

MAY 29 2008

SALT LAKE COUNTY

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IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

Tom Gregory, Glen E. Brown, )  
A. Lamont Tyler, Marjorie Tuckett, )  
Teresa Theurer, Jordan Tanner, )  
Debbie Swenson, Carmen Snow, )  
Marilyn Shields, Pat Rusk, )  
Ronda Rose, Jack Redd, )  
Georgia Peterson, Carole Peterson, )  
Bonnie Palmer, Denis Morrill, )  
Bill Moore, Sarah Meier, )  
Rosalind McGee, Scott McCoy, )  
Sheryl Allen, Dee Burningham, )  
Kim Burningham, Carolyn White, )  
Michael Jensen, Steven O. Laing, )  
Judy Larson, Lisa Watts Baskin, )  
David Hogue, Rebecca Chavez-Houck, )  
Janice Fisher, Christine Johnson, )  
Beth Beck, Mike Marsh, )  
Karen Hale, Becky Edwards, )  
Janet Cannon, and Steven C. Baugh, )

Plaintiffs, )

vs. )

Mark Shurtleff, in his official )  
capacity as Attorney General )  
for the state of Utah, Edward )  
Alter, in his official capacity )

COMPLAINT

Civil No. 080908814

Judge: Dever

as Treasurer for the state )  
of Utah, and Jeff Herring, in )  
his official capacity as Executive )  
Director of the Utah Department )  
of Human Resource Management, )  
) )  
Defendants. )  
)

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Plaintiffs bring this action against defendants, seeking a judgment declaring that SB 2 (second substitute), a bill passed in the 2008 General Session of the Utah State Legislature, is unconstitutional in light of the requirements of Article VI, Section 22, and Article X, Section 3, of the Utah Constitution, as well as an injunction, blocking the implementation, funding, and enforcement of this legislation. For causes of action, plaintiffs show this Honorable Court as follows.

**THE PARTIES, JURISDICTION, AND VENUE**

1. Plaintiffs are a non-partisan coalition of citizen voters who believe that their elected representatives in the Utah State Legislature are the people's servants. Plaintiffs, moreover, are united by their concern that these representatives should conduct the people's business in an orderly, open, and ethical manner, consistent with those fundamental, mandatory, procedural constraints set forth in the Utah Constitution.

2. Plaintiffs are committed to the following elementary propositions. Good laws are a product of good lawmaking. Good lawmaking, at a minimum, is a process which insures -- through its transparency and fairness -- the participation of all citizens. Citizen participation, not only is a fundamental right, guaranteed by the Utah Constitution, but also is a procedural imperative if enacted laws are to reflect, through the mirror of representation, the will of the people. Concerned citizens cannot know how to direct their participation when legislative proposals are falsely named or otherwise disguised through

omnibus "Christmas Tree" bills and hydra-headed substitutions in the last hours of a legislative session. In this fashion, moreover, lawmakers grow deaf to the people's voice, and the will of the many may be denied or defeated through the parliamentary maneuverings of a few.

3. Each plaintiff is an individual, residing in the state of Utah. Each is a registered voter, taxpayer, and citizen of Utah. Plaintiffs include members of both major political parties, Republican and Democrat. Their government service and (where appropriate) political affiliations are as follows.

4. Tom Gregory presently serves as a member of the Utah State Board of Education ("USBE"). The USBE is established pursuant to Article X, Section 3, of the Utah Constitution. Article X, Section 3, likewise provides that "[t]he general control and supervision of the public education system shall be vested" in the USBE. All members of the USBE are elected in non-partisan races to serve 4 year terms.

5. Glen E. Brown, a Republican, formerly served as Speaker of the House of Representatives in the Utah State Legislature.

6. A. Lamont Tyler formerly served as a Republican member of the House of Representatives in the Utah State Legislature.

7. Marjorie Tuckett currently is a member of the Board of Directors of the Utah School Boards Association ("USBA"). Founded in 1932, the USBA is an umbrella organization which represents all 40 school districts in the state of Utah. Ms. Tuckett serves in a non-partisan capacity with the USBA.

8. Teresa Theurer currently is a member of the USBE. This is a non-partisan office.

9. Jordan Tanner formerly served as a Republican member of the House of Representatives in the Utah State Legislature.

10. Debbie Swenson currently serves as a member of the Board of Directors of the USBA. Ms. Swenson serves in a non-partisan capacity with the USBA.

11. Carmen Snow formerly served as President of the Utah Chapter of the Parent Teacher Association ("PTA").

12. Marilyn Shields formerly served as a member of the USBE. As noted above, all USBE members are non-partisan.

13. Pat Rusk currently serves as the Executive Director of Utahns for Public Schools ("UTPS"), a non-partisan coalition of organizations seeking reform and improvements for public schools in the state of Utah. Ms. Rusk formerly has served as President of the Utah Education Association ("UEA").

