

**The Bill to Replace Proposition 2:  
A Betrayal of the Will of the People and Disregard  
of the Constitutional Retention of the People’s  
Democratic Power Through the Initiative Process**

**Submitted by Patient Advocacy Groups, TRUCE and  
Epilepsy Association of Utah  
November 26, 2018**

**Fundamental Principles Essential to Free Government**

The Utah Constitution compels “[f]requent recurrence to fundamental principles,” which is “essential to the security of individual rights and the perpetuity of free government.”<sup>1</sup>

Among the fundamental principles we should always keep in mind—and concerning which the Utah Legislature, particularly, should remind itself—is that “[a]ll political power is inherent in *the people*; and all free governments are founded on *their* authority for *their* equal protection and benefit . . . .”<sup>2</sup>

A fundamental corollary to that principle is that the people, through the Utah Constitution, vested the Utah Legislature with legislative power, but the people also *retained their* power to legislate through the initiative and referendum process.<sup>3</sup>

Another requirement for a free government—and for a free people—is that no church shall control the State or interfere in the functions of government. The Utah Constitution provides that “[t]here shall be no union of Church and State, *nor shall any church dominate the State or interfere with its functions.*”<sup>4</sup>

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<sup>1</sup> Utah Constitution, Article I, Section 27.

<sup>2</sup> Utah Constitution, Article I, Section 2.

<sup>3</sup> Utah Constitution, Article VI, Section 1.

<sup>4</sup> Utah Constitution, Article I, Section 4 (emphasis added).

## Citizens' Initiatives

It is entirely contrary to the concept of the people retaining their political power, generally, and retaining *their* power to directly legislate, specifically, for the people to pass an initiative by majority vote, then for the Legislature to almost immediately materially alter, and in many ways eviscerate, the intention of that people's legislation.

Justice Larson eloquently noted in 1937:

*[T]he people themselves are not creatures or creations of the Legislature. They are the father of the Legislature, its creator, and in the act of creating the Legislature the people provided that its voice should never silence or control the voice of the people in whom is inherent all political power; and being coequal in legislative power, the Legislature, the child of the people, cannot limit or control its parent, its creator, the source of all power. And when the people, by the proper exercise of the initiative, their method of legislating, have spoken on a matter essentially within their scope of government, master has spoken and even the voice of the child, though it may be recalcitrant, is stilled.<sup>5</sup>*

## Control and Interference by The Church of Jesus Christ of Latter-day Saints

The Church of Jesus Christ of Latter-day Saints, with several collaborators it solicited, aggressively opposed Proposition 2.<sup>6</sup> That initiative provided for medical cannabis for people with medical conditions for which cannabis has been proven to provide substantial relief. The Church of Jesus Christ even went so far as to email

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<sup>5</sup> *Utah Power & Light Co. v. Provo City*, 74 P.2d 1191, 1205 (1937).

<sup>6</sup> Marty Stephens, the new Director of Community and Government Relations in the Public Affairs Department of the Church of Jesus Christ, sent an email to several people reflecting the Church's determination to defeat Proposition 2. That email, along with observations by Rocky Anderson, is attached as Appendix "A". Now that Proposition 2 has passed by a majority vote during the last election, the Church is unwilling to accept defeat. Instead, it has, once again, exercised its control over the Utah Legislature, which is scheduled to meet in special session on December 3 to drastically alter the system contemplated by Proposition 2 to provide relief from human suffering.

members telling them to oppose Proposition 2.<sup>7</sup> Some of its local leaders, including the Church's point-man on this issue, Marty Stephens, a former Speaker of the Utah House of Representatives, even announced from the podium in church meetings that members of the Church were to vote against Proposition 2.

After the majority of voters passed Proposition 2, the Church of Jesus Christ brought together a number of collaborators to orchestrate the *deprivation* of the will of the people. Several back-room, closed door meetings, have resulted in several moving-target versions of an absurdly long and convoluted replacement bill. That has brought us to the point where, on December 3 (a mere eight weeks before the commencement of the next regular session), at a costly and unnecessary special session, the Legislature is expected to defeat the will of the people. The Senate President has even threatened his fellow senators that if they do not show up for the special session, he will send out the sergeant-at-arms to locate and force them to attend.<sup>8</sup>

This is all not only wholly anti-democratic, but constitutes a virtual theocratic control of our State and interference in the functions of our government by a church. It is also a wholesale betrayal of the people's power to pass legislation through a citizen's initiative, making a mockery of the sacred power retained by the people, through our Constitution, to legislate.

