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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	**PLAINTIFFS' THIRD SUPPLEMENTAL COMPLAINT** Case No. 220901712 Honorable Dianna Gibson

LIEUTENANT GOVERNOR DEIDRE HENDERSON, in her official capacity,

Defendants.

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

INTRODUCTION

1. In its August 25, 2025 Order, the Court ruled that "Proposition 4 is the law on redistricting in Utah." Rather than comply with Proposition 4's prohibition on partisan gerrymandering, the Legislature has rushed to amend the law to neuter that prohibition by enacting S.B. 1011 on October 6, 2025. Worse yet, it has changed Proposition 4 to *require* partisan gerrymandering in favor of the majority party in Utah—contrary to the major purpose behind the voters' reform.

2. S.B. 1011 profoundly impairs Proposition 4's prohibition on partisan gerrymandering in several ways. Its primary feature is to infect the law with a cherry-picked test, the "partisan bias" test, that is universally known to be inappropriate for use in states like Utah that are not politically competitive in statewide elections.

3. This is because applying the test in states like Utah causes false and irrational results. It labels maps that provide the minority party (here, Democrats) with a single district biased *against Democrats* because they would not win a second district in the imaginary world in which elections suddenly become tied statewide. The test prioritizes focusing on the imaginary world of tied elections over the actual world of lopsided statewide elections. Thus, it labels maps that

provide Democrats *zero* districts unbiased against them and maps that provide Democrats one district biased against them.

4. This makes no sense in the real world of Utah elections, and it is why the political scientists who developed the test have repeatedly warned it should not be applied to noncompetitive states like Utah. This is a universally accepted view.

5. For similar reasons, political scientists agree that the second test adopted by the Legislature in S.B. 1011, the mean-median difference test, should not be used to assess partisan gerrymandering in noncompetitive states.

6. The third assessment codified by S.B. 1011—an ensemble analysis—has serious design flaws that impair Proposition 4's reforms. Inexplicably, S.B. 1011 untethers the set of ensemble maps from Proposition 4's neutral redistricting criteria and infects it by "culling" maps that do not pass the flawed "partisan bias" test.

7. Together, these changes to Proposition 4 systematically neuter its prohibition on partisan gerrymandering. In fact, they operate to *require* partisan gerrymandering. They do so by systematically disqualifying the vast majority of maps compliant with Proposition 4's neutral redistricting criteria—any maps that create a district favoring Democrats in Salt Lake County—because they do not create a second Democratic district in imaginary tied election scenarios that have not and do not actually occur in Utah.

8. Proposition 4's provision for assessing partisan favoritism was purposefully broad and intended to capture developments in political science. It requires the use of "judicial standards and the best available data and scientific and statistical methods, including measures of partisan symmetry." Utah Code § 20A-19-103(4).

9. S.B. 1011 severely restricts the available data and scientific and statistical methods, and instead of applying the "best available" measures, it applies the *worst available*. And it makes the worst available measures exclusive, prohibiting use of the best available measures.

10. While the Court observed that the Legislature has discretion in undertaking the assessment required by Proposition 4, it did not greenlight the Legislature impairing Proposition 4's reforms by mandating the use of the worst available metrics to the exclusion of the best available metrics. And it certainly did not greenlight redefining Proposition 4's prohibition on partisan gerrymandering to effectively *require* partisan gerrymandering.

11. Finally, S.B. 1011 makes this new framework—a wolf in sheep's clothing—applicable *only* to assessing congressional maps.

12. Here's why. The partisan bias test operates irrationally in Utah. It labels congressional maps (which have just four districts) that are obviously extreme gerrymanders as "unbiased" and maps that are partisan neutral "biased." For congressional maps, this irrational feature of the test singularly benefits Republicans.

13. But the partisan bias test also labels Utah's state legislative maps as extremely biased, while other more appropriate tests like the efficiency gap do not.

14. If S.B. 1011 were to apply its test to *all* maps, Republicans would suffer the effect of its irrationality for the state legislative maps.

15. The fact that S.B. 1011 seizes upon the partisan bias test's irrationality only when it benefits the majority party and not when it harms the majority party is a perfect illustration of how the new law *requires*, rather than prohibits, party favoritism in redistricting.

16. Because S.B. 1011 impairs the core anti-gerrymandering goal of Proposition 4 for no compelling reason, it violates Plaintiffs' fundamental right to alter or reform their government. Utah Const. art. I, § 2.

17. Because S.B. 1011 cherry-picks inappropriate tests that privilege gerrymandered maps favoring Republican voters and disfavoring Democratic voters, it likewise violates (i) Plaintiffs' rights under the Free Elections Clause, *id.* art. I, § 17; (ii) Plaintiffs' equal protection rights under the Utah Constitution, *id.* art. I, §§ 2 & 24; (iii) Plaintiffs' right to "communicate freely their thoughts and opinions," *id.* art. I, §§ 1 & 15; (iv) Plaintiffs' right to vote, *id.* art. IV, § 2; and (v) Plaintiffs' right to be ensured free government, *id.* art. I, §§ 2 & 27.

PARTIES

18. The League of Women Voters of Utah ("LWVUT") has members who are registered voters in the State of Utah and who will vote in future elections.

19. LWVUT's membership includes Utah registered voters who voted for and support Proposition 4.

20. LWVUT and its membership are harmed by S.B. 1011. The law impairs the anti-gerrymandering purpose of Proposition 4 by mandating use of biased statistical tests cherry-picked to benefit the majority party and allow a gerrymandered map. This violates LWVUT's and its members' right to alter or reform their government through ballot initiative without undue legislative interference.

21. As a consequence of S.B. 1011 and the gerrymandered maps it will countenance, the alter and reform rights of LWVUT and its members will be violated because S.B. 1011 directly undermines the stated and intended purpose of Proposition 4.

22. LWVUT has standing on its own behalf and on behalf of its members, who, on their own, would have standing to challenge S.B. 1011 and its impairment of the government reforms codified in Proposition 4.

23. By mandating that gerrymandered congressional maps that pass the partisan bias and mean-median difference tests are legal under Proposition 4, S.B. 1011 also violates the Free Election, Equal Protection, Speech and Association, Right to Vote, and Free Government rights of LWVUT and its members under the Utah Constitution.

24. Mormon Women for Ethical Government ("MWEG") has members who are registered voters in the State of Utah and who will vote in future elections.

