No. 20260236-SC

IN THE
SUPREME COURT OF UTAH

League of Women Voters of Utah, *et al.*,
Petitioners (Plaintiffs),
v.
Utah State Legislature, *et al.*,
Respondents (Defendants).

OPENING BRIEF OF PETITIONERS

On Petition for Extraordinary Relief

Third Judicial District Court, Salt Lake County,
Honorable Catherine Conklin, Honorable Derek Williams, Honorable Roger Griffin,
District Court No. 220901712

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CURRENT AND FORMER PARTIES

Petitioners (Plaintiffs)

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

Represented by Troy L. Booher, J. Frederic Voros, Jr., and Caroline A. Olsen of Zimmerman Booher; David C. Reymann, Cheylynn Hayman, and Kade N. Olsen of Parr Brown Gee & Loveless; and Mark P. Gaber, Annabelle E. Harless, Aseem Mulji, Benjmain Phillips, and Isaac DeSanto of Campaign Legal Center

Respondents (Legislative Defendants)

Utah State Legislature; Utah Legislative Redistricting Committee; Sen. Scott Sandall, in his official capacity; Rep. Mike Schultz, in his official capacity; and Sen. J. Stuart Adams, in his official capacity

Represented by Victoria Ashby, Christine R. Gilbert, and Alan R. Houston of Office of Legislative Research & General Counsel; and Tyler Green, Taylor A.R. Meehan, Frank H. Chang, Marie E. Sayer, and Soren Geiger of Consovoy McCarthy PLLC

Respondent (Lieutenant Governor Defendant)

Lt. Governor Diedre Henderson, in her official capacity

Represented by Sarah Goldberg of the Office of the Attorney General

Respondents (Judicial Respondents)

Hon. Dianna Gibson, Judge, Third District Court, declined to exercise jurisdiction over Plaintiffs' case; Hon. Catherine Conklin, Second District Judge; Hon. Roger Griffin, Fourth District Judge; Hon. Derek Williams, Third District Judge, have assumed jurisdiction over Plaintiffs' case as the assigned three-judge panel;

Represented by Joseph A. Willard of the Administrative Office of the Courts

Former Parties

Dale Cox (Former plaintiff, voluntarily dismissed)

Rep. Brad Wilson, in his official capacity (former Speaker of the House, Rep. Mike Schultz substituted)

Hon. Derek Pullan, Fourth District Judge (originally assigned as part of three-judge panel, voluntarily recused)

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INTRODUCTION

The Utah Constitution creates three co-equal branches of government. While it confers limited power on the Legislature to shape the structure of the judiciary, that power may not be exercised in a manner that violates the Constitution or intrudes on responsibilities explicitly granted to the judicial branch. The Legislature may not redefine by statute the meaning of "district court" found in Article VIII—a single judge presiding over a case—that has existed from the nation's founding through Utah's statehood. It cannot amend rules of procedure to remake the structure of the judiciary created by Article VIII or transgress the separation of powers prescribed by Article V. It cannot create judicial rules that unfairly advantage government litigants over the people, nor evade review of its unconstitutional actions by passing mid-litigation amendments with the same constitutional flaws. And finally, the Legislature may not create a contingent court that would spring to life if the Legislature's other unlawful lawmaking is enjoined, where that court unconstitutionally strips the district court of its jurisdiction. None of this is constitutional.

The Legislature has violated the Utah Constitution by attempting to accomplish such an overhaul of Utah's judiciary by enacting H.B. 392, H.B. 366, S.J.R. 5, and S.J.R. 6. H.B. 392 upends Utah's court system by restructuring the number of district court judges adjudicating cases and bestowing special privileges on the government. S.J.R. 5 amends the Utah Rules of Civil Procedure in furtherance of this purpose. In enacting both, the Legislature acted contrary to the Utah Constitution's text and history, and conferred upon itself power belonging to the judicial branch. After the Legislature used those laws to

abruptly transfer Petitioners' ("Plaintiffs") case to a panel of three new judges after four years of litigation before the same single-judge court, Plaintiffs challenged H.B. 392 and S.J.R. 5 on multiple constitutional grounds. The Legislature then attempted a midstream fix of some of the constitutional flaws by passing H.B. 366 and S.J.R. 6. But fatal constitutional flaws remain. H.B. 366 does not have retroactive effect, meaning Plaintiffs' challenges to H.B. 392 and S.J.R. 5 remain live. And even if H.B. 366 were retroactive, it does not resolve all of Plaintiffs' challenges, including the fundamental claims that the three-judge district court scheme violates the separation of powers and the constitutional requirement that "district court" means a single judge. Nor does H.B. 366's contingent creation of a "constitutional court" solve the problem, as it too is unconstitutional.

Plaintiffs have a right to a constitutional forum in which to litigate their claims. Since Utah's founding, cases have proceeded before single-judge district courts, and matters like judge assignments have been administered by the judiciary. The Legislature cannot upend the structure of the judiciary outlined in Utah's Constitution simply because it does not like the outcome of prior litigation. To uphold the separation of powers, remain faithful to the Constitution, and preserve public trust in the court system, these laws must be enjoined and declared unconstitutional. Furthermore, the Court should issue an order or writ directing (1) the three-judge panel to which Plaintiffs' case was transferred not to exercise jurisdiction over Plaintiffs' case, *see* Utah R. Civ. P. 65B(d)(2)(A), and (2) the transferor judge, Hon. Dianna Gibson, to perform the duty of exercising jurisdiction over Plaintiffs' case, *see* Utah R. Civ. P. 65B(d)(2)(B).

STATEMENT OF ISSUES

Issues: Whether H.B. 392, S.J.R. 5, H.B. 366, and/or S.J.R. 6 violate (1) Article V and Article VIII, Section 12(1) of the Utah Constitution by exercising powers appertaining to the Judicial Department; (2) Article VIII of the Utah Constitution because "district court" means a court presided over by a single judge; (3) Article I, Section 24; Article VI, Section 26; or Article I, Section 11, by conferring unequal and arbitrary power on government litigants; or (4) Article VIII, Section 1 by contingently stripping the district court of its power as a "trial court of general jurisdiction."

Standard of Review: Under Rule 19, "[w]hen no other plain, speedy, or adequate remedy is available," a party may petition this Court for extraordinary relief "referred to in Rule 65B of the Utah Rules of Civil Procedure." *Anderson v. Bates*, 2025 UT 51, ¶ 30, 582 P.3d 728; Utah R. App. P. 19(a). Under Rule 65B, extraordinary relief is available where an inferior court "exceed[s] its jurisdiction," "abuse[s] its discretion," or "fail[s] to perform an act required by law as a duty of office." Utah R. Civ. P. 65(B)(d)(2)(A) & (B). "[F]actors such as the egregiousness of the alleged error, the significance of the legal issue presented by the petition, the severity of the consequences occasioned by the alleged error, and additional factors" are all relevant to the analysis. *State v. Barrett*, 2005 UT 88, ¶ 24, 127 P.3d 682. Whether relief is ultimately granted is "left to the sound discretion" of this Court. *Id.* ¶ 23.[1]

[1] Because this matter comes to the Court on a Petition for Extraordinary Relief under Rule 19, preservation of issues is not required. *See* Utah R. App. P. 19(e). And in any event,

STATEMENT OF THE CASE

I. Case background

This redistricting case was filed in March 2022 following the Legislature's repeal of Proposition 4, an initiative enacted by Utah voters in 2018. The case has already resulted in a series of rulings by both the district court and this Court. As this Court recognized in February of this year, the district court has resolved several issues in the case, including by permanently enjoining S.B. 200 (the law that repealed Proposition 4) as violating Article I, Section 2 of the Utah Constitution, declaring Proposition 4 in effect as a result, and permanently enjoining the state's 2021 congressional map. *See* Order at 3-5, *League of Women Voters of Utah v. Utah State Legislature*, No. 20260019-SC (Utah Feb. 20, 2026) ("*League of Women Voters IV*"). But because of the Legislature's eleventh-hour amendment to Proposition 4's standards in October 2025 (S.B. 1011) and its enactment of a map that violated Proposition 4's requirements (Map C), Plaintiffs' remedy for Count V of the amended complaint and their challenge to S.B. 1011 are currently in a preliminary injunction posture before the district court.

Both before and after the district court's November 10, 2025 order, which preliminarily enjoined S.B. 1011 and Map C and ordered the adoption of a remedial congressional map, legislative leaders have announced their displeasure with the single district court judge presiding over this case.[2]

Plaintiffs raised these same issues before the district court and in previous briefing before this Court, after which this Court granted review.

[2] *See Speaker Updates: Judicial Overreach*, Utah Legislature (Oct. 26, 2025), https://house.utleg.gov/speaker-updates/; M.J. Jewkes & Lindsay Aerts, *'This is not fair to*

II. H.B. 392 and S.J.R. 5 create three-judge district court panels.

On February 13, 2026, the Legislature passed and the Governor signed H.B. 392, which enacted Utah Code § 78A-5-102.7 and took effect immediately.[3] H.B. 392 applied 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. H.B. 392, § 3(2)(a).[4] It allowed 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 provided that this notice "may not be challenged by any party" and "is not subject to judicial review." H.B. 392, § 3(2)(b)(i)-(ii). It stated that the "panel of three district court judges shall hear and decide, by majority decision, the civil action," and each judge, randomly selected, must come from a different judicial district. Utah Code § 78A-5-102.7(3)(a)-(b).

