

John Mejia (13965)
**AMERICAN CIVIL LIBERTIES UNION
OF UTAH FOUNDATION, INC.**
355 North 300 West
Salt Lake City, Utah 84103
Telephone: 801.521.9862

Chad R. Derum (9452)
**MANNING CURTIS BRADSHAW &
BEDNAR**
170 South Main Street
Salt Lake City, UT 84101
Telephone: 801.363.5678

David C. Reymann (8495)
PARR BROWN GEE & LOVELESS
185 South State Street, Suite 800
Salt Lake City, UT 84111
Telephone: 801.532.7840

*Attorneys for Amicus Curiae American Civil
Liberties Union of Utah Foundation, Inc.*

IN THE SUPREME COURT OF THE STATE OF UTAH

UTAHNS FOR ETHICAL
GOVERNMENT,

Appellant/Cross-Appellee,

vs.

CLERKS FOR ALL COUNTIES IN
THE STATE OF UTAH, *et al.*,

Appellees/Cross-Appellants.

Appeal No. 20120594-SC

**MOTION FOR LEAVE TO FILE BRIEF
OF AMICUS CURIAE IN SUPPORT OF
APPELLANT UTAHNS FOR ETHICAL
GOVERNMENT**

Pursuant to Utah Rule of Appellate Procedure 25, the American Civil Liberties Union of Utah Foundation, Inc. (“ACLU of Utah”) respectfully requests leave of the Court to file an amicus curiae brief in this proceeding in support of Appellant and Cross-Appellee Utahns for Ethical Government (“UEG”).


In particular, the ACLU of Utah seeks to file a brief on the limited issue of the constitutionality of a complete ban on electronic signatures collected in efforts to place initiatives on the ballot. The district court's order below appears to hold that Utah Code §§ 20A-7-203 & 204 set out requirements for collecting, submitting, and processing signatures in connection with initiative petitions that are wholly incompatible with electronic signatures. The ACLU of Utah views this ruling as an implicit ban on electronic signatures in the initiative process, and seeks leave to argue before this Court that such a ban violates the Utah Constitution. The ACLU of Utah has particular expertise in this matter, having been counsel of record in *Anderson v. Bell*, 2010 UT 47, 234 P.3d 1147, in which this Court addressed the use of electronic signatures in support of a candidate's eligibility to be placed on the ballot; and in *Lord v. Bell*, Case No. 20110259-SC, an extraordinary writ proceeding involving the constitutionality of the ban on using electronic signatures in connection with referenda petitions.

If leave is granted, the ACLU of Utah will submit its amicus curiae brief by this Friday, July 20, 2012, which is the same day set by this Court for the submission of briefs by the parties.

This motion is accompanied by a supporting memorandum.

RESPECTFULLY SUBMITTED this 16th day of July, 2012.

THE AMERICAN CIVIL LIBERTIES UNION
OF UTAH FOUNDATION, INC.

By: 
John Mejia

|

*Attorneys for Amicus Curiae American Civil
Liberties Union of Utah Foundation, Inc.*

CERTIFICATE OF SERVICE

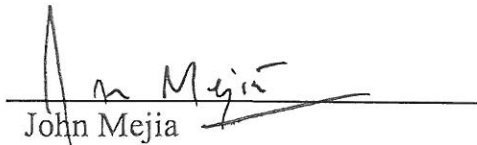
I HEREBY CERTIFY that on the 16th day of July 2012, a true and correct copy of the foregoing **MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANT UTAHNS FOR ETHICAL GOVERNMENT** was served via U.S. mail, first-class postage prepaid, upon the following:

Thom D. Roberts
Assistant Attorney General
160 East 300 South, 5th Floor
P.O. Box 140857
Salt Lake City, Utah 84114-0857

Melanie F. Mitchell
Salt Lake County Attorney's Office
2001 South State Street, Suite S3700
Salt Lake City, Utah 84190-1200

