This motion requires you to respond.
Please see the Notice to Responding Party.

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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' MOTION FOR PRELIMINARY INJUNCTION ON COUNTS 23-27 OF THEIR FIFTH SUPPLEMENTAL COMPLAINT, RULE 65A CONSOLIDATION WITH TRIAL ON MERITS, AND RULE 54(b) CERTIFICATION

Case No. 220901712

Honorable Dianna Gibson

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"We recognize the potential mischief, indeed, the grave constitutional problems, that could arise if the Legislature were to attempt to determine the outcome of a particular case by passage of a law intended to accomplish such a purpose."

– *Foil v. Ballinger,* 601 P.2d 144, 151 (Utah 1979)

RELIEF REQUESTED AND GROUNDS

Pursuant to Rule 65A of the Utah Rules of Civil Procedure, Plaintiffs League of Women Voters of Utah, Mormon Women for Ethical Government, Stefanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, and Jack Markman hereby move for a preliminary injunction on Counts 23-27 of their Fifth Supplemental Complaint.

Plaintiffs are entitled to a preliminary injunction because H.B. 392 and its accompanying S.J.R. 5 create imminent risk of Plaintiffs' lawsuit being transferred to an unconstitutionally composed district court. H.B. 392 (1) violates Article VIII of the Utah Constitution by redefining "district court" from its original public meaning of a single judge adjudicating a case; (2) violates the Utah Constitution's Uniform Operation of Law Clause, its prohibition on special laws, and the Open Courts Clause by allowing only government litigants to unilaterally and arbitrarily decide, in the government litigants' sole and unfettered discretion, how many judges will hear a case; and (3) violates the Due Process and Open Courts Clauses by purporting to shield notices filed by the government for a three-judge court from judicial review.

Plaintiffs request that the Court give notice that it will consolidate the preliminary injunction hearing with the trial on the merits under Rule 65A(a)(2), as the motion raises purely legal issues, and likewise certify its ruling as a final judgment under Rule 54(b). There is no just reason for delay, because these distinct legal claims are matters of statewide public importance raising constitutional challenges to the Legislature's reworking of Utah's judicial system. Moreover, they are separate from the matters that remain pending in the Court.

The deadline for Defendants to file a notice removing this case to a three-judge district court is March 30, 2026. However, the law purports to allow Defendants to do so at any time, even though the Judicial Conference will not have rules in place until as late as March 7. Plaintiffs request that the Court order a scheduling conference to set a briefing schedule and ascertain whether Defendants will voluntarily refrain from filing a notice until the Court adjudicates this motion. If not, Plaintiffs will seek a temporary restraining order to preserve the status quo (or rewind it, should Defendants rush to file a notice) and thereby allow an orderly and prompt resolution of this matter.

BACKGROUND

On February 13, 2026, the Legislature passed and the Governor signed H.B. 392, which enacts Utah Code § 78A-5-102.7.[1] Because H.B. 392 passed both chambers by over two-thirds vote, it took effect upon the Governor's signature. *Id.*

H.B. 392 applies to civil actions brought in the district court in which a state entity, or a state official in the state official's official capacity, is a party to the action. Utah Code § 78A-5-102.7(2)(a) (2026). It allows the Attorney General, the Governor, or the Legislature to "file a notice in the district court that a panel of three district court judges must be convened to hear and decide the civil action." *Id.* H.B. 392 provides that this notice "may not be challenged by any party" and "is not subject to judicial review." Utah Code § 78A-5-102.7(2)(b)(i)-(ii) (2026).

The "panel of three district court judges shall hear and decide, by majority decision, the civil action." Utah Code § 78A-5-102.7(3)(a) (2026). Each judge, randomly selected, must come from a different judicial district, and the presiding officer of the Judicial Council selects a chief judge of the panel. Utah Code § 78A-5-102.7(3)(b)(i)-(ii) & (4)(a) (2026). The chief judge "shall

[1] H.B. 392, 2026 Gen. Sess. (Utah 2026), https://le.utah.gov/~2026/bills/static/HB0392.html.

conduct all proceedings in an action before a panel," except that "[a] panel shall sit en banc for a trial, an order for an injunction or temporary restraining order, or any motion that would dispose of the action or any claim or defense in the action." Utah Code § 78A-5-102.7(4)(b)-(c) (2026). A judge may concur or dissent. Utah Code § 78A-5-102.7(4)(d) (2026). Venue requirements and requirements to file suit in particular counties or districts do not apply to actions before a panel. Utah Code § 78A-5-102.7(5) (2026).

H.B. 392 directs the Judicial Council, before March 7, 2026, to establish by rule a process for random assignment of judges, reassignment for disqualification, recusal, or the exercise of change of judge rights, and to maintain a list of judges qualified to serve that contains at least 50% of the district judges from each district. Utah Code § 78A-5-102.7(6)(a)-(c) (2026).

The same day, the Legislature adopted S.J.R. 5, which amended Rule 42 of the Utah Rules of Civil Procedure.[2] The amendment allows the Attorney General, Governor, or the Legislature to file a notice convening a three-judge district court if that notice is filed within 45 days after (1) the action is commenced, (2) an amendment to the complaint is filed, or (3) February 13, 2026, if the action is pending in the district court on February 13, 2026." Utah R. Civ. P. 42(e)(1) (2026). The district judge in whose court the action was filed must notify the Judicial Council upon receipt of a notice to convene a three-judge court, must transfer the case, and "may not sever any matter from the action or take any further action." Utah R. Civ. P. 42(e)(3).

S.J.R. 5 also amended Rule 63 to create procedures for disqualification of judges on a district court panel, and Rule 63A regarding judge changes.

[2] S.J.R. 5, 2026 Gen. Sess. (Utah 2026), https://le.utah.gov/~2026/bills/static/SJR005.html.

LEGAL STANDARD

A preliminary injunction is appropriate if Plaintiffs show that (1) "there is a substantial likelihood that [they] will prevail on the merits of the underlying claim," (2) "[they] will suffer irreparable harm unless the . . . injunction issues," (3) "the threatened injury to [them] outweighs whatever damage the proposed . . . injunction may cause the party . . . enjoined," and (4) "the . . . injunction, if issued, would not be adverse to the public interest." Utah R. Civ. P. 65A(f).

ARGUMENT

First, H.B. 392 violates Article VIII of the Utah Constitution by redefining, by statute rather than a constitutional amendment enacted by the people of Utah, the meaning of "district court" in a manner that contravenes the original public meaning of "a trial court of general jurisdiction known as the district court" as established by the Utah Constitution. Utah Const. art. VIII, § 1.

Second, by privileging state officials to arbitrarily choose whether to have their cases tried before a constitutionally-created single-judge district court or an unconstitutional three-judge panel, H.B. 392 violates Article I, Section 24's requirement for the uniform operation of laws, Article VI, Section 26's prohibition on special laws, and Article I, Section 11's requirement that for open courts.

Third, by insulating the government's notice to convene a three-judge panel from challenge by any party and from judicial review, H.B. 392 violates both the Due Process Clause and the Open Courts provision of the Utah Constitution and is void. *See* Utah Const. art. I, §§ 7 & 11.

Plaintiffs have a vested right to have this case adjudicated by a "court of competent jurisdiction," *see* Utah Code § 20A-19-301(1), and are thus harmed by H.B. 392 placing them at direct risk of being forced into an unconstitutionally constituted tribunal. *See also In re Dallas County*, 697 S.W.3d 142, 150 (Tex. 2024) ("Every litigant has a clear right to have its case decided by a legitimate court staffed only by lawfully empaneled judges."); *Nguyen v. United States*, 539

U.S. 69, 82 (2003) ("[T]his Court has never doubted its power to vacate the judgment entered by an improperly constituted court of appeals, even when there was a quorum of judges competent to consider the appeal.").

Moreover, as the Utah Supreme Court has held: "Every constitutional officer derives his power and authority from the Constitution, the same as the Legislature does, and the Legislature, in the absence of express constitutional authority, is as powerless to add to a constitutional office duties foreign to that office, as it is to take away duties that naturally belong to it." *Allen v. Rampton*, 463 P.2d 7, 9 (Utah 1969).

Because H.B. 392 creates an unconstitutional court staffed by unlawfully empaneled judges, it must be enjoined.

