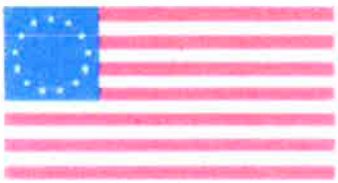
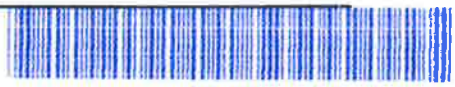
EXHIBIT A



Paul-Kenneth: Cromar.
the secured party of the name "PAUL KENNETH CROMAR",
c/o 9870 N. Meadow Drive
Cedar Hills, Utah-state: uSA [84062]

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

Paul-Kenneth: Cromar, **Plaintiff,** **v.** **Kraig J. Powell,** **Defendant.**	**CIVIL CLAIM** **CASE NO.: 2:20-cv-00625.** **NOTICE OF LIS PENDENS**



To those concerned,

Please take notice that a lawsuit was commenced in the Utah Fourth District Court in Provo on July 13, 2020 [Case No: 200400972] by COPPER BIRCH PROPERITES LLC against the "PAUL KENNETH CROMAR" and "BARBARA ANN CROMAR", which is now pending, wherein the above named living man Kraig J. Powell, who sometimes acts as a Utah state judge, and currently sits on that unresolved named case despite a conflict of interest acknowledged on the record of the court and as outlined in a **Motion for New Trial, Recusal of Judge, and Stay of Judgment** *(emphasis added)*, is named in the above captioned Civil Claim Case No.: 2:20-cv-00625 in federal district court in Salt Lake City, Utah.

The general object of the above captioned suit is to obtain a judgment and other ancillary relief including, but not limited to, judgment establishing Mr. Powell's agreement of fraud, and

possible felony and RICO violations, within the state court case including **Order of Restoration** by Powell, despite the Plaintiff's (defendant) clear and undisputed Superior LAND PATENT Title part and parcel #392 in the state of Utah, supported by 180 years of **unanimous** Supreme Court opinions, regarding the property commonly known as:

9870 N. Meadow Drive, Cedar Hills, Utah 84062

That action names the above captioned parties and is itself pursued as a:

CIVIL CLAIM

The lawful remedies to this CIVIL CLAIM are provided in great detail in the **PUBLIC NOTICE, DECLARATIONS, MANDATES, AND LAWFUL PROTEST** and a **NOTICE OF DEFAULT, ACCEPTANCE OF AGREEMENT, AND INTENT TO COLLECT** [both are private communications Mr. Powell chose to add to case #200400972 docket public record], with one additional demand of one silver dollar in lawful money as described in the Constitution, for each and every minute from the EXACT minute of the court's SUMMONS is Serviced to Mr. Kraig J. Powell until such time as this CIVIL CLAIM is resolved and paid in FULL.

Additionally, there are a number of cases ***(listed below)*** past, currently active, and forth-coming, with the intent to reach the Supreme Court if necessary, to obtain heretofore **denied** *due process* and *Trial by Jury*, all related to the Plaintiff Cromar family's pursuit of Constitutional *(anno domini 1787)* Justice protection of their Lives, Liberty and ("Meadow Drive") Property. Litigation has been on-going in this legal action since 2017 *(and earlier as noted below)* including the above captioned case has not yet been calendared in the US DISTRICT Court.

(NOTE related cases in Plaintiff's pursuit of Justice includes: UTAH FOURTH JUDICIAL DISTRICT COURT (Provo) civil cases #190400494, #196410645 #200400972, #201402860 & #201402868, – and in U.S. DISTRICT COURT (SLC) 2:09-cv-1102, 2:17-cv-01223-RJS-EJF, 2:19-cv-0255-TDD, 2:20-cv-224, 2:20-cv-625, – and in Utah County Justice Court, Fourth Judicial District, Utah County, #208100052.)

