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I'm Just a Bill: Citations to Legislative History by the Arizona Supreme Court and Utah Supreme Court

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Professor Penny A. Hazelton
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I. Introduction

As every generation has stated before (with feeling), we live in a time of great change. Bob Dylan said it best, “the times they are a-changin’”.¹ Granted, he probably did not have legal research and legislative histories in mind, but perhaps he should have. One can now easily find case law and statutes online.² Legislative history materials are not lagging too far behind. As more legislative materials become available electronically, how, if at all, have citations to these materials changed in the state courts? This question raises another question, how have the state courts treated legislative history historically? Finally, what cases or statutes authorize the use of legislative history at the state level?

This research begins as an attempt to survey the fifty states for their respective treatment of legislative history in the highest state courts, with the idea that certain trends and common history would emerge. From this beginning, the research project approached the citations to legislative history by the state courts, within set time parameters. In order to limit the scope of research to something meaningful yet manageable, this paper will be limited to two states, Arizona and Utah.³ The study will look at citation by the Arizona Supreme Court and Utah Supreme Court for three different years, 1972, 1992, and 2012. These twenty-year increments were chosen in order to paint as broad a picture as possible for comparison over the years, paralleling the developments in online legal research.

This paper looks first at the history of the use of legislative history by the state courts and attempts to find the original cases and statutes permitting its use. The second part will look at the citations to legislative history in Utah and Arizona, comparing the citations from the years 1972, 1992 and 2012. Finally, in part three, this paper will address the implications in education and for law libraries.

This paper makes no attempt to delve into the concept of statutory construction or to analyze any schools of thought on the subject or canons of construction. Instead, the focus is on what legal information was and is available, and how it was and is utilized by the courts.

¹ Bob Dylan, *The Times They Are A Changin'*, Warner Bro. Inc., 1963, available at <http://www.bobdylan.com/us/songs/times-they-are-changin..>

² *Listings by Jurisdiction*, Legal Information Institute, Cornell University Law School, <http://www.law.cornell.edu/states/listing>.

³ These two states were, for the most part, randomly selected, but the decision was influenced by the interesting case readings that came out of part I, looking at the historical treatment of legislative history in each state.

Studies of court citations and the legislative history research process have become important areas of research today. It is the business of law librarians to know the legislative process and what documents come out of this process. They must also know how and where to find these documents. Researchers delve into citation studies to better understand court reasoning. For law librarians, this information is vital to understand what the education needs of students really are. Do they need to know legislative history research? Citation studies also arm law librarians with the some of the information needed to make collection development decisions. Does our library need to preserve copies of these documents? Finally, these studies provide insight into access and preservation. Digitization of these materials allows for greater access, but does digitization preserve these materials?

II. A Brief History

a. Legislative History Defined

Legislative history is defined as, “The background and events leading to the enactment of a statute, including hearings, committee reports, and floor debates. Legislative history is sometimes recorded so that it can later be used to aid in interpreting the statute.”⁴ Or legislative history can simply be defined in terms of the output, “The legislative history of a law include any and all public documents relating to the law when it was still a bill in the legislature.”⁵ The documentation that can come out of the legislative process can include, “floor debates, planned colloquies, prepared statements on submission of a bill, statements in committees by relevant executive branch administrators, committee reports, transcripts of discussions at committee hearings, statements and submissions by interested persons, committee debates on “mark-up” of bills, conference committee reports, analyses of bills by legislative counsel and administrative departments, amendments accepted and rejected, executive branch messages and proposals, prior and subsequent legislation dealing with the same subject matter, recorded votes”.⁶

The materials produced by state legislatures as a product of the legislative process differs greatly from state to state. For example, the Louisiana State Law Institute produces *exposès des motifs*⁷ whereas New York produces relatively little documentation, requiring researchers to resort to the governor’s file.⁸ Also,

⁴ Black’s Law Dictionary (9th ed. 2009), legislative history.

⁵ Bart M. Davis et. al., *Use of Legislative History: Willow Witching for Legislative Intent*, 43 Idaho L. Rev. 585, 586 (2007).

⁶ Jos R. Torres & Steve Windsor, *State Legislative Histories: A Select, Annotated Bibliography*, 85 Law Libr. J. 545, 546 (1993).

⁷ Brian Huddleston, *Louisiana Legislative History Resources*, 30 Legal Reference Services Q. 42, 47.

⁸ William H. Manz, *If It’s Out There Researching Legislative Intent in New York*, N.Y. St. B.J., March/April 2005, at 43, 46.

not all of the materials are created for the purposes of later use in ascertaining intent. The Minnesota legislature specifically states that the statements of legislators are not to be used for determining legislative intent.⁹

The use of the phrase “legislative history” also differs in usage, with the meaning evolving over time. Some courts, specifically in early cases, use the phrase simply to refer to the “chronology of textual changes on the face of the state code”.¹⁰ For example, this meaning is used by the Supreme Court of Tennessee in 1868, “Until the present instance, there has not been, in the legislative history of the State, any departure from it, known to this Court.”¹¹ This is a far cry from the general meaning and usage today.

While this paper does not purport to offer an exhaustive historical survey of the treatment of legislative history throughout the history of this country, it is useful, before reviewing and analyzing citations to these materials by modern courts, to have a basic understanding of the historical context.

The original thirteen states inherited much from England including its prohibition against the use of legislative history from England.¹² Sir William Blackstone argued that the practice of equitable interpretation, looking to both the letter and the spirit of the law, permitted the judiciary to reshape the law, usurping power from the legislature.¹³ To interpret statutes, the British courts had for some time looked at the common law, the mischief to be remedied, the remedy decided upon by Parliament, and the true reason of the selected remedy.¹⁴ We will see versions of this test in early state case law.

Then Court of the King’s Bench decided *Millar v Taylor* 1769, abandoning the practice of equitable interpretation. The British “exclusionary rule” originated in this case when the court prohibited the use of parliamentary debates.¹⁵ The court stated, “The sense and meaning of an Act of Parliament must be collected from what it says when passed into law, and not from the history of changes it underwent in the House where it took its rise. That history is not known to the other house or to the Sovereign.”¹⁶

⁹ George R. Jackson, *Minnesota Legislative History*, 30 Legal Reference Services Q. 62, 65 (2011).

¹⁰ Jos R. Torres & Steve Windsor, *supra* note 6, at 547.

¹¹ *Keese v. Civil Dist. Bd. of Educ.*, 46 Tenn. 127, 132 (1868).

¹² Matthew B. Todd, *Avoiding Judicial in-Activism: The Use of Legislative History to Determine Legislative Intent in Statutory Interpretation*, 46 Washburn L.J. 189, 193 (2006).

¹³ *Id.* at 198.

¹⁴ M.B.W. Sinclair, *Legislative Intent: Fact or Fabrication? Dynamic Statutory Interpretation by William N. Eskridge*, (Harvard University Press, Cambridge, 1994), 41 N.Y.L. Sch. L. Rev. 1329, 1330 (1997).

¹⁵ Holger Fleischer, *Comparative Approaches to the Use of Legislative History in Statutory Interpretation*, 60 Am. J. Comp. L. 401, 416-17 (2012).

¹⁶ *Id.* at 437 (citing to *Millar v. Taylor* (1769) 4 Burr 2303, 2332 (Willes J) (KB)).

