

**MINUTES OF THE  
UTAH CONSTITUTIONAL REVISION COMMISSION**  
Friday, February 12, 2010 – 12:00 p.m. – Room 450 State Capitol

**Members Present:**

Judge Jon M. Memmott, Chair  
Mr. Roger Tew, Vice Chair  
Sen. Peter C. Knudson  
Sen. Benjamin M. McAdams  
Sen. John L. Valentine  
Rep. Sheryl L. Allen  
Rep. Brian S. King  
Rep. Ronda Rudd Menlove  
Mr. John T. Nielsen  
Mr. Robin L. Riggs

**Members Absent:**

Ms. Lisa Watts Baskin  
Mr. Byron L. Harward  
Mr. Kirk Jowers  
Ms. Sheila McCleve  
Dr. Michael Petersen

**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 Memmott called the meeting to order at 12:18 p.m. Mr. Jowers and Dr. Petersen were excused from the meeting.

**2. Review of Constitutional Amendments Proposed for Consideration During the 2010 General Session of the Utah Legislature**

Rep. Curtis Oda distributed and discussed H.J.R. 24, "Joint Resolution on Equal Treatment by Government." He stated that the proposed amendment is intended to prohibit discrimination and preferential treatment by government entities.

Dr. Ward Connerly spoke in favor of the proposed amendment and asserted that citizens should have the expectation of equal treatment by government. He maintained the proposed amendment would reinforce that principle.

Ms. Jennifer Gratz stated that government should not engineer diversity and spoke in favor of the proposed amendment. She noted that other states have enacted similar constitutional amendments and discussed the effects those amendments have had on citizens' access to government entities, institutions, and programs.

Mr. Nielsen mentioned that the Commission takes amending the Utah Constitution seriously and inquired whether the objective of the proposed amendment could be achieved through a statutory prohibition, since the provision affects government entities that are typically controlled by statute. Rep. Oda stated that the constitution is the bible of society, and justice is supposed to be blind. He remarked that, without a constitutional provision, a fragmentation of law could occur. Dr. Connerly stated that preferences concerning gender or ethnicity will change over time, and one's relationship to government should not be at the will of the group in power.

Mr. Nielsen inquired whether substantial changes in employment or other areas of society have occurred in the states where similar constitutional amendments have passed. Dr. Connerly stated that there has been a decrease in the enrollment of underrepresented minorities in universities where preferences were

being used, but he maintained that when artificial preferences are removed and outreach programs are initiated it gives minorities the tools to compete based on merit.

Rep. King inquired if Rep. Oda had spoken to civil rights groups or business or education communities about how the legislation would affect those entities. Rep. Oda stated that he has spoken to business owners but has not spoken to specific minority groups, but he has spoken to friends that are minorities and they expressed their support. Rep. King asked if there are specific cases of discrimination under current law that necessitates the proposed amendment. Rep. Oda stated that he cannot give specific names of cases, but he does know of instances of discrimination.

Sen. Valentine inquired about court actions in states that have passed similar constitutional amendments. Ms. Gratz stated that lawsuits were immediately brought in California and Michigan to delay implementation and to deviate from the policy and those lawsuits were unsuccessful. Sen. Valentine asked if there has been litigation concerning implementation of the constitutional amendments. Dr. Connerly stated that certain municipalities tried to circumvent the policy in contracting and the courts ruled against those municipalities.

Rep. Menlove inquired if there are already protections for discrimination in statute and in the constitution. Ms. Gratz stated that those protections do not extend to everyone based on United States Supreme Court rulings, and she stated that race preferences have been allowed in college admissions and public contracting and employment. Dr. Connerly stated that the United States Supreme Court ruled it was not unconstitutional to use preferences for the purpose of achieving diversity. Rep. Menlove stated concern with the narrow language of the proposed constitutional amendment, and she suggested the policy would be more appropriately placed in statute rather than the Utah Constitution.

Rep. Allen asked about how the proposed amendment would affect programs that encourage young women to go into math and science based professions, and she also inquired how it would affect state programs that help minority owned small businesses apply for federal grants. Ms. Gratz stated that those programs have not been discontinued due to the implementation of similar constitutional amendments in other states. Dr. Connerly explained that economic development programs would not be prohibited from helping small businesses, but the programs could not limit their serves to minorities only.

Judge Memmott recognized Sen. McAdams as a new member of the Commission. Sen. McAdams inquired if there are current statutory provisions that allow preferential treatment, and he asked if those provisions could be amended to prohibit preferential treatment rather than adopting a constitutional amendment. Dr. Connerly stated that there are current statutory provisions that could be changed to align with the principles of the proposed amendment but those statutory changes would be easier to change in the future than if they were enacted through a constitutional amendment. Sen. McAdams pointed out differences between Utah and other states' constitutional amendment processes and the application of law, and noted the different methods needed to implement change to preferential treatment law in those states compared to Utah.

Mr. Tew stated that similar constitutional amendments in other states were enacted by the initiative process and therefore went through a public debate process before being voted on. He expressed concern that the proposed amendment has not gone through extensive study and review before being brought to

the Legislature. Rep. Oda stated that the intent is to initiate dialogue on the issue for voters to then decide how to vote when the issue is placed on the ballot at the November election.

Mr. Riggs stated that constitutional provisions should be concise, and said that he does not have a fundamental problem with the concept of the proposed amendment being in a constitution.

Judge Memmott discussed his interpretation of the language of the proposed amendment and the consequences that would arise from its implementation.

Commission discussion followed and Dr. Connerly and Ms. Gratz answered questions from the Commission.

Ms. Carol Lear, attorney, State Board of Education, spoke concerning educational programs that the proposed amendment could affect.

Mr. John Florez spoke in opposition to the proposed amendment.

Mr. Dave Buhler, Associate Commissioner, Utah System of Higher Education, spoke concerning the proposed amendment and expressed a desire to study the issue further.

Rep. King recommended further study of the issue.

Sen. McAdams stated opposition to enacting provisions in the constitution that can be accomplished through statutory changes.

Judge Memmott offered to meet with Rep. Oda to discuss certain drafting issues. No Commission action was taken on H.J.R. 24.

Rep. Kraig Powell distributed and discussed H.J.R. 25, "Joint Resolution Regarding School Fees and Supplies" and distributed and discussed Amendment 1, dated February 12, 2010. He stated the purpose of H.J.R. 25 is to align Utah with other states and their requirements to provide, or pay a fee for, school supplies.

Sen. Valentine questioned the appropriateness of addressing this issue through a constitutional amendment rather than through a change in statute.

Mr. Rees stated that there is a possible limitation to achieving the purpose of the proposed amendment through a statutory change because of the constitutional provision that elementary and secondary schools be free.

**MOTION:** Rep. Allen moved to continue to study H.J.R. 25, "Joint Resolution Regarding School Fees and Supplies." The motion passed unanimously, with Sen. Knudson and Mr. Nielsen absent for the vote.

### **3. Other Business / Adjourn**

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Chair Memmott adjourned the meeting at 1:54 p.m.