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**Admitted Pro Hac Vice*

**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 MIKE SCHULTZ, in his
official capacity; SENATOR J. STUART
ADAMS, in his official capacity; and
LIEUTENANT GOVERNOR DEIDRE
HENDERSON, in her official capacity,

Defendants.

**PLAINTIFFS'
MOTION TO FILE
SUPPLEMENTAL
COMPLAINT**

Case No. 220901712

Honorable Dianna Gibson

INTRODUCTION

Pursuant to Utah Rule of Civil Procedure 15(d), Plaintiffs respectfully move for leave to file a supplemental complaint “setting out . . . event[s] that happened after the date of the [original] pleading” in this case. Utah R. Civ. P. 15(d). Plaintiffs respectfully request that the attached proposed Supplemental Complaint (Ex. A) be accepted and docketed as filed.

BACKGROUND

On July 11, 2024, on interlocutory appeal of this case, the Utah Supreme Court held that the Utah Constitution protects the people’s fundamental constitutional right to alter or reform the government through initiatives and that the Legislature cannot subsequently act to impair such a reform initiative unless it does so in a way that is narrowly tailored to further a compelling government interest. *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 74 (“*LWVUT*”). The Court then remanded the case to this Court for further proceedings on Plaintiffs’ Count V, *id.* at ¶ 13, and in light of this decision, Plaintiffs filed their First Amended Complaint on August 30, 2024.

Since the case was remanded, the Utah Legislature convened in a special “emergency” session and adopted S.J.R. 401, which proposes a constitutional amendment that would fundamentally undermine the *LWVUT* decision, taking for the Legislature the power held by the people. *See* S.J.R. 401, Proposal to Amend Utah Constitution – Voter Legislative Power, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), <https://le.utah.gov/~2024S4/bills/static/SJR401.html>. The constitutional amendment proposed by S.J.R. 401 would allow the Legislature to amend or repeal for any reason any law passed via ballot initiative. *See id.* Pursuant to Article XXIII, § 1 of the Utah Constitution, the proposed amendment must now be submitted to the voters for approval or

rejection at the next general election, via ballot language drafted by the Speaker of the House and the President of the Senate. *See* Utah Code § 20A-7-103(3). That ballot language—certified by the Lieutenant Governor on September 3, 2024—is flagrantly misleading and grossly misrepresents the substance and effects of the proposed amendment.

Plaintiffs thus seek to supplement their Amended Complaint to add supplemental factual allegations and claims for relief regarding the Utah Legislature’s efforts to undo Plaintiffs’ win at the Utah Supreme Court through the use of false and misleading ballot language intended to trick Utah voters into giving up their constitutional rights.

ARGUMENT

The Court should grant Plaintiffs’ motion to file a supplemental complaint. “On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” Utah. R. Civ. P. 15(d). This Court has broad discretion in granting such a motion. *Rowley v. Milford City*, 10 Utah 2d 299, 301, 352 P.2d 225, 226 (1960). A motion to file a supplemental pleading “should be freely granted,” if doing so would not be “unjust.” *Harvey v. Ute Indian Tribe of Uintah & Ouray Rsrv.*, 2017 UT 75, ¶ 56. Additionally, “the fundamental purpose” of Utah’s liberalized pleading rules “is to afford parties the privilege of presenting whatever legitimate contentions they have pertaining to their dispute.” *Williams v. State Farm Ins. Co.*, 656 P.2d 966, 971 (Utah 1982) (internal citation omitted).

While the Utah Supreme Court has “rarely had the opportunity to address” Rule 15(d), the standard for granting a motion under Rule 15(d) is “very similar to that under 15(a).” *Harvey*, 2017 UT 75, ¶¶ 55-56. Thus, the motion should be “liberally” granted unless it includes “untimely, unjustified, and prejudicial factors.” *Daniels v. Gamma W. Brachytherapy, LLC*, 2009 UT 66, ¶ 58;

see also Harvey, 2017 UT 75, ¶ 56 (applying Rule 15(a) standard to 15(d)). Here, Plaintiffs’ motion is timely, justified, and does not prejudice Defendants, and should therefore be granted.

The motion is not untimely. A motion may be untimely when it is “filed in the advanced procedural states of the litigation process,” *Daniels*, 2009 UT 66, ¶ 59 (citation omitted), but there is no bright-line rule on timeliness, *Kelly v. Hard Money Funding, Inc.*, 2004 UT App 44, ¶ 28. In *Savage v. Utah Youth Village*, the Utah Supreme Court found no error in a finding of timeliness when a motion to amend was filed eleven months after the deadline to do so, three months after the case was certified for trial, and only four weeks before trial. 2004 UT 102, ¶ 10; *see also Harvey*, 2017 UT 75, ¶¶ 57-58 (affirming finding of untimeliness when motion to supplement was brought *after* briefing and oral argument on dispositive motions). This litigation remains in the early stages. Briefing is ongoing on Plaintiffs’ Motion for Summary Judgment, and oral argument has not yet been scheduled. The motion to supplement here was made just *two days* after the certification of the ballot language that gave rise to the claims raised, and long before any trial dates have been set. The motion is thus not untimely.

