

(Draft - Awaiting Formal Approval)

**MINUTES OF THE
UTAH CONSTITUTIONAL REVISION COMMISSION**

Thursday, December 2, 2010 – 1:00 p.m. – Room 450 State Capitol

Members Present:

Judge Jon M. Memmott, Chair
Mr. Roger Tew, Vice Chair
Sen. Benjamin M. McAdams
Sen. John L. Valentine
Rep. Sheryl L. Allen
Rep. Brian S. King
Ms. Lisa Watts Baskin
Mr. Byron L. Harward
Mr. Kirk Jowers
Judge Sheila McCleve
Mr. John T. Nielsen

Members Absent:

Sen. Peter C. Knudson
Rep. Ronda Rudd Menlove
Dr. Michael Petersen
Mr. Robin L. Riggs

Staff Present:

Mr. Jerry D. Howe, Policy Analyst
Mr. Robert H. Rees, Associate General Counsel
Ms. Kimberly A. Heiner, 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.

1. Commission Business

Chair Memmott called the meeting to order at 1:05 p.m. Sen. Knudson and Dr. Petersen were excused.

MOTION: Mr. Jowers moved to approve the minutes of the September 16, 2010 meeting. The motion passed unanimously.

2. Article VIII, Section 9, Judicial Retention Elections

Sen. Hillyard discussed 2011 General Session draft legislation, "Joint Resolution on Judicial Retention Elections" (2011FL-0177/002), which was distributed to the Commission prior to the meeting. He explained the legislation would limit the number of Utah Supreme Court justices and Court of Appeals judges that may appear on the ballot at the same retention election.

3. Article VIII, Section 7, Qualification of Justices and Judges

Sen. Hillyard discussed 2011 General Session draft legislation, "Joint Resolution Modifying Supreme Court Justices Qualifications" (2011FL-0176/002), which was distributed to the Commission prior to the meeting. He explained the legislation would require a certain number of Utah Supreme Court justices to have practiced law outside Salt Lake County to provide greater representation on rural and urban issues. Sen. Hillyard cited examples of Utah case law where the justices may not have considered certain ramifications of their decisions in rural areas. He asked the Commission to study this proposal but stated he is not presenting it during the 2011 General Session. Sen. Hillyard responded to questions from the Commission.

4. Review of Affirmative Action Issues

Rep. Litvack discussed 2010 General Session H.J.R. 24, "Joint Resolution on Equal Treatment by Government," which was distributed to the Commission, and requested the Commission to provide guidance to the Legislature on the impact of its implementation.

Chair Memmott stated that he sent written invitations to several groups inviting responses to this proposed amendment, in accordance with the Commission's suggestions at its last meeting. He informed the Commission that he received some responses to the request, but he is not aware of any proponents present to address the issue.

Mr. Troy Booher, citizen, recommended the Commission study whether H.J.R. 24 will alter existing obligations of the entities it will affect. He also distributed and discussed a memorandum outlining five issues regarding H.J.R. 24. He stated that a statutory provision would accomplish the same goal and would allow the Legislature to make changes, but a constitutional provision reduces that flexibility. Mr. Booher responded to questions from the Commission.

Mr. Howe distributed and discussed the handout, "Joint Resolution on Equal Treatment by Government Section by Section Comparison With Other State Laws," which compared certain states' equal treatment by government provisions.

Mr. Rees distributed and discussed the handout, "Comparison between Enacting a Measure into Law by Statute and Enacting a Measure into Law by Constitutional Amendment."

Ms. Marina Lowe, American Civil Liberties Union of Utah, cited a similar California proposition as an example for the Commission to study to see which programs were eliminated or amended as a result of its passage. She stated there will be substantial legislative work that will follow if a similar amendment is enacted in Utah. Ms. Lowe also remarked that there is no evidence that shows affirmative action is a problem in Utah, but implementing H.J.R. 24 in the Utah Constitution or in statute would likely cause problems.

Mr. Octavio Villalpando, citizen, spoke concerning the impact of diversity in higher education and the consequences of affirmative action. He encouraged the Commission to look closely at the implications to higher education of passing a law similar to H.J.R. 24.

Mr. Robert Archuleta, President of Utah Coalition of La Raza, distributed and discussed a letter concerning affirmative action. He stated that there is no hurry on this issue, because there is no evidence showing this to be a problem.

Mr. Ernie Gamonal, Utah State Hispanic Democratic Caucus, distributed and discussed a letter discussing equal opportunity. He stated that the high school graduation rate of Latinos is 78 percent, compared to the general population at 88 percent. He expressed a desire for the Legislature to be able to remedy this situation if they choose, but if this constitutional amendment passes, the hands of the Legislature would be tied.

Dr. Forrest Crawford, Wasatch Front Citizens Coalition, stated he has worked for higher education for 33 years, and is not aware of any case where individuals have been specifically discriminated against as a result of any program. He expressed concern that the type of programs that would be targeted in a constitutional amendment are the types of programs that break down barriers. Dr. Crawford responded to questions from the Commission.

Chair Memmott stated that the Utah Constitution is a document of the people and that the Commission was established to garner input on constitutional amendments from a broad perspective. Commission discussion followed.

MOTION: Ms. Watts Baskins moved that equal treatment by government be studied further. Commission discussion followed.

Mr. Rees reminded the Commission about their statutory duties and referred to Section 631-3-203.

SUBSTITUTE MOTION: Sen. Valentine moved that the Commission study equal treatment by government only after a proposal by the proponents is brought forward. The motion passed, with Rep. Allen, Rep. King, and Ms. Watts Baskins voting in opposition. Mr. Harward was absent for the vote.

5. Other Business / Adjourn

Chair Memmott discussed that the next meeting would be scheduled once the Commission receives a request to review further constitutional amendments.

MOTION: Mr. Harward moved to adjourn the meeting. The motion passed unanimously.

Chair Memmott adjourned the meeting at 3:52 p.m.