

**MINUTES OF THE  
UTAH CONSTITUTIONAL REVISION COMMISSION**  
Thursday, October 11, 2007 – 1:00 p.m. – Room W125 House Building

**Members Present:**

Mr. Kevin J. Worthen, Chair  
Sen. Peter Knudson  
Rep. Sheryl L. Allen  
Rep. Ronda Rudd Menlove  
Mr. Byron L. Harward  
Mr. Michael Peterson  
Mr. Roger Tew

**Members Absent:**

Judge Jon M. Memmott, Vice-Chair  
Sen. Mike Dmitrich  
President John L. Valentine  
Rep. Ralph Becker  
Mr. Robin L. Riggs  
Ms. Kristine Strachan

**Staff Present:**

Mr. Jerry D. Howe, Policy Analyst  
Mr. Robert H. Rees, Associate General Counsel  
Ms. Amanda Majers, Legislative Secretary

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair Worthen called the meeting to order at 1:17 p.m.

**MOTION:** Rep. Allen moved to approve the minutes of the September 27, 2007 meeting. The motion passed unanimously.

**2. Selection Methods State School Board**

Mr. Rees distributed and discussed "State School Board Election History - Statutes," "State School Board Election History," and "Summary of State School Board Election History." Mr. Rees explained that these documents summarize the history of changes to Article X, Section 3 of the Utah constitution and statutory changes relating to the election of state school board members.

Rep. Allen requested a history of changes to the nominating committee, which chooses candidates for election to the state school board. She also requested information concerning the consequences that resulted from the nominating committee's failure to meet in about 2004.

**3. Redistricting Timeline**

Mr. Harward requested that the cases mentioned in "Effective Death Penalty and Post Conviction Reform Amendments (9/19/07 Draft)" be sent to the commission members for further study.

Chair Worthen suggested that the Commission consider the post conviction issues later in the meeting, and then introduced the redistricting issue by stating that the state constitution, at a minimum, requires a redistricting after the census, but it is silent as to whether mid-cycle redistricting is permitted or prohibited.

Mr. Howe explained the census process, and that redistricting is typically concluded in a special session in the late fall of the same year the census data is published. He explained that the question before the Commission is whether the language of Article IX, Section 1 prohibits the Legislature from conducting mid-cycle redistricting.

Mr. Harward asked what the Legislature considers an enumeration because the results of the census are currently published only once in a redistricting cycle.

Mr. Howe responded that the language clearly requires one redistricting after the census "at the session next," which raises an interesting problem. The Legislature has learned that redistricting is such a difficult process that if it were conducted in a general session it would eclipse virtually all other issues. As a consequence, the Legislature wisely conducts its redistricting in a special session at a time prior to the next general session. This seems permissible because the constitution does not specify general session or special session, just next session. Consider this question, he asked: can the governor, therefore, call a special session after the enumeration, but before redistricting has been done, at which redistricting is not considered?

Mr. Rees observed that the Legislature currently appears to be interpreting the wording to allow mid-cycle redistricting.

Mr. Howe distributed and discussed 2006 Fifth Special Session S.B. 5001, "Congressional Four Member Redistricting Plan," and 2006 General Session H.B. 436, "Legislative District Changes to Accommodate County Boundary Change," which illustrate the Legislature's authorization of mid-cycle redistricting. Both of these bills, he said, represent changes in the redistricting that was passed after the 2000 census.

Mr. Peterson expressed concern that redistricting might be done under this provision to change the balance of power between Republicans and Democrats in legislative or congressional districts. Mr. Harward agreed, and encouraged the chair to place this issue on a future agenda for further study.

#### **4. Death Penalty and Post Conviction Amendments**

Mr. Kirk Torgensen, Chief Deputy, Attorney General's Office, presented "Unreasonable Searches Forbidden - Issuance of Warrant." Mr. Torgensen proposed that the language of the Fourth Amendment to the United States Constitution and the language of Article I, Section 14 of the Utah constitution concerning search and seizure are substantively identical, except for an "and" and some punctuation differences. He argued that the framers of the state constitution clearly intended the language be the same as the federal language.

Mr. Torgensen discussed *Brigham City v. Stuart*, a case where the Utah Supreme Court, relying on the language of the Fourth Amendment, held that a Brigham City officer was not justified in entering a home without a warrant to stop a fight in progress. Mr. Torgensen expressed concern that a different search and seizure jurisprudence would develop under Article I, Section 14 than exists under the Fourth Amendment, unless Article I, Section 14 is amended to indicate that it should be applied the same as the Fourth Amendment.