25. MWEG's membership includes Utah registered voters who voted for and support Proposition 4.

26. MWEG and its membership are harmed by S.B. 1011. The law impairs the anti-gerrymandering purpose of Proposition 4 by mandating use of biased statistical tests cherry-picked to benefit the majority party and allow a gerrymandered map. This violates MWEG's and its members' right to alter or reform their government through ballot initiative without undue legislative interference.

27. As a consequence of S.B. 1011 and the gerrymandered maps it will countenance, the alter and reform rights of MWEG and its members will be violated because S.B. 1011 directly undermines the stated and intended purpose of Proposition 4.

28. MWEG has standing on its own behalf and on behalf of its members, who, on their own, would have standing to challenge S.B. 1011 and its impairment of the government reforms codified in Proposition 4.

29. By mandating that gerrymandered congressional maps that pass the partisan bias and mean-median difference tests are legal under Proposition 4, S.B. 1011 also violates the Free Election, Equal Protection, Speech and Association, Right to Vote, and Free Government rights of MWEG and its members under the Utah Constitution.

30. Plaintiff Stefanie Condie is a registered voter who supports Proposition 4, opposes S.B. 1011, and intends to vote in future Utah elections.

31. Plaintiff Condie will be injured if S.B. 1011 is implemented because it mandates use of biased statistical tests that permit the very partisan gerrymandering that Proposition 4 was passed to prohibit. S.B. 1011 violates Plaintiff Condie's alter and reforms rights under the Utah Constitution by unduly impairing a core reform of Proposition 4, as well as other constitutional rights.

32. Plaintiff Wendy Martin is a registered voter who supports Proposition 4, opposes S.B. 1011, and intends to vote in future Utah elections.

33. Plaintiff Martin will be injured if S.B. 1011 is implemented because it mandates use of biased statistical tests that permit the very partisan gerrymandering that Proposition 4 was passed to prohibit. S.B. 1011 violates Plaintiff Martin's alter and reforms rights under the Utah Constitution by unduly impairing a core reform of Proposition 4, as well as other constitutional rights.

34. Plaintiff Malcom Reid is a registered voter who supports Proposition 4, opposes S.B. 1011, and intends to vote in future Utah elections.

35. Plaintiff Reid will be injured if S.B. 1011 is implemented because it mandates use of biased statistical tests that permit the very partisan gerrymandering that Proposition 4 was passed to prohibit. S.B. 1011 violates Plaintiff Reids' alter and reforms rights under the Utah

Constitution by unduly impairing a core reform of Proposition 4, as well as other constitutional rights.

36. Plaintiff Victoria Reid is a registered voter who supports Proposition 4, opposes S.B. 1011, and intends to vote in future Utah elections.

37. Plaintiff Reid will be injured if S.B. 1011 is implemented because it mandates use of biased statistical tests that permit the very partisan gerrymandering that Proposition 4 was passed to prohibit. S.B. 1011 violates Plaintiff Reid's alter and reforms rights under the Utah Constitution by unduly impairing a core reform of Proposition 4, as well as other constitutional rights.

38. Plaintiff Jack Markman is a registered voter who supports Proposition 4, opposes S.B. 1011, and intends to vote in future Utah elections.

39. Plaintiff Markman will be injured if S.B. 1011 is implemented because it mandates use of biased statistical tests that permit the very partisan gerrymandering that Proposition 4 was passed to prohibit. S.B. 1011 violates Plaintiff Markman's alter and reforms rights under the Utah Constitution by unduly impairing a core reform of Proposition 4, as well as other constitutional rights.

40. Plaintiff Eleanor Sundwall is a registered voter who supports Proposition 4, opposes S.B. 1011 and intends to vote in future Utah elections.

41. Plaintiff Sundwall will be injured if S.B. 1011 is implemented because it mandates use of biased statistical tests that permit the very partisan gerrymandering that Proposition 4 was passed to prohibit. S.B. 1011 violates Plaintiff Sundwall's alter and reforms rights under the Utah Constitution by unduly impairing a core reform of Proposition 4, as well as other constitutional rights.

42. Defendant Utah State Legislature passed S.B. 1011 on October 6, 2025.

43. Defendants Sen. Adams and Rep. Schultz, in their official capacities as the Utah Senate President and House Speaker, voted in favor of S.B. 1011.

44. Defendant Lt. Governor Henderson, in her official capacity as Utah's Chief Election Officer, exercises direct authority "over the conduct of elections for . . . statewide or multicounty ballot propositions," Utah Code § 67-1a-2(2)(a)(ii), and has the obligation and authority to implement the congressional map adopted by the Legislature pursuant to S.B. 1011.

SUPPLEMENTAL FACTUAL ALLEGATIONS

The Utah Supreme Court Reaffirms Utahns' Right to Alter or Reform Their Government via Initiative and the District Court Reinstates Proposition 4's Reforms, Enjoins Enforcement of the Congressional Map, and Orders a Remedial Process

45. 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 v. Utah State Legislature*, 2024 UT 21, 554 P.3d 872.

46. In its July 11 decision, the Supreme Court held that the people's right to alter or reform their government via citizen initiatives is protected from government infringement. *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*. ¶ 11.

47. The Court held that "[l]egislative changes that do impair the reforms enacted by the people" are subject to strict scrutiny and survive a constitutional challenge only if "the Legislature shows that they were narrowly tailored to advance a compelling government interest." *Id*.

48. On August 25, 2025, the District Court found that in enacting Proposition 4, "the people exercised their initiative power to propose redistricting legislation within the alter or reform clause in the Utah Constitution." Order Granting MSJ on Count V at 61.

49. The District Court further found that by replacing Proposition 4 with S.B. 200, the Legislature "infringed on the people's exercise of their right to propose and enact legislation to alter or reform their government and impaired the core redistricting reform" of Proposition 4. *Id.*

50. The District Court found that the justifications offered by the Legislature for its impairment of Proposition 4 did not satisfy strict scrutiny and "fail[ed] to justify overriding the will of the people of Utah." *Id.* at 62.

51. As a result of these findings, the District Court ruled that the Legislature's repeal and replacement of Proposition 4 was void *ab initio* and that Proposition 4 "stands as the only valid law on redistricting." *Id.* at 69.

52. The District Court found that the "Legislature unconstitutionally repealed Proposition 4, enacted S.B. 200 and then, under that framework, enacted H.B. 2004, the 2021 Congressional Plan." *Id.* at 71. The District Court found that "[a]s a result, H.B. 2004, and the 2021 Congressional Plan must be enjoined." *Id.* at 72.

