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IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LEAGUE OF WOMEN VOTERS OF UTAH, MORMON WOMEN FOR ETHICAL GOVERNMENT, STEFANIE CONDIE, MALCOLM REID, VICTORIA REID, WENDY MARTIN, ELEANOR SUNDWALL, JACK MARKMAN, and DALE COX, Plaintiffs, v. UTAH STATE LEGISLATURE; UTAH LEGISLATIVE REDISTRICTING COMMITTEE; SENATOR SCOTT SANDALL, in his official capacity; REPRESENTATIVE BRAD WILSON, in his official capacity; SENATOR J. STUART ADAMS, in his official capacity; and LIEUTENANT GOVERNOR DEIDRE HENDERSON, in her official capacity, Defendants.	**LEGISLATIVE DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS** Case No.: 220901712 Honorable Dianna Gibson

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Defendants Utah State Legislature, Utah Legislative Redistricting Committee, Senator Scott Sandall, Representative Brad Wilson ("Speaker Wilson"), and Senator Stuart Adams ("President Adams") (collectively, "Legislative Defendants"), by and through their undersigned counsel, submit this reply memorandum in further support of their Motion to Dismiss ("Motion").

INTRODUCTION

In their Memorandum Opposing Legislative Defendants' Motion ("Opposition"), Plaintiffs nominally attempt to distance themselves from the allegations of their own Complaint. In their Motion, Legislative Defendants argue that "the Utah Constitution does not guarantee a beneficial political outcome for a given political affiliation." Motion at 20–22. In the Opposition, Plaintiffs accuse Legislative Defendants of creating a "strawman" argument and deny that the relief they seek in the Complaint is a "beneficial political outcome." Opp'n at 6. However, the Complaint belies that assertion, arguing, among other grievances, that the congressional map unconstitutionally precludes voters who choose to vote for a given political party in a given election "from translating their votes into victories at the ballot box" and from "elect[ing] their preferred congressional candidates." *See, e.g.*, Compl. ¶¶ 274–276. Thus, contrary to the assertion in their Opposition, the right that Plaintiffs ask the Court to invent is a right of equalized voting strength aggregation, a right that cannot possibly be applied to each individual voter or to all political groups of voters.

Plaintiffs' claim of a "strawman" argument cannot obscure the common thread running through each of the redistricting counts of the Complaint[1]: that the 2021 congressional map dilutes the magnitude of the effect of the vote of some voters and that the Court should create a right of equalized and aggregated voting strength for a political group of voters to provide them a more beneficial political outcome.[2] Elections necessarily produce winners and losers. Because there will always be more candidates on the ballot than available congressional seats, every voter

[1] Count One: Plaintiffs allege that the Legislature manipulated the 2021 congressional map to "unduly advantage or disadvantage certain voters" and that the manipulation violates provisions of the Utah Constitution by "diminishing and/or diluting the voting power of certain voters on the basis of partisan affiliation." Compl. ¶ 274. Count Two: Plaintiffs allege that the 2021 congressional plan "targets the disfavored class of voters for negative differential treatment compared to other similarly situated Utahns," prevents plaintiffs "from translating their votes into victories at the ballot box," and "precludes their equal opportunity to elect their preferred congressional candidates." Compl. ¶¶ 274–276. Count Three: Plaintiffs allege that the 2021 congressional map "restrains and mutes Plaintiffs' ability to express their viewpoints," "abridges the ability of voters with disfavored views to effectively associate with other people holding similar viewpoints," and makes the voices of voters of opposing political viewpoints "too diluted to be heard." Compl. ¶¶ 289–290, 294. Count Four: Plaintiffs allege a violation of the right to vote, which plaintiffs assert "affirmatively protects citizens' right to be free from the denial, abridgment, undue impairment, and/or dilution of their vote" and that the 2021 congressional map "dilutes, impairs, and abridges Plaintiffs' fundamental right to vote." Compl. ¶¶ 302, 304.

[2] While nominally distancing themselves from the Legislative Defendants' recognition that the intended result of the Complaint is a beneficial political outcome, Plaintiffs' arguments in their opposing memorandum repeat the same thread. Plaintiffs argue that:

- the 2021 congressional map "amplif[ies] the votes of some Utahns and diminish[es] the votes of others," (Opp'n at 1) and "diminish[es] the strength of [the] voting power [of non-Republican] voters" (Opp'n at 4);
- partisan gerrymandering occurs if lines are "manipulated to dilute the electoral influence of some voters and amplify the influence of others on a partisan basis" (Opp'n at 1);
- the Court should evaluate plaintiffs' Free Elections Clause claim by evaluating whether the congressional plan "has the effect of substantially diminishing or diluting the power of voters based on their political views" (Opp'n at 17);
- uncracking the congressional districts drawn by the Legislature "means returning to an undiluted neutral map where voters have an equal opportunity to affect the electoral process" (Opp'n at 19); and
- seeking "a level playing field where all voters may participate equally" (Opp'n at 19).

cannot have a constitutional right to translate their vote into a victory. Therefore, the necessary foundation of Plaintiffs' arguments is not that an individual's vote could or should determine the winner of an election, but that a political group of voters should be endowed with a right to equalized and aggregated voting strength.

The Utah Constitution does not establish any such right, and Plaintiffs ask the Court to perform an unworkable task in inventing such a right. There are no judicially recognizable standards the Court could employ to benefit the political voting strength of a set of aggregated voters without harming the political voting strength of other aggregated voters, let alone employing such political standards without performing a legislative function.

If the alleged right benefits a voter in one district while harming a voter in another, that is evidence that the alleged right is a political question resulting in a political outcome, and the Court should not accept Plaintiffs' invitation to invent a novel constitutional right and wade into the amorphous task of attempting to balance political interests. For these reasons, the Court should dismiss counts one through four of the Complaint.

Additionally, Plaintiffs incorrectly argue that the Utah Constitution limits the ability of the Legislature to modify existing statute when the statute was enacted by an initiative, without the Constitution even hinting at a concept that could be misconstrued as the source of such a limitation. Therefore, the Court should likewise dismiss the Complaint's fifth count.

Simply stated, Plaintiffs' continued invitations to the Court to invent new constitutional rights and limitations is a political invitation that the Court should not accept.