14. Ronda Rose has served on the Utah State PTA Board for over 10 years, and she has served on local and regional PTA Boards since 1995.

15. Jack Redd formerly served as a Republican member and majority leader of the House of Representatives in the Utah State Legislature.

16. Georgia Peterson formerly served as a Republican member of the House of Representatives in the Utah State Legislature. Ms. Peterson also has served as a Commissioner on the Utah State Tax Commission.

17. Carole Peterson formerly served as Chief Clerk of the House of Representatives in the Utah State Legislature.

18. Bonnie Palmer formerly served (in a non-partisan capacity) as President of the USBA. She presently serves as Chairperson of the Executive Committee of UTPS.

19. Denis Morrill presently serves as a member of the USBE. As noted above, all service on the USBE is non-partisan in nature.

20. Bill Moore presently serves as a member of the Board of Directors of the USBA and as a member of the Davis County School Board. He formerly served as President of the USBA. All service on the USBA and local school boards is non-partisan in nature.

21. Sarah Meier presently serves as President of the Granite School Board and as a member of the Board of Directors of the USBA. She formerly served as President of the USBA. Her service on the USBA and with the Granite School Board is non-partisan in nature.

22. Rosalind McGee presently serves as a Democratic member of the House of Representatives in the Utah State Legislature.

23. Scott McCoy presently serves as a Democratic member of the Senate in the Utah State Legislature.

24. Sheryl Allen presently serves as a Republican member of the House of Representatives in the Utah State Legislature.

25. Dee Burningham is registered to vote as a Republican. He formerly served as the political director of the UEA.

26. Kim Burningham presently serves as a member of the USBE. He formerly served as Chairperson of the USBE. All such service, as noted above, is non-partisan in character. Prior to such service, he was a Republican member of the House of Representatives in the Utah State Legislature.

27. Carolyn White currently is a non-partisan member of the Board of Directors of the USBA.

28. Michael Jensen presently serves (in a non-partisan capacity) as a member of the USBE.

29. Steven O. Laing formerly served as the State Superintendent of Public Instruction for the state of Utah. Pursuant to the provisions of Article X, Section 3, of the Utah Constitution, the USBE appoints the state superintendent who then becomes "the executive officer of the board." As an appointee of the USBE, the state superintendency is non-partisan in nature.

30. Judy Larson formerly served (in a non-partisan capacity) as a member of the USBE.

31. Lisa Watts Baskin presently serves as a Councilperson on the City Council for North Salt Lake. She formerly has served as an attorney in the Office of Legislative Research and General Counsel.

32. David Hogue formerly served as a Republican member of the House of Representatives in the Utah State Legislature.

33. Rebecca Chavez-Houck presently serves as a Democratic member of the House of Representatives in the Utah State Legislature.

34. Janice Fisher presently serves as a Democratic member of the House of Representatives in the Utah State Legislature.

35. Christine Johnson presently serves as a Democratic member of the House of Representatives in the Utah State Legislature.

36. Beth Beck is a retired school administrator and a former President of the UEA.

36a. Mike Marsh presently serves (in a non-partisan capacity) as a member of the Board of Directors of the USBA.

37. Karen Hale formerly served as a Democratic member of the Senate in the Utah State Legislature.

38. Becky Edwards is a long-time community advocate for education and family health issues.

39. Janet Cannon presently serves in a non-partisan capacity as a member of the USBE.

40. Steven C. Baugh formerly served as Superintendent of the Alpine School District. He is an associate professor of educational leadership at the university level in the state of Utah.

41. As noted above, all plaintiffs are concerned with the openness, fairness, and integrity of the process by which the Utah State Legislature enacts legislation and the extent to which that process, if constitutionally impaired, impacts their ability, as representatives, senators, education officials, or constituents, to affect that process. All aver that their ability to have input in and impact upon the various bills which became SB 2 (second substitute) in fact was impaired, if not thwarted, in view of the process which the Utah State Legislature followed in enacting that particular legislation.

42. Plaintiffs who are elected or appointed as legislators or officials have taken an oath under Article IV, Section 10, of the Utah Constitution. This oath requires them, among other things, to "support, obey and defend . . . the Constitution of this State," and

to "discharge the duties of my office with fidelity." These plaintiffs feel bound by their oath to bring the instant action.

43. Defendants are the Utah state officials primarily charged with funding, implementing, administering, and enforcing the provisions of SB 2 (second substitute). Each defendant is sued in his official capacity for the purpose of obtaining declaratory and injunctive relief.

44. Pursuant to the provisions of title 78 of the Utah Code, this Court has subject-matter jurisdiction over the claims asserted in this civil action. Based upon the claims which are set forth below, and pursuant to Utah Code, Sections 78-33-1, *et seq.*, as well as Rule 57, Utah Rules of Civil Procedure, plaintiffs are entitled to a judgment declaring that SB 2 (second substitute) (or a portion thereof) is unconstitutional, invalid, ineffective, and unenforceable. Based upon the claims which are set forth below, and pursuant to Rule 65, Utah Rules of Civil Procedure, plaintiffs are entitled to an injunction (preliminarily and/or permanently) which restrains defendants from enforcing, implementing, or administering (through the disbursement of funds or otherwise) the provisions of SB 2 (second substitute) (or a portion thereof).

