AGENDA
Friday, September 6, 2019

12:00 p.m.

- Call to Order (Chair Protem Till)
- Pledge of Allegiance
- Approval of Minutes (Secretary Till)
  A. August 23, 2019 (Study Committee Special Meeting)
- General Reports
  B. Review of County Attorney report as to compliancy of the draft Optional Plan with the State Constitution and State Code (Chair Protem Till)
- Community Outreach and Possible Action
  C. Approving proposed “Argument in Favor” statement for a Voter Information Pamphlet for delivery to the County Clerk no later than September 6, 2019 for the 2019 general election, in the event that the Optional Plan is found by the County Attorney to be legally compliant (Subcommittee Members Dabney, Greenberg, and Stocks)
  D. Developing a new campaign to educate the public on the status and contents of the draft Optional Plan and process, whether or not the Plan is found by the County Attorney to be legally compliant in time for the 2019 general election (Subcommittee Members Carmichael, Dabney, and Till)
  E. Suggestions for additional public service announcement(s) and/or flyer update, postponed from August 23, 2019 (Chair Protem Till)
- Presentations (none)
- General Business- Action Items- Discussion and Consideration of: (none)
- Consent Agenda- Action Items (none)
- Discussion Items
  F. Discussion on the Study Committee’s role for the transition plan if the Optional Plan is on the 2019 ballot and voted down, thus defaulting by law to a three-member Commission form of government and requiring a new transition plan by December 31, 2020 (Attorney Gavin Anderson)
- Discussion and Possible Action on Study Strategy
  G. Next steps, if required by the County Attorney, for correcting the draft Optional Plan for compliancy with the State Constitution and State Code in time for the 2020 general election (Chair Protem Till)
- Public Hearings- Possible Action Items (none)
- Future Considerations
- Closed Session(s) (if necessary)
- Adjournment

NOTICE OF SPECIAL ACCOMMODATION DURING PUBLIC MEETINGS. In compliance with the Americans with Disabilities Act, individuals with special needs requests wishing to attend Change of Form of Government Study Committee meetings are encouraged to contact the County two (2) business days in advance of these events. Specific accommodations necessary to allow participation of disabled persons will be provided to the maximum extent possible. T.D.D. (Telecommunication Device for the Deaf) calls can be answered at: (435) 259-1346. Individuals with speech and/or hearing impairments may also call the Relay Utah by dialing 711. Spanish Relay Utah: 1 (888) 346-3162

It is hereby the policy of Grand County that elected and appointed representatives, staff and members of Grand County Council may participate in meetings through electronic means. Any form of telecommunication may be used, as long as it allows for real time interaction in the way of discussions, questions and answers, and voting.
At the Change of Form of Government Study Committee meetings/hearings any citizen, property owner, or public official may be heard on any agenda subject. The number of persons heard and the time allowed for each individual may be limited at the sole discretion of the Chair. On matters set for public hearings there is a three-minute time limit per person to allow maximum public participation. Upon being recognized by the Chair, please advance to the microphone, state your full name and address, whom you represent, and the subject matter. No person shall interrupt legislative proceedings.

Requests for inclusion on an agenda and supporting documentation must be received forty-eight (48) hours prior to a regular or special Change of Form of Government Study Committee Meeting, subject to the Chair’s authorization. Information relative to these meetings/hearings may be obtained at the Grand County Council’s Office, 125 East Center Street, Moab, Utah and at www.grandcountyutah.net; (435) 259-1346.

A Change of Form of Government Study Committee agenda packet is available at the local Library, 257 East Center St., Moab, Utah, (435) 259-1111 at least 24 hours in advance of the meeting. For more information: www.grandcountyutah.net/change. Email: studycommittee@grandcountyutah.net
Call to Order
The Grand County Change in Form of Government Study Committee ("Study Committee") met in Regular Session on the above date in the County Council Chambers. The meeting was called to order by Chairperson Stocks at 12:00 p.m. with a quorum present. In attendance at the call to order were Study Committee Members Judy Carmichael, Walt Dabney, Cricket Green, Bob Greenberg, and Marcy Till. Committee Member Jeramy Day was absent due to medical reasons. Also in attendance was County Council Administrator Ruth Dillon to take minutes and Attorney Gavin Anderson (by phone).

Pledge of Allegiance
The Pledge of Allegiance to the Flag was led by Marcy.

Approval of Minutes
A. August 12, 2019 (Study Committee Special Meeting)

Chairperson Stocks requested any changes or corrections to the minutes. Bob stated that on page 2, last paragraph, the entire paragraph should be replaced with a truncated version of the beginning sentence to read, “Bob then read a statement for the record, attached.” He further requested that his statement of August 12th be attached to the final, approved minutes.

Bob also stated that on page 7, the statement should read, “Attorney Anderson reiterated that if the draft Optional Plan is found by the County Attorney to not be in compliance with State Statute or Constitution, then the County Attorney must set out specifics” rather than “must set out specific ways for compliance and cite statutes.”

Bob suggested for the last sentence of that same paragraph on page 7 adding a phrase, “and if she completes her work by September 6th,” to read, “That is, as long as there are no requirements by the County Attorney to amend the draft Plan in order to be in compliance with State Code and/or Constitution, and if she completes her work by September 6th, it will be on the 2019 election ballot.