H.B. 392 directed that a chief judge "shall 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 a motion that would dispose of the action or any claim or defense in the action." Utah Code § 78A-5-102.7(5)(a)-(b). A judge may

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Utahns': State leaders react to Judge Gibson's ruling in redistricting case, ABC4 (Nov. 11, 2025), https://www.abc4.com/news/politics/inside-utah-politics/leaders-judge-gibson-redistricting/.

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

[4] Provisions of H.B. 392 which were altered or not re-enacted by H.B. 366, *see infra*, are cited using the relevant bill section. Provisions of H.B. 392 that remained unchanged after the passage of H.B. 366 are cited using the relevant Utah Code provision as it exists post-H.B. 366.

concur or dissent. Utah Code § 78A-5-102.7(5)(d). 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(6). H.B. 392 directed 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(7)(a)-(c). The Judicial Council did so.[5]

The same day it enacted H.B. 392, the Legislature adopted S.J.R. 5, which amended Rule 42 of the Utah Rules of Civil Procedure.[6] The amendment allowed 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 was pending in the district court on February 13, 2026. Utah R. Civ. P. 42(f)(1). 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(f)(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.

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[5] *District Court Panel*, Utah State Cts., https://www.utcourts.gov/en/courts/court-types/dist/district-court-panel.html (last visited June 8, 2026).
[6] S.J.R. 5, 2026 Gen. Sess. (Utah 2026), https://le.utah.gov/~2026/bills/static/SJR005.html.

III. Plaintiffs challenge H.B. 392 and S.J.R. 5.

On February 21, 2026, Plaintiffs filed a motion for leave to file a Fifth Supplemental Complaint raising claims challenging the constitutionality of H.B. 392 and S.J.R. 5 and filed a motion for a preliminary injunction. D. Ct. Docs. 848 & 850. Plaintiffs requested a scheduling conference for the parties to discuss whether Legislative Defendants would agree to postpone filing a notice to convene a three-judge panel until the district court resolved Plaintiffs' preliminary injunction motion and, if not, Plaintiffs indicated they would seek a temporary restraining order. D. Ct. Doc. 850 at 2. On February 22, 2026, Legislative Defendants and the Attorney General filed a notice pursuant to H.B. 392 and S.J.R. 5 to convene a three-judge panel. D. Ct. Doc. 855. On February 23, 2026, Plaintiffs filed a motion for a temporary restraining order to restrain operation of Legislative Defendants' notice until the district court could resolve Plaintiffs' preliminary injunction motion. D. Ct. Doc. 858.

On February 26, 2026, the district court issued a Minute Entry regarding Plaintiffs' motions for a preliminary injunction and a temporary restraining order, noting that because of S.J.R. 5's promulgation of Rule 42(f)(3), "this Court cannot rule on any pending motions because it now lacks jurisdiction." D. Ct. Doc. 864 at 2. The Court continued: "[T]his Court hereby notifies the presiding officer of the Judicial Council that the Utah Attorney General and the Utah Legislature have filed a notice requesting a panel of three district court judges be convened and that this action be transferred to that panel." *Id.* On February 26, 2026, Plaintiffs' case was transferred to a three-judge panel. D. Ct. Doc. 865. Plaintiffs in three

other high-profile cases in Utah also challenged H.B. 392 and S.J.R. 5, and State defendants filed similar notices of transfer in those three cases as well.[7]

IV. H.B. 366 and S.J.R. 6 amend the three-judge court and create a contingent constitutional court.

With multiple constitutional challenges to H.B. 392 and S.J.R. 5 pending, on March 6, the Legislature passed H.B. 366 and S.J.R. 6, which amended H.B. 392's three-judge panel scheme in three primary ways.

First, H.B. 366 creates three conditions for a case to be transferred to a three-judge panel: (1) the civil action must "challeng[e] the constitutionality of a state statute or legislation, a provision of the Utah Constitution, an action or inaction of the Legislature, an executive order, an administrative rule, or an inaction by the executive branch," (2) the action must "seek[] a declaratory judgment or injunctive relief," and (3) the action must be "brought against a state entity or a state official in the state official's capacity." Utah Code § 78A-5-102.7(2)(a)(i)-(iii). *Second*, it provides that any party, not just the governmental party, may request the transfer to the three-judge panel. Utah Code § 78A-5 102.7(2)(a). *Third*, it creates a contingency plan in case a court invalidates the three-judge district court. "[I]f a court invalidates or enjoins Section 78A-5-102.7," then a so-called "constitutional court" is created. Utah Code §§ 78A-5b-102 & -103. The constitutional court is "a trial

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[7] Defs.' Notice to Convene Three-Judge Panel Pursuant to Utah Code § 78-5-102.7, *Planned Parenthood Ass'n of Utah v. State*, No. 220903886 (Utah 3d Jud. Ct. Feb. 22, 2026); Defs.' Notice to Convene Three Judge Panel Pursuant to Utah Code § 78-5-102.7, *Roberts v. Dep't of Nat. Res.*, No. 250909533 (Utah 3d Jud. Ct. Feb. 22, 2026); Defs.' Notice to Convene Three-Judge Panel Pursuant to Utah Code § 78-5-102.7, *Utah Physicians for a Healthy Env't v. Utah Dep't of Nat. Res.*, No. 230906637 (Utah 3d Jud. Ct. Feb. 22, 2026).

court with limited and statewide jurisdiction" that has "equal status with the district and juvenile courts and the Business and Chancery Court." Utah Code § 78A-5b-103. The constitutional court is granted "exclusive jurisdiction" over a civil action filed after the effective date of H.B. 366 when three conditions exist: (1) the civil action must "challeng[e] the constitutionality of a state statute or legislation, a provision of the Utah Constitution, an action or inaction of the Legislature, an executive order, an administrative rule, or an inaction by the executive branch," (2) the action must "seek[] a declaratory judgment or injunctive relief," and (3) the action must be "brought against a state entity or a state official in the state official's capacity." Utah Code § 78A-5b-104(1)(a). The constitutional court also has "exclusive jurisdiction" over a civil action filed before the effective date of H.B. 366 if it meets those same requirements and "a party files a notice of removal within 45 days after the effective date of this chapter." Utah Code § 78A-5b-104(1)(b). S.J.R. 6 amended Utah Rule of Civil Procedure 42 and made technical and conforming changes to accomplish the purpose of H.B. 366.

Because H.B. 366 passed by over a two-thirds majority in each House, it became effective the day the Governor signed it into law on March 13, 2026. Legislative Defendants did not file a new transfer notice pursuant to H.B. 366 within 45 days of the bill's effective date.

V. Plaintiffs ask this Court for relief.

Plaintiffs first asked this Court for relief from H.B. 392 and S.J.R. 5 via Rule 19 and Rule 5 petitions filed on February 26, 2026. That same day, Plaintiffs also filed a Rule 8 motion to stay the transfer of the case to a three-judge panel and enjoin H.B. 392 and S.J.R.

5 pending resolution of their Rule 19 Petition. On March 13, Plaintiffs filed a supplement noting the updates resulting from the enactment of H.B. 366 and S.J.R. 6. That same day, Judge Conklin, chief judge of the three-judge district court panel to which this case has been transferred, granted Plaintiffs' motion to extend time to file a reply in support of their motion for a preliminary injunction until seven days after this Court's final disposition of the pending Rule 5 and Rule 19 petitions. D. Ct. Doc. 889. On March 18, Legislative Defendants filed a suggestion of mootness under Rule 37, which Plaintiffs opposed on March 31. On March 19, the district court panel issued an order denying as moot Plaintiffs' motion for a temporary restraining order. D. Ct. Doc. 891. On April 29, this Court set Plaintiffs' Rule 19 petition for argument on September 9, 2026, and ordered merits briefing.

SUMMARY OF ARGUMENT

The Legislature's mid-litigation attempt to remake Utah's judiciary violates the Constitution multiple times over. *First*, the Legislature's creation of a three-judge court and associated rules violates Article V's separation of powers because it exceeds the Legislature's limited role in administering the courts under Article VIII, Section 12(1).

Second, even if the Legislature were permitted to make some such changes to the structure of the judiciary, the changes in its new laws violate Article VIII because the text and history of the Utah Constitution make plain that in Utah, a "district court" consists of a single judge, not a three-judge panel.

Third, though the Legislature has claimed that the passage of H.B. 366 mooted Plaintiffs' challenges to H.B. 392, H.B. 366 does not have retroactive effect, and the transfer of this case was made pursuant to H.B. 392, not H.B. 366. Therefore, all of

Plaintiffs' claims against H.B. 392 remain live: it violates Article I, Section 24 (Uniform Operation of Law), Article VI, Section 26 (special laws prohibition), and Article I, Section 11 (Open Courts Clause), because it treats state and private litigants differently and the three-judge panel is not "open to all."

Fourth, H.B. 366's contingent creation of a constitutional court—which will become immediately operative if the three-judge panel scheme is enjoined—violates Article VIII, Section 1 by stripping the district court of its constitutional power as a "trial court of general jurisdiction" and thus is also unconstitutional.

