Case No. 20180108-SC

IN THE

UTAH SUPREME COURT

SCOTT PATTERSON,
Petitioner/Appellant,

v.

STATE OF UTAH,
Respondent/Appellee.

Supplemental Brief of Appellee

On appeal from an order granting summary judgment for the State and denying Appellant's postconviction petition in the Second District Court, the Honorable Thomas L. Kay presiding

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INTRODUCTION

The PCRA provides grounds for relief and remedies far beyond anything contemplated by the core writ of habeas corpus enshrined in the Utah Constitution. And though that core constitutional writ was always subject to reasonable regulation from 1896 forward, the PCRA mostly includes grounds for relief and remedies over which the legislature has plenary power, and to the extent it overlaps with the narrow relief authorized by the original 1896 writ, it does so reasonably. This Court should therefore hold that the PCRA occupies the field of post-conviction review in Utah and renounce *Winward's* suggestion of a non-statutory exception. Short of that, this Court should hold that the only "egregious injustice" that is actionable in the post-conviction sphere is one where the petitioner files a petition for writ of habeas corpus and can show that, through no

fault of their own and due to circumstances external to the petitioner, they have a meritorious claim they could never have brought under the PCRA and that would have been actionable under the core constitutional writ in 1896.

There is more to habeas corpus than post-conviction relief. Indeed, post-conviction relief was not part of the original writ of habeas corpus at all, not in 1679 in England, not in 1789 after the Revolutionary War, and not in 1896 in Utah. Post-conviction, post-appeal review in the guise of habeas corpus was a Twentieth Century invention, always subject to legislative regulation. Though it is now the sole remedy for post-conviction review in Utah, the PCRA sits firmly and logically within an elegant habeas structure covering challenges to convictions obtained without proper jurisdiction—the core habeas right enshrined in Utah's constitution—as well as a broad range of claims and remedies that would have been inconceivable to Utah's framers or any lawyers or judges who preceded them, such as claims of factual innocence, claims for DNA exoneration, or even claims based on new evidence[1] discovered well after the original conviction.

The core sphere of habeas corpus rights enshrined in the 1896 Utah

[1] Errors of fact were traditionally corrected through the writ of error coram nobis, not habeas corpus. *See, e.g., U.S. v. Morgan*, 346 U.S. 502 (1954) (explaining the ancient writ of error coram nobis, used to correct errors of fact). But the PCRA also encompasses this remedy.

Constitution is inviolate. But it was not the Article VIII reference to this Court's power to "issue" the writ that did the work of protecting or defining that core right. Rather, it was—and still is—the Suspension Clause that limits the legislature's power to suspend the core writ. And though Article VIII was amended in 1984 to modernize its writ language, the Suspension Clause has remained unchanged since Utah's founding.

The scope, purpose, and meaning of the Suspension Clause was well-understood by Utah's framers. The civil war-era suspension of the federal writ of habeas corpus and post-Civil War Congressional legislation of the writ were within the memory of many of the framers and the people who ratified the constitution. They were issues of intense national debate during their lifetimes. By 1896, the meaning of the federal suspension clause was well understood by Utah's framers and they chose a nearly identical suspension clause for Utah's constitution. Early caselaw in Utah accords with this understanding and the cases Patterson relies on for a contrary view cannot support the weight he places on them. And even the core constitutional habeas right was always subject to reasonable legislative regulation short of a suspension.

When this Court expanded the writ beyond that original core meaning, it developed a common law that was always subject to plenary regulation by the

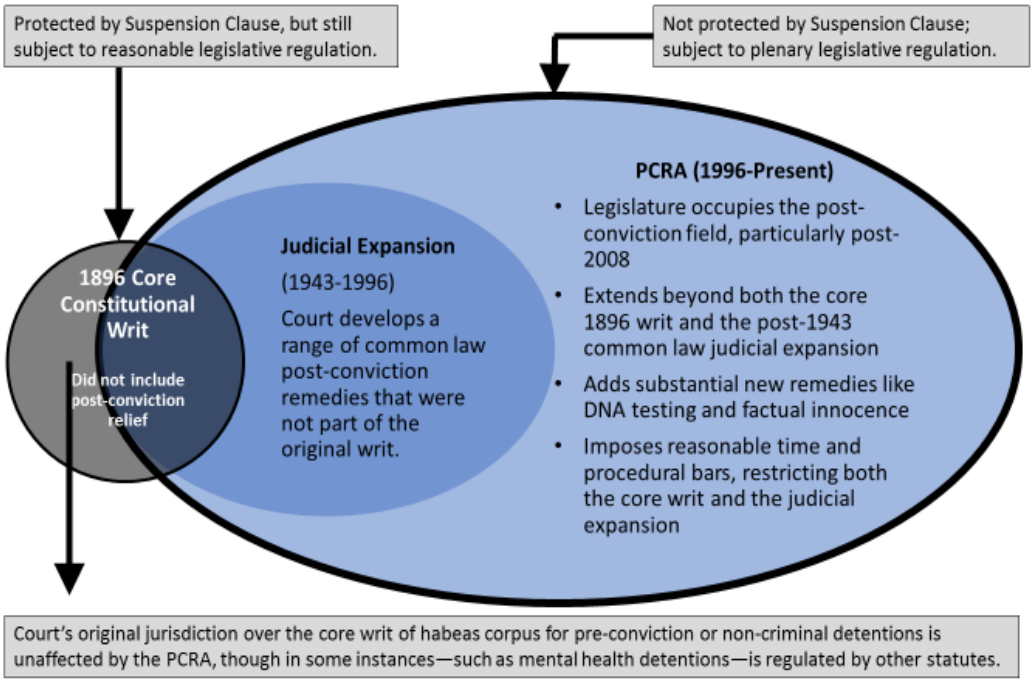
legislature. The further from the constitutional core the Court got, the weaker its constitutional mandate. Utah's habeas expansion began in earnest in 1943, peaking in *Hurst* in 1989. By then there was a long list of common law developments, all of which were subject to potential regulation by the legislature.

The 1996 PCRA was the legislature's first attempt to regulate what it viewed as an unruly and unrestrained expansion of habeas corpus to post-conviction review. Further amendment in 2008 made clear the legislature's intent that the PCRA be the "sole remedy" for post-conviction cases. This Court has recognized the validity of that legislation both by rule and caselaw.

But there remain numerous areas unrelated to post-conviction where habeas corpus operates, some of which are regulated by statute and others of which proceed under the core constitutional writ. For example, mental health detentions can be challenged via habeas corpus pursuant to statute. *See* Utah Code Ann. § 62A-15-642 and 709. Similarly, interstate extradition can also be challenged via habeas writ, which is regulated by statute. *See* § 77-30-10. Writs of habeas corpus may be brought by juveniles detained by DCFS who have not been charged with any crime (or by their parent or guardian). Writs of habeas corpus may also be used to challenge custody of incapacitated adults or children in care facilities.

Thus, a range of habeas corpus actions emanate unchanged from the

original core habeas writ enshrined in the 1896 Constitution. Some of those remain unregulated, some only mildly regulated, and, some are more heavily regulated by the PCRA—a modern statutory scheme that both protects the original use of the writ and greatly expands it.



This framework provides due process to any habeas petitioner in any circumstance who actively pursues his rights. It accounts not only for the PCRA and its constitutionality, but also for any other type of case imaginable. Therefore, this Court should repudiate *Winward's* suggestion that a non-statutory egregious injustice "exception" may be applied to the PCRA. It is inefficient, constitutionally unauthorized, and serves no meaningful purpose.

ARGUMENT

I. In 1896, the people of Utah would have understood the scope of the judiciary's habeas corpus authority as narrow and subject to reasonable regulation by the legislature.

The Great Writ requires government detention to be authorized by law. In England, a person held unlawfully could apply for a writ to challenge their detention and the court was required to "certify the true causes of his detainer or imprisonment." Habeas Corpus Act of 1679. Indeed, "'confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore *a more dangerous engine* of arbitrary government.'" The Federalist No. 84 (Alexander Hamilton) at 512, (quoting 1 William Blackstone, Commentaries on the Laws of England 136 (1765)). Fundamentally, the writ protected citizens from detention without proper legal process. The framers of the United States Constitution approved the continued use of habeas petitions by explicitly restraining the federal government's power to suspend them. *See* U.S. Const. art. I, § 9, cl. 2.

But the writ only required proof of a legal basis for the detention. It did not permit examination of errors in the underlying process leading to detention. As the United States Supreme Court long ago explained, a habeas petitioner could not

collaterally attack a conviction because "imprisonment under a judgment cannot be unlawful, unless that judgment be an absolute nullity; and it is not a nullity if the court has general jurisdiction of the subject, although it should be erroneous." *Ex parte Watkins*, 28 U.S. 193, 203 (1830). "The law trusts that court with the whole subject" of a criminal proceeding and the Supreme Court could not "usurp that power by the instrumentality of the writ of habeas corpus." *Id.* at 207. Regardless of errors in Watkins's trial, the judgment was from "a court of record whose jurisdiction is final," and "conclusive on all the world." *Id.* at 202–03.

Similarly, a conviction imposed where the court lacked authority to convict was void and redressable in habeas. *See Ex parte Lange*, 85 U.S. 163 (1873) (holding that a court's power to enter a conviction on a second charge for the same offense "was exhausted" and therefore "further exercise was prohibited…. because the power to render any further judgment did not exist").[2]

[2] *See also Ex parte Snow*, 120 U.S. 274, 285-86 (1887) (same). Petitioner relies heavily on *Snow* and other polygamy cases for the proposition that habeas review was very broad. But well-established caselaw from that time provided relief in continuing offense cases where a single offense was arbitrarily divided into numerous prosecutions. *See Id.* at 286 (collecting cases). The habeas remedy—release from confinement—was appropriate because the successive convictions were nullities, requiring that the petitioner be released as to those convictions.

As Chief Justice Waite explained in the 1880's:

> The writ of habeas corpus is the remedy which the law gives for the enforcement of the civil right of personal liberty. Resort to it sometimes becomes necessary, because of what is done to enforce laws for the punishment of crimes; but the judicial proceeding under it is not to inquire into the criminal act which is complained of, but into the right to liberty notwithstanding the act.

Ex parte Tom Tong, 108 U.S. 556, 559 (1883). Such was the case in Utah in 1896.

In 1896, the people of Utah would have understood the scope of habeas corpus review to be in line with the narrow view taken by the United States Supreme Court. Indeed, the kinds of post-trial, post-appeal claims often brought today under the PCRA would have been unimaginable to the people of 1896 under habeas petitions. At that time, the Supreme Court of the Territory of Utah had already held that, after a conviction, a habeas writ could only be employed to challenge subject matter jurisdiction or void convictions.

In 1873, this Court's predecessor enforced the same limitation that the United States Supreme Court did in *Ex parte Watkins*, explaining:

> [U]pon the hearing on a writ of habeas corpus, where the party asks a discharge from imprisonment on final process from a court of competent jurisdiction, and where the judgment is regular upon its face and entered in the ordinary course of justice, the party will not be discharged, but be compelled to seek a correction of the irregularities in the court where they are alleged to have occurred, and if he fail of redress in that way, to resort to his appeal.

Ex parte Douglas, 1 Utah 108, 109 (Utah Terr. 1873).

Thus, in the years immediately after 1896, this Court consistently applied the writ in accordance with that Nineteenth Century understanding. For example, in 1897, this Court held that a criminal conviction rendered at trial by a competent court was "presumed to be legal, and cannot be questioned upon habeas corpus for anything except a want of jurisdiction," even if that conviction may have been the product of error. *Ex parte Hays*, 47 P. 612, 614 (Utah 1897).

The only manner of challenging a post-conviction detention via habeas then was to establish that the court lacked jurisdiction or the judgment was void ab initio. But "when the imprisonment is under process valid on its face, it will be deemed prima facie legal, and, if the petitioner fails to show a want of jurisdiction in the magistrate or court whence it emanated, his body must be remanded to custody." *Id.* at 614. Just as its territorial predecessor held, this Court stated that "[o]n a habeas corpus the judgment of an inferior court cannot be disregarded. We can only look at the record to see whether a judgment exists, and have no power to say whether it is right or wrong." *Id.* (quoting *Ex parte Winston*, 9 Nev. 71, 75 (Nev. 1873)); *see also In re Clark*, 78 P. 475, 475 (Utah 1904) ("Habeas corpus cannot operate as an appeal or writ of error.").

This view persisted into the Twentieth Century. In 1908, this Court held:

> As a general rule, the courts hold that on habeas corpus, in the absence of a statute conferring the right, the courts cannot go into the evidence adduced before the magistrate, but must confine the inquiry to questions of jurisdiction, and, if it be found that the magistrate had jurisdiction of the subject-matter and the person of the defendant, that the complaint stated an offense and a hearing was had upon the charge and the mittimus under which the accused is held is regular, and that the magistrate acted within his jurisdiction, then the court may not discharge the prisoner.

Winnovich v. Emery, 93 P. 988, 993 (Utah 1908). To use a habeas writ "as if it were a writ of error, under which they might correct the errors and irregularities of other judges and courts, whatever their relative jurisdiction and dignity" constituted "an abuse." *Id.* (citation and internal quotation marks omitted).[3]

Thus, the contours of the writ of habeas corpus enshrined in the Utah Constitution mirrored the narrow scope of the writ passed down from England and into the United States Constitution. As discussed below, even that core constitutional writ was always subject to legislative regulation, so long as it was not suspended. But as this Court expanded the use of the writ beyond that core constitutional concept and developed a body of post-conviction common law

[3] The Utah Constitution also guaranteed the right to appeal in all criminal cases, which provided for error correction. Utah Const. Art. VIII, § 9 (1896).

review, those expanded common law uses were subject to plenary legislative oversight, just as any common law is.

II. This Court's Twentieth Century common law expansion of the writ of habeas corpus went far beyond the core constitutional writ and was always subject to plenary legislative power.

Many states held to narrow habeas review for a long time. Consequently, the federal bench saw "a tremendous increase in habeas corpus applications" in which petitioners raised federal constitutional claims. *Case v. Nebraska*, 381 U.S. 336, 338 (1965) (per curiam) (Clark, J., concurring). Justice Clark expressed his "hope that the various States will follow the lead of Illinois, Nebraska, Maryland, North Carolina, Maine, Oregon and Wyoming in providing [a] modern procedure for testing federal claims in the state courts." *Id.* at 340. That is exactly what was done in Utah when the PCRA was passed in 1996.

But first this Court engaged in piecemeal common law expansion of the writ to post-conviction, post-appeal cases. In 1943, two habeas petitioners asserted that evidence of prior criminal convictions used at trial "deprived them of a fair trial such as to constitute a lack of due process of law." *Thompson v. Harris*, 144 P.2d 761, 766 (Utah 1943). This Court opined that "the writ will lie if the petitioner has been deprived of one of his constitutional rights such as due process of law." *Id.*

To get there, *Thompson* relied solely on two U.S. Supreme Court cases that did not actually support such a sweeping shift. *See id.* (citing *Bowen v. Johnston*, 306 U.S. 19 (1939), and *Johnson v. Zerbst*, 304 U.S. 458 (1938)).[4]

Nevertheless, *Thompson* began this Court's broad common law expansion of habeas review. This Court later acknowledged that it had "expanded the role of the Writ" and explained that it did so "to protect against the denial of a constitutional right in a criminal conviction." *Hurst v. Cook*, 777 P.2d 1029, 1034

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[4] Those federal cases followed Congressional *statutory* expansion of the writ. In *Johnson*, the Court held that "Congress has expanded the rights of a petitioner for habeas corpus and the effect is to substitute for the bare legal review that seems to have been the limit of judicial authority under the common-law practice" for a "more searching investigation." *Johnson*, 304 U.S. 458, 466 (1938) (citation and internal quotation marks omitted); *see also Thompson v. Harris*, 152 P.2d 91, 97 (Utah 1944), *on petition for rehearing*, (Larson, J., dissenting) ("The tendency of the Federal statutes and of Federal decisions has been to extend rather than curtail the scope of the writ of habeas corpus."). The federal statutory expansion of federal habeas altered the otherwise "bare" jurisdictional habeas review, but there was no corresponding state statutory expansion. The *Bowen* court explained that despite the trial court's own determination of jurisdiction to try the defendant "the absence of jurisdiction may appear on the face of the record and the remedy of habeas corpus may be needed to release the prisoner from a punishment imposed by a court manifestly without jurisdiction to pass judgment." 306 U.S. at 26 (1939) (citations omitted). In other words, the habeas court examined the circumstances of the case to determine whether the trial court properly assumed jurisdiction. *Id.* at 26–27. If it improperly assumed jurisdiction, the conviction could be attacked in habeas.

(Utah 1989) (referring to *Thompson*, 144 P.2d 761). And it noted that in 1969 it adopted a rule of procedure "implementing" this post-conviction function "as a branch of habeas corpus." *Id.* This departure from the core constitutional writ was significant both because of the issues reached and the remedy it required.

In the midst of this common law development, Justice Crocket observed that "the use of such a writ for collateral attack upon a judgment runs crossgrain to the usual and established procedures of the law" and warned that the traditional relief available in habeas was inappropriate in a review for error. *Ward v. Turner*, 366 P.2d 72, 75 (Utah 1961) (Crocket, J., concurring).[5] A court entering a conviction when it is without jurisdiction renders that conviction void and the successful habeas petitioner is therefore entitled to immediate release from detention. But a conviction produced by a process containing error is merely voidable. A voidable

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[5] Discussing the blurred lines between common law habeas review and post-conviction error review, Justice Crocket explained the mismatch between the writ's expansion into error correction and its remedy:

> if a defendant convicted of a crime took his appeal within the time and in accordance with the requirements of the law, and showed substantial error, he would not be freed, but would be granted a new trial. But if a defendant permitted the time for appeal to go by and then brought [a habeas corpus proceeding], and substantial error were found, he would be set free.

Ward v. Turner, 366 P.2d 72, 75 (Utah 1961) (Crocket, J., concurring).

conviction set aside in an expanded habeas review subjects the petitioner to retrial and Justice Crocket cautioned against the traditional habeas relief of "complete release of the *defendant*." *Id.*; *see also Ex parte Watkins*, 28 U.S. 193, 203 (1830) ("We have no power to examine the proceedings on a writ of error, and it would be strange, if, under colour of a writ…we could substantially reverse a judgment which the law has placed beyond our control.").

With its expansion to any conceivable claim of "fundamental unfairness in the trial or a substantial and prejudicial denial of [their] constitutional rights," *Morishita v. Morris*, 621 P.2d 691, 693 (Utah 1980), and previously unheard of remedies such as vacating a conviction for retrial, this Court's common law post-conviction expansion of the writ created an entirely new species of claim, completely distinct from the core constitutional writ. Indeed, commenting on these developments nationally, Justice Blackmun noted that "we have come a long way from the traditional notions of the Great Writ" and speculated that "[t]he common-law scholars of the past hardly would recognize what the Court has developed, and they would, I suspect, conclude that it is not for the better." *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 501 (1973) (Blackmun, J., concurring) (citation omitted)).

III. The core writ of habeas corpus preserved in the Utah Constitution was always subject to regulation, so long as it was reasonable and did not amount to a suspension; the judicial expansion was always subject to plenary legislative oversight.

The Suspension Clause in the United States Constitution provides: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I, § 9. The Suspension Clause adopted by Utah's framers was nearly identical. Const. of Utah, art. I, § 5 (1896) ("The privilege of the writ of *habeas corpus* shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it."). And it remains unchanged.[6]

The suspension clauses in both constitutions give the respective legislatures power to regulate the core writ of habeas corpus so long as the regulation is not a

[6] In 1896, the people of Utah would have well-understood the import of the Suspension Clause and what reasonable regulation looked like because that issue had been national news during the living memory of many. During and after the Civil War, the writ of habeas corpus was suspended several times. The Habeas Corpus Suspension Act was signed into law on March 3, 1863 and President Lincoln suspended habeas corpus throughout the entire Union in any case involving prisoners of war, spies, traitors or military personnel. In 1871, Congress passed a Civil Rights Act which permitted the president to suspend habeas corpus if conspiracies against federal authority were so violent that they could not be checked by ordinary means. That same year, President Grant suspended the writ of habeas corpus in nine South Carolina counties. All of this was widely reported by Utah newspapers. *See generally*, Exhibit 1.

suspension. This understanding was so uncontroversial by 1896 that this Court noted in *Winnovich* that the Great Writ "has been and now is regulated by statute" since the Habeas Corpus Act of 1679.[7] *Winnovich*, 93 P. at 990; *accord Miskimins v. Shaver*, 58 P. 411, 413–14 (Wyo. 1899) ("Unquestionably the matter may be regulated by statute, provided the statutory regulations do not infringe upon the constitutional right to the writ."). It further explained, "[i]n modern times habeas corpus may…be considered as a statutory proceeding, although it had its origin in the common law." *Winnovich v. Emery*, 93 P. at 990. But despite those beginnings, "in the absence of a *statute conferring the right*, the courts cannot go into the evidence adduced before the magistrate, but must confine the inquiry to questions of jurisdiction." *Id.*at 993 (emphasis added).

