

**The Bill to Replace Proposition 2:
A Betrayal of the Will of the People and Disregard
of the Constitutional Retention of the People’s
Democratic Power Through the Initiative Process**

**Submitted by Patient Advocacy Groups, TRUCE and
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Fundamental Principles Essential to Free Government

The Utah Constitution compels “[f]requent recurrence to fundamental principles,” which is “essential to the security of individual rights and the perpetuity of free government.”¹

Among the fundamental principles we should always keep in mind—and concerning which the Utah Legislature, particularly, should remind itself—is that “[a]ll political power is inherent in *the people*; and all free governments are founded on *their* authority for *their* equal protection and benefit”²

A fundamental corollary to that principle is that the people, through the Utah Constitution, vested the Utah Legislature with legislative power, but the people also *retained their* power to legislate through the initiative and referendum process.³

Another requirement for a free government—and for a free people—is that no church shall control the State or interfere in the functions of government. The Utah Constitution provides that “[t]here shall be no union of Church and State, *nor shall any church dominate the State or interfere with its functions.*”⁴

¹ Utah Constitution, Article I, Section 27.

² Utah Constitution, Article I, Section 2.

³ Utah Constitution, Article VI, Section 1.

⁴ Utah Constitution, Article I, Section 4 (emphasis added).

Citizens' Initiatives

It is entirely contrary to the concept of the people retaining their political power, generally, and retaining *their* power to directly legislate, specifically, for the people to pass an initiative by majority vote, then for the Legislature to almost immediately materially alter, and in many ways eviscerate, the intention of that people's legislation.

Justice Larson eloquently noted in 1937:

[T]he people themselves are not creatures or creations of the Legislature. They are the father of the Legislature, its creator, and in the act of creating the Legislature the people provided that its voice should never silence or control the voice of the people in whom is inherent all political power; and being coequal in legislative power, the Legislature, the child of the people, cannot limit or control its parent, its creator, the source of all power. And when the people, by the proper exercise of the initiative, their method of legislating, have spoken on a matter essentially within their scope of government, master has spoken and even the voice of the child, though it may be recalcitrant, is stilled.⁵

Control and Interference by The Church of Jesus Christ of Latter-day Saints

The Church of Jesus Christ of Latter-day Saints, with several collaborators it solicited, aggressively opposed Proposition 2.⁶ That initiative provided for medical cannabis for people with medical conditions for which cannabis has been proven to provide substantial relief. The Church of Jesus Christ even went so far as to email members telling them to oppose Proposition 2.⁷ Some of its local leaders, including

⁵ *Utah Power & Light Co. v. Provo City*, 74 P.2d 1191, 1205 (1937).

⁶ The email Marty Stephens sent to several people, reflecting the Church's determination to defeat Proposition 2 (along with observations regarding that letter by Rocky Anderson) is attached as Appendix "A". Now that Proposition 2 has passed by a majority vote during the last election, the Church is unwilling to accept defeat. Instead, it has, once again, exercised its control over the Utah Legislature, which is scheduled to meet in special session on December 3 to drastically alter the system contemplated by Proposition 2 to provide relief from human suffering.

⁷ See the letter to members of the Church of Jesus Christ from Craig C. Christensen, attached as Appendix "B".

the Church’s point-man on this issue, Marty Stephens, a former Speaker of the Utah House of Representatives, even announced from the podium in church meetings that members of the Church were to vote against Proposition 2.

After the majority of voters passed Proposition 2, the Church of Jesus Christ brought together a number of collaborators to orchestrate the *deprivation* of the will of the people. Several back-room, closed door meetings, have resulted in several moving-target versions of an absurdly long and convoluted replacement bill. That has brought us to the point where, on December 3 (a mere eight weeks before the commencement of the next regular session), at a costly and unnecessary special session, the Legislature is expected to defeat the will of the people. The Senate President has even threatened his fellow senators that if they do not show up for the special session, he will send out the sergeant-at-arms to locate and force them to attend.⁸

This is all not only wholly anti-democratic, but constitutes a virtual theocratic control of our State and interference in the functions of our government by a church. It is also a wholesale betrayal of the people’s power to pass legislation through a citizen’s initiative, making a mockery of the sacred power retained by the people, through our Constitution, to legislate.