53. In an August 25 order, later amended on September 6, the District Court ordered a remedial process to ensure the adoption of a congressional map that complies with Proposition 4 in time for use in the 2026 midterm elections. The order set a timeline that included an opportunity for the Legislature to adopt a compliant map if it chose to do so, for Plaintiffs to submit any

proposed remedial map if necessary, and for the Court to adjudicate any dispute about the maps' compliance with Proposition 4 at a hearing to be held on October 23, 2025.

Proposition 4's Prohibition on Partisan Favoritism

54. Proposition 4 requires that in addition to conforming to the neutral rank-ordered redistricting criteria, no redistricting plan may "divide 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." Utah Code § 20A-19-103(3).[1]

55. Proposition 4 provides that the Legislature "shall use judicial standards and the best available data and scientific and statistical methods, including measures of partisan symmetry, to assess whether a proposed redistricting plan abides by and conforms" to the prohibition on partisan favoritism. *Id.* § 20A-19-301(4). Under this provision, "measures of partisan symmetry" is a nonexclusive example of a method by which a map's compliance with the prohibition can be assessed.

56. In these provisions, the People codified a quality requirement that the Legislature use methods most appropriate to the context (*i.e.*, "best"), an understanding that the methods and their applicability may evolve over time (*i.e.*, "available"), and flexibility in the types of evidence that can serve as proof (*i.e.*, "data and scientific and statistical methods, including measures of partisan symmetry").

57. This is for good reason. Political scientists have developed a variety of methods to determine whether a map purposefully or unduly favors or disfavors a political party, including

[1] Except where otherwise noted, citations to Utah Code § 20A-19-103 refer to the version enacted by Proposition 4 before its amendment by S.B. 1011. Provisions of § 20A-19-103 added or modified by S.B. 1011 are cited throughout with a parenthetical indicating the citation is to the provision "as amended."

multiple measures of partisan symmetry. And the appropriateness of any given method or measure depends on the context, including the state's current and historical political environment, political geography, and the type of plan under review. No measure should be analyzed in isolation from the context. And in some contexts, certain methods simply cannot yield reliable or interpretable results, or their application can itself confer an undue advantage to one party.

58. With respect to partisan symmetry, courts have recognized that there are multiple accepted measures of partisan symmetry, including measures applicable to Utah, such as the efficiency gap, that are excluded from consideration under S.B. 1011. *See Common Cause v. Rucho*, 318 F. Supp. 3d 777, 885 (M.D.N.C. 2018), *vacated on other grounds*, *Rucho v. Common Cause*, 588 U.S. 684 (2019) (defining partisan symmetry as "whether supporters of each of the two parties are able to translate their votes into representation with equal ease"); *Whitford v. Gill*, 218 F. Supp. 3d 837, 898 (W.D. Wis. 2016), *vacated on other grounds*, *Gill v. Whitford*, 585 U.S. 48 (2018) (concluding that plaintiffs had met burden to prove an unlawful partisan effect in map through "plaintiffs' proposed measure of asymmetry, the efficiency gap"); *Ga. State Conference of NAACP v. State*, 269 F. Supp. 3d 1266, 1284 (N.D. Ga. 2017) ("partisan symmetry, measured by the efficiency gap, is one way to make a political gerrymandering claim").

59. Proposition 4's prohibition of dividing districts that "purposefully or unduly favors or disfavors . . . any political party" mirrors similar language in other states, which has readily been interpreted and applied by state courts in light of the best available data and scientific and statistical methods, including measures of partisan symmetry. *See, e.g.*, Ohio Const. art. XIX, § 1(C)(3)(a); Haw. Const. art. IV, § 6; Del. Code Ann. tit. 29, § 804; Va. Code § 24.2-304.04(8).

60. In an action challenging the lawfulness of a redistricting plan under Proposition 4, the court "shall review or evaluate the redistricting plan at issue de novo." Utah Code § 20A-19-301(4).

Legislature Enacts S.B. 1011

61. On October 6, 2025, the Utah Legislature enacted S.B. 1011, introduced by Senator Brady Brammer.

62. The bill purports to innocently define terms and establish standards to use in evaluating redistricting plans for compliance with Proposition 4, but S.B. 1011 in effect overwrites Proposition 4's redistricting standards and requirements, a core reform codified at Utah Code § 20A-19-103.

63. First, S.B. 1011 undermines Proposition 4's prohibition on purposeful partisan favoritism by providing that "a redistricting plan that is within the acceptable bounds of the ensemble analysis" does not purposefully favor or disfavor a political party, "[a]bsent clear and convincing evidence of purpose." Utah Code § 20A-19-103(4)(b) (as amended).

64. An "ensemble analysis" under the bill refers to an analysis that "uses a sequential simulation to generate an ensemble of at least 4,000 redistricting plans before culling any plan for compliance with this section" and then compares the redistricting plan to the computer-generated ensemble maps to see if it is outside the normal distribution of expected outcomes. A map "that is not within 2.5% and 97.5% fails the ensemble analysis." *Id.* § 20A-19-103(1)(a) (as amended). The bill sets no constraints or parameters on how the computer-simulated ensemble maps must be drawn, except that the maps generated cannot be culled, or filtered, to ensure compliance with Proposition 4's neutral redistricting criteria.

65. Next, S.B. 1011 dictates how to prove that a redistricting plan "unduly" favors or disfavors a political party—that is, whether the map has the *effect* of advantaging or disadvantaging a political party, regardless of its purpose. *Id.* § 20A-19-103(4)(b) (as amended).

66. For a congressional map, S.B. 1011 defines "unduly favors or disfavors" as a map that is both (a) "asymmetrical under measures of partisan symmetry" and (b) "fails the mean-median difference test." *Id.* § 20A-19-103(1)(f), (4)(b) (as amended).

67. A congressional map is asymmetrical under "measures of partisan symmetry" if it fails "the partisan bias test" and "an ensemble analysis with subsequent culling to include only redistricting plans that pass the partisan bias test to ensure the plan is within the statistical bounds of passing plans." *Id.* § 20A-19-103(1)(a) (as amended).

68. The "partisan bias test" in turn is defined as a metric tabulated by calculating each party's statewide vote share using a defined set of elections referred to as a "partisan index." This statewide vote share is subtracted from 50%, and that difference is then subtracted from each party's vote share in each district in the congressional map using the same partisan index. This "adjusted vote share" is then used to calculate the difference between each party's expected seat share and 50% of the seats in a hypothetical election. If the result of this calculation is other than "0" (for an even number of seats) or ".5" (for an odd number of seats), the redistricting plan fails the partisan bias test. *See id.* § 20A-19-103(1)(d)-(e) (as amended).

