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Attorney for Petitioners Mia Love and Friends of Mia Love

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

MIA LOVE, a Utah resident, FRIENDS OF MIA
LOVE, a Utah corporation,

Petitioners,

v.

SHERRIE SWENSEN, Salt Lake County Clerk
and election officer.

Respondent.

**VERIFIED PETITION UNDER UTAH
CODE SECTION 20A-1-404 AND RULE
65B OF THE UTAH RULES OF CIVIL
PROCEDURE**

Civil No. _____

Hon. Judge _____

Petitioners Mia Love and Friends of Mia Love (“Petitioners”) hereby submit this Verified
Petition under Utah Code Section 20A-1-404 and Rule 65B of the Utah Rules of Civil
Procedure (the “Petition”) and respectfully request that this Court issue an order concerning the
November 2018 general election as follows:

- 1) granting Petitioners a meaningful opportunity to analyze and challenge Salt Lake
County’s determinations on whether the signatures on ballot envelopes match the
signatures on file with Salt Lake County (the “County”);
- 2) precluding the County from separating any ballots from their respective ballot envelopes
while such analysis is pending and where the signature verification has been challenged
after such analysis;

- 3) precluding the County from validating signatures based on Voter Affidavits that it receives until Petitioners have had a chance to receive and review copies of those affidavits along with the corresponding ballot envelopes, and lodge and resolve challenges;
- 4) granting Petitioners a meaningful opportunity to analyze and challenge the County's determinations on whether provisional ballot envelopes or forms are valid and sufficient;
- 5) precluding the County from de-linking the unique number on the provisional ballot envelopes or forms from the corresponding electronic voting record until Petitioners have had an opportunity to analyze the provisional ballot envelopes or forms, and lodge and resolve challenges; and
- 6) precluding the County from tabulating provisional ballots until Petitioners have had an opportunity to analyze the provisional ballot envelopes or forms, and lodge and resolve challenges.

THE NATURE OF THE CONTROVERSY AND RELIEF SOUGHT

Mia Love is seeking re-election to Utah's Fourth Congressional District in the United States House of Representatives (the "District") against Salt Lake County Mayor Ben McAdams (the "Love/McAdams race"). The Love/McAdams race will be decided by a small number of votes. Approximately eighty five percent of the District is in Salt Lake County. Respondent Sherrie Swensen (the "Respondent") is the Salt Lake County Clerk and election officer for Salt Lake County under Utah Code section 20A-1-102(27)(b). The County is currently tabulating votes from ballots that voters submitted by mail as well as evaluating and verifying provisional ballots that were cast on election day.

Respondent has allowed poll monitors to observe the process by which the signature verifiers for the County determine whether signatures on ballot envelopes match the signatures that the County has on file, but Respondent has denied poll monitors a process to challenge those verifiers' determinations. A right of observation without a right of challenge, however, is a hollow right indeed. A challenge procedure is critical because once a county employee has

unilaterally verified a signature on a ballot envelope, the envelope and the ballot are then separated. The result is that even if a candidate were to successfully challenge a signature verification later on, the candidate would be left without recourse because it would then be impossible to match a ballot envelope with the actual tabulated ballot. Petitioners understand on information and belief thousands of mail-in ballots remain within their ballot envelopes in Salt Lake County, but all such ballots could be removed within the next twenty-four hours.

Where the County verifiers have determined that a signature on a ballot envelope does *not* match the signature(s) on file with the County, the County has sent cure letters to those voters, which letters inform the voters of the non-matching signatures and invite those voters to sign and mail in a Voter Affidavit to the County. On information and belief, the County will then verify the ballot, and may even verify the ballot where the signature on the ballot envelope does not match the signature on the Voter Affidavit. As with the mail-in ballots above, once a County employee verifies a signature based on a Voter Affidavit, the ballot and envelope are separated, making any subsequent challenge to the signature verification futile because there is then no way to match the invalid ballot envelope with the underlying ballot. That process raises particularly compelling questions to the extent that the Voter Affidavits do not conform with the Utah Election Code, as discussed below.

Petitioners, through legal counsel, have asked Respondent for a procedure through which poll monitors can challenge the County's signature verifiers' determinations on whether the signatures on ballot envelopes match the signatures on file with the County, but Respondent has not granted that request. Petitioners also made a request pursuant to the Utah Government

Records Access and Management Act (“GRAMA”) for copies of all Voter Affidavits, but the County has failed to provide those records.

Similar issues surround the verification of approximately 16,300 provisional ballots by the County. The County has permitted poll monitors to observe that verification process, but those poll monitors must observe at a distance and are unable to view the provisional ballot envelope or form or information on the County’s VISTA database in any meaningful way. As a result, poll monitors are left without any way of knowing whether certain verifications of those provisional ballots are improper.

