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**ATTORNEY FOR PLAINTIFFS**

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

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**US COUNT VOTES**, a Utah non-profit  
corporation and **KATHY DOPP**,

Plaintiffs,

vs.

**GARY HERBERT**, Lieutenant Governor of  
the State of Utah;  
**SUMMIT COUNTY**, a government entity;  
and, **KENT H. JONES**,  
Summit County Clerk,

Defendants.

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**COMPLAINT**

Civil No. \_\_\_\_\_

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PLAINTIFFS, US COUNT VOTES and KATHY DOPP, by and through counsel,  
BRIAN M. BARNARD of the Utah Legal Clinic, as cooperating attorney for Utah Civil Rights

& Liberties Foundation, Inc., as a Complaint and as causes of action against the defendants state and allege as follows:

### **PRELIMINARY STATEMENT**

1. Plaintiffs US COUNT VOTES and KATHY DOPP seek declaratory relief and a determination regarding defendants' obligations under the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg *et seq.* ("NVRA") with respect to the disclosure of voter registration data for federal elections held by Summit County, State of Utah.

2. Plaintiffs seek permanent injunctive relief to compel defendants' production of voter registration records pursuant to 42 U.S.C. §§ 1973gg-9 and 1973gg-6(i)(1)-(2), which authorize a private right of action to enforce compliance when a jurisdiction fails to maintain and/or make available records and papers relating to voter registration for federal elections.

3. Plaintiffs seek equitable relief and a determination that provisions of the Utah Election Code, Ut. Code Ann. §§ 20A-4-202(2)(c)-(d) and 20A-1-102(28) are in conflict with the superseding public disclosure requirements of the NVRA, 42 U.S.C. § 1973gg-6(i).

4. Plaintiffs seek equitable relief and a determination under Ut. Code Ann. § 63-2-201 *et seq.*, the Utah Government Records Access and Management Act ("GRAMA") with respect to the disclosure of certain public records relating to voter registration and election data.

5. Plaintiffs seek no monetary damages.

## **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to the National Voter Registration Act, 42 U.S.C. § 1973gg-9(b)(2) and the Declaratory Judgment Act, 28 U.S.C. § 2201. This Court has supplemental jurisdiction over the state law questions related to GRAMA pursuant to 28 U.S.C. § 1367(a).

7. Venue for this action is proper in the United States District Court for the District of Utah, pursuant to 28 U.S.C. §§ 125 and 1391(b). Defendants reside in or do business in the Central Division of this Court.

## **PARTIES**

8. Plaintiff US COUNT VOTES is a non-profit corporation organized under the laws of Utah and dedicated to raising voter awareness and involvement regarding election issues. US COUNT VOTES is concerned with facilitating citizen oversight regarding the integrity of election processes in Utah and monitoring state and local government compliance with federal election laws.

9. Plaintiff KATHY DOPP is a citizen, resident and registered voter and taxpayer of Summit County, Utah. She is an officer, agent and member of US COUNT VOTES.

10. The State of Utah is one of the States of the United States of America and is affirmatively charged with the duties and obligations imposed by the NVRA, 42 U.S.C. § 1973gg *et seq.* with regard to voter registration, balloting, elections, etc.

11. Defendant GARY HERBERT is the Lieutenant Governor and the chief State elections official for the State of Utah and is responsible for custody and maintenance of voter registration records for all persons eligible to vote under Utah law. Ut. Code Ann. § 20A-1-102. He is named as a party to secure full equitable relief. He is charged with the duty and responsibility of insuring that county clerks, such as defendant KENT JONES and counties, such as SUMMIT COUNTY comply with state and federal laws related to elections, ballots, public access, etc.

12. Defendant KENT H. JONES is the County Clerk of defendant SUMMIT COUNTY. He is the custodian of election records and voter registration materials in Summit County and is obligated to comply with federal, state and county statutes and policy regarding compilation, maintenance, preservation and public access to election and voter registration data. His immediate predecessor in office was Sue Follet.

13. Defendant SUMMIT COUNTY is a governmental entity created and functioning pursuant to Utah statutes and governing the geographical area known as Summit County, State of Utah. It is the employer and principal of defendant KENT H. JONES.

#### **APPLICABLE STATUTES**

14. The National Voter Registration Act of 1993 (“NVRA”), 42 U.S.C. § 1973gg *et seq.*, requires, *inter alia*, that “all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters” be maintained and made available for public inspection and copying. This statute

applies, *inter alia*, to voter registration applications and affidavits, precinct signature logs and poll books, as well as their associated electronic counterparts or analogues. *See* 42 U.S.C. § 1973gg-6(i).

