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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 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' RESPONSE IN OPPOSITION TO LEGISLATIVE DEFENDANTS' MOTION TO DISMISS OR STAY PROCEEDINGS

Case No. 220901712

Honorable Dianna Gibson

HEARING REQUESTED

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INTRODUCTION

Legislative Defendants ("Defendants") move to dismiss Counts VI-VIII of Plaintiffs' First Amended Complaint or otherwise stay the proceedings. Both requests should be denied.

Defendants present no valid reason for dismissal. Counts VI and VII allege that the Legislature enacted the 2021 Congressional Map in violation of Prop 4's mandatory procedures and substantive standards. And Count VIII alleges that the state's old 2011 Congressional Map—which would become operative again if H.B. 2004 (the law that enacted the 2021 Map) is properly enjoined—is unconstitutionally malapportioned. These claims and the relief they seek are also encompassed within Plaintiffs' claim for relief under Count V, which the Supreme Court described as the "broadest claim, encompassing both . . . Plaintiffs' challenge to the redistricting process that led to the Congressional Map and their challenge to the Congressional Map itself." *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 61, 554 P.3d 872 ("*LWVUT*"); *see* Utah R. Civ. P. 8(e) (allowing claim to be stated in one or multiple counts).

Unsurprisingly, then, Defendants' dismissal motion parrots many of the same meritless arguments raised in their cross-motion for summary judgment on Count V. These arguments center on Prop 4's constitutionality and fail for the same reasons discussed in Plaintiffs' summary judgment briefing. As explained below, Prop 4's procedural requirements that Count VI alleges were violated do not impair the constitutional authority of each chamber to set its internal operating rules, and Count VI properly calls for 2021 Map to be enjoined for violating these requirements. Count VII also adequately alleges a violation of Prop 4's substantive requirements, including its prohibition on partisan gerrymandering and its other redistricting standards. These claims do not present nonjusticiable political questions and accord with Article IX of the Utah Constitution and the U.S. Constitution's Elections Clause. Count VIII also states a violation of the Utah Constitution's one-person, one-vote principle if the 2021 Congressional Map is enjoined. The

claim is neither moot nor unripe, and Plaintiffs have alleged standing to bring it. Thus, Counts VI–VIII should not be dismissed.

The Court should also deny Defendants' request to stay, which seeks to delay resolution of these time-sensitive questions for months or years pending appeals that have not and may never be filed. Two years ago, this Court denied a stay request as premature where Defendants sought to halt the proceedings pending a possible but not certain grant of their petition for interlocutory review. The instant request is premised on even greater speculation and should likewise be denied. Furthermore, Defendants provide no valid justification for a stay of Counts VI–VIII. They far overstate the judicial resources that Counts VI–VIII would require. Indeed, if Plaintiffs' motion for summary judgment and requested relief for Count V is granted, the claims alleged in Counts VI–VIII would be fully remedied. And the harms arising from the indefinite delay they seek would severely prejudice Plaintiffs, risking delay that could force them and all Utahns to vote for a third straight election under an unlawful congressional map. For these reasons explained more fully below, Defendants alternative request for a stay should be denied.

ARGUMENT

I. This Court should not dismiss Counts VI–VIII.

A. Counts VI-VIII should not be dismissed for their reliance on Count V because Plaintiffs will succeed on Count V.

For the reasons explained in Plaintiffs' Motion for Summary Judgment ("Pls. MSJ") and Consolidated MSJ Opposition and Reply ("Pls. MSJ Resp."), Plaintiffs will succeed on Count V. As such, the remaining Counts VI–VIII should not be dismissed because of their reliance on Count V. To avoid repetition, Plaintiffs do not include those arguments again here, but fully incorporate them by reference. *See* Pls. MSJ; Pls. MSJ Resp.

B. Count VI should not be dismissed.

Count VI of Plaintiffs' First Amended Complaint ("FAC") alleges that the Legislature enacted the 2021 Congressional Map in violation of three Prop 4 procedural provisions requiring that the Legislature: (1) enact without material change or reject the Commission's proposed maps, Utah Code § 20-A-19-204(2)(a) (2018); (2) issue a report explaining how the Legislature's adopted map(s) better adhere to Prop 4's standards if it rejects the Commission's maps, Utah Code § 20A-19-204(5)(a) (2018); and (3) accept public comment for at least 10 days, Utah Code § 20A-19-204(4) (2018). *See* First Am. Compl. ("FAC") ¶¶ 324–326. Defendants seek to dismiss Count VI on grounds that these procedures impair the Legislature's "prerogative" to set its own procedural rules in violation of Article VI, Section 12 of the Utah Constitution, and that the scope of Plaintiffs' relief is too broad. Neither has merit.

