

# Capitol-ism

Thursday February 23, 2006

## Special Report: Amendment E

### Judicial Harassment Disguised as Accountability

#### bul·ly

Pronunciation: 'bu-lē,

Function: *noun*

**2a: a blustering browbeating person**

**It will be listed on this fall's ballot as Amendment E.** Proponents like to use an acronym J.A.I.L. (Judicial Accountability Initiated Law). There are many other descriptions for it but this is a family publication. Well, assuming readers are fond enough of their families to protect them from dire boredom, this still strives to be a publication of reasonable decorum.

**Amendment E is an attempt to institutionalize the harassment of judges (and many others), should they offend an individualized and ephemeral notion of justice.** It has been brought to South Dakota by an activist from California who is using this state's initiative laws to establish a victory he hopes will spread across the nation. *[Note - Capitol-ism believes the trend of using South Dakota as a beachhead for experimental laws will continue, given the low number of signatures required to place an initiative on the ballot, the lack of geographical distribution requirements for those signatures and low cost media making campaigns very cost efficient].*

**How it would work.** In case it has escaped notice to this point, the South Dakota Chamber of Commerce is opposed to Amendment E. Here is what this amendment will do.

**Amendment E will create a super grand jury** that can strip judicial immunity from judges or other public officials, thereby allowing civil suits to be filed against these individuals. The super grand jury will be established in the state's constitution to have the power to determine "both law and fact", meaning if the grand jury doesn't like the restraints of current law, they can make it "right". This is an echo of jury nullification attempted several years ago that would have allowed juries to arrive at any verdict, regardless of legal restraints.

**Who can serve on the Super Grand Jury?** Anyone who is a citizen at least 30 years old and has been in South Dakota for 2 years. Those excluded are "any appointed or elected official members of the State Bar, Judges (active or retired) judicial prosecutorial and law enforcement personnel." The only other exclusions are people judged to have mental incapacity, imprisonment, or parole from a conviction of felonious crime against persons.

**Business pays the costs.** The Super Grand Jury members will be paid the same rate as judges. The initiative demands a funding level of twice the annual pay of the 13 jurors and requires that the funds be raised by the imposition "*appropriate surcharges upon the civil court filing fees of corporate litigants as necessary to supplement the funding of this amendment.*"

**Not Just Judges.** The reach of Amendment E goes well beyond judges. There are numerous boards and commissions that regular citizens (including your employees and yourself) serve on that have some level of judicial immunity. Official actions of boards of equalization or planning commissions have the same protection again harassment granted through "quasi-judicial" immunity.

The Chamber has been given a copy of several emails during which proponents discuss how the Super Grand Jury can be used to address the actions of any level of government. Don't like a zoning decision? The remedy is straight forward, file a lawsuit and if the judge throws it out, you can take him and the zoning board to the super grand jury seeking the right to file lawsuits against them.

Because the 13 members of the Super Grand Jury will be the sole determiners of both law and fact, it would be good if they were members of your immediate family (although it might be good to avoid ex-spouses, especially for those owing back child support). While intended to bring some comedic relief to this horrid topic, the comment above is designed to point out the peril of this proposal. It will be people offended by the courts, regardless of their own accountability, that will use this system to exercise their angst endlessly.

**An End to UCC?** The anger of proponents toward the current system of governance extends well beyond the judiciary. Quoted below you will find the dim view they take of the corporate world and the laws used to govern commerce (Warning - you are about to read a portion of a newsletter answering a question about the UCC, you will read some phrases taken from the Declaration of Independence - and mangled badly):

*The unauthorized corporate power that has overtaken the People has been "the patient sufferance of [America]" for many decades; "*

*The history of the present [unauthorized corporate power] is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over [this country]."*

*Yes, Loma, we \*/do/\* "hope that all of you have studied history and understand that we are being ruled under UCC corporate law"*

*\*\_J.A.I.L.\_\* is the means by which the People will carry out their duty to alter or reform government today, The People will settle for nothing less than a Constitutional Republic, a republican form of government -- \*\_NOT\*\_ A DEMOCRACY!*

**Rough Tactics.** During this legislative session, opponents to Amendment E brought forward a resolution urging voters to reject the proposal. During debate on the resolution, several Senators and Representatives discussed receiving hundreds of emails decrying their position. The overwhelming majority of these emails are from out-of-state and many of them are rude.

Proponents have sent letters to all legislators demanding they confirm whether they support Amendment E or oppose it. These letters give a deadline and conclude by saying if the group does not hear from a legislator by the deadline, they will be listed on their website as being an opponent. These are not the actions of a respectable advocacy (see definition above).

The Chamber has received one such email which featured a complaint about a particular court proceeding and had a long list of accusations the sender claims are being ignored by the courts. It is this level of discontent that will be endlessly brought forward, should Amendment E become law.

Conclusion: Capitol-ism believes it was Mark Twain that said *"it ain't what a man don't know that makes him dangerous . . . it's what he do know that ain't so"*

Clouded by a misreading of the founding father's intention and a complete distortion of the elegant expressions in the Declaration of Independence, the proponents of Amendment E have brought forward a proposal that would not be worth brief banter, except for the fact that the initiative process has brought it perilously close to becoming law.

**Amendment E is dangerous.  
The Chamber encourages members to oppose it.**