

Initiative and Referendum Institute et al v. State of Utah (2-00-cv-837)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

INITIATIVE AND REFERENDUM INSTITUTE, THE HUMANE SOCIETY OF THE UNITED STATES, THE FUND FOR THE ANIMALS, UTAH STATE HOUSE REPRESENTATIVE LYNETTE E. BROOKS, CRAIG AXFORD, CONNIE BULLIS, DICK CARTER, DREW CHAMBERLAIN, BETTY F. CHRISTENSEN, HIGH UINTAS PRESERVATION COUNCIL, HUMANE SOCIETY OF UTAH, SEAN KEARNEY, CHARLES CHRISTIAN LARSEN, NANCY ELLEN WHITEHEAD LORD, MICHAEL T. RIDGWAY, KAYLIN ROBINSON, UTAH ENVIRONMENTAL CONGRESS, RICHARD VANWAGENEN, RICHARD WARNICK, and STACY WILLIAMS,

Plaintiffs,

v.

OLENE S. WALKER, LIEUTENANT GOVERNOR OF UTAH, and JANET GRAHAM, ATTORNEY GENERAL OF UTAH,

Defendants.

Plaintiffs, by and through counsel, Lisa Watts Baskin and Robert R. Wallace, sue Defendants Olene S. Walker, Lieutenant Governor of Utah, and Janet Graham, Utah Attorney General, for injunctive and declaratory relief that Proposition 5, the 1999 Amendment to the Utah Constitution, Article VI, Section 1, is facially unconstitutional.

JURISDICTION AND VENUE

1. This United States District Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question).
2. This Court has pendent jurisdiction over all state law claims.
3. Venue is proper in that all acts occurred within the judicial district of Utah, and in the Central Division.

PARTIES PLAINTIFF

4. Plaintiff, the Initiative and Referendum Institute, (hereafter "IRI") is a nonprofit corporation in Washington, D.C., incorporated under the laws of the state of Nebraska for the purpose of educating the public about the initiative and referendum process as well as working to protect the process from unconstitutional attempts to regulate its use. IRI has 1,575 affiliated members in Utah. IRI challenges the constitutionality of the Amendment to the Utah Constitution, at Article VI, Section 1, enacted on January 1, 1999, on the basis that it unconstitutionally infringes upon political speech in the initiative process under the First and Fourteenth Amendments of the United States Constitution, burdens direct democracy in general, and encourages the placement of similar measures into other states' statutes or constitutions.

5. Plaintiff, The Humane Society of the United States, hereafter ("HSUS") is a nonprofit corporation in Gaithersburg, Maryland, incorporated under the laws of the state of Maryland, for the purpose of protecting wild and domestic animal life. The HSUS has over 7 million members and constituents, including approximately 26,325 who reside in Utah. The HSUS accomplishes objectives through public education, grassroots organization, legislation, litigation, and research and investigations. The HSUS brings this action on behalf of the organization itself and its members. The HSUS has been actively involved in supporting state initiatives and referenda to forward its policy goal of animal protection by providing financial and organizational support to those campaigns, as well as engaging HSUS membership involvement in all-volunteer signature gathering efforts, and participating in initiative campaigns throughout the country, including Alaska, Arizona, California, Colorado, Idaho, Massachusetts, Michigan, Oregon, and Washington. HSUS has additionally been supportive of measures in Arizona, Missouri, and Oklahoma to protect domestic animals from egregious abuses. Proposition 5 drastically impairs HSUS's ability to advocate its policies in Utah and to effectuate any meaningful change or encourage membership involvement in these issues. Given the HSUS's national perspective on the initiative and referendum process as a method for enacting animal protection legislation, the enforcement of this amendment in Utah will likely impair its future efforts in Utah and promote the passage of similar measures across the country which will additionally impair the HSUS's ability to advocate for animal protection nationwide.

6. Plaintiff, the Fund for the Animals, (hereafter "Fund"), is a nonprofit corporation, in New York City, incorporated under the laws of the state of New York for the purpose of preventing cruelty to wildlife and domestic animals. The Fund has approximately 200,000 members, including 500 who reside in Utah. Proposition 5 creates a sense of futility to pursue any initiative efforts in Utah utilized by the Fund. Its enactment is a detriment and will be a detriment in the future for the Fund's advocacy and protection of animals.