When this Court began disregarding that limitation in the 1940's and expanded the writ into post-conviction review, it did so without any constitutional mandate and was merely developing a common law expansion of the writ. While not necessarily improper, that expanded common law writ was always subject to

[7] Indeed, the writ of habeas corpus was regulated by territorial statutes prior to statehood and was regulated by state statute immediately after the Utah Constitution was ratified. *See* Compiled Laws of the Territory of Utah (1876), Title XIX, Ch. 1; Compiled Laws of Utah (1888), Title IX, Ch. X, §§5282-5304; Rev. Code of Utah, Title 23 (1898).

plenary legislative power, as all common law is. *Gottling v. P.R. Inc.*, 2002 UT 95, ¶8, 61 P.3d 989. Since the core constitutional writ itself is subject to reasonable legislative regulation, *a fortiori* the common law non-constitutional writ is regulatable.

In adopting the PCRA, the Utah Legislature merely did what this Court recognized it could do in 1908—it created formal procedures and statutory causes of action that both encompassed and expanded on this Court's common law developments, and it imposed reasonable time and procedural bars on those causes of action.[8] Its power to do so was plenary.

Indeed, when the PCRA was amended in 2008 to become the "sole remedy" for post-conviction relief, it occupied the entire field of post-conviction review, including whatever elements of the core constitutional writ of habeas corpus might arguably have overlapped with modern post-conviction review. *See Gottling*, 2002 UT 95 at ¶8 (where "the plain language" of a statute "reveals an explicit legislative intention to preempt all common law remedies" it will

[8] Although this Court had also developed various procedural bars at common law. *See e.g., Andrews v.* Morris, 607 P.2d 816, 820 (Utah 1980) (issues not raised on direct appeal, that could have been raised, are barred).

"preempt existing or developing common law"). Although the PCRA cannot preempt the constitution, the PCRA applies only to post-conviction review, which lies almost entirely outside the core constitutional writ of habeas corpus.

And though Patterson attempts to characterize the *Snow* and *Nielson* cases from the 1880's as examples of broad post-conviction uses of the core constitutional habeas writ, *see* Supp.Br.Aplt. at 8-19, whether those cases go beyond the well-established narrow confines of habeas review from that time is largely irrelevant now. The simple fact is that both of those cases could have proceeded under the PCRA without question, which demonstrates that, whatever regulation the PCRA has over the core constitutional writ, that regulation is reasonable and therefore permissible. The PCRA plainly does not suspend the ability to bring any claim that could have been brought in 1896. This Court need not concern itself with defining precisely where the line between the two areas falls because it has already determined that the PCRA is a reasonable regulation.

The Court's Advisory Committee Notes to Rule 65C state that the rule amendments "embrace Utah's Post-Conviction Remedies Act as the law governing post-conviction relief." They continue that "[i]t is the committee's view that the added restrictions which the Act places on post-conviction petitions do not amount to a suspension of the writ of habeas corpus." Advisory committee

notes "merit great weight in any interpretation of [the] rules." *Burns v. Boyden*, 2006 UT 14, ¶16 n.6, 133 P.3d 370. And this Court has already resolved the basic constitutionality of the PCRA and recognized that it is now the "sole remedy" for post-conviction review. *See Pinder v. State*, 2015 UT 56, ¶56, 367 P.3d 968. Patterson provides no reason to discount the advisory committee notes or question the caselaw.

None of this is controversial. "Legislative regulation of the writ process…is neither an unconstitutional encroachment on the powers of the judiciary nor a suspension of the writ of habeas corpus in violation of the federal or state constitutions." *Jordan v. Housewright*, 696 P.2d 998, 999 (Nev. 1985); *see also Maryland House of Correction v. Fields*, , 703 A.2d 167 (Md. 1997); *Dromiack v. Warden, Nevada State Prison*, 630 P.2d 751 (Nev. 1981); *Ex parte Davis*, 947 S.W. 2d 216 (Tex. Crim. App. 1996). Many states have followed a similar path ending in post-conviction statutes such as Utah's PCRA and have held they are expansions of the writ of habeas corpus, rather than suspensions of it. *See, e.g., Dionne v. State*, 459 P.2d 1017 (Idaho 1969); *United States v. Hayman*, 342 U.S. 205 (1952); *Brooks v. Gladden*, 358 P.2d 1055 (Or. 1961). Post-conviction statutes do not violate the Suspension Clause where they provide a reasonable substitute for the writ of habeas corpus. *See e.g. Carson v. Hargett*, 689 So.2d 753 (Miss. 1996); *Kills on Top v.*

State, 901 P.2d 1368 (Mont. 1995); *Com v. Marcum*, 873 S.W.2d 207 (Ky. 1994); *Bartz v. State*, 839 P.2d 217 (Or. 1992); *White v. State*, 779 S.W.2d 571 (Mo. 1989), related ref, 838 S.W.2d 140 (Mo. Ct. App. W.D. 1992); *In re McCastle*, 514 N.E. 2d 1307 (Mass. 1987); *Campbell v. State*, 500 P.2d 303 (Okla. Crim. App. 1972).

IV. The 1984 constitutional amendment did not alter or modify the writ authority given to the courts in the 1896 constitution.

The 1984 constitutional amendment did not alter the substance of the courts' writ authority. It merely removed antiquated references to historical writs in favor of a more generic and modern "all extraordinary writs." *See* Utah Const. art. VIII, § 3.

The original Utah Constitution granted the Utah Supreme Court:

> original jurisdiction to issue writs of mandamus, certiorari, prohibition, quo warranto[,] and habeas corpus. Each of the justices shall have power to issue writs of habeas corpus, to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court, or before any district court or judge thereof in the State. In other cases the Supreme Court Shall have appellate jurisdiction only, and power to issue writs necessary and proper for the exercise of that jurisdiction.

Utah Const. art. VIII, § 4 (1896). On November 6, 1984, the people of Utah approved a repeal and replacement of the entirety of article VIII of the Utah Constitution. The newly enacted article VIII granted the Utah Supreme Court

> 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.

Utah Const. art. VIII, § 3 (1984). The amendment also made substantial structural changes to the courts and those were the focus of the public debates. The "extraordinary writs" modification was not explained to the Utah voters at all, other than a single oblique reference to "miscellaneous" changes to "remove outdated and unnecessary provisions." *See generally* Utah Voter Information Pamphlet, General Election, 14-15 (1984) (Ex. 2).[9] The change was nothing more substantive than linguistic cleanup, part of the larger "movement toward simplification of the writ process." *State v. Barrett*, 2005 UT 88, ¶ 10, 127 P.3d 682.

Similarly, the more detailed Report of the Constitutional Revision

[9] To that end, the term "extraordinary writs" should be read simply as a broader term encompassing the same traditional common-law writs, but without the rigid requirements of separate forms of complaint and procedure. *See Renn v. Utah State Bd. of Pardons*, 904 P.2d 677, 682 (Utah 1995) (observing that when rule 65B, Utah Rules of Civil Procedure, was promulgated, "the common law forms and procedures for extraordinary writs were abolished in keeping with modern concepts of pleading and practice, but the remedies continue to be available" (footnote omitted)); *see also* Utah R. Civ. P. 65B ("There shall be no special form of writ.").

Commission ("Commission Report") (Ex. 3) also suggests there was no intent to alter the substance of the core constitutional habeas writ. The "three major objectives" of the judicial revision set out in the Commission Report make no mention of redefining the Court's writ power generally, or of habeas corpus specifically. *See* Ex. 3 at B22-23. In the section specifically discussing the revised Section 3, the Commission Report confirms that no substantive change was intended, stating "[t]he original jurisdiction to issue extraordinary writs has been retained, but is written in more general language than that found in the present provisions." Ex. 3. at B33. And finally, it explains that this Court has "original jurisdiction" over writs and certified questions of state law in federal courts and "appellate jurisdiction over all other matters" and then states that "the legislature is empowered to determine how that jurisdiction will actually be exercised." *Id*.

Thus, the contemporaneous record does not show that the 1984 Amendment intended any substantive change to the scope of the writ of habeas corpus as it was originally established in 1896. Nor did it modify the Legislature's power to regulate the writ, both because the Commission Report says as much and because that power comes from the Suspension Clause, which was not modified (or even mentioned) in public discussions of the 1984 Amendment.

V. The PCRA is but one piece of a comprehensive habeas scheme that reaches any potential case and renders *Winward* unnecessary.

The PCRA may overlap with some small portion of the core constitutional writ of habeas corpus, but the PCRA also greatly enlarges on what can be raised, even beyond this Court's Twentieth Century common law expansion. But wherever the core constitutional writ of habeas corpus ends and the purely statutory rights of the PCRA begin is academic. Taken together, habeas corpus and the PCRA constitute a seamless continuum of rights emanating outward from the 1896 constitution through to present day remedies that would have been inconceivable to the framers. And they reach any case imaginable where a petitioner has a claim and brings it at the earliest opportunity. And habeas is much more than post-conviction review insofar as it applies in many non-criminal and quasi-criminal contexts where the PCRA has no application at all.[10] Those habeas writs still exist and are used frequently, some of them are also regulated by statute while other uses are not and proceed under the Court's traditional common law procedures regulating the core constitutional writ.

Imagine a county sheriff in Utah, inflamed by one of the major public issues

[10] The PCRA specifically states that it "does not apply to (a) habeas corpus petitions that do not challenge a conviction or sentence for a criminal offense." Utah Code Ann. § 78B-9-102(a); *see also Sandoval v. State*, 2019 UT 13, ¶ 20, 441 P.3d 7848 (Lee, J., concurring).

of the day, decides he has had enough of illegal immigration and rounds up every illegal immigrant in his county, holding them at the county jail. With no criminal charges against them, the PCRA will never give them any relief. But the immigrants do have an absolute right to bring a writ of habeas corpus under the core constitutional power. Indeed, this kind of arbitrary and lawless detention is exactly the purpose for which the writ was invented in England and it can still be used today in Utah. But hypotheticals are not required to demonstrate the writ's continued power, real cases happen all the time.

For example, petitions for writs of habeas corpus are filed under the core constitutional right in numerous contexts, such as: child custody cases,[11] challenges to non-criminal juvenile detentions by DCFS or other authorities, challenges to the custody of an incapacitated adult,[12] by prisoners challenging

[11] *See Harrison v. Harker*, 44 Utah 541, 142 P. 716 (1914); *Sherry v. Doyle,* 68 Utah 74, 249 P.250 (1926); *Ex parte Flora*, 84 Utah 143, 29 P.2d 498 (1934); *Baldwin v. Nielson,* 110 Utah 172, 170 P.2d 179 (1946); *Walton v. Coffman,* 110 Utah 1, 169 P.2d 97 (1946); *see also Morrison v. Federico et al.*, 120 Utah 75, 232 P.2d 374 (1951); *R. v. Whitmer,* 30 Utah 2d 206, 515 P.2d 617 (1973).

[12] *See Matter of Lees,* 942 P.2d 341 (Utah 1997) (granting a habeas petition brought by a daughter whose mother was forcibly removed from daughter's home and placed in a care center).

detentions unrelated to their convictions,[13] and potentially in any other circumstance not directly challenging a criminal conviction that is not otherwise provided for by statute.

The legislature also regulates habeas corpus in other areas. For example, "[a]ny individual detained" in the Utah State Hospital or another mental health facility "is entitled to the writ of habeas corpus upon proper petition by himself or a friend, to the district court in the county in which he is detained." Utah Code Ann. § 62A-15-642. Same for detentions of children. *See* § 62A-15-709. The Utah code of criminal procedure also regulates habeas corpus petitions by providing specific procedures for use of the writ in extradition cases, where it is used frequently.[14] *See* Utah Code Ann. § 77-30-10.

Not only do Utah courts still possess the authority to *issue* writs of habeas corpus under the constitution and outside of the PCRA, they do it all the time. There is even a statutory penalty if a judge wrongfully refuses to allow a writ of

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[13] *See Hearn v. State,* 621 P.2d 707 (Utah 1980) (prisoner challenging a detainer filed by another state); *Gibson v. Morris*, 646 P.2d 733 (Utah 1982) (same).

[14] *See Emig v. Hayward*, 703 P.2d 1043, 1047, n.2 (Utah 1985); *Boudreaux v. State*, 1999 UT App 310, ¶ 2, 989 P.2d 1103; *Edwards v. State*, 2003 UT App 167U; *Tippett v. Sanpete County*, 2002 UT App 216U; *Cordova v. Kennard*, 2000 UT App 175U.

habeas corpus.[15] The PCRA is, at most, merely one kind of proceeding on one end of the habeas spectrum. But because post-conviction review produces the highest volume of cases, many of them vexatious or repetitive and because there are other important societal interests at stake—such as the finality of convictions, rights of victims, and the need for efficient use of judicial resources—the legislature had to strike a multitude of balances in crafting its remedies and restrictions.

For example, petitioners were never entitled to a writ of habeas corpus if some other statutory remedy was available but never pursued. *See, e.g.*, *Lindeman v. Morris*, 641 P.2d 133, 134 (Utah 1982) (per curiam) (application for habeas corpus rejected as "an attempt to…substitute [it] for…timely appeal"). The PCRA's procedural bars formalize this requirement, encouraging petitioners to bring claims at the first possible opportunity or risk loss of those claims.

Similarly, the PCRA's one-year limitations period allows for ample time to bring a claim when the grounds for relief arise, and it is also structured to work in parallel with prisoners' federal habeas corpus rights under the Anti-Terrorism and

[15] "Any judge, whether acting individually or as a member of a court, who wrongfully and willfully refuses to allow a writ of habeas corpus whenever proper application has been made shall forfeit and pay a sum not exceeding $5,000 to the aggrieved party." Utah Code Ann. § 78B-6-601 (formerly 78-35-1).

Effective Death Penalty Act of 1996 ("AEDPA"). AEDPA also has a one-year limitations period that begins as soon as a state court conviction becomes final (which is usually the same time that the PCRA limitations period begins to run). 28 U.S.C. § 2244(d)(1). However, AEDPA's limitations period is tolled during the pendency of a state post-conviction action. 28 U.S.C. § 2244(d)(2). By requiring PCRA cases to be brought within one-year, the Utah Legislature ensured that those who brought timely PCRA claims would not unwittingly forfeit their federal habeas corpus rights by ensuring petitioners would receive the benefit of AEDPA's tolling provision. Any longer PCRA limitations period (or no period at all) would cause many PCRA petitioners to file their state petitions after their federal limitations period had run, which would leave them permanently time-barred and forever unable to pursue their federal habeas corpus rights.

This comprehensive, even elegant, structure allows for any conceivable claim to be brought so long as it is brought in a timely manner. *Winward* seems born from a fear that there may be a hypothetical "egregious" case where an obviously meritorious claim somehow could never be remedied. But this fear is unfounded. Every *Winward* case—and they are now legion—claims "egregiousness" based solely on an application of the time or procedural bars. But those bars by definition mean only that someone sat on a claim too long or already

had a prior opportunity to bring it. And claims like that *should* be barred.

The PCRA already provides a path for all legitimate claims that one might view as egregious. For example, a claim based on newly discovered evidence, including *Brady*, *Youngblood*, or *Tiedemann* violations, has a year from the discovery of the evidence. Same for any subsequent changes in the law that retroactively undermine the conviction. And the PCRA's limitations period is tolled entirely by mental incapacitation or unconstitutional State interference with the prisoner's access to the courts. The limitations period for all claims is tolled while petitioners pursue DNA exoneration or factual innocence claims.

And any judge's biggest fear of all—a demonstrably innocent person forced to stay in prison—is directly remedied. A claim showing DNA exoneration or factual innocence can be brought *at any time*. Although exceedingly rare, these cases do happen and this Court does not usually see them.[16] Moreover, factual innocence isn't even actionable under the core constitutional writ. *See Herrera v. Collins,* 506 U.S. 390, 400-01 (1993). To these many safeguards, *Winward* adds nothing but needless confusion as run-of-the-mill PCRA petitioners seek

[16] Indeed, the State stipulated to two factual innocence petitions just this year. *See Wickham v. State*, Case No. 180904994; *Hawkins v. State*, Case No. 180908555. Cases like these never reach this Court because when someone is demonstrably factually innocent there is nothing to litigate.

alternatives to forfeited appellate remedies, repeated bites at the post-conviction apple, or relief from their own tardiness.

CONCLUSION

As addressed above, the answers to this Court's supplemental briefing questions are:

1). The people of Utah in 1896 would have understood the scope of the judiciary's habeas corpus authority to be extremely narrow (although the courts also had power over other types of extraordinary writs). By 1984 the courts had expanded the reach of habeas writs, but the actual scope of the judiciary's constitutional writ authority had not changed;

2). The 1984 amendment merely removed antiquated language in favor of the more modern "all extraordinary writs." It did not in any way alter or modify the writ authority given to the courts in the 1896 constitution;

3). Yes, the Legislature has the constitutional authority to regulate writs, including writs of habeas corpus, so long as the regulation is not a suspension of the writ; and

4). Yes, Utah courts still possess constitutional authority to issues habeas writs and other writs not regulated by the PCRA.

Therefore, this Court should recommit to the PCRA being the "sole remedy" for post-conviction relief and disavow the portion of *Winward* that raises the possibility that a non-statutory exception to the PCRA might exist. A non-statutory exception is constitutionally unauthorized and serves no meaningful purpose. For that rare hypothetical case where egregious injustice might exist, petitioners may file a writ of habeas corpus, if they can show that, through no fault of their own, they could never have brought their claim under the PCRA, but the claim they have would have been actionable under the core constitutional writ in 1896.

Respectfully submitted on November 1, 2019.

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Utah Attorney General

/s/ Aaron G. Murphy

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Assistant Solicitor General
Counsel for Appellee

CERTIFICATE OF COMPLIANCE

I certify that in compliance with this Court's 5 April 2019 order, this supplemental brief does not exceed thirty pages, excluding the table of contents, table of authorities, addenda, and certificate of counsel. I also certify that in compliance with rule 21(g), Utah Rules of Appellate Procedure, this petition, including the addenda:

☑ does not contain private, controlled, protected, safeguarded, sealed, juvenile court legal, juvenile court social, or any other information to which the right of public access is restricted by statute, rule, order, or case law (non-public information).

☐ contains non-public information and is marked accordingly, and that a public copy of the brief has been filed with all non-public information removed.

/s/ Aaron G. Murphy
AARON G. MURPHY
Assistant Solicitor General

CERTIFICATE OF SERVICE

I certify that on November 1, 2019, the supplemental brief was served upon the respondent's counsel of record by ☐ mail ☑ email ☐ hand-delivery at:

Benjamin McMurray
46 West Broadway, Ste. 110
Salt Lake City, Utah 84101
Benji_mcmurray@fd.org

I further certify that an electronic copy of the supplemental brief in searchable portable document format (pdf):

☑ was filed with the Court and served on respondent by email, and the appropriate number of hard copies have been or will be mailed or hand-delivered upon the Court and counsel within 7 days.

☐ was filed with the Court on a CD or by email and served on respondent.

☐ will be filed with the Court on a CD or by email and served on respondent within 14 days.

/s/ Melissa Walkingstick Fryer

Exhibits

Exhibit 1

10/08/1862
Deseret News

ARREST OF MR. CHAS. INGERSOLL.

At a Democratic meeting held in Independence Square, Philadelphia, on the 23d of August, Mr. Charles Ingersoll was one of the speakers, and gave utterance to the following offensive language, as appears from an affidavit made by a Mr. Willard before Alderman Butler: "The despotism of the Old World can furnish no parallel to the corruptions of the administration of Abraham Lincoln. They can imprison us as they like for the exercise of the rights of free speech, as in the case of a citizen of the 12th Ward, but what does it all amount to? If they can imprison us, they have to feed, clothe and lodge us, and in these hard tim s that is quite a consideration." For speaking thus disrespectfully of the Administration, Mr. Ingersoll was arrested and incarcerated in prison. The *World*, in referring to the circumstances, says of the speech: "It no doubt contains a world of incendiary and disloyal matter, or else he would not have been arrested; but a great many honest people

will 'cudgel their brains' without finding it out. He expresses a doubt as to the wisdom and honesty of the Administration, it is true; but then Horace Greeley and Wendell Phillips have done the same thing in a fifty-fold more offensive manner—yet the one offender receives a respectful letter signed 'A. Lincoln,' and the other is sent to jail. It is an extraordinary spectacle which we have witnessed for the last year: a free people—the freest on earth, tenacious of their rights, imperious for the largest liberty, quietly submitting to the suspension of their rights and liberties, to a restricted freedom of the press, the suspension of the writ of habeas corpus, imprisonments without trial, liberations without reparation. The President of the United States and his advisers will terribly mistake the temper of the American people, the secret of their submission to, of their demand for, these stretches of executive power, if they presume or act upon the presumption that they will tolerate them for any other end whatever than the suppression of the rebellion."

01/14/1863
Deseret News

DOINGS OF CONGRESS.

In the Senate on the 19th of December, Mr. Kennedy offered a joint resolution which was referred in relation to the mileage of the Senators and Representatives of the present session.

Mr. McDougall offered a resolution, which laid over, requesting the Secretary of War to inform the Senate whether any tribunal had been constituted to report upon the operations of Major-General D. C. Buell in Kentucky and Tennessee, and if so to state the character

the state of the Union and when the committee arose the House adjourned, as did the Senate till the following Monday.

In the Senate on Monday, Dec. 22nd, the Vice President presented a communication from the Secretary of War relating to the charter of the vessels for the expedition under Gen. Banks, with other documents pertaining to that matter and Mr. Grimes offered a resolution which was adopted, providing for the appointment of a committee of three to inquire into the whole matter. Mr. Grimes also offered a resolution which was adopted, instructing the Committee on Naval Affairs to inquire into the expediency of abolishing the United States Marine Corps as a naval organization, and attaching it to the United States army as the twentieth Regiment of Infantry.

A bill was passed providing for the payment by Government, of the funeral expenses of the late Gen. E. D. Baker.

