

1970

Joseph E. Nelson v. Clyde L. Miller, As Secretary of State of the State of Utah : Brief of Defendant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errorsVernon B. Romney, Veal R. Topham, and G. Blaine Davis; Attorneys for DefendantDennis F. Olsen, Richard M. Taylor, Paul H. Liapis, and Jackson B. Howard; Attorneys for Plaintiff

Recommended Citation

Brief of Respondent, *Nelson v. Miller*, No. 12258 (Utah Supreme Court, 1970).
https://digitalcommons.law.byu.edu/uofu_sc2/226

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

In The Supreme Court of the State of Utah

JOSEPH E. NELSON,

BY DE L. MILLER, as
of the State of Utah,

BRIEF OF

This is an original
State of Utah
Secretary of State of the State

WINNIS F. OLSEN,
McCott, Bagley, Connors
McCarthy

11 East First South

RICHARD M. TAYLOR,
75 North Main Street
Spanish Fork, Utah

PAUL H. LEAPIS,
Austin & Gustie
10 Walker Bank Bldg.
Salt Lake City, Utah

JACKSON B. HOWARD
40 East 300 North
Provo, Utah
Attorneys for Plaintiff

TABLE OF CONTENTS

	Page
NATURE OF THE CASE	1
STATEMENT OF THE FACTS	2
RELIEF SOUGHT BY THE PARTIES	4
ARGUMENT	
POINT I. ANY LEGISLATION PROPERLY PASSED BY THE LEGISLATURE IS PRESUMED TO MEET ALL CONSTITUTIONAL REQUIREMENTS, AND THE BURDEN OF SHOWING THAT ANY LEGISLATION IS UNCONSTITUTIONAL RESTS WITH THE PARTY CHALLENGING THAT LEGISLATION.	5
POINT II. WHEN A STATUTE HAS TWO POSSIBLE CONSTRUCTIONS AND ONE OF THOSE CONSTRUCTIONS WOULD VALIDATE THE STATUTE WHILE THE OTHER CONSTRUCTION WOULD RENDER IT UNCONSTITUTIONAL, THE COURT MUST ADOPT THE CONSTRUCTION WHICH WOULD VALIDATE THE STATUTE.	8
POINT III. WHEN THE VOTERS OF THE STATE OF UTAH APPROVED THE CONSTITUTIONAL AMENDMENT, THEY BELIEVED THAT IT WAS A PROVISION TO MANDATORILY RETIRE JUDGES FROM OFFICE UPON THE ATTAINMENT OF A GIVEN AGE, AND THE COURT, IF POSSIBLE, SHOULD INTERPRET IT TO MEANT WHAT IT MEANT TO THE VOTERS.	12

TABLE OF CONTENTS—Continued

	Page
POINT IV. THE CLASSIFICATION MADE BY THE LEGISLATURE IN SECTION 49-7-1.1 IS NOT UNREASONABLE OR ARBITRARY AND THERE IS A REASONABLE BASIS FOR DIF- FERENTIATION BETWEEN CLASSES.	14
CONCLUSION	18
CASES CITED	
Edler v. Edwards, 34 Utah 13, 95 Pac. 367	7
Geary v. Phillips, 278 N.Y.S.2d 506, 53 Misc. 2d 337 ..	9
Gronlund v. Salt Lake City, 113 Utah 284, 194 P.2d 464	15
Gubler v. Utah Teachers Retirement Board, 113 Utah 188 192 P.2d 580	6
Hansen v. Public Employees Retirement System Board of Administration, 122 Utah 44 246 P.2d 591	15
Jacobs v. New Jersey State Highway Authority, 54 N.J. 393, 255 A.2d 266	9
Morirson v. Department of Highways, 229 La. 116, 85 So. 2d 51	10
Norville v. State Tax Commission, 98 Utah 170, 97 P.2d 937	6, 7, 11
Rio Grande Lumber Company v. Dorke, 50 Utah 114, 167 Pac. 241	5
Salter v. Nelson, 85 Utah 460, 39 P.2d 1061	10
State v. J. B. & R. E. Walker, Inc., 100 Utah 523, 116 P.2d 766	15
State v. Mason, 94 Utah 501, 78 P.2d 920, 117 A.L.R. 330	15

