

IN DEDICATION TO CHIEF JUSTICE CHRISTINE M. DURHAM

*Jess M. Krannich**

In 1982, Christine Meaders Durham was named the first female Justice to the Utah Supreme Court by then-Governor Scott M. Matheson. Only thirty-seven years old, she had served as a trial judge for four years before being appointed to Utah's highest bench. For the past thirty years, ten of them as Chief Justice, she has provided steady leadership to the judiciary of the State of Utah, becoming one of the most well-known and respected jurists in the country. During that time, Chief Justice Durham has dedicated herself tirelessly to advancing the law and the legal profession. In addition to her service on the Utah Supreme Court, she has (among other things) taught courses in constitutional law, served on the Utah Constitutional Revision Commission, the Advisory Committee on the Rules of Civil Procedure, and the Leadership Institute in Judicial Education, and been President of the National Association of Women Judges and the Conference of Chief Justices. For her countless contributions to the legal system, she was presented with the William H. Rehnquist Award for Judicial Excellence, one of the nation's highest judicial honors, by Chief Justice John G. Roberts in November 2007.¹

It is appropriate that this journal has dedicated its State Constitutional Commentary issue to Chief Justice Durham because her contributions to the development of the law are particularly significant in the area of state constitutional law. In many states, no substantive body of state constitutional law exists, because interpretation of the state constitution is an afterthought to the application of federal constitutional jurisprudence. In cases involving constitutional rights, state courts frequently rely on federal decisions and do not look to their state constitutions unless the case at bar involves a state-specific provision. This is not so

* Partner, Manning Curtis Bradshaw & Bednar LLC.

¹ See *William H. Rehnquist Award for Judicial Excellence Previous Recipients*, NAT'L CTR. FOR STATE COURTS (Ap. 12, 2012), <http://www.ncsc.org/About-us/Awards/William-H-Rehnquist-Award/Previous-recipients.aspx>.

with the State of Utah, which has one of the most significant bodies of state constitutional law in the nation. Much of the development of Utah constitutional law is due to Chief Justice Durham, who has long been a proponent of conducting an independent state constitutional analysis whenever possible.² Her approach has resulted in numerous opinions regarding the Utah Constitution. The hallmark of Chief Justice Durham's jurisprudence in this area has been a willingness to tackle difficult questions through a meticulous analysis of the Utah Constitution's text, history, intent, and application to the facts at issue.

Two opinions from 2006 illustrate Chief Justice Durham's thoughtful approach to state constitutional questions. In the first, *University of Utah v. Shurtleff*,³ the Utah Supreme Court considered whether a state university had the authority to prohibit firearms on campus, even if the university's policy was inconsistent with state legislation allowing residents to carry firearms.⁴ Among other things, the university argued that the Utah Constitution granted it the authority to promulgate its own policies on matters integral to academic affairs.⁵ In a four to one decision, the majority found that the university's policy contravened Utah statutory law and that the university did not have constitutional authority to disregard such legislation by barring firearms on campus.⁶

Writing alone in concurrence and dissent, Chief Justice Durham disagreed with the majority's conclusion that the university lacked the constitutional authority to regulate issues related to its internal academic affairs.⁷ Through a painstaking analysis of Article X, section 4 of the Utah Constitution, including the history and intent of that provision at the time it was drafted in 1896, Chief Justice Durham found that the Utah Constitution gave the university the authority to function independently with respect to its academic mission.⁸ And given the university's authority to enact and enforce policies on campus to maximize the "educational environment," the university could reasonably conclude that allowing students to carry firearms on campus would be detrimental to the school's academic mission.⁹ Chief Justice Durham took particular issue with the

² See *State v. Daniels*, 40 P.3d 611, 626 (Utah 2002) (Durham, C.J., concurring).

³ *Univ. of Utah v. Shurtleff*, 144 P.3d 1109 (Utah 2006).

⁴ *Id.* at 1113.

⁵ *Id.* at 1111.

⁶ *Id.* at 1121–22.

⁷ *Id.* at 1125–27.

⁸ *Id.* at 1122–25.

⁹ *Id.* at 1127.

