



ON THE BALLOT

CONSTITUTIONAL AMENDMENTS: NOVEMBER 3, 2020

INTRODUCTION

The Utah Legislature referred seven proposed constitutional amendments to voters for the November 3, 2020 election. The amendments range in topics from modernizing language in the Utah Constitution to broadening how funds can be used from Utah’s Education Fund.

The figure below provides a glimpse into whether there is opposition to each amendment. Four of the seven amendments are from resolutions that were supported unanimously on the House and Senate floors. One was unanimous when it was heard in the Senate, but when it went to the House it faced nearly enough opposition to kill the resolution. The final two amendments faced more opposition.

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

AMENDMENT A: CHANGE LANGUAGE THAT APPLIES TO A SINGLE GENDER

What It Would Do

The amendment would replace “men” with “persons” in the Utah Constitution and make other similar changes.

Background

Utah was the first state to elect a woman to the position of state senator – way back in 1896. However, six out of 237 sections the Utah Constitution still refer to legislators and the legislative auditor general with male pronouns. This amendment changes these and several other terms: husband or wife replaced with spouse; he replaced with [legislative] member, and; men replaced with persons.

S.J.R. 7, which put the amendment on the ballot, passed unanimously in the Utah State Senate and the Utah House of Representatives.



Overview of Legislative Support for House and Senate Joint Resolutions Placing 2020 Constitutional Amendments on the Ballot

Amendments	House vote	Senate vote
Legislative votes required for passage:	50 to 24	20 to 9
Amendment A: Change Language that Applies to a Single Gender	unanimous	unanimous
Amendment B: Legislator Age Requirement at Election	unanimous	unanimous
Amendment C: Remove from Constitution the Option for Slavery as Punishment for a Crime	unanimous	unanimous
Amendment D: Municipal Water Resources	unanimous	unanimous
Amendment E: Right to Hunt and Fish	59 to 11	21 to 7
Amendment F: Legislative Session Start Date	50 to 24	unanimous
Amendment G: Use of Income Tax Revenue Beyond Education	67 to 5	26 to 2

Takeaway

A vote **for** this amendment would provide for gender-neutral constitutional language, but would not have a significant legal effect.

A vote **against** this amendment would leave the existing language in Utah’s Constitution.

Sources

S.J.R. 7, “Proposal to Amend Utah Constitution – Terminology Update,” 2019 Utah Legislature General Session, <https://le.utah.gov/~2019/bills/static/SJR007.html>.

2019 Utah Legislature, “SJR7 Proposal to Amend Utah Constitution – Terminology Update, Henderson,” House 2019 General Session Day 28, February 25, 2019, <https://le.utah.gov/av/floorArchive.jsp?markerID=106556>.

2019 Utah Legislature, “SJR7 Proposal to Amend Utah Constitution – Terminology Update, Henderson,” House 2019 General Session Day 37, March 6, 2019, <https://le.utah.gov/av/floorArchive.jsp?markerID=106556>.

AMENDMENT B: LEGISLATOR AGE REQUIREMENT

What It Would Do

The amendment would clarify the language in the Utah Constitution that the eligibility qualifications required to be elected or appointed to the Utah State House or Utah State Senate apply at the date of election or appointment – not beforehand when the person is running or being considered for office, and not afterwards when the person assumes office.

Background

The requirements for qualifying to be elected or appointed to the House or the Senate are as follows: the candidate must be a citizen of the United States, at least 25 years old and a voter in the relevant district. The amendment does not change these requirements. Instead, it specifies that the requirements must be met at the time of election or appointment. The proposed amendment would add clarifying language to align the timing of requirements for state legislative offices with those of Utah’s state executive offices.

The Lieutenant Governor’s Office asked the resolution sponsor to run the legislation following a situation in Davis County regarding a candidate who was 24 years old. The question was when the candidate needed to be 25:

- At the time of the filing deadline (in March)
- At the time of the November election
- When (if) the candidate assumed office (in January)

The amendment would clarify issues such as this. H.J.R. 4, which put the amendment on the ballot, passed unanimously in both the Utah House of Representatives and Utah State Senate.

Analysis

Arguments for the amendment are to add clarifying language to the Utah Constitution to specify that requirements for eligibility apply at the time of election or appointment and not before.

There is no opposition to this amendment. This amendment does not change the qualifications required to be elected or appointed.

Takeaway

A vote **for** this amendment would clarify that the age requirement to qualify for elected or appointed office is at the time of election or appointment.