This rule remained in effect in the United Kingdom until 1992, when court in *Pepper v. Hart* allowed for a limited exception for the statements by ministers disclosing the mischief the statute intended to remedy.¹⁷

This prohibition drove the treatment, or lack thereof, of legislative history by the courts for some time (until well after the Civil War), creating the principle that judges should discern only the plain meaning from the language of the statute.¹⁸ In fact, scholarly literature in 1930 discussed the fragmented and changing treatments of legislative history, stated that, “In the United States, there is no general agreement.”¹⁹

Courts very early on faced a conundrum; the language of the statute did not seem to have one plain meaning to interpret. In fact, the English language makes this a particularly common problem with words almost always having multiple meanings.²⁰ How then did the courts find meaning in ambiguous statutory language?²¹

Early state cases looked at “the history of the time” and similar variants.²² For example, “But, as has been said, if there were doubt as to the construction which should be given to this statute upon its wordings, we could have recourse to information derived from the *history of the country* as to the evil intended to be remedied, for the purpose of aiding us in giving the correct construction: we could also call to our aid for the same purpose the title to the act.”²³ Other variants include “the history which led up to its enactment” or simply “history”.²⁴ While not specifically relying on legislative history, this at a minimum signifies a shift

¹⁷ Nicholas M. McLean, *Intersystemic Statutory Interpretation in Transnational Litigation*, 122 *Yale L.J.* 303, 309 (2012).

¹⁸ Fleischer, *supra* note 15, at 421.

¹⁹ Max Radin, *Statutory Interpretation*, 43 *Harv. L. Rev.* 863, 872 (1930).

²⁰ Stacey L. Gordon & Helia Jazayeri, *Lost Legislative Intent: What Will Montanans Do When the Meaning Isn't Plain?*, 70 *Mont. L. Rev.* 1, 2 (2009).

²¹ Many of the states have early cases considering the meaning of constitutional provisions and looking to the constitutional convention. See R.E.H., Annotation, *Resort to constitutional or legislative debates, committee reports, journals, etc., as aid in construction of constitution or statute*, 70 *A.L.R.* 5 (Originally published in 1931).

²² Adrian Vermeule, *Legislative History and the Limits of Judicial Competence: The Untold Story of Holy Trinity Church*, 50 *Stan. L. Rev.* 1833, 1836 (1998).

²³ *Dyer v. State*, 19 *Tenn.* 237, 254 (1838) (emphasis added).

²⁴ See *Prowell v. State*, 142 *Ala.* 80, 39 *So.* 164 (1905); *Ellet v. Campbell*, 18 *Colo.* 510, 33 *P.* 521 (1893) *aff'd*, 167 *U.S.* 116, 17 *S. Ct.* 765, 42 *L. Ed.* 101 (1897); *Mayor of Savanna v. Hartridge*, 8 *Ga.* 23 (1850); *Curry v. Lehman*, 55 *Fla.* 847, 47 *So.* 18 (1908); *Funk v. St. Paul City Ry. Co.*, 61 *Minn.* 435, 439, 63 *N.W.* 1099, 1101 (1895); *Sw. Missouri Light Co. v. Scheurich*, 174 *Mo.* 235, 73 *S.W.* 496 (1903); *State v. Hallock*, 16 *Nev.* 373 (1882); *Stanyan v. Town of Peterboro*, 69 *N.H.* 372, 46 *A.* 191, 192 (1898); *Tafoya v. Garcia*, 1 *N.M.* 480, 483 (1871); *Cain v. State*, 20 *Tex.* 355, 363 (1857); *Hackett v. Amsden*, 56 *Vt.* 201, 203 (1883); *Prince v. Skillin*, 71 *Me.* 361 (1880); *Broadnax v. Thomason*, 1 *La. Ann.* 382, 384 (1846) *Prowell v. State*, 142 *Ala.* 80, 39 *So.* 164 (1905).

away from reliance solely on the language of the statute and introduces permission to consult extrinsic aids.²⁵

The original British equitable interpretation looked at, among other things, the mischief to be remedied.²⁶ This is also seen in many early state cases, as the courts began to look beyond the language of the statute itself for meaning.²⁷ One case even looked at the “spirit” or “cause which moved the legislature to enact it.”²⁸ Again the British equitable interpretation language is mirrored in the changing American case law.

Some early cases even looked to “legislative history of the time”, using the phrase “legislative history” differently than it is generally used today. In these early cases, the phrase again meant a general history of the legislation of the state. For example, “That such was the fact, we are informed by our own recollection of the legislative history of the times”.²⁹ In rare instances, the phrase referred to chronology.³⁰ An early Iowa case used “legislative history” to mean the changes in language from old statute to new.³¹ The Supreme Court in Louisiana began to look at “contemporaneous history” and “discussions attendant upon the progress of the legislation through its various stages”, language more harmonious with the modern usage and understanding of legislative history.³²

While not exactly legislative history, these cases are, however, the first step in opening the doors to the use of extrinsic aids. They opened the doors for the courts to continue to the next step, and consider legislative history materials when interpreting statutory language.

It was not until after the Civil War that courts began to diverge from the traditional British treatment of legislative history.³³ The earliest state Supreme Court decision to look at legislative history was *Cass v Dillon* in Ohio.³⁴ This early history looked at constitutional convention debates. The change was slow in many states. Well into the early 1900s, courts were still looking to the context, spirit of the statutes, and the statutes as a whole to ascertain meaning.³⁵

²⁵ Stacey L. Gordon & Helia Jazayeri, *Lost Legislative Intent: What Will Montanans Do When the Meaning Isn't Plain?*, 70 Mont. L. Rev. 1, 12 (2009).

²⁶ Fleischer, *supra* note 15.

²⁷ See *Dekelt v. People*, 44 Colo. 525, 99 P. 330 (1909); *Curry v. Lehman*, 55 Fla. 847, 47 So. 18 (1908); *Newgirk v. Black*, 174 Iowa 636, 156 N.W. 708 (1916); *Chicago, R.I. & P. Ry. Co. v. Gist*, 79 Okla. 8, 190 P. 878, 879 (1920); *France v. Connor*, 3 Wyo. 445, 27 P. 569 (1891) *aff'd*, 161 U.S. 65 (1896); *Clark v. City of Janesville*, 10 Wis. 136, 165 (1860).

²⁸ *Appeal of Neff*, 21 Pa. 243, 246 (1853).

²⁹ *Ex parte Simonton*, 9 Port. 390, 393-94 (Ala. 1839), see also *Chicago*, 190 P. at 879.

³⁰ *Stout v. Bd. of Comm'rs of Grant Cnty.*, 107 Ind. 343, 8 N.E. 222, 224 (1886).

³¹ *City of Burlington v. Kellar*, 18 Iowa 59, 63-64 (1864).

³² *State ex rel. New Orleans Pac. Ry. Co. v. Nicholls*, 30 La. Ann. 980, 983 (1878)

³³ Fleischer, *supra* note 15, at 419.

³⁴ *Cass v. Dillon*, 2 Ohio St. 607, 621 (1853).

³⁵ See *City of Birmingham v. S. Express Co.*, 164 Ala. 529, 51 So. 159 (1909).

Some early state supreme court cases looked at legislative journals. These early journal cases did not look to interpret the statute but instead looked at the journals to determine if the bill had passed following the proper procedures.³⁶ The Louisiana Supreme Court says that the language of a statute cannot be altered unless the court looks to the enrolled bill, to verify that an error did occur, not to the journals.³⁷ Also, in Maryland, New York, California, Kentucky, and New Jersey the engrossed bill was considered authoritative and could not be challenged by looking at the legislative journals.³⁸

In contrast to these engrossed bill cases, Michigan permitted the courts to look at the legislative journals to look at legislative reasoning to the extent that the purpose might be unconstitutional.³⁹ The courts could not use the journals for statutory interpretation by itself, but if the journals revealed a purpose in violation of the constitution, that purpose would be considered.

