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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, et al.,

Defendants.

PLAINTIFFS' REMEDIAL BRIEF

Case No. 220901712

Honorable Dianna Gibson

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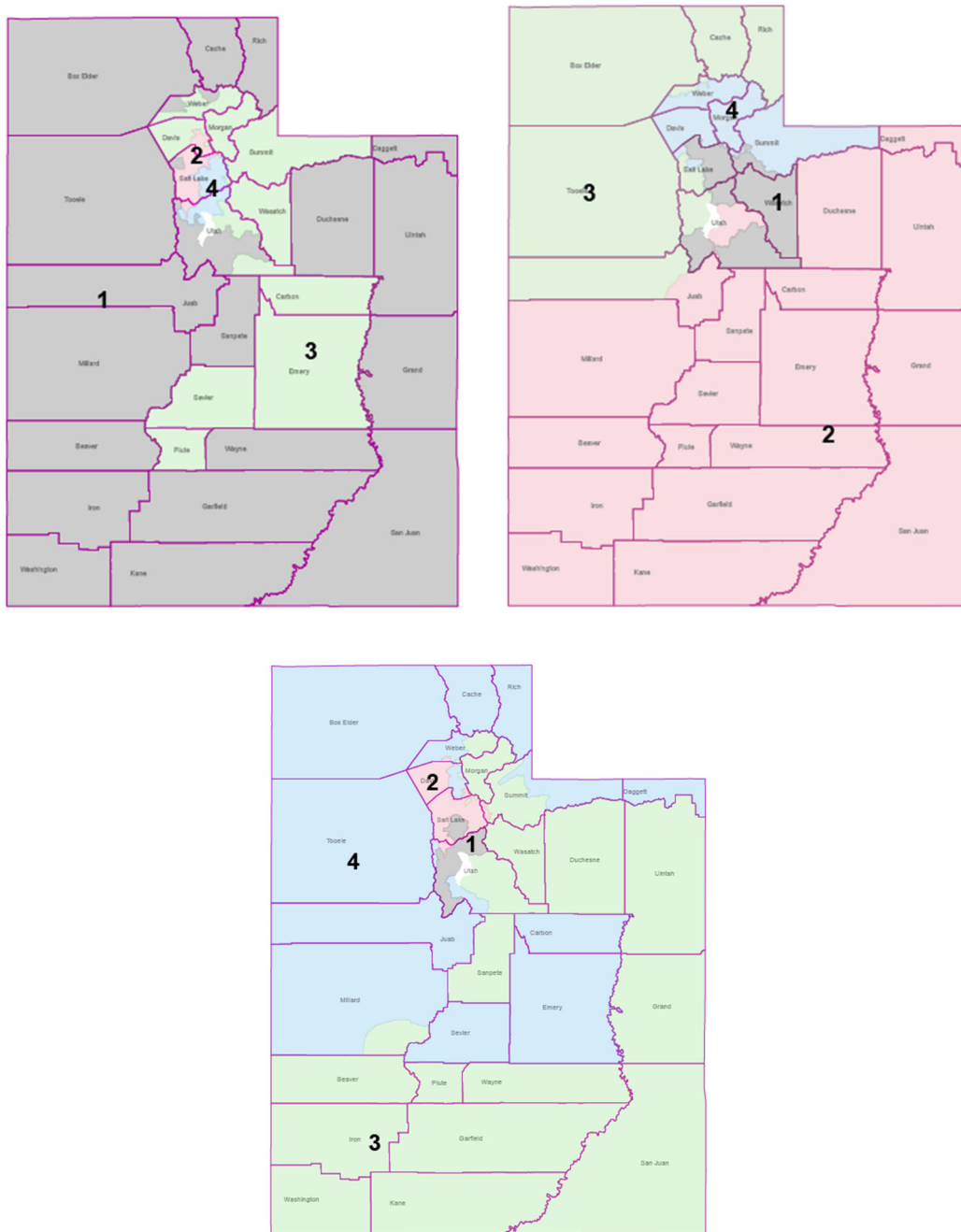
INTRODUCTION

The Court has before it three maps. Two (Plaintiffs' proposals) comply with the law; one (the Legislature's adopted Map C) does not.

Since this Court's August Order restoring Prop 4 and invalidating the 2021 congressional map, the Legislature has engaged in a series of actions to systematically rig the mapdrawing process to circumvent Prop 4's central reform—its prohibition on partisan gerrymandering. Its first step was to rewrite Prop 4 to, in effect, *mandate* partisan favoritism for the majority party. Its second step was to advance five map options that all favor the majority party. And its third step was to pick the one of those five that *most* violated Prop 4's ban on partisan gerrymandering.

How did the Legislature get there? By systematically disqualifying nearly all map options from sets of computer-simulated maps that created a single Democratic district and “culling” the options to include almost entirely 4-0 Republican maps. This process was deeply and disturbingly flawed. Turning Prop 4 on its head, the Legislature's expert, Dr. Sean Trende, disregarded Prop 4's neutral redistricting criteria and puzzlingly eliminated from consideration the maps that came closest to following those criteria while keeping in the mix those that did not—with stark partisan effects.

Consider just three examples—there are too many to choose from—among the set of maps against which Dr. Trende compared Map C in order to reach his conclusion that Map C complied with the newly announced (and inappropriate) S.B. 1011 standards:



These absurd maps—which do not even have contiguous districts—show how meaningless the Legislature’s conclusion regarding Map C’s compliance is. So long as its map did comparatively well on the metrics to maps like *these*, the Legislature concluded it had satisfied the law.

Not so. Prop 4 demands maps that comply with its neutral redistricting criteria and that do not favor a political party. The Legislature cannot rewrite the law jettison its prohibition on partisan gerrymandering, cannot disregard Prop 4’s neutral redistricting criteria in assessing or adopting a map, and cannot disqualify all partisan neutral maps from consideration in favor of cementing one party control over the congressional delegation.

Map C does not abide by Prop 4’s requirements. Plaintiffs’ maps do. The Court has a constitutional obligation to ensure that an equally apportioned, lawful map is in effect for the 2026 election. That obligation to impose a lawful one when the Legislature fails to dispense its obligation to do so has been recognized by courts across the country, including repeatedly by the U.S. Supreme Court. The Legislature could have complied with Prop 4. Yet it could not bring itself to do so.

BACKGROUND

I. The Legislature Hurriedly Alters Prop 4’s Partisan Favoritism Standards and Adopts a Non-Compliant Map.

The Legislature engaged in this remedial process “under protest.” As part of its process to select and adopt a new congressional map, the Legislature held three hearings of the Legislative Redistricting Committee (“LRC”), co-chaired by Senator Sandall and Representative Pierucci. The first meeting of the LRC took place on September 22, 2025, and five map proposals were presented, Maps A-E.¹ The Legislature’s expert, Dr. Sean Trende, testified to the committee about how he had created these five maps, including their derivation from various sets of computer-generated maps. At this September 22 hearing, and at an additional hearing on September 24, committee

¹ Leg. Redistricting Cmte. Minutes, Sep. 22, 2025, available at <https://le.utah.gov/interim/2025/pdf/00003658.pdf>.

members and members of the public spoke about their preferences and reactions to the five proposed maps.

But in addition to selecting a map, the Legislature used the LRC hearings as a new opportunity to undermine Prop 4. At the initial LRC hearing on September 22, with only three days before the Legislature was required to submit maps for public comment, Senator Brammer presented a proposal for a new bill mandating that only the “partisan bias test” could be used to follow Prop 4’s requirement of determining partisan favoritism using “judicial standards and the best available data and scientific and statistical methods, including measures of partisan symmetry.” Utah Code § 20A-19-103(4). This was the first time the Legislature shared publicly that they would be taking action to modify the standard used to evaluate compliance with Prop 4’s ban on “purposefully or unduly favor[ing] or disfavor[ing] . . . any political party.” Utah Code § 20A-19-103(3).

Despite the fact that Senator Brammer’s bill had only been made public that day and was not yet law (and indeed did not even have a bill number yet), Dr. Trende testified about how, in creating Maps A-E, he had primarily relied on the partisan bias test to evaluate their compliance with Prop 4.² In the course of his testimony, Dr. Trende inaccurately claimed that “the only test that truly measures partisan symmetry is the partisan bias test.”³

During the public comment portion at both the September 22 hearing, and at a second LRC hearing on September 24, Utahns’ testimony regarding Senator Brammer’s bill was overwhelmingly negative. Questions and comments from members of the committee as well as testimony from the public underscored the fact that the partisan bias test was ill-suited to the

² *Id.*

³ Leg. Redistricting Cmte. Audio/video, Sep. 22, 2025, available at <https://le.utah.gov/av/committeeArchive.jsp?mtgID=20165>, 1:56:50.

political realities of Utah because, as committee-member Representative Owens and other commentators stressed, the test requires a comparison to a hypothetical 50-50 state-wide election which is virtually guaranteed not to happen in Utah.⁴ When asked how many states are currently using the partisan bias test, Senator Brammer stated that “to this point, I don’t think any other states have statutorily adopted a statistical model.”⁵

When members of the committee or the public attempted to comment on the ways in which this test would favor the majority party or otherwise sought to comment on the Legislature’s maps’ compliance with Prop 4’s partisan favoritism ban, they were repeatedly shot down by Co-Chair Sandall, who insisted such discussion was inappropriate. Senator Sandall claimed such discussion was prohibited under Prop 4, when in fact evaluating whether a map favors or disfavors a political party either in purpose or effect is a *requirement* of Prop 4. Despite Senator Sandall’s efforts, multiple members of the committee and many members of the public nevertheless made clear their views that the partisan bias test was ill-suited for Utah and would guarantee a map that was disproportionately favorable to the majority party.

At the September 24 hearing, Representative Owens also voiced concerns about the opacity of Dr. Trende’s process in evaluating the Legislature’s maps. He noted that the Democratic members of the committee had not been provided with the data Dr. Trende had used to conduct the partisan bias test, nor a breakdown of the results. He explained that “essentially, we just put our maps into [Dr. Trende’s] black box and he says pass/fail.”⁶

⁴ *Id.*; Leg. Redistricting Cmte. Draft Minutes, Sep. 24, 2025, available at <https://le.utah.gov/interim/2025/pdf/00003705.pdf>.

⁵ Leg. Redistricting Cmte. Audio/video, Sep. 22, 2025, available at <https://le.utah.gov/av/committeeArchive.jsp?mtgID=20165>, 1:10:12.

⁶ Leg. Redistricting Cmte. Audio/video, Sep. 24, 2025, available at <https://le.utah.gov/av/committeeArchive.jsp?mtgID=20167>, 48:48.

On Friday, October 3, an altered version of Senator Brammer’s bill was posted on the Legislature’s website as S.B. 1011. This new version retained the requirement to use the skewed partisan bias test but also included significant changes. Specifically, S.B. 1011 also mandates the use of additional flawed metrics, including the use of the mean-median test and an ensemble analysis subject to “culling” for maps that fail the inappropriate “partisan bias” test.⁷

The LRC met again on Monday, October 6. The committee chose not to disclose the changes that Senator Brammer’s bill had undergone, nor discuss or even acknowledge the existence of S.B. 1011. Instead, the LRC simply voted to recommend Map C to the full Legislature, and then adjourned with minimal discussion. The hearing lasted less than ten minutes, and no public comment was allowed.⁸ Later that day, during the brief debate of S.B. 1011 on the House floor, Representative Thurston moved to substitute an updated version of the bill. This new version further explained and altered the description of how the ensemble analysis mandated in S.B. 1011 was to be conducted. This updated version of S.B. 1011 also retained all the flawed and biased metrics from the previous version. S.B. 1011 passed with single-party support in each chamber of the Legislature in the face of bipartisan opposition in both the House and Senate. It passed the Senate with a vote of 22 to 7, and it passed the House with a vote of 55 to 18 (with two abstentions). Shortly thereafter, Governor Cox signed S.B. 1011 into law.

