**

**(4) Notwithstanding any other provision of the Constitution, the people’s exercise of their Legislative power as provided in Subsection (2) does not limit or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature, or by a law making body of a county, city, or town, on behalf of the people whom they are elected to represent.**

— Proposal to Amend the Utah Constitution

The amendment would take effect on Jan. 1, 2025, if two-thirds of the Legislature advances it and voters pass it.

## **What does the amendment mean?**

The amendment explicitly grants lawmakers in the state the ability to make changes to or repeal laws that started as initiatives. Amendments are common in the lawmaking process, which is what legislators have said is one of the primary reasons for making this part of the state constitution.

If passed, the amendment would also prevent foreign entities from using money or other means to support or oppose citizen-led initiatives.

The amendment does not prevent citizens from passing initiatives. Nothing changes about the process of citizens proposing initiatives if the amendment passes.

The reason behind the proposal of this amendment is a Utah Supreme Court decision allowing a lawsuit over redistricting to move forward, the court included language that

said when citizens pass initiatives, those initiatives are protected from “unfettered legislative amendment, repeal or replacement.”

The bar to amending laws that originated as initiatives seems to now hinge on a legal test requiring the amendments to address “a compelling government interest.” Others laws, like those passed by the Legislature, do not have to show this kind of interest before they are amended.

## What would the amendment mean for Utah citizens?

The process for Utah citizens getting initiatives on the ballot and then passing them would remain the same way it is right now based on the amendment.

The amendment would explicitly spell out that the Utah Legislature has the power to amend or repeal initiatives. In the past, lawmakers on both sides of the aisle have amended initiatives. An example of that is medical marijuana. Senate President Stuart J. Adams, R-Layton, said the law has been amended every session since voters passed it, but the core of it — the legalization of medical marijuana — has remained intact.

Utah majority leadership said they would like to add more time to the referendum process and there is a bill open to do just that. Referendums are different from initiatives, they are the way Utah voters can repeal laws. During the special session, state lawmakers will try to extend the signature gathering period, which would give Utah citizens more time (20 days) to collect signatures.

## Why some are in favor of the amendment

**Utah Senate President Stuart Adams and House Speaker Mike Schultz** said they were fighting to preserve the voice of Utahns and to allow the state legislature to make necessary changes to initiatives.

Adam pointed toward an instance where they amended the Better Boundaries initiative since it had an unconstitutional provision in it. He said the group asked for the changes and they made them so the group did not lose their initiative on constitutional grounds.

“We’re taking their ideas and making them functional for them,” he said about the Utah Legislature’s track record on amending initiatives.

“This has given the citizens an opportunity to decide if they want the unelected justices to make that decision for them, or if they want to be able to make it for themselves,” said Schultz, R-Hooper, about the proposition of the amendment.

**Utah GOP chairman Rob Axson** who led an effort to encourage lawmakers to consider an amendment said he thought the court’s ruling was out of line with the principles of a constitutional republic.

“I think the core issue is that in a republic you are electing folks to represent you and they are most closely accountable to the voters while also being positioned to make necessary judgments and adjustments,” said Axson, explaining lawmakers sometimes need to be able to change laws quickly due to circumstances that arise.

**The chief growth officer at Sutherland Institute, Derek Monson,** said the ruling created uncertainty and an amendment would resolve that. “Now the court is having to decide public policy,” said Monson, predicting the ruling would lead to more litigation around laws. “They’re kind of inserting themselves into a lawmaking role because of how they chose to interpret the Constitution.”

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## Why some oppose the amendment

**Better Boundaries** led an effort on a joint letter to oppose the amendment, saying they thought the amendment would undermine the balances of power.

“Rather than rushing to amend our constitution, we call on you to embrace this ruling as an opportunity to strengthen our democratic processes, and encourage you to work collaboratively with citizens and grassroots organizations through existing channels, and to focus on improving governmental transparency and accountability, which will reduce the need for citizen initiatives,” said the group.



**Utah Democratic Party chair Diane Lewis** said the amendment was an attempt for Republicans to hold onto power.

“If the Republican supermajority succeeds in putting their anti-Utahn constitutional amendment on the ballot this November, Utahns must turn out to defeat it,” said Lewis in a statement. “We cannot let power-hungry politicians take away our ability to hold them accountable.”

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**Utah Minority Leader Angela Romero** had not seen the text of the amendment by the time of her comments, but expressed concern about giving the Utah Legislature the ability to veto a citizen-driven initiative.

“For truly a citizen legislature, we should be listening to the people of our state,” said Romero, D-Salt Lake City. “And I don’t think a majority of people in Utah would want to do anything that jeopardizes their voice.”

For more reporting on this amendment, see the following articles:

- [Utah legislators considering a constitutional amendment on ballot initiatives.](#)
- [Constitutional amendment over ballot initiatives would help Utah avoid ‘nightmare scenario,’ says Derek Monson.](#)
- [Special session called to put initiative constitutional amendment on Utah’s ballot.](#)
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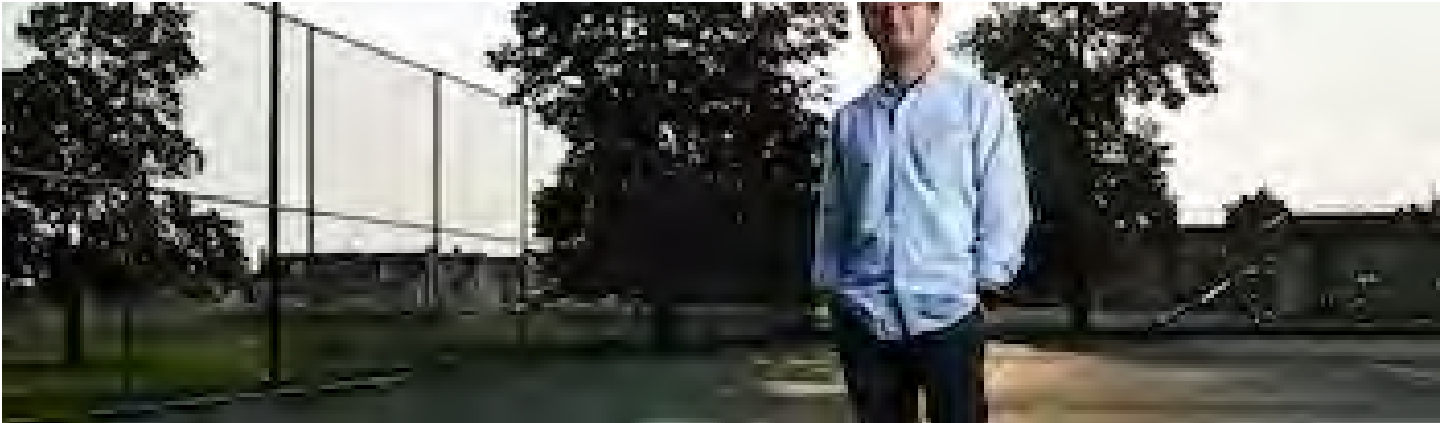
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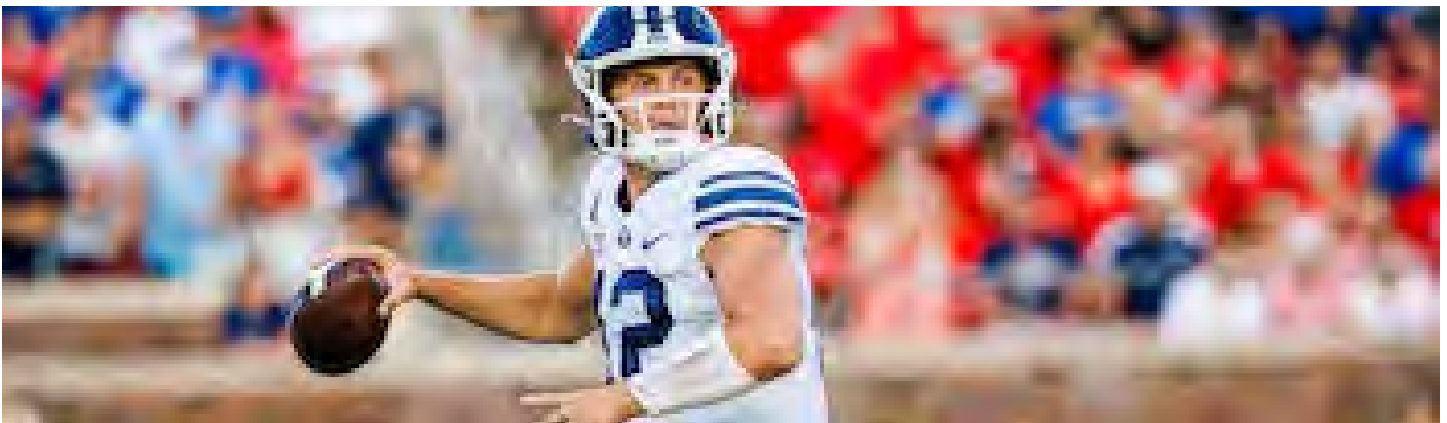
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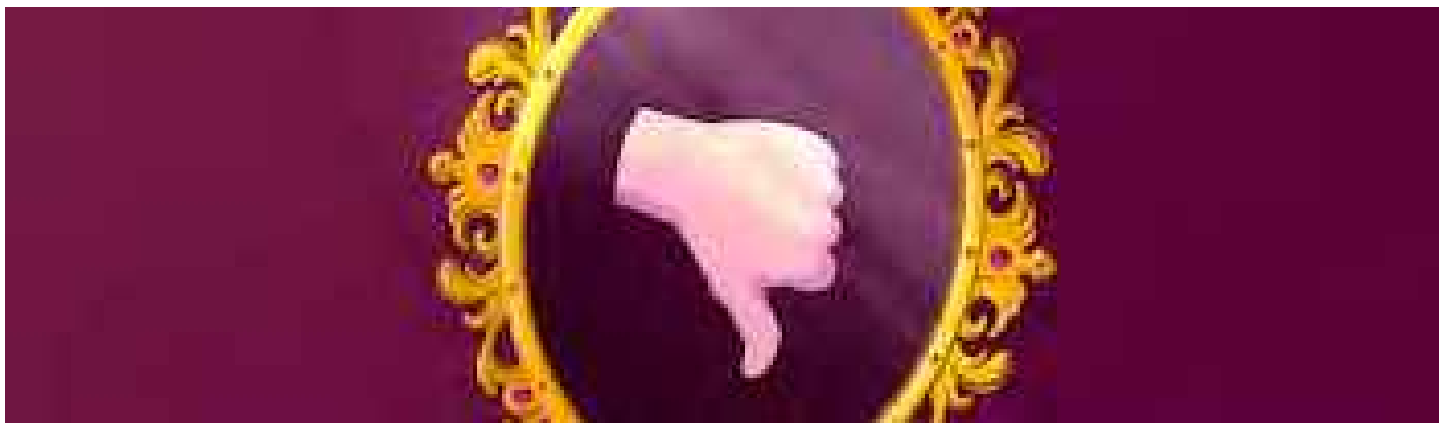


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# GOP supermajority votes for more power over ballot initiatives, sends it to Utah voters

KUER 90.1 | By [Saige Miller](#), [Sean Higgins](#)

Published August 21, 2024 at 9:17 PM MDT



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*Saige Miller / KUER*

Utah lawmakers in the House and Senate debate a resolution to put a constitutional amendment on the November ballot, Aug. 21, 2024 The proposal, if approved by voters, would grant lawmakers the ability to overhaul citizen initiatives.

Utah voters will see a new constitutional amendment on the November ballot, and not all Republicans are happy about it. Nine joined with all Democrats in voting against giving lawmakers the power to revise or repeal citizen-led ballot initiatives.

The vote in the Senate was [20-8](#), and the House cleared the [resolution 54-21](#). The majority of Republicans that voted no are in competitive districts within Salt Lake

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"I feel like this is taking power away from the people that is fairly well defined in Utah's constitution," Republican Rep. [Marsha Judkins](#), one of the nays and who is not running for reelection, told KUER.

"This is being rushed way too fast, and we need more time to really examine this issue if it's even going to be a problem."

The Republican supermajority wants the ability to freely repeal or alter citizen-led initiatives passed by voters. They called the special session after a July [Utah Supreme Court ruling](#) that said lawmakers overstepped their authority when they altered a voter-approved initiative on redistricting.

Legislative leadership called it "one of the worst outcomes" they've ever seen from the court.

Despite the reaction to the ruling, House sponsor Rep. [Jordan Teuscher](#) insisted in his closing remarks before the vote that this "has nothing to do with redistricting."

"We're not bringing forth this constitutional amendment because the Legislature is butthurt that maybe we might have to redraw maps."

## What the resolution says

Lawmakers published the [proposed resolution language](#) roughly 24 hours before they convened.

The resolution, if approved in November, proposes to give the Legislature the ability to amend or repeal ballot initiatives passed by voters. It would also prohibit "foreign individuals, entities, or governments" from "directly or indirectly" influencing, supporting, or opposing an initiative or a referendum. Another aspect would allow lawmakers to act "retrospectively," meaning they would have the power to alter or repeal previously passed initiatives.

Republican Sen. [Lincoln Fillmore](#) said that ability is necessary, especially on past initiatives like medical marijuana which is expected to be reclassified on the federal level. Additionally, Fillmore said "unelected judges cannot be the final arbiter of what goes on in Utah," even though all the justices appointed to the Utah Supreme Court

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were done so by a Republican governor and confirmed by a Republican supermajority.

“We've got different interpretations of what provisions in the constitution mean and we're asking the people to decide, which is their right,” he said. “Our constitution gives them the right to decide. So let's give Utah that choice.”


The ability to act “retrospectively” would allow lawmakers to parry the state supreme court’s July 11 decision. The case centered on the Legislature’s actions to amend Proposition 4, the 2018 citizen-passed initiative for an independent redistricting commission to handle the state’s once-a-decade redistricting. The Legislature voted to make the commission purely advisory and went on to approve their own maps in 2021.

The court did not rule on the constitutionality of the maps, but affirmed that “the people's right to alter or reform the government through an initiative is constitutionally protected from government infringement, including legislative amendment, repeal or replacement of the initiative in a manner that impairs the reform enacted by the people.”

The underlying case was sent back to a lower court for further deliberation.


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# Why the supermajority sees this as necessary

The Republican’s interpretation is that the ruling creates what they call “super laws” that cannot be altered by the Legislature. In fact, the court’s decision said the Legislature is well within its right to alter a citizen’s initiative, as long as they do not

Rather than bar any action, the court established a stricter standard that needs to be met. Justice Paige Petersen wrote lawmakers could still alter an initiative and survive a court challenge “if the Legislature shows that they were narrowly tailored to advance a compelling government interest.”

In a committee hearing preceding the vote on the resolution, Sen. [Kirk Cullimore](#), an attorney by profession, countered that rationale.

“I would contend, though, that nowhere in law or case law do we have a definition of what it means to alter or reform government,” he said. “If I’m somebody pushing an initiative, and you have a good attorney worth their salt, any good attorney is going to make a pretty compelling argument that their particular initiative alters and reforms government.”

Cullimore interprets the Utah Constitution to say that the Legislature and the people are co-equals, therefore lawmakers should have the power to change initiatives. It’s a similar argument the state made during oral arguments in front of the Supreme Court. From his perspective, the special session resolution will “let the people decide and [let] the people interpret what their constitution says.”

Sen. [Daniel Thatcher](#), one of two GOP senators to vote against the resolution, doesn’t believe the Legislature’s power to amend initiatives is at risk. Rather, the public’s respect for the Legislature is.

“I don’t think that the public will come around on this. And I think this is unlikely to pass in November, but it is likely to give us the biggest black eye we’ve ever had as a Legislature.”

Democratic Sen. [Kathleen Riebe](#) believed the special session was called under “false pretenses” that further erodes trust with Utahns.

“Right now, we are experiencing an unprecedented high level of mistrust in politics, and I don’t believe that this is helping.”

Her perception of how Utahns are responding to actions from election officials aligns with a [recent survey](#) from the Utah Foundation. The non-partisan organization found that the number one issue with Utahns was “politicians listening to voters.”

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Public comments at the earlier hearing were heavily opposed to the proposal. Jeff Baker served on the independent redistricting commission and questioned the speed at which this constitutional amendment was drafted.

“How often is quality legislation and amendment language put together in just a few weeks or days?” he said. “I'll answer that for you, it doesn't come together in a healthy, proper, good manner. The proposed amendment is also not founded in the voice of the people. I encourage each of you to vote down the proposed amendment.”

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# How Utah lawmakers voted on a constitutional amendment to gut voter initiative power

The proposed amendment will appear on the November ballot after GOP legislators gave it just over the two-thirds required yeas.



(Rick Egan | The Salt Lake Tribune) The Utah Senate meets to discuss a constitutional amendment over citizen initiatives in the Senate during a special session, on Wednesday, Aug. 21, 2024.

By Emily Anderson Stern | Aug. 21, 2024, 8:56 p.m.

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ballot initiatives went public, just over the required two-thirds of lawmakers — all Republican — gave it the OK to be placed on the November ballot.

Several Republican legislators crossed the partisan divide to vote against the amendment.

The amendment, weighed during a special session that [top lawmakers used emergency powers](#) to convene, would give the Legislature nearly unfettered ability to repeal or amend any voter-passed policy. A majority of voters must sign off on the amendment before it is added to the Utah Constitution.

GOP leaders say voters would still be able to run and approve ballot initiatives, but that any changes to the law would have to go through the legislative process, and that would allow them to make changes they deem necessary. But legislative Democrats say the amendment would give the Republican supermajority constitutional cover to “disregard the will of the people.

*[\[READ: GOP lawmakers vote for power to amend, repeal ballot initiatives. Now Utahns get final say.\]](#)*

Lawmakers approved the amendment as 59 representatives’ and 13 senators’ names will appear with the amendment on ballots in districts around the state in their bids for reelection. Two additional representatives are running for a seat in the Utah Senate, while one has mounted a campaign for governor and another a gubernatorial write-in campaign. One senator is running for Congress.

Here’s how each lawmaker in both the Senate and the House cast their vote:



# Utah Senate

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District	Senator	Party	Vote	Running for reelection?
1	Scott Sandall	Republican	Aye	Not up for election
2	Chris Wilson	Republican	Aye	Yes
3	John Johnson	Republican	Absent	Yes
4	D. Gregg Buxton	Republican	Aye	Leaving the Senate
5	Ann Millner	Republican	Aye	Not up for election
6	Jerry Stevenson	Republican	Aye	Not up for election
7	Stuart Adams	Republican	Aye	Not up for election
8	Todd Weiler	Republican	Aye	Yes
9	Jennifer Plumb	Democrat	Nay	Not up for election
10	Luz Escamilla	Democrat	Nay	Yes

Source: [Utah Legislature](#)  
(Emily Anderson Stern | The Salt Lake Tribune)

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# Utah House of Representatives

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District	Representative	Party	Vote	Running for reelection?
1	Thomas Peterson	Republican	Yea	Yes
2	Michael Petersen	Republican	Yea	Yes
3	Dan Johnson	Republican	Yea	Leaving the House
4	Kera Birkeland	Republican	Yea	Yes
5	Casey Snider	Republican	Yea	Yes
6	Matthew Gwynn	Republican	Yea	Yes
7	Ryan Wilcox	Republican	Yea	Yes
8	Jason Kyle	Republican	Yea	Yes
9	Calvin Musselman	Republican	Yea	Running to represent Utah Senate District 4
10	Rosemary Lesser	Democrat	Nay	Yes

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Source: [Utah Legislature](#)  
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# Constitutional amendment will now go to Utah voters

Supporters say they want to keep Utah from becoming California, while opponents say it'll take power from voters

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Rep. Jordan Teuscher, R-South Jordan, speaks in the House as Utah's legislature holds a special session to consider an initiative constitutional amendment at the Capitol in Salt Lake City on Wednesday, Aug. 21, 2024. | Scott G Winterton, Deseret News PURCHASE IMAGE



**By Hanna Seariac**

Hanna is a reporter for the Deseret News where she covers courts, crime, policy and faith.

Utah voters will now decide: Should the Utah Constitution say the Legislature can amend or repeal citizen-led initiatives?

The Utah House and Senate voted Wednesday to advance a constitutional amendment that would allow the Legislature to amend or repeal initiatives. Lawmakers were responding to a state Supreme Court ruling over redistricting that said they did not have that power in some cases, leading to concerns over what would happen if an initiative passed that had unintended consequences.

Those opposed to the amendment said it would take power away from the state's voters.

The constitutional amendment passed 54-21 in the House, and 20-8 in the Senate, clearing both chambers with more than two-thirds approval as required. Now the proposed constitutional amendment will appear on Utahns' November ballots.

In addition to stating lawmakers have the ability to amend or repeal laws originating from citizen initiatives, the amendment would also prevent foreign entities from using resources to sway or dissuade Utahns from voting for or against initiatives.

Utah lawmakers approved other changes to the ballot initiative process, including an extension of the signature gathering period as well as additional language requiring the Legislature to give deference to initiatives when making amendments (they would have to keep the general intent of the initiative).

After the vote, Senate President Stuart J. Adams, Rep. Jordan Teuscher, R-South Jordan and Sen. Kirk Cullimore, R-Draper held a press conference where they emphasized the amendment would not change the process for citizen-led initiatives.

When asked how they will make their case to the voters, Adams, R-Layton, said the message will be very clear: "Don't become California and keep Utah, Utah."

Historically, Utah initiatives have been passed by Utah citizens, said Cullimore. The amendment would ensure this remains the case.

Teuscher said he foresaw "a mound of litigation" on every initiative ever passed in Utah without the amendment. Adams added without legislation, questions about definitions and limitations would have to be resolved in the courts.

"That is just not the way we set statute in Utah," said Adams.





Sen. Kirk Cullimore, R-Draper, talks with Senate Minority Leader Luz Escamilla, D-Salt Lake City, as Utah's legislature holds a special session to consider an initiative constitutional amendment at the Capitol in Salt Lake City on Wednesday, Aug. 21, 2024. | Scott G Winterton, Deseret News PURCHASE IMAGE

## The discussion in the Utah Senate

The reason for the constitutional amendment was bigger than the recent Utah Supreme Court ruling, Cullimore told the Utah Senate. The decision handed down by the state's highest court said initiatives are protected from unfettered changes.

Cullimore said he acknowledged the ruling would still allow the Legislature to make amendments to some laws originating from initiatives. But he said there was ambiguity about when specifically the Legislature could make those changes.

"This cuts both ways," said Cullimore, adding he believes it is not a partisan issue because both conservative and liberal initiatives could pass in the state. He said the Legislature needs to have the ability to amend these laws in some cases, including to fulfill the constitutional mandate to balance the budget.

Senate Minority Whip Kathleen Riebe, D-Cottonwood Heights, said she opposed the bill because she thinks legislators called themselves into a special session when they should not have done so.

At one point during the discussion, Adams had to ask the public sitting in the gallery to maintain decorum. He said he would clear the gallery if disruptions continued.

Sen. Curtis Bramble, R-Provo, said the resolution gives people the choice whether to amend the constitution and he strongly supports the effort. He referenced a prior initiative that required amendments from the Legislature to make it constitutional and raised questions about whether or not the ruling created an unequal balance of powers.

A floor amendment to the resolution was raised by Sen. Nate Blouin, D-Salt Lake City, to strike out the word “retrospective,” which would prevent the amendment from applying to prior initiatives. Cullimore said he was not in favor of the floor amendment, which failed to gain approval.

Democratic lawmakers including Blouin and Senate Minority Leader Luz Escamilla expressed concern about the short notice the Utah Legislature had to address this issue. Wednesday is the last interim day before the deadline lawmakers would need to meet in order for the amendment to appear on November ballots.

“The unelected judges cannot be the final arbiter,” said Sen. Lincoln Fillmore, R-South Jordan. He gave a long speech on the floor, which he said was prompted by a reading of the Federalist Papers. He called the separation of powers a genius system.

“There’s been a false narrative put out since Friday that we’re making it harder to put initiatives on the ballot,” said Sen. Todd Weiler, R-Woods Cross, who supported the amendment. He said he thinks this measure asks the people to weigh in on the question and makes it easier to get initiatives on the ballot.

When Weiler took office, he said most likely the majority of his constituents did not support medical marijuana or same-sex marriage. He said that has now changed. He asked his fellow lawmakers what would have happen if an initiative had passed earlier on one of those issues and now the Legislature was unable to change it.

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The Utah House of Representatives convenes in a special session to consider a constitutional amendment at the Capitol in Salt Lake City on Wednesday, Aug. 21, 2024. | Scott G Winterton, Deseret News PURCHASE IMAGE

### The discussion in the Utah House

“We do not want Utah to become another California,” said Teuscher. He explained there are two states where lawmakers are restricted from making changes to initiatives: Arizona and California.

Arizona has 11 initiatives on the ballot this year and California has 14, said Teuscher.

“This has created a target for our state for outside money to pour in and change Utah,” said Teuscher, pointing toward Maine and California which he said saw millions of dollars from foreign entities come in related to initiatives.



Quoting from George Washington, Teuscher said, “Foreign influence is one of the most painful foes of republican government.” The amendment would prevent foreign influence on initiatives, he said, and also allow the Utah Legislature to meet the state’s needs.

“Power comes from the people. The Utah Constitution says it plainly, that people can reform their government. That’s not a radical idea. It’s a beautiful idea,” said Rep. Doug Owens, D-Millcreek.

He asked what the motivations were behind the amendment.

“What’s the worst that could happen? The worst that could happen is that maybe, once in a while, we send a Democrat to Washington,” said Owens. “I’d suggest, if that happens, that could be good for Utah.”

Rep. Judy Weeks Rohner, R-West Valley City, said she believes the amendment would give people in the state a voice.

“I strongly encourage this body to pass this bill, not only for people in this area, but the entire state of Utah,” said Rohner. “Listen to the people. They want a voice. This allows them to have that voice.”

“All political power is inherent in the people,” said Rep. Joel Briscoe, D-Salt Lake City. “They have the right to alter or to fund their government as the public welfare may require. I don’t see anything in here the says they have to ask permission from 104 people up here.”

As an example, Briscoe said the Utah Legislature did not listen to the people on medical marijuana, which is why he thinks Utahns resorted to passing an initiative.

“I’ve been here since 2010, I’ve never seen a perfect bill,” Rep. Ken Ivory, R-West Jordan said. He explained most of what the Utah Legislature spends their time on is amending and refining legislation.

“But what the opponents of this bill are asking us to do is to suppose that the initiative that doesn’t go through that process is in one pass perfect,” said Ivory, adding there was no accountability. “Who do the people hold accountable in the initiative process?”

Like in the Senate, the vote in the House fell largely along party lines, with a few Republicans joining their Democratic colleagues to oppose the measure.



Rep. Joel Briscoe, D-Salt Lake, lifts his arms during his comments in the House as Utah's legislature holds a special session to consider an initiative constitutional amendment at the Capitol in Salt Lake City on Wednesday, Aug. 21, 2024. | Scott G Winterton, Deseret News PURCHASE IMAGE

## Why was the amendment brought forward?

Discussion around an amendment picked up steam when Utah GOP chair Rob Axson and others signed a letter encouraging the Legislature to consider pushing back against the Supreme Court's decision. The Sutherland Institute also put forward a letter on Friday calling for an amendment.

On Wednesday, before the chambers approved the bill, it was discussed and passed out of the Business and Labor Interim Committee.

The public who attended the hearing were told that whether or not the amendment was passed by the Legislature, litigation over the drawing of the state's congressional districts



would move forward, according to Cullimore.

“The Utah Supreme Court determined citizen initiatives were a path by the people to alter and reform their government,” said Cullimore. He added there is no definition in case law of what “alter or reform government” means and that could be interpreted broadly by groups making a case their initiative alters or reforms governments.

He said this was one of the reasons why lawmakers proposed the amendment.

“This essentially created a new class of laws, super laws if you will,” said Cullimore. He said the law is “living and breathing” and statutes are amended for a variety of reasons.

Cullimore said he was aware of groups in the state that have already been contacted by outside groups motivated to pour money into initiatives. This concerned him.

Rep. Brian King, D-Salt Lake City, asked Cullimore to explain why Utah voters should feel good about what the Legislature was doing with the amendment.



Two women watch from the balcony in the House as Utah’s legislature holds a special session to consider an initiative constitutional amendment at the Capitol in Salt Lake City on Wednesday, Aug. 21, 2024. | Scott G Winterton, Deseret News PURCHASE IMAGE

“We haven’t had a lot of time to look at it,” said King about the amendment and legislation before the committee, noting the text of the amendment came out less than 24 hours in advance. He read messages from constituents saying the Utah Legislature was “rigging the game” and not listening to the people.

Sen. Karen Kwan, D-West Valley City, said she had “total disdain for” the resolution, and focused on the language regarding foreign entities. Kwan asked the committee to clarify what this language means before moving forward with the amendment.

Cullimore said he thinks the definition would apply to people outside the U.S., not outside Utah.

Axson testified in support of the amendment at the committee meeting. He said the amendment started with a groundswell of support from groups and individuals across the state.

**157****Comments**

Another member of the public, Jeff Baker, said he was a former member of the independent redistricting committee. He said he opposed the amendment because he thinks the Utah Supreme Court’s ruling was correct and urged the Legislature to follow it.

Baker’s remarks were met with applause from some people of the room followed by a reminder to maintain decorum. As the discussion about the proposed amendment and its accompanying bills continued, one member of the audience was removed for yelling out a question to the committee about them wanting less democracy.



Senate President Stuart Adams, R-Layton; Sen. Kirk Cullimore, R-Draper; and Rep. Jordan Teuscher, R-South Jordan, talk with media following a special session of Utah's legislature to consider an initiative constitutional amendment at the Capitol in Salt Lake City on Wednesday, Aug. 21, 2024. | Scott G Winterton, Deseret News PURCHASE IMAGE

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## What does the amendment say?

The amendment would take effect on Jan. 1, 2025, if voters approve it.

**3) (a) Foreign individuals, entities, or governments may not, directly or indirectly, influence support, or oppose an initiative or a referendum.”**

**(b) The Legislature may provide, by statute, definitions, scope, and enforcement of the prohibition under Subsection (3) (a).**



**(4) Notwithstanding any other provision of the Constitution, the people’s exercise of their Legislative power as provided in Subsection (2) does not limit or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature, or by a law making body of a county, city, or town, on behalf of the people whom they are elected to represent.**

— Proposal to Amend the Utah Constitution

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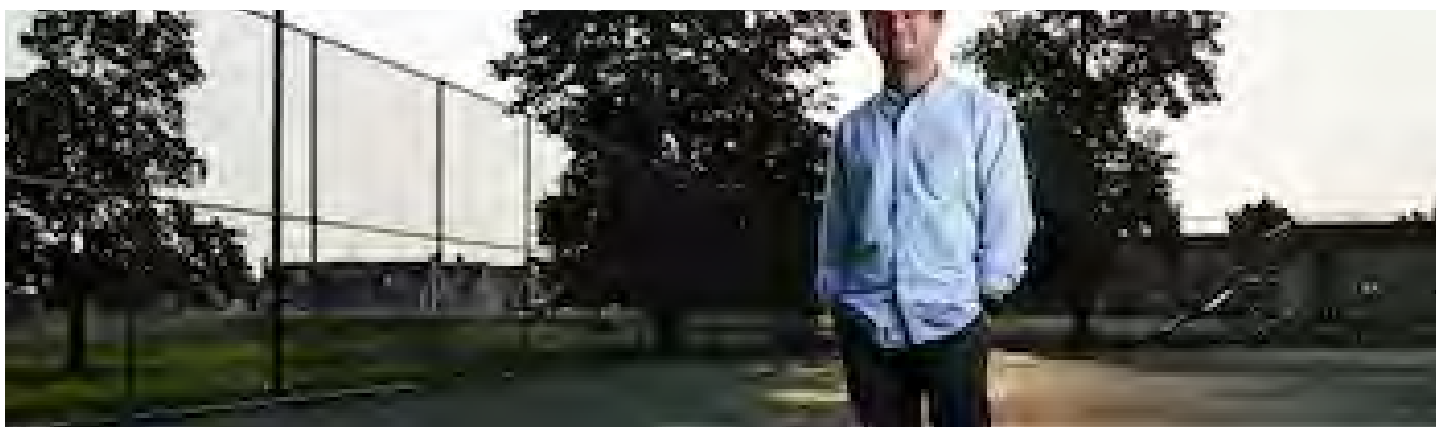
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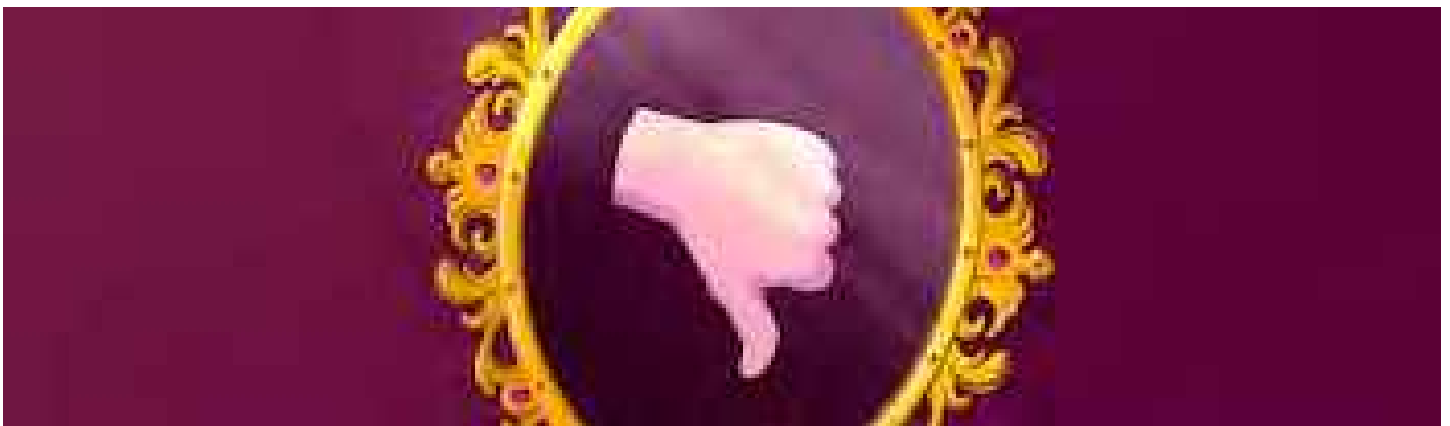
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BREAKING NEWS

# Cox signs measure, voters to decide on ballot initiative changes in November

Aug 21, 2024, 4:06 PM | Updated: Aug 22, 2024, 2:58 pm



The Utah House of Representatives convenes in special session to consider an initiative constitutional amendment, at the capitol in Salt Lake City on Wednesday, August 21, 2024. (Scott Winterton, Deseret News)

**BY CLAYRE SCOTT, BECKY BRUCE**

KSLNewsRadio

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SALT LAKE CITY — A proposal to change the Utah constitution to give lawmakers more say over ballot initiatives will be on the ballot in November after Gov. Spencer Cox signed the measure on Thursday. The news comes less than a day after a vote during the Utah Legislature's special session.

