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*Attorneys for Petitioners*

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

DAN MCCAY, candidate for Utah State  
Senate District 11; ROZAN MITCHELL,  
candidate for Salt Lake County Clerk,

Petitioners,

v.

SHERRIE SWENSEN, Salt Lake County  
Clerk and election officer,

Respondent.

**VERIFIED PETITION PURSUANT TO  
UTAH CODE SECTION 20A-1-404**

Case No. \_\_\_\_\_

Hon. Judge \_\_\_\_\_

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Petitioners Dan McCay (“Mr. McCay”) and Rozan Mitchell (“Ms. Mitchell”), (together  
“Petitioners”), through their counsel and pursuant to Utah Code section 20A-1-404, hereby  
submit a verified petition and allege as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Dan McCay is a resident of Salt Lake County, and seeking election as the  
Republican candidate for Utah State Senate District 11.

2. Rozan Mitchell is a resident of Salt Lake County, and seeking election as the Republican candidate for Salt Lake County Clerk.

3. Sherrie Swensen (“Ms. Swensen” or “Election Officer”) is the current Salt Lake County Clerk and the election officer for Salt Lake County under Utah Code section 20A-1-102(27)(b).

4. The Court has jurisdiction over this matter pursuant to Utah Code Ann. § 20A-1-404(1)(a)(i) and Utah Code Ann. § 78A-5-102.

5. Venue lies in this district pursuant to Utah Code Ann. § 78B-3-307.

#### **GENERAL ALLEGATIONS & REQUEST FOR RELIEF**

6. General elections in Utah will be held on November 6, 2018.

7. As part of the general elections, on November 6, registered voters may appear and vote in person at certain voting locations.

8. In addition, “[a]ny person who is registered to vote may vote by absentee ballot.” Utah Code Ann. § 20A-3-301(1).

9. Each election officer is responsible for “caus[ing] a sufficient number of ballots to be known as absentee ballots to be prepared and printed.” Utah Code Ann. § 20A-3-303(1).

10. In addition, the election officer must “ensure that the absentee ballots are printed and in the possession of the election officer with sufficient time before commencement of voting.” Utah Code Ann. § 20A-5-405(1)(e).

11. “An election officer who administers an election by absentee ballot: (a) shall mail each active voter within a voting precinct: (i) an absentee ballot.” Utah Code Ann. § 20A-3-302(2)(a).

12. “No later than **21 days** before election day, the election officer shall mail an official absentee ballot, postage paid, to all absentee voters, other than to a uniformed-service voter or an overseas voter, who have submitted a properly filled out and signed absentee voter application before the day on which the ballots are mailed and enclose an envelope printed as required by Subsection (2).” Utah Code Ann. § 20A-3-305(1)(b).

13. Ms. Swensen is the election officer for Salt Lake County and is therefore responsible for all provisions applicable to absentee ballots under Title 20A.

14. The Salt Lake County Election Officer has contracted with K & H Printers-Lithographers, Inc. (“K&H”) to print and mail out ballots and envelopes to Salt Lake County voters.<sup>1</sup>

15. K&H is a Washington company that, according to its website, provides “high volume or highly technical printing.”<sup>2</sup>

16. Pursuant to Title 20A, the Salt Lake County Election Officer ordered 514,000 absentee ballots from K&H to conduct the general elections.<sup>3</sup>

17. The Salt Lake County Election Officer also ordered 560,000 envelopes from K&H.<sup>4</sup> According to the Election Officer, she ordered 46,000 more envelopes than ballots as a precautionary measure.

18. Upon information and belief, on or about October 8, 2018, Ms. Swensen reported

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<sup>1</sup> Paul Nelson, *Some Ballots still on the way to Salt Lake County voters*, KSL.com (last visited Nov. 1, 2018), <https://www.ksl.com/article/46417344/some-ballots-still-on-the-way-to-salt-lake-county-voters>.

<sup>2</sup> Trust K&H Printers for high volume and highly technical printing, K&H Integrated Print Solutions (last visited Nov. 1, 2018), <http://www.khprint.com/printing-services.aspx>.

<sup>3</sup> Nelson, *supra* note 1.

<sup>4</sup> Nelson, *supra* note 1.

to the Salt Lake Tribune that “nearly 500,000 ballots were mailed Monday [October 8] to Salt Lake County voters . . . .”<sup>5</sup> Upon information and belief, the same day (or on October 9, 2018), Ms. Swensen reported to KSL news that “about 482,000 ballots were sent from Salt Lake County . . . to the post office Monday for the Nov. 6 election.”<sup>6</sup>

19. Upon information and belief, on October 15, 2018, K&H informed the Election Officer that it had run short on the envelopes and were therefore unable to send out an unknown number of absentee ballots.<sup>7</sup>

20. According to Election Officer, K&H promised her that all remaining ballots were mailed the between October 22 and October 26, 2018.<sup>8</sup> However, besides K&H’s promise there is no way to confirm if K&H has in fact mailed all ballots.

21. Based the Election Officer’s statements to the Salt Lake Tribune and KSL that on October 8, 2018, “nearly 500,000 ballots were mailed” and that “about 482,000 ballots were sent,” between 14,000 to 32,000 ballots were not timely mailed.

22. As of October 31, 2018, registered voters have told Mr. McCay that they have not yet received their ballot.

23. There now exists a controversy between the Election Officer and Petitioners, who are both candidates for office.

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<sup>5</sup> Lee Davidson, *Voting begins: Salt Lake County mails 500k ballots to voters*, The Salt Lake Tribune (last visited Nov. 1, 2018), <https://www.sltrib.com/news/politics/2018/10/08/voting-begins-salt-lake/>.

<sup>6</sup> Carter Williams, *Here’s what you need to know to vote*, KSL.com (last visited Nov. 1, 2018), <https://www.ksl.com/article/46403616/your-ballot-is-in-the-mail-heres-what-you-need-to-know-to-vote>.

<sup>7</sup> Nelson, *supra* note 1.

<sup>8</sup> Nelson, *supra* note 1.

24. The timely mailing of absentee ballots is critical to conducting a proper election that reflects the deliberate and reasoned votes of citizens. Voters who opted to receive an absentee ballot may not receive one in time, or with enough time to make a deliberate and reasoned decision

25. Because Salt Lake County conducts absentee voting, the number of voting locations are limited. If thousands of voters do not timely receive their absentee ballot, it may result in serious consequences to the outcome of elections.

26. As candidates, each vote matters to the Petitioners. Petitioners therefore have a special interest in ensuring that the absentee ballots are timely mailed to each and every Salt Lake County voter.

27. Petitioners are not aware of how many absentee ballots have been mailed to date, and when those ballots were mailed.

28. Petitioners request that the Court grant an order requiring Respondent, Election Officer, to provide a list of each voter to whom an absentee ballot was not timely mailed.

DATED this 1st day of November, 2018.

SNELL & WILMER L.L.P.

/s/ Stewart O. Peay

Stewart O. Peay  
Zaven A. Sargsian

*Attorneys for Petitioners*

**VERIFICATION**

Pursuant to Utah Code Ann. § 78B-18a-101 *et seq.* (2018), the undersigned, having personal knowledge, declares, that the foregoing factual statements in the Verified Complaint are true and correct to the best of the undersigned's knowledge, information and belief, except for statements that are made upon information, and, in those circumstances, the undersigned believes such statements to be true.

I declare under criminal penalty under the law of Utah that the foregoing is true and correct.

Signed on the   1   day of November, 2018.



**Dan McCay**



**Rozan Mitchell**