Radical Changes in the Replacement Bill – Depriving Remedies for Suffering

The greatest outrage is that, at the behest of those who sought to deprive a proven remedy for human suffering through their opposition to medical cannabis bills in the past *and* Proposition 2, this Legislature, immediately after the effective date of the initiative statute, is poised to defeat central purposes of the proposition.

The many radical changes sought by proponents of the replacement bill will delay—and in many instances deprive—thousands of Utah residents of remedies for their severe suffering. The extreme, convoluted changes being sought are discriminatory, anti-democratic, and inhumane. They will create an enormous, DABC-like wasteful, incredibly expensive, and cumbersome bureaucracy of the worst sort. By comparison, Proposition 2 provides for a free-market system of relief, which has been proven to work simply and efficiently in the majority of other states.

⁸ A copy of Senator Niederhauser’s letter to all state senators is attached as Appendix “C”.

Denying Medical Professionals Certified to Prescribe Opioids Authority to Recommend Cannabis

Under Proposition 2, any person with a DEA certification to prescribe opioids, would be able to recommend cannabis for people with qualified conditions or whose conditions were found by a compassionate use board to merit medical cannabis. Those who would have recommendation authority would include medical doctors, osteopathic physicians, and nurse practitioners and physician assistants who currently have authority to prescribe opioids.

Under the replacement bill, the only persons who would have authority to recommend cannabis medications would be medical doctors and osteopathic physicians. That is a 50% reduction in the number of medical professionals who will be authorized to recommend cannabis medications.⁹ Except for the interests of the Utah Medical Association in monopolizing the field for MDs and DOs, there can be no good reason for depriving people who have authority to prescribe opioids from recommending cannabis medications, which have resulted in no overdose deaths, ever.

Excessive Limits on Recommending Authority for Physicians Who Specialize in the Treatment of Qualified Conditions

Even with the drastic reductions in the numbers of medical professionals who will have authority to help people obtain cannabis medications under the replacement bill, those who would have authority to recommend cannabis would have a profound limit placed on the number of patients they could help obtain cannabis. The people's legislation, Proposition 2, provides that most medical providers would be limited to recommending cannabis to 20% of their patients. Those who are board certified in anesthesiology, gastroenterology, neurology, oncology, pain and palliative care, physiatry, or psychiatry, would have no limit on

⁹ According to the Utah Medical Education Council, State of Utah, in a 2016 report, there were 4,528 DOs and MDs treating patients in Utah in 2015. According to the Utah Division of Occupational and Professional Licensing, there are 4,528 physician assistants and nurse practitioners who can prescribe opioids practicing in Utah. There is likely going to be a growing disparity in the numbers of those categories because the number of physicians has been decreasing each year, with a 17% decrease in their numbers between 2010–2015. As burgeoning healthcare solutions evolve, we are depending more and more on medical treatment by physician assistants and nurse practitioners.

the number of patients for whom they can recommend cannabis for qualifying conditions.

Under the replacement bill, draconian limits would be placed on the numbers of patients for whom cannabis medication can be recommended by MDs and DOs. Under the replacement bill, physicians board certified in anesthesiology, gastroenterology, neurology, oncology, pain, hospice and palliative medicine, physical medicine and rehabilitation, rheumatology, and psychiatry will be limited to recommending cannabis medication for 300 patients at any one time. All other medical providers will be limited to recommending cannabis for 175 patients. That is an unconscionable lottery, which will exclude effective relief from suffering for many patients and severely curtail a physician's ability to help patients obtain safe medications on the basis of their experience and extensive knowledge of their patients' medical history.