In November, voters will decide whether to make the change part of the state constitution. The measure would allow the legislature to reject or amend what's in ballot initiatives.

The Utah Legislature voted to place an amendment on Wednesday, giving lawmakers the ability to change citizen ballot initiatives after they are passed, on the upcoming November general election ballot.

According to KSL TV's Lindsay Aerts, the Senate voted 20-8, with two Republicans, Sen. Wayne Harper and Sen. Daniel Thatcher opposing. Senate Democrats opposed the move. The House passed the amendment 54 to 20. Seven Republicans voted against it.

At 8:00 p.m. Wednesday evening, [the Salt Lake Chamber](#) announced their support for the amendment.

"The Salt Lake Chamber supports the foundational principle of respecting the will of the people in lawmaking processes," the statement read. "Whether through their duly elected representatives or constitutional ballot initiatives."

Utah House Democrats disapproved, publishing a statement shortly after its legislative approval that condemned the bill as a means of taking power away from voters.

Utah House Democrats


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The Utah House Democratic Caucus released the following statement at the conclusion of the 2024 4th Special Session.

9:05 PM · Aug 21, 2024



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# BLOG: Utah legislature puts constitutional amendment on citizen initiatives on the November ballot



The Utah State Legislature's controversial proposed constitutional amendment on citizen ballot initiatives has passed 54-21. A number of Republicans crossed party lines to vote with the Democrats against it, but still met the two-thirds requirement to get on the upcoming ballot.

By: Ben Winslow



Posted 2:07 PM, Aug 21, 2024 and last updated 9:39 AM, Aug 22, 2024

**SALT LAKE CITY** — The Utah State Legislature is meeting in a special session to put forward a constitutional amendment on citizen ballot initiatives. It's in response to the Utah Supreme Court's ruling last month that the legislature overstepped its bounds when it overrode a citizen initiative on independent redistricting.

Now, lawmakers are proposing to reverse that decision by taking it directly to voters in November. [You can read more about the special session and why Utah lawmakers are pushing for one here.](#)

Here's a live blog of events in the special session:

**8:39 a.m.**

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00:02

02:00

Heritage Action for America, related to the Heritage Foundation, applauded the legislature's passage of the constitutional amendment. Specifically, the provision banning foreign contributions to initiatives. Their statement:

*"When foreign billionaires are allowed to bankroll ballot initiative campaigns, major policy decisions that impact Americans' daily lives are dictated by activists on the other side of the world. Heritage Action is very glad to see Utah join the growing list of states fighting this unacceptable foreign influence in our elections. We look forward to Utahns approving S.J.R. 401 in November to keep foreign dollars out of elections in the Beehive State."*

**9:56 p.m.**

In an interview with FOX 13 News, one of the plaintiffs in the original lawsuit that led to the Utah Supreme Court ruling said she believes the public will vote down the constitutional amendment.

"The people of Utah are smart enough to see through some of the arguments that were made today," said Emma Petty Addams, the co-chair of Mormon Women for Ethical Government.

Katharine Biele, the president of the League of Women Voters of Utah, another plaintiff in the lawsuit, left the House chamber disappointed.

"It wasn't surprising," she told me of the vote. "It was sad. They say this will allow the people of Utah to vote? We've already voted. We are a representative government. We're simply asking our representatives to represent us."

**9:02 p.m.**

Michelle Quist, the United Utah Party candidate for Utah Attorney General, issued a statement criticizing the legislature for the amendment. Here is her statement in full:

*"Today, the Utah Legislature passed a resolution that will put a proposed constitutional amendment on the ballot this November. Not only was the process unnecessarily secretive, rushed, and sloppy, but there was no legitimate basis for the Legislature to use its "emergency" powers to call itself into a special*

*session in the first place. Even worse, legislators are trying to hide the effect of the proposed amendment as well as their reasons for pushing it.*

*Currently, the Utah Constitution protects Utahns' right to reform government through the initiative process. The Utah Supreme Court recently made clear that the Legislature has the power -- CURRENTLY, without any amendment to the state's constitution -- to amend and/or repeal voter initiatives that do not relate to reforming government. Additionally, the Legislature can amend voter initiatives that reform government if those amendments "facilitate or support" the reform. Even more, the Legislature can make more extreme changes to such an initiative if they can show a compelling government interest. These standards are required to protect Utahns' constitutional right to reform government through the initiative process.*

*Displeased with the court's opinion, the Legislature now wants Utahns to change their own constitution to take away these rights and allow the Legislature to freely amend - even repeal - an initiative for any reason. Why would Utahns willingly limit their own rights?*

*My opponent Derek Brown supported calling this special session to limit Utahns' constitutional rights. I support Utahns' constitutional rights as they are now. My opponent would represent a party. I would represent the people of Utah, and I stand with you now as we fight to retain our constitutional rights."*

**8:06 p.m.**

The Utah Democratic Party issued this statement on the amendment via Chair Diane Lewis:

*"The Republican Supermajority claims they want to preserve representative government, but today, they showed that their real priority is holding onto power - no matter how many Utahns they have to steamroll to do so. To stop*

*this power-grab, Utahns of every party must turn out and vote ‘No’ on the proposed amendment this November.”*

**8:00 p.m.**

The Salt Lake Chamber, the state's largest business organization, issued this statement supporting the amendment going on the ballot:

*"The Salt Lake Chamber supports the foundational principle of respecting the will of the people in lawmaking processes, whether through their duly elected representatives or constitutional ballot initiatives.*

*To that end, we support the Utah Legislature placing a constitutional amendment before the voters that:*

- *Restores certainty, predictability and balance between legislative and initiative lawmaking processes;*
- *Upholds the integrity of democratic rights by prohibiting foreign influence, support and funds for initiatives and referendums; and*
- *Protects Utah’s best-in-class economy and avoids Utah becoming a state that is governed by unfettered, unlimited and unchangeable ballot initiatives.”*

**7:55 p.m.**

The other bills have passed the chambers. The special session is over. Because it is a proposed constitutional amendment? Governor Spencer Cox is not involved. He has no signature or veto power over it. He votes like everyone else.

**7:37 p.m.**

SJR 401 passes 54-21 with a number of Republicans crossing party lines to vote with the Democrats against it. It still meets the two-thirds requirement to get on the ballot.

**7:36 p.m.**

Rep. Teuscher notes all the changes to marijuana in Utah, and says the legislature needs to be able to respond to what the people want.

"I think it's funny how the media, how interest groups always want to pit the legislature against the people. The legislature represents the people," he says. "We listen to them. We understand their needs. We come here to do their work."

He says if people don't feel the legislature is listening to them? It's coming from the media and interest groups that are trying to fundraise off of policies they pass.

**7:32 p.m.**

Rep. Brady Brammer, R-Highland, says at the core, it was a partisan action initiative (he's referring to Prop. 4) but the constitutional analysis is "entirely unique." He says the Court got it wrong.

Rep. Ashlee Matthews, D-Kearns, calls the question and ends debate.

Rep. Teuscher says the amendment "has nothing to do with redistricting."

"We're not bringing forth a constitutional amendment because the legislature is butthurt," he says to laughter and shock from some in the House chamber.

He insists this allows them to "make it better" when it comes to an initiative. Adding "repeal" of an initiative, he says, is interchangeable as an amendment is in essence a repeal of a law. This avoids more loopholes.

Rep. Teuscher says his intent is foreign means "outside the United States," addressing Democrats' concerns.

**7:23 p.m.**



"The process, the form of government we have, is a republic," Rep. Ivory says, adding people can hold them accountable in a couple of months (during the election).

He insists the legislative process is the way to go and this "respects the process" by going back to the people and "not unelected judges."

Rep. Andrew Stoddard, D-Sandy, says he's seen "undermining of the judiciary based on recent Supreme Court decisions." He reminds the House they "are an equal branch of government and we need to treat them as such."

Rep. Stoddard says he actually doesn't have a problem with letting the people decide this, but likens the legislature to a toddler throwing a tantrum because they don't like what's happening. He believes the public will vote against the constitutional amendment.

House Minority Whip Jennifer Dailey-Provost, D-Salt Lake City, asks what the definition of foreign entities is? Rep. Teuscher says it's not defined in statute, but the legislature will define it in the general session. Rep. Dailey-Provost says while many define it as those outside the country, she worries some may define it as "outside of Utah."

"I have concern about the tone and tenor about the use of the word 'foreign,'" she says.

The House Minority Whip says it's "offensive" how the legislature portrays this as a "gift to our residents because we know better."

These are a lot of the similar arguments made in the Senate, and you can expect this bill to pass with the two-thirds majority needed to get on the ballot.

**7:16 p.m.**

"I think we should approach passing legislation with some humility," Rep. Briscoe says. He says the legislature is not showing respect for the people of Utah.

Rep. Steve Eliason, R-Sandy, asks the House floor sponsor if the legislature could modify future initiatives if there's problems? House floor sponsor Rep. Jordan Teuscher, R-West Jordan, says they don't know what they could do and it makes citizen ballot initiatives subject to litigation, which has them deciding policy.

Rep. Ken Ivory, R-West Jordan, speaks in favorable terms of the legislative process refining bills.

Meanwhile, SB 4002, which is the process to get the amendment before voters passes the Senate 21-6 with Democrats voting no. That now heads to the House of Representatives.

**7:09 p.m.**

The House of Representatives has gaveled in and is now considering SJR 401.

Rep. Norm Thurston, R-Provo, speaks in favor of it as it is "allowing the people to have a voice." Rep. Judy Weeks Rohner, R-West Valley City, who was a big activist for the tax referendum a few years back, says at that time the overwhelming thought was "the legislature is not listening to us."

But now, as a state representative, she says the legislature "has heard the people." She will support a public vote on it.

"Let the people decide," she says. "It's up to the citizens to decide if it's best for them, their families and the state."

Rep. Joel Briscoe, D-Salt Lake City, says "when I read 'We the People' I don't read an asterisk." He invokes medical cannabis and reminds the House that people were frustrated with the legislature. He says Utahns are benefitting from

Medicaid expansion thanks to a citizen ballot initiative that "we were not willing to give them" as a legislature.

**6:41 p.m.**

SJR 401, the proposed constitutional amendment overriding the Utah Supreme Court's ruling on citizen ballot initiatives, passes the Senate 20-8 with Sens. Thatcher and Harper joining the Senate Democrats in voting against it. The resolution now heads to the House for a vote.

**6:27 p.m.**

Sen. Daniel Thatcher, R-West Valley City, says he doesn't think Utah should be like California. But he says Utah isn't like that with only five as long as he's been alive.

"The language from the Supreme Court ruling verbatim says this does not mean the legislature cannot amend," Sen. Thatcher says.

Sen. Thatcher starts reading from the Court's ruling. He says he doesn't believe it actually limits the legislature.

"I don't believe failure to pass this makes it so we can't do our jobs. I don't believe we'll become California because it's already hard," he says.

Sen. Thatcher warns this will backfire with voters and give the legislature "the biggest black eye."

Sen. Hinkins says he thinks churches could get together and run whatever they wanted on abortion or alcohol or whatever.

"Careful," President Adams warns.

Sen. Hinkins says the legislature is elected by the people to represent them and "there's groups out there that control things," referring to special interests.

No more debate.

**6:18 p.m.**

Sen. Lincoln Fillmore, R-South Jordan, asks if there's anything in the resolution that makes it more difficult for citizens to run an initiative? No, Sen. Cullimore replies. Sen. Fillmore speaks in support of the resolution for separation of powers reasons.

"Because the citizens have the power to hold over the legislature. It influences us in a positive way. It makes us more responsive to our citizens," he says.

He supports putting the question before voters to decide.

"The unelected judges cannot be the final arbiter of what goes on in Utah," Sen. Fillmore says.

Sen. Todd Weiler, R-Woods Cross, says he will support the resolution, noting the vast majority of initiatives are on the city and county level. The Court's decision could apply to them, too.

He says some cities are upset and don't want to extend the days to gather signatures for initiatives. Sen. Weiler says there's a "false narrative" that they are making it harder to run an initiative.

"We are making it easier," he says.

**6:03 p.m.**

Sen. Karen Kwan, D-Taylorsville, raises issues with the definition of "foreign individuals" in the bill and who falls under it. Why can they not change "individual" to "national"? Sen. Cullimore said he anticipates a bill in the general session to refine it (but that's not until January). Sen. Kwan says she gets the intent, but doesn't like the rushed nature of this.

Senate Majority Leader Evan Vickers, R-Cedar City, asks if medical cannabis were to pass today, would they be able to amend it? Sen. Cullimore said it's an "unanswered question."

Sen. Vickers notes that every session, they've refined medical cannabis in a bipartisan way with input. Without that? He worries about the problems it could create.

Sen. Kathleen Riebe, D-Cottonwood Heights, asks if this will hinder initiatives at a city, county or school board level? Sen. Cullimore says there's question that the Court's decision could impact that, too. He is proposing to go back to what was before the Court's decision.

Sen. Riebe says she believes this infringes on people's ability to locally control their cities, counties or school boards.

"It's a lot of overreach we are inflicting upon our communities," she says.

Sen. Jen Plumb, D-Salt Lake City, notes the Court's decision was the "form and function of government" but Sen. Cullimore counters they didn't really define it.

"The problem is, that's going to be arguable on every foreseeable initiative," he says.

**5:52 p.m.**

Sen. Curt Bramble, R-Provo, says if you look at the construction of the Utah constitution, the legislature "is the people's voice." What stops an initiative from ignoring any other article in the constitution that the legislature would be prohibited from changing? he asks.

Sen. Cullimore says this clarifies the separation of powers. Sen. Bramble said this takes it back to the people to decide.

Sen. Nate Blouin, D-Salt Lake City, has amendments (he's going to essentially try to hijack the bill through a series of floor motions). One takes away a retrospective clause that he suspects could undercut the initiatives passed in 2018 on medical cannabis, Medicaid expansion and independent redistricting.

"It's unprecedented," he tells the Senate.

Sen. Cullimore said he would resist the motion, insisting that they have initiatives that both sides have cooperated to modify (which has happened with medical cannabis). Sen. Scott Sandall, R-Tremonton, asks Sen. Blouin's amendment passes, does that make Medicaid expansion untouchable by the legislature? Sen. Blouin said "it probably would make it difficult to challenge."

Sen. Sandall warns that Medicaid expansion as originally passed had the potential to overwhelm the state budget and that creates more problems.

Sen. Bramble asks Sen. Blouin how far back he wants to go? Would any past initiative be under consideration? Sen. Blouin said the Utah Supreme Court's decision didn't preclude the legislature from amending, so his colleagues' concerns are unfounded.

Sen. David Hinkins, R-Orangeville, recalls the "English only" law that the state had. COVID changed that and they repealed it. Without that ability to do away with that resolution? English only would have hurt a lot of constituents. He urges the Senate to be fair to other people.

Senate Minority Leader Luz Escamilla, D-Salt Lake City, says the Court's ruling makes it clear that the legislature must meet strict scrutiny before it can change an initiative. She objects to the retroactive provision.

Sen. Cullimore says the retroactivity goes to the heart of the bill. They're not changing the citizen initiative process and the legislature is asking the people to go back to what it was in light of the Court's ruling.

That's a lot of debate over Sen. Blouin's amendment to remove the "retroactive" clause. His amendment fails.

**5:33 p.m.**

Sen. Cullimore wraps by saying this is allowing the people to decide their government.

He goes over the companion bills, including the one that extends signature-gathering for referendums and initiatives from 40 to 60 days. He also says there's language giving deference to citizen initiative intent when the legislature amends one in the future.

Sen. Kathleen Riebe, D-Cottonwood Heights, said her constituents are not happy they've been called into special session. She asks if there's a fiscal crisis? Sen. Cullimore defends it with potential initiatives coming. She asks if this is war or a natural disaster and suggests they've been called under "false pretense."

Someone applauds in the gallery and President Adams once again warns against outbursts. He warns he will clear the gallery if people don't knock it off.

**5:25 p.m.**

Sen. Cullimore warns that there's a case to be made that any initiative could "alter or reform government" and litigation ensues. He reminds the Senate that voters still get to decide this and they are "letting the people decide what the constitution says."

A person applauds, and President Adams reminds the gallery no outbursts.

"This is not a partisan issue," he insists, adding he's been contacted by lobbyists and PR firms representing some out of state groups interested in running initiatives in Utah.

"We have big money special interests that can seize on opportunities to go around the legislative process," he tells the Senate. "We do not want to turn Utah into California."

He insists it won't do away with the citizen initiative process, but preserves the balance between direct democracy and representative government.

**5:19 p.m.**

[SJR 401](#) is called up. It's the proposed constitutional amendment. Sen. Cullimore announces an amendment. Sounds like minor changes. The amendment has no opposition.

Sen. Cullimore begins his floor speech, noting this is related to the Utah Supreme Court opinion.

"This essentially creates a new class of laws. Superlaws, if you will," he tells the Senate.

Sen. Cullimore's presentation largely mirrors what he told the Business & Labor Interim Committee.

**5:14 p.m.**

[Senate Bill 4001](#) is called up. Sen. Jen Plumb, D-Salt Lake City, said it's a small fix to a bill passed in the last legislative session on justice courts. She says a one word issue added to the burden of juvenile courts. No one opposes it. SB4001 passes unanimously and heads to the House.



**4:57 p.m.**

Senate President J. Stuart Adams, R-Layton, is calling the special session into order.

**4:52 p.m.**

We're now in the Senate chamber for the debate and vote in the special session. Many of the original plaintiffs in *League of Women Voters of Utah, Mormon Women For Ethical Government, et al vs. Utah State Legislature* are here in the gallery with me.

**4:02 p.m.**

[Senate Bill 4003](#) is now up. Sen. Cullimore said even those who oppose the amendment should support this. When it comes to referendums and initiatives? They get 20 more days to gather signatures. It also requires the legislature to give "deference" to a citizen initiative if they look to change it.

Sen. Kwan says "it is a good bill" but notes it's contingent on the passage of the constitutional amendment. Sen. Cullimore said it could run in the general session if it doesn't pass.

Summit County Clerk Eve Furse speaks against the bill. She said initiatives are helpful and argues the courts are the proper arbiter of disputes.

Chair Bramble makes a motion to pass the bill out of committee. Rep. King again objects to it.

Bill passes out of committee 12-2 in the House side and 5-1 on the Senate side. Ajournd!

**3:54 p.m.**

Sen. Cullimore makes a motion to pass SB 4002 out of committee. Rep. King seeks clarification if the bill was posted publicly 24 hours before it's voted on and if that violated the law?

Chair Maloy says he'll get an answer, but will proceed. Sen. Vickers reminds the room what his bill does (temporary amendment process just to get it on the ballot).

SB 4002 passes out of committee with 13-1 in the House and 5-1 on the Senate side.

**3:49 p.m.**

[Senate Bill 4002](#) is now up. Senate Majority Leader Evan Vickers, R-Cedar City, is presented. This would set some ground rules for the constitutional amendment. A temporary process (word limits, etc.) to get an amendment on the ballot.

Pretty short.

Sen. Karen Kwan asks if this doesn't pass, does the constitutional amendment not get on the ballot this year? Yes, Sen. Vickers replies.

Public comment now. It's being limited for time, leading to some in the audience to grumble.

A man (whose name I didn't catch) supports this and the underlying resolution, warning that "money can influence bad policy."

Ryan Bell with Better Boundaries says he doesn't like how "casual this all looks" meeting in special session, cutting public comment time, and says "it is not conservative at all to go and undo this."

"I am in favor of representative government," Kristen Chevrieux said, speaking for the bill. "I am not in favor of straight democracy."

A member of the Forward Party (whose name I didn't catch) speaks against the bill. Nat Williams, a Utah County Republican Party member, speaks against the bill citing the unanimous ruling by the Utah Supreme Court.

**3:38 p.m.**

Rep. Keven Stratton says what he's hearing from people for and against is they want their voices heard. So he's in favor of putting it before the people to vote on in November.

"As the people decide at the ballot? We will act and respect that," he says.

SJR 4001 passes out of committee 13-2 in the House membership and Senate membership in a 4-1 vote and goes to the full Senate.

**3:32 p.m.**

Rep. Keven Stratton, R-Orem, makes a motion to pass SJR 401 out of committee. That sends it to the full Senate for a vote in the special session.

Chair Bramble brings up the fact that Prop. 4 passed with 53% of the vote. He supports it. Rep. Brian King, D-Salt Lake City, asks if they can do a raise of hands of how many in the room are for and against the bill? Sen. Scott Sandall, R-Tremonton, asks if they need a vote to move this to the floor?

"You want even less democracy?" someone in the crowd shouts.

That person is removed from the audience. House Majority Whip Karianne Lisonbee, R-Clearfield, says a raise of hands isn't representative given that there's two overflow rooms.

Chair Maloy opts to move on. Rep. King thanks everyone who came and says "people feel strongly for this."

"This strikes me as a degree of legislative malpractice," Rep. King says, declaring it "unwise" and "rushed through."

**3:25 p.m.**

"I do believe it attempts to alter the intent of the people's voice," Sen. Kwan tells the committee of the special session bills.

Chair Maloy says he'll hear five people in response to SJR 401. Lots of grumbles from the crowd.

Chad Saunders is speaking for the amendment. He says he's worked on initiatives and says the proposed changes are necessary.

"It does not take away our liberties," he tells the committee.

Jeff Baker, a former member of the independent redistricting commission, speaks against the amendment.

"The Court's ruling was absolutely correct and I believe the legislature should honor their ruling," he said, urging them to vote it down. There's applause from the room and Chair Maloy calls for order.

"Mr. Chair! This is unacceptable, point of order," Sen. Sandall says. Chair Maloy declines to clear the room like some request.

Utah GOP Chair Rob Axson speaks in favor of the amendment.

"We appreciate you have listened to the people of Utah and those who have raised their voices in asking you consider this issue," he tells the committee.

Jackson Lewis, a school board candidate, accuses the legislature of "an attempt to consolidate power." He rips into the legislature calling itself into special session for an "emergency." He says lawmakers are "afraid they don't get to rule with impunity anymore."

Senate Chair Curt Bramble accuses Lewis of impugning the committee.

"Deal with it!" Lewis says as he leaves the room. "You did it to yourself!"

**3:15 p.m.**

Sen. Cullimore invokes California and their many, many citizen ballot initiatives. He warns they're not "grassroots initiatives" contemplated when they were first introduced in state constitutions, but rather "big money" groups that enact binding law "through soundbites and strategic PR campaigns."

"We do not want to turn Utah into California," he declares.

SJR 4001 won't change the citizen initiative process, but "preserves the balance between direct democracy and representative government." It also guards against "undue outside influence" by enacting a prohibition on foreign spending on citizen initiatives.

The legislature will also extend the time frame for signature gathering for referendums from 40 to 60 days, Sen. Cullimore tells the committee.

"Let's ensure the people of Utah have the final say as to how their constitution is interpreted," he said.

Now committee questions.

Rep. Brian King, D-Salt Lake City (who is also the Democratic candidate for governor), says he wants to "cut to the chase" and reads emails from voters he's received accusing the legislature of "rigging the game" and "changing the rules" and "this is about power, plain and simple."

He asks if Sen. Cullimore really believes this amendment moves in the right direction and increases public confidence?

"I do think it is and I think it represents both the people's voice and the representative form of government we have," Sen. Cullimore replies.

As far as the speed of this bill? They do have election deadlines (ballots are printed at the end of this month).

Sen. Karen Kwan, D-Taylorsville, says she has "total disdain" for the bill. She asks about "foreign individuals" and is there a definition about "a foreign individual?" Sen. Cullimore can't name specific, but believes there's a definition in law. He refers to "foreign nationals" which would mean outside the U.S., not outside Utah.

**3:07 p.m.**

[SJR 401](#), which puts the constitutional amendment on the ballot, is heard first.

Sen. Cullimore says this will not "specifically target" the League of Women Voters of Utah case because it's still being litigated. However, it is in response to the Utah Supreme Court ruling on citizen ballot initiatives.

"The Utah Supreme Court determined citizen initiatives were a path by the people to alter and reform their government," Sen. Cullimore says, adding he appreciates the Court's conclusion. But the ruling "created a new class of laws" which have never been contemplated before, he tells the committee.

The practical reasons of this is the law is a "living and breathing thing," he says, there could also be fiscal impacts on the state budget. But he says there's no definition of what it means to "alter or reform government." Anyone could make a case that their initiative alters or reforms, thus leaving it to the Courts to legislate what that standard is.

The resolution attempts to provide answers, Sen. Cullimore says. The public will have a chance to decide it.

"Let the people decide and the people interpret what their constitution says," he tells the committee, insisting they are not "fearmongering." Groups are now

motivated to run and fund initiatives in Utah, he warns.

**3:00 p.m.**

"I completely spaced it," Chair Maloy says, apologizing to the room for not moving up the special session bills. He is planning for 20 minutes per bill. They have a hard stop at 4 p.m. when the Senate goes into "advice and consent."

**2:50 p.m.**

The committee chair did not, in fact, move up the discussion on special session bills. The committee finished the discussion on licensure and then moved on to ambulance supply reimbursements. It's possible new language is coming for the bills as sponsor Sen. Kirk Cullimore, R-Sandy, isn't in the room.

**2:07 p.m.**

Utah Tech Leads, the political action committee for the state's tech industry, says its members overwhelmingly oppose the proposed constitutional amendment. That could become a thing if this goes before voters in November. Here's their post on Threads:



utahtechleads 19m

We asked you, our community, what you think about our state legislators attempts to squash citizen initiatives that seek to reform our state government.

You came back with a resounding answer.

With a whopping 84%, our community has chosen to say no to the political elites of our state trying to rip power away from citizens.

#utpol #utleg #slc





Utah Tech Leads via Threads

**1:44 p.m.**

Sen. Karen Kwan, D-Taylorsville, notes there's three bills that make up the proposed constitutional amendment. Will the public get to speak to each bill or all of them together? Chair Maloy says it's his preference that they consider them as one block. She asks if there's going to be time limits? Maybe. Chair Maloy says he wants to get to as many people as possible. They have a hard stop at 4 p.m. (The Senate will meet to confirm appointees).

"We're going to expect you all to be on your best behavior, we wouldn't expect anything less," he tells the crowd.

Before the special session bills, Utah Dept. of Commerce Executive Director Margaret Woolley Busse will talk about the cosmetology licensure issue (not a bill).

**1:40 p.m.**

The gavel bangs and Chair Maloy welcomes everyone to the committee. He warns against outbursts and says because of time restraints, he will only take public comment on the special session bills (because they're actually going to be voted on). That means cosmetologists who packed the room won't get to speak, as there is no actual bill on that matter to be voted on.

Chair Maloy warns that he's going in order, so the special session bills are still a ways away.

**1:38 p.m.**

Committee chair Cory Maloy, R-Lehi, announced that he will not allow people to stand in the room. There's now two overflow rooms for the items on the

Biz/Labor committee agenda. UHP troopers ushering people to those overflows. Hearing should start shortly.

**1:18 p.m.**

The committee room is so full, Utah Highway Patrol (which runs Capitol security) isn't letting any more in. They've opened an overflow where the legislature will stream the hearing. Interestingly enough, the majority of the crowd so far doesn't appear to be for the special session bills. Instead, it's for a discussion on cosmetology licensure. There's a lot of cosmetologists here.

We've had a few people pull a "don't you know who I am?" when trying to get a seat in the crowded committee room (including from a member of the press). It isn't working.

**1:07 p.m.**

Greetings from the Utah State Legislature's Business & Labor Interim Committee! It's a packed room as lawmakers will hold their only public hearing on the proposed bills that will make up the constitutional amendment.

Here's the [proposed resolution putting the issue on the ballot](#).

Here's the [proposed legislation overriding the Court's decision](#).

Here's the [proposed bill that would expand the time period people can gather signatures in a citizen ballot initiative](#).

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# GOP lawmakers vote for power to amend, repeal ballot initiatives. Now Utahns get final say.

Despite some resistance, the Legislature's Republican supermajority passed an amendment that will undo a Supreme Court ruling protecting initiatives.



(Rick Egan | The Salt Lake Tribune) The Utah Senate meets to discuss a constitutional amendment over citizen initiatives in the Senate during a special session, on Wednesday, Aug. 21, 2024. The GOP-led Legislature passed a constitutional amendment to overrule a Utah Supreme Court decision on a recent gerrymandering case.

By Robert Gehrke | Aug. 21, 2024, 8:43 p.m. | Updated: 9:03 p.m.

Comment



lawmakers' right to amend or repeal citizen-led ballot initiatives — that is, if voters approve the ballot measure this fall.

Utah Senate Majority Whip Kirk Cullimore, R-Cottonwood Heights, sought to dispel the idea that the amendment was an effort by the Legislature to strip voters of the power to pass laws.

"It's an opportunity for the people of Utah to decide the direction of their government," he said. "We're asking the people to affirm that their government remains balanced, flexible and protected from outside influence."

Cullimore warned that the Supreme Court's ruling — which states the Legislature needs a "compelling" interest to change a ballot initiative that reforms government — creates "super laws" that lawmakers can't touch and opens the door to special interests outside the state to pour millions into ballot initiatives.

"The incentives have changed," he said, cautioning that there are "outside entities that are looking to take advantage of this. That is why we need this clarification."

Utah doesn't want to become California — which has an easier path to get an initiative on the ballot, Cullimore said. "Let's keep Utah Utah."

Sen. Daniel Thatcher, R-West Valley City, said that it is difficult to get an initiative on the ballot in Utah — just five have passed in his lifetime. Seven have passed since the initiative right was added to the constitution in 1900.

"I don't believe we're going to become California," he said. "I don't believe that these arguments will survive scrutiny from the public. I don't believe the public will come around on this and I don't think it is likely to pass in November. But I do think this will give us the biggest black eye we could have as a Legislature."

**[*READ: How Utah lawmakers voted on a constitutional amendment to aut voter*]**



The amendment passed on a near-party-line vote a little more than 24 hours after the text was first made available to the public. Two Republican senators — Sen. Daniel Thatcher, R-West Valley City, and Sen. Wayne Harper, R-Taylorsville, who is up for reelection this year — joined the Democrats in voting no.

The House vote was 54-21 with seven Republicans breaking with their party and joining the Democratic opposition.

Earlier, Utahns jammed a committee room Wednesday afternoon — most of them seeming to be opposed to the change — wanting to voice their opinions on the proposal. Just six were allowed to give brief comments, three in support and three opposed.

Rep. Cory Maloy, who chaired the committee, warned spectators not to clap or cheer for the critics of the bill. After less than 30 minutes of discussion, the proposed amendment passed on a party-line vote.

Gov. Spencer Cox does not need to sign and cannot veto the resolution.

(Rick Egan | The Salt Lake Tribune) Sen. Kirk Cullimore, R-Sandy, discusses a constitutional amendment over citizen initiatives in the Senate during a special session, on Wednesday, Aug. 21, 2024.

## “A power grab”

The amendment is likely to be met with a concerted campaign to persuade voters to reject the measure. On Tuesday, a group of voters [registered the People’s Initiative Reform Coalition](#) with the state elections office to oppose the amendment. Other groups could also be created.

Katie Wright, executive director of Better Boundaries, the group that backed the anti-gerrymandering initiative at the heart of the Supreme Court’s decision, said that Wednesday’s special session confirmed all of the concerns.

have showed up, but they have not been heard.”

“I think that voters will see this exactly for what it is: a power grab,” Wright said. “I think the supermajority Legislature totally underestimates voters and how thoughtful they are. So I think ultimately it will be defeated.”



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The measure will now go on the Nov. 5 general election ballot where it would need a majority of support from voters to take effect. If that happens, it would apply retroactively to make clear the change would apply to the anti-gerrymandering



Sen. Nate Blouin, D-Millcreek, proposed taking out the retrospective provision, saying it was an unprecedented move and that, if the goal of the constitutional amendment was to set clear rules for future initiatives, retroactivity is unnecessary.

Cullimore said the amendment needs to be retroactive so supporters of two other 2018 ballot initiatives that passed and were amended — one legalizing medical marijuana and another expanding health care coverage for low-income Utahns through Medicaid — don't come back and sue over the changes that were made.

Blouin's amendment failed.

It would also ban foreign interests from financing ballot initiatives — a response to an initiative in Maine where a Canadian power company spent more than \$22 million to defeat an electricity transmission project.

On Tuesday, Senate President Stuart Adams said he wasn't aware of any examples of foreign influences on Utah initiatives.

Legislators passed two other bills — one expediting the process for the constitutional amendment so it can make it onto the November ballot and the other allowing citizens more time to gather signatures for a referendum, which allows citizens to overturn a law passed by the Legislature. Cox will have to sign — or veto — both bills.

"I'm very disappointed, as well, that as a representative, I have been accused of trying to take away the voice of the people," said Sen. Todd Weiler, R-Woods Cross. "Instead, the Legislature is giving the public a chance to weigh in, and the additional time for signature-gathering will make it easier to run initiatives."

People4Utah, a political interest group, [is considering running a ballot initiative](#) to change the way Utah primary elections are conducted, with candidates from all parties going on the primary ballot and the top two vote-getters moving to the general election.

(Rick Egan | The Salt Lake Tribune) Sen. Nate Blouin, D-Salt Lake City, asks a question of the sponsor, as the Senate discusses a constitutional amendment over citizen initiatives during a special session, on Wednesday, Aug. 21, 2024.

## **‘All political power is inherent in the people’**

In 2018, [voters passed Proposition 4](#), which prohibited partisan gerrymandering — drawing political boundaries to benefit one party — and established an independent redistricting commission. A little over a year later, legislators passed SB200, which made the commission advisory and [removed the ban on gerrymandering](#).

Lawmakers ignored the commission maps and adopted congressional boundaries that split Salt Lake County into four pieces. The League of Women Voters, Mormon Women for Ethical Government and several voters impacted by the split districts sued, arguing that the congressional maps effectively deprived them of representation in Congress and that the Legislature had overstepped its authority when it gutted the proposition.

The Utah Supreme Court agreed, ruling that the Utah Constitution states that “All political power is inherent in the people ... and they have the right to alter or reform their government as the public welfare may require.”

In oral arguments, the justices suggested the constitutional right becomes meaningless if citizens can spend vast amounts of time and millions of dollars to pass an initiative, only to be undone by the Legislature.

And, in the unanimous ruling, the five justices — all of them Republican appointees — said that when it comes to initiatives that alter and reform government, the Legislature must give a degree of deference to those laws and can only change them to aid in implementing the will of the voter or if there is a “compelling state interest.”

The court sent the gerrymandering case back to the district judge to decide if the state can meet that threshold.

Republican legislative leaders were outraged, saying the ruling was “upending over 100 years of representative democracy” and created an opportunity for outside interests to spend millions to shape policy in Utah.

The constitutional amendment GOP lawmakers passed Wednesday would undo the court’s ruling — and the assurances voters have that initiatives won’t be undone — by explicitly stating that the Legislature has a right to amend or repeal any initiative passed by voters.

“The unelected judges cannot be the final arbiter of what goes on in Utah,” said Sen. Lincoln Fillmore, R-South Jordan. That power, he said, belongs to the Legislature and the citizens of the state.

