

# **Utah Voter Information Pamphlet**

**General Election  
November 6, 1984**

**COMPILED BY DAVID S. MONSON, LT. GOVERNOR**

**IN COOPERATION WITH THE UTAH STATE LEGISLATURE  
MILES 'CAP' FERRY, SENATE PRESIDENT  
NORMAN H. BANGERTER, HOUSE SPEAKER**

**ANALYSIS BY JON M. MEMMOTT, DIRECTOR, OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL**





STATE OF UTAH  
Lieutenant Governor

SALT LAKE CITY, UTAH 84114

DAVID S. MONSON  
LIEUTENANT GOVERNOR  
BRAD E. HAINSWORTH  
DEPUTY

September 27, 1984

Dear Fellow Utahn:

In the 1984 General Election, the Utah voter will be faced with five proposed constitutional amendments and one initiative which will appear on the ballot. In accordance with state law, this Voter Information Pamphlet has been prepared to provide explanations of these propositions. The pamphlet also contains the arguments for and against the proposals, along with rebuttals.

Your vote allows for direct citizen input into the issues that confront us. I hope that you will find the information helpful to you in making your decisions in the November election.

The pamphlet also contains instructions on how to mark your ballot properly.

Please take advantage of your privilege and vote on November 6, 1984.

Sincerely,

A handwritten signature in dark ink, appearing to read "David S. Monson".

DAVID S. MONSON  
Lieutenant Governor

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#### INSTRUCTIONS FOR READING THE TEXT OF THE PROPOSITIONS

NOTE: In reviewing the text of the propositions the following rules apply:

- (1) Underlined words and numbers represent new language added to the constitution or current language moved from another section in the constitution.
- (2) Bracketed and lined-through words or numbers represent current language being deleted from the constitution or current language which is being moved to another section in the constitution.

Example: Section 10. Supreme court justices, district court judges, and judges of all other courts of record while holding office may not practice law, hold any elective nonjudicial public office, or hold office in a political party.

Example: Section 1. [All State] Unless otherwise provided by law, all state, district, city, county, town, and school officers [excepting notaries public, boards of arbitration, court commissioners, justices of the peace and constables,] shall be paid fixed and definite salaries [Provided, That city justices may be paid by salary when so determined by the mayor and council of such cities].

- (3) All other language is the current language in the constitution which is retained without change.

For



Against



# Proposition No. 1

## TANGIBLE PERSONAL PROPERTY TAX EXEMPTION

Vote cast by the members of the 1984 Legislature on final passage:  
HOUSE (75 members): Yeas, 66; Nays, 2; Absent or not voting, 7.  
SENATE (29 members): Yeas, 23; Nays, 0; Absent or not voting, 6.

### Official Ballot Title:

Shall Article XIII, Section 14, of the State Constitution be amended to allow the Legislature to exempt motor vehicles, aircraft, and watercraft from the property tax and provide, instead of the property tax, a uniform state fee for vehicles used on public highways, lands or waterways.

## IMPARTIAL ANALYSIS

### Proposal

The current revenue and taxation article of the Utah Constitution requires that all property, unless exempted, be taxed at a uniform and equal rate. The property taxes on automobiles, boats, and aircraft are determined and collected at the county level. Even though the constitution requires a uniform and equal rate of assessment, the same car could have different tax bills in different counties. This is because of different tax rates (mill levy rates) for each county. The formula for the property tax is:

$$\text{Assessed Value} \times \text{Mill Levy Rate} = \text{Amount of Tax}$$

The proposed amendment would allow the legislature to exempt from the property tax all types of vehicles, watercraft, and aircraft that must be registered to be used on public highways, waterways or lands. Instead of a tax on these vehicles and craft, the legislature would establish uniform statewide fees or levies.

The rate would be the same wherever the property is registered in the state. As with the current property tax, the revenue from the fee would be distributed back to the local taxing districts.

### Effective Date

The amendment, if approved by the voters, would be effective beginning December 31, 1984. However, the amendment only authorizes the legislature to change the current taxes to uniform fees for vehicles, watercraft and aircraft. Until those changes are made by the legislature, no change in the current law would occur.

### Fiscal Effect

There has been no enabling legislation passed by the legislature at this time that would change the property tax on vehicles and craft to a uniform fee. Therefore, if passed, this amendment would have no fiscal impact for the next tax year. Future legislation would be required to implement the changes authorized by this amendment.

## Arguments for

**Property taxes on cars, boats, and airplanes are not fair!** Our constitution currently requires all property to be taxed according to its market value. For some kinds of property, particularly cars, boats, and airplanes, this requirement means taxes are often too high and unfair. For example, two identical vehicles may be assessed vastly different taxes, depending on where the owner chooses to register the vehicles. Proposition 1 would amend the constitution so a uniform licensing fee could be imposed for motor vehicles, boats, and airplanes in place of the cumbersome property tax.

**Proposition 1 would encourage compliance with the law!** The constitutional requirement that all property must be taxed according to market value means that taxes on motor vehicles and airplanes are comparatively high. In addition, Utah law requires that vehicles and planes used in the state be taxed in Utah. Because of the high taxes, many owners register their vehicles and planes outside of Utah and avoid obeying the law. Proposition 1 will amend the constitution so a reasonable registration fee could be imposed in place of the property tax. As a result, people would not be encouraged to break the law. They would properly register their vehicles in Utah. Actual tax revenues would increase if people complied with the law.

**The present system is difficult to administer.** The present property tax system for cars, planes, and boats is very difficult to administer. Under the current system, there are over 500 different tax rates which may be used to determine the taxes on identical vehicles. A standard registration fee would be much easier to understand and to administer.

**Proposition 1 has broad support!** Those involved in administering the property tax have long felt a change was needed for motor vehicles, boats, and airplanes. The legislature passed Proposition 1 nearly unanimously. In addition, many other states are now using registration fees in place of property taxes.

Vote **"FOR"** Proposition 1!

Senator Charles W. Bullen  
1624 Sunset Drive  
Logan, UT 84321

## Arguments Against

No opposing argument was submitted within the time requirement established by law.



**COMPLETE TEXT OF PROPOSITION NO. 1  
TANGIBLE PERSONAL PROPERTY TAX EXEMPTION RESOLUTION**

A JOINT RESOLUTION OF THE 45TH LEGISLATURE OF THE STATE OF UTAH PROPOSING TO AMEND ARTICLE XIII OF THE CONSTITUTION OF UTAH TO AUTHORIZE THE LEGISLATURE TO EXEMPT AIRCRAFT, WATERCRAFT, MOTOR VEHICLES, OR OTHER TANGIBLE PERSONAL PROPERTY REQUIRED BY LAW TO BE REGISTERED BEFORE IT IS USED UPON PUBLIC HIGHWAYS AND PUBLIC LANDS FROM TAXATION AS PROPERTY, AND PROVIDE IN LIEU OF SUCH PROPERTY TAX UNIFORM STATEWIDE FEES, OR UNIFORM STATEWIDE RATES OF ASSESSMENT OR LEVY.

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 Article XIII of the Constitution of Utah by adding a new section to read:

Sec. 14. Aircraft, watercraft, motor vehicles, and other tangible personal property, not otherwise exempt under the laws of the United States or under this Constitution, may be exempted from taxation as property by the Legislature. In the exercise of the discretion granted under this section,

however, the legislature may only exempt tangible personal property that is required by law to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air. If the legislature exempts tangible personal property from taxation under this section, it shall provide for uniform statewide fees or uniform statewide rates of assessment or levy in lieu of the tax on such property. The value of any tangible personal property exempted from taxation, however, shall remain and be considered as part of the state tax base for the purpose of determining debt limitations as set forth in Article XIV of this Constitution. The proceeds from such a tax or fee are not subject to Sec. 13 of this Article and shall be distributed to the taxing districts in which the exempted property is located in the same proportion as the revenue collected from real property tax is distributed to such districts.

Section 2. The lieutenant governor is directed to submit this proposed amendment to the electors of the State of Utah at the next general election in the manner provided by law.

Section 3. If adopted by the electors of this state, this amendment shall take effect December 31, 1984.



For



Against



# Proposition No. 2

## LEGISLATIVE SESSIONS AMENDMENTS

Vote cast by the members of the 1984 Legislature on final passage:

HOUSE (75 members): Yeas, 67; Nays, 5; Absent or not voting, 3.

SENATE (29 members): Yeas, 21; Nays, 7; Absent or not voting, 1.

### Official Ballot Title:

Shall Article VI, Sections 2 and 16, of the State Constitution be amended to change the legislative sessions from the current 60-day general sessions in odd-numbered years and 20-day budget sessions in even-numbered years to annual 45-day general sessions.

## IMPARTIAL ANALYSIS

### Proposal

The length of the state's legislative sessions are set by the Utah Constitution. Currently, it provides for a 60-calendar-day general session in odd-numbered years (1983, 1985, etc.) and a 20-calendar-day budget session in even-numbered years (1982, 1984, etc.). At a general session the legislature may consider any bill or resolution which is filed by a legislator. In a budget session only budgetary bills may be dealt with unless an enabling resolution is approved by a 2/3 vote from both the house and senate. The legislature cannot meet in a session longer than the constitutional time limits.

The proposed revision would establish annual 45-calendar-day general sessions. The change would eliminate the budget session and allow the legislature to consider any bill or resolution filed each year.

By comparison legislative session lengths for surrounding states are:

Arizona	Odd - 103	Even - 109
Colorado	Odd - 116	Even - 80
Idaho	Odd - 78	Even - 85
Nevada	Odd - 90	
New Mexico	Odd - 60	Even - 30
Wyoming	Odd - 40	Even - 20
Washington	Odd - 60	Even - 59
Oregon	Odd - 187	

### Effective Date

This amendment, if approved by the voters, would be effective January 1, 1985. This would change the 1985 general session from 60 days to 45 days. The 1986 session would change from 20 days to 45 days.

### Fiscal Effect

The proposed revision would provide for ten additional legislative days over the next two years. The estimated increase in expense because of the additional ten days would be \$168,700 over a two-year period.

## Arguments for

**The present legislative system is outdated and does not meet Utah's needs!** Budget sessions are outdated. Under the present system, the legislature can address general issues only every other year. The issues facing Utah often cannot wait two years. The state needs legislative action on many issues every year. As a result, the legislature must deal with important bills in the limited budget session. During the 1984 Budget Session, 70 percent of the bills introduced were actually non-budgetary! Proposition 2 will eliminate the outdated budget session and allow the legislature to deal with general matters every year.

**The procedures of the Budget Session waste time!** Our constitution requires non-budgetary items to receive the approval of two-thirds of the legislature before they are reviewed. This procedure takes a great deal of time. Little time is left for actual review of bills or the budget. During the last budget session, legislators averaged less than 13 minutes on each bill. Proposition 2 will remove the cumbersome budget session procedures.

**The Utah Legislature's workload has dramatically increased!** As Utah's population has increased, so have the issues facing the legislature. Just 42 bills were introduced at the first budget session in 1970. Over 300 bills were introduced in the 1984 Budget Session! In order to complete its work, the legislature has met in special session more often. In addition to providing for annual general sessions, Proposition 2 gives the legislature ten additional days every two years. This extra time will help the legislature to respond to public needs.

**The present legislative sessions are actually organized backwards!** Currently, the first legislative session in which new legislators and legislative leadership participate is the 60-day general session. They spend much of this session learning the legislative process. After gaining experience, legislators often develop important proposals which are considered during the next legislative session — the short, restricted budget session. As a result, budget sessions often deal with complex issues that should have more consideration by committees and the public. Proposition 2 provides for equal annual sessions. This change will allow legislators to take advantage of their experience gained from the first annual session. It will also make the interim period between the sessions more productive. Proposals developed during the interim period will be more adequately addressed during the sessions. Proposition 2 will allow both legislative sessions and the interim periods to be used more effectively.

**Proposition 2 will help enhance Utah's part-time citizen legislature!** Utahns want a part-time legislature. However, they also want their legislature to address the needs of the state. In order to meet these two goals, more effective use must be made of the time already spent in

legislative session. Proposition 2 meets these objectives. It will allow citizen legislators to make better use of their legislative time. Even with Proposition 2, the Utah legislature will meet fewer days than all western states but Wyoming.

Vote **"FOR"** Proposition 2 for a more effective Utah State Legislature!

