GRAND COUNTY
CHANGE IN FORM OF GOVERNMENT
STUDY COMMITTEE
REGULAR MEETING

Grand County Council Chambers
125 East Center Street, Moab, Utah

AGENDA
Friday, September 27, 2019

12:00 p.m.

☐ Call to Order (Chairperson Stocks)
☐ Pledge of Allegiance
☐ Approval of Minutes (Secretary Till)
  A. September 6, 2019 (Study Committee Regular Meeting)

☐ General Reports
  B. Review and discussion of County Attorney report as to compliance of the draft Optional Plan with the State Constitution and State Code, continued from September 6, 2019 discussion between the Study Committee and Attorney Gavin Anderson (County Attorney Christina Sloan)

☐ Community Outreach and Possible Action (none)
☐ Citizens to Be Heard
☐ Presentations (none)
☐ General Business- Action Items- Discussion and Consideration of:
  C. Coordinating specific Optional Plan agenda topics with specific regular meeting dates (Chairperson Stocks)
  D. Setting up a deadline for submitting the Amended Optional Plan (Chairperson Stocks)
  E. Considering Study Committee communications with members of the State Legislature and/or representative(s) of the Utah Association of Counties (Chairperson Stocks)

☐ Consent Agenda- Action Items (none)
☐ Discussion Items (none)
☐ Discussion and Possible Action on Study Strategy (none)
☐ Public Hearings- Possible Action Items (none)
☐ Future Considerations
  F. Additional relevant next steps (Chairperson Stocks)

☐ Closed Session(s) (if necessary)
☐ Adjournment

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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) 250-1346.

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
GRAND COUNTY CHANGE IN FORM OF GOVERNMENT
STUDY COMMITTEE
REGULAR MEETING

Grand County Council Chambers
125 East Center Street, Moab, Utah

MINUTES
September 6, 2019

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 Protem Marcy Till at 12:01 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 Stephen Stocks (by phone). Absent at the Call to Order was Committee Member Jeramy Day. Also in attendance was County Council Administrator Ruth Dillon to take minutes, County Clerk Chris Baird, and Attorney Gavin Anderson.

Motion by Bob to elect Marcy Till as Chair Protem for this meeting, seconded by Walt carried 6-0.

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

It was announced that County Attorney Christina Sloan could not be present due to family member major surgery.

Jeramy Day arrived at 12:05 p.m.

Approval of Minutes
A. August 23, 2019 (Study Committee Regular Meeting)

Chair Protem Till requested any changes or corrections to the minutes. County Council Administrator Ruth Dillon reported that corrected draft minutes were on the dais to replace the draft minutes in the packet.

MOTION:
Motion by Bob to approve the replacement minutes of the August 23, 2019, seconded by Cricket carried 7-0.

B. Review of County Attorney Report as to compliance of the draft Optional Plan with the State Constitution and State Code

MOTION:
Motion by Stephen to table this matter of review of the County Attorney Report, to return to it later in the agenda, seconded by Bob.

Discussion ensued. Attorney Gavin Anderson stated that the Study Committee will need to sit down and review corrections with the County Attorney for her final review.

Jeramy asked if the County Attorney's opinion is the final say on whether the Study Committee work goes forward. Attorney Anderson answered yes, that the County Attorney determines whether the Optional Plan recommended by the Study Committee is contrary to state and/or constitutional law and, if so, the County Attorney's review must state the problems and make suggestions for changes. He stated that there is no way to appeal her decision other than to take it to court, and that timeliness then becomes the question.

County Clerk/Auditor Baird read from State Code, Section 17-52a-501, regarding what triggers an election.
Attorney Anderson read from State Code, Section 17-52a-406, provided on the dais. He stated that there will be no election on the Optional Plan in 2019, but the Study Committee can make corrections and file a new report as an amended Optional Plan.

Chair Protem Till said the County Attorney was not involved in the creation of the document, yet she is completely responsible for it. She commended the County Attorney for her attention to detail and thoughtfulness, noting that the County Attorney found easily correctable mistakes in the draft Optional Plan.

Chair Protem Till called for the vote. Motion approved 7-0. Chair Protem Till tabled the matter of review of the County Attorney Report until later in the agenda.

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

MOTION:
Motion by Bob to approve the proposed “Argument in Favor” statement, seconded by Judy.

Stephen stated that the need for a Voter Information Pamphlet depends on the final outcome of the Optional Plan, particularly regarding districts, and that the Voter Information Pamphlet is a moot point.

Motion failed 7-0.

