

**PARR BROWN GEE & LOVELESS**

David C. Reymann (8495)  
Kade N. Olsen (17775)  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
(801) 532-7840  
dreymann@parrbrown.com  
kolsen@parrbrown.com

**ZIMMERMAN BOOHER**

Troy L. Booher (9419)  
J. Frederic Voros, Jr. (3340)  
Caroline Olsen (18070)  
341 South Main Street  
Salt Lake City, Utah 84111  
(801) 924-0200  
tbooher@zbappeals.com  
fvoros@zjbappeals.com  
colsen@zbappeals.com

**CAMPAIGN LEGAL CENTER**

Mark Gaber (*pro hac vice*)  
Hayden Johnson (*pro hac vice*)  
Aseem Mulji (*pro hac vice*)  
1101 14th St. NW, Suite 400  
Washington, D.C. 20005  
(202) 736-2200  
mgaber@campaignlegalcenter.org  
hjohnson@campaignlegalcenter.org  
amulji@campaignlegalcenter.org

Annabelle Harless (*pro hac vice*)  
55 W. Monroe St., Ste. 1925  
Chicago, Illinois 60603  
aharless@campaignlegalcenter.org

*Attorneys for Plaintiffs*

**THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LEAGUE OF WOMEN VOTERS OF  
UTAH, *et al.*,

Plaintiffs,

v.

UTAH STATE LEGISLATURE, *et al.*,

Defendants.

**SUPPLEMENT TO STATEMENT OF  
DISCOVERY ISSUES RE:  
PURPORTED LEGISLATIVE  
PRIVILEGE**

Civil Action No. 220901712

Honorable Dianna Gibson

The Legislative Defendants opposed Plaintiffs' Statement of Discovery Issues based almost entirely on the assertion that they couldn't possibly predict, one week out, how they would assert the so-called "legislative discovery privilege" to refuse to engage in the most basic incidents of discovery, insisting those issues were unripe. Attached as Exs. 1-13 are the responses from those defendants as well as from individual legislators on whom Plaintiffs served subpoenas. The Legislative Defendants and the individual legislators have essentially refused to provide any information or documents that are not already public, including their communications with non-legislative individuals to whom a privilege could not possibly apply.

These responses show the issues Plaintiffs raised in their original Statement were never hypothetical, and the issue is ripe for the Court's consideration.

Date: January 5, 2023

RESPECTFULLY SUBMITTED,

/s/ David C. Reymann

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Annabelle Harless  
Hayden Johnson  
Aseem Mulji

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 5th day of January 2023, I filed the foregoing  
**SUPPLEMENT TO STATEMENT OF DISCOVERY ISSUES RE: PURPORTED  
LEGISLATIVE PRIVILEGE** via electronic filing, which served all counsel of record.

/s/ David C. Reymann

# **EXHIBIT 1**

John L. Fellows (4212)  
Robert H. Rees (4125)  
Eric N. Weeks (7340)  
Michael Curtis (15115)  
OFFICE OF LEGISLATIVE RESEARCH  
AND GENERAL COUNSEL  
Utah State Capitol Complex,  
House Building, Suite W210  
Salt Lake City, UT 84114-5210  
Telephone: 801-538-1032  
jfellows@le.utah.gov  
rrees@le.utah.gov  
eweeks@le.utah.gov  
michaelcurtis@le.utah.gov

Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
(703) 243-9423  
tyler@consovoymccarthy.com

Taylor A.R. Meehan\*  
Frank H. Chang\*  
James P. McGlone\*  
CONSOVOY MCCARTHY PLLC  
1600 Wilson Blvd. Suite 700  
Arlington, VA 22209  
(703) 243-9423  
taylor@consovoymccarthy.com  
frank@consovoymccarthy.com  
jim@consovoymccarthy.com

*Counsel for Legislative Defendants*

*\* Admitted pro hac vice*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL GOV-  
ERNMENT, STEFANIE CONDIE, MALCOLM  
REID, VICTORIA REID, WENDY MARTIN,  
ELEANOR SUNDWALL, JACK MARKMAN,  
and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLA-  
TIVE REDISTRICTING COMMITTEE; SENA-  
TOR SCOTT SANDALL, in his official capacity;  
REPRESENTATIVE BRAD WILSON,  
in his official capacity; SENATOR J. STUART AD-  
AMS, in his official capacity; and LIEUTENANT  
GOVERNOR DEIDRE HENDERSON, in her offi-  
cial capacity,

Defendants.

