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Attorneys for Plaintiffs

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

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League of United Latin American Citizens	)	
of Utah, the League of Women Voters of	)	
Utah, Cheronne Anderson, and Lavinia	)	
Taumoepeau-Latu,	)	
	)	COMPLAINT and REQUEST FOR
Plaintiffs,	)	DECLARATORY JUDGMENT and
	)	INJUNCTIVE RELIEF
	)	
	)	Civil No.
	)	
vs.	)	
	)	Judge
Spencer Cox, as Lieutenant	)	
Governor of the state of Utah,	)	
	)	
Defendant.	)	
	)	
	)	

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COME NOW the Plaintiffs, LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF UTAH, THE LEAGUE OF WOMEN VOTERS OF UTAH, CHERONNE ANDERSON, and

LAVINIA TAUMOEPEAU-LATU, and for their cause of action against the Defendant,  
SPENCER J. COX, Lieutenant Governor for the State of Utah, allege:

### **THE PARTIES**

1. Plaintiff, the League of United Latin American Citizens of Utah (“LULAC Utah”), is a chapter of a nonpartisan, nonprofit organization founded in 1929, and which has its primary place of business in Salt Lake County, Utah.

2. Plaintiff, the League of Women Voters of Utah (the “League”), is a chapter of a nonpartisan, nonprofit organization founded in 1919 whose primary place of business is in Salt Lake County, Utah.

3. Plaintiff Cheronne Anderson is a child psychiatrist and a resident of Salt Lake County, Utah. She is a member of LULAC Utah and participates in voter registration and education activities in a volunteer capacity. She is a registered voter in Utah.

4. Plaintiff Lavinia Taumoepau-Latu is a Health Program Specialist and a resident of Bountiful, Utah. She participates in LULAC Utah voter registration and education activities in a volunteer capacity, and also serves as Director of Civic Engagement for a group that works to engage the Tongan community in Utah. She is a registered voter in Utah.

5. Defendant Spencer J. Cox is the Lieutenant Governor for the State of Utah, and is being sued here in his official capacity as Lieutenant Governor for the State of Utah. Defendant is the State’s chief election officer and has primary power to implement, administer, and enforce the provisions of Utah’s election code. He is the official ultimately responsible for complying with any request for access to the state’s Voter Database pursuant to Utah Code § 20A-2-104.

## **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action and the requested relief sought under Utah Code §§ 78A-5-102, 78B-6-401 and Utah R. Civ. Pro. 65A.

7. Venue in this Court is proper under Utah Code §§ 78B-3-302, 78B-3-307 in as much as the cause of action arises in Salt Lake City, Salt Lake County.

## **INTRODUCTION**

8. This lawsuit seeks to prevent the Utah Lieutenant Governor from producing information from the State’s computerized voter registration files to the Presidential Advisory Commission on Election Integrity (the “Commission”), or any member or officer thereof, in a manner that does not comply with State law and that can harm hundreds of thousands of registered Utah voters.

9. In the aftermath of his unsubstantiated claim that “millions of people . . . voted illegally” in the 2016 presidential election,<sup>1</sup> President Donald Trump signed Executive Order No. 13,799, which established the Commission. The Commission’s stated mission is to “study the registration and voting processes used in Federal elections,” and to issue a report that addresses, *inter alia*, (i) “those laws, rules, policies, activities, strategies, and practices” that either “enhance” or “undermine the American people’s confidence in the integrity of the voting processes used in Federal elections;” and (ii) “vulnerabilities in voting systems and practices used for Federal elections that could lead to improper voter registrations and improper voting, including fraudulent voter registrations and fraudulent voting.” Exec. Order No. 13,799, 82 Fed. Reg. 22,389 (May 16, 2017).

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<sup>1</sup> Donald Trump (@realDonaldTrump), Twitter (Nov. 27, 2016, 12:30 PM), <https://twitter.com/realdonaldtrump/status/802972944532209664?lang=en>

10. On June 28, 2017, the Commission sent letters to all 50 states (and the District of Columbia), including Utah, seeking a wide range of information relating to each state’s voters, including name, address, demographic information, partial social security numbers, party affiliations, criminal felony convictions, registration and voting histories, and more. In doing so, the Commission clearly stated that any information sent to it would become public. The Commission initially requested that Utah and the other states respond by July 14, 2017.

