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Federal Court Upholds South Carolina's Utah-inspired Constitutional Amendment

Decision Protects Secret Ballot and Rebuffs Obama Administration's NLRB

A federal judge ruled on September 5, 2012 that Arizona's "Save Our Secret Ballot" (SOS Ballot) is constitutional. The Obama administration's National Labor Relations Board had filed suit to prevent the SOS Ballot from taking effect. They argued that their federal authority preempted states from protecting the right to cast a secret ballot. Nevertheless, Judge Frederick J. Martone ruled that no facial conflict exists between the SOS Ballot and federal law.

Though Americans have long assumed that they could cast election ballots in total privacy, the Obama administration and his Democrat allies in Congress hoped in 2009 and 2010 to implement "card check," a mechanism allowing employers and labor unions to pierce the veil around an employee's vote on whether to unionize.

Your Taxpayers Association worked with a broad coalition of state and national groups, including the Utah Retail Merchants Association, the Salt Lake Chamber and the Goldwater Institute, to put the SOS Ballot Amendment before Utah voters. As a proposed amendment to the Utah Constitution, 2/3 of the House and 2/3 of the Senate had to approve it. After receiving that overwhelming legislative support, 60 percent of Utah voters approved it in 2010.

Arizona, South Carolina and South Dakota joined Utah in protecting the right to cast a secret ballot by adopting the SOS Ballot Amendment. Public support at the ballot box for the SOS Ballot ranged from 60 to 86 percent.

Fortunately, in the states that have passed SOS, no one has tried to enforce card check and violate the constitutional amendment. If and when a local, state or federal authority tries to violate the protection at the ballot, your Taxpayers Association and our allies will defend every workers right to cast a secret ballot.

Utah Works to Minimize Effects of the Affordable Care Act

Commentary by Rep. Jim Dunnigan, Chair, Health Systems Task Force

Although the 2010 federal health care law was billed as an attempt to make health insurance "affordable" (the Patient Protection and *Affordable* Care Act), the bill actually includes numerous provisions that will undoubtedly drive up the cost of insurance and threaten the ability of employers and individuals to purchase coverage.

One provision of particular concern is the requirement that the U.S. Secretary of Health and Human Services (HHS) define "essential health benefits" (EHB), the minimum services that must be offered in a small employer or individual insurance plan, both inside and outside a health insurance exchange. Last year, I worked hard to persuade HHS that states should be allowed to develop their own definitions, rather than adopt a national one-size-fits-all definition. Thankfully, the agency has determined that for at least the first two years of implementation (2014, 2015), EHB will be defined by benchmarks chosen by each of the 50 states. I will describe how Utah is choosing its benchmark and some of

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Representative Jim Dunnigan

the implications of that choice.

At the end of last year, HHS announced that Utah would be able to designate one of 10 plans offered in the state as an EHB benchmark. The plans include the three largest products in the small employer market, the three largest state employee plans, the three largest federal employee plans, and the largest managed care plan. Since that time, the Legislature has sought input from consumers, insurers, health care providers, the business community, and regulators on which plan should be chosen.

In June, the Legislature's Health System Reform Task Force convened a public hearing at 11 locations around the state and also solicited written comments. The responses, which were many, generally fell into two categories: pleas to ensure that the benchmark include specific services (e.g., for autism), and pleas to select a benchmark that would minimize increases in the cost of insurance.

After considering stakeholder input and discussing the matter among themselves, the Task Force recommended earlier this month that one of the three largest state employee health plans, *Utah Basic Plus*, be designated as the EHB benchmark. That recommendation was forwarded to the Utah Insurance Department, who now has 30 days to adopt an emergency rule designating the benchmark.

Let me now discuss several important points about the selection of *Utah Basic Plus*.