69. The "mean-median difference test" is defined as the difference between a party's average statewide vote share and the party's median district vote share under the redistricting plan. If this difference is greater than 2%, the redistricting plan fails the mean-median test. *Id.* § 20A-19-103(1)(b) (as amended).

70. S.B. 1011 emphasizes that any judicial review of a *congressional* plan to determine compliance with the partisan favoritism prohibition must be based on the outcomes of an ensemble analysis, the partisan bias test, and the mean-median difference test, "in accordance with" the amended § 20A-19-103. *Id.* § 20A-19-103(8) (as amended).

71. As for redistricting plans that are *not* congressional plans—such as the Legislature's own state and house districts—S.B. 1011 is less prescriptively defined. The same standard for *purposeful* favoring or disfavoring applies to all redistricting plans under amended § 20A-19-103(4)(a). But for purposes of *undue* favoring or disfavoring, under amended § 20A-19-103(4)(b), S.B. 1011 simply provides that a non-congressional redistricting plan does not unduly favor or disfavor a political party if it is "symmetrical under the measures of partisan symmetry and passes the mean-median difference test." *Id.* § 20A-19-103(4)(c) (as amended). Under amended § 20A-19-103(1)(c), the term "measures of partisan symmetry" is limited to the partisan bias test only for the purpose of evaluating congressional plans, not any other type of redistricting plan. Thus, S.B. 1011 does not require non-congressional maps to satisfy the partisan bias test. *See id.* § 20A-19-103(1)(c) (as amended).

72. These amendments to Proposition 4 severely impair its enforceable prohibition on partisan favoritism—the people's central reform—in several ways. First, S.B. 1011 mandates the use of a partisan bias test, which is inapt for states like Utah where statewide elections are uncompetitive, and yields unreliable paradoxical results in Utah. Second, the bill mandates the use of the mean-median difference test, inapplicable in Utah for similar reasons. Third, the bill mandates a flawed ensemble analysis that is untethered from Proposition 4's neutral criteria and effectively greenlights purposeful and undue partisan favoritism. Fourth, by heightening Proposition 4's evidentiary standard for proving purposeful partisan favoritism, S.B. 1011 erects

barriers to effective judicial review of gerrymandering claims. And finally, the combined purpose and effect of these provisions is to privilege congressional maps that favor Republicans and lock Democratic voters out of representation in the state's congressional delegation.

S.B. 1011's Mandatory Use of the Partisan Bias Test Impairs Proposition 4

73. S.B. 1011's mandated use of the partisan bias test to assess congressional redistricting plans undermines Proposition 4 because the test cannot detect partisan favoritism in Utah redistricting plans.

74. Partisan favoritism manifests in redistricting plans by way of "packing" the disfavored party's voters into a small number of districts or by "cracking" them across multiple districts so they cannot elect a candidate of choice anywhere. In Utah, where minority party voters are clustered in a single region (Salt Lake County) and unable to reliably form a majority in more than one of the state's four congressional districts, it is cracking—not packing—that primarily operates to disfavor minority party voters in congressional elections. By cracking Democratic Party voters in Salt Lake County, in other words, a redistricting map can ensure the Republican Party wins all four seats.

75. Some partisan symmetry measures, like the efficiency gap, are designed to capture the presence of both cracking and packing in a redistricting plan. Others like the Least Republican Vote Share (LRVS) and the standard deviation of vote share (SDVS) have been developed by scholars to specifically detect cracking gerrymanders in Utah. These are among the best available methods and measures to assess undue partisan favoritism in Utah congressional plans.

76. The partisan bias test, on the other hand, is among the *worst* methods to use in Utah.

77. The partisan bias test requires assuming a counterfactual scenario in which each of two parties receives an even share of the statewide vote, to compare the expected seat share of the

two parties in that scenario. It asks, in other words, what share of seats each party would win in a hypothetical scenario where the statewide vote is perfectly tied at 50-50. And if one party wins more seats under a given redistricting plan than the other in this scenario, the plan exhibits partisan bias.

78. Because it depends on how a redistricting plan functions in a counterfactual 50-50 election, the partisan bias test only works in states where either party *could* feasibly win 50% of the statewide vote. Professor Gary King, an author of the test, has emphasized this repeatedly in his published work: "we only propose to apply the methodology to jurisdictions where it is factually reasonable to assume that elections can be competitive" at the statewide level. Bernard Grofman & Gary King, *The Future of Partisan Symmetry as a Judicial Test for Partisan Gerrymandering after* LULAC v. Perry, 6:1 Election L.J. 2, 19 (2007).

79. It is not factually reasonable—nor anywhere near the realm of possibility—to assume that statewide elections in Utah are competitive statewide.

80. If there is one thing widely known about statewide elections in Utah, it is that they have long been, and remain, highly *un*competitive. In the past three decades, Republicans have won every statewide election for president, governor, and other statewide offices, nearly always with landslide margins of 20 percentage points or more. And the level of Republican dominance in statewide elections has only grown steadily in the last several decades. The last time a Democratic candidate received a majority of the vote statewide in Utah was the 1996 attorney general election in which Democrat Jan Graham was elected.

81. Many more scholars have warned that the partisan bias test should not be used in states like Utah where one party consistently receives a significant majority of the state-wide vote. For example, in a 2015 publication, the authors Stephanopoulos and McGhee have written that, in

such states, "the vote share shifting that would have to be assumed to simulate a tied election (let alone the flipping of the parties' performances) is simply too implausible to be taken seriously." Nicholas O. Stephanopoulos & Eric M. McGhee, *Partisan Gerrymandering and the Efficiency Gap*, 82 U. Chi. L. Rev. 831, 860 (2015).

82. Because Utah's electoral environment is outside the condition necessary to apply partisan bias, when it is applied to Utah redistricting plans it invariably produces absurd and irrational outcomes.

83. Consider some examples. First, the Legislature's 2021 Congressional Map. That map, recently enjoined in this case, cracked Salt Lake County's concentration of Democratic voters into four Republican-majority districts, guaranteeing Republicans victory in all four districts while locking Democrats out of any representation. Unsurprisingly, the map registers as an extreme pro-Republican partisan gerrymander under every measure of partisan favoritism applicable in Utah, including the efficiency gap, LRVS, and SRVS. But under S.B. 1011's partisan bias test, the map receives a "pass," a perfectly unbiased score of 0.

