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IN THE UTAH SUPREME COURT

NANCY LORD, JANALEE S. TOBIAS, and MADISON M. HUNT, Petitioners, vs. GREG BELL, in his official capacity as Lieutenant Governor of the State of Utah; and JOHN DOES 1-10, Respondents.	Case No. _____ **PETITION FOR WRIT OF EXTRAORDINARY RELIEF**

Pursuant to Article VIII, section 3 of the Utah Constitution, Rule 65B of the Utah Rules of Civil Procedure, and Rule 19 of the Utah Rules of Appellate Procedure, Petitioners Nancy Lord, Janalee S. Tobias, and Madison Hunt (collectively, "Petitioners") respectfully request that this Court issue an order declaring that Utah Code Section 20A-

1-306, Utah Code Section 20A-7-101(17), and related portions of Utah Code Section 20A-7-306.3 are unconstitutional on their face with respect to referenda petitions, and that electronically gathered signatures should be counted and verified in connection with referenda petitions. Petitioners further request that this Court issue an extraordinary writ directing Lieutenant Governor Greg Bell to count all otherwise valid signatures that are gathered electronically in connection with the referendum petition on HB 477 ("HB 477 Referendum").

This Petition is supported by a memorandum of points and authorities, filed concurrently herewith.

STATEMENT OF INTERESTED PERSONS

1. Petitioner Nancy Lord ("Lord") is one of five sponsors of the HB 477 Referendum and the initiative petition seeking a repeal of SB 165 ("SB 165 Initiative").

2. Petitioner Janalee S. Tobias ("Tobias") is one of five sponsors of the HB 477 Referendum and the SB 165 Initiative.

3. Petitioner Madison M. Hunt ("Hunt") is a registered Utah voter currently residing out of state while enrolled in college at the University of Pennsylvania. She would sign the HB 477 Referendum petition if electronic signatures were permitted, but will not be in Utah to sign the petition in hard copy until after the April 19, 2011, deadline for the sponsors to collect and submit for verification approximately 100,000 signatures.

4. Steven D. Tobias, Alan W. Lord, and Steven G. Maxfield are the three other sponsors of the HB 477 Referendum and the SB 165 Initiative.

5. Respondent Lieutenant Governor Greg Bell ("Lt. Gov. Bell" or "Bell" or "Respondent") is the public official charged with counting the number of names submitted by the sponsors of referenda or initiatives that have been certified as valid by the various county clerks, and thereafter declaring those referenda or initiative petitions to be "sufficient" or "insufficient" based on the total number of names. Utah Code Ann. § 20A-7-307(2)(a)-(c).

6. The People of the State of Utah are vested with the fundamental right and co-equal power under Article VI, section one of the Utah Constitution to legislate through the referendum and initiative processes. Those rights are imminently threatened by the challenged provisions of SB 165.

ISSUES PRESENTED

1. Are the provisions of Utah Code Section 20A-1-306, 20A-7-306.3(2)(a), -306.3(2)(b)(ii), -306(2)(c)(ii), and 20A-1-101(17) enacted by SB 165, which prohibit the counting, verification, and certification of otherwise valid signatures gathered electronically in support of referenda petitions, unconstitutional?

2. Should an extraordinary writ issue to Lieutenant Governor Greg Bell directing him to count all otherwise valid signatures that are gathered electronically in support of the HB 477 Referendum?

RELIEF SOUGHT

Petitioners seek a declaration (i) that Utah Code Section 20A-1-306, 20A-7-306.3(2)(a), -306.3(2)(b)(ii), -306(2)(c)(ii), and 20A-1-101(17) —all of which were enacted in 2011 following passage of SB 165—are unconstitutional on their face with

respect to referenda petitions, and (ii) that all otherwise valid electronically gathered signatures should be counted in connection with referenda petitions. Petitioners further seek an accompanying extraordinary writ directing Lieutenant Governor Greg Bell to count all otherwise valid signatures that are gathered electronically in connection with the HB 477 Referendum.

