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IN THE UTAH SUPREME COURT

FARLEY ANDERSON, STEVEN G. MAXFIELD, STEVEN K. MAXFIELD, and JOHN DOES 1-50, Petitioners, vs. LT. GOVERNOR GREG BELL, MARK THOMAS, PAUL NEUENSCHWANDER, SPENCER HADLEY, et al., and JOHN DOES 1-10, Respondents.	**PETITIONER FARLEY ANDERSON'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF AMENDED PETITION FOR EXTRAORDINARY WRIT OF RELIEF** Case No. 20100237 SC

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Pursuant to Rule 19(d) of the Utah Rules of Appellate Procedure and the Court's June 2, 2010, Supplemental Briefing Order, Petitioner Farley Anderson respectfully submits this Supplemental Memorandum in Support of his Amended Petition for Extraordinary Writ of Relief.

INTRODUCTION

Utah statutes set forth a straightforward process for unaffiliated candidates to gain access to the general election ballot. The candidate must collect at least 1,000 signatures on petition forms and must certify that he or she has "provided the required number of signatures." The candidate must then present the signed petition forms to County Clerks. The County Clerks are required (and allowed) to determine only (i) whether each submitted signature corresponds to a registered voter and (ii) whether the voter in question has signed a nomination petition for another candidate for the same office. If the Clerk determines that the signatures meet those two criteria, then the Clerk must certify the names for inclusion on the candidate's nomination petition.

Once the requisite number of signatures is collected and certified, the candidate must present the signed, certified petition to the Lieutenant Governor and pay a filing fee. By statute, the Lieutenant Governor is required to read to the candidate the statutory and constitutional requirements for candidacy, and the candidate must thereafter state whether he or she meets those requirements. If a candidate presents a certified petition, pays the requisite filing fee, and affirms that he or she meets the requirements for candidacy, the candidate has met all statutory

requirements for inclusion on the general election ballot and the Lieutenant Governor has no authority to refuse the petition.

Here, the Lieutenant Governor refused to perform these simple statutory duties, and instead imposed on Farley Anderson and various County Clerk extra-statutory requirements that not only violated the common and statutory laws of this State, but that also deprived Mr. Anderson and those who would support him of their constitutional rights of freedom of association and fair and equal access to the ballot. This should not be countenanced.

Farley Anderson, an unaffiliated gubernatorial candidate, presented various County Clerks with petitions including more than 1,000 signatures from registered voters. The County Clerks certified the names included with Mr. Anderson's petitions. Mr. Anderson then took his completed nominating petitions to the Lieutenant Governor's office as required by statute. Mr. Anderson presented his petitions, paid the filing fee, and affirmed his ability to meet the statutory and constitutional requirements for candidacy. Although he had complied with all statutory requirements, the Lieutenant Governor's office denied Mr. Anderson's right to be placed on the November ballot based on the Lieutenant Governor's refusal to count the signatures of voters who signed the petition electronically, i.e., by "e-signature," rather than by putting pen to paper. Notably, neither the Lieutenant Governor (nor any County Clerk) challenged any of the signatures as fraudulently obtained, or even raised the potential of fraud as a basis to refuse to count some signatures and thereby to refuse the petition. The Lieutenant Governor instead rejected Mr. Anderson's petitions solely on his categorical refusal to accept e-signatures as valid.

The Lieutenant Governor's position with respect to e-signatures has no support in existing law. All signatures obtained by Mr. Anderson are valid and legally enforceable according to the statutory definition of "signature." That definition includes electronic signatures, and must be employed when construing the Unaffiliated Candidate Ballot Access statute.

Moreover, in refusing to accept Mr. Anderson's completed nomination petition, the State restricted Mr. Anderson's constitutionally protected ballot-access rights. This restriction does not serve a compelling State interest and cannot be used to abdicate the rights Mr. Anderson has under the constitutions of Utah and the United States.

In any event, the deadline by which the State of Utah requires unaffiliated candidates to collect nomination petition signatures and submit their petitions to the Lieutenant Governor is itself unconstitutional. The early deadline—nearly 200 days before the general election—violates the First and Fourteenth Amendments of the United States Constitution, and the uniform operation of law provision of the Utah State Constitution, by discriminating against unaffiliated candidates as compared to candidates from recognized political parties.

For these reasons and others, as discussed more fully below, the Court should order the Lieutenant Governor to recognize the legitimacy of the e-signatures supporting Mr. Anderson's nominating petition and to place Mr. Anderson's name on the November ballot. The Court should also strike as unconstitutional the existing unaffiliated candidate filing deadline.

ARGUMENT

I. BALLOT ACCESS IS A FUNDAMENTAL RIGHT PROTECTED BY THE UTAH AND UNITED STATES CONSTITUTIONS.

"[N]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. . . ." *Gallivan v. Walker*, 2002 UT 89, ¶ 24, 54 P.3d 1069 (quoting *Reynolds v. Sims*, 377 U.S. 533, 560, 84 S. Ct. 1362 (1964)). There can be no question that the right to vote—the right to have free and fair access to the ballot—is of the utmost import for the successful operation of government in our society. *See generally id.* This sacrosanct and fundamental right is established in and protected by not only the United States Constitution, but also the Constitution of the State of Utah, which states: "All elections are to be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Article I, Section 17.

The importance of the constitutionally protected right to access the ballot requires that any restriction on that right must be narrowly tailored to serve a compelling State interest. *See, e.g., Norman v. Reed*, 502 U.S. 279, 289, 112 S. Ct. 698 (1991); *Buckley v. Am. Const'l Law Foundation, Inc.*, 525 U.S. 182, 192 n.12, 119 S. Ct. 636 (1999). In striking down a multi-county ballot initiative petition signature requirement, this Court held that restrictions that interfered with constitutionally protected rights "must be 'narrowly drawn to advance a State interest of compelling importance.'" *Gallivan*, 2002 UT 89, ¶ 81 (quoting *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S. Ct. 2059 (1992)). Any restriction on ballot access imposed by the State must be the least drastic means of achieving the State's interest; if less restrictive

alternatives exist, the existing restriction will not survive constitutional muster. *See, e.g., Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 185, 99 S. Ct. 983 (1979) (noting that, where restrictions on access to the ballot are involved, "a State may not choose means that unnecessarily restrict constitutionally protected liberty [and must] adopt the least drastic means to achieve their ends") (internal citations omitted); *Gallivan*, 2002 UT 89, ¶ 83, 54 P.3d 1069, 1097.

