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**Pro Hac Vice*

In the Supreme Court of the State of Utah

League of Women Voters of Utah, Mormon Women for Ethical Government, Stefanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, Jack Markman,

Appellees,

v.

Utah State Legislature, Utah Legislative Redistricting Committee, Sen. Scott Sandall, Rep. Mike Schultz, Sen. J. Stuart Adams,

Appellants.

APPELLEES' RESPONSE IN OPPOSITION TO APPELLANTS' MOTION FOR STAY OF PERMANENT INJUNCTION

No. 20260019-SC

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INTRODUCTION

Legislative Defendants' stay request seeks to deny the People of Utah a lawful congressional map for yet another election. But it comes much too late, is procedurally improper, and is wrong on the law at every turn. Plaintiffs—and all Utah voters—must finally vote in fair and lawful congressional districts drawn according to the reforms they adopted in Proposition 4, using their fundamental constitutional right to alter and reform the government, more than seven years ago.

Proposition 4, enacted by the People in 2018, created an advisory independent redistricting commission, banned partisan gerrymandering, and established procedures and neutral criteria for redistricting maps. Legislative Defendants have opposed these reforms at every turn. This lawsuit arises from their unconstitutional repeal of Proposition 4 through the passage of S.B. 200, which impaired Proposition 4's core reforms, and the resulting enactment of H.B. 2004 ("2021 Map"), which was passed in violation of Proposition 4's requirements and gerrymandered Utah's congressional districts for partisan advantage.

After years of litigation, on August 25, 2025, the district court granted Plaintiffs' summary judgment motion, resurrecting Proposition 4 and enjoining use of the 2021 Map. Legislative Defendants now come to this Court—after months of delay—demanding a stay of the district court's injunction and demanding a decision in the next two weeks. But their stay request is based on a thoroughly incorrect understanding of the law and of the district court's carefully reasoned decision.

Proposition 4 complies with the Utah Constitution. Legislative Defendants assert that the Utah Constitution gives them sole and near-unreviewable authority to redistrict—

and gerrymander—as they like. Their whole argument hangs on the incorrect belief that Article IX grants exclusive authority over redistricting to the Legislature. But Article IX is a *limitation* on the Legislature's redistricting power, not a grant of sole authority. Rather, Utah's legislative power is co-equally shared between the People and their elected representatives; where the Legislature can pass a law, so can the People. Nor does Proposition 4 violate—or even implicate—the Legislature's power under any other provision of the Utah Constitution. Under Proposition 4, the Legislature retains the ability to redistrict, including balancing redistricting criteria, rejecting any maps suggested by the Commission, and passing its own map. The federal Elections Clause also supports the legality of Proposition 4—the U.S. Supreme Court has repeatedly held that redistricting is subject to a state's regular lawmaking process, including initiatives. Utah is no different.

Moreover, the district court's injunction against the 2021 Map was an appropriate remedy for the constitutional and statutory harms found by the district court. The 2021 Map was a direct product of, and enacted under, the unconstitutional process established by S.B. 200. In addition, the 2021 Map undisputedly did not follow Proposition 4's procedures. As a result, a stay of the injunction would irreparably harm Plaintiffs and Utah voters, who have already voted twice under an unlawful map. They must not be forced to do so again. Legislative Defendants claim they face harm absent a stay, but their months-long delay in appealing the decision and refusal to pass a lawful map suggest otherwise. This Court should deny Legislative Defendants' stay request.

FACTUAL BACKGROUND

In 2018, the people of Utah exercised their rights under the Utah Constitution and passed Proposition 4, which created an independent redistricting commission and a set of procedures, requirements, and criteria to which redistricting maps must conform. *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶¶ 24-33, 554 P.3d 872 ("*LWVUT I*"). The Legislature disregarded the people's reform and passed S.B. 200, which repealed Proposition 4.[1] *Id.* ¶ 34. The Legislature then enacted H.B. 2004 ("2021 Map"), which carved Salt Lake County into all four of Utah's Congressional districts. *Id.* ¶ 42. Plaintiffs filed suit, alleging, *inter alia*, that the Legislature's passage of S.B. 200 unconstitutionally infringed their Article I, § 2 rights to alter or reform the government. *Id.* ¶¶ 48-49. Plaintiffs requested that enforcement of S.B. 200 be enjoined, along with enforcement of H.B. 2004, which was undisputedly enacted pursuant to S.B. 200 and not Proposition 4. *Id.* ¶ 61. The district court granted Legislative Defendants' motion to dismiss, and Plaintiffs appealed to this Court. *Id.* ¶¶ 51, 57.

In *LWVUT I*, this Court held that Plaintiffs stated a valid cause of action that the Legislature's repeal of Proposition 4 violated their Article I, § 2 right to alter or reform their government. The Court remanded for the district court to determine whether S.B. 200 violated that constitutional right and observed that if it did, then "Proposition 4 . . . would become controlling law." *Id.* ¶ 222 (citations omitted). "And under Proposition 4, if the

[1] Legislative Defendants cite comments made at a press conference surrounding the passage of S.B. 200. But as the district court observed, what various people "thought or believed" is inadmissible hearsay and irrelevant to the legal analysis here. Ex. B at 8 n.3.

facts alleged by Plaintiffs are proven true, it is likely that the Congressional Map cannot stand." *Id.* The Court noted that those facts included the Legislature's failure to follow Proposition 4's "procedural requirements." *Id.*

On remand, Plaintiffs amended their complaint, D.Ct. Doc. 298,[2] and moved for summary judgment, contending that (1) the repeal of S.B. 200 unconstitutionally infringed their right to alter or reform the government and (2) that the 2021 Map was indisputably enacted in violation of Proposition 4's procedural requirements, D.Ct. Doc. 293 at 8-24, 27. Argument on the summary judgment motion was heard in January 2025.[3]

Following the summary judgment hearing, the district court requested supplemental briefing on two questions related to remedy. First, the court requested that the parties "clarify the legal basis for Plaintiffs' position that a permanent injunction" of the 2021 Map "is an appropriate remedy if the Court grants Plaintiffs' Motion for Summary Judgment on Count V." Second, the court asked whether "additional procedural steps [were] required by Proposition 4 before a permanent injunction" could be entered against the 2021 Map. The court also inquired whether it was necessary to make findings of fact related to the 2021 Map's compliance with Proposition 4's substantive criteria, and why Plaintiffs

[2] Citations to "D.Ct. Doc." are to documents filed on the district court docket below, No. 220901712.

[3] Briefing on the summary judgment motion was delayed because of emergency litigation related to Amendment D, whereby the Legislature attempted to trick voters into overturning *LWVUT I* via misleading ballot language and failed to follow constitutional notice requirements. *See League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 40, 559 P.3d 11 ("*LWVUT II*").

included counts in the alternative in the amended complaint if full relief was possible under Count V. D.Ct. Doc. 453.

In the supplemental briefing the court requested, Plaintiffs explained that the district court could enjoin enforcement of H.B. 2004 on either of two independent grounds: as part of the full remedy for the violation of Plaintiffs' constitutional alter or reform rights, or pursuant to Proposition 4's requirement that redistricting maps be enacted in conformance with certain processes and criteria. D.Ct. Docs. 455, 459. Legislative Defendants did not dispute the factual record showing that H.B. 2004 violated Proposition 4's procedural requirements. D.Ct. Doc. 457. And they stated their expectation that remedial proceedings in the case would "entail substantial expert discovery, including expert-proposed alternative maps." *Id.* at 20.

Following the supplemental briefing, the district court issued a 76-page Ruling and Order on August 25, 2025 ("August 25 Order"). Ex. B.[4] The Order declared S.B. 200 unconstitutional, reinstated Proposition 4, permanently enjoined implementation of H.B. 2004 (the 2021 Map), and proposed a schedule for remedial proceedings.

On August 29, 2025, Legislative Defendants filed a motion in the district court to stay the August 25 Order pending resolution of the remedial process and appeal, citing a grab-bag of arguments about the power to redistrict under the Utah and Federal constitutions, the authority of the Utah Legislature to determine the rules that govern its proceedings, timing complaints, and disagreements about the procedures that would govern

[4] Plaintiffs cite to the exhibits as they are labeled in Legislative Defendants' stay motion.

the forthcoming remedial process. D.Ct. Doc. 482. Plaintiffs orally opposed the motion at a hearing in the district court later that day, and the court denied the motion on September 2. D.Ct. Doc. 496. Legislative Defendants did not appeal the August 25 Order, as was their statutory right under Utah Code § 78B-5-1002, and thus did not seek a stay pending such an appeal. Instead, they filed a Rule 19 Petition for Extraordinary Relief asking this Court for a stay of the district court's injunction of the 2021 Map, which this Court denied on September 15, 2025. *See League of Women Voters of Utah v. Utah State Legislature*, 2025 UT 39, 579 P.3d 287 (per curiam) ("*LWVUT III*").

On September 2, the Lieutenant Governor filed a notice identifying November 10 as the deadline to have a final congressional map in place. D.Ct. Doc. 494. On September 6, the district court issued an Amended Ruling and Order that adopted the parties' proposed remedial schedule and clarified its August 25 Order in certain respects. Ex. C.