MOTION:
Motion by Bob to approve the minutes of the August 12, 2019 special meeting with the corrections, seconded by Cricket carried 6-0.

B. Developing a new campaign to educate the public on the Optional Plan, in the event that the Optional Plan is found by the County Attorney, by September 6, 2019, to be legally compliant with the State Constitution and State Code

Marcy suggested, since the Optional Plan is in process with the County Attorney that Committee Members could think about ideas between now and the next meeting for educating the public, and that by next meeting the Committee will have the County Attorney’s legal review. Committee Members began discussing the need to educate the public whether the matter is on the 2019 or 2020 ballot. Committee Members discussed ideas including holding Open Houses in the same locations as before and/or a public educational meeting led by
Attorney Anderson at Star Hall. Chairperson Stocks suggested having a subcommittee to lead the efforts, and several Committee Members volunteered.

MOTION:
Motion by Marcy to create a subcommittee composed of Walt, Judy, and Marcy to develop a plan to update the public, regardless of the County Attorney’s report on the proposed Optional Plan, whether it is to be on this year’s ballot or next year’s ballot. Motion was seconded by Cricket. Marcy suggested that the subcommittee meet within the next two weeks and bring back a game plan and possible dates for events to be held possibly in late September or early October. Cricket suggested that if the Optional Plan meets the County Attorney’s approval for a 2019 ballot that the Open Houses be held, and if not that the educational meeting led by Attorney Anderson instead be held at Star Hall. Motion carried 6-0.

C. Drafting an “Argument in Favor” statement for a Voter Information Pamphlet for delivery to the County Clerk on or before September 6, 2019, in the event that the Optional Plan is found by the County Attorney to be legally compliant

Bob suggested the need for volunteers to draft the Argument in Favor statement for the Voter Information Pamphlet. County Council Administrator Dillon reported that the maximum number of words is 500.

MOTION:
Motion by Judy to form a subcommittee composed of Walt, Bob, and Stephen to come back with ideas for an Argument in Favor statement for the Voter Information Pamphlet for Committee approval on September 6th, in the event that the Optional Plan is to be on the 2019 ballot. Motion was seconded by Marcy. Attorney Anderson reminded Committee Members that if the Plan does not make it to the 2019 ballot, the Study Committee could make changes in time for the 2020 ballot. He also stated that the Study Committee can help with the transition plan if the voters were to vote down the proposed Optional Plan causing the form of government to default to a three-member Commission. He stated that either the existing County Council or the Study Committee would have to come up with the transition, most importantly for the effective date of the new form of government and also for the terms of the three County Commissioners.

Marcy inquired as to whether the Argument in Opposition statement for the Voter Information Pamphlet would be basically the same as the Argument in Favor statement of a three-person Commission. Attorney Anderson replied “not necessarily” and also informed Committee Members that the Study Committee cannot tell those who may develop an Argument in Opposition statement what to say in such statement. Committee Members acknowledged that they understood. Attorney Anderson also informed Committee Members that it is fine to have an Argument in Favor statement even if there is no Argument in Opposition statement. He said that sometimes there is a Statement in Favor, a rebuttal against the Statement in Favor, an Argument in Opposition statement, and a rebuttal against the Argument in Opposition statement.

County Council Administrator Dillon reminded Committee Members that the Voter Information Pamphlet is due to the Clerk/Auditor 60 days prior to the November 5, 2019 election, which date is Friday, September 6 and coincides with the next regular Study Committee meeting. Committee Members acknowledged that the subcommittee will provide a proposed Argument in Favor statement for a vote of the Study Committee on September 6th in time for same-day delivery via County Council Administrator Dillon to the County Clerk/Auditor. Motion carried 6-0.

D. Suggestions for additional public service announcement(s) and/or flyer update

MOTION:
Motion by Bob to postpone this matter to September 6, 2019 seconded by Walt carried 6-0.

Citizens to Be Heard - none

Future Considerations
Chairperson Stocks asked for any future considerations. Walt asked for clarification and joint understanding on the
following scenario:

The terms of 4 current Council Members will end 12/31/2020, and Council Member Morse has announced possible plans to move out of district, for a possible total of 5 vacant Council seats for the 2020 election – if Council Member Morse’s move out of district occurs within his first two years of office (i.e., by 12/31/2020).

Walt asked a question along the lines of: If the Optional Plan is not on the general election ballot until 2020, and the 4 open Council seats, plus a potential district seat, have 5 candidates running in 2020 under the current form of government, will the 2020 winning candidates potentially serve for only 2 years from January 2021 until January 2023? Study Committee Members seemed to think so.

Walt continued: And if the voters approve the new form of government in 2020 to be effective January of 2023, could candidates potentially run in 2022 for the new 5-person form of government, with 3 of them only running for 2 years, having to run again in a Presidential election year? He stated his understanding that the 2 district candidates would run in 2022 for 4 years. Study Committee Members seemed to think so. Walt commented on the expense of campaigning and running elections for this process.

Attorney Anderson stated that if the Optional Plan is voted down, that it is possible that a new study committee could be created; he stated that he would need to further research House Bill 224 that became law. Attorney Anderson indicated that the Study Committee could start over again, that the County Council could place the ballot question as to whether to form a new study committee. He reiterated that the Study Committee’s work is done March 8, 2020, and that if the County Attorney finds that the proposed Optional Plan is in violation and thus it is not on the 2019 ballot, then the Study Committee can correct the problems prior to the end date of March 8, 2020 in time for the 2020 election. Chairperson Stocks suggested an agenda item for the next meeting, September 6th, to invite the County Attorney to review violations if any are found.