When dealing with protected constitutional rights, such as ballot access, voting, speech, and association, the government must act clearly and definitively; any such restrictions may not be assumed or imposed by other than clear legislative mandate. *Veiga v. McGee*, 26 F.3d 1206, 1212 (1st Cir. 1994) ("In the absence of clear legislative intent, we will not adopt an interpretation of a statute that would render it constitutionally suspect."). It is the policy of this Court, like the United States Supreme Court, "to interpret a statute if possible to avoid potential constitutional conflicts." *Cole v. Jordan Sch. Dist.*, 899 P.2d 776, 778 (Utah 1995) (citing *Carlson v. Bos*, 740 P.2d 1269, 1276 (Utah 1987); *State v. Casarez*, 656 P.2d 1005, 1008 (Utah 1982)); *see also Rust v. Sullivan*, 500 U.S. 173, 190, 111 S. Ct. 1759 (1991).

It follows that neither the County Clerks nor the Lieutenant Governor may lawfully impose restrictions on ballot access that are not clearly and definitively authorized by the legislature, a principle this Court recognized in *Page v. McKeachnie*, 2004 UT 65, 97 P.3d 1290 (Utah 2004). In that case, the County Clerks implemented a signature verification process for a ballot initiative that was not authorized by statute. *Id.* ¶ 3. Specifically, the clerks were checking for address matches and signature matches where the statute only required valid signatures. *Id.*

¶¶ 2-3. This Court concluded that the County Clerks improperly exercised "negative discretion" by imposing additional petition requirements—i.e., address matches—that were not required by the ballot initiative statute. *Id.* ¶¶ 4-7.

McKeachnie acknowledged that County Clerks, and by inference the Lieutenant Governor, do not have the ability unilaterally to create requirements for ballot or candidate petitions. The Utah Legislature established requirements and charged the County Clerks and the Lieutenant Governor with specific duties to manage the electoral process. *See generally id.*; Utah Code Ann. §§ 20A-9-501 to -503. The County Clerks and the Lieutenant Governor may carry out only those responsibilities given to them by the legislature, and may not impose additional or different ballot restrictions of their own choosing. *Id.* The unaffiliated candidate statute is clear on this point: "Upon compliance with the provisions of this part, the unaffiliated candidate is entitled to all the rights and subject to all the penalties of candidates selected by a registered political party." Utah Code Ann. § 20A-9-501(b) (emphasis added).

In addition to making clear that candidates need meet only the statutory requirements, the statute is also clear that the petition signature "transaction" is between the signer and the circulator, and that it is complete before the petitions are presented to the County Clerks for certification. Utah Code Ann. § 20A-9-502(2)(a). When presented by the petition circulator with the petition, whether in person or online, the registered voter decides whether to sign the petition to indicate his or her support of the candidate's nomination and placement on the ballot. Once the petition is signed, the gathering of that voter's signature, i.e., the transaction, is complete; the only two parties to that transaction are the petition circulator, on the one hand, and

the petition signer, on the other. The County Clerk's only role thereafter is to verify that the signer is a registered voter who has not signed another candidate's petition for the same office. *Id.* § 20A-9-502(2)(b). The Lieutenant Governor's only role after that is to verify the number of certified signatures, read to the potential candidate the oath of office, and collect the filing fee. Neither the County Clerks nor the Lieutenant Governor has any role in the underlying transaction at issue, i.e., the individual voter's decision whether to sign the petition, nor could—or should—they.

The unaffiliated candidate statute does not impose any additional or different requirements on what may be deemed a "signature" beyond what is already required under established law, nor does it authorize any other person or entity to do so. If it did, the statute would raise severe constitutional concerns by imposing greater obstacles to ballot access than are imposed on transactions generally. *See generally* Utah Const. art. I, § 24; *see also Cole*, 899 P.2d at 778 (acknowledging this Court's policy "to interpret a statute if possible to avoid potential constitutional conflicts").

II. UTAH DEFINES "SIGNATURE" TO INCLUDE ELECTRONIC SIGNATURES

In enacting the "Candidates Not Affiliated with a Party" Chapter of the Election Code, the State chose not to restrict unaffiliated candidate access to the ballot by imposing signature requirements different than, or in addition to, the well-established definition of "signature" set forth in Utah common and statutory law. For example, ballot petition signatures need not be notarized or otherwise witnessed. To the contrary, rather than try to restrict ballot access, the legislature expressly instructed courts to "construe this part liberally so as to give unaffiliated

candidates for public office every reasonable opportunity to make their candidacy effective." Utah Code. Ann. § 20A-9-501(3).[1]

With this framework in mind, the issue is whether the Lieutenant Governor may preemptively shut the door on Mr. Anderson's candidacy based on the Lieutenant Governor's rejection of the e-signatures Mr. Anderson obtained online from registered voters. The answer to the question is "no." Utah's statutory nomination and petition scheme includes a definition of "signature," and the e-signatures Mr. Anderson collected meet that definition. E-signatures are no different from their handwritten counterparts for purposes of an unaffiliated candidate's nomination petition. The Lieutenant Governor's categorical rejection of e-signatures denies Mr. Anderson his constitutionally protected right to ballot access.

A. The Legislative Definition of "Signature" Includes E-signatures.

The Utah Legislature has said, for purposes of construing Utah's statutory enactments, that a "'[s]ignature' includes any name, mark, or sign written with the intent to authenticate any instrument or writing." Utah Code Ann. § 68-3-12(2)(w). Likewise, the Legislature has said, for purposes of interpreting the Utah Code, that a "writing" includes: "(i) printing; (ii) handwriting; and (iii) information stored in an electronic or other medium if the information is retrievable in a perceivable format." *Id.* § 68-3-12(2)(cc) (emphasis added).[2] When the Legislature has defined a term, that definition is to be observed when construing Utah statutes. Utah Code Ann. § 68-3-

[1] A liberal construction is not necessary in this case, however, because the statute itself is clear. Mr. Anderson has complied with the statute and it is the Lieutenant Governor who has acted beyond the statute's command.

[2] The legislature amended and renumbered this Section to Utah Code Ann. §§ 68-3-12 and -12.5 during its 2010 session. *See* 2010 Utah Laws Ch. 254 (H.B. 236).

11. Under these legislatively adopted rules of construction, the definition of "signature" is incorporated into the Unaffiliated Candidate statute, and the Lieutenant Governor has no authority to impose a different definition. Indeed, the State has not even attempted to explain why the Legislature's definition of any term could legitimately be over-ridden by the Lieutenant Governor.[3]

This statutory definition should end the inquiry. Mr. Anderson submitted petitions that contained sufficient signatures, all of which met the statutory definition of "signature." By definition, those signatures could include "any name, mark, or sign written with the intent to authenticate any instrument or writing," which may "include information stored in an electronic . . . medium." *Id.* §§ 68-3-12(2)(w) and (cc).[4] Mr. Anderson thus satisfied the signature requirements of the unaffiliated candidate nomination petition statute, Utah Code Ann. § 20A-9-502, and should have been allowed to access the ballot.

