



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC
355 NORTH 300 WEST, SALT LAKE CITY, UT 84103
(801) 521-9862 PHONE • (801) 532-2850 FAX
ACLU@ACLUUTAH.ORG • WWW.ACLUUTAH.ORG

FOR IMMEDIATE RELEASE

March 25, 2011

ACLU OF UTAH SUES STATE OVER UNCONSTITUTIONAL E-SIGNATURES BAN

(Salt Lake City) Early this morning, the ACLU of Utah sued Utah Lieutenant Governor Greg Bell challenging his refusal to count electronically collected signatures (e-signatures) submitted in support of citizens' referenda or initiatives. The ACLU represents two of the sponsors of the on-going referendum to repeal HB 477--the controversial bill that was passed at record-speed in the waning days of the 2011 legislative session, which eviscerated Utah's public information law. When those sponsors, Janalee Tobias and Nancy Lord, submitted their petition for the HB 477 Referendum, Lt. Gov. Bell declared his outright refusal to count any e-signatures they might gather. The law on which Lt. Gov. Bell relied, SB 165, was also passed in the last days of the session, and contains a blanket ban on any e-signatures collected in support of any referenda or initiatives. The ACLU's lawsuit contends that SB 165 violates the state and federal constitutional rights of Utah voters--including those of a third ACLU client, Madison Hunt, who attends college out of state and who, like many Utah voters (like soldiers or missionaries), cannot participate in the HB 477 Referendum if she cannot do so on-line.

"In HB 477, the legislature sought to protect its ability to do legislative work behind closed doors, using twenty-first century technologies like video chats and text messaging," said ACLU of Utah cooperating attorney Chad Derum. "In SB 165, however, the legislature condemned Utah voters to using ancient technology when attempting to exercise their constitutional right to check the legislature's power through initiatives and referenda."

A summary of the ACLU of Utah's full argument is provided below.

On March 10, 2011, Utah Governor Gary Herbert signed into law House Bill 477 (HB 477). HB 477 amends Utah's Government Records Access Management Act (GRAMA)—the law that secures the public's right to obtain government records that show how the public's business is being done. Among its many now-notorious provisions, HB 477 shields from public disclosure all voice mails, instant messages, video chats and text messages—even when those communications relate to public business. It expands the fees the government can charge for retrieving public records. HB 477 also eliminates

the presumption that government records may be publicly disclosed and places on the requesting party the burden to show why the records that concern public business should be accessible. HB 477 was rushed through the legislature in a matter of days, with virtually no time for public comment, before it was signed by the Governor.

The public's reaction to HB 477 was swift and overwhelmingly negative. Rarely, if ever, has this state seen citizens of nearly every political stripe and every political label united in such an outpouring of opposition to the legislature's work.

The sponsors of the HB 477 Referendum wish to collect and submit electronically gathered signatures (e-signatures) in support of their effort. On March 10, 2011, however, the Governor also signed into law Senate Bill 165 (SB 165), which struck at the heart of Utah voters' fundamental constitutional right to legislate directly through initiatives and referenda.

In SB 165, the legislature decided that only handwritten (or "holographic") signatures, and not e-signatures, could be counted toward the total signatures required to put an initiative or referendum on the ballot. As a result, Respondent Lt. Gov. Bell has stated his refusal to count any electronically collected signatures supporting the HB 477 Referendum.

As this Utah Supreme Court made clear less than a year ago in *Anderson v. Bell*, no valid reason exists to distinguish between e-signatures and handwritten signatures, so long as the intent of the signer is clear. Lt. Gov. Bell's refusal to count any e-signatures violates Utah voters' constitutional rights to use the initiative and referendum power, which is expressly reserved for the people in Article VI, Section 1 of the Utah Constitution.

Like HB 477, SB 165 was rushed through the legislature without any legitimate legislative purpose. Its only purpose is to make it more difficult for citizens to gather the signatures necessary to support initiatives and referenda—including the HB 477 Referendum. In singling out and prohibiting all e-signatures, SB 165 is nothing more than a purported solution in search of a problem. E-signatures can be verified, if anything, more easily than holographic signatures, and have the potential to deter fraud. All of that could be done at no cost to the state.

The unjustified, unconstitutional burden created by SB 165 is even more onerous when the blanket ban on e-signatures is considered along with the other unnecessary and undue burdens included in that law. For example, although SB 165 did not expand the forty-day time period petition sponsors have to collect signatures, the legislature nevertheless increased the total number of signatures required by at least one-third, i.e., from about 65,000 to about 100,000. The legislature also added an unconstitutional requirement that county clerks individually verify each petition signature against a signature in the state's voter registration database to make sure the two are "substantially similar." The law does not explain how county clerks are to accomplish the Herculean task of verifying these signatures in the limited time frames the laws allow.

Not only does SB 165 impose a facially unconstitutional burden on Utah voters' fundamental right to exercise the right to initiative and referendum, but it also violates the uniform operation of laws provision in the Utah Constitution, which requires that laws implicating fundamental rights, like voting, must treat similarly situated people equally. In mandating that only handwritten signatures will be accepted, the legislature has effectively ruled that registered Utah voters not present in the state during the signature gathering period—such as our military servicemen and women, students studying out of state, missionaries, and others—have no right to exercise their constitutional right to support initiatives and referenda. This disenfranchisement of thousands of Utah voters is unfair, unnecessary, and unconstitutional.

The public's right to exercise the power of initiative and referendum deserves the utmost protection, and that principle must be applied here. The Court should declare SB 165's prohibitions on e-signatures unconstitutional and issue an order requiring Lt. Gov. Bell to count all such signatures submitted in connection with the HB 477 Referendum.

###