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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, and JACK MARKMAN,

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.

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON COUNT V

Case No. 220901712

Honorable Dianna Gibson

HEARING REQUESTED

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RELIEF REQUESTED AND GROUNDS

Pursuant to Rule 56(a) of the Utah Rules of Civil Procedure, Plaintiffs League of Women Voters of Utah, Mormon Women for Ethical Government, Stepanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, and Jack Markman hereby move for summary judgment on Count V of their Complaint. Plaintiffs are entitled to judgment as a matter of law because S.B. 200's reversal of Proposition 4's nonpartisan redistricting reforms violates Plaintiffs' constitutional rights under the Alter and Reform Clause of the Utah Constitution, Defendants cannot show that S.B. 200 is narrowly tailored to further a compelling governmental interest, and it is undisputed that the current congressional map was not enacted in compliance with Proposition 4's requirements. Because there are no disputed facts, this motion presents only questions of constitutional and statutory interpretation proper for resolution on summary judgment.

Pursuant to Utah R. Civ. P. 7(h), Plaintiffs respectfully request a hearing.

INTRODUCTION

Utah voters acted to end partisan gerrymandering in 2018. Their constitutionally protected right to alter and reform their government via Proposition 4 should have resulted in fair maps in both the 2022 and upcoming 2024 elections. Instead, the People have seen their reform effort unconstitutionally gutted by Defendants with the enactment of S.B. 200.

The Utah Supreme Court has remanded this case with instructions to reinstate Count V of Plaintiffs' complaint, which asserts that the Legislature's repeal of Proposition 4 violated Plaintiffs' right to alter or reform their government under Article I, Section 2 of the Utah Constitution. The Court held that Plaintiffs stated a claim for relief, and that to prevail on the claim they must show that: (1) Proposition 4 was an initiative that "contained government reforms or alterations within the meaning of the Alter or Reform Clause" and (2) the Legislature "impaired the reform" when it

enacted S.B. 200 and repealed Proposition 4. *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 74 ("*LWVUT*").

For the reasons below, as a matter of law, Proposition 4 was an exercise by the People of their constitutional right to alter or reform their government, and the Legislature's subsequent enactment of S.B. 200 was an unconstitutional impairment of that reform. S.B. 200 reversed the central reforms of Proposition 4. In violating Plaintiffs' constitutional right to reform their government, Defendants were not advancing any compelling government interest. And even if Defendants could identify such an interest, S.B. 200 is not narrowly tailored. The unconstitutional aspects of S.B. 200 must be enjoined, but its provisions that do not impair Proposition 4's reforms are severable and should stand.

Moreover, the Supreme Court further held that Count V is Plaintiffs' "broadest claim, encompassing both . . . Plaintiffs' challenge to the redistricting process that led to the Congressional Map and their challenge to the Congressional Map itself." *LWVUT*, 2024 UT 21, ¶ 61; *see id.* (noting that Count V "also encompasses the constitutionality of the Congressional Map that resulted from S.B. 200 and was not subject to Proposition 4's requirements"). Because it is undisputed that the current congressional map did not comply with Proposition 4's procedural requirements, the map must be enjoined.

Specifically, and as set forth in greater detail *supra*, the Court should:

1. Permanently enjoin the following portions of S.B. 200's Section 12 "repealer" provision: Line 625, Line 626, Line 627, Lines 628–30 (only to the extent they repeal Utah Code § 20A-19-201(12)(a) (2018)), Line 635, and Line 638. The Court should enjoin S.B. 200 Section 11, which amended certain statutes to effectuate the elimination of Proposition 4's cause of action.

And the Court should enjoin the following codified aspects of S.B. 200: Utah Code § 20A-20-302(4)-(8) and Utah Code § 20A-20-303 (corresponding to S.B. 200 §§ 8 and 9);

2. Conclude that the remaining provisions of S.B. 200, which Plaintiffs do not contend impaired Proposition 4's reforms, are severable and are operable alongside the reinstated aspects of Proposition 4;

3. Permanently enjoin H.B. 2004, which enacted the current congressional map, because it is undisputed that it failed to comply with the procedural requirements of Proposition 4;

4. Retain jurisdiction for remedial proceedings, set a deadline for legislative action on a remedial map, if any, and set further deadlines for the filing of proposed remedial maps, briefing, and accompanying expert reports pursuant to the requirement that any remedial map "abide[ ] by and conform[ ] to the redistricting standards, procedures, and requirements" of Proposition 4. Utah Code § 20A-19-301(8) (2018);

5. Set a deadline for an evidentiary hearing on any legislative or party map proposals to ascertain compliance with Proposition 4's requirements. In the absence of a lawful legislatively enacted map, the Court should enter an Order imposing a lawful congressional map to ensure that an equally populated map, *see* Utah Const. art. I, § 24, and one compliant with Proposition 4, is in place in time for the 2026 elections; and

6. Set a briefing schedule on Plaintiffs' motion for attorneys' fees, costs, and expenses pursuant to Utah Code § 20A-19-301(5) (2018).

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. In the November 2018 election, Utahns adopted a citizen ballot initiative titled the Utah Independent Redistricting Commission and Standards Act—numbered Proposition 4 and popularly named Better Boundaries. [Utah Lieutenant Governor, Proposition Number 4,

https://vote.utah.gov/wp-content/uploads/sites/42/2023/09/Proposition-4.pdf; Utah Lieutenant Governor, 2018 General Election Canvass, https://vote.utah.gov/wp-content/uploads/sites/42/2023/09/2018-General-Election-Canvass.pdf.]

2. The sponsors of Proposition 4 invoked the People's rights under Article 1, Section 2 of the Utah Constitution to "alter or reform their government," explaining that the initiative would reform the redistricting process in Utah to "return[ ] power to the voters and put[ ] people first in our political system." [*Proposition 4*, *in* UTAH VOTER INFORMATION PAMPHLET 74, 76 (Sept. 3, 2018), https://vote.utah.gov/wp-content/uploads/sites/42/2023/09/2018-VIP.pdf ("Voter Pamphlet").]

3. Proposition 4 was codified at Utah Code §§ 20A-19-101 to 301 (2018).

4. The law prohibited partisan gerrymandering by expressly prohibiting the practice of "divid[ing] districts in a manner that purposefully or unduly favors any incumbent elected official, candidate or prospective candidate for elective office, or any political party." [*Id.* § 20A-19-103(3) (2018).]