45. Pursuant to the provisions of title 78 of the Utah Code and Rule 4 of the Utah Rules of Civil Procedure, this Court has personal jurisdiction over each defendant in this civil action.

46. Pursuant to the provisions of title 78 of the Utah Code, the venue for this civil action properly is laid in this Court.

## BACKGROUND AVERMENTS

47. On March 5, 2008, the last day of the 2008 General Session, the Utah State Legislature enacted SB 2 (second substitute) (hereinafter called "SB 2" or the "Omnibus Bill").

48. Although SB 2 was titled simply "Minimum School Program Budget Amendments," the bill was an omnibus measure which cobbled together no fewer than 14 separate pieces of legislation, relatively few of which dealt with the "Minimum School Program Budget" referenced in the title.

49. The legislative measures which became SB 2 had been introduced as no fewer than 14 separate bills with single subjects during the course of the 2008 General Session, demonstrating a legislative judgment that each of these 14 bills should be reviewed, debated, and voted upon according to their individual merits independently of any other item of legislation or legislative agenda.

50. Further demonstrating this legislative judgment, all but one of these 14 bills in fact were reviewed, debated, and voted upon according to their individual merits prior to their amalgamation into the Omnibus Bill. In this regard, and subject to further discovery, plaintiffs tentatively have reconstructed the legislative record which, to the best of their understanding at present, shows the following.

### **Fourteen Bills Introduced and Considered as Single Subjects**

51. **HB 67 – Extended Year for Special Educators.** Lines 865 to 911 of SB 2 initially were introduced as a single subject as HB 67 on January 21, 2008. When introduced as a single subject, this bill was titled "Extended Year for Special Educators." A House committee reported favorably on the bill by a vote of 11 to 0 on January 25,

2008. The bill passed the House by a vote of 62 to 0 on January 30, 2008, after which it was forwarded to the Senate. A Senate committee reported favorably on the bill by a vote of 4 to 0 on February 7, 2008. The Senate passed the bill by a vote of 22 to 0 on February 14, 2008. Even though the bill had passed both houses, however, it was not forwarded to the governor for his signature. Instead, and apparently in contravention of the Rules of the Fifty-Seventh Legislature (updated as of January 2, 2008), it was held in abeyance and ultimately rolled into and enacted as part of the Omnibus Bill.

52. **HB 200 – Early Childhood Learning and Evaluation.** Lines 259 to 399 of SB 2 initially were introduced as a single subject as HB 200 on February 28, 2008. When introduced as a single subject, this bill was titled “Early Childhood Learning and Evaluation.” A House committee reported favorably on the bill by a vote of 10 to 2 on February 18, 2008. But after being replaced with HB 200 (first substitute) on the House floor, it was disapproved by the entire House by a vote of 31 to 37 on February 29, 2008. Although the Rules of the Fifty-Seventh Legislature (updated as of January 2, 2008) required that motions for reconsideration be made and heard, if at all, within 24 hours of a bill's defeat on the House floor, there was no motion for reconsideration of the negative vote on HB 200. This bill achieved passage only because it ultimately was rolled into and enacted as part of the Omnibus Bill.

53. **HB 212 – State System of Public Education Amendments or Educator Salary Adjustments.** Lines 718 to 772 of SB 2 initially were introduced as a single subject as HB 212 [which became HB 212 (second substitute)] on February 12, 2008. When proposed as a single subject, the bill was titled “State System of Public Education Amendments.” A substitute bill, also proposed as a single subject, was titled “Educator

Salary Adjustments.” A House committee reported favorably on the bill by a vote of 15 to 0 on February 15, 2008. The bill passed the House by a vote of 66 to 0 on February 22, 2008, after which it was sent to the Senate and held in abeyance until ultimately rolled into and enacted as part of the Omnibus Bill.

54. **HB 266 – Accelerated Learning Program Revisions.** Lines 534 to 602 and 622 to 624 of SB 2 initially were introduced as a single subject as HB 266 on January 21, 2008. When introduced as a single subject, this bill was titled “Accelerated Learning Program Revisions.” A House committee reported favorably on the bill by a vote of 11 to 1 on January 30, 2008. The House passed the bill by a vote of 72 to 0 on February 8, 2008, after which it was sent to the Senate. But the bill stalled in the Senate, failing of recommendation on account of a tied committee vote. The bill ultimately was rolled into and enacted as part of the Omnibus Bill.