First, *Utah Basic Plus* does not include *every* possible service *every* consumer might want. But that is because the benchmark will serve as a floor—a minimum—for insurers, much like the basic benefit plan that used to be defined in Utah Code. Given the state's experience with the basic benefit plan, I expect most products offered by insurers will be significantly richer than the EHB benchmark.

Second, the designation of a benchmark is not an indication of how deductibles, copays, out-of-pocket limits, and other cost sharing provisions must be applied to the minimum required services. Cost sharing features are the province of insurers and consumers and will vary according to consumer preference and insurer creativity.

Third, the designation of *Utah Basic Plus* as an EHB benchmark is likely temporary. HHS plans to review how it defines "essential health benefits" and may come up with an entirely different approach beginning in 2016. For this reason, the Utah Legislature will be monitoring and seeking to influence HHS' review.

In summary, the definition of "essential health benefits," both now and in the future, has significant implications for the cost of insurance. If the definition is too expansive, costs will escalate, employers will drop or refuse to offer coverage, and employees will pay more or go without. I encourage you to become involved by following the work of the Legislature's Health System Reform Task Force and providing input wherever appropriate.

My Corner: Dragging Public Education into the 21st Century, Kicking and Screaming

Association President Howard Stephenson

Public Education has failed to embrace modern tools for individualized learning, leaving educators with inadequate, manual tools. However, state legislatures can successfully move the needle through competitive requests for proposals from vendors and allowing local schools to compete to implement pilot programs.

For several years I have served as Senate Chair of the Public Education Appropriations Committee in the Utah Legislature. During that time and even before, I have witnessed the resistance of public education to accept digital learning tools. While society and the world of business moves at light speed into the 21st century, utilizing ever-improving technological tools to enhance the world of work, commerce, communications, entertainment, and family life, public education operates largely with 19th century manual tools. Businesses and professional offices are on the cutting edge of technology, because those who aren't are killed by their competition.

Since K-12 education is a government monopoly, and is not threatened with going out of business, there is not the urgency to adopt new, more effective digital tools. Clearly, government education is too big to fail.

I have found through first-hand experience that when technology *is* placed in schools, it is often misused, or ignored. "Clickers" are stored in drawers, once the newness wears off and teachers realize they require more work, not less. Interactive white boards when not left in their shipping boxes are often used as very expensive power point screens. One-to-one computers are often used as a new component of the curriculum instead of a tool to enhance delivery of the core curriculum. Many teachers leave audio enhancement mics in their cradles, preferring to use their "classroom voice."

Public education operates largely with 19th Century manual tools

It is remarkable that students bring more computing capacity in their pockets and backpacks than exists in their classrooms, yet school boards prohibit their use in class. Students whose lives are saturated with technology are required to power down when they enter the school and live for 6 1/2 hours a day in a 19th century time-warp.

From my visits with hundreds of educators and policymakers I have learned the sad news that many if not most educators, school board members, and state legislators are unaware of computer assisted instructional software and apps which can individualize instruction and keep students engaged with the same technology they use in their lives out of school.

Frustrated, and looking for answers, I visited Colleges of Education and was shocked to learn they are doing very little to prepare future teachers to use digital tools in the classroom. It appears teacher colleges have the same resistance to technology as teacher unions despite technology's ability to elevate the profession of teaching from manual laborers to true learning facilitators by providing individualized, adaptive instruction and formative assessment. Instead, where colleges *are* exposing future teachers to technology, the instruction is focused on enhancing teachers' classroom presentations, not individualizing instruction through virtual tutors and computer-assisted instructional (CAI) software. These presentation-enhancing gadgets are soon ignored because they require significant additional preparation time on the part of the teacher.