Immediately following the official enactment of S.B. 1011, the Legislature passed S.B. 1012, its codification of Map C. S.B. 1012 also passed with single-party support and in the face of bipartisan opposition in both chambers. It passed the Senate with a vote of 18 to 9 (with two

⁷ See S.B. 1011, 10-03 17:19, available at <https://le.utah.gov/Session/2025S1/bills/introduced/SB1011.pdf>.

⁸ Leg. Redistricting Cmte. Audio/video, Oct. 6, 2025, available at <https://le.utah.gov/av/committeeArchive.jsp?mtgID=20174>.

abstentions) and the House with a vote of 56 to 17 (also with two abstentions). Governor Cox promptly signed the bill after its passage in the Legislature. Defendants' Map C splits three municipalities (Millcreek, North Salt Lake, and Pleasant Grove) into eleven pieces and three counties (Davis, Salt Lake, and Utah) four times.

II. Because Defendants' Map C is Unlawful, Plaintiffs Propose Two Remedial Maps.

Because Defendants' Map C does not comply with Prop 4 as enacted and an injunction against its use would leave Utahns with the unconstitutionally malapportioned 2011 congressional map as the operative map, Plaintiffs submitted two remedial maps on October 6 that both resolve that malapportionment violation and comply with Prop 4's requirements.

Plaintiffs' Map 1 comes from an ensemble of 10,000 maps generated by Plaintiffs' ensemble expert Dr. Jowei Chen using a computer algorithm designed to comply with Prop 4's priority-ordered redistricting criteria without considering partisan data. Dr. Chen selected the computer-generated map in his ensemble with the fewest municipal splits (the top-ranked criterion after population equality), and Plaintiffs' mapping expert Dr. Kassra Oskooii made a minor adjustment to improve ease of transportation in Rich County. Map 1 splits only one municipality (Midvale) and three counties (Salt Lake, Utah, and Weber).

Plaintiffs' Map 2 is a "least change" map based on the Legislature's Map C with changes made by Dr. Oskooii to correct its failures to conform to Prop 4's requirements. In particular, it corrects Map C's failure to minimize municipal and county splits to the greatest extent practicable and the enacted map's failure to comply with Prop 4's prohibition on party favoritism. Map 2 splits only one municipality (Pleasant Grove) and three counties (Salt Lake, Utah, and Weber), and has an average of 84.76% population overlap with the Legislature's enacted map.

Both of Plaintiffs' maps were created without the use of partisan or political data. Additionally, both maps have significant overlap with two of the maps created by the Utah

Independent Redistricting Commission (UIRC) in 2021: Map 1 has an 84.34% overlap with the Commission’s Orange Map, and an 80.32% overlap with the Purple Map. Map 2 also has substantial population overlap with the Commission’s Purple (80.94%) and Orange (77.32%) maps.

ARGUMENT

I. Map C Violates Prop 4’s Prohibition on Partisan Gerrymandering.

Map C cannot serve as a lawful remedy because it violates Prop 4’s express prohibition on partisan gerrymandering. Prop 4 provides that “[t]he Legislature . . . may not 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). As Legislative Defendants concede, this provision forbids partisan favoritism in both purpose *and* effect. *See* Legis. Defs. Combined Summ. J. Resp. at 78. To comply with this prohibition and Prop 4’s neutral redistricting criteria, the law provides that the Legislature “shall use judicial standards and the best available data and scientific and statistical methods, including measures of partisan symmetry.” Utah Code § 20A-19-103(4). And the Court “shall review or evaluate the redistricting plan at issue de novo” in ascertaining its compliance with Prop 4’s requirements. *Id.* § 20A-19-301(4).

Map C violates Prop 4, as enacted by the People, because it both unduly and purposefully favors Republicans. As Plaintiffs have explained, *see* Pls. Mot. for Prelim. Inj. on Counts 16-21 (“SB 1011 PI Mot.”) at 9-29, the Legislature’s recent enactment of S.B. 1011 is an unconstitutional attempt to codify biased, cherry-picked statistical tests that *mandate* the undue partisan favoritism that Prop 4 prohibits. Thus, S.B. 1011 is void *ab initio* and cannot supply the governing standard

in these remedial proceedings. But even if S.B. 1011 did apply, Map C still fails its test for *purposeful* partisan favoritism. Map C is therefore impermissible under any version of the law.

A. Map C Unduly Favors the Republican Party.

Map C unduly favors Republicans and disfavors Democrats, meaning it has the unlawful *effect* of favoring or disfavoring a party under Prop 4. Although this is the first case in Utah to apply an undue favoritism standard to redistricting, many states similarly prohibit maps that have the effect of unduly favoring or disfavoring parties without a showing of intent. *See* 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). Courts have not found this language too general or non-specific to apply—indeed, they use the same tools of analysis that Prop 4 helpfully makes explicit: “judicial standards and the best available data and scientific and statistical methods, including measures of partisan symmetry.” Utah Code § 20A-19-103(4).

For instance, in construing the Ohio Constitution’s prohibition on a map that “unduly favors or disfavors a political party,” the Ohio Supreme Court rejected the legislature’s contention that this language lacks a judicially manageable standard. *Adams v. DeWine*, 195 N.E.3d 74, 84 (Ohio 2022). The court reasoned that it presents a no less manageable standard than the Fourteenth Amendment’s prohibition on racial discrimination. *Id.* at 83. The court also noted the U.S. Supreme Court’s assessment in *Rucho*: “We do not understand how the dissent can maintain that a provision saying that no districting plan ‘shall be drawn with the intent to favor or disfavor a political party’ provides little guidance on the question.” *Id.* at 84 (quoting *Rucho v. Common Cause*, 588 U.S. 684, 719 (2019)). And, in recognizing that the voters of Ohio (as here) “intended that th[eir] anti-gerrymandering requirements . . . have teeth,” the court concluded that they had “articulate[d] a standard that is ‘grounded in a limited and precise rationale and [that is] clear, manageable, and politically neutral.’” *Id.* (quoting *Rucho*, 588 U.S. at 703).

To interpret the language, the Ohio Supreme Court “appl[ied] the rules that govern the interpretation of statutes.” *Id.* With respect to the word “unduly” the court looked to dictionary definitions and concluded that it meant “[e]xcessive or unwarranted.” *Id.* (quoting Black’s Law Dictionary 1838 (11th ed. 2019); *see also* Webster’s Third New Int’l Dictionary 2492 (2002) (defining “unduly” as “in an undue manner, *esp.*: EXCESSIVELY” and defining “undue” as “exceeding or violating propriety or fitness: EXCESSIVE, IMMODERATE, UNWARRANTED”)). The court then observed that “[t]his, of course, raises questions: In excess of what? Or, unwarranted by what?” *Adams*, 195 N.E. 3d at 84. The answer, the court held, was found in the Ohio Constitution’s neutral redistricting criteria. Ohio requires, *inter alia*, that congressional maps comply with federal law, consist of contiguous territory, avoid splitting municipalities and counties, and be compact. *Id.* at 85 (citing Ohio Const. art. XIX, § 2). Applying the principle that provisions addressing like subjects “be read *in pari materia* and harmonized if possible,” the court concluded that its Constitution “prohibits the General Assembly from passing . . . a plan that favors or disfavors a political party . . . to a degree that is in excess of, or unwarranted by, the application of [the neutral redistricting criteria] to Ohio’s natural political geography.” *Id.* “In other words, [the provision] does not prohibit a plan from favoring or disfavoring a political party . . . to the degree that inherently results from the application of neutral criteria, but it does bar plans that embody partisan favoritism or disfavoritism in excess of that degree—i.e., favoritism not warranted by legitimate, neutral criteria.” *Id.*

The Ohio Supreme Court then applied this judicial standard to the challenged congressional districts, relying on competing expert testimony to weigh evidence derived from a wide range of scientific and statistical methods and measures of partisanship in redistricting applicable to Ohio.

Id. at 85-92. Based on these “various expert analyses,” the court concluded that the map excessively and unwarrantedly favored Republicans and disfavored Democrats. *Id.* at 92.

This is the kind of analysis Prop 4 contemplates in specifying that its requirements be assessed by “judicial standards” and the “best available” data and methods. Utah Code § 20A-19-103(4). As Plaintiffs have explained, this standard includes a quality requirement that the applied methods be most appropriate to the context (i.e., “best”), an understanding that the methods and their applicability may evolve over time (i.e., “available”), and a flexibility in the types of evidence that can serve as proof (i.e., “data and scientific and statistical methods”).⁹ One nonexclusive example of a method Prop 4 identifies is “measures of partisan symmetry,” which is the idea of “whether supporters of each of the two parties are able to translate their votes into representation with equal ease.” *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 885 (M.D.N.C. 2018), *vacated on other grounds*, 588 U.S. 684 (2019). Although courts and scholars sometimes use the term partisan symmetry to mean one specific measure (partisan bias),¹⁰ e.g., *Adams*, 195 N.E.3d at 91, Prop 4 refers to multiple measures of partisan symmetry, and courts have identified multiple measures in this category. *See, e.g., id.* (identifying “three standard measures of partisan symmetry:

⁹ This is a common legal standard that government bodies and courts routinely apply. *See, e.g., Keep the N. Shore Country v. Bd. of Land & Nat. Res.*, 506 P.3d 150, 169 (Haw. 2022) (interpreting “best scientific and other reliable data available” to require evaluation of “applicability and quality of the information” and to allow some information to be deemed inapplicable or insufficiently reliable); *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999) (holding that “best available information” standard allowed agency assessments to “depend on the circumstances” of a given case and what information is available); *Cent. Coast Forest Ass’n v. Fish & Game Comm’n*, 389 P.3d 840, 845 (Cal. 2017) (interpreting requirement under California Endangered Species Act that assessments be “based upon best scientific information available” to be “legislative recognition that information and scientific understanding are subject to change” (cleaned up)).

¹⁰ Dr. Warshaw explains that this use of the term reflects the fact that partisan bias was an early proposed measure, but scholars have since proposed other measures of partisan symmetry, like the efficiency gap, mean-median difference, and declination, among others. *See* Pls. Mot. for Prelim. Inj., Ex. 1 (Decl. of Christopher Warshaw) at 5 n.5, 4-6 (hereinafter “PI Ex. 1”).

the ‘efficiency gap,’ ‘partisan bias,’ and ‘the mean-median difference’”); *Whitford v. Gill*, 218 F. Supp. 3d 837, 898 (W.D. Wis. 2016), *vacated on other grounds*, 585 U.S. 48 (2018) (plaintiffs met burden to prove unlawful partisan effect in map through “plaintiffs’ proposed measure of asymmetry, the efficiency gap”); *Ga. State Conf. 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”).

In adjudicating the partisan favoritism effects claim here, this Court should follow the reasoning of the Ohio Supreme Court in *Adams*, interpreting each Prop 4 provision “in connection with every other part or section so as to produce a harmonious whole.” *Berneau v. Martino*, 2009 UT 87, ¶ 12, 223 P.3d 1128 (quoting *Sill v. Hart*, 2007 UT 45, ¶ 7, 162 P.3d 1099). The Court should thus apply a two-part test. First, considering the best available data and methods, including applicable measures of partisan symmetry, the Court should assess whether a challenged map has the effect of favoring or disfavoring any political party. Second, if the evidence shows that the map favors or disfavors any political party, the Court should assess whether it does so unduly, *i.e.*, “to a degree that is in excess of, or unwarranted by, the application of [Prop 4’s neutral redistricting criteria] to [Utah’s] natural political geography.” *Adams*, 195 N.E.3d at 85.