55. **HB 270 – Utah Science Technology and Research Initiative Centers.** Lines 912 to 965 of SB 2 initially were introduced as a single subject as HB 270 on January 21, 2008. When introduced as a single subject, this bill was titled “Utah Science Technology and Research Initiative Centers.” A House committee reported favorably on the bill by a vote of 10 to 0 on January 25, 2008. The House passed the bill by a vote of 73 to 0 on January 31, 2008, after which it was forwarded to the Senate. A Senate committee reported favorably on the bill by a vote of 3 to 0 on February 6, 2008. The Senate passed the bill by a vote of 22 to 1 on February 14, 2008. Nevertheless, the bill was not forwarded to the governor for his signature. Instead, and apparently in contravention of the Rules of the Fifty-Seventh Legislature (updated as of January 2,

2008), the bill was held in abeyance and ultimately rolled into and enacted as part of the Omnibus Bill.

**56. HB 278 – Charter School Funding Amendments.** Lines 95 to 258 and 603 to 621 of SB 2 initially were introduced as a single subject as HB 278 on January 28, 2008. When introduced as a single subject, this bill was titled “Charter School Funding Amendments.” Although reported favorably by a House committee vote of 8 to 1 on February 18, 2008, the bill failed of passage in the House by a vote of 33 to 41 on February 25, 2008. A motion for reconsideration of HB 278 as a single subject may have been entertained as allowed pursuant to the legislative rules. Nevertheless, the bill ultimately was rolled into and obtained enactment as part of the Omnibus Bill.

**57. HB 329 – High-ability Student Initiative Program.** Lines 966 to 1005 of SB 2 initially were introduced as a single subject as HB 329 on January 25, 2008. When introduced as a single subject, this bill was titled “High-ability Student Initiative Program.” A House committee reported favorably on the bill by a vote of 11 to 1 on February 18, 2008. The bill passed the House by a vote of 64 to 0 on February 25, 2008, and was sent to the Senate. It was held in the Senate and ultimately rolled into and enacted as part of the Omnibus Bill.

**58. HB 363 – Public Education-Arts Enhanced Learning Program or Beverley Taylor Sorenson Elementary Arts Learning Program.** Lines 1029 to 1060 of SB 2 initially were introduced as a single subject as SB 363 [which later became SB 363 (first substitute)] on February 1, 2008. When introduced as a single subject, this bill was titled “Public Education – Arts Enhanced Learning Program.” A substitute bill, also submitted as a single subject, was titled the “Beverley Taylor Sorenson Elementary Arts

Learning Program.” A House committee reported favorably on the bill by a vote of 10 to 0 on February 13, 2008. The bill passed the House by a vote of 71 to 0 on February 21, 2008, and was sent to the Senate where it was held and ultimately rolled into and enacted as part of the Omnibus Bill.

**59. HB 419 – Public Textbook Evaluation Amendments.** Lines 468 to 491 of SB 2 initially were introduced as a single subject as HB 419 on February 12, 2008. When introduced as a single subject, this bill was titled “Public School Textbook Evaluation Amendments.” A House committee reported favorably on the bill by a vote of 9 to 0 on February 25, 2008. The bill ultimately was rolled into and enacted as part of the Omnibus Bill.

**60. HB 436 – English Language Learner Family Literacy Centers Program.** Lines 1006 to 1028 of SB 2 initially were introduced as a single subject as HB 436 February 6, 2008. When introduced as a single subject, this bill was titled “English Language Learner Family Literacy Centers Program.” A House committee reported favorably on the bill by a vote of 10 to 0 on February 22, 2008. The House passed the bill by a vote of 55 to 9 on February 27, 2008. The bill thereafter was forwarded to the Senate and ultimately rolled into and enacted as part of the Omnibus Bill.

**61. SB 35 – Differentiated Pay for Teachers.** Lines 773 to 864 of SB 2 initially were introduced as a single subject as SB 35 [which later became SB 35 (second substitute)] on January 21, 2008. When introduced as a single subject, this bill and its substitute were titled “Differentiated Pay for Teachers.” It was reported favorably out of a Senate Committee by a vote of 5 to 1 on January 22, 2008. It passed the Senate by a vote of 19 to 7 on February 5, 2008. It then was forwarded to the House where it may

have died on a tie vote in Committee February 27, 2008. In any event, SB 35 ultimately was rolled into and enacted as part of the Omnibus Bill.

62. **SB 61 – Financial and Economic Literacy Education.** Lines 400 to 467 of SB 2 initially were introduced as a single subject as SB 61 on January 21, 2008. When introduced as a single subject, this bill was titled “Financial and Economic Literacy Education.” It was reported favorably out of committee by a vote of 7 to 0 on January 28, 2008. It was passed by the Senate by a vote of 24 to 0 on February 2, 2008. It then was forwarded for consideration by the House. It was reported favorably out of committee in the House by a vote of 11 to 0 on February 18, 2008. The bill thereafter was held in abeyance until rolled into and enacted as part of the Omnibus Bill.