I. Plaintiffs are likely to succeed on the merits of their claims.

Plaintiffs are likely to succeed on the merits of their claims. When interpreting constitutional language, Utah courts "start with the meaning of the text as understood when it was adopted." *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 101, 554 P.3d 872 ("*League of Women Voters I*") (quoting *S. Salt Lake City v. Maese*, 2019 UT 58, ¶ 18, 450 P.3d 1092). The focus is on "the objective original public meaning of the text, not the intent of those who wrote it." *Id.* (citation modified). Nevertheless, the Utah Supreme Court has explained that "evidence of the framers' intent can help with this endeavor," but when courts "use such material—for example, transcripts from the constitutional convention on a particular topic—[the Supreme Court has] clarified that this is only a means to this end, not an end in itself." *Id.* (citation modified). The Court thus "interpret[s] the [C]onstitution according to how the words of the document would have been understood by a competent and reasonable speaker of the language at the time of the document's enactment." *Id.* (citation modified). "When [courts] interpret the

Utah Constitution, the 'text's plain language may begin and end the analysis.'" *State v. Barnett*, 2023 UT 20, ¶ 10, 537 P.3d 212 (quoting *S. Salt Lake City v. Maese*, 2019 UT 58, ¶ 23).

Moreover, when courts interpret the Constitution, "[t]he different sections, provisions, and amendments relating to the same subject-matter must be construed together and read in the light of each other, as far as possible, to effect a harmonious construction of the whole." *Wadsworth v. Santaquin City*, 28 P.2d 161, 167 (1933); *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 18, 140 P.3d 1235 ("[W]hen determining the meaning of a constitutional provision, 'other provisions dealing generally with the same topic . . . assist us in arriving at a proper interpretation of the constitutional provision in question.'" (quoting *In re Worthen*, 926 P.2d 853, 866-67 (Utah 1996)) (ellipses in original)); *State ex rel. Breeden v. Lewis*, 26 Utah 120, 72 P. 388, 389 (1903) (noting that when constitutional provisions "are in pa[ri] materia[], . . . under well-known rules of interpretation, [they] must be construed together.").

A. Article VIII permits only single-judge district courts.

The Constitution's text and history compel the conclusion that "district court" in Article VIII means a single-judge presiding over a case, not a panel of three district judges as H.B. 392 creates.

1. The text of Article VIII permits only a single-judge district court.

The text of Article VIII requires cases in the district court to be heard by a single judge. Article VIII, Section 1 provides that "[t]he judicial power of the state shall be vested in a Supreme Court, in a trial court of general jurisdiction known as the district court, and in such other courts as the Legislature by statute may establish." Utah Const. art. VIII, § 1. Article VIII thus establishes two constitutionally defined courts—the Supreme Court and the district court—and leaves to the Legislature the power to establish other types of courts. *See id.* It does not, however, confer upon

the Legislature the power to redefine the very meaning of "district court" from its original public meaning.

Section 2 governs the Supreme Court. It provides that "[t]he Supreme Court shall be the highest court and shall consist of at least five justices." Utah Const. art. VIII, § 2. It specifies that "[t]he Supreme Court by rule may sit and render final judgment either en banc or in divisions," but provides that "[t]he court shall not declare any law unconstitutional under this constitution or the Constitution of the United States, except on the concurrence of a majority of all justices of the Supreme Court." *Id*. Section 3 also provides for a mechanism to ensure a full panel can hear a case: "If a justice of the Supreme Court is disqualified or otherwise unable to participate . . . the remaining justices, shall call an active judge from an appellate court or the district court to participate in the cause." *Id.* The Constitution thus carefully and expressly requires a multi-justice panel to hear all cases, with cases to be heard en banc or in divisions, and with a majority requirement for constitutional decisions.

By contrast, Article VIII does not provide for multiple-judge panels to hear cases before the district court. Rather, it provides that "[t]he district court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs. The district court shall have appellate jurisdiction as provided by statute. The jurisdiction of all other courts, both original and appellate, shall be provided by statute." Utah Const. art. VIII, § 5.

Because Article VIII creates just two constitutionally prescribed courts, its sections creating the Supreme Court and the district court must be construed together. *See, e.g.*, *Wadsworth*, 28 P.2d at 167; *see also State v. Houston*, 2015 UT 40, ¶ 160, 353 P.3d 55 (observing that where Constitution uses different formulations, "the clear implication is that a difference is intended")

(Lee, J., concurring in part and concurring in judgment); *Harmelin v. Michigan*, 501 U.S. 957, 978 n.9 (1991) (lead op. of Scalia, J.) ("When two parts of a provision [of the Constitution] use different language to address the same or similar subject matter, a difference in meaning is assumed.").

As Article VIII, Section 2 makes clear, where the Constitution creates a multi-judge court, it says so explicitly. Where Article VIII envisions a multi-judge court sitting en banc, allows certain decisions to be decided by a division of the larger panel of judges hearing a case, or requires a majority vote for certain decisions, it says so explicitly. Article VIII says so with respect to the Supreme Court. Its omission of any such language with respect to the district court must be given meaning. Interpreting the two provisions together, as the Court must, *see Am. Bush*, 2006 UT 40, ¶ 18, leads to the conclusion that the "district court," as used in the Constitution, means a single judge presiding over a case.

Article VIII, Section 6 does not contradict this conclusion. It tasks the Legislature with establishing the number of district court judges in the state, not on a single court:

> The number of judges of the district court and of other courts of record established by the legislature shall be provided by statute. No change in the number of judges shall have the effect of removing a judge from office during a judge's term of office. Geographic divisions for all courts of record except the Supreme Court may be provided by statute. No change in divisions shall have the effect of removing a judge from office during a judge's term of office.

Utah Const. art. VIII, § 6. This provision allows the Legislature to add or eliminate district judge *positions*, each of whom will solely preside over a case; it does not authorize the Legislature to change the meaning of "district court" to mean a panel of judges deciding a case by majority vote.

Article VIII, Section 2 illustrates why this is so. That provision creates, in specific terms, a multi-justice Supreme Court, as discussed above. It also provides as follows: "The number of justices may be changed by statute, but no change shall have the effect of removing a justice from office." Utah Const. art. VIII, § 2. As with Section 6 regarding the district court, this provision is

not what establishes a multi-justice panel to decide cases. Likewise, Section 6, which must be understood in the context of the similar provision in Section 2, does not create multi-judge district court panels to hear cases simply because it allows the Legislature to increase or decrease the number of district judges in the state.

Moreover, it would be superfluous for Section 6 to protect against the Legislature "removing a judge from office during a judge's term," Utah Const. art. VIII, § 6, if Section 6 authorized the Legislature to change the number of judges who preside over a particular *case*. That change would never have the effect of prematurely terminating a judge's term of office, it would merely affect the case load distribution amongst the judges. The only sensible reading of Section 6 is that it empowers the Legislature to determine the number of district judge *positions* and not instead to redefine the very meaning of "district court" as H.B. 392 does. The Legislature can increase or decrease the number of *positions*, but the magnitude of any decrease is limited by the number of judges whose terms have not lapsed.

Likewise, H.B. 392 is not an exercise of the Legislature's authority to establish "other courts" beyond the constitutionally created Supreme Court and district court. Utah Const. art. VIII, § 1. First, by its plain text H.B. 392 does not purport to do so—rather, it creates a "panel of three district court judges," Utah Code § 78A-5-102.7(1)(a), convened to adjudicate a case pending in the district court at the whim of a governmental party. Second, the Legislature may only establish "other courts," Utah Const. art. VIII, § 1, with defined and stable jurisdiction and dedicated judges. This is clear from Article VIII, Section 12, which establishes the Judicial Council and provides that "[t]here shall be at least one representative on the Judicial Council from each court established by the Constitution or by statute." Utah Const. art. VIII, § 12. The Legislature has by statute established the court of appeals, the business and chancery court, the juvenile courts, and the justice

court—each with stable, defined jurisdiction and dedicated judges. *See* Utah Code § 78A-5a-101 *et seq.* (establishing business and chancery court); *id.* § 78A-6-101 *et seq.* (establishing juvenile courts); *id.* § 78A-7-101.1 *et seq.* (establishing justice court). Each of these statutorily created courts is represented on the Judicial Council as Article VIII, Section 12 requires. *See* Utah Code § 78A-2-104(1). But H.B. 392 does not establish a "court" distinct from the district court, and the Legislature did not, and could not—given the absence of dedicated judgeships—amend the composition of the Judicial Council to account for H.B. 392. It is therefore not an exercise of the Legislature's authority to create "other courts" by statute. Utah Const. art. VIII, § 1.

