

1983

Shelia Ann Cox, Susan Keller And Susan Smith v.
Orrin Hatch, Union Members For Hatch
Committee, Friends For Orrin Hatch Committee,
Hatch Election Committee, Michael Leavitt And
John Does I-X : Answering Brief of Respondents

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IN THE SUPREME COURT OF THE STATE OF UTAH

SHEILA ANN COX, SUSAN KELLER :
and SUSAN SMITH, :

Plaintiffs-Appellants, :

vs. :

Appeal No. 19257

ORRIN G. HATCH, UNION MEMBERS :
FOR HATCH COMMITTEE, FRIENDS :
FOR ORRIN HATCH COMMITTEE, :
HATCH ELECTION COMMITTEE, :
MICHAEL LEAVITT AND JOHN DOES :
I-X, :

Defendants-Respondents. :

ANSWERING BRIEF OF RESPONDENTS

On Appeal from the District Court
of Salt Lake County
HONORABLE TIMOTHY R. HANSON, District Judge

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FILED

DEC 8 1993

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IN THE SUPREME COURT OF THE STATE OF UTAH

SHEILA ANN COX, SUSAN KELLER
and SUSAN SMITH,

Plaintiffs-Appellants,

vs.

ORRIN G. HATCH, UNION MEMBERS
FOR HATCH COMMITTEE, FRIENDS
FOR ORRIN HATCH COMMITTEE,
HATCH ELECTION COMMITTEE,
MICHAEL LEAVITT and JOHN DOES
1-X,

Defendants-Respondents.

Appeal No. 19357

ANSWERING BRIEF OF RESPONDENTS

NATURE OF THE CASE

The appellants, Cox, Keller and Smith, commenced this action in the district court for Salt Lake County, Utah on November 12, 1982, seeking special, general and exemplary damages against the respondents for claimed violation of Utah's Abuse of Personal Identity Act, for invasion of privacy, and defamation.^{1/} Appellants' amended complaint contended that such

^{1/} Only Orrin G. Hatch and Michael Leavitt were served by appellants with process and, thus, are the only respondents that have entered an appearance and are before the Court.

damages arose out of an allegedly improper use by respondents, during Utah's 1982 United States senatorial campaign, of a photograph of Senator Hatch talking with the three appellants in a campaign flyer circulated by the Hatch election forces. A reduced copy of the political flyer, entitled "Senator Orrin Hatch Labor Letter" is set forth in the appendix to this Brief as Attachment 1.

DISPOSITION OF CASE IN LOWER COURT

Respondents filed motions to dismiss and for summary judgment under Rules 12(b)(6) and 56, U.R.Civ.P., urging that under the free speech provision of the First Amendment of the U.S. Constitution and for other reasons, the amended complaint failed to state a claim, as a matter of law, upon which relief could be granted. (R. 23, 24, 52-82) Upon consideration of memoranda and oral argument, District Judge Hanson entered an order granting defendants' motions and dismissing plaintiffs' amended complaint with prejudice on the basis that the publication of the questioned photograph in the political flyer was constitutionally protected under the First Amendment. (R. 84-86, 101-102).^{2/}

^{2/} The district court, in its memorandum decision and order of dismissal, found it unnecessary to reach defendants' motions to dismiss on the non-constitutional grounds that plaintiffs' amended complaint failed, in law, to state a cause of action.

RELIEF SOUGHT ON APPEAL

Appellants, Cox, Keller and Smith seek reversal of the district court order of April 19, 1983, dismissing their amended complaint.

ISSUES PRESENTED ON APPEAL

1. Was the publication by respondents of the photograph, picturing Senator Hatch conversing with the three unidentified appellants in a political flyer during a senatorial election campaign, constitutionally protected free speech under the First Amendment to the United States Constitution against appellants' claims herein?
2. Even aside from the First Amendment question, does appellants' amended complaint state a claim, in law, under the Utah Abuse of Personal Identity Act, or for invasion of privacy, or for defamation upon which relief could be granted?

STATEMENT OF FACTS AND CASE

Appellants' Statement of Facts, as far as it goes, generally is unobjectionable.^{3/} However, the Statement is so incomplete and the balance of the Brief so convoluted that it is

^{3/} However, the statement in appellants' Brief at p.3 that the particular photograph in the political advertisement "implied that appellants approved or endorsed the reelection of respondent Hatch", is nothing more than appellants' personal opinion and is not a fact established by the record.

difficult to determine wherein the appellants claim the district court erred. Thus, pursuant to Rule 75(p)(2) U.R.Civ.P., respondents will set forth their own facts of the matter, what the amended complaint alleged, and what the district court determined.

1. The Hatch Political Flyer.

In 1982, the political office of U. S. Senator for Utah was before the electorate. The incumbent, Orrin G. Hatch, stood for reelection. In October, 1982, during the election campaign, the Hatch organization distributed an eight page political tabloid, or flyer, entitled "Senator Hatch Labor Letter". The flyer included some ten photographs of the Senator talking with various persons, none of whom, other than Hatch's family, were identified or known.

The pictures were standard campaign fare -- the Senator in a hard hat inspecting an industrial facility, the Senator sharing a joke with a worker, the Senator chatting with a young woman, the Senator looking over the work of three working women (the appellants), the Senator talking with an older citizen, etc. See Appendix, Attachment 1.

None of the pictures in the flyer were captioned; their purpose was to depict the range of the candidate's cares of and interest in the working man and woman. On page 6, the flyer included a reproduction of an article by Senator Hatch in First Monday, the Republican National Committee's magazine, entitled

"Bargaining for a Better America". That article set forth the Senator's views on trade unionism, government regulation of working conditions, and other labor problems. The text was interspersed with two photographs, one of the Senator speaking to an unidentified middle-aged laborer and the other of the Senator examining and/or discussing the work of three unidentified women (appellants). Neither picture was titled or captioned and neither had any direct connection with the article. The photograph was not referred to anywhere in the flyer.

2. The Complaint of Cox, Keller and Smith.

The photograph of Senator Hatch with appellants is the subject of this lawsuit. Although plaintiffs Cox, Keller and Smith were not identified in any way and there was no indication that they were Hatch supporters, plaintiffs alleged:

The use of the plaintiffs' photograph . . . was in such a manner as to imply that the plaintiffs herein approved of or endorsed the conduct and reelection of the defendant Hatch.

Amended Complaint, ¶9 (R. 15).

That conclusion is unfounded. The most that can be said or inferred from the photograph is that the plaintiffs were speaking with Senator Hatch and one apparently was smiling at him. The photograph was a typical, contemporary campaign picture, as the political flyer was a typical campaign tabloid. Candidates routinely are shown in a variety of situations and with a

variety of company, including small children, office-holders even of the opposite party, miscellaneous citizens whose politics presumably are diverse and even a few apolitical dogs and horses.

Although stated under one count, the amended complaint asserted three causes of action ---- (i) abuse of personal identity (based upon the Utah Abuse of Personal Identity Act, 45-3-1 et seq. Utah Code Ann. (5A Repl. Vol. 1981)), (ii) invasion of privacy and (iii) defamation. (R. 13-18).

The defendants, Hatch and Leavitt, moved to dismiss plaintiffs' action on the following grounds:

- a. the entire action was barred by the First Amendment to the United States Constitution;
- b. the elements of an abuse of identity claim were not available;
- c. the elements of a defamation claim were not available;
- d. the elements of a claim for invasion of privacy were not available. (R. 52-82).

3. Dismissal Order of District Court.

After extensive briefing and oral argument, the lower court, the Honorable Timothy R. Hanson, dismissed the amended complaint on First Amendment grounds, holding:

To allow plaintiffs to assert a cause of action based upon the photograph as it was presented in this particular situation, would

impose and constitute a "chilling [e]ffect" on what must be under constitutional principles the closely guarded right of free speech, and would severely limit a political candidate's right to free political expression as constitutionally guaranteed.

A cause of action as plaintiffs attempt to assert would impinge upon defendants right of free speech and therefore cannot be constitutionally condoned. ... (R. 85).

See Attachment 2 for the full text of the trial court's memorandum decision.

Since only Orrin G. Hatch and Michael Leavitt, of the five named defendants, were served with process and before the court, judgment was entered as to them and made final, pursuant to Rule 54(b), U.R.Civ.P.

ARGUMENT

POINT I

THE AMENDED COMPLAINT SOUGHT RELIEF WHICH
WOULD HAVE IMPERMISSIBLY "CHILLED" FREE SPEECH
UNDER THE FIRST AMENDMENT AND IT WAS PROPERLY
DISMISSED.

I. The Amended Complaint Raises Respondents' Federal Constitutional Rights of Free Speech.

Appellants' attempt to curtail political speech --- whether they call it abuse of identity, invasion of privacy or defamation in their amended complaint --- is squarely confronted by the rights to free speech of the respondents guaranteed under the First Amendment of the United States Constitution. The Amendment states in relevant part:

"Congress shall make no law respecting an establishment of religion, . . . or abridging the freedom of speech or of the press;"

In the 1925 decision of Gitlow v. New York, 268 U.S. 652 (1925), the U. S. Supreme Court incorporated the free speech provisions of the First Amendment within the guaranteed rights under the Due Process Clause of the Fourteenth Amendment by the statement that:

For present purposes we may and do assume that freedom of speech and of the press -- which are protected by the First Amendment from abridgement by Congress -- are among the fundamental personal rights and "liberties" protected by the due process clause of the 14th Amendment from impairment by the states. 268 U.S. at 666.

The holding in Gitlow has been consistently affirmed. Fiske v. Kansas, 274 U.S. 380 (1927); Bates v. State Bar of Arizona, 433 U.S. 350 (1977).

2. Political Campaign Literature is the Most Protected Form of Free Speech Under the First Amendment.

The attempt of appellants to apply the Utah Abuse of Identity Act or any other of their claims to the campaign literature in this case would impose an impermissible "chilling" upon political expression. No form of speech is more strictly guarded by the First Amendment. As stated by U.S. Supreme Court in Monitor Patriot Co. v. Roy, 401 U.S. 265, 272 (1971):

[T]he constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for public office. (Emphasis added).