7. Plaintiff, Utah State Representative David M. Jones, is a resident of Utah who resides in Salt Lake County. Rep. Jones is the House Minority Leader and has been a member of the Utah State Legislature for 12 years. Rep. Jones opposed Senate Joint Resolution 10 (hereafter "S.J.R. 10") in the 1998 Annual General Session of the Utah State Legislature, speaking in opposition to the proposed amendment in floor and committee debate. He requested review of S.J.R. 10, later renamed as Proposition 5, for ballot purposes, in the Utah Constitutional Revision Commission and made the motion to officially oppose it - - which motion passed by the members of the commission. He also spoke publicly within the Utah community to oppose Proposition 5 and voted against the measure. Rep. Jones believes and argued the constitutional amendment to Article VI,

Section 1 is unconstitutional because it severely limits the ability of a certain political view to be presented on the ballot before the public through its chilling effect. He also argued that such a measure should not be placed in the state constitution because it focuses on only certain types of public policy issues. He also believes that the supermajority threshold is such a high threshold that it impairs the people's constitutional right to initiate legislation under Utah Constitution, Article VI, Section 1.

8. Plaintiff, Bart Grant, is a resident and employee of the State of Utah, who resides in Sevier County and actively opposed Proposition 5 in the 1998 General Election and voted against the measure. Mr. Grant has advocated for direct democracy for approximately 12 years and assisted in several initiative petition campaigns in Utah in the past and anticipates assisting on other such initiative campaigns in the future. Such initiative petitions could be adversely affected by the enforcement of Proposition 5 by the defendants.

9. Plaintiff, Lynette Brooks, is a native Utahn and a resident of Salt Lake County. She has been active in wildlife issues in Utah since 1989 and attended numerous Utah Wildlife Board and Regional Advisory Council public meetings, speaking for reasonable limitations on hunting, increased use of scientific data in wildlife management, ending controversial hunting methods, and protecting and enhancing the observable wildlife. She is a board member of the High Uintas Preservation Council and supported the organization's opposition to Proposition 5 and voted against Proposition 5. Plaintiff Brooks anticipates speaking out on wildlife issues in the future, and if an initiative petition campaign were sought, the initiative could be adversely affected by the enforcement of Proposition 5 by the defendants.

10. Plaintiff, Craig Axford, is a resident of Utah in Salt Lake County. In 1997, he helped found the Predator Education Fund to provide public information about animal predators, in particular cougar, in Utah. He has spoken in many Utah Wildlife Board and Regional Advisory Council public meetings, opposing high numbers of cougar and bear hunting permits and controversial hunting methods. In 1998, he helped form the Utah Voting Rights Coalition in opposition to Proposition 5 and voted against the proposition. He is the program director for the Utah Environmental Congress. He believes his rights to free speech are violated because of the chilling effect Proposition 5 has on those who wish to speak out, effectuate change, and present policy issues statewide.

11. Plaintiff, Connie Bullis, is a resident of Salt Lake County. She has been active in wildlife issues in Utah since 1989, and has attended numerous Utah Wildlife Board and Regional Advisory Council public meetings, speaking for reasonable limitations on hunting and ending controversial hunting methods. She served on the committee to select Utah Wildlife Board Members. She actively opposed Proposition 5 and voted against it. She is harmed by the sense of futility experienced once the measure passed and its long-term impact on citizen advocacy on wildlife issues.

12. Plaintiff, Dick Carter, is a resident of Cache County. He has been active in land management wildlife issues for 25 years. In 1979, he helped form the Utah Wilderness Association to actively propose additional designated wilderness in Utah and served as the coordinator of the Utah Wilderness Association for 17 years. In 1996, he helped form the High Uintas Preservation Council to protect the high Uintas eco system and serves as the coordinator of the High Uintas Preservation Council. Personally, and as the coordinator for those organizations, he has attended and spoken at innumerable Utah Wildlife Board and Utah Advisory Council public meetings to speak for limited animal predator hunting, ending controversial hunting methods, and protecting and enhancing the opportunities to watch wildlife. He actively opposed Proposition 5, and voted against it. The chilling effect of Proposition 5 on wildlife advocacy is and will be profound. Carter sees it as an attempt to silence political speech and curtail citizenry political action. The prohibitive language is so broad as to cause advocates to steer clear of wildlife advocacy, possibly not covered in the language, to avoid futile attempts and failed outcomes.