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**LEGISLATIVE DEFENDANTS'  
RESPONSES AND OBJECTIONS TO  
PLAINTIFFS' FIRST SET OF  
REQUESTS FOR PRODUCTION**

Case No. 220901712

Honorable Dianna Gibson

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Pursuant to Utah Rules of Civil Procedure 26 and 34, the Utah State Legislature, on behalf of all Legislative Defendants, serves these responses and objections. The Legislature reserves the right to supplement these responses and objections. Any document production pursuant to Plaintiffs' requests is made subject to the objections stated below. As noted below and consistent with the Utah Rules of Civil Procedure, the Legislature is willing to meet and confer regarding these objections and responses.

### **OBJECTIONS RELEVANT TO EACH REQUEST**

The Legislature asserts and repeats each of the following objections as to each request below.

In the interest of brevity, these objections are listed here to avoid unnecessary repetition.

1. The Legislature objects to Plaintiffs' instruction that all Defendants should answer separately, to the extent Plaintiffs intended for each of the Legislative Defendants to answer separately. The Legislature answers Plaintiffs' requests on behalf of all Legislative Defendants, including the Utah Legislative Redistricting Committee, Senator Scott Sandall, Representative Brad Wilson, and Senator J. Stuart Adams. When the District Court denied the motion to dismiss the Committee and the individual legislators from this lawsuit, the District Court simultaneously acknowledged that the Speech or Debate Clause "issues raised by Defendants are legitimate questions that the Court will address if and when the issues are fully ripe and briefed." Op. 22 n.11 (Nov. 22, 2022), Doc. 140. Whether Plaintiffs can compel a legislative committee and individual legislators to participate in discovery, separate from the Legislature, is such a "legitimate question[]." In Article VI, §8, the Utah Constitution guarantees legislative immunity and privilege, critical protections that enable legislators to be free not only from "the consequences of litigation's results, but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967).

For purposes of responding to these requests, the Committee was a subdivision of the Legislature by the Legislature's creation. The Committee will thus comply with these discovery requests by

and through the Legislature. The Legislature will conduct a reasonable search of documents that were maintained by the Committee and will produce non-privileged, responsive documents, subject to the objections below.

Individually named legislators will comply with discovery requirements by and through the Legislature in the following way. In responding to these requests, the Legislature intends to search the documents of the Legislature but not those belonging solely to the offices of individual legislators and staff. Further subjecting individual legislators' documents to discovery, including any documents of the individually named legislators, transgresses their legislative immunity, enshrined in Utah Constitution's Speech or Debate Clause. *See, e.g., Edwards v. Vesilind*, 790 S.E.2d 469 (Va. 2016); *In re Perry*, 60 S.W.3d 857 (Tex. 2001). It is also unduly burdensome, unreasonable, and disproportionate to the needs of the case when individual legislators' documents—to the extent they are not duplicative of the legislative record—will be largely if not entirely privileged.<sup>1</sup>

The Legislature is willing to meet and confer regarding this objection and all other objections contained in these responses.

2. The Legislature objects to these requests to the extent that they seek irrelevant information. Rule 26 allows discovery only of information “which is relevant to the claim or defense of any party.” Utah R. Civ. P. 26(b)(1). “The party seeking discovery always has the burden of showing ... relevance.” Utah R. Civ. P. 26(b)(4).

3. The Legislature also objects to these requests to the extent they are not proportional. As with relevance, the party seeking discovery “always” has the burden “of showing proportionality.” Utah R. Civ. P. 26(b)(4). The Utah Supreme Court significantly amended the Utah Rules of Civil

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<sup>1</sup> If Plaintiffs press for individual legislators' documents and the Court ultimately rejects individual legislators' immunity and privilege arguments, then the individual legislators' objections to the requests for production of their individual documents would be the same as those below.

Procedure in 2011 “in large part to ... promote proportionality in costs and procedures in civil litigation.” *Pilot v. Hill*, 2019 UT 10, ¶1, 437 P.3d 362. Discovery requests are proportional if: (A) discovery is “reasonable, considering the needs of the case”; (B) “the likely benefits of the proposed discovery outweigh the burden or expense”; (C) the discovery is consistent with the “overall case management” and will further the “just, speedy, and inexpensive” determination of the case; (D) the discovery is “not unreasonably cumulative or duplicative”; (E) “the information cannot be obtained from another source that is more convenient, less burdensome, or less expensive”; and (F) “the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise.” Utah R. Civ. P. 26(b)(3).