TABLE OF CONTENTS—Continued

	Page
State ex rel. University of Utah v. Candland, 36 Utah 406, 164 Pac. 285	7
Tintic Standard Mining Co. v. Utah County, 80 Utah 491, 15 P.2d 663	6, 11, 14

CONSTITUTIONS CITED

United States Constitution, Amendment XIV	17
Utah Constitution, Section 2, Article VIII	16
Utah Constitution, Section 5, Article VIII	16
Utah Constitution, Section 28, Article VIII	3, 8

STATUTES CITED

Section 49-7-1.1, Utah Code Annotated 1953	2, 4, 8, 9, 10, 14
Section 78-2-2, Utah Code Annotated 1953	1

OTHER AUTHORITIES

Black's Handbook of Constitutional Law, Section 39	7
16 Am. Jur. 2d, Constitutional Law, Section 145	11, 12

In The Supreme Court of the State of Utah

JOSEPH E. NELSON,

Plaintiff,

- v -

CLYDE L. MILLER, as Secretary of State
of the State of Utah,

Defendant.

} Case No.
12258

BRIEF OF DEFENDANT

NATURE OF THE CASE

This is a petition for an extraordinary writ, which has been filed in the Utah Supreme Court by the plaintiff, in which the Supreme Court of the State of Utah has original jurisdiction under Section 78-2-2, Utah Code Annotated 1953. This case has heretofore been briefed by the parties hereto, and has heretofore been argued before the Supreme Court of the State of Utah. However, the time permitted for briefing the case was short, and the court, after hearing arguments, ordered that supplemental briefs be filed. The court also therein ordered Judge Nelson's name placed on the ballot

and has reserved the issues as to constitutionality of the statute in question (Section 49-7-1.1, Utah Code Annotated 1953).

STATEMENT OF THE FACTS

Judge Joseph E. Nelson, the plaintiff in this case, is presently a duly elected and acting Judge of the Fourth Judicial District Court of the State of Utah and has been such for several years. Judge Nelson's present term expires on December 31, 1970, and if Judge Nelson were to continue into another term, it would be necessary for him to either be reelected by the electorate of the State of Utah, or for him to be reappointed to that position by the Governor of the State of Utah after that position becomes vacant.

Pursuant to the election statutes of the State of Utah, the defendant herein, filed a declaration of candidacy for the office of Judge of the Fourth Judicial District of the State of Utah. That declaration of candidacy was filed on the 26th day of June, 1970, and the statutory filing fee was tendered to the Secretary of State at that time. However, because of Judge Nelson's age (73), the Secretary of State refused to accept the filing fee and returned Judge Nelson's declaration of candidacy to him at that time. It has been stipulated by the parties that Judge Nelson meets the requirements to file for reelection unless his age prevents him from being eligible to run for reelection to his present office because of the provisions of Section 49-7-1.1, *supra*.

In 1968, the electorate of the State of Utah, by avote of 314,819 for and 72,652 against, approved an amendment to the Utah Constitution which was added as Section 28 of Art. VIII, and reads as follows:

“The legislature may provide uniform standards for manditory retirement and for removal of judges from office. Legislation implementing this section shall be applicable only to conduct occurring subsequent to the effective date of such legislation. Any determination requiring the retirement or removal of a judge from office shall be subject to review, as to both law and facts, by the supreme court. This section is additional to and accumulative with the methods of removal of justices and judges provided in sections 11 and 27 of this Article.”

That amendment was carried as Proposition No. 5 on the ballot, and the title of the bill which was presented to the public and which appeared on the ballot given to the voters on election day read as follows:

“A JOINT RESOLUTION PROPOSING TO AMEND ARTICLE VIII OF THE CONSTITUTION OF THE STATE BY THE ADDITION OF SECTION 28, AUTHORIZING THE LEGISLATURE TO PROVIDE FOR THE MANDATORY RETIREMENT AND FOR REMOVAL OF JUDGES FROM OFFICE.”

As implementing legislation, the 1969 legislature passed Section 49-7-1.1, Utah Code Annotated, which was intended to implement that constitutional amendment, and reads as follows:

“A trial judge shall retire upon attaining the age of 70 years, and a supreme court judge shall retire upon attaining the age of 72 years; provided, however, any judge serving a term as judge on the effective date of this act who has attained the age of retirement, or attains that age during his present term shall retire on the completion of his present term.”