ARGUMENT

I. The Legislature's creation of a three-judge district court violates the separation of powers.

The Legislature's creation of a three-judge district court unconstitutionally encroaches on the power of the Supreme Court and the Judicial Council in violation of Article V and Article VIII, Section 12(1). The Supreme Court, not the Legislature, has "the authority to supervise and oversee the administration of the lower courts of this state." *Hi-Country Ests. Homeowners Ass'n v. Bagley & Co.*, 2000 UT 27, ¶ 13, 996 P.2d 534; *see also Pleasant Grove City v. Terry*, 2020 UT 69, ¶¶ 49-50, 478 P.3d 1026 (noting that this Court has "constitutionally sanctioned supervisory authority" over lower courts). That includes, specifically, the "administrative rules or procedures governing the transfer of a case from one judge to another." *Hi-Country Ests.*, 2000 UT 27, ¶ 13. "Whatever power was conferred upon the courts by the Constitution cannot be enlarged or abridged by the

Legislature," regardless of whether the Legislature's action is "reasonable." *Patterson v. State*, 2021 UT 52, ¶¶ 150, 151, 504 P.3d 92 (citation modified).

The Legislature transgressed its authority when it purported to redefine the meaning of "district court." The Utah Constitution provides that "no person charged with the exercise of powers belonging [to one branch of government] shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted." Utah Const. art. V, § 1. It also provides that administering the courts is a judicial function: "[t]here is created a Judicial Council which shall adopt rules for the administration of the courts of the state." Utah Const. art. VIII, § 12(1). Because the administration of the court system is a judicial function, the Legislature may not "exercise any functions appertaining" to court administration "except in the cases [the Constitution] expressly direct[s] or permit[s]." Utah Const. art. V, § 1. Thus, the Legislature's plenary legislative power under Article VI does not extend to restructuring the court system by creating a three-judge district court. Unless expressly allowed by Article VIII, legislation aimed at court administration violates separation of powers.[8]

The limited power granted to the Legislature by Article VIII, Section 4 does not include the power to create a three-judge "district court." Section 4 provides:

> The Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state and shall by rule manage the appellate process. The Legislature may amend the Rules of Procedure and Evidence adopted by the

[8] All the express legislative powers set out in Article XIII would be superfluous if the Legislature had plenary power—arising from constitutional silence—to administer the court system.

> Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature.

Utah Const. art. VIII, § 4. But creation of three-judge "district courts" far exceeds merely amending rules of procedure. The Legislature's actions exceed its limited power in this area in violation of Article V and Article VIII, Section 12(1), in at least four ways.

First, the Legislature cannot amend procedural rules unconstrained by the Constitution. As Plaintiffs explain below, the Constitution itself creates the district court and that phrase has an original public meaning that does not include a three-judge court. The Legislature cannot change procedural rules in a manner that violates the Constitution.

Second, the Legislature cannot—as it has so contended—amend the Rules of Civil Procedure to redesign the district court's structure. The Constitution separately addresses which entities are empowered to (1) create rules for administering courts and (2) create or amend procedural rules. Only the Judicial Council may "adopt rules for the administration of the courts of the state." Utah Const. art. VIII, § 12(1). By contrast, the Supreme Court must adopt procedural rules, which the Legislature may amend. *See* Utah Const. art. VIII, § 4. These provisions must be "read in the light of each other . . . to effect a harmonious construction of the whole." *Wadsworth v. Santaquin City*, 28 P.2d 161, 167 (Utah 1933). The constitutional distinction between these rulemaking powers—particularly because they are assigned to different branches—must be respected.

A rule creating three-judge district court panels falls squarely within the power reserved exclusively to the Judicial Council to regulate "the administration of the courts of the state." Utah Const. art. VIII, § 12(1). Such a rule is nothing like typical procedural rules,

which govern how a litigant must act in prosecuting or defending a case—*e.g.*, the timing and process for pleading claims and defenses, adding parties, filing motions, seeking discovery, conducting trial, and obtaining judgment. These rules focus on the conduct of the litigants, not the structure of the court. Because the Constitution assigns to the judicial branch the power to regulate court administration without expressly authorizing any legislative role—in stark contrast to Section 4's treatment of the procedural and evidentiary rulemaking processes—the Legislature cannot amend the Rules of Civil Procedure to restructure the district court. *See Patterson*, 2021 UT 52, ¶ 146 ("We presume that the people of Utah chose the words of their constitution with care, and that causes us to conclude that the omission of 'as provided by statute' and 'except as limited . . . by statute' was intentional.").

Third, even if the Legislature could amend the procedural rules to redesign the court structure as Legislative Defendants have contended, that is not what it did here. To start, neither H.B. 392 nor H.B. 366 constitute amendments to this Court's Rules of Civil Procedure and thus cannot be sustained as such. In *Brown v. Cox*, 2017 UT 3, ¶ 24, 387 P.3d 1040, this Court held that "a bill amending a statute" was not a "joint resolution amending a rule of procedure" and thus not a constitutional exercise of the Legislature's Article VIII, Section 4 power. Although H.B. 392 and H.B. 366 were accompanied by S.J.R. 5 and S.J.R. 6, those rule changes do not on their own establish three-judge panels. *See, e.g.*, Utah R. Civ. P. 42(f)(1) ("A party may file a notice to convene a district court panel, *as described in Utah Code section 78A-5-102.7 . . .*.) (emphasis added).

Moreover, even if the procedural rules could in theory be amended in this manner, the Legislature's creation of three-judge district court panels exceeds the scope of a permissible amendment to the Rules of Civil Procedure. As this Court explained in *Brown*, "[b]y the constitution's plain language, the Legislature does not adopt rules of procedure and evidence; it amends the rules the supreme court creates." 2017 UT 3, ¶ 17. "By distinguishing between adoption and amendment, the Constitution assigns this court the responsibility to put rules into effect and allows the Legislature to modify them by supermajority." *Id.* ¶ 21. This distinction imposes not just procedural requirements on how the Legislature can amend the rules, *see id.* ¶¶ 22-24, but also must impose substantive limitations on what constitutes adoption versus amendment. This Court never adopted a Rule of Procedure governing the number of district judges that adjudicate a case.[9] Because no such rule exists, the Legislature had no authority to amend unrelated Rules— such as Rules 1 and 42—to regulate three-judge district court panels. For Article VIII, Section 4's distinction between adoption and amendment to be meaningful, a legislative amendment must at least substantively relate to a preexisting Rule. The Legislature's creation of a three-judge district court panel does not.

Fourth, even beyond exceeding the Legislature's powers vis-à-vis the Judicial Council when it comes to the structure of the courts, H.B. 392 and 366 also violate the separation of powers by purporting to compel the Judicial Council to adopt particular court administration rules. These relate to the assignment of a case to a three-judge panel, the

[9] Likely because "district court" *means* a single presiding judge.

selection of panel judges, the maintenance and publication of a list of judges qualified to serve on a panel, and the hiring of certain staff to assist the panel. Utah Code § 78A-5-102.7(7)-(8). Such administrative activities are judicial powers over which the Constitution grants the Legislature no authority. *See* Utah Const. art. VIII, § 12(1).

Similar attempts in states across the country to change court structure and jurisdiction have been widely rejected for violating the separation of powers. When the Kentucky Legislature passed a law creating a "new mechanism for automatic transfer" of challenges to the constitutionality of state statutes, the Kentucky Supreme Court held that it "invade[d]" the court's authority to adopt rules of procedure and was a "clear violation of the separation of powers doctrine." *Arkk Props., LLC v. Cameron*, 681 S.W.3d 133, 140-42 (Ky. 2023). The court also held that the law's mandate of certain actions by courts and court staff to effectuate the new transfer rule likewise "invade[d]" the judicial authority of Kentucky courts. *Id.* at 142. Similarly, the Arkansas Supreme Court ruled unconstitutional a state law that changed which court had jurisdiction over constitutional challenges to state statutes. *Norris v. Indep. Cnty.*, 2026 Ark. 91, at 11, 2026 WL 1173111, at *5. While the Arkansas Constitution, like the Utah Constitution, gave the legislature power to amend rules of procedure, changing the structure or jurisdiction of the courts via amendments to the rules was a "sleight of hand" that "[t]he constitution d[id] not permit." *Id.* at 12.

Courts in other states also carefully guard against instances where state legislatures dictate administrative or other actions that courts and court personnel must take, as H.B. 392 and H.B. 366 purport to do. For instance, the Kansas Supreme Court held that its "essential power" in the "administration of district courts" was violated by a law that

removed from the court the ability to select chief district court judges. *Solomon v. Kansas*, 364 P.3d 536, 546 (Kan. 2015); *id.* at 545 (stating courts have the "authority and duty to preserve the constitutional division of powers against disruptive intrusion by one branch of government into the sphere of a coordinate branch of government"); *see also Jud. Att'ys Ass'n v. Michigan*, 586 N.W.2d 894, 896 (Mich. 1998) (statute assigning county personnel responsibilities for court employees impermissibly "encroach[ed] on the . . . judicial branch" because "judicial branch's powers necessarily include the administrative function of controlling" court employees); *In re P.L. 2001, Chapter 362*, 895 A.2d 1128, 1136 (N.J. 2006) ("[c]ourt's authority over court administration is 'unfettered' and 'plenary,' in contrast to its authority over practice and procedure, which is 'subject to law'") (internal citation omitted).