The parties followed the stipulated schedule for remedial proceedings. On October 6, the Legislature passed S.B. 1012 (Map C) and filed it with the district court, and Plaintiffs filed two alternative maps (Map 1 and Map 2). An evidentiary hearing was held on October 23 and 24. On November 10, the district court issued an order finding that Map C violated Proposition 4 because it was drawn using partisan data, was drawn as an intentional partisan gerrymander, was an extreme partisan outlier, and failed to conform to Proposition 4's neutral criteria regarding municipal and county splits. Ex D.[5] To ensure

[5] The November 10 Order also preliminarily enjoined a separate law, S.B. 1011, which unconstitutionally impaired Proposition 4 by structurally mandating partisan favoritism for one party contrary to Proposition 4's core reforms.

that an equally populated and lawful congressional map was in effect for the 2026 election, the court adopted Plaintiffs' Map 1 as the remedial map. *Id.* at 87-89. Legislative Defendants did not appeal or request a stay at that time.

As the Lieutenant Governor began to implement Map 1 pursuant to the November 10 Order, the Lieutenant Governor filed a motion seeking guidance from the Court on a number of minor technical issues.[6] The Court requested briefing from the parties on the questions raised, and Plaintiffs responded. D.Ct. Docs. 751, 711. The district court adopted Plaintiffs' suggestions regarding the issues raised by the Lieutenant Governor (largely requiring no changes at all) and ultimately ordered the implementation of Map 1 with one small adjustment to account for a possible one-home precinct. D.Ct. Docs. 780, 788. The Lieutenant Governor proceeded to implement the map.

Legislative Defendants took no position on the technical issues on which the court had requested briefing and instead filed a procedurally improper stay request on November 19. D.Ct. Doc. 763. The stay request was based on several incorrect assertions, including that the Legislature had been precluded from appealing, the district court lacked authority to impose a map, and the technical issues raised by the Lieutenant Governor somehow demonstrated error in the November 10 Order. The district court denied the stay, noting that Legislative Defendants had had numerous opportunities to appeal but failed to do so,

[6] These were the type of technical issues that arise in *any* redistricting, and that are far more prevalent in the 2021 Map and Map C than Map 1. *See* D.Ct. Doc. 771 at 5 (2021 Map has a single-*voter* precinct); D.Ct. Doc. 754 at 2 (2021 Map and Map C "bisect" homes at least twice as often as Map 1). Plaintiffs separately responded to the Motion for Joinder by the Utah County Clerk which raised these and similar meritless complaints.

and that they had stipulated to the remedial proceedings—acknowledging both the court's ability to impose a map if necessary and the dataset that would be used to assess the map with which they now took issue. D.Ct. Doc. 788. Legislative Defendants did not appeal this denial or attempt to seek a stay from this Court.

Following briefing regarding final judgment, the district court issued a Rule 54(b) certification as to the August 25 and September 6 Orders on January 6, 2026, Ex. F, and Legislative Defendants filed a notice of appeal on January 7. On January 16, Plaintiffs filed a motion for summary disposition in this Court, and on January 23, *five months* after the district court's permanent injunction of S.B. 200 and the 2021 Map, Legislative Defendants filed the pending Motion for Stay of Permanent Injunction here.

REASONS TO DENY A STAY

I. The motion for stay is procedurally improper.

Legislative Defendants have not met the requirements under Rule 8 of the Utah Rules of Appellate Procedure to ask this Court for a stay. A party may move the appellate court for a stay pending appeal under Rule 8, but "[b]efore seeking relief in the appellate court under this rule, a party must first seek the requested relief in the trial court." Utah R. App. P. 8. The only exceptions to this requirement are when "the party can show extraordinary circumstances or that the trial court has already rejected the basis for the requested relief." *Id.* Legislative Defendants have not made such a showing.

Legislative Defendants did not first seek the requested relief in the trial court, nor did the trial court reject the bases for the relief requested here as Rule 8 requires. *See Jenco, LC v. Valderra Land Holdings, LLC*, 2025 UT 20, ¶ 16, 572 P.3d 381. The present Motion

requests a stay of the injunction against H.B. 2004 on the grounds that Proposition 4 contravenes the Utah Constitution and the federal Elections Clause, and that enjoining the 2021 Map was not the proper remedy for S.B. 200's unconstitutional repeal of Proposition 4. These are not the same bases on which Legislative Defendants' prior stay requests to the district court were grounded. Legislative Defendants' August 29 motion in the district court sought a stay based primarily on a disagreement with the district court over the procedures that should govern the remedial process, as did the petition for an extraordinary writ that followed the district court's denial. *See LWVUT III*, 2025 UT 39. And Legislative Defendants' procedurally improper November 19 stay request at the district court primarily addressed the appropriateness of imposing Map 1 (which is not at issue in this appeal), rather than the injunction against the 2021 Map, and it did not address the remedy question raised in the present Motion. *See* D.Ct. Doc. 763. This Court is thus unable to evaluate "why the district court denied the relief" when Legislative Defendants failed to go first to the district court with their present stay request. *See Van Dusen v. Wasatch Cnty.*, 2026 UT 1, ¶ 23.

An application under Rule 8 "must show" that the trial court has denied an application or has failed to provide the relief which the applicant requested. *Utah Res. Int'l, Inc. v. Mark Techs. Corp.*, 2014 UT 60, ¶ 15, 342 P.3d 779. This requirement may be omitted "where it appears a district court has exceeded its discretion by declining to acknowledge a timely appeal or by declining to grant a stay." *Garver v. Rosenberg*, 2014 UT 42, ¶ 15 n.24, 347 P.3d 380. The district court's denials of the August 29 and November 19 stay requests did not "decline to acknowledge a timely appeal," as none was made until

January 7. Legislative defendants concede that this stay request is on different grounds than those previous ones, *see* Mot. at 5 n.3, confirming that this request was not first made in the district court.

There are also no extraordinary circumstances justifying Legislative Defendants' failure to follow Rule 8's requirements. Legislative Defendants contend (at 7) that "fast approaching" election deadlines constitute an "extraordinary circumstance[]" that warrants this Court's action. But both the election deadlines and the current status of the appeal are entirely of Legislative Defendants' own making. Legislative Defendants could have requested this precise relief in September 2025 when the then-existing election deadlines were still two months away. Instead of filing an appeal and accompanying stay motion then (or anytime within the following five months), Legislative Defendants requested that the district court issue a stay on different grounds and filed no appeal.

Having inexplicably waited to file their notice of appeal—missing multiple statutory deadlines in the process, *see* Mot. for Summ. Disp.—Legislative Defendants now ask this Court to bail them out. But the Rules do not permit a party to "bypass[] traditional avenues for judicial relief," when applicants come to this Court with a "self-imposed emergenc[y]." *See Krejci v. City of Saratoga Springs*, 2013 UT 74, ¶ 10, 322 P.3d 662; *see also Cheves v. Williams*, 1999 UT 86, ¶ 46, 993 P.2d 191 ("The plain language of [Rule 8] indicates that the trial court has jurisdiction, in the first instance . . . to determine whether a stay of the judgment pending appeal should be granted."). Legislative Defendants' single sentence about election deadlines over which *they* had control, is not a sufficient explanation of the

"extraordinary circumstances justifying seeking relief for the first time in the appellate court," particularly given their dilatory conduct. Utah R. App. P. 8(b)(2).

II. Legislative Defendants are unlikely to prevail on appeal.

Legislative Defendants are unlikely to prevail on appeal. Legislative Defendants' main argument (at 7) is that the district court erred in finding that Proposition 4 was a proper exercise of Article I, § 2's Alter or Reform power because it violates several provisions of the Utah Constitution and the U.S. Constitution's Elections Clause.[7] In addition, they contend that the district court erred by enjoining the 2021 Map after finding S.B. 200 unconstitutional. *Id*. The district court correctly rejected these arguments, which are contrary to Utah and federal law, and Legislative Defendants offer no reason for this Court to rule differently.

A. Proposition 4 complies with the Utah Constitution.

As the district court held, "the Legislature does not have sole and exclusive authority over redistricting," and Proposition 4 complies with the Utah Constitution. Ex. B at 17, 21-39. Legislative Defendants claim that the district court erred because Proposition 4 violates the redistricting authority held by the Legislature "alone" under Article IX of the Utah Constitution by (1) requiring application of redistricting criteria in a particular order, (2)

[7] Legislative Defendants limit their stay motion to addressing only the first factor established in this Court's three-part test in *LWVUT I* and expressly exclude the district court's rulings on the second and third factors as a basis for their request. 2024 UT 21, ¶ 74; Mot. at 8, n 4. As a result, Plaintiffs do not address these factors here, but note that the district court's findings that S.B. 200 infringed the People's Alter and Reform right by impairing the reforms in Proposition 4, and that the Legislature failed to meet strict scrutiny in doing so, further support denying Legislative Defendants' requested stay.

prohibiting partisan gerrymandering, and (3) requiring use of judicial standards and the best available data and methods to assess a plan's compliance with Proposition 4. Mot. at 8-13. In addition, they argue that Proposition 4 violates Article IV by impairing the Legislature's "prerogative" to make its own rules, and Article V, § 1 by "transferring" the Legislature's redistricting functions to the commission and courts. *Id*. at 13-18. Not so. Each of these arguments are based on a flawed understanding of the law, were thoroughly rejected by the district court, and provide no basis for a stay on appeal.