84. Now consider the three maps proposed by the Utah Independent Redistricting Commission (UIRC). Each map included one district in which the state's Democratic voting minority in Salt Lake County could elect a candidate of their choice. Under S.B. 1011's partisan bias test, these maps *fail* and nonsensically register as biased against *Democrats*.

85. In other words, S.B. 1011's partisan bias test views a map that provides Democrats *no* representation as fair to all parties but a map that does provide Democrats representation as unfair to Democrats—because in the imaginary world where statewide elections were tied, they would not win half the seats.

86. Scholars have recognized this effect as the so-called "Utah paradox." When other applicable measures register a map as disfavoring the minority party to a high degree, the partisan bias test concludes fair. When other applicable measures register a map as fair, the partisan bias says the map is unfair to the party that already enjoys an opportunity to win every seat. When the People approved a ban on partisan favoritism assessed by the "best available" scientific methods and measures, a measure yielding such haywire results is not what was contemplated.

87. Scholars have likewise found that this pattern recurs in sets of thousands, even a million, neutrally drawn computer generated congressional maps in Utah: plans that happen to include one district with a majority-Democratic vote share are consistently flagged as pro-Republican, while plans guaranteeing Republicans a majority in all four seats appear unbiased.

88. Thus, the paradoxical results of S.B. 1011's partisan bias test thus systematically privilege maps that favor Republican representation and disfavor Democratic representation.

89. Given these effects, scholars have resoundingly concluded that the partisan bias test cannot validly be applied here because it is too easily gamed by partisan actors. That is precisely what occurred in S.B. 1011.

S.B. 1011's Mandatory Use of the Mean-Median Difference Test Impairs Proposition 4

90. The mean-median difference test, another required element under S.B. 1011, is also inapplicable to Utah and produces similarly biased results.

91. The mean-median difference test, as applied in political science, compares a party's median district vote share and its mean district vote share.

92. S.B. 1011 codifies a similar but not identical version of this test that instead reports the difference between a party's median district vote share and its mean *statewide* vote share.

93. The test seeks to capture whether the distribution of a party's support across districts is skewed—*i.e.*, whether its votes are packed inefficiently into too few districts. A greater difference between the mean and median suggests the district distribution is skewed in favor of the other party, while when the mean and median are close, the district distribution is more symmetric.

94. Although there is no set level of mean-median difference that constitutes undue partisan favoritism and any score should be interpreted in context, S.B. 1011 sets an artificial threshold of 2%, where any greater difference fails the test.

95. The mean-median difference metric does not detect cracking gerrymanders in a state like Utah, which is how any disadvantage to the minority party in Utah generally manifests. One of the authors of the measure noted that unlike the efficiency gap (which is designed to capture cracking and packing), the mean-median difference detects packing only.

96. Like the partisan bias metric, the mean-median also only works in states with competitive statewide elections, where it is possible for control over the median district to shift. This is not possible in Utah; elections never approach 50-50 statewide in Utah. In states with uncompetitive elections, where the median district cannot practically flip, the mean-median difference has little relevance to whether the parties can elect seats with symmetrical ease.

97. The mean-median difference metric also structurally disadvantages the minority party in politically lopsided states like Utah, where Democrats are only numerous enough to reliably win one seat and geographically concentrated. The test compares a party's average vote share across all districts to its vote share in the median district, treating any difference above 2% as evidence of bias. But in a state like Utah, the median district vote share is always safely Republican and very nominally Democratic when the lines are drawn neutrally. Because Democrats' votes are concentrated in a single metro area, their statewide average vote share is

naturally inflated relative to the median district's vote share. So, a map's mean-median difference tends to rise quickly past the 2% failure threshold as the Democratic vote share climbs even by small amounts in the most Democratic district, which happens to be the *only* district where Democrats can translate vote share into representation. In effect, by forcing the median vote share to be within just two percentage points of the statewide mean, S.B. 1011 puts tremendous downward pressure—indeed, an effective cap—on how Democratic the most Democratic district can be.

98. As a result, the mean-median test also results in absurd, paradoxical outcomes benefitting Republicans alone. By way of illustration, the 2021 Congressional Map, which guaranteed Republicans a 4-0 map by cracking Democrats in Salt Lake County, has a mean-median difference under S.B. 1011 of close to 0, or totally fair. Meanwhile, the UIRC maps, which provided Democrats with one district where they could reliably elect a candidate of choice, all have a mean-median difference under the bill far exceeding 2% and thus failing the test.

99. Scholars have also found, based on analysis of large ensembles, that the mean-median difference test tends to register 4-0 Republican maps as symmetrical and fair while registering 3-1 maps with a Democratic district as pro-*Republican*.

100. Given its exclusive focus on the parties' vote share at the median (where Republicans always win), S.B. 1011's mean-median test lacks any sensitivity to the parties' symmetrical ability to translate votes into actual representation in the congressional delegation.

101. S.B. 1011's requirement to satisfy the mean-median difference test thus impairs Proposition 4's core purpose of identifying and prohibiting undue partisan favoritism in redistricting.

S.B. 1011's Flawed and Biased Ensemble Analysis Impairs Proposition 4

102. S.B. 1011 also mandates the use of an ensemble analysis in two ways, both of which impair Proposition 4.

103. First, to determine whether a redistricting plan exhibits purposeful favoritism, S.B. 1011 requires that the plan be compared to a set of at least 4,000 maps generated by a computer simulation. If the plan "is within the acceptable bounds of the ensemble analysis" it does not purposefully favor or disfavor a political party. *See* Utah Code § 20A-19-103(4)(b) (as amended).

104. The definition of "ensemble analysis" is the set of maps generated by a computer "*before culling* any plan for compliance" with the requirements of Proposition 4. Utah Code § 20A-19-103(1)(a)(i)(A) (as amended) (emphasis added). This means that to determine whether a map exhibits purposeful favoritism, it is being compared to a set of maps that S.B. 1011 expressly directs should *not* be limited to those maps that follow the requirements of Utah's neutral redistricting criteria.

105. Though an ensemble analysis is ordinarily among the best available evidence to determine whether a map has been drawn to purposefully favor or disfavor a political party, an ensemble expressly defined *not* to follow the state's non-partisan criteria wholly defeats the purpose of an ensemble analysis. An ensemble analysis sheds light on a plan's partisan purpose when the ensemble is constructed to *follow* a state's neutral redistricting criteria, including by culling (i.e., excluding) maps from the ensemble that violate those criteria. Only then can an ensemble begin to serve its purpose of helping to determine whether the plan is a partisan outlier among neutrally drawn maps. By *prohibiting* an ensemble from being filtered to exclude maps that violate Proposition 4's neutral criteria, S.B. 1011 renders any ensemble analysis useless for determining partisan purpose.