The Utah Legislature's attempt to wrest from the Judicial Council its authority to regulate the administration of Utah's court system represents a similar intrusion into powers that the Constitution grants to the judicial branch, not the Legislature. This Court should follow the example of other state courts that have rejected legislative efforts to infringe the power of the judiciary.

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

A. The text of Article VIII permits only single-judge district courts.

Article VIII does not permit multi-judge district court panels. 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's provisions

regarding the two courts it creates must be read together "to effect a harmonious construction of the whole." *Wadsworth*, 28 P.2d at 167.

Article VIII, Section 2 specifically configures the Supreme Court to be a multi-justice panel, requiring that there be five or more justices, allowing the Court to sit "en banc or in divisions," requiring constitutional rulings to be upon "the concurrence of a majority of all justices," and requiring that disqualified justices be replaced to ensure a full, multi-justice complement to adjudicate a case. *See* Utah Const. art. VIII, § 2. By contrast, the Constitution does not configure the district court to be panels of judges adjudicating cases. *See* Utah Const. art. VIII, § 5. This distinction is meaningful. *See, e.g.*, *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, C.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.").

Neither Article VIII, Section 6 nor Article VIII, Section 1 authorize the Legislature to create district court panels. Article VIII, Section 6 permits the Legislature to change the total number of district judge positions in the state, but not the number of district court judges presiding over a single case. Likewise, creation of a three-judge panel is not a proper exercise of the Legislature's power to create "other courts." Utah Const. art. VIII, § 1. The text of Article VIII makes clear that this is a power to create a court with specified jurisdiction and designated judges, not ad hoc panels of judges within the district court.

Legislative Defendants have conceded that it is "non-controversial and uncontested" that neither of these provisions provide authority for the Legislature's creation of three-judge district court panels. Resp. to Rule 19 Pet. for Extraordinary Review at 14 (Mar. 19, 2026).

B. History shows that in Utah, the original public meaning of "district court" includes only a single judge.

Even if Article VIII's text were ambiguous, the history removes any doubt that the original public meaning of "district court" is a single judge presiding over a case. *See League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 101, 554 P.3d 872 ("*League of Women Voters I*") (inquiry requires ascertaining "objective original public meaning of the text").

From the nation's founding through Utah's statehood, "district court" meant a single judge presiding over a case. The idea that a "district court" could be a three-judge panel would have been entirely foreign when the Constitution was adopted in 1895. The Judiciary Act of 1789, one of Congress's first laws, created a "district court," with each judicial district "to consist of *one judge*." Act of Sep. 24, 1789, ch. 20, § 3, 1 Stat. 73 (1798) (emphasis added). Although the Act created multi-judge panels for the circuit court[10] and Supreme Court, *id.*, at no point from 1789 through 1895 did the federal judiciary ever have a district court with multi-judge panels.

[10] By the time of Utah's statehood, the circuit court was nearing its end, with the size of its panel reduced over time and its appellate jurisdiction eliminated in 1891. *See* Act of Apr. 10, 1896, ch. 22, § 2, 16 Stat. 44 (1869); Act of Mar. 3, 1891, ch. 517, 26 Stat. 826 (1891). Indeed, Utah never had a federal circuit court. *See* Glen Fairclough, *Court Organization*, Utah Div. of Archives & Recs. Serv. (updated June 29, 2010), https://archives.utah.gov/research/guides/courts-system/.

Congress enacted Utah's Territorial Organic Act in 1850, which expressly provided for a district court with a single judge per district. *See* Act of Sep. 9, 1850, ch. 51, 9 Stat. 453 (1950); *id.* § 9 ("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") (emphasis added). For some time, there was a single district judge presiding over the entire Territory.[11]

The 1895 Constitution reflected this consistent understanding of "district court." Like today's Article VIII, it established a Supreme Court and a district court and specified that the Supreme Court would be a multi-judge panel. *See* Utah Const. art. VIII, § 1 (1895). It provided that the state would be divided into judicial districts, with each having "at least *one*, and not exceeding three judges." *Id.* § 5 (emphasis added). It provided that "*[a]ny District Judge* may hold a District Court in any county at the request of *the* judge of the district," and allowed for cases to be "tried by *a* judge pro tempore." *Id.* (emphasis added). Like today's Article VIII, it empowered the Legislature to increase or decrease the total number of district judges. *Id.* § 6. But nowhere was there even a suggestion that more than one judge would be assigned to a single case. The text and history from the founding to statehood conclusively shows that the original public meaning of "district court" in Utah's Constitution is a single presiding judge.

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

The 1984 revision to Article VIII did not alter that meaning. First, the term "district court" entered the Utah Constitution in 1895, not 1984. *See Patterson*, 2021 UT 52, ¶ 92 ("[W]hen the people of Utah amend the constitution, we look to the meaning that the public would have ascribed to the amended language when it entered the constitution."). But moreover, the 1984 revision, which resulted in Article VIII's current language, *maintained* the Supreme Court and the district court as the constitutionally established courts, and revised only the judicial selection and judicial conduct provisions. *See generally* Utah Const. art. VIII. Nothing in the amended text nor in the surrounding circumstances of the 1984 amendment suggests that the voters thought they were being asked to alter the established understanding that "district court" means a single-judge trial court of general jurisdiction. The Constitutional Revision Commission's report emphasized that the district court was "essential to a judicial system" and explained that its changes to Section 6, which allows the Legislature to set the number of district judge positions, were largely stylistic and left it "basically unchanged" from the 1895 Constitution.[12] The Voter Information Pamphlet said nothing about redefining the meaning of "district court" and instead focused on relieving the Supreme Court's docket and revising the judicial selection process.[13] The ballot language did not suggest a redefinition of "district court."[14] Newspaper articles and

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[12] Report of the Constitutional Revision Comm'n, at 28-30 (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.
[13] *See* Proposition 3, Utah Voter Information Pamphlet, General Election November 6, 1984, at 14-30 (Sep. 27, 1984), https://vote.utah.gov/wp-content/uploads/2023/09/1984-VIP.compressed.pdf.
[14] *Id.* at 14.

editorials from the Commission's leaders and key legislators also focused on these provisions, saying nothing about redefining "district court."[15]

The only example of three-judge district courts was in the federal system, and they had become rare by 1984. From 1910 through 1976, Congress had established such courts, requiring them any time a state law was challenged on constitutional grounds.[16] But after much criticism from the U.S. Supreme Court, litigants, and the bar, Congress abolished federal three-judge district courts in all but one narrow category of litigation—constitutional challenges to legislative and congressional apportionment plans.[17] 28 U.S.C. § 2284.

Notably, Congress was authorized to create three-judge district courts because of the scope of its Article III power to shape the federal judiciary. *See* U.S. Const. art. III, § 1 ("The 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."). But when Utahns revised Article VIII in 1984, they did not grant the Legislature such unfettered power to create and define "inferior courts" of any type and membership, but rather

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[15] *See, e.g.*, Dr. Martin B. Hickman, *Amending the Judicial Article Merits Close Attention*, Salt Lake Trib., Oct. 14, 1984, at 18A, https://newspapers.lib.utah.edu/ark:/87278/s6k98tcs/29127164; Pat McCutcheon, *Proposition 3 would reshape judicial system*, Logan Herald J., Oct. 16, 1984, at 1, https://newspapers.lib.utah.edu/ark:/87278/s6dr8s3q/30099471; Sen. E. Verl Asay, *Senator Says Proposition 3 Contains Flaws*, Orem-Geneva Times, Oct. 17, 1984, at 2, https://newspapers.lib.utah.edu/ark:/87278/s6qk18z4/22908281.

[16] *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).

[17] *See id.*

maintained the same trial court that had existed since (and before) 1895—the "district court." Nothing suggests that voters would have understood the state district court to have come to encompass the concept of three-judge panels on account of a then-largely abolished federal court concept.[18] Utah's judiciary had no history with such panels, and nothing supports the conclusion that the original public meaning of the phrase, as used in Utah's Constitution, changed so radically in 1984. Indeed, if that was intended, then it was somehow missed for the preceding 42 years until H.B. 392's enactment.

III. H.B. 392 violates the Uniform Operation of Laws and Open Courts Clauses and the prohibition on special laws, and Plaintiffs' challenges on these grounds remain live.

A. H.B. 366 does not have retroactive effect and Plaintiffs' original claims thus remain live.

H.B. 366 does not have retroactive effect and thus all of Plaintiffs' claims against H.B. 392 remain live. Legislative Defendants filed a notice, and a three-judge court was convened pursuant to H.B. 392's unconstitutional provisions. Legislative Defendants have not filed a new notice—or anything else—to suggest that the panel should instead be convened pursuant to H.B. 366. In three other cases where the State filed a notice under H.B. 392, the State subsequently filed a new notice of transfer pursuant to H.B. 366.[19]

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[18] Since the near-total abolition of federal three-judge district courts eight years prior to the 1984 amendments, no three-judge district court would be empaneled in Utah until February 2026. *See Powers Gardner v. Henderson*, No. 2:26-CV-00084-RJS-JCB, 2026 WL 496448, at *1 (D. Utah Feb. 23, 2026).