In *Adams*, as noted above, the Ohio Supreme Court held that the map unduly favored Republicans to a degree in excess of what the neutral criteria would require. In so finding, the court relied on the testimony and analysis of the petitioners’ experts, including Dr. Chris Warshaw and Dr. Jowei Chen. *Id.* at 86-87. The court noted that Dr. Warshaw “found that Republicans [were] likely to win 80 percent of the congressional seats (12 out of 15) under the enacted plan, even though Republicans have received about 53 percent of the vote in recent statewide elections.” *Id.* at 86. Dr. Warshaw reported on measures of partisan symmetry, including the efficiency gap, and

the court credited his finding that the challenged Ohio map was “more extremely biased than 70 percent of previous plans and ‘more pro-Republican’ than 85 percent of previous plans.” *Id.* at 92. Likewise, the court relied upon the analysis and testimony of Dr. Chen, who generated 1,000 maps using the Ohio Constitution’s neutral redistricting criteria and found that “only 1.3 percent of the simulated plans created 12 Republican-favoring districts. Dr. Chen concluded that the enacted plan is a ‘statistical outlier’ and that the plan’s ‘extreme’ partisan bias cannot be attributable to Ohio’s political geography, which he accounted for in his simulations.” *Id.* at 87.

Here, Map C unduly favors Republicans and disfavors Democrats in violation of Prop 4 for similar reasons.

1. Map C favors Republicans and disfavors Democrats to an extreme degree.

First, the “best available data and scientific and statistical methods, including measures of partisan symmetry,” demonstrate that Map C favors Republicans and disfavors Democrats to an extreme degree. Utah Code § 20A-19-103(4).

To begin, courts “examine how the two major political parties are expected to perform under the enacted plan,” based on “voting history in prior elections,” to assess whether the plan creates a disparity between a party’s statewide vote share and expected seat share. *Adams*, 195 N.E.3d at 85. Here, as Dr. Chen’s analysis shows, although Democratic voters comprise about 34.2% of voters in recent statewide elections, they can expect to win *none*—0%—of the state’s four congressional seats under Map C. Ex. 3 (Chen) at Sec. 3. Meanwhile, Republicans are expected to win 100% of the seats, even though they comprise 64% of the statewide vote share. *Id.* This is a significant indication the plan is biased in favor of Republicans. See *Adams*, 195 N.E.3d at 86 (striking down map granting Republicans 80% of congressional seats despite comprising 53% of statewide vote share).

Map C’s pro-Republican skew is also revealed by comparing it to a set of computer-generated maps programmed to consider Prop 4’s neutral criteria and no partisan data, *i.e.*, an ensemble analysis, which courts widely rely upon to assess partisan favoritism in redistricting. Ex. 3 (Chen) at Sec. 1 (citing cases); *see Rucho*, 588 U.S. at 737 (Kagan, J., dissenting) (describing this “extreme outlier approach” as an established way to demonstrate a map’s partisan effects). Dr. Chen compared Map C with 10,000 computer-simulated maps and observed that over 99.9% of simulations create one Democratic-leaning district including northern Salt Lake County and three Republican-majority districts—reflective of Utah’s political geography and makeup. *Id.* at Sec. 3. By contrast, Map C cracks Salt Lake County’s Democratic voters in half creating four safe Republican districts, a result almost never observed among neutral simulations programmed to follow Prop 4’s neutral criteria. *Id.* Map C is thus an extreme outlier and exhibits a “statistically significant degree of electoral bias in favor of the Republican Party.” *Id.*

Map C’s pro-Republican bias is also apparent from comparison with simulation maps along two additional measures—the least Republican vote share (LRVS) and standard deviation of Republican vote shares—which scholars have identified as among the best methods to assess partisan bias in Utah given its political geography. PI Ex. 1 (Warshaw) at 10-11. Both methods show statistically how Map C cracks Salt Lake County Democratic voters into heavily Republican districts to prevent them from electing even one congressional representative.

The LRVS method compares the two-party vote share in the least Republican districts in the enacted map with that of ensemble maps. Ex. 3 (Chen) at Sec. 3. Dr. Chen found that in the middle 95% of neutral Prop 4 simulations, the expected Republican vote share in the least Republican district ranges from 42.6-45.5%—meaning it is a district Democrats should expect to

carry. *Id.* But the LRVS in Map C (District 3) is 56.1%, a comfortable Republican majority and an outlier greater than 99.9% of neutral simulations. *Id.*

The standard deviation of Republican vote shares across Map C's districts is also anomalously low and, as Dr. Chen found, much smaller than any deviation produced by neutral computer simulations. *Id.* This deviation quantifies how unusually and severely Democratic voters in the Salt Lake area are cracked and dispersed among safe Republican-majorities across all districts. Ex. 3 (Chen) at Sec. 3. Map C's SDVS is an outlier compared to the simulated maps, indicating that Democrats in the Salt Lake County metropolitan area are highly cracked under the map. *Id.*

Map C's extreme pro-Republican bias is also reflected in its efficiency gap ("EG"), which measures the asymmetry between each party's respective inefficient votes due to cracked or packed districts. Ex. 1 (Warshaw) at 11; PI Ex. 1 at 7-9. A vote is inefficient if it is "cast (1) for a losing candidate, or (2) for a winning candidate but in excess of what she needed to prevail." Nicholas O. Stephanopoulos & Eric M. McGhee, *Partisan Gerrymandering and the Efficiency Gap*, 82 U. Chi. L. Rev. 831, 834 (2015). Cracking the disfavored party's votes into multiple districts produces the former type of inefficiency, packing the disfavored party's voters into a single district produces the latter type. *Id.* A positive EG score indicates a Republican bias, a negative score indicates a Democratic bias, and zero means perfect symmetry between each party's inefficient votes. Ex. 1 (Warshaw) at 11. Based on recent election results, Map C has a 11.7% pro-Republican EG, a bias greater than "80% of all prior congressional plans in all U.S. states with at least 4 districts over the last 50 years" and "more pro-Republican than 88% of all previous redistricting plans." *Id.* Courts have invalidated maps with less bias relative to past plans. *See*

Adams, 195 N.E.3d at 92 (invalidating map more biased than 70% and more pro-Republican than 85% of past plans).

These methods and metrics—including the LRVs, the SDVS, and the efficiency gap, compared to other maps including a rigorously neutral ensemble—are the best available methods in Utah to assess undue partisanship in congressional maps, and they leave no doubt that Map C favors Republicans and disfavors Democrats.

2. Map C’s extreme Republican favoritism is undue because it is unwarranted by application of Prop 4’s neutral redistricting criteria to Utah’s political geography.

The second question in the undue partisan effects inquiry is whether Map C’s extreme pro-Republican bias is undue, *i.e.*, “to a degree that is in excess of, or unwarranted by, the application of [Prop 4’s neutral redistricting criteria] to [Utah’s] natural political geography.” *Adams*, 195 N.E.3d at 85; Utah Code § 20A-19-103(3). Here, Dr. Chen’s “extreme outlier” analysis confirms that it is. *Rucho*, 588 U.S. at 737.

Dr. Chen generated 10,000 congressional maps using a computer algorithm designed to adhere strictly to Prop 4’s neutral redistricting criteria. Ex. 3 (Chen) at Sec. 1. The algorithm took Utah’s political geography as a given, relying on the state’s census population data and political subdivision boundaries and accounting for natural features pursuant to Prop 4. *Id.* And most critically, the algorithm ignored partisan data. *Id.* This allowed Dr. Chen to determine whether the pro-Republican partisan advantage in Map C is attributable to application of Prop 4’s neutral criteria to Utah’s natural political geography. *Id.* at Sec. 3.

It is not. Dr. Chen’s comparative analysis of Map C and the ensemble revealed that Map C is an “extreme statistical outlier” when compared to the computer-simulated maps. *Id.* Only 0.06% of maps generated using Prop 4’s neutral redistricting criteria have Map C’s effect of granting

Republicans a clean-sweep of all four congressional districts. *Id.* Map C thus creates a degree of partisan bias favoring Republicans that is more extreme than nearly every simulation. *Id.* Such an extreme departure from an ensemble generated by applying Prop 4’s neutral criteria is sufficient evidence alone that it cannot be explained by adherence to those criteria.

But Map C also demonstrably disregards multiple of Prop 4’s neutral criteria, which must be followed “to the greatest extent practicable” and in “order of priority.” Utah Code § 20A-19-103(2). The first criterion after adhering to federal law and achieving equal district populations is “minimizing the division of municipalities and counties across multiple districts” with priority to avoiding municipal splits. *Id.* § 20A-19-103(2)(a). As discussed *infra*, although Map C has three municipal splits similar to Dr. Chen’s neutral simulations, it has an unusual district configuration, rare among neutral simulations, that does not require that many municipal splits in order to comply with additional criteria. Indeed, Plaintiffs’ Map 2 shows that at least two of Map C’s municipal splits could have easily (*i.e.*, “practicably”) been avoided with limited changes. Ex. 2 (Oskooii) 7-10. Similarly, Map C has four total county splits because it splits Utah County twice into three districts, but Plaintiffs’ Map 2 shows that this gratuitous split of Utah County could have practicably been avoided with limited changes. *Id.* Furthermore, as Dr. Chen shows, all of the neutral simulations achieved three total county splits, the minimum number necessary given Utah’s population. Ex. 3 (Chen) at Sec. 5. Dr. Chen’s analysis additionally shows that Map C conforms with few state house, senate, and board of education districts, preserves few communities of interest identified by the Utah Independent Redistricting Commission (UIRC) during its extensive public consultations, and is at the lower end of neutral simulations on compactness metrics. Ex. 3 (Chen) at Sec. 6; *see* Utah Code § 20A-19-103(2)(c), (e), (g). Thus, as Dr. Chen concludes, Map

C cannot be explained as an extreme partisan outlier by adherence to Prop 4’s neutral criteria or by Utah’s political geography. Ex. 3 (Chen) at Secs. 6-7.

In sum, Map C’s far-and-away outlier status among neutral Prop 4 simulated maps on partisanship, coupled with its disregard for abiding Prop 4’s neutral criteria “to the greatest extent practicable,” proves that Map C’s significant pro-Republican bias far exceeds and is unwarranted by application of Prop 4’s neutral criteria or the state’s natural political geography. *See Adams*, 195 N.E.3d at 85. Map C therefore unduly favors Republicans and disfavors Democrats in violation of Utah Code § 20A-19-103(3) and cannot be approved by this Court as a lawful remedy.

3. S.B. 1011’s methods for assessing undue partisan favoritism are irrational, unconstitutional, and cannot sanitize Map C’s undue partisan effect.

S.B. 1011 seeks to redefine “unduly favors or disfavors” under Prop 4 to mean a map that fails both (i) a “partisan bias test” and ensemble analysis culled to exclude plans that fail partisan bias, and (ii) a “mean-median difference” test. Utah Code § 20A-19-103(4)(c), (1)(b), (1)(c) (as amended). That is, under S.B. 1011, a map cannot be said to unduly favor or disfavor a party unless it fails both tests. But mandating the partisan bias and mean-median difference tests (to the exclusion of other, best available data and metrics) under S.B. 1011 unconstitutionally impairs Prop 4’s prohibition on partisan gerrymandering because those tests are irrational and inapplicable in Utah. They have no bearing on whether Map C has the undue partisan favoritism that Prop 4 prohibits.

As Plaintiffs explained in their recent preliminary injunction motion, the partisan bias test is universally recognized, including by its lead proponent, as inapt for states like Utah where statewide elections feature lopsided results. *See S.B. 1011 PI Mot.* at 13. When applied in Utah, the test yields systematically false and irrational results, deeming nearly all 4-0 maps that deny

Democrats a winnable district (like Map C) as perfectly unbiased while labeling most 3-1 maps that include a Democratic district as biased against *Democrats*. PI Ex. 1 (Warshaw) at 18. This absurd result stems from the test’s focus on what *would* happen in the imaginary world where elections are suddenly tied statewide, “a hypothetical scenario that has not and does not occur in Utah.” *Id.* at 1; *see also id.* at 15-17. S.B. 1011’s mean-median test has the same limitations and the same nonsensical, biased effect when applied in Utah. *Id.* at 21. By its operation under S.B. 1011, the test tends to fail maps that unify Salt Lake County Democratic voters in a district as too *pro-Republican* and pass maps (like Map C) that crack those voters into multiple Republican-majority districts. *Id.* at 21-22.