Senator Glade M. Sowards  
Chairman, Senate Rules Committee  
380 West 100 South  
Vernal, Utah 84078

Representative Franklin W. Knowlton  
House Chairman,  
Executive Appropriations Committee  
Box 426  
Layton, Utah 84041

## Rebuttal to Arguments in favor of Proposition No. 2

Nothing said in the arguments for Proposition 2 suggest that any significant gains would be made by voting for the annual session changes as proposed with the 10 additional costly days.

If the citizens would vote overwhelmingly **against** this proposal, they would send back the very important message to the Legislature that they will not be panicked into voting on important constitutional changes without being given alternative choices.

In 1968, the Legislature erred badly in offering the citizens the 20-day Budget Session which the Legislature now admits is unwieldy. Yes, a change should be made. **But**, my experience suggests that a vote **against** would allow for a better proposal in 1986.

Believe me, your vote **"AGAINST"** Proposition 2 is in the best interests of all.

Representative Samuel S Taylor  
3682 South 500 East  
Salt Lake City, Utah 84106  
266-7745

## Arguments Against

Vote "NO" on this proposal. Send a message back to the Legislature that the citizens desire a more palatable proposal (or proposals) for consideration in 1986. Presently, there are two sessions of 60 days and 20 days for a total of 80 days actual session time. In addition, there are Special Session provisions. This new proposal allows for two annual sessions of 45 days each for a total of 90 days of actual session time. The Special Session provisions still remain. What will be gained from the extra and more costly 10 days? Would it not be just as well without the extra and more costly 10 days?

1. There is merit to eliminating the present 20 day misnamed "Budget" Session. But, why pay a very high price? Send a message back to the Legislature that you, the citizen, would prefer a better solution. In this proposal to reduce the present 60-day General Session to 45 days, isn't this an admission that the responsibilities of the Legislature can be just as effective in 45 days as it can be in 60 days? The only real change necessary would be in the 20-day "Budget" Session. But, there is NO good reason for an additional costly 10 days total time. In my opinion, the Legislature should propose not more than 40 day annual sessions totaling 80 days for citizen approval in 1986.
2. Including the newly adopted Legislators' salary schedule which now can be changed up or down (usually up) without further voter approval, the daily Legislative session cost will average about \$13,000. The ten extra days will cost the taxpayers about \$130,000 additionally. I would suggest that other priorities such as education, housing, utilities, day care centers, and medicare can gain from the savings.
3. Ten additional days as provided in this new proposal may possibly allow for more bills to consider, more taxes, more restrictions, less freedom. Are these what you want? If not. . . .

Insist upon the Legislature's presenting other proposals in 1986 for citizen consideration. Proposals of two 40-day annual sessions totaling 80 days would be just as appropriate. In fact, because of the "hectic, hoopla" of the regular session, interim study committees can more effectively consider legislation between sessions. These could be handled at less cost to taxpayers because there are no additional staff requirements.

Vote "AGAINST" this more expensive, additional 10 day proposal. Nothing will be lost. 1986 is only two short years away. The Legislature should offer better, less costly, proposals for the citizen's consideration.

Representative Samuel S Taylor  
3682 South 500 East  
Salt Lake City, Utah 84106  
266-7745

## Rebuttal to

### Arguments against Proposition No. 2

Even the opponents of Proposition 2 agree the budget session should be eliminated! When Proposition 2 was presented to the legislature there was almost unanimous agreement that the constitution needed to be amended to eliminate budget sessions. The only debate centered on the length of annual sessions. Without Proposition 2, the legislature would be forced to continue with the outdated and restrictive Budget Session. Virtually everyone agrees that this situation would not be in the best interests of Utah.

An extra ten days is a small price for a more effective legislature! Compared to other western states, Utah's legislature meets for a very short time. Arizona, for example, has average legislative sessions totalling 200 days every two years! Our legislature meets only 80 days. The problems facing Utah and the Utah Legislature are far too complex to be addressed in hurried legislative sessions. Changes to the constitution should not just address current problems, but should also anticipate future needs. Adding an additional 10 days every two years is a reasonable way to provide for a more effective legislature.

The cost of Proposition 2 is very small! The opponents of Proposition 2 claim it will increase legislative expenditures. It is true that the additional days will cost money. However, any increased cost is very small. At present operating levels it represents less than 2% of the budget of the legislature and less than .001% of the overall state budget! The cost of hurried legislation and unmet problems is much higher.

#### VOTE "FOR" PROPOSITION 2!

Senator Glade M. Sowards  
Chairman, Senate Rules Committee  
380 West 100 South  
Vernal, Utah 84078

Representative Franklin W. Knowlton  
House Chairman,  
Executive Appropriations Committee  
Box 426  
Layton, Utah 84041

## COMPLETE TEXT OF PROPOSITION NO. 2 LEGISLATIVE SESSIONS

A JOINT RESOLUTION OF THE LEGISLATURE PROPOSING TO AMEND THE UTAH CONSTITUTION; PROVIDING FOR ANNUAL SESSIONS OF THE LEGISLATURE OF 45 CALENDAR DAYS; AND PROVIDING THAT THE ANNUAL SESSION BEGIN THE SECOND MONDAY OF JANUARY EACH YEAR. THIS RESOLUTION PROPOSES TO AMEND ARTICLE VI, SECS. 2 AND 16, OF THE UTAH CONSTITUTION.

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 Article VI, Sec. 2, of the Utah Constitution, to read:

Sec. 2. (~~Sessions~~) Annual general sessions of the Legislature shall be held annually at the seat of government and shall begin on the second Monday in January. (A general session shall be held during odd-numbered years, and a budget session shall be held during even-numbered years. Legislation not directly related to the state budget may be considered by the legislature during budget sessions only if permitted by a joint resolution passed by two-thirds of the members elected to each house.)

Section 2. It is proposed to amend Article VI, Sec. 16, of the Utah Constitution, to read:

Sec. 16. No annual general session of the Legislature shall exceed ~~(sixty)~~ 45 calendar days, except in cases of impeachment. (~~No budget session shall exceed twenty calendar days, except in cases of impeachment.~~) No special session shall exceed 30 calendar days, except in cases of impeachment. When any session of the Legislature trying cases of impeachment exceeds the number of (~~calendar~~) days it may remain in session as provided in this section, the members shall receive (~~for compensation only the usual per diem~~) compensation only for expenses and mileage for those days in excess of 30.

Section 3. The lieutenant governor is directed to submit this proposed amendment to the electors of the state of Utah at the next general election in the manner provide by law.

Section 4. If approved by the electors of the state the amendment proposed by this joint resolution shall take effect on January 1, 1985.



For



Against



# Proposition No. 3

## JUDICIAL ARTICLE REVISION

Vote cast by the members of the 1984 Legislature on final passage:  
HOUSE (75 members): Yeas, 68; Nays, 3; Absent or not voting, 4.  
SENATE (29 members): Yeas, 23; Nays, 5; Absent or not voting, 1.

### Official Ballot Title:

Shall Article VIII of the State Constitution be repealed and reenacted and Article XXI, Sections 1 and 2, be amended to provide a Judicial Article which: establishes the authority and jurisdiction of the Supreme Court and District Courts; allows the Legislature to establish other courts as necessary including nonrecord courts with nonlawyer judges; establishes a Judicial Council for administration of the courts; establishes the qualifications and selection process for judges; establishes a Judicial Conduct Commission to review complaints against judges; establishes elected public prosecutors; organizes and clarifies other sections, and provides an effective date of July 1, 1985.

## IMPARTIAL ANALYSIS

### Proposal

The provisions of the proposed Judicial Article can be divided into four general categories:

1. **Court Organization and Administration** — The revision would constitutionally establish only the supreme court and the district court. All other courts including the currently established juvenile court, circuit court and justice of the peace courts, would exist by statute not by the constitution. However, the revision does include a requirement of having a court fill the role now performed by the justice of the peace courts by requiring courts not of record to be established by statute. The revision also establishes that the qualifications for judges of courts not of record may not include being admitted to practice law in the state. This maintains the lay court system now administered by the justice of the peace courts.

Under the constitution the legislature may establish other courts in the state as necessary. The revision also establishes a judicial council to sit as the administrative body of the judicial system. The council would have representatives from all court levels and be headed by the chief justice of the supreme court. There is presently a judicial council in operation. However, it is established by statute and has in the past only served part of the state's courts.

The method of selecting the chief justice of the supreme court would also be changed by the revision. The constitution presently states that the chief justice is that justice with the least time remaining in his term. The revision would allow for a new selection process to be established by statute.

2. **Jurisdiction and Appeals** — The revision establishes appellate jurisdiction in the supreme court and general trial jurisdiction in the district court. The revision allows the legislature to establish the jurisdiction of other courts. This would provide flexibility to address the supreme court's increasing work load. Though it would not mandate any one solution, it would allow for various options. In addition, the proposal would eliminate restrictions on the jurisdiction of the justice of the peace courts. Currently the constitution limits justice of the peace courts to matters with fines of up to \$299.

3. **Judicial Personnel Issues** — The revision focuses primarily on judicial selection and judicial discipline questions. The constitution presently allows the legislature to determine by statute the method of selecting judges. However, the constitution prohibits the partisan selection of judges. The supreme court in two recent cases has ruled that the legislature's involvement in the selection process is limited. This is especially true where judges are required to stand for contested elections. Court rulings

have concluded that the constitution prohibits the legislature from being involved in the advise and consent of judicial appointments for supreme court, district court and circuit court judges.

The proposed revision would provide for a specific and uniform selection process. The key components include:

- a. judicial nominating commissions - the commission would screen applicants and select the three most qualified.
- b. appointment by the governor - the governor would select one of the three applicants nominated.
- c. review by the senate - the appointment would be effective upon majority vote of the senate. This senate vote must be within 30 days of the governor's appointment or, if not, the selection process begins again with the nominating commission.
- d. uncontested retention elections - at the first general election three years after appointment, each judge shall be subject to an unopposed retention election. The elections would be nonpartisan and conducted as provided by statute.

The proposal also provides for the constitutional establishment of a judicial conduct commission to review complaints and

order disciplinary action against judges. The judicial conduct commission is composed of lawyers, legislators and lay citizens. It has authority to order a reprimand, censure, suspension, removal or involuntary retirement of a judge. The action of the commission is subject to final review by the state supreme court.

4. **Other miscellaneous provisions** — The following are other provisions contained in the revision. These sections (1) clarify the supreme court's procedural and evidence rulemaking authority, although the legislature may amend court rules by a 2/3 majority vote; (2) establish elected public prosecutors; (3) maintain the same qualifications for holding judicial office; and (4) remove outdated and unnecessary provisions.

#### **Effective Date**

The amendment, if approved by the voters, would be effective beginning July 1, 1985. However, judges currently in office would hold office for the term for which they were elected or appointed. At the completion of their full term of office they would be subject to the provisions of this article.

#### **Fiscal Effect**

There has been no enabling legislation passed by the legislature or changes made in the Judicial Article Revision which would have a fiscal impact.



## Arguments for

**The Utah Supreme Court hears too many cases!** Our constitution requires the supreme court to hear every appeal from the major trial courts. Last year the court heard nearly 800 appeals. This makes the court's caseload one of the most burdensome in the country. Many of these appeals are of questionable value. They waste time and prevent the court from hearing more important matters. ***Our constitution prevents the court and the legislature from taking action to solve this problem.*** Proposition 3 will amend the constitution so actions can be taken to reduce the supreme court's workload.

**Courts need to be free from outdated restrictions!** The Utah Constitution was written in 1896. It established a court system to meet 1896 needs. Unfortunately, the constitution is not flexible enough to meet changing situations. For example, the constitution limits the fines which some courts may impose. ***Most drunk driving offenses still carry only a \$299 fine, a figure set in 1896.*** The constitution does not allow some courts to impose higher fines. ***Proposition 3 will remove outdated restrictions from the constitution.***

**Utah must attract good judges and remove poor ones!** Ideally, judges should be selected solely on professional merit. They should not be selected because of political ties or other non-professional reasons. There should be checks so no one group unduly controls the selection process. In addition, the people should be able to review a judge's performance. The selection process in Proposition 3 meets these goals. It balances the interests of the governor, the legislature, the courts, and the people. Proposition 3 also provides for a judicial conduct commission to investigate complaints against judges. The conduct commission has authority to discipline or remove poor judges. ***Proposition 3 will help maintain quality judges.***

**Utah needs an independent judicial system!** The U.S. founding fathers provided for an independent judiciary in the U.S. Constitution. Our state judiciary should also be independent. Some important judicial responsibilities are open to control by other branches of government. Proposition 3 places these responsibilities with the judiciary. ***Proposition 3 will provide for an independent judiciary.***

**Utah needs a well managed judicial system!** Utah has many different courts. While their roles are different, many of their needs are similar. It is important that a central coordinating body exist to address the needs of the whole judicial system. Proposition 3 provides for a judicial council with representatives from all courts. The council is headed by the chief justice of the supreme court. It provides for better coordination between the courts. ***Proposition 3 will provide for a well-managed judicial system.***

**Proposition 3 has been carefully studied!** Proposition 3 has been studied for 5 years. It is supported by all levels of the judiciary and groups associated with the legal community. It is supported by the governor and received a favorable vote

from nearly 90% of the legislature. ***We need Proposition 3 to give our courts tools to address contemporary problems.***

Vote "FOR" Proposition 3!