13. Plaintiff, Drew Chamberlain, is a resident of Salt Lake County. He actively opposed Proposition 5 in the 1998 General Election and voted against the measure. Mr. Chamberlain has advocated for direct democracy through initiative and referendum including the property tax initiative, the elimination of the sales tax on food, light rail initiatives, and term limits and assisted in several other failed initiative campaigns in Utah. He believes that Utah's initiative power is unconstitutionally diluted by requiring a 2/3 vote to initiate and adopt legislation by the voters and such a threshold should not be imposed on any initiative measure, no matter what the content. He believes that the perpetuity of free government is threatened because the initiative process is doomed for failure by the state's imposing such an absurd threshold. Once the initiative power is effectively eliminated, he believes there is no recourse for the people to respond to its elected representatives, short of voting those representatives out of office.

14. Plaintiff, Betty F. Christensen, is a resident of Salt Lake County and has been actively involved with the Libertarian Party. She has been a resident of the state of Utah for approximately 50 years. Plaintiff Christensen believes that the tightening down on the initiative petition process takes away the right from the citizenry. She believes the 2/3 vote threshold as provided in Proposition 5 limits the slight chance of success to only those people who are wealthy enough to run an initiative campaign and eliminates the voice of people who are less wealthy. She believes that the threshold limits the right of the people to speak.

15. Plaintiff, High Uintas Preservation Council, believes predators are an intricate part of a functioning wildlife ecosystem and supports the scientific and ecological management of animal predators, including limited hunting, reduced debridation control, and use of animal predators as a natural part of the system to control oncolate populations. The High Uintas Preservation Council is a non-profit corporation, incorporated under the laws of the state of Utah, with 300 members in Utah, which actively opposed Proposition 5 on the ballot. Proposition 5 adversely impairs the Council's efforts to effectively comment on state wildlife policy and freely and effectively advocate for change.

16. Plaintiff, Humane Society of Utah, (hereafter "HSU"), is a non-profit corporation incorporated in the state of Utah, whose purpose is to eliminate the pain, fear, and suffering in all animals. It actively opposed Proposition 5 because HSU's free speech rights are impaired as it attempts to

speak on these issues and faces an insurmountable supermajority vote when these issues are presented to the public for popular vote. The HSU brings this action on behalf of the organization and its 25,000 members.

17. Plaintiff, Sean Kearney, is a resident of Salt Lake County. He has been involved in wildlife issues in Utah for approximately 19 years. He is a board member of the High Uintas Preservation Council and supported the organization's opposition to Proposition 5 and voted against it. He challenges Proposition 5, on its face, because it impairs his ability to speak and to effectuate changes sought by him personally and through the Council.

18. Plaintiff, Charles Christian Larsen, is a resident of Salt Lake County. He opposed Proposition 5 in the 1998 General Election and voted against the proposition. He believes that the state constitution should be applied equally to all persons on all issues and that the right of the initiative process must be preserved. He believes the legislative effort to raise the threshold to two-thirds vote is an effort to circumvent the will of the people and is selective enforcement of the state constitution.

19. Plaintiff, Nancy Ellen Whitehead Lord, is a resident of Salt Lake County and is affiliated with the Republican Party. She is a precinct chair of the Republican Party in Salt Lake County. She has been a delegate to the Republican State Convention, and she is one of 38 elected representatives to Salt Lake County's State Central Committee for the Utah Republican Party. She believes that the initiative process is fundamental in that it provides for a check and balance on the legislative and executive branches of government. She challenges Proposition 5 on the basis it effectively eliminates that check and balance power and violates the uniform operation of laws protection as provided in Utah's Constitution.