4. The Legislature objects to these requests to the extent they seek information that would be protected by legislative immunity or legislative privilege. Under the Utah Constitution, “Members of the Legislature” “shall not be questioned in any other place” “for words used in any speech or debate in either house.” Utah Const. art. VI, §8; *see also Tenney v. Brandhove*, 341 U.S. 367, 375 n.5 (1951) (citing Utah Const. art. VI, §8). Legislative immunity and privilege protect legislators and staff members “not only from the consequences of litigation’s results but also from the burden of defending themselves.” *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (quoting *Tenney*, 341 U.S. at 376). This privilege “protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts.” *In re Hubbard*, 803 F.3d 1298, 1310 (11th Cir. 2015) (emphasis removed) (quoting *United States v. Brewster*, 408 U.S. 501, 525 (1972)). These protections exist to “insur[e] the independence of individual legislators.” *Brewster*, 408 U.S. at 507; *see also, e.g., Biblia Abierta v. Banks*, 129 F.3d 899, 905 (7th Cir. 1997) (“An inquiry into a legislator’s motives for his actions, regardless of whether those reasons are proper or improper, is not an appropriate consideration for the court.”). Relevant here, preparations for the 2023 legislative session are underway, and the time required to address Plaintiffs’ burdensome and overbroad discovery requests substantially impairs



the Legislature's, legislators', and staff members' performance of their present and forthcoming legislative duties.

Insofar as these requests seek legislatively privileged documents regarding legislative acts, including the passage of the 2021 Congressional Redistricting Plan, such documents are not discoverable.

5. The Legislature also objects to the extent that these requests implicate additional privileges, including but not limited to, the attorney-client privilege, common-interest privilege, the attorney work-product protections, and the deliberative process privilege. The Legislature will assert these privileges as appropriate.

6. There is currently no protective order in place between Plaintiffs and the Legislature. *See* Utah R. Civ. P. 37(a)(1)(D) (allowing the district court to issue protective orders). To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure of certain sensitive information, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

7. These responses and objections are made without waiving any further objections to, or admitting the relevance or materiality of, any of the information or document requests. Likewise, any future document productions are made without waiving any objections to, or admitting the relevance or materiality of, any of the documents produced or similar documents. All answers are given without prejudice to Defendants' right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with Plaintiffs' characterization of any facts, circumstances, or legal obligations. The Legislature reserves the right to contest any such characterization as inaccurate and objects to the requests insofar as they contain any express or implied assumptions of

fact or law concerning matters at issue in this litigation.

8. The Legislature will provide responses based on terms as they are commonly understood and consistent with the Utah Rules of Civil Procedure. The Legislature objects and will refrain from modifying any words employed in the requests to go beyond ordinary English.

9. The Legislature will answer the requests to the extent required by the Utah Rules of Civil Procedure and will not otherwise provide additional information to Plaintiffs, not required by the Rules, unless properly directed to the Legislature as a discovery request, within the limitations of Rule 26 for a Tier 2 case.

### **OBJECTIONS TO PLAINTIFFS' DEFINITIONS AND INSTRUCTIONS**

1. The Legislature objects to Plaintiffs' instructions and definitions, including definitions of "communications," "concern," "concerning," "regarding," "document," "electronically stored information" or "ESI," as overbroad to the extent that they enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit.

2. The Legislature objects to the definitions of "legislator" and "Member of Congress" as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit. Plaintiffs' overly broad definitions of a "legislator" and "Member of Congress" would include materials from individuals well beyond those legislators. The definitions also erroneously impute to a legislator anything shared or communicated by "advisors" or others who are not the legislator. The definitions are also overbroad and vague because it is not easily discernible which past or present individuals "purport[ed] to act" on an individual legislator's behalf. Moreover, the Legislature objects to the extent that this definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity under the Utah or U.S. Constitutions. The Legislature also objects to the extent that this definition requires the disclosure of materials subject to the attorney-client privilege. The Legislature intends to interpret Plaintiffs' request to use the

term “legislator” and “Member of Congress” to mean the past or present members of the Utah Legislature or U.S. House of Representatives, respectively, during the relevant time period of January 1, 2021, to November 12, 2021.