Further to the point, the U. S. Supreme Court has emphasized as "unfettered" the First Amendment right of political candidates to express their views in the electoral process. In Buckley v. Valeo, 424 U.S. 1, 52-53 (1976), the Court wrote:

[I]t is of particular importance that candidates have the unfettered opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing them on election day. Mr. Justice Brandeis' observation that in our country "public discussion is a political duty" [citation omitted] applies with special force to candidates for public office.

In the 1980 case of CBS, Inc. v. FCC, 629 F.2d 1, 24 (D.C. Cir. 1980), aff'd, 453 U.S. 367 (1981), the District of Columbia Circuit held:

The public's right to be informed is nowhere stronger than in the area of elections. And, no speech is more protected than political speech.

Political speech is entitled to a higher degree of protection than is commercial speech. See, e.g., Virginia State Bd. of Pharm. v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 778-780 (1976) (Stewart, J. concurring); SEC v. Wall Street Transcript Corp., 422 F.2d 1371, 1379-1381 (2d Cir. 1970), cert. denied, 398 U.S. 958 (1970). Lamar Outdoor Advertising, Inc.

v. Mississippi State Tax Comm'n., 701 F.2d 314, 319 (5th Cir. 1983), reh. en banc ordered, 701 F.2d 335 (5th Cir. 1983).

Restraints which permissibly may be imposed on commercial or other non-political advertising (such as an abuse of identity statute) may not be imposed upon political campaign literature. See, e.g., Virginia State Bd. of Pharm v. Virginia Citizens Consumer Council, Inc., supra at 778 n.3 (noting that restrictions upon labor practices "would clearly violate First Amendment guarantees if applied to political expression concerning the election of candidates to public office"); SEC v. Wall Street Transcript Corp., supra at 1379 (rejecting the "assumption that the activities involved in giving commercial investment advice are entitled to the identical constitutional protection provided for certain forms of social, political or religious expression").

Abuse of identity legislation is intended primarily for application to commercial advertising. This is an area of expression which is given much lighter protection than political speech. Indeed, as recently as 1968, the District of Columbia Circuit stated:

Promoting the sale of a product is not ordinarily associated with any of the interests the First Amendment seeks to protect. As a rule, it does not affect the political process, does not contribute to the exchange of ideas, [etc.] It is rather a form of merchandising subject to limitation for public purposes like other business practices.

Banzhaf v. FCC, 405 F.2d 1082, 1101-1102 (D.C. Cir. 1968), cert. denied sub nom Tobacco Inst., Inc. v. FCC, 396 U.S. 842 (1969).

Although the United States Supreme Court since has rejected the notion that commercial speech "lacks all protection" of the First Amendment, e.g., Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n., 444 U.S. 557, 561 (1980), it still is clear that it is much less protected than its political counterpart.

3. Appellants' Position is a Dangerous Threat to First Amendment Rights.

Appellants do not dispute the protected nature of political speech. Indeed, it is not even clear whether they dispute Judge Hanson's holding that their claims would impermissibly chill protected speech. Rather, appellants insist, in Point I of their Argument:

. . . THE USE OF APPELLANTS' PHOTOGRAPH
IS NOT CONSTITUTIONALLY PROTECTED SPEECH
OR EXPRESSION. Appellants' Br. at 4.

Thus, appellants claim that use of the questioned photograph in respondents' political flyer simply is outside the reach of the First Amendment. This neat trick is accomplished by appellants setting themselves up as the arbiters of what is or what is not political speech, or at least of what is or is not "worthy" political speech by the candidate.

The misuse of their [appellants'] photograph
in respondents['] campaign advertising is not

part of any political discussion on "vital political issues". Such protection would be given to Orrin Hatch making statements as to his opponent's political beliefs and policies; no such protection should be given to Orrin Hatch publically [sic] and falsely saying that he is endorsed by three ordinary members of the public, the plaintiffs in this action. The respondents' conduct in falsely implying endorsement of Orrin Hatch by the plaintiffs is not entitled to any constitutional privilege. Appellants' Br. at 12. (Emphasis added).

Appellants cite no authority at all for this alarming doctrine that "worthy" political speech is protected while "unworthy" speech is not.^{4/} Apparently, appellants argue that speech which they happen to dislike is truly "vital" or "worthy" public discussion. Appellants fail to recognize that the "First Amendment is not limited to ideas, statements, or positions which are accepted" and its "standards are not adjusted to a particular type of publication or particular subject matter." Pring v. Penthouse, Ltd., 695 F.2d 438, 443 (10th Cir. 1982) petition for cert. filed, 51 U.S.L.W. 3738 (April 3, 1983) (No. 82-1621).

^{4/} Appellants' presumption in determining whose speech is or is not worthy is exceeded by their earlier presumption in determining whose vote is or is not worthy. Apparently, votes for Senator Hatch were not worthy. Appellants contended before the trial court:

...Only 60% of the people in Utah voted for Orrin Hatch

. . . .

It is fallacious to contend that elections or public decisions in campaigns and elections are synonymous with actions of that ideal "reasonable person" that the law envisions. A political majority swayed and coaxed by slick campaigns and political gimmicks does not set the law's ideal "reasonable person" standard. (Emphasis added). (R. 98-99).

Contrary to the potentially dangerous argument of appellants, the United States Supreme Court has emphatically held that distinctions between worthy and unworthy political speech are constitutionally impermissible. Cohen v. California, 403 U.S. 15, 23-24 (1971). Defendant Cohen had been fined for disturbing the peace in the Los Angeles County Courthouse by wearing a jacket bearing the words "Fuck the Draft". This hardly was a serious discussion of the Selective Service or of the Vietnam conflict. To paraphrase appellants, Cohen was not "making statements as to [President Johnson's or General Hershey's] political beliefs and policies". Indeed, the State defended the prosecution as restraining, not serious speech, but merely a "distasteful mode of expression". Id. at 21.

The U.S. Supreme Court rejected that argument and such attempted "distinctions", holding:

We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech [i.e., "serious" discussion], has little or no regard for [the] emotive function [e.g., a great deal of campaign advertising]... . Id. at 25.

Even if it were merely "emotive", the Hatch flyer was political speech and entitled to the highest constitutional protection. ^{5/}

^{5/} The Cohen decision is fully consistent with a fundamental rule of First Amendment cases: content-based prohibitions on speech (of which a "worthiness" test is the most extreme possible example) are impermissible. Consolidated Edison Co. v. Public Serv. Comm'n., 447 U.S. 557, 560 n.3 (1980); Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 556 n.8 (1975); Waters v. Chaffin, 684 F.2d 833, 837 (5th Cir. 1982).

4. Plaintiffs' Claim, if Permitted to Stand, would Chill Speech

Plaintiffs nowhere deny that the relief they seek would "chill" speech such as that of the Hatch flyer; indeed, they appear to acknowledge that it would have that effect. The "chilling effect" of plaintiffs' theory is obvious. If plaintiffs were to prevail, any photograph of a person published without his permission (which, for safety's sake, had better be in writing) in the most miniscule of social conversation with a candidate for public office would subject the candidate to a potential suit for abuse of personal identity. Such a requirement necessarily would significantly burden -- or "chill" -- political speech by exposing candidates and their campaign organizations to the risk of litigation every time they publish an informal photograph.

An impermissible "chilling" of speech occurs when risks of legal liability

require [those subject to them] to "steer far wider of the unlawful zone" [citation omitted] than if the boundaries of the forbidden areas were clearly marked, . . . by restricting their conduct to that which is unquestionably safe. Free speech may not be so inhibited.

Baggett v. Bullitt, 377 U.S. 360, 372-73 (1964).

The First Amendment will not permit a rule [which] would invite timidity and self-censorship and very likely lead to the suppression of many items that would otherwise be published and that should be made available to the public.

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 496 (1975).

Applying the Abuse of Personal Identity Act or other tort claim to campaign literature would create a "forbidden zone" which campaign organizations could accommodate only by substantially restricting their advertising practices or obtaining pre-publication permission from every person shown in every photograph, television commercial, etc., used in the campaign (or in fund solicitation, partisan newsletters, etc.). Seeking pre-publication permission would substantially increase a campaign's personnel requirements, would require additional photographs (to compensate for the possibility that permission might not be obtained for particular photographs), and frequently could compel candidates to pay for publication rights (which, in turn, would make political advertising even more expensive than it already is).

Appellants' proposed claims would make use of photographs or film clips of a candidate with large, transient groups of people or with persons not affiliated with his party impractical, if not impossible. Just how preposterous that requirement would be is illustrated below by the attached photographs (Attachments 3, 4, 5 and 6) of President Franklin D. Roosevelt with large, obviously diverse groups and also talking to several individuals in much the same role as Senator Hatch with Cox, Smith and Keller. None of the Roosevelt photographs could have been used for political campaign purposes in Utah under appellants' interpretation of the First Amendment.

Plaintiffs' proposed rule would adversely affect every form of political or public interest advertising. Not only

candidates for office, but other groups attempting to influence the public (of particular policies or legislation -- ranging from nuclear disarmament proponents to gun control opponents -- and even "propagandists" or advocates of various social practices and religious persuasions) would be vulnerable to litigation. Under appellants' theory of this case, abuse of identity litigation easily could become a convenient device for harrassing politicians, activists, or even churches one did not like.

The First Amendment demands that such potential inhibition of free speech be nipped in its incipency.

In the domain of . . . speech, press or association, the decisions of this Court recognize that abridgment of such rights, even though unintended, may inevitably follow from various forms of governmental action.

NAACP v. Alabama, 357 U.S. 449, 461 (1958).

[S]tatutes or ordinances that regulate or infringe upon the exercise of First Amendment rights . . . "must survive the most exacting scrutiny." [citation omitted]. [Such a law] is presumptively unconstitutional and . . . bears the burden of justification.

Rosen v. Port of Portland, 641 F.2d 1243, 1246 (9th Cir. 1981).

