



May 11, 2018

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DEA Salt Lake City Metro
Narcotics Task Force
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Re: Notice of Claims

All:

We write on behalf of the Utah Patients Coalition (the “Coalition”) to notify you of the Coalition’s intention to pursue legal claims against you and all appropriate third parties in connection with your effort to fraudulently obtain the withdrawal of signatures from the initiative petition in support of the Utah Medical Cannabis Act (the “Petition”). Your efforts to mislead voters who signed the Petition, in order to induce the withdrawal of their signatures from the Petition, not only renders the withdrawals void and without legal effect, but also gives rise to civil liability for damages incurred by the Coalition. Further, even if you did not employ fraudulent means to procure signature withdrawals, the withdrawal forms are defective and incomplete, and were improperly submitted to the county clerks. Finally, it appears that the Drug Enforcement Agency’s affiliation with Drug Safe Utah places them in direct and continuing violation of federal law.

OVERVIEW OF THE COALITION’S CLAIMS

I. Fraudulent Inducement of Signature Withdrawals

The First Amendment secures a right to the robust and uninhibited debate of pressing public policy questions; it does not, however, license intentional deception. As detailed below, direct accounts of your canvassers and agents, as well as publicly available evidence, amply demonstrate your efforts to deceive Petition signers:

- A widely-circulated [video](#) reveals one of your canvassers falsely claiming to be a government official.
- A compendium of talking points titled “tips for approach” provided to your canvassers contains misrepresentations so egregious that even Drug Safe Utah was forced to [admit](#) that it was replete with “errors and incorrect statements.”

- Although Drug Safe Utah has dismissed the duplicitous talking points as the unauthorized work of a “single canvasser” and purportedly repudiates any relationship with the canvasser posing as a government official, other evidence directly undermines these excuses:
 - Agents of your canvassing campaign have personally informed the Coalition that the “tips for approach” or similar talking points were widely distributed to your team members.
 - Yet [another video](#) has emerged of a canvasser falsely informing a Petition signer that “the state found that unfortunately that most of the signatures [on the Petition] have been forged and your name was one of the names that was on that list.” Particularly when juxtaposed against another canvasser’s misrepresentation of herself as a government agent, this episode evinces as a troubling pattern of fraudulently enlisting the official imprimatur of the state government to induce voters to withdraw their signatures.¹
- Two agents of your campaign have separately and independently confided to the Coalition that they were increasingly uncomfortable with the deceptive tactics they were instructed to employ in procuring signature withdrawals.
- Numerous Petition signers have reported being the target of demonstrably false solicitations for signature withdrawals. For example, one voter recounted to the Coalition that your canvasser “assured me that my name wasn't being removed but that this was verifying I agreed to any changes to make the initiative even better.”
- Emphasizing risk of identity fraud, the Lieutenant Governor has [publicly warned](#) voters not to sign signature withdrawal forms distributed by your canvassers.
- Even before your withdrawal campaign commenced, the Utah Medical Association has been [propagating](#) what one newspaper has deemed “[pure rubbish](#)” in connection with the Utah Medical Cannabis Act. Among these arrant falsehoods are claims that the Act “would allow possession of 4 times the amount of marijuana than most other ‘medical’ marijuana states” (in reality, several states allow limits much higher than those contemplated by the Act), and that there would remain “few real restrictions or liability for either possession, distribution or manufacture of cannabis products by anyone.” In reality, the Act would impose a panoply of fines and other penalties for violations of its comprehensive restrictions on the manufacture and sale of cannabis products. *See* Cathy McKittrick, “Fact-Checking Utah Medical Association’s Claims on Medical Marijuana Initiative,” STANDARD-EXAMINER (Apr. 10, 2018). Your canvassers presumably are systematically deploying these known deceptions as part of your signature withdrawal campaign.

¹ It is a criminal offense under Utah law to impersonate a public servant or to provide “with a purpose to procure the compliance of another with a request made by the person” a document that purports to have, but does not actually have, “official sanction.” *See* Utah Code §§ 78-8-512, 78-8-513.