These problems are not just theoretical. Dr. Chen shows that if he were to “cull” from his ensemble all maps that fail S.B. 1011’s partisan bias test, as the law requires, then 99.89% of the neutrally drawn maps would disappear; only 11 maps of the 10,000 would remain. Ex. 3 (Chen) at Sec. 4. Of the 9,989 maps that would have to be culled for failing partisan bias, all but one are 3-1 maps with one Democratic district. *Id.* Of the only 11 maps that would remain, more than half (six) are maps with four Republican districts. *Id.* The same is true for the mean-median difference test: nearly all of Dr. Chen’s neutrally constructed simulations are disqualified. *Id.* Metrics that disqualify—on a partisan basis—nearly *all* computer-simulated maps drawn strictly to follow Utah’s legal criteria and political geography cannot plausibly be considered the “best available” for assessing partisan favoritism. And that demonstrates that the interpretation of Prop 4 advanced in S.B. 1011 places the statute at war with itself in an atextual manner that yields absurd results.

A similar effect is observed in the three simulation sets Dr. Sean Trende used to assess Map C, which were *not* programmed to follow Prop 4’s neutral criteria, *see infra* Part I.B. By way of background, in a written and oral analysis presented to the LRC, Dr. Trende stated that he

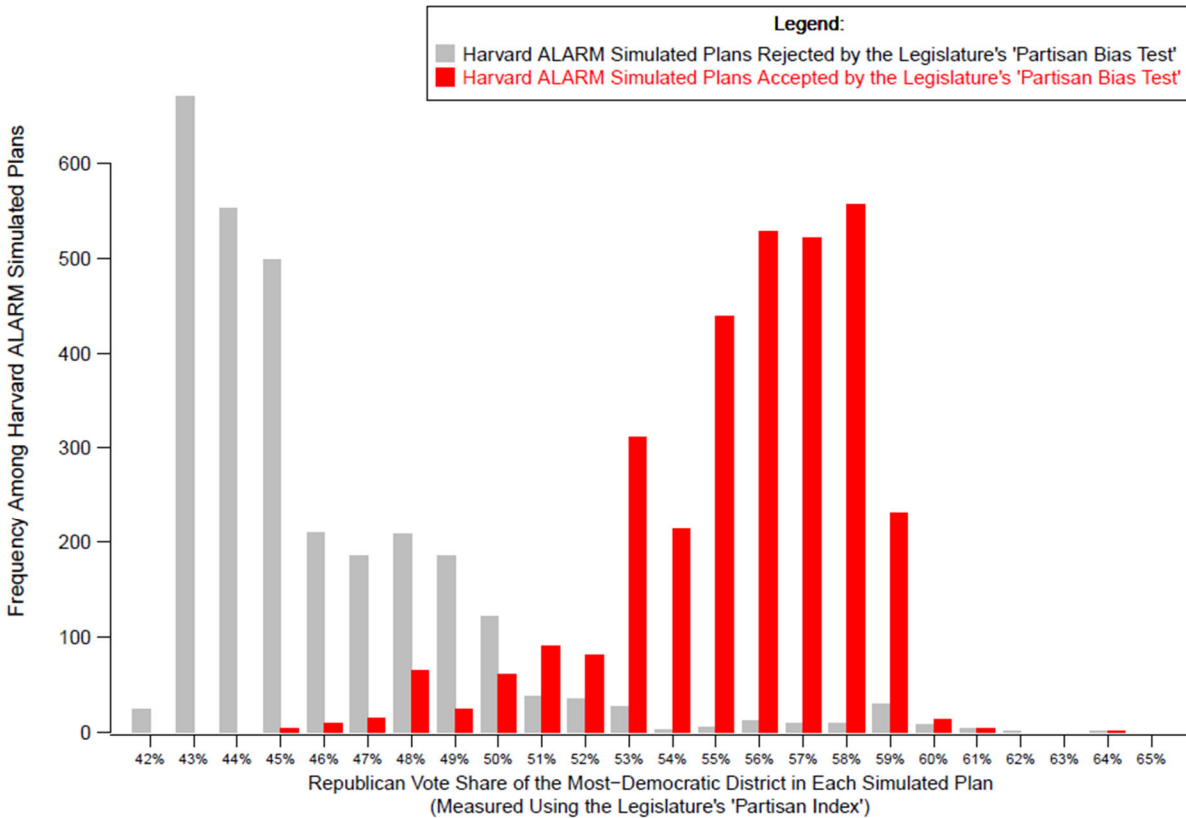
compared Map C’s least Republican district vote share to three culled simulation sets.¹¹ The first, which he calls the “Harvard sims,” were generated by the ALARM Project, an academic research group that produces off-the-shelf simulations for each state.¹² The other two are sets Dr. Trende claims to have created himself: a set 100,000 “base” simulation plans generated with minimal geographic constraints on the map-drawing process, and another set of 100,000 “restricted” simulations generated with “maximal[]” geographic constraints, such as avoiding certain river crossings.¹³ See Ex. 3 (Chen) at Sec. 5. In Dr. Trende’s “base” simulation set, 67.8% of maps were culled for failing the partisan bias test, of which 96% were maps that included a Democratic district. *Id.* at Sec. 4. In his “restricted” simulation set, 59.1% of maps were culled, of which 91% were maps with a Democratic district. *Id.* The skewed partisan effect of culling for so-called “partisan bias” in these simulations is perhaps most starkly evident in a series of figures comparing the least Republican districts of maps that were culled from the ensembles to those that were not culled. *Id.* The figure below, for instance, shows a striking rightward shift in the Harvard ALARM simulations after Dr. Trende culled the maps (in grey) that fail partisan bias, which are far less Republican, leaving only the maps (in red) that pass partisan bias, which are far more Republican. *Id.* The same effect appears in Dr. Trende’s base and restricted simulation sets. *Id.*

¹¹ Trende Analysis on Proposed Maps (Dr. Sean Trende), at 2, <https://le.utah.gov/interim/2025/pdf/00003667.pdf> (“Trende Analysis”).

¹² *Id.*; see ALARM Project, <https://alarm-redist.org>.

¹³ Trende Analysis at 2.

Figure 4.4:
The Most-Democratic District in Each Harvard ALARM Simulated Plan



In sum, the partisan bias and mean-median difference tests cannot be validly relied upon in Utah to detect undue partisan favoritism. They in fact *mandate* partisan favoritism because of the irrational way in which they operate in a non-competitive state like Utah. Yet S.B. 1011 would nevertheless give Map C a passing grade because it passes both of these flawed tests designed from the outset to greenlight plans just like it. This Court should enjoin the enforcement of this unconstitutional standard. Then, like every other court to adjudicate a partisan gerrymandering claim, the Court should consider the Legislature's proposed partisan bias and mean-median difference methods, compare them to methods proposed by Plaintiffs, assess their inherent limitations, and apply them only to the extent they are applicable here—which is, as the evidence

shows, not at all. Notwithstanding S.B. 1011’s unconstitutional mandatory tests, Map C unduly favors Republicans and disfavors Democrats and is not a lawful remedy.

B. Map C Purposefully Favors the Republican Party.

Map C was also purposefully configured to favor Republicans—in violation of both Prop 4 as well as S.B. 1011. In addition to prohibiting redistricting maps that have the *effect* of unduly favoring or disfavoring political parties, Prop 4 prohibits maps that *purposefully* favor or disfavor political parties. Utah Code § 20A-19-103(3).

Whereas S.B. 1011 redefines “unduly favor or disfavor” a political party to mean a map fails both the faulty partisan bias and mean-median difference tests, it imposes no such requirement on proving that a map purposefully favors a party. To the purposeful favoritism prohibition, S.B. 1011 instead adds the following: “Absent clear and convincing evidence of purpose, a redistricting plan that is within the acceptable bounds of the ensemble analysis does not purposefully favor or disfavor a political party under” the general prohibition. Utah Code § 20A-19-103(4)(b) (as amended). And S.B. 1011 defines an “ensemble analysis” to mean “an analysis of a proposed redistricting plan . . . that indicates whether a proposed redistricting plan shows a partisan intent by comparing the proposed plan to the ensemble” under a metric called the “ranked marginal deviation” (RMD). Utah Code § 20A-19-103(1)(a)(ii) (as amended).

In other words, to prove that a map has partisan purpose under S.B. 1011, the map must either (1) fail S.B. 1011’s RMD test, or (2) otherwise display “clear and convincing evidence” of purpose.¹⁴ Both conditions are satisfied with respect to Map C, and so it must be enjoined and cannot serve as a lawful remedy.

¹⁴ This elevated evidentiary standard is one of many ways in which S.B. 1011 impairs Prop 4’s core anti-gerrymandering reform, as Plaintiffs have explained, *see* S.B. 1011 PI Mot. at 17-18. But

1. Map C fails S.B. 1011's RMD partisan intent test.

Under S.B. 1011, a map that fails the RMD test has unlawful partisan intent. Despite the Legislature's strident effort to insulate its maps from an adverse finding, Map C manages to fail S.B. 1011's RMD analysis. A map fails this analysis if its RMD exceeds that of 95% of maps in a computer-simulated ensemble of "at least 4,000" redistricting plans. *See* Utah Code § 20A-19-103(1)(a) (as amended). The RMD under S.B. 1011 is a version of a relatively obscure metric designed to capture the difference between a party's vote share in each district of a proposed map and the average of the party's vote share in the same districts across ensemble maps. *See id.* at § 20A-19-103(1)(a)(ii)(A)-(B); Supp. Decl. of Dr. Warshaw at 2.¹⁵ S.B. 1011 indicates that, for purposes of establishing partisan intent, the ensemble need not be culled for partisan bias, as is required to prove partisan effect. *Compare* Utah Code § 20A-19-103(1)(a)(iii)(A) with § 20A-19-103(1)(a)(iii)(B) (as amended). Nor does a finding of partisan purpose require that a map fail the partisan bias and mean-median difference tests. *Compare id.* § 20A-19-103(4)(b) with § 20A-19-103(4)(c) (as amended).¹⁶

Map C straightforwardly fails the RMD test imposed by S.B. 1011. Dr. Chen calculated the RMD of Map C and of each of the 10,000 ensemble maps drawn strictly to follow Prop 4's rank-ordered neutral criteria. Ex. 3 (Chen) at Sec. 4. The result is decisive: Map C's RMD is higher

Map C's partisan purpose here is sufficiently clear and convincing to clear this unconstitutional hurdle.

¹⁵ As Drs. Warshaw and Chen both point out, S.B. 1011's calculation of the RMD deviates in various ways from how the metric is defined in the academic literature. *Id.* at 3; Ex. 3 (Chen) at Sec. 4.

¹⁶ Utah Code § 20A-19-103(8) (as amended) states that "[a]ny judicial review of a congressional plan to determine whether [it] purposefully or unduly favors or disfavors a political party shall base the review on the outcomes of" an ensemble analysis, the partisan bias test, and the mean-median difference test "in accordance with this section." As "this section" provides, the partisan bias and mean-median difference are relevant only to establishing undue partisan effect.