In the House on the 22nd, Mr. Pendleton offered a resolution that the protest of the thirty-six members of the House against the passage of the bill to indemnify the President for certain arrests under the suspension of the writ of habeas corpus, be entered upon the

ter of such tribunal, whether it was a court-martial or a court of inquiry, and if not under wh.t law it was instituted, and whether that tribunal was in session in secret and had attempted to exclude from its sessions Major-General Buell, whose conduct it was to investigate, and whether the said tribunal proposed to the said Major-General Buell to take an oa h that he would not disclose any of the incidents connected with this trial or any of the evidence.

Mr. Powell called up his resolution to inquire of the Secretary of War whether any oath had been proposed to citizens who have been arrested and imprisoned, that they would not sue or bring any action against those who arrested them, which caused a lengthy discussion, in the course of which Mr. Powell and Mr. Morrill had some sharp words in relation to the matter.

The bankrupt bill was taken up, to which some amendments were made.

In the House on the 19th, Mr. Law offered a resolution which, after some debate instructing the Military Committee to inquire into the expediency of reporting a bill by which soldiers who have been rendered unfit by wounds and other disabilities may at once discharged from

journal.

Mr. Ashley introduced bills proposing a temporary government for Idahoe, and to enable the territories of Nevada, Utah, and Colorado to form state governments preliminary to their admission into the Union. They were referred to the Committee on Territories.

Mr. May offered a resolution which was tabled by a vote of 63 to 48, requesting the President to communicate to the House a copy of the order of the Secretary of State dated about the 28th of November last, and which he caused to be read to the State prisoners at Fort Warren, forbiding them to employ counsel, on the ground that such a course would be deemed by the government and the State Department, as a reason for prolonging their imprisionment.

The deficiency bill was taken up and passed.

A resolution offered by Mr. Mallory that, the Senate concerring, an adjournment take place to the first Monday in January 1863 was passed by a vote of 79 to 47.

THEATRE.—The representations, during the past week, of The Charcoal Burner were well received. The principal character —Pernet Arden, was

service, and that all soldiers at the military hospital fit for duty be returned to their respective regiments; also establishing a board of medical officers to examine into such cases by visiting the hospitals and examining into the physicial condition of the men, with the power to thus return them; the results of such examination to be reported to the surgeon-general and Congress. In the course of the discussion a letter was read from the soldier's convalescent camp near Alexandria, describing the woeful condition of affairs in that camp, and the sufferings endured by the sick and wounded soldiers there, who preferred the perils and horrors of the battle-field to the filthy disease-creating loathsome condition in which they were placed under existing arrangements.

On motion of Mr. Sargeant, a resolution was adopted instructing the Committee of Ways and Means to inquire into the expediency of providing by law for the office of Assistant Commissioner of Internal Revenue for the Pacific State and Territories, who shall have general control of matters on that subject under the direction of the Commissioner of Internal Revenue.

The bill for the payment of invalid and other pensions was passed without debate after

played by Mr. Caine, and the leading characters were creditably sustained by Messrs. Simmons, Margetts and Maiben. The old Miser—Matthew Esdale, was a piece of exquisite acting by Mr. McKenzie. Mrs. Gibson's first appearance on the stage, with a part committed to her not two days before—was very creditable.

The management announces for to-night the fine classic play—Virginius, or the Roman Father: Mr. Bernard Snow representing Virginius. Mr. Snow has many admirers, and his playing will doutless attract a large audience. The play is an excellent representation of the nobility and honor of the uncorrupted ancient Roman citizen. Dunbar's comic song—The Perfect Cure, with Don't Judge by Appearances are to follow Virginius. They make an attractive bill. Yesterday, the tickets for this evening were "going" rapidly.

We were glad to hear less coughing than on former occasions. A few more children still suffering from the epidemic could very profitably, to them and to the general audience, be left at home.

PEACE INDICATIONS.—The most promising

01/14/1863
Deseret News

being amended on motion of Mr. Duell that no part of the money appropriated shall be paid to any person who has given aid and comfort to the enemy.

Mr. Stevens made a lengthy speech in favor of his financial propositions, after which the House went into committee of the whole on

sign of peace we have observed of late is embodied in the following important announcement:

Tom Sayers is out of the ring for life. He thus announces the fact in the newspapers of London: "Tom Sayers begs most respectfully to state that he will never again fight, or second any man who may fight."

10/07/1863
Deseret News

PROCLAMATION OF PRESIDENT LINCOLN.

BY THE PRESIDENT OF THE UNITED STATES.

WASHINGTON, Sep. 15, 1863.

Whereas, the constitution of the United States has ordained that "the privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it;" and

Whereas, a rebellion was existing on the third day of March, 1863, which rebellion is still existing; and

Whereas, by a statute which was approved on that day, it was enacted by the Senate and House of Representatives of the United States, in Congress assembled, that during the present insurrection the President of the United States, whenever in his judgment the public safety may require, is authorized to suspend the privilege of the writ of habeas corpus in any case throughout the United States, in any part thereof; and

Whereas, in the judgment of the President the public safety does require that the pri-

10/07/1863
Deseret News

vilege of the said writ shall now be suspended throughout the United States in cases where, by the authority of the President of the United States, military, naval and civil officers of the United States, or any of them, hold persons under their command or in their custody, either as prisoners of war, spies or aiders and abettors of the enemy, or officers, soldiers, or seamen enrolled, drafted or mustered or enlisted in or belonging to the land or naval forces of the United States, or as deserters therefrom, or otherwise amenable to military law, or to the Rules and Articles of War, or the rules and regulations prescribed for the military or naval service by the authority of the President of the United States, or for resisting a draft, or for any other offence against the military or naval service;

Now, therefore, I, Abraham Lincoln, President of the United States, do hereby proclaim and make known to all whom it may concern that the privilege of the writ of habeas corpus is suspended throughout the United States in the several cases before mentioned, and that the suspension will continue throughout the duration of the said rebellion.

or until this proclamation shall by a subsequent one, to be issued by the President of the United States, be modified and revoked. And I do hereby require all magistrates, attorneys and other civil officers within the United States, and all officers and others in the military and naval services of the United States, to take distinct notice of this suspension, and give it full effect; and all citizens of the United States to conduct and govern themselves accordingly and in conformity with the constitution of the United States and the laws of Congress in such cases made and provided.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed, this fifteenth day of September, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States of America the eighty-eighth. ABRAHAM LINCOLN.

By the President:
WILLIAM H. SEWARD, Secretary of State.

Important Order Relative to the Suspension of the Writ of Habeas Corpus.

We publish below, for the information of all concerned, General Orders No 315, just received by the War Department, relative to the suspension of the writ of *habeas corpus* throughout the United States:

General Orders, No. 315. War Department, Adjutant General's Office, Washington, Sept. 17, 1863.

The following Act of Congress and Proclamation of the President, based upon the same, are published for the information of all concerned; and the special instructions hereinafter contained for persons in the military service of the United States will be strictly observed:

AN ACT RELATING TO HABEAS CORPUS, AND REGULATING JUDICIAL PROCEEDINGS IN CERTAIN CASES. *Approved March 3, 1863.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, during the present rebellion, the President of the United States, whenever, in his judgment, the public safety may require it, is authorized to suspend the privilege of the writ of *habeas corpus* in any case throughout the United States, or any part thereof. And whenever and wherever the said privilege shall be suspended, as aforesaid, no military or other officer shall be compelled, in answer to any writ of *habeas corpus*, to return the body of any person or persons detained by him by authority of the President; but upon the certificate, under oath, of the officer having charge of any one so detained that such person is detained by him as a prisoner under authority of the President, further proceedings under the writ of habeas corpus shall be suspended by the judge by the command of any court or judge, or otherwise, and with or without process of law, shall attempt to arrest the officer making such return and holding in custody such person, the said officer is hereby commanded to refuse submission and obedience to such arrest, and if there should be any attempt to take such person from the custody of such officer, or arrest such officer, he shall resist such attempt, calling to his aid any force that may be necessary to maintain the authority of the United States, and render such resistance effectual.

By order of the Secretary of War:

E. D. TOWNSEND,
Assistant Adjutant General.

of *habeas corpus* shall be suspended by the judge or court having issued the said writ, so long as said suspension by the President shall remain in force, and said rebellion continue.

BY THE PRESIDENT OF THE UNITED STATES—A PROCLAMATION.

Whereas the Constitution of the United States has ordained that the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it; and, whereas, a rebellion was existing on the third day of March, 1863, which rebellion is still existing, and whereas by a statute, which was approved on that day, it was enacted by the Senate and House of Representatives of the United States in Congress assembled, that during the present insurrection the President of the United States, whenever, in his judgment, the public safety may require, is authorized to suspend the privilege of the writ of *habeas corpus* in any case throughout the United States, or any part thereof; and, whereas, in the judgment of the President, the public safety does require the privilege of the said writ shall now be suspended throughout the United States, in the cases when, by the authority of the President of the United States, military, naval, and civil officers of the United States, or any of them, hold persons under their command, or in their custody, either as prisoners of war, spies, or aiders or abettors of the enemy, or officers, soldiers, or seamen enrolled, drafted, or mustered or enlisted in, or belonging to, the land or naval forces of the United States, or as deserters therefrom, or otherwise amenable to military law, or the Rules and Articles of War, or the rules or regulations prescribed for the military or naval services by authority of the President of the United States; or for resisting a draft, or for any other offence against the military or naval service:

Now, therefore, I, Abraham Lincoln, President of the United States, do hereby proclaim and make known to all whom it may concern, that the privilege of the writ of *habeas corpus* is suspended, throughout the United States, in the several cases before mentioned, and that this suspension will

continue throughout the duration of the said rebellion, or until this proclamation shall, by a subsequent one to be issued by the President of the United States, be modified or revoked. And I do hereby require all magistrates, attorneys, and other civil officers within the United States, and all officers and others in the military and naval service of the United States, to take distinct notice of this suspension, and to give it full effect, and all citizens of the United States to conduct and govern themselves accordingly, and in conformity with the Constitution of the United States and the laws of Congress in such cases made and provided.

In testimony whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed. this (15th) day
[L. S] of September, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States of America the eighty-eighth.

ABRAHAM LINCOLN.

By the President:
WM. H. SEWARD, Secretary of State.

The attention of every officer in the military service of the United States is called to the above Proclamation of the President, issued on the 15th day of September, 1863, by which the privilege of the writ of *habeas corpus* is suspended. If, therefore, a writ of *habeas corpus* should, in violation of the aforesaid Proclamation, be sued out and served upon any officer in the military service of the United States, commanding him to produce before any court or judge, any person in his custody by authority of the President of the United States, belonging to any one of the classes specified in the President's Proclamation, it shall be the duty of such officer to make known by his certificate, under oath, to whomsoever may issue or serve such writ of *habeas corpus*, that the person named in said writ "is detained by him as a prisoner under authority of the President of the United States."

Such return having been made, if any person

BY PACIFIC TELEGRAPH.

[SPECIAL TO THE DAILY UNION VEDETTE.]

WASHINGTON, April 18.

The House to-day resolved to hold evening sessions. Arnold, of Illinois, offered the following: *Resolved*, That in the present condition of our country and its finances, it is the imperative duty of Congress to raise the taxes, so as largely to increase the revenue of the Government, and that for this purpose a much higher rate of duties should be imposed on all luxuries imported or produced in the U. S. *Resolved*, That the expansion of the bank circulation of the country, is producing a general and ruinous state of affairs, and should be repressed by taxing the issue of such State banks. These resolutions were agreed to; the latter by a vote of 62 to 46.

A resolution was offered by Holman, that in the judgment of the House, the present deranged condition of pub-

The Prussians had driven in the Danish out-posts and occupied their position 250 paces nearer Duppel than at first. The parallel works were uninjured by the bombardment. The bombardment of Sonderberg had ceased, but the town was burning in several places. Eighty women and children were killed and the town deserted by the inhabitants.

WASHINGTON, April 19th.

The President has approved an act extending for two years from date the time within which States and Territories may accept grants of land donated for the establishment of colleges for the benefit of agriculture. The mechanics of West Virginia are now included within the limits of the land bill.

There was a full attendance at the Republican caucus to-night at the Capitol, the object being to arrange expense and business. It was agreed to take up the internal tax bill at noon

the present deranged condition of public finances can only be effectually remedied by reducing the amount of paper currency in the country, and that, as the only effectual remedy, the Committee be instructed to report a bill repealing the National Banking Law, and to provide for limiting the circulation to legal tender notes issued by the Treasury Department, under authority of the United States. The House refused to second the demand for the previous question on this resolution, by 41 to 56, and debate ensuing, the question lies over. A joint resolution was offered, that for sixty days after the passage of this resolution, all duties on imported goods, wares and merchandise now provided by law, shall be increased 50 per cent. Objection was made to the consideration of the resolutions, speakers insisting that the tax bill must go to the Committee of the Whole on the state of the Union. Fernando Wood introduced a resolution to restrain the working of mineral lands, etc., in Colorado and Arizona, until provision be made by Government for their working and settlement. The morning hour expired to-morrow; no unnecessary debate to be indulged in, but a fair opportunity will be given for the explanations of amendments. All who attended the caucus were in favor of passing the bill at the earliest practicable moment, as well as others of a public character. The bill defining the duties of Wardens and Marshalls of Territories and of the District of Columbia, passed the Senate to-day.

McDougall introduced a bill to ascertain the settlement of certain land claims in California; referred to the Committee on Lands.

NEW YORK, April 19.

Portsmouth, Va. A correspondent reports a recent expedition for the purpose of capturing the rebel torpedo-boat which attempted to destroy the Minnesota. It was not found, but several sharp skirmishes were had with the rebels. Fifty contrabands and a large number of horses were brought in.

GRAND ECORE RIVER, April 16.

Gen. Banks' army moved forward this morning towards Shreveport. Accounts from the rebel lines say the

before final action on this resolution. The National Bank or currency bill passed by 88 to 63.

NEW YORK, April 18.

Bank statement shows a decrease in loans of over five millions; a decrease in deposits of twenty-one hundred thousand; an increase in specie of seven hundred and fifty-three thousand.

Special to the *Post* says the House will probably pass the Senate gold bill by a small majority.

Gen. Washburn has been ordered to command Western Tennesse, vice Hurlbut, and leaves to-night to assume his new duties.

NEW YORK, April 18.

Additional per Saxonia: The House of Lords has given judgment in the Alexandria case, dismissing the appeal from the judgment of Court.

Later news state that the difficulties about the acceptance of the Mexican crown by Maximilian have been solved by a conference between the Emperor of Austria and the Arch Duke. He will proceed shortly to Mexico.

feeling in Kirby Smith's army is bad; that not more than half the men will stand a fight. Kirby Smith is very unpopular with his army of Louisianians.

The report is confirmed that large numbers of citizens are daily subscribers to the amnesty oath. All the cotton along the river has been burned.

In a skirmish at Fort Jessup on the 2d, we took forty prisoners; our loss was slight. A pitched battle is not probable unless Smith can fall upon the detachment of Bank's forces. The rebel army is reported at 20,000 and 72 pieces of artillery. Gen. Price is reported approaching with 7,000 more

CHICAGO, April 19th.

Letters dated Grand Ecore, Louisiana, 10th and 11th, say our cavalry of the 3d and 4th divisions of the 13th army corps, after a hard fought action were overpowered and put to rout by a largely superior rebel force. The 13th corps came up and finally checked the enemy. Our loss is reported at 2,000. The Chicago Mercantile battery lost all its guns four officers and twenty-two men.

NEW YORK, April 18.

The money market was much disturbed to-day by stock panic, and there is no regular rate of interest; one per cent. per day and even more has been paid. The banks are not paying out greenbacks, and legal tenders are worth two per cent. more than certified checks. Some banks refuse to take certified checks of others. A large number of bull operators failed. Morse & Co. announce that they will be able to pay up in sixty days. At the public board the panic was intense, and stocks were thrown overboard at almost any price. At the second board the market was very unsettled, some stocks showing a sharp advance while the majority were lower.

CHICAGO, April 19th.

A letter dated Grand Ecore, Red river the 10th, says: Our cavalry have been driving the enemy for two days, but on the forenoon of that day they sent back word for infantry supplies under sanction of the military authorities. There is much suffering in Texas from the influx of negroes and their families. Beef and corn are the sole products of the country and of these there is not enough to supply resident population.

Prominent Frenchmen in New Orleans confidently predict that a treaty of friendship will be made with the Confederacy by the Arch-Duke Maximilian backed by the Emperor of France, and that the consolidation of the French forces at Matamoras will lead to complications with our Government.

On the 7th, a party of cavalry with one gun, near Port Hudson, was surrounded by 300 of Wirt Adams' cavalry. In a skirmish we lost one gun, fifteen prisoners, and had five wounded. The rebels lost fifteen killed.

CHICAGO, April 19.

Mobile papers of the 23d contain a synopsis of the speech of Vice Presi-

port. Gen. Ransom, in command of 300 of the 4th division of the 13th corps, was ordered to send his brigade, and did so. At noon he was ordered to send up all of the 4th division, and he went up with them. After advancing about five miles from where the 3d division and 19th corps were encamped, the rebels made a stand, and our line, consisting of only twenty-four hundred, formed in a belt of woods with an open field in front; the enemy were in the woods on the opposite side. Gen. Stone (of Ball's Bluff fame) of Gen. Bank's staff, took the direction of the movements. Gen. Ransom was in favor of advancing only in force, but his wish was disregarded. After keeping up a skirmish-firing across the open field for about an hour, the enemy advanced in overwhelming numbers—estimated at 10,000 strong—all our available troops were sent to the front and opened on them. The enemy lost heavily, but advanced steadily and soon made our cavalry give way, whereupon the infantry fell back and in a few moments the enemy pressed us so closely and the panic of the cavalry was so demoralizing that the re-

dent Stephens, at Milledgeville, in which he said, the bill suspending habeas corpus was constitutional but dangerous. He did not believe the President would abuse the powers conferred, but the abuse might be exercised without his knowledge. If suspension was necessary, which he did not admit, it was passed in a way dangerous to freemen; if not protested against, it would be fastened as the policy of Government. The currency bill he thought unwise and severe, and the military bill will be fatal, if executed, as it diminished producers to such an extent as to interfere with the the necessary supply of food.

New York, April 19th.

The *Herald's* Alexandria Washington dispatches, state that Grant will appoint McClellan to a command in the Army of the Potomac.

Secretary Chase arrived in Washington on Monday night.

Hon. Mr. Wade, of the Committee on the Conduct of the War, left for Cairo, to take evidence in relation to the massacre at Fort Pillow.

The *Times'* Washington special says, it is reported that Gilmore is relieved

treat became a rout. While endeavoring to save the artillery Gen. Ransom was wounded severely in the leg. His Adjutant, Capt. Dicky, was killed. The Chicago Mercantile Battery was lost; all the guns captured and the men taken prisoners. Two Lieutenants were killed. While the 4th division was falling back in disorder, the 3d division, numbering only 1,800 men, came up and was immediately routed, and finally the 19th corps with 7,000 men came up and formed a line which checked the enemy and held them until we got all our trains off, except that of the cavalry. The whole army is now falling back here, where it must await re-organization before proceeding further towards Shreveport. Our loss is said to be 2,000, but may be exaggerated.

CAIRO, April 19th.

Refugees from central Texas report fearful outrages to have been committed upon persons suspected of Union sentiments. As many as a hundred have been hung and shot by commit-

from Charleston, and ordered for service elsewhere. It is not unlikely notwithstanding this change, that our iron-clads will be alongside Charleston wharf before the end of summer. Gen. Hatch has been mentioned as the successor of Gilmore.

The *World's* special says, the Blair investigating Committee will report the famous liquor order, to have been a forgery.

04/20/1871
Salt Lake Tribune

The Ku Klux Bill.

The passage of the Ku Klux Bill by both Houses of Congress inaugurates a new and more vigorous policy towards the late reconstructed States of the South. Whatever may have been the cause, it is certain that affairs in the Southern States have been growing worse and worse, until a state of things existed which demanded the prompt and forcible action of Congress to correct. While there has been, no doubt, a good deal of exaggeration and partisan coloring in a portion of the reports from various sections of the South concerning the attitude of a certain class of the population, there is unquestionably a good deal of truth in the accounts of outrages and lawlessness on the part of masked armed men, who have created and maintained a reign of terror particularly in sections where the

freedmen are in the majority. Not only have the colored citizens been made victims of a system of terrorism, sustained by acts of violence resulting in death often times, but white men of Northern birth, and those native of the South, of liberal ideas, have been killed or driven away. Mysterious warnings were given which if not heeded, were followed by visits from disguised armed men, who burned, destroyed and slaughtered in the most brutal and barbarous manner. Anarchy reigned in many quarters; business was suspended; schools stopped; and whole communities shudderingly crouched before a secret and terrible enemy known all over the South as the Ku Klux Klan. The rebellion had broken out again, only assuming a different, but not less dangerous form It was to grapple with and strangle this new hydra that Congress passed the Ku Klux Bill which gives the

the Ku Klux Bill, which gives the President power to declare martial law in any district or State, to suspend the writ of Habeas Corpus, and to employ the troops and militia of the United States to put down any unlawful or dangerous combinations against the peace and well being of the country. It gives the President ample power to enforce the act, and it is certain that he will put it in operation with the requisite rigor to accomplish the desired end—if law can reach the evil.