NEW MATTERS RAISED IN OPPOSITION

In their Opposition, Plaintiffs first assert that the Court has jurisdiction to decide Plaintiffs' partisan gerrymandering claims because redistricting is not a purely legislative function and that the Utah Constitution provides standards by which partisan gerrymandering claims may be evaluated. Neither argument is convincing: the congressional map does not violate a constitutional right for which the Court should provide a remedy and the Court has no jurisdiction to determine the weight or priority of whatever redistricting criterion (policy factors) the Court would require. Such judicial involvement would raise separation of powers concerns because it is the Legislature, not the judiciary, that retains complete authority and discretion over redistricting policy decisions. *See infra*, Part I.A. Moreover, political gerrymandering claims are nonjusticiable because, as other courts have recognized, there are no manageable judicial standards to adjudicate such claims. *See infra*, Part I.B.

Plaintiffs then argue that certain Legislative Defendants are proper defendants and are not immune from Plaintiffs' claims. However, the failure of Plaintiffs' arguments is demonstrated by the fact that the only way the Court could grant relief in relation to the certain Legislative Defendants would be to disregard the doctrine of separation of powers and commandeer the legislative process by ordering those Legislative Defendants to perform certain legislative actions, such as filing or passing a bill. *See infra*, Part II.

Plaintiffs contend that the partisan gerrymandering claims are proper and valid claims under various sections of the Utah Constitution. Those arguments are belied by the Utah Constitution's plain language. Simply stated, the Utah Constitution does not guarantee a right to

equalized and aggregated political voting strength, let alone an aggregation of voting strength that is disproportionate to a given political group's population within the state *See infra*, Part III.

Lastly, Plaintiffs insist that their challenge regarding Proposition 4 is proper because they claim that the Legislature does not have the authority to repeal portions of the Utah Code that an initiative enacts, but this argument cannot prevail where the Utah Constitution—which is an instrument that limits rather than grants power—does not state any such limitation. *See* Opp'n at 2–3, 42–46. The Utah Constitution vests the Legislative power of the state—including the power to amend or repeal any statute—co-equally to the Legislature and the people. Utah Const. art. VI, § 1. The Legislature's core function is to legislate, and the Court should not accept Plaintiffs' invitation to invent a novel limitation on that function. *See infra*, Part IV.

Although Plaintiffs conflate arguments addressing the congressional map and the Legislature's treatment of the statutes enacted by Proposition 4, these issues are entirely separate and distinct. The threshold legal issues regarding the congressional map are entirely unrelated to the Legislature's authority to amend or repeal statutes enacted by a citizen initiative.

For these reasons, explained more fully in the Legislative Defendants' Motion to Dismiss and in the memorandum below, the Court should grant the Motion to Dismiss.

RESPONSE TO PLAINTIFFS' ADDITIONAL "FACTS"

In their Opposition, Plaintiffs raise new facts that did not appear in the Complaint, and they raise new legal conclusions and opinion couched as facts presented in the Complaint. For example, on page 2 of the Opposition, Plaintiffs assert as a new "fact" their interpretation of the U.S. Supreme Court's *Rucho* decision. This is a legal opinion, not a fact. Plaintiffs also state legal conclusions or opinions from their Complaint that are not factual allegations. For example,

on pages 1 and 2 of the Opposition, Plaintiffs cite numerous paragraphs from their Complaint's introduction. The Court "need not accept extrinsic facts not pleaded nor . . . accept legal conclusions in contradiction of the pleaded facts." *Am. W. Bank Members, L.C. v. State*, 2014 UT 49, ¶ 7, 342 P.3d 224, 228. Additionally, the Court need not "accept legal conclusions or opinion couched as facts." *Koerber v. Mismash*, 2013 UT App 266, ¶ 3, 315 P.3d 1053, 1054 (citations and internal quotation marks omitted). In their Motion, Legislative Defendants provide the factual allegations from the Complaint that are relevant to the legal questions presented. Motion at 4. For these reasons, the Court should disregard all conclusions, opinions, mischaracterizations, and irrelevant points Plaintiffs have alleged as "facts" and decide the threshold legal issues based on the handful of relevant facts identified in the Motion to Dismiss.

ARGUMENT

The Court should grant the Motion because (I) the Court lacks jurisdiction over Plaintiffs' claims that present nonjusticiable political questions; (II) Plaintiffs fail to state a claim against the Utah Legislative Redistricting Committee, Senator Scott Sandall, Speaker Wilson, and President Adams; (III) Plaintiffs fail to state a claim under the Utah Constitution that could invalidate the 2021 congressional plan; and (IV) Plaintiffs fail to state a claim regarding the Legislature's power to amend or repeal any law regardless of whether the law was enacted by citizen initiative or by legislation.

I. THE COURT LACKS JURISDICTION OVER PLAINTIFFS' CLAIMS THAT PRESENT NONJUSTICIABLE POLITICAL QUESTIONS.

Plaintiffs' claims raise nonjusticiable political questions in Utah because (A) redistricting is constitutionally assigned to the Legislature, meaning that absent the invention of a constitutional right that is not expressed in the text of the Utah Constitution, the Court has no

jurisdiction to opine on the Legislature's policy choices in map drawing, and because (B) Plaintiffs' requested relief lacks judicially discoverable and manageable standards.

Redistricting is inherently a political function, which is why the framers intended it to be determined by the most political branch—the Legislature. Redistricting outcomes are inherently political—inevitably any redistricting map results in some voters having greater voting strength based on their political affiliation because it is impossible to draw districts containing voters equally likely to support competing political philosophies. For better or worse, there are always voters who will not have the necessary numbers to "translat[e] their votes into victories at the ballot box." Compl. ¶ 275. Politics and political considerations are inseparable from the redistricting process. The judicial branch could not remain apolitical if it engages in reviewing and influencing political and policy considerations every ten years through years-long litigation to ensure that district boundaries are drawn to ensure that the Court dictates those considerations.

A. The Utah Constitution places the authority and discretion for redistricting policy decisions solely with the Legislature.

Plaintiffs argue in their Opposition that the Court is empowered to review the Legislative Defendants' redistricting maps because redistricting authority is not wholly within the control or discretion of the Legislature. Opp'n at 7. Far from functioning as a limitation on the Legislature's power as Plaintiffs suggest (*see* Opp'n. at 12), the Utah Constitution functions as a limitation on the judiciary's authority to opine on the Legislature's redistricting policy decisions by explicitly placing the task of redistricting wholly within the control and discretion of the Legislature. Utah Const. art. IX, § 1. The Legislature has plenary authority over lawmaking,

including redistricting maps,[3] unless that authority is withheld by a Utah or United States constitutional provision. "The Utah Constitution 'committed [the state's] whole law-making power to the Legislature,' and the [L]egislature's 'authority is absolute and unlimited, except by the express restrictions of the fundamental law.'" *Univ. of Utah v. Shurtleff*, 2006 UT 51, ¶ 31, 144 P.3d 1109, 1117 (quoting *Kimball v. Grantsville City*, 19 Utah 368, 57 P. 1, 4–5 (1899)).