5. Proposition 4 likewise required district boundaries be configured according to neutral redistricting criteria, including "minimizing the division of municipalities and counties across multiple districts," "creating districts that are geographically compact," "contiguous," and "allow for the ease of transportation throughout the district," "preserving traditional neighborhoods and local communities of interest," adhering to "natural and geographic features, boundaries, and barriers," and "maximizing boundary agreement among different types of districts." [*Id.* § 20A-19-103(2) (2018).]

6. Proposition 4 created the Utah Independent Redistricting Commission to "draw district boundaries through an open and independent process and then submit recommended

redistricting plans to the Legislature." [Utah Code § 20A-19-201(1) (2018); *Statement of Intent & Subject Matter*, UTAH INDEPENDENT REDISTRICTING COMMISSION AND STANDARDS 1 (2018), https://vote.utah.gov/wp-content/uploads/sites/42/2023/09/Utah-Independent-Redistricting-Commission-And-Standards-Act-Combined-Files.pdf.]

7. Under Proposition 4, the Commission was required to hold open meetings throughout the state to garner public input. [Utah Code § 20A-19-202(5)(b), (7), (9) (2018).]

8. Once the Commission selected maps compliant with Proposition 4's requirements, the Commission was to submit them to the Legislature for consideration. [*Id.* § 20A-19-204(1)(a) (2018).]

9. Upon receipt, Proposition 4 required the Legislature to vote on the Commission's recommended maps and either enact them "without change or amendment" or reject them and propose its own maps. [*Id.* § 20A-19-204(2)(a) (2018).]

10. The initiative required the Legislature to comply with Proposition 4's standards if it drew its own maps, including the prohibition on partisan gerrymandering and the neutral redistricting requirements. [*Id.* § 20A-19-103(2)-(6) (2018).]

11. It also required the Legislature to explain to the public its "reasons for rejecting" the Commission's maps and why the Legislature's maps "better satisfie[d]" the "redistricting standards and requirements" of Proposition 4. [*Id.* § 20A-19-204(5)(a) (2018).]

12. It also required that the Legislature make its proposed maps available for public review for at least 10 calendar days before it could be enacted. [*Id.* § 20A-19-204(4) (2018).]

13. Proposition 4 included an enforcement mechanism to allow Utah residents a private right of action to challenge redistricting maps as noncompliant with Proposition 4's requirements. [*Id.* § 20A-19-301 (2018).]

14. Before the 2020 Census data was released and the redistricting cycle began, the Legislature enacted S.B. 200, which repealed Proposition 4 and replaced it with a new law. [Redistricting Amendments, S.B. 200, 63d Leg., 2020 Gen. Sess. (Utah 2020), https://le.utah.gov/~2020/bills/static/SB0200.html; Utah Code §§ 20A-20-101 to 303.]

15. S.B. 200 (like Proposition 4) provided for the creation of an advisory redistricting Commission, but also altered the structure of the Commission and the map selection process. [*Id.* § 20A-20-201 (2020)*;* § 20A-20-302 (1)-(3) (2020).]

16. S.B. 200 also made the prohibition on partisan gerrymandering and the neutral redistricting standards inapplicable to the Legislature; eliminated the requirement that the Legislature vote on the Commission's maps or explain its rejection of them to the public; and eliminated the private right of action, among other changes. [*Id.*]

17. After the 2020 Census data was released, the Commission preformed its duties under S.B. 200 and submitted proposed maps to the Legislature, including three proposed congressional maps. [Utah Legislative Redistricting Committee, UIRC Final Recommendations (Purple, Orange, and Public), https://citygate.utleg.gov/legdistricting/utah/comment_links.]

18. The Legislature never voted to adopt or reject the Commission's recommended congressional redistricting maps. Instead, the Legislative Redistricting Committee publicly released its own congressional map around 10:00 PM on Friday, November 5, 2021—only two weekend days before the scheduled public hearing the following Monday, November 8, 2021. [Utah Legislative Redistricting Committee, Congress, https://citygate.utleg.gov/legdistricting/utah/comment_links.]

19. The Legislature's map split Salt Lake County into four pieces—across all four congressional districts—including splitting the city of Millcreek across all four districts. [Utah

Legislative Redistricting Committee, Enrolled Congressional Map, https://citygate.utleg.gov/legdistricting/comments/plan/184/12.]

20. The following week, the Legislature voted to approve the map in the form of H.B. 2004, which amended Utah Code § 20A-13-101 through 104 to replace the 2011 congressional map with the new map. [Congressional Boundaries Designation, H.B. 2004, 64th Leg., 2d Special Sess. (Utah 2021), https://le.utah.gov/~2021S2/2021S2.HTM/].

21. Governor Spencer Cox signed the congressional map into law on November 12, 2021, seven days after it was released to the public. [*Id.*]

22. The Legislature did not, within seven days of enacting H.B. 2004, "issue to the public a detailed written report setting forth the reasons for rejecting the plan or plans submitted" by the Commission and "a detailed explanation of why the redistricting plan enacted by the Legislature better satisfies the redistricting standards and requirements contained in this chapter." [Utah Code § 20A-19-204(5)(a) (2018).]

LEGAL STANDARD

Plaintiffs are entitled to summary judgment when "there is no genuine dispute as to any material fact." Utah R. Civ. P. 56(a). This Court "is required to draw all *reasonable* inferences" in Defendants' favor. *Heslop v. Bear River Mut. Ins. Co.*, 2017 UT 5, ¶ 21, 390 P.3d 314 (cleaned up). But in determining whether Defendants have identified a "genuine" dispute of fact, this Court is "not required to draw every possible inference of fact, no matter how remote or improbable." *Id.* (cleaned up). "[T]o be reasonable, the inference must present something more than pure speculation." *Id.*

ARGUMENT

Plaintiffs are entitled to summary judgment on Count V of their complaint, which allege that Defendants violated Article I, Section 2 of the Utah Constitution by repealing Proposition 4 and replacing it with S.B. 200, which resulted in a congressional map that was not enacted pursuant to Proposition 4's requirements.

To prevail on Count V with respect to the repeal of Proposition 4, Plaintiffs must establish two elements:

> (1) that the people exercised, or attempted to exercise, their initiative power, and the subject matter of the initiative contained government reforms or alterations within the meaning of the Alter or Reform Clause; and
>
> (2) the Legislature infringed the exercise of these rights because it amended, repealed, or replaced the initiative in a manner that impaired the reform contained in the initiative.

LWVUT, 2024 UT 21, ¶ 74. "[I]f a plaintiff can establish these elements, then the legislative action that impairs the reform is unconstitutional unless the defendant shows that it is narrowly tailored to advance a compelling government interest." *Id*. ¶ 75.