*This story is breaking and will be updated.*

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BALLOT MEASURES

Utah voters to decide on constitutional amendment granting legislature power to amend or repeal initiatives and banning foreign influence on ballot measures

By Jackie Mitchell

August 23, 2024 at 2:15 PM



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Voters in Utah will decide on a [constitutional amendment](#) to provide the Utah State Legislature with explicit power to amend or repeal voter-approved ballot initiatives. The constitutional amendment would also ban foreign individuals, entities, or governments from influencing, supporting, or opposing initiatives and referendums.

On Aug. 21, 2024, the Utah State Legislature referred the constitutional amendment, Senate Joint Resolution 401 (SJR 401), to the ballot for Nov. 5, 2024. In the Senate, the vote was 20-8. Two Republicans joined the six Senate Democrats to oppose the amendment. The remaining 20 Senate Republicans voted for the amendment. In the House, the amendment passed 54-21. All 14 House Democrats opposed the amendment, while Republicans were divided 54-7.

The state legislature convened a special session to pass the constitutional amendment in response to a recent ruling by the Utah Supreme Court in *League of Women Voters v. Utah State*

*Legislature.* The litigation challenged the legislature's repeal and replacement of **Proposition 4**, a 2018 voter-approved initiative that sought to establish an independent advisory redistricting commission. Under Proposition 4, the commission would recommend redistricting maps to the state legislature, which would then be required to either enact or reject them. If the legislature rejected a commission-recommended map, it would have been required to create its own map using the same criteria outlined in Proposition 4. One provision of Proposition 4 was designed to explicitly prohibit the practice of "divid[ing] districts in a manner that purposefully or unduly favors or disfavors any incumbent elected official, candidate or prospective candidate for elective office, or any political party."

In the lawsuit, plaintiffs said that the state legislature "rescinded critical Proposition 4 reforms and enacted watered-down versions of others," and stated that the legislative redistricting process violated Utahns' right to vote and right to free speech by dividing Salt Lake County, a county with the state's largest concentration of voters for minority parties, into four congressional districts.

The court ruled on July 11, 2024, that the state legislature could not repeal or undo an initiative meant to reform government, writing that "the people's right to alter or reform the government through an initiative is constitutionally protected from government infringement, including legislative amendment, repeal, or replacement of the initiative in a manner that impairs the reform enacted by the people."

Nationally, 21 states allow citizens to initiate state statutes, with 10 states having some type of restriction on how and when the legislature can amend or repeal them. Utah is one of 11 states without restrictions on the legislature's ability to alter or repeal citizen initiatives, at least before the court ruling.

Between 2010 and 2022, Utah voters approved three initiated state statutes, all of which were on the ballot in 2018. The state legislature subsequently amended all three. During the same period 23 constitutional amendments were placed on the Utah ballot by the state legislature, with 18 (78.26%) receiving voter approval.

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ELECTION 2024

GOV &amp; POLITICS

## 'Vote no': Anti-gerrymandering groups launch campaign against Utah constitutional amendment

Meanwhile, conservatives and business leaders ramping up own campaign in favor

BY: **KATIE MCKELLAR** - AUGUST 26, 2024 7:31 PM



📷 A coalition of anti-gerrymandering groups urge Utah voters to reject a constitutional amendment on ballot initiatives during a rally at the Utah Capitol in Salt Lake City on Aug. 26, 2024. (Katie McKellar / Utah News Dispatch)

With a rallying cry of “vote no, vote no, vote no,” hundreds of Utahns packed onto the steps of the Utah Capitol on Monday to launch a campaign urging voters to reject a proposed constitutional amendment this November.

The campaign, spearheaded by the anti-gerrymandering group [Better Boundaries](#), has so far raised \$30,000 for the effort from some 270 donors and counting, according to executive director Katie Wright.

“We believe in checks and balances, and we are united in keeping our state balanced,” Wright said during the rally. “We will not give up our rights to politicians. Politicians are asking you to give up your constitutional right, but we will vote no.”

Wright, referring to a [letter circulated ahead of last week’s special session](#) that more than 2,500 people signed urging Utah lawmakers to respect the Utah Supreme Court interpretation of the Utah Constitution, said Better Boundaries has “heard from thousands of Utans” who are “united against this power grab.”

## Better Boundaries to lawmakers ahead of special session: Respect Utah Supreme Court ruling



As Utah lawmakers gear up for a special session on Wednesday to consider asking Utah voters to sidestep a recent Utah Supreme Court ruling on ballot initiatives that angered Republicans, the group that sought the ballot initiative at the heart of the court case is urging Utah’s leaders to

respect the judicial branch’s decision. Better ... [Continue reading](#)



Utah News Dispatch

Among those who spoke during the rally were leaders from the bipartisan group Mormon Women for Ethical Government, as well as at least one Republican legislator (Sen. Daniel Thatcher, R-West Valley City) who voted against putting the proposed constitutional amendment on Utahns’ ballots.

One of the most prominent speakers, however, was retired Utah Supreme Court chief justice, Christine Durham.



Durham served on Utah's Independent Redistricting Commission, which in 2021 recommended independently drawn electoral maps. But Utah's Republican supermajority ultimately ignored them – which led to an anti-gerrymandering lawsuit over Utah's redistricting process, a Utah Supreme Court ruling that revived the lawsuit and upset Republican lawmakers, and, eventually the debate Monday over whether to amend Utah's Constitution in spite of the court ruling.

Monday's rally – where protesters carried bright red signs reading “protect your rights, vote no” – came just five days after the [Utah Legislature called itself into an “emergency” special session](#) to place a complex but crucial question before voters on the Nov. 5 ballot to effectively ask voters to sidestep a recent Utah Supreme Court ruling that Utah's Republican supermajority worries will handcuff their power to alter or repeal ballot initiatives.

The question before voters: Should the Utah Constitution be amended to make clear the Utah Legislature has the ultimate power to amend, enact or repeal a law adopted by any ballot initiative, as well as should it be amended to ban “foreign individuals, entities or governments” from influencing an initiative or referendum?

Or should the Utah Supreme Court decision stand – and should the Utah Constitution remain the same?

Republican legislative leaders argue the constitutional amendment is needed because the Utah Supreme Court's ruling paved the way for invincible “super laws” enacted by ballot initiatives that the Utah Legislature would have no way of changing.

But Democrats, some Republicans that voted against putting the constitutional amendment on the ballot, and other opponents including anti-gerrymandering groups like Better Boundaries, argued that fears of “super laws” are an unfounded overreaction. They also note the Supreme Court's decision sets limits, specifically when it comes to “government reform” ballot initiatives – and it explicitly states the Legislature can still alter ballot initiatives, just not undermine them.

## The argument against

Ryan Bell, a board member of Better Boundaries, started his remarks by saying Utahns now find themselves in a “very strange situation.”

“The Utah State Legislature is seeking to ensure its supremacy over the will and voice of the people of Utah,” Bell said, which drew boos from the crowd.

He said the Utah Constitution “gives the people the right” to enact laws through the ballot initiative process, but “it has become clear that when the people exercise this right, the Legislature gets defensive of what they do as their turf.”

Bell said lawmakers demonstrated that in 2018, after voters approved Better Boundaries’ ballot initiative, Proposition 4, which sought an independent commission to set Utah’s political boundaries during its redistricting process. When voters passed that ballot initiative, he said Utahns “sent a message” to lawmakers that “we no longer trust them to draw fair election districts.”

“They chose to ignore the express will of the people, tossing out the initiative and passing their own law, appropriating back to themselves the right to draw their own legislative districts in the way that they choose,” he said.



📷 A coalition of anti-gerrymandering groups urge Utah voters to reject a constitutional amendment on ballot initiatives during a rally at the Utah Capitol in Salt Lake City on Aug. 26, 2024. (Katie McKellar / Utah News Dispatch)

Believing the Utah Constitution gave them ultimate authority to repeal and replace ballot initiatives with their own versions of the law, the [Utah Legislature in 2020 adopted a watered-down version](#) of the new redistricting process. That allowed Utah Lawmakers to ignore independently-drawn maps and adopt their own versions, which is ultimately what [Republican lawmakers did in 2021](#) when it came time to set Utah’s new political districts for the next 10 years.



Those 2021 maps [cracked Democratic strongholds in the red state of Utah](#), including a congressional map that sliced Utah's most populated county, Salt Lake County, into four congressional districts.

A lawsuit challenged the Legislature's repeal and replacement of that independent commission. The League of Women Voters of Utah – along with the group Mormon Women for Ethical Government and individual Salt Lake County residents who alleged they were disenfranchised by unlawful gerrymandering – claimed the Utah Legislature overstepped when it repealed and replaced Better Boundaries' voter-approved initiative.

The case ended up before the Utah Supreme Court, which on July 11 issued a [unanimous ruling](#) that angered Utah Republican legislators and spurred last week's special session. In that opinion, the Utah Supreme Court [remanded the lawsuit back to district court](#), with all five of Utah's justices ruling that the district court "erred" when it dismissed the League of Women Voters' claim that the Utah Legislature violated the Utah Constitution in 2021 when it repealed and replaced Better Boundaries' voter-approved initiative.

That litigation now continues, but the Supreme Court ruling was a major victory for the plaintiffs, and for Better Boundaries' anti-gerrymandering efforts.

## Utah Legislature asks voters to change constitution, skirt Supreme Court ballot initiatives ruling



The Republican-controlled Utah Legislature on Wednesday called itself into an "emergency" special session to place a proposed constitutional amendment on the Nov. 5 ballot, asking voters to skirt a recent Utah Supreme Court ruling that Republicans worry will handcuff their power

to alter or repeal ballot initiatives. The proposed constitutional amendment passed in the Senate ... Continue reading



Utah News Dispatch

"The court unanimously decided the Legislature does not get to veto the direct action of the people," Bell said, to loud cheers.

Bell described Utah legislative leaders' seething response to the ruling – saying it effectively made a "new law about the initiative power, creating chaos and [striking at the very heart of our Republic](#)" – as "language of politicians who are accustomed to exercising total power while being accountable to no one."

"Last week, the tantrum continued," he said, referring to the special session that allowed Utah's lawmakers to approve the proposed constitutional amendment and lay out a fast-tracked process to get it on the ballot in time for the Nov. 5 election.

"They've decided on the nuclear option. They're just going to rewrite that troublesome constitution," Bell said, to more boos. "Employing that same supermajority they obtained by drawing unfair voting districts in the first place, they approved a constitutional amendment that was sloppily drafted over a couple of quick, panicky days, which will give them power to simply veto initiatives passed by the voice of the people."

Bell, who called himself a conservative, said it would be "difficult to imagine anything less conservative than a knee-jerk, slap-dash,

rewriting of the constitution in order to shift more power from the people to their representatives.”

Bell urged Utah voters, regardless of their party affiliation, to not “give our leaders more control over us.”

“We, the people, are the ultimate authority in this government, and if this legislature wants to pick a fight to change that balance, that is the signal that we need to leak arms as citizens of Utah and let them know they have badly misunderstood their role and badly, badly underestimated us.”

Bell said Better Boundaries and the larger coalition of groups uniting to oppose the constitutional amendment reject it as an effort to “elevate the interests of representatives over the people they represent.”

“We look forward to connecting and joining with all Utahns as we work to maintain the proper balance of power in the state,” Bell said. “Now let’s get to work.”

## A campaign in favor is also brewing

Seeing as the Utah Legislature only moved last week to place the proposed constitutional amendment on the ballot, voters have barely two months to wrap their heads around the complex issue.

While the Better Boundaries coalition is rolling out their campaign to urge voters to vote no, so is the other side. From their corner, a coalition of business and community leaders are preparing to mount a campaign in support of the constitutional amendment.



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That coalition includes the Salt Lake Chamber (which issued a statement last week supporting the constitutional amendment), as well as prominent business leader Scott Anderson, who recently [retired](#) as president and CEO of Zions Bank.

“Utah has benefitted from the right balance between the initiative process and the legislative process for over a century,” Anderson said in a prepared statement to Utah News Dispatch on Monday.

“The recent Utah Supreme Court decision incentivizes outside

interests to meddle in Utah's affairs through the initiative process. Unless we act immediately, our state risks following the disastrous path of states like California."

The Salt Lake Chamber's statement, explaining its position, said it "supports the foundational principle of respecting the will of the people in lawmaking processes, whether through their duly elected representatives or constitutional ballot initiatives."

The chamber said it supports the constitutional amendment because it "restores certainty, predictability and balance between legislative and initiative lawmaking processes; Upholds the integrity of democratic rights by prohibiting foreign influence, support and funds for initiatives and referendums; and protects Utah's best-in-class economy and avoids Utah becoming a state that is governed by unfettered, unlimited and unchangeable ballot initiatives."

### Foreign interests and California-style politics?

To concerns that ballot initiatives open the door to funding from special interests to control Utah's laws, Wright told Utah News Dispatch in an interview after the rally that the Utah Legislature "is also funded by special interest groups."

She said Utah lawmakers are copying the playbook from other states, like [Ohio](#), where voters are slated to consider an anti-gerrymandering amendment.

## Utah Supreme Court's 'watershed' redistricting ruling has major implications. Now what?



The Utah Supreme Court's ruling on Thursday, which handed a major win to plaintiffs in an anti-gerrymandering lawsuit, was a "watershed moment." That's how the plaintiffs' attorney, David Reymann with Parr Brown Gee & Loveless, described it during a news conference celebrating the ruling. In a unanimous opinion released that day, Utah Supreme Court justices ... Continue reading



Utah News Dispatch

"We find it frustrating that they're not actually listening to the people of Utah, instead they're playing into some national pseudo crisis," Wright said.

The exact language for the constitutional amendment that will appear on Utah's Nov. 5 ballot has yet to be finalized – but lawmakers also passed another special session bill, [SB4002](#), to establish an expedited timeline and condensed process to write the ballot language. Though it will be one ballot question, Utah voters will vote on two issues: whether the Utah Legislature should have ultimate authority to repeal and replace any ballot initiative, and whether to constitutionally ban "foreign individuals, entities or governments" from influencing an initiative or referendum.

By combining those two issues into one question and by passing a bill giving lawmakers the ability to write the ballot language, Wright said she's "very concerned that the language will be challenging for voters."

However, Wright said she also trusts voters "to be really thoughtful, and I think ultimately they'll vote no."

There is no evidence of foreign interference in Utah's elections – though legislative leaders said they put that language in to prevent



any future meddling. But Wright said that's a "red herring" to tempt Utah voters to pass the constitutional amendment.

To claims that Utah allowing the Utah Supreme Court ruling to stand will open the door to California-style lawmaking in Utah, Wright noted Utah has much more restrictive ballot initiative requirements than California.



📷 Former Utah Supreme Court justice Christine Durham urges Utah voters to reject a constitutional amendment on ballot initiatives during a rally at the Utah Capitol in Salt Lake City on Aug. 26, 2024. (Katie McKellar / Utah News Dispatch)

Durham, in her remarks during the rally, also challenged that claim. She focused her remarks on the history of Better Boundaries' efforts to implement independent redistricting in Utah as well as what the Utah Supreme Court's decision did or didn't say. "There is no basis on which this (Utah Supreme Court) opinion would create California in Utah," the former chief justice said.

Rather, Durham said the opinion "focuses solely" on the "Alter or Reform" clause of the Utah Constitution. "It doesn't speak to any other type of initiative," she said, though she noted there could be future challenges on that issue.

Durham also questioned why "outsiders" would want to spend money to influence Utah lawmaking. "Can you imagine why anybody would want to spend loads of money on Utah's form of government?" she said, drawing laughs from the crowd. "I don't

quite get it, but that's going to be the campaign and we have to be ready to refute it."

Durham said she moved to Utah in the '70s, and back then there was much more bipartisanship in Utah's politics. But she said in the decades since, that's changed.

"It's become more and more difficult over the years to get any kind of bipartisanship, because there's no need for it. Because we have a one-party state," she said. "It's time for us to say no."

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**KATIE MCKELLAR**  

Katie McKellar covers Utah government as a senior reporter for Utah News Dispatch. She specializes in political reporting, covering the governor and the Utah Legislature, with expertise in beats including growth, housing and homelessness.

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NEWSLETTERS

Utah constitutional amendment would allow Legislature to repeal initiatives, prohibit foreign influence

By [Ethan Rice](#)

August 27, 2024 at 2:56 AM

Welcome to the Tuesday, Aug. 27, 2024, Brew.

By: Ethan Rice

Here’s what’s in store for you as you start your day:

1. Utah constitutional amendment would give Legislature authority to repeal initiatives, prohibit foreign influence in ballot measure elections
2. A closer look at New Hampshire's 2nd Congressional District Democratic primary
3. Republicans control 10.57% more state legislative seats than Democrats

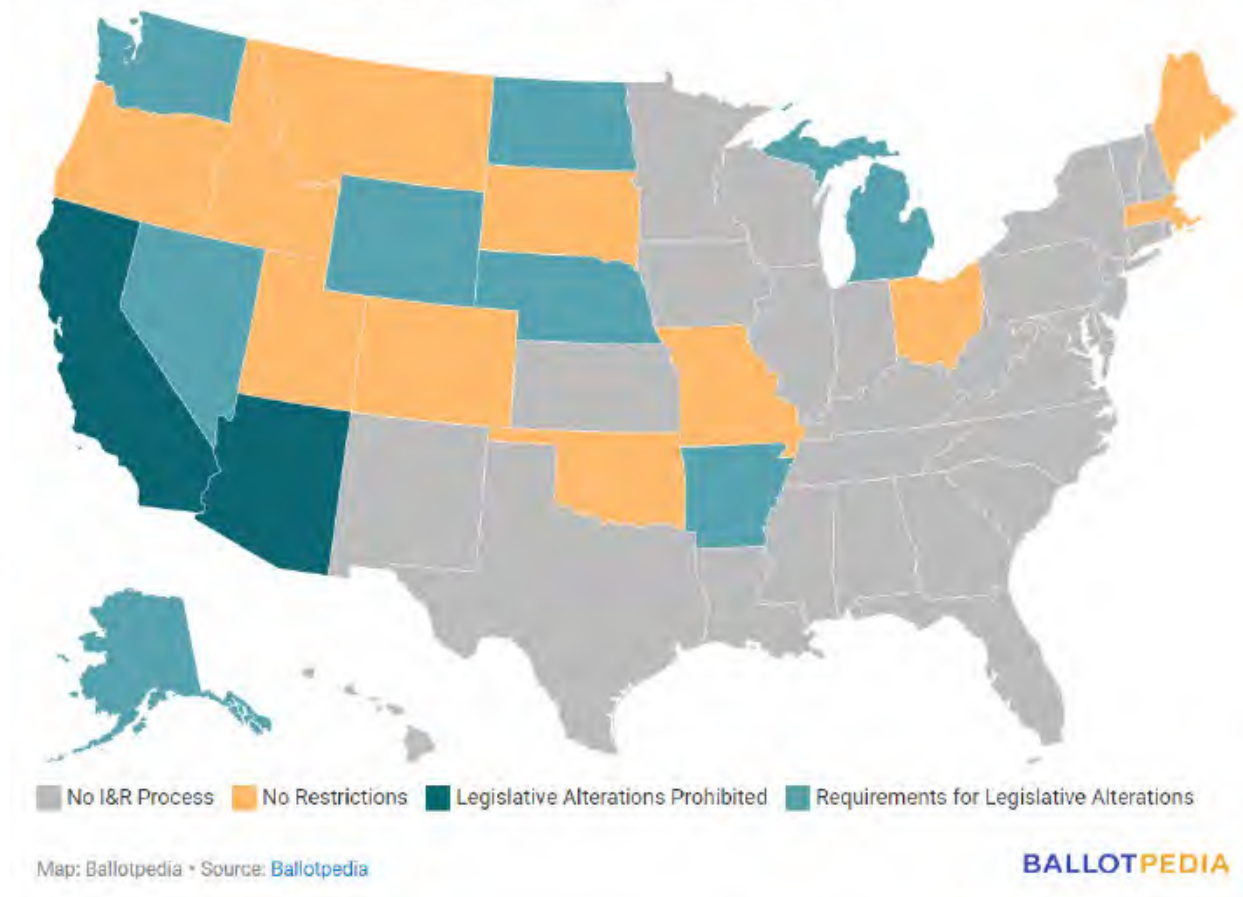
## Utah constitutional amendment would give Legislature authority to repeal initiatives, prohibit foreign influence in ballot measure elections

The Utah Legislature passed a constitutional amendment on Aug. 21 that will appear on the Nov. 5 ballot. If approved by voters, the [proposed amendment](#) would give the [Legislature](#) explicit power to amend or repeal voter-approved ballot initiatives. It would also ban foreign individuals, entities, or governments from influencing, supporting, or opposing initiatives and referendums.

Nationally, 21 states allow citizens to initiate state statutes, with 10 states having some type of restriction on how and when the legislature can [amend or repeal](#) them. Utah is one of 11 states without restrictions on the legislature's ability to alter or repeal citizen initiatives.

## Restrictions on legislative alteration by state

Restrictions and requirements for legislatures to alter voter-approved ballot initiatives.



Nine states have banned foreign nationals or governments from contributing to ballot measure campaigns. Ballot measures prohibiting foreign contributions were [passed](#) in [Colorado](#) in 2002, [Missouri](#) in 2016, [North Dakota](#) in 2018, and [Maine](#) in 2023, though the Missouri measure was found unconstitutional.

On Aug. 21, the Utah Legislature referred [Senate Joint Resolution 401](#) (SJR 401) to the Nov. 5 ballot. In the Senate, the vote was 20-8. Two Republicans joined the six Senate Democrats to oppose the amendment. The remaining 20 Senate Republicans voted for the amendment. In the House, the amendment passed 54-21. All 14 House Democrats opposed the amendment, while Republicans were divided 54-7.

The Legislature convened a special session to pass the amendment in response to the Utah Supreme Court's ruling in [League of Women Voters v. Utah State Legislature](#). Plaintiffs challenged the legislature's repeal and replacement of [Proposition 4](#), a 2018 voter-approved initiative that would have created an

independent advisory redistricting commission. Under Proposition 4, the commission would recommend redistricting maps to the Legislature, which would then be required to either approve or reject them. If the Legislature rejected a commission-recommended map, it would have been required to create its own map using the same criteria outlined in Proposition 4. One provision of Proposition 4 would have explicitly banned the practice of “divid[ing] districts in a manner that purposefully or unduly favors or disfavors any incumbent elected official, candidate or prospective candidate for elective office, or any political party.”

In the lawsuit, plaintiffs [said](#) the Legislature “rescinded critical Proposition 4 reforms and enacted watered-down versions of others.” They also argued that the legislative redistricting process violated Utahns’ right to vote and right to free speech by dividing [Salt Lake County](#), which has the state’s largest concentration of voters for minority parties, into four congressional districts.

The court [ruled](#) on July 11, 2024, that the Legislature could not repeal or undo an initiative meant to reform government: “The people’s right to alter or reform the government through an initiative is constitutionally protected from government infringement, including legislative amendment, repeal, or replacement of the initiative in a manner that impairs the reform enacted by the people.”

Between 2010 and 2022, Utah voters [approved](#) three initiated state statutes, all of which were on the ballot in 2018. The Legislature subsequently amended all three. During the same period, the Legislature placed 23 constitutional amendments on the ballot. Voters approved 18 (78.26%).

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## A closer look at New Hampshire’s 2nd Congressional District Democratic primary

*Throughout the year, we'll bring you coverage of the most compelling elections — the battlegrounds we expect to have a meaningful effect on the balance of power in governments or to be particularly competitive. You can catch our previous coverage of other battleground races [here](#).*

Today, we're looking at the Democratic primary for [New Hampshire's 2nd Congressional District](#). [Maggie Goodlander](#) (D) and [Colin Van Ostern](#) (D) are running in the Sept. 10 primary. Incumbent Rep. [Annie Kuster](#) (D), who was first elected in 2012, is not running for re-election. Kuster is one of 45 House incumbents [not running for re-election](#).

*New Hampshire Public Radio's Josh Rogers [said](#), "So far in this race, there's little to choose between the two Democrats, save for their biographies. As far as issues go, both Goodlander and Van Ostern mostly agree." According to Rogers, the candidates used their backgrounds to distinguish themselves in the primary. Referencing Goodlander's government experience, Van Ostern [said](#), "I'm in this race to fix Washington, not to defend it." Regarding Van Ostern's past runs for office, Goodlander [said](#), "I'm not a perennial candidate; I'm not a professional politician."*

Goodlander was a senior White House aide in President [Joe Biden's](#) (D) administration and served in the U.S. Department of Justice as a counselor to the attorney general and later deputy assistant attorney general. Goodlander was also an advisor to U.S. Sens. [John McCain](#) (R) and [Joe Lieberman](#) (I).

Van Ostern represented District 2 on the [New Hampshire Executive Council](#) from 2013 to 2017.[4] In 2016, he ran for [governor](#). [Chris Sununu](#) (R) [defeated](#) Van Ostern 49% to 46.7%. Van Ostern has worked for multiple companies, including Stonyfield Yogurt, Alumni Ventures, and Southern New Hampshire University.

Kuster [endorsed](#) Van Ostern, who was a campaign manager for her 2010 congressional campaign. EMILY's List, an organization that works to elect Democratic pro-choice women to office, [endorsed](#) Goodlander.

In the [2022 election](#), Kuster defeated [Bob Burns](#) (R) 55.8%-44.1%, a smaller [margin of victory](#) than the average 28.4 percentage point margin for House Democrats that year. *Daily Kos* calculated what the results of the [2020 presidential election](#) in this district would have been following redistricting. Joe Biden (D) would have defeated [Donald Trump](#) (R) 53.6%-44.7%. *The Cook Political Report*, *Inside Elections*, *Sabato's Crystal Ball*, and *Decision Desk HQ* and *The Hill* rate the district *Likely Democratic*.

All 435 seats in the U.S. House are up for election. Republicans have a 220 to 213 majority with two vacancies. As of August 2024, 45 members of the U.S. House had announced they were not running for re-election. To read more about the U.S. House elections taking place this year, [click here](#).

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## Republicans control 10.57% more state legislative seats than Democrats

As a part of Ballotpedia's [coverage](#) of state legislatures, we produce a monthly report detailing the partisan breakdown of state legislatures. As of the most recent report, nationwide,

**Republicans control 781 (10.57%) more state legislative seats than Democrats.** Republicans control 4,052 (54.86%) state legislative seats to Democrats' 3,271 (44.29%). Independent, nonpartisan, and other state legislators hold 23 (0.31%) of those seats, while 40 (0.54%) are vacant.

1. Across the lower chamber of state legislatures, Republicans control 2,938 seats to Democrats' 2,427.
2. Across the upper chamber of state legislatures, Republicans control 1,114 seats to Democrats 844.

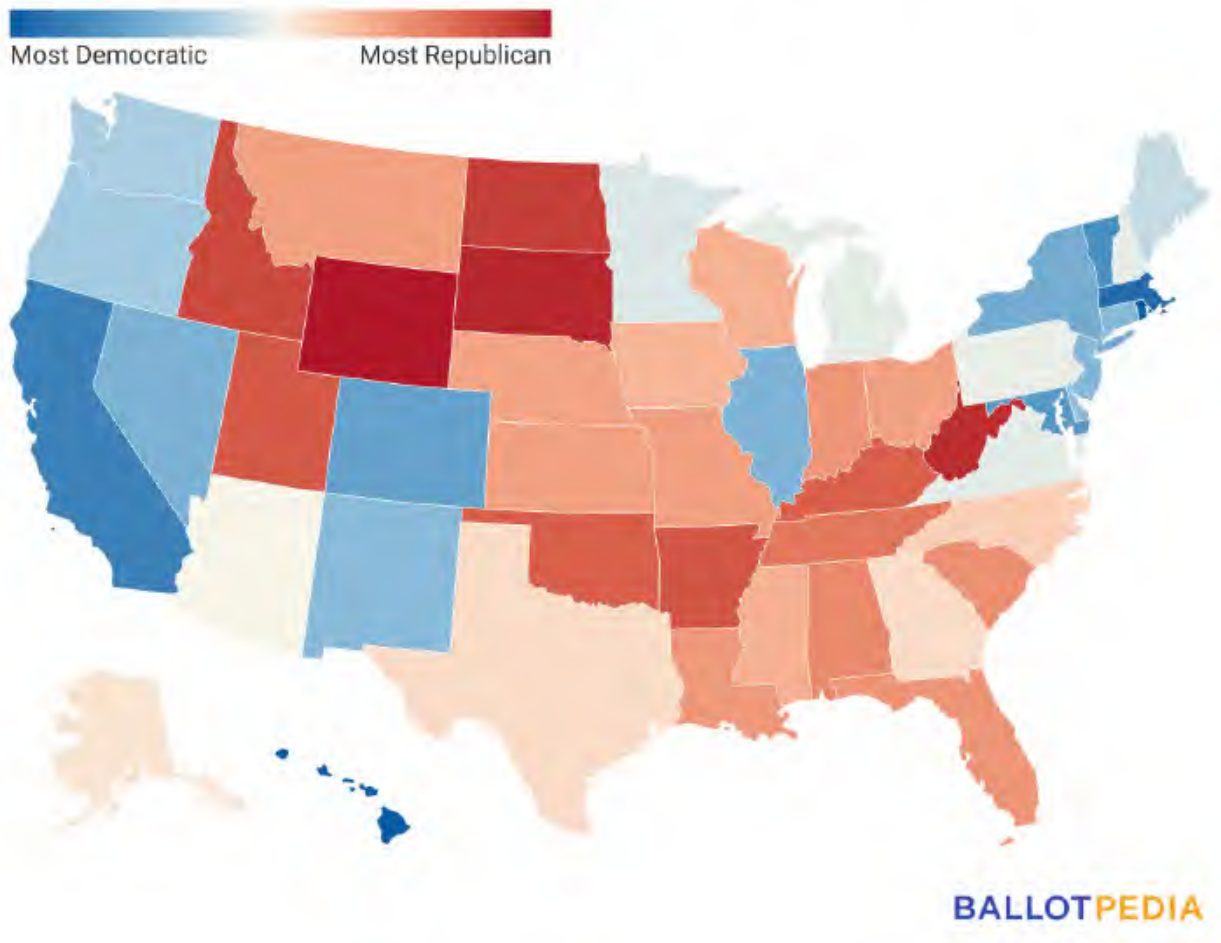
### Least competitive state legislatures by overall composition

1. Hawaii and Rhode Island have the most Democratic legislators by percent, with Democrats controlling 86.27% (66 seats) of the Hawaii Legislature and 86.67% (97 seats) in the Rhode Island Legislature.



2. Wyoming and South Dakota have the most Republican legislators by percent, with Republicans controlling 91.94% (86 seats) of the Wyoming Legislature and 90% (94 seats) in the South Dakota Legislature.

### Partisan Composition of State Legislatures by % Democrat and Republican



### Most competitive state legislatures by overall composition

1. Pennsylvania and New Hampshire have the most competitive overall legislative compositions by percent, with Democrats having a 0.49% (five seats out of 253 total) edge in Pennsylvania and Republicans having a 1.25% edge in New Hampshire. In New Hampshire, Republicans control 213 seats to Democrats' 204, with two held by third-party members and five vacancies.

Eighty-five state legislative chambers will hold regularly scheduled elections in 2024. Ballotpedia has identified 10 of those chambers



as state legislative battlegrounds:

- [Alaska State Senate](#)
- [Alaska House of Representatives](#)
- [Arizona State Senate](#)
- [Arizona House of Representatives](#)
- [Michigan House of Representatives](#)
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- [Wisconsin State Senate](#)

In even-year election cycles from 2010 to 2022, an average of nine chambers changed party control. The year with the most changes was 2010 (22), and the year with the least was 2020 (two). For a full list of all of these changes, [click here](#).

Heading into the 2024 elections, Republicans control six battleground chambers, and Democrats control two. The [Alaska Senate](#) and the [Alaska House of Representatives](#) have a multipartisan coalition in charge, although Republicans have an 11-9 numerical majority in the Senate and a 22-13 numerical majority in the House. Click [here](#) to learn more about state legislative battleground chambers.

To learn more about competitiveness in state legislatures this year, [click here](#). Keep reading



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# 'Vote no' rally at the Utah capitol launches opposition to ballot initiative amendment

KUER 90.1 | By [Saige Miller](#)

Published August 26, 2024 at 5:36 PM MDT



Sean Higgins / KUER

Katie Wright, executive director of Better Boundaries, speaks at an Aug. 26, 2024, rally on the steps of the Utah State Capitol opposing a constitutional amendment that would give lawmakers more power over ballot initiatives.

Fresh off of the Legislature's decision to put a constitutional amendment on the November ballot to alter ballot initiatives approved by voters, advocacy groups are asking Utahns to vote against it.

Opponents have labeled it a "power grab" by politicians.

"Our constitutional rights are sacred, and we will not give them away to politicians who think they know better than us, the voters," said Katie Wright, the executive director of Better Boundaries.

The amendment, which would give lawmakers the power to revise or repeal citizen-led ballot initiatives, was passed by the Legislature during an Aug. 21 [special emergency session](#). It comes after the Utah Supreme Court ruled the Legislature [overstepped](#) its authority when it significantly changed a 2018 initiative greenlit by voters that created an independent redistricting commission to prevent partisan congressional maps.



Sean Higgins / KUER

Better Boundaries held a 'vote no' rally on the steps of the Utah State Capitol in Salt Lake City, Aug. 26, 2024. The campaign is urging voters to reject a constitutional amendment on the November ballot that would allow lawmakers more power over ballot initiative's.

[Better Boundaries](#), the organizer behind the redistricting ballot initiative, launched the ["vote no" campaign](#) on Aug. 26. They were joined at the state capitol by [Mormon Women for Ethical Government](#), who sued the Legislature over the redistricting alterations, former Utah Supreme Court justice Christine Durham and lawmakers who voted against the special session resolution.

The groups were vague on specific plans, but they say they need a focused and well-funded statewide campaign since the timeline is tight.

For Ryan Bell, a Better Boundaries board member, the constitutional amendment put forth by the Republican supermajority is unpopular across the political spectrum. As a self-proclaimed conservative, he said it's "difficult to imagine anything less conservative than a knee-jerk, slap-dash rewriting of the constitution in order to

"Our state constitution gives the people the right to enact laws directly through the initiative process, and it has become clear that when the people exercise this right, the Legislature gets defensive of what they view as their turf."

During the special session, Republican lawmakers pushed back against the accusation of a power grab on the House and Senate floor. They have a different interpretation of the state constitution, arguing it grants them the power to change initiatives passed by the voters.

Ultimately, lawmakers are giving voters the final say on the matter.



Sean Higgins / KUER

Republican state Sen. Daniel Thatcher address the 'vote no' rally on the steps of the Utah State Capitol in Salt Lake City, Aug. 26, 2024.

Republican Sen. [Daniel Thatcher](#), one of the nine GOP votes against the resolution sending the amendment to the ballot, said he doesn't believe the Utah Supreme Court decision means lawmakers can't make tweaks to approved ballot initiatives. The ruling from the high court said lawmakers can amend an initiative "if the Legislature shows that they were narrowly tailored to advance a compelling government interest."