The motion is justified. A motion to amend or supplement a complaint may be unjustified where the moving party had knowledge of the events at issue before filing the original complaint, or when the motion is filed in bad faith or after unreasonable neglect. *Swan Creek Vill. Homeowners v. Warne*, 2006 UT 22, ¶ 22. That is not this case. As explained, Plaintiffs seek to file a supplemental complaint because Defendants’ used misleading ballot language to induce the people to vote for the Legislature’s proposed constitutional amendment. Plaintiffs’ original complaint was filed March 17, 2022, and their first amendment complaint was filed August 30, 2024, after the remand from the Utah Supreme Court. The latest ballot language a was certified by the Lieutenant Governor on September 3, 2024. So Plaintiffs could not have alleged the facts in

the Supplemental Complaint in a prior pleading. The motion is also not filed in bad faith, nor due to any neglect on Plaintiffs' part: the ballot language is confusing and misleading and risks depriving Plaintiffs of their fundamental constitutional rights, and Plaintiffs filed this motion within days of becoming aware of this fact.

The motion would not prejudice Defendants. A motion is prejudicial when the opposing side faces has no time to prepare a response. *Aurora Credit Servs., Inc. v. Liberty W. Dev., Inc.*, 970 P.2d 1273, 1282 (Utah 1998). The scope of the “prejudice” rule is limited to those situations causing “undue and substantial prejudice”; the practical burdens on the opposing party of responding to a supplemental pleading are not sufficient, and “[m]ere inconvenience to the opposing party is *not* grounds” for denial of a motion to supplement. *Swan Creek Vill. Homeowners*, 2006 UT 22, ¶ 21; *Kelly*, 2004 UT App 44, ¶ 31 (emphasis in original; internal citation omitted). Here, Defendants face no undue or substantial prejudice because they will have ample opportunity to respond to Plaintiffs' supplemental complaint. And at any rate, the Defendants brought this situation upon themselves by submitting misleading ballot language shortly before the general election. Furthermore, when a government enacts a new law while related litigation is already pending, “[t]he interest of judicial economy . . . militates in favor of allowing supplemental pleadings.” *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 625 (6th Cir. 2016).¹ “When a dispute is complicated and protracted, and a new complaint is the likely alternative, allowing supplemental pleadings before a court already up to speed is often the most efficient course.” *Id.* Thus, this motion promotes efficiency and economy for the court and the parties. It is not prejudicial.

¹ Because the language in Utah's Rule 15 is identical to its federal counterpart, federal caselaw is instructive. *Compare* Utah R. Civ. P. 15(d) *with* Fed. R. Civ. P 15(d).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion for Leave to File Plaintiffs' Supplemental Complaint and direct the Clerk to docket as filed the attached proposed Supplemental Complaint.

September 5, 2024

Respectfully submitted,

/s/ David C. Reymann

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CERTIFICATE OF SERVICE

I filed this motion on the Court's electronic filing system, which will email everyone requiring notice.

September 5, 2024

/s/ Kade N. Olsen

EXHIBIT A

If you do not respond to this document within applicable time limits, judgment could be entered against you as requested.

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UTAH STATE LEGISLATURE, UTAH
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Defendants.

**PLAINTIFFS' FIRST
SUPPLEMENTAL
COMPLAINT**

Case No. 220901712

Honorable Dianna Gibson

Pursuant to Rule 15(d) of the Utah Rules of Civil Procedure, Plaintiffs file this First Supplemental Complaint setting forth events that occurred after the filing of this action and pleading additional claims based on those events. This First Supplemental Complaint is filed in addition to, not in replacement of, Plaintiffs' First Amended Complaint. Plaintiffs allege as follows:

INTRODUCTION

1. On July 11, 2024, the Utah Supreme Court held that Article I, Section 2 of the Utah Constitution protects Utahns' ability to alter or reform their government through citizen initiative. *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21 ("*LWVUT*"). In its decision, the Court did not categorically bar the Legislature from amending or repealing citizen initiatives, but rather held that the Constitution limits the Legislature's changes to those that further a government reform, and even changes that impair a reform may be made so long as they further a compelling government interest and are narrowly tailored. *Id.* at ¶ 11. The Court remanded to the district court for Plaintiffs to pursue their claim challenging the repeal of Proposition 4.

2. Outraged that a co-equal branch of government would interpret the Constitution in line with its text, history, and precedent, the Legislature responded to the Court's decision by trashing the Court in the media and calling a rushed special session on August 21, 2024. The special session unveiled SJR 401 ("Proposed Amendment"), a proposed constitutional amendment that would reverse the *LWVUT* decision and instead impose the Legislature's anti-democratic view of its own legislative power on the people. The Proposed Amendment aims to give the Legislature the ability to amend or repeal citizen initiatives virtually without limit, weakening the constitutional rights of Utahns to reform their government.

