

Case No _____

IN THE SUPREME COURT OF THE UNITED STATES

SUSAN ROSE, Petitioner,
v.
STATE OF UTAH, UTAH SUPREME COURT,
Respondents.

**PETITION FOR A WRIT OF CERTIORARI
 TO THE UTAH SUPREME COURT**

Petitioner, Pro Se, In Forma Pauperis

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Respondents

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 -Honorable Ass. Chief Justice Robert Lee
 -Honorable Justice Christine Durham
 -Honorable Justice Constandinos Himonas
 -Honorable John Pearce
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**RULE 20(b) POTENTIALLY INTERESTED PERSONS WHO MAY WISH TO
RESPOND**

The Utah State Bar and Office of Professional Conduct, for this Petition's purposes,
are not named as a parties though they may have an interest in the outcome.

Utah State Bar
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Salt Lake City, Utah 84111
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Office of Professional Conduct ("Prosecutor")
Mr. Billy Walker Senior Counsel
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QUESTIONS PRESENTED

Is the Utah Supreme Court's ("UTST") Disbarment Order legally *void ab initio*¹, as resulting from UTST- claimed authority of a 1984 Amendment to Utah's Constitution that restructures Utah government eliminating Congress' Enabling Act of 1894-mandated separation of powers, in the practice of law (i.e. which is everything and everyone), resulting in elimination of United States Supremacy of law and Courts in Utah?

¹ **THELAW.COM LAW DICTIONARY & BLACK'S LAW DICTIONARY 2ND ED.** "void ab initio" Latin, void from the beginning. Never legitimate or valid.

LIST OF PARTIES

X All parties to this Petition are listed in the caption.

X All parties in the court below, do not appear in the caption of the case on the cover page. A list of all other parties to the proceeding in the state court whose judgment is the subject of this petition is as follows:

Office of Professional is not a party here. It is an arm of the UTSCCT.
Mr. Billy Walker Senior Counsel
Ms. Townsend
Mr. Bevis
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The Utah State Bar is not involved in lawyer discipline, though it may have an interest in this Petition in behalf of all Utah State Bar members.

Utah State Bar
Elizabeth Wright General Counsel
645 South 200 East
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Utah State is listed as a Party.

Utah Supreme Court is listed as a Party.

The United States is listed as a Party. Discussed below

The Utah Legislature is a Party. Discussed below

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August 15, 2011 Honorable Judge Jenkins order identifying same issues
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Transcript

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**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **state courts**: The opinion of the highest **state court** to review the merits appears at Appendix to the petition and is reported at **Susan Rose v. Office of Professional Conduct, 2017 UT 50**.

State Court Orders

-November 3, 2017 Utah 3rd District Court lifting of stay and order and decree of disbarment. Pet. App. 1

-September 6, 2017 UTSCT denial of discretionary review. Pet. App.

- August 15, 2017 UTSCT DISBARMENT ORDER Pet. App. .

U.S. Court orders denying sanctions against the Petitioner.
Pet. App.

JURISDICTION

This Petition is timely filed within the Court's 90 days, its due date being December 5, 2017. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

For cases from state courts: The date on which the **highest state court** **decided** my case was August 15, 2017. A copy of that decision appears at Petitioners Appendix ("Pet. App.") page 4.

[X] A timely petition for rehearing was thereafter denied on the following date:
September 6, 2017, and a copy of the order denying rehearing appears at Pet. App.

3 No extension was requested here.

SUPREME COURT RULE 14(G)(I) STATEMENT.
The issues here were raised below:

The issues raised here have been raised with the UTSCt beginning in 2008. Two issues were not raised with the UTSCt and are identified herein. At every point of litigation, this Petitioner sought relief from a Court lacking jurisdiction, and lacking Due Process that renders all void in state court. *Fehlhaber v. Fehlhaber*, 681 F.2d 1015, 1027 (C.A.5 (Fla.), 1982). Pet. App.

Petitioner relied on Justice Scalia and this Court for doing so. ²

The federal questions raised here were raised in, a petition for a writ, the Appeal brief; two Rule 10A motions #1 and #2 and in a motion for discretionary review .

Petitioner here has filed at each point of litigation, in the UTSCt the following: Pet. App. Petition: UTSCt case 20080443 denied; Petition case 20090268, denied; Petition 20091050, denied; Petition 20100591 denied; 20101015 denied; Appeal, 20100714 denied; Petition 20150757 denied; Appeal 20151037 resulted in disbarment. Petition 20160146 denied. (Pet. App.)

Inaccessibility to the UTSCt for rule challenges

² *Freytag v. Commissioner of Internal Revenue*, 501 U.S. 868, 897, 111 S.Ct. 2631, 115 L.Ed.2d 764 (1991)(J. Scalia concurrence)

Utah State Bar v. Steffensen , 373 P.3d 186, 2016 UT 18 (Utah, 2016)(“ ¶ 9
Lawyers and litigants are free to seek an audience with one of our advisory
committees if they wish to advocate for an amendment to our rules..... ¶ 11 Our
rules set forth existing procedural standards. They are entitled to respect unless
and until we amend them.”)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION ARTICLE VI CL. 2

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

CONGRESS' 1894 UTAH ENABLING ACT—attached to the Petition

Utah Rule of Professional Conduct 8.5 - attached to the Petition

Article VIII Section 4 of the Utah Constitution

The Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.

Utah Code 78A-3-103(3)

“The Supreme Court shall by rule govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to the practice of law.”

Utah State Rule of Lawyer Discipline and Disability

Rule 14-506. Jurisdiction.

