In the Supreme Court of the State of Utah

League of Women Voters of Utah, Mormon Women for Ethical Government, Stefanie Condie, Malcom Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, Jack Markman, Dale Cox, *Plaintiffs-Petitioners*, v. Utah State Legislature, Utah Legislative Redistricting Committee, Sen. Scott Sandall, Rep. Brad Wilson, Sen. J. Stuart Adams, *Defendants-Respondents.*	No. 20220998-SC (Consolidated with Case No. 20220991-SC) On interlocutory review from the Third Judicial District Court Honorable Dianna M. Gibson No. 220901712

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INTRODUCTION

This case is not about whether the people are sovereign in the State of Utah. They are. Instead, this case is about the lawmaking power given to the Legislature by the people, as prescribed by the people's Constitution.

Today, the relationship between the people and the Legislature is one of shared lawmaking power. Each bears specific constitutional authority to express the people's will on matters of public policy. The Legislature does so by passing legislation. The people do so by enacting laws through a direct initiative. The people could have limited—but chose not to limit—the Legislature's power for laws created through a direct initiative by the people. Nothing in the constitutional text or structure privileges those laws over others when it comes to the Legislature's power to legislate. Instead, the Legislature's power is "parallel and coextensive" with the people's in that regard. *Carter v. Lehi City*, 2012 UT 2, ¶22, 269 P.3d 141; *see also Gallivan v. Walker*, 2002 UT 89, ¶23, 54 P.3d 1069 (stating "power of the legislature and the power of the people to legislate through initiative and referenda are coequal, coextensive, and concurrent").

Plaintiffs claim that initiative statutes cannot be repealed or amended except by another initiative. Consequently, they contend, the Legislature's passage of S.B. 200 in 2020 invalidly "nullified" Proposition 4, a statute enacted by initiative in the 2018 election. But the Constitution contains no such restriction on the Legislature's lawmaking power. If the people had intended to impose such a limit, as Plaintiffs maintain, they would have inserted one into the Constitution's text, as the people in many other States have done. Instead, the Utah Constitution's text and structure does not even hint at such an implied restriction. This Court's prior

cases suggest that none exists. And the historical practice with every Utah statute passed by initiative to date has entailed amendments through ordinary legislation.

Nor can Plaintiffs salvage their claim by invoking the Constitution's statement that "[a]ll political power is inherent in the people," including "the right to alter or reform their government as the public welfare may require." Utah Const. art. I, §2. This is a foundational principle of Utah's entire constitutional structure, not a judicially manageable standard for discerning which of two statutes—one passed by the people through their Legislature, and one passed by the people through initiative—best reflects the will of the people. In short, the people have chosen to create two constitutional lawmaking processes, and the high-level principle of Article I, §2 is not a basis for privileging one over the other. This Court should affirm the district court's order dismissing Plaintiffs' Count Five.

STATEMENT OF THE ISSUES

1. Did the Legislature validly enact S.B. 200, which amended Proposition 4?

2. Did the passage of S.B. 200 violate the right of the people to alter or reform their government?

Preservation: The Legislature raised these issues in its memorandum in support of the motion to dismiss Plaintiffs' complaint. Bates#000240-24.

Standard of Review: "[T]he standard of review of a district court's 'decision on a motion to dismiss [is] de novo.'" *Est. of Faucheaux v. City of Provo*, 2019 UT 41, ¶9, 449 P.3d 112. A court reviewing a decision on a motion to dismiss may take judicial notice of facts "not subject to reasonable dispute." Utah R. Evid. 201(b); *e.g.*, *Lee v. Gaufin*, 867 P.2d 572, 585 (Utah 1993).

STATEMENT OF THE CASE

A. The Initiative Power of Article VI

Exercising their inherent sovereign power, *see* Utah Const. art. I, §2, the people have established a government of "three distinct departments, the Legislative, the Executive, and the Judicial," *id.* art. V, §1. As originally ratified by the people in 1895, the Constitution vested the "Legislative power of the State" in the Legislature. *Id.* art. VI, §1. In doing so, the people empowered the Legislature "to set public policy by law" as the people's representatives. *Sevier Power Co., LLC v. Bd. of Sevier Cnty. Comm'rs*, 2008 UT 72, ¶7, 196 P.3d 583.

Then in 1899, the Legislature proposed, and in 1900 the people ratified, an amendment to the Constitution to vest a share of the legislative power in another body: the people themselves. *See* H.J.R. 5, §1 (1899); Charles A. Beard & Birl E. Shultz, *Documents on the State-Wide Initiative, Referendum, and Recall* 78 (1912). As amended (and as it reads today after some non-substantive revisions), Article VI vests the legislative power jointly in "the Legislature" and "the people of the State of Utah." Utah Const. art. VI, §1(1)(a)-(b). The people as a whole exercise their legislative power in two ways: referendum and initiative. In a referendum, the state's legal voters can "require any law passed by the Legislature … to be submitted to the voters of the State" for approval or rejection. *Id.* §1(2)(a)(i)(B). A referendum may not be held, however, on a law passed by two-thirds majorities of both legislative houses. *Id.* In an initiative, the voters can—"under the conditions, in the manner, and within the time provided by statute"—"initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote." *Id.* §1(2)(a)(i)(A).[1] In short, after that constitutional amendment in 1900,

[1] Article VI contains two other provisions for initiatives that are not relevant here. The first imposes added requirements for initiatives regarding "the taking of wildlife," and the

the Legislature remains "the usual instrument by which the people express their collective will on matters of public policy," but the Constitution also now "contemplates an equivalent retention of power for direct action by citizens." *Sevier Power Co.*, 2008 UT 72, ¶7.

Article VI requires a "statute" to supply the "conditions," "manner," and "time" for initiatives and referenda. *Id.* §2(a)(i); *see Sevier Power Co.*, 2008 UT 72, ¶10 (affirming the Legislature's "role of providing for the orderly and reasonable use of the initiative power"). Following those instructions, the Legislature has enacted statutes to structure the initiative process. *See generally* Utah Code §§20A-7-101 *et seq*. The Utah Code supplies, for example, signature requirements for getting an initiative on the ballot, *id.* §201; a voter information pamphlet with required contents to inform voters about any ballot question, *id.* §701; and the form of the ballot and manner of voting for initiatives, *id.* §210. The same chapter of the Code also expressly provides for legislative amendment of initiatives. *Id.* §212(3)(b) ("The Legislature may amend any initiative approved by the people at any legislative session.").

Significantly, though initiatives and referenda are available to the people as acts of lawmaking authority, neither one is a mechanism for amending the Utah Constitution itself. To be sure, constitutional amendments also require a majority vote of the State's voters. Utah Const. art. XXIII, §3. But the constitutional-amendment process starts with either the Legislature or a constitutional convention before the vote of the people, with other requirements spelled out elsewhere in the Constitution. *See id.* art. XXIII, §§1-2.

Numerous other states have also enacted constitutional provisions that allow the people to pass legislation directly. In 1898, South Dakota was the first to do so. Beard & Shultz,

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second extends the initiative and referendum processes to the municipal and county levels of government. *Id.* §2(a)(ii) & (b).

supra, at 70. Among States that allow direct lawmaking by the people, some of them—the district court cited ten—have explicitly restricted their legislatures' power to amend statutes passed by initiative. *See* Bates#000790 n.33 (citing Alaska Const. art. XI, §6; Ariz. Const. art. IV, pt. I, §1(6)(B)-(C); Ark. Const. art. V, §1; Cal. Const. art. II, §10; Mich. Const. art. II, §9; *id.* art. XII, §2; Neb. Const. art. III, §2; Nev. Const. art. XIX, §§1-2; N.D. Const. art. Ill, §8; Wash. Const. art. II, §1; Wyo. Const. art. III, §52). But many others, like Utah, have not. *See also, e.g.*, Colo. Const. art. V, §1; Idaho Const. art. III, §1; Mo. Const. art. III, §49; Mont. Const. art. V, §1; Ohio Const. art. II, §1f; Or. Const. art. IV, §1; S.D. Const. art. III, §1.

B. Past Utah Laws Enacted By Initiatives

Seven initiatives in Utah have become law, the first passing in 1960. Of the four to pass before Proposition 4 in 2018, the first—Initiative A, on Merit Commissions for Deputy Sheriffs—has been modified by the Legislature multiple times, including H.B. 330 (1997), Attachment015-16, and S.B. 131 (2009), Attachment053-80.[2] The Compulsory Fluoridation Initiative of 1976 has likewise been modified multiple times, including with H.B. 405 (1998), Attachment018-19; S.B. 128 (2000), Attachment021-22; and H.B. 309 (2002), Attachment024-25. The Utah Uniform Forfeiture Procedures Act of 2000 (Initiative B) was modified four years after enactment by S.B. 175 (2004), Attachment027-51. And one initiative has been substantially repealed: Initiative A (2000), which established English as the State's official language, was first amended specifically as to occupational licensing exams in 2019, then repealed almost entirely in 2021. *See* H.B. 132 (2019), Attachment082; S.B. 214, §3 (2021), Attachment096-98 (repealing almost all of Utah Code §63G-1-201). This record leaves no doubt: the Legislature's

[2] Most recently, technical amendments were made with H.B. 22 (2023).

amending initiative legislation—up to and including repeal—has not been the historical exception but the norm.

The Legislature has also amended initiative legislation passed in 2018 alongside Proposition 4. The Utah Medical Cannabis Act (Proposition 2) passed into law that same election. The Legislature passed an amended version of the Act, H.B. 3001, in a special session that December. *See Grant v. Herbert*, 2019 UT 42, ¶2 n.2, 449 P.3d 122 (noting "similarities and differences" between Proposition 2 and H.B. 3001). The Legislature further amended this act in 2019 with S.B. 1002, which passed unanimously through both the House and Senate. Similarly in 2018, with the passage of the Utah Decides Healthcare Act (Proposition 3), the people passed an expansion of the state Medicaid expansion. The Legislature amended this statute by enacting S.B. 96 in February 2019.

C. Proposition 4

In two principal ways, Proposition 4—entitled the Utah Independent Redistricting Commission and Standards Act—overhauled the redistricting process for all statewide electoral maps, a task that the Utah Constitution expressly commits to the Legislature. *See* Utah Const. art. IX, §1. First, Proposition 4 instituted statutory factors for consideration in redistricting. *See* Attachment112 (Proposition 4, §3). Some of those factors were uncontroversial, notably compliance with all applicable federal law. *Id.* Others, however, were in direct tension with each other: Proposition 4 forbade consideration of "[p]artisan political data and information, such as partisan election results, voting records, political party affiliation information, and residential addresses of incumbent elected officials and candidates or prospective candidates for elective office," except that it also *required* use of "the best available data and scientific and statistical methods, including measures of partisan symmetry," to ensure the maps did not

"unduly favor[ ] or disfavor[ ] any incumbent elected official, candidate or prospective candidate for elective office, or any political party." *Id.*

Second, Proposition 4 created a new governmental body to take the lead role in redistricting: the Utah Independent Redistricting Commission. Attachment112 (Proposition 4, §5). Each redistricting cycle, the Governor would appoint a Commission chair, and the majority and minority leadership of the Legislature would appoint six additional Commissioners. *Id.* If any appointing authority failed to appoint a Commissioner or fill a vacancy within the statutory time limits, a Commissioner would be appointed by the Chief Justice of the Supreme Court of Utah. Attachment113 (Proposition 4, §5).

Proposition 4 charged the Commission with selecting at least one redistricting plan, and as many as three, that could garner the approval of five Commissioners. Attachment114 (Proposition 4, §7). These approved plans would then be submitted to the Legislature. Attachment114 (Proposition 4, §8). But if no plan garnered approval of five Commissioners, the Commission's task shifted to the Chief Justice of the Supreme Court of Utah. The Commission would submit at least two (un-adopted) plans to the Chief Justice, who would then "select … at least one and as many as three plans" which he found could "satisf[y] the redistricting standards and requirements of" Proposition 4—effectively issuing an advisory opinion on the legal merits of hypothetical election maps. Attachment114 (Proposition 4, §7).

Following the Commission's work, Proposition 4 significantly restricted the Legislature's exercise of discretion in redistricting. For instance, while the Legislature was not absolutely bound by the Commission's recommendations, it was practically bound by them as it could reject the Commission's recommendations only if it satisfied a high bar. To enact any redistricting plan other than the Commission's, the Legislature had to publish a "detailed

written report setting forth the reasons for rejecting the [Commission's] plan or plans," along with a "detailed explanation of why" the Legislature's own plan "*better* satisfies"—not just equally satisfies—all the criteria in Proposition 4, §3. Attachment114 (Proposition 4, §8).

Proposition 4 was submitted to the voters in the November 2018 general election. It passed by fewer than 7,000 votes, with about 75% voter turnout, and took effect after the election.[3]

D. S.B. 200 Amends Proposition 4.

In 2020, well before the next redistricting cycle, the Legislature passed S.B. 200 to address constitutional concerns with Proposition 4 and preserve the Legislature's constitutional duty to carry out redistricting. Many legislators wanted to address the obvious constitutional and practical problems with Proposition 4 while respecting the essence of Proposition 4.

For instance, Senator Curtis Bramble (R-Provo), the sponsor of S.B. 200, correctly observed that Proposition 4 created an "advisory" redistricting commission. Sen. Floor Debate at 37:18-37:40, 2020 Gen. Sess. (2020), https://bit.ly/3W2GIMh. But Senator Bramble further observed that Proposition 4 created "issues that would give rise to legal challenges under the Constitution." *Id.* Representative Carol Spackman Moss (D-Salt Lake City), the bill's House sponsor, similarly explained that there were many constitutional issues with Proposition 4, including giving a redistricting role to the Chief Justice. House Floor Debate at 1:33:55-1:34:21, 2020 Gen. Sess. (2020), https://bit.ly/3Bdp9zn. Fixing these constitutional defects was the "sticking point" of the negotiations. *Id.* (Rep. Moss). Nevertheless, the Legislature

[3] Proposition 4 garnered 512,217 votes in favor and 505,274 votes in opposition. *See* 2018 General Election Canvass, Utah Lieutenant Governor (Nov. 26, 2018), https://bit.ly/40FmEAc.

wanted to respect the essence of having an independent voice and public input in redistricting. *See* Sen. Floor Debate at 35:55-36:25, 2020 Gen. Sess. (2020) (Sen. Bramble); House Floor Debate at 1:34:21-1:36:00, 2020 Gen. Sess. (2020) (Rep. Moss).

With input from both the majority and minority parties, the Legislature embarked on a 15-month negotiation with Better Boundaries, Proposition 4's initial sponsor,[4] to reach a consensus on reforming the Commission. *See* Sen. Floor Debate at 36:39-37:17, 2020 Gen. Sess. (2020) (Sen. Bramble); House Floor Debate at 1:32:20-1:33:55, 2020 Gen. Sess. (2020) (Rep. Moss). After this meticulous and painstaking process, the Legislature passed a "compromise" bill that "maintains the redistricting commission with seven members," "preserves" the independent voice in redistricting, and "preserves the constitutional prerogatives of the Legislature to do the redistricting consistent with [its] constitutional mandate." Sen. Floor Debate at 35:44-36:38, 2020 Gen. Sess. (2020) (Sen. Bramble).

S.B. 200 amended and repealed numerous provisions of Proposition 4 while retaining others. It removed the Chief Justice from the Commission's appointment process, *see* S.B. 200, §4, *codified at* Utah Code §20A-20-201(4), and from the process of selecting maps to recommend to the Legislature, *see id.* §8, *codified at* Utah Code §20A-20-302(3)(b). It made the Commission's recommended maps into true recommendations, thereby preserving the Legislature's discretion under Article IX to adopt a Commission map or some other plan. *See id.* §9, *codified at* Utah Code §20A-20-303(5). At the same time, it retained much of Proposition 4's public deliberative process, including the expectation that the Commission would host seven public hearings held across the State, *id.* §7, *codified* at Utah Code §20A-20-301, and a public

[4] *See, e.g.*, Better Boundaries, *Utahns for Responsive Government Better Boundaries Redistricting Initiative Application* (July 19, 2017), https://perma.cc/T6LD-3AQ8.

meeting for submitting the Commission's maps to the Legislature's redistricting committee, *id.* §9, *codified at* Utah Code §20A-20-303(2)-(3).[5]

The Legislature passed S.B. 200 with broad bipartisan support. The bill passed the Senate by a unanimous vote of 25-0, and the House by a near-unanimous vote of 67-4. *See* Utah Legis., S.B. 200 Redistricting Amendment (2020 Gen. Sess.), https://le.utah.gov/~2020/bills/static/SB0200.html. Better Boundaries also cheered S.B. 200's passage as a compromise that "would resolve lawmakers' concerns over the redistricting law while preserving the spirit of the 2018 voter initiative." Bethany Rodgers, *Utah Lawmakers, Better Boundaries Explain How They've Compromised on the Anti-Gerrymandering Law*, Better Boundaries (Feb. 28, 2020), https://perma.cc/PY4D-MRPH.

E. Plaintiffs Sue to Invalidate S.B. 200's Reforms.

In 2022, Plaintiffs sued the Legislature, alleging five claims all targeting the constitutionality of the Legislature's 2021 redistricting efforts. Only Count Five of Plaintiffs' complaint is at issue in this cross-appeal. Count Five alleged that S.B. 200 unconstitutionally repealed Proposition 4. Bates#000080 ¶¶316-17. Plaintiffs described S.B. 200 as a "*post-hoc* nullification of the voters' initiative power" and argued that the statute "unduly burdened the people's lawmaking authority and right to alter or reform their government." *Id.* ¶318. As such, they contended, it violated both Article VI, which provides the initiative power, and Article I, §2's

[5] Plaintiffs contend that "there is no dispute here that the Legislature wholly repealed—and thereby nullified—Prop 4," Br. 39, but the Legislature maintained below that Plaintiffs were wrong to say "that the Legislature 'repealed Proposition 4.'" Bates#000240 n.17. In any event, the legal effect of S.B. 200 is not a "factual allegation" that must be accepted as true at this stage of litigation. And because the Legislature has the same authority to repeal initiative statutes as it does to amend them, the Court need not address this issue.

statement that "[a]ll political power is inherent in the people," including "the right to alter or reform their government as the public welfare may require." Bates#000079 ¶¶311-12.

Although the district court allowed Plaintiffs' other four claims to proceed, it granted the Legislature's motion and dismissed Count Five. Beginning with its interpretation of the constitutional "text itself," the district court found that "the text of article VI broadly confers legislative authority on the Legislature without any express limitations." Bates#000789. This absence of any restriction, in the court's view, created "a clear implication that the Legislature has broad authority to enact and repeal laws, including those enacted by citizen initiatives." Bates#000790. Confirming this textual interpretation by referring to "statutory language, the caselaw, and historical practice" in Utah and in other States, the district court held that "the Legislature's exercise of its coequal legislative authority to repeal citizen initiatives does not violate the Citizen Initiative or Inherent Powers Clauses of the Utah Constitution." Bates#000791. It therefore dismissed this claim as a matter of law. This Court then granted Plaintiffs' petition for interlocutory review of that dismissal order.

SUMMARY OF ARGUMENT

The district court correctly dismissed Count Five. Plaintiffs would have this Court nullify S.B. 200—which passed with near unanimity in the Legislature and with the full support of Proposition 4's lead proponents—on a theory that the Legislature lacks constitutional power to amend laws passed through popular initiatives. Plaintiffs cite two constitutional provisions for this theory. Neither imposes any such bar.

First, Plaintiffs argue that Article VI prohibits the Legislature from amending or repealing laws passed through initiatives. This theory finds no support in the Constitution's text, this Court's cases, or the undisputable history in Utah of initiatives being amended by the

Legislature. Article VI's text vests the "Legislative power" equally in the Legislature and the people. While the people can act directly to pass initiatives into law, the Constitution imposes no restrictions on the Legislature's amending laws passed through initiatives, just as it imposes no restrictions on the Legislature's amending laws passed by prior Legislatures. This Court has already observed as much, based on the well-established equal status of the two exercises of legislative power. Indeed, the Legislature has amended (and at times, even repealed) initiatives with no controversy since the people adopted the initiative power in 1900. And the law and practice in other States confirm that amendment and repeal of initiative statutes may be subject to explicit limitation, but not unwritten restrictions.

Second, Plaintiffs argue that, even if the Legislature could amend initiatives *generally*, it cannot amend *certain types* of initiatives—those that alter or redistribute governmental power—because doing so would violate the people's inherent political power to reform the government. Plaintiffs' reliance on Article I, §2 is misplaced. As a threshold matter, Article I, §2 is not self-executing. Rather, it states the basic premise of the government at a high level, a quintessential feature of a non-self-executing clause. Nor does Article I, §2 provide the means for enforcing it without some other law. Article I, §2's text doesn't provide any judicially enforceable standard, nor does it prohibit the Legislature from amending laws passed through initiatives. Plaintiffs' reading of Article I, §2 also raises grave justiciability concerns, putting this Court in an impossible position of deciding which of two duly enacted pieces of legislation—one by the people through their elected representatives in the Legislature and the other by the people through an initiative—reflects the true will of the people. But even if Article I, §2 were judicially enforceable, S.B. 200 was a lawful exercise of authority by the people, through their Legislature, to fix the constitutional and practical defects in Proposition 4.

ARGUMENT

I. The Legislature has constitutional power to amend or repeal laws passed by initiatives and by prior Legislatures.

Article VI, §1 of the Utah Constitution vests the people with power to "initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote." *Id.* §1(2)(a)(i)(A). But the Constitution does not give laws passed by initiative any special status or make them "super-statutes." Nor does any constitutional text limit the Legislature's ability, in the normal exercise of its "Legislative power," *id.* §1(1)(a), to amend or repeal such laws.

That alone suffices to defeat Plaintiffs' claim. "An alleged violation of the Constitution must be of a specific provision of a particular article thereof." *Trade Comm'n v. Skaggs Drug Ctrs., Inc.*, 446 P.2d 958, 961 (Utah 1968); *see also Scott v. Salt Lake Cnty.*, 196 P. 1022, 1024 (Utah 1921) ("Before an act of the Legislature can be held unconstitutional it must be clear and free from doubt that it contravenes some provision of the Constitution."). Beyond that, the text, structure, and history of Article VI further show that the Legislature may amend or repeal laws enacted by popular initiative. Other States' initiative processes confirm as much, too. The district court correctly dismissed Count Five.

A. Article VI allows the Legislature to amend or repeal statutes passed through initiatives.

1. Start with the constitutional text and structure. Article VI vests the "Legislative power" in the Legislature, and in the people of Utah. The legislative power is "the fundamental power of government." *Bateman v. Bd. of Examiners of State of Utah*, 322 P.2d 381, 385 (Utah 1958). It includes the power to "do any act or perform any function of government not specifically prohibited by the State Constitution," *Wood v. Budge*, 374 P.2d 516, 518 (Utah 1962),

including the "general plenary power" to "enact, amend, or repeal any statute law," *State ex rel. Richards v. Whisman*, 154 N.W. 707, 709 (S.D. 1915). Indeed, "[n]o rule of law is better settled throughout the United States than that a state Legislature has absolute power to enact, that is, pass, amend, or repeal, any law whatsoever it pleases, unless it is prohibited from doing so by either the state or federal Constitutions." *Id.*; *see also Clinton v. City of New York*, 524 U.S. 417, 444 (1998) (repeals, including "partial repeals," of statutes are acts of the legislative power); *Helvering v. Nw. Steel Rolling Mills*, 311 U.S. 46, 51 (1940) (power of "repeal, modification, alteration, or amendment" of a "law" is "within the general legislative powers").

Nothing in Article VI displaces this ordinary understanding of the legislative power. On the contrary: "The mere fact that the Constitution reserves legislative power to the people does not preclude the legislature from acting within its power, also granted by the Constitution, upon the same matters." *Dewey v. Doxey-Layton Realty Co.*, 277 P.2d 805, 809 (Utah 1954), *overruled on other grounds by Carter v. Lehi City*, 2012 UT 2, 269 P.3d 141. For in contrast to other express constitutional limits on legislative power—such as the people's choice to make "laws passed by a two-thirds vote of the members elected to each house of the Legislature" exempt from referenda, Art. VI, §2(a)(i)(B)—no text limits the Legislature's ability to amend or repeal any statute, no matter how it was passed. That is a crucial omission: "In the absence of any such limitation, the legislature can immediately render [initiative] laws ineffective by amendment." 1A Sutherland Statutory Construction §22:6 (7th ed.). In short, the people ratified Article VI as written—first in 1895 and then with an amendment in 1900—including all the grants of power and attendant limitations expressed in its text. And "'there is nothing'" in Article VI "'which, either expressly or impliedly, in any degree, conflicts with, inhibits, limits, abridges, or prohibits any part of the legislative power originally granted to [the Legislature] to

enact, amend, or repeal any law which it might have enacted before'" the people amended Article VI in 1900. *Dewey*, 277 P.2d at 809 (quoting *Whisman*, 154 N.W. at 709).

Even so, Plaintiffs contend that the people's referendum power is itself a "right of the people to repeal legislation" that excludes a "mirror right" of the Legislature under the *expressio unius* canon. Br. 34-35. This argument fails twice over. First, referenda are not a "right of repeal" at all, but a specific procedure within the legislative process "before the law may take effect." Art. VI, §1(2)(a)(i)(B). A repeal power, by contrast, could touch any statute no matter how long it has been in force. Second, the power to repeal statutes is not otherwise missing from Article VI—it is an integral and inherent part of the legislative power originally vested in the Legislature. It predates the initiative process itself, and the people did not add any restrictions on it when they amended the Constitution to include the initiative process. Plaintiffs cannot use a canon of construction like *expressio unius* "to create ambiguity where the" Constitution's "structure and text suggest none." *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 227 (2008).

Nor does the power to amend somehow destroy the initiative power or upset the "constitutional crafting" of Article VI. Br. 35. Passing a law through the Legislature remains (rightly so) a difficult and complex process. Both houses of the Legislature must approve any bill, and the Governor must ordinarily sign it into law. And even after passage through the Legislature, the people typically retain the power to reject a bill (including bills that amend pre-existing law) by referendum.

Lastly, the Legislature's power to amend avoids serious practical problems that could arise if initiative statutes enjoyed an unwritten status in the Utah code as "super legislation." The initiative process is—as Plaintiffs emphasize—challenging and rarely invoked. As the district court noted, it could "create certain practical challenges to the maintenance of the Utah

Code," Bates#000790 n.34, if this unwieldy process was the *only* way to make necessary revisions to sections of the code passed by initiative.

2. This Court's precedent confirms the text's plain meaning. The Court has said that "[t]he power of the legislature and the power of the people to legislate through initiative and referenda are coequal, coextensive, and concurrent and share 'equal dignity.'" *Gallivan v. Walker*, 2002 UT 89, ¶23, 54 P.3d 1069. For this reason, the Court explained in *Carter v. Lehi City* that the Legislature may amend statutes enacted by initiative: "[t]he initiative power of the people is … parallel and coextensive with the power of the legislature." 2012 UT 2, ¶22, 269 P.3d 141. Indeed, based on "the text, structure, and history of our constitution," the Court described this equal sharing of power as a "fundamental principle[ ]." *Id.* ¶20. For this reason, the Court said in *Carter*, "'[l]aws proposed and enacted by the people under the initiative … are subject to the same constitutional limitations as other statutes, and may be amended or repealed by the Legislature at will.'" *Id.* ¶27 (quoting *Kadderly v. City of Portland*, 74 P. 710, 720 (Or. 1903)).