### **Radical Changes in the Replacement Bill – Depriving Remedies for Suffering**

The greatest outrage is that, at the behest of those who sought to deprive a proven remedy for human suffering through their opposition to medical cannabis bills in the past *and* Proposition 2, this Legislature, immediately after the effective date of the initiative statute, is poised to defeat central purposes of the proposition.

The many radical changes sought by proponents of the replacement bill will delay—and in many instances deprive—thousands of Utah residents of remedies for their severe suffering. The extreme, convoluted changes being sought are discriminatory, anti-democratic, and inhumane. They will create an enormous, DABC-like wasteful, incredibly expensive, and cumbersome bureaucracy of the

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<sup>7</sup> See the letter to members of the Church of Jesus Christ from Craig C. Christensen, attached as Appendix "B".

<sup>8</sup> A copy of Senator Niederhauser's letter to all state senators is attached as Appendix "C".

worst sort. By comparison, Proposition 2, provides for a free-market system of relief, which has been proven to work simply and efficiently in the majority of other states.

### **Denying Medical Professionals Certified to Prescribe Opioids Authority to Help Patients Obtain Cannabis**

Under Proposition 2, any person with a DEA certification to prescribe opioids, would be able to *recommend* cannabis for people with qualified conditions or whose conditions were found by a compassionate use board to merit medical cannabis. Those who would have recommendation authority would include medical doctors, osteopathic physicians, and nurse practitioners and physician assistants who currently have authority to prescribe opioids.

Under the replacement bill, the provision in Proposition 2 for “recommending” cannabis, which is legal,<sup>9</sup> is unnecessarily deleted, and it is substituted with a provision for “prescribing,” although “prescribing” cannabis would be a violation of federal law. It appears that the substitution may have been made so that *no one* will prescribe or recommend cannabis for patients. What physicians are going to violate federal law and risk losing their certifications to prescribe controlled substances by “prescribing” cannabis? There can be no reason for substituting the use of the word “recommend” in Proposition 2, which is the workable terminology used in other states, for the word “prescribe” in the replacement bill, except to discourage or prevent physicians from helping patients obtain relief through the use of cannabis.

Also, under the replacement bill, the only persons who would have purported authority to *prescribe* cannabis medications would be medical doctors and osteopathic physicians. That is a 50% reduction in the number of people who will be authorized to prescribe or recommend cannabis medications.<sup>10</sup> Except for the

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<sup>9</sup> *Conant v. Walters*, 309 F.3d 629 (9th Cir. 2002).

<sup>10</sup> According to the Utah Medical Education Council, State of Utah, in a 2016 report, there were 4,528 DOs and MDs treating patients in Utah in 2015. According to the Utah Division of Occupational and Professional Licensing, there are 4,528 physician assistants and nurse practitioners who can prescribe opioids practicing in Utah. There is likely going to be a growing disparity in the numbers of those categories because the number of physicians has been decreasing each year, with a 17% decrease in their numbers between 2010–2015. As burgeoning healthcare solutions evolve, we are depending more and more on medical treatment by physician assistants and nurse practitioners.

interests of the Utah Medical Association in monopolizing the field for MDs and DOs, there can be no good reason for depriving people who have authority to prescribe opioids from recommending cannabis medications, which have resulted in no overdose deaths, ever.

### **Excessive Limits on Authority for Physicians Who Specialize in the Treatment of Qualified Conditions**

Even with the drastic reductions in the numbers of medical professionals who will have purported authority to help people obtain cannabis medications under the replacement bill, those who would have purported authority to prescribe would have a profound limit placed on the number of patients they could help obtain cannabis. The people's legislation, Proposition 2, provides that most medical providers would be limited to recommending cannabis to 20% of their patients. Those who are board certified in anesthesiology, gastroenterology, neurology, oncology, pain and palliative care, physiatry, or psychiatry, would have no limit on the number of patients for whom they can recommend cannabis for qualifying conditions.

Under the replacement bill, draconian limits would be placed on the numbers of patients that purportedly can be prescribed cannabis medication by MDs and DOs. Under the replacement bill, physicians board certified in anesthesiology, gastroenterology, neurology, oncology, pain, hospice and palliative medicine, physical medicine and rehabilitation, rheumatology, and psychiatry will be limited to prescribing cannabis medication for 300 patients at any one time. All other medical providers will be limited to prescribing for 175 patients. That is an unconscionable lottery, which will exclude effective relief from suffering for many patients and severely curtail a physician's ability to help patients obtain safe medications on the basis of their experience and extensive knowledge of their patients' medical history.