3. The Proposed Amendment was rushed through the Legislature, leaving the public less than an hour to testify, and passed with several laws amending election dates and procedures

to force the eleventh-hour amendment to fit the election calendar. Proving the problem, Utahns spoke out against the Proposed Amendment, but their views were ignored by the Legislature.

4. Following the rushed passage of the Proposed Amendment, Defendants Adams and Schultz, the leaders of the Senate and House, hastily drafted false and misleading ballot language for the Proposed Amendment. The Defendants' ballot language describes the exact opposite of the Proposed Amendment's actual text, to trick Utah voters into transferring their constitutional rights to the Legislature.

5. The Utah Legislature has repeatedly used anti-democratic measures, such as the rapid passage of the Proposed Amendment despite opposition and disingenuous ballot language, to retain power at Utahns' expense. However, Utah's voters are entitled to language that accurately describes the *constitutional amendment* they are considering on their ballot. The Proposed Amendment's ballot language provides the opposite. Defendants' misleading and inaccurate proposed language, which was certified by Defendant Henderson on September 3, 2024, violates (1) the Utah Constitution's and Code's requirements for submitting amendments to voters, Utah Const. art. XXIII, § 1, Utah Code § 20A-7-103(3); (2) the Free Elections Clause, *id.* art. I, § 17, (3) Plaintiffs' right to "communicate freely their thoughts and opinions," *id.* art. I, §§ 1 & 15, (4) Plaintiffs' right to vote, *id.* art. IV, § 2, and (5) Plaintiffs' right to be ensured free government, *id.* art. I, §§ 2 & 27.

PARTIES

6. The League of Women Voters of Utah ("LWVUT") has members who are registered voters in the State of Utah and who will vote in the November 5, 2024 election.

7. LWVUT's membership includes Utah registered voters who oppose the Proposed Amendment.

8. LWVUT and its membership are harmed by the Proposed Amendment. The Proposed Amendment's misleading and inaccurate ballot language injures LWVUT's ability to educate voters about the Amendment. The Proposed Amendment also intends to reverse the Utah Supreme Court's July 11, 2024 decision in LWVUT's favor, which reaffirmed LWVUT's and its members' right to alter or reform their government through ballot initiative without undue legislative interference.

9. As a consequence of the Proposed Amendment and its inaccurate and misleading ballot language, LWVUT will have to expend additional resources to educate voters about the Amendment's scope and impact along with increasing its efforts to encourage voters to oppose the Proposed Amendment.

10. LWVUT has standing on its own behalf and on behalf of its members, who, on their own, would have standing to challenge the Proposed Amendment and its misleading ballot language.

11. Mormon Women for Ethical Government ("MWEG") has members who are registered voters in the State of Utah and who will vote in the November 5, 2024 election.

12. MWEG's membership includes Utah registered voters who oppose the Proposed Amendment.

13. MWEG and its membership are harmed by the Proposed Amendment. The Proposed Amendment's misleading and inaccurate ballot injures MWEG's ability to educate voters about the Amendment. The Proposed Amendment also intends to reverse the Utah Supreme Court's July 11, 2024 decision in MWEG's favor, which reaffirmed MWEG's and its members' right to alter or reform their government through ballot initiative without undue legislative interference.

14. As a consequence of the Proposed Amendment and its inaccurate and misleading ballot language, MWEG will have to expend additional resources to educate voters about the Amendment's scope and impact along with its increasing efforts to encourage voters to oppose the Proposed Amendment.

15. MWEG has standing on its own behalf and on behalf of its members, who, on their own, would have standing to challenge the Proposed Amendment and its misleading ballot language.

16. Plaintiff Stefanie Condie opposes the Proposed Amendment and intends to vote against it in the November 5, 2024 election.

17. Plaintiff Condie will be injured if the Proposed Amendment is submitted to the voters using the adopted ballot language, because the language misleadingly describes the Proposed Amendment and its impact, and the Proposed Amendment seeks to reverse the Utah Supreme Court's July 11, 2024 decision reaffirming Plaintiff Condie's right to alter or reform her government through ballot initiative without undue legislative interference.

18. Plaintiff Wendy Martin opposes the Proposed Amendment and intends to vote against it in the November 5, 2024 election.

19. Plaintiff Martin will be injured if the Proposed Amendment is submitted to the voters using the adopted ballot language, because the language misleadingly describes the Proposed Amendment and its impact, and the Proposed Amendment seeks to reverse the Utah Supreme Court's July 11, 2024 decision reaffirming Plaintiff Martin's right to alter or reform her government through ballot initiative without undue legislative interference.

20. Plaintiff Malcom Reid opposes the Proposed Amendment and intends to vote against it in the November 5, 2024 election.