B. Utah Statutory Definition is Consistent with Common Law.

In defining the term "signature," the Legislature merely restated long-established principles of common law:

> In regard to a signature, it is the intent rather than the form of the act that is important. While one's signature is usually made by writing his name, the same purpose can be accomplished by placing any writing, indicia or symbol which the

[3] Given that elected officials in Utah so frequently advocate for "strict construction" of constitutions and statutes, it is at least anomalous that the Lieutenant Governor asks this Court to allow him to overlook this legislative directive.

[4] Utah courts rely on the rules of construction and definitions set forth by the legislature in Utah Code Ann. § 68-3-12. *See, e.g.*, *Roswell v. Labor Comm'n*, 2008 UT App. 187, ¶ 13, 186 P.3d 968; *Brent Brown Dealerships v. Tax Comm'n, Motor Vehicle Enforcement Div.*, 2006 UT App 261, ¶ 40, 139 P.3d 296; *In re Estate of Scarritt*, 845 P.2d 938, 940 (Utah Ct. App. 1992); *Jensen v. Intermountain Health Care, Inc.*, 679 P.2d 903, 908 (Utah 1984).

> signer chooses to adopt and use as his signature and by which it may be proved: e.g., by finger or thumb prints, by a cross or other mark, or by any type of mechanically reproduced or stamped facsimile of his signature, as effectively as by his own handwriting.

Salt Lake City v. Hanson, 425 P.2d 773, 774 (Utah 1967).

This Court's recognition that intent trumps form with respect to signatures comports with centuries of judicial treatment and common law. In 1915, for example, the Nebraska Supreme Court analyzed what constituted a signature by citing to an 1867 appellate case in England: "Where a name was stamped upon a notice of objection in an election contest proceeding which the statute required 'shall be signed by the person objecting,' this was held sufficient." *Berryman v. Childs*, 153 N.W. 486, 488 (Neb. 1915) (quoting *Bennett v. Brumfitt*, 3 L. R. C. P. (Eng. 1867) (emphasis added)); *see also Roberts v. Johnson*, 212 F.2d 672, 674 (10th Cir. 1954) ("The law is settled that a printed name upon an instrument with the intention that it should be the signature of the person is valid and has the same force and effect as though the name were written in the person's own handwriting."). Similarly, in 1882, the Maryland Supreme Court held that names of individuals printed on letterhead were sufficient "signatures" to satisfy the statute of frauds because the names of the individuals were placed on the letterhead by them, or by their authority. *Drury v. Young*, 1882 WL 4502 at *4 (Md. 1882) ("This decision of our Court settles the question that the place of the signature in the memorandum is immaterial, and the English cases are equally emphatic, that the name may as well be printed as written, if the printed name is adopted by the party to be charged.").

As here, *Salt Lake City v. Hanson*, 425 P.2d 773, involved a request for relief under Rule 65B of the Utah Rules of Civil Procedure.[5] In *Hanson*, a district court judge dismissed seven criminal cases on appeal from a city court because the city court judge stamped rather than signed his signature on the respective complaints. 425 P.2d at 773-74. Salt Lake City sought relief in this Court to correct the district court's abuse of judicial power. *Id.* at 773 n.1. In a single paragraph—the paragraph quoted above—this Court held that the stamped signature was valid and that the district court improperly elevated form over substance in disregarding it. *Id.* at 774 ("In regard to a signature, it is the intent rather than the form of the act that is important."). The Court granted Salt Lake City's request for Rule 65B relief and "kindly reversed" the district court. *Id.* at 778.

Commentators, like courts, recognize that substance and intent predominate over form. "The signature to a memorandum may be any symbol made or adopted with an intention, actual or apparent, to authenticate the writing as that of the signer." Restatement (Second) of Contracts § 134 (1981); *id.*, cmt. a ("The traditional form of signature is of course the name of the signer, handwritten in ink. But initials, thumbprint or an arbitrary code sign may also be used; and the signature may be written in pencil, typed, printed, made with a rubber stamp, or impressed into the paper. Signed copies may be made with carbon paper or by photographic process."); *see also Northstream Invs., Inc. v. 1804 Country Store Co.*, 739 N.W.2d 44, 48-49 (S.D. 2007) (collecting cases).

[5] Here, Mr. Anderson requests relief under Rule 19 of the Utah Rules of Appellate Procedure which is akin to the extraordinary relief available under Utah Rule of Civil Procedure 65B.

More recently, courts have acknowledged that electronic marks and signatures, even in the absence of statutory authorization, are valid signatures so long as the requisite intent exists. *See, e.g.*, *Rosenfeld v. Zerneck*, 776 N.Y.S.2d 458, 460 (N.Y. S. Ct. 2004) ("This Court holds that the sender's act of typing his name at the bottom of the e-mail manifested his intention to authenticate this transmission for Statute of Frauds purposes and the copy of the e-mail in question submitted as evidence by the defendant constitutes a sufficient demonstration of same."); *Cloud Corp. v. Hasbro, Inc.*, 314 F.3d 289, 295-96 (7th Cir. 2002) (concluding that a sender's name on an e-mail satisfies the signature requirement of the statue of frauds); *Roger Edwards, LLC. v. Fiddes & Son, Ltd.*, 245 F. Supp. 2d 251, 261 (D. Me. 2003) (acknowledging that "[c]ourts in other jurisdictions have held that e-mails satisfy the writing and signature requirements of statutes of frauds" and holding the same is true in Maine). In each of these cases, the respective courts held that a name, typed into an e-mail, and sent electronically to the recipient, constituted a valid signature because the requisite intent to sign existed.

C. Other Utah Statutes Reinforce the Acceptance of Electronically Signed Nominating Petitions.

The Legislature's intent to recognize the validity of signatures in various forms, including electronic, can be found throughout its statutory enactments. For example, under Utah's adoption of the Uniform Commercial Code, a contract or agreement can be signed "using any symbol executed or adopted with present intention to adopt or accept a writing." Utah Code Ann. § 70A-1a-201(2)(kk). Thus, the statute of frauds in Utah Code Ann. § 70A-2-201 is satisfied by a written agreement, that has been signed by using any symbol with the intent to adopt or accept the agreement. *Id.* § 70A-1a-201(2)(kk). As other courts have acknowledged,

this includes e-signatures. *See Int'l Casings Group, Inc. v. Premium Standard Farms, Inc.*, 358 F. Supp. 2d 863, 874 (W.D. Mo. 2005).

