

IN THE
SUPREME COURT OF UTAH

League of Women Voters of Utah, *et al.*,
Petitioners (Plaintiffs),

v.

Utah State Legislature, *et al.*,
Respondents (Defendants).

REPLY 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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INTRODUCTION

The Utah Constitution confers limited powers on the Legislature to shape the structure of Utah’s judiciary. Defying these limitations, the Legislature created a three-judge district court panel and a contingent “constitutional court.” Attempts by Respondents (“Legislative Defendants”) to defend these actions—or evade this Court’s review of them—fail.

Amendments to an earlier version of the three-judge panel law do not moot this case, as the core constitutional infirmity—a district court panel—remains. Moreover, the “constitutional court” introduced a new constitutional violation. This Court can grant Petitioners (“Plaintiffs”) relief, so a live controversy remains.

Articles V and VIII explicitly *limit* the ways the Legislature may regulate the judiciary, which do not include restructuring the district court system by amending rules of procedure. In response, Legislative Defendants claim that the Constitution’s precise terms do not mean what they say and ignore Utah-specific text and history establishing that in Utah, “district court” means a single presiding judge. Furthermore, they conflate distinct jurisdictional terms to defend stripping the district court of its constitutional role as trial court of “general jurisdiction.”

Finally, Legislative Defendants raise a grab-bag of meritless arguments to evade or delay this Court’s review of their unconstitutional scheme to remake the judiciary following a series of losses in high-profile cases. Their contentions find no support in the Constitution or law.

ARGUMENT

I. Plaintiffs' challenge is not moot.

Plaintiffs' challenge is not moot. A case may become moot “by repeal or amendment of the law under review,” but only if the “controversy before the court is eliminated, rendering the relief requested impossible.” *Salt Lake City Corp. v. Utah Inland Port Auth.*, 2022 UT 27, ¶ 21, 524 P.3d 573 (internal quotations omitted). Here, though H.B. 366 and S.J.R. 6 amended H.B. 392 and S.J.R. 5, the challenged practice—an unconstitutional three-judge court—remains. Legislative Defendants concede this (at 12). That should end the mootness analysis.

Nevertheless, Legislative Defendants claim that “the Court cannot ‘order a remedy that will have a meaningful impact on the practical positions of the parties.’” Leg.Br. at 12 (quoting *Natalie R. v. State*, 2025 UT 5, ¶ 27, 567 P.3d 550). Not so—this Court could declare the still-extant three-judge panel unconstitutional and order Plaintiffs' case transferred back to the constitutional single-judge district court. Thus, unlike in *Natalie R.*, where statutory amendments made relief “impossible or of no legal effect,” 2025 UT 5, ¶ 26 (quotation simplified), the existence of a persisting controversy and possibility for meaningful relief mean that “granting a *present* determination of the issues offered will have some effect in the real world.” *Petrella v. Brownback*, 787 F.3d 1242, 1256 (10th Cir. 2015) (citation modified).

Legislative Defendants also claim that the challenge is moot because Plaintiffs originally challenged the three-judge panel as enacted by H.B. 392 and S.J.R. 5, and those laws were amended by H.B. 366 and S.J.R. 6. But it is a “well settled rule that a defendant’s

voluntary cessation of a challenged practice” does not moot a challenge to “the legality of the practice.” *Ne. Fla. Chapter of Assoc. Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 662 (1993) (internal quotations omitted). Even if the new law “may disadvantage [Plaintiffs] to a lesser degree than the old one,” where it “disadvantages them in the same fundamental way,” the case is not moot. *Id.* Here, though the law changed somewhat in the amended version, the fundamental three-judge panel provisions remained unaltered. Legislative Defendants cannot evade review of unconstitutional legislation by reenacting the offending provisions under a different name.¹

Plaintiffs’ challenge is not moot for a further reason: Plaintiffs’ claims under the Uniform Operation of Laws and Open Courts clauses and the prohibition on special laws remain live. Legislative Defendants’ transfer notice was filed pursuant to the law as it existed *before* the passage of H.B. 366 and S.J.R. 6. And unlike in the other three cases where a transfer notice was filed, no new notice was filed under H.B. 366 in this case. *See* Leg.Br. at 11. Thus, this case was transferred under H.B. 392 not H.B. 366.

H.B. 366 is not retroactive. *See* Utah Code § 68-3-3. Legislative Defendants note (at 11) that under H.B. 366, a transfer notice filed before H.B. 366’s effective date that meets the requirements “is valid.” Utah Code § 78A-5-102.7(2)(c). But as Plaintiffs

¹ This is especially so where, as here, the amendments were made *after* the law was challenged. *See Knox v. Serv. Emps. Int’l Union, Loc. 1000*, 567 U.S. 298, 307 (2012) (mid-litigation “maneuvers designed to insulate a [matter] from review . . . must be viewed with a critical eye”).

previously explained (at 24-25), the most natural reading of this provision is simply that H.B. 366 does not invalidate a transfer notice previously filed under H.B. 392, not that H.B. 366 retroactively applies. That is, H.B. 366 incorporates and applies the H.B. 392 framework to notices filed under H.B. 392. Legislative Defendants make no effort to explain why this reading is wrong, nor do they contend that H.B. 366 offers 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). H.B. 392—the law under which this case was transferred—remains the operative provision for this Court’s analysis.

