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Lynn A. Jenkins v. State of Utah et al : Brief of Respondent

Utah Supreme Court

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James B. Lee and James M. Elegante; Attorney for Plaintiff-Respondent;

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IN THE SUPREME COURT OF THE

STATE OF UTAH

* * * * *

LYNN A. JENKINS,

)
)
Plaintiff and
Respondent,

v.

)
)
STATE OF UTAH, MORONI L.
JENSEN, as President of the
Utah State Senate and as
Vice-Chairman of the
Legislative Management
Committee of the Forty-Second
Legislature of the State of
Utah, and GLADE M. SOWARDS,
as Speaker of the Utah State
House of Representatives
and as Chairman of the
Management Committee of the
Forty-Second Legislature of
the State of Utah,

)
)
Defendants and
Appellants.

No. 16034

* * * * *

RESPONDENT'S BRIEF

* * * * *

APPEAL FROM THE JUDGMENT OF
THE THIRD JUDICIAL DISTRICT COURT
FOR SALT LAKE COUNTY

Hon. G. Hal Taylor, Judge

* * * * *

FILED

SEP 15 1978

Clerk, Supreme Court, Utah

James B. Lee and
James M. Elegante
of and for
PARSONS, BEHLE & LATIMER
Attorney for Plaintiff/Respondent
79 South State Street
Salt Lake City, Utah 84111

Telephone: 532-1234

IN THE SUPREME COURT OF THE

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Plaintiff and)
Respondent,)
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v.)
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STATE OF UTAH, MORONI L.)
JENSEN, as President of the)
Utah State Senate and as)
Vice-Chairman of the)
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Committee of the Forty-Second)
Legislature of the State of)
Utah, and GLADE M. SOWARDS,)
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James B. Lee and
James M. Elegante
of and for
PARSONS, BEHLE & LATIMER
Attorney for Plaintiff/Respondent
79 South State Street
Salt Lake City, Utah 84111
Telephone: 532-1234

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the State of Utah,)	
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Defendants and)	
Appellants.)	

* * * * *

RESPONDENT'S BRIEF

* * * * *

STATEMENT OF THE KIND OF CASE

This is an action for a declaratory judgment as to the validity of the laws passed by the Forty-Second Utah State Legislature and as to the eligibility of teachers for membership in the Legislature.

DISPOSITION IN LOWER COURT

The case was disposed of in the trial court by summary judgments brought both by Plaintiff and by Defendants. From

that portion of the judgment favorable to Plaintiff, Defendants appeal. There is no cross-appeal by Plaintiffs on that part of the judgment favorable to Defendants.

RELIEF SOUGHT ON APPEAL

Defendants seek reversal of that part of the trial court's judgment favorable to Plaintiff.

STATEMENT OF FACTS

On January 10, 1977, Governor Scott M. Matheson convened the 1977-1978 Utah State Legislature. The Legislature had among its members several teachers or school administrators. The Legislature enacted a number of laws during its 1977-1978 session.

On August 9, 1978, Plaintiff brought a declaratory action in the Third Judicial District Court, State of Utah, seeking to have declared invalid all laws passed by the 1977-1978 Utah State Legislature on the basis that the Legislature was improperly constituted in violation of the Utah State Constitution which provides that certain persons may not be members of the Legislature.

Pursuant to motions for summary judgment brought by both Plaintiff and Defendants, the trial court ruled that:

1. The Court had jurisdiction;
2. Plaintiff had standing to bring the action;

3. Article VI, Section 6 of the Utah Constitution prohibits educators and school teachers employed in the Utah Public School System from simultaneously being members of the Utah Legislature;

4. The Forty-Second Utah Legislature was properly constituted and seated and was a de facto Legislature;

5. All laws enacted by the Forty-Second Legislature are valid and in full force and effect;

6. All monies collected by the Forty-Second Legislature should not be returned to the people.

ARGUMENT

POINT I

THE LEGISLATURE IS NOT THE EXCLUSIVE JUDGE OF THE ELIGIBILITY OF CANDIDATES FOR THE LEGISLATURE

Defendants contend that the judiciary has no jurisdiction to pass upon the eligibility of candidates for the State Legislature. They cite as authority for this contention Article VI, Section 10, Utah State Constitution (all cites are to the Utah Constitution unless otherwise indicated), which provides as follows:

Each House shall be the judge of the election and qualifications of its members, and may punish them for disorderly conduct, and with the concurrence of two-thirds of all of the members elected, expel a member for cause.

