

**MINUTES OF THE  
UTAH CONSTITUTIONAL REVISION COMMISSION**  
Thursday, May 8, 2008 – 1:00 p.m. – Room C450 State Capitol

**Members Present:**

Mr. Kevin J. Worthen, Chair  
Judge Jon M. Memmott, Vice-Chair  
President John L. Valentine  
Rep. Sheryl L. Allen  
Ms. Lisa Watts Baskin  
Mr. Byron L. Harward  
Mr. Kirk Jowers  
Ms. Kristine Strachan

**Members Absent:**

Sen. Mike Dmitrich  
Sen. Peter Knudson  
Rep. Ronda Rudd Menlove  
Dr. Michael Petersen  
Mr. Robin L. Riggs  
Mr. Roger Tew

**Staff Present:**

Mr. Jerry D. Howe, Policy Analyst  
Mr. Robert H. Rees, Associate General Counsel  
Ms. Amanda K. 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 1:10 p.m.

**2. Death Penalty and Post-conviction Amendments**

Mr. Fred Voros, Chief of the Criminal Appeals Division, Utah Attorney General's Office, gave a brief history of the Attorney General's Office's campaign to reform the post-conviction process in Utah.

Mr. Thomas Brunner, Assistant Attorney General, Utah Office of the Attorney General, discussed "Effective Death Penalty and Post Conviction Reform Constitutional Amendment 5/8/08 CRC Meeting," which was distributed to the Commission prior to the meeting.

Mr. Harward asked whether the proposed language to amend the Utah constitution could be interpreted to allow the Legislature to eliminate post-conviction review by statute.

Mr. Voros stated that the proposed constitutional language presupposes the Utah Supreme Court's jurisdiction to review criminal convictions and sentences, and reasoned that, if the proposed language were to ever be interpreted by the Utah Supreme Court, it would not act to eliminate its jurisdiction but would read the language as only allowing the Legislature to limit, but not eliminate, the Court's jurisdiction over post-conviction review.

Mr. Alan Sullivan, Snell and Wilmer, spoke against the proposed amendment by affirming the importance of the habeas corpus right and the importance of the courts to have the power to enforce that right. He further contended that the language in the proposed amendment would not adequately prevent the Legislature from reducing or eliminating post-conviction relief. Mr. Sullivan stated that, to his knowledge, no other state has a provision in its constitution that places the power to eliminate post-conviction habeas corpus into the hands of the Legislature.

Mr. Voros and Mr. Brunner continued to present their arguments in favor of the proposed post-conviction reform constitutional amendment and answered questions from the Commission.

Mr. Michael Zimmerman, Snell and Wilmer, spoke in opposition to the proposed post-conviction amendment. He advocated providing adequate funding for competent post-conviction counsel and creating a separate office to provide defense for death penalty cases with state money. He also pointed out that the proposed amendment is not limited to death penalty cases but applies to all post-conviction cases. Mr. Zimmerman argued that the proposed amendment is an erosion of the separation of powers because it does not have a limit as to what the Legislature can do in the area of sentencing and conviction.

Mr. Zimmerman answered questions from the Commission.

Mr. Troy Booher, Snell and Wilmer, distributed and discussed "Utah Attorney General's Proposed Amendments to Article VIII, Sections 3 and 5 - Utah Constitutional Revision Commission (May 8, 2008)," and spoke in opposition to the post-conviction reform amendment.

Ms. Strachan suggested changes to the language of the proposed amendment.

Rep. Allen asked for more direct language to focus on only affecting death penalty post-conviction review, and inquired whether other states have enacted an amendment to reform post-conviction review.

Professor Daniel Medwed, Associate Professor of Law, University of Utah, spoke in opposition to the proposed amendment. He stated that in his opinion it would be a mistake to amend the constitution to impede the ability of the judiciary to correct its own mistakes. He also stated that he is not aware of any other state that has considered amending its constitution to restrict post-conviction review.

Professor Medwed answered questions from the Commission.

Mr. Richard Mauro, Salt Lake attorney, spoke in opposition to the proposed amendment. He stated that Utah is not the only state to suffer the drawn out nature of death penalty cases. Mr. Mauro argued that the delays in these cases have been caused by the lack of funding and resources available to defend death penalty cases.

Mr. Mauro answered questions from the Commission.

Mr. Voros stated that the Utah Office of the Attorney General is willing to reach a compromise by rewriting the language to the proposed post-conviction relief amendment to include many of the suggestions raised during the meeting.

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**3. Other Business / Adjourn**

Chair Worthen scheduled the next meeting of the Commission for Thursday, July 10, 2008 and adjourned the meeting at 3:56 p.m.