63. **SB 118 – Education Transportation Amendments.** Lines 635 to 717 of SB 2 initially were introduced as a single subject as SB 118 on January 21, 2008. When introduced as a single subject, this bill was titled “Education Transportation Amendments.” It was reported favorably out of committee by a vote of 5 to 0 on January 24, 2008. The Senate passed the bill by a vote of 26 to 0 on February 5, 2008. It was sent to the House February 5, 2008. It was reported favorably out of committee by a vote of 12 to 0 on February 18, 2008. The bill thereafter was held in abeyance for a month until it was rolled into and enacted as part of the Omnibus Bill.

64. **Sections 12, 13, and Uncodified Sections of SB 2.** Plaintiffs are unsure of the origins of lines 492 to 533 and 603 to 621 and 1072 to 1155 of SB 2. Plaintiffs are certain, however, that these are appropriations measures or measures related to appropriations. This is the money that was intended, among other purposes, to fund the so-called Minimum School Program looking to the future. These portions of SB 2

sometimes hereafter, for convenience of reference, will be called the "money bill" or words to that effect. This money bill, in effect, was held in abeyance and not distributed for consideration until March 4, 2008, one day prior to the end of the legislative session. After distribution, it passed both houses of the legislature as part of the Omnibus Bill.

65. Plaintiffs aver that, since each of the bills noted above was introduced as a single subject, and since each was reviewed, debated, and considered by either or both houses of the state legislature as a single subject, this course of dealing establishes a legislative judgment that each bill in fact was a single subject which should have been considered individually on its own merits and not in combination with other bills.

#### **The Hostage Bills**

66. Several of the bills referenced above were enormously popular as independent measures. Indeed, passage of these bills, in view of the perceived need for reform efforts in public education, was considered by many to be a legislative imperative. Included in this category were bills such as HB 67, HB 212, HB 270, SB 118, and, of course, the money bill.

67. As expected, several of these bills passed both houses of the state legislature as single subjects. These approvals occurred unanimously or by overwhelming majorities. These included HB 67 and HB 270, both of which had cleared both houses no later than February 14, which was 19 calendar days and 14 legislative days before the session ended.

68. Still other bills passed at least one house and had received committee approval for passage in another house. These approvals occurred unanimously or by overwhelming majorities. These included SB 61 which passed the Senate February 2 and

obtained committee approval in the House February 18, and SB 118 which passed the Senate February 5 and received committee approval in the House February 18, which was 16 calendar days and 12 legislative days before the session ended.

68a. The relatively early dates of passage by one or both houses for bills such as HB 67, HB 270, SB 61, and SB 118 suggest a deliberate intent by a small group of insider legislators to interrupt the normal flow of bill consideration with respect to these measures for the express purpose of holding them hostage.

69. And still another set of bills passed at least one house by unanimous vote or overwhelming majority and then was held in abeyance until ultimately becoming part of the Omnibus Bill. These included HB 212 which passed the House February 15, HB 329 which passed the House February 25, and HB 436 which passed the House February 27. As with the bills noted above in the immediately preceding paragraph of this complaint, the relatively early passage of HB 212 in particular reinforces the impression of hostage holding by an insider group.

70. Finally, the money bill, although contemplated for passage early in the session, was not distributed for consideration until March 4, when it promptly became the linchpin and centerfold for the Omnibus Measure which was enacted as SB 2.

71. Plaintiffs aver that these popular bills were used as hostages to obtain passage of less popular or unpopular bills, bills that, but for the hostage bills, did not or could not have obtained passage if considered alone and on the basis of their individual merits. As noted above, these so-called hostage bills, although they had passed (or could quickly have been passed) by both houses of the state legislature, deliberately were not forwarded to the governor for signature or otherwise were held in abeyance so that they could serve

as hostages in order to extort enactment of the less popular or unpopular bills referenced below. On information and belief, plaintiffs aver that the bills described above as hostage bills deliberately were held back so that they could be used as hostages to extort or compel enactment of the less popular bills described below.

### **The Price for Release of the Hostages**

72. As indicated above, other bills were less popular or decidedly unpopular. These included HB 278 which was voted down (33-41) in the House February 29, HB 200 which was defeated (31-37) in the House February 29, and HB 266 which, although passing in the House, could not get out of committee in the Senate. These also may have included SB 35 which, although passing the Senate on February 5, may have died in a House committee on February 27. None of these bills could obtain passage by the constitutionally required majorities of both houses of the state legislature when viewed independently on their own merits. All achieved passage only because they were combined with the popular bills that were rolled into and enacted as part of the Omnibus Bill.

### **Unclear Title Problems**

73. SB 2, as noted above, is titled "Minimum School Program Budget Amendments." This title is misleading for the following reasons which are meant to be illustrative and not exhaustive.

