

From: Sherrie Swensen on behalf of Sherrie Swensen <SSwensen@slco.org>
To: Justin Lee - State Election Division (justinlee@utah.gov); rhatch@WeberCountyUtah.gov
Cc: vsug@utah.gov
Subject: RE: [EXTERNAL]GRAMA Request for Ballots
Date: Thursday, February 4, 2021 4:18:37 PM
Attachments: [Opinion provided by Deputy District Attorney Paula Smith -2019.pdf](#)
[Farrell v Larsen.rtf](#)
[image001.png](#)
[image002.png](#)
[image003.jpg](#)

This information was provided in 2019 by Paula Smith, Deputy District Attorney. It was a response to a municipal candidate's GRAMA request for ballots from a past election.



Sherrie Swensen
Salt Lake County Clerk
sswensen@slco.org
385-468-7370
 [SLCO Clerk](#)
[Website](#)

From: Hatch,Ricky <rhatch@co.weber.ut.us>
Sent: Thursday, February 4, 2021 12:37 PM
To: Hatch,Ricky <rhatch@co.weber.ut.us>; Justin Lee <justinlee@utah.gov>; VSUsersGroup Voting-Systems-Users-Group <vsug@utah.gov>
Subject: RE: [EXTERNAL]GRAMA Request for Ballots

And no, I didn't say "steal." Get your minds out of the gutter!😊

I thought there was a law that ballots could not be examined after the canvass, except under court order.

--
Carpe Diem
Ricky Hatch, CPA, CPO
Clerk/Auditor
Weber County
2380 Washington Blvd., Suite 320 | Ogden UT | 84401 USA
E: rhatch@WeberCountyUtah.gov | P:801.399.8613 | M: [REDACTED]
#WinninginWeber

From: Hatch,Ricky <rhatch@co.weber.ut.us>
Sent: Thursday, February 4, 2021 12:35 PM
To: Justin Lee <justinlee@utah.gov>; VSUsersGroup Voting-Systems-Users-Group <vsug@utah.gov>
Subject: [EXTERNAL]RE: [EXTERNAL]GRAMA Request for Ballots

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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.”

GRAMA’s sole reference to ballots is to “a completed military-overseas ballot that is electronically transmitted under Title 20A, Chapter 16, Uniform Military and Overseas Voters Act.” Utah Code Ann. § 63G-2-302(1)(s). Such records are private and may only be accessed by the subject of the records or other individuals as defined in § 63G-2-202(1)(a). While military voters whose overseas ballots are submitted electronically waive their right to a secret ballot, Utah Code Ann. 20A-16-409(2), they do not waive their right to privacy and would be the subject of the record, not one of many candidates. In addition, if the ballot contains the federal congressional race, the Clerk could still not disclose the record unless a federal court ordered it. [Pam: are there any of these ballots in the Draper precincts that you can determine without opening the paper ballots or looking at the ballots on the voting memory cards?]

If copies of ballots could be obtained pursuant to GRAMA, it would undermine the strict requirements for election recounts, election contests, and any federal challenges. Recounts are only allowed when the difference between the number of votes for the winner and loser is equal to or less than .25%. The election officer supervises the recount, § 63G-2-401(e). In the counting of ballots, if questions arise as to the intent of a voter, the ballot is adjudicated by two counting judges using the standards set forth in §§ 20A-4-101(3) & 20A-4-105. Even courts struggle with adjudicating difficult ballots. *Mosier v. Gilmore*, 635 P.2d 55, 58-59 (Utah 1981) (Providing copies of ballots to anyone or any candidate who wanted them would allow parties to conduct their own unmonitored recounts with results that would vary from supervised counting ballot adjudication and undermine the election process.

Since at least 1903, Utah courts have found any opening or review of ballots by county clerks or their staff outside of the recount process during the retention period to be improper. The Utah Supreme Court found that handling the ballots outside of the designated “strict” process opens the door to fraud and corruption in the election process and puts the will of the people in jeopardy. *Farrell v. Larsen*, 26 Utah 283, 73 P. 227, 230 (1903). In *Coombs v. Barger*, 100 Utah 451, 116 P.2d 390, 391-392 (1941), the Utah Supreme Court found that the County Clerk, the County Treasurer, and political worker who broke the seal on a precinct envelope containing ballots, examined ballots, and then resealed the envelope was a deliberate violation of the law. Then, as now, the ballots had to be retained unopened.

