

Joseph E. Hatch, Attorney at Law
5295 So. Commerce Drive, Suite 200
Murray, Utah 84107

June 13, 2012

DECISION ON APPEAL

This Decision on Appeal relates to the appeal filed by Joseph E. Hatch on June 6, 2012, on behalf of the Utah Democratic Party.

COURSE OF PROCEEDINGS

1. On October 12, 2011, Matt Lyon and Todd Taylor, on behalf of the Utah Democratic Party, filed a public records request under the Government Records Access and Management Act (GRAMA) with the Office of Legislative Research and General Counsel (OLRGC), requesting the following:

"All communications in the past 30 days, whether paper or electronic, between members of the Utah State Legislature, their staff, and/or outside organizations, individuals, or entities that:

- 1) Contain or reference block assignment files;
- 2) Reflect, regard or reference the purported grounds or criteria discussed, referenced, considered -- officially or unofficially -- regarding proposed or adopted congressional, Utah House, or Utah Senate maps;
- 3) Consist of, regard or reference redistricting and members of the Utah State Legislature, Utah's Congressional Delegation, Utah Governor or Utah State Republican Party, including current, past, potential, and future candidates and elected officials;
- 4) Reflect, consist of, regard or reference any email sent to or from the Utah or National Republican Party, including its staff, advisors, and executive committee regarding redistricting; and/or,
- 5) Reference or include partisan data and the redistricting process."

(See the Exhibit "A.")

The Utah Democratic Party also requested a waiver of fees.

2. On October 14, 2011, the OLRGC sent a letter to Matt Lyon and Todd Taylor, indicating that additional time was needed to respond to their request and denying their request for a waiver of fees. (See Exhibit "B" (The attachments to Exhibit "B" are omitted.))

3. On October 19, 2011, John Fellows, General Counsel to the Legislature, called and left a message at the Utah Democratic Party, asking to discuss charges for the records request. A return call was not received.
4. On October 24, 2011, John Fellows, General Counsel to the Legislature, and Thomas Vaughn, Associate General Counsel to the Legislature, called Todd Taylor and explained that the fee for responding to the request would be significantly higher than \$100. Mr. Taylor informed Mr. Vaughn that he would get back to Mr. Vaughn within one and one-half hours. Mr. Taylor failed to contact Mr. Vaughn.
5. On October 25, 2011, Mr. Vaughn again called Mr. Taylor. During that telephone conversation, Mr. Taylor indicated that he had not called because he was still waiting for a decision to be made by someone within the Utah Democratic Party. Mr. Taylor also stated that it was likely that the Utah Democratic Party would be withdrawing its request and filing a very similar one. Mr. Vaughn informed him that the Legislature had already incurred expenditures in excess of \$100 and that the Legislature needed to know how to proceed. Mr. Taylor advised Mr. Vaughn to stop work on the response for a "couple of days" until the Utah Democratic Party decided what to do.
6. On October 26, 2011, Mr. Vaughn sent a letter to Mr. Taylor memorializing the events described in the preceding paragraph and informing Mr. Taylor that, based on his conversation with Mr. Taylor on October 25, 2011, Mr. Vaughn would be instructing the records officers in all legislative staff offices to cease work on the records request from the Utah Democratic Party until further notice.¹ (See Exhibit "C.")
7. On November 9, 2011, Matt Lyon and Todd Taylor, on behalf of the Utah Democratic Party, sent an amended GRAMA request to the OLRGC. This request was broader, in both the time period it covered and the scope of the records requested, than the initial request that was filed on October 14, 2011. The request sought the following records:

"All communications inclusive of the period from September 12, 2011 through October 21, 2011, whether paper or electronic, between members of the Utah State Legislature, their staff, and/or outside organizations, individuals, or entities that:

- 1) Contain or reference block assignment files;
- 2) Reflect, regard or reference the purported grounds or criteria discussed, referenced, considered -- officially or unofficially -- regarding proposed or adopted congressional, Utah House, or Utah Senate maps;

¹ After the Utah Democratic Party filed its initial records request, the Utah Republican Party filed its own request for certain redistricting-related records. The Utah Republican Party's request was significantly narrower in that it was limited to four legislators and did not include legislative staff. The Utah Republican Party agreed to pay, and did pay, the \$2,537.65 fee for responding to its request.

- 3) Consist of, regard or reference redistricting and members of the Utah State Legislature, Utah's Congressional Delegation, Utah Governor, or Utah State Republican Party, including current, past, potential, and future candidates (including but not limited to Rob Bishop, Jim Matheson, Jason Chaffetz, Carl Wimmer, Dave Clark, Mia Love, David Kirkham, Cherilyn Eager, Morgan Philpot, Ken Sumsion, Chris Herrod, Dan Liljenquist, Chuck Williams, Jason Buck, Chris Stewart, Howard Wallack, John Willoughby, Rebecca Lockhart, Michael Waddoups, Jake Shannon, Casey Anderson, Craig Frank, Bill Skokos, John Valentine) and elected officials;
- 4) Reflect, consist of, regard or reference any e-mail sent to or from the Utah or National Republican Party, including its staff advisors, and executive committee regarding redistricting; and/or,
- 5) Reference or include partisan or voter participation data and the redistricting process."

(See the Exhibit "D.")

8. On November 16, 2011, Bryant Howe, Records Officer for the OLRGC, sent a letter to Matt Lyon and Todd Taylor, informing them that it would likely take at least 60 days to respond to the Utah Democratic Party's request and denying its renewed request for a waiver of fees. (See Exhibit "E" (The attachments to Exhibit "E" are omitted.)) In his letter, Mr. Howe stated that:

"The Office of Legislative Research and General Counsel alone has already spent 54.5 hours working on your initial request. At a rate of \$25 per hour, fees are already at \$1,362.50. We estimate that the charges for responding to your request (for the Senate, the House, and all legislative offices combined) will be approximately \$5,000."
9. On December 16, 2011, Joseph Hatch hand delivered a letter to OLRGC, appealing, on behalf of the Utah Democratic Party, the denial of the request for a waiver of fees and the determination that it will likely take at least 60 days to respond to their request. (See Exhibit "F" (The attachments to Exhibit "F" are omitted.))
10. On December 23, 2011, Michael Christensen, Director of the OLRGC, issued a decision upholding Mr. Howe's decision and denying the Utah Democratic Party's Appeal. (See Exhibit "G" (The attachments to Exhibit "G" are omitted.)) At the same time, the OLRGC provided to the Utah Democratic Party a free electronic copy of the documents that were provided to the Utah Republican Party in response to their request relating to redistricting.²
11. On January 23, 2012 (the first day of the 2012 General Session) the Utah Democratic Party paid \$5,000 towards its amended records request. A letter provided with the request stated:

² See footnote 1 on page 2.

"The Democratic Party certainly recognizes that, during the legislative session, time is a [sic] premier. However, by your own admission, 25% of the work has been completed. The Democratic Party will expect a partial release of the documents as they become available."

(See Exhibit "H.")

12. On January 31, 2012, the OLRGC sent a letter to Joseph Hatch, stating:

"We cannot begin the remainder of the work on the request until after the end of the general session. Please understand that the above quote [referring to the statement that 25% of the work was completed] does not mean that 25% of the records are available for disclosure. The percentage refers to the overall work completed in order to respond to your request. We will attempt to find time, during the session, to determine the classification of the documents that have been sorted thus far in order to provide some of the documents to you. But, as previously indicated, we cannot begin the remainder of the work until the general session ends."

(See Exhibit "I.")

13. On February 14, 2012, Jim Dabakis sent an email to Bryant Howe, Records Officer of the OLRGC, referring to Mr. Dabakis' letter of January 23, 2012, requesting an update on the expected time to respond to the records request from the Utah Democratic Party and inquiring as to why they had not received a partial response. (See Exhibit "J.")
14. On February 15, 2012, Bryant Howe responded to Mr. Dabakis' email and provided him a copy of the letter that was sent to Joseph Hatch on January 31, 2012. (See Exhibit "K.")
15. After the end of the 2012 General Session, Mr. Vaughn contacted Mr. Dabakis by phone and informed him that the OLRGC had a box of maps that the Utah Democratic Party could look through to determine whether they wanted copies of any of the maps in connection with their request. Matt Lyon called Mr. Vaughn to discuss this offer. As of the date of this decision, nobody from the Utah Democratic Party has come to view these maps.
16. On or about April 2, 2012, Mr. Vaughn called the Utah Democratic Party and informed them that a box of 5,000 pages of documents responding to their request was ready to pick up.
17. On or about April 17, 2012, Mr. Vaughn left a voicemail message for Matt Lyon reminding him that the box of 5,000 pages was still waiting for him to pick up and informing him that a second box of 5,000 pages was also ready for disclosure.

18. On May 7, 2012, representatives of the Utah Democratic Party arrived and picked up the first box. At that time, Mr. Vaughn informed them that the remainder of the documents would be provided to them upon payment of the additional amount owed.
19. On May 7, 2012, Mr. Howe sent a letter to Mr. Dabakis and Mr. Lyon, responding to the Utah Democratic Party's amended records request. (See Exhibit "L.") In the letter, Mr. Howe indicated that the Legislature had approximately 16,000 pages to release in response to the request and that the total charge for responding to the request would be \$14,250 (leaving \$9,250 due and payable). Mr. Howe further indicated that the remaining 11,000 pages would be provided upon receipt of the amount that the Utah Democratic Party still owed.
20. On June 6, 2012, the OLRGC received a letter (dated June 5, 2012), addressed to Michael Christensen, appealing the additional fees charged for responding to the Utah Democratic Party's amended request and requesting return of the \$5,000 already paid by the Utah Democratic Party. (See Exhibit "M" (The attachments to Exhibit "M" are omitted.))

DISCUSSION

I. The Utah Democratic Party is Not Entitled to a Waiver of Fees for its Records Request.

The Utah Democratic Party cannot challenge the denial of its fee waiver request, because the deadline for challenging the denial has passed. Further, even if the Utah Democratic Party was not barred from challenging the denial of its fee waiver request, its request was properly denied.

A. The Decision on Appeal to Uphold Denial of the Fee Waiver Request is Final Because the Deadline for the Utah Democratic Party to Appeal the Denial Has Passed.

The Utah Democratic Party requested a waiver of fees when it submitted its amended request on November 9, 2011. The request for a waiver of fees was denied on November 16, 2011. The Utah Democratic Party appealed the denial on December 16, 2011. The decision to deny the request for a waiver of fees was upheld on appeal on December 23, 2011. The Utah Democratic Party failed to appeal this decision, and it became final at the end of the day on January 22, 2011.

Because the time for appealing the decision to uphold the denial of a fee waiver has passed, the Utah Democratic Party can no longer challenge this decision on appeal. The only issue relating to fees that the Utah Democratic Party may now appeal is the amount of the fee that exceeds the \$5,000 estimated amount that the party already paid.

In its notice of appeal filed on June 6, 2012, the Utah Democratic Party claims that if it had "known that the OLRGC had so grossly underestimated the time involved to gather the requested documents, the Democratic Party would have utilized its appeal rights." (Exhibit "M" (The attachments to Exhibit "M" are omitted.)) While the assertion that the Utah Democratic Party was surprised by the final amount charged may be the reason it is challenging the total amount

charged, it does not justify the party's failure to timely challenge the ruling that it is not entitled to a waiver of fees.

The amended records request filed by the Utah Democratic Party may well be the largest records request filed with the Utah State Legislature in its entire history. Estimating the amount of time required to respond to such a voluminous request is extremely difficult. It was impossible to know how many records that were responsive to the request existed until a significant amount of the work was completed. In a letter, dated November 16, 2011, Bryant Howe stated that "[w]e estimate that the charges for responding to your request (for the Senate, the House, and all legislative offices combined) will be approximately \$5,000." (Exhibit "E" (The attachments to Exhibit "E" are omitted.)) Because this amount was stated to be only an estimate, the Utah Democratic Party was put on notice that the actual charges could be higher. Moreover, based on the extremely broad nature of its request, the Utah Democratic Party should have known that the amount of time necessary to respond to its request could be much higher than originally anticipated.

There is no provision in the Government Records Access and Management Act, or in the appeals process outlined in Part 3 of the Utah Legislative Policies and Procedures for Handling Records Requests, that allows a party to appeal the denial of a fee waiver request after the deadline when the estimated fee amount is higher than anticipated. Because the Utah Democratic Party did not timely appeal this issue, it is foreclosed from raising it in this appeal. The only issue related to fees that the Utah Democratic Party may appeal at this time is the amount of the fee that exceeds the \$5,000 estimate originally charged.

B. Even if the Utah Democratic Party Was Not Foreclosed From Raising the Fee Waiver Issue on Appeal, the Request for a Waiver of Fees was Properly Denied.

The Utah Democratic Party concedes that Mr. Howe has the discretion on whether or not to grant a fee waiver. (Exhibit "M", p. 2 (The attachments to Exhibit "M" are omitted.)) However, the party asserts that Mr. Howe abused his discretion. A review of the record indicates that this is not the case.

On appeal, the Utah Democratic Party mischaracterizes Mr. Howe's decision as being based on a "finding that 'it is unfair to taxpayers that they should have the burden of paying for the staff time responding to your [request]'" and an alleged assumption that the request "will result in an inappropriate use of taxpayer resources." (Exhibit "M", pp. 2-3 (The attachments to Exhibit "M" are omitted.)) Mr. Howe's statement regarding the burden placed on taxpayers was stated as an additional reason for his exercise of discretion, separate and distinct from the primary reason for denial. Moreover, Mr. Howe never stated an assumption that the request by the Utah Democratic Party would result in an inappropriate use of taxpayer resources. Rather, he simply expressed his opinion that it would be unfair to impose on taxpayers the burden of responding to the Utah Democratic Party's request without requiring reimbursement.

The Utah Democratic Party claims that the denial of its request for a waiver of fees violates Utah Code Section 63G-2-203. The party asserts this claim despite the fact that, in response to its first

appeal, the party was informed that the Legislature is expressly exempt from Utah Code Section 63G-2-203. (Exhibit “G”, p. 5 (The attachments to Exhibit “G” are omitted.)) Utah Code Subsection 63G-2-703(2)(a) states as follows:

“The Legislature and its staff offices are not subject to Section 63G-2-203 or to Part 4, Appeals, 5, State Records Committee, or 6, Collection of Information and Accuracy of Records.”

Utah Code Subsection 63G-2-703(3) provides that:

- “(3) The Legislature, through the Legislative Management Committee:
- (a) shall establish policies to handle requests for classification, designation, fees, access, denials, segregation, appeals, management, retention, and amendment of records; and
 - (b) may establish an appellate board to hear appeals from denials of access.”

The Legislative Management Committee has complied with its statutory duty and adopted the following fee policy:

“Section 2.2. Fees for records requests.

- (1) The Legislature may charge a fee to obtain a record as provided under these Policies and Procedures as attached in Appendix B.
- (2) The Legislature may fulfill a record request without charge if:
 - (a) the release of the record primarily benefits the public rather than the person requesting the record; or
 - (b) the individual requesting the record is the subject of the record or an individual specified in Utah Code Ann. § 63[G]-2-202(1) or (2) (Supp. 2006).”

(Policies of the Legislative Management Committee, Utah State Legislature, June 14, 2011, page 34.)

In denying the Utah Democratic Party’s initial request for a fee waiver, Mr. Howe found that, even if the Utah Democratic Party is correct that release of the records is in the public interest, the *primary* benefit of releasing the records would be to the party. Mr. Howe based this finding on the following:

“You have previously indicated that you may be litigating issues relating to the redistricting process. Some or all of the records you have requested may relate to that potential litigation and to the records described in your letter of October 3, 2011, where you request that we retain records pending potential litigation. Further, in your amended request, you indicate that “[t]he Utah Democratic Party may be a party to litigation on the subject of the information requested.”

(Exhibit “E” (The attachments to Exhibit “E” are omitted.))

The Utah Democratic Party asserts that “just because litigation may be involved, does not mean that the requested information is not primarily in the public interest.” (Exhibit “G” (The attachments to Exhibit “G” are omitted.)) However, it may also be stated that just because the public has an interest in the records that the Utah Democratic Party has requested does not mean that release of the records is not *primarily* in the interest of the Utah Democratic Party. Based on a totality of the circumstances, including the facts below, Mr. Howe’s finding that release of the records that the Utah Democratic Party has requested will primarily benefit the Utah Democratic Party is correct and not an abuse of discretion:

1. Statements made in the amended request indicate that the Utah Democratic Party is seeking the records primarily for its own interests as a private political organization. For example:
 - While the amended request is broad enough to cover documents in the possession of members of the Utah Democratic Party, it primarily focuses on members of the Republican Party and on “the Utah or National Republican Party, including its staff advisors, and executive committee.” (Exhibit “D.”)
 - The amended request further demonstrates that the Utah Democratic Party is requesting the records for its own use when it states that the Utah Democratic Party needs “accurate information to provide substantial and accurate testimony to legislators when there is pending official action by policy making bodies.” (Exhibit “D.”)
2. On October 3, 2011, Jim Dabakis, on behalf of the Utah Democratic Party, sent a letter to John Fellows, General Counsel to the Legislature, requesting that the Legislature preserve records related to redistricting in anticipation of possible litigation by the Utah Democratic Party. (See “Exhibit “N.”) Some or all of the records that the Utah Democratic Party has requested may relate to that potential litigation.
3. In the Utah Democratic Party’s amended request, the Utah Democratic Party indicates that “[t]he Utah Democratic Party may be a party to litigation on the subject of the information requested.” (Exhibit “D.”)
4. In its initial appeal, the Utah Democratic Party again indicated that the “Democratic Party is considering litigation over redistricting issues . . .” (Exhibit “F”, p. 2 (The attachments to Exhibit “F” are omitted.))
5. Statements made in the media by representatives of the Utah Democratic Party indicate that the records request is made primarily for the Utah Democratic Party’s own interests, including its interests in litigation related to the redistricting process. For example, in a story published by the Salt Lake Tribune on December 2, 2011, Utah Democratic Party Chairman Jim Dabakis is quoted as saying, “They know we need those records to file a lawsuit on redistricting, so I think they are acting in a

partisan way to make it hard. . . . We had another meeting with lawyers last night getting ready for a lawsuit. But it is difficult without those documents.”

6. In its most recent appeal, the Utah Democratic Party again states that the “Democratic Party is considering litigation over redistricting issues . . .” (Exhibit “M”, p. 3 (The attachments to Exhibit “M” are omitted.))

The Utah Democratic Party also claims that it is entitled to a fee waiver based on its assertion that the party should be considered to be an individual who is the subject of the record, as provided in Utah Code Subsection 63G-2-203(4). As indicated above, the Utah Democratic Party erroneously relies on Utah Code Subsection 63G-2-203(4), from which the Legislature and its staff offices are expressly exempt. The Legislative Management Policy does, however, contain a similar provision. That provision permits the Legislature to fulfill a records request without charge if, “the individual requesting the record is the subject of the record³ or an individual specified in Utah Code Ann. § 63[G]-2-202(1) or (2)” (Supp. 2006).⁴ (Policies of the Legislative

³ The Utah Democratic Party claims that Mr. Howe misreads the fee provision by ignoring the word “or” in the statutory fee provision of Utah Code Section 63G-2-203. Though that provision does not apply to the Legislature, it is clear that Mr. Howe did not ignore a similar provision in the Policies of the Legislative Management Committee. Rather, he addressed this provision separately and properly concluded that it is not applicable to the Utah Democratic Party.

⁴ Utah Code Subsections 63G-2-202(1) and (2) provide as follows and are not applicable to this matter:

- “(1) Upon request, and except as provided in Subsection (11)(a), a governmental entity shall disclose a private record to:
- (a) the subject of the record;
 - (b) the parent or legal guardian of an unemancipated minor who is the subject of the record;
 - (c) the legal guardian of a legally incapacitated individual who is the subject of the record;
 - (d) any other individual who:
 - (i) has a power of attorney from the subject of the record;
 - (ii) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or
 - (iii) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a health care provider, as defined in Section 26-33a-102, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or
 - (e) any person to whom the record must be provided pursuant to:
 - (i) court order as provided in Subsection (7); or
 - (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.
- (2) (a) Upon request, a governmental entity shall disclose a controlled record to:
- (i) a physician, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:
 - (A) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and
 - (B) a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and
 - (ii) any person to whom the record must be disclosed pursuant to:
 - (A) a court order as provided in Subsection (7); or
 - (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.
- (b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.”

