

Standing Up For Utah's Needs

2017 Report

The 2017 Utah Citizens' Counsel
Assessment of Policy Progress in Utah

www.utahcitizenscounsel.org



Table of Contents

Cover Letter	2
A Declaration of Utah Human Rights	3
Executive Summary	4
Committee Reports	
Environmental Health	7
Public Education	13
Health	19
Personal Security	27
Social Support Systems	34
Participatory Governance	40

October 2017

Dear fellow Utahns,

This year has been unusually eventful, and we are releasing our 2017 report in October rather than December because we want our analyses to be part of the dialogue in the remaining months of the year. Our Declaration of Utah Human rights (see next page) remains the framework for our policy positions because it reflects the kind of communities in which we believe all Utahns should be able to live.

Government alone cannot accomplish all that we seek for residents of Utah. Neither can private institutions, nor can individuals acting alone. All are needed to solve the many problems facing our communities and state. There is much groundwork to build on and many talented people and institutions who are leading out. We are among the groups that want to be contributing knowledge, analysis, and recommendations for Utah's future. It is in that spirit that we offer our 2017 report to interested readers.

An executive summary of our 2017 report follows on page 4. Given the current turmoil at the national level over immigration, we have deferred an update on Article 1 and concentrated on issues requiring local and state action now. We stand by our earlier positions on immigration reform, which we invite you to read on our website at www.utahcitizenscounsel.org. We will return to examination of equal protection issues in future reports.

Over time we have lost valued UCC members, some to death (with sorrow, we report the recent death of Kim Burningham) and some to emeriti status. As senior citizens, our ranks turn over more often than we would like, and we lose some of the personal wisdom that comes from many years of public policy experience. As other community leaders become retirees, we add new members to UCC. We are pleased to welcome Pat Christensen, Rex Olsen, Jean Nielson, and Julie Miller as thinkers, researchers, writers, and activists who share UCC's vision.

Sincerely,

Sheryl Allen
Di Allison
Robert (Archie) Archuleta
John Bennion
Pat Christensen
Michael Deily
Irene Fisher
Harry Fuller
Nancy Haanstad
Dixie Huefner

Robert Huefner
Louise Knauer
Cheryll May
Julie Miller
Jean Nielson
Rex Olsen
Stewart Olsen
Dee Rowland
Andrew Schoenberg
Michael Stapley
M. Donald Thomas

With volunteer staff support from David Carrier, University of Utah



Dedicated to improving public policy.

A Declaration of Utah Human Rights

Preamble

In recognition that the inherent right of every member of the human family to dignity and respect serves as the foundation of freedom, justice, and tranquility in the state of Utah, as well as the United States of America and the world; and in recognition that this right also frames the shared responsibilities of individuals, organizations, and governments; and inspired by the Declaration of Independence, the Constitution of the United States, and the Universal Declaration of Human Rights, the Utah Citizens' Counsel (UCC) articulates the following statement of rights as the framework for UCC policy positions.

Article 1: All Utahns, regardless of race, color, ethnicity, religion, gender and gender identity, language, disability, political preference, age, birth status, military status, or other status, are entitled equally to dignity and respect as human beings and to equitable treatment under the law.

Article 2: All Utahns, young and old, have the right to live and thrive in a healthy environment that includes clean air, land, and water, and share in the responsibility to pass that healthy environment on to succeeding generations.

Article 3: All Utahns have the right to a public education that ensures literacy, numeracy, critical thinking, character development, and the capability for responsible citizenship to help secure a promising future for Utah in a complex, interdependent, and competitive world.

Article 4: All Utahns have the right to comprehensive, quality health care at reasonable cost, and responsible societal efforts to help them achieve and maintain optimal well-being, with appropriate initiatives that encourage and facilitate healthy living and the prevention of disease, disability, and injury.

Article 5: All Utahns have the right to security of person, especially freedom from physical harm and psychological abuse, whether experienced within the family or in the community at large.

Article 6: All Utahns have the right to the fundamental social support systems that assist in assuring a standard of living adequate for the well-being of both the individual and families, in all their configurations, including timely assistance in case of unemployment, disability, old age, and natural or man-made disasters.

Article 7: All Utahns have the right to transparent and ethical governance as well as effective participation in the democratic process.

UCC 2017 Executive Summary

Environmental Health

Most Utahns are painfully aware of the state's serious winter and summer air pollution problems because they constantly see, feel, and sometimes smell them. Some might be less aware that climate warming in the region is occurring at twice the average rate of the continent and the planet. The state's rapidly growing population increases the urgency of these problems. Utah needs to set pollution fees for high emissions cars, reinstate tax incentives for low emission and electric vehicles, and encourage building construction with zero emission ratings. With the country's second lowest rainfall total, but one of the highest rates of water use, Utah should provide strong incentives for water conservation rather than support needlessly expensive water development projects.

Public Education

Over the last decade, the Utah public education system has lost over a billion dollars yearly in spending for public education. Concurrently, student performance on many national achievement tests has declined, experienced teachers are leaving the profession in alarming numbers, and recruitment problems have become acute. We strongly support the Our Schools Now Initiative, a business-led proposal to modestly increase state income and sales taxes to restore much of the lost education funding. The initiative includes mechanisms to ensure accountability for improved performance, and allows for flexibility and local control to meet schools' individual needs. For decades, Utahns displayed their commitment to properly educate the rising generation with their tax dollars. Restoring that commitment will greatly enhance the future economy and overall wellbeing of Utah's children and society.

Health

Utah does better than most states in respect to the general health of its population and the efficiency of its health care systems. But except for its recent number one ranking in cost, the state has significantly declined from its overall first-in-the-nation status enjoyed during the 1990s. For international comparisons, Utah is behind advanced nations, though not as far behind as is the U.S. in general. A major reason for the decline is that Utah has been slower than most states in assuring that low-income citizens have affordable access to healthcare. During the present period of national tumult over healthcare policy, Utah can take the lead by giving greater support and public exposure to state and local public health programs, moving aggressively to extend coverage through Medicaid and other low-income health programs, and promoting better health through programs such as environmental protection and public safety.

Personal Security

Although Utahns generally enjoy a high level of personal security, improved government policies could reduce domestic-violence-related homicides, assaults against members of hated social groups, and cases of sexual violence. Real progress in preventing domestic violence has been made by 46 Utah police departments adopting the Lethality Assessment Protocol. But domestic violence-related murders would be further reduced by expanding the legal definition of domestic violence victims to include non-married romantic partners, since dating conflicts accounts for 25% of violence between intimate partners. Joining the 48 other states who have

adopted the Prison Rape Elimination Act and passing a strong, effective hate crimes bill would also give Utah residents greater personal security.

Social Support Systems

In spite of considerable government attention and media coverage in the last year, Utah's affordable housing crisis is worse than ever. Meaningful steps have been taken at state and local levels to explore, explain, and document the problem, and some measures have been enacted in response to it. Today, however, more low-income Utahns than last year are experiencing the stress of overcrowding, frequent moves, threats of eviction, and even occasional homelessness. More intense efforts are needed to increase both affordable housing inventories and poor people's incomes. The state needs to significantly expand its affordable housing tax credit program for local developers. County and city governments need to greatly expand their affordable housing programs, and the legislature needs to pass a state earned income tax credit.

Participatory Government

Over the last few decades, Utah's voter participation as a percentage of eligible voters has declined significantly, while the increasing number of uncontested state legislative elections has also become problematic. General elections have become irrelevant for many voters. A major cause of these worrisome shifts is sophisticated, computer enhanced "gerrymandering" of congressional and state legislative boundaries, which has allowed politicians to select their voters rather than voters to select their representatives. Rigging the boundaries to favor the party in power has led to more extreme candidate platforms, greater polarization, and less accountability. We strongly support the Better Boundaries initiative that establishes an independent redistricting commission and requires use of nonpartisan criteria to draw fair and rational boundaries for congressional and Utah legislative districts.

Committee Reports

Environmental Health

Utah Citizens' Counsel Environmental Health Committee

Article 2. All Utahns, young and old, have the right to live and thrive in a healthy environment that includes clean air, land, and water, and share in the responsibility to pass that healthy environment on to succeeding generations.

Introduction

This year's environmental report again focuses on air quality and water availability. The air quality for many days this summer has been in the "moderate" to "unhealthy for sensitive persons" range due to high ozone concentrations.¹ The Environmental Protection Agency (EPA) has again cited Utah for non-attainment in areas with excess particle and ozone concentrations.² In July, the State Water Strategy Advisory Team released the final version of their report.³ We applaud the Team's efforts to educate and make policy recommendations but find their conservation recommendations both misleading and inadequate. This year's report also turns to our concern that citizens of our state exhibit a relatively poor understanding of human caused global warming.⁴ The projected doubling of the population in Utah and its effect on pollution and essential resources are also of concern.⁵

Air Quality

In last year's report we welcomed the international efforts to curb greenhouse gas emissions, which resulted in the landmark agreement signed in Paris.⁶ The previous administration in Washington signed this agreement. Unfortunately, the current administration has withdrawn U.S. government support for the agreement.⁷ It also has withdrawn EPA's rule, called the "Clean Power Plan," to curb emissions from coal fired electricity generating stations.⁸

Utah government has a mixed record on improving air quality. It passed an extension for a tax credit for wind and solar renewable energy installations in homes and businesses. It did not renew tax credits for electric vehicles.⁹ Refineries have pledged to convert to Tier 3 fuels in Utah, but progress is slow, with conversions not promised until the end of 2019.¹⁰ Electric vehicle sales in Utah are growing and amounted to 0.81% of new vehicles sold so far in 2017.¹¹ Of greater concern for both air quality and global warming, is that SUV and light truck sales in Utah represented 67% of all new cars sold in 2016 and reached 70% in the first half of 2017.¹² Nationally, the trend toward buying less efficient new vehicles is not much better, with 63% of 2016 sales being SUVs and light trucks.¹³

Some of our recommendations last year did find support in Utah. Electric vehicle charging stations have increased.¹⁴ Utah House Resolution HCR 18 passed, which recommends that car buyers consider smog ratings of new cars.¹⁵

Neither House Bill (HB) 457, a bill imposing a tax on carbon emissions, nor a resolution SJR 9, expressing the need to recognize climate change, passed the Utah Legislature in 2017. However, the need to recognize climate change and curb carbon emissions is gaining bipartisan support in Washington. Driven by the efforts of the Citizens Climate Lobby there is now a Congressional Climate Lobby with 26 Republican and 26 Democratic members.¹⁶ Mia Love is the only Utah

Representative in this group. Last year's recommendation to reduce speed limits to save lives and reduce pollution has been ignored so far. Utah vehicle fatalities increased again in 2016, to 281.¹⁷

Many Utah Citizens Lack Understanding of Human-Caused Climate Warming

Scientists understand the physical basis of climate warming with the same clarity that they understand gravity and electricity.¹⁸ Moreover, the hard evidence that our climate is warming at an unprecedented rate is overwhelming, leading the vast majority of scientists to acknowledge that humans are the cause and that severe consequences await.¹⁹ Yet, Utahns appear to be poorly informed about the cause of climate change. A study by the Yale Program on Climate Change Communication indicates that, based on 2016 survey data, only 43% of Utahns believe climate warming is primarily caused by human activity.²⁰ This value is 11% below the national average. Only the state of Wyoming has a lower percentage (42%) of citizens who believe humans are the primary cause.

Because the Utah lies in a region that is warming at twice the average rate of North America and the planet,²¹ our state will be disproportionately impacted. Local temperature records help put the magnitude of recent warming in perspective. During the entire 20th century, daily temperatures rose to 103° F only four times in the town of Tooele. In contrast, during the first decade of the 21st century, temperatures in Tooele reached this level 28 times.²² As our temperatures rise, there will be increased evaporation negatively impacting agriculture, municipal water supplies, mountain forests, wetland habitats, and further reducing the level of the Great Salt Lake. Other impacts already include reduced winter snow pack, which further threatens municipal and agricultural water supplies; increased frequency and intensity of toxic algae blooms in our fresh water lakes; and increased summer ozone air pollution. Compounding many of these anticipated problems is Utah's rapidly growing population, projected to double by 2065.²³

Given that denial of science acts as an anchor, constraining progress, we need to increase public education about the scientific basis of human caused climate change, the risks to our economy and quality of life, and what individual citizens of Utah can do to mitigate the harm. To increase understanding of the human causes of climate change and why scientists are confident of the evidence for climate change, a web site maintained by the National Aeronautics and Space Administration is instructive.²⁴ Additionally, a recent extensive report by the Global Change Research Program summarizes the current state of our understanding of climate change.²⁵ Last, The LDS Church has a website explaining the value of environmental stewardship and conservation.²⁶

We believe the most effective way to combat climate warming is through a national carbon fee and dividend policy.²⁷ Various proposals exist,²⁸ but all would place a steadily rising fee/tax on green-house gas emissions, with all collected fees, minus administrative costs, returned to households as dividends. Phased-in fees on greenhouse gas emissions with dividends for all American households would incentivize reduced fossil fuel consumption, lead to increased adoption of renewable energy, and ultimately drive the transition to a net zero carbon emissions economy.

Water Availability

As was true last year, we remain steadfast in our opinion that future demand for municipal water in our state can be met through conservation and incorporation of agricultural water (because farmland increasingly is developed by municipalities) rather than through investment in major new water projects. For years now, managers of Utah's municipal water (some water conservancy districts and the Division of Water Resources) have warned that demand for water will surpass the currently developed supply in about 25 years, limiting population growth and economic development. The solution, they continue to argue, is investment in major new water projects such as the Bear River Development Project and the Lake Powell Pipeline.²⁹ We believe these water projects will not be necessary; will threaten our wetland ecosystems, including the Great Salt Lake;³⁰ and will cost taxpayers far more than the water is worth.³¹

With one of the highest per capita domestic water use in the nation, Utah has extraordinary potential for conservation.³² Actual wasteful use of municipal water is largely a consequence of taxpayers subsidizing water use. Consequently, individuals do not see the true cost of water use in their monthly bill, giving them little incentive to conserve. Contributing to the low incentive to conserve are relatively flat pricing structures in which homeowners with the highest rates of use pay only slightly more than homeowners with low usage.³³

In July, Governor Gary Herbert's State Water Strategy Advisory Team released the final version of its Recommended State Water Strategy report.³⁴ The Advisory Team, formed in 2013, has 38 members who are stakeholders with extensive backgrounds in various aspects of water use and management. Clearly, the process of developing this report has been an important educational experience for all who were directly and indirectly involved. In that sense, the report represents an important dialogue that must continue as we strive for effective policy. The report itself acknowledges the complexity of the issues and the need for additional planning in the coming years.

We applaud the attention the report gives to the negative impact that climate warming will have on the future health of our watersheds and water supply, and the report's clear recommendations for how we can prepare for and minimize the impact of climate change.³⁵ However, although the report advocates conservation in most chapters (for instance, 1, 4, 5, and 7), in other chapters (3, 8) acknowledgement of the importance of conservation to the health of our water sheds is noticeably missing. Of most importance, we strongly disagree with the report's support for continued use of the property tax to subsidize user fees and fund large water projects.³⁶ Using property taxes as a funding mechanism for municipal water means that property owners do not see the true cost of water use in their monthly bill, and therefore have little incentive to conserve.³⁷ Ultimately, we are troubled by the absence of clear suggestions on ways the State could incentivize conservation

Commendations

- **The LDS Church** for their advocacy of environmental stewardship
- **Representative Mia Love** for her leadership in combating climate change

- **Utah chapters of the Citizens' Climate Lobby** for their efforts to promote passage of a carbon fee and dividend policy
- **The Utah Legislature's Clean Air Caucus** for its efforts to promote cleaner air
- **Salt Lake City** for passage of the “Energy Benchmarking & Transparency Ordinance”
- **The State Water Strategy Advisory Team** for their efforts to find solutions for water conservation and supply

Recommendations

- **We continue to promote the idea of a pollution fee for cars**, particularly those with high emissions, and suggest reintroduction of Utah HB 457.
- **The Legislature should require new car advertisers to publish gas consumption and pollution ratings.**
- **Utah leaders and planners need to begin questioning the desirability and presumed inevitability of the projected doubling of population** in Utah. This level of growth will make it very difficult to improve air quality in the Wasatch Front counties.
- **The Legislature should reinstitute tax incentives for low emission and electric vehicles.**
- **The Legislature and municipalities should encourage construction of public and residential buildings with low or zero emissions ratings.**
- **The Legislature should consider lowering and enforcing speed limits to reduce pollution and accident rates.**
- **Before taxpayer money is spent on new water projects, we recommend that the Legislature** (1) implement effective mechanisms to **document water resources** and consumer use; (2) adopt policies that **provide strong incentives for conservation**; and (3) **fund repair and modernization** of existing agricultural water infrastructure.
- **We support a Joint Resolution on climate change** such as SJR 9.
- **We urge Governor Herbert to add the state of Utah to the United States Climate Alliance to uphold the Paris Accord.**
- **We encourage cities throughout the state to follow Salt Lake City's lead in adopting building energy use benchmarking and transparency standards.**

Endnotes for Article 2 (Environmental Health)

¹ Emma Penrod, "July Is the New January: Ozone Levels Skyrocket Over Wasatch Front As Inversion-Like Conditions Settle In", *Salt Lake Tribune*, August 2, 2017, accessed September 17, 2017, <http://www.sltrib.com/news/environment/2017/08/02/july-is-the-new-january-ozone-skyrockets-over-wasatch-front-as-inversion-like-conditions-settle-in/>.