Defendants read this constitutional provision as making the Legislature the sole and exclusive judge of all questions

affecting membership in the Legislature. By its very language, however, this constitutional provision is limited to questions relative to the election and qualification of the Legislature's members. This appeal deals only with the portion of the trial court's summary judgment which holds that teachers may not be members of the Legislature. That portion of the summary judgment appealed from deals with the eligibility of candidates for the Legislature, and not with actual members of the Legislature.

Ellison v. Barnes, 23 Utah 183, 63 P.899 (1901), is not dispositive of this appeal. In Ellison, the Utah Supreme Court was asked to decide an election contest arising from alleged voting irregularities. The Court declined to decide the election for the reason that Article VI, Section 10, granted the Legislature exclusive jurisdiction to decide election contests. Ellison does not deal with the eligibility of candidates for the Legislature.

Courts of sister states have ruled on the scope of a Legislature's jurisdiction to decide questions of candidacy for membership in the body. In State v. Dubuque, 68 Wash. 2d 553, 413 P.2d 972 (1966), the Washington Supreme Court was asked to construe the effect of a constitutional provision similar to Article VI, Section 7, prohibiting a legislator from being elected or appointed to an office created by the Legislature of which he was a part. The Washington Legislature had passed laws increasing the salaries of representatives and new senators for the upcoming session of the Legislature. Suit was brought by a taxpayer-elect to determine whether members of the 39th

Washington Legislature would be eligible for reelection to the 40th Legislature. Like Defendants here, the appellants in Dubuque asserted that the Legislature was the exclusive judge of the eligibility of its members. The trial court took the position that the constitutional provision relating to the in-house judiciary function of the Legislature did not bar it from construing another constitutional provision directed at the eligibility of candidates for the Legislature. The Supreme Court affirmed, pointing out that the case before it did not concern members of the Legislature but rather candidates for the Legislature.

The Court in Dubuque, supra, appended a footnote to its opinion, pointing out the folly of vesting a Legislature with exclusive jurisdiction as to all questions of membership therein:

We apprehend a grave danger to our democratic institutions if it be the inexorable rule that, without regard to concepts of fair play and due process of law, the House and Senate of either the State Legislature or the Congress have exclusive jurisdiction to disqualify and unseat members thereof and that the courts are completely powerless in the premises. Conceding the separation of powers to be one of the keystones of freedom, we note among other dangers that, should the courts be deemed utterly without jurisdiction, one political party can, if ruthlessly bent upon destruction of its opposition, disqualify and unseat all of its opposing members. 413 P.2d at 977, n.5.

This Court, like the Washington Court, should not construe Article VI, Section 10, to divest it of jurisdiction to construe another constitutional provision relating to the eligibility of candidates for membership in the Utah Legislature.

In Hayes v. Gill, 52 Haw. 251. 473 P.2d 872 (1970), the Hawaii Supreme Court was asked to rule on the constitutionality of a statutory provision requiring a candidate to be a resident three years before seeking election to the House of Representatives. The statutory provision tied in with a constitutional provision regarding eligibility for membership in the State Legislature. The petitioner contended that a construction of the provision by a court would be a usurpation of the exclusive constitutional right of the State Legislature to pass upon questions of eligibility of its members. The court rejected this idea, basing its holding on Powell v. McCormack, 395 U.S. 486, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969):

The precise question has not been before the United States Supreme Court. However, we think there is clear indication in Powell v. McCormack . . . that if the question is presented to it, it will rule that the power of each House to judge the qualifications of its members does not include the power to construe the constitutional provision on qualifications contrary to the construction of the court. 473 P.2d at 876.

The question before this Court concerns the construction of a constitutional provision specifically excluding certain persons from membership in the Legislature. It would be ludicrous to suggest that the Legislature may assume a judicial role and interpret Article VI, Section 6, relating to the eligibility of candidates to the Legislature. The Legislature may have exclusive jurisdiction to decide upon the election and qualification of its members once they are members, but that small grant

of judicial power does not make the Legislature a partner with the Judiciary in interpreting the Constitution.

