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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

JAN GARBETT,

Plaintiff,

vs.

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. 2:20-cv-00245-PMW

Magistrate Judge Paul M. Warner

Plaintiff Jan Garbett, Republican candidate for Governor of Utah (“**Garbett**”), complains and alleges against Governor Gary Herbert and Lieutenant Governor Spencer Cox 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 Garbett seeks to secure her right to appear on the Republican primary ballot as a candidate for governor.
2. Garbett is a citizen of the State of Utah, who pursuant to the Utah Election Code timely filed a declaration of candidacy for governor and timely filed a notice of intent to gather signatures to secure her place on the ballot.

3. Defendant Gary Herbert is the Governor of Utah and possesses power to act during emergencies and times of crisis, as he has demonstrated recently in addressing the Coronavirus.

4. Defendant Spencer Cox is the Lieutenant Governor of Utah. In that capacity, he is also the chief election officer of Utah, *see* Utah Code § 67-1a-2(2)(a), and responsible for the enforcement of the Utah Election Code with respect to statewide elections. Lieutenant Governor Cox is also a Republican candidate for governor.¹

JURISDICTION AND VENUE

5. Garbett invokes this court's jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, in that this matter presents a federal question involving rights protected by the U.S. Constitution.

6. 28 U.S.C. §§ 2201 and 2202 authorize the declaratory and injunctive relief Garbett seeks.

7. The District of Utah represents a proper venue pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Garbett's claims occurred in the District of Utah.

FACTUAL ALLEGATIONS

8. Under Utah law, a gubernatorial candidate seeking the nomination of a qualified political party through the signature gathering process may qualify for the primary ballot by collecting 28,000 valid signatures. *See* Utah Code Ann. § 20A-9-408(8).

9. Such a candidate may collect signatures only after filing an intent to gather signatures.

See id. § 20A-9-408(3).

10. This election year, gubernatorial candidates had until March 19, 2020, to file such an intent. *See id.*

¹ Because he is running for governor, Lieutenant Governor Cox announced in May 2019 that he created a process through which former Utah Lieutenant Governor Gayle McKeachnie would make initial advisory determinations on election-related matters, but that he would still have authority to make ultimate decisions because he could not delegate those statutory duties to McKeachnie. *See Memorandum*, Justin Lee & Kirsten Rappleye, May 14, 2019,

11. Utah law ties the timeframe for collecting signatures to the date of the applicable political party's state convention. *See id.* § 20A-9-408(8)(b). Specifically, the law provides that the signatures may be gathered from January 1 until "5 p.m. 14 days before the day on which the qualified political party's convention for the office is held." *See id.*

12. The Utah Republican Party set Saturday, April 25, 2020 as the date for its state convention. Candidates therefore could collect signatures until 5 p.m. on Saturday, April 11, 2020. Candidates had until Monday, April 13, 2020 to submit signatures to the Lieutenant Governor's office.

13. Garbett's decision to run as a candidate for governor sprung from an event on January 31, 2020. That day, the Silicon Slopes Tech Summit hosted a debate for six Republican gubernatorial candidates. Garbett was surprised to learn at that event that all six Republican candidates backed President Donald Trump.

14. Garbett had assumed that at least two of the candidates did not support President Trump given his caustic style and frequent divergence from many Utah Republicans on policy issues. In fact, a poll commissioned by Garbett at the end of 2019 found that approximately 26 percent of Utah Republicans had serious reservations about President Trump. Given these facts, Garbett felt compelled to provide Utah Republicans an alternative option on the ballot, and she began to investigate a possible gubernatorial campaign.

15. One of the most important considerations in Garbett's investigation was whether she would be able to collect signatures in time to qualify for the primary ballot. Given recent experience, Garbett surmised that a Trump-skeptic candidate had little chance of qualifying for the primary ballot through the Republican convention. Indeed, in 2018, Mitt Romney—a Trump-skeptic Republican—only garnered 49 percent of the delegate vote at the Republican

convention compared to 51 percent for his pro-Trump challenger, despite Romney's high levels of general name recognition and support in Utah. In the Republican 2018 primary election, Romney then easily beat this same opponent 71 to 29 percent.

16. Accessing the ballot through the signature gathering process appeared to be Garbett's only viable path to the ballot.

Garbett's Initial Signature Gathering Efforts

17. Given Garbett's shorter window to obtain the necessary signatures, and with the convention path not being a viable option, Garbett approached professional signature-gathering firms in order to ensure the campaign would meet its deadline and that Garbett would get on the ballot.

18. The campaign approached eight different firms about conducting this work and ultimately received bids from two firms with significant experience. On February 12 and 13, these two firms submitted proposals to gather 35,000 signatures before the deadline. These proposals included significant "overage" of 7,000 signatures in order to ensure that the campaign would qualify for the primary ballot because—as is common—these firms anticipated many signatures would not satisfy ballot requirements. Both proposals anticipated meeting the April 13 deadline with 35,000 signatures with a buffer of a few days.