The contestee now challenges the correctness of the judgment and decree by appeal, and insists, *inter alia*, that the court erred in admitting the ballots in evidence, and ordering them to be recounted in certain districts, where the contestant alleged illegal ballots had been counted by the board of canvassers. It is urged that, after the votes were counted, and the official returns and canvass made, the ballots were not kept and preserved as required by law. The statute concerning elections, in section 858, Rev. St. 1898, on the subject of the disposal of ballots after counting by the judges of election, provides: "At all elections, the ballots as soon as read must be strung on a string by one of the judges, and must not thereafter be examined by any person. The 'excess' and 'defective' ballots, separately strung, shall, with the counted ballots, be carefully sealed in a strong envelope. Every 'excess' or 'defective' ballot must be marked by the judges, in writing, across the face thereof 'Excluded on the *228 ground of ***,' filling the blank with a brief statement of the reasons for the rejection, which statement must be dated and signed by the judges." Section 863 provides that the judges, before they adjourn, must deliver the package of ballots so counted and sealed to one of their number, who must, within 24 hours, deliver it, "without having been opened, to the county clerk, city recorder, or town clerk, as the case may be." Section 865 provides that upon the receipt of such package the clerk or recorder must file the same, and "must keep it unopened and unaltered for twelve months; after which time, if there is not a contest commenced in some tribunal having jurisdiction, he must burn the package without opening or examining the contents." These provisions of the statute, as will be seen, specify particularly how the ballots, after they have been read and counted by the judges of election, shall be sealed, to whom they shall be delivered, how and for what length of time and purpose kept, and in what manner finally destroyed. The statute prescribes the manner of the preservation with much strictness, and every consideration of public policy requires that its terms should be complied with as near as possible and practicable. The evident intent of the Legislature was to have the ballots, for the purposes of a contest, preserved untouched, undisturbed, and inviolate; and such intent is in harmony with the best interests of the state and its subjects. When preserved, as required by the statute, the ballots, under well-settled law, are the best and controlling evidence, in an election contest, to determine who is entitled to the particular office in controversy, and may be received to overturn the presumption that the returns are correct, and that the election officers performed their duty. The correctness of the official canvass and returns is presumed, since the same are made immediately upon the close of the polls, by sworn officers, usually in the presence of the friends of the

competing candidates, before the result of the election is known, or an opportunity for tampering with the ballots is presented. Such being the case, the *onus probandi*, in all election contests, is upon the contestant, who offers and relies upon such evidence, to show that the ballots have been kept and preserved according to the requirements of the statute; and before the ballots can be received in evidence it must affirmatively appear from the testimony that they have been so preserved. The well-known rules of evidence, as well as public policy, require that he who relies upon such evidence should satisfactorily show that the ballots have been preserved according to law, and are genuine. When they have been so preserved, then, as between the returns and the ballots, the ballots must control. Experience has shown that temptation on the part of a defeated candidate or his friends to change the result of an election has been frequently manifest, especially where the vote was very close. In such case the danger of tampering with the ballots is so great that no opportunity must be afforded by those who are intrusted, under the law, with their safe-keeping. Therefore, in cases where the departure on the part of the custodian of the ballots from the statutory requirements for their preservation has been such as to necessarily expose them to unauthorized persons or the public, the ballots should not be received as evidence against the correctness of the official count and returns. The rule that the ballots must be kept and preserved in accordance with the requirements of the statute, to continue them as controlling evidence in an election contest, and that the burden is upon the contestant to prove that they were not improperly or unlawfully exposed, but were preserved and undisturbed, is doubtless in harmony with the great weight of authority.

In McCrary on Elections, § 471, the author says: "Where, as is the case in several of the states, the statute provides a mode of preserving the identical ballots cast at an election for the purpose of being used as evidence in case of contest, such statute, and particularly those provisions which provide for the safe-keeping of such ballots, must be followed with great care. The danger that the ballots may be tampered with after the count is made known, especially if the vote is very close, is so great that no opportunity for such tampering can be permitted. Such ballots, in order to be received in evidence, must have remained in the custody of the proper officers of the law from the time of the original count until they are produced before the proper court or officer; and if it appear that they have been handled by unauthorized persons, or that they have been left in an exposed and improper place, they cannot be offered to overcome the official count."

