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IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

Dr. A. LeGrand Richards, an individual, Kathleen McConkie, an individual, Randy Miller, an individual, Carol Barlow Lear, an individual, the Utah PTA, a non-profit corporation, Utahns For Public Schools, Inc., a non-profit Corporation, and ABU Education Fund, a non-profit corporation, Plaintiffs, vs. Spencer Cox, as Lieutenant Governor of the state of Utah, Defendant.	COMPLAINT and REQUEST for DECLARATORY JUDGMENT and INJUNCTIVE RELIEF Civil No. Judge:

NATURE OF THE CASE

In this civil action, plaintiffs aver that SB 78, enacted into law during the 2016 general session of the Utah state legislature, codified in sections of title 20 of the Utah Code, and requiring the election of members of the Utah state school board (the "Board") on a partisan rather than non-partisan basis ("SB 78"), violates Article X of the Utah Constitution and its prohibition of partisan tests or qualifications as a condition of employment in the state's education systems. In the alternative, and assuming that SB 78 passes constitutional muster under Article X of the Utah Constitution, this legislation, in effect, channels selection of Board candidates through Utah's partisan caucus/convention system. This system, as it presently operates, violates – on both a facial and as applied basis -- the principle of "one person one vote," a principle enshrined in Utah Constitution, Article I, Sections 2, 17, 24, 25, and 27, as well as Article IV, Section 1, and Article IX, Section 1. Moreover, this same system unconstitutionally may delegate the legislative apportionment function, found at Utah Constitution, Article IX, Section 1, to non-legislative governmental entities, the county legislative bodies and county clerks, and to private political parties – as well as trespassing upon candidates' rights to access the ballot in the fair, orderly, transparent process vouchsafed under the Declaration of Rights in Utah's Constitution. Plaintiffs seek a declaration that SB 78 is unconstitutional pursuant to the Utah state constitution and an injunction respecting implementation, administration, and enforcement of the same. Plaintiffs accordingly file this complaint and for cause of action aver as follows.

JURISDICTION AND VENUE

1. This Court has subject-matter jurisdiction respecting this complaint.

2. This Court has personal jurisdiction over the defendant.

3. Venue is proper in this Court.

PARTIES AND STANDING

4. This section of the complaint incorporates by reference all averments found elsewhere in the complaint.

5. Dr. A. LeGrand Richards is an individual residing in Provo, Utah. In 2018, he will seek membership on the Board from District 9. In order to run for election, he must file a declaration of candidacy with the Utah Lieutenant Governor's Office. The declaration of candidacy requires him to certify, under oath, that he is eligible, constitutionally and legally, to be a member of the Board. Under SB 78, Richards will be required to declare a political affiliation and qualify for membership on the Board through a partisan election process, even though, as a matter of privacy and conscience, insofar as public education administration is concerned, he considers himself to be neither a Republican nor a Democrat, but an advocate for children's education – and even though, at the level of personal belief, he considers the partisan qualification requirements of SB 78 to be unconstitutional.

6. In order to succeed in his campaign for election, Richards must invest considerable time and personal funds. He insists on conducting a campaign on a non-partisan basis for several reasons. First, he believes, as noted above, that this is a constitutional requirement in the state of Utah. Second, regardless of constitutional requirements, he believes (for the reasons detailed elsewhere in this complaint) that educational administration must be conducted on a non-partisan basis and that partisan politics are inimical to public education in our state and, hence, it would be a violation of political conscience if he were forced to qualify for election in a partisan political race or to serve on a Board which labored under any degree of partisan political influence. Third, in school board races, he believes that all candidates, including himself, have a

privacy interest respecting political affiliation and this interest would be abridged were he forced to qualify for election in a partisan political election. Finally, he believes that his constituency, those who would vote for him, share his views on the non-partisan nature of educational administration, and that, accordingly, he will lose votes, and his chances of election therefore will be compromised, in the event he is forced to qualify for election in a partisan political race.

7. The Court may take judicial notice of the Utah Lieutenant Governor's website[1] which shows that, as of March 29, 2017, 600,863 citizens in Utah, 39 percent of all registered voters, claim that they are unaffiliated with any political party. This is approximately two-thirds of the combined number of registered Democrats and Republicans. These figures underscore Richards's prospect of losing votes in the event he is forced to run in a partisan race. Moreover, SB 78 effectively precludes nearly 40 percent of Utah voters, who eschew affiliation with a political party, from the civic opportunity of serving on the Board, unless they override their conscience in order to run as a party partisan. Until passage of SB 78, that conviction of conscience, as a constitutionally protected right, had been deemed inviolate.

8. Even if Richards were able to run as an independent candidate, under the terms of SB 78, he still must qualify for membership on the Board in a partisan electoral process, and this would ensure his defeat since no independent candidate has won a Utah election in anyone's memory. Utah has become a virtual one-party state. In only 4 of Utah's 29 counties do Democrats "regularly" hold elective office[2] and the last Democrat to hold a statewide office, Jan Graham as attorney general, was elected in 1996. What is more, Richards will be running from

[1] https://elections.utah.gov/party-and-status

[2] They are Carbon, Grand, Salt Lake, and Summit counties. A single Democrat holds elective office in each of Beaver and Millard counties. Two Democrats hold elective office in San Juan county.

Utah County where partisan hostility to non-Republican candidates has been evident in every statewide, legislative, and countywide office going back at least 30 years.

9. The inherent disadvantage of independent candidates further is illustrated by the fact that most electors vote a straight-ticket for one of the traditional, registered political parties in the state of Utah. For example, in 2016, in Salt Lake County, 27.7 percent of the ballots cast were straight-ticket ballots between 5 registered political parties.

10. Thus, SB 78's requirement that, in order to achieve election, Richards must qualify for membership on the Board on a partisan basis, is adverse to Richards as a matter of constitutional belief, personal conscience, privacy interest, and election prospects.

11. SB 78 is the cause of the adverse effects, noted in the preceding paragraphs of this complaint, respecting Richards. The relief which he seeks in this litigation, if granted, will redress those harms.

12. Richards also qualifies as a plaintiff under the public interest standing doctrine reflected in cases such as *Gregory v. Shurtleff*. Whether the administration of education in the state of Utah shall be governed or conducted along partisan lines is a matter of public interest. Richards is well-qualified and exceedingly suitable as a party to the debate on this question. He is an associate professor of educational leadership and foundations at Brigham Young University and has taught in BYU's education department since 1985. He has a masters of education degree from Harvard University and a doctorate in educational philosophy from BYU. He has published books, as well as articles in books and academic journals, on the history and philosophy of education. He has served as president of the Far Western Philosophy of Education Society from 1995 to 1996 and the department chair at BYU's education department from 2005

to 2009. He also has been a visiting professor and assistant professor at the University of Wurzburg, Germany.