Discovery in any future litigation will undoubtedly reveal additional documents and information that further amplify this pattern of fraud and misconduct, and identify the individuals and organizations aiding and abetting your deceptive practices.

Any person who knowingly or recklessly makes a false statement of material fact to induce action or reliance is liable for any resulting injury. *See generally Keith v. Mountain Resorts Dev., LLC*, 337 P.3d 213, 225-26 (Utah 2014) (setting forth elements of a fraudulent inducement claim). Your fraudulent inducement of signature withdrawals to obstruct the Petition’s certification for the 2018 general election ballot gives rise to substantial damages to the Coalition, including the large sums of money and resources it has expended to qualify the Petition and to defend against your illicit signature withdrawal campaign. The Coalition accordingly is prepared to seek judicial redress of these injuries.

In addition, signature withdrawals procured by deceit are null and void. “The reserved right and power of initiative is a fundamental right . . . [and] is the power of a voter to directly legislate via exercising the right to vote.” *Gallivan v. Walker*, 54 P.3d 1069, 1080 (Utah 2002). To ensure that this constitutional prerogative is not corrupted by machinations in the initiative process, Utah law has long recognized the necessity of policing and punishing petition fraud. *See generally* Utah Code 20A-7-213; *Gallivan*, 54 P.3d at 1088 (acknowledging the state’s “legitimate” interest in “deterring fraud”). Even in the absence of specific statutory proscriptions, courts nationwide have fashioned judicial remedies to expunge the taint of petition fraud and deter its recurrence. In the face of sufficient evidence that the efforts of various circulators were infected by pervasive fraud, courts have invalidated all signatures collected by such individuals, even those that were not necessarily the fruit of deception. *See, e.g., See Brousseau v. Fitzgerald*, 675 P.2d 713, 715-16 (Ariz. 1984); *Montanans v. State*, 146 P.3d 759, 777 ¶ P80 (Mont. 2006) (“The filing of a false affidavit by a signature gatherer is ‘more than a technicality’ in that it destroys the primary procedural safeguard for ensuring the integrity of the signature gathering process.”); *Citizens Comm. for the D.C. Video Lottery Terminal Initiative v. D.C. Bd. of Elecs. & Ethics*, 860 A.2d 813, 819 (D.C. 2004) (concluding that the elections board’s “broad remedy of exclusion-commensurate with the magnitude of the wrongdoing it had found-was necessary to preserve the integrity of the circulation process”); *Lebowitz v. Barnes*, 221 N.Y.S.2d 703, 706 (Sup. Ct. 1961); *Weisberger v. Cohen*, 22 N.Y.S.2d 1011, 1012 (Sup. Ct. 1940) (holding that “[t]he surest way to keep [the petitions] free from fraud is to let it be known that any taint of fraud will wholly invalidate them”), *aff’d* 260 App.Div. 392, 22 N.Y.S.2d 835 (1940). The principles underlying these authorities extend equally to the circulation and collection of signature withdrawals. The Coalition accordingly intends to seek similar judicial relief should your signature withdrawal campaign succeed in interdicting a vote on the measure by Utah electors.

II. Defective Withdrawal Forms

Even if signature withdrawals were not fraudulently induced, they are without legal effect for the independent reasons that they were (1) not sworn, notarized, or witnessed; (2) circulated and collected by individuals who were not residents of Utah; and (3) impermissibly submitted to county clerks by third parties, rather than by the signers themselves. Each defect is addressed below.

A. Absence of Sworn Verification

More than eighty years ago, the Utah Supreme Court recognized a right implicit in the state constitution to timely withdraw one’s signature from a ballot measure petition. *See Halgren v. Welling*, 63 P.2d 550 (Utah 1936). Although the court agreed that a signer’s withdrawal need not necessarily be “executed with the same formality and sanctity as that of the petition he signed,” *id.* at 556, it concluded that the withdrawal must be effectuated

by the voter either in person or by a “[w]ritten withdrawal accompanied by proof of identity by affidavit either of the signer himself or some one who knows of the identity of the signatures of the person,” *id.* at 557.