POINT II

THE UTAH ABUSE OF PERSONAL IDENTITY

STATUTE HAS NO APPLICATION TO POLITICAL

EXPRESSION UNDER THE FIRST AMENDMENT.

The general case law forbids abuse of identity claims, whether statutory or otherwise, which restrict protected political

or editorial -- as distinguished from commercial -- speech. Cher v. Forum International Ltd., 692 F.2d 634, 639 (9th Cir. 1982).

In Davis v. Duryea, 99 Misc.2d 933, 417 N.Y.S.2d 624 (Sup. Ct. 1979) a candidate's commercial contained a photograph of Davis, identified as a participant in the Attica prison riots who later had been pardoned, with a promise that, if elected, candidate Duryea would "'toughen policies on pardons and paroles.'" 417 N.Y.S.2d at 625. Davis sued under a New York statute, claiming abuse of personal identity. The New York court dismissed the action for failure to state a claim on which relief could be granted, holding:

[T]here is no way that a television commercial used in a political campaign for governor can be construed to be a non-privileged advertising or trade use encompassed within the ambit of proscription by the [abuse of identity section of the] civil rights Laws. Id. at 629.

The Davis court also stated:

[T]he constitutional requisites of freedom of speech become more imperative and irresistibly compelling when those freedoms are relevantly exercised during the course of and as a part of the electoral process. No activity is more basic to the maintenance of a democratic society than that which develops the knowledge, debate, and information necessary to enable our citizens to best exercise their electoral franchise, and thereby facilitate the election of leaders who will guide and shape the policies and programs of our institutions. Id. at 627.

In Fogel v. Forbes, Inc., 500 F.Supp. 1081 (E.D.Pa. 1980), an action for abuse of identity brought against a major

business news magazine, the federal district court, after dismissing the claim on non-constitutional grounds, stated:

In the event, however, the substantive law . . . may have been misconstrued in any of our foregoing analyses, . . . since the publication of the photograph in this case was for the sole purpose of illustrating a newsworthy article, the defendants would be entitled to summary judgment on constitutional grounds. Id. at 1089.

Plaintiffs' claims can neither be squared with Duryea, and Fogel nor stand in the face of the unwavering U.S. Supreme Court decisions regarding the integrity of political speech under the First Amendment.

The Application of the Utah Statute.

The Utah Abuse of Personal Identity Act should not reach beyond business advertising or comparable activities. It cannot reach purely political expression. It is one thing to impose a consent requirement -- which, in effect, means a financial requirement -- upon commercial advertising. Such advertising is relatively unprivileged speech and decisions to advertise commercially are made on a cost-effectiveness basis. However, the constitutional guarantee of free speech does not permit a similar burdening of political advertising. It likewise is impermissible to restrict such political speech by calling it an "invasion of privacy" or "defamation."

Appellants' claims are irreconcilable with the Supreme Court's mandate in Buckley v. Valeo (supra, 424 U.S. at 52-53)

that "candidates have the unfettered opportunity" to promote their candidacies. The remedy for perceived abuse of political speech, wrote Justice Brandeis, is "more speech, not enforced silence." Whitney v. California, 274 U.S. 357, 377 (1927).

Appellants' remedy, if they need one, must be speech of their own -- in letters to the editor, or radio and television interviews in which they denounce or disclaim any support of Senator Hatch, the candidate. But they cannot seek recourse under the Abuse of Personal Identity Statute without running aground the First Amendment. As the U.S. Supreme Court put it bluntly in New York Times Co. v. Sullivan, 376 U.S. 254, 281 (1964):

The importance to the state and to society of such discussions is so vast, and the advantages derived are so great, that they more than counterbalance the inconvenience of private persons whose conduct may be involved, and occasional injury to the reputations of individuals must yield to the public welfare, although at times such injury may be great. The public benefit from publicity is so great, and the chance of injury to private character so small, that such discussion must be privileged. ...

POINT III

APPELLANTS' CLAIM THAT THEY ARE EXEMPT FROM
FIRST AMENDMENT RESTRICTIONS IS DEVOID OF
SUPPORTING AUTHORITY.

Appellants claim that their photograph, unidentified as it was, with Orrin Hatch in the political campaign flyer is

actionable under the Utah Abuse of Identity Act even if that results in a "chilling" of political speech. Indeed, it is argued in appellants' Brief:

The fact that some government restrictions [the Utah Act] placed upon freedom of expression create a "chilling effect" in the exercise of these rights is not sufficient to prohibit this regulation. Appellants' Br. at 4.

The flaw in appellants' contention is that it not only lacks any supporting case precedent, but the authoritative holdings are flatly against the proposition. The attempt to rely at page 4 of their Brief, upon Younger v. Harris, 401 U.S. 37 (1971), is quite unavailing. In Younger, the defendant, indicted in a California court on charges of criminal syndicalism, sought a federal injunction arresting the state proceedings on First Amendment grounds. The U.S. Supreme Court denied the injunction on procedural grounds, holding that the place to address the constitutional questions was a direct defense to the state indictment. The Court, in Younger, did not begin to address what was or was not an impermissible "chilling" of free speech.

Younger does contain a statement of no more than obiter dictum that where state regulation has only a minor or incidental impact upon speech, the regulation may be upheld. Id. at 51. However, the Younger dictum does not begin to touch upon the area of political speech or expression. If a state regulation presents even the most minimum risk that political speech will be

impaired, much less jeopardized, the attempted regulation will fall under the weight of the First Amendment. Buckley v. Valeo, supra. State regulation of essentially commercial speech under an abuse of identity act is one thing ---- for example, preventing the use of a photograph of Clint Eastwood to sell cigars or a movie of Bob Hope's life, without their consent and without paying for the obvious value of their likenesses. But it is quite another matter to apply the Act in the regulation of political speech of a candidate for public office. The latter is constitutionally proscribed, Monitor Patriot Co. v. Roy, supra, and the obiter dictum in Younger does not begin to suggest otherwise. It has no application to the instant case.

United States v. Baranski, 484 F.2d 556 (7th Cir. 1973), also cited at page 4 of appellants' Brief is as inapplicable as Younger. Baranski involved a prosecution of four individuals who went to a local draft board, pulled out filing cabinets and poured animal blood over the files. They were charged with willful damage of government property, mutilation and destruction of records, interference with the administration of the Selective Service Act and conspiracy to commit those offenses. The Seventh Circuit properly recognized that destroying records (or any other property) simply is not "speech".

Further, appellants, at page 7 of their Brief, erroneously attempt to rely on Branzburg v. Hayes, 408 U.S. 665 (1972), in which the U.S. Supreme Court addressed the question of

whether a newspaper reporter had a constitutional right to refuse to reveal his sources in a judicial proceeding. Branzburg did not involve a restraint of speech, but a claim of an alleged adverse secondary impact upon journalism if the reporter were required to testify. It is of no assistance.

The balance of appellants' Brief is an assortment of unhelpful citations and irrelevant arguments. At page 8 of their Brief, appellants cite Greer v. Spock, 424 U.S. 828, 836 (1976), a case wherein the U.S. Supreme Court upheld a military regulation against political demonstrations and similar activities on the military reservation at Fort Dix, New Jersey. Unremarkably, the Court held that Fort Dix's primary business was to train soldiers, not to provide a public forum. However, the Court emphasized that the regulation did not authorize the military authorities to prohibit the distribution of conventional political campaign literature. Id. at 834-835.

Further, appellants cite an excerpt from Consolidated Edison Co. v. Public Serv. Comm'n, supra, at page 8 of their Brief. Appellants would have done well to cite this case at more length. In Consolidated Edison, the U.S. Supreme Court held that the New York Public Service Commission could not constitutionally prohibit Consolidated Edison from including, in its monthly bills, inserts expressing the company's viewpoint on controversial issues of public policy. The Court held that:

[A] constitutionally permissible time, place or manner restriction may not be based upon either the content or subject matter of speech. . . .

The First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic. As a general matter, "the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." [citation omitted]. Id. at 537.

The subject State action is neither a valid time, place or manner restriction, nor a permissible subject matter regulation, nor a narrowly drawn prohibition justified by compelling state interest. Id. at 544.

Interestingly, appellants cite Consolidated Edison immediately after a statement in their Brief that:

[R]espondents apparently determined that Senator Hatch's views on labor and unions needed to be propagandized in his effort to obtain support from Utah union members in his bid for re-election. This decision alone, in the context of a re-election, does not extend any constitutional right to propagandize Senator Hatch's views, whenever, however and wherever he or his campaign staff choose. Appellant's Br. at 8.

In fact, the rationale of Consolidated Edison, as well as numerous other cases cited above, indicates emphatically that Senator Hatch and his campaign staff indeed are entitled - subject to only the narrowest of limitations - to "propagandize" his views "whenever, however, and wherever he or his campaign staff choose."

Appellants devote page 9 through 12 of their Brief to the curious argument that they are not "public figures" within the meaning of New York Times Co. v. Sullivan, 376 U.S. 254

(1964), or later cases. This is a rather peculiar addition to appellants' Brief, inasmuch as that issue was neither argued or raised by respondents before the district court nor does it have any relevance to this appeal.

Appellants are forced to argue that the Utah Abuse of Identity Act contains

reasonable restrictions as to the time, place and manner of advertising; those provisions are permissible restrictions upon free speech even of a political nature. Appellants' Br. at 13.

Appellants cite no authority, whatsoever, for that proposition and for good reason ----- there is none. It is clear from the binding precedent --- Buckley, Consolidated Edison and the others --- that restrictions upon the time, place and manner of political speech are profoundly disfavored and that such restrictions may not be based upon either the content or subject matter of speech. Consolidated Edison Co. v. Public Serv. Comm'n, supra at 541.

Finally, the claim of appellants that they merely advocate in this case "restrictions as to time, place and manner" of political advertising and not advertising itself (Br. at 13) is disingenuous and utter nonsense. Their claim, unveiled in its real form, is that the Hatch campaign was not entitled to publish the subject photograph in the political flyer at any time, anywhere, or in any manner. That restriction is, of course, the gravamen of the constitutional offense under the First Amendment.