13. If the Court does not declare SB 78 unconstitutional pursuant to Article X of the Utah Constitution, Richards will have no alternative but to qualify for membership on the Board through any available means, including the partisan caucus/convention system of either the Republican or Democratic party. Richards is a registered voter and has voted regularly in general elections in the state of Utah for many years.

14. Kathleen McConkie is an individual residing in Bountiful, Utah. In 2018, she will seek membership on the Board from District 5. McConkie re-states and incorporates by reference the averments found in paragraphs 5, 6, 7, 8, 9, 10, and 11 of this complaint, as these averments also apply in her case. The voting patterns applicable to Richards, were he to run on an independent basis, and as noted above, apply with equal force to McConkie, since she is running for election from Davis county where partisan hostility to non-Republican candidates has been evident in every statewide, legislative, and countywide office going back at least 30 years.

15. McConkie also qualifies as a plaintiff under the public interest standing doctrine reflected in cases such as *Gregory v. Shurtleff*. Whether the administration of education in the state of Utah shall be governed and conducted along partisan lines is a matter of public interest. McConkie is well-qualified and exceedingly suitable as a party to the debate on this question. Before getting a graduate degree in law, she taught in public high schools for five years. She has practiced law in the state of Utah for over 30 years. She has been a candidate in political campaigns, for Davis County Commission and the United States Congress, and therefore knows well the advantages and disadvantages of partisanship as those might bear upon Board races.

She currently serves -- as a gubernatorial appointee -- on the Utah Department of Alcoholic Beverage Control for the state of Utah.

16. Randy Miller is an individual residing in Syracuse, Utah. In 2020, he wants to run for election to the Board from District 4. Miller re-states and incorporates by reference the averments found in paragraphs 5, 6, 7, 8, 9, 10, and 11 of this complaint, as these averments also apply in his case. The voting patterns applicable to Richards, were he to run on an independent basis, and as noted above, apply with equal force to Miller, since he is running for election from Davis county where partisan hostility to non-Republican candidates has been evident in every statewide, legislative, and countywide office going back at least 30 years.

17. What is more, since SB 78 requires Board races to be conducted, and candidates to qualify, in a partisan electoral process, that legislation completely bars Miller, a federal employee with the U S Forest Service and subject to the constraints of the Hatch Act, at 5 U.S.C. Section 7323, *et seq.,* from seeking a seat on the Board. SB 78, which conditions qualification on participation in a partisan electoral process, must be declared unconstitutional so that Miller and other similarly situated candidates can run for election to the Board.

18. In 2016, Carol Barlow Lear was elected on a non-partisan basis from District 7 to membership on the Board. After the election, she took the oath of office prescribed in Utah Constitution, Article IV, Section 10. This oath requires her to "support, obey, and defend," the state constitution. Lear believes that partisan school board elections are unconstitutional, as alleged in this complaint, under that constitution. Hence, she believes that, in order to keep faith with her sworn oath, she must bring this lawsuit.

19. If SB 78 is implemented, starting in 2018, all candidates for membership on the Board will have to qualify for election in a partisan process. Thus, in 2018, as a practical matter,

given Utah's political realities, 7 individuals or almost half of the membership of the Board will qualify for election as either Republicans or Democrats. The other 8 members of the Board, including Lear, qualified for election on a non-partisan basis in 2016. What is more, under Article X, the Board is given general supervisory power and control over Utah's 41 local school boards of education and 126 charter schools -- the largest fraction of public education administration in the state of Utah – and members of these local school boards and governing boards for charter schools all qualify for office on a nonpartisan basis. The half partisan, half non-partisan Board – as well as the misalignment of a Board divided by partisanship while at the same time supervising and controlling non-partisan local boards and charter boards -- will present an impossible situation for Board governance, since partisan members will owe their fealty to a political party and nonpartisan members will refuse to have their single-minded devotion to the education of Utah's children compromised by such political considerations. This circumstance is bound to complicate and frustrate Lear's goals for effective, even-handed, and efficient educational administration in the state of Utah. A divided or partisan board also will affect adversely Lear's ability to perform her duties in office – given the gridlock and deadlock which often accompany decision-making in public agencies infected with partisan politics. This in turn may impact Lear negatively in the eyes of her constituents – having a negative effect upon her chances for re-election – because, when there is partisan infighting with political spin, it often is difficult to determine who bears responsibility for the ensuing confusion and turmoil.

20. Lear will run for re-election in 2020. She therefore restates and incorporates by reference the averments found above in paragraphs 5, 6, 7, 8, 9, 10, and 11 of this complaint, since they also apply in her case.

21. Lear also qualifies as a plaintiff under the public interest standing doctrine reflected in cases such as *Gregory v. Shurtleff*. Whether the administration of education in the state of Utah shall be governed or conducted along partisan lines is a matter of public interest. Lear is well-qualified and exceedingly suitable as a party to the debate on this question. Her resume includes years of teaching in Utah public schools. She has practiced law in the education field after graduating from the College of Law, University of Utah, in 1982, a practice which has included 27 years of service as a legal specialist and the Director of Law, Legislation, and Professional Practices for the Utah State Office of Education. For the past 20 years, at Utah State University, she has taught classes respecting legal issues to graduate students and aspiring administrators. As noted above, she currently serves as a Board member from District 7 and plans on running for re-election to that seat.

22. The Utah PTA ("PTA"), Utahns for Public Schools, Inc. ("UTPS"), and the ABU Education Fund ("ABU") are non-profit corporations, organized under the laws of the state of Utah and headquartered in Salt Lake City. Each has qualified for so-called Section 501(c)(3) or Section 501(c)(4) status with the Internal Revenue Service, Department of Treasury, United States of America. This tax-exempt status is valuable. Even though these groups remain non-partisan and never endorse candidates, their tax-exempt status may be threatened in the event that policy issues surrounding Board elections are suffused with partisanship and candidates or others end up accusing the PTA, UTPS, and ABU with sanctionable partisan activity. This in fact occurred in the case of the PTA and in connection with the 2007 voucher referendum in the state of Utah. The PTA neither supported nor opposed political candidates, but it did enter the lists against school vouchers – vigorously, and as a matter of education policy – and this led to

partisan retribution in the form of state audits which were intended to de-certify the PTA as a non-profit entity. That retribution failed, but the PTA fears a repeat of that experience.