It is remarkable that students bring more computing capacity in their pockets and backpacks than exists in their classrooms, yet school boards prohibit their use in class

Fortunately, the Utah Legislature has led the nation in successfully placing digital learning tools in the schools by using free market principles to invite requests for proposals from educational software and digital device companies. Once the licenses are purchased, local schools are invited to compete to receive the licenses. Schools vie for the right to pilot the digital tools by proving they will implement the technology optimally, provide the appropriate daily dose rates for students and provide the training for teachers to utilize the tools effectively in improving student performance. Additionally, student test scores are compared by third party evaluators with schools not utilizing the digital tools so that the true effect of the digital tools can be accurately assessed.

Today, Utah schools have software to provide non-English speaking students with the individualized English instruction they need to be successful in the classroom. Utah has also provided home-based pre-kindergarten software to prepare disadvantaged children to be successful when they hit kindergarten. The legislative appropriations for these programs have paid off with improved student performance.

Utah also has this year a pilot program for smart school deployment of one-to-one digital devices such as iPads. Early intervention software licenses were just awarded to six competing companies which will be deployed this year, giving 30,000 kindergarten and first grade students some of the best software available for learning early reading and math.

These are just some of the ways the legislature has stepped up to move schools into the 21st Century. Watch next year for even more progress.

UTOPIA's "new" Management Team Has Not Changed Poor Performance

The following Op-ed by Association Vice President Royce Van Tassell appeared in the August 11, 2012 Salt Lake Tribune

In the wake of the Legislative Auditor General's Audit of UTOPIA last week, UTOPIA officials have repeated one line over and over again: the original management created problems, but the management team installed in 2008 has resolved them. Now, they say, UTOPIA is "alive and well," as UTOPIA's Board Chair Kane Loader recently argued in the Salt Lake Tribune.

That assessment is simply false. The "new" management team-are you really new if you took control while George W. Bush was president?- hasn't spent millions on useless electronics. Congratulations. And their average revenue per user is up over that time. Well done.

None of that obscures UTOPIA's ongoing financial failure. As noted in the Legislative Audit, UTOPIA's net assets are negative $120 million. In other words, UTOPIA would have to pay $120 million to sell itself. And this isn't an isolated data point. "UTOPIA has had nine consecutive years of operating losses" (page 9 of the Audit), including the four years the current management team has overseen.

On the subscriber front, the current management team hasn't performed any better. Quoting from page 32 of the Legislative Audit, "In the past five years of operation, UTOPIA has failed to reach its target take rates (projections for subscribing residents)."

Page 34 of the Audit notes that UTOPIA gained an average of 190 new subscribers per month between July 2011 and April 2012. If those 1900 new subscribers told the whole story, this management team might have something to celebrate. However, page 8 of the Audit notes that over the same ten months UTOPIA's total subscribers increased by just 768. In other words, UTOPIA lost 1,132 subscribers. Churning through subscribers doesn't inspire confidence in this management team.

Just as troubling, the current management refuses to hold itself to the standards at the heart of their current plan. Assessing the management team the auditors write, "many of the agency's past practices have not changed. For example, the agency has not followed its commitment to invest funds only in those locations where 25 percent of residents have agreed to purchase the service" (page 42).

The Auditors note how little of their plan UTOPIA has articulated. "When asked for a description of the new business plan, UTOPIA could not provide us with a formal written narrative of the new business model," thereby preventing the Auditors (and taxpayers!) from verifying "whether the plan does in fact correct past mistakes" (page 41).

Another example from the Audit seems especially telling about the abilities of the current management to successfully guide UTOPIA. Centerville officials provided the Auditors a document entitled, "UIA Five-Year Plan: Executive Summary" (Appendix B in the Audit.) When asked for the plan that this summarized, "UTOPIA officials said they were not even aware that such a document had been presented to Centerville City" (page 43).

Such mismanagement is shocking, especially given that the officials who publicly led UTOPIA's Centerville outreach were CEO Todd Marriott and General Counsel David Shaw of Kirton McConkie. Perhaps they don't recall writing and distributing that document. Perhaps they don't know who wrote and distributed it. Either explanation raises serious doubts about the ability of this management team to lead UTOPIA.

