



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC

355 NORTH 300 WEST, SALT LAKE CITY, UT 84103

(801) 521-9862 PHONE • (801) 532-2850 FAX

ACLU@ACLUUTAH.ORG • WWW.ACLUUTAH.ORG

February 23, 2010

Utah State Senators
320 State Capitol
PO Box 145115
Salt Lake City, Utah 84114

Dear Senator,

On behalf of the American Civil Liberties Union of Utah, we urge you to vote against Senate Bill 108, "Judicial Nominating Commission Staff Amendments."

S.B. 108 would give the governor unprecedented access to, and power over, the judicial nomination process, seriously eroding the independence and non-political nature of the judicial nominating commissions. This bill threatens the separation of powers envisioned by the framers of the Utah Constitution. It violates the integrity and independence of the courts, and is wholly unnecessary.

S.B. 108 improperly interject politics into the judiciary by allowing the governor to appoint a member of his or her own staff to serve as "staff" to the commission that nominates the Supreme Court Chief Justice. This would allow the governor an inappropriate "insider" view of the nominations process, which is intended to be non-public, *precisely* so it can be free from political interference. With the governor's staff person privy to the inner workings of the nominating process, the governor would know, for example, if one of his or her favorite candidates was not faring well. This governor could then improperly influence the process to improve the chances of his or her preferred candidate.

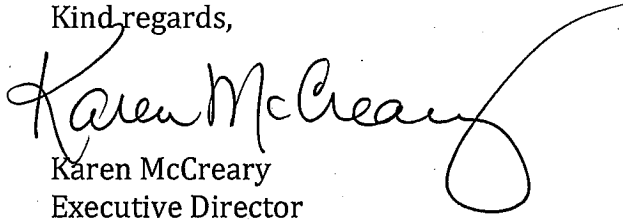
S.B. 108 would also increase the number of nominees sent from the nominating commissions to the governor. Currently, the nominee lists must include at least three candidates, but no more than five candidates. S.B. 108 would increase those numbers to seven (for appellate nominees) and five (for trial court nominees). Expanding the governor's choices to five or seven candidates could result in two additional candidates being eligible for appointment. We should be seeking to improve the quality of our judges, rather than broadening the pool to include less qualified candidates.

S.B. 108 is unnecessary as there is already an established process for judicial nominee selections. The judicial council currently enacts the rules that must be

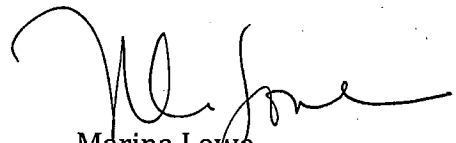
followed by nominating commissions when considering potential judicial nominees. S.B. 108 would transfer this rule-making authority from the judicial council to the executive branch. The governor would enact rules that dictate the selection process, and would only have to "consult with" the judicial council when doing so. There is no reason for this authority to be transferred from the judicial council to the governor.

The Utah judiciary is consistently recognized as one of the best in the nation. There is no need to "fix" what is an effective and highly functioning system.

Kind regards,



Karen McCreary
Executive Director



Marina Lowe
Legislative & Policy Counsel