Some courts eased into the use of extrinsic aids by first starting to look beyond the language of the statute and to the title and the language of other statutes. For example, the Georgia Supreme Court looked at the preamble and the title in 1906.⁴⁰ Several decades before, Tennessee permitted the court to look to the title for guidance.⁴¹

The courts have also set limitations on the use of extrinsic aids. For example, many cases exist prohibiting the testimony of individual legislators. For example, “Testimony to explain the motives which operated upon the law-makers, or to point out the objects they had in view, is wholly inadmissible. It would take from the statute law every semblance of certainty, and make its character depend upon the varying and conflicting statements of witnesses.”⁴² Other states have similar case language.⁴³ Similarly, Maryland, New York and New Jersey prohibit

³⁶ See Moody v. State, 48 Ala. 115 (1872); Harwood v. Wentworth, 4 Ariz. 378, 42 P. 1025 (1895) aff'd, 162 U.S. 547 (1896); McCulloch v. State, 11 Ind. 424, 435 (1858); Auld v. Butcher, 2 Kan. 135, 149 (1863); State v. Frank, 60 Neb. 327, 83 N.W. 74 (1900) on reh'g, 61 Neb. 679, 85 N.W. 956 (1901); State v. Rogers, 22 Or. 348, 364, 30 P. 74, 77 (1892); Southwark Bank v. Com., 26 Pa. 446, 450 (1856); Nelson v. Haywood County, 91 Tenn. 596, 20 S.W. 1 (1892); State ex rel. City of Cheyenne v. Swan, 7 Wyo. 166, 51 P. 209, 214 (1897).

³⁷ De Sentmanat v. Soule, 33 La. Ann. 609, 610 (1881) (but noting enrolled bill was likely lost in Baton Rouge fire).

³⁸ See Fouke v. Fleming, 13 Md. 392, 395 (1859); Standard Underground Cable Co. v. Attorney Gen., 46 N.J. Eq. 270, 277, 19 A. 733, 735 (1890); The People v. Purdy, 1841 WL 4327 (N.Y. Oct. 1841) rev'd sub nom. Purdy v. People, 1842 WL 4532 (1842); Duncan v. Combs, 131 Ky. 330, 115 S.W. 222, 224 (1909); Sherman v. Story, 30 Cal. 253 (1866).

³⁹ Ellis v. Parsell, 100 Mich. 170, 174, 58 N.W. 839, 840-41 (1894).

⁴⁰ J.H. Smith & Co. v. Evans, 125 Ga. 109, 53 S.E. 589 (1906).

⁴¹ Dyer v. State, 19 Tenn. 237, 254 (1838).

⁴² Pagaud v. State, 13 Miss. 491, 497 (Miss. Err. & App. 1845).

⁴³ See State v. Lancashire Fire Ins. Co., 66 Ark. 466, 51 S.W. 633 (1899); Leese v. Clark, 20 Cal. 387 (1862); Stewart v. Atlanta Beef Co., 93 Ga. 12, 18 S.E. 981, 985 (1893); Yoshizaki v. Hilo Hosp., 50 Haw. 150, 433 P.2d 220 (1967); Eddy v. Morgan, 216 Ill. 437, 449, 75 N.E. 174, 178 (1905); Parker v. State ex rel. Powell, 132 Ind. 419, 31 N.E. 1114, 1115 (1892); Tennant v. Kuhlemeier, 142 Iowa 241, 120 N.W. 689, 690 (1909); People v. Marxhausen, 204 Mich. 559, 575, 171 N.W. 557, 562 (1919) holding modified by People v. Goldston, 470 Mich. 523, 682

consideration of the report or statement of the draftsman.⁴⁴ Generally, the understanding of a single legislator is not enough to evidence legislative intent and is therefore not permitted as a source of legislative history.⁴⁵

Interestingly, in 1913, while many courts were still wrestling with the use of legislative history, the New Mexico Supreme Court found that it was proper to consult the Spanish translation of a statute. The translation was made before the act passed and, as many of the legislators functioned predominantly in Spanish, was relied upon by them and thus could be used to determine intent.⁴⁶ Arguably, this is the first use of legislative history by the New Mexico Supreme Court, as a draft bill translation.

While there are certainly limitations to the use of legislative history, as just seen with legislator testimony, and unique twists, as seen in New Mexico, all of the fifty states do permit the use of legislative history to some extent.⁴⁷ A few of the states have statutes authorizing the use of legislative history. Interestingly, Oregon was one of the first states to adopt language permitting the use of legislative history. The language of the current statute, Oregon Revised Statute 174.020, comes from the Deady Code of 1862.⁴⁸ The Deady Code came from the Field Code of 1848.⁴⁹ Important to remember, is that, at the time, legislative history did not mean the same thing as we generally refer to today. The Field Code was also adopted in some form in Missouri, California, Iowa, Minnesota, Indiana, Ohio, Nebraska, Wisconsin, and Kansas.⁵⁰

In contrast to the early entries to the use of legislative history, some states entered late. New Jersey joined the legislative history bandwagon later than many of the other states. In 1955, the *Deaney* court stated that it was permitted to look at the sponsor's statement that accompanies the bill.⁵¹ Rhode Island appears to have also joined the legislative history party late.⁵²

N.W.2d 479 (2004); Dowdy v. Wamble, 110 Mo. 280, 19 S.W. 489 (1892); Tallevast v. Kaminski, 146 S.C. 225, 143 S.E. 796, 799 (1928); Washington Cnty. v. Am. Fed'n of State, Cnty. & Mun. Emp., Council No. 91, 262 N.W.2d 163 (Minn. 1978); In re Murphy, 23 N.J.L. 180, 194 (Sup. Ct. 1851).

⁴⁴ Baltimore Retail Liquor Package Stores Ass'n v. Kerngood, 171 Md. 426, 189 A. 209 (1937), People v. Smith, 28 N.Y.S. 912, 913 (Gen. Term 1894).

⁴⁵ *Testimony of members of the legislature*, 2A Sutherland Statutory Construction § 48:16 (7th ed.).

⁴⁶ Ex parte De Vore, 18 N.M. 246, 136 P. 47, 50 (1913).

⁴⁷ See Appendix for a list of cases and statutes.

⁴⁸ Jack L. Landau, *The Intended Meaning of "Legislative Intent" and Its Implications for Statutory Construction in Oregon*, 76 Or. L. Rev. 47, 57 (1997).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Deaney v. Linen Thread Co., 19 N.J. 578, 584-85, 118 A.2d 28, 31-32 (1955); see also Barbara H. Garavaglia, *Using Legislative Histories to Determine Legislative Intent in New Jersey*, 30 Legal Reference Services Q. 71, 72 (2011).

⁵² Nugent ex rel. Manning v. La France, 91 R.I. 398, 400, 164 A.2d 230, 231 (1960).

In the next section, this paper will look first at the legislative processes of both Arizona and Utah, including the documents produced, and then to the citations to these materials by the Arizona Supreme Court and the Utah Supreme Court.⁵³

III. Legislative History Citations in Arizona

a. Legislative Process

The Arizona legislature website provides links to two different documents describing the legislative process, one written for a young audience and one for adults.⁵⁴ Legislative history research guides can be found from the University of Arizona Law Library, Arizona State University, and the Arizona State Library.⁵⁵ Links to online materials can be found at the Library of Congress' Guide to Law Online Arizona.⁵⁶ Links can also be found from the Maricopa County Law Library.⁵⁷

Arizona elects a new legislature every two years.⁵⁸ They have been consecutively numbered since Arizona became a state in 1912.⁵⁹ The session the first year is called the first regular session and the second year is called the second regular session.⁶⁰

Only legislators can sponsor legislation, but like the federal system, the original proposal may originate just about anywhere.⁶¹ The Legislative Council drafts proposed legislation according to specific standards.⁶² Proposed legislation can be introduced during the first twenty-two days of a regular session or the first ten days of a special session.⁶³

⁵³ These states were selected because of the interesting case readings that came out of part 1.