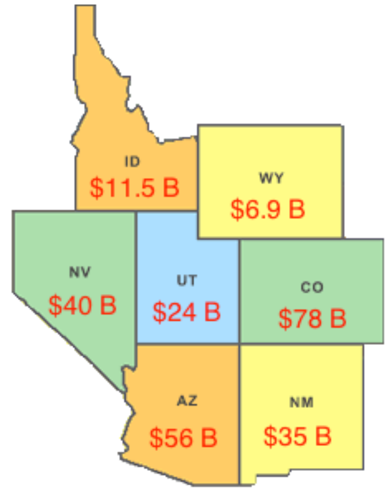
UTOPIA has wasted hundreds of millions of dollars. They have consistently failed to meet their own subscriber and financial goals. Those critiques apply equally to UTOPIA's original and current management teams. UTOPIA's member cities must demand the same accountability private investors would. Anyone who's read the financial news knows that a management team that fails to fix fundamental financial failure in four years isn't "new," and should probably update their resumes.

States Hold Over $4 Trillion in Debt

Trillion is a dollar amount that is becoming more and more familiar. Fortunately, it is still a term used to describe federal spending and debt. States are still counting in the Billions. But, a new report from State Budget Solutions, a nonpartisan think tank that focuses on state budgets, shows that the total debt for all fifty states is over $4 trillion on $1.4 trillion in estimated total annual spending. By contrast, the federal debt eclipsed $16 trillion just this week on $3.8 trillion in total annual spending.

In order to determine the amount of debt that each state carried, the report considered 5 factors: outstanding debt, unemployment trust fund loans, FY 2013 budget gap, OPEB UAAL and AEI pension UAAL. Of the $4.19 trillion that states are in debt (down from $4.24 trillion in 2011), unfunded public pension liabilities (OPEB and AEI) make up $2.8 trillion. These unfunded liabilities are the dollar amounts promised, but not necessarily paid for.

In an environment where Utah is used to ranking number one in one report after another, this report is not as glowing; Utah ranks 14th with over $24 billion in debt. Much of this debt is from pension plans. In fact, over $19 billion of Utah's $24 billion debt comes from unfunded public pension liabilities. Utah has zero debt within the categories of un-employment trust fund loans and the FY 2013 total budget gap.



California carries the most debt, with over $617 billion, while Vermont carries the least amount of debt at $5.8 billion. Among intermountain states, Utah's debt level places it in the middle of the pack. Idaho ($11.5 billion) and Wyoming ($6.9 billion) carry less debt than Utah, while Colorado ($78 billion), Arizona ($56 billion), Nevada ($40 billion) and New Mexico ($35 billion) all carry debt levels much higher than Utah.

To view the complete report, visit www.statebudgetsolutions.org.

Taxpayers Largely Ignored at 2012 Truth In Taxation Hearings

August is Truth In Taxation time in Utah, and this year fourteen cities and towns, 7 out of 41 school districts, 5 special districts and 2 counties out of 29 proposed property tax increases. Your Taxpayers Association attended hearings and testified across the state. At many of these hearings, public response was overwhelming. Thousands of taxpayers turned out to oppose property tax increases and insist that city councils, school boards and other entities cut their budgets before pushing a higher burden on taxpayers.

While many local governments dismissed the pleas of residents and increased taxes, some responded and reduced the amount of increases that were being proposed, but still passed the tax increases. Noted here are four of the most egregious property tax increases adopted, which happen to all be cities.

Orem City

After proposing a 50% property tax hike ($3.3 million) to cover the cost of UTOPIA debt that the city has committed to paying, the city council voted to approve a scaled back version, resulting in a $1.7 million increase (25%). Your Taxpayers Association and more than 500 outraged citizens voiced their opposition to this tax increase and pleaded with the city council find alternatives to pay for the burdensome UTOPIA. In the end, taxpayers were successful in limiting the size of the tax increase.