15. The Utah Government Records Access Act (“GRAMA”), Ut. Code Ann. § 63-2-201 *et seq*, is intended to ensure transparency and citizen oversight with regard to government agencies, their policies and actions. The Utah GRAMA statute provides that “all [government] records are public unless otherwise expressly provided by statute.” Ut. Code Ann. § 63-2-201(2).<sup>1</sup>

### OPERATIVE FACTS

16. On June 27, 2006 and on November 7, 2006 elections were held in Summit County, Utah conducted by defendant SUMMIT COUNTY and defendant KENT JONES. Those elections included balloting for federal offices.

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<sup>1</sup> Ut. Code Ann. § 63-2-201 (1953 as amended). Right to inspect records and receive copies of records.

- (1) Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections 63-2-203 and 63-2-204.
- (2) A record is public unless otherwise expressly provided by statute.
- (3) The following records are not public:

\* \* \*

(b) a record to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.

17. On August 9, 2006, plaintiff KATHY DOPP sent a letter (Exhibit "A" attached) to Summit County Clerk Sue Follet requesting access to various election and voter registration records pursuant to the Utah Government Records Access and Management Act, Ut. Code Ann. § 63-2-201 *et seq.* ("GRAMA").

18. Summit County Clerk Follet denied part of this request *via* a letter dated August 15, 2006 (Exhibit "A-1" attached).

19. On August 24, 2006, plaintiff KATHY DOPP sent a letter (Exhibit "B" attached) to Summit County Clerk Follet, again requesting election and voter registration records under GRAMA.

20. Summit County Clerk Follet answered *via* an August 24, 2006 email (Exhibit "B-1" attached) and failed to respond to much of Dopp's GRAMA request. This nonresponsive email constitutes another denial.

21. On September 21, 2006, plaintiff KATHY DOPP engaged Summit County Clerk Follet in a phone conversation in which the GRAMA requests for election and voter registration records were renewed and reiterated.

22. Summit County Clerk Follet repeated and restated the prior denials in a September 22, 2006 letter (Exhibit "C" attached). In this third rejection, Follet stated that defendant SUMMIT COUNTY's interpretation of certain provisions of the Utah Election Code, Ut. Code Ann. § 20A-4-202 *et seq.*, mandated denial of plaintiff KATHY DOPP's GRAMA requests.

23. On September 30, 2006, Summit County Clerk Follet sent a letter (Exhibit “D” attached) to plaintiff KATHY DOPP in reply to additional GRAMA requests made by Dopp on September 20, 2006. This response was another denial of access to the election and voter registration materials requested.

24. On October 6, 2006, Summit County Clerk Follet sent a letter (Exhibit “E” attached) in which she denied plaintiff KATHY DOPP’s October 3, 2006 reiteration of the previous denials of access to election and voter registration records under GRAMA. In this October 6, 2006 denial, Follet stated that defendant SUMMIT COUNTY’s interpretation of the Utah Election Code, Ut. Code Ann. § 20A-1-102 *et seq.*, compelled denial of DOPP’s GRAMA requests because certain requested voter registration records (*e.g.*, poll books, affidavits of registration, military and overseas absentee voter registration certificates, etc.) were included in the Utah State statutory definition of “election returns.” *See* Exhibit “D” attached. Follet cited Ut. Code Ann. §§ 20A-4-202(2)(c)-(d) and 20A-1-102(28) as bases for denial of DOPP’s requests under GRAMA.

25. In an October 25, 2006 letter (Exhibit “F” attached) Summit County Clerk Follet issued another denial in response to an October 16, 2006 GRAMA request by plaintiff KATHY DOPP for copies of written policies relating to election and voter registration programs.

26. In related letters dated November 8, 2006, November 9, 2006, and November 10, 2006 (Exhibit “G” attached), plaintiff KATHY DOPP made additional requests under GRAMA for various election and voter registration records, data and policy explanations.

27. On November 22, 2006, Summit County Clerk Follet responded to plaintiff KATHY DOPP's final GRAMA requests with another rejection letter (Exhibit "G-1" attached) in which she denied access to the requested material based on defendant SUMMIT COUNTY's interpretation of the Utah Election Code, Ut. Code Ann. §§ 20A-2-202(2)(c)-(d) and 20A-1-102(28). Defendant SUMMIT COUNTY refused to produce poll books, affidavits of registration, absentee voter registration material, voter registration policy explanations and various other requested election and voter registration records. This letter (Exhibit "G-1") constitutes defendant SUMMIT COUNTY's final denial of plaintiff KATHY DOPP's requests for election and voter registration materials made under GRAMA.