The Legislature is willing to meet and confer regarding this objection and all other objections contained in these responses.

2. The Legislature objects to the definition of “you” and “your” as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit, including by requiring the Legislature to search for and/or produce documents that are not within its possession, custody, or control. The Legislature objects to the extent that the definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity. The Legislature will interpret Plaintiffs’ requests for production to use the terms “you” and “your” to include the documents, communications, and other information of the Legislature. The Legislature also interprets “you” or “your” to exclude the Lieutenant Governor’s office.

The Legislature is willing to meet and confer regarding this objection and all other objections contained in these responses.

3. The Legislature objects to Plaintiffs’ instruction that requests should be construed to concern the period of time from January 1, 2020, to the present, unless otherwise specified. That date range is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. See Utah R. Civ. P. 26(d)(3). The official P.L. 94-171 census data was not released until August 12, 2021. The relevant legislative session commenced in November 2021. And the Governor signed the challenged legislation on November 12, 2022. Accordingly, the Legislature intends to interpret Plaintiffs’ requests to seek documents from January 1, 2021, to November 12, 2022.

The Legislature is willing to meet and confer regarding this objection and all other objections contained in these responses.

## **RESPONSES AND OBJECTIONS TO PLAINTIFFS' REQUESTS FOR PRODUCTION OF DOCUMENTS**

### **REQUEST FOR PRODUCTION NO. 1:**

Produce any and all drafts of the enacted 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted, including but not limited to shapefiles, geojson files, and/or block assignment files.

**RESPONSE:** The Legislature incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. The Legislature further objects to this request because it is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all drafts" or "other potential congressional plan or configuration of congressional districts that was not adopted." Such an overly broad request creates an undue burden. The request for "any other potential congressional plan or configuration" is also vague, overbroad, unduly burdensome, and disproportionate.

The Legislature objects to this request because it asks the Legislature to gather publicly available documents that are equally accessible to Plaintiffs. Documents responsive to this request are already publicly accessible on the websites listed in the Legislature's response.

The Legislature objects to this request insofar as it seeks documents subject to legislative privilege and immunity. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public, draft redistricting plans are draft legislation and are subject to the legislative privilege.

The Legislature also objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, or other applicable privileges. To the extent there are drafts created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal

requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

The Legislature is conducting a reasonable search of documents within its possession and control and in a manner not inconsistent with the immunity of individual legislators and staff members. Subject to and without waiving the Legislature's objections, the Legislature will produce responsive, non-privileged documents and communications between January 1, 2021, and November 12, 2021, on a rolling basis beginning December 30, 2022. For publicly available non-privileged documents and communications, the Legislature directs Plaintiffs to legislative websites, including the Utah Legislative Redistricting Committee website, and other portions of the legislative record: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>.

#### **REQUEST FOR PRODUCTION NO. 2:**

Produce any and all analyses, data, and/or code related to the enacted 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** The Legislature incorporates the above objections, including those to Plaintiffs' instructions and definitions. The Legislature further objects to this request because it is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "analyses, data, and/or code related to" the 2021 Congressional Plan and other "potential" plans and configurations that were "not adopted." Such an overly broad request creates an undue burden. The Legislature also objects to the term "code" as vague.

The Legislature objects to this request insofar as it asks the Legislature to gather publicly available documents that are equally accessible to Plaintiffs. Documents responsive to this request are already publicly accessible on the websites listed in the Legislature's response.

The Legislature objects to this request insofar as it seeks documents subject to the legislative privilege and immunity. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. To the extent Plaintiffs seek any non-public analyses, data, or code related to the enacted plan or drafts, such information, to the extent it exists, would be subject to legislative privilege and is thus not discoverable.

The Legislature also objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are analyses, data, or code created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

The Legislature is conducting a reasonable search of documents within its possession and control and in a manner not inconsistent with the legislative immunity of individual legislators and staff members. Subject to and without waiving its objections, the Legislature will produce responsive, non-privileged documents and communications between January 1, 2021, and November 12, 2021, on a rolling basis beginning December 30, 2022. For publicly available non-privileged documents and communications, the Legislature directs Plaintiffs to legislative websites, including the Utah Legislative Redistricting Committee website, and other portions of the legislative record: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>;

[https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>.