Alan L. Smith
1169 East 4020 South
Salt Lake City, Utah 84124

David R. Irvine
747 East South Temple, Suite 130
Salt Lake City, Utah 84102


John Mejia

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Appeal No. 20120594-SC

**MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO FILE BRIEF
OF AMICUS CURIAE IN SUPPORT OF
APPELLANT UTAHNS FOR ETHICAL
GOVERNMENT**

In support of its Motion for Leave to File Brief Amicus Curiae in Support of Appellant Utahns for Ethical Government (“UEG”), filed concurrently herewith, the American Civil Liberties Union of Utah Foundation, Inc. (“ACLU of Utah”) respectfully submits this supporting memorandum.

ARGUMENT

The ACLU of Utah

The ACLU of Utah is a non-profit, non-partisan membership organization founded in 1958. *See* Affidavit of John Mejia dated July 16, 2012 (“Mejia Aff.”), attached hereto as Addendum A, at ¶ 3. The ACLU of Utah is the state affiliate of the American Civil Liberties Union (“ACLU”), which was founded in 1920 to protect and advance civil liberties throughout the United States. *Id.* The ACLU has more than 500,000 members nationwide. *Id.* The ACLU of Utah has more than 2,400 members and supporters. *Id.*

Both the ACLU of Utah and the ACLU are dedicated to defending the guarantees of liberty and equality found in the federal and state Constitutions. *Id.* The ACLU of Utah has reviewed the Order dated June 6, 2012 entered by the district court below (the “Order”), and believes it can provide important context, both legal and factual, which will substantially assist the Court in reaching a fair and just resolution in this case.¹ *Id.* at ¶ 5.

In particular, the ACLU of Utah seeks to file a brief on the limited issue of the constitutionality of a complete ban on electronic signatures collected in efforts to place

¹ Counsel for UEG requested late last week that the ACLU of Utah consider submitting a brief of amicus curiae in this matter. *Mejia Aff.* at ¶ 4. Counsel for UEG further advised the ACLU of Utah that on July 11, 2012, this Court ordered that simultaneous briefs were due on July 20, 2012. *Id.* The ACLU of Utah then reviewed the Order and determined that it may be able to provide a unique perspective on the constitutionality of prohibiting electronic signatures in the initiative and referenda processes. *Id.* The materials filed with this Court today were prepared with as much expediency as the circumstances allowed. *Id.* The ACLU of Utah thus respectfully requests that the Court determine sufficient cause has been shown to waive the requirement that this motion be filed “at least twenty-one days prior to the date on which the brief of the party whose position as to affirmance or reversal the amicus curiae . . . will support is due,” Utah R. App. P. 25, and that the Court grant this motion for leave to submit a brief as amicus curiae.

initiatives on the ballot. The Order appears to hold that Utah Code §§ 20A-7-203 & 204 set out requirements for collecting, submitting, and processing signatures in support of initiative petitions that are wholly incompatible with electronic signatures. The ACLU of Utah views this ruling as an implicit ban on electronic signatures in the initiative process, and seeks leave to argue before this Court that such a ban is unconstitutional. *Mejia Aff.* at ¶ 6.

The ACLU of Utah Can Provide Legal and Factual Analyses to Assist the Court in Determining the Constitutionality of a Ban on Electronic Signatures

The ACLU of Utah and the ACLU have long histories of vigorously defending the right of the people to participate in their government, through litigation and advocacy. *Mejia Aff.* at ¶ 8. In particular, the ACLU of Utah has been on the forefront of litigation in Utah concerning the validity of electronic signatures and the constitutionality of limiting or banning its use in participatory democracy, representing parties in two recent cases on this subject. *Id.*

First, the ACLU of Utah was co-counsel in the case of *Anderson v. Bell*, 2010 UT 47, 234 P.3d 1147. *Mejia Aff.* at ¶ 9. In that case, the ACLU of Utah argued that the use of electronic signatures in the ballot access petition process was valid. This Court made a first of its kind decision to uphold the validity of electronic signatures for ballot access petitions. *Anderson* has the potential to significantly increase the ability of independent candidates to access the general election ballot, and thus to increase the opportunity for minority viewpoints in Utah to be heard and considered.

