

# GOVERNOR'S COMMISSION ON STRENGTHENING UTAH'S DEMOCRACY

## RECOMMENDATION FOR ELECTIONS, LOBBYING, & CAMPAIGN FINANCE ENFORCEMENT COMMISSION

*SPONSORED BY COMMISSIONERS RANDY DRYER AND BRUCE HOUGH*

Whereas, the Lieutenant Governor's Office is the State Office charged with administering Utah's elections, campaign finance, and lobbying laws, and currently lacks specific enforcement procedure and authority, adequate, staff and resources to monitor filings, audit compliance with applicable laws, and investigate and adjudicate complaints from candidates and citizens;

Whereas, public confidence in the electoral system can be reinforced when the screening and disposition of election, campaign finance, and lobbying complaints is done by an independent body;

The Governor's Commission on Strengthening Utah's Democracy hereby resolves to recommend that the Utah Legislature (1) establish within the Office of Lieutenant Governor an Elections & Lobbying Review Commission ("Commission") to enforce and review compliance with Utah's election, campaign finance and lobbying requirements, and (2) increase funding to the Lieutenant Governor's Office to enable it to provide (a) for the immediate, electronic filing and disclosure of campaign finance and lobbying reports and (b) to provide the Commission with adequate staff and legal assistance to perform its duties effectively and efficiently.

The Commission will be comprised of three retired judges, no more than one of whom may be registered with the same political party and no more than one of whom may reside in the same county. Each member of the Commission will serve for staggered six year terms, appointed by the Governor and subject to the advice and consent of the Utah Senate. Commission members are removable by the Governor "for cause" and by the Legislature through impeachment proceedings. The Commission will investigate complaints received from candidates, legislators, and the public. Any individual or group may file a complaint. The Commission's powers include the ability to issue advisory opinions, subpoena documents and witnesses, and impose penalties.

The Lieutenant Governor's Office shall provide staff and legal assistance as requested by the Commission and provide administrative services to the Commission.

It is contemplated the Lieutenant Governor's Office will promulgate rules and regulations governing the operation of the Commission but should generally provide for the following:

### COMPLAINTS AND INVESTIGATIONS

A complaint to be investigated by the Commission must (1) provide the full name, address, and telephone number of the person filing the complaint; (2) be signed, sworn to, and notarized; (3) clearly recite the facts that show specific violations under the Commission's jurisdiction; (4) clearly identify each person, committee or group that is alleged to have committed a violation;

and (5) include any documentation supporting the allegations, if available. If the complaint is deficient, the complainant will be notified and given an opportunity to correct the deficiency.

The time frames set forth below would be applicable to complaints filed within 30 days of an election. Complaints filed at other times would be processed under time frames allowing more time for response and Commission action.

After a complaint is filed, a Commission staff member or attorney would be required to notify the respondent(s) within two business days. The respondent(s) would then have three (3) business days after they receive notice to explain in writing why the Commission should not take any action or investigate further. The Commission may, in its discretion, allow an extra two (2) business days for a respondent to respond. The fact that a complaint has been filed, as well as the Commission's investigative and resolution process would be confidential until the matter is resolved.

Once a complaint and response are received, the Commission shall, by a majority vote, and as soon as possible, but in no event longer than three (3) business days, place the matter on one or both of two tracks, depending on the matter's facts and circumstances: (1) the Administrative Fine Program—a mechanically-applied civil fine program for late disclosure reports or minor compliance violations; (2) the regular enforcement process, reserved for matters that require additional legal and factual investigation. Cases that do not warrant action or further investigation will be dismissed.

Cases in the regular enforcement process will be assigned to a staff member and/or attorney. For cases that are assigned to an attorney, the attorney shall as soon as possible, but in no event longer than three (3) business days, (unless the attorney/staff member is granted additional time by the Commission upon good cause shown), report to the Commission and recommend whether there is "reason to believe" the respondent has committed or is about to commit a violation of the law. The Commission then takes an initial vote regarding whether there is "reason to believe." The Commission will take one of three actions.

- Find reason to believe that a violation occurred and continue investigation.
- Find no reason to believe that a violation occurred and dismiss the matter.
- Dismiss the matter, but send an admonishment or caution letter.

The Commission will make all final actions and all accompanying documentation available to the public within a reasonable period of time, but no longer than 5 days after a final action is taken. A majority of the Commission must vote to take any action. If the Commission votes to continue an investigation, the attorney and/or Commission staff member will take the action he or she deems necessary to gather sufficient facts, and will have the power to subpoena documents and witnesses, and conduct paper and field audits. The attorney and/or Commission staff member will file a formal report and present it to the Commission. The report will explain the factual and legal issues of the case and recommend whether the Commission should find there is "probable cause to believe" a violation has occurred or is about to occur. The respondent is provided with a copy of the report and given ten (10) days to file a written response. The respondent may request a Probable Cause Hearing to present oral argument, witnesses or other evidence to the Commission at this time, which hearing shall be conducted as soon as practicable.

After the Commission reviews the Commission attorney and/or staff member's final report, the respondent's reply, and considers any other evidence, it votes on whether there is "probable

cause to believe” that a legal violation occurred. If a majority of the Commission votes to find “probable cause,” the Commission may then determine and impose the appropriate fine amount or other sanction.

In addition, the Commission may recommend to the Lieutenant Governor’s Office to initiate an administrative prosecution and a hearing before an administrative law judge and/or refer the matter to the Utah Attorney General for civil and/or criminal prosecution.

**APPROVED 16-0 (3 ABSENT)  
NOVEMBER 5, 2009**

VOTING TO APPROVE

Acting Chair Kirk Jowers, Representative Rebecca Chavez-Houck, Randy Dryer, Representative Craig Frank, Dave Hansen, Bruce Hough, Meghan Holbrook, Senator Scott Jenkins, Dan Jones, Tom Love, Frank Pignanelli, Dick Richards, Dee Rowland, Ken Verdoia, LaVarr Webb, Doug Wright