Attorney Anderson agreed to research whether the Study Committee has a role for the transition plan if the proposed Optional Plan is voted down in 2019, thus requiring a transition plan for a three-member Commission by December 31, 2020. Chairperson Stocks suggested having this matter on the next agenda. Attorney Anderson stated that House Bill 224 is not clear. Attorney Anderson reported that he had sent an email earlier this week to the Study Committee addressing this matter. He stated that there is an argument that the Study Committee has the authority to play a role in such a transition plan, and he quoted State Code provided in the email related to voters not approving a change in the county’s form of government (before December 31, 2020): “…the county shall transition to the form of government … in the same manner as if the voters of the county had approved the change in the form of government ….” He questioned whether “in the same manner” could include the activities of the Study Committee, stating that there is a good argument for it. He suggested that it may become necessary to collaborate with the County Attorney, Clerk/Auditor, and current County Council as to who would play what role.

Bob asked, if it is determined to be within the Study Committee’s authority to play a role in a required transition to a three-member Commission, is the Study Committee required to do so? Committee Members briefly discussed the challenge of supporting a transition for a vision they do not hold, together with the desire to work toward supporting the voters’ wishes for a successful change in the form of government.

Marcy asked, if the County Attorney finds violations in the proposed Optional Plan and then the Study Committee makes the necessary corrections in time for the 2020 election, with the Study Committee’s obligations ending in March of 2020, and with the Study Committee being the most knowledgeable to champion and present the Plan to the community, could the Study Committee do so after March 2020? The response was that Committee Members would have to act as individuals after March 8, 2020, rather than as a Study Committee, in championing the proposed Optional Plan.

Closed Session(s) (if necessary) - none
Adjournment
The meeting was adjourned at 12:40 p.m. by motion that carried unanimously as made by Bob and seconded by Walt.

________________________________________
Stephen Stocks
Chairperson

________________________________________
Marcy Till
Secretary
September 5, 2019

Chris Baird
Grand County Clerk/Auditor
125 E. Center Street
Moab, Utah 84532
VIA EMAIL ONLY

Re. Optional Plan Review

Dear Chris,

On August 13, 2019, my office received a copy of the “Recommendation and Report” and “Optional Plan for Grand County Government” for review. Utah Statute § 17-52a-404(3) prohibits any optional plan which is inconsistent with or prohibited by the Utah Constitution or any statute. And, pursuant to Utah Statute § 17-52a-406, I shall provide you with a written report containing my opinion as to whether implementation of the Optional Plan would result in a violation of any applicable statutory or constitutional provisions. In the event a violation would occur, I am obligated to identify each statutory or constitutional provision that the implementation of the Optional Plan would violate, identify each provision or feature of the proposed optional plan that causes such violation, and recommend modifications to cure the violation.

Accordingly, upon a careful review of the Optional Plan, the Utah Constitution, and Utah law, I find that the following four (4) provisions of the Optional Plan violate Utah law:

1. **Council Districts:**

   a. **Utah Constitution:** Article VI, § 1 vests legislative power in the people, which includes the power to “initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute.”

      Article IX, § 1 states that “the Legislature shall divide the state into congressional, legislative, and other districts accordingly.”
b. **Utah Law:**

Utah Statute § 17-52a-403 states that each report of the Study Committee shall include a complete detailed draft of a proposed plan to change the form of county government, including “all necessary implementing provisions.”

Utah Statute §§ 17-52a-404(2) and (3) state that “an optional plan may include provisions that are considered necessary or advisable to the effective operation of the proposed optional plan” unless they are “inconsistent with or prohibited by the Utah Constitution or any statute.”

Utah Statute § 17-52a-404(4)(d) states that the Optional Plan shall “specif[y] whether the members of the County Council are to be elected from districts, at large, or by a combination of at large and by district.”

Utah Statute § 17-52a-406 requires the County Attorney’s review of the Optional Plan to determine if it “would result in a violation of any applicable statutory or constitutional provision.”

Utah Statute § 17-53-210 states that “a county legislative body may divide the County into precincts, districts, or other entities as permitted or required by law, and may change them and create others as convenience requires.”

Utah Statute § 20A-5-303 states that “the county legislative body may establish, divide, abolish, and change voting precincts.”

Utah Statute § 20A-14-201 states that “the county legislative body, for local school districts whose boundaries encompass more than a single municipality . . . shall divide the local school district into local school board districts . . . .”

c. **Optional Plan:** Section 2.04 reapportions and adjusts Council Districts, and Section 2.04(3) and its Exhibit A specifically create two new Council Districts with a map of district boundaries (and existing precincts) and population summary report.

d. **Violation:** The creation of new Council Districts in the Optional Plan by the Study Committee illegally usurps redistricting power that is reserved to the State Legislature in the Utah Constitution and delegated to the County Council by Utah Statute.