11. The information sought by the Commission is not widely available in Utah, but instead may be released only under certain circumstances and conditions imposed by Utah’s Government Records Access and Management Act (GRAMA) and Utah’s voting laws. *See* Utah Code §§ 20A-2-104, 63G-2-206, 63G-2-301, and 63G-2-302. Individuals and entities, like the Commission, that are seeking large-scale voter information can only access certain data contained in Utah’s computerized voter registration files and even then only upon certain conditions. *See id.*

12. Utah law, including GRAMA, requires that a range of data contained in the voter registration files remain private, including Social Security numbers. Utah Code § 63G-2-302.

13. Utah law also imposes strict limitations on access to dates of birth, which are treated as private records under GRAMA. The only way that requesting individuals or entities, like the Commission, can gain access to a date of birth is by demonstrating that they are a “qualified person” to receive such information under § 20A-2-104. The requesting entity must certify that it is qualified in writing, and the Lieutenant Governor must verify that the requester is in fact qualified, before he can provide the date of birth information.

14. Utah law imposes even stricter limitations on how a qualified entity can use date of birth information. In particular, Utah law provides that “government officials or employees

can only use voters' birth dates for their respective governmental capacities" and that "[a]ny other use of voters' birth dates is prohibited by law." *See* Utah Voter Database Request, Utah Lieutenant Governor, <https://elections.utah.gov/Media/Default/Forms/Voter%20File%20Request%20Form%20Fillable%20PDF.pdf> (last visited July 22, 2017). To gain access to birth dates, then, the requesting entity must provide "a statement regarding the purpose for which the person desires to obtain the dates of birth," and the Lieutenant Governor must confirm that the use meets this test. Utah Code § 20A-2-104.

15. In addition, any voter registration record must remain private if a voter has requested in writing that her voter registration record be private, and the Lieutenant Governor or relevant county clerk has found that refusing the voter's request would put his or her (or a member of the voter's household's) safety at risk. Utah Code §§ 20A-2-104(4)(f), 63G-2-302(k). Such records may not be disclosed to any "person other than a government official or government employee acting in the government official's or government employee's [official] capacity." *Id.* § 20A-2-104(4)(d).

16. Furthermore, requesting individuals or entities may obtain the remaining, redacted information in the Voter Database only after they pay a fee of \$1,050.00. *See* Utah Code §§ 20A-2-104(3)(d), 63G-2-203(10); *Utah Voter Database*, Utah Lieutenant Governor, <https://elections.utah.gov/voterdatabase> (last visited July 22, 2017).

17. On June 30, 2017, Utah Lieutenant Governor Spencer J. Cox issued a statement regarding the Commission's request, indicating he will only provide information that is available

to the public.<sup>2</sup> He listed expressly only two kinds of information as protected—social security number and driver’s license number. Date of birth information contained in the records is also protected, but was not mentioned.

18. Defendant’s provision of the data requested by the Commission, even if cabined to information available to the public, would undermine, and run afoul of, the State’s carefully-crafted regulation of the use of voter data.

19. *First*, based on the Lieutenant Governor’s public statement, it appears he intends to disclose birth date information from the State’s computerized Voter Database without receiving confirmation in writing from the Commission that it will only use such information for the limited purposes authorized under Utah law. Indeed, the Lieutenant Governor’s statement makes no mention of the legal requirements for the Commission to first submit in writing “a statement regarding the purpose for which the person desires to obtain the dates of birth” and a confirmation “that the date of birth of a registered voter that is obtained from the list of registered voters may not be provided or used for a[ny other] purpose.” Utah Code § 20A-2-104(4)(b)(ii)(E). Disclosure of dates of birth without ensuring compliance with these legal requirements would contravene the clear and explicit language of § 20A-2-104.