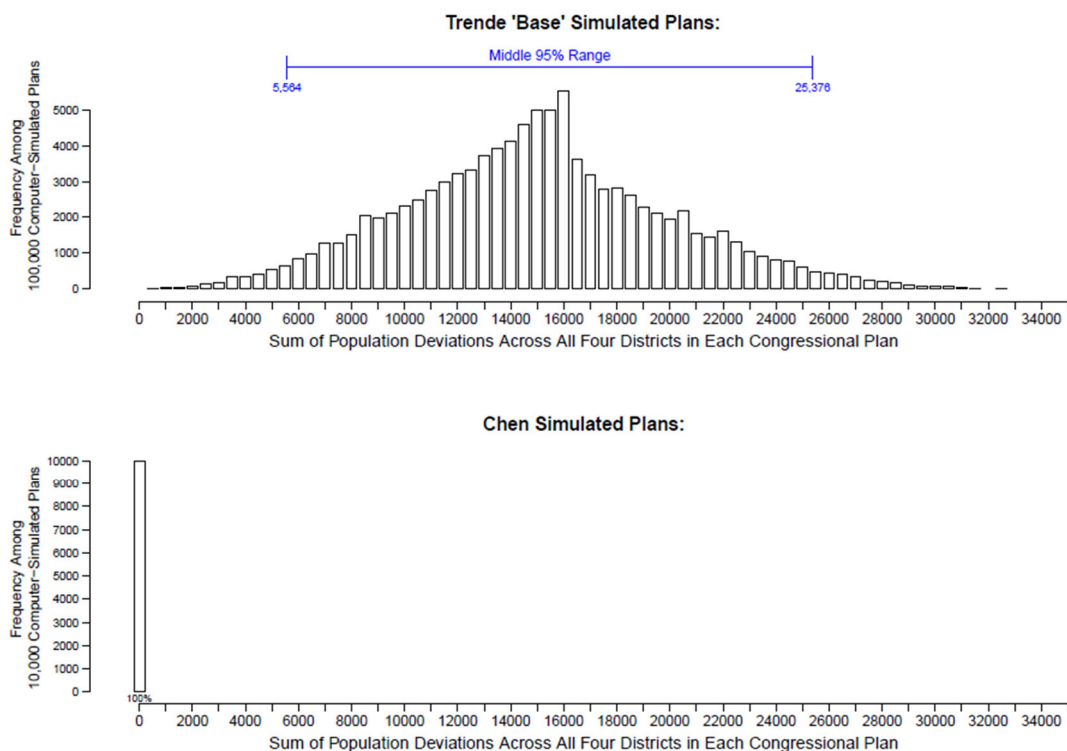
than that of 99.99% of the Prop 4-compliant ensemble maps, far exceeding S.B. 1011's 95th percentile threshold. *Id.*

Defendants may point out that Map C passes the RMD test compared to Dr. Trende's simulations. True, if you include the simulated maps that plainly violated Prop 4's redistricting criteria. But as Dr. Chen shows, Dr. Trende's simulation sets are deeply flawed and were not drawn to abide by Prop 4's "legal and geometric criteria," as S.B. 1011 requires. Utah Code § 20A-19-103(1)(f) (as amended); Ex. 3 (Chen) at Sec. 5. As an initial matter, the ALARM Project simulations Dr. Trende used to test for partisan intent were "entirely inappropriate" because they were programmed to follow the criteria not of Prop 4 but of S.B. 200, which included preserving the cores of prior districts. *Id.* The ALARM Project's use of these outdated (and unlawful) criteria for Utah is indicated prominently on its website where Utah simulations can be accessed.¹⁷

Dr. Trende's own two simulation sets (the base and restricted) likewise fail to follow Prop 4's neutral criteria. First, unlike Dr. Chen's simulated plans, not even one of Dr. Trende's simulations achieved equal population between districts, Prop 4's top-rank criterion. Ex. 3 (Chen) at Sec. 5.

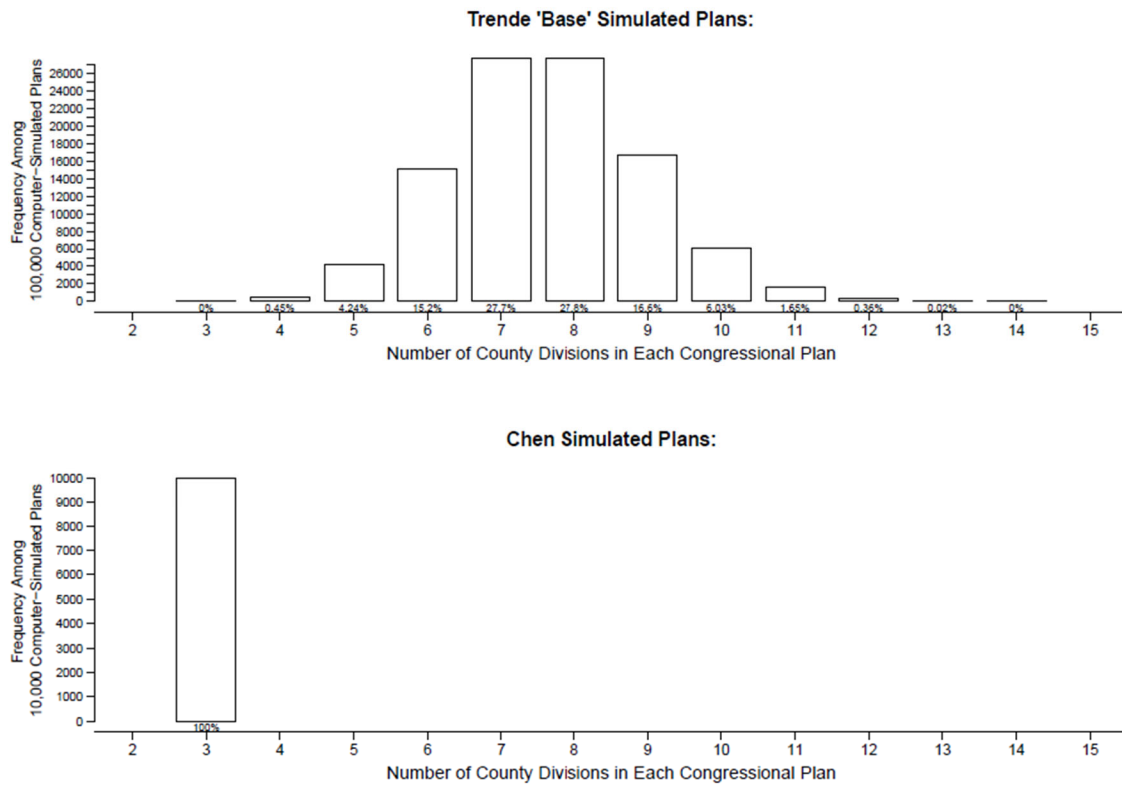
¹⁷ See McCartan, Cory; Kenny, Christopher T.; Simko, Tyler; Kuriwaki, Shiro; Garcia, George, III; Wang, Kevin; Wu, Melissa; Imai, Kosuke, 2021, "50-State Redistricting Simulations", <https://doi.org/10.7910/DVN/SLCD3E>, Harvard Dataverse, V14; UT_cd_2020_doc.html.

Figure 5.1:
Comparison of Population Deviations in Trende's 'Base' Simulated Plans and Chen's Simulated Plans



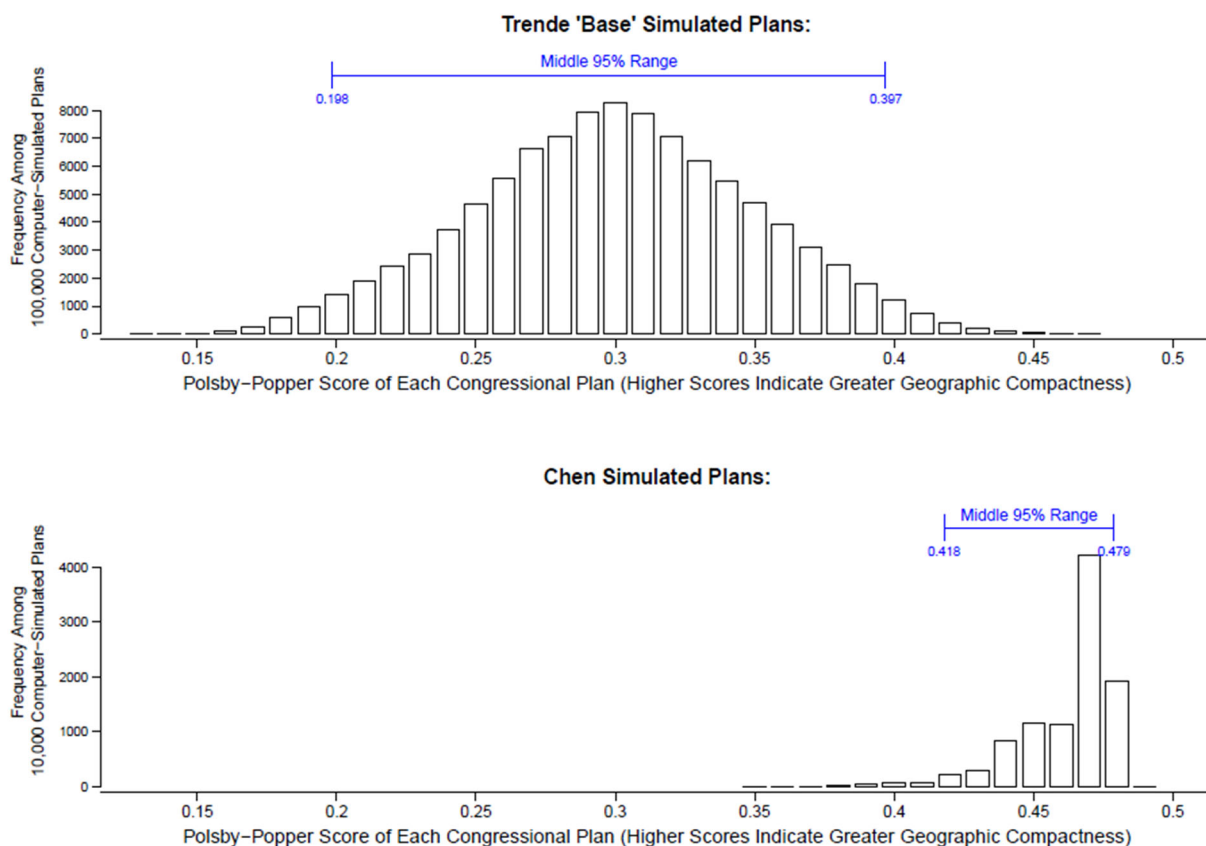
Next, Dr. Trende's simulations also spectacularly fail to minimize the division of counties, Prop 4's second-rank criterion. *Id.* Whereas Dr. Chen's simulations all have three county divisions (the minimum number necessary to maintain equal population among districts in Utah), the most common outcome among his simulations is *eight* county divisions, nearly all simulations exceed five, and over 8% of his simulations have *10* to *14*. *Id.* As Dr. Chen shows, Dr. Trende's decision to so severely disregard county divisions also baked an equally severe pro-Republican bias into how his algorithm drew plans: "[a]s the number of county divisions in Dr. Trende's maps increases, the percent of maps containing a Democratic district steadily increases." *Id.* Thus, the county divisions in Dr. Trende's simulations "benefits Republicans and significantly decreases the possibility of having a Democratic-majority district based in the northern half of Salt Lake County." *Id.*

Figure 5.2:
Comparison of Number of County Divisions in Trende's 'Base' Simulated Plans and Chen's Simulated Plans



Additionally, Dr. Trende's simulated plans severely lack geographic compactness, as compared to Dr. Chen's simulations, violating Prop 4's third-rank criterion. *Id.* As with county divisions, Dr. Trende's choice to tolerate wildly non-compact districts in his simulations also had the effect of skewing his ensemble maps more Republican. *Id.* And finally, Dr. Trende's simulated maps even feature (in some cases, severe) dis-contiguities—*i.e.*, districts that include breaks or islands in violation of Prop 4's straightforward and common requirement of contiguity. *Id.* at App'x E.