20. Plaintiff Michael T. Ridgway, is a resident of Salt Lake County and has been involved in promoting and protecting the initiative process. Ridgway believes the initiative power to be the only real check on a monolithic government. Mr. Ridgway is actively involved with the Utah Republican Party. He was elected as the Senate District Chair and is consequently a member on the Salt Lake County Executive Committee. He is on the State Republican Central Committee and is also an elected member of the State Republican Executive Committee for the Second Congressional District. He sees that the two-thirds vote is an unreasonable burden upon the electorate to initiate legislation, regardless of whether the content is wildlife, school vouchers, legislative terms, or any other public policy issue.

21. Plaintiff, Kaylin Robinson, is a resident of Salt Lake County. She actively opposed Proposition 5 in the 1998 General Election and voted against it. She is a member of the Libertarian Party and is interested in constitutional rights and in protecting each and every constitutional right, including the state constitutional right of the initiative process and the rights of free speech and association.

22. Plaintiff, Utah Environmental Congress, (hereafter "UEC") which consists of 160 individuals, 18 business members, and nine organizations located in Utah, is a Utah non-profit corporation, incorporated under the laws of the State of Utah for the purpose of informing the citizenry on animal predator control issues in the Grand Staircase - - Escalante National Monument and on

national forest issues. UEC is harmed by Proposition 5 because it violates the rights to free speech and association, and eliminates the ability to effectively advocate change in wildlife policy.

23. Plaintiff, Richard VanWagenen, is a native Utahn and a Salt Lake County resident. He has supported organizations that have been active in wildlife issues for approximately 23 years. He is President of the Board of Trustees of the High Uintas Preservation Council and supported the organization's oppositions to Proposition 5 and voted against it. He brings this action on behalf of the organization and its 300 members.

24. Plaintiff, Richard Warnick, is a resident of Salt Lake County. Plaintiff Warnick actively opposed Proposition 5 in collaboration with the Utah Voting Rights Coalition and voted against Proposition 5. He has also been a member of the High Uintas Preservation Council. He brings this action individually and believes Proposition 5 impairs free speech and free association based upon its chilling effect.

25. Plaintiff, Stacy Williams, is a resident of Daggett County who has spoken publicly on wildlife issues. She is a native Utahn and a member of the High Uintas Preservation Council. She actively opposed Proposition 5 and voted against it in the 1998 General Election. She believes it dilutes the people's inherent powers, otherwise retained in a free government, by the legislatively-proposed 2/3 vote requirement imposed upon the people.

PARTIES DEFENDANT

26. Defendant, Olene S. Walker, Lieutenant Governor, is the chief election officer of the state of Utah, empowered to enforce certain provisions of the state law including the Amendment language of Proposition 5. Her statutory duties include that she "maintain election returns and statistics" and "certify to the governor the vote for and against the law proposed by the initiative petition." See Utah Const., Art. VII, Sec. 14, Utah Code Ann. §§ 67-1a-2 (1984) and 20A-7-211 (1994).

27. Defendant, Janet Graham, Attorney General, is the legal adviser of the state of Utah empowered to enforce certain provisions of the state law, including the Amendment language of Proposition 5. Her constitutional and statutory duties include that she "prosecute or defend all causes to which the state, or any officer, board, or commission of the state in an official capacity is a party; and take charge, as attorney, of all civil legal matters in which the state is interested." See Utah Const., Art. VII, Sec. 16, Utah Code Ann. § 67-5-1 (2000).

GENERAL FACTS

28. In order to amend the Constitution of Utah, the following acts are required:

- (1) the Legislature only may propose an amendment to the Utah Constitution and the amendment may be proposed in either house of the Legislature
- (2) two-thirds of all the members elected in each of the two houses shall vote in favor thereof;

(3) the electors of the State voting thereon by a majority vote shall approve or reject the proposed amendment in a General Election. See Utah Const., Art. XXIII, Sec. 1.

29. There is no requirement for a two-thirds vote of approval of the electors to amend the Utah Constitution, rather a favorable majority vote of those voting in the General Election alone is required.

30. For an initiative to be submitted to a vote of the people for approval or rejection, the initiative proponents must first obtain legal signatures in 20 of Utah's 29 counties equal to 10% of the total of all votes cast in that county for gubernatorial candidates at the last regular general election; i.e., 67,188 signatures. Utah Code Ann. § 20A-7-201(2). The language at issue in this lawsuit requires a two-thirds vote of approval of those voting for adoption of legislation initiated by the voters on certain wildlife issues.