The interchangeability of handwritten signatures and e-signatures is clear throughout Utah's statutory code. Utah has legislated the use of electronic filings and e-signatures in Utah's courts. *See* Utah Code Ann. §§ 78A-2-217; 46-4-503(1)(d)(ii). Utah law requires that citizens be allowed to conduct a variety of governmental transactions electronically, using e-signatures, including filing income tax returns, renewing driver's licenses and motor vehicle registrations, registering corporations or partnerships, and registering products or brands. *Id.* at § 46-4-503(1). Utah citizens are even allowed to register to vote electronically, via a publicly available system on the Internet. *Id.* at § 20A-2-206. The Utah Uniform Electronic Transactions Act, Utah Code Ann. §§ 46-4-101, et seq. ("UETA"), in conjunction with Utah's Notaries Public Reform Act, Utah Code Ann. §§ 46-1-1 to -23, provides for valid notarization by the electronic appearance of the notary's full name and commission number in a given electronic record. *See id.* at § 46-1-16(7); *id.* at § 46-4-205.

D. Utah's Uniform Electronic Transactions Act Prohibits Invalidation of A Signature Because it is Electronic.

Analysis of the UETA is unnecessary for this Court to determine that Mr. Anderson's rights were violated on March 19 when the Lieutenant Governor refused Mr. Anderson's nominating petition and thus refused him access to the general election ballot. This Court need look no further than the unaffiliated candidate statute and its use of statutorily defined terms to determine that the Lieutenant Governor exceeded his authority and acted contrary to Utah law when he rejected Mr. Anderson's Petitions because some voters signed electronically.

To the extent the Court decides to consider the effect of the UETA in this case, however, the UETA confirms that the Lieutenant Governor had no authority to refuse the e-signatures included with Mr. Anderson's nominating petition. The UETA "must be construed and applied . . . to facilitate electronic transactions consistent with other applicable law." *Id.* at § 46-4-106. A "transaction" is defined as "an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs." *Id.* at § 46-4-102(16). As previously noted, all petition gathering "transactions," and thus an unaffiliated candidate's nominating petition, is "completed" before the petition is presented to the County Clerks or the Lieutenant Governor. *See* Utah Code Ann. § 20A-9-502(2)(a). Thus, to the extent the UETA even applies in this context, the parties to the petition, i.e., the signers and the circulator, have agreed to conduct transactions by electronic means within UETA § 46-4-105(2)(a).

The UETA expressly provides for the use of e-signatures, *id.* at § 46-4-102(8), and mandates that "[a] record or signature may not be denied legal effect or enforceability solely because it is in electronic form," *id.* at § 46-4-201(1). It also states unequivocally that, "[i]f a law requires a signature, an electronic signature satisfies the law." *Id.* at § 46-4-201(4).

The Legislature has also directed, as an overriding rule of evidence applicable to all courts in the State, among other governmental entities, that "[i]n a proceeding, evidence of a . . . signature may not be excluded solely because it is in electronic form." Utah Code Ann. § 46-4-302 (emphasis added). Yet that is what the State now asks this Court to do—i.e., to reject the evidence of signatures Mr. Anderson submitted solely because some were in electronic form.

The Lieutenant Governor argues that Utah Code Ann. § 46-4-501(4)(b)[6] allows him to disregard other statutory mandates and to reject the e-signatures submitted by Mr. Anderson. The language, context and fundamental rules of statutory construction make clear, however, that subsection 4(b) should be construed so that it does not nullify the express directives in Utah Code Ann. §§ 46-4-201 and 46-4-302, the common law, and the statutory definitions in Utah Code Ann. § 68-3-12.

First, by its terms, subsection 4(b) applies only to the UETA and does not allow a governmental agency to disregard existing common law or the statutory definitions in Utah Code Ann. § 68-3-12. Utah Code Ann. § 46-4-501(4)(b) ("nothing in this chapter"). As explained above, the State is required to give legal effect to the existing statutory and common law definition of "signature," separate and apart from the language of the UETA, and nothing in the UETA mandates, or even allows, a different requirement for e-signatures.

Second, subsection (4)(b) must be read in the context of Utah Code Ann. § 46-4-106, which mandates that the UETA be construed and applied to facilitate electronic transactions. Although Utah Code Ann. § 46-4-501(4)(b) may allow state agencies the option of choosing not to use electronic signatures in their own activities, the language of the statute does not—and cannot—give any agency the right to refuse "to accept" a signature deemed valid under other statutory and substantive law. *See* Utah Code Ann. §§ 46-4-105(5), 46-4-201(4) ("If a law requires a signature, an electronic signature satisfies the law."). Where the Legislature deemed it

[6] "Except as provided in subsection 46-4-301(6), nothing in the chapter requires any state governmental agency to: . . . (b) use or permit the use of electronic records or electronic signatures." Utah Code Ann. § 46-4-501(4)(b).

appropriate to limit the use of e-signatures, it made specific exceptions to the UETA. The UETA, for example, does not apply to transactions "governed by the law governing the creation and execution of wills, codicils or testamentary trusts," Utah Code Ann. § 46-4-103(2), and the UETA does not "require[] any County Recorder to accept for recording any instrument in electronic form, *id.* at 46-4-103(5). There is no similar exception for ballot access petitions or for any other provision in the elections laws.

Third, the Utah State Constitution requires that "[a]ll laws of a general nature shall have uniform operation." Utah Const. art. I, § 24. To the extent an obligation is imposed on ballot access that is different or greater than that imposed on transactions generally, it runs afoul of this constitutional provision. The Lieutenant Governor's restriction discriminates against the constitutionally protected activity of seeking ballot access, and discriminates between subclasses of transactions and citizens. The availability of e-signatures enables candidates, such as Mr. Anderson, who are not well funded by special interests or parties, to reach all corners of the State to gain petition support. If the Lieutenant Governor's views are accepted, then citizens who desire to sign petitions electronically will be subjected to greater burdens than others when engaging in legally binding transactions. This Court previously recognized that such restrictions are unconstitutional under the uniform operation of laws provision of the Utah State Constitution. *See Gallivan*, 2002 UT 89, ¶¶ 34-64. It would be unusual, at best, for the Court to sanction the Lieutenant Governor's attempt to impose additional burdens on constitutionally protected activity with no legislative directive to do so.

Utah's statutory enactments anticipate the use of e-signatures in a variety of transactions and do not impose a greater burden on e-signatures as compared to handwritten signatures. To the contrary, Utah's statutory law follows the common law principle that any name, mark, or sign, made with the proper intent, constitutes a valid, legal signature. The Lieutenant Governor was wrong to conclude otherwise.