Here, Plaintiffs easily satisfy these elements and Defendants cannot show that S.B. 200 was narrowly tailored. Plaintiffs are thus entitled to summary judgment on Count V. And because it is undisputed that the congressional map was not adopted in compliance with Proposition 4's requirements, H.B. 2004—which enacted that map—must likewise be enjoined.

I. Proposition 4 was an initiative that contained government reforms or alterations within the meaning of the Alter or Reform Clause.

It is undisputed that Proposition 4 was an initiative. There also is no genuine dispute that Proposition 4 exercised the people's right to reform or alter the government within the meaning of the Alter or Reform Clause.

"The 'right to alter or reform the government' refers to a right retained by the people themselves to correct the government they created." *LWVUT*, 2024 UT 21, ¶ 192. As defined at Utah's founding, the people may engage their inherent authority to "alter" the government by "chang[ing] some of the elements or ingredients or details" and "operat[ing] upon a subject-matter which continues objectively the same while modified in some particular." *Alter*, BLACK'S LAW DICTIONARY 64 (1st ed. 1891). Or, more broadly, the people can "reform" the government by acting "[t]o correct, rectify, amend, remodel" it in some fashion and improve upon a defect that had not "been well enough before." *Reform*, BLACK'S LAW DICTIONARY 1011 (1st ed. 1891). Utahns reserved their rights to make such alterations or reforms to the government to serve the general "public welfare," meaning "[t]he prosperity, well-being, or convenience of the public at large, or of a whole community, as distinguished from the advantage of an individual or limited class." *Public Welfare*, BLACK'S LAW DICTIONARY 964 (1st ed. 1891).

Importantly, Article I, Section 2 reserves to the people the right to alter or reform *the government*, not merely generally applicable laws that govern the conduct of the People. Initiatives that alter or reform "the framework of political institutions, departments, and offices,"—*i.e.*, the structure of government, including the system by which representatives are elected to governmental office—are thus within the scope of the Alter or Reform Clause. *Government*, BLACK'S LAW DICTIONARY 544 (1st ed. 1891). This stands apart from initiatives that merely enact laws of general applicability that regulate the conduct of the People.

Proposition 4 is a paradigmatic initiative that alters or reforms the government within the meaning of the Alter or Reform Clause. Indeed, Defendants have never contended otherwise. *See LWVUT*, 2024 UT 21, ¶ 83 ("On appeal, Defendants do not challenge Plaintiffs' argument that Proposition 4 sought to alter or reform the government as contemplated by article I, section 2.").

Nor could they, as Proposition 4 on its face alters and reforms the system of how Utahns' representatives are elected. In doing so, Proposition 4 alters or reforms the government to ensure that the districting system by which representatives are elected operates "for [Utahns'] equal protection and benefit" rather than for the benefit of the Legislature's self-interest and preferred voting districts. Utah Const. art. I, § 2. That Proposition 4 falls within the scope of the Alter or Reform Clause is evident from both the stated purpose of its proponents and as a matter of law from the text of the initiative itself.

First, as the Supreme Court explained,

> [i]n proposing [Proposition 4], the sponsors invoked the people's rights under article I, section 2 of the Utah Constitution, 'inform[ing] voters that Proposition 4 was a government reform measure invoking the people's constitutional lawmaking authority, and it was designed to 'return[ ] power to the voters and put[ ] people first in our political system.'

LWVUT, 2024 UT 21, ¶ 25 (quoting *Proposition 4, in* UTAH VOTER INFORMATION PAMPHLET 74, 76 (Sept. 3, 2018), https://vote.utah.gov/wp-content/uploads/sites/42/2023/09/2018-VIP.pdf ("Voter Pamphlet")). The Voter Pamphlet "argued that gerrymandering had 'gotten out of control' and had made politicians less accountable to the people." *Id.* ¶ 26. It emphasized that the government should be reformed such that "[v]oters choose their representatives"—in contrast to "under current law, [where] Utah politicians can choose their voters." *Id.* (quoting Voter Pamphlet at 76). Proposition 4's proponents explained that under the existing system, "[l]egislators draw their own legislative districts with minimal transparency, oversight, or checks on inherent conflicts of interest. As a result, politicians wield unbridled power to design districts to ensure their own re-election." *Id.* (quoting Voter Pamphlet at 76). The proponents and the voters of Utah understood Proposition 4 to be an initiative aimed at exercising the People's rights under the Alter or Reform Clause.

Second, the specific provisions of Proposition 4 fall within the scope of the Alter or Reform Clause as a matter of law. Among its most important reforms, Proposition 4 explicitly prohibited the practice of "divid[ing] districts in a manner that purposefully or unduly favors or disfavors any incumbent elected official, candidate or prospective candidate for elective office, or any political party." *Id.* ¶ 28 (quoting Utah Code §§ 20A-19-103(3) (2018)).

Proposition 4 likewise mandated that districts be drawn according to neutral redistricting standards, including minimizing the division of municipalities and counties in the formation of districts, creating geographically compact districts that are contiguous and allow for efficient transportation across the district, preserving traditional neighborhoods and communities of interest, following natural geographic features, and maximizing boundary alignment among different types of electoral and government districts. *Id.* ¶ 29; Utah Code § 20A-19-103(2) (2018)).

Proposition 4 also created a new governmental body—the Utah Independent Redistricting Commission—tasked with drawing "district boundaries through an open and independent process and then submit[ting] recommended redistricting plans to the Legislature." *Id.* ¶ 30; Utah Code § 20A-19-201(1) (2018). Proposition 4 ensured that the entire public would be able to participate by requiring numerous open meetings and opportunities for public input. *Id.* ¶ 30; Utah Code § 20A-19-202(5)(b), (7), (9) (2018).

Proposition 4 further reformed the redistricting process by requiring the Legislature to vote on the Commission's proposed plans "without change or amendment" or to reject them and propose its own maps. *Id.* ¶ 32; Utah Code § 20A-19-204(2)(a) (2018). If the Legislature were to reject the Commission's maps, Proposition 4 required it to adhere to the same substantive restrictions that applied to the Commission and explain to the public how, in its view, its maps better satisfied Proposition 4's redistricting requirements. *Id.* ¶ 32; Utah Code § 20A-19-204(5)(a)

(2018). Finally, Proposition 4 ensured that the public could enforce Proposition 4's requirements by establishing a private right of action. *Id.* ¶ 33; Utah Code § 20A-19-301 (2018).