Judge Nelson is now challenging the constitutionality of that statute, and its constitutionality is the primary issue before the Court at this time.

RELIEF SOUGHT BY THE PARTIES

Judge Nelson has asked the Supreme Court of the State of Utah to issue an extraordinary writ directing the Secretary of State to place his name upon the ballots as a candidate, in the Counties of Utah, Wasatch, Duchesne, Uintah, Summit and Daggett, for election to the office of Judge of the Fourth Judicial District Court. Judge Nelson prays in the alternative that the defendant be ordered to issue to him a Certificate of Election to the office of Judge of the Fourth Judicial District Court.

The defendant's answer filed herein asks that the plaintiff's petition be dismissed and that all statutes alleged to be unconstitutional be upheld as being constitutional.

ARGUMENT

POINT I

ANY LEGISLATION PROPERLY PASSED BY THE LEGISLATURE IS PRESUMED TO MEET ALL CONSTITUTIONAL REQUIREMENTS, AND THE BURDEN OF SHOWING THAT ANY LEGISLATION IS UNCONSTITUTIONAL RESTS WITH THE PARTY CHALLENGING THAT LEGISLATION.

With the passage of every piece of legislation there is a presumption that the new enactment is constitutional, and the burden of showing any unconstitutionality rests with the party seeking its destruction. This principal has been reiterated by the Utah Supreme Court on many occasions. In the case of *Rio Grande Lumber Company v. Dorke*, 50 Utah 114, 167 Pac. 241, the Court, at pp. 119-120, stated it as follows:

“[A]fter fully and fairly considering the powers of the legislative body and the limitations of its power under the Constitution, if there is a reasonable doubt in the mind of the court, that doubt must be cast in favor of the validity of the act . . . Mr. Justice Washington, of the Supreme Court of the United States, upon this point, uses the following language:

‘But if I could rest my opinion in favor of the constitutionality of the law on which the question arises, on no other ground than this doubt so felt and acknowledged, that alone would, in my estimation, be a satisfactory vindication of it. It is but a decent respect due to the wisdom, the integrity, and the patriotism

of the legislative body by which any law is passed to presume in favor of its validity until its violation of the constitution is proved beyond all reasonable doubt. That has always been the language of this court when that subject has called for its decision.'

* * * * *

Any other rule than this would be inconsistent and untenable from every point of view, and would be a reflection upon the wisdom and motives, and an interference with the prerogatives, of an independent co-ordinate department. These rules are fundamental and elementary."

This same principal has been stated by the Utah Supreme Court in *Norville v. State Tax Commission*, 98 Utah 170, 97 P.2d 937, and *Tintic Standard Mining Co. v. Utah County*, 80 Utah 491, 15 P.2d 663, inter alia.

In addition to the existence of a strong presumption of constitutionality, the courts unanimously place a heavy burden of proof on the party alleging unconstitutionality, and the Utah Supreme Court has required that unconstitutionality be shown *beyond a reasonable doubt*. In the case of *Gubler v. Utah Teachers Retirement Board*, 113 Utah 188 192 P.2d 580, 2 A.L.R. 2d 1022, the Utah Supreme Court stated:

"If there is *reasonable doubt* about the validity or invalidity of this act, then the duty of this court is to resolve the doubt in favor of constitutionality." (Emphasis added)

In that same case, at 113 Utah 200, the Court quoted with approval, from Section 39, Black's Handbook of Constitutional Law, the following statements:

"Every presumption is in favor of the constitutionality of an act of the legislature . . . Every reasonable doubt must be resolved in favor of the statute, not against it; and the courts will not adjudge it invalid unless the violation of the constitution is, in their judgment, clear, complete, and unmistakable."

In *State ex rel. University of Utah v. Candland*, 36 Utah 406, 164 Pac. 285, the court said:

"(I)f the court entertains a *reasonable doubt* upon the question, then the law must be upheld."

This same principal has also been stated in *Norville v. State Tax Commission*, *supra*, *Rio Grande Lumber Co. v. Dorke*, *supra*, and *Edler v. Edwards*, 34 Utah 13, 95 Pac. 367.