Construing the plain text of Article VIII's provisions together compels the conclusion that by creating a "trial court of general jurisdiction known as the district court," the Constitution creates single-judge district courts to preside over cases, not multi-judge panels as H.B. 392 creates.

2. History shows that the original public meaning of "district court" is a single presiding judge.

But even if the text left ambiguity, the history of the meaning of "district court" leaves none. It demonstrates that the original public meaning of "district court" is a single presiding judge. Utah courts look to "historical evidence of the state of the law when [the Constitution] was drafted, and Utah's particular traditions at the time of drafting" to determine a provision's original public meaning. *Salt Lake City Corp. v. Haik*, 2020 UT 29, ¶ 12, 466 P.3d 178 (quoting *S. Salt Lake City v. Maese*, 2019 UT 58, ¶¶ 18-19, 450 P.3d 1092).

a. The federal judicial system defined "district court" to be a single judge in the time leading to the 1895 Utah Constitution.

From the Nation's founding through the time of the 1895 Utah Constitution, the federal judicial system defined "district court" to be a single district judge presiding over cases while the other federal courts, the circuit court and the Supreme Court, consisted of panels of judges.

The Judiciary Act of 1789. One of the first acts of the new Congress was to enact the Judiciary Act of 1789. *See* Act of Sept. 24, 1789, ch. 20, 1 Stat. 73. It established three federal courts: the Supreme Court, the district court, and the circuit court. The Supreme Court consisted of the Chief Justice and five Associate Justices. *Id.* § 1. It established thirteen judicial districts (mostly adhering to state boundaries), *id.* § 2, and provided that "there be a court called a District Court, in each of the afore mentioned districts, *to consist of one judge*, who shall reside in the district for which he is appointed, and shall be called a District Judge," *id.* § 3 (emphasis added). The Judiciary Act provided that the district court was to have jurisdiction over certain crimes with punishments under a set threshold and admiralty cases. *Id.* § 9. Likewise, it was granted concurrent jurisdiction with the circuit court over tort cases commenced by aliens under the law of nations or a treaty, common law suits up to one hundred dollars in dispute, and suits against "consuls or vice-consuls." *Id.*

The third court established by the Judiciary Act was the circuit court. The Act created three circuits covering the geography of the United States, and provided that

> there shall be held annually in each district of said circuits, two courts, which shall be called Circuit Courts, and shall consist of any two justices of the Supreme Court, and the district judge of such districts, any two of whom shall constitute a quorum: *Provided*, That no district judge shall give a vote in any case of appeal or error from his own decision; but may assign the reasons of such his decision.

Id. § 4. The Act provided that the circuit court was to have jurisdiction over civil suits at common law and equity where the matter in dispute exceeded five hundred dollars, where the United States

was a plaintiff or petitioner, or an alien was a party, or where the suit was between citizens of different states. *Id.* § 11. It provided that the circuit court would have jurisdiction over federal crimes and concurrent jurisdiction with the district court with respect to crimes over which that court had jurisdiction. *Id.* The circuit court also was given appellate jurisdiction over the district court. *Id.*

The Judiciary Act of 1789 thus created two courts that presided over trials—the district court and the circuit court—and provided the latter appellate review over cases heard by the former. A case in the district court was heard by a single judge, while cases heard in the circuit court had three judges.

The Judiciary Act created the "circuit riding system," whereby Supreme Court justices traveled across the country to sit on circuit court panels to both try cases and hear appeals from the district courts. This was unpopular among the justices, who disliked the arduous travel.[3] The practice briefly ended in 1801 but was resurrected by the Judiciary Act of 1802, though with district court judges able to hold circuit court in the absence of Supreme Court justices. *See id.*; *see also* Act of Mar. 8, 1802, ch. 8, 2 Stat. 156, § 4.

Judiciary Act of 1869. No change occurred until 1869, when Congress passed the Judiciary Act of 1869. *See supra* note 3. The Act created a dedicated circuit judge position for each Circuit:

> The circuit courts in each circuit shall be held by the justice of the Supreme Court allotted to the circuit, or by the circuit judge of the circuit, or by the district judge of the district sitting alone, or by the justice of the Supreme Court and circuit judge sitting together, in which case the justice of the Supreme Court shall preside, or in the absence of either of them by the other, (who shall preside,) and the district judge.

[3] *See* Jake Kobrick, *A Brief History of Circuit Riding*, Fed. Judicial Ctr., https://www.fjc.gov/history/spotlight-judicial-history/circuit-riding (last visited Feb. 20. 2026).

Act of April 10, 1869, ch. 22, 16 Stat. 44, § 2. It likewise provided that "[C]ases may be heard and tried by each of the judges holding any such court sitting apart by direction of the presiding justice or judge, who shall designate the business to be done by each." *Id.* The Judiciary Act of 1869 thus lessened the burden on the Supreme Court justices by reducing from two to one the number participating in each circuit court. It did nothing to alter the definition of district court, which still "consist[ed] of one judge." Act of Sept. 24, 1789, ch. 20, 1 Stat. 73, § 3.

The Evarts Act of 1891. In 1891, Congress passed the Evarts Act, which brought major changes to the federal judiciary. *See supra note* 3; *see* Act of Mar. 3, 1891, ch. 517, 26 Stat. 826. The Evarts Act created the "circuit court of appeals, which shall consist of three judges, of whom two shall constitute a quorum, and which shall be a court of record with appellate jurisdiction." *Id.* § 2. It added a circuit judge position to each Circuit, *id.* § 1. And it provided that "the Chief-Justice and the associate justices of the Supreme Court assigned to each circuit, and the circuit judges within each circuit, and the several district judges within each circuit, shall be competent to sit as judges of the circuit court of appeals within their respective circuits." *Id.* § 3. The Act also made attendance by the Supreme Court justices voluntary, rather than mandatory, *id.*, which had the effect of nearly immediately ending the 100-year circuit riding practice of Supreme Court justices, *see supra* note 3. And it provided that "no appeal . . . shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts." *Id.* § 4. In 1911, Congress abolished the circuit courts entirely, transferring their remaining trial court jurisdiction to the district courts, leaving the federal judiciary to have the district court, circuit court of appeals, and the Supreme Court. *See* Act of Mar. 3, 1911, ch. 231, 36 Stat. 1087.

Thus, from the founding of the United States to the ratification of the Utah Constitution in 1895, the federal judiciary defined "district court" to consist of *one* judge presiding over cases and separately created a multi-judge "circuit court."

b. Utah's pre-statehood era defined "district court" as a single judge presiding over cases.

For all of Utah's pre-statehood era, "district court" was defined as a single judge presiding over cases. Congress enacted Utah's Territorial Organic Act in 1850. *See* Act of Sept. 9, 1850, ch. 51, 9 Stat. 453. It provided that "the judicial power of said Territory shall be vested in a Supreme Court, District Courts, Probate Courts, and in justices of the peace." *Id.* § 9. It provided for three Supreme Court justices and required that the "Territory shall be divided into three judicial districts, and a District Court shall be held in each of said districts by *one* of the justices of the Supreme Court." *Id.* (emphasis added). It provided that the district court and Supreme Court had chancery and common law jurisdiction and that "[e]ach District Court, or *the judge* thereof, shall appoint its clerk . . . ." *Id.* (emphasis added). Appeals from the district court's decisions were to the territorial Supreme Court, from which writs of error and appeals went to the U.S. Supreme Court. *Id.* Moreover, the Act provided that the territorial "District Courts shall have and exercise the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in the Circuit and District Courts of the United States." *Id.*[4]

For some time, the Utah Territory had just a single district court judge who heard all cases in the Territory after two of the three Supreme Court justices (and thus two of the three District Court judges) abandoned their posts. On October 4, 1851, the Territorial legislature passed a law

[4] Accordingly, no multi-judge federal circuit courts were ever established in Utah. *See* Utah Div. of Archives & Records Service, *Court Organization*, https://archives.utah.gov/research/guides/courts-system/.

providing that Justice Zerubbabel Snow would preside over each of the three territorial judicial districts.[5]

There were several attempts by Utahns to achieve statehood prior to Congress's enactment of the 1894 Enabling Act allowing admission of Utah as a state. The last of those proposed Constitutions in 1887 would have vested the judicial power of the state in "a Supreme Court, Circuit Courts, and such inferior courts" established by law, with the state to be divided into judicial circuits, the voters of which would elect "*one judge*, who shall be the judge of the Circuit Court therein."[6]

From the time Utah became a Territory until statehood, it had a "district court" that was explicitly defined to be a single judge hearing a case. No one in 1895 Utah would have understood "district court" to mean anything else.

c. The 1895 Constitution reflects the original public meaning of "district court" to be a single judge presiding over a case.