Redistricting is a legislative task. See *Large v. Fremont County, WY*, 670 F.3d 1133, 1137 (10th Cir. 2012). And “apportionment and districting decisions rest in the first instance with state and local governments.” *Navajo Nation v. San Juan County*, 162 F.Supp.3d 1162, 1176 (D.Utah 2016), citing *Voinovich v. Quilter*, 507 U.S. 146, 156 (U.S. 1993); see also *United States v. Brown*, 561 F.3d
420, 435 (5th Cir.2009) ("district courts must offer governing bodies the first pass at devising a remedy").

Specifically, the power to create districts within the State of Utah is reserved for the State Legislature, which has delegated such power to the counties in Utah Statute §§ 17-53-210 (the county may divide the county into districts, change districts, and create others) and 20A-14-201 (the county may divide the county into districts). Similarly, the State Legislature delegated the power to establish and divide the county into voting precincts to the county legislative body in Utah Statute § 20A-5-303.

By contrast, the State has not expressly delegated such power to the Study Committee, the powers and duties of which are codified at Utah Statute §§ 17-52a-403 and 404. While Title 17, Chapter 52a states that the Study Committee shall specify whether the members are to be elected from districts, at large, or a combination, it does not permit the Study Committee to divide the County into districts, change districts, or create others.

Further, the study committee is an advisory body—a procedural vehicle to initiate the transition to a new form of government. It is not empowered with legislative authority. See e.g. Utah Statute §§ 17-52a-403, 404. In this instance, the hard work of the study committee is to study the form of government and make recommendations to the county legislative body and to the voters. However, the legislative act occurs later—when the County Council creates new districts, for example, and when the voters approve or reject the Optional Plan.

And while Article VI, § 1 of the Constitution empowers the people with legislative power, that power is not all-encompassing. First, it limits that power to the language of the initiating statute under Article VI, § 1(2)(b): "[t]he legal voters of any county, city, or town, in the numbers, under the conditions, in the manner, and within the time provided by statute, may: (i) initiate any desired legislation and cause it to be submitted to the people of the county . . . for adoption upon a majority vote of those voting on the legislation as provided by statute."

This procedure for legislating by initiative is governed by Title 20A, Chapter 7 (Issues Submitted to the Voters), whereas the procedure for changing the form of government is governed by Title 17, Chapter 52a. Grand County’s initiation of the change in form of government process was not prompted by the legal voters of the County, but by the County Council, as mandated under House Bill 224 (2018). Indeed, given the provisions of Utah Statute §17-52a-103 and as the County argued in Moab District Court Case No. 180700045, this mandated change in form of government process could not have been started by citizen petition.
These procedural differences matter because the State Legislature, by delineating differences in the two processes at issue, by the language it chose, intended them to matter.

And we cannot interpret the Utah Constitution in a way which forces a Hobson's Choice on local voters. Article VI, § 1 does not require that either the voters pass the proposed Optional Plan or face a fate imposed by the State Legislature.

Second, if the people’s legislative power under Article VI, § 1 was so broad they could legislate all matters themselves, then: (i) HB 224 is illegal since Grand County’s 1992 modified form of government has been voted the people's choice in numerous elections; and (ii) there could be no possible violation of law or constitution under HB 224 and the County Attorney’s review becomes unnecessary, which means Utah Statute §§ 17-52a-404(3) and 406 have no meaning.

Similarly, the reference to all “necessary implementing provisions” contained in Utah Statute § 17-52a-403(4)(b) cannot trump all other provisions in law or, again, the County Attorney’s review becomes unnecessary and Utah Statute §§ 17-52a-404(3) and 406 have no meaning.

Plus, it is not necessary that the study committee create the districts because the current County Council has sufficient time to create new districts before the 2020 general election, which is consistent with the deadlines set forth in Utah Statute §17-52a-103. This result also makes sense as the redistricting process affords the County the opportunity to revisit its precincts. Grand County’s existing precincts, which date back to at least 1992, appear to violate federal and state constitutional law because they are unequal in voter population (and may exceed the limits allowed under Utah Statute § 20A-5-303). Note that precincts become very important under partisan elections, as party caucuses are organized and delegates chosen by precinct. So, where precincts are unequal, it affects a person’s right to vote, which brings us back to the important of preserving the County Council’s legislative power to redistrict and draw new precincts.

In addition, we must “read the language of the statute as a whole and also in its relation to other statutes. In so doing, we read each term according to its ordinary and accepted meaning. We also assume that each term included in the statute was used advisedly, and we seek to give effect to every word, clause and sentence.” See, e.g., State v. Parduhn, 283 P.3d 464, 469-470 (Utah 2011).

Thus, we must read Article VI, § 1 together with Article IX, § 1, which expressly states that “the Legislature shall divide the state into congressional, legislative, and other districts accordingly.” And we must read Utah Statute §§ 17-52a-403(4)(b) and 404(d) together with Utah Statute §§ 17-53-210 and 20A-14-201, which expressly state that the county legislative body has the power to divide the county into districts, change districts, and create others.
It is also important to note that long-standing U.S. and Utah Supreme Court law establishes that the specific governs over the general. Expressio unius est exclusion alterius is a principle in statutory construction, codified by the U.S. Supreme Court, that means that an explicit mention of one thing excludes another. In other words, as expressed by the U.S. Supreme Court, when one or more things of a class are expressly mentioned, others of the same class are excluded. See e.g., O'Melveny & Myers v. FDIC, 512 US 79 (US 1994); Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701, 730-731 (US 1989); Chan v. Korena Airlines, Ltd., 490 US 122, 133-134 (US 1989); Nevares v. M.L.S., 345 P.3d 719, 725 (Utah 2015); Penunuri v. Sundance Partners, Ltd., 301 P.3d 984 (Utah 2013).