74. SB 2 is an Omnibus Bill, containing at least 14 separate bills, only a portion of which treats the so-called Minimum School Program. SB 2's title falsely implies that SB 2 treats only the Minimum School Program and not other subjects.

75. SB 2's title falsely implies that the bill is confined to budgetary questions whereas many of the bills which are incorporated into SB 2 treat substantive, statutory policy issues, as distinct from fiscal issues.

76. SB 2's title falsely implies that it is amendatory in nature, amending existing statutes, whereas many of the bills which are incorporated into SB 2 enact entirely new legislation which in turn establish brand new programs.

77. SB 2's title misleadingly fails to inform legislators and the public that certain bills which had failed of passage in either the House or the Senate during the course of the session have been rolled into this Omnibus Measure.

78. Some of the titles by which the individual bills comprising SB 2 were introduced and tracked through the course of the session were confusingly altered when these bills were rolled into and considered as part of SB 2. For example, SB 35 was known as the "Differential Pay for Teachers" bill throughout the session, but became the "Teacher Salary Supplement Program," an entirely different name with a distinctive meaning, when enacted as lines 774 to 864 of SB 2.

**COUNT ONE: THE OMNIBUS BILL VIOLATES  
THE SINGLE SUBJECT REQUIREMENT  
OF ARTICLE VI, SECTION 22,  
OF THE UTAH CONSTITUTION**

79. In light of the facts set forth above and below, the Omnibus Bill violates the single subject requirement of Article VI, Section 22, of the Utah Constitution, which provides, in pertinent part, that, "Except general appropriations bills and bills for the

codification and general revision of laws, no bill shall be passed containing more than one subject, which shall be clearly expressed in its title."

80. Article VI, Section 22, is a mandatory limitation on legislative power, and, in particular, the process by which the legislature exercises power in the consideration and enactment of legislation.

81. By passing the Omnibus Bill, the legislature violated Article VI, Section 22, in at least 3 distinct respects. A violation in even one of these respects, standing alone, however, would be sufficient to warrant a judgment that the Omnibus Bill is unconstitutional pursuant to Article VI, Section 22.

### **The First Respect in Which the Omnibus Bill**

#### **Violates the Single Subject Requirement of Article VI, Section 22.**

82. What is a "single subject" for purposes of Article VI, Section 22? Whether the Omnibus Bill treats a single subject or multiple subjects is to be determined in light of the purpose which the framers intended to be served when they passed Article VI, Section 22. That purpose is to prevent parliamentary maneuverings whereby any bill, so unpopular that it could not pass on its own merits when standing alone, is bundled with popular measures in order to extort enactment of the unpopular measure. When this occurs, the single subject rule of Article VI, Section 22, is offended.

83. The averments in this complaint amply demonstrate that this occurred through the passage of the Omnibus Bill. In particular, and without limiting the foregoing, plaintiffs point the Court to statements made by a member of the legislature in the wake of SB 2's passage. Michael Waddoups, the Republican Senator from District 6, issued a written statement to all delegates at the Salt Lake County Republican Convention on or

about May 10, 2008. The statement reads, in pertinent part, "This funding bill [SB 2] was presented to the legislature the day before the session ended leaving no time to debate the bill and rewrite a new one. It was put together by House and Senate Leadership. This is not the way funding is traditionally handled. I thought it was wrong then and I still think it was wrong. However, I, along with almost every other legislator, voted for it because we were faced with the problem that school funding was included in this bill. Had we not voted for the bill education would have remained unfunded. Many of the senators were upset about it and we are currently in the process of seeing it never happens again."

84. Demonstrating the same point in a different way, at the most recent meeting of the Interim Education Committee, on or about May 21, 2008, the wisdom (and the constitutionality) of a portion of SB 2, namely, the International Baccalaureate Program, was challenged. Stephen Urquhart, the Republican representative from St. George, approved the carving out of the IB portion of SB 2 for constitutional review by the committee staff, stating that, "I think with an ongoing appropriation, it's fully appropriate to see if we want to continue to make that appropriation *on a bill that failed to make it through the process[.]*" (Emphasis supplied.)

### **The Second Respect in Which the Omnibus Bill**

#### **Violates the Single Subject Requirement of Article VI, Section 22.**

85. What is a "single subject" for purposes of Article VI, Section 22? When any bill combines appropriations measures with general legislation, this is a *per se* violation of the "single subject" requirement of Article VI, Section 22. This is because, consistent with the first respect in which the Omnibus Bill violates the single subject requirement,

money bills, which are critical for government funding, and which usually are subject to passage in the last hours of a legislative session, too easily are taken hostage for the purpose of extorting passage of otherwise unpopular measures. The averments in this complaint, especially Senator Waddoups's statement in this regard, amply demonstrate that this occurred through the passage of the Omnibus Bill.