Plaintiffs acknowledge that the redistricting function in article IX, section 1 of the Utah Constitution is a *legislative* function, which has time constraints imposed on that function. Opp'n at 8. Legislative Defendants agree. Article IX, section 1 authorizes—and requires—the Legislature to redistrict the state, subject only to one limitation: article IX requires the "Legislature [to] divide the state into congressional . . . districts," but limits that authority by requiring it to be done "[n]o later than the annual general session next following the Legislature's receipt of the results of an enumeration made by the authority of the United States." Utah Const. art. IX, § 1. No other state constitutional provision expressly limits this authority.

There is no constitutional claim for the Court to protect because there is no constitutional provision that places a limitation on the Legislature regarding partisan considerations or protecting or amplifying the voting strength of a subset of voters (*see infra*, Part III), and because there is no claim related to any other state or federal constitutional limitation based on equal protection claims of race or population deviation equal protection claims. If any other limitation on the Legislature's redistricting authority were intended, it certainly would have been included in the redistricting provision of article IX. No other limitations were included, and the Court

[3] The Legislature fulfills its constitutional function to divide the state into various districts by passing legislation that establishes the maps containing the new district boundaries. *See* Utah Const. art. IX, § 1.

should decline plaintiffs' invitation to manufacture limitations from other provisions of the Utah Constitution that have no bearing on the Legislature's authority to make policy decisions.

Plaintiffs confuse the political and policy question of where a line should be drawn—exclusively a legislative function—with the Court's ability to review constitutionality. Clearly, the Court has the authority to evaluate the constitutionality of a legislative act, and Legislative Defendants do not argue that the Court lacks authority to consider constitutionality. However, in this case, there is no express or judicially recognized constitutional right at issue. Plaintiffs ask the Court to wade into political waters with the justification of a patchwork of constitutional provisions that do not relate to the voter composition of congressional districts.

Moreover, the Court has no authority to engage in executive or legislative functions. Therefore, the Court has no jurisdiction to grant the relief Plaintiffs request: the Court has no authority to engage in any line-drawing (Compl. at 78), dictate the policy priorities the Legislature or a given legislator must value in considering redistricting legislation (Opp'n at 6), order a legislator to file a bill, order the Legislature to pass a bill, or order the Governor to sign or veto a bill. *See, e.g.*, *id.* at 21–22. Plaintiffs' claims and prayers for relief demonstrate a willingness to disregard the separation of powers and overextend the Court's jurisdiction.

B. There are no judicially discoverable or manageable standards for providing Plaintiffs' requested relief.

No judicially discoverable or manageable standards exist for the Court to provide Plaintiffs' requested relief. Any redistricting map will unavoidably dilute the voting strength of some voters based on their party affiliation or the number of voters willing to vote in favor of the given party in a given election, and any effort to amplify that voting strength through judicially directed boundary manipulation necessarily comes at the cost of the voting strength of voters in

the same district who would cast an opposing vote and voters in the other districts who would consequently have fewer like-minded voters with whom to vote in their district.

Plaintiffs argue that federal courts' rulings that partisan gerrymandering claims are nonjusticiable have "no bearing on whether such claims are justiciable in Utah." Opp'n at 14. Legislative Defendants do not argue that federal court rulings of nonjusticiability are binding on Utah courts; rather, the wisdom of the justices is instructive because the Utah judiciary would face the same impossible task of creating judicially manageable standards that led the United States Supreme Court to conclude that such claims are nonjusticiable. Utah courts routinely rely on federal case law for its precedential value. Federal precedent may not be binding but "can be persuasive and helpful." *Griffin v. Snow Christensen & Martineau*, 2020 UT 33, ¶ 21, 467 P.3d 833, 838; *see also Malan v. Lewis*, 693 P.2d 661, 670 (Utah 1984).

Challenges to redistricting maps based on a one-person-one-vote principle or on racial gerrymandering are justiciable because judicially discoverable and manageable standards exist. *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2495–96, 2501 (2019). For one person, one vote claims, there is a mathematical standard for the courts to apply. *See id.* But for partisan gerrymandering claims, there is no objective measure to evaluate whether a redistricting map treated one political party fairly. *See id.* at 2501. The *Rucho* Court observed that redistricting involves numerous policy decisions, noting "[p]artisan gerrymandering claims invariably sound in a desire for proportional representation," and that "plaintiffs inevitably ask the courts to make their own political judgment about how much representation particular political parties *deserve*—based on the votes of their supporters—and to rearrange the challenged districts to achieve that end." *Id.* at 2499, 2507 (emphasis in original). "In other words, plaintiffs ask the

courts 'to reallocate political power between the two major political parties.'" *Harper v. Hall*, 868 S.E.2d 499, 591 (N.C. 2022) (Newby, J., dissenting).

Challenges to redistricting maps based on racial gerrymandering are justiciable because the court applies the well-established strict scrutiny standard for racial classifications. *See Rucho*, 139 S. Ct. at 2501–02. Unlike racial gerrymandering claims, which ask for the elimination of racial classifications, political gerrymandering claims "cannot ask for the elimination of partisanship." *Id.* at 2502. Additionally, race is an immutable characteristic, while voters commonly engage in split-ticket and cross-party voting and change political affiliation with ease.

Although it is the Court's role to determine what the Constitution says, it is not the Court's role to tell the Legislature what criteria to use when drawing political maps because it would necessarily be choosing a political *outcome*. Plaintiffs ask the Court for a "partisan-*neutral* map" adopted in an impartial process using "traditional, nonpartisan criteria."[4] Opp'n at

[4] Redistricting principles, the most historically common of which are sometimes referred to as "traditional redistricting principles," are considerations taken into account when making decisions about line drawing. *See generally Shaw v. Reno*, 509 U.S. 630, 647 (1993) (recognizing as "traditional districting principles" compactness, contiguity, and the preservation of counties and other political subdivisions), *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (recognizing the preservation of communities of interest), and *Karcher v. Daggett*, 462 U.S. 725, 740 (1983) (recognizing the preservation of cores of prior districts and the protection of incumbents). *See also* Nat'l Conference of State Legislatures, Redistricting Law 2020, https://www.ncsl.org/blog/2019/12/04/extra-extra-read-all-about-it-red-book-is-out.aspx. Examples of redistricting principles are compactness, contiguity, population, preservation of counties and other political subdivision boundaries, preservation of cores of prior districts and the protection of incumbents, preservation of communities of interest, and many others. *See id.* Legislatures and other political bodies may choose to rank these policy principles in a hierarchy to aid in decision making. Legislatures or redistricting commissions or committees may choose to adopt such policy criteria through a political process of debating and voting on which principles will be adopted or not, and in what order they will be ranked, either for use by that body as guiding principles or for inclusion as requirements in the state's constitution. In addition, numerous states have elected to require certain redistricting principles in their state constitution