In addition, last year the ACLU of Utah was counsel to petitioners in *Lord v. Bell*, Case No. 20110259-SC, an extraordinary writ proceeding relating to a referendum seeking to repeal H.B. 477, the well publicized bill that sought to substantially restrict public access to government records. *Mejia Aff.* at ¶ 10. The extraordinary writ petition filed in that case argued that the ban on electronic signatures in the referendum process that had been enacted by S.B. 165 was unconstitutional, and that the sponsors of the H.B. 477 referendum should be entitled to gather electronic signatures in support of their referendum drive. During a special session convened on the same day the petition was filed, H.B. 477 was repealed by the Utah Legislature. As a result, the petition was withdrawn and the case dismissed without prejudice. *See* Order dated March 31, 2011 (Case No. 20110259-SC). Nonetheless, the ACLU of Utah continues to maintain that bans on electronic signatures in support of participatory democracy violate the constitution.

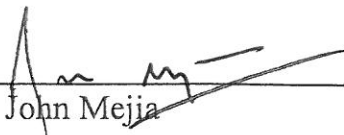
Because the parties' emphasis below was on statutory construction, the ACLU of Utah's familiarity and expertise with regard to Utah's participatory democracy laws, and particularly on electronic signatures as part of the initiative and referendum processes, give it a unique perspective and interest in the matter before the court. Because this Court's decision has the potential to significantly affect the fundamental rights secured by the initiative and referendum processes in contexts well beyond this case, the ACLU of Utah respectfully requests that it be given the opportunity to provide its perspective on these critical rights.

CONCLUSION

For all of the foregoing reasons, the ACLU of Utah respectfully requests that it be granted leave to submit and amicus curiae brief, to be filed by July 20, 2012.

RESPECTFULLY SUBMITTED this 16th day of July, 2012.

THE AMERICAN CIVIL LIBERTIES UNION
OF UTAH FOUNDATION, INC.

By:  _____
John Mejia

*Attorneys for Amicus Curiae American Civil
Liberties Union of Utah Foundation, Inc.*

CERTIFICATE OF SERVICE

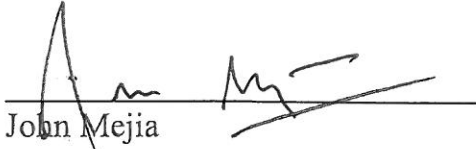
I HEREBY CERTIFY that on the 16th day of July 2012, a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANT UTAHNS FOR ETHICAL GOVERNMENT** was served via U.S. mail, first-class postage prepaid, upon the following:

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160 East 300 South, 5th Floor
P.O. Box 140857
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Melanie F. Mitchell
Salt Lake County Attorney's Office
2001 South State Street, Suite S3700
Salt Lake City, Utah 84190-1200

Alan L. Smith
1169 East 4020 South
Salt Lake City, Utah 84124

David R. Irvine
747 East South Temple, Suite 130
Salt Lake City, Utah 84102


John Mejia

ADDENDUM A

John Mejia (13965)
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OF UTAH FOUNDATION, INC.**
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Salt Lake City, Utah 84103
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170 South Main Street
Salt Lake City, UT 84101
Telephone: 801.363.5678

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Appeal No. 20120594-SC

**AFFIDAVIT OF JOHN MEJIA IN
SUPPORT OF MOTION FOR LEAVE
TO FILE BRIEF OF AMICUS CURIAE
IN SUPPORT OF APPELLANT
UTAHNS FOR ETHICAL
GOVERNMENT**

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

JOHN MEJIA, after being duly sworn, states from first hand knowledge of the facts and circumstances that:

1. I am the Legal Director for the American Civil Liberties Union of Utah Foundation, Inc. (“ACLU of Utah”). The proposed brief discussed below will be filed in support of Appellant and Cross-Appellee Utahns for Ethical Government (“UEG”).