Senator Karl N. Snow  
Chairman, Constitutional Revision Commission  
1847 North Oak Lane, Provo, Utah 84604

Representative G. LaMont Richards  
House Chairman, Higher Education Study Committee  
P.O. Box 25717, Salt Lake City, Utah 84125

## Rebuttal to

### Arguments in favor of Proposition No. 3

The idea that Utah's Constitution is outdated is a ***socialist myth*** perpetuated by political opportunists in an attempt to deceive the electorate.

The Judicial Conduct Commission has ***NEVER*** removed a judge from the bench for misconduct. Why should this appointed group be included in the Utah Constitution?

Political rhetoric would have you believe Proposition No. 3 does not eliminate checks and balances on the judiciary. ***THIS IS THE DARKEST OF POLITICAL LIES.*** It is espoused by those who would turn our Constitution into a document of ***TYRANNY***. Unopposed elections of any type are not the "American Way."

Legislators voted to have Proposition No. 3 on the ballot for you, the voter, to decide about our judiciary.

"POWER CORRUPTS. ABSOLUTE POWER CORRUPTS ABSOLUTELY!" Preserve your freedoms. Vote "***AGAINST***" Proposition No. 3.

Representative Francis Hatch Merrill  
4280 South 838 East, Salt Lake City, Utah 84107

May we point out the fallacies in the preceding argument for Proposition 3:

**Paragraph 1:** The Supreme Court does have an overload of cases. A simple amendment would allow them to meet in two panels, ***one hearing the civil cases, the other the criminal cases.***

**Paragraph 2:** The Constitution of our country, written in 1787, is still not outdated. Drunk driving penalties are more severe than ever before.

**Paragraphs 3 and 4:** ***The last State Supreme Court appointment was anything but ideal. Neither the people nor their representatives had any say whatsoever in that selection. Proposition 3 would make it worse than ever.***

**Paragraphs 5 and 6:** Most of the points in Proposition 3 have been ***rejected by the legislature time and time again.*** ***Now we ask you, the people, to confirm that action.***

Vote "***AGAINST***" Proposition 3!

Senator E. Verl Asay  
Chairman, Senate Judiciary Committee  
4857 South 1950 West, Taylorsville, Utah 84118

## Arguments Against

The Constitution was written to eliminate government tyranny, not to have the government chain people down by limiting their powers. This constitutional revision will take away YOUR right to have a candidate run against a judge in an election. It limits individual rights to remove judges from office by permitting **UNOPPOSED RETENTION ELECTIONS** every ten years for Supreme Court Judges and every six years for other judges.

Ask yourself these questions: (1) What form of government has *uncontested elections*? (2) What kind of government *does not allow competition in candidates*? (3) What kind of government has moved *justice away from the people* by making government unaccountable to the people through the voting process? (4) What kind of government *allows only one candidate per office on the ballot*? (unopposed retention elections) (5) What form of government *eliminates scrutiny by the people*? (6) What form of government *muzzles the people in the balloting system*? (7) *Under the American check & balance system of government should the judiciary police itself without scrutiny from the people*? (8) *Why put the elitist Judicial Council & Judicial Conduct Commission, two functioning committees, in the Constitution thus making them difficult to eliminate or change should the need arise*?

This constitutional revision goes beyond the point of forming a "EXCLUSIVE CLUB".

It allows the Judicial Branch to rise above the level of the people instead of serving the citizenry.

This atrocity is perpetuated by the judiciary for the convenience of the judiciary and it should be offensive to **FREEDOM LOVING PEOPLE**.

Vote "AGAINST" Proposition 3

Representative Francis Hatch Merrill  
4280 South 838 East, Salt Lake City, Utah 84107

**The people need to know that Proposition 3 proposes drastic undesirable changes in our constitution.** There are two or three good suggestions within the proposal, however, several very bad provisions are included within the package. The good provisions should be submitted to the people rather than "take it or leave it" in a single package.

**Proposition 3 will give unprecedented power and authority to the judicial branch of government.** For instance, the present constitution reads that "judges may be removed from office by two-thirds vote of both houses of the legislature". This gives the people through their representatives some control. *Proposition 3 would remove this safety valve and the judicial branch would account only to themselves for their action. This would also take from the people the inherent right to elect judges.* This would also give the Supreme Court unprecedented power and authority to govern the practice of law in Utah, including *who would be admitted to the bar and under what circumstances.*

The proposed article was rushed through a special session of the legislature without time to go through the regular legislative process. It may be we need some changes, this proposal certainly is not the answer.

There are many legislators who voted to have the proposed amendment on the ballot, yet themselves will vote *against* Proposition 3.

Vote "AGAINST" Proposition No. 3.

Senators Barlow, Matheson, Overson, Sandberg, Bangerter concur!

Senator E. Verl Asay  
Senate Chairman, Judiciary Study Committee  
4857 South 1950 West, Taylorsville, Utah 84118

## Rebuttal to

### Arguments against Proposition No. 3

Utahns respect the U.S. Constitution and the principles it outlines. A most important principle is the need for an independent judiciary. The constitution provides for the President to appoint federal judges, subject to review by the U.S. Senate. If approved, federal judges are appointed for life. Proposition 3 proposes a similar method for selecting state judges. However, Proposition 3 contains additional safeguards: nominating commissions to screen applicants, and periodic review of judges by the people. **Proposition 3 actually includes more protections for selecting and reviewing state judges than the U.S. Constitution does for federal judges.**

Selection methods similar to Proposition 3 are used in many other states. These procedures have been very effective at attracting good judges and removing poor ones. It has been shown that poor judges are often *more* likely to be removed with retention elections than with contested elections.

Contested judicial elections raise the possibility of serious abuse. For example, election campaigns require money, usually raised by contributions. For judicial elections, money comes primarily from lawyers and other persons who regularly appear before judges. This situation can easily result in conflicts of interest and compromise the independence and integrity of the judiciary.

Proposition 3 is one of the most thoroughly studied proposals ever presented to Utah voters. It has been carefully reviewed by state and national authorities for nearly five years. **Most of the changes have not been suggested by the courts, but by citizens concerned that Utah maintain an effective court system.**

VOTE "FOR" PROPOSITION 3!

Senator Karl N. Snow, Jr.  
Chairman, Constitutional Revision Committee  
1847 North Oak Lane, Provo, Utah 84604

Representative G. LaMont Richards  
House Chairman, Higher Education Study Committee  
P.O. Box 25717, Salt Lake City, Utah 84125

**COMPLETE TEXT OF PROPOSITION NO. 3  
JUDICIAL ARTICLE REVISION**

A JOINT RESOLUTION OF THE LEGISLATURE PROPOSING TO AMEND THE UTAH CONSTITUTION; RELATING TO THE JUDICIAL ARTICLE OF THE UTAH CONSTITUTION; PROVIDING FOR THE VESTING OF JUDICIAL POWER AND AUTHORITY TO ESTABLISH COURTS; PROVIDING FOR THE COMPOSITION AND JURISDICTION OF THE SUPREME COURT, THE DISTRICT COURT, AND OTHER COURTS; ESTABLISHING A JUDICIAL COUNCIL FOR ADMINISTRATION OF THE COURTS OF THE STATE; PROVIDING FOR THE QUALIFICATIONS AND MEANS OF SELECTING JUDGES; ESTABLISHING A JUDICIAL CONDUCT COMMISSION TO REVIEW COMPLAINTS AGAINST JUDGES; PROVIDING FOR A SYSTEM OF PUBLIC PROSECUTORS; CLARIFYING PROVISIONS RELATING TO THE COMPENSATION OF JUSTICES OF THE PEACE; AND PROVIDING AN EFFECTIVE DATE.

THIS RESOLUTION PROPOSES TO AMEND ARTICLE XXI, SECTION 1 AND SEC. 2, OF THE UTAH CONSTITUTION; AND REPEAL AND REENACT ARTICLE VIII, OF THE UTAH CONSTITUTION.

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 repeal and reenact Article VIII, of the Utah Constitution, to read:

Section 1. The judicial power of the state shall be vested in a supreme court, in a trial court of general jurisdiction known as the district court, and in such other courts as the legislature by statute may establish. The supreme court, the district court, and such other courts designated by statute shall be courts of record. Courts not of record shall also be established by statute.

Sec. 2. The supreme court shall be the highest court and shall consist of at least five justices. The number of justices may be changed by statute, but no change shall have the effect of removing a justice from office. A chief justice shall be selected from among the justices of the supreme court as provided by statute. The chief justice may resign as chief justice without resigning from the supreme court. The supreme court by rule may sit and render final judgement either en banc or in divisions. The court shall not declare any law unconstitutional under this constitution of the Constitution of the United States, except on the concurrence of a majority of all justices of the supreme court. If a justice of the supreme court is disqualified or otherwise unable to participate in a cause before the court, the chief justice, or in the event the chief justice is disqualified or unable to participate, the remaining justices, shall call an active judge from an appellate court or the district court to participate in the cause.

Sec. 3. The supreme court shall have original jurisdiction to issue all extraordinary writs and to answer questions of state law certified by a court of the United States. The supreme court shall have appellate jurisdiction over all other

matters to be exercised as provided by statute, and power to issue all writs and orders necessary for the exercise of the supreme court's jurisdiction or the complete determination of any cause.

Sec. 4. The supreme court shall adopt rules of procedure and evidence to be used in the courts of the state and shall by rule manage the appellate process. The legislature may amend the rules of procedure and evidence adopted by the supreme court upon a vote of two-thirds of all members of both houses of the legislature. Except as otherwise provided by this constitution, the supreme court by rule may authorize retired justices and judges pro tempore to perform any judicial duties. Judges pro tempore shall be citizens of the United States, Utah residents, and admitted to practice law in Utah. The supreme court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.

Sec. 5. The district court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs. The district court shall have appellate jurisdiction as provided by statute. The jurisdiction of all other courts, both original and appellate, shall be provided by statute. Except for matters filed originally with the supreme court, there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause.

Sec. 6. The number of judges of the district court and of other courts of record established by the legislature shall be provided by statute. No change in the number of judges shall have the effect of removing a judge from office during a judge's term of office. Geographic divisions for all courts of record except the supreme court may be provided by statute. No change in divisions shall have the effect of removing a judge from office during a judge's term of office.

Sec. 7. Supreme court justices shall be at least 30 years old, United States citizens, Utah residents for five years preceding selection, and admitted to practice law in Utah. Judges of other courts of record shall be at least 25 years old, United States citizens, Utah residents for three years preceding selection, and admitted to practice law in Utah. If geographic divisions are provided for any court, judges of that court shall reside in the geographic division for which they are selected.

Sec. 8. When a vacancy occurs in a court of record, the governor shall fill the vacancy by appointment from a list of at least three nominees certified to the governor by the judicial nominating commission having authority over the vacancy. The governor shall fill the vacancy within 30 days after receiving the list of nominees. If the governor fails to fill the vacancy within the time prescribed, the chief justice of the supreme court shall have 20 days make the appointment from the list of nominees. The legislature by statute shall provide

for the nominating commissions' composition and procedures. No member of the legislature may serve as a member of, nor may the legislature appoint members to, any judicial nominating commission. The senate shall consider and render a decision on each judicial appointment within 30 days of the date of appointment. If necessary, the senate shall convene itself in extraordinary session for the purpose of considering judicial appointments. The appointment shall be effective upon approval of a majority of all members of the senate. If the senate fails to approve the appointment, the office shall be considered vacant and a new nominating process shall commence. Selection of judges shall be based solely upon consideration of fitness for office without regard to any partisan political considerations.