BASIS FOR EXTRAORDINARY WRIT JURISDICTION

The authority of this Court "to issue extraordinary writs is constitutional in nature and may be exercised when the circumstances of a particular case warrant extraordinary relief." *Renn v. Utah State Bd. of Pardons*, 904 P.2d 677, 682 (Utah 1995); *see also* Utah Const. art. VIII, § 3 (the "Supreme Court shall have original jurisdiction to issue all extraordinary writs"). This Court's "cases demonstrate the practical utility of the flexibility of extraordinary writs in various circumstances." *Gallivan v. Walker*, 2002 UT 73, ¶ 4, 54 P.3d 1066 (quotation omitted). This Court's cases further demonstrate the appropriateness of extraordinary writ review for election issues such as this.

Most recently, in *Anderson v. Bell*, 2010 UT 47, 234 P.3d 1147, this Court accepted for review on an extraordinary writ the similar issue of "whether a candidate may use electronic signatures to satisfy the signature requirement" of the Election Code for the nomination of non-affiliated candidates, finding that case an "'appropriate circumstance' [for review] under rule 19." *Id.* ¶¶ 1, 3 & n.1. Likewise, in *Gallivan*—which also involved a facial constitutional challenge to a statutory signature requirement—this Court "considered the exigencies dictated by timing in an election-related case to permit the determination of a constitutional question in an extraordinary

writ proceeding." 2002 UT 73, ¶ 4. In *Walker v. Weber County*, 973 P.2d 927 (Utah 1998), this Court similarly deemed a challenge to a ballot title to be a "suitable case for exercising our writ jurisdiction" due to impending election deadlines and the fact that requiring district court proceedings "would effectively preclude timely relief." *Id.* at 929.

Even if this Court's constitutional authority to grant extraordinary writs were limited by the specific requirements of Rule 65B of the Utah Rules of Civil Procedure, which it is not, two different sections of Rule 65B apply here. First, Rule 65B(c)(2)(A) allows for extraordinary relief "where a person . . . unlawfully . . . exercises a public office[.]" Utah R. Civ. P. 65B(c)(2)(A). This Court has applied this rule in similar contexts. *See*, *e.g.*, *Anderson*, 2010 UT 47, ¶ 5; *Walker*, 973 P.2d at 929.[1]

Second, Rule 65B(d)(2)(B) allows for extraordinary relief where a person "has failed to perform an act required by law as a duty of office, trust, or station[.]" For the same reason that Lt. Gov. Bell's refusal to count signatures gathered electronically constitutes the unlawful exercise of his office, such conduct also constitutes the failure to perform the acts required by that office consistent with the Utah Constitution.

Because this Petition seeks a declaration that the new Utah Code Section 20A-1-306 is unconstitutional on its face with respect to referenda petitions, the fact that Lt. Gov. Bell was purportedly following that statute in stating that he would refuse to count electronic signatures does not remove his actions from the ambit of Rule 65B. As this Court has held, "'[a]n unconstitutional act is not a law; it confers no rights; it imposes no

[1] As required by Rule 65B(c)(1), Petitioners gave prior notice of this action to Attorney General Shurtleff, who declined to seek the same relief. (*See* Addendum Exhibit A.)

duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.'" *Egbert v. Nissan Motor Co., Ltd.*, 2010 UT 8, ¶ 12, 228 P.3d 737 (quoting *Norton v. Shelby Cnty.*, 118 U.S. 425, 442 (1886)). Because the premise of this Petition is the unconstitutionality of the law on which Lt. Gov. Bell relied in stating that he would not count signatures gathered electronically, Petitioners have properly brought a claim for extraordinary relief based on actions that constitute the unlawful exercise of office and failure to perform the duties mandated by the Utah Constitution.[2]

