

**JOINT RESOLUTION RECOMMENDING A NAME FOR NEW
FEDERAL COURTHOUSE**

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Johnny Anderson

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This joint resolution of the Legislature urges the members of Utah's congressional delegation to work toward having the new federal courthouse in Salt Lake City named after Justice George Sutherland.

Highlighted Provisions:

This resolution:

▶ urges the members of Utah's congressional delegation to work toward having the new federal courthouse in Salt Lake City named after Justice George Sutherland;

and

▶ urges the members of Utah's congressional delegation to make this effort in recognition of Justice Sutherland's lifetime of service as a member of the Utah Senate, United States House of Representatives, United States Senate, and as the only Utahn to serve on the United States Supreme Court, and whose example of humility and integrity in public service is unsurpassed.

Special Clauses:

None

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

WHEREAS, a new federal courthouse is currently being constructed at 351 South West



28 Temple in Salt Lake City;

29 WHEREAS, if this new structure is to bear the name of an exemplary Utahn, it should
30 be named after Justice George Sutherland, the only Utahn to serve on the United States
31 Supreme Court;

32 WHEREAS, to date, Justice Sutherland is Utah's most accomplished attorney, public
33 servant, and judge;

34 WHEREAS, before joining the United States Supreme Court, Sutherland was a
35 renowned legal scholar and sage politician, having served in the Utah State Senate, the United
36 States House of Representatives, and the United States Senate;

37 WHEREAS, no past or present Utahn has done more for his state or country, or
38 accomplished more as a lawyer;

39 WHEREAS, Sutherland was born in England in 1862 to converts to the Church of
40 Jesus Christ of Latter-day Saints (LDS);

41 WHEREAS, Sutherland's family immigrated to Utah as part of an oxcart company in
42 October 1863;

43 WHEREAS, the Sutherland family first settled in Springville, Utah, and then moved to
44 Tintic, Utah, where George Sutherland, Sr. sold dry goods to miners;

45 WHEREAS, George Sutherland, Sr. left the LDS Church in 1870, and young George
46 was never baptized;

47 WHEREAS, Sutherland recalled his boyhood as a "period when life was very simple,
48 but, as I can bear testimony, very hard as measured by present day standards...Nobody worried
49 about child labor, the average boy of 10 worked--and often worked very hard";

50 WHEREAS, Sutherland grew up in a time when everybody was poor and everybody
51 worked;

52 WHEREAS, neither the 8-hour day nor the 40-hour week had arrived, so work began
53 when it was light enough to see and ended when it became too dark;

54 WHEREAS, Sutherland worked first in a clothing store in Salt Lake City, then as a
55 Wells Fargo agent and later as a mining recording agent until age 17, when his family moved to
56 Provo;

57 WHEREAS, Sutherland had no schooling from ages 12 to 17, but because he was
58 taught well by his parents, he entered the Brigham Young Academy in 1879 as an excellent

59 student and writer;

60 WHEREAS, at Brigham Young Academy, he flourished under the tutelage of renowned
61 headmaster Karl Maeser, who nurtured the institution for decades;

62 WHEREAS, at Brigham Young Academy, George Sutherland made many lifelong
63 friends, nearly all members of the LDS Church, including Sam Thurman, who later became his
64 law partner, cofounder of the predecessor firm to Snow, Christensen & Martineau, and a Utah
65 Supreme Court Chief Justice; William H. King, his future law partner and political opponent
66 against whom he ran for Congress in 1900 and the United States Senate in 1916; and James E.
67 Talmage and Richard Lyman, future Apostles of the LDS Church;

68 WHEREAS, at Brigham Young Academy, he met Rosamond Lee of Beaver, Utah, and
69 several years later they married;

70 WHEREAS, George and Rosamond Sutherland were together for nearly 60 years and
71 had three children, a boy who died at 17 and two daughters who survived him;

72 WHEREAS, Sutherland graduated from Brigham Young Academy in 1881 and
73 attended the University of Michigan Law School for a year, passed the Michigan Bar, and then
74 married Rosamond and moved to Provo, where he started a practice with his father, by then a
75 self-taught lawyer;

76 WHEREAS, Sutherland once stated, "I transacted all kinds of business, both civil and
77 criminal. A lawyer in a small town can't pick and choose--public opinion demands that he
78 shall treat all men alike when they call for his services. I often traveled on horseback in the
79 mountains to try cases before Justices of the Peace";

80 WHEREAS, Sutherland earned a well-deserved reputation as a hardworking and honest
81 family man who was smart, empathetic, and kind;