**REQUEST FOR PRODUCTION NO. 3:**

Produce any and all documents and communications with any past or current Member of Congress and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** The Legislature incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The Legislature objects to this request because it asks the Legislature to gather publicly available documents that are equally accessible to Plaintiffs. Documents responsive to this request are already publicly accessible on the websites listed in the Legislature’s response.

The Legislature also objects to this request to the extent that it seeks documents and communications subject to the legislative privilege and immunity. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including Members of Congress, to discuss draft legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege.

The Legislature also objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

The Legislature is conducting a reasonable search of documents within its possession and control and in a manner not inconsistent with the legislative immunity of individual legislators and staff members. Subject to and without waiving its objections, the Legislature will produce responsive,

non-privileged documents and communications between January 1, 2021, and November 12, 2021, on a rolling basis beginning December 30, 2022. For publicly available non-privileged documents and communications, the Legislature directs Plaintiffs to legislative websites, including the Utah Legislative Redistricting Committee website, and other portions of the legislative record: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>.

**REQUEST FOR PRODUCTION NO. 4:**

Produce any and all documents and communications to, from, or shared with any past or current Legislator and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** The Legislature incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The Legislature further objects to this request because it is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “documents and communications with any past or current Legislator” and their agents. This request is facially overbroad and vague and creates an undue burden.

The Legislature also objects to this request insofar as it asks the Legislature to gather publicly available documents that are equally accessible to Plaintiffs. Documents responsive to this request are already publicly accessible on the websites listed in the Legislature’s response.

The Legislature also objects to this request to the extent that it seeks documents and communications subject to the legislative privilege and immunity. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Documents and communications among legislators “related to the



planning, negotiation, drafting, consideration, or enactment” of legislation are paradigmatic examples of documents subject to the legislative privilege.

The Legislature also objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

The Legislature is conducting a reasonable search of documents within its possession and control and in a manner not inconsistent with the legislative immunity of individual legislators and staff members. Subject to and without waiving the Legislature’s objections, the Legislature will produce responsive, non-privileged documents and communications between January 1, 2021, and November 12, 2021, on a rolling basis beginning December 30, 2022. For publicly available non-privileged documents and communications, the Legislature directs Plaintiffs to legislative websites, including the Utah Legislative Redistricting Committee website, and other portions of the legislative record: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>.

**REQUEST FOR PRODUCTION NO. 5:**

Produce any and all documents and communications to, from, or shared with Governor Cox and his agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** The Legislature incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The Legislature further objects to this request insofar as it asks the Legislature to gather publicly available documents that are equally accessible to Plaintiffs.

Documents responsive to this request are already publicly accessible on the websites listed in the Legislature’s response. Other responsive materials are presumably publicly available on executive branch websites.

The Legislature further objects to this request to the extent that it seeks documents and communications subject to the legislative privilege and immunity. *See* Utah Const. art. VI, §8; *see, e.g., Dobrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—especially executive branch officials who exercise certain legislative functions under the Utah Constitution—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.,* Utah Const. art. VII, §7 (requiring presentment to the Governor for signature before any bill becomes a law); *Hubbard*, 803 F.3d at 1308 (“[T]he privilege protects the legislative process itself, and therefore covers both governors’ and legislators’ actions in the proposal, formulation, and passage of legislation.”). Any such non-public documents and communications are subject to the legislative privilege.

The Legislature also objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.,* ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

The Legislature is conducting a reasonable search of documents within its possession and control and in a manner not inconsistent with the legislative immunity of individual legislators and staff members. Subject to and without waiving the Legislature’s objections, the Legislature will produce responsive, non-privileged documents and communications between January 1, 2021, and November 12, 2021, on a rolling basis beginning December 30, 2022. For publicly available non-

privileged documents and communications, the Legislature directs Plaintiffs to legislative websites, including the Utah Legislative Redistricting Committee website, and others portions of the legislative record: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>.

#### **REQUEST FOR PRODUCTION NO. 6:**

Produce any and all documents and communications, including partisan voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population, or any other data considered, viewed, or used to assess the partisan performance of draft or final Utah congressional districts or district maps.