As recently as 2019, this Court ruled on constitutional challenges to amendments to an initiative-enacted statute without a trace of skepticism about the Legislature's power to amend or repeal. *See Grant v. Herbert*, 2019 UT 42, 449 P.3d 122. There the Court reviewed H.B. 3001, the Utah Medical Cannabis Act, which in 2018 had substantively amended Proposition 2, an initiative enacted earlier that same year. *See id.* ¶5 & n.2 ("highlight[ing] a few of the similarities and differences between Proposition 2 and H.B. 3001"). H.B. 3001 had, for example, changed which medical conditions qualified for the use of cannabis and reduced the number of licenses available for cannabis cultivation facilities, dispensaries, and pharmacies. *Id.* ¶5 n.2. The Legislature enacted these changes just two days after the people's initiative statute took effect, *id.*

¶¶4-5, yet this Court never suggested that the H.B. 3001 encroached on the people's legislative power.

In response, Plaintiffs invoke a number of this Court's precedents, but none so much as hint that the Constitution prohibits the Legislature from repealing initiative statutes. Instead, each cited case holds only that the Legislature cannot stop the people from exercising their power in the first place. The earliest such precedent is Justice Larson's concurring opinion in *Utah Power & Light Co. v. Provo City*, 74 P.2d 1191 (Utah 1937). In Plaintiffs' telling, Justice Larson reached "precisely" the conclusion "that the Legislature lacks the authority to nullify laws enacted by initiative." Br. 26. In fact, though, the opinion addressed an altogether different question: whether an act of the legislature (there, the Granger Act of 1933) could "*preempt*" a city ordinance later enacted through the initiative process. *Id.* at 1201. Because "[t]he power of the referendum is fully reserved to the people, and is not dependent upon anything" from the Legislature, *id.* at 1207, Justice Larson reasoned that that Granger Act could not preempt the field and deprive the people, who are "themselves … not creatures or creations of the Legislature," *id.* at 1205, from acting. In his view, the Legislature could not "silence or control the voice of the people" by preventing them from exercising their initiative power. *Id.* But the question of power to amend or repeal initiative laws did not enter into the case.

This Court has built on Justice Larson's opinion in exactly this way, establishing a rule that the Legislature (and municipal legislative bodies) cannot "deny the initiative right to the people" under the guise of its authority to "provid[e] for the orderly and reasonable use of the initiative power." *Sevier Power Co., LLC v. Bd. of Sevier Cnty. Comm'rs*, 2008 UT 72, ¶10, 196 P.3d 583. It cannot, for example, "unduly burden or constrict" the initiative process "by making it harder to place initiatives on the ballot." *Gallivan*, 2002 UT 89, ¶52; *see also Mouty v. The Sandy*

City Recorder, 2005 UT 41, ¶15, 122 P.3d 521 (holding city could not block referendum on ordinance because of vested "individual economic interests," as doing so "would make hollow the constitutional guarantee that the people of this state retain direct legislative power"). Plaintiffs cite all these cases to support an alleged rule against repeal or amendment. Br. 26-27. But none of them concerned any legislative action *after* an initiative; instead, each case concerned *ex ante* restrictions on the people's exercise of the initiative power. *See Carter*, 2012 UT 2, ¶7 (holding Lehi City infringed people's initiative power by refusing to place proposed initiatives on the ballot); *Sevier Power Co.*, 2008 UT 72, ¶2 (deciding constitutionality of "statutory ban … on initiating 'a land use ordinance or a change in a land use ordinance'"); *Mouty*, 2005 UT 41, ¶1 (deciding "whether a city ordinance that amends the permitted and prohibited uses of land in a particular zoning category can be subjected to the referendum process"); *Gallivan*, 2002 UT 89, ¶29 (reviewing "multi-county signature requirement" "for a proposed initiative to be placed on the ballot").

This Court did not simply forget about that line of cases when it wrote that while "the people are a 'legislative body coequal in power' with the legislature," laws passed by initiative "'may be amended or repealed by the Legislature at will.'" *Carter*, 2012 UT 2, ¶27. Though Plaintiffs maintain that "the same logic applies" to both *ex ante* restrictions on initiative power and *ex post* amendment or repeal, Br. 25, elementary distinctions separate the two. *Ex ante* restrictions actually "diminish" the people's "powers … derived from the constitution." *Petersen v. Utah Bd. of Pardons*, 907 P.2d 1148, 1152 (Utah 1995). That is, such restrictions prevent the people from exercising a power that the Constitution vests in them, just as if a statute purported to abolish judicial writs that the Constitution authorizes courts to issue. *See id.* But amendments or repeals of initiative-enacted laws do no such thing. After an amendment, the

people retain their full power: the ability to pass, by a statewide majority vote, a law that "applies to all future cases until repealed or altered by further legislative action." *Carter*, 2012 UT 2, ¶58 n.42. The people can even subject those very amendments to the referendum process (unless those amendments pass both houses of the Legislature by a two-thirds vote). *See* Utah Const. art. VI, §1(2)(a)(i)(B). Restrictions on the initiative process are altogether different from repeal or amendment of initiative statutes, and the safeguards against the former cannot be reflexively extended to cover the latter.

Lastly, Plaintiffs argue that under *Patterson v. State*, 2021 UT 52, 504 P.3d 92, the Legislature lacks authority to "diminish" the people's initiative power when "'nothing' in article VI, section I 'even hints at the possibility.'" Br. 32-33. As confirmation, Plaintiffs point to the Legislature's power to "establish a *procedural* framework for initiatives," arguing that the *expressio unius* canon thus suggests no other legislative power to restrict initiatives. Br. 33; *see* Utah Const. art. VI, §1(2)(a)(i) (the "conditions," "manner," and "time" of initiatives shall be "provided by statute").

This argument fails two ways. First, amendments do not "*substantively* limit the scope of [the initiative] power." *Patterson*, 2021 UT 52, ¶160. To the contrary, that power remains untouched when the Legislature amends a statute passed by initiative. Second, beyond just "hint[ing]" at a power to amend or repeal statutes enacted by initiative, Br. 32-33, Article VI affirmatively vests "the Legislative power of the State" in "the Legislature," Utah Const. art. VI, §1(1)(a), and that power has always been understood to include the power to amend or repeal statutes, *see supra* at 13-15. No provision of the Constitution exempts initiative statutes from its reach.

3. The history of Utah initiatives also supports the district court's order dismissing Count Five. Plaintiffs erroneously contend that "the Legislature did not even attempt to substantially amend an initiative until 2018." Br. 36. To the contrary, when initiative proposals have become law, the Legislature has frequently amended them. This historical record starts in 1960, the first time an initiative became law in Utah, and it shows that the Legislature has amended or repealed to some extent each initiative that passed before Proposition 4. *See supra* at 5-6. The Utah Uniform Forfeiture Procedures Act, *codified at* Utah Code §24-1-1 *et seq.*, for example, was substantially amended in 2004—four years after the people enacted it—adding many new substantive and procedural protections for claimants of seized property, redirecting forfeited property to two new General Funds, and creating a new Crime Reduction Assistance Program funded by forfeited property, which replaced the preceding Uniform School Fund. *See* S.B. 175 (2004), *codified at* Utah Code §24-1-2 *et seq.* The post-enactment history of the initiative recognizing English as Utah's official language is even more telling: in 2021, the Legislature repealed the initiative almost in its entirety, striking lengthy substantive provisions and leaving only the bare statement that "English is declared to be the official language of Utah." S.B. 214, §3 (amending Utah Code §63G-1-201). Here, Plaintiffs address none of those amendments. Skirting this issue only hurts them, for they do not even try to reconcile their arguments with the "[l]ong settled and established practice" of the Legislature's amending initiative statutes. *N.L.R.B. v. Noel Canning*, 573 U.S. 513, 524 (2014).

B. Analogous initiative provisions in other States confirm the Legislature's power to amend or repeal statutes.

"[T]he legislative history of Utah's initiative amendment is limited," but the initiative processes of "other states," many of which ratified similar constitutional provisions around

the same time as Utah, "inform the scope of the people's initiative power as it was originally understood." *Carter*, 2012 UT 2, ¶24. And since the first initiative processes were introduced, legislatures nationwide have had authority to amend or repeal statutes passed by initiative absent any specific, textual restrictions to the contrary.

Plaintiffs raise a select sample of sister states whose own initiative processes, they argue, show that Utah's provision bars legislative amendment or repeal. Br. 31-32. The complete picture shows just the opposite: in the early twentieth century, it was an "almost universal rule" across the states with initiative processes "that the legislature may repeal at once any act of the people." Recent Case, *Initiative and Referendum — Powers of the Legislature — Legislating on Subject Matter of Referred Measure*, 36 Harv. L. Rev. 108, 108 (1922). That rule has stood from the first introduction of initiative processes to today: States that wish to limit amendments thus "commonly provide in their constitutions that a law enacted by initiative or referendum cannot be amended or repealed by the legislature, either absolutely or for a limited period of time, unless otherwise provided." 1A Sutherland Statutory Construction §22:6 (7th ed.). But "[i]n the absence of any such limitation, the legislature can immediately render such laws ineffective by amendment." *Id.*

Other states with initiative processes have consistently adhered to this rule. In the earliest decision on this question, the Supreme Court of Oregon held that "[l]aws proposed and enacted by the people under the initiative clause of the amendment are subject to the same constitutional limitations as other statutes, and may be amended or repealed by the Legislature at will." *Kadderly v. City of Portland*, 74 P. 710, 720 (Or. 1903). Plaintiffs argue that *Kadderly* depends on features of Oregon's initiative provision that "materially differ[]" from Utah's, Br. 37, but the opinion does not depend on any such language. Indeed, even though Oregon's

constitutional provision for initiatives clarified that it did not "deprive any member of the legislative assembly of the right to introduce any measure," *Kadderly*, 74 P. at 712, the *Kadderly* court did not refer to this clause in its analysis. On the contrary, it relied on the structural fact that "[t]he representative character of the government still remains" alongside an initiative process, so that the people have still delegated to the legislature the duty to represent them even while reserving for themselves a share of the legislative power. *Id.* at 720. The same is true here.

In South Dakota, the first State to create an initiative process, the state supreme court held early on that "nothing" in the constitutional provisions for initiatives "either expressly or impliedly, in any degree, conflicts with, inhibits, limits, abridges, or prohibits any part of the legislative power originally granted to it." *Whisman*, 154 N.W. at 709. The Court explained:

> If the framers of this constitutional amendment had placed therein language something like the following: "No Legislature shall have power to repeal any initiative measure referred to a vote of the people"—then the Constitution would have expressly prohibited the Legislature from amending or repealing initiated laws; or, if they had placed something like this in the constitutional amendment: "Initiated laws can be amended or repealed only by a vote of the people"—then this constitutional amendment would, by necessary implication, have prohibited the Legislature from repealing initiated laws. But no such limitation of the legislative power appears in such amendment or elsewhere in the Constitution.

Id. at 710. The parties arguing for an implied bar on amendments, the court said, were "in effect, now asking this court to read into the Constitution something that is not, either expressly or by implication therein." *Id.* So it is with Utah's initiative provision.

The courts of numerous other states have, with apparent unanimity, agreed. *E.g.*, *Reclaim Idaho v. Denney*, 497 P.3d 160, 193 (Idaho 2021) ("In *Luker* [*v. Curtis*, 136 P.2d 978, 979 (Idaho 1943)], we held that initiative-based legislation was subject to amendment and repeal

by the legislature because, after the law is passed, the constitutional amendment that created the initiative right placed initiative legislation 'on an equal footing' with other legislative acts."); *Advisory Op. on Constitutionality of 1982 PA 47*, 340 N.W.2d 817, 824 (Mich. 1983) ("An act adopted with the approval of the voters is generally subject to amendment by the Legislature without voter approval, subject to explicit and implicit constitutional limitations."); *State ex rel. Goodman v. Stewart*, 187 P. 641, 643 (Mont. 1920) ("'Laws proposed and enacted by the people under the initiative clause of the amendment are subject to the same constitutional limitations as are other statutes, and may be amended or repealed by the Legislature at will.'" (quoting *State ex rel. Evans v. Stewart*, 161 P. 309, 311 (Mont. 1916))); *State ex rel. Singer v. Cartledge*, 195 N.E. 237, 240 (Ohio 1935) ("in the absence of provisions to the contrary, contained either in the State Constitution or state law curbing or limiting the power of council, there is no inhibition prohibiting the city council of a noncharter city from amending or repealing an initiated ordinance adopted by the electors"); *Granger v. City of Tulsa*, 51 P.2d 567, 569 (Okla. 1935) ("In those jurisdictions where the Constitution does not specifically prohibit the Legislature from repealing initiated legislation, it is commonly held by the courts of such jurisdictions that acts so passed are subject to repeal by the Legislature in the same manner as other ordinary legislative measures are repealed."). Plaintiffs' brief does not mention even one of those cases.

Plaintiffs also fail to mention another group of states: those whose constitutions extend express protections to initiative statutes. Plaintiffs must have known about this group; the district court listed ten such states with "express limits" in their constitutions as "examples" that confirm "it would clearly be improper for the Court to read such a limitation into Utah's Constitution." Bates#000790 n.34; *see supra* at 5. "Why the Constitution builders of Washington and California put such a prohibition as to legislative repeal of initiated laws in their state

Constitutions, or why the Constitution builders of this state, and all these others, left such prohibition out of their Constitutions, is not for us to inquire. It is enough for us to know that it was left out of our Constitution." *Whisman*, 154 N.W. at 710.

Compounding the point that constitutional silence means no implied restriction exists, other states' restrictions take a variety of forms. For example, the Alaska Constitution bars repeal completely (but allows amendment) for two years after an initiative statute's effective date. Alaska Const. art. XI, §6. The Nevada Constitution goes further, protecting initiative statutes from amendments and repeal for three years. Nev. Const. art. XIX, §2(3). The Nebraska Constitution allows amendment and repeal at any time, but only by a two-thirds majority of the Legislature. Neb. Const. art. III, §2. Given this wide array of constitutional limits on repeal of initiative statutes, if this Court were to select one possible limit—Plaintiffs' preferred blanket bar on amendment or repeal—and infer that it alone is an unwritten restriction implied within Article VI, the Court would effectively be amending the Constitution without following the mechanisms specified in Article XXIII.

This broad array of evidence from other States—those that restrict amendments and those that don't—should be fatal to Plaintiffs' argument. From those two groups of States a clear rule emerges: the Legislature ordinarily has power to repeal or amend initiatives, absent some express constitutional provision restricting that power. Yet Plaintiffs have failed to engage this crucial evidence at all, and their attempts to cite other out-of-state decisions are unavailing.

Plaintiffs get no support from States that explicitly reserve the legislature's "right to propose any measure." Br. 32. Those provisions are included in state constitutions as rules of *construction*—confirming that the people's power "shall not be construed" to limit the

legislature's power. Mo. Const. art. III, §52(b); *State ex rel. Halliburton v. Roach*, 130 S.W. 689, 693 (Mo. 1910) ("It will also be observed that the initiative amendment to the Constitution of 1908 expressly provides that 'this section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure.'"); *In re Senate Resol. No. 4*, 130 P. 333, 336 (Colo. 1913) (similar); Beard & Shultz, *supra*, at 128, 181, 194, 197 (collecting similar rules of construction from early constitutions of Arkansas, Montana, Nebraska, and Washington).[6] Such rules of construction clarify a provision's meaning to dispel possible ambiguity; they do not, as Plaintiffs suggest, imply that the same provision would mean something else—much less the exact *opposite*—without the clarification. *See, e.g.*, *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1858 (2018) (clause stating a provision "shall not be construed to preclude" certain actions was "rule of construction" serving as "clarification[]" (citing 52 U.S.C. §20507(c)(2)(B))); *Fed. Mar. Comm'n v. S.C. State Ports Auth.*, 535 U.S. 743, 752 (2002) (constitutional provision that "[t]he Judicial power of the United States shall not be construed to extend to" certain suits "clarified" scope of sovereign immunity).

Plaintiffs also cite States with what they call "workable doctrines" that "differentiate permissible amendments from those that are unlawful." Br. 39 (citing *Alaska v. Trust the People*, 113 P.3d 613, 623 (Alaska 2005); *People v. Kelly*, 222 P.3d 186, 197-98 & n.19 (Cal. 2010); *State v. Maestas*, 417 P.3d 774, 778 (Ariz. 2018)). But the constitutions in all three of those states

[6] Only one early twentieth-century example is even arguably not a rule of construction. *See* Okla. Const. art. 5, §7 ("The reservation of the powers of the initiative and referendum in this article shall not deprive the Legislature of the right to repeal any law, propose or pass any measure, which may be consistent with the Constitution of the State and the Constitution of the United States."); *see also* Beard & Shultz, *supra*, at 139. Located at the end of the amendment defining the initiative and referendum, and lacking any "notwithstanding" or "except that" phrasing, this clause is still best read as a clarification, not in contradiction with the creation of an initiative process on its own.

have textual restrictions on amending initiatives—as the district court noted—and their judicial doctrines follow from these provisions. *See* Bates#000790 n.33 (citing Alaska Const. art. XI, §6; Ariz. Const. art. §IV, pt. 1, §1(6)(B)-(C); Cal. Const. art. II, §10). In Alaska, for example, a statute passed by initiative "may not be repealed by the legislature within two years of its effective date" but "may be amended at any time." Alaska Const. art. XI, §6. Accordingly, Alaska's courts have developed a standard to distinguish amendments from repeals. *See, e.g.*, *Warren v. Thomas*, 568 P.2d 400, 402-03 (Alaska 1977). California requires a referendum on any amendment or repeal of an initiative statute, *see* Cal. Const. art. II, §10(c), so its constitutional standard similarly distinguishes amendments from permissible legislation on a "related but distinct area." *Cnty. of San Diego v. San Diego NORML*, 81 Cal. Rptr. 3d 461, 484 (Cal. Ct. App. 2008). And Arizona courts apply the state constitution's requirement that any amendment to an initiative statute "furthers the purposes of" the original law, a limitation with no Utah analog. Ariz. Const. art. IV, pt. 1, §1(6)(C); *see, e.g.*, *State v. Maestas*, 417 P.3d 774, 778 (Ariz. 2018). Far from supporting Plaintiffs' claim, these States reinforce the point that only express, textual provisions can limit the Legislature's power to amend or repeal initiative statutes. When States can restrict (and have restricted) amendments in many different ways, implying an unwritten blanket prohibition is improper.

It has always been true that the people are the ultimate sovereign. But in exercising their sovereign power, the people adopted a Constitution that creates a Legislature and reserves only limited legislative power for themselves. Finding an implied prohibition on amendment or repeal of initiative statutes "would require the Court to read something into the Constitution that is simply not there." Bates#000790. This Court should affirm the district court's decision declining to do so.

II. The district court properly dismissed Plaintiffs' claim under Article I, §2.

Article I, §2 states that "[a]ll political power is inherent in the people; … and they have the right to alter or reform their government as the public welfare may require." Utah Const. art. I, §2. Plaintiffs contend that even if the Legislature could "repeal or amend initiatives generally" under Article I, §2, "the Legislature cannot repeal an initiative that seeks to reallocate governmental power and restructure the exercise of government authority." Br. 47. Plaintiffs' attempt to remake the Utah Constitution fails for two independent reasons.

A. Article I, §2 is not self-executing.

"[A] self-executing constitutional clause is one that can be judicially enforced without implementing legislation." *Spackman ex rel. Spackman v. Bd. of Educ. of Box Elder Cnty. Sch. Dist.*, 2000 UT 87, ¶7, 16 P.3d 533. A clause is self-executing "'if it articulates a rule sufficient to give effect to the underlying rights and duties intended by the framers.'" *Id.* A clause that "prohibits certain government conduct" may also be self-executing, "'at least to the extent that courts may void incongruous legislation.'" *Id.* ¶8.

But "[n]ot every provision of the constitution states an enforceable limitation on our government." *Tesla Motors UT, Inc. v. Utah Tax Comm'n*, 2017 UT 18, ¶52, 398 P.3d 55. Most provisions "are stated at so high a level of generality or aspiration that they require legislation to establish a limitation enforceable in [the] courts." *Id.* Because "'they merely indicate a general principle or line of policy without supplying the means for putting them into effect,'" they are "non-justiciable." *Id.* This Court has found only a handful of constitutional provisions to be self-executing. *Spackman*, 2000 UT 87, ¶¶9-10, 14 (listing three clauses already held to be self-executing, and holding Due Process Clause and Open Education Clause are self-executing).

Plaintiffs propose that Article I, §2 is self-executing, *see* Br. 41-44, but this provision falls on the "general principle or line of policy" side of this doctrine for three reasons.

First, the clause states a high-level premise of the government. *See Spackman*, 2000 UT 87, ¶7. The clause simply states that "[a]ll political power is inherent in the people" and that "they have the right to alter or reform their government as the public welfare may require." Utah Const. art. I, §2. This clause enshrines the general principle that the government is "an organization created *by* the people for their own purposes," *Duchesne Cnty. v. State Tax Comm'n*, 140 P.2d 335, 339-40 (Utah 1943), to secure "'the rights and powers which [the people] possessed before the constitution was made,'" *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶13, 140 P.3d 1235; *see also* The Federalist No. 39 (James Madison) ("[W]e may define a republic to be … a government which derives all its powers directly or indirectly from the great body of people."). It thus restates the "basic premise, upon which all our government is built." *Carter*, 2012 UT 2, ¶21.

The records of the Constitutional Convention confirm that the Framers—both proponents of the clause and those who saw "no necessity of" its inclusion—believed that this clause "simply affirm[s] and reaffirm[s] a principle." *See* Proceedings and Debates of the Convention, Day 17, 230 (Mar. 20, 1895) (Mr. Varian); *see also id.* (Mr. Wells) (arguing it is "very pertinent to provide that all political power is inherent in the people"). There is no indication in the Convention records that would support the notion that the general public understood Article I, §2 to adopt justiciable standards. And although "probably one-half of the constitutions of the states in the United States ha[d] the same provision" at the time of the Constitution's adoption, *id.* (Mr. Wells), Plaintiffs fail to cite even one case from those states where a court invalidated an act of the legislature for disregarding the inherent political power of the people.

Such a general statement of principle is not sufficient to be self-executing. For instance, this Court recently held that another vaguely phrased clause in the Constitution, the Free Market Clause, was not self-executing. *See Tesla*, 2017 UT 18, ¶¶51-54. That clause states that "[i]t is the policy of the state of Utah that a free market system shall govern trade and commerce in this state to promote the dispersion of economic and political power and the general welfare of all the people." Utah Const. art. XII, §20. This Court held that this clause "identif[ied] only a 'general principle' with no justiciable standard or 'means for putting [it] into effect.'" *Tesla*, 2017 UT 18, ¶53. The same is true of Article I, §2. The vagueness of Article I, §2's text is alone a sufficient reason to dismiss Plaintiffs' claim. *See id.* ¶54 ("reject[ing]" the Free Market Clause claim "on that basis").

Second, Article I, §2 does not "'supply[] the means for putting" its stated policy "into effect.'" *Spackman*, 2000 UT 87, ¶7. Critically, Article I, §2 requires "law" through which the people exercise their "inherent authority to allocate governmental power." *Carter*, 2012 UT 2, ¶21. Indeed, Article I, §2 says nothing about what kind of power the people may exercise directly. That's no surprise; after all, in the original constitution, the people exercised their inherent political power by entrusting lawmaking responsibility only to an elected Legislature. Then when the people amended Article VI in 1900, they exercised their inherent power in a slightly different way—reserving to themselves a "parallel and coextensive" ability to legislate directly. *Id.* ¶21; Bates#000788. But even then, the people themselves placed limits on their direct legislative authority. *See* Utah Const. art. VI, §1(b) (vesting legislative power in the people "as provided in Subsection (2)"); *see also* Bates#000789. On its own, Article I, §2 does not make any of those choices constitutionally suspect or permissible.

Other provisions of the Constitution confirm that allocating power under the people's inherent political authority requires legislation. The Constitution expressly mentions governmental bodies that may be created, altered, reformed, or abolished by a statute or an initiative. *See, e.g.*, Utah Const. art. VI, §2 (initiative power to be exercised "under the conditions, in the manner, and within the time provided by statute"); *id.* art. VIII, §1 ("other courts as the Legislature by statute may establish"); *id.* art. VII, §10(1)(a) (Governor may appoint officers for "offices … which may be created by law"); *id.* art. XI, §1 (counties "shall continue until changed as provided by statute"). These provisions contemplate that the offices, courts, and counties would be created (or altered) by law. Article I, §2 is silent about these bodies.

This Court's cases confirm that Article I, §2 does not provide the means of its own enforcement. For example, this Court has considered the constitutionality of a law that "authorize[d] the appointment of arbitrators … to make binding determinations affecting the quantity, quality, and cost of an essential public service." *Salt Lake City v. Int'l Ass'n of Firefighters, Locals 1645, 593, 1654, and 2064*, 563 P.2d 786, 789 (1977). There the Court cited Article I, §2 and observed that "[t]he power conferred on the panel of arbitrators [was] not consonant with the concept of representative democracy," but the decision turned on the fact that the legislature attempted to improperly delegate legislative power "to a private ad hoc panel of arbitrators in violation of Article VI, §1['s]" vesting clause. *Id.* at 790. In other words, the high-level principle of Article I, §2 illumined the breadth of another constitutional clause—Article VI, §1. *See id.* This does not establish that Article I, §2—alone—can be wielded to nullify duly enacted laws.

Because Article I, §2 does not supply the means of its own enforcement, but requires laws or constitutional amendments to alter the government, it is not self-executing.

Third, Plaintiffs' interpretation of Article I, §2 raises grave justiciability concerns. *See Tesla*, 2017 UT 18, ¶54. This Court has long looked to the U.S. Supreme Court's justiciability cases as persuasive authority, and the U.S. Supreme Court has long held that cases involving competing claims of legitimate governmental acts are non-justiciable. For instance, in *Luther v. Borden*, Rhode Island had "two opposing governments"—"the government established by the voluntary convention" and the "charter government" that had called the convention but "did not acquiesce." 48 U.S. 1, 3 (1849). The Supreme Court held that it "rest[ed] with Congress to decide what government is the established one in a State." *Id.* at 42. Later, the U.S. Supreme Court rejected a taxpayer's challenge to an Oregon tax law adopted through a ballot initiative on the ground that ballot initiatives are "pure democracy" and not "republican," in violation of the Guaranty Clause. *Pac. States Tel. & Tel. Co. v. State of Oregon*, 223 U.S. 118, 138, 150-51 (1912). Relying on *Luther*, the Court held that deciding which government act was "'the legitimate one'" was a political question. *Id.* at 149.

For similar reasons, this Court lacks judicial tools to assess whether an act of the legislature (like S.B. 200) or an initiative (like Proposition 4) reflects the true will of the people. *Cf.* Br. 47-48. Here, S.B. 200 was passed with near unanimity in both chambers (the House by 67 yes votes, four no votes, and four absences; the Senate by a 25-0-4 vote) and signed into law by the Governor after months of negotiation with, and with the full support of, Better Boundaries, the organization that promoted Proposition 4. By comparison, Proposition 4 passed with a 0.6% margin—fewer than 7,000 votes. Plaintiffs would have this Court second-guess whether a law duly enacted by the Legislature *really* reflects the people's will. But they do not explain why Proposition 4 was the only legitimate exercise of the people's right to alter the

government by legislation, while S.B. 200, which garnered broad support—including from Proposition 4's principal proponents—was not. This Court should reject Plaintiffs' invitation.