1. The Legislature does not have exclusive authority to redistrict under Article IX.

Legislative Defendants argue (at 8-9) that Article IX grants them "alone" the authority to redistrict in Utah, and that Proposition 4 "tried to restrict by statute the Legislature's state constitutional powers and functions," including its "discretion." But the Utah Constitution grants the Legislature no such sole authority, and Legislative Defendants cannot show that the district court erred in rejecting their contrary arguments below. Ex. B at 17, 21-39. Indeed, Article IX is a *limit* on the Legislature's authority to redistrict and does not exclude the People, who hold a coequal legislative role with the Legislature, from legislating regarding redistricting. *Id*.; Ex. D at 56-57.

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

In rejecting Legislative Defendants' arguments, the district court conducted a careful analysis of the text and history of Article IX and other Utah constitutional provisions, the text of similar provisions in other constitutions, and federal precedent in assessing whether Article IX grants the Legislature exclusive authority over redistricting. Ex. B at 21-39. Starting with principles of constitutional interpretation, the court noted that in Utah, "it is a 'well-recognized principle' that because the legislature is the representative of the people, 'wherein lies the residuum of governmental power, constitutional provisions are *limitations*, rather than grants of power.'" *Id*. at 21 (citing *Parkinson v. Watson*, 4 Utah 2d 191, 199, 291 P.2d 400, 405 (1955) (emphasis added)). Article IX is no different—the provision's plain language and history limit the Legislature's redistricting authority, rather than providing an unlimited grant. Ex. B at 23-24.[8]

Indeed, the text of Article IX nowhere uses the words "exclusive" or "sole" in relation to the Legislative Defendants' authority, or to "exclude the people's co-equal legislative power under this provision, unlike other Utah Constitutional provisions that do make clear when authority is exclusively granted to a particular body." *Id*. at 24 (citing examples). Thus, "the plain language of Article IX, section 1—in both the original and current versions—does not expressly exclude the people from exercising their direct legislative power." *Id*. Numerous other courts have considered provisions similar to Article IX and "held that the term 'Legislature' means 'any lawmaking entity,' and not just the

[8] As the district court noted, the text of Article IX expressly restricts the Legislature's discretion regarding redistricting, including providing "a limitation on when redistricting shall occur" to only once a decade after receiving the decennial census. Ex. B at 24.

elected legislature." *Id*. (citing *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 813-14 (2015) (*AIRC*)); *People ex. rel. Salazar v. Davidson*, 79 P.3d 1221, 1236 (Colo. 2003) (holding under similar provision in Colorado Constitution that the term "General Assembly," like "legislature" "encompasses the entire legislative process," including voter initiatives); *Lawyer v. Department of Justice*, 521 U.S. 567, 577 n.4 (1997) (discussing Fla. Const. art. III, § 16 and rejecting the argument that it "provides the exclusive means by which redistricting can take place," as "this article in terms provides only that the state legislature is bound to redistrict within a certain time after each decennial census, for which it may be required to convene"); *see also Carter v. Lehi City*, 2012 UT 2, ¶¶ 79-80, 269 P.3d 141; *Mawhinney v. City of Draper*, 2014 UT 54, ¶¶ 15-18, 342 P.3d 262.

Moreover, reviewing the text of Article IX "in harmony with the rest of the constitution," *LWVUT I*, 2024 UT 21, ¶ 9, demonstrates that in Utah, "redistricting is a quintessential legislative function, subject to a state's 'ordinary constraints on law-making' including gubernatorial veto, citizen referendum and citizen initiatives." Ex. B at 25 (citing *AIRC*, 576 U.S. at 808; *Moore v. Harper*, 600 U.S. 1, 29 (2023)); Utah Const. art. VII, § 8 (gubernatorial veto); *Id*. art. VI, § 1 (initiative and referendum rights); *Id*. art. I, § 2 (alter and reform rights). As both the district court and this Court have held, "Utah law makes clear that the 'legislative power' of the state is vested, *equally*, in both the Utah State Legislature and the people of Utah." Ex. B at 26 (citing *Carter*, 2012 UT 2, ¶ 22); *LWVUT I*, 2024 UT 21, ¶ 22 ("On its face, article VI recognizes a single, undifferentiated 'legislative power, vested both in the people and in the legislature"). And "'[L]egislative

powers are policy making powers,' which are not beyond the reach of the people . . . [s]imply put, if the state legislature can enact it, then so can the people." Ex. B at 27 (citations omitted). Thus, "because redistricting is a legislative function, and the people have equal legislative power, the people have the fundamental constitutional right to propose legislation to alter or reform redistricting in Utah." *Id*.

Indeed, the plain text of the Constitution provides that the People may "initiate *any desired legislation*." Utah Const. art. VI, § 1(2)(a)(i)(A) (emphasis added). Article VI contains no topical exceptions to the People's power to initiate legislation. If they desire it, and it is "legislation," then the People can enact it. Legislative Defendants ask the Court to identify a silent exception for redistricting legislation based upon a silent conferral of sole power in Article IX. But this Court does not add words to constitutional text, rather it interprets its provisions in harmony. And reading Article VI's broad grant of power for the People to enact any desired legislation with Article IX mandates the conclusion that Article IX imposes a temporal obligation on the Legislature while leaving the People free to enact redistricting legislation as they so "desire."

Legislative Defendants' stay motion simply ignores this analysis from the district court. *See* Mot. at 7-18. As a result, their arguments regarding specific conflicts between Proposition 4 and the Utah Constitution depend on a bare assertion that Article IX grants them a power it does not. That is not a sufficient basis for success on appeal, let alone a stay of the district court's opinion. Each of their arguments thus fail for the same reason—Legislative Defendants do not have "sole" power with unlimited discretion regarding redistricting under the Utah Constitution but rather share it with the People. Ex. B at 24-

28. Nor does Proposition 4 remove ultimate responsibility for redistricting from the Legislature. *Id.* at 33; *LWVUT I*, 2024 UT 21, ¶ 198. As a result, Proposition 4's establishment of priority-ordered redistricting criteria, a prohibition on partisan gerrymandering, and the use of judicial standards and best available data and methods for assessing a map's compliance with Proposition 4 does not impair any legislative function under Article IX. *Id.* at 28. Each of these arguments are addressed in turn below.

a. Priority-ordered redistricting criteria

First, Legislative Defendants argue that Proposition 4's "ordered priority list of factors the Legislature must consider when redistricting" "divests" the Legislature of discretion to balance redistricting criteria as it sees fit. Mot. at 9 (citations omitted). This argument fails for the reasons outlined *supra*. In short, if the Legislature can establish redistricting criteria, so can the People via initiative. As a result, Proposition 4's establishment of redistricting criteria and a priority order for those criteria cannot impair any legislative function under Article IX. Article IX compels the Legislature to adopt redistricting maps on a particular timeline; it does not shield them from complying with government reform initiatives imposing redistricting standards when doing so.

Legislative Defendants' also quibble with Proposition 4's priority of keeping Utah's municipalities and counties whole, claiming that it would require the Legislature's (curious) desire to split a populated municipality with shared interests to "give way" to splitting an unincorporated area, or prevent the Legislature from pursuing undefined

criteria such as rural-urban balance. Mot. at 10.[9] But *any* redistricting requires balancing criteria—Proposition 4 does not change this.[10] Rather, Proposition 4 "provides some discretion in balancing competing interests and in making policy considerations" as it requires both the Legislature and the Commission to follow Proposition 4's criteria "to the greatest extent practicable." Ex. B at 28; Utah Code § 20A-19-103(2) (2018). As the district court noted, this allows flexibility in balancing Proposition 4's criteria but does not allow them to be "disregarded or ignored merely because the legislature disagrees with them." Ex. B at 28; Ex. D at 83. The People "have the legislative authority to enact redistricting legislation, and [they] did." Ex. B at 37. Thus, "the Legislature is subject to and required to comply with the mandatory redistricting standards and procedures under Proposition 4." *Id.*

Legislative Defendants also point (at 9) to *Salt Lake City v. Ohms*, 881 P.2d 844, 849 (Utah 1994) and *Evans & Sutherland Comp. Corp. v. Utah State Tax Comm'n*, 953 P.2d 435, 443 (Utah 1997), to argue that Article IX "vests" only the Legislature with

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[9] Legislative Defendants refer (at 10) to balancing urban and rural interests as a "legitimate policy objective," but in the 2021 Map, this was a pretext for partisan advantage.