Management Committee, Utah State Legislature, June 14, 2011, page 34). The Utah Democratic Party contends that “[t]he real issue is whether the legislature, by using the term ‘individual,’ desired to exclude legal entities from utilizing this section of the statute.” (Exhibit “M”, p. 3 (The attachments to Exhibit “M” are omitted.)) The Legislature has expressed its clear intent to exclude legal entities from utilizing this provision. Utah Code Subsection 63G-2-103(13) expressly defines “individual” for purposes of GRAMA as “a human being.” The Utah Democratic Party is not “a human being” and, therefore, is not covered by this provision.⁵

Based on the foregoing discussion, I hold that even if the Utah Democratic Party was not foreclosed from raising the fee waiver issue on appeal its request for a waiver of fees was properly denied.

II. The Amount Charged for Responding to the Request by the Utah Democratic Party is in Accordance With the Requirements of Law.

The Utah Democratic Party is barred on appeal from challenging, or seeking the return of, the initial \$5,000 fee amount, because the deadline for appealing this initial amount has passed. Also, the initial fee amount and the additional charge of \$9,250 is supported by the facts and is in accordance with the requirements of law.

A. The Decision on Appeal to Uphold the Initial \$5,000 Fee Amount is Final Because the Time for the Utah Democratic Party to Appeal the Denial Has Passed.

The Utah Democratic Party appealed the estimated \$5,000 fee amount on December 16, 2011. This estimated fee amount was upheld on appeal on December 23, 2011. The Utah Democratic Party failed to appeal this decision, and it became final at the end of the day on January 22, 2011.

Because the time for appealing the decision to uphold the initial estimated \$5,000 fee amount has passed, the Utah Democratic Party can no longer challenge this decision on appeal. The only issue relating to fees that the Utah Democratic Party may now appeal is the amount of the fee that exceeds the \$5,000 it already paid.

B. The Decision to Charge \$9,250 in Fees, in Addition to the \$5,000 Originally Charged, Complies With the Requirements of Law.

On appeal, the Utah Democratic Party asserts that “the additional \$9,250 fee request violates U.C.A. §63G-2-203.”⁶ However, the party does not state how charging the additional amount

⁵ The Utah Democratic Party also claims that “[n]o one disputes that the Democratic Party and its members are a subject of many of the records requested.” (Exhibit “M”, p. 3 (The attachments to Exhibit “M” are omitted.)) This claim is without basis. While a few of the records may mention a legislator who happens to be a Democrat (for example as a sender or recipient of an email), it is a far stretch to claim that the Democratic Party and its members are the *subject* of even a small part of the records requested.

⁶ The Utah Democratic Party also asserts that Michael Christensen stated in his December 23, 2011, decision denying its appeal that “the production could be completed in less than 60 days following the end of the

allegedly violates that section of code. Further, as discussed above, Utah Code Section 63G-2-203 does not apply to the Legislature or its staff offices. (See Utah Code Subsection 63G-2-703(2)(a).)

The Utah Democratic Party also asserts, based on a statement in the December 23, 2011, decision, that the OLRGC had “already performed about 25% of the work necessary to respond to the request” (Exhibit “G”, p. 8 (the attachments to Exhibit “G” are omitted)), the total charge should not have exceeded \$5,450. (Exhibit “M”, p. 1 (The attachments to Exhibit “M” are omitted.)) This statement was based on the following statement in the November 16, 2011, letter from Bryant Howe that required payment of the \$5,000 estimated fee⁷:

“The Office of Legislative Research and General Counsel alone has already spent 54.5 hours working on your initial request. At a rate of \$25 per hour, fees are already at \$1,362.50. We estimate that the charges for responding to your request (for the Senate, the House, and all legislative staff offices combined) will be approximately \$5,000.”⁸

(Exhibit “E”, pp. 3-4 (The attachments to Exhibit “E” are omitted.))

As indicated in the above statement, the \$5,000 was only an estimate. Further, the statement clearly indicates that the 54.5 hours of work that had been completed as of the date of that letter was only in relation to the Utah Democratic Party’s *initial* request. The amended request, sent to the OLRGC on November 9, 2011, was broader in both the time period it covered and in its scope. This required the OLRGC to search, sort, and classify a larger number of records and to conduct a second search of records that had already been combed through in relation to the Utah Democratic Party’s initial request. Finally, the \$1,362.50 referred to in the above statement only related to the hours spent working on the request. It did not include the ten cents per copy charge for records provided in response to the request.

Mr. Howe’s letter, dated May 7, 2012, indicated that:

“We now have approximately 16,000 pages ready to respond to your request. We have spent 506 hours during and after the general session in order to respond to your request. This does not include any of the time we spent before the session to respond to your request. As you are aware, we only charge \$25 per hour for work on a request, though the actual cost to taxpayers is much higher. At a rate of \$25 an hour, the amount due for staff time is \$12,650. We are prepared to release approximately 16,000 pages. At ten cents per copy, the charge for copies is

legislature.” (Exhibit “M” (The attachments to Exhibit “M” are omitted.)) That assertion is incorrect. The statement made in that decision actually reads as follows: “OLRGC could likely respond in less than 60 days if it had no work to do other than respond to the request.” (Exhibit “G”, p. 8, fn. 3 (The attachments to Exhibit “G” are omitted.))

⁷ This letter contains the decision from which the Utah Democratic Party made its first appeal.

⁸ From this statement, the Utah Democratic Party extrapolated that the OLRGC had “already done about 25% of the work.” (Exhibit “F”, p. 3 (The attachments to Exhibit “F” are omitted.))

\$1,600. Thus, the total amount attributable to the request is \$14,250. The Utah Democratic Party has already paid \$5,000, so the amount left owing is \$9,250.”

The Utah Democratic Party has not disputed on appeal the number of hours worked, the number of pages produced, the \$25 per hour charge, or the ten cents per copy charge. Rather, the party’s complaint appears to relate to the fact that responding took more work, and produced more pages, than either the party or the Legislature anticipated. Neither the Government Records Access and Management Act, nor the Utah Legislative Policies and Procedures for Handling Records Requests, provide that a fee amount may be challenged on the basis that responding to a request ended up costing more than anticipated.

For a request as broad and far-reaching as the one filed by the Utah Democratic Party, it is impossible to estimate with any degree of accuracy what the final cost might be. As discussed above, the party’s request may be the largest records request ever submitted to the Legislature. With no other requests to compare it to, the difficulty in predicting the final cost was substantial. Further, the amended request expressly sought an unknown quantity of records by seeking “[a]ll communications inclusive of the period from September 12, 2011 through October 21, 2011, whether paper or electronic, between members of the Utah State Legislature, their staff, and/or outside organizations, individuals, or entities” that related to several people, entities, and topics. (Exhibit “D.”) Due to the fact that all 104 legislators, multiple staff members, and large numbers of the public were interested and involved in the redistricting process, the Utah Democratic Party should have foreseen that the number of records that were responsive to its request was likely to be very large and difficult to predict. Moreover, after being informed that its original request would result in a substantial expense, the Utah Democratic Party, rather than limiting the scope of its request, filed a request that was broader in time and scope, practically guaranteeing that the expense would increase. Based on its actions, the Utah Democratic Party cannot now complain that they got what they asked for.

The Utah Democratic Party also complains that the additional sum of \$9,250 was demanded “without prior consultation or notification.” (Exhibit “M”, p. 2 (The attachments to Exhibit “M” are omitted.)) While the Legislature attempts to keep a requestor informed of increasing costs relating to a records request, doing so proved difficult due to the size and complexity of the Utah Democratic Party’s amended request. In an attempt to finally get out from under the extreme burden of the request, the OLRGC assigned almost all of its staff to work on the request during a one-week period. During this time, individual employees kept a running tab of the time expended working on the request. Under these circumstances, it was difficult to keep track of the total time being expended and the OLRGC was, frankly, surprised by the final number of hours and pages.

Regardless of whether the Utah Democratic Party or the OLRGC was surprised by the final result, the party cannot now claim that it is being treated unfairly. As discussed above, the Legislature produced approximately 16,000 pages in response to the request. The Utah Democratic Party has paid approximately one-third of the total cost and has received approximately one-third of the records. Moreover, the Legislature has not demanded that the additional \$9,250 dollars be paid. Rather, the Legislature is only requiring that the additional amount be paid if the Utah Democratic Party wants the remainder of the records that it requested.

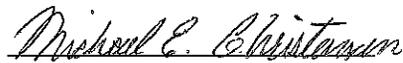
This puts the Utah Democratic Party in the same position it would have been in had the Legislature informed it that the cost would be more than anticipated and asked whether the party wanted the Legislature to continue working on the request.

Based on the foregoing discussion, I find that the amount charged for responding to the Utah Democratic Party's amended request is reasonable and in accordance with the requirements of law.

CONCLUSION

Based on the foregoing discussion, I uphold Mr. Howe's findings and actions with respect to the amended request by the Utah Democratic Party. The Utah Democratic Party's appeal is denied.

The Utah Democratic Party may appeal this decision to the Legislative Records Committee by filing a notice of appeal with me (at the Utah State Capitol Complex, House Building, Suite W210, P.O. Box 145210, Salt Lake City, Utah, 84114-5210), no later than 30 calendar days after the date of this decision.



Michael E. Christensen

Director

Office of Legislative Research and General Counsel

EXHIBIT "A"

(To "Decision on Appeal," dated June 13, 2012)

UTAH GOVERNMENT RECORDS REQUEST FORM

TO: Office of Legislative Research and General Counsel
(Name of government office holding the records and/or name of agency contact person.)

Address of government office: W210 State Capitol Complex
Salt Lake City, UT 84114

Description of records sought (records must be described with reasonable specificity):
See Attached

- I would like to inspect (view) the records.
- I would like to receive a copy of the records. I understand that I may be responsible for fees associated with copying charges or research charges as permitted by UCA 63G-2-203. I authorize costs of up to \$ 100
- UCA 63G-2-203 (4) encourages agencies to fulfill a records request without charge. Based on UCA 63G-2-203 (4), I am requesting a waiver of copy costs because:
 - releasing the record primarily benefits the public rather than a person. Please explain:
Due to recent statements in the media and otherwise, the public has a right to know what is happening in closed, smoke-filled rooms regarding the redistricting process.
- I am the subject of the record.
- I am the authorized representative of the subject of the record.
- My legal rights are directly affected by the record and I am impoverished.
(Please attach information supporting your request for a waiver of the fees.)

- If the requested records are not public, please explain why you believe you are entitled to access.
- I am the subject of the record.
 - I am the person who provided the information.
 - I am authorized to have access by the subject of the record or by the person who submitted the information. Documentation required by UCA 63G-2-202, is attached.
 - Other. Please explain:

I am requesting expedited response as permitted by UCA 63G-2-204 (3)(b). (Please attach information that shows your status as a member of the media and a statement that the records are required for a story for broadcast or publication; or other information that demonstrates that you are entitled to expedited response.)

Requester's Name: Utah State Democratic Party - Matt Lyon/Todd Taylor

Mailing Address: 825 N 300 W, Ste C400

Daytime telephone number: (801) 328-1212 Date: 10/12/11

Signature: 

All communications in the past 30 days, whether paper or electronic, between members of the Utah State Legislature, their staff, and/or outside organizations, individuals, or entities that:

- 1) Contain or reference block assignment files;
- 2) Reflect, regard or reference the purported grounds or criteria discussed, referenced, considered – officially or unofficially – regarding proposed or adopted congressional, Utah House, or Utah Senate maps;
- 3) Consist of, regard or reference redistricting and members of the Utah State Legislature, Utah's Congressional Delegation, Utah Governor or Utah State Republican Party, including current, past, potential, and future candidates and elected officials;
- 4) Reflect, consist of, regard or reference any e-mail sent to or from the Utah or National Republican Party, including its staff, advisors, and executive committee regarding redistricting; and/or,
- 5) Reference or include partisan data and the redistricting process.

EXHIBIT "B"

(To "Decision on Appeal," dated June 13, 2012)



October 14, 2011

Mr. Matt Lyon and Mr. Todd Taylor
Utah State Democratic Party
825 N. 300 W. Ste C400
Salt Lake City, UT 84103

SUBJECT: Government Records Request

Dear Mr. Lyon and Mr. Taylor:

This letter is in response to your records request, received by our office on October 12, 2011, seeking the following:

"All communications in the past 30 days, whether paper or electronic, between members of the Utah State Legislature, their staff, and/or outside organizations, individuals, or entities that:

- 1) Contain or reference block assignment files;
- 2) Reflect, regard or reference the purported grounds or criteria discussed, referenced, considered -- officially or unofficially -- regarding proposed or adopted congressional, Utah House, or Utah Senate maps;
- 3) Consist of, regard or reference redistricting and members of the Utah State Legislature, Utah's Congressional Delegation, Utah Governor or Utah State Republican Party, including current, past, potential, and future candidates and elected officials;
- 4) Reflect, consist of, regard or reference any email sent to or from the Utah or National Republican Party, including its staff, advisors, and executive committee regarding redistricting; and/or,
- 5) Reference or include partisan data and the redistricting process."

Responding to your request will likely take longer than the normal response time of ten business days. We will require additional time for the following reasons:

- The Legislature is currently in special session.
- The request requires us to review a large number of records to locate the records requested.
- The decision to release a record involves legal issues that require us to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law.

October 14, 2011
Page 2 of 2

Legislative Management Policy provides that, unless unusual circumstances exist, if a request for records is made during a general or special legislative session, the legislative office may respond as soon as reasonably possible but no later than 15 business days from the date of the original request. We estimate that it will take a minimum of 15 business days to respond to your request. The last two reasons, described above, that our response may require longer than the normal ten business days constitute extraordinary circumstances. Thus, pursuant to Legislative Management Policy and Utah Code 63G-2-204, we may, if necessary, take longer than 15 business days to respond to your request. If this becomes necessary, we will notify you. If we are able to respond in less than 15 business days, we will do so.

In your letter, you request a waiver of fees under Utah Code Subsection 63G-2-203(4), based on your assertion that releasing the record primarily benefits the public rather than a person. The only justification that you offer for this assertion is the following:

"Due to recent statements in the media and otherwise, the public has a right to know what is happening in closed, smoke-filled rooms regarding the redistricting process."

Please be advised that, to the best of our knowledge, no portion of the redistricting process has been conducted in a smoke-filled room. Indeed, doing so in a publicly owned building or office would constitute a violation of the Utah Indoor Clean Air Act.

I reject your assertion that releasing the record primarily benefits the public rather than a person. While it is arguable that release of the records may benefit some members of the public, I find that the primary benefit will be to you and to the Utah State Democratic Party, on whose behalf you made your request. Based on this finding, and in accordance with Utah Code Subsection 63G-2-203(4), your request for a waiver of fees is denied.

The Legislature's fee schedule for responding to a records request is attached. Because you have authorized costs of up to \$100, we will stop work relating to responding to your request when we reach that expenditure amount to see if you would like us to continue.

You have the right to appeal the denial of your fee waiver request to Michael Christensen, the Director of the Office of Legislative Research and General Counsel, at the Utah State Capitol Complex, W210 House Building, P.O. Box 145210, Salt Lake City, Utah, 84114-5210, within 30 days of the date of this letter. The appeals process is outlined in Part 3 of the Utah Legislature Policies and Procedures for Handling Records Requests, which governs the response and appeals process relating to records (a copy is included with this letter).

Respectfully,



Bryant Howe
Assistant Director

EXHIBIT "C"

(To "Decision on Appeal," dated June 13, 2012)



October 26, 2011

Todd Taylor
Utah State Democratic Party
825 N. 300 W., Suite C400
Salt lake City, UT 84103

SUBJECT: Government Records Request

Dear Mr. Taylor:

This letter is in relation to your records request, received by our office on October 12, 2011, seeking the following:

"All communications in the past 30 days, whether paper or electronic, between members of the Utah State Legislature, their staff, and/or outside organizations, individuals, or entities that:

- 1) Contain or reference block assignment files;
- 2) Reflect, regard or reference the purported grounds or criteria discussed, referenced, considered -- officially or unofficially -- regarding proposed or adopted congressional, Utah House, or Utah Senate maps;
- 3) Consist of, regard or reference redistricting and members of the Utah State Legislature, Utah's Congressional Delegation, Utah Governor or Utah State Republican Party, including current, past, potential, and future candidates and elected officials;
- 4) Reflect, consist of, regard or reference any email sent to or from the Utah or National Republican Party, including its staff, advisors, and executive committee regarding redistricting; and/or,
- 5) Reference or include partisan data and the redistricting process."

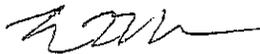
In your request, you authorized charges of up to \$100. On October 19, 2011, we called and left a message to discuss charges with you. We called again on October 24, 2011 and explained that the fee for responding to the request would be significantly higher than \$100. You indicated that you would get back to us within one and one-half hours regarding this issue. I called again on October 25, 2011, because I had not heard from you. During that telephone conversation, you indicated that you had not called me

October 26, 2011
Page 2 of 2

because you were still waiting for a decision to be made by someone within your party. You also stated that it was likely that you would be withdrawing your request and filing a new one that was very similar. I informed you that we had already incurred expenditures in excess of \$100 and that we needed to know how to proceed. You advised stopping work on the response for a "couple of days" until you decided what to do.

Based on our conversation, I am instructing the records officers in all staff offices to cease work on your records request until further notice. This action will toll the period in which we will provide a response. Please notify us if, or when, you would like us to proceed and the dollar amount that you are willing to expend.

Respectfully,



Tom Vaughn
Associate General Counsel

EXHIBIT "D"

(To "Decision on Appeal," dated June 13, 2012)

UTAH GOVERNMENT RECORDS REQUEST FORM

TO: Office of Legislative Research and General Counsel
(Name of government office holding the records and/or name of agency contact person.)

Address of government office: W210 State Capitol Complex
Salt Lake City, UT 84114

Description of records sought (records must be described with reasonable specificity):
10/12/2011 request amended - See Attached

- I would like to inspect (view) the records.
- I would like to receive a copy of the records. I understand that I may be responsible for fees associated with copying charges or research charges as permitted by UCA 63G-2-203. I authorize costs of up to \$
- UCA 63G-2-203 (4) encourages agencies to fulfill a records request without charge. Based on UCA 63G-2-203 (4), I am requesting a waiver of copy costs because:
 - releasing the record primarily benefits the public rather than a person. Please explain:
10/12/2011 request amended - See Attached

- I am the subject of the record.
- I am the authorized representative of the subject of the record.
- My legal rights are directly affected by the record and I am impoverished.
(Please attach information supporting your request for a waiver of the fees.)

If the requested records are not public, please explain why you believe you are entitled to access.

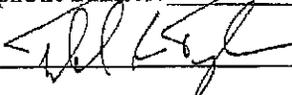
- I am the subject of the record.
- I am the person who provided the information.
- I am authorized to have access by the subject of the record or by the person who submitted the information. Documentation required by UCA 63G-2-202, is attached.
- Other. Please explain:

I am requesting expedited response as permitted by UCA 63G-2-204 (3)(b). (Please attach information that shows your status as a member of the media and a statement that the records are required for a story for broadcast or publication; or other information that demonstrates that you are entitled to expedited response.)

Requester's Name: Utah State Democratic Party - Matt Lyon/Todd Taylor

Mailing Address: 825 N 300 W Ste C400, Salt Lake City, UT 84103

Daytime telephone number: 801-328-1212 Date: 11/09/2011

Signature: 



UTAH Democratic Party

November 9, 2011

Tom Vaughn
Associate General Counsel
Office of Legislative Research and General Counsel
W210 State Capitol Complex
Salt Lake City, UT 84114

Dear Mr. Vaughn,

Thank you for your letter of October 26, 2011 regarding our government records request of October 12, 2011. We are hereby submitting an amended request.