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

Walt stated his opinion that developing a new educational campaign is moot for now. Bob suggested one public meeting to explain the amended Optional Plan after the County Attorney has reviewed it – in order to close out the Study Committee work on the final product.

MOTION:
Motion by Judy to postpone this matter of an educational campaign indefinitely, seconded by Jeramy carried 7-0.

E. Suggestions for additional public service announcement(s) and/or flyer update, postponed from August 23, 2019

Chair Protem Till asked if it would be a legitimate budgetary expense to have advertising in early 2020, closer to the November 2020 election. Clerk/Auditor Baird answered that he will figure out a way.

MOTION:
Motion by Cricket to postpone additional public service announcements or flyer updates until the Study Committee has a plan, seconded by Bob carried 7-0.

MOTION:
Motion by Jeramy to add the inadvertently missing “Citizens to Be Heard” standing agenda item at the same time as “Presentations,” seconded by Bob carried 7-0.

Charlotte Mates, citizen, commended the Study Committee, stating that she feels firmly that the Study Committee should go forward this election year. She stated her opinion that the County Attorney should have left someone in charge for this meeting in the personal absence of the County Attorney.
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.

Study Committee Members agreed to skip discussing this matter of a transition plan since it is moot at this time.

G. Next steps, if required by the County Attorney, for correcting the draft Optional Plan for compliance with the State Constitution and State Code in time for the 2020 general election

Chair Protem Till removed from the table Item B, Review of County Attorney Report as to compliance of the draft Optional Plan with the State Constitution and State Code.

Chair Protem Till asked Study Committee Members and Attorney Anderson to review the Item B County Attorney Report document alongside the Item G corrections document. Stephen requested to have Attorney Anderson review the larger issues of the County Attorney Report first, and thus in reverse order of the Report.

Attorney Anderson reviewed page 9, Item 4 of the County Attorney Report, “Removal of Officers”. He acknowledged his mistake, stating that he “overdid” the language. Attorney Anderson said his argument is that removal for mental disability is not state constitutional. He said it is “clearly unconstitutional,” and that State statute is contradictory. He said that the State Constitution allows removal for high crimes, misdemeanors, and malfeasance in office. Attorney Anderson stated that the cure, as shown on the last line of page 3 of Attorney Anderson’s corrections document, is to remove the word “judicial”.

Stephen inquired of Attorney Anderson: Does this element alone trigger the Optional Plan being unconstitutional? Attorney Anderson said no, that makes it contradictory with existing State Statute, that it is not a constitutional statute, that the related law is only one or two years old, and that the law has not yet been tested in court.

Regarding page 7 of the County Attorney Report, “Special Election” section, and page 2 of Attorney Anderson’s corrections document: A question arose as to the Clerk’s authority. Attorney Anderson stated that the County Attorney states that the Plan attempts to establish a 2019 election, but she argues in the Report that such authority is vested by the governing body. Attorney Anderson said regarding his corrections document, on the bottom of page 2: The Plan only makes reference to the election date; it does not establish the election date. The cure, he said, is to eliminate the date. Attorney Anderson said the special election date was not set in the Optional Plan. Instead, it was set by operation of law by House Bill (HB) 224, and the Plan only acknowledges it.

Clerk/Auditor Baird said, in his opinion, that the Optional Plan referred to in HB 224 would not be considered for a special election, and he said that State Elections Code Title 20A and the Lieutenant Governor backed him up on this opinion. He stated that the Plan would have been on this year’s ballot if there had been no violations. He read: “A county shall hold . . . at the next regular or general municipal election” if all the circumstances are in place. He also recommended leaving the date out. Attorney Anderson said the county governing body would not have a role in setting an election date for this matter.

Stephen asked Attorney Anderson which items in the County Attorney’s Report have merit, and which ones do not? Attorney Anderson referred to page 6 of the County Attorney’s Report, “Council Interference with Executive Branch”, stating it is “flat wrong” in his opinion. He referred to page 2 of the corrections document, saying that the County Attorney states it is internally inconsistent to remove the County Manager by vote of the Council. He stated that the Plan has a place for removing the County Manager and that he added clarifying language as a correction. Bob remarked that this is not covered in State Statute or State Constitution.
Clerk/Auditor Baird said that it is a statutory issue regarding what the Council can and cannot do on directing executive personnel. He suggested that the Study Committee should review this such that the language is exactly the same as it appears in statute if it is to be included in the Plan.

Attorney Anderson proposed a correction of “appointing or” to the word “removing” to be added such that it reads, “appointing or removing.” He said that the change is unimportant because the prohibitions do not apply in an open meeting. Attorney Anderson distinguished a separation of powers form of government versus an elected commission form with commissioners who are used to directing employees. He stated that there are checks and balances: All communications between the legislative and executive branch are “over the counter” with transparency in a Council-Manager form of government.