Respecting the admissibility of ballots in evidence in an election contest, Judge Cooley, in his Constitutional Limitations, p. 788, says: "But back of this *prima facie*

and kept in a telephone room, which was in the contestant's office, although there was a vault connected with the office having some vacant space therein. Respecting the telephone room, and the access to the ballots therein, the contestant testified: "There is a lock on this telephone room, but it has not been locked. The door of the main office, where the telephone room lies, is always open when the janitor is around. With the arrangements I have made, it will be easily possible for persons not in my employ to have access to these envelopes in a way, but to what extent I would not be willing to say. It would be easily possible with the arrangements which I have made. I have never examined the packages containing the ballots *230 after they were placed in the telephone room. I have never kept track, from time to time, that they were there. It would have been possible, if any one desired to do so, that some of them might have been taken out and kept over night and over a day, and then returned, and I would have never been the wiser. *** Since election day I have known of times when the office was left vacant without any person in charge of the inner or outer office." He further testified: "The janitor has access to both offices. The door between the two offices is always unlocked, so far as I know. The door of this telephone room, after the official count was made, was always unlocked. There are times when the outside door of my office is also unlocked—for instance, at the time the janitor makes the necessary cleaning, building fires, and other such work." It also appears that the clerk, the deputy clerk, the assistant, and the janitor all had keys to the office. Further reference to the evidence in detail would be unimportant. The careless and reckless manner in which the ballots were kept is so manifest from a perusal of the testimony as to leave no room for argument. That the letter and spirit of the statute were alike violated is clear beyond all reasonable controversy. For the contestant himself to undertake to be the custodian was, to say the least, of doubtful propriety; but when it is considered that while in his custody the packages, a number of them in an unsealed condition, were deliberately placed and kept in a telephone room, unlocked, and to which unauthorized persons had unrestricted access, the transaction becomes so fraught

with suspicion as to render the ballots wholly inadmissible as evidence in a court of justice. If such ballots, so preserved, could, in an election contest, be employed to rebut and overturn the strong presumption that the election officers properly performed their sworn duty in making their official count and returns, then, indeed, the door to fraud and corruption would be wide open. The security of the ballot, after being cast, is, for the purposes of a contest, quite as important as freedom and independence in casting it; and where, as in this case, the contestant is himself the custodian, not only the law, but every consideration of justice and fairness, requires that the strictest care and vigilance be exercised in the preservation of the ballots, so as to preclude even the suspicion that they may have been tampered with by unauthorized persons. Where they are so carelessly preserved as in this instance, who can say that the very distinguishing marks complained of were not placed upon the ballots after the official count? Who can say, with any degree of assurance, that ballots so kept have remained unopened, unaltered, and inviolate? The will of the people cannot thus be put in jeopardy. Ballots thus kept and preserved must be held to be incompetent and inadmissible as evidence to change the official count and returns of an election within this jurisdiction.

Having reached this conclusion, it becomes unnecessary to decide any of the other questions presented. The judgment must, therefore, be reversed, with costs, and the cause remanded, with directions to the court below to dismiss the action.

It is so ordered.

BASKIN, C. J., and McCARTY, J., concur.

All Citations

26 Utah 283, 73 P. 227

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From: Sherrie Swensen
To: [Justin Lee](#)
Subject: RE: Election Security Memo
Date: Monday, February 24, 2020 3:11:36 PM
Attachments: [image007.png](#)
[image008.png](#)
[image009.jpg](#)
[image010.png](#)
[image011.png](#)
[image012.jpg](#)

Thanks Justin.

I think the logical timeframe for us will be to schedule in April, but we will need to confirm that with Mark Evan's schedule.



Sherrie Swensen
Salt Lake County Clerk
sswensen@slco.org
385-468-7370
 [SLCO Clerk Website](#)

From: Justin Lee <justinlee@utah.gov>
Sent: Monday, February 24, 2020 2:39 PM
To: Sherrie Swensen <SSwensen@slco.org>
Cc: Pam Tueller <PTueller@slco.org>; Lannie Chapman <LKChapman@slco.org>
Subject: Re: Election Security Memo

Thanks Sherrie. They're scheduling them several weeks out, or even months, so there's no concern about it being done in the next week.

Justin

Justin Lee
Director of Elections
Office of the Lieutenant Governor
State of Utah
801.538.1129
justinlee@utah.gov

On Mon, Feb 24, 2020 at 2:37 PM Sherrie Swensen <SSwensen@slco.org> wrote:

Hi Justin,

Good morning,

Attached is a memo from Lt. Governor Cox on election security. Please read the memo and then review the attachments regarding the free cyber and physical security assessments offered by DHS/CISA. Lt. Governor Cox would like each county to work with DHS/CISA to complete these assessments to keep each county, and our elections as secure as possible.