The only material changes in the description of records sought are the dates covered and in item 5 a reference to voter participation data. For your convenience, we have also provided in item 3 a list of candidates that might be referenced in the documents.

Herewith is the amended description of records sought:

All communications inclusive of the period from September 12, 2011 through October 21, 2011, whether paper or electronic, between members of the Utah State Legislature, their staff, and/or outside organizations, individuals, or entities that:

- 1) Contain or reference block assignment files;
- 2) Reflect, regard or reference the purported grounds or criteria discussed, referenced, considered – officially or unofficially – regarding proposed or adopted congressional, Utah House, or Utah Senate maps;
- 3) Consist of, regard or reference redistricting and members of the Utah State Legislature, Utah's Congressional Delegation, Utah Governor, or Utah State Republican Party, including current, past, potential, and future candidates (including but not limited to Rob Bishop, Jim Matheson, Jason Chaffetz, Carl Wimmer, Dave Clark, Mia Love, David Kirkham, Cherilyn Eagar, Morgan Philpot, Ken Sumsion, Chris Herrod, Dan Liljenquist, Chuck Williams, Jason Buck, Chris Stewart, Howard Wallack, John Willoughby, Rebecca Lockhart, Michael Waddoups, Jake Shannon, Casey Anderson, Craig Frank, Bill Skokos, John Valentine) and elected officials;
- 4) Reflect, consist of, regard or reference any e-mail sent to or from the Utah or National Republican Party, including its staff advisors, and executive committee regarding redistricting; and/or,
- 5) Reference or include partisan or voter participation data and the redistricting process.

We stand by our initial authorization of costs up to one hundred dollars (\$100.00) and with this amendment renew our request under UCA 63G-2-203(4) to have the records request fulfilled without charge. We are requesting a waiver of copy costs because:

- 1) The Utah Democratic Party through informed participation in the public debate helps to educate the

public on a matter of public policy; 2) The Utah Democratic Party has been a partner to government through our informed assistance in bringing public participation to the legislative process; 3) The Utah Democratic Party needs accurate information to provide substantial and accurate testimony to legislators when there is pending official action by policy making bodies; 4) The Utah Democratic Party is directly and indirectly the subject of the information requested; 5) The Utah Democratic Party may be a party to litigation on the subject of the information requested; and, 6) The Utah Democratic Party needs the information because it has a unique responsibility to support the legal rights of the people of Utah.

The records requested deal with the legislative decision-making process for redistricting of state house, state senate and congressional seats. Few issues decided by the legislature have as much import and interest for the public as to how the legislature came to its final conclusions in the matter of determining the boundaries, and consequently, which voters have the opportunity to select which public officials. It is of high interest because like a "Man Bites Dog" story it typifies a reversal of the norm wherein elected officials are choosing their voters instead of the other way around.

We note that redistricting has a long history of public interest with elected and appointed officials taking action on behalf of the public, and the public taking action themselves when response of elected officials was inadequate. During the past decade every general session and at least one special session of the legislature has featured introduced legislation on the subject of redistricting. The Utah Constitutional Revision Commission has discussed the issue. It has been the subject of a citizens' initiative. The Salt Lake County Council has created an independent redistricting advisory committee. The Utah Democratic Party has been an active voice for the public to our elected officials in all these instances.

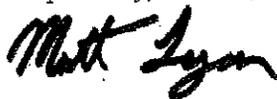
Public interest has been particularly high in recent months with dozens of news stories devoted to the subject. The Utah Democratic Party has been a featured source in much of this needed public debate bringing interest and input from the public into the legislative process. The documentation requested helps fulfill our continuing role in educating the public on this important issue. (Please see the attached nineteen page chronology of recent articles published.)

Additionally to the extent that records reflect partisan concerns, Democrats aver that we are the subject, directly and indirectly, of some of the records requested. These records may be material to the Utah State Democratic Party being a plaintiff or the subject of any litigation involving the redistricting of the State of Utah particularly as it may relate to the Constitutional issues of equal protection, due process, right of suffrage, freedom of association and monopolies.

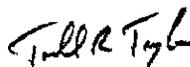
Finally, despite efforts to officially shield redistricting from partisan data, it is clear from public statements by legislators that redistricting inherently has a political partisan component as practiced in the Utah legislature. As the party in opposition, the Utah State Democratic Party has a unique interest and a unique responsibility to support the legal rights of the people of Utah to "fair and effective representation for all citizens" directly affected by this redistricting.

We kindly await your replay to our amended request for government records.

Respectfully,



Matt Lyon
Executive Director



Todd Taylor
Senior Strategic and Political Advisor

Redistricting Media Clips

July 14--

Utah Redistricting Committee presents plans, listens to Cache County residents' concerns (Satenik Sargsyan, Herald Journal)

Utah's Legislative Redistricting Committee visited Logan on Wednesday to discuss the upcoming changes with voting district boundaries. While the new boundaries will not be approved until fall, the committee held a meeting at Utah State University to address public questions and concerns. Residents from some parts of Cache Valley voiced concerns about being represented by a politician in Box Elder County.

July 19--

Utah Dem seeks to make seats more competitive (Lee Davidson, Salt Lake Tribune)

While GOP redistricting plans have proposed eliminating one or two Democrat-held Utah Senate districts, Democrats have countered with an alternative that would preserve them all by creating fewer "safe seats" for both parties. The Democratic plan also appears not to pit any Senate incumbents against one another in the same new districts.

July 21--

Redistricting Right (Deseret News Editorial)

At a string of public hearings scheduled to last through the summer, the redistricting committee has been busy offering up a veritable buffet of pizza slice, doughnut and now doughnut hole maps. We applaud the hearings and the effort at transparency they represent, and we hope that effort will prove sincere. We will know only when we see the final maps, which we hope will reflect input from Utah citizens and honor the idea of representative democracy.

SLC Residents on Redistricting: Don't Chop Us Up (Lee Davidson, Salt Lake Tribune)

Upset Salt Lakers packed a hearing Wednesday to complain that GOP proposals for redrawing congressional and legislative districts would split up their neighborhoods, or pair them with areas that have little in common with them. "In some of the maps you have drawn, you have torn our communities apart. We don't want that," said Salt Lake City Mayor Ralph Becker, in comments typical of the crowd.

July 22--

Drawing Districts (Salt Lake Tribune Editorial)

Utah Senate President Mike Waddoups, a Republican, says that when new state Senate district boundaries are drawn, the Democrats will lose at least one district they hold now. The reason, he says, is that population growth within existing districts held by Democrats has been slower than in areas held by Republicans.

July 26--

Public hearings bring redistricting compromise (Lee Davidson, Salt Lake Tribune)

The Legislature's Redistricting Committee finished a series of 17 field hearings Tuesday after traveling 2,000 miles in nine weeks. Senate President Michael Waddoups said he's been listening, and he presented what he says is a compromise congressional map based on comments from state residents.

New proposal would keep Salt Lake whole and put military areas into one congressional district (Jared Page, Deseret News)

The 68-day, 17-city, information-gathering tour of the Utah Redistricting Committee wrapped up Tuesday night. Now comes the hard part. Over the next month, committee members will weigh the various suggestions for new state legislative, school board and Utah congressional districts and come up with a plan to present to the full Legislature during a special session in September.

July 27--

Critics say lawmakers don't listen on redistricting (Lee Davidson, Salt Lake Tribune)

Three watchdog groups said Wednesday that Utah lawmakers are not listening to the public about redistricting, and instead seek to protect political parties and incumbents. They called Wednesday for them to start listening and avoid political gerrymandering.

Don't ignore what Utahns want in drawing new boundaries, advocates urge (Lisa Riley Roche, Deseret News)

Advocates calling for the state's political boundaries to be re-drawn fairly urged the lawmakers in charge of the process Wednesday not to forget what Utahns want. For several months, more than 150 members of the public have told the Legislature's redistricting committee they want their communities kept together rather than divided for political purposes. But now that the committee has concluded a series of statewide public hearings, the advocates said they fear that testimony will be ignored in setting new legislative and congressional boundaries.

July 29--

Utah Democrats threaten redistricting lawsuit (Chris Vanocur, ABC4)

You draw unfair political boundaries and we will see you in court! This is the tough message Utah's new Democratic Chairman is now sending to state Republican leaders.

Chuck the Pizza (Salt Lake Tribune Editorial)

Mike Waddoups says he is losing his taste for pizza. By that he means he's losing his fondness for the Republican idea for creating four Utah congressional districts by slicing Salt Lake County into four pieces and tacking each piece onto a huge chunk of rural Utah.

July 30--

Conflicts of Interest (Deseret News Editorial)

The pressure is on the Utah redistricting committee to show where its true loyalties lie. Public hearings on redistricting have wrapped up, and over the next couple of months, the committee will settle on a final plan to submit to the full Legislature.

August 4--

Becker Seeks Redistricting Volunteers (AP)

Salt Lake City Mayor Ralph Becker and the Salt Lake City Council are looking for volunteers to help redraw the city political map. Officials say the redistricting is required to ensure equal representation for city residents in each of seven council districts and public school precincts.

August 7--

Drawing boundaries: How much influence will public have on redistricting process? (Lisa Riley Roche, Deseret News)

Later this month, lawmakers will start making decisions about where the state's legislative, congressional and school board boundaries should be set for the next decade. Over the summer, the Legislature's Redistricting Committee has held more than a dozen hearings around the state, encouraging Utahns to come up with their own maps using free software available online.

Independent Redistricting 101: Salt Lake County Ready For Results (Jeremiah Stettler, Salt Lake Tribune)

A panel of three Democrats, three Republicans and a lone Independent has spent months quietly redrawing six council districts as members of the county's first independent redistricting commission. Now, with scenarios ranging from the status quo to the controversial, the commission is ready to roll out its work to the County Council this month.

August 9--

Utah redistricting committee announces plan for final phase (Alison Peek, Examiner)

Now in the final phases of redrawing political districts following the 2010 Census, the Utah Legislature's Redistricting Committee is holding meetings to discuss available proposals before it completes the process. Senate committee chair Ralph Okerlund-R, Monroe hopes all proposals will be finalized by September 10, and believes a special session will be called during the second week of October for a formal vote on the new district outlines.

August 10--

County Districts: Commission Draws Good Maps (Salt Lake Tribune Editorial)

Salt Lake County's Independent redistricting commission has drawn three proposed maps, two of which are exemplary for their symmetry and fairness. Which probably means they don't have a snowball's chance of being adopted by the incumbent County Council. Still, we can hope.

Redistricting Jeopardy (Patrick Cone, Salt Lake Tribune)

Once again our overlords at the Legislature are proposing to slice our voting districts into outlandish shapes, with various philosophies and rationalizations. It's their way to ensure the prominent party's dominance of Utah politics. It serves their corporate donors well, but certainly not the public or the two-party system.

August 12--

Partisan maps being created at party HQs (Lee Davidson, Salt Lake Tribune)

To make redrawing congressional and legislative boundaries appear more pure and aloof from down-and-dirty politics, the Legislature's Redistricting Committee this year banned placing any political data — such as which neighborhoods tend to vote more Republican or Democratic — into its computer system.

August 14--

Utah County: the center of a redistricting battle (Billy Hesterman, Daily Herald)

A battle is brewing in the state between Utah County legislators and the rest of the state's lawmakers. Some within Utah County are worried that lawmakers from south Salt Lake County and Southern Utah may want to pick-pocket the county and draw boundary lines that take population from Utah County to help protect other lawmakers who reside outside the county.

August 15--

Redistricting: Debate over Utah urban-rural mixes (Josh Loftin, AP)

A key debate for state lawmakers crafting a final redistricting proposal will be whether to divide the populated Wasatch Front among four congressional districts or attempt to consolidate as many rural voters as possible into one district.

Utah Democrats seek common redistricting (David DeMille, St. George Spectrum)

ST. GEORGE - State Democratic leaders are headed to Southern Utah this month, arguing they may have some common interests with the heavily conservative area when it comes to drawing up new congressional and legislative districts. Touring several area cities from Aug. 22 through 25, the group is urging residents to learn more about the possibility of gerrymandering during the redistricting process, saying districts should represent people of like interests. They propose a plan that would give Southern Utah and most rural parts of the state its own congressional representation - and would leave the Democratic stronghold of Salt Lake County largely intact.

August 16--

Utah Poll: 'Doughnut hole' ahead of 'pizza slices' in redistricting (Lee Davidson, Salt Lake Tribune)

Paul E. Rogers, of Millcreek, would be in one congressional district, his neighbors across the street would be in another, and people living a half-block south would be in a third — if a major redistricting proposal by Utah Senate President Michael Waddoups is adopted. “I don’t like dividing us up like that,” said Rogers, a member of the Canyon Rim Community Council, one of four councils in Millcreek Township.

GOP and Dems in Utah say other party is gerrymandering (Lee Davidson, Salt Lake Tribune)

For example, Utah Democratic Party Chairman Jim Dabakis said he suspects the 17 field hearings held statewide by the GOP-controlled Redistricting Committee were a facade to give an appearance of good government, while real maps were being made in backrooms along political lines to benefit Republicans. “Ten years ago, there was no relationship between the hearings and that dog-and-pony show and the maps that actually came out,” he said.

August 17--

Defend Unity of Utah County (Daily Herald Editorial)

State lawmakers from Utah County must fight to keep the political carpetbaggers from slicing up parts of our community into various state House and Senate districts to benefit themselves, diluting Utah County's influence on state politics and the power of your vote. Revamping districts based on new population data from the 2010 Census can be tricky. But not on this point: Utah County is practically a textbook example of what a district should look like. To maintain the principles of fair representation, Utah County should have 14 House districts and at least five Senate districts based on the numbers.

August 18 --

Utah Democrats Ready Lawsuit Over Redistricting (Bob Bernick, UtahPolicy.com)

For decades it's been a badge of honor, and a fine political talking point: Utah has never been sued over the Legislature's redrawing of U.S. House, legislative and State School Board boundaries. Thus, by definition, the Republican-dominated redistricting must be not only legal, but fair. Looks like that run will be over.

Pizza or Doughnut Hole: Redistricting Is Just Politics (Jay Evans, Deseret News)

In a few days, the Utah Legislature is going to finalize the state's new political districts for the next 10 years. This time, Utah is adding a fourth representative in Congress. Word on the street is lawmakers are

debating whether to draw those four districts as a doughnut, with a doughnut hole that includes all of politically diverse Salt Lake County, or as a pizza, where four equal slices of the state include, as a couple of well-known Utah singers might put it, a little bit of country and a little bit of rock 'n roll.

August 19 --

Donut Hole (Salt Lake Tribune Editorial Board)

When it comes to new congressional districts, the folks in Salt Lake County prefer doughnuts to pizza. That is they would rather see the Legislature draw a new congressional district entirely within the county (the doughnut plan) than divide the county three or four ways and graft each piece onto a huge expanse of rural Utah (pizza slices).

Redistricting Committee to go over public maps (Billy Hesterman, Daily Herald)

After holding 17 public meetings around the state, the Legislature's Redistricting Committee will return to Capitol Hill today to discuss and review plans submitted by the public through the online redistricting website.

Redistricting 'Plan D from Outer Space' (Bob Bernick, UtahPolicy.com)

In the next few weeks the election politics in Utah's four U.S. House and 104 legislative districts will pretty much be decided upon, shaping elections for the next decade. It's crunch time for the Legislature's Redistricting Committee, which holds the first of its "working" sessions Friday morning, 9 a.m. in the Senate Office Building on Capitol Hill.

S.L. County Councilman David Wilde drawn out of his district in map endorsed by independent redistricting commission (Marjorie Cortez, Deseret News)

Shortly, the recommendations of the first independent Salt Lake County Redistricting Commission will go to the Salt Lake County Council for its consideration. To a large degree, the recommendations approved by the commission of three Democrats, three Republicans and one independent were driven by the numbers. Population growth in Salt Lake County has largely occurred in its southwest quadrant. District and precinct boundaries for the County Council and school boards were reconfigured to reflect those changes.

August 20--

Commission reviews Utahns' redistricting map proposals (Lee Davidson, Salt Lake Tribune)

As protesters claimed lawmakers who are redrawing political boundaries are not listening to the public, the Legislature's Redistricting Commission spent five hours in a hearing Friday reviewing 172 maps that citizens, special interests and lawmakers submitted to it.

Doughnuts for breakfast or pizza for lunch? Legislature weighs plans for 4 congressional districts (Marjorie Cortez, Deseret News)

It was a politically interested Utahn — not a politician — who summed up Friday's public hearing before the Utah Legislature's Redistricting Committee best: "There's never going to be a map that pleases all constituencies," said Jon Hansen, a private citizen who was so motivated to participate in the process that he submitted his recommendations to lawmakers while on business in Albania.

Local GOP, Lawmakers want more seats in Utah County (Bill Hesterman, Daily Herald)

The Legislature's redistricting committee took the day to review maps that were submitted via the Legislature's redistricting website. Authors of the submissions included citizens, city councils and legislators who aren't on the Redistricting Committee. Legislators said the public gave them plenty to

think about as they draw the new boundaries for Utah's U.S. House seats, state House and Senate seats and state board of education seats.

August 22—

Utah Democratic chairman, elected officials start 4 days of meetings with rural Utah voters (THE ASSOCIATED PRESS)

Utah Democratic party officials are venturing into Republican strongholds for public meetings with rural voters. Democratic Party Chairman Jim Dabakis (duh-BAK'-ihs) says the four days of meetings will focus on the redistricting process, which could result in rural areas in the central and southern parts of the state being combined with urban areas in northern Utah. Dabakis says those proposals are misguided because rural voters have unique concerns, especially when it comes to public land management. The meetings will begin Monday in Springville and continue through Thursday. More than a dozen meetings are planned in places such as Price, Kanab, Richfield and St. George. Dabakis says the tour is part of his planned outreach to rural, Mormon voters who are a traditionally strong Republican voting bloc.

State Board of Education on Redistricting Chopping Block? (Bob Bernick, UtahPolicy.com)

The State Board of Education — you remember those guys? — dodged a bullet last Friday. One they didn't even know was coming. At a lengthy meeting of the Legislature's Redistricting Committee, committee House chairman Ken Sumsion, R-American Fork, suggested that the number of board members for the next 10 years be reduced from 15 to nine.

August 23—

Utah's top Dem takes redistricting fight south (Donald Meyers, Salt Lake Tribune)

Jim Dabakis says Republicans have poorly rewarded their southern Utah constituents for their loyalty. "They were disenfranchised," Dabakis, the state's Democratic Party chairman said Monday, pointing to the 2001 redrawing of the 2nd Congressional District, which doglegs from Salt Lake City around three sides of the state. And he worries that Republicans plan to do it to rural Utahns again, diluting their clout in Congress by combining them with urban constituents.

Lawmakers endorse citizen map for new school board boundaries (Lee Davidson, Salt Lake Tribune)

The Legislature's Redistricting Committee did two things Monday that critics doubted would ever happen. First, it adopted a map proposed by an ordinary citizen — Robert Horning, a software designer living in Logan — for new state school board boundaries. Second, it let the news media into a backroom to watch a subcommittee negotiate how to redraw Horning's map a bit before final adoption, allowing reporters to listen to frank discussion about protection of incumbents and local school board boundaries.

Buy the doughnut (Salt Lake Tribune)

As the Legislature's redistricting committee begins debate on maps for Utah's four new congressional districts, they should order a doughnut rather than slices of pizza. By that we mean that all of rural Utah should be rolled into one large district (the doughnut) surrounding the four Wasatch Front counties (the hole). The hole itself, comprised of Utah, Salt Lake, Davis and Weber counties, should be parsed into three districts.

August 24--

GOP operative following, filming Utah Democratic chief (Lee Davidson, Salt Lake Tribune)

After new Utah Democratic Party Chairman Jim Dabakis hosted a radio show during which two top state GOP officials said they support ending public education, Medicare and Social Security, Republicans now have a cameraman following Dabakis to possibly catch him saying something stupid. They are paying a cameraman to follow Dabakis on his current "Red Rock Tour" through southern Utah to talk about public land issues and to urge creation of a congressional seat there. Utah Republican Party Chairman Thomas Wright acknowledged that his party sent the cameraman.