21. Plaintiff Reid will be injured if the Proposed Amendment is submitted to the voters using the adopted ballot language, because the language misleadingly describes the Proposed Amendment and its impact, and the Proposed Amendment seeks to reverse the Utah Supreme Court's July 11, 2024 decision reaffirming Plaintiff Reid's right to alter or reform his government through ballot initiative without undue legislative interference.

22. Plaintiff Victoria Reid opposes the Proposed Amendment and intends to vote against it in the November 5, 2024 election.

23. Plaintiff Reid will be injured if the Proposed Amendment is submitted to the voters using the adopted ballot language, because the language misleadingly describes the Proposed Amendment and its impact, and the Proposed Amendment seeks to reverse the Utah Supreme Court's July 11, 2024 decision reaffirming Plaintiff Reid's right to alter or reform her government through ballot initiative without undue legislative interference.

24. Plaintiff Jack Markman opposes the Proposed Amendment and intends to vote against it in the November 5, 2024 election.

25. Plaintiff Markman will be injured if the Proposed Amendment is submitted to the voters using the adopted ballot language, because the language misleadingly describes the Proposed Amendment and its impact, and the Proposed Amendment seeks to reverse the Utah Supreme Court's July 11, 2024 decision reaffirming Plaintiff Martin's right to alter or reform his government through ballot initiative without undue legislative interference.

26. Plaintiff Eleanor Sundwall opposes the Proposed Amendment and intends to vote against it in the November 5, 2024 election.

27. Plaintiff Sundwall will be injured if the Proposed Amendment is submitted to the voters using the adopted ballot language, because the language misleadingly describes the

Proposed Amendment and its impact, and the Proposed Amendment seeks to reverse the Utah Supreme Court’s July 11, 2024 decision reaffirming Plaintiff Sundwall’s right to alter or reform her government through ballot initiative without undue legislative interference.

28. Defendant Utah State Legislature passed the Proposed Amendment, SB 4002, and SB 4003 on August 21, 2024 and transmitted the Proposed Amendment to the Lt. Governor to be submitted to the voters at the November 5, 2024 election.

29. Defendants Sen. Adams and Rep. Schultz, in their official capacities as the Utah Senate President and House Speaker, voted in favor of the Proposed Amendment and drafted the Proposed Amendment’s ballot language.

30. Former Defendant House Speaker Rep. Brad Wilson retired from his position. Defendant Rep. Schultz is Rep. Wilson’s successor as House Speaker, and as such continues the actions of former speaker Rep. Wilson.

31. Defendant Lt. Governor Henderson, in her official capacity as Utah’s Chief Election Officer, received the Proposed Amendment, ballot title, and language from the legislative Defendants. Defendant Henderson exercises direct authority “over the conduct of elections for...statewide or multicounty ballot propositions,” Utah Code § 67-1a-2(2)(ii), and certified the Proposed Amendment’s ballot title and language for the November 5, 2024 election. Utah Code § 20A-7-103.1(1).

SUPPLEMENTAL FACTUAL ALLEGATIONS

The Utah Supreme Court Reaffirms Utahns’ Right to Alter or Reform Their Government Through Ballot Initiative

32. On July 11, 2024, the Utah Supreme Court 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. *LWVUT*, 2024 UT 21.

33. In its July 11 decision, the Court held that the “people’s right to alter or reform their government is protected from government infringement,” including through citizen initiatives. *LWVUT*, 2024 UT 21 ¶¶ 8, 10-11. Specifically, the Court held that “government-reform initiatives are constitutionally protected from unfettered legislative amendment, repeal, or replacement,” which “limits the Legislature’s authority to amend or repeal the initiative.” *Id.* at ¶ 11.

34. In so holding, the Court further held that “this does not mean that the Legislature cannot amend a government reform initiative at all. Rather, legislative changes that facilitate or support the reform, or at least do not impair the reform enacted by the people, would not implicate the people’s rights under the Alter or Reform Clause.” *Id.*

35. Moreover, the Court held that “[l]egislative changes that do impair the reforms enacted by the people could also survive a constitutional challenge, if the Legislature shows they were narrowly tailored to advance a compelling government interest.” *Id.*

In Direct Response to Supreme Court’s Decision, the Legislature Calls a Special Session to Decimate Utahns’ Rights

36. On July 11, 2024, immediately following the Court’s decision, Defendants Adams and Schultz issued a press release describing the Court’s decision as “one of the worst outcomes we’ve ever seen from the Utah Supreme Court.”¹

37. In direct response to the *LWVUT* decision, on August 19, 2024 the Legislature hastily announced it would convene an “emergency” special session just two days later on August

¹ See *Adams and Schultz Press Release*, Utah Senate (July 11, 2024), <https://senate.utah.gov/president-adams-and-speaker-schultz-respond-to-utah-supreme-court-decision/>.

21, 2024 to consider the Proposed Amendment. Utah State Legislature, *Legislative Special Session Proclamation*, <https://le.utah.gov/session/2024S4/Proclamation.pdf?r=1>; Utah Const. art. VI, § 2(3)(a).

