

# Exhibit D

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*Counsel for Defendant Lieutenant Governor Deidre Henderson*

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

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LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL  
GOVERNMENT, STEFANIE CONDIE,  
MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR SUNDWALL,  
JACK MARKMAN, and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH  
LEGISLATIVE REDISTRICTING  
COMMITTEE; SENATOR SCOTT SANDALL,  
in his official capacity; REPRESENTATIVE  
BRAD WILSON, in his official capacity;  
SENATOR J. STUART ADAMS, in his official  
capacity; and LIEUTENANT GOVERNOR  
DEIDRE HENDERSON, in her official capacity,

Defendants.

**DEFENDANT LT. GOVERNOR  
DEIDRE HENDERSON'S RESPONSE  
TO PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION ON  
COUNTS 9-14 OF THEIR PROPOSED  
FIRST SUPPLEMENTAL  
COMPLAINT**

Case No. 220901712

Honorable Diana Gibson

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Defendant Lieutenant Governor Deidre Henderson (the "Lt. Governor") submits this response to Plaintiffs' Motion for Preliminary Injunction on Counts 9-14 of their proposed First Supplemental Complaint. As the Court considers the public interest and balancing of the harms

factors of the preliminary injunction test, *see* Utah R. Civ. P. 65A(e)(3) & (4), it should be mindful of three things: (1) the election process and deadlines governing the general election; (2) the consequences for failure to meet those deadlines; and (3) the costs, financial and otherwise, associated with modifying ballots on the eve of an election. To stay compliant with federal election law, and for reasons set forth herein, county clerks will submit ballot proofs to third-party printing vendors beginning Monday, September 9, 2024 so that they may print ballots.

## **FACTUAL AND LEGAL BACKGROUND**

### **I. The Lt. Governor’s role in administering elections.**

1. The Lt. Governor is the chief elections officer for the State of Utah. *See* Utah Code § 67-1a-2. *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 3.

2. As such, she oversees all elections, and functions relating to elections, in the State, *see* Utah Code § 67-1a-2(b)(i), and performs duties outlined by statute. *See, e.g.*, Utah Code § 67-1a-2(a)(i-xi). *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 4.

3. With respect to Amendment D, a constitutional amendment submitted by the Legislature, the Lt. Governor’s role is governed by Utah Code §§ 20A-7-103 and 103.1 and is largely ministerial. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 5.

4. Pursuant to Section 103, the responsibility for drafting the title and summary of the proposed Amendment falls to the “presiding officers,” defined as the Speaker of the House of Representatives and the President of the Senate. Utah Code §§ 20A-7-101(28) and 103(3)(c). *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 6.

5. The Lt. Governor’s role for constitutional amendments proposed by the Legislature is to certify the letter or number and ballot title of each amendment to the county clerk of each county no later than 65 days before the election. Utah Code § 20A-7-103(4). *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 7.

6. The Lt. Governor also publishes the full text of the amendment not more than 60 days or less than 14 days before the date of the election in accordance with Utah Code § 63G-30-102. Utah Code § 20A-7-103. *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 8.

7. Utah Code § 20A-7-103.1 directs the Lt. Governor to certify the letter or number and ballot title of Amendment D to the county clerk of each county no later than September 1, 2024. *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 9.

8. However, Utah Code 20A-1-104(3)(b)(iv), “Computation of time,” provides that “if a deadline that falls before or after a specified date or event falls on a Saturday, Sunday, or legal holiday, the time period is extended to the following business day.” *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 10.

9. September 1, 2024 was a Sunday and September 2, 2024 was Labor Day – a legal holiday. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 11.

10. The Lt. Governor certified candidates and ballot issues, including Amendment D, to county clerks in a timely manner, on Tuesday, September 3, 2024. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 12.

11. The Lt. Governor’s Office (“LGO”) does not prepare, print, or mail ballots to voters. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 13.

12. Rather, the Lt. Governor certifies candidates and ballot issues to county clerks who prepare ballots, have them printed, and mail them to voters. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 14.

13. The overwhelming majority of counties in Utah use three main print vendors that serve the State. Two of these vendors print ballots for over 160 counties throughout the United States. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 15.

14. The print vendors serving Utah also serve the other 49 states and territories in printing their ballots and preparing other election materials. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 16.

15. The county clerks' work in proofing and otherwise preparing ballots to be submitted to print vendors is time-sensitive and can be labor intensive depending on the county. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 17.

16. Counties take the certified language from the Lt. Governor and either program their own ballots or work with a vendor to prepare the ballot (as most do). Then they send the ballot proof to print vendors or print them in-house. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 18.