August 26 --

Beware the pizza slice (Daily Herald Editorial)

It was disappointing to hear a Utah Valley lawmaker saying that he favors the "pizza slice" plan for redistricting the State of Utah. It was doubly disappointing that he also happens to co-chair the panel that's redrawing the district boundary lines. "A pizza slice plan will mean that more people represent the public lands," Rep. Ken Sumsion of American Fork said. Well, that may be. But that's not the most important criterion.

Open meetings (Salt Lake Tribune Editorial)

You've probably heard the old saw that no one wants to see sausage being made or laws being written. We beg to differ. We believe that many Utahns would like to witness their lawmakers debating plans and cutting deals, particularly when they are drawing new boundaries for legislative districts. The Legislature's redistricting committee should keep these meetings open.

August 27 --

Democrats calling for southern Utah congressional district (Richard Platt, KSL)

Utah Democrats say there is a divide between the north and the south in this state. That's why the party's new leadership is on a tour to drum up support for a southern Utah congressional district. This as a legislative committee is redistricting the four new districts. Is it about a real divide in Utah--the differences between the north and the south when it comes to water and land-use issues--or is it about something else, like finding out what's good for a political party?

August 29 --

Keep redistricting as is (Rep. Stuart C Reid, Salt Lake Tribune)

Considerable noise has been made about the possibility of changing the responsibilities of redistricting in Utah from that of the Legislature to one of an independent commission. When you think about it, the noise itself is not unhealthy. In fact, it is representative of our democratic process. Discussion and examining both sides of an issue reflect the democratic principles our country is built on. It is those very principles that endorse keeping the existing legislative responsibility for redistricting Utah.

Utah Senate Democrats Facing 'Sophie's Choice' in Redistricting (Bob Bernick, UtahPolicy.com)

For a few days last week the more optimistic, some might say naïve, among us thought that the Legislature's Redistricting Committee may actually have members of the media/public in the room as they drew some boundaries on congressional and/or state Senate and House seats. After all, GOP leaders of the committee did let two reporters into the basement "war room" last week as the final lines were drawn in the 15-member State School Board redistricting

August 30 --

Utah senators discuss redistricting behind closed doors (Lee Davidson, Salt Lake Tribune)

While work by the Legislature's Redistricting Committee has been surprisingly public this year, the Senate half of the group huddled behind closed doors last week to try to draw a map for state Senate boundaries before the committee's next public meeting.

August 31 –

Gov. & Legislature can't agree on date for redistricting (Chris Vancocur, ABC4)

Utah's leaders are going back and forth on a date for a redistricting special session. The governor proposes one date, the legislature suggests another. It has been this way for weeks. Right now, legislators seem to favor a redistricting special session starting the week of Monday, October 3rd.

Matheson: 'There's no question I'm a target' in redistricting (Lisa Riley Roche, Deseret News)

Utah's lone Democrat in Congress, Rep. Jim Matheson, said Tuesday he expects state lawmakers will once again change the boundaries of his 2nd District seat to make it as tough as possible for him to win reelection. "There's no question I'm a target," Matheson said. "My gosh, 10 years ago, the Wall Street Journal said it was the most egregious example of gerrymandering in the country. Of course that's what they're doing. We all know it."

September 1 –

Special session for redistricting to begin Oct. 3 (Lee Davidson, Salt Lake Tribune)

Gov. Gary Herbert on Wednesday called a special session of the Legislature beginning Oct. 3 to debate and adopt redrawn congressional, legislative and state school board districts. The Legislature's Redistricting Committee is still working on its recommendations for those plans. It adopted a "base plan," which may still be tweaked a bit, last week for the state school board.

September 4 –

Don't cut up Utah County (Daily Herald)

Utah County residents need to tell their lawmakers not to cheat Utah County when, in less than a month, they meet to redraw state legislative and congressional boundaries. Unfortunately, there are signs that some opportunistic lawmakers will slice and dice the county if given the chance so that it cannot exercise the rightful political power it earned by virtue of population growth in the last decade.

September 6 –

Southeast Salt Lake County Troublesome Area for Redistricting (Bob Bernick, UtahPolicy.com)

When the Legislature's Redistricting Committee meets Wednesday, state senators will be closer to deciding new boundaries for their 29 districts than will be House members' 75 seats, several sources tell UtahPolicy. House Democrats have a rough understanding of what they would like to see in redistricting: Absorb House District 30 (vacated by former Rep. Jackie Biskupski, D-Salt Lake, this summer) into surrounding Democratic seats and look to have two Republicans together in another part of the county.

September 7 –

Democrats visit county to talk about redistricting boundaries (Phil Fauver, Emery County Progress)

Utah State Democrat Party Chairman Jim Dabakis visited Emery County Aug. 22, at the Museum of the San Rafael. Gary Petty the Emery County Democrat Party Chairman and Commissioner Laurie Pitchforth warmly greeted Chairman Dabakis to Castle Dale. They also greeted his assistants Emily Hallingshead, Media and Communications Coordinator for this event and Justin Daniels from the Utah State Democrat Party headquarters.

Non-partisan committee releases proposals for Utah redistricting (Fox 13)

A non-partisan committee has released their proposals on how the redistricting maps should be made for Utah and are challenging state legislators to come up with something better. The Fair Boundaries Coalition says the new lines are fair and the database used to create them did not look at voting patterns or at the addresses of incumbents.

Redistricting: Salt Lake County loses, Utah County gains (Lee Davidson, Salt Lake Tribune)

Republicans plan to let Democrats win a small battle or two but force them to lose the overall war on Wednesday as the Legislature's Redistricting Committee debates new Utah Senate districts. One small win for Democrats is that Republicans have agreed not to merge Sen. Luz Robles' multicultural district in

Rose Park into a new Republican-majority seat with the conservative Davis County district of Sen. Dan Liljenquist, R-Bountiful, said Sen. Ralph Okerlund, R-Monroe, Senate chairman of the committee.

September 8 –

A 'gotcha' moment in Utah politics (Maryann Martindale)

Gotcha politics usually refers to the idea of catching a politician saying a few ill-chosen words which are then taken out of context and used against them relentlessly. Lanny Davis — special counsel to President Bill Clinton and friend of President George W. Bush — wrote a book about this whole subject called "Scandal: How Gotcha Politics is Destroying America."

Utah County poised to hold 5 state Senate seats (Billy Hesterman, Daily Herald)

Utah County appears to be in a good position to get five state Senate seats within its boundaries, based on the latest maps being considered by the Legislature's Redistricting Committee. In the latest map being considered by the committee, Utah County would have five state Senate seats located within the county's boundaries, with another three seats that overlap into the county. Salt Lake County Democrats appear to be the losers, though, with Utah County gaining a seat.

'Back to the drawing board' for Utah Senate redistricting (Lee Davidson, Salt Lake Tribune)

The Legislature's Redistricting Committee stumbled Wednesday in an attempt to finish new Utah Senate districts when several members and community groups complained that a draft proposal was unfair to their home areas, and the group voted abruptly to adjourn. "It's back to the drawing board for now," Sen. Ralph Okerlund, R-Monroe, the Senate chairman of the committee, said afterward. "But time is becoming an issue. We only have a month to finish these maps" for the Legislature and Congress.

Utah lawmakers looking at state senate boundaries (Josh Loffin, Associated Press)

The Utah Redistricting Committee is reviewing final proposals for new state Senate and school board boundaries. The 18 committee members are meeting Wednesday at the Capitol as they finalize election maps that will be used for the next decade.

Redistricting Committee Stalls on Senate Map (Whitney Evans, KCPW)

A legislative redistricting committee considered two maps this morning for the Utah Senate boundaries, but neither got the stamp of approval. One of the maps came from the citizen group Fair Boundaries Coalition, while the other came from the redistricting committee's co-chairman. As KCPW's Whitney Evans reports, the second map raised lots of concern over Tooele.

September 9 –

House proposal puts Sandstrom and Herrod in same district (Billy Hesterman, Daily Herald)

Rep. Stephen Sandstrom, R-Orem, and Rep. Chris Herrod, R-Provo, may find themselves battling it out for a House seat in the next election if one redistricting plan being considered moves forward. One proposed map for the state House of Representatives combines Herrod's and Sandstrom's districts, meaning the two allies could end up running against each other in the 2012 election.

Redistricting Starting to Bring Out Hard Feelings (Bob Bernick, Daily Herald)

There's a lot of tough votes in the Utah Legislature that pit one group or individuals against others. But rarely does it become personal. The 2011 redrawing of the 29 state Senate seats and 75 House seats is becoming personal. That's because to protect some incumbents while sacrificing others some strange — and to the individuals involved, very personal — lines are being drawn.

Senate plan carves up county again (Tim Gillie, Tooele Transcript Bulletin)

Sloan: "To slap the people of Tooele County with a map like this shows that the public has no place in the process." A proposed base plan for new boundaries for state Senate seats is drawing sharp criticism from Tooele County leaders and citizens who hoped redistricting would finally give them a resident senator. Since the last round of redistricting a decade ago, Tooele County has been split into four senate districts. A decade of growth has now made the county Utah's seventh largest in terms of population, but the newly proposed boundaries would again divide Tooele County, making it the only one of the state's nine most populous counties not to have a population majority in a senate seat.

September 13 –

To understand redistricting, read 'The Godfather' (Henry C Jackson, Associated Press)

In Utah, Republicans long ago tired of Democratic Rep. Jim Matheson holding onto a seat in a state they otherwise dominate. With the state gaining a seat in redistricting, the GOP-held Legislature is signaling it will favor a map that vastly dilutes Matheson's Salt Lake City-area base, creating a congressional map that looks like a half of a pizza, with four slices that meet in and around Salt Lake City.

Utah County to gain in Senate, Provo/Orem to lose in House (Billy Hesterman, Daily Herald)

If the Legislature approves two proposed maps, Utah County will have five Senate seats of its own, but two legislators' districts will be combined in the House. Rep. Ken Sumsion, R-American Fork, House chair for the Redistricting Committee, said the districts of Rep. Stephen Sandstrom, R-Orem, and Rep. Chris Herrod, R-Provo, had to be combined because of population numbers.

Lawmakers endorse new Utah Senate, House maps (Lee Davidson, Salt Lake Tribune)

The Legislature's Redistricting Commission unanimously passed on Monday new district maps for both the Utah Senate and House, which would force a dozen legislators to face a fellow incumbent for re-election if approved by the full Legislature at a special session next month. The committee also managed to win praise from good-government groups for its Utah House map, but they and some officials from Tooele and Salt Lake counties groused that the Senate map may have unfairly gerrymandered some areas to help incumbents.

Utah Legislature's Redistricting Committee approves preliminary Senate, House maps (Lisa Riley Roche, Deseret News)

A legislative committee quickly approved a new state Senate district map Monday without any concessions to concerns raised about how it splits Tooele County. The unanimous vote came soon after some members spent more than an hour behind closed doors, delaying the start of the meeting. "We looked at a lot of options," said the committee's co-Chairman Sen. Ralph Okerlund, R-Monroe. "At this point we are where we were."

Redistricting: Senate Map Proposal Sends Warning to Critics (Bob Bernick, UtahPolicy.com)

When we last left our intrepid state Senate map-drawers they were taking considerable public heat over suggesting that Tooele County be split two ways in a new 29-district map. That was last week. Monday – after saying they considered Tooele County officials' complaints about not having a "resident" state senator in the 2011 redistricting – by a unanimous vote the Legislature's Redistricting Committee adopted a "base" Senate map much like the one drawn and presented last week by Sen. Ralph Okerlund, R-Monroe, the committee's GOP Senate chair.

Redistricting: Proposed House Map Combines 10 Incumbents (Bob Bernick, UtahPolicy.com)

If Republican House members on the Legislature's Redistricting Committee can hold to recommendations made Monday, the 75-member state House would see some of the most significant changes to its make-up in at least the last three redistricting efforts. A House "base" map that passed unanimously after nearly a whole day of work puts together more incumbents than redistricting in the 2001 and 1991 efforts. (The new House plan should be online Tuesday at: www.redistrictutah.com, although there were software problems with the map-drawing site Monday.)

September 14 –

District maps (Salt Lake Tribune)

Judging by the proposed maps on the Legislature's redistricting website, RedistrictUtah.com, it's not easy to divide the state into 29 Senate districts without goring someone's ox. Even the maps submitted by so-called good government groups lasso communities together that seem to have little in common. But that doesn't mean that a good job cannot be done, and we believe that the draft Senate map adopted by the Legislature's Redistricting Committee week falls short. We urge the committee to further refine its plan before submitting it to the full Legislature next month.

Senate redistricting: Process shows how weak get weaker (Tooele Transcript Bulletin)

Tooele County residents still smarting from the last redistricting a decade ago were steeled for battle as the process kicked off this time around. However, rather than rallying cries from local political leaders, they often heard soothing reassurances: We have no need of an independent redistricting commission, since our elected leaders are ideally suited to this non-political task. Or, now that we have an all-Republican, six-member legislative team, state Republican Party leaders will definitely hear our appeals for better representation and act on them. Or simply, don't worry, the Legislature knows they made a mistake 10 years ago and is planning to redress it out a sincere spirit of shared justice. Wrong. Dead wrong. Childishly naive.

September 16 –

Redistricting has Been Kind to Democrats...So Far (Bob Bernick, UtahPolicy.com)

If you had shown me last spring the redistricting maps of the Utah House and Senate unanimously adopted this week by the Legislature's Redistricting Committee, I would have been more than a little surprised. Why? Because the majority Republicans did not treat the minority Democrats too badly

Utah County lawmakers like pizza plan for House districts (Billy Hesterman, Daily Herald)

Utah County lawmakers on the Legislature's Redistricting Committee are leaning toward supporting a pizza slice plan for Utah's four congressional districts. Two of the three Utah County-based lawmakers on the committee say they like the idea of a plan that would divide the state into four districts with the wedges of each district meeting somewhere in Salt Lake County.

September 19 –

Democratic Party Leader Slams Redistricting Proposal (KCPW)

Just two weeks before final redistricting maps are voted on by the Utah Legislature, Utah Democratic Party Chairman Jim Dabakis is not shying away from voicing his disgust on one proposal likely to be presented to the legislative body, even though it got bipartisan support from the redistricting committee. KCPW's Jessica Gail reports.

September 20 –

Peter Corroon urges Utahns to sign redistricting petition, attend rally (Lisa Riley Roche, Deseret News)

Salt Lake County Mayor Peter Corroon is urging Utahns to sign a petition calling for lawmakers to keep communities together as they redraw boundaries for congressional, legislative and state school board districts. In an email sent by his unsuccessful campaign for governor last year, the Democratic mayor also asks Utahns to join him at a redistricting rally at the Capitol, scheduled for 11:30 a.m. on Oct 3, the first day of a special legislative session to finalize the new districts.

September 21 –

Most Salt Lake County House Republicans 'Okay' With Redistricting Proposal (Bob Bernick, UtahPolicy.com)

You know the old saying "divide and conquer." Well, Republicans on the Legislature's Redistricting Committee may be using that adage to round up needed votes in the always contentious, always personal, redrawing of state House and Senate district boundaries.

Exclusive: Democratic Official Drew 'Nonpartisan' Redistricting Maps (Bob Bernick, UtahPolicy.com)

Longtime Utah State Democratic Party official Todd Taylor drew the legislative and congressional redistricting maps submitted to the Legislature's Redistricting Committee by the citizen group Fair Boundaries, UtahPolicy learned Tuesday.

September 22 –

Most Salt Lake County House Republicans 'Okay' With Redistricting Proposal (Bob Bernick, UtahPolicy.com)

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September 23 –

Congressional maps still in the running slice up Salt Lake County (Lee Davidson, Salt Lake Tribune)

A five out of six chance now exists that Utah will have a "pizza slice" plan for its new congressional districts, which would divide Salt Lake County into slices that are attached to large rural areas. The Legislature's Redistricting Committee voted Thursday to advance six congressional plans for further and final consideration Tuesday. Five of the six are variations of pizza slice plans.

Lawmakers narrow list of potential congressional maps to six (Lisa Riley Roche, Deseret News)

The Legislature's Redistricting Committee has narrowed it down to six proposals that divide Utah into four congressional districts. The committee spent several hours Thursday refining their choices, and hope to settle on a single map at their next meeting on Tuesday, a week before the Legislature's special redistricting session begins. Only one of the maps selected features an urban district that's surrounded by largely rural districts, similar to the so-called "donut" plan seen as favorable to Democrats.

September 26 –

Doughnuts don't get fair taste test (Daily Herald)

Despite the overwhelming expression by the legislative committee that it wished to include the people in the process, it has proven, once again, it was all for show. The public was once again ignored when at the end of Thursday's redistricting committee meeting we were left six choices out of the same pizza box. Don't get me wrong, I like pizza. But I prefer my pizza on a plate, with an ice-cold drink, not as a carved up district map for my state congressional delegations.

Chaffetz Finally Paying Attention to Redistricting Plans (Bob Bernick, UtahPolicy.com)

Of the six "template" congressional maps the Legislature's Redistricting Committee has adopted, five of them split Utah County – something that many observers didn't think would happen when the redrawing process started last spring.

Fair Boundaries redistricting maps stick to metrics goals (Glenn Wright, Salt Lake Tribune)

In its Sept. 15 editorial, "District Maps: Senate Plan Needs Revision," the Tribune editorial board made the cardinal error of being distracted by alluring redistricting anecdotes rather than focusing on quantitative metrics gauging the maps they describe

September 27 –

Outrage over redistricting Senate seats in Ogden (Charles Trentelman, Standard Examiner)

Redistricting Top of Utah's Republican-held state Senate seats divides Ogden among three senators, a move one Ogden official praises for giving Ogden more power in the Legislature. The chairman of the state's Democratic Party, however, calls it "blatant gerrymandering" designed to protect the senators who now sit in those seats.

Pizza by any other name ... (Daily Herald)

Incredibly, state legislators, including some local ones, are bulldozing ahead with redistricting plans that would dilute Utah Valley's political presence in Washington. With the Legislature's Redistricting Committee meeting again today, and a special session to vote next week, time is running out.

Lawmakers expected to choose new Utah political boundaries today (Fox13)

Lawmakers are expected to choose the state's new political boundaries today. The "pizza slice" plan, cutting Utah into four equal districts, is one proposal that is favored by many republican lawmakers in the state.

September 28 -

Favored redistricting map splits Salt Lake County three ways (Lee Davidson, Salt Lake Tribune)

In its long-awaited final decision on how to draw new congressional districts, the Legislature's Redistricting Committee on Tuesday served up a "pizza slice" plan — which would slice Salt Lake County into three pieces and combine them with large rural areas...Rep. Jim Matheson, D-Utah, was dissatisfied enough at what appears to be a tougher district for him that he said "a race by me for governor or the Senate is still on the table" instead of seeking House re-election.

Committee votes for map splitting Utah County into two districts (Billy Hesterman, Daily Herald)

Utah's Legislative Redistricting Committee is close to finalizing a map that will divide Utah County into two congressional seats. On Tuesday, the committee adopted a map drawn by Rep. Ken Sumsion, R-American Fork, and modified by House Speaker Becky Lockhart, R-Provo, which will divide Utah County in half and place the areas in separate seats in the U.S. House of Representatives.

Matheson Could Face Tough Re-Election Challenge After Redistricting (Bob Bernick, UtahPolicy.com)

Ok, here's the big political question of the 2011 redistricting by the GOP-controlled Utah Legislature: Can Democratic U.S. Rep. Jim Matheson win re-election next year if about half of his current voters are placed in his new 2nd Congressional District?

Utah lawmakers endorse congressional map (Lisa Riley Roche, Deseret News)

The Legislature's Redistricting Committee endorsed a congressional map Tuesday that splits Salt Lake County residents among three of the state's now-four districts, a decision that drew harsh criticism from Democratic party leaders. The map approved by the committee is a modification of one of the six congressional plans advanced last week for further discussion. The committee will meet Thursday to take another look at the map before making its final recommendation.

October 4 -

Utah House redraws congressional map on governor's request (Lee Davidson, Salt Lake Tribune)

The state Senate passed on Monday a controversial "pizza slice" plan on how to draw new congressional districts, but House leaders are working on a significantly redrawn version at the request of Gov. Gary Herbert that would increase the urban-rural mix of districts even more.