### **Eliminating the Ability of Patients with Many Serious Medical Conditions to Qualify for a Prescription**

Among the radical, discriminatory changes being proposed is the elimination of many medical conditions that would qualify for the patients to obtain cannabis. Proposition 2 included all autoimmune diseases among the conditions that would qualify for the recommendation of cannabis. The latest version of the replacement bill has removed all but two autoimmune diseases (ulcerative colitis and Crohn's disease) from the list of qualifying conditions. Among the diseases covered by Proposition 2, but not covered by the replacement bill, are lupus, rheumatoid

arthritis, inflammatory bowel diseases (with the exceptions mentioned earlier), Guillain-Barré, Graves' disease and vasculitis, most of which are extremely painful diseases.

Nationally, about 1.6 million people suffer from ulcerative colitis and Crohn's,<sup>11</sup> which are covered by the replacement bill. However, many more millions of people suffer from lupus and Graves' disease,<sup>12</sup> which are among the diseases omitted from the replacement bill. Between 14–22 million people in the United States are affected by autoimmune diseases, the third most common category of disease after cancer and heart disease.<sup>13</sup> “Autoimmune diseases affect approximately 8% of the population, 78% of whom are women.”<sup>14</sup> Autoimmune diseases are a leading cause of death among young and middle-age women.<sup>15</sup> Yet the replacement bill eliminates most autoimmune diseases from its coverage.

### **Discriminatory Denial of Rural Access to Dispensaries**

Proposition 2 provides for a relatively simple, yet highly-controlled, inexpensive, free-market system for the distribution of cannabis, with the greater of one dispensary per county or one dispensary for each 150,000 people in the county, while the replacement bill would require distribution through a state-run central fill, with only seven private dispensaries state-wide plus thirteen dispensaries through health department offices. However, those health department dispensaries, which would have to be funded by the counties, cannot be counted on ever being established. The replacement bill even contemplates the health department dispensaries may never exist.

The replacement bill replaces the free-market distribution system supported by the majority of voters with a wasteful, oppressive, centrally-controlled bureaucracy, reminiscent of the DABC—except, here, the consequences are that

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<sup>11</sup> <https://inflammatoryboweldisease.net/what-is-crohns-disease/statistics/>

<sup>12</sup> <https://www.lupus.org/resources/lupus-facts-and-statistics>;

<https://www.gdatf.org/about/about-graves-disease/>

<sup>13</sup> Fairweather and Rose, “Women and Autoimmune Diseases,” International Conference on Women and Infectious Diseases (Centers for Disease Control and Prevention), 2004.

<sup>14</sup> *Id.*

<sup>15</sup> Walsh and Rau, “Autoimmune Diseases: A Leading Cause of Death Among Young and Middle-Aged Women in the United States,” *American Journal of Public Health*, September 2000.

thousands of people will be denied, or at least severely delayed in obtaining, relief from their suffering, and in many instances will be driven to the black market to obtain cannabis. This replacement bill provision is not only going to create tremendous expense, with counties responsible for financing the health department dispensaries, but it is incredibly discriminatory toward rural patients.

Tens of thousands of residents of many rural counties will not have reasonable geographic access to the relief from suffering provided by cannabis. Any rural county legislators supporting the replacement bill are betraying the interests of their constituents and aiding in the blatant discrimination against them. Many people who do not have access to a cannabis dispensary are likely to seek cannabis through the black market.

### **Eliminating the Option for People Beyond 100 Miles from a Dispensary**

Exacerbating the discriminatory impact of the central fill scheme, and the limit on the number of dispensaries under the replacement bill, is the elimination of the option, under Proposition 2, for those beyond 100 miles of a dispensary to grow six plants, two of them flowering and four in a vegetative state. Under the replacement bill, there is no back-up option for those who have no reasonable access to a dispensary—other than obtaining cannabis on the black market.

### **The Direct Voice of the People Must Control**

The replacement bill is a blatant infringement on the initiative power of the people.

Some may feel that with passage of the unfeasible replacement bill, they will somehow “win”. But the growing resentments caused by church control, legislative arrogance, and the derogation of direct democracy will be a major, sustained loss by all who support the replacement bill.

## Appendix A



Below is an email from Marty Stephens from his Church of Jesus Christ of Latter-day Saints email account ("ldschurch.org"), dated June 7, 2018.