First, as Plaintiffs noted in their summary judgment motion (at 27 n.8), the Supreme Court has explained that Count V already necessarily encompasses Plaintiffs' allegations that the congressional map was not adopted pursuant to Prop 4's required procedures. *See LWVUT*, 2024 UT 21, ¶ 61. Thus, Plaintiffs explained that they were merely adding those allegations into a new Count VI to make the complaint more specific, consistent with Utah R. Civ. P. 8(e), which permits Plaintiffs to state a claim in one count or in separate counts. To that end, Defendants' arguments about dismissing Count VI are beside the point as those allegations are already encompassed in Count V, the Supreme Court has already held that Count V should not be dismissed, and the same allegations that are restated in Count VI are pending before the Court in Plaintiffs' summary judgment motion.

Second, Defendants' Article VI, Section 12 argument is a carbon copy of an argument in support of their cross-motion for summary judgment on Count V. *See* Leg. Defs. Cross-Mot. for Summ. J on Count V (Doc. 405) at 43–51. This argument fails for the same reasons explained in

opposition to that motion, which Plaintiffs summarize here and fully incorporate by reference. *See* Pls. MSJ Resp. at III.A.3. Article IV, Section 12 provides that "[e]ach house shall determine the rules of its proceedings and choose its own officers and employees." This provision, when read in harmony with other constitutional provisions, cannot be interpreted to prohibit the People from enacting initiatives that alter or reform how the Legislature operates, which arises from their rights under Article I, Section 2 "to alter or reform their government as the public welfare may require" and under Article VI, Section 12 to "initiate any desired legislation" coextensively with the Legislature. *See* Pls. MSJ Resp. at III.A.3.

The Utah authority Defendants cite to support their cramped reading of Article VI, Section 12 is a selective quotation from a single footnote in *Gallivan v. Walker*, 2022 UT 89, ¶ 59 n.11, 54 P.3d 1069. But that footnote supports Plaintiffs' reading, not Defendants'. In *Gallivan*, the Legislature sought to justify its imposition of a multi-county signature requirement on the initiative process as an extension of its ability to set its internal rules for lawmaking pursuant to Article VI, Section 12. *Id.* The Supreme Court rejected this argument, reasoning that "[n]othing in the constitution indicates that it is within the legislature's province to impose on the coequal initiative legislative right a system of checks and balances, that is, rules for operation, akin to the legislature's own internal rules for operation." *Id.* But the Court also went on to point out that the People *are* permitted to provide a reverse check and balance on the Legislature because:

> the representative legislative process, while coequal and coextensive with the direct initiative legislative process, has a different character in our constitutional system than the direct legislative process in that the direct initiative legislative process may be considered a constitutional check on the representative legislature if it fails to enact widely supported legislation.

Id.

Defendants' reliance on out-of-state authority is also misplaced. As Plaintiffs have explained, comparison to the California Constitution, for example, is inapt because California allocates far less legislative authority to the People than the Utah Constitution, which affords coequal and coextensive authority. *See* Pls. MSJ Resp. at III.A.3. Defendants' citation (at 5) to Pennsylvania case law is even less helpful because that state's constitution does not allocate its citizens *any* power to initiate legislation directly. *See* Pa. Const. art. 2, § 1.

Thus, the Utah Constitution lends no support for Defendants' contention (at 5–6) that Prop 4's mandates on the Legislature to consider and vote on the Commission's maps, to issue a report supporting adoption of its own map, and to afford the public 10 days to inspect and comment on such plans are impermissible intrusions on each chamber's power to set its internal rules. Indeed, the Legislature itself has repeatedly enacted statutes subject to approval of both chambers and the Governor and modifiable only by those same actors—rather than rules adopted individually by each chamber—regulating the operation of the Legislature. *See* Pls. MSJ Resp. at III.A.3 (citing code sections regulating, for example, which lawmakers can vote on legislative committees). Defendants do not contend that any of these enactments are impermissible. Prop 4's procedural requirements are similarly permissible laws enacted by a coequal legislating authority that constitutionally regulate the Legislature's conduct as a whole.