III. MR. ANDERSON COMPLIED WITH ALL REQUIREMENTS TO BE PLACED ON THE BALLOT

Utah prescribes a straightforward process for unaffiliated candidates to gain ballot access. *See* Utah Code Ann. §§ 20A-9-501 to -503. For statewide offices, the candidate, the County Clerks, and the Lieutenant Governor's office all have specific, defined responsibilities from which they may not deviate.

First, the candidate has the responsibility to collect on petition forms that substantially comply with Utah Code Ann. § 20A-9-502(1)(a) at least 1,000 signatures of voters registered to vote in the State of Utah. The candidate bears the responsibility of ensuring the validity of all signatures reflected on his petition. Utah Code Ann. § 20A-9-502(1)(a) (candidate must affirm, under oath, the legitimacy of the signatures provided); *id.* at § 20A-1-605 (making it unlawful to file a false or fraudulent certificate of nomination); *id.* at § 20A-1-609 (establishing criminal penalties for submitting a fraudulent certificate of nomination, including removal from office and

revocation of right to vote); *see also McKeachnie*, 2004 UT 65, ¶¶ 4-5 (signers and collectors required to affirm validity of signatures under threat of criminal penalty).[7]

After the requisite 1,000 signatures are obtained, the candidate must present the signed petition forms to the County Clerks. The County Clerks are to "count and certify only those persons who signed the petition who: (i) are registered voters within the political division that the candidate seeks to represent; and (ii) did not sign any other certificate of nomination for that office." *Id.* at § 20A-9-502(2)(b). Beyond these two statutorily defined duties, as the Court noted at oral argument, the County Clerks do not—and may not—perform any other function. Specifically, under the current system, the County Clerks make no effort to determine whether any signatures—electronic, handwritten, or otherwise—are fraudulent. Instead, to the extent evidence of fraud arises, a voter, a clerk, or the Lieutenant Governor can then investigate whether there was fraud and take whatever actions are appropriate and necessary.

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[7] As Mr. Maxfield explained in his Response to Lieutenant Governor's Response to Petition for Extraordinary Writ of Relief, the electronic signatures included on Mr. Anderson's Petitions were collected pursuant to an "I-SIGN™" system that is secure and verifiable. However, neither the County Clerks nor the Lieutenant Governor's office took advantage of the electronic submission and verification features. (*See* Salt Lake County's Motion in Support of Lieutenant Governor's Motion to Strike at 2 ("Salt Lake County Clerk's office did not process electronic signatures any differently than it processed handwritten signatures. Nor did Salt Lake County Clerk's office make use of any security code or other features.")). The Lieutenant Governor did not object to or question the security of these features at the time he rejected Mr. Anderson's petition, choosing instead to reject all e-signatures out of hand. The Lieutenant Governor's belated implication that Mr. Anderson's e-signatures may increase the potential of fraud should be rejected, not only because it is unfounded but also because the Lieutenant Governor did not take advantage of the verification offered. Having categorically rejected e-signatures, the Lieutenant Governor cannot shift ground to assert a different basis for his decision. *C.f.*, *Save Beaver County v. Beaver County*, 203 P.3d 937, 942 (Utah 2009) (finding that the county, having labeled its action legislative, was estopped from thereafter asserting that it acted administratively.).

Once he or she has obtained certification for at least 1,000 signatures, the candidate must present the signed, certified petition to the Lieutenant Governor and pay a filing fee. *Id.* at § 20A-9-503(1). By statute, the Lieutenant Governor is required to read to the candidate the statutory and constitutional requirements for candidacy, and the candidate must thereafter state whether he or she meets those requirements. If a candidate presents a certified petition, pays the requisite filing fee, and affirms that he or she meets the requirements for candidacy, the candidate has met all statutory requirements for inclusion on the general election ballot, and the Lieutenant Governor has no authority to refuse the petition. Section 20A-9-503 does not give the Lieutenant Governor authority to second-guess the validity of certified signatures he receives from the County Clerks. *Id.* Indeed, the Lieutenant Governor has no discretion to impose any additional requirements on the signatures he receives; his role as the chief election officer has no bearing on his ability to create or impose greater restrictions. *See McKeachnie*, 2004 UT 65, ¶¶ 4-7; *see also* Utah Code Ann. 67-1a-2 (enumerating general duties of the Lieutenant Governor).

Farley Anderson presented the Lieutenant Governor with a certified petition, paid the filing fee, and affirmed that he meets the statutory and constitutional requirements to be a candidate for Governor. *See* Amended Petition for Extraordinary Writ of Relief ¶¶ 4-17. Under those circumstances, the Lieutenant Governor had no authority to refuse Mr. Anderson's petition.

This Court's decision in *Cope v. Toronto*, 332 P.2d 977 (1958), helps to illustrate the role of the Lieutenant Governor and the scope of his duties. That case dealt with the Secretary of State's (now Lieutenant Governor's) duties and authority regarding initiative petitions. Relying

on the express language of Utah Code Ann. § 20-11-16, this Court determined that the Secretary of State had acted properly in doing no more or less than what the statute directed him to do regarding the certification of ballot initiative petition signatures, i.e., rely on the County Clerks' certifications of those signatures. *Cope*, 332 P.2d at 979. The County Clerks, too, acted within the limited scope of their statutory duties by determining whether the names on the petitions were those of duly registered voters and then certifying the signatures to the Secretary of State. *Id.*

Here, by contrast, the Lieutenant Governor exceeded the scope of his authority under Utah Code Ann. § 20A-9-503 by creating and imposing additional requirements for ballot access signatures beyond the statutory and common law definition of signatures. As the Court counseled in *Cope*, however, in construing a similar statutory scheme, the Lieutenant Governor may not disregard the certifications provided by the County Clerks. *See generally Cope*, 332 P.2d at 979. In refusing Mr. Anderson's petition, the Lieutenant Governor went beyond the responsibilities given him in Section 20A-9-503, thus requiring remedy through an extraordinary writ. *See* Utah R. App. P. 19; Utah R. Civ. P. 65B(a); *Cope*, 332 P.2d at 979.

IV. THE LIEUTENANT GOVERNOR'S DESIGNATION AS "CHIEF ELECTION OFFICER" DOES NOT INCLUDE AUTHORITY TO CHANGE THE ELECTION CODE OR TO INTERFERE WITH THE RIGHT OF SUFFRAGE.

The Lieutenant Governor's actions contravene well-established statutory and common law. Notwithstanding the legislative definition of "signature," the Lieutenant Governor has argued that he may impose his own ballot access requirements pursuant to his claimed authority as "chief election officer," under Utah Code Ann. § 67-1a-2(2)(a). But possessing "general

supervisory" and "direct" authority over elections for Governor does not allow the Lieutenant Governor to disregard or amend state law and thereby impose unequal, and extra-statutory burdens on independent candidates.