The said lands and premises to be affected by said suit in Utah County and the federal courts, are "legally" described as follows:

Lot: 3 Plat "C",
Amended North Meadow Estates Subdivision
47:059:0003

Also known as:

9870 N. Meadow Drive, Cedar Hills, Utah 84062

This *LIS PENDENS* Notice provides all potential purchasers and lien holders with ***constructive legal Notice*** that there is ongoing litigation affecting the real estate, and those that those persons claiming a subsequent interest, take a subordinated interest to the plaintiff's interest post litigation. If the Plaintiff prevails in the action(s), the Plaintiff would have priority over any alleged "purchasers" or "sales", judgments, orders, final judgments, etc., by inferior courts surrounding this prevailing *Lis pendens*. (Note: June 25, 2019 a related *NOTICE OF LIS PENDENS* was filed in US District Court on 2:19-cv-00255-BCW, and filed on June 26, 2019 on the Utah County Record on the above property where it remains on the record under "ENT 58695:2019".) In other words, "Buyer Beware", final adjudication regarding the NON-abandoned Cromar claimed home/property at address above – remains in question.

In sum, "the primary purpose of the NOTICE of *Lis pendens* is to preserve the property which is the subject matter of the lawsuit from actions of the property owner so that full judicial relief can be granted, if the plaintiff prevails." A *Lis pendens* may be filed in an action affecting real estate and, in the State of Utah, is governed by statute under Utah Code, Title 78B - Judicial Code, Chapter 6, Part 13, Section 1303 *Lis pendens – Notice.*

Sworn and submitted this 21st day of October 2020, by:

by: Paul-Kenneth Cromar and by: Barbara-Ann Cromar

Paul-Kenneth: Cromar
c/o 9870 N. Meadows Dr.
Cedar Hills, Utah state [84062]

Barbara-Ann: Cromar
c/o 9870 N. Meadows Dr.
Cedar Hills, Utah state [84062]

CERTIFICATE OF SERVICE

I, Paul Kenneth Cromar certify that a true copy of the attached *Notice of Lis Pendens* has been served via regular US postal service to the following:

HEATHER J. CHESNUT (6934)
Assistant Utah Attorney General
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856

SEAN D. REYES
Utah Attorney General
Utah State Capitol Complex
350 North State Street, Suite 230
Salt Lake City, UT 84114-2320

WILLIAM P. BARR
UNITED STATES - Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

by: Paul-Kenneth: Cromar

;Paul-Kenneth: Cromar
c/o 9870 N. Meadow Drive
Cedar Hills, Utah state [84062]

October 21, 2020

EXHIBIT #B

Over 180 years of

UNANIMOUS SUPREME COURT

Findings prove that Land Patents are in fact valid!

None of which has ever been overturned!

The issue of Land Patents has already been decided, *(res judicata)*! Settle law!

It also depends on the political strength of the Constitution and how diligent the courts are in upholding the law of the land. People want problems solved without taking any responsibility for creating them in the first place through ignorance, neglect and fear. It also depends on the political strength of the sovereign people. Are you willing to stand for your rights and property or NOT? Land Patents were upheld and respected for generations until the American people went to sleep. Suddenly, they're waking up and realizing they have been *had* by their own government!

The following is taken from

WHAT YOU NEED TO KNOW ABOUT...

LAND PATENTS

U.S. Land Patents are the SUPREME LAW of the LAND per

The Constitution for The United States of America: Art. VI (2) and Art. IV § 3 (2)

BY: Ron Gibson

SECOND EDITION - 2015

Continues…

... With over one hundred and eighty plus years of court cases proves that land patent is in fact valid!

Over 180 years of unanimous U.S. Supreme Court cases speak for themselves that land patents are valid:

WRIGHT v. MATTISON 18 HOW (1856) (9-0): The courts have concurred, it is believed, without an exception, in defining "color of title" to be that which in appearance is title, but which in reality is no title. Yet a claim asserted under the provisions of such a deed is strictly acclaim under color of title, hence, color of title, even under a void and worthless deed, has always been received as evidence that the person in possession claims adversely to the entire world. Color of title may be made through conveyances, or bonds, or contracts, or bare possession under parol agreements. We can entertain no doubt in this case that the auditor's deed to the purchaser at the tax sale is color of title in Woodward, in the true intent and meaning of the Statute, and without regard to its intrinsic worth as a title.

STONE v. UNITED STATES 69 U.S. (1865) (10-0): A patent is the highest evidence of title, and is conclusive as against the government, and all claiming under junior patents or titles, until it is set aside or annulled by some judicial tribunal. The patent is but evidence of a grant, and the officer who issues it acts magisterially and not judicially.