[10] Legislative Defendants assert (at 10) that under Proposition 4, an alleged choice "to split a municipality for the sake of keeping a community of interest together must give way if instead an unincorporated area could be split to achieve equal population between districts." But Proposition 4 is not rigid—it simply requires balancing redistricting criteria to "the greatest extent practicable." Ex. B at 28. In addition, compliance with the federal equal population requirement would always trump keeping a community of interest whole (Proposition 4 or not). Finally, municipalities are also communities of interest. *See* Ex. D at 50. The Legislature does not explain why splitting one community of interest (a municipality) to perhaps keep another undefined community of interest together would be more desirable than splitting neither. Plaintiffs' Map 1 respects both. *Id.*

redistricting power, which prohibits any attempt to transfer or limit the Legislature's "full discretion." The district court rejected these arguments and held that *Ohms* and *Evans* do not apply here because they "stand for the proposition that the Legislature cannot transfer power constitutionally granted to one legislative body to another nor delegate its core-legislative functions to an independent body, respectively." Ex. B. at 38. Unlike in *Evans* and *Ohms*, here "the legislature and the people are not separate. Together, they make up the 'Legislative Department' and have co-equal law-making authority." *Id.* at 39. As a result, "there is no unconstitutional delegation of core legislative functions" and the Legislature "does in fact retain discretion in fulfilling its redistricting responsibilities" in compliance with Proposition 4 including "the ultimate decision-making authority and discretion to decide which redistricting plan to enact." *Id.* Defendants provide no answer to this analysis.[11]

b. Proposition 4's ban on partisan gerrymandering.

Next, Legislative Defendants argue (at 10-11) that Proposition 4 limits the Legislature's sole redistricting power and discretion under Article IX by "prohibiting the

[11] For similar reasons, Legislative Defendants' citations to *Salt Lake City v. International Association of Firefighters*, *Locals 1645, 593, 1654, & 2064*, 563 P.2d 786 (Utah 1977), are unavailing. That case does not hold that the Legislature has sole redistricting authority. Rather, *Firefighters* involves the opposite situation from Proposition 4. There, the Legislature delegated to a private commission certain subjects that would insulate those policy areas from popular control in a manner that "may be antagonistic to the public interest." *Id.* at 789. Proposition 4, by contrast, brought redistricting closer to the People's legislative prerogative. Unlike the "final and binding" decisions from the *Firefighters* private commission, Proposition 4 created a public *advisory* commission to make nonbinding recommendations, appointed by public elected officials, and mandated public access and redistricting criteria to increase the Legislature's accountability.

Legislature from 'purposefully or unduly favor[ing] or disfavor[ing]" incumbents, candidates, and political parties. Not so. As explained above, the People have coequal power to legislate regarding redistricting, and thus Proposition 4's partisanship criteria cannot violate Article IX. Ex. B at 21-39.

Nor does Proposition 4 contain an "impossible command to scrub the redistricting process of politics." Mot. at 11. Indeed, Proposition 4 *requires* consideration of partisanship "to assess whether a proposed redistricting plan abides by and conforms to the redistricting standards" in the statute. Utah Code § 20A-19-103(5) (2018). In passing Proposition 4, Utahns simply "determined that partisan advantage and incumbency protection"—*i.e.* partisan gerrymandering—are not "proper" considerations for map-drawing. Ex. B. at 28; Utah Code § 20A-19-103(5) (2018). The Utah Constitution certainly is not violated because the Legislature can no longer treat voters and candidates differently based on their political viewpoints. Indeed, the U.S. Supreme Court has held it constitutionally acceptable for states to guard against partisan gerrymandering in redistricting. *See, e.g.*, *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973); *Rucho v. Common Cause*, 588 U.S. 684, 718 (2019).

Legislative Defendants also make several arguments (at 10-11) regarding the implementation of Proposition 4's ban on partisan gerrymandering, such as the possible existence of a map with partisan effect but no intent, and how to measure whether a map unduly favors a political party. But, as the district court found, "compliance with Proposition 4's mandatory redistricting standards and procedures establish a justiciable standard that can be reasonably evaluated." Ex. B. at 29. The district court did so in the

remedial proceedings here. Ex. D. And the U.S. Supreme Court noted in *Rucho* that "[p]rovisions in state statutes and state constitutions can provide standards and guidance for state courts to apply" to prohibit partisan gerrymandering. 588 U.S. at 719. As the district court found, "Proposition 4 is that solution for Utah." Ex. B at 29.

c. Use of standards and data to assess compliance with redistricting criteria.

Finally, Legislative Defendants argue (at 11-12) that Proposition 4's provision requiring evaluation of a plan's compliance using "judicial standards and the best available data and scientific and statistical methods, including measures of partisan symmetry," violates Article IX because "policymaking and political decision-making are not reducible to judicial standards" and Proposition 4 transfers legislative authority to courts. Not so.

First, S.B. 200, *which was passed by the Legislature*, "provides for the same review using the same standards" as Proposition 4's provision. Ex. B at 29 (comparing Utah Code §20A-19-103(4) to Utah Code §20A-20-302(8)(a), (b) (2020)). This belies Legislative Defendants' contention that somehow Proposition 4's standard is problematic. In addition, the Legislature already

> must [and does] consider judicial standards (e.g. U.S. Supreme Court rulings, Utah Supreme Court rulings, and both the Utah and U.S. Constitutions), use available data (e.g., population data, voting patterns demographics, communities of interest data, etc.) and apply various scientific methods (e.g., tools, methods, computer-based algorithms and simulations) to ensure that electoral maps comply with both federal and state laws…and to confirm that race is not a predominate factor in drawing district lines.

Ex. B. at 29. Indeed, legislators consider similar information all the time when drafting, debating, and voting on legislation. *See, e.g.*, *Policy 360 Briefings, Utah State Legislature,*

https://perma.cc/JSX8-D7PJ (linking to numerous presentations to legislators that discuss data, laws, and judicial standards in relation to marriage, divorce, immigration, and health reform). As a result, Proposition 4's provision does not impose any judicial function, displace legislative redistricting authority, or violate Article IX.

Legislative Defendants return to their refrain (at 12) that Proposition 4's provision prohibiting undue partisan favoritism is standardless and unmanageable. This argument lacks merit for several reasons, addressed *supra*. Ex. B at 29. Proposition 4 itself points to ways to evaluate whether a map has an undue effect, including using measures of partisan symmetry and statistical methods. Utah Code § 20A-19-103(3) (2018); Ex. B at 29. The lower court applied them without trouble in the remedial phase in this case. Ex. D. State courts and map drawers across the country have used similar standards to protect against partisan gerrymandering, including relying on traditional redistricting criteria, expert opinion, and statistical evidence of partisan skew that reveal whether a map cracks and/or packs a disfavored party's voters to advantage the other party. *See, e.g.*, *LWVPA v. Commonwealth*, 178 A.3d 737, 769-79 (Pa. 2018); *Szeliga v. Lamone*, 2022 WL 2132194, *31–34, 41 (Md. Cir. Ct. Mar. 25, 2022); *Adams v. DeWine*, 195 N.E.3d 74, 85–93 (Ohio 2022); *Matter of 2021 Redistricting Cases*, 2023 WL 3030096, *35 (Alaska Apr. 21, 2023); *Harkenrider v. Hochul*, 197 N.E.3d 437, 453 n.14 (N.Y. Ct. App. 2022).[12] The U.S. Supreme Court also approvingly cited a Delaware statute with a standard similar to Utah's

[12] In addition, many of these state courts did so applying general constitutional provisions, which do not contain the explicit standard for evaluating partisan gerrymandering found in Proposition 4.

as a state redistricting solution. *Rucho*, 588 U.S. at 720 (citing "Del. Code Ann., Tit. xxix, § 804 (2017) (providing that in determining state legislative districts, no district shall "be created so as to unduly favor any person or political party")). Utah is no different, and Proposition 4 does not infringe upon Article IX.

Moreover, given the language of the provision, "the legislature retains discretion in determining what judicial standards are applicable" and which data and methods "to use in evaluating redistricting plans." Ex. B at 29-30. This provision thus provides flexibility as standards change and data and methods develop. Legislative Defendants claim that their attempt to determine applicable standards in S.B. 1011 proves otherwise, but S.B. 1011 does not help them. While they contend (at 12) that S.B. 1011 was an attempt at "a dose of clarity," the district court found that it "unconstitutionally impair[ed] Proposition 4's reforms" by "directly contraven[ing] Proposition 4's neutral redistricting criteria." Ex. D at 2. As the district court noted, "the obvious defense against challenges of partisan motivation…is compliance with" the "mandatory, neutral, prioritized redistricting standards and procedures enacted under Proposition 4." Ex. B at 29. Instead, S.B. 1011 attempted to game the system and "structurally *mandate* partisan favoritism" that "Proposition 4 was enacted to stop." Ex. D at 2. Thus, the only clarity brought by S.B. 1011 was the lengths to which the Legislature will go to maintain partisan advantage.

Finally, Legislative Defendants appear to argue (at 12) that judicial review of legislative redistricting violates their constitutional "authority." However, interpreting statutory and constitutional language and evaluating whether statutes have been violated is a classic judicial function. *Timpanogos Planning & Water Mgmt. Agency v. Cent. Utah*

Water Conservancy Dist., 690 P.2d 562, 569 (Utah 1984) (core judicial function includes "the power to hear and determine controversies between adverse parties and questions in litigation"). *Any* law Legislative Defendants pass is subject to judicial review, and Defendants cannot show that there is a redistricting exception to the Utah Constitution. Indeed, this Court has reviewed redistricting actions before. *Parkinson,* 291 P.2d at 402–03 (concluding that Court was "required to adjudicate the limitations upon the authority of other departments of government," rejecting any claim that Defendants have plenary, unreviewable control of redistricting). As a result, Legislative Defendants cannot show that Proposition 4 violates Article IX, and their stay request should be denied.