Legislative Defendants offer no response to Plaintiffs’ arguments (at 26-29) targeted at H.B. 392, including claims under the Uniform Operation of Laws Clause, the Open Courts Clause, and the prohibition on special laws. If those challenges are not moot, Legislative Defendants have conceded the merits of these claims.

Regardless, this Court can resolve this case in a way that affords Plaintiffs meaningful relief, including declaratory judgment about the unconstitutionality of the three-judge court, and transfer of Plaintiffs’ case back to the originally assigned single-judge court. *See Transp. All. Bank v. Int’l Confections Co.*, 2017 UT 55, ¶ 15, 423 P.3d 1171. The case is not moot, and this Court can and should reach the merits of Plaintiffs’ claims.²

² Importantly, this Court ordered briefing and oral argument on Plaintiffs’ Rule 19 petition *after* H.B. 366’s passage and *after* Legislative Defendants’ Suggestion of Mootness was fully briefed.

II. Three-judge district court panels are unconstitutional.

Whether evaluated under H.B. 392 or H.B. 366, three-judge district court panels are unconstitutional. The Legislature's attempt to restructure the judiciary violates Article V's separation of powers, and Article VIII's definition of "district court," which permits only a single presiding judge. Legislative Defendants contend that they can use their power to amend rules of procedure to create a district court panel, and that the words "district court" in the Utah Constitution have no precise meaning. They are wrong.

A. The Legislature's creation of a three-judge district court by amending the rules of procedure violates the separation of powers.

The Legislature cannot use its power to amend the rules of procedure to fundamentally restructure the district court system. Article VIII, Section 12(1) tasks the judiciary, not the Legislature, with the administration of Utah courts. The Legislature's limited constitutional role in court administration is expressly enumerated in Article VIII, and includes amending rules of procedure already adopted by the Court. Utah Const. art. VIII, § 4.

While the Legislature has plenary power under Article VI to legislate except where otherwise limited, that power is limited here by the judiciary's constitutional powers because "no person charged with the exercise of powers properly belonging [to one branch of government] shall exercise any functions appertaining to either of the others," except as the Constitution "expressly direct[s] or permit[s]." Utah Const. art. V, § 1. The Legislature's limited authority to legislate in the judicial realm cannot exceed the powers expressly enumerated in Article VIII.

Legislative Defendants make three claims about their ability to create district court panels through their authority to amend the rules of procedure. All fail. *First*, Legislative Defendants contend (at 16) that the Legislature has “plenary power” to regulate Utah courts’ structure and procedures. They then characterize the Legislature’s express powers in Article VIII as mere “example[s]” of this power. That gets things backwards.³ The legislative powers that Article VIII delineates are specific instances of the Constitution “expressly direct[ing] or permit[ing]” the Legislature to exercise functions “appertaining” the judicial branch. Utah Const. art. V, § 1. The list is exhaustive, not illustrative. Article V requires express permission for the Legislature to exercise cross-branch powers, it does not say that the Constitution provides “examples” of such powers.

Moreover, even without a separation of powers concern, ordinary rules of constitutional interpretation defeat the Legislature’s contention. The inclusion of express powers for the Legislature in the judicial arena necessarily excludes others not listed. *See Nevares v. M.L.S.*, 2015 UT 34, ¶ 31, 345 P.3d 719 (applying *expressio unius* canon). If the Legislature retained broad plenary power to regulate the courts as Legislative Defendants claim, there would be no reason to list certain powers in Article VIII. Instead, constitutional provisions must be “harmoniz[ed]” and read to give “meaning and function [to] the constitution as a whole.” *Univ. of Utah v. Shurtleff*, 2006 UT 51, ¶ 17, 144 P.3d 1109.

³ Legislative Defendants appear to agree. They do not seriously contend that Article VI is the source of legislative power here, but rather the specified Article VIII power to amend procedural rules.

The Utah Constitution creates a delicate balance of power between the judicial and legislative branches when it comes to adopting and amending rules of procedure. *See* Utah Const. art. VIII, § 4. Legislative Defendants’ argument would allow the Legislature to run roughshod over this careful constitutional regime developed over decades. From 1943 to 1984, Utah law granted rule-making authority nearly exclusively—and increasingly—to the Supreme Court. *Brown v. Cox*, 2017 UT 3, ¶ 17 n.8, 387 P.3d 1040. In 1984, the constitution was amended to permit the Legislature to *amend* rules adopted by the Court, but critically, the 1984 amendment “solidified” that it was the *Court’s* “constitutional authority to adopt rules of evidence and procedure.” *Id.* The voters would have thus understood the power to “amend” to be limited, lest the Legislature’s power to “amend” subsume the Court’s power to “adopt.”