B. Article I, §2 permits the people, acting through their Legislature, to pass legislation that cures constitutional defects of previous laws.

Even if Article I, §2 can be judicially enforced, Plaintiffs' Article I, §2 argument fails on the merits. The gravamen of Plaintiffs' argument is that even if the Legislature could repeal initiatives generally, "initiatives that reallocate governmental power and restructure the exercise of government authority within the existing constitutional bounds" cannot be repealed under Article I, §2. Br. 47.

This argument fails. As explained above, when the people legislate through the Initiatives Clause, they are exercising a particular form of legislative power that can later be amended or repealed through another exercise of legislative power. *See* Utah Const. art. VI, §1(1)(b) & (2)(a)(i)(A); *see also Carter*, 2012 UT 2, ¶27 ("'[l]aws proposed and enacted by the people under the initiative … may be amended or repealed by the Legislature at will.'"). Article I, §2—as a matter of text and history—does not distinguish between initiatives that can be repealed and those that can't, regardless of whether those initiatives alter the government. In fact, no provision of the Constitution recognizes such a distinction.

What's more, Article I, §2 permits the people, acting through the Legislature, to alter the government "as the public welfare may require." And that's precisely what the Legislature did when it spotted defects in Proposition 4.

Proposition 4 took redistricting away from the Legislature (in violation of Article IX) and gave it to an "independent" fourth branch of the government, in violation of the separation of powers. *See* Utah Const. art. V, §1; *see also Firefighters*, 563 P.2d at 790 ("insulat[ing] the

decision-making process" from "accountability within the political process" is "not consonant with the concept of representative democracy" enshrined in Article I, §2). Proposition 4 even gave the Chief Justice a role in redistricting, another violation of the separation of powers and a demand for an advisory opinion. *But see Utah Transit Auth. v. Loc. 382 of Amalgamated Transit Union*, 2012 UT 75, ¶19, 289 P.3d 582. Legislators from both parties voiced these constitutional concerns during the debate. Republican Senator Bramble, the Senate sponsor of S.B. 200, highlighted that the bill "preserves the constitutional prerogative of the Legislature to do redistricting consistent with [its] constitutional mandate" while retaining an independent input from the Commission. Sen. Floor Debate at 35:44-36:38, 2020 Gen. Sess. (2020). He observed that S.B. 200 retained the Commission but removed "the issues that would give rise to legal challenges under the Constitution." *Id.* at 37:30-37:40. Democratic Representative Carol Spackman Moss, the bill's House sponsor, echoed those concerns and especially highlighted S.B. 200's effort to cure the constitutional problems with drawing the Chief Justice into the midst of political redistricting. *See* House Floor Debate at 1:33:55-1:34:21, 2020 Gen. Sess. (2020). The Legislature's careful exercise of its judgment and balancing of the constitutional concerns and the citizens' wishes was precisely what the political process was designed to facilitate. Such an exercise was fully consonant with Article I, §2.

To be sure, some powers distributed by the Constitution cannot be altered by either a statute or an initiative. *See Carter*, 2012 UT 2, ¶27 (initiatives "subject to the same constitutional limitations as other statutes"). An initiative statute could not, for example, abolish the Supreme Court and vest judicial power in the chief executive instead. That would exceed the limits of the legislative power the people have reserved to themselves, and their Article I, §2 right to "alter or reform their government" would offer no support to such an initiative.

But this only further demonstrates that Article I, §2 is a principle underlying the *entire* government of Utah, with no special rule for the initiative process. The people's inherent power does not mean they can "alter or reform" Utah's constitutional structure by *statute*, without limits. Rather, the Constitution allows the people to alter the government *within* the guardrails of its constitutional structure by statute (whether legislative or initiative), and to alter that constitutional structure itself through a constitutional amendment. *See* Utah Const. art. XXIII, §§1-2; *cf. Whitehill v. Elkins*, 389 U.S. 54, 57 (1967) (observing that "a person who might wish to 'alter' our form of government" must use "the method of 'alteration' by the amending process").

As affirmed by Article I, §2, the people's sovereignty is a foundational principle of Utah's entire government. But it has no special relationship to the initiative process of Article VI. Still less does it transform certain *types* of initiatives into super-statutes that cannot be amended.

CONCLUSION

The Court should affirm the district court's dismissal of Count Five of Plaintiffs' complaint.

Dated: May 12, 2023

Respectfully submitted,

s/ *Tyler R. Green*
Tyler R. Green
CONSOVOY MCCARTHY PLLC

Counsel for Respondents Utah State Legislature, et al.

CERTIFICATE OF COMPLIANCE

1. This brief contains 10,561 words, excluding any tables or attachments, in compliance with Utah Rule of Appellate Procedure 24(g).
2. This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Garamond font in compliance with the typeface requirements of Utah Rule of Appellate Procedure 27(a).
3. This brief contains no non-public information and complies with Utah Rule of Appellate Procedure 21(h).

/s/ Tyler R. Green

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2023, a true, correct, and complete copy of the foregoing **Brief of Respondents Utah State Legislature et al.** was filed with the Utah Supreme Court and served via electronic mail as follows:

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ATTACHMENTS

A. Constitutional Provisions

B. H.J.R. 5 (1899)

C. H.B. 330 (1997)

D. H.B. 405 (1998)

E. S.B. 128 (2000)

F. H.B. 309 (2002)

G. S.B. 175 (2004)

H. S.B. 131 (2009)

I. H.B. 132 (2019)

J. S.B. 214 (2021)

K. S.B. 1004 (2021)

L. Proposition 4

Attachment A

Alaska Const. art. XI, §6
If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty days after certification. Additional procedures for the initiative and referendum may be prescribed by law.

Ariz. Const. art. IV, pt. I, §1(6)(B)-(C)
(B) Legislature's power to repeal initiative or referendum. The legislature shall not have the power to repeal an initiative measure to approve a tax that is approved by sixty percent of the votes cast thereon or to repeal a referendum measure to approve a tax that is decided by sixty percent of the votes cast thereon and for all other initiatives and referendums, the legislature shall not have the power to repeal an initiative measure approved by a majority of the votes cast thereon and shall not have the power to repeal a referendum measure decided by a majority of the votes cast thereon.

(C) Legislature's power to amend initiative or referendum. The legislature shall not have the power to amend an initiative measure to approve a tax that is approved by sixty percent of the votes cast thereon, or to amend a referendum measure to approve a tax that is decided by sixty percent of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure. For all other initiatives and referendums, the legislature shall not have the power to amend an initiative measure approved by a majority of the votes cast thereon and shall not have the power to amend a referendum measure decided by a majority of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure.

Ark. Const. art. V, §1
Amendment and Repeal. No measure approved by a vote of the people shall be amended or repealed by the General Assembly or by any city council, except upon a yea and nay vote on roll call of two-thirds of all the members elected to each house of the General Assembly, or of the city council, as the case may be.

Cal. Const. art. II, §10
(c) The Legislature may amend or repeal a referendum statute. The Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without the electors' approval.

Colo. Const. art. V, §1
Neither the general assembly nor its committees or agencies shall have any power to require the amendment, modification, or other alteration of the text of any such proposed measure or to establish deadlines for the submission of the original draft of the text of any proposed measure.

Idaho Const. art. III, §1
The legislative power of the state shall be vested in a senate and house of representatives. The enacting clause of every bill shall be as follows: "Be it enacted by the Legislature of the State of Idaho."

The people reserve to themselves the power to approve or reject at the polls any act or measure passed by the legislature. This power is known as the referendum, and legal voters may, under such conditions and in such manner as may be provided by acts of the legislature, demand a referendum vote on any act or measure passed by the legislature and cause the same to be submitted to a vote of the people for their approval or rejection.

The people reserve to themselves the power to propose laws, and enact the same at the polls independent of the legislature. This power is known as the initiative, and legal voters may, under such conditions and in such manner as may be provided by acts of the legislature, initiate any desired legislation and cause the same to be submitted to the vote of the people at a general election for their approval or rejection.

Mich. Const. art. II, §9
No law initiated or adopted by the people shall be subject to the veto power of the governor, and no law adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature. Laws approved by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof. If two or more measures approved by the electors at the same election conflict, that receiving the highest affirmative vote shall prevail.

Mich. Const. art. XII, §2
Any county may frame, adopt, amend or repeal a county charter in a manner and with powers and limitations to be provided by general law, which shall among other things provide for the election of a charter commission. The law may permit the organization of county government in form different from that set forth in this constitution and shall limit the rate of ad valorem property taxation for county purposes, and restrict the powers of charter counties to borrow money and contract debts. Each charter county is hereby granted power to levy other taxes for county purposes subject to limitations and prohibitions set forth in this constitution or law. Subject to law, a county charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns.

The board of supervisors by a majority vote of its members may, and upon petition of five percent of the electors shall, place upon the ballot the question of electing a commission to frame a charter.

No county charter shall be adopted, amended or repealed until approved by a majority of electors voting on the question.

Mo. Const. art. III, §49
The people reserve power to propose and enact or reject laws and amendments to the constitution by the initiative, independent of the general assembly, and also reserve power to approve or reject by referendum any act of the general assembly, except as hereinafter provided.

Mont. Const. art. V, §1
The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum.

Neb. Const. art. III, §2
The Legislature shall not amend, repeal, modify, or impair a law enacted by the people by initiative, contemporaneously with the adoption of this initiative measure or at any time thereafter, except upon a vote of at least two-thirds of all the members of the Legislature.

Nev. Const. art. XIX, §2
3. *** An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or suspended by the Legislature within 3 years from the date it takes effect.

N. Dak. Const. art. Ill, §8
A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house.

Ohio Const. art. II, §1f
The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

Ore. Const. art. IV, §1
(1) The legislative power of the state, except for the initiative and referendum powers reserved to the people, is vested in a Legislative Assembly, consisting of a Senate and a House of Representatives.

(2)(a) The people reserve to themselves the initiative power, which is to propose laws and amendments to the Constitution and enact or reject them at an election independently of the Legislative Assembly.

(b) An initiative law may be proposed only by a petition signed by a number of qualified voters equal to six percent of the total number of votes cast for all candidates for Governor at the election at which a Governor was elected for a term of four years next preceding the filing of the petition.

(c) An initiative amendment to the Constitution may be proposed only by a petition signed by a number of qualified voters equal to eight percent of the total number of votes cast for all candidates for Governor at the election at which a Governor was elected for a term of four years next preceding the filing of the petition.

(d) An initiative petition shall include the full text of the proposed law or amendment to the Constitution. A proposed law or amendment to the Constitution shall embrace one subject only and matters properly connected therewith.

(e) An initiative petition shall be filed not less than four months before the election at which the proposed law or amendment to the Constitution is to be voted upon.

(3)(a) The people reserve to themselves the referendum power, which is to approve or reject at an election any Act, or part thereof, of the Legislative Assembly that does not become effective earlier than 90 days after the end of the session at which the Act is passed.

(b) A referendum on an Act or part thereof may be ordered by a petition signed by a number of qualified voters equal to four percent of the total number of votes cast for all candidates for Governor at the election at which a Governor was elected for a term of four years next preceding the filing of the petition. A referendum petition shall be filed not more than 90 days after the end of the session at which the Act is passed.

(c) A referendum on an Act may be ordered by the Legislative Assembly by law. Notwithstanding section 15b, Article V of this Constitution, bills ordering a referendum and bills on which a referendum is ordered are not subject to veto by the Governor.

(4)(a) Petitions or orders for the initiative or referendum shall be filed with the Secretary of State. The Legislative Assembly shall provide by law for the manner in which the Secretary of State shall determine whether a petition contains the required number of signatures of qualified voters. The Secretary of State shall complete the verification process within the 30-day period after the last day on which the petition may be filed as provided in paragraph (e) of subsection (2) or paragraph (b) of subsection (3) of this section.

(b) Initiative and referendum measures shall be submitted to the people as provided in this section and by law not inconsistent therewith.

(c) All elections on initiative and referendum measures shall be held at the regular general elections, unless otherwise ordered by the Legislative Assembly.

(d) Notwithstanding section 1, Article XVII of this Constitution, an initiative or referendum measure becomes effective 30 days after the day on which it is enacted or approved by a majority of the votes cast thereon. A referendum ordered by petition on a part of an Act does not delay the remainder of the Act from becoming effective.

(5) The initiative and referendum powers reserved to the people by subsections (2) and (3) of this section are further reserved to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district. The manner of exercising those powers shall be provided by general laws, but cities may provide the manner of exercising those powers as to their municipal legislation. In a city, not more than 15 percent of the qualified voters may be required to propose legislation by the initiative, and not more than 10 percent of the qualified voters may be required to order a referendum on legislation.

S. Dak. Const. art. III, §1
The legislative power of the state shall be vested in a Legislature which shall consist of a senate and house of representatives. However, the people expressly reserve to themselves the right to propose measures, which shall be submitted to a vote of the electors of the state, and also the right to require that any laws which the Legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions. Not more than five percent of the qualified electors of the state shall be required to invoke either the initiative or the referendum.

This section shall not be construed so as to deprive the Legislature or any member thereof of the right to propose any measure. The veto power of the Executive shall not be exercised as to measures referred to a vote of the people. This section shall apply to municipalities. The enacting clause of all laws approved by vote of the electors of the state shall be: "Be it enacted by the people of South Dakota." The Legislature shall make suitable provisions for carrying into effect the provisions of this section.

Wash. Const. art. II, §1

(c) No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment: *Provided,* That any such act, law, or bill may be amended within two years after such enactment at any regular or special session of the legislature by a vote of two-thirds of all the members elected to each house with full compliance with section 12, Article III, of the Washington Constitution, and no amendatory law adopted in accordance with this provision shall be subject to referendum. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon.

Wyo. Const. art. III, §52

(f) *** An initiated law becomes effective ninety (90) days after certification, is not subject to veto, and may not be repealed by the legislature within two (2) years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty (30) days after certification. Additional procedures for the initiative and referendum may be prescribed by law.

Attachment B

Substitute for H. J. R. No. 5.

By Mr. SMITH.

Resolution, Proposing Amendments to Sections 1 and 24 of Article 6 of the Constitution of the State of Utah, Relating to Direct Legislation by the People.

Be it resolved and enacted by the Legislature of the State of Utah, two-thirds of all the members elected to each House thereof concurring therein:

Section 1. That Section 1 of Article 6, of the Constitution of the State of Utah, be amended to read as follows:

Section 1. The Legislative power of the State shall be vested:

1. In a Senate and House of Representatives which shall be designated the Legislature of the State of Utah.

2. In the people of the State of Utah, as hereinafter stated:

The legal voters or such fractional part thereof, of the State of Utah as may be provided by law, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people for approval or rejection, or may require any law passed by the Legislature (except those laws passed by a two-thirds vote of the members elected to each house of the Legislature) to be submitted to the voters of the State before such law shall take effect.

The legal voters or such fractional part thereof as may be provided by law, of any legal subdivision of the State, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people of said legal subdivision for approval or rejection, or may require any law or ordi-

nance passed by the law making body of said legal subdivision to be submitted to the voters thereof before such law or ordinance shall take effect.

Sec. 2. *Also that section 22, of Article 6, of the Constitution of the State of Utah be amended to read as follows:*

Sec. 22. The enacting clause of every law shall be, "Be it enacted by the Legislature of the State of Utah." *Except such laws as may be passed by the vote of the electors as provided in subdivision 2, section 1 of this article, and such laws shall begin as follows, "Be it enacted by the people of the State of Utah."* No bill or Joint Resolution shall be passed, except with the assent *of the majority of all the members elected to each house* of the Legislature, and after it has been read three times. The vote upon the final passage of all bills shall be by yeas and nays; and no law shall be revised or amended by reference to its title only; but the act as revised, or section *as amended, shall be re-enacted and published at* length.

Sec. 3. The Secretary of State is hereby ordered to cause this proposition to be publsihed in at least one newspaper in every county of the State where a newspaper is published, for two months immediately preceding the next general election.

Sec. 4. This proposition shall be submitted to the electors of this State at the next general election for their approval or rejection. The official ballots used at said election shall have printed thereon "for the amendment, ~~etc.~~ Sections 1 and 22 article 6 of the Constitution etc" and "against the amendment, ~~etc.~~" and such designation of title as may be provided for by law. Said ballots shall be received and said vote shall be taken, counted, canvassed and returns thereof be made in the same manner and in all respects as is provided by law in case of the election of State officers.

to Section 1 and 22 article 6 of the Constitution &c,

GRAY

IN THE SENATE

RECEIVED FROM HOUSE

1899.

READ

First Time 1899.

Second Time 1899.

Third Time 1899.

REFERRED TO

Committee on Judiciary

1899.

REPORTED

1899.

FURTHER ACTION

FINAL VOTE

1899.

Ayes Nays Absent

RETURNED TO HOUSE

1899.

No. 5

HOUSE BILL

By Smith

Feby 24 1899.

READ

First Time Feby 24 1899.

Second Time 1899.

Third Time 1899.

ORDERED PRINTED AND REFERRED TO

Committee on Finance

Feby 24 1899.

REPORTED

1899.

FURTHER ACTION

Reported back from Committee on Finance

FINAL VOTE

1899.

Ayes Nays Absent

Received 1899.

Enrolled 1899.

Sent to Governor 1899.

Attachment010

House J. R. No. 5 By Smith.

Proposed Amendment to the constitution of the State of Utah.

A joint resolution proposing and agreeing to amendments to sections 1 and 22 of Article 6 of the constitution of the State of Utah, providing for direct legislation by the election of ~~the~~ one ~~the~~ this state.

Be it resolved by the House of Representatives the Senate concurring: That, the constitution of the State of Utah be amended by striking out section 1 of Article 6, and that sections 1- 1a- 1b- 1c- 1d- 1e- ~~and 1f~~ and be inserted in lieu thereof as follows:-

Section 1. The Legislative power of the State is inherent and shall be vested in the electors of this State, in a General Assembly, which shall consist of the Senate and House of Representatives. The legislative power of any municipal division of this state, (such as county, city, town, township, or school district,) on its own municipal matters, is inherent, and shall be vested in the electors of each municipal division, subject to such laws of a general nature having uniform operation throughout the whole state as the electors or the general assembly may enact.

Sec. 1a. Five per cent of the qualified electors of the State of Utah, as shown by the last congressional election, shall have the power to require that any act or part of an act passed by the general assembly, shall be referred to the qualified electors of the State ~~affected thereby~~ at the next general election, to take effect if approved by a majority of those voting thereon, by filing their signed demand with the secretary of state not more than sixty days after the adjournment of the general assembly which passed the act, earlier than which date no law or part of a law can become operative. Any law whose reference is properly petitioned for, shall not take effect till approved by a majority of those voting thereon. All laws for the immediate preservation of the public peace, health and safety

may go into immediate operation if passed by a threefourths vote of the members elected respectively to each house, ~~provided that such laws shall be considered as repealed from the date of the voting.~~

Sec. 1b . Five per cent of the qualified electors of the State of Utah, as shown by the last congressional election, shall have the power to propose any law or amendment to the constitution of this state and require that it be referred to the qualified electors of the state, if it is not a law enacted by the general assembly as petitioned for, at the ~~next~~ first general election occurring at least two months for a law and six months for a constitutional amendment after such demand shall have been filed with the secretary of state, to become ~~be come~~ a law or part of the constitution if approved by a majority of those voting thereon.

Sec. 1c. All municipalities and political subdivisions of this ~~the~~ State, (such as county, City, town, township, or school district) may exercise the right of direct legislation as provided for the State in sections 1a and 1b of this article, by filing their petitions with the clerk of the law making body of the municipality.

Sec. 1d. Whenever any law or part of a law shall have been declared unconstitutional by any state court, the executive shall submit it to all the electors the same as if it had been initiated by five per cent of the qualified electors, and if approved by a majority of those voting thereon, it shall become a law of the state, notwithstanding anything in the constitution to the contrary.

Arrangement.

Sec. 1e. Until laws are enacted specially providing for the enforcement of this amendment, the secretary of state and all other officers in referring measures, providing ballots and all other necessary matters shall be guided by the general election laws, and the provisions of acts heretofore passed referring laws and constitutional amendments to the electors for acceptance or rejection, supplemented by such reasonable

action as may be necessary to render this constitutional provision self-executing.

Also, that section 22 of Article 6 of the Constitution of the State of Utah be amended by striking out all of said section and inserting in lieu thereof as follows:--

Sec. 22. The enacting clause of every law shall be, "Be it enacted by the Legislature of the State of Utah," except such laws as may be passed by the vote of the electors, as provided in sections 1a, and 1b ~~one~~ of this article, and such laws shall begin as follows, "Be it enacted by the people of the State of Utah." No bill or joint resolution shall be passed, except with the assent of the majority of all the members elected to each House of the Legislature, and after it has been read three times. The vote upon the final passage of all ~~the~~ bills shall be by yeas and nays; and no law shall be revised or amended by reference to its title only; but the act as revised, or section as amended, shall be reenacted and published at length.

O. K.

Attachment C

Download Zipped Enrolled WP 6.1 HB0330.ZIP 5,649 Bytes
[Introduced][Status][Bill Documents][Fiscal Note] [Bills Directory]

H.B. 330 Enrolled

DEPUTY SHERIFFS - MERIT SYSTEM

COMMISSION AMENDMENTS

1997 GENERAL SESSION

STATE OF UTAH

Sponsor: Gene Davis

AN ACT RELATING TO COUNTIES; AUTHORIZING THE COUNTY LEGISLATIVE BODY TO COMPENSATE MEMBERS OF THE MERIT SYSTEM COMMISSION; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

17-30-3, as last amended by Chapter 67, Laws of Utah 1979

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

Section 1. Section **17-30-3** is amended to read:

17-30-3. Establishment of merit system commission -- Appointment, qualifications, and compensation of members.

(1) Each [~~of the several counties of the state of Utah~~] *county* with a population of 20,000 people or more shall establish a merit system commission consisting of three members appointed by the [~~governing~~] *county legislative* body [~~in such counties~~]. Not more than two members of the commission shall be affiliated with or members of the same political party. Of the original appointees, one member shall be appointed for a term ending February 1 of the first odd-numbered year after the date of [~~his~~] appointment, and one each for terms ending two and four years thereafter. Upon the expiration of any of [~~said~~] *the* terms*,* a successor shall be appointed for a full term of six years. Appointment to fill a vacancy resulting other than from expiration of term

shall
be for the unexpired portion of the term only. [~~Any governing body~~] *Each legislative body* charged
by this act with the appointment of a personnel merit system commission shall make such appointments within [~~ninety~~] *90* days after the effective date of this act.

(2) Members of a commission shall be citizens of the state, shall have been residents of the area embraced by the governmental unit from which appointed not less than five years next
preceding the date of appointment, and shall hold no other office or employment under the

---

governmental unit for which appointed.

(3) [~~Members of a commission shall receive no compensation for their services, but shall be reimbursed~~] *The county legislative body may compensate a member for service on the commission and reimburse the member* for necessary expenses incurred in the performance of [~~their~~]
the member's duties.

[Bill Documents][Bills Directory]

STATE SENATE

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PO Box 145115
Salt Lake City, Utah 84114
Telephone: (801) 538-1408
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Contact a Senator

HOUSE OF REPRESENTATIVES

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Attachment016

Attachment D

LEGISLATIVE GENERAL COUNSEL
₵ Approved for Filing: KMW ₵
₵ 02-05-98 4:23 PM ₵

H.B. 405

APPROVAL REQUIREMENTS FOR WATER FLUORIDE TREATMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Mary Carlson

AN ACT RELATING TO THE ENVIRONMENTAL QUALITY CODE; AMENDING THE PROCEDURE FOR CALLING AN ELECTION ON THE ISSUE OF ADDING FLUORINE TO A PUBLIC WATER SUPPLY; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

19-4-111, as renumbered and amended by Chapter 112, Laws of Utah 1991

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

Section 1. Section **19-4-111** is amended to read:

19-4-111. Fluorine added to water -- Election required.

(1) Notwithstanding any other provision of law, public water supplies, whether state, county, municipal, or district, shall not have fluorine or any of its derivatives or compounds or any other medications added to them without the approval of a majority of voters in an election in the area affected. An election shall [~~not be held unless an initiative petition has been filed requesting the action in accordance with state law governing initiative petitions.~~] be held upon the:

(a) filing of an initiative petition requesting the action in accordance with state law governing initiative petitions;

(b) in the case of a municipal or county water system, passage of a resolution by the legislative body representing the affected voters, submitting the question to the affected voters at the next general or special election; or

(c) passage of a resolution by a county commission to place an opinion question on the ballot at the next general or special election.

(2) If a majority of voters on an opinion question under Subsection (1)(c) approve the

addition of fluorine or any other medication to the public water supplies within the county, the county health department shall require and regulate the addition of fluorine or other medication to the public water supplies within that county.

(3) Nothing contained in this section prohibits the addition of chlorine or other water purifying agents.

[~~(2)~~] (4) Any political subdivision which, prior to November 2, 1976, decided to and was adding fluorine or any of its derivatives or compounds to the drinking water is [~~deemed~~] considered to have complied with Subsection (1).

Legislative Review Note
as of 2-4-98 1:54 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Attachment019

Attachment E

LEGISLATIVE GENERAL COUNSEL
₵ Approved for Filing: KMW ₵
₵ 01-18-00 2:00 PM ₵

FLUORIDE OPTION FOR SECOND CLASS COUNTIES

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Robert F. Montgomery

AN ACT RELATING TO ENVIRONMENTAL QUALITY; AUTHORIZING COMMISSIONERS OF SECOND CLASS COUNTIES TO PASS A RESOLUTION TO PLACE THE ISSUE OF ADDING FLUORINE TO DRINKING WATER ON A GENERAL ELECTION BALLOT; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

19-4-111, as last amended by Chapter 301, Laws of Utah 1998

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

Section 1. Section **19-4-111** is amended to read:

19-4-111. Fluorine added to water -- Election required.

(1) Notwithstanding any other provision of law, public water supplies, whether state, county, municipal, or district, shall not have fluorine or any of its derivatives or compounds added to them without the approval of a majority of voters in an election in the area affected. An election shall be held upon the:

(a) filing of an initiative petition requesting the action in accordance with state law governing initiative petitions;

(b) in the case of a municipal, special district, or county water system, passage of a resolution by the legislative body or special district board representing the affected voters, submitting the question to the affected voters at the next general election; or

(c) in a county of the first or second class, passage of a resolution by [~~a~~] the county commission to place an opinion question relating to all public water systems within the county on the ballot at the next regular general election or municipal general election.

(2) If a majority of voters on an opinion question under Subsection (1)(c) approve the addition of fluorine to the public water supplies within the county, the local health departments shall require the addition of fluorine to the public water supplies within that county.

(3) Nothing contained in this section prohibits the addition of chlorine or other water purifying agents.

(4) Any political subdivision which, prior to November 2, 1976, decided to and was adding fluorine or any of its derivatives or compounds to the drinking water is considered to have complied with Subsection (1).