We hope that the good sense and wisdom of the better and more thoughtful classes in the South will aid in eradicating this great evil now destroying their prosperity, and thereby bring about promptly and without unnecessary delay, a new era of quiet, peace and safety; so that foreign capital and enterprise may go among them once more to restore the wasted substance of the country and again

make it rich, prosperous and happy. If this end can be reached, let not a general amnesty be longer withheld.

The cool audacity of the American bankers in Paris who proposed to purchase the magnificent column of bronze in the Place Vendome, and set it up in the Central Park in New York, must have caused the grim effigy of the Great Napoleon to shiver with astonishment and disgust. The thought was worthy of a "regular down easter." If this banker has the chance and the money we shall soon hear of negotiations for the purchase for transfer of the splendid sarcophagus in the Hotel des Invalides con-

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THE KU KLUX BILL.

The statute violates the letter of the Constitution by declaring that to be a rebellion against the United States which is nothing more than violence to individuals, and by permitting the writ of *habeas corpus* to be suspended in time of peace; by authorizing the President to employ the military forces in repressing opposition to State laws without any application from State authorities; by extending the prohibitions of the Fourteenth Amendment to cases of private wrong; and by clothing the national courts with jurisdiction over ordinary crimes and with the function of ordinary police repression. It violates the entire spirit of the Constitution by conferring upon the President in time of peace a military discretion which belongs to him only as Commander-in-Chief in time of actual war; and by destroying the separate—although subordinate—independence of the States within their appropiate spheres, which was firmly established in the Constitution as an essential feature of our institutions.—*From the Nation.*

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Salt Lake Herald

SOUTHERN CELEBRATION AT BUNGLETOWN.

BUNGLETOWN, UTAH TERRITORY,
July 5th, 1871.

Editors Herald:

The fourth was celebrated here amid great enthusiasm by the entire population. Johnie Reb, the orator of the occasion, spoke as follows:

Fellow citizens, who have met here to-day in the burning July sun of these mountain fastnesses to do honor to that gallant little band of patiots who, ninety-five years ago, rallied around the shrine of their country's freedom and fulminated the Declaration of Independence, which is the charter of American liberty. In Utah certain religious fanatics claim and appropriate it to their religion. Northern people claim it and appropiate it to their

claim it and appropriate it to their section; and though they have suspended the writ of *habeas corpus* in many instances, destroyed the right of trial by jury, and violated nearly every other right sanctified to us by the blood of our fathers; the fourth of July is to us still sacred and we are here to-day to curse the hand and paralize the arm of such brave men as these, who in violation of truth and history slander the memory of those who first with the glittering staff unfurled the ensign of liberty which full high advanced shone like a meteor streaming to the wind. Without country, without tradition, for to that vast column of freedom not one Southern stone or pebble was added The sacrifices were all made by the North. Battles were fought by them; but 'tis no part of our duty to speak of the fierce, long and arduous struggle

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of the Revolution, of the vales of the Cowpens, the miseries of Valley Forge, the pealing sheets of musketry, booming of cannon and clashing conflict of sabres everywhere; or of the shouts of liberty and defiance that went up from the battlements of 96. Sufficient is it to say everywhere human rights and liberty were vindicated by our great fathers, and that this day is given to us a heritage, for we, too, are native American citizens; and whilst we would not steal and appropriate it to ourselves, we would be recreant to ourselves if we did not demand our portion of it. Our fathers are all gone; their strong arms have long since been made food for worms; their eloquent tongues hushed in the mute and solemn vaults of death; but their acts have implanted monuments in our breasts, and of those who are to come after us that will cause us to

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revere their names and shout forth their deeds upon every future anniversary.

In conclusion, we have the smiles of but few others here to-day to cheer us, but they have them elsewhere, for whilst we are in the lowlands, thousand of fair ones amid the distant slopes of the Blue Mountains are made happy by the music of the bird and the waterfall, for the ladies ever feel a warm interest in their country and its benefactors. And we feel all the military ardor of 1776, without the presence of soldiers here.

The gifted orator was greeted with unlimited rounds of applause; and the celebration at Bungletown closed with the firing of several demijohns and numerous volleys of soda-cocktails.

Yours,

ANTI-HUMBUG.

Telegraphic.

THE LATEST DISPATCHES.

BY THE WESTERN UNION TELEGRAPH CO.

MORE HORRORS.

Details from the Northwest.

FRIGHTFUL LOSS OF LIFE.

THE FIRE DEMON IN INDIANA.

A City in Flames.

NEW GOLD FIELDS.

Queen Victoria Seriously Ill.

A POLYGAMIST ON TRIAL.

TESTIMONY OF HIS LEGAL WIFE.

rously offered. The Chamber of Commerce of this city has already contributed over $600,000.

Charles O'Connor has associated with himself W. H. Peckham, Wm. M. Evarts, and Judge Emmett, the first mentioned being a Democrat, and the two latter, Republicans, as counsel in the prosecution for the defrauded municipal government. Samuel J. Tilden, Chairman of the Democratic State Committee, was present at the conference between the Attorney-General of the State and O'Connor, concerning those suits. He believes the proceedings will be successful and that Tweed will probably be the first attacked. It is belived that the evidence against him is very strong, and is based upon Broadway bank disclosures. The repeating business going on pays special attention to reformers. Most summarily measures are to be taken against any operations of this class. The grand jury had the case of Mayor Hall under consideration yesterday, and subpœnas were issued for witnesses of the Young Mens' Democratic Reform Association, the name of an organization just established.

The nominations made last night by the Democratic Reformers meets the approval of the Republicans generally. The Times and Tribune support them. Siegel's nomination is a concession to the Republicans.

There is a revival of the rumor that Comptroller Connolly is to be impeached.

Private advices received from Captain Hall report him, September 5th, sailing northward from Upernavick; all well.

New York, Oct. 19.—Fisk, jr. has procured an injunction from Judge Pratt of Brooklyn, prohibiting the use of any of certain letters in his possession, by Helen Josephine Mansfield, written to Fisk, the publication of which he says would subject him to public criticism.

The Lorillard Insurance Company is compelled to suspend on account of their Chicago losses. The assets of the company is contingration was yet ended, have remained here ever since and have put the munificent donations of their city to most profitable and sensible use by establishing a large soup house and making arrangements to run it as long as any necessity exists for it.

The Times this morning publishes a complete exhibit of the city debt, showing the total amount to be fourteen million four hundred and seventeen thousand dollars.

The largest engine of the water works commenced pumping yesterday and there is now a fair supply of water in the hydrants.

Chicago, Oct. 20.—The Tribune, this morning, publishes an exact statement of the number of buildings destroyed by the great fire, with a careful estimate of the number of people rendered homeless, and an estimate of what is left. The total area of the city is stated to be over 2,500 acres, including the annexed territory west of Western avenue, and the total number of buildings before the fire was about 60,000. On the south side the fire destroyed nearly everything in the First and Second wards, and a light portion in the northwest corner of Third, its southern line. At a point a little below Polk street the area of the burnt district is 450 acres. There were destroyed 3,600 buildings, including 1,600 stores, 28 hotels, 60 manufacturing establishments, and 21,600 persons were turned out of their homes, the greater number or whom lived in the Second ward west of State street, where they were closely packed.

Chicago, Oct. 19.—The total number of buildings destroyed were 10,000, which included over six hundred stores and one hundred manufacturing establishments. About 70,000 persons were deprived of homes, and are sojourning on the West-side, or have left the city. Out of a population of 77,-000, only about 7,000 have houses which they can claim as their own. There are not over 600 houses standing, for the district burned over embraced most of the settled area of the North division, while the account missioner has called upon all insurance companies in the State to make returns of their condition.

New Orleans, Oct. 19.—Bank Box of Hall and Comstock, containing about fifty thousand dollars worth of securities, were stolen to-day.

A wagon load of Union torpedoes, part of a lot being unloaded from a ship from New York, exploded on the street this morning. The driver was instantly killed, and several passers by injured, and one house and a saloon demolished. The vessel which has two hundred cases still on board, will probably be ordered off.

Indianapolis, Oct. 19.—Brownsburg, Indiana, twenty-five miles from here, is burning up. They have telegraphed for steamers from here.

St. Paul, Minn., Oct. 19.—General Leman arrived from Fort Garry last evening and reports intense excitement at Winnipeg on account of recent gold discoveries at Lake Shabandarwin. Specimens of dust, nuggets and quartz have been brought to Winnipeg, and hundreds were rushing to the new gold fields. Lake Shabondarwin is a short distance from Silver Islet.

General Curleye, one of the leaders of the late Fenian fiasco upon Manitoba, arrived here yesterday and was immediately arrested. General Curleye, like O'Neill, who was arrested here Monday, declares the Fenian raid was no raid at all, but merely a colonization scheme, and that the colony could have successfully resisted Colonel Wheaton if so disposed.

Indianapolis, Oct. 19.—The fire this afternoon at Brownsburg, Indiana, destroyed five stores and three dwellings. Loss, fifteen or twenty thousand dollars; insurance, two thousand.

Boston, Oct. 19.—Washburne has written Hoar, accepting the Republican nomination for Governor.

Augusta, Me., Oct. 19.—Quite a severe shock of earthquake was felt here at 1.40

ETC., ETC., ETC.

SALT LAKE CITY.

Salt Lake City, Oct. 19.—In the case of Hawkins, the polygamist, charged by his first wife with adultery, the jury was finally impaneled this afternoon and the trial commenced. Tom Fitch, for the defence, occupied all the morning in an argument that he had the right under the United States law to the peremtory challenges, while the prosecution had only the right to two. Judge McKean, on the ground that this was a matter of the people of the United States, in the Territory of Utah, and not the United States, decided against the defense. On the opening of the trial, the first witness called was the true wife. She testified positively to the cohabitation of her husband with two other women in her house. To-morrow the daughter, now married, will take the witness stand. The indictment in this case was brought under the Utah statue in relation to crimes and punishments, approved March 6, 1852.

Everything peaceable and weather delightful.

SAN FRANCISCO.

San Francisco, Oct. 19.—The Republican majority in this State will be much larger than that of September, though the vote was much lighter.

The fires in Santa Cruz county, on the Watsonville road, burned over a district nine by four miles, with great destruction to farmers.

The Pacific Insurance Company resumed business on capital intact.

At a meeting of the citizens to-day they resolved to send part of the funds collected for Chicago to Milwaukee, for the Wisconsin sufferers. They will send Chicago one hundred thousand and have twenty thousand for Wisconsin.

San Francisco, Oct. 19.—The whole Republican and Tax-payers' ticket were elected. [illegible] one million and three quarters, and the liabilities are unknown. The Atlantic and Manhattan has also suspended.

Tammany circles are excited over the decision of Chas. O'Connor, to assist the prosecution of the ring thieves.

Political parties are busy nominating candidates for the next election. Jas. O'Brien was nominated Senator, in Seventh District, by the reformers. Tammany renominated the same old candidates.

Governor Scott, of South Carolina, who is here, says he is not quite stisfied with the Ku-klux proclamation, and says he wanted troops, not the suspension of habeas corpus.

New York, Oct. 19.—A London correspondent writes that an alliance has been effected between certain members of the peerage and sessions of working classes, the object of which is to overthrow the present government; the Commune principle pervades their platform. The same writer hints that the Queen's condition is such that she may die any moment.

The Sanitary Committee of the Board of Health reported against allowing any cargoes of rags from countries where cholera prevails to be landed.

Deputy Comptroller Green asks a meeting of the Board of Apportionment to provide funds for supplies for the support of reformatory institutions.

Contractors for cleaning streets presented bills to the city for $142,000 for work from September 1st to October 16th.

CHICAGO.

Chicago, Oct. 18.—Every day increases the business activity of all circles. Thousands of men are now at work in all quarters of the burnt district on the south side, clearing away the ruins and erecting temporary wooden structures and laying foundations for substantial buildings of brick and stone. The weather is most promising, and should it continue for thirty days there will be many good buildings finished and occupied in other locations of former business streets. Meanwhile, every available build- [illegible] of ground burned over in the West division did not exceed 150 acres, much of that being occupied by lumber yards, etc., yet the people who did live there were very closely packed together, and between one and two thousand people must have dwelt there. But of the 60,000 buildings in Chicago, only about 13,500 have been destroyed, and that while 92,000 persons have been driven from their homes, over 215,000 have not been affected at all.

MISCELLANEOUS.

Milwaukee, Oct. 19.—The Door County Advocate contains a full account of the loss of life and property by the great fires in that county up to Sunday night, the 8th instant. The fires had been raging through the towns of Brussels, Union, Gardner, Forestville, Clay, Banks, Nasawaupee, Sturgeon, Bay, Sevastopol, burning fences and timber, but leaving the houses untouched. At 9 P. M. on Sunday a fiery tornado swept down from the southwest, beginning at the Belgian settlement in Brussels, sweeping through the towns of Gardner, Union, the western part of Sevastopol and down the east shore of the bay, consuming every building in its path. At Williamson's shingle mill everything was burned, and the most awful destruction of human life ensued. Out of eighty persons at the mill fifty-nine were burned to death. The few survivors tell a horrible tale of the scene. After the fire forty-five bodies were found in a potatoe patch in the center of the clearing. Other bodies were found scattered about, some disfigured in such a manner as to be beyond recognition. This great destruction was but the work of fifteen minutes, and was the same tornado that burned up Peshtigo and twelve hundred human beings. A number of other losses of life are reported in other places. Twenty-two in the town of Brussels suffered alike fate. There is scarcely a house or barn left standing in the line of this fire. Efforts of relief are not spared here or anywhere in the State, and donations from abroad are coming along just in time to make comfortable [illegible] o'clock this afternoon, lasting ten or fifteen minutes.

FOREIGN NEWS.

London, Oct. 19.—The Bullion Bank of England has increased £1,181,000.

London, Oct. 19.—Up to last night subscriptions at the Mansion House for Chicago, amounted to £20,000; at Manchester, £3,000; and Kidderminster gave £3,000 on the spot.

Paris, Oct. 19.—The amount contributed for the relief of Chicago by Americans in Paris is 131,955 francs.

London, Oct. 20.—Earl Granville in a speech at Manchester last night, expressed a feeling of pride over the Matuna negotiations and their result; regretted the sufferings of Chicago, and thanked the American Government for suppressing Fenian raids.

The Times this morning believes the jealousy of England is extinct, and states that subscriptions have been received at the Mansion House, for Chicago, to the amount of £33,000. Rothschild has contributed seven hundred dollars.

It is rumored that Prince Napoleon will go to Paris.

ted in this city by from twelve to fifteen hundred majority. The State has gone Republican by a large majority.

Suit was commenced by the Democrats of Solano county to set aside the September election in that county on the ground of the action of the Federal officials.

Marshal Glascock, a saloon keeper at Colusa, was shot dead by W. R. Mills, who was defending himself against a drunken assault.

Mathew Smith was burned to death by the burning of his house, at Rough and Ready, yesterday.

The case of Mrs. Fair has been set for the 24th inst. in the Supreme Court.

The mail carriers' party was attacked between Tucson and Camp Crittenden, Arizona, on the 9th, by the Apaches, with whom Collier had just made peace.

NEW YORK.

New York, Oct. 19.—The County Convention of the reform Democracy was held last night, 400 delegates being present. W. W. Curtis warned the meeting that Tammany intended frauds at the election, and said the only remedy was to execute summary justice by suspending repeaters or fraudulent inspectors from lamp posts, and he believed the law would protect the citizens in so doing. The following nominations were made: For Judge of the Supreme Court, ex-Judge Geo. C. Barret; for Judge of Common Pleas, Judge Chas. P. Daly; Register, General Franz Sigel.

New York, Oct. 19.—Tammany made nominations for State Senate to-night, including William M. Tweed, Michael Norton, John J. Bradley and Henry W. Genet.

New York, Oct. 19.—Boston yesterday added ten thousand dollars to her contributions for Chicago. Contributions for Wisconsin and Michigan continue to be made, and money and clothing are being geeding in that part of the west division contiguous to the burnt district, is being fitted up for use by wholesale merchants, bank offices, etc. All the old first-class hotels are again located and opened, the Sherman house occupying a fine building erected for hotel purposes over a year ago, on the corner of Madison and Clinton, and never occupied until now.

The shipments of grain are already nearly as large as before the fire. The Board of Trade is in full operation, and the national banks and private institutions have nearly all resumed business, as usual. Deposits at almost every one daily exceed the amounts drawn out. Every daily newspaper has now resumed publication in some form or other—the leading dailies in nearly the old form. A comfortable building for city offices will be finished within thirty days on Lasalle street, about three blocks south of the court-house. There has been some bad feeling engendered by the attempt of some parties to force business south of Twelfth street, upon Wabash and Michigan avenues, and new members of the Board of Trade rented a hall in that vicinity with the view of doing a portion of the business there. These differences are being rapidly settled and the entire business portion of the community are working in one direction. There is confident belief now that the restoration of the city will be even more remarkable than her destruction. Contributions for the relief of sufferers continue to come in, and the local committee is now so organized as to insure a systematic and proper distribution to the needy only. Work, at least during good weather, promises to be abundant and fair wages, still there will be many thousands who will have to be supported during the winter, and every preparation is being made for this. The Cincinnati relief committee, who were among the very first who arrived here, coming indeed before the those who survive.

Detroit, Mich., Oct. 19.—Intelligence has been received here of the picking up of two more boats of the steamer Colburn with eighteen persons. Twenty persons are still missing. Gilbert Demont, and the State Indian Agent, Smith and wife, of Detroit, are undoubtedly among the lost, as also were all the women on board.

Shreveport, La., Oct. 19.—The Railroad Convention which met here yesterday was largely attended, and the proceedings were harmonious. Representatives from St. Louis, Memphis, Vicksburg, Kansas, Arizona, and New Mexico were present. Reports were read favoring an early completion of the Southern Pacific Railroad, after which the Convention adjourned, to meet at Marshall on Saturday.

Syracuse, Oct. 19.—Public school building No. 7, one of the largest in the city, was burned. Loss, $12,000; insured, $5,000. It was doubtless the work of an incendiary. A colored girl is now under arrest, who confesses to having attempted to fire the building last evening.

Providence, R. I., Oct. 19.—Hon. Sylvester Mowry of Arizona died in London, England, Thursday last.

Laramie, Oct. 19.—A smash up occurred near Rock Creek, on the Union Pacific Railroad, this morning, in which eight or ten freight cars were demolished. No lives lost.

Laramie, Oct. 19.—John Mulroy, of the Ninth Infantry, was struck by a passenger train at five o'clock to-night and fatally injured. The engineer did not see him until he struck him.

Leavenworth, Ks, Oct. 19.—Camps for grading parties of the Leavenworth and Denver narrow gauge railroad have been established some distance west of here. Contractors expect to make surprising speed.

Boston, October 19.—The Insurance Com-

GENERAL.

Washington News.

Washington, 3.—Delegate Hooper, of Utah is here, and denies that his business with the President is concerning Utah matters.

It is thought that the application to the supreme court, for a writ of mandamus to compel the secretary of the treasury to issue a warrant for $325,000 alleged to be due Kentucky for arming troops, etc., will be unsuccessful.

The remains of 120 Confederate soldiers from North Carolina, buried at Gettysburg, have been removed to Raleigh.

Judge Richardon writes from London October 21st, that the whole syndicate business will be a complete success, the members of the syndicate doing everything in accordance with their agreements, and the bonds were delivered as fast as practicable. He thinks the transaction will be closed by the first of December.

Surgeon Wm. M. Wood, late chief of the naval bureau of medicine and surgery, is appointed inspector general of the fleet hospital.

Victor G. Powell, late clerk of the second auditor's office, charged with conspiracy with W. B. Stone and others to defraud the State, is released on ten thousand dollars bail.

News from New York.

New York, 3.—In his speech, last night, Tilden said he had been approached by Tammany officials, and office and other considerations were offered him to leave the Reform party.

The injunction order was modified by judge Barnard this morning, so as to prevent the issue of fifteen millions of bonds negotiated by August Belmont, without the endorsement of deputy comptroller Green. He also granted a mandamus, compelling the bureau of elections to provide for the election of assistant aldermen.

Judge Ingraham has granted a writ of error in the case of Rosenzweig, the abortionist, returnable at the next general term which takes place in January.

Twenty-five hundred wooden buildings are in course of erection in the north division, 600 in the south, and 150 in the west. Permits for the erection of permanent buildings of stone and brick continue to be issued daily. The weather continues fine and unusually warm for the season.

The Georgia Governorship.

Atlanta, Ga., 3.—The Georgia Legislature to-day recognized Connoly, Republican, as acting governor. A bill for a special election of governor in December was introduced and a resolution passed declaring false governor Bullock's allegations that the assembly meant to impeach him without investigation, and that the people did not respect the constitution or recognize the results of the war.

Monetary and Stocks.

New York, 3.—Money easy, 6 and 7. Sterling, 8?. Governments strong.

Stocks steady. W. U. T., 62; Quicksilver, 17?; Wells Fargo, 51; Pacific Mail, 46?.

London, 3.—Consols, 93. Money, 93?.

Paris, 3.—Rentes 58 francs and 45 centimes. The bullion in the bank of France has decreased 2,600,000 francs.

The Police Commissioners allow each reform candidate to select a man to each election precinct, and to protect him while he is present at the polls. Mayor Hall's chief clerk, in a letter to the press, promises, on the part of the mayor, prompt attention to all complaints made by citizens against inspectors or other poll officers. About 2,000 young men have been enrolled as watchers of polls on the part of the committee of 70 and the council of municipal reform.

Judge Barnard to-day, in court, stated that he was determined to stop imprisonment for debt or of witnesses. He had no doubt the murderers of Nathan and Rogers would have been discovered but for fear on the part of some one of an indefinite imprisonment.