31. On November 3, 1998, Utah's electors amended its constitution as the culmination of the following acts.

32. On or about February 26, 1998, an Act, First Substitute Senate Joint Resolution 10, "Resolution Establishing Wildlife Numbers," (hereafter "S.J.R. 10") sponsored by Senator Leonard J. Blackham and co-sponsored by 22 other state Senators, passed both houses of the State Legislature with the required two-thirds vote needed for a proposal to amend the Utah Constitution, at Article VI, Section 1.

33. The Senate and House Journal recorded the final votes in the House as 52 yeas votes, 19 nay votes, and 4 absent and in the Senate as 25 yeas votes, 3 nay votes, and 1 absent.

34. The language of the long title of S.J.R. 10 read in, "A JOINT RESOLUTION OF THE LEGISLATURE PROPOSING TO AMEND THE UTAH CONSTITUTION; PROVIDING THAT ANY VOTER INITIATIVE REGARDING THE TAKING OF WILDLIFE SHALL BE ADOPTED UPON APPROVAL OF TWO-THIRDS OF THOSE VOTING; AND PROVIDING AN EFFECTIVE DATE." See a copy of the entire S.J.R. 10 attached hereto as Exhibit A. Following approval in both houses, the S.J.R. 10 Amendment to the Utah Constitution was renamed and submitted to the electors as "Proposition 5."

35. The amendment in S.J.R. 10 to the Utah Constitution amended Article VI, Section 1. [Power vested in Senate, House, and People.] The language of S.J.R. 10 increased the requirement of those voting on wildlife issues, only when initiated by the voters, to a favorable supermajority vote of two-thirds of those voting in order to pass, rather than a simple majority threshold set out in the Constitution for all other constitutional amendments, initiatives, and referenda. See Utah Const., Art. XXIII, Sec. 1, attached hereto as Exhibit B.

36. The language to amend Utah's Constitution in S.J.R. 10 read: "Legislation initiated to allow, limit, or prohibit the taking of wildlife or the season for or method of taking wildlife shall be adopted upon approval of two-thirds of those voting."

37. The Office of Legislative Research and General Counsel, acting as legal counsel to the State Legislature, did not attach a Legislative Review Note to S.J.R. 10 which "upon a limited legal review of [the resolution]" would have raised any "obvious constitutional or statutory concerns" as required by Utah Code Ann. 36-12-12. See Legislative Drafting Manual, 1998, P. 34, attached hereto as Exhibit C. The drafting attorney, Jeanenne B. Larson, did not alert the Legislature to these "obvious" constitutional concerns in a Legislative Review Note.

38. Ms. Gay Taylor, General Counsel, The Office of Legislative Research and General Counsel, (hereafter "the Office") acts as legal counsel to the Legislature under Utah Constitution, Article VI, Section 32. "Legal counsel should provide and control all legal services for the Legislature unless otherwise provided by the statute." The General Counsel's duties include providing "research and legal analysis services to any interim committee, legislative standing committee, or individual legislator on actual or proposed legislation or subjects of general legislative concern." Utah Code Ann. § 36-12-12 (2)(c)(1993). The duties also include that the Office "prepare and assist in the preparation of legislative bills, resolutions, . . . any other documents or instruments required in the legislative process and, under the direction of the general counsel, give advice and counsel regarding them in the Legislature, majority and minority leadership of the House and the Senate, any of its members or members-elect, . . ." Utah Code Ann. § 36-121-12(2)(f) (1993) (Emphasis added).

39. To be effective, Proposition 5 would require approval by a simple majority of those voting in the 1998 General Election.

40. On the ballot in the 1998 General Election, Proposition 5 passed in that election on November 3, 1998 with 272,296 voters voting in favor and 212,473 voters voting against, which amounted to 56 percent voting in favor and 44 percent voting against. The law would take effect on January 1, 1999.