GOP lawmakers reconsider congressional map; Democrats put them on notice that they will sue (Lisa Riley Roche, Deseret News)

The controversial congressional map that drew more than 100 protesters to the Capitol on Monday is likely history. House Speaker Becky Lockhart, R-Provo, said GOP House members made it clear they didn't like it, either, during their closed caucus meetings on the first day of a special legislative session dealing with redistricting. So a public hearing will be held at 10 a.m. Tuesday on a new map that was expected to be made public online late Monday, at redistrictutah.com.

House draws new map for congressional districts (Billy Hesterman, Daily Herald)

The state Legislature gave final approval to one of the four maps it will need to approve during its special redistricting session this week. The House and Senate both gave a nod to the state school board map, a map that in its early version was drawn by a member of the public, and each house gave approval to the

maps that draw their respective districts. But the map for Utah's four U.S. Congressional seats is forcing the Legislature to work for a second day in the special session.

Back and Forth on Redistricting Session's First Day (Bob Bernick ,UtahPolicy.com)

Fluid – that was the politics Monday as the Legislature worked on redrawing Utah's new four-seat U.S. House map. The state Senate adopted the Redistricting Committee's recommended Sum6A congressional map Monday afternoon – the first day of a special session called by GOP Gov. Gary Herbert to officially pass U.S. House, state House and Senate, and State School Board boundaries lines.

Democrats warning of lawsuit over political boundaries (Billy Hesterman, Daily Herald)

Utah Democrats took the first step in moving toward a lawsuit against the state if the Legislature approves redistricting maps it views as unfair. The Democratic Party delivered a letter on Monday to the Legislature, which is meeting in a special session to redraw the state's political boundaries, warning of possible litigation over the process used to change the state's political boundaries. The letter was delivered in advance of the Legislature approving any actual maps.

October 5 –

Talks to redraw congressional map put on hold (Lee Davidson & Robert Gerhke, Salt Lake Tribune)

Instead of just fighting with Democrats and reform groups, Republicans in the state House and Senate battled each other Tuesday over how to redraw congressional districts. They ended in a stalemate, then recessed until Oct. 17 to allow time to find a compromise.

House, Senate GOP can't agree on congressional maps, postpone session (Lisa Riley Roche & Dennis Romboy, Deseret News)

Utah House and Senate Republicans reached an impasse late Tuesday night and put off setting new congressional district boundaries until later this month. GOP lawmakers, who hold the majority in both bodies, spent much of the day behind closed doors in the hope they could agree on a map on Day 2 of a special legislative session. But instead, they ended up with five or six proposals.

Special Session on Hold Until Oct. 17 (Bob Bernick, UtahPolicy.com)

Remember the old joke about the camel – that it was so ugly it must have been designed by a committee. Well, unfortunately, critics say, the Republicans in the Utah Legislature – after months of public testimony, a \$1 million budget and literally hundreds of U.S. House maps to choose from – were close to approving a camel-like four-seat congressional map late Tuesday night that, despite what up until then had been the most open and transparent redistricting Utah has ever seen, would have been made public just before the House and Senate took votes.

Rolly: Provo Republicans cry 'gerrymandering' (Paul Rolly, Salt Lake Tribune)

Here's a switch. A group of Utah County Republicans feels disenfranchised by the Legislature's redistricting process. At least they have one thing in common with Salt Lake City liberals. The group, representing west Provo, says new boundaries for Senate District 16 now will include Wallsburg in Wasatch County, which means the intra-party fight for that seat will be in the GOP state convention instead of the county convention because it now crosses county lines.

October 6 –

The jig is up (Salt Lake Tribune)

The Legislature has blown its cover. Any pretense that the redistricting process is something other than a political struggle governed by personal ambition and partisan calculation exploded in this week's special session. When Republicans in the House threw out the Redistricting Committee's proposed map for Utah's four new congressional districts and started drawing new lines in back rooms, the jig was up.

Redistricting redux (Deseret News)

After months of public meetings, dozens of proposed maps and endless debate over which junk-food approach to redistricting is best, you would have thought Utah legislators could approve some sort of map during a special session called for that purpose this week. But you would have been wrong. Instead,

Tuesday night found House Republicans scrambling behind closed doors to draw yet another map, a task that ultimately ended in the postponement of the session to allow for more public hearings.

Lawmakers say taking time on maps is a good thing (Billy Hesterman, Daily Herald)

While Utah's lawmakers hit the pause button on the special session to redraw Utah's congressional districts late Tuesday night, they hope the work stoppage will show the Legislature is ready and willing to listen to the public. "We feel the public needs to review some of the things we have discussed," said House Majority leader Brad Dee, R-Ogden.

Lawmakers relieved to be taking a breather on redistricting (Lisa Riley Roche, Deseret News)

Tuesday night, Senate Majority Leader Scott Jenkins was fed up over the House GOP's failure to reach an agreement on how to divide the state's now four congressional districts. After two days "of mostly sitting around" waiting for the House majority Republicans to make a decision, "I was frustrated like everybody else," Jenkins, R-Plain City, said. But Wednesday, the Senate leader said he agrees that adjourning the special redistricting session that started Monday until Oct. 17 was the right call.

October 10 –

House districts (The Spectrum)

Do people in Salt Lake City really care deeply about rural issues? Probably to some extent, but on a daily basis, does the use of Utah's public lands cross their minds? Probably not. Do people in Moab really care deeply about urban issues? Again, probably to some extent, but it's not likely those issues cross their minds on a daily basis. Shouldn't elected House members, though watching out for the state in total at times, watch out more for the day-to-day interests of their constituents? That's not entirely possible at times when urban and rural interests conflict.

Partisan Focus in Congressional Redistricting (Bob Bernick, UtahPulse.com)

The question Utah House and Senate members must answer is how partisan – some may say how loyal – of a Republican do each of them wish to be, compared to how representative of their constituents in redrawing the state's four new U.S. House seats. In part because of the times, in part because of the timing, the 58 GOP House members and 22 Republican senators are in a bind.

Democrats call for GOP to open meetings on redistricting (Billy Hestermann, Daily Herald)

Utah Democrats are calling on Republican lawmakers to open the doors to their discussions about how the boundary lines should be drawn for Utah's congressional districts..."When a family has a fight they don't do it on the front lawn," said Speaker of the House Becky Lockhart, R-Provo. "Not that there was a knockdown drag out, but there was some very high emotions. There is a lot of stress in this process."

Gop Lawmakers Defend Closed Redistricting Meetings (Associated Press)

Republican Utah lawmakers are defending their closed-door meetings last week on the task of setting new congressional district boundaries..."It was closed because we have Republicans fighting with Republicans," said Rep. Francis Gibson, R-Mapleton. "If we're going to fight in my house, I'm sorry, all the visitors are going to have to leave."

Blog Watch: Lockhart Slams Redistricting Critics (UtahPulse)

At her personal blog, House Speaker Becky Lockhart responds defiantly to the threat from various Democratic and Republican groups to sue the state over redistricting, saying: "Bring it on." [Read Lockhart's full blog [here](#)]

Redistricting on Hold (Bryan Schott, UtahPulse)

Republicans in the Utah House and Senate had a hard time last week agreeing on a new four-seat congressional redistricting map. They will try again Oct. 17. In the end, which of the following do you think will happen?

October 11 –

Cache GOP chair sees values as more important than two-party system (Jennie Christensen, CacheValleyDaily)

Utah will have four Congressional districts instead of three and Cache County's Republican Party Chairman Boyd Pugmire says he feels it is important that a Republican is elected in the new district. In fact, he says right now Democratic Congressman Jim Matheson often cancels out the vote of one of Utah's Republicans. Pugmire says if all four Congressional seats could be held by Republicans, it would be a great accomplishment. He disagrees with those who say Utah needs a stronger two-party system. "I think the best thing to do is to look at what the values are in the state," Pugmire said, "and rather it be a Republican or whoever is elected, I think we need to look at do their values match the values of the people within the state. "To say we need to have a Democrat in there because we need a two party system, we do have a two party system but I think the people should have the right to vote in the people who have the same values they have."

October 12 –

Dems Plan For Redistricting (Eric Peterson, City Weekly)

As the Legislature struggles to finalize the congressional map that will guide Utahns' selection of their congressional delegates for the next decade, Democrats are bracing for a map that will hit them where it hurts—right in the liberal stronghold of Salt Lake County.

Lawmakers optimistic new redistrict map will reach bipartisan agreement (Aaron Vaughn, Fox13)

In less than a week the Utah Legislature will vote on the state's new congressional map, one that will include a new fourth seat. Critics worry of gerrymandering by Republicans, while some Democratic leaders are optimistic a fair map may come out of the works.

October 14 –

Bob Bernick's Notebook: Redistricting Lawsuits are a Dangerous Game (Bob Bernick, UtahPulse.com)

Utah Democratic Party leaders have entered into what many may see as a dangerous game – not only threatening a lawsuit over redistricting, but saying they will subpoena leading GOP legislators in an effort to see what they talked about on redistricting "behind closed doors."

'Nuclear' blog highlights politics behind Utah's redistricting talks (Max Roth, Fox13)

An explosive column by Sutherland Institute President Paul Mero has created a major debate over the rationale behind redistricting. Mero makes the argument that cities by necessity create communities that rely on government regulation and that limit freedom. He uses that argument to say Utah should draw its four U.S. Congressional districts in order to limit the influence of city dwellers who tend toward liberalism and socialism.

New congressional maps unveiled (Billy Hesterman, Daily Herald)

Two new maps defining Utah's congressional districts were released to the public on Wednesday. The maps, drawn by Rep. Ken Sumsion, R-American Fork, are modifications to a map that was approved by the state Senate last week in the Legislature's special session on redistricting.

Dems say Utah GOP lacks redistricting transparency (Lee Davidson, Salt Lake Tribune)

Democrats scolded Republicans on Wednesday for what they say is a lack of transparency in redistricting work, just as the GOP posted publicly two maps that House Republicans will consider Monday as they try to end a standoff with the Senate over new congressional boundaries.

October 17 –

Redistricting Fight Moves Back to Legislature Monday Morning (Bob Bernick, UtahPolicy.com)

Get ready for a spirited, if perhaps short, meeting of the Utah Legislature on Monday. One GOP senator tells UtahPolicy he expects House Republicans to either approve of the four-seat congressional map the upper body sent them two weeks ago, or make "modest" changes to the map

Redistricting process disrespects Utah citizens' right to vote (David Irvine, Deseret News)

The contempt of many legislators for public opinion and voting fairness is almost beyond belief. Some legislators consider redistricting to be none of the public's business. But they will tell school children that our system is wonderful because if you don't like the representation you get, you can vote someone else into office. Gerrymandering makes electing that "someone else" nearly impossible, and that's what's going on here and now.

Redistricting squabble has GOP congressional hopefuls wondering where to line up (Dennis Rombo, Deseret News)

Several Republicans looking to get into the 2012 congressional race don't know where to line up yet. A standoff in the Utah Legislature over how to set new boundaries for the state's four districts has left some potential candidates in wait-and-see mode. They aren't ready to commit to a district in which they might not end up living — though that has worked for GOP 3rd District Rep. Jason Chaffetz.

Utah lawmakers ready to resume redistricting battle (Lee Davidson, Salt Lake Tribune)

The curtain is set to rise Monday on a second — and perhaps final — act of raw political drama as a multisided brawl continues among House Republicans, Senate Republicans, Democrats and reform groups over how to redraw Utah's new congressional boundaries. The future of parties, incumbents and would-be candidates hangs in the balance.

Redistricting talks continue to polarize state lawmakers (Max Roth, Fox13)

As lawmakers get closer to a special session aimed at finally drawing Utah's congressional map, the political parties are getting more polarized, with Democrats complaining that they are being victimized by gerrymandering.

Paul Rolly: Dysfunction in the House (Paul Rolly, Salt Lake Tribune)

It wasn't exactly the "Rumble in the Jungle." Or even the "Thrilla in Manila." But when House Speaker Becky Lockhart, R-Provo, told her second in command to step outside from a caucus meeting he was conducting during the Legislature's special session on redistricting earlier this month, it wasn't to play checkers. The incident, say Republican caucus members, illustrates the growing tension within the base in the Republican-dominated House, with one member comparing the chamber's leadership to a dysfunctional family.

October 18 –

Utah Dems angry at closed caucus meeting (Loretta Park, Standard Examiner)

The Utah Democratic Party chairman became angry after the House Republican caucus voted to close its meeting. "This is the type of arrogant, pretentious, and disdainful behavior Utahns have come to expect from Utah's Republican leadership," said Utah Democratic Party Chair Jim Dabakis.

Opinion: Utah legislature commits crime against humanity (Daily Herald)

The Utah Legislature has committed a crime against humanity. On Monday night, both houses adopted a map for Utah's representatives to Congress that would border on the laughable if it didn't hurt so many communities.

Redistricting Denouement (For Now) (Bob Bernick, UtahPolicy.com)

Utah Senate President Michael Waddoups was the lucky one. He was stuck in Argentina at a legislative conference, unable to get a flight back last weekend because of a Chilean exploding volcano, and missed Monday's special legislative session aimed at trying (again) to pick a new four-seat U.S. House map.

Utah lawmakers pass new congressional map (Lisa Riley Roche & Dennis Rombo, KSL)

Lawmakers approved a new map dividing Utah into four new congressional districts late Monday, ending a special session that stretched over several weeks and sparked sometimes harsh partisan debate.

Republicans approve new Utah congressional map (Lee Davidson & Robert Gehrke, Salt Lake Tribune)

After a long day of closed-door negotiations, protests and one GOP misstep that forced a temporary retreat, Utah lawmakers finished months of battling and finally passed a map for Utah's new congressional districts. (View the map at <http://www.redistrictutah.com/maps/sb3002s20>)

Legislature approves new congressional map for Utah (Billy Hesterman, Daily Herald)

After more than two weeks of debate and many hours spent behind closed doors, lawmakers put the final stamp of approval on a map that redraws the boundary lines for Utah's four U.S. House districts late Monday night.

October 20 –

Opinion: Governor should veto the map (Daily Herald)

Gov. Gary Herbert should take a close look at the congressional district map delivered by the Utah Legislature on Monday, and then veto it for what he finds. He should not stand for the dissection of Utah communities, regardless of the partisan advantages of doing so. A veto would bring the legislature's foolishness into full public view.

Republicans threatened gerrymandering lawsuit (Robert Gerhke, Salt Lake Tribune)

Democrats were not the only ones threatening to sue the Legislature over redistricting. Utah Republican Party Chairman Thomas Wright says he warned lawmakers that the GOP would do the same if it made a safe district for Democrats among new congressional boundaries.

GOP says Dems exaggerate Utah redraw impact (Lee Davidson, Salt Lake Tribune)

Republicans said Wednesday that the ratio of Democrats to Republicans in newly drawn congressional districts is not as draconian as Democrats portray. For example, while Democrats said this week that the new 2nd Congressional District where Rep. Jim Matheson, D-Utah, lives is 65 percent Republican, the GOP said it is 60 percent instead. Those five percentage points could make a big difference in close elections.

Veto district map (Salt Lake Tribune)

Gov. Gary Herbert should veto the map for Utah's four new congressional districts. It's probably whistling into the wind to even suggest that, because the governor has to get along with the other Republicans who form three-quarters of the Legislature. But as a matter of process and principle, the governor could and should force the lawmakers to reconsider their action of Monday night, which drew boundaries for four new congressional districts, all with an eye to splitting up the votes of Democratic and independent voters and guaranteeing that Republicans will win all four seats in the next general election.

Secrecy has its place, but not in redistricting (Jay Evensen, Deseret News)

Secrecy is a valued concept when the subject is birthday or Christmas shopping, or when surprise parties are hatched. Try it in the halls of a democratic-republican government, however, and you're asking for trouble.

County gets southwest congressional seat (Tim Gillie, Tooele Transcript)

"I'm not excited by the prospect of being represented by Jim Matheson," said Tooele County Republican Party chairman Chris Sloan. "It is not just that he is a Democrat, but he has been a very vocal critic of the radioactive waste industry that provides a large chunk of our county's income."

New map could sink Legislature's only openly gay lawmaker (Derek P Jensen, Salt Lake Tribune)

A rejiggered map of Utah House districts may pit a freshman, who earned his seat on the last convention ballot, against a 12-year veteran who happens to be the Democratic minority leader.

West-side redistricting creates a political whodunit (Lee Davidson, Salt Lake Tribune)

Some say her fellow Democrats plunged a political dagger into her back. Others say Republicans did her in. Some wonder whether high-powered friends of the Utah Transit Authority targeted her because of her criticism of that agency. Regardless, when the Utah House approved new district maps this month for its own members, only one was unhappy enough to vote against it — Rep. Janice Fisher, D-West Valley City.

Syracuse avoids redistricting split (Steven Oberbeck, Salt Lake Tribune)

Mayor Jamie Nagle is a lot less stressed these days. The community that Nagle helps oversee was divided into just two legislative House districts, as in the past, instead of the three or four that initially were being considered by the Legislature's Redistricting Committee.

October 21 –

Oops! Redistricting legislators split homes in half (Chris Vanocur, ABC4)

What if, in their haste to pass new political boundaries, Utah Legislators had accidentally split people's homes and put each half into a different congressional district? Sound far-fetched? Well, wait until you find out what we found out.

Herbert signs redistricting bills (Deseret News)

Gov. Gary Herbert signed the remaining redistricting bills following a lengthy and rancorous special session over the political boundaries for Utah's four congressional seats. In addition to the congressional designations, Herbert signed off on the state Senate boundaries. Political boundaries are redrawn every 10 years following the census. An increase in population gave Utah a new fourth district.

Governor OKs new Utah congressional maps (Lee Davidson, Salt Lake Tribune)

Gov. Gary Herbert signed into law on Thursday new congressional redistricting maps, despite threats of lawsuits by Democrats, critical petition drives by reform groups and editorials urging a veto by the state's major newspapers.

EXHIBIT "E"

(To "Decision on Appeal," dated June 13, 2012)



Michael E. Christensen
Director

John L. Fellows
General Counsel

Matt Lyon
Executive Director
Utah State Democratic Party
825 N 300 W, Suite C400
Salt Lake City, Utah 84103

Todd Taylor
Senior Strategic and Political Advisor
Utah State Democratic Party
825 N 300 W, Suite C400
Salt Lake City, Utah 84103

November 16, 2011

Re: Amended GRAMA request

Dear Mr. Lyon and Mr. Taylor:

This letter is in response to your amended records request, received by our office on November 9, 2011, seeking the following:

"All communications inclusive of the period from September 12, 2011 through October 12, 2011, whether paper or electronic, between members of the Utah State Legislature, their staff, and/or outside organizations, individuals, or entities that:

- 1) Contain or reference block assignment files;
- 2) Reflect, regard or reference the purported grounds or criteria discussed, referenced, considered -- officially or unofficially -- regarding proposed or adopted congressional, Utah House, or Utah Senate maps;
- 3) Consist of, regard or reference redistricting and members of the Utah State Legislature, Utah's Congressional Delegation, Utah Governor, or Utah State Republican Party, including current, past, potential, and future candidates (including but not limited to Rob Bishop, Jim Matheson, Jason Chaffetz, Carl Wimmer, Dave Clark, Mia Love, David Kirkham, Cheryl Eager, Morgan Philpot, Ken Sumsion, Chris Herrod, Dan Liljenquist, Chuck Williams, Jason Buck, Chris Stewart, Howard Wallack, John Willoughby, Rebecca Lockhart, Maichael Waddoups, Jake Shannon, Casey Anderson, Craig Frank, Bill Skokos, John Valentine) and elected officials;
- 4) Reflect, consist of, regard or reference any e-mail sent to or from the Utah or National

Utah State Capitol Complex
House Building, Suite W210
PO Box 145210
Salt Lake City, Utah
84114-5210
Phone (801) 538-1032
Fax (801) 538-1712
www.le.utah.gov

Republican Party, including its staff advisors, and executive committee regarding redistricting; and/or,

- 5) Reference or include partisan or voter participation data and the redistricting process."