SANFORD v. SANFORD 139 U.S. (1891) (9-0): In ejectment, the question always is who has the legal title for the demanded premises, ***not who ought to have it.*** In such cases the patent of the government issued upon the direction of the land department is unassailable. A Court of equity has jurisdiction in such a case to compel the transfer to the plaintiff of property which, but for such fraud and misrepresentation, would have been awarded to him, and of which he was thereby wrongfully deprived.

CHANDLER v. CALUMET & HECLA 149 US (1893) (7-0): It is well settled that the state could have impeached the title thus conveyed to the canal company only by a bill in chancery to cancel or annul it, either for fraud on the part of the grantee, or mistake or misconstruction of the law on the part of its officers in issuing the patent. But whether there is any technical estoppel, in the ordinary sense, or not, it cannot be maintained that the state can issue two patents, at different dates to different parties, for the same land, so as to convey by the second patent a title superior to that acquired under the first patent.

Neither can the second patentee, under such circumstances, in an action at law, be heard to impeach the prior patent for any fraud committed by the grantee against the state, or any mistake committed by its officers acting within the scope of their authority and having jurisdiction to act and to execute the conveyance sought to be impeached. Neither the state nor its subsequent patentee is in a position to cancel or annul the title which it had authority to make, and which it had previously conveyed to the patentee.

SARGEANT v. HERRICK 221 US (1911) (9-0): It is apparent that the validity of the tax title depends upon the question whether the location of the warrant in 1857, without more, gave a right to a patent. Among the conditions upon compliance with which such a right depends, none has been deemed more essential than the payment of the purchase price, which, in this instance, could have been made in money or by a warrant like the one actually used.

UNITED STATES v. CREEK NATION 295 US (1935) (9-0): They were intended from their inception to effect a change of ownership and were consummated by the issue of patents, the most accredited type of conveyance known to our law.

SUMMA CORP v. CALIFORNIA STATE EX REL. LANDS COM'N 466 US (1984) (8-0): The final decree of the Board, or any patent issued under the Act, was also a conclusive adjudication of the rights of the claimant as against the United States, but not against the interests of third parties with superior titles.

Finally, in **UNITED STATES v. CORONADO BEACH CO. 255 US (1921):** The Court expressly rejected the Government's argument, holding that the patent proceedings were conclusive on this issue, and could not be collaterally attacked by the Government. The necessary result of the Coronado Beach decision is that even "sovereign" claims such as those raised by the State of California in the present case be barred.

FRIENDS OF MARTIN BEACH v. MARTIN BEACH Case No. CIV517634 (2013): These decisions control the outcome of this case. We hold that California cannot at this late date assert its public trust easement over petitioner's property, when petitioner's predecessors-in-interest had their interest confirmed without any mention of such an easement in proceedings taken pursuant to the Act of 1851. The interest claimed by California is one of such substantial magnitude that regardless of the fact that the claim is asserted by the State in its sovereign capacity, this interest, like the Indian claims made in BARKER and in **UNITED STATES v. TITLE INS. & TRUST *CO:*.,** must have been presented in the patent proceeding or be barred.

After exclusive jurisdiction over lands within a State have been ceded to the United States, private property located thereon is not subject to taxation by the State, nor can state statutes enacted subsequent to the transfer have any operation therein.
Surplus Trading Company v. Cook, 281 US 647;

Western Union Telegraph Co. v. Chiles, 214 US 274; Arlington Hotel v. Fant, 278 US 439;
Pacific Coast Dairy v. Department of Agriculture, 318 US 285.

Miscellaneous:

Fictitious entities, like trusts, corporations, etc., cannot obtain land patents except by express act of the united states Congress. An example of Congress granting land through patents to fictitious entities is the Railroad Grants made to compensate the railroad companies for building railroads across America.

A land patent is permanent and cannot be changed by the government after its issuance except in case of fraud, clerical error, or failure to pay the initial administrative fees. A statute of limitations applies, (2 years).

A patent has a double operation. In the first place, it is documentary evidence having the dignity of a record of the evidence of the title or such equities respecting the claim as to justify its recognition and later confirmation. In the second place, it is a deed of the United States, or a title deed. As a deed, its operation is that of a quitclaim, or rather, of a conveyance of such interest as the United States possess in the land, such interest in the land passing to the people or sovereign freeholders. **63 Am. Jur. 2d Section 97, p. 566!**

Finally, the United States Supreme Court, in
Summa Corporation v. California ex rel. State Lands Commission, etc., 80 L.Ed.2d 237 (1984), made determinations as to the validity of a patent confirmed by the United States through the **Treaty of Guadalupe Hidalgo, 9 Stat. 631 (1951).** The State of California attempted to acquire land that belonged to the corporation.