Finally, Defendants contend (at 6) that it is impractical to issue a report supporting the Legislature's adoption of its own map because of the "difficulty of ascertaining the will of 104 individual legislators." But the Legislature has previously provided that it can adopt a written report making recommendations to Utah's U.S. Senators by either joint resolution or the signatures of a majority of each house. *See* Utah Code § 36-27-103. It can likewise adopt such a rule or approach in complying with Prop 4. In sum, Defendants' argument that Prop 4's procedural

requirements are prohibited by the Legislature's power to make rules is without merit and does not warrant dismissal of Count VI.[1]

Third, Defendants' concern with the breadth of Count VI's requested relief misses the mark and does not warrant dismissal. Count VI enforces Prop 4's procedural requirements pursuant to the plain text of Prop 4's judicial review provisions. *See* Utah Code § 20A-19-301 (2018); FAC ¶ 46. That section provides that "if a court . . . determines in any action brought under this Section that a redistricting plan enacted by the Legislature fails to abide by or conform to the redistricting standards, ***procedures***, and requirements set forth in this chapter, the court ***shall*** issue a permanent injunction barring enforcement or implementation of the redistricting plan." *Id*. § 20A-19-301(2) (2018) (emphasis added). Count VI alleges that the Legislature enacted the 2021 Congressional Map in violation of Prop 4's procedures and therefore properly seeks to permanently enjoin its enforcement or implementation. *See* FAC ¶¶ 324–27; 85 (Relief Sought).

Defendants also object to Plaintiffs' request for injunctive relief to ensure that a new lawful redistricting plan is in place for the 2026 elections. But such relief is not precluded by Prop 4's judicial review provision and is necessary to avoid having to conduct the 2026 election under Utah's old congressional plan, which is now unconstitutionally malapportioned. *See infra* Part I.D; *Sys. Concepts, Inc. v. Dixon*, 669 P.2d 421, 425 (Utah 1983) (granting injunctive relief is within the discretion of the trial court). In any event, even if the Court found part of Plaintiffs' claim for relief overbroad, the proper course would be to grant whatever relief the Court deems appropriate upon resolving the merits, not to dismiss the claim outright. *See Whipple v. Am. Fork Irr. Co.*, 910 P.2d 1218, 1220 (Utah 1996) ("[T]he purpose of a rule 12(b)(6) motion is to challenge the formal

[1] Defendants (at 7) also claim that Prop 4's procedural requirements are impermissible under the Federal Elections Clause. But this claim directly contradicts controlling precedent. *See supra* Part I.C.3; Pls. MSJ Resp. at III.A.2.

sufficiency of the claim for relief, not to establish the facts or resolve the merits of the case. . . . [D]ismissal is justified only when the allegations of the complaint clearly demonstrate that the plaintiff does not have a claim.").

For these reasons, Count VI should not be dismissed.

C. Count VII should not be dismissed.

Defendants assert a number of arguments as to why Plaintiffs' Count VII should be dismissed, including that (1) partisan gerrymandering presents a nonjusticiable political question, (2) Prop 4's requirement to minimize political subdivision and community-of-interest splits is not manageable, and (3) Prop 4 impairs the Legislature's "exclusive" redistricting authority. None of these claims has merit.

1. Partisan gerrymandering does not present a nonjusticiable political question.

Count VII, which includes Plaintiffs' claim that the 2021 Congressional Map violates Prop 4's substantive provisions barring partisan gerrymandering, does not present nonjusticiable political questions. This Court has already ruled that claims challenging redistricting plans are not barred by the political questions doctrine. As the Court explained, "political questions are those questions which have been wholly committed to the sole discretion of a coordinate branch of government, and those questions which can be resolved only by making policy choices and value determinations." Ruling & Order on Defs.' Mot. Dismiss ("MTD Op.") at 10–11 (internal citation omitted). To determine whether a claim presents a nonjusticiable political question, this Court must consider 1) whether there is a "textually demonstrable constitutional commitment" of the matter to a separate branch of government, or 2) whether there is a lack of judicially discoverable and manageable standards for adjudicating the matter. *Id.* at 11 (internal citation omitted). Neither is the case here. *Id*.

To begin, Article IX of the Utah Constitution does not commit redistricting exclusively to the Legislature, as this Court has ruled. MTD Op. at 11–12. And Article IX *limits* the Legislature, by imposing an obligation and a timing restriction when it comes to ensuring new electoral maps are in place following each decennial Census. *See* Pls. MSJ Resp. at III.A.1. Nor does Article IX preclude judicial review to ensure that redistricting is conducted pursuant to all applicable laws. MTD Op. at 12-14; Pls. MSJ Resp. at III.A.1.

While the plain text of Article IX imposes a *limit* on legislative discretion, it does not outright preclude the involvement of other branches of government as "[e]ven a cursory analysis reveals." MTD Op. at 12. Article IX's enumerated legislative power must be read "in harmony with the rest of the constitution," which includes further substantive restraints on the Legislature's redistricting power. *LWVUT*, 2024 UT 21, ¶ 9. For example, redistricting laws and maps are subject to gubernatorial review and veto. Utah Const. art. VII, § 8. And because the Constitution mandates that "[a]ll political power is inherent in the people," and guarantees that the People may "initiate any desired legislation," *id.* art. I, § 2; art. VI, § 1(2)(a)(i)(A), the People too may play a role in redistricting as they did here. Redistricting power is thus not solely exercised by the Legislature, and so is not immune from judicial review. Indeed, the Utah Supreme Court has already rejected the notion that redistricting claims are unreviewable. *See Parkinson v. Watson,* 291 P.2d 400, 402–03 (Utah 1955).