The Supreme Court of Arizona in State v. Lockhart, 76 Ariz. 390, 265 P.2d 447 (1953), was called upon to issue a writ of quo warranto to oust a person claiming a right to be seated in the State Senate. The case arose when an amendment to the Arizona Constitution provided that there would be two senators from Apache County. Prior to the adoption of the amendment, Apache County only had one senator. The Governor, thinking that the adoption of the new amendment created a vacancy in the term of one of the senators, appointed Defendant Lockhart to serve as senator from Apache County. The Supreme Court of Arizona decided that the question was justiciable under a quo warranto proceeding despite the constitutional provision making the Legislature the judge of elections and qualifications of its members. The Court held:

Nor is this exercise of jurisdiction by the courts an encroachment upon the power of the Legislature to judge the qualifications of its own members. 265 P.2d at 450.

In Powell v. McCormack, 395 U.S. 486, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969), the Supreme Court of the United States reversed the trial court and the court of appeals in their holdings that the Federal Judiciary was without jurisdiction to decide the propriety of an exclusionary order vacating the House seat of Representative Adam Clayton Powell. The Court found jurisdiction because the questions before the Court involved construction of constitutional provisions and such an exercise

by the Judiciary would not be a usurpation of the adjudicatory power reserved to the House of Representatives to determine qualification of its members. The Court pointed out:

[A] determination of petitioner Powell's right to sit would require no more than an interpretation of the Constitution. Such a determination falls within the traditional role accorded courts to interpret the law, and does not involve a "lack of the respect due [a] coordinate [branch] of government" nor does it involve an "initial policy determination of a kind clearly for non-judicial discretion." 395 U.S. at 548.

In the instant matter Defendants seek to convince this Court that it does not have jurisdiction to adjudicate the matter before it. They contend that Article VI, Section 10, makes the State Legislature the exclusive judge of its members. Plaintiff does not argue that the Legislature may not judge the qualifications or the election returns of members once they are elected. However, the matter before the Court involves an interpretation of other constitutional provisions. It has always been the prerogative of the judiciary to interpret and construe constitutional provisions. A grant of limited judicial power to the Legislature to deal with its own members does not deprive this Supreme Court of its role as interpreter of the Constitution. The matter at bar involves eligibility for candidacy to the Legislature, it deals with the qualifications of a potential member of the Legislature and not of an actual member. This Court has jurisdiction to decide the issues before it.

POINT II

STATE LEGISLATORS MAY NOT SIMULTANEOUSLY HOLD TEACHING POSITIONS IN UTAH PUBLIC SCHOOLS

The court below found that Article VI, Section 6, (See Appendix), would be violated if administrators and teachers could simultaneously be members of the Utah State Legislature. Defendants propose that the words "public office," as used therein, are to be narrowly construed so as not to encompass teachers employed by the state system of public schools.

There are numerous cases giving a definition of public officer. The Supreme Court of Utah has itself on occasion dealt with the question of what constitutes a public office. For example, in Dull v. Mining Company, 28 Utah 467, 79 P.1050 (1905), this Court denied a court reporter additional compensation for reporting a lengthy trial. The Court found that a court reporter was a public officer and that public officers are entitled only to compensation as fixed by law, so that any contract for additional compensation in the performance of official duties would be void as against public policy.

In a more recent case, the Utah Supreme Court held that membership on a Legislative Council constituted the holding of civil office, and that, therefore, a legislator could not hold such office because of the prohibition of Article VI, Section 6. Romney v. Barlow, 24 Utah 2d 226 469 P.2d 497 (1970). It should be noted that the Legislative Council had been created by the Utah Legislature and was to consist of sixteen members drawn

from the members of the Legislature itself. This Court construed the word "public office of profit" in a very broad manner so as to include members of the Legislature itself. If the Court was willing to construe "public office" in a manner which would eliminate in-house membership, how much more then should the Court be willing to hold that the commingling of the role of a Legislator with that of a member of another branch of the government is unhealthy.

The Territorial Supreme Court in McCornick v. Thatcher, 8 Utah 294, 30 P.1091 (1892), discussed various definitions of public officer found in the authorities. The Court cited this broad definition from State v. Stanley, 66 N.C. 59:

A "public office" is an agency for the state, and the person whose duty it is to perform this agency is a "public officer." This we consider to be the true definition of a "public officer" in its original broad sense. The essence of it is the duty of performing an agency; that is, of doing some act or acts, or series of acts, for the state. 8 Utah at 301, 30 P. at 1093.