These provisions of Proposition 4 sit comfortably within the plain text of the Clause as it would have been originally understood by the public when the Constitution was ratified. As the Supreme Court held, at the time of Utah's founding, "it was widely understood that 'the people are the source of all political power,' and that the individuals 'who occupy the position of rulers are but the servants of the sovereign people.'" *LWVUT*, 2024 UT 21, ¶ 131. Moreover, "[Utahns] understood that their direct legislative power would . . . provide the people with a check on the Legislature in times of disagreement." *Id.* ¶ 139. Proposition 4 provided Utahns with a check on the Legislature's power to manipulate district lines for partisan gain at the expense of the People—exactly the type of alteration or reform contemplated by the public at the time of Utah's founding.

In summary, through Proposition 4, Utah voters "correct[ed] the government they created," *Id.* ¶ 192, by ending a practice—partisan gerrymandering—that is "incompatible with democratic principles," *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 791 (2015) (cleaned up); *see also* Utah Const. art. I, § 27 ("Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.").

II. S.B. 200 infringed Plaintiffs' right to alter or reform their government by gutting Proposition 4's central reforms.

There also is no genuine dispute that S.B. 200 impaired Proposition 4's central reforms. Defendants have not contended otherwise. *See LWVUT*, 2024 UT 21, ¶ 87. Nor could they. S.B. 200 repealed Proposition 4's key provisions and left in its wake a statutory scheme that no longer operates to prohibit partisan gerrymandering; enforce neutral redistricting criteria; accord respect to the work of the Commission; require opportunities for public input; or permit the public to enforce these reforms in court.

In particular, the following provisions of S.B. 200 reversed Proposition 4's reforms:

1. S.B. 200 Section 12, Line 625. This provision repealed Utah Code § 20A-19-102 (2018), which provided that redistricting could occur only once a decade following the decennial redistricting unless ordered by a court. This reform was aimed to ensure that the redistricting process is a response to population growth and shifts, not a ready means to improve one party's or one politician's chances in the next election.
2. S.B. 200 Section 12, Line 626. This provision repealed Utah Code § 20A-19-103 (2018), which established the redistricting standards and requirements applicable to the Commission and the Legislature, including the prohibition on partisan gerrymandering and the creation of neutral, traditional redistricting criteria.
3. S.B. 200 Section 8. This provision enacted Utah Code § 20A-20-302 (2020), which governed the process by which the Commission recommended maps to the Legislature and the map requirements. In particular, it created § 20A-20-302(4)–(8), which permitted the Commission to alter the mapping standards (in contrast to Proposition 4, which made them mandatory) and made the redistricting requirements applicable only to the Commission and not to the Legislature.[1]
4. S.B. 200 Section 12, Line 635. This provision repealed Utah Code § 20A-19-204 (2018), which required the Legislature to vote on the Commission's maps, provide an opportunity for public review and input, and issue a report explaining how any map it enacted (instead of a Commission drawn map) better complied with the redistricting requirements.

[1] Plaintiffs do not contend that the map selection process created by S.B. 200, codified by Section 8 at Utah Code § 20A-20-302(1)–(3), impaired the reforms of Proposition 4.

5. S.B. 200 Section 9. This provision enacted Utah Code § 20A-20-303 (2020) to replace § 20A-19-204 (2018) (described in number 4 above). Section 303 eliminated the required public comment period, the mandatory legislative vote on the Commission maps, and the reporting requirement.
6. S.B. 200 Section 11 and Section 12, Line 638. These provisions repealed Utah Code § 20A-19-301 (2018), which provided for the cause of action to enforce Proposition 4's requirements. It amended Utah Code §§ 63G-7-201 and 63G-7-301 to eliminate references to that cause of action.
7. S.B. 200 Section 12, Lines 628-30. This provision repealed Utah Code § 20A-19-201 (2018) and in doing so undermined the role of the Commission by removing the statutory requirement for the Legislature to appropriate adequate funds for the Commission's work. Utah Code § 20A-19-201(12)(a) (2018).
8. S.B. 200 Section 12, Line 627. This provision repealed Proposition 4's Severability Clause, Utah Code § 20A-19-104 (2018).

As a consequence of S.B. 200, the Utah Legislature held no vote on the maps proposed by the Commission; adopted a map before the statutorily required timeline for public comment; provided no written report explaining its action or why its map better complied with Proposition 4's requirements; and adopted a map that Plaintiffs contend violated the neutral redistricting criteria of Proposition 4 as well as the prohibition on partisan gerrymandering. Indeed, the Voter Pamphlet described the ban on partisan gerrymandering as Proposition 4's "[m]ost important[ ]" provision. *See* Voter Pamphlet at 76. Because of S.B. 200, the congressional map was not subject to that prohibition.

It is apparent from the face of S.B. 200 that it impaired Proposition 4's reforms as a matter of law. Accordingly, Plaintiffs have shown the elements they "need to prove to make out their Count V claim" and thus "the burden [] shift[s] to Defendants . . . to establish that S.B. 200 is not unconstitutional because it satisfies strict scrutiny." *LWVUT*, 2024 UT 21, ¶¶ 201, 202.

III. S.B. 200 is not narrowly tailored to advance a compelling government interest.

S.B. 200 does not survive strict scrutiny because it is not narrowly tailored to advance a compelling government interest.

The government has no interest—let alone a *compelling* one—in engaging in partisan gerrymandering or configuring districts without regard to neutral, traditional criteria. As the U.S. Supreme Court has explained, "[p]artisan gerrymanders . . . [are incompatible] with democratic principles." *Ariz. State Legislature*, 576 U.S. at 791 (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 292 (2004) (plurality opinion)); *see also Rucho v. Common Cause*, 588 U.S. 684, 718 (2019) ("Excessive partisanship in districting leads to results that reasonably seem unjust."). The Legislature cannot advance a compelling interest in a practice that is incompatible with the fundamental concept of democracy. *See* Utah Const. art. I, § 27 ("Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.").

The Legislature also lacks any interest in shielding the government from litigation by the citizenry for violation of the requirements established by initiative. *See, e.g.*, Utah Const. art. I, § 11 ("All courts shall be open, and every person, for an injury done to the person in his or her person . . . shall have a remedy by due course of law . . . ."); *see also* Utah Code § 78A-3-102(4)(c) (conferring Utah Supreme Court with original appellate jurisdiction over cases involving

"reapportionment of election districts"). Defendants have no conceivable interest—compelling or otherwise—in avoiding the substance of the Proposition 4 reforms.

In their briefing in the Supreme Court, Defendants suggested that S.B. 200 advanced a compelling government interest in remedying what they perceived to be constitutional flaws in Proposition 4, although they did not brief those concerns on appeal. *See LWVUT*, 2024 UT 21, ¶ 194 (noting that Defendants asserted but did not brief the constitutionality of Proposition 4's provisions). Accordingly, the Court did not address Proposition 4's constitutionality. *Id.* Although Defendants' briefing has been vague, it has cited two constitutional arguments in support of its repeal of Proposition 4: (1) the involvement of the Chief Justice in the redistricting process; and (2) Article IX, Section 1, which sets a timeline for the Legislature to ensure Utah has new redistricting maps following each decennial Census.