The State maintained that there was a public trust easement granting to the State authority to take the land without compensation for public use. The corporation relied in part on the intent of the treaty, in part on the intent of the patent and the statute creating it, and in part in the requisite challenge date of the patent expiring.

The Summa Court followed the lengthy dissertation of the dissenting judge on the California Supreme Court, See: **31 Cal. 3d 288,** dissenting opinion, in determining that the patent which had been the apparent operative title throughout the years, was paramount and the actions by the State were against the manifest weight of the Treaty and the legislative intent of the patent statutes.

In each of these cases it states that the patent, through possession, or claim and color of title, or through the term **"his heirs and assigns forever",** or through the necessary passage of title at the death of a joint tenant or tenant in common, is still the operable title and is required to secure the peaceful control of the land.

These same ideas can also apply to state patents for lands that went to the state or remained in the hands of the state upon admission into the Union.
Oliphant v. Frazho, 146 N.W.2d 685,686,687 (1966);
Fiedler v. Pipers, 107 So.2d 409, 411-412 (1958) "Not even the State could be heard to question the validity of a patent signed by the Governor and the Register of the State Land Office".

"No government can object to the intent and creation of a patent after such is issued, unless issued through fraud or mistake. The patent, either federal or state, has an intent to create sovereign freeholders in the land protected form the speculators, (any lending institution speculates upon land), and a public policy to maintain a simplistic, stable and permanent system of land records.

Land patents were designed to effectively insure that this intent and policy were retained. Colors of title cannot provide this type of stability, since such titles are powerless against liens, mortgages, when the freeholder is unable to repay principle and interest on the accompanying promissory note.

Equity will entertain jurisdiction at the instance of the owner of fee of lands to remove a cloud upon his title created by the sale of the premises and a deed issued thereto under a decree of foreclosure of a mortgage there-on."
Hodgen v. Guttery, 58 Free. (I LL.) 431,438 (1871). (Though this case dealt with an improper sale of land covered by a patent, any forced sales of lands covered by a patent is improper in view of the policy and intent of the Congress).

Equity however will protect the mortgagee who stands to lose his interest in the property, thereby requiring a trust to be created until the debt is erased, making partners of the creditor and debtor. What then exists is a situation where the patent should be declared (confirmed or reissued), to protect the sovereign freeholder and to re-institute the policy and intent of Congress.

The patent as the paramount title, fee simple absolute, cannot be collaterally attacked, but when a debt cannot be paid immediately placing the creditor in jeopardy, the courts can impose a constructive trust until the new "partners" can mutually eliminate the debt. If the debt cannot be satisfactorily removed, it is still possible, considering the present intent of the government, to maintain sovereign freeholders on the property, immune from the loss of the land, since it is Congress' intent to keep the family farm in place.

The use of colors of title to act as the operative title is inappropriate considering the rising number of foreclosures and the inability of the colors of title to restrain a mortgage or lien. However, the lending institutions, speculators on the land, maintain that the public policy of the country includes the eradication of the sovereign freeholders in the rural sector in an effort to implant upon the country, large corporate holdings. This last area must be effectively met and eliminated.

To those who framed the Constitution, the rights of the States and the rights of the people were two distinct and different things. Throughout their debates they had two objects foremost in their minds: first, to create a strong and effective national government; and secondly to protect the people and their rights from usurpation and tyranny by government.

The people's liberties and individual rights and safeguards were to be kept forever beyond the control and dominion of the legislatures of the States, whom they distrusted, and against whom they so carefully guarded themselves.

If such control and domination and unlimited powers were given to a few legislatures they could override every one of the reserved rights covered by the first ten Amendments (the bill of rights); they could change the government of limited powers to one of unlimited powers; **they could declare themselves hereditary rulers**; they could abolish religious freedoms, they could abolish free speech and the right of the people to petition for redress; they could not only abolish trial by jury, but even the rights to a day in court; and most importantly they could abolish free sovereign ownership of the land.