6. They point to traditional redistricting criteria like contiguity, compactness, and respect for political subdivisions as "neutral benchmarks" to evaluate redistricting maps. Opp'n at 16, 18. These criteria are traditionally defenses raised to justify a Legislature's choice to draw a district in a given way when facing a population deviation or race-related challenge to a map. Were the Court to convert these traditional defenses into requirements and prioritize one particular criterion, it would be making policy choices resulting in judicially influenced political outcomes and political winners and losers. Each criterion is a different "version of fairness" and would "unavoidably have significant political effect, whether intended or not." *Rucho,* 139 S. Ct. at 2500–01 (internal citation omitted). "Deciding among just these different visions of fairness . . . poses basic questions that are political, not legal. There are no legal standards discernible in the Constitution for making such judgments, let alone limited and precise standards that are clear, manageable, and politically neutral." *Id.* at 2500. Likewise, there are no legal standards discernible in the Utah Constitution for making this judgment.

Plaintiffs' argument boils down to claiming a right to equalized and aggregated political voting strength.[5] Compl. ¶¶ 2, 265, 276, 301; Opp'n at 1, 4, 17. Even accepting Plaintiffs'

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or statute. *See, e.g.*, Alabama (Ala. Const. art. IX, §§ 198-200); Alaska (Alaska Const. art. VI); Arizona (Ariz. Const. art. IV, pt. 2, § 1); California (Cal. Const. art. XXI, § 2); Florida (Fla. Const. art. III, §§ 20, 21); Idaho (Idaho Const. art. III, § 5); *see also Vieth v. Jubelirer*, 541 U.S. 267, 277 n. 4, (2004) (collecting several states' constitutional provisions that have "adopted standards for redistricting, and measures designed to insulate the process from politics").

[5] In North Carolina, the *Harper* dissent argued that, in order to achieve what Plaintiffs request here, the majority opinion began by "radically changing the meaning of the fundamental right to vote. It takes this individual right and transforms it into a right to 'substantially equal voting power on the basis of party affiliation' and then declares a right to statewide proportional representation. In its unparalleled distortion of the right to vote, it singles out equal representation based on political affiliation, i.e., the two major political parties. What about the

allegations as true, that a partisan gerrymander relies on voting patterns to lock in single-party control for a decade, and that Legislative Defendants sought to guarantee a political outcome (*see* Opp'n at 19), there is no result that would give voters in one district more equal political voting strength without diminishing the political voting strength of voters in other districts. It is not a factual dispute, but simple logic, that if voters had perfect equality of voting strength, then, because there is not numerical equality among political parties, each of the four congressional districts would have the same proportion of partisan voters, resulting in more majority party voters in each district. Alternatively, if a district were created to be competitive or favor non-majority party voters, non-majority party voters in other districts would suffer additional vote dilution. There is no other constitutional right that allows for a constitutional violation against members of a subset of a group of individuals in order to enhance that constitutional right for other members of that same subset.

The Court would be stepping in to not only define political "fairness" in choosing which criteria to apply, but also in asking

> "How much is too much?" At what point does permissible partisanship become unconstitutional? If compliance with traditional districting criteria is the fairness touchstone, for example, how much deviation from those criteria is constitutionally acceptable and how should mapdrawers prioritize competing criteria? Should a court "reverse gerrymander" other parts of a State to counteract "natural" gerrymandering caused, for example, by the urban concentration of one party? If a districting plan protected half of the incumbents but redistricted the rest into head to head races, would that be constitutional? A court would have to rank the relative importance of those traditional criteria and weigh how much deviation from each to allow.

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unaffiliated voters or voters in 'non-partisan,' issue-focused groups organized for political influence? Of course, nothing about this approach is supported by the constitutional text or case law." *Harper*, 868 S.E.2d at 586 (Newby, J., dissenting).

Rucho, 139 S. Ct. at 2501.

Furthermore, although Plaintiffs claim that North Carolina and Pennsylvania created manageable standards (Opp'n at 16), neither states' supreme court has done so. North Carolina's sharply divided supreme court provided no standard and simply required the prioritization of redistricting criteria that *already existed in the state's constitution. See Harper*, 868 S.E.2d at 511, 559–60; *Harper v. Hall*, 867 S.E.2d 554, 558 (N.C. 2022); N.C. Const. art. II, §§ 3, 5. The Pennsylvania Supreme Court articulated specific redistricting criteria that *already existed in the state's constitution* and warned that a map that *unfairly* disadvantaged a political party at the expense of those pre-existing criteria requirements would run afoul of the new right. *See League of Women Voters v. Commonwealth*, 178 A.3d 737, 816 (Pa. 2018); Pa. Const. art. II, § 16. Utah's Constitution does not contain any redistricting criteria. Furthermore, the redistricting criteria requirements that the North Carolina and Pennsylvania courts relied on do not create manageable standards but rather a warning of a "we know it when we see it" test that invades the Legislature's prerogative to evaluate and balance redistricting criteria in the ever-changing political and demographic shifts that occur during decennial census and redistricting cycles. The Court should not look to either of these heavily divided opinions as a model for a "manageable standard" for Utah—even more so when considering the historical, legal, constitutional, and political differences between Utah and those states.

Regardless of which criteria the Court imposed or which statistical modeling the Court deemed to be "fair" or "neutral," if the Court ordered the drawing of a new map, it would have the practical effect of redistricting maps being litigated every ten years for largely the duration of

the decade. If Pennsylvania's experience is instructive,[6] this would leave election processes in a perpetual state of uncertainty and instability in order to serve a judicially directed notion of political fairness. This would be a heavy burden that would be unprecedented in its political ramifications for the judicial branch to carry. Consequently, the Court should dismiss the Complaint for a lack of judicially discoverable or manageable standards for providing relief.

II. PLAINTIFFS FAIL TO STATE A CLAIM AGAINST DEFENDANTS' UTAH LEGISLATIVE REDISTRICTING COMMITTEE, SENATOR SCOTT SANDALL, SPEAKER WILSON, AND PRESIDENT ADAMS.