The 1895 Constitution reflects—in its text and Convention proceedings—that the original "district court" as used in Article VIII meant a single judge presiding over a case, not panels of district judges presiding over a single case.

Article VIII of the 1895 Constitution provided that "[t]he judicial power of the State shall be vested in the senate sitting as a court of impeachment, in a supreme court, in district courts, in justices of the peace, and such other courts inferior to the supreme court as may be established by law." Utah Const. art. VIII, § 1 (1895). Section 2 provided that the supreme court would consist

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[5] *See* Acts, Resolutions, and Memorials Passed by the First Annual and Special Sessions of the Legislative Assembly of the Territory of Utah at 38, *An Act Concerning the Judiciary, and for Judicial Purposes* (Oct. 4, 1851), https://babel.hathitrust.org/cgi/pt?id=uc1.a0004508107&seq=1&q1=court.

[6] Proposed Utah Constitution of 1887, art. VI, § 5, Desert Evening News at 5 (July 8, 1887), https://newspapers.lib.utah.edu/ark:/87278/s6rf9v5t/23184750 (emphasis added).

of three judges, but after 1905 could be increased to five. *Id.* art. VIII, § 2 (1895). Moreover, it provided that "a majority of the judges constituting the [supreme] court shall be necessary to form a quorum or render a decision." *Id.* And it provided for district court judges to be called up to join the panel to hear a case in the event of disqualification of one of the supreme court judges. *Id.*

Section 5 provided that "[t]he State shall be divided into seven judicial districts, for each of which, at least *one*, and not exceeding three judges, shall be chosen by the qualified electors thereof." *Id.* art. VIII, § 5 (1895) (emphasis added). It provided that the term of office of "*the* district judges shall be four years," *id.* (emphasis added), and that "*[a]ny District Judge* may hold a District Court in any county at the request of *the* judge of the district, and upon a request of the Governor, it shall be his duty to do so." *Id.* (emphasis added). Moreover, it provides that "[a]ny cause in the district court may be tried by *a* judge pro tempore . . . ." *Id.* (emphasis added).

Section 6 specified that the Legislature may "increase or decrease" the number of district judges:

> The legislature may change the limits of any judicial district, or increase or decrease the number of districts, or the judges thereof. No alteration or increase shall have the effect of removing a judge from office. In every additional district established, *a* judge shall be elected by the electors thereof, and his term of office shall continue as provided in section five of this article.

Utah Const. art. VIII, § 6 (1895) (emphasis added). The pairing "increase" with "decrease" shows that the section was speaking to the number of district judges sitting in the state: with the judiciary limited to single-judge district courts, the Legislature could not "decrease" the number of judges adjudicating a case.

The text of the 1895 Constitution makes clear that the original public meaning of "district court" was a single judge, in contrast to the Utah Supreme Court, which was explicitly required to be a panel of three or five judges, with a decision only by a majority. The original public meaning

of "district court" did not encompass the idea of a multi-judge panel of district judges hearing and deciding a case. That concept would have been entirely foreign, as the preceding history and text of the provision makes evident.

The Convention debates confirm this conclusion. For example, during the April 23, 1895 debate about judicial salaries, the delegates' remarks demonstrate an understanding—consistent with the constitutional text they wrote—that the "district court" *meant* a court presided over by a single judge. *See, e.g.*, Proceedings & Debates of the Convention Assembled to Adopt a Constitution for the State of Utah, Day 51, at 1382 (Apr. 23, 1895), https://le.utah.gov/documents/conconv/51.htm (statement of Mr. Thurman) ("As far as the work is concerned, *the judge* who has to attend to the business in Sanpete, Carbon, Emery, Grand, and San Juan, will have as much work to do, he will have a far more difficult job to perform in order to do it, than *the judge* who sits here in Salt Lake City, who only has to go out of the courthouse to go to his residence a few blocks away, and from his residence back to the courthouse to attend to the business . . . ." (emphasis added)); *id.* at 1388 (statement of Mr. Page) ("In the seventh district, particularly, that will work a hardship upon *the judge*." (emphasis added)).

Given the history of the federal district courts, the territorial district courts, and the text and history of the 1895 Constitution, the original public meaning of "district court" in the 1895 Constitution can only have meant a single judge presiding over a case, and not a panel of district judges deciding cases by majority vote.

d. Congress creates three-judge district courts to hear constitutional challenges to state laws.

Article III of the U.S. Constitution grants Congress greater power to structure the federal judiciary than the Utah Legislature possesses to structure Utah's judiciary. Article III, Section 1 provides that "[t]he judicial Power of the United States, shall be vested in one supreme court, and

in such inferior courts as the Congress may from time to time ordain and establish." U.S. Const. art. III, § 1. Federal district courts—in contrast to Utah district courts—are thus not constitutionally created courts. The U.S. Constitution imposes no stable definition dictating the composition of the inferior courts Congress creates.

Following the U.S. Supreme Court's decision in *Ex parte Young*, 209 U.S. 123 (1908), Congress, concerned about the decision, passed a law in 1910 requiring a panel of three judges to be convened when injunctions against state laws were sought in *Ex parte Young* cases. Act of June 18, 1910, ch. 309, 36 Stat. 539, 557 (codified as § 266 of Judicial Code, Act of Mar. 3, 1911, ch. 231, § 266, 36 Stat. 1087, 1162-63). The scope of the statute was expanded over time to include constitutional challenges to federal statutes and certain Voting Rights Act claims. *See, e.g.*, Michael E. Solimine & James L. Walter, *The Strange Career of the Three-Judge District Court: Federalism and Civil Rights, 1954-76*, 72 Case W. Res. L. Rev. 909, 917-19 (2022). The cases had direct appellate review to the Supreme Court, and by the 1960s and 70s, had reached hundreds of cases per year, stressing the federal courts and the Supreme Court. *Id.* at 919. The Supreme Court itself and prominent legal commentators called for the abolition or limitation in scope of three-judge district courts with direct appellate review to the U.S. Supreme Court. *Id.* at 919-20 (collecting citations). In 1976, Congress abolished the three-judge federal district court as it had existed since 1910, leaving only cases challenging the constitutionality of congressional or statewide legislative district apportionment to require three-judge federal courts. *See* Act of Aug. 12, 1976, Pub. L. No. 94-381, 90 Stat. 1119; 28 U.S.C. § 2284.

e. The original public meaning of "district court" in the Utah Constitution did not change with the 1984 amendments to Article VIII.

Article VIII of the Utah Constitution was revised upon the passage of Proposition 3 in November 1984, resulting in the text as it appears today. "[W]hen the people of Utah amend the constitution, we look to the meaning that the public would have scribed to the amended language when it entered the constitution." *Patterson v. State*, 2021 UT 52, ¶ 92, 504 P.3d 92.

Proposition 3 left the "district court" as a constitutionally established court, just as it was in 1895. And nothing in the text or history of the 1984 amendment indicates that a redefinition of "district court" from its original public meaning of a case decided by a single judge was intended. The 1984 amendment was the culmination of years of study by the Constitutional Revision Commission.[7] The Commission's Report provided rationales for the proposed changes, none of which reflect an intention to redefine the concept of a district court.

With respect to changes to Article VIII, Section 5—which sets forth the district court's jurisdiction—the Commission explained: "A trial court of general jurisdiction is considered essential to a judicial system. As such, the district court is vested with that authority. However, there are instances where limited authority for specialized matters may better be vested in specialized trial courts. This section provides for those options."[8] It does not redefine "district court" to include a court presided over by multiple judges, which would have been a striking change indeed.

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[7] *See* Report of the Constitutional Revision Comm'n (Jan. 1984), attached as Appendix Part B to Appellant's Supplemental Opening Br., *Patterson v. State of Utah*, No. 20180108-SC (Utah July 19, 2018), https://legacy.utcourts.gov/utc/appellate-briefs/wp-content/uploads/sites/46/2020/02/Appellant-Supplemental-20180108.pdf.

[8] *Id.* at 28.