2. Proposition 4 does not impair the Legislature's authority to make internal rules.

Proposition 4 neither violates nor even implicates the Legislature's power to set its own rules. Article VI, § 12 of the Utah Constitution provides that "[e]ach house shall determine the rules of its proceedings and choose its own officers and employees." Legislative Defendants contend (at 14) that this provision gives them exclusive authority over their internal rules and procedures, and that Proposition 4 violates this authority by requiring the Legislature to (1) vote on plans proposed by the commission or Chief Justice, (2) issue a report explaining how the Legislature's adopted map(s) better adhere to Proposition 4's standards, (3) to accept public comment for at least 10 days, and (4) redistrict only once a decade. Not so.

Defendants are wrong to contend that their authority under Article VI, § 12 is "unlimited" and prohibits initiatives that alter or reform how the Legislature operates. *See*

Ex. B at 44. Like all constitutional provisions, Article VI, § 12 must be interpreted in light of other relevant constitutional provisions. *Id.* at 44-45; *Am. Bush v. City of South Lake*, 2006 UT 40, ¶ 18, 140 P.3d 1235 (noting that "other provisions dealing generally with the same topic . . . assist us in arriving at a proper interpretation of the constitutional provision in question"); *Berry by and through Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 675 (Utah 1985) (explaining that a constitutional provision's meaning "must be taken not only from its history and plain language, but also from its functional relationship to other constitutional provisions"). The requirement that "[e]ach house shall determine the rules of its proceedings," Utah Const. art. VI, § 12, must therefore be construed in light of Article I, § 2, which declares that "[a]ll political power is inherent in the people . . . and they have the right to alter or reform their government as the public welfare may require." Likewise, Article VI, § 12 must be interpreted in light of the People's power to "initiate *any desired legislation*," Utah Const. art. VI, § 1(2)(a)(i)(A) (emphasis added)—a power that this Court has explained is not "less than that of the Legislature's power" and "reaches to the full extent of the legislative power." *Carter*, 2012 UT 2, ¶ 22, 30-31.[13] The Legislature also has

[13] The Legislature has repeatedly enacted statutes subject to approval of both chambers and the Governor and modifiable only by those same actors—rather than rules adopted individually by each chamber—regulating the operation of the Legislature. For example, the Legislature has enacted laws governing public transparency of its proceedings, including the Government Records Access and Management Act, which applies to the Legislature, *see* Utah Code § 63G-2-103(11)(a)(ii), and the Open and Public Meetings Act, which applies to the Legislature, requires open proceedings, and requires at least 24 hours' notice before legislative meetings, *see* Utah Code § 52-4-101, *et seq.* S.B. 200 itself regulated—by statute—the Legislature's redistricting process. *See, e.g.*, Utah Code § 20A-20-303 (setting limits on enacting maps and requirements to hold public hearings). Under Legislative Defendants' theory, these statutes—which require the assent of both chambers

a "constitutional responsibility and duty" to facilitate the citizen initiative process by "enact[ing] initiative enabling legislation." *Gallivan v. Walker*, 2002 UT 89, ¶ 59 n. 11, 54 P.3d 1069; Ex. B at 44-45.

This reading is consistent with how the U.S. Supreme Court has interpreted the analogous provision of the U.S. Constitution,[14] holding that the "Legislature's internal rule-making power cannot be used to 'ignore constitutional restraints or violate fundamental rights.'" Ex. B at 44 (citing *United States v. Ballin*, 144 U.S. 1, 5 (1892)) (recognizing "there should be a reasonable relation between the mode or method of proceeding, established by the rule and the result which is sought to be attained."); *Burt v. Speaker of the House of Representatives*, 528, 243 A.3d 609, 614 (2020) ("The legislature may not, even in the exercise of its absolute internal rulemaking authority, violate constitutional limitations.") (citation modified). Thus, while each chamber of the Legislature must adopt rules governing its procedures, the People are empowered to reform the operation of the Legislature and the rules adopted by the Legislature must be consistent with statutes adopted by initiative aimed at altering or reforming the Legislature. Ex. B. at 40, 45. This reading gives harmony to all three provisions.[15]

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and the Governor to have been enacted or to be repealed—would all be unconstitutional. That is not so.

[14] U.S. Const. art. I, § 5, cl. 2.

[15] *Ballin*—decided shortly before the Utah Constitution was drafted—illustrates the flaw in Defendants' broad interpretation of Article VI, Section 12. Legislative rules must coexist with fundamental rights. But Defendants' position would place the functioning of the Legislature beyond the reach of the People's Article I, Section 2 power to alter or reform their government. While initiatives must be "exercised in harmony with the rest of the constitution," *LWVUT I*, 2024 UT 21, ¶ 157, the rest of the Constitution must be interpreted

Legislative Defendants rely (at 14) on *People's Advocates, Inc. v. Superior Court*, 181 Cal. App. 3d 316 (1986), to argue that an initiative may not control an internal rule of proceeding in "a binding and irrevocable manner." But that case is distinguishable. In *People's Advocate*, "the principal purpose" of the initiative at issue was "was rule-making through legislation *solely* to govern the internal proceedings of the [] state legislature[]." Ex. B at 43. But that is not what Proposition 4 did. "Proposition 4 and its redistricting legislation was law-making, not rule-making." *Id.* at 43. The purpose "behind Proposition 4 was to eliminate the opportunity for partisan gerrymandering and to create neutral standards and procedures for redistricting, which provide, through legislation, manageable and justiciable standards to address partisan gerrymandering"—not make rules. *Id.* at 43-44. Thus Proposition 4 "does not invade the Legislature's internal rule-making authority or dictate how the Legislature should govern its internal proceedings." *Id.* at 44.

Moreover, in *People's Advocate* the Court did not consider—and the parties apparently did not raise—how Article II, Section 1 of the California Constitution affects the interpretation of the legislature's power to adopt rules. *See* Cal. Const. art. II, § 1 ("[a]ll political power is inherent in the people . . . and they have the right to alter or reform [the government] when the public good may require"). In the absence of any consideration of the Alter or Reform Clause—the central issue is in this case—*People's Advocates* provides little insight into the meaning of the Utah Constitution. In addition, the Utah Constitution

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in harmony with the People's fundamental constitutional right to alter or reform their government by initiative.

vests full legislative power coequally with the People and the Legislature. As Defendants themselves emphasize (at 13), "[t]he execution of internal rules also implicates the substantive legislative power because internal rules always have been inextricably identified with the legislative process." (citation modified). Exactly. In Utah, the substantive legislative power rests with both the Legislature and the People. These fundamental differences make *People's Advocates* inapposite.[16]

Legislative Defendants make *no* arguments in their stay motion regarding how any of the four challenged provisions specifically violate Article VI, § 12. However, all four of the provisions—*e.g.*, the requirement to hold a vote on the Commission's maps, to issue a report explaining why the Legislature's plan better accords with the redistricting standards than the Commission's map, to provide an opportunity for public input, and to refrain from mid-decade redistricting—are precisely the types of requirements that are "rationally capable of classification as either" procedural or substantive. *Moore*, 600 U.S. at 31 (quoting *Hanna v. Plumer*, 380 U.S. 460, 472 (1965)); *Id.* (stating that "[t]he line between procedural and substantive law is hazy") (quoting *Erie R. Co. v. Tompkins*, 304 U.S. 64,

[16] Legislative Defendants also cite *Gregory v. Shurtleff*, 2013 UT 18, ¶ 59 n.29 to argue (at 15) that "courts in this State [used to be] 'wary of imposing further requirements' on the Legislature's internal processes." But the cited portion of *Gregory* is about Article VI, § 22 and the Constitution's explicit requirements regarding bill titles. It has nothing to do with Article VI, § 12, the Legislature's internal rules, or the interplay between the constitutional provisions relevant here and Article VI, § 12. Indeed, *Gregory* notes that Article VI, § 22 expresses "the intent of the people 'to limit legislative power and prevent special interest abuse' which was 'clearly motivated by a wariness of unlimited legislative power.'" *Id.* at ¶ 32 n.18 (citations omitted). That hardly supports unlimited Article VI authority for the Legislature here.

92 (1938) (Reed, J., concurring in part)). These provisions "do not actually change or govern the general internal operations of the Legislature" and instead further Proposition 4's substantive purpose of empowering independent, citizen-led map drawing; enforce Proposition 4's redistricting standards, including its prohibition on partisan gerrymandering; and make map drawing more transparent and public. Ex. B at 45, 51. Indeed, the district court analyzed each of the challenged provisions, *id.* at 45-52, and found that they are "so intertwined with the substantive redistricting legislation that they must be viewed as 'substantive.'" *Id.* at 51 (quoting *State v. Rippey*, 2024 UT 45; *State v. Drej*, 2010 UT 35, ¶ 31, 233 P.3d 476).[17] Defendants offer no response in their stay motion.