A. Elimination of Proposition 4's involvement of the Chief Justice does not allow S.B. 200 to survive strict scrutiny.

Proposition 4 created two tasks for the Chief Justice in the redistricting process: (1) appointing commissioners if the designated appointing authority failed to do so, Utah Code § 20A-19-201(10) (2018); and (2) selecting compliant maps if the Commission failed to agree upon recommendations to the Legislature, *id.* § 20A-19-203(2). Although Defendants have not developed the argument, they have suggested that the involvement of the Chief Justice in the Commission process is "a violation of the separation of powers and a demand for an advisory opinion." Brief of Respondents Utah State Legislature et al. at 33, *LWVUT*, No. 220901712-SC (May 12, 2023). Even if fleshed out, this argument would fail to demonstrate that S.B. 200 satisfies strict scrutiny.

As an initial matter, even if the Legislature's purported constitutional concerns regarding the Chief Justice were correct, S.B. 200 is not "narrowly tailored to advance" that interest because

it did far more than remove the Chief Justice from the redistricting process. *LWVUT*, 2024 UT 21, ¶ 202. Rather, "S.B. 200 eliminated the prohibition of partisan gerrymandering, the mandatory neutral redistricting criteria, . . . the enforcement mechanism, [and] allowed the Legislature to reject the Independent Commission's maps without explanation." *LWVUT*, 2024 UT 21, ¶ 87. Indeed, S.B. 200 repealed and replaced Proposition 4 in its entirety.

Moreover, Defendants are wrong to suggest that the Chief Justice's role raised constitutional concerns, either by violating the separation of powers or inviting an advisory opinion. Article V, Section 1 of the Constitution provides that there are three branches of government and states that "no person charged with the exercise of powers properly belonging to one of [the] departments, shall exercise any functions appertaining to either of the others." Utah Const. art. V, § 1. Including a role for the Chief Justice in the redistricting process does not run afoul of this provision because the roles do not require the Chief Justice to exercise an exclusive power of a different branch.

In *In re Young*, the Supreme Court explained that for a power or function to implicate Article V, Section 1, it "must be so inherently legislative, executive or judicial in character that they must be exercised exclusively by their respective departments." 1999 UT 6, ¶ 14, 976 P.2d 581 (cleaned up). These are powers or functions that are "primary," "core," or "essential" to a particular branch. *Id.* Importantly, the Court explained that "[a] necessary corollary to the doctrine that some powers or functions belong exclusively to the members of one branch is that there must be powers and functions which may, in appearance, have characteristics of an inherent function of one branch but which may be permissibly exercised by another branch." *Id.*

Based on that reasoning, the Court held that the Judicial Conduct Commission did not violate separation of powers by including as members legislators appointed by legislative

leadership. *Id.* ¶¶ 1, 26. First, "the commission does not . . . purport to perform a function that is inherently and exclusively judicial, such as entering judgment" *Id.* ¶ 26. Second, "the commission makes only nonbinding recommendations to this Court." *Id.* For these reasons, legislators' cross-branch service on the Judicial Conduct Commission did not run afoul of separation of powers because its members did not exercise any powers that are "essential, core, or inherent in the very concept of one of the three branches." *Id.*

The same is true here. The Independent Redistricting Commission does not engage in any conduct inherent to the very concept of the Legislature—*e.g.*, it does not enact laws or override gubernatorial vetoes. Rather, just like the Judicial Conduct Commission, it makes "nonbinding recommendations" to the Legislature. *See id.* The Supreme Court recognized as much when it explained that Proposition 4 "did not take the authority to enact electoral maps from the Legislature and give it to the Independent Commission;" rather "the Legislature retained the ultimate responsibility for 'divid[ing] the state into congressional, legislative, and other districts.'" *LWVUT*, 2024 UT 21, ¶ 197 (quoting Utah Const. art. IX, § 1).

There also is no merit to the convention that the Chief Justice would be issuing an "advisory opinion" by selecting a map to propose to the Legislature in the event the Commission were unable to select one. In *Utah Transit Authority v. Local 382 of Amalgamated Transit Union*, the Supreme Court held that the Judicial Power Clause of Article VIII, Section 1 implies "a prohibition on the issuance of advisory opinions by our courts." 2012 UT 75, ¶ 23, 289 P.3d 582. But Proposition 4 does not implicate the Judicial Power Clause because it does not task a *court* with issuing an advisory opinion (or judgment of any kind), but rather tasks a single governmental official with potentially recommending a map to the Legislature. *See* Utah Const. art. VIII, § 1. The involvement of a single government official, the Chief Justice, in potentially recommending a map

to the Legislature in his role on the Commission is not an exercise of the Judicial Power.[2] Whatever limitation the Judicial Power Clause imposes on *courts* issuing advisory opinions, it cannot apply to governmental actions that are not undertaken by courts pursuant to that Clause. Defendants do not—and could not—contend that the Commission unconstitutionally issues an "advisory opinion" by recommending to the Legislature what it views to be a lawful map. Substituting "Chief Justice" for the Commission does not somehow convert the task into a power exercised pursuant to the Judicial Power Clause.

In any event, Plaintiffs do not contend that S.B. 200's changes to the Commission structure and map recommendation process—including its elimination of the role of the Chief Justice—impaired Proposition 4's reforms. Indeed, as Plaintiffs explain below, they believe this aspect of S.B. 200 is severable from its unconstitutional components that must be held invalid. *See supra* Part IV. In that regard, Defendants' position regarding the Chief Justice's involvement is irrelevant because the Chief Justice will not be involved in the Commission process should the Court agree with Plaintiffs' position.

[2] Nor is it unusual for the Utah Code to call upon the Chief Justice or other members of the judiciary to recommend the adoption of legislation or participate in cross-branch activities. *See, e.g.*, Utah Code § 78A-2-104(5)(c)(ii) (requiring the Judicial Council to provide "recommendations for legislation"); *id.* § 26B-5-803(3) (requiring Utah Behavioral Health Commission, including members of judiciary appointed by Chief Justice, to report recommendations to the Legislature); *id.* § 78A-2-113 (authorizing Governor, President of Senate, Speaker of the House, and Chief Justice to implement judicial hiring freeze); *id.* § 63O-2-301(1)(c) (requiring State Capitol Preservation Board, which includes Chief Justice or a designee, to submit a budget request to the Legislature and Governor).