28. Plaintiffs requested and SUMMIT COUNTY through Sue Follet denied access to documents, records, materials, etc. including the following:

- Direct Recording Electronic voting machines ("DRE") serial numbers with total number of ballots cast on each DRE and showing precinct assignment for each DRE
- Ballot reconciliation sheets
- Inspection Board Logs
- Write-In Board Log
- Receiving Board Log
- Duplication Board Log
- Poll Books    Electronic Ballot Voters
- Optical Scan Ballot/Official Register & Poll Book
- Official Register
- DRE Zero Tapes
- DRE Vote Total Tapes
- DRE Reconciliation Forms



Provisional Ballot Forms & Affidavits & Envelopes  
Provisional Ballot / Optical Scan Reconciliation Forms  
Printer Canister Logs / Forms  
Written county policies and procedures for early voting  
Written county policies and procedures for election day voting  
Written county policies and procedures for absentee ballot handling and verification  
Written county policies and procedures for audits  
Written county policies and procedures for electronic voter registration roll handling and security  
Written county policies and procedures for electronic voting machine security  
Written county policies and procedures for election recounts  
GEMS server log file  
List of detailed vote counts for County Clerk's race from each DRE for November 2006 election  
Detailed vote count for all races from DRE voting machines  
Ballot summary tapes  
Documents necessary to assess the accuracy and currency of voter registration records  
Precinct vote totals.

29. Plaintiffs US COUNT VOTES and KATHY DOPP appealed defendant SUMMIT COUNTY's denial of GRAMA requests to the Utah State Records Committee in February 2007. State Records Committee, Decision and Order, Case No. 07-02 (Exhibit "H" attached).

30. Following a hearing on February 8, 2007, the Records Committee affirmed defendant SUMMIT COUNTY's denial of plaintiffs' GRAMA requests and affirmed SUMMIT COUNTY's interpretation of Ut. Code Ann. §§ 20A-2-202(2)(c)-(d) and 20A-1-102(28), declaring that the requested voter registration and election records are "election returns" under

the statute and, therefore, are exempt from the public access requirements of GRAMA. *See* Records Committee Decision and Order (Exhibit “H” attached) at p. 2.

31. On March 12, 2007, plaintiff KATHY DOPP, sent a letter ("statutory notice letter," Exhibit “I” attached), pursuant to 42 U.S.C. § 1973gg(9)(b)(1)-(3), to defendant GARY HERBERT, Lieutenant Governor of the State of Utah, formally demanding, *inter alia*, that voter registration records withheld by defendants SUMMIT COUNTY and KENT H. JONES be made available for public inspection as *per* the NVRA’s public disclosure requirements.

32. Plaintiffs’ purpose in accessing these voter registration materials was, *inter alia*, to review and/or determine compliance by the State with the procedures for voter registration as well as the list maintenance provisions of the National Voter Registration Act, 42 U.S.C. § 1973gg *et seq.* ("NVRA").

33. The March 12, 2007 statutory notice letter requested that defendant GARY HERBERT, Lieutenant Governor and chief elections officer for the State of Utah, compel defendant SUMMIT COUNTY’s production of materials regularly maintained as part of voter registration programs and activities. Exhibit “I” attached.

34. Defendant GARY HERBERT did not respond to the statutory notice letter. Exhibit “I” attached.

35. Defendant SUMMIT COUNTY has declined to provide the requested voter registration materials based upon a State statute purportedly limiting access to such records. Ut. Code Ann. § 20A-4-202.

36. Ut. Code Ann. § 20A-4-202 requires Utah election officers to preserve “election

returns” for only twenty-two (22) months after an election and then to destroy such records without allowing public access in the interim. Ut. Code Ann. § 20A-4-202(2)(a)-(e).<sup>2</sup>

37. The Utah statutory definition of “election returns” includes poll-books, affidavits of voter registration, military and overseas absentee voter registration certificates and other voter registration forms, including the official voter registration rolls. Ut. Code Ann. §§ 20A-1-102(28)<sup>3</sup> and 20A-5-408(2).

38. The voter registration materials required to be sealed and destroyed after twenty-two (22) months under Ut. Code Ann. § 20A-4-202 include “records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” However, those documents must be publicly disclosed, available for photocopying and preserved for at least twenty-four (24) months under

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<sup>2</sup> (2) Each election officer shall:

(a) no later than 5 p.m. on the day after the date of the election, determine the number of provisional ballots cast within the election officer's jurisdiction and make that number available to the public;

(b) preserve ballots for 22 months after the election or until the time has expired during which the ballots could be used in an election contest;

(c) package and seal a true copy of the ballot label used in each voting precinct;

(d) preserve all other official election returns for at least 22 months after an election; and

(e) after that time, destroy them without opening or examining them.