⁵⁴ Rob Richards, *Arizona Bill* (1977); Randall Gnant, *From Idea to Bill to Law: The Legislative Process in Arizona* (2000); both available at <http://www.azleg.gov/> (on left hand list and called Bill to Law and Bill Process).

⁵⁵ For additional legislative history research guides for Arizona or any other state, see *State Legislative History Guides*, University of Pennsylvania Law School, <https://www.law.upenn.edu/library/research/guides/state-legislative-history.php>.

⁵⁶ *Guide to Law Online Arizona*, Library of Congress, <http://www.loc.gov/law/help/guide/states/us-az.php>.

⁵⁷ *Arizona Research*, Judicial Branch of Arizona, Maricopa County, <http://www.superiorcourt.maricopa.gov/LawLibrary/LegalResearch/ArizonaResearch/azLaws.asp>.

⁵⁸ *Arizona Legislative Manual*, Arizona Legislative Council (2003), 33, http://www.azleg.gov/az_leg_council/documentation.htm (linked at Legislative Manual three quarters down the list of publications).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Gnant, *supra* note 54, at 21.

⁶² *Id.* at 29.

⁶³ *Supra* note 58, at 37.

Measures must be read, per the Arizona Constitution, on the floor of both houses on three different days.⁶⁴ Each reading is associated with specific actions in each house. The third reading in each house is usually involves a vote on the measure.⁶⁵

As with the federal system, much of the work of the Arizona legislature is done in committee. Once assigned to a standing committee, the measure will be considered on its merits in debate, hearings and testimony.⁶⁶ Bills can, and often do, die in committee.⁶⁷

In addition to the standing committee, the Committee of the Whole House or Committee of the Whole Senate (consists of just that, the entire membership of either house) will consider the bill.⁶⁸ It allows for informal debate of measures without those pesky rules of procedure getting in the way.⁶⁹ Once a bill has been reported out of the Committee of the Whole favorable, or “COWed”, it is set for the Senate Calendar or the House Third Reading Calendar, depending on the house it is in.⁷⁰ Bills are passed by a majority of the members of the specific house.⁷¹ The bill then heads to the second house for consideration.⁷²

b. Sources

The legislative process in Arizona leaves a useful paper trail for the researcher to follow. The types of materials created throughout the legislative process will be familiar to researchers of federal legislative history.

The types of legislative history in Arizona are discussed below, including access to this information today. Prior to the online access described below, print versions of the materials had to be consulted and were available at the Arizona State Legislature and the Arizona State Library.⁷³ At the state legislature, documents are held with the Clerk of the Arizona House of Representative and the Senate Resource Center.⁷⁴ Print materials are available at the university law libraries (Arizona State University Law Library and the University of Arizona Law Library), but the collections are not complete.⁷⁵

⁶⁴ *Id.* See also Ariz. Const. Art. 4 Part 2 § 12.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Supra* note 58, at 38. See also David Frishberg, *I'm Just a Bill*, Schoolhouse Rock (1975), <http://www.youtube.com/watch?v=tyeJ55o3E10>;

⁶⁸ *Id.* at 43.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Randall Gnant, *supra* note 54, at 60.

⁷² *Id.* at 63.

⁷³ *Guide to Arizona Legislative History at Arizona's Capital*, Arizona State Library, Archives, and Public Records, <http://www.azlibrary.gov/is/lr/leghist.aspx>.

⁷⁴ *Id.*

⁷⁵ *Arizona Legislative History: Research Guide*. Sandra Day O'Connor College of Law Library, <http://www.law.asu.edu/library/RossBlakleyLawLibrary/ResearchNow/ResearchGuides/ArizonaL>

Session Laws

Session laws are available on the Arizona Legislature website from 1997 to present. Session laws are also available on the HeinOnline Session Laws library from 1864 to present.⁷⁶ Materials previous to this are available in print and microfilm at the State Library and Arizona State University Law Library.⁷⁷

Senate Bills, House Bills

The researcher may wish to consult different drafts of a bill. Bills from 1997 to present are available on the Arizona Legislature website.⁷⁸ Print versions can be found at the Arizona State Library and the bill files can be found with the Clerk of the House of Representative and the Senate Resource Center, but the bill files will be in microfiche except for the latest three years.⁷⁹ Print House and Senate bills are available at the Arizona State University Law Library and the University of Arizona Law Library but their collections are not complete.

Legislative Study Committee Reports

Unfortunately, these reports are not just a simple click away. These reports may be available with the Clerk of the House, with the Secretary of the Senate, at the Legislative Council Library, or in the special collection of the Arizona State Library.⁸⁰

Committee Minutes and Interim Committee Minutes

Minutes are available on the legislature's website from 1997 to present.⁸¹ Pre-1997 requires a trip to the Capitol Building to review the bill and committee files held with the Clerk of the House and Secretary of the Senate.⁸²

Journals

Chronology of actions taken on any given bill can be found in the journals, but not detailed transcripts of activities.⁸³ Coverage begins in 1915 at the State Library and with volume 5 in 1921 for the University of Arizona Law Library and Arizona State University Law Library.⁸⁴

c. Methodology

[egislativeHistoryResearchGuide.aspx](#); Jacquelyn Kasper, *Arizona Legislative History: A Step-by-Step Research Guide*, University of Arizona College of Law Library (2000).

⁷⁶ *Id.*

⁷⁷ *Id.* See also *Guide to Arizona Legislative History*, *supra* note 73.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Guide to Arizona Legislative History at Arizona's Capitol*, *supra* note 73.

⁸⁴ Per respective online catalog searches.

To identify specific citations to legislative history, I began by conducting searches in Westlaw Next targeting these sources.⁸⁵ Once these results were compiled, I checked my research for completeness by conducting a manual review of all cases within the given year to identify any missed citation to legislative history. I then conducted targeted searches within the set years for decisions involving ambiguous statutory language.⁸⁶

Arizona courts generally speak of looking to the plain language of the statute before resorting to canons of construction or legislative history.⁸⁷ The Arizona Supreme Court held in 1942 that it could look into the history of the statute to determine the legislative intent.⁸⁸

d. 1972

In 1972, the Arizona Supreme Court decided 194 cases, only two citing to legislative history sources. This is only 1% of cases citing to legislative history. One of these two citations was to session law and the second citation was to a bill. Of these 194 cases, two look to the plain language of the statute for meaning and do not resort to any legislative history documents.⁸⁹ In total, three cases required statutory interpretation with looking to legislative history. The fourth case cites to a house bill, not for interpretive purposes but to trace facts.

e. 1992

In 1992, the Arizona Supreme Court decided a total of 88 cases. Within these opinions, nine cases cited to legislative history sources a total of twenty-three times. The court cited to legislative history in 10% of cases. The twenty-three citations break down as follows: six citations to bills, 4 citations to committee hearings, six citations to session laws, three to veto messages, and three to debates.

Within the 88 court opinions, four cases determined that the language of the statute was unambiguous and did not warrant a look at legislative history.⁹⁰

⁸⁵ Search terms included basic words including bill, report, committee, session law, journal, legislative history, legislative intent, H.B., S.B., fact sheet. Not surprisingly, these different searches returned results containing many mis-hits.