38. The Proposed Amendment’s language was made public less than 24 hours before the August 21, 2024 special session.

39. The Proposed Amendment modifies Article I, Section 2 of the Constitution as follows, with the added language underlined: “All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government through the processes established in Article VI, Section 1, Subsection (2), or through Article XXIII as the public welfare may require.” SJR 401, Proposal to Amend Utah Constitution – Voter Legislative Power, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), <https://le.utah.gov/~2024S4/bills/static/SJR401.html>.

40. Likewise, the Proposed Amendment modifies Article VI, Section 1 of the Utah Constitution to (1) prohibit foreign individuals, entities, and governments from supporting or opposing initiatives or referenda and (2) provides that

Notwithstanding any other provision of this Constitution, the people’s exercise of their legislative power as provided in Subsection (2) does not limit or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature, or by a law making body of a county, city, or town, on behalf of the people whom they are elected to represent.

41. The Proposed Amendment eliminates the Constitution’s limits on the Legislature’s ability to interfere with Utahns’ right to alter or reform the government through a citizen initiative, instead amending the Constitution to state that the people’s legislative power “does not limit or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature...” *Id.* at § 2(4).

42. Section 3 of the Proposed Amendment required the Lieutenant Governor to submit the Proposed Amendment to the voters just over two months later, at the November 5, 2024 election.

43. To accommodate this short timeframe, the Legislature had to amend existing law and move election and ballot deadlines, including moving the deadline for the ballot title and language to September 1, 2024. Utah Code § 20A-7-103.1(1) (SB 4002).

44. The Legislature also previously made other changes to the existing procedure for constitutional amendments, such as removing the constitutional amendment ballot title drafting responsibility from the legislative general counsel and giving it instead to Defendants Adams and Schultz. *Id.* The Utah Code now requires the Speaker of the House and the President of the Senate to “draft and designate a ballot title for each proposed amendment . . . that [] summarizes the subject matter of the amendment . . . and [] summarizes any legislation that is enacted and will become effective upon the voters’ adoption of the proposed constitutional amendment.” Utah Code § 20A-7-103(3).

45. The Legislature also enacted contingent legislation (SB 4003) that takes effect if the proposed amendment is approved by voters. That legislation, *inter alia*, adds 20 days to the amount of time voters have to submit referendum signatures and provides that if during the next general session following adoption of an initiative the Legislature decides to amend it, it shall do so “in a manner that, in the Legislature’s determination, leaves intact the general purpose of the initiative.” S.B. 4003, Statewide Initiative and Referendum Amendments, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), <https://le.utah.gov/~2024S4/bills/static/SB4003.html>. The next provision exempts the Legislature from even that non-requirement if it determines that the initiative might have an adverse fiscal impact. This provision thus only purports to limit the Legislature during a

single general session and not at all if money is involved. Moreover, the provision appears unenforceable under the terms of the Proposed Amendment itself.

46. At the August 21, 2024 special session, less than an hour was provided for members of the public to provide testimony and the number of people permitted to testify was severely limited.

47. Plaintiff MWEГ testified against the Proposed Amendment at the August 21, 2024 special session.

48. Plaintiff LWVUT attempted to testify against the Proposed Amendment but was not permitted.

49. Plaintiff Victoria Reid attempted to testify against the Proposed Amendment but was not permitted.

50. A number of legislators, including both Republicans and Democrats, spoke out against the Proposed Amendment.

51. For example, Sen. Thatcher (R-West Valley City), who voted against the Proposed Amendment, said unlike proponents' claims, the *LWVUT* decision did not eliminate the Legislature's ability to amend reform initiatives, and warned that the Proposed Amendment would "give us the biggest black eye we've ever had in the Legislature."²

52. Nevertheless, the Legislature passed the Proposed Amendment, SB 4002, and SB 4003 on August 21, 2024.

53. Governor Cox signed both SB 4002 and 4003 on August 22, 2024.

² Katie McKellar, *Utah Legislature asks voters to change constitution, skirt Supreme Court ballot initiatives ruling*, Utah News Dispatch (Aug. 21, 2024), <https://utahnewsdispatch.com/2024/08/21/utah-legislature-asks-voters-change-constitution-skirt-supreme-court-ballot-initiatives-ruling/>

Defendants Adams and Schultz Drafted Misleading and Inaccurate Ballot Language for the Proposed Amendment

54. Defendants Adams and Schultz drafted and submitted the Proposed Amendment's ballot title and language to Defendant Henderson on September 1, 2024.

55. Defendant Henderson certified the Proposed Amendment's ballot title and language on September 3, 2024. The deadline to certify constitutional amendments for the November 2024 ballot has passed. Utah Code § 20A-7-103.1(1) & (2).

56. As certified by Defendant Henderson, the Proposed Amendment's language reads as follows:³

Constitutional Amendment D

Should the Utah Constitution be changed to strengthen the initiative process by:

- Prohibiting foreign influence on ballot initiatives and referendums.
- Clarifying the voters and legislative bodies' ability to amend laws.