20. *Second*, it appears that the Lieutenant Governor intends to disclose information from the State’s computerized Voter Database without receiving any written confirmation from the Commission that it will limit further transmission or dissemination. Indeed, the Lieutenant Governor’s statement makes no mention of the legal requirement for the Commission to sign “a statement that the date of birth of a registered voter that is obtained from the list of registered

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<sup>2</sup> *Statement from Lt. Gov. Spencer J. Cox regarding the Presidential Advisory Commission on Election Integrity*, Utah Lieutenant Governor, <https://elections.utah.gov/Media/Default/2017%20Election/LGstatementonPACEI.pdf>.

voters may not be used *or provided* for a[ny other] purpose.” Utah Code § 20A-2-104 (emphasis added). That is so even though, under Utah law, “[a] person is guilty of a class A misdemeanor if the person . . . uses *or provides* the date of birth of a registered voter that is obtained from the list of registered voters, in a manner that is not permitted by law.” *Id.* § 20A-2-104(4)(e)(ii) (emphasis added). Disclosure of dates of birth absent such submissions would thus directly contravene the clear and explicit requirements of § 20A-2-104. That is of particular concern here, in light of the Commission’s stated plan to publish otherwise private voter data, which would enable widespread abuse of that information to the detriment of Utah citizens. Once the information is public, the Commission cannot possibly provide assurances as to its use.

21. *Third*, Defendant has not indicated whether he plans to provide to the Commission any of the voter registration records that were previously designated private by the Lieutenant Governor or a county clerk at a voter’s request. If Defendant does so before first receiving confirmation from the Commission that it will limit further transmission or dissemination, that action will violate Utah Code § 20A-2-104(4)(d), (f), which clarifies that the records can only be shared with government officials or employees. Indeed, the Commission’s stated plan to publish this otherwise private voter data would run afoul of those strict limits. Such secondary transmission of these particular records would be especially concerning, because the Lieutenant Governor and/or county clerk have already determined that publication of such records would put the voter’s or a household member’s safety at risk.

22. *Fourth*, neither Defendant nor the Commission has indicated whether the Commission will comply with the Lieutenant Governor’s published procedures for providing voter information to the public. Under those procedures, entities that want access to Utah’s Voter Database must pay a fee of \$1,050. *See* Utah Code §§ 20A-2-104(3)(d), 63G-2-203(10);

*Utah Voter Database*, Utah Lieutenant Governor, <https://elections.utah.gov/voterdatabase> (last visited July 22, 2017). Allowing the Commission to receive the information without paying undermines those individuals or entities who have legitimately obtained the information by submitting the required fee. The Commission should not receive special treatment.

23. Providing the requested information to the Commission would make an end-run around Utah's important restrictions on secondary dissemination and use of the received voter information. Once the information requested by the Commission is made publicly available (which the Commission has admitted it will do), the genie cannot be put back in the bottle.

24. As a result, Plaintiffs request that the Court enter declaratory and injunctive relief preventing Defendant from releasing the information sought by the Commission unless and until obligations under Utah law are satisfied.

#### **STANDING OF THE PARTIES**

25. Plaintiff, the League of United Latin American Citizens of Utah, is a nonpartisan, nonprofit organization founded in 1929 and based in Salt Lake County, Utah. The vast majority of the over 100 members of LULAC Utah are residents of Utah who are registered to vote in Utah and whose information is contained in the Utah Voter Database, which will be released by Defendant to the Commission.

26. LULAC Utah has standing to challenge Defendant's release of the Voter Database on behalf of its members. LULAC Utah has members who will be directly impacted and harmed by the release of the Voter Database information to the Commission. The Voter Database contains personal information regarding Utah voters' identities, which may be used to solicit, harass, or otherwise infringe upon the privacy of Utah voters, including LULAC Utah's members.



27. LULAC Utah also has standing to challenge Defendant's release of the Voter Database on its own behalf. By producing information to the Commission—which has indicated that it will make any documents that are submitted to the Commission available to the public, which may be compelled under Federal Law in any event—Defendant will impair the privacy of LULAC Utah's members, including members that LULAC Utah assisted in registering to vote. It will also make it substantially more difficult for LULAC Utah to engage in voter-registration and get-out-the-vote activities, which they regularly perform in support of their civic-engagement mission. Voters and prospective voters will be more reluctant to participate in elections or register to vote in the future if they understand that Defendant is willing to provide information on the Voter Database to entities who openly admit that they intend to make such information public. The public disclosure of such personal information will chill LULAC Utah members' as well as other voters' and prospective voters' exercise of First Amendment rights, including the right to vote and freedom of association.