41. In its August 14, 1998 meeting, the Utah Constitutional Revision Commission, (hereafter "CRC") a Utah think tank which focuses on Utah's Constitution and examines proposed state constitutional amendments, voted to "officially oppose" Proposition 5 in response to Plaintiff Representative Dave Jones's motion that subjecting initiatives to two-thirds vote was not good public policy. See Minutes of Constitutional Revision Commission, August 14, 1998 attached hereto as Exhibit D.

42. As stated in the minutes of the August 14, 1998 CRC meeting, Rep. Michael Styler "explained that Proposition 5 is primarily about wildlife management. . . . Rep. Styler expressed concern that certain groups from outside the state want to manage Utah wildlife practices through initiative petition," and the purpose of Proposition 5 appears to be to restrict the voters from being able to be heard through initiative petitions if influenced by these forces.

43. In the minutes of the CRC meeting, Mr. Don Peay, Utahns for Wildlife, said "Proposition 5 is an effort to preserve Utah's wildlife practices from East Coast Special Interest groups who can influence Utah elections through initiative petition [by the voting public]."

44. Because the legislation was to be submitted to a vote of the people, upon approval of legal sufficiency by legislative general counsel, the Office was required to prepare an impartial analysis of each measure to be submitted to the voters in the Voter Information Pamphlet. . . . That analysis shall "(b) [show] the effect of the measure on existing law;" and "(e) [identify] any potential conflicts with the United States or Utah Constitutions raised by the measure; . . ." Utah Code Ann. § 20A-7-703(2) (1995). (Emphasis added.) The analysis was provided with regard to Proposition 5 in the 1998 Voter Information Pamphlet. In its ostensible impartial analysis, the Office made no comment about Proposition 5's potential conflicts with the United States or Utah Constitutions, or the potential for legal challenge but did emphasize that "[a]ll other initiatives would continue to generally, be subject to approval by majority vote." See 1998 Voter Information Pamphlet, pp. 34-37, attached hereto as Exhibit E.

45. Based upon information and belief, the State of Utah Elections Office and the Office of the Attorney General have not yet applied this amended language in Article VI, Section 1.

46. Based upon information and belief, there are no similar efforts in Utah at present to create other content-based categories on public policy issues which would require a two-thirds vote at the ballot box to enact voter initiated legislation.

47. Based upon information and belief, the Arizona Legislature and Alaska Legislature will place a similar measure on the ballot in its 2000 General Election.

FIRST CAUSE OF ACTION

(First Amendment - - Freedom of Speech)

48. Plaintiffs incorporate allegations set forth in paragraphs 1 through 47 and allege as follows:

49. The amendment to the Utah Constitution, Article VI, Section 1, requires an unprecedented two-thirds vote of those voting to adopt voter-initiated legislation on certain wildlife public policy issues only, and violates the First Amendment and Fourteenth Amendment of the United States Constitution on its face under 28 U.S.C. Section 1331 because:

1. The heightened two-thirds vote requirement applies only to certain wildlife issues and is a content-based, unreasonable restriction on the people's democratic ability to present issues before the public for initiative adoption;
2. The heightened two-thirds vote requirement works a chilling effect upon those persons intending to sponsor an initiative petition on those particular issues because it creates an unreasonable burden for voter passage and the likelihood of success is so minimal as to significantly discourage any efforts by the people to exercise direct democracy;

3. It limits the potential for statewide expression of certain political issues through initiative petitions and consideration by the whole electorate and thus significantly and unreasonably silences the voice of the people;
4. It violates the purpose of the First Amendment to assure unfettered interchange and expression of ideas for the bringing about of political and social changes desired by the people;
5. It restricts the speech of some elements of society to enhance the relative voices of others; and
6. It unconstitutionally violates the basic principles of government of the people, by the people, and for the people.

