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UTAH SUPREME COURT

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/Petitioners,

v.

Utah State Legislature, Utah Legislative
Redistricting Committee, Sen. Scott
Sandall, Rep. Brad Wilson, Sen. J. Stuart
Adams, and Lt. Gov. Deidre Henderson,

Defendants/Respondents.

PETITION FOR PERMISSION TO APPEAL FROM INTERLOCUTORY ORDER

No. _____-SC
District Court No. 220901712

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Addenda

- A. October 24, 2022 Summary Ruling Denying in Part and Granting in Part Defendants’ Motion to Dismiss

Pursuant to Rule 5 of the Utah Rules of Appellate Procedure, Plaintiffs petition for permission to appeal from the district court’s Summary Ruling Denying in Part and Granting in Part Defendants’ Motion to Dismiss. That interlocutory order, signed October 24, 2022, is attached as Addendum A.

Introduction

Plaintiffs do not contend that a determination of the correctness of the district court’s order before final judgment will “materially advance the termination of the litigation.” Utah R. App. P. 5(c)(1)(D). This case should proceed in the district court, on an expedited course, in order to provide a developed factual record and reasoned decision on which the Court can adjudge Plaintiffs’ constitutional claims. However, if this court grants interlocutory review of the portion of the district court’s order denying dismissal of Counts One through Four of the complaint, it also should grant interlocutory review of the portion of the district court’s order dismissing Count Five. Plaintiffs’ claim in Count Five seeks to vindicate Utahns’ core constitutional right to alter or reform their government through citizen-initiated laws, which Utahns exercised in enacting redistricting reform in 2018 and the Legislature eviscerated when repealing the law in 2020 prior to undertaking redistricting. No interest would be served by this Court reviewing challenges to different portions of the same order at different stages of this litigation.

Statement of Material Facts

In 2018, Utah voters attempted to abolish partisan gerrymandering in Utah by passing a citizen initiative known as Proposition 4. Proposition 4 reformed the redistricting process by creating an independent redistricting commission and adopting neutral map-

drawing standards. Those standards expressly prohibited partisan gerrymandering. Utah Code § 20A-19-103(3), *repealed by* Laws 2020, c. 288, § 12, eff. March 28, 2020. Prop 4 also provided a statutory cause of action through which Utahns could seek judicial review of the Legislature’s adherence to the statutory prohibition on partisan gerrymandering. *Id.* § 20A-19-301(2), *repealed by* Laws 2020, c. 288, § 12, eff. March 28, 2020.

In 2020, the Legislature repealed Proposition 4 and replaced it with a new redistricting law, SB200. SB200 rescinded Proposition 4’s most critical reforms, including the prohibition on partisan gerrymandering.

The complaint filed in this action challenges the Legislature’s actions. Counts One through Four allege that the Legislature violated the Utah Constitution by adopting a congressional electoral map that is an extreme partisan gerrymander. Count Five alleges that the Legislature violated article I, section 2 of the Utah Constitution, which guarantees to the people the right to alter or reform their government, by repealing Proposition 4 and enacting SB200 in its place.

Defendants moved to dismiss all five counts. The district court denied the motion as to Counts One through Four but granted the motion as to Count Five.

Issues Presented, Preservation, and Standard of Review

Did the Legislature’s repeal of Proposition 4 violate the people’s right to exercise their inherent political power, to initiate legislation, and to alter or reform their government as protected by article I, section 2 and article VI, section 1 of the Utah Constitution?

The issue was preserved in the district court by the court’s dismissal of Count Five of the Complaint. (Add. A.)

Issues of constitutional interpretation are reviewed for correctness, granting no deference to the district court. *Richards v. Cox*, 2019 UT 57, ¶ 7, 450 P.3d 1074.

Reasons Why this Court Should Permit an Immediate Appeal

Plaintiffs do not contend that a determination of the correctness of the district court's order before final judgment will "materially advance the termination of the litigation." Utah R. App. P. 5(c)(1)(D). Indeed, Plaintiffs are seeking a trial date in April of 2023 to ensure that any relief can be granted (and reviewed on appeal) in time for the 2024 election cycle. Consequently, should the matter go forward in the district court, trial will likely be completed before briefing would be completed on any interlocutory appeal. Accordingly, *denying* interlocutory review will materially advance the termination of the litigation.

However, if this court grants interlocutory review of the portion of the district court's order denying dismissal of Counts One through Four of the complaint, it also should grant interlocutory review of the portion of the district court's order dismissing Count Five of the complaint. No interest would be served by this court's reviewing challenges to different portions of the same order at different stages of this litigation.