For the physical security assessment please reach out to:

[REDACTED]
Protective Security Advisor (PSA) – Utah
Cybersecurity and Infrastructure Security Agency – Region 8
U.S. Department of Homeland Security
[REDACTED]

For the cybersecurity assessment please reach out to:

[REDACTED]
Cybersecurity Advisor, Region VIII
Cybersecurity and Infrastructure Security Agency
[REDACTED]

Sincerely,

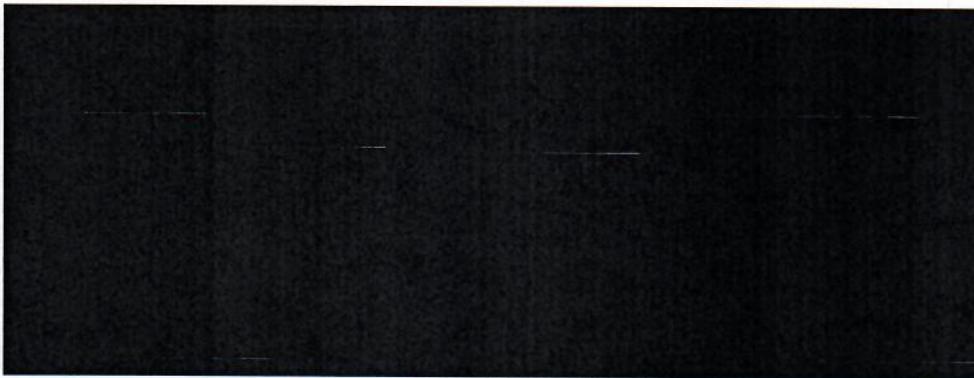
Justin Lee

Director of Elections
Office of the Lieutenant Governor
State of Utah
801.538.1129
justinlee@utah.gov

From: Sherrie Swensen on behalf of Sherrie Swensen <SSwensen@slco.org>
To: Justin Lee (justinlee@utah.gov)
Cc: vsug@utah.gov
Subject: Clean-up language needed for 2017 HB 230
Date: Thursday, January 18, 2018 6:20:59 PM
Attachments: [image009.jpg](#)
[image010.png](#)
[image011.png](#)
[image012.jpg](#)

Hi Justin,

This language is from 2017's **HB 230**:



I brought this up to Mark Thomas when I came across it last year as I was reviewing the laws in preparation for canvass meetings. Our legal counsel confirmed that with this language, a voter could present a cure letter through the **conclusion** of a board of canvassers meeting.

As a result, I notified the city recorders where there were very close contests that they should accept cure letters up until the results were certified by their board. I and another staff member stayed here until the boards of canvassers meetings concluded in case a voter submitted a cure letter. If that had happened, we as a team would have retrieved that voter's ballot, checked the signature from the cure letter the city recorder forwarded to us and opened the ballot if the signature matched. The city recorder would have had to adjust their canvass report accordingly.

Thank you for your consideration.



Sherrie Swensen
Salt Lake County Clerk
sswensen@slco.org
385-468-7370

From: Sherrie Swensen
To: [Justin Lee](#)
Cc: [Lannie Chapman](#); [Jenn Fowler](#); [Ronald Buckley](#)
Subject: Re: TRACK YOUR VOTE?
Date: Wednesday, December 23, 2020 11:51:37 AM

Thank you Justin.

Have a wonderful holiday.

Sherrie

Sent from my iPhone

On Dec 23, 2020, at 10:54 AM, Justin Lee <justinlee@utah.gov> wrote:

Sherrie,

We have re-enabled the track your ballot feature. It is live on the website.

Justin

On Dec 22, 2020, at 1:14 PM, Justin Lee <justinlee@utah.gov> wrote:

I just tested mine and didn't get an error message, just that my ballot was not found. It shouldn't be a big deal to re-enable it.

Justin Lee
Director of Elections
Office of the Lieutenant Governor
State of Utah
justinlee@utah.gov

On Tue, Dec 22, 2020 at 1:11 PM Sherrie Swensen
<SSwensen@slco.org> wrote:

Hi Justin,

I can let the very few voters know that is the reason they can't access their information. If it is a problem to put it back up (or costly), it wouldn't be worth spending money. Is it possible for you to have them place a message to let people know it has been disabled instead of that there is an error?