Furthermore, there are manageable judicial standards for adjudicating a redistricting claim. Defendants have already acknowledged that the redistricting process is subject to the legal parameters established by the United States and Utah Constitutions, state and federal laws, and applicable caselaw. MTD Op. at 14 (citing Utah State Legislature Office of Legislative Research and General Counsel, 2001 Redistricting in Utah,

https://le.utah.gov/documents/redistricting/redist.htm). Prop 4 is a state law, properly enacted by the People, that directs courts to review redistricting plans for violations of Prop 4's timing, mapping, and enactment requirements. What's more, Prop 4 *itself* provides manageable judicial standards for evaluating a claim brought pursuant to its provisions. Pls. MSJ Resp. at III.A.1.d; Utah Code § 20A-19-103(4) (2018); *id*. § 20A-19-103(3) (2018); *id*. § 20A-19-103(2) (2018).

Defendants claim (at 9–10) that there are no judicially manageable standards to evaluate partisan gerrymandering, relying on *Rucho v. Common Cause*, 588 U.S. 684 (2019). But "Utah courts . . . are not bound by the same justiciability requirements as federal courts under Article III." MTD Op. at 15. And *Rucho*, while holding partisan gerrymandering nonjusticiable in federal court, specifically recognized that "provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply." 588 U.S. at 719. Prop 4 is exactly such guidance.

And indeed, state courts have done exactly as the *Rucho* court suggests, using standards similar to those in Prop 4 to protect against partisan gerrymandering. For example, in *League of Women Voters of Florida v. Detzner*, the Florida Supreme Court evaluated whether certain districts violated Florida's Fair Districts Amendment, which banned the Florida legislature from enacting a redistricting plan with the "intent to favor or disfavor a political party or an incumbent." 172 So. 3d 363, 369 (Fla. 2015) (applying Fla. Const. Art. III, Sec. 20(a)). Illustrating states' ability to prohibit partisan gerrymandering even where the Federal Constitution could not, the *Rucho* Court even pointed to a Delaware statutory prohibition that uses the same formulation as Prop 4. *Rucho*, 588 U.S. at 720 (citing Del. Code Ann., Tit. xxix, § 804 (2017) (providing that no district shall "be created so as to *unduly favor* any person or political party") (emphasis added)).

While Defendants fret (at 10–11) about courts "predict[ing] the future" or engaging "questions of political philosophy," state courts routinely adjudicate partisan gerrymandering

claims by relying on traditional redistricting criteria and expert and factual evidence showing statistical evidence of partisan bias that reveal whether a map cracks and/or packs disfavored party voters to advantage the other party. *See, e.g.*, *LWVPA*, 178 A.3d 737, 769-79 (Pa. 2018); *Szeliga v. Lamone*, No. C-02-cv-21-001816, 2022 WL 2132194, at *31–34, 41 (Md. Cir. Ct. Mar. 25, 2022); *Adams v. DeWine*, 195 N.E.3d 74, 85-93 (Ohio 2022); *Matter of 2021 Redistricting Cases*, No. 18332, 2023 WL 3030096, at *35 (Alaska Apr. 21, 2023); *Harkenrider v. Hochul*, 197 N.E.3d 437, 453, n.14 (N.Y. Ct. App. 2022); *see also Rucho*, 588 U.S. at 735 (Kagan, J., dissenting) (laying out three-part partisan gerrymandering test); Pls. MSJ Resp. at III.A.1(c) –(d). Utah is no different, and Prop 4 provides clear *statutory* criteria that Utah courts can apply to assess compliance with its directives.

2. Prop 4's requirements to minimize municipal and county splits and preserve communities of interest are also judicially manageable.

Prop 4 requires that, in creating new redistricting plans, the Legislature minimize municipal and county splits and preserve communities of interest. Defendants argue (at 11) that this requirement also creates a non-justiciable political question on which courts could not possibly rule. Defendants' argument ignores 80 years of unambiguous precedent in which courts do just that.

The United States Supreme Court has held that "[t]he 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 States in such cases *has been specifically encouraged*." *Scott v. Germano*, 381 U.S. 407, 409 (1965) (emphasis added); *see also Growe v. Emison*, 507 U.S. 25, 33 (1993) (explaining that "state courts have a significant role in redistricting"). Further, "the inquiry [into redistricting] should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries."

League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 433 (2006); *see also Allen v. Milligan*, 599 U.S. 1, 20 (2023) ("traditional districting criteria" includes "respecting existing political subdivisions, such as counties, cities, and towns").