In this case, it seems clear and unequivocal that there is much more than a reasonable doubt about the unconstitutionality of the statute in question, and the burden to show the unconstitutionality beyond a reasonable doubt has not been met here.

Therefore, in view of the very strong presumption of constitutionality of all legislative enactments, and in view of the very strong pronouncements by this court that any reasonable doubt about

the validity or invalidity of a statute must be resolved in favor of constitutionality, it is respectfully submitted that the statute in question in this case should be clearly upheld.

POINT II

WHEN A STATUTE HAS TWO POSSIBLE CONSTRUCTIONS AND ONE OF THOSE CONSTRUCTIONS WOULD VALIDATE THE STATUTE WHILE THE OTHER CONSTRUCTION WOULD RENDER IT UNCONSTITUTIONAL, THE COURT MUST ADOPT THE CONSTRUCTION WHICH WOULD VALIDATE THE STATUTE.

One of plaintiff's contentions is that the implementing legislation contained in Section 49-7-1.1 exceeds the authority granted to the legislature in Article 8, Section 28. It is claimed that mandatory retirement must be based upon some "conduct" of the judge for whom mandatory retirement is provided.

Such a claim is contrary to the accepted meaning of the word retirement as now commonly used by our society. Retirement is most frequently based upon age and/or disability. Retirement does not require any affirmative action or conduct, but merely requires the termination of employment or the termination of office upon the retirees reaching the usual set age of retirement.

Conduct is seldom a basis of retirement, and the language included later in the amendment as

to conduct was clearly placed there, modifying the portion of the amendment providing for the removal of judges for cause and was not intended to apply to the portion of that section relating to mandatory retirement. In addition, it was to protect the judiciary from attempts being made to remove a judge from office for some past conduct on his part, which conduct had not been grounds for removal at the time the acts of conduct were performed. That phrase, if it relates to retirement, could reasonably be construed to require the legislature to allow judges then serving elected terms upon the effective date of the legislation to continue to serve for the term for which they had already been elected prior to the enactment of mandatory retirement legislation, even though the judge may already have reached the mandatory retirement age, and such a provision was included by the legislature in enacting Section 49-7-1.1.

Other courts have discussed the distinctions between the words retirement, removal and discharge.

In *Gearv v. Phillips*, 278 N.Y.S.2d 506, 53 Misc. 2d 337, the New York Supreme Court held that "retirement does not constitute removal," and in *Jacobs v. New Jersey State Highway Authority*, 54 N.J. 393, 255 A.2d 266, the Supreme Court of New Jersey said:

"Retirement from employment has a connotation different from discharge. The former ordinarily signifies voluntary withdrawal, the latter compulsory dismissal."

In the case of *Morrison v. Department of Highways*, 229 La. 116, 85 So. 2d 51, the Supreme Court of Louisiana said that the words removal and retirement "are not synonymous," although they did not elaborate on the distinctions.

As is shown above, the statute in question, Section 49-7-1.1, and the constitutional amendment under which that statute was passed, are capable of two different types of construction. One construction would be as is argued by plaintiff, that the word "conduct" in the constitutional amendment applies to the standards for mandatory retirement as well as to the standards for removal of judges from office. The other possible construction would be that the word "conduct" only applies to the provisions as to removal of judges, because the terms "mandatory retirement" are commonly thought of not to require any conduct, as the defendant's contention in this case. Therefore, since there are two possible constructions of the constitutional and statutory language, one of which would validate the statute while the other would render the statute unconstitutional, it is respectfully urged that the court should adopt the interpretation which would validate the statute in conformance to the rule recited by this Court in many instances.

In the case of *Salter v. Nelson*, 85 Utah 460, 39 P.2d 1061, the Utah Supreme Court stated:

"In our discussion of the various objections urged against the constitutionality of the

amendment . . . , it is necessary to keep in mind certain elementary rules of statutory construction among which are: That when the validity of a statute assailed upon constitutional grounds and there are two possible constructions by one of which the statute would be rendered unconstitutional and the other valid, the court should adopt the later construction."