Utah courts interpreting statutes "first look to the plain language of the statute and give effect to that language unless it is ambiguous." *State v. Jeffries*, 217 P.3d 265, 267 (Utah 2009) (citing *Stephens v. Bonneville Travel*, 935 P.2d 518, 520 (Utah 1997)). The Lieutenant Governor's position that Utah Code Ann. §67-1a-2(2)(a) should be construed so as to allow him authority to contravene express provisions of the Utah Code and long-established common law is "a result so absurd that the legislature could not have intended it." *Jeffries*, 217 P.3d at 267. This Court need not define the breadth of the Lieutenant Governor's authority; it need only reject the construction proposed by the Lieutenant Governor and the serious constitutional and separation of powers concerns it implicates.

This Court recently rejected the invitation of the Democratic Party to deny ballot access to Ellis Ivory after Nancy Workman withdrew on grounds of disability. *See Adams v. Swenson*, 108 P.3d 725 (Utah 2005). In Adams, this Court emphasized its "reluctance to inject the statute with court-conjured meaning." *Id.* at 727. Such a construction would "oversimplif[y] the question," and overlook "two competing policy objectives":

> Here, we confront two competing policy objectives: the principle that the electorate is best served when a candidate holds herself out to the public for a period of time sufficient to be fully examined, and the countervailing policy objective of promoting access to the ballot and affording voters the opportunity to meaningfully exercise their franchise.

Id. at 728 (emphasis added).

This Court chose to "be guided by the policy of encouraging ballot access." *Id.* (emphasis added). Significantly, the Court "[was] not convinced . . . that the potential [for political manipulation] outweigh[ed] the goal of promoting electoral choice." *Id.*

In like manner, the Lieutenant Governor's unsupported (and late-arising) stated concern for potential fraud in petition gathering does not outweigh the goal of promoting electoral choice. This conclusion is made plain by the simple fact that the Legislature imposed on the candidate, not the Lieutenant Governor, the responsibility to assure valid signatures on his petition. *See* p. 18, *supra*. The Lieutenant Governor cannot second-guess or countermand that legislative determination. Mr. Anderson does not seek an extraordinarily extra-textual or liberal construction of a statute; he simply requests that the relevant statutes be construed as written.

This Court recently rearticulated that "all governmental power is conferred on the officers and institutions of government by the people, who hold that power." *Sevier Power Co., LLC v Bd. of Sevier Cty. Comm'rs*, 196 P.3d 583, 585 (Utah 2008). In striking down a statutory limitation on the initiative process, this Court emphasized that "[i]t does not follow, logically or constitutionally, that the authority to set limits on conditions, manner, or time gives the legislature the broader authority to deny the initiative right to the people." *Id.* at 586 (emphasis in original). In concluding that this express statutory limitation on the initiative process was unconstitutional, this Court noted that:

> Highly participatory democracy is at times inefficient, expensive, and time consuming. However, the initiative power, as with all other powers identified in our constitution, is a creature of the people. It is for the people to determine when, if, and how it is to be modified. That much is clear.

Id. at 588.

The rights of the people to access the ballot and enjoy electoral choice are equally protected constitutional rights. The Lieutenant Governor is attempting to impose unauthorized and extra-statutory restrictions on these rights and has asked this Court to expand his own authority. Mr. Anderson does not question the specific grants of statutory authority over elections to the Lieutenant Governor. But it cannot reasonably be argued that being named the "chief election officer" gives the Lieutenant Governor the power to "intervene to prevent the free exercise of the right of suffrage." Utah Const., art. I, § 17.

V. THE IMPOSITION OF AN EARLY FILING DEADLINE ON UNAFFILIATED CANDIDATES VIOLATES THE FIRST AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 24 OF THE UTAH STATE CONSTITUTION.

In compliance with Section 20A-9-503 of the Utah Code, Mr. Anderson attempted to file his certified, executed, and acknowledged certificate of nomination with the Lieutenant Governor's office before 5 p.m. on Friday, March 19th. In requiring Mr. Anderson to comply with this early deadline, the State violated (i) the First Amendment right of Mr. Anderson and his supporters to freely associate, (ii) the Equal Protection Clause of the Fourteenth Amendment, by imposing a much more restrictive burden on unaffiliated or independent candidates than party candidates campaigning for the same office, and (3) the uniform operations of laws provision of the Utah Constitution, Utah Const. art. I, § 24.

The United States Supreme Court established the controlling authority and test for determining the constitutionality of filing deadlines for independent candidates in *Anderson v. Celebrezze*, 460 U.S. 780 (1983). A court applying this test "must first consider the character

and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate." *Id.* at 789. Next, the court must "identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule." *Id.* The court must then weigh the asserted injury against the asserted interests, and it is "only after weighing all these factors [that] the reviewing court [is] in a position to decide whether the challenged provision is unconstitutional." *Id.*

A. The Early Filing Deadline for Independent Candidates Infringes the Constitutional Rights of Mr. Anderson and His Supporters Without Furthering Any State Interest.

In *Anderson*, the United States Supreme Court considered the impact of Ohio's early filing deadline on the candidacy of John Anderson,[8] an independent candidate for President during the 1980 general elections. 460 U.S. at 782. Under the statutory system then in place, John Anderson was required to tender "a nominating petition containing approximately 14,500 signatures and a statement of candidacy" to the filing officer by March 20th. *Id.* at 782. He was unable to file the required petitions and statement until May 16th of that year. *Id.* The filing officer refused to accept as timely the nominating petition, and John Anderson challenged the deadline in the United States District Court for the Southern District of Ohio. *Id.* at 783. The District Court "held that the statutory deadline was unconstitutional on two grounds. [First, i]t imposed an impermissible burden on the First Amendment rights of Anderson and his Ohio supporters. . . . [Second,] by requiring an independent to declare his candidacy in March without mandating comparable action by the nominee of a political party, the State violated the Equal

[8] John Anderson is referred to here and in subsequent uses by his full name, to avoid confusion with petitioner Farley Anderson.

Protection Clause of the Fourteenth Amendment." *Id.* at 783. The District Court's holding was appealed to the Sixth Circuit, and the Court of Appeals reversed, holding that the deadline furthered the State of Ohio's interest in voter education. *Id.* at 785. On appeal to the United States Supreme Court, that Court reversed, holding that "the burdens Ohio has placed on the voters' freedom of choice and freedom of association, in an election of nationwide importance, unquestionably outweigh the State's minimal interest in imposing a March deadline." *Id.* at 806.