[19] Contingent Notice to Convene Three-Judge Panel Pursuant to Utah Code § 78A-5-102.7, *Utah Physicians for a Healthy Env't v. Utah Dep't of Nat. Res.*, No. 230906637 (Utah 3d Jud. Ct. Mar. 16, 2026); Contingent Notice to Convene Three Judge Panel Pursuant to Utah Code § 78A-5-102.7, *Planned Parenthood Ass'n of Utah v. State*, No. 220903886 (Utah 3d Jud. Ct. Mar. 16, 2026); Contingent Notice to Convene Three Judge Panel Pursuant to

Legislative Defendants did not file such a notice in this case by the March 30, 2026 deadline. *See* Utah Code § 78A-5-102.7(2)(b); Utah R. Civ. P. 42(f)(1)(C). Thus H.B. 392 remains the operative law here, and Plaintiffs' constitutional claims against it remain. In previous briefing, Legislative Defendants claimed that H.B. 366 somehow mooted all of Plaintiffs' claims but failed to explain how. Ordinarily, courts in this state "apply the law as it exists at the time of the event regulated by the law in question." *State v. Clark*, 2011 UT 23, ¶ 13, 251 P.3d 829. Here, H.B. 392 governed when the three-judge panel notice was filed, and it is the only law under which a notice has been filed in this case.

Moreover, to give a statute retroactive effect, Utah courts require a clear and unequivocal statement of intent. *See id.* ¶ 6; Utah Code § 68-3-3 ("A provision of the Utah Code is not retroactive, unless the provision is expressly declared to be retroactive."). But the closest H.B. 366 gets is not close enough.

Under H.B. 366, "[a] notice to convene a panel that was filed before [the effective date of this bill], and met the requirements of this section and Utah Rules of Civil Procedure, Rule 42, at the time the notice was filed is valid." Utah Code § 78A-5-102.7(2)(c). That provision is subject to at least two interpretations, only one of which could support an intent to make H.B. 366 retroactive.

The most natural reading of this provision is that the passage of H.B. 366 does not invalidate a notice filed under H.B. 392, at least until a court invalidates H.B. 392, and then and only then does H.B. 366 apply to that notice. The lack of clarity in the Legislature's

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Utah Code § 78A-5-102.7, *Roberts v. Dep't of Nat. Res.*, No. 250909533 (Utah 3d Jud. Ct. Mar. 16, 2026).

choice of words means that the provision fails the test of evincing a "clear and unavoidable implication that the statute operates on events already past." *Waddoups v. Noorda*, 2013 UT 64, ¶ 7, 321 P.3d 1108 (internal citation omitted). Nor can it be said that either H.B. 392 or H.B. 366 govern purely procedural rights, as their provisions plainly affect the timeliness of citizens' access to the judicial system. *See* Utah Const. art. I, § 11. There is a long history of courts protecting litigants' vested rights in particular court rules or defenses. *Mitchell v. Roberts*, 2020 UT 34, ¶ 48, 469 P.3d 901. "[R]etroactive legislative interference" with such vested rights is "an unconstitutional exercise of legislative power." *Id.* ¶ 49.

Even if H.B. 366 has retroactive effect, Plaintiffs' core claims—that the Legislature has violated the separation of powers, and that "district court" means a single presiding judge—would remain. *See supra* Parts I & II. Nor are Plaintiffs' Uniform Operation of Laws, special laws, and Open Courts claims completely resolved by the passage of H.B. 366. Under H.B. 366, the Legislature still retains unequal and special litigation advantage including by requiring private litigants (but not the government) to pay $1,500 to convene a three-judge panel, Utah Code § 78A-2-301(1)(bb), and by allowing the government (but not private litigants) to transfer a case to a three-judge court after entry of an injunction and then seek reconsideration of that injunction, Utah R. Civ. P. 65A(g). And as explained below, H.B. 366 suffers from its own, new constitutional problems. But absent the clear and unavoidable indication of retroactive effect the law requires, all of Plaintiffs' claims against H.B. 392 remain live.

B. H.B. 392 and S.J.R. 5 violate the Utah Constitution's Uniform Operation of Laws Clause, its prohibition on special laws, and the Open Courts Clause.

Without the amendments in H.B. 366, the unequal, arbitrary rules enacted by H.B. 392 and S.J.R. 5 violate multiple provisions of the Utah Constitution.

First, H.B. 392 violates the Uniform Operation of Laws 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 UT 91, ¶ 19, 103 P.3d 135). To establish a violation of the Clause, a party must show (1) a classification that (2) imposes disparate treatment on similarly situated persons (3) without reasonable justification. *Taylorsville City v. Mitchell*, 2020 UT 26, ¶ 37, 466 P.3d 148. In *Bingham*, the Court explained that it applies heightened scrutiny to the third prong of the test in cases, like this one, implicating open courts. 2024 UT 38, ¶ 40. H.B. 392 fails this test.

H.B. 392 creates a classification that treats state and private litigants differently, because it grants them different powers to determine the composition of their district court, thus satisfying the first and second prongs of the test. And for purposes of H.B. 392, state and private litigants are similarly situated. "To determine if individuals are similarly situated, we have frequently looked 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."). While government litigants might be differently situated from private litigants in other contexts, *see, e.g.*, Utah Code § 67-5-41(1) (unconditional right for attorney general to intervene in cases challenging constitutionality of statutes), that is not true for purposes of this classification. There is nothing unique about the government as compared to private litigants insofar as it might wish to remove judges that disagree with its positions on the merits.

H.B. 392 is standardless and arbitrary, satisfying the third prong of the test. The government, acting as lawgiver, has granted the government, acting as litigant, an arbitrary power no other litigant enjoys—the power to divest the assigned judge of jurisdiction to hear the case merely because the government disagrees with the judge's rulings. That unilateral right springs to life each time the complaint is amended, a one-sided power that is neither reasonable nor justified. Arbitrary and self-serving, H.B. 392 fails any level of scrutiny.

Second, H.B. 392 violates Article VI, Section 26's special law prohibition. *See* Utah Const. art. VI, § 26 ("No private or special law shall be enacted where a general law can be applicable."). Laws that "confer[] particular privileges or impose[] peculiar disabilities . . . upon a class of persons arbitrarily selected" violate this provision. *Hulbert v. State*, 607 P.2d 1217, 1224 (Utah 1980) (quoting *Utah Farm Bureau Ins. Co. v. Utah Ins. Guar. Ass'n*, 564 P.2d 751, 754 (Utah 1977)). For the same reasons that H.B. 392 violates the Uniform Operation of Laws Clause, it creates an unconstitutional special law.

It privileges state litigants with the power to determine the tribunal—a privilege that reemerges whenever the complaint is amended. It is wholly arbitrary, with no standards guiding when that power can be exercised. It offends not only the Operation of Laws Clause, but the very notion of the rule of law.

Third, these same features violate the Open Courts Clause of Article I, Section 11. The "clear language" of the Open Courts Clause "guarantees access to the courts and a judicial procedure that is based on fairness and equality." *Berry By & Through Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 675 (Utah 1985). Even if Article VIII permitted three-judge panels within the district court, H.B. 392 violates the Open Courts Clause because it creates a tribunal (a three-judge panel) where access is guaranteed only to the government, and which is fundamentally *un*fair and *un*equal in its procedures. Furthermore, H.B. 392 violates the Open Courts Clause's command that courts be available "without . . . unnecessary delay" by creating recurring 45-day periods in which a plaintiff's case may be upended merely because they amend their complaint—no matter the nature or scope of the amendment and even if it occurs during or after trial. This same feature of H.B. 392 further violates the Open Courts Clause by "arbitrarily depriv[ing]" litigants of "effective remedies" by allowing the government to transfer a case to a three-judge panel just before the original single-judge court is about to issue preliminary relief. *See Berry*, 717 P.2d at 675. H.B. 392 empowers the government to obfuscate justice and in doing so violates the promise of open courts.

Fourth, even if any of the challenged enactments could be implemented constitutionally in some circumstance, the transfer of Plaintiffs' case to the three-judge

panel is unconstitutional as applied to Plaintiffs. *See Archuleta v. State*, 2020 UT 62, ¶ 35 n.3, 472 P.3d 950. The facts make plain that this case, and the three other high-profile cases in which transfer notices were filed, were the express targets of the three-judge court scheme. The Legislature's attempt to alter the rules not only for prospective litigation but for long-running cases such as this one violates Plaintiffs' rights to due process and uniform operation of laws as applied to them. *See Mitchell*, 2020 UT 34, ¶ 5; *Malan v. Lewis*, 693 P.2d 661, 671 (Utah 1984); *see also Foil v. Ballinger*, 601 P.2d 144, 151 (Utah 1979) ("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.").

IV. H.B. 366's contingent creation of a constitutional court violates Article VIII by depriving the district court of its constitutionally conferred status as a court of general jurisdiction.