⁸⁶ Search terms included unambiguous, ambiguity, and legislative intent. I did not check these search results for completeness by again conducting a manual search, so these numbers may not be exhaustive of all cases involving statutory interpretation.

⁸⁷ Arizona Newspapers Ass'n, Inc. v. Superior Court In & For Maricopa Cnty., 143 Ariz. 560, 694 P.2d 1174 (1985)

⁸⁸ State ex rel. Frohmiller v. Hendrix, 59 Ariz. 184, 124 P.2d 768 (1942).

⁸⁹ State Tax Comm'n v. Television Servs., Inc., 108 Ariz. 236, 239, 495 P.2d 466, 469 (1972), Halenar v. Superior Court in & for Maricopa Cnty., 109 Ariz. 27, 28, 504 P.2d 928, 929 (1972)

⁹⁰ See Perini Land & Dev. Co. v. Pima Cnty., 170 Ariz. 380, 383, 825 P.2d 1, 4 (1992); State v. Cuffle, 171 Ariz. 49, 52, 828 P.2d 773, 776 (1992); State v. Diaz, 173 Ariz. 270, 273, 842 P.2d 617, 620 (1992); Achen-Gardner, Inc. v. Superior Court In & For Cnty. of Maricopa, 173 Ariz. 48, 51, 839 P.2d 1093, 1096 (1992).

Twice as many cases cite to legislative history over relying on the language of the statute.

f. 2012

In 2012, the Arizona Supreme Court decided only 39 cases, a drastic decrease from 1992. Of those opinions, eight cite to legislative history. The Court cited to legislative history in 20% of cases, a notable increase from 1992. Of these eight citations, six were to session laws, one to a report, and one to bill fact sheet.

Surprisingly, none of the thirty-nine cases determined that the language of the statute was unambiguous and so did not look at legislative history materials. While the number of cases citing to legislative history continues to increase, the number of cases that found the statutes unambiguous or where the court looked to the plain language of the statute has noticeably dropped. This may suggest the courts general preference for resorting to legislative history for statutory interpretation, or it could indicate that statutes are just not written like they used to be, with clarity and precision.

IV. Legislative History Citations in Utah

a. Legislative Process

The Utah State legislature website provides a basic overview of the legislative process, in addition to being the online home to the more recent legislative history documents.⁹¹ A detailed research guide for legislative history is maintained by the Division of Archives and Records Service, including links to online materials.⁹² Links can also be found at the Library of Congress' Guide to Law Online Utah.⁹³

The legislature in Utah is also a bicameral system with a process similar to that of Arizona. A legislator submits an idea to the Office of Legislative Research and General Counsel to draft the bill.⁹⁴ Once drafted, the bill is introduced, via a first reading, into the Legislature and assigned to a standing committee by the Presiding Officer on recommendation from the Rules Committee.⁹⁵

⁹¹ *Legislative Guide*, Utah State Legislature, <http://le.utah.gov/lrgc/civiceducation.htm>

⁹² *Legislative History Research*, Utah State Archives, <http://archives.utah.gov/research/guides/legislative-history.htm>.

⁹³ *Guide to Law Online Utah*, Library of Congress, <http://www.loc.gov/law/help/guide/states/us-ut.php>.

⁹⁴ *How Ideas Become Bills, Then Laws*, Utah State Legislature, <http://le.utah.gov/documents/aboutthelegislature/billtolaw.htm>.

⁹⁵ *Id.*

The standing committee then holds a public meeting to review the bill and hear testimony.⁹⁶ After this hearing, the bill is returned to the house with a committee report.⁹⁷ “The committee reports the bill out favorably, favorably with amendments, substituted, or that the bill has been tabled.”⁹⁸

The bill is then debated by the full house.⁹⁹ A bill must have thirty-eight votes in the House of Representatives and fifteen votes in the Senate to pass.¹⁰⁰ The Office of Legislative Research and General Counsel then steps in again to prepare the enrolled bill, the bill in final form, that will be submitted to the Governor for signature.¹⁰¹

b. Sources

As in Arizona, the legislative process in Utah leaves a detailed paper trail for the intrepid researcher to follow.

In 1972 and 1992, researching legislative history looked very different. The author in *Finding Utah Legislative Intent*, from 1995 walks his readers through the process of legislative history research. He begins with the statute in the Utah Code Annotated, consults the Laws of Utah and the House and Senate Journals.¹⁰² Consulting the latter two involved a trip to the Utah Supreme Court library if the researcher was not lucky enough to have these print materials in their firm libraries.¹⁰³ The researcher could also have listened to recordings of the debates by requesting the materials at the house or senate administrative offices.¹⁰⁴

Additionally, a listing of legislative history print materials available to the researcher of 1972 or 1992 can be found in Utah Practice Materials. These materials include, from the Legislative Printing Office, The Laws of the State of Utah, Journal of the House of Representatives of the State of Utah, State of Utah Senate Journal, State of Utah Legislative Bill Summary and Status Reports, Digest of Legislation as Enacted by the General Session of the Legislature, and Interim Study Committee Reference Bulletin Report.¹⁰⁵ Other publishers provide the Utah Code Annotated Advance Code Service and the Utah Legislative Report.¹⁰⁶ From this bibliography, a plethora of print materials can be found.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² James G. McLaren, *Finding Utah Legislative Intent*, Utah B.J., Feb. 1995 at 11, 12.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Kory D. Staheli, *Utah Practice Materials: A Selective Annotated Bibliography*, 87 Law Lib. J. 28, 29 (1995).

¹⁰⁶ *Id.* at 30.

These materials, however, were available only at select libraries, and not always easily accessible to the researcher.

The following is a basic breakdown of what legislative materials are available to the researcher today. While the major print resources still exist, much of the materials is available online.

Session Laws

Session laws are available from several resources, including the State Legislature's website from 1998.¹⁰⁷ Westlaw provides coverage from 1990.¹⁰⁸ Full coverage, from 1851 through present is available, with a Utah Public Library Card, via HeinOnline's Session Laws.¹⁰⁹ Print and microfilm/microfiche is available at the Utah State Archives and the State Law Library.¹¹⁰

Working Bills

As stated earlier, bills go through several drafts and many changes are made as they travel through committees and debates. Territorial records are available at the State Archives.¹¹¹ House and Senate bills are available on the state legislature's website from 1990 to present.¹¹² Older bills are available only at the State Archives.¹¹³ The contents of bills are not recorded in the legislative journals.¹¹⁴

Committee Minutes

Committee minutes are available on the legislature's website from 1999 to present. Older minutes are available at the State Archive, but the Archive does not have complete coverage.¹¹⁵ Audio is also available on the Utah State Legislature's website from 2005.¹¹⁶

¹⁰⁷ *Utah Legislative History Resources*, Utah State Law Library, Aug. 2012.

¹⁰⁸ *Id.*

¹⁰⁹ *Utah Session Laws*, Utah Government Publications Online, <http://publications.utah.gov/laws/sessionlaws.html>.

¹¹⁰ *Legislature Laws of Utah*, Utah Department of Administrative Services, Division of Archives and Records Service, <http://archives.utah.gov/research/inventories/83155.html>; Utah Legislative History Resources, *supra* note 93.

¹¹¹ *Legislative History Records*, Utah State Archives, <http://archives.utah.gov/research/guides/legislative.htm>

¹¹² *Utah Legislative History Resources*, *supra* note 107.

¹¹³ *Id.*

¹¹⁴ *Legislature. Senate Journals*, Utah State Archives, <http://archives.utah.gov/research/inventories/409.html>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

Legislative Journals

The Senate and House Journals are available online via the state legislature's website from 1997.¹¹⁷ Print House and Senate Journals are available at the State Archive and the State Law Library.¹¹⁸

Legislative Interim Reports

"Interim Committees study key issues facing the state and recommend legislation for the upcoming session."¹¹⁹ These reports can provide a wealth of useful information for the researcher. These histories are available online via the legislature's website from 1990 and via the State Archive from 1967 to present.