Indeed, that is how the Legislature understood it until now. The Utah House Rules provide for both “amendments” and “substitutes” to legislation. *See, e.g.*, Utah House Rules 3-2-406 & 3-2-407. Amendments are limited to changing the text of particular sections and a member “may not propose an amendment to legislation that [] adds or removes an entire section from the legislation; or [] modifies the legislation’s effective date.” Utah House Rule 3-2-406(3). Such a change must instead come in the form of a “substitute.” Utah House Rule 3-2-407. And both an “amendment” and a “substitute” must be “germane to the subject of the legislation.” Utah House Rule 3-2-406(2)(a) & 3-2-407(2)(a); Utah Senate Rule 3-2-406(2)(a).

The Utah Constitution does not empower the Legislature to adopt “substitute” rules of procedure, nor does it permit nongermane amendments (or substitutes). But that is what

the Legislature attempted here. Allowing the Legislature to transform the structure of Utah courts simply by calling a wholesale reorganization an “amendment” to the rules of procedure would upset the delicate balance of power between the court’s adoption of rules and the Legislature’s authority to amend them. *See League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 162, 554 P.3d 872 (recognizing Legislature’s power to amend must be exercised consistent with constitutional limitations and distributed powers).

Nor does Legislative Defendants’ citation (at 3 n.1) to miscellaneous multi-member panels in 15 other states support the constitutionality of Utah’s statute. Of the 28 statutes cited, only four (in Kansas, Nebraska, and Texas) create district court panels in states with constitutionally established district courts. Moreover, like nearly all the cited examples, these panels have jurisdiction over only a small, specified class of disputes, and the relevant state constitutions grant greater legislative power over court jurisdiction and structure than in Utah.

Second, Legislative Defendants sidestep the critical point that the three-judge panel was enacted via statute, not via the Legislature’s authority to amend the rules of procedure. “[A] bill amending a statute [is] not a joint resolution amending a rule of procedure.” *Brown*, 2017 UT 3, ¶ 24. Though the Legislature’s creation of the three-judge panel in H.B. 392/H.B. 366 was accompanied by amendments to the rules in S.J.R. 5/S.J.R. 6, it was the statutes, not the rules, that established the district court panel.

Legislative Defendants point (at 18 n.11) to various instances where rules of procedure reference provisions of the Utah Code. But these examples cite code provisions

providing definitions or detail that are well within the purview of the Legislature to establish, like the acceptable form of a notarized affidavit, a garnishee fee amount, or the definition of “farm products.” *See*, Utah R. Civ. P. 5, 64D, 69A. In contrast, the cross-references in S.J.R. 5 and 6 cite the code provisions where the Legislature purports to establish the three-judge panel in the first place. Legislative Defendants even characterize it that way, acknowledging, “*HB 392* established procedures for convening a three-judge district court panel” Leg.Br. at 2 (emphasis added). It is an unconstitutional circularity to claim that the authority to amend rules of procedure authorizes the creation of a district court panel, only to create that panel via legislation that would be unconstitutional but for citation in the rules. The Legislature may have “signal[ed] its intent” to amend the rules, Leg.Br. at 19, but its amendment was a thinly-veiled attempt to smuggle in a statutory change to the district court system that Legislative Defendants admit could not be accomplished otherwise.

Third, Legislative Defendants claim that a rule regulating the structure of the district court is wholly procedural, placing it within the Legislature’s purview to amend. But that does not advance Legislative Defendants’ argument. If the number of district court judges is a procedural rule, then a rule adopting a three-judge district court system must originate from *this Court* adopting such a rule, not from the Legislature “amending” a nonexistent rule about three-judge district courts.

In any event, the creation of a district court panel is better understood as an administrative rule, the promulgation of which the Constitution assigns to the Judicial

Council. Utah Const. art. VIII, § 12.⁴ Legislative Defendants counter (at 21) that “[a]dministrative rules tend to describe what occurs behind the door that separates the courtroom from judges’ chambers and . . . [p]rocedural rules tend to govern what happens in front of that door.” *State v. Richins*, 2025 UT 10, ¶ 28, 568 P.3d 1046. But this distinction cuts against them. A rule that “prescribes the manner and means of raising a particular issue in court proceedings” is “quintessentially procedural,” *State v. Rettig*, 2017 UT 83, ¶ 58, 416 P.3d 520, and governs what occurs “in front of that door” to the courtroom. The existence of a three-judge panel to adjudicate those proceedings and the selection of judges to comprise it occurs “behind the door,” and is administrative. The three-judge court provision literally establishes who will walk out the door from chambers into the courtroom, not, *e.g.*, the timelines and process for filing motions.⁵

Finally, Legislative Defendants assert (at 21-22) that the Legislature regularly directs the Judicial Council to take certain actions. The Constitution permits this practice when those actions lie within the Legislature’s authority. But ordering the Judicial Council

⁴ Federal courts’ references to the “procedural” aspects of the federal three-judge court statutes are inapposite. *See* Leg.Br. at 19. Those statutes govern how to *convene* a panel the constitutionality of which is not in doubt.