B. Article IX does not provide a basis for S.B. 200 to survive strict scrutiny.

Defendants have suggested an argument that Proposition 4 violates Article IX, Section 1 by intruding on the Legislature's redistricting power. But Article IX does not provide a basis for S.B. 200 to survive strict scrutiny.

Article IX, Section 1 provides that "[n]o later than the annual general session next following the Legislature's receipt of the results of an enumeration made by the authority of the United States, the Legislature shall divide the state into congressional, legislative, and other districts accordingly." Utah Const. art. IX, § 1.

In *LWVUT*, the Supreme Court responded to concerns raised by the Governor in an amicus brief about Article IX, Section 1. The Court was clear that Proposition 4 "did not take the authority to enact electoral maps from the Legislature and give it to the Independent Commission." 2024 UT 21, ¶ 197. "Rather, it empowered the Independent Commission to create proposed maps, which the Legislature was required to consider." *Id.*

Accordingly, the Court explained that

> to establish that Proposition 4 violated the Utah Constitution, a party would have to show that article IX, section 1 does more than grant the Legislature authority to enact legislation setting congressional boundaries. They would have to show that the provision prohibits the people from using their own legislative power to, for example, enact statutory standards for the redistricting process, or establish an independent commission to create proposed maps that the Legislature is required to consider.

2024 UT 21, ¶ 198. Defendants cannot make that showing. The plain text and structure of the Constitution imposes no limit on the People's power to enact redistricting-related legislation.

Defendants' position thus runs headlong into the guarantee of Article VI, Section 1 that the People may "initiate *any desired legislation*." Utah Const. art. VI, § 1(2)(a)(i)(A) (emphasis

added). The Constitution expressly provides that there is no topical limitation on the type of legislation the People may initiate.

Utah courts have reliably protected this constitutional right to self-government. In this case, the Utah Supreme Court explained that in adding the initiative power through constitutional amendment, the People "took back an equal measure of legislative power" from the Legislature. *LWVUT*, 2024 UT 21, ¶ 67. The only limitation on the subject matter of an initiative that the Court has found is that it must be "legislative in nature." *Id.* ¶ 170. In *Carter v. Lehi City*, the Court explained that "[o]n its face, article VI recognizes a single, undifferentiated 'legislative power,' vested both in the people and in the Legislature" and that there was not "any difference" between the powers of the People and the Legislature to enact legislation. 2012 UT 2, ¶ 22, 269 P.3d 141. "[A]rticle VI nowhere indicates that the scope of the people's initiative power is less than that of the Legislature's power, or that the initiative power is derived from or delegated by the Legislature." *Id.* ¶¶ 30–31 (holding that "[t]he people's initiative power reaches to the *full extent of the legislative power*" (emphasis added)).

To be sure, Article IX, Section 1 tasks the Legislature with engaging in redistricting after each decennial Census. But this enumerated legislative power must be read "in harmony with the rest of the constitution." *LWVUT*, 2024 UT 21, ¶ 9.[3] Nothing in the text of Article IX, Section 1 indicates that the People *cannot* enact legislation regarding redistricting or that redistricting is a topical exception to the People's initiative power.

[3] *See also Am. Bush v. City of South Salt Lake*, 2006 UT 40, ¶ 18, 140 P.3d 1235 ("[W]hen determining the meaning of a constitutional provision, 'other provisions dealing generally with the same topic . . . assist us in arriving at a proper interpretation of the constitutional provision in question.'"); *Berry by and through Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 675 (Utah 1985) (explaining that the meaning of a constitutional provision "must be taken not only from its history and plain language, but also from its functional relationship to other constitutional provisions.")

Defendants would have the Court imply such a prohibition because Article IX is silent with respect to the People's initiative power. But that silence is irrelevant because Article VI answers the question in express textual terms—the People may "initiate any desired legislation." Utah Const. art. VI, § 1(2)(a)(i)(A). Reading the two provisions together, as the Court must, compels the conclusion that Article IX places no prohibition on the People's power to enact initiatives regarding redistricting.

The Court's analysis in *Mawhinney v. City of Draper* further compels this conclusion. 2014 UT 54, 342 P.3d 262. There, the Court explained that in ascertaining whether an initiative is appropriately legislative, rather than administrative, in nature, "it is helpful to compare an action in question to those actions undertaken by the Utah Legislature pursuant to the specific powers granted to that body in the Utah Constitution." *Id.* ¶ 14. In *Mawhinney*, the question was whether an initiative regarding a tax levy was legislative rather than administrative. The Court explained that its "conclusion that levying a tax is an exercise of legislative power is consistent with the fact that levying taxes is a power given to the Legislature by the Utah Constitution." *Id.* ¶ 18. That is, the Constitution's specific reference to the Legislature's power to enact certain legislation *confirms* that the People may likewise do so pursuant to their power to "initiate any desired legislation." Utah Const. art. VI, § 1(2)(a)(i)(A). This court should decline Plaintiffs' invitation to read constitutional provisions in isolation to deny the People their right to enact redistricting initiatives.

Were it otherwise, the Constitution would—through silence—wall off large swaths of public life from the People's initiative power. *See, e.g.*, Utah Const. art. XIII, § 3 (authorizing Legislature to levy property taxes on public property, to exempt certain property from property taxes, and to provide for remission or abatement of taxes of the poor); *id.* art. XIII, § 4 (authorizing Legislature to levy taxes other than property taxes, including income taxes); *id.* art. X, § 2

(authorizing Legislature to create certain public schools and impose certain fees for secondary schools); *id.* art. I, § 6 (authorizing Legislature to define the lawful use of firearms).[4] A conclusion that only the Legislature can enact legislation related to redistricting, taxes, public education, and firearm regulation is wholly incompatible with Article VI's "relatively unlimited legislative power reserved by the people," *Carter*, 2012 UT 2, ¶ 30, to "initiate any desired legislation," Utah Const. art. VI, § 1(2)(a)(i)(A).

Far from bestowing unlimited authority over redistricting on the Legislature, Article IX *limits* the Legislature's discretion. Both the Legislature and the People hold the power to enact redistricting legislation by virtue of their status as the "Legislative Department" of the State. *See* Utah Const. art. VI, § 1. In most contexts, the Legislature and the People have discretion to legislate or *not* legislate as they see fit. But Article IX limits that discretion regarding whether and when to enact redistricting legislation. Specifically, Article IX imposes an affirmative obligation on the Legislature to draw new electoral maps after each decennial Census. In doing so, it acts as a restriction on the Legislature's discretion, not as a font of exclusive power.