² Emma Penrod, "EPA Plans to Classify Utah Air Quality Misses as 'Serious'", *Salt Lake Tribune*, May 2, 2017, accessed September 17, 2017, <http://archive.sltrib.com/article.php?id=4722488&itype=CMSID>.

³ "Recommended State Water Strategy," Governor's Water Strategy Advisory Team, accessed September 19, 2017, http://www.envisionutah.org/images/FINAL_Recommended_State_Water_Strategy_7.14.17_5b15d.pdf.

⁴ "Climate change: How do we know?" *NASA Global Climate Change*, accessed September 19, 2017, <http://climate.nasa.gov/evidence/>.

⁵ Pamela S. Perlich, et al., "Utah's Long-Term Demographic and Economic Projections Summary," *Gardner Policy Institute, University of Utah*, accessed September 19, 2017, <http://gardner.utah.edu/wp-content/uploads/Projections-Brief-Final.pdf>.

⁶ "Paris Climate Agreement," *United Nations Framework Convention on Climate Change*, accessed September 18, 2017, https://en.wikipedia.org/wiki/Paris_Agreement. As of September 2017, 195 UNFCCC members have signed the agreement, 162 of which have ratified it.

⁷ "United States Withdraws from the Paris Agreement," *Wikipedia*, accessed September 18, 2017, http://en.wikipedia.org/wiki/United_States_withdrawal_from_the_Paris_Agreement.

⁸ "Withdrawal of Proposed Rules: Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or before January 8, 2014," published April 7, 2017, *Environmental Protection Agency*, accessed September 19, 2017, <https://www.federalregister.gov/documents/2017/04/03/2017-06518/withdrawal-of-proposed-rules-federal-plan-requirements-for-greenhouse-gas-emissions-from-electric>.

⁹ Cathy McKittrick, "Clean Air Not a Big Priority for Utah Lawmakers in 2017 Session," *Standard Examiner*, March 12, 2017, accessed September 19, 2017, <http://www.standard.net/Government/2017/03/12/Clean-air-not-a-big-priority-for-Utah-lawmakers-in-2017-session>.

¹⁰ Amy Joi O'Donoghue, "Chevron's S.L. Refinery Will Produce Low-Sulfur Fuel in 2019," *Deseret News*, April 18, 2017, accessed September 19, 2017, <http://www.deseretnews.com/article/865678115/Chevrons-SL-refinery-will-produce-low-sulfur-fuel-in-2019.html>.

¹¹ "DrivingZEV, Sales Section," *A project by GlobalAutomakers*, accessed September 18, 2017, <http://www.drivingzev.com/sales>. The sales site summarizes ZEVs (Zero Emission Vehicles) in every U.S. State for YTD (Year to Date) 2017 and ZEVs sold since 2011. ZEVs sold in Utah are 573 or 0.81% of all cars sold in 2017 YTD.

¹² Data calculated from the official Utah State Tax Commission website, accessed September 16, 2017, <http://tax.utah.gov/econstats/my/new-vehicle-sales>. This web site lists quarterly new motor vehicle sales since 2010, including the first 2 quarters of 2017. It differentiates passenger cars and light trucks.

¹³ Associated Press, "2016 U.S. Auto Sales Set a New Record High, Led by SUVs," *Los Angeles Times*, January 4, 2017, accessed September 19, 2017, <http://www.latimes.com/business/autos/la-fi-hy-auto-sales-20170104-story.html>.

¹⁴ "Salt Lake City Debuts 28 New Electric Charging Stations," accessed September 19, 2017, <http://www.slcgov.com/salt-lake-city-debuts-28-new-electric-vehicle-charging-stations>.

¹⁵ H.C.R. 18, Concurrent Resolution Encouraging Utahns to Consider the Smog Rating When Purchasing a Vehicle, accessed September 19, 2017, <https://le.utah.gov/~2017/bills/static/HCR018.html>.

¹⁶ This is a bipartisan group of members of the U.S. House of Representatives who are exploring options to reduce risks associated with climate change. The Citizens Climate Lobby presents details of this group on its website, accessed September 19, 2017, <https://citizensclimatelobby.org/climate-solutions-caucus/>.

¹⁷ "Utah Fatal Crash Summary 2016," *Department of Public Safety of Utah*, accessed September 16, 2017, <https://highwaysafety.utah.gov/wp-content/uploads/sites/22/2015/02/2016FatalCrashSummary-3.pdf>. This report shows an increase of 30 deaths over the previous 3 year average, with speed the leading contributing factor.

¹⁸ "Causes: A Blanket Around the Earth," *NASA, Global Climate Change*, accessed September 19, 2017, <https://climate.nasa.gov/causes/>.

-
- ¹⁹ Donald Wuebbles, et al., “Climate Science Special Report (CSSR) (Final Clearance, Fifth Order Draft),” *U.S. Global Change Research Program*, June 28, 2017, accessed September 19, 2017, <http://www.nytimes.com/packages/pdf/climate/2017/climate-report-final-draft-clean.pdf?mcubz=0>.
- ²⁰ “Yale Climate Opinion Maps–U.S. 2016”, *Yale Program on Climate Change Communication*, accessed September 19, 2017, <http://climatecommunication.yale.edu/visualizations-data/ycom-us-2016/>.
- ²¹ “Climate at a Glance,” *National Centers for Environmental Information, National Oceanic and Atmospheric Administration*, accessed September 19, 2017, https://www.ncdc.noaa.gov/cag/time-series/us/109/0/tavg/12/1/1895-2017?base_prd=true&firstbaseyear=1901&lastbaseyear=2000.
- ²² Professor Robert Davies, Utah State University, email message to Carrier, July 23, 2017.
- ²³ Perlich, “Utah’s Long-Term Demographic.”
- ²⁴ “Causes: A Blanket Around the Earth.”
- ²⁵ Wuebbles, “Climate Science Special Report.”
- ²⁶ “Environmental Stewardship and Conservation,” *The Church of Jesus Christ of Latter-Day Saints*, accessed September 19, 2017, <https://www.lds.org/topics/environmental-stewardship-and-conservation?lang=eng>.
- ²⁷ See “Carbon Fee and Dividend Policy and FAQs,” *Citizens’ Climate Lobby*, accessed September 19, 2017, <https://citizensclimatelobby.org/carbon-fee-and-dividend/>.
- ²⁸ Ibid.
- ²⁹ “Recommended State Water Strategy.”
- ³⁰ Wayne Wurtsbaugh, et al, “Impacts of Water Development on the Great Salt Lake and the Wasatch Front,” *Watershed Sciences Faculty Publications* (2016), accessed October 23, 2016, http://digitalcommons.usu.edu/wats_facpub/875/.
- ³¹ Gail Blattenberger and Gabriel Lozada, Letter to Governor Gary Herbert from 19 university economics faculty stating their concerns that Utah taxpayers will ultimately be required to pay for 72% or more of the costs to build and maintain the Lake Powell Pipeline (2016), accessed October 23, 2016, <http://utahrivers.org/wp-content/uploads/2016/09/2016-Letter.pdf>.
- ³² “A Performance Audit of Projections of Utah’s Water Needs,” *Office of the Legislative Auditor General*, 2015, accessed October 19, 2016, http://le.utah.gov/audit/15_01rpt.pdf. See also “Recommended State Water Strategy.”
- ³³ Ibid., iii, iv, Fig. 2, 38.
- ³⁴ “Recommended State Water Strategy.”
- ³⁵ Ibid., 1, 5, 26, 70-77.
- ³⁶ Ibid., 21, 81-82.
- ³⁷ “A Performance Audit.” Existing pricing policy for municipal water in most Utah cities does not encourage efficient water use. The use of property tax to subsidize the cost of water reduces customer incentive to conserve. Additionally, the relatively flat pricing structure that characterizes most Utah municipalities provides no incentive to use water efficiently. Many western cities outside Utah use block rate structures that charge consumers substantially higher prices as consumption increases. In contrast, the tiered rate structures in many Utah municipalities entail relatively minor increases in cost that provide little or no incentive to conserve. The city of Orem represents a notable exception, having adopted a tier rate structure in 2016 that does appear to be providing incentive to conserve. Emma Penrod, “Orem Man Threatens to Kill his Lawn if City Doesn’t Cut Its Water Rates”, *Salt Lake Tribune*, September 24, 2017, accessed October 9, 2017, <http://www.sltrib.com/news/environment/2017/09/24/orem-man-threatens-to-kill-his-lawn-if-city-doesnt-cut-its-water-rates/>. For a comparison of various City Water Rates, see “Standing Up For Utah’s Needs, 2016 Report,” 14 (Figure 2), *Utah Citizens’ Counsel*, accessed October 8, 2017, www.utahcitizenscounsel.org.

Public Education

Utah Citizens' Counsel Education Committee

Article 3. All Utahns have the right to a public education that ensures literacy, numeracy, critical thinking, character development, and the capability for responsible citizenship to help secure a promising future for Utah in a complex, interdependent, and competitive world.

Introduction

In previous annual reports, UCC has documented the decade-long loss of at least a billion dollars per year in revenues for public education.¹ There are multiple reasons for the loss: (1) the 2008 elimination of Utah's progressive income tax and replacement with a 5% flat tax rate, (2) the 1996 constitutional amendment that allowed funding shifts from public education to higher education, freeing up sales tax revenue, mostly for more spending on transportation; (3) state property tax cuts to the basic school program, and (4) the recession of 2007-2009, which brought declining income tax revenues. Overall, state spending on public education reflects reduced effort per taxpayer--a reduced percent of personal income spent on public education.² The Utah Legislature has failed to ensure that annual funding remains sufficient not only for enrollment growth and inflation but, of more importance, to retain the kind of support that would keep Utah's public education vibrant and robust and our effort per taxpayer among the best in the country.

This year we are turning our attention to the Our Schools Now (OSN) initiative. If the signatures of somewhat over 113,000 registered voters from across the state³ are gathered by April 15, 2018, the initiative to increase income and sales tax revenues for improvements in public education will appear on the 2018 ballot for public vote. For reasons explained below, we believe that such an initiative is long overdue and very much needed.

The Our Schools Now Initiative

If passed into law, the Our Schools Now initiative would raise an estimated \$700 million per year in new dollars for education, 85% of which would go to public education, and 15% to higher education, including Utah's technical colleges.⁴ The initiative is named the Teacher and Student Success Act. For K-12 education, it stipulates that power will be given to each local education agency (LEA, the local school board) to oversee success plans initiated by each elementary, secondary, and charter school within the LEA boundaries. Each local school board will establish the framework and guidelines for school success plans.⁵ Each local board "may allocate up to 25%" of the new money for teacher salary increases and "may allocate up to 40%" under certain conditions.⁶ Then, each school within an LEA will prepare its own plan. The local board will take over a school's plan preparation only for a school that fails to meet State Board of Education overall ratings of A or B, or yearly 1% performance increases.⁷ Each school may spend the new money in a variety of areas, such as professional development, additional support personnel, software, early childhood education, class size reduction, summer-school programs, and educator "stipends" (additional paid days at the usual rate for a given teacher). Local schools are to determine which services will most enhance the performance of their students.

Higher education funding will also be based on meeting performance improvement expectations. Money may be spent to increase services to underserved populations, to respond to workforce needs, to increase degrees and certificates awarded, and for graduate research.

The initiative will raise the new money by increasing the 5% flat income tax rate by .45% (to 5.45%) and the state sales tax rate by .45% (from 4.7% to 5.15%). (The state sales tax rate on food will not change.)⁸ The income tax rate increase does not reveal what rate most individuals actually will pay in income taxes. Given available exemptions (such as the federal income tax exemption and the \$3000+ exemption per person in a family), the median rate for taxpayers was 2.94% in 2015.⁹ Thus, the income tax for most taxpayers will be less than the rate increase suggests.

Reasons to Support the Initiative and Rebuttal of Opposition Arguments

1) *The initiative is focused on improving the future of the state's economy, and the business community is leading the effort.* The Chamber of Commerce and many corporate CEOs state that businesses will benefit from improvement in public education. They debunk the argument that economic growth will be harmed. They believe such an opposition argument is not supported by economics, nor does it recognize the needs of the business community for a prepared workforce in the future.¹⁰

2) *Increased spending on identified areas of underfunding will help reverse the decline in student proficiency on state and national achievement tests.* When Utah students are compared with students in peer states and when scores are disaggregated by ethnic group, Utah does not perform well. Reports that Utah student achievement is at or above national averages seriously misrepresent our flagging performance.¹¹ Furthermore, achievement scores in the U.S. are nothing to be proud of, as they are far behind other developed countries.¹² When teachers are leaving the profession in record numbers and recruitment is an ongoing problem, the failure to have competitive salaries for teachers, robust professional development, better support services, and class size reduction poses a serious threat to the quality of our teaching profession and the performance of our students.

3) *Accountability to achieve improved student performance is built into the initiative, along with flexibility and local control to meet the different needs of different schools.*¹³ Those who criticize the initiative for lack of accountability seem not to have read the initiative and have not indicated what kind of additional accountability they seek. Over time, if other measures of accountability are documented as effective, they can be introduced into the statute as amendments.

4) *The distribution of funds to schools on the basis of student enrollment is the most feasible way to bring new money into all schools* without developing complex and cumbersome distribution formulas based on difficult-to-measure individual needs at each school. Arguments that the distribution is inequitable ignore the fact that Utah is already better at equalizing tax revenues across school districts than most states.¹⁴ Although achievement gaps remain across ethnic groups, if new money is used in all-day kindergarten, or early reading intervention programs for low-income students and non-native English speakers, it will help reduce those inequities.

5) *Every taxpayer shares in the responsibility to ensure better outcomes for Utah's children.* Arguments that parents with many children should pay more or most of the cost of public

education ignore the fact that Utah stands to lose if we are not ensuring that the future generation will thrive and strengthen our economy. Adults with grown children, few children, or no children have as much at stake in what happens to the educational attainments of all children as parents of many children.¹⁵ Although tax exemptions based on the number of children in a family are arguably too generous to large families, this issue needs to be resolved by the Legislature.

6) *The increasingly diverse populations of our schools require that we respond with increased revenues.* Almost 17% of our students are Hispanic,¹⁶ and the percentage is growing. Hundreds of languages are spoken in our schools, and all children must be taught to perform in English. Children with disabilities have individualized needs that often are not met with existing funds. Early childhood programs need expansion. Poverty affects how much parents are able to teach their children at home; so does the health of parents, the demands of double employment, stress levels, and more. The public school system was created to help all children develop into good citizens, tap their own abilities, and learn skills to prepare them for the future. Arguments that better parenting will solve the school's problems are simplistic; they ignore the role of public education and discount the challenges faced by many parents.

A Charge to the Utah Legislature

The OSN initiative is giving Utah voters an opportunity to show that they understand the critical need to increase investment in the future of all our children. The Legislature must not undermine this investment. If the initiative passes, the Legislature retains a key, indeed critical role: It must not see the new money as a way to reduce its own effort. It must maintain funding for enrollment growth, inflation, and for strengthening the professionalism of teachers and the performance of students. The Legislature should be reviewing the millions of dollars in sales tax loopholes for businesses and the income tax subsidies used to attract new businesses. Its review must be transparent and provide evidence that the subsidies are not giveaways to special interests.