⁵ *Stephenson v. Bartlett*, 595 S.E.2d 112 (N.C. 2004), offers no support. *Contra* Leg.Br. at 19-20. North Carolina’s Constitution assigns the legislature primary power to “make rules of procedure and practice for the Superior Court,” N.C. Const. art. IV, § 13(2), and thus lacks Utah’s critical administrative/procedural distinction. Moreover, North Carolina law already permitted three-judge panels in other contexts, *Stephenson*, 595 S.E.2d at 118, so the case was not addressing the first-time creation of such a panel.

to do what the Constitution forbids of the Legislature itself, transgresses the separation of powers.⁶

B. Text and history demonstrate that Article VIII permits only single-judge district courts.

Article VIII's text and history permit only single-judge district courts. As Plaintiffs explained, the text of Article VIII establishes the Supreme Court as a multi-member body, but does not do so for the district court. Br. at 17-19 (citing Utah Const. art. VIII, §§ 2, 5). Where the Constitution uses different formulations, "the clear implication is that a difference is intended." *State v. Houston*, 2015 UT 40, ¶ 160, 353 P.3d 55 (Lee, C.J., concurring in part and concurring in judgment).

The text of Article VIII does not authorize the Legislature to create district court panels. Section 6 permits the Legislature to change the total number of district judge positions in the state, and Section 1 permits the Legislature to create other courts with specified jurisdiction. Neither of these sections authorizes the creation of a three-judge district court panel, and Legislative Defendants have conceded they do not rely on them. Resp. to Rule 19 Pet. at 14 (Mar. 19, 2026).

Legislative Defendants' only response to Plaintiffs' text-based arguments is to fall back on the general proposition that the "Utah Constitution is not one of grant, but one of

⁶ Legislative Defendants' efforts (at 22-23) to distinguish Plaintiffs' out-of-state cases fail for the same reasons their Utah-based arguments fail. A legislature changing procedural rules or meddling with court administration in ways the state constitution assigns to the judiciary violates the separation of powers. In Utah and across the country, state courts jealously protect judicial powers from legislative usurpation.

limitation.” Leg.Br. at 27 (citing *Shurtleff*, 2006 UT 51, ¶ 18). But that is self-defeating. Article V is a clear limitation: the Legislature may not exercise powers assigned to the judiciary, absent a specific textual grant. Article VIII grants certain limited powers to the Legislature, but the power to create district court panels is not among them.

The history of Article VIII confirms that, in Utah, “district court” *means* a single presiding judge. In both the Judiciary Act of 1789, and the 1850 Organic Act governing the Utah Territory, district courts were defined as having a single presiding judge. Br. at 19-20. After including a “circuit court” in earlier drafts of the Utah Constitution, in 1895, the Framers of the Utah Constitution made a deliberate choice to instead adopt a single-judge “district court” model for the state’s trial courts in the Constitution that was ratified when Utah joined the Union. Despite experiments with multi-judge district and circuit courts in other jurisdictions in the decades that followed, the definition never changed in Utah, including in 1984 when voters amended Article VIII—but left unchanged the language establishing a district court.

Legislative Defendants respond that (1) the choice of a district court model was meaningless, (2) multi-judge courts exist elsewhere, and (3) voters in 1984 intended multi-judge district courts. These arguments fail.

First, the selection of a district court model was an intentional choice. Faced with multiple options for a trial court structure, Utahns selected a district court. Legislative Defendants contend (at 25) that this selection was arbitrary, and that because Utah’s trial court might have gone by “some other name,” no import attaches to the selected name. But the Constitution’s Framers did not treat the question so carelessly.

A series of changes from prior constitutional proposals—and contemporary news coverage of the constitutional convention—demonstrate that the choice of a “district court” was intentional. To start, the 1849 proposed constitution of the State of Deseret had no prescribed trial court, stating only that “[t]he Judicial power shall be vested in a Supreme Court, and such Inferior Courts, as the General Assembly, shall from time to time establish.” Deseret Const. art. IV, § 1 (1849). The 1862 proposed constitution introduced the inclusion of a “circuit court.” Deseret Const. art. VI, § 1 (1862) (“The judicial power shall be vested in a supreme court, *circuit courts*, probate courts, and such other courts as the general assembly may from time to time, establish”) (emphasis added). The next three proposed constitutions likewise retained “circuit courts.” *See* Deseret & Utah Consts. art. VI, § 1 (1872, 1882, 1887). This changed in the 1895 constitution, when the reference to “circuit courts” was replaced by “district courts,” Utah Const. art. VIII, § 1 (1895), adopting the district court model used under Utah’s Territorial Organic Act, which expressly provided for a district court with a single judge per district. *See* Act of Sep. 9, 1850, ch. 51, 9 Stat. 453 (1850). This change was not a random or thoughtless one, as Legislative Defendants suggest. Rather, as part of the process of adopting the new constitution, the Judiciary Committee held “an interesting session at which the merits of various judicial systems were discussed.” *Important Subjects Discussed at Yesterday’s Meetings*, Salt Lake Trib., Mar. 13, 1895.⁷ Following this discussion, “[i]t was decided to provide for District Courts.” *Id.*

⁷ Available at <https://newspapers.lib.utah.edu/ark:/87278/s6kw6rj9/12615382>.