A vote **against** this amendment would leave the requirement date ambiguous.

Sources

H.J.R.4, “Proposal to Amend Utah Constitution – Legislator Qualifications Amendment,” 2020 Utah State Legislature General Session, <https://le.utah.gov/~2019/bills/static/HJR004.html>.

2019 Utah State Legislature, “HJR4 Proposal to Amend Utah Constitution – Legislator Qualifications, McCay,” Utah Senate 2019 General Session Day 44, March 13, 2019, <https://le.utah.gov/av/floorArchive.jsp?markerID=108122>.

Utah Foundation email exchange with H.J.R.4’s sponsor, Rep. Craig Hall.

AMENDMENT C: REMOVE SLAVERY AS PUNISHMENT FOR A CRIME

What It Would Do

The amendment would repeal the provision from the Utah Constitution that allows for slavery and involuntary servitude as a criminal punishment.

Background

The 13th Amendment of the U.S. Constitution and the Utah Constitution currently allow slavery and involuntary servitude as a criminal punishment. If passed, this amendment would disallow slavery and involuntary servitude (work for no pay under the threat of punishment) in Utah under all circumstances.

Twelve states (including Utah) currently contain provisions in their constitutions that allow slavery and involuntary servitude as a criminal punishment. Nine states permit involuntary servitude as a criminal punishment, but do not use the term “slavery.” One state allows for

involuntary servitude as a punishment to pay a debt, damage, fine or some other qualified cost.

H.J.R. 8 passed unanimously in both the Utah State Senate and the House of Representatives.

Analysis

There is no formal opposition to this amendment. Upon passing, Utah prisons would not be allowed to use slavery or involuntary, forced labor. The Utah Department of Corrections has stated that this amendment will not change any practices since they are not engaging in them now. Instead, it is simply codifying current practices, beliefs and morals around the issue.

Takeaway

A vote **for** this amendment would remove language from the Constitution allowing slavery and involuntary servitude as criminal punishment, though will likely have no effect on current practices.

A vote **against** this amendment would leave language in the Constitution that would allow for slavery and involuntary servitude as criminal punishment.

Sources

H.J.R. 8, “Proposal to Amend Utah Constitution – Remove Slavery as Punishment for a Crime from Constitution Amendment,” 2020 Utah State Legislature General Session, <https://le.utah.gov/~2019/bills/static/HJR008.html>.

2019 Utah State Legislature, “HJR8 Proposal to Amend Utah Constitution – Slavery and Involuntary Servitude Prohibition, Anderegg,” Senate 2019 General Session Day 44, March 13, 2019, <https://le.utah.gov/av/floorArchive.jsp?markerID=108181>.

2019 Utah State Legislature, “HJR8 Proposal to Amend Utah Constitution – Slavery and Involuntary Servitude Prohibition, Anderegg,” Utah House 2019 General Session Day 44, March 13, 2019, <https://le.utah.gov/av/floorArchive.jsp?markerID=108249>.

Vernellia R. Randall, The Thirteenth Amendment: Slavery, Involuntary Servitude, and the Convict-labor Exception, <https://racism.org/articles/law-and-justice/criminal-justice-and-racism/137-prison-industrial-complex-and-mass-incarceration/1404-may041202?start=3>.

AMENDMENT D: MUNICIPAL WATER RESOURCES

What It Would Do

The proposed amendment to the Utah Constitution would allow cities to supply water to neighboring communities, individual consumers and others outside of cities’ boundaries.

Background

Utah Constitution, Article XI, Section 6, does not explicitly allow cities to sell water outside of their boundaries. Nonetheless, some municipal water utilities sup-

ply areas outside their jurisdiction with water resources and have done so for decades.

The amendment has two pieces of companion legislation: House Bill 31, which goes into effect only upon the passage of the amendment, and Senate Bill 17, which is already in effect.

H.J.R. 3 passed unanimously in both the Utah House of Representatives and Utah State Senate.

Analysis

If voters approve the amendment, H.B. 31 would make the statutory changes necessary to allow water providers to designate “service areas” that include consumers inside and outside of its political municipal jurisdiction – or city boundaries. H.B. 31 would guarantee the same protections to those outside a municipality’s jurisdiction as those within it.

S.B. 17 modifies existing provisions related to “extraterritorial jurisdiction” – or those areas outside of a city’s boundaries – to enact protections for city water providers and these cities’ sources of water. The changes allow greater regulation of water resources outside a city’s boundaries.