"I don't believe that this [Supreme Court ruling] restrains the Legislature from doing its job or staying within the bounds, I don't," Thatcher said. "I think it only requires justification for impairing or overturning the otherwise constitutional and lawful

He sees the move made by his colleagues as a “moment of awful consequence to the state of Utah.” Thatcher said the question in front of voters is about the amount of power lawmakers possess.

“The question before us is: Is there a limit? Either there is a limit and it is this reasonable boundary, or there is no limit, and we surrender the final bulwark – forever.”

*Disclosure: Katie Wright of Better Boundaries is a member of the KUER [advisory board](#).*

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Sept. 24 — KUER Mug Stop: The Honeysuckle Coffee Co.



Sept. 26 — KUER Mug Stop: 3 Cups Coffee

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POLITICS UTAH

# The cases for and against a Utah constitutional amendment

Should the Utah Constitution say the Legislature can make changes to laws originating as initiatives?

Published: Sept 2, 2024, 3:50 p.m. MDT

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Executive Director of Better Boundaries Katie Wright talks with supporters after a rally by Better Boundaries on the steps of the state capitol building in Salt Lake City on Monday, Aug. 26, 2024. | Brice Tucker, Deseret News

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**By Hanna Seariac**

Hanna is a reporter for the Deseret News where she covers courts, crime, policy and faith.

Should the Utah Constitution say the Legislature can amend or repeal citizen-led initiatives and foreign (out of country) influence should not be allowed to sway Utahns on voting for or against initiatives?

That is a question Utah voters will have to answer on their ballots.

The Deseret News has spoken with Utah majority leaders about why they believe the amendment should be passed, as well as leaders from Better Boundaries, a group opposing the amendment.

## **Better Boundaries' case against the amendment**

"We, the people, are the final check on the power of politicians," said Katie Wright, executive director of Better Boundaries. "And that is why it's so important that when we're trying to form or reform the very government that is for us and by us, that we have the final say."

Wright said the Utah Supreme Court's decision that said legislators can amend initiatives that alter or reform the government by narrowly tailoring the amendment to a compelling government interest was "prudent."

"It allows the legislative body to make tweaks and changes as long as there is a compelling interest, and that is a proper and prudent balance of powers," said Wright.

The process leading up to lawmakers putting the amendment on voters' ballot was "antithetical to a robust thriving republic," said Wright, adding there was only a few minutes of public intent in the committee meeting. "There was no debate, no meetings across the state to gauge the public's interest in this."

When Wright was asked why there should be a difference in the way lawmakers can amend laws originating from alter and reform initiatives and laws the legislative body passed themselves, she said giving them “the ability to carte blanche change what a majority of Utahns have voted for is giving them unchecked power.”

“I think the politicians have proven their unwillingness to listen to the people, and that’s when we go to court,” said Wright, pointing toward the lawsuit over the redistricting maps. She said after the initiative to create an independent redistricting commission passed, lawmakers “completely overrode the decisions of the independent commission and put in place the worst gerrymander we’ve had in our state’s history.”

Wright said this was a “prime example” of the super-majority Legislature “absolutely at every stage discarding the will of the people and acting in very bad faith.”

In Wright’s eyes, giving the Legislature the ability to amend and repeal initiatives is effectively taking away the right of Utahs to pass initiatives.

“What it affirmatively does is make our ability to pass initiatives totally beside the point,” said Wright.

Lawmakers also passed a bill requiring themselves to keep the general purpose of an initiative intact when making amendments. Wright said she still thinks it gives the power people have now to politicians.

As for the other part of the amendment — stating foreign influences will not be allowed to sway voters on initiatives — Wright said she thinks it was put in the amendment “to entice Utah voters.” She said she does not think there should be out-of-country influence on initiatives, but also thought voters will see through the amendment.

If she was speaking to a Utah voter who sees the amendment as necessary for preserving the state’s constitutional republic, Wright said she would point back toward the Utah Supreme Court decision.

“The Utah Supreme Court decision was unanimous and specific that there are guardrails in certain ballot initiatives — what the Legislature can do and those are an



appropriate check on power that allow us to ensure the politicians are working for us,” said Wright.

The campaign against the amendment will be straightforward, said Wright. Utah voters “have the ability to check the power of politicians through this constitutional right and I don’t think they will give that up.”



Supporters with signs stand on the state capitol building steps during a rally by Better Boundaries in Salt Lake City on Monday, Aug. 26, 2024. | Brice Tucker, Deseret News PURCHASE IMAGE

Ralph Becker, former Salt Lake City mayor, was one of the co-chairmen of the drive to pass the initiative. Before that, he was minority leader in the Utah House of Representatives during the 2000 redistricting.

“My experience is that most state legislators come in and operate with good intentions, and try to do what they think is right for the state,” said Becker. But when it comes to redistricting, he thinks “there is an inherent conflict of interest because legislators are so directly affected by it.”

Becker explained boundaries impact who lawmakers represent, the chances they have to keep their seat and it becomes personal for them. Democrat or Republican, the issue has a partisan layer on top of it, he said.

“It maybe makes them blind to the effects that their decisions have in a very fundamental way on how our democracy and elections operate,” said Becker.

There are almost always changes to laws, said Becker. But the Utah Supreme Court decision does not prevent the Legislature from amending initiatives, he said. “What they did say is you can’t impair the basic intent of an initiative when it’s an initiative to reform government.”

“To me, that’s a very healthy outcome,” said Becker. “So the Legislature can make changes, they just can’t ignore what’s the clear will of the people.”

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## The changes to the initiative

After the initiative passed, the Legislature started talking about amending it.

“We hired lobbyists. We went up and talked to people, tried to preserve the results of the popular vote and the initiative,” said Becker. He said the Legislature “took to heart to some extent what the initiative said,” but still made changes.

The result of the changes? As opposed to the Legislature adopting the maps from the independent redistricting commission, those maps would be considered a recommendation and the Legislature could implement their own maps.

At the time of the changes, the then-executive director of Better Boundaries said “the compromise wasn’t perfect, but good policy is all about give and take.” The compromise with Better Boundaries came after back-and-forth, and the consideration of a repeal of the initiative.

The commission completed its work and Becker said the Legislature went with its own map as opposed to the commission's.

Becker said he and others tried to provide as much reasonable constructive input as possible. "But the outcome was the same as if there had never been a statute passed and never been an independent redistricting commission that did the job that the Legislature asked them to do."

Utah Senate President Stuart J. Adams in a previous interview said Better Boundaries came to lawmakers to make changes to an initiative.

"They came to us because when they drafted it, they had an unconstitutional provision in it," said Adams, R-Layton, explaining the provision said if the House speaker and the Senate president did not appoint people to the commission, it would default to the Supreme Court.

Adams said the Legislature made those changes and held a press conference with leaders from Better Boundaries in the Gold Room.

"And they needed it, or they would have lost their initiative on constitutional grounds," said Adams. He said the Legislature is not taking away the right of the people, they take their ideas and make them functional.





Senate President Stuart Adams, R-Layton; Sen. Kirk Cullimore, R-Draper; and Rep. Jordan Teuscher, R-South Jordan, talk with media following a special session of Utah's legislature to consider an initiative constitutional amendment at the Capitol in Salt Lake City on Wednesday, Aug. 21, 2024. | Scott G Winterton, Deseret News

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**Utah majority leaders say amendment needed so Utah doesn't become California**

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## Utah Majority leaders make their case for the amendment

The night of the Utah Legislature's special session, Adams, Rep. Jordan Teuscher, R-South Jordan, and Sen. Kirk Cullimore, R-Draper, held a press conference to discuss the amendment and its accompanying issues.

When asked what the case for the amendment would be to Utah voters, Adams immediately responded, "Don't become like California and keep Utah, Utah."

In the days leading up to Utah lawmakers putting the constitutional amendment on the ballot, Adams and House Speaker Mike Schultz both spoke to the Deseret News about

why they believe the amendment would be good for Utahns.

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Adams said Utah is the greatest state in the nation, listing off the state's rankings on management, the economy and happiness as evidence for his statement.

“We don't want it to be California with initiatives and out-of-state money and out-of-state influences determining policies that affect the citizens of Utah,” said Adams. “That's what we're fighting for.”

Schultz, R-Hooper, said, “We just want to keep things the way it's been for the last 130 years in the state of Utah and to show that we're sincere in that we opened up the back end of that for referenda, making it easier for citizens of the state to hold the legislature accountable.”

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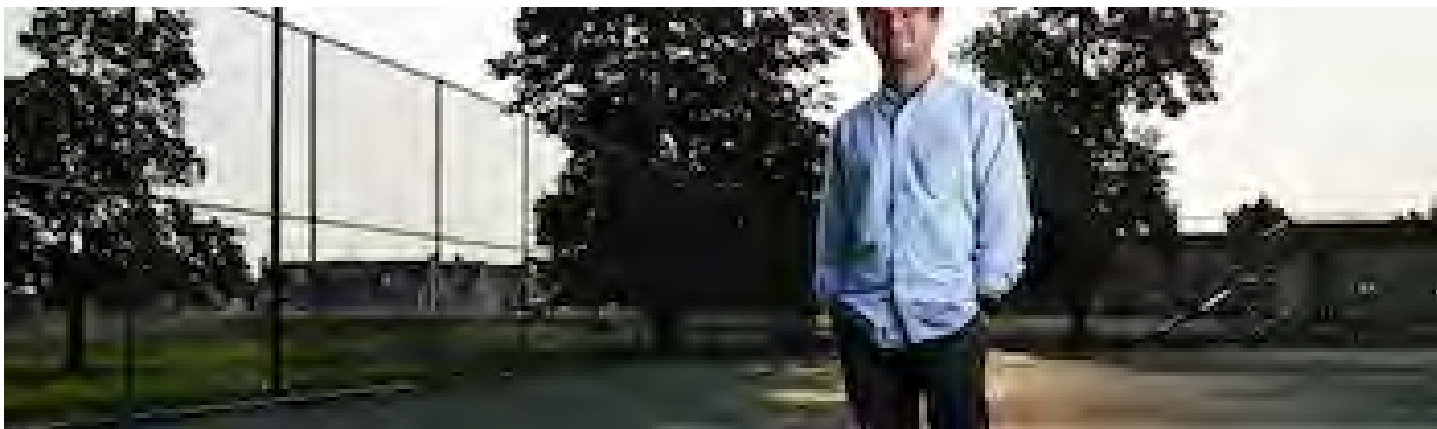
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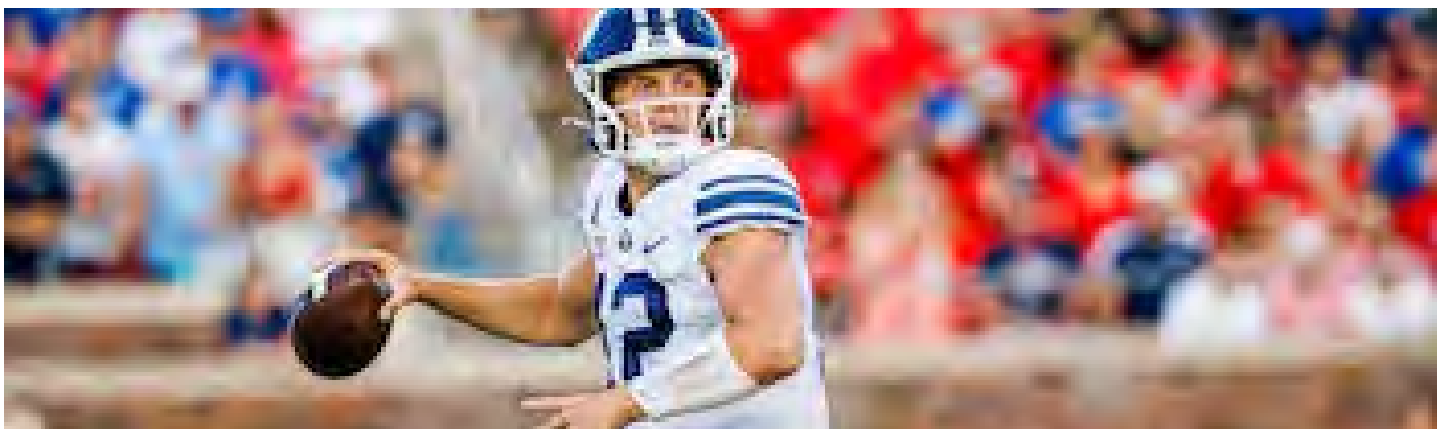
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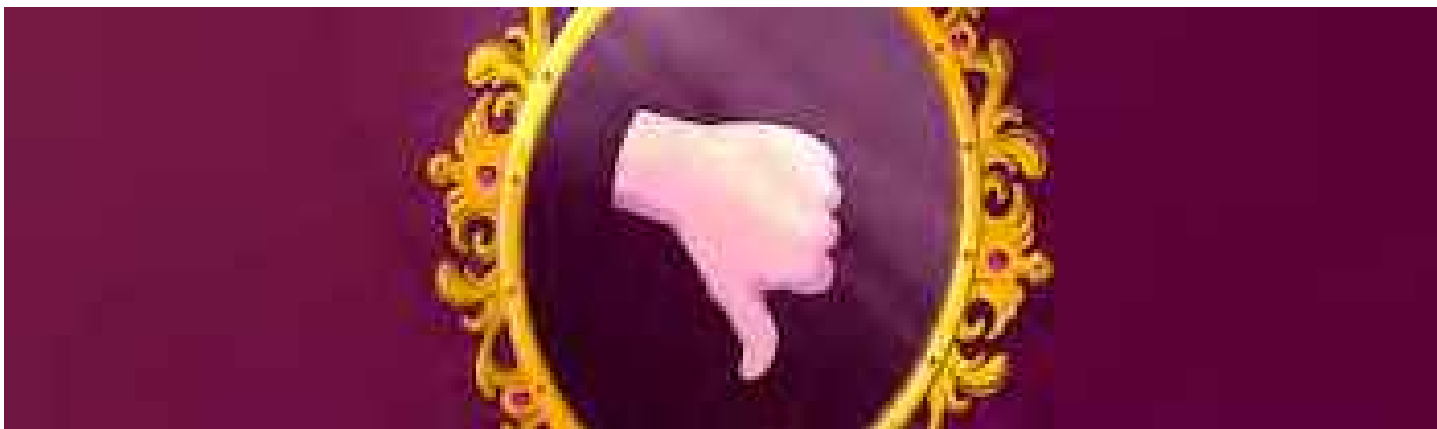
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# 'Deceptive' and 'misleading': Ballot language to limit voters' initiative power thrashed by critics — including Republicans

While GOP leaders contend they used clear language to explain the amendment's impact, some Republican lawmakers and critics aren't buying it.



(Chris Samuels | The Salt Lake Tribune) Members of the public attend a rally against a proposed constitutional amendment to reform the citizen initiative process at the Capitol in Salt Lake City, Monday, Aug. 26, 2024.

By Robert Gehrke | Sep. 4, 2024, 4:00 p.m. | Updated: Sep. 5, 2024, 12:39 p.m.



Groups opposing a constitutional amendment that will ensure the Utah Legislature can repeal or amend any future ballot initiative are outraged by the way the issue will be presented on voters' ballots in November, calling the language a deceptive "lie" intended to "trick voters" into surrendering their constitutional rights.

As it was written by Utah Senate President Stuart Adams and House Speaker Mike Schutlz, the question put before voters is whether or not to "strengthen the initiative process" by prohibiting "foreign influence" on Utah ballot initiatives and "clarifying the voters and legislative bodies' ability to amend laws."

It is the description of the amendment "strengthening the initiative process" that has opponents upset, contending it minimizes what they say is actually a power grab by the Legislature that would strip voters of their constitutional right to run ballot initiatives.

Republican lawmakers [changed the law earlier this year](#), taking the responsibility for writing the ballot language away from legislative attorneys and giving it to the House speaker and Senate president.

The description of the amendment comes as the ballots that will be sent to [1.7 million registered voters](#) are now being printed and as a new study by The Utah Foundation reports that [politicians ignoring voters is the second most important issue](#) for residents — surpassed only by the cost of housing in the state.

The amendment was [hastily approved by legislative Republicans](#) during an emergency special session last month after five GOP-appointed [Utah Supreme Court justices unanimously ruled in July](#) that, in order for the citizen's constitutional right to pass initiatives to have meaning, the Legislature cannot simply undo the intent of voters on a whim.

Legislators in the [Republican supermajority](#) argued that would create "super laws" that



was explicit in its ruling that laws could be changed if there is a “compelling” reason or if the changes help to implement the will of voters.

Ryan Bell, a board member for the group Better Boundaries, which is spearheading opposition to the constitutional amendment, called the wording of the ballot measure “hopelessly slanted.”

“It is not true that this amendment will strengthen the initiative process; it will weaken that process,” he said in a statement. “It is not true that the amendment will establish requirements for the legislature to follow the intent of a ballot initiative; it will free them to override initiatives passed by the will of the people.”



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Bell said the legislative leaders are compounding their unwillingness to engage with the public on the initiative issue “with ballot language that is likely to mislead the people,” and said his group and its allies will “ensure that the people of Utah see through these tactics.”

In a joint statement, Schultz and Adams said their objective is “to provide a straightforward and concise description to allow voters to easily understand the core of the proposed changes.”

“Additionally, voters always have access to comprehensive analysis and arguments both for and against the amendments,” they said. “Modeling previous ballot titles was our guide as we drafted this constitutional amendment. Those who label these efforts as deceptive are often the ones attempting to mislead voters.”

But critics of the ballot language include Republican lawmakers, like Bountiful Rep. Ray Ward, one of the [nine Republicans who voted against the amendment](#).

“I believe that ballot language that has been written by them is deceptive and it incorrectly claims that the effect is to strengthen the initiative process when, to me, it seems the main purpose of the amendment is to seriously weaken the initiative process,” Ward said. “I think it reads like an advertisement for [the amendment] as opposed to neutral language. In the end, it will be on the voters to come to understand it and I hope there will be enough attention paid that they do understand it.”

Republican Provo Rep. Marsha Judkins, who also voted against the amendment, was surprised at the way the ballot question was worded, [posting on X](#), “You have got to be kidding. What misleading language!”

Recalling her time on the school board, Judkins said, ballot questions put to the public had to be very clear and specific about what they did and what the impacts would be.

“What this language says in this new constitutional amendment being proposed is, ‘We can repeal it,’” Judkins said. “This isn’t just changing it and trying to keep what voters have said through the initiative process. It’s actually repeal.”

State Sen. Nate Blouin, D-Millcreek, said that if voters approve the proposed amendment, the Legislature would make the citizens’ ability to reform government through the initiative meaningless.

“Now, they will print language on the ballot that can be described in no uncertain terms as a lie in an attempt to trick voters into voting against their own interests,” he said. “They will use millions of dollars flowing in from all corners of the nation to convince you that they know better. Let me tell you from experience: They don’t.”

[Voter Initiative Amendment Language](#) by [Robert Gehrke](#) on Scribd



## Constitutional Amendment D

Should the Utah Constitution be changed to strengthen the initiative process by:

- Prohibiting foreign influence on ballot initiatives and referendums.
- Clarifying the voters and legislative bodies' ability to amend laws.

If approved, state law would also be changed to:

- Allow Utah citizens 50% more time to gather signatures for a statewide referendum

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The description written by Adams and Schultz is factually correct in that the constitutional amendment would attempt to prohibit foreign influence on initiatives. The term, however, is not defined in the amendment and [Republican leaders don't have any examples of foreign interests trying to influence Utah](#) initiatives. When asked about foreign influence, Adams said they want to make sure it doesn't happen here.

Other states that have enacted similar bans have done it through statute, rather than an amendment. Some have also argued that such bans are unconstitutional and would be struck down by the courts. In June, [a lawsuit was filed challenging Ohio's ban on forei](#)

effect, saying it was likely unconstitutional to ban green card holders — who can serve in the military, for example — from participating in the political process.

Ward said the foreign money ban is unenforceable since in the current campaign finance system special interests can donate dark money that never has to be reported.

Bell said that including the ban on foreign money in the amendment was nothing more than “a red herring more directed at scaring people than solving any actual problem.”

The ballot language written by Schultz and Adams also highlights two other bills approved by the Legislature — one that [expands the time allowed for signature-gathering](#) for voter referenda aimed at overturning a law passed by the Legislature, and another saying the [Legislature should give “deference” to the intent of citizen initiatives](#) — that would take effect if the amendment is approved.

The language requiring deference only applies to the general session immediately following the passage of an initiative and does not apply to any special legislative sessions.

Ward pointed out that in the two decades, the Legislature has passed 9,700 laws, while the public has passed three through the initiative process. That’s because it is difficult, with high signature thresholds and time and money needed to get one through.

“If you make that process so it can be overturned in a special session a week after you pass it, I don’t know who would have the stomach, and time and willpower to go out and put their shoulder to the wheel [to get it done],” he said.

A report released Wednesday by The Utah Foundation, a non-partisan think tank, identified politicians not listening to voters as a top issue among Democrats, Republicans and independents. It ranked just behind housing affordability among Utahns’ top priorities and ahead of inflation, government overreach, partisanship in

In addition, polls have shown that the initiative process remains a popular tool among voters.

Earlier this year, [a poll by the Ballot Initiative Strategy Center](#) reported that 87% of Utahns said the Legislature should be required to enact ballot measures passed by voters. It found that 88% said legislators should not block, limit or reverse initiatives, and 93% say legislators have an obligation to carry out the will of the people if a majority approves an initiative.

Because the poll was conducted across multiple states, the Utah sample size was small, meaning it had a high margin of error, but the degree of support was overwhelming.

**Updates: Sept. 4, 5:20 p.m. and Sept. 5, 11:40 a.m.** • *This story has been updated to include an interview with Republican Provo Rep. Marsha Judkins and subsequently to include the Legislature's change to who writes the ballot language.*

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# The Salt Lake Tribune

Utah News Dispatch

# Opponents of Utah constitutional amendment on voter initiatives decry 'deceptive' ballot language

Katie McKellar

Wed, September 4, 2024 at 6:17 PM CDT · 12 min read



People watch from a packed gallery as the Senate discusses a proposed constitutional amendment related to citizen initiatives during a special legislative session at the Capitol in Salt Lake City on Wednesday, Aug. 21, 2024. (Photo by Spenser Heaps for Utah News Dispatch)

The language that will appear on the Nov. 5 ballot asking voters whether to change the [Utah Constitution to sidestep a recent Utah Supreme Court ruling](#) on ballot initiatives has been finalized.

Anti-gerrymandering advocates with the group Better Boundaries decried the language as misleading. In response, the Utah Legislature's top Republican legislative leaders argue it's "straightforward and concise" to help voters understand the "core" of the proposed constitutional change.

The question — written by Senate President Stuart Adams and House Speaker Mike Schultz — that will appear before Utah voters on the ballot will read as follows, according to the official [2024 general election certification](#) that Lt. Gov. Deidre Henderson signed Tuesday.

should the Utah Constitution be changed to strengthen the initiative process by:

- Prohibiting foreign influence on ballot initiatives and referendums.
- Clarifying the voters and legislative bodies' ability to amend laws.

If approved, state law would also be changed to:

- Allow Utah citizens 50% more time to gather signatures for a statewide referendum.
- Establish requirements for the legislature to follow the intent of a ballot initiative.

The language that would be added to the Utah Constitution, according to the special session resolution that placed the question on the ballot, [SJR401](#), would:

- Make clear that “notwithstanding any other provision of this Constitution, the people’s exercise” of their ballot initiative or referendum power “does not limit or preclude the exercise of Legislative power, including through amending, enacting or repealing a law, by the Legislature, or by a law making body of a county, city, or town, on behalf of the people whom they are elected to represent.”
- Ban “foreign individuals, entities or governments” from “directly or indirectly” influencing, supporting or opposing an initiative or referendum, and allow the Legislature to enforce that ban.

57 (3) (a) Foreign individuals, entities, or governments may not, directly or indirectly,  
 58 influence, support, or oppose an initiative or a referendum.  
 59 (b) The Legislature may provide, by statute, definitions, scope, and enforcement of the  
 60 prohibition under Subsection (3)(a).  
 61 (4) Notwithstanding any other provision of this Constitution, the people's exercise of their  
 62 Legislative power as provided in Subsection (2) does not limit or preclude the exercise  
 63 of Legislative power, including through amending, enacting, or repealing a law, by the  
 64 Legislature, or by a law making body of a county, city, or town, on behalf of the people  
 65 whom they are elected to represent.  
 66 **Section 3. Submittal to voters.**  
The lieutenant governor is directed to submit this proposed amendment to the  
 68 voters of the state at the next regular general election in the manner provided by law.  
 69 **Section 4. Contingent effective date.**  
If the amendment proposed by this joint resolution is approved by a majority of  
 71 those voting on it at the next regular general election, the amendment shall take effect on  
 72 January 1, 2025.  
 73 **Section 5. Retrospective operation.**  
The actions affecting Article I, Section 2 and Article VI, Section 1, Subsection (4)  
 75 have retrospective operation.

A screenshot of the proposed amendment to the Utah Constitution in SJR401, containing language that would be added to the Utah Constitution if voters approve Constitutional Amendment D in the general election on Nov. 5, 2024. (Katie McKellar / Utah News Dispatch)

constitution. Voting in favor will enshrine in the Utah Constitution the Utah Legislature's authority to alter or repeal any voter ballot initiative passed by Utah voters — something Legislature's Republican leaders thought has been their authority, up until a recent Utah Supreme Court ruling in an anti-gerrymandering lawsuit said otherwise.

*Utah Supreme Court hands big win to plaintiffs in anti-gerrymandering lawsuit*

That July 11 ruling remanded the lawsuit over Utah's redistricting process back to district court, with all five of Utah's justices ruling that the district court "erred" when it dismissed the League of Women Voters' claim that the Utah Legislature violated the Utah Constitution in 2021 when it repealed and replaced Better Boundaries' voter-approved 2018 initiative that sought an independent redistricting commission. That litigation over the constitutionality of the Legislature's decision to adopt a watered-down version of the redistricting process — allowing lawmakers to ultimately ignore the independent commission's recommended political boundaries — now continues.

However, Utah's Republican lawmakers fear the ruling dramatically weakened their constitutional authority to repeal and replace ballot initiatives as they've done in the past, claiming it effectively allowed ballot initiatives to become "super laws" immune to legislative changes. As a result, they argued it would invite California-style governance to Utah by allowing more lawmaking at the ballot box — something they argued could create "chaos" and strike "at the very heart of our Republic."

That's not necessarily what the Utah Supreme Court ruling explicitly said, though it does leave a question over how other ballot initiatives could be litigated. While the ruling makes clear the Legislature's power to amend government-reform initiatives has limits, the ruling also explicitly states "this does not mean that the Legislature cannot amend a government-reform initiative at all."

"Rather, legislative changes that facilitate or support the reform, or at least do not impair the reform enacted by the people, would not implicate the people's rights under the Alter or Reform Clause," the ruling states.

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Legislature shows that they were narrowly tailored to advance a compelling government interest.”

Rather than letting the Utah Supreme Court’s interpretation of the constitution stand, Utah lawmakers opted to instead put the question before voters. If Amendment D passes, it will effectively render the Utah Supreme Court’s latest interpretation moot. [SJR401](#) makes that clear, by stating the constitutional amendment would be retrospective, meaning it would impact any past ballot initiatives, as well as future.

### The debate

Anti-gerrymandering advocates argue legislative leaders’ fear of “super laws” are unfounded — and they said the Legislature is misrepresenting the issue to voters. Though the Senate president and House speaker characterized the constitutional amendment as one that would “strengthen” the ballot initiative process, anti-gerrymandering advocates argued it would actually weaken Utah voters’ power to reform their government through ballot measures.

“The ballot language issued by legislative leadership is hopelessly slanted,” Ryan Bell, a board member of Better Boundaries, said in a prepared statement Wednesday. “It is not true that this amendment will strengthen the initiative process; it will weaken that process.”

Bell said it’s also “not true” that the constitutional amendment, if it passes, will “establish requirements for the Legislature to follow the intent of a ballot initiative; it will free them to override initiatives passed by the will of the people.”

“It is saddening to see legislative leadership compound their refusal to engage with the people on this issue with ballot language that is likely to mislead the people,” Bell said. “Better Boundaries and its many allies will ensure that the people of Utah see through these tactics.”

The language of Amendment D refers to [SB4003](#), a companion bill that the Utah Legislature also passed in last month’s [special session](#) that’s “contingent” on voters passing the constitutional amendment.

That bill would make it slightly easier to successfully place a voter referendum (a petition to refer an existing law to voters for approval or rejection) on the ballot by increasing the window of time referendum sponsors have to gather signatures, extending it from 40 days to 60 days. It would also require the Legislature, if it’s amending a ballot initiative, to



determine it necessary to “mitigate an adverse fiscal impact.”

*Utah Legislature asks voters to change constitution, skirt Supreme Court ballot initiatives ruling*

In response to a request for comment on complaints that the ballot language is misleading and why they chose to characterize the amendment as one that would “strengthen” Utah’s ballot initiative process, Adams and Schultz on Wednesday issued a joint prepared statement.

“Using clear and straightforward language is common practice and crucial for ensuring voters fully understand the measures they are deciding on,” the Senate president and House speaker said. “We recognize there will always be criticism, but our objective remains consistent – to provide a straightforward and concise description to allow voters to easily understand the core of the proposed changes.”

Adams and Schultz also noted voters will have access to an analysis and arguments both for and against the constitutional amendment that will be included in their voter pamphlet. Under SB4002, another bill lawmakers passed during the special session that established an expedited timeline and process to place the question on the ballot, the House speaker and Senate president will appoint lawmakers who voted in favor, as well as lawmakers who voted against, to craft those arguments.

“Modeling previous ballot titles was our guide as we drafted this constitutional amendment,” Adams and Schultz continued. “Those who label these efforts as deceptive are often the ones attempting to mislead voters.”

#### **Democrats call ballot language ‘misleading’**

House Minority Leader Angela Romero, D-Salt Lake City, and Senate Minority Leader Luz Escamilla, D-Salt Lake City, told Utah News Dispatch on Wednesday they had been appointed to write the arguments against the constitutional amendment that will appear in the voter pamphlet. Both Democrats were frustrated with the ballot language, and agreed it was “misleading.”

“I think it makes the average citizen distrust the Legislature even more,” Romero said.

Escamilla noted that this year marks the first time the Senate president and the House speaker have written constitutional amendment language



it to the House and Senate's presiding officers. Democrats and some Republicans voted against that bill, but it passed handily in both bodies.

Previously, Utah law required an "impartial analysis" of the measure to be prepared by the Office of Legislative Research and General Counsel to be included in the voter pamphlet, but SB37 added an exception for constitutional amendments, allowing an "analysis" of the measure to be prepared by the House speaker and Senate president. In that provision, it doesn't require neutrality or unbiased, Escamilla said.

"It's very concerning," she said, "when there's inaccuracies like that (in the ballot language)."

Better Boundaries executive director Katie Wright has also said the provision in the proposed constitutional amendment to ban "foreign influence" is a "red herring" designed to entice Utahns to vote in favor. There is no evidence that "foreign entities" have contributed to any ballot initiatives or referendums in Utah, but legislative leaders have argued it's meant to prevent it from ever happening in the future.

Romero also noted Utah already makes it "very difficult" for a citizen initiative to qualify for the ballot. Since 1952, Utahns have successfully placed 23 initiatives on the ballot, and only seven have passed. In the last 20 years, only three have succeeded, all in 2018 (medical cannabis, Medicaid expansion, and independent redistricting), and all of which were repealed and replaced by Utah lawmakers.

*'Vote no': Anti-gerrymandering groups launch campaign against Utah constitutional amendment*

"So I don't think this cry that we're becoming like California is accurate, and I feel like we're basically lying and we're trying to distract the people of Utah while we're taking away their voice," Romero said.

As Amendment D's official language began circulating on social media, it prompted backlash from Democrats, anti-gerrymandering advocates and some Republicans opposed to the constitutional amendment decrying it as deceptive.

Sen. Dan McCay, R-Riverton, clapped back, writing in a [post on X](#) that the outcry underscored problems with ballot initiatives.



pass/fail because very busy voters only read what is on the ballot and DO NOT READ the actual language.”

To McCay’s post, Escamilla said “there’s an issue of trust with the Legislature,” and regardless of “smart comments” on social media, she said there’s a difference between the difficult task of voters gathering enough signatures and successfully placing a ballot initiative on the ballot and a constitutional amendment approved by the Utah Legislature’s supermajority.

“I find it a little bit offensive that we want to patronize voters. They are busy and it is convoluted,” Escamilla said, but she added what’s different and “concerning” with this ballot question thanks to SB37 is there is now “bias” in the language, which she said voters wouldn’t expect.

“So now not only do we need to educate the public about the impact of the constitutional question, (but also) now the way we ask the question is problematic,” Escamilla said.

Romero said McCay’s post was “snarky” and “disrespectful” to Utahns, and “this is why more than ever people need to vote against Amendment D to show (lawmakers) that the Utah Legislature is here to serve the people of Utah.”

#### **A Republican makes the case against**

Rep. Ray Ward, R-Bountiful, was among nine Republicans (two in the Senate, seven in the House) who voted against putting the proposed constitutional amendment on the ballot.

He told Utah News Dispatch in an interview Wednesday that the ballot language for Amendment D “is deceptive — period.”

“It incorrectly claims that the effect of the amendment is to strengthen the initiative process,” Ward said, “when in fact the main change that is proposed will seriously weaken the initiative process.”

*Utah Supreme Court’s ‘watershed’ redistricting ruling has major implications. Now what?*

He said that part of the proposed constitutional amendment “gives the Legislature clear constitutional power to change or completely repeal any citizen initiative, at any point. And that’s just put right in the Constitution.



Ward said the second bullet point of the Amendment D question — “clarifying the voters and legislative bodies’ ability to amend laws” — is also “misleading” because it does not clearly communicate how the balance of voter initiative power and legislative power would change. While ballot initiatives require “thousands of hours of work” and donor money to gather signatures to even make it on the ballot, he said the Legislature will have the power to overturn it in “one day, in a special session.”

Ward said he worries that if the constitutional amendment passes, it will have long-term negative impacts on Utah governance.

“Having ballot initiatives don’t happen often, but they are an important check, and they are an important balance of power,” Ward said. “I believe if we lose that balance, which we could on this vote, that long-term Utah will not be as good as a place if we lose that little bit of balance of power.”

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Utah News Dispatch

# ‘Unprecedented’ lawsuit to void Utah constitutional Amendment D will be heard Wednesday

Katie McKellar  
Mon, September 9, 2024 at 7:11 PM CDT · 8 min read

  2



Former Utah Supreme Court justice Christine Durham urges Utah voters to reject a constitutional amendment on ballot initiatives during a rally at the Utah Capitol in Salt Lake City on Aug. 26, 2024. (Katie McKellar / Utah News Dispatch)

The [lawsuit urging a judge to throw out the ballot language of a proposed constitutional amendment](#) to cement the Utah Legislature's authority to change or repeal any ballot initiative could cause an unprecedented wrinkle ahead of the Nov. 5 election.