In the case of *Norville, v. State Tax Commission*, *supra*, the Utah Supreme Court again held:

"When there is ambiguity in the terms of a statute or when it is susceptible of two interpretations, one of which would render it unconstitutional and the other bring it within constitutional sanctions, the court is bound to choose that interpretation which would uphold the statute, and to produce a statute unconstitutional only when the case is so clear as to be free from doubt. *Highland Boy Gold Mining Co. v. Strickley*, (28 Utah 215, 78 P. 296, 1 L.R.A., N.S., 976, 107 Am. St. Rep. 711, 3 Ann. Cas. 1110 affirmed in 200 U.S. 527, 26 S.Ct. 301, 50 L. Ed. 581, 4 Ann. Cas. 1174) *Stillman v. Lynch*, 56 Utah 540, 192 P. 272; *Denver & Rio Grande v. Grand County*, 51 Utah 294, 170 P. 74, 3 A.L.R. 1224; *Powell v. Pennsylvania*, 127 U.S. 678, 8 S.Ct. 992, 1257, 32 L. Ed. 253; 11 Am. Jur. Sec. 92 at p. 719 et seq."

This same principle has also been cited in *Tintic Standard Mining Co. v. Utah County*, *supra*. This principle has also been very well stated in 16 Am. Jur. 2d, Constitutional Law, Sec. 145, wherein it states:

"It is an elementary principle that where the validity of a statute is assailed and there are two possible interpretations, by one of which the statute would be unconstitutional and by the other it would be valid, the court should adopt the construction which will uphold it, even though the construction which is adopted does not appear to be as natural as the other."

Although the plaintiff may argue that his construction of the constitutional language seems more natural and would fit in better, according to the above statement from Am. Jur. 2d, the court should still validate the statute where there are two possible interpretations of it, "even though the construction which is adopted does not appear to be as natural as the other."

In view of the above, it is respectfully submitted that the statute in question and the constitutional amendment are capable of two types of construction, and the court should clearly rule that the statute is constitutional and harmonious with the constitutional requirements.

POINT III

WHEN THE VOTERS OF THE STATE OF UTAH APPROVED THE CONSTITUTIONAL AMENDMENT, THEY BELIEVED THAT IT WAS A PROVISION TO MANDATORILY RETIRE JUDGES FROM OFFICE UPON THE ATTAINMENT OF A GIVEN AGE, AND THE COURT, IF POSSIBLE, SHOULD INTERPRET IT TO MEAN WHAT IT MEANT TO THE VOTERS.

As was mentioned earlier, the title of Proposition No. 5 as it appeared on the ballot, and the title of the bill which was always presented to the public and which the voters saw as they voted for and approved the proposition read as follows:

**"A JOINT RESOLUTION PROPOSING
TO AMEND ARTICLE VIII OF THE CON-
STITUTION OF THE STATE OF UTAH BY
THE ADDITION OF SEC. 28, AUTHORIZ-
ING THE LEGISLATURE TO PROVIDE
FOR THE MANDATORY RETIREMENT
AND FOR THE REMOVAL OF JUDGES
FROM OFFICE."**

Thus, as the voters entered the voting booth to decide this issue, the above statement was what they read, and the wording which they had before them at the time they voted in favor of the proposition. This title to the proposition clearly sets forth that the voters believed they were voting for a provision which would authorize the legislature to provide for the mandatory retirement of judges as well as for the removal of judges from office. Under the current understanding of today's society of these terms, the public would have believed they were voting for the mandatory retirement of judges upon the reaching of some age to be determined by the legislature, and for judges to be removed from office for certain conduct which would constitute cause for removal.

The above stated principle has been clearly approved by the Utah Supreme Court before in the

case of *Tintic Standard Mining Co. v. Utah County*, supra, in which the Utah Supreme Court accepted a definition because it was commonly accepted and well established, and they stated:

“We are restricted to this definition because of another canon of constitution construction that terms used in a constitution *must be taken to mean what they meant to the minds of the voters* of the state when the provision was adopted.” (Emphasis added)

Involuntary retirement based on age exists throughout American culture today, in both the public and private sector. Persons associate retirement with age. Retirement for conduct is not common in our society and would not have been considered by a voter deciding how to vote on this proposed amendment.

POINT IV

THE CLASSIFICATION MADE BY THE LEGISLATURE IN SECTION 49-7-1.1 IS NOT UNREASONABLE OR ARBITRARY AND THERE IS A REASONABLE BASIS FOR DIFFERENTIATION BETWEEN CLASSES.