28. Last year, LULAC Utah conducted twenty-one voter registration events. LULAC Utah also encouraged and assisted individuals in voting and conducted other activities to boost civic engagement, which has been essential to its mission since its founding. If Defendant provides the Commission with the Voter Database, some portion of LULAC Utah's funds that would have gone to voter registration, get-out-the-vote, and civic engagement will be redirected to ameliorating the consequences of Defendant's action, including educating voters regarding the Commission and the State's privacy laws. Additional expenses may also be incurred by LULAC Utah as it responds to fallout from the release of Utahns' personal information, including (but not limited to) voter education efforts, political activism, and litigation. LULAC Utah will thus be forced to divert time, money, and resources from their other activities in order to expend more

time and attention educating and assisting Utah citizens with regard to the protection of their personal information.

29. Plaintiff, the League of Women Voters of Utah, is a nonpartisan, nonprofit organization founded in 1919 and based in Salt Lake County, Utah. The vast majority of the approximately 375 members of the League are Utah residents who are registered to vote in Utah and whose information is contained in the Utah Voter Database, which will be released by Defendant to the Commission.

30. The League has standing to challenge Defendant's release of the Voter Database on behalf of its members. The League has members who will be directly impacted and harmed by the release of the Voter Database information to the Commission. The Voter Database contains personal information regarding Utah voters' identities, which may be used to solicit, harass, or otherwise infringe upon the privacy of Utah voters, including the League's members.

31. The League also has standing to challenge Defendant's release of the Voter Database on its own behalf. By producing information to the Commission—which has indicated that it will make any documents that are submitted to the Commission available to the public, which may be compelled under Federal Law in any event—Defendant will impair the privacy of the League's members, including members that the League assisted in registering to vote. It will also make it substantially more difficult for the League to engage in voter-registration and get-out-the-vote activities, which they regularly perform in support of their civic-engagement mission. Voters and prospective voters will be more reluctant to participate in elections or register to vote in the future if they understand that Defendant is willing to provide information on the Voter List to entities who openly admit that they intend to make such information public. The public disclosure of such personal information will chill League members' as well as other

voters' and prospective voters' exercise of First Amendment rights, including the right to vote and freedom of association.

32. Last year, the League, through its four county chapters, conducted at least 70 voter registration drives. The League also encouraged and assisted individuals in voting and conducted other activities to boost civic engagement, which has been essential to its mission since its founding. If Defendant provides the Commission with the Voter Database, some portion of the League's funds that would have gone to voter registration, get-out-the-vote, and civic engagement will be redirected to ameliorating the consequences of Defendant's action, including educating voters regarding the Commission and the State's privacy laws. Additional expenses may also be incurred by the League as it responds to fallout from the release of Utahns' personal information, including (but not limited to) voter education efforts, political activism, and litigation. The League will thus be forced to divert time, money, and resources from their other activities in order to expend more time and attention educating and assisting Utah citizens with regard to the protection of their personal information.

33. Plaintiff Cheronne Anderson is a child psychiatrist and a resident of Salt Lake County, Utah. She is a member of LULAC Utah and participates in voter registration and education activities in a volunteer capacity. She is a registered voter and has consistently participated in Utah elections. On information and belief, Ms. Anderson's name and information appears in Utah's Voter Database. As such, her personal information will be released by Defendant to the Commission. The release of such personal information will infringe on Ms. Anderson's privacy rights. Furthermore, the public disclosure of such personal information could expose Ms. Anderson to intimidation or harassment for merely exercising her right to vote, and may chill her exercise of First Amendment rights, including the right to vote and freedom of

association. Ms. Anderson believes that her unique name and address make her particularly easy to identify and thus susceptible to such harassment, even with the release of limited information. As a result, Ms. Anderson has standing to bring this action individually.