Accordingly, when we interpret the statutes together in the interest of giving each meaning, and when we give intent to omissions and exclusions, it is dispositive that the statute requires the Study Committee to specify whether the Council members are to be elected by district but does not give the Study Committee power to divide, change, or create districts.

Further, I can find no precedent to support the people’s power to redistrict. While counties in Utah have allowed such redistricting measures to go to the people for years via the study committee and optional plan process, and it hasn't been challenged in court or by legislative amendment, Utah law does not permit the people dividing the state or the county into districts. Even Utah’s new Independent Redistricting Commission, which was created by voter referendum and codified in 2018, is merely a recommending body to the State Legislature. See Utah Statute § 20A-19-101, et seq. The State Legislature, not the public, has the power to approve or reject the Commission’s redistricting plans. Utah Statute § 20A-19-204; see also Navajo Nation, 162 F.Supp.3d at 1167 (special advisory commission created by the court to recommend a redistricting plan to the San Juan County Commission).

Finally, I am compelled to render the exclusion purposeful because the County itself cannot delegate redistricting power. Redistricting is protected as a state function in the Utah Constitution because it is a fundamental process affecting our most fundament right, the right to vote, and the weight given to every person’s franchise. See, e.g., Salt Lake City v. I. A. of Firefighters, Etc., 563 P.2d 786, 780 and 789 (Utah 1977); Stewart v. Utah Public Service Comm’n, 885 P.2d 759, 776 (Utah 1994). Thus, the State Legislature alone must delegate redistricting power, and it failed to expressly do so in Title 17, Chapter 52a.

e. **Recommendation:** Modify the Optional Plan to remove Exhibit A and defer the creation of new Council Districts to the current County Council in advance of the November 2020 general election. The Study Committee may recommend the two districts it has proposed in its revised Recommendation and Report.
2. Council Interference with Executive Branch:

a. **Utah Constitution**: Article V, § 1 divides the government into “three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.”

b. **State Law**: Utah Statute § 17-52a-204(1)(a) provides that an elected county council; a county manager appointed by the council; and other officers and employees authorized by law shall govern a “council-manager” form of government.

   Utah Statute § 17-52a-204(2)(a) states that: “the county manager is the administrative head of the county government and has the power, functions, and duties of a county executive, except: (a) as the county legislative body otherwise provides by ordinance; and (b) that the county manager may not veto any ordinances enacted by the council.”

   Utah Statute § 17-52a-204(3) states that: “a member of the council may not directly or indirectly, by suggestion or otherwise: (i) attempt to influence or coerce the manager in: (A) making any appointment; (B) removing any officer or employee; or (C) purchasing supplies; (ii) attempt to exact any promise relative to any appointment from any candidate for manager; or discuss directly or indirectly with the manager the matter of specific appointments to any county office or employment.”

c. **Optional Plan**: Section 2.11 states that “the County Manager is appointed by vote of four members of the County Council and may be removed by vote of three members of the Council at a meeting at which all sitting members are present. The County Manager may be removed for cause.”

   Section 2.12(3) states, in part, that “neither the Council, nor any member thereof, shall appoint, dismiss, or give directions to any employee of the Executive Branch or of any of the Officers of the County nor influence or attempt to influence work assignments, individual personnel actions or the purchase of good or services.”

d. **Violation**: Section 2.12(3), when read alone, prohibits the Council from exercising its right to appointment and dismissal of the County Manager, who is not excepted, which violates Utah Statute § 17-52a-204(1)(a)(ii) (and contradicts Section 2.11 of the Optional Plan).

   More generally, Section 2.12(3) also prohibits Council from giving any direction to the Council Manager, which violates Council powers set forth in Utah Statute § 17-52a-204(2)(a), as permitted by the Utah Constitution.
e. **Recommendation:** Modify Section 2.12(3) of the Optional Plan to except the County Manager and/or revise Section 2.12(3) to mirror Utah Statute § 17-52a-204(3)(a).

3. **Special Election:**

   a. **Utah Constitution:** Article I, § 2 states that “all political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.”

   Article IV, § 9 states that each general election shall be held in even-numbered years and special elections may be held as provided by statute.

   b. **Utah Law:** Utah Statute § 17-52a-406, as integrated into Utah Statute § 17-52a-501(3), requires County Attorney review before the election date may be established.

   Utah Statute § 17-52a-501(1)(a) requires the county legislative body to hold an election on an optional plan that satisfies statute.

   Utah Statute § 17-52a-501(3) describes the process for establishing the election date for the Optional Plan, which, when read together with Utah Statute § 17-52a-103, could be in 2019 or 2020.

   Utah Statute § 17-52a-503 sets forth the procedure for electing county officers and adopting the optional plan. For example, without establishing dates, it requires that: “if a proposed optional plan is approved at an election held under Section 17-52a-501, the elected county officers specified in the plan shall be elected at the next regular general election following the election under Section 17-52a-501, according to the procedure and schedule established under Title 20A, Election Code, for the election of county officers.”

   Utah Statute §§ 20A-1-203(1) and (2) permits local special elections “for any purpose authorized by law,” which local special elections shall be conducted using procedures for regular municipal elections.