Given that even a few mistaken verifications could decide the outcome of the Love/McAdams race, that the County could finish tabulating mail-in ballots any day (and has signaled that they plan to finish by Thursday, November 15, 2018), and the importance of a challenge procedure before a ballot is separated from its corresponding envelope, Petitioners request an order from this Court (1) granting Petitioners a meaningful opportunity to challenge the County’s determinations on whether the signatures on ballot envelopes match the signatures on file with the County; (2) precluding the County from separating any ballots from their respective ballot envelopes where the signature verification has been challenged; (3) precluding the County from validating signatures based on Voter Affidavits that it receives until Petitioners have had a chance to receive and review copies of those affidavits along with the corresponding ballot envelopes, and lodge and resolve challenges; (4) granting Petitioners a meaningful opportunity to analyze and challenge the County’s determinations on whether provisional ballot envelopes or forms are valid and sufficient; (5) precluding the County from de-linking the unique number on the provisional ballot envelopes or forms from the corresponding electronic voting

record until Petitioners have had an opportunity to analyze the provisional ballot envelopes or forms, and lodge and resolve challenges; and (6) precluding the County from tabulating provisional ballots until Petitioners have had an opportunity to analyze the provisional ballot envelopes or forms, and lodge and resolve challenges. Otherwise, Petitioners' rights to monitor the verification and tabulation processes are meaningless, "for a right without a remedy is inconceivable." *Johanson v. Cudahy Packing Co.*, 115 P.2d 794, 798 (Utah 1941).

PARTIES, JURISDICTION, AND VENUE

1. Mia Love is a resident of Utah seeking re-election to Utah's Fourth Congressional District in the United States House of Representatives.
2. Friends of Mia love is a Utah corporation formed for the purpose of supporting Mia Love's re-election bid.
3. Sherrie Swensen is a resident of Utah and is the Salt Lake County Clerk in charge of elections.
4. This Court has jurisdiction over this matter pursuant to Utah Code section 20A-1-404(1)(a)(i) and Utah Code section 78A-5-102, and Rule 65B of the Utah Rules of Civil Procedure.
5. Venue lies in this district pursuant to Utah Code section 78B-3-307.

ARGUMENT

I. THIS COURT SHOULD GRANT PETITIONERS AN OPPORTUNITY TO CHALLENGE THE COUNTY'S DETERMINATIONS ON WHETHER THE SIGNATURES ON BALLOT ENVELOPES MATCH THE SIGNATURES ON FILE WITH THE COUNTY.

Because every single vote is crucial in the Love/McAdams race, the Court should grant Petitioners an opportunity to challenge the County verifiers' determinations on whether the

signatures on ballot envelopes match the signatures on file with the County. A meaningful challenge procedure must occur before the ballot and corresponding ballot envelope become separated forever.

Utah law already provides for challenges to a voter's eligibility to vote in different stages of an election. *See e.g.* Utah Code Ann. § 20A-3-202(1) (West 2018) (“A person may challenge an individual’s eligibility to vote” on any of eleven grounds including that “the individual is not the individual in whose name the individual tries to vote.”); Utah Code Ann. § 20A-3-202.3(1) (West 2018) (providing that before an election, “[a] person may challenge an individual’s eligibility to vote by filing a written statement with the election officer....”); Utah Code Ann. § 20A-3-202.5 (West 2018) (providing that at the time of voting, “[a] poll worker, a watcher, or an individual who lives in the voting precinct may challenge an individual’s eligibility to vote in that voting precinct or in that election,” and that “[t]he poll worker shall record a challenge in the official register and on the challenge sheets in the pollbook....”)

But given the recent emphasis by county clerks to implement and expand voting by mail, a similar opportunity should be afforded to challenge whether a signature on a mail-in ballot envelope matches a signature on file with the County to ensure that the person signing the ballot envelope and ostensibly filling out the ballot is indeed the same registered voter.

Respondent is currently allowing poll watchers to observe the County’s signature verifiers as the verifiers determine whether signatures on ballot envelopes match the signatures that the County has on file, but the poll watchers cannot do anything in the instances where the signature verifiers approve a ballot signature envelope that does not appear to match the signature that the County has on file. As mentioned above, once a county employee has verified

a signature on a ballot envelope, the envelope and the ballot are then separated. The result is that even if a candidate were to successfully challenge a signature verification later on, the candidate would be left without recourse because it would then be impossible to match a ballot envelope with the actual tabulated ballot.

Petitioners do not anticipate a large number of challenges, but on information and belief, in the short periods of time that poll monitors have observed signature verification, they have observed myriad instances where a county worker verified a signature on a ballot envelope that did not appear to match the signature on file with the County. A meaningful challenge procedure is essential to provide any sort of recourse in the event of improper verifications. Accordingly, Petitioners request that this Court enter an order permitting poll monitors to make challenges to signature verifications.