34. Plaintiff Lavinia Taumoepeau-Latu is a Health Program Specialist and a resident of Bountiful, Utah. She participates in LULAC Utah voter registration and education activities in a volunteer capacity, and also serves as Director of Civic Engagement for a group that works to engage the Tongan community in Utah. She is a registered voter and has consistently participated in Utah elections. On information and belief, Ms. Taumoepeau-Latu's name and information appears in Utah's Voter Database. As such, her personal information will be released by Defendant to the Commission. The release of such personal information will infringe on Ms. Taumoepeau-Latu's privacy rights. Furthermore, the public disclosure of such personal information could expose Ms. Taumoepeau-Latu to intimidation or harassment for merely exercising her right to vote, and may chill her exercise of First Amendment rights, including the right to vote and freedom of association. Ms. Taumoepeau-Latu believes that her unique name and address make her particularly easy to identify and thus susceptible to such harassment, even with the release of limited information. As a result, Ms. Taumoepeau-Latu has standing to bring this action individually.

35. Defendant is the duly appointed Lieutenant Governor of Utah. He is sued only in his official capacity, and not in his personal capacity. As Lieutenant Governor, Defendant has statutory responsibilities in a number of areas, including the maintenance of election records. In particular, the Lieutenant Government is charged with implementing and maintaining a statewide "list of registered voters in electronic form." Utah Code § 20A-2-104(3)(b).

## PLAINTIFFS' CLAIM

36. Plaintiffs reallege and incorporate all prior paragraphs of this Complaint.

### *The Commission and Its Request*

37. The Presidential Advisory Commission on Election Integrity was established on May 11, 2017 by Executive Order (“Commission Order”). *See* Exec. Order. No. 13,799, 82 Fed. Reg. 22,389 (May 16, 2017).

38. Although the Commission has the stated task of “study[ing] the registration and voting processes used in Federal elections,” *see id.*, the Commission does not have any authority to subpoena records, to undertake investigations, or to demand the production of state voter records from state election officials, including in Utah or anywhere else.

39. Nonetheless, on June 28, 2017, the Vice Chair of the Commission, Kansas Secretary of State Kris Kobach, sent a letter to all fifty states and the District of Columbia seeking detailed voter data from each jurisdiction. *See* Office of the Vice President, Readout of the Vice President’s Call with the Presidential Advisory Commission on Election Integrity (June 28, 2017), <https://www.whitehouse.gov/the-press-office/2017/06/28/readout-vice-presidents-call-presidential-advisory-commission-election> (“Vice Chair of the Commission and Kansas Secretary of State Kris Kobach told members a letter will be sent today to the 50 states and District of Columbia on behalf of the Commission requesting publicly-available data from state voter rolls and feedback on how to improve election integrity.”).

40. On information and belief, one of the Commission’s letters was sent to Defendant (the “Letter”). *See* Letter dated June 28, 2017, Presidential Advisory Commission on Election Integrity, <https://elections.utah.gov/Media/Default/2017%20Election/PEIC%20Letter%20to%20Utah.pdf>

(last visited July 22, 2017). The Letter sought, *inter alia*, the following data from the Voter Database:

[T]he full first and last names of all [Utah] registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in your state), last four digits of social security number if available, voter history (elections voted in) from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizen information.

*Id.* The Letter also asked Lieutenant Governor Cox to provide “evidence or information . . . regarding instances of voter fraud or registration fraud” in Utah and information on in-state “convictions for election-related crimes . . . since the November 2000 federal election.” *Id.*

41. The Letter stated that “any documents that are submitted to the full Commission will also be made available to the public.” *Id.*

42. By the plain terms of the Letter, the Commission requested that the Lieutenant Governor provide the aforementioned data by July 14, 2017. *Id.*

43. On information and belief, in connection with a separate lawsuit pending in the U.S. District Court for the District of Columbia, on July 10, a federal officer working on behalf of the Commission contacted election officials on behalf of the Commission in order to request a temporary hold on submitting data to the Commission. Plaintiffs are unaware of whether Defendant or any entity in Utah received this message.

#### ***Utah’s Voter Database and Distribution of Voter Data***

44. Utah requires citizens to register to vote in order to participate in state and federal elections within the State. Utah Code § 20A-2-102.