Plaintiff also claims that the provision of Section 49-7-1.1, setting forth a different retirement age for a trial judge than a supreme court judge violates the requirement of the constitutional amendment which states that the legislature may provide “uniform standards for mandatory retirement.”

It was undoubtedly contemplated by the drafters of the constitutional language that maximum

protection should be given to an individual judge so that some standards could not be enacted singling out any judge for special treatment allowing him to remain in office or to require his retirement, and was also meant to comply with already well established constitutional law concepts of equal protection.

In the case of *Hansen v. Public Employees Retirement System Board of Administration*, 122 Utah 44 246 P.2d 591, the Supreme Court of Utah, in considering a retirement act dealing with other state employees, dealt with very similar issues. The court therein made the following statements which set forth proper legal concepts applicable here:¹

“Some such inequities are practically inevitable in all retirement systems, especially in the first years of their operation.”

“It was therefore essential that some classification be made.”

“As to discrimination: an act is never unconstitutional because of discrimination so long as there is some reasonable basis for differentiation between classes which is related to the purposes to be accomplished by the act.”

The constitution and laws of the State of Utah have always recognized that a reasonable classification

¹See also: *State v. J. B. & R. E. Walker, Inc.*, 100 Utah 523, 116 P.2d 766; *State v. Mason*, 94 Utah 501, 78 P.2d 920, 117 A.L.R. 330; and *Gronlund v. Salt Lake City*, 113 Utah 284, 194 P.2d 464.

exists for differentiation between supreme court judges and district court judges. Article 8, Section 2 of the Constitution of the State of Utah provides:

“ . . . every judge of the Supreme Court shall be at least 30 years of age.”

While Article 8, Section 5 of the Utah Constitution provides:

“ . . . each judge of a district court shall be at least 25 years of age.”

It is evident and certainly needs no elaboration to the honorable justices of the this court that the nature of the work of a district court judge is not identical to the work performed by a supreme court justice. This is particularly true of many districts in Utah where a district court judge is required to cover a large geographical area and his work involves travel over that area. Driving over large areas requires a certain amount of physical strength and physical stamina which older persons frequently do not have, and this significant difference in physical activity from that required of a supreme court justice is in itself sufficient to form a reasonable basis for the classification included within the act providing for a mandatory retirement age for district court judges of two years younger than that required for supreme court judges.

An important difference also exists in the ability of the Supreme Court to conduct business by a

quorum. It is a well-known fact that older persons tend to be ill more than younger persons, and if a district court judge becomes ill and unable to work, his district may become totally void of any acting judiciary; whereas, if a Supreme Court Justice becomes ill and unable to work, it will increase the workload of his associates, but it will not cripple the court and prevent it from acting. Also, the Supreme Court could obtain assistance from District Court Judges to distribute the workload.

Petitioner also alleges that the right to hold elective office is a privilege and depriving a person of that right by reason of age alone is an unreasonable deprivation of that privilege, and violative of Amendment XIV of the United States Constitution. However, the right to hold elective office is no more of a privilege than is the right to be gainfully employed, and if mandatory retirement by reason of age alone is unconstitutional, then every retirement rule in the country is placed in serious jeopardy.

Petitioner also further alleges that a maximum age limitation is a denial of equal protection guaranteed by the United States Constitution, but the cases are numerous which have held that as long as the distinction is based on a reasonable classification as is above stated, it is not a denial of equal protection, and it is suggested that a limitation which applies equally to all similar judicial offices is not a denial of equal protection.

CONCLUSION

It is respectfully suggested to this Honorable Court that the legislation which was properly passed by the legislature is in full accord with the intent which the voters had at the time they approved that constitutional amendment, and there is a reasonable construction out of two possible constructions, one of which would validate the statute. In view of the presumption of constitutionality of statutes, and the other factors mentioned in this brief, it is respectfully suggested to the Court that the classifications made in that statute are reasonable and that the statute is in compliance with all constitutional requirements.

Respectfully submitted,

VERNON B. ROMNEY

Attorney General

G. BLAINE DAVIS

Assistant Attorney General

VERL R. TOPHAM

Assistant Attorney General

Attorneys for the Defendant