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**IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

MIA LOVE, a Utah resident, FRIENDS OF
MIA LOVE, a Utah corporation, ,

Petitioners,

v.

SHERRIE SWENSEN, Salt Lake County
Clerk and Election Officer

Respondent.

**MOTION TO DISMISS VERIFIED
PETITION UNDER UTAH CODE
SECTION 20A-1-404 AND RULE 65B OF
THE UTAH RULES OF CIVIL
PROCEDURE**

Case No. 180908585

Judge James D. Gardner

Salt Lake County Clerk and Election Officer, Sherrie Swensen, through counsel and in accordance with Utah Code § 20A-1-404 moves this court to summarily dismiss Petitioners, Mia Love's and the Friends of Mia Love's, verified petition.

INTRODUCTION AND RELIEF REQUESTED

On November 6, 2018, the State of Utah held a midterm general election for federal, state and local elected offices, including the office now held by Petitioner Mia Love. As part of

that election process, every active registered voter in Salt Lake County was given the opportunity to complete an election ballot in one of three ways – (1) by completing and returning a mail-in ballot prepared, printed and sent out under the direction of the Respondent Salt Lake County Clerk and Election Officer, Sherrie Swensen (Ms. Swensen); (2) by voting early and in person at one of the eleven (11) early voting centers maintained by the County Clerk’s Office prior to election day; or (3) by voting in person on election day at one of the forty-three (43) vote centers operated by the County that day. While most election contests are by-now decided and the results clear, the election contest for Utah’s Fourth Congressional District between incumbent Mia Love and challenger Salt Lake County Mayor Ben McAdams remains outstanding, and will be decided based largely on the dwindling number of mail-in and provisional ballots that are yet to be verified and counted. That process is onerous and ongoing.

Seeking to interrupt the process, Petitioners Mia Love and Friends of Mia Love – a candidate and a Utah corporation – have petitioned this Court for relief under Utah Code § 20A-1-404 and rule 65B of the Utah Rules of Civil Procedure. There, Petitioners claim they possess not simply a right to act as poll monitors and to observe the processes by which Salt Lake County verifies whether signatures on ballot envelopes match signatures the County has on file and by which the County verifies provisional ballots, but Petitioners claim also to have a right to challenge the manner by which the Clerk’s Office does so. Apart from not having shown – in statute or otherwise - that such a right exists, Petitioners have failed to comply with the plain language of Utah Code § 20A-1-404, or to show how under Rule 65B this Court can grant Petitioners any of their requested relief. What is more, Petitioners have no right under Section

20A-1-404 to the relief they seek. But faced with an election controversy, a court may order “(i) strict compliance with all filing deadlines for financial disclosure reports,” or “(ii) substantial compliance with all other provisions of [the election code] by the parties to the controversy.” *Id.* § 20A-1-404(2)(b)(i), (ii). Petitioners have not alleged a breach of any financial disclosure laws, and they have wholly failed to show Ms. Swensen has failed to substantially comply with Utah’s Election Code. The verified petition is at once procedurally deficient and substantively flawed. Petitioners can therefore not carry their burden. It should summarily be dismissed.

DISCUSSION

Utah Code § 20A-1-404 regarding election controversies, states plainly:

(1)(a)(i) Whenever any controversy occurs *between any election officer* or other person or entity charged with any duty or function under this title *and any candidate*, or the officers or representatives of any political party, or persons who have made nominations, either party to the controversy may file a *verified* petition with the district court.

Id. § 20A-1-404(1)(a)(i) (emphasis added). The verified petition filed here fails the rigors of this statute. Though filed by co-petitioners Mia Love and Friends of Mia Love, it has only been verified by Cole LaCroix, Field Director of the latter. Contrary to the face of Section 20A-1-404(1)(a)(i), Representative Love has not verified the petition. More than menial, that is a distinction with a difference. But nowhere in Section 20A-1-404(1)(a)(i), is a Utah-based corporation given standing to bring an election controversy. That right is limited and extended to candidates or to officers or representatives of a political party or nominating committee. Friends of Mia Love is not a proper petitioning party and the verification provided by it should be

disregarded. Because the verified petition fails even the most basic standards – lacking a verification from the candidate seeking relief – the Court should summarily dismiss it.

And should the Court determine to look past those shortcomings, the verified petition still fails inasmuch as Rule 65B is not the proper vehicle for seeking an order enjoining Ms. Swensen from completing the important work of overseeing the tabulation of votes cast in the Fourth Congressional District election contest. A plain reading of that rule shows its hand.