45. The Utah voter registration form instructs prospective voters to provide at least the following information: name; residence and postal address; any previous voter registration address in Utah; Utah county of residence; date of birth; previous name (if applicable); driver

license or identification number (if applicant possesses one); last four digits of social security number; and date of application for registration. *See* Utah Code § 20A-2-104(1) (delineating these requirements). Other information, including a voter’s telephone number, email address, disability status, and political party affiliation, is requested on the form, but is optional.

Furthermore, the application requires applicants to affirm that they: reside in the State; are a citizen of the United States; and are not a convicted felon currently incarcerated for commission of a felony. Utah’s voter registration application can be found on the Lieutenant Governor’s website. *See Voter Registration Form*, Utah Lieutenant Governor, <https://elections.utah.gov/Media/Default/Forms/Utah%20Voter%20Registration%20Form.pdf> (last visited July 22, 2017).

46. The Lieutenant Governor is charged with implementing and maintaining a statewide “list of registered voters in electronic form.” Utah Code § 20A-2-104(3)(b). Each county clerk shall also “retain lists of currently registered voters” in the county. Utah Code § 20A-2-104(3)(a).

47. On information and belief, the Utah Lieutenant Governor maintains a voter database containing the following fields, in tab-delimited format: voter identification number; first, middle, and last name; voter status (active or inactive); absentee status; original registration date; party affiliation; phone number (if provided); mailing and residence address; county and precinct; Congressional district, state house district, state senate district, state school board district; voter participation history; and method of participation (absentee, by mail, normal, etc.). *See Utah Voter Database*, Utah Lieutenant Governor, <https://elections.utah.gov/voterdatabase> (last visited July 22, 2017).

48. Information on registered voters is not openly posted on the Internet and is generally not made available absent a specific request by an individual or entity. In the case of such a request, however, voter registration records are, with certain exceptions, “public” documents. Utah Code § 63G-2-301(2)(l).

49. Such a request, however, is limited to certain information and must meet specific requirements.

50. *First*, Utah law requires that a range of data in the voter registration files always remain private. Specifically, “that part of a voter registration record identifying a voter’s (i) driver license or identification card number; (ii) Social Security number, or last four digits of the Social Security number; (iii) email address” must remain private, and thus cannot be released by the State. Utah Code § 63G-2-302.

51. *Second*, Utah law imposes strict limitations on access to date of birth information contained in these records. Dates of birth are private records under GRAMA. The only way that a requesting entity, like the Commission, can gain access to date of birth information is by demonstrating that it is a qualified person to receive the information, and only for authorized purposes permitted by law. Utah Code § 20A-2-104(4)(e). The purposes for which date of birth information can be used are carefully circumscribed: “government officials or employees can only use voters’ birth dates for their respective governmental capacities. Health providers, insurance companies, and financial institutions can only use birth dates to verify the accuracy of personal information submitted by an individual or to confirm the identity of a person to prevent fraud, waste, or abuse. Political parties and candidates can only use birth dates for political purposes. Members of the media can only use birth dates to verify the identity of a single individual. Any other use of voters’ birth dates is prohibited by law.” *See* Utah Voter Database



Request, Utah Lieutenant Governor,

<https://elections.utah.gov/Media/Default/Forms/Voter%20File%20Request%20Form%20Fillable%20PDF.pdf> (last visited July 22, 2017).

52. In fact, the Voter Database Request form requires any requesting parties to “swear/affirm” that “I will not provide or use the date of birth of a registered voter that is obtained from the list of registered voters in a manner that is prohibited by law” and that “I understand that a person who . . . provides or uses the date of birth of a registered voter that is obtained from the list of registered voters in a manner prohibited by law, is guilty of a class A misdemeanor.” *See* Utah Voter Database Request, Utah Lieutenant Governor, <https://elections.utah.gov/Media/Default/Forms/Voter%20File%20Request%20Form%20Fillable%20PDF.pdf> (last visited July 22, 2017). The Commission cannot certify that that date of birth information will not be improperly used if it plans to make public the information it receives.