Figure 5.11:
Comparison of Geographic Compactness of Trende's 'Base' Simulated Plans and Chen's Simulated Plans



It should therefore come as no surprise that Map C—which itself disregards many of Prop 4’s neutral criteria and is an extreme partisan outlier among neutral simulations, *see supra* Part I.A.2—is not an outlier among biased simulations drawn to disregard Prop 4’s neutral criteria and to generate more pro-Republican maps. In fact, Dr. Chen shows that if one were to subset Dr. Trende’s simulations for those that “plausibly comply” with Prop 4’s neutral criteria, then Map C would *fail* the RMD test even under Dr. Trende’s simulation sets. Ex. 3 (Chen) at Sec. 5.

Map C unquestionably fails S.B. 1011’s RMD test. Map C must therefore be enjoined, even under S.B. 1011, as violating Prop 4’s prohibition on maps that purposefully favor a political party.

2. Map C exhibits clear and convincing evidence of partisan purpose.

Even if Map C did not fail S.B. 1011’s RMD test, there is nevertheless clear and convincing evidence that Map C “divide[s] districts in a manner that purposefully . . . favors or disfavors . . . a political party.” Utah Code § 29A-19-103(3).

As the Florida Supreme Court explained in construing the Florida Constitution’s similar prohibition on maps that purposefully favor or disfavor political parties, “there is no acceptable level of improper intent.” *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 375 (Fla. 2015). “[T]he focus of the analysis must be on both direct and circumstantial evidence of intent. One piece of evidence in isolation may not indicate intent, but a review of all the evidence together may lead this Court to the conclusion that the plan was drawn for a prohibited purpose.” *Id.* at 375-76 (cleaned up). A finding of an unlawful partisan purpose “does not necessarily mean that those who made the decisions acted with malevolent or evil purpose, which is not required” to find a violation. *Id.* at 378 (cleaned up). Unlike in other contexts where legislative intent is assessed by reviewing statutory text and context, where questions of unlawful intent are at issue, “the actions and statements of legislators and staff, especially those directly involved in the map drawing process” may also be considered. *Id.* at 388 (cleaned up).

A finding of unlawful purpose “implies more than intent as volition or intent as awareness of consequences” in that it requires an action be taken “at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” *Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). But that “is not to say that the inevitability or foreseeability of consequences of a neutral rule has no bearing upon the existence of discriminatory intent.” *Id.* at 279 n.25. “Certainly, when the adverse consequences of a law upon an identifiable group are . . . inevitable . . . a strong inference that the adverse effects were desired can reasonably be drawn.” *Id.* Likewise, direct evidence of intent is not needed for a court to find unlawful purpose. As the New York Court

of Appeals explained in addressing New York’s prohibition on intentional partisan gerrymandering, unlawful partisan intent “could be demonstrated directly or circumstantially through proof of a partisan process excluding participation by the minority party and evidence of discriminatory results (*i.e.*, lines that impactfully and unduly favor or disfavor a political party . . .).” *Harkenrider v. Hochul*, 197 N.E.3d 437, 452 (N.Y. 2022).¹⁸

Courts routinely rely upon “alternative maps” evidence to ascertain the presence of unlawful intent in redistricting cases. This evidence can come in several forms. For example, courts routinely rely upon analyses of computer-simulated redistricting plans to draw conclusions about the mapdrawer’s partisan intent. Computer algorithms are coded to comply with relevant, neutral redistricting criteria—and exclude partisan data—to generate a control group of thousands of maps. Those non-partisan maps are then compared to the challenged map to determine whether it is an outlier, which is strong evidence of partisan intent. *See, e.g., League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, 192 N.E.3d 379, 412 (Ohio 2022) (“The fact that the adopted plan is an outlier among 5,000 simulated plans is strong evidence that the plan’s result was by design.”); *City of Greensboro v. Guilford Cnty. Bd. of Elections*, 251 F. Supp. 3d 935, 943 (M.D.N.C. 2017) (“[C]redible evidence based on computer simulations by Dr. Jowei Chen establishes that it is highly unlikely for a Greensboro redistricting process to result in four Republican-leaning districts absent an intentional effort to draw lines giving Republicans an advantage.”); *Allen v. Milligan*,

¹⁸ In the context of ascertaining whether racial discrimination was a purpose motivating an official decision, the U.S. Supreme Court has identified a number of relevant considerations, including whether the challenged action bears more heavily on the disfavored group, the historical background of decision-making on the particular issue, the sequence of events leading to the challenged action, whether there were departures from the normal procedural sequence or the substantive norm, and any contemporary statements by members of the Legislature. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977).

599 U.S. 1, 44 (2023) (Kavanaugh, J., concurring) (“[C]omputer simulations might help detect the presence or absence of *intentional* discrimination.” (emphasis in original)).

Even a single alternative map (whether computer simulated or not) can provide strong evidence to defeat a defendants’ proffered justification for a challenged map. The U.S. Supreme Court has held that plaintiffs can meet their burden to prove unlawful intent in redistricting by proffering an alternative map that satisfies the purported objective of the challenged map without the challenged map’s discriminatory effects. In *Cooper v. Harris*, the Supreme Court characterized an alternative map of this sort as “key evidence” and a “highly persuasive” way to disprove a purported justification for a map:

If you were *really* sorting by [the purported justification] instead of [the unlawful discriminatory characteristic] (so the argument goes) you would have done—or, at least, could just as well have done—*this*. Such would-have, could-have, and (to round out the set) should-have arguments are a familiar means of undermining a claim that an action was based on a permissible, rather than a prohibited, ground.

581 U.S. 285, 317-18 (2017) (emphasis in original). In *Cooper*, the claim was racial gerrymandering, and the state defended itself by contending that it was in fact motivated by partisan concerns. But as the *Cooper* Court noted, this is a familiar evidentiary tool not limited to one set of claims or justifications. And the U.S. Supreme Court recently punctuated the value of alternative map evidence, noting that it alone can “carry the day” for plaintiffs and, if produced, will “undermine[] the [government’s] defense that the districting lines were ‘based on a permissible, rather than a prohibited, ground.’” *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 35-36 (2024).

Here, the evidence will show that Map C has the purpose of favoring Republicans and disfavoring Democrats. As Dr. Chen’s analysis shows, the map is an extreme outlier compared to 10,000 computer-simulated maps drawn using Prop 4’s neutral criteria. Ex. 3 (Chen) at Sec. 3. Of

those 10,000 maps, over 99.9% resulted in three Republican and one Democratic district. *Id.* Otherwise stated, the odds that the partisan skew in Map C was created using only neutral criteria is extremely unlikely, less than 1 in 1,000. Furthermore, as Dr. Chen reports, Map C has an unusually low standard deviation among the districts—meaning they are all more evenly Republican and Democratic than would be expected from a map drawn solely to follow neutral criteria and the state’s political geography. *Id.* This unnatural result is exceedingly unlikely to occur unintentionally. As Dr. Chen opines, given the computer-simulated mapping results, Map C’s partisan skew in favor of Republicans is not the product of adherence to Prop 4’s neutral redistricting criteria or Utah’s political geography. *Id.*

This analysis alone establishes purposeful partisan gerrymandering. *See, e.g., City of Greensboro*, 251 F. Supp. 3d at 943 (finding intent based upon outlier analysis compared to computer-simulated maps). But other facts surrounding the creation, assessment, and adoption of the map confirm its purpose of favoring Republicans and disfavoring Democrats. Map C is among five map proposals that Dr. Trende presented to the LRC (Maps A through E). Although it is not entirely clear how Dr. Trende drew Map C, the Legislature principally relied on his analysis for assurance that Map C was not drawn with partisan intent. But, as Dr. Chen explains, Dr. Trende’s ensemble analysis, which he used to assess Map C’s partisan intent, was “deeply flawed” and was itself infected with partisan bias from start to finish. Ex. 3 (Chen) at ¶ 7, Sec. 5.

First, every simulated plan Dr. Trende generated or used to assess whether Map C is a partisan outlier failed to comply with Prop 4’s neutral redistricting criteria. *Id.* at Sec. 5; *supra* Part I.B.1. This alone made it impossible to conclude that Map C’s partisan outcome resulted from following neutral criteria and not partisan motivation. *Id.* Worse, and as discussed above, these violations of neutral criteria—which Dr. Trende’s built into his map-drawing algorithm—caused

maps in his ensemble to skew significantly pro-Republican. *Id.* Thus, Dr. Trende’s algorithm, from its inception, “caused him to conduct his partisan analysis using simulated plans that exhibit unnatural pro-Republican bias.” *Id.*

Worse still, Dr. Trende then took his ensembles and “culled” them to remove from consideration all simulations he identified as failing the partisan bias test. The effect of this was twofold. One effect was the removal of extraordinary percentages of maps from each ensemble, nearly 60% from his “base” simulations, 68% from his “restricted” simulations, and 47% from the ALARM simulations. *Id.* at Sec. 4. And, given the widely understood bias of applying the partisan bias metric in a place like Utah, those removed were by and large plans that happen to include one Democratic district. *Id.* The other effect of Dr. Trende’s culling on partisan bias was to remove even more maps that complied with Prop 4’s neutral criteria, namely those with fewer county divisions and relatively higher compactness scores. *Id.* at Sec. 5. In the end, these conscious choices left Dr. Trende with ensemble maps that universally defy Prop 4’s neutral criteria and validate Map C’s level of extreme pro-Republican favoritism virtually never observed in maps that actually follow the neutral criteria. *See id.*

The Legislative Defendants will likely disclaim knowing Map C’s partisan details before it was enacted, citing Prop 4’s provision that “[p]artisan political data and information . . . may not be considered by the Legislature, except as permitted under Subsection (4).” Utah Code § 29A-92-103(5). But, as the text makes clear, this required blindness to partisan data and information is not absolute: such data must be considered, in fact, to apply “the best available data and scientific and statistical methods” to assess a proposed map’s compliance with Prop 4’s ban on purposeful or undue favoritism. *Id.* § 29A-92-103(4). Even if the Legislature was unaware of Map C’s pro-Republican bias and relied entirely on Dr. Trende to conduct this required partisan intent and effect

analysis, that analysis was so flawed in its application of the partisan bias test and its culled, rigged ensembles that it plainly could not be trusted to be partisan neutral. The Legislature also endorsed Dr. Trende’s biased analysis when it codified the partisan bias test in S.B. 1011.

When placed in the historical context of the Legislature’s repeated efforts over decades to stamp out any non-Republican representation in the congressional delegation, *see* Ex. 1 (Warshaw) at 2-7, these facts demonstrate a purposeful effort to favor Republicans and disfavor Democrats in Map C.

II. Map C Violates Prop 4’s Requirement to Minimize the Division of Municipalities and Counties Across Multiple Districts.

Map C fails to minimize the division of municipalities and counties as Prop 4 requires. Maps in Utah “shall abide by” the redistricting standards in Prop 4 “to the greatest extent practicable” and in the priority order delineated in the statute. Utah Code § 20A-19-103(2). Preceded only by adherence to the federal constitution (including population equality), Prop 4’s second priority-ordered requirement is that maps must be drawn to “minimiz[e] the division of municipalities and counties across multiple districts, giving first priority to minimizing the division of municipalities and second priority to minimizing the division of counties.” *Id.* at § 20A-19-103(2)(b).

To “minimize” means to “reduce or keep to a minimum,” and “reduce” in turn means “to diminish in size, amount, extent, or number.” *Minimize, Reduce*, Merriam-Webster. Prop 4’s plain language thus requires that maps be drawn to reduce both the extent and number of municipalities and counties divided across multiple districts. In other words, the requirement necessitates minimizing both the extent that any one municipality or county is divided and the total number of municipalities and counties that are divided. *See, e.g.*, 2018 Voter Information Pamphlet at 76, <https://vote.utah.gov/wp-content/uploads/2023/09/2018-VIP.pdf> (describing Prop 4 as remedying

a situation such as Holladay City being “splintered” across multiple districts); *cf. Hall v. Moreno*, 2012 CO 14, ¶ 47, 270 P.3d 961, 971 (discussing practical benefits to reducing division of communities of interest “across multiple districts”).