Seventeen indictments have been found against the forger Mines.

Warrants were issued to-day for several repeaters operating on the registry list.

Ex-sheriff O'Brien, the Reform candidate for senator of the 7th district, in a speech last evening said "There are 60000 men in New York who will not stand the illegal interference of these hirelings, and who, should the police on Tuesday next attempt to prevent honest men from voting or shield rogues in repeating, will hang the villains to the nearest lamp-post." This was greeted with uproarious cheers and shouts of "We will that."

The steamer *Wabash* will proceed to Fortress Monroe from this city, at which place general Sherman and staff will go on board for Europe.

Attempted Suicide by a Murderer.

Cincinnati, O., 3.—B. F. Randolph, charged with murdering his wife, attempted suicide in Delaware county, O., jail last night, and then confessed the murdering of his wife by strangulation.

Surrender of Ku Klux.

Washington, 3.—Information has been received that two hundred Ku Klux made a voluntary confession and surrendered to the authorities. They deserted from the Ku Klux clan on Monday. Thirty-seven of them have confessed at this writing. It is estimated that three

hundred have fled, and one hundred and two are confined in jail. The examinations before the commission will be soon commenced.

One hundred troops have been ordered to Fort Leavenworth, as an assignment to the cavalry there.

Suspension of Habeas Corpus Revoked.

Washington, 3.—The President issued a proclamation to-day, revoking the suspension of the *habeas corpus* in Marion county, S. C., it having been ascertained that unlawful combinations do not exist there to the extent described in the proclamation suspending said writ.

The Defaulter Forbes.

The commissioner of pensions has returned his investigations of the Philadelphia reports. The defalcation of pension agent Forbes is $32,000. He will be removed.

Indian Matters.

Washington, 3. — Agent Gibson reports that there are over 800 white trespassers, from Kansas, on the new Osage reservation. The surveyors recently sent to the Osage country to fix the line at 96 degrees, made the line four miles west of the previous official surveys, by which the choicest lands in the valley of the Cane river will be taken from the Osages, thus pushing the Indians upon the mountainous region. The administration directed, for the present, that the Indians shall not be disturbed and that they shall be protected. The names of colonel Tappan, colonel H. A. Clum, and general F. A. Walker are mentioned in connection with the commissioners of Indian affairs.

The Government is investigating the charges against Judge J. W. Wright of this city, formerly of Indiana, in relation to the collection of bounties and pensions of Indian soldiers of the Creek, Cherokee and Seminole nations, who served on the frontier during the rebellion. The alleged frauds it is said amount to nearly $400,000, and that some of the checks of payments and bounties were cashed by the assistant

treasurer at New York, upon the indorsement of dead soldiers' names by Wright or his agents.

Romantic Suicides.

Lewiston, Me., 3. — Two girls, named Ada Brown, of Buckfield, and Anna Wood, of Hartford, to-day leaped into the deepest channel of the falls with their arms interlocked, and left their clothing on a rock.

Another Suicide.

Providence, R. I., 3.—Stephen Waterman, a member of the State Legislature, shot himself through the head this morning.

Interesting Chicago Items.

Chicago, 3.—The total registration of the city so far as the returns are received is less than 14,000, or one half the number of last year. It is believed the total registration will not exceed 17,000.

A third ticket for city and county officers, headed by Dr. N. S. Davis for mayor, has been nominated by the Temperance party.

11/08/1871
Deseret News

[SPECIAL TO THE DESERET NEWS.

By Telegraph.

GENERAL.

NEVADA CITY.—To-day about one o'clock, a worthless bummer, named Benjamin Reed and a man named Christian Johnson had a few words in Charles' saloon. Reed left and in a few minutes returned with a borrowed pistol and shot Johnson through the body just above the navel. Reed was immediately arrested and lodged in jail. Johnson died in two hours.

NEW YORK, 3.—It is expected that Tweed will pay the Neyset claim of $42,000 to-day. It is admitted on every hand that Ingersoll, Garvey and Woodward have escaped from the country, and are not likely to return of their own accord. Deputy Comptroller Green is ready to pay the re[illegible] and city judge their salaries. He thinks the sum fixed by the list receiving approval is ten thousand a year. The supervisors afterwards placed the salaries at $15,000, but as this was unratified by the legislature, the deputy comptroller is only willing to pay them $10,000. Green yesterday made further removals of court attendants and employees of the comptroller's office. Payment of 2,100 men employed on the aqueduct was completed. The police also were paid yesterday, and $40,000 placed to the credit of the department of the parks.

The address of the committee of 70 adopted at the reform meeting last night, says, "There is not in the history of villainy a parallel for the gigantic crime against property conceived by the Tammany ring. It was engineered on the complete subversion of free government in the very heart of a Republican nation. An American city, having a population of over a million, was disfranchised by an open act of a legislature born and nurtured in Democracy and Republicanism, and was handed over to a self appointed oligarchy, to be robbed and plundered by them and their confederates and assigns for six years certainly, and prospectively for ever. The new city charter gave to a gang of thieves power to govern this metropolis, it substantially deprived the citizens of self-control, nullified their right of suffrage, nullified the principles of representation, and authorized a handful of cunning and resolute robbers to levy taxes, create a public debt, and incur municipal liabilities without limit and without check, and which placed at their disposal the revenues of a great municipality and the property of all its citizens."

WASHINGTON, 3—The President issued a proclamation to-day, revoking the suspension of the *habeas corpus* in Marion county, S. C., it having been ascertained that unlawful combinations do not exist there to the extent described in the proclamation suspending said writ.

WASHINGTON, 3.—Delegate Hooper, of Utah, is here, and denies that his business with the President is concerning Utah matters.

Information has been received that two hundred Ku Klux made a voluntary confession and surrendered to the

CINCINNATI, 3—B. F. Randolph, charged with murdering his wife attempted suicide in Delaware county, O., jail last night, and then confessed the murdering of his wife by strangulation.

WASHINGTON, 5.—South Carolina papers report the excitement at Spartanburg subsiding. There have been no arrests for the past week, though the U. S. forces have been reinforced by a company of artillery. There have been no arrests yet in Chester, and but 21 in Look county, where two hundred persons confessed their connection with the Ku Klux organization, though they mainly allege that they never participated in its operations. Some say they were compelled to join, while others did it as a means of protection for their negro laborers. The confessions give the names of those who performed the initiation, and others who were present. Some acknowledge the commission of outrages, in Ku Kluxing murders. Of the recent arrests, four negroes and six whites were released; 88 remain in jail, including two negroes.

Chas. O'Connor says he is certain that from three to six millions can be recovered from Tweed, whose aiders and abettors are also to be proceeded against. Tweed's election, by a large majority, is conceded. The *Herald* says the controlling political elements in his district are, according to Democratic authority, outlaws, vagrants, loafers, vagabonds and bummers. They would probably go for him if he were under conviction and awaiting sentence, as the robber of the public treasury.

The *World* says there are most extraordinary rumors in circulation, concerning the issue of bonds of the State of South Carolina. There has been such an over issue as absolutely endangers the solvency of the State. It is stated that a bank note company of this city print

authorities. They deserted from the Ku Klux clan on Monday. Thirty-seven of them have confessed at this writing. It is estimated that three hundred have fled, and one hundred and two are confined in jail. The examinations before the commission will be soon commenced.

One hundred troops have been ordered to Fort Leavenworth as an assignment to the cavalry there.

Agent Gibson reports that there are over 800 white trespassers from Kansas on the new Osage reservation. The surveyors recently sent to the Osage country to fix the line at 96 degrees; made the line four miles west of the previous official surveys, by which the choicest lands in the valley in the Cane river will be taken from the Osages, thus pushing the Indians upon the mountainous region. The administration directed, for the present, that the Indians shall not be disturbed and that they shall be protected. The names of Colonel Tappan, Colonel H. A. Clum, and General F. A. Walker are mentioned in connection with the commissioners of Indian affairs.

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NEW YORK, 3.—In his speech last night, Tilden said he had been approached by Tammany officials, and offices and other considerations were offered him to leave the Reform party.

The injunction order was modified by

a bank note company of this city printed twenty millions of bonds, which have passed into the possession of Mr. Kempton, State financial agent, and that several members of the State government are in this city, other prominent South Carolinians are here watching the proceedings. Gov. Scott is said to have admitted this printing of the bonds, but does not state the object of their issue. It is also alleged that many of the State officials are implicated in the misappropriation of the money of the State, and that it is believed this fraudulent issue of $20,000,000 had been negotiated, and the money misapplied.

LOUISVILLE, 6.—At half past nine o'clock, last night, the giving way of a column in the lower room in the African Baptist church, corner of Fifth and York streets, created a panic among the congregation in the upper room, and the whole body rushed, jammed and crushed down two narrow stairways. On each side of the door men were trampling over women and children, and a number were more or less wounded. One had a leg broken. The killed are all women and children. The scene was terrible and heartrending. Mothers were screaming over their dead children, and husbands in agony over their wives. The column or pillar which gave way proved to have been set on the lower floor between joists, with nothing under it but inch flooring.

FOREIGN.

LONDON, 2.—A compromise has been arrived at between the French and English governments with regard to the commercial treaty. The notice of abrogation given by France has been withdrawn and the treaty is to be continued in force, but with material modifications, the details of which have already been agreed upon.

A serious railway accident is report-

11/08/1871
Deseret News

Judge Barnard this morning so as to prevent the issue of fifteen millions of bonds negotiated by August Belmont. without the endorsement of deputy comptroller Green. He also granted a mandamus, compelling the bureau of elections to provide for the election of assistant aldermen.

Seventeen indictments have been found against the forger Mines.

Warrants were issued to-day for several repeaters operating on the registry list.

Ex-sheriff O'Brien, the reform candidate for senator of the 7th district, in a speech last evening said—

"There are 50,000 men in New York who will not stand the illegal interference of these hirelings, and who, should the police on Thursday next attempt to prevent honest men from voting or shield rogues in repeating, will hang the villains to the nearest lamp-post." This was greeted with uproarious cheers and shouts of "We will that."

ed from Perth, Scotland, but no particulars are received.

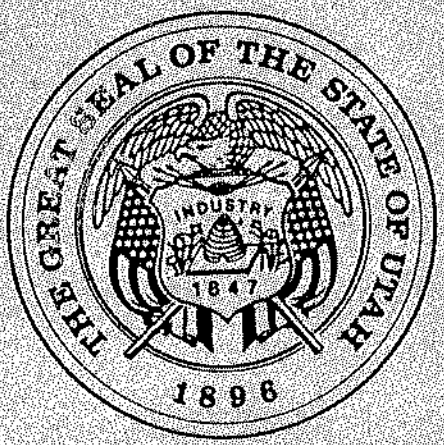
The Mansion House fund last evening amounted to £15,500. The receipts of the relief committee of Liverpool are £18,700.

PARIS, 2.—A deputation of American residents to-day presented Minister Washburne with a service of plate, in recognition of his services to his countrymen during the siege and under the Commune.

BERLIN, 2.—The workingmen's committee of this city has summoned a congress of workmen to meet here on the 19th. The business of this meeting is to organize a general strike for the reduction of the daily labor to nine hours, and for a general increase of wages.

PARIS, 3.—Intelligence has been received of the entire suppression of the insurrection in Algeria. The natives are generally resuming their labors.

Exhibit 2



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,

DAVID S. MONSON
Lieutenant Governor

TABLE OF CONTENTS

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 nonjudical 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:

Assessed Value X Mill Levy Rate = 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 unwieldly. 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 prosented 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 establisb 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 prohiblts the legislature from belng 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 selectlon process. The key components include:

a. judicial nominating commissions - tho commisslon 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 appolntment or, if not, the selection process begins again with the nominatlng commission.

d. uncontested retention elections - at the first general election three years after appointment, each judge shall be subject to an unopposed retentlon election. The elections would be nonpartisan and conducted as provided by statute.

The proposal also provides for the constltutional establishment of a judicial conduct commission to review complaints and order disciplinary action agalnst 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 holdlng 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 completlon of their full term of office they would be subject to the provisions of this article.

Fiscal Effect

There has been no enabling legislatlon passed by the legislature or changes made in the Judicial Article Revislon 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 disipline 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

Argumeñts 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 tyrany, 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. Vert 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 PROSECUTERS; 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 nonpartisian 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 Judical 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 persistant 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 proseutor 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 availble 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 Shool 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 though 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. Cornaby
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 Stated 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. Futhermore, 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 are 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 guaranties.

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 I, 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 l islation raises fundamental First Amend-
m questions ove e scope of the state's authority to regulate
fr speech. All su regulatory efforts will be reviewed by the
c s with extre caution and examined very carefully. This
p icular legisl n is even more restrictive than existing
l slation deali with cable television programming. As such,
rt approval l ss likely for it than for the existing law.

In additic o the First Amendment issues, a recent U.S.
preme Cour ecision 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 1983. 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. Bunnel
Director of Public Affairs
Utah Cable Television
Operators Association
P.O. Box 6045, Salt Lake City, Utah 8410

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 orlented.

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 laws. 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 roquires 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 precmpted 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) "Distributo" 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.

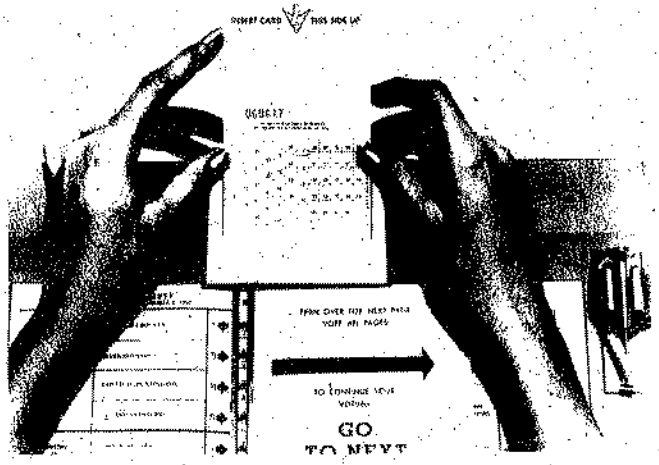
NOTE: If an Election Judge has reason to doubt any person's identity, the Judge shall either, (a) request identification from the voter, or (b) have the voter identified by a known registered voter of the district.

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:

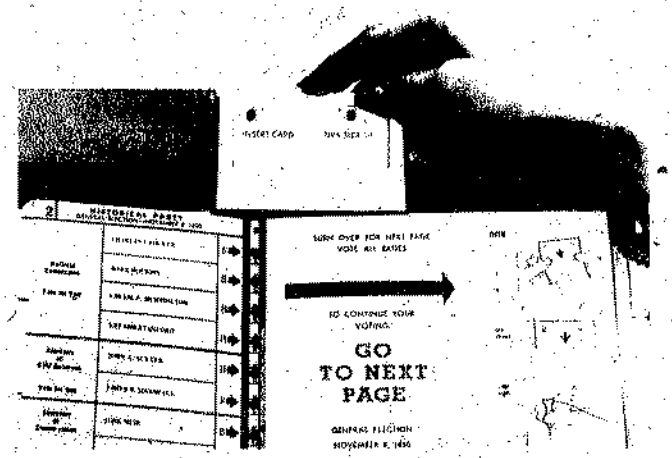
STEP 1

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



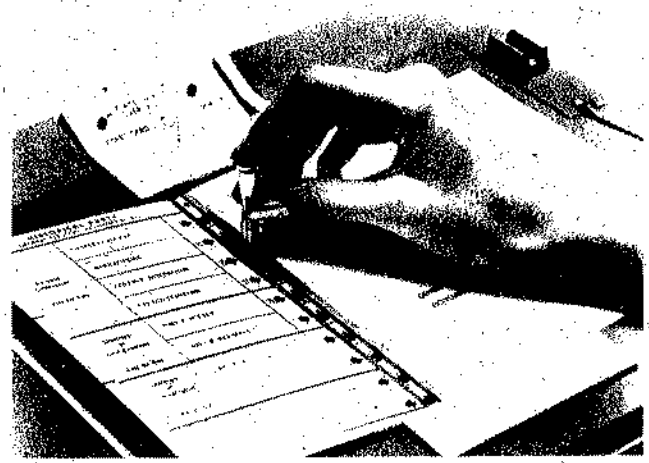
STEP 2

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



STEP 3

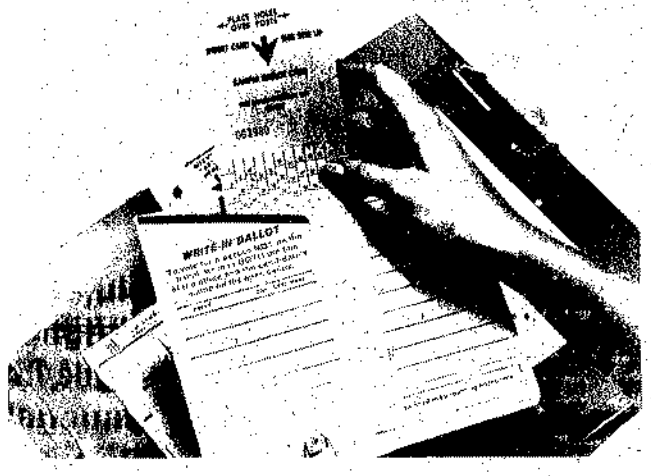
To vote, hold the Punch straight up and push down through the card for each of your choices. Vote all pages as instructed. **Use the punch provided. Do not use pen or pencil.**



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.

All Counties Except Davis, Cache, Carbon and Salt Lake

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.

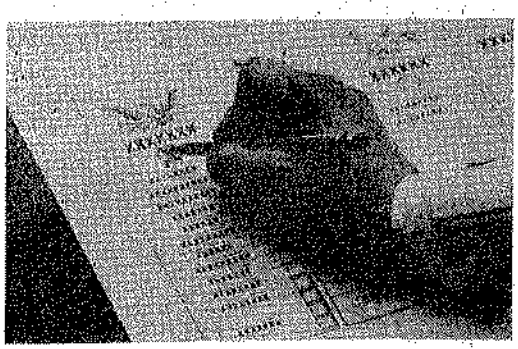
NOTE: If an Election Judge has reason to doubt any person's identity, the Judge shall either, (a) request identification from the voter, or (b) have the voter identified by a known registered voter of the district.

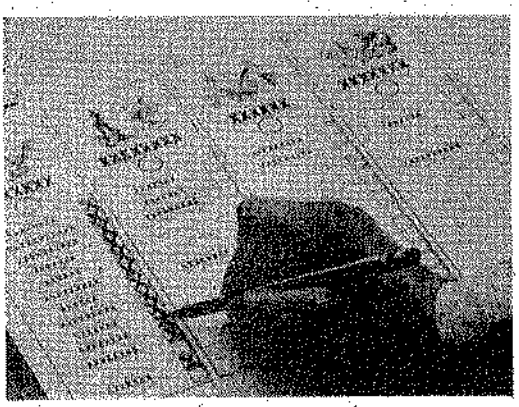
HOW TO VOTE BALLOT

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

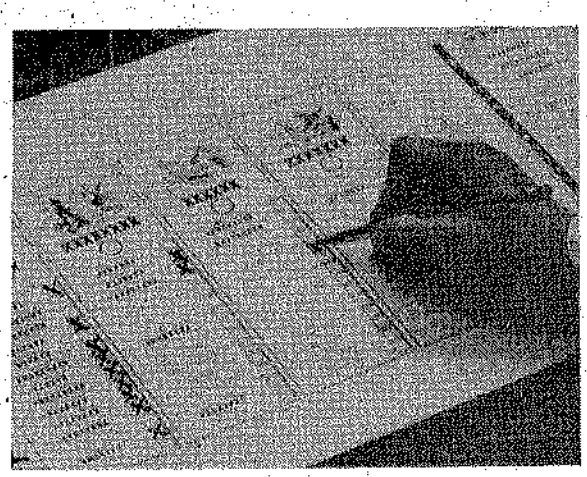
If you desire to vote for all the candidates upon any ticket you may mark in the circle above that ticket, or in the squares opposite the names of all candidates thereon, or may make both such markings as shown below.

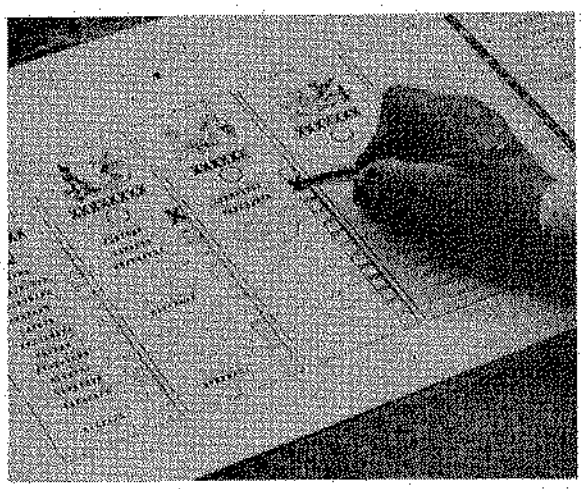




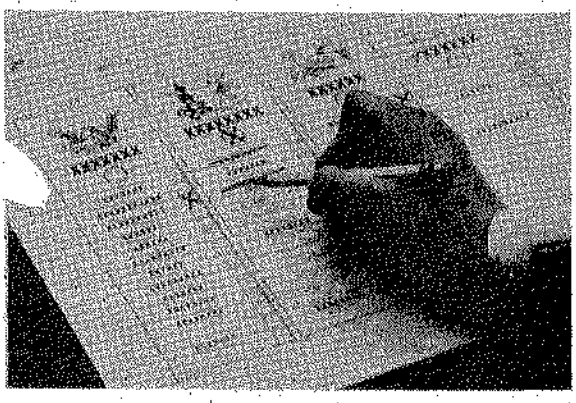
VOTING FOR CANDIDATES ON TWO OR MORE TICKETS

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.