Eliminating the Ability of Patients with Many Serious Medical Conditions to Qualify for a Recommendation for Cannabis Medication

Among the radical, discriminatory changes being proposed is the elimination of many medical conditions that would qualify for patients to obtain cannabis. Proposition 2 included all autoimmune diseases among the conditions that would qualify for the recommendation of cannabis. The latest version of the replacement bill has removed all but two autoimmune diseases (ulcerative colitis and Crohn's disease) from the list of qualifying conditions. Among the diseases covered by Proposition 2, but not covered by the replacement bill, are lupus, rheumatoid arthritis, inflammatory bowel diseases (with the exceptions mentioned earlier), Guillain-Barré, Graves' disease and vasculitis, most of which are extremely painful diseases.

Nationally, about 1.6 million people suffer from ulcerative colitis and Crohn's,¹⁰ which are covered by the replacement bill. However, many more millions of people suffer from lupus and Graves' disease,¹¹ which are among the diseases omitted from the replacement bill. Between 14–22 million people in the United States are affected by autoimmune diseases, the third most common category of

¹⁰ <https://inflammatoryboweldisease.net/what-is-crohns-disease/statistics/>

¹¹ <https://www.lupus.org/resources/lupus-facts-and-statistics;>
<https://www.gdatf.org/about/about-graves-disease/>

disease after cancer and heart disease.¹² “Autoimmune diseases affect approximately 8% of the population, 78% of whom are women.”¹³ Autoimmune diseases are a leading cause of death among young and middle-age women.¹⁴ Yet the replacement bill eliminates most autoimmune diseases from its coverage.

Discriminatory Denial of Rural Access to Dispensaries

Proposition 2 provides for a relatively simple, yet highly-controlled, inexpensive, free-market system for the distribution of cannabis, with the greater of one dispensary per county or one dispensary for each 150,000 people in the county, while the replacement bill would require distribution through a state-run central fill, with only seven private dispensaries state-wide plus thirteen dispensaries through health department offices. However, those health department dispensaries, which would have to be funded by the counties, cannot be counted on ever being established. The replacement bill even contemplates the health department dispensaries may never exist.

The replacement bill replaces the free-market distribution system supported by the majority of voters with a wasteful, oppressive, centrally-controlled bureaucracy, reminiscent of the DABC—except, here, the consequences are that thousands of people will be denied, or at least severely delayed in obtaining, relief from their suffering, and in many instances will be driven to the black market to obtain cannabis. This replacement bill provision is not only going to create tremendous expense, with counties responsible for financing the health department dispensaries, but it is incredibly discriminatory toward rural patients.

Tens of thousands of residents of many rural counties will not have reasonable geographic access to the relief from suffering provided by cannabis. Any rural county legislators supporting the replacement bill are betraying the interests of their constituents and aiding in the blatant discrimination against them. Many people who

¹² Fairweather and Rose, “Women and Autoimmune Diseases,” International Conference on Women and Infectious Diseases (Centers for Disease Control and Prevention), 2004.

¹³ *Id.*

¹⁴ Walsh and Rau, “Autoimmune Diseases: A Leading Cause of Death Among Young and Middle-Aged Women in the United States,” *American Journal of Public Health*, September 2000.

do not have access to a cannabis dispensary are likely to seek cannabis through the black market.

Eliminating the Option for People Beyond 100 Miles from a Dispensary

Exacerbating the discriminatory impact of the central fill scheme, and the limit on the number of dispensaries under the replacement bill, is the elimination of the option, under Proposition 2, for those beyond 100 miles of a dispensary to grow six plants, two of them flowering and four in a vegetative state. Under the replacement bill, there is no back-up option for those who have no reasonable access to a dispensary—other than obtaining cannabis on the black market.

The Direct Voice of the People Must Control

The replacement bill is a blatant infringement on the initiative power of the people.

Some may feel that with passage of the unfeasible replacement bill, they will somehow “win”. But the growing resentments caused by church control, legislative arrogance, and the derogation of direct democracy will be a major, sustained loss by all who support the replacement bill.