SETTING THE RECORD STRAIGHT

Utahns for Ethical Government

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The following material responds to inaccurate information about the UEG initiative that is being circulated by opponents, including some legislators.

FICTION	REALITY
The initiative gives the Commission authority to find a legislator guilty of a felony.	• The Commission has authority to find an ethics violation and recommend a sanction to the Legislature. It has no authority to find someone guilty of a felony, which is a criminal offense. • Any finding of ethical misconduct that implicates a possible crime would be reported to the applicable authorities, who would determine whether to prosecute. • The term *felony* appears for the purpose of ensuring that legislators cannot claim immunity from sanction on the basis of legislative privilege. For this reason only, an ethics violation would be deemed one or more of the following: "a felony, a breach of the peace, an action outside the ordinary course of legislative business, or an action beyond the scope of a legislator's official duties."
Democrats and those who want to weaken Republican control of the legislature are behind this legislation.	• Republicans, Democrats, Independents, and other voters have joined in a nonpartisan effort to address legislative ethics reform. • Former Republican state legislators and Republican lawyers are leaders of this initiative. • Governor Olene Walker is a supporter of the initiative, as are 39 other former Republican and Democratic legislators.
Political parties will not be able to contribute to legislative candidates	• The Utah Code defines political parties such that they do not fit the initiative's definition of corporations (which are prohibited from contributing to candidate campaigns). • Nothing in the initiative prohibits candidate contributions from political parties, provided they are not laundering money for corporations, including labor unions.
Any 3 "crazies" can file an anonymous complaint forcing a legislator to defend himself from politically motivated allegations of misconduct	• The legislature itself provides that in every other branch or level of government--executive, judicial, county, municipal--one person may file an ethics complaint against a public official or employee. • Requiring 3 persons, rather than one, to file a complaint is a protection against "crazies." If the complaint is found to be frivolous, or lacking factual or legal support, the Commission will dismiss it. • Nothing bars the Commission from revealing the complainants' identity to the accused legislator at the informal stage of proceedings. If the complaint is determined to have merit, the complainant must be identified to the legislator.
An accused legislator is not allowed to present information in his or her own defense in determining whether a complaint has merit.	• Any legislator who is subject to a complaint has informal rights of participation during the screening process and formal rights at the hearing stage. The informal rights are not limited in the initiative. and would be more extensive than those provided by the Legislature's current process.

When alleged misconduct occurs, a legislator is considered guilty of misconduct until proven innocent.	• The Commission does not determine guilt or innocence. All it does is make a recommendation for action by the Legislature. • The persons bringing the complaint have the initial burden of establishing all the elements of the misconduct. Only then does the burden shift to the legislator to rebut the allegations by a preponderance of the evidence. This is the same standard that already applies to corporate officers and directors, business partners, or trustees of trusts.
Having no judicial review of Commission recommendations is a constitutional denial of due process of law.	• Commission recommendations are advisory to the Legislature, so there is no ruling for a court to review. • Where legislator discipline is concerned, it would be a constitutional violation of the separation of powers doctrine to have the issue of ethical misconduct reviewed by the courts. (Furthermore, there is no judicial review of existing legislative ethics rulings).
A legislator can select any private lawyer to defend against a complaint, regardless of cost.	• The legislator is permitted to select a private attorney because legislative staff attorneys may have a conflict of interest if simultaneously defending the legislator while charged to protect the integrity of the Legislature as an institution. • Only "reasonable costs" are reimbursable. Such reimbursement is a protection for legislators, who otherwise might be afraid that defense costs would be prohibitive. Business organization statutes have similar protections for principals of a business. • The Commission is likely to draw on Utah court decisions that provide guidance in determining what costs are considered reasonable.
The required financial disclosures are an invasion of privacy and will result in revealing the names of customers or clients of the legislator's employer.	• Public officials accept the fact that their privacy is constrained when they agree to serve the public, and they openly acknowledge this in supporting disclosure requirements. • There is no requirement for disclosure of the clients or customers of legislators' employers. A legislator must disclose the significant sources from which the legislator derived benefit of more than $10,000 in the previous year. • Disclosing one's sources of significant revenue allows the public to assess whether a legislator has a conflict of interest in voting for or against certain pieces of legislation.
Being required by the initiative to be a "fiduciary" means that a legislator must always vote the way a majority of his or her constituents want.	• Being a fiduciary means that the legislator has entered into a trust relationship with the public and must not use that trust for personal profit, must make full disclosure, and must be accountable for his or her performance in office. • It is not considered a breach of fiduciary duty if any benefit to the legislator is on the same terms and conditions as benefit to the public at large.