Director of Elections

Office of the Lieutenant Governor

State of Utah

justinlee@utah.gov

On Tue, Dec 22, 2020 at 12:59 PM Sherrie Swensen
<SSwensen@slco.org> wrote:

Hi Justin,

Has TRACK YOUR BALLOT been inactivated?

I think some voters are still trying to access their information.

Here is an email I received on December 20th. His vote was received and counted, but when I enter is information in TRACK YOUR BALLOT, it says there is an error, etc. I also received one other question about it.

I can send him a snipping of his by-mail history from VISTA, but I would like to let him know if there is a reason he can't access the information on vote.utah.gov. I assume that is where he checked.

"why does it say you never received my vote, did my vote count, am I a victim of the corrupt left-wing Nazzis?

my name is [REDACTED]

I want to know my vote counted- this is a travesty the amount of fraud going on.

From: Sherrie Swensen
To: [Justin Lee](#)
Cc: [Lannie Chapman](#); [Jenn Fowler](#)
Subject: RE: Utah voting systems
Date: Friday, February 19, 2021 9:28:12 AM
Attachments: [image007.png](#)
[image008.png](#)
[image009.jpg](#)

Hi Justin,

I searched my emails and the got-vote emails and I have not received an email from [REDACTED]



Sherrie Swensen
Salt Lake County Clerk
sswensen@slco.org
385-468-7370
[!\[\]\(f4349ea867b307dd2675269f68d0971f_img.jpg\)](#) [!\[\]\(30f4029e815bf61392c2c0ac35af6c08_img.jpg\)](#) [SLCO Clerk Website](#)

From: Justin Lee <justinlee@utah.gov>
Sent: Friday, February 19, 2021 9:19 AM
To: Sherrie Swensen <SSwensen@slco.org>
Cc: Lannie Chapman <LKChapman@slco.org>
Subject: Fwd: Utah voting systems

Good morning Sherrie,

The email below is from a Salt Lake County resident. I'm going to reach out to her, but before I did I wondered if you had any contact with this individual. Has she ever reached out to your office?

Thanks,
Justin

Justin Lee
Director of Elections
Office of the Lieutenant Governor
State of Utah
justinlee@utah.gov

systems to ensure that we truly have an election we can feel confident is accurate and safe from potential outside tampering?

Thank you for your time. I look forward to receiving your answers to my questions.

[REDACTED]

Holladay, UT
84117

From: Sherrie Swensen
To: Justin Lee
Cc: Lannie Chapman; Jenn Fowler; Ronald Buckley
Subject: RE: TRACK YOUR VOTE?
Date: Tuesday, December 22, 2020 1:11:52 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.jpg](#)

Hi Justin,

I can let the very few voters know that is the reason they can't access their information. If it is a problem to put it back up (or costly), it wouldn't be worth spending money. Is it possible for you to have them place a message to let people know it has been disabled instead of that there is an error?

Thank you,



Sherrie Swensen
Salt Lake County Clerk
sswensen@slco.org
385-468-7370

[Website](#)

From: Justin Lee <justinlee@utah.gov>
Sent: Tuesday, December 22, 2020 1:05 PM
To: Sherrie Swensen <sswensen@slco.org>
Cc: Lannie Chapman <LKChapman@slco.org>
Subject: Re: TRACK YOUR VOTE?

Hi Sherrie,

Yes, the system does stop displaying the information at a certain point after Election Day. Given the interest from voters I will have the team turn that feature back on.

Thanks,
Justin

Justin Lee
Director of Elections
Office of the Lieutenant Governor
State of Utah
justinlee@utah.gov

On Tue, Dec 22, 2020 at 12:59 PM Sherrie Swensen <sswensen@slco.org> wrote:

From: Sherrie Swensen
To: [Justin Lee - State Election Division \(justinlee@utah.gov\)](mailto:JustinLee-State.Election.Division@utah.gov)
Cc: Charlotte Kuhn; Lannie Chapman
Subject: FW: FW: KUER Question: Polling Locations
Date: Monday, September 21, 2020 4:29:16 PM
Attachments: [Copy of General-Election-Polling-Locations-2020-09-21.xlsx](#)
[image001.png](#)
[image002.png](#)
[image003.jpg](#)

Hi Justin,

Attached is the corrected vote center list and Charlotte added coordinates where they were missing. She also marked the locations where there will be early voting. There are still a couple of outstanding contracts to be solidified.