As the district court held, "there is no question that Proposition 4 is overwhelmingly substantive legislation to reform and establish a statutory redistricting process." Ex. B at 51-52. Thus, the four challenged provisions do not implicate the Legislature's internal rules at all. But even if any of the provisions "are in fact infringements on [the Legislature's] internal rule-making authority, they are incidental infringements." *Id.* at 52. All four are limited in scope (applying only to redistricting and likely only once every ten years) and are "appropriate and necessary for the people to establish and define redistricting standards and procedures," and are "inextricably intertwined with Proposition 4's substantive reform." *Id.*; *Moore*, 600 U.S. at 31 (stating that "[p]rocedure, after all, is often used as a vehicle to

[17] In addition, Proposition 4 places the exact same limit on the Legislature regarding the timing of redistricting as does Article IX. Ex. B at 46-50.

achieve substantive ends.") As such, Legislative Defendants cannot show that Proposition 4 violates Article VI, § 12.

3. Proposition 4 does not transfer legislative functions to a commission or the court.

Proposition 4 does not delegate any legislative redistricting functions to a commission or court in violation of Article V of the Utah Constitution. At the outset, Legislative Defendants' argument again relies on the premise that the Legislature has sole authority regarding redistricting under Article IX. As explained *supra*, that argument lacks merit. *See* Ex. B at 21-39.[18]

Legislative Defendants claim (at 15-16) that Proposition 4 limits their authority or delegated their legislative powers to the Commission. That is false. As this Court held, Proposition 4 did not "eliminate" the Legislature's power to override decisions by others, as it "did not take the authority to enact electoral maps from the Legislature and give it to the Independent Commission." *LWVUT I*, 2024 UT 21, ¶ 197. "Rather, it empowered the Independent Commission to create proposed maps, which the Legislature was required to consider." *Id.*

Indeed, Proposition 4 tasks the *advisory* Commission, and any court hearing a legal challenge, with roles that are not inherently legislative. The Commission makes nonbinding recommendations to the Legislature, following statutory criteria that were legislatively enacted by the People. The Commission does not get to vote to enact any map, and the

[18] Prop 4 also does not violate the Federal Elections Clause. Defendants' flawed Elections Clause arguments are addressed *infra* II.B.

Legislature retains "ultimate responsibility" and remains "free to reject or adopt any recommended redistricting plan or to create its own," subject to the law. *Id.* ¶ 197-98; Ex. B at 33. As the district court held, "it is clear that the Legislature retains the ultimate-decision-making authority when it comes to redistricting." *Id.* Contrary to Legislative Defendants' contention (at 16), Proposition 4 thus meets the requirement in *Salt Lake City v. Int'l Ass'n of Firefighters, Locs. 1645, 593, 1654 & 2064*, 563 P.2d 786, 790 (Utah 1977), that to "retain the power to make ultimate policy decisions," the Legislature must be free to "override decisions made by others." Ex. B at 33.

Legislative Defendants also cite *Matheson v. Ferry*, 641 P.2d 674, 677 (Utah 1982), to argue (at 16) that Proposition 4 "violates the separation of powers doctrine." But under Proposition 4, no legislative power is transferred to another entity. Unlike the statute in *Matheson*, the Commission has "no decision-making authority and no veto" and the Legislature remains free to create its own map. Ex. B at 35. Thus, "the Legislature's role in redistricting under Proposition 4 is not 'subservient,' 'perfunctory,' or controlled by the Commission . . . in any way." *Id.*[19]

Similarly, Proposition 4's private right of action does not "effectively make[] the courts the final arbiters of congressional boundaries." Mot. at 16. If anything, it is the Legislature's own choices that may do so. Proposition 4 does not give courts any legislative function and the People, who retain coequal legislative power in Utah, "have the right to

[19] Legislative Defendants also cite *Evans*, which does not help them for the reasons outlined *supra* II.A(1)(a).

provide a mechanism [] to enforce" Proposition 4. Ex. B at 30. At minimum, Utah courts have the power to review the legality of statutes; that is firmly a judicial role. Indeed, Legislative Defendants *have already* given Utah courts the ability to review redistricting challenges. The Supreme Court's jurisdictional statute, for example, provides that the Court "has original appellate jurisdiction" over disputes concerning the "reapportionment of election districts." Utah Code § 78A-3-102(4)(c); S.B. 2002 Appellate Court Jurisdiction Amendments (Dec. 11, 2025) (providing that this Court has "exclusive and original appellate jurisdiction" over "a judgment, or an interlocutory appeal of an order, of a district court involving" "the establishment of boundaries of political districts for purposes of election").[20]

Legislative Defendants contend (at 16) that Proposition 4's private right of action subjects them to a "court-run beauty contest," citing to the remedial phase below. But the Legislature had the first opportunity to remedy its violation of Proposition 4—it just chose not to.[21] Indeed, it was the Legislature's retained "ultimate policy decision" to enact Map C (S.B. 1012) in continued pursuit of partisan advantage, not the district court's application of redistricting criteria "to the greatest extent practicable," that led to the invalidation of

[20] Available at: https://le.utah.gov/%7E2025S2/bills/static/SB2002.html.

[21] Legislative Defendants complain (at 17) that Plaintiffs' "out-of-state experts" submitted maps in the remedial phase. But that was only necessary because the out-of-state individual who drew the Legislature's map displayed partisan data while doing so and drew a gerrymandered map that failed to comply with Proposition 4's neutral requirements. To the extent the Legislature is claiming some kind of in-state expertise, they certainly didn't utilize it—their map split more Utah municipalities, counties, and communities of interest than Plaintiffs' maps. Ex. D at 39-54.

Map C and the Court's ultimate need to adopt Plaintiffs' Map 1 (which instead fully complied with Proposition 4). Ex. D at 39-51. The Legislature's ill-fated choice to violate the law does not mean Proposition 4 offends the Utah Constitution.

B. Proposition 4 does not violate the federal Elections Clause.

Proposition 4 does not violate the Elections Clause of the U.S. Constitution. The federal Elections Clause states: "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof." U.S. Const. art. I, § 4. Legislative Defendants claim (at 18) that Proposition 4 "violates the federal Elections Clause by imposing restrictions outside the Utah Constitution on the Legislature's redistricting power." This novel theory directly contradicts controlling precedent and does not support a stay here.

The U.S. Supreme Court "has consistently recognized that state legislatures, even when exercising their lawmaking power under the federal Elections Clause, must abide by restrictions imposed by state constitutions and are subject to their state's ordinary law-making process when redistricting." Ex. B at 17. In *Ohio ex rel. Davis v. Hildebrant*, the Court considered a challenge to a referendum that rejected the congressional map enacted by the Ohio Legislature. 241 U.S. 565, 566-67 (1916). The Ohio Constitution gave the People the right "by way of referendum to approve or disapprove by popular vote any law enacted by the general assembly." *Id.* at 566. The Court rejected arguments that the People's referendum violated the Elections Clause, noting that the Apportionment Act of 1911 left "each State full authority to employ in the creation of congressional districts its own laws and regulations" and "If they include initiative, it is included." *Id.* at 568-69;

AIRC, 576 U.S. at 811 (citations omitted); *id.* at 809 (stating "[i]n drafting the 1911 Act, Congress focused on the fact that several States had supplemented the representative legislature mode of lawmaking with a direct lawmaking role for the people" via initiative and referendum and thus replaced a reference to the "state legislature" with broader language "in the manner provided by the laws thereof"). The Court held that the state's legislative power was contained in the "senate and house of representatives" and "in the people," and upheld Ohioans right to reject the Legislature's congressional plan via referendum. 241 U.S. at 566-67.

In *Smiley v. Holm*, 285 U.S. 355, 369 (1932), the U.S. Supreme Court upheld the constitutionality of the Minnesota Governor's veto, provided for in the state constitution, of the congressional plan passed by the Legislature. The Court noted that if state law treats the veto and referendum as part of state legislative power, "the power as thus constituted should be held and treated to be the state legislative power for the purpose of creating congressional districts by law." *Id.* at 371. Then, in *AIRC*, 576 U.S. at 787, the Court upheld an initiative passed by Arizonans to amend their state constitution to remove the state legislature from redistricting and create an independent redistricting commission. The Court held that under the Elections Clause, "the Legislature" means any entity empowered to legislate under the state constitution, including the people by initiative. *Id.* at 813-14. The *AIRC* Court emphasized that "nothing in the Elections Clause offers state legislatures

carte blanche to act 'in defiance of provisions in the State constitution." *Moore*, 600 U.S. at 31 (citing *AIRC*, 576 U.S. at 817-18).[22]

Most recently, in *Moore*, the Court reaffirmed its precedent, holding that the Court has "long rejected the view that legislative action under the Elections Clause is purely federal in character, governed only by restraints found in the Federal Constitution." 600 U.S. at 29-30. The Court stated that the Elections Clause "does not insulate state legislatures from the ordinary exercise of state judicial review" and "the ordinary constraints on lawmaking in the state constitution." *Id.* at 21, 30. In particular, *Moore* held that state courts retain judicial review authority under the Elections Clause so long as they do not "so exceed the bounds of ordinary judicial review as to unconstitutionally intrude upon the role specifically reserved to state legislatures." *Id.* at 37. In arriving at this conclusion, the Court noted that precedent under the Elections Clause does not vest state legislatures with "exclusive and independent authority when setting the rules governing federal elections." *Id.* at 26; *see also id.* at 25 ("[T]he Court in [*AIRC*] recognized that *whatever authority* was responsible for redistricting, that entity remained subject to constraints set forth in the State Constitution" (emphasis added)).