(a) Persons practicing law. The persons subject to the disciplinary jurisdiction of the Supreme Court and the OPC include any lawyer admitted to practice law in Utah, any

lawyer admitted but currently not properly licensed to practice in Utah, any formerly admitted lawyer with respect to acts committed while admitted to practice in Utah or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of any rule promulgated, adopted, or approved by the Supreme Court or any other disciplinary authority where the attorney was licensed to practice or was practicing law at the time of the alleged violation, any lawyer specially admitted by a court of Utah for a particular proceeding, and any other person not admitted in Utah who practices law or who renders or offers to render any legal services in Utah.

(b) Incumbent and sitting judges. Incumbent and sitting judges are subject to the jurisdiction of OPC only for conduct that occurred prior to the taking of office.

(c) Former judges. A former judge who has resumed the status of a lawyer is subject to the jurisdiction of the Supreme Court not only for conduct as a lawyer but also for misconduct that occurred while the lawyer was a judge and would have been grounds for lawyer discipline provided that the misconduct was not the subject of a judicial disciplinary proceeding as to which there has been a final determination by the Supreme Court.

(d) Part-time judges. Part-time judges, while in office, are subject to lawyer disciplinary and disability proceedings for acts outside their judicial capacity.

STATEMENT OF THE CASE

CURRENT STATUS – The lower 3rd district court prepared the disbarment order on remitter on Nov. 3, 2017. Pet. App. The Judge is preparing a final judgment at this time.

However, the issues here have had a final ruling by the Utah Supreme Court the U.S. Supreme Court's rule's "highest court".

I. PARTIES

The Utah State Bar is not a party here since it plays no role in lawyer discipline except it is forced to fund the prosecutor who uses its name without any means of preventing him from doing so, given their "integration" with the UTSC.

The Office of Professional Conduct is not a party since it is an arm of the Utah Supreme court over whom no one else has any authority.

Utah and the Utah Supreme Courts are parties.

The Utah Senate and Legislature are parties due to having filed a brief with the UTSC voicing its support this Petitioner's position for elimination of separation of powers in the regulation of the practice of law and integration of the Bar. (Pet. App. 188).

The United States government is a party. It has a duty and responsibility to protect its sovereignty. It must ensure its laws are carried out in Utah State Courts. Without Utah having multiple involved in the practice of law, there is no separation of power restraints to ensure federal supremacy.

II. RELIEF REQUESTED:

1. That this Court hold that the disbarment by default order is void ab initio due to the 1984 Amendment to Utah's Constitution eliminating Due Process for all Utah State Bar members including Petitioner, and for would be clients unable to find representation as well.
2. That this Court hold that the disbarment by a civil default order is void ab initio as the case is inseparable from the exclusive federal question of Indian Nation court jurisdiction definitions, and by the ABA rule 8.5 adopted by Utah, it exceeds Utah's state jurisdiction that extends "for in court conduct" only to reciprocal discipline, and conduct of Utah State Bar members in legally valid, not void ab initio cases exceeding state court jurisdiction.
3. That this Court will hold that the disbarment by civil default is legally void since the UTSCOT lawyer regulation plan is patently unconstitutional.
4. That this Court make a finding that irreparable harms have occurred to the Utah State Bar members, and to the public unable to secure representation due to lawyers fear of prosecution.
 - A. Thereby assign Utah's lawyer discipline to a U.S. District Court judge who is not politically or religiously affiliated with Utah and who has not taken an oath to uphold the Church of Jesus Christ of Latter day Saints with their wealth, name, reputation, or life in a (Mormon) Temple making themselves subject to the church's leaders over the U.S. Constitution and United States.

- a. And for the selected Judge to assign a Special Master, independent of Utah in any manner, to take over Utah's lawyer discipline, and work with the United States Attorney General and other agencies,
- (i) to develop a constitutionally compliant lawyer discipline program,
- (ii) to investigate Utah's lawyer discipline program to discover by independent investigation if a. it has been used to restrain trade of small and solo practitioners, or b. for the profit or interests benefits for special private interests conspiring to deprive special targeted persons or groups of persons of their civil right

b. And, for this selected judge to determine if Utah has taken federal funds as other states, while abandoning the Enabling Acts conditions for statehood, making those funds secured by Utah under false pretenses of United States law and United States Constitution NOT having Article VI supremacy in Utah and in its Courts due to Enabling Act abolishment.

III. STANDING

"To establish Article III standing, a plaintiff must show: (1) that it has suffered a concrete and particular injury in fact that is either actual or imminent; (2) the injury is fairly traceable to the alleged actions of the defendant; and (3) the injury will likely be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

This Petition arises from a Utah Supreme Court 'civil' disbarment 'by default' order. Pet. App. 1. A concrete harm. The Harms are directly due to the 1984

elimination of separation of powers that eliminates U.S. Supremacy in Utah's law. The relief sought will like redress much of the harm, but not all. The very definition of irreparable harms.

The disbarment is a prohibited relitigation of U.S. Court orders unenforceable in Utah courts. *Myton, Ute, infra*, ABA Rule of Professional Conduct 8.5(b) attached as adopted in 2005. The U.S. Courts in the underlying case denied sanction motions by the complainant opposing counsel FIVE times. The charges are inseparable from how this Petitioner defined Indian Nation Court jurisdiction- this lawyer regulation is redefining by destroying the messenger... once again in a state court...disallowed by Congress' Indian Civil Rights Act, 25 U.S.C. 1321-1326. These were my FIRST cases involving litigation. MacArthur began about one year after graduation.

Due to the prosecution, the Petitioner was unable to secure multiple training positions, pro bono work with skilled lawyers, and even doing transactional work with realtors and estates, specifically due to this prosecution.