In McCornick, the Court was called upon to decide whether trustees of the Territorial College could be considered public officers. The Court held that they were such.

Case law abounds with discussions of the meaning of the words "public officer." In 1892 the Supreme Court of Utah noted:

The definitions of the term "office," as given by the text writers and courts, are not in entire harmony. . . . McCornick v. Thatcher, 8 Utah at 301, 30 P. at 1093.

Almost a century later it can be said that the muddled waters of semantics have not cleared. There is still no harmony in the definitions of "public officer."

Members of school boards and the Superintendent of Public Instruction are officers. In 53-1-11, Utah Code Ann., the State Superintendent of Public Instruction is referred to as "the chief state school officer." That members of the State Board of Education hold a public office is demonstrated by the elaborate election procedure specified in 53-2-1, et seq., Utah Code Ann. So prominent a public office is membership on the State Board of Education that the candidates' names appear on the same ballots with candidates for the United States Senate and the Utah Senate.

The Superintendent of Public Instruction is identified as the "executive officer of the board [of education]," in 53-2-1, Utah Code Ann. Section 5 of that Chapter provides that "the State Superintendent shall present to the Governor a report of the Administration of the System of Public Instruction." There is a further requirement in 53-3-9, Utah Code Ann., that the Superintendant shall file monthly itemized expense account statements to the State Board of Examiners. The State Board of Examiners consists of the Governor, the Secretary of State, and the Attorney General under 63-6-1, Utah Code Ann. All of these statutory provisions locate the entire Public School System and its members within the executive branch of the state government.

Members of County Boards of Education are also officers, 53-6-3, Utah Code Ann., and are clearly part of the executive

branch of government in that they report to the State Superintendent, 53-6-13, Utah Code Ann., who, as pointed out above, reports to the State Board of Examiners.

The final link in the chain of command from teachers to the Governor is provided in the "Educational Professional Practices Act", 53-50-1, et seq., Utah Code Ann. That chapter provides that the Superintendent of Public Instruction shall appoint members to a professional practices commission. These members come from "professional personnel" within the educational system and "classroom teachers." The commission serves as a regulatory agency within the teaching profession itself.

It is clear that, whether the term "officer" is used or not, Utah statutes place the educational system squarely within the executive branch of government. This case should not turn on the meaning of "public office." For this Court to lose sight of the underlying issue at bar by sinking in the quagmire of the semantics of "public office" would be to ignore the underpinnings of the constitutional provisions in question here. Constitutional provisions such as Article VI, Section 6, and Section 7, were designed as specific implementations of a more general constitutional prohibition contained in Article V, Section 1. That provision is the traditional statement of the doctrine of Separation of Powers. It provides:

The powers of the government of the State of Utah shall be divided into three distinct departments, the legislative, the executive, and the judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any

functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

If Article VI, Section 6, does not prevent teachers from being members of the Legislature, it is very clear that the prohibition of Article V, Section 1, will prevent Legislators from being teachers. The issue in this case is Separation of Powers.

In State v. Grover, 102 Utah 41, 125 P.2d 807 (1942), this Court had the occasion to deal with a case arising under Article VI, Section 7. The Court did an exhaustive study of constitutions of sister states with respect to the prohibition against a legislator's accepting an office created during the term of his membership in the Legislature. The Court lauded decisions from other jurisdictions which discussed the evil arising from trafficking in public offices. The Court also noted that many state constitutions prohibits legislators from having any other type of office or employment. The Court made these observations:

In the study of the various state constitutions it is interesting to note that the newer or more recently adopted constitutions, and practically all constitutions that have been amended on this point since originally adopted, have made the inhibition against legislators receiving or accepting appointive office more rigid, to bar them from any office, even though not created by a Legislature of which they were members. In California in 1916 the people by initiative petition enacted an amendment to their constitution, Article IV, Section 19, barring legislators from holding or accepting any office, trust or employment under the State during the term for which they were elected to the Legislature. 102 Utah at 48, 125 P.2d at 810.