Moreover, Plaintiffs' Count Five claim presents almost entirely legal questions concerning citizen lawmaking authority in Utah. The Utah Constitution guarantees to its citizens "the right to alter or reform their government as the public welfare may require." Utah Const. art. I, § 2. The citizens did just that in enacting Proposition 4, which the Legislature quickly repealed before the governmental reforms adopted by the citizens could govern redistricting. If this Court grants Defendants' petition for interlocutory appeal, then the case would be materially advanced by reviewing the district court's dismissal of Count

Five. Should this Court conclude that the district court erred in dismissing Count Five—and that the Legislature may not immediately repeal governmental reforms the citizens enact pursuant to their right to do so guaranteed by the Constitution’s Declaration of Rights—then Plaintiffs’ partisan gerrymandering claims can proceed on the people’s enacted cause of action to prohibit partisanship in the redistricting process. Such a course would avoid the need to rule on the justiciability and other constitutional questions that Defendants present in their interlocutory appeal. Thus, if this Court were to grant Defendants’ petition for interlocutory appeal, then it would materially advance the termination of the litigation for the Court to likewise review the district court’s dismissal of Count Five.

This Matter Is Not Subject to Assignment

The Supreme Court has exclusive jurisdiction over questions concerning the “reapportionment of election districts.” Utah Code § 78A-3-102(4)(c). Accordingly, this matter is not subject to assignment to the Utah Court of Appeals.

Conclusion

This Court should deny interlocutory review and permit the district court proceedings to progress on an expedited track. But if this Court grants interlocutory review of the portion of the district court’s order denying dismissal of Counts One through Four of the complaint, then it also should grant interlocutory review of the portion of the district court’s order dismissing Count Five.

Dated this 14th day of November, 2022.

ZIMMERMAN BOOHER

/s/ Troy L. Booher

Troy L. Booher

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Certificate of Service

I hereby certify that on the 14th day of November, 2022, I caused the foregoing *Petition for Permission to Appeal from Interlocutory Order* to be served via email on the following:

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Addendum A

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

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.

**SUMMARY RULING DENYING IN
PART and GRANTING IN PART
DEFENDANTS' MOTION TO DISMISS**

Case No. 220901712

Judge Dianna M. Gibson

Defendants Utah State Legislature, Utah Legislative Redistricting Committee, Senator Scott Sandall, Representative Brad Wilson, and Senator Stuart Adams (collectively, "Defendants")¹ filed a Motion to Dismiss ("Motion") Plaintiffs' Complaint on May 2, 2022. The Court heard oral argument on August 24, 2022. The Court carefully considered Defendants'

¹ Lieutenant Governor Deidre Henderson is not a party to named Defendants' Motion.

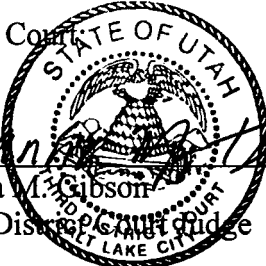

Motion, the memoranda submitted both in support and opposition to the Motion, and counsel's arguments made on August 24, 2022. The Court now issues this Summary Ruling to apprise the parties of the Court's decision. The Court, however, requires additional time to finalize the legal analysis supporting the Ruling and will issue a full written decision in short order.

The Court's Summary Ruling is as follows:

- (1) The Court DENIES Defendants' Motion to Dismiss Plaintiffs' Complaint for lack of subject matter jurisdiction.
- (2) The Court DENIES Defendants' Motion to Dismiss certain Defendants Utah Legislative Redistricting Committee, Senator Scott Sandall, Representative Brad Wilson, and Senator J. Stuart Adams.
- (3) The Court DENIES Defendants' Motion to Dismiss Count One (Free Elections Clause), Count Two (Equal Protection Rights), Count Three (Free Speech and Association Rights), and Count Four (Affirmative Right to Vote) of Plaintiffs' Complaint.
- (4) The Court GRANTS Defendants' Motion as to Plaintiffs' Count Five. Therefore, Count Five, "Unauthorized Repeal of Proposition 4 in Violation of Utah Constitution's Citizen Lawmaking Authority to Alter or Reform Government" is DISMISSED, with prejudice.

Dated October 24, 2022.

By the Court



Dianna M. Gibson
Third District Judge

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 220901712 by the method and on the date specified.

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10/24/2022

/s/ ALEXANDER GUARDADO

Date: _____

Signature