Black listing Additionally, Justice Pearce's wife is THE editor of the Salt Lake Tribune. She wrote a scathing, long, editorial about the Petitioner. Even out of state lawyers will not associate with me. After all, who is one lone lawyer to challenge the entire state of Utah? It is not a position the Petitioner sought.

The single lawyer who was assisting the Petitioner is now a target creating a unwaivable conflict.

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The single lawyer who was assisting the Petitioner is now a target creating a unwaivable conflict.

A. Irreparable and Concrete Harms to all of Utah. Here is a picture of what a society without freedom to zealously advocate for citizens, or where Judges take oaths to other powers than the U.S. Constitution, looks like. Lawyers afraid of unconstitutional prosecutions with a near 100 percent conviction rate, causes injury to myself and the entire Utah population.

The Utah State Bar is not named as an opposing party. It is held hostage to this illegal lawyer regulatory system, 1) not making rules as displaced by the UTSC judicial advisory committees, 2) having no authority over the Prosecutor his policies or processes, 3) forced to fund prosecutors, provide materials, office space, who are using unconstitutional means of discipline, 4) UTSC-stripped of rule-making authority, without rules providing for how to terminate his employment only the UTSC controls if they wish, 5) without legislature jurisdiction over lawyer regulation due to a 1985 constitutional amendment, 6) having to appear hat-in-hand before UTSC ad hoc committees for rule changes, 7) while a Prosecutor who can prosecute anyone he targets as “unprofessional” is appointed on those committees.

Mr. Larsen identified to the UTSC about two dozen Prosecutor rule violations, all to no avail. Fellow friends of the Prosecutor submitted letters to the UTSC again “blacklisting” him to discredit him personally, rather than allowing the record of the district judge informing the Prosecutor they failed to make their case speak freely.

B. Enabling Act Sec. 3 violation harms to citizens

1. The affidavit of Mr. Ronald Karren (Pet. App. 183) evidences how some Mormons are Enabling Act sec. 3, “molested in person or property on account of his

or her religious worship.” Mr. Karren alleges in Court and under oath that his daughter was sexually abused along with another six year old little girl by a grandfather who is a Mormon General Authority. **This Petitioner read his divorce decree stipulation**, wherein he pays the mother as if there is joint physical custody, while his three children were placed in his care and have not returned. Further, Mr. Karren identifies the Mormon Church lawyers entered an appearance in his divorce case. Various persons attack his credibility also. One statistic, not public at this moment, showed how nationally the rate of incarceration of pedaphiles was about 10 or 11% but for that year it was shockingly about 30% for Utah. Where are these indictments.

*Judge Ritter was highly ‘disfavored’ in Utah. According to a history written by U.S. Judge Jenkins for the 10th Circuit court, his ‘disfavor’ began when he ruled for Indians, a disfavored group in Utah. That disfavor spilled over to the Tenth Circuit court, but **this Court ruled for him in 80% of the cases appealed to this Supreme Court.**

*One outstanding lawyer won millions for his clients against the state in a Navajo Trust fund case . He is disciplined.

*Rule violations are rampant. Another lawyer fought in U.S. court against a church-owned company. *In re Discipline of Sonnenreich*, 2004 UT 3, 86 P.3d 712 (Utah, 2004) Attorney Sonnenreich prevailed at a cost of about \$30,000 in fees. Rule 11 was violated by the Prosecutor but she could not show his intent to do so, so bad faith was not allowed to award her fees. Out of dozens of lawyers with computer

issues regarding payment she was the one singled out for prosecution for practicing law without a license. She wasn't practicing at all. Home with her toddlers. She escaped.

*Another lawyer told a county he would be suing them in U.S. Court. He was nearly immediately selected for prosecution. Suitter & Axeland's lawyer used the Prosecutors state court filings against him in U.S. Court to discredit him. His suspension is over. *Larsen v. Utah State Bar (In re Larsen)*, 379 P.3d 1209, 2016 UT 26 (Utah, 2016) This Petitioner was in the state district court when the Judge announced the Prosecutor had failed to meet his burden.

*Another lawyer was helping this targeted lawyer and he is the target now.

* Petitioner spoke to a lawyer who stated he personally has assisted 25,000 persons in removing their names from the Mormon Church, and he stated "hundreds" have sought legal assistance for one cause or another, and were unable to find a lawyer to represent them against powerful opponents.

* Another person previously disciplined fearful of involvement is leaving the country stating their life had been years of a nightmare, and they did not wish to be involved since during the discipline process their daughter was threatened with murder.

* Petitioner spoke to another individual who left their position with BYU, and the church, who documented the horrific level of pedophilia in the Mormon church, and in Utah, reporting persons were petrified to complain about it, petrified to leave, and petrified that if they did not remain silent they might lose their eternal

salvation, even living in gated communities.

* *Discipline is a form of blacklisting.* Here, the Salt Lake Tribune's editor is the wife of a Utah Supreme Court justice. Any lawyer criticizing a county, or disciplined, can be selected by her and subject to an editorial by this state wide newspaper in the most unfavorable terms before the motion for discretionary review was submitted. Most recently a *Montana* lawyer had a column against him for his making critical remarks against a county.

* In 2000 when my daughter was killed in a wreck, I called dozens of lawyers to take the Navajo case going into U.S. Court to no avail. Lawyers helping Lawyers was not available then. For this matter, I personally have spoken to over about 2 dozen lawyers who are sympathetic. They tell me their own horror stories. All are fearful of even allowing me to use their names. Who can blame them? Even out of state lawyers saw The Salt Lake Tribune article.

