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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

JEFF BURNINGHAM,

Plaintiff,

v.

GARY HERBERT, in his official capacity as
Governor of Utah, and SPENCER COX, in his
official capacity as Lieutenant Governor of
Utah,

Defendants.

**COMPLAINT FOR EQUITABLE,
DECLARATORY AND INJUNCTIVE
RELIEF**

Case No. _____

Judge _____

Plaintiff Jeff Burningham, Republican candidate for Governor of Utah (“Burningham”), complains and alleges against Governor Gary Herbert (the “Governor”) and Lieutenant Governor Spencer Cox (the “Lt. Governor”) in their official capacity as follows:

NATURE OF THE CASE AND PARTIES

1. This is a civil action for equitable, injunctive and declaratory relief as Burningham seeks to secure his right to appear on the Republican primary ballot as a candidate for governor.
2. Burningham is a citizen of the State of Utah who, on or about January 2, 2020, timely filed a declaration for candidacy for governor, and timely filed a notice of intent to gather signatures to secure his place on the ballot pursuant to the Utah Election Code.
3. Defendant Gary Herbert is the Governor of Utah.
4. Defendant Spencer Cox is the Lieutenant Governor of Utah. In that capacity, he is also the chief election officer of Utah and responsible for the enforcement of the Utah Election Code with respect to statewide elections.

JURISDICTION AND VENUE

5. Burningham invokes this Court's federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.
6. Burningham invokes this Court's authority to provide declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.
7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

FACTUAL ALLEGATIONS

8. On or about January 10, 2020, Burningham and his campaign began to gather signatures from registered Republican voters throughout the State of Utah.
9. On February 29, 2020, the COVID-19 virus caused the first US-related death.
10. On March 6, 2020, Governor Herbert declared a state of emergency in Utah.

11. On March 6, 2020, Utah health officials confirmed the first known case of COVID-19 in Utah.

12. On March 10, 2020, Utah confirmed the second case of COVID-19.

13. On March 11, 2020, Utah confirmed the third case of COVID-19.

14. On March 12, 2020, Utah announced a soft closure of schools for at least two weeks.

15. On March 17, 2020, the Utah Department of Health, in coordination with the Governor's Office and Utah COVID-19 Community Task Force, issued an order prohibiting gatherings of more than ten individuals.

16. On March 27, 2020, Governor Herbert issued a Stay Safe, Stay Home Directive, which requires individuals to stay at home as much as possible and to only engage in essential activities outside the home. The term "essential activities" does not include signature gathering.

17. That same day, Salt Lake City issued its own stay-at-home order.

18. On March 29, 2020, Salt Lake County issued a stay-at-home order.

19. On March 30, Wasatch County issued a stay-at-home order.

20. On April 1, 2020, Davis County issued a stay-at-home order.

21. On April 9, 2020, Governor Herbert extended his Stay Safe, Stay Home Directive to May 1, 2020.

22. After the government began issuing warnings, guidance, and orders related to the COVID-19 crisis, Burningham was unable to gather signatures at public events and his ability to safely send signature-gatherers door-to-door to collect signatures was significantly impaired.

23. By April 13, 2020, Burningham had collected approximately 19,150 signatures. His campaign did not attempt to submit these signatures to the Lt. Governor's office because he understood that the Lt. Governor's office would not accept fewer than 28,000 signatures.

24. But for the limitations imposed by the government in response to the COVID-19 crisis, Burningham would have met the signature threshold by the deadline.

25. Burningham is ready to immediately submit all of the approximately 19,150 signatures he has gathered to the Lt. Governor's office.

FIRST CAUSE OF ACTION
(42 U.S.C. § 1983 – First Amendment)

26. Burningham hereby incorporates the foregoing allegations of the Intervenor Complaint as though fully set forth herein.

27. Under present circumstances, Utah's ballot-access requirements for candidates for governor violate rights guaranteed to Burningham by the First and Fourteenth Amendments to the United States Constitution.

28. The emergency measures ordered by the State of Utah and local governments overlay the ballot-access requirements in the Election Code, rendering the ballot-access requirements a severe burden on Burningham's access to the Republican primary ballot.

29. Burningham is suffering immediate and irreparable harm as a result of the State of Utah's ballot-access laws and the emergency orders.

30. The harm will continue unless declared unlawful and enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Burningham respectfully prays for the following relief:

1. This Court should enjoin the Lt. Governor from refusing to include Burningham on the Republican Party's primary ballot and direct the Lt. Governor to place Burningham on the Republican Party primary ballot, either directly or, in the alternative, conditioned upon his 19,150 signatures exceeding a 70% validity rate;
2. Issue a permanent injunction aligning with the modified preliminary injunction issued by this Court; and
3. Retain jurisdiction over this matter and order Defendants to provide Burningham any additional relief the Court deems just.¹

RESPECTFULLY SUBMITTED this 30th day of April 2020.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Cheylynn Hayman _____

Jonathan O. Hafen

Cheylynn Hayman

Attorneys for Intervenor Jeff Burningham

¹ As Jan Garbett has prepared and argued the Motion for Preliminary Injunction and Memorandum in Support on which Burningham is relying for relief in the related case of *Garbett v. Herbert*, 2:20-cv-245-RJS, Burningham is not seeking recovery of his costs and reasonable attorney's fees under 42 U.S.C. § 1988(b).