53. *Third*, a record must also remain private if the voter has requested in writing that her record be private, and has provided sufficient evidence to the Lieutenant Governor or county clerk that refusing her request would put her or a household member’s safety at risk. Utah Code §§ 20A-2-104(4)(f), 63G-2-302(k). Such records may not be disclosed to any “person other than a government official or government employee acting in the government official's or government employee’s [official] capacity.” *Id.* § 20A-2-104(4)(d).

54. *Fourth*, Utah law authorizes the Lieutenant Governor to collect fees for furnishing the Voter Database. *See* Utah Code §§ 20A-2-104(3)(d), 63G-2-203(10). On information and belief, the Lieutenant Governor charges requesting entities a fee of \$1,050.00 to acquire the voter database. *See Utah Voter Database*, Utah Lieutenant Governor, <https://elections.utah.gov/voterdatabase> (last visited July 22, 2017).

### *Utah's Provision of Data to the Commission*

55. The disclosure of birth dates included in the Voter Database would violate Utah law and the rights of Utah citizens.

56. On information and belief, neither the Commission nor any of its members has agreed that it will not use the information obtained, including date of birth information, for unauthorized purposes beyond those pursuant to their specific governmental capacities, including but not limited to advertising or promoting commercial products or services.

57. On information and belief, neither the Commission nor any of its members has explained to Defendant, let alone offered any assurances or agreement, regarding how it will prevent third parties from using the Voter Database information for unauthorized purposes, including but not limited to advertising or promoting commercial products or services, once the Voter Database information is in the hands of the Commission.

58. Provision of the Voter Database information to the Commission would multiply the number of individuals and entities with access to the information. The Commission's Letter stated that "any documents that are submitted to the full Commission will also be made available to the public." The Commission therefore apparently intends to make information received from the Utah Voter Database, including dates of birth, fully available to the public.

59. In a July 5 filing in a case in the District of Columbia, Mr. Kobach, the Vice Chair of the Commission, reaffirmed that there would be a "public release of documents," but asserted, without any explanation, that the voter roll data would be "de-identif[ied]." This assertion did not indicate which information in Utah's (or any other states') voter rolls would be made available to the public and which would not. Nonetheless, Mr. Kobach proffered, with no further explanation, that the "voter rolls themselves will not be released to the public by the

Commission.” Decl. of Kris W. Kobach at 3, *Elec. Privacy Info. Ctr. v. Presidential Advisory Comm’n on Election Integrity*, No. 1:17-cv-01320-CKK (D.D.C. July 5, 2017), ECF No. 8-1.

60. Moreover, even if the Commission itself intended to keep the voter information private, it is not clear that the Commission, which is an advisory committee covered under the Federal Advisory Committee Act (FACA), has the authority to prevent the dissemination of information provided to it. Rather, FACA requires advisory committees like the Commission to make available for public inspection all “the records, reports, . . . or other documents which were made available” to it unless those records fall within one of the enumerated exceptions. 5 U.S.C. App. 2 § 10(b). There is thus still a serious risk that, even if the Commission indicated that it did not intend to make any information provided to it public, the Voter Database will still be made available, irrespective of any post-hoc assertions from Mr. Kobach.

61. The Commission’s intended (or compelled) publication of the information provided by Utah (and other states) would eviscerate the requirements set forth in Utah Code § 20A-2-104, including that a party state in writing before dates of birth are furnished that it will only use that information for a limited set of purposes.

62. Once the Commission makes the Voter Database public, neither the Commission nor Defendant can effectively monitor or police the use of the Voter Database. Hence, even if the Commission and/or its members sign the Database Request form, it is impossible to guarantee the promise will be upheld when the information is publicly dispersed. In particular, neither Defendant nor the Commission can guarantee that individuals or entities who seek or receive the Voter Database information from the Commission will be subject to the use limitations imposed by Utah law.

63. Thus, by turning the Voter Database or its information over to the Commission, Defendant would be sanctioning the disclosure of information regarding millions of Utahns to private firms, who could use such data without limitation and to the detriment of the privacy and associational rights of Utah voters, including Plaintiffs and their members.