*. As a former member of the Utah Department of Corrections Advisory board for two terms, Petitioner can personally attest to the Mormon Church's division of family services reporting that Utah leads the nation in the top states for percentage of prisoners incarcerated or pedophilia, that pedophiles are never cured. Further, very often, they are sentenced to week ends in jail where they do custodial work or hang out with other pedophiles watching tv. Those are not counted in the corrections population. Recently, we see Utah's youth suicide rate is the highest in America with one about every 14 minutes -if memory of a radio program is correct.

For all the foregoing reasons, there is injury in fact to this Petitioner and to all others, facially, and as applied, that is concrete and not conjectural.

IV. Statement of Twelve Facts

Nature of the Case involves three jurisdictions over 10 years.

1. The Utah Supreme Court ("UTSCT") has "civilly" disbarred the Petitioner by default for her inability to prove her innocence, based upon her expressions and filings and client relations, against state court jurisdiction in Navajo Nation Indian country when actions involving non Indians, occurred within the Navajo Nation borders.
2. The UTSCT self described "arm of the court", Office of Professional Conduct ("PROSECUTOR") filed two cases combined in one later public formal complaint. In 2004 he filed one based on U.S. District court *MacArthur et al v. San Juan County et al*, 395 F. Supp. 2d 891(D. Utah) (OPC matter herein after "MacArthur matter") and in a Utah 7th District Court hailing her Navajo mother and child into state court. (Smith matter).
3. The UTSCT MacArthur matter was a relitigation of federal court orders.

Petitioner was conforming to United States Court rules. rule 8.5(b) attch.

- a. The United States District Court Honorable Judge Jenkins ruled that what is known as the *Montana* doctrine should probably not apply to them. (P. App. 0089-90) in a decision that is the most comprehensive historical

analysis of Indian law in United State published Court history. A

Monumental achievement in Petitioner's first litigation.

b. Honorable Judge Jenkins four times, (Pet. App. 0067-70) and the 10th Circuit court Honorable Judge Stephen Anderson (Pet. App. 0065) ruled against opponents repeated motions for sanctions who merely began a state proceeding to relitigate the "same issues" . (Pet. App. 1410-141)

The Court: ...where the question of sanctions has been raised and passed on..

Mr. Sanders: Yes, sir. Yes, sir But not the question of...

The Court: For the same conduct kind of complaint to the state---the arm of the state?

Mr. Sanders: Our answer is yes because it reflects on the fitness to practice in Utah Courts.

4. The UTSCCT 2005 Smith matter involved non Indian alleged grandparents (never documenting their relationship who had not visited the 5 yr. old child formally for 3 years)- who resided within the Navajo Nation -hailing Petitioner' s Navajo mother and child into "state court" for custodial grandparent visitation--while the Navajo mother and child were subject to a Navajo Nation family court seeking termination of parental rights of a father abandoning the child 3 years previously.
5. Opposite the disbarment by default, this Petitioner NEVER filed an appearance in Navajo Court for the Smith matter or sought an order preventing anyone from submitting the mother and child to state court.

6. After the Utah Court of Appeals agreed the State Court lacked subject matter jurisdiction, (0081), disappointed opposing counsel filed a motion for a consented voluntary dismissal, without any reservations for a prior issued \$300 sanction by the Judge for charging him with a lack of impartiality in refusing to dismiss under the Indian Child Welfare Act among other issued. (Pet. App. 0092). One day later she filed a complaint with the Prosecutor.
7. In 2005 Utah adopted a ABA Rule of Professional Conduct 8.5 attached to the Petition, that was published and is the only jurisdictional rule applying only to the Prosecutor and if applied plainly and strictly as read, as ABA intended, the Prosecutor had no legal authority to file the 2007 public 3rd District Court 070917445.
8. The ABA and Utah comment on Rule 8.5(b) explains the rule' s intended jurisdiction limitation on the Prosecutor. Discussed below.
9. The UTSCOT order reads rule 8.5 (a) broadly for the Prosecutor while ignoring if Rule 8.5(b) and comments did not apply, contrary to the ABA comment intent. (Pet. App. 0028). A “#1 Rule 10A motion” was submitted to the for just this single issue, and others challenged the constitutionality of the rules, and how they were applied, as the dockets show and these referred to the appendices.
- 10, The disbarment order makes it appear this Petitioner did not participate in the case OR advantage herself of due process.

a. **NO pretrial screening panel UT SCT rule 14-503(d) requires an 8 member UT SCT appointed screening panel to recommend a case to public trial.** The Prosecutor by his own secret policy gave me and all Utah State Bar members for years- **three** he hand picked for both my cases. The disbarment order skips over this fact. Affidavit of Mr. Denver Snuffer, a prior "screening panel" chair, (Pet. App. 184) and the secret, 2014- revealed, Prosecutor's policy (Pet. App. 150-159) of destroying the UT SCT appointed 8 person panels. They made no findings of fact, or identified any evidence to support claims of rule violations, did no rule-required investigation in a **one hour** limited "hearing" for each case, but did find this Petitioner was well intentioned, eliminating a *mens rea* for disbarment. (Pet. App. 165, 172).

Mr. Snuffer and the Policy were given to the Justices prior to oral hearing, and Justice Pearce asked about the matter clarifying he well understood the issue. Yet the disbarment order says there was a "screening panel" pet. Ap 0011. It is disingenuous to say the Justices did not understand the argument. **Petitioner NEVER argued all eight had to appear, only that they had to be initially invited.**

b. In fact for 'DEFAULT" this Petitioner can show she was participating and did not know a first sanctions hearing of several days would be vacated by a second that she did not attend after discovering rule 14-506(c) and the judge had no authority over the prosecution, could not rule on jurisdiction or lack of pretrial screening panels, and where perjured testimony occurred in

the first sanctions hearing it was anticipated realistically to occur in the second.⁴

11. No Utah rule-defined “default Judgment” as rule-required to be signed by he Judge, certified by the court clerk, and mailed was ever issued.
12. The Judges, subject to rule 14-506(c) prosecution for what they say and do on the bench, merely skipped over this fact to get to a sanctions hearing without any substantive evidence that would allow this Petitioner to formulate a defense.