In sum, the simple fact is that appellants' argument that they may sue the respondents for the publication of the photograph in the political flyer without squarely infringing respondents' First Amendment rights of free speech, is without any authoritative precedent, whatsoever. Stacked against it is nearly 50 years of case law of the United States Supreme Court and other courts. Acceptance of appellants' position in this appeal would not only "chill" political speech and expression, it would strangle it.

The ruling of the trial judge determined that respondents' First Amendment rights would be in serious jeopardy if the amended complaint were permitted to stand. That ruling should be affirmed.

POINT IV

THE DISTRICT COURT HAD AVAILABLE

TO IT OTHER, ALTERNATIVE

GROUND FOR DISMISSAL

1. The Facts Alleged by the Amended Complaint did not amount to a Claim upon Which Relief could be Granted under the Abuse of Personal Identity Act.

The Abuse of Personal Identity Act provides:

The personal identity of an individual is abused if:

- (1) An advertisement is published in which the personal identity of that individual is used in a manner which expresses or implies

that the individual approves, endorses, has endorsed, or will endorse the specific subject matter of the advertisement; and

(2) Consent has not been obtained for such use from the individual

UTAH CODE ANN. §45-3-3 (1981 Repl. Vol.).

The photograph in the Hatch flyer is not actionable under the statute.

(a) Appellants' claim is based upon an unsupportable inference. The complained-of photograph did not represent that appellants had endorsed Senator Hatch. Just as clearly, it did not "imply" an approval or endorsement. An "implication" is a "necessary deduction from the circumstances, general language or conduct of the parties." Farm Bureau Mut. Ins. Co. v. Dryden, 492 S.W.2d 392, 394 (Mo. App. 1973) (Emphasis added).

Whether a document is capable of supporting an actionable inference is a question of law, which may be disposed of by summary judgment. Fogel v. Forbes, Inc., supra at 1084; H.O. Merrin & Co. v. A. H. Belo Corp., 228 F. Supp. 515, 521 (N.D. Tex. 1969). It is particularly appropriate that a claim based upon an unreasonable inference be summarily dismissed when it is directed against the exercise of free speech. Fadell v. Minneapolis Star and Tribune, 425 F. Supp. 1075, 1085 (N.D. Ind. 1976) (stating that such a suit's "'chilling effect' . . . on First Amendment rights calls for a judicial attitude more favorable toward summary judgment"); Meeropol v. Nizer, 381 F.

supp. 29, 32 (S.D.N.Y. 1974), aff'd, 580 F.2d 1061 (2d Cir. 1977), cert. denied, 434 U.S. 1013 (1978).

The proper disposition of an inadequate claim for abuse of identity is illustrated in Fogel v. Forbes, Inc., supra, in which summary judgment was entered in defendant's favor. The action arose from an article in Forbes Magazine concerning Latin American investment and consumption in Miami. It stated that numerous Latin American tourists bought great quantities of American goods in Miami and resold them at home for three or four times the purchase price. The article included a photograph of plaintiffs (who were Philadelphians, not Latin Americans), along with one other person (beside a couple of airline employees) standing at the Pan American Airways counter at Miami International Airport with numerous boxes of merchandise and at least one Spanish-language wrapper in the foreground. The photograph was captioned "The Load: Some Latins buy so much in Miami they've been known to rent an extra hotel room just to store their purchases." Id. at 1083-84. (The Forbes photograph of the Fogels is reproduced at page 1094 of the decision and is annexed hereto as Attachment 6. They look at least as much like Latin Americans with an accumulation of packages as appellants look like Republicans with a GOP candidate.)

The Fogels sued, alleging defamation and appropriation of their likenesses in that

. . . their appearance in the photograph creates the innuendo that they are participating in the activity described in the article, that is, buying merchandise in Miami for sale in Latin America. Id. at 1085 (Emphasis added).

The Forbes court dismissed both the defamation and appropriation claims, holding:

The court finds that the picture and the article are not reasonably capable of conveying the meaning or the innuendo ascribed by plaintiffs [I]f the publication is not in fact libelous, it cannot be made so by innuendo which puts an unfair and forced construction on the interpretation of the communication.

Id. at 1085 (Emphasis added).

[W]e find that the picture and the article are not reasonably capable of conveying the meaning . . . ascribed by the plaintiffs as the basis for their invasion of privacy claim.

Id. at 1088.

Appellants propose at least as "unfair and forced" a construction of the Hatch photograph as the Fogels proposed of the Forbes article. On that basis alone, the amended complaint should have been dismissed.

(b) Appellants' claim is based upon a mere incidental use of their photograph, which is not actionable under the Abuse of Identity Act. An incidental use of a person's identity--as distinguished from a claim of endorsement or approval--in advertising or other publications is not actionable as a misappropriation of identity. Ladany v. William Morrow & Co., 465 F. Supp.

870, 780-882 (S.D.N.Y. 1978) (granting summary judgment); University of Notre Dame v. Twentieth Century-Fox Film Corp., 15 N.Y.2d 940, 259 N.W.S.2d 440, 207 N.E.2d 508 (1965) (affirming summary judgment). The Massachusetts Supreme Court held, in Tropeano v. Atlantic Monthly, Inc., 400 N.E.2d 847, 850 (Mass 1980):

[T]he crucial distinction . . . must be [drawn] between situations in which the defendant makes an incidental use of the plaintiff's name, portrait or picture and those in which the defendant uses the plaintiff's name, portrait or picture deliberately to exploit its value for advertising or trade purposes.^{6/} (Emphasis added).

Accord, Namath v. Sports Illustrated, 48 A.D.2d 487, 371 N.Y.2d 10, 11 (1975), aff'd, 39 N.Y.2d 897, 386 N.Y.2d 397, 352 N.E.2d 584 (1977). Fogel v. Forbes, supra at 1089; Nelson v. Maine Times, 373 A.2d 1221 (Me. 1977).

The complained-of "appropriation"--assuming, arguendo, that it occurred at all--was as "incidental", if not more so, to the Hatch advertisement as the Tropeano photograph was to the Atlantic Monthly article (or as Joe Namath's instantly recognizable photograph and name were to a Sports Illustrated advertisement (Namath v. Sports Illustrated, supra)). Appellants' claim is as defective as the foregoing actions.

^{6/} Appellants' claim is very analogous to the claim brought under Massachusetts identity statute (similar to Utah's) and rejected in Tropeano. Ms. Tropeano's photograph appeared in an article entitled "After the Sexual Revolution." She, like appellants, was not identified in the article. supra at 848.

The instant action does not come within either the terms of the Utah Act or the recognized definitions of appropriation of identity. The abuse of identity claims are deficient on statutory as well as constitutional grounds.

2. The Amended Complaint did not Allege the Elements of an Action for Defamation. An actionable defamation, under Utah law, is a statement

. . . expressed either by printing or by signs or pictures . . . tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, publish the natural defects of one who is alive, and thereby to expose him to public hatred, contempt or ridicule.

UTAH CODE ANN. §45-2-2 (1981 Repl. Vol.)

The statute (as well as the case law of other jurisdictions) would have required findings:

a. that the photograph implied that plaintiffs were endorsing Senator Hatch; and

b. that being described as a supporter of a man recently re-elected to the United States Senate by 60 percent plurality tends to impeach one's honesty, integrity, virtue or reputation.

These requirements are stated conjunctively in the statute. Therefore, plaintiffs' failure to establish either would defeat their claim.

As has been pointed out in this Brief, the questioned photograph did not reasonably imply that plaintiffs were Hatch

supporters. In a defamation action, it is the trial court's duty initially to determine whether the communication complained of is capable of a defamatory meaning. Fogel v. Forbes, Inc., supra at 1084; H. O. Merrin & Co. v. A. H. Belo Corp., supra at 512. If this threshold matter is decided against plaintiffs, the case is ended. RESTATEMENT (SECOND) OF TORTS §614, Comment (b)(1977).

The failure of the second element of appellants' case also is evident. Perhaps one may not wish to have his picture taken with a candidate who is of a different political persuasion, but one does not become an outcast by doing so. By any objective standard, plaintiffs cannot be deemed defamed.

The test of whether a publication is defamatory is whether, in the circumstances, the writing discredits the plaintiff "in the minds of any considerable and respectable segment of the community." [citation omitted].
Tropeano v. Atlantic Monthly Co., supra at 851.

Accord, Fogel v. Forbes, Inc., supra; Campbell v. Seabury Press, 486 F.Supp. 298, 301 (N.D. Ala. 1979). Appellants have not claimed that any segment of the community deemed them dishonest, unvirtuous, etc., by reason of having been photographed with a United States Senator. The most harm plaintiffs can claim is that they were questioned by their Post Office supervisors about a possible violation of the Hatch Act's prohibition of political activity by civil servants. Appellants' Br. at 3, 12. That hardly creates an imputation of dishonesty.

3. The Amended Complaint does not Allege the Elements of a Claim for Invasion of Privacy. Appellants' final claim is for "invasion of privacy". The right of privacy did not exist at common law. It is a twentieth century invention which has come to include four elements: (i) intrusion upon seclusion, (ii) appropriation of name or likeness, (iii) publicity given to private life, and (iv) publicity placing a person in false light. RESTATEMENT (SECOND) OF TORTS, §652B-E.

The right to name or likeness, of course, is the subject of the Abuse of Identity Act in Utah. The rights and remedies provided by that statute are exclusive. Silverstein v. Sisters of Charity, etc., 38 Colo. App. 286, 559 P.2d 716, 718 (1972); Dupree v. Richardson, 314 F.Supp. 1260, 1262 (W.D. Pa. 1970). The flaws in plaintiffs' identity claim already have been treated.