Responding to your request will likely take longer than the normal response time of ten business days. We will require additional time for the following reasons:

- the request requires us to review a large number of records to locate the records requested; and
- the decision to release a record involves legal issues that require us to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law.

These reasons constitute extraordinary circumstances under which we may extend the time for responding to a request. Thus, pursuant to Legislative Management Policy and Utah Code Section 63G-2-204, we hereby inform you that it will likely take at least 60 days from the time we begin working on your amended request (which is broader than your original request, in both time and scope) to respond to your request.

In your letter, you request a waiver of fees under Utah Code Subsection 63G-2-203(4), based on the following assertions:

"1) The Utah Democratic Party through informed participation in the public debate helps to educate the public on a matter of public policy; 2) The Utah Democratic Party has been a party to government through our informed assistance in bringing public participation to the legislative process; 3) The Utah Democratic Party needs accurate information to provide substantial and accurate testimony to legislators when there is pending official action by policy making bodies; 4) The Utah Democratic Party is directly and indirectly the subject of the information requested; 5) The Utah Democratic Party may be a party to litigation on the subject of the information requested; and, 6) The Utah Democratic Party needs the information because it has a unique responsibility to support the legal rights of the people in Utah."

I deny your request for a waiver of fees. The Legislature's policy, adopted pursuant to Utah Code 63G-2-703, for the charging or waiving of fees is as follows:

Section 2.2. Fees for records requests.

- (1) The Legislature may charge a fee to obtain a record as provided under these Policies and Procedures as attached in Appendix B.
- (2) The Legislature may fulfill a record request without charge if:
 - (a) the release of the record primarily benefits the public rather than the person requesting the record; or
 - (b) the individual requesting the record is the subject of the record or an individual

November 16, 2011

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specified in Utah Code Ann. § 63[G]-2-202(1) or (2) (Supp. 2006).

You suggest several reasons that release of the records you have requested may provide a public benefit. Even if you are correct, in determining whether to waive fees, I am directed to consider whether the *primary* benefit of releasing the records is to the public rather than the person requesting the record. In order to make this determination, I must also consider the benefit that releasing the record provides to you.

You have previously indicated that you may be litigating issues relating to the redistricting process. Some or all of the records you have requested may relate to that potential litigation and to the records described in your letter of October 3, 2011, where you request that we retain records pending potential litigation. Further, in your amended request, you indicate that "[t]he Utah Democratic Party may be a party to litigation on the subject of the information requested." Though the release of the records you have requested *may* indirectly provide some benefit to the public, I find that the primary benefit of the release of the records would be to the Utah Democratic Party. Thus, your request for the waiver of fees on the grounds that release of the records to you may provide a public benefit is denied.

You also assert that fees should be waived because "[t]he Utah Democratic Party is directly and indirectly the subject of the information requested." In relation to these grounds, I am directed to consider whether the *individual* requesting the record is the subject of the record or an *individual* specified in Utah Code Subsection 63[G]-2-202(1) or (2). The Utah Democratic Party is not an individual and does not satisfy any of the criteria described in Utah Code Subsection 63[G]-2-202(1) or (2). Further, the Legislature's policy on the waiver of fees cannot reasonably be interpreted to be so broad as to apply to a record of which the individual is indirectly the subject. In the event that you, as an individual, are the subject of any of the records, I will reconsider your request with respect to those records only. Thus, your request for the waiver of fees on the grounds that Utah Democratic Party is the subject of the records requested is denied.

Finally, I deny your request for a waiver of fees on separate and independent grounds from those discussed above. The Legislature's policy provides that the Legislature "*may* fulfill a record request without charge . . ." (emphasis added). The decision to waive fees is discretionary, not mandatory. Thus, even if you were able to establish that the waiver of fees is appropriate under the Legislature's policy, your request can still be denied. In this case, I exercise my discretion to deny your request. It is unfair to taxpayers that they should have the burden of paying for the staff time spent responding to your records request.

Please understand that we are treating both political parties equally in relation to their respective records requests. The Utah Republican Party is also being charged for the time spent responding to their request. They have authorized expenditures far in excess of \$100. Because your request is broader than theirs, your final fee will likely be higher and the time necessary to respond to your request will likely be longer.

The Office of Legislative Research and General Counsel alone has already spent 54.5 hours working on your initial request. At a rate of \$25 per hour, fees are already at \$1,362.50. We

November 16, 2011

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estimate that the charges for responding to your request (for the Senate, the House, and all legislative staff offices combined) will be approximately \$5,000. Please notify us immediately if you are willing to expend this amount or if you desire to narrow the scope of your request in order to lower the cost. **We will not begin working to respond to your amended request until you have agreed to the expenditure of funds necessary to respond.** Additionally, the 60-day period that we estimate it will take to respond to your request will not begin until you have agreed to the expenditure of funds that we estimate will apply to your request. If responding to your request is less expensive than our estimate, you will be charged the lesser amount. If it appears that it will be more expensive, we will inform you and ask if you would like us to proceed.

You have the right to appeal the denial of your fee waiver request to Michael Christensen, the Director of the Office of Legislative Research and General Counsel, at the Utah State Capitol Complex, W210 House Building, P.O. Box 145210, Salt Lake City, Utah, 84114-5210, within 30 days of the date of this letter. The appeals process is outlined in Part 3 of the Utah Legislature Policies and Procedures for Handling Records Requests, which governs the response and appeals process relating to records (a copy is included with this letter).

Sincerely,

A handwritten signature in cursive script that reads "Bryant R. Howe".

Bryant R. Howe
Public Records Officer
OLRGC

EXHIBIT "F"

(To "Decision on Appeal," dated June 13, 2012)

Joseph E. Hatch

ATTORNEY AT LAW
5295 SO. COMMERCE DRIVE, SUITE 200
MURRAY, UTAH 84107
TELEPHONE: 801-268-4042
FAX: 801-747-1049

December 13, 2011

Mr. Michael Christensen
Director of the Office of Legislative Research
and General Counsel
Utah State Capital Complex
W210 House Building
P.O. Box 145210
Salt Lake City, UT 84114-5210

Re: Notice of Appeal of Fees Requested and Timeliness

Dear Mr. Christensen,

On behalf of Utah State Democratic Party, I am filing this Notice of Appeal to the response authorized by Bryant R. Howe, dated November 16, 2011 addressed to the Utah State Democratic Party. A true and correct copy of the response is attached hereto as Exhibit "A". A true and correct copy of the GRAMA request is attached hereto as Exhibit "B".

Petitioner appeals from two decisions contained in Mr. Howe's response. First, the Petitioner believes that the \$5,000.00 fee request demanded in the response violates U.C.A. §636-2-203. Second, the Petitioner believes that the 60-day period for responding to the GRAMA request is not the result of an "extraordinary circumstances" as defined in U.C.A. §63G-2-204(5). The balance of this Notice of Appeal will present the Utah Democratic Party's reasons for the appeal.

1. Fee Waiver

Mr. Howe is correct that his office has discretion on whether or not to grant the fee waiver. However, that discretion is limited by statute and by law. By finding that "it is unfair to taxpayers that they should have the burden of paying for the staff time responding to your requests", the Office of Legislative Research and General Counsel ("OLRGC") abused its discretion. The Utah Court of Appeals in a recent case held that

An agency abuses its discretion when it reaches an outcome that is clearly against the logic and the effect of such facts as are presented

in support of the application, or against the reasonable and probable deductions to be drawn from the facts disclosed upon the hearing.

Sorge v. Office of the Attorney General, 128 P. 3d 566 (Ut. Ct. App. 2006).

To simply assume that the Democratic Party's request will result in an inappropriate use of taxpayer resources is an abuse of discretion. Further, the Utah Legislature has already addressed this point in U.C.A. §63G-2-203(4) which reads, in part, as follows:

A governmental entity may fulfill a record request without charge and is encouraged to do so when it determines that:

- (a) releasing the record primarily benefits the public rather than a person; [or]
- (b) the individual requesting the record is the subject of the record, or an individual specified in Subsection 63G-2-202(1) or (2);

[Emphasis added]

Mr. Howe has stated that the information is not primarily in the public's best interest. The Democratic Party is considering litigation over redistricting issues, but just because litigation may be involved, does not mean that the requested information is not primarily in the public interest. Ask Attorney General Shurtliff whether or not the litigation against the federal government over health care reform or primacy of county roads is not in the public interest. Ask Attorney General Graham whether or not litigation against the tobacco industry was not in the public interest. Information involving this state's efforts of redistricting is, of course, primacy in the public interest, whether or not there is litigation.

Mr. Howe also found that the Utah Democratic Party is not an "individual" within the meaning of U.C.A. § 63G-2-203(4)(b). First, Mr. Howe misreads the statute by ignoring the word "or" contained in the statute; therefore, the statute applies in the Democratic Party should the Democratic Party be an "individual" "subject of the record". No one disputes that the Democratic Party and its members are a subject of many of the records requested. The Republican Party's selective release of some requested documents to the media demonstrates this point. The real issue is whether the legislature, by using the term "individual", desired to exclude legal entities from utilizing this section of the statute. Of course, it is easy to quote Utah Republicans favorite presidential candidate, "corporations are people too", as support that the Utah Democratic Party should not be excluded from utilizing this section of the fee waiver statute. However, there is a strong policy consideration that public interest entities should be permitted to utilize this statute. Absent, express legislative intent to the contrary, the Utah Democratic Party should be treated as an individual under the code.

2. Time to Respond

Mr. Howe stated that the OLRGC needs 60 days from the date that the Democratic Party commits to pay \$5,000.00 to respond. This is far too long. As Mr. Howe admits in his response, his office has already done about 25% of the work; additionally, his office has already provided much of the requested documents to the Republican Party and the media. It should not take an additional 60 days to respond with the remaining documents of the request.

Petitioner Utah Democratic Party respectfully requests that the fee waiver be granted and that the requested documents be made available in 15 days.

DATED this 16th day of December, 2011.

Very truly yours,



Joseph E. Hatch
Attorney for Utah State Democratic Party

EXHIBIT "G"

(To "Decision on Appeal," dated June 13, 2012)

Joseph E. Hatch, Attorney at Law
5295 So. Commerce Drive, Suite 200
Murray, Utah 84107

COPY

December 23, 2011

DECISION ON APPEAL

This Decision on Appeal relates to the appeal filed by Joseph E. Hatch on December 16, 2011, on behalf of the Utah Democratic Party.

COURSE OF PROCEEDINGS

1. On October 12, 2011, Matt Lyon and Todd Taylor, on behalf of the Utah Democratic Party, filed a public records request under the Government Records Access and Management Act (GRAMA) with the Office of Legislative Research and General Counsel (OLRGC), requesting the following:

"All communications in the past 30 days, whether paper or electronic, between members of the Utah State Legislature, their staff, and/or outside organizations, individuals, or entities that:

- 1) Contain or reference block assignment files;
- 2) Reflect, regard or reference the purported grounds or criteria discussed, referenced, considered -- officially or unofficially -- regarding proposed or adopted congressional, Utah House, or Utah Senate maps;
- 3) Consist of, regard or reference redistricting and members of the Utah State Legislature, Utah's Congressional Delegation, Utah Governor or Utah State Republican Party, including current, past, potential, and future candidates and elected officials;
- 4) Reflect, consist of, regard or reference any email sent to or from the Utah or National Republican Party, including its staff, advisors, and executive committee regarding redistricting; and/or,
- 5) Reference or include partisan data and the redistricting process."

(See the Exhibit "A", attached).

The Utah Democratic Party also requested a waiver of fees.

2. On October 14, 2011, OLRGC sent a letter to Matt Lyon and Todd Taylor, indicating that additional time was needed to respond to their request and denying their request for a waiver of fees. (See Exhibit "B", attached).
3. On October 19, 2011, John Fellows, General Counsel to the Legislature, called and left a message at the Utah Democratic Party, asking to discuss charges for the records request. A return call was not received.
4. On October 24, 2011, John Fellows, General Counsel to the Legislature, and Thomas Vaughn, Associate General Counsel to the Legislature, called Todd Taylor and explained that the fee for responding to the request would be significantly higher than \$100. Mr. Taylor informed Mr. Vaughn that he would get back to Mr. Vaughn within one and one-half hours. Mr. Taylor failed to contact Mr. Vaughn.
5. On October 25, 2011, Mr. Vaughn again called Mr. Taylor. During that telephone conversation, Mr. Taylor indicated that he had not called because he was still waiting for a decision to be made by someone within the Utah Democratic Party. Mr. Taylor also stated that it was likely that the Utah Democratic Party would be withdrawing its request and filing a very similar one. Mr. Vaughn informed him that the Legislature had already incurred expenditures in excess of \$100 and that the Legislature needed to know how to proceed. Mr. Taylor advised Mr. Vaughn to stop work on the response for a "couple of days" until the Utah Democratic Party decided what to do.
6. On October 26, 2011, Mr. Vaughn sent a letter to Mr. Taylor memorializing the events described in the preceding paragraph and informing Mr. Taylor that, based on his conversation with Mr. Taylor on October 25, 2011, Mr. Vaughn would be instructing the records officers in all legislative staff offices to cease work on the records request from the Utah Democratic Party until further notice.¹ (See Exhibit "C", attached).
7. On November 9, 2011, Matt Lyon and Todd Taylor, on behalf of the Utah Democratic Party, sent an amended GRAMA request to OLRGC. This request is broader, in both the time period it covers and the scope of the records requested, than the initial request that was filed on October 14, 2011. The request seeks the following records:

"All communications inclusive of the period from September 12, 2011 through October 21, 2011, whether paper or electronic, between members of the Utah State Legislature, their staff, and/or outside organizations, individuals, or entities that:

¹ After the Utah Democratic Party filed its initial records request, the Utah Republican Party filed its own request for certain redistricting-related records. The Utah Republican Party's request was significantly narrower in that it was limited to four legislators and did not include legislative staff. The Utah Republican agreed to pay, and did pay, the \$2,537.65 fee for responding to its request.

- 1) Contain or reference block assignment files;
- 2) Reflect, regard or reference the purported grounds or criteria discussed, referenced, considered -- officially or unofficially -- regarding proposed or adopted congressional, Utah House, or Utah Senate maps;
- 3) Consist of, regard or reference redistricting and members of the Utah State Legislature, Utah's Congressional Delegation, Utah Governor, or Utah State Republican Party, including current, past, potential, and future candidates (including but not limited to Rob Bishop, Jim Matheson, Jason Chaffetz, Carl Wimmer, Dave Clark, Mia Love, David Kirkham, Cherilyn Eager, Morgan Philpot, Ken Sumsion, Chris Herrod, Dan Liljenquist, Chuck Williams, Jason Buck, Chris Stewart, Howard Wallack, John Willoughby, Rebecca Lockhart, Michael Waddoups, Jake Shannon, Casey Anderson, Craig Frank, Bill Skokos, John Valentine) and elected officials;
- 4) Reflect, consist of, regard or reference any e-mail sent to or from the Utah or National Republican Party, including its staff advisors, and executive committee regarding redistricting; and/or,
- 5) Reference or include partisan or voter participation data and the redistricting process."

(See the Exhibit "D", attached).

8. On November 16, 2011, Bryant Howe , Records Officer for OLRGC, sent a letter to Matt Lyon and Todd Taylor, informing them that it will likely take at least 60 days to respond to the Utah Democratic Party's request and denying its renewed request for a waiver of fees. (See the Exhibit "E", attached).
9. On December 16, 2011, Joseph Hatch hand-delivered a letter to OLRGC, appealing, on behalf of the Utah Democratic Party, the denial of the request for a waiver of fees and the determination that it will likely take at least 60 days to respond to their request. (See the Exhibit "F", attached).

DISCUSSION

I. Mr. Howe Correctly Denied the Request for a Waiver of Fees.

The Utah Democratic Party requested a waiver of fees based on the following assertions:

"1) The Utah Democratic Party through informed participation in the public debate helps to educate the public on a matter of public policy; 2) The Utah Democratic Party has been a party to government through our informed assistance in bringing public

participation to the legislative process; 3) The Utah Democratic Party needs accurate information to provide substantial and accurate testimony to legislators when there is pending official action by policy making bodies; 4) The Utah Democratic Party is directly and indirectly the subject of the information requested; 5) The Utah Democratic Party may be a party to litigation on the subject of the information requested; and, 6) The Utah Democratic Party needs the information because it has a unique responsibility to support the legal rights of the people in Utah.”

(See the Exhibit “D”, attached).

Mr. Howe based his decision on the Legislature’s fee policy, adopted pursuant to Utah Code 63G-2-703, as follows:

Section 2.2. Fees for records requests.

(1) The Legislature may charge a fee to obtain a record as provided under these Policies and Procedures as attached in Appendix B.

(2) The Legislature may fulfill a record request without charge if:

(a) the release of the record primarily benefits the public rather than the person requesting the record; or

(b) the individual requesting the record is the subject of the record or an individual specified in Utah Code Ann. § 63[G]-2-202(1) or (2) (Supp. 2006).

(Policies of the Legislative Management Committee, Utah State Legislature, June 14, 2011, page 34).

A. Mr. Howe Correctly Denied the Request for A Waiver of Fees as a Proper Exercise of His Discretion as a Records Officer.

The Legislature’s policy on fees provides that the Legislature “*may* fulfill a record request without charge” under certain circumstances (emphasis added). The policy does not say that the Legislature “shall” or “is required to” fulfill the request without charge. The decision to not charge a fee is completely discretionary. Indeed, the Legislature may choose to charge for all public records requests.

Mr. Howe acted appropriately when he chose to deny the Utah Democratic Party’s request for a waiver of fees on the separate and independent grounds that it was within his discretion to deny the request, regardless of whether the Utah Democratic Party otherwise satisfied the criteria described in Section 2.2(2) of the Legislature’s public records policy. Mr. Howe’s decision to deny the request for a waiver of fees, and his reason for doing so, are both logical and reasonable.

B. Mr. Howe Correctly Denied the Request for A Waiver of Fees, Because Waiving the Fees Would Primarily Benefit the Utah Democratic Party.

In denying the Utah Democratic Party's request, Mr. Howe found that, even if the Utah Democratic Party is correct that release of the records is in the public interest, the *primary* benefit of releasing the records would be to the party. Mr. Howe based this finding on the following:

"You have previously indicated that you may be litigating issues relating to the redistricting process. Some or all of the records you have requested may relate to that potential litigation and to the records described in your letter of October 3, 2011, where you request that we retain records pending potential litigation. Further, in your amended request, you indicate that '[t]he Utah Democratic Party may be a party to litigation on the subject of the information requested.'"

(See the Exhibit "E", attached).

On appeal, the Utah Democratic Party erroneously relies on Utah Code Subsection 63G-2-203(4), which is GRAMA's fee provision. Another section of GRAMA, however, expressly exempts the Legislature from that provision and, instead, requires it to adopt its own fee policies through the Legislative Management Committee.² The Legislative Management Committee has complied with its statutory duty and adopted the fee policy quoted above. That policy does not encourage the waiver of fees. Rather, it provides that the Legislature *may* fulfill a records request without charge if "the release of the record *primarily* benefits the public rather than the person requesting the record." (Policies of the Legislative Management Committee, Utah State Legislature, June 14, 2011, page 34, emphasis added).

The Utah Democratic Party asserts that "just because litigation may be involved, does not mean that the requested information is not primarily in the public interest." (See Exhibit "F", attached). However, it may also be stated that just because the public has an interest in the records that the Utah Democratic Party has requested does not mean that release of the records is not *primarily* in the interest of the Utah Democratic Party. Based on a totality of the circumstances, including the facts below, I uphold Mr. Howe's finding that release of the

² Utah Code Subsection 63G-2-703(2)(a) states:

"(2) (a) The Legislature and its staff offices are not subject to Section 63G-2-203 or to Part 4, Appeals, 5, State Records Committee, or 6, Collection of Information and Accuracy of Records."