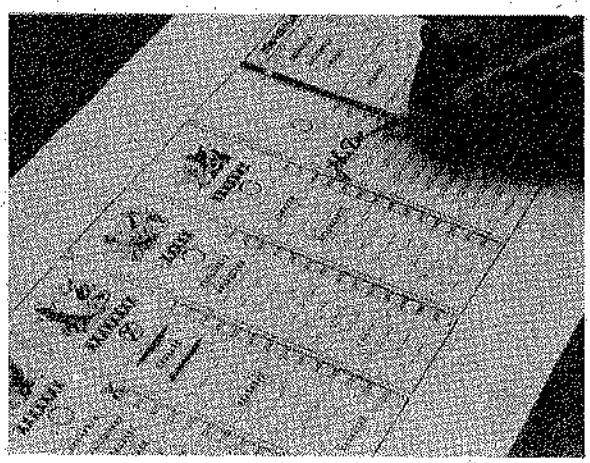


If a cross is marked in a circle above a ticket, the voter MAY or may not draw a line or lines through the name or names of any candidate on the ticket for whom he does not wish to vote. However, in municipal elections and any other election when an office is listed that requires more than one person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



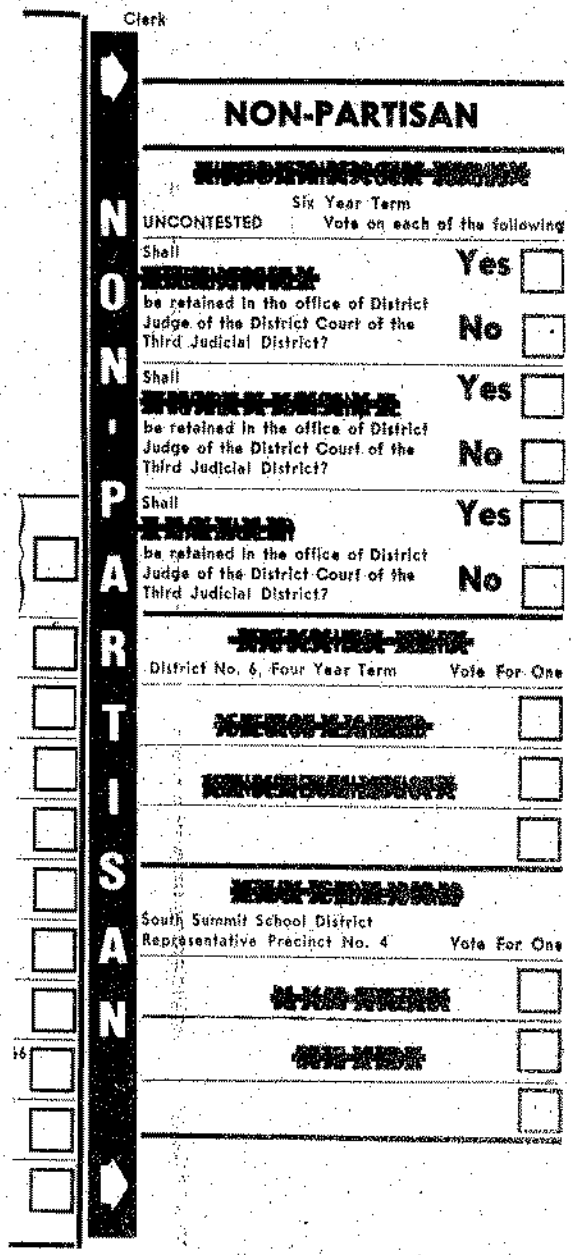
WRITE IN VOTING

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.



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 or 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 the 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.

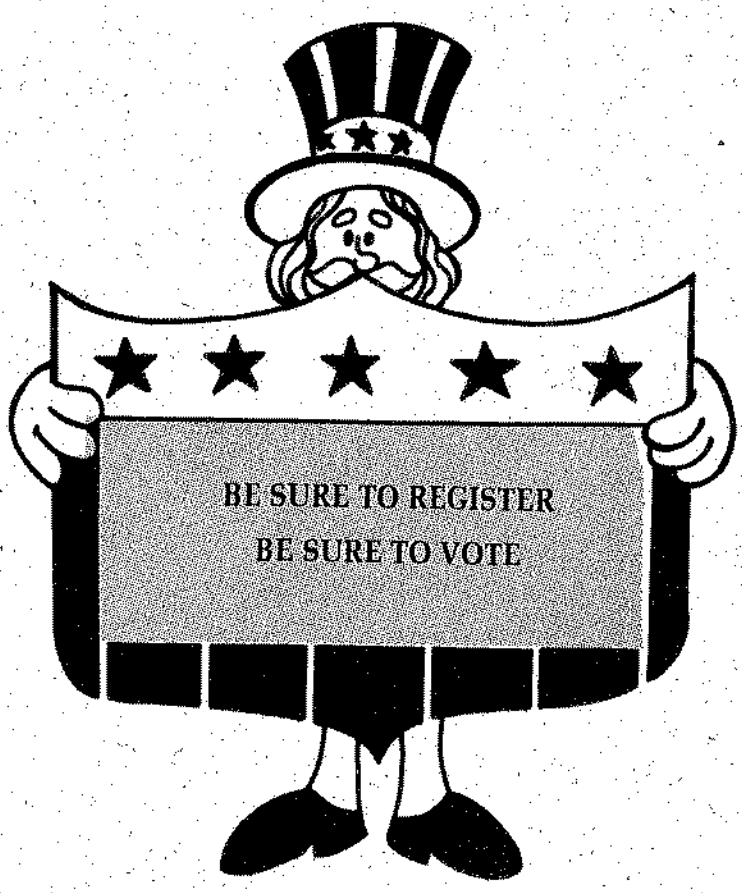
HOW TO REGISTER TO VOTE

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.



STATE OF UTAH

Executive Department

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.

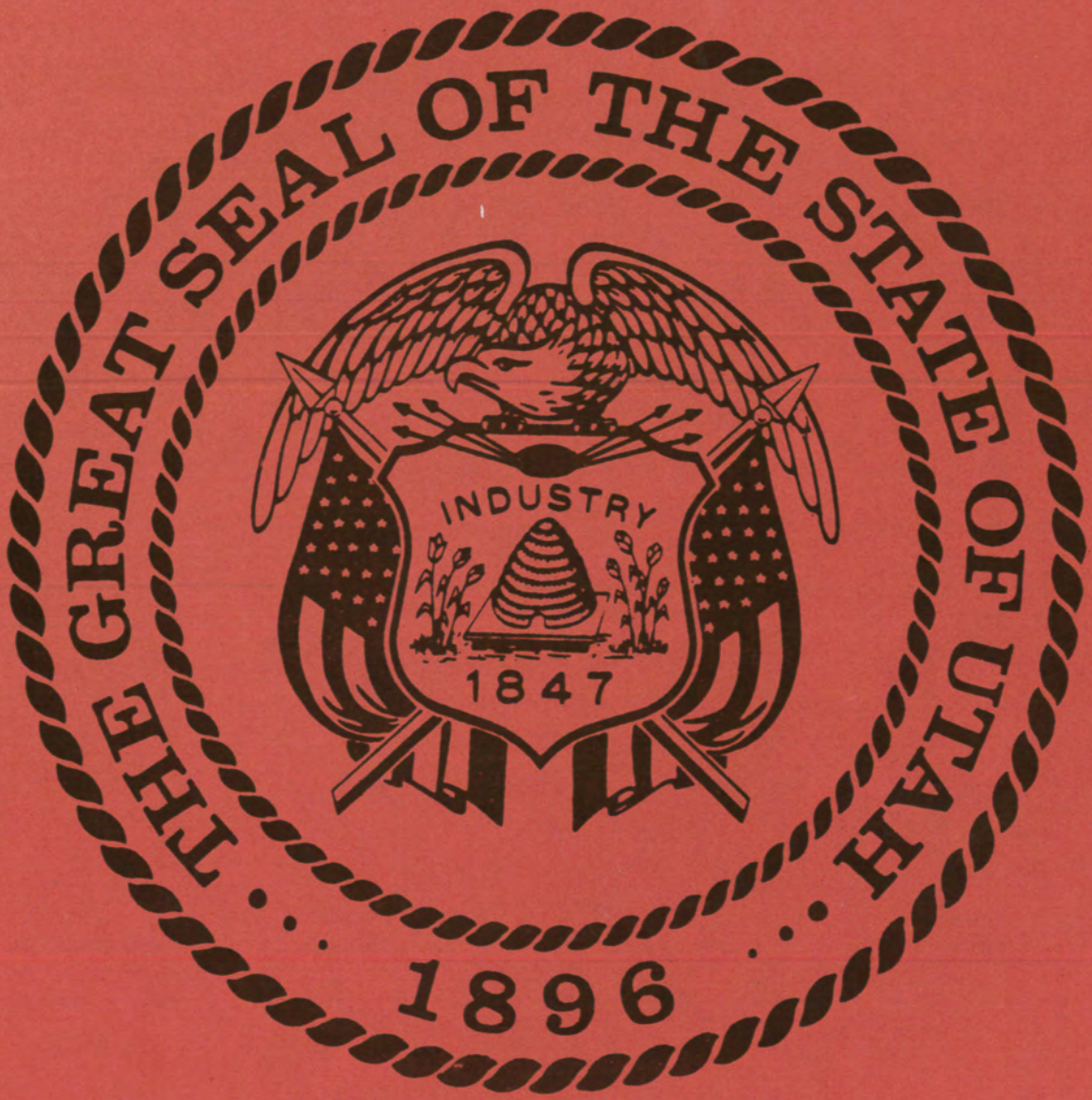
THE GREAT SEAL OF THE STATE OF UTAH
INDUSTRY
1847
1896

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

Exhibit 3

Report of the
CONSTITUTIONAL REVISION COMMISSION
Submitted to the Governor and the 45th Legislature of the State of Utah for the years 1982 and 1983



January 1984
Second Printing

B1

REPORT OF THE

UTAH CONSTITUTIONAL REVISION COMMISSION

SUBMITTED TO THE GOVERNOR AND THE

45TH LEGISLATURE OF THE STATE OF UTAH

OFFICE OF LEGISLATIVE RESEARCH
AND GENERAL COUNSEL
436 STATE CAPITOL
SALT LAKE CITY, UTAH 84114

JANUARY 1984
SECOND PRINTING

B2

Utah Constitutional Revision Commission

436 State Capitol • Salt Lake City, Utah 84114 • (801) 533-5481

Honorable Scott M. Matheson
Governor of the State of Utah

Honorable Members of the 45th Legislature
of the State of Utah

The Utah Constitutional Revision Commission is pleased to submit this report of its work during the 1982 and 1983 legislative interims. The work of the commission during this period has included further study of the Judicial and the Education Articles as well as a review of the Legislative Article.

The commission has devoted a great deal of time and attention in preparing the recommendations included in this report. In addition to its own detailed study, the commission has received input from a broad cross section of interested parties, including public officials, interested organizations and citizen groups, as well as the public at large. Their participation was a valuable contribution in preparing the commission recommendations.

This report will discuss in depth the commission's proposals for major revisions of the Judicial Article (Article VIII) and the Education Article (Article X). The commission has also proposed an important amendment to the Legislative Article (Article VI). The report also includes an overview of previous commission recommendations and a summary of the 1982 election, reviewing the four constitutional amendments that were on the ballot.

The Utah Constitutional Revision Commission has been charged to conduct a comprehensive examination of the Utah Constitution and to recommend those changes necessary to provide Utah with the tools to address present and future needs. We appreciate the opportunity we have had to serve in this capacity, and hope that our efforts will receive serious consideration and ultimately prove to be of benefit to the people of Utah.

UTAH CONSTITUTIONAL REVISION
COMMISSION

Karl N. Snow, Jr.
Chairman

William G. Fowler
Vice Chairman

TABLE OF CONTENTS

INTRODUCTION

THE UTAH CONSTITUTIONAL REVISION COMMISSION ANNUAL REPORT, 1982 AND 1983

This report contains a review of the studies and recommendations of the Constitutional Revision Commission for the years 1982 and 1983. The report contains the following information:

- Legislative action taken on commission recommendations made to the Budget Session of the 44th Legislature - January, 1982 (See Report of the Constitutional Revision Commission - January 1982.)

- The commission's involvement with, and the results of, the 1982 General Election;

- A review of the commission's recommendations to the General Session of the 45th Legislature; and

- The commission's recommendations to the Budget Session of the 45th Legislature, or if necessary, a special session of the 45th Legislature. The commission has prepared proposals for significant change to three articles of the Utah Constitution: (a) the Judicial Article, (b) the Education Article, and (c) the Legislative Article. For each recommendation discussed, an introduction and overview will be offered, followed by a detailed section-by-section analysis which will include old and new language, explanations, and a rationale.

CHAPTER I

BACKGROUND

THE CONSTITUTIONAL REVISION COMMISSION

The Constitutional Revision Commission was originally organized in 1969 to study and recommend needed revisions of the Utah Constitution. Concerns had been expressed for many years that the Utah Constitution needed serious overhaul. However, a proposal to call a constitutional convention to completely rewrite the constitution had been rejected by the voters in 1966.

At the same time the commission was organized, the Utah Legislature proposed the Gateway Amendment. This amendment allowed for the revision of entire constitutional articles which could then be presented to the public as a single ballot issue. The Gateway Amendment was approved by the electorate at the 1970 General Election.

Commission Activities - Prior to 1977

The Constitutional Revision Commission existed on an ad hoc basis until 1977. During this period, the commission proposed the following amendments:

--Legislative Article (partial revision)
presented to the 39th Legislature, January 1971 (approved)
approved by voters, November 1972

--Executive Article
presented to the 40th Legislature, January 1973 (approved)
rejected by voters, November 1974

--Elections and Right of Suffrage Article
presented to 41st Legislature, January 1976 (approved)
approved by voters, November 1976

--Congressional and Legislative Appointment Article
presented to 41st Legislature, January 1976 (not approved)

Establishment of the Commission as a Permanent Body

The Utah Constitutional Revision Commission was established as a permanent commission by the 42nd Legislature in 1977. The commission is empowered to, "make a comprehensive examination of the Constitution of the State of Utah, and of the amendments thereto, and thereafter to make recommendations to the

governor and the legislature as to specific proposed constitutional amendments designed to carry out the commission's recommendations for changes therein." (See Appendix A for a copy of the statute.)

In reviewing and revising the Utah Constitution, the commission has sought to develop a document that protects essential rights and basic institutions while at the same time allowing for flexibility to address future needs. The commission has, therefore, recommended deleting references to policies or practices that could be better established by statute. In addition, the commission has tried to eliminate certain ambiguities between long-standing practice and actual constitutional language. In many cases, constitutional requirements and prohibitions have been ignored for years. The commission has recommended removing these long-neglected provisions as well as other outdated sections from the constitution.

The commission consists of 16 members. The president of the senate appoints three state senators, the speaker of the house appoints three state representatives, and the governor appoints three members. Six members are then chosen by these nine appointees. The director of the Office of Legislative Research and General Counsel serves as an ex officio member. (Exhibit 1 contains a complete list of the Constitutional Revision Commission's members and staff.)

Commission Activities - Since 1977

Since 1977, the commission has been active in reviewing and revising the constitution. It has recommended revisions of the following:

--Revenue and Taxation Article
presented to the 43rd Legislature, January 1980 (approved)
rejected by voters, November 1980
presented to the 44th Legislature, January 1982 (approved)
approved by voters, November 1982

--Labor Article
presented to the 43rd Legislature, January 1979 (approved)
approved by voters, November 1980

--Executive Article
presented to the 43rd Legislature, January 1979 (approved)
approved by voters, November 1980

--Judicial Article
presented to the 44th Legislature, January 1982 (not approved)

In addition to these formal study proposals, the commission has assisted in developing other constitutional amendments which have been submitted to the legislature independently. The commission has been instrumental in obtaining legislative and public approval for these changes. Specifically, these proposals include:

--Legislative Compensation Commission
presented to the 44th Legislature, January 1982 (approved)
approved by voters, November 1982

--Corporate Officers Amendment
presented to the 44th Legislature, January 1982 (approved)
approved by voters, November 1982

As a bipartisan body, composed of both legislators and and citizen members, the Constitutional Revision Commission has demonstrated a unique capacity to develop meaningful proposals for improving the Utah Constitution.

EXHIBIT 1
MEMBERS OF THE UTAH CONSTITUTIONAL REVISION COMMISSION

Karl N. Snow, Jr., Chairman (term expired 1983 reappointed until 1989)	Senate Appointee State Senator Provo
William G. Fowler, Vice Chairman (term expired 1983, reappointed until 1989)	Governor Appointee Citizen Member Salt Lake City
James E. Faust (term expired 1981, reappointed until 1987)	CRC Appointee Citizen Member Salt Lake City
Norman H. Bangerter (appointed 1981, term expires 1987)	House Appointee State Representative, Speaker of the House West Valley City
Martin B. Hickman (term expired 1979 reappointed until 1985)	CRC Appointee Citizen Member Provo
Raymond L. Hixson (term expired 1983, reappointed until 1989)	CRC Appointee Citizen Member Salt Lake City
Richard C. Howe (term expires 1985)	CRC Appointee Citizen Member Murray
Dixie Leavitt (term expired 1981, reappointed until 1987)	CRC Appointee Citizen Member Cedar City
Clifford S. LeFevre (term expires 1985)	House Appointee State Representative Clearfield
Eddie P. Mayne (term expired 1979, reappointed until 1985)	CRC Appointee Citizen Member West Valley City
Jon M. Memmott (ex officio)	Director, Office of Legislative Research and General Counsel Layton
Jefferson B. Fordham (appointed 1981, term expires 1987)	Governor Appointee Citizen Member Salt Lake City

Darrell G. Renstrom (term expired 1983)	Senate Appointee State Senator Ogden
Wilford R. Black (appointed 1983, term expires 1989)	Senate Appointee State Senator Salt Lake City
G. LaMont Richards (term expired 1979, reappointed until 1985)	House Appointee State Representative Salt Lake City
Phyllis C. Southwick (term expired 1983, reappointed until 1989)	Governor Appointee Citizen Member Bountiful
Glade M. Sowards (term expired 1981, reappointed until 1987)	Senate Appointee State Senator Vernal

The following were constituted commission subcommittees during the period covered by this report.

Education Article Subcommittee	Judicial Article Subcommittee
Mr. Clifford S. LeFevre, Chairman	Dr. Martin B. Hickman, Chairman
Rep. G. LaMont Richards	Mr. William G. Fowler
Sen. Karl N. Snow, Jr.	Elder James E. Faust
Mr. Dixie Leavitt	Dr. Jefferson Fordham
Speaker Norman H. Bangerter	Justice Richard C. Howe
Mr. Eddie P. Mayne	Mr. Darrell G. Renstrom
Mr. Raymond L. Hixson	Dr. Phyllis C. Southwick
Sen. Wilford R. Black	Sen. Glade M. Sowards
Mr. Jon M. Memmott	Mr. Jon M. Memmott

Staff

Roger O. Tew	Executive Director, 1981 - Present
Robin Riggs	Research Assistant, 1980 - 1982
Ivan Legler	Research Assistant, 1981
Kevin Howard	Research Assistant, 1982 - 1983
Brian McKell	Research Assistant, 1983
Shelly Cordon	Research Assistant, 1983 - Present
Jan Poulson	Secretary, 1981 - Present

REPORT OF THE 1982 BUDGET SESSION

The Constitutional Revision Commission presented two major proposals to the Budget Session of the 44th Legislature: a revision of the Revenue and Taxation Article, and a revision of the Judicial Article. (See Report of the Constitutional Revision Commission - January 1982.) In addition, the legislature considered three other constitutional amendments, two of which the commission was instrumental in developing.

Revenue and Taxation Article Revision

The Revenue and Taxation Article Revision (introduced as SJR 3) proposed a series of changes to the present constitution dealing with tax policy. Collectively, the proposal provided the legislature with the authority to implement various tax exemptions and policies.

The legislature approved the Revenue and Taxation Article Revision as presented by the commission with the following amendments (see Appendix B for a copy of the resolution as amended by the legislature):

1. The proposed tax exemption for tangible personal property was deleted.

2. The residential property tax exemption ceiling was lowered. The commission had proposed that the residential property tax exemption be limited at 50 percent of the property's assessed valuation. The legislature lowered the ceiling to 45 percent.

3. The vertical revenue sharing proposed by the commission was deleted. This provision would have authorized revenue sharing between the state and its political subdivisions.

The most controversial provision of the amendment was the residential property tax exemption. During the 1982 Budget Session, the legislature passed legislation to implement the exemption at a level of 25 percent (HB 142 - 1982). Enactment of the measure was tied to the passage of the Tax Article by the electorate.

Judicial Article Revision

The commission introduced a comprehensive revision of the Judicial Article to the 1982 Budget Session of the legislature. The proposal (HJR 10) was considered and approved by the house of representatives. The senate, however, deferred action on the proposal. Chapter II discusses the issues raised by the legislature, and subsequent efforts to develop an acceptable Judicial Article revision.