High Quality Preschool Programs

Although preschool programs are among those for which funding under the OSN initiative will be available, such programs are competing with many K-12 programs that will have much support in Utah schools. Nonetheless, we want to keep educators and the public focused on the need to develop more high quality preschool programs because research reveals that these programs are among the best ways to help children disadvantaged by poverty and language differences to be at or near grade level when they enter kindergarten. Early social and academic success in grades K-3 is one of the best predictors of future success in school and life.¹⁷

Two developments affecting kindergarten, however, are worth noting. First, the Utah State Board of Education, collaborating with the Utah School Superintendents Association, completed and will now be implementing a uniform, statewide entry-level assessment of all kindergartners.¹⁸ Development of exit-level assessment is underway. Together these assessments will provide much useful data to assess students' progress in kindergarten achievement.

A second development is a Utah law for a kindergarten "supplemental enrichment" program, House Bill (HB) 168, which expands opportunities for extended-day kindergarten in schools where 10% of the students are from intergenerational poverty families or 50% are eligible for free or reduced lunch.¹⁹ Sixty schools have submitted applications for three-year grants, funded

primarily with federal TANF (Temporary Assistance for Needy Family) funds.²⁰ Research clearly supports the value of extended-day and full-day kindergarten for children at risk.²¹ Thus, HB 168 provides at least a modest opportunity for those most at risk to have enriched programs. Measurement of exit outcomes is anticipated after the 2nd year of operation.

The above programs address only kindergarten. Utah still lags far behind other states in scaling up its preschool programs.²² Moreover, full-day and extended-day kindergartens are still underserving children at risk and are not combined with enough high quality preschool opportunities to predict success in significantly narrowing the achievement gap between students who lack enriched early learning experiences and students who have them. Much more funding will be necessary in the coming years when current funding for pilot preschool programs expires.

Commendations

- **Our Schools Now for the courage to launch an initiative petition** after the continuing failure of the Legislature to raise enough revenue for the public schools
- **The Utah State Board of Education for collaboratively developing and starting to implement screening assessments for all children entering and exiting kindergarten**
- **The Utah Legislature for its passage of Representative Lowry Snow's optional enhanced kindergarten bill**

Recommendations

- **Registered voters, the general public, and the media should support the Our Schools Now initiative**, showing the Legislature that Utahns understand the need to invest more in the education of their children.
- **The Legislature, county government, and private corporations should continue to scale up high quality preschool programs** as the most effective educational means over the long term to help disadvantaged students have a better chance to succeed in school.
- **The Legislature should undertake broad-based tax reform.** The value of a fairer system that can raise sufficient revenue to address multiple problems that government can help solve should be examined without a pre-set ideological requirement of revenue neutrality or otherwise.

Endnotes for Article 3 (Public Education)

¹ Previous Utah Citizens' Counsel Public Education Committee reports have documented this revenue loss. See "Standing Up For Utah's Needs" (2014 and 2015) *Utah Citizens' Counsel*, accessed August 17, 2017, <http://www.utahcitizenscounsel.org/past-annual-reports>. See also "Standing Up for Utah's Needs, 2016", 20-21 (Appendix 1 and Appendix 2), *Utah Citizens' Counsel*, accessed August 17, 2017, <http://www.utahcitizenscounsel.org/wp-content/uploads/2016/12/3.PublicEdFinal2016.pdf>. In addition, the Utah Foundation performed a 2016 analysis and reported similar figures. See Benjamin Wood, "Tax Policies Shortchange Utah Schools \$1.2B a Year," *Salt Lake Tribune*, November 29, 2016, A1. As noted in the article, the Utah Foundation reported that Utah's funding effort "was ranked seventh in the nation in the mid-1990s [but]. . . has since dropped to 37th." *Ibid.*, A4. The full report is entitled "Getting By with Less: Two Decades of K-12 Education Revenue and Spending," *Utah Foundation*, November 28, 2016, accessed December 14, 2016, <http://www.utahfoundation.org/reports/getting-less-two-decades-k-12-education-revenue-spending/>. See also "Easing the Burden: Utah Tax Burden Taking Lowest Share of Income in 20 Years," *Utah Foundation*, January 14, 2015, accessed June 10, 2016, http://www.utahfoundation.org/report_category/taxes/.

² See "Standing Up for Utah's Needs, 2014," 14 (Appendix 2), which documented the decline in personal effort over the past 20 years. See also "Individual Income Tax FY 1931-2015," *Utah State Tax Commission*, accessed September 26, 2016, <http://tax.utah.gov/econstats/history>, for the history of income tax rates over the decades.

³ In 26 of the 29 Utah Senate districts, the signature total must reach 10% of the number of registered voters who voted for President of the U.S. in that district in the last presidential election. The cumulative total of all votes cast by Utah registered voters in that same election must also reach 10%. Utah Code Annotated, 20A-7-201(2)(a) (2011).

⁴ "The Teacher and Student Success Act" (Our Schools Now initiative petition), 63J-1-316, accessed August 10, 2017, <https://ourschoolsnow.com/teacher-student-success-act/>.

⁵ *Ibid.*, 53A-17a-304.

⁶ *Ibid.*, 53A-17a-305(1)(a) and (b).

⁷ *Ibid.*, 53A-17a-307.

⁸ Clarification provided by Austin Cox, OSN Campaign Manager, in an email to D. Huefner, August 23, 2017.

⁹ The median rate means that half of the taxpayers paid more than that rate, and half of the taxpayers paid less. 2015 is the most recent year for which tax data are available. See "Tax Year 2015 Full Year Resident Statistics by AGI Class," *Utah State Tax Commission*, accessed August 26, 2017, tax.utah.gov/esu/income-state/state2015.xlsx.

¹⁰ Lane Beattie, chair of the Salt Lake City Chamber of Commerce, is one of many business leaders who are members of the Steering Committee listed on the OSN website and who have spearheaded the need for increased funding to prepare students for the economic needs of the future. Another is Ron Jibson, retired CEO of Questar, whose op-ed in the *Salt Lake Tribune* urged more investment in educating the future workforce to sustain Utah's economic strength and keep employment opportunities in Utah. Ron Jibson, "Modern Society Demands Excellence in Education," *Salt Lake Tribune*, April 23, 2017, Opinion O6.

¹¹ Although Utah science and reading NAEP (National Assessment of Educational Progress) scores trended up in 2015 and exceeded the national average scores, math scores showed no significant difference and writing scores decreased from prior years. Overall, only in the significantly higher 8th grade science scores did 50% of the students reach proficiency or above, "Nation's Report Card," *NAEP*, accessed August 28, 2017, <https://www.nationsreportcard.gov/profiles/stateprofile/overview/UT>. Although the 8th grade science scores are encouraging, overall the scores are nothing to brag about, and none of the achievement scores show how Utah fares compared to its peer states, which would provide more insightful analysis. Furthermore, on ACT achievement tests, only 59% of Utah's graduating seniors in 2016 met the ACT college readiness benchmark in English, 42% in Reading, 35% in Math, and 33% in Science. See "The Condition of College and Career Readiness 2016," *ACT*, accessed August 26, 2017, <https://www.schools.utah.gov/file/7a7a1789-5545-4f06-a52c-04fb726d346a>. Only 23% met all 4 benchmarks. *Ibid.*, "Utah Key Findings," accessed August 28, 2017, http://www.act.org/content/dam/act/unsecured/documents/state45_Utah_Web_Secured.pdf. Moreover, overall scores obscure the discrepant, lower scores achieved by lower income and minority students. Our point is that even relatively good standardized test results mask the risk that too many postsecondary students will not meet the growing need for a sufficiently talented labor pool in the coming years.

¹² Student achievement data from OECD (Organization for Economic Cooperation and Development) in 2015 show the United States 18th in reading, 36th in math, and 23rd in Science among the 44 countries (Hong Kong, Singapore,

Macau and Taiwan are counted as countries). Randomly selected 15-year-olds in the 44 countries were tested using PISA (Program for International Student Assessment). "OECD Data," accessed August 26, 2017, [https://data.oecd.org/education.htm#profile-International student assessment \(PISA\)](https://data.oecd.org/education.htm#profile-International%20student%20assessment%20(PISA)).

¹³ "Teacher and Student Success Act," 53A-17a-306.

¹⁴ Utah's income tax revenues are equalized across school districts based on the same weighted pupil unit (wpu) per student enrolled in Utah schools. Also, the basic state property tax rate was increased in 2015 (first increase to offset inflation since 1996) to help equalize the value of the property tax revenues raised by rich and poor districts. See SB 97, accessed August 28, 2017, <https://le.utah.gov/~2015/bills/static/SB0097.html>. For more explanation, see Morgan Jacobsen, "House Approves \$75 Million Property Tax Increase to Equalize School Funding," *Deseret News*, March 11, 2015, accessed August 26, 2017, <http://www.deseretnews.com/article/865624014/House-approves-75M-property-tax-increase-to-equalize-school-funding.html>.

¹⁵ One of the early expressions of this conviction came from John Dewey in 1907: "What the best and wisest parent wants for his own child, that must the community want for all of its children. Any other ideal for our schools is narrow and unlovely; acted upon, it destroys our democracy.... Only by being true to the full growth of all the individuals who make it up, can society be true to itself." John Dewey, *The School and Social Progress*, (Chicago: University of Chicago Press, 1907), 19-20.

¹⁶ "District Counts and State Totals by Demographics, October 1, 2016," *Utah State Board of Education (USBE)*, accessed August 26, 2017, <https://www.schools.utah.gov/data/datareports>. As of the beginning of the 2016-17 school year, 26 % of students were classified as ethnic minority students (Native American, African American, Asian, Pacific Islander, Multi-race, and Hispanic). Thirty-five percent were classified as low-income and six percent as English language learners.

¹⁷ See "The State of Preschool 2016," *National Institute for Early Education Research (NIEER)* for an executive summary of what is happening across the country, accessed August 26, 2017, http://nieer.org/wp-content/uploads/2017/08/Executive-Summary_8.21.17.pdf. NIEER notes that some research results vary, along with the quality of preschools in the states. See also "The Research on Pre-K," *Center for Public Education*, accessed August 26, 2017, <http://www.Centerforpubliceducation.org/Main-Menu-Pre-kindergarten/Pre-kindergarten>, for an examination of short-term and long-term benefits of pre-K programs.

¹⁸ The new assessment is referred to as KEEP (Kindergarten Entry and Exit Profile). In July 2017, the Utah State Board of Education adopted changes to Rule 277-489, incorporating the mandatory pre- and post-K assessments. Jennifer Thronsdon, USBE, PreK-12 Literacy Coordinator, emails to D. Huefner, May 8, 2017 and August 27, 2017.

¹⁹ Utah Code Annotated, 53A-15-2001-2003 (2017).

²⁰ D. Huefner, Notes from meeting of UCC Public Education Committee members with Jennifer Thronsdon, May 2017. The federal TANF funds are not ongoing and the currently available funds are being depleted.

²¹ One study is "Starting Out Right: Pre-K and Kindergarten at a Glance," *Center for Public Education*, February 2012, accessed September 25, 2016, www.centerforpubliceducation.org/Main-Menu-Organizing-a-school/Starting-Out-Right-Pre-K-and-Kindergarten. As we reported last year, the study found even higher gains for children who attended both pre-K and half-day kindergarten than for those who attended only full-day kindergarten.

²² Utah is still one of only seven states without any state-funded pre-K programs. "The State of Preschool 2016," *NIEER*, accessed August 27, 2017, http://nieer.org/wp-content/uploads/2017/08/Executive-Summary_8.21.17.pdf.

Health

Utah Citizens' Counsel Health Committee

Article 4. All Utahns have the right to comprehensive, quality health care at reasonable cost, and responsible societal efforts to help them achieve and maintain optimal well-being, with appropriate initiatives that encourage and facilitate healthy living and the prevention of disease, disability, and injury.

Introduction

The uncertainty in national health policy is increasing, and so are concerns about how costs are distributed and how costs affect access to and quality of health care. Utah and the nation face these concerns while hobbled by health care costs that nationally are nearly twice that of other advanced nations.¹ These costs, moreover, do not buy better health; health in the U.S. falls well below that in comparable nations.² Utah does better than the rest of the U.S., but not as well as most advanced nations. Utah can do better still, and by doing so can improve its economy and quality of life while also contributing to national progress.

The next few years will test whether we will improve health while we control costs. Ongoing uncertainty in health care markets, heightened by political threats and inaction, intensifies concerns about federal costs.³ These, in turn, increase uncertainties for states, insurers, employers, and individuals and threaten insurance coverage. How might Utah respond to the national uncertainty and the needs for better health care? Our first theme this year is whether Utah will be a leader in positive change, or will wait, and perhaps be limited by external events.

A second theme builds upon the references in our previous reports to the “Health Field Concept”⁴ and “health determinants.” These concepts enlarge the scope of health care study and policy. They go beyond medical care, for example, to include pollution control in seeking individual well-being and population health. This second theme encourages public health programs and patient engagement, and explores links between health and the other programs assessed by the Utah Citizens’ Counsel.

A third theme is Utah’s continuing failure to accept the expanded federal funding offered by the Affordable Care Act for Medicaid.⁵ This failure unfairly hurts our disadvantaged citizens and unreasonably restricts Utah’s economy.

The Situation: Indicators, Observations, and Interpretations

Overall Measures of health and health care include those measures 1) focusing upon the health of the population and 2) those focusing upon the performance of health care systems.

An established assessment focusing on population health is the United Health Foundation’s *America’s Health Rankings*. The latest edition ranks Utah 8th best in the nation using their 34 health determinants and outcomes. Utah traditionally ranks well, first in the nation during the ‘90s but moving lower in rankings since then, slipping to 7th and now 8th in the last two reports.⁶ The 2016 edition “highlights” five Utah trends. Three are negative (physical inactivity of adults;

Salmonella incidence; and disparity in health status by level of education), and two are positive (HPV immunizations of young males and preventable hospitalizations). In the four general categories that group the 36 measures, Utah ranks number 1 in “Behaviors”--a reflection of life styles. In the “Outcomes” category, which groups 8 measures, Utah ranks number 3, reflecting quality of care and demographic factors such as a younger population and less poverty.

A Commonwealth Fund annual report, now in its fifth year, concentrates upon health care systems. With the most recent comparable data, it uses 100 indicators for 2014 and 2015 to assess the present, and the same indicators two years earlier to assess trends.⁷ Overall, Utah ranks high at 15th, but was 12th two years earlier, again slipping a bit.⁸ The report estimates potential improvement by calculating the change if Utah were to match the state with the best rate for specific indicators. That calculation would result in giving 313,506 more adults a source of coordinated care; 9,525 more children vaccinations; 4,912 fewer patients unsafe medications; 199 patients the life they prematurely lost; and 2,548 fewer patients making costly and stressful emergency department visits.

Access continues to be a challenging problem for Utah, keeping the state’s national ranking below where it could be. Although Utah increased the income cap for parent eligibility for Medicaid to 60% of poverty,⁹ the failure to adopt Medicaid expansion under the Affordable Care Act wasted an opportunity to improve low-income residents’ access to care and to reduce their financial burdens. It also missed major opportunities to support the state’s economy and health care providers. The minimal expansion proposal passed in 2016 still lacks federal approval.¹⁰ Although it would address some important public policy needs, it is an incomplete and expensive approach, using traditional, rather than enhanced, federal financial support.¹¹ Additionally, newly proposed time limits and work requirement amendments dampen access for the new populations that critically need coverage, and set a problematic precedent for Utah’s Medicaid program. Recent national studies find that increased coverage itself helps recipients gain employment, health care, and health status.¹² As said in last year’s report,¹³ the expansion proposal fails to address the unfairness of our health care policies for the uninsured or to capitalize on the fact that Medicaid expansion improves cost management and total population health.

Cost is a pressing challenge, deepened by national political failures that stymie essential progress. A recent analysis of spending for personal health care ranks Utah as the state with the least expenditures per person: \$5,982 per year, which is 74% of the expenditure per person for the nation as a whole--\$2,023 per person less than the national average.¹⁴ How satisfactory is that for Utah? We know, but cannot well quantify, that Utah should have low costs because of such advantages as healthier life styles, younger populations, lower poverty rates, and higher levels of education. Perhaps with these advantages Utah should do even better when compared to the rest of the nation.