There was no intrusion upon plaintiffs' seclusion; they were photographed in a public place. The intrusion argument of appellants is clearly insufficient. RESTATEMENT (SECOND) OF TORTS, §652B; Neff v. Time, Inc., 406 F.Supp. 858, 861 (W.D. Pa 1976). Similarly, there can be no claim here of wrongful publicity of plaintiffs' private lives. It repeatedly has been held that a photograph of a person in a public or semi-public situation (on the street, at work, etc.) will not support such a

claim. e.g. Arrington v. New York Times Co., 449 N.Y.S.2d 941, 434 N.E.2d 1319 (1982); RESTATEMENT (SECOND) OF TORTS, §652D, illustrations 4, 5.

The only privacy claim which conceivably is left to plaintiffs is one for publicity allegedly placing them in a false light. However, that tort, as defined by the Restatement, did not occur here.

One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if

(a) the false light in which the other was placed would be highly offensive to a reasonable person, and

(b) the actor had knowledge of or acted in a reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

RESTATEMENT (SECOND) OF TORTS, §652E.

The only "false light" of which plaintiffs complain is an alleged appearance of talking with Senator Hatch. That communication is hardly something "highly offensive to a reasonable person." It has been held, apparently without exception, that offensiveness in privacy cases is to be determined by an objective standard, not by plaintiff's professed subjective sentiments.

The protection afforded by the law of this right relates to ordinary sensibilities and cannot extend to "supersensitiveness or agoraphobia." [citation omitted]. Nelson v. Maine Times, supra at 1224 (Me. 1973) (affirming dismissal).

Accord, Mark v. King Broadcasting Co., 27 Wash. App. 344, 618 P.2d 512, 519 (1980), aff'd, 96 Wash.2d 473, 635 P.2d 1081 (1981), cert. denied, 457 U.S. 1124 (1981); Blount v. TD Publ. Corp., 77 N.M. 384, 423 P.2d 421 (1966).

C O N C L U S I O N

The constitutional question in this case is of momentous consequence. There is more involved than just appellants' claim that their unidentified photograph with Senator Hatch in a Hatch political flyer violated the Utah Abuse of Personal Identity legislation, and further, invaded their privacy and was defamatory. The bedrock question before the Court that cannot be ignored is whether the guarantees of free political speech under the First Amendment of the United States Constitution are to be preserved against the threatened encroachment of appellants. Too many of the most noted statesmen and jurists have spoken on the importance of free political speech for there to exist any doubt as to its priority in our society. Nor has the precept been of recent invention.^{7/}

^{7/} It should not be overlooked that Article I Section 15 of the Utah State Constitution also guards against infringement on free speech by the statement that

"No law should be passed to abridge or restrain freedom of speech ***."

See also Article I Section 1 of the Utah State Constitution providing that "All men have the inherent and unalienable right *** to communicate freely their thoughts and opinions ***."

As Mr. Justice Brandeis put it in Whitney v. California,
supra at 375 (1927):

Those who won our independence *** believed
that freedom to think as you will and to speak
as you think are means indispensable to the
discovery and spread of political truth; that
without free speech and assembly, discussion
would be futile; . . .

When appellants' claims are weighed against the rights
of free political speech under the First Amendment guaranteed to
the respondents, the determination of this case is not even a
close call. The constitutional arguments are dispositive, and
quickly so.

Much could be said about the abject failure of the
appellants to marshal any authoritative, constitutional precedent
to support their positions. It is probably sufficient to say
that this failure merely underscores the significance of the
constitutional issue. The proposition is simple -- the photo-
graph of the unidentified appellants with Senator Hatch in the
political flyer was in the exercise of the "unfettered" right of
political speech in this Country. No matter how the appellants
may strive to characterize their claim as abuse of identity,
invasion of privacy or defamation, the publication is protected
speech under the First Amendment and is not actionable.

The trial judge was convinced that appellants' amended
complaint presented such serious jeopardy to political speech that
a dismissal was entered on the constitutional ground, alone,
without ever reaching the issue of whether the amended complaint

stated a claim for relief for abuse of personal identity, defamation or invasion of privacy. It is respectfully submitted that this Court conclude likewise and affirm.

Even were it assumed, arguendo, that the constitutional issue were not present, it is, nonetheless, plain that appellants' amended complaint fails to state a claim for relief on any of their three theories. Accordingly, the dismissal by the trial court could be and, if necessary, should be affirmed on non-constitutional grounds.

It is earnestly suggested, however, that this case should turn unequivocally on First Amendment grounds, that the questioned photograph in the political flyer is protected speech thereunder, and that the district court order of dismissal with prejudice be affirmed by this Court.

Respectfully submitted,


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Dated: December 7, 1983

UNION MEMBERS FOR HATCH COMMITTEE



Hatch Helps Utahns

Everyday special requests and inquiries come in to Senator Hatch's office from Utah citizens who are having special problems with government agencies, need some special assistance or who are just saying, "Please, help!"

These cases are handled routinely with care and concern until the problem is solved or some resolution can be reached.

The figures listed below represent a combined total of cases handled in Utah and in the Washington office during the first five years of the Senator's term:

1977 — 1,947
1978 — 2,210
1979 — 2,500
1980 — 2,850
1981 — 3,400
Total — 12,907

Examples of Service to Utahns

• Back Pay for Black Lung Benefits

Due to the work of Senator Hatch, a gentleman received \$20,000 in back pay for black lung benefits. Without Senator Hatch's intervention, he would probably have never known that he qualified.

• Social Security Payments

A woman, home bound and a widow, was suddenly denied Social Security payments when her name was improperly deleted from the computer. She and her family tried for five months to get the matter resolved, without success. Senator Hatch's staff went to work on it and in two days she was sent an emergency check for the five months and re-enrolled in the system.

• Immigration Problem Solved

A young man was called on a mission by the LDS Church to Mexico. He was a Mexican citizen, deserted by his parents in the U.S., and adopted and raised by a Utah family. Before leaving for his mission, he was assured by the Immigration and Naturalization Service that he would have no problem returning to this country. However, when he concluded his two-year mission in Mexico, he was told he could never return to his family in the U.S. Senator Hatch fought a private bill through the Senate and the House to reunite the youngster and his family.

• Handicapped Job Opportunities

A handicapped Mexican-American wanted to work for the Post Office. He had trained as a janitor, had worked for the University of Utah for several years, and had a spotless record. USPS said his "spastic" condition was a danger to himself and his fellow employees. After several letters from this office with no result, Senator Hatch

UNITED STATES SENATOR
WASHINGTON, D.C.

ORRIN G. HATCH
UTAH

Dear Union Member,

You might be surprised to be hearing from me. It's no secret that I'm not exactly the favorite Senator of many Washington labor leaders. And while you've probably been given alot of "information" about my record in the Senate, I wanted to take this opportunity to give you my side, because I believe Utahns are fair-minded and willing to make an independent decision based on facts—not heated rhetoric.

I want you to know that my roots are in the union movement. My Dad has been a strong union supporter all his life. Like him, I apprenticed in the building trades as a metal lather and was a card-carrying union member for several years. I have not forgotten these roots, what it means to work with your hands, and I never will.

Frankly, I think I've worked hard to promote your interests. Let me give you just a few examples:

- Introduced the Displaced Workers Act, to provide job-training and assistance for workers hurt by layoffs.
- Supported a 13 week extension in unemployment benefits.
- Sponsored the Training for Jobs Act which recently passed Congress and will provide job training for thousands of workers.
- Supported full funding of dual benefits for railroad retirees.
- Opposed proposals to merge Railroad Retirement and Federal pension plans with Social Security.
- Sponsored the Black Lung Reform Act which saved the Black Lung Benefit Fund for miners from bankruptcy.
- Have supported union workers at Dugway who have fought to keep their jobs from being taken over by outsiders.
- Have assisted numerous AFGE members in disputes with federal supervisors, including opening the Toxic Chemical investigation at Hill Air Force Base.
- Sponsored legislation to crack-down on imports of cheap, substandard foreign steel.

I've also been a strong advocate of industrial development in Utah to provide the critical jobs we need. I've worked with Kennecott Copper, Geneva Steel, and others in negotiations with EPA to ensure that over-regulation didn't force these plants to close. I've promoted the export of Utah coal to Taiwan, and encouraged development of Utah's many resources. You see, I understand that while clean air is important, so are jobs. I'd rather see Utahns working in key industries like Kennecott than have the political endorsement of environmental extremists groups.

As chairman of the Labor Committee I'm in a critical position when it comes to the issues most important to Utah workers. My opponent has criticized me for my chairmanship, claiming that the Labor Committee isn't important to Utah. You and I know better.

I realize we don't agree on every issue. But I honestly believe that in all my work in the Senate I have put the interests of Utah's rank and file workers first. My door is open, and always will be, to Utah workers.

One final point. Everyone knows that our economic mess has been growing for years. I believe that we are making the tough decisions that will turn our economy around, that we are going in a new direction. The basic question to be answered this November is whether we are going to continue in this new direction, or whether we are going to return to the failed policies of yesterday.

I invite you to join me in continuing in the new direction which will restore our economy to health and vitality, and mean increased opportunity and prosperity for all Utah workers. I hope you'll support our efforts to turn America around when you vote this November 2.

Sincerely,
Orrin G. Hatch
Orrin G. Hatch

PAID FOR BY HATCH ELECTION COMMITTEE

personally called the district office of the Post Office and said, "I will take responsibility". The man was hired and has been an exemplary employee.

• Forest Service Grazing Fine

A rancher in Rich county unintentionally violated a Forest Service procedure by allowing a neighbor to use some of his grazing allotment. He was fined nearly \$3,000 by the USFS. After several meetings, including a hearing in Wyoming on the matter, the USFS relented and eliminated the fine.

• HUD Service Improved

The Federal Housing Authority

was the subject of a series of complaints by local realtors and builders. They were told of poor service, delays, and inconsistent appraisals. Senator Hatch asked the State Director of HUD if he would attend a public forum in Provo. He and the Regional Director went to Provo with Senator Hatch to face 250 concerned citizens. The three hour meeting resulted in changes in two important office procedures in FHA, a promise of better service, and few complaints have been heard since.