When examining constitutional text, this Court must “assume the [Framers] used each term advisedly and in accordance with its ordinary meaning.” *State v. Martinez*, 2002 UT 80, ¶ 8, 52 P.3d 1276. “If [a body] amends or reenacts a provision . . . a significant change in language is presumed to entail a change in meaning.” *MacDonald v. MacDonald*, 2018 UT 48, ¶ 38, 430 P.3d 612 (quoting Antonin Scalia & Bryan A. Garner, *Reading Law* 256 (2012)). Thus, ascribing significance to the change from “circuit court” to “district court” in 1895 is not a “myopic focus” on a naming convention that “could have just as easily” gone a different way, Leg.Br. at 24, but an instance of proper constitutional analysis. The range of other states’ trial courts Legislative Defendants detail (at 25) simply proves Plaintiffs’ point: With two federal models to choose from—a single-judge district court or a multi-judge *circuit* court—Utahns ultimately abandoned the circuit court, choosing instead to vest the judicial power “in a trial court of general jurisdiction known as the *district court*.” Utah Const. art. VIII, § 1 (emphasis added).⁸

Second, the existence of various multi-judge courts in the federal system or in “medieval England” does not alter the original public meaning of the term “district court” in Utah. Legislative Defendants do not—and cannot—dispute that when the term “district court” entered the Utah Constitution in 1895, that phrase meant a court with a single presiding judge. It had been expressly defined as such since the Judiciary Act of 1789, *see*

⁸ The out-of-state cases Legislative Defendants cite (at 25-26) were about a formalistic versus a context-driven textual analysis inapposite here. *See, e.g., State ex. rel Coffin v. Cnty. Com’rs*, 10 P. 901, 906 (Nev. 1886) (rejecting plaintiffs’ application of “narrow and technical rules of statutory construction”). Critically, these cases did not conduct the kind of original public meaning analysis Utah law requires.

Act of Sep. 24, 1789, ch. 20, 1 Stat. 73 (1789), and in the Organic Act governing the Utah Territory. Legislative Defendants’ examples (at 29-30) of multi-judge federal *circuit courts* thus do not bear on the meaning of “district court” when Utahns selected that model in 1895. Legislative Defendants attempt to redirect the analysis to the phrase “trial court of general jurisdiction” to render any example of a trial court structure relevant. But this Court cannot ignore that in 1895 the operative phrase “district court,” carried the specific meaning of a single presiding judge. *See Farm Bureau Mut. Ins. Co. v. Weston*, 2025 UT 42, ¶ 44, 587 P.3d 936 (citing Scalia & Garner, *Reading Law* 174) (“No word or provision ‘should needlessly be given an interpretation that causes it to . . . have no consequence.’”).

Third, Legislative Defendants are wrong that Utahns’ understanding of the phrase “district court” from 1895 through 1983 is irrelevant because extensive changes were made to Article VIII in 1984. That asks this Court to ignore 88 years of consistent practice.

In 1984, Utahns were asked whether “to enact a new judicial article of the constitution.” *Patterson v. State*, 2021 UT 52, ¶ 140, 504 P.3d 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.” *Id.* ¶ 92. While other aspects of Article VIII were amended in 1984, “district court” remained unchanged. That term thus entered the Utah Constitution in 1895 not 1984, making 1895’s public understanding of the phrase plainly relevant.

But even if 1984 were a relevant timeframe, from 1895 to 1984, in the context of Utah’s judiciary, “district court” meant a single-judge court. The experiment in three-judge federal district courts for certain constitutional challenges that Congress created in 1911

was all but eliminated by 1976, eight years before Utah’s 1984 constitutional amendments. *See* Br. at 22. If Utahns wished to empower the Legislature to alter this longstanding definition, they would have amended Article VIII to mimic Article III of the United States Constitution, which empowers Congress to establish courts inferior to the Supreme Court. They did not.⁹

Legislative Defendants claim that despite a long history in Utah of single-judge district courts, a lack of federal three-judge district courts convening in Utah, and a near-elimination of federal three-judge district courts nationally, Utahns would nevertheless have understood the 1984 amendments to be operating against a “legal backdrop” in which the concept of “district court” included multi-judge panels. Not so.

Original public meaning analysis focuses on how the words of the Constitution “would have been understood by a competent and reasonable speaker of the language” at the time the relevant text was ratified. *Neese v. Utah Bd. of Pardons & Parole*, 2017 UT 89, ¶ 96, 416 P.3d 663 (citation omitted). This requires the Court to “analyze [the] text, historical evidence of the state of the law when it was drafted, and *Utah’s particular traditions at the time of drafting.*” *S. Salt Lake City v. Maese*, 2019 UT 58, ¶ 18, 450 P.3d 1092 (emphasis added) (citation omitted).

⁹ While Utah’s 1849 proposed constitution had analogous language, neither the 1895 nor the 1984 version did, instead *narrowing* the Legislature’s power over the judiciary. Indeed, a central argument in favor of the 1984 amendments was judicial independence and protection from “control by other branches of government.” *See* Proposition 3, Utah Voter Information Pamphlet, General Election November 6, 1984, at 16 (Sep. 27, 1984), <https://vote.utah.gov/wp-content/uploads/2023/09/1984-VIP.compressed.pdf>.