17. Once ballot proofs are submitted to print vendors, it takes time to print them. The amount of time depends on the county, and the workload of the respective printer. During a general election, when all counties across the nation face the same federal deadlines, printers are extremely busy. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 19.

18. In order to stay compliant with federal law, discussed below, and to run an orderly election, counties clerks will submit ballot proofs to printers for printing beginning early next week. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 20.

## **II. The UOCAVA deadline and consequences of failure to meet it**

19. The Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), as amended by the Military Overseas Voter Empowerment Act ("MOVE") protects the right of U.S. military service members and U.S. citizens residing outside the United States to vote in federal elections and requires absentee ballots to be mailed to eligible overseas voters by the 45th day before a federal election, which is September 21, 2024 for the 2024 general election. *See* 52 U.S.C. §§ 20301-30311. *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 21.

20. Because September 21, 2024 is a Saturday, county clerks will mail overseas ballots the day before (Friday, September 20, 2024) pursuant to Utah Code § 20A-16-403(1). *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 22.

21. Those protected by UOCAVA are members of the Uniformed Services, members of the Merchant Marine, Eligible family members of the above, and U.S. citizens residing outside the U.S. *See* 52 U.S.C. §§ 20301-30311. *See also* Declaration of Shelly Jackson, Exhibit 1, ¶ 23.

22. Utah expects to have 4,451 initial ballot requests covered by UOCAVA ballots for the September 21 deadline. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 24.

23. In cases where jurisdictions miss this federal UOCAVA deadline, the United States Attorney General is authorized to bring civil actions to enforce this deadline. Penalties for failure to comply with this deadline are severe, and can include consent decrees and court orders changing ballot receipt dates, extensions of time for ballot counting periods, and sometimes permanent changes to a jurisdiction's election laws. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 25.

### **III. The costs associated with changing ballots**

24. The number of active registered voters in the state of Utah is approximately 1.73 million voters. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 26.

25. The cost of reprinting ballots is estimated to be up to \$3 million. Reprinting may not even be possible given all of the other jurisdictions in the country who are also printing ballots at the same time. Additionally, there are costs associated with re-certifying, re-programming ballots, and re-proofing. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 27.

26. Altering the ballot on the eve of an election jeopardizes the State's ability to meet the UOCAVA deadline and to otherwise run an orderly election that protects Utahns' right to vote. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 28.

27. Amendment D is, of course, not the only item on the ballot during a general, presidential election year. On the same ballot will be federal, state, and local candidates, judicial retention elections, and other state and local issues – including other proposed constitutional amendments. Altering the ballot, after all of these things have already been certified for the ballot, jeopardizes the orderly election for all candidates and issues, not just Amendment D. *See* Declaration of Shelly Jackson, Exhibit 1, ¶ 29.

### **ARGUMENT**

The Lt. Governor takes no position on the merits of Plaintiffs’ proposed supplemental claims or their likelihood of success. But Plaintiffs’ request for preliminary injunction implicates the incredibly important public interest in running a fair and orderly election. Ballots have already been certified, programmed, proofed, and are ready for printing. Printing must begin early next week. A judicial order to literally stop the presses creates the risk that the presses won’t run again in time for mandatory federal deadlines and even the election. An order stopping the presses once they have started is likely to result in significant disruption to the election, with the potential to disenfranchise millions of Utah voters regarding all candidates and issues, and cost the State \$3 million to reprint the ballots. Thus, the harms to the State and the harms to the public interest far exceed the alleged harm suffered by Plaintiffs.

DATED: September 6, 2024.

OFFICE OF THE UTAH ATTORNEY GENERAL

/s/ Lance Sorenson  
DAVID N. WOLF  
LANCE F. SORENSON  
Assistant Utah Attorneys General  
*Counsel for Defendant Lieutenant  
Governor Deidre Henderson*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 6, 2024, I electronically filed the foregoing, *Lieutenant Governor Deidre Henderson’s Response to Plaintiffs’ Motion for Preliminary Injunction on Counts 9-14 of the Proposed Supplemental Complaint*, with the Clerk of the Court by using the electronic filing system, which gave notice to the following:

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/s/ Lily Egginton  
Paralegal



# **Exhibit 1**

## **Declaration of Shelly Jackson**

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*Counsel for Defendant Lieutenant Governor Deidre Henderson*

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

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LEAGUE OF WOMEN VOTERS OF UTAH,  
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MALCOLM REID, VICTORIA REID,  
WENDY MARTIN, ELEANOR SUNDWALL,  
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UTAH STATE LEGISLATURE; UTAH  
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COMMITTEE; SENATOR SCOTT SANDALL,  
in his official capacity; REPRESENTATIVE  
BRAD WILSON, in his official capacity;  
SENATOR J. STUART ADAMS, in his official  
capacity; and LIEUTENANT GOVERNOR  
DEIDRE HENDERSON, in her official capacity,

Defendants.