The huge gap between U.S. costs and costs in other highly developed countries also sheds light on Utah’s need and capacity to do better. A 2017 Commonwealth Fund study comparing health care in the U.S. with ten other economically advanced nations ranks the U.S. last overall and “last in Access, Equity, and Health Care Outcomes, and next to last in Administrative Efficiency as reported by patients and providers. Only in Care Process is the U.S. performance better, ranking fifth.”¹⁵ OECD data for 2014 show that in comparing *costs* the U.S. is an even more

distant outlier. U.S. health expenditures as a percent of GDP (a measure of national economic burden) are 17.2%, while the other nations range from 9.0(Australia) to 11.8% (France).¹⁶ Using health expenditures in dollars per person, for comparisons at the individual level, U.S. costs are \$9,364, while those of the other ten nations range from \$4,038 (New Zealand) to \$6,787 (Switzerland).¹⁷ To summarize, U.S. expenditures are generally over 50% higher as a national burden and nearly 100% higher in costs per person.

With these symptoms,¹⁸ what might be the diagnosis? Two crucial concerns are that:

1. Outsized health care costs¹⁹ relate to our poor comparative health, and they undermine the nation's economic, civil, and international security.²⁰
2. The structure of the health care financing and delivery systems, with stubborn inefficiency²¹ and perverse incentives, carry much responsibility for outsized costs.²²

Congressional politics, restraining domestic expenditures but influenced by lobbyists protecting existing institutions, shifts federal costs by lowering patient benefits and raising non-federal costs. This ignores analyses showing that present institutional structures and incentives encourage expenditures that reduce quality.²³ Can we manage, rather than shift, costs and simultaneously improve quality?

Quality in Utah, like costs in Utah, is among the nation's best. If Utah sought to be the best on each Commonwealth indicator, would such a goal be adequate or should Utah go further? Nationally, are the nearly 200,000 deaths from medical errors evidence of the need for higher goals? The reviews of U.S. health care by the Institute of Medicine two decades ago and the critical assessments this year from within the health care industry say yes.²⁴

The recent assessments reach beyond this year's political stalemate, which pits cost management against health benefits. The assessments shift the targets to changes in organizational structure and in incentives that improve quality while reducing costs.²⁵ These systemic solutions have huge possibilities and require huge effort, for a health care industry representing a sixth of the national economy and for professions having particular respect. Although such effort inevitably engages national politics, states have opportunities while waiting for the nation to find its role. There are possibilities in (A) public health programs, (B) health determinants, and (C) patient engagement.

A. The Utah Department of Health and local health departments carry responsibilities for public health programs. Most are inadequately funded, inadequately understood, and inadequately appreciated. They prevent disease and accidents. They evaluate, regulate, and fill gaps in medical care. In these roles, the Utah Department of Health tracks 15 indicators of healthy lifestyles. The indicators confirm the national reports that rank Utah high, sometimes highest, in lifestyle, though not in mental health, drug usage, and accidents. They suggest Utah can do better in each measured concern.²⁶ These and other measures²⁷ identify and develop prescriptions for decreasing health problems. The opportunities to do better go beyond financial support to promoting leadership, through public and private institutions, and promoting understanding and support for disease prevention and health promotion. The focus on prevention, though more beneficial in terms of costs, comfort, and consequences, is less adequately supported in budgets and leadership priorities than is medical care that treats problems not prevented.

B. Many opportunities to improve health come from the impact of other programs on health, a perspective developed within the “health field concept”²⁸ and from the related focus upon “social determinants of health.”²⁹ Examples relating to other sections of this UCC report include:

- UCC's “Environmental Health” and “Health” reports relate in many ways. Presently the Environmental Health report suggests a “fee and dividend” approach to resource development that fairly shares burdens and advantages and could build local support for the physical and behavioral health of communities supporting extractive industries.
- UCC's “Personal Security” and “Health” reports also relate in many ways, such as in understanding the health implications of gun violence. Research about the use of guns is restricted by the politics of gun control, a matter worth attention in order to address this major cause of deaths and disabilities, especially serious among young people.³⁰

C. Two challenging components of managing the quality and cost of health are engaging individuals in healthy behaviors and educating them to participate more effectively in their medical care. The Utah Department of Health’s “Healthiest People” progress report³¹ identifies programs associated with each health indicator. This could be a path to building new levels of individual responsibility for health care.³²

Commendations

- Utah's ranking, with some slippage, generally **among the best five states for healthy lifestyles, avoidable hospitalizations, medical outcomes, and health care costs.**
- Utah's increasing **capabilities for health-related research and administration by governments, universities, and private institutions to improve the economy and health of the state and nation.**
- Utah's **increase of the income ceiling for Medicaid eligibility for parents to 60% of poverty.**

Recommendations

- **Utah should move aggressively to extend coverage for Medicaid and other health needs to low-income individuals.** Specifically, Utah should seek the fullest possible Medicaid expansion under the Affordable Care Act.
- **Public health programs of state and local governments should be actively supported** through increased financing, public leadership, and public understanding.
- Utah should seek and exploit opportunities to use other programs, such as those pursuing environmental quality and securing personal security to **strengthen determinants of good health.**

In summary, Utah should, without waiting on national politics, pursue improvement of access, costs, and quality, by seeking solutions in which these goals are mutually supportive, rather than competitive.

Endnotes for Article 4 (Health)

¹ Comparable nations of the Organization for Economic Cooperation and Development (OECD).

² In general, these measures and comparisons have not greatly changed in the last year. Compare with "Standing Up for Utah's Needs, 2016 Report," 22, *Utah Citizens' Counsel*, accessed August 2017, <http://www.utahcitizenscounsel.org/>.

³ "H.R. 1628, Better Care Reconciliation Act of 2017," *Congressional Budget Office*, accessed August 2017, <https://www.cbo.gov/publication/52849>.

⁴ Marc Lalonde, *A New Perspective on the Health of Canadians: A Working Document*, (Ottawa: Department of National Health and Welfare, 1974).

⁵ "Standing Up for Utah's Needs, 2016 Report."

⁶ "America's Health Rankings, 2016" *United Health Foundation*, accessed July, 2017,

<http://assets.americashealthrankings.org/app/uploads/ahr16-complete-v2.pdf>, 134; also

http://www.americashealthrankings.org/explore/2016-annual-report/measure/PH_Spending/state/UT, The table below provides examples of categories and the Utah ranking in the categories. The rankings focus on measures of health, rather than measures of health systems, i.e., the professionals, hospitals, insurers, and others directly providing health care.

Determinant Category	Number of Measures	Utah's Rank	Example Measures (determinants and outcomes)	Utah's Rank
Behaviors	6	1	Adult Obesity	6
Community and Environment	8	15	Air Pollution	41
Policy	8	44	Immunizations, Children 19-35 Months	42
Clinical Care	4	16	Preventable Hospitalizations	2
Outcomes	8	3	Diabetes	2

⁷ "Commonwealth Fund Scorecard on State Health System Performance, 2017," *Commonwealth Fund*, accessed October 5, 2017,

http://www.commonwealthfund.org/~media/Files/2017%20State%20Scorecard/Utah_final.pdf?_ga=2.49272742.1892333477.1501098133.false.

⁸ The table below provides the categories and the Utah rankings in the categories:

Dimension Category	Number of Indicators	Utah's Rank (2015/2013)	Example Indicators	Utah's 2015 Rank
Access and affordability	6	15/12	Adults 19-64 uninsured	6
Prevention and treatment	18	40/37	Unsafe medications	31
Avoidable hospital use and cost	10	3/3	Potentially avoidable E.D. visits	2
Healthy lives	11	4/3	Deaths amenable to health care	6
Equity	35	18/10	Low income uninsured, ages 19-64	31

⁹ "What's New," *Utah Department of Health, Medicaid*, accessed September 21, 2017, <https://medicaid.utah.gov/whats-new>.

¹⁰ "Medicaid Adult Expansion Overview, May 2016," *Utah Department of Health, Medicaid*, accessed September 4, 2017, <http://health.utah.gov/medicaidexpansion/pdfs/MedicaidAdultExpansionOverview.pdf>. The State requested several amendments to its existing 1115 waiver. The waivers would allow the state to provide Medicaid to adults, ages 19-64, without dependent children, who have gross income less than 5% of the federal poverty level (FPL) who also meet the following criteria, listed by priority to be used if state appropriation cannot cover eligible applicants:

1. Chronically homeless
2. Involved in the justice system AND in need of substance use or mental health treatment
3. Needing substance abuse or mental health treatment

The plan would also make several other program changes, among them a waiver to allow for medically necessary residential treatment services for individuals with substance use disorders.

An executive action this year, based upon the same legislation authorizing the 1115 application, increased the income eligibility limit for parents of dependent children up to 60% of the FPL.

¹¹ The UCC has the same comments as in last year’s report. Some members of the Utah Legislature expressed concern that the enhanced financing provided under the ACA (Affordable Care Act, also referred to as “ObamaCare”) for the Medicaid expansion population will be withdrawn. This is possible, but as Congressional action over the year shows, very difficult. It is a risk Utah takes in accepting any federal financial support: for highways, water, education, law enforcement, defense, etc. Budgeting involves difficult tasks that the public expects legislators to perform with fairness and intelligence, capabilities ignored in denying Medicaid expansion.

The financial benefits of Medicaid expansions are coming more into focus as states gain more experience. Legislatures and governors have sponsored studies of the expansion programs, and other independent studies have been undertaken. Even though enrollment is higher than expected in many states, these studies still generally show positive economic benefits to the states. State experiences differ because states differ in program and implementation. We suggest that topics to which Utah should give further consideration are 1) how the ongoing efforts to improve existing Medicaid programs can save state dollars and 2) how the infusions of additional federal money for full Medicaid expansion (a 90% federal contribution rather than the approximately 70% of regular Medicaid) compare with the economic returns of other state programs. A discussion by Sven Wilson of the potential multiplier effects of Medicaid expansion concludes that the direct benefits are so high that “*indirect*” benefits are hardly needed to tip the balance in favor of Medicaid expansion.” Sven E. Wilson, “Economic Perspectives on Utah Medicaid Reform under the ACA,” 28-29, *Utah Department of Health, Medicaid*, accessed October 5, 2017, <https://medicaid.utah.gov/Documents/pdfs/MedExpansionOption/EconomicPerspectives.pdf>.

¹² “Ohio Medicaid Group VIII Assessment: A Report to the Ohio General Assembly,” accessed July 30, 2017, <http://medicaid.ohio.gov/Portals/0/Resources/Reports/Annual/Group-VIII-Assessment.pdf> and Drew Altman, “No, Medicaid Isn’t Broken,” accessed July 30, 2017, <https://www.axios.com/no-medicaid-isnt-broken-2404950733.html>

¹³ “Standing Up for Utah’s Needs, 2016,” 22.

¹⁴ David Lassman, et al., “Health Spending By State 1991-2014: Measuring Per Capita Spending by Payers and Programs,” *Health Affairs* 36(2017), 1318-27. The primary source of comparative expenditures data in the U. S. is the federal CMS (Centers for Medicare and Medicaid Services). *Health Affairs* pays special attention to reporting and analyzing these data. Other low-expenditure states are Georgia, Arizona, Nevada, Colorado, Idaho, and Texas (ranging from \$6,587 to \$6,998). Highest are Alaska, Massachusetts, Delaware, Vermont, North Dakota, and Connecticut (ranging from \$11,064 to \$9,859). ¹⁴ These expenditures are for 2014. Utah holds its ranking and proportion throughout the 11 year period of the study, with annual rates of increase below the national average for 2004-2009 (4.8% v. 5.2%) and again for 2010-2013 (2.6% v. 2.8%). Health care, however, is in a significant, and uncertain, state of change. The comparable cost figures available for this study include only the first year of the ACA implementation (2014), and Utah experienced a relative rate of change higher than the nation in general (5.7% v. 4.4%), which may warn that Utah has difficulty keeping up with the national policy and program changes.

¹⁵ Eric C. Schneider, et al, “Mirror, Mirror 2017: International Comparison Reflects Flaws and Opportunities for Better U.S. Health Care,” *Commonwealth Fund*, accessed September 19, 2017, <http://www.commonwealthfund.org/interactives/2017/july/mirror-mirror/>. The 11 nations included are:

	\$/person	% of GDP
New Zealand	\$4,038	10.9
United Kingdom	\$4,094	10.2
Australia	\$4,207	9.0
France	\$4,620	11.8
Canada	\$4,728	10.5
Germany	\$5,119	11.0
Netherlands	\$5,227	10.9
Sweden	\$5,306	11.7
Norway	\$6,432	9.3
Switzerland	\$6,787	11.4
United States	\$9,364	17.2

These and other comparisons are crude (e.g., definitions differ and comparisons make few adjustments for the differences in the relative advantages and burdens between nations, such as differences in age distributions). The

future may produce more consistency and adjustments for such comparisons. However, even present comparisons are stark enough to be meaningful. Utah's costs, in spite of Utah's special advantages such as the age and life styles, eliminate only half the difference between the expenditures in the U.S. and those in other developed nations. Still, Utah's lower costs in the U.S. are a large advantage for the state's quality of life and economic competition, and provide guidance for other states as well as a base for further improvements in Utah.

¹⁶ "International Health Care System Profiles, Percentage of GDP Spent on Health Care, 2014," *International Commonwealth Fund*, accessed Sept. 19, 2017, http://international.commonwealthfund.org/stats/percentage_gdp/.

¹⁷ "International Health Care System Profiles. Health Care Spending per Capita," *International Commonwealth Fund*, accessed September 19, 2017, http://international.commonwealthfund.org/stats/spending_per_capita/

¹⁸ Growing dissatisfaction with the cost and quality of U.S. health care produces a growing number of increasingly critical assessments. Provocative analyses include two Institute of Medicine reports from the turn of the century, which, incidentally, were strongly influenced by Utah experience and analysis. Linda T. Kohn, Janet M. Corrigan, and Molla S Donaldson (eds.), *To Err Is Human: Building a Safer Health System*, (Washington: National Academy Press, 2000); Institute of Medicine Committee on Quality Health Care in America, *Crossing the Quality Chasm: A New Health System for the 21st Century*, (Washington: National Academy Press, 2001).

In 2017, two new assessments, independent of each other, draw upon the experience of physician-leaders in the Kaiser Foundation and in the Kaiser Permanente medical group. They show contrasts and similarities in the evolution of assessments. They show growing impatience with costs and quality of health care, and yet a consistency with the IOM reports that the promising solutions find complementary connections between concerns for quality and for cost. These are concerns that couple two basic public purposes rather than the concerns that politically seek compromises between the financial purposes of multiple private interests. Elisabeth Rosenthal, *An American Sickness: How Healthcare Became Big Business and How You Can Take It Back*, (New York: Penguin Press, 2017); Robert Pearl, *Mistreated: Why We Think We're Getting Good Health Care—And Why We're Usually Wrong*, (New York: Public Affairs, 2017).

¹⁹ Some often cited causes of excessive expenditures are that:

Competing private insurers spend over 10% more than public insurance for overhead that pays for the labor-intensive process of limiting the number of costly enrollees and benefits.

Providers have comparable overhead expenditures to deal with the red tape insurers require while seeking such savings.

More than a third of actual medical procedures are unnecessary or even harmful.

Line-item billing ignores proven efficiencies of competent medical management.

Excessive testing and delays result from poor coordination between providers or excessive concerns about documentation.

Drug makers use exploitative pricing.

For a further listing see Pearl, *Mistreated*, and for a longer and more strongly worded recitation, see Rosenthal, *An American Sickness*.

²⁰ The extra share of the GDP taken by health care in the U.S. (5% to 8% more than comparable OECD countries), is equivalent to a 5-8% tax on *all* U.S. production. This tax undermines economic security by increasing the cost of living, creating a competitive disadvantage for U.S. production of goods and services. This economic burden rivals that of the nation's expenditures for national defense. This burden combines with lack of affordable access to health care to threaten civil security, i.e. "domestic tranquility." Combining the threats to economic and civil security undermines foreign respect for the real and perceived ability of the U.S. to finance and sustain international military and economic influence.

²¹ The Post WWII evolution of health care, from a professional to a financially competitive organizational culture, ironically separated the providers and their pricing from the financial burdens of their consumers. This is especially destructive of an effective market when the product is highly technical and uncertain, difficult to judge, and primarily understood by the provider--on whom the consumer depends for guidance.