Plaintiffs provided this historical context in their opening brief, explaining (at 21-22) what Utahns would have understood the 1984 amendments to mean in the form of ballot language, newspaper articles, comments from legislators, and voter pamphlets. *See, e.g., State v. Barnett*, 2023 UT 20, ¶ 59, 537 P.3d 212 (referencing voter guides to ascertain constitutional text’s original public meaning).

Legislative Defendants have offered no such evidence in response, relying instead on a “legal backdrop” gleaned from multi-judge courts in other jurisdictions. This is insufficient. *See Patterson*, 2021 UT 52, ¶ 92 (“[W]e look to the meaning that *the public* would have ascribed to the amended language when it entered the constitution.”) (emphasis added); Lawrence B. Solum, *Original Public Meaning*, 2023 Mich. St. L. Rev. 807, 820 (2023) (“Original public meanings are ordinary meanings; legal meanings are technical meanings.”). The existence of multi-judge courts outside of Utah at earlier periods of American (or English) history—systems never mentioned in contemporary reporting—would not have informed Utah voters in 1984 of the meaning of the proposed constitutional amendments. A proper constitutional analysis reveals that just as it did in 1895, in 1984, the phrase “district court” meant a single presiding judge.

III. The constitutional court is unconstitutional.

The contingent “constitutional court” is also unconstitutional. The Utah Constitution addresses both the district court’s *original jurisdiction* and its *subject matter jurisdiction*. Its original jurisdiction extends to “all matters except as limited by this constitution or by statute,” art. VIII, § 5, while its subject matter jurisdiction is “general” and cannot be similarly limited, *id.* § 1; Br. at 31-36. This means that the Legislature can

use its limited powers under Article VIII to create other courts that remove the power of the district court to be the *first* to hear a case, but it cannot remove the district court's power to hear a certain broad category of cases at all. To do so would infringe on the constitutional mandate that the district court be a court of "general jurisdiction." Yet this is what the constitutional court would do.

Defending this scheme, Legislative Defendants make two erroneous arguments. First, they claim (at 34-35) that original and subject matter jurisdiction are "synonymous," and because the Legislature may limit one, it may also limit the other. Second, Legislative Defendants claim (at 35-38) that the Legislature may grant "exclusive jurisdiction" to statutorily created courts over *any* subject matter. But this extreme reading cannot be right: it would allow the Legislature to completely strip the district court of its constitutional role as a "trial court of general jurisdiction."

Original and subject matter jurisdiction are distinct concepts, and the Legislature may constitutionally deprive the district court of the former but not the latter. "Original jurisdiction is a 'court's power to hear and decide a matter before any other court can review the matter.'" *Patterson*, 2021 UT 52, ¶ 80 (quoting *Original Jurisdiction*, Black's Law Dictionary (11th ed. 2019)). In contrast, "subject matter jurisdiction" addresses "the type of cases the court has been empowered to entertain." *Myers v. State*, 2004 UT 31, ¶ 16, 94 P.3d 211 (citation omitted).

With textual support in the Constitution to limit only the district court's original jurisdiction, *see* Utah Const. art. VIII, § 5, Legislative Defendants simply conflate the two. But their examples (at 34) of this Court treating original and subject matter jurisdiction

synonymously are just examples of the Court analyzing or discussing one or both types of jurisdiction. They do not establish that this Court treats them interchangeably. *See, e.g., State v. Smith*, 2014 UT 33, ¶ 20, 344 P.3d 573 (noting statute granting “original jurisdiction in all matters civil and criminal” “grants district courts broad subject matter jurisdiction over criminal cases”); *In re Adoption of Baby E.Z.*, 2011 UT 38, ¶¶ 30-31, 266 P.3d 702 (separately enumerating district courts’ original and subject matter jurisdiction).

To whatever extent past cases have blurred the lines, this Court has recently made the distinction explicit. *See Patterson*, 2021 UT 52, ¶ 80 (defining original jurisdiction); *id.*, ¶ 80 n.14 (defining subject matter jurisdiction “in contrast”). Where the Constitution gives the Legislature power to restrict one form of jurisdiction, it does not follow that it can restrict another. *Cf. Id.*, ¶ 246 (Lee, A.C.J., concurring in part and concurring in the judgment) (Constitution’s words “give the legislature the power to determine how our ‘appellate jurisdiction’ is ‘to be exercised’—and clearly imply that the legislature lacks such power over our original jurisdiction”). Original and subject matter jurisdiction are distinct concepts; the Legislature may constitutionally limit only the former.

Legislative Defendants’ second contention, that the Legislature’s power to establish statutory courts allows it to strip all of the district court’s subject matter jurisdiction, fails. While the Legislature has authority under Article VIII, Section 1 to create new courts by statute and assign them certain subject matter to adjudicate, this power cannot be exercised so broadly as to render the district court no longer a “trial court of general jurisdiction” as Article VIII, Section 1 also requires. *Shurtleff*, 2006 UT 51, ¶ 17 (constitutional

interpretation must “harmonize constitutional provisions with one another and with the meaning and function of the constitution as a whole”).