106. Because S.B. 1011 does not define what if any parameters the simulations in the ensemble must follow, it acts as an open invitation for manipulation and gamesmanship. For example, if a legislature wanted to avoid liability for drawing a challenged plan to crack Democrats in Salt Lake County four ways, it could program a 4,000-map ensemble to include only variants that split the state's most populous county at least once. If the challenged plan falls within the middle 95% of outcomes in this reverse engineered ensemble—as it very well could—S.B. 1011 would insulates it from liability under the prohibition on purposeful favoritism absent clear and convincing evidence of purpose.

107. S.B. 1011's definition of an ensemble mandatorily untethered from Prop 4's neutral redistricting criteria severely impairs the prohibition on redistricting plans that purposely favor or disfavor any political party.

108. Second, the flawed ensemble analysis also impairs Proposition 4's prohibition on plans that *unduly* (i.e., in effect) favor or disfavor a political party.

109. Courts frequently consider ensemble analyses to evaluate partisan effect claims, in addition to partisan purpose claims, because ensembles (so long as they are filtered to comply with the state's neutral redistricting criteria) can provide evidence as to whether a map's partisan makeup can be fairly attributed to compliance with the law's neutral criteria, or is otherwise undue.

110. But S.B. 1011 prescribes a far narrower role for ensembles in the undue partisan favoritism analysis for congressional maps. The bill incorporates into the definition of "measures of partisan symmetry" an "ensemble analysis with subsequent culling to include only redistricting plans that pass the partisan bias test." Utah Code § 20A-19-103(1)(c)(2) (as amended). In so doing, S.B. 1011 imports both the untethered ensemble analysis and the inapt partisan bias test into the law's determination of undue partisan favoritism.

111. In this provision, S.B. 1011 uses an ensemble analysis solely to intensify the paradoxical and biased effects of applying the partisan bias test. Under the provision, an ensemble must be culled to exclude all maps that fail the bill's flawed partisan bias test. Then, to assess whether a plan is symmetrical under the bill, the plan being assessed must fall within the middle 95% of this culled ensemble. Recall that the effect of the partisan bias score in S.B. 1011 is to reject maps that afford Democratic voters the opportunity to win a seat. This provision says that even maps that *pass* the partisan bias test must nevertheless be struck down as asymmetrical if they fall outside the middle 95% of an ensemble exclusively comprised of other maps that also pass partisan bias. Under the bill, if the maps fall in the tail of that distribution outside the middle 95%, it provides Democratic voters too great an opportunity in the most Democratic district, and must be invalidated.

112. S.B. 1011's doubly problematic ensemble analysis thus directly impairs Proposition 4's anti-gerrymandering purpose and reform.

S.B. 1011 Restricts Judicial Review

113. S.B. 1011 also impairs the anti-gerrymandering enforcement goals of Proposition 4 by restricting judicial review to a limited number of flawed considerations rather than allowing judges to consider the best available data and tests and the totality of evidence that may be available.

114. S.B. 1011 requires that, in determining whether a redistricting plan purposefully or unduly favors or disfavors a political party, judicial review *must* be based on an ensemble analysis, the partisan bias test, and the mean-median difference test, with all the problems alleged above. Utah Code § 20A-19-103(8) (as amended).

115. Additionally, S.B. 1011 mandates that in determining whether a redistricting plan purposefully favors or disfavors a political party, courts must apply a "clear and convincing" evidentiary standard in assessing whether a plan was drawn with partisan purpose. Utah Code § 20A-19-103(4)(b) (as amended). This raises the evidentiary threshold in a way that both directly impairs Proposition 4 and contradicts it. Section 20A-19-301 sets a "preponderance of the evidence" standard for judicial review and requires *de novo* judicial review. S.B. 1011 conflicts with these provisions in a manner that, if applied, impairs Proposition 4's reforms.

The Purpose and Effect of S.B. 1011 Is to Favor Republicans and Disfavor Democrats in Congressional Redistricting

116. The purpose and combined effect of S.B. 1011's various amendments to Proposition 4's redistricting standards is to transform its strict unqualified prohibition on purposeful and undue partisan favoritism into a mandate to favor Republicans and disfavor Democrats in congressional redistricting.

117. To satisfy the bill's partisan bias test, a map-drawer that has drawn a congressional plan that happens to include a district in which Democrats form a majority and can reliably elect a candidate of their choice must artificially weaken the Democratic performance of a congressional plan's most Democratic district by shifting Democrats to the second-most Democratic district. This is to ensure Democrats can win two seats in the imaginary 50-50 world (though they are unable to win even one in the real world).

118. Then, to satisfy the law's symmetry requirement, that plan must not fall within the 2.5% distribution tail of an ensemble constructed without regard for Proposition 4's neutral redistricting criteria and culled to remove all plans that violated the partisan bias test—placing even more downward pressure on the permissible Democratic vote share in the plan's most Democratic district.

119. Upon passing the symmetry requirement, the plan must also then satisfy the bill's mean-median test, which likewise caps the Democratic vote share in the most Democratic district insofar as the second and third-most Democratic districts require a greater share of Democratic voters to ensure less than 2 percentage points difference between the median district and mean statewide Democratic vote share.

120. These tests together create an effective ceiling on the allowable Democratic performance of the most Democratic congressional district. Indeed, applying the partisan bias and mean-median difference test to a computer-generated ensemble of maps drawn to comply with Proposition 4's rank-ordered neutral criteria would eliminate from consideration virtually all of the maps in the ensemble.

121. Finally, to insulate the plan from liability for purposefully favoring Republicans, S.B. 1011 gives the Legislature license to concoct a set of at least 4,000 simulated maps in a manner that ensures a challenged map falls within the middle 95% of the ensemble's outcomes. Absent clear and convincing evidence of purpose (a high bar), S.B. 1011 ensures that a map favoring or disfavoring a political party can survive judicial scrutiny.

122. S.B. 1011 is thus in direct conflict with Proposition 4's reform to prohibit purposeful and undue partisan favoritism.