²² Markets should be appropriate and efficient allocators of resources, made so by establishing incentives that result in constructive behaviors. There's the rub. Originally, BlueCross and BlueShield established health insurance to share the (high and highly uncertain) risks of sickness and accidents. "Community rating" achieved this by setting premiums based upon actuarial assessments of the average health care needs in the community where the plan operated. However, when insurance evolved to multiple and competitive plans within a community, it gave a competitive advantage of lower premiums for an insurer that rated premiums on the experience of costs for a relatively healthy subset of the population (e.g., by enrolling persons who were younger, or in less dangerous occupations, or having healthier lifestyles). Such competition soon forced other plans to replace community rating

with “experiential rating.” Competition also produced an incentive to write benefit plans to discourage enrollment by, or full coverage of, persons with high health risks. The primary determinants of an insurer’s success became the ability to avoid enrolling those most needing care and to avoid covering the expensive care for those it did enroll. Thus the strongest incentive for insurance that was meant to share risk is to avoid caring for those with the highest risk: in any given year the 5% of the population is responsible for half of the health care costs, or the 2% responsible for a third of the costs, or the 1% responsible for a quarter of the costs.

²³ Kohn, *To Err Is Human*; Institute of Medicine, *Crossing the Quality Chasm*; Rosenthal, *An American Sickness*; Pearl, *Mistreated*.

²⁴ Ibid.

²⁵ Ibid.

²⁶ From, or calculated from, Utah Department of Health, Utah Health Status Update: “Utahns Becoming the Healthiest People in the Nation—Progress Review,” December, 2016, accessed August 4, 2017,

https://ibis.health.utah.gov/pdf/opha/publication/hsu/2016/1612_HealthiestPeople.pdf

Indicator	Rate as % of population age adjusted		Percentage change over two years of most recently available rates
	2011	2015	
Smoking, Adolescents	5.2	3.4	* Better by 34.6%
Smoking Adults	11.3	9.1	* Better by 17.7%
Physical Activity, Adults	56.1	55.6	Worse by 0.9%
Physical Activity, Adolescents	18.7	19.9	Better by 6.4%
Obesity, Adult	25.0	25.0	No Change
Obesity, Adolescents	7.5	9.6	Worse by 28.0%
Binge Drinking, Adult	11.3	11.5	Worse by 1.8%
Chronic Drinking, Adult	4.1	3.7	Better by 9.8%
Alcohol Use, Youth	11.2	8.6	* Better by 23.2%
Marijuana Use, Youth	7.0	6.9	Better by 1.4%
Depression, Adult	21.8	20.8	Better by 4.6%
Suicide Risk, Youth	7.8	13.5	* Worse by 76.0%
Suicide Attempt, Youth	5.1	7.6	* Worse by 49.0%
Drug Overdose & Poisoning	**19.5	NA	Comparison not available
Unintentional Injury Deaths	**42.9	NA	Comparison not available

* Changes great enough to be statically significant.

** Rate per 100,000 population

²⁷ A significant data set at the Utah Department of Health is the “Utah All Payer Claims Data” providing detailed and ongoing data about health care costs, conditions, and treatments. Progress report at Utah Department of Health (January 2016) “Utah Health Status Update: Healthcare Cost in Utah: Brief Summary of the 2014 Utah All Payer Claims Data,” accessed Sept. 18, 2017, https://ibis.health.utah.gov/pdf/opha/publication/hsu/SE01_APCD.pdf.

Comprehensive guide to Utah Department of Health data is available at the web site: <http://stats.health.utah.gov/>.

²⁸ Utah Citizens’ Counsel, *Standing Up for Utah’s Needs*, 2016, 23-24.

²⁹ “Social Determinants of Health,” *Wikipedia*, accessed August 2017, https://en.wikipedia.org/wiki/Social_determinants_of_health.

³⁰ Rita Rubin, “Tale of 2 Agencies: CDC Avoids Gun Violence Research But NIH Funds It,” *JAMA* 315 (2016), 1689-1692. Todd C Frankel, “Why the CDC Still Isn’t Researching Gun Violence, Despite the Ban Being Lifted Two Years Ago,” *The Washington Post*, accessed September 23, 2017, https://www.washingtonpost.com/news/storyline/wp/2015/01/14/why-the-cdc-still-isnt-researching-gun-violence-despite-the-ban-being-lifted-two-years-ago/?utm_term=.689193292c4f. Meredith Wadman, “NIH Quietly Shelves Gun Research Program,” *JAMA* 357 (2017), 1082.

³¹ Utah Department of Health, “Utahns Becoming the Healthiest People. . .”

³² Pearl, *Mistreated*; Rosenthal, *An American Sickness*.

Personal Security

Utah Citizens' Counsel Personal Security Committee

Article 5. All Utahns have the right to security of person, especially freedom from physical harm and psychological abuse, whether experienced within the family or in the community at large.

Introduction

Our 2016 Personal Security Report focused on domestic violence-related homicides, and the prominent role of guns in such murders as well as suicides. Utah's rate of domestic violence-related homicides remained significantly higher than the national rate, although use of the Lethality Assessment Protocol by law enforcement helped reduce those numbers. Concerns about ineffective rape policies focused on the under-testing of rape kits, lax campus rape protocols, Utah's failure to join the Prison Rape Elimination Act, and failure to enact an enforceable hate crimes law. This 2017 report updates these issues and adds examination of the role of dating violence and the debate over gun legislation.

Domestic Violence and Guns

The presence of a firearm during a domestic dispute boosts by five times the likelihood of a woman's homicide.¹ Despite its low overall homicide rate, Utah's domestic violence-related homicides account for 42% of total homicides, compared with a 30% rate nationally. Firearms were the source of nearly 60% of Utah's domestic violence-related homicides (2010-13), and nearly 40% of the murderers had a domestic violence record.² Federal law requires that anyone under protective orders or with a domestic violence record shall not possess or purchase firearms,³ but states rarely enforce it. House Bill (HB) 206, sponsored by Representative Brian King, aligns Utah law with federal law, and thus helps ensure its enforcement.⁴

Substantial progress against domestic violence-related homicides has been achieved through the adoption of the Lethality Assessment Protocol (LAP). When LAP-trained police officers arrive at the scene of a domestic violence incident, they administer LAP's 11-point questionnaire. If it indicates a high level of danger, officers immediately put the victim in contact with a domestic violence shelter. Since July 2015, LAP has been adopted by 46 Utah police departments and employed in over 4000 situations. The Utah Domestic Violence Coalition reports that 3/4 of the questionnaire outcomes classified victims as 'high risk,' and that nearly half of those individuals took advantage of the offered services.⁵

In addition to the use of LAP, domestic violence-related murders would be further reduced by expanding the legal definition of victims of domestic violence beyond biological parents, co-habitants, and married or divorced couples. **Dating conflicts account for 25% of violence between intimate partners, yet violence or threatened violence against romantic partners is not treated as domestic violence** and fails to receive the same level of response by law enforcement.⁶ Ned Searle, director of the Office on Domestic and Sexual Violence, calls for Utah's adoption of the more inclusive federal intimate partner classification, which also includes "a person who has been in a social relationship of a romantic or intimate nature with the abuser..."⁷ Such a Utah law would not only mirror federal law but create symmetry with HB 50

(2013), which extended protective orders to cover those who are, or have been, in a dating relationship. It would also enhance police authority to handle such situations.⁸

Criticism of police occurred when a Sandy woman and her son were recently killed after informing police of her ex-boyfriend's threatening behavior. Her 911 call included allegations of stalking and text messages from him that referenced his guns and included pictures of her children. She gave his name to police, who told him to stop contacting her. Police suggested that she apply for protective orders, but the killings occurred before the woman completed the requisite paperwork. The police chief said that, unlike domestic violence cases, officers were not required in dating conflicts to conduct an interview with the accused and possibly arrest him.⁹

A study in the *American Journal of Medicine* found that Americans were ten times more likely to die from firearms than citizens in 22 other highly developed nations. The authors conclude that "firearms are killing us rather than protecting us."¹⁰ However, the National Rifle Association (NRA), despite evidence to the contrary, advocates that citizens should arm themselves rather than consent to the regulation of guns or gun ownership."¹¹

Governor Gary Herbert vetoed a 'permitless carry' bill in 2013 that would have allowed anyone to carry a concealed firearm without a required test. It would have superseded the current 'concealed carry' law and thus ended the mandatory background checks supported by 80% of Utahns.¹² Utah's Bureau of Criminal Investigation (BCI) confirmed that 342 'concealed carry' permits were denied in 2015-16 due to domestic violence convictions or protective orders. In 2016 alone, 1,583 'concealed carry' permits were denied and 1,630 revoked because background checks revealed issues "from outstanding warrants to mental illness to drug offenses."¹³

Opposing views of preventing gun violence were on display during the 2017 legislative session. Despite growing success in other states,¹⁴ two 'permitless carry' bills were rejected in Utah's 2017 session. Governor Herbert's threatened veto apparently killed HB 112. HB 237, a revised version of HB 112, would have added a ban on carrying firearms for anyone convicted of domestic violence or under certain protective orders. Unexpected pushback from the NRA sank the bill, apparently because it allowed a penalty enhancement--a class A misdemeanor--for carrying a firearm, whether used or not, by such a person during a domestic violence incident. One of the sponsors promises another attempt for 'permitless carry' in the 2018 session.¹⁵

During the same session, the 2017 Legislature expanded access to firearms. Despite concerns stemming from teenage immaturity and suicide patterns, age eligibility for 'concealed carry' permits was lowered in HB 198 to include 18-21 year-olds.¹⁶ The sponsor's rationale mirrors the NRA perspective--access to firearms would allow college-age women to legally and effectively resist rape.¹⁷

Rape Kits and Campus Rapes

Rising attention to the low numbers of convictions in reported rape cases and the backlog of untested rape kits resulted in the "truly revolutionary" new reality created by HB 200.¹⁸ Every rape kit must be submitted by local law enforcement to the state crime lab within 30 days; forensic testing must be completed within a time frame to be determined administratively; and victims must have access to a tracking system.¹⁹ The \$2.4 million fiscal note was intended to fund new personnel to manage the additional lab work, design the tracking system, and train

police officers. Because only half the sum was appropriated, the bill's sponsor, Representative Angela Romero, confirmed plans to request the other \$1.2 million in 2018.²⁰

The newly inaugurated Unified State Laboratory will facilitate the processing of rape kits with the added benefits of advanced technology, robotics, and additional personnel.²¹ Grant money should close out the backlog of rape kits within a year.²²

Under the Obama Administration, the Title IX Office for Civil Rights (OCR) began to investigate sexual assault complaints on college campuses because the institutions themselves were rarely addressing or even acknowledging them.²³ The *Salt Lake Tribune* received a Pulitzer Prize for revealing victims' stories that exposed Brigham Young University's policy of prioritizing its Honor Code over addressing sexual assault complaints, and Utah State University's failure to pursue multiple sexual assault complaints against a student-athlete.²⁴

After a months-long study by an internal advisory council on campus response to sexual assault, BYU accepted all the council's recommendations. Most importantly, an 'amnesty clause' will now result in suspension of the University's Honor Code regarding the student's own conduct arising from a specific sexual assault complaint.²⁵ USU's in-house report proposed eight recommendations to improve its sexual assault process, while denying it engaged in a "cover-up" or "preferential treatment" for a USU athlete.²⁶ Other Utah institutions have also committed to wide-ranging reforms after student complaints brought federal attention.²⁷ Utah's Higher Education Board of Regents has approved policies that make it possible to track transfer students with a sexual misconduct history.²⁸

The new U.S. Secretary of Education, Betsy DeVos, citing work overload and concern for the rights of the accused, issued plans in June 2017 to cut 40 OCR positions and suspend major areas of civil rights oversight, including campus sexual assault policies.²⁹ In September 2017, Secretary DeVos rescinded earlier Obama Administration policy that had instructed campuses to use a "preponderance of the evidence" standard in determining the guilt of the accused and instead directed them to use the higher "clear and convincing evidence" standard for determining guilt.³⁰

The Department of Justice (DOJ) confirms that only Utah and Arkansas have failed to join the Prison Rape Elimination Act (PREA) designed to prevent the estimated 200,000 annual inmate sexual assaults. All other states are either in compliance or documenting their steps toward compliance. Governor Herbert's office maintains that Utah prefers to follow its own guidelines to achieve the same goal. Noncompliance deprived Utah of DOJ grants worth \$146,132 for corrections and other community programs in 2016 alone.³¹

Hate Crimes

Hate crimes are vastly underreported, and rely on data compiled from voluntary submissions by local law enforcement. The FBI has long identified African-Americans (race) and Jews (religion) as the primary victims of hate crimes. In the run-up to the divisive 2016 election, Muslims suffered a 67% surge of attacks.³² Despite the 1,239 hate crimes during its 20 year history, **Utah's "toothless" hate crimes law has never been used in a successful prosecution.**³³

A robust but unsuccessful hate crimes bill proposed in 2016 provided the inspiration for 2017's SB 72.³⁴ The bill title, "Victim Selection Penalty Enhancement," emphasized protection of all

victims assaulted because of their perceived identity in a group despised by the assailant(s). Support from the Utah Law Enforcement Legislative Committee and the Utah Sheriff's Association could not overcome strong opposition from certain Senators.³⁵ Senator Daniel Thatcher, the bill's sponsor, remains optimistic that reducing the legal punishments and a broader public educational effort will bring passage in 2018.³⁶

Commendations

- **The Legislature for its passage of HB 206** promoting the safety of family members by **prohibiting the domestic violence abuser's access to firearms**
- **The 46 police departments that have successfully adopted LAP**, and thereby effectively and verifiably reduced the number of domestic homicides.
- **The Legislature for its passage of HB 200 mandating the submission and processing of all rape kits** by the Utah State Crime lab within given timelines and a tracking system
- **BYU for its hiring of two full-time positions** (Title IX Coordinator and a Victim Advocate) **to undergird the Amnesty Clause that waives the Honor Code** during sexual assault investigations³⁷
- ***Salt Lake Tribune* reporters**, including Erin Alberty, Jessica Miller, Alex Stuckey, and others, working under Managing Editor Sheila McCann, for receiving the **2017 Pulitzer Prize for Local Accountability Reporting**

Recommendations

- **The Legislature should add dating conflicts to the category of domestic violence** to establish consistency with Utah's protective orders and enhance police authority.
- **The Legislature should not allow 'permitless carry'** to void the background check and firearm training presently required for the 'concealed carry' permit.
- **The Legislature must provide the additional \$1.2 million necessary** to comply with the standards contained in HB 200 **to collect and test all rape kits** in the given time frames.
- **Governor Herbert should reconsider Utah's non-compliance with PREA standards** by endorsing its provisions and taking advantage of DOJ grant monies.
- **The Legislature should endorse a strong, effective hate crimes bill** modeled on the hate crimes bills introduced in the 2016 and 2017 sessions.