64. On information and belief, neither the Commission nor any of its members has submitted the fee of \$1,050.00 established by the Lieutenant Governor to acquire the Voter Database or expressed a willingness to pay that fee.

65. On information and belief, the Lieutenant Governor has acknowledged that he will provide certain information to the Commission, including voter names, addresses, registration, voting methods, voter status, and the elections (including primaries) in which specific voters have participated.

66. On information and belief, the Lieutenant Governor excluded date of birth information from the information that would be withheld from the Commission.

67. On information and belief, the Lieutenant Governor has not indicated that he will require the Commission or any of its members to pay the fee for furnishing the Voter Database pursuant to the Utah Code.

68. On information and belief, the Lieutenant Governor has not yet released the Voter Database (or other data) to the Commission. In fact, on information and belief, on July 10, the Commission asked states, including Utah, to postpone their response to the Commission's Letter pending the resolution of a motion for temporary restraining order pending in U.S. District Court for the District of Columbia. On information and belief, now that the motion has been resolved, unless restrained by this Court's injunction, Defendant will release the Voter Database (or a subset of information in the Voter Database) to the Commission.

**COUNT I:**  
**Violation of Utah Code § 20A-2-104**

69. Plaintiffs reallege and incorporate all prior paragraphs of this Complaint.

70. Defendant's release of the birth dates included in the Voter Database without adhering to the requirements and protections of Utah Code § 20A-2-104 violates Utah law.

71. Defendant cannot release such information to the Commission because it cannot ensure that the date of birth information disclosed will not be used for any purpose other than the ones § 20A-2-104 expressly contemplates.

72. Defendant cannot sidestep Utah law simply because the Commission has requested the data. Rather, Defendant must treat the Commission like every other entity requesting the Voter Database—that is, requiring writing confirmation of compliance with the access and use requirements and the payment of a fee.

73. These statutory protections are especially important in this case, as the Commission has stated that the information it receives will be shared with the public. Moreover, even if the Commission states its intention not to share the Voter Database information, its publication may be required by federal law. This dissemination could lead to Utah voters' information being used by others for improper purposes in violation of Utah Code § 20A-2-104. And the dissemination of voters' identifying information in combination with their addresses and voting history undermines GRAMA and creates a risk of harassment and intimidation.

74. Unless enjoined by this Court, Plaintiffs will suffer immediate and irreparable harm from the exposure of personal voter information, with no alternative adequate remedy at law.

75. Given the clear limitations imposed on Defendant under Utah law and the rights of Utah voters, the irreparable nature of the harm that would follow of the release of the Voter

Database or information from the Voter Database, and the fact that other remedies would not prevent a failure of justice, injunctive relief should be granted.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request the following relief and judgment:

- A. a judgment in favor of Plaintiffs and against Defendant, and, under the authority of Utah R. Civ. Pro. 65A, entry of a temporary injunction, and after trial, a permanent injunction enjoining Defendant, Lieutenant Governor Spencer J. Cox, from providing the Voter Database or any part thereof to the Commission.
- B. a declaratory judgment in favor of Plaintiffs pursuant to Utah Code § 78B-6-401, finding and determining that as announced:
  - 1. the release of birth dates as part of the Voter Database would violate Utah Code § 20A-2-104 and Utah law generally;
  - 2. Defendant’s release of the Voter Database or any part thereof to the Commission must comply with all aspects of Utah Code § 20A-2-104 and Utah law generally, including but not limited to the submission of a proper request, payment of a fee, and guarantees and assurances as to the use and publication of the Voter Database information;
  - 3. Plaintiffs’ rights will be irreparably harmed without injunctive or declaratory relief from this Court;
  - 4. the threatened injury to Plaintiffs outweighs whatever damage the injunction may cause Defendant; and
  - 5. Defendant is under no obligation to provide the Voter Database or any part thereof to the Commission in response to its June 28, 2017 request, or any other similar request.
- C. An order and judgment that Plaintiffs recover the costs of this action.
- D. Such other and further relief as the Court deems just in the premises.

DATED this 26<sup>th</sup> day of July, 2017.

\_\_\_\_\_  
/s/ David R. Irvine

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