As traditional districting principles, maintaining communities of interest and political subdivisions are regularly considered by state courts in evaluating redistricting claims. See *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 599 (Fla. 2012) (holding that in evaluating a challenge to state legislative districts the Court must consider the requirement that "where feasible, districts shall utilize existing political and geographical boundaries"); *Carter v. Chapman*, 270 A.3d 444, 468 (Pa. 2022), *cert. denied sub nom. Costello v. Carter*, 143 S. Ct. 102 (2022) (holding that "respect for communities of interest" was a "historical consideration" considered by the Court in evaluating redistricting plans); Pls. MSJ Resp. at III.A.1(a), (d) (demonstrating the feasibility of evaluating plans based on municipal and county splits, and citing cases that do the same, including through expert evidence). As such, contrary to Defendants' claim, courts are well suited to determine whether requirements such as those in Prop 4 have been met.

Defendants also claim (at 11) that "[s]plitting municipalities, counties, and communities of interest [in the course of the redistricting process] is unavoidable" and that all of Salt Lake County cannot be placed in a single congressional district. These are straw man arguments that Plaintiffs do not contest. As Defendants themselves correctly note, Prop 4 does not prohibit the splitting of municipalities, counties, and communities of interest, but only requires that these splits be *minimized*. Utah Code § 20A-19-103(2)(b) (2018). Like, for example, by not splitting Salt Lake County *four ways.* Defendants also argue that Prop 4's requirement to minimize splits of municipalities, counties, and communities of interest violates the Legislature's redistricting

authority under Article IX. As Plaintiffs have explained, this argument also fails. *See* Pls. MSJ Resp. at III.A.1(a).

3. Prop 4 does not impair the Legislature's redistricting responsibility under the Federal Elections Clause.

Defendants also claim that Prop 4 impermissibly impairs the Legislature's redistricting responsibility granted to it by the U.S. Constitution's Elections Clause. This argument is entirely based on their erroneous reading of *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787, 813 (2015) ("*AIRC*"), which, if read properly, actually supports Plaintiffs' position.

As discussed at greater length in Plaintiffs' brief opposing Defendant's motion for summary judgment (at 31), in *AIRC*, the Court held that "the Legislature" to which the Elections Clause confers authority means not only the state's representative body, but any entity empowered to legislate under the state constitution, including the People by initiative. 576 U.S. 813–14. As such, because the Arizona Constitution vests a legislative power in the People co-equal to that of the Legislature, when the People exercise their authority to legislate redistricting reforms, they *are* "the Legislature" as that term is used in the Elections Clause. *Id*. Therefore, the People's use of that power to delegate redistricting to an independent commission was a valid exercise of Elections Clause authority. *Id.*

The same is true here. The Utah Constitution, like the Arizona Constitution, vests "Legislative power" in "the people," permitting them to "initiate any desired legislation." Utah Const. art. VI, § 1(1)(b), (2)(a)(i)(A). Under this provision and *AIRC*'s interpretation of the Elections Clause, the People are well within their rights to use that power to legislate regarding redistricting, including to create an independent commission, redistricting standards, and a private right of action. To frame this exercise of the People's legislative power as an impairment or

restriction on the Legislature's power fundamentally misunderstands both the People's legislative power as granted by the Utah Constitution and the holding in *AIRC*.[2] *See* Pls. MSJ Resp. at III.A.2.

D. Count VIII should not be dismissed.

Count VIII addresses the malapportionment of the 2011 congressional plan and should not be dismissed. H.B. 2004 amended the Utah Code provisions enacting the 2011 congressional boundaries to refer instead to the 2021 congressional boundaries. *See* H.B. 2004, Congressional Boundaries Designation, 2021 2d Special Session, https://perma.cc/D3LQ-JZY3. If this Court enjoins enforcement of H.B. 2004 for failing to comply with the substantive or procedural requirements of Prop 4, the 2011 plan will once again be in effect. Because that plan is malapportioned in violation of the one-person, one-vote requirement of Article I, Sections 2 and 24 of the Utah Constitution, this Court must order relief to remedy this malapportionment—and in doing so must ensure that the remedial map complies with Prop 4's standards. Defendants contend that even if enforcement of the 2021 map is enjoined, the 2011 map will not be reinstated. They also assert that the claim is moot and/or unripe, and that Plaintiffs lack standing. Defendants are wrong on all fronts.