H.B. 366's contingent creation of a "constitutional court" if the three-judge district court is enjoined, violates Article VIII of the Utah Constitution by divesting the district court of its constitutionally conferred status as the "trial court of general jurisdiction." Utah Const. art. VIII, § 1. If this Court enjoins the three-judge court scheme, it can and should also enjoin the constitutional court that would be triggered, as it too is unconstitutional. As this Court has explained, "whatever power was conferred upon the courts by the Constitution cannot be enlarged or abridged by the Legislature." *Brown v. Cox*, 2017 UT 3, ¶ 14, 387 P.3d 1040 (quoting *State ex rel. Robinson v. Durand*, 104 P. 760, 762-63 (Utah 1908)). Moreover, "[A]rticle VIII's explicit vesting of jurisdiction in the various courts of

the state is an implicit prohibition against any attempt to vest such jurisdiction elsewhere." *Salt Lake City v. Ohms*, 881 P.2d 844, 849 (Utah 1994).

This is so because "[e]very 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 . . . , as it is to take away duties that naturally belong to it." *Allen v. Rampton*, 463 P.2d 7, 9 (Utah 1969) (quoting *State ex rel. Josephs v. Douglas*, 110 P. 177 (Nev. 1910)); *see also Salt Lake Cnty. v. Utah State Tax Comm'n*, 2024 UT 11, ¶ 39, 548 P.3d 865 ("Because the Constitution expressly vests that authority in the Commission, the legislature 'has no power to delegate that function to any other office or commission.'") (quoting *State ex rel. Pub. Serv. Comm'n v. S. Pac. Co.*, 79 P.2d 25, 36 (Utah 1938)).

If this Court rules for Plaintiffs and enjoins use of the three-judge panel, the "constitutional court" will automatically become operative. Utah Code §§ 78A-5b-102 & -103. Because it will immediately inflict constitutional harm, this Court need not wait, to address the constitutional court's validity, and it should issue declaratory relief and enjoin enforcement of these provisions too. *See Univ. of Utah v. Shurtleff*, 252 F. Supp. 2d 1264, 1276 (D. Utah 2003) (quoting *United States v. Colorado Sup. Ct.*, 87 F.3d 1161, 1166 (10th Cir. 1996)) ("[O]nce the gun has been cocked and aimed and the finger is on the trigger, it is not necessary to wait until the bullet strikes" for a litigant to receive relief.).

A. Article VIII does not authorize the Legislature to abridge the district court's general subject matter jurisdiction.

Article VIII does not authorize the Legislature to abridge the district court's general subject matter jurisdiction. Article VIII separately establishes both the subject matter jurisdiction and the original jurisdiction of the district court. As this Court has explained, these are different concepts. "Original jurisdiction is a 'court's power to hear and decide a matter *before any other court can review the matter*.'" *Patterson v. State*, 2021 UT 52, ¶ 80 (quoting *Original Jurisdiction*, Black's Law Dictionary (11th ed. 2019)) (emphasis added). "This is in contrast to subject matter jurisdiction, which places boundaries on the exercise of jurisdiction" and is defined as "'[j]urisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things.'" *Id.* ¶ 80 n.14 (quoting *Subject-Matter Jurisdiction*, Black's Law Dictionary (11th ed. 2019)).

Section 1 creates the district court and defines its subject matter jurisdiction: "The 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 (emphasis added). By conferring "general jurisdiction" on the district court, the Constitution mandates that its subject matter jurisdiction be "unlimited or nearly unlimited." *See Court of General Jurisdiction*, Black's Law Dictionary (12th ed. 2024) (defining "court of general jurisdiction" as "[a] court having unlimited or nearly unlimited trial jurisdiction in both civil and criminal cases"). And while Section 1 gives the Legislature the authority to vest judicial power in additional

statutorily-created courts, it provides no authority for the Legislature to limit the "general jurisdiction" of the district court. Accordingly, as this Court has recognized, "[o]ur constitution grants the district courts, as general jurisdiction courts, the authority to adjudicate matters that affect a citizen's legal rights." *Matter of Childers-Gray*, 2021 UT 13, ¶ 65, 487 P.3d 96.

Similarly, Section 5 grants the district courts original jurisdiction, *i.e.*, the power to be the first court to adjudicate a matter. *See Patterson*, 2021 UT 52, ¶ 80.

> The 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. Section 5 thus by default confers upon the district courts the power to be the first court to decide "all matters" but empowers the Legislature to "limit" that default arrangement by conferring original jurisdiction over some matters upon "other courts." Utah Const. art. VIII, § 5. The Legislature's power to change the order in which the district court may hear and decide a matter is not, however, the power to withdraw from the district court its jurisdiction to hear and decide a matter altogether.

Sections 1 and 5 must be "read in the light of each other . . . to effect a harmonious construction of the whole." *Wadsworth*, 28 P.2d at 167. As this Court explained in construing Section 5's conferral of power on the district courts to issue extraordinary writs, "[w]e presume that the people of Utah chose the words of their constitution with care, and that causes us to conclude that the omission of 'as provided by statute' and 'except as limited . . . by statute'" was intentional." *Patterson*, 2021 UT 52, ¶ 146 (quoting Utah Const.

art. VIII, § 5). The same is true here. Section 5 expressly empowers the Legislature to limit the power of the district court to be the first court to hear a matter, but grants no power to the Legislature to abridge the district court's general subject matter jurisdiction. Thus, in the "absence of express constitutional authority," the Legislature is "powerless to . . . take away duties that naturally belong to" a trial court of general jurisdiction. *Allen*, 463 P.2d at 9 (citation modified).

Accordingly, when the Legislature establishes "other courts" pursuant to its Section 1 authority, it can shift to them the original jurisdiction to hear cases that otherwise would have been heard first by the district court, but not subject matter jurisdiction in a manner that deprives the district court of its status as Utah's "trial court of general jurisdiction." Utah Const. art. VIII, § 1.[20]

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[20] Unlike Utah, other states' constitutions provide their legislatures more power to shape their trial court's subject matter jurisdiction. *See, e.g.*, Kan. Const. art. III, § 6(b) ("The district courts shall have such jurisdiction in their respective districts as may be provided by law."); Ala. Const. art. VI, §§ 139, 142 (vesting judicial power in, *inter alia*, "a trial court of general jurisdiction known as the circuit court" and providing that "[t]he circuit court shall exercise general jurisdiction in all cases except as may otherwise be provided by law"); Tenn. Const. art. VI, § 8 ("The jurisdiction of the Circuit, Chancery and other inferior Courts, shall be as now established by law, until changed by the Legislature."); Ind. Const. art. 7, § 8 ("The Circuit Courts shall have such civil and criminal jurisdiction as may be prescribed by law."); N.C. Const. art. IV, § 12(3) ("Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State."); Conn. Const. art. V, § 1 ("The judicial power of the state shall be vested in a supreme court, a superior court, and such lower courts as the general assembly shall, from time to time, ordain and establish. The powers and jurisdiction of these courts shall be defined by law."); R.I. Const. art. X, §§ 1, 2 (vesting judicial power in "one supreme court, and in such inferior courts as the general assembly may, from time to time, ordain and establish" and providing that "[t]he inferior courts shall have such jurisdiction as may, from time to time, be prescribed by law"); Alaska Const. art. IV, § 1 ("The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law."); Tex. Const. art.

This Court has recognized as much. In *Anderson v. Anderson*, the Court considered whether a juvenile court order could supersede a prior district court order with different terms for child custody and support. 416 P.2d 308, 308 (Utah 1966). The Court concluded the answer was no. The Court first analyzed the Juvenile Court Act of 1965's statutory language and recognized the legislative purpose of providing a dedicated forum for cases concerning the welfare of children. *Id.* at 310. "But to go beyond that supplemental purpose and oust the District Court of jurisdiction entirely would not be in accord with the meaning or intent of the statute." *Id.* "More importantly," the Court emphasized, construing the statute in that manner would create constitutional problems:

> [S]uch an application of the statute would meet with grave difficulties in relation to the basic structure of our court system. The District Courts are created by our Constitution as courts of general jurisdiction having authority in all cases both civil and criminal. This includes divorce and all matters relating thereto, including custody and support money. Whereas the Juvenile Court is created by statute and has jurisdiction only in the cases specified therein.