Moreover, the Commission's explanation for the amendment to Section 6 demonstrates that no substantive change was intended to the meaning of "district court." In rewording that Section—which allows the Legislature to provide for the number of judges of the district court—the Commission explained:

> This section is basically unchanged from the present [1895] constitutional language. The recommended change does, however, remove the specific enumeration of judicial districts. In keeping with the policy of making constitutional language more general, the specific duties, power, and qualifications of judges were removed from this section and included in broader language in Sections 7, 8, and 9 of the proposed article.

Id. at 30. This explanation underscores why Article VIII, Section 6 of the Constitution, by authorizing the Legislature to change the number of district judge positions, did not authorize it to redefine the number of district judges that hear a single case. The 1895 Constitution likewise allowed the Legislature to "increase or decrease the number of districts, or the judges thereof." Utah Const. art. VIII, § 6 (1895). As discussed above, it is obvious from the text of the 1895 Constitution that "district court" meant a single presiding judge. That the Legislature was empowered then to increase or decrease the number of district judges illustrates why that same provision in the current Constitution does not authorize the Legislature to redefine "district court" to mean multi-judge panels. And as the Commission explained, no change was intended in the rewording of Section 6 in this regard.

Nothing in the Voter Information Pamphlet accompanying the 1984 amendment would have put voters on notice that they were being asked to redefine "district court," or to empower the Legislature to do so. *See* Utah Voter Information Pamphlet, General Election November 6, 1984, Proposition 3, at 14-30 (Sep. 27, 1984), https://vote.utah.gov/wp-content/uploads/2023/09/1984-VIP.compressed.pdf. On the contrary, the Impartial Analysis assured voters that "[t]he revision would constitutionally establish only the supreme court and the

district court. All other courts including the currently established juvenile court, circuit court, and justice of the peace courts, would exist by statute not by the constitution." *Id.* at 14. It further explained that "[u]nder the constitution the legislature may establish other courts in the state as necessary." *Id.* And it explained that "[t]he revision focuses primarily on judicial selection and judicial discipline questions." *Id.* The arguments and rebuttals focused on eliminating mandatory appeal jurisdiction of the Supreme Court—and thus reducing its case load—and the judicial selection provisions. *Id.* at 16-17.

The official ballot title read:

> Shall Article VIII of the State Constitution be repealed and reenacted and Article XXI, Sections 1 and 2, be amended to provide a Judicial Article which: establishes the authority and jurisdiction of the Supreme Court and Districts Courts; allows the Legislature to establish other courts as necessary including nonrecord courts with nonlawyer judges; establishes a Judicial Council for administration of the courts; establishes the qualifications and selection process for judges; establishes a Judicial Conduct Commission to review complaints against judges; establishes elected public prosecutors; organizes and clarifies other sections, and provides an effective date of July 1, 1985.

Id. at 14. Nothing on the ballot indicated that the amendment redefined the meaning of "district court" to include multi-judge panels hearing a case.

Dr. Martin Hickman, a member of the Commission that proposed the revisions to Article VIII, submitted an editorial on behalf of the Judicial Article subcommittee encouraging voters to support Proposition 3 in the October 14, 1984 edition of the Salt Lake Tribune.[9] It focused on the elimination of the right of direct appeal to the Supreme Court to relieve its caseload and the judicial selection process changes. *Id.* Its only mention of the district court was in relation to the direct appeal issue. *Id.* An October 16, 1984 article in the Logan Herald Journal explained that

[9] *See* Dr. Martin B. Hickman, *Amending the Judicial Article Merits Close Attention*, Salt Lake Tribune at 18A (Oct. 14, 1984), https://newspapers.lib.utah.edu/ark:/87278/s6k98tcs/29127164.

Proposition 3 would "allow the Legislature to establish intermedial appellate (appeals) courts or other options to handle the large number of appeals cases," in contrast to then then-process whereby "the Utah Supreme Court is required to hear every appeal from the state's district courts."[10] Senator E. Verl Asay, the Senate Judiciary Committee Chairmen, opposed Proposition 3. In a letter to the editor of the Orem-Geneva Times on October 17, 1984, he wrote that "[t]he 1st section of the bill sets up the mechanism to create another court of appeals between the District Court and the Supreme Court, a concept that has been studied by legislative interim committees for years and rejected by both houses of the legislature time and time again. We think the appeals process takes way too long as it is, without adding another layer."[11]

Nothing from the text of the amendment, the official ballot materials, or the public debate suggests that the amendment was intended to redefine "district court" to mean something other than what it had always meant—a trial court presided over by a single judge. Nor is there any indication that the federal court three-judge court experiment—by that point largely eliminated—played a role in the public discourse or understanding of what Utah's state district courts were.[12] When the voters adopted Proposition 3, three-judge panels were a foreign concept to Utah state district courts, and nothing from the history of Proposition 3's adoption evinces an intent to change course.

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[10] Pat McCutcheon, *Proposition 3 would reshape judicial system*, Logan Herald Journal at 1 (Oct. 16, 1984), https://newspapers.lib.utah.edu/ark:/87278/s6dr8s3q/30099471.

[11] Sen. E. Verl Asay, *Senator Says Proposition 3 Contains Flaws*, Orem-Geneva Times at 2 (Oct. 17, 1984), https://newspapers.lib.utah.edu/ark:/87278/s6qk18z4/22908281.

[12] With Congress's near-elimination of three-judge federal district courts in 1976 (save for certain redistricting cases), there would not even have been any such tribunals at the time of the 1984 amendment. Indeed, it seems there would not again be a three-judge federal district court in Utah until just this month, when various plaintiffs (including two members of Congress) challenged the imposition of Map 1 under the U.S. Constitution's Elections Clause. *See Powers Gardner v. Henderson*, No. 2:26-cv-84 (D. Utah Feb. 2, 2026).

* * *

The original public meaning of "district court" in the Utah Constitution is a trial court with a single presiding judge deciding a case. That is apparent from the overwhelming textual and historical record. The Legislature cannot by statute redefine one of the two constitutionally created courts to mean the opposite of what is has always meant.

B. H.B. 392 violates the Utah Constitution's Uniform Operation of Law Clause, its prohibition on special laws, and the Open Courts Clause by creating disparate rules for state litigants.

H.B. 392 also violates the Utah Constitution's Uniform Operation of Law Clause, its prohibition on special laws, and the Open Courts Clause by creating a category of super-litigants—the Governor, Attorney General, or Legislature—clothed with the absolute power to pick their tribunal, whether to retain a single district judge to adjudicate a lawsuit or to add two additional district judges.[13] It also unreasonably empowers the government to engage in abusive litigation tactics that could likely frustrate the ability of citizens to seek and obtain effective preliminary relief.

1. H.B. 392 violates the Uniform Operation of Law Clause.

H.B. 392 likewise violates the Uniform Operation of Law Clause. Article I, Section 24 of the Utah Constitution provides that "[a]ll laws of a general nature shall have uniform operation." This provision "guards against discrimination within the same class and helps ensure that statutes establishing or recognizing rights for certain classes do so reasonably given the statutory objectives." *Bingham v. Gourley*, 2024 UT 38, ¶ 39, 556 P.3d 53 (quoting *Judd v. Drezga*, 2004

[13] H.B. 392 and S.J.R. 5's application to currently pending cases is particularly troubling, given that it permits governmental defendants to pick and choose which cases to convert to three-judge courts based on the government's pleasure or displeasure with the rulings that have occurred in those cases.

UT 91, ¶ 19, 103 P.3d 135). To assess whether a statute violates the Uniform Operation of Law Clause, courts apply a three-step framework to determine: (1) "whether the statute creates any classifications," (2) "whether the classifications impose any disparate treatment on persons similarly situated," and (3) "if there is disparate treatment, whether the legislature had any reasonable objective that warrants the disparity." *Taylorsville City v. Mitchell*, 2020 UT 26, ¶ 37, 466 P.3d 148 (quoting *Count My Vote, Inc. v. Cox*, 2019 UT 60, ¶ 29, 452 P.3d 1109). How the third step is assessed depends upon the level of scrutiny. In *Bingham*, the Court explained that it applies heightened scrutiny to cases involving open courts:

> Upholding legislation implicating open courts rights against a uniform operation challenge requires the legislation (1) to be "reasonable"; (2) to have "more than a speculative tendency to further the legislative objective and, in fact, actually and substantially furthers a valid legislative purpose"; and (3) to be "reasonably necessary to further a legitimate legislative goal."