Highland City

The city had its day of reckoning. After spending too much money on new, and nice, government buildings, the city of Highland reached its bonding capacity. With no more room to bond and pressing infrastructure needs, the city council proposed and passed a $900,000 property tax increase despite opposition from many citizens.

Taylorsville City

Taylorsville increased its property tax by 38% to cover maintenance and other services. What's concerning is that Taylorsville is also considering bonding for an additional $4 million for "economic development" purposes. The "economic development", as we understand, would include incentives for businesses to locate in Taylorsville. The obvious motive for this is the collection of sales taxes, which is currently distributed based on point of sale and population (50/50).

West Jordan City

West Jordan passed a 17% tax increase to supplement an annual shortfall of $2.7 million in sales tax revenue since 2008. The city claims that this increase is to maintain current service levels after

Five Tax Questions on the November Ballot

This upcoming November voters in Salt Lake County, Cache County, Park City and Tooele City will want to pay particular attention to a couple of items that will appear on their ballots. In addition to Amendment A, they will be asked to approve bonds, reauthorize and increase sales and use taxes.

Ballot Question

Amendment A (HJR 6, sponsored by Rep. Jim Nielsen of Bountiful) would put a portion of severance tax revenues into the Permanent State Trust Fund. If passed, Amendment A would require that 50% of severance tax revenues on the first $50 million collected be deposited into the Permanent State Trust Fund, 75% of the second $50 million collected and 100% of any revenues exceeding $100 million. This is an important step to protect the benefits the state receives from our finite resources for future generations.

Bond Question

Salt Lake County is proposing a $47 million parks bond this November. The bond money as explained by the county council would go towards previously determined projects. But, the County cannot maintain the current parks that it operates, so it is hard to justify bonding to build new ones.

Boutique Taxes

Cache County and Tooele City are asking voters to reauthorize the arts, recreation and parks sales taxes that are set to expire. Your Taxpayers Association believes that Utah should have a statewide uniform sales tax rate, not boutique taxes earmarked for a specific purpose. All programs should be subject to the budget process, and if they are deemed important, they will win out. Park City is also asking voters to approve an increase in the sales taxes that it imposes. The resort communities sales and use tax rate is currently 1.1%, but Park City is asking voters to raise the rate to 1.6%, which would make the overall sales tax in Park City 7.95%.

Utah Per Pupil Spending Increases in 2013, While Most States Cut

Utah is one of only 22 states to increase per student state funding of public education between FY 2012 and FY 2013. A new report by the center-left think tank "Center on Budget and Policy Priorities" (CBPP) finds that Utah's state support of public education increased by $40 per student.

The CBPP report evaluates how states have changed their funding of public education since the beginning of "The Great Recession" in 2007. In the face of sharply decreased sales and income tax revenue, only 13 states increased per student state support for public education between FY 2008 and FY 2013, while 35 states decreased per student state aid for public education over the same time.

According to the CBPP report, Utah's per student state support of public education decreased 8.1 percent between FY 2008 and FY 2013, which places Utah squarely in the middle of the 48 states evaluated by the report. (The report excludes Indiana and Hawaii from its analysis, because they "publish education funding data in ways that make it difficult to make accurate historical comparisons.")

Utah's performance in per pupil state aid to public education is remarkable, given that roughly 97% of Utah students attend public schools, while in most states only 88% of students attend public schools. In addition, Utah has the nation's highest birth rate. In other words, to maintain per student state aid to public education Utah has had to make greater financial effort.

Between FY 2008 and FY 2012, Utah's income tax revenues (the primary source of state aid to public education) decreased 6%, from $2.602 billion to $2.456 billion, while the number of Utah students in public schools increased 9%, from 551,013 in FY 2008 to 600,224 (projected) in FY 2013. Utah faced other significant fiscal pressures, as state Medicaid costs are increasing at three times the rate of the rest of the state budget.