19. Because these professionals were confident that Garbett could collect the necessary signatures in that timeframe, Garbett decided to move forward with her gubernatorial campaign.

20. On February 17, 2020, Garbett executed a contract with I&RCMS to gather 35,000 signatures by April 8, 2020. Furthermore, out of an abundance of caution, Garbett engaged a second signature gathering firm, Zero Week, to collect 15,000 additional signatures exclusively in Utah County. With the addition of the Zero Week contract, the Garbett campaign had

commitments for the collection of 50,000 signatures before the deadline. Garbett felt this necessary to ensure her place on the primary ballot and to build a buffer.

21. The head of I&RCMS arrived in Utah around February 19, 2020, and spent the next few days making job postings and undertaking preparations to start collecting signatures. I&RCMS established its initial signature office in the campaign headquarters in Salt Lake City. Garbett filed her intent to gather signatures on February 24, 2020. That same day, I&RCMS sent out its first canvasser to begin gathering signatures for Garbett. The following week, on March 2, 2020, I&RCMS hired office managers and opened new signature offices in Sandy, Providence, and St. George. One week later it added an office manager and office in Ogden. Shortly after Super Tuesday (March 3), Zero Week's key management personnel had arrived in Utah. They subsequently started an office in Pleasant Grove. By March 11, 2020, Zero Week had employed canvassers and started signature gathering shifts in Utah County.

22. Just as the signature gathering companies were becoming fully staffed and beginning to hit their stride, the Coronavirus crisis made its way to Utah.

The Coronavirus Crisis Hits Utah

23. On March 6, 2020, Governor Herbert declared a state of emergency and appointed Lieutenant Governor Cox as head of the Utah COVID-19 Community Task Force. On March 9, 2020, Utah reported its first case of COVID-19.

24. On March 11, 2020, the NBA suspended its season because a player for the Utah Jazz was diagnosed with COVID-19.

25. 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.

26. During that time, the health departments of Salt Lake County and Utah County took additional action to prohibit gatherings of more than ten individuals by adding criminal penalties (misdemeanor violation) for individuals found gathering in groups larger than ten.

27. The State of Utah and local authorities have closed schools and public universities. The State of Utah and local authorities have ordered restaurants, bars, and cafes to close except for curbside pick-up, take out, or delivery. Utahns have been instructed to stay six feet away from others.

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

29. That same day, Salt Lake City issued its own stay-at-home order. Salt Lake County followed suit on March 29, 2020.

30. On March 30, 2020 and April 1, 2020, Wasatch County and Davis County, respectively, issued stay at home orders.

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

32. In short, Utahns are living under emergency orders that restrict daily lives to an unprecedented degree, and understandably so. As of April 13, 2020, there were well over 570,000 confirmed cases of COVID-19 and nearly 23,000 deaths in the United States. In Utah, confirmed cases jumped from 51 on March 17, 2020, to 298 just one week later on March 24, 2020. As of April 13, 2020, there have been over 2,300 reported cases in Utah.

Election-Related Responses to Coronavirus Across Nation

33. On March 19, 2020, New Jersey Governor Phillip D. Murphy issued Executive Order 105 (2020), permitting candidates to gather signatures via online forms. “No one should be out gathering signatures, physically; we want to see all signature collection moving to the online platforms,” Gov. Murphy said.

34. On or about March 20, 2020, New York Governor Andrew Cuomo issued an Executive Order temporarily modifying the signature requirements for ballot access such that candidates will only need to collect 30 percent of the statutory threshold. It also extended deadlines for New Yorkers to register to vote absentee.

35. On March 16, 2020, Ohio Governor Mike DeWine delayed in person voting for the presidential primary election until June, a decision upheld after a challenge by the Ohio Supreme Court.

36. Arizona has adopted online petitioning. *See* Arizona Secretary of State: Citizen Clean Elections Commission, Welcome to E-Equal, available at <https://apps.azsos.gov/equal/> (“Voters interested in assisting Statewide and Legislative candidates can now sign a petition electronically”).

37. As of April 13, 2020, twenty-one states have taken steps to delay elections.

Impact of Coronavirus Crisis on Garbett’s Campaign

38. On March 16, 2020, Zero Week informed the Garbett campaign that it was instructing its employees to stay at home and temporarily suspended signature gathering on a day-by-day basis.

39. Because of the Garbett campaign’s tight timeframe, it ended its contract with Zero Week and asked I&RCMS to take over operations in Utah County. By Thursday, March 19, 2020, I&RCMS had hired office managers to run operations in Utah County and began hiring new

canvassers. Its office there opened on March 21, 2020. By March 25, 2020, I&RCMS had hired approximately 200 people to help with its signature gathering efforts in Utah.

