



Utah Judicial Council

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council
Judge David N. Mortensen
Utah Court of Appeals
Vice-chair, Utah Judicial Council

Ronald B. Gordon, Jr.
State Court Administrator
Neira Siaperas
Deputy State Court Administrator

February 26, 2025

Dear President Adams and Speaker Schultz,

I write on behalf of the Judicial Council to express significant concerns about HB 512, Judicial Retention Changes. Because of these significant concerns, outlined below, the Judicial Council opposes HB 512.

During my state of the judiciary address, I quoted former U.S. Supreme Court Justice Kennedy as saying “[j]udicial independence is not conferred so that judges can do as they please, it is conferred so they can do as they must.” The Judicial Council acknowledges that while the three branches of government created by the Utah Constitution are independent and co-equal, the Utah Constitution also establishes checks and balances among the branches of government. The Judicial Council understands that some policy decisions, though they impact the Judiciary, fall within the authority of the Legislature.

In opposing HB 512, and other bills that may have the impact of undermining the independence and integrity of the Judiciary, the Judicial Council is not suggesting otherwise. Rather, the Judicial Council asserts that HB 512 goes too far by intervening in the core functions of the Judiciary and poses a substantial threat to the Judiciary’s ability to fulfill its constitutional responsibilities.

By creating a joint legislative committee on judicial performance and empowering that committee to provide recommendations as to whether individual judges should be retained for another term, HB 512 introduces partisan politics directly into the work of the Judiciary. This unprecedented approach is not only dangerous but also detrimental to the public’s trust in a fair and impartial judicial system and ultimately harmful to the citizens. A recommendation by a legislative committee as to whether a judge should be retained for another term will inevitably be viewed as a partisan recommendation. It is simply impossible to separate the partisan politics associated with legislative decisions from such a recommendation.

HB 512 will erode public trust and confidence in the decisions of the Judiciary. This will happen regardless of the intent of any individual legislator on the committee and regardless of how careful committee members are in their review of a judge. The possibility of a negative recommendation from the committee will be viewed by the public as an incentive for judges to make politically palatable decisions rather than decisions that are required by the law. It will be viewed as an

**The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.**

incentive for judges to act in their own self-interest, rather than upholding the rule of law.

A loss of trust is particularly damaging to the Judiciary. Possessing neither the sword nor the purse, the Judiciary can fulfill its constitutional role only when the public trusts its impartiality and commitment to the rule of law. People act in accordance with judicial decisions because they know judges seek to understand the law as written by the Legislature, and apply it to the facts of a given case. Even when parties disagree with judicial decisions, they abide by those decisions because they know that judges in Utah make decisions free of political or other outside influence.

The Judicial Council opposes HB 512 not because it will be uncomfortable or disagreeable to judges. The Judicial Council opposes HB 512 because it will harm the ability of Utah citizens to trust that the Judiciary can resolve their disputes as the law requires.

Also concerning is the requirement in HB 512 that a recommendation from the committee be published on the ballot. While candidates for office appropriately invest resources in persuading voters, the ballot itself should remain free from efforts to influence them.

If the ballot includes government recommendations as to whether voters should vote in favor of or against any person on the ballot, it will be perceived as a governmental intrusion into the electoral process. Voters will feel that their right to make decisions is being influenced by the government rather than preserved. Voters will lose faith in the electoral system that is foundational to the operation of government because they will believe that elections are neither free nor fair. It is no more appropriate to include on the ballot recommendations from the Legislature about whether voters should vote to retain a judge than it would be to include on the ballot recommendations from the Judiciary as to whether voters should vote for particular legislative candidates.

One of the reasons offered in support of HB 512 is that voters do not have sufficient information to make informed decisions about judges on the ballot. Voters actually have more objective information about judges than any other person on the ballot. Through the Judicial Performance Evaluation Commission (“JPEC”), judges are subject to a thorough, rigorous, unbiased review of their performance. The results of that performance review are public and available for every judge on the ballot. The performance evaluations do not attempt to influence voters in any particular way, but simply to provide relevant and objective information.

JPEC provides voters with insights into over 30 aspects of judicial performance that can be grouped into four main categories: legal ability, integrity and judicial temperament, administrative skills, and procedural fairness. The information comes from surveys administered by JPEC to lawyers who appear before the judge being evaluated, court staff, and jurors. Additionally, trained volunteers observe court proceedings and offer objective evaluations of judicial performance. These evaluations also include information about judicial discipline, judicial attributes, and compliance with standards established by the Judicial Council.

While some critics argue that the inclusion of the Judicial Council’s standards in performance evaluations amounts to judges evaluating themselves, it is important to note that these standards account for only three of the dozens of data points in JPEC’s evaluations. Furthermore, JPEC

includes these metrics at its own discretion and could remove them without compromising the thoroughness or objectivity of its evaluations.

No other public officials in Utah are subject to a more thorough, objective, and public evaluation than judges. If there are specific problems or deficiencies with judicial performance evaluations, they should be addressed through improvements to JPEC's process - not through HB 512. The Judicial Council stands ready to work with the Legislature on those changes so that JPEC's evaluations can continue to be a national model as they are currently regarded.

The citizens of Utah deserve a Judiciary that is guided by the rule of law, not by political considerations. The Utah Constitution establishes a Judiciary in which judges are free to decide cases based on the law and the facts, without regard for the identities of the litigants or political consequences. By introducing partisan influence—whether real or perceived—HB 512 threatens to undermine judicial independence and public confidence in the Judiciary's role as a neutral arbiter of legal disputes. For these reasons, the Judicial Council opposes HB 512.

Respectfully,

A handwritten signature in black ink, appearing to read 'Matthew B. Durrant', with a long horizontal line extending to the right.

Matthew B. Durrant
Chief Justice, Utah Supreme Court
Chair, Utah Judicial Council