When a statute that amends or repeals a previous statute is declared invalid, the previous, statute is once again in effect. *Bd. of Educ. of Ogden City v. Hunter*, 159 P. 1019, 1024 (Utah 1916); *In re J. P.*, 648 P.2d 1364, 1378 n.14 (Utah 1982) ("Where amendatory legislation repealing or displacing a former statute addressing the same subject matter is held unconstitutional, the amendment has no superseding effect and the prior statute remains in full force as though no

[2] Defendants attempt to distinguish *AIRC* by claiming that the Court only concluded that the Elections Clause covers the People in this case because Arizonans enacted their redistricting reform by constitutional amendment rather than by ballot initiative. The Court in *AIRC* does not make this distinction. 576 U.S. at 813–14. Nor is a constitutional amendment required to grant the People legislative authority which Article VI of the Utah Constitution already unambiguously provides them.

amending legislation had been enacted."). This is a basic principle of law and logic. *Board of Education of Ogden v. Hunter* addressed an analogous situation: A newly-passed statute repealed parts of an existing statute that established how certain property taxes were to be levied and collected. 159 P. at 1020. When the newer statute was struck down for its impermissible classification of cities subject to the taxation scheme, the Utah Supreme Court explained succinctly that "so much of the former statute which was superseded by the invalid portion of the later one is not repealed, but continues in full force and effect." *Id.* at 1024. Thus, because the subsequent statute was invalidated, the repealed provisions of the original taxation statute were once again in effect. Likewise, as the Supreme Court has explained in this case, if this Court determines that S.B. 200 unconstitutionally repealed aspects of Prop 4, an injunction against enforcement of those repealer provisions has the effect of making the relevant Prop 4 provisions the governing law. *See LWVUT*, 2024 UT 21, ¶ 222 ("In the event Plaintiffs prevail on their claim that S.B. 200 violates the people's right to alter or reform their government via citizen initiative, the act enacted by Proposition 4, Utah Code §§ 20A-19-101 to -301 (2018), would become controlling law). The same is true here. If this Court enjoins enforcement of H.B. 2004, the 2021 map will cease to have effect, and the 2011 plan—codified at the pre-H.B. 2004 version of Utah Code § 20A-13-102—will once again be the operative congressional map.

Defendants argue that the 2011 plan "no longer exists" because the legislature repealed it. MTD at 13. That is true, but only in the same way that the taxation scheme in *Board of Education of Ogden* no longer existed for those cities covered by the subsequent law. But when that later law was invalidated because of the improper city classification, the original taxation scheme once again was given full effect. So too here: if H.B. 2004 is not enforced, its amendment of the Utah Code to replace the 2011 map with the 2021 map will be enjoined from enforcement, thus reinstating

the 2011 maps.[3] This is not uncommon in redistricting litigation, where a successful challenge to a new map can result in the previous map remaining in place. *See, e.g.*, *Legislative Rsch. Comm'n v. Fischer*, 366 S.W.3d 905 (Ky. 2012); *Walters v. Bos. City Council*, 676 F. Supp. 3d 26 (D. Mass. 2023).

Defendants also claim that Plaintiffs lack standing to challenge the malapportionment of the 2011 map. While the existence of the 2011 map is contingent upon the enjoinment of H.B. 2004, that eventuality is sufficiently impending for Plaintiffs to have standing. *Salt Lake County v. State*, 2020 UT 27, ¶ 19; Utah R. Civ. P. 8(e). Defendants also wrongly contend that Plaintiffs have not alleged facts sufficient to show they live in a malapportioned district under the 2011 map. The individual Plaintiffs have properly alleged that they live in all four congressional districts under the 2021 map. FAC ¶¶ 28–39. Similarly, the organizational plaintiffs have properly alleged that they have members living throughout the state. *Id.* ¶¶ 13–27. The four congressional districts that make up the 2011 plan cover the same total area as the four congressional districts that make up the 2021 map: the entirety of the State of Utah. It is thus evident as a matter of logic that Plaintiffs or Plaintiffs' members reside in one or more of the 2011 districts, all of which are malapportioned. FAC ¶ 359.[4] As one example, Plaintiffs Malcolm and Victoria Reid live in Millcreek. FAC ¶¶ 31, 34; *see also* Decls. of Malcolm and Victoria Reid (Doc. 342, Ex. A). Under the 2011 map,

[3] Defendants stress (at 13–14) that courts do not "erase" or "strike down" statutes, but rather Defendants are enjoined from enforcing unconstitutional or illegal laws. Fine. But this semantic point is irrelevant. If this Court enjoins the enforcement of H.B. 2004, its provisions—including the one repealing the 2011 plan—will not be enforced, meaning the 2011 plan will be back in place. This Court would not be *ordering* the 2011 plan back into effect, that would simply be the *effect* of ordering that H.B. 2004 not be enforced.