Legislative Review Note
as of 1-17-00 1:08 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Attachment F

LEGISLATIVE GENERAL COUNSEL
₵ Approved for Filing: C.S. Felt ₵
₵ 02-22-02 9:00 AM ₵

H.B. 309
1st Sub. (Buff)

Representative Roger E. Barrus proposes the following substitute bill:

PUBLIC WATER SYSTEMS AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Roger E. Barrus

This act modifies the Safe Drinking Water Act. The act defines a functionally separate water system. The act allows voters in a county, municipality, or water district the option to vote to add fluoride to or remove fluoride from the public water supply. The act makes technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

19-4-111, as last amended by Chapter 181, Laws of Utah 2000

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

Section 1. Section **19-4-111** is amended to read:

19-4-111. Fluorine added to water -- Election required.

(1) As used in this section, "functionally separate" means that a public water system, not including a wholesale water supplier, provides and distributes water only to the end users within its service boundaries, and does not provide water to another public water system except in an emergency.

[~~(1)~~] (2) [~~Notwithstanding any other provision of law, public~~] Except as provided in Subsection 19-4-104(1)(a)(i), water supplies, whether state, county, municipal, or district, [~~shall~~] may not have fluorine or any of its derivatives or compounds added to or removed from them without the approval of a majority of voters in an election in the area affected. An election shall be held upon the:

(a) filing of an initiative petition requesting the action in accordance with state law governing initiative petitions;

(b) in the case of a municipal, special district, or county water system, passage of a resolution by the legislative body or special district board representing the affected voters, submitting the question to the affected voters at the next regular general election or municipal general election; or

(c) in a county of the first or second class, passage of a resolution by the county commission to place an opinion question relating to all public water systems within the county, except as provided in Subsection [~~(2)~~] (3), on the ballot at the next general election.

[~~(2)~~] (3) If a majority of voters on an opinion question under Subsection [~~(1)~~] (2)(c) approve the addition of fluorine to or the removal of fluorine from the public water supplies within the county, the local health departments shall require the addition of fluorine to or the removal of fluorine from all public water supplies within that county other than those systems:

(a) that are functionally separate from any other public water systems in that county; and

(b) where a majority of the voters served by the public water system voted against the addition or removal of fluorine on the opinion question under Subsection [~~(1)~~] (2)(c).

[~~(3)~~] (4) Nothing contained in this section prohibits the addition of chlorine or other water purifying agents.

[~~(4)~~] (5) Any political subdivision which, prior to November 2, 1976, decided to and was adding fluorine or any of its derivatives or compounds to the drinking water is considered to have complied with Subsection [~~(1)~~] (2).

Attachment G

PROTECTION OF PRIVATE LAWFULLY OBTAINED PROPERTY

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: D. Chris Buttars

Mike Dmitrich
Ron Allen
Patrice M. Arent
Gregory S. Bell
Leonard M. Blackham
Curtis S. Bramble
Gene Davis
Dan R. Eastman
Beverly Ann Evans
James M. Evans
Karen Hale
Thomas V. Hatch
John W. Hickman
Paula F. Julander
Sheldon L. Killpack
Peter C. Knudson
L. Alma Mansell
Ed P. Mayne
Carlene M. Walker

LONG TITLE

General Description:

This bill modifies the Utah Uniform Forfeiture Procedures Act regarding property owner interests, allocation of forfeiture proceeds, and reporting.

Highlighted Provisions:

This bill:

- provides additional definitions;
- increases innocent owner protections;
- repeals the provision for depositing forfeiture proceeds in the Uniform School Fund;
- creates a restricted account for specified state forfeiture funds, and provides that funds in the account shall be appropriated to the Commission on Criminal and Juvenile Justice;
- specifies accountability standards in management of forfeited property and of the proceeds;
- specifies law enforcement purposes for which the proceeds may be used and those purposes for which the proceeds may not be used;
- specifies standards and procedures for allocation of the proceeds to law enforcement agencies by the Commission on Criminal and Juvenile Justice; and

- requires reporting by agencies and by the Commission on Criminal and Juvenile Justice.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

24-1-2, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

24-1-3, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

24-1-4, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

24-1-6, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

24-1-7, as last amended by Chapter 185, Laws of Utah 2002

24-1-10, as last amended by Chapter 185, Laws of Utah 2002

24-1-11, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

24-1-12, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

24-1-14, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

24-1-15, as last amended by Chapter 185, Laws of Utah 2002

ENACTS:

24-1-3.5, Utah Code Annotated 1953

24-1-17, Utah Code Annotated 1953

24-1-18, Utah Code Annotated 1953

24-1-19, Utah Code Annotated 1953

24-1-20, Utah Code Annotated 1953

REPEALS:

24-1-16, as last amended by Chapter 185, Laws of Utah 2002

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

Section 1. Section **24-1-2** is amended to read:

24-1-2. Purpose.

It is the intent of this chapter to:

(1) provide [~~for~~] a uniform set of procedures and substantive standards for the criminal and civil forfeiture of property within the state of Utah;

(2) permit law enforcement personnel to deter crime by lawfully seizing and forfeiting contraband and the instrumentalities and proceeds of criminal conduct;

(3) protect innocent owners and innocent interest holders from the [~~wrongful taking~~] forfeiture of their property;

(4) ensure that seizures and forfeitures of property from private citizens are [~~not disproportionate~~] in proportion to the violation or crime committed;

(5) ensure direct control and accountability over the use and sale of forfeited property and [~~the proceeds generated therefrom~~] the revenue resulting from the disposal of forfeited property; [~~and~~]

(6) ensure the revenue resulting from property forfeiture allows continued:

(a) law enforcement, crime prevention, and drug courts; and

(b) other appropriate activities related to the functions under Subsection (6)(a);

(7) maximize the benefits of, and accountability for, federal asset forfeiture sharing for the citizens of the state; and

[~~(6)~~] (8) direct that any and all revenues resulting from the sale of forfeited property be [~~contributed to the Uniform School Fund~~] allocated to the Utah Commission on Criminal and Juvenile Justice for grants to state and local law enforcement agencies according to specified guidelines.

Section 2. Section **24-1-3** is amended to read:

24-1-3. Definitions.

As used in this section:

(1) "Account" means the Criminal Forfeiture Restricted Account created in Section 24-1-18.

[~~(1)~~] (2) "Agency" [~~shall mean~~] means any agency of municipal, county, or state government, including law enforcement agencies, law enforcement personnel, and multi-jurisdictional task forces.

(3) "Claimant" means:

(a) any owner of property as defined in this section;

(b) any interest holder as defined in this section; and

(c) any other person or entity who asserts a claim to any property seized for forfeiture under this section.

(4) "Complaint" means a civil complaint seeking the forfeiture of any real or personal property pursuant to this chapter.

(5) "Constructive seizure" means a seizure of property where the property is left in the control of the owner and the seizing agency posts the property with notice of seizure by that agency for forfeiture.

[~~(2)~~] (6) "Contraband" [~~shall mean~~] means any property, item, or substance which is unlawful to produce or to possess under state or federal law.

(7) (a) "Innocent owner" means an owner or interest holder who held an ownership interest in property at the time the conduct subjecting the property to seizure occurred, and:

(i) did not have actual knowledge of the conduct subjecting the property to seizure; or

(ii) upon learning of the conduct subjecting the property to seizure, took reasonable steps to prohibit the illegal use of the property.

(b) "Innocent owner" means an owner or interest holder who acquired an ownership interest in the property and who had no knowledge that the illegal conduct subjecting the property to seizure had occurred or that the property had been seized for forfeiture, and:

(i) acquired the property in a bona fide transaction for value;

(ii) was a person, including a minor child, who acquired an interest in the property through probate or inheritance; or

(iii) was a spouse who acquired an interest in property through dissolution of marriage or by operation of law.

(8) (a) "Interest holder" means a secured party as defined in Subsection 70A-9a-102(72), a mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest would be perfected against a good faith purchaser for value.

(b) "Interest holder" does not mean a person who holds property for the benefit of or as an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value.

(9) "Legal costs" means the costs and expenses incurred by the prosecuting agency, not to exceed 20% of the net value of the forfeited property.

(10) "Legislative body" means:

(a) (i) the state Legislature, county commission, county council, city commission, city council, or town council that has fiscal oversight and budgetary approval authority over a seizing agency; or

(ii) the seizing agency's governing political subdivision; or

(b) the lead governmental entity of a multijurisdictional task force, as designated in a memorandum of understanding executed by the agencies participating in the task force.

[~~(3)~~] (11) "Multijurisdictional task force" [~~shall mean~~] means a law enforcement task force or other agency comprised of persons who are employed by or acting under the authority of different governmental authorities, including federal, state, county or municipal governments, or any combination [~~thereof~~] of these agencies.

[~~(4)~~] (12) "Owner" [~~shall mean~~] means any person or entity, other than an interest holder as defined in this section, that possesses a bona fide legal or equitable interest in real or personal property[~~, including a security interest~~].

(13) "Program" means the Crime Reduction Assistance Program created in Section 24-1-19.

[~~(5)~~] (14) "Property" [~~shall mean~~] means all property, whether real or personal, tangible or intangible.

[~~(6)~~] (15) "Prosecuting attorney" [~~shall mean the public attorney authorized by a specific provision of state law to initiate forfeiture proceedings under this chapter.~~] means:

(a) the state attorney general and any assistant attorney general;

(b) any district attorney or deputy district attorney; and

(c) any county attorney or assistant county attorney;

(d) any other attorney authorized to commence an action on behalf of the state under this chapter or other provisions of state law.

(16) "Seize for forfeiture" means seizure of property:

(a) by a law enforcement officer or law enforcement agency, including a constructive seizure; and

(b) accompanied by an assertion by the officer or agency or by a prosecuting attorney that the property is seized for forfeiture in accordance with this chapter.

[~~(7) "State law" means all Utah law, including municipal, county and state law.~~]

Section 3. Section **24-1-3.5** is enacted to read:

24-1-3.5. Jurisdiction and venue.

(1) A state district court has jurisdiction over any action filed in accordance with this chapter regarding:

(a) all interests in property if the property for which forfeiture is sought is within this state at the time the action is filed; and

(b) the interests of owners or interest holders in the property, if the owner or interest holder is subject to the personal jurisdiction of the district court.

(2) (a) In addition to the venue provided for under Title 78, Chapter 13, Place of Trial-Venue, or any other provisions of law, a proceeding for forfeiture under this chapter may be maintained in the judicial district in which:

(i) any part of the property is found; or

(ii) a civil or criminal action could be maintained against an owner or interest holder for the conduct alleged to give cause for the forfeiture.

(b) A claimant may obtain a change of venue under Section 78-13-9.

Section 4. Section **24-1-4** is amended to read:

24-1-4. Civil Procedures.

(1) An agency which seizes property under any provision of state law subjecting [~~an owner's~~] the property to [~~civil~~] forfeiture shall, as soon as practicable, but in no case more than 30 days after seizure:

(a) prepare a detailed inventory of all property seized and transfer the seized property to a designated official within the agency, who shall be responsible for holding and maintaining seized property pending a court order of release or final determination of forfeiture and disposition of property under this chapter;

(b) notify the prosecuting attorney for the appropriate jurisdiction who is responsible for initiating [~~civil~~] forfeiture proceedings under this chapter of the items of property seized, the place of the seizure and any persons arrested at the time of seizure; and

(c) give written notice to all owners and interest holders known, or reasonably discoverable after due diligence, of [~~the following items~~]:

(i) the date of the seizure and the property seized;

(ii) the owner's or interest holder's rights and obligations under this chapter, including the availability of [~~counsel and~~] hardship relief in appropriate circumstances; and

(iii) [~~an outline~~] a brief description of the [~~steps in the~~] statutory basis for the forfeiture and the judicial proceedings by which property is forfeited under this chapter.

(2) (a) If the seizing agency fails to provide notice as required in [~~subparagraph~~] Subsection (1)[~~(c)~~], an owner or interest holder entitled to notice who does not receive notice may void the forfeiture with respect to the owner's or interest holder's interest in the property by bringing a motion before the appropriate district court and serving it upon the seizing agency. [~~Such~~] The motion may be brought at any time prior to the final disposition of the property under this chapter.

(b) If an owner or interest holder brings a motion to void the forfeiture for lack of the notice required under [~~subparagraph~~] Subsection (1)[~~(c)~~], the court shall void the forfeiture unless the seizing agency demonstrates:

[~~(a)~~] (i) good cause for the failure to give notice to that owner; or

[~~(b)~~] (ii) that the owner otherwise had actual notice of the seizure.

(3) (a) Within [~~90~~] 60 days of any seizure, the prosecuting attorney shall file a complaint for forfeiture in the appropriate district court and serve a summons and notice of intent to seek forfeiture with a copy of the complaint upon all owners and interest holders known to the prosecuting attorney to have an interest in the property. Service shall be by one of the following methods:

[~~(i) personal service upon each owner whose name and address is known, or by mailing a copy to the last known address; or~~]

[~~(ii) upon all other owners whose addresses are not known, by publication in a newspaper of general circulation in the county where the seizure was made for a period of two consecutive weeks.~~]

(i) if the owner's or interest holder's name and current address are known, either by personal service by any person qualified to serve process, by a law enforcement officer, or by certified mail, return receipt requested, to that address;

(ii) if the owner's or interest holder's name and address are required by law to be on record with any state agency in order to perfect an interest in property and the owner's or interest holder's current address is not known, by mailing a copy of the notice by certified mail, return receipt requested, to the most recent address listed by any of those agencies; or

(iii) if the owner's or interest holder's address is not known and is not on record as provided in Subsection (3)(a)(i) or (ii), by publication for two successive weeks in a newspaper of general circulation in the county in which the seizure occurred.

(b) Notice is effective upon the earlier of personal service, publication, or the mailing of a written notice.

(c) The summons and notice of intent to seek forfeiture shall:

(i) be addressed to the known owners and interest holders of the seized property, and to the person from whom the property was seized;

(ii) contain the name, business address, and business telephone number of the prosecuting

attorney seeking the forfeiture; and

(iii) contain:

(A) a description of the property which is the subject matter of the forfeiture proceeding;

(B) notice that a complaint for forfeiture has been or will be filed;

(C) the time and procedural requirements for filing an answer or claim;

(D) notice of the availability of hardship or bond release of the property; and

(E) notice that failure to file an answer or other claim regarding the seized property will result in a default judgment against the seized property.

[~~(b)~~] (d) The complaint shall describe with reasonable particularity:

(i) the property which is the subject matter of the forfeiture proceeding;

(ii) the date and place of seizure; and

(iii) the allegations which constitute a basis for forfeiture.

(4) (a) If the prosecuting attorney does not timely file a complaint for forfeiture of the property in accordance with [~~subparagraph~~] Subsection (3), the agency shall promptly return the property to its owner and the prosecuting attorney [~~shall~~] may take no further action to effect the forfeiture of [~~such~~] the property.

(b) If the agency knows of more than one owner, it shall return the property to the owner who was in possession at the time of the seizure.

(5) (a) In any case where the prosecuting attorney files a complaint for forfeiture of property, an owner or interest holder may file a claim and an answer to the complaint.

(b) The claim and answer shall be filed within 30 days after the complaint is served in person or by mail, or where applicable, within 30 days after publication under [~~subparagraph~~] Subsection (3)[~~(a)(ii)~~].

(6) (a) Except as otherwise provided in this chapter, [~~civil~~] forfeiture proceedings are governed by the Utah Rules of Civil Procedure.

(b) The court shall take all reasonable steps to expedite forfeiture proceedings and shall give [~~such~~] these proceedings the same priority as is given to criminal cases.

(c) In all suits or actions brought for the civil forfeiture of any property under this

chapter, the burden of proof is on the prosecuting attorney to establish, by clear and convincing evidence, to what extent, if any, property is subject to forfeiture.

(d) The right to trial by jury applies to [~~civil~~] forfeiture proceedings under this chapter.

Section 5. Section **24-1-6** is amended to read:

24-1-6. Innocent owners.

(1) An innocent owner's or interest holder's interest in property [~~shall~~] may not be forfeited [~~civilly~~] under any provision of state law.

(2) The prosecuting attorney [~~shall have~~] has the burden of establishing by clear and convincing evidence that an [~~individual is not an innocent~~] owner[~~.~~]or interest holder:

[~~(3) With respect to an ownership interest in existence at the time the conduct subjecting the property to seizure took place, the term "innocent owner" means an owner who:~~]

[~~(a) did not have actual knowledge of the conduct subjecting the property to seizure; or~~]

[~~(b) upon learning of the conduct subjecting the property to seizure, took reasonable steps to prohibit such use of the property.~~]

(a) is criminally responsible for the conduct giving rise to the forfeiture, subject to Subsection (4);

(b) knew of the conduct giving rise to the forfeiture, and allowed the property to be used in furtherance of the conduct;

(c) acquired the property with notice of its actual or constructive seizure for forfeiture under this chapter;

(d) acquired the property knowing the property was subject to forfeiture under this chapter; or

(e) acquired the property in an effort to conceal, prevent, hinder, or delay its lawful seizure or forfeiture under any provision of state law.

[~~(4)~~] (3) For purposes of [~~subparagraph (3)(b), no~~] this chapter, an owner [~~shall~~] or interest holder may not be required to take steps that he reasonably believes would be likely to [~~subject any person (other than the person whose conduct gave rise to the forfeiture) to~~] result in physical harm or danger to any person. An owner or interest holder may demonstrate that he

took reasonable action to prohibit [~~such~~] the illegal use of the property by, for example:

(a) timely notifying a law enforcement agency of information that led the owner to know that conduct subjecting the property to seizure would occur, was occurring, or has occurred; [~~or~~]

(b) timely revoking or attempting to revoke permission for those engaging in [~~such~~] the illegal conduct to use the property; or

(c) taking reasonable actions to discourage or prevent the illegal use of the property.

[~~(5) With respect to an ownership interest acquired after the conduct subjecting the property to seizure has occurred, the term "innocent owner" means a person who, at the time he acquired the interest in the property, had no knowledge that the illegal conduct subjecting the property to seizure had occurred or that the property had been seized for forfeiture, and:~~]

[~~(a) acquired the property in a bona fide transaction for value;~~]

[~~(b) was a person, including a minor child, who acquired an interest in property through probate or inheritance; or~~]

[~~(c) was a spouse who acquired an interest in property through dissolution of marriage or by operation of law.~~]

(4) If the state relies on Subsection (2)(a) to establish that a person is not an innocent owner or interest holder, and if the owner or the interest holder is criminally charged with the conduct giving rise to the forfeiture and is acquitted of that charge on the merits:

(a) the property subject to the forfeiture or the value of the property, if the property has been disposed of under Subsection 24-1-7(15), shall be returned to the owner or interest holder; and

(b) any payments required under this chapter regarding holding the property shall be paid to the owner or interest holder.

[~~(6)~~] (5) No owner may assert, under this [~~paragraph~~] section, an ownership interest in contraband.

(6) Property is presumed to be subject to forfeiture under this chapter if the prosecuting attorney establishes, by clear and convincing evidence, that:

(a) the owner or interest holder has engaged in conduct giving cause for forfeiture;

(b) the property was acquired by the owner or interest holder during that period of the conduct giving cause for forfeiture or within a reasonable time after that period; and

(c) there was no likely source for the purchase or acquisition of the property other than the conduct giving cause for forfeiture.

(7) A finding that property is the proceeds of conduct giving cause for forfeiture does not require proof that the property was the proceeds of any particular exchange or transaction.

Section 6. Section **24-1-7** is amended to read:

24-1-7. Hardship release of seized property.

(1) After property is seized for forfeiture, a person or entity may not alienate, convey, sequester, or attach that property until the court issues a final order of dismissal or an order of forfeiture regarding the property.

(2) The seizing agency or the prosecuting attorney may authorize the release of property seized for forfeiture to its owner if retention of actual custody is unnecessary.

(3) With the consent of a court of competent jurisdiction, the prosecuting attorney may discontinue forfeiture proceedings and transfer the action to another state or federal agency which has initiated forfeiture proceedings involving the same property.

(4) Property seized for forfeiture is considered to be in the custody of the district court and subject only to:

(a) the orders and decrees of the court having jurisdiction over the property or the forfeiture proceedings; and

(b) the acts of the seizing agency or the prosecuting attorney pursuant to this chapter.

(5) (a) An owner of property seized pursuant to this chapter may obtain release of the property by posting with the district court a surety bond or cash in an amount equal to the current fair market value of the property as determined by the court or by the parties' stipulation.

(b) The district court may refuse to order the release of the property if:

(i) the bond tendered is inadequate;

(ii) the property is contraband or is retained as evidence; or

(iii) the property is particularly altered or designed for use in conduct giving cause for

forfeiture.

(c) If a surety bond or cash is posted and the property seized and then released on a bond or cash is forfeited, the court shall order the forfeiture of the surety bond or cash in lieu of the property.

(6) (a) As soon as practicable after seizure for forfeiture, and in no case later than 30 days after seizure for forfeiture, the seizing agency shall conduct a written inventory of the property seized.

(b) The seizing agency shall deposit property that is in the form of cash or other readily negotiable instruments into a restricted account maintained by the agency solely for the purpose of managing and protecting the property from commingling, loss, or devaluation during the pendency of the forfeiture proceedings.

(c) The seizing agency shall have in place written policy for the identification, tracking, management, and safekeeping of seized property, which shall include a prohibition against the transfer, sale, or auction of forfeited property to any employee of the seizing agency.

(d) An agency may not be awarded any funds from forfeiture through the Crime Reduction Assistance Program under Section 24-1-19 if the agency has not established or maintained the inventory policy, restricted account, and written policies required by this Subsection (6).

[~~(1)~~] (7) An owner is entitled to the immediate release of seized property from the seizing agency pending the final determination of [~~civil~~] forfeiture if:

(a) the owner [~~has~~] had a possessory interest in the property at the time of seizure;

(b) continued possession by the agency or the state pending the final disposition of the forfeiture proceedings will cause substantial hardship to the owner, such as:

(i) preventing the functioning of a legitimate business;

(ii) preventing any individual from working;

(iii) preventing any minor child or student from attending school;

(iv) preventing or hindering any person from receiving necessary medical care;

(v) hindering the care of an elderly or disabled dependent child or adult;

(vi) preventing an owner from retaining counsel to provide a defense in the forfeiture proceeding; or

(vii) leaving any individual homeless, or any other condition that the court determines causes a substantial hardship; [~~and~~]

(c) the hardship from the continued possession by the agency of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the owner during the pendency of the proceeding[~~.~~]; and

(d) determination of substantial hardship under this Subsection (7) is based upon the property's use prior to the seizure.

[~~(2)~~] (8) The right to appointed counsel under Section 24-1-9 applies throughout civil forfeiture proceedings, including an owner's motion for hardship release.

(9) An owner may file a motion for hardship release:

(a) in the court in which forfeiture proceedings have commenced; or

(b) in any district court having jurisdiction over the property, if forfeiture proceedings have not yet commenced.

(10) The motion for hardship release shall also be served upon the prosecuting attorney or the seizing agency within ten days after filing the motion.

[~~(3)~~] (11) The court shall render a decision on a motion [~~or complaint~~] for hardship filed under [~~Subsection (2)~~] this section not later than [~~ten~~] 20 days after the date of filing, or ten days after service upon the prosecuting attorney or seizing agency, whichever is earlier, unless [~~the ten-day~~] this period is extended by the [~~consent of the~~] parties or by the court for good cause shown.

[~~(4)~~] (12) (a) If the owner demonstrates substantial hardship pursuant to [~~subparagraph (1)~~] this section, the court shall order the property immediately released to the owner pending completion of proceedings by the government to obtain forfeiture of the property.

(b) The court may place [~~such~~] conditions on release of the property as it finds [~~are~~] necessary and appropriate to preserve the availability of the property or its equivalent for forfeiture.

[~~(5) Subparagraph (1) shall~~] (13) The hardship release does not apply if the seized property is:

(a) contraband;

(b) currency or other monetary instrument or electronic funds, unless [~~such~~] the property is used to pay for the reasonable costs of defending against the forfeiture proceeding or constitutes the assets of a legitimate business; or

(c) likely to be used to commit additional illegal acts if returned to the owner.

(14) (a) The court may order property which has been seized for forfeiture to be sold as allowed by Subsection (15), leased, rented, or operated to satisfy a specified interest of any owner or interest holder, or to preserve the interests of any party on motion of that party.

(b) The court may enter orders under Subsection (14)(a) after notice to persons known to have an interest in the property, and after an opportunity for a hearing.

(15) (a) A sale may be ordered under Subsection (14) when the property is liable to perish, waste, or be significantly reduced in value, or when the expenses of maintaining the property are disproportionate to its value.

(b) A third party designated by the court shall dispose of the property by commercially reasonable public sale and distribute the proceeds in the following order of priority:

(i) first, for the payment of reasonable expenses incurred in connection with the sale;

(ii) second, for the satisfaction of any interests, including those of interest holders, in the order of their priority as determined by Title 70A, Uniform Commercial Code; and

(iii) third, any balance of the proceeds shall be preserved in the actual or constructive custody of the court, in an interest-bearing account, subject to further proceedings under this chapter.

Section 7. Section **24-1-10** is amended to read:

24-1-10. Prejudgment and postjudgment interest.

In any [~~civil or criminal~~] proceeding to forfeit currency or other negotiable instruments under this chapter, the court shall award a prevailing [~~owner~~] party prejudgment and postjudgment interest on the currency or negotiable instruments at the legal rate of interest

established by Section 15-1-1.

Section 8. Section **24-1-11** is amended to read:

24-1-11. Attorneys' fees and costs.

In any [~~civil or criminal~~] proceeding to forfeit seized property under this chapter, the court shall award a prevailing [~~owner~~] party reasonable attorneys' fees and other costs of [~~suit~~] litigation reasonably incurred by the owner. An owner who prevails only in part [~~shall be~~] is entitled to recover reasonable attorneys' fees and reasonable costs of suit related to those issues on which he prevailed.

Section 9. Section **24-1-12** is amended to read:

24-1-12. Compensation for damaged property.

(1) [~~In any civil or criminal proceeding,~~] If property seized for forfeiture is returned by operation of this chapter, an owner [~~shall have a private~~] has a civil right of action against a seizing agency for any claim based upon the negligent destruction, loss, damage, or other injury to seized property while in the possession or custody of [~~a state~~] the agency[~~, if the property was seized for the purpose of initiating forfeiture proceedings under this chapter~~].

(2) [~~For the purposes of~~] As used in this section, "damage or other injury" does not include normal depreciation, deterioration, or ordinary wear and tear.

Section 10. Section **24-1-14** is amended to read:

24-1-14. Proportionality.

(1) (a) An owner's interest in property, excluding contraband, [~~shall not be civilly or criminally forfeited under a~~] is not subject to forfeiture under any provision of state law [~~unless such~~] if the forfeiture is substantially [~~proportional to both~~] disproportional to the use of the property in committing or facilitating a violation of state law and the value of the property.

(b) Forfeiture of property used solely in a manner that is merely incidental and not instrumental to the commission or facilitation of a violation of law is not proportional[~~, as a matter of law~~].

(2) (a) In determining proportionality, the court shall consider:

(i) the conduct giving cause for the forfeiture;

(ii) what portion of the forfeiture, if any, is remedial in nature;

(iii) the gravity of the conduct for which the claimant is responsible in light of the offense; and

(iv) the value of the property.

(b) If the court finds that the forfeiture is substantially disproportional to the conduct for which the claimant is responsible, it shall reduce or eliminate the forfeiture, as it finds appropriate.