Sec. 9. Each appointee to a court of record shall be subject to an unopposed retention election at the first general election held more than three years after appointment. Following initial voter approval, each supreme court justice every tenth year, and each judge of other courts of record every sixth year, shall be subject to an unopposed retention election at the corresponding general election. Judicial retention elections shall be held on nonpartisan ballot in a manner provided by statute. If geographic divisions are provided for any court of record, the judges of those courts shall stand for retention election only in the geographic division to which they are elected.

Sec. 10. Supreme court justices, district court judges, and judges of all other courts of record while holding office may not practice law, hold any elective nonjudicial public office, or hold office in a political party.

Sec. 11. Judges of courts not of record shall be elected in a manner, for a term, and with qualifications provided by statute. However, no qualification may be imposed which requires judges of courts not of record to be admitted to practice law. The number of judges not of record shall be provided by statute.

Sec. 12. A Judicial Council is established, which shall adopt rules for the administration of the courts of the state. The Judicial Council shall consist of the chief justice of the supreme court, as presiding officer, and such other justices, judges, and other persons as provided by statute. There shall be at least one representative on the Judicial Council from each court established by the constitution or by statute. The chief justice of the supreme court shall be the chief administrative officer for the courts and shall implement the rules adopted by the Judicial Council.

Sec. 13. A Judicial Conduct Commission is established which shall investigate and conduct confidential hearings regarding complaints against any justice or judge. Following its investigations and hearings, the Judicial Conduct Commission may order the reprimand, censure, suspension, removal, or involuntary retirement of any justice or judge for the following:

- (1) action which constitutes willful misconduct in office;
- (2) final conviction of a crime punishable as a felony under state or federal law;
- (3) willful and persistent failure to perform judicial duties;
- (4) disability that seriously interferes with the performance of judicial duties; or
- (5) conduct prejudicial to the administration of justice which brings a judicial office into dispute.

Prior to the implementation of any commission order, the supreme court shall review the commission's proceedings as to both law and fact. The court may also permit the introduction of additional evidence. After its review, the supreme court shall, as it finds just and proper, issue its order implementing, rejecting, or modifying the commission's order. The legislature by statute shall provide for the composition and procedures of the Judicial Conduct Commission.

Sec. 14. The legislature shall provide for the compensation of all justices and judges. The salaries of justices and judges shall not be diminished during their terms of office.

Sec. 15. The legislature may provide for the mandatory retirement of justices and judges from office.

Sec. 16. The legislature shall provide for a system of public prosecutors who shall have primary responsibility for the prosecution of criminal actions brought in the name of the State of Utah and shall perform such other duties as may be provided by statute. Public prosecutors shall be elected in a manner provided by statute, and shall be admitted to practice law in Utah. If a public prosecutor fails or refuses to prosecute, the supreme court shall have power to appoint a prosecutor pro tempore.

Section 2. It is proposed to amend Article XXI, Section 1, of the Utah Constitution, to read:

Section 1. (All State) Unless otherwise provided by law, all state, district, city, county, town, and school officers [; excepting notaries public, boards of arbitration, court commissioners, justices of the peace and constables,] shall be paid fixed and definite salaries[: Provided, that city justices may be paid by salary when so determined by the mayor and council of such cities].

Section 3. It is proposed to amend Article XXI, Sec. 2, of the Utah Constitution, to read:

Sec. 2. The Legislature shall provide by law, for the fees (which shall) to be collected by all officers within the (State) state. (Notaries public, boards of arbitration, court commissioners, justices of the peace, and constables paid by fees, shall accept said fees as their full compensation. But all

other State) All state, district, county, city, town, and school officers, shall be required by law to a true and correct account of all fees collected by them, and to pay the same into the proper treasury, and the officer whose duty it is to collect such fees shall be held responsible under his bond for the same.

Section 4. This amendment shall not shorten the term of office nor abolish the office of any justice of the supreme court, any judge of the district court, or judge of any other court who is holding office on the effective date of this amendment. Justices and judges holding office on the effective date of this amendment shall hold their respective

offices for the terms for which they were elected or appointed and at the completion of their current terms shall be considered incumbent officeholders. Existing statutes and rules on the effective date of this amendment, not inconsistent with it, shall continue in force and effect until repealed or changed by statute.

Section 5. The lieutenant governor is directed to submit this proposed amendment to the electors of the state of Utah at the next general election in the manner provided by law.

Section 6. If approved by the electors of the state, the amendment proposed by this joint resolution shall take effect on July 1, 1985.



For



Against



# Proposition No. 4

## STATE SCHOOL FUND AMENDMENTS

Vote cast by the members of the 1984 Legislature on final passage:  
HOUSE (75 members): Yeas, 51; Nays, 3; Absent or not voting, 21.  
SENATE (29 members): Yeas, 21; Nays, 7; Absent or not voting, 1.

### Official Ballot Title:

Shall Article X, Section 3, of the State Constitution be amended to modify the revenue sources to the State School Fund to include all revenues from nonrenewable resources from school or state lands; and clarify the funding and administration of the Uniform School Fund, and provide an effective date of July 1, 1987.

### IMPARTIAL ANALYSIS

#### Proposal

The Utah Constitution establishes (1) a State School Fund, and (2) a Uniform School Fund.

(1) The State School Fund is a trust fund established by the state constitution to provide a permanent source of revenue for public education. The State School Fund now receives revenues from three sources: (a) proceeds from the sale of all lands granted to the state by the United States for the support of elementary and secondary schools (this land is a one mile square section in each township of the public domain given to Utah at statehood by the federal government); (b) five percent of the net proceeds of federal land sold in Utah; and (c) revenues appropriated by the legislature. Monies deposited in the fund must remain there permanently and cannot be appropriated by the legislature. Interest received by investing these funds are used yearly to help fund publicly supported elementary and secondary schools. Currently the State School Fund has investments of \$19.0 million and the interest earned on the investments last year was \$1.4 million.

(2) The Uniform School Fund is constitutionally established as an operating fund for public education and receives the major sources of revenue for state aid to education. It receives revenues from: (a) proceeds from the sale of all unclaimed property; (b) all unclaimed dividends and shares of Utah corporations; (c) proceeds from the sale of timber, minerals (oil, gas, etc.) and

proceeds from other uses of renewable resources from school and state lands as well as income from the permanent school fund investments; (d) proceeds from individual income tax; and (e) funds appropriated annually by the legislature from state general and special revenues.

The state government pays approximately 73 percent of the cost of public elementary and secondary education in Utah. The remaining 27 percent of the cost is raised through local property taxes. For the 1984-85 school year the legislature appropriated \$574 million of state funds to finance elementary and secondary education in Utah. This represents 37 percent of the total state budget. Of this total, \$1.4 million will come from interest on State School Fund investments, \$10.6 million will be collected from school land renewable resources and \$7.0 million will be collected from the sale of nonrenewable resources on state and school lands.

The proposed revision constitutionally changes the manner that proceeds from the sale of nonrenewable (oil, coal, gas) natural resources on school and state lands are used to pay for public education. Currently they are used each year to fund the Uniform School Fund. The proposed revision will provide that proceeds from these resources be placed in the State School Fund rather than the Uniform School Fund, where they will be incorporated into a non-expendable interest bearing trust fund.



This shift in funding will increase investments of the State School Fund and eventually will provide for increased interest payments to the Uniform School Fund. This plan would, however, result in an annual reduction in funds available to the Uniform School Fund until interest earned on the investments of the State School Fund would be sufficient to replace the revenues currently earned on the nonrenewable resources.

This proposed revision will also provide for clarification of the administration of the State School Fund and the Uniform School Fund.

#### **Effective Date**

The amendment, if approved by the voters, would become effective July 1, 1987.

#### **Fiscal Effect**

Because the revision is not effective until July 1, 1987 there would be no immediate fiscal effect for the next two fiscal years. However, when implemented in 1987 there will be an initial loss of revenue on nonrenewable resources to the Uniform School Fund. However, this will be offset by a long term increase in interest revenue from investments in the State School Fund.

## Arguments for

**Proposition 4 will reduce the tax burden on Utahns!** Our constitution provides for a State School Fund to help pay for public education. Only the interest from the fund can be spent. The State School Fund is presently very small. Interest from the fund pays only 2 percent of the cost of public education. That figure is low because the constitution limits the revenues which go to the State School Fund. The State School Fund's major source of revenue is the sale of state school lands. Revenue from the use of these same lands, such as mineral and timber rights, does not go to the State School Fund. Instead, this money goes to pay current operating expenses for the public schools. Proposition 4 will transfer some of this money which presently goes to general education funds, to the State School Fund. As a result, the State School Fund will increase substantially each year. As the fund grows, the interest payments will increase. *Eventually, interest from the fund could pay a major part of state education expenses.*

**Non-renewable resource money is being spent with no thought for the future!** Much of the revenue from school lands comes from resources that cannot be replaced. These include oil, gas, and other minerals. Once these assets are extracted, their revenue potential is gone forever. We are now using these important resources for our own advantage, with no thought for the future. The money is used to pay for current public school operating expenses. *This is unthinkable!* As these resources are used up, the revenues they provide will have to be replaced by increased taxes! *Proposition 4 ensures that proceeds from non-renewable resources will be saved for current and future generations of taxpayers!*

**We must save for the future!** It is a fact of life that to get ahead, we must save for the future. No one gets anywhere by spending everything. Proposition 4 will help Utah save for its children's future!

**Proposition 4 will protect significant revenues for the State School Fund!** Proposition 4 will constitutionally protect major revenues for the State School Fund. Funding decisions made by statute may be changed by the legislature. Political pressures may alter the fund. Proposition 4 permanently protects the State School Fund as a major source of education funding!

**Proposition 4 will gradually transfer revenues to avoid budget problems!** If the money coming from non-renewable resources were transferred immediately into the State School Fund, it could seriously affect the state's budget. Under Proposition 4, the transfer of revenues will not take place until 1987. This plan will give state government time to make a smooth transition. Proposition 4 will allow for a portion of the money to be transferred each year until the full amount has been moved.

Vote **"FOR"** Proposition 4 for the sake of lower taxes and current and future generations!

Senator K.S. Cornaby  
Senate Majority Leader

3794 Hermes Drive  
Salt Lake City, Utah 84124

Representative Ervin M. Skousen  
3316 Metro Way  
Salt Lake City, Utah 84109

## Rebuttal to

### *Arguments in favor of Proposition No. 4*

**We cannot afford to pass Proposition 4!** Proposition 4 would take **\$7.0 million** away from the revenues that can be used for education's immediate, pressing needs. In order to continue funding education at present levels, \$7.0 million would have to be supplied from other sources, such as taxes. These revenues would be locked into a trust fund that might or might not grow into a significant funding source in the future. At a time when many areas of education are critically underfunded, *this is unwise!*

Proponents of Proposition 4 will claim that since the state has a surplus this year, the money would be set aside without raising taxes. Even with a surplus, though, there are many areas of greater importance than locking revenues into the State School Fund. *By passing this amendment, we will be taking money away from some urgent need!*

**Proposition 4 limits the power of the legislature to wisely allocate money!** To ensure that the best possible decisions are made about how to spend the state's money, the legislature should be allowed to allocate money as needed. Funding needs vary from year to year. Only the legislature has the power to adjust funding as appropriate. Dedicating revenues in the constitution limits the legislature's ability to apportion revenues wisely! *Proposition 4 is an unwise amendment to the constitution!*

### VOTE "AGAINST" PROPOSITION 4!

Senator Wilford R. Black

Senate Minority Leader  
826 North 1300 West  
Salt Lake City, Utah 84116

## Arguments Against

1. **Proposition 4 will reduce education funding by millions of dollars over the next few years!** This money will have to be replaced from other sources! Supporters of Proposition 4 claim that it will not reduce education funding. They say it will only change the way that education is funded. This is untrue! Proposition 4 will transfer revenues into the state school fund that have historically been used for current education needs. Putting these revenues into the state school fund will decrease the amount of money available for immediate use. Many years will pass before the increase in interest on the state school fund equals the extra amount of revenue going into it. Until then, education funding will fall millions of dollars short of present levels.