1. The email evidences the effort of Mr. Stephens and The Church of Jesus Christ of Latter-day Saints to derail Proposition 2, even though Proposition 2 required a majority of votes to pass. The anti-democratic implications of Mr. Stephens's letter are manifest.
2. Mr. Stephens's and his employer's disregard for the democratic process is palpable in their effort to undermine an initiative that was going to be placed on the ballot according to the intent of the Utah Constitution that (1) **the people** are to have the legislative power to pass laws pursuant to initiatives or referendums and (2) The Church of Jesus Christ shall not have control of the State or interfere in its functions.
3. Mr. Stephens clearly contemplates, presumptuously and anti-democratically, that he and The Church of Jesus Christ are not going to accept the result if a majority of voters support Proposition 2 (which they did). He threatens a "long political and legislative fight that lies ahead if we cannot find some room to work together;" *i.e.*, if the initiative goes to a vote and the majority of voters support it.
4. Mr. Stephens purports to be among a group of insiders that will decide "how and when we involve elected officials, the medical association, and other community groups . . . ."
5. Mr. Stephens, although writing apparently as a representative of The Church of Jesus Christ, describes what he calls his "personal goals" in substituting his and his employer's ideas of what best serves the public for the views and votes of a majority of voters.
6. Mr. Stephens threatens a "5-10 million dollar" expenditure "fighting about this initiative." That amount would presumably come from fundraising efforts among its wealthy members by The Church of Jesus Christ.
7. Mr. Stephens seeks to control the composition of the group that would meet about undermining Proposition 2 and proposes "keeping everything confidential for now;" *i.e.*, hiding from public exposure the secret efforts

of The Church of Jesus Christ to stop Proposition 2 from being presented to voters.

8. Mr. Stephens suggests that if a chosen group of people and organizations can agree to what The Church of Jesus Christ will accept, contrary to the proposal in Proposition 2, Mr. Stephens (the representative of the Church of Jesus Christ) (and no one else) “will take that document to Church leaders, the UMA, the S.L. Chamber (which apparently is inclined to push for legislative proposals, such as the two-party recording bill, on behalf of The Church of Jesus Christ<sup>[1]</sup>), legislative leaders and the Governor’s office and try to get their support as well.”
9. The hand-picked “supporting groups would then call upon the Governor to call a special session of the legislature to draft a bill” vastly different than Proposition 2.
10. Finally, Mr. Stephens makes clear that if the select group can get everything done “before the election” they can “join forces in messaging that . . . there is no need for the initiative.” In other words, the intent was for these few powerful people and institutions, meeting at the behest of The Church of Jesus Christ, would substitute their will for the will of **the people**.
11. Mr. Stephens suggested the closed group would meet at the offices of The Church of Jesus Christ, but noted that he would “consider” meeting somewhere else “that will be private.”
12. Mr. Stephens concluded with the implicit threat that if there were not an agreement reached among the closed, secret group, “[t]here are things organizing behind the scenes that will make a compromise difficult in the not too distant future.”

This email not only displays an arrogance of power and control, but a disdain for the democratic process and a reflection of domination of and interference in State government by The Church of Jesus Christ, in violation of Article I, Section 4 of the Utah Constitution.

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<sup>[1]</sup> Brian Mullahy, “LDS church supports, others object to bill for secret recording ban,” <https://kutv.com/news/local/lds-church-supporters-and-other-object-bill-for-secret-recording-ban> (“The LDS Church supports it and so does the Greater Salt Lake Chamber of Commerce, but opposition is mounting over a bill to make secret recordings illegal.”)

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

Subject: Way forward  
From: Marty Stephens <mstephens@ldschurch.org>  
Date: Thu, June 07, 2018 9:41 am  
To: Nathan Frodsham <nfrodsham@gmail.com>,  
"tpaskett@truceutah.org" <tpaskett@truceutah.org>,  
"cstenquist@truceutah.org" <cstenquist@truceutah.org>,  
"doug@epilepsyut.org" <doug@epilepsyut.org>  
Cc: "Juan T. Becerra" <jtbecerra@ldschurch.org>, Alexa Roberts  
<AlexaRoberts@ldschurch.org>  
Good morning!

Thank you for the opportunity to get to know each of you better yesterday. I've spent a lot of time since we met trying to see a path forward and how we could perhaps be of help to each other and avoid this long political and legislative fight that lies ahead if we cannot find some room to work together.

I also have given considerable thought to how and when we involve elected officials, the medical association, and other community groups that are lining up both in opposition and in support of the initiative and are gearing up for the campaign.

First of all, my personal goals in this effort are the following in order:

1. Protect the children of our state from increased exposure to marijuana or and other harmful drug.
2. Allow access to those with true medical needs to the medications they need including marijuana based medications.
3. Prevent, if possible, the 5-10 million dollar waste of money in fighting about this initiative by finding a compromise that will allow the truly medical needy access to the medications they need, while strictly controlling access to minors and those without medical needs.