“When no plain, speedy, [or] adequate remedy,” exists, Rule 65B permits a person to petition the court for extraordinary relief “on any of the grounds forth in paragraph (b) (involving wrongful restraint personal liberty); paragraph (c) (involving the wrongful use of public or corporate authority); or paragraph (d) (involving the wrongful use of judicial authority, the failure to exercise such authority, and actions by the Board of Pardons and Parole). Utah R. Civ. P. 65B(a). Plainly subsections (b) and (d) do not apply. Leaving Petitioner with only that relief afforded by Rule 65B(c) – for alleged wrongful use of public authority. Even then, Petitioners come up short.

Rule 65B(c)(1) reads, in part:

(c)(1) *Who May Petition the Court; Security.* The attorney general may, and when directed to do so by the governor shall, petition the court for relief on the grounds enumerated in this paragraph. Any person who is not required to be represented by the attorney general and who is aggrieved or threatened by one of the acts enumerated in subparagraph (2) of this paragraph may petition the court under this paragraph if (A) the person claims to be entitled to an office unlawfully held by another or (B) the attorney general fails to file a petition under this paragraph after receiving notice of the person’s claim.

Fed. R. Civ. P. 65B(c)(1). The verified petition has not been brought by the Office of the Utah Attorney General, nor any Assistant Attorney General purporting to act on the Office's behalf. Consequently, before being heard by this Court, these Petitioners were required by failed to show (1) that either claims to be entitled to public office held by another; or (2) that prior to filing the verified petition at issue here, these Petitioners sought to have the Attorney General do so, but were denied. The verified petition must therefore be dismissed.

Finally, even despite these procedural flaws, Petitioners are not entitled to the relief they seek; namely, that the Court enter an order (1) granting Petitioners a meaningful opportunity to analyze and challenge Salt Lake County's determinations on whether the signatures on ballot envelopes match the signatures on file with Salt Lake County; (2) precluding the County from separating any ballots from their respective ballot envelopes while such analysis is pending and where the signature verification had been challenged after such analysis; (3) precluding the County from validating signatures based on Voter Affidavits that it receives until Petitioners have had a chance to receive and review copies of those affidavits along with the corresponding ballot envelopes, and lodge and resolve challenges; (4) granting Petitioners a meaningful opportunity to analyze and challenge the County's determinations on whether provisional ballot envelopes or forms are valid and sufficient; (5) precluding the County from de-linking the unique number on the provisional ballot envelopes or forms from the corresponding electronic voting record until Petitioners have had an opportunity to analyze the provisional ballot envelopes or forms, and lodge and resolve challenges; and (6) precluding the County from tabulating ballots until Petitioners have had an opportunity to analyze the provisional ballot envelopes or forms,

and lodge and resolve challenges. (Verified Petn, pp. 2, 4). Relief under Section 20A-1-404 is circumscribed. Faced with an election controversy, a court may order “(i) strict compliance with all filing deadlines for financial disclosure reports,” or “(ii) substantial compliance with all other provisions of [the election code] by the parties to the controversy.” *Id.* § 20A-1-404(2)(b)(i), (ii). Petitioners have wholly failed to show that by fulfilling her elected duty to oversee Salt Lake County’s mail-in and provisional ballot counts in accordance with State law, Ms. Swensen has failed to substantially comply with Utah’s Election Code.¹

Indeed, these Petitioners point to no provision of the election code with which Ms. Swensen is out of compliance. But the rights of candidates and campaigns to poll watch, while statutorily based, are limited. *See* Utah Code § 20A-3-201(4), (5) (respectively describing what a poll watcher may and may not do). And by Petitioners’ own account those rights are being met, not infringed by Ms. Swensen and the Clerk’s Office. Neither a poll watcher, nor candidate, nor elected official possesses a right, in essence, to re-do an Election Officer’s work. But permitting a poll watcher, an election campaign, candidate or even an election official to handle a mail-in ballot cast by an active registered voter would come perilously close to violating Utah law. As set out in Utah Code § 20A-3-203(1), “It is unlawful for an election official or watcher to reveal to another person the name of a candidate or ballot proposition for whom a voter has voted or to communicate to another person the election official or watcher’s opinion, belief, or impression

¹ In fact they agree she has, and that appears to be Petitioners’ regret. But in the absence of constitutional or statutory right to the relief they request, Petitioners remain free to lobby the legislature to amend the Elections Code.

regarding for whom or what a voter has voted.” But Utah’s voters have a right to privacy in their voting. The relief requested here would seem to dismiss that.

Having no basis in rule or law, but being procedurally and substantively flawed, the verified petition should be dismissed, Petitioners taking nothing thereby.

Dated this 14th day of November, 2018.

SIM GILL
Salt Lake County District Attorney

/s/ Bridget K. Romano
Bridget K. Romano
D. Adam Miller
Deputy Salt Lake County District Attorneys

CERTIFICATE OF SERVICE

I hereby that on this 14th day of November, 2018, I sent a true and correct copy of the foregoing through the court's electronic filing system to the following:

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