82 WHEREAS, in 1886, at age 24, his law partnership with Sam Thurman began, and they
83 were joined by William King two years later;

84 WHEREAS, as young lawyers, Sutherland and Thurman defended nine Irish miners
85 accused of lynching, a capital offense; all were tried and convicted but none was executed--a
86 victory for Sutherland and Thurman;

87 WHEREAS, Sutherland also represented many members of the LDS Church charged
88 with violating the Federal Edmund's Act outlawing polygamy;

89 WHEREAS, through these cases and his general character, he earned respect within the

90 LDS community and at the same time received the political support of the non-LDS
91 community.

92 WHEREAS, Sutherland did not represent Karl Maeser when he was convicted in 1887
93 of violating the Edmund's Act, but he nonetheless appeared at Maeser's sentencing and made an
94 impassioned and successful plea to the Court not to jail Maeser, citing his many
95 accomplishments at Brigham Young Academy;

96 WHEREAS, the Court did not sentence Maeser to jail, but fined him \$300, which
97 Sutherland immediately paid to the Court;

98 WHEREAS, as a young lawyer, Sutherland dove into public service and politics;

99 WHEREAS, from 1886 to 1890, Sutherland was an Overseer of the State Hospital in
100 Provo, and in 1890 he ran for Mayor of Provo as a Liberal Party candidate on an antipolygamy
101 platform, and lost;

102 WHEREAS, LDS-Church sanctioned polygamy ended in late 1890, gutting the Liberal
103 Party of its purpose, so Sutherland became a Republican and narrowly lost the 1892
104 Republican nomination for Congress;

105 WHEREAS, Sutherland was gratified that Utah's new Constitution provided for
106 women's suffrage, a cause for which he campaigned throughout his political career;

107 WHEREAS, Sutherland's legal practice blossomed, and in 1894 he left Thurman &
108 Sutherland and moved to Salt Lake City where he joined the predecessor to the Van Cott law
109 firm;

110 WHEREAS, Sutherland helped form the Utah Bar Association in 1895, and in 1896
111 was elected to the first Utah State Senate, where he chaired the Judiciary Committee, which
112 drafted the first Utah Judicial and Penal Codes;

113 WHEREAS, Sutherland proposed the state's first State Workers' Compensation Statute
114 and laws granting eminent domain to miners and those working in irrigation;

115 WHEREAS, in 1900, Sutherland narrowly defeated Democrat and former law partner
116 William H. King for Utah's lone seat in the United States House of Representatives;

117 WHEREAS, Sutherland remained very active in state and national Republican Party
118 affairs, serving as a party delegate from Utah to every Republican convention between 1900
119 and 1916;

120 WHEREAS, in his only House term, Sutherland was instrumental in passing the

121 Reclamation Act, which allowed Western water projects to be engineered and financed with
122 federal money, allowing the Western States to grow much faster than if water projects had been
123 left to private and state financing;

124 WHEREAS, Sutherland chose not to run for a second term and resumed his practice
125 with Van Cott;

126 WHEREAS, in 1905, United States Senators were elected by State Legislatures;

127 WHEREAS, years earlier, Sutherland had represented United States Senator Reed
128 Smoot's father in a polygamy case and now, with the endorsement of his friend and Senator,
129 Sutherland prevailed in an interparty fight with incumbent Thomas Kearns;

130 WHEREAS, Sutherland's two-term Senate career was stellar;

131 WHEREAS, through his legal ability, affability, and hard work, Sutherland
132 accomplished much regarding women's suffrage, workers' compensation, reclamation, Indian
133 affairs, and foreign policy;

134 WHEREAS, Sutherland was the driving force behind the Federal Employer Liability
135 Act, which created a workers' compensation system;

136 WHEREAS, in support of the new system, Sutherland argued, "When we are able to get
137 to the truth as to how these accidents happen we will be able to apply the remedy with greater
138 certainty, so that the law is not only just in providing compensation to all injured employees,
139 one of the legitimate expenses of the industry, but what is perhaps still more important, it will
140 tend to greatly reduce the number of accidents and consequently the aggregate of human
141 suffering";

142 WHEREAS, Sutherland championed many other labor causes, earning him the praise of
143 Samuel Gompers, President of the American Federation of Labor;

144 WHEREAS, Sutherland's Judiciary Committee rewrote the United States Criminal and
145 Judicial codes, "a monumental task" according to Chief Justice Charles Evans Hughes of the
146 United States Supreme Court;