Utah Code Subsection 63G-2-703(3) states:

"(3) The Legislature, through the Legislative Management Committee:

(a) shall establish policies to handle requests for classification, designation, fees, access, denials, segregation, appeals, management, retention, and amendment of records; and
(b) may establish an appellate board to hear appeals from denials of access. "

records that the Utah Democratic Party has requested will primarily benefit the Utah Democratic Party:

1. Statements made in the amended request indicate that the Utah Democratic Party is seeking the records primarily for its own interests as a private political organization. For example:
 - While the amended request is broad enough to cover documents in the possession of members of the Utah Democratic Party, it primarily focuses on members of the Republican Party and on “the Utah or National Republican Party, including its staff advisors, and executive committee.” (See Exhibit “D,” attached).
 - The amended request further demonstrates that the Utah Democratic Party is requesting the records for its own use when it states that the Utah Democratic Party needs “accurate information to provide substantial and accurate testimony to legislators when there is pending official action by policy making bodies.” (See Exhibit “D,” attached).
2. On October 3, 2011, Jim Dabakis, on behalf of the Utah Democratic Party, sent a letter to John Fellows, General Counsel to the Legislature, requesting that the Legislature preserve records related to redistricting in anticipation of possible litigation by the Utah Democratic Party. (See “Exhibit “G,” attached). Some or all of the records that the Utah Democratic Party has requested may relate to that potential litigation.
3. In the Utah Democratic Party’s amended request, the Utah Democratic Party indicates that “[t]he Utah Democratic Party may be a party to litigation on the subject of the information requested.”
4. On appeal, the Utah Democratic Party again indicates that the “Democratic Party is considering litigation over redistricting issues . . .”
5. Statements made in the media by representatives of the Utah Democratic Party indicate that the records request is made primarily for the Utah Democratic Party’s own interests, including its interests in litigation related to the redistricting process. For example, in a story published by the Salt Lake Tribune on December 2, 2011, Utah Democratic Party Chairman Jim Dabakis is quoted as saying, “They know we need those records to file a lawsuit on redistricting, so I think they are acting in a partisan way to make it hard. . . . We had another meeting with lawyers last night getting ready for a lawsuit. But it is difficult without those documents.”

C. Mr. Howe Correctly Denied the Request for A Waiver of Fees, Because the Utah Democratic Party is Not an “Individual” Under the Fee Provisions of the Policies of the Legislative Management Committee.

As indicated above, the Utah Democratic Party erroneously relies on Utah Code Subsection 63G-2-203(4), from which the Legislature and its staff offices are expressly exempt. The Legislative Management Policy does, however, contain a similar provision. That provision permits the Legislature to (in addition to the “primary interest” provision) fulfill a records request without charge if, “the individual requesting the record is the subject of the record or an individual specified in Utah Code Ann. § 63[G]-2-202(1) or (2)” (Supp. 2006). (Policies of the Legislative Management Committee, Utah State Legislature, June 14, 2011, page 34).

On appeal, the Utah Democratic Party argues that Mr. Howe misread the provisions of Utah Code Subsection 63G-2-203(4)(b). Though this statutory provision does not apply to the Legislature or its staff offices, it is similar to the Legislative policy that Mr. Howe applied. That policy, in addition to allowing the Legislature to waive charges based on the primary benefit being to the requestor, clearly refers to the following additional circumstances under which the Legislature may choose to not charge for a records request:

- “the *individual* requesting the record is the subject of the record”; or
- the individual requesting the record is “an *individual* specified in Subsection 63G-2-202(1) or (2).

(Policies of the Legislative Management Committee, Utah State Legislature, June 14, 2011, page 34, emphasis added).

The plain language of the policy makes it clear that Mr. Howe did not misread it. That portion of the policy relates only to individuals.

On appeal, the Utah Democratic Party argues that “[a]bsent express legislative intent to the contrary, the Utah Democratic Party should be treated as an individual under the code.” The Legislature *has* expressed an intent to the contrary. Utah Code Subsection 63G-2-103(13) expressly defines “individual” for purposes of GRAMA as “a human being.” The Utah Democratic Party is not “a human being” and, therefore, is not covered by any of these additional provisions, even if it is the subject of the records requested.

II. Sixty Days is a Reasonable Period of Time, Under the Circumstances, to Respond to the Amended Request by the Utah Democratic Party.

The Utah Democratic Party challenges Mr. Howe’s estimate regarding the time that it is likely to take to respond to the Utah Democratic Party’s request. First, the Utah Democratic Party asserts that “the 60-day period is not the result of an [sic] ‘extraordinary circumstances’ as defined in U.C.A. §63G-2-204(5).” In his letter, Mr. Howe indicated that the extraordinary

circumstances permitting an extension of time are as follows:

- the request requires us to review a large number of records to locate the records requested; and
- the decision to release a record involves legal issues that require us to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law.”

(See the Exhibit “E”, attached).

Both of these circumstances constitute “extraordinary circumstances” that permit “a governmental entity to delay approval or denial by an additional period of time.” (See Utah Code Subsections 63G-2-204(5)(e) and (f)). The Utah Democratic Party has not offered any arguments challenging the existence of these circumstances. Rather, the Utah Democratic Party complains that this period of time is too long for the following reasons:

- OLRGC has already done about 25% of the work; and
- OLRGC has already provided “much” of the requested documents to the Republican Party and the media.

The Legislature began working on the Utah Democratic Party’s initial request immediately after it was received. As the Legislature began gathering documents, it became apparent that there are more than 10,000 records that are potentially responsive to the request. Based on this information, the Legislature estimated the time it would take to complete the response and calculated the associated fee. The Legislature then informed the Utah Democratic Party of the estimated fee that it is required to pay before the Legislature proceeds with the response.

While it is true that OLRGC has already performed about 25% of the work necessary to respond to the request, that work required a substantial amount of time and effort. The additional 75% of the work will require significantly more time and effort.

Moreover, the statement that OLRGC has already provided “much” of the requested documents to the Republican Party and the media is incorrect. The records request from the Republican Party sought only the records of four legislators for a time period ending on October 12, 2011. The request from the Utah Democratic Party seeks records relating to all 104 legislators, and to nearly 100 legislative staff, for a time period ending on October 21, 2011.

Based on the foregoing, I uphold Mr. Howe’s decision regarding the amount of time it will likely take to respond to the Utah Democratic Party’s request.³

³ OLRGC could likely respond to the request in less than 60 days if it had no work to do other than respond to the request. However, the Utah Democratic Party’s delays (see the preceding course of proceedings), with respect to the records they have requested, has resulted in this process being extended to a time when OLRGC must focus its efforts on preparing for the upcoming general session. The Legislature and its staff offices cannot be expected to neglect their constitutional, statutory, and other duties, which are essential to the functioning of the legislative

CONCLUSION

Based on the foregoing discussion, I uphold Mr. Howe's findings and actions with respect to the request by the Utah Democratic Party. The Utah Democratic Party's appeal is denied.

The Utah Democratic Party may appeal this decision to the Legislative Records Committee by filing a notice of appeal with Michael E. Christensen, Director of the Office of Legislative Research and General Counsel (Utah State Capitol Complex, House Building, Suite W210, P.O. Box 145210, Salt Lake City, Utah, 84114-5210) no later than 30 calendar days after the date of this decision.

DISCLOSURE OF RECORDS

I have enclosed a copy of the response to the Republican Party's records request with this letter (on the enclosed compact disc). Immediately before responding to the request from the Republican Party, we scanned the documents that we provided to them in order to preserve a record of what was provided. Thus, we now have an electronic copy of the documents that we provided to the Republican Party. Because the Republican Party has already paid for the labor required to respond to their request, and because of the minimal effort required to provide the Utah Democratic Party with an electronic copy of these documents, we are providing them to the Utah Democratic Party free of charge.

Please note that approximately 200 pages on the disc were scanned from documents that printed improperly. These pages were printed from an Excel spreadsheet that was attached to an email. The enclosed disc includes this email and the Excel spreadsheet that was attached.



Michael E. Christensen

Director

Office of Legislative Research and General Counsel

branch, in order to respond to a public records request as its first priority. Indeed, with the session fast approaching, it may now take longer than the 60-day period originally anticipated. With the intense workload and extended hours required during the general session, it is unlikely that OLRGC will be able to devote any time responding to this voluminous request during the general session.

EXHIBIT "H"

(To "Decision on Appeal," dated June 13, 2012)

Joseph E. Hatch

ATTORNEY AT LAW
5295 SO. COMMERCE DRIVE, SUITE 200
MURRAY, UTAH 84107
TELEPHONE: 801-268-4042
FAX: 801-747-1049

January 23, 2012

Michael E. Christensen
Office of Legislative Research
and General Counsel
Utah State Capitol Complex
W210 House Building
P.O. Box 145210
Salt Lake City, UT 84114-5210

Re: Utah Democratic Party GRAMA Request

Dear Mr. Christensen,

My client, the Utah State Democratic Party, has asked my opinion as to whether or not to appeal your decision on the Democrats' GRAMA request to the Legislative Records Committee. I have advised the Democratic Party that it has a very good appeal, but not to expect a favorable outcome from the Legislative Records Committee. Instead, the issues raised with the appeal would not be fairly heard and addressed except in District Court. My client, quite wisely, does not want to spend that kind of time on appeal and delay the release of the requested documents.

As a result, the Democratic Party has authorized me to commit \$5,000.00 toward payment of fees required. A check will be delivered shortly.

I note in the fine print of your December 23, 2011 letter, you state:

With the intense workload and extended hours required during the general session, it is unlikely that OLRGC will be able to devote any time responding to this voluminous request during the general session.

The Democratic Party certainly recognizes that, during the legislative session, time is a premium. However, by your own admission, 25% of the work has been completed. The Democratic Party will expect partial release of the documents as they become available.

Michael E. Christensen

Page 2

January 23, 2012

Although you have stated on several occasions that this request is primarily to benefit the Democratic Party and not the general public, I am not sure that a significant portion of the general public will view any unreasonable delays in the same light.

If you have any questions, please call.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joe Hatch", with a stylized flourish extending to the right.

Joseph E. Hatch

Attorney for Utah State Democratic Party

JEH/kn

cc: Jim Dubakis

g:\sldocs\jhatch\td\democrats\ltr. to michael e. christensen.012012.doc

EXHIBIT "I"

(To "Decision on Appeal," dated June 13, 2012)



Michael E. Christensen
Director

John L. Fellows
General Counsel

January 31, 2012

Mr. Joseph E. Hatch
5295 So. Commerce Drive, Suite 200
Murray, UT 84107

SUBJECT: Government Records Request

Dear Mr. Hatch:

This letter acknowledges receipt of a check on January 23, 2012 (the first day of the 2012 General Session) from the Utah Democratic Party, in the amount of \$5,000, to pay expenses related to the party's amended public records request that was received by our office on November 9, 2011.

In the letter provided to us with the check, you state as follows:

"The Democratic Party certainly recognizes that, during the legislative session, time is a premier. However, by your own admission, 25% of the work has been completed. The Democratic Party will expect partial release of the documents as they become available."

We cannot begin the remainder of the work on the request until after the end of the general session. Please understand that the above quote does not mean that 25% of the records are available for disclosure. The percentage refers to the portion of the overall work completed in order to respond to your request. We will attempt to find time, during the session, to determine the classification of the documents that have been sorted thus far in order to provide some of the documents to you. But, as previously indicated, we cannot begin the remainder of the work until the general session ends.

We appreciate your patience in light of the timing of your request.

Respectfully,

Bryan Howe
Assistant Director

EXHIBIT "J"

(To "Decision on Appeal," dated June 13, 2012)

From: Jim Dabakis
Sent: Tuesday, February 14, 2012 11:08:30 AM
To: Bryant Howe
Subject: A Valentine's Day Request

Letter attached and sent via USPS

February 14, 2012

Bryant R. Howe
Public Records Officer
Office of Legislative Research and General Counsel
W210 State Capitol Complex
Salt Lake City, UT 84114

Dear Mr. Howe,

Twenty-two days ago, on January 23, 2012, the Utah Democratic Party delivered a letter to the Office of Legislative Research and General Counsel announcing that we would not continue to appeal the cost associated with the GRAMA request of November 19, 2011 for redistricting records and presented a check for \$5,000.00 toward payment of the fees required.

The letter of January 23 noted that "25% of the work has been completed." This figure was generously based on the contents your letter of November 16 which stated that your office had "already spent 54.5 hours working on your initial request" and provided an estimate of the fees already incurred for that time and a total estimate of fees that exceeded that 25% figure. It also stated that we expect partial release of the documents as they become available.

As of this date, we have not yet received any release of documents from this request. We would like an update on the expected time to complete our request. Further, we request to know why you have not sent a partial release of any documentation despite over 50 hours of work prior in prior months.

We kindly await your replay to our amended request for government records.

Respectfully,

Jim Dabakis
Chairman

EXHIBIT "K"

(To "Decision on Appeal," dated June 13, 2012)

Mr. Dabakis:

Thank you for your email. As indicated in my letter to Joseph Hatch (see attached), a statement that "25% of the work has been completed" does not mean that 25% of the records are available for disclosure. The estimated percentage refers to the portion of the overall work completed in order to respond to your request. We will attempt to find time, during the session, to determine the classification of the documents that have been sorted thus far. However, we must give first priority to performing the work of the Legislature and its members -- both Democrats and Republicans -- during the General Session.

-----Original Message-----

From: Jim Dabakis [mailto:jdabakis@utdem.org]
Sent: Tuesday, February 14, 2012 11:09 AM
To: Bryant Howe
Subject: A Valentine's Day Request

Letter attached and sent via USPS

February 14, 2012

Bryant R. Howe
Public Records Officer
Office of Legislative Research and General Counsel
W210 State Capitol Complex
Salt Lake City, UT 84114

Dear Mr. Howe,

Twenty-two days ago, on January 23, 2012, the Utah Democratic Party delivered a letter to the Office of Legislative Research and General Counsel announcing that we would not continue to appeal the cost associated with the GRAMA request of November 19, 2011 for redistricting records and presented a check for \$5,000.00 toward payment of the fees required.

The letter of January 23 noted that "25% of the work has been completed." This figure was generously based on the contents your letter of November 16 which stated that your office had "already spent 54.5 hours working on your initial request" and provided an estimate of the fees already incurred for that time and a total estimate of fees that exceeded that 25% figure. It also stated that we expect partial release of the documents as they become available.

As of this date, we have not yet received any release of documents from this request. We would like an update on the expected time to complete our request. Further, we request to know why you have not sent a partial release of any documentation despite over 50 hours of work prior in prior months.

We kindly await your replay to our amended request for government records.

Respectfully,

Jim Dabakis
Chairman

EXHIBIT "L"

(To "Decision on Appeal," dated June 13, 2012)



Michael E. Christensen
Director

John L. Fellows
General Counsel

Jim Dabakis and Matt Lyon
Utah State Democratic Party
825 N 300 W, Suite C400
Salt Lake City, Utah 84103

May 7, 2012

Re: Response to your amended GRAMA request

Dear Mr. Dabakis and Mr. Lyon:

This letter is in response to your amended records request, received by our office on November 9, 2011, seeking the following:

"All communications inclusive of the period from September 12, 2011 through October 12, 2011, whether paper or electronic, between members of the Utah State Legislature, their staff, and/or outside organizations, individuals, or entities that:

- 1) Contain or reference block assignment files;
- 2) Reflect, regard or reference the purported grounds or criteria discussed, referenced, considered -- officially or unofficially -- regarding proposed or adopted congressional, Utah House, or Utah Senate maps;
- 3) Consist of, regard or reference redistricting and members of the Utah State Legislature, Utah's Congressional Delegation, Utah Governor, or Utah State Republican Party, including current, past, potential, and future candidates (including but not limited to Rob Bishop, Jim Matheson, Jason Chaffetz, Carl Wimmer, Dave Clark, Mia Love, David Kirkham, Cheryl Eager, Morgan Philpot, Ken Sumsion, Chris Herrod, Dan Liljenquist, Chuck Williams, Jason Buck, Chris Stewart, Howard Wallack, John Willoughby, Rebecca Lockhart, Michael Waddoups, Jake Shannon, Casey Anderson, Craig Frank, Bill Skokos, John Valentine) and elected officials;
- 4) Reflect, consist of, regard or reference any e-mail sent to or from the Utah or National Republican Party, including its staff advisors, and executive committee regarding redistricting; and/or
- 5) Reference or include partisan or voter participation data and the redistricting process."

Course of Proceedings

1. On October 12, 2011, Matt Lyon and Todd Taylor, on behalf of the Utah Democratic Party, filed a public records request under the Government Records Access and Management Act (GRAMA) with the Office of Legislative Research and General Counsel (OLRGC), requesting the following:

Utah State Capitol Complex
House Building, Suite W210
PO Box 145210
Salt Lake City, Utah
84114-5210
Phone (801) 538-1032
Fax (801) 538-1712
www.le.utah.gov

"All communications in the past 30 days, whether paper or electronic, between members of the Utah State Legislature, their staff, and/or outside organizations, individuals, or entities that:

- 1) Contain or reference block assignment files;
- 2) Reflect, regard or reference the purported grounds or criteria discussed, referenced, considered -- officially or unofficially -- regarding proposed or adopted congressional, Utah House, or Utah Senate maps;
- 3) Consist of, regard or reference redistricting and members of the Utah State Legislature, Utah's Congressional Delegation, Utah Governor or Utah State Republican Party, including current, past, potential, and future candidates and elected officials;
- 4) Reflect, consist of, regard or reference any email sent to or from the Utah or National Republican Party, including its staff, advisors, and executive committee regarding redistricting; and/or
- 5) Reference or include partisan data and the redistricting process."

The Utah Democratic Party also requested a waiver of fees.

2. On October 14, 2011, OLRGC sent a letter to Matt Lyon and Todd Taylor, indicating that additional time was needed to respond to their request and denying their request for a waiver of fees.
3. On October 19, 2011, John Fellows, General Counsel to the Legislature, called and left a message at the Utah Democratic Party, asking to discuss charges for the records request. A return call was not received.
4. On October 24, 2011, John Fellows, General Counsel to the Legislature, and Thomas Vaughn, Associate General Counsel to the Legislature, called Todd Taylor and explained that the fee for responding to the request would be significantly higher than \$100. Mr. Taylor informed Mr. Vaughn that he would get back to Mr. Vaughn within one and one-half hours. Mr. Taylor failed to contact Mr. Vaughn.
5. On October 25, 2011, Mr. Vaughn again called Mr. Taylor. During that telephone conversation, Mr. Taylor indicated that he had not called because he was still waiting for a decision to be made by someone within the Utah Democratic Party. Mr. Taylor also stated that it was likely that the Utah Democratic Party would be withdrawing its request and filing a very similar one. Mr. Vaughn informed him that the Legislature had already incurred expenditures in excess of \$100 and that the Legislature needed to know how to proceed. Mr. Taylor advised Mr. Vaughn to stop work on the response for a "couple of days" until the Utah Democratic Party decided what to do.

6. On October 26, 2011, Mr. Vaughn sent a letter to Mr. Taylor memorializing the events described in the preceding paragraph and informing Mr. Taylor that, based on his conversation with Mr. Taylor on October 25, 2011, Mr. Vaughn would be instructing the records officers in all legislative staff offices to cease work on the records request from the Utah Democratic Party until further notice.

7. On November 9, 2011, Matt Lyon and Todd Taylor, on behalf of the Utah Democratic Party, sent an amended GRAMA request to OLRGC (first quoted above). This request was broader, in both the time period it covered and the scope of the records it requested, than the initial request that was filed on October 14, 2011.

8. On November 16, 2011, Bryant Howe, Records Officer for OLRGC, sent a letter to Matt Lyon and Todd Taylor, informing them that it would likely take at least 60 days (from the time that the Utah Democratic Party agreed to pay the estimated cost of responding to the request) to respond and denying its renewed request for a waiver of fees.

9. On December 16, 2011, Joseph Hatch hand-delivered a letter to OLRGC, appealing, on behalf of the Utah Democratic Party, the denial of the request for a waiver of fees and the determination of the estimated time it would take to respond to the request.