• Post Office closure

The Ogden Post Office was scheduled to be downgraded and all mail transferred to and

handled by the Salt Lake Post Office. USPS had made this decision because of new machinery purchased in Salt Lake which was not being fully utilized. The fear was that slower mail service to Weber County would result. The staff went to work on the problem and the Senator insisted that a public hearing be held in Ogden. USPS sent officials from Washington and the Regional offices. Public comments were accepted and assurances were given. Senator Hatch chaired the meeting. Despite the public outcry, the USPS implemented the "consolidation" of the two Post Offices.



Hatch Bill to Rescue Black Lung Fund Approved

Last year Congress enacted legislation recommended by Senator Hatch to restore solvency to the black lung benefits trust fund. Prior to the legislation the trust fund was falling increasingly in debt to the Treasury. The benefits of persons going on the rolls since 1973 were being placed in grave jeopardy through staggering indebtedness.

The bill enacted last December was the substance of a proposal introduced by Senator Hatch (S 1922). It was because of the efforts of Senator Hatch as Chairman of the Labor Committee that hearings were held on the measure, with passage quickly thereafter.

All coal miners in Utah currently receiving black lung benefits are aided by this legislation plus all coal miners who in the future may have to apply for such benefits. In September, 1981, a total of 1,863 Utahns were collecting \$437,000 aggregate in monthly benefits from the Black Lung Trust Fund.

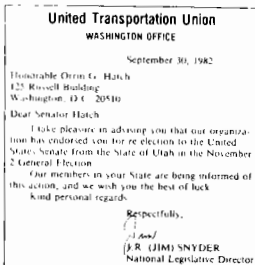
"Coal miners make great contributions in Utah's economy and culture, and as all benefit. It's only fair that Congress should provide some kind of assurances that any who may be afflicted with black lung can get the aid they have been promised," Senator Hatch said at the time.

Hatch Training for Jobs Act Means Work for Utah

Senator Hatch sponsored the Training for Jobs Act to replace CETA. The Act establishes a new system for providing training services. To economically disadvantaged Americans to enable them to get meaningful jobs in the private sector and reduce their dependence on welfare. It will provide a greater emphasis on training, less federal involvement, performance evaluation and input from the private sector.

The Act will provide training for approximately 6,500 Utahns, or over 2,000 more than are currently served under CETA. Senator Hatch played an important role in getting the measure passed.

"The bill we passed recognizes that government can't do the job alone, and for the first time private enterprise and government will work together to train people for jobs," Senator Hatch said. "The Training for Jobs Act recognizes that it is the private sector which will hire individuals graduating from these training programs."



Hatch Champions Youth through Programs

Senator Hatch supported a one-year extension of CETA youth programs. Signed into law by President Reagan and funded at \$576 million this legislation was a great aid to the people of Salt Lake and Davis County, where 60-65 percent of their training programs are youth oriented.

Utah's junior senator has also been credited with saving the Job Corps program for disadvantaged, hard-to-employ youth. After fighting to retain authorization for the program, Senator Hatch offered an amendment, which was adopted, to in-

crease the appropriation to the Job Corps by \$10 million.

The Senator also authored the amendment to the proposed Youth Act to raise wages from \$7,200 to 8,000 for country public service employment under CETA to



permit greater placement of trainees with private sector employers. The concept of this amendment was formulated during discussions with Salt Lake County Commissioner Bill Dunn.

Senator Hatch supported funding for federal training programs authorizing \$3.8 billion for employment and training programs, such as CETA, which was responsible for training some 4,473 people in Utah in 1981.

Hatch Urges End to Age Discrimination



This past summer Senator Hatch co-sponsored legislation to prohibit employers from mandatorily retiring an individual solely based on age.

Following the lead of the Utah legislature, which removed the mandatory retirement age, Senator Hatch co-sponsored the Prohibition of Mandatory Retirement and Employment Rights Act, S. 2617.

"All persons, regardless of age, should be given the opportunity to be judged on the basis of their own skills and experience," the Senator said. "They should not be arbitrarily excluded from work simply because of the inexorable passage of time."

A Utah incident involving the former principal of a Sandy, Utah, school provided the Senator with an example of both age

discrimination and the rising national sentiment against it. Earl Cox, principal of the Edgemont School, was forced to retire in 1972 and later joined forces with the American Association of Retired Persons and the Retired Teachers Association to work for an amendment to Utah's age discrimination statute.

"We should be trying to keep men and women such as Earl Cox in the work force instead of arbitrarily dismissing them for no other reason than their own good health and longevity," the Senator said. "An important first step would be for the federal government to follow the example of the Utah legislature and uncap the Age Discrimination in Employment Act."

ORRIN G. HATCH: A FAMILY MAN AT HOME A

by C

Hatch has, in little more than five years, become one of the most influential forces in the United States Senate. Whether that influence is positive or negative is a judgment subjective in nature; he does wield substantial influence. But how does a man who basically was a stranger to national politics prior to his election in 1976 rise to such a position so rapidly?

The reasons perhaps are as many as they are varied. It might be said he was a man in the right place at the right time. It might be said he was lucky. It might be said he fell into it. The real reasons, however, are much less superficial.

Another viewpoint

To understand those reasons, one must understand the man.

Frank Silbey is chief investigator for the Senate Labor and Human Resources Committee oversight office and has spent 15½ years as an investigator with various government agencies, working most of those years with Democrats.

"Hatch is extremely interested," Silbey says, "in oversight and investigation into the functions of government. He shows enormous courage in dealing with politically sensitive investigations. When the crunch comes, he has the courage of a conviction to follow through because the public interest is involved."

"He has never put any pressure on us to kill or redirect an investigation. I would give him fantastic grades for guts and brains and the willingness to use his authority in the public interest. Very few politicians have Hatch's guts and courage. He is tough and objective."

Family is number one

Away from the political glitter of the nation's capital, however, there is another side of Orrin Hatch that contributes as much to his personal drive—perhaps more

so—as do his reputation and abilities on Capitol Hill.

He is an intensely private man during those few moments not claimed by the rigors of being a United States Senator. And when he finds such a moment, his first love is spending it with his family.

"My family," Hatch says, "is my first interest. I have a difficult time involving them in politics. They want to be involved, but I have a tendency to try to shelter them."

"That's why when I have some time to spend with them, I like to put politics aside. One of my favorite things is to play golf with my 11-year-old son. In some ways I hesitate taking the time away from government business to do it, but it is a thrill to me to be able to walk down the fairway arm-in-arm with my son."

He also enjoys relaxing with his 12-year-old daughter, writing to his missionary son, reading—when it isn't a must, and most sports. The former attorney has participated in football, basketball, baseball, golf, and boxing. He won 11 of 12 fights as an amateur, six by knockout.

Even in family life, however, there are those times when his profession causes ripples, even if the ripples are in just.

While trying to make a point to the family, Hatch once was interrupted by his son Scott, who is now serving an LDS mission in Arcadia, Calif.

"Listen," Scott said, gathering all the seriousness he could, "I think you need to know that your being a United States Senator doesn't cut any ice around here."

The masquerade of seriousness, however, quickly broke down and both father and son soon were hugging each other and laughing.

The third son and sixth of nine children born to Jesse and Helen Hatch, of Midvale, Orrin Hatch enjoys his family heritage. He often is accused of being a non-Utah Senator, a favorite tactic of his

political adversaries, but he is proud of his family roots that are deep in Utah history.

"My great-grandfather," Hatch says, "founded Vernal and the Ashley Valley area in the mid-1880's, and just about everywhere I go in this state I find families that tie in with my pioneer ancestors."

Young union member

Hatch entered his father's trade when only 16 years of age, becoming a journeyman metal lather with the AFL-CIO, a trade that

"Of all the awards, citations and honors he has received, the one of which he is perhaps most proud is the certificate of apprenticeship completion in the AFL-CIO."

later was used to help put himself through Brigham Young University. Of all the awards, citations and honors he has received, the one of which he is perhaps most proud is the certificate of apprenticeship completion in the AFL-CIO.

While carrying 18 to 21 hours of class load, he worked full-time—two of those years as a janitor and the others as a metal lather—to obtain a degree in history and philosophy. He then obtained a full-honors scholarship to the University of Pittsburgh Law School, earning his Juris Doctor degree in 1962.

"When I graduated," he said, "I traded the high pay some other graduates were getting for some good training, and I was fortunate to get it with a small but very good firm in Pittsburgh."

He later became a full partner in the firm, but in 1969 Hatch decided with his wife Elaine they wanted to raise their family in Utah. The two are the parents of six children and soon will become grandparents, as their son Brent—who is attending Columbia Law School—and his wife are expecting their first child in June.

"We knew Utah was the place we wanted to live and raise our family," Hatch said, "so we were very positive about making the move and are very happy we did so."

"Having been a card-carrying member of a union, I know what it is like for the workers. It is for them—the union workers—that I am fighting. I believe in the men and women of the unions. . . . HATCH"



Hatch has been instrumental in several bills of interest to Utah workers. He fought to keep the Geneva steel plant in Orem open by taking on the EPA's air standards. By keeping air standards reasonable at Kennecott Copper's operation on the west side of the Salt Lake

NO A LEADER IN THE UNITED STATES SENATE

By Sam

...sary. Some 7,000 jobs were saved.

Working with Garni, the two Utah senators were able to keep the vital Central Utah Project from being axed by the Carter administration.

"The House dumped the bill into the Senate," Hatch said. "So Jake (Garni) and I each took half the Senate and worked until we had 68 votes—enough to keep this important project alive for Utah."

Hatch, along with Senator Edward Kennedy (D-Mass.) is a co-sponsor of the Radiation Compensation Act for victims of nuclear fallout during Nevada testing.

"The government was wrong to do that," he said, "and when government is wrong it should pay its bills."

Hatch also worked to sponsor legislation for health victims at Hill Air Force Base and has helped with funding for the small business center and pharmacy department at the University of Utah.

"Having been a card-carrying member of a union," he says, "I know what it is like for the workers. It is for them—the union workers—that I am fighting. I believe in the men and women of the unions. When labor is right, I will vote for them. But I don't believe in their leaders. That is where I feel the problem lies."

