

(H.J.R. 15)

CONSTITUTIONAL AMENDMENT D

RESOLUTION ON LEGISLATIVE ETHICS COMMISSION

2010 GENERAL SESSION

SENATE: 25-4-0

HOUSE: 70-3-2

BALLOT TITLE

FOR

AGAINST

Shall the Utah Constitution be amended to:

- establish a five-member legislative ethics commission whose members may not include sitting legislators or registered lobbyists;
- authorize the commission to conduct an independent review of complaints alleging unethical legislative behavior; and
- authorize the Legislature to provide for:
 - procedures and requirements for filing a complaint;
 - the qualifications, appointment, and terms of commission members; and
 - commission duties, powers, operations, and procedures?

IMPARTIAL ANALYSIS

Constitutional Amendment D establishes a five-member legislative ethics commission with authority to conduct an independent review of complaints alleging unethical legislative behavior.

Current provisions of the Utah Constitution

The Utah Constitution currently authorizes the Utah House of Representatives to punish a member of the House, and the Utah Senate to punish a member of the Senate, for "disorderly conduct." Although "disorderly conduct" is not defined in the Utah Constitution, the Legislature has interpreted that term to refer to a violation of the Legislature's Code of Official Conduct or to a legislator's improper conduct while acting as a legislator that would reflect discredit upon the House or Senate. The Utah Constitution also authorizes the House and Senate, with a two-thirds vote, to expel a member of its respective house for cause. The Utah Constitution does not specify the process that the House or Senate must use to decide whether to punish or expel a member but leaves it to each house to define that process.

Effect of Constitutional Amendment D

Constitutional Amendment D establishes a legislative ethics commission to participate in the process of evaluating complaints alleging unethical legislative behavior. Under the Amendment, the legislative ethics commission has authority to conduct an independent review to determine whether a complaint merits further consideration by the house of the member against whom the complaint is made. The decision whether to punish or expel a member of the Utah House of Representatives would remain with the House, and the decision whether to punish or expel a member of the Utah Senate would remain with the Senate.

The Amendment requires the legislative ethics commission to have five members. It prohibits a sitting legislator or registered lobbyist from being a member of the commission.

The Amendment also authorizes the Legislature to provide in its internal rules for:

- 1) the procedures and requirements for filing a complaint alleging unethical legislative behavior;
- 2) the qualifications, appointment, and terms of commission members; and
- 3) the duties, powers, operations, and procedures of the commission.

Constitutional Amendment D does not affect the authority of the House or Senate to establish internal rules to govern other aspects of the process of determining whether to punish or expel a member.

Effective date

If approved by voters, Constitutional Amendment D takes effect January 1, 2011.

IMPARTIAL ANALYSIS (CONTINUED)

Fiscal impact

Costs to the state associated with Constitutional Amendment D will depend on the content of legislative rules allowed under the Amendment. Based on current legislative rules, costs could range from \$700 per year to significantly higher, depending on the number of complaints filed and the nature of those complaints. Constitutional Amendment D will have no direct, measurable impact on state revenues or on local government costs or revenues.

ARGUMENT FOR

The Constitution of the State of Utah requires that, "Each house shall be the judge of the election and qualifications of its members, and may punish them for disorderly conduct." This provision, which can also be found in our inspired U.S. Constitution, is critical to maintaining a healthy government and ensuring appropriate checks and balances between each branch of government.

Constitutional Amendment D preserves that power and creates a Legislative Ethics Commission with the authority to independently review alleged unethical behavior in the Legislative Branch of government. This provision is patterned after the Judicial Conduct Commission, which has been well-tested and effective in the Judicial Branch.

Unfortunately, trust in government throughout the world is low. We have been fortunate in Utah to have honest, ethical government that is responsive to citizens. The leaders of this State, of both parties, have helped create a foundation of good management and fiscal discipline. It is important that we maintain principled, ethical institutions so that our economy can be strong and so that Utah remains the best place in the nation to raise a family, to work and to play.

Creation of this Ethics Commission will strengthen our legislative branch and see that breaches of ethics are properly handled. It allows for independent reviews of ethics complaints, but also provides a process to ensure that complaints have merit and are not submitted only for partisan political purposes.

Constitutional Amendment D ensures that legislative ethics complaints will be considered by an independent panel of distinguished Utahns. It does not allow sitting legislators or lobbyists to participate in this process.

Most Utahns clearly want their legislators to work cooperatively with one another to accomplish the work of the state. Although there have been, and always will be, disagreements over important policy matters, we are in full accord, as Republicans and Democrats, that ethics is not an issue over which we should fight. We have worked cooperatively with legislators of both parties to develop and submit this Ethics Commission amendment. It passed both the Senate and House in the 2010 legislative session with near-unanimous support.

This constitutional amendment will forever enshrine an Ethics Commission in the Constitution, helping ensure honorable behavior and good government in our state.

PLEASE VOTE FOR CONSTITUTIONAL AMENDMENT D.

--Representative David Clark

Speaker, Utah House of Representatives

-Representative David Litvack – Minority Leader, Utah House of Representatives

--Senator John Valentine – Former President, Utah State Senate

ARGUMENT AGAINST

Last session, I voted against the constitutional amendment regarding ethics reform and here are a couple of reasons why I believe the public should also vote AGAINST this ballot initiative.

1. First, the only reason this measure is on the ballot is because it was a political reaction to the Ethics Reform petition that was being circulated. This amendment was proposed to counter this initiative, so it would appear the legislature was addressing the voters' concerns, using "let's show them we're doing something" tactics.
2. Passing this initiative will not guarantee your elected official will truly represent you and be honest in their dealings with others and do what's best for the people.
3. Because a person's integrity is born from within, we as voters need to do a better job of knowing our candidates before we elect them, so we know we can trust them before they are sworn into an office of public trust.
4. Voting for this ballot initiative will not guarantee checks and balances, accountability, responsibility, or whether or not someone has integrity. Voting for this initiative will not guarantee that those we elect to office of public trust will be ethical and have moral integrity.