This requirement to minimize division of municipalities and counties, and in that order, is mandatory. It is preceded by the imperative “shall,” and its plain language prescribes first minimizing the division of municipalities, and second that of counties. *See Pugh v. Draper City*, 2005 UT 12, ¶ 13, 114 P.3d 546, 549; *see also LWVUT*, 2024 UT at ¶ 87 (discussing Prop 4’s “mandatory neutral redistricting criteria”). While Prop 4 specifies that its requirements be met “to the greatest extent practicable,” Utah Code § 20A-19-103(2), that phrase provides flexibility in the manner in which maps may comply with the requirements but does not excuse non-compliance.

The Georgia Supreme Court analyzed the phrase “to the greatest extent practicable” in an analogous context, finding that for something to be “practicable” means that it reasonably can be done. *See City of Marietta v. Summerour*, 807 S.E.2d 324, 334 (Ga. 2017). In *City of Marietta*, a Georgia statute provided a list of policies and practices that the city must follow “to the greatest extent practicable” when exercising its eminent domain power. *Id.* The city argued that “to the greatest extent practicable” indicated that the policies were “effectively nothing more than suggestions” from which it could depart “whenever it conclude[d] that another course would be better.” *Id.* at 330. The court rejected this reading, holding that something is practicable if it is “capable of being accomplished,” “feasible in a particular situation,” or “able to be effected, accomplished, or done.” *Id.* at 334 (citing dictionaries). As the *City of Marietta* court explained, “‘to the greatest extent practicable’ is not to say that [one] must comply with it only ‘if [one] feels like complying’ or ‘if [one] thinks it a good idea.’” *Id.* at 330 (citing *Brown v. Bd. of Ed.*, 349 U.S. 294, 300 (1955)). Rather, the phrase communicates *some* degree of flexibility in complying with

mandatory requirements. *Id.* at 331. The Georgia Supreme Court’s reading accords with other courts’ interpretations of the same and similar phrases. *See, e.g., City of Columbia v. Costle*, 710 F.2d 1009, 1013 (4th Cir. 1983) (concluding that “to the greatest extent practicable” requires compliance “to the fullest extent . . . capable”); *see also Maryland Dep’t of Env’t v. Anacostia Riverkeeper*, 134 A.3d 892, 917-18 (Md. Ct. App. 2016) (“maximum extent practicable” required regulated party to continue until “all reasonable opportunities” were “exhausted”).

Applying these principles to redistricting in Utah, Prop 4 requires that, to the fullest extent feasible, a map should reduce the total number of municipalities and counties that are divided, as well as the extent that any one municipality or county is divided across multiple districts, first prioritizing municipalities and then counties.

Map C does not do this. The very existence of Plaintiffs’ maps demonstrates that it is “capable of being accomplished,” “feasible in a particular situation,” and “able to be effected, accomplished, or done” to draw a reasonably configured congressional map that further minimizes the municipal and county splits beyond what Map C accomplishes. Map C divides three municipalities into 11 pieces. Ex. 2 (Oskooii) at 9. Given that both of Plaintiffs’ maps easily divide only one municipality one time, it is evident that Map C fails to minimize the division of municipalities to the greatest extent practicable. While three municipal splits places Map C near the middle of the distribution in Dr. Chen’s ensemble, Ex. 3 (Chen) at Sec. 6, Map C exhibits a rare district configuration that does not show up among the computer-generated maps. Given the configuration of the districts in Map C, there is no reason to split excess municipalities as it does. Indeed, the fact that Map 2 maintains a high degree of similarity with Map C while significantly

reducing municipal splits demonstrates that reducing municipal splits in this map configuration is “practicable,” and thus required.

Map C also violates Prop 4’s requirement to minimize county divisions. Though Map C divides the same number of counties as Maps 1 and 2 (three counties total), Map C includes an additional division of Utah county that could have been resolved with minimal, practicable adjustments. Ex. 2 (Oskooii) at 9-10. And this extra division is significant. As Dr. Chen explains, having more than three county divisions is *never* necessary in Utah to achieve population equality in the congressional map, and in the 10,000 equally populated and legally compliant maps in his ensemble, no map ever has more than three county splits. Ex. 3 (Chen) at Sec. 1, Sec. 5. This demonstrates conclusively that it is “practicable” to create a compliant map with only three county divisions. Thus, Map C’s division of Utah County across three districts, resulting in four county divisions total, makes Map C a significant outlier, and violates Prop 4.

III. Plaintiffs’ Maps Comply with Prop 4.

Plaintiffs’ proposed Maps 1 and 2 both satisfy the criteria and requirements of Prop 4 and were both created without the use of any partisan data. These maps split fewer municipalities and counties than Map C, perform comparably or better on compactness measures, communities of interest, and have higher boundary agreement with other district maps. Both maps avoid purposeful or undue partisan favoritism, outperforming Map C on every applicable measure of partisan neutrality.

Plaintiffs’ Map 1 is derived from Dr. Chen’s ensemble of 10,000 maps generated by a computer algorithm designed to comply with Prop 4’s priority-ordered redistricting criteria in a partisan-blind manner. Ex. 3 (Chen) at Sec. 1. At the request of Plaintiffs’ counsel, Dr. Chen selected the map in his ensemble with the lowest number of municipal splits, the top-ordered criterion under Prop 4 after compliance with federal law. Plaintiffs’ counsel then gave this

“Simulation Map” to Dr. Oskooii to improve ease of transportation between districts in Rich County without referencing any partisan data and with the least changes possible. Ex. 2 (Oskooii) at 3. Dr. Oskooii’s adjustments moved only 328 people and had no other substantive impact on the map. *Id.* at 7. The “Simulation Map” from Dr. Chen’s computer-generated ensemble together with Dr. Oskooii’s minor adjustments is what is now labeled “Map 1.”

Plaintiffs’ Map 2 is based on the Legislature’s Map C and is intended to be a “least change” map while also correcting Map C’s failure to abide by and conform to Prop 4’s requirements. To create this map, Dr. Oskooii started with the Legislature’s Map C and then made adjustments to reduce the excess municipal and county splits. *Id.* at 3-4. North Salt Lake and Millcreek were moved to eliminate the splits to those municipalities, and Bluffdale was moved to eliminate the additional split of Utah County. *Id.* at 10. To balance the population after making these adjustments, Midvale, South Jordan, West Jordan, Holladay, and two small unincorporated areas were shifted between districts. *Id.* After making these adjustments, the resulting Map 2 retains an 84.76% overlap with Map C, including over 99.9% overlap in two districts. *Id.* at 11. Map 2 thus preserves the legislative priorities of the LRC and the Legislature as much as possible while complying with Prop 4’s requirements.

A. Plaintiffs’ maps follow Prop 4’s neutral criteria.

Plaintiffs’ two maps each comply with Prop 4’s neutral criteria, which must be followed “to the greatest extent practicable” and in the order of priority delineated in the statute. Utah Code § 20A-10-103(2). Plaintiffs’ maps meet this requirement, frequently performing better than Map C on each criterion, illustrating that the Legislature failed to follow the criteria “to the greatest extent practicable” as Prop 4 requires. *See supra.*

Federal law. Both maps comply with federal law including “achieving equal population among districts,” *Id.* § 20A-10-103(2)(a) because both maps have zero population deviation. Ex. 2 (Oskooi) at 7, 11.

Municipal and county splits. Both maps “minimize[e] the division of municipalities and counties across multiple districts,” as Prop 4 requires. *Id.* § 20A-10-103(2)(b). Both maps split only one municipality once: in Map 1 Midvale is split between Districts 1 and 4, and in Map 2 Pleasant Grove is split between Districts 3 and 4. All other municipalities remain whole. Ex. 2 (Oskooii) at 16. This stands in contrast to Map C, which splits three municipalities (Millcreek, North Salt Lake, and Pleasant Grove) into 11 pieces total. *Id.* Divisions of counties are similarly minimized in both of Plaintiffs’ maps. In both maps, only three counties—Salt Lake, Utah, and Weber—are divided, and each county is divided only one time. *Id.* In contrast, the Legislature’s map has an extra—and unnecessary—split of Utah County. *Id.* at 10.

Compactness. Both of Plaintiffs’ maps “create[] districts that are geographically compact.” 20A-10-103(2)(c). Map 1 has an average Reock score of .49 and an average Polsby-Popper score of .44. The individual district scores range from .44 to .55 for Reock, and .36 to .56 for Polsby-Popper. Ex. 2 (Oskooii) at 16. Map 2 has an average Reock score of .49 and an average Polsby-Popper score of .37. The individual district scores range from .36 to .61 for Reock, and .23 to .43 for Polsby-Popper. *Id.* These compactness scores all land in the range of compactness scores observed in a neutral ensemble, demonstrating that they are not outliers on compactness. Ex. 3 (Chen) at Sec. 6.

Contiguity. Both of Plaintiffs’ maps have districts that are “contiguous and that allow for the ease of transportation throughout the district.” Utah Code § 20A-10-103(2)(d). Every district in both maps is contiguous. Ex. 2 (Oskooii) at 7, 11. Dr. Chen’s algorithm that produced Map 1

was programmed to follow natural boundaries, including the Great Salt Lake, Utah Lake, and the Colorado River. Ex. 3 (Chen) at Sec. 1. And, when making the adjustments to ultimately produce Plaintiffs’ Maps 1 and 2, Dr. Oskooii performed his own check for ease of transportation and made adjustments to the Simulation Map in Rich County to improve connectivity. Ex. 2 (Oskooii) at 7.

Communities of interest. Plaintiffs’ maps also “preserv[e] traditional neighborhoods and local communities of interest.” Utah Code § 20A-10-103(2)(e). Dr. Chen compared all three remedial proposals to both the Legislature’s identified communities of interest and the communities identified by the UIRC in 2021. Ex. 3 (Chen) at Sec. 6. Plaintiffs’ Map 1 keeps together the most communities identified by the UIRC of the three maps, while Plaintiffs Map 2 and Map C lag further behind. Both of Plaintiffs’ maps preserve the four sets of communities identified by the LRC: the Uintah Basin (Uintah and Deschene Counties), tribal lands and reservations, higher education institutions, and military installations. *See* Ex. 2 (Oskooii) at 12, 17-22 (overlaying the boundaries of tribal areas, military installations, and institutions of higher education on images of Plaintiffs’ maps and Map C).

Natural and geographic boundaries. Plaintiffs’ maps likewise “follow[] natural and geographic features, boundaries, and barriers.” Utah Code § 20A-10-103(2)(f). Dr. Chen’s algorithm was programmed to take account of the Colorado River, the Great Salt Lake, and Utah Lake. *See* Ex. 3 (Chen) at Sec. 1. And Dr. Oskooii’s minor alterations to produce Maps 1 and 2 do not result in violations of Utah’s natural geography. *See* Ex. 2 (Oskooii) at 3-4.

Boundary agreement. Plaintiffs’ maps “maximiz[e] boundary agreement among different types of districts,” Utah Code § 20A-10-103(2)(g), while not sacrificing the higher-ranked criteria. The two maps keep whole more State House, State Senate, and State School Board districts within congressional districts than Map C does. *See* Ex. (Chen) at Sec. 6.

In sum, Plaintiffs' maps comply with all of Prop 4's neutral criteria.

B. Plaintiffs' maps do not exhibit partisan favoritism.

1. Plaintiffs' maps do not purposefully favor or disfavor any political party.

Plaintiffs' maps do not purposefully favor or disfavor any political party. This is apparent from how they were developed. Map 1 was derived from an ensemble of computer-generated maps produced by an algorithm programmed to follow Prop 4's neutral criteria, without any regard to partisanship and with no reference to partisan data. Ex. 3 (Chen) at Sec. 1. Map 2 is based on the Legislature's Map C with minimal changes made to bring it into compliance with Prop 4's neutral criteria, likewise without any regard to partisanship and no reference to partisan data. *See* Ex. 2 (Oskooii) at 3-4. Furthermore, when Dr. Chen compared Maps 1 and 2 to his neutral ensemble he found that, unlike Map C, both "have partisan characteristics, namely the inclusion of one Democratic district, that fall within the norm of the ensemble maps." Ex. 3 (Chen) at Sec. 3.