[4] There is a typo in ¶ 359 of the First Amended Complaint: while under the 2011 Congressional Plan, Districts 1, 2, and 3 have fewer people than may reside in these districts under a constitutionally compliant congressional plan, District 4 has 65,265 *more* people than ideal, and a population difference large enough to violate one-person, one-vote. *See* 2020 Redistricting Data, OLRGC, at 12 (Aug. 16, 2021), https://perma.cc/GQ3W-3SRH.

Millcreek is in District 4, and the Court can take judicial notice of this fact.[5] Because District 4 under the 2011 map is overpopulated, FAC ¶ 359, Plaintiffs Malcolm and Victoria Reid have standing to bring Count VIII.

Defendants make two other cursory arguments (at 14–15) about Count VIII, claiming it is both moot and (seemingly) that it is unripe. Neither is so. As the Utah Supreme Court found in *Salt Lake County*, issues are ripe for adjudication where "there is a substantial likelihood that [a controversy] will develop *so that the adjudication will serve a useful purpose in resolving or avoiding* controversy or possible litigation." 2020 UT 27, ¶ 19 (internal quotation marks and citation omitted) (alteration in original); *see also* Utah R. Civ. P. 8(e) (allowing parties to "state a claim or defense alternately or hypothetically, either in one count . . . or in separate counts" and if "one of them is sufficient, the pleading is not made insufficient by the insufficiency of an alternative statement.").

Plaintiffs have moved for summary judgment on Count V. If Plaintiffs' motion is granted, the 2011 congressional plan will again be in effect (as discussed above), and Plaintiffs' Count VIII would thus require resolution. As such, there is a "substantial likelihood that" a controversy will "develop" such that adjudication of Count VIII would "serve a useful purpose in resolving or avoiding controversy" and continued litigation. *Id.*; *see also Dimensional Music Publ'g, LLC v. Kersey ex rel. Est. of Kersey*, 448 F. Supp. 2d 643, 653 (E.D. Pa. 2006) ("Simply because the

[5] The Court can take judicial notice of the boundaries of the 2011 Congressional Plan because they can be "accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Utah R. Evid. 201(b)(2); Utah – Congressional District 4, U.S. Census Bureau, https://perma.cc/D7JC-QHRF. While one precinct in Millcreek is not in District 4 under the 2011 plan, the entirety of the rest of Millcreek is, as is apparent from the map, and the Reids do not live in that one excluded precinct. *See* Decls. of Malcolm and Victoria Reid, ¶ 2 (Doc. 342, Ex. A) (testifying that they reside in Congressional District 2 in the 2021 map, which overlaps with the portion of Millcreek assigned to Congressional District 4 in the 2011 map).

outcome of one claim is contingent upon the outcome of another claim in the case does not mean that the first claim cannot be alleged or that the first claim is not ripe."). Defendants' efforts to dismiss Count VIII are premature; if the Court does not rule in Plaintiffs' favor on Count V, it can simply not reach Count VIII. On the other hand, dismissing Count VIII at this stage only risks prolonging the litigation and wasting judicial resources.

II. The Court should not stay proceedings and should enter judgment in Plaintiffs' favor on the pending MSJ.

The Court should reject Defendants' alternative request to stay the case pending resolution of the summary judgment motions on Count V, any subsequent appeal, and the outstanding appeal as to Counts I–IV.

In assessing a stay request, the touchpoint is the need to achieve a "just, speedy, and inexpensive determination" of the action. Utah R. Civ. P. 1. The presumption is against staying a case: "Where there is doubt, it should inure to the benefit of those who oppose grant of the extraordinary relief which a stay represents." *Williams v. Zbaraz*, 442 U.S. 1309, 1316 (1979) (Stevens, J., in chambers). This is because the Court's duty is to "effectuate justice" and "to afford [litigants] every reasonable opportunity to be heard on the merits of their cases." *Bunting Tractor Co. v. Emmett D. Ford Contractors*, 2 Utah 2d 275, 277 (1954). Thus, the moving party bears the burden of showing that a stay is warranted, balancing judicial economy with factors affecting the administration of justice, including prejudice to the nonmoving party, the balance of equities, and the public interest. *See generally* Utah R. App. P. 8(b)(2) (standard governing stays pending appeal in appellate courts).

Defendants cannot carry this burden, nor do they *even attempt* to address the relevant standard. To begin, the requested stay pending appeal is premature, for the obvious reason that no appeal has been (or even could be) filed. This Court previously denied Defendants' request for a

stay pending appeal because their petition for interlocutory appeal, though it had been filed, had not yet been granted. The Court ruled that speculative anticipation of an appeal could not warrant a stay, especially given the "important competing interests" of the parties and the people of Utah "in expeditious resolution" of the case in time for the 2024 election, which "any further delay [would] jeopardize." Recording of Nov. 30, 2022 Stay Hr'g at 28:53–30:14. The instant request is premised on even greater speculation because no appeal exists. In fact, no ruling from which to appeal exists. And the circumstances here counsel even further against a stay, because the Utah Supreme Court ha*s already ruled in detail* that a fundamental right to alter or reform the government through initiative exists under the Utah Constitution, and on the legal framework for any such claim. In doing so, the Court stated that if Plaintiffs succeed on Count V, "it is likely that the Congressional Map cannot stand" under Prop 4. *LWVUT*, 2024 UT 21, ¶ 222. This alone is enough to deny the requested stay.