REASONS WHY THE COURT SHOULD ACCEPT THIS PETITION.

The Utah Supreme Court’s (“UTST”) Disbarment Order is legally *void ab initio*, as resulting from UTSC- claimed authority of a 1984 Amendment to Utah’s Constitution, that restructures Utah government eliminating Congress’ Enabling Act of 1894-mandated separation of powers, in the practice of law (i.e. which is everything and everyone), resulting in elimination of United States Supremacy of law and Courts in Utah.

- I. **THIS COURT SHOULD TAKE THIS PETITION AS THE UTSC ORDER CONFLICTS WITH THIS COURT’S PRIOR PRECEDENTS THAT RENDER THE DISBARMENT ORDER *VOID AB INITIO***

⁴ a) filed an answer, b) filed initial disclosures through another lawyer, c) filed answers to production refusing to violate her clients’ privileges, d) objecting to each one deemed necessary, e) which objections for each request objected to was not heard for each one individually, and f) appeared in and participated in a several day sanctions hearing, and g) had no notice of a second sanction hearing vacating the first one entirely. (the Judge may have stated a few words orally, but this Petitioner did not hear them, and there was no written orders stating such.)

1. **THE 1984 AMENDMENT IS VOID BY ELIMINATING SEPARATION OF POWERS THAT ELIMINATES CONGRESS' MANDATED FUNDAMENTAL ASPECT OF STATE GOVERNMENT AS A PRECONDITION FOR TAKING OVER FEDERAL TERRITORIAL COURT PROCESSES.**

A. **The 1984 amendment elimination of separation of powers**

The UTSCS proudly identifies its power an elimination of separation of powers protections the People of Utah adopted in the 1984 Amendment and that the Utah legislature supported afterward in a state statute. Utah Code 78A-3-103(3).

However, very significantly, in 1979 the Office of Legislative Research and Counsel filed a brief with the UTSCS wholly against integration of the Utah State Bar, against eliminating separation of powers.(Pet. App. 183)

¶79 The 1984 Amendment states that “[t]he Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.” UTAH CONST. art. VIII, § 4. This provision effectively remove the power to oversee the practice of law and attorney discipline from the legislative and executive branches. *[citation omitted.]*

The “by rule” part is unenforceable without all three branches.

This Court’s orders are unenforceable as they have been for forty years. (*Myton, Ute, infra.*)

B. **The United States Enabling Act of 1894 section 3.**

Congress’ Enabling Act of 1894 states in section 3.

The Constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not to be repugnant to the Constitution of the United States and the principles of the Declaration of Independence.

Sec. 7 specified “legislative, executive, and judicial”

Utah agreed U.S. Const. Article VI and promises and guarantees of Article IV apply in Utah.

C. This Court Has already addressed this issue.

The Guarantee Clause provides: “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.” U.S. Const. art. IV, § 4.

id. § 3 (“New states may be admitted by Congress into this Union ... Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”).

Kerr v. Hickenlooper, 744 F.3d 1156 (10th Cir., 2014)

This Court has held that a “republican form” of government may be adopted in various forms by a State, for example, Arizona’s Constitutional Amendments. *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 135 S.Ct. 2652, 192 L.Ed.2d 704, 83 USLW 4633 (2015).

There is not a SINGLE case supporting a State to amend its Constitution by eliminating three branch separation...much less for the practice of law. NONE.

See, *Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1216-1217, 191 L.Ed.2d 186 (2015) (J. Scalia concurring)

The Framers thus separated the three main powers of Government—legislative, executive, and judicial—... ..To the Framers, the separation of powers and checks and balances were more than just theories. **They were practical and real protections for individual liberty in the new Constitution. ...The Judiciary—no less than the other two branches—has an obligation to guard against deviations from those principles.”**

Most very recently, *Nat'l Labor Relations Bd. v. SW Gen., Inc.* (No. 15-1251 (March 21, 2017) pg. 32 J. Thomas Concurring) held separation of powers protects individual rights and it doesn't matter if the legislature agrees.

That the Senate voluntarily relinquished its advice-and-consent power in the FVRA does not make this end-run around the Appointments Clause constitutional. The Clause, **like all of the Constitution's structural provisions, "is designed first and foremost not to look after the interests of the respective branches, but to protect individual liberty."** *NLRB v. Noel Canning*, 573 U. S. ___, ___ (2014) (Scalia, J., concurring in judgment) (slip op., at 3) (internal quotation marks and bracket omitted). It is therefore irrelevant that **"the encroached-upon branch approves the encroachment."** *Free Enterprise Fund, supra*, at 497 (internal quotation marks omitted). **"Neither Congress nor the Executive can agree to waive" the structural provisions of the Constitution any more than they could agree to disregard an enumerated right.** *Freytag v. Commissioner*, 501 U. S. 868, 880 (1991). **The Judicial Branch must be most vigilant in guarding the separation between the political powers precisely when those powers collude to avoid the structural constraints of our Constitution.**

In, Morrison v. Olson, 487 U.S. 654, 697 (1988) (explaining how separation of powers is a core fundamental to just government to protect citizens from tyranny of the majority)

... we are "a government of laws, and not of men." ...The Framers of the Federal Constitution similarly viewed the principle of separation of powers as the absolutely central guarantee of a just government. In No. 47 of *The Federalist*, Madison wrote that "[n]o political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty." *The Federalist* No. 47, p. 301 (C. Rossiter ed.1961)"

See, *Minor v. Happersett*, 88 U.S. (21 Wall.) 162, 175, 22 L.Ed. 627⁵; *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 115 S.Ct. 1447, 131 L.Ed.2d 328, 63 U.S.L.W. 4243 (1995)(“separation of powers is a structural safeguard”); *Hampton & Co. v. United States*, 276 U.S. 394, 406 (1928)(destroying separation of powers is a “breach of the national fundamental law”⁶.); *I.N.S. v. Chada*, 462 U.S. 963 (1983)(violations occur two way, by interference in a branch’s “constitutionally assigned function” and a branch’s “assumption of a function more proper for another”. ⁷)

The Relief Requested is well justified..