The whole literature of the period of the adoption of the Constitution and the first ten amendments is one of great testimony to the insistence that the Constitution must be so amended as to safeguard unquestionably the rights and freedoms of the people so as to secure from any future interference by the new government, matters the people had not already given into its control, unless by their own consent. **United States v. Sprague, 282 US 716, 723-726 (1930).**

The problem has not in the lending institutions that simply practice good business on their part. The problem in the loss of freedoms by this present interference with allodial sovereign ownership lies with the state legislatures that created law, or marketable title acts, that claimed to enact new simplistic, stable land titles and actually created a watered-down version of the fee simple absolute that requires complicated tracing and protection, and is ineffective against mortgage foreclosures.

None of these problems would occur if the patent were the operable title again, as long as the sovereigns recognized the powers and disabilities of their fee simple title. The patent was meant to keep the sovereign freeholder on the land, but the land was also to be kept free of debt, since that debt was recognized in 1820 as un-repayable, and today is un-repayable.

The re-declaration of the patent is essential in the protection of the rural sector of sovereign freeholders, but also essential is the need to impress the state legislatures that have strayed from their enumerated powers with the knowledge that they have enacted laws that have defeated the intent and goal of man since the Middle Ages. That intent, of course, is to own a small tract of land absolutely, whether by land- bloc or patent, on which the freeholder is beholden to no lord or superior.

The patent makes sovereign freeholders of each person who owns his/her land. A return to the patent must occur if those sovereign freeholders wish to protect that land from the encroachment of the state legislatures and the speculators that benefit from such legislation.

CONCLUSION

As has been seen, man is always striving to protect his rights, the most dear being the absolute right to ownership of the land, this right was guaranteed by the land patent, the public policy of the Congress, and the legislative intent behind the Statutes at Large. Such fights must be reacquired through the re-declaration of the patent in the color of title claimant's name, based on his color of title and possession.

With such re-born rights, the land is protected from the forced sale because of delinquency on a promissory note and foreclosure on the mortgage. This protected land will not eliminate the debt; a trust must be created whereby "partners" will work together to repay it. These rights must be recaptured from the state legislated laws, or the freedoms guaranteed in the Bill of Rights and Constitution will be lost.

Once lost, those rights will be exceedingly hard, if no impossible to reclaim, and quite possibly, as Thomas Jefferson said, the children of this generation may someday wake up homeless on the land their forefathers founded. This Court has the opportunity, nay the obligation, to uphold the original intent of the founding fathers, and the Congress, in the protection of our most valued unalienable right, the right to allodial property.

EXHIBIT - C

ADMINISTRATIVE PROCEDURE ACT

[PUBLIC LAW 404—79TH CONGRESS]

[CHAPTER 324—2D SESSION]

[S. 7]

AN ACT To improve the administration of justice by prescribing fair administrative procedure

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE

SECTION 1. This Act may be cited as the "Administrative Procedure Act".

DEFINITIONS

SEC. 2. As used in this Act—

(a) AGENCY.—"Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this Act shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 3, there shall be excluded from the operation of this Act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by the following statutes: Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944.

(b) PERSON AND PARTY.—"Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies. "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any agency proceeding; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(c) RULE AND RULE MAKING.—"Rule" means the whole or any part of any agency statement of general or particular applicability

and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing upon any of the foregoing. "Rule making" means agency process for the formulation, amendment, or repeal of a rule.

(d) ORDER AND ADJUDICATION.—"Order" means the whole, or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency in any matter other than rule making but including licensing. "Adjudication" means agency process for the formulation of an order.

(e) LICENSE AND LICENSING.—"License" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission. "Licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation amendment, modification, or conditioning of a license.

(f) SANCTION AND RELIEF.—"Sanction" includes the whole or part of any agency (1) prohibition, requirement, limitation, or other condition affecting the freedom of any person; (2) withholding of relief; (3) imposition of any form of penalty or fine; (4) destruction, taking, seizure, or withholding of property; (5) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (6) requirement, revocation, or suspension of a license; or (7) taking of other compulsory or restrictive action. "Relief" includes the whole or part of any agency (1) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (2) recognition of any claim, right, immunity, privilege, exemption, or exception; or (3) taking of any other action upon the application or petition of, and beneficial to, any person.