If approved, state law would also be changed to:

- Allow Utah citizens 50% more time to gather signatures for a statewide referendum.
- Establish requirements for the legislature to follow the intent of a ballot initiative.

For () Against ()

57. As drafted and certified by Defendants, the Proposed Amendment's ballot language is misleading and inaccurate.

58. For example, rather than "strengthen[ing]" the citizen initiative process, the Proposed Amendment weakens Utahns' initiative rights by eliminating current constitutional limits on the Legislature's ability to appeal or amend citizen reform initiatives.

³ 2024 General Election Certification, Office of the Lieutenant Governor (Sept. 3, 2024), <https://vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf>.

59. Nor does the Proposed Amendment “clarify the voters and legislative bodies’ abilities to amend laws.” The actual text of the Proposed Amendment simply invents and imposes the Legislature’s preferred balance of power by eliminating an existing fundamental constitutional right. The result of the Proposed Amendment would be to reverse the clear text of the Utah Constitution and Supreme Court’s *LWVUT* decision, which limits the Legislature’s ability to amend or repeal reform initiatives, at the expense of Utah citizens.

60. The ballot language also states that if the Amendment is passed, state law would be “changed” to “establish requirements for the legislature to follow the intent of a ballot initiative.”

61. But state law *already* requires the Legislature to adhere to the intent of government reform initiatives. Moreover, that law (SB 4003) would allow the Legislature to amend any citizen initiative, as long as such action occurs at a special session, a general session after the first general session following the passage of the initiative, or “to mitigate an adverse fiscal impact of the initiative.” Utah Code § 20A-7-212 (3)(b)(i)-(ii). Moreover, the provision appears to violate the express terms of the Proposed Amendment, which leaves the Legislature free to amend or repeal initiatives for any or no reason at all. The ballot language discloses none of this.

62. After viewing the Proposed Amendment’s ballot language, numerous state legislators, both Republicans and Democrats, spoke out against the language as deceptive.

63. Rep. Raymond Ward (R-Bountiful) stated “I believe that ballot language that has been written by them is deceptive and it incorrectly claims that the effect is to strengthen the initiative process when, to me, it seems the main purpose of the amendment is to seriously weaken

the initiative process.” He continued, “I think it reads like an advertisement for [the amendment] as opposed to neutral language.”⁴

64. Rep. Marsha Judkins (R-Provo), who also voted against the Proposed Amendment, posted on social media “You have got to be kidding. What misleading language!”

65. Rep. Judkins elaborated on the inaccurate language of the Proposed Amendment, stating “What this language says in this new constitutional amendment being proposed is, ‘We can repeal it’ . . . This isn’t just changing it and trying to keep what voters have said through the initiative process. It’s actually repeal.”⁵

66. Under the Uniform Military and Overseas Voters Act, the first ballots for the November 2024 election will begin to be mailed on the 45th day before the election—this year that date is September 20, 2024. Utah Code § 20A-16-403. Ballots to most other Utah voters will be mailed beginning on October 15, 2024. Utah Code § 20A-3a-202(2)(a).

CAUSES OF ACTION

Count Nine

Violation of the Utah Constitution’s Requirement to Submit Constitutional Amendments to Voters for Approval or Rejection – Article XXIII, Section 1

67. Plaintiffs restate and incorporate by reference all allegations in this Complaint as though fully set forth in this paragraph.

68. Article XXIII, Section 1 provides that if two-thirds of all members elected to each house of the Legislature vote in favor of a proposed amendment, “the said amendment . . . shall be submitted to the electors of the state for their approval or rejection, and if a majority of the electors

⁴ Robert Gehrke, “Deceptive” and “Misleading”: Ballot language to limit voters’ initiative power thrashed by critics—including Republicans, Salt Lake Tribune (Sept. 4, 2024), <https://www.sltrib.com/news/politics/2024/09/04/ballot-language-limit-voters/>

⁵ *Id.*

voting thereon shall approve the same, such amendment . . . shall become part of this Constitution.”
Utah Const. art. XXIII, § 1.

69. If the Legislature, upon voting in favor of a proposed amendment, fails to “submit[]” the amendment to voters, it cannot become law. *Id.*

70. Proposed constitutional amendments are submitted to the electorate in the form of a ballot upon which voters express their choice to approve or reject the proposal. The plain language of Article XXIII requires that *the amendment* be submitted to voters on the ballot, not a misleading and false summary of it. The use of ballot language for a proposed amendment that is misleading, deceptive, inaccurate, biased, or unreasonable deprives voters of their constitutionally guaranteed choice and contravenes the Utah Constitution’s requirement to “submit[]” the proposed amendment to a popular vote.

71. Defendants’ ballot language does not present the Proposed Amendment to voters, and it is a flagrantly misleading, deceptive, inaccurate, biased, and unreasonable representation of the Proposed Amendment.