Utah's budget is already very tight. Providing extra funds to make up for the shortfall will be difficult. Raising taxes, or levying new taxes, will probably become necessary. Extra funds will have to be provided *every year* until the interest on the state school fund equals the revenues from non-renewable resources. *In short, Proposition 4 will place a burden on taxpayers for years to come!*

2. **Proposition 4 will not really increase education funding for many years!** Supporters of Proposition 4 claim that the increased interest from the state school fund will eventually pay a major part of Utah's education bill. With the additional revenue, taxes could be lowered. It will take many years to reach that point! Consider the facts:

If the annual revenues from non-renewable resources continue to be about \$7 million dollars (the 1983-1984 figure), *it will be 10 years before the interest on the fund even replaces itself!*

Even if Proposition 4 works the way its sponsors claim, it will be a long time before Utah taxpayers realize any benefit. On the other hand, taxpayers will probably see increased taxes *right away!* *Proposition 4 will take too long to produce real benefits!*

3. **The state needs all current revenue sources to fulfill its obligations!** Utah's resources are strained to the limits. Many important programs have gone without funding because of lack of money. Proposition 4 will tie up millions of dollars in a trust fund. *The state would benefit more from spending the money now!* While the money *might* be useful in the future, it would *definitely* be useful now.

There are also other considerations. Inflation may lessen the value of the dollars we save now. By saving money for the future instead of spending it now we may not be able to get the greatest value for our money. Spending money now on critical educational needs may reduce the amount of funding necessary for remedial programs later. *For Utah's sake, we need to spend this money now!*

## VOTE "AGAINST" PROPOSITION 4!

Senator Wilford R. Black  
Senate Minority Leader  
826 North 1300 West  
Salt Lake City, Utah 84116

## Rebuttal to

### Arguments against Proposition No. 4

1. Even the opponents of Proposition 4 admit that it will eventually increase funding for education. They are merely unwilling to exercise the discipline that it will take to reach that goal. Any savings or investment program is a plan for the future, and involves sacrifice. No matter what the future cost of education is, every dollar of interest from the State School Fund will be one less dollar that has to come out of the taxpayer's pocket!

2. The funds that Proposition 4 will transfer into the State School Fund are from non-renewable resources. *When those resources are depleted, that source of income will be gone forever!* The taxpayer of the future will have to make up the difference out of his pocket. It would be intolerably selfish to squander the income from these nonrenewable resources with no concern for the future.

3. Opponents claim that every available penny is needed to meet the obligations of the state. *This is not true!* State spending *could* be cut. During the past three years the Governor has ordered 2 percent reductions in spending on seven different occasions, with only small impact on state operations! Scrupulous budget analysis by the legislature will make up for the shift of funds proposed by Proposition 4. *No increase in taxes will be necessary!*

Governor Matheson says:

*"The time has come for Utahns to face up to the rising cost of educating our children. We cannot afford not to support this constitutional amendment!"*

## VOTE "FOR" PROPOSITION 4!

Senator K.S. Cernaby  
Senate Majority Leader  
3794 Hermes Drive  
Salt Lake City, Utah 84124  
Representative Ervin M. Skousen  
3316 Metro Way  
Salt Lake City, Utah 84109

## COMPLETE TEXT OF PROPOSITION NO. 4 STATE SCHOOL FUND AMENDMENTS

A JOINT RESOLUTION OF THE LEGISLATURE PROPOSING TO AMEND THE UTAH CONSTITUTION; RELATING TO PUBLIC EDUCATION; MODIFYING THE REVENUE SOURCES FOR THE STATE SCHOOL FUND AND THE UNIFORM SCHOOL FUND.

THIS RESOLUTION PROPOSES TO AMEND ARTICLE X, SECS. 3 AND 5, OF THE UTAH CONSTITUTION.

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 Article X, Sec 3, of the Utah Constitution, to read:

Sec. 3. (1) (The) Except as provided by statute for the necessary cost of land administration, (a) proceeds of the sales of all lands that have been or may hereafter be granted by the United States to this state, for the support of the [common] public elementary and secondary schools, (b) [and five per centum] 5% of the net proceeds of the sales of United States public lands lying within the states and sold by the United States subsequent to the admission of this state into the Union, (c) all revenues derived from the use of nonrenewable resources from school or state lands, other than those lands granted for other specific purposes, and (d) other revenues as appropriated by the legislature, shall be and remain a permanent fund, to be called the State School Fund, the interest of which only, shall be expended for the support of the [common] public elementary and secondary schools. [The interest on the State School Fund; the proceeds of all property that may accrue to the state by the escheat or forfeiture, all unclaimed shares and dividends of any corporation incorporated under the laws of this state; the proceeds of the sales of timber; and the proceeds of the sale or other disposition of minerals or other property from school and state lands; other than those granted for specific purposes; shall with such other revenues as the legislature may from time to time allot thereto; constitute a fund to be known as the Uniform School Fund; which Uniform School Fund shall be maintained and used for the support of the common and public schools of the state and apportioned in such a manner as the legislature shall provide. The provisions of Section 7, Article XIII of this Constitution shall be

construed as a limitation in the rate of taxation on tangible property for district school purposes and not on the amount of funds available therefore and; further, no moneys allocated to the Uniform School Fund shall be considered in fixing the rates of taxation specified in Section 7 of Article XIII].

(2) There is established a Uniform School Fund which shall consist of revenue from three sources; (a) interest from the State School Fund; (b) except as appropriated by the legislature for the State School Fund, revenues derived from the use of renewable resources from school or state lands, other than those granted for specific purposes; and (c) other revenues which the legislature may appropriate. If the interest generated by the State School Fund exceeds the amount of interest required to fund the Uniform School Fund, as appropriated annually by the legislature, the excess shall pass through to the General Fund. The Uniform School Fund shall be maintained and used for the support of the state's public elementary and secondary schools and appropriated as the Legislature shall provide.

Section 2. It is proposed to amend Article X, Sec. 5, of the Utah Constitution, to read:

Sec. 5. The proceeds of the sale of lands reserved by an Act of Congress, approved February 21st, 1855, for the establishment of the University of Utah, and all the lands granted by an Act of Congress, approved July 16th, 1894, shall constitute permanent funds, to be safely invested and held by the State; and except as provided by statute for the necessary cost of land administration, the income thereof shall be used exclusively for the support and maintenance of the different institutions and colleges, respectively, in accordance with the requirements and conditions of said Acts of Congress.

Section 3. Statutes and regulations in existence on the effective date of this amendment that are not inconsistent with the amendment shall continue in force and effect until repealed or changed by statute.

Section 4. The lieutenant governor is directed to submit this proposed amendment to the electors of the State of Utah at the next general election in the manner provided by law.

Section 5. If approved by the electors of the state the amendment proposed by this joint resolution shall take effect July 1, 1987.

For



Against



# Proposition No. 5

## RIGHT TO BEAR ARMS AMENDMENT

Vote cast by the members of the 1984 Legislature on final passage:  
HOUSE (75 members): Yeas, 63; Nays, 1; Absent or not voting, 11.  
SENATE (29 members): Yeas, 26; Nays, 1; Absent or not voting, 2.

### Official Ballot Title:

Shall Article I, Section 6, of the State Constitution be amended to state that the individual right to keep and bear arms for the security and defense of the individual, family, others, property, or for other lawful purposes shall not be infringed, but the Legislature may define the lawful use of arms.

## IMPARTIAL ANALYSIS

### Proposal

The Utah Constitution in Article 1, Section 6 guarantees the people the right to bear arms for their security and defense. This section also gives the legislature the authority to regulate the exercise of this right by law. The Utah Supreme Court has interpreted this section to indicate that it gives to the legislature the authority to forbid possession of dangerous weapons by those who are not citizens, who have been convicted of crimes, who are addicted to drugs, or who are mentally incompetent (*State v. Bearchia* 530 P. 2d 813 1974).

The proposed amendment defines the right to bear arms further by adding language which specifies the right as an individual right of the people to keep as well as bear arms. The revision lists the things for which keeping and bearing arms for security and defense may be used. These include: (1) self, (2) family, (3) others, (4) property, or (5) the state, and other lawful purposes.

The proposed amendment deletes the provision that allows the legislature to regulate the exercise of the right to bear arms and instead gives the legislature the right to define the lawful use of arms.

The changes in this proposed revision would not affect any of the current Utah laws which forbid the possession of dangerous weapons to criminals, drug addicts or mentally incompetent persons and other illegal use of arms now defined in statute. However, further legislation concerning the right to keep and bear arms would be limited to defining the lawful use of arms.

### Effective Date

The amendment, if approved by the voters, would be effective beginning January 1, 1985.

### Fiscal Effect

The proposed revision of Article 1, Section 6, will not have any significant fiscal impact.

## Arguments for

Article I, Section 6 of the Utah Constitution is to be amended to read as follows:

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms.

The amendment specifically guarantees broad individual liberties and protects the enjoyment of those liberties from infringement. At the same time, the legislature may continue to enact laws against the misuse of arms and the police may continue to enforce such laws; enforcement would extend to seizing arms which are misused.

An individual right to keep and bear arms is guaranteed. However, convicted felons, mental incompetents, minors, and illegal aliens would not be guaranteed this right. The principle of law that such persons may be excluded from the enjoyment of the right to keep and bear arms is well-established.

Constitutionally protected arms include rifles, shotguns, pistols and revolvers, and hunting knives. The term "arms" does not extend to every conceivable weapon or instrument. Thus, weapons not commonly kept by people, such as switch-blade knives or instruments of mass destruction, for example, rockets or bombs, find no protection under this guarantee.

The right to keep constitutionally protected arms includes the right to purchase arms and ammunition and to keep arms in a state of repair.

The object or end to be attained by this right is to guarantee that arms may be kept or borne for defensive purposes. The right is not restricted just to the specified purposes. Other lawful purposes are also included. Thus, traditional purposes such as lawful hunting and lawful recreation use would also be protected.

While the bearing of arms for a constitutionally protected purpose extends to open carrying, the bearing of arms concealed may be regulated by, for example, requiring a license to carry arms concealed. However, licensing would have to be equitably administered. Furthermore, the open carrying of arms may be prohibited in places such as courtrooms, polling places, or at a public assembly.

The right to keep or bear arms for a constitutionally protected purpose may not be infringed. Thus, for example, laws banning the possession or sale of constitutionally protected arms, laws requiring a license to acquire or possess such arms, requiring the registration of such arms, or imposing special taxation on such arms would be impermissible.

The legislature retains the authority to define the lawful use of arms so as to protect the people for the misuse of arms. The types of misconduct that the legislature may forbid by defining the lawful use of arms are well-known and self-evident. Examples of such misconduct include using arms to commit robbery, carrying arms while intoxicated, using arms to harass, intimidate, or recklessly endanger someone, shooting in an unsafe place or manner, and poaching.

Vote "FOR" Proposition 5!

Senator Jack M. Bangerter  
1177 East 500 North  
Bountiful, Utah 84010

Representative Donna M. Dahl  
2440 East 6200 South  
Salt Lake City, Utah 84121

## Rebuttal to Arguments in favor of Proposition No. 5

The argument is very ill-considered. It fails to take into account the basic fact that the subject is very thoughtfully dealt with in the constitution as it now reads.

The statement lists classes of persons who are said not to be assured rights under the provision. But that is not provided in the proposed amendment itself.

The statement undertakes to identify protected arms. It is so broad as to include Saturday-night specials. It speaks in unequivocal terms which amount to constitutional guarantees.

The fundamental infirmity of the statement is its declaration that the end to be attained by the "right" is to assure that arms may be kept for defensive purposes. Obviously it is not so confined.

The statement declares that if adopted the provision would preclude legislation requiring licenses to acquire or possess arms "for a constitutionally protected purpose" and would preclude laws requiring registration. Nothing could be more opposed to the public interest. Firearms are intrinsically dangerous and as such should be registered just as, of course, are motor vehicles. We know, in the case of the latter, that registration is vitally important to law enforcement and protection of public safety. With the aid of registration responsible persons will be encouraged to exercise the requisite care, criminal activity may be prevented and persons engaged in crime may be apprehended. This applies as well to firearms.

Mr. Jefferson B. Fordham  
Distinguished Professor of Law  
College of Law

## Arguments Against

The proposed Utah constitutional amendment as to firearms should not be approved by the voters. The present constitutional provision is quite well-considered. It recognizes a right to bear arms and, at the same time, empowers the legislature to regulate the subject. Nothing could be more evident than that organized society should be competent to protect the public safety against the unregulated availability of deadly weapons.

As the Supreme Court of the United States has made quite clear, the provisions of the Second Amendment to the Constitution of the United States concerning a right to bear arms relate to the availability of arms for citizen militia.

It would be no less than foolhardy to deny the representatives of the people adequate authority to protect the citizenry generally against the misuse of deadly weapons.