[4] *See also, e.g.*, Utah Const. art. VII, § 18 (authorizing Legislature to set salaries for state officers); *id.* art. XIII, § 2 (authorizing Legislature to enact statutes regarding the valuation of agricultural land, livestock, and intangible property for property taxation purposes); *id.* art. XIII, § 5 (requiring Legislature to provide for tax revenue sufficient to meet State expenses); *id.* art. XIII, § 6 (authorizing Legislature to enact statutes permitting State Tax Commission to assess mines and public utilities, provide Commission other taxing authority, and to authorize courts to adjudicate matters decided by the Tax Commission); *id.* art. XIII, § 7 (authorizing Legislature to provide for judicial review of county board of equalization matters); *id.* art. X, § 1 (requiring Legislature to provide for public school system); *id.* art. X, § 5 (authorizing Legislature to make certain appropriations regarding public schools); *id.* art. X, § 7 (authorizing Legislature to provide for necessary administrative costs related to proceeds of land grants for state universities and colleges).

The U.S. Supreme Court agrees. In *Lawyer v. Dep't of Justice*, the Court considered a provision in Florida's Constitution akin to Article IX, Section 1. 521 U.S. 567, 577 n.4 (1997).[5] The Court rejected the argument that the provision "provides the exclusive means by which redistricting can take place," because "this article in terms provides only that the state Legislature is bound to redistrict with a certain time period after each decennial census, for which it may be required to convene." *Id.*

The same is true here. Article IX, just like the Florida provision interpreted by the U.S. Supreme Court in *Lawyer*, compels the Legislature to enact redistricting maps every ten years to ensure that Utah has new, equally populated district maps. It does not—and cannot—limit the People's legislative power on the topic, just as it does not limit the power of the judiciary to adjudicate the lawfulness of an adopted map or issue a mandatory injunction imposing a lawful remedial map if necessary. *See, e.g.*, *Growe v. Emison*, 507 U.S. 25, 33 (1993) ("[S]tate courts have a significant role in redistricting. . . . 'The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the State in such cases has been specifically encouraged'" (quoting *Scott v. Germano*, 381 U.S. 407, 409 (1965))). Article IX does not provide a compelling justification for S.B. 200's impairment of Proposition 4's reforms.

[5] *See* Fla. Const. art. III, § 16 ("The Legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state in accordance with the constitution of the state and the United States . . . .")

IV. The Court should enjoin the unconstitutional aspects of S.B. 200 and find its other provisions severable.

This Court should enjoin the unconstitutional aspects of S.B. 200 and sever the rest.[6] The end result is that some provisions of Proposition 4 are revived and some provisions of S.B. 200—the constitutional ones—remain in effect.

"The general rule is 'that statutes, where possible, are to be construed so as to sustain their constitutionality.'" *State v. Lopes*, 1999 UT 24, ¶ 18, 980 P.2d 191 (quoting *Celebrity Club Inc. v. Utah Liquor Control Comm'n*, 657 P.2d 1293, 1299 (Utah 1982)). "Accordingly, if a portion of the statute might be saved by severing the part that is unconstitutional, such should be done." *Id.* (quotation marks omitted).

Legislative intent is the touchstone of severability:

> To determine if a statute is severable from its unconstitutional subsection, we look to legislative intent. If the intent is not expressly stated, we then turn to the statute itself, and examine the remaining constitutional portion of the statute in relation to the stricken portion. If the remainder of the statute is operable and still furthers the intended legislative purpose, the statute will be allowed to stand.

Id. ¶ 19.

S.B. 200 did three things: (1) it amended two provisions of the Code (§§ 63G-7-201 and -301) related to private rights of action, (2) it enacted nine new Code sections (§§ 20A-20-101, -102, -103, -201, -202, -203, -301, -302, and -303), and (3) it repealed all nine of Proposition 4's Code sections (§§ 20A-19-101, -102, -103, -104, -201, -202, -203, -204, and -301).

[6] In particular, the Court should enjoin the following portions of S.B. 200's Section 12 "repealer" provision: Line 625, Line 626, Line 627, Lines 628-30 (only to the extent they repeal Utah Code § 20A-19-201(12)(a)), Line 635, and Line 638. The Court should enjoin S.B. 200 Section 11, which amended certain statutes to effectuate the elimination Proposition 4's cause of action. And the Court should enjoin the following codified aspects of S.B. 200: Utah Code § 20A-20-302(4)-(8) and Utah Code § 20A-20-303 (corresponding to S.B. 200 §§ 8 and 9). *See supra* Part II.

Of the nine new Code sections enacted by S.B. 200, only one entire section (§ 20A-20-303) and part of another (§ 20A-20-302(4)–(8)) must be invalidated as unconstitutional because they impair Proposition 4's reforms. Specifically, those are the provisions of S.B. 200 that neuter Proposition 4's redistricting standards and its requirement that the Legislature consider the Commission's proposed maps.

The remaining sections of S.B. 200 revised the Commission's structure and map selection process, among related things. Plaintiffs do not contend that these aspects reversed Proposition 4's reforms. These provisions are operable on their own and still further the initiative's purpose—even if they remove the role of the Chief Justice from the redistricting process. They are severable from S.B. 200's invalid Code sections, §§ 20A-20-302(4)–(8) and 20A-20-303.

In summary, the revised Commission structure and map selection process created by S.B. 200 can coexist alongside the key reforms from Proposition 4, which will be reinstated by an injunction against the unconstitutional repealer and amendment aspects of S.B. 200.[7]

The Court should enjoin the aspects of S.B. 200 that reversed Proposition 4's reforms while allowing the revised Commission structure adopted by S.B. 200 to stand alongside the reinstated key aspects of Proposition 4.

V. The Court should enjoin H.B. 2004, which enacted the congressional map.

The Court should also enjoin Defendants from enforcing or implementing H.B. 2004, the legislation that enacted the current congressional map, in any future election after the November

[7] The bulk of the unconstitutional aspects of S.B. 200 arise from its amendment and repealer provisions. The effect of the injunction sought by Plaintiffs would be to (1) return §§ 63G-7-201 and -301 to their pre-S.B. 200 form; and (2) resurrect the following Proposition 4 Code provisions: Utah Code § 20A-19-102, -103, -104, -201(12)(a), -204, and -301. The Proposition 4 Code sections that would remain repealed are §§ 20A-19-201(1)-(11) & 12 (b)-(c), 20A-19-202, and 20A-19-301, which relate to the Commission structure and map selection process. Those would be replaced by the S.B. 200 Code sections remaining in effect.

