

**MINUTES OF THE  
LEGISLATIVE MANAGEMENT COMMITTEE**

August 5, 2002 – 2:30 p.m. – Room 303 State Capitol

**Members Present:**

Speaker Martin R. Stephens, Chair  
President Al Mansell, Vice-Chair  
Sen. Ron Allen  
Sen. Gene Davis  
Sen. Karen Hale  
Sen. Mike Dmitrich  
Rep. Greg J. Curtis  
Rep. Brad King  
Rep. David Ure

**Members Absent:**

Sen. Peter C. Knudson  
Sen. L. Steven Poulton  
Sen. John L. Valentine  
Rep. Patrice M. Arent  
Rep. Ralph Becker  
Rep. Jackie Biskupski

**Staff Present:**

Mr. Michael E. Christensen, Director  
Ms. M. Gay Taylor, General Counsel  
Ms. Beverlee LeCheminant, Secretary

**Note:** A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or by contacting the Office of Legislative Research and General Counsel.

**1. Call to Order**

Chair Stephens called the meeting to order at 2:45 p.m.

**2. Consideration of Amicus Brief in *Gallivan v. Walker Case***

Ms. M. Gay Taylor, General Counsel, explained that the *Gallivan v. Walker* case deals with the initiative petition on radioactive waste which has not yet qualified for the November voting ballot. The initiative petition was sent to the Lieutenant Governor to be certified on July 6. But opponents of the initiative had raised sufficient concerns that many voters removed their names off the signature sheets. The result was that there were a little over 95,000 names on the petition. Though this was enough to meet the statewide 10 percent requirement, it was not enough to meet the 10 percent requirement in 20 of the state's 29 counties. The Lieutenant Governor declared that the initiative failed to qualify for the ballot. There is an opportunity under the statute for the petitioners to challenge that failure of the Lieutenant Governor to certify their initiative petition with the Utah Supreme Court, which they did, and the Supreme Court was required by July 30 to make a decision about whether the Lieutenant Governor properly did her job. The petitioners also challenged the constitutionality of the statute by saying that by combining the ten percent vote requirements with 20 of 29 counties violates the Constitution under the First Amendment and the Equal Protection Clause of the United States Constitution.

Ms. Taylor indicated that on July 30, the Supreme Court entered an order declining to deal with the statutory appeal of whether the Lieutenant Governor properly failed to certify the petition. The Supreme Court said that under the statute they didn't think they could consider the constitutional claims, but nevertheless under their general power to issue extraordinary writs, they would consider the petitioners' constitutional claims. The Supreme Court did decide that they were going to hold in abeyance their final decision on the matter until August 30. There was also some discussion in arguments made to the Supreme Court about severing the provision that allowed the voters to actually remove their names once

they had signed it. There was no stated premise as to why that provision was unconstitutional other than voters should be informed when they vote on the issue originally. The decision that was reached on July 30 required the parties to this case to file additional briefs on what should be the standard for determining freedom of expression and equal protection under the Utah Constitution. As their briefs were originally filed, the parties addressed federal constitutional principles. The second issue that parties were required to brief is what considerations affect the severability question regarding all portions of the initiative statute, the geographic distribution, percentage requirements, and the signature recision provisions about whether they must be considered as a whole or severed one from another.

Ms. Taylor stated that if the Office of Legislative Research and General Counsel is to file an amicus on behalf of the Legislature, it must be authorized by this committee. She said that if the Legislature were to file an amicus, it would probably take the stand affirming the Legislature's view of the constitutionality of its basic underlying statute and that the provisions are not severable. She noted that research shows that the geographic distribution and the ten percent requirement date back to 1917, so its clear that they have a long history in Utah's law as being joined together.

**MOTION:** Sen. Dmitrich moved that the Legislative Management Committee authorize staff to file an amicus brief in this case. He stated that under the Equal Protection Act, he feels that applies to every county, not just the most populous, and there are plenty of arguments to file the amicus brief.

Sen. Allen said that although he is a believer in initiatives in general as they protect the public from an unfair Legislature, initiatives have become a business and they have become a playing ground of the new political elite. He feels they need to assert themselves as the Legislature, in this case, and file this brief.

Rep. Curtis asked if the brief would be limited to the severability issue or would be addressing the equal protection issue also. Ms. Taylor said that the severability issue and the constitutional principle would be addressed, but there was not adequate time to research and comment on equal protection.

President Mansell said that if the ruling comes on August 30, haven't the initiative time frames that are in the law already violated.

Ms. Taylor said there are time frames in terms of the pro and con arguments that are due in terms of the ballot title, the impartial analysis, and the rebuttals, and all of those time frames will have expired by the time the court acts on August 30. That those time frames are passing will also be noted in the brief.

President Mansell said that this could be one of the arguments that if they are going to rule against the current statute, then they are throwing out all of the dates to make it possible and if they change the dates, they are making the law rather than interpreting it.

Rep. Ure asked if the Legislature is not only defending its actions in the past years, but if the Supreme Court does make a decision, are they being asked to bring it back to the Legislature to resolve the problem.

Ms. Taylor said she feels that would be an appropriate remedy and one that the office will suggest.

Legislative Management Committee  
August 5, 2002  
Page 2

Another remedy could be that the parties could ask the Legislature to consider the initiative in January, and that petitioners have until 2004 to qualify for the ballot with the present initiative. So they could go out and get additional signatures and still qualify this initiative petition.

The motion passed unanimously.

### **3. Adjournment**

**MOTION:** President Mansell moved to adjourn the meeting at 3:00 p.m. The motion passed unanimously.