II. IN THE RARE CASES WHERE THERE ARE CHALLENGES, THE COURT SHOULD ENJOIN THE COUNTY FROM SEPARATING BALLOTS FROM BALLOT ENVELOPES UNTIL THE CHALLENGE IS ADJUDICATED.

In conjunction with Petitioners' first request for relief and because separation of a ballot and its ballot envelope is irreversible, the Court should preclude the County from separating any ballots that are currently still within their corresponding ballot envelopes until the challenge procedure has been provided. Petitioners also ask the Court to order that challenged signatures be sequestered while the challenge is adjudicated.

III. THE COURT SHOULD ENJOIN SALT LAKE COUNTY FROM VALIDATING SIGNATURES BASED ON VOTER AFFIDAVITS THAT THE COUNTY RECEIVES UNTIL PETITIONERS HAVE HAD A CHANCE TO REVIEW THOSE AFFIDAVITS ALONG WITH THE CORRESPONDING BALLOT ENVELOPES.

The Court should enjoin the County from validating signatures based on Voter Affidavits that it receives until Petitioners have had a chance to receive and review those affidavits along with the corresponding ballot envelopes, and to lodge and resolve challenges.

Petitioners have already submitted a GRAMA request pursuant to Utah Code 63G-2-101 et seq. requesting “that the County provide a copy of all Voter Affidavits that the County has received or receives in the future in connection with signatures on ballot envelopes for the 2018 general election that potentially do not match the voter’s signature on file with the County.” *See* 11/12/2018 Email from R. Harrington to Respondent, attached hereto as **Exhibit “A.”** This request included “Voter Affidavits received in response to notification letters sent by the County regarding un-matching signatures” and that “with respect to all such Voter Affidavits, the County also provide a copy of the initial signatures on all such related ballot envelopes.” *Id.* Respondent has failed to produce any such records, and has not responded to Petitioners’ request that while Petitioners await this information, “the County refrain from tabulating and/or separating any related ballot envelopes from the ballots themselves where there is any outstanding question on whether the signature on the ballot envelope matches the signature previously on file with the County.” *Id.*

Petitioners’ request for copies of those affidavits is particularly significant because the form of the Voter Affidavits may not conform to the Utah Election Code. The County has provided a template of such a Voter Affidavit, a copy of which is attached hereto as **Exhibit B,**

but that template does not provide “an attestation that the individual voted the absentee ballot,” Utah Code Ann. § 20A–3–308(5)(b), nor does it include “a space for the individual to enter the individual’s . . . driver’s license number or the last four digits of the individual’s social security number,” *id.* at 308(5)(b)(ii), or “a statement that, by signing the affidavit, the individual authorizes the lieutenant governor’s and county clerk’s use of the individual’s signature on the affidavit for voter identification purposes,” *id.* at 308(5)(b)(iii).

Petitioners could be irreparably harmed if this verification process continues to proceed without the potential that Petitioners review the Voter Affidavits for similar reasons as stated in Argument Sections I and II above—namely that once a signature is verified, the ballot and ballot envelope are forever separated.

Alternatively, if the Court determines that Petitioners are not entitled to receive copies of the Voter Affidavits, along with the initial signatures on the corresponding ballot envelopes, then Petitioners request that they be granted a real-time challenge procedure wherein poll monitors can observe the County’s verification of signatures in light of such Voter Affidavits and lodge contemporaneous challenges.

IV. THIS COURT SHOULD GRANT PETITIONERS SIMILAR RELIEF WITH RESPECT TO PROVISIONAL BALLOTS—AFFORDING A CHALLENGE PROCEDURE AND PRECLUDING A SCENARIO WHEREIN THE PROVISIONAL BALLOT ENVELOPES OR FORMS CAN NO LONGER BE MATCHED TO THE UNDERLYING VOTES.

For similar reasons, Petitioners request that they be afforded a meaningful opportunity to analyze and challenge the County’s determinations on whether a provisional ballot is valid. Such determinations often entail subjective judgment calls, including whether to verify a provisional ballot where the voter presented no valid identification, based solely on whether that voter’s

signature matches a signature on file with the County. The County has permitted poll monitors to observe the provisional ballot verification process, but the poll monitors may only witness from afar, are unable to see the underlying provisional ballot envelope or form, and are accordingly unable to decipher in any meaningful way whether certain verifications by the County are improper.

CONCLUSION

For the reasons stated above, Petitioners' Requests for Relief in its Verified Petition Under Utah Code Section 20A-1-404 and Rule 65B of the Utah Rules of Civil Procedure should be granted. Given the time sensitivity of this Petition, Petitioners request a hearing at the Court's earliest convenience.