Each Petitioner has standing to pursue relief under Rule 65B, which grants standing to any person "aggrieved" or "whose interests are threatened" by the unlawful act or failure to properly discharge an official duty.[3] Utah R. Civ. P. 65B(c)(1), (d)(1). Petitioners Tobias and Lord are two of the sponsors of the HB 477 Referendum. Their efforts to gather the requisite number of signatures for the HB 477 Referendum are

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[2] In *Anderson*, this Court held that it reviews "whether a government actor has 'unlawfully exercised the authority of their office' through an 'abuse of discretion standard.'" *Anderson*, 2010 UT 47, ¶ 5 (quoting *Walker*, 973 P.2d at 929). Under Utah law, an exercise of discretion premised upon an error of law is an abuse of discretion. *State v. Henriod*, 2006 UT 11, ¶ 19, 131 P.3d 232; *State v. Barrett*, 2005 UT 88, ¶ 24, 127 P.3d 682. Because an unconstitutional statute "imposes no duties," "affords no protection," and is "inoperative as though it had never been passed." *Egbert*, 2010 UT 8, ¶ 12, a finding by this Court that the challenged portions of SB 165 are unconstitutional would necessarily entail a conclusion that Lt. Gov. Bell's reliance on that law was an abuse of discretion.

[3] Standing is also appropriate under the "alternative test" recognized by this Court in *Utah Chapter of the Sierra Club v. Utah Air Quality Board,* 2006 UT 74, ¶¶ 35-41, 148 P.3d 960, because Petitioners are "appropriate part[ies] raising issues of significant public importance." *Id.*¶ 35; *see also id*. ¶ 36 ("[T]he interests of justice will be served by providing a forum where qualified interested parties can be heard.").

directly affected and immediately threatened by the legislature's unconstitutional blanket ban on signatures gathered electronically. (*See* Declaration of Janalee S. Tobias ("Tobias Decl."), Addendum ("Add.") C hereto at ¶ 6; Declaration of Nancy Lord ("Lord Decl."), Add. B hereto at ¶ 6.) Petitioner Hunt is a registered Utah voter who will be out of state during the entire 40-day signature period for the HB 477 Referendum. Hunt has indicated her desire to sign the HB 477 Referendum petition electronically, but has been denied the right to do so by Lt. Gov. Bell's reliance on SB165 and stated refusal to count signatures collected in that matter. (*See* Declaration of Madison M. Hunt ("Hunt Decl."), Add. D hereto at ¶¶ 2-4.)

STATEMENT OF FACTS

Petitioners submit the following statement of facts necessary to understand the nature of the relief sought:[4]

Petitioners' Desire to Collect and Submit Signatures Collected Electronically In Support of the HB 477 Referendum

1. Petitioners Lord and Tobias are two of the sponsors of the HB 477 Referendum. (*See* Lord Decl. at ¶ 2; Tobias Decl. at ¶ 2.) They are actively involved in gathering signatures for the HB 477 Referendum. (*See* Lord Decl. at ¶ 3; Tobias Decl. at ¶ 3.) Both would like the opportunity to gather signatures electronically to ensure that Utah voters who do not have an opportunity to sign the petition in person will have a chance to participate in the referendum and have their voices heard. (*See* Lord Decl. at ¶ 3; Tobias Decl. at ¶ 3.)

[4] This Statement of Facts is also referenced in the Memorandum of Points and Authorities in Support of Petition for Extraordinary Relief.

2. If they were allowed to gather signatures electronically, Petitioners Lord and Tobias would do so utilizing a system designed to verify the authenticity of signatures gathered and the identity of the signers. (*See* Lord Decl. at ¶ 4; Tobias Decl. at ¶ 4.) This system would allow Utah voters who are out of state, like Petitioner Hunt, to sign the referendum petition. (*See* Lord Decl. at ¶ 4; Tobias Decl. at ¶ 4; Hunt Decl. at ¶ 4.) The use of this system would be at the expense of the sponsors and supporters of the referendum, not the State. (*See* Lord Decl. at ¶ 4; Tobias Decl. at ¶ 4.)