40. The two most efficient and common way to collect signatures is by approaching voters at large public gatherings or at their homes.

41. When seeking signatures at homes, canvassers use voter data to specifically target registered Republicans and then knock on their doors to ask for signatures.

42. As the government began issuing warnings, guidance, and orders related to the Coronavirus, Garbett began to see her rejection rate—the rate at which people refuse to sign a petition after answering their door or being approached by a canvasser—grow from 20 percent to 50 percent.

43. In addition, ordinarily, Garbett could be expected to gather up to 30% of the necessary signatures by sending organizers to attend public events (such as sporting events) or by sending organizers to places where large groups congregate (such as universities). Because of closures and governmental orders, Garbett could not gather signatures in this way.

Coronavirus-related Changes to Utah's Election

44. While Garbett struggled to obtain signatures, various Utah officials were making changes to address the Coronavirus crisis.

45. The Utah Republican Party was slated to hold its required precinct caucuses on March 24, 2020.

46. Those caucuses are mandated by the Party's constitution and are where delegates to the state convention are selected.

47. On or around March 12, 2020, the Utah Republican Party announced that its state convention would move to a virtual online convention, with all precinct caucuses indefinitely postponed.

48. The Party also stated that it would use the delegates elected for the 2018 state convention for the 2020 convention.

49. Around this time, Garbett engaged in conversations with the Lieutenant Governor's Office and the Governor, respectfully requesting that they do something to address the signature-gathering situation. One request Garbett made was to allow campaigns to collect electronic signatures. The Governor and Lieutenant Governor refused to make such an accommodation, citing the Utah statute that does not permit the electronic signing of petitions. While accurate, Utah law also provides that a "signature may not be denied legal effect or enforceability solely because it is in electronic form" and "[i]f a law requires a signature, an electronic signature satisfies the law." *See* Utah Code § 46-4-201.

50. However, on March 12, 2020, Governor Herbert issued an executive order countermanding the statutory requirement that candidates file their declarations of candidacy in person. Instead, through executive order, Governor Herbert allowed individuals to file declarations of candidacy electronically. Governor Herbert explained that "[t]his declaration simply creates a pathway for individuals to participate in the political process, even if they are experiencing symptoms and need to stay home."

51. At the same time, Garbett's campaign continued to do its best to collect signatures. While taking all possible measures to protect its staff and voters, Garbett continued to send canvassers to doors until the stay at home orders and directives went into effect. During the last four days of signature gathering, the campaign averaged 1,600 signatures per day.

52. However, on March 27, 2020, Governor Herbert issued the Stay Safe, Stay Home Directive. That same day, Salt Lake City issued its stay-at-home order. Salt Lake County issued its order on March 29, 2020.

53. Those orders do not create exemptions for signature collections.

54. As Garbett continued to plead with the Governor and Lieutenant Governor to allow electronic signatures, Governor Herbert issued an executive order to allow campaigns to collect copies of handwritten signatures by eliminating the requirement that the signature-gatherer verify having witnessed the signing.

55. The Governor presented this as having met Garbett's request to allow electronic signatures. However, the action did no such thing.

56. Garbett had requested being allowed to collect and submit "electronic signatures." Utah law defines "electronic signature" as "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." *See* Utah Code § 46-4-102(8).

57. Instead, the Order replaced in-person signature gathering with a "new" avenue that did woefully little to counterbalance the elimination of in-person signature gathering.

58. Specifically, the process outlined in the Order requires at least the following: (1) a candidate to create an appropriate signature form; (2) a candidate to identify appropriate recipients of such forms; (3) a candidate to deliver the form to a voter, either through e-mail or physical mail; (4) a voter to print off the form (if received electronically) and correctly fill out the form, including signature and other required information, without assistance from signature gatherer; (5) a voter to scan the form or return it via mail; (6) a voter to attach the scanned form

to an e-mail; (7) a voter to e-mail the candidate an attached copy of the signed signature page; and (8) a candidate to provide the signature pages to the Lieutenant Governor's Office.

59. The Order does not account for the realities associated with the signature-gathering process. Collecting "electronic handwritten signatures" requires significantly more expense and work than collecting in-person handwritten signatures, and also requires the voter to own a printer or scanner or to pay to return the signed petition through mail.

60. Moreover, the Order significantly increases the burden on Garnett by effectively prohibiting the door-to-door and other in-person signature collection methods almost exclusively relied on by Garbett's campaign.

61. Any doubt as to whether the Order, itself, prohibits such collection efforts was erased when the Governor issued the Stay Safe, Stay Home directive, which was in turn followed by more orders from counties and cities across the state, as detailed above.