DATED this 14th day of November, 2018.

RAY QUINNEY & NEBEKER P.C.

/s/ Robert P. Harrington

Robert P. Harrington

Attorney for Petitioners

VERIFICATION

Pursuant to Utah Code Ann. § 78B-1-101 *et seq.* (2018), the undersigned, having personal knowledge, declares, that the foregoing factual statements in the Verified Complaint are true and correct to the best of the undersigned's knowledge, information and belief, except for statements that are made upon information, and, in those circumstances, the undersigned believes such statements to be true.

I declare under criminal penalty under the law of Utah that the foregoing is true and correct.

Signed this 14th day of November, 2018.



Cole LaCroix
Field Director
Friends of Mia Love

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2018, a true and correct copy of the foregoing **VERIFIED PETITION UNDER UTAH CODE SECTION 20A-1-404 AND RULE 65B OF THE UTAH RULES OF CIVIL PROCEDURE** was filed with the Clerk of Court using the ECF system and served on Respondent via email at the following address:

Sherrie Swensen
sswensen@slco.org
Cc: got-vote@slco.org

/s/ Jeanette Evans

1472013

EXHIBIT A

Jeanette Evans

From: Robert Harrington
Sent: Monday, November 12, 2018 11:50 AM
To: 'sswensen@slco.org'; 'got-vote@slco.org'
Subject: GRAMA REQUEST - Voter Affidavits and Corresponding Signatures on Ballot Envelopes

Dear Salt Lake County Clerk:

This email to the Salt Lake County Clerk's Office (the "County") is sent pursuant to the Utah Government Records Access and Management Act ("GRAMA"). Utah Code 63G-2-101 et seq. We request that the County provide a copy of all Voter Affidavits that the County has received or receives in the future in connection with signatures on ballot envelopes for the 2018 general election that potentially do not match the voter's signature on file with the County. This request includes Voter Affidavits received in response to notification letters sent by the County regarding un-matching signatures. We further request that, with respect to all such Voter Affidavits, the County also provide a copy of the initial signatures on all such related ballot envelopes.

As we await this information, we request that the County refrain from tabulating and/or separating any related ballot envelopes from the ballots themselves where there is any outstanding question on whether the signature on the ballot envelope matches the signature previously on file with the County.

Please contact me should you have any questions.

All the best,
Bobby

Robert Harrington | Ray Quinney & Nebeker P.C. | 36 South State Street, Suite 1400 | Salt Lake City, Utah 84111
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This email is from a law firm and may contain privileged or confidential information. Any unauthorized disclosure, distribution, or other use of this email and its contents is prohibited. If you are not the intended recipient, please contact the sender and delete this email. Thank you.

EXHIBIT B



Sherrie Swensen
Salt Lake County Clerk

Rashelle Hobbs
Chief Deputy Clerk



<<Date>>

<<Name>>

<<FullAddress>>

**Signatures Do Not
Match**

SUBJECT: Your Vote is Important! Additional Action Required.

We received your 2018 General Election ballot. However, the signature on your ballot envelope does not match the signature we have on file. Utah law requires that a voter must sign their ballot envelope affidavit and the signature must match the signature on the voter's registration form for the ballot to be counted.

NOTE: We continue to process valid ballots and voter affidavits received during the two-week canvassing period after the election. Your ballot will be counted and included in the final certified results once your signature is verified.

Please complete the steps listed below as soon as possible. Your information must be received in our office no later than 5:00 pm on **November 19, 2018.**

1. Sign and date the VOTER AFFIDAVIT on the back of this letter.
2. Return the VOTER AFFIDAVIT by one of the following methods:
 - Email to returnballot@slco.org
 - Mail in the enclosed postage-paid envelope
 - In person to the Election Division at 2001 South State Street, (South Building) Suite S1-200, Salt Lake City, UT 84190
 - Fax to Salt Lake County Elections at 385-468-7401

Your signature will be updated for this election and all future elections.

For additional information during business hours (M-F, 8:00 am – 5:00 pm), call 385-468-8683 or visit our website at www.clerk.slco.org.

<<First>> <<Last>>, <<ID>>

%%ID%%

<<VoterID>>

<<Precinct>>

Voter Affidavit

Read the Declaration

I do solemnly swear that I am a qualified resident voter and that I am entitled to vote in this election. I am not a convicted felon currently incarcerated for commission of a felony.

It is illegal to forge a signature or cast another person's ballot. Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

Sign and Date Below

X

/ /

Signature of Voter (required)

Date (mm/dd/yy)

Email or Phone Number

**Signatures Do Not
Match**