(g) AGENCY PROCEEDING AND ACTION.—"Agency proceeding" means any agency process as defined in subsections (c), (d), and (e) of this section. "Agency action" includes the whole or part of every agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

PUBLIC INFORMATION

SEC. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of any agency—

(a) RULES.—Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated

and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

(b) OPINIONS AND ORDERS.—Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

(c) PUBLIC RECORDS.—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

RULE MAKING

SEC. 4. Except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—

(a) NOTICE.—General notice of proposed rule making shall be published in the Federal Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) and shall include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) PROCEDURES.—After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by statute to be made on the record after opportunity for an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.

(c) EFFECTIVE DATES.—The required publication or service of any substantive rule (other than one granting or recognizing exemption or relieving restriction or interpretative rules and statements of policy) shall be made not less than thirty days prior to the effective date thereof except as otherwise provided by the agency upon good cause found and published with the rule.

(d) PETITIONS.—Every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

ADJUDICATION

SEC. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

(a) NOTICE.—Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) PROCEDURE.—The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 7 and 8.

(c) SEPARATION OF FUNCTIONS.—The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

(d) DECLARATORY ORDERS.—The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

ANCILLARY MATTERS

SEC. 6. Except as otherwise provided in this Act—

(a) APPEARANCE.—Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding (interlocutory, summary, or otherwise) or in connection with any agency function. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

(b) INVESTIGATIONS.—No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person compelled to submit data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(c) SUBPENAS.—Agency subpenas authorized by law shall be issued to any party upon request and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought. Upon contest the court shall sustain any such subpena or similar process or demand to the extent that it is found to be in accordance with law and, in any proceeding for enforcement, shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(d) DENIALS.—Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of procedural or other grounds.

HEARINGS

SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

(a) PRESIDING OFFICERS.—There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this Act; but nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or

part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) HEARING POWERS.—Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take any other action authorized by agency rule consistent with this Act.

(c) EVIDENCE.—Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) RECORD.—The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

DECISIONS

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

(a) ACTION BY SUBORDINATES.—In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in

the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires.

(b) SUBMITTALS AND DECISIONS.—Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

SANCTIONS AND POWERS

SEC. 9. In the exercise of any power or authority—

(a) IN GENERAL.—No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

(b) LICENSES.—In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this Act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

JUDICIAL REVIEW

SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) RIGHT OF REVIEW.—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) FORM AND VENUE OF ACTION.—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence of inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

(c) REVIEWABLE ACTS.—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

(d) INTERIM RELIEF.—Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

(e) SCOPE OF REVIEW.—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts

to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

EXAMINERS

SEC. 11. Subject to the civil-service and other laws to the extent not inconsistent with this Act, there shall be appointed by and for each agency as many qualified and competent examiners as may be necessary for proceedings pursuant to sections 7 and 8, who shall be assigned to cases in rotation so far as practicable and shall perform no duties inconsistent with their duties and responsibilities as examiners. Examiners shall be removable by the agency in which they are employed only for good cause established and determined by the Civil Service Commission (hereinafter called the Commission) after opportunity for hearing and upon the record thereof. Examiners shall receive compensation prescribed by the Commission independently of agency recommendations or ratings and in accordance with the Classification Act of 1923, as amended, except that the provisions of paragraphs (2) and (3) of subsection (b) of section 7 of said Act, as amended, and the provisions of section 9 of said Act, as amended, shall not be applicable. Agencies occasionally or temporarily insufficiently staffed may utilize examiners selected by the Commission from and with the consent of other agencies. For the purposes of this section, the Commission is authorized to make investigations, require reports by agencies, issue reports, including an annual report to the Congress, promulgate rules, appoint such advisory committees as may be deemed necessary, recommend legislation, subpena witnesses or records, and pay witness fees as established for the United States courts.

CONSTRUCTION AND EFFECT

SEC. 12. Nothing in this Act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. If any provision of this Act or the application thereof is held invalid, the remainder of this Act or other applications of such provision shall not be affected. Every agency is granted all authority necessary to comply with the requirements of this Act through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this Act except to the extent that such legislation shall do so expressly. This Act shall take effect three months after its approval except that sections 7 and 8 shall take effect six months after such approval, the requirement of the selection of examiners pursuant to section 11 shall not become effective until one year after such approval, and no procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

Approved June 11, 1946.