   Utah Statute § 20A-1-203(5)(b) requires a “legislative body of a local political subdivision” to call a special election “by adopting an ordinance or resolution that designates the date for the local special election . . . and the purpose for the local special election.”

   Utah Statute § 20A-1-204 describes the process for establishing the date of the local special election, which shall be “called” by the legislative body of a local political subdivision.
c. **Optional Plan**: Section 5.02 requires the County hold an election on the Optional Plan on November 5, 2019.

**Violation**: In selecting a date certain for the approval election in Section 5.02, the Study Committee attempts to usurp powers reserved to the County legislative body and undermine the independent review by an elected County Official, which violates the Utah Constitution and Utah Statute.

State law expressly empowers the county legislative body to “hold” the approval election on the Optional Plan and to “call” all local special elections, which power includes setting the election date consistent with Titles 17 and 20A of Utah Statute.

Further, on July 18, 2019, by email, Derek Brenchley, the Deputy Director of Elections, confirmed that the approval election on the Optional Plan may run in 2019 (regular municipal election year) as a local special election: “Although [the approval election] is not explicitly listed in the special election session, 20A-1-203(1) states that local special elections may be held for any purpose authorized by law, and 17-52a-501(3) appears to authorize placing the study question on the municipal election ballot.”

This opinion supports the County’s ability to run the Optional Plan this year as a local special election. It does not undermine or otherwise negate the County’s power to hold and call the local special election.

Of course, the ability to set the election date is also expressly limited by County Attorney review.

A specific election date (and specific adoption date) is also unnecessary. The plan may be adopted at a regular municipal or general election, so all provisions related to the adoption and effective dates of the optional plan may be written to correlate to periods of time relative to a successful election. Thus, the designation of a specific election day is not a necessary implementing provision in the optional plan.

Finally, it is also noteworthy that this power is derived from the Utah Constitution, which acknowledges the political will of the people and reserves to the county legislative body the ultimate ability to alter and reform its government. Here, the timing of the election may be critical to the people’s exercise of the right to vote, and thus the election should be called, and therefore the timing of the election determined, by duly elected officials rather than a study committee of private citizens.

d. **Recommendation**: Modify the Optional Plan to remove the election date in Section 5.02.
4. Removal of Officers:

a. **Utah Constitution**: Article VI, § 19 permits removal of state officers for “high crimes, misdemeanors, or malfeasance in office.”

   Article VI, § 20 requires that “no person shall be tried on impeachment, unless he shall have been served with a copy of the articles thereof, at least ten days before the trial, and after such service he shall not exercise the duties of his office until he shall have been acquitted.”

   Article VI, § 21 provides for additional removal options: “all officers not liable to impeachment shall be removed for any of the offenses specified in this article, in such manner as may be provided by law.”

b. **Utah Law**: Utah Statute § 20A-1-902 sets forth a statutory process for removal of an officer by the county legislative body.

   Utah Statute § 77-6-1, *et seq.*, sets forth a judicial process for removal of county officers.

c. **Optional Plan**: Section 5.04(2) prohibits the removal of officers and members of the Council except by judicial removal.

d. **Violation**: The Optional Plan restricts constitutional and legal remedies for impeachment and other removal of elected officials from office by limiting removal to the judicial removal process only.

e. **Recommendation**: Modify Section 5.04(2) to allow removal as allowed by Utah law and remove the specific reference to the judicial removal process.

I appreciate the hard work of the Study Committee, and its counsel. However, due to my findings here, Grand County may not hold an election on the Optional Plan in 2019 as the Plan may not be modified within 120 days of the election. See Utah Statute §§ 17-52a-403, 406, and 501. However, these issues may be remedied in a revised Recommendation and Report on or before March 7, 2020 (one year after the study committee’s first meeting). See Utah Statute §§ 17-52a-403 and 406. Thus, I look forward to working with the Study Committee and its counsel to finalize the Optional Plan in the coming months.

Sincerely,

[Signature]

Christina Sloan
cc: Gavin Anderson, Salt Lake County Deputy County Attorney
Ruth Dillon, Grand County Council Administrator
Stephen Stocks, Chair, Grand County Study Committee
GRAND COUNTY VOTER INFORMATION PAMPHLET
PROPOSITION 9

The Grand County Election Ballot for the November 5, 2019 General Election will include a Proposition. The ballot title for the Proposition, which is designated as Proposition #9, will read as follows:

Proposition #9

Shall Grand County adopt the alternate form of government known as the Council-Manager Form pursuant to the Optional Plan for Grand County Government that the study committee has recommended?
For ________  Against _________

The arguments for or against a ballot proposition are the opinions of the authors.

Argument In Favor

The passage of House Bill 224 in 2018 required that Grand County change its form of government to one of four allowed by statute. The Grand County Change in Form of Government Study Committee was tasked with studying the current form of government to determine if it could be strengthened, made more responsive and accountable to the people, or improved in the interest of economy and efficiency.

Over the course of 6 months the Study Committee held numerous open public meetings to solicit input on the form of government that would be best suited to our community, including: a special educational meeting at Star Hall led by Attorney Gavin Anderson; four public “Open House” opportunities to answer citizen questions and discuss differences in the 4 forms; a citizen survey with over 250 responses; interviews of current and past county council members and other county elected officials, the Council Administrator, and all county department heads.