Id. The Court thus concluded that the Juvenile Court Act "does not *and could not* limit or curtail the authority of the District Court," but rather "its action[s] must be regarded as supplementary to the action of the District Court" and "its authority [does not] supersede or divest the District Court of jurisdiction." *Id.* (emphasis added). Other states' highest

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V, § 1 ("The judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law. The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto."); Or. Const. art. VII, § 1 ("The judicial power of the state shall be vested in one supreme court and in such other courts as may from time to time be created by law.").

courts have also held that their legislatures cannot abridge their trial courts' constitutionally conferred general subject matter jurisdiction.[21]

In sum, while the Legislature is empowered to create statutory courts, to grant them specified subject matter jurisdiction, and to shift to them original jurisdiction otherwise possessed by the district court, it cannot withdraw from the district court subject matter

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[21] *See, e.g.*, N.J. Const. art. VI, § III(2) ("The Superior Court shall have original general jurisdiction throughout the State in all causes."); *O'Neill v. Vreeland*, 77 A.2d 899, 901-02 (N.J. 1951) (holding that the superior court's jurisdiction is "fixed by the Constitution and can be altered neither by rule of this Court nor by act of the Legislature"); N.Y. Const. art. VI, § 7 ("The supreme court shall have general original jurisdiction in law and equity . . . ."); *People v. Correa*, 933 N.E.2d 705, 10 (N.Y. 2010) ("[T]he Legislature cannot by statute deprive [the] Supreme Court of one particle of its jurisdiction, derived from the Constitution (Art. VI), although it may grant concurrent jurisdiction to some other court." (citation modified)); *id.* (explaining that "any effort by the Legislature to abridge, limit or qualify the broad jurisdiction conferred under article VI, § 7 would be unconstitutional and void") (internal quotation marks omitted); W. Va. Const. art. VIII, § 6 ("Circuit courts shall have original and general jurisdiction of all civil cases at law where the value or amount in controversy, exclusive of interest and costs, exceeds one hundred dollars unless such value or amount is increased by the Legislature . . . ."); *Halltown Paperboard Co. v. C. L. Robinson Corp.*, 148 S.E.2d 721, 724 (W. Va. 1966) ("When a court, created and in existence by virtue of the Constitution, is granted certain jurisdiction by that document, the legislature has no power to impair the essential nature or jurisdiction thereof. A constitutional court is not subject to legislative control unless specific authority is conferred upon the legislature by the Constitution.") (internal citations omitted); Neb. Const. art. V, § 9 ("The district courts shall have both chancery and common law jurisdiction, and such other jurisdiction as the Legislature may provide . . . ."); *Jesse B. v. Tylee H.*, 883 N.W.2d 1, 6 (Neb. 2016) ("The Legislature cannot limit or take away the broad and general jurisdiction of the district courts, as conferred by the Nebraska Constitution. But it can give county courts concurrent original jurisdiction over the same subject matter."); Ky. Const. §§ 109, 112(5) (vesting judicial power in, *inter alia*, "a trial court of general jurisdiction known as the Circuit Court" and providing that "[t]he Circuit Court shall have original jurisdiction of all justiciable causes not vested in some other court."); *Hisle v. Lexington-Fayette Urb. Cnty. Gov't*, 258 S.W.3d 422, 432 (Ky. 2008) ("[T]he circuit court has extensive subject matter jurisdiction over all types of cases in common law and equity flowing directly from and conferred by the constitution that are not subject to limitation or infringement by statutes enacted by the legislature.").

jurisdiction in a manner that abridges its constitutionally established status as Utah's trial court of general jurisdiction.

B. H.B. 366 unconstitutionally abridges the district court's status as a trial court of general jurisdiction by divesting its power to interpret and enforce the Utah and federal Constitutions.

H.B. 366 unconstitutionally abridges the district court's status as a trial court of general jurisdiction by divesting its power to hear and decide lawsuits seeking to enforce the Utah and federal Constitutions. H.B. 366 creates a "constitutional court" with exclusive jurisdiction over constitutional questions in cases with state defendants in which declaratory or injunctive relief is sought. It is axiomatic that interpreting and enforcing constitutional provisions is a core power of a court of general jurisdiction. "It is elementary that the Constitution must be regarded by the courts as fundamental law." *Wadsworth*, 28 P.2d at 172. Accordingly, "courts have the unquestioned right to declare any act of the government, in any of the departments, which violates the constitution, to be utterly void." *Ritchie v. Richards*, 47 P. 670, 676 (Utah 1896) (Batch, J.); *see also Renn v. Utah State Bd. of Pardons*, 904 P.2d 677, 680 (Utah 1995) ("It has long been held that the judicial power includes the authority to decide whether a statute is constitutional."); *State ex rel. Richards v. Armstrong*, 53 P. 981, 983 (Utah 1898) ("Where [] the mind is convinced of the unconstitutionality of the law, the duty which devolves upon the court to declare it so is imperative . . . ."); *State ex rel. Univ. of Utah v. Candland*, 104 P. 285, 290 (Utah 1909) ("[W]e cannot see upon what theory a court can refuse to pass upon the constitutionality of the law in any proceeding where the question is properly presented and to which the officer is a party."); *Block v. Schwartz*, 76 P. 22, 23 (Utah 1904) (explaining that if a

statute is "found to contravene constitutional provisions, or to constitute an infringement upon the rights of individuals guarant[e]ed by the Constitution, then the courts have the conceded power to declare void the enactment, as being a violation of the supreme law of the land").

Indeed, this Court has emphasized that the district court's duty to interpret and enforce constitutional provisions as a trial court of general jurisdiction. In *Vega v. Jordan Valley Medical Center, LP*, the Court explained that it is an "obligation[] of a district court judge" to "reason through each case and issue decisions based on sound and thorough legal analysis, including constitutional analysis." 2019 UT 35, ¶ 8 n.5, 449 P.3d 31.

The essential power of a court of general jurisdiction to interpret and enforce the Constitution is not a concept unique to Utah.[22] Indeed, it appears that no other state has

[22] *See, e.g.*, *Op. of the Justices*, 624 So. 2d 107, 110 (Ala. 1993) ("Included within the general jurisdiction of the circuit court is the power to decide whether the actions of the executive or legislative branches are consistent with the requirements of the fundamental law of the people—their constitution."); *Rudnick v. City of Jamestown*, 463 N.W.2d 632, 636 (N.D. 1990) (explaining that North Dakota district courts have "general jurisdiction with the power to determine all controversies which can possibly be made the subject matter of a civil action," including to "construe[] and pass[] on the constitutionality of the law"); *State ex rel. DeKrey v. Peterson*, 174 N.W.2d 95, 100 (N.D. 1970) (explaining that "[t]he framers of our Constitution contemplated and designated the district court as a court of general jurisdiction" and thus "the district court has the inherent power to declare a statute unconstitutional"); *Hisle*, 258 S.W.3d at 432 ("In Kentucky, circuit courts are courts of general jurisdiction" and thus have "the general power to determine all matters of controversy arising under common law or equity, or by reason of statute or the constitution . . . ."); *Bingham Farms Tr. v. City of Belle Fourche*, 2019 S.D. 50, ¶ 14, 932 N.W.2d 916 ("South Dakota circuit courts are courts of general jurisdiction, and we have held that our Constitution confers broad authority upon circuit courts to hear all civil actions") (internal citations and quotations omitted).

sought to divest its courts of general jurisdiction of the power to interpret and enforce the state or federal Constitutions.[23]

The 1895 Constitution expressly recognized the district court's power to adjudicate the constitutionality of statutes. It provided that the district court's appellate review of decisions of justices of the peace "shall be final, except in cases involving the validity or constitutionality of a statute." Utah Const. art. VIII, § 9 (1895); *id.* (providing for appellate review to supreme court of decisions from district court).

Then, as part of the 1984 revision, the phrase "trial court of general jurisdiction" was added to Article VIII, Section 1. There was no indication that the people thought a court could possess general jurisdiction while suddenly being powerless to interpret and enforce the Utah and federal constitutions. *See Patterson*, 2021 UT 52, ¶¶ 92-93 (explaining that courts "look to the meaning that the public would have ascribed to the amended language when it entered the constitution").

H.B. 366 divests the district court of a core power of a court of general jurisdiction—determining whether statutes, the Legislature, or executive officials should be enjoined for violating the Utah or United States Constitutions. H.B. 366 thus violates Article VIII by stripping the district court of an essential and defining component of its

[23] Court Statistics Project, *Understanding state court jurisdiction*, Nat'l Ctr. for State Cts., https://www.ncsc.org/resources-courts/understanding-state-court-jurisdictions (last visited June 8, 2026).

constitutionally-vested subject matter jurisdiction, depriving the district court of its status as a "trial court of general jurisdiction." Utah Const. art. VIII, § 1.[24]

C. The existing statutory courts illustrate H.B. 366's constitutional infirmity.

The existing statutory courts illustrate why H.B. 366's constitutional court violates Article VIII. The Legislature has exercised its power under Article VIII, Section 1 to create the following statutory courts: the court of appeals, the business and chancery court, the juvenile court, and the justice court. *See* Utah Code § 78A-1-101. The structure of these statutory courts—which do not invade the district court's general jurisdiction—stands in stark contrast to H.B. 366's so-called constitutional court.

Court of Appeals. Article VIII, Section 1 authorizes the Legislature's creation of the court of appeals because that court is granted appellate jurisdiction and thus does not infringe the district court's constitutional status.

Business and Chancery Court. The business and chancery court "has jurisdiction, concurrent with the district court," over various business-related claims. Utah Code § 78A-5a-103 (emphasis added). The Legislature thus did not divest the district court of any subject matter or original jurisdiction but rather created a specialized court with concurrent jurisdiction with the district court.[25]

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[24] H.B. 366 is likewise incompatible with the district court's power—not subject to legislative contraction—to issue all extraordinary writs, which necessarily includes writs issued on constitutional grounds. *See Patterson*, 2021 UT 52, ¶¶ 146-48.