It could also place state and local elected officials in a tough spot as they face fast-approaching deadlines to begin submitting ballot proofs for printing as soon as this week.

In a scheduling conference held Monday afternoon while trying to navigate those tight deadlines, 3rd District Court Judge Diana Gibson scheduled an expedited hearing for Wednesday at 3 p.m. to consider arguments on whether or not the court should grant a motion for a preliminary injunction to block Amendment D from appearing on the ballot.

Anti-gerrymandering groups have asked a judge to toss out Amendment D, alleging its language written by Utah's top Republican legislative leaders is false and misleading. The plaintiffs also allege state officials failed to provide notice of the proposed amendment by publication as strictly required under the Utah Constitution.

*[‘Orwellian doublespeak’: Lawsuit asks judge to scrap ‘misleading’ Utah constitutional amendment](#)*

**'Unprecedented' situation**

Attorneys defending the Utah Legislature and Lt. Gov. Deidre Henderson on Monday told the judge local election officials are under the wire, set to submit ballot proofs to third-party printing vendors beginning Monday, the same day as the hearing. Federal law also requires election officials to send absentee ballots to military service members and other U.S. citizens residing outside the U.S. early — by Sept. 20 — so they argued time is running extremely short to get ballots proofed, printed and mailed before that deadline.

Utah expects to print 4,451 of those initial overseas ballots, according to the lieutenant governor's office.

"The absolute drop dead date for getting proofs to the printer is this Thursday," attorney David Wolf with the Utah Attorney General's Office, representing Henderson, told the judge.

Mark Gaber, an attorney for the Campaign Legal Center representing the plaintiffs (the League of Women Voters of Utah, Mormon Women for Ethical Government, and individual Salt Lake County residents who claim they have been disenfranchised by unlawful gerrymandering), argued that if the judge determines that Amendment D's language is illegally placed on the ballot, it should not be printed.

"It seems to us that the most prudent step is to prepare two proofs," Gaber said, one that has the question and one that does not. And "if necessary, print two sets" of overseas absentee ballots.

However, Wolf argued "the idea of two proofs is costly and runs the risk of confusion for counties."

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When Gibson asked for alternative solutions, state attorneys said county clerks would need a ruling by Wednesday to give them time to adjust their ballots, if need be.

"Otherwise, we just move forward, they're printed, and then we'll figure out how to deal with that after the fact — if the court rules in favor of the plaintiffs?" the judge asked.

State attorneys said it is possible to print the ballots with the question, and if the judge were to decide to void Amendment D, Utah election law



"That type of process exists. I think logistically that could be used for Amendment D," Wolf said. "But I haven't thought through other implications of doing that, whether that could create confusion for counties ... or confusion for voters. But logistically it's possible."

It's not yet clear what the judge will do regarding the preliminary injunction — though on Monday she granted the motion to expedite proceedings, signaling she's open to hearing the plaintiff's case. Gibson urged state officials to file a response to the plaintiff's arguments by 10:30 a.m. Wednesday so she can consider them before the 3 p.m. hearing.

*Utah Legislature asks voters to change constitution, skirt Supreme Court ballot initiatives ruling*

Attorney Tyler Green, representing the Utah Legislature in the case, told the judge state attorneys were already racing to respond, but they could meet that deadline.

"All of our cylinders are firing as quickly as they can fire. We've had people working on this around the clock since (the lawsuit) came in," Green said, pointing to the large scope of the lawsuit. "We're trying to make sure we get it right ... to get the court the right answer to resolve this."

Green added what the plaintiffs are seeking is "unprecedented in this state."

#### **How did we get here?**

It's the latest development in a long saga — after the anti-gerrymandering group Better Boundaries successfully pursued and voters approved a 2018 voter initiative to create an independent redistricting commission to draw Utah's new political boundaries in its redistricting process that occurs every 10 years.

In 2020, the Utah Legislature repealed and replaced that voter initiative with a watered-down version of the law, turning the independent commission into an advisory role, but allowing the Utah Legislature to ignore the independent commission and draw their own version of the maps, which is ultimately what lawmakers did in 2021. Those 2021 maps cracked Democratic strongholds in the red state of Utah, including a congressional map that sliced Utah's most populated county, Salt Lake County, into four congressional districts.

repealed and replaced the group [Better Boundaries](#)’ voter-approved initiative.

That case ended up before the Utah Supreme Court, which [remanded the lawsuit over back to district court](#) in a unanimous opinion issued July 11, with all five of Utah’s justices ruling that the district court “erred” when it dismissed the League of Women Voters’ claim that the Utah Legislature violated the Utah Constitution in 2021 when it repealed and replaced Better Boundaries’ voter-approved initiative. That litigation now continues.

That ruling upset the Utah Legislature’s Republican supermajority — with most GOP lawmakers fearing it handcuffed their constitutional authority to repeal and replace ballot initiatives as they’ve done in the past, claiming it effectively allowed ballot initiatives to become “[super laws](#)” immune to legislative changes.

*Utah Supreme Court’s ‘watershed’ redistricting ruling has major implications. Now what?*

That spurred the Utah Legislature to call itself into an “[emergency](#)” [special session](#), in which it passed a resolution to place the proposed constitutional amendment on the ballot. Rather than let the Utah Supreme Court’s interpretation of the Constitution stand, lawmakers opted instead to refer the question to voters. If Amendment D passes, it will effectively render the Utah Supreme Court’s latest interpretation moot.

The language that would be added to the Utah Constitution, according to the special session resolution that placed the question on the ballot, [SJR401](#), would:

- Make clear that “notwithstanding any other provision of this Constitution, the people’s exercise” of their ballot initiative or referendum power “does not limit or preclude the exercise of Legislative power, including through amending, enacting or repealing a law, by the Legislature, or by a lawmaking body of a county, city, or town, on behalf of the people whom they are elected to represent.”
- Ban “foreign individuals, entities or governments” from “directly or indirectly” influencing, supporting or opposing an initiative or referendum, and allow the Legislature to enforce that ban.

Hooper, characterized Amendment D's as follows:

### Constitutional Amendment D

Should the Utah Constitution be changed to strengthen the initiative process by:

- Prohibiting foreign influence on ballot initiatives and referendums.
- Clarifying the voters and legislative bodies' ability to amend laws.

If approved, state law would also be changed to:

- Allow Utah citizens 50% more time to gather signatures for a statewide referendum.
- Establish requirements for the legislature to follow the intent of a ballot initiative.

When that ballot language was published last week, anti-gerrymandering groups, Democrats and some Republicans who voted against placing the constitutional amendment on the ballot decried the language as "deceptive." Soon after, League of Women Voters and the other plaintiffs filed the lawsuit to get the question removed altogether.

*Opponents of Utah constitutional amendment on voter initiatives decry 'deceptive' ballot language*

Adams and Schultz in series of statements last week defended Amendment D's language as "clear and straightforward," and criticized the plaintiffs, accusing them of being hypocritical.

"It's ironic that the very people who claim to advocate for greater voter engagement are the same ones trying to obstruct Utahns from having the opportunity to vote on this important matter," Adams and Schultz said. "The plaintiffs are clearly concerned about leaving it to voters to decide. Before initiatives overwhelm and significantly alter our state, Utahns should have the opportunity to voice their opinions."

Where will this saga go next? We'll know more Wednesday.

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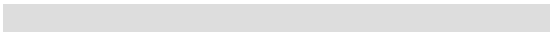
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# Critics say text of proposed Utah constitutional amendment is 'misleading'

By Bridger Beal-Cvetko, KSL.com | Posted - Sept. 5, 2024 at 10:04 a.m.

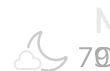


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initiatives in Utah are pushing back against the text of the question that will appear on ballots across the state this fall, calling it "misleading" and "hopelessly slanted."

The text of proposed constitutional "Amendment D" — which was written by Utah House Speaker Mike Schultz, R-Hooper, and Senate President Stuart Adams, R-Layton — was [made public](#) on the state election website this week, along with the text of three other proposed constitutional changes voters will weigh in on in November.

In the wake of a July Supreme Court ruling that found the Legislature [overreached](#) in altering a [2018 ballot initiative](#) to create an independent redistricting commission, lawmakers last month voted to [approve the proposed amendment](#) aiming to [head off the impact](#) of the ruling which found "the people's exercise of their right to reform the government through an initiative is constitutionally protected from government infringement, including legislative amendment or repeal that impairs the intended reform."

After that measure passed on mostly partisan lines — with a handful of Republicans voting against it — the top legislative leaders crafted the precise language of the question on the ballot, which reads:

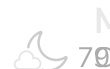
**"Should the Utah Constitution be changed to strengthen the initiative process by:**

- Prohibiting foreign influence on ballot initiatives and referendums.
- Clarifying the voters and legislative bodies' ability to amend laws.

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language misleading. Ryan Bell, a board member of Better Boundaries, said the proposed amendment would "weaken" the initiative process, which is the opposite of the wording of the ballot question.

"Using clear and straightforward language is common practice and crucial for ensuring voters fully understand the measures they are deciding on," Schultz and Adams' statement said.

"Additionally, voters always have access to comprehensive analysis and arguments both for and against the amendments. Modeling previous ballot titles was our guide as we drafted this constitutional amendment. Those who label these efforts as deceptive are often the ones attempting to mislead voters."

Better Boundaries led the initial push to establish an independent [redistricting](#) commission in 2018 and has been rallying support against the proposed amendment.

"The ballot language issued by legislative leadership is hopelessly slanted. It is not true that this amendment will strengthen the initiative process; it will weaken that process," Bell stated.

"It is not true that the amendment will establish requirements for the Legislature to follow the intent of a ballot initiative; it will free them to override initiatives passed by the will of the people.

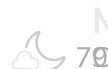
"It is saddening to see legislative leadership compound their refusal to engage with the people on this issue with ballot language that is likely to mislead the people," he continued.



## Utah Supreme Court: Legislature

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In a message to constituents posted on her [website](#) last month, Judkins said she has heard lots of "fearmongering and catastrophizing" about the Supreme Court ruling, but said limiting lawmakers' ability to overturn initiatives passed by voters is "a healthy check on our power."

"I think the language is deceptive because I think the main effect of the amendment is to seriously weaken the initiative process," Rep. Ray Ward, R-Bountiful, another Republican who opposed putting the measure on the ballot, told [KSL](#).

Sen. Nate Blouin, a Democrat from Salt Lake City, [said](#) the "language is even more disingenuous and misleading than I expected it would be. If you must lie to pass your proposal, you don't belong in office."

Still, others in the Legislature and groups supportive of changing the Constitution defended the text and the purpose of the ballot question.

"The amendment prohibits foreign influence and clarifies the Legislature's role in the initiative process," said Marty Carpenter, who represents groups in favor of the proposal. "The critics' true concern seems to be that the language is so easy to understand that voters will be hard-pressed to find reasons to oppose it."

"I wonder if those that complain about the language on the ballot know they are making the Legislature's case?" [asked](#) Sen. Dan. McCay, R-Riverton, on X. "Initiatives mostly pass/fail because very busy voters only read what is on the ballot and DO NOT READ the actual language."

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**Constitutional Amendment A:** Shall the Utah Constitution be amended to allow income tax money to be used for all state needs and prioritize public education funding for changes in enrollment and inflation? If this amendment is approved, state statute will eliminate the state sales tax on food.

**Constitutional Amendment B:** Shall the Utah Constitution be amended to increase the limit on the annual distributions from the State School Fund to public schools from 4% to 5% of the fund?

**Constitutional Amendment C:** Shall the Utah Constitution be amended to have the office of county sheriff be elected by voters?

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POLITICS

UTAH

# Ballot language on Utah initiative constitutional amendment released

Here’s what a yes and a no vote on the amendment would mean

Published: Sept 5, 2024, 4:08 p.m. MDT

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Supporters with signs stand on the state capitol building steps during a rally by Better Boundaries in Salt Lake City on Monday, Aug. 26, 2024. State Republican leadership said it provided “straightforward language” to explain a constitutional amendment regarding initiatives. A Better Boundaries board member said it was “hopelessly slanted.”  
| Brice Tucker, Deseret News    PURCHASE IMAGE

**By Hanna Seariac**

Hanna is a reporter for the Deseret News where she covers courts, crime, policy and faith.

State Republican leadership said it provided “straightforward language” to explain a constitutional amendment regarding initiatives. A Better Boundaries board member said it was “hopelessly slanted.”

Utahns will see the following language on their ballots come November:

## **Should the Utah Constitution be changed to strengthen the initiative process by:**

- Prohibiting foreign influence on ballot initiatives and referendums.**
- Clarifying the voters and legislative bodies' ability to amend laws.**

## **If approved, state law would also be changed to:**

- Allow Utah citizens 50% more time to gather signatures for a statewide referendum.**
- Establish requirements for the legislature to follow the intent of a ballot initiative.**

It will be listed as Constitutional Amendment D on the ballot.

## **What Better Boundaries board member said**

“The ballot language issued by legislative leadership is hopelessly slanted. It is not true that this amendment will strengthen the initiative process; it will weaken that process. It is not true that the amendment will establish requirements for the legislature to follow the intent of a ballot initiative; it will free them to override initiatives passed by the will of the people,” said Better Boundaries board member Ryan Bell.

“It is saddening to see legislative leadership compound their refusal to engage with the people on this issue with ballot language that is likely to mislead the people. Better Boundaries and its many allies will ensure that the people of Utah see through these tactics,” continued Bell.

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## **What Republican leadership said**

“Using clear and straightforward language is common practice and crucial for ensuring voters fully understand the measures they are deciding on. We recognize there will always be criticism, but our objective remains consistent — to provide a straightforward

and concise description to allow voters to easily understand the core of the proposed changes,” said Utah Senate President J. Stuart Adams and House Speaker Mike Schultz.

“Additionally, voters always have access to comprehensive analysis and arguments both for and against the amendments. Modeling previous ballot titles was our guide as we drafted this constitutional amendment. Those who label these efforts as deceptive are often the ones attempting to mislead voters,” continued Adams, R-Layton, and Schultz, R-Hooper.

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## What would the constitutional amendment do?

The proposed constitutional amendment does not change the way initiatives are passed by voters in the state. It would change the Utah Constitution to say the Legislature has the ability to amend or repeal laws that originated as initiatives.

It would also prohibit foreign — Rep. Jordan Teuscher, R-South Jordan, specified in the special session, the intent was foreign meant out of country — influence on ballot initiatives and referenda. This means foreign entities would not be allowed to sway Utah votes through media campaigns and other methods.

When the Legislature made the decision to put the amendment on Utah voters’ ballots, lawmakers also passed legislation that would go into effect if voters approve the amendment. It would require state lawmakers to keep the general intent of an initiative intact when making changes the first general session after it is passed by voters. Lawmakers also raised the threshold for the numbers of days people have to gather signatures if they want to repeal a Utah law.

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## What would voting yes or no mean?



Utah voters who vote yes on the amendment would be voting for the Utah Constitution to be amended. In that case, they would say the Legislature should have the ability to change laws that originated as citizen initiatives, and they want it in the state constitution that foreign entities cannot influence the initiative process.

Voting no on the initiatives means Utah voters do not want to change the Utah Constitution. In that case, a recent state Supreme Court ruling that allows the Legislature to change citizen initiatives that reform the government only if they narrowly tailor the changes for a compelling government interest.

## **The origins of the proposed constitutional amendment**

The proposal of the constitutional amendment came after the Utah Supreme Court issued a decision allowing a gerrymandering lawsuit against the Legislature to move forward.

Utah voters in 2018 passed a citizen initiative to have an independent redistricting committee draw boundaries in the state. Better Boundaries led the effort on the initiative. After the initiative was passed, the Legislature amended the law — there would still be an independent redistricting committee that could propose maps, but the Legislature would have a say on what maps ultimately were implemented.

The Legislature went with its own maps instead of those of the independent redistricting committee. Mormon Women for Ethical Government and League of Women Voters of Utah along with some Utah voters then sued the Legislature.

The Utah Supreme Court decision issued earlier this summer allowed that lawsuit to move forward. In the decision, the state's highest court said if lawmakers make changes to initiatives that alter or reform the government, they need to meet a legal test: strict scrutiny.

In other words, lawmakers would need to show a compelling government interest and narrowly tailor their changes to the initiative to meet that interest.

Utah Republican Party chair Rob Axson led an effort on an open letter to lawmakers encouraging them to put an amendment on the ballot. Sutherland Institute also issued a letter with the same encouragement.

The Legislature then held a special session to consider putting the amendment on the ballot. The proposed amendment was considered in an afternoon committee meeting. The chair of the committee said he would hear from five people on the proposed amendment. There was limited additional comment during the discussion on the other two bills.

After the committee meeting, the Legislature discussed the proposed amendment in both the House and the Senate that same evening. It needed two-thirds of lawmakers in both chambers to make it onto the ballot and it received the necessary votes.

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## What others are saying about the ballot language

Sen. Dan McCay, R-Riverton: “I wonder if those that complain about the language on the ballot know they are making the legislature’s case? Initiatives mostly pass/fail because very busy voters only read what is on the ballot and DO NOT READ the actual language.”

Sen. Nate Blouin, D-Salt Lake City: “Isn’t this an argument for unbiased, nonpartisan ballot language like we had in every past year? If we want voters to decide on the merits (I do) and they’re only going to read the ballot language, shouldn’t it be honest?”

Sen. Todd Weiler, R-Woods Cross: “Each bullet point(s) is accurate.”

Sen. Kathleen Riebe, D-Cottonwood Heights: “Yes, the language is deceptive and yes I saw it coming ... and no they did not adopt my amendment.”

Rep. Marsha Judkins, R-Provo: “You have got to be kidding. What misleading language!”

## Why some support the proposed amendment and some oppose it

(Supports) Senate President Stuart Adams: “We’re not trying to take away any of their rights or any of their abilities. The initiative process has not changed at all. We just want to make sure that we keep Utah, Utah.”

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(Opposes) Better Boundaries executive director Katie Wright: “We, the people, are the final check on the power of politicians. And that is why it’s so important that when we’re trying to form or reform the very government that is for us and by us, that we have the final say.”

(Supports) House Speaker Mike Schultz: “We just want to keep things the way it’s been for the last 130 years in the state of Utah and to show that we’re sincere in that we opened up the back end of that for referenda, making it easier for citizens of the state to hold the legislature accountable.”

(Opposes) Rep. Joel Briscoe, D-Salt Lake City: “All political power is inherent in the people. They have the right to alter or to fund their government as the public welfare may require. I don’t see anything in here the says they have to ask permission from 104 people up here.”

## What the text of the proposed amendment says

**) (a) Foreign individuals, entities, or governments may not, directly or indirectly, influence support, or oppose an initiative or a referendum.”**

**(b) The Legislature may provide, by statute, definitions, scope, and enforcement of the prohibition under Subsection (3) (a).**

**(4) Notwithstanding any other provision of the Constitution, the people’s exercise of their Legislative power as provided in Subsection (2) does not limit or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature, or by a law making body of a county, city, or**

# town, on behalf of the people whom they are elected to represent.

— Proposal to Amend the Utah Constitution

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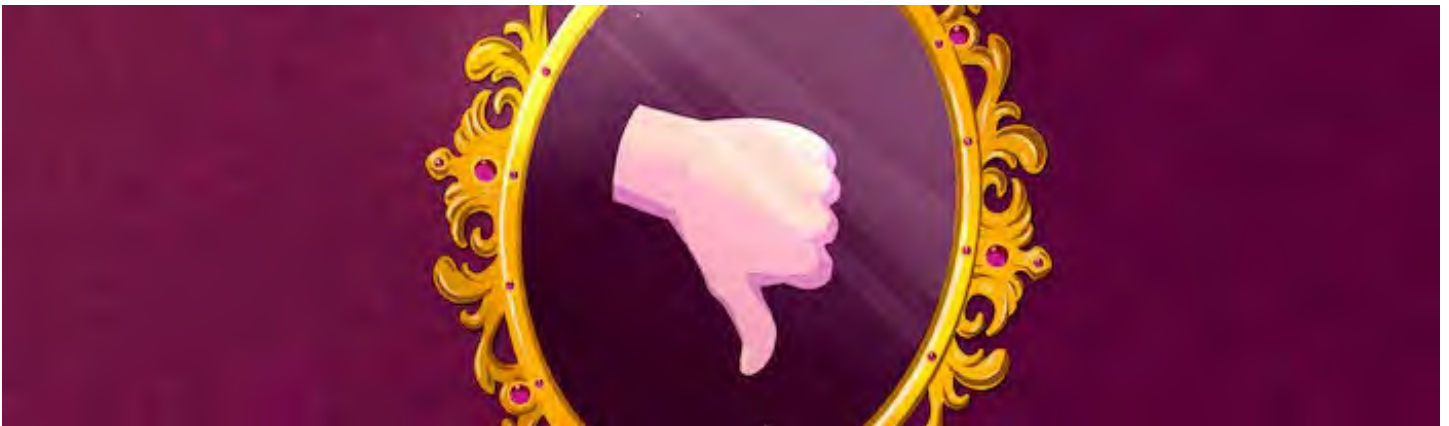
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# Groups sue to block 'misleading' constitutional amendment from being put on the ballot

By Bridger Beal-Cvetko, KSL.com | Updated - Sept. 6, 2024 at 3:05 p.m. | Posted - Sept. 6, 2024 at 12:16 p.m.



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SALT LAKE CITY — Several groups and individuals who have challenged the constitutionality of Utah's congressional maps are now asking the courts to block a proposed constitutional amendment from being placed on the November ballot, saying the "certified ballot language fails to accurately submit the amendment to the voters."

The plaintiffs, represented by the Campaign Legal Center, filed a supplemental complaint on Thursday to an [ongoing legal case](#) in Utah's 3rd District Court, arguing the language of proposed Constitutional Amendment D that will be put to voters is "a flagrantly misleading" representation of the actual proposal. Because of that, the plaintiffs claim, the language of the question being put to voters violates the Utah Constitution requiring that "the said amendment ... shall be submitted to the electors of the state for their approval or rejection."

"The plain language of Article XXIII requires that the amendment be submitted to voters on the ballot, not a misleading and false summary of it," the complaint states. "The use of ballot language for a proposed amendment that is misleading, deceptive, inaccurate, biased, or unreasonable deprives voters of their constitutionally guaranteed choice and contravenes the Utah Constitution's requirement to 'submit' the proposed amendment to a popular vote."

Attorneys for the plaintiffs filed a separate motion Thursday, seeking a preliminary injunction to strike the proposed amendment from the general election ballot.

"Utah politicians refuse to accept any check on their power," said Mark Gaber, senior director of redistricting at the Campaign Legal Center. "First, they overruled the will of the people by repealing Prop 4, and now they are trying to overrule the Utah Supreme Court. This eleventh-hour push for an unnecessary constitutional amendment, along with the misleading language to deceive Utahns into voting for it, is yet another example of Utah politicians doing everything

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matter," the two told KSL.com through a spokeswoman. "The plaintiffs are clearly concerned about leaving it to voters to decide. Before initiatives overwhelm and significantly alter our state, Utahns should have the opportunity to voice their opinions."

The pair issued a joint statement earlier this week in reaction to the controversy sparked by the [release of the language](#) to be put on the ballot, saying "those who label these efforts as deceptive are often the ones attempting to mislead voters."

The legal filings are the latest in a long-running dispute between the state's Republican-dominated state Legislature and several groups who argue lawmakers overstepped the people's authority when they [changed a 2018 ballot initiative](#) to create an independent body to advise on the drawing of political maps.

Lawmakers amended the role of the independent redistricting commission to an advisory one, and later ignored the commission's recommendations and [adopted political maps they drew themselves](#) — which many contend intentionally split the Democratic stronghold in Salt Lake City between all four congressional districts and eliminated a previously competitive House district.

Plaintiffs — including the League of Women Voters of Utah, Mormon Women for Ethical Government and several residents — [sued the state in 2022](#), claiming the Legislature violated Utahns' rights to free elections and ignored the authority of voters to pass legislation through the ballot initiative process.

The Utah Supreme Court agreed [lawmakers overreached](#) in altering the ballot initiative in a ruling this July, which sent waves of panic through the GOP caucus and prompted an

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### "Should the Utah Constitution be changed to strengthen the initiative process by:

- Prohibiting foreign influence on ballot initiatives and referendums.
- Clarifying the voters and legislative bodies' ability to amend laws.

### If approved, state law would also be changed to:

- Allow Utah citizens 50% more time to gather signatures for a statewide referendum.
- Establish requirements for the Legislature to follow the intent of a ballot initiative."

The actual text that would be added to the Constitution states: "Notwithstanding any other provision of this Constitution, the people's exercise of their legislative power as provided in subsection (2) does not limit or preclude the exercise of legislative power, including through amending, enacting, or repealing a law, by the Legislature, or by a law-making body of a county, city, or town, on behalf of the people whom they are elected to represent."

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*Bridger Beal-Cvetko is an award-winning journalist who covers politics, Salt Lake County communities and breaking news for KSL.com. He is a graduate of Utah Valley University.*

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ELECTION 2024 GOV & POLITICS

# 'Orwellian doublespeak': Lawsuit asks judge to scrap 'misleading' Utah constitutional amendment

Opponents of Amendment D – which would cement Utah Legislature's authority to change or repeal any ballot initiative – say it's written to 'trick' voters

BY: KATIE MCKELLAR - SEPTEMBER 6, 2024 12:56 PM



A coalition of anti-gerrymandering groups urge Utah voters to reject a constitutional amendment on ballot initiatives during a rally at the Utah Capitol in Salt Lake City on Aug. 26, 2024. (Katie McKellar / Utah News Dispatch)

The fight over the Utah Legislature's attempt to rewrite the state Constitution to override a recent [Utah Supreme Court ruling](#) in a legal battle over the state's redistricting process has spurred a new lawsuit.

Plaintiffs in the court case at the heart of the issue – currently suing over the Utah Legislature's 2021 move to repeal and replace a 2018 ballot initiative sought by the anti-gerrymandering group Better Boundaries – filed a new suit against state leaders on Friday, attempting to stop a proposed constitutional amendment from being printed on the Nov. 5 ballot.

## Opponents of Utah constitutional amendment on voter initiatives decry 'deceptive' ballot language



The language that will appear on the Nov. 5 ballot asking voters whether to change the Utah Constitution to sidestep a recent Utah Supreme Court ruling on ballot initiatives has been finalized. Anti-gerrymandering advocates with the group Better Boundaries decried the language as misleading. In



Amendment D's language written by Utah's top Republican legislative leaders "fails to accurately submit the Amendment to the voters," the [motion](#) filed in 3rd District Judicial Court says. "Instead, it seeks through deception to mislead Utah voters into surrendering their constitutional rights."

Amendment D violates constitutional requirements and should be declared void, argue the plaintiffs (League of Women Voters of Utah, Mormon Women for Ethical Government, and individual Salt Lake County residents who alleged they were disenfranchised by unlawful gerrymandering). The [Campaign Legal Center](#), a nonpartisan group devoted to "advancing democracy through law" also joined the suit.

Utah's Constitution requires ballot language to "fairly and accurately describe the constitutional amendment," but Amendment D's language "does the opposite and is not only misleading and deceptive, but also illegal and unconstitutional," the Campaign Legal Center wrote in a news release Friday.

"Utah politicians refuse to accept any check on their power. First, they overruled the will of the people by repealing Prop 4, and now they are trying to overrule the Utah Supreme Court," said Mark Gaber, senior director of redistricting at Campaign Legal Center. "This eleventh hour push for an unnecessary constitutional amendment, along with the misleading language to deceive Utahns into voting for it, is yet another example of Utah politicians doing everything they can to take power away from the people and give it to themselves."

Better Boundaries' "fight for fair maps should continue in court," Gaber said, "so Utahns can pick their politicians instead of the other way around."



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In response, Senate President Stuart Adams, R-Layton, and House Speaker Mike Schultz, R-Hooper, issued a joint statement Friday afternoon criticizing the plaintiffs and accusing them of being hypocritical.

"It's ironic that the very people who claim to advocate for greater voter engagement are the same ones trying to obstruct Utahns from having the opportunity to vote on this important matter," Adams and Schultz said. "The plaintiffs are clearly concerned about leaving it to voters to decide. Before initiatives overwhelm and significantly alter our state, Utahns should have the opportunity to voice their opinions."

Earlier this week amid the ballot language's backlash, the legislative leaders also issued a joint statement defending how they wrote Amendment D.

"Using clear and straightforward language is common practice and crucial for ensuring voters fully understand the measures they are deciding on," the Senate president and House speaker said. "We recognize there will always be criticism, but our objective remains

consistent – to provide a straightforward and concise description to allow voters to easily understand the core of the proposed changes.”

Adams and Schultz also noted voters will have access to an analysis and arguments both for and against the constitutional amendment that will be included in their voter pamphlet. Under SB4002, another bill lawmakers passed during last month’s [special session](#) that established an expedited timeline and process to place the question on the ballot, the House speaker and Senate president appointed lawmakers who voted in favor, as well as lawmakers who voted against, to craft those arguments.

### Utah Legislature asks voters to change constitution, skirt Supreme Court ballot initiatives ruling



The Republican-controlled Utah Legislature on Wednesday called itself into an “emergency” special session to place a proposed constitutional amendment on the Nov. 5 ballot, asking voters to skirt a recent Utah Supreme Court ruling that Republicans worry will handcuff their power

“Modeling previous ballot titles was our guide as we drafted this constitutional amendment,” Adams and Schultz continued. “Those who label these efforts as deceptive are often the ones attempting to mislead voters.”

Utah election officials are scheduled to begin mailing ballots to overseas and military voters on Sept. 10, while most Utahns will begin receiving their ballots the week of Oct. 15, so plaintiffs requested the judge to allow an expedited briefing and hearing in the case.

The suit comes after Amendment D’s ballot language was made public this week when Lt. Gov. Deidre Henderson signed the official [2024 general election certification](#). Its language – asking voters whether the Utah Constitution should “be changed to strengthen the initiative process” – [prompted heated backlash](#), with anti-gerrymandering advocates, Democrats and some Republicans decrying it as “misleading” and “deceptive.”

---

#### Constitutional Amendment D

Should the Utah Constitution be changed to strengthen the initiative process by:

- Prohibiting foreign influence on ballot initiatives and referendums.
- Clarifying the voters and legislative bodies’ ability to amend laws.

If approved, state law would also be changed to:

- Allow Utah citizens 50% more time to gather signatures for a statewide referendum.

- Establish requirements for the legislature to follow the intent of a ballot initiative.

Voting in favor of the amendment will enshrine in the Utah Constitution the Utah Legislature's authority to alter or repeal any voter ballot initiative passed by Utah voters — something the Legislature's Republican leaders thought has been their authority, up until the July 11 Utah Supreme Court [ruling](#) in the lawsuit against Utah's redistricting process said otherwise, placing limits on the legislature's powers to amend, repeal or replace government-reform initiatives.

That [unanimous opinion](#) remanded the redistricting lawsuit back to district court, with all five of Utah's justices ruling that the district court "erred" when it dismissed the League of Women Voters' claim that the Utah Legislature violated the Utah Constitution in 2021 when it repealed and replaced Better Boundaries' 2018 ballot initiative. That litigation over the constitutionality of the Legislature's decision to adopt a watered-down version of the redistricting process — allowing lawmakers to ultimately ignore the independent commission's recommended political boundaries — now continues.

However, Utah's Republican lawmakers fear the Supreme Court ruling dramatically weakened their constitutional authority to repeal and replace ballot initiatives as they've done in the past, claiming it effectively allowed ballot initiatives to become "super laws" immune to legislative changes.

### Utah Supreme Court hands big win to plaintiffs in anti-gerrymandering lawsuit



The Utah Supreme Court on Thursday handed a major win to those legally challenging the Utah Legislature's 2021 redistricting process. While it's a significant ruling, the fight — which could have major implications for Utah's 2026 congressional boundaries and future voter

That's not necessarily what the Utah Supreme Court ruling said, though it does leave an open question over how other ballot initiatives could be litigated. While the ruling makes clear the Legislature's power to amend government-reform initiatives has limits, the ruling also explicitly states "this does not mean that the Legislature cannot amend a government-reform initiative at all."

The ruling said legislative changes that "facilitate or support the reform, or at least do not impair the reform enacted by the people," could legally stand — and more substantial could "also survive a constitutional challenge, if the Legislature shows that they were narrowly tailored to advance a compelling government interest."

Still, fearing sweeping consequences and years of more litigation, the GOP-controlled Utah Legislature called itself into an "emergency" special session to place the proposed constitutional amendment on the ballot. Rather than let the Utah Supreme Court's

interpretation of the Constitution stand, lawmakers opted instead to refer the question to voters. If Amendment D passes, it will effectively render the Utah Supreme Court's latest interpretation moot.

The language that would be added to the Utah Constitution, according to the special session resolution that placed the question on the ballot, [SJR401](#), would:

- Make clear that “notwithstanding any other provision of this Constitution, the people’s exercise” of their ballot initiative or referendum power “does not limit or preclude the exercise of Legislative power, including through amending, enacting or repealing a law, by the Legislature, or by a law making body of a county, city, or town, on behalf of the people whom they are elected to represent.”
- Ban “foreign individuals, entities or governments” from “directly or indirectly” influencing, supporting or opposing an initiative or referendum, and allow the Legislature to enforce that ban.

Rather than “strengthen” Utah’s ballot initiative process, Amendment D would “eliminate Utahns’ constitutional right to reform their government without legislative interference,” plaintiffs contended in Friday’s filing. They argued its text asks voters to change the Utah Constitution to “*exempt* the Legislature from complying with *any* provision of the Constitution when it acts to repeal or amend citizen initiatives.”

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“Undoubtedly aware of the optics,” the motion continues, Adams and Schultz “then devised” ballot language that “not only will fail to inform voters that the proposed Amendment eliminates their fundamental constitutional right, but brazenly asserts that the amendment would ‘strengthen’ the initiative process” and “require the legislature to follow the intent of a ballot initiative.”

“This is the definition of Orwellian doublespeak; the Amendment does the opposite on both counts,” plaintiffs argued. “By seeking to mislead Utah voters into surrendering their fundamental constitutional rights by deception, Defendants have violated multiple provisions of the Utah Constitution.”

Katharine Biele, President of the League of Women Voters of Utah, issued a prepared statement Friday saying her organization has “long advocated for a fair and transparent” redistricting process.

“While the Utah Supreme Court affirmed that the process was flawed, the legislature continues to fight against the will of the people,” Biele said, “and insults the voter with ballot language that is both biased and self-serving.”

Emma Petty Addams, co-executive director of Mormon Women for Ethical Government, also issued a statement, accusing Utah lawmakers of “once again” prioritizing “their own wishes above both their constitutional duties and their obligation to serve the people of Utah.”

“The people of Utah deserve better, and we will continue to advocate for long standing constitutional rights and freedoms,” she said.

Read the full filing here:

**This motion requires you to respond by September 16, 2024.**  
**Please see the Notice to Responding Parties.**

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR  
SUNDWALL, and JACK MARKMAN,

Plaintiffs,

v.