Indeed, the provision of a sworn notarization as a prerequisite to a valid withdrawal was subsequently codified in statute.² Moreover, the Legislature’s repeal of the sworn attestation requirement in 2010³ is inconsistent with the minimum indicia of veracity required by *Halgren*. While the court disclaimed any attempt “to state all of the ways or means whereby the identity of the signer may be established,” it expressed agreement with the Missouri Supreme Court’s conclusion that an “informally signed postal card or letter”—which is the functional equivalent of the current form promulgated by the Lieutenant Governor—is manifestly insufficient and “would open the gates to fraud.” *See id.* at 557.

Further, even if the current version of Section 20A-7-205 supersedes the rule of *Halgren*, it constitutes a discriminatory viewpoint-based burden on the First Amendment rights of initiative sponsors relative to those of opponents. In addition to its prominent position in the state’s constitutional pantheon, *see Gallivan*, 54 P.3d at 1080, the right of initiative inevitably envelops “core political speech” for which First Amendment protection “is at its zenith.” *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 186-87 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414 (1988)). Any state action that “regulate[s] speech based on its substantive content or the message it conveys,” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995), or that discriminates in the exercise of a fundamental right, can be constitutionally sustained only upon proof that it is narrowly drawn to vindicate a compelling state interest. *See id.* (“Discrimination against speech because of its message is presumed to be unconstitutional.”); *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 99 (1972) (“Because picketing plainly involves expressive conduct within the protection of the First Amendment, discriminations among pickets must be tailored to serve a substantial governmental interest.”) (internal citations omitted); *Utah Safe to Learn*, 94 P.3d at 227 (“Where a legislative enactment implicates a ‘fundamental or critical right’ or creates classifications which are ‘considered impermissible or suspect in the abstract,’ we apply a heightened degree of scrutiny.”).

Utah law mandates that every signature on an initiative petition must be accompanied by the circulator’s sworn averment that he personally witnessed affixation of the signature. *See Utah Code* § 20A-7-203(3). Following the repeal in 2010 of the sworn attestation requirement for signature withdrawals, however, withdrawal forms do not include any independent corroboration of their authenticity. If, as the state surely would contend, a circulator’s verification of a signature’s affixation is necessary to forestall fraud and maintain electoral integrity, there is no discernible reason why such exigencies do not extend in equal measure to a signature’s withdrawal. Conversely, if a voter’s unsworn and unverified signature on a withdrawal form bears sufficient indicia of reliability, then the state’s requirement of a sworn circulator verification on a petition form is constitutionally unsustainable. Under either formulation, no compelling state interest could plausibly justify the arbitrary differential treatment imposed by current law.⁴

² The Supreme Court affirmed the constitutionality of a prior iteration of the statute requiring voters to submit a “notarized statement” of withdrawal. *See Utah Safe to Learn-Safe To Worship Coal., Inc. v. State*, 94 P.3d 217, 230 (Utah 2004) (citing Utah Code § 20A-7-205).

³ *See* 2010 Utah Laws Ch. 225 (S.B. 275).

⁴ An enactment that is viewpoint discriminatory on its face is unconstitutional, irrespective of its drafters’ subjective intent. *See Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd.*, 502 U.S. 105, 117 (1991) (“[O]ur cases have consistently held that ‘[i]llicit legislative intent is not the *sine qua non* of a violation

B. Non-Resident Canvassers

Every circulator of an initiative petition must be a resident of the State of Utah. *See* Utah Code § 20A-7-203(3). Any signature collected by a non-resident is subject to automatic invalidation. *See id.* § 20A-7-206(2)(a). The constitutional command of equal protection compels the extension of this residency requirement to canvassers of withdrawal forms.