3. When Petitioners Lord and Tobias, along with their co-sponsors, submitted the referendum application for HB 477, they asked Lt. Gov. Bell to allow them to gather signatures electronically, and requested that he provide them with referendum packets that could be circulated electronically. (*See* Lord Decl. at ¶ 5; Tobias Decl. at ¶ 5.) Lt. Gov. Bell refused. (*See* Lord Decl. at ¶ 5 & Ex. 1 thereto; Tobias Decl. at ¶ 5.)

4. Lt. Gov. Bell's stated refusal to count signatures gathered electronically severely undermines the ability of Petitioners Lord and Tobias, as sponsors of the HB 477 Referendum, to gather the requisite number of signatures to certify the referendum. (*See* Lord Decl. at ¶ 6; Tobias Decl. at ¶ 6.) This is due in part to the significant increase in statewide signatures required enacted by the 2011 legislature (*see* Declaration of Darcy M. Goddard ("Goddard Decl."), Add. G hereto at ¶ 7 & n.1), the extremely short time-frame afforded by law to gather such a large number of signatures (*see* Lord Decl. at ¶ 6; Tobias Decl. at ¶ 6), and the inherent inefficiencies in printing, copying, and using paper to gather every signature (*see* Lord Decl. at ¶ 6; Tobias Decl. at ¶ 6).

5. Petitioners Lord and Tobias, as sponsors of the HB 477 Referendum, have been forced to choose whether to allocate severely limited resources toward the gathering of signatures electronically, which may ultimately be invalidated, or the arduous process of gathering every signature holographically. (*See* Lord Decl. at ¶ 7; Tobias Decl. at ¶ 7.) As a result, the legislature's prohibition on the use of signatures gathered electronically, and Lt. Gov. Bell's stated refusal to count such signatures for the HB 477 Referendum, is having an immediate and detrimental impact on the ongoing efforts of the referendum sponsors to gather the requisite number of signatures. (*See* Lord Aff. at ¶ 8; Tobias Aff. at ¶ 8.)

6. Petitioner Madison Hunt is a registered Utah voter and a college student at the University of Pennsylvania. (*See* Hunt Decl. at ¶ 2.) Due to school commitments, Petitioner Hunt will not be back in Utah until mid- to late May 2011 (*id*.), well after the signature-gathering period on the HB 477 Referendum. If Ms. Hunt were "permitted to sign the referendum petition with an electronic signature," she would do so. (*See* Hunt Decl. at ¶ 4.) Given Lt. Gov. Bell's stated refusal to count any signatures gathered electronically, Ms. Hunt is precluded from exercising her fundamental right to participate in the petitioning process.

The History of Signatures Gathered Electronically in Utah's Electoral Process: *Anderson v. Bell* and Its Aftermath

7. The ACLU of Utah, along with cooperating attorney Brent Manning, was counsel of record for Petitioner Farley Anderson in *Anderson v. Bell*, 2010 UT 47, 234 P.3d 1147. In *Anderson*, this Court held, inter alia, that electronically gathered signatures

could be used in support of an independent candidate's nominating petition to be placed on the general election ballot. 2010 UT 47, ¶ 27, 234 P.3d at 1156.

8. Immediately following the decision in *Anderson*, on July 8, 2010, the Lieutenant Governor's Office filed notice of a 120-Day (Emergency) Rule, "Electronic Signatures and Referenda." (Goddard Decl. at ¶ 3 & Ex. 1 thereto.)