62. In addition, the Governor issued the Order in the evening on Thursday, March 26. That gave campaigns little more than two weeks to create this new system. For mailing efforts, that meant campaigns would have two weeks to create acceptable petitions, have them printed and mailed in mass, and receive them back from voters in two weeks.

63. The campaign experimented with the new executive order to see if remote signature gathering would succeed. The campaign quickly piloted an effort to test whether voters would sign and return signature petition sheets that the campaign mailed to them—with postage-paid return envelopes.

64. The campaign assumed that soliciting signatures via mail would likely only result in a return rate of 1 to 5 percent. To improve return rates, the campaign had canvassers hand-address envelopes to registered Republican voters. The campaign ensured that the list excluded voters

who had already signed nominating petitions for previously-qualified candidates—Thomas Wright and Spencer Cox—as well as anyone who had already signed for Garbett’s campaign.

65. The campaign sent 20,000 hand-addressed letters with nominating petitions, postage-paid return envelopes, instructions, and a brief campaign message between March 28 and April 2. The recipients’ signed and returned petitions started arriving on April 7 and continued to the signature-gathering deadline of April 13. In total, the campaign received approximately 1,000 signatures from this effort. This means that the mailers produced a return rate of 5 percent and the average cost per signature for mail solicitation was an unsustainable \$163 per signature.

66. For comparison, the canvassing operation produced signatures at an average cost of approximately \$25 per signature.

67. While Garbett’s canvassing operation ended up costing much more than is typical because of various factors, it was much less expensive than any other option, including mail. All other methods for collecting signatures were simply unsustainable. Remarkably, outreach through email and text-message proved to be even more expensive on a per signature basis. The pilot program using email to solicit signatures involved appeals to approximately 6,500 registered Republicans and cost roughly \$584 per signature. The pilot program using text messages to mobile phones involved about 3,000 registered Republicans and generated only three signatures; it cost a whopping \$5,583 per signature.

68. By April 13, 2020, Garbett had collected signatures approximately 21,000 signatures. Her campaign attempted to submit these signatures to the Lieutenant Governor’s Office on April 13, 2020, but they were refused because there were not a sufficient number of signatures to qualify Garbett for the ballot.

69. But for the unprecedented limitations imposed by the government in response to the Coronavirus crisis, Garbett would have met the signature threshold by the deadline.

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

70. Garbett realleges the allegations contained in the preceding paragraphs.

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

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

73. Garbett is suffering immediate and irreparable harm as a result of the State of Utah’s ballot-access laws and the emergency orders.

74. The harm will continue unless declared unlawful and enjoined by this court.

SECOND CAUSE OF ACTION
(42 U.S.C. § 1983 – Equal Protection)

75. Garbett realleges the allegations contained in the preceding paragraphs.

76. Under the present circumstances, Utah’s ballot-access requirements for candidates for governor who seek a place on the Republican primary ballot through the petition process violate Garbett’s and her supporters’ rights under the Equal Protection Clause of Fourteenth Amendment to the United States Constitution.

77. Under the present circumstances, Utah’s ballot-access requirements irrationally classify on the basis of which route a candidate is seeking access to the Republican primary ballot, on when a candidate began collecting signatures, between electronic signatures and handwritten

signatures, and on how a voter seeks to support a candidate seeking access to the Republican primary ballot.

PRAYER FOR RELIEF

WHEREFORE, Garbett prays for respectfully prays that this court:

1. Issue a preliminary injunction (1) prohibiting enforcement of Utah's requirement that Garbett submit 28,000 valid signatures to be placed on the Republican primary ballot; (2) directing Defendant Lieutenant Governor Cox to place Garbett on the Republican primary ballot;
2. In the alternative, issue a preliminary injunction: (1) prohibiting Lieutenant Governor from certifying which candidates will appear on the Republican primary ballot for governor and from printing and mailing Republican primary ballots and directing Governor Herbert to extend the deadline for submitting petition signatures until four weeks after Governor Herbert's Stay Home, Stay Safe directive and all local stay at home orders expire;
3. Issue a declaratory judgment providing that in light of the current public health emergency caused by the Coronavirus and accompanying state and local orders, Utah's signature requirement cannot be constitutionally enforced against Garbett and that Defendants must accordingly place her name on the Republican primary ballot for governor;
4. Issue a permanent injunction aligning with the preliminary injunction issued by the court;
5. Order Defendants to pay to Garbett her costs and reasonable attorney fees under 42 U.S.C. § 1988(b);

6. Retain jurisdiction over this matter and order Defendants to provide Garbett any additional relief the court deems just.

RESPECTFULLY SUBMITTED this 13th day of April, 2020.

TETER & VU LLC

/s/ Michael J. Teter

Attorney for Jan Garbett