UTAH STATE LEGISLATURE, UTAH  
LEGISLATIVE REDISTRICTING  
COMMITTEE; SENATOR SCOTT  
SANDALL, in his official capacity;  
REPRESENTATIVE MIKE SCHULTZ, in his  
official capacity; SENATOR J. STUART  
ADAMS, in his official capacity; and  
LIEUTENANT GOVERNOR DEIDRE  
HENDERSON, in her official capacity,

Defendants.

**PLAINTIFFS' MOTION FOR A  
PRELIMINARY INJUNCTION ON  
COUNTS 9-14 OF THEIR FIRST  
SUPPLEMENTAL COMPLAINT**

**(Expedited consideration requested)**

Case No. 220901712

Honorable Dianna Gibson

**HEARING REQUESTED**



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# Voices: To prevent Utah from becoming California, we must pass the ballot initiatives amendment

The delicate balance of our system is now under serious threat, and the consequences could be far-reaching if we do not act decisively.



(Rick Egan | The Salt Lake Tribune) Members of the House of Representatives discuss a constitutional amendment over citizen initiatives in the House during a special session, on Wednesday, Aug. 21, 2024.

By Rob Bishop | For The Salt Lake Tribune | Sep. 9, 2024, 7:10 a.m.

■ Comment





Utah is at a crossroads. For decades, our state has prided itself on maintaining a balanced and thoughtful approach to governance — one that carefully considers the will of the people while ensuring that laws enacted serve the broader public good. However, the delicate balance of our system is now under serious threat, and the consequences could be far-reaching if we do not act decisively.

This is why I strongly support Amendment D, [a proposed amendment to the Utah Constitution](#) that would ban foreign contributions to initiatives in Utah and reaffirm the Utah Legislature’s authority to exercise legislative review on passed initiatives.

Opponents of the amendment argue that the fears of Utah turning into California — a state notorious for governance by initiative and the unintended consequences that follow — are overblown and far-fetched. They couldn’t be more incorrect. The floodgates for initiatives have already been opened. [A recent Utah Supreme Court decision](#) has already set a dangerous precedent, and the first signs of the coming deluge are upon us.

On Aug. 19, [a new initiative was filed](#) that seeks to further lower the threshold for initiatives and referendums in Utah. This initiative is not only a reaction to the court’s decision, but it also exploits the exact language used by the court to push for an even more radical change. The proposal would drastically reduce the number of signatures needed to qualify an initiative for the ballot, from the current requirement of 8% of active voters statewide to just 1%. This is not just a minor tweak; it is a fundamental restructuring of how direct democracy functions in our state.



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The proposed initiative goes further, mandating that all initiatives be made available for signing online. This sounds convenient, but the implications are profound. Imagine this: An initiative to legalize sports gambling is flashed on the Jumbotron at a college football game, complete with a QR code that allows thousands of spectators to sign it in real-time from their seats. In a matter of minutes, a measure with potentially massive implications for every Utah resident could qualify for the ballot. This is a very real possibility under the proposed rules.

Some may dismiss this as an unlikely scenario, but the truth is that the threat of Utah becoming California is not just real; it is imminent. In California, initiatives have led to a system where complex and far-reaching policies are put to voters, who often lack the time, resources and context to fully understand the complicated issues they are asked to decide. The result has been a state hamstrung by conflicting laws, budget crises and an inability to govern effectively. We cannot allow Utah to follow in those footsteps.

The truth is, some in Utah know they cannot pass their progressive agenda through a Legislature that reflects the will of [a majority conservative state](#). So they are trying to do it by creating their own system of governance by initiative.

foreign contributions, we protect our system from outside influences that do not have Utah's best interests at heart. By reaffirming the Legislature's authority to review passed initiatives, we ensure that all laws are consistent, practical and beneficial to the state as a whole.

The initiative process has its place, but it must be safeguarded against abuse and manipulation. If we fail to pass Amendment D, we are inviting chaos into our legislative process. The proposed initiative is just the beginning — a sign of what is to come if we do not act now.

Let us learn from California's mistakes, not repeat them. Let us protect Utah's future by supporting Amendment D.

(Rick Bowmer | The Associated Press) In this Feb. 12, 2018, photo, Utah Republican U.S. Rep. Rob Bishop speaks on the Senate floor at the Utah State Capitol in Salt Lake City.

**Rob Bishop** *is the former congressman representing Utah's 1st District and a former Speaker of the Utah House of Representatives.*

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By Rob Bishop | For The Salt Lake Tribune

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# Utah Amendment D, Provide for Legislative Alteration of Ballot Initiatives and Ban Foreign Contributions Measure (2024)

## Utah 2024 elections



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**Utah Amendment D**, the **Provide for Legislative Alteration of Ballot Initiatives and Ban Foreign Contributions Measure**, is on the [ballot](#) in [Utah](#) as a [legislatively referred constitutional amendment](#) on [November 5, 2024](#).<sup>[1]</sup>

A **"yes"** vote supports this constitutional amendment to:

- provide in the state constitution that the state legislature has the power to amend and repeal citizen initiatives; and
- prohibit foreign individuals, governments, or entities from supporting, opposing, or otherwise influencing ballot initiatives.

A **"no"** vote opposes expressly providing that the state legislature has the power to amend and repeal citizen initiatives (thereby upholding the state supreme court's ruling that government reform initiatives cannot be amended by the state legislature) and opposes prohibiting foreign individuals, governments, or entities from influencing ballot initiatives.

### Utah Amendment D



**Election date**  
[November 5, 2024](#)

**Topic**  
[Direct democracy measures](#)

**Status**  
*On the ballot*

**Type** [Constitutional amendment](#) **Origin** [State legislature](#)

## Overview

## How would Amendment D effect legislative alteration of ballot initiatives?

See also: [Text of measure](#) and [Legislative alteration](#)

Amendment D would provide in the constitution that the state legislature has the power to amend or repeal a citizen initiative. The amendment contains a provision stating that the power would apply retroactively.<sup>[1]</sup>

The legislature also passed Senate Bill 4003, which would take effect if Amendment D is approved. SB 4003 would allow the state legislature to amend a voter-approved initiative by amending the law in such a way that, "in the Legislature's determination, leaves intact the general purpose of the initiative." The amendment would allow the state legislature to amend a voter-approved initiative "in any manner determined necessary by the Legislature to mitigate an adverse fiscal impact of the initiative".<sup>[2]</sup>

The term [legislative alteration](#) refers to when lawmakers repeal or amend citizen initiatives after voters have approved them. Utah is one of 11 states (out of 21 states with a process for initiative statutes) that does not restrict legislative alteration of voter-approved initiatives.

The last time a citizen initiative qualified for the ballot in Utah was [2018](#), when three [initiated state statutes](#) appeared on the ballot. Voters approved all three of the initiatives. All three were later amended by the state legislature. Before 2018, the last time an initiated statute was on the ballot and approved by voters was in [2000](#).

## How would Amendment D effect legislative alteration of ballot initiatives?

See also: [Laws governing foreign spending in ballot measure campaigns](#)

Amendment D would prohibit foreign individuals, entities, and governments from influencing, supporting, or opposing a ballot initiative. The amendment would give the state legislature authority to further provide for the scope and enforcement of the prohibition in state law.<sup>[1]</sup>

At least nine states have passed laws prohibiting foreign nationals or governments from contributing to ballot measure committees. However, the definition of foreign national may vary by state. Those nine states are California, Colorado, Maine, Maryland, Nevada, North Dakota, Ohio, South Dakota, and Washington.

## How would Amendment D change veto referendum requirements?

See also: [Veto referendums in Utah](#)

Senate Bill 4003, which would take effect if Amendment D is approved, would increase the amount of time for sponsors to gather [veto referendum](#) signatures by 20 days (from 40 days to 60 days).<sup>[2]</sup>

In Utah, referendums must be filed within five days following the end of the legislative session during which the bill was passed. The number of required signatures for veto referendums in Utah

is 8% of the total active voters as of January 1 of each year. For 2024, the veto referendum [requirement](#) was 134,298 total signatures (25% of 134,298 amounts to 33,575 signatures).

Veto referendums are a type of [ballot initiative](#) in which citizens gather signatures to place a bill enacted by the state legislature on the statewide ballot for voter approval or rejection in the hopes of overturning the law. Utah is one of 23 states with a referendum process. Utah has had a total of four veto referendums: two in 1954, one in 1974, and one in 2007. [Utah](#) is the only state where voters have repealed every law put before them through the veto referendum process.

## How did Amendment D get on the ballot?

See also: [League of Women Voters v. Utah State Legislature](#) and [Path to the ballot](#)

The Legislature convened a special session to pass the amendment in response to the Utah Supreme Court's ruling in [League of Women Voters v. Utah State Legislature](#). The court ruled on July 11, 2024, that the Legislature could not repeal or undo an initiative meant to reform government: "The people's right to alter or reform the government through an initiative is constitutionally protected from government infringement, including legislative amendment, repeal, or replacement of the initiative in a manner that impairs the reform enacted by the people."

The amendment was introduced as Senate Joint Resolution 401 on August 20, 2024. On August 21, 2024, the Senate passed the bill in a vote of 20-8. Among Senate Republicans, 20 were in favor and two were opposed. All six Senate Democrats voted against the bill. The House passed the bill on the same day in a vote of 54-21. Among Republican Representatives, 54 were in favor and seven were opposed. All 14 Democratic Representatives voted against the bill.<sup>[1]</sup>

## Text of measure

### Ballot title

The ballot title for the amendment is as follows:

“ Should the Utah Constitution be changed to strengthen the initiative process by:

- Prohibiting foreign influence on ballot initiatives and referendums.
- Clarifying the voters and legislative bodies' ability to amend laws.

If approved, state law would also be changed to:

- Allow Utah citizens 50% more time to gather signatures for a statewide referendum.
- Establish requirements for the legislature to follow the intent of a ballot initiative.

For ( ) Against ( ) <sup>[3]</sup>

”

## Ballot language lawsuit

[League of Women Voters](#) of Utah filed a lawsuit seeking to invalidate Amendment D and have it removed from the ballot, or, if it does appear on the ballot, prohibit votes cast on the measure from being counted. Plaintiffs alleged that the ballot language was not certified until two days after the official state deadline according to state law and also alleged that the ballot language is false and misleading. The lawsuit claims "The language violates the inherent accuracy requirement of Section 1 of [Article XXIII](#) because it fails to submit the amendment to the voters for a popular vote."<sup>[4]</sup>

To read more about the lawsuit, click [here](#).

## Constitutional changes

See also: [Article I, Utah Constitution](#) and [Article VI, Utah Constitution](#)

The amendment would amend Section 2 of [Article I](#) and Section 1 of [Article VI](#) of the [Utah Constitution](#). The following underlined text would be added and ~~struck-through~~ text would be deleted:<sup>[1]</sup>

Note: Use your mouse to scroll over the below text to see the full text.

designated the Legislature of the State of Utah; and

(b) the people of the State of Utah as provided in Subsection (2).

(2) (a) (i) The legal voters of the State of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:

(A) initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute; or

(B) require any law passed by the Legislature, except those laws passed by a two-thirds vote of the members elected to each house of the Legislature. to be submitted to the

## Support

### Supporters

### Officials

- State Sen. [Kirk Cullimore](#) (R)
- State Rep. [Jordan Teuscher](#) (R)

## Arguments

- **Yes on Amendment D campaign spokesperson Marty Carpenter:** "The ballot language is clear and direct. The amendment prohibits foreign influence and clarifies the legislature's role in the initiative process. The critics' true concern seems to be that the language is so easy to understand that voters will be hard pressed to find reasons to oppose it."
- **Senate President Stuart Adams (R-7) and House Speaker Mike Schultz (R-12):** "It's ironic that the very people who claim to advocate for a greater voter engagement are the same ones trying to obstruct Utahns from having the opportunity to vote on this important matter. The plaintiffs are clearly concerned about leaving it to voters to decide. Before initiatives overwhelm and significantly alter our state, Utahns should have the opportunity to voice their opinions."

## Opposition

### Opponents

#### Officials

- State Rep. [Raymond Ward](#) (Nonpartisan)

#### Organizations

- Better Boundaries
- League of Women Voters of Utah
- Mormon Women for Ethical Government

## Arguments

- **State Rep. Ray Ward (R-19):** "[The ballot question] incorrectly claims that the effect of the amendment is to strengthen the initiative process when in fact the main change that is proposed will seriously weaken the initiative process. Having ballot initiatives don't happen often, but they are an important check, and they are an important balance of power. I believe if we lose that balance, which we could on this vote, that long-term Utah will not be as good as a place if we lose that little bit of balance of power."
- **Better Boundaries board member Ryan Bell:** "It is not true that this amendment will strengthen the initiative process; it will weaken that process. It is not true that the amendment will establish requirements for the legislature to follow the intent of a ballot initiative; it will free them to override initiatives passed by the will of the people."

# Background

## League of Women Voters v. Utah State Legislature

See also: [Utah Supreme Court, League of Women Voters v. Utah State Legislature, July 11, 2024](#)

*League of Women Voters v. Utah State Legislature* challenged the legislature's repeal and replacement of [Proposition 4](#), a 2018 voter-approved initiative that sought to establish an independent advisory redistricting commission to recommend redistricting maps to the state legislature, which would have been required to enact them or reject them, though, upon rejecting a commission-recommended map, the legislature would have been required under Proposition 4 to create its own map using the same criteria. One provision of Proposition 4 was designed to explicitly prohibit the practice of "divid[ing] districts in a manner that purposefully or unduly favors or disfavors any incumbent elected official, candidate or prospective candidate for elective office, or any political party."<sup>[5]</sup>

In the lawsuit, plaintiffs alleged that the state legislature, in enacting Senate Bill 200, "rescinded critical Proposition 4 reforms and enacted watered-down versions of others," and alleged that the legislative redistricting committee violated Utahns' right to vote and right to free speech by dividing Salt Lake County, a county with the state's largest concentration of voters for minority parties, into four congressional districts.<sup>[5]</sup>

The court ruled on July 11, 2024, that the state legislature could not repeal or undo an initiative meant to reform government, writing that "the people's right to alter or reform the government through an initiative is constitutionally protected from government infringement, including legislative amendment, repeal, or replacement of the initiative in a manner that impairs the reform enacted by the people."<sup>[6]</sup>

## Legislative alteration

See also: [Legislative alteration](#)

The term **legislative alteration** refers to when lawmakers repeal or amend citizen initiatives after voters have approved them. At the statewide level, it applies only to initiated state statutes since legislatures cannot change [initiated constitutional amendments](#) without voter approval. There are 21 states with a process for initiated state statutes. Eleven states have no restrictions on legislative alteration, two states—Arizona and California—require voter approval of substantive alteration, and the remaining eight states have either time restrictions, supermajority vote requirements, or a combination of the two.

Utah is one of eleven states that has no restriction on legislative alteration of ballot initiatives.

Of the 21 states that provide for [initiated state statutes](#):

- **Eleven** states have no restrictions on when or how legislators can amend or repeal voter-approved initiated statutes.
- **Ten** states have restrictions on how and when the legislature can amend or repeal voter-approved initiatives.



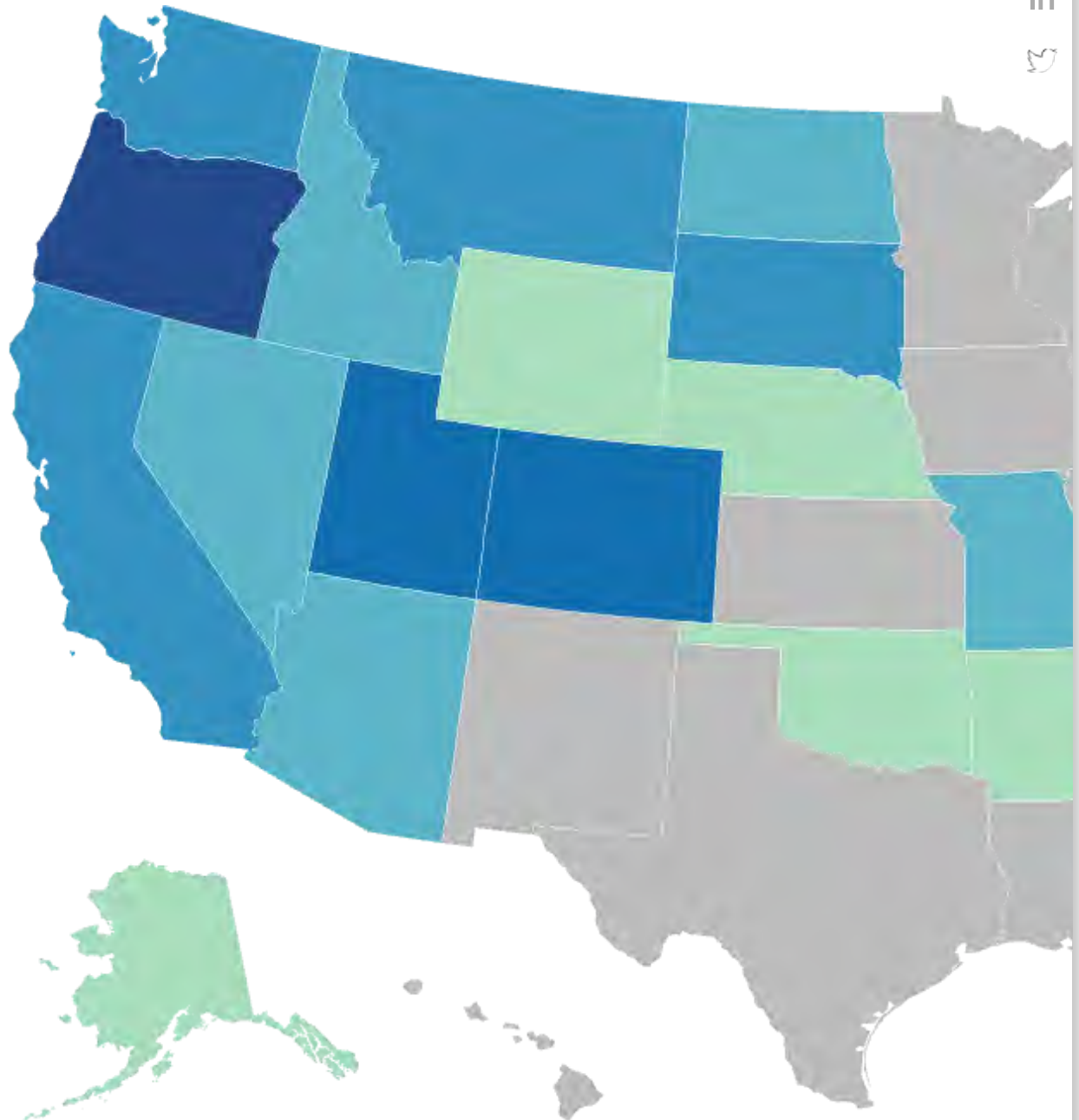
- 8/17

See also: [Legislative alterations of ballot initiatives](#)

From 2010 through 2022, 143 initiated state statutes and three initiated ordinances in D.C. were approved by voters. Of these 146 total initiatives from 2010 through 2022, 29 were legislatively altered as of January 2023. To read about legislative alterations of ballot initiatives from 2010 through 2022, click [here](#).

### Legislative alteration of initiatives approved from 2010 - 2023

States in a darker shade have featured more legislative alterations. Hover over each state for details.



Map: Ballotpedia • Source: [Ballotpedia](#)

### Laws governing foreign spending in ballot measure campaigns

See also: [Laws governing foreign spending in ballot measure campaigns](#)

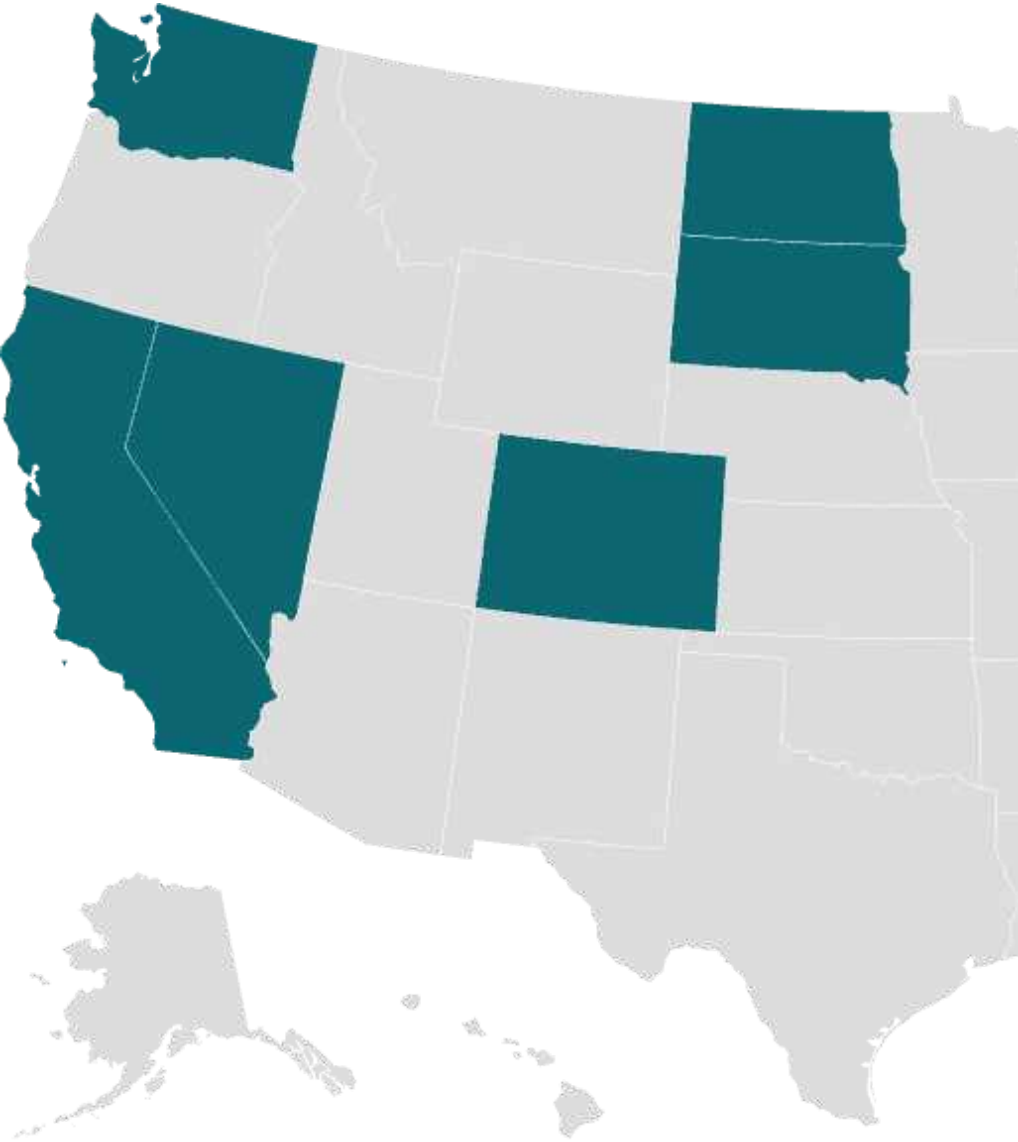


Campaign finance rules for ballot measures differ from those for candidate elections. "Referenda are held on issues, not candidates for public office," wrote the U.S. Supreme Court in 1978 ([First National Bank of Boston v. Bellotti](#)).<sup>[7]</sup> The court has held that spending on ballot measure campaigns is similar to issue advocacy, such as lobbying, in the lawmaking process. In 2012, the Supreme Court affirmed that, under the [Federal Elections Campaign Act](#) (FECA), foreign nationals were prohibited from making contributions to candidates. However, FECA "does not bar foreign nationals from issue advocacy," according to the court.<sup>[8]</sup>

The [Federal Election Commission](#), following the court's orders, has held that ballot measure campaigns are not regulated under FECA. According to the FEC, since ballot measure campaigns are similar to issue advocacy, foreign individuals, corporations, and governments can contribute to them.<sup>[9]</sup>

At least nine states have passed laws prohibiting foreign nationals or governments from contributing to ballot measure committees. However, the definition of foreign national may vary by state. Those nine states are California, Colorado, Maine, Maryland, Nevada, North Dakota, Ohio, South Dakota, and Washington.

# Ban on foreign nationals contributing to ballot measure campaigns




Updated: June 2024

## Ballot measures related to foreign spending in ballot measure campaigns

Ballotpedia tracked four ballot measures related to foreign spending in ballot measure campaigns.

State	Year	Measure	Type	Description	Outcome
Maine	2023	<a href="#">Question 2</a>	<a href="#">IndISS</a>	Prohibits foreign governments, or entities with at least 5% foreign government ownership or control, from spending money to influence ballot measures or candidate elections	✓
North Dakota	2018	<a href="#">Measure 1</a>	<a href="#">CICA</a>	Ban political contributions from foreign government entities, foreign individuals, and foreign corporations	✓
Missouri	2016	<a href="#">Constitutional Amendment 2</a>	<a href="#">CICA</a>	Ban committees from accepting contributions from foreign corporations <sup>[10]</sup>	✓ / ✗

State	Year	Measure	Type	Description	Outcome
Colorado	2002	<a href="#">Amendment 27</a>	<a href="#">CICA</a>	Prohibits candidate committees and political parties from making or accepting certain contributions	

Utah ballot measure statistics

Citizen initiatives on the ballot

The last time a citizen initiative qualified for the ballot was 2018, when three initiated state statutes appeared on the ballot. Voters approved all three of the initiatives. All three were later amended by the state legislature.

Before 2018, the last time an initiated statute was on the ballot and approved by voters was in [2000](#).

Between 1952 and 2022, 23 citizen initiatives appeared on the ballot. Of the 23 initiatives, seven were approved (30.4%) and 16 were defeated (69.6%).

Citizen initiated state statutes (1952-2022)

Total number	Approved	Percent approved	Defeated	Percent defeated
23	7	30.4%	16	69.6%

Veto referendums in Utah

See also: [List of veto referendum ballot measures in Utah](#)

In Utah, bills passed by the state legislature can be put before voters through a [veto referendum](#) petition. Bills passed by a two-thirds supermajority in the state legislature are not subject to referendum.

Utah is the only state where voters have repealed every law put before them through the veto referendum process. Utah has had a total of four veto referendums.

- Signature requirement: 8% of registered voters on January 1 after the previous general election
- Result of a yes vote: targeted law upheld
- Result of a no vote: targeted law repealed
- Does not allow for veto referendums on emergency legislation
- Successful veto referendum petitions suspend the targeted law until the election

Year	State	Subject	Measure	Outcome for target law
<a href="#">2007</a>	<a href="#">Utah</a>	<a href="#">Education</a>	<a href="#">Referendum 1: School Vouchers</a>	Repealed
<a href="#">1974</a>	<a href="#">Utah</a>	<a href="#">Property</a>	<a href="#">Referendum 1: Land Use Act</a>	Repealed
<a href="#">1954</a>	<a href="#">Utah</a>	<a href="#">Education</a>	<a href="#">Referendum A: Abolishment of Carbon College</a>	Repealed
<a href="#">1954</a>	<a href="#">Utah</a>	<a href="#">Education</a>	<a href="#">Referendum B: Dixie, Snow and Weber Colleges as Private Organizations</a>	Repealed

## Referred amendments on the ballot

From 2010 to 2022, the [Utah State Legislature](#) referred 23 constitutional amendments to the ballot. Voters approved 18 (78.26%) and rejected five (21.74%) of the referred amendments. All of the amendments were referred to the ballot for general elections during even-numbered election years. The average number of amendments appearing on the general election ballot was between three and four.

Legislatively-referred constitutional amendments, 2010-2022

Total number	Approved	Percent approved	Defeated	Percent defeated	Annual average	Annual minimum	Annual maximum
23	18	78.26%	5	21.74%	3.29	1	7

## Path to the ballot

See also: [Amending the Utah Constitution](#)

In Utah, both chambers of the [state legislature](#) need to pass a constitutional amendment by a two-thirds vote during one legislative session to refer an amendment to the ballot.

### Senate Joint Resolution 401

The Legislature convened a special session to pass the amendment in response [League of Women Voters v. Utah State Legislature](#). The court ruled on July 11, 2024, that the Legislature could not repeal or undo an initiative meant to reform government: “The people’s right to alter or reform the government through an initiative is constitutionally protected from government infringement, including legislative amendment, repeal, or replacement of the initiative in a manner that impairs the reform enacted by the people.”

The amendment was introduced as Senate Joint Resolution 401 on August 20, 2024. On August 21, 2024, the Senate passed the bill in a vote of 20-8. Among Senate Republicans, 20 were in favor and two, Sen. [Daniel W. Thatcher](#) and Sen. [Wayne Harper](#), were opposed. All six Senate Democrats voted against the bill. The House passed the bill on the same day in a vote of 54-21. Among Republican Representatives, 54 were in favor and seven were opposed. All 14 Democratic Representatives voted against the bill.<sup>[\[1\]](#)</sup>

Vote in the <a href="#">Utah House of Representatives</a> August 21, 2024	Vote in the <a href="#">Utah State Senate</a> August 21, 2024
<b>Requirement:</b> Two-thirds (66.67 percent) vote of all members in each chamber	<b>Requirement:</b> Two-thirds (66.67 percent) vote of all members in each chamber
Number of yes votes required: 50	Number of yes votes required: 20

	Yes	No	Not voting		Yes	No	Not voting
Total	54	21	0	Total	20	8	1
Total percent	72.00%	28.00%	0,00%	Total percent	68.97%	27.59%	3.44%
Democrat	0	14	0	Democrat	0	6	0
Republican	54	7	0	Republican	20	2	1

Senate Bill 4003

Along with the constitutional amendment, the legislature also passed Senate Bill 4003, which would take effect if the amendment is approved. The bill would allow the state legislature to amend a voter-approved initiative by amending the law that, "in the Legislature's determination, leaves intact the general purpose of the initiative" and allows the legislature to "amend the law in any manner determined necessary by the Legislature to mitigate an adverse fiscal impact of the initiative". The bill would also increase the amount of time for sponsors to gather VR signatures by 20 days (40 days to 60 days).<sup>[11]</sup>

SB 4003[show]  
Vote

Senate

House

Lawsuit

Lawsuit overview

**Issue:** Whether the ballot language for the constitutional amendment is misleading and inaccurate

**Court:** Third Judicial District Court of Salt Lake City

**Plaintiff(s):** [League of Women Voters](#)

**Defendant(s):** [Utah State Legislature](#), Sen. [Stuart Adams](#) (R-7), Rep. [Mike Schultz](#) (R-12), Lt. Gov. [Deidre Henderson](#) (R)

Source: [Fox 13 Now](#)

[League of Women Voters](#) of Utah filed a lawsuit seeking to invalidate Amendment D and have it removed from the ballot, or, if it does appear on the ballot, prohibit votes cast on the measure from being counted. Plaintiffs alleged that the ballot language was not certified until two days after the official state deadline according to state law and also alleged that the ballot language is false and misleading. The lawsuit claims "The language violates the inherent accuracy requirement of Section 1 of [Article XXIII](#) because it fails to submit the amendment to the voters for a popular vote."<sup>[4]</sup>

Plaintiffs alleged that "The ballot summary plainly does not communicate that the Amendment eliminates a fundamental constitutional right that has existed since 1895 ... Second, somehow worse than failing to disclose that the Amendmer 'eliminates a fundamental right, the ballot

summary misleads voters into believing a vote in favor will strengthen their constitutional right to initiate legislation. The purpose of the Amendment is to weaken voters' constitutional right to initiate government reform measures by authorizing the Legislature to amend or repeal them as it sees fit. Indeed, the text of the Amendment—in sweeping language— wholesale exempts the Legislature from complying with any constitutional provision when it acts to amend, repeal, or enact laws in relation to voter-approved initiatives."<sup>[4]</sup>

Better Boundaries, the group leading the campaign in [opposition](#) to the amendment, said, "Amendment D would do the opposite of what the misleading ballot language claims and would weaken Utahns ability to make their voice heard through the ballot initiative process. By changing the rules to draft deceptive ballot language for Amendment D, Senate President Adams and House Speaker Schultz now find themselves back in court. We fully support the League of Women Voters Utah and Mormon Women for Ethical Government in their pursuit of integrity."<sup>[4]</sup>

Senate President [Stuart Adams](#) (R-7) and House Speaker [Mike Schultz](#) (R-12) said, "It's ironic that the very people who claim to advocate for greater voter engagement are the same ones trying to obstruct Utahns from having the opportunity to vote on this important matter. The plaintiffs are clearly concerned about leaving it to voters to decide. Before initiatives overwhelm and significantly alter our state, Utahns should have the opportunity to voice their opinions."<sup>[4]</sup>

## How to cast a vote

See also: [Voting in Utah](#)

**Click "Show" to learn more about current voter registration rules, identification requirements, and poll times in Utah.**

How to cast a vote in Utah

[show]

## See also

### 2024 measures



- [2024 ballot measures](#)
- [Direct democracy measures on the ballot](#)
- [2024 legislative sessions](#)

### Utah



- [Utah ballot measures](#)
- [Utah ballot measure laws](#)

### News and analysis



- [Ballot measure lawsuits](#)
- [Ballot measure readability](#)
- [Ballot measure polls](#)

## External links

- [Senate Joint Resolution 401](#)

## Footnotes

1. [Utah State Legislature, "S.J.R. 401 Proposal to Amend Utah Constitution - Voter Legislative Power," accessed August 22, 2024](#)
2. [Utah State Legislature, "SB 4003," accessed September 6, 2024](#)
3. *Note: This text is quoted verbatim from the original source. Any inconsistencies are attributable to the original source.*
4. [Fox 13 Now, "Opponents of Amendment D ask court to remove it from the ballot," accessed September 9, 2024](#)
5. [Justia Law, "League of Women Voters v. Utah State Legislature," accessed August 23,](#)

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## **Exhibit F**

## 2024 Proposed Constitutional Amendments

### Constitutional Amendment A

#### Ballot Title

Shall the Utah Constitution be amended to allow income tax money to be used for all state needs and prioritize public education funding for changes in enrollment and inflation? If this amendment is approved, state statute will eliminate the state sales tax on food.

FOR ( ) AGAINST ( )

#### PROPOSAL TO AMEND UTAH CONSTITUTION - INCOME TAX

2023 General Session

#### Utah Constitution Sections Affected:

AMENDS:

#### ARTICLE XIII, SECTION 5

*Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:*

Section 1. It is proposed to amend Utah Constitution, Article XIII, Section 5, to read:

#### **Article XIII, Section 5. [Use and amount of taxes and expenditures.]**

(1) (a) The Legislature shall provide by statute for an annual tax sufficient, with other revenues, to defray the estimated ordinary expenses of the State for each fiscal year.

(b) If the ordinary expenses of the State will exceed revenues for a fiscal year, the Governor shall:

(i) reduce all State expenditures on a pro rata basis, except for expenditures for debt of the State; or

(ii) convene the Legislature into session under Article VII, Section 6 to address the deficiency.