The cited opinion shows the keen interest that the Utah Supreme Court has demonstrated in the past in keeping the three branches of government separate and in assuring that legislators enjoy "that independent frame of mind which should be possessed by the ideal legislator." 102 Utah at 51, 125 P.2d at 812, quoting from Chenoweth v. Chambers, 164 P.428 (Cal. 1917).

There is no question that the Utah Public School System benefits from appropriations made by the Utah State Legislature. An educator within the Utah State School System would naturally be happy to see his profession advanced by healthy appropriations. A teacher-legislator may at times not enjoy that free state of mind with regard to legislative determinations which the Utah Supreme Court found to be so important in Grover, supra.

Other states have dealt directly with the question of teachers in the legislature. The Alaska Supreme Court examined the question in Begich v. Jefferson, 441 P.2d 27 (Alaska 1968). The wording of the Alaska Constitution was broader than the equivalent Utah provision. The Alaska Constitution, Article II, Section 5, provides, in pertinent part:

No legislator may hold any other office or position of profit under the United States or the State.

The Alaska Supreme Court reasoned that the Separation of Powers doctrine mandates a conclusion that teachers hold a position of profit under the state, and that, therefore, to allow them to sit in the Alaska Legislature would violate the Alaska Constitution. The Court expounded on the reasoning underlying the Separation of Powers doctrine:

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Alaska's constitutional prohibition against members of our three separate branches of state government holding any other position of profit under the State of Alaska reflects the intent to guard against conflicts of interest, self-aggrandizement, concentration of power, and dilution of separation of powers in regard to the exercise by these government officials of the executive, judicial and legislative functions of our state government. The rationale underlying such prohibitions can be attributed to the desire to encourage and preserve independence and integrity of action, and decision on the part of individual members of our state government. 441 P.2d at 35.

Like the Alaska Supreme Court, the Utah Supreme Court demonstrated in Grover, supra, that it is concerned about the dilution of the separation of powers and its attendant evils.

The Oregon Supreme Court was faced with the question of teachers in the Legislature in Monaghan v. School District No. 1, Clackamas County, 211 Or. 360, 315 P.2d 797 (1957). In that case the Oregon Supreme Court held that a legislator duly elected was prohibited from exercising his functions as a school teacher in a public school district by a constitutional prohibition worded almost exactly like the Utah provision found in Article V, Section 1. The opinion in Monaghan is very well reasoned. The Court refused to find that the words "any functions" were synonymous with official duties and pointed out:

One who performs "official duties" necessarily functions in tasks relating to his office, but one who exercises the functions of another department is not necessarily engaged in the performance of "official duties." 315 P.2d at 803.

The Oregon Court found that Representative Monaghan was charged with the exercise of powers belonging to a senator, but that he also performed "functions" belonging to another department of government, the executive branch. The Court reasoned that education was not a local matter, since the Oregon Constitution mandated the establishment of a statewide school system. It also found that school districts were quasi-municipal corporations and a governmental agency which performed duties imposed on it by statute. The Court then reasoned that teachers were employees of this state agency.

The Utah Constitution, Article X, Section 1, also mandates establishment of a public school system:

The Legislature shall provide for the establishment and maintenance of a uniform system of public schools, which shall be open to all children of the state, and be free from sectarian control.

The Utah Supreme Court has declared educational divisions to be bodies corporate. In Hansen v. Board of Education of Emery County School District, 101 Utah 15, 116 P.2d 936 (1941), the Utah Supreme Court stated:

A Board of Education is a legal entity created by statute. For the purpose of administering the affairs relating to schools within a designated area, certain limited powers are conferred upon boards of education. These powers are exercised for the welfare and in the interest of the people within the designated area. 101 Utah at 21, 116 P.2d at 938.

Lest there be any misunderstanding as to the importance of the role of the actual teacher within the framework of the state education system and its relation to the executive branch of

government, the Oregon Supreme Court in Monaghan, supra, pointed out that a teacher surely occupied a more important place in state government than stenographers. It cited Gibson v. Kay, 68 Or. 589, 137 P.864 (1914), wherein the Oregon Supreme Court had earlier found that stenographers and clerks of the corporation commissioner were prohibited under the Separation of Powers clause in the Oregon Constitution from holding office in other departments of government. It will be remembered that the Supreme Court of Utah has also declared stenographers to be public officers. Dull v. Mining Company, 28 Utah 67, 30 P.1091 (1905). How much more important the public school teacher is in the framework of the Utah State Government than a court reporter.

