Tyler R. Green (#10660)
Solicitor General
Stanford E. Purser (#13440)
Deputy Solicitor General
Sean Reyes (#7969)
Attorney General
P.O. Box 140858
160 East 300 South, 5th Floor
Salt Lake City, UT 84114-0858
Phone: (801) 366-0353
Fax: (801) 366-0352
tylergreen@agutah.gov
spurser@agutah.gov

Attorneys for Amicus Curiae
Utah Attorney General's Office

In the Supreme Court of the State of Utah

Bart Grant, et al., *Petitioners*, v. Governor Gary R. Herbert, et al., *Respondents*.	No. 20180997-SC

Response to Motion for Emergency Relief

Respondents Governor Gary R. Herbert, Lieutenant Governor Spencer Cox, and Director of Elections Justin Lee, respectfully request that the Court deny Petitioner's motion for emergency relief. The motion does not comply

with the governing appellate rule, and consequently fails to show any real emergency demanding immediate relief or any legal basis for their requested relief in general.

Background

Petitioners are mad that the Governor called a special legislative session at which a supermajority of both the Utah House and Senate enacted H.B. 3001, Utah Medical Cannabis Act, amending a recently approved statewide initiative known as Proposition 2.

So, the same day H.B. 3001 passed, Petitioners submitted a referendum application to the Lieutenant Governor's Office to begin the process of putting H.B. 3001 on the ballot for voter approval or rejection. Petition for Extraordinary Relief, Exhibit C.

The next day, the LG's Office rejected the Petitioners' application for two reasons. First, under both the Utah Constitution and Utah Code, voters have no right to referendum on a law like H.B. 3001 that was passed by at least two-thirds of the House and Senate. Utah Const. art. VI, § 1(2)(a)(i)(B); Utah Code § 20A-7-102(2). Second, at least one of the application sponsors failed to meet the statutory criteria because he had not voted in a regular general election in Utah within the last three years. Utah Code § 20A-7-302(2)(b)(ii). *See* Petition, Exhibit L.

Petitioners then filed a petition for extraordinary relief and a motion for emergency relief in this Court appearing to challenge the Governor's authority to call a special session, the Legislature's authority to amend a voter-approved-initiative, and the Lieutenant Governor's denial of Petitioner's referendum application.

Petitioners' Inadequate Motion Fails to Show the Need for or Entitlement to Any Emergency Relief

The Court has previously noted that requests for emergency relief place a substantial burden on respondents (and the Court to some degree) and therefore should not include non-emergency requests or be combined with a petition invoking the Court's jurisdiction. *Snow, Christensen & Martineau v. Lindberg*, 2009 UT 72, ¶ 7, 222 P.3d 1141 (per curiam). To that end, rule 23C requires a separately filed motion for emergency relief to contain specific information in a certain order, including: (1) identification and a copy of the order from which relief is sought, (2) a specific and clear statement of the emergency relief sought, (3) the facts and legal grounds entitling the movant to relief, and (4) the facts justifying emergency action. Utah R. App. P. 23C(b). The rule also warns against requesting "relief beyond that necessitated by the emergency circumstances justifying the motion." *Id.*

Petitioners' motion fails to follow this rule and cannot support any emergency relief. Instead of concisely describing the emergency relief

requested with facts and law justifying such relief, the Petitioners submitted essentially a two-page motion that recites a few facts, incorporates "[a]ll arguments" from their petition for extraordinary relief, gives a "jurisdictional basis," and then lists most, if not all, the relief they appear to seek in their petition, including invalidating a special legislative session, striking down H.B. 3001, restoring Proposition 2, and declaring that voters can seek referendum on statutes passed by more than two-thirds of the legislature. Motion for Emergency Relief, ¶¶ 1-13.

Petitioners' inadequate motion not only fails to justify whatever emergency relief they're seeking, it places respondents (and the Court) in the untenable position of trying to make Petitioners' arguments for them so Respondents can respond and the Court can rule. *Cf. Bank of Am. v. Adamson*, 2017 UT 2, ¶ 12, 391 P.3d 196 (stating "an appellant who fails to adequately brief an issue will almost certainly fail to carry its burden of persuasion on appeal"). Petitioners' wholesale incorporation of arguments from their petition and broad request for relief evades the requirement that they file a separate motion that itself spells out the *precise* emergency relief requested and the specific facts and law supporting the emergency.

The fact that Petitioners are proceeding pro se offers them no exception to following this Court's prior guidance and rule 23C. *See, e.g., Lundahl v.*

Quinn, 2003 UT 11, ¶ 3, 67 P.3d 1000; *see also Bell v. Bell*, 2013 UT App 248, ¶ 27, 312 P.3d 951 ("Even though appellate litigants are generally lenient with pro se litigants, those litigants must still follow the appellate rules.").

Petitioners' Arguments Lack Merit

Petitioners' motion appears to ask the Court to "make its decision as early as possible" because they have a limited time to gather sufficient signatures to put their referendum on the November 2020 ballot. Motion, ¶¶ 3-5. Even if that were true, it wouldn't justify all the emergency relief they've requested. And more importantly, their petition's core claims are meritless and do not support any relief, emergency or otherwise.

They claim that the Governor calling a special session to consider amending Proposition 2 amounts to an illegal gubernatorial veto over a voter-approved initiative in violation of Utah Code section 20A-7-212(3). Petition at 12. But the differences between the Governor's veto authority, Utah Const. art. VII, § 8(1), and his authority to call the legislature into session, Utah Const. art. VII, § 6(1), to potentially amend a statute are too plain for argument. So the fact that he cannot unilaterally veto a voter-approved initiative, Utah Code § 20A-7-212(3), says nothing about his constitutional authority to convene the legislature; particularly, when the legislature has

express authority to "amend any initiative approved by the people at any legislative session." Utah Code § 20A-7-212(3)(b).

Petitioners also claim that the Lieutenant Governor wrongly denied their application because they should have an absolute right to referendum on any law including those passed by more than two-thirds of the legislature. Petition at 22. But that argument is plainly refuted by the Utah Constitution. It expressly allows legal voters to "require any law passed by the Legislature, *except those laws passed by a two-thirds vote of the members elected to each house of the Legislature*, to be submitted to the voters of the State, as provided by statute, before the law may take effect." Utah Const. art. IV, § (2)(a)(i)(B) (emphasis added). Petitioners do not dispute that H.B. 3001 passed by more than two-thirds of the votes in each house, nor do they explain how this constitutional provision could possibly be read under any accepted interpretive canons as not applying to H.B. 3001.

And Petitioners' other primary claim—whether one sponsor was properly rejected for not voting in the last three general elections, Petition at 15—is irrelevant given the foregoing constitutional bar to their referendum attempt.

Conclusion

For the foregoing reasons, the Court should deny Petitioners' motion for emergency relief.

Respectfully submitted,

/s/ Stanford E. Purser
Stanford E. Purser

Counsel for Respondents Governor Gary R. Herbert, Lieutenant Governor Spencer Cox, and Director of Elections Justin Lee

Certificate of Service

I hereby certify that on 13 December 2018 a true and correct copy of the foregoing Response to Motion for Emergency Relief was filed with the Court and served electronically to the following:

Bart Grant
Bgrant17@gmail.com

Steven G. Maxfield
me@SteveMaxfield.com

Daniel Newby
daniel@helmsmansociety.com

Eric Weeks
eweeks@le.utah.gov

/s/ Stanford E. Purser
Stanford E. Purser