(2) (a) For any fiscal year, the Legislature may not make an appropriation or authorize an expenditure if the State's expenditure exceeds the total tax provided for by statute and applicable to the particular appropriation or expenditure.

(b) Subsection (2)(a) does not apply to an appropriation or expenditure to suppress insurrection, defend the State, or assist in defending the United States in time of war.

(3) For any debt of the State, the Legislature shall provide by statute for an annual tax sufficient to pay:

(a) the annual interest; and

(b) the principal within 20 years after the final passage of the statute creating the debt.

(4) Except as provided in Article X, Section 5, Subsection (5)(a), the Legislature may not impose a tax for the purpose of a political subdivision of the State, but may by statute authorize political subdivisions of the State to assess and collect taxes for their own purposes.

(5) All revenue from taxes on intangible property or from a tax on income shall be used:

(a) to support the systems of public education and higher education as defined in Article X, Section 2; ~~and~~

(b) to maintain a statutory public education funding framework that:

(i) uses a portion of revenue growth for expenditures from the Uniform School Fund for changes in student enrollment and long-term inflation; and

(ii) provides a budgetary stabilization account:

~~[(b)]~~ (c) to support children and to support individuals with a disability[-]; and

(d) to support other state needs after the fulfillment of the requirements in Subsection (5)(b).

(6) Proceeds from fees, taxes, and other charges related to the operation of motor vehicles on public highways and proceeds from an excise tax on liquid motor fuel used to propel those motor vehicles shall be used for:

(a) statutory refunds and adjustments and costs of collection and administration;

(b) the construction, maintenance, and repair of State and local roads, including payment for property taken for or damaged by rights-of-way and for associated administrative costs;

(c) driver education;

(d) enforcement of state motor vehicle and traffic laws; and

(e) the payment of the principal of and interest on any obligation of the State or a city or county, issued for any of the purposes set forth in Subsection (6)(b) and to which any of the fees, taxes, or other charges described in this Subsection (6) have been pledged, including any paid to the State or a city or county, as provided by statute.

(7) Fees and taxes on tangible personal property imposed under Section 2, Subsection (6) of this article are not subject to Subsection (6) of this Section 5 and shall be distributed to the taxing districts in which the property is located in the same proportion as that in which the revenue collected from real property tax is distributed.

(8) A political subdivision of the State may share its tax and other revenues with another political subdivision of the State as provided by statute.

(9) Beginning July 1, 2016, the aggregate annual revenue from all severance taxes, as those taxes are defined by statute, except revenue that by statute is used for purposes related to any federally recognized Indian tribe, shall be deposited annually into the permanent State trust fund under Article XXII, Section 4, as follows:

(a) 25% of the first \$50,000,000 of aggregate annual revenue;

(b) 50% of the next \$50,000,000 of aggregate annual revenue; and

(c) 75% of the aggregate annual revenue that exceeds \$100,000,000.

**Section 2. Submittal to voters.**

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

**Section 3. Contingent effective date.**

If the amendment proposed by this joint resolution is approved by a majority of those voting on it at the next regular general election, the amendment shall take effect on January 1, 2025.

## **Constitutional Amendment B**

### **Ballot Title**

Shall the Utah Constitution be amended to increase the limit on the annual distributions from the State School Fund to public schools from 4% to 5% of the fund?

FOR ( ) AGAINST ( )

### **PROPOSAL TO AMEND UTAH CONSTITUTION - STATE SCHOOL FUND**

2023 General Session

#### **Utah Constitution Sections Affected:**

AMENDS:

#### **ARTICLE X, SECTION 5**

*Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:*

Section 1. It is proposed to amend Utah Constitution, Article X, Section 5, to read:

#### **Article X, Section 5. [State School Fund and Uniform School Fund -- Establishment and use -- Debt guaranty.]**

(1) There is established a permanent State School Fund which consists of:

- (a) proceeds from the sales of all lands granted by the United States to this state for the support of the public elementary and secondary schools;
- (b) 5% of the net proceeds from the sales of United States public lands lying within this state;
- (c) all revenues derived from nonrenewable resources on state lands, other than sovereign lands and lands granted for other specific purposes;
- (d) all revenues derived from the use of school trust lands;
- (e) revenues appropriated by the Legislature; and
- (f) other revenues and assets received by the permanent State School Fund under any other provision of law or by bequest or donation.

(2) (a) The permanent State School Fund shall be prudently invested by the state and shall be held by the state in perpetuity.

(b) Only earnings received from investment of the permanent State School Fund may be distributed from the fund, and any distribution from the fund shall be for the support of the public education system as defined in Article X, Section 2 of this constitution.

(c) Annual distributions from the permanent State School Fund under Subsection (2)(b) may not exceed [~~4%~~] 5% of the fund, calculated as provided by statute.

(d) The Legislature may make appropriations from school trust land revenues to provide funding necessary for the proper administration and management of those lands consistent with the state's fiduciary responsibilities towards the beneficiaries of the school land trust. Unexpended balances remaining from the appropriation at the end of each fiscal year shall be deposited in the permanent State School Fund.

(e) The permanent State School Fund shall be guaranteed by the state against loss or diversion.

(3) There is established a Uniform School Fund which consists of:

- (a) money from the permanent State School Fund;
- (b) revenues appropriated by the Legislature; and

(c) other revenues received by the Uniform School Fund under any other provision of law or by donation.

(4) The Uniform School Fund shall be maintained and used for the support of the state's public education system as defined in Article X, Section 2 of this constitution and apportioned as the Legislature shall provide.

(5) (a) Notwithstanding Article VI, Section 29, the State may guarantee the debt of school districts created in accordance with Article XIV, Section 3, and may guarantee debt incurred to refund the school district debt. Any debt guaranty, the school district debt guaranteed thereby, or any borrowing of the state undertaken to facilitate the payment of the state's obligation under any debt guaranty shall not be included as a debt of the state for purposes of the 1.5% limitation of Article XIV, Section 1.

(b) The Legislature may provide that reimbursement to the state shall be obtained from monies which otherwise would be used for the support of the educational programs of the school district which incurred the debt with respect to which a payment under the state's guaranty was made.

**Section 2. Submittal to voters.**

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

**Section 3. Contingent effective date.**

If the amendment proposed by this joint resolution is approved by a majority of those voting on it at the next regular general election, the amendment shall take effect on January 1, 2025.

## **Constitutional Amendment C**

### **Ballot Title**

Shall the Utah Constitution be amended to have the office of county sheriff be elected by voters?

FOR ( ) AGAINST ( )

### **PROPOSAL TO AMEND UTAH CONSTITUTION - ELECTION OF COUNTY SHERIFFS**

2023 General Session

#### **Utah Constitution Sections Affected:**

ENACTS:

#### **ARTICLE XI, SECTION 10**

*Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:*

Section 1. It is proposed to enact Utah Constitution Article XI, Section 10, to read:

#### **Article XI, Section 10. [Election of County Sheriffs.]**

(1) Each county shall have an office of county sheriff.

(2) The office of county sheriff is an elected office.

(3) Their term of office shall be four years from the first day of January next after their election.

#### **Section 2. Submittal to voters.**

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

#### **Section 3. Contingent effective date.**

If the amendment proposed by this joint resolution is approved by a majority of those voting on it at the next regular general election, the amendment shall take effect on January 1, 2025.

## **Constitutional Amendment D**

2024 Fourth Special Session

House Joint Resolution (S.J.R) 401

*Proposal to Amend Utah Constitution - Election of County Sheriffs*

### **Ballot Title**

*Should the Utah Constitution be changed to strengthen the initiative process by:*

- Prohibiting foreign influence on ballot initiatives and referendums.
- Clarifying the voters and legislative bodies' ability to amend laws.

*If approved, state law would also be changed to:*

- Allow Utah citizens 50% more time to gather signatures for a statewide referendum.
- Establish requirements for the legislature to follow the intent of a ballot initiative.

FOR ( ) AGAINST ( )

## **PROPOSAL TO AMEND UTAH CONSTITUTION - VOTER LEGISLATIVE POWER**

2024 Fourth Special Session

**Utah Constitution Sections Affected:**

AMENDS:

### **ARTICLE I, SECTION 2**

### **ARTICLE VI, SECTION 1**

*Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:*

Section 1. It is proposed to amend Utah Constitution, Article I, Section 2, to read:

#### **Article I, Section 2 . All political power inherent in the people**

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government through the processes established in Article VI, Section 1, Subsection (2), or through Article XXIII as the public welfare may require.

Section 2. It is proposed to amend Utah Constitution, Article VI, Section 1, to read:

#### **Article VI, Section 1 . Power vested in Senate, House, and People -- Prohibition of foreign influence on initiatives and referenda.**

(1) The Legislative power of the State shall be vested in:

(a) a Senate and House of Representatives which shall be designated the Legislature of the State of Utah; and

(b) the people of the State of Utah as provided in Subsection (2).

(2)(a)(i) The legal voters of the State of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:

(A) initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute; or

(B) require any law passed by the Legislature, except those laws passed by a two-thirds vote of the members elected to each house of the Legislature, to be submitted to the voters of the State, as provided by statute, before the law may take effect.

(ii) Notwithstanding Subsection (2)(a)(i)(A), legislation initiated to allow, limit, or prohibit the taking of wildlife or the season for or method of taking wildlife shall be adopted upon approval of two-thirds of those voting.

(b) The legal voters of any county, city, or town, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:

(i) initiate any desired legislation and cause it to be submitted to the people of the county, city, or town for adoption upon a majority vote of those voting on the legislation, as provided by statute; or

(ii) require any law or ordinance passed by the law making body of the county, city, or town to be submitted to the voters thereof, as provided by statute, before the law or ordinance may take effect.

(3)(a) Foreign individuals, entities, or governments may not, directly or indirectly, influence, support, or oppose an initiative or a referendum.

(b) The Legislature may provide, by statute, definitions, scope, and enforcement of the prohibition under Subsection (3)(a).

(4) Notwithstanding any other provision of this Constitution, the people's exercise of their Legislative power as provided in Subsection (2) does not limit or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature, or by a law making body of a county, city, or town, on behalf of the people whom they are elected to represent.

### **Section 3. Submittal to voters.**

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

### **Section 4. Contingent effective date.**

If the amendment proposed by this joint resolution is approved by a majority of those voting on it at the next regular general election, the amendment shall take effect on January 1, 2025 .

### **Section 5. Retrospective operation.**

The actions affecting Article I, Section 2 and Article VI, Section 1, Subsection (4) have retrospective operation.



## **Exhibit G**

**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR  
SUNDWALL, and JACK MARKMAN,

Plaintiffs,

v.

UTAH STATE LEGISLATURE, UTAH  
LEGISLATIVE REDISTRICTING  
COMMITTEE; SENATOR SCOTT  
SANDALL, in his official capacity;  
REPRESENTATIVE MIKE SCHULTZ, in his  
official capacity; SENATOR J. STUART  
ADAMS, in his official capacity; and  
LIEUTENANT GOVERNOR DEIDRE  
HENDERSON, in her official capacity,

Defendants.

DECLARATION OF KIMBALL GLEN  
WILLARD

Case No. 220901712  
Honorable Dianna Gibson

*I, Kimball Glen Willard, based on my personal knowledge, declare that:*

1. I am a qualified registered voter in the State of Utah.
2. I am over eighteen years old. I am a resident of Morgan in Morgan County, Utah.
3. I intend to vote in Utah's 2024 general election, including voting on each of the four proposed amendments to the Utah Constitution that the Lieutenant Governor has certified for inclusion on the 2024 Utah general election ballot.
4. I have read the text of SJR401 that was passed in the special legislative special session held in August 2024. SJR401 contains the text that has since been certified on the 2024 General Election ballot as proposed constitutional Amendment D.
5. The text of proposed Amendment D is easy to find online. I was able to find Amendment D's full text with minimal effort through internet searching. Amendment D's full text is available on the Utah Legislature's website. Amendment D's text has also been included in several news stories. Some of those news stories reprint the text itself. Other news stories include hyperlinks

to Amendment D's full text that allows a reader to click on the hyperlink and have Amendment D's full text immediately displayed.

6. Nothing about my internet searches for Amendment D's text was difficult or unusual. Any competent voter interested in finding and reading Amendment D's full text to educate himself or herself about Amendment D should be able to find the full text through a Google search with virtually no effort. In fact, a Google search for "Utah 2024 Constitutional Amendment D" returns a page of results that includes not just a link to Amendment D's full text on the Legislature's website, but also a host of news articles discussing the proposed amendment and the litigation related to it.

7. As a voter, I regularly use the internet to search for information to inform my decisions about votes on candidates and issues. I have been using the internet to obtain that kind of information for several election cycles. I cannot remember the last time I looked in a printed copy of a newspaper for information to inform my vote about a candidate or issue.

8. I have also read the summary description of Amendment D that the Legislature created for inclusion on the 2024 General Election ballot.

9. The text of Amendment D itself and the Legislature's ballot summary language itself are both clear and in plain English. I was not confused by either Amendment D's text or the summary description.

10. I have compared Amendment D's text to the ballot summary language. After doing so, I do not think the ballot summary is deceptive or misleading. The ballot summary fairly and accurately describes the purpose and effect of Amendment D.

11. I can exercise my right under the Utah Constitution to alter or reform my government through my fundamental right to vote on an initiative. I can also exercise my right under the Utah Constitution to alter or reform my government through votes cast on my behalf by my lawfully elected representatives in the Utah House of Representatives and the Utah Senate. My lawfully elected representatives are not free-wheeling actors. They are responsible to me, and to the rest of their constituents, for the votes they cast. If they do not properly represent our interests, we will vote them out and replace them with another representative who will.

12. A court order that removes Amendment D from the ballot will deprive me of my ability to express my support for Amendment D even though both the amendment's text and the summary description of it are clear and not misleading. The court should not deprive me of my opportunity to express my political and policy views by voting on Amendment D. A court order that removes Amendment D from the ballot will also deprive me of the opportunity to exercise my right to alter or reform the government by voting on a proposed constitutional amendment.

I declare under penalty of perjury of the laws of the State of Utah that the foregoing is true and correct.

Executed in St. George, Utah this 10th day of September 2024.

/s/ Kimball Glen Willard

*Electronically signed pursuant to Utah Code §§ 46-4-101, et seq.*

**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR  
SUNDWALL, and JACK MARKMAN,

Plaintiffs,

DECLARATION OF

JODY VALANTINE

UTAH STATE LEGISLATURE,

UTAH LEGISLATIVE REDISTRICTING COMMITTEE;

SENATOR SCOTT SANDALL, in his official capacity;

REPRESENTATIVE MIKE SCHULTZ, in his official capacity;

SENATOR J. STUART ADAMS, in his official capacity; and

Case No. 2209017

LIEUTENANT GOVERNOR DEIDRE HENDERSON,

Honorable Dianna Gibson

in her official capacity,

Defendants.

JODY VALANTINE

*I, Jody Valantine, based on my personal knowledge, declare that:*

1. I am a qualified registered voter in the State of Utah.
2. I am over eighteen years old. I am a resident of Santa Clara in Washington County, Utah.

3. I intend to vote in Utah's 2024 general election, including voting on each of the four proposed amendments to the Utah Constitution that the Lieutenant Governor has certified for inclusion on the 2024 Utah general election ballot.

4. I have read the text of SJR401 that was passed in the special legislative special session held in August 2024. SJR401 contains the text that has since been certified on the 2024 General Election ballot as proposed constitutional Amendment D.

5. The text of proposed Amendment D is easy to find online. I was able to find Amendment D's full text with minimal effort through internet searching. Amendment D's full text is available on the Utah Legislature's website. Amendment D's text has also been included in several news stories. Some of those news stories reprint the text itself. Other news stories include hyperlinks to Amendment D's full text that allows a reader to click on the hyperlink and have Amendment D's full text immediately displayed.

6. Nothing about my internet searches for Amendment D's text was difficult or unusual. Any competent voter interested in finding and reading Amendment D's full text to educate himself or herself about Amendment D should be able to find the full text through a Google search with virtually no effort. In fact, a Google search for "Utah 2024 Constitutional Amendment D" returns a page of results that includes not just a link to Amendment D's full text on the Legislature's website, but also a host of news articles discussing the proposed amendment and the litigation related to it.

7. As a voter, I regularly use the internet to search for information to inform my decisions about votes on candidates and issues. I have been using the internet to obtain that kind of information for several election cycles. I cannot remember the last time I looked in a printed copy of a newspaper for information to inform my vote about a candidate or issue.

8. I have also read the summary description of Amendment D that the Legislature created for inclusion on the 2024 General Election ballot.

9. The text of Amendment D itself and the Legislature's ballot summary language itself are both clear and in plain English. I was not confused by either Amendment D's text or the summary description.

10. I have compared Amendment D's text to the ballot summary language. After doing so, I do not think the ballot summary is deceptive or misleading. The ballot summary fairly and accurately describes the purpose and effect of Amendment D.

11. I can exercise my right under the Utah Constitution to alter or reform my government through my fundamental right to vote on an initiative. I can also exercise my right under the Utah Constitution to alter or reform my government through votes cast on my behalf by my lawfully elected representatives in the Utah House of Representatives and the Utah Senate. My lawfully elected representatives are not free-wheeling actors. They are responsible to me, and to the rest of their constituents, for the votes they

cast. If they do not properly represent our interests, we will vote them out and replace them with another representative who will.

12. A court order that removes Amendment D from the ballot will deprive me of my ability to express my support for Amendment D even though both the amendment's text and the summary description of it are clear and not misleading. The court should not deprive me of my opportunity to express my political and policy views by voting on Amendment D. A court order that removes Amendment D from the ballot will also deprive me of the opportunity to exercise my right to alter or reform the government by voting on a proposed constitutional amendment.

I declare under penalty of perjury of the laws of the State of Utah that the foregoing is true and correct.

Executed in Santa Clara, Utah this 10th day of September 2024.

Jody Valantine

*Electronically signed pursuant to Utah Code §§ 46-4-101, et seq.*

**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR  
SUNDWALL, and JACK MARKMAN,

Plaintiffs,

v.

UTAH STATE LEGISLATURE, UTAH  
LEGISLATIVE REDISTRICTING  
COMMITTEE; SENATOR SCOTT  
SANDALL, in his official capacity;  
REPRESENTATIVE MIKE SCHULTZ, in his  
official capacity; SENATOR J. STUART  
ADAMS, in his official capacity; and  
LIEUTENANT GOVERNOR DEIDRE  
HENDERSON, in her official capacity,

Defendants.

DECLARATION OF BONNIE LYNN HYER

Case No. 220901712  
Honorable Dianna Gibson

*I, Bonnie Lynn Hyer, based on my personal knowledge, declare that:*

1. I am a qualified registered voter in the State of Utah.
2. I am over eighteen years old. I am a resident of Ogden in Weber County, Utah.
3. I intend to vote in Utah's 2024 general election, including voting on each of the four proposed amendments to the Utah Constitution that the Lieutenant Governor has certified for inclusion on the 2024 Utah general election ballot.
4. I have read the text of SJR401 that was passed in the special legislative special session held in August 2024. SJR401 contains the text that has since been certified on the 2024 General Election ballot as proposed constitutional Amendment D.
5. The text of proposed Amendment D is easy to find online. I was able to find Amendment D's full text with minimal effort through internet searching. Amendment D's full text is available on the Utah Legislature's website. Amendment D's text has also been included in several news stories. Some of those news stories reprint the text itself. Other news stories include hyperlinks



to Amendment D's full text that allows a reader to click on the hyperlink and have Amendment D's full text immediately displayed.

6. Nothing about my internet searches for Amendment D's text was difficult or unusual. Any competent voter interested in finding and reading Amendment D's full text to educate himself or herself about Amendment D should be able to find the full text through a Google search with virtually no effort. In fact, a Google search for "Utah 2024 Constitutional Amendment D" returns a page of results that includes not just a link to Amendment D's full text on the Legislature's website, but also a host of news articles discussing the proposed amendment and the litigation related to it.

7. As a voter, I regularly use the internet to search for information to inform my decisions about votes on candidates and issues. I have been using the internet to obtain that kind of information for several election cycles. I cannot remember the last time I looked in a printed copy of a newspaper for information to inform my vote about a candidate or issue.

8. I have also read the summary description of Amendment D that the Legislature created for inclusion on the 2024 General Election ballot.

9. The text of Amendment D itself and the Legislature's ballot summary language itself are both clear and in plain English. I was not confused by either Amendment D's text or the summary description.

10. I have compared Amendment D's text to the ballot summary language. After doing so, I do not think the ballot summary is deceptive or misleading. The ballot summary fairly and accurately describes the purpose and effect of Amendment D.

11. I can exercise my right under the Utah Constitution to alter or reform my government through my fundamental right to vote on an initiative. I can also exercise my right under the Utah Constitution to alter or reform my government through votes cast on my behalf by my lawfully elected representatives in the Utah House of Representatives and the Utah Senate. My lawfully elected representatives are not free-wheeling actors. They are responsible to me, and to the rest of their constituents, for the votes they cast. If they do not properly represent our interests, we will vote them out and replace them with another representative who will.

12. A court order that removes Amendment D from the ballot will deprive me of my ability to express my support for Amendment D even though both the amendment's text and the summary description of it are clear and not misleading. The court should not deprive me of my opportunity to express my political and policy views by voting on Amendment D. A court order that removes Amendment D from the ballot will also deprive me of the opportunity to exercise my right to alter or reform the government by voting on a proposed constitutional amendment.

I declare under penalty of perjury of the laws of the State of Utah that the foregoing is true and correct.

Executed in Ogden, Utah this 10th day of September 2024.

/s/ Bonnie Lynn Hyer

*Electronically signed pursuant to Utah Code §§ 46-4-101, et seq.*

**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR  
SUNDWALL, and JACK MARKMAN,

Plaintiffs,

v.

UTAH STATE LEGISLATURE, UTAH  
LEGISLATIVE REDISTRICTING  
COMMITTEE; SENATOR SCOTT  
SANDALL, in his official capacity;  
REPRESENTATIVE MIKE SCHULTZ, in his  
official capacity; SENATOR J. STUART  
ADAMS, in his official capacity; and  
LIEUTENANT GOVERNOR DEIDRE  
HENDERSON, in her official capacity,

Defendants.

DECLARATION OF ALEXIS ENCE

Case No. 220901712  
Honorable Dianna Gibson

*I, Alexis Ence, based on my personal knowledge, declare that:*

1. I am a qualified registered voter in the State of Utah.
2. I am over eighteen years old. I am a resident of Santa Clara in Washington County, Utah.
3. I intend to vote in Utah's 2024 general election, including voting on each of the four proposed amendments to the Utah Constitution that the Lieutenant Governor has certified for inclusion on the 2024 Utah general election ballot.
4. I have read the text of SJR401 that was passed in the special legislative special session held in August 2024. SJR401 contains the text that has since been certified on the 2024 General Election ballot as proposed constitutional Amendment D.
5. The text of proposed Amendment D is easy to find online. I was able to find Amendment D's full text with minimal effort through internet searching. Amendment D's full text is available on the Utah Legislature's website. Amendment D's text has also been included in several news stories. Some of those news stories reprint the text itself. Other news stories include hyperlinks

to Amendment D's full text that allows a reader to click on the hyperlink and have Amendment D's full text immediately displayed.

6. Nothing about my internet searches for Amendment D's text was difficult or unusual. Any competent voter interested in finding and reading Amendment D's full text to educate himself or herself about Amendment D should be able to find the full text through a Google search with virtually no effort. In fact, a Google search for "Utah 2024 Constitutional Amendment D" returns a page of results that includes not just a link to Amendment D's full text on the Legislature's website, but also a host of news articles discussing the proposed amendment and the litigation related to it.

7. As a voter, I regularly use the internet to search for information to inform my decisions about votes on candidates and issues. I have been using the internet to obtain that kind of information for several election cycles. I cannot remember the last time I looked in a printed copy of a newspaper for information to inform my vote about a candidate or issue.

8. I have also read the summary description of Amendment D that the Legislature created for inclusion on the 2024 General Election ballot.

9. The text of Amendment D itself and the Legislature's ballot summary language itself are both clear and in plain English. I was not confused by either Amendment D's text or the summary description.

10. I have compared Amendment D's text to the ballot summary language. After doing so, I do not think the ballot summary is deceptive or misleading. The ballot summary fairly and accurately describes the purpose and effect of Amendment D.

11. I can exercise my right under the Utah Constitution to alter or reform my government through my fundamental right to vote on an initiative. I can also exercise my right under the Utah Constitution to alter or reform my government through votes cast on my behalf by my lawfully elected representatives in the Utah House of Representatives and the Utah Senate. My lawfully elected representatives are not free-wheeling actors. They are responsible to me, and to the rest of their constituents, for the votes they cast. If they do not properly represent our interests, we will vote them out and replace them with another representative who will.

12. A court order that removes Amendment D from the ballot will deprive me of my ability to express my support for Amendment D, even though both the amendment's text and the summary description of it are clear and not misleading. The court should not deprive me of my opportunity to express my political and policy views by voting on Amendment D. A court order that removes Amendment D from the ballot will also deprive me of the opportunity to exercise my right to alter or reform the government by voting on a proposed constitutional amendment.

I declare under penalty of perjury of the laws of the State of Utah that the foregoing is true and correct.

Executed in Santa Clara, Utah this 10th day of September 2024.

/s/ Alexis Ence

*Electronically signed pursuant to Utah Code §§ 46-4-101, et seq.*

**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR  
SUNDWALL, and JACK MARKMAN,

Plaintiffs,

v.

UTAH STATE LEGISLATURE, UTAH  
LEGISLATIVE REDISTRICTING  
COMMITTEE; SENATOR SCOTT  
SANDALL, in his official capacity;  
REPRESENTATIVE MIKE SCHULTZ, in his  
official capacity; SENATOR J. STUART  
ADAMS, in his official capacity; and  
LIEUTENANT GOVERNOR DEIDRE  
HENDERSON, in her official capacity,

Defendants.

DECLARATION OF EUGENE DOMINGO  
GARATE

Case No. 220901712  
Honorable Dianna Gibson

*I, Eugene Domingo Garate, based on my personal knowledge, declare that:*

1. I am a qualified registered voter in the State of Utah.
2. I am over eighteen years old. I am a resident of Virgin in Washington County, Utah.
3. I intend to vote in Utah's 2024 general election, including voting on each of the four proposed amendments to the Utah Constitution that the Lieutenant Governor has certified for inclusion on the 2024 Utah general election ballot.
4. I have read the text of SJR401 that was passed in the special legislative special session held in August 2024. SJR401 contains the text that has since been certified on the 2024 General Election ballot as proposed constitutional Amendment D.
5. The text of proposed Amendment D is easy to find online. I was able to find Amendment D's full text with minimal effort through internet searching. Amendment D's full text is available on the Utah Legislature's website. Amendment D's text has also been included in several news stories. Some of those news stories reprint the text itself. Other news stories include hyperlinks

to Amendment D's full text that allows a reader to click on the hyperlink and have Amendment D's full text immediately displayed.

6. Nothing about my internet searches for Amendment D's text was difficult or unusual. Any competent voter interested in finding and reading Amendment D's full text to educate himself or herself about Amendment D should be able to find the full text through a Google search with virtually no effort. In fact, a Google search for "Utah 2024 Constitutional Amendment D" returns a page of results that includes not just a link to Amendment D's full text on the Legislature's website, but also a host of news articles discussing the proposed amendment and the litigation related to it.

7. As a voter, I regularly use the internet to search for information to inform my decisions about votes on candidates and issues. I have been using the internet to obtain that kind of information for several election cycles. I cannot remember the last time I looked in a printed copy of a newspaper for information to inform my vote about a candidate or issue.

8. I have also read the summary description of Amendment D that the Legislature created for inclusion on the 2024 General Election ballot.

9. The text of Amendment D itself and the Legislature's ballot summary language itself are both clear and in plain English. I was not confused by either Amendment D's text or the summary description.

10. I have compared Amendment D's text to the ballot summary language. After doing so, I do not think the ballot summary is deceptive or misleading. The ballot summary fairly and accurately describes the purpose and effect of Amendment D.

11. I can exercise my right under the Utah Constitution to alter or reform my government through my fundamental right to vote on an initiative. I can also exercise my right under the Utah Constitution to alter or reform my government through votes cast on my behalf by my lawfully elected representatives in the Utah House of Representatives and the Utah Senate. My lawfully elected representatives are not free-wheeling actors. They are responsible to me, and to the rest of their constituents, for the votes they cast. If they do not properly represent our interests, we will vote them out and replace them with another representative who will.

12. A court order that removes Amendment D from the ballot will deprive me of my ability to express my support for Amendment D even though both the amendment's text and the summary description of it are clear and not misleading. The court should not deprive me of my opportunity to express my political and policy views by voting on Amendment D. A court order that removes Amendment D from the ballot will also deprive me of the opportunity to exercise my right to alter or reform the government by voting on a proposed constitutional amendment.

I declare under penalty of perjury of the laws of the State of Utah that the foregoing is true and correct.

Executed in Virgin, Utah this 10th day of September 2024.

/s/ Eugene Domingo Garate

*Electronically signed pursuant to Utah Code §§ 46-4-101, et seq.*



**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR  
SUNDWALL, and JACK MARKMAN,

Plaintiffs,

v.

UTAH STATE LEGISLATURE, UTAH  
LEGISLATIVE REDISTRICTING  
COMMITTEE; SENATOR SCOTT  
SANDALL, in his official capacity;  
REPRESENTATIVE MIKE SCHULTZ, in his  
official capacity; SENATOR J. STUART  
ADAMS, in his official capacity; and  
LIEUTENANT GOVERNOR DEIDRE  
HENDERSON, in her official capacity,

Defendants.

DECLARATION OF CHAD G. SAUNDERS

Case No. 220901712  
Honorable Dianna Gibson

*I, Chad G. Saunders, based on my personal knowledge, declare that:*

1. I am a qualified registered voter in the State of Utah.
2. I am over eighteen years old. I am a resident of Stansbury Park in Tooele County, Utah.
3. I intend to vote in Utah's 2024 general election, including voting on each of the four proposed amendments to the Utah Constitution that the Lieutenant Governor has certified for inclusion on the 2024 Utah general election ballot.
4. I have read the text of SJR401 that was passed in the special legislative special session held in August 2024. SJR401 contains the text that has since been certified on the 2024 General Election ballot as proposed constitutional Amendment D.
5. The text of proposed Amendment D is easy to find online. I was able to find Amendment D's full text with minimal effort through internet searching. Amendment D's full text is available on the Utah Legislature's website. Amendment D's text has also been included in several news stories. Some of those news stories reprint the text itself. Other news stories include hyperlinks

to Amendment D's full text that allows a reader to click on the hyperlink and have Amendment D's full text immediately displayed.

6. Nothing about my internet searches for Amendment D's text was difficult or unusual. Any competent voter interested in finding and reading Amendment D's full text to educate himself or herself about Amendment D should be able to find the full text through a Google search with virtually no effort. In fact, a Google search for "Utah 2024 Constitutional Amendment D" returns a page of results that includes not just a link to Amendment D's full text on the Legislature's website, but also a host of news articles discussing the proposed amendment and the litigation related to it.

7. As a voter, I regularly use the internet to search for information to inform my decisions about votes on candidates and issues. I have been using the internet to obtain that kind of information for several election cycles. I cannot remember the last time I looked in a printed copy of a newspaper for information to inform my vote about a candidate or issue.

8. I have also read the summary description of Amendment D that the Legislature created for inclusion on the 2024 General Election ballot.

9. The text of Amendment D itself and the Legislature's ballot summary language itself are both clear and in plain English. I was not confused by either Amendment D's text or the summary description.

10. I have compared Amendment D's text to the ballot summary language. After doing so, I do not think the ballot summary is deceptive or misleading. The ballot summary fairly and accurately describes the purpose and effect of Amendment D.

11. I can exercise my right under the Utah Constitution to alter or reform my government through my fundamental right to vote on an initiative. I can also exercise my right under the Utah Constitution to alter or reform my government through votes cast on my behalf by my lawfully elected representatives in the Utah House of Representatives and the Utah Senate. My lawfully elected representatives are not free-wheeling actors. They are responsible to me, and to the rest of their constituents, for the votes they cast. If they do not properly represent our interests, we will vote them out and replace them with another representative who will.

12. A court order that removes Amendment D from the ballot will deprive me of my ability to express my support for Amendment D even though both the amendment's text and the summary description of it are clear and not misleading. The court should not deprive me of my opportunity to express my political and policy views by voting on Amendment D. A court order that removes Amendment D from the ballot will also deprive me of the opportunity to exercise my right to alter or reform the government by voting on a proposed constitutional amendment.

I declare under penalty of perjury of the laws of the State of Utah that the foregoing is true and correct.

Executed in Stansbury Park, Utah this 10th day of September 2024.

/s/ Chad G. Saunders

*Electronically signed pursuant to Utah Code §§ 46-4-101, et seq.*

**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR  
SUNDWALL, and JACK MARKMAN,

Plaintiffs,

v.

UTAH STATE LEGISLATURE, UTAH  
LEGISLATIVE REDISTRICTING  
COMMITTEE; SENATOR SCOTT  
SANDALL, in his official capacity;  
REPRESENTATIVE MIKE SCHULTZ, in his  
official capacity; SENATOR J. STUART  
ADAMS, in his official capacity; and  
LIEUTENANT GOVERNOR DEIDRE  
HENDERSON, in her official capacity,

Defendants.

DECLARATION OF  
LESA SANDBERG

Case No. 220901712  
Honorable Dianna Gibson

*I, Lesa Sandberg, based on my personal knowledge, declare that:*

1. I am a qualified registered voter in the State of Utah.
2. I am over eighteen years old. I am a resident of St. George in Washington County, Utah.
3. I intend to vote in Utah's 2024 general election, including voting on each of the four proposed amendments to the Utah Constitution that the Lieutenant Governor has certified for inclusion on the 2024 Utah general election ballot.
4. I have read the text of SJR401 that was passed in the special legislative special session held in August 2024. SJR401 contains the text that has since been certified on the 2024 General Election ballot as proposed constitutional Amendment D.
5. The text of proposed Amendment D is easy to find online. I was able to find Amendment D's full text with minimal effort through internet searching. Amendment D's full text is available on the Utah Legislature's website. Amendment D's text has also been included in several news stories. Some of those news stories reprint the text itself. Other news stories include hyperlinks

to Amendment D's full text that allows a reader to click on the hyperlink and have Amendment D's full text immediately displayed.

6. Nothing about my internet searches for Amendment D's text was difficult or unusual. Any competent voter interested in finding and reading Amendment D's full text to educate himself or herself about Amendment D should be able to find the full text through a Google search with virtually no effort. In fact, a Google search for "Utah 2024 Constitutional Amendment D" returns a page of results that includes not just a link to Amendment D's full text on the Legislature's website, but also a host of news articles discussing the proposed amendment and the litigation related to it.

7. As a voter, I regularly use the internet to search for information to inform my decisions about votes on candidates and issues. I have been using the internet to obtain that kind of information for several election cycles. I cannot remember the last time I looked in a printed copy of a newspaper for information to inform my vote about a candidate or issue.