Id. ¶ 40 (quoting *Judd*, 2004 UT 91, ¶ 19) (citation modified). H.B. 392 fails this test.

a. H.B. 392 creates a classification that imposes disparate treatment on similarly situated litigants.

H.B. 392 creates a classification that imposes disparate treatment on similarly situated litigants.

First, on its face H.B. 392 creates a classification between two categories of civil litigants: (1) state entities and officials and (2) everyone else. *See* Utah Code § 78A-5-102.7(2)(a).

Second, the classification imposes disparate treatment on persons similarly situated. H.B. 392 imposes disparate treatment because one class of litigants—state entities and officials—is afforded the unilateral and unfettered power to determine whether to have the case adjudicated by the assigned district judge or to instead demand a panel of three district judges. S.J.R. 5 provides a 45-day window for the state litigant to consider that decision, during which time substantive action may occur in the case. By contrast, the private opposing party cannot make that

determination and is instead stuck with the choice made by the government and precluded from challenging it.

Moreover, state- and non-state litigants are similarly situated in the context of H.B. 392. "To determine if individuals are similarly situated, we have frequently look to the context created by the challenged statute and within which the individuals act[]." *State v. Outzen*, 2017 UT 30, ¶ 19, 408 P.3d 334; *see also Slater v. Salt Lake City*, 206 P.2d 153, 163 (Utah 1949) ("It may be admitted that under certain circumstances, [one group is] a different class than [another group]. However, under the circumstances of this case, we conclude they are similarly situated."). The question therefore is not whether there are differences between state litigants and private litigants that cause them to be differently situated. Rather, the question is whether H.B. 392's features are attributable to any differences that might exist between state and private litigants. They are not, and so the classes are similarly situated.

H.B. 392 empowers state litigants to decide, after a 45-day observational period, whether to keep the assigned single district judge or to convene a three-judge panel. That power is not tethered to any factor premised on state litigants being differently situated from private litigants. The power does not arise based upon the subject matter of the lawsuit, whether it involves constitutional challenges to state laws, or whether it is a matter of public importance. Rather, there are no standards whatsoever; state litigants have unfettered power to make the determination. They can merely watch the proceedings unfold for 45 days and then decide to keep the assigned judge or demand a new three-judge panel based on their assessment of the assigned judge's favorability to their position in the case. Nothing about a state litigants' status as a governmental entity or official situates them differently from private litigants when it comes to determining their

satisfaction or dissatisfaction with a judge's rulings. In the context that H.B. 392 creates, state and private litigants are similarly situated.

Another provision of H.B. 392 that Plaintiffs do not challenge illustrates the point. H.B. 392 provides that "[t]he attorney general has an unconditional right to intervene in a civil action in a district court upon receiving a notice under Rule 24 of the Utah Rules of Civil Procedure that a party is challenging the constitutionality of a statute in the civil action." Utah Code § 67-5-41(1). This creates a classification that treats the attorney general's right to intervene in such cases disparately from private individuals. *Compare id. with* Utah R. Civ. P. 24(a). But when it comes to defending the constitutionality of a state statute, the attorney general is differently situated than private citizens. *See* Utah Code § 67-5-1(1)(b) (tasking attorney general with "tak[ing] charge as attorney, of all civil legal matters in which the state is interested"). Likewise, governmental entities have a unique permissive intervention standard when a party's claim is based on laws they administer—something that situates them differently. *See* Utah R. Civ. P. 24(b)(2).

There is nothing about a state litigants' versus a private litigants' determination of whether they are satisfied with the single assigned judge or instead demand three judges that situates the two classes differently. In the context of H.B. 392, state and private litigants are similarly situated.

b. H.B. 392 is not reasonable under the heightened scrutiny test applicable in cases implicating open courts.

i. H.B. 392 is not reasonable.

H.B. 392 is not reasonable. In assessing whether a statute is reasonable, the Utah Supreme Court has considered "(1) if there is a greater burden on one class as opposed to another without a reason; (2) if the statute results in unfair discrimination; (3) if the statute creates a classification that is arbitrary or unreasonable; or (4) if the statute singles out similarly situated people or groups without justification." *Merrill v. Utah Labor Comm'n*, 2009 UT 26, ¶ 10, 223 P.3d 1089.

H.B. 392 imposes a greater burden on plaintiffs suing a state entity or state official than on plaintiffs suing anyone else. For starters, H.B. 392 creates a classification that is "arbitrary and unreasonable." *Merrill*, 2009 UT 26, ¶ 10. It grants unilateral and arbitrary authority upon a single class of civil litigants—the Governor, Attorney General, or Legislature—to determine which and how many district judges will adjudicate a case. No standards or rules govern that decision; it can be made for pernicious judge-shopping reasons or gamesmanship, and H.B. 392 even purports (unconstitutionally) to make the decision not subject to judicial review. For the same reasons, H.B. 392 "singles out similarly situated people or groups without justification." *Merrill*, 2009 UT 26, ¶ 10. One class of civil litigants—the government—is granted extraordinary power to dictate how and when the case will be adjudicated. Private plaintiffs are not afforded that power.

Another asymmetrical burden imposed by H.B. 392 involves time. Defendants generally have a seven-day window within which to file a notice of change of judge. *See* Utah R. Civ. P. 63(a)(2)(D)(ii). But under H.B. 392 and S.J.R. 5, a state entity or state official has 45 days after the action is commenced (or any time the complaint is amended) to file a notice that a panel of three district judges must be convened to hear the case. *See* Utah R. Civ. P. 42(e)(1) (2026).

That time difference matters. If the litigation is urgent, a lot can happen in 45 days. A plaintiff may have moved for a temporary restraining order or preliminary injunction, and the assigned district judge may have held a hearing, taken testimony, and even signaled their intended ruling. Yet at that point, having gotten a sneak peak at the district judge, the state party could file a notice demanding a three-judge panel hear the case. No other litigant can play the system that way.

Likewise, H.B. 392 permits governmental parties to file a notice convening a three-judge court in the 45 days after a complaint is amended. *See* Utah Code § 78A-5-102.7(2)(d) (2026);

Utah R. Civ. P. 42(e)(1)(B). Rule 15 provides that leave to amend should be "freely give[n]," Utah R. Civ. P. 15(a)(2), and will often occur close to trial. Moreover, Rule 15(b) allows for amendments during and *after* trial. Utah R. Civ. P. 15(b). If the opposing party objects that the evidence during trial is "not within the issues raised in the pleadings, the court may permit the pleadings to be amended" and "should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice the party's action or defense on the merits." Utah R. Civ. P. 15(b)(2). H.B. 392 thus severely burdens private litigants. If they choose to amend near, during, or after trial, they risk providing the government defendant a chance to abruptly remove the presiding judge and switch to a three-judge panel. If the trial is going poorly for the government, it will have every incentive to do so. If the private litigant wants to avoid this risk, it must forego amending its complaint to advance potentially meritorious legal claims just to avoid the prejudice and delay of starting over before a new tribunal.

Granting state defendants a weapon that no other litigant enjoys invites gamesmanship. Consider this very case. Plaintiffs filed their Third Supplemental Complaint on October 6, 2025, challenging S.B. 1011, Doc. 539 and filed a motion for a preliminary injunction on October 7, 2025, Doc. 555. The Court held an evidentiary hearing on October 23-24, heard argument days later, and issued its order preliminarily enjoining S.B. 1011 and Map C on November 10, 2025, Doc. 735. That is a period of 35 days. Had H.B. 392 been the law, the Legislative Defendants could have lain in wait until November 9—a day before the Lieutenant Governor's deadline—and then sprung a notice to convene a three-judge court. In addition to giving the Legislature a second bite at the apple before a different tribunal—a gift the Legislature has withheld from other litigants—this gambit may well have left an unlawful congressional map in place and deprived Plaintiffs of their rights under Proposition 4.

H.B. 392, together with the extended 45-day period it grants government litigants to reconnoiter before arbitrarily demanding a three-judge court, could serve to essentially shield the government from citizens' ability to effectively seek temporary restraining orders or preliminary injunctions of unlawful government action, leaving only the courts' extraordinary writ power as an avenue.

ii. H.B. 392 does not further a valid legislative purpose.