**DECLARATION OF SHELLY  
JACKSON**

Case No. 220901712

Honorable Diana Gibson

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1. I am over the age of 18 and have personal knowledge of the facts set forth in this Declaration.

2. I am the Deputy Director of Elections in the Lt. Governor's Office and have served in that position since February 2021. In that capacity I, together with the Elections Office staff,

administer Utah elections as authorized and directed under the Utah Elections Code. *See* Utah Code § 20A-1-101, *et. seq.*

**The Lt. Governor’s role in administering elections**

3. The Lt. Governor is the chief elections officer for the State of Utah. *See* Utah Code § 67-1a-2.

4. As such, she oversees all elections, and functions relating to elections, in the state, see Utah Code § 67-1a-2(b)(i), and performs duties outlined by statute. *See, e.g.,* Utah Code § 67-1a-2(a)(i-xi).

5. With respect to Amendment D, a constitutional amendment submitted by the Legislature, the Lt. Governor’s role is governed by Utah Code §§ 20A-7-103 and 103.1 and is largely ministerial.

6. Pursuant to Section 103, the responsibility for drafting the title and summary of the proposed Amendment falls to the presiding officers,” defined as the Speaker of the House of Representatives and the President of the Senate. Utah Code §§ 20A-7-101(28) and 103(3)(c).

7. The Lt. Governor’s role for constitutional amendments proposed by the Legislature is to certify the letter or number and ballot title of each amendment to the county clerk of each county no later than 65 days before the election. Utah Code § 20A-7-103(4).

8. The Lt. Governor also publishes the full text of the amendment not more than 60 days or less than 14 days before the date of the election in accordance with Utah Code § 63G-30-102. Utah Code § 20A-7-103.

9. Utah Code § 20A-7-103.1 directs the Lt. Governor to certify the letter or number and ballot title of Amendment D to the county clerk of each county no later than September 1, 2024.

10. However, Utah Code § 20A-1-104(3)(b)(iv), “Computation of time,” provides that “if a deadline that falls before or after a specified date or event falls on a Saturday, Sunday, or legal holiday, the time period is extended to the following business day.”

11. September 1, 2024 was a Sunday and September 2, 2024 was Labor Day – legal holiday.

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**The UOCAVA deadline and consequences of failure to meet it**

21. The Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), as amended by the Overseas Voter Empowerment Act (“MOVE”) protects the right of U.S. military service members and U.S. citizens residing outside the United States to vote in federal elections and requires absentee ballots to be transmitted to eligible overseas voters by the 45th day before a federal election, which is September 21, 2024 for the 2024 general election. *See* 52 U.S.C. §§ 20301-30311.

22. Because September 21, 2024 is a Saturday, county clerks will mail overseas ballots the day before (Friday, September 20, 2024) pursuant to Utah Code § 20A-16-403(1) (“if the 45th day before the election is a weekend or holiday, not later than the business day preceding the 45th day, the election official in each jurisdiction . . . shall transmit a ballot . . . to all covered voters”).

23. Those voters covered by UOCAVA are members of the Uniformed Services, members of the Merchant Marine, Eligible family members of the above, and U.S. citizens residing outside the U.S. *See* 52 U.S.C. §§ 20301-30311.

24. Utah expects to have 4,451 initial ballot requests covered by UOCAVA ballots for the September 21 deadline.

25. In cases where jurisdictions miss this federal UOCAVA deadline, the United States Attorney General is authorized to bring civil actions to enforce this deadline. Penalties for failure to comply with this deadline include consent decrees and court orders changing ballot receipt dates, extensions of time for ballot counting periods, and sometimes permanent changes to a jurisdiction’s election laws.

**The costs associated with changing ballots**

26. The number of active registered voters in the state of Utah is approximately 1.73 million voters.

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28. Altering the ballot on the eve of an election jeopardizes the State’s ability to meet the UOCAVA deadline and to otherwise run an orderly election that protects Utahns’ right to vote.

29. Amendment D is, of course, not the only item on the ballot during a general, presidential election year. On the same ballot will be federal, state, and local candidates, judicial retention elections, and other state and local issues – including other proposed constitutional amendments. Altering the ballot, after all of these things have already been certified for the ballot, jeopardizes the orderly election for all candidates and issues, not just Amendment D.

**DECLARATION UNDER PENALTY OF PERJURY**

I declare under penalty of perjury that the above statements are true and based upon my personal knowledge.

DATED: September 6, 2024.

/s/ Michelle Jackson  
Michelle Jackson  
*(Signed copy of document bearing signature  
of Michelle Jackson is being maintained in  
the office of the Filing Attorney)*