Rep. Allen asked for clarification on the Utah Supreme Court's ruling on *Brigham City v. Stuart*.

Mr. Fred Voros, Attorney General's Office, responded that the Utah Supreme Court gave the Fourth Amendment an expansive interpretation in opposition to the narrower interpretation of the United States Supreme Court. Mr. Voros argued that the same result that occurred in *Brigham City v. Stuart* will occur under Article I, Section 14 if the Legislature does not change the language in Utah's search and seizure amendment.

Mr. Tew reasoned that since *Brigham City v. Stuart* was overturned by the United States Supreme Court the Utah Supreme Court would adopt a narrower view of the search and seizure amendment.

Mr. Voros countered that the Utah Supreme Court has consistently stated that Utah's equal protection provision provides greater protection than the comparable federal provision. He further argued that the Utah Supreme Court believes that they are free to interpret the state constitution as they understand it.

Mr. Torgensen contended that if the framers intended Article I, Section 14 to be interpreted the same as the Fourth Amendment then the Utah Supreme Court's statement that they have more latitude under the state constitution is flawed.

Mr. Tew posed the counter argument that some who compare the language of the Fourth Amendment and Article I, Section 14 do not see the two amendments as identical.

Mr. Torgensen stated that the framers intended the interpretation of Article I, Section 14 and the Fourth Amendment to be identical. He proposed that the Legislature ought to clarify the language to highlight the framers' intention, so that constitutionally the Utah Supreme Court would not have the authority to claim that the state constitution provides more protection than the Fourth Amendment.

Chair Worthen asserted that the same result would occur if the Legislature repealed Article I, Section 14, because according to Mr. Torgensen's argument the state search and seizure article has no meaning since the Fourth Amendment already provides the necessary protections against unwarranted search and seizure.

The Commission discussed whether the founders intended there to be substantial differences between Article I, Section 14 and the Fourth Amendment, whether those perceived differences impede law enforcement while extending greater protection to the people of Utah, and whether the Legislature should take any action to clarify the language in the state constitution.

Mr. Howe distributed and discussed 1994 General Session S.J.R.1, "Resolution Amending Search and Seizure," and "Minutes of the Utah Constitutional Revision Commission: August 12, 1994; September 9, 1994; and October 14, 1994."

Mr. Thomas Bruner, Assistant Attorney General, and Mr. Torgensen presented "Post-Conviction Reform Amendment." Mr. Bruner advocated to restore the Post-Conviction Remedies Act which would provide a balance between insuring that convicted persons receive the right to petition for relief for

serious constitutional errors in their convictions or sentences and providing the State and crime victims with the closure to which they are entitled.

Chair Worthen inquired if the proposed amendment would apply to all post conviction relief, and if there is a reason to differentiate between death penalty cases and non-death penalty cases.

Mr. Bruner responded that the amendment would not differentiate as a function of equal treatment. He indicated that the incentive to delay in death penalty cases and the incentive to move along the appeal process in non-death penalty cases is similar, in that, the convicted person would receive more review than is justified.

Rep. Allen recommended that Mr. Bruner and Mr. Torgensen research how other states have dealt with this issue before they present their bill to the Legislature.

Mr. Tew questioned whether a constitutional amendment is necessary considering the existence of the judicial article.

Mr. Bruner contended that the Utah Supreme Court has shown its opposition to the legislative directive in *Gardner v. Galetka* when the Supreme Court maintained independent constitutional authority over the statutory procedural rules.

The Commission continued to question Mr. Bruner and Mr. Torgensen as to how the amendment would effect the current post-conviction review process, and proceeded to discuss whether this issue should be solved through an amendment or through statutory changes.

Mr. Peterson asked Mr. Bruner and Mr. Torgensen to provide copies of their presentation to the Commission.

Mr. Harward asked to hear more about the unintended consequences of the amendment, and recommended seeking the advice of a representative of the Utah Supreme Court.

## **5. Other Business / Adjourn**

**MOTION:** Mr. Harward moved to accept the recommendation to appoint Mr. Kirk Jowers as a member of the Commission. The motion passed unanimously.

Chair Worthen adjourned the meeting at 3:33 p.m.