Endnotes for Article 5 (Personal Security)

-
- ¹ Jenn Oxborow, "Op-ed: Take Guns Out of Domestic Abusers' Hands," *Salt Lake Tribune*, March 4, 2017, accessed March 5, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=5000468>.
- ² Mariah Noble, "Domestic Violence Accounted for Nearly a Third of Utah Homicides in 2016," *Salt Lake Tribune*, January 4, 2017, accessed June 20, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=4719154>. The 42% figure for Utah is an average over 16 years.
- ³ 18 U.S.C. 922(g)(9).
- ⁴ Lee Davidson, "Domestic Violence Gun Bill Sails through Panel," *Salt Lake Tribune*, February 11, 2017, accessed February 11, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=4928759>.
- ⁵ Jessica Miller, "Domestic Violence Deaths: Utah Advocates Hope a Growing Risk-Assessment Program Will Help Save Lives," *Salt Lake Tribune*, July 2, 2017, accessed July 3, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=5462030>.
- ⁶ Editorial, "Utah Must Face Its Problem of Domestic Violence," *Salt Lake Tribune*, June 16, 2017, accessed June 17, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=5411207>.
- ⁷ 18 U.S.C.2266(7).
- ⁸ Pat Reavy, "Sandy Police Defend Domestic Violence Policies," *Deseret News*, June 20, 2017, accessed August 11, 2017, <http://www.deseretnews.com/article/865683359/Sandy-police-defend-domestic-violence>.
- ⁹ Luke Ramseth, "Police Missed an Opportunity to Help Utah Woman Who Reported Stalking Before Man Killed Her, Advocate Says," *Salt Lake Tribune*, June 15, 2017, accessed June 17, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=5403359>; Jessica Miller, "Sandy Police Didn't Consider Threats 'Domestic Violence' Because Victim and Her Eventual Killer Weren't Living Together," *Salt Lake Tribune*, June 21, 2017, accessed June 21, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=5422824>.
- ¹⁰ Erin Grinshteyn and David Hemenway, "Violent Death Rates: The US Compared with Other High-Income OECD Countries, 2010," *The American Journal of Medicine*, March 2016, 29: 3, 266-273.
- ¹¹ Melissa Jeltsen, "The NRA Wants To Solve Domestic Violence By Arming Victims. It Probably Won't Work," *Huffington Post*, July 15, 2017, accessed July 29, 2017, http://www.huffingtonpost.com/entry/nra-guns-domestic-violence_us_5967dd57e4b01741; Libby Isenstein, "The States with the Most Gun Laws See the Fewest Gun-Related Deaths," *The Atlantic*, August 28, 2015, accessed August 4, 2017, <http://www.theatlantic.com/politics/archives/2015/08/the-states-with-the-most-gun-laws-see>.
- ¹² "Utah Ready for Hatch to Move On; More Progressive than You Might Think," *Public Policy Polling*, August 24, 2016, accessed July 15, 2017, <http://www.publicpolicypolling.com/main/utah/>.
- ¹³ Robert Gehrke, "Perry Bill Takes Solid Steps on Domestic Violence, but Trips on Concealed-Gun Issue," *Salt Lake Tribune*, February 1, 2017, accessed February 1, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=4886641>.
- ¹⁴ Charles C.W. Cooke, "Constitutional Carry Marches On," *National Review*, January 25, 2017, accessed May 29, 2017, <http://www.nationalreview.com/node/444212/print>.
- ¹⁵ Robert Gehrke, "NRA Went Too Far Opposing Domestic Violence Provisions of Utah Gun Bill--so Its Sponsors Are Killing It," *Salt Lake Tribune*, March 2, 2017, accessed March 2, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=5001168>.
- ¹⁶ Lee Davidson, "House Approves Allowing Concealed Gun Permits for Utahns as Young as 18," *Salt Lake Tribune*, Feb 22, 2017, accessed February 22, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=4967744>.
- ¹⁷ Ryan Morgan, "Lawmakers Approve Concealed Firearms for 18-Year-Olds," *Deseret News*, March 9, 2017, accessed March 10, 2017, <http://www.deseretnews.com/article/865675292/Lawmakers-approve-concealed-firearms>; Claire Landsbaum, "NRA Ad Claims 'Real Women's Empowerment' Is Owning a Gun," *The Cut*, July 13, 2016, accessed July 29, 2017, <http://www.thecut.com/2016/07/nra-ad-tells-women-to-shoot-rapists-abusers.html>.
- ¹⁸ Pat Reavy, "Only 1/5 of Rape Kits Collected by Police Submitted to Crime Lab, Study Finds," *Deseret News*, April 7, 2016, accessed September 3, 2016, <http://www.deseretnews.com/article/865651740/Only-15-of-rape-kits-collected-by-police>.

¹⁹ Jessica Miller, "'This is a Victory for Everyone': Utah Lawmakers Pass \$1.2 Million Bill Mandating Testing of All Rape Kits," *Salt Lake Tribune*, March 9, 2017, accessed March 9, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=5030815>.

²⁰ Benjamin Wood, "Bill Unveiled to Mandate Testing of All Utah Rape Kits," *Salt Lake Tribune*, January 26, 2017, accessed January 26, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=4863703>.

²¹ Tiffany Frandsen, "Utah's New Crime Lab to Use Robotics to Speed up Rape Kit Testing," *Salt Lake Tribune*, June 2, 2017, accessed June 2, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=5355039>.

²² Mariah Noble, "Rape Kit Testing for SLC Backlog has Yielded Rape Charges in Five Cases," *Salt Lake Tribune*, July 11, 2017, accessed July 11, 2017, <http://www.sltrib.com/csp/mediapool/sites/pages/printfriendly.csp?id=5460019>.

²³ It defies credibility that 89% of U.S. colleges reported no incidents of rape in 2015. See Amy Becker, "Newly Released Campus Sexual Violence Data Don't Tell Full Story," *American Association of University Women*, May 10, 2017, accessed September 24, 2017, <http://www.aauw.org/article/newly-released-campus-sexual-violence-data>.

²⁴ Jennifer Napier-Pearce, "Salt Lake Tribune Wins Reporting Award for BYU, Utah State Sex-Assault Coverage," *Salt Lake Tribune*, April 4, 2017, accessed April 4, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=5135597>; Editorial, "Pulitzer Prize is Recognition that There Are Stories Only the Salt Lake Tribune Can Tell," *Salt Lake Tribune*, April 11, 2017, accessed April 11, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=5161831>.

²⁵ Tad Walsh, "BYU Adopts Amnesty Clause, Other 'Sweeping Changes' to Help Sexual Assault Victims," *Deseret News*, October 26, 2016, accessed October 26, 2016, <http://www.deseretnews.com/article/865665672/BYU-advisory-council-recommends>. "Students will not be disciplined by the university for any related honor code violation occurring at or near the time of the reported sexual misconduct unless a person's health or safety is at risk." The "health or safety" language was explained as standard for universities when investigations reveal behavior by the victim such as threats against peers or drug dealing. Benjamin Wood and Rachel Piper, "BYU Announces All Campuses Will Now Give Honor Code Amnesty and 'Leniency' to Students Who Report Sexual Assaults," *Salt Lake Tribune*, June 25, 2017, accessed June 25, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/printfriendly.csp?id=5437526>.

²⁶ Utah State University, "Recommendations from Inquiry on Sexual Assaults," August 24, 2016, *Utah State Today*, August 24, 2016, accessed June 4, 2017, <http://www.usu.edu/today/?id=56061>; Jessica Miller, "Torrey Green, Former Utah State University Football Star, Ordered to Stand Trial for Allegedly Committing Multiple Sexual Assaults," *Salt Lake Tribune*, April 20, 2017, accessed June 4, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=5191368>.

²⁷ Alex Stuckey, "Half of Utah's 10 Largest Colleges under Federal Investigation for Sexual Misconduct Allegations," *Salt Lake Tribune*, August 21, 2017, accessed August 22, 2017, <http://www.sltrib.com/news/education/2017/08/21/half-of-utahs-10-largest-schools-under>; Stuckey, "U. Details Efforts to Improve Response to Sex Assault," *Salt Lake Tribune*, February 1, 2017, accessed February 1, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=4885513>; Stuckey, "New USU Campaign Urges Bystanders to Step in and Prevent Sex Assault," *Salt Lake Tribune*, January 26, 2017, accessed February 1, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=4858126>;

²⁸ Alex Stuckey, "Utah Universities to Track Student Sexual Misconduct across Campuses, Boost Campus Surveys," *Salt Lake Tribune*, Jan 22, 2017, accessed February 1, 2017, <http://www.sltrib.com/csp/mediapool/sites/pages/printfriendly.csp?id=4844302>.

²⁹ Erica Green, "Education Dept. Says It Will Scale Back Civil Rights Investigations," *New York Times*, June 16, 2017, accessed June 18, 2017, <https://www.nytimes.com/2017/06/16/us/politics/education-department-civil-rights-betsy-devos>; Erica Green and Sheryl Stolberg, "Campus Rape Policies Get a New Look as the Accused Get DeVos's Ear," *New York Times*, July 12, 2017, accessed July 14, 2017, <https://www.nytimes.com/2017/07/12/us/politics/campus-rape-betsy-devos-title-iv-education>.

³⁰ Stephanie Saul and Kate Taylor, "Betsy DeVos Reverses Obama-Era Policy on Campus Sexual Assault Investigations," *New York Times*, September 22, 2017, accessed October 5, 2017, <https://www.nytimes.com/2017/09/22/us/devos-colleges-sex-assault.html>. The new instruction is optional until the policy is formalized in a regulation.

³¹ Luke Ramseth, "Utah One of Only Two States Not Complying with Federal Prison-Rape Guidelines, DOJ Says," *Salt Lake Tribune*, May 15, 2017, accessed May 15, 2017,

<http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printerfriendly.csp?id=5284203>. Governor Herbert objects to the expense of auditing various aspects of PREA, and the requirement that guards announce their entrance into opposite-sex housing areas. Although this was intended to limit sexual harassment and exploitation by guards, Herbert believes it actually creates dangers for them and limits their ability to prevent sexual abuse among prisoners. See Associated Press, "Utah Opts out of Prison Rape Law Requirements," *Washington Times*, May 23, 2014, accessed July 12, 2014, <http://www.washingtontimes.com/news/2014/may/23/utah-opts-out-of-prison-rape-law>.

³² Masood Farivar, "US Justice Department Defends Record Against Hate Crimes," *Voice of America*, May 2, 2017, accessed May 27, 2017, <http://www.voanews.com/a/justice-department-defends-record-against-hate-crimes/383558>; Criminal Justice Information Services Division, "2015 Hate Crime Statistics," *Federal Bureau of Investigation*, accessed June 3, 2017, <https://ucr.fbi.gov/hate-crime/2015/home/topic-pages/victims-final>.

³³ McKenzie Romero, "Law Enforcement, Activists Reiterate Need to Replace Utah's 'Toothless' Hate Crime Law," *Deseret News*, August 4, 2016, accessed November 26, 2016, <http://www.deseretnews.com/article/865659466/Law-enforcement-activists-reiterate-need>.

³⁴ Daphne Chen, "Utah Senator Revives Proposal to Beef up State's Hate Crime Laws," *Deseret News*, September 21, 2016, accessed November 26, 2016, <http://www.deseretnews.com/article/865662984/Utah-senator-revives-proposal-to-beef>.

³⁵ Jennifer Dobner, "Bill Emerges to Replace Utah's Unenforceable Hate-Crimes Law," *Salt Lake Tribune*, January 18, 2017, accessed January 23, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=4817564>.

³⁶ Hallie Golden, "Hate Crimes Measure among Plans for 2018 Legislation," *Salt Lake Tribune*, May 15, 2017, accessed May 15, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=5294343>.

³⁷ Tad Walch, "BYU Hires New Title IX Coordinator, Adds Victim Advocate," *Deseret News*, January 13, 2017, accessed June 4, 2017, <http://www.deseretnews.com/article/865671051/BYU-hires-new-Title-IX-coordinator-adds>.

Social Support Systems

Utah Citizens Counsel Social Support Systems Committee

Article 6: All Utahns have the right to the fundamental social support systems that assist in assuring a standard of living adequate for the well-being of both the individual and families, in all their configurations, including timely assistance in case of unemployment, disability, old age, and natural or human-made disasters.

Introduction

This year's report updates last year's report that focused on affordable housing. The lack of affordable housing, especially along the Wasatch Front, has received a good deal of government attention and media coverage over the last year. The term "crisis" has often been attached to the situation affecting a growing number of low-wage residents unable to find affordable housing. In June and July 2017, growing crime and squalor in the homeless encampment around the Road Home homeless center drew angry protests from local businesses and citizens alike. In early August, "Operation Rio Grande," a joint state/county/city program, was launched. The goals of the program were to restore public order, assess and treat the drug dependent individuals occupying the area, and finally, to increase employment opportunities for those emerging from incarceration and treatment programs.¹ But homelessness is just the tip of an iceberg of housing insecurity that threatens tens of thousands of our citizens, impedes economic progress, and leads to many expensive social ills. This year's update will briefly review the extent of this problem, and describe and evaluate the efforts made at various levels of government (with aid and support from a number of community actors) to deal with it. Finally, the report will suggest some useful directions for future action.

The Problem: Utah's Low Inventory of Affordable Housing

For the last three years, the Social Support Systems Committee has documented the extremely harmful impact of toxic stress on young children, and the many sources of this stress for those living in poverty. This stress has been shown to limit these children's cognitive and emotional development, adversely affecting their concentration, memory, and ability to learn.² These children are more likely to suffer from chronic health problems, including asthma, pneumonia, and anemia. Poverty-induced stress levels make it less likely that poor children will graduate from high school, more likely that they will interact with law enforcement, and, for female teens, more likely that they will have a child out of wedlock.³

Last year's report named housing insecurity as one of the chief sources of this stress for poor children and their parents. Recent studies have indicated that, compared with their residentially stable peers, children experiencing residential insecurity suffer from lower vocabulary skills, problem behaviors, grade retention, increased high school drop-out rates, and lower adult educational attainment.⁴ To quote the National Low Income Housing Coalition, "Research shows that increasing access to affordable housing is *the* most cost-effective strategy for reducing childhood poverty in the United States" (emphasis in original).⁵

Despite significant efforts during the last year to increase the inventory of affordable housing, the number of Utah children experiencing residential insecurity is increasing.⁶ Thirty percent of children currently living in Salt Lake City are living in poverty.⁷ A large number of them are experiencing overcrowding, frequent moves, deprivations caused by too much of the family income going for housing, and even occasional homelessness. These situations are stressful for parents and children alike.

One might think that since the Utah economy is doing well, the affordable housing problem would be declining. It is true that jobs are available in Utah. But a large percentage of these jobs do not pay enough to allow workers to find affordable housing. In Salt Lake City, renter wages increased 4% between 2011 and 2016. During the same time period, rent prices increased 26%.⁸ The nearly 69,000 Utahns with "extremely low incomes" (0-30% of Area Median Income [A.M.I.]) make little more than the state minimum wage of \$7.25 per hour.⁹ To afford a two-bedroom apartment at the fair market rent rate of \$990 per month, a worker in the Salt Lake metropolitan area would need to earn \$19.04 per hour for a 40-hour week.¹⁰

While the inventory of market-rate housing units in Salt Lake County has greatly increased in the last decade, the relative number of affordable units for low income residents has actually declined.¹¹ The Utah Low Income Housing Coalition's 2016 Report disclosed that there were 33 affordable housing units for every 100 Utah renters with an income of 30% or less of the A.M.I.. In the 2017 Report, that number had declined to only 31 affordable units per hundred of those in that income category.¹² This indicates a shortage of over 38,000 units for "extremely low income" (approximately the lowest 10-15% of earners) residents in Utah.¹³ As a result, currently 49% of renters and 22% of homeowners in Salt Lake City spend more than 30% of their income on housing, and 24% are "severely cost burdened," paying more than 50% of their income for rent.¹⁴

For the 69,000 Utahns in the extremely low income category, the best tools for gaining affordable housing are government programs that supplement their rent. Most of these programs restrict the amount renters have to pay to 30% of their monthly income. The rest of the rent is paid by the government program. The great majority of the supplement funds are provided by the federal government. The problem is that all the rent supplement programs in Utah combined total only 19,100, which reach only 27.6% of those most in need.¹⁵ A number of municipalities and community aid organizations offer temporary rent assistance, but it is clear that tens of thousands of Utahns, especially those living in Salt Lake County, are not receiving any aid to enable them to afford their rent.

To make a meaningful dent in the affordable housing shortage, policies need to be pursued that will increase the inventory of low cost units. At the same time, more steps need to be taken to increase the income of those suffering from poverty, to help them afford decent, stable housing. Achieving these goals will require a concentrated effort from actors at all levels of government, as well as from the financial sector, community organizations, and the general public.

Important government actors and community groups have acknowledged and analyzed Utah's affordable housing problem, and some initial steps have been taken to cope with it. This is necessary and encouraging, but **for all the talk of "crisis," the response level has still been too**

low and too slow. Even Salt Lake City, which has taken the most impactful steps toward coping with the crisis, is enacting measures (expediting paperwork for new construction, constructing mini-units, stabilizing existing affordable housing stock, and supporting new affordable housing construction) at an unduly slow pace.

While some steps have been taken to increase the affordable housing inventory, little if anything has been done to increase incomes to a more sustainable level. Some far-sighted Utah legislators have proposed establishing a state Earned Income Tax Credit to supplement the current federal E.I.T.C. program, which between 2011 and 2013 lifted 94,000 Utah families out of poverty.¹⁶ Others have proposed that we increase the state's minimum wage to a more sustainable level.

We see a startling gap between what we *know* (about the environment needed to give children a decent chance at a healthy, successful life) and what we *do*. Many other developed countries manage to provide virtually all their children with the care and security they need to have an equal chance to become high achieving, contributing adults.¹⁷ In order to succeed, our plans must also alleviate the stressful deprivations suffered by the adults who care for their children. In Utah, and in the country as a whole, we need to do better. While some states must struggle with a crippling high poverty rate, Utah has the eighth lowest poverty rate in the country.¹⁸ The goal of virtually eliminating children's poverty is within reach in this state if we make a commitment to achieve it.