Legislative Defendants attempt to analogize the sweeping jurisdiction of the constitutional court to the “exclusive but limited jurisdiction” granted to the juvenile court over certain child custody issues. Leg.Br. at 37 (citing *In re State in Int. of Valdez*, 29 Utah 2d 63, 68, 504 P.2d 1372 (1973)). But these are different in kind. The highly specific examples of statutorily granted exclusive jurisdiction outside the district court that Legislative Defendants cite (at 35-36) only underscore this point. By authorizing the creation of “other courts,” Article VIII, Section 1 impliedly permits such courts to have some subject matter jurisdiction, perhaps even exclusive subject matter jurisdiction. But whatever amount of subject matter jurisdiction the Legislature may constitutionally shift from the district courts to statutory courts, it cannot reallocate subject matter jurisdiction so broadly as to render the district court no longer a court of general jurisdiction. *See Shurtleff*, 2006 UT 51, ¶ 17; *Buckle v. Ogden Furniture & Carpet Co.*, 216 P. 684, 685 (Utah 1923) (“We conceive it to be our duty, if possible, to adopt that interpretation which will give effect to each provision and harmonize them with each other, so that neither will be meaningless.”). By disempowering Utah’s district courts from interpreting and enforcing the U.S. and Utah Constitutions, the Legislature transgresses the line.

IV. Rule 19 relief is appropriate and warranted.

To obtain relief under Rule 19, a petitioner “must clear three hurdles” by: (1) demonstrating that “no other plain, speedy, or adequate remedy is available,” (2) identifying grounds for granting the requested relief, and (3) persuading this Court that

relief is warranted. *Adams v. Salt Lake City*, 2026 UT 28, ¶¶ 12-15. Plaintiffs clear all three hurdles.

First, no other plain, speedy, or adequate remedy is available. As Plaintiffs explained (at 43-45), the judge presiding over this case for four years declined to exercise jurisdiction over Plaintiffs' challenge to the three-judge court scheme, and Plaintiffs' case has been transferred to a three-judge panel that is the subject of the challenge. An unconstitutionally composed court cannot decide its own constitutionality and thus cannot provide a plain, speedy, or adequate remedy. *See* Utah R. App. P. 19(a); *League of Women Voters of Utah v. Utah State Legislature*, 2025 UT 39, ¶ 24, 579 P.3d 287 (reasoning that a theoretically available route does not negate Rule 19's satisfaction). If Plaintiffs' constitutional arguments are correct, any ruling by the panel is necessarily void. Legislative Defendants disagree, claiming the panel can decide its own constitutionality just as courts regularly decide whether they have jurisdiction. But these adjudications are not analogous.

Legislative Defendants cite several cases where courts determined whether they had jurisdiction or evaluated the constitutionality of a statute under which they adjudicated cases (such as FISA or the bankruptcy code). Leg.Br. at 39. But this is fundamentally different from a court deciding its own constitutionality to hear *any* cases, not just its jurisdiction to hear a particular case. Legislative Defendants' examples (at 40) of federal three-judge district court panels assessing whether they were properly convened is also not the same as assessing whether they are constitutionally permissible at all. In fact, the U.S. Supreme Court has consistently held that decisions by unlawfully composed courts are void. *See, e.g., 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[.]”); *United States v. Am.-Foreign S.S. Corp.*, 363 U.S. 685, 691 (1960) (holding that improper participation of senior judge meant that “judgment must be set aside”); *William Cramp & Sons Ship & Engine Bldg. Co. v. Int’l Curtis Marine Turbine Co.*, 228 U.S. 645, 648 (1913) (vacating decision of unlawfully composed appellate court and noting regrettable resulting delay).

Contrary to Legislative Defendants’ contentions, a tribunal deciding the legality of its own existence differs from assessing jurisdiction. *See, e.g., Colo. State Bd. of Acct. v. Paroske*, 39 P.3d 1283, 1289 (Colo. App. 2001) (“An agency has no jurisdiction to rule on the constitutionality of its own organic act.”); *Borough of Green Tree v. Bd. of Prop. Assessments, Appeals & Rev. of Allegheny Cnty.*, 328 A.2d 819, 825 (Pa. 1974) (“[T]he determination of the constitutionality of enabling legislation is not a function of the administrative agencies thus enabled . . . Whatever benefit might be derived from [challenging constitutionality in challenged agency first] would be far outweighed by the inconvenience, delay and expense involved.”).

Because three-judge district court panels are the equivalent to “no court at all, because [they are] not organized in conformity to [the Utah Constitution],” *William Cramp & Sons Ship & Engine Bldg. Co.*, 228 U.S. at 652, they are an inappropriate forum to resolve this dispute. Requiring parties to first proceed before an unconstitutional tribunal incapable of issuing valid orders (or even one for which that is likely so) provides neither speedy nor adequate relief. That approach would instead inject new issues into the fray, further delaying the finality Legislative Defendants have repeatedly said they desire.

Indeed, if a court is unconstitutional, its order holding as much would lack legal force. *See W. Jordan City v. Goodman*, 2006 UT 27, ¶ 16, 135 P.3d 874 (“If the convicting court is constitutionally infirm, then the conviction is necessarily invalid.”).