Business leaders, especially members of boards of directors or corporate officers of businesses, will not be able to serve in the legislature because they are considered "control persons" under the initiative.	• If a legislator serves on a board of directors because of skills and expertise relevant to the board and not simply because of legislative status, and if the legislator is not compensated for such service, the legislator can remain on a board of a corporation that has not retained and paid a lobbyist. Serving in an advisory rather than a decision-making capacity also would not be an ethics violation. • The initiative seeks to prevent conflicts of interest that arise when a legislator is a lobbyist or has significant ties to lobbyists. Hence, if the legislator is a paid lobbyist or a "control person" of a corporation (which includes a nonprofit business or a labor union) that retains and pays a lobbyist, the legislator may have committed an ethics violation. The legislator may easily avoid this violation by not acting as a lobbyist or by resigning as a control person in the corporation that has hired a lobbyist.
A legislator could be held responsible for misconduct that goes back 6 years prior to passage of the initiative, even if no longer serving as a legislator.	• The 6-year time frame is not retroactive. It begins to run only after the initiative is enacted by the public.
Limitations on campaign contributions are unconstitutional.	• Limits on campaign contributions have been upheld in several decisions of the U.S. Supreme Court. • The recent U.S. Supreme Court decision overturning the ban on independent corporate political expenditures in federal election campaigns did not deal with statutory bans on direct corporate contributions to legislative candidates. Nor did it unsettle the longstanding rule that such bans are constitutionally valid. The ruling of the court, therefore, should not affect our initiative.
The initiative gives voters the right to establish duties that are constitutionally assigned only to the Legislature.	• Under Article VI, Section 1 of the Utah Constitution, legislative power is vested in the legislature and in "the people" through the initiative process. • The initiative does not intrude upon any duty specifically assigned by the Utah Constitution to the Legislature.
The process for selecting Commissioners is partisan. Giving the minority party co-equal responsibility for selection of the 20 candidates for the Commission is meant to enhance the power of Democrats in the Legislature.	• The requirement for unanimity by the Republican and Democratic leaders in the House and Senate is intended to ensure that the 20 people in the pool are acceptable to both major political party leaders and viewed as independent-minded citizens. • The fact that the leadership will not know which 5 members of the pool will ultimately be randomly selected as Commissioners greatly reduces the incentive for legislative leaders to pick partisan members of the pool. • A bipartisan process is used in order to obtain a nonpartisan commission. In all states with Independent Commissions, both political parties are involved in the selection of Commission members.

The fall-back provision for selecting the pool of candidates (allowing 5 sponsors of the initiative to create the pool if the legislative leadership can not reach agreement) turns control over to political partisans rather than the legislature.	• The sponsors have no incentive to be partisan because it would undermine the purpose of the initiative and destroy the reputation of the Commission. • The fall-back provision encourages the legislative leadership to agree on a pool of 20 or otherwise risk public criticism. • If a group of five sponsors is needed to create the pool of 20 candidates, the sponsors are drawn from both political parties and unaffiliated voters and must follow the same criteria as the legislative leadership. Legislators themselves still select the 5 commissioners at random from the pool of 20 selected by the five sponsors.
Only the wealthy will be able to run for office if campaign contributions are limited.	• Limiting special interest contributions will require candidates for office to raise more of their campaign funds from their constituents and ordinary citizens. • Wealthy individuals may have more money of their own to put into a campaign, but that money does not make the candidate beholden to big contributors. • Getting to know and develop the confidence of one's constituents can compensate for lack of personal wealth.
Disclosure of potential conflicts of interest and campaign contributions is sufficient to allow the public to determine any ethical lapses, and therefore there is no need for campaign contribution limits.	• Full and timely disclosure would be an important step, but disclosure alone is insufficient. • Disclosure does not constrain the undue influence of big money in legislative decision making, nor prohibit unethical behavior. • Utah's campaign disclosure laws are neither timely nor enforced, and no penalty exists for partial reports that are amended after the election is over. • Utah's conflict of interest disclosure laws lack teeth and are, in effect, unenforceable. They also do not require adequate disclosures, and many legislators make only cursory statements about the nature of their employment (e.g., real estate) so that possible conflicts of interest are not revealed.
There is not really any problem with ethics in the legislature because constituents continue to re-elect their legislators.	• Election to office does not assure ethical behavior. Polls show that a large majority of Utahns see legislative ethics as a problem. • Legislative duties are not just to their constituents but to the public at large and to the integrity of the Legislature as an institution. • Many ethical breaches are ignored because legislators don't want to rock the boat, and current ethics rules make it extremely difficult to find inappropriate conduct unless there is a self-admission of such.
The Commission's budget cannot be reduced.	• The Legislature is charged with appropriating no less than $472,000 to prevent a hostile legislature from gutting the Commission by eliminating its appropriation. This amount represents about 60 cents per Utah household. The fiscal estimate by the Governor's Office of Planning and Budget estimated a somewhat higher initial cost ($536,000). The additional amount is to cover the Lt. Governor's costs of preparing the initiative for the ballot. • The appropriation clause in our initiative is similar to many others adopted by the legislature. All are subject to the "retrenchment doctrine," which means that no legislature can bind a future legislature as to an actual appropriation of funds. If, over time, few charges are brought against legislators, the annual appropriation could realistically decrease.