2. I submit this affidavit in support of the ACLU of Utah’s motion for leave to file an amicus curiae brief in this proceeding.

3. The ACLU of Utah is a non-profit, non-partisan membership organization founded in 1958. The ACLU of Utah is the state affiliate of the American Civil Liberties Union (“ACLU”), which was founded in 1920 to protect and advance civil liberties throughout the United States. The ACLU has more than 500,000 members nationwide. The ACLU of Utah has more than 2,400 members and supporters. Both the ACLU of Utah and the ACLU are dedicated to defending the guarantees of liberty and equality found in the federal and state Constitutions.

4. Counsel for UEG requested late last week that the ACLU of Utah consider submitting a brief of amicus curiae in this matter. Counsel for UEG further advised the ACLU of Utah that on July 11, 2012, this Court ordered that simultaneous briefs were due on July 20, 2012. The ACLU of Utah then reviewed the district court’s Order dated June 6, 2012 (the “Order”). We prepared the materials filed with this Court today with as much expediency as the circumstances allowed.

5. After this reviewing the Order, the ACLU of Utah believes it can provide important context, both legal and factual, which will substantially assist the Court in reaching a fair and just resolution in this case.

6. In particular, the ACLU of Utah seeks to file a brief on the limited issue of the constitutionality of a complete ban on electronic signatures collected in efforts to place initiatives on the ballot. As the ACLU of Utah reads the Order, the district court determined that Utah Code §§ 20A-7-203 & 204 set out requirements for collecting, submitting, and processing signatures in connection with initiative petitions that are wholly incompatible with electronic signatures. The ACLU of Utah views this ruling as an implicit ban on electronic signatures in the initiative process, and seeks leave to argue before this Court that such a ban is unconstitutional.

7. The ACLU has a unique perspective on the constitutionality of prohibiting electronic signatures in the initiative and referenda processes.

8. The ACLU of Utah and the ACLU have long histories of vigorously defending the right of the people to participate in their government, through litigation and advocacy. In particular, the ACLU of Utah has been on the forefront of litigation in Utah concerning the validity of electronic signatures and the constitutionality of limiting or banning its use in participatory democracy, representing parties in two recent cases on this subject.

9. First, the ACLU of Utah was co-counsel in the case of *Anderson v. Bell*, 2010 UT 47, 234 P.3d 1147. In that case, the ACLU of Utah argued that the use of electronic signatures in the ballot access petition process was valid. This Court made a first of its kind decision to uphold the validity of electronic signatures for ballot access petitions. *Anderson* has the potential to significantly increase the ability of independent

candidates to access the general election ballot, and thus to increase the opportunity for minority viewpoints in Utah to be heard and considered.

10. In addition, last year the ACLU of Utah was counsel to petitioners in *Lord v. Bell*, Case No. 20110259-SC, an extraordinary writ proceeding relating to a referendum seeking to repeal H.B. 477, the well publicized bill that sought to substantially restrict public access to government records. The extraordinary writ petition filed in that case argued that the ban on electronic signatures in the referendum process that had been enacted by S.B. 165 was unconstitutional, and that the sponsors of the H.B. 477 referendum should be entitled to gather electronic signatures in support of their referendum drive. During a special session convened on the same day the petition was filed, H.B. 477 was repealed by the Utah Legislature. As a result, the petition was withdrawn and the case dismissed without prejudice. Nonetheless, the ACLU of Utah continues to maintain that bans on electronic signatures in support of participatory democracy violate the constitution.

DATED this 16th day of July, 2012.

By: 
JOHN MEJIA

SUBSCRIBED AND SWORN to before me, this 16th day of July, 2012.


Notary Public