Second, there are grounds for granting the requested relief. Legislative Defendants claim (at 13-14) that Plaintiffs have failed to show an entitlement to relief under Rule 65B. Not so. Plaintiffs are entitled to relief under, as the discussion of the merits demonstrates. *See supra* sections II-III. Legislative Defendants claim (at 13-14) that Judge Gibson did not “fail[] to perform an act required by law” by notifying the presiding officer of the Judicial Council of the filed transfer, as the newly-passed statute required, and that the panel did not err by accepting the transfer. But when a statute conflicts with the Constitution, a court must follow the Constitution, not the contrary statute. Both Judge Gibson’s refusal to act on Plaintiffs’ motions, and the panel’s denial of Plaintiffs’ TRO, meet the requirements of Rule 65B and constitute grounds for granting relief.¹⁰

Third, relief is warranted, and this Court should exercise its discretion to award it. Under Rule 19, this Court considers a “host of factors, including ‘the egregiousness of the alleged error, the significance of the legal issue presented by the petition, [and] the severity of the consequences occasioned by the alleged error.’” *Adams*, 2026 UT 28, ¶ 15 (quoting *State v. Barrett*, 2005 UT 88, ¶ 24, 127 P.3d 682).

¹⁰ This Court also granted Plaintiffs’ Rule 5 Petition for Interlocutory Appeal of the panel’s denial as moot of Plaintiffs’ TRO. Order, *League of Women Voters of Utah v. Utah State Legislature*, Case No. 20260365-SC (July 8, 2026).

Here, the error is egregious because, at minimum, the laws at issue violate Articles V and VIII of the Utah Constitution, fundamentally transgressing the division of powers. Additionally, the legal issue is significant, not only for Plaintiffs here, but for plaintiffs in the other three high-profile cases that have been transferred to three-judge courts, and for the people of Utah who have a significant interest in these cases and in the fair and constitutional structure of the State’s courts.

Finally, the consequences of this error are severe. In the final stages of their case, Plaintiffs have been transferred to a panel of three new judges who lack the context and experience with a complicated record that has amassed over the past four years. As described above, litigating the three-judge court issue (and any others) before the three-judge panel makes no sense given the possibility that any orders would be void if Plaintiffs’ constitutional arguments are correct.¹¹

V. This Court can still provide meaningful relief.

This Court can still provide meaningful relief. In the final pages of their brief, Legislative Defendants float (at 41-42) a second mootness argument: that because transfer of Plaintiffs’ case to the three-judge panel has already occurred, it is now “too late” to provide Plaintiffs any relief. That is wrong; courts routinely grant injunctive relief to return the parties to the status quo *ex ante*. See, e.g., *Planned Parenthood Ass’n of Utah v. State*, 2024 UT 28, ¶ 226, 554 P.3d 998 (holding that “[t]he appropriate time to determine the

¹¹ Because of the unprecedented nature of the Legislature’s actions, Plaintiffs sought relief under both Rule 5 and Rule 19. This Court denied Plaintiffs’ initial Rule 5 petition (Case No. 20260237-SC) and proceeded under Rule 19.

status quo is ‘the last uncontested status between the parties which preceded the controversy’” (quoting *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1260 (10th Cir. 2005)); *Schrier*, 427 F.3d at 1260 (reinstatement of terminated employee would maintain status quo).

A case is moot only if “there remains no meaningful relief that this [C]ourt could offer.” *Teamsters Loc. 222 v. Utah Transit Auth.*, 2018 UT 33, ¶ 9, 424 P.3d 892. Here, Plaintiffs’ have requested, *inter alia*, that this Court declare the statutes and rules at issue unconstitutional, permanently enjoin use of the three-judge court, issue an order or writ directing that the three-judge panel not exercise jurisdiction over this case, and order that it be returned to the single-judge court where it originated. Br. at 45. The fact that the initial transfer already occurred does not foreclose this relief, and the case is thus not moot. Legislative Defendants’ “too late, too bad” notion of mootness is unsupported by law.

Furthermore, this Court can obviously redress a claim about the courts’ administration of this case. Legislative Defendants’ cursory standing argument (at 42-44) that Plaintiffs’ claim is un-redressable because Defendants do not administer the courts is meritless. While Legislative Defendants do not administer the courts, in rapid succession they created then convened the three-judge court, and this Court can enjoin Legislative Defendants from taking actions pursuant to these laws if they are unconstitutional. And this Court can order the district court to direct its clerk to transfer the case back to Judge

Gibson. *See Baumgaertel v. Salt Lake Cnty.*, 560 P.2d 325, 328 (Utah 1977) (“[T]he clerk is subject to the control of the court.”).¹²

CONCLUSION

The Court should grant relief as described in Plaintiffs’ Opening Brief (at 45).

DATED this 10th day of August, 2026.

Respectfully Submitted,

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¹² As Legislative Defendants note (at 43), the district court judges are respondents in this case.

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 6999 words, excluding the parts of the brief exempted by Utah R. App. P. 24(g)(2).

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

DATED this 10th day of August, 2026.

/s/ Troy L. Booher

CERTIFICATE OF SERVICE

This is to certify that on the 10th day of August, 2026, I caused the Brief of
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