123. S.B. 1011 was designed with this very purpose in mind.

124. One clear indication of this purpose is the selective application of its provisions to congressional maps alone. S.B. 1011 does not apply the partisan bias test and the culled ensemble analysis, for example, to the state senate, house, or school board maps. The reason for that, after all, was that the Legislature's current state senate and house districts would fail the partisan bias test deemed unlawful under S.B. 1011.

125. In addition, the Legislature needed legal cover for the remedial congressional map, Map C, that was advanced to the floor the same day. Map C purposefully and unduly favors Republicans and disfavors Democrats in violation of Proposition 4's prohibition on partisan favoritism, as shown by the "best available" data and statistical and scientific methods, including measures of partisan symmetry. S.B. 1011 is an effort to undo that violation.

126. The Legislature's map proposal was drawn by Dr. Sean Trende and evaluated by him for undue partisan favoritism according to a standard that bears striking similarity to that codified in a predecessor draft of S.B. 1011. In accordance with S.B. 1011, he applied the partisan bias test and ensured that it fell in the middle 95% of an ensemble untethered from Proposition 4's rank-ordered neutral criteria and culled to remove variants that fail the partisan bias test. The only difference with S.B. 1011 as enacted is that the bill adds the extra pro-Republican requirement that a map satisfy a 2% mean-median difference.

127. Dr. Trende's map drawing and evaluation process—which was motivated by the unlawful purpose of favoring Republicans and disfavoring Democrats in violation of Proposition 4—was codified into law to otherwise give his maps legal credence.

The Legislature Was Aware of S.B. 1011's Severe Impairment of Proposition 4 and Expressed No Legitimate Justification for It

128. During the legislative process leading to the adoption of S.B. 1011, legislators and members of the public testified about why its standards and other changes to Proposition 4 are inappropriate for Utah and would undermine the core anti-gerrymandering goal of Proposition 4.

129. On September 22, the Legislature held a hearing of the Legislative Redistricting Committee (LRC) where it presented five congressional remedial map options and unveiled for the first time an earlier version of S.B. 1011 drafted by Senator Brammer that codified the partisan bias test alone. The LRC held a second hearing on September 24.

130. On September 22, Representative Owens pointed out: "The court said, 'Legislature, go back and comply with the requirements in Prop 4.' The first thing out of the chute this morning is us changing the requirements in Prop 4." He further expressed his objection to using the partisan bias test, noting that test was called "counterfactual" by U.S. Supreme Court Justice Kennedy because it relies on a hypothetical that "has no bearing on reality."

131. In response to a question from Co-chair Sandall, Senator Brammer acknowledged that the partisan bias test uses a "hypothetical" election in its calculations.

132. The public opposed Senator Brammer's proposed bill at both hearings.

133. For example, at the September 22 hearing, Stuart Hepworth, a resident of South Jordan, remarked that the proposed bill "uses a lot of complicated language, but the test it imposes is actually very simple." However, Hepworth explained that the partisan bias test only works in states like "Wisconsin, Georgia, and North Carolina, where both parties get about half the vote and fundamentally doesn't work in places like Utah or New York" where statewide vote shares are lopsided toward one party. After describing how the bill's test would classify the current enjoined map as fair, and the UIRC maps as unfair pro-*Republican* gerrymanders, Hepworth noted that "the outcomes of this test are patently, unambiguously absurd."

134. At the September 24 hearing, Richard Harvey, a math teacher from Salt Lake City, explained why the partisan bias test is not supported by the necessary assumptions in Utah to apply that test because of the "very unlikely" electoral outcomes its calculations are based on. Harvey commented that the results of the partisan bias test "cannot be extrapolated beyond empirically plausible vote distributions," as is done when the tests assume a 50-50 statewide vote. In response to a question from Representative Pierucci about which test he would prefer, Harvey explained the

difficulties of applying various tests and why using more tests is preferable over mandating just one.

135. In the days following the hearings, members of the public continued to contact their representatives to urge them not to support the proposed bill.

136. Some legislators responded via email to their constituents indicating that they were under the impression the Legislature had been ordered by the district court to pass a bill codifying certain redistricting standards and tests.

137. Representative Melissa Garff Ballard wrote in an email regarding Senator Brammer's bill: "This was requested by the League of Women Voters to the judge, who has asked us to define and establish these standards, otherwise we wouldn't be doing it. I don't want it either."

138. Another Representative wrote in an email to a voter: "In Prop 4, there was no standard presented to test for partisan symmetry. In the judge's ruling, she required the legislature to establish a partisan symmetry standard test. So we've been asked to establish the standard by the courts before voting on new maps. The bill you mentioned is that bill establishing a standard to test our maps against. So that's a big part of what we're doing on October 6. If I don't vote in favor of it, I'm defying the judge's orders."

139. This Court neither invited nor ordered the Legislature to amend Proposition 4, certainly not in a manner that impairs its central anti-gerrymandering reform.

140. On the evening of Friday, October 3, the Legislature publicly posted S.B. 1011, which significantly changed Senator Brammer's previously proposed bill to add required consideration of the flawed mean-median difference test and other of S.B. 1011's provisions curtailing judicial review of partisan favoritism claims.

141. That same Friday, Governor Cox issued a call to convene the Legislature into special session on Monday, October 6, to consider S.B. 1011 and to adopt new congressional boundaries in relation to this case.

142. On October 6, after only a weekend for the public to review the legislation, the LRC held a committee hearing at 8:00 a.m. Mountain Time. Despite the compelling testimony and public pushback against the prior version of the bill, the LRC made no mention of S.B. 1011. There was no debate, discussion, or public comment on the new version of the bill. Instead, after meeting for about 10 minutes, the LRC simply voted to advance congressional Map C to the Senate floor.

143. The bill proceeded to the Senate floor the same day, where it passed under a suspension of the legislative rules by a vote of 22 to 7.

144. Shortly thereafter, the bill went to the House floor, where it passed by a vote of 55 to 18, with 2 abstaining.

145. At no point in the legislative process did the Legislature identify a compelling state interest to justify S.B. 1011's impairments to Proposition 4's reforms.

CAUSES OF ACTION

Count XVI

Violation of the Utah Constitution's Alter or Reform Clause – Article I, Section 2

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

147. Article I, Section 2 protects Utahns' rights to alter or reform their government.

148. Proposition 4 was enacted pursuant to that right with a core goal of ending partisan gerrymandering in Utah.

149. As such, among Proposition 4's reforms is an enforceable ban on any redistricting map that "purposefully or unduly favors or disfavors . . . any political party." Utah Code § 20A-19-103(3).