The Oregon Supreme Court in Monaghan, supra, would not impute a malevolent motive to Representative Monaghan, but merely pointed out that the occasion for abuse must be avoided under the Separation of Powers doctrine. The Court found the lower court's assessment of the situation admirably stated and incorporated it into the opinion:

Conceivably the school board could say to its employee who is serving in the legislature, "You must vote in favor of certain bills that are advantageous to us and which increase our authority. If you do, we will increase your salary, and if you do not you will be penalized in your position in certain respects." Would this relationship not then tend to concentrate power in the branch of the government by which the member of the legislature was employed and to the detriment of the legislative branch? 315 P.2d at 805.

The same potential for abuse exists in the Utah State Legislature.

Respondent in the case at bar does not impute evil motive to educators who desire to be members of the Legislature. Civic interest is always to be praised wherever it can be found. But the Separation of Powers doctrine is a keystone of democratic government as practiced in the United States and to allow a person to commingle his role in one branch with functions and duties of another branch would lead to an unholy marriage, anathema in the eyes of American governmental tradition. Teachers should not be legislators and legislators should not be teachers.

POINT III

PLAINTIFF HAS STANDING TO BRING THIS ACTION

Where a plaintiff challenges the constitutionality of a statute the question of standing may arise. Several Utah cases have held that "an attack on the validity of a statute cannot be made by one whose interests have not been and are not about to be prejudiced by its operation." State v. Alexander, 87 Utah 376, 49 P.2d 408 (1935).

There is no hard and fast rule, however, as to what constitutes standing. This is especially true where a plaintiff seeks interpretation of a constitutional provision without reference to a statute. In such cases the only requirement for standing may be that the plaintiff be a taxpayer. For example, in Johnson v. State Tax Commission, 17 Utah 2d 337, 411 P.2d 831 (1966), the court entertained an action for a declaratory judg-

ment with regard to tax laws promulgated by the state legislature. In a footnote to the opinion the court made reference to the usual rule that "one must himself suffer damage or have his rights adversely affected before he can question the constitutionality of the statute." 17 Utah 2d at 342, 411 P.2d at 834, n. 7. In the same footnote, however, the court admitted that in this case it had "met and dealt with the issue here presented." Given the gravity of the issue, the court felt that justice would best be served by meeting the issues head on rather than evading them by holding that the plaintiff did not have standing to bring the suit.

The California Supreme Court has recently ruled that the requirement of standing is met when the court is assured that the plaintiff before it will vigorously prosecute the issues raised. In Harmon v. City and County of San Francisco, 7 Cal. 3d 150, 496 P.2d 1248 (1972), the court ruled that a taxpayer had standing to seek a declaratory judgment on a complaint that the City Director of Property was selling city property at prices not reflecting their true value. The defendant city claimed that the plaintiff did not have standing to bring such a suit. The court held:

A party enjoys standing to bring his complaint into court if his stake in the resolution of that complaint assumes the proportions necessary to insure that he will vigorously present his case. 496 P.2d at 1254.

The court analyzed the plaintiff's interest and found that, if the City could sell property for a higher price, then the municipal taxes would be decreased, as would plaintiff's tax burden. This

gave the plaintiff sufficient interest in the case to insure vigorous prosecution.

Plaintiff in the instant matter is a taxpayer and an elector. As a taxpayer he suffers the burden of increased taxation if the legislature, improperly constituted, makes unnecessary and overly large appropriations to public education in the state. As an elector the power of his vote is diminished when other electors are allowed to vote for candidates not eligible to sit in the legislature. The very fact that Plaintiff is before this Court demonstrates his zeal in prosecuting the suit.

The United States Supreme Court has also often relaxed the standing requirements when the issues presented were worthy of the Court's attention. In Smiley v. Holm, 285 U.S. 355, 52 S. Ct. 397, 76 L. Ed. 795 (1932), the court granted a writ of certiorari and reversed a decision of the Supreme Court of Minnesota in a redistricting case filed by a "citizen, elector and taxpayer." 285 U.S. at 361. Likewise, where all other interested parties to a suit cannot effectively be brought before the court, the United States Supreme Court has held that a representative plaintiff may bring the suit. In NAACP v. Alabama, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958), the Supreme Court allowed the NAACP to assert the rights of individual Negro members. The Court noted the general rule as to standing and explained its exception in this case:

To limit the breadth of issues which must be dealt with in particular litigation, this court has generally insisted that parties

rely only on constitutional rights which are personal to themselves. . . . The principle is not disrespected where constitutional rights of persons who are not immediately before the court could not be effectively vindicated except through an appropriate representative before the court. 357 U.S. at 459.