Plaintiffs rightly argue that if a court invalidated a redistricting map, individual legislators and legislative committees have the power to file legislation to enact a new map. Speaker Wilson and President Adams have the power to oversee the legislative process to consider legislation in the Senate and the House of Representatives, respectively, and could call a special session under certain circumstances. Opp'n at 21–22. However, the fact that certain Legislative Defendants have the *ability* to engage in certain legislative functions does not provide the Court with an opportunity to *order* any of these defendants to engage in any discretionary legislative function. Any relief the Court would grant ordering the Utah Legislative Redistricting Committee, Senator Scott Sandall, Speaker Wilson, or President Adams to engage in a discretionary legislative function would blatantly violate the separation of powers. Certainly, every time a redistricting map needs to be enacted, the Legislature exercises its authority to enact a map, just as it did in enacting new maps during the 2021 redistricting cycle. The Court's authority is limited to a constitutional review of legislative enactments and does not extend to

[6] *See generally League of Women Voters*, 178 A.3d at 741–42 (describing history of the legal challenge to the 2011 redistricting plan).

directing how or who should exercise a legislative function. For these reasons, the Court should dismiss the individual legislators and the Utah Legislative Redistricting Committee.

III. PLAINTIFFS' COMPLAINT FAILS TO STATE A CLAIM UNDER THE UTAH CONSTITUTION REGARDING THE CONGRESSIONAL MAP.

The Court should dismiss Plaintiffs' claims related to the congressional map because the Utah Constitution does not protect a right to disproportionately balanced voting strength or a beneficial political outcome for a given political affiliation under (A) Utah's Free Elections Clause or (B) any of the other constitutional provisions Plaintiffs reference.

A. The constitution does not guarantee a beneficial political outcome for a given political affiliation under article I, section 17 of the Utah Constitution.

Nothing in the text of article 1, section 17 of the Utah Constitution (the "Free Elections Clause"), its original plain meaning, or any case law suggests that it prohibits "extreme" partisan gerrymanders. [7] *See* Opp'n at 25. The text of the Free Elections Clause instead states that it guarantees the right to elections, including casting a vote, without constraints from civil or military interference. Utah courts look to the plain language of the text of the constitution to seek understanding of what the framers of that text meant by the terms. *See Patterson v. State*, 2021 UT 52, ¶ 91, 504 P.3d 92, 112, *reh'g denied* (Jan. 18, 2022).

Ratification-era definitions support the interpretation that the Free Elections Clause was limited to protecting Utah voters from being intimidated during the elections process. Black's Law Dictionary from 1891 defines "free" as "[u]nconstrained; having power to follow the

[7] The Legislative defendants do not, of course, agree with Plaintiffs that the 2021 congressional map is an "extreme partisan gerrymander."

dictates of his own will." BLACK'S LAW DICTIONARY (1st ed. 1891). In other words, voters may not be constrained or intimidated into voting against their will. In the same 1891 edition of Black's Law Dictionary, "Suffrage" is defined as "[a] vote; the act of voting; the right or privilege of casting a vote at public elections." *Id.* In other words, voters have a functional right to cast a vote at public election.

When interpreting the plain language of the text, Utah courts "consider the entire text, in view of its structure and of the physical and logical relation of its many parts." *Salt Lake City Corp. v. Haik*, 2020 UT 29, ¶ 15, 466 P.3d 178, 182 (interpreting Utah Const. art. XI, § 6) (internal citations omitted). Yet, Plaintiffs focus only on the first clause of the Free Elections Clause to argue that the definition of "free" within the clause prohibits extreme partisan gerrymandering. Opp'n at 25. The first clause "[a]ll elections shall be free," must be read within the context of the second clause of the sentence, "*and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage*." Utah Const. art. I, § 17. In modifying the first clause, the second clause suggests that the intent of the ratifiers was not freedom to have equal political influence over the outcome of the election regardless of the number of voters who support a given political persuasion, but rather the freedom to *cast a vote* without interference from civil or military power. Had the framers wanted Utah's Constitution to provide for politically "equal voting power" or a vote that is politically "equal in its influence," they would have included such language, or at least not expressly removed "and equal" from the phrase "All elections shall be free."

Although Utah courts look to common law and sister states' original public meaning analysis, in this instance, our framers are silent in their debate about the Free Elections Clause.

Utah has no early common law discussing this clause.[8]

Plaintiffs' reliance on non-binding precedent from the other side of the country is misplaced. *See* Opp'n at 27–28. It is true that justices in Pennsylvania and North Carolina created rights in the way Plaintiffs request. However, as stated above (*see Supra*, Part II.B.) the Utah Constitution is distinct from other states' constitutions, in some ways in express language, but also in that the historical and political context of our state is inherently different, creating a difference in meaning. Even if the Court agrees with Plaintiffs that the Utah Constitution should be read to be identical to the constitutions of other states, it remains a leap for Plaintiffs to assert that it would be correct for the Court to mirror the rights the Pennsylvania and North Carolina courts created.

In interpreting the Pennsylvania Free and Equal Clause, the Pennsylvania Supreme Court noted the historical context and differing meanings of "free" on the one hand, focused on securing universal access to the election process regardless of property or financial means, and "equal" on the other, focused on resolving historical strife between religious factions in different regions of that state for political control. *See League of Women Voters*, 178 A.3d at 806–08. Notably, Utah's history is obviously distinct from the factional religious strife and suffrage challenges experienced in Pennsylvania. Certainly, if the framers of the Utah Constitution had relied on Pennsylvania's constitution, understood that it meant what the

[8] Plaintiffs argue that Utah courts have stated that Utah's Constitution arose from the English Bill of Rights of 1689. Opp'n at 27 (citing *Bott v. Deland*, 922 P.2d 732, 737 (Utah 1996)). In fact, in *Bott v. Deland*, the Utah Supreme Court noted only that article 1, section 9 (the cruel and unusual punishment clause) arose from the English Bill of Rights of 1689. *See id*. The only other right the court mentioned as being derived from that or other historical fundamental documents was the right to an award of money damages. *See id.* at 739.

Pennsylvania court interpreted it to mean, and felt that Utah faced similar concerns, they would not have removed "and equal" from Utah's Free Elections Clause. Utah's history, especially its social, electoral, and constitutional history, is markedly distinct[9] from the states Plaintiffs cite and should accordingly be interpreted differently.