150. As part of this reform, Proposition 4 requires the use of "judicial standards and the best available data and scientific and statistical methods, including . . . partisan symmetry" to assess compliance with the ban on partisan favoritism. *Id.* § 20A-19-103(4).

151. The partisan bias test, the mean median test, and the bill's flawed ensemble analysis are not the "best available" data and methods to assess partisan favoritism in Utah congressional redistricting plans.

152. These tests give a "pass" to congressional maps gerrymandered to favor the majority political party.

153. S.B. 1011's various amendments to Proposition 4 privilege and require redistricting maps that unduly favor the state's majority party, constituting an end-run around the anti-gerrymandering goals of Proposition 4.

154. S.B. 1011 thus impairs the core reforms and government alterations contained in Proposition 4 and are not narrowly tailored to advance a compelling government interest.

155. S.B. 1011 thus violates Plaintiffs' alter or reform rights under Article I, Section 2.

Count XVII

Violation of the Utah Constitution's Free Election Clause – Article I, Section 17

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

157. 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.

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

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

160. An election in which the fairness of district lines is measured using tests and standards that have the purpose and effect of benefitting one party under the guise of neutrality is not a Free Election within the meaning of Article I, Section 17.

161. S.B. 1011's amendments to Proposition 4 have the purpose and effect of systematically privileging and requiring maps that unduly favor the state's majority party and disfavor the minority party and thus "interfere to prevent the free exercise of the right of suffrage."

162. S.B. 1011 therefore violates Plaintiffs' right to free elections in violation of Article I, Section 17.

Count XVIII

Partisan Favoritism in Violation of Utah Constitution's Equal Protection Rights — Article I, Sections 2 and 24

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

164. S.B. 1011 violates Article I, Section 24 of the Utah Constitution because it has the purpose and effect of depriving a disfavored class of Utah voters of an equal opportunity to elect congressional representatives.

165. Article I, Section 24 provides: "All laws of a general nature shall have uniform operation." Utah Const. art. I, § 24.

166. Article I, Section 2 states in relevant part that the government is "founded on [the people's] authority for their equal protection and benefit." Utah Const. art. I, § 2.

167. S.B. 1011 violates Plaintiffs' rights under Article I, Section 2 and Article I, Section 24 because it arbitrarily classifies voters based on partisan affiliation and then uses that classification to permit congressional plans that disfavor one class of voters for negative differential treatment compared to other similarly situated Utahns.

168. S.B. 1011 intentionally mandates the use of cherry-picked metrics and standards that gives a "pass" score to congressional maps gerrymandered in favor of the majority political party and to the disfavor of the minority political party.

169. By systematically disfavoring Democratic voters and favoring Republican voters, S.B. 1011 shifts political power from all the people and instead places it in a subset of the people.

170. Heightened scrutiny applies because S.B. 1011 implicates Plaintiffs' fundamental rights and creates impermissible and suspect classifications. *See Gallivan v. Walker*, 2002 UT 89, ¶¶ 40-42, 54 P.3d 1069, 1085-86.

171. S.B. 1011 has no compelling, reasonable, or legitimate justification for the adverse differential treatment Plaintiffs will experience as a result of which congressional maps are approved or disapproved through the use of S.B. 1011's tests and standards.

172. Seeking partisan advantage through the selection of partisan favoritism metrics is not a compelling or legitimate objective.

173. Plaintiffs, or their members in the case of organizations, are part of the class of citizens that S.B. 1011 denies equal treatment.

174. S.B. 1011 thus violates Plaintiffs' equal protection rights under Article I, Sections 2 and 24.

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

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

176. 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.

177. 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.

178. 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 South Salt Lake*, 2006 UT 40, ¶ 20, 140 P.3d 1235, 1241, which are "an essential attribute of the sovereignty of citizenship," *Cox v. Hatch*, 761 P.2d 556, 558 (Utah 1988).

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

180. S.B. 1011 violates the free speech and association rights of Plaintiffs and other Utahns under Article I, Sections 1 and 15.

181. S.B. 1011's biased and cherry-picked tests and standards guarantee that maps grossly favoring voters supportive of the majority party and disfavoring voters supportive of the minority party will be rated as "fair," thus burdening disfavored voters' ability to "communicate freely their thoughts and opinions" by turning their votes into representation at the ballot box.

182. Despite the severe burdens S.B. 1011 imposes on Plaintiffs' and other Utahns' rights of free expression and association, it is not narrowly tailored to serve any legitimate state interest.

183. S.B. 1011 thus violates Plaintiffs' free expression and association rights under Article I, Sections 1 and 15.

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

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

185. 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 (emphasis added).

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

187. 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 "is to ascertain the popular will, and not to thwart it," and "aid" in securing "a fair expression at the polls." *Id.*

188. The Utah Constitution protects citizens' right to vote free from undue influence, and in districts where the outcome is not predetermined through selection of biased metrics and standards for evaluating district lines.

189. S.B. 1011 denies, abridges, impairs, and dilutes Plaintiffs' and other Utahns' fundamental right to vote by greenlighting gerrymandered district lines and thwarting the ability of Plaintiffs and other Utah voters to fully express their will in their votes for congressional representative.

190. S.B. 1011 is an effort to defeat the public will and predetermine the outcome of the election.

191. S.B. 1011 is not justified by or narrowly tailored to achieve any legitimate governmental interest.

192. S.B. 1011 thus violates Plaintiffs' fundamental right to vote under Article IV, Section 2.

Count XXI

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

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

194. Article I, Section 2 provides 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, § 2.

195. Article I, Section 27 states: "Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government." Utah Const. art I, § 27.

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

197. S.B. 1011's purpose and effect of approving gerrymandered congressional maps favoring the state's majority party and disfavoring the state's minority party is the antithesis of free government and democracy.

198. S.B. 1011 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 S.B. 1011 violates the Utah Constitution's Article I, Section 2; Article I, Section 17; Article I, Sections 2 and 24; Article I, Sections 1 and 15; Article IV, Section 2; and Article I, Sections 2 and 27.

b. Preliminarily and permanently enjoin Defendants and their agents, officers, and employees, and those acting in concert with them, from enforcing or giving effect to S.B. 1011;

c. Retain jurisdiction of this action to render any further orders that this Court may deem appropriate;

d. Award Plaintiffs their reasonable attorneys' fees and costs as available, including under Utah Code § 20A-19-301(5);

e. Grant such other and further relief as the Court deems just and appropriate.

October 6, 2025

Respectfully submitted,

/s/ David C. Reymann

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