[25] By merely creating concurrent jurisdiction rather than ousting the district court of its subject matter jurisdiction, the business and chancery court *statute* does not offend Article VIII, Section 1. The same may not be true for the corresponding *rule* governing transfer of cases to the business and chancery court. *See* Utah R. Civ. P. 42(d)(2)(B) (prohibiting district court from deferring to plaintiff's choice to file in district court and limiting district

Justice Court. The Legislature acted within its Article VIII, Section 5 power to limit the district court's original jurisdiction by creating the justice court. The justice court has original jurisdiction over cases alleging violations of certain misdemeanors, ordinances, and infractions. *See* Utah Code § 78A-7-106. But the district court retains appellate jurisdiction over cases decided by the justice court, with review in the form of a trial *de novo*. *See* Utah Code § 78A-7-118. The Legislature thus did precisely what Article VIII, Section 5 authorizes: it limited the district court's "power to hear and decide a matter *before any other court can review the matter*," *Patterson*, 2021 UT 52, ¶ 80 (emphasis added) (internal citation omitted), but it did not eliminate the district court's general subject matter jurisdiction to adjudicate cases following the decision of the justice court.

Juvenile Court. As this Court has explained, "[o]ur juvenile courts owe their existence to the legislature's recognition that the sharp edges of the law, which are necessary to achieve predictability and even-handedness when dealing with the affairs of adults, often inflict harm on children who come in contact with them." *State ex rel. K.M.*, 2007 UT 93, ¶ 13, 173 P.3d 1279. In modern times, the juvenile court has "achieved status equal to our district courts, but as courts of specified and limited statutorily delineated jurisdiction." *Id.* ¶ 34 (Wilkins, J., concurring); *Shedron-Easley v. Easley*, 2011 UT App 42, ¶¶ 3-4, 248 P.3d 67 ("District courts are constitutional courts of general jurisdiction . . .

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court's power to retain case if a transfer motion is filed within 21 days of the movant's appearance). Because the question does not arise in this case, the Court need not address it.

In contrast to the general jurisdiction of district courts, juvenile courts are statutory courts with limited jurisdiction over specified subject matter.").

The juvenile court has jurisdiction over two narrow categories of cases: (1) violations of certain criminal statutes committed by minors and (2) matters of child welfare. *See* Utah Code § 78A-6-103. Utah courts have recognized that by conferring this jurisdiction upon the juvenile court, the Legislature has not intruded upon the district court's status as a court of general jurisdiction. *See, e.g.*, *Anderson*, 416 P.2d at 310; *State v. Hodges*, 2002 UT 117, ¶ 12, 63 P.3d 66 (explaining that Utah Code "plainly grants district courts jurisdiction over criminal matters generally" and that jurisdiction is not supplanted by juvenile court); *Shedron-Easley*, 2011 UT App 42, ¶ 7 (explaining that when the juvenile court has jurisdiction over a child welfare matter concurrent to district court's jurisdiction over a divorce proceeding, "[t]he concurrent jurisdiction statute does not confer broad jurisdiction on the juvenile court at the expense of the district court").

Although the Legislature has done more than merely limit the district court's *original* jurisdiction in shaping the juvenile court's jurisdiction, the scope of exclusive jurisdiction upon which it has conferred the juvenile court does not jeopardize the district court's status as a court of general jurisdiction. *See Court of General Jurisdiction*, Black's Law Dictionary (12th ed. 2024) (defining "court of general jurisdiction" as "[a] court having unlimited or nearly unlimited trial jurisdiction in both civil and criminal cases"). The juvenile court is thus consistent with Article VIII, Section 1: the Legislature has created a statutory court and conferred upon it jurisdiction, but that jurisdiction is narrow and specialized and is not "at the expense of the district court," *Shedron-Easley*, 2011 UT

App 42, ¶ 7, which maintains "jurisdiction over criminal matters generally," *Hodges*, 2002 UT 117, ¶ 12. The narrow circumstances in which the juvenile court is conferred exclusive jurisdiction nowhere near approach H.B. 366's purported grant of exclusive jurisdiction for the constitutional court to interpret and enforce the state and federal Constitutions in cases involving the state actors. The most fundamental obligation of a court of general jurisdiction is to ensure the government complies with constitutional requirements, yet H.B. 366 divests the district court of its constitutionally conferred power to do so.

By authorizing the Legislature to create "other courts," Article VIII, Section 1 necessarily permits the Legislature to assign those courts, like the juvenile court, subject matter jurisdiction. But the Legislature's power to confer such jurisdiction is limited by the Constitution's conferral of general jurisdiction on the district court. When a statutory court is given exclusive jurisdiction over a subject matter, the topic must be narrow and outside the core functions of a court of general jurisdiction. Otherwise, the Legislature exceeds its power to shape the judiciary under Article VIII by divesting the district court of its general subject matter jurisdiction. The juvenile court is an example of the Legislature conferring jurisdiction on a statutory court while retaining the district court's status as a court of general jurisdiction.[26] H.B. 366's constitutional court, by contrast, far overruns Article VIII, Section 1's boundaries. *See supra* Part II.A.

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[26] The juvenile court has existed since 1903. *See Appendix A: History of Utah Juvenile Court Studies*, Utah State Cts., https://www.utcourts.gov/en/court-records publications/publications/court-publications/court-reports/famctrpt/history.html#N_1_ (last visited June 8, 2026). It has undergone many changes in the time since its creation. *See Hodges*, 2002 UT 117, ¶¶ 10-11 (recounting history of juvenile court). It existed when voters amended Article VIII in 1984, suggesting that the voters understood it as satisfying

V. Extraordinary relief is warranted.

Extraordinary relief from this Court is warranted. Because of the Legislature's new enactments—indeed, as a matter of express design—no other plain, speedy, or adequate remedy is available. Utah R. App. P. 19(a). The single-judge district court before which Plaintiffs filed their preliminary injunction motion and motion for a temporary restraining order has concluded it lacks jurisdiction to decide Plaintiffs' challenge to H.B. 392 and S.J.R. 5. That leaves only the three-judge panel to which Plaintiffs' case has been transferred. But that tribunal is unconstitutionally constituted and as such cannot provide Plaintiffs an adequate remedy. While courts are empowered to decide their own jurisdiction, that principle cannot sensibly extend to determining whether their own existence is constitutional. No rulings or orders of an unconstitutionally constituted court could have legal effect—such a ruling included—and thus this Court's adjudication is necessary.

Plaintiffs are entitled to litigate their case before a constitutionally-constituted tribunal, and Legislative Defendants are unharmed by proceeding before a single-judge district court—the judicial system that has governed Utah since its founding, and where this case was filed and had been pending for four years. Moreover, the public has an obvious interest in a constitutionally constituted judicial system. Public confidence in the judiciary is eroded by unconstitutional legislative manipulation. Multiple high-profile cases are already subject to the unlawful three-judge panel scheme, and this Court should

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Article VIII, Section 1's balance between the constitutionally conferred general jurisdiction of the district court and the authorization for the Legislature to create other statutory courts.

enjoin it now to avoid the significant wasted resources that will result from necessary do-overs of proceedings if cases are adjudicated by courts whose unconstitutionality is only confirmed later. This applies to both the three-judge panel and the contingent constitutional court, both of which this Court should enjoin.

Relief is further warranted because this litigation is in its end stages, not its infancy. Plaintiffs' case has proceeded for four years and has developed a large and complicated record. The district 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 reactive whim of Legislative Defendants—has removed the case from the judge that oversaw the evidence and observed the witness demeanor at the October 2025 evidentiary hearing. This has already caused delay in resolution of this case, and, if relief is not granted, will result in further delay and prejudice to Plaintiffs, who bear the burden of proof, by depriving them of the benefit of the judge who has overseen and witnessed the testimony and evidence already part of the record.

Moreover, this case satisfies the factors the Court typically considers when exercising its discretion to grant extraordinary relief. *See State v. Henriod*, 2006 UT 11, ¶ 20, 131 P.3d 232 (relevant factors include the egregiousness of the alleged error, the significance of the legal issues presented by the petitioner, and the severity of the consequences caused by the alleged error). The errors are egregious. The Legislature has attempted to remake the judicial branch to its benefit, violating the Constitution's separation of powers; ignored its text; trampled on the protection of open courts, uniform

operation of laws, and general application of laws; and stripped courts of their constitutional jurisdiction.

These issues are of immense significance and importance and strike at the core of Utahns' system of government and justice. The consequences, not just to Plaintiffs, but to the public's confidence in the judicial branch itself, are stark.

CONCLUSION

For the foregoing reasons, the Court should declare H.B. 392, H.B. 366, S.J.R. 5, and S.J.R. 6 unconstitutional and permanently enjoin use of the three-judge court and the contingent constitutional court. Furthermore, the Court should issue an order or writ directing (1) the three-judge panel to which Plaintiffs' case was transferred not to exercise jurisdiction over Plaintiffs' case, *see* Utah R. Civ. P. 65B(d)(2)(A), and (2) the transferor judge, Hon. Dianna Gibson, to perform the duty of exercising jurisdiction over Plaintiffs' case, *see* Utah R. Civ. P. 65B(d)(2)(B).

DATED this 9th day of June, 2026.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the word limits set forth in Utah R. App. P. 24(g)(1) because this brief contains 13,486 words, excluding the parts of the brief exempted by Utah R. App. P. 24(g)(2).

2. This brief complies with the addendum requirements of Utah R. App. P. 24(a)(12).

3. This brief complies with Utah R. App. P. 21(h) regarding public and non-public filings.

DATED this 9th day of June, 2026.

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