2. Plaintiffs' maps do not unduly favor or disfavor any political party.

Nor do Plaintiffs' maps unduly favor or disfavor any political party in effect. According to Dr. Chen's ensemble analysis, the partisan characteristics of Plaintiffs' maps both appear within the distribution of neutrally drawn computer-generated simulations and do not exhibit the extreme outlier status of Map C. Ex. 3 (Chen) at Sec. 3. The least Republican vote share (LRVS) of Map 1 is well within the norm of the ensemble. *Id.* Map 2's LRVS is naturally at the higher end of the distribution given its necessary resemblance to the Legislature's Map C as its least-change alternative. *Id.* However, the minimal changes made to bring Map 2 into compliance with Prop 4's neutral criteria had the effect of making the least Republican district one that Democrats can fairly expect to win, bringing it into line with over 99.9% of the ensemble. *Id.* In addition, Dr. Chen found that Maps 1 and 2 both have a standard deviation of district vote shares within the middle

95% range among computer simulated plans, indicating that neither unduly cracks the minority party concentrated in the Salt Lake County metropolitan area. *Id.*

The partisan neutrality of Plaintiffs' maps is also evident from the efficiency gap. In contrast to Map C's 11.7% pro-Republican efficiency gap, Maps 1 and 2 have efficiency gaps very close to zero, -2.4% and -0.8% respectively. Ex. 1 (Warshaw) at 11. This means that Map C has an efficiency gap nearly five times larger than Map 1 and more than 14 times larger than Map 2. While Map C has an efficiency gap that places it near the pro-Republican extreme compared to congressional plans around the country, Maps 1 and 2 have efficiency gaps so small they are "virtually neutral." *Id.* at 12.

For the reasons explained above and in Plaintiffs' recent preliminary injunction motion on Counts 16-21, the partisan bias and mean-median tests mandated by S.B. 1011 are inapplicable to assessing partisan favoritism in Utah and unconstitutional impairments of Prop 4's fundamental anti-gerrymandering purpose. That said, it is worth noting that Plaintiffs' Map 2 *passes* S.B. 1011's partisan bias test. Ex. 3 (Chen) at Sec. 4. It also just narrowly misses the law's arbitrary 2% cutoff for the mean-median difference test—unless S.B. 1011 envisions rounding, in which case Map 2 passes that test as well. *Id.*

Plaintiffs' maps therefore satisfy Prop 4's partisan favoritism prohibition.

C. Plaintiffs' maps respect the work of the Commission and the priorities of the Legislature.

In addition to complying with all the requirements of Prop 4, Plaintiffs' maps respect the work of the commission and the priorities of the Legislature wherever possible. As this Court observed, "the work performed by the independent redistricting commission . . . can be considered by the Legislature as it redesigns the congressional plan for future elections." Amended Ruling and Order at 3. Though there is no up-or-down vote or written report required, "[t]he work done

and the information previously gathered” by the Commission “are still viable to this remedial process.” *Id.* at 4. Despite this, the Legislature largely ignored the Commission’s work. But Plaintiffs have respected it. In particular, Plaintiffs’ maps both have significant core retention with the Commission’s Orange and Purple plans. Map 1 has an 84.34% overlap with the Orange Map and an 80.32% overlap with the Purple Map,¹⁹ while Map 2 has a 77.32% overlap with the Orange Map and an 80.94% overlap with the Purple Map. Ex. 2 (Oskooii) at 11.

Other legislative priorities beyond those included in Prop 4 are also included in Plaintiffs’ maps where possible. For example, by maintaining over 84% core retention with Map C, Map 2 includes a similar urban-rural mix. In reluctantly supporting Map C, Senator Weiler expressed a desire to “keep Davis County together,” that he “would prefer to keep North Salt Lake together,” and that he had received some “pressure” from some of his constituents against Map C because it failed to do so.¹⁹ Both of Plaintiffs’ maps keep Davis County and North Salt Lake in one piece, and in the case of Map 2, manages to do so while preserving most other features of Map C. Senator Weiler expressed a desire to “avoid dividing more cities than we need to,” which Map C fails to do and Plaintiffs’ maps achieve. Similarly, Senator Musselman acknowledged that though some counties and municipalities would need to be split, “if you can minimize that as much as you possibly can, then I think that’s the map that we should give the greatest consideration to.”²⁰ Once again, Map C does not do that, while Maps 1 and 2 do. Other priorities identified by legislators during the floor debate are also respected (and improved) in Plaintiffs’ maps. For example, Representative Gricius explained her support of Map C stating, “I really, really like the distribution on military installations that this map has, and I think it’s a great map to maximize our

¹⁹ Map C Floor Debate at 1:15:52-1:16:25.

²⁰ Floor Debate on Map C at 1:24:09 to 1:25:17.

representation there.”²¹ As explained above, the distribution of military bases in Map C is similar in Map 1 and nearly identical in Map 2.

IV. This Court Has the Authority and Obligation to Order the Use of a Remedial Congressional Map to Cure Multiple Violations of the Utah Constitution.

This Court has the equitable authority to order the use of a remedial congressional map to cure a violation of the Utah Constitution. *See Scott v. Germano*, 381 U.S. 407, 409 (1965) (“The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged.”). In an instance in which a map is found unconstitutional, it is a proper use of equitable authority for the Court to order a remedial process which provides the Legislature an opportunity to draw a new map. However, if the remedial map proposed by the Legislature does not cure the violation, the Court has an *obligation* to order the use of a map that is instead legally sufficient. *See Maryland Comm. for Fair Representation v. Tawes*, 377 U.S. 656, 676 (1964) (finding that Maryland’s state legislative maps violated the U.S. Constitution and allowing the Legislature the opportunity to redraw the maps, but noting that the Court should take action if the legislature fails to enact a legally valid map, and that “*under no circumstances* should the [upcoming] election . . . be permitted to be conducted pursuant to the existing or any other unconstitutional plan.”).

This Court has found that the 2021 congressional map, H.B. 2004, violated the Utah Constitution. Specifically, this Court held that the Legislature’s repeal and replacement of Prop 4 with S.B. 200 was a violation of Plaintiffs’ right to alter and reform their government through the initiative process. Order Granting Pls. Mot. for Summary Judgement at 69. This Court further

²¹ Oct 6 LRC Hearing at 1:35.

concluded that “H.B. 2004 cannot be separated from the Legislature’s unconstitutional repeal of Proposition 4,” because H.B. 2004 “is the fruit of that unlawful repeal, an extension of the very constitutional violation that tainted the process from the start.” *Id.* at 70. As a result, the Court declared both S.B. 200 and H.B. 2004 unconstitutional. *Id.* at 71-72.

In a proper exercise of its equitable authority, this Court then ordered a remedial process in which the Legislature was provided the opportunity to submit a remedial map that cured that constitutional violation by complying with Prop 4. But as discussed *supra*, the Legislature’s proposed remedial map fails to “abide[] by and conform[] to the redistricting standards, procedures, and requirements” of Prop 4. As a consequence, it must be enjoined and, to remedy the unconstitutional malapportionment of the operative 2011 congressional map (Count VIII), a lawful map must be imposed by this Court. As noted *supra*, both of Plaintiffs’ Maps comply with Prop 4 and all other relevant federal and state laws. Therefore, this Court is empowered to select either of Plaintiffs’ Map in the course of this remedial process.

Defendants have publicly made claims that a court selecting a remedial map that was not approved by the Legislature would be a serious infringement of the Legislature’s authority to redistrict under Article IX, Section I of the Utah Constitution. *See* Utah Const. art. IX, § 1 (“No later than the annual general session next following the Legislature’s receipt of the results of an enumeration made by the authority of the United States, the Legislature shall divide the state into congressional, legislative, and other districts accordingly.”).

But these claims are inconsistent with this Court’s recent interpretation of that provision. Article IX, Section 1 “does not grant redistricting authority to the ‘Legislature,’” but “[r]ather, in accordance with long-standing Utah law, [] *limits* the Legislature’s authority” on “when redistricting shall occur.” Order Granting Pls. Motion for Summary Judgement at 23-24 (emphasis

added). “[T]he argument that the Legislature has the sole and exclusive authority to redistrict” under Utah Constitution is an argument which “this Court rejected.” *Id.* at 28. Nothing in Article IX or elsewhere in the Utah Constitution provides a grant of power to the Legislature with regard to redistricting that would suggest that the state judiciary lacks the equitable authority to select a compliant remedial map in accordance with U.S. Supreme Court precedent.

Indeed, by enacting an unlawful remedial map, it is the *Legislature* that has violated Article IX by failing to dispense its obligation to enact a lawful map. This Court simply has the unwelcome obligation to remedy the constitutional violation occasioned by the Legislature’s failure. And the contention that a state court is powerless to impose a lawful, equally apportioned congressional map that complies with state law in the absence of one adopted by the Legislature is simply foreign to American jurisprudence.

Take some examples. The Minnesota Constitution provides that “the legislature shall have the power to prescribe the bounds of congressional and legislative districts.” Minn. Const. art. IV, § 3. But the State’s political branches have failed for decades to enact lawful, apportioned maps and the Minnesota Supreme Court has for decades imposed maps as a result. *See, e.g., Wattson v. Simon*, 970 N.W.2d 56 (Minn. 2022). The Wisconsin Constitution provides that “[a]t its first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly.” Wis. Cons. art. IV, § 3. When the Wisconsin legislature failed to discharge that responsibility, the Wisconsin Supreme Court took jurisdiction and—at the urging of the same lawyers who represent the Utah Legislature in this case—imposed a new map. *See Johnson v. Wis. Elections Comm’n*, 967 N.W.2d 469 (Wis. 2021). Later, when the Wisconsin Supreme Court ruled that the state’s legislative districts violated the State Constitution’s contiguity requirement, the court enjoined the maps and began a judicial

remedial process in the event the political branches failed to enact a lawful map, holding that it was required to impose a lawful map if the legislature failed to following an injunction against the current map. *Clarke v. Wis. Elections Comm’n*, 998 N.W.2d 370, 396 (Wis. 2023) (citing *Growe* and *Germano*). In *Alexander v. Taylor*, the Oklahoma Supreme Court held that its state courts had jurisdiction to impose a lawful congressional map in the absence of one enacted by the legislature, citing the Oklahoma Constitution’s “open courts” provision, which states that “[t]he courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice.” 51 P.3d 1204, 1208 (Okla. 2002) (quoting Okla. Const. art. 2, § 6).

The Utah Constitution likewise provides for open courts and judicial remedies, which necessarily extends to the power to remedy a violation of a person’s right to an equally apportioned, lawful congressional map, as the Oklahoma Supreme Court held. *See* Utah Const. art. I, § 11 (“All courts shall be open, and every person, for an injury done to the person in his or her person, property, or reputation, shall have remedy by due course of law”). Citing the U.S. Supreme Court’s unequivocal holding in *Growe* that state courts were obligated to step in and impose a lawful map in the absence of one adopted by a state’s political branches, the New Hampshire Supreme Court rejected an argument that it was powerless to impose a lawful congressional map. *Norelli v. Sec. of State*, 292 A.3d 458, 462-64 (N.H. 2022).

In all of these states, the constitutions place the obligation to redistrict primarily with the legislature. But where the legislature fails to discharge that responsibility by enacting a lawful map, and where no time remains for another legislative attempt, then it is universally recognized that state courts must impose a lawful map. Such is this case here.

CONCLUSION

For the reasons above, enforcement of the Legislature's map should be enjoined, and one of Plaintiffs' two maps should be selected as Utah's operative congressional map.

RESPECTFULLY SUBMITTED this 17th day of October 2025.

/s/ David C. Reymann

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