Despite the Supreme Court's holding, Defendants (at 16) argue that the case should be stayed pending resolution of Count V because Counts VI–VIII would require "further litigation past the motion-to-dismiss stage" even if Plaintiffs' motion for summary judgment is granted on Count V. Again, the opposite is true. As the Supreme Court held, 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."). As such,

Plaintiffs' summary judgment motion on Count V requests remedial relief that would not only fully remediate Count V, but also make it unnecessary to fully litigate Counts VI–VIII.[6]

Plaintiffs' summary judgment motion requests that the Court both enjoin the unconstitutional parts of S.B. 200 (to reinstate Prop 4's core reforms) and permanently enjoin H.B. 2004, which enacted the 2021 Map, because it undisputably failed to follow Prop 4's procedural requirements. *See* Pls. MSJ at 26–27. Defendants do not dispute that the passage of H.B. 2004 did not comply with Prop 4's procedural requirements, and they cannot—the Legislature did not either enact without material change or reject all of the Commission's proposed maps, issue a detailed report explaining why it rejected the Commission's maps and the basis for why its maps better satisfy Prop 4's criteria, or make its map available for at least 10 days for public review. *See* Utah Code § 20A-19-204(2)(a), (4), & (5)(a) (2018). It goes without saying that an entirely undisputed claim which would invalidate the congressional map cannot provide a basis to stay litigation indefinitely.

In addition, because Prop 4's reinstated provisions provide for judicial remedies when a map is permanently enjoined, Plaintiffs requested that the Court provide the Legislature a reasonable period of time to comply with Prop 4's procedures and standards in proposing a remedial map, and if the Legislature chooses not to or fails to enact a compliant map, that the Court order one that does in time for the 2026 election. *See* Pls. MSJ at 28–29. Thus, if Plaintiffs prevail and are granted full remedial relief on Count V and the Legislature responds by complying with Prop 4 in enacting a new map, then no further litigation would be required to resolve Counts VI–VIII. If the Court were to stop short of enjoining the current congressional map based upon its

[6] As noted above, Count VI does not even state claims beyond what is encompassed within Count V. *See supra*.

undisputed violation of Prop 4's procedural requirements—something that would be contrary to Prop 4's express terms, which require a permanent injunction against enforcement of a map that fails to comply with Prop 4's requirements—then the Court would need to schedule an expedited trial on Count VII to assess the map's compliance with Prop 4's substantive standards, including its partisan gerrymandering prohibition.

In any event, Defendants' request for an indeterminate stay pending appeal should be denied because it would severely prejudice Plaintiffs and the public. The requested stay, which seeks to halt the entire proceeding indefinitely, could operate to delay resolving the merits of this case by anywhere from several months to upwards of a year. If the Lieutenant Governor's preferred deadline to have a new congressional map remains one year out from the election (November 2025) is followed, then Defendants' stay further risks leaving insufficient time to ensure a remedy for the 2026 election. Indeed, if Defendants are seeking certainty for future elections, they should be seeking to *expedite* the district court proceedings. Plaintiffs and Utah voters have already been forced to vote under gerrymandered and otherwise unlawful congressional maps in two of this decade's five elections. Having to vote in yet another election under an unlawful map will once again contravene their fundamental constitutional rights and "unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

To avoid such harm and to ensure "just, speedy, and inexpensive" determination of this action pursuant to Rule 1, the Court should deny Defendants' cursory and premature request for an indeterminate stay. Furthermore, the Court should grant Plaintiffs' motion for summary judgment as to Count V and award Plaintiffs the relief outlined therein. The remedial process should be allowed to proceed pending any request for an interlocutory appeal to ensure implementation of a remedial map before the 2026 election if the Court's ruling is affirmed.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss Counts VI–VIII or to stay proceedings should be denied.

November 22, 2024

Respectfully submitted,

/s/ David C. Reymann

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of November, 2024, I filed the foregoing **PLAINTIFFS' RESPONSE IN OPPOSITION TO LEGISLATIVE DEFENDANTS' MOTION TO DISMISS OR STAY PROCEEDINGS** via electronic filing, which served all counsel of record.

/s/ David C. Reymann