

**RESOLUTION URGING ACTION FOR  
APPARENT BREACHES OF UTAH'S  
ENABLING ACT AND FEDERAL  
CONSTITUTION**

2004 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE**

**General Description:**

This joint resolution of the Legislature urges the Utah Attorney General's Office to investigate apparent breaches of trust and constitutional violations.

**Highlighted Provisions:**

This resolution:

- ▶ urges Utah's Attorney General to investigate apparent breaches of Utah's Enabling Act and the United States Constitution by the United States Senate and the United States House of Representatives and to report to the Legislature;
- ▶ urges Utah's Attorney General to look to all controlling and persuasive federal and state constitutional, statutory, and case authorities, including but not limited to Article I, Section 27 of the Utah Constitution, in order to develop arguments under existing law

and, if necessary, develop nonfrivolous arguments for the extension, modification, or reversal of existing law or the establishment of new law;

- ▶ provides investigative considerations for use by the Attorney General in the conduct of the investigation; and
- ▶ urges the Utah Constitutional Defense Council to participate in the investigation.

**Special Clauses:**

None

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*Be it resolved by the Legislature of the state of Utah:*

WHEREAS, the Utah Enabling Act is a compact between the Senate and House of Representatives of the United States of America and the inhabitants of the Territory of Utah;

WHEREAS, the state of Utah was admitted under the Utah Enabling Act "on an equal footing with the original states";

WHEREAS, equal footing is defined as cited in *United States v. Texas*, 339 U.S. 707, 1950, as equality of political rights and sovereignty;

WHEREAS, the original states declared themselves sovereign and independent according to the limits of their respective territories;

WHEREAS, this territorial sovereignty was in no way diminished or subordinated to the legislative authority of Congress under the Constitution;

WHEREAS, the sovereignty of a state cannot exist without a territorial domain upon which it is to act as cited in *Green v. Biddle*, 21 U.S. 1, 1821;

WHEREAS, the people of the original states did reserve to themselves the right to exercise sovereign municipal governance, or political rights, throughout the limits of their territory;

WHEREAS, Sec. 3 of the Utah Enabling Act requires that until the title to the unappropriated public lands lying within the limits of the state shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States;

WHEREAS, upon admission of the state of Utah as a member of the American

confederacy on an equal footing with the original states, the laws of the former territory and the new state are to be in full force and effect in the state and the laws of the United States are to have "the same force and effect within the said State as elsewhere within the United States";

WHEREAS, the United States does today assert complete legislative jurisdiction without limitation over approximately 67% of the state which remains public domain;

WHEREAS, this legislative jurisdiction is asserted under authority of the constitutional supremacy clause, thereby extinguishing every state legislative act thereon at the will of Congress;

WHEREAS, the scope of federal governmental power over the public lands of the state of Utah is demonstrated by the fact that, under current federal law, federal officers may search and seize both persons and property without warrant or process upon the public domain notwithstanding the constitutional safeguard against unwarranted search and seizure;

WHEREAS, Congress has proclaimed that, as of October 21, 1976, it is federal policy that the public lands be retained in federal ownership, which denies to the schools of the state of Utah that 5% of proceeds of sale to which they are entitled under Sec. 9 of the Utah Enabling Act;

WHEREAS, the Senate and House of Representatives of the United States stand in material breach of certain terms of the Utah Enabling Act with the inhabitants of the state of Utah;

WHEREAS, since the state of Utah is denied sovereign governance upon public lands within its borders, it is denied equal footing with the original states;

WHEREAS, since the people of the state of Utah are denied the right to form and to administer a government upon that portion of territory otherwise committed to them for the purposes of their state by terms of their enabling Act compact with the United States, but which remains under complete federal legislative jurisdiction, the people are also denied their political rights;

WHEREAS, denial of political rights is tantamount to denial of republican self governance, including local law enforcement, as guaranteed under Article IV, Section 4 of the United States Constitution;

WHEREAS, since statehood is defined as "people, territory, and governance," the people

of the state of Utah are denied statehood upon the 67% of the state which remains subject to federal territorial governance in the form of complete, unlimited, and supreme federal legislative jurisdiction;

WHEREAS, by retaining the public lands of the state of Utah in federal ownership, Congress denies its trust obligation under the Utah Enabling Act compact to maintain these lands subject to disposition; and

WHEREAS, material breach of specific and binding terms of the Utah Enabling Act compact by Congress has resulted in the violation of provisions of Article IV, Sections 3 and 4 of the United States Constitution:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah urges the Utah Attorney General to immediately commence an investigation into these apparent breaches of trust and constitutional violations and that he report to the Legislature on the progress of the investigation.

BE IT FURTHER RESOLVED that the Legislature urges the Attorney General to look to all controlling and persuasive federal and state constitutional, statutory, and case authorities, including but not limited to Article I, Section 27 of the Utah Constitution, which states "Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government" and develop arguments under existing law and, if necessary, develop nonfrivolous arguments for the extension, modification, or reversal of existing law or the establishment of new law, in order to advise and recommend possible legal action for the redress of any breaches of trust or constitutional violations which the Attorney General finds as a result of this investigation.

BE IT FURTHER RESOLVED that the Legislature urges the Attorney General to remain cognizant of the fact that the precedential value of cases and commentators tends to increase in proportion to their proximity to the adoption of the Constitution, the Bill of Rights, or any other amendments.

BE IT FURTHER RESOLVED that the Legislature strongly urges that the Utah Constitutional Defense Council participate in this investigation.

**Enrolled Copy**

**H.J.R. 17**

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Utah Attorney General, the Utah Constitutional Defense Council, the Majority Leader of the United States Senate, and the Speaker of the United States House of Representatives.