I would propose the following:

1. Let's meet together just as this group that was together yesterday, keeping everything confidential for now, and see if we can come to agreement on what a path forward might look like. I would like to see if we can work as quickly as possible as I will be out of town most of the month of July.
2. I think we should not try and write the legislation, but try and come up with a document that we can both agree to that would list the key components that whatever piece of legislation was passed would need to contain in order to have our joint support.
3. If we are able to do that, I will take that document to Church leaders, the UMA, the S.L. Chamber, legislative leaders and the Governor's office and try to get their support as well. You also would share it with your key allies and see if we can build a broader coalition.
4. The supporting groups would then call upon the Governor to call a special session of the legislature to draft a bill which would be based on the principles in our joint agreement.
5. If we are able to accomplish all of that before the election we would all join forces in messaging that the medical needs have been taken care of and that there is no need for the initiative.

If these basics seem like a good framework to work from, I would propose we meet soon with our respective lists of concerns with the initiative and basic requirements that would need to be in any agreement. We probably will need to block out 2-3 hours for the next meeting. I am happy to host you here or if you have somewhere else you'd like to meet that will be private I'd be happy to consider that.

Time is of the essence in seeing if we can come to an agreement. There are things organizing behind the scenes that will make a compromise difficult in the not too distant future.

I have the following times available in the next few days:  
Monday at noon, I'd be happy to have a light lunch brought in.  
Tuesday at 9:00 am.

Please let me know if you have an interest in proceeding.

I think we have a wonderful opportunity to do something special here in Utah to help those in need, protect our children, and avoid what is sure to be a very divisive and costly battle.

I am committed to working with you as a trusted partner to get this done.

Marty

## Appendix B

Dear Brothers and Sisters,

In November, Proposition 2, an initiative which would legalize the sale and use of marijuana, will appear on the ballot. Its proponents assert that it will make medical marijuana available to those suffering with debilitating pain and other infirmities. However, in truth it goes much further, creating a serious threat to health and public safety, especially for our youth and young adults, by making marijuana generally available with few controls.

The Church joins a coalition of medical experts, public officials, and community stakeholders in calling for a safe and compassionate approach to providing medical marijuana to those in need. The Church does not object to the medicinal use of marijuana, if doctor prescribed, in dosage form, through a licensed pharmacy.

As a member of the coalition, we urge voters of Utah to vote **NO** on Proposition 2, and join us in a call to state elected officials to promptly work with medical experts, patients, and community leaders to find a solution that will work for all Utahns, without the harmful effects that will come to pass if Proposition 2 becomes law.

For more information on Proposition 2 please refer to this legal analysis prepared for the Church by Kirton McConkie.



Elder Craig C. Christensen  
President, Utah Area

## Appendix C

Begin forwarded message:

**From:** Wayne Niederhauser <wniederhauser@le.utah.gov>  
**Date:** November 15, 2018 at 5:40:59 PM MST  
**To:** Senators <LS-SENATORS@le.utah.gov>  
**Cc:** Senate Staff <SenateStaff@le.utah.gov>  
**Subject:** **Special Session attendance**

Senators,

The Governor will call a special session on December 3 to address the medical cannabis bill. While the exact time has not been determined, it's anticipated to begin in the morning and will end in the afternoon.

Based upon the current results, Prop 2 will pass and go into effect on Saturday, December 1. The earliest opportunity for the Legislature to convene is December 3. Each of you have received a calendar invite holding December 3 as the date of the special session. Specific details as to the exact time will be provided in the coming days.

It is important to have every Senator attend the special session. To avoid legal issues, legal questions and public confusion, this bill needs an immediate effective date and thus must pass by a two-thirds majority. Specifically, law enforcement is very concerned with the "affirmative defense" provision in Prop 2, which protects medical cannabis users from criminal conviction, whether or not they have received a medical cannabis card.

Please make every effort to be in attendance. Several senators have already indicated they may not be available to attend, and this concerns me. While I understand you may have prior obligations and commitments, this will be a critical special session and requires each of you to attend.

I understand emergencies may arise, but it is my expectation that each of you be in attendance. If you believe you're not able to attend, please call me directly as soon as possible.

As Senate President, I can compel attendance of absent senators. While I don't believe that will be necessary in this case, due to the importance of the special session, I will not hesitate to order the sergeant-at-arms to find and ensure your attendance.

I thank each of you in advance. I know the difficulties this may have on your personal and professional lives, but this is one of the few times I'm willing to exercise my discretion to ensure your attendance.

Please let me know if you have any questions.

President Niederhauser