2024 election. *See* Utah Code § 20A-19-301(2) (2018). As the Supreme Court held, the lawfulness of the congressional map—which was not enacted pursuant to Proposition 4's requirements—is necessarily "encompass[ed]" within Count V. *LWVUT*, 2024 UT 21, ¶ 61.[8]

It is undisputed that the current congressional map was not enacted pursuant to Proposition 4's "standards, procedures, and requirements" regarding nonpartisan redistricting. Utah Code § 20A-19-301(2) (2018). At a minimum, Defendants do not and cannot dispute that the congressional map was not enacted pursuant to Proposition 4's *procedural* requirements regarding how the Legislature enacts a map. In enacting the congressional map, the Legislature did not (1) vote to enact without material change or reject the Commission's recommended maps, *see* Utah Code § 20A-19-204(2)(a) (2018); (2) make its proposed congressional map available for ten days prior to enactment, *see* Utah Code § 20A-19-204(4) (2018); or (3) issue a written report explaining its decision and why its map better satisfies the mandatory, neutral criteria of § 20A-19-204(5)(a) (2018). In addition, the map itself violates Proposition 4's substantive redistricting criteria, including the prohibition on partisan gerrymandering. But the Court need not resolve those substantive issues because the map must be enjoined on the undisputed procedural violations.

Because it was not enacted pursuant to Proposition 4's requirements, "the Congressional Map cannot stand." *LWVUT*, 2024 UT 21, ¶ 222. The Court should permanently enjoin H.B. 2004 to ensure the current congressional map is not enforced or implemented in any election following the November 2024 election.

[8] Plaintiffs intend to seek leave to file an amended complaint that will, *inter alia*, additionally allege Defendants' violations of Proposition 4's procedural requirements as a separate count, but those violations necessarily remain encompassed within Count V. *See* Utah R. Civ. P. 8(e) (allowing plaintiffs to state a claim in one count or in separate counts).

VI. The Court should retain jurisdiction and set a schedule for remedial proceedings to ensure that a lawful map is in effect for use in the 2026 congressional elections.

Proposition 4 provides that "[u]pon issuance of a permanent injunction, . . . the Legislature may enact a new or alternative redistricting plan that abides by and conforms to the redistricting standards, procedures, and requirements of this chapter." Utah Code § 20A-19-301(8) (2018).

To ensure a lawful map is in place in time to govern the 2026 elections, Plaintiffs respectfully request that the Court enter an Order governing the remedial proceedings as follows:

1. The Court should permanently enjoin H.B. 2004 (the current congressional map) and retain jurisdiction to conduct remedial proceedings.

2. The Court should set a reasonable deadline for the Legislature to (a) exercise its option, if it so chooses, to enact a new or alternative map that "abides by and conforms to the redistricting standards, procedures, and requirements" of Proposition 4, Utah Code § 20A-19-301(8) (2018), and (b) file the map (via its Block Equivalency File in .CSV format) with the Court and serve the parties.

Thirty days would be a reasonable and appropriate amount of time for the Legislature to consider the three maps the Commission has already recommended, vote on them, and if it declines to adopt a Commission-recommended map, follow Proposition 4's requirements for enacting a different map. Such a timeframe is consistent with, and indeed more generous, than what other courts, both federal and state, have provided Legislatures in other redistricting litigation.[9]

[9] *See, e.g.*, Order, *Caster v. Allen*, No. 2:21-cv-01536-AMM (N.D. Ala. June 20, 2023), Doc. 156, *stay denied*, *Allen v. Milligan*, 144 S. Ct. 476 (2023) (Mem.) (providing Alabama Legislature 31 days); *Robinson v. Ardoin*, 37 F.4th 208, 232 (5th Cir. 2022) (affirming order providing 14 days); *Turtle Mountain Band of Chippewa Indians v. Howe*, No. 3:22-cv-22, 2023 WL 8004576, at *17 (D.N.D. Nov. 17, 2023) (providing Legislature 35 days); *Calvin v. Jefferson Cnty. Bd. of Comm'rs*, 172 F. Supp. 3d 1292, 1326 (N.D. Fla. 2016) (providing 16 days); *Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016) (providing 14 days); *Larios v. Cox*, 300 F. Supp. 2d 1320, 1356 (N.D. Ga. 2004), *aff'd*, 542 U.S. 947 (2004) (providing 19 days); *Common Cause v. Lewis*, No. 18

3. By the same deadline the Court sets for the Legislature to enact a revised map, the Court should require the Plaintiffs and any other parties to file proposed remedial maps, along with any accompanying expert reports and supportive materials, with the Court in the event that (a) the Legislature chooses not to or fails to succeed in enacting a remedial map, or (b) Plaintiffs contend that the legislatively enacted remedial map fails to "abide[ ] by and conform[ ] to the redistricting standards, procedures, and requirements" of Proposition 4. Utah Code § 20A-19-301(8) (2018).

4. The Court should set a subsequent deadline—Plaintiffs recommend 14 days later—for the parties to file briefs setting forth any objections to any legislatively enacted map or any remedial maps proposed by the parties, along with any accompanying expert reports and supporting materials.

5. The Court should schedule an evidentiary remedial hearing to take testimony and evidence on the foregoing maps and objections.

6. Following the hearing, the Court should issue a remedial order that determines whether the legislatively enacted remedial map, if one is enacted, "abides by and conforms to the redistricting standards, procedures, and requirements" of Proposition 4, Utah Code § 20A-19-301(8) (2018). If it does not, the Court should permanently enjoin it. If the Legislature chooses not to adopt such a remedial map, or if the Court enjoins the remedial map as failing to comply with Proposition 4, the Court should order into effect a remedial map to ensure that Utah has a congressional map in place in time to govern the 2026 elections that complies with the Utah Constitution's equal population requirement, *see* Utah Const. art. I, §§ 2, 24, and the requirements

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CVS 014001, 2019 WL 4569584, at *134 (N.C. Super. Ct., Sept. 3, 2019) (providing Legislature two weeks); *League of Women Voters of Pa. v. Commonwealth*, 175 A.3d 282, 290 (Pa. 2018) (providing Legislature 18 days).

of Proposition 4, *see Growe*, 507 U.S. at 33 (holding that state courts are empowered to impose maps in the absence of lawfully enacted map).

7. The Court should set a subsequent schedule for briefing on Plaintiffs' claim for attorneys' fees, costs, and expenses. *See* Utah Code § 20A-19-301(5) (2018).

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion for summary judgment and schedule remedial proceedings to ensure that Utah voters can cast their ballots in the 2026 election pursuant to lawful maps.

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Respectfully submitted,

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