[22] In quoting *AIRC*, Legislative Defendants rely (at 18) on Chief Justice Roberts' dissent. But in dissenting, Chief Justice Roberts noted that "the state legislature need not be exclusive in congressional redistricting, but neither may it be excluded" and that "[t]here is a critical difference between allowing a State to supplement the legislature's role in the legislative process and permitting the State to supplant the legislature altogether." *Id.* at 841-42. As explained *supra*, Proposition 4 does the former, leaving the Legislature with ultimate decision-making authority, in accordance with the *AIRC* majority *and* dissent.

Under this authority, there is no question that Proposition 4 aligns with both the Utah Constitution and the federal Elections Clause. Legislative Defendants argue (at 19) that *AIRC* proves their point, because the initiative in Arizona transferring power from the legislature to a commission was accomplished via a constitutional amendment, whereas in Utah voters can only pass reforms via statute. But that is beside the point.[23] Proposition 4 does not transfer redistricting power from the Legislature to any other body; the Legislature retains "ultimate responsibility" for redistricting and remains "free to reject or adopt any recommended redistricting plan or to create its own," subject to the law. *LWVUT I*, 2024 UT 21, ¶ 198; Ex. B at 33. Moreover, "Utah law makes clear that the Legislature and the people of Utah equally share the law-making power," the Legislature does not have exclusive authority to redistrict under Article IX, and "Utah's ordinary lawmaking includes the people's initiative and referendum powers and the gubernatorial veto." Ex. B at 19-20. Because "redistricting is a legislative function" shared by the People, Proposition 4 operates within the bounds of Utah's prescriptions for lawmaking, and the district court's holding that Proposition 4 does not violate Article IX is within "the ordinary bounds of judicial review."[24] *AIRC*, 576 U.S. at 808; *Moore*, 600 U.S. at 36; Ex. B at 19.

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[23] The assertion is also incorrect—in *AIRC*, the Court also favorably cited a California initiative-passed statute regulating voting in congressional elections in reasoning that the Election Clause's reference to "legislature" includes initiated legislation. 576 U.S. at 822. In any case, Proposition 4 *does* stem from constitutional restraints on the Legislature—the People's right to alter or reform the government via an initiative. Utah Const. art. I, § 2; art. VI, § 2.

[24] This is especially so here, because Legislative Defendants do not even address the district court's analysis of the text and history of Article IX, other relevant Utah constitutional provisions, other similar state provisions, and federal precedent. Ex. B at 21-39.

C. The district court properly enjoined the 2021 Map.

The district court properly enjoined H.B. 2004, the 2021 Map, after finding that the Legislature unconstitutionally repealed Proposition 4 by enacting S.B. 200 "in violation of the People of Utah's fundamental constitutional rights." Ex. B at 64. The district court enjoined the 2021 Map, enacted under S.B. 200, on two grounds: (1) to provide complete relief for the violation of Plaintiffs' constitutional right to alter or reform their government, and (2) pursuant to Section 20A-19-301(2), because Plaintiffs proved that the 2021 Map was enacted in undisputed violation of Proposition 4's requirements. *Id.* at 69-71, 72-74. Legislative Defendants' arguments otherwise lack merit and provide no basis for a stay.

In *LWVUT I*, 2024 UT 21, this Court remanded for the district court to determine whether S.B. 200 violated Plaintiffs' constitutional rights to alter and reform their government and observed that if it did, then "Proposition 4 would become controlling law." *Id.* ¶ 222 (citations omitted). After multiple rounds of briefing, oral argument, supplemental briefing, and a 76-page opinion, the lower court determined that S.B. 200 unconstitutionally infringed the People's right to alter and reform their government by repealing Proposition 4. Ex. B at 62. As a result, S.B. 200 was void *ab initio* because, as this Court has held, "[a]n unconstitutional act is not a law . . . it is, in legal contemplation, as inoperative as though it had never been passed." *Egbert v. Nissan Motor Co.*, 2010 UT 8, ¶ 12, 228 P.3d 737, 739 (citing *Norton v. Shelby County*, 118 U.S. 425, 442 (1886)). Proposition 4 thus became "the only valid law on redistricting." Ex. B at 69; *id.* at 67-69.

Given that Proposition 4 was improperly repealed, and because S.B. 200 "cleared the path for a map drawn independent of" Proposition 4's requirements, Ex. B at 70, the

district court found that the resulting 2021 Map was "not a fresh or independent act—it is the fruit of [S.B. 200's] unlawful repeal, an extension of the very constitutional violation that tainted the process from the start." *Id.* The district court thus held that, "if left unremedied" the "Legislature's unconstitutional act" which impaired the People's right to alter and reform their government through redistricting reform will "be compounded with each election cycle." *Id.* at 71. Considering the nature of the violation, which was both constitutional and statutory, the district court concluded that the proper remedy was to permanently enjoin the 2021 Map from use in future elections. *Id.* at 73-74.

Legislative Defendants contend (at 23) that the district court's injunction was not narrowly tailored, and that "[w]ith or without S.B. 200, the Legislature has the independent constitutional authority to enact congressional maps under Article IX." But as explained *supra*, the Legislature's Article IX power is limited, and is without a doubt subject to constitutional constraints. Moreover, the court considered the serious nature of the constitutional violation here in determining a permanent injunction was warranted. Ex. B at 70-75. Defendants ignore the district court's analysis.

Instead, Legislative Defendants claim (at 21-22) that Plaintiffs' Count V challenged only S.B. 200, and thus they had no "notice" that Plaintiffs were challenging the 2021 Map. That claim is false. As this Court explained in 2024, Count V "encompass[es] both matters at issue in this case: Plaintiffs' challenge to the redistricting process that led to the Congressional Map and their challenge to the Congressional map itself." *LWVUT I*, 2024 UT 21, ¶ 61. Given this Court's recognition of Count V's scope as pleaded in Plaintiffs' initial complaint, on remand Plaintiffs labeled their summary judgment motion as being

under Count V and sought relief regarding both the lawfulness of S.B. 200 and the violation of Proposition 4's requirements.[25] Ex. B at 72 (holding that the requested relief for Count V in Plaintiffs' complaints included enjoining the 2021 Map). Most charitably, Legislative Defendants have been on actual notice of the relief Plaintiffs were seeking from the day the summary judgment motion was filed. Plaintiffs also filed supplemental briefing at the district court seeking the requested relief for Count V of enjoining the 2021 Map. Legislative Defendants responded to this briefing. *See* D.Ct. Docs. 455, 457, 459; *see also* Utah R. Civ. P. 54(c) (providing that, except for default judgments, "[e]very other judgment should grant the relief to which each party is entitled, even if the party has not demanded the relief in its pleadings."). Thus, the district court correctly rejected Legislative Defendants' position as "not true." Ex. B at 72.

In addition, if Legislative Defendants truly believed that they had insufficient "notice" the 2021 Map was being challenged (or believed it did not violate Proposition 4), they could have simply re-enacted the same underlying map in the remedial phase of this litigation, while complying with the appropriate procedural requirements. Plaintiffs could then have challenged the 2021 Map again on the merits under Proposition 4. The

[25] Plaintiffs explained in their summary judgment motion that Count V encompassed both issues and that their amendment to add additional counts was merely pursuant to their ability to state claims as one or separate counts. *See* D.Ct. Doc. 293 at 27 n.8. Plaintiffs had a host of claims against the 2021 Map, including its constitutionality, and moved on all of them. Moreover, Defendants point to no authority stating that delineation into counts is a pleading requirement. *See, e.g.*, Utah R. Civ. P. 1 (requiring Rules to be construed "liberally . . . to achieve the just, speedy, and inexpensive determination of every action"); Utah R. Civ. P. 8(f) ("All pleadings will be construed to do substantial justice.").

Legislature enacted Map C instead. That belies any claim that they believed the 2021 Map complied with Proposition 4's substantive redistricting criteria. In fact, their expert witness (and mapdrawer) conceded that the 2021 Map's four-way split of Salt Lake County violated Proposition 4. D.Ct. Doc. 613 at 32.

Next, Legislative Defendants argue (at 22) that Plaintiffs did not prove the 2021 Map violated Proposition 4. Not so. Ex. B at 72-73. There is no question that the 2021 Map was enacted under S.B. 200's requirements and not Proposition 4, as the "Legislature intentionally stripped away all of Proposition 4's core redistricting standards and procedures that were mandatory and binding on it." Ex. B at 74. It was also undisputed that the 2021 Map did not comply with Proposition 4's procedural requirements, *id.* at 72, including that the Legislature did not (1) hold a vote on all maps presented by the Commission, (2) issue a report explaining why the Legislature's 2021 Map better complied with Proposition 4, and (3) provide an opportunity for public input for at least 10 calendar days. *Id.* at 72-73. Legislative Defendants object (at 21) that these procedural violations are insufficient to enjoin the 2021 Map. But that is not the law. As this Court stated in *LWVUT I*, "[U]nder Proposition 4, if the facts alleged by Plaintiffs are proven true, it is likely that the Congressional Map cannot stand." 2024 UT 21, ¶ 222. This Court noted that those facts included the Legislature's failure to follow Proposition 4's "procedural requirements." *Id.*

Moreover, Proposition 4's procedural requirements are substantive in nature—thus, "failing to comply with Proposition 4's procedural requirements is a failure to comply with the substantive requirements of Proposition 4's redistricting reform." Ex. B at 73. Indeed,

rather than "merely trifling," Mot. at 21, these substantive procedural requirements "are so integral" to Proposition 4's reforms "that any map enacted in their absence is, itself, a violation of the people's right to alter and reform their government."[26] Ex. B at 73. As a result, no further litigation was necessary to enjoin the 2021 Map.[27] *Id.* The district court did not err, and this Court should deny Legislative Defendants request for a stay.