23. SB 78 is the cause of these adverse effects – increased confusion and enhanced risk in the context of educational issues and Board campaigns, resulting in a chilling of the traditional exercise of advocacy rights -- upon the PTA, UTPS, and the ABU. The relief which these entities seek in this litigation, especially in the form of clarification respecting the constitutionality of partisan Board elections, if granted, will redress those harms.

24. The PTA, UTPS, and the ABU are defined by their memberships which include parents whose children attend schools in Utah, teachers who are employed at those schools, and taxpayers whose tax dollars are used to fund those schools. The politicization of education through partisan election of Board members negatively will impact the members of these entities in dramatic, important ways. For example, long ago, Karl Maeser, one of the founding fathers of Utah education, said:

> There has arisen a danger to the welfare of our schools far more threatening than all the miserable features of our past education stages put together. I refer to the introduction of politics into the management of the education system. Politics is a curse in educational matters. Any principle, good or bad, leads ultimately to results by which it is bound to stand or fall, independently of temporary success or failure. A State Board of Education, or a Superintendent of Public Instruction, is to be chosen. The former, let us say, is appointed by the Legislature, and the latter elected by the people. If, unfortunately, a partisan feeling should prevail in the election of these officers, they would consider themselves bound to use the influence of their offices in the interest of their party, as regards persons and measures, wherever possible or convenient. Subordinate school authorities would follow the example and teachers would be engaged or dismissed, not so much on account of their merits or demerits, as in consideration of their party proclivities. It may happen then that officers or teachers of long experience and fruitful services may find themselves set adrift to make room for successful partisans, men to whom the party owes compensation for campaign work, regardless of educational fitness. Not to be exposed to the vicissitudes of political chicanery, some officers and teachers may perhaps play the role of political weather-cocks and change their coats to the fashion of the times, and if such stultification

> becomes necessary in order to hold positions, the better class of teachers will seek situations and careers more worthy of their manhood and honest convictions. In the latter case, the schools would be deprived of the noblest element of vitality and progress. And yet, bad as it is, this would not be the worst feature of political interference with education. Such interference would cast its blight upon the pupils also. It would destroy confidence in the stability, justice, and wisdom of the school system. It would make scholars personally interested in the political changes likely to affect their teachers, and introduce that feverish excitement into the school which is so destructive to all study and discipline. Devoted and trustworthy teachers are not found fighting in the political arena; for no teacher can do that without robbing his calling, and losing the sacred character of neutrality, which should characterize the faithful moulder of youthful minds. For this reason, once more let me say, politics are a curse in educational affairs, even if they contaminate only a member of some board of education, some superintendent, or some teacher. In all cases there is a danger that the contagion will finally reach the school and the children, and spoil the work.

25. The members of the PTA, UTPS, and the ABU will be directly and adversely affected by the so-called "curse of politics" in Board elections and Utah's educational system. These members, as parents and teachers, like the parents and teachers in cases such as *Meyer v. Nebraska* and *Pierce v. Society of Sisters*, are profoundly concerned with the nature – especially any politicized aspect – of educational administration in this state. These members, as taxpayers, like those taxpayers in cases such as *Crockett v. Board of Education of Carbon County*, always have been given standing to raise issues involving board governance in the educational arena. Article X of Utah's Constitution shields these members, insofar as they are teachers and parents of students and students, from political influences in educational administration, but this shield will be lowered if the Board itself is politicized, since it will be impossible to protect the educational body from the "curse of politics" if the Board, as head of that body, is a well-spring of partisanship. And these members have associational standing through entities such as the PTA, UTPS, and the ABU, entities which, indeed, through their very charters, are tasked with this duty of representation. SB 78, by bringing the curse of politics into Board elections, is the

cause of the adversity which these association plaintiffs seek to remedy in this litigation. The relief sought by these plaintiffs, if granted, will redress these wrongs.

26. The PTA, UTPS, and ABU also qualify as plaintiffs under the public interest standing doctrine reflected in cases such as *Gregory v. Shurtleff*. Whether the administration of education in the state of Utah shall be governed or conducted along partisan lines is a matter of public interest. These entities are well-qualified and exceedingly suitable as parties to the debate on this question. Their institutional background and organizational history, when aggregated, include well over a century's worth of involvement with educational issues in the state of Utah.

27. Defendant Spencer Cox is being sued here in his official capacity as Lieutenant Governor of the state of Utah. Cox has power, under Utah's election code, as gatekeeper respecting all declarations of candidacy for those seeking membership on the Board. He is the state's chief election officer and has primary power to implement, administer, and enforce the provisions of SB 78. He also has power to direct and control other government officials, such as the county clerks, who will play a role in the implementation, administration, and enforcement of SB 78.

FIRST CLAIM FOR RELIEF: SB 78 VIOLATES ARTICLE X OF THE UTAH CONSTITUTION

28. Plaintiffs incorporate by reference in this section of the complaint all of the averments found elsewhere in this complaint.

29. SB 78 violates Article X, Section 8, of the Utah Constitution which provides that, "No religious or partisan test or qualification shall be required as a condition of employment, admission, or attendance in the state's education systems."

30. Board members have "employment" in the state's education systems because, like ordinary employees in state government, they receive a salary, along with rights to participate in plans respecting benefits and retirement. In this regard, Board members enroll for their salary

and reimbursement payments through the Utah state automated employment system, and qualify for the same state group insurance plan as do other employees in the Utah State Department of Education pursuant to Utah Code, Section 53A-1-202(3). Like other state employees, they are bound to obey ethical rules imposed by statute or regulation or both.

31. Board members are "employed" in the additional sense that they are used and useful in furthering administration of educational policies – set by the legislature -- in the state of Utah. Under Utah's constitution, as senior executives, they are given power to "supervise" and "control" the management of those policies.

32. SB 78's requirement of partisan elections for Board members, in practical effect, means that candidates for these offices must register their affiliation with a political party, such as the Democrats or Republicans, and pass whatever "tests" of political purity, fitness, or soundness may be imposed by those parties, "qualifying" for nomination through the caucuses and conventions associated with the same. Indeed, the sponsors and spokespersons for SB 78 and similar bills maintained that this vetting process, including the testing and qualifying of candidates through caucuses, conventions, and political affiliation, was the primary reason for making Board races partisan – because, but for this vetting, testing, and qualifying process (or so the theory went), too few voters really could know anything about the value qualifications and political correctness of individuals who ran for these offices. Hence, the express intent behind the enactment of SB 78 is to "test" and "qualify" and condition the election of Board members on the basis of partisanship and party values in Utah politics.

33. In any case and in all events, regardless of legislative intent, the effect of SB 78 is that no individual, no matter his or her party, can attain Board membership without qualifying – just as sporting teams must qualify for tournament play through rounds of competition – by going

through an electoral sifting mechanism which is characterized by and infused with partisan politics.