In reaching this conclusion, the Court emphasized that its "primary concern [was] with the tendency of ballot access restrictions to 'limit the field of candidates from which voters might choose.'" *Id.* at 786 (quoting *Bullock v. Carter*, 405 U.S. 134, 143, 92 S. Ct. 849 (1972)). Early filing deadlines "may have a substantial impact on independent-minded voters," as issues and party platforms change and evolve over time, and "the inflexibility imposed by the March filing deadline is a correlative disadvantage because of the competitive nature of the electoral process." *Id.* at 790-91. The Court also emphasized the burden on independent candidates caused by a filing deadline far in advance of both the primary and general elections:

> [The challenged statute] also burdens the signature-gathering efforts of independents who decided to run in time to meet the deadline. When the primary campaigns are far in the future and the election itself is even more remote, the obstacles facing an independent candidate's organizing efforts are compounded. Volunteers are more difficult to recruit and retain, media publicity and campaign contributions are more difficult to secure, and voters are less interested in the campaign.

Id. at 792.

After articulating these obvious burdens on independent candidates and voters in general, the Court evaluated the asserted State interests in voter education, equal treatment, and political

stability, and found them unequal to the injury caused by their furtherance. With regard to voter education, the Court astutely noted that "[i]n the modern world it is somewhat unrealistic to suggest that it takes more than seven months to inform the electorate about the qualifications of a particular candidate simply because he lacks a partisan label." *Id.* at 797. In response to Ohio's argument that party candidates had to declare their candidacy on the same day as independents, the Court pointed out that "the burdens and the benefits of the respective requirements are materially different" and "[t]he consequences of failing to meet the statutory deadline are entirely different." *Id.* at 799. Although "the major parties may include all events preceding their national conventions in the calculus that produces their respective nominees and campaign platforms," the campaigns of unaffiliated candidates "must be based on a history that ends in March." *Id.* at 799-800. The State interest in "equal treatment of partisan and independent candidates simply is not achieved by imposing the March filing deadline on both." *Id.* at 801 (internal quotation marks omitted). Finally, Ohio's asserted interest in political stability was, according to the Court, simply "a desire to protect existing political parties from competition." *Id.* "There is, of course, no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms." *Id.* at 802 (citing *Williams v. Rhodes,* 393 U.S. 23, 31-32, 89 S. Ct. 5 (1968)). Like John Anderson, Farley Anderson has been subjected to "[a] burden that falls unequally on new or small political parties or on independent candidates [that] impinges, by its very nature, on associational choices protected by the First Amendment," as well as directly disadvantaging voters "whose political

preferences lie outside the existing political parties." *Anderson*, 460 U.S. at 793-94. Although he is not a candidate for a national office, subsequent cases make it clear that the Supreme Court's reasoning in *Anderson* applies to "ballot access challenges by local and state as well as national office candidates and their supporters." *Cromer v. South Carolina*, 917 F.2d 819, 822 (4th Cir. 1990) ("[W]e specifically reject the State's contention here that [*Anderson*] applies only to ballot access restrictions upon candidates for national office.").

As was the case in Ohio, Utah's filing deadline falls far in advance of both the primary elections held on the Fourth Tuesday of June (99 days) and the general elections in November (about 200 days). Thus, for all practical purposes, "history ends in March" for unaffiliated candidates in Utah. *Anderson*, 460 U.S. at 799-800. Unaffiliated candidates are severely handicapped by this inability to react or respond to dramatic shifts in party politics during party caucuses and primary elections,[9] and the freedom of Utah voters to choose from a field of candidates is also subjected to the whims of party politicians. Moreover, as was the case in Ohio, the Utah election code requires party candidates to "file a declaration of candidacy" during the same time period as unaffiliated candidates. Utah Code Ann. § 20A-9-202. Like Ohio, party candidates are not, however, required to gather nominating petition signatures and thus do not encounter the burdens of signature-gathering and volunteer mobilization at the center of the Supreme Court's concerns in *Anderson*.

[9] The recent unexpected rejection of Senator Robert Bennett's re-election candidacy during the Utah Republican Convention held in May of this year serves as a reminder of the dramatic shifts in party positioning that can occur after the March deadline for unaffiliated candidates. *See, e.g.*, http://www.reuters.com/article/idUSTRE64800R20100509 (last visited June 1, 2010).

As described at length by the Supreme Court, discriminatory filing deadlines such as that found in Section 20A-9-503 violate the First Amendment rights of candidates and voters by restricting their freedom to associate. *See generally Anderson*, 460 U.S. 780. The Section 20A-9-503 deadline also violates the Equal Protection Clause of the 14th Amendment by imposing unequal burdens on unaffiliated and affiliated candidates. *Id.* For the same reasons, the filing deadline also violates the uniform operations of laws provision in the Utah Constitution, art. I, § 24, a provision embodying the principle that "persons similarly situated should be treated similarly, and persons in different circumstances should not be treated as if their circumstances were the same." *Malan v. Lewis,* 693 P.2d 661, 669 (Utah 1984). As discussed below, courts throughout the country have relied on *Anderson* to strike down as unconstitutional early independent candidate filing deadlines like Utah's and have upheld filing deadlines similar to the relief requested by Mr. Anderson: a deadline corresponding with primary elections held by registered political parties (or for an additional reasonable amount of time if the primary elections are less than two weeks away at the time of the Court's decision).

B. Decisions from This Court and Numerous Other Jurisdictions Confirm that Section 20A-9-503's Early Deadline is Unconstitutional.

In *Gallivan v. Walker*, this Court, responding to a petition for an extraordinary writ, held that a provision in the Utah Election Code requiring initiative sponsors to gather signatures from "each of more than two-thirds of the State's counties" was unconstitutional under both the Utah and United States constitutions. 2002 UT 89, ¶ 4, 54 P.3d 1069. In so doing, this Court applied the *Anderson* test and found this restriction was not a "reasonable, nondiscriminatory restriction" and thus failed Utah's "own heightened-scrutiny analysis under the uniform operation of laws

provision of the Utah Constitution . . . which 'is at least as exacting' if not more so than the Equal Protection Clause of the Fourteenth Amendment." *Id.* ¶ 83 (citations omitted). Like the multi-county signature requirement in *Gallivan*, the unaffiliated candidate filing deadline here is not a "reasonable, nondiscriminatory restriction" for the reasons specified above. Following the analysis in *Gallivan* and *Anderson*, the Court should find that the deadline in Section 20A-9-503 fails the same heightened-scrutiny analysis and is thus unconstitutional under both the Utah and United States constitutions.