2. THE 1984 AMENDMENT IS VOID *AB INITIO* FOR VAGUENESS

⁵ *Minor, supra* (“ It is true that the United States guarantees to every State a **republican form** of government. [18]The guaranty necessarily implies a duty on the part of the States themselves to provide such a government. **All the States had governments when the Constitution was adopted. In all the people participated to some extent, through their representatives elected in the manner specially provided.**”)

⁶ *Hampton, supra* (“Our federal Constitution and state constitutions of this country divide the governmental power into three branches. The **first is the legislative, the second is the executive, and the third is the judicial, ... it is a breach of the national fundamental law** if Congress gives up its legislative power and transfers it to the President, or to the judicial branch, or if by law it attempts to invest itself or its members with either executive power or judicial power. Id. at 406.) emphasis added.

⁷ *Chada*, (“Functionally, the [separation of powers] doctrine may be violated in two ways. One branch may interfere impermissibly with the other's performance of its constitutionally assigned function. [citations omitted] Alternatively, the doctrine may be violated when one branch assumes a function that more properly is entrusted to another. [citations omitted], This case presents the latter situation.[4]”)

(this issue was not briefed to the UTSCt)⁸

Article VIII Section 4 of the Utah Constitution

The Supreme Court **by rule shall govern** the practice of law, including admission to practice law and the conduct and **discipline of persons admitted to practice law.**

Without knowing the scope of the 1984 amendment, the People could not make an informed decision and the 1985 Amendment is *void ab initio*. Undoubtedly, the UTSCt understood this when it was enacted.⁹

Prior Precedent decides this issue. See, *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991) struck down a Bar discipline based on a vague rule that provided no notice to the lawyer that his conduct was forbidden.

In *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 115 S.Ct. 1223, 131 L.Ed.2d 94 (1995) this Court ruled that a retirement plan amendment was “*void ab initio*” holding that the standard reservation clause contained in *Curtiss-Wright's* plan constitution ...is too vague” under ERISA.”

II. THIS COURT SHOULD ACCEPT THIS PETITION DUE TO THE UTSCt USURPING U.S. SOVEREIGNTY RENDERING IF A NULLITY IN UTAH STATE COURTS FOR 40 YEARS.

⁸ However, Petitioner believed and briefed the amendment’s “shall” and “by rule” sections as why the case should be dismissed for Prosecutorial misconduct. Mr. Larsen did also.

⁹ *Call v. City of West Jordan*, 727 P.2d 180, 183 (Utah, 1986)(Notice, to be effective, must alert the public to the nature and scope of the ordinance that is finally adopted. Id. at 200. We therefore hold that the West Jordan, Utah, Ordinance 33, § 9-C-8(2) (1975), is invalid and void ab initio.)

This disbarment is a way for legally unrestrained UTSC and state judges to do an end run around U.S. Supremacy. Have the Prosecutor kill the messenger arguing against favored majoritarian interests in Utah, then one need not worry about suits arising challenging state authority over Indian lands

The Enabling Act by Sec. 3 Irrevocable Ordinance, second, states

Second. That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof; and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States;

A. JUDGE, NOW JUSTICE GORSUCH, OF THE TENTH CIRCUIT COURT ESTABLISHED UTSC AND COURT'S PATTERN AND PRACTICE, OF IGNORING OR VIOLATING UNITED STATE SUPREMACY IN LAW AND U.S. COURT ORDERS FOR FORTY YEARS.

1. Judge, now Justice Gorsuch, identified in two Tenth Circuit cases in 2015 and 2016 that for 40 years Utah has ignored federal law and federal court orders. *Ute Indian Tribe of the Uintah & Ouray Reservation v. Myton* (10th Cir. No. 15-4080, August 9, 2016, page 3). (40 years goes back to the 1985 amendment eliminating three branch supervision of lawyers and judges.)

Yet here we are, **forty years** in, issuing our seventh opinion in the Ute line and **still addressing the same arguments we have addressed so many times before.** ... Once more, we expected this boundary dispute to march expeditiously to its end. Yet just last year the State of Utah and several of its counties sought to relitigate those same boundaries. And now one of its cities tries to do the same thing today. **Over the last forty years the questions haven't changed — and neither have our answers. We just keep rolling the rock.** “

The “rock” is “still rolling”. Check out UTSCOT recent opinion in *Harvey. v. Ute Indian Tribe of Uintah & Ouray Reservation*, 2017 UT 75 (Utah, 2017) again defining Indian Court jurisdiction in a *state court* trying to act as a federal court, that Congress *expressly prohibits* in the Indian Civil Rights Act 25 U.S.C. 1321-1326. Also while not an Indian case, but one involving federal land and a Utah political subdivision, and see what the UTSCOT and “absurdity doctrine” can do. See, *Garfield Cnty. v. U.S.*, 2017 UT 41 (Utah, July 26, 2017).