Ut. Code Ann. § 20A-4-202(2)(a)-(e) (1953 as amended)

<sup>3</sup> (28) "Election returns" includes the pollbook, all affidavits of registration, the military and overseas absentee voter registration and voting certificates, one of the tally sheets, any unprocessed absentee ballots, all counted ballots, all excess ballots, all unused ballots, all spoiled ballots, the ballot disposition form, and the total votes cast form.

Ut. Code Ann. § 20A-1-2(28) (1953 as amended).

the requirements of the NVRA. 42 U.S.C. § 1973gg-6(i)(1).

39. The Utah statute and defendants' related actions conflict with the public disclosure requirements of the NVRA. The Utah statute mandates election officials deny public access to voter registration materials and to destroy such materials twenty-two (22) months after a federal election (*see* Ut. Code Ann. § 20A-4-202(c)-(d)). In contrast, the NVRA (42 U.S.C. § 1973gg-6(i)(1)), requires that such materials be available to the public for a period of not less than twenty-four (24) months after a federal election.

40. Under the Supremacy Clause of the United States Constitution, Ut. Code Ann. § 20A-4-202(c)-(d) is superseded by the NVRA. *See* 42 U.S.C. § 1973gg *et seq.*; U.S. CONST. art VI, cl.2.

### **FIRST CAUSE OF ACTION**

41. The Utah statutory provisions as enforced by defendant GARY HERBERT and as applied by SUMMIT COUNTY and KENT JONES and as set forth above are in violation of the NVRA's public disclosure requirements. 42 U.S.C. § 1973gg *et seq.*

42. Under 42 U.S.C. § 1973gg *et seq.*, every officer of election shall retain and preserve, for a period of at least twenty-four (24) months from the date of any federal election, records and papers relating to voter registration programs and activities related to the maintenance of accurate and current voter registration lists. 42 U.S.C. § 1973gg(6)(i)(1).

43. Any record or paper required to be retained and preserved under 42 U.S.C. § 1973, must be made available to members of the public for inspection, reproduction and copying

at reasonable cost. 42 U.S.C. § 1973gg(6)(i)(1).

44. Plaintiffs have been harmed or will be harmed by defendants' compliance with the state provisions and non-compliance with the federal provisions.

## SECOND CAUSE OF ACTION

45. The Utah Government Records Access and Management Act ("GRAMA") specifies that "all [government] records are public unless otherwise expressly provided by statute." Ut. Code Ann. § 63-2-201(2).

46. Defendant SUMMIT COUNTY has declared that voter registration and election records requested by plaintiffs are "exempt" from the public access requirements of GRAMA and are "election returns" which are governed by the Utah Election Code, Ut. Code Ann. § 20A-4-202 *et seq.*, and prohibited from being disclosed to the public. *See* Records Committee Decision and Order, Exhibit "H" attached.

47. The Utah statutory definition of "election returns," set forth at Ut. Code Ann. § 20A-1-2(28) and the seal-and-destroy policy embodied in Ut. Code Ann. § 20A-4-202(c)-(d), conflict with the superseding public disclosure duties imposed by the NVRA. 42 U.S.C. § 1973gg *et seq.* The Election Code definition, which includes voter registration material and data among "non-public" records exempt from disclosure, conflicts with the NVRA. As such, the Utah Election Code definitions and related non-disclosure are invalid as contrary to federal law.

48. Plaintiffs have been harmed or will be harmed by defendants' actions complained of herein.

### **THIRD CAUSE OF ACTION**

49. The GRAMA exemptions asserted by defendants to justify non-disclosure of voter registration records are premised upon invalid statutory interpretations.

50. The Summit County defendants have refused to provide plaintiffs access to government records not specifically exempt under Ut. Code Ann. § 20A-1-2(28) and § 20A-4-202(2).

51. The requested documents, records, etc. not specifically exempted by Ut. Code Ann. § 20A-1-2(28) and § 20A-4-202(2) must be disclosed under GRAMA

52. Plaintiffs have been harmed or will be harmed by defendants' actions complained of herein.

### **ATTORNEY FEES**

53. Plaintiffs have incurred and will incur attorney fees and costs in pursuit of their claims set forth herein.

54. Plaintiffs are entitled to an award of attorney fees, expenses and court costs under the NVRA pursuant to 42 U.S.C. § 1973gg-9(c).

55. Plaintiffs provided the appropriate statutory notice to the Summit County defendants pursuant to Ut. Code Ann. § 63-2-802 (1953 as amended) so that plaintiffs are entitled to attorney fees incurred in this action under GRAMA. *See* Exhibit "J" attached.