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SECOND CAUSE OF ACTION

(First Amendment -Freedom of Association)

50. Plaintiffs incorporate allegations set forth in paragraphs 1 through 49, and further allege as follows:

51. The Amendment to the Utah Constitution, Article VI, Section 1, facially violates the First and Fourteenth Amendment to the United States Constitution under 28 U.S.C. Section 1331 because:

(1) It violates plaintiffs' right to freedom of association because it impairs the ability of persons to engage in particular political expression and association. The amendment makes those matters no longer a likely focus of statewide discussion and consideration by the whole electorate due to the restructuring of democratic processes which disadvantages an unpopular group because of its efforts to freely express and associate; and

(2) It impairs the ability of certain associated persons to advocate for change openly and freely through the democratic process, and express the merits of that proposed change

THIRD CAUSE OF ACTION

(Overbreadth)

52. The plaintiffs incorporate allegations in paragraphs 1 through 51 and further allege as follows:

53. The Amendment to the Utah Constitution, Article VI, Section 1, is unconstitutionally overbroad on its face under 28 U.S.C. Section 1331 because:

(A) the Amendment is overly broad and does not clearly describe which initiated legislation on wildlife issues would be subject to the heightened two-thirds burden for adoption by the people; and

(B) the Amendment inhibits the exercise of freedom of speech and association because its uncertain and overly broad language inevitably leads citizens to steer far wider than the regulated content and infringes upon their efforts to pursue political change, which is constitutionally protected conduct.

FOURTH CAUSE OF ACTION

(Utah State Constitution - - Power of People To Legislate)

54. Plaintiffs incorporate the allegations of paragraphs 1 through 53 and further allege as follows:

55. The Amendment to the Utah Constitution, Article VI, Section 1, is unconstitutional on its face because it effectively violates plaintiffs' rights guaranteed by the Utah Constitution, in that same article, that the Legislative power of the state shall be vested in the people because:

1. it imposes such a significant burden on the initiative process and effectively eliminates the successful utilization of this process right by the people because the likelihood of success is absurdly minimal when balanced against the efforts required to place an initiative before the people; and
2. the Amendment language could be broadened in the future to include more ostensibly forbidden initiative issues.

FIFTH CAUSE OF ACTION

(Utah State Constitution - - Freedom of Speech)

56. Plaintiffs incorporate allegations in paragraphs 1 through 55 and further allege as follows:

57. The Amendment to Utah State Constitution, Article VI, Section 1, is unconstitutional on its face because it violates plaintiffs' rights to freedom of speech under Utah Constitution, Article I, Sections 1 and 15, on the basis that it has a chilling effect on expression because the efficacy of that speech is severely impaired and therefore silenced.

(A) The heightened two-thirds vote requirement applies only to certain wildlife issues and is a content-based unreasonable restriction on the people's democratic ability to present issues before the public for initiative adoption;

(B) The heightened two-thirds vote requirement works a chilling effect upon those persons intending to sponsor an initiative petition on those particular issues because it creates an unreasonable burden for voter passage and the likelihood of

success is so minimal as to significantly discourage any efforts by the people to exercise direct democracy;

(C) It limits the potential for statewide expression of certain political issues through initiative petitions and consideration by the whole electorate and thus significantly and unreasonably silences the voice of the people;

(D) It violates the purpose of Article I, Sections 1 and 15, Utah Constitution, assure unfettered interchange and expression of ideas for the bringing about of political and social changes desired by the people;

(E) It restricts the speech of some elements of society to enhance the relative voices of others; and

(F) It unconstitutionally violates the basic principles of government of the people, by the people, and for the people.

SIXTH CAUSE OF ACTION

(Utah State Constitution - - Uniform Operation of Laws)

58. Plaintiffs incorporate allegations in paragraphs 1 through 57 and further allege as follows:

59. The Amendment to Utah State Constitution, Article VI, Section 1, is unconstitutional on its face because it violates plaintiffs' rights to uniform operation of laws under Utah Constitution, Article I, Section 24, through use of the initiative petition by unreasonably requiring a two-thirds votes of the people to create law by initiative petition in the area of wildlife management only while maintaining a proper majority vote of the people in all other areas. The effect thereof is a grossly disparate application of the initiative power to a certain group of initiative petitioners based upon the content of its political speech or cause.