(3) The prosecuting attorney has the burden to demonstrate that any forfeiture is proportional to an alleged violation of state law. It is the province of the court, not the jury, to decide questions of proportionality.

Section 11. Section **24-1-15** is amended to read:

24-1-15. Transfer and sharing procedures.

(1) For purposes of this section, property is [~~deemed~~] considered to be "seized" whenever any agency takes possession of the property or exercises any degree of control over the property.

(2) (a) Seizing agencies or prosecuting attorneys authorized to bring civil or criminal forfeiture proceedings under this chapter [~~shall~~] may not directly or indirectly transfer seized property to any federal agency or any governmental entity not created under and subject to state law unless the court enters an order, upon petition of the prosecuting attorney, authorizing the property to be transferred. The court may not enter an order authorizing a transfer unless:

(i) the activity giving rise to the investigation or seizure is interstate in nature and sufficiently complex to justify [~~such~~] the transfer;

(ii) the seized property may only be forfeited under federal law; or

(iii) pursuing forfeiture under state law would [~~unduly~~] unreasonably burden prosecuting attorneys or state law enforcement agencies.

(b) Notwithstanding [~~Subparagraph~~] Subsection (2)(a), the court may refuse to enter an order authorizing a transfer to the federal government if [~~such~~] the transfer would circumvent the protections of the Utah Constitution or of this chapter that would otherwise be available to the property owner.

(c) Prior to granting any order to transfer pursuant to [~~Subparagraph~~] Subsection (2)(a),

the court must give any owner the right to be heard with regard to the transfer.

(3) (a) [~~All~~] Subject to Subsection (3)(b), all property, money, or other things of value received by an agency pursuant to federal law which authorizes the sharing or transfer of all or a portion of forfeited property or the proceeds of the sale of forfeited property to an agency [~~shall be promptly transferred to the state treasurer and sold and deposited in the Uniform School Fund as provided under Section 24-1-16.~~]:

(i) shall be used in compliance with federal rules and regulations relating to equitable sharing;

(ii) shall be used only for those law enforcement purposes specified in Subsection 24-1-19(8); and

(iii) may not be used for those law enforcement purposes prohibited in Subsection 24-1-19(9).

(b) If an agency receives forfeiture proceeds under Subsection (3)(a) that equal an amount that is more than 25% greater than the annual budget of the receiving agency, the amount of the proceeds that is in excess of 125% of the agency's annual budget shall be passed through by the agency to the Commission on Criminal and Juvenile Justice to be used for the purposes under Section 24-1-19.

[~~(b)~~] (c) Subject to [~~Subparagraph~~] Subsection (3)(a), state agencies are encouraged to seek an equitable share of property forfeited by the federal government and to cooperate with federal law enforcement agencies in all cases in which [~~such~~] cooperation is in the interest of this state.

(d) A law enforcement agency awarded any equitable share of property forfeited by the federal government may only use the award monies after approval or appropriation by the agency's legislative body.

(e) Law enforcement agencies are entitled to their equitable share of property forfeited by the federal government since March 29, 2001.

(f) (i) Each agency awarded any equitable share of property forfeited by the federal government shall file copies of all federal equitable sharing certifications, applications, and reports

with the state auditor and the Commission on Criminal and Juvenile Justice at least annually.

(ii) This information shall provide details of all awards received from the federal government during the preceding reporting period, including for each award:

(A) the agency's case number or other identification;

(B) the amount of the award;

(C) the date of the award;

(D) the identity of the federal agency involved in the forfeiture;

(E) how the awarded property has been used; and

(F) a statement signed by both the agency's executive officer or designee and by the agency's legal counsel, that the agency has only used the awarded property for crime reduction or law enforcement purposes authorized under Section 24-1-19, and only upon approval or appropriation by the agency's legislative body.

(4) (a) Any agency that violates [~~Subparagraph~~] Subsection (2) or (3) is civilly liable to the state for three times the amount of the forfeiture diverted and for costs of suit and reasonable attorneys' fees.

(b) Any damages awarded to the state shall be paid to the [~~Uniform School Fund~~] Criminal Forfeiture Restricted Account created in Section 24-1-18.

(c) Any agent, including a state law enforcement [~~officers who are~~] officer, detached to, deputized or commissioned by, or working in conjunction with a federal agency, who knowingly transfers or otherwise [~~trades~~] trades seized property in violation of [~~Subparagraph~~] Subsection (2)(a) or who receives property, money, or other things of value under [~~Subparagraph~~] Subsection (3)(a) and knowingly fails to transfer [~~such~~] the property [~~to the state treasurer~~] in accordance with this section is guilty of a class B misdemeanor.

Section 12. Section **24-1-17** is enacted to read:

24-1-17. Disposition and allocation of forfeiture property.

(1) Upon finding that property is subject to forfeiture under this chapter, the court shall order the property forfeited to the state, and the seizing agency shall then:

(a) make the payments as required under this chapter; and

(b) transfer possession, custody, and control of the net forfeiture property or proceeds immediately to the Criminal Forfeiture Restricted Account created under Section 24-1-18.

(2) If the forfeiture arises from any violation of Section 23-20-1 relating to wildlife resources, the court shall:

(a) direct that the legal costs of the forfeiture proceeding be paid to the prosecuting agency; and

(b) direct that the net forfeited property after the legal costs shall be deposited in the Wildlife Resources Account created in Section 23-14-13.

(3) (a) Prior to transferring forfeited property, the seizing agency shall authorize a public or otherwise commercially reasonable sale of that property which is not required by law to be destroyed and that is not harmful to the public.

(b) The proceeds of the forfeited property shall remain segregated from other property, equipment, or assets of the seizing agency until transferred to the state in accordance with this chapter.

(4) From the forfeited property, both currency and the proceeds or revenue from the property, the seizing agency shall:

(a) deduct the seizing agency's direct costs and expenses, as approved by the court, of obtaining and maintaining the property pending forfeiture; and

(b) pay the legal costs to the prosecuting agency for the prosecution of the forfeiture proceeding.

(5) The remaining forfeited property shall then be deposited in the Criminal Forfeiture Restricted Account created in Section 24-1-18.

(6) All property and proceeds awarded to the state through forfeiture proceedings under this chapter shall be deposited in the Criminal Forfeiture Restricted Account created in Section 24-1-18.

Section 13. Section **24-1-18** is enacted to read:

24-1-18. Criminal Forfeiture Restricted Account.

(1) There is created within the General Fund a restricted account known as the Criminal

Forfeiture Restricted Account.

(2) Proceeds from forfeited property and forfeited monies through state forfeitures shall be deposited in this account.

(3) Money in the account shall be appropriated to the Commission on Criminal and Juvenile Justice for implementing the Crime Reduction Assistance Program under Section 24-1-19.

Section 14. Section **24-1-19** is enacted to read:

24-1-19. Crime Reduction Assistance Program.

(1) There is created the Crime Reduction Assistance Program.

(2) The program shall fund crime prevention and law enforcement activities that have the purpose of:

(a) deterring crime by depriving criminals of the profits and proceeds of their illegal activities;

(b) weakening criminal enterprises by removing the instrumentalities of crime;

(c) reducing crimes involving substance abuse by supporting the creation, administration, or operation of drug court programs throughout the state;

(d) encouraging cooperation between local, state, and multijurisdictional law enforcement agencies;

(e) allowing the costs and expenses of law enforcement to be defrayed by the forfeited proceeds of crime; and

(f) increasing the equitability and accountability of the use of forfeited property used to assist law enforcement in reducing and preventing crime.

(3) (a) When property is forfeited under this chapter and transferred to the fund, the Commission on Criminal and Juvenile Justice shall make awards of monies from the fund to state, local, or multijurisdictional law enforcement agencies or political subdivisions of the state in compliance with this section and to further the program purposes under Subsection (2).

(b) In granting the awards, the Commission on Criminal and Juvenile Justice shall ensure that the amount of each award takes into consideration:

(i) the demonstrated needs of the agency;

(ii) the demonstrated ability of the agency to appropriately use the award;

(iii) the degree to which the agency's need is offset through the agency's participation in federal equitable sharing or through other federal and state grant programs; and

(iv) the agency's cooperation with other state and local agencies and task forces.

(4) Agencies or political subdivisions shall apply for program awards by completing and submitting forms specified by the Commission on Criminal and Juvenile Justice.

(5) Applying agencies or political subdivisions shall demonstrate compliance with all reporting and policy requirements applicable under this chapter and under Title 63, Chapter 25a, Criminal Justice and Substance Abuse, in order to qualify as a potential award recipient.

(6) Recipient law enforcement agencies may only use program award monies after approval or appropriation by the agency's legislative body, and the award monies are nonlapsing.

(7) A recipient law enforcement agency or political subdivision shall use program awards only for law enforcement or controlled substance law enforcement purposes as described in Subsection (8), and only as these purposes are specified by the agency or political subdivision in its application for the award.

(8) Permissible law enforcement purposes for which award monies may be used include:

(a) controlled substance interdiction and enforcement activities;

(b) drug court programs;

(c) activities calculated to enhance future investigations;

(d) law enforcement training that includes:

(i) implementation of the Fourth Amendment of the federal constitution and Utah Constitution Article I, Section 7, and addresses the protection of the individual's rights of due process;

(ii) protection of the rights of innocent property holders; and

(iii) the Tenth Amendment of the federal constitution regarding states' sovereignty and the states' reserved rights;

(e) law enforcement or detention facilities;

(f) law enforcement operations or equipment which are not routine costs or operational expenses;

(g) drug, gang, or crime prevention education programs which are sponsored in whole or in part by the law enforcement agency or its legislative body; and

(h) matching funds for other state or federal law enforcement grants.

(9) Law enforcement purposes for which award monies may not be granted or used include:

(a) payment of salaries, retirement benefits, or bonuses to any person;

(b) payment of enforcement expenses not related to law enforcement;

(c) uses not specified in the agency's award application;

(d) uses not approved or appropriated by the agency's legislative body;

(e) payments, transfers, or pass-through funding to entities other than law enforcement agencies; or

(f) uses, payments, or expenses that are not within the scope of the agency's functions.

(10) For each fiscal year, any state, local, or multijurisdictional agency or political subdivision that received a program award shall prepare, and file with the Utah Commission on Criminal and Juvenile Justice and the state auditor, a report in a form specified by the Utah Commission on Criminal and Juvenile Justice. The report shall include the following regarding each award:

(a) the agency's name;

(b) the amount of the award;

(c) the date of the award;

(d) how the award has been used; and

(e) a statement signed by both the agency's or political subdivision's executive officer or designee and by the agency's legal counsel, that:

(i) the agency or political subdivision has complied with all inventory, policy, and reporting requirements of this chapter;

(ii) all program awards were used for crime reduction or law enforcement purposes as

specified in the application; and

(iii) and only upon approval or appropriation by the agency's or political subdivision's legislative body.

(11) The Utah Commission on Criminal and Juvenile Justice shall report in writing to the legislative Law Enforcement and Criminal Justice Interim Committee annually regarding the forfeited property transferred to the fund, awards made by the program, uses of program awards, and any equitable share of property forfeited by the federal government as reported by agencies pursuant to Subsection 24-1-15(3).

Section 15. Section **24-1-20** is enacted to read:

24-1-20. State Law Enforcement Forfeiture Account created -- Revenue sources -- Use of account designated.

(1) (a) There is created in the General Fund a restricted account called the State Law Enforcement Forfeiture Account.

(b) All monies awarded to the Department of Public Safety or the Department of Corrections, or any division or agency within either department, through the Crime Reduction Assistance Program created in Section 24-1-19 shall be deposited into the State Law Enforcement Forfeiture Account.

(c) All monies previously deposited, or currently held in the Drug Forfeiture Account created in Section 58-37-20, and that were in that account when it was repealed by Initiative B, which passed in 2000, and which became effective March 29, 2001, shall be transferred to and deposited in the State Law Enforcement Forfeiture Account created in this Subsection (1).

(2) The Department of Public Safety and the Department of Corrections may expend amounts as appropriated by the Legislature from the State Law Enforcement Forfeiture Account for law enforcement purposes or controlled substance law enforcement purposes as specified in Section 24-1-19.

(3) That portion of funds forfeited or that are required to be disbursed to other governmental entities under existing contractual agreements or Utah statutory requirements are exempt from this section.

(4) Funds forfeited as a result of the Salt Lake Airport Drug Program operated by the Department of Public Safety, not to exceed the Department of Public Safety's expenditure to that program, are exempt from this section.

(5) The Department of Public Safety and the Department of Corrections, as part of the annual legislative budget hearings, shall provide to the legislative Executive Offices and Criminal Justice Appropriations Subcommittee a complete accounting of expenditures and revenues from the funds received under this section.

(6) The Legislature may annually provide, in an appropriations act, legislative direction for anticipated expenditures of the monies received under this section.

Section 16. **Repealer.**

This bill repeals:

Section **24-1-16, Disposition of proceeds from criminal or civil forfeiture.**

Attachment H

LAW ENFORCEMENT SERVICE IN LOCAL DISTRICTS AND INTERLOCAL ENTITIES

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott K. Jenkins

House Sponsor: Richard A. Greenwood

LONG TITLE

General Description:

This bill modifies provisions relating to law enforcement services in local districts and interlocal entities.

Highlighted Provisions:

This bill:

- replaces "extended police protection" with "law enforcement service" in the list of services that a local district may be created to provide;
- eliminates the requirement to submit the creation of a local district to voters for their approval if the local district is created to provide law enforcement service;
- requires county and municipal legislative body approval of a property tax imposed by a police local district;
- requires counties and municipalities participating in a police local district to reduce their certified tax rate to offset a tax levied by the district;
- modifies who appoints one member of a merit system commission for a first class county in which a police local district or police interlocal entity is created;
- expands an exception as to how the board of trustees of a service area is to be constituted to include a service area created to provide law enforcement service;
- modifies a provision relating to the duties of a sheriff in a first class county that enters into an interlocal agreement for law enforcement services and expands it to apply to all counties;
- requires interlocal agreements between a county and one or more municipalities for

law enforcement service to require the service to be provided by or under the direction of the county sheriff;

- specifies that if a police interlocal entity or police local district enters an interlocal agreement for law enforcement service, the sheriff is not the chief executive officer of any entity created under that agreement, unless the agreement so provides, and that the sheriff provides law enforcement service under that agreement as provided in the agreement;
- provides that a sheriff is the chief law enforcement officer of a local district or interlocal entity created to provide law enforcement service and is subject to the direction of the local district board or interlocal entity governing body as provided by agreement;
- limits application of some provisions to districts in counties of the first class;
- expands certain local district annexation and withdrawal provisions to apply to specified local districts that provide law enforcement service; and
- repeals a provision relating to a first class county entering an interlocal agreement for law enforcement service.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-2-406, as last amended by Laws of Utah 2007, Chapter 329

10-2-419, as last amended by Laws of Utah 2007, Chapter 329

11-13-202, as last amended by Laws of Utah 2004, Chapter 163

17-22-2, as last amended by Laws of Utah 2008, Chapter 117

17-30-1, as last amended by Laws of Utah 1993, Chapters 227 and 234

17-30-3, as last amended by Laws of Utah 1997, Chapter 177

17B-1-202, as last amended by Laws of Utah 2008, Chapter 360

17B-1-214, as renumbered and amended by Laws of Utah 2007, Chapter 329

17B-1-416, as last amended by Laws of Utah 2008, Chapter 118

17B-1-502, as renumbered and amended by Laws of Utah 2007, Chapter 329

17B-1-505, as renumbered and amended by Laws of Utah 2007, Chapter 329

17B-2a-903, as enacted by Laws of Utah 2007, Chapter 329

17B-2a-905, as enacted by Laws of Utah 2007, Chapter 329

59-2-924.2, as enacted by Laws of Utah 2008, Chapters 61, 231, and 236

REPEALS:

17-50-324, as enacted by Laws of Utah 2008, Chapter 117

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

Section 1. Section **10-2-406** is amended to read:

10-2-406. Notice of certification -- Publishing and providing notice of petition.

(1) After receipt of the notice of certification from the city recorder or town clerk under Subsection 10-2-405(2)(c)(i), the municipal legislative body shall:

(a) (i) publish a notice at least once a week for three successive weeks, beginning no later than ten days after receipt of the notice of certification, in a newspaper of general circulation within:

(A) the area proposed for annexation; and

(B) the unincorporated area within 1/2 mile of the area proposed for annexation; or

(ii) if there is no newspaper of general circulation within those areas, post written notices in conspicuous places within those areas that are most likely to give notice to residents within those areas; and

(b) within 20 days of receipt of the notice of certification under Subsection 10-2-405(2)(c)(i), mail written notice to each affected entity.

(2) (a) The notice under Subsections (1)(a) and (b) shall:

(i) state that a petition has been filed with the municipality proposing the annexation

of an area to the municipality;

(ii) state the date of the municipal legislative body's receipt of the notice of certification under Subsection 10-2-405(2)(c)(i);

(iii) describe the area proposed for annexation in the annexation petition;

(iv) state that the complete annexation petition is available for inspection and copying at the office of the city recorder or town clerk;

(v) state in conspicuous and plain terms that the municipality may grant the petition and annex the area described in the petition unless, within the time required under Subsection 10-2-407(2)(a)(i)(A), a written protest to the annexation petition is filed with the commission and a copy of the protest delivered to the city recorder or town clerk of the proposed annexing municipality;

(vi) state the address of the commission or, if a commission has not yet been created in the county, the county clerk, where a protest to the annexation petition may be filed;

(vii) state that the area proposed for annexation to the municipality will also automatically be annexed to a local district providing fire protection, paramedic, and emergency services or a local district providing law enforcement service, as the case may be, as provided in Section 17B-1-416, if:

(A) the proposed annexing municipality is entirely within the boundaries of a local district:

(I) that provides fire protection, paramedic, and emergency services or law enforcement service, respectively; and

(II) in the creation of which an election was not required because of Subsection 17B-1-214(3)(c); and

(B) the area proposed to be annexed to the municipality is not already within the boundaries of the local district; and

(viii) state that the area proposed for annexation to the municipality will be automatically withdrawn from a local district providing fire protection, paramedic, and emergency services or a local district providing law enforcement service, as the case may be,

as provided in Subsection 17B-1-502(2), if:

(A) the petition proposes the annexation of an area that is within the boundaries of a local district:

(I) that provides fire protection, paramedic, and emergency services or law enforcement service, respectively; and

(II) in the creation of which an election was not required because of Subsection 17B-1-214(3)(c); and

(B) the proposed annexing municipality is not within the boundaries of the local district.

(b) The statement required by Subsection (2)(a)(v) shall state the deadline for filing a written protest in terms of the actual date rather than by reference to the statutory citation.

(c) In addition to the requirements under Subsection (2)(a), a notice under Subsection (1)(a) for a proposed annexation of an area within a county of the first class shall include a statement that a protest to the annexation petition may be filed with the commission by property owners if it contains the signatures of the owners of private real property that:

(i) is located in the unincorporated area within 1/2 mile of the area proposed for annexation;

(ii) covers at least 25% of the private land area located in the unincorporated area within 1/2 mile of the area proposed for annexation; and

(iii) is equal in value to at least 15% of all real property located in the unincorporated area within 1/2 mile of the area proposed for annexation.

Section 2. Section **10-2-419** is amended to read:

10-2-419. Boundary adjustment -- Notice and hearing -- Protest.

(1) The legislative bodies of two or more municipalities having common boundaries may adjust their common boundaries as provided in this section.

(2) (a) The legislative body of each municipality intending to adjust a boundary that is common with another municipality shall:

(i) adopt a resolution indicating the intent of the municipal legislative body to adjust a

common boundary;

(ii) hold a public hearing on the proposed adjustment no less than 60 days after the adoption of the resolution under Subsection (2)(a)(i); and

(iii) (A) publish notice at least once a week for three successive weeks in a newspaper of general circulation within the municipality; or

(B) if there is no newspaper of general circulation within the municipality, post at least one notice per 1,000 population in places within the municipality that are most likely to give notice to residents of the municipality.

(b) The notice required under Subsection (2)(a)(iii) shall:

(i) state that the municipal legislative body has adopted a resolution indicating the municipal legislative body's intent to adjust a boundary that the municipality has in common with another municipality;

(ii) describe the area proposed to be adjusted;

(iii) state the date, time, and place of the public hearing required under Subsection (2)(a)(ii);

(iv) state in conspicuous and plain terms that the municipal legislative body will adjust the boundaries unless, at or before the public hearing under Subsection (2)(a)(ii), written protests to the adjustment are filed by the owners of private real property that:

(A) is located within the area proposed for adjustment;

(B) covers at least 25% of the total private land area within the area proposed for adjustment; and

(C) is equal in value to at least 15% of the value of all private real property within the area proposed for adjustment; and

(v) state that the area that is the subject of the boundary adjustment will, because of the boundary adjustment, be automatically annexed to a local district providing fire protection, paramedic, and emergency services or a local district providing law enforcement service, as the case may be, as provided in Section 17B-1-416, if:

(A) the municipality to which the area is being added because of the boundary

adjustment is entirely within the boundaries of a local district:

(I) that provides fire protection, paramedic, and emergency services or law enforcement service, respectively; and

(II) in the creation of which an election was not required because of Subsection 17B-1-214(3)(c); and

(B) the municipality from which the area is being taken because of the boundary adjustment is not within the boundaries of the local district; and

(vi) state that the area proposed for annexation to the municipality will be automatically withdrawn from a local district providing fire protection, paramedic, and emergency services, as provided in Subsection 17B-1-502(2), if:

(A) the municipality to which the area is being added because of the boundary adjustment is not within the boundaries of a local district:

(I) that provides fire protection, paramedic, and emergency services; and

(II) in the creation of which an election was not required because of Subsection 17B-1-214(3)(c); and

(B) the municipality from which the area is being taken because of the boundary adjustment is entirely within the boundaries of the local district.

(c) The first publication of the notice required under Subsection (2)(a)(iii)(A) shall be within 14 days of the municipal legislative body's adoption of a resolution under Subsection (2)(a)(i).

(3) Upon conclusion of the public hearing under Subsection (2)(a)(ii), the municipal legislative body may adopt an ordinance adjusting the common boundary unless, at or before the hearing under Subsection (2)(a)(ii), written protests to the adjustment have been filed with the city recorder or town clerk, as the case may be, by the owners of private real property that:

(a) is located within the area proposed for adjustment;

(b) covers at least 25% of the total private land area within the area proposed for adjustment; and

(c) is equal in value to at least 15% of the value of all private real property within the

area proposed for adjustment.

(4) The municipal legislative body shall comply with the requirements of Section 10-2-425 as if the boundary change were an annexation.

(5) An ordinance adopted under Subsection (3) becomes effective when each municipality involved in the boundary adjustment has adopted an ordinance under Subsection (3) and as determined under Subsection 10-2-425(5) if the boundary change were an annexation.

Section 3. Section **11-13-202** is amended to read:

11-13-202. Agreements for joint or cooperative action, for providing or exchanging services, or for law enforcement services -- Effective date of agreement -- Public agencies may restrict their authority or exempt each other regarding permits and fees.

(1) Any two or more public agencies may enter into an agreement with one another under this chapter:

(a) for joint or cooperative action;

(b) to provide services that they are each authorized by statute to provide;

(c) to exchange services that they are each authorized by statute to provide;

(d) for a public agency to provide law enforcement services to one or more other public agencies, if the public agency providing law enforcement services under the interlocal agreement is authorized by law to provide those services, or to provide joint or cooperative law enforcement services between or among public agencies that are each authorized by law to provide those services; or

(e) to do anything else that they are each authorized by statute to do.

(2) An agreement under Subsection (1) does not take effect until it has been approved, as provided in Section 11-13-202.5, by each public agency that is a party to it.

(3) (a) In an agreement under Subsection (1), a public agency that is a party to the agreement may agree:

(i) to restrict its authority to issue permits to or assess fees from another public agency

that is a party to the agreement; and

(ii) to exempt another public agency that is a party to the agreement from permit or fee requirements.

(b) A provision in an agreement under Subsection (1) whereby the parties agree as provided in Subsection (3)(a) is subject to all remedies provided by law and in the agreement, including injunction, mandamus, abatement, or other remedy to prevent, enjoin, abate, or enforce the provision.

(4) An interlocal agreement between a county and one or more municipalities for law enforcement service within an area that includes some or all of the unincorporated area of the county shall require the law enforcement service provided under the agreement to be provided by or under the direction of the county sheriff.

Section 4. Section **17-22-2** is amended to read:

17-22-2. Sheriff -- General duties.

(1) The sheriff shall:

(a) preserve the peace;

(b) make all lawful arrests;

(c) attend in person or by deputy the Supreme Court and the Court of Appeals when required or when the court is held within his county, all courts of record, and court commissioner and referee sessions held within his county, obey their lawful orders and directions, and comply with the court security rule, Rule 3-414, of the Utah Code of Judicial Administration;

(d) upon request of the juvenile court, aid the court in maintaining order during hearings and transport a minor to and from youth corrections facilities, other institutions, or other designated places;

(e) attend county justice courts if the judge finds that the matter before the court requires the sheriff's attendance for security, transportation, and escort of jail prisoners in his custody, or for the custody of jurors;

(f) command the aid of as many inhabitants of his county as he considers necessary in

the execution of these duties;

(g) take charge of and keep the county jail and the jail prisoners;

(h) receive and safely keep all persons committed to his custody, file and preserve the commitments of those persons, and record the name, age, place of birth, and description of each person committed;

(i) release on the record all attachments of real property when the attachment he receives has been released or discharged;

(j) endorse on all process and notices the year, month, day, hour, and minute of reception, and, upon payment of fees, issue a certificate to the person delivering process or notice showing the names of the parties, title of paper, and the time of receipt;

(k) serve all process and notices as prescribed by law;

(l) if he makes service of process or notice, certify on the process or notices the manner, time, and place of service, or, if he fails to make service, certify the reason upon the process or notice, and return them without delay;

(m) extinguish fires occurring in the undergrowth, trees, or wooded areas on the public land within his county;

(n) perform as required by any contracts between the county and private contractors for management, maintenance, operation, and construction of county jails entered into under the authority of Section 17-53-311;

(o) for the sheriff of a [~~first class~~] county that enters into an interlocal agreement for law enforcement service under Title 11, Chapter 13, Interlocal Cooperation Act, [~~as authorized in Section 17-50-324: (i)~~] provide law enforcement service as provided in the interlocal agreement; [~~or~~]

[~~(ii) provide law enforcement service to an unincorporated area of the county to the extent that the law enforcement service is not provided to the area by a local district or interlocal entity, as defined in Section 11-13-103, established to provide law enforcement service or extended police protection to the area;~~]

(p) manage search and rescue services in his county;

(q) obtain saliva DNA specimens as required under Section 53-10-404;

(r) on or before January 1, 2003, adopt a written policy that prohibits the stopping, detention, or search of any person when the action is solely motivated by considerations of race, color, ethnicity, age, or gender; and

(s) perform any other duties that are required by law.

(2) Violation of Subsection (1)(j) is a class C misdemeanor. Violation of any other subsection under Subsection (1) is a class A misdemeanor.

(3) (a) As used in this Subsection (3):

(i) "Police interlocal entity" has the same meaning as defined in Section 17-30-3.

(ii) "Police local district" has the same meaning as defined in Section 17-30-3.