Commendations

- The **Affordable Housing Assessment and Plan** (October 2016), produced in less than a year by the Utah Affordable Housing Task Force chaired by Lt. Governor Spencer Cox.¹⁹ This excellent and comprehensive assessment gives policy makers a good general understanding of the Utah housing ecosystem and demonstrates the state's commitment to deal with the affordable housing shortage.
- The Utah State Legislature for passing **H.B. 36** in 2017. The bill, co-sponsored by Housing Task Force members Senator Todd Weiler and Representative Becky Edwards, **appropriates \$2 million to an investment fund, which (along with the \$3 million in the Olene Walker Housing Loan Fund can be leveraged to finance about ten times that amount in affordable housing. The bill also tripled the amount of state housing credits that developers can use to make construction of low-rent units financially viable.**²⁰ These funds are specifically targeted to generate housing affordable to those with incomes of 30% or less of the A.M.I.
- **The Salt Lake City Mayor and City Council for developing “Growing Salt Lake City: A Five-Year Housing Plan”** (draft issued February 2017).²¹ This finely grained analysis of the SLC housing shortage gives an in-depth account of hindrances to affordable housing development, and the policies needed to overcome those barriers. The policy recommendations in the plan will likely be adopted by the end of the year.
- **The Salt Lake City Mayor and City Council for presenting a budget in June 2017 that included \$21 million for affordable housing construction and repair.** The

housing plan also calls for other measures, such as removing current barriers to affordable housing in middle class areas, allowing additional dwellings on larger lots, and creating a community land trust.²² Formal adoption should come by the end of the year.

- **The Salt Lake County Collective Impact program (in cooperation with Salt Lake City and with state financial backing) to upgrade diversion and case management services to significantly reduce the number of homeless residents.** The program also increases the number of major shelters from one to three, with each serving a particular population.
- **Federal safety net programs** (such as food stamps, Medicaid, housing assistance, the Earned Income Tax Credit) **that cut the U.S. poverty rate nearly in half.**²³

Recommendations

- **The state tax credit program for local developers should be expanded to take advantage of their willingness to build more affordable housing if additional credits became available.**²⁴
- **Back-up accommodation plans need to be in place if the homeless numbers exceed the 600 people who can be housed in the new shelters.** The dramatic loss of bed space projected in the Collective Impact Homeless Shelter Plan is of real concern. The measures to greatly decrease the homeless population, including diversion and case management programs, and new affordable housing construction, are gearing up very slowly.
- **The Utah Legislature should create a state Earned Income Tax Credit (EITC)** to help working families. Modeled after the federal EITC and programs in 26 other states, a Utah EITC would help narrow the gap between a working family's income and escalating rental costs. The measure proposed in the 2017 Utah legislative session to peg the state EITC at 10% of the federal level would be a good starting point.
- **Utah should join the 29 other states that have established a minimum wage higher than the federal \$7.25 per hour.** State Representative Hemingway has for the last four years proposed raising the state minimum wage to \$10.50 per hour with yearly increases. We believe that such an increase, indexed to future price inflation, would help thousands of low income Utahns better afford housing.
- **We encourage public understanding of the many perspectives surrounding affordable housing problems,** a willingness to engage in civil dialogue, and a search for ways to take positive action to become part of the solution. **Utah's current housing and homelessness problems belong to all of us.** Housing insecurity not only causes suffering for thousands of Utahns who cannot find affordable, decent housing but also hurts the community economically, and leads to social problems that our taxes must be used to address.

Endnotes for Article 6 (Social Support Systems)

¹ “OPERATION RIO GRANDE: A Collaborative Three Phase Plan to Restore Public Safety in the Rio Grande District of Salt Lake City,” accessed September 8, 2017, operationriogrande.utah.gov.

² “Growing Salt Lake City: A Five Year Housing Plan,” *Salt Lake City Housing and Neighborhood Development*, February 2017, accessed August 3, 2017, www.slcdocs.com/hand/Housing_plan_long.pdf, 40.

³ Ibid.

⁴ Heather Sandstrom and Sandra Huerta, “The Negative Effects of Instability on Child Development: A Research Synthesis,” September 2013, *Urban Institute*, accessed September 11, 2017, <https://www.urban.org/.../412908-The-Negative-Effects-of-Instability-on-Child-Development>, 7.

⁵ “A Place to Call Home; The Case for Increased Federal Investments in Affordable Housing,” *Campaign for Housing and Community Development Funding C/O National Low Income Housing Coalition*, accessed September 25, 2017, nlihc.org/sites/default/files/A-Place-To-Call-Home.pdf, 4.

⁶ Housing is considered “affordable” if it requires no more than 30% of a family’s monthly income. Those paying between 30% and 50% of their income for housing are considered “cost burdened,” and those paying more than 50% of their incomes for housing are considered “extremely cost burdened.” People in the latter two categories will have difficulty having enough money to purchase food, clothing, transportation and medical care. “2017 Utah State Housing Profile,” *National Low Income Housing Coalition*, updated June, 2017. These documents were provided by Tara Rollins of the Utah Low Income Housing Coalition.

⁷ Ibid., 39. The number of children in poverty statewide is 13%. “2017 Measures of Child Well Being in Utah and the National Annie E. Casey Data Book Released,” *Voices for Utah Children*, June 27, 2017, accessed September 2, 2017, www.utahchildren.org > Newsroom > Speaking of Kids Blog.

⁸ Ibid., 30.

⁹ “2017 Housing Profile.” Median income is the amount that divides the income distribution into two equal groups, half having income above that amount, and half having income below that amount. Thus, a person making a wage that is 30% of Area Median Income would be making a wage 70% lower than those at the middle of the area’s income distribution.

¹⁰ “Out of Reach, 2017: The High Cost of Housing: Utah Fact Sheet 69,” *National Low Income Housing Coalition*, accessed August 2, 2017, <http://nlihc.org/oor>. This is the wage necessary to keep the cost of rent at 30% or less of monthly income.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ “Growing Salt Lake City: A Five-Year Housing Plan,” 10-11.

¹⁵ “Utah Fact Sheet: Federal Rental Assistance,” *Center on Budget and Policy Priorities*, accessed September 19, 2017, <https://www.cbpp.org/blog/a-state-by-state-look-at-federal-rental-assistance>.

¹⁶ “Utah Fact Sheet: Expand Tax Credits to Promote Work and Fight Poverty,” *Center on Budget and Policy Priorities*, accessed September 5, 2017, <https://www.cbpp.org/.../tax/state-fact-sheets-the-earned-income-and-child-tax-credits>.

¹⁷ Jacob S. Hacker and Paul Pierson, *American Amnesia: How the War on Government Led Us to Forget What Made America Prosper*, (New York: Simon and Schuster Paperbacks, 2016), 26-38.

¹⁸ Lee Davidson, “Census: With Income Up and Poverty Down, Utah Enjoys Relative Prosperity. But Annual Data Snapshot Shows Good Fortune Is Uneven, with Some Areas Enjoying More Abundance Than Others,” *Salt Lake Tribune*, September 14, 2017, accessed September 14, 2017, www.sltrib.com/.../census-with-income-up-and-poverty-down-utah-enjoys-relative-prosperity.

¹⁹ “State of Utah Affordable Housing Assessment and Plan,” accessed August 10, 2017, <https://jobs.utah.gov/housing/publications/documents/affordablehousingplan.pdf>.

²⁰ H.B. 36, Affordable Housing Amendments, accessed July 30, 2017, <https://le.utah.gov/~2016/bills/static/HB0036.html>. Another provision sets up a \$500,000 fund to reimburse landlords for any property damage caused by low-income renters.

²¹ "Growing Salt Lake City."

²² Tony Semerad, "The Solution to Homelessness is Housing': Salt Lake City Sets Aside \$30M to Address Homelessness, Affordable Housing," *The Salt Lake Tribune*, October 20, 2016, accessed August 12, 2017, [http://www.sltrib.com/search/'The+Solution+to+Homelessness+is+Housing'+Salt+Lake+City+Sets+Aside+\\$30M+to+Address+Homelessness,+Affordable+Housing/?q=%27The+Solution+to+Homelessness+is+Housing%27%3A+Salt+Lake+City+Sets+Aside+%2430M+to+Address+Homelessness%2C+Affordable+Housing](http://www.sltrib.com/search/'The+Solution+to+Homelessness+is+Housing'+Salt+Lake+City+Sets+Aside+$30M+to+Address+Homelessness,+Affordable+Housing/?q=%27The+Solution+to+Homelessness+is+Housing%27%3A+Salt+Lake+City+Sets+Aside+%2430M+to+Address+Homelessness%2C+Affordable+Housing).

²³ Arloc Sherman and Tazra Mitchell, "Economic Security Programs Help Low-Income Children Succeed Over Long Term, Many Studies Find," *Center on Budget and Policy Priorities*, August 17, 2017, accessed September 1, 2017, <https://www.cbpp.org/topics/safety-net-successes>. The statistic is based on 2015 data.

²⁴ "State of Utah Affordable Housing Assessment," 28.

Participatory Governance

Utah Citizens' Counsel Transparent, Ethical, and Participatory Governance Committee

Article 7. All Utahns have the right to transparent and ethical governance as well as effective participation in the democratic process.

Introduction

The past two years UCC has focused on (1) the importance of a nonpartisan redistricting process following the 2020 census, (2) the continuing need for campaign finance reform, and (3) support for the Count My Vote (CMV) effort to introduce a more inclusive nominating process for Democratic and Republican candidates for office. Although all three remain UCC priorities, campaign finance reform is complex and politically elusive at the moment, and the CMV compromise with the Legislature, reached in 2014's Senate Bill (SB) 54, has succeeded in allowing some candidates to gain access to the ballot by gathering signatures rather than using the ideologically narrow caucus/convention process. Although we continue to support campaign finance reform and will follow CMV's September 2017 decision to relaunch an initiative for a direct primary,¹ the most critical and potentially transformative means of improving the functioning of democracy in Utah would be an independent redistricting commission. Such a commission has been proposed in an initiative petition filed by a newly formed group called Utahns for Responsive Government. The commission would submit nonpartisan boundary maps to the Utah Legislature when it redraws state legislative and federal congressional district boundaries following the 2020 census. This emerging possibility is the focus of this year's report.

The Need for Nonpartisan Redistricting

Redistricting occurs every ten years, shortly after the decennial U.S. Census identifies population and demographic changes in states across the country. State legislatures have traditionally held the authority to do the redistricting.² Since the early 1800s, many legislatures have redrawn election district boundaries to favor the political party in power. The term "gerrymandering" arose when Governor Elbridge Gerry of Massachusetts signed a bill that drew a partisan district said to resemble a salamander, and the "Gerry-mander" was born.³ As urban populations increasingly exceeded rural populations in the first half of the 20th century, extra voting power went to residents of more sparsely populated rural districts because districts did not have to contain equal populations. In 1964, the U.S. Supreme Court interpreted the Equal Protection Clause of the 14th Amendment to require that congressional and state legislative districts be drawn to be essentially equal in population, articulating the one person, one vote principle.⁴ Ironically, as technological advances in computer programming and data analysis grew exponentially in recent decades, state legislatures have been able to use the Court's one person, one vote requirement to justify configurations of minute census tract subdivisions that created politically partisan, equal population districts favoring incumbents and the party in power while ignoring important considerations such as neighborhood patterns and county and municipal boundaries.

Additional law suits, many arising from the civil rights movement of the 1960s, asserted that some state legislatures were drawing boundaries deliberately to reduce the voting power of

minorities in violation of the 15th Amendment and the Voting Rights Act. Further Supreme Court rulings established additional protection for minorities, primarily African Americans.⁵ These protections, however, have not stopped political gerrymandering intended to reduce the voting power of whatever political party is the minority party in a given state.

As a result of partisan redistricting across the country in 2001 and 2011, most seats in the U.S. House of Representatives are considered safe seats for incumbents and are largely uncontested.⁶ Competition in those districts now occurs at the level of primaries, where narrow interests and extreme ideological positions often dictate the turnout. The result has been increasing polarization in the House of Representatives. This is not the way democracy should function.

In Utah, the result of gerrymandering can be seen by looking at the 2011 redistricting maps. Salt Lake County was split into three congressional districts, with District 2 stretching from Salt Lake City to St. George. So-called "pizza slice" districts combined urban and rural communities with little in common economically and culturally.⁷ No Utah representative in Congress comes from Salt Lake County, although it accounts for more than 40% of the population.⁸ Democrats now have little chance to capture even one of the four Utah seats in the House of Representatives, although having close to the same number of voters as Republicans in Salt Lake County, with Independents holding the balance of power.⁹ At the state legislative level, Republicans hold 83% of the seats in the Legislature while representing only two-thirds of the state's voters.¹⁰ The redrawn maps in 2011 split Tooele in half; Holladay in thirds, Moab right down Main Street. A dozen other municipalities were also split.

A national movement to limit the redistricting power of legislatures has been growing year by year. In 18 states, commissions made up of citizens and/or elected officials now draw the maps for state legislative districts.¹¹ As of July 2017, legislation to create independent redistricting commissions was pending in fifteen other states.¹²

The Better Boundaries Initiative

Because of widespread dissatisfaction with partisan legislative redistricting, Utahns for Responsive Government launched a Better Boundaries (BB) Campaign by filing an initiative petition to establish an independent redistricting commission. If 113,143 registered voters sign the petition by April 15, 2018,¹³ the initiative will appear on the 2018 ballot.

The initiative would establish a seven-person commission. Two members each would be selected by the majority and minority leaders in the Utah Senate and Utah House. Two more, who must be unaffiliated voters, would be selected by the majority and minority leadership teams in the Legislature.¹⁴ The Governor would appoint the seventh member, who would serve as chair.

The Commission is charged with drawing from one to three district maps to submit to the Legislature, using decennial census data and specified standards for drawing nonpartisan maps. In addition to the traditional districting standards of compactness, contiguity, and equal population, the standards require minimizing the division of cities and counties and considering natural and geographic features, traditional neighborhoods, and communities of interest. The standards also prohibit the use of partisan political data (for example, addresses of incumbents and candidates, voting records, election results, party affiliation). Five of the seven commissioners must approve any map before it can be submitted to the Legislature.¹⁵

Under the initiative, the Legislature retains the final authority to redistrict. A major court challenge to provisions in the Utah Constitution would be needed for voters to give the actual redistricting power to the Commission, so the initiative establishes the Commission's role as advisory.¹⁶ If the Legislature does not select one of the recommended maps, however, it must defend its own selection, measured against the initiative's standards for nonpartisan mapping, and the Commission may critique the Legislature's map(s). A citizen who believes that the maps violate the initiative may file what is known as a private right of action, challenging the legitimacy of the map(s) in court.¹⁷ The Utah Supreme Court would ultimately decide that case.

The Potential Benefits of the Better Boundaries Initiative

1) Chief among the expected benefits is *recognition of the right of voters to choose their political representatives rather than representatives choosing their voters*.¹⁸ This right should be obvious in a democracy. Other expected benefits include:

2) *More trust in the process*. Democracy depends in large part on people trusting their representatives. This does not happen if large numbers of potential voters believe their views are ignored because legislators are choosing their voters by how they draw district boundaries.

3) *Less polarization in decision making and more accountability to the public*. In both the U.S. Congress and the Utah Legislature, polarization has increased in recent decades.¹⁹ The result has often been reduced ability to unite to solve important problems in areas such as health care and education, where polling suggests that legislators are ignoring the will of the people.

4) *More citizens who will vote*. When eligible voters do not believe that their vote matters, they too often are lulled into not voting or even not registering to vote. Utah's voter turnout as a percentage of the eligible voting-age population has been steadily declining in recent years from 66.6% in 1980 to 28.8% in 2014, the 3rd lowest in the country. Although it rebounded in the tumultuous 2016 presidential election, far too many Utah adults are not registered, and far too many registered voters do not turn out to vote.²⁰ Both groups need to have more reasons to believe that their votes will count.