To say union bosses are not fond of Orrin Hatch would be a substantial exercise in understatement. The Utah Senator, however, enjoys relating an experience he had with the late George Meany, Mr. Organized Labor himself.

Shortly after his successful filibuster against the labor reform bill, he was to attend a reception for long-time Kentucky Senator John Sherman Cooper. As Hatch entered the reception, there sat Meany. "In all his splendor," Hatch extended his hand and said, "I'm Orrin Hatch."

"I know who you are," Meany snapped. Meany then stood, put his arm on Hatch's shoulder and said, "Orrin, we respect you. We didn't think anyone could beat us. We control the Presidency, we own Congress and we own the bureaucracy we created. No hard feelings, but if it costs us \$4 million in 1982, we'll beat you."

"I truly admired his (Meany's) foreign policy, in fact, I feel organized labor's foreign policy often is more sound than that of our government. . . . HATCH"

A broad smile creased Hatch's face. "Ge. Mr. Meany," he replied, "if you put \$4 million into Utah in 1982, that will double our GNP, and I'll be an instantaneous hit in the state."

Meany laughed long and hard, the two talking as friends and remaining so to the day Meany died.

"I truly admired his (Meany's) foreign policy," Hatch said. "In fact, I feel organized labor's foreign policy often is more sound than that of our government."

The wisdom of experience

Five years and a few months of life as a Senator have given Hatch a slightly different perspective of government from the one he had at the outset. No longer does he see everything in black and white. Many



things, he had found, come in various shades of gray. That is not to say, however, he has changed his ideals.

"Most Senators basically are good people," Hatch said. "Working with them I have learned that compromise often is neces-

sary. But not when it concerns a principle.

"I still feel a little new to this game. But I feel this is the most serious time in our nation's history."

One of the office slogans frequently used by Hatch is "Try to shorten the time for effectiveness." He wishes more legislators felt that way and says, when pressed, there are three things he dislikes pertaining to the Senate.

"First, the time it takes away from my family," he said. "That is very difficult for me. Second, the lack of statesmanship shown by those who put their personal political skin ahead of their country. And third, the entrenchment of the philosophy of taking tax dollars to buy constituent votes with costly special programs."

He lists our country's most pressing issues as inflation, high interest rates, unemployment and a sub-par national defense. In addition to work on issues, however, he and his staff also concentrate heavily on constituent service.

"We worked on more than 1,800 cases in the last year," Martin said, "and if any Utahn comes to Orrin's office, he tries very hard to see them. That's just another thing that keeps him so busy. Even with seeing as many people as he can and his heavy committee assignments, he still manages to maintain a very high voting record."

During his five years in the Senate, Hatch has a 94 percent voting record—97 percent in 1981. The demand on his time and energy, however, apparently has not dimmed his enthusiasm for what he is doing.

"Elaine and I have never looked back," he says. "She was a little reticent about my running in 1976 because she felt we had things going well in our law practice and didn't want to see me hurt."

"But she has become my biggest supporter. She also is my best critic and the first to step in and tell me if she thinks I'm doing something wrong."



LABOR AND CONGRESS

Bargaining For a Better America

by Senator Orrin Hatch

Honor carries obligation. With the honor of enough union votes to help elect Ronald Reagan last November, Republicans earned the obligation to watch out for the "American union worker," an obligation shirked by the Democrats, the "traditional" blue-collar party.

It's a heavy obligation, an enormous duty. It's a task we Republicans actively sought however, we should work to fulfill our commitments as well as we can. And so we shall.

What are the interests of the American union member? Having grown up in a union family and having been a union man myself, I can say they are the same as those of most other Americans. Union families want to own their homes, stow away some cash for rainy days and future opportunities, and keep up with the bills for day-to-day necessities. That's not a lot—but it has been increasingly difficult to do with inflation sprouting like Jack's magic beans.

Union families want to own their homes, stow away some cash for rainy days and future opportunities, and keep up with the bills for day-to-day necessities.

Union wages have grown enormously over the past decade, but union members suffered the same frustrations the rest of us did. Median income for American families of four was just over \$28,000 last year, but that \$28,000 bought far less than it would have ten years earlier. All families found it difficult to make food dollars stretch to cover what they used to cover, the price of energy made it difficult to stay warm in winter, and sometimes made it difficult even to get to work. High interest rates made home ownership much more a memory than a dream.

Whatever other faults the leaders of America's labor unions may have, even they recognized these problems. The late Teamsters President Frank E. Fitzsimmons told the *Washington Star* just after the election, "The large vote for President-elect Reagan is a mandate to curb inflation, which has been strangling American workers, and to once again put America back to work."

Republican leadership in the United States Senate has worked hard to set an agenda that will benefit America's union members—and all other Americans as well. As I write this—eight months into the first Republican-controlled Senate in a quarter of a century—our efforts have already come to partial fruition. We have already created several block grants, passing much of the decision-making authority

Government regulation too often assumes that workers and managers are mortal enemies, and uses that assumption to design regulations and enforcement that do not serve as well as they could.

to state and local governments, thereby reducing overhead at the federal level, reduced federal spending significantly (by 25 percent in the programs over which my committee, the Committee on Labor and Human Resources, has jurisdiction) while preserving programs necessary for those who literally have no other place to turn (we preserved programs for the handicapped with very few cuts, for example), cut taxes, so that by 1983 that "average union family" will have an extra \$1,000 annually, to put down on the new house, to save for Junior's college education, to put towards a more comfortable retirement.

Some of the other items on our agenda may be more difficult. We are concerned, for example, about the safety of workers. While the Occupational Safety and Health Administration was established to work for greater safety on the job, statistics tell us that jobs are not safer for the effort. At the same time, businesses experience great difficulties complying with safety rules that are often costly, sometimes difficult to enforce among workers, occasionally contradictory to other safety rules, and too often ineffective. In short, the regulatory web intended to protect workers is really more red tape for employers than a safety net for employees.

The issues are complex, and will get a thorough airing before any action is taken legislatively. Government regulation too

often assumes that workers and managers are mortal enemies, and uses that assumption to design regulations and enforcement that do not serve as well as they could. Workers, comprise the most valuable assets of businesses. Government has



rules should be designed to encourage businessmen to seek help to protect their most valuable asset. Workers and managers together will do more to improve safety in the workplace, and do more effectively, than a perpetually understaffed federal regulatory agency ever could.

Employees, whether members of a union or not, will be more productive in a workplace made safer by the cooperative efforts of labor and management. Safer, more productive, they will make more money. Taxed less, they will save more that money for the future. With more money in banks, businesses will find easier to expand, innovate and reinvent.

It is our obligation to rebuild the economy, to put the country to work, and to leave more of the fruits of labor with the laborers.

Workers will also find it easier to get money to buy a home. Increased demand for new homes will create more jobs, and will be safer when government regulation encourages protection of workers rather than a proliferation of regulations. Union members aspire to a better life, and opportunity to carve even a better existence for their children. It is a great tribute to the American labor movement that union families' incomes are high enough to qualify for the 33 percent tax bracket. But when that happens largely as a result of inflation, it is well beyond time for a change. Union members have made great contributions to this nation. With the Republican Administration and Republican control of the Senate we have an enormous opportunity, and a great obligation, to return those many favors. It is our obligation to rebuild the economy, to put the country to work, and to leave more of the fruits of labor with the laborers.

We can watch out for the interests of every member by carefully watching out for the union member's tax dollars; spending wisely and spending them less. A healthier economy is the ticket to more jobs, higher savings, and greater opportunity for working men and women.



Hatch Accomplishments for Utah

More Jobs & Economic Growth for Utah

Central Utah Project

The Central Utah Project was on President Carter's list to eliminate all funding. All of Utah's delegation and the Governor worked well together to save the project so vital to Utah's future. The House, rather than strip out the bad projects, passed on a combined water project bill with the bad projects included, which President Carter threatened to veto. Senator Hatch and Senator Garn each took half of the Senate and worked one on one with their colleagues to get the bad projects out. When all the votes were counted, the Central Utah Project was saved in the Senate. The House passed the bill and the President signed it into law. The Washington Post wrote on January 25, 1982, that Senator Hatch "twisted enough arms on the Senate floor to rescue it (the C.U.P. Project)."

Jobs through Coal

In the interest of expanding Utah's coal export market, Senator Hatch went to Northeast Asia, including Taiwan, and met with end-users of coal products. Contracts have subsequently been signed, and both the Taiwanese and the Utah exporter credit Senator Hatch with making the contracts possible. These contracts create jobs for Utah as well as bringing money into the State. The contracts are valued at 400 million dollars.

Inflation

Senate Joint Resolution 58, cosponsored by Senator Hatch requires the federal government to balance its budget and includes a built-in tax spending limitation. Persistently high levels of inflation and unemployment and levels of growth and productivity all can be traced directly or indirectly to the fiscal problems of the federal government.

Retiree Benefits

Amendment to the Continuing Appropriations Resolution H.J. Resolution 357, to restore full funding of "dual benefits" to railroad retirees.

On November 19, 1981, Senator Hatch cosponsored a successful amendment to H.J. Res. 357 to add \$90 million to the "dual benefits" appropriation made each year on behalf of railroad retirees who accrued pension rights prior to 1974.

Housing Mortgage Investments

Senator Hatch sponsored this legislation to ease the rules under ERISA so as to allow for the investment in residential housing mortgages by private pensions otherwise restricted from investing in such securities.

Hill Air Force Base Hearings

As a result of oversight hearings conducted by Senator Hatch which were held at Hill Air Force Base in Ogden, Utah, the National Cancer Institute and Rocky Mountain Center for Occupational and Environmental Health are conducting feasibility and mortality studies on job-related illnesses contracted by Hill employees.

Cancer Eye Project

Federal support for research was needed to assure Utah's trail-blazing medical and scientific programs researching causes of cancer. In particular, Doctor Kleinschuster's pioneer work at Utah State University to treat cancer in the eyes of certain cattle is playing a critical role in curing this most devastating disease. Senator

Hatch and the Utah delegation have worked to maintain past funding and restore current funding for this program. Dr. Kleinschuster submitted two proposals to the N.C.I. in 1982, and they are currently being reviewed.