(b) A sheriff in a county which includes within its boundary a police local district or police interlocal entity, or both:

(i) serves as the chief executive officer of each police local district and police interlocal entity within the county with respect to the provision of law enforcement service within the boundary of the police local district or police interlocal entity, respectively; and

(ii) is subject to the direction of the police local district board of trustees or police interlocal entity governing body, as the case may be, as and to the extent provided by agreement between the police local district or police interlocal entity, respectively, and the sheriff.

(c) If a police interlocal entity or police local district enters an interlocal agreement with a public agency, as defined in Section 11-13-103, for the provision of law enforcement service, the sheriff:

(i) does not serve as the chief executive officer of any interlocal entity created under that interlocal agreement, unless the agreement provides for the sheriff to serve as the chief executive officer; and

(ii) shall provide law enforcement service under that interlocal agreement as provided in the agreement.

Section 5. Section **17-30-1** is amended to read:

17-30-1. Definitions.

(1) "Governing body" means the county legislative body.

(2) "Appointing authority" means the sheriff of a county having jurisdiction over any peace officer.

(3) "Peace officer" means any paid deputy sheriff, other than a chief deputy designated by the sheriff, who is in the continuous employ of a county.

(4) "Commission" means the [~~personal~~] merit system commission consisting of three persons appointed [~~by the governing body~~] as provided in Section 17-30-3 and having the duty, power, and responsibility for the discharge of the functions of this chapter.

(5) "Department of Public Safety" means the department created in Section 53-1-103.

Section 6. Section **17-30-3** is amended to read:

17-30-3. Establishment of merit system commission -- Appointment, qualifications, and compensation of members.

(1) (a) Each county with a population of 20,000 [~~people~~] or more shall establish a merit system commission consisting of three members appointed as provided in Subsection (1)(b).

(b) (i) As used in this Subsection (1)(b):

(A) "Police interlocal entity" means an interlocal entity, as defined in Section 11-13-103, that is created:

(I) under Title 11, Chapter 13, Interlocal Cooperation Act, by an agreement to which a county of the first class is a party; and

(II) to provide law enforcement service to an area that includes the unincorporated part of the county.

(B) "Police local district" means a local district, as defined in Section 17B-1-102:

(I) whose creation was initiated by the adoption of a resolution under Section 17B-1-203 by the legislative body of a county of the first class, alone or with one or more other legislative bodies; and

(II) that is created to provide law enforcement service to an area that includes the

unincorporated part of the county.

(ii) For a county in which a police interlocal entity is created, whether or not a police local district is also created in the county:

(A) two members shall be appointed by the legislative body of the county; and

(B) one member shall be appointed by the governing body of the interlocal entity.

(iii) For a county in which a police local district is created but in which a police interlocal entity has not been created:

(A) two members shall be appointed by the legislative body of the county; and

(B) one member shall be appointed by the board of trustees of the police local district.

(iv) For each other county, all three members shall be appointed by the county legislative body.

(c) Not more than two members of the commission shall be affiliated with or members of the same political party.

(d) Of the original appointees, one member shall be appointed for a term ending February 1 of the first odd-numbered year after the date of appointment, and one each for terms ending two and four years thereafter.

(e) Upon the expiration of any of the terms, a successor shall be appointed for a full term of six years.

(f) Appointment to fill a vacancy resulting other than from expiration of term shall be for the unexpired portion of the term only. [~~Each legislative body charged by this act with the appointment of a personnel merit system commission shall make such appointments within 90 days after the effective date of this act.~~]

(2) Members of a commission shall be citizens of the state, shall have been residents of the area embraced by the governmental unit from which appointed not less than five years next preceding the date of appointment, and shall hold no other office or employment under the governmental unit for which appointed.

(3) The county legislative body may compensate a member for service on the commission and reimburse the member for necessary expenses incurred in the performance of

the member's duties.

Section 7. Section **17B-1-202** is amended to read:

17B-1-202. Local district may be created -- Services that may be provided -- Limitations.

(1) (a) A local district may be created as provided in this part to provide within its boundaries service consisting of:

(i) the operation of an airport;

(ii) the operation of a cemetery;

(iii) fire protection, paramedic, and emergency services;

(iv) garbage collection and disposal;

(v) health care, including health department or hospital service;

(vi) the operation of a library;

(vii) abatement or control of mosquitos and other insects;

(viii) the operation of parks or recreation facilities or services;

(ix) the operation of a sewage system;

(x) street lighting;

(xi) the construction and maintenance of curb, gutter, and sidewalk;

(xii) transportation, including public transit and providing streets and roads;

(xiii) the operation of a system, or one or more components of a system, for the collection, storage, retention, control, conservation, treatment, supplying, distribution, or reclamation of water, including storm, flood, sewage, irrigation, and culinary water, whether the system is operated on a wholesale or retail level or both;

(xiv) [~~extended police protection~~] law enforcement service; or

(xv) subject to Subsection (1)(b), the underground installation of an electric utility line or the conversion to underground of an existing electric utility line.

(b) Each local district that provides the service of the underground installation of an electric utility line or the conversion to underground of an existing electric utility line shall, in installing or converting the line, provide advance notice to and coordinate with the utility that

owns the line.

(2) For purposes of this section:

(a) "Operation" means all activities involved in providing the indicated service including acquisition and ownership of property reasonably necessary to provide the indicated service and acquisition, construction, and maintenance of facilities and equipment reasonably necessary to provide the indicated service.

(b) "System" means the aggregate of interrelated components that combine together to provide the indicated service including, for a sewage system, collection and treatment.

(3) (a) A local district may not be created to provide and may not after its creation provide more than four of the services listed in Subsection (1).

(b) Subsection (3)(a) may not be construed to prohibit a local district from providing more than four services if, before April 30, 2007, the local district was authorized to provide those services.

(4) (a) Except as provided in Subsection (4)(b), a local district may not be created to provide and may not after its creation provide to an area the same service already being provided to that area by another political subdivision, unless the other political subdivision gives its written consent.

(b) For purposes of Subsection (4)(a), a local district does not provide the same service as another political subdivision if it operates a component of a system that is different from a component operated by another political subdivision but within the same:

(i) sewage system; or

(ii) water system.

(5) (a) Except for a local district in the creation of which an election is not required under Subsection 17B-1-214(3)(c), the area of a local district may include all or part of the unincorporated area of one or more counties and all or part of one or more municipalities.

(b) The area of a local district need not be contiguous.

(6) For a local district created before May 5, 2008, the authority to provide fire protection service also includes the authority to provide:

(a) paramedic service; and

(b) emergency service, including hazardous materials response service.

Section 8. Section **17B-1-214** is amended to read:

17B-1-214. Election -- Exceptions.

(1) (a) Except as provided in Subsection (3) and in Subsection 17B-1-213(2)(a), an election on the question of whether the local district should be created shall be held by:

(i) if the proposed local district is located entirely within a single county, the responsible clerk; or

(ii) except as provided under Subsection (1)(b), if the proposed local district is located within more than one county, the clerk of each county in which part of the proposed local district is located, in cooperation with the responsible clerk.

(b) Notwithstanding Subsection (1)(a)(ii), if the proposed local district is located within more than one county and the only area of a county that is included within the proposed local district is located within a single municipality, the election for that area shall be held by the municipal clerk or recorder, in cooperation with the responsible clerk.

(2) Each election under Subsection (1) shall be held at the next special or regular general election date that is:

(a) for an election pursuant to a property owner or registered voter petition, more than 45 days after certification of the petition under Subsection 17B-1-209(3)(b)(i); or

(b) for an election pursuant to a resolution, more than 60 days after the latest hearing required under Section 17B-1-210.

(3) The election requirement of Subsection (1) does not apply to:

(a) a petition filed under Subsection 17B-1-203(1)(a) if it contains the signatures of the owners of private real property that:

(i) is located within the proposed local district;

(ii) covers at least 67% of the total private land area within the proposed local district as a whole and within each applicable area; and

(iii) is equal in value to at least 50% of the value of all private real property within the

proposed local district as a whole and within each applicable area;

(b) a petition filed under Subsection 17B-1-203(1)(b) if it contains the signatures of registered voters residing within the proposed local district as a whole and within each applicable area, equal in number to at least 67% of the number of votes cast in the proposed local district as a whole and in each applicable area, respectively, for the office of governor at the last general election prior to the filing of the petition;

(c) a resolution adopted under Subsection 17B-1-203(1)(c) on or after May 5, 2003 that proposes the creation of a local district to provide fire protection, paramedic, and emergency services or law enforcement service, if the proposed local district includes a majority of the unincorporated area of one or more counties; or

(d) a resolution adopted under Subsection 17B-1-203(1)(c) or (d) if the resolution proposes the creation of a local district that has no registered voters within its boundaries.

(4) (a) If the proposed local district is located in more than one county, the responsible clerk shall coordinate with the clerk of each other county and the clerk or recorder of each municipality involved in an election under Subsection (1) so that the election is held on the same date and in a consistent manner in each jurisdiction.

(b) The clerk of each county and the clerk or recorder of each municipality involved in an election under Subsection (1) shall cooperate with the responsible clerk in holding the election.

(c) Except as otherwise provided in this part, each election under Subsection (1) shall be governed by Title 20A, Election Code.

Section 9. Section **17B-1-416** is amended to read:

17B-1-416. Automatic annexation to a district providing fire protection, paramedic, and emergency services or law enforcement service.

(1) An area outside the boundaries of a local district that is annexed to a municipality or added to a municipality by a boundary adjustment under Title 10, Chapter 2, Part 4, Annexation, is automatically annexed to the local district if:

(a) the local district provides:

(i) fire protection, paramedic, and emergency services; or

(ii) law enforcement service;

(b) an election for the creation of the local district was not required because of Subsection 17B-1-214(3)(c); and

(c) before the municipal annexation or boundary adjustment, the entire municipality that is annexing the area or adding the area by boundary adjustment was included within the local district.

(2) The effective date of an annexation under this section is governed by Subsection 17B-1-414(3)(b)(ii).

Section 10. Section **17B-1-502** is amended to read:

17B-1-502. Withdrawal of area from local district -- Automatic withdrawal in certain circumstances -- Definitions.

(1) (a) An area within the boundaries of a local district may be withdrawn from the local district only as provided in this part.

(b) Except as provided in Subsections (2) and (3), the inclusion of an area of a local district within a municipality because of a municipal incorporation under Title 10, Chapter 2, Part 1, Incorporation, or a municipal annexation or boundary adjustment under Title 10, Chapter 2, Part 4, Annexation, does not affect the requirements under this part for the process of withdrawing that area from the local district.

(2) (a) An area within the boundaries of a local district is automatically withdrawn from the local district by the annexation of the area to a municipality or the adding of the area to a municipality by boundary adjustment under Title 10, Chapter 2, Part 4, Annexation, if:

(i) the local district provides:

(A) fire protection, paramedic, and emergency services; or

(B) law enforcement service;

(ii) an election for the creation of the local district was not required because of Subsection 17B-1-214(3)(c); and

(iii) before annexation or boundary adjustment, the boundaries of the local district do

not include any of the annexing municipality.

(b) The effective date of a withdrawal under this Subsection (2) is governed by Subsection 17B-1-512(2)(b).

(3) (a) An area within the boundaries of a local district located in a county of the first class is automatically withdrawn from the local district by the incorporation of a municipality whose boundaries include the area if:

(i) the local district provides:

(A) fire protection, paramedic, and emergency services; or

(B) law enforcement service;

(ii) an election for the creation of the local district was not required because of Subsection 17B-1-214(3)(c); and

(iii) the legislative body of the newly incorporated municipality:

(A) adopts a resolution approving the withdrawal that includes the legal description of the area to be withdrawn; and

(B) delivers a copy of the resolution to the board of trustees of the local district.

(b) The effective date of a withdrawal under this Subsection (3) is governed by Subsection 17B-1-512(2)(a).

Section 11. Section **17B-1-505** is amended to read:

17B-1-505. Withdrawal of municipality in certain districts providing fire protection, paramedic, and emergency services or law enforcement service.

(1) (a) The process to withdraw an area from a local district may be initiated by a resolution adopted by the legislative body of a municipality that is entirely within the boundaries of a local district:

(i) that provides:

(A) fire protection, paramedic, and emergency services; or

(B) law enforcement service; and

(ii) in the creation of which an election was not required because of Subsection 17B-1-214(3)(c).

(b) Within ten days after adopting a resolution under Subsection (1)(a), the municipal legislative body shall submit to the board of trustees of the local district written notice of the adoption of the resolution, accompanied by a copy of the resolution.

(2) If a resolution is adopted under Subsection (1)(a), the municipal legislative body shall hold an election at the next municipal general election that is more than 60 days after adoption of the resolution on the question of whether the municipality should withdraw from the local district.

(3) If a majority of those voting on the question of withdrawal at an election held under Subsection (2) vote in favor of withdrawal, the municipality shall be withdrawn from the local district.

(4) (a) Within ten days after the canvass of an election at which a withdrawal under this section is submitted to voters, the municipal legislative body shall send written notice to the board of the local district from which the municipality is proposed to withdraw.

(b) Each notice under Subsection (4)(a) shall:

(i) state the results of the withdrawal election; and

(ii) if the withdrawal was approved by voters, be accompanied by a map or legal description of the area to be withdrawn, adequate for purposes of the county assessor and recorder.

(5) The effective date of a withdrawal under this section is governed by Subsection 17B-1-512(2)(a).

Section 12. Section **17B-2a-903** is amended to read:

17B-2a-903. Additional service area powers -- Property tax limitation for service area providing law enforcement service.

(1) In addition to the powers conferred on a service area under Section 17B-1-103, a service area:

[~~(1)~~] (a) may issue bonds as provided in and subject to Chapter 1, Part 11, Local District Bonds, to carry out the purposes of the district;

[~~(2)~~] (b) that, until April 30, 2007, was a regional service area, may provide park,

recreation, or parkway services, or any combination of those services; and

[~~(3)~~] (c) may, with the consent of the county in which the service area is located, provide planning and zoning service.

(2) A service area that provides law enforcement service may not levy a property tax or increase its certified tax rate, as defined in Section 59-2-924, without the prior approval of:

(a) (i) the legislative body of each municipality that is partly or entirely within the boundary of the service area; and

(ii) the legislative body of the county with an unincorporated area within the boundary of the service area; or

(b) (i) a majority of the legislative bodies of all municipalities that are partly or entirely within the boundary of the service area; and

(ii) two-thirds of the legislative body of the county with an unincorporated area within the boundary of the service area.

Section 13. Section **17B-2a-905** is amended to read:

17B-2a-905. Service area board of trustees.

(1) (a) Except as provided in Subsection (2):

(i) the initial board of trustees of a service area located entirely within the unincorporated area of a single county may, as stated in the petition or resolution that initiated the process of creating the service area:

(A) consist of the county legislative body;

(B) be appointed, as provided in Section 17B-1-304; or

(C) be elected, as provided in Section 17B-1-306;

(ii) if the board of trustees of a service area consists of the county legislative body, the board may adopt a resolution providing for future board members to be appointed, as provided in Section 17B-1-304, or elected, as provided in Section 17B-1-306; and

(iii) members of the board of trustees of a service area shall be elected, as provided in Section 17B-1-306, if:

(A) the service area is not entirely within the unincorporated area of a single county;

(B) a petition is filed with the board of trustees requesting that board members be elected, and the petition is signed by registered voters within the service area equal in number to at least 10% of the number of registered voters within the service area who voted at the last gubernatorial election; or

(C) an election is held to authorize the service area's issuance of bonds.

(b) If members of the board of trustees of a service area are required to be elected under Subsection (1)(a)(iii)(C) because of a bond election:

(i) board members shall be elected in conjunction with the bond election;

(ii) the board of trustees shall:

(A) establish a process to enable potential candidates to file a declaration of candidacy sufficiently in advance of the election; and

(B) provide a ballot for the election of board members separate from the bond ballot; and

(iii) except as provided in this Subsection (1)(b), the election shall be held as provided in Section 17B-1-306.

(2) (a) This Subsection (2) applies to a service area created on or after May 5, 2003 if:

(i) the service area was created to provide:

(A) fire protection, paramedic, and emergency services; [~~and~~] or

(B) law enforcement service; and

(ii) in the creation of the service area, an election was not required under Subsection 17B-1-214(3)(c).

(b) (i) Each county whose unincorporated area is included within a service area described in Subsection (2)(a), whether in conjunction with the creation of the service area or by later annexation, shall appoint three members to the board of trustees.

(ii) Each municipality whose area is included within a service area described in Subsection (2)(a), whether in conjunction with the creation of the service area or by later annexation, shall appoint one member to the board of trustees.

(iii) Each member appointed by a county or municipality under Subsection (2)(b)(i) or

(ii) shall be an elected official of the appointing county or municipality, respectively.

(c) Notwithstanding Subsection 17B-1-302(2), the number of members of a board of trustees of a service area described in Subsection (2)(a) shall be the number resulting from application of Subsection (2)(b).

Section 14. Section **59-2-924.2** is amended to read:

59-2-924.2. Adjustments to the calculation of a taxing entity's certified tax rate.

(1) For purposes of this section, "certified tax rate" means a certified tax rate calculated in accordance with Section 59-2-924.

(2) Beginning January 1, 1997, if a taxing entity receives increased revenues from uniform fees on tangible personal property under Section 59-2-404, 59-2-405, 59-2-405.1, 59-2-405.2, or 59-2-405.3 as a result of any county imposing a sales and use tax under Chapter 12, Part 11, County Option Sales and Use Tax, the taxing entity shall decrease its certified tax rate to offset the increased revenues.

(3) (a) Beginning July 1, 1997, if a county has imposed a sales and use tax under Chapter 12, Part 11, County Option Sales and Use Tax, the county's certified tax rate shall be:

(i) decreased on a one-time basis by the amount of the estimated sales and use tax revenue to be distributed to the county under Subsection 59-12-1102(3); and

(ii) increased by the amount necessary to offset the county's reduction in revenue from uniform fees on tangible personal property under Section 59-2-404, 59-2-405, 59-2-405.1, 59-2-405.2, or 59-2-405.3 as a result of the decrease in the certified tax rate under Subsection (3)(a)(i).

(b) The commission shall determine estimates of sales and use tax distributions for purposes of Subsection (3)(a).

(4) Beginning January 1, 1998, if a municipality has imposed an additional resort communities sales and use tax under Section 59-12-402, the municipality's certified tax rate shall be decreased on a one-time basis by the amount necessary to offset the first 12 months of estimated revenue from the additional resort communities sales and use tax imposed under Section 59-12-402.

(5) (a) This Subsection (5) applies to each county that:

(i) establishes a countywide special service district under Title 17D, Chapter 1, Special Service District Act, to provide jail service, as provided in Subsection 17D-1-201(10); and

(ii) levies a property tax on behalf of the special service district under Section 17D-1-105.

(b) (i) The certified tax rate of each county to which this Subsection (5) applies shall be decreased by the amount necessary to reduce county revenues by the same amount of revenues that will be generated by the property tax imposed on behalf of the special service district.

(ii) Each decrease under Subsection (5)(b)(i) shall occur contemporaneously with the levy on behalf of the special service district under Section 17D-1-105.

(6) (a) As used in this Subsection (6):

(i) "Annexing county" means a county whose unincorporated area is included within a [~~fire~~] public safety district by annexation.

(ii) "Annexing municipality" means a municipality whose area is included within a [~~fire~~] public safety district by annexation.

(iii) "Equalized [~~fire~~] public safety protection tax rate" means the tax rate that results from:

(A) calculating, for each participating county and each participating municipality, the property tax revenue necessary:

(I) in the case of a fire district, to cover all of the costs associated with providing fire protection, paramedic, and emergency services:

[~~(I)~~] (Aa) for a participating county, in the unincorporated area of the county; and

[~~(II)~~] (Bb) for a participating municipality, in the municipality; [~~and~~] or

(II) in the case of a police district, to cover all the costs:

(Aa) associated with providing law enforcement service:

(Ii) for a participating county, in the unincorporated area of the county; and

(IIii) for a participating municipality, in the municipality; and

(Bb) that the police district board designates as the costs to be funded by a property tax; and

(B) adding all the amounts calculated under Subsection (6)(a)(iii)(A) for all participating counties and all participating municipalities and then dividing that sum by the aggregate taxable value of the property, as adjusted in accordance with Section 59-2-913:

(I) for participating counties, in the unincorporated area of all participating counties; and

(II) for participating municipalities, in all the participating municipalities.

(iv) "Fire district" means a service area under Title 17B, Chapter 2a, Part 9, Service Area Act[~~,~~]:

(A) created to provide fire protection, paramedic, and emergency services; and

(B) in the creation of which an election was not required under Subsection 17B-1-214(3)(c).

(v) "Participating county" means a county whose unincorporated area is included within a [~~fire~~] public safety district at the time of the creation of the [~~fire~~] public safety district.

(vi) "Participating municipality" means a municipality whose area is included within a [~~fire~~] public safety district at the time of the creation of the [~~fire~~] public safety district.

(vii) "Police district" means a service area under Title 17B, Chapter 2a, Part 9, Service Area Act, within a county of the first class:

(A) created to provide law enforcement service; and

(B) in the creation of which an election was not required under Subsection 17B-1-214(3)(c).

(viii) "Public safety district" means a fire district or a police district.

(ix) "Public safety service" means:

(A) in the case of a public safety district that is a fire district, fire protection, paramedic, and emergency services; and

(B) in the case of a public safety district that is a police district, law enforcement service.

(b) In the first year following creation of a [~~fire~~] public safety district, the certified tax rate of each participating county and each participating municipality shall be decreased by the amount of the equalized [~~fire protection~~] public safety tax rate.

(c) In the first budget year following annexation to a [~~fire~~] public safety district, the certified tax rate of each annexing county and each annexing municipality shall be decreased by an amount equal to the amount of revenue budgeted by the annexing county or annexing municipality:

(i) for [~~fire protection, paramedic, and emergency services~~] public safety service; and

(ii) in:

(A) for a taxing entity operating under a January 1 through December 31 fiscal year, the prior calendar year; or

(B) for a taxing entity operating under a July 1 through June 30 fiscal year, the prior fiscal year.

(d) Each tax levied under this section by a [~~fire~~] public safety district shall be considered to be levied by:

(i) each participating county and each annexing county for purposes of the county's tax limitation under Section 59-2-908; and

(ii) each participating municipality and each annexing municipality for purposes of the municipality's tax limitation under Section 10-5-112, for a town, or Section 10-6-133, for a city.

(e) The calculation of a [~~fire~~] public safety district's certified tax rate for the year of annexation shall be adjusted to include an amount of revenue equal to one half of the amount of revenue budgeted by the annexing entity for [~~fire protection, paramedic, and emergency services~~] public safety service in the annexing entity's prior fiscal year if:

(i) the [~~fire~~] public safety district operates on a January 1 through December 31 fiscal year;

(ii) the [~~fire~~] public safety district approves an annexation of an entity operating on a July 1 through June 30 fiscal year; and

(iii) the annexation described in Subsection (6)(e)(ii) takes effect on July 1.

(7) For the calendar year beginning on January 1, 2007, the calculation of a taxing entity's certified tax rate, calculated in accordance with Section 59-2-924, shall be adjusted by the amount necessary to offset any change in the certified tax rate that may result from excluding the following from the certified tax rate under Subsection 59-2-924(3) enacted by the Legislature during the 2007 General Session:

(a) personal property tax revenue:

(i) received by a taxing entity;

(ii) assessed by a county assessor in accordance with Part 3, County Assessment; and

(iii) for personal property that is semiconductor manufacturing equipment; or

(b) the taxable value of personal property:

(i) contained on the tax rolls of a taxing entity;

(ii) assessed by a county assessor in accordance with Part 3, County Assessment; and

(iii) that is semiconductor manufacturing equipment.

(8) (a) The taxable value for the base year under Subsection 17C-1-102(6) shall be reduced for any year to the extent necessary to provide a community development and renewal agency established under Title 17C, Limited Purpose Local Government Entities - Community Development and Renewal Agencies, with approximately the same amount of money the agency would have received without a reduction in the county's certified tax rate, calculated in accordance with Section 59-2-924, if:

(i) in that year there is a decrease in the certified tax rate under Subsection (2) or (3)(a);

(ii) the amount of the decrease is more than 20% of the county's certified tax rate of the previous year; and

(iii) the decrease results in a reduction of the amount to be paid to the agency under Section 17C-1-403 or 17C-1-404.

(b) The base taxable value under Subsection 17C-1-102(6) shall be increased in any year to the extent necessary to provide a community development and renewal agency with approximately the same amount of money as the agency would have received without an increase in the certified tax rate that year if:

(i) in that year the base taxable value under Subsection 17C-1-102(6) is reduced due to a decrease in the certified tax rate under Subsection (2) or (3)(a); and

(ii) the certified tax rate of a city, school district, local district, or special service district increases independent of the adjustment to the taxable value of the base year.

(c) Notwithstanding a decrease in the certified tax rate under Subsection (2) or (3)(a), the amount of money allocated and, when collected, paid each year to a community development and renewal agency established under Title 17C, Limited Purpose Local Government Entities - Community Development and Renewal Agencies, for the payment of bonds or other contract indebtedness, but not for administrative costs, may not be less than that amount would have been without a decrease in the certified tax rate under Subsection (2) or (3)(a).

Section 15. **Repealer.**

This bill repeals:

Section **17-50-324, First class county may contract to provide law enforcement service.**

Attachment I

OCCUPATIONAL AND PROFESSIONAL LICENSING AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Kwan

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill modifies provisions related to the Division of Occupational and Professional Licensing (DOPL).

Highlighted Provisions:

This bill:

- allows DOPL to offer required examinations in languages in addition to English.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

58-1-310, Utah Code Annotated 1953

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

Section 1. Section **58-1-310** is enacted to read:

58-1-310. Required examinations in languages in addition to English.

In order to encourage economic development in the state in accordance with Subsection 63G-1-201(4)(e), the department may offer any required examination under this title, which is prepared by a national testing organization, in languages in addition to English.

Attachment J

OFFICIAL LANGUAGE AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: Mike Schultz

LONG TITLE

General Description:

This bill removes provisions relating to English being the sole language of government in Utah.

Highlighted Provisions:

This bill:

- removes the provision that English is the sole language for the government in the state of Utah;
- removes the provision requiring all official government documents, transactions, proceedings, meetings, or publications to be in English;
- removes provisions relating to the return of state funds appropriated or designated for the printing or translation of materials or the provision of services or information in a language other than English; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-1-311, as enacted by Laws of Utah 2019, Chapter 117

58-11a-302, as last amended by Laws of Utah 2020, Chapter 339

63G-1-201, as last amended by Laws of Utah 2020, Chapter 134

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

Section 1. Section **58-1-311** is amended to read:

58-1-311. Required examinations in languages in addition to English.

In order to encourage economic development in the state [~~in accordance with Subsection 63G-1-201(4)(c)~~], the department may offer any required examination under this title, which is prepared by a national testing organization, in languages in addition to English.

Section 2. Section **58-11a-302** is amended to read:

58-11a-302. Qualifications for licensure.