5) *More competitive elections*. When districts are competitive, results from the dominant party's infighting in its primary do not automatically determine the ultimate winner. Competitive elections can increase voter turnout and produce better public understanding of the issues. Sadly, the number of contested seats has shrunk significantly since the 2011 redistricting.²¹

Most voters are likely to vote Republican for the foreseeable future, and Republicans will hold most congressional and state legislative seats. Redistricting is not designed to change that reality but to create a more democratic process in which voters actually select their representatives. If more competitive elections produce a better informed electorate and more centrists from both parties, the result may be a renewed focus on actual problem solving and compromise through effective negotiation. Ideological purity often ignores the wishes of a majority of constituents, who prefer centrism to far left or far right ideologies.²²

Redistricting Cases in Federal Court

Concurrent with efforts to form independent redistricting commissions, legal challenges are being brought in several states, arguing that deliberately partisan state maps are unconstitutional.

One such case from Wisconsin--the first to hold partisan gerrymandering unconstitutional--was heard by the U.S. Supreme Court on October 3, 2017.²³ The Court will issue its decision by June 2018. Evidence in the lower court documented that the Wisconsin Legislature deliberately "packed" (concentrated) more Democrats into fewer districts where they were already likely to win, while "cracking" (splitting) the remainder of Democratic voters among majority Republican districts so that more Republican districts would result. Whether the Supreme Court will establish national standards to determine when redistricting is partisan enough to violate the 14th and 1st Amendments to the Constitution may be the most important decision the Court will make in its 2017-2018 term.²⁴ If the Court sets new standards to reduce the impact of partisan redistricting, Utah's Independent Redistricting Commission would follow them in a manner that ensures their implementation. At the same time, if the Better Boundaries standards for nonpartisan map drawing are more specific and thorough in reducing gerrymandering and do not conflict with those set by the Court, those standards could be used to enhance nonpartisanship and transparency. If, on the other hand, the Court does not find the case suitable for judicial resolution, the Commission's ability to implement nonpartisan standards would be even more crucial for Utahns. In either case, an independent commission that increases accountability and reduces the power of behind-the-scenes partisan jockeying will improve democracy.

Potential Legislative Response to Passage of the Better Boundaries Initiative

Many legislators insist that past redistricting has been essentially nonpartisan because it created contiguous districts of virtually equal population. They also assert that the process was transparent because it allowed many forms of citizen input. These arguments ignore how sophisticated computer programs enabled manipulation of boundaries to protect incumbents and disadvantage the minority party. They also ignore the way public input was rejected in closed-caucus meetings that shut out the public when final decisions were made. Legislator protestations notwithstanding, all who followed the process know how gerrymandering was conducted.

The initiative, if enacted, will become a statute, not a constitutional amendment. Therefore, the public must remain vigilant to ensure that the Legislature does not amend the statute to reduce the authority of the Independent Redistricting Commission and the public's right to bring a court challenge to the Legislature's actions. "Eternal vigilance is the price of liberty."²⁵ "Over the long term, everyone--and the continuing vitality of democracy--will be served by a system that resounds in fairness."²⁶

Commendations

- **Utahns for Responsive Government for launching its Better Boundaries signature-gathering campaign to allow registered voters to express their views on the benefits of allowing a public vote on nonpartisan redistricting**

Recommendations

- **The public, registered voters, and the media should support the Better Boundaries signature-gathering campaign.**
- **Registered voters should vote in large numbers for the Better Boundaries redistricting initiative once it gains a place on the 2018 general election ballot.**

Endnotes for Article 7 (Participatory Governance)

¹ Because of continuing efforts to undermine the success of SB 54, CMV leaders decided to relaunch an initiative for a direct primary, which would do away entirely with the caucus/convention system. They have expressed their frustration with continuing threats from some Republican legislators to repeal the current SB 54 compromise, which allows selection of nominees both by signature gathering and caucus/convention systems. Additional efforts by Republican Party officials to undo the compromise by litigation, unsuccessful thus far, have also been a source of deep distrust for CMV supporters. CMV leaders have determined that only an initiative process which ultimately allows the public to vote on the desirability of a direct primary will put the issue to rest.

² State constitutions give the authority to redistrict to state legislatures. Twenty-four states, however, have ballot initiative provisions that can be used by citizens to propose a law or constitutional amendment for passage either by voters or their legislature. Alexis Farmer, "Citizen-Led Efforts to Reform Redistricting," September 20, 2017, *The Brennan Center for Justice*, accessed October 1, 2017, <https://www.brennancenter.org/analysis/current-citizen-efforts-reform-redistricting>.

³ See "A Citizen's Guide to Redistricting (2010 ed.)," *The Brennan Center for Justice*, accessed August 17, 2017, <https://www.brennancenter.org/sites/default/files/legacy/CGR%20Reprint%20Single%20Page.pdf>.

⁴ *Reynolds v. Sims*, 377 U.S. 533 (1964) (requiring state legislative districts to have equal populations); *Wesberry v. Sanders*, 376 U.S.1 (1964) (applying one person, one vote principle to congressional districts).

⁵ A landmark case that invoked the 15th Amendment's prohibition against abridging the right to vote "on account of race" was *Gomillion v. Lightfoot*, 364 U.S. 399 (1960). The Court allowed a challenge to a racial gerrymander that excluded nearly all black voters from the city limits of Tuskegee, Alabama. The decision held that the state could not circumvent the constitutional prohibition by redrawing municipal boundaries. Multiple challenges have been brought since then in which the Court has had to determine whether race was a dispositive factor in the way legislative or congressional districts have been drawn.

⁶ Researchers at the Brennan Center have concluded that 16 or 17 of the 24 Republican seats needed to retain control in the House of Representatives in 2020 resulted from gerrymandering. Laura Royden and Michael Li, "Extreme Maps," May 9, 2017, *Brennan Center for Justice*, accessed October 3, 2017, <https://www.brennancenter.org/publication/extreme-maps>. Using data from the 2012, 2014, and 2016 election cycles, the authors found that partisan bias in the worst gerrymandered states provided Republicans a "durable advantage" of 16-17 seats in the current Congress. These so-called "extreme maps" all came from states under single-party control. Of interest is the finding that maps drawn by independent commissions, courts, or split-party state governments had significantly less partisan bias in their maps.

Turning to Utah, 59 of 271 state legislative races have been uncontested since 2011, a sizable increase over the previous decade's number. The supermajority of Republicans in the state House of Representatives of 62-13 in 2014 was the largest since 1967 and the second largest since the Great Depression. Lee Davidson, "Utah had 3rd-lowest voter turnout among states," *Salt Lake Tribune*, December 1, 2014, accessed August 29, 2017, archive.sltrib.com/article.php?id=1873023&itype=CMSID. Currently, the supermajority is 63-12, even more lopsided, given that 1/3 of votes for House candidates go to Democrats.

⁷ For more examples of 2011 gerrymandering, see Paul Rolly, "Decades of Gerrymandering Bear Fruit: Utah's Legislature is Wacko," *Salt Lake Tribune*, April 2, 2016, A17. Rolly states that the 2001 Legislature "tried to Neuter SLC" by slicing it up (cracking) it into heavily Republican districts. Rolly quotes Republican then-Senator Bob Bennett as describing the redistricting as "one of the worst examples of gerrymandering he had seen." Rolly asserts that the Utah Legislature furthered the effort to crack the Democratic vote by carving Tooele into three state legislative districts, splitting a Democratic district in Ogden, and placing key parts of Democratic Carbon County into neighboring Republican districts.

⁸ "Quick Facts, Salt Lake County," *U.S. Census Bureau*, accessed August 29, 2017, <https://www.census.gov/quickfacts/fact/table/saltlakecountyutah,UT/PST045216>.

⁹ Bob Bernick, "Just How Liberal is Salt Lake County?" *Utah Policy.com*, accessed August 4, 2017, <http://www.utahpolicy.com/index.php/features/today-at-utah-policy/13947-analysis-just-how-liberal-is-salt-lake-county>.

¹⁰ Bryan Schott, "Analysis Shows Utah Electoral Maps Gave GOP a Three-seat Advantage in 2016," *Utah Policy.com*, accessed August 29, 2017, <http://utahpolicy.com/index.php/featurestoday-at-utah-policy/13598-analysis-shows-utah-electoral-maps-gave-gop-a-three-seat-advantage-in-2016>.

¹¹ As of December 2015, the National Conference of State Legislatures (NCSL) reported that 13 states had commissions with primary responsibility for drawing state legislative maps (AK, AZ, AR, CA, CO, HI, ID, MO, MT, NJ, OH, PA, WA). Five had advisory commissions (ME, NY, RI, VT, VA) and five had back-up commissions if a state legislature failed to agree on redistricting--a total of 23. "Congressional Redistricting: State Legislative Plans," *NCSL*, accessed August 29, 2017, [ncsl.org/research/redistricting/2009-redistricting-commissions_table.aspx](http://www.ncsl.org/research/redistricting/2009-redistricting-commissions_table.aspx). At the same time, six states had state commissions with primary responsibility for congressional redistricting (AZ, CA, HI, ID, NJ, WA); five had advisory commissions (ME, NY, OH, RI, VA), and two had back-up commissions (CT, IN)--a total of 13. "Redistricting Commission: Congressional Plans," *NCSL*, accessed August 29, 2017, <http://www.ncsl.org/research/redistricting/redistricting-commissions-congressional-plans.aspx>. NCSL notes that some commissions are more partisan than others in the way they actually operate. It also notes that Iowa uses a different, unique procedure for its redistricting. Ballotpedia provides a condensed classification as of August 2017 that does not include advisory commissions or backup commissions. "Redistricting," *Ballotpedia*, accessed August 29, 2017, <https://ballotpedia.org/Redistricting>. Consistent with NCSL, it reports that 13 states have commissions for state legislative redistricting. Six use independent commissions, and seven use politician commissions. Of the six states using commissions for congressional redistricting, four use independent commissions and two use political commissions. Ballotpedia states that legislatures retain final authority for state and congressional redistricting in 37 states, some of which have no provision for any voter initiatives. (Seven states have only one congressperson, so congressional redistricting does not happen there.)

¹² See "Redistricting Commission Bills," *NCSL*, accessed August 29, 2017, <http://www.ncsl.org/research/redistricting/redistricting-commission-bills.aspx>.

¹³ 1,131,430 Utahns voted in the 2016 presidential election. "2016 General Election Results," *Office of Utah Lieutenant Governor*, accessed June 2017, <https://elections.utah.gov/Media/Default/2016%20Election/2016%20GE%20Canvass.pdf>. For the initiative to be placed on the 2018 general election ballot, the total number of Utah registered voters who sign the petition must reach 10% of this number. The number of registered voters must also reach 10% of the number who voted in the presidential election in each of 26 of 29 of the state Senate Districts. In other words, if 100,000 votes were cast for a 2016 presidential candidate in a specific Senate District, 10,000 registered voters must sign the petition in that Senate District. See Utah Code Annotated, 20A-7-201(2)(a) (2011).

¹⁴ To be more specific, the Speaker of the House and the Senate President would each select one member. The minority leader of the House and the minority leader of the Senate would each select one member. Various exclusions apply (e.g., no elected official, no lobbyist, no party official can serve). One unaffiliated member would be appointed by the entire leadership team of the majority party in the Legislature, and one would be appointed by the entire minority leadership team. Similar exclusions apply.

¹⁵ If five members--a super majority--of the Commission cannot agree, then the Commission must submit at least two maps to the Chief Justice of the Utah Supreme Court, who will select the map or maps to be forwarded to the Legislature. *Ibid.*, 20A-19-203.

¹⁶ The Utah Constitution explicitly gives the redistricting power to Utah's elected Legislature, along with the power to initiate amendments to the Utah Constitution if 2/3 of both Houses of the Legislature vote to do so. Utah's initiative provision was placed in the state constitution a few years later but appears limited to proposing and adopting a statute, not a constitutional amendment. A court ruling would be necessary to establish the right of voters to use the initiative to amend the redistricting provision in the constitution. Such a challenge would be unlikely to be resolved prior to the 2018 election and would be expensive and its outcome uncertain. The Better Boundaries campaign decided it was more feasible to use the initiative procedure to change the redistricting process by statute than to attempt to amend the Utah Constitution to give final authority to an Independent Redistricting Commission.

¹⁷ "Utah Independent Redistricting Commission and Standards Act," 20A-19-301.

¹⁸ As one election law scholar has framed the issue: "Are we a nation where it is okay, or not okay, to manipulate a legislative map so that 'in practice,' as president Garfield put it, 'a large portion of the voting people are permanently disenfranchised'?" Edward Foley, "Symposium: Wechsler, History and Gerrymandering," *SCOTUSBLOG*, accessed August 11, 2017, <http://www.scotusblog.com/2017/08/symposium-wechsler-history-gerrymandering>.

¹⁹ "Political Polarization in the American Public," *Pew Research Center*, accessed August 30, 2017, <http://www.people-press.org/2014/06/12/political-polarization-in-the-american-public/>. See also "Partisan Politics, Polarization, and Participation," *Utah Foundation*, June 18, 2012, accessed August 30, 2017, <http://www.utahfoundation.org/reports/partisan-politics-polarization-and-participation/>.

²⁰ The percentage in 2016 was still the 11th lowest in the nation. See Lee Davidson, "Utah Leaders Hailed Voter Turnout in Election. Actually, we were among the Worst in the Nation," *Salt Lake Tribune*, March 16, 2017, accessed August 30, 2017, <http://archive.sltrib.com/article.php?id=5066062&itype=CMSID>. The leaders who were hailing the turnout were comparing the turnout to the number of registered voters, not the total population of eligible voters. See also "Utah Once Again in the Bottom-tier of States for Voter Turnout," *Deseret News*, March 20, 2017, accessed August 30, 2017, <http://www.deseretnews.com/article/865675984/In-our-opinion-Utah-once-again-in-the-bottom-tier-of-states-for-voter-turnout.html>. For 2014 and 2012 turnouts, see Lee Davidson, "Utah had 3rd-lowest Voter Turnout among States," *Salt Lake Tribune*, December 1, 2014, accessed August 30, 2017, <http://archive.sltrib.com/article.php?id=1873023&itype=CMSID>; Robert Gehrke, "Mitt or Not, Utah Voter Turnout was Paltry," *Salt Lake Tribune*, November 24, 2012, accessed August 30, 2017, <http://archivesltrib.com/article.php?id=55336290&itype=CMSID>.

²¹ See Jay Evensen, "Utah's Canceled Elections are a Bad Sign," *Deseret News*, September 30, 2015, accessed August 30, 2017, <http://www.deseretnews.com/article/865637878/Utahs-canceled-elections-are-a-bad-sign.html?pg=all> (documenting increase in noncontested legislative House races and increased percentage of landslide victories).

²² "Political Polarization in the American Public."

²³ *Whitford v. Gill*, 218 F. Supp. 3d 837, 2016 WL 6837299 (W.D. Wisc. 2016), accepted by the U.S. Supreme Court in summer 2017 for hearing in October 2017 under the name *Gill v. Whitford*. See *SCOTUSBLOG*, accessed September 12, 2017, <http://www.scotusblog.com/case-files/cases/gill-v-whitford/>. More than 50 "friend of the court" briefs have been filed in support of or opposition to the lower court decision in *Whitford v. Gill*.

²⁴ This is a widely held view, shared by Supreme Court Justice Ruth Bader Ginsburg in July 2017 comments reported in the *New York Times*. Adam Liptak, "On Justice Ginsburg's Summer Docket: Blunt Talk on Big Cases," July 31, 2017, accessed August 30, 2017, <https://www.nytimes.com/2017/07/31/us/politics/ruth-bader-ginsburg.html?mcubz=3>. Liptak wrote: "Justice Ginsburg said the court's decision to hear the case was 'perhaps the most important grant so far. . . So far, the Court has held race-based gerrymandering unconstitutional but has not found a manageable, reliable measure of fairness for determining whether a partisan gerrymander violates the Constitution.'" In September 2017, a group of prominent current and former politicians, including many notable Republicans, filed "friend of the court" briefs with the U.S. Supreme Court urging it to rule that extreme gerrymandering for partisan purposes violates the U.S. Constitution. Adam Liptak, "Some of G.O.P.'s Stars Break Ranks in Urging Justices to End Gerrymandering," *New York Times*, September 7, 2017, A18.

²⁵ This quote is usually attributed to Thomas Jefferson, but the research librarian at the Jefferson Library provides a more thorough analysis of the origin of the quote. See Anna Berkes, "Eternal Vigilance," August 22, 2010, *Thomas Jefferson Foundation*, accessed August 14, 2017, <https://www.monticello.org/site/blog-and-community/posts/eternal-vigilance>.

²⁶ A statement by a Republican friend who read our report prior to publication.