Regarding “Council Districts”, page 1 of the County Attorney Report and page 1 of the corrections document: Attorney Anderson reported that he had told the County Attorney he has never heard of a County Council or Commission setting the districts in a change of form of government. He reported that eight governing bodies have gone through a change in government in Utah, and all except for Morgan County’s current proposed plan have a district created by the Study Committee and set out in their Optional Plan. He referred to the limitations in the County Attorney Report, page 2 regarding legislative body powers. Attorney Anderson explained his correction that HB 224 empowers the Study Committee to do the same. He stated that the County Attorney felt that the best the Study Committee can do is recommend districts to the current County Council and it could be that the County Council comes up with their own districts. He explained that in HB 224 and its predecessor are express in that the current government has nothing to do with the Optional Plan. He stated that the legislative intent is that the Study Committee makes the decision as to districts. Attorney Anderson referred Study Committee Members to his corrections document in which the Study Committee could recommend to the County Council that these be the districts. Walt questioned whether it is in the Study Committee’s purview at this point to recommend that the districts be based on the 2020 Census. Attorney Anderson stated yes.

Stephen inquired as to where in the Statute does the Study Committee go to the County Council regarding forming district and he inquired as to the mechanism. Attorney Anderson stated that the existing county governing body has nothing to do with the Optional Plan. He stated that there are Study Committee procedures that do not carry through to the County Council. Jeramy said HB 224 is clear on this point, that the current county government is to stay out of the process. Attorney Anderson said that the County Attorney feels fairly strongly on this point about the legislative body’s authority to form districts with his understanding of her belief of the “black letter of the law” on her side. He stated that in court he would emphasize that the current County Council stays out of it.

Bob said the County Attorney argues that districting is a legislative function. He continued that the State legislature maintains their districting authority despite a statewide referendum to give authority to the people. Further, the existing Council has the authority to district at any time.

Walt said the Study Committee is “advisory” per the County Attorney, yet the Study Committee is an entity with certain powers when voters initiate the change in form of government. He stated that the Study Committee recommends a Plan, and the Study Committee is authorized by the voters.

The question was raised as to whether the Study Committee is “advisory” to the County Council or “a committee with legislative authority. Jeramy stated that the Study Committee is empowered by the state legislature, not by the county. He asserted that it appears from the County Attorney Report that the sitting governance, the County Council, wants control.

Attorney Anderson stated that the County Attorney sent an initial draft of her Report to Clerk/Auditor Baird and to himself, and it originally had eight problems rather than four.
Attorney Anderson stated that the Study Committee is a government entity created by State Statute with significant powers and legislative authority to be essentially framers of the constitution of the new government. Further, he stated that it is incorrect to suggest that the Study Committee is an advisory body.

Bob stated that HB 224 does not remove any authority of the legislative body. He continued that the County Attorney is vested with making a determination, not a legal opinion, and the Study Committee has an opportunity to dissuade her.

Clerk/Auditor Baird said he “totally disagrees” with the County Attorney on the Council districting issue. He continued, the Legislature gave power to the Study Committee to draft all the implementing provisions. He stated that the County Attorney Report calls out that the legislative body “may” redistrict. He suggested that the Study Committee should recommend to the current County Council that they adopt the new districts. He continued, the Legislature in HB 224 empowered the Study Committee to draft the districts as a necessary component in enacting the Plan, but the County Council could change it.

Clerk/Auditor Baird stated that voters actually enact the districts and that it is possible to pass this by a ballot initiative. He continued, stating it is necessary that districts be established. He stated that it is contained in the Optional Plan, and that approval by voters is the only guarantee of it.

Chair Protem Till said the districting recommendation was extremely well thought out and made by the Study Committee with support from the expert consultant. She inquired about what happens if the Study Committee does not agree with the County Attorney. Attorney Anderson responded that December 31, 2020 is the drop-dead date to change the form of government, and the point at which a three-person commission would go into effect if the Plan were voted down. He continued, no optional plan is required because a three-person commission is a standardized form of government. The Optional Plan will not be on this November election, so an agreement between the County Attorney and the Study Committee to change it will be necessary in time for the November 2020 election.

Chair Protem Till acknowledged Citizen Charlotte Mates once again. Ms. Mates reiterated the need for the Optional Plan to be on the ballot this year, stating that she is willing to sue to get it on the 2019 ballot, as long as she has county support in the process.