Floor Debates

Recordings of House floor debates begin in 1957 and are available with the State Archive.¹²⁰ Recordings from 1990 to present are available at the House and on the legislature's website.¹²¹

c. Methodology

As with Arizona, I ran targeted searches in Westlaw to identify cases specifically citing to legislative history.¹²² I then verified the completeness of these results by doing a manual review of the court opinions. I included citations found in concurring and dissenting opinions, as well as the main court opinion. I then searched for cases that determined that the statutory language was plain or unambiguous by using targeted searches for key phrases.¹²³

Utah courts first consult the language of the statute to determine legislative intent.¹²⁴ The Utah Supreme Court first permitted the use of legislative history in 1909.¹²⁵

d. 1972

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *About Legislative Committees*, Utah State Legislature, <http://le.utah.gov/documents/aboutthelegislature/committees.htm>.

¹²⁰ *Utah Legislative History Resources*, *supra* note 107.

¹²¹ *Id.*

¹²² Search terms included basic words including bill, report, committee, commission, session law, journal, legislative history, legislative intent, H.B., S.B., Utah laws. Not surprisingly, these different searches returned results containing many mis-hits.

¹²³ Search terms included unambiguous, ambiguity, legislative intent. I did not confirm these search results with a manual review of all cases within the target years.

¹²⁴ *Parkinson v. State Bank of Millard Cnty.*, 84 Utah 278, 35 P.2d 814 (1934).

¹²⁵ *Cooper v. Utah Light & Ry. Co.*, 35 Utah 570, 102 P. 202, 207 (1909) (looking to the proceedings and debates of the constitutional convention for interpretation).

The Utah Supreme Court decided 257 total opinions in 1972, with eight cases, citing a total of thirteen times, to legislative history documents. Legislative history is cited to in only 3% of cases for this year. The citations break down into three categories, resolutions, debates, and sessions laws. The court cited once to resolutions, once to debates, and eleven times to session laws.

In contrast, the court found that the language of the statute was not ambiguous in only two cases.¹²⁶ As expected, the court did not resort to legislative history materials in these cases.

e. 1992

In 1992 the number of opinions diminished significantly from 1972, coming to a total of 98 cases. Of these cases, fifteen cite to legislative history, with a total of twenty-five combined citations. Citations increased to 15% of total opinions. Of these citations, two are to debates and the remaining twenty-three are to session laws.

Additionally, the court found no need to resort to legislative histories, finding the “plain language” of the statute sufficient to determine meaning in seven cases.¹²⁷ This is a significant increase over the two cases from 1972.

f. 2012

The Utah Supreme Court decided 114 total cases in 2012. Of these cases, six cited to legislative history a total of twelve times, a mere 5%. While the percentage of cases citing to legislative history dropped, the variety of citations by type changes notably. Of the twelve citations, only three are to session laws, three are to bill, and six citations are to debates and statements.

In twenty-three cases, the Court found the “plain language” of the statute enough for interpretation, without needing to resort to legislative history.¹²⁸ This is a threefold jump from 1992.

¹²⁶ Of the seven total results for these searches, over half of them dealt with the ambiguity of contract language and thus were not pertinent to this comparison.

¹²⁷ See Versluis v. Guar. Nat. Companies, 842 P.2d 865, 867 (Utah 1992); Citicorp Mortgage, Inc. v. Hardy, 834 P.2d 554, 556 (Utah 1992); Funk v. Utah State Tax Comm'n, 839 P.2d 818, 820 (Utah 1992); State v. Menzies, 845 P.2d 220, 227 (Utah 1992); S. Utah Wilderness Alliance v. Bd. of State Lands & Forestry of State, 830 P.2d 233, 235 (Utah 1992); Andrews v. Utah Bd. of Pardons, 836 P.2d 790, 792 (Utah 1992); Hales Sand & Gravel, Inc. v. Audit Div. of State Tax Comm'n of Utah, 842 P.2d 887, 890 (Utah 1992).

¹²⁸ See Richards v. Brown, 2012 UT 14, 274 P.3d 911, 917; Hooban v. Unicity Int'l, Inc., 2012 UT 40, 285 P.3d 766, 769; Thayer v. Washington Cnty. Sch. Dist., 2012 UT 31, 285 P.3d 1142, 1145-46; VCS, Inc. v. Utah Cmty. Bank, 2012 UT 89, 293 P.3d 290, 295-96; Summit Operating, LLC v. Utah State Tax Comm'n, 2012 UT 91, 293 P.3d 369, 372; In re Adoption of Baby B., 2012 UT 8, 270 P.3d 486, 506 opinion amended and superseded, 2012 UT 35; Alliant Techsystems, Inc. v. Salt Lake Bd. of Equalization, 2012 UT 4, 270 P.3d 441, 448; Westgate Resorts, Ltd. v. Consumer Prot. Grp., LLC, 2012 UT 56, 289 P.3d 420, 424; In re Reinhart, 2012 UT 82, 291 P.3d 228, 232-

For Utah, the numbers demonstrate that as the internet and research online became available (the span between 1972 and 1992), citations to legislative history increased.

V. Implications

The results reveal two very different stories. In Arizona we see a marked increase in the use of legislative history, but in Utah, we see a significant drop.

The increase in citations in Arizona tracked with expectations and increased as access to legislative history materials became more easily accessible. Surprisingly, while the citations increased, the variety of materials cited to decreased noticeably. Also, the percentage of cases citing to legislative history increased, while the number of cases looking only to the language of the statute decreased. Just looking at the overall percentages (combined legislative history citation and cases looking to the statutory language to total cases decided that year), an increase in cases involving some sort of statutory interpretation can be seen.

Legislative history usage in Utah, on the other hand, tells a more complex story. There was a significant citation increase between 1972 and 1992, hinting that as easy electronic access increased, so did citations. The trend did not continue in 2012, where the number of cases citing to legislative history dropped. This drop, however, also includes an increase in different types of legislative history materials. In 1972 and 1992, the citations were predominantly to session laws. However, in 2012, citations to bills and debates greatly outnumbered citations to session laws. While citations decreased, the increase in variety of type of history cited may hint to the fact that better access to these materials is starting to catch on.

These results lead to even more questions. Why are citations not increasing in Utah? Why are citations in Arizona to fewer types of legislative materials? These questions are especially interesting given that a wider array of materials are more accessible now than they have ever been.

a. In Education

33; Turner v. Staker & Parson Companies, 2012 UT 30, 284 P.3d 600, 603; Utah Dep't of Transp. v. FPA W. Point, LLC, 2012 UT 79; In re Guardianship of A.T.I.G., 2012 UT 88, 293 P.3d 276, 288; Lopez v. United Auto. Ins. Co., 2012 UT 10, 274 P.3d 897, 900-01; Utah Chapter of the Sierra Club v. Bd. of Oil, Gas, & Min., 2012 UT 73, 289 P.3d 558, 565; State v. Ruiz, 2012 UT 29, 282 P.3d 998, 1005; Rapela v. Green, 2012 UT 57, 289 P.3d 428, 432; Salt Lake City Corp. v. Jordan River Restoration Network, 2012 UT 84; Whitney v. Div. of Juvenile Justice Servs., 2012 UT 12, 274 P.3d 906, 909; Suarez v. Grand Cnty., 2012 UT 72, 296 P.3d 688, 702, reh'g denied (Jan. 31, 2013); State v. Butt, 2012 UT 34, 284 P.3d 605, 612 cert. denied, 133 S. Ct. 1456 (U.S. 2013); Pioneer Builders Co. of Nevada, Inc. v. K D A Corp., 2012 UT 74, 292 P.3d 672, 686-87; State v. Jimenez, 2012 UT 41, 284 P.3d 640, 643-44; Shurtleff v. United Effort Plan Trust, 2012 UT 47, 289 P.3d 408, 416.