72. The ballot language says nothing about how the Proposed Amendment would eliminate a fundamental constitutional right—one that has existed in Utah’s Declaration of Rights since 1895—to alter or reform the government without legislative interference that is not narrowly tailored to achieve a compelling purpose.

73. The ballot language deceives voters into believing a vote in favor of the Proposed Amendment will strengthen their constitutional right to legislate by initiative. The purpose of the Proposed Amendment is to weaken voters’ constitutional right to reform the government by ballot initiative by authorizing the Legislature to amend or repeal them without limitation.

74. Defendants’ ballot language fails to submit the Proposed Amendment to Utah voters for approval or rejection in violation of Article XXIII, Section 1.

Count Ten
Violation of Utah Code § 20A-7-103(3)(c)

75. Plaintiffs restate and incorporate by reference all allegations in this Complaint as though fully set forth in this paragraph.

76. Under Utah Code § 20A-7-103(3)(c), the Speaker of the House and Senate President must “draft and designate a ballot title for each proposed amendment . . . that[] summarizes the subject matter of the amendment.”

77. Defendants’ misleading, deceptive, inaccurate, biased, and unreasonable ballot language fails to summarize the subject matter of the Proposed Amendment and thus violates Utah Code § 20A-7-103(3)(c).

Count Eleven
Violation of the Utah Constitution’s Free Election Clause – Article I, Section 17

78. Plaintiffs restate and incorporate by reference all allegations in this Complaint as though fully set forth in this paragraph.

79. Article I, Section 17 of the Utah Constitution protects Utahns’ right to free elections. It states: “All elections shall be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers, in time of war, may vote at their post of duty, in or out of the State, under regulations to be prescribed by law.” Utah Const. art. I, § 17.

80. The Free Elections Clause applies to *all* elections, which includes those in which voters are asked to approve or reject constitutional amendments proposed by the Legislature under Article XXIII, Section 1.

81. The right to vote is a fundamental right in the Utah Constitution.

82. For an election to be free under the Free Elections Clause, the will of the people must be fairly ascertained and accurately reflected.

83. An election in which voters are presented with ballot language that misrepresents or fails to accurately inform them of the substance or effect of a proposed constitutional amendment is not free. An election in which voters are presented with misleading, deceptive, inaccurate, biased, or unreasonable ballot language for a proposed constitutional amendment is not free. Such elections deprive voters of their constitutionally guaranteed choice to approve or oppose a constitutional amendment proposed by the Legislature. In such elections, the will of the electorate cannot be fairly ascertained or accurately reflected.

84. Any election in which voters are presented with Defendants' misleading, deceptive, inaccurate, biased, and unreasonable ballot language as a representation of the Proposed Amendment is not free.

85. The use of ballot language for a proposed amendment that does not present the proposed amendment for consideration and is affirmatively misleading, deceptive, inaccurate, biased, or unreasonable is also an exercise of power that "interfere[s] to prevent the free exercise of the right of suffrage." *Id.*

86. Defendants' use of misleading, deceptive, inaccurate, biased, and unreasonable ballot language to represent the Proposed Amendment is an abuse of power that "interfere[s] to prevent the free exercise of the right of suffrage."

87. Defendants intended and designed the ballot language to obscure and misrepresent the substance and effect of the Proposed Amendment.

88. Defendants' development and use of the ballot language is a shameful effort to unduly influence voters and coerce them into surrendering their fundamental right to alter or reform their government without undue government interference.

89. Defendants' development and use of this ballot language for the Proposed Amendment violates Plaintiffs' right to free elections in violation of Article I, Section 17.

Count Twelve
Violation of the Utah Constitution's Free Speech & Association Rights – Article I, Sections 1 and 15

90. Plaintiffs restate and incorporate by reference all allegations in this Complaint as though fully set forth in this paragraph.

91. Article I, Section 1 of the Utah Constitution states that “[a]ll persons have the inherent and inalienable right to . . . assemble peaceably, . . . petition for redress of grievances; [and] to communicate freely their thoughts and opinions, being responsible for the abuse of that right.” Utah Const. art. I, § 1.

92. Article I, Section 15 states that “[n]o law shall be passed to abridge or restrain the freedom of speech or of the press. . . .” Utah Const. art. I, § 15.

93. Article I, Sections 1 and 15 are “read in concert” to protect the right of Utahns to free expression and association, *American Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 20, 140 P.3d 1235, 1241, which are “an essential attribute to the sovereignty of citizenship,” *Cox v. Hatch*, 761 P.2d 556, 558 (Utah 1988).

94. Voting is a fundamental right, and its exercise is a form of protected expression.

95. Voting is also the constitutionally designated mechanism for Utahns to express their approval for or rejection of constitutional amendments proposed by the Legislature under Article XXIII, § 1.

96. Defendants’ ballot language for the Proposed Amendment violates the free speech and association rights of Plaintiffs and other Utahns under Article I, Section 1 and Article I, Section 15.