Other Constitutional Amendments

Legislative Compensation Commission

The Budget Session of the 44th Legislature also considered and approved a measure calling for the establishment of a legislative salary commission. This

proposal, while not formally introduced as a commission recommendation, was actually the product of previous commission study efforts. The amendment, introduced as SJR 5, provided for the creation of an independent legislative salary commission to recommend salary levels for legislators. The governor would appoint the members of the salary commission. The legislature would be required to approve, reject or lower the recommendations. (See Appendix B for a copy of the resolution.)

SJR 5 provided needed flexibility in establishing legislative compensation. It removed the specific dollar figures from the constitution and allowed the legislature to create by legislative rule a mechanism for reimbursing expenses. The measure was endorsed by the commission.

Legislative Residency Amendment

A final constitutional amendment considered and approved by the 1982 Budget Session was HJR 1. This proposal required legislators to live in their districts throughout their term of office. If a legislator moves from the district, the office would be vacated and filled according to existing statutory procedures. The measure originated independently of the commission, but did receive an endorsement from the commission prior to the 1982 General Election. (See Appendix B for a copy of the resolution.)

Corporate Officers Amendment

This measure (introduced as HJR 27) proposed to remove a seldom-enforced prohibition on corporate officers holding public office in municipalities which grant a business license to the corporation. The commission did not formally introduce the proposal to the legislature, but the issue was originally raised by commission studies. After approval by the legislature, the measure received commission endorsement. (See Appendix B for a copy of the resolution.)

REPORT OF THE 1982 GENERAL ELECTION

The 1982 General Election ballot included four constitutional amendments.

1. Proposition 1--Revenue and Taxation Article Revision
2. Proposition 2--Legislative Compensation Commission Amendment
3. Proposition 3--Legislative Residency Amendment
4. Proposition 4--Corporate Officers Amendment

The previous section detailing the actions of the 1982 Budget Session briefly outlined the four proposals and the Constitutional Revision Commission's involvement with each proposed amendment. This section describes the commission's efforts to achieve voter approval in the 1982 General Election. These efforts were ultimately successful, with all four proposed amendments being approved by the electorate.

The Constitutional Revision Commission took an active role in providing educational information about the proposed amendments. In addition, the commission provided information to the lieutenant governor for the official voter information pamphlet which was distributed to all voters of the state.

The commission carefully avoided expending any public funds for advertising or any direct promotional efforts for the amendments. Its efforts were confined to providing general educational information on the Utah Constitution and issues surrounding the 1982 ballot proposals. The commission was instrumental in developing a wide-ranging informational program which included a speaker's bureau and informational mailings to public officials and civic groups. Commission members also appeared on various media programs to discuss the amendments.

An independent promotional organization was created by interested citizens to solicit funds and to directly promote the passage of the amendments--particularly Proposition 1. This organization, known as Citizens for Constitutional Improvement, actively raised money and campaigned for the amendments.

In the final analysis, however, it was the direct involvement by the governor, the legislature, both major political parties, the education community, and other key public leaders, which convinced the electorate of the need to approve the proposed amendments. Their efforts focused primarily on the passage of Proposition 1. All of the amendments, however, received broad support and endorsement. (Exhibit 2 summarizes the actual election results.)

EXHIBIT 2
1982 CONSTITUTIONAL AMENDMENTS
GENERAL ELECTION SUMMARY

Final Vote Summary

Proposition 1 - Tax Article Revision

For	341,263	64.7%
Against	185,924	35.3%

Proposition 2 - Citizen Salary Commission

For	352,195	67.1%
Against	172,380	32.9%

Proposition 3 - Residency Requirement

For	403,694	82.7%
Against	84,229	17.3%

Proposition 4 - Corporate Officers

For	293,289	62.5%
Against	176,270	37.5%

REPORT OF THE 1983 GENERAL SESSION

The Constitutional Revision Commission did not recommend any proposals to the 1983 General Session of the 45th Legislature. Commission studies had not been completed for consideration for the legislature at its general session. The commission, therefore, voted to introduce any proposed amendments to either the 1984 Budget Session or to a subsequent special session. It should be noted that the commission unanimously endorsed the concept of a special session to review constitutional amendments.

CHAPTER II

JUDICIAL ARTICLE

BACKGROUND

The following information summarizes the Constitutional Revision Commission's Judicial Article study. The material includes a brief review of the commission's action from 1980 to 1982, as well as a more extensive review of the commission's Judicial Article study since the 1982 Budget Session.

Judicial Article Study 1980 to 1982
(See Report of the Constitutional Revision Commission - January 1982)

The Constitutional Revision Commission actually first examined the Judicial Article (Article VIII) in 1975. At the direction of the Utah Legislature (SJR 3 - 1973), the commission reviewed the positions of a special task force on court organization and the Utah State Bar which had recommended changes in the Judicial Article. (See Utah Courts Tomorrow - Report and Recommendations of the Unified Court Advisory Committee, September 1972, and the recommendation of the Utah State Bar, April 1972). The commission, after a preliminary examination of the proposals, declined to recommend any changes in Article VIII to the legislature.

The Constitutional Revision Commission began its most recent review of the Judicial Article in 1980 by supporting a simple amendment to eliminate automatic appeals to the supreme court (HJR 20 - 1980). The measure was ultimately rejected by the legislature. However, even though the commission supported the proposal, there was concern that the entire Judicial Article merited extensive review. As such, a total review of the article was included on the commission's 1981 study agenda.

During the 1981 study year, a Judicial Article Subcommittee was formed to more clearly focus the commission's resources on the Judicial Article study. The commission staff did extensive background work on the problems associated with the present Judicial Article. Several hearings were conducted with representatives of the judiciary to discover areas of concern. The commission's work indicated that, in addition to the appeals problems, other substantive issues warranted review. Specifically, changes in the administration of the judiciary and clarification of the judicial selection process were needed.

The Constitutional Revision Commission defined three major objectives that the revised Judicial Article should address. They were:

1. to articulate the role of the judiciary as a co-equal branch of government within the historical framework of the system of checks and balances;

2. to provide the means to develop a more efficient and effective judicial system; and

3. to attract and maintain quality judges. The proposal, introduced to the 1982 Budget Session of the legislature as HJR 10, was developed to accomplish these objectives.

The 1982 Budget Session

HJR 10 was reviewed closely by the legislature. After significant amendments, the proposal was adopted by the house of representatives. These amendments concerned incorporating a specific reference to justice of the peace courts and restoring the general authority of the legislature to establish the judicial selection process. However, the measure was not acted upon by the senate.

It was in fact the controversy over the selection of judges which ultimately precluded action by the senate. Just prior to the beginning of the legislative session, the Utah Supreme Court ruled on a controversial case challenging the authority of the senate to review judicial appointments. Matheson v. Ferry, 641 P.2d 674 (1982). In this case, the Court struck down the statutory provision requiring senate confirmation of judicial appointments. The political atmosphere surrounding the case made adoption of the Judicial Article revision impossible. As a result, no action was taken and the commission was asked to further study the revision.

The 1982-1983 Judicial Article Study

Following the actions of the 1982 Budget Session, the Constitutional Revision Commission again undertook a review of the Judicial Article. The Judicial Article subcommittee was reconstituted and began to work on the article.

Further study was slowed, however, by a second court case. Again, the governor challenged a statute providing for senate confirmation of judicial appointments. The action was resolved by the Utah Supreme Court shortly before the beginning of the 1983 General Session. Matheson v. Ferry, 657 P.2d 240 (1982). As a result, the commission did not introduce a proposal to the 1983 General Session.

Following this second litigation on judicial selection, the Judicial Article subcommittee began its work in earnest. It was decided by the subcommittee to support most of the previous positions taken in developing HJR 10. However, the subcommittee did reexamine those issues raised by the legislature in 1982.

On the justices of the peace issue, the subcommittee again supported deleting specific reference to them from the constitution. As before, this action was taken to provide legislative flexibility and to avoid unnecessary specificity. The commission, however, did not intend that this recommendation reflect on the value of the justice of the peace system. Rather, the commission position simply states that no court of limited jurisdiction should be mentioned in the constitution.

In examining the selection process for judges, primary concern centered on balancing the interests of the legislature, the governor, the courts, and the public. The subcommittee's study indicated that aspects of the current selection process, specifically the election procedures, contained significant potential for abuse. In some instances, incumbent judges stand for a retention election only based on their

record as a judge. If opposed, however, an incumbent judge must participate in a contested election. In the view of the subcommittee, this "hybrid" approach provided neither meaningful review of judges' records nor protection against undue politicizing of judicial elections. As a result, the subcommittee again recommended retention elections only for incumbent judges.

The commission had previously not included senate confirmation as part of the judicial selection process. It felt that the original commission proposal provided adequate legislative involvement at the nominating level. However, the subcommittee now recommended that a senate rejection provision be included, coupled with a strict prohibition on legislative involvement at the nominating level. This approach satisfied concerns over any one governmental branch exercising undue control over judicial appointments.

The full Constitutional Revision Commission considered and adopted the subcommittee recommendations with minor amendments. The full commission restored a provision regarding public prosecutors. Current language provides for elected county attorneys. The subcommittee supported deletion of the provision, arguing for legislative flexibility. The full commission adopted a provision establishing a system of public prosecutors to be selected as provided by statute.

The Recommendations to the 1984 Budget Session

As with other commission recommendations, changes made in the Judicial Article by the commission are comprehensive and do not follow closely the order of the present article. Although the commission's proposal is different in organization from that found in the present constitution, much of the substance of the present article is retained.

The following material presents a comparative outline showing the relationship between the current constitution and the commission proposal, and a section-by-section analysis of the commission's proposal. The discussion will present the current constitutional language as it relates to issues raised by the new proposal. A short statement outlining the commission's rationale is also included. (Appendix C contains a copy of the complete commission proposal as well as a copy of the present Judicial Article.)

COMPARATIVE OVERVIEW

The following information is a summary comparing the Constitutional Revision Commission's proposed Judicial Article revision and the present Judicial Article. The information is organized by subject matter and shows how each document addresses specific issues.

CRC PROPOSED JUDICIAL ARTICLE REVISION	PRESENT JUDICIAL ARTICLE
1. Court Structure (Section 1) •Specifically mentions supreme court and district court. •Allows other courts by statute (juvenile, circuit, j.p.'s).	1. Court Structure (Section 1) •Specifically mentions supreme court, district court, and j.p.'s. •Allows other courts by statute (juvenile, circuit).
2. Supreme Court Organization (Sec. 2) •Five justices plus additional. •Chief justice to be selected as provided by law. •Court may hear cases in panels.	2. Supreme Court Organization (Sec. 2) •Five justices plus additional. •Chief justice automatically justice with least remaining time on term. •All cases must be heard by a majority.
3. Supreme Court Jurisdiction (Sec. 3) •Original jurisdiction over extra-ordinary writs and "certified" state law questions. •General appellate jurisdiction to be exercised as provided by statute.	3. Supreme Court Jurisdiction (Sec. 4) •Original jurisdiction over certain specified writs. •Appellate jurisdiction which requires all cases filed originally in district court to be heard. Specified how appeals to be processed from j.p. courts.
4. Supreme Court Rulemaking Authority (Sec. 4) •Empowers supreme court to adopt court rules. •Empowers supreme court to govern practice of law.	4. Supreme Court Rulemaking Authority (Sec. 4) •No stated authority for rulemaking or governance of the practice of law •Powers derived from inherent judicial authority powers.

- Authorizes use of retired judges and pro tempore. (See Sec. 2)
- Supreme court by rule manages the appellate process.

- Sec. 2 authorizes use of a district court judge to sit on supreme court. No specific mention for use of other retired judges.
- Sec. 5 authorized use of judges pro tempore

5. District Court and Trial Court Organization and Jurisdiction (Sec. 5)
   - Original jurisdiction except as limited by statute.
   - Appellate jurisdiction as provided by statute.
   - Guarantees right of appeal.
   - Eliminates reference to specific writs.

5. District Court Organization and Jurisdiction (Secs. 5, 7, 8, 9)
   - Original jurisdiction except as as limited by law.
   - Appellate jurisdiction from specific trial courts.
   - Lists specific writs.

6. Number of Judges/Judicial Districts (Sec. 6)
   - Allows legislature to establish judicial districts (eliminates reference to specific districts).

6. Number of Judges/Judicial Districts (Secs. 5, 6, 8, 16)
   - Specifies seven districts, the organizati of the seven may be changed.

7. Qualifications for Judges (Sec. 7)
   - Supreme court - 30 years/five-year resident, admitted to practice.
   - Other courts of record - 25 years/ Three year resident, admitted to practice.
   - If district established, residency in district.
   - Courts not of record - as provided by law.

7. Qualifications for Judges (Secs. 2, 5)
   - Supreme court - 30 years/five-year resident, admitted to practice.
   - District Court - 25 years/three-year resident, admitted to practice.
   - Resident of judicial district.
   - No mention of other courts.

8. Judicial Selection (Secs. 8, 9)
   - Judicial Nominating Commissions (no legislative involvement).
   - Governor appointment.
   - Senate review.
   - Unopposed retention election after Three years/then at end of each term.
   - Prohibition on partisan involvement.

8. Judicial Selection (Sec. 3)
   - Method to be established by statute.
   - Prohibition on partisan involvement.

     Statutory Method
     - -Nominating Commissions
     - -Governor appointment
     - -Stand for election at first general election following term-retention if unopposed. (Juvenile court does not stand for election - subject to senate review.)

9. Judicial Prohibitions (Sec. 10) •Private practice of law. •Holding elective nonjudicial offices. •Offices in political party.	9. Judicial Prohibitions •No similar prohibitions exist in article.
10. Judicial Administration (Sec. 11) •Establishes a judicial council. •Representatives from each court. •Chief justice head of council	10. Judicial Administration (Sec. 7) •No similar provision exists. -Present judicial council exists by statute. •District court has supervisory authority over "inferior" courts.
11. Discipline and Removal of Judges (Sec. 12) •Establishes a judicial conduct commission. •Standards for discipline. •Impeachment still retained.	11. Discipline and Removal of Judges (Secs. 11, 27, 28) •General legislative authority to develop standards for removal of judges. •Removal-by-address (2/3 vote of each house). •Forfeiture by absence.
12. Judicial Salaries (Sec. 13) •Legislature to provide for compensation.	12. Judicial Salaries (Sec. 20) •$3,000 until changed by law.
13. Retirement of Judges (Sec. 14) •Legislature to establish standards (deletes "uniform" requirement.)	13. Retirement of Judges (Sec. 28) •Legislature to establish uniform standards for retirement.
14. Public Prosecutors (Sec. 15) •Legislature to provide for system of public prosecutors. •Selected as provided by statute. •Admitted to practice law.	14. Public Prosecutors (Sec. 10) •Each county to have attorney. •Elected to four-year term. •No qualifications.

NOTE -- The proposed CRC revision deleted the following sections:

Sec. 8 - Justice of the Peace Jurisdiction
Sec. 11 - Removal by Address
Sec. 13 - Disqualification of Judges
Sec. 14 - Supreme Court Clerk
Sec. 15 - Appointment of Relatives to Office
Sec. 18 - Style of Process
Sec. 19 - Form of Civil Action

Sec. 14 - Supreme Court Clerk
Sec. 15 - Appointment of Relatives to Office
Sec. 18 - Style of Process
Sec. 19 - Form of Civil Action
Sec. 21 - Judges to be Conservators of Peace
Sec. 22 - Reporting Defects in Law
Sec. 23 - Publication of Decision
Sec. 24 - Extending Judges Terms
Sec. 25 - Decisions to be in Writing
Sec. 26 - Syllabus of Cases
Sec. 27 - Forfeiture of Office Due to Absence

SECTION-BY-SECTION ANALYSIS

Section 1 - Vesting of Judicial Powers

Present Language

> Section 1. The Judicial power of the State shall be vested in the Senate sitting as a court of impeachment, in a supreme court, in district courts, in justice of the peace, and such other courts inferior to the Supreme Court as may be established by law.
>
> Sec. 17. The Supreme and District Courts shall be courts of record, and each shall have a seal.

Proposed Language

> 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 or record. Courts not of record may also be established by statute.

Explanation

This section vests the judicial power of the state in the Utah Supreme Court, establishes a trial court of general jurisdiction known as the district court, and deletes specific reference to justice of the peace courts. Other courts of limited jurisdiction, such as the juvenile court and the circuit court, are also not mentioned specifically. Courts other than the supreme court and district court would be established by the legislature. The proposed article specifically allows for the creation of courts not of record such as justice of the peace courts. Courts not of record are those courts which do not develop appealable records. The proposal also deletes the reference to the senate sitting as a court of impeachment.

Rationale

This provision establishes the supreme court and the general jurisdiction trial court (district court) as the constitutional foundation of the court system. The legislature is empowered to establish additional courts as needed. Most constitutional scholars feel that specific delineation of courts is unnecessary.

The provision does contain a reference to the trial court of general jurisdiction, however, since that court is fundamental to a judicial system. The reference to the senate sitting as a court of impeachment is removed because impeachment is actually a legislative function. The Legislative Article (Article VI, Sec. 18) contains a similar provision regarding the role of the senate in impeachment cases. As such, the removal of this provision from the Judicial Article will have no impact on the impeachment process.

Sec. 2 - The Supreme Court

Present Language

> Sec. 2. The Supreme Court shall consist of five judges, which number may be increased or decreased by the legislature, but no alternation or increase shall have the effect of removing a judge from office. A majority of the judges constituting the court shall be necessary to form a quorum or render a decision. If a justice of the Supreme Court shall be disqualified from sitting in a cause before said court, the remaining judges shall call a district judge to sit with them on the hearing of such cause. Every judge of the Supreme Court shall be at least thirty years of age, an active member of the bar, in good standing, learned in the law, and a resident of the state of Utah for the five years next preceding his selection. The judge having the shortest term to serve, not holding his office by selection to fill a vacancy before expiration of a regular term, shall be the chief justice, and shall preside at all terms of the Supreme Court, and in case of his absence, the judge, having in like manner, the next shortest term, shall preside in his stead.

Proposed Language

> 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 judgment either en banc or in divisions. The court shall not declare any law unconstitutional under this constitution or 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.

Explanation

This section retains the provision setting the number of supreme court justices at five, but allows the legislature the authority to add additional justices. The proposed language also allows the court to sit in divisions to render decisions not

involving constitutional issues. Otherwise, a full majority is still necessary to render a decision. Also, in case of a justice's disqualification only an active judge from a lower court may be called in to sit with the supreme court.

The proposed article also provides for the selection of a chief justice in a manner provided by statute. The current procedure provides for the selection of the chief justice according to length of service on the bench. The chief justice may also resign as chief justice without resigning from the supreme court.

Qualifications for supreme court justice have been moved to Sec. 7 of the proposed revision.

Rationale

By providing the legislature with the authority to expand the supreme court, the revision gives the legislature an additional option to deal with increasing caseloads. Likewise, allowing the court to sit in divisions is another tool for caseload management. The new selection process for the chief justice is recommended because the chief justice will have more administrative responsibilities under the new Judicial Article. A change in the process for selecting the chief justice will permit a justice with appropriate administrative skills to be selected for the position. The commission felt the legislature should be free to determine the method for selecting the chief justice.

Finally, the commission felt that only active judges should be used to fill temporary vacancies on the supreme court. The present constitution states that a district court judge may be used. Historically, however, retired supreme court justices have also been called to fill temporary vacancies. The proposed revision empowers the supreme court to establish rules for the use of retired judges for proceedings in lower courts (Sec. 4). However, the commission felt that only active judges should be so employed for the supreme court. The commission recommendation follows federal court procedures where retired judges are used for lower court proceedings, but not for the supreme court.

Sec. 3 - Jurisdiction of the Supreme Court

Present Language

> Sec. 4. The Supreme Court shall have original jurisdiction to issue writs of mandamus, certiorari, prohibition, quo warranto and habeas corpus. Each of the justices shall have power to issue writs of habeas corpus, to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court, or before any district court or judge thereof of in the State. In other cases the Supreme Court shall have appellate jurisdiction only, and power to issue writs necessary and proper for the exercise of that jurisdiction. The Supreme Court shall hold at least three terms every year and shall sit at the capital of the State.

Proposed Language

> 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.

Explanation

The proposed article outlines the jurisdiction of the supreme court. The revision gives the court the original jurisdiction to issue all extraordinary writs and to answer questions of state law in federal courts. The supreme court is vested with appellate jurisdiction over all other matters. However, the legislature is empowered to determine how that jurisdiction will actually be exercised. The court is also given the necessary authority to issue writs and orders for the full exercise of its appellate jurisdiction. The provision deletes reference to the terms of the court as well as the requirement that the court sit at the capital of the state.

Rationale

This section, in outlining the appellate and original jurisdiction of the supreme court, grants broad authority to the court. The court's original jurisdiction has been expanded to include dealing with questions of state law when used in federal courts. The original jurisdiction to issue extraordinary writs has been retained, but is written in more general language than that found in the present provision. The court retains general appellate jurisdiction over all matters. However, the method of exercising that jurisdiction is left to statute. The commission felt that the court should not be compelled to actually hear all matters, but rather, options such as an intermediate appellate court should be available. Vesting the authority with the legislature established maximum flexibility to deal with caseload management. The commission deleted the reference to court terms and location of sittings on the basis that these items are better handled by court rule or statute.

Sec. 4 - Supreme Court Rulemaking

Present Language

There is no language in the present constitution providing the Supreme Court with rulemaking authority. Any present rulemaking authority exists pursuant to statute or by inference regarding the traditional role of the judiciary.

> Sec. 5. . . . Any cause in the district court may be tried by a judge pro tempore, who must be a member of the bar sworn to try the cause, and agreed upon by the parties, or their attorneys of record. . . .