Ascribing the meaning that elections and the right to cast a vote shall be free from constraint to Utah's Free Elections Clause is consistent with interpretations of other states' analogous constitutional provisions. The Supreme Court of Colorado interpreted its state's "free and open elections" provision to mean voters' right to the act of suffrage, free from coercion. *See Neelley v. Farr*, 158 P. 458, 467 (Colo. 1916); Colo. Const. art. 2, § 5. Similarly, Idaho's Supreme Court held that its "free and lawful elections" clause would not affect a ranked-choice voting law because the clause meant simply that no power may "meddle with or intimidate electors, and thus to interfere with and prevent them from the free and lawful exercise of the right of suffrage." *Adams v. Lansdon*, 110 P. 280, 282 (Idaho 1910); Idaho Const. art. I, § 19.

The divided courts in North Carolina and Pennsylvania found a basis for their conclusion that their equivalent Free Elections Clauses offer protection from partisan gerrymandering in their state's historical documents. Utah does not have that unique history and does not have common law from other states to define the scope and meaning of this clause. Moreover, the

[9] "The constitutional convention convened on March 4, 1895, in Salt Lake City. Of the 107 delegates, only 28 were non-Mormons. The delegates drew much of the final document from previous Utah constitutions and the constitutions of other states—Nevada, Washington, Illinois, and New York in particular. With this foundation, most debates centered on local problems such as 'woman suffrage, apportionment of the state legislature, the salaries of state officials, the location of the state university, and the restrictions on aid to business by the legislature.' There was little discussion or controversy regarding any of the provisions of the Declaration of Rights. The final version of the Utah Constitution was adopted without dissent on May 8, 1895." *Soc'y of Separationists, Inc. v. Whitehead*, 870 P.2d 916, 928–29 (Utah 1993) (citations omitted).

Pennsylvania and North Carolina courts did not simply work through Plaintiffs' reasoning and conclude that the courts should impose a judicially created requirement for traditional criteria. Rather, the Constitution of the Commonwealth of Pennsylvania already imposed that requirement through express limitations on the Legislature's redistricting processes. *See* Pa. Const. art. II, § 16. The Constitution of North Carolina also contains a limitation by affirmatively establishing binding redistricting criteria on the Legislature. *See* N.C. Const. art. II, §§ 3, 5.

These distinctions between Utah's constitution and the Pennsylvania and North Carolina constitutions would prohibit the Court from following the Pennsylvania or North Carolina approaches as Plaintiffs request. Simply stated, those courts reached an interpretation of their free elections clauses that, based on the history of Utah, would not be correct in this case. Furthermore, those states' constitutions provide the redistricting criteria limitations on legislative redistricting authority that appear in those judicial opinions. Notably, the Utah Constitution does not include any such criteria, leaving the Court without a similar basis for restating constitutional policy criteria requirements and directing which of the criteria the Legislature should consider or prioritize in defining district boundaries.

Additionally, as Plaintiffs rightly noted (Opp'n at 19 n.7), the Kansas Supreme Court recently distinguished itself from the Pennsylvania and North Carolina courts and instead ruled in favor of the Kansas Legislature in a similar case.[10] Although the court has yet to release its written opinion, it is at least instructive that a state with a partisan geographic distribution similar to Utah's has rejected the political claims Plaintiffs make in this case.

[10] *See Rivera v. Schwab*, 508 P.3d 1289 (Kan. 2022) (mem.).

Because Utah's Free Elections Clause is distinct in meaning from the jurisdictions that Plaintiffs cite, because the Utah Constitution does not contain the legislative limitations that the constitutions from those jurisdictions include, and because other states are poised to reject similar political redistricting claims, the Court should decline to invent a right of political voting strength and political outcomes and decline to invent limitations to ensure that invented right.

B. The Utah Constitution does not guarantee a beneficial political outcome under the remaining constitutional provisions cited in article I, sections 1, 2, 15, and 24 or under article IV, section 2.

The Court should dismiss the Complaint because it fails to state a claim under Utah Constitution article I, sections 1, 2, 15, and 24, or article IV, section 2.

The perceived inequality of a voter's political voting strength is a product of the imbalance in the political makeup of the state and the corresponding political outcomes that reflect that imbalance of political opinion. For example, a voter who affiliates with a party made up of less than 5% of registered voters in the state would certainly have a reduced political voting strength when compared to voters who affiliate with a party comprising 15% of registered voters and voters who affiliate with a party comprising 50% of registered voters, let alone the voting strength of the 30% of voters who do not affiliate with a political party.[11] The "inequality" is not a product of the location where the Legislature chooses to place a given congressional district boundary: it is a product of the state's political landscape where the

[11] Because data regarding registered voters' political affiliation is generally known and can be accurately and readily determined from the office of the Lieutenant Governor, who is the state's election official, the Court could choose to take judicial notice of current political affiliation data. Utah R. Evid. 201; *see also Lee v. Gaufin*, 867 P.2d 573, 585 & n.19 (Utah 1993). According to the Lieutenant Governor's official website, 14% of registered voters in Utah are registered Democrats, 52% are registered Republicans, 5% are affiliated with other parties, and 29% are unaffiliated. *See* https://voteinfo.utah.gov/current-voter-registration-statistics/.

number of voters affiliated with various parties and the number of unaffiliated voters are vastly divergent.

Equal political voting strength is an illusory concept at best, and the alleged right to equalized and aggregated voting strength does not exist. There is no suggestion—much less an explicit provision—in the Utah Constitution guaranteeing that every person's vote will have equal political strength with the vote of every other person. To attempt to fabricate such a guarantee with imbalanced numbers of unaffiliated voters and registered members of various political parties would be impossible. The concept of equal political voting strength could exist only if each voter belonged to a political party and each political party's share of total voters was equal, let alone the geographic distribution of those voters throughout the state complicating that balance in each district. This is certainly not the reality of the political landscape in Utah or likely any other state, and it is not a constitutional right that the Court should invent.

Assuming, for the moment, that the Court has a role in providing equalized and aggregated political voting strength, existing political realities render that task unmanageable given vastly disparate numbers of voters among the political parties, that not all voters vote in every election, that voters registered as a member of one political party may vote for a candidate of another political party, and that a large percentage of Utah voters are unaffiliated—not registered as members of any political party. By any metric, either through judicially discoverable party affiliation data or the Complaint's careful selection of one voting data point from one election, Utah voters have self-selected into a politically imbalanced landscape, which is a reality that must be considered in the redistricting process.

Should the Court require that each congressional district contain the proportional partisan composition that is reflected in the statewide partisan composition to the extent practicable based on geographic distribution of voters? That may achieve a version of "equality" of political voting strength, but it would not assure non-majority voters any improved political voting strength in a given district because of the political and geographic realities of voter distribution.