III. Granting a stay would be unjust to Plaintiffs and against the public interest.

A stay here would be unjust because it will significantly harm Plaintiffs and is against the public interest. On the other hand, Legislative Defendants, who waited *months* from the district court's orders to seek a stay, face no harm if the 2026 election proceeds under Map 1. The "standards and other requirements governing" a stay request under Rule of Appellate Procedure 8 "are found in rule 62 of the Utah Rules of Civil Procedure." *Jenco, LC*, 2025 UT 20, ¶ 16. Rule 62 provides in relevant part that a party may obtain a stay of an injunction pending appeal, only if doing so would be "just" for the "rights of the adverse party." Utah R. Civ. P. 62(c); *Jenco, LC*, 2025 UT 20, ¶ 22; D.Ct. Doc. 496 at 3 (determining "[w]hat is 'just' must also include the impact of the requested stay on Plaintiffs and on the people of Utah."). Legislative Defendants make no mention of Rule

[26] Legislative Defendants also include a violation of the People's fundamental constitutional rights for multiple election cycles in the category of "merely trifling." That cannot be right.

[27] Legislative Defendants also strangely contend (at 22-23) that they had no chance to "test Plaintiffs' standing or explore other legal arguments past the pleading stage." They could have sought discovery under Rule 56(d) but chose not to. Nor did they articulate any standing challenge in response to Plaintiffs' declarations establishing standing. And they filed a cross-motion for summary judgment. Legislative Defendants had every opportunity to brief and make any arguments they wanted to make; they chose not to.

62(c) and do not attempt to show that their requested relief would be "just" for Plaintiffs. It would not be.

Plaintiffs have already voted in two congressional elections under the unconstitutional 2021 Map which was undisputedly enacted contrary to the process required by Proposition 4 and "in defiance of the will of the people" of Utah. Ex. B at 75. As the district court noted in granting the injunction, the 2021 Map is "the product of an unconstitutional process" and would cause Plaintiffs "irreparable harm" which would "be compounded with each election cycle" if a stay were granted and yet another election took place under the 2021 Map. *Id.* at 71, 74.[28] Indeed, to "permit the 2021 [Map] to remain in place would reward the very constitutional violation . . . already identified and would nullify the people's 2018 redistricting reform that they passed through Proposition 4." *Id.* at 74-75. And "it is always in the public interest to prevent the violation of a party's constitutional rights." *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013) (citing *Awad v. Ziriax*, 670 F.3d 1111, 1131-32 (10th Cir. 2012)).

Legislative Defendants contend that because Counts VI and VII were not fully litigated, Plaintiffs have not shown that the 2021 Map is legally defective.[29] But this is wrong. *See supra* II.C. The district court enjoined the 2021 Map as a continuation of the

[28] The standard used by lower courts in assessing whether to grant a permanent injunction is not necessarily the same as the standard used to assess a stay request pursuant to Rule 8. *See, e.g.*, *Jenco, LC*, 2025 UT 20, ¶ 22. Because Defendants did not request a stay below on the bases they present here, this Court is thus unable to evaluate "why the district court denied the relief"—the issue was never presented. *See Van Dusen v. Wasatch Cnty.*, 2026 UT 1, ¶ 23.

[29] In addition to being wrong, this claim is particularly ironic given Legislative Defendants' premature request for Rule 54(b) certification.

Legislature's unconstitutional repeal of Proposition 4. Anything *but* an injunction against the 2021 Map would thus "exacerbate the constitutional violation." Ex. B at 74. Moreover, it was undisputed below that the 2021 Map did not comply with the procedural requirements of Proposition 4. Ex. B at 72.[30] Plaintiffs—and the public—would be harmed by a further election under the 2021 Map.

Rule 62 only requires consideration of the rights of the party *adverse* to the movant. Utah R. Civ. P. 62(c). In any event, Legislative Defendants assert no harms justifying a stay. As with previous stay requests, Legislative Defendants' analysis of irreparable harm "assumes that the [district c]ourt erred, [and] that the error will impact the injunction." *See* D.Ct. Doc. 496 at 3. But this assumption is unfounded and provides no grounds to deny Utah voters—including Plaintiffs—a legal map, particularly after multiple elections under an unconstitutional one.[31]

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[30] Additionally, following the October 2025 evidentiary hearing, the district court made further findings about the 2021 Map's noncompliance with Proposition 4. During the remedial process, the co-chair of the Legislative Redistricting Committee noted that the 2021 Map was "developed under Senate Bill 200—different criteria" than Proposition 4. D.Ct. Doc. 735 at 18 n.80. The Court also credited the findings of one of the experts who evaluated the 2021 Map as "one of the most extreme partisan gerrymanders in the country." *Id.* at 63. It accomplished this by "cracking Salt Lake County and dividing it between the four districts." *Id.* at 62; D.Ct. Doc. 584 at 6-7. These findings and other similar ones about the 2021 Map were unrebutted.

[31] Legislative Defendants complain (at 24) about the partisan makeup of districts in Map 1, which appears to be the real crux of their concerns. But Map 1 complies with Proposition 4's prohibition on undue partisan effect and all other requirements. Ex. D. A map that complies with all applicable laws cannot work "irreparable" harm simply because Legislative Defendants prefer a different partisan breakdown.

Moreover, Legislative Defendants had multiple opportunities to obtain appellate review prior to the 2026 election—yet did not. Instead, they waited months after the district court's orders, and weeks after filing their notice of appeal here, to seek a stay. *See* Mot. for Summ. Disp. This delay dispels any notion of harm. Moreover, the Legislature was given an opportunity to pass a new legally complaint map—but instead chose to defy Proposition 4 yet again. Their dilatory conduct and self-created harm cannot be the basis to request that this Court grant a stay that would further "sanction[] the Legislature's violation of the people's constitutional right to reform their government through redistricting legislation." D.Ct. Doc. 496 at 3. Such action would be unjust to Plaintiffs and would not be in the public interest.[32]

Legislative Defendants claim (at 25) to want "certainty about the 2026 election," but there already is. Indeed, the Lieutenant Governor's office has already implemented Map 1, and new voting precincts have been approved for any counties that needed them.[33] *Nothing else must happen for the 2026 election to occur under Map 1*. *See* Lt. Gov. Joinder Resp. at 5; Lt. Gov. Stay Resp. For this reason, the Utah County Clerk's joinder motion is

[32] Legislative Defendants wrongly assert (at 24) that the Legislature has been "forced" into two special sessions because of these proceedings. But the October 6 special session to enact Map C was optional, as the district court's September 6 Order made clear. And the December special session during which election deadlines were extended was not at all required to allow Legislative Defendants time to appeal. They simply failed to appeal at the many points when they were able. *See* Mot. for Summ. Disp.

[33] Legislative Defendants' reference (at 25) the minor technical issues raised by the Lieutenant Governor, but these issues are irrelevant here, present in every map, have been thoroughly addressed, and exist to an even *greater* degree in both Map C and the 2021 Map. *See supra* n.7.

also irrelevant—Map 1 is ready to be used in the 2026 election. At this point, it is the *stay* Legislative Defendants seek that would cause confusion, as the Lieutenant Governor's office would have to "change course and work to implement" the 2021 Map instead. Lt. Gov. Stay Resp. at 2; *id.* at 3 (requesting notice at least two weeks before candidate filing to have sufficient time to do so). Attempts to change course now would *create*, not alleviate, confusion. *See Anderson v. Bates*, 2025 UT 51 (denying relief where petition came too close to impeding election because "[i]n election cases, factors affecting the orderly administration of the election are often central to our analysis.").

Legislative Defendants cite (at 25) a Tenth Circuit case and a U.S. Supreme Court concurrence to suggest a stay would be appropriate. But both those opinions addressed federalism concerns about a federal district court altering state election rules on the eve of an election, in a way that was contrary to the democratic process. Here, a *state* court has applied a state law that was democratically enacted by the People to ensure a lawful map is in place for the first time this decade, well in advance of the election. Unlike the election-eve decisions in *Fish v. Kobach* and *DNC v. Wisconsin State Legislature*, the district court's decision at issue here came *fifteen months* before the November 2026 election, *ten months* before the June 2026 primary, and well in advance of the candidate filing and other election administration deadlines (which have since been extended). *See* D.Ct. Doc. 496. Any voter confusion is of Legislative Defendants' own making and would be exacerbated by granting a stay now. A stay would not be just.

CONCLUSION

For the forgoing reasons, the Motion for Stay of the Permanent Injunction should be denied.

DATED this 6th day of February, 2026.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

This is to certify that on the 6th day of February, 2026, I caused the foregoing Response in Opposition to Appellants' Motion for Stay or Permanent Injunction to be served via email on:

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