The Study Committee approved that a Council/Manager form of government be submitted to the voters in their “Optional Plan for Grand County Government”. The Council will consist of five elected members with legislative responsibilities. The Council will then hire a professional County Manager who will hold executive, administrative, and supervisory responsibilities.

The county council members will be non-benefited part-time officials. The annual salary of the Chair will be $27,000, and the annual salary of the remaining members will be $24,000. There will be three at-large seats and two district seats. One district will approximately encompass the current boundaries of the City of Moab, and the other district will include the remainder of Grand County.

This decision was based on community input and hours of measured discussion by Study Committee Members.

We recommend voting FOR the question on your ballot. A NO vote, by law, will result in Grand County defaulting to a 3 person county commission form of government.

Grand County Change In Form of Government Study Committee Members Stephen Stocks (Chair), Marcy Till (Secretary), Judy Carmichael, Walt Dabney, Jeramy Day, Cricket Green, and Bob Greenberg

No rebuttal was submitted to the argument in favor of Proposition #9
No argument was submitted against Proposition #9

Comment [CB1]: It is my reading of statute that a question to change the form of government can only be run once every four years. And so, even though we have until the end of next year to approve a new form, if it fails at the ballot, we wouldn’t be able to run it again, due to the four year time constraint. So, I do believe this statement is true, although I’m not sure that Christina Stoeckl agrees with me.
Effective 3/15/2018

17-52a-103 Forms of county government -- County commission form required unless another is adopted -- Restrictions on form of county government.

(1) Subject to Subsection (2), each county shall operate under one of the following forms of county government:
   (a) the county commission form under Section 17-52a-201;
   (b) the expanded county commission form under Section 17-52a-202;
   (c) the county executive and council form under Section 17-52a-203; or
   (d) the council-manager form under Section 17-52a-204.

(2) Unless a county adopts another form of government as provided in this chapter, the county shall operate under the county commission form of government under Section 17-52a-201.

(3)
   (a) In a county that operates under a form of government that is not described in Subsection (2):
      (i) the county's legislative body shall, before July 1, 2018, initiate the process under Section 17-52a-302 of changing the county's form of government;
      (ii) the county shall hold a special election described in Section 17-52a-304 on November 6, 2018;
      (iii) if the voters approve the appointment of a study committee at the special election described in Subsection (3)(a)(ii):
         (A) the study committee may not recommend under Section 17-52a-403 that the county retain the county's current form of government; and
         (B) the county shall hold an election described in Section 17-52a-501 before December 31, 2020, on an optional plan that the study committee creates; and
      (iv) the registered voters of the county may not repeal an optional plan under Section 17-52a-505 that is adopted at an election described in Subsection (3)(a)(iii)(B).

   (b) If the voters of a county described in Subsection (3)(a) do not approve a change in the county's form of government at an election described in Subsection (3)(a)(iii)(B) before December 31, 2020:
      (i) the county shall operate under the county commission form of government under Section 17-52a-201 in the same manner that a county is required under Subsection 17-52a-102(2) to operate under that form of government if the county does not adopt another form of government; and
      (ii) the county shall transition to the form of government described in Subsection (3)(b)(i) in the same manner as if the voters of the county had approved the change in the form of government described in Subsection (3)(b)(i) in the applicable election described in Subsection (3)(b).

Renumbered and Amended by Chapter 68, 2018 General Session
CORRECTIONS TO OPTIONAL PLAN DRAFT
Based on the Review of the Grand County Attorney

THE COUNCIL DISTRICTS BOUNDARIES MUST BE ESTABLISHED BY
THE PREDECESSOR COUNTY COUNCIL RATHER THAN THE STUDY
COMMITTEE.

Section 2.03. - Council Members Elected by District

1. Two Council members shall be elected by district by the voters of their districts, through partisan elections. They shall meet the qualifications of county elected officials as established by state law and be residents of their districts and they shall remain residents of their district and of the County throughout their terms of office.

2. For the purpose of electing district Council members, the County shall be divided into two (2) geographical districts designated Districts 1 and 2. The numbered designation of district seats shall be maintained throughout the Council members’ terms and district Council seats shall be so designated during future council election procedures. The Study Committee recommends that the districts be established by the Predecessor County Council and that District 1 [shall] be composed primarily of the City of Moab and District 2 [shall] be composed of rural portions of Grand County, primarily outside the City of Moab.

3. The initial term of office for District 1 shall be two (2) years. The initial term of office for District 2 shall be two (2) years. After the initial terms of office, the regular term of office of each district council person shall be four (4) years. District Council members shall thereafter be elected in gubernatorial general election years. Each term begins at noon on the first Monday of January following each council member’s election.

Section 2.04. - Reapportionment and Adjustment of Council Districts

1. Council districts shall have substantially equal populations and shall be reapportioned by the Council within one year after each decennial census report is available.

2. Upon reapportionment, the Council districts shall, to the extent practical, remain consistent with their original geographical configuration and representation, allowing for continuity and facilitating contact between residents and district Council members and also maintaining “one person, one vote” ideals.

3. The Study Committee recommends that the Predecessor County Council adopt two council districts as set out in this Optional Plan. The map of the initial Council districts, as recommended to the Predecessor County Council, is attached as Exhibit A.
THE PROHIBITIONS ON THE COUNCIL INTERFERING WITH THE EXECUTIVE BRANCH MUST ACKNOWLEDGE THE AUTHORITY TO REMOVE THE COUNTY MANAGER.