8. I have also read the summary description of Amendment D that the Legislature created for inclusion on the 2024 General Election ballot.

9. The text of Amendment D itself and the Legislature's ballot summary language itself are both clear and in plain English. I was not confused by either Amendment D's text or the summary description.

10. I have compared Amendment D's text to the ballot summary language. After doing so, I do not think the ballot summary is deceptive or misleading. The ballot summary fairly and accurately describes the purpose and effect of Amendment D.

11. I can exercise my right under the Utah Constitution to alter or reform my government through my fundamental right to vote on an initiative. I can also exercise my right under the Utah Constitution to alter or reform my government through votes cast on my behalf by my lawfully elected representatives in the Utah House of Representatives and the Utah Senate. My lawfully elected representatives are not free-wheeling actors. They are responsible to me, and to the rest of their constituents, for the votes they cast. If they do not properly represent our interests, we will vote them out and replace them with another representative who will.

12. A court order that removes Amendment D from the ballot will deprive me of my ability to express my support for Amendment D even though both the amendment's text and the summary description of it are clear and not misleading. The court should not deprive me of my opportunity to express my political and policy views by voting on Amendment D. A court order that removes Amendment D from the ballot will also deprive me of the opportunity to exercise my right to alter or reform the government by voting on a proposed constitutional amendment.

I declare under penalty of perjury of the laws of the State of Utah that the foregoing is true and correct.

Executed in St George, Utah this 10th day of September 2024.

/s/ Lesa Sandberg

*Electronically signed pursuant to Utah Code §§ 46-4-101, et seq.*

**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR  
SUNDWALL, and JACK MARKMAN,

Plaintiffs,

v.

UTAH STATE LEGISLATURE, UTAH  
LEGISLATIVE REDISTRICTING  
COMMITTEE; SENATOR SCOTT  
SANDALL, in his official capacity;  
REPRESENTATIVE MIKE SCHULTZ, in his  
official capacity; SENATOR J. STUART  
ADAMS, in his official capacity; and  
LIEUTENANT GOVERNOR DEIDRE  
HENDERSON, in her official capacity,

Defendants.

DECLARATION OF VERNITA BROWN

Case No. 220901712  
Honorable Dianna Gibson

*I, Vernita Brown, based on my personal knowledge, declare that:*

1. I am a qualified registered voter in the State of Utah.
2. I am over eighteen years old. I am a resident of Morgan in Morgan County, Utah.
3. I intend to vote in Utah's 2024 general election, including voting on each of the four proposed amendments to the Utah Constitution that the Lieutenant Governor has certified for inclusion on the 2024 Utah general election ballot.
4. I have read the text of SJR401 that was passed in the special legislative special session held in August 2024. SJR401 contains the text that has since been certified on the 2024 General Election ballot as proposed constitutional Amendment D.
5. The text of proposed Amendment D is easy to find online. I was able to find Amendment D's full text with minimal effort through internet searching. Amendment D's full text is available on the Utah Legislature's website. Amendment D's text has also been included in several news stories. Some of those news stories reprint the text itself. Other news stories include hyperlinks

to Amendment D's full text that allows a reader to click on the hyperlink and have Amendment D's full text immediately displayed.

6. Nothing about my internet searches for Amendment D's text was difficult or unusual. Any competent voter interested in finding and reading Amendment D's full text to educate himself or herself about Amendment D should be able to find the full text through a Google search with virtually no effort. In fact, a Google search for "Utah 2024 Constitutional Amendment D" returns a page of results that includes not just a link to Amendment D's full text on the Legislature's website, but also a host of news articles discussing the proposed amendment and the litigation related to it.

7. As a voter, I regularly use the internet to search for information to inform my decisions about votes on candidates and issues. I have been using the internet to obtain that kind of information for several election cycles. I cannot remember the last time I looked in a printed copy of a newspaper for information to inform my vote about a candidate or issue.

8. I have also read the summary description of Amendment D that the Legislature created for inclusion on the 2024 General Election ballot.

9. The text of Amendment D itself and the Legislature's ballot summary language itself are both clear and in plain English. I was not confused by either Amendment D's text or the summary description.

10. I have compared Amendment D's text to the ballot summary language. After doing so, I do not think the ballot summary is deceptive or misleading. The ballot summary fairly and accurately describes the purpose and effect of Amendment D.

11. I can exercise my right under the Utah Constitution to alter or reform my government through my fundamental right to vote on an initiative. I can also exercise my right under the Utah Constitution to alter or reform my government through votes cast on my behalf by my lawfully elected representatives in the Utah House of Representatives and the Utah Senate. My lawfully elected representatives are not free-wheeling actors. They are responsible to me, and to the rest of their constituents, for the votes they cast. If they do not properly represent our interests, we will vote them out and replace them with another representative who will.

12. A court order that removes Amendment D from the ballot will deprive me of my ability to express my support for Amendment D even though both the amendment's text and the summary description of it are clear and not misleading. The court should not deprive me of my opportunity to express my political and policy views by voting on Amendment D. A court order that removes Amendment D from the ballot will also deprive me of the opportunity to exercise my right to alter or reform the government by voting on a proposed constitutional amendment.

I declare under penalty of perjury of the laws of the State of Utah that the foregoing is true and correct.



Executed in Cottonwood Heights, Utah this 10th day of September 2024.

/s/ Vernita Brown

*Electronically signed pursuant to Utah Code §§ 46-4-101, et seq.*

**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR  
SUNDWALL, and JACK MARKMAN,

Plaintiffs,

v.

UTAH STATE LEGISLATURE, UTAH  
LEGISLATIVE REDISTRICTING  
COMMITTEE; SENATOR SCOTT  
SANDALL, in his official capacity;  
REPRESENTATIVE MIKE SCHULTZ, in his  
official capacity; SENATOR J. STUART  
ADAMS, in his official capacity; and  
LIEUTENANT GOVERNOR DEIDRE  
HENDERSON, in her official capacity,

Defendants.

DECLARATION OF RICHARD ASael  
HYER

Case No. 220901712  
Honorable Dianna Gibson

*I, Richard Asael Hyer, based on my personal knowledge, declare that:*

1. I am a qualified registered voter in the State of Utah.
2. I am over eighteen years old. I am a resident of Ogden in Weber County, Utah.
3. I intend to vote in Utah's 2024 general election, including voting on each of the four proposed amendments to the Utah Constitution that the Lieutenant Governor has certified for inclusion on the 2024 Utah general election ballot.
4. I have read the text of SJR401 that was passed in the special legislative special session held in August 2024. SJR401 contains the text that has since been certified on the 2024 General Election ballot as proposed constitutional Amendment D.
5. The text of proposed Amendment D is easy to find online. I was able to find Amendment D's full text with minimal effort through internet searching. Amendment D's full text is available on the Utah Legislature's website. Amendment D's text has also been included in several news stories. Some of those news stories reprint the text itself. Other news stories include hyperlinks

to Amendment D's full text that allows a reader to click on the hyperlink and have Amendment D's full text immediately displayed.

6. Nothing about my internet searches for Amendment D's text was difficult or unusual. Any competent voter interested in finding and reading Amendment D's full text to educate himself or herself about Amendment D should be able to find the full text through a Google search with virtually no effort. In fact, a Google search for "Utah 2024 Constitutional Amendment D" returns a page of results that includes not just a link to Amendment D's full text on the Legislature's website, but also a host of news articles discussing the proposed amendment and the litigation related to it.

7. As a voter, I regularly use the internet to search for information to inform my decisions about votes on candidates and issues. I have been using the internet to obtain that kind of information for several election cycles. I cannot remember the last time I looked in a printed copy of a newspaper for information to inform my vote about a candidate or issue.

8. I have also read the summary description of Amendment D that the Legislature created for inclusion on the 2024 General Election ballot.

9. The text of Amendment D itself and the Legislature's ballot summary language itself are both clear and in plain English. I was not confused by either Amendment D's text or the summary description.

10. I have compared Amendment D's text to the ballot summary language. After doing so, I do not think the ballot summary is deceptive or misleading. The ballot summary fairly and accurately describes the purpose and effect of Amendment D.

11. I can exercise my right under the Utah Constitution to alter or reform my government through my fundamental right to vote on an initiative. I can also exercise my right under the Utah Constitution to alter or reform my government through votes cast on my behalf by my lawfully elected representatives in the Utah House of Representatives and the Utah Senate. My lawfully elected representatives are not free-wheeling actors. They are responsible to me, and to the rest of their constituents, for the votes they cast. If they do not properly represent our interests, we will vote them out and replace them with another representative who will.

12. A court order that removes Amendment D from the ballot will deprive me of my ability to express my support for Amendment D even though both the amendment's text and the summary description of it are clear and not misleading. The court should not deprive me of my opportunity to express my political and policy views by voting on Amendment D. A court order that removes Amendment D from the ballot will also deprive me of the opportunity to exercise my right to alter or reform the government by voting on a proposed constitutional amendment.

I declare under penalty of perjury of the laws of the State of Utah that the foregoing is true and correct.

Executed in Ogden, Utah this 10th day of September 2024.

/s/ Richard Asael Hyer

*Electronically signed pursuant to Utah Code §§ 46-4-101, et seq.*

**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR  
SUNDWALL, and JACK MARKMAN,

Plaintiffs,

v.

UTAH STATE LEGISLATURE, UTAH  
LEGISLATIVE REDISTRICTING  
COMMITTEE; SENATOR SCOTT  
SANDALL, in his official capacity;  
REPRESENTATIVE MIKE SCHULTZ, in his  
official capacity; SENATOR J. STUART  
ADAMS, in his official capacity; and  
LIEUTENANT GOVERNOR DEIDRE  
HENDERSON, in her official capacity,

Defendants.

DECLARATION OF STAFFORD  
PALMIERI SIEVERT

Case No. 220901712  
Honorable Dianna Gibson

*I, Stafford Palmieri Sievert, based on my personal knowledge, declare that:*

1. I am a qualified registered voter in the State of Utah.
2. I am over eighteen years old. I am a resident of Morgan in Morgan County, Utah.
3. I intend to vote in Utah's 2024 general election, including voting on each of the four proposed amendments to the Utah Constitution that the Lieutenant Governor has certified for inclusion on the 2024 Utah general election ballot.
4. I have read the text of SJR401 that was passed in the special legislative special session held in August 2024. SJR401 contains the text that has since been certified on the 2024 General Election ballot as proposed constitutional Amendment D.
5. The text of proposed Amendment D is easy to find online. I was able to find Amendment D's full text with minimal effort through internet searching. Amendment D's full text is available on the Utah Legislature's website. Amendment D's text has also been included in several news stories. Some of those news stories reprint the text itself. Other news stories include hyperlinks

to Amendment D's full text that allows a reader to click on the hyperlink and have Amendment D's full text immediately displayed.

6. Nothing about my internet searches for Amendment D's text was difficult or unusual. Any competent voter interested in finding and reading Amendment D's full text to educate himself or herself about Amendment D should be able to find the full text through a Google search with virtually no effort. In fact, a Google search for "Utah 2024 Constitutional Amendment D" returns a page of results that includes not just a link to Amendment D's full text on the Legislature's website, but also a host of news articles discussing the proposed amendment and the litigation related to it.

7. As a voter, I regularly use the internet to search for information to inform my decisions about votes on candidates and issues. I have been using the internet to obtain that kind of information for several election cycles. I cannot remember the last time I looked in a printed copy of a newspaper for information to inform my vote about a candidate or issue.

8. I have also read the summary description of Amendment D that the Legislature created for inclusion on the 2024 General Election ballot.

9. The text of Amendment D itself and the Legislature's ballot summary language itself are both clear and in plain English. I was not confused by either Amendment D's text or the summary description.

10. I have compared Amendment D's text to the ballot summary language. After doing so, I do not think the ballot summary is deceptive or misleading. The ballot summary fairly and accurately describes the purpose and effect of Amendment D.

11. I can exercise my right under the Utah Constitution to alter or reform my government through my fundamental right to vote on an initiative. I can also exercise my right under the Utah Constitution to alter or reform my government through votes cast on my behalf by my lawfully elected representatives in the Utah House of Representatives and the Utah Senate. My lawfully elected representatives are not free-wheeling actors. They are responsible to me, and to the rest of their constituents, for the votes they cast. If they do not properly represent our interests, we will vote them out and replace them with another representative who will.

12. A court order that removes Amendment D from the ballot will deprive me of my ability to express my support for Amendment D even though both the amendment's text and the summary description of it are clear and not misleading. The court should not deprive me of my opportunity to express my political and policy views by voting on Amendment D. A court order that removes Amendment D from the ballot will also deprive me of the opportunity to exercise my right to alter or reform the government by voting on a proposed constitutional amendment.

I declare under penalty of perjury of the laws of the State of Utah that the foregoing is true and correct.

Executed in West Palm Beach, Florida this 10th day of September 2024.

/s/ Stafford Palmieri Sievert

*Electronically signed pursuant to Utah Code §§ 46-4-101, et seq.*

Victoria Ashby (12248)  
Robert H. Rees (4125)  
Eric N. Weeks (7340)  
Michael Curtis (15115)  
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taylor@consovoymccarthy.com  
frank@consovoymccarthy.com

*Counsel for Legislative Defendants*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID, WENDY  
MARTIN, ELEANOR SUNDWALL, JACK  
MARKMAN, and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH  
LEGISLATIVE REDISTRICTING COMMITTEE;  
SENATOR SCOTT SANDALL, in his official  
capacity; REPRESENTATIVE BRAD WILSON,  
in his official capacity; SENATOR J. STUART  
ADAMS, in his official capacity; and LIEUTEN-  
ANT GOVERNOR DEIDRE HENDERSON, in her  
official capacity,

Defendants.

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**LEGISLATIVE DEFENDANTS'  
SUPPLEMENTAL BRIEF & DECLAR-  
ATION IN OPPOSITION TO PLAIN-  
TIFFS' MOTIONS FOR  
PRELIMINARY  
INJUNCTION**

Case No.: 220901712

Honorable Dianna Gibson



## SUPPLEMENTAL BRIEF & DECLARATION

Legislative Defendants submit the following supplemental brief in response to questions asked at today's hearing and assertions made by Plaintiffs' counsel:

1. Legislative Defendants want to clarify their position on the timing and scope of relief. If the Court intends to order Amendment D removed from the ballot, Legislative Defendants request an immediate preliminary order this evening. Based on the Lieutenant Governor's Office's declaration and the statements made at hearings, the Legislative Defendants' emergency appeal of any such order must occur tonight. Come tomorrow, there will be no time left to seek further review for the more than 1 million Utahns who will be denied their fundamental right to vote on Amendment D. Once the Amendment is off the ballot, there is no putting it back on without \$3 million in costs—and even that might not be possible. Any further delay with an order to remove Amendment D off the ballot creates serious constitutional harms for Utah voters who had no say in Plaintiffs' extraordinary motion to remove an amendment off their ballots.

2. The statute requiring the full text of constitutional amendments to be posted in polling places is Utah Code §20A-5-103. The State publishes Voter Information Pamphlets unique to Utah. They will include the full text of Amendment D and arguments for and against the amendment. *See* Utah Code §§20A-7-701(1), 20A-7-702.5. The Voter Information Pamphlets are widely read and familiar to Utah Voters. According to the most recent available study, “almost nine out of ten voters” report that “they read all or part of [the Pamphlets] prior to the election.” Peter Brien, *Voter Pamphlets: The Next Best Step in Election Reform*, 28 J. Legis. 87, 102 (2002). These and myriad other sources to learn about Amendment D are the very sort of “surrounding circumstances” that a Utah court must consider before taking the extraordinary step of removing a constitutional amendment from the ballot or otherwise declaring it void. *Nowers v. Oakden*, 169 P.2d 108, 116 (Utah 1946).

3. Today, the Legislature took additional steps to cause Amendment D to be published. Those steps are described in the attached declaration. To be clear, the Legislature’s *constitutional* argument remains that it has fully complied with the text and original meaning of Article XXIII. The Legislature does not run a newspaper; it helps runs a government, and it took all required steps to “cause” the amendment to be published in August. The Legislature has taken these additional steps only so that the Legislature can say it has exhausted all its options for those Utah voters who have had no say in whether a constitutional amendment should be removed from the ballot, denying them their fundamental voting rights. As the declaration explains below, the Legislature itself has never historically taken these steps with respect to publishing.

4. Finally, today Plaintiffs’ counsel made various arguments about a “misleading” and “false” ballot summary. Legislative Defendants want to ensure that the Court has had the opportunity to fully appreciate Defendants’ argument in response to these points. The ballot summary is not misleading, and legislatures have broad discretion to describe amendments as briefed in Legislative Defendants’ opposition. But even under Plaintiffs’ view that it is, there is no constitutional provision to have ballot summaries for constitutional amendments written the way that opponents to those constitutional amendments would prefer. There is no constitutional provision to line-edit legislative ballot summaries. Plaintiffs must instead show that actual constitutional provisions are violated—be it free speech or voting rights. Plaintiffs’ counsel expressly avoided making that showing today. To be clear, the only constitutional violation that is both likely and imminent is the deprivation of the most fundamental constitutional rights of Utahns to campaign for or against Amendment D, to support or oppose Amendment D, and to ultimately vote for or against Amendment D at a polling place.

## CONCLUSION

For these reasons, the Court should deny Plaintiffs’ motions for preliminary injunction. In the alternative, if the Court intends to grant Plaintiffs’ motions and order Amendment D removed,

Legislative Defendants request that the Court issue a preliminary order immediately. Without such an order, the opportunity for appellate review will be lost.

Dated: September 11, 2024

Victoria Ashby (12248)  
Robert H. Rees (4125)  
Eric N. Weeks (7340)  
Michael Curtis (15115)  
OFFICE OF LEGISLATIVE RESEARCH  
AND GENERAL COUNSEL  
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Respectfully submitted,

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*Counsel for Legislative Defendants*

#### **CERTIFICATE OF SERVICE**

I filed this brief on the Court's electronic filing system, which will email everyone requiring notice.

Dated: September 11, 2024

/s/ Tyler R. Green

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

---

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID, WENDY  
MARTIN, ELEANOR SUNDWALL, JACK  
MARKMAN, and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH  
LEGISLATIVE REDISTRICTING COMMITTEE;  
SENATOR SCOTT SANDALL, in his official  
capacity; REPRESENTATIVE BRAD WILSON,  
in his official capacity; SENATOR J. STUART  
ADAMS, in his official capacity; and LIEUTEN-  
ANT GOVERNOR DEIDRE HENDERSON, in her  
official capacity,

Defendants.

**DECLARATION OF ABBY OSBORNE**

Case No.: 220901712

Honorable Dianna Gibson

**DECLARATION OF ABBY OSBORNE**

I Abby Osborne, declare and state as follows:

1. I am over 18 years of age and competent to testify to the following matters.
2. I am the Chief of Staff of the Utah House of Representatives.
3. In my authority as Chief of Staff of the Utah House of Representatives, I have taken the necessary steps to purchase, on the Legislature's behalf, space in 35 newspapers to publish the ballot title and full text of each proposed constitutional amendment certified to appear on the November 2024 general election ballot.
4. The 35 newspapers are as follows:

- a Beaver County Journal
- b Box Elder News Journal
- c Daily Herald
- d Deseret News
- e Emery Telcom
- f Gunnison Valley Gazette
- g Herald Journal
- h Intermountain Catholic
- i Intermountain Commercial Record
- j Iron County Today
- k Leader
- l Lehi Free Press
- m Millard County Chronicle
- n Park Record
- o Payson Chronicle
- p Pyramid
- q Richfield Reaper
- r Salina Sun
- s Salt Lake Tribune
- t San Juan Record
- u Sanpete Messenger
- v Signpost

w Southern Utah News  
x Spectrum  
y Standard Examiner  
z The Daily Utah Chronicle  
aa The Eagle  
bb The Insider  
cc Times-Independent  
dd Times-News  
ee Tooele Transcript-Bulletin  
ff Uintah Basin Standard  
gg Utah Statesman  
hh Vernal Express  
ii Wasatch Wave & Summit County News

5. My understanding is that publication of the ballot titles and full text of the amendments will occur in each newspaper during the week of September 16, 2024.
6. To the best of my knowledge, this is the first time the Legislature has purchased space in a newspaper to publish a proposed constitutional amendment.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Salt Lake City, Utah on this 11th day of September 2024.

/s/ Abby Osborne  
Abby Osborne

*Electronically signed pursuant to Utah Code §§ 46-4-101, et seq.*

# Exhibit D

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---

**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

---

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR SUNDWALL,  
JACK MARKMAN, and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH  
LEGISLATIVE REDISTRICTING  
COMMITTEE; SENATOR SCOTT SANDALL,  
in his official capacity; REPRESENTATIVE  
BRAD WILSON, in his official capacity;  
SENATOR J. STUART ADAMS, in his official  
capacity; and LIEUTENANT GOVERNOR  
DEIDRE HENDERSON, in her official capacity,

Defendants.

**DEFENDANT LT. GOVERNOR  
DEIDRE HENDERSON'S RESPONSE  
TO PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION ON  
COUNTS 9-14 OF THEIR PROPOSED  
FIRST SUPPLEMENTAL  
COMPLAINT**

Case No. 220901712

Honorable Diana Gibson

Defendant Lieutenant Governor Deidre Henderson (the "Lt. Governor") submits this response to Plaintiffs' Motion for Preliminary Injunction on Counts 9-14 of their proposed First Supplemental Complaint. As the Court considers the public interest and balancing of the harms



factors of the preliminary injunction test, *see* Utah R. Civ. P. 65A(e)(3) & (4), it should be mindful of three things: (1) the election process and deadlines governing the general election; (2) the consequences for failure to meet those deadlines; and (3) the costs, financial and otherwise, associated with modifying ballots on the eve of an election. To stay compliant with federal election law, and for reasons set forth herein, county clerks will submit ballot proofs to third-party printing vendors beginning Monday, September 9, 2024 so that they may print ballots.

## **FACTUAL AND LEGAL BACKGROUND**

### **I. The Lt. Governor’s role in administering elections.**

1. The Lt. Governor is the chief elections officer for the State of Utah. *See* Utah Code § 67-1a-2. *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 3.

2. As such, she oversees all elections, and functions relating to elections, in the State, *see* Utah Code § 67-1a-2(b)(i), and performs duties outlined by statute. *See, e.g.*, Utah Code § 67-1a-2(a)(i-xi). *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 4.

3. With respect to Amendment D, a constitutional amendment submitted by the Legislature, the Lt. Governor’s role is governed by Utah Code §§ 20A-7-103 and 103.1 and is largely ministerial. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 5.

4. Pursuant to Section 103, the responsibility for drafting the title and summary of the proposed Amendment falls to the “presiding officers,” defined as the Speaker of the House of Representatives and the President of the Senate. Utah Code §§ 20A-7-101(28) and 103(3)(c). *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 6.

5. The Lt. Governor’s role for constitutional amendments proposed by the Legislature is to certify the letter or number and ballot title of each amendment to the county clerk of each county no later than 65 days before the election. Utah Code § 20A-7-103(4). *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 7.

6. The Lt. Governor also publishes the full text of the amendment not more than 60 days or less than 14 days before the date of the election in accordance with Utah Code § 63G-30-102. Utah Code § 20A-7-103. *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 8.

7. Utah Code § 20A-7-103.1 directs the Lt. Governor to certify the letter or number and ballot title of Amendment D to the county clerk of each county no later than September 1, 2024. *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 9.

8. However, Utah Code 20A-1-104(3)(b)(iv), “Computation of time,” provides that “if a deadline that falls before or after a specified date or event falls on a Saturday, Sunday, or legal holiday, the time period is extended to the following business day.” *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 10.

9. September 1, 2024 was a Sunday and September 2, 2024 was Labor Day – a legal holiday. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 11.

10. The Lt. Governor certified candidates and ballot issues, including Amendment D, to county clerks in a timely manner, on Tuesday, September 3, 2024. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 12.

11. The Lt. Governor’s Office (“LGO”) does not prepare, print, or mail ballots to voters. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 13.

12. Rather, the Lt. Governor certifies candidates and ballot issues to county clerks who prepare ballots, have them printed, and mail them to voters. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 14.

13. The overwhelming majority of counties in Utah use three main print vendors that serve the State. Two of these vendors print ballots for over 160 counties throughout the United States. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 15.

14. The print vendors serving Utah also serve the other 49 states and territories in printing their ballots and preparing other election materials. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 16.

15. The county clerks' work in proofing and otherwise preparing ballots to be submitted to print vendors is time-sensitive and can be labor intensive depending on the county. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 17.

16. Counties take the certified language from the Lt. Governor and either program their own ballots or work with a vendor to prepare the ballot (as most do). Then they send the ballot proof to print vendors or print them in-house. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 18.

17. Once ballot proofs are submitted to print vendors, it takes time to print them. The amount of time depends on the county, and the workload of the respective printer. During a general election, when all counties across the nation face the same federal deadlines, printers are extremely busy. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 19.

18. In order to stay compliant with federal law, discussed below, and to run an orderly election, counties clerks will submit ballot proofs to printers for printing beginning early next week. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 20.

## **II. The UOCAVA deadline and consequences of failure to meet it**

19. The Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), as amended by the Military Overseas Voter Empowerment Act ("MOVE") protects the right of U.S. military service members and U.S. citizens residing outside the United States to vote in federal elections and requires absentee ballots to be mailed to eligible overseas voters by the 45th day before a federal election, which is September 21, 2024 for the 2024 general election. *See* 52 U.S.C. §§ 20301-20311. *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 21.

20. Because September 21, 2024 is a Saturday, county clerks will mail overseas ballots the day before (Friday, September 20, 2024) pursuant to Utah Code § 20A-16-403(1). *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 22.

21. Those protected by UOCAVA are members of the Uniformed Services, members of the Merchant Marine, Eligible family members of the above, and U.S. citizens residing outside the U.S. *See* 52 U.S.C. §§ 20301-30311. *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 23.

22. Utah expects to have 4,451 initial ballot requests covered by UOCAVA ballots for the September 21 deadline. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 24.

23. In cases where jurisdictions miss this federal UOCAVA deadline, the United States Attorney General is authorized to bring civil actions to enforce this deadline. Penalties for failure to comply with this deadline are severe, and can include consent decrees and court orders changing ballot receipt dates, extensions of time for ballot counting periods, and sometimes permanent changes to a jurisdiction's election laws. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 25.

### **III. The costs associated with changing ballots**

24. The number of active registered voters in the state of Utah is approximately 1.73 million voters. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 26.

25. The cost of reprinting ballots is estimated to be up to \$3 million. Reprinting may not even be possible given all of the other jurisdictions in the country who are also printing ballots at the same time. Additionally, there are costs associated with re-certifying, re-programming ballots, and re-proofing. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 27.

26. Altering the ballot on the eve of an election jeopardizes the State's ability to meet the UOCAVA deadline and to otherwise run an orderly election that protects Utahns' right to vote. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 28.

27. Amendment D is, of course, not the only item on the ballot during a general, presidential election year. On the same ballot will be federal, state, and local candidates, judicial retention elections, and other state and local issues – including other proposed constitutional amendments. Altering the ballot, after all of these things have already been certified for the ballot, jeopardizes the orderly election for all candidates and issues, not just Amendment D. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 29.

### **ARGUMENT**

The Lt. Governor takes no position on the merits of Plaintiffs’ proposed supplemental claims or their likelihood of success. But Plaintiffs’ request for preliminary injunction implicates the incredibly important public interest in running a fair and orderly election. Ballots have already been certified, programmed, proofed, and are ready for printing. Printing must begin early next week. A judicial order to literally stop the presses creates the risk that the presses won’t run again in time for mandatory federal deadlines and even the election. An order stopping the presses once they have started is likely to result in significant disruption to the election, with the potential to disenfranchise millions of Utah voters regarding all candidates and issues, and cost the State \$3 million to reprint the ballots. Thus, the harms to the State and the harms to the public interest far exceed the alleged harm suffered by Plaintiffs.

DATED: September 6, 2024.

OFFICE OF THE UTAH ATTORNEY GENERAL

/s/ Lance Sorenson  
DAVID N. WOLF  
LANCE F. SORENSON  
Assistant Utah Attorneys General  
*Counsel for Defendant Lieutenant  
Governor Deidre Henderson*

### **CERTIFICATE OF SERVICE**

I hereby certify that on September 6, 2024, I electronically filed the foregoing, *Lieutenant Governor Deidre Henderson's Response to Plaintiffs' Motion for Preliminary Injunction on Counts 9-14 of the Proposed Supplemental Complaint*, with the Clerk of the Court by using the electronic filing system, which gave notice to the following:

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/s/ Lily Egginton  
Paralegal

# **Exhibit 1**

## **Declaration of Shelly Jackson**

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*Counsel for Defendant Lieutenant Governor Deidre Henderson*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

---

LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR SUNDWALL,  
JACK MARKMAN, and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH  
LEGISLATIVE REDISTRICTING  
COMMITTEE; SENATOR SCOTT SANDALL,  
in his official capacity; REPRESENTATIVE  
BRAD WILSON, in his official capacity;  
SENATOR J. STUART ADAMS, in his official  
capacity; and LIEUTENANT GOVERNOR  
DEIDRE HENDERSON, in her official capacity,

Defendants.

**DECLARATION OF SHELLY  
JACKSON**

Case No. 220901712

Honorable Diana Gibson

1. I am over the age of 18 and have personal knowledge of the facts set forth in this Declaration.

2. I am the Deputy Director of Elections in the Lt. Governor's Office and have served in that position since February 2021. In that capacity I, together with the Elections Office staff,



administer Utah elections as authorized and directed under the Utah Elections Code. *See* Utah Code § 20A-1-101, *et. seq.*

**The Lt. Governor's role in administering elections**

3. The Lt. Governor is the chief elections officer for the State of Utah. *See* Utah Code § 67-1a-2.

4. As such, she oversees all elections, and functions relating to elections, in the state, see Utah Code § 67-1a-2(b)(i), and performs duties outlined by statute. *See, e.g.,* Utah Code § 67-1a-2(a)(i-xi).

5. With respect to Amendment D, a constitutional amendment submitted by the Legislature, the Lt. Governor's role is governed by Utah Code §§ 20A-7-103 and 103.1 and is largely ministerial.

6. Pursuant to Section 103, the responsibility for drafting the title and summary of the proposed Amendment falls to the presiding officers," defined as the Speaker of the House of Representatives and the President of the Senate. Utah Code §§ 20A-7-101(28) and 103(3)(c).

7. The Lt. Governor's role for constitutional amendments proposed by the Legislature is to certify the letter or number and ballot title of each amendment to the county clerk of each county no later than 65 days before the election. Utah Code § 20A-7-103(4).

8. The Lt. Governor also publishes the full text of the amendment not more than 60 days or less than 14 days before the date of the election in accordance with Utah Code § 63G-30-102. Utah Code § 20A-7-103.

9. Utah Code § 20A-7-103.1 directs the Lt. Governor to certify the letter or number and ballot title of Amendment D to the county clerk of each county no later than September 1, 2024.

10. However, Utah Code § 20A-1-104(3)(b)(iv), “Computation of time,” provides that “if a deadline that falls before or after a specified date or event falls on a Saturday, Sunday, or legal holiday, the time period is extended to the following business day.”

11. September 1, 2024 was a Sunday and September 2, 2024 was Labor Day – legal holiday.

12. The Lt. Governor certified candidates and ballot issues, including Amendment D, to county clerks in a timely manner, on Tuesday, September 3, 2024.

13. The Lt. Governor’s Office (“LGO”) does not prepare, print, or mail ballots to voters.

14. Rather, the Lt. Governor certifies candidates and ballot issues to county clerks who prepare ballots, have them printed, and mail them to voters.

15. The overwhelming majority of counties in Utah use three main print vendors that serve the State. Two of these vendors collectively print ballots for over 160 counties throughout the United States.

16. The print vendors serving Utah also serve the other states and territories in printing their ballots and preparing other election materials.

17. The county clerks’ work in proofing and otherwise preparing ballots to be submitted to print vendors is time-sensitive and can be labor intensive depending on the county.

18. Counties take the certified language from the Lt. Governor and either program their own ballots or work with a vendor to prepare the ballot (as most do). Then they send the ballot proof to print vendors or print them in-house.

19. Once ballot proofs are submitted to print vendors, it takes time to print them. The amount of time depends on the county, and the workload of the respective printer. During a general election, when all counties across the nation face the same federal deadlines, printers are extremely busy.

20. In order to stay compliant with federal law, discussed below, and to run an orderly election, counties clerks will submit ballot proofs to printers for printing beginning early next week.

**The UOCAVA deadline and consequences of failure to meet it**

21. The Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), as amended by the Overseas Voter Empowerment Act (“MOVE”) protects the right of U.S. military service members and U.S. citizens residing outside the United States to vote in federal elections and requires absentee ballots to be transmitted to eligible overseas voters by the 45th day before a federal election, which is September 21, 2024 for the 2024 general election. *See* 52 U.S.C. §§ 20301-30311.

22. Because September 21, 2024 is a Saturday, county clerks will mail overseas ballots the day before (Friday, September 20, 2024) pursuant to Utah Code § 20A-16-403(1) (“if the 45th day before the election is a weekend or holiday, not later than the business day preceding the 45th day, the election official in each jurisdiction . . . shall transmit a ballot . . . to all covered voters”).

23. Those voters covered by UOCAVA are members of the Uniformed Services, members of the Merchant Marine, Eligible family members of the above, and U.S. citizens residing outside the U.S. *See* 52 U.S.C. §§ 20301-30311.

24. Utah expects to have 4,451 initial ballot requests covered by UOCAVA ballots for the September 21 deadline.

25. In cases where jurisdictions miss this federal UOCAVA deadline, the United States Attorney General is authorized to bring civil actions to enforce this deadline. Penalties for failure to comply with this deadline include consent decrees and court orders changing ballot receipt dates, extensions of time for ballot counting periods, and sometimes permanent changes to a jurisdiction’s election laws.

**The costs associated with changing ballots**

26. The number of active registered voters in the state of Utah is approximately 1.73 million voters.

27. The cost of reprinting ballots is estimated to cost up to \$3 million. Reprinting may not even be possible given all of the other jurisdictions in the country who are also printing ballots at the same time. Additionally, there are costs associated with re-certifying, re-programming ballots, and re-proofing.

28. Altering the ballot on the eve of an election jeopardizes the State's ability to meet the UOCAVA deadline and to otherwise run an orderly election that protects Utahns' right to vote.

29. Amendment D is, of course, not the only item on the ballot during a general, presidential election year. On the same ballot will be federal, state, and local candidates, judicial retention elections, and other state and local issues – including other proposed constitutional amendments. Altering the ballot, after all of these things have already been certified for the ballot, jeopardizes the orderly election for all candidates and issues, not just Amendment D.

**DECLARATION UNDER PENALTY OF PERJURY**

I declare under penalty of perjury that the above statements are true and based upon my personal knowledge.

DATED: September 6, 2024.

/s/ Michelle Jackson

Michelle Jackson

*(Signed copy of document bearing signature  
of Michelle Jackson is being maintained in  
the office of the Filing Attorney)*