2. As Judge Gorsuch identified in 2015, *Indian Tribe of the Uintah & Ouray Reservation v. Utah*, 790 F.3d 1000, 1003 (10th Cir., 2015) (“Ute”) it was seriously argued

“state officials chose “to disregard the binding effect of the Tenth Circuit decision in order to attempt to relitigate the boundary dispute in a friendlier forum.” *Id.* As a vehicle for their effort, they decided to prosecute tribal members in state court for conduct occurring within the tribal boundaries.”

While seriously arguing “the Tribe may not exercise authority over any lands in Utah because (in part) the State was once “a separate, independent nation, the State of Deseret” with “its own *Constitution*”. *Ute, supra*, at 1006.

(i). UTSCOT ERROR.

The ABA adopted rule 8.5 as a jurisdiction limit on prosecutors. It is not reported in the Order correctly. UTSCOT relies on rule 8.5(a) to the total elimination of Petitioner’s reliance on Rule 8.5(b).

(ii) THE UTSCOT CLAIMS TOTAL JURISDICTION TO DEFINE ALL UTAH STATE LAWYER MISCONDUCT IN ALL JURISDICTIONS BY RELYING ON THEIR BAR RULE.

Rule 8.5(a) The Disbarment Order claims jurisdiction over ALL conduct of ALL

Utah State Bar members, that by rule 14-506(c) includes judges, in ALL jurisdictions, for ALL “in court” activities, even if they have a license also in Alaska. Par. 70.

a “lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer’s conduct occurs.” UTAH R. PROF’L CONDUCT 8.5(a).

(Pet. App. 0028)

Rule 8.5 Comment 1 states it is for “reciprocal discipline”.

Petitioner relies Rule 8.5(b), comment [5] and [7] identify when the state “SHALL NOT” discipline a lawyer.

Comment [5] was relied on by this Petitioner.

So long as the lawyer’s conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

FIVE U.S. COURT orders deny sanctions as proof I was conforming to the rules of the jurisdiction where I reasonably believed the predominant effect would occur.

Myton and Ute’s rulings identify the Petitioner did not, could not, “reasonably believe the predominant effect would be” in Utah state courts.

Further 8.5 comment [7] explains that jurisdictions involving nation to nation or government to government contracts are outside of state jurisdiction. Here the Navajo Nation Indian Self Determination Judicial Program contract expressly eliminates state law within the Navajo Nation where the initial cases arose. For federal claims, the proper court is still U.S. District court, not Utah.

Judge Jenkins Order of 2011 spells out the VERY important question here, and unfairness to the lawyer working in U.S. Courts under the

UTSCT view. Pet. App. 50-51. (This disbarment matter is a relitigation of U.S. District Court orders involving this Petitioner's conduct, based on her speech and client associations, already ruled in her favor FIVE times.)

This case is simply an end run around U.S. Supremacy. See below.

CONCLUSION: The 1984 amendment eliminating legislature and executive policing activities, eliminates enforcement of United States Supremacy, and invades a subject matter jurisdiction eliminating state courts defining Indian court jurisdiction under the guise of defining the states jurisdiction, while refusing to read their own rule 8.5(b) and falsely claiming multiple jurisdictions agree with the UTSCT's reading of rule 8.5(a) as if (b) did not exist. Nonsense. Ruled on in *Myton and Ute*.

The Disbarment is void as the 1984 Amendment eliminates Congress' Enabling Act Sec. 3 "irrevocable ordinance" restraints for Utah to exercise any authority in Utah's Indian Country except as specifically provided by Congress. **The subject matter of the disbarment case, i.e. defining Navajo Court jurisdiction in BOTH underlying cases, exceeds Utah's subject matter jurisdiction, and its own Rule 8.5(b) and comments. *It is void ab initio*.** See *Rose v. Himely*; 4 Cranch 241, 2 L ed 608 (1808); *Pennoyer v. Neff* 95 US 714, 24 L ed 565 (1877); *Thompson v. Whitman* 18 Wall 457, 21 L ED 897 (1873).

III. THIS COURT SHOULD ACCEPT THIS PETITION BECAUSE UTAH'S SOVEREIGNTY IS ELIMINATING THIS COURT'S SOVEREIGN JURISDICTION AND IS CONTRARY TO PRIOR PRECEDENT.

The U.S. Constitution's separation of powers and Article IV's mandates enacted in Congress' Enabling Act of 1894 are the "floor" of rights beneath which any State action becomes *void ab initio*.

A. This Court's sovereign duty and authority ensure U.S. law and Court orders are protecting Utah Bar members is eliminated in Utah.

UTSCT Justice Durham, now retiring to head Brigham Young University's law school, once wrote that the "floor" of "rights" beneath which states cannot go is the U.S. Constitution. (just not applicable to Utah lawyers.) *State v. Briggs*, 199 P.3d 935 ¶ 26 (Utah 2008).

¶ 26 Nevertheless, the protections in the federal Constitution provide a constitutional floor, which, if Utah's Constitution or laws provide a lesser level of protection, renders interpretation of Utah's Constitution unnecessary.²⁶ In other words, if the challenged state action violates the federal Constitution, we need not reach the question of whether the Utah Constitution provides additional protection; we may instead resolve the case with reference only to the federal Constitution.

Congress' Enabling Act section 19 guarantees the U.S. Constitution's Article VI supremacy while guaranteeing Article IV individual protections.

all laws in force made by said Territory at the time of its admission into the Union shall be in force in said State, except as modified or changed by this act or by the Constitution of the State; **and the laws of the United States shall have the same force and effect within the said State as elsewhere within the United States.**

What happened with the elimination of oversight of two branches? When the cats away the mice will play.

B. This Court's ability to enforce U.S. Constitutional protections in Utah is a nullity without three branch protections for lawyers.