97. Defendants’ misleading, inaccurate, and deceptive ballot language conceals the substance and effect of the Proposed Amendment, thus burdening voters’ ability to “communicate freely their thoughts and opinions” on the Proposed Amendment both at the ballot box and in public discourse. The ballot language is designed to deny voters an informed choice in expressing their opinion on whether to approve or reject the Proposed Amendment.

98. The ballot language is also blatantly biased. It is designed to trick—that is, coerce—Utahns into voting for the Proposed Amendment by presenting a false and incomplete picture of its substance and effect. This imposes a particular burden on the free speech rights of Utahns who would vote to reject the Proposed Amendment (and convince others to do so as well) if the ballot language did not falsify the Proposed Amendment’s substance and effect. The ballot language operates to compel Utahns into unwittingly expressing a position on the Proposed Amendment they may not hold, privileging the expression of viewpoints Defendants’ like and repressing those they dislike.

99. Despite the severe burdens Defendants’ ballot language imposes on Plaintiffs and other Utahns rights of free expression and association, it is not narrowly tailored to serve any legitimate state interest.

Count Thirteen

Violation of Utah Constitution’s Affirmative Right to Vote Protections – Article IV, Section 2

100. Plaintiffs restate and incorporate by reference all allegations in this Complaint as though fully set forth in this paragraph.

101. Article IV, Section 2 provides that “[e]very citizen of the United States, eighteen years of age or over, who makes proper proof of residence in this state for thirty days next preceding any election, or for such other period as required by law, *shall be entitled to vote in the election.*” Utah Const. art. IV, § 2.

102. The right to vote is fundamental, and the Utah Constitution affirmatively protects citizens’ right to a meaningful and effective vote.

103. The right to vote “cannot be abridged, impaired, or taken away, even by an act of the Legislature.” *Earl v. Lewis*, 77 P. 235, 237-38 (Utah 1904). The purpose of an election—including one to approve or reject a proposed constitutional amendment—“is to ascertain the popular will, and not thwart it,” and “aid” in securing “a fair expression at the polls.” *Id.*

104. The Utah Constitution protects citizens’ right to vote free from undue influence, coercion, and trickery.

105. Defendants’ ballot language denies, abridges, impairs, and dilutes Plaintiffs’ and other Utahns’ fundamental right to vote by failing to fully and accurately present the substance and effect of the Proposed Amendment they are being asked to vote on, impeding their ability to cast an informed vote and attempting to trick Utahns into voting for it.

106. Defendants’ use of the ballot language is an effort to defeat the public will and predetermine the outcome of the election.

107. Defendants have no legitimate governmental interest in using misleading, deceptive, inaccurate, biased, and unreasonable ballot language that denies, abridges, impairs, and dilutes Plaintiffs’ and other Utahns’ fundamental right to vote. Even if Defendants had a legitimate interest in their ballot language, it is not tailored to achieve any legitimate interest.

Count Fourteen

Violation of the Utah Constitution's Right to Free Government – Article I, Sections 2 & 27

108. Plaintiffs restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

109. Article I, Section 2 proved that “[a]ll political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.” Utah Const. art. I, sec. 2.

110. Article I, Section 27 states: “Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.”

111. Both Article I, Section 2 and Article I, Section 27 together guarantee Utahns the right to a free government.

112. Defendants’ use of misleading ballot language to trick Utah voters into approving an amendment to their Constitution to derogate their own right to alter or reform their government is the antithesis of free government and democracy.

113. Defendants’ ballot language for the Proposed Amendment thus violates the free government guarantee of Article I, Sections 2 and 27.

RELIEF SOUGHT

For the foregoing reasons, and in addition to relief sought in Plaintiffs’ First Amended Complaint, Plaintiffs request that this Court:

- a. Declare that Defendants’ ballot language for proposed Amendment D is unconstitutional and invalid because it violates the Utah Constitution’s Article XXIII,

Section 1; Article I, Section 17; Article I, Sections 1 and 15; Article IV, Section 2; Article I, Sections 2 and 27; and Utah Code § 20A-7-103(3)(c);

- b. Preliminarily and permanently enjoin Defendants and their agents, officers, and employees, and those acting in concert with them, from placing proposed Amendment D on November 2024 election ballot;
- c. Declare that, if any ballots are issued to voters that include proposed Amendment D, Amendment D is void;
- d. Order the Lieutenant Governor to notify all County Clerks of the injunction such that they are bound by its terms, *see* Utah R. Civ. P. 65A(d);
- e. Retain jurisdiction of this action to render any further orders that this Court may deem appropriate;
- f. Award Plaintiffs their reasonable attorneys' fees and costs as available;
- g. Grant such other and further relief as the Court deems just and appropriate.

September 5, 2024

Respectfully submitted,

/s/ David C. Reymann

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CERTIFICATE OF SERVICE

I filed this response on the Court's electronic filing system, which will email everyone requiring notice.

Dated: September 5, 2024

/s/ Kade N. Olsen