Thank you,



Sherrie Swensen
Salt Lake County Clerk
sswensen@slco.org
385-468-7370
[SLCO Clerk Website](#)

From: Charlotte Kuhn <CKuhn@slco.org>
Sent: Monday, September 21, 2020 2:45 PM
To: Sherrie Swensen <SSwensen@slco.org>
Cc: Lannie Chapman <LKChapman@slco.org>
Subject: RE: FW: KUER Question: Polling Locations

Hi Sherrie,

I highlighted the Salt Lake County locations. Some were missing coordinates. I have corrected them based on the ballot insert letter.

I also updated which locations were offering EV.

Charlotte

From: Justin Lee <justinlee@utah.gov>
Sent: Monday, September 21, 2020 2:17 PM
To: Sherrie Swensen <SSwensen@slco.org>
Cc: Derek Brenchley <dbrenchley@utah.gov> (dbrenchley@utah.gov) <dbrenchley@utah.gov>; Pam

Earlier this month you mentioned to me on the phone that Salt Lake County would have around 60 polling locations, and that that was much more than usual. But, according to data I got from the state, Salt Lake County had 575 polling locations in 2016, 140 of which were in Salt Lake City. I've attached the spreadsheet that Justin Lee gave me to this email, with two pivot tables I made that break down the number of polling locations per city and per county. (Salt Lake County is County #18).

So, it appears there will actually be significantly fewer polling places this fall. Could you clarify? If that's true, could you explain why?

Happy to chat on the phone about this if you have a few minutes today.

Many thanks,

[REDACTED]

[REDACTED]
Politics and Government Reporter
KUER
[REDACTED]
[REDACTED]
[REDACTED]

11/3/2020 Utah	Pleasant Grove UT Manila Stake Center	850 N 900 E	American Fork	84003	Yes	No
11/3/2020 Utah	Provo UT Married Student 3rd Stake	945 E 700 N	Provo	84606	Yes	No
11/3/2020 Utah	Saint Francis Of Assisi Catholic Church	65 E 500 N	Orem	84057	Yes	No
11/3/2020 Utah	Spanish Fork Fairgrounds	475 S Main St	Spanish Fork	84660	Yes	No
11/3/2020 Utah	Utah County Vote Service Center	100 E Center St	Provo	84606	No	Yes
11/3/2020 Utah	Utah Mountain Saratoga Stake Center	612 W Pony Express Pkwy	Saratoga Springs	84045	Yes	No
11/3/2020 Wasatch	Wasatch County Outdoor Arena	415 Southfield RD	Heber City	84032	Yes	No
11/3/2020 Washington	Dixie Convention Center	1835 Convention Center Dr	St George	84790	Yes	Yes
11/3/2020 Wayne	Wayne County Clerk's Office	18 South Main	Loa	84747	No	Yes
11/3/2020 Weber	Mobile Vote Center	1000 N 1200 W	Ogden	84404	Yes	No

From: Sherrie Swensen
To: Amanda Covington
Cc: Lannie Chapman; Pam Tueller; ckuhn@slco.org; Justin Lee - State Election Division (justinlee@utah.gov)
Subject: RE: Vivint Smart Home Arena
Date: Wednesday, July 8, 2020 6:09:27 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.jpg](#)

Dear Amanda,

I am very grateful for the generous offer for us to possibly use the Vivint Smart Home Arena and Megaplex Theaters as polling locations for the November General Election.

We are finalizing the Primary Election and it will be certified on July 21st. We will reach out to you to set up a time to discuss this with you toward the end of July if that is alright with you.

Thank you very much.

Best wishes,



Sherrie Swensen
Salt Lake County Clerk
sswensen@slco.org
385-468-7370
 [SLCO Clerk Website](#)

From: Amanda Covington [REDACTED]
Sent: Thursday, July 2, 2020 5:24 PM
To: Justin Lee <justinlee@utah.gov>
Cc: Sherrie Swensen <SSwensen@slco.org>; Pam Tueller <PTueller@slco.org>; Lannie Chapman <LKChapman@slco.org>
Subject: Re: Vivint Smart Home Arena

Hello Sherrie,

I know you and your team are incredibly busy and thank you for all you're doing to serve our citizens.

The NBA has asked its teams to explore the possibility of using our arenas for polling locations. I would expand that to include our Megaplex theatres.

We obviously don't know what November will look like with Covid. I do know that we recently held a successful public blood drive at Vivint Smart Home Arena with all social distancing guidelines in