The United States District Court for the District of Utah considered Utah's early filing deadlines in *LaRouche v. Monson*, 599 F. Supp. 621 (D. Utah 1984). In *LaRouche*, the District Court noted that the Utah filing deadline for independent candidates (the deadline was April 15th in 1984) had been acknowledged as "burdensome" by the State. *Id.* at 625. However, because Utah had not attempted to enforce its admittedly "defective" deadline, the court held the plaintiffs did not have standing to challenge it. *Id.* at 628. But the *LaRouche* court's means of evading the constitutional question is no longer available. Four years after *LaRouche*, the United States Supreme Court emphasized in a pre-enforcement context that because "[t]he State has not suggested that the newly enacted law will not be enforced . . . .[w]e conclude that plaintiffs have alleged an actual and well-founded fear that the law will be enforced against them," and that the self-censorship threat to the plaintiff's First Amendment rights was "a harm that can be realized even without an actual prosecution." *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 393, 108 S. Ct. 636, 643 (1988). Mr. Anderson has been denied access to the ballot under an unconstitutionally early deadline for submitting petitions. Therefore, he has been directly

disadvantaged by the early deadline. Even if he had not been directly disadvantaged, the State should not be allowed to continue to subject unaffiliated candidates to selective enforcement of its unconstitutionally early filing deadline or force others to comply or face litigation as a prelude to candidacy.

In *Hagelin for President Committee of Kansas v. Graves*, the Tenth Circuit upheld a Kansas filing deadline requiring "the filing of nomination petitions by the Monday preceding the primary election [August 3], which turns out to be about ninety-one days before the general election." 25 F.3d 956, 957 (10th Cir. 1994). The *Hagelin* court applied the *Anderson* test to the Kansas statute, noting that using this test it had previously invalidated a June 1 filing deadline for new political parties (a category of cases that has been treated somewhat more strictly by courts than unaffiliated candidates). *Id.* at 960. The Kansas statute survived constitutional scrutiny because the deadline just before the prior elections was "in line with the [August and September] deadlines of approximately two-thirds of the states." *Id.* (citing *Anderson*, 460 U.S. at 795 n. 20)). The court also noted that a deadline 91 days in advance of the *general* election served Kansas's administrative needs as well as the State's interest in voter education. *Id.* at 961; *compare* Utah Code Ann. § 20A-9-503 (deadline approximately 200 days in advance of the general election).

The *Hagelin* decision falls into a consistent pattern of upholding state unaffiliated candidate filing deadlines on or near the date of the primary elections. *See, e.g., Swenson v. Worley*, 490 F.3d 894 (11th Cir. 2007) (Alabama's filing deadline on same day as primary election date upheld); *Lawrence v. Blackwell*, 430 F.3d 368 (6th Cir. 2005) (Ohio's post-

Anderson primary-eve filing deadline upheld); *Wood v. Meadows*, 207 F.3d 708 (4th Cir. 2000) (Virginia's filing deadline on same day as primary elections upheld); *Council of Alternative Political Parties v. Hooks*, 179 F.3d 64 (3d Cir. 1999) (New Jersey's filing deadline on same day as primary election upheld); *Browne v. Bayless*, 46 P.3d 416 (Ariz. 2002) (Arizona's June 14th deadline upheld).

While deadlines contemporaneous with primary elections are generally upheld, unaffiliated candidate filing deadlines similar to Utah's have been consistently struck down. *See, e.g., Lee v. Keith*, 43 F.3d 63 (7th Cir. 2006) (Illinois' December 15th of previous year deadline found unconstitutional)[10]; *Cromer v. South Carolina*, 917 F.2d 819 (4th Cir. 1990) (South Carolina's March 30th deadline found unconstitutional); *New Alliance Party of Ala. v. Hand*, 933 F.2d 1568 (11th Cir. 1991) (Alabama's April 6th deadline found unconstitutional); *Stoddard v. Quinn*, 593 F. Supp. 300 (D.C. Me. 1984) (Maine's April 1st deadline found unconstitutional).

These decisions confirm that Utah's March filing deadline for unaffiliated candidates is an unconstitutional abnormality. Absent a showing of compelling interest and administrative necessity in having a filing deadline some 200 days before the general election, the deadline is improper and deprives Mr. Anderson and Utah voters of their constitutionally protected rights. No state, including Utah, has successfully articulated a legitimate state interest sufficient to

[10] The same statute was previously upheld in *Stevenson v. State Bd. of Elections*, 794 F.2d 1176 (7th Cir. 1986). The court in *Lee* distinguished this decision on the grounds that the challenge in *Stevens* was directed solely at the candidate deadline, and the challenges in *Lee* included the number of signatures required and other restrictions. The *Lee* court noted that "[a]n early filing deadline coupled with a less burdensome signature requirement may well pass constitutional muster, depending on their combined effect on political association rights." *Id.* at 770.

justify an unaffiliated candidate filing deadline so far in advance of the primary and general elections. There simply are no legitimate reasons for discriminating against unaffiliated candidates in this manner.

As the relevant cases confirm, a filing deadline on or near the date of Utah's primary elections would alleviate much of the unequal burden that unaffiliated candidates suffer by being forced to foresee the political atmosphere in the months to come and the difficulty of mobilizing and motivating voters and volunteers when the field of possible candidates is still an unknown quantity. The enforcement of the constitutional rights of Utah voters would immeasurably benefit independent-minded voters and others by providing increased choice and competition by eliminating the unfair electoral advantage established parties gain under Utah's early filing deadline.

CONCLUSION

The Lieutenant Governor's refusal to accept Mr. Anderson's candidacy petition based on the unauthorized and categorical exclusion of lawful e-signatures constitutes an improper restriction on ballot access. Utah law recognizes the validity of e-signatures. The unaffiliated candidate nomination statute gives Mr. Anderson the right to be placed on the ballot upon satisfaction of its requirements. The Lieutenant Governor, with no statutory authority, imposed an additional requirement on unaffiliated candidates and has rejected lawful signatures of registered voters who had not signed another petition for the same office. Neither County Clerks nor the Lieutenant Governor has the right or discretion to impose ballot access restrictions not

found in the statute. The Court should order the Lieutenant Governor to accept Mr. Anderson' nomination petition and to place Mr. Anderson's name on the general election ballot.

In addition, Utah's early unaffiliated candidate filing deadline violates the First and Fourteenth Amendments of the United States Constitution and Article I, Section 24 of the Utah State Constitution. The deadline discriminates against unaffiliated candidates in favor of candidates affiliated with political parties. The Court should strike down as unconstitutional the early unaffiliated candidate filing deadline set forth in Utah Code Ann. § 20A-9-503.

DATED: June 7th, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on June 7th, 2010, I caused a true and correct copy of the foregoing **PETITIONER FARLEY ANDERSON'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF AMENDED PETITION FOR EXTRAORDINARY WRIT OF RELIEF** to be served in the method indicated below to the following:

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