10. On December 23, 2011, Michael Christensen, Director of the Office of Legislative Research and General Counsel, issued a decision denying the appeal. At the same time, the Office of Legislative Research and General Counsel provided to the Utah Democratic Party a copy of the documents that were provided to the Utah Republican Party in response to their request relating to redistricting.¹

11. On January 23, 2012 (the first day of the 2012 General Session) the Utah Democratic Party paid \$5,000 towards its amended records request. A letter provided with the request stated:

"The Democratic Party certainly recognizes that, during the legislative session, time is a premier. However, by your own admission, 25% of the work has been completed. The Democratic Party will expect a partial release of the documents as they become available."

12. On January 31, 2012, the OLRGC sent a letter to Joseph Hatch, stating:

¹ After the Utah Democratic Party filed its initial records request, the Utah Republican Party filed its own request for certain redistricting-related records. The Utah Republican Party's request was significantly narrower in that it was limited to four legislators and did not include legislative staff. The Utah Republican Party quickly agreed to pay, and did pay, the \$2,537.65 fee for responding to its request.

"We cannot begin the remainder of the work on the request until after the end of the general session. Please understand that the above quote [referring to the statement that 25% of the work was completed] does not mean that 25% of the records are available for disclosure. The percentage refers to the overall work completed in order to respond to your request. We will attempt to find time, during the session, to determine the classification of the documents that have been sorted thus far in order to provide some of the documents to you. But, as previously indicated, we cannot begin the remainder of the work until the general session ends."

13. On February 14, 2012, Jim Dabakis sent an email to Bryant Howe, Records Officer of the OLRGC, referring to Mr. Dabakis' letter of January 23, 2012, requesting an update on the expected time to respond to the records request from the Utah Democratic Party and inquiring as to why they had not received a partial response.

14. On February 15, 2012, Bryant Howe responded to Mr. Dabakis' email and provided him a copy of the letter that was sent to Joseph Hatch on January 31, 2012.

15. After the end of the 2012 General Session, Mr. Vaughn contacted Mr. Dabakis by phone and informed him that the OLRGC had a box of maps that the Utah Democratic Party could look through to determine whether they wanted copies of any of the maps in connection with their request. Matt Lyon called Mr. Vaughn to discuss this offer. As of the date of this letter, nobody from the Utah Democratic Party has viewed these maps.

16. On or about April 2, 2012, Mr. Vaughn called the Utah Democratic Party and informed them that a box of 5,000 pages of documents responding to their request was ready to pick up.

17. On or about April 17, 2012, Mr. Vaughn left a voicemail message for Matt Lyon reminding him that the box of 5,000 pages was still waiting for him to pick up and informing him that a second box of 5,000 pages was also ready for disclosure.

18. On May 7, 2012, representatives of the Utah Democratic Party arrived and picked up the first box. At that time, Mr. Vaughn informed them that the remainder of the documents would be provided to them upon payment of the additional amount owed.

Response

We now have approximately 16,000 pages ready to respond to your request. We have spent 506 hours during and after the general session in order to respond to your request. This does not include any of the time we spent before the session to respond to your request. As you are aware, we only charge \$25 per hour for work on a request, though the actual cost to taxpayers is much higher. At a rate of \$25 an hour, the amount due for staff time is \$12,650. We are prepared to release approximately 16,000 pages. At ten cents per copy, the charge for copies is \$1,600. Thus,

the total amount attributable to the request is \$14,250. The Utah Democratic Party has already paid \$5,000, so the amount left owing is \$9,250.

Because you have paid approximately one-third of the expenses relating to your request, the first box of approximately 5,000 pages has been provided to you. The remaining 11,000 pages will be provided to you upon receipt of the \$9,250 that you still owe. Please make this amount payable to the Office of Legislative Research and General Counsel.

Please be advised that some documents that are responsive to your request have been withheld from disclosure as follows:

- Some documents have been withheld because they are drafts. Drafts are not records (see Utah Code Subsection 63G-2-103(22)(b)(ii)) and are protected under Utah Code Subsection 63G-2-305(22).
- Some documents constitute personal files of a state legislator. These documents are protected records and have been withheld under Utah Code Subsection 63G-2-305(19)(a) (See also 63G-2-103(22)(b)(i)). Most of these are handwritten notes of legislators.
- Some records constitute an internal communication that is part of the deliberative process in connection with the preparation of legislation between members of a legislative body, a member of a legislative body and a member of the legislative body's staff, or members of a legislative body's staff. These are protected records and have been withheld under Utah Code Subsection 63G-2-305(19)(b).
- Some of the records constitute records that are in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public. These records are protected and have been withheld under Utah Code Subsection 63G-2-305(20).
- Some records have been withheld because they are attorney-client communications that are protected by the attorney-client privilege (see Utah Code Section 78B-1-137 and Subsection 63G-2-305(18)).

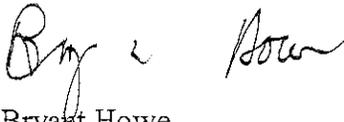
Please be advised that some of the records that we are disclosing to you are protected records under GRAMA. We have chosen to release some protected records to you despite our legal right to withhold them. We are releasing these records in the interest of public disclosure. Our decision to release these records to you in this case does not constitute a waiver of our ability to

May 7, 2012
Page 6 of 6

assert protected status for similar records now or in the future and is not to be considered as a pattern or practice in response to other requests.

You have the right to appeal the decision to withhold records (as described above), and the additional amount you are being charged, to Michael Christensen, the Director of the Office of Legislative Research and General Counsel, at the Utah State Capitol Complex, W210 House Building, P.O. Box 145210, Salt Lake City, Utah, 84114-5210, within 30 days of the date of this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bryant Howe".

Bryant Howe
Records Officer

EXHIBIT "M"

(To "Decision on Appeal," dated June 13, 2012)

Joseph E. Hatch

ATTORNEY AT LAW
5295 SO. COMMERCE DRIVE, SUITE 200
MURRAY, UTAH 84107
TELEPHONE: 801-268-4042
FAX: 801-747-1049

June 5, 2012

Mr. Michael Christensen
Director of the Office of Legislative Research
and General Counsel
Utah State Capital Complex
W210 House Building
P.O. Box 145210
Salt Lake City, UT 84114-5210

Re: Notice of Appeal of Fees Requested

Dear Mr. Christensen,

On behalf of Utah State Democratic Party, I am filing this Notice of Appeal to the response authored by Bryant R. Howe, dated May 7, 2012 addressed to the Utah State Democratic Party. A true and correct copy of the response is attached hereto as Exhibit "A". A true and correct copy of the GRAMA request is attached hereto as Exhibit "B".

Petitioner appeals from the decision contained in Mr. Howe's response. The Petitioner believes that the additional \$9,250.00 fee request violates U.C.A. §63G-2-203. The balance of this Notice of Appeal will present the Utah Democratic Party's reasons for the appeal.

In a Decision on Appeal (see Exhibit "C" hereto) by Michael E. Christensen dated December 23, 2011, the following was stated regarding the Utah Democratic Party's GRAMA request for fee waiver:

1. That the production could be completed in less than 60 days following the end of the legislature. It was completed in 60 days.
2. That 25% of the outstanding work had been completed by the OLRGC on or before November 16, 2011. The fee for the 25% was stated to be \$1,362.50. That should mean a total fee of \$5,450.00. OLRGC requested an initial deposit of \$5,000.00.

Mr. Michael Christensen

Page 2

June 5, 2012

Based upon the above, on January 23, 2012, the Utah Democratic Party made the decision not to appeal the Christensen ruling to the Legislative Records Committee and to pay the \$5,000.00.

On January 31, 2012, the OLRGC sent a letter which read in part as follows:

We cannot begin the remainder of the work on the request until after the end of the general session. Please understand that the above quote [referring to the statement that 25% of the work was completed] does not mean that 25% of the records are available for disclosure. The percentage refers to the overall work completed in order to respond to your request. We will attempt to find time, during the session, to determine the classification of the documents that have been sorted thus far in order to provide some of the documents to you. But, as previously indicated, we cannot begin the remainder of the work until the general session ends.

Also, during this period of time, the OLRGC was obligated to gather and preserve all the requested documents by reason of a letter dated October 3, 2011 from the Utah Democratic Party to John Fellows. The purpose of the letter was to preserve the documents in the event of litigation.

During the months of March and April, the OLRGC did provide certain documents to the Democratic Party. (During the legislative session, the OLRGC provided no documents). However, on May 7, 2012, the OLRGC demanded the additional sum of \$9,250.00 before released any more documents. This was done without prior consultation or notification to the Democratic Party. Had the Democratic Party known that the OLRGC had so grossly underestimated the time involved to gather the requested documents, the Democratic Party would have utilized its appeal rights. Therefore, with this Notice, the Democratic Party restates its argument for a fee waiver below.

Mr. Howe was correct that his office has discretion on whether or not to grant the fee waiver. However, that discretion is limited by statute and by law. By finding that "it is unfair to taxpayers that they should have the burden of paying for the staff time responding to your requests", the Office of Legislative Research and General Counsel ("OLRGC") abused its discretion. The Utah Court of Appeals in a recent case held that:

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An agency abuses its discretion when it reaches an outcome that is clearly against the logic and the effect of such facts as are presented in support of the application, or against the reasonable and probable deductions to be drawn from the facts disclosed upon the hearing.

Sorge v. Office of the Attorney General, 128 P. 3d 566 (Ut. Ct. App. 2006).

To simply assume that the Democratic Party's request will result in an inappropriate use of taxpayer resources is an abuse of discretion. Further, the Utah Legislature has already addressed this point in U.C.A. §63G-2-203(4) which reads, in part, as follows:

A governmental entity may fulfill a record request without charge and is encouraged to do so when it determines that:

- (a) releasing the record primarily benefits the public rather than a person; [or]
- (b) the individual requesting the record is the subject of the record, or an individual specified in Subsection 63G-2-202(1) or (2);

[Emphasis added]

Mr. Howe has stated that the information is not primarily in the public's best interest. The Democratic Party is considering litigation over redistricting issues, but just because litigation may be involved, does not mean that the requested information is not primarily in the public interest. Ask Attorney General Shurtliff whether or not the litigation against the federal government over health care reform or primacy of county roads is not in the public interest. Ask Attorney General Graham whether or not litigation against the tobacco industry was not in the public interest. Information involving this state's efforts of redistricting is, of course, primacy in the public interest, whether or not there is litigation.

Mr. Howe also found that the Utah Democratic Party is not an "individual" within the meaning of U.C.A. § 63G-2-203(4)(b). First, Mr. Howe misreads the statute by ignoring the word "or" contained in the statute; therefore, the statute applies in the Democratic Party should the Democratic Party be an "individual" "subject of the record". No one disputes that the Democratic Party and its members are a subject of many of the records requested. The Republican Party's selective release of some requested documents to the media demonstrates this point. The real issue is whether the legislature, by using the term "individual", desired to exclude legal entities from utilizing this section of the statute. Of course, it is easy to quote Utah Republicans favorite presidential candidate, "corporations are people too", as support that the Utah Democratic Party should not be excluded from utilizing this section of the fee waiver statute. However, there is a strong policy consideration that public interest entities should be

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permitted to utilize this statute. Absent, express legislative intent to the contrary, the Utah Democratic Party should be treated as an individual under the code.

Petitioner Utah Democratic Party respectfully requests that the fee waiver be granted, that the records be immediately turned over to the Utah Democratic Party, and that the OLRGC return the \$5,000.00 previously paid.

DATED this 5th day of June, 2012.

Very truly yours,



Joseph E. Hatch
Attorney for Utah State Democratic Party

EXHIBIT "N"

(To "Decision on Appeal," dated June 13, 2012)



UTAH Democratic Party

October 3, 2011

John Fellows
General Counsel
Office of Legislative Research and General Counsel, Utah State Legislature
W210 State Capitol Complex
Salt Lake City, UT 84114

To Whom It May Concern:

In light of recent press statements and conversations, both officially and unofficially, the Utah State Democratic Committee would like to remind the Utah State Legislature, its staff and members within, of their obligations to retain all documents, records, conversations, and notes regarding the 2011 redistricting hearings, drafting of maps, and special session.

Because we are aware that you represent the Utah State Legislature, we direct this letter to your attention and ask that you forward this communication to the Utah Senate and House Leadership, applicable legal counsel, the Utah Office of the Governor, as well as its agents, representatives, and any other persons (collectively, "Utah State Legislature,") who are responsible for these matters and/or are reasonably likely to have discoverable information in their personal possession.

In particular, we believe that Utah State Legislature and Office of the Governor may be involved in litigation in the near future. While we hope that we can avoid a lawsuit, the possibility creates certain obligations for the parties, and thus we write to remind the Utah State Legislature that it is important that all evidence relating to the dispute be preserved. Even though you (and presumably the Utah State Legislature) are no doubt aware of the obligation by a party or witness to a lawsuit to preserve, and not to destroy, evidence relating to the case(s), this letter is a formal request and notice to this effect to the Utah State Legislature. In particular, we request that the Utah State Legislature not destroy, conceal, or alter any paper or electronic files and/or other data generated by or stored on computers and storage media (e.g., hard disks, floppy disks, backup tapes, Zip cartridges, CDs, DVDs, etc.), or any other electronic data, such as voice mail, which may relate to the dispute in any way. Of particular importance, e-mail communications relating to the dispute are relevant and must be preserved.

To expand, please note that electronic documents, and the storage media on which they reside, contain relevant, discoverable information beyond that which may be found in printed documents. Therefore, even where a paper copy exists, we may seek all documents in their electronic form, along with information about those documents contained on the media.

In addition, in order to avoid spoliation, the Utah State Legislature may have to suspend certain normal computer maintenance procedures, including but not limited to such procedures as defragmenting hard drives and running any 'disk clean-up' processes, until such time as electronic files can be separately preserved.

Further, the Utah State Legislature should preserve any log or logs of computer or network use by employees or otherwise, whether kept in paper or electronic form, and preserve all copies of backup tapes and the software necessary to reconstruct the data on those tapes, so that there can be made a complete, bit-by-bit 'mirror' evidentiary image copy of the storage media of the personal computers (and/or workstations) and network server(s) in the Utah State Legislature's control and custody, as well as image copies of all hard drives retained by the Utah State Legislature and no longer in service.

For your convenience, we provide a glimpse of the authority supporting our request. Numerous courts, including those identified herein, have made it clear that all information available on electronic storage media is discoverable, whether readily readable ('active') or 'deleted' but recoverable. *See, e.g., Easley, McCaleb & Assocs., Inc. v. Perry*, No. E-2663 (Ga. Super. Ct. July 13, 1994) ('deleted' files on a party's computer hard drive held to be discoverable, and plaintiff's expert was allowed to retrieve all recoverable files); *Santiago v. Miles*, 121 F.R.D. 636, 640 (W.D.N. Y. 1988) (a request for 'raw information in computer banks' was proper and obtainable under the discovery rules); *Gates Rubber Co. v. Bando Chemical Indus., Ltd.*, 167 F.R.D. 90, 112 (D. Colo. 1996) (mirror-image copy of everything on a hard drive 'the method which would yield the most complete and accurate results,' chastising a party's expert for failing to do so).

For your reference, the following is a summary list of the types of paper documents and electronic data and storage media, whether currently in existence or created subsequent to this letter, that are and will likely be the subject of our future discovery requests:

1. All documents, whether paper or electronic, regarding or referencing redistricting, gerrymandering, political or partisan data in any way.
2. All documents, whether paper or electronic, reflecting, regarding or referencing the purported grounds or criteria discussed, referenced, considered – officially or unofficially – regarding proposed congressional, Utah House, or Utah Senate maps.
3. All documents, whether paper or electronic, reflecting, consisting of, regarding or referencing any final or proposed (draft) statements or maps about redistricting maps, criteria, or conversations leading to drafts or final maps.
4. All documents, whether paper or electronic, consisting of, regarding or referencing redistricting and members of the Utah State Legislature, Utah's Congressional Delegation, Utah Governor or Utah State Republican Party, including current, past, and future candidates and elected officials.
5. All documents, whether paper or electronic, reflecting, consisting of, regarding or referencing any e-mail sent to or from a Utah or National Republican Party e-mail account, including to staff and members of the Utah State Legislature's personal email accounts.
6. All documents, whether paper or electronic, in any way related to the allegations of partisan information, communities of interest, current, past, or potential candidates and elected officials.

7. All documents, whether paper or electronic, regarding or referencing the Utah or National Republican Party, or members of, in any way.
8. All e-mail, word processing files, spreadsheets, and presentations, including prior drafts, 'deleted' files, and file fragments, in any way related to the redistricting, gerrymandering, partisan data or any of the topics identified above, including the other types of documents requested herein.

Please note that these requests are not meant to be all-inclusive or a limitation upon the discovery that we may conduct. Rather, it is a general outline to help the Utah State Legislature understand the categories of documents that should be preserved.

We remind the Utah State Legislature that a party has a duty to preserve evidence when the party is placed on notice that the evidence is relevant to litigation or when the party should have known that the evidence may be relevant to future litigation. *See, e.g., Silvestri v. General Motors Corp.*, 271 F.3d 583, 591 (4th Cir.2001); *Thompson v. HUD*, 219 F.R.D. 93, 100 (D.Md.2003). The duty to preserve encompasses any documents or tangible items authored or made by individuals likely to have discoverable information that the disclosing party may use to support its claims or defenses. *See Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 217-18 (S.D.N.Y.2003). Any information relevant to the claims or defenses of any party, or which is relevant to the subject matter involved in the litigation, is covered by the duty to preserve. *Id.* And, a party must preserve evidence for which it has notice it is reasonably likely to be the subject of a discovery request even before a request is actually received. *Cohn v. Taco Bell Corp.*, No. 92 C 5852, 1995 WL 519968, at *5 (N.D.Ill. Aug. 30, 1995); *Wm. T. Thompson, Co. v. Gen. Nutrition Corp.*, 593 F. Supp 1443, 1455 (D.C.Cal.1984). Lawyers have an affirmative duty to advise their clients of pending litigation and the requirement to preserve potentially relevant evidence. *See, e.g., Turner v. Hudson Transit Lines, Inc.*, 142 F.R.D. 68, 73 (S.D.N.Y.1991).

Destruction of such relevant evidence, including allowing such evidence to be destroyed pursuant to regular document destruction protocols, will constitute spoliation. *West v. Goodyear Tire & Rubber Co.*, 167 F.3d 776, 779 (2d Cir.1999)). Potential sanctions for spoliation are legion. *See, e.g., Computer Assocs. Int'l, Inc. v. American Fundware, Inc.*, 133 F.R.D. 166 (D.Colo.1990) (dismissal of claim or granting judgment in favor of prejudiced party an appropriate sanction for spoliation); *Bowman v. American Med. Sys., Inc.*, 1998 WL 721079 (E.D.Pa. October 9, 1998) (same); *United States v. Philip Morris USA Inc.*, 327 F.Supp.2d 21, 25 (D.D.C.2004) (suppression of evidence an appropriate sanction for spoliation); *Balotis v. McNeil*, 870 F.Supp. 1285, 1292-93 (M.D.Pa.1994) (adverse or "spoliation" inference against party destroying documents); *Scott v. IBM Corp.*, 196 F.R.D. 233, 248-50 (D.N.J.2000) (same); *In re Prudential Insurance Co. of Am. Sales Practices Litig.*, 169 F.R.D. 598, 615-17 (D.N.J.1997) (monetary sanctions for spoliation); *Philip Morris USA*, 327 F.Supp.2d at 25-26 (same).

In order to assure that the Utah State Legislature complies with its obligation to preserve evidence or potential evidence, we ask that you forward a copy of this letter to not only members and staff of the Utah State Legislature, but also to the persons who may have relevant information in their personal possession. We also ask that you ensure that your client(s) understand their obligations to maintain and preserve evidence.

(D.N.J.1997) (monetary sanctions for spoliation); *Philip Morris USA*, 327 F.Supp.2d at 25-26 (same).

In order to assure that the Utah State Legislature complies with its obligation to preserve evidence or potential evidence, we ask that you forward a copy of this letter to not only members and staff of the Utah State Legislature, but also to the persons who may have relevant information in their personal possession. We also ask that you ensure that your client(s) understand their obligations to maintain and preserve evidence.

A handwritten signature in black ink that reads "Jim Dabakis". The signature is written in a cursive, flowing style.

Jim Dabakis
Chair

Utah State Democratic Committee