Judy asked whether a three-person Commission could be in effect in January 2021. Attorney Anderson stated that between now and March 8, 2020, the Study Committee must agree with the County Attorney for an Optional Plan, as amended. He stated that an impasse is possible.

Jeremy stated that there are recourses such as a judgment to gain clarity. He stated that County Council interference would be a violation of the law. Walt stated that he is not supportive of a lawsuit. He continued that he hopes to sit down with the County Attorney and Attorney Anderson and talk through the districting authority issue. He stated that he is unaware of anyone on the current County Council inserting themselves into this process.

Cricket stated that the County Council has the legislative authority on districting in that they can change the recommended districts even after voters agree to them, if they do. She asked “What is the threat?”

Stephen requested the Study Committee hold a closed session to discuss the options moving forward. It was explained that closed sessions are reserved for specific matters, per the Open and Public Meetings Act. County Council Administrator Dillon read from the list of reasons for going into closed session.

MOTION: Motion by Stephen to go into closed session for the purpose of discussing pending or reasonably imminent litigation, seconded by Jeremy.

Marcy said the Study Committee has conducted itself well, and is in a potentially politically explosive situation, and the Study Committee should not change its course of action just yet. She requested that the
Study Committee give the County Attorney the same consideration as has been given to each other, and move forward in a reasonable fashion.

Bob stated that if the Study Committee is not able to persuade the County Attorney regarding districting, there are other solutions to consider. He asked Study Committee Members not to impugn anyone’s motives as there is no evidence that the County Council is attempting to meddle.

Stephen said there is a finite period of time—as the Study Committee—to look at how best to resolve this issue and that the Study Committee should speak with Attorney Anderson first, in preparing for litigation.

Attorney Anderson said his responsibility to the Study Committee is per contract and that he is not comfortable with giving advice on litigation or on a closed meeting for “reasonably imminent litigation”.

Chair Protem Till inquired as to where the Study Committee turns for expertise on the Study Committee’s authority and the concept of districting. She continued, the County Attorney has publically stated that she does not believe that the Council-Manager form of government is appropriate for Grand County, and this statement creates some bias. She continued that the County Attorney is thorough and professional, and has done her job on this. She expressed gratitude and a desire for a face-to-face conversation with the County Attorney on the issues.

Walt said the County Attorney did not have the full prescribed time that the law allows to review this Plan. He stated that the Study Committee needs specific rebuttals regarding Study Committee authority on redistricting.

Clerk/Auditor Baird said the Study Committee is not necessarily a political subdivision of the State. He said that State Code is silent, not explicit, for the Study Committee. He explained that in Utah, political subdivisions have the power to sue and be sued, but that it is unclear as to whether the Study Committee can even legally bring a lawsuit.

Bob reiterated that the Study Committee could go to the County Council for a resolution to consider support of Study Committee recommendations on districting.

Stephen stated that he stands by his motion to go into closed session, and Chair Protem Till called for the vote. Motion failed 1-5-1, with Stephen voting in favor; Walt, Marcy, Bob, Cricket, and Judy voting against; and Jeramy abstaining.

Jeramy requested County Council Administrator Dillon coordinate a meeting with the County Attorney, Attorney Anderson and the Study Committee to discuss the County Attorney’s Report and Attorney Anderson’s recommended corrections. Jeramy stated his opinion that the County Attorney’s Report is “overreach and fundamentally wrong according to the law.”

Attorney Anderson inquired about discussing with the County Council their inclination on setting up the districts. Study Committee Members tentatively agreed, after first talking with the County Attorney.

Future Considerations

Ruth announced that the County Attorney had made it known in an email that she can be available Friday, September 27, 2019 or an earlier date, preferring a Tuesday. Study Committee Members agreed to a regular meeting date of September 27, 2019 as long as this date still works for the County Attorney. They agreed to cancel the next regular meeting of September 20, 2019.

Closed Session(s) (if necessary) - none

Adjournment

The meeting was adjourned at 2:19 p.m. by motion made by Bob and seconded by Jeramy that carried unanimously 7-0.
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 “specify] 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 precedence 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 fundamental 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
Dear Committee members –

I have attached a draft ‘Amended Recommendation and Report’ which incorporates and responds to the County Attorney’s review. The yellow highlights represent the changes we discussed at the last committee meeting, with some slight revisions. Walt brought up a Q on the blue highlights - regarding the staggered terms for council members - raising the issue of the committee’s decision that the at-large council members be elected in presidential general election years and district council members in gubernatorial years. Because the eventual vote for council members will move from 2020 to 2022, we may want to change those two provisions. The colored highlighting is for the study committee’s convenience and will not appear in the final version of the amended report. How would the committee like to address this draft and make decisions regarding it? Do you want to discuss sometime before the meeting with Christina on Sep 27th?