Residency prerequisites “reduce the pool of eligible petition circulators and limit political conversation and association,” *Chandler v. City of Arvada, Colo.*, 292 F.3d 1236 (10th Cir. 2002), thereby exacerbating the financial and logistical costs to initiative sponsors. Even if such mandates are constitutional as a general matter, “the government offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression.” *Rosenberger*, 515 U.S. at 828. And because the state’s putative “compelling interest in preventing fraud,” *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614, 616 (8th Cir. 2001) (upholding circulator residency requirement on this basis), is equally salient in the context of signature withdrawals, the residency requirement must be equally applied to initiative sponsors and opponents alike. Accordingly, the Coalition will seek the judicial invalidation of any signature withdrawal solicited or collected by individuals who are not Utah residents.

C. Improper Submission of Withdrawal Forms

Even if the signature withdrawal forms were properly circulated and contained sufficient indicia of veracity, they nevertheless were improperly submitted to the county clerks by unidentified third parties, rather than by the voters themselves. The governing statute authorizes only “a voter” to file and mail the prescribed withdrawal documentation; it does not expressly or implicitly contemplate submission by an unrelated third party. *See* Utah Code § 20A-7-205(3)(a); *see generally State v. Ireland*, 150 P.3d 532, 537 (Utah 2006) (“[O]ur role is to interpret the statute ‘according to its literal wording unless it is unreasonably confusing or inoperable.’”). The plain meaning of the statutory text is also fortified by the official instructions on the form promulgated by the Lieutenant Governor, which directs the voter to directly “submit this application to your county clerk via mail or deliver it in person.” Your practice of tasking anonymous canvassers to collect voters’ withdrawal forms and mail them *en masse* to the county clerks directly contravenes Section 20A-7-205(3)(a), and all withdrawal forms harvested in this manner hence are invalid.

Further, a contrary reading of the statutory text would engender significant constitutional concerns. *See generally Brown v. Cox*, 387 P.3d 1040, 1044 (2017) (“[W]e will endeavor to avoid constitutional issues by construing ‘a statute as constitutional wherever possible, resolving any reasonable doubt in favor of constitutionality’”). The Legislature has required all circulators of initiative petitions to identify themselves on every petition sheet in their custody. *See* Utah Code § 20A-7-203(3). In addition, the sponsors of an initiative must disclose to the Lieutenant Governor the names of all paid circulators employed in its petition effort. *See id.* § 20A-7-205.5. Underlying these mandates presumably is the Legislature’s conviction that, to

of the First Amendment.” (internal quotation omitted)). Nevertheless, during the consideration of the 2010 amendment to Section 20A-7-205, at least two legislators expressed concern that the bill could be perceived as a deliberate effort to impede a pending initiative campaign. If established, such an invidious purpose would furnish an additional basis for invalidating the legislation. *See Senate Bill 275: Hearing Before the Senate Government Operations and Political Subdivisions Standing Committee*, Feb. 19, 2010 (statements of Senators McAdams and Robles), *audio available at* http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=14450&meta_id=508112.

deter fraud and maintain the electoral system's integrity, signatures may not be collected and submitted anonymously by unidentified third parties. Because these concerns are equally germane to the withdrawal of petition signatures,⁵ the Legislature must have intended voters withdrawing their signatures to personally deliver or mail the required documentation to the county clerk. A contrary interpretation of Section 20A-7-205(3)(a) would necessarily indicate that the Legislature has "impose[d] discriminatory restrictions on the initiative right by making it 'not so easy' to get initiatives on the ballot simply for the sake of making it harder to do so and restricting the initiative power," *Gallivan*, 54 P.3d at 1088, and accordingly would render the statute unconstitutional.

III. DEA's Improper Affiliation with Drug Safe Utah

It is unfortunate (if perhaps unsurprising) that overzealous ideologues, such as Drug Safe Utah and its canvassers, would resort to fraud and other illegalities in service to their cause. The rule of law, however, requires the government to observe its own edicts as scrupulously as it enforces them against its citizens.

In its annual appropriations legislation for fiscal year 2017, Congress explicitly directed that "[n]one of the funds made available in this Act to the Department of Justice may be used, with respect to" various states, including Utah, "to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana." PL 115-31, § 537, 2017 HR 244 (May 5, 2017). By using its resources to provide direct and in-kind support to Drug Safe Utah in its campaign to subvert the Utah Medical Cannabis Act, the DEA Salt Lake City Metro Narcotics Task Force is in continuing violation of federal law.