H.B. 392 does not further a valid legislative purpose. To the extent the purpose is to ensure that more judges from a broader geographic reach adjudicate cases of public importance, H.B. 392 does not further that interest because it provides no guidelines or standards for which cases are to be heard by three-judge courts. It is not, for example, limited to cases involving constitutional challenges. Instead, it grants state entities a litigation weapon available to no other parties, the ability to forum- and judge-shop and thereby block citizens from vindicating their rights by being able to obtain effective preliminary relief. That is not a valid legislative purpose. *See, e.g.*, *State v. Brickey*, 714 P.2d 644, 647 (Utah 1986) (labeling forum shopping an "abusive practice[]"). The government has no valid legislative purpose in being able to act arbitrarily to evade legal accountability.

iii. H.B. 392 is not reasonably necessary to further any legitimate legislative goal.

H.B. 392 is not reasonably necessary to further any legitimate legislative goal. To survive scrutiny under the Uniform Operation of Law Clause, H.B. 392 must be "reasonably necessary to achieve" a legitimate legislative goal and "in fact, actually and substantially further[] them." *Judd*, 2004 UT 91, ¶ 19; *see also Bingham*, 2024 UT 38, ¶ 46. H.B. 392 fails that test. First, as explained above, H.B. 392 advances no legitimate legislative goal. Second, even if it could be characterized as having such a goal, H.B. 392 is not necessary to further it. During the legislative proceedings,

H.B. 392's sponsor, Senator McKell, noted that the three-judge panel created by the Bill would be for "constitutional cases" and reiterated that "this is to consider our constitutional issues."[14] But H.B. 392 is both over- and under-inclusive in how it serves this purported goal. It is over-inclusive because it does not limit state litigants' power to convene a three-judge panel to cases involving constitutional claims, rather it empowers state litigants to file a notice convening a three-judge panel in *any* case in which they are a party. H.B. 392 is under-inclusive because it does not create a three-judge panel for all cases involving constitutional issues. Rather, it makes that a matter of discretion in the hands of only the state litigant. And a three-judge panel is possible in constitutional cases in which a state entity or official is *not* a party only if the attorney general chooses to intervene. *See* Utah Code § 67-5-41(1) (2026).

Regardless of how the government might characterize H.B. 392's goal, its arbitrary features and potential for gamesmanship and abusive litigation tactics are not necessary to further any legitimate goal.

2. H.B. 392 violates Article VI, Section 26's prohibition on special laws.

H.B. 392 also violates the Utah Constitution's prohibition on special laws. Article VI, Section 26 provides that "[n]o private or special law shall be enacted where a general law can be applicable." Utah Const. art. VI, § 26. The prohibition on special laws "can be seen as policing the separation of powers." *Carter v. Lehi City*, 2012 UT 2, ¶ 43, 269 P.3d 141. The Utah Supreme Court has explained that a law is general if it "operates uniformly upon all members of any class, places, or things requiring legislation peculiar to themselves in matters covered by the laws in question." *Hulbert v. State*, 607 P.2d 1217, 1223 (Utah 1980) (quoting *Utah Farm Bureau Ins. Co.*

[14] Utah Senate, 2026 Gen. Sess., Day 23 at 30:21 (Feb. 11, 2026) (statement of Sen. McKell), https://www.utleg.gov/event-streaming/floor/marker/133898.

v. Utah Ins. Guar. Ass'n, 564 P.2d 751, 754 (1977)). By contrast, "special legislation relates either to particular persons, places, or things or to persons, places, or things which, though not particularized, are separated by any method of selection from the whole class to which the law might, but for such legislation, be applied." *Id.* (quoting *Utah Farm Bureau*, 564 P.2d at 754). Moreover, the Court explained that special legislation privileges a class of persons arbitrarily selected from the general body of those subject to the law:

> A law is general when it applies equally to all persons embraced in a class founded upon some natural, intrinsic, or constitutional distinction. It is special legislation if it confers particular privileges or imposes peculiar disabilities, or burdensome conditions in the exercise of a common right; upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law. The constitutional prohibition of special legislation does not preclude legislative classification, but only requires the classification to be reasonable.

Id. (quoting *Utah Farm Bureau*, 564 P.2d at 754).

The prohibition on special laws strikes at the heart of free government itself:

> [E]very one has a right to demand that he be governed by general rules, and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in all similar cases, would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free government.

Carter, 2012 UT 2, ¶ 43 (quoting Thomas M. Cooley, *A Treatise on the Constitutional Limitations which Rest Upon the Legislative Power of the States of the American Union* 484 (The Lawbook Exchange, Ltd., 5th prtg., 1998) (Boston; Little, Brown, & Co., 5th ed. 1883)). Accordingly, the Utah Supreme Court explained, the prohibition against special laws "is more than a guarantee that laws will be applied equally. It is a reflection of the nature of legislative power, which confirms that such power typically is limited to making laws of general applicability based on policy preferences." *Id.*

H.B. 392 violates the prohibition on special laws in two overarching ways.

First, H.B. 392 takes a general class—civil litigants—and creates a special privilege for only certain among them: the Governor, the Attorney General, and the Legislature. These parties, and not the opposing litigants, are afforded the privilege of deciding whether they are satisfied with the single judge to which the case has been assigned or if they would prefer to have the case heard before three judges. There is no reasonable basis to permit governmental litigants, and no one else, to decide whether a case should be heard by one or three district judges.

Second, H.B. 392 creates no standards or guidelines for which cases involving governmental parties will be heard by a single judge or three judges. Rather, it leaves entirely unilateral and arbitrary discretion in the hands of the governmental defendant. No private litigant can know whether their case against the government will be before a single judge or three-judge panel, or when in the first 45 days—during which important litigation steps occur—a change may occur. Rather, the government can exercise absolute discretion to determine the forum for any reason. Especially worrisome is the judge-shopping power it unilaterally bestows upon governmental litigants. If the government thinks it has randomly drawn a judge whom it views is likely to rule in its favor, it can choose to remain before a single judge regardless of the statewide public policy importance of the matter. On the other hand, if it views the randomly assigned judge as likely to be unfavorable to its position, it can demand a three-judge panel. This constitutes "an arbitrary mandate [that] is not within the province of free government." *Carter*, 2012 UT 2, ¶ 43 (citation modified). It is not law, it is arbitrary action contrary to free government.

This special, arbitrary law is not based on any reasonable classification. There is no reasonable reason why state litigants, and not their opposing party, should be entitled to determine how many judges adjudicate their case. There is no reasonable justification to allow state litigants to unilaterally make that determination for entirely arbitrary—and at worst, pernicious—reasons.

And there is certainly no reasonable justification to allow state litigants to make this election in cases, such as this one, that have been pending for four years.

Indeed, the timing of the passage of H.B. 392 strongly suggests that the Legislature's immediate goal was to affect the outcome in this very case, a privilege no other litigant enjoys or, consistent with the rule of law, should enjoy.

H.B. 392 privileges one category of civil litigants with judge-shopping power in a manner that violates Article VI, Section 26 of the Utah Constitution.

By doing so, the Legislature has exceeded its power and has not legislated, but rather singled itself out for special privileges. That is not legal.

3. H.B. 392's creation of asymmetrically available three-judge panels violates the Open Courts Clause.

H.B. 392 also violates the Open Courts Clause. Article I, Section 11 provides:

> 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, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, with or without counsel, any civil cause to which the person is a party.

Utah Const. art. I, § 11. H.B. 392's creation of an asymmetrically available three-judge panel violates the Open Courts Clause in at least three ways.

First, it violates the Open Courts Clause for the same reason it violates Article VIII—H.B. 392 purports to funnel certain cases, at the whim of state litigants, into a tribunal that is unconstitutionally constituted. *See supra* Part I.A. H.B. 392 permits state litigants to force private litigants into having their case heard and decided by a three-judge panel without their consent. Inherent in Article I, Section 11's guarantee to open courts is a requirement that the court be a constitutionally composed tribunal. *Cf. In re Dallas County*, 697 S.W.3d at 150 ("Every litigant has a clear right to have its case decided by a legitimate court staffed only by lawfully empaneled

judges."). H.B. 392 closes to certain private litigants—at the state litigants' exclusive discretion—the "trial court of general jurisdiction known as the district court," Utah Const. art. VIII, § 1, and replaces it with a three-judge panel that is not sanctioned by Article VIII, *see supra* Part I.A. Although the Legislature may avoid liability under the Open Courts Clause if it provides "an effective and reasonable alternative," *Berry By and Through Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 680 (Utah 1985), an alternative that contravenes the Constitution is surely neither effective nor reasonable. Nor can H.B. 392 be justified as eliminating some "clear social or economic evil" in a manner that "is not an arbitrary or unreasonable means." *Id.* The single-judge district court system—prescribed by Article VIII—is not a "clear social or economic evil" and H.B. 392 is both arbitrary and unreasonable, as explained above.