34. Thus, SB 78 directly offends the literal language of Article X, Section 8, because employment as a board member is conditioned upon and made subject to vetting and testing and qualification through an election process which is partisan in nature.

35. This understanding of the plain language of Article X, Section 8, is confirmed by the constitutional history of school administration in our state. At Utah's founding, in 1896, the principal officer in relation to state education was the Superintendent of Public Instruction. This office was included in Article VII – as part of the executive department, along with the governor – of the Utah Constitution. The holders of this office, like the governor, were picked through a partisan electoral process. The Superintendent was assisted by a board of which he also was a member, but the board was appointed, not elected, and, pursuant to the governing statutes from the beginning to the middle of the 1900s, both the criteria and the process for these appointments were expressly non-partisan in nature. But while the Board had a non-partisan composition, the Superintendent, like the governor, continued to be nominated and elected in partisan political campaigns. As the decades passed, however, both Utah studies and national trends in educational administration suggested forcibly that party politics and educational administration at best did not mix well and at worst were toxic together, and that state superintendents, like Utah's, should not be selected in a manner which had anything to do with politics in general or partisanship in particular.

36. This trend ultimately culminated in a 1950 amendment to the Utah Constitution which removed the office of Superintendent from Article VII as a partisan political officer – with the intended effect of taking educational administration out of partisan politics altogether -- and

made the Superintendent an appointee of the Board, the members of which would continue to be selected on a non-partisan basis. From the date of the 1950 amendment forward, the manner in which Board members have been elected has changed frequently and varied considerably, but each of these changes and variations has shared one common characteristic: all Board elections were non-partisan in nature, showing that the legislature understood the constitutional intent behind that 1950 Amendment and kept faith with that intent.

37. In 1986, as part of another set of constitutional amendments, the language of what now is Article X, Section 8, was broadened so that partisanship, not only in connection with admissions and attendance, but also in relation to employment, was proscribed. Although this enlargement in coverage of the proscription, under ordinary conditions, might have been considered significant, the Voter Information Pamphlet nevertheless described this amendment as "technical." This circumstance (and adjective) best can be explained in terms of the common understanding and legislative precedents, at least from 1950 forward, respecting non-partisanship in the selection of Board members. Of course the public's intent in passing the 1986 amendment cannot be circumscribed by language in a Voter Information Pamphlet, but the entire history of changes and adaptations for the provisions of Article X, in plaintiffs' view, establishes that Section 8 must be read to forbid any partisan elections for Board members.

38. The interpretation of Article X, Section 8, advanced in this complaint, further is confirmed by viewing it in the context of the history and design of the Utah Constitution. The United States wanted to ensure, when enabling the admission of Utah as a state, that all aspects of Mormon theocracy, church politics, and religious preferences – including the tradition and influence of that polity and religion respecting educational administration in the Utah territory -- were uprooted, planting a new government on neutral ground. Hence, the Enabling Act and state

constitution are littered with proscriptions which echo the language which today is found in Article X, Section 8. The constitutional amendments of 1950 and 1986 were designed to expand, clarify, and reinforce these constitutional objectives.

39. As it stands today, Utah's constitution insists upon the establishment of a system of "public" education, eschewing the influence and taint of any "private" or otherwise narrowly drawn political and therefore partisan agenda. Since Article X, Section 8, clearly forbids any direct partisan influence respecting the admission of personnel or attendance of students in that educational system, it would be anomalous "indirectly" to permit that influence to infect the system – from the top no less – through a partisan Board. Utah's founders, and those who spearheaded the 1950 and 1986 amendments, must be credited with a better sense of constitutional *design* than this. Article X obligates the legislature – a political branch, the members of which are elected through partisan politics – to establish and maintain the educational system in the state of Utah. There is no sense in having the Board, as administrator, become a second layer of partisan politics, in the implementation of those legislative policies. Those who fashioned the 1950 and 1986 amendments must be credited with a better sense of constitutional *structure* than this. Viewed altogether, the plain language, as well as the history, design, and structure of Article X, demonstrates that Board elections shall not be conducted on a partisan basis.

40. Finally, adding one last weight to the scales of constitutional interpretation, Utah's representatives and senators themselves, by means of over 60 years of statutory enactments and legislative precedents (all prior to passage of the single exception which is SB 78), have confirmed that the 1950 and 1986 amendments to Articles VII and X must be read to require that Board elections shall not be conducted on a partisan basis. SB 78, thus, is the hyper-partisan

consequence of a legislature determined to ignore the literal language of Article X, Section 8, as well as its own long history of respect for the non-partisan nature of the Board.

SECOND CLAIM FOR RELIEF: THE CAUCUS/CONVENTION SYSTEM WHICH PLAINTIFFS WILL ENTER IN ORDER TO GET ON THE BALLOT IN THE EVENT OF A PARTISAN ELECTION, ON ITS FACE, VIOLATES UTAH CONSTITUTIONAL PROVISIONS WHICH REGULATE REDISTRICTING AND APPORTIONMENT

41. Plaintiffs re-allege and incorporate by reference in this part of the complaint all other averments found elsewhere in this complaint.

42. In the event this Court does not find SB 78 unconstitutional pursuant to Article X, Section 8, of Utah's Constitution, the individual plaintiffs (with the exception of Miller who is subject to the Hatch Act) still will seek membership on the Board and, to that end, since they have would have no other alternative at that juncture, will attempt to qualify for office in a partisan electoral process.

43. Plaintiffs will seek to qualify through the caucus/convention systems of their respective political parties. Plaintiffs believe that, in practical effect, they must take this route for at least two reasons. First, it is the surest way to win unqualified support from their respective political parties. While running on an unaffiliated route to the general election ballot may be an option, no unaffiliated candidate has been elected to office in Utah in anyone's memory. If the object is to make a grand but futile gesture, running "unaffiliated" in a partisan contest is sure to not disappoint. Second, while state law presently allows a petition signature route to a partisan nomination, it is far from clear whether this option will not be burdened into oblivion in 2018, and, in any event, going the caucus/convention route is the only way of guaranteeing endorsements from party stalwarts as "true" or "pure" Republicans or Democrats.

44. Plaintiffs believe, however, and therefore aver that these caucus/convention systems are facially unconstitutional under Utah's Constitution for the following reasons.

45. Utah Constitution, Article IX, Section 1, provides that, "No later than the annual general session next following the Legislature's receipt of the results of an enumeration made by the authority of the United States, the Legislature shall divide the state into congressional, legislative, and other districts accordingly." Utah Constitution, Article V, enshrines the separation of powers principles, including various non-delegation doctrines, which are central to constitutional government in the state of Utah.