Proposed Language

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. Except as otherwise provided by this constitution, the supreme court by rule may authorize retired justices and judges 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.

Explanation

This section gives the supreme court general authority to establish rules of procedure and evidence for the state's various courts. The court is also charged with responsibility for managing the appellate process in those courts. The rulemaking authority also includes a specific responsibility to govern the practice of law, including the admission to practice and the discipline of attorneys. Lastly, the section provides for rulemaking to govern the use of retired judges and judges pro tempore and sets basic qualifications for judges pro tempore.

Rationale

Members of the commission felt that the rulemaking authority of the supreme court should be specifically included in the constitution. This power is considered essential to the maintaining an independent judiciary. The revision also provides the supreme court with clear constitutional authority for the governance of the practice of law. The commission felt that the practice of law is an inherent function of the judiciary. Lastly, the commission decided that the supreme court should be charged with managing the appellate process of the courts since it historically has assumed that role. The provision regarding judges pro tempore is taken essentially from Sec. 5 of the present Judicial Article. The court is granted broad authority to employ retired judges, subject to the limitation outlined in Sec. 2.

Sec. 5 - Jurisdiction of the District Court and Other Courts

Present Language

Sec. 5. . . . All civil and criminal business arising in any county must be tried in such county, unless a change of venue be taken, in such areas as may be provided by law. . . .

Sec. 7. The District Court shall have original jurisdiction in all matters civil and criminal, not excepted in this Constitution, and not prohibited by law; appellate jurisdiction from all inferior courts and tribunals, and a supervisory control of the same. The District Court or any judge thereof, shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, prohibition and other writs necessary to carry into effect their orders, judgments and decrees, and to give them a general control over inferior courts and tribunals within their respective jurisdictions.

Sec. 8. . . . The jurisdiction of justices of the peace shall be as now provided by law, but the legislature may restrict the same.

Sec. 9. From all final judgments of the District Courts, there shall be a right of appeal to the Supreme Court. The appeal shall be upon the record made in the court below, and under such regulations as may be provided by law. In equity case the appeal may be on questions of both law and fact; in cases at law the appeal shall be on questions of law alone. Appeals shall also lie from the final orders and decrees of the Court in the administration of decedent estates, and in cases of guardianship, as shall be provided by law. Appeals shall also lie from the final judgments of justices of the peace in civil and criminal cases to the District Courts on the questions of law and fact, with such limitations and restrictions as shall be provided by law; and the decision of the District Courts on such appeals shall be final, except in cases involving the validity or constitutionality of a statute.

Proposed Language

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.

Explanation

The proposed article deletes all reference to the jurisdiction of courts other than the district court. The district court is vested with general trial jurisdiction except as may be limited by statute or the constitution. It also gives the court power to issue all extraordinary writs, and permits appellate jurisdiction of the court to be established by statute. The jurisdiction of all other courts is established by statute. Finally, the proposal establishes a right of appeal to an appropriate appellate court.

Rationale

A trial court of general jurisdiction is considered essential to a judicial system. As such, the district court is vested with that authority. However, there are instances where limited authority for specialized matters may better be vested in specialized trial courts. This section provides for those options. The district court is also given the authority to issue all extraordinary writs. The jurisdiction of other courts is to be established by statute. The commission felt that the authority to establish the jurisdiction of most state courts properly lies with the legislature.

The proposed article also removes the provision mandating an appeal of all final judgments of the district courts to the supreme court. This proposal would instead provide for a right of appeal to any appropriate appellate court. The actual

determination of how this appeal would be discharged would be determined by statute or court rule. Again, this language was chosen to provide flexibility in determining how the appellate process should be established. It should be noted that the guaranteed right of appeal does not apply to matters raised originally with the supreme court. The court's original jurisdiction is very limited, however, and the commission felt that the court should not be mandated to hear appeals from its own original decisions.

In addition to removing the supreme court's mandated appeals language, the proposal also removes language requiring "de novo" appeals from the justice of the peace courts to the district court.

Sec. 6 - Judicial Districts and Number of Judges

Present Language

> Sec. 5. The state shall be divided into seven judicial districts, for each of which, at least one judge shall be selected as hereinbefore provided. Until otherwise provided by law, a district court at the county seat of each county shall be held at least four times a year. . . .
>
> Sec. 6. The Legislature may change the limits of any judicial district, or increase or decrease the number of districts, or the judges thereof. No alteration or increase shall have the effect of removing a judge from office. In every additional district established, a judge or judges shall be selected as provided in section 3 of this article.
>
> Sec. 8. The Legislature shall determine the number of justices of the peace to be elected, and shall fix by law their powers, duties and compensation. . . .
>
> Sec. 16. This section specifically outlines the present judicial districts for the district court. The most recent alignment of the seven judicial districts became effective July 1, 1982.

Proposed Language

> 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. The number of judges of courts not of record shall be provided by statute.

Explanation

This section removes the specific limitation of seven judicial districts for the district court from the constitution. Instead, the provision allows the legislature to

establish appropriate judicial districts. This section also empowers the legislature to determine the number of judges, but prevents political manipulation of judges by preventing any change in number from removing a judge from office during the judge's term. Otherwise, geographic determination of judicial districts and number of judges is to be established by statute.

Rationale

This section is basically unchanged from the present constitutional language. The recommended change does, however, remove the specific enumeration of judicial districts. In keeping with the policy of making constitutional language more general, the specific duties, powers, and qualifications of judges were removed from this section and included in broader language in Sections 7, 8, and 9 of the proposed article.

Sec. 7 - Judicial Qualifications

Present Language

> Sec. 2. . . . Every judge of the Supreme Court shall be at least thirty years of age, an active member of the bar, in good standing, learned in the law, and a resident of the state of Utah for the five years next preceding his selection. . .
>
> Sec. 5. . . . Each judge of a district court shall be at least twenty-five years of age, an active member of the bar in good standing, learned in the law, a resident of the state of Utah three years next preceding his selection, and shall reside in the district for which he shall be selected. . . .

Proposed Language

> 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.

Explanation

The proposed article indicates that judges of all courts of record must be citizens of the United States, Utah residents (five years for the supreme court, three for other courts) and admitted to practice law in Utah. The present article sets specific age and residency requirements for certain courts, but they are scattered among several sections in the Judicial Article. In addition, the proposed language contains a more general residency requirement than that

found in the present article. Specifically, the provision states that if courts are divided into districts, judges must reside in the district for which they are selected.

Rationale

The commission agreed with those experts who indicated that specific requirements beyond those of professional competence, age, United States citizenship and basic residency should not be included in the constitution. By placing specific qualifications in the constitution, it is intended that the legislature be precluded from establishing additional requirements.

Sec. 8 - Judicial Selection

Present Language

Sec. 3. Judges of the supreme court and district courts shall be selected for such terms and in such manner as shall be provided by law, provided, however, that selection shall be based solely upon consideration of fitness for office without regard to any partisan political considerations and free from influence of any person whomsoever, and provided further that the method of electing such judges in effect when this amendment is adopted shall be followed until changed by law.

Proposed Language

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 within 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, unless rejected by a majority vote of all members of the senate. If the senate rejects 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 judicial appointee of 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 a nonpartisan ballot in a manner provided by statute. If geographic divisions are provided for any court of record, judges of those courts shall stand for retention election only in the geographic divisions to which they are selected. Judges of courts not of record shall be selected in a manner, for a term, and with qualifications provided by statute.

Explanation

The proposed article specifically provides for the method of selecting judges for all courts of record. The procedure includes the following components:

1. Judicial Nominating Commissions - Legislative participation is strictly prohibited. The nominating commissions would recommend three names to the governor.

2. Gubernatorial appointment - The Governor would make an appointment from the nominating commission recommendations.

3. Review by the senate - A majority vote would be necessary to reject a nominee. In addition, the senate could call itself into session to review judicial appointments.

4. Uncontested retention elections - The initial retention election would be held at the first general election three years after appointment. Subsequent elections would be held at the conclusion of each term of office.

Under the proposal, the term of office for supreme court justices is ten years and the terms for judges of other courts of record judges is six years. These terms are the same as those found in the present constitution. Partisan considerations are prohibited as a basis of selection. Also included is a reference stating that if geographic divisions are created for a court, judges will stand for retention election only in their respective division. This position reaffirms existing practice.

The present constitution provides for the selection process to be set entirely by statute. However, direct partisan involvement is prohibited. The scope of legislative authority, however, has been limited through recent court decisions.

Rationale

One of the principal objectives of the Constitutional Revision Commission's study of the Judicial Article was to provide a mechanism to attract and retain quality individuals to serve in the judiciary. Due to the importance of this issue, the Constitutional Revision Commission departed from its usual policy of legislative flexibility and proposed a specific selection process to be included in the constitution.

The Constitutional Revision Commission carefully reviewed the experiences and constitutions of other states, as well as the United States Constitution. The selection process proposed by the Constitutional Revision Commission is based on the following conclusions:

- The judicial selection process must balance the interests of the legislature, the governor, the courts, and the public.

- Absent actionable behavior, selection to the bench contemplates a permanent position. As such, judicial terms are longer than terms for other political offices. (Note: The United States Constitution provides for the lifetime appointment of all federal judges.)

- Periodic public review is necessary to evaluate the performance of sitting judges. However, that review should focus on the record of the judge and not become a contest between personalities or parties.

- The selection process must balance the public's right to review with the protection for the judiciary to render unpopular but legally correct decisions.

The commission feels that its proposal grants a meaningful, but not excessive, role to both the legislature and the governor. Likewise, the public's right to periodically evaluate judges is preserved. Lastly, the necessary protections are maintained to preserve an independent judiciary.

Sec. 10 - Conflict of Interest

Present Language

There is no language in the present constitution establishing guidelines or restrictions in the area of conflict of interest. Such restrictions, if any, are provided by statute.

Proposed Language

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 non-judicial public office or hold office in a political party.

Explanation

The private practice of law, holding elected public office, and the holding office in a political party are prohibited for judges by the proposed article.

Rationale

Most members of the judiciary expressed concern over the absence of such a provision in the present constitution. For this reason, the commission inserted this provision. It is similar to comparable language found in other state constitutions.

Sec. 11 - Court Administration

Present Language

There is no present language in the constitution dealing directly with administration of the judiciary. Sec. 7 does contain language authorizing the district court to exercise supervisory authority over other "inferior courts".

Sec. 7. . . . The District Courts or any judge thereof, shall have power to issue. . . writs necessary to carry into effect their orders, judgments and decrees, and to give them a general control over inferior courts and tribunals within their respective jurisdictions.

Sec. 14. The Supreme Court shall appoint a clerk, and a reporter of its decisions, who shall hold their offices during the pleasure of the Court. Until otherwise provided, Court Clerks shall be ex officio clerks of the District Courts in and for their respective counties, and shall perform such other duties as may be provided by law.

Proposed Language

Sec. 11. 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.

Explanation

The proposed article specifically establishes a Judicial Council to be composed of representatives from each level of the judiciary. The council would act as the administrative body for the court with the chief justice as presiding officer.

Rationale

This section addresses the issue of whether or not there should be a central administrative authority for the entire judicial branch of government. The commission determined that centralized authority would create a more efficient and effective judicial administration. The proposal, therefore, establishes a single judicial governing body, the Judicial Council, to represent all courts. The inclusion of a representative from every court level would insure the participation of all courts in the administrative process. In addition, placing the chief justice at the head of the council focuses administrative and presiding authority in the senior judicial officer of the state. The commission felt that the legislature should determine the composition of the council (with limited guidelines) to ensure maximum flexibility in developing an administrative body for the judiciary.

Some questions arose over the administrative authority of the judicial council and the rulemaking authority of the supreme court. The commission felt that the primary role of the council lies in developing basic administrative policies including consolidated budgeting procedures, personnel systems, relations with other governmental entities, and the management of judicial resources. The role of the supreme court is to establish the actual adjudication procedures used by the courts. In addition, the supreme court is specifically charged with the management of the appeals process.

Sec. 12 - Judicial Conduct

Present Language

> Sec. 11. Judges may be removed from office by the concurrent vote of both houses of the Legislature, each voting separately; but two-thirds of the members to which each house may be entitled must concur in such vote. The vote shall be determined by yeas and nays, and the names of the members voting for or against a judge, together with the cause or causes of removal, shall be entered on the journal of each house. The judge against whom the house may be about to proceed shall receive notice thereof, accompanied with a copy of the cause alleged for his removal, at least ten days before the day on which either house of the Legislature shall act thereon.
>
> Sec. 27. Any judicial officer who shall absent himself from the State of district for more than ninety consecutive days, shall be deemed to have forfeited his office: Provided, That in case of extreme necessity, the Governor may extend the leave of absence to such time as the necessity therefor shall exist.
>
> Sec. 28. The Legislature may provide uniform standards for mandatory retirement and for removal of judges from office. Legislation implementing this section shall be applicable only to conduct occurring subsequent to the effective date of such legislation. Any determination requiring the retirement or removal of a judge from office shall be subject to review, as to both law and facts, by the Supreme Court.

Proposed Language

> Sec. 12. A Judicial Conduct Commission is established, which shall investigate complaints against any justice or judge and conduct confidential hearings concerning the removal or involuntary retirement of a justice or judge. The legislature by statute shall provide for the composition and procedures of the Judicial Conduct Commission. On recommendation of the Judicial Conduct Commission, the supreme court, after a hearing, may censure, remove, or retire a justice or judge for action which constitutes willful misconduct in office, willful and persistent failure to perform judicial duties, disability that seriously interferes with the performance of judicial duties, or conduct prejudicial to the administration of justice which brings a judicial office into disrepute. The power of removal conferred by this section is alternative to the power of impeachment.

Explanation

Under this section, a Judicial Conduct Commission is established to review complaints against judges and to conduct confidential hearings. The revision provides the Judicial Conduct Commission with the authority to make recommendations to the supreme court concerning discipline or the removal of judges. The section also outlines the parameters of judicial misconduct and provides that the composition and procedures of the commission shall be established by the legislature. Other means of disciplining or removing judges have been deleted, including the "removal by address" power of the legislature (Sec. 11), forfeiture of office by absence (Sec. 27), and other statutory methods (Sec. 28). The provision further provides that the method of discipline and removal used by the commission is to be an alternative to the impeachment power which is provided in the Legislative Article.

Rationale

The commission initially felt that specific standards of judicial conduct would be best left to legislative determination. However, as alternative methods of judicial discipline were reviewed, the commission discovered that most of these methods were either vague regarding grounds for removal, or lacked a fundamental regard for due process.This was particularly true regarding the "removal by address" provision in Sec. 11.

The commission concluded that the establishment of the Judicial Conduct Commission was the best system and important enough to warrant constitutional inclusion. The role of the legislature is still preserved with the impeachment power.

Sec. 13 - Judicial Compensation

Present Language

> Sec. 12. The Judges of the Supreme and District Courts shall receive at stated times compensation for their services, which shall not be diminished during the terms for which they are selected.
>
> Sec. 20. Until otherwise provided by law, the salaries of supreme and district judges, shall be three thousand dollars per annum, and mileage, payable quarterly out of the State treasury.

Proposed Language

> Sec. 13. The legislature shall provide for the compensation for all justices and judges. The salaries of justices and judges shall not be diminished during their terms of office.

Explanation

The proposed article provides for judicial compensation by statute and prohibits diminution of judicial salaries during their terms of office.

Rationale

Specific dollar amounts in the constitution were deleted because they unduly restrict constitutional flexibility. In addition, the present language concerning diminution of judicial salaries was retained to prevent political manipulation or retribution on the part of the legislature and to help insure judicial independence.

Sec. 14 - Retirement and Removal From Office

Present Language

Sec. 28. The Legislature may provide uniform standards for mandatory retirement and for removal of judges from office. Legislation implementing this section shall be applicable only to conduct occurring subsequent to the effective date of such legislation. Any determination requiring the retirement or removal of a judge from office shall be subject to review, as to both law and facts, by the Supreme Court.

This section is additional to, and cumulative with, the methods of removal of justices and judges provided in Sections 11 and 27 of this article.

Proposed Language

Sec. 14. The legislature may provide standards for the mandatory retirement of justices and judges from office.

Explanation

The proposed article permits the legislature to provide standards for the mandatory retirement of judges. There is little change from the present language as it relates to judicial retirement. However, the term "uniform" has been deleted. The commission has substituted the Judicial Conduct Commission (Sec. 12) for the legislative authority regarding judicial removal standards. Supreme court review of removal actions is also included in Sec. 12.

Rationale

The commission saw no need to substantially change this section as it relates to mandatory judicial retirement standards. The commission deleted the term "uniform" because it felt that the legislature should be free to set different retirement standards for the judges of the various courts.

Sec. 15 - County Attorneys

Present Language

Sec. 10. A county attorney shall be elected by the qualified voters of each county who shall hold his office for a term of four years. The

powers and duties of county attorneys, and such other attorneys for the state as the legislature may provide, shall be prescribed by law. In all cases where the attorney for any county, or for the state, fails or refuses to attend and prosecute according to law, the court shall have power to appoint an attorney pro tempore.

Proposed Language

Sec. 15. 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 selected 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.

Explanation

The section deletes specific reference to county attorneys and establishes a system of public prosecutors. The prosecutors would be selected as provided by statute. A requirement that public prosecutors be qualified to practice law is also included. The section retains the authority to appoint prosecutors pro tempore, but clarifies that the supreme court is to be the appointing authority.

Rationale

The commission felt that requiring each county to elect a county attorney was unduly restrictive and precluded the establishment of other prosecutorial structures such as district attorneys. The proposal requires the legislature to establish a system of professionally competent public prosecutors. The prosecutors would be selected as provided by statute. The commission felt that since there are legitimate reasons for requiring elected as well as appointed prosecutors, the legislature should be free to set public policy in this area.

Miscellaneous Provisions

The following sections of Article VIII were considered by the commission to be unnecessary or outdated and were deleted from the proposal. In most cases, similar provisions could be established by either court rule or statute.

1. Disqualification of Judges, Nepotism

Sec. 13. Except by consent of all the parties, no judge of the supreme or inferior courts shall preside in the trial of any cause where either of the parties shall be connected with him by affinity or consanguinity within the degree of first cousin, or in which he may have been of counsel, or in the trial of which he may be presided in any inferior court.

Sec. 15. No person related to any judge of any court by affinity or consanguinity with the degree of first cousin, shall be appointed by such court or judge to, or employed by such court or judge in any office or duty in any court of which such judge may be a member.

Rationale

The essence of these provisions could be more appropriately retained by statute or court rule.

2. Style of Process--"The State of Utah"

Sec. 18. The style of all process shall be, "The State of Utah," and all prosecutions shall be conducted in the name and by the authority of the same.

Rationale

This provision is a procedural requirement better stated by court rule.

3. Forms of Civil Action

Sec. 19. There shall be but one form of civil action, and law and equity may be administered in the same action.

Rationale

Although there are historical distinctions surrounding this provision, its importance is largely symbolic and could be stated by court rule.

4. Judges to be Conservators of Peace

Sec. 21. Judges of the Supreme Court, District Courts, and justices of the peace, shall be conservators of the peace, and may hold preliminary examinations in cases of felony.

Rationale

The language of this section is outdated and inconsistent with the rest of the proposal.

5. Judges to Report Defects in Law

Sec. 22. District Judges may, at any time, report defects and omissions in the law to the Supreme Court, and the Supreme Court, on or before the

first day of December of each year, shall report in writing to the Governor any seeming defect or omission in the law.

Rationale

This provision is outdated and and could be stated by court rule.

6. Publication of Decision, Supreme Court Decisions to be in Writing

Sec. 23. The legislature may provide for the publication of decisions and opinions of the Supreme Court, but all decisions shall be free to publishers.

Rationale

This provision is outdated and not needed in the constitution. The requirements could be established by statute.

7. Effect of Extending Judges' Terms

Sec. 24. The terms of office of Supreme and District Judges may be extended by law, but such extension shall not affect the terms for which any judge was elected.

Rationale

This provision was considered unnecessary.

8. Decisions to be in Writing

Sec. 25. When a judgment or decree is reversed, modified or affirmed by the Supreme Court, the reasons therefor shall be stated concisely in writing, signed by the judges concurring, filed in the office of the clerk of the Supreme Court, and preserved with a record of the case. Any judge dissenting therefrom, may give the reasons of his dissent in writing over his signature.

Rationale

The commission is generally supportive of the concept of written court opinions. However, it felt that a rigid constitutional mandate was unnecessary. This same requirement could easily be imposed by statute or court rule. It should be noted that the present language applies only to the supreme court. As such, no similar constitutional requirement exists regarding decisions by other courts, even when functioning in an appellate capacity. Also, no similar provision is contained in the U.S. Constitution.

9. Court to Prepare Syllabus

Sec. 26. It shall be the duty of the court to prepare a syllabus of all the points adjudicated in each case, which shall be concurred in by a majority of the judges thereof, and it shall be prefixed to the published reports of the case.

Rationale

This requirement was considered unnecessary for inclusion in the constitution and could be stated by statute.

Section 2 - Transition Provision

Section 2. This amendment shall not shorten the term of office or 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 of 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 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.

Rationale

This section is included as part of the amendment resolution, but is not part of the actual Judicial Article. The section is intended to ensure a smooth transition after the approval of the amendment and to protect sitting judges. Specifically, judges holding office on the effective date of the amendment are considered incumbent officeholders and therefore not subject to reappointment. At the completion of their term, they would stand for a retention election as provided in the Judicial Article.