**The Third Respect in Which the Omnibus Bill**

**Violates the Single Subject Requirement of Article VI, Section 22.**

86. What is a "single subject" for purposes of Article VI, Section 22? Under the single subject rule, bills may combine measures which are related historically, instrumentally, or necessarily by subject-matter. But to say that SB 2 contains only a single subject because all of its provisions, in some way, however disjointedly, relate to matters of "education," in the end, proves too much. We could just as well say that all legislation is related to the business of "government," thereby easily circumventing the constitutional proscription of Article VI, Section 22. The "single subject" principle of Article VI, Section 22, must be applied meaningfully so that legislative abuses do not become the exceptions which swallow the rule.

87. In this regard, the Omnibus Bill did not treat a single, related subject area for the following reasons which are meant to be illustrative and not exhaustive.

**88. Deference to the legislative judgment that SB 2 is an Omnibus Bill in violation of Article VI, Section 22.** Courts should not second-guess lightly the manner in which a legislature desires to conduct business. But what was the overwhelming weight of legislative judgment in this regard? Members of the Fifty-Seventh Legislature during the 2008 General Session, every man and woman in both House and Senate,

treated these 14 bills as separate measures, introducing, reviewing, debating, and voting on each according to its individual merits for 43 days of a 45 day session. This course of dealing establishes a well-nigh irrefutable presumption that, in this case, each of these 14 bills in fact was a single subject which should have been considered separately on its own merits and not in combination with other bills in SB 2, the Omnibus Bill. Only in the last hours of that session were the bills bundled into SB 2, and the vote on this Omnibus Bill, as Senator Waddoups indicated above and as plaintiff legislators will testify at the trial of this matter, was not a judgment about what constitutes a single subject for constitutional purposes, but rather a matter of expedience, if not exigency, to free the hostage bills and educational funding for the coming budgetary cycle.

**89. Deference to the USBE judgment that SB 2 is an Omnibus Bill in violation of Article VI, Section 22.** The USBE, as noted above, is the constitutionally established agency empowered with "general control and supervision of the public education system" for the state of Utah. After SB 2 was enacted and sent to Governor Huntsman, the USBE, by unanimous vote, sent the Governor a letter urging him to veto the Omnibus Bill. This correspondence argues, in effect, that SB 2, although nominally an "education" measure, contains disparate, unrelated subject matters within the education code and, thus, is an omnibus bill in violation of Article VI, Section 22. Hence, the constitutional entity with the greatest expertise in educational policy in the state of Utah views SB 2 as containing multiple rather than single subject matters within the meaning of Article VI, Section 22. This Article X determination, like the legislative judgment noted above, is entitled to considerable deference by the judicial branch in adjudicating the constitutionality of the Omnibus Bill.

90. **SB 2 in fact contains multiple, disparate subject matters in contravention of the constraints of Article VI, Section 22.** One yardstick for determining whether a particular bill contains multiple or single subjects is the codification of various subjects in the education code. Different subjects related to public education are treated and codified in separate chapters of that code. Hence, for example, the single subject of USBE governance is treated separately in one chapter and not intermingled with the different subject of core curricula which is partitioned in another chapter. SB 2 clearly offends the single subject rule when measured against the codification yardstick in the following particulars which are meant to be illustrative rather than exhaustive and which are not listed by order of importance.

91. SB 2 does an end-run around the education code, as well as Article X, Section 3, of the Utah Constitution, by having a non-education related department, the Department of Human Resource Management, administer questions respecting educator salaries.

92. SB 2 establishes a State governed, pre-school, home-school program for low-income families. Fee waivers for low-income students historically have been handled in local districts. Pre-schooling is outside the conventional mandate of Utah's constitutionally prescribed education system. Home-schooling, speaking conceptually, is treated as an exemption from the conventional requirements of that public education system. And, indeed, the UPSTART portion of the Omnibus Bill is codified in that separate chapter of the education code which treats alternatives to public education.

93. Portions of the Omnibus Bill treat textbooks and instructional materials. These subjects historically have been dealt with in a separate chapter of the education code.

94. Portions of the Omnibus Bill create an English Language Learner Family Literacy Center Program to be administered by local school boards. The jurisdiction of local school boards over various programs is a matter of separate codification in chapter 3 of the education code. SB 2, however, rolls this particular measure into the Minimum School Program Act which is codified in chapter 17 of the education code.

95. Portions of the Omnibus Bill treat the so-called Minimum School Program. The Minimum School Program is a term of art which separately is codified in the education code. The nature and scope of the Minimum School Program have been defined statutorily in chapter 17 of the education code. They also have been defined as a matter of historical legislative practice. SB 2 inserts several new, optional programs, such as the High Ability Student Initiative Program, into the middle of the Minimum School Program, in contravention of these statutory prescriptions and this historical practice.

96. In view of all of the foregoing considerations, plaintiffs aver that the Omnibus Bill is unconstitutional pursuant to the single subject requirement of Article VI, Section 22, of the Utah Constitution.