SEVENTH CAUSE OF ACTION

(Utah State Constitution - - All Political Power Inherent in the People)

60. Plaintiffs incorporate the allegations of paragraphs 1 through 59 and further allege as follows:

61. The law is unconstitutional on its face because it violates plaintiffs' and the people's rights to its inherent political power. All political power is inherent in the people. Utah Const., Art. I, Sec. 2. The people retain the rights of a free government. The enumeration of those rights in the State Constitution shall not be construed to impair or deny others retained by the people. Utah Const., Art. I, Sec. 25. The people may restrain the power of its elected representatives through imposing the two-thirds vote, such as applied to legislative amendments to the State Constitution or veto-overrides. In contrast, the representatives of the people cannot impose a two-thirds vote on the people so as to dilute its inherent political powers.

EIGHTH CAUSE OF ACTION

Declaratory Relief - Federal Law

62. Plaintiffs incorporate the allegations of paragraphs 1 through 61 and further allege as follows:

63. Based upon this Court's findings that allegations of paragraphs 1 through 53 establish the facial unconstitutionality of the Amendment to the Utah Constitution, Article VI, Section 1, the plaintiffs are entitled to declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C.S. § 2201 (2000).

NINTH CAUSE OF ACTION

Declaratory Relief - State Law

64. Plaintiffs incorporate the allegation of paragraphs 1 through 63 and further allege as follows:

65. Based upon this Court's findings that the allegations of paragraphs 1 through 61 establish the facial unconstitutionality of the Amendment to the Utah Constitution, Article VI, Section 1, the plaintiffs are entitled to declaratory judgment under their pendent state claims pursuant to the Utah Code Ann. § 78-33-1 et seq. (1953).

TENTH CAUSE OF ACTION

Prospective Permanent Injunctive Relief - Federal Law

66. Plaintiffs incorporate allegations of paragraphs 1 through 65 and further allege as follows:

67. Plaintiffs seek an injunction enjoining the enforcement of the Amendment to Utah Constitution, Article VI, Section 1, and are entitled to prospective permanent injunctive relief because:

- (A) Plaintiffs seek prospective, not retrospective injunctive relief, based upon their allegations incorporated throughout and Causes of Action, FIRST through SEVENTH and;
- (B) The violations of the United States Constitution are ongoing and continuous, based upon their allegations throughout and Causes of Action, FIRST through THIRD;
- (C) Equitable relief would not implicate special sovereignty interests; and
- (D) Security by the applicant has been given in such sum and form as the court deems proper.

ELEVENTH CAUSE OF ACTION

Injunctive Relief - State Law

68. Plaintiff incorporate allegations in paragraphs 1 through 67 and further allege as follows:

69. Plaintiffs are entitled to injunctive relief because the Amendment to Utah Constitution, Article VI, Section 1, violates the United States Constitution and Utah Constitution, based upon the allegations throughout and Cause of Action, FOURTH through SEVENTH because:

- (A) plaintiffs will suffer irreparable harm;
- (B) the threatened injury to the plaintiffs outweighs whatever substantial damage the injunction may cause to the party enjoined;
- (C) the injunction, if issued, would not be adverse to the public interest; and
- (D) there is a substantial likelihood that the plaintiffs will prevail on the merits of the underlying claim or the case presents serious issues on the events which should be the subject of further litigation.

TWELFTH CAUSE OF ACTION

Attorney's Fees

70. Plaintiffs incorporate allegations in paragraphs 1 through 69 and further allege as follows:

71. Under 28 U.S.C. § 1331, in the event plaintiffs prevail on any substantial issue in this action through declaratory judgment and injunctive relief, plaintiffs are entitled to attorney's fees and other such costs as the Court determines to be proper.

PRAYER FOR RELIEF

WHEREFORE, on all their causes of action plaintiffs ask for:

- 1 Declaratory judgment that the amendment to Article VI, Section 1, Utah Constitution through Proposition 5 is unconstitutional on its face on the grounds stated in the allegations above and Causes of Action FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, and SEVENTH;
- 2 Permanent injunctive relief as requested in the Complaint on the grounds stated in the allegations above and Causes of Action TENTH and ELEVENTH;
3. Costs and attorney fees incurred in this suit;
4. Such other and further relief as the Court determines to be just and equitable.

PPLANT, WALLACE, CHRISTENSEN & KANELL

Lisa Watts Baskin
Robert R. Wallace
Attorneys for Plaintiffs

DATED this _____ day of _____, 2000.