Certainly it should be clear that all of us in organized society have vital dependence upon our elected representatives to adopt reasonable measures to assure the public safety.

Vote **"AGAINST"** Proposition 5 as an unnecessary and unwise change in the Utah constitution!

Mr. Jefferson B. Fordham  
Distinguished Professor of Law  
College of Law  
University of Utah  
Salt Lake City, Utah 84112

## Rebuttal to

### *Arguments against Proposition No. 5*

Currently, Article I, Section 6 of the Utah Constitution not only grants a right, but allows the legislature to restrict the right. This leaves the provision open to a great deal of interpretation. Subsequently, in one recent Utah Supreme Court case dealing with this issue, the five justices wrote three different opinions as to what rights the citizens of Utah have and the extent those rights can be regulated. One of those opinions state that regulation to the point of complete prohibition is a proper exercise of legislative authority under Utah's current constitutional provision!

Therefore, Proposition 5 seeks to change the last clause of the current language from a grant of legislative authority to regulate the right to a recognition of the legislative power to define the lawful use of arms. It's a change that will not compromise the ability of the legislature to draft laws necessary to protect the populace from firearms misuse.

The amendment also acknowledges the right belongs to the individuals in society rather than the people as a whole and adds the right of keeping arms to the already recognized right to bear arms. In addition, Proposition 5 clarifies the reasons for keeping and bearing arms to include not only security and defense, but other lawful purposes such as hunting and target shooting.

Proposition 5 is needed to provide this and future generations of Utah citizens with a strong, positive guarantee of their individual right to keep and bear arms.

VOTE **"FOR"** Proposition 5!

Senator Jack M. Bangerter  
1177 East 500 North  
Bountiful, Utah 84010

Representative Donna M. Dahl  
2440 East 6200 South  
Salt Lake City, Utah 84121



**COMPLETE TEXT OF PROPOSITION NO. 5  
RIGHT TO BEAR ARMS AMENDMENT**

A JOINT RESOLUTION OF THE LEGISLATURE PROPOSING TO AMEND THE UTAH CONSTITUTION; RELATING TO THE RIGHT TO BEAR ARMS; SUBSTITUTING THIS RESOLUTION FOR A RESOLUTION PASSED AT THE GENERAL SESSION OF THE 45th LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE.

THIS RESOLUTION PROPOSES TO AMEND ARTICLE I, SEC. 6, OF THE UTAH CONSTITUTION, AND REPEALS AND WITHDRAWS ENROLLED COPY S.J.R. NO. 2 PASSED BY THE GENERAL SESSION OF THE 45TH LEGISLATURE AND REPLACES IT WITH THIS RESOLUTION.

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 Article 1, Sec. 6, of the Utah Constitution, to read:

Sec. 6. The individual right of the people [have the right] to keep and bear arms for [their] security and defense [; but

the Legislature may regulate the exercise of this right by law] of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms.

Section 2. Enrolled Copy S.J.R. No. 2 passed by the General Session of the 45th Legislature of the state of Utah is repealed and withdrawn in its entirety from the next general election.

Section 3. The lieutenant governor is directed to submit in lieu thereof this proposed amendment to the electors of the state of Utah at the next general election in the manner provided by law.

Section 4. If approved by the electors of the state the amendment proposed by this joint resolution shall take effect January 1, 1985.



For



Against



# Initiative A

## CABLE T.V. DECENCY ACT

### Official Ballot Title:

Should a law be adopted in the criminal code dealing with cable television programming, which defines indecent material and makes the distribution of indecent or obscene material over cable television a class A misdemeanor for individuals or a moral public nuisance for a cable television distribution company.

## IMPARTIAL ANALYSIS

### Proposal

The proposal amends state law to provide criminal and civil penalties for knowingly distributing obscene or indecent material over cable television.

### Current Law

The federal government through the Federal Communications Commission (F.C.C.) has the authority to generally regulate television broadcasting. This includes providing standards which prohibit indecent material being broadcast. The current state criminal laws make it illegal to distribute obscene material. This would include programming over cable television. In addition, the legislature in 1983 enacted the "Cable Television Programming Decency Act". The 1983 act provides that distributing indecent material as a continuing course of conduct over cable television is a public nuisance. The 1983 legislation provides a civil penalty of up to \$1,000 for a first offense and up to \$10,000 for a second offense. This act is currently before the Federal District Court in Utah to determine the constitutionality of the law.

### Proposed Amendment

The proposal is additional legislation to regulate the content of cable television programs. The proposal is essentially a duplication of existing state law in making the distribution of obscene material a criminal act. The proposal also provides an

additional civil penalty (loss of business license) for distribution of obscene material that does not exist under current law.

In addition to prohibiting obscene material the proposal also makes the distribution of indecent material illegal. The proposal is like the 1983 "Cable Television Programming Decency Act" with a few key differences. The primary difference is that the 1983 act provides only a civil penalty for continuing violations (public nuisance); the proposal provides criminal and civil penalties for any violation.

### Legal Sufficiency

The First Amendment to the U.S. Constitution protects generally the rights of free speech. This right, however, is not an absolute right. For example, the U.S. Supreme Court in interpreting the First Amendment has held that material deemed to be obscene may be prohibited. (*Miller v. California*, 413 U.S. 15 (1973)).

In addition to the *Miller* standards for obscenity, the supreme court has also recognized the authority of the F.C.C. to regulate the broadcasting over radio of "indecent material" which is not obscene. *F.C.C. v. Pacifica Foundation*, 438 U.S. 726 (1978).

The Cable T.V. Decency Act (Initiative A) seeks to expand the concept of regulation of nonobscene but indecent material over cable television.

The proposed legislation raises fundamental First Amendment questions over the scope of the state's authority to regulate speech. All such regulatory efforts will be reviewed by the courts with extreme caution and examined very carefully. This particular legislation is even more restrictive than existing legislation dealing with cable television programming. As such, its approval is less likely for it than for the existing law.

In addition to the First Amendment issues, a recent U.S. Supreme Court decision has raised additional questions about

whether cable television programming is under the control of the F.C.C., thus preempting state regulation. (*Capital Cities Cable v. Oklahoma Alcoholic Beverage Control Board*, 52 U.S.L.W. 4803 (1984)).

All of the constitutional and other legal issues raised by this initiative will ultimately be resolved through court determinations.

#### **Fiscal Effect**

The proposal will not have any significant fiscal impact.

## Arguments for

This ballot proposal would require of Cable television the same standard of broadcast decency that is required of network television. The effect of this measure would be to require Cable broadcasters to disseminate over Cable television material that is of the same standard of decency as that which is broadcast by the major networks, which are regulated by the Federal Communications Commission. There would be no more stringent requirement made of the Cable broadcaster under this statute than the Federal Communications Commission now requires of the network broadcasters.

This statute is being submitted to the people of the State because it is well documented that Cable programs in the State of Utah have carried increasingly indecent and obscene material. In these programs have been depictions of deviant sexual acts which have been presented in graphic detail. It is beyond denial that the Cable systems have repeatedly broadcast material which would never have been shown over network television.

The spokesmen for the Cable industry will attempt to distort the issue by asserting that "there are already laws against the broadcast of pornographic material in Utah." The seeming truth of that statement is totally beside the point since, in fact, the burden of proof for present laws which were drafted for the prohibition of printed pornography make it almost impossible for any prosecutor to effectively utilize existing law against a Cable broadcaster.

The State Legislature has enacted a Cable Broadcast statute which is presently before the federal courts as to its constitutionality. A final decision on that statute has yet to be issued. The people of the State can further protect themselves against the dissemination of indecent material over Cable Television by the enactment of this ballot proposition. The effect of this proposition will be to provide State and local law enforcement officials with an additional weapon that contains not only criminal but civil sanctions for the violation of the statute.

Legitimate constitutional issues such as those in the First Amendment are not jeopardized by this statute. The statute clearly provides that the exhibition of the proscribed material must be done in a manner to intentionally appeal to a morbid interest in sex or excretion. That type of programming which may reveal the human body in nudity but which is clearly for educational, scientific or literary purposes would not be proscribed by this statute.

The requirement for a jury to conclude that the broadcaster intended to disseminate material which was a violation of the statute more than protects any individual against a possible infringement upon their constitutional rights.

The author of the Ballot Proposition has had twenty years of experience in legal confrontation with the pornography industry. It is his opinion as a lawyer licensed to practice in the State of California, before the Federal Courts, and the Supreme Court of the United States, that the proposition is constitutionally valid and one which will protect the people from the unnecessary and undesired exhibition of indecent material over Cable television.

Mr. John Harmer  
Chairman, Citizen's  
Commission for Yes on Initiative A  
2953 South 300 West, Salt Lake City, Utah 84115

## Rebuttal to Arguments against Initiative A

The proposed cable "decency" law now on the ballot was originally presented to the Utah Legislature in 1988. After careful review by the Attorney General, legal advisers, and legislative leaders, this law was overwhelmingly **rejected**. Even the most ardent supporters of cable programming restrictions have recognized the obvious legal defects of this law. The Legislature rewrote the law and did pass a substitute law, Senate Bill 309. The substitute law is now under review by the federal court.

Passage of this referendum will inevitably result in yet another legal challenge. Even the Attorney General, who must defend this law if passed, has expressed publicly his view that the law is seriously flawed, and has recognized the likely outcome of such a legal challenge.

The whole issue of regulating cable TV programming is presently being litigated. Serious questions have been raised as to whether federal law has preempted any state regulation of cable programming. Additionally, numerous First Amendment questions have been raised and have yet to be answered by the U.S. Supreme Court. Answers to these questions will be provided as the present case, **Community Television v. Wilkinson**, winds its way through the judicial process. To pass another state cable law before some of the questions already raised by prior laws are answered is premature and unproductive.

Regardless of one's personal opinions of cable programming laws generally, the wisdom of rejecting this particular referendum should be apparent.

Mark E. Carter, President  
Utah Cable Television Operators Association  
P.O. Box 6045, Salt Lake City, Utah 84106

James K. Bunnell  
Director of Public Affairs  
Utah Cable Television  
Operators Association  
P.O. Box 6045, Salt Lake City, Utah 84106

## Arguments Against

Freedom of choice is what Cable TV is all about. Cable TV offers an array of programs, including sports, news, and for those who want to invite it into their homes, movies. It is the optional movie channels which this law seeks to, in effect, censor. Instead of trusting Utah residents to pick and choose what they want to watch, this proposed cable law seeks to make that choice for us.

Obviously, not all movies are for everyone, and some are clearly inappropriate for children. The same is true for programs on regular TV. The solution is parental control and supervision, not a state mandated law which permits programming that is only fit for children. To aid parents in controlling access by minors to inappropriate material, the cable industry offers numerous means of controlling Cable TV fare.

First, every parent has the option of not subscribing to the movie channels even if the other cable channels are desired.

Second, the cable companies provide program guides which clearly warn parents in advance of those programs which are adult oriented.

Third, the cable companies provide "lock-out" boxes which allow parents to turn off channels when they are not home to supervise their children.

Every subscriber invites cable into his or her home on terms which the subscriber dictates, and it is the subscriber who has the obligation and right to control cable, not the State of Utah.

This referendum is the fifth attempt in recent years by various municipalities and the state legislature to impose a law censoring what they term "indecent material". The most recent attempt, passed in 1983, is presently winding its way through the courts. Similar laws have been held unconstitutional. It seems exceedingly foolish to once again adopt a law which faces the exact legal problems faced by the earlier law. The cost of defending such laws are enormous. Even those who support such laws must recognize that the wiser course is to wait and see how the courts treat an almost identical law before passing a new one.

As each voter evaluates the cable issue, it is critical that a distinction is made between pornographic and obscene material and so-called "indecent" material. The cable operators of this state have consistently supported laws which ban obscene and pornographic material. Utah already has such a law. This referendum, however, attempts to restrict material which is not obscene, but which may be offensive to some. Virtually all movies which contain scenes involving nudity, such as *Kramer v. Kramer*, fall within the ban imposed by this new law.

In summary, this new cable law is unwarranted intrusion by the State into the home. The solution to

unwanted programming is to either not subscribe or to utilize one of many means to restrict access to minors. In any event, Utah can ill afford yet another expensive legal battle, especially since an almost identical law has already been passed and is presently under review by the Federal Court.