Second, H.B. 392 violates the Open Courts Clause in the most literal way—it creates a tribunal that is not open to all. *See* Utah Const. art. I, § 11 ("All courts shall be open . . . . [N]o person shall be barred from prosecuting or defending before any tribunal in this State . . . ."). While the operation of the Open Courts Clause has been subject to debate in the context of abrogated causes of action, *see Waite v. Utah Labor Comm'n*, 2017 UT 86, ¶¶ 18-19, 416 P.3d 635, it should hardly be debatable that creating a special tribunal that only one category of litigant can access is not consistent with the Constitution's guarantee that courts be "open to all" and no person barred from "prosecuting or defending before *any tribunal* in this State." Utah Const. art. I, § 11 (emphasis added).

Third, H.B. 392 violates the Open Courts Clause by, as a practical matter, jeopardizing the ability of plaintiffs to secure preliminary relief within the first 45 days of a case. *Id.* (guaranteeing access to courts "without . . . unnecessary delay"). Likewise, it permits even more egregious delay by allowing government litigants to abruptly divest the assigned judge of jurisdiction within 45

days of any amended complaint—which can occur on the eve of, during, *or even after* trial. *See supra* Part I.B.1.b.i. A plaintiff could be forced to try the case twice as a simple result of exercising their Rule 15 rights.

C. H.B. 392 violates the Open Courts and Due Process Clauses by purporting to shield notices invoking three-judge courts from judicial review.

H.B. 392 violates the Open Courts and Due Process Clauses by purporting to shield the government's notice invoking a three-judge court from judicial review. *See* Utah Const. art. I, §§ 7 & 11. "Parties to a suit, subject to all valid claims and defenses, are constitutionally entitled to litigate any justiciable controversy between them, *i.e.*, they are entitled to their day in court." *Miller v. USAA Cas. Ins. Co.*, 2002 UT 6, ¶ 38, 44 P.3d 663. As the *Miller* Court explained, "both the due process clause of article I, section 7 and the open courts provision of article I, section 11 of the Utah Constitution guarantee that litigants will have this 'day in court.'" *Id.* (quoting *Jenkins v. Percival*, 962 P.2d 796, 799 (Utah 1998)); *see also Jenkins*, 962 P.2d at 799 ("Even the most limited reading of [the open courts] provision guarantees a day in court to all parties . . . ."); *Berry*, 717 P.2d at 675 (noting that Open Courts Clause "guarantees access to the courts and a judicial procedure that is based on fairness and equality."); *Celebrity Club, Inc. v. Utah Liquor Control Comm'n*, 657 P.2d 1293, 1296 (Utah 1982) (holding that the due process clause guarantees claimants a day in court).

In *Miller*, the Court explained that "[t]he analysis to determine whether [a party is] denied [its] day in court is the same under both the open courts provision and the due process clause," though the due process clause requires showing a deprivation of life, liberty, or property. 2002 UT 6, ¶ 38. "Causes of action or claims that have accrued under existing law are vested property rights just as tangible things are property." *Id.* ¶ 40. Here, Plaintiffs had vested claims under Utah's

Constitution and Proposition 4—and, importantly, the vested constitutional right to advance those claims in a constitutionally constituted court—well before H.B. 392 was enacted. Plaintiffs may thus advance both claims.

H.B. 392 is unconstitutional for all the reasons stated above. To the extent that it purports to prevent Plaintiffs from raising these constitutional claims before this single-judge court—and having this single-judge court decide these claims against H.B. 392 irrespective of any forthcoming three-judge court "notice" by Defendants—that too is unconstitutional. "At a minimum, a day in court means that each party shall be afforded the opportunity to present claims and defenses, and have them properly adjudicated on the merits according to the facts and the law." *Id.* ¶ 42.

On its face, H.B. 392 purports to shield the government's notice invoking a three-judge court from judicial review. To the extent Defendants were to contend that this precludes this Court—sitting as a single district judge (the only constitutional form of a "district court")—from hearing and adjudicating Plaintiffs' constitutional challenge to H.B. 392, that provision is unconstitutional and unenforceable under both the Open Courts and Due Process Clauses.

II. The remaining factors favor entry of an injunction.

The remaining irreparable harm, balance of harms, and public interest factors all favor entry of an injunction. *See* Utah R. Civ. P. 65A(f)(2)-(4).

First, Plaintiffs will suffer irreparable harm in the absence of an injunction against the proposed Amendment. Irreparable harm "is that which cannot be adequately compensated in damages" and is "fundamentally preventive in nature." *Zagg, Inc. v. Hammer*, 2015 UT App 52, ¶¶ 6, 8, 345 P.3d 1273 (citation modified). Forcing Plaintiffs to adjudicate the remainder of their lawsuit before an unconstitutionally constituted tribunal is not a harm that can be redressed after-the-fact. This is especially so considering that this litigation has proceeded for four years and has

developed a large and complicated record. The Court has conducted extensive proceedings with technical evidence—all of which need not, under the Rules, be repeated before final judgment is ultimately entered. *See* Utah R. Civ. P. 65A(a)(2). Yet an abrupt change of the judge(s) hearing this case—at the whim of Defendants—would remove from the case the judge that oversaw the evidence and observed the witness demeanor at the October 23-34 hearing. Doing so could both delay resolution of this case and unnecessarily rob Plaintiffs, who bear the burden of proof, from the benefit of the judge who has overseen and witnessed the testimony and evidence already part of the record.

Second, the balance of the equities, which "considers whether the applicant's injury exceeds the potential injury to the defendant," favors Plaintiffs. *Planned Parenthood Ass'n of Utah v. State*, 2024 UT 28, ¶ 210, 554 P.3d 998. Defendants are not harmed by litigating this case consistent with how the phrase "district court" has been understood since (and before) Utah's founding. Nor are they harmed by being foreclosed from engaging in forum shopping and delay tactics to foreclose Plaintiffs' access to a tribunal in the event emergency circumstances require prompt action in this case.

Third, the public interest weighs in favor of an injunction. The "purpose of a preliminary injunction is 'to preserve the status quo pending the outcome of the case.'" *Planned Parenthood*, 2024 UT 28, ¶¶ 224, 225 (internal citation omitted) (upholding a preliminary injunction as in public interest where it "would maintain the status quo . . . as it has been legally permitted for nearly fifty years"). The public has an obvious interest in a constitutionally constituted judicial system. Moreover, if the Utah Supreme Court ultimately agrees with Plaintiffs that H.B. 392 is unconstitutional and its implementation is not in the meantime enjoined, any adjudications that

occur before three-judge courts in the meantime would be subject to vacatur afterwards—an event that would be significantly contrary to the public interest.

CONCLUSION

For the foregoing reasons, the Court should preliminarily enjoin Defendants, and those acting in concert with them, from taking steps to enforce H.B. 392 and S.J.R. 5. Moreover, the Court should, pursuant to Rule 65A(a)(2), consolidate the preliminary injunction hearing with the trial on the merits of Plaintiffs' claims, and certify Plaintiffs' claims against H.B. 392 and S.J.R. 5 as a final judgment under Rule 54(b) to permit this issue of statewide public importance to be finally determined on appeal by the Utah Supreme Court in an expeditious manner.

February 21, 2026

RESPECTFULLY SUBMITTED,

/s/ David C. Reymann

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CERTIFICATE OF COMPLIANCE

Pursuant to Utah R. Civ. P. 7(q)(3), I hereby certify that the foregoing **PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ON COUNTS 23-27 OF THEIR FIFTH SUPPLEMENTAL COMPLAINT** contains 12,554 words, excluding the items identified in Utah R. Civ. P. 7(q)(2). Plaintiffs have filed a motion to enlarge the word limit.

/s/ David C. Reymann

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of February 2026, I filed the foregoing **PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ON COUNTS 23-27 OF THEIR FIFTH SUPPLEMENTAL COMPLAINT** via electronic filing, which served all counsel of record.

/s/ David C. Reymann

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You have a limited amount of time to respond to this motion. In most cases, you must file a written response with the court and provide a copy to the other party:

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- at least 14 days before the hearing, if the motion will be decided by a commissioner.

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