In the case at bar the interests of plaintiff in prosecuting this action are representative of those of other citizens of Utah who are interested in the proper constitution of the Utah Senate.

Perhaps the most cogent explanation of a court's approach to standing where crucial issues are involved was expressed in State ex rel. Sego v. Kirkpatrick, 86 N.M. 359, 524 P.2d 975 (1974). There plaintiff brought an original proceeding in the New Mexico Supreme Court for a writ of mandamus ordering certain state officials to ignore "line item vetoes" made by the Governor. The court granted the writ of mandamus despite a challenge to plaintiff's standing. The court noted that the question of standing could not be determined by hard and fast rules. The court recognized plaintiff's standing not by virtue of plaintiff's civil status, but by virtue of the importance of the issues before the court. The court stated:

[I]t has been clearly and firmly established that even though a private party may not have standing to invoke the power of this court to resolve constitutional questions and enforce constitutional compliance, this court, in its discretion, may grant standing to private parties to vindicate the public interest in cases presenting issues of great public importance. There is no claim that the issues here presented are not of great public

interest or importance, and we consider them of sufficiently great importance and interest to the public to grant standing to petitioner to raise and present them in these proceedings. 524 P.2d at 979 (emphasis added).

The issues now before this Court present grave questions of public importance. This Court may wish to recognize plaintiff's standing to raise these issues on the ground that plaintiff is a taxpayer and an elector. Or this Court may simply exercise its discretion and grant the plaintiff standing in order to rule on important matters. In either case the question of standing should not be allowed to interfere with the Court's adjudication of the constitutional questions before it.

CONCLUSION



The issue before this Court involves the Separation of Powers doctrine. The case turns on the interpretation of provisions in the Utah Constitution. The Utah Constitution, Article VI, Section 10, carves a small slice of judicial power and gives it to the legislative branch of government so that it can judge the qualifications of its own members. Other constitutional provisions such as those in question here, Article VI, Section 6, and Article V, Section 1, deal with eligibility for candidacy to the legislature. Interpretation of constitutional provisions is uniquely the function of the Judiciary. This Court has jurisdiction to decide the issues before it.

The Utah Educational System and its member-employees are inextricably involved in the executive branch of the Utah state government. The Utah State Constitution, Article VI, Section 6, and Article V, Section 1, are designed to assure the separation of powers so that each branch of government may remain untainted by intrusions from other branches. To allow teachers to sit in the Legislature commingles the functions of two distinct branches of the state government and violates the Utah Constitution.

As taxpayer and elector, the plaintiff has standing to seek a judicial interpretation of constitutional provisions. The issue before the court is of such magnitude that standing may be accorded plaintiff as a matter of law or as a matter of discretion by this Court.

Plaintiff, Lynn A. Jenkins, therefore prays this Court to affirm the judgment of the District Court.

RESPECTFULLY SUBMITTED this 15th day of September, 1978.


JAMES B. LEE

JAMES M. ELEGANTE

of and for
PARSONS, BEHLE & LATIMER
Attorneys for Plaintiff/Respondent
79 South State Street
Salt Lake City, Utah 84111
Telephone: 532-1234

ARTICLE V, SECTION 1:

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

ARTICLE VI, SECTION 6:

No person holding any public office of profit or trust under authority of the United States, or of this State, shall be a member of the Legislature; Provided, That appointments in the State Militia, and the offices of notary public, justice of the peace, United States commissioner, and postmaster of the fourth class, shall not, within the meaning of this section, be considered offices of profit or trust.

ARTICLE VI, SECTION 7:

No member of the Legislature, during the term for which he was elected, shall be appointed or elected to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected.

ARTICLE VI, SECTION 10:

Each house shall be the judge of the election and qualifications of its members, and may punish them for disorderly conduct, and with the concurrence of two-thirds of all of the members elected, expel a member for cause.