Additionally, this balanced reflection of statewide voting totals is the reality of the challenged congressional map, so there would be no relief for the Court to order if the statewide political proportionality was the requirement. According to Plaintiffs, the Court could assume that 61% of voters recently voted for Republican candidates, while 35% of voters recently voted for Democratic candidates (Compl. ¶ 206). This proportional distribution is roughly reflected in the current congressional districts according to Plaintiffs' factual assertions that rely on an amalgamation of election data from some, but not all, of the statewide elections under the previous maps,[12] (Compl. ¶ 228) with District 1 returning 62.8% Republican voters and 32% Democratic voters (*Id.*), District 2 returning 60.1% Republican voters and 34.2% Democratic voters (Compl. ¶ 229), District 3 returning 64.7% Republican voters and 30.3% Democratic voters (Compl. ¶ 230), and District 4 returning 66.4% Republican voters and 28.3% Democratic voters (Compl. ¶ 231). Given that reflecting the political composition of the state is unacceptable to Plaintiffs, it appears Plaintiffs seek district boundaries that provide at least one district with political voting strength that is amplified and outpaces the statewide partisan composition.

[12] "The election returns figures are based on statewide composite election data from the 2012, 2016, and 2020 elections for U.S. President; 2016 and 2018 elections for U.S. Senate; 2016 and 2020 election for Utah Governor; and 2016 and 2020 election for Utah Attorney General." Compl. ¶ 228 n.56 (citing Dave's Redistricting, UT 2022 Congressional, https://davesredistricting.org/maps#viewmap::b4d46a7e4366-4f6c-ac54-ff6640d4e13f).

Should the Court require that a map "pack" enough voters from a minority party into a district to approximate the number of voters of the majority party to create a more "competitive" district or even a minority-party-leaning district? Amplifying the relative voting strength of a set of voters through packing might help non-majority party voters in that given district feel better about their political voting strength and their ability to "translat[e] their votes into victories at the ballot box" (Compl. ¶ 275), but what of the non-majority party voters in the three other congressional districts whose voting strength has been substantially diluted because they are included in a district that consequently now has an artificially low share of non-majority voters? The fatal flaw in this exercise is the reality that the voter composition of a district changes substantially depending on where lines are drawn, and moving a line to change the voter composition of one district substantially effects the voting composition of the remaining districts. How could a constitutional right of voters in a given district force the packing of a political group's voters in that district without violating that same constitutional right by draining the voting strength for that same political group's voters in the remaining districts?

Whatever process the Legislature follows to divide the state into congressional districts, there will undoubtedly be political winners and losers. What is fair to one voter or set of voters, or results in greater political voting strength for a voter or set of voters when measured by political outcome, inevitably results in less fairness or less political voting strength to others. Legislative Defendants do not contest Plaintiffs' limited and properly stated relevant facts or argue that it would be impossible to create one "competitive" or even a packed minority party-leaning congressional district (at least as far as the two major parties are concerned). The question though is not whether the Legislature could or should set a district boundary to pack or

crack (two sides of the same coin), but whether the Utah Constitution prohibits cracking and contradictorily requires packing. Plaintiffs ask the Court to recognize a right that simply does not exist—in other words, to invent a right not expressed in the text of the Utah Constitution. Although Plaintiffs rely on constitutional provisions that provide important constitutional rights to speak freely and cast votes in elections free from civil or military interference—rights with which Legislative Defendants certainly do not argue—Plaintiffs have failed to articulate a single constitutional provision that establishes a right to a political outcome of a vote.

Specific to the constitutional provisions the Plaintiffs reference, the congressional map does not violate the Utah Constitution's guarantee of uniform operation of laws. The map does not compromise an individual's "right to vote" in any way, and every registered voter has a completely equal opportunity to vote with each district containing literally the exact same number of people. Plaintiffs' citations to population deviation cases are therefore erroneous. Opp'n at 33–35.[13] Unlike in *Gallivan v. Walker*, 2002 UT 89, 54 P.3d 1069, the congressional map does not create any subclasses of voters. *Id.* ¶¶ 44–45 (describing the classifications created by the multi-county signature requirement). The congressional districts divide the state into identical numbers of voters, and the only distinction that may be drawn is not by the legislative enactment of the line but by the choice of an individual voter to affiliate with a party, not affiliate, or vote for a given candidate or issue, or not vote at all. Voters are free to engage in their right to vote in whatever way they choose, and the location of a given district boundary does not affect that freedom. Although Plaintiffs' arguments seem to rely on an assumption that

[13] Plaintiffs cite *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) and *Gallivan v. Walker*, 2002 UT 89, ¶ 72, 54 P.3d 1069, 1093 (quoting *Reynolds*, 377 U.S. at 565–66).

an individual's party registration or voting pattern in a recent election is somehow immutable, how an individual voter affiliates or votes can and does change from election to election and even issue to issue or candidate to candidate on a given ballot in a given election. It is the individual voter, not the district boundary, that determines if and how the voter exercises their right to vote. The constitutional guarantee of uniform operation of laws ensures that maps treat voters equally, for example in race or population deviation, and the congressional map complies.

The congressional map does not violate the Utah Constitution's guarantee of free speech and association rights. Voters retain their unfettered ability to express viewpoints, associate with others holding similar viewpoints, and speak through their vote to attempt to elect a preferred candidate. Just as the right to freedom of speech does not require others to hear or heed an individual's speech, these rights similarly don't require that a voter's vote carry the election for their preferred candidate. There is nothing in the language or history of the constitutional provisions cited or in the case law interpreting those provisions to suggest otherwise or to extend these provisions to political questions like the location of a district boundary.

The congressional map does not violate the Utah Constitution's guarantee of the right to vote. Legislative defendants agree that the constitution guarantees everyone who meets eligibility requirements the right to vote. Again, the location of a district boundary does not in any way interfere with an eligible voter's ability to cast a vote.

Plaintiffs cite several rights laudably guaranteed by the Utah Constitution, but these provisions are not disturbed by the location of a district boundary. Having a guarantee of uniform operation, the right to speak, or the right to cast a vote is clearly different from a supposed right that a vote carry political strength equal to the voter's political opponent's vote or that political

voting strength should be equalized and aggregated. To add such a right would be to add significance beyond the simple and plain meaning of the cited provisions of the Utah Constitution. As a practical and mathematical matter, that "right" clearly could not exist in Utah on a statewide basis. This means that the "right" could only be a right for some voters and not others or benefit some and harm others, seemingly violating the real and express right of uniform operation. This "right" of equalized and political voting strength for a beneficial political outcome is not mentioned in the Utah Constitution, and the Court should not endeavor to invent it. This weighing of, let alone influence on, political interests is not a practice the judiciary should undertake, especially where the Utah Constitution wisely assigns the responsibility for dividing the state into congressional districts to the political and policy-making branch of government: the Legislative Branch.