(1) Each applicant for licensure as a barber shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation of:

(i) graduation from a licensed or recognized barber school, or a licensed or recognized cosmetology/barber school, whose curriculum consists of a minimum of 1,000 hours of instruction, or the equivalent number of credit hours, over a period of not less than 25 weeks;

(ii) (A) graduation from a recognized barber school located in a state other than Utah whose curriculum consists of less than 1,000 hours of instruction or the equivalent number of credit hours; and

(B) practice as a licensed barber in a state other than Utah for not less than the number of hours required to equal 1,000 total hours when added to the hours of instruction described in Subsection (1)(c)(ii)(A); or

(iii) completion of an approved barber apprenticeship; and

(d) meet the examination requirement established by rule.

(2) Each applicant for licensure as a barber instructor shall:

(a) submit an application in a form prescribed by the division;

(b) subject to Subsection (24), pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a barber;

(d) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school, as defined by rule, consisting of a minimum of 250 hours or the equivalent number of credit hours;

(ii) on-the-job instructor training conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 250 hours or the equivalent number of credit hours; or

(iii) a minimum of 2,000 hours of experience as a barber; and

(e) meet the examination requirement established by rule.

(3) Each applicant for licensure as a barber school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's physical facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for barber schools, including staff and accreditation requirements, established by rule; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (22).

(4) Each applicant for licensure as a cosmetologist/barber shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation of:

(i) graduation from a licensed or recognized cosmetology/barber school whose curriculum consists of a minimum of 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours;

(ii) (A) graduation from a recognized cosmetology/barber school located in a state other than Utah whose curriculum consists of less than 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours; and

(B) practice as a licensed cosmetologist/barber in a state other than Utah for not less than the number of hours required to equal 1,600 total hours when added to the hours of instruction described in Subsection (4)(c)(ii)(A); or

(iii) completion of an approved cosmetology/barber apprenticeship; and

(d) meet the examination requirement established by rule.

(5) Each applicant for licensure as a cosmetologist/barber instructor shall:

(a) submit an application in a form prescribed by the division;

(b) subject to Subsection (24), pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a cosmetologist/barber;

(d) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school, as defined by rule, consisting of a minimum of 400 hours or the equivalent number of credit hours;

(ii) on-the-job instructor training conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 400 hours or the equivalent number of credit hours; or

(iii) a minimum of 3,000 hours of experience as a cosmetologist/barber; and

(e) meet the examination requirement established by rule.

(6) Each applicant for licensure as a cosmetologist/barber school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's physical facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for cosmetology schools, including staff and accreditation requirements, established by rule; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (22).

(7) Each applicant for licensure as an electrologist shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation of having graduated from a licensed or recognized electrology school after completing a curriculum of 600 hours of instruction or the equivalent number of credit hours; and

(d) meet the examination requirement established by rule.

(8) Each applicant for licensure as an electrologist instructor shall:

(a) submit an application in a form prescribed by the division;

(b) subject to Subsection (24), pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as an electrologist;

(d) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school, as defined by rule, consisting of a minimum of 150 hours or the equivalent number of credit hours;

(ii) on-the-job instructor training conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 150 hours or the equivalent number of credit hours; or

(iii) a minimum of 1,000 hours of experience as an electrologist; and

(e) meet the examination requirement established by rule.

(9) Each applicant for licensure as an electrologist school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for electrologist schools, including staff, curriculum, and accreditation requirements, established by rule; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (22).

(10) Each applicant for licensure as an esthetician shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation of one of the following:

(i) graduation from a licensed or recognized esthetic school or a licensed or recognized cosmetology/barber school whose curriculum consists of not less than 15 weeks of esthetic instruction with a minimum of 600 hours or the equivalent number of credit hours;

(ii) completion of an approved esthetician apprenticeship; or

(iii) (A) graduation from a recognized cosmetology/barber school located in a state other than Utah whose curriculum consists of less than 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours; and

(B) practice as a licensed cosmetologist/barber for not less than the number of hours required to equal 1,600 total hours when added to the hours of instruction described in Subsection (10)(c)(iii)(A); and

(d) meet the examination requirement established by division rule.

(11) Each applicant for licensure as a master esthetician shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation of:

(i) completion of at least 1,200 hours of training, or the equivalent number of credit hours, at a licensed or recognized esthetics school, except that up to 600 hours toward the 1,200 hours may have been completed:

(A) at a licensed or recognized cosmetology/barbering school, if the applicant graduated from the school and its curriculum consisted of at least 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours; or

(B) at a licensed or recognized cosmetology/barber school located in a state other than Utah, if the applicant graduated from the school and its curriculum contained full flexibility within its hours of instruction; or

(ii) completion of an approved master esthetician apprenticeship;

(d) if the applicant will practice lymphatic massage, provide satisfactory documentation to show completion of 200 hours of training, or the equivalent number of credit hours, in lymphatic massage as defined by division rule; and

(e) meet the examination requirement established by division rule.

(12) Each applicant for licensure as an esthetician instructor shall:

(a) submit an application in a form prescribed by the division;

(b) subject to Subsection (24), pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a master esthetician;

(d) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school, as defined by rule, consisting of a minimum of 300 hours or the equivalent number of credit hours;

(ii) on-the-job instructor training conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 300 hours or the equivalent number of credit hours; or

(iii) a minimum of 1,000 hours of experience in esthetics; and

(e) meet the examination requirement established by rule.

(13) Each applicant for licensure as an esthetics school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's physical facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for esthetics schools, including staff, curriculum, and accreditation requirements, established by division rule made in collaboration with the board; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (22).

(14) Each applicant for licensure as a hair designer shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation of:

(i) graduation from a licensed or recognized cosmetology/barber, hair design, or barbering school whose curriculum consists of a minimum of 1,200 hours of instruction, or the

equivalent number of credit hours, with full flexibility within those hours;

(ii) (A) graduation from a recognized cosmetology/barber, hair design, or barbering school located in a state other than Utah whose curriculum consists of less than 1,200 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours; and

(B) practice as a licensed cosmetologist/barber or hair designer in a state other than Utah for not less than the number of hours required to equal 1,200 total hours when added to the hours of instruction described in Subsection (14)(c)(ii)(A);

(iii) being a state licensed cosmetologist/barber; or

(iv) completion of an approved hair designer apprenticeship; and

(d) meet the examination requirements established by rule.

(15) Each applicant for licensure as a hair designer instructor shall:

(a) submit an application in a form prescribed by the division;

(b) subject to Subsection (24), pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a hair designer or as a cosmetologist/barber;

(d) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school, as defined by rule, consisting of a minimum of 300 hours or the equivalent number of credit hours;

(ii) on-the-job instructor training conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 300 hours or the equivalent number of credit hours; or

(iii) a minimum of 2,500 hours of experience as a hair designer or as a cosmetologist/barber; and

(e) meet the examination requirement established by rule.

(16) Each applicant for licensure as a hair design school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's physical facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for a hair design school, including staff and accreditation requirements, established by rule; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (22).

(17) Each applicant for licensure as a nail technician shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation of:

(i) graduation from a licensed or recognized nail technology school, or a licensed or recognized cosmetology/barber school, whose curriculum consists of not less than 300 hours of instruction, or the equivalent number of credit hours;

(ii) (A) graduation from a recognized nail technology school located in a state other than Utah whose curriculum consists of less than 300 hours of instruction or the equivalent number of credit hours; and

(B) practice as a licensed nail technician in a state other than Utah for not less than the number of hours required to equal 300 total hours when added to the hours of instruction described in Subsection (17)(c)(ii)(A); or

(iii) completion of an approved nail technician apprenticeship; and

(d) meet the examination requirement established by division rule.

(18) Each applicant for licensure as a nail technician instructor shall:

(a) submit an application in a form prescribed by the division;

(b) subject to Subsection (24), pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a nail technician;

(d) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school, as defined by rule, consisting of a minimum of 75 hours or the equivalent number of credit hours;

(ii) an on-the-job instructor training program conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 75 hours or the equivalent number of credit hours; or

(iii) a minimum of 600 hours of experience in nail technology; and

(e) meet the examination requirement established by rule.

(19) Each applicant for licensure as a nail technology school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for nail technology schools, including staff, curriculum, and accreditation requirements, established by rule; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (22).

(20) Each applicant for licensure under this chapter whose education in the field for which a license is sought was completed at a foreign school may satisfy the educational requirement for licensure by demonstrating, to the satisfaction of the division, the educational

equivalency of the foreign school education with a licensed school under this chapter.

(21) (a) A licensed or recognized school under this section shall accept credit hours towards graduation for documented, relevant, and substantially equivalent coursework previously completed by:

(i) a student that did not complete the student's education while attending a different school; or

(ii) a licensee of any other profession listed in this section, based on the licensee's schooling, apprenticeship, or experience.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this section, the division may make rules governing the acceptance of credit hours under Subsection (21)(a).

(22) A school licensed or applying for licensure under this chapter shall maintain recognition as an institution of postsecondary study by meeting the following conditions:

(a) the school shall admit as a regular student only an individual who has earned a recognized high school diploma or the equivalent of a recognized high school diploma, or who is beyond the age of compulsory high school attendance as prescribed by Title 53G, Chapter 6, Part 2, Compulsory Education; and

(b) the school shall be licensed by name, or in the case of an applicant, shall apply for licensure by name, under this chapter to offer one or more training programs beyond the secondary level.

(23) A person seeking to qualify for licensure under this chapter by apprenticing in an approved apprenticeship shall register with the division as described in Section 58-11a-306.

(24) The department may only charge a fee to a person applying for licensure as any type of instructor under this chapter if the person is not a licensed instructor in any other profession under this chapter.

(25) In order to encourage economic development in the state [~~in accordance with Subsection~~ 63G-1-201~~(4)(c)~~], the department may offer any required examination under this section, which is prepared by a national testing organization, in languages in addition to

English.

Section 3. Section **63G-1-201** is amended to read:

63G-1-201. Official state language.

[~~(1)~~] English is declared to be the official language of Utah.

[~~(2) As the official language of this State, the English language is the sole language of the government, except as otherwise provided in this section.~~]

[~~(3) Except as provided in Subsection (4), all official documents, transactions, proceedings, meetings, or publications issued, conducted, or regulated by, on behalf of, or representing the state and its political subdivisions shall be in English.~~]

[~~(4) Languages other than English may be used when required:~~]

[~~(a) by the United States Constitution, the Utah State Constitution, federal law, or federal regulation;~~]

[~~(b) by law enforcement for public health and safety needs;~~]

[~~(c) by public and higher education systems according to rules made by the State Board of Education and the State Board of Regents to comply with Subsection (5);~~]

[~~(d) in judicial proceedings, when necessary to insure that justice is served;~~]

[~~(e) to promote and encourage tourism and economic development, including the hosting of international events such as the Olympics;~~]

[~~(f) by a recreational, scenic, historic, or cultural facility, site, or area that is frequented by international tourists to:~~]

[~~(i) inform international tourists about the facility, site, or area; and~~]

[~~(ii) address the health and safety of international tourists while visiting the facility, site, or area;~~]

[~~(g) by libraries to:~~]

[~~(i) collect and promote foreign language materials; and~~]

[~~(ii) provide foreign language services and activities; and~~]

[~~(h) by the Utah Educational Savings Plan established under Title 53B, Chapter 8a, Utah Educational Savings Plan.~~]

[~~(5) The State Board of Education and the State Board of Regents shall make rules governing the use of foreign languages in the public and higher education systems that promote the following principles:~~]

[~~(a) non-English speaking children and adults should become able to read, write, and understand English as quickly as possible;~~]

[~~(b) foreign language instruction should be encouraged;~~]

[~~(c) formal and informal programs in English as a Second Language should be initiated, continued, and expanded; and~~]

[~~(d) public schools should establish communication with non-English speaking parents of children within their systems, using a means designed to maximize understanding when necessary, while encouraging those parents who do not speak English to become more proficient in English.~~]

[~~(6) Unless exempted by Subsection (4), all state funds appropriated or designated for the printing or translation of materials or the provision of services or information in a language other than English shall be returned to the General Fund.~~]

[~~(a) Each state agency that has state funds appropriated or designated for the printing or translation of materials or the provision of services or information in a language other than English shall:~~]

[~~(i) notify the Division of Finance that the money exists and the amount of the money; and~~]

[~~(ii) return the money to the Division of Finance.~~]

[~~(b) The Division of Finance shall account for the money and inform the Legislature of the existence and amount of the money at the beginning of the Legislature's annual general session.~~]

[~~(c) The Legislature may appropriate any money received under this section to the State School Board for use in English as a Second Language programs.~~]

[~~(7) Nothing in this section affects the ability of government employees, private businesses, nonprofit organizations, or private individuals to exercise their rights under:~~]

[~~(a) the First Amendment of the United States Constitution; and~~]

[~~(b) Utah Constitution, Article 1, Sections 1 and 15.~~]

[~~(8) If any provision of this section, or the application of any such provision to any person or circumstance, is held invalid, the remainder of this act shall be given effect without the invalid provision or application.~~]

Attachment K

PEACE OFFICER TRAINING QUALIFICATIONS AMENDMENTS

2021 FIRST SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill amends requirements for certain peace officer and dispatcher applicants.

Highlighted Provisions:

This bill:

- amends requirements a non-citizen applicant is required to meet to become a peace officer or dispatcher; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

17-30-7, as enacted by Statewide Initiative A, Nov. 8, 1960

17-30a-303, as enacted by Laws of Utah 2014, Chapter 366

53-6-203, as last amended by Laws of Utah 2021, Chapter 233

53-6-302, as last amended by Laws of Utah 2021, Chapter 233

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

Section 1. Section **17-30-7** is amended to read:

17-30-7. Disqualification of applicant for examination -- Appeal to commission.

(1) The commission shall disqualify an applicant for examination who:

(a) [~~Does~~] does not meet advertised qualifications[~~.~~];

(b) [~~Has~~] has been convicted of a criminal offense inimical to the public service, or involving moral turpitude[~~.~~];

(c) [~~Has~~] has practiced or attempted deception or fraud in [~~his~~] the applicant's application or examination, or in securing eligibility for appointment[~~.~~]; or

(d) [~~Is~~] is not:

(i) a citizen of the United States[~~.~~]; or

(ii) a lawful permanent resident of the United States who:

(A) has been in the United States legally for the five years immediately before the day on which the application is made; and

(B) has legal authorization to work in the United States.

(2) If an applicant is rejected, [~~he~~] the applicant shall be notified by mail at [~~his~~] the applicant's last known address.

(3) At any time [~~prior to the date of~~] before the day on which the examination is held, an applicant may correct a defect in [~~his~~] the applicant's application, or appeal in writing to the commission.

Section 2. Section **17-30a-303** is amended to read:

17-30a-303. Disqualification of applicant for examination -- Appeal to commission.

(1) In accordance with this section and rules adopted by the commission, an applicant may be disqualified if the applicant:

(a) does not meet minimum qualifications;

(b) has been convicted of a criminal offense inimical to the public service or involving moral turpitude;

(c) has practiced or attempted deception or fraud in the application or examination process or in securing eligibility for appointment; or

(d) is not:

(i) a citizen of the United States[~~.~~]; or

(ii) a lawful permanent resident of the United States who:

(A) has been in the United States legally for the five years immediately before the day on which the application is made; and

(B) has legal authorization to work in the United States.

(2) If an applicant is rejected, the applicant shall be promptly notified.

(3) At any time [~~prior to the date of~~] before the day on which the examination is held, an applicant may correct a defect in the applicant's application.

(4) An applicant may file a written appeal regarding the application process with the commission at any time before the [~~date of the exam~~] day on which the examination is held.

Section 3. Section **53-6-203** is amended to read:

53-6-203. Applicants for admission to training programs or for certification examination -- Requirements.

(1) Before being accepted for admission to the training programs conducted by a certified academy, and before being allowed to take a certification examination, each applicant for admission or certification examination shall meet the following requirements:

(a) be either:

(i) a United States citizen; or

(ii) a lawful permanent resident of the United States who:

(A) has been in the United States legally for [~~at least~~] the five years immediately before the day on which the application is made; and

(B) has legal authorization to work in the United States;

(b) be at least:

(i) 21 years old at the time of certification as a special function officer; or

(ii) as of July 1, 2019, 19 years old at the time of certification as a correctional officer;

(c) be a high school graduate or furnish evidence of successful completion of an examination indicating an equivalent achievement;

(d) have not been convicted of a crime for which the applicant could have been

punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of this or another state;

(e) have demonstrated good moral character, as determined by a background investigation;

(f) be free of any physical, emotional, or mental condition that might adversely affect the performance of the applicant's duties as a peace officer; and

(g) meet all other standards required by POST.

(2) (a) An application for admission to a training program shall be accompanied by a criminal history background check of local, state, and national criminal history files and a background investigation.

(b) The costs of the background check and investigation shall be borne by the applicant or the applicant's employing agency.

(3) (a) Notwithstanding any expungement statute or rule of any other jurisdiction, any conviction obtained in this state or other jurisdiction, including a conviction that has been expunged, dismissed, or treated in a similar manner to either of these procedures, may be considered for purposes of this section.

(b) This provision applies to convictions entered both before and after the effective date of this section.

(4) Any background check or background investigation performed [~~pursuant to~~] under the requirements of this section shall be to determine eligibility for admission to training programs or qualification for certification examinations and may not be used as a replacement for any background investigations that may be required of an employing agency.

(5) An applicant shall be considered to be of good moral character under Subsection (1)(e) if the applicant has not engaged in conduct that would be a violation of Subsection 53-6-211(1).

(6) An applicant seeking certification as a law enforcement officer, as defined in Section 53-13-103, shall be qualified to possess a firearm under state and federal law.

Section 4. Section **53-6-302** is amended to read:

53-6-302. Applicants for certification examination -- Requirements.

(1) Before being allowed to take a dispatcher certification examination, each applicant shall meet the following requirements:

(a) be either:

(i) a United States citizen; or

(ii) a lawful permanent resident of the United States who:

(A) has been in the United States legally for [~~at least~~] the five years immediately before the day on which the application is made; and

(B) has legal authorization to work in the United States;

(b) be 18 years old or older at the time of employment as a dispatcher;

(c) be a high school graduate or have a G.E.D. equivalent;

(d) have not been convicted of a crime for which the applicant could have been punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of this or another state;

(e) have demonstrated good moral character, as determined by a background investigation;

(f) be free of any physical, emotional, or mental condition that might adversely affect the performance of the applicant's duty as a dispatcher; and

(g) meet all other standards required by POST.

(2) (a) An application for certification shall be accompanied by a criminal history background check of local, state, and national criminal history files and a background investigation.

(b) The costs of the background check and investigation shall be borne by the applicant or the applicant's employing agency.

(3) (a) Notwithstanding Title 77, Chapter 40, Utah Expungement Act, regarding expungements, or a similar statute or rule of any other jurisdiction, any conviction obtained in this state or other jurisdiction, including a conviction that has been expunged, dismissed, or treated in a similar manner to either of these procedures, may be considered for purposes of this

section.

(b) Subsection (3)(a) applies to convictions entered both before and after May 1, 1995.

(4) Any background check or background investigation performed [~~pursuant to~~] under the requirements of this section shall be to determine eligibility for admission to training programs or qualification for certification examinations and may not be used as a replacement for any background investigations that may be required of an employing agency.

(5) An applicant is considered to be of good moral character under Subsection (1)(e) if the applicant has not engaged in conduct that would be a violation of Subsection 53-6-309(1).

Section 5. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Attachment L

PROPOSITION NUMBER 4

☐ FOR
☐ AGAINST

Shall a law be enacted to:

- create a seven-member commission to recommend redistricting plans to the Legislature that divide the state into Congressional, legislative, and state school board districts;
- provide for appointments to that commission: one by the Governor, three by legislative majority party leaders, and three by legislative minority party leaders;
- provide qualifications for commission members, including limitations on their political activity;
- require the Legislature to enact or reject a commission-recommended plan; and
- establish requirements for redistricting plans and authorize lawsuits to block implementation of a redistricting plan enacted by the Legislature that fails to conform to those requirements?

IMPARTIAL ANALYSIS

Background

The state is divided into different types of districts for electing different officers. There are districts for electing representatives to the U.S. House of Representatives, districts for electing members to the Utah Legislature, and districts for electing representatives to the State Board of Education. Under federal constitutional law requiring one person's voting power to be roughly the same as another person's, each type of district is required to have at least a roughly equal population as each other district of that type.

Every 10 years, the federal government conducts a census to count the population of each state. During the 10-year period from one census to the next, the population of the state shifts, resulting in unequal populations within the various districts. Following each census, the Legislature redefines the boundaries of those districts to ensure roughly equal populations within the districts. This redefining of district boundaries is commonly referred to as "redistricting."

Proposition 4

Proposition 4 affects redistricting in Utah in three main ways: (1) it creates a seven-member appointed commission to participate in the process of formulating redistricting plans; (2) it imposes requirements on the Legislature's redistricting process; and (3) it establishes standards with which redistricting plans must comply.

1. Redistricting Commission

Current Law

The Utah Constitution states that "the Legislature shall divide the state" into districts. Current Utah law does not provide for the involvement of a commission or any other group in the redistricting process.

Effect of Proposition 4

Proposition 4 creates the "Utah Independent Redistricting Commission," with responsibility to recommend redistricting plans to the Legislature. The redistricting commission consists of seven members. One member is appointed by each of the following:

- the governor;
- the president of the Utah Senate;
- the speaker of the Utah House of Representatives;
- the leader of the largest minority political party in the Utah Senate;
- the leader of the largest minority political party in the Utah House of Representatives;
- Utah Senate and House leadership of the political party that is the majority party in the Utah Senate; and
- Utah Senate and House leadership of the political party that is the largest minority party in the Utah Senate.

Under Proposition 4, a person may not be appointed to the commission if the person has engaged in certain political activity during the four or, in some cases, five years before appointment. The Proposition also places limitations on certain political activity of commission members during their service on the commission and for four years afterwards.

Proposition 4 establishes a process for the commission to follow in recommending redistricting plans. Among other things, the Proposition requires the commission to:

- make redistricting plans available to the public and hold public hearings; and
- assess whether redistricting plans comply with standards established by Proposition 4.

If the commission fails to submit redistricting plans to the Legislature by a specified deadline, the Utah Supreme Court chief justice is required to select plans for the commission to submit.

2. Legislature's Redistricting Process

Current Law

Under current law, the Legislature performs redistricting according to a process it defines internally, with no limitations or requirements imposed by state law. The Legislature's past redistricting process has included opportunities for the public to submit redistricting plans, a legislative redistricting committee to adopt redistricting standards and recommend plans, the posting of plans on the Legislature's website, and public hearings around the state.

Effect of Proposition 4

Proposition 4 places requirements on the process that the Legislature uses to enact redistricting plans, including limits on when and the circumstances under which the Legislature may enact a redistricting plan.

Proposition 4 requires the Legislature to enact or reject a plan that the commission submits but does not limit the Legislature from enacting its own separate plan. The commission may require a plan being considered by the Legislature to undergo a commission assessment to determine whether it complies with standards established by the Proposition. If the Legislature enacts a plan other than one submitted by the commission, the Proposition requires the Legislature to publicly issue a detailed written report explaining why.

3. Standards Applicable to Redistricting Plans

Current Law

Redistricting plans enacted by the Legislature are required to comply with certain provisions of federal law, including a requirement that districts have roughly equal populations. Utah law does not specify additional standards with which redistricting plans must comply.

Effect of Proposition 4

Proposition 4 requires commission-recommended or Legislature-enacted redistricting plans, as much as possible, to:

- minimize the division of counties, cities, and towns;
- create districts that are geographically compact and in one unbroken piece;
- preserve traditional neighborhoods and local communities;
- follow natural and geographic features; and
- maximize boundary agreement among different types of districts.

The Proposition also prohibits the commission or Legislature from favoring or disfavoring incumbent elected officials or from considering partisan political information.

The Proposition authorizes any Utah resident to file a lawsuit requesting a court to block implementation of a redistricting plan enacted by the Legislature that fails to conform to the standards and requirements established by Proposition 4.

Potential Constitutional Conflicts

Proposition 4 raises the following potential conflicts with the United States Constitution or Utah Constitution:

- restricting former commission members from engaging in certain political activity after serving on the commission may conflict with freedom of speech and association guarantees of the First Amendment to the United States Constitution and similar guarantees under Article I, Sections 1 and 15 of the Utah Constitution;
- directing the Utah Supreme Court chief justice to select redistricting plans to recommend to the Legislature may violate separation of powers principles under Article V, Section 1 of the Utah Constitution; and
- requiring redistricting plans enacted by the Legislature to comply with certain standards and imposing other restrictions on the Legislature's redistricting process may violate Article IX, Section 1 of the Utah Constitution.

Fiscal Impact

The legislative fiscal analyst estimates that implementing Proposition 4 may cost the state $1,015,500 every 10 years for commission and other redistricting-related expenses. The state may incur additional costs to defend lawsuits authorized by the Proposition.

PROPOSITION NUMBER 4

ARGUMENT IN FAVOR

VOTE "YES" ON PROPOSITION 4

Voters should choose their representatives, not vice versa.

Yet under current law, Utah politicians can choose their voters. Legislators draw their own legislative districts with minimal transparency, oversight, or checks on inherent conflicts of interest. As a result, politicians wield unbridled power to design districts to ensure their own re-election. This is called "gerrymandering."

Gerrymandering is not new. But in recent years it has gotten out of control. Sophisticated computer modeling allows incumbents to craft districts with a precision the framers of the Utah Constitution could not have foreseen. Incumbents of both parties do this, with the result that Utah is divided into districts that empower politicians, not voters.

For example, Holladay City is splintered into four State House districts, two State Senate districts and two Congressional districts. Who benefits from this? Holladay voters don't, but politicians do. Incumbents in safe districts are less responsive to voters and more responsive to special interests. In short, gerrymandering makes representative democracy less representative.

To be fair, we can't expect legislators to fix the system. It benefits them. We the People must fix it.

Proposition 4 returns power to the voters and puts people first in our political system. It does this by enacting the Utah Independent Redistricting Commission and Standards Act. The Act addresses the problem of gerrymandering in two ways.

First, it creates a seven-member Independent Redistricting Commission. The Governor and Legislative leaders appoint the Commissioners, at least two of whom must be politically unaffiliated. To promote impartiality, lobbyists, current and recently retired elected officials, political party leaders, and government appointees may not serve as Commissioners. With citizen input, the Commission draws proposed district boundaries for Utah's congressional, legislative, and State school board districts. It then submits these electoral maps to the Legislature as required by the Utah Constitution. The Legislature can enact or reject the Commission's proposed maps. If it rejects them, it must explain why to the citizens.

Second, the Act requires that, in drawing districts, the Commission and the Legislature abide by common-sense redistricting standards to the greatest extent practicable. These standards include:

- Adhering to the U.S. and Utah Constitutions and other applicable law
- Preserving equal populations among districts
- Keeping municipalities and counties together
- Creating districts that are compact and contiguous
- Respecting traditional neighborhoods and communities of interest
- Following geographic features and natural barriers

Most importantly, the Act forbids drawing districts to unduly favor or disfavor any incumbent, candidate, or political party. And it allows Utah voters to challenge a map enacted by the Legislature that violates these standards.

By placing common-sense limits on politicians' power to design their districts, Proposition 4 will ensure that our representative government serves people, not politicians. It will make the redistricting process more transparent, increase voter participation, and make the politicians we elect more responsive and accountable to the people who elect them.

In short, it will ensure that Utah voters have a government of the People, by the People, and for the People.