Mr. Mark E. Carter  
President, Utah Cable  
Television Operators Association  
P.O. Box 6045  
Salt Lake City, Utah 84106

Mr. James K. Bunnell  
Utah Cable Television  
Operators Association  
P.O. Box 6045  
Salt Lake City, Utah 84106

## Rebuttal to Arguments in favor of Initiative A

The Statute requires of Cable television that it adhere to the same standard of decency as network broadcast television. The opponents would have you believe that "*Kramer v. Kramer*" could not be shown on Cable Television if this statute is passed. That argument is untrue. "*Kramer v. Kramer*" has been shown many times on regular network television simply by omitting one 45-second frontal nudity scene. This statute would require the same of Cable.

Nothing of any redeeming value would be omitted from Cable broadcasts by the requirements of the statute.

Not all parents monitor what is being viewed by their children or in the homes of their children's friends. Program guides are irrelevant, and so-called "lock-out boxes" are easily by-passed.

The evidentiary requirements for present Utah statutes against pornography make it totally impossible to effectively utilize them against Cable obscenity.

The Cable industry asks for "freedom of choice." It is freedom of choice of *all* the people that is the issue. Those people who choose *not* to have in their home vile, degenerate material. Those people who choose *not* to have their children exposed to this type of material — in their own home or a neighbors. Those people who choose to have a community in which decency and dignity are preserved.

This statute will not deprive anyone of freedom of choice to have filth. It will simply protect those who wish to choose a decent society and a decent community free from the intrusion of degenerate material.

Mr. John L. Harmer  
Chairman, Citizen's Commission for  
Yes on Initiative A  
2953 South 300 West  
Salt Lake City, Utah 84115

## COMPLETE TEXT OF INITIATIVE A CABLE T.V. DECENCY ACT

AN ACT RELATING TO THE CRIMINAL CODE; PROHIBITING THE DISTRIBUTION OF OBSCENE AND INDECENT MATERIAL OVER CABLE TELEVISION; DEFINING INDECENT MATERIAL AND OTHER TERMS; AND PROVIDING PENALTIES.

THIS ACT ENACTS SECTION 76-10-1230, UTAH CODE ANNOTATED 1953.

Be it enacted by the Legislature of the State of Utah upon Initiative Petition Filed with the Lieutenant Governor:

Whereas it is the right and duty of the citizens of the state of Utah to protect the moral standards of their communities, to enable the citizens of this state to be free from indecent and obscene material; and,

Whereas the Supreme Court of the United States in the case of Federal Communications Commission versus Pacifica Foundation held that the transmission of indecent material must of necessity yield to a higher standard of accountability than is required of a publisher of matters which are printed; and,

Whereas in the state of Utah cable franchisees have transmitted matter of an indecent, obscene, and highly offensive nature, and which if allowed to continue would result in very harmful exposure of our citizens and of our youth to indecent and morally destructive materials;

Now, therefore, be it enacted by the legislature of the State of Utah, at its general session for 1983, as follows:

SECTION 1. Section 76-10-1230, Utah Code Annotated 1953, is enacted to read:

76-10-1230

(A) It is unlawful for any person to knowingly distribute within this state any obscene or indecent material by means of cable television.

(B) It is unlawful for any person to knowingly distribute within this state any obscene or indecent material by means of cable television or enhanced cable television services.

(C) It is unlawful for any person to knowingly distribute or broadcast within this state any obscene or indecent material by means of cable television or enhanced cable television services or any other broadcast or transmitting capacity which is not subject to regulation by the Federal Communications Commission insofar as the decency content of the broadcast material is concerned.

(D) It is the intent of this statute to regulate the decency content of material broadcast and/or transmitted for reception in the state of Utah where there is no valid federal statute or regulation governing the decency content of such material or where the Federal Communications Commission has specifically declined to exercise jurisdiction over the same.

(E) The provisions of subsection (A), (B), and (C) are not intended to interfere with or preempt the power of any political subdivision of this state over franchises or the authority of a local political subdivision to regulate obscenity or indecency in a manner which is not inconsistent with subsections (A), (B), and (C).

(F) Nothing in this section shall apply to the distribution of material as defined in subsection (A), (B), or (C), if regulation of such material, insofar as decency content is concerned, is preempted by either valid federal laws or valid federal regulations.

(G) "Material" means any visual display shown on a cable or other television system, whether or not accompanied by sound, or any sound recording played on a cable or other television system.

(H) "Distribute" means to send, transmit, retransmit, telecast, broadcast, or cable cast by any means, including by wire or satellite, or to produce or provide material to send, transmit, retransmit, telecast, broadcast, or cable cast.

(I) "Knowingly" means having general knowledge or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of the nature and character of the material involved. A person has such knowledge when he or she knows or is aware of the nature and character of the material, whether or not such person has precise knowledge of the specific contents thereof. Such knowledge may be proven by direct or circumstantial evidence, or both.

(J) As used in this section "Indecent material" means a depiction, representation, or verbal description of:

- (1) A human sexual or excretory organ or function; or
- (2) A state of undress so as to expose the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or the showing the prurient appeal purposes of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or
- (3) An ultimate sexual act, normal or perverted, actual or simulated; or
- (4) Masturbation; and
- (5) Flagellation, torture, or other violence indicating a sadomasochistic sexual relationship;

which the average person applying contemporary community standards for the television medium would find is presented in a patently offensive way.

(K) "Community" shall mean the geographic area within the state of Utah which received the distribution, and in the case of a cable or enhanced cable services television distribution, the area served by the cable franchise.

(L) "Enhanced cable television services" means television services which do not originate with broadcast sources which



are regulated by the federal government insofar as program content is concerned.

#### SECTION 2.

(A) Any person who violates the provision of Section 1 hereof is guilty of a Class A misdemeanor.

(B) Any television distribution company which is twice convicted of violating the provision of Section 1 hereof shall be deemed to constitute a moral public nuisance and may upon recommendation of the state Attorney General to the Lieutenant Governor be suspended from doing business within the state of Utah for a period of one year.

#### SECTION 3. SEVERABILITY CLAUSE

If any word, clause, sentence, paragraph, or part of this statute or its application to any person or circumstance shall for any reason be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder of this statute or its application to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, persons, or circumstances, or part thereof, directly involved in the controversy in which the judgment shall have been rendered.

# Instructions to Voters

## FOR PREPARING BALLOTS

### HOW TO OBTAIN BALLOT FOR VOTING

1. Give your name and address to an Election Judge.
2. If your name is on the Official Register, and your right to vote has not been challenged, the Election Judge will present a ballot or ballots to you.

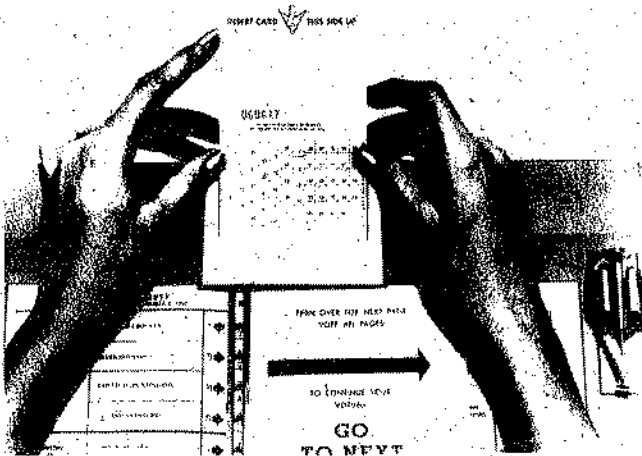
**NOTE:** If an Election Judge has reason to doubt any person's identity, the Judge shall either, (a) request identification from the voter, or (b) have the voter identified by a known registered voter of the district.

### HOW TO VOTE BALLOT

On receiving your ballot from the Election Judge, immediately retire alone to one of the voting booths and vote your ballot as follows:

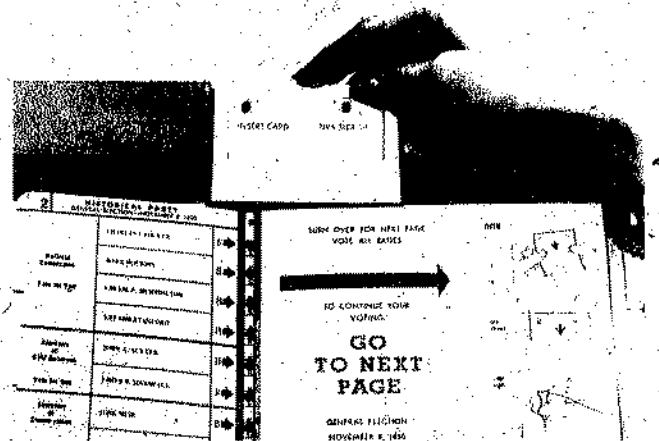
#### STEP 1

Using both hands, slide the ballot card all the way into the Vote Recorder.



#### STEP 2

Be sure the two holes at the top of the card fit over the two red pins on the Vote Recorder.



#### STEP 3

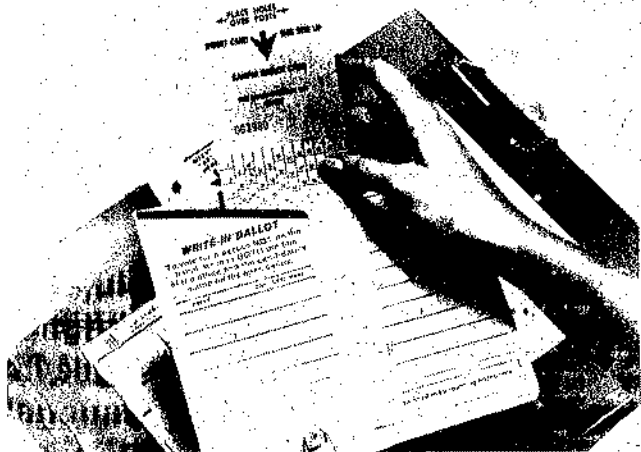
To vote, hold the Punch straight up and push down through the card for each of your choices. Vote all pages as instructed. Use the punch provided. Do not use pen or pencil.



#### STEP 4

After voting, slide the card out of the Vote Recorder and place it under the flap in the write-in envelope.

**NOTE:** *DO NOT* vote a spoiled or defaced ballot. Identification marks or a spoiled or defaced ballot will render it invalid. In the event you make a mistake, or you have a spoiled or defaced ballot, return such ballot to the Judge who will cancel it and issue a new ballot to you.



#### STEP 5

After you have voted the ballot and placed it under the flap of the write-in ballot envelope, **RETURN IT TO THE ELECTION JUDGE.** Give your name and the Judge will remove the stub. Deposit the write-in ballot envelope (containing the ballot card) in the ballot box. You have now completed the voting procedure.

#### WRITE-IN VOTING

For the November election, you may vote for a valid write-in candidate. This is done by either writing the office title and the name of the candidate on the write-in ballot envelope or by placing a sticker on the write-in envelope that has the office and

candidate's name printed on it. When voting a write-in candidate do not punch a hole in the punch card ballot for the respective position.

#### VOTING FOR CANDIDATES ON ONE TICKET

If you wish to cast a "straight party" vote for all the candidates of one party, punch the position indicated next to the desired party. If you have voted "straight party" you have voted for each candidate of that party.

#### VOTING FOR CANDIDATES ON TWO OR MORE TICKETS

If you desire to vote for candidates on two or more tickets, you may accomplish this by simply punching the ballot next to the desired candidate's name as indicated on the ballot. If you have voted straight party and change your mind and desire to vote for a candidate of another party, it is permissible to do that by simply punching the ballot next to the desired candidate's name.

#### VOTING INITIATIVE AND REFERENDUM QUESTIONS

Voters may also vote on initiatives, referendums, or constitutional amendments submitted to the vote of the people. To do so punch a hole in the ballot where the desired response is indicated.

#### VOTING NON-PARTISAN CANDIDATES

Judicial, state school, local school, etc. are non-partisan contests and are located on the last pages of your ballot. The vote recorder copy contains instructions as to how many persons can be selected for that particular office.

#### HOW TO OBTAIN ASSISTANCE IN MARKING BALLOT

Any voter who declares under oath to the Judges of Election that he cannot read or write the English language, or that he is physically unable to prepare his ballot without assistance, or that he is physically unable to enter the polling place, being at the entrance thereto, shall upon his request receive the assistance of any two Election Judges who are of different political parties.

Any voter who does not understand the English language is entitled to have two interpreters each from a different political party to assist him.

Any voter who is blind or has defective vision so that he cannot read his ballot or mark it correctly, may select any qualified elector to assist him.