H.J.R. 3, which put the amendment on the ballot, passed unanimously in both the Utah House of Representatives and the Utah State Senate. There is no formal opposition.

The combination of the amendment and the accompanying legislation would allow for greater regulatory flexibility for water providers and cities to meet certain water needs. This amendment primarily formalizes practices that have occurred for decades.

Takeaway

A vote **for** this amendment would clarify that cities can provide water outside of their municipal jurisdictions.

A vote **against** this amendment would leave the legality of the existing practice in question.

Sources

H.J.R.3, Proposal to Amend Utah Constitution – Municipal Water Resources, 2020 General Session, <https://le.utah.gov/~2020/bills/static/HJR003.html>.

2020 Utah State Legislature, “HJR3 Proposal to Amend Utah Constitution – Municipal Water Resources, Okerlund,” Utah Senate 2020 General Session Day 43, March 10, 2020, <https://le.utah.gov/av/floorArchive.jsp?markerID=111415>.

2019 Utah State Legislature, “HJR1 Proposal to Amend Utah Constitution – Municipal Water Resources, Grover,” Utah Senate 2019 General Session Day 43, March 12, 2019, <https://le.utah.gov/av/floorArchive.jsp?markerID=108068>.

AMENDMENT E: RIGHT TO HUNT AND FISH

What It Would Do

The amendment would guarantee the right to hunt and fish in the Utah Constitution. State regulations would still apply, and the right would have no effect on trespassing, property rights or the state's authority over its natural resources. The amendment would also require hunting and fishing to be the "preferred means of managing and controlling wildlife."

Background

Twenty-two states have adopted in their constitutions the right to hunt and fish. Vermont was the first state to do so in 1777, but each of the other 21 states has done so only since 1996. California and Rhode Island guarantee the right to fish, but not to hunt.

H.J.R. 15, which put the amendment on the ballot, passed 21 to 7 in the Utah State Senate and 59 to 11 in the Utah House of Representatives.

Analysis

Supporters of the amendment argue it is important to protect the right of future generations to hunt and fish. They claim that hunting and fishing is important to responsible stewardship of the land and is an important source of funding for conservation efforts. The National Rifle Association is actively pushing for constitutional right to hunt and fish amendments in multiple states, including Utah.

There were general concerns in floor discussion that a constitutional right to hunt and fish is unnecessary. For instance, the Western Wildlife Conservancy, an advocacy group focused on protecting carnivores from hunting, pointed out there has been no Utah legislation attempting to prohibit hunting and fishing, suggesting that the amendment is superfluous.

This constitutional amendment would likely result in little change from the status quo. Hunting and fishing will still be regulated by the state and the amendment will not infringe on property law or state sovereignty. Hunting and fishing is currently the method that the Utah Department of Wildlife Resources uses to control wildlife populations in an effort to preserve habitat.

Takeaway

A vote **for** this amendment would provide a constitutional right for Utahns to hunt and fish – protecting, but not expanding upon – Utahns' current rights.

A vote **against** this amendment will maintain the status quo but leave open the possibility of future efforts to

curtail fishing and hunting rights.

Sources

2020 Utah State Legislature, "HJR15 Proposal to Amend Utah Constitution – the Right to Hunt and Fish, Allen," Utah House 2020 General Session Day 32, February 28, 2020, <https://le.utah.gov/av/floorArchive.jsp?markerID=110436>.

2020 Utah State Legislature, "HJR15 Proposal to Amend Utah Constitution – the Right to Hunt and Fish, Allen," Utah House 2020 General Session Day 44, March 11, 2020, <https://le.utah.gov/av/floorArchive.jsp?markerID=111610>.

H.J.R.15, "Proposal to Amend Utah Constitution – Right to Hunt and Fish Amendment," 2020 Utah Legislature General Session, <https://le.utah.gov/~2020/bills/static/HJR015.html>.

Amy Joi O'Donoghue, "Should Utahns have a constitutional right to hunt and fish?" *KSL News*, 5 March 2020, <https://www.ksl.com/article/46726097/should-utahns-have-a-constitutional-right-to-hunt-and-fish>.

National Rifle Association Institute for Legislative Action, "Without hunters" NRA-ILA, <https://www.nra.org/campaigns/huntingconservation/without-hunters/>.