46. Article IX, Section 1, mandates that the state legislature shall create all districts and perform all redistricting functions (after receipt of census figures from the federal government) for purposes of elections in Utah. Redistricting and apportionment are core legislative powers and, in light of Article IX, Section 1, and Article V, may not be delegated to any other party, public or private.

47. Utah Constitution, Article I, Sections 1, 2, 17, 24, 25, and 27, and Article IV, Section 1, read together, require that redistricting and apportionment in the state of Utah must guarantee that each vote in every election be given equal weight. District boundaries must be drawn, as nearly as practicable, with equal populations, so that these voting units with the same number of people have the same number of representatives and the same representative clout in government. This is the so-called "one person one vote" principle.

48. The most fundamental unit – of fixed geographical boundaries and base-line populations – for elections in Utah, and the unit upon which voting in caucuses and conventions is predicated – is the neighborhood voting precinct and, therefore, it needs be and in fact is established pursuant to governmental authority.

49. The legislature has decreed in Utah Code, Section 20A-5-303, that voting precinct boundaries and populations shall be created by county legislative bodies (with critical input from

county clerks). The statute makes clear that the establishment of voting precincts which serve the caucus and convention system is a redistricting and apportionment function because the text refers to Article IX, Section 1, of the Utah Constitution no fewer than 3 times and these textual references, moreover, exist to coordinate the timing of redistricting and apportionment as between the state legislature and county governments.

50. County legislative bodies fix boundaries and populations pursuant to Sections 20A-5-303(1)(a), (b), and (c), but these sections give little guidance, noting only that each precinct may contain *not more than* 1,250 active voters. The number of active voters – anywhere from 1 to 1,250 – is left to the discretion of the county legislative bodies. The term "active voter" is defined in Utah Code, Section 20A-1-102(1) to mean a "registered voter" who has not been classified as "inactive" by a county clerk, but the term "inactive" is undefined and, therefore, its meaning perforce is left to the discretion of those clerks.

51. In the caucus/convention system, attendees (members of state-registered political parties such as Democrats and Republicans) at caucuses in voter precincts elect delegates. These delegates then act as agents or representatives of their caucuses and all other voters in their precincts at county and state conventions where candidates are selected. The caucus thus is an integral part of, as well as a critical stage (some would say, in light of the many single-party dominated elections in our state, the most critical stage) in, Utah's publicly-financed electoral infrastructure.

52. If the population base for voting precincts were equal, we would expect that their voting power, manifested in the number of delegates elected, for apportionment purposes, should be the same. Section 20A-5-303, however, gives no guidance on that score. Instead, the number of delegates to be elected for service as representatives from each voting precinct is left to the

discretion of the political parties which have exercised that discretion to formulate rules for delegate allocation. These rules ignore the population base – for active voters or otherwise – in a given precinct, providing (1) for one delegate per precinct, (2) for an increase in delegates when a party leader or an elected government leader from that party resides in that precinct,[3] and (3) for an adjustment where voter turnout for the party in that precinct at recent elections has changed.

53. The caucus/convention system outlined above is unconstitutional on its face for the following reasons, any one of which, standing alone, would be sufficient ground for a declaration of unconstitutionality.

54. First, the legislature, through Section 20A-5-303, unconstitutionally has delegated its redistricting and apportionment powers to public entities, the counties, and private parties, the state-registered political parties such as the Democrats and Republicans.

55. The voting precincts are "other districts" within the meaning of Article IX, Section 1, and the legislature, through statute or otherwise, cannot delegate its core power to fix precinct boundaries or apportion electoral strength within them to other entities or individuals, public or private. But that is precisely what the legislature has done, in violation of Article IX, Section 1, and Article V.

56. Section 20A-5-303 directs county legislative bodies to fix boundaries for voter precincts and this direction comes with no meaningful standards (although even standards with meaning could not save this form of unconstitutional delegation). District size may range from 1 to 1,250 people who are "active" voters, itself an undefined term, the definition for which is left

[3] While it sometimes is claimed that these so-called *ex officio* delegate positions "follow the office and not the person" (whatever that may mean), in practical effect they still are extra thumbs on the scale with respect to the precincts where they reside, and, in any event, there can be no state interest, compelling or otherwise, in financing a system which gives party elites a larger voice than grassroots delegates.

to the discretion of still another unit of local government, county clerks. The voting clout, i.e., the number of delegates as representatives who are allocated to each of these districts, is determined by state-registered political parties. Accordingly, the caucus/convention system is unconstitutional on its face because it is built upon districts – and apportionment decisions relative to those districts -- which are set and made by county legislative bodies, county clerks, and private political parties rather than pursuant to Article IX, Section 1, and Article V by the Utah state legislature.

57. Second, the caucus/convention system is unconstitutional on its face, even if the legislature properly may delegate to counties and parties the fixing of geographical boundaries and apportionment of voting strength within those electoral units. The language of Section 20A-5-303 tolerates a population base-line for voting precincts – the geographical district upon which the caucus/convention system is predicated – which is widely, even wildly, unequal. Districts may have 100, 500, 1,000 and up to 1,250 active voters, allowing for the possibility – assuming there is one delegate per precinct – that a citizen's vote in District A with 100 active voters may have 10 times the clout as a citizen's vote in District B with 1,000 active voters. This scheme violates the "one person one vote" principle enshrined in Utah's constitution.

58. Third, even though precinct boundaries are drawn by county legislators with an eye on delegate elections at party caucuses, and even though the term "active voter" is defined in part to include registered voters, some of whom may declare an affiliation with a particular party, the statutory standard does not require districting or apportionment which bears any relation to this purpose (assuming that it were constitutionally permissible to do so). This creates even greater disproportionality of voting power between and among voting precincts.

59. Fourth, the statute's failure to coordinate population base with voting strength, allowing the political parties themselves, through intraparty rule, to determine how many delegates are allocated to each district, further serves to make voting strength unequal between and among voting precincts.