56. Plaintiffs are entitled to an award of attorney fees, expenses and court costs pursuant to Ut. Code Ann. § 63-2-802(2)(a).

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs US COUNT VOTES and KATHY DOPP pray for the following relief:

### **FIRST CAUSE OF ACTION**

1. A declaration that defendants are in violation of 42 U.S.C. § 1973gg(6)(i)(1) with respect to the production of voter registration data, which they are required to make available for public inspection and photocopying.

2. A declaration that defendant SUMMIT COUNTY's interpretation of Ut. Code Ann. §§ 20A-4-202(2)(c)-(d) and 20A-1-102(28), leading to a policy of non-disclosure of voter registration and related records, is invalid; and that defendant SUMMIT COUNTY's policy of non-disclosure regarding such voter registration records is in violation of the NVRA, 42 U.S.C. § 1973gg *et seq.*

3. A declaration that Ut. Code Ann. §§ 20A-4-202(2)(c)-(d) and 20A-1-102(28) conflict with federal law (NVRA) in requiring only a twenty-two (22) month period of preservation, with no public access, for materials related to voter registration; whereas the NVRA, 42 U.S.C. § 1973gg-6(i)(1)-(2), requires that voter registration records be made available for public inspection and preserved for at least twenty-four (24) months after a federal election.

4. An order compelling defendants to immediately make available for inspection, reproduction and copying, the requested voter registration and related records, pursuant to 42 U.S.C. § 1973gg *et seq.*

5. An award of reasonable attorney fees, including litigation expenses and costs related to pursuit of this matter as authorized under 42 U.S.C. § 1973gg-9(c).

6. Such and further relief as the interest of justice may require, together with the court costs, expenses and disbursements of this action.

### **SECOND CAUSE OF ACTION**

7. A declaration that under GRAMA, the defendants are required to provide plaintiffs with the voter registration and election records requested.

8. A declaration that defendants' interpretation of Ut. Code Ann. §§ 20A-4-202 *et seq.* and 63-2-201 *et seq.* are invalid insofar as such interpretation compels the non-disclosure of voter registration and election material which is required to be publicly disclosed under superseding federal law. *See* 42 U.S.C. § 1973gg *et seq.* ("NVRA").

9. An order compelling defendants to immediately make available for inspection, reproduction and copying, the requested voter registration records.

10. An award of reasonable attorney fees and costs related to pursuit of this cause of action under GRAMA as authorized by Ut. Code Ann. § 63-2-802(2)(a).

11. Such and further relief as the interest of justice may require, together with the court costs, expenses and disbursements of this action.

### **THIRD CAUSE OF ACTION**

12. A declaration that the statutory interpretation relied upon by defendants in their denial of Plaintiffs' requests are invalid.



13. A declaration that under GRAMA, the defendants are required to provide plaintiffs with the voter registration and election records requested and not specifically exempted by Ut. Code Ann. § 20A-1-2(28) and § 20A-4-202(2).

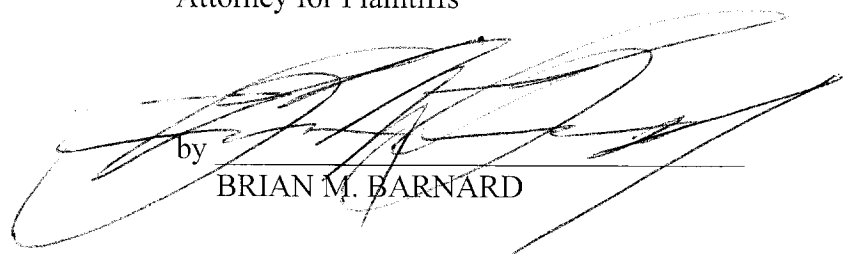
14. An order compelling defendants to immediately make available for inspection, reproduction and copying, the requested voter registration and related records, pursuant to GRAMA, Ut. Code Ann. §§ 63-2-201 *et seq.* (1953 as amended), and not specifically exempted by Ut. Code Ann. § 20A-1-2(28) and § 20A-4-202(2).

15. An award of reasonable attorney fees and costs related to pursuit of this cause of action under GRAMA as authorized by Ut. Code Ann. § 63-2-802(2)(a).

16. Such and further relief as the interest of justice may require, together with the court costs, expenses and disbursements of this action.

DATED this 19<sup>th</sup> day of SEPTEMBER 2007.

UTAH LEGAL CLINIC  
Attorney for Plaintiffs

by   
BRIAN M. BARNARD