147 WHEREAS, in 1907, Sutherland's courtroom skills were well displayed in the Senate
148 where he mounted a detailed and successful defense of Senator Reed Smoot when the Senate
149 considered expelling Smoot due to his religious and alleged polygamous practices;

150 WHEREAS, Sutherland sponsored the Nineteenth Amendment to give women the right
151 to vote in 1915 and exerted every effort to assure its passage;

152 WHEREAS, Sutherland gave several well received speeches promoting the
153 amendment, including a 1914 speech in which he stated, "I give my assent to woman suffrage
154 because, as the matter appeals to me, there is no justification for denying to half our citizens the
155 right to participate in the operations of a government which is as much their government as it is
156 ours upon the sole ground that they happen to be born women instead of men";

157 WHEREAS, Sutherland was not a pacifist, and contended that security should be won
158 through vigilance and strength;

159 WHEREAS, when Germany's new submarine fleet attacked shipping in the open sea,
160 President Wilson's apparent vacillation in 1915 gave rise to sharp criticism from Sutherland in
161 the Senate, where he stated, "...my own view of the matter is that the new weapon [the
162 submarine] must yield to the law not that the law must yield to the new weapon...I for one am
163 becoming sick and tired of the spineless policy of retreat and scuttle...Instead of warning our
164 own people to exercise their rights at their peril I would like to see issued to other people a
165 warning to interfere with these rights at their peril. The danger of it all is that by this policy of
166 always backing down, instead of backing up, we shall encourage an increased encroachment
167 upon our rights until we shall finally be driven into crises from which nothing but war can
168 extricate us";

169 WHEREAS, during his Senate years, Sutherland was frequently engaged as a speaker
170 on many public issues and he gained a strong reputation as a constitutional scholar;

171 WHEREAS, this reputation was enhanced by the fact that he argued three cases before
172 the United States Supreme Court while serving in the Senate;

173 WHEREAS, in 1915, Sutherland supported the Seventeenth Amendment, which
174 provided for popular election of United States Senators;

175 WHEREAS, in 1916, Sutherland ran for a third term against his old law partner and
176 friend, William King, and lost;

177 WHEREAS, although Sutherland had not run a statewide campaign for 16 years, his
178 loss was likely due to the coattail effect of the antiwar fervor that propelled President Wilson to
179 a second term, on the mantra that "He kept us out of war";

180 WHEREAS, many Republican candidates were badly defeated in 1916, but in his
181 consoling words to William Howard Taft on his loss of the presidential race, Sutherland stated,
182 "We are to pass through a period of readjustment, and the present administration, in view of its

183 past history, is not likely to deal with the serious problems which will arise in such a way as to
184 satisfy the country. The result will be, therefore, that we shall come back into power for a long
185 time";

186 WHEREAS, the Republicans won the next three presidential elections;

187 WHEREAS, after leaving the Senate, Sutherland practiced law in Washington, D.C.
188 and argued four cases before the United States Supreme Court;

189 WHEREAS, in 1917, Sutherland was elected President of the American Bar
190 Association and gave a series of six lectures at Columbia University Law School on the
191 Constitution and foreign affairs;

192 WHEREAS, always a keen political strategist, Sutherland supported Warren G.
193 Harding's seemingly unlikely but successful bid for the Republican presidential nomination,
194 and after Harding was elected he appointed Sutherland as lead counsel for the United States in
195 a seven week trial at The Hague;

196 WHEREAS, Sutherland was also counsel to the United States Delegation to the
197 Armament talks of 1921;

198 WHEREAS, on September 5, 1922, President Harding nominated Sutherland for an
199 open seat on the United States Supreme Court and the Senate unanimously confirmed him the
200 same day;

201 WHEREAS, there was great public interest in and support for Sutherland's appointment
202 because he was the first Utahn to be appointed, one of the few Senators to ascend to the bench,
203 only the fourth foreign born Justice to serve on the Court, and the first to do so since 1793;

204 WHEREAS, as he had throughout every aspect of his life, Justice Sutherland worked
205 very hard on the United States Supreme Court;

206 WHEREAS, in 15 years he wrote 295 majority opinions, 35 dissents, and 1
207 concurrence--an average of 20 majority opinions per year, which is double the average
208 production of today's Supreme Court Justices;

209 WHEREAS, Justice Sutherland's broad life experiences, sobriety, hard work, and
210 self-reliance brought a valuable perspective to the Court;

211 WHEREAS, Justice Sutherland's impoverished upbringing and boyhood years filled
212 with extremely hard work, combined with his intellect and ambition, propelled him into the
213 highest echelon of power on the state and national levels, exposing him to people from all