60. Fifth, the statute uses an unconstitutional yardstick, namely, "active voters," defined to exclude, *at a minimum*, all who are not registered voters, and, *then, going further*, all who are not active registered voters, as a population base-line for redistricting and apportionment purposes. The population base-line for these purposes must be the general population and not merely active registered voters. Under federal equal protection principles, this may be an open question. But this lawsuit proceeds under the uniform operation of laws provision (and other provisions) of the Utah constitution. As the Utah Supreme Court has made clear, Utah's constitution may have stricter standards for determining whether and when Utah's citizens are denied equal protection. Utah's uniform operation of laws provision is part of a Declaration of Rights which applies to all citizens, not just to voters. Article I, Section 24, requires that laws operate uniformly respecting all citizens, not just voters. Article I, Section 1, protects the inherent and inalienable rights of all persons, not just voters. Article I, Section 2, says that all political power is inherent in the people, not just voters, and assures us that free governments are founded on their authority for the equal protection and benefit of those same people, not just voters. Article IV, section 1, guarantees equality of all civil, political, and religious rights and privileges to all citizens, not just voters. Under Article IX, section 1, Utah's legislature is required to make redistricting and apportionment decisions which are based upon the decennial census which, of course, is a tally of total population, not just voters. Hence, a population base-

line defined merely by registered voters, however "active" or inactive they may be, violates the "one person one vote" principle, and hence is unconstitutional in the state of Utah.

61. If registered voters or active registered voters are an unconstitutional baseline insofar as "one person one vote" standards in Utah are concerned, the state has made this worse by its delegation of apportionment power to political parties which, in turn, have narrowed this baseline even further via their formulas respecting actual voter turnout.

62. The *ex officio* delegates add to this unconstitutional skewing of the apportionment process since these delegates, which consist of party officers and elected officials, bear no relation at all to population counts by whatever measuring rod – federal census or a county government's tally of registered voters or active registered voters – but instead are dropped into the baseline as though they had been beamed down from the *Enterprise.*

63. On information and belief, plaintiffs allege that the political parties' delegate allocations may vary further, creating still more inequality of right, benefit, and privilege, because the criteria for making these allocations may be different as between the state parties and county parties and as among the county parties.

THIRD CLAIM FOR RELIEF: SB 78 CHANNELS PLAINTIFFS INTO THE PARTISAN, CAUCUS/CONVENTION BALLOT ACCESS SYSTEM, AND THIS SYSTEM, ON ITS FACE, IS PREDICATED AND DEPENDENT UPON AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE APPORTIONMENT POWER

64. Plaintiffs re-allege and incorporate by reference in this section of the complaint all previous averments of this complaint.

65. If the Court declines to declare SB 78 unconstitutional pursuant to Article X, Section 8, of the Utah Constitution, the individual plaintiffs other than Miller, since they will have no other alternative, will attempt to gain access to the election ballot for Board membership through

political affiliation, either Republican or Democrat, and through the caucus/convention systems of their respective parties.

66. Those systems, however, are predicated upon precinct boundaries drawn by county legislative bodies and county clerks and the allocation of delegates and hence voting power to each precinct according to the constitutions and bylaws of the political parties.

67. As already alleged in this complaint, the precincts drawn by county legislative bodies and county clerks are not equalized according to population, as required by the principle of "one person one vote."

68. As also alleged in this complaint, the malapportionment achieved by this population disequivalence in voting precincts is worsened by the parties' arbitrary methods of assigning delegate votes to those precincts.

69. In any event, however, under Utah Constitution, Article IX, Section 1, the authority to draw boundaries and apportion votes is a function of redistricting, and that authority is a core legislative power, vested exclusively in the state legislature.

70. Pursuant to Utah Constitution, Article IX, Section 1, and Article V, and cases such as *State v. Gallion, State v. Ohms,* and *Stewart v. Utah Public Service Comm'n,* the legislature may not delegate this exclusive prerogative to another governmental agency, such as the county legislative bodies and county clerks' offices, or to private entities, such as the Republican or Democratic parties.

71. SB 78, thus, in effect, will require the individual plaintiffs (excepting Miller) to run an unconstitutional gauntlet, seeking access to the election ballot through voting precincts created by county governments exercising boundary drawing powers which unconstitutionally have been delegated to them and in light of the malapportionment of voting power in those

districts by political parties exercising powers which also have been unconstitutionally delegated to them. Hence, the system, on its face, is unconstitutional.

FOURTH CLAIM FOR RELIEF: SB 78, ON AN "AS APPLIED" BASIS, VIOLATES THE "ONE PERSON ONE VOTE" REQUIREMENT ENSHRINED IN THE UTAH CONSTITUTION

72. This section of the complaint incorporates by reference all averments found elsewhere in this complaint.

73. SB 78 violates many sections of the Utah Constitution on an as applied basis. For example:

74. Article I, Section 2, of the Utah Constitution declares that *All political power is inherent in the people, and all free governments are founded on their authority for their equal protection and benefit…*

75. Article I, Section 17, of the Utah Constitution declares that *All elections shall be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage . . .*

76. Article I, Section 24, of the Utah Constitution declares that *All laws of a general nature shall have a uniform operation.*

77. Article I, Section 25, of the Utah Constitution declares that *This enumeration of rights shall not be construed to impair or deny others retained by the people.*

78. Article I, Section 27, of the Utah Constitution declares that *Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.*

79. Article IV, Section 1, of the Utah Constitution declares that *The rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both*

male and female citizens of this State shall enjoy equally all civil, political and religious rights and privileges.

80. Each of these provisions of the Utah Constitution stands for and guarantees the basic and fundamental principles of free and representative democracy that operate to ensure the equality of voting power among all of Utah's citizens in elections to choose public officers.

81. SB 78, by requiring Board membership to be a partisan office, subjects the individual plaintiffs herein and all others who would be candidates for the Board, as well as all Utah voters, to a partisan candidate nomination system that violates each of the provisions of the Utah Constitution enumerated above.

82. In applying the Utah Constitution's equal protection, equal benefits, provisions to voting rights cases, the Utah Supreme Court has used tests which are the same as or more restrictive than those employed by the United States Supreme Court in its so-called "one person one vote" decisions. Those decisions require that the states equalize voting power, so that congressional, legislative, school district, and municipal district boundaries be drawn as closely uniformly as possible to ensure that the voting power of any one voter in one such district will be equal to the voting power of any one voter in every other district. Indeed, the Utah Supreme Court, in opinions such as *Gallivan v. Walker,* has taken this approach in cases involving the pre-election mechanics by which private groups get initiatives or referenda on a ballot in the first instance.

83. The principle of "one person one vote" is a basic and fundamental right in a free and representative democracy, and it is effectively mirrored and incorporated within the Utah Constitution's declarations of equal protection and benefit respecting political power for Utah's citizens, uniform operation of general law, equal enjoyment of all civil and political rights and

privileges, and the guarantee of free elections. "One person one vote" is so critical to free elections that, even if it were not embraced within the Utah Constitution's more explicit Declaration of Rights, it would still be afforded constitutional protection as a right retained by the people under Article I, Section 25, and as a fundamental principle essential to the security of individual rights and the perpetuity of free government under Article I, Section 27.