Section 2.12. - Prohibitions

1. No member of the Council shall occupy any other elective public office during his or her membership on the Council.

2. Council members may not be employed by Grand County in any other capacity during membership on the Council. A Council member may be a contractor with the County, either personally or through a business, with a vote of three County Council members and subject to the requirements and prohibitions of state law and county ordinance regarding contracting, conflicts of interest and recusal.

3. The Council may, by ordinance, adopt a rule of procedure which requires a Council member to recuse himself or herself from Council deliberation or vote, based on a conflict of interest as specifically defined in County ordinance.

4. Members of the Council are subject to all limitations and prohibitions applicable under state law or County Ordinance, together with any sanctions or penalties associated therewith.

5. Neither the Council, nor any member thereof, shall appoint, dismiss, or give directions to any employee of the Executive Branch or of any of the Officers of the County nor influence or attempt to influence work assignments, individual personnel actions or the purchase of goods or services. Nothing in this Section shall be construed, however, to prohibit the Council, while in open or closed session, from engaging in any of its responsibilities as set out in this Plan, or from removing the County Manager using the process described in this Optional Plan Section 2.11.1. or from fully and freely discussing with or suggesting or recommending to the County Manager or any other appointed or elected County Officer or employee, anything pertaining to County affairs or the interests of the County.

THE OPTIONAL PLAN SHOULD NOT MENTION THE DATE OF THE ADOPTION VOTE, AS IT MAY BE INCORRECT.

Section 5.02. - Adoption Vote

This Plan shall be considered adopted when approved by the affirmative vote of a majority of those voting on the question of its approval at an election to be held in Grand County [on November 5, 2019].
THE OPTIONAL PLAN MAY NOT LIMIT THE REMOVAL OF ELECTED OFFICERS TO JUDICIAL REMOVAL.

Section 5.04. – Prior Optional Plan

1. Upon this Plan becoming effective on January 6, 2021, the former optional plan of Grand County government, adopted in 1992, is repealed and has no further legal force or effect.

2. The election of members of the Council and Officers shall be by partisan elections and in accordance with state law regarding the election of county officials. Officers and members of the Council are not subject to term limitations and may not be recalled or removed from office except by the judicial removal process set out in state law.
17-52a-406. County or district attorney review of proposed optional plan -- Conflict with statutory or constitutional provisions -- Processing of optional plan after attorney review.

(1) Within 45 days after the day on which the county or district attorney receives the recommended optional plan from the county clerk under Subsection (3)(d), 17-52a-303(3)(c), or 17-52a-403(3)(b) or from the county legislative body under Subsection (3)(c) or 17-52a-302(3), the county or district attorney shall send a written report to the county clerk containing the information described in Subsection (2).

(2) A report from the county or district attorney under Subsection (1) shall:

(a) state the attorney's opinion as to whether implementation of the optional plan described in Subsection (1) would result in a violation of any applicable statutory or constitutional provision;

(b) if the attorney concludes that a violation would result:
   (i) identify specifically each statutory or constitutional provision that implementation of the optional plan would violate;
   (ii) identify specifically each provision or feature of the proposed optional plan that would result in a statutory or constitutional violation if the plan is implemented; and
   (iii) recommend how the proposed optional plan may be modified to avoid the statutory or constitutional violation.

(3) (a) Except as provided in Subsection (3)(b), (c), or (d), if the attorney determines under Subsection (2) that a violation would occur, the proposed optional plan may not be the subject of an election under Section 17-52a-501.

(b) The study committee may:
   (i) modify an optional plan that the study committee recommends in accordance with Section 17-52a-403 to avoid a violation that a county or district attorney's report describes under Subsection (2); and
   (ii) file a new report under Subsection 17-52a-403(3)(a)(iv).

(c) A county legislative body may:
   (i) modify an optional plan that the county legislative body proposes in accordance with Subsection 17-52a-302(1)(b) to avoid a violation that a county or district attorney's report describes under Subsection (2); and
   (ii) within 10 days of modifying the optional plan, send the modified optional plan to:
      (A) the county clerk; and
      (B) the county or district attorney for review in accordance with this section.

(d) (i) The petition sponsors may:
   (A) modify an optional plan that the petition proposes in accordance with Subsection 17-52a-303(1)(a)(ii) to avoid a violation that a county or district attorney's report describes under Subsection (2); and
   (B) submit the modified optional plan to the county clerk.
(ii) Upon receipt of a modified optional plan described in Subsection (3)(d)(i), the county clerk shall send the modified optional plan to the county or district attorney for review in accordance with this section.

(4) The county executive, county legislative body, county or district attorney, and county clerk shall treat the following as an original:

(a) a new report that a study committee files under Subsection 17-52a-403(3)(a)(iv);

(b) a modified optional plan that a county legislative body sends under Subsection (3)(c); and

(c) a modified optional plan that petition sponsors submit to the county clerk and that the county clerk sends under Subsection (3)(d).

(5) If the attorney's report under Subsection (2) does not identify any provisions or features of the proposed optional plan that, if implemented, would violate a statutory or constitutional provision, the proposed optional plan is subject to the provisions described in Section 17-52a-501.