214 walks of life;

215 WHEREAS, Justice Sutherland's extensive experience in the state and national
216 legislative branches gave him a solid foundation as a constitutional scholar and an expert in
217 governmental affairs;

218 WHEREAS, having seen temporary factions spring to life from time to time, claiming
219 to have all the answers to society's challenges only to fade away and leave in their wake
220 ill-considered legislation that often infringed on individual rights or violated other
221 constitutional principles, Justice Sutherland was wary of the tyranny of the majority;

222 WHEREAS, Justice Sutherland challenged the Congress, the President, and other
223 courts in order to protect individual rights or fundamental constitutional doctrines;

224 WHEREAS, in 1935, in *Berger v. United States*, wherein an Assistant U.S. Attorney
225 was guilty of gross misconduct during a criminal trial, Justice Sutherland eloquently set the
226 standard for prosecutorial misconduct when he wrote that the misconduct called for a stern
227 rebuke and repressive measures, stating, "The United States Attorney is the representative not
228 of an ordinary party to a controversy, but of a sovereignty whose obligation to govern
229 impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a
230 criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is
231 in peculiar and very definite sense the servant of the law, the twofold name of which is that
232 guilt shall not escape, or innocents suffer. He may prosecute with earnestness and vigor,
233 indeed he should do so. But, while he may strike hard blows, he is not at liberty to strike foul
234 ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful
235 conviction as it is to use every legitimate means to bring about a just one";

236 WHEREAS, this decision better clarified the prosecutor's role and obligations and gave
237 trial judges a clear directive and authority to punish prosecutorial misconduct;

238 WHEREAS, when Franklin D. Roosevelt overwhelmingly defeated President Hoover in
239 1932, the Congress quickly passed many acts to address the economic calamity, but the laws
240 were not thoroughly assessed from a constitutional point of view before they were passed;

241 WHEREAS, this led to scores of court challenges, and many laws were struck down by
242 unanimous vote in 1934, 1935, and 1936, while others were struck down by close votes on
243 various constitutional grounds;

244 WHEREAS, the most controversial opinions that Justice Sutherland wrote struck down

245 portions of President Franklin Delano Roosevelt's New Deal legislation;

246 WHEREAS, after his landslide 1936 reelection, Roosevelt proposed adding six Justices
247 to the United States Supreme Court, which Justice Sutherland saw as a roadblock to economic
248 recovery;

249 WHEREAS, the political upheaval that the court-packing plan sparked caused
250 conservative Justice Owen Roberts to change his votes and to uphold the New Deal legislation;

251 WHEREAS, this switch of a vote and strong public opposition to court-packing led to
252 its defeat in the Senate and avoided a constitutional, and perhaps a national, crisis;

253 WHEREAS, Justice Sutherland was bitterly disappointed with Justice Roberts's vote
254 change, and when the Supreme Court then reversed recent Supreme Court decisions,
255 Sutherland dissented sharply, contending that political expediency had trumped constitutional
256 principles;

257 WHEREAS, much to the disappointment of moderates and conservatives, Justice
258 Sutherland retired in 1938;

259 WHEREAS, humble to the end, Sutherland did not mention the Supreme Court or his
260 career in his last public address, the Convocation of the BYU Class of 1941, but instead
261 reminisced about Utah in the 1860s and 70s, his daylong labors as a child, and his education at
262 his beloved Brigham Young Academy;

263 WHEREAS, above all he implored graduates to be vigilant caretakers of their character,
264 then to focus on career, family, and church;

265 WHEREAS, George Sutherland passed away in 1942;

266 WHEREAS, this nation's heritage and good sense teach us to honor distinguished and
267 exemplary forefathers; and

268 WHEREAS, other public servants may deserve the recognition of having their names
269 on the new federal courthouse, but none deserves it more than George Sutherland:

270 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah urge
271 the members of Utah's congressional delegation to work to have the new federal courthouse in
272 Salt Lake City named after Justice George Sutherland.

273 BE IT FURTHER RESOLVED that the Legislature urge the members of Utah's
274 congressional delegation to make this effort in recognition of Justice Sutherland's lifetime of
275 service to the citizens of the state of Utah as a member of the Utah Senate and to the United

276 States as a member of the United States House of Representatives, a member of the United
277 States Senate, and the only Utahn to serve on the United States Supreme Court, and whose
278 example of humility and integrity in public service is unsurpassed.

279 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the members of
280 Utah's congressional delegation.

Legislative Review Note

as of **2-11-13 9:38 AM**

Office of Legislative Research and General Counsel