9. On or about July 14, 2010, the Lieutenant Governor's Office filed a Notice of Proposed Rule (New Rule), "Electronic Signatures in Initiatives and Referenda" ("Notice of Rule"), which proposed to make final the earlier Emergency Rule. (*See* Goddard Decl. at ¶ 4.) Because it appears the Lieutenant Governor's Office never submitted notice of an effective date or change to the proposed rule in connection with the Notice of Rule (s*ee id*.), however, the Emergency Rule never became final. *See* 63G-3-301(12)(e) ("A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the division within 120 days of publication.").

Legislative History of SB 165

10. As originally drafted, SB 165 was silent on the issue of signatures gathered electronically.[5] (*See* Goddard Decl. at ¶ 5 & Ex. 2 thereto.) On March 1, 2011, however, a substitute bill was introduced. (*See* Goddard Decl. at ¶ 7& Ex. 3 thereto.) The bill

[5] SB 165 also greatly increased the number of signatures required to support a statewide initiative or referendum, raising the figure from ten percent of the number of Utah voters who voted in the last gubernatorial election, i.e., currently approximately 65,000 signatures, to ten percent of the number of Utah voters who voted in the last presidential election, i.e., currently approximately 100,000 signatures. *See*, *e.g.*, SB 165 (First Substitute) at lines 433-435 (initiatives) and lines 497-499 (referenda), attached to the Goddard Declaration as Exhibit 3. That language remained in SB 165 (Second Substitute) and was passed into law.

included, among other changes to the Election Law, the following proposed language (*see id.* & Ex. 3 thereto at lines 336-344):

> **20A-1-306. Electronic signatures.**[6]
>
> Notwithstanding Title 46, Chapter 4, Uniform Electronic Transactions Act, and Sections 68-3-12 and 68-3-12.5 , an electronic signature may not be used to sign a petition to:
>
> (1) qualify a ballot proposition for the ballot under Chapter 7, Issues Submitted to the Voters;
> (2) organize and register a political party under Chapter 8, Political Party Formation and Procedures; or
> (3) qualify a candidate for the ballot under Chapter 9, Candidate Qualifications and Nominating Procedures.

11. In the March 1, 2011, Committee hearing on SB 165 (First Substitute), the Senate sponsor testified that his intention when adding a blanket prohibition on the use of electronically collected signatures in support of initiatives and referenda was in response to "the on-going dispute, the confusion over initiative processes." (*See* Goddard Decl. at ¶ 7 (citing Audio Tr. 03/01/11 Committee Hr'g, available at http://le.utah.gov/~2011/ htmdoc/sbillhtm/ sb0165.htm, "Senate Revenue and Taxation Committee 3/1," at 2:19-2:23).) He described the bill as addressing, among other things, "whether or not electronic signatures are allowed without, uh, any verification or checks and balances as to the security of those signatures." (*Id*. at 2:30-2:37.)

12. Notably, however, SB 165 did not provide for (or permit) any such "verification" processes or "checks and balances as to security" of signatures gathered

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[6] "Electronic signature" was defined elsewhere in SB 165 (First Substitute) (*see* Goddard Decl. at ¶ 6 & Ex. 3 thereto at lines 139-141) to include "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."

electronically; instead, it simply imposed a blanket ban on the use of any electronically gathered signatures, in support of any referendum or initiative, regardless of what processes might be in place to assure verification of the signer's identity.[7] (*See* Goddard Decl. at ¶ 7.) The entire Committee debate on SB 165 (First Substitute) took less than six minutes. (*Id*.)

13. SB 165 (First Substitute) was debated only briefly on the Senate floor. The first debate occurred on March 7, 2011. (*See generally* Goddard Decl. at ¶ 8 (citing Audio Tr. 03/07/11, available at http://le.utah.gov/asp/audio/index.asp?Sess=2011GS &Day=42&House=S).) The Senate sponsor characterized the bill as addressing (*id*. at 0:35-1:38):

> [A] great deal of controversy concerning our initiative and referendum provisions, specifically as it relates to timing of when certain steps in the process need to be concluded, when the time frame is . . . [and] whether electronic signatures should be allowed for the initiative, ballot, candidate qualification, and political parties. And the way it deals with them is [sic] specifically prohibits electronic signatures from being used for those purposes. The reason for the prohibition as opposed to a moratorium is that currently it is very difficult to have the kind of integrity in the process for electronic signatures. The verification process, the notion that, that our system of governance, that the vote is the most sacred thing that we do, and signing a petition is tantamount to casting a vote.