If this Court were to rule merely the UTSCOT plan is unconstitutionally void, how would it enforce it without three branch government? It could not do so.

These de facto rules were addressed with the motion for discretionary review.

UTSCOT DEFACTO RULES OF LAWYER DISCIPLINE

First, Utah's Prosecutor will target any lawyers and judges he believes is committing "misconduct". Not well liked anyway, right? Whoever controls lawyers mouths by financial or professional intimidation controls your rights too, and that goes for Utah State Bar members who are judges also.

Second, no Utah lawyers will have three branch separation of power protections ensuring U.S. Constitutionally conforming Rules of regulations, from a legally unrestrained Supreme Court by Utah Constitutional Amendment who adopts unconstitutional rules.

Third, Utah State Bar members will pay for their own prosecution and have no elected Commissioners participating in the lawyer regulation scheme.

Fourth, Utah lawyers are prohibited from having prosecutorial misconduct defenses with no rules delegating to District Courts authority over the Prosecutors, and the Supreme Court ignoring Rules violations, or claiming they were not articulated properly.

Fifth, Utah lawyers are prohibited from having any impartial triers at any stage of the process. The State Supreme Court authorizes the Prosecutor to prosecute all lawyers on screening panels, rules committees, Bar commissioners, and the judges for their bench activity under Rule 14-506(c)

Sixth, Utah lawyers are prohibited from having any adversarial trial. (In re Strong, Utah 1980)

Seventh, Utah lawyers carry the entire burden of proving their innocence, while the State Supreme Court eliminates the Prosecutor's burden of proof entirely. by adopting a civil standard that by civil rules, shifts the burden to the defending lawyer. (See In re MacFarlane, 1960 J. Wade dissent)

Eight, any lawyer assisting a targeted lawyer can be prosecuted similarly, creating an unwaivable conflict between the two. (as happened here).

Nine, no Utah lawyer will have the ability to petition the Utah Supreme Court prior to final judgment charging lack of jurisdiction, and lack of U.S. Constitutional Due Process.

Ten, ALL Utah State Bar members are subject to the Prosecutor's discipline no matter where they practice.

Eleven, the UT SP CT no longer entertains U.S. Constitutional challenges to their rules. Those go to a UT SP CT ad hoc committee, upon which sets the Prosecutor, and not during litigation. *In re Steffesen, supra.*

The UTSC is very well aware that a) there are no public notices informing Utah lawyers of these defacto rules; b) these defacto rules are opposite this U.S. Supreme Court U.S. Constitutionally defined lawyer regulation standards identified previously.

C. UTSC violates, ignores, this Court's prior precedents regarding *this* Bar integration situation. (this issue was not briefed to the UTSC) This issue applies here as another evidence of how patently unconstitutional the system is.

Under *Aboud v. Detroit Board of Education*, 431 U.S. 209 (1977) this Court also held at 233-235,

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein [citations omitted]. These principles... are no less applicable to the case at bar, and they thus prohibit appellees from requiring any of the appellants to contribute to support of an ideological cause he may opposed as a condition of holding a job as a public school teacher.

Summary

The fact of the matter is simple. Because the UTSCOT has all the authority over the practice of law of Utah State Bar members—it has an affirmative duty- to know this U.S. Supreme Court and federal court's U.S. Constitutional lawyer discipline standards. It is fakery for the UTSCOT to act as if it doesn't know the law is and should be, given Utah's banks of lawyers at their disposal.

This Petitioner is claiming the UTSCOT did and does know the U.S. standards. They do understand the separation of powers totally eliminating two for one's totalitarian control is unconstitutional and has never been upheld as here. The UTSCOT could choose individual rights. They chose power. The UTSCOT could have chosen to allow citizen's ready access to zealous advocates. They chose power to silence them. Now they wish to make committees to make a list of acceptable lawyers for appeal of indigents.

Can ANY one tell this Petitioner what greater judicial misconduct can exist than for an entire state supreme court who took an oath to uphold the U.S. Constitution, and Utah's constitution, to eliminate both and eliminate United States Supremacy in the practice of law, of the U.S. Constitution, of federal laws, in Indian affairs? The situation needs the relief or similar relief immediately.

It is time the U.S. Constitution and God's -given individual rights (Declaration of Independence) comes to Utah, for everyone. It is a very sad place without individual value. **It is an incredibly serious situation that has eliminated or disciplined HUNDREDS of lawyers unconstitutionally and my research shows so as to restrain trade in behalf of large firms and big money and power interests.**

CONCLUSION

For all the foregoing reasons, this Petition should be accepted.

/s/ Susan Rose,  as signed this December 4, 2017.

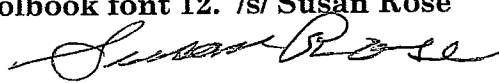
Filing for leave to file *in forma pauperis*.

Filing *pro se*

CERTIFICATE OF GOOD FAITH.

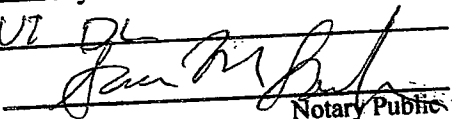
Petitioner is filing this Petition in Good Faith as a proud member of this United States Supreme Court Bar. She is hoping this Petition will free Utah from the shackles of tyranny, as spelled out here. So signed this December 4, 2017 /s/ 

CERTIFICATE OF WORD COUNT. Beginning with Statement of the case, there are 7901 words including footnotes, using Wordperfect word counter, using Century Schoolbook font 12. /s/ Susan Rose

 12-4-17

State of UT
County of Salt Lake

Subscribed and sworn/affirmed to before me
this 4 day of December 20 17,
by UT DL


Notary Public

My Commission Expires 3/3/2020