Two other questions regarding the adoption and future effect of the optional plan:

1. What process and time frames are binding on the predecessor county council to create the council district boundaries?

2. Does taking the creation of council district boundaries out of the authority of the study committee and the optional plan mean the statutory process for amending the optional plan (super-majority vote to amend, 17-52a-504) does not apply to the council district seats?
AMENDED
RECOMMENDATION AND REPORT
Grand County Form of Government Study Committee
Submitted to the Grand County Council and Grand County Clerk

Background:
The Grand County Form of Government Study Committee, pursuant to its statutory duties set out in Utah Code Annotated, Section 17-52a-403(3), prepared and filed a Recommendation and Report with the Grand County Clerk/Auditor and the Grand County Council on August 15, 2019. That Recommendation and Report described the Committee’s work regarding the proposal that Grand County change its form of government and it included an Optional Plan for Grand County Government for submission to the voters. The proposed new government is a Council-Manager form with an appointed Manager and five Council members, with two council members elected by district and three elected at large.

The original Recommendation and Report is hereby incorporated into this Amended Recommendation and Report, except to the extent that it differs from this Amended Report, in which case the terms of this Amended Report prevail.

County Attorney Review:
On August 13, 2019, a copy of the Recommendation and Report, along with the Optional Plan, was provided to the Grand County Attorney, Christina Sloan, for her review and opinion regarding whether the proposed plan was inconsistent with Utah Constitution or statute, as provided in Section 17-52a-406. In reviewing the proposed Optional Plan, as described, the County Attorney found the Plan inconsistent with the Utah Constitution and state statute as described below:

1) The council district boundaries must be established by the current county council rather than the study committee.

2) The prohibitions on the council interfering with the executive branch must more clearly acknowledge the council’s authority to remove the county manager.

3) The optional plan should not set the date of the adoption vote.

4) The optional plan may not limit the removal of elected officers to judicial removal.

The County Attorney identified the statutory and constitutional provisions violated and recommended how to correct those violations.

Study Committee Recommendations:
Based on the County Attorney’s review and pursuant to the Study Committee’s statutory authority under Section 17-52a-406(3)(b), the Study Committee hereby submits changes to the originally proposed Optional Plan to read as follows:

1) Council District boundaries:

Section 2.02. - Council Members Elected At-Large
1. Three Council members shall be elected at-large by the voters of Grand County through partisan elections. They shall meet the qualifications of office of county elected officials as established by state law, and they shall remain residents of Grand County throughout their terms of office.

2. For the purpose of electing at-large Council members, there shall be individual seats known as Council Seats A, B and C. The lettered designation of at-large seats shall be maintained throughout the Council members' terms and at-large council seats shall be so designated during future council election procedures.

3. The initial term of office for at-large Council Seats shall be four years. After the initial terms of office, the regular term of office of each at-large seat shall be four years. At-large Council members shall thereafter be elected in presidential general election years. Each term begins at noon on the first Monday of January following each council member's election.

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.
2) Council interference with the executive:

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. a) 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.

   b) Nothing in this Section shall be construed, however, to prohibit the Council, while in a lawfully convened meeting open or closed session, from:

   1) engaging in any of its responsibilities as set out in this Plan or state law;
   2) removing the County Manager using the process described in this Optional Plan Section 2.11.1; or
   3) fully and freely discussing with, directing, suggesting, or recommending to the County Manager, any employee of the Executive Branch or any other appointed or elected County Officer or employee, anything pertaining to County affairs or the interests of the County.

3) Election date:

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 2, 2020 [or delete].

4) Removal from office:

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.

Conclusion:

The Grand County Form of Government Study Committee hereby submits this Amended Recommendation and Report and attaches a second draft of the proposed Optional Plan of Government for Grand County and requests that this draft be reviewed by the Grand County Attorney, that the Grand County Clerk/Auditor schedule this matter for election and adoption by Grand County voters on November 2, 2020, and that the Grand County Council speedily adopt boundaries setting out the two council districts in the new form of government, as described in the attached Optional Plan.

DATED: this ____ day of September, 2019.

GRAND COUNTY FORM OF GOVERNMENT STUDY COMMITTEE:

____________________________________
Stephen Stocks, Chair

____________________________________
Marcy Till, Secretary

____________________________________
Judy Carmichael

____________________________________
Walt Dabney

____________________________________
Jeramy Day

____________________________________
Cricket Green

____________________________________
Bob Greenberg