Federal officers and employees are strictly prohibited from making or authorizing an expenditure for which Congress has not appropriated funds. *See* 31 U.S.C. § 1341(a). They similarly cannot accept (other than in narrow emergency circumstances) unauthorized voluntary services. *Id.* § 1342. Penalties for violating these limitations can range from disciplinary action to criminal prosecution. *Id.* §§ 1349, 1350; *see also* 18 U.S.C. §§ 2-3 (aiding and abetting and co-conspirator liability).

LITIGATION HOLD NOTICE

For the reasons discussed above, we reasonably anticipate litigation concerning your use of false and misleading statements or omissions to induce Utah voters to withdraw their signatures from the Petition. We therefore inform you of your duty to preserve evidence relevant to any such litigation.

In general terms, you have a duty to take reasonable steps to preserve all paper, electronic information, and other evidence that may be related in any way to the legal claims referenced above. This obligation extends to any written documents that you have, or that are reasonably in your possession, custody or control, as well as any electronic information stored on your current or former computer or data systems. Electronically stored information includes, for example, e-mails; voicemails; text messages; instant messages; social media posts; Word, WordPerfect, or PDF documents; bank records, accounting or financial documents; spreadsheets; databases; telephone logs; audio recordings; videos; photographs or images; information contained on desktops, laptops, tablet computers, smartphones, or other portable devices; calendar records

⁵ Indeed, even if Drug Safe Utah is, as it [claims](#) to be, unaware of the identities and actions of its canvassers, this obliviousness only underscores how the anonymous collection and submission of withdrawal forms facilitates pervasive fraud.

and diary data. If information is in both electronic and paper forms, you should preserve both forms. **Destroying, deleting, removing, concealing, tampering with, or failing to take reasonable steps to preserve such records could result in significant penalties, and could form the basis of legal claims, legal presumptions, or jury instructions relating to spoliation of evidence.**

Specifically, we ask that you take all cost-justified steps to preserve evidence relating in any way to efforts by any person to procure the withdrawals of Petition signatures, including but not limited to:

1. Communications between or among you and/or any third party concerning Petition signature withdrawals;
2. Any and all documents, whether prepared by you or any third party, provided to canvassers in connection with efforts to obtain Petition signature withdrawals, including but not limited to talking points and similar materials;
3. Lists or other documents reflecting the identities of individuals who solicited, distributed, collected, and/or submitted Petition signature withdrawal forms.

With this in mind, please immediately suspend deletion, modification, overwriting, or any other possible destruction of the information described above, including electronic information, and take all measures to preserve this information. You and any of your agents, employees, contractors, service providers, vendors, or other agents or representatives should take all reasonable steps to preserve the above-described information. Therefore, such individuals or entities (including any managers and information technology personnel) should be informed of the above requirements immediately.

If you are in doubt as to whether any particular items or documentation must be preserved, if you would like technological assistance, and/or if you would like assistance in drafting a notice letter to your agents or representatives, please contact us. We are happy to discuss cooperatively the proper balance between evidentiary preservation and the risks of evidentiary spoliation.

* * *

In sum, it appears you are undertaking a calculated and concerted campaign to defraud electors into forfeiting their signatures in support of the Petition. These tactics not only have exacted tangible injuries on the Coalition, but inevitably corrode public confidence in the electoral system and threaten the legitimacy of the outcomes it produces. Accordingly, unless you immediately cease these efforts, the Coalition is prepared to initiate litigation against you and all appropriate third parties to ensure that the tens of thousands of Utahns who have signed the Petition have their voices heard.

If you are represented by legal counsel in this matter, we ask that you notify your own attorney immediately and kindly ask him or her to contact us so that we can discuss such matters with, and direct future communications to, your legal counsel.

Respectfully,

/s/ Kory Langhofer
Kory Langhofer