84. "One person one vote" has been carefully crafted and tended for more than 50 years in Utah to ensure that no vote dilution occurs at any level in state elections. This means that relevant districts must be equally apportioned in terms of population base-lines and representative strength.

85. In Utah, however, there is one stage of the partisan candidate nomination and election process where the capstone principle of "one person one vote" utterly breaks down and is very deliberately thwarted and frustrated. This corruption of "one person one vote" has been accomplished with the active participation as well as tacit endorsement of Utah government, since the state has delegated the precinct boundary drawing responsibility to county legislative bodies and county clerks, has certified political parties with constitutions and bylaws intent upon further malapportionment via their procedures for delegate allocation, and has created an electoral infrastructure (administered by county clerks in tandem with the Office of the Lieutenant Governor), all of which enables the subversion of "one person, one vote" representation at the most critical part of the partisan election process: the caucus/convention stage where candidates are nominated and proceed to publicly-funded election ballots.

86. That break down, thwarting, and frustration now infects and imperils all Board candidates as well, since SB 78 makes Board membership a partisan office, and by doing so subverts and corrupts "one person one vote" at the one stage in the election process where it

matters the most in Utah: the partisan caucus/convention system for nominating candidates for the primary or general election ballots.

87. In Utah, the basic component of our representative democracy is the neighborhood voting precinct. The Utah legislature has set a cap on the number of voters per voting precinct, but (a) has abdicated its apportionment power found at Article IX, Section 1, of the Utah Constitution by (b) delegating to county legislative bodies and county clerks the responsibility to "district" or set geographical boundaries for each precinct and by (c) also delegating to those government entities the task implicit in such boundary setting, namely, determining voter population sizes within each precinct. Pursuant to Utah Code, Section 20A-5-303(2)(a), the size of a neighborhood voting precinct may not exceed 1,250 "active voters." In reality, voting precincts in every county all across the state are of disparate active voter size, ranging from fewer than 100 active voters, to a few hundred, to 800, to 1,000, to 1,250. This is because the cited statute empowers the county legislative bodies and county clerks to apportion districts in any manner within the cap of 1,250 so-called active voters.

88. Until passage of SB 78, insofar as Board elections were concerned, this voting precinct numerical size disparity did not create a constitutional infirmity under "one person one vote," because non-partisan Board candidates ran on an at-large basis in their districts in what was the functional equivalent of a direct primary election, where all registered voters had the right to vote, and thereby nominate the Board candidates. Every elector's vote was equal.

89. This is not the case, however, with respect to offices filled by partisan election in Utah, and that disparate voting power constitutional taint now will corrupt State Board candidate nominations, beginning in 2018, if the caucus/convention system is allowed to stand.

90. Under the general supervision and control of state government, Utah's political parties use a caucus/convention system to nominate their candidates, and an element of that system is the allocation of convention delegates among the neighborhood voting precincts.

91. Nothing about these delegate allocation processes recognizes or accepts the "one person one vote" principle, and the parties' delegate allocation process involves criteria which are both arbitrary and deliberately violative of the principle. While the specifics of the delegate allocation process may vary, generally they rely on a formula that attempts to allocate 1 delegate per voting precinct, with the remainder based on a party's level of voting participation in the previous general election. Delegates are also selected on the basis of *ex officio* status either within the party organization or by virtue of holding partisan elective office. Since voting precincts are of widely varying population size, and since delegate allocation rules, noted above, exacerbate further this disproportionality, there is no semblance of adherence to "one person one vote."

92. For illustrative purposes, it is possible for two neighborhood voting precincts to be of equal size (numerically by active voters) and be situated side-by-side. Precinct A has 1,250 voters as does Precinct B. Both precincts are allocated one delegate because the allocation formula may prescribe one delegate per precinct. Precinct A is also allocated 3 additional delegates because of high party turnout in the last election. Precinct B receives only 1 additional delegate because of lower party turnout in that election. Precinct A may pick up an additional delegate position, because a party officer resides in that precinct. Thus, two precincts with identical populations can be allocated 5 delegates or 2 delegates.

93. As further illustration, consider Precinct C with 600 voters and Precinct D with 900 voters. They each start with 1 delegate. Precinct C gets another delegate for voter turnout, but

Precinct D does not; however, Precinct D is home to a party officer and a party elected official, so Precinct C has 2 delegates, and Precinct D has 4 delegates.

94. If the four precincts described above were each comprised of 1,250 voters, and each precinct had 1 delegate, the relative voting power of each voter in each precinct would be the same. "One person one vote," same voting power. However, precincts do not have the same, but rather widely varying population sizes and these discrepancies in size, especially when worsened by the parties' delegate allocations, produce significantly disparate voting power per voter.

95. Voting power in primary and general elections is, at least at the time of reapportionment, as mathematically equal as can be reasonably calculated. That equality of voting power strictly applies in two of Utah's three election phases, but it is blatantly disregarded in the single most important election the state allows: county and state nominating conventions. In single party dominant districts, which are all of Utah's congressional and the vast majority of all legislative districts, the nominating convention election frequently determines which candidate will be crowned in November – not unlike the infamous White Primaries which Southern Democrats used to tyrannize voters in the forepart of the Twentieth Century.

96. The political parties have internal rules that allow convention delegates to eliminate primary elections altogether. For example, with respect to the special election to replace Rep. Jason Chaffetz in Utah's third congressional district, the Utah State Republican Central Committee adopted a special rule for purposes of that nominating convention which allowed a candidate who received 50 percent plus one of the delegate votes to eliminate all other convention challengers who did not gather petition signatures, which is what in fact occurred. If this rule were applied in a multi-county Utah House race, where there are 22,000 residents, the

general election winner can be selected by a pool of 45 delegates in a county convention, without a primary election.[4] In other words, the votes of 24 delegates in such a district can preclude a primary election for the dominant party, which is virtually guaranteed to win the district in the general election.

97. Because Utah is so heavily dominated by a single political party, the alternatives to running as the nominated candidate of the dominant party are entirely cosmetic, if not completely futile. Gerrymandered safe districts, for both major political parties, are the rule in the vast majority of districts, and they ensure dominant party election victories. To run as an unaffiliated candidate is a guaranteed defeat.

FIFTH CLAIM FOR RELIEF: SB 78 CHANNELS PLAINTIFFS INTO THE PARTISAN, CAUCUS/CONVENTION BALLOT ACCESS SYSTEM, A SYSTEM WHICH VIOLATES THEIR RIGHTS AS BOARD CANDIDATES UNDER UTAH CONSTITUTION, ARTICLE I, SECTIONS 1, 2, 15, AND 17, BECAUSE CONVENTION DELEGATES VOTE IN SECRET

98. Plaintiffs re-allege and incorporate by reference in this section of the complaint all previous averments of this complaint.