14. When questioned, the Senate sponsor acknowledged that there were "a number of places where electronic signatures have been accepted." (*Id*. at 2:33-2:36.) He continued, however (*id*. at 2:37-3:14):

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[7] SB 165 (First Substitute) also contained language authorizing people to vote if they registered on-line at least fifteen days in advance of the election. (*See* Goddard Decl. at ¶ 6 & Ex. 3 thereto at lines 354-390.) That language was included in SB 165 (Second Substitute) and passed into law.

> [T]here's been a, an uncertainty about the use of electronic signatures specifically as it relates to ballot qualification for initiatives and referendums, for candidate qualification relating to the ballot, and for the number of signatures necessary to register a political party. This specifically prohibits that. In speaking with the Lieutenant Governor, the reason for a prohibition as opposed to a moratorium, this gives clear direction to the courts on the matter. It doesn't prohibit the Lieutenant Governor, when the technology catches up with our intent to have openness in the process, that that can be brought back at that time.

15. Questioned again about why a blanket prohibition on electronically gathered signatures was necessary (*see* Goddard Decl. at ¶ 10 (citing Audio Tr. 03/07/11, available at http://le.utah.gov/asp/audio/index.asp?Sess=2011GS &Day=42&House=S, at at 3:14-3:38 (Senator Ben McAdams expressing concern that SB 165 (First Substitute) might be moving in the "wrong direction," and noting that the better course might be to explore "how we can use electronic and on-line means to involve the public in this process"))), the sponsor did not respond (*see* Goddard Decl. at ¶ 10). After less than four minutes of substantive discussion, SB 165 (First Substitute) was moved into its third reading. (*See* Goddard Decl. at ¶ 10 (citing Audio Tr. 03/07/11, available at http:// le.utah.gov/asp/audio/index.asp?Sess=2011GS &Day=42&House=S, at 3:44-8:00).)

16. SB 165 (First Substitute) was replaced the following day, March 8, 2011, with SB 165 (Second Substitute). (*See* Goddard Decl. at ¶ 11 & Ex. 4 thereto.) In addition to containing the same blanket prohibition on the use of electronically gathered signatures in support of initiatives and referenda (*see id.* & Ex. 4 thereto at lines 377-386), SB 165 (Second Substitute) also included language purporting to require county clerks to compare each "signature" to determine whether, in the clerk's opinion, it "appears substantially similar to the signature on the statewide voter registration

database" (*see id.* & Ex. 4 thereto at lines 881-884). Only after that visual comparison was completed would the county clerk be authorized to "declare the signature valid." (*See id.* & Ex. 4 thereto at lines 883-884, 889-890, 895-896.) Elsewhere in SB 165 (Second Substitute), the term "signature" was defined to "mean a holographic signature" and to "not mean an electronic signature." (*See id.* & Ex. 4 thereto at lines 536-537.)

17. SB 165 (Second Substitute) was briefly addressed for the first time on the Senate floor on March 8, 2011. (*See* Goddard Decl. at ¶ 12.) The Senate sponsor stated that the bill would, among other things (*see* Goddard Decl. at ¶ 12 (citing Audio Tr. 03/08/11 available at http://le.utah.gov/asp/audio/index.asp?Sess=2011GS&Day=43 &House=S, at 1:00-1:41)):

> [P]rohibit[] the use of an electronic signature, and require[] the use of a holographic signature . . . and for those who don't know what a holographic signature is, that means a handwritten signature, not something that comes on a Star Trek holodeck. . . . But it prohibits an electronic signature for qualifying a candidate for the ballot, a ballot proposition, or signing a petition to organize and register a political party.