Uthans for Responsive Government/Better Boundaries
2630 East Stringham Avenue
Apt 310A
Salt Lake City, UT 84109

Jeff Wright (R)
Co-Chair, Better Boundaries
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Salt Lake City, UT 84102

PROPOSITION NUMBER 4

REBUTTAL TO ARGUMENT IN FAVOR

Proposition 4 sponsors' best argument seems to be that giving an unelected commission authority in the redistricting process will result in a more accountable government. If that is true, it must be done by a constitutional amendment and not by an initiative petition.
In 2011 the legislative redistricting committee held over thirty public, open, and transparent meetings throughout the state. They received and considered hundreds of public comments and even provided a dedicated website for citizens to draw, submit, and comment on maps.

Backed by Ralph Becker and other liberal Salt Lake City Democrats and funded by out of state interest groups, Proposition 4 is a cleverly disguised partisan power grab.

- It unconstitutionally gives redistricting authority to unelected bureaucrats and judges.
- It deliberately imposes vague and conflicting redistricting requirements to throw the doors wide open for lawsuits.
- 4 out of 5 of its sponsors are liberal Democrats from Salt Lake City (if you include the one who became Republican right before sponsoring).
- 70% of the nearly $1 Million behind the initiative are from OUT OF STATE special interest groups.
- Over half of the in-state donations came from inside of Salt Lake City proper.

The framers of the Utah Constitution ensured that redistricting would be anchored in the voice of the people by exclusively entrusting this authority to the legislature.

A vote for Proposition 4 is a vote to unconstitutionally silence the voice of the majority of people in Utah and allow unelected bureaucrats and judges redistricting authority

Senator Ralph Okerlund
Utah State Senate

ARGUMENT AGAINST

Proposition 4 is a cleverly disguised partisan plan to stifle the voice of the people of Utah as represented by the Legislature and unconstitutionally create an overwhelmingly Democrat congressional district around Salt Lake City.

Violates the Constitution

Inspired by the framers of our United States Constitution, the founders of Utah divided governmental power into three separate branches of government – the Executive, the Legislative, and the Judicial. The founders thought it was important to grant the legislature the *exclusive* authority over the redistricting process.

Proposition 4 blatantly violates the Utah Constitution by creating a redistricting commission and granting that commission and the Utah Supreme Court a role in the redistricting process. If we, as citizens of Utah, wish to grant this legislative authority to other branches of government, we must do it through a constitutional amendment not an initiative petition.

The Perfect Legal Storm

Over the past few redistricting cycles there have been hundreds of redistricting lawsuits in at least 40 states. In that time, not a single successful case has been brought against Utah due to our transparent, fair, and strictly constitutional redistricting process.

Proposition 4 deliberately imposes vague and conflicting redistricting requirements, it leaves multiple key terms undefined, and it grants any person or business with a Utah address the right to legally challenge redistricting plans. These provisions reveal the obvious underlying goal of this initiative is to create a perfect legal storm for lengthy lawsuits that result in the courts unconstitutionally redrawing district boundaries.

Better Boundaries for Whom?

District boundaries are redrawn by the legislature every ten years following the census to ensure that every district is represented by the same number of people. Because Utah's population is growing – the growth in each district must be averaged out. This means slower growing districts must have boundaries that expand, while the surrounding faster growing districts must have boundaries that shrink.

This is precisely what is happening in and around Salt Lake City. Due to their significantly slower population growth rates, district boundaries around Salt Lake City must expand to gain population while the surrounding districts shrink to average out. Despite being their last strong-hold in the state, it is inevitable that these current growth patterns will continue to water-down Democrat representation. Faced with this fact, proponents of Proposition 4 are desperately trying to maintain and even increase their representation by creating an overwhelmingly Democrat district insulated from the rest of the state.

Appropriately named by its Salt Lake City Democrat supporters, the "Better Boundaries Initiative," begs the question: better boundaries for whom? Themselves.

Conclusion

Make no mistake about it, the backers of this initiative are *not* seeking to create a transparent, fair, and constitutionally sound redistricting process – we already have that. They are seeking to unconstitutionally pack what is now a competitive congressional district with Democrat voters to create a single, safe, and solidly Democrat congressional district for themselves.

Do not be fooled. Vote against Proposition 4.

Senator Ralph Okerlund
Utah State Senate
248 S 500 W
Monroe, UT 84754

REBUTTAL TO ARGUMENT AGAINST

Utah voters should not be surprised that the statement against Proposition 4 comes from a politician. Politicians are the only folks that benefit from gerrymandering. The current system presents a clear conflict of interest.

The opposition statement is also misleading; let's focus on the facts.

First, Proposition 4 is a bi-partisan effort, led by members of both major parties. Over 190,000 Utahns from all across the State signed the petition, and polling shows that a majority of Utahns support it.

Second, Utahns overwhelmingly support Proposition 4 because it creates a transparent process. It favors no party or outcome. It merely creates sensible rules so that *no one* can rig the system.

Third, the State Constitution does not say our Legislature has "exclusive" authority to draw electoral maps. Proposition 4 is carefully designed to operate within the framework established by the Utah and U.S. Constitutions.

Fourth, the speculation that this Proposition will encourage litigation is misleading. Proposition 4 enacts common-sense redistricting standards. A map that respects those standards is unlikely to provoke baseless litigation, especially since the initiative also contains provisions to discourage frivolous lawsuits.

The fight against gerrymandering is about patriotism, not party. Ronald Reagan called gerrymandering an "un-American practice" contrary to "American values of fair play and decency."

That's why 18 other states have adopted some form of an independent redistricting commission. We need to end gerrymandering here in Utah once and for all. Don't be distracted by misleading statements and scare tactics.

Vote for Proposition 4.

Jeff Wright and Ralph Becker
Co-Chairs, Better Boundaries

FULL TEXT OF PROPOSITION 4

Be it Enacted by the People of the State of Utah:

Section 1. Section **20A-19-101** is enacted to read:

CHAPTER 19. UTAH INDEPENDENT REDISTRICTING COMMISSION AND STANDARDS ACT

Part 1. General Provisions

20A-19-101. Title.

This chapter is known as the "Utah Independent Redistricting Commission and Standards Act."

PROPOSITION NUMBER 4

Section 2. Section **20A-19-102** is enacted to read:

20A-19-102. Permitted Times and Circumstances for Redistricting.

Division of the state into congressional, legislative, and other districts, and modification of existing divisions, is permitted only at the following times or under the following circumstances:

(1) no later than the first annual general legislative session after the Legislature's receipt of the results of a national decennial enumeration made by the authority of the United States;

(2) no later than the first annual general legislative session after a change in the number of congressional, legislative, or other districts resulting from an event other than a national decennial enumeration made by the authority of the United States;

(3) upon the issuance of a permanent injunction by a court of competent jurisdiction under Section 20A-19-301(2) and as provided in Section 20A-19-301(8);

(4) to conform with a final decision of a court of competent jurisdiction; or

(5) to make minor adjustments or technical corrections to district boundaries.

Section 3. Section **20A-19-103** is enacted to read:

20A-19-103. Redistricting Standards and Requirements.

(1) This Section establishes redistricting standards and requirements applicable to the Legislature and to the Utah Independent Redistricting Commission.

(2) The Legislature and the Commission shall abide by the following redistricting standards to the greatest extent practicable and in the following order of priority:

(a) adhering to the Constitution of the United States and federal laws, such as the Voting Rights Act, 52 U.S.C. Secs. 10101 through 10702, including, to the extent required, achieving equal population among districts using the most recent national decennial enumeration made by the authority of the United States;

(b) minimizing the division of municipalities and counties across multiple districts, giving first priority to minimizing the division of municipalities and second priority to minimizing the division of counties;

(c) creating districts that are geographically compact;

(d) creating districts that are contiguous and that allow for the ease of transportation throughout the district;

(e) preserving traditional neighborhoods and local communities of interest;

(f) following natural and geographic features, boundaries, and barriers; and

(g) maximizing boundary agreement among different types of districts.

(3) The Legislature and the Commission may not divide districts in a manner that purposefully or unduly favors or disfavors any incumbent elected official, candidate or prospective candidate for elective office, or any political party.

(4) The Legislature and the Commission shall use judicial standards and the best available data and scientific and statistical methods, including measures of partisan symmetry, to assess whether a proposed redistricting plan abides by and conforms to the redistricting standards contained in this Section, including the restrictions contained in Subsection (3).

(5) Partisan political data and information, such as partisan election results, voting records, political party affiliation information, and residential addresses of incumbent elected officials and candidates or prospective candidates for elective office, may not be considered by the Legislature or by the Commission, except as permitted under Subsection (4).

(6) The Legislature and the Commission shall make computer software and information and data concerning proposed redistricting plans reasonably available to the public so that the public has a meaningful opportunity to review redistricting plans and to conduct the assessments described in Subsection (4).

Section 4. Section **20A-19-104** is enacted to read:

20A-19-104. Severability.

(1) The provisions of this chapter are severable.

(2) If any word, phrase, sentence, or section of this chapter or the application of any word, phrase, sentence, or section of this chapter to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of this chapter must be given effect without the invalid word, phrase, sentence, section, or application.

Section 5. Section **20A-19-201** is enacted to read:

Part 2. Utah Independent Redistricting Commission

20A-19-201. Utah Independent Redistricting Commission – Selection of Commissioners – Qualifications – Term – Vacancy – Compensation – Commission Resources.

(1) This Act creates the Utah Independent Redistricting Commission.

(2) The Utah Independent Redistricting Commission comprises seven commissioners appointed as provided in this Section.

(3) Each of the following appointing authorities shall appoint one commissioner:

(a) the governor, whose appointee shall serve as Commission chair;

(b) the president of the Senate;

(c) the speaker of the House of Representatives;

(d) the leader of the largest minority political party in the Senate;

(e) the leader of the largest minority political party in the House of Representatives;

(f) the leadership of the majority political party in the Senate, including the president of the Senate, jointly with the leadership of the same political party in the House of Representatives and the speaker of the House of Representatives if a member of that political party; and

(g) the leadership of the largest minority political party in the Senate jointly with the leadership of the same political party in the House of Representatives and the speaker of the House of Representatives if a member of that political party.

(4) The appointing authorities described in Subsection (3) shall appoint their commissioners no later than 30 calendar days following:

(a) the receipt by the Legislature of a national decennial enumeration made by the authority of the United States; or

(b) a change in the number of congressional, legislative, or other districts resulting from an event other than a national decennial enumeration made by the authority of the United States.

(5) Commissioners appointed under Subsection (3)(f) and Subsection (3)(g), in addition to the qualifications and conditions in Subsection (6), may not have at any time during the preceding five years:

(a) been affiliated with any political party for the purposes of Section 20A-2-107;

(b) voted in any political party's regular primary election or any political party's municipal primary election; or

(c) been a delegate to a political party convention.

(6) Each commissioner:

(a) must have been at all times an active voter, as defined in Section 20A-1-102(1), during the four years preceding appointment to the Commis-

sion;

(b) must not have been at any time during the four years preceding appointment to the Commission, and may not be during their service as commissioner or for four years thereafter:

(i) a lobbyist or principal, as those terms are defined under Section 36-11-102;

(ii) a candidate for or holder of any elective office, including any local government office;

(iii) a candidate for or holder of any office of a political party, excluding the office of political party delegate, or the recipient of compensation in any amount from a political party, political party committee, personal campaign committee, or any political action committee affiliated with a political party or controlled by an elected official or candidate for elective office, including any local government office;

(iv) appointed by the governor or the Legislature to any other public office; or

(v) employed by the Congress of the United States, the Legislature, or the holder of any position that reports directly to an elected official or to any person appointed by the governor or Legislature to any other public office.

(7)(a) Each commissioner shall file with the Commission and with the governor a signed statement certifying that the commissioner:

(i) meets and will continue to meet throughout their term as commissioner the applicable qualifications contained in this Section;

(ii) will comply with the standards, procedures, and requirements applicable to redistricting contained in this chapter;

(iii) will faithfully discharge the commissioner's duties in an independent, honest, transparent, and impartial manner; and

(iv) will not engage in any effort to purposefully or unduly favor or disfavor any incumbent elected official, candidate or prospective candidate for elective office, or any political party.

(b) The Commission and the governor shall make available to the public the statements required under Subsection (7)(a).

(8)(a) A commissioner's term lasts until a successor is appointed or until that commissioner's death, resignation, or removal.

(b) A commissioner may resign at any time by providing written notice to the Commission and to the governor.

(c) A commissioner may be removed only by a majority vote of the speaker of the House of Representatives and the leader of the largest minority political party in the House of Representatives and the president of the Senate and leader of the largest minority political party in the Senate, and may be removed only for failure to meet the qualifications of this Section, incapacity, or for other good cause, such as substantial neglect of duty or gross misconduct in office.

(9)(a) The appointing authority that appointed a commissioner shall fill a vacancy caused by the death, resignation, or removal of that commissioner within 21 calendar days after the vacancy occurs.

(b) If the appointing authority at the time of the vacancy is of a different political party than that of the appointing authority when the original appointment was made, then the corresponding appointing authority of the same political party in the Senate, the House, or the leadership, as the case may be, as the appointing authority that made the original appointment must make the appointment to fill the vacancy.

(10) If an appointing authority fails to appoint a commissioner or to fill a vacancy by the deadlines provided in this Section, then the chief justice of the Supreme Court of the State of Utah shall appoint that commissioner within 14 calendar days after the failure to appoint or fill a vacancy.

(11)(a) Commissioners may not receive compensation or benefits for their service, but may receive per diem and travel expenses in accordance with:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules of the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) A commissioner may decline to receive per diem and travel expenses.

(12)(a) The Legislature shall appropriate adequate funds for the Commission to carry out its duties, and shall make available to the Commission such personnel, facilities, equipment, and other resources as the Commission may reasonably request.

(b) The Office of Legislative Research and General Counsel shall provide the technical staff, legal assistance, computer equipment, computer software, and other equipment and resources to the Commission that the Commission reasonably requests.

(c) The Commission has procurement and contracting authority, and upon a majority vote, may procure the services of staff, legal counsel, consultants, and experts, and may acquire the computers, data, software, and other equipment and resources that are necessary to carry out its duties effectively.

Section 6. Section **20A-19-202** is enacted to read:

20A-19-202. Commission Code of Conduct – Quorum – Action by the Commission – Assessment of Proposed Redistricting Plans – Open and Public Meetings – Public Hearings – Ex Parte Communications.

(1) The Commission shall conduct its activities in an independent, honest, transparent, and impartial manner, and each commissioner and member of Commission, including staff and consultants employed or retained by the Commission, shall act in a manner that reflects creditably on the Commission.

(2) The Commission shall meet upon the request of a majority of commissioners.

(3) Attendance of a majority of commissioners at a meeting constitutes a quorum for the conduct of Commission business and the taking of official Commission actions.

(4) The Commission takes official actions by majority vote of commissioners at a meeting at which a quorum is present, except as otherwise provided in this chapter.

(5)(a) The Commission may consider any redistricting plan submitted to the Commission by any person or organization, including commissioners.

(b) The Commission shall make available to each commissioner and to the public all plans or elements of plans submitted to the Commission or to any commissioner.

(6) Upon the affirmative vote of at least three commissioners, the Commission shall conduct the assessments described in Section 20A-19-103(4) of any redistricting plan being considered by the Commission or by the Legislature, and shall promptly make the assessments available to the public.

(7)(a) The Commission shall establish and maintain a website, or other equivalent electronic platform, to disseminate information about the Commission, including records of its meetings and public hearings, proposed redistricting plans, and assessments of and reports on redistricting plans, and to allow the public to view its meetings and public hearings in both live and in archived form.

(b) The Commission's website, or other equivalent electronic platform, must allow the public to submit redistricting plans and comments on redistricting plans to the Commission for its consideration.

(8) The Commission is subject to Title 52, Chapter 4, Open and Public Meetings Act, Secs. 52-4-101 to 52-4-305, and to Title 63G, Chapter 2, Government Records Access and Management Act, Secs. 63G-2-101 to 63G-2-804.

(9)(a) The Commission shall, by majority vote, determine the number, locations, and dates of the public hearings to be held by the Commission, but the Commission shall hold no fewer than seven public hearings throughout the state in connection with each redistricting that is permitted under Section 20A-19-102(1)-(2) as follows:

(i) one in the Bear River region—Box Elder, Cache, or Rich County;

(ii) one in the Southwest region—Beaver, Garfield, Iron, Kane, or Washington County;

(iii) one in the Mountain region—Summit, Utah, or Wasatch County;

(iv) one in the Central region—Juab, Millard, Piute, Sanpete, Sevier, or Wayne County;
(v) one in the Southeast region—Carbon, Emery, Grand, or San Juan County;
(vi) one in the Uintah Basin region—Daggett, Duchesne, or Uintah County; and
(vii) one in the Wasatch Front region—Davis, Morgan, Salt Lake, Tooele, or Weber County.

(b) The Commission shall hold at least two public hearings in a first or second class county but not in the same county.

(10) Each public hearing must provide those in attendance a reasonable opportunity to submit written and oral comments to the Commission and to propose redistricting plans for the Commission's consideration.

(11) The Commission must hold the public hearings required under Subsection (9) by:

(a) the earlier of the 120th calendar day after the Legislature's receipt of the results of a national decennial enumeration made by the authority of the United States or August 31st of that year; or

(b) no later than 120 calendar days after a change in the number of congressional, legislative, or other districts that results from an event other than a national decennial enumeration made by the authority of the United States.

(12)(a) A commissioner may not engage in any private communication with any person other than other commissioners, Commission personnel, including consultants retained by the Commission, and employees of the Office of Legislative Research and General Counsel, that is material to any redistricting plan or element of a plan pending before the Commission or intended to be proposed for Commission consideration, without making the communication, or a detailed and accurate description of the communication including the names of all parties to the communication and the plan or element of the plan, available to the Commission and to the public.

(b) A commissioner shall make the disclosure required by Subsection (12)(a) before the redistricting plan or element of a plan is considered by the Commission.

Section 7. Section **20A-19-203** is enacted to read:

20A-19-203. Selection of Recommended Redistricting Plan.

(1) The Commission shall prepare and, by the affirmative vote of at least five commissioners, adopt at least one and as many as three redistricting plans that the Commission determines divide the state into congressional, legislative, or other districts in a manner that satisfies the redistricting standards and requirements contained in this chapter as the Commission's recommended redistricting plan or plans no later than 30 calendar days following completion of the public hearings required under Section 20A-19-202(9); and

(2)(a) If the Commission fails to adopt a redistricting plan by the deadline identified in Subsection (1), the Commission shall submit no fewer than two redistricting plans to the chief justice of the Supreme Court of the State of Utah.

(b) The chief justice of the Supreme Court of the State of Utah shall, as soon as practicable, select from the submitted plans at least one and as many as three redistricting plans that the chief justice determines divide the state into congressional, legislative, and other districts in a manner that satisfies the redistricting standards and requirements contained in this chapter as the Commission's recommended redistricting plan or plans.

(c) Of the plans submitted by the Commission to the chief justice of the Supreme Court of the State of Utah under Subsection (2)(a), at least one plan must be supported by the commissioner appointed under Section 20A-19-201(3)(f), and at least one plan must be supported by the commissioner appointed under Section 20A-19-201(3)(g).

Section 8. Section **20A-19-204** is enacted to read:

20A-19-204. Submission of Commission's Recommended Redistricting Plans to the Legislature – Consideration of Redistricting Plans by the Legislature – Report Required if Legislature Enacts Other Plan.

(1)(a) The Commission shall submit to the president of the Senate, the speaker of the House of Representatives, and the director of the Office of Legislative Research and General Counsel, and make available to the public, the redistricting plan or plans recommended under Section 20A-19-203 and a detailed written report setting forth each plan's adherence to the redistricting standards and requirements contained in this chapter.

(b) The Commission shall make the submissions described in Subsection (1)(a), to the extent practicable, not less than 10 calendar days before the Senate or the House of Representatives votes on any redistricting plan permitted under Section 20A-19-102(1)-(2).

(2)(a) The Legislature shall either enact without change or amendment, other than technical corrections such as those authorized under Section 36-12-12, or reject the Commission's recommended redistricting plans submitted to the Legislature under Subsection (1).

(b) The president of the Senate and the speaker of the House of Representatives may direct legislative staff to prepare a legislative review note and a legislative fiscal note on the Commission's recommended redistricting plan or plans.

(3) The Legislature may not enact any redistricting plan permitted under Section 20A-19-102(1)-(2) until adequate time has been afforded to the Commission and to the chief justice of the Supreme Court of the State of Utah to satisfy their duties under this chapter, including the consideration and assessment of redistricting plans, public hearings, and the selection of one or more recommended redistricting plans.

(4) The Legislature may not enact a redistricting plan or modification of any redistricting plan unless the plan or modification has been made available to the public by the Legislature, including by making it available on the Legislature's website, or other equivalent electronic platform, for a period of no less than 10 calendar days and in a manner and format that allows the public to assess the plan for adherence to the redistricting standards and requirements contained in this chapter and that allows the public to submit comments on the plan to the Legislature.

(5)(a) If a redistricting plan other than a plan submitted to the Legislature under Subsection (1) is enacted by the Legislature, then no later than seven calendar days after its enactment the Legislature shall issue to the public a detailed written report setting forth the reasons for rejecting the plan or plans submitted to the Legislature under Subsection (1) and a detailed explanation of why the redistricting plan enacted by the Legislature better satisfies the redistricting standards and requirements contained in this chapter.

(b) The Commission may, by majority vote, issue public statements, assessments, and reports in response to:

(i) any report by the Legislature described in Subsection (5)(a);

(ii) the Legislature's consideration or enactment of any redistricting plan, including any plan submitted to the Legislature under Subsection (1); or

(iii) the Legislature's consideration or enactment of any modification to a redistricting plan.

Section 9. Section **20A-19-301** is enacted to read:

Part 3. Private Right of Action for Utahns

20A-19-301. Right of Action and Injunctive Relief.

(1) Each person who resides or is domiciled in the state, or whose executive office or principal place of business is located in the state, may bring an action in a court of competent jurisdiction to obtain any of the relief available under Subsection (2).

(2) If a court of competent jurisdiction determines in any action brought under this Section that a redistricting plan enacted by the Legislature fails to abide by or conform to the redistricting standards, procedures, and requirements set forth in this chapter, the court shall issue a permanent injunction barring enforcement or implementation of the redistricting plan. In addition, the court may issue a temporary restraining order or preliminary injunction that temporarily stays enforcement or implementation of the redistricting plan at issue if the court determines that:

(a) the plaintiff is likely to show by a preponderance of the evidence that a permanent injunction under this Subsection should issue, and

(b) issuing a temporary restraining order or preliminary injunction is in the public interest.

(3) A plaintiff bringing an action under this Section is not required to give or post a bond, security, or collateral in connection with obtaining any relief under this Section.

(4) In any action brought under this Section, the court shall review or evaluate the redistricting plan at issue de novo.

(5) If a plaintiff bringing an action under this Section is successful in obtaining any relief under Subsection (2), the court shall order the defendant in the action to promptly pay reasonable compensation for actual, necessary services rendered by an attorney, consulting or testifying expert, or other professional, or any corporation, association, or other entity or group of other persons, employed or engaged by the plaintiff, and to promptly reimburse the attorney, consulting or testifying expert, or other professional, or any corporation, association, or other entity or group of other persons, employed or engaged by the plaintiff for actual, necessary expenses. If there is more than one defendant in the action, each of the defendants is jointly and severally liable for the compensation and expenses awarded by the court.

(6) In any action brought under this Section, the court may order a plaintiff to pay reasonable compensation for actual, necessary services rendered by an attorney, consulting or testifying expert, or other professional, or any corporation, association, or other entity or group of other persons, employed or engaged by a defendant, and to promptly reimburse the attorney, consulting or testifying expert, or other professional, or any corporation, association, or other entity or group of other persons, employed or engaged by a defendant for actual, necessary expenses, only if the court determines that:

(a) the plaintiff brought the action for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b) the plaintiff's claims, defenses, and other legal contentions are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; or

(c) the plaintiff's allegations and other factual contentions do not have any evidentiary support, or if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(7) Notwithstanding Title 63G, Chapter 7, Governmental Immunity Act of Utah, a governmental entity named as a defendant in any action brought under this Section is not immune from such action or from payment of compensation or reimbursement of expenses awarded by the court under Subsection (5).

(8) Upon the issuance of a permanent injunction under Subsection (2), the Legislature may enact a new or alternative redistricting plan that abides by and conforms to the redistricting standards, procedures, and requirements of this chapter.

Section 10. Section **63G-7-301, Governmental Immunity Act of Utah,** is amended to read:

63G-7-301. Waivers of immunity.

...

(2) Immunity from suit of each governmental entity is waived:

(a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;

(b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;

(c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;

(d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of Utah Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;

(e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney fees under Sections 63G-2-405 and 63G-2-802;

(f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act;

(g)as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious Land Use Act;

(h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

(i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

(ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement; [~~and~~]

(i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment[~~.~~]; and

(j) as to any action or suit brought under Section 20A-19-301 and as to any compensation or expenses awarded under Section 20A-19-301(5).

Section 11. Section **63G-2-103, Government Records Access and Management Act,** is amended to read:

63G-2-103. Definitions.

As used in this chapter:

. . .

(11)(a) "Governmental entity" means:

(i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Office, the State Board of Education, the State Board of Regents, and the State Archives;

(ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

(iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iv) any state-funded institution of higher education or public education; or

(v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.

(b) "Governmental entity" also means:

(i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business;

(ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking; and

(iii) as defined in Section 11-13a-102, a governmental nonprofit corporation; [~~and~~]

(iv) an association as defined in Section 53A-1-1601[~~.~~]; and

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(v) the Utah Independent Redistricting Commission.

(c) "Governmental entity" does not include the Utah Educational Savings Plan created in Section 53B-8a-103.

...

Section 12. Section **52-4-103, Open and Public Meetings Act,** is amended to read:

52-4-103. Definitions.

As used in this chapter:

...

(9)(a) "Public body" means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

(i) any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

(A) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

(B) consists of two or more persons;

(C) expends, disburses, or is supported in whole or in part by tax revenue; and

(D) is vested with the authority to make decisions regarding the public's business; or

(ii) any administrative, advisory, executive, or policymaking body of an association, as defined in Section 53A-1-1601, that:

(A) consists of two or more persons;

(B) expends, disburses, or is supported in whole or in part by dues paid by a public school or whose employees participate in a benefit or program described in Title 49, Utah State Retirement and Insurance Benefit Act; and

(C) is vested with authority to make decisions regarding the participation of a public school or student in an interscholastic activity as defined in Section 53A-1-1601.

(b) "Public body" includes:

(i) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking; [~~and~~]

(ii) as defined in Section 11-13a-102, a governmental nonprofit corporation[.]; and

(iii) the Utah Independent Redistricting Commission.

(c) "Public body" does not include:

(i) a political party, a political group, or a political caucus;

(ii) a conference committee, a rules committee, or a sifting committee of the Legislature;

(iii) a school community council or charter trust land council as defined in Section 53A-1a-108.1; or

(iv) the Economic Development Legislative Liaison Committee created in Section 36-30-201.

FISCAL IMPACT ESTIMATE

The Governor's Office of Management and Budget estimates that the law proposed by this initiative would result in a total fiscal expense of approximately $1 million.

In addition, the cost of posting information regarding the initiative in Utah's statewide newspapers and for printing the additional pages in the voter information packet is estimated at $30,000 in one-time funds.