99. If the Court declines to declare SB 78 unconstitutional pursuant to Article X, Section 8, of the Utah Constitution, the individual plaintiffs (with the exception of Miller), since they have no other alternative, will attempt to gain access to the election ballot for Board membership

[4] SB 54, enacted in the 2014 general session of the Utah Legislature, provides an alternative path to a primary election via petition signatures. Some candidates opt for both submitting petition signatures and following the caucus/convention route, since traveling down both roads will guaranty that the convention vote cannot keep them off the primary election ballot. The Utah Republican Party has declared its open hostility to SB 54, however, and its efforts to stymie or repeal the statute are ongoing. Candidates who gather signatures, moreover, may not receive any endorsement or the same degree of backing as those who obtain nomination through caucuses and conventions. Notwithstanding SB 54, the fundamental constitutional flaw inherent in the caucus/convention system in Utah is nevertheless imported into every convention ballot for every office for which the parties nominate candidates because the precinct boundary districting and the delegate allocation rules themselves are flawed. In all events, if SB 78 isn't declared unconstitutional pursuant to Article X, plaintiffs intend to use the caucus/convention system to obtain nominations through their respective parties, since they can't be sure of receipt of party backing through SB 54's signature gathering route. That means that plaintiffs will be forced to attempt to achieve nomination through a system which is fundamentally flawed in light of the Utah Constitution's "one person one vote" requirement.

through political affiliation, either Republican or Democrat, via the caucus/convention systems of their respective parties.

100. Those systems are an integral part of and essential conduit to ballot access for Board candidates. This is an electoral process which is public, not private, in scope and purpose. The electoral process in general and ballot access in particular are critical governmental functions which the state of Utah finances through millions of dollars of taxpayer funds and regulates in order to ensure order, fairness, and transparency. All political parties, not only freeload on this electoral process so that their candidates may become officeholders in the state, but also, since they depend upon that process for these benefits, are subject to the state's constitutional and statutory conditions respecting ballot access.

101. As noted, constitutional requirements qualify the procedures for obtaining access to the ballot. Those constitutional requirements include procedural fairness, which in turn entails transparency, as enshrined in the due process clause found at Utah Constitution, Article I, Section 7. They also include the right to access to information about important functions in the electoral process, a right vouchsafed in Utah Constitution, Sections 1, 2, 7, 15, and 17.

102. In the event that this Court declines to declare SB 78 unconstitutional pursuant to Article X, Section 8, the individual plaintiffs (with the exception of Miller) will invest time and money and effort in cultivating delegates, obtaining assurances respecting their votes, in the precinct caucuses and then at the convention level. Delegates are agents of their caucuses, serving in a representative capacity. They are expected to vote at convention according to the instructions received at their caucuses. But solicitous candidates and caucus participants have no way of knowing whether delegates honor this agency duty or duty of representation because voting at convention is done in secret. Candidates and their voters accordingly have no means to

know whether they were represented faithfully, no way to hold delegates to account for errant behavior.

103. This lack of transparency – this license for delegates to disregard (or even dissemble with) their constituents – violates the principles of fairness, transparency, and the like which are central to the Declaration of Rights in Utah's Constitution.

104. This violation is all the more glaring since it occurs at a critical juncture in the governmental function of regulating ballot access.

105. And this violation is even more glaring when it occurs, as it does in the many single-party-dominated districts in the state of Utah, when convention delegate votes may be the only juncture for determining which candidate will be on the ballot.

106. This want of fairness and transparency, this denial of the right to access important information, this tolerance of what may be unrepresentative, unlicensed behavior by actors who are critical to the public function of ballot sorting cannot be excused by any compelling government purpose. As already noted, giving a license to delegates to be unfaithful – even dissembling – to the caucuses which they purport to represent is unworthy of any public-spirited government. Other ballot access measures, such as those regulating initiatives and referenda, require public disclosure of petition signers – even though these persons are exercising a right which is the functional equivalent of voting at an election and notwithstanding the fact that, unlike caucus delegates, they are not playing any representative role, with fiduciary duties, in relation to registered voters. Transparency and accountability are the order of the day, both from a constitutional and statutory standpoint, when it comes to legislative representatives and other public officials. It shows an extreme, unacceptable inconsistency, then, when delegates, who serve in this same kind of representative capacity, and, moreover, are the critical link between

our right to vote and nominate the candidates from whom we will chose in the government sponsored electoral process, are excused from adherence to the constitutional principles by which all others are bound in our state.

107. SB 78, thus, in effect, will subject plaintiffs to an unconstitutional regime – namely, the caucus/convention system -- which lacks transparency, order, fairness, and access to the information necessary to hold critical players in the electoral process to account as agents and fiduciaries and representatives – all in violation of various portions of the Declaration of Rights in the Utah Constitution.

REQUEST FOR RELIEF

Wherefore, plaintiffs ask this Honorable Court to enter an order which gives them the following relief:

a. Declaring SB 78 and its related codifications, insofar as they provide for the partisan election of Board members, unconstitutional and void;

b. Permanently enjoining the Lieutenant Governor from implementing, administering, or enforcing these provisions of SB 78;

c. Permanently enjoining the Lieutenant Governor, in his capacity as chief elections officer for the state of Utah, to direct all county clerks and other officials with pertinent roles in the election of Board members to NOT implement, administer, or enforce these provisions of SB 78.

d. In the alternative, and in the event that the Court does not find SB 78 unconstitutional pursuant to the language of Article X, Section 8, declaring that Utah's caucus/convention system, on its face and as applied to Board elections, is unconstitutional pursuant to the Utah constitutional provisions which enshrine the principle of "one person one vote," and on any or all of the grounds identified in Claims Two, Three, Four, and Five of this complaint.

e. Permanently enjoining the Lieutenant Governor from admitting to the ballot any Board candidate who is nominated or otherwise selected as a product of that system.

f. Permanently enjoining the Lieutenant Governor, in his capacity as chief elections officer for the state of Utah, to direct all county clerks and other officials with pertinent roles in the election of Board members to block ballot access to any and all Board candidates who may be nominated or otherwise selected as a product of that system.

g. Awarding attorneys' fees to plaintiffs' counsel pursuant to the private attorneys' general doctrine or, as it is called in Utah, the *Stewart* doctrine, and, insofar as any legislative enactment may seem to forbid that result, to declare said enactment unconstitutional pursuant to Article V and other relevant provisions of the Utah Constitution and therefore void and of no force or effect.

h. Awarding plaintiffs any and all costs which they have incurred in this litigation.

Dated this 27th day of June, 2017.

[signed]_____
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