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majority's conclusion that the university could enact no policy relating to on-campus possession of firearms; under the majority's approach, students could "openly brandish[] firearms in classrooms" without regulation from the university.¹⁰ Such a result would contravene the university's "autonomous authority over academic affairs."¹¹

Second, in *Sierra Club v. Utah Air Quality Board*,¹² a case that generated far less press coverage than *Shurtleff* but is equally illustrative of Chief Justice Durham's impact on state constitutional issues, the Utah Supreme Court addressed and clarified its approach to associational standing under the Utah Constitution.¹³ Following a decision by the Utah Division of Air Quality to permit the construction and operation of a 270-megawatt coal-fired power plant, the Sierra Club objected and challenged the decision.¹⁴ In addressing the question of whether the Sierra Club had standing under the Utah Constitution, the court took the opportunity to clarify the "somewhat convoluted" and complex case law that had developed regarding standing.¹⁵ In particular, the Court sought to ensure that associational standing be tied to concrete and specific facts, not generalized allegations of public harm.¹⁶

Writing for a unanimous court, Chief Justice Durham found that the Sierra Club had standing pursuant to both the "traditional" test and the "alternative" test under Utah law.¹⁷ In doing so, she conducted a careful review of precedent and the policy underlying Utah's standing requirements, redefining both tests in the process.¹⁸ The court found that the Sierra Club satisfied the "traditional" requirement that its members must suffer sufficient "adverse effects" to give it a personal stake in a case because those members alleged specific facts showing that the coal plant would negatively impact them personally.¹⁹ The court clarified that its requirement of specific, personal adverse effects is designed to ensure that organizational standing is premised on a concrete dispute—assessed on a fact-intensive, case-by-case basis—rather than on general

¹⁰ *Id.* at 1128.

¹¹ *Id.*

¹² *Sierra Club v. Utah Air Quality Bd.*, 148 P.3d 960 (Utah 2006).

¹³ *Id.* at 967.

¹⁴ *Id.* at 963.

¹⁵ *Id.* at 967.

¹⁶ *Id.*

¹⁷ *Id.* at 967–68, 972.

¹⁸ *Id.*

¹⁹ *Id.* at 968.

allegations of public harm.²⁰

The court also clarified that its “alternative” test allows an “appropriate” party (one with a sufficient, personalized interest to effectively assist the court in resolving the dispute) who raises issues of “sufficient public importance” to gain standing.²¹ In prior cases, courts had confused this standard, treating the requirements as two separate tests and conferring standing based on generalized allegations.²² In *Sierra Club*, the court confirmed that the “alternative test” is also a fact-specific inquiry, and that an organization that raised general concerns more appropriately addressed by another branch of government would not satisfy the “sufficient public importance” aspect of the alternative test.²³ Taken as a whole, *Sierra Club* represents a thoughtful redefinition of Utah standing law, designed to ensure that associational standing is found only in concrete disputes properly subject to judicial resolution, and not in cases where an organization raises a policy complaint that should be directed to the legislature.

Although Chief Justice Durham’s many contributions to the law are well-known, her contributions to the lives of her family, friends, and colleagues are equally remarkable. As those who know or have worked with her can attest, Chief Justice Durham has not only a great legal mind, but also a down-to-earth, genuine, and caring personality. She is renowned among her colleagues for her collaborative, engaging style. I had the good fortune to be selected as an intern in her chambers when I was a first-year law student, and her impact on my approach to the practice of law is immeasurable. Chief Justice Durham’s rare analytical abilities, dedication to justice, and professional integrity have provided an example of how success in the legal profession should be measured. Her emphasis on the importance of family has been equally inspiring; while serving the State of Utah, Chief Justice Durham also raised five incredible children. In this regard, Chief Justice Durham’s experience is a welcome reminder that it is not necessary to compromise a commitment to one’s most important personal relationships in order to reach the highest pinnacles of this profession.

No accolade given to Christine Meaders Durham could sufficiently award her contributions to the law. It has been my

²⁰ *Id.* at 968.

²¹ *Id.* at 972–74.

²² *Id.*

²³ *Id.* at 974.

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great honor to know her as a boss, mentor, and friend throughout my professional career. I cannot imagine a better example of what the legal profession, and those who serve it, should aspire to.