97. In the alternative, those portions of the Omnibus Bill which clearly offend the single subject requirement (which portions, subject to final proof, may include HB 200, HB 266, HB 278, and SB 35) should be severed from SB 2 for the purpose of making a constitutional adjudication of the legislation in this case.

98. The Omnibus Bill (or a severed portion of SB 2) should be declared unconstitutional as violative of the single subject requirement of Article VI, Section 22, of the Utah Constitution.

99. Because the Omnibus Bill (or a severed portion of SB 2) is unconstitutional, defendants should be enjoined from enforcing, administering, implementing, or funding the relevant provisions of this legislation.

**COUNT TWO: THE OMNIBUS BILL VIOLATES  
THE CLEAR TITLE REQUIREMENT  
OF ARTICLE VI, SECTION 22,  
OF THE UTAH CONSTITUTION**

100. In light of the facts set forth above, the Omnibus Bill violates the clear title requirement of Article VI, Section 22, of the Utah Constitution.

101. In the alternative, those portions of the Omnibus Bill which plainly offend the clear title requirement (which may include, subject to proof, HB 200, HB 266, HB 278, and SB 35) should be severed from SB 2.

102. The Omnibus Bill (or a severed portion of SB 2) should be declared unconstitutional as violative of the clear title requirement of Article VI, Section 22, of the Utah Constitution.

103. Because the Omnibus Bill (or a severed portion of SB 2) is unconstitutional, defendants should be enjoined from enforcing, administering, implementing, or funding the relevant provisions of this legislation.

**COUNT THREE: PORTIONS OF SB 2**

**VIOLATE THE NON-DELEGATION DOCTRINE**

**AND ARTICLE X, SECTION 3, OF THE UTAH CONSTITUTION**

104. As noted above, SB 2 incorporates and enacts SB 35. SB 35 is found at lines 774 to 864 of SB 2. When introduced as a single subject, SB 35 was titled "Differentiated Pay for Teachers." When rolled into and enacted as part of SB 2, this legislation was re-named the "Teacher Salary Supplement Program."

105. SB 35 or lines 774 to 864 of SB 2 creates a program to supplement the salaries of eligible teachers under specified criteria.

106. Although nominally an "education program," SB 35 or lines 774 to 864 of SB 2 delegates administration of the new legislation to the Utah Department of Human Resource Management, and not to the Utah State Board of Education.

107. Article X, Section 3, of the Utah Constitution requires that education-related programs shall be administered by the Utah State Board of Education. This power of supervision and control is complete and exclusive.

108. SB 35 or lines 774 to 865 of SB 2 are unconstitutional in that they have delegated power to administer an educational program to the Utah Department of Human Resource Management, rather than to the Utah State Board of Education, all in violation of Article X, Section 3, of the Utah Constitution.

109. This Court should declare that SB 35 or lines 774 to 865 of SB 2 are an unconstitutional delegation of power in violation of Article X, Section 3, of the Utah Constitution.

110. This Court should enjoin the Utah Department of Human Resource Management from implementing or otherwise administering any aspect of SB 35 or lines 774 to 865 of SB 2.

**COUNT FOUR: PORTIONS OF SB 2**

**VIOLATE THE NON-DELEGATION DOCTRINE**

**AND ARTICLE X, SECTION 3, OF THE UTAH CONSTITUTION**

111. Section 11 of SB 2 requires an "independent party" (via private contract) to evaluate and map the alignment of public school instructional materials to the so-called core curriculum. These provisions of SB 2, moreover, forbid the Utah State Board of Education and other governmental entities from performing or supervising this work of evaluation and alignment.

112. Article X, Section 3, of the Utah Constitution requires that education-related programs shall be administered by the Utah State Board of Education. This power of supervision and control is complete and exclusive.

113. Section 11 of SB 2 is unconstitutional in that it delegates the power to administer an educational program to private, so-called "independent parties," while at the same time stripping the Utah State Board of Education of any supervisory control respecting such delegation, all in violation of Article X, Section 3, of the Utah Constitution.

114. This Court should declare that Section 11 of SB 2 is an unconstitutional delegation of power in violation of Article X, Section 3, of the Utah Constitution.

115. This Court should enjoin defendants from implementing or otherwise administering any aspect of Section 11 of SB 2.

## REQUEST FOR RELIEF

Wherefore, having asserted the causes of action set forth above, plaintiffs ask the Court to enter an order in favor of plaintiffs and against defendants which order shall provide for the following relief.

- a. A declaration of unconstitutionality (with or without severability) as set forth above.
- b. An injunction (preliminary and/or permanent), prohibiting defendants or any of them from funding, implementing, administering, or enforcing any provisions of SB 2 which this Court has declared to be unconstitutional on any ground.
- c. Attorneys fees and costs of court.
- d. Such additional relief as the Court may deem equitable or appropriate under all of the facts and circumstances of this civil action.

Dated this 28th day of May, 2008.



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