This proposal is not in the best interest of the voters of the State of Utah. As you cast your vote regarding this ballot initiative, please remember, ethics and integrity come from within. Use your integrity. Do the right thing and vote NO on this proposal.

Signed Rep. Neil Hansen

Only citizens who are serious about their responsibilities of discernment and election can ensure their legislature is moral. "Ethics" legislation, topped off by this proposed Independent Commission will not make angels of us all. This will do very little to stop the truly ambitious and evil among us.

Only your vote can do that.

Ever-tightening ethics regulations will set up a convoluted system where groups who fail at the ballot box can promote their political agenda under the guise of ethics complaints. Your elected representatives could have their reputations destroyed on technicalities that are not morally wrong.

Consider, for a moment, the many opportunities citizens have to screen and scrutinize public officials:

- The moment an individual registers as a candidate for political office, he or she enters a glass house for all to inspect;
- Public and media scrutiny during the campaign, driven by public interest;
- Elections;
- Performance in office; and
- Re-Elections.

The current process places you, the citizen, in full control of ethics violations. In fact, you ARE the ethics committee, because YOU decide whether a candidate is allowed to serve.

Do not use ethics legislation as a feel-good crutch when the real problem is that too many citizens fail to properly scrutinize candidates before they vote.

There are no short cuts to running a proper democratic republic.

Don't be fooled. Ethics cannot be legislated. Please vote no on Amendment D.

Chris Buttars
Utah State Senator

REBUTTAL TO ARGUMENT FOR

Creation of this Ethics Commission will do nothing. The power of the ethics committee is now in the hands of the party leaders of the legislature on both sides. The way to get appointed to this committee is to show favoritism to those party leaders. There are no checks and balances in place. The only real way to have a good ethics committee is to allow all members of the legislature pick the members of the ethics committee by secret vote, This would take away, fear or favoritism, from the party leaders and would cure the problem. This would ensure the necessary checks and balances in the ethics committee. There's too much power given to the party leaders and this is what needs to change.

Therefore you should vote NO on Constitutional amendment D.

Representative Neil Hansen
House District # 09

Changing the core structure of our government to add another layer of bureaucracy is wrong.

The legislature is supposed to handle her own problems and regulate her own affairs. This element was put into the constitution for a reason.

The voters ARE the Independent Ethics Committee. There should be no bureaucratic buffer zone between the People and their elected representatives.

We should be about the business of limiting layers of bureaucracy, not adding more.

We can dream bright ideas up all day, but we need to be very cautious about changing the fundamental founding document of our state.

Amendment D is wrong. Please vote against it.

D. Chris Buttars
Utah State Senator, District 10

REBUTTAL TO ARGUMENT AGAINST

Our colleagues are correct when they say rules cannot force anyone to act with integrity. That comes from inside. They are right when they say voters are the final 'ethics committee'. In a democratic republic there is no workable substitute for educated, engaged citizens.

However, we firmly believe citizens should have a reasonable expectation that

- 1) Legislators will act honorably while representing them in office,
- 2) Ethical breaches will be dealt with appropriately, and
- 3) Citizens will be fully informed of credible accusations of wrongdoing.

We have worked hard to form a new system that will do just that, and the Independent Ethics Commission plays an essential role. It is charged with investigating complaints in a manner that is fair to the innocent and uncompromising to the guilty. When wrongdoing is found the information will be made public and the issue will move to a very public hearing. This idea precedes the UEG initiative. It was extensively reworked in public meetings throughout the summer of 2009 and approved in 2010.

REBUTTAL TO ARGUMENT AGAINST (CONTINUED)

Utahns are ethical people, and the makeup of the legislature tends to reflect that. Last year the Center for Competitive Politics rated government corruption in Utah seventh lowest out of 50 states. However, no state is perfect and no human infallible. We believe the Independent Ethics Commission is essential as we move forward, and we believe it should be given a permanent place in government by including it in the Utah Constitution.

Please vote yes on Amendment D. Thank you.

David Clark
Speaker of the House

John Valentine
State Senator

David Litvack
House Minority Leader

COMPLETE TEXT CONSTITUTIONAL AMENDMENT D

Utah Constitution Sections Affected:

AMENDS:

ARTICLE VI, SECTION 10

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

Section 1. It is proposed to amend Utah Constitution Article VI, Section 10, to read:

Article VI, Section 10. [Each house to be judge of election and qualifications of its members -- Expulsion -- Legislative ethics commission.]

(1) Each house shall be the judge of the election and qualifications of its members, and may punish them for disorderly conduct, and with the concurrence of two-thirds of all the members elected, expel a member for cause.

(2) (a) There is established a legislative ethics commission with authority to conduct an independent review of each complaint alleging unethical legislative behavior, to determine whether the complaint merits further consideration by the house of the member against whom the complaint is made.

(b) (i) The commission shall consist of five members.

(ii) A commission member may not be a sitting legislator or a person who is registered as a lobbyist.

(c) The Legislature may by rule provide for:

(i) procedures and requirements for filing a complaint alleging unethical legislative behavior;

(ii) the qualifications, appointment, and terms of commission members; and

(iii) commission duties, powers, operations, and procedures.

Section 2. **Submittal to voters.**

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

Section 3. **Effective date.**

If the amendment proposed by this joint resolution is approved by a majority of those voting on it at the next regular general election, the amendment shall take effect on January 1, 2011.