# Instructions to Voters

## FOR PREPARING BALLOTS

### HOW TO OBTAIN BALLOT FOR VOTING

1. Give your name and address to an Election Judge.
2. If your name is on the Official Register, and your right to vote has not been challenged, the Election Judge will present a ballot or ballots to you.

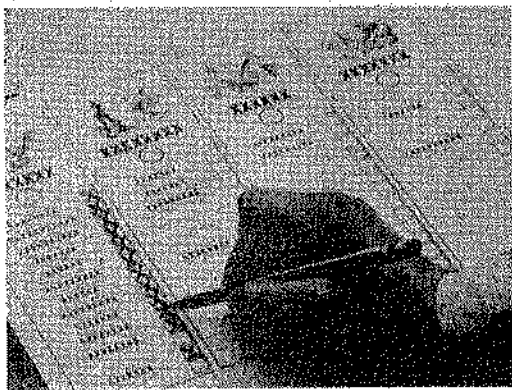
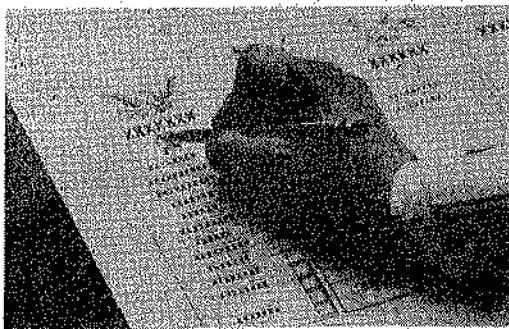
**NOTE:** If an Election Judge has reason to doubt any person's identity, the Judge shall either; (a) request identification from the voter, or (b) have the voter identified by a known registered voter of the district.

### HOW TO VOTE BALLOT

On receiving your ballot from the Election Judge, immediately retire alone to one of the voting booths and prepare your ballot by marking a cross (X) as hereinafter provided:

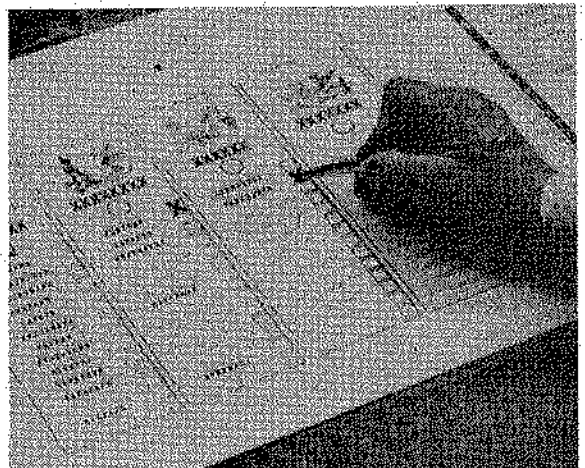
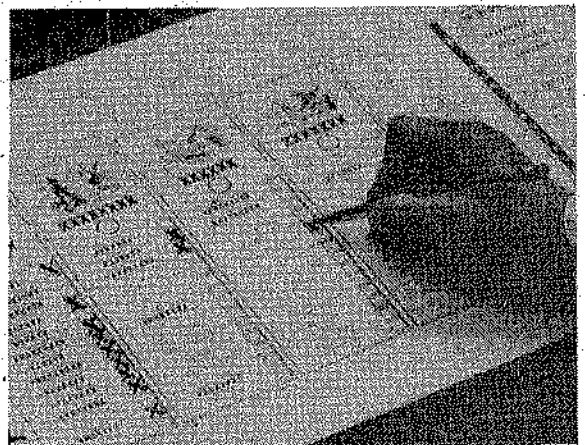
### VOTING FOR CANDIDATES ON ONE TICKET

If you desire to vote for all the candidates upon any ticket you may mark in the circle above that ticket, or in the squares opposite the names of all candidates thereon, or may make both such markings as shown below.

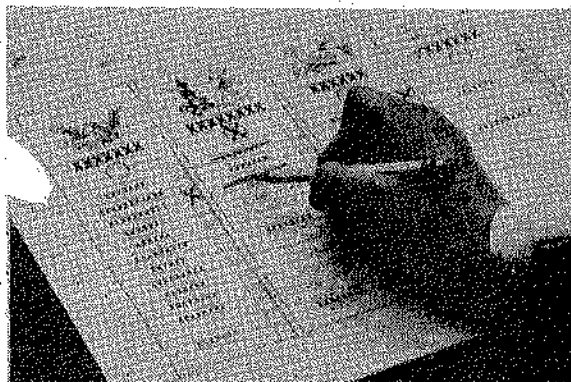


### VOTING FOR CANDIDATES ON TWO OR MORE TICKETS

To vote for candidates on two or more tickets you may mark in the squares opposite the names of the candidates for whom you wish to vote without marking in any circle; or you may indicate your choice by marking in the circle above one ticket and marking in the squares opposite the names of the candidates of your choice upon other tickets.

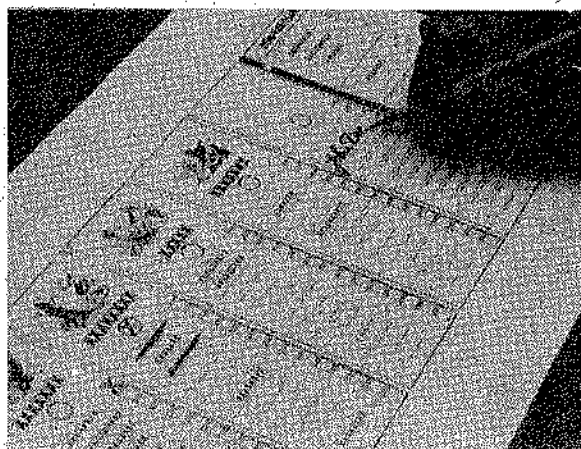


If a cross is marked in a circle above a ticket, the voter MAY or may not draw a line or lines through the name or names of any candidate on the ticket for whom he does not wish to vote. However, in municipal elections and any other election when an office is listed that requires more than one person to be elected the voter SHALL draw a line through the names of the persons of that ticket for whom he does not wish to vote.



#### WRITE IN VOTING

You may also vote for a valid write-in candidate. This is done by either writing the name of the candidate on the ballot or by applying a sticker to the ballot that has the candidate's name and office printed on it. Partisan write-in candidates are to be listed in the respective office space of the blank write-in ticket. Non-partisan write-in candidates are to be listed in the blank space for the respective non-partisan office. You shall be deemed to have voted for that person, whether you make or fail to make a cross mark opposite such write-in name.



#### VOTING NON-PARTISAN CANDIDATES

Judicial, state school, local school, etc. are non-partisan contests and are located in the extreme-right column on the ballot. Just above the voting squares are instructions as to how many persons can be voted for that particular office.

Clerk	
NON-PARTISAN	<p><b>NON-PARTISAN</b></p> <p><b>JUDICIAL DISTRICT COURT - THIRD DISTRICT</b></p> <p>Six Year Term</p> <p>UNCONTESTED Vote on each of the following</p> <p>Shall <del>BE RETAINED</del> Yes <input type="checkbox"/></p> <p>be retained in the office of District Judge of the District Court of the Third Judicial District? No <input type="checkbox"/></p> <p>Shall <del>BE RETAINED</del> Yes <input type="checkbox"/></p> <p>be retained in the office of District Judge of the District Court of the Third Judicial District? No <input type="checkbox"/></p> <p>Shall <del>BE RETAINED</del> Yes <input type="checkbox"/></p> <p>be retained in the office of District Judge of the District Court of the Third Judicial District? No <input type="checkbox"/></p> <p><b>DISTRICT NO. 6, FOUR YEAR TERM</b> Vote For One</p> <p><del>BE RETAINED</del> <input type="checkbox"/></p> <p><del>BE RETAINED</del> <input type="checkbox"/></p> <p><del>BE RETAINED</del> <input type="checkbox"/></p> <p><b>SOUTH SUMMIT SCHOOL DISTRICT</b> Representative Precinct No. 4 Vote For One</p> <p><del>BE RETAINED</del> <input type="checkbox"/></p> <p><del>BE RETAINED</del> <input type="checkbox"/></p> <p><del>BE RETAINED</del> <input type="checkbox"/></p>

### **VOTING INITIATIVE AND REFERENDUM QUESTIONS**

In case of a question submitted to the vote of the people, you shall mark a cross against the answer you desire to give.

Fold your ballot in the same manner as when you received it, and hand it (speaking your name) to the Judge, who shall remove the stub and return the ballot to you. Deposit the ballot in the ballot box yourself, with the printed endorsement thereon uppermost, in full view of the Judges.

### **HOW TO OBTAIN A NEW BALLOT**

If you spoil or deface your ballot, return such spoiled ballot to the Judge who will cancel it and issue you a new ballot.

**NOTE:** *DO NOT* vote a spoiled or defaced ballot. Identification marks on a spoiled or defaced ballot will render it invalid.

### **HOW TO OBTAIN ASSISTANCE IN MARKING BALLOT**

Any voter who declares under oath to the Judges of Election that he cannot read or write the English language, or that he is physically unable to prepare his ballot without assistance, or that he is physically unable to enter the polling place, being at the entrance thereto, shall upon his request receive the assistance of any two Election Judges who are of different political parties.

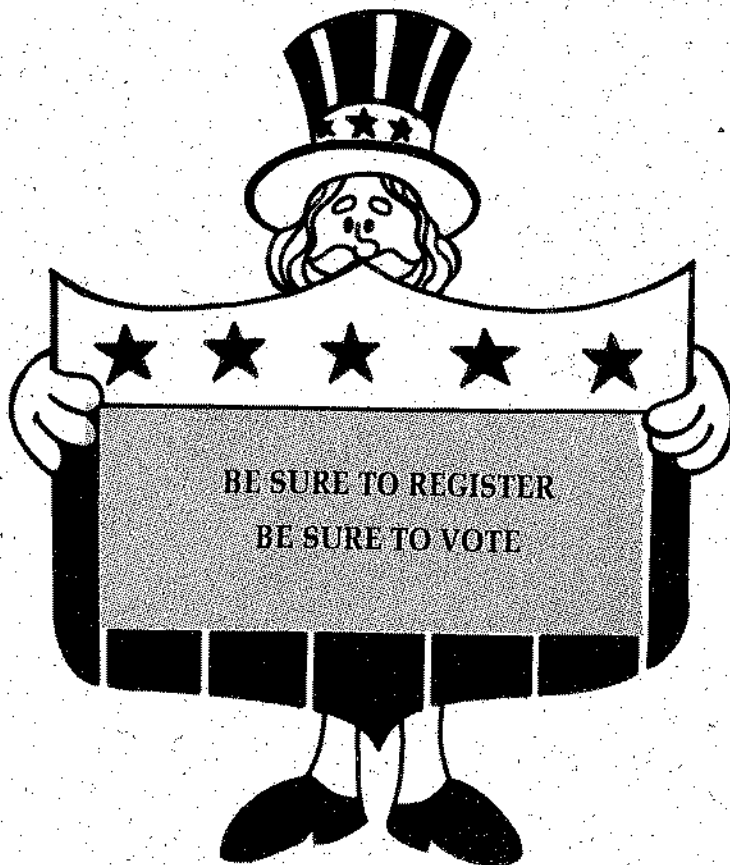
Any voter who does not understand the English language is entitled to have two interpreters each from a different political party to assist him.

Any voter who is blind or has defective vision so that he cannot read his ballot or mark it correctly, may select any qualified elector to assist him.

## HOW TO REGISTER TO VOTE

If you will be 18 or over and will have been a resident of the State of Utah for 30 days preceding the election in November, you may register to vote and you are urged to do so by one of the following methods:

1. You may register with the registration agent of your election district between 8:00 a.m. and 9:00 p.m. on October 30th, 31st, and Nov. 1
2. You may register at the County Clerks office of your County during regular working hours, up to twenty days preceding the November election day.
3. You may register by mail at any time prior to 20 days before the November election day by mailing in the Utah Election Registration form. These forms may be obtained at any bank, post office or library. You will then be notified by the County Clerk of your registration.





I, David S. Monson, Lieutenant Governor of the State of Utah, do hereby certify that the foregoing measures will be submitted to the voters of the State of Utah at the election to be held throughout the State on November 6, 1984, and the foregoing pamphlet is complete and correct according to law.



Witness my hand and the  
Great Seal of the State of  
Utah, at Salt Lake City, Utah  
this 27th day of September, 1984.

David S. Monson  
Lieutenant Governor