He also noted that SB 165 (Second Substitute) would require "a county clerk to compare the signatures on a packet to the voter registration database." (*See id* at 1:50-1:56.)

18. Senator McAdams again expressed concerns with the blanket prohibition on electronically gathered signatures. (*See* Goddard Decl. at ¶ 13.) Specifically, he stated (*see id.* (citing Audio Tr. 03/08/11 available at http://le.utah.gov/asp/audio/ index.asp?Sess=2011GS& Day=43&House=S, at 7:47-7:59)): "Overall, I just have a philosophical disagreement with limiting the use of electronic signatures. I would like to find a way to make it work. I understand that there are some concerns with the way it

works currently, but I would like to explore a way that we can make it work." He also noted that the signature comparison requirements—which would necessarily envision only the use of holographic signatures—would be excessively expensive, and that it would be an "overly burdensome requirement to require every [that] every signature be compared to its on-line counterpart where there may not be suspicion of fraud or tampering." (*See id.* at 7:15-7:30.) Other than Senator McAdams' comments, and summary comments by the Senate Sponsor (*see id.* at 8:23-10:09), there was no substantive discussion of SB 165 (Second Substitute) before it was passed by the Senate. (*See generally id*. at 0:01-11:51.)

19. Discussion of SB 165 (Second Substitute) was similarly truncated in the House. (*See generally* Goddard Decl. at ¶ 14 (citing Audio Tr. 03/09/11, available at http://le.utah.gov/asp/audio/ index.asp?Sess=2011GS&Day=44&House=H, at 0:08-14:32).) As it pertained to the issue of electronically collected signatures, the House sponsor stated that the bill (*id.* at 0:10-1:08):

> [E]ssentially says that electronic signatures are not valid for qualifying a candidate for a ballot, for, uh, on a ballot proposition, or to sign a petition to organize a political party. Now let me tell you why that's important. The fact is, having played in the electronics world, it is indeed possible to have secure electronic signatures. However, the cost to do that is prohibitive. And so, frankly, the cheapest method is to require only handwritten signatures. That is the fundamental policy change here.

20. The House sponsor also addressed questions relating to the logical inconsistency between SB 165 (Second Substitute)'s blanket ban on electronically gathered signatures in support of initiatives and referendum, on the one hand, and the State's acceptance of on-line voter registrations on the other hand (*see* Goddard Decl. at ¶

15 (citing Audio Tr. 03/09/11, available at http://le.utah.gov/asp/audio/index.asp?Sess=2011GS&Day=44&House=H, at 2:23-2:58), as follows (*id*. at 2:59-3:25):

> That's a good question. The fact is, when you are registering, uh, to vote, there are several checks that take place to make sure that you are the person, not the least of which, um, is the fact that if you show up at a polling place you have to show your identification. And so there are a number of checks in place when you are registering to vote that are not in place, nor could they physically be put in place without a prohibitive amount of cost, for signing a petition.

21. After approximately six minutes of substantive discussion, the House sponsor was asked for his summation. (*See* Goddard Decl. at ¶ 16 (citing Audio Tr. 03/09/11, available at http://le.utah.gov/asp/audio/index.asp?Sess=2011GS&Day=44&House=H, at 6:14-6:16).) His discussion of SB 165 (Second Substitute)'s prohibition on the collection and use of signatures collected electronically consisted of the following (*see id.* at 6:29-7:37):

> Let me just say this. I think the initiative process is important. I think it is essential that we have it in place. However, I also understand that making sure that the people signing those petitions are actually the people that, whose [sic] those signatures belong to. The fact is, if we have an electronic signature system, it is very, very easy to hack into it and put in false signatures, and it's extremely difficult and very expensive for our election officials to do that.
>
> If we are going to allow for electronic signatures, and I'm not necessarily opposed to that, we have to face up to the fact that the cost is going to be millions and millions of dollars. That's just all there is to it. . . .