IV. PLAINTIFFS FAIL TO STATE A CLAIM REGARDING THE LEGISLATURE'S POWER TO AMEND OR REPEAL ANY LAW, REGARDLESS OF WHETHER THE LAW WAS ENACTED BY CITIZEN INITIATIVE OR BY LEGISLATION.

The Court should dismiss Plaintiffs' claims related to Proposition 4 because Plaintiffs fail to state a claim that the Legislature does not have the authority to perform the most core legislative function of amending or repealing the Utah Code.

"The power of the legislature and the power of the people to legislate through initiative and referenda are coequal, coextensive, and concurrent and share 'equal dignity.'" *Gallivan*, 2002 UT 89, ¶ 23 (*citing Utah Power & Light Co. v. Provo City*, 94 Utah 203, 235–36 (1937) (Larson, J., concurring)). The only differences with respect to the exercise of legislative power are those expressly described in the Utah Constitution. The legislative power of the people is

limited in at least two ways. First, the right of the people to legislate must be done by initiative or referendum "under the conditions, in the manner, and within the time provided by statute." Utah Const., art. VI, § 1(2). Second, the right of the people to repeal a legislative enactment through a referendum is limited to laws that are not passed by "two-thirds vote of the members elected to each house of the Legislature." *Id*. The legislative power of the Legislature is limited by the veto power of the governor, though the Legislature may override a veto. Utah Const. art. VII, § 8.

If the framers of the Utah Constitution intended to further limit the legislative power of the Legislature, they would have included those additional limitations in the constitution. As Plaintiffs cite, "[t]he Utah Constitution is not one of grant, but one of limitation." Opp'n at 8 (citing *Univ. of Utah*, 2006 UT 51, ¶ 18). Plaintiffs claim that the Legislature is somehow prohibited from repealing[14] an initiative passed by the people, ignoring the fact that such a limitation is not expressed in the Utah Constitution. Other state constitutions expressly provide such a limitation.[15] Plaintiffs attempt to infer such a limitation where the constitution "specifically grants the people the power to disapprove of laws enacted by the Legislature but

[14] The assertion that the Legislature repealed the redistricting initiative is a misuse of legislative jargon. The initiative enacted portions of the Utah Code. After extensive negotiations with the initiative's sponsors, the Legislature passed a revised version of the law that eliminated provisions that were constitutionally suspect. (*See* S.B. 200, Redistricting Amendments, 2020 General Session). The Legislature did not take any action toward the initiative but rather the portions of the Utah Code that the initiative enacted.

[15] Ten states restrict when or how the legislature may amend or repeal the statute of a successful citizen initiative: Alaska (Alaska Const. art. XI, § 6); Arizona (Ariz. Const. art. IV, pt. 1, § 1); Arkansas (Ark. Const. art. V, § 1); California (Cal. Const. art. II, § 10); Michigan (Mich. Const. art. II, § 9; art. XII, § 2); Nebraska (Neb. Const. art. III, § 2); Nevada (Nev. Const. art. XIX, §§ 1-2); North Dakota (N.D. Const. art. III, § 8); Washington (Wash. Const. art. II, § 1); and Wyoming (Wyo. Const. art. III, § 52). Eleven other states provide for citizen initiatives, including Utah, and have no initiative-related restrictions on legislative authority.

contains no such reciprocal power to the Legislature." Opp'n. at 45. This assertion is unfounded and contradicts the Plaintiffs' reminder that the Utah Constitution is one of limitation. The method by which the Legislature may modify or repeal a statute, regardless of whether the initiative or legislation enacted it, is already in place as part of the regular legislative process and the Legislature's core function. To claim otherwise rejects the principle that the power of the Legislature is coequal, coextensive, and concurrent with the power of the people.[16]

If the Legislature repeals or modifies a law enacted by a citizen initiative, voters are not left without recourse. First, voters retain the option to overturn legislative enactment through a referendum, subject to the constitutional two-thirds limitation, or to enact new statutes by placing another initiative on the ballot. Second, voters retain the right to vote and are free to cast votes against an incumbent in disagreement with the legislator's and Legislature's actions in response to the Legislature amending or repealing a statute that a citizen initiative enacted. Based on these provisions, and those explained in the Motion to Dismiss, the Legislature has the power to repeal or amend any statute, subject to the referendum and veto limitations expressly provided in the Constitution. Because the Utah Constitution is one of limitation and does not contain any limitation reflecting Plaintiffs' claims, the Court should dismiss count five of the Complaint.

[16] Additionally, Utah Code Subsection 20A-7-212(3)(b) provides that "[t]he Legislature may amend any initiative approved by the people at any legislative session" and Subsection 20A-7-311(5)(b) provides that "[t]he Legislature may amend any laws approved by the people at any legislative session after the people approve the law." Furthermore, the rule Plaintiffs ask the Court to create would pose practical and technical challenges to the maintenance of the Utah Code. For example, if a citizen initiative contained a typographical error, mistakenly used an incorrect cross reference, unintentionally caused a statutory conflict, or otherwise caused mistaken harm to the Utah Code, the state would be left with a broken body of laws unless another citizen initiative came along to clean up those errors, let alone any new errors that a clean-up initiative could create.

CONCLUSION

Plaintiffs' Complaint asks the Court to take unprecedented action to violate the separation of powers, engage with a nonjusticiable political question by inventing a constitutional right to equalized and aggregated political voting strength that the Utah Constitution does not protect, and invalidate the 2021 congressional map based upon a political disagreement with the policy choices the Legislature made in establishing the boundaries of new congressional districts. Plaintiffs also seek to overturn validly enacted legislation related to the legislative redistricting process and impose an unparalleled restriction on the Legislature's core power to legislate, not based on constitutional text, but because of a political disagreement with the Legislature's policy choices related to statutes governing the redistricting process. The Court should not entertain the Plaintiffs' invitation to insert the Court's own "political judgment about how much representation particular political parties deserve—based on the votes of their supporters—and to rearrange the challenged districts to achieve that end. . . to reallocate political power between the two major political parties." *Harper* 868 S.E.2d at 591 (Newby, J., dissenting). For the reasons stated above and in the Motion to Dismiss, the Court should dismiss this case.

CERTIFICATE OF FILING

I certify that on this 17th day of June 2022, I electronically filed the foregoing **LEGISLATIVE DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS** with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

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