National Rifle Association for Legislative Action, Right to Hunt & Fish Amendment," NRA-ILA Web site, <https://www.nra.org/campaigns/huntingconservation/facts-at-a-glance-right-to-hunt-and-fish/>.

AMENDMENT F: LEGISLATIVE SESSION START DATE

What It Would Do

The amendment would allow the Utah State Legislature to set the legislative session start date by statute, removing the constitutional requirement that legislative sessions begin on the fourth Monday in January. The amendment would make no changes to the constitutionally required length of legislative sessions.

Background

In 2007, Utah voters amended the Utah Constitution to change the legislative session start date from the third Monday of January to the fourth Monday of January because it interfered with Martin Luther King Jr. Day. The 2020 constitutional amendment – combined with companion legislation (Senate Bill 156) – would set by statute the default start date of the general session to the third Tuesday of January. This date could be changed by a simple majority vote at any time by the Legislature instead of requiring a future constitutional amendment.

S.J.R. 3, which put the amendment on the ballot, passed unanimously in the Utah State Senate, but passed 50 to 24 in the Utah House of Representatives, with exactly the minimum number of votes needed.

Analysis

Arguments in favor of the amendment propose that it would allow more flexibility for the legislature to de-

cide when the best start date for the legislative session is – though because of SB 156, it would default to the third Tuesday of January.

The argument against the amendment during the House floor debate is that the Utah Constitution currently proves more certainty than allowing the Legislature to change the start date to any day in January. The arguments against S.B. 156 which would go into effect upon passage of the amendment are that starting too early could interfere with: 1) important fiscal projections needed to make certain decisions; and 2) elected officials' day jobs. The Utah Legislative Fiscal Analysts Office suggests that the first point is not a concern. Regarding the second point, the amendment does not change the duration of the 45 days of the annual General Session, and requires each session to begin in January.

Ultimately, this appears to be an amendment that addresses the preferences of state legislators and a desire for greater flexibility.

Takeaway

A vote **for** this amendment would allow the Utah Legislature to change the start date for General Sessions to any day in January. The accompanying legislation would change the start date from the fourth Monday in January to the third Tuesday in January.

A vote **against** this amendment will maintain the status quo, keeping the start date for General Sessions on the fourth Monday in January.

Sources

2020 Utah Legislature, "SJR3 Proposal to Amend Utah Constitution – Annual General Sessions of the Legislature, Millner," Utah House 2020 General Session Day 44, March 11, 2020, <https://le.utah.gov/av/floorArchive.jsp?markerID=111632>.

S.J.R.3, "Proposal to Amend Utah Constitution – Legislative Session Start Date Amendment," 2020 Utah Legislature General Session, <https://le.utah.gov/~2020/bills/static/SJR003.html>.

2020 Utah Legislature, "SJR 3 Proposal to Amend Utah Constitution – Annual General Sessions of the Legislature, Millner," Senate General Session Day 15-16, February 10-11, 2020, <https://le.utah.gov/av/floorArchive.jsp?markerID=109192>.

S.B. 156, "General Session Date Amendments," 2020 Utah Legislature, <https://le.utah.gov/~2020/bills/static/SB0156.html>.

S.J.R. 12, "Resolution Amending Utah Constitution," 2007 Utah Legislature, <https://le.utah.gov/~2007/bills/static/SJR012.html>.

AMENDMENT G: EXPANDED USE OF INCOME TAX REVENUE

What It Would Do

The amendment would allow the State of Utah to expand the use of state income tax revenue from the current limitation that it be used for education purposes only to also include support services and programs for children and people with disabilities.

Background

Since the 1940s, income taxes have been dedicated toward education. For decades, expenditures were limited to K-12 public education. Following a constitutional amendment in 1996, state income tax revenues have also been used to fund Utah's tech schools, colleges and universities. The 2020 amendment would add language to Article XIII, Section 5, of the Utah Constitution so that income tax revenue could also be used for other child-related programs and people with disabilities.

The amendment comes with companion legislation in the form of House Bill 357, which is intended to ensure future funding for K-12 education. H.B. 357 statutorily commits legislators to invest in the growth of public education and provide a safety net to protect this funding. However, funding under this bill can be reduced through future budget amendments and statutory changes. In an agreement with the Utah Education Association to support the amendment, legislators proposed H.B. 357 to show legislative intent of increasing *spending* for public K-12 education in exchange for permitting the use of *revenues* from Utah's income tax in other budget categories that target children and individuals with disabilities.