Salt Lake Indian Health Center

Senator Hatch, assisting Senator Garn, is working to maintain the \$8.1 million in the Interior Appropriations budget that would support continuing health services to urban Indians in the Greater Salt Lake area.

Saving Utah's Swing Bed Programs

In 1979, The Carter Administration threatened to cut off funding for the swing bed program, a cost-saving measure that minimizes the number of unused health facilities.

Senator Hatch interceded to save this program, preserving an important aspect of our nation's program to fight health cost inflation and establishing an important principle that Utah would not be taken for granted by federal regulatory agencies.

Community Home Health Services Act

Senator Hatch introduced this legislation, which has passed the Labor and Human Resources Committee, in order to provide home health care to the thousands of elderly in Utah and across the nation who are annually forced into nursing homes because they needed medical help or minor support which wasn't available at home. This legislation expands Medicare to include home health services not reimbursable under current law and will make available limited amounts of grants and loans for high priority demonstration projects in home health care. This legislation is not only humane but cost conscious because of the savings effectuated in reduced demand for nursing home expansion and the reduction in hospital bed days each year.

Atomic Bomb Fallout Compensation

Senator Hatch introduced this legislation to compensate the citizens of Utah, Nevada and Arizona who were exposed to radiation during the atomic bomb testing in the 1950's at the Nevada test site. These citizens were not adequately warned of the dangers of radioactive fallout, and it is proper, then, that the government should compensate them for the losses they suffered as a result. Senator Hatch introduced S. 1483, the Radiation Exposure Compensation Act to compensate property damage and injured parties in an attempt to, in part, repay them for their losses. The Labor and Human Resources Committee reported the bill out in April, and it has passed Judiciary Subcommittee and is now awaiting action by the full Judiciary Committee.

Student Financial Assistance

Last year it was proposed that the Guaranteed Student Loan in-school interest subsidy be repealed and eligibility sharply restricted. As Chairman of the Senate conferees on the Budget Reconciliation Act, Senator Hatch played a crucial role in turning back these proposals. The resulting compromise made

significant savings in the program while maintaining nearly all in-school benefits for students in need.

Veteran's Cost of Instruction Program

Senator Hatch single-handedly saved the Veterans' Cost of Instruction Program from extinction in the Senate-House conference on the 1981 Budget Reconciliation Act, where he led the Senate conferees.

Utah has developed a nationally-recognized model Veteran's Cost of Instruction program on veteran counseling, with Mary Peterson of Weber State College at the forefront. Continued VCIP funding not only sustains Utah's initiative, it better serves our state's many veterans, to whom we owe a continuing debt of gratitude.

Older Americans and Aging

The Older Americans Act (P.L. 97-115) sponsored by Senator Hatch and Senator Denton was reauthorized and signed into law on December 29, 1981. This legislation funds such vital services as nutrition programs, senior citizens centers, information and referral systems and transportation. Since 1965, this particular Act has touched the lives of over 6 million senior Americans, 150,000 of them in Utah.

Dependent Care Service Provisions Amendment

This amendment, introduced July 24, 1981 by Senator Metzenbaum and Senator Hawkins, and co-sponsored by Senator Hatch, passed the Senate and became part of the H.J. Res. 266. It provides an expanded tax credit for working parents who must pay day-care expenses for children and will be a part of the tax reform package available for the 1982 calendar year.

Home Energy Assistance Grants

This is also known as Low-Income Energy Assistance or Fuel Assistance for the Elderly.

Senator Hatch cosponsored S.1724 which passed into law on November 15, 1979 (P.L. 96-223), after hearings held in Salt Lake City revealed that even residents of energy-rich states can have difficulty paying heating bills. This brought \$13.6 million of Federal funds into Utah to aid the 21,000 eligible households. The program was changed to a block grant in the Reconciliation Conference in 1981, which Senator Hatch chaired.

The Head Start Act

Introduced April 30, 1981 by Senator Denton and Senator Hatch, this bill was reauthorized as part of the Omnibus Reconciliation Act of 1981 (P.L. 97-35). Senator Hatch authored provisions so that funds are allocated to states proportionately, according to the number of eligible children, and to require local evaluation of programs.

With the highest birth rates in the nation, Utah has a very high number of potentially eligible Head Start children as well as an excellent group of child and family scholars who can assist in providing evaluations of local Head Start programs.

Legislator of the Year Award

The U.S. Health Association gave Senator Hatch its Legislator of the Year Award in 1978. Utah's variety of health institutions includes the most efficiently run, non-profit hospitals in the country as well as some of the smallest. Their funding base needed to be protected from a federal establishment that could get jealous of our state's health endowments success story.

UNION MEMBERS FOR HATCH COMMITTEE

Richard Hoffine
Gary Duenas
Phil Kelly
Michael Leyba
Ronald Gregory
George Cuthbert
Tim Simmons
Llewellyn Jenkins

Hatch Says We Must Provide Jobs

"The workers here in Utah, as well as across our nation, face problems," Hatch continued. "The most significant thing that we can do is to create an economic environment that will provide jobs for our unemployed workers."

"We are working to protect American industry from unfair foreign competition. When properly equipped and allowed to work in an atmosphere free from over-regulation and counter-productive taxation the American labor force is as productive as any in the world."

"The working people are the backbone of Utah and the Nation. Although these are rough times, our workers have faith in the future. With that faith and determination, the obstacles will be overcome."

"Our own unemployment rate in Utah has been rising, generally because of layoffs in mining and manufacturing. In fact, between October of 1981 and March of 1982, 3,500 people in Utah were displaced due to plant closings and major layoffs. The figures are really overwhelming. I have introduced the Displaced Worker Readjustment Act to tackle this problem."

—SENATOR HATCH

"American working men and women don't always vote the way some national union leaders necessarily like. I'm the product of a working class background and my immediate political and social circles are rich in what pollsters would probably call working class citizens. Like many other Utahns, they don't take orders from the AFL-CIO or any other Washington-based power."

—SENATOR HATCH

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REPLY

☐ Yes, I will put a bumper sticker on my car. Please send me _____
(Please limit one per car.)

☐ Yes, I will put a lawn sign up in my yard.
Please send signs to _____

☐ Yes, I will endorse Senator Hatch for reelection and allow my name to be used in advertisements.

Signature _____ Print Name _____

Other members of my household who will endorse Senator Hatch

Print name _____

☐ Yes, I will volunteer time either at home or campaign headquarters to make telephone calls, etc.

Other members of my household who could help make phone calls

Print name _____

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Salt Lake County District Court
By *[Signature]*
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SHEILA ANN COX, et al.,	:	MEMORANDUM DECISION
Plaintiffs,	:	
vs.	:	CIVIL NO. C-82-9228
ORRIN HATCH, et al.,	:	
Defendants.	:	

The defendants' Motion to Dismiss came before the Court on March 28, 1983. Plaintiffs were represented by their counsel, Brian M. Barnard, the defendants were represented by their counsel, Robert S. Campbell, Jr. The Court noted and was advised by counsel for defendants that defendants' Motion for Summary Judgment had been withdrawn based upon the stipulation of the parties that the "union newsletter" could be considered by the Court in determining the defendants' Motion to Dismiss for failure to state a cause of action. The Court heard argument of counsel in support of their respective positions. Following submission of the matter to the Court, the Court took the defendants' Motion under advisement to further consider the Memorandum of Points and Authorities submitted by the parties, and to further consider the Court's entire file. The Court has

now reviewed the legal authorities presented, and otherwise being fully advised in the premises, enters the following Memorandum Decision.

Based upon the parties stipulation that the "union newsletter" can be considered in connection with this Motion to Dismiss, the Court will do so, even though a consideration of the total "union newsletter" goes beyond the pleadings to some degree. The Court notes, however, that a portion of the "union newsletter" was attached to the plaintiffs' Complaint.

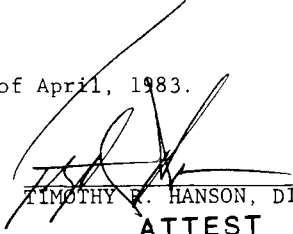
The photograph that appeared in the "union newsletter" of which the plaintiffs complain constitutes an expression of speech, in this case, "political speech". To allow plaintiffs to assert a cause of action based upon the photograph as it was presented in this particular situation, would impose and constitute a "chilling affect" on what must be under constitutional principles the closely guarded right of free speech, and would severely limit a political candidate's right to free political expression as constitutionally guaranteed.

A cause of action as plaintiffs attempt to assert in this case would impinge upon the defendants' right of free speech and therefore cannot be constitutionally condoned. Accordingly, the Court determines that the defendants' Motion to Dismiss should be granted on constitutional grounds alone,

and the claims of abuse of identity, defamation or invasion of privacy espoused by the plaintiffs need not be addressed.

The plaintiffs' Complaint fails to state a cause of action upon which relief can be granted, and is therefore dismissed as a matter of law. Defendants' counsel is requested to prepare an Order in accordance with this Decision, and submit the same to the Court for consideration in accordance with Rule 2.9 of the Rules of Practice in the District Courts of the State of Utah.

Dated this 5 day of April, 1983.

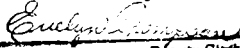

TIMOTHY F. HANSON, DISTRICT JUDGE

ATTEST

H. DIXON HINDLEY

CLERK

BY


Deputy Clerk

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, postage prepaid, to the following, this 6 day of April, 1983:

Brian M. Barnard
Attorney for Plaintiffs
214 East Fifth South
Salt Lake City, Utah 84111

Robert S. Campbell, Jr.
Attorney for Defendants
310 South Main, Suite 1200
Salt Lake City, Utah 84101







NO MAN
IS GOOD
THREE
TIMES





APPENDIX--Continued



The Load: Some Latins buy so much in Miami they've been known to rent an extra hotel room just to store their purchases.