While much scholarly research surrounds legislative history, the focus in basic legal research and writing classes is on the basics: statutes, cases, and legal analysis writing.¹²⁹ This, despite the fact that legislative intent often plays a key role in statutory interpretation and thus the understanding and use of which should be part of the basic skill set for practicing attorneys. Understanding the use of legislative history in the courts and the interpretive process is essential to building and making persuasive arguments before the court.¹³⁰

This concept of legislative history as a core competency is by no means new or original. From the MacCrate report, “The competent lawyer should understand the function of legislative history as a means of statutory construction.”¹³¹ The report continues by enumerating specific abilities, including understanding the components of a legislative history and understanding the criticisms of its use.¹³² Similar requirements can be found in the American Association of Law Librarians Legal Research Competencies, where the student is expected to understand what legal information is created by the different branches of government and be able to identify resources “to locate the legislative, regulatory, and judicial law produced by the respective government bodies”.¹³³

On the other hand, first year law students are bombarded with material they need to learn, and learn quickly. For most, the idea of a case citation and court reporters are new and foreign territory. And legal writing introduces a new and not exactly intuitive way of writing for most 1Ls. Is it really practical to expect new students to master these basics and the intricacies of legislative history research all within the first year?

To fill the gap, many schools now offer advanced legal research and specialized legal research classes as electives. The timing of these options, after the first year, lends itself to better comprehension of more difficult research and methods. However, given the importance of legislative history documents for the practitioner, one might question the reasoning behind offering these courses as electives. Research is the cornerstone behind any legal practice. Future attorneys should no more be able to elect to take advanced legal research as future doctors opting out of studying the cardiopulmonary system or future mechanics the transmission.

¹²⁹ A look at the Index to Perspectives: Teaching Legal Research and Writing, Vol. 1-20 by subject shows the Legislative Materials subject covering more basic topics such as updating the Code, but with a few good articles for federal legislative history documents.

¹³⁰ Marc James Ayers, *Unpacking Alabama's Plain-Meaning Rule of Statutory Construction*, 67 Ala. Law. 31, 32 (2006).

¹³¹ Rhonda R. Schwartz, *Resorting to Extrinsic Aids: North Dakota Legislative History Research*, 30 Legal Reference Services Q. 95, 96 (2011).

¹³² *Id.*

¹³³ AALL *Legal Research Competencies and Standards for Law Student Information Literacy*, American Association of Law Libraries (July 2012), <http://www.aallnet.org/main-menu/Leadership-Governance/policies/PublicPolicies/policy-lawstu.html>.

A possible solution would be to make advanced legal research classes a required part of the law school curriculum. This would save first year students from being overwhelmed by more complex research materials. It would also ensure, at least as much as required courses can, that graduates enter the legal profession with a better understanding of legislative histories. This solution does not address the additional work load making advanced legal research would place on instructors. Perhaps a less daunting solution is to focus on the basics in first year legal research courses, providing an introduction to the legislative process and how to find the best legal research guides. Not every student will need to know the specifics of how to conduct legislative history research in Kansas, but every student does need to know how the legislative process works generally and where to find research guides.

b. In Law Libraries

The trend with government documents, of which legislative history materials are an important part, appears to be a continued increase in digitization.¹³⁴ As more and more of these government documents are made available online through state legislative websites, state archives, and elsewhere, to what extent do law libraries need to keep copies of the materials they have collected? Does every law library in the state really need or want to keep copies of the House Journals and Senate Journals if, probably when, the contents are digitized?

These changes will inevitably have an impact on collection development, especially as libraries face pressures to transition into a workspace rather than as just a place to conduct research and study. With space at a premium, decisions will need to be made to weed out unnecessary items in the collection. Digitization may result in some legislative history materials becoming “unnecessary” during weeding projects, especially as access increases online.

On the other hand, there is, arguably, historic value in many of these materials. For some libraries, in addition to the state law libraries, maintaining copies of historic volumes serves another purpose, that of preserving the official versions or original versions of government documents.

While digitization projects abound, and online access to these state materials increase, there is the risk of assuming that the documents are then preserved in perpetuity. This assumption is a mistake. This debate over digitization and preservation raises many questions. How accurate are the digitized copies? How permanent is the access? What will happen to the official print materials? Can online access really be considered public access for government documents given the digital divide? These questions are all part of

¹³⁴ Fifteen digitization projects for state government documents are currently listed on the ALA website. See http://wikis.ala.org/godort/index.php/State_Government_Information_Projects.

the ongoing debate.¹³⁵ The answers seem to be guided more by budget cuts and necessity than by these more important issues of preservation, authenticity, and public access.

VI. Conclusions

The results of this citation survey contained many surprises. The expectation was that in both Arizona and Utah, the number of citations to legislative history would increase from year to year, due to improved online access. While this was seen in Arizona, Utah actually showed a decrease. However, Utah exhibited a trend toward citing to more types of legislative history being used by the Utah Supreme Court. Whether these trends will continue would make for an interesting continuation to this research.

Addressing those unanswered questions that resulted from this research would be the next step. Looking in detail at preservation of legislative history documents and how digitization is affecting it would be of great interest. Also, further research trends in collection development as a result of the digitization movement would be another interesting follow up to access how access to materials is being provided both today and planned for tomorrow.

¹³⁵ Ken Kozlowski, *Digital Information and Budget Cuts—Preservation in Jeopardy?*, 16 No. 9 Internet L. Researcher 1 (2011); Hollee Schwartz Temple, *Are Digitization and Budget Cuts Compromising History*, Am. B.J., May 2013, http://www.abajournal.com/magazine/article/are_digitization_and_budget_cuts_compromising_history/