22. With no further discussion or evidence in support of the House sponsor's assertion, for example, that "[i]f we are going to allow for electronic signatures . . . the cost is going to be millions and millions of dollars," the House passed SB 165 (Second

Substitute) on March 9, 2011. (*See* Goddard Decl. at ¶ 17.) Governor Herbert signed of SB 165 (Second Substitute) into law the next day, March 10, 2011. (*See id.* at ¶ 18.)

STATEMENT OF WHY NO OTHER PLAIN, SPEEDY, OR ADEQUATE REMEDY EXISTS AND WHY DISTRICT COURT PROCEEDINGS ARE IMPRACTICAL

The deadline for submitting signatures in support of the HB 477 Referendum is April 19, 2011, less than thirty days from now. The legislature's unconstitutional invalidation of signatures gathered electronically, and the Lieutenant Governor's stated refusal to count such signatures, has an immediate and detrimental impact on the ongoing efforts of the referendum sponsors to gather the requisite number of signatures. (*See* Lord Decl. ¶ 6; Tobias Decl. ¶ 6.) Uncertain whether electronically-gathered signatures will ultimately be accepted, signature gatherers are being forced to choose whether to expend critically limited resources gathering such signatures, or to adhere to the Lieutenant Governor's unconstitutional dictates. *Id.* Moreover, because Utah law criminalizes the signing of a referendum petition more than once, *see* Utah Code Ann. § 20A-7-312(1)(b), Utah voters who would sign the petition electronically, but then also have the opportunity to sign holographically, would be forced to choose between risking criminal liability and being disenfranchised.

Given these urgent timing issues, requiring Petitioners to proceed first in district court, with an inevitable appeal to follow, is not practical and would only contribute to confusion among the electorate. This Court has an extensive history of addressing election-related issues in extraordinary writ proceedings to avoid such problems. As this Court explained in *Gallivan*:

> [T]his court has on at least one occasion considered the exigencies dictated by timing in an election-related case to permit the determination of a constitutional question in an extraordinary writ proceeding. Although an alternative legal remedy by way of a declaratory judgment action theoretically exists here, we are persuaded that it is not adequate to respond to the relief sought, namely, the placement of this petition on the ballot.

Gallivan, 2002 UT 73, ¶ 4 (citation omitted); *see also Walker*, 973 P.2d at 927; *Anderson*, 2010 UT 47, ¶ 3 n.1; *Snow v. Office of Legislative Research & Gen. Counsel*, 2007 UT 63, ¶¶ 6-11, 167 P.3d 1051 (pursuant to enabling statute, extraordinary writ proceeding challenging ballot title for referendum); *Nelson v. Miller*, 480 P.2d 467, 468 (Utah 1971) (extraordinary writ proceeding to compel certification of election results).

Urgent time constraints, the constitutional magnitude of the People's right to "check" the Legislative branch, and the risk of irreparable damage to the ongoing HB 477 Referendum make it appropriate that this Court review these issues now.

CONCLUSION

Petitioners respectfully request that the Court grant this petition and declare SB 165 unconstitutional and void of all effect. Petitioners seek that relief for the reasons described herein and as set forth fully in the accompanying Memorandum of Points and Authorities.

DATED: March ____, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March ____, 2011, I caused a true and correct copy of the foregoing **PETITION FOR EXTRAORDINARY WRIT OF RELIEF** to be served in the method indicated below to the following:

___HAND DELIVERY	Thom D. Roberts
___U.S. MAIL	Mark L. Shurtleff
___OVERNIGHT MAIL	160 East 300 South, 5th Floor
___FAX	P.O. Box 140857
___E-MAIL	Salt Lake City, Utah 84114-0857

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_____