Both H.B. 357 and a follow-up bill, H.B. 5011, provide base-level funding. The former helps ensure funding increases that reflect student enrollment growth and inflation in addition to providing funding for an education stabilization rainy-day fund, while the latter statutorily calls for a 6% increase in education funding in the coming years.

S.J.R. 9, which put the amendment on the ballot, passed 26 to 2 in the Utah State Senate and 67 to 5 in the Utah House of Representatives.

Analysis

Fiscal Impact. The fiscal impact of the amendment is unclear. The definition of programs that "support children and ... support individuals with a disability" is not well defined and is subject to interpretation. The Lieutenant Governor's Office estimates that up to \$600 million is currently spent on such categories. Still, the vagueness of the categories makes it difficult to understand how much

money might not go to schools because it can be redirected to services previously covered by the General Fund.

Budget Flexibility. Utah Foundation has highlighted how earmarks can reduce budget flexibility. Our research has also shown that the sales tax revenues for the General Fund have been decreasing as a proportion of all tax revenues. This amendment would partially increase flexibility and reduce demands on the state general fund. However, the proposed amendment is not the only way to achieve this goal. If the amendment does not pass, the Utah Legislature could increase sales taxes, remove sales tax exemptions or take other measures to bolster funds or cut expenditures from the General Fund.

Funding for Additional Needs. Education outcomes may be assisted by other programs that support children and families. This amendment may help fund programs that in the end benefit the educational system. However, there is no guarantee that these programs will receive additional funding. Income tax revenues could be used to replace rather than boost existing funds that support children and individuals with disabilities.

Ensured Increase in Funds for Schools. Companion legislation may provide more adequate and more predictable funds for K-12 education. While the status quo guarantees the dedication of a revenue stream, it does not guarantee a maintained funding level. Income tax revenues could decrease or funding could be shifted to higher education at the expense of K-12. Companion legislation to Amendment G helps ensure funding increases that reflect student enrollment growth and inflation, provides funding for an education stabilization rainy-day fund, and provides a timeline for a 6% increase in funding.

While the amendment and companion legislation may help provide a specific level of K-12 funding, barring other changes in state tax rates, passing the amendment could result in less revenue being guaranteed for education at large. The initial guaranteed amount could be changed through budget amendments or via statute. Because the funding intention is not part of the Utah Constitution like the current revenue guarantee, the Legislature could repeal the funding intention through a majority vote instead of taking the matter up with Utah's voters.

Takeaway

A vote **for** this amendment would allow the Legislature to use income tax funds for children and people with disabilities, expanding the constitutional revenue dedication that currently earmarks the use of income tax revenue for public education.

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

Sources

S.J.R. 9, "Proposal to Amend Utah Constitution – Use of Tax," 2020 Utah Legislature General Session, <https://le.utah.gov/~2020/bills/static/SJR009.html>.

H.B. 357, "Public Education Funding Stabilization," 2020 Utah Legislature General Session, <https://le.utah.gov/~2020/bills/static/HB0357.html>.

H.B. 5011, "WPU Value Increase Guarantee," 2020 Utah Legislature Fifth Special Session, <https://le.utah.gov/~2020S5/bills/static/HB5011.html>.

2020 Utah Legislature, "1SJR9 Proposal to Amend Utah Constitution – Use of Tax Revenue, McCay," Utah Senate 2020 General Session Day 39, March 5, 2020, <https://le.utah.gov/av/floorArchive.jsp?markerID=111103>.

Utah Constitution, Article X Section 2, https://le.utah.gov/xcode/ArticleX/Article_X_Section_2.html?v=UC_AX_S2_1800010118000101.

Utah Lieutenant Governor's Office, 2020 Ballot Titles and Impartial Analyses for Proposed Constitutional Amendments, <https://voteinfo.utah.gov/wp-content/uploads/sites/42/2020/10/Constitutional-Amendment-G.pdf>.

Utah Citizens' Council Position Statement on Constitutional Amendment Proposal G, September 7, 2020, www.utahcitizenscounsel.org/constitutional-amendment-proposal-g.

Utah Education Association, "Issue: Tax Reform," UEA Web site, March 22, 2020, https://www.myuea.org/issues_action/uea_under_the_dome/issue_tax_reform.aspx.

Utah Foundation interviews with the Utah Education Association, and Utah Legislators in support of and in opposition to this constitutional amendment.

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