Appendix A

Authorizing Statutes/Cases¹³⁶

State	Case/Statute
Alabama	<u>Abramson v. Hard</u> , 229 Ala. 2, 155 So. 590 (1934)
Alaska	<u>City & Borough of Sitka v. Int'l Bhd. of Elec. Workers, Local Union 1547</u> , 653 P.2d 332 (Alaska 1982)
Arizona	<u>State ex rel. Frohmiller v. Hendrix</u> , 59 Ariz. 184, 124 P.2d 768 (1942)
Arkansas	<u>Hill's Adm'rs v. Mitchell</u> , 5 Ark. 608 (1844)
California	<u>S. Pac. Co. v. Indus. Acc. Comm'n</u> , 19 Cal. 2d 271, 120 P.2d 880 (1942), 16 Cal.2d 379; <u>Shafer v. Registered Pharmacists Union Local 1172</u> , 16 Cal. 2d 379, 106 P.2d 403 (1940); <u>Ex parte Goodrich</u> , 160 Cal. 410, 117 P. 451 (1911)
Colorado	<u>People v. Gibson</u> , 53 Colo. 231, 237-38, 125 P. 531, 534 (1912); Colo. Rev. Stat. Ann.. § 2-4-203
Connecticut	<u>Bayon v. Beckley</u> , 89 Conn. 154, 93 A. 139 (1915); <u>Kelly v. Dewey</u> , 111 Conn. 281, 149 A. 840 (1930)
Delaware	<u>Clendaniel v. Conrad</u> , 26 Del. 549, 570, 83 A. 1036 (1912) dismissed, 235 U.S. 712, 35 S. Ct. 203, 59 L. Ed. 437 (1914)
Florida	<u>State v. Amos</u> , 76 Fla. 26, 79 So. 433 (1918)
Georgia	<u>Sharpe v. Lowe</u> , 214 Ga. 513, 518, 106 S.E.2d 28, 32 (1958); <u>Mayor of Savanna v. Hartridge</u> , 8 Ga. 23, 28 (1850)
Hawaii	<u>Pringle v. Bicknell</u> , 22 Haw. 557 (1915)
Idaho	<u>Green v. Wilhite</u> , 14 Idaho 238, 93 P. 971, 973 (1908)
Illinois	<u>Sisk v. Smith</u> , 6 Ill. 503, 518 (1844); <u>Moran v. Bowley</u> , 347 Ill. 148, 155, 179 N.E. 526, 529 (1932)
Indiana	<u>Walter A. Wood Mowing & Reaping Mach. Co. v. Caldwell</u> , 54 Ind. 270, 280 (1876)
Iowa	<u>Des Moines City Ry. Co. v. City of Des Moines</u> , 152 Iowa 18, 131 N.W. 43, 45 (1911); Iowa Code Ann. § 4.6
Kansas	<u>State ex rel. Coleman v. Kelly</u> , 71 Kan. 811, 81 P. 450 (1905)
Kentucky	<u>Adams v. Greene</u> , 182 Ky. 504, 206 S.W. 759, 760 (1918)

¹³⁶ See also Mary Whisner, *Other Uses of Legislative History*, Law Lib. J. (forthcoming Spring 2013); R.E.H., Annotation, *Resort to constitutional or legislative debates, committee reports, journals, etc., as aid in construction of constitution or statute*, 70 A.L.R. 5 (Originally published in 1931)

Louisiana	<u>State ex rel. New Orleans Pac. Ry. Co. v. Nicholls</u> , 30 La. Ann. 980, 983 (1878); <u>Malone v. Cannon</u> , 215 La. 939, 957-58, 41 So. 2d 837, 843 (1949); La. Rev. Stat. Ann. § 24:177
Maine	<u>Inhabitants of Georgetown v. William E. Hanscome & Co.</u> , 108 Me. 131, 79 A. 379, 380 (1911)
Maryland	<u>Maryland Agr. Coll. v. Atkinson</u> , 102 Md. 557, 62 A. 1035 (1906)
Massachusetts	<u>Boston Safe Deposit & Trust Co. v. Comm'r of Corporations & Taxation</u> , 273 Mass. 212, 214, 174 N.E. 116, 117 (1930); <u>Old S. Ass'n in Boston v. City of Boston</u> , 212 Mass. 299, 304-05, 99 N.E. 235, 236 (1912)
Michigan	<u>Ellis v. Parsell</u> , 100 Mich. 170, 174, 58 N.W. 839, 840-41 (1894); <u>Miles v. Fortney</u> , 223 Mich. 552, 194 N.W. 605 (1923)
Minnesota	<u>In re Lis' Estate</u> , 120 Minn. 122, 139 N.W. 300 (1912); Minn. Stat. Ann. § 645.16
Mississippi	<u>White v. Miller</u> , 162 Miss. 296, 139 So. 611 (1932)
Missouri	<u>Rust v. Missouri Dental Bd.</u> , 348 Mo. 616, 155 S.W.2d 80 (1941)
Montana	<u>Melzner v. N. Pac. Ry. Co.</u> , 46 Mont. 162, 127 P. 146 (1912); <u>Nichols v. Sch. Dist. No. 3 of Ravalli Cnty.</u> , 87 Mont. 181, 287 P. 624, 626 (1930)
Nebraska	<u>State v. Omaha & C.B. St. R. Co.</u> , 96 Neb. 725, 148 N.W. 946 (1914)
Nevada	<u>Maynard v. Johnson</u> , 2 Nev. 25 (1866)
New Hampshire	<u>Hurd v. Nadeau</u> , 81 N.H. 183, 123 A. 236, 237 (1923)
New Jersey	<u>Deaney v. Linen Thread Co.</u> , 19 N.J. 578, 584-85, 118 A.2d 28, 31-32 (1955)
New Mexico	<u>State v. Prince</u> , 52 N.M. 15, 18, 189 P.2d 993, 995 (1948); N. Mex. Stat. Ann. § 12-2A-20
New York	<u>In re Schinasi's Will</u> , 277 N.Y. 252, 259, 14 N.E.2d 58, 60 (1938); N.Y. Stat. § 124
North Carolina	<u>Nance v. S. Ry. Co.</u> , 149 N.C. 366, 63 S.E. 116, 119 (1908)
North Dakota	<u>State ex rel. Erickson v. Burr</u> , 16 N.D. 581, 113 N.W. 705, 709 (1907); N. Dak. Cent. Code Ann. § 1-02-39
Ohio	<u>Cass v. Dillon</u> , 2 Ohio St. 607, 621 (1853); <u>Slingluff v. Weaver</u> , 66 Ohio St. 621, 626, 64 N.E. 574, 575-76 (1902); Ohio Rev. Code Ann. § 1.49
Oklahoma	<u>Pure Oil Co. v. Cornish</u> , 174 Okla. 615, 52 P.2d 832 (1935)
Oregon	<u>Superior Oil & Ref. Syndicate v. Handley</u> , 99 Or. 146, 157, 195 P. 159, 163 (1921); Or. Rev. Stat. Ann. § 174.020
Pennsylvania	<u>Commonwealth ex rel. Carson v. Mathues</u> , 210 Pa. 372, 59 A. 961 (1904); <u>In re Miles' Estate</u> , 272 Pa. 329, 339, 116 A. 300, 303 (1922); 1 Pa. Cons. Stat. Ann. § 1921
Rhode Island	<u>Nugent ex rel. Manning v. La France</u> , 91 R.I. 398, 400, 164 A.2d 230, 231 (1960)

South Carolina	<u>Crescent Mfg. Co. v. Tax Comm'n</u> , 129 S.C. 480, 124 S.E. 761, 767 (1924)
South Dakota	<u>State v. Tarr</u> , 61 S.D. 218, 248 N.W. 200, 202 (1933)
Tennessee	<u>Malone v. Williams</u> , 118 Tenn. 390, 103 S.W. 798, 811 (1907)
Texas	<u>Augustine v. State</u> , 41 Tex. Crim. 59, 72, 52 S.W. 77, 80-81 (1899); Tex. Gov't Code Ann. § 311.023
Utah	<u>Cooper v. Utah Light & Ry. Co.</u> , 35 Utah 570, 102 P. 202, 207 (1909)
Vermont	<u>State v. Rutland R. Co.</u> , 81 Vt. 508, 71 A. 197, 198 (1908)
Virginia	<u>Shenandoah Lime Co. v. Mann</u> , 115 Va. 865, 80 S.E. 753, 754 (1913)
Washington	<u>Scouten v. City of Whatcom</u> , 33 Wash. 273, 284, 74 P. 389, 392 (1903)
West Virginia	<u>Chesapeake & O.R. Co. v. Miller</u> , 19 W. Va. 408, 420 (1882) aff'd, 114 U.S. 176, 5 S. Ct. 813, 29 L. Ed. 121 (1885)
Wisconsin	<u>Pfingsten v. Pfingsten</u> , 164 Wis. 308, 159 N.W. 921, 923 (1916)
Wyoming	<u>Burnham Hotel Co. v. City of Cheyenne</u> , 30 Wyo. 458, 222 P. 1, 2 (1924)