**RESPONSE:** The Legislature incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The Legislature further objects to this request because it is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calling for the production of “any and all” “documents and communications” involving “any other data considered” is overbroad and vague and creates an undue burden. Terms such as “partisan voting patterns,” “assessments of candidate performance,” “partisan indexes,” and “partisan performance” are also objectionable as vague.

The Legislature objects to this request insofar as it asks the Legislature to gather publicly available documents that are equally accessible to Plaintiffs. Documents responsive to this request are already publicly accessible, including on the websites listed in the Legislature’s response. For example, the request seeks “election results” that are publicly available on government websites including those of county clerks.

The Legislature objects to this request to the extent that it seeks documents and communications subject to legislative privilege or immunity. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. The request for data and other information that individual legislators

“considered, viewed, or used to assess the partisan performance of draft or final Utah congressional districts or district maps” is a request for legislators’ thought processes and mental impressions that are subject to the legislative privilege.

The Legislature also objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges. To the extent there are legal analyses involving “partisan voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population” for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation, they are privileged and/or attorney work-product and are not discoverable.

The Legislature is conducting a reasonable search of documents within its possession and control and in a manner not inconsistent with the legislative immunity of individual legislators and staff members. Subject to and without waiving the Legislature’s objections, the Legislature will produce responsive, non-privileged documents and communications between January 1, 2021, and November 12, 2021, on a rolling basis beginning December 30, 2022. For publicly available non-privileged documents and communications, the Legislature directs Plaintiffs to legislative websites, including the Utah Legislative Redistricting Committee website, and other portions of the legislative record: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>.

**REQUEST FOR PRODUCTION NO. 7:**

Produce any and all documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives that Legislative Defendants considered, or decided not to consider, in developing the 2021 Congressional Plan.

**RESPONSE:** The Legislature incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The Legislature further objects to this request to the extent that it asks the Legislature to gather publicly available documents that are equally accessible to Plaintiffs. Documents responsive to this request are already publicly accessible, including on the websites listed in the Legislature’s response.

The Legislature objects to this request to the extent that it seeks documents and communications subject to legislative privilege or immunity. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Confidential “documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives” that individual legislators and staff members may have “considered” or “decided not to consider” are subject to the legislative privilege.

The Legislature also objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. Legal analyses involving redistricting criteria for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation would be privileged and/or subject to the attorney work-product protections and are not discoverable.

The Legislature is conducting a reasonable search of documents within its possession and control and in a manner not inconsistent with the legislative immunity of individual legislators and staff members. Subject to and without waiving the Legislature’s objections, the Legislature will produce responsive, non-privileged documents and communications between January 1, 2021, and November 12, 2021, on a rolling basis beginning December 30, 2022. For publicly available non-privileged documents and communications, the Legislature directs Plaintiffs to legislative websites, including the Utah Legislative Redistricting Committee website, and other portions of the legislative record:

<https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>;  
<https://le.utah.gov/interim/2021/pdf/00002847.pdf>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links);  
and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>.

**REQUEST FOR PRODUCTION NO. 8:**

Produce any all documents related to the designation of areas of the state of Utah as urban or rural in the drafting, consideration, or enactment of the 2021 Congressional Plan and any draft congressional plans or districts.

**RESPONSE:** The Legislature incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The Legislature further objects to this request to the extent that it asks the Legislature to gather publicly available documents that are equally accessible to Plaintiffs. Documents responsive to this request are already publicly accessible, including on the websites listed in the Legislature’s response.

The Legislature objects to this request to the extent that it seeks documents and communications subject to legislative privilege or immunity. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public documents relating to “drafting” or “consideration” of proposed legislation are subject to the legislative privilege.

The Legislature also objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. For example, legal analyses involving designations of communities of interest for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation would be attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

The Legislature is conducting a reasonable search of documents within its possession and control and in a manner not inconsistent with the legislative immunity of individual legislators and

staff members. Subject to and without waiving the Legislature’s objections, the Legislature will produce responsive, non-privileged documents and communications between January 1, 2021, and November 12, 2021, on a rolling basis beginning December 30, 2022. For publicly available non-privileged documents and communications, the Legislature directs Plaintiffs to legislative websites, including the Utah Legislative Redistricting Committee website, and other portions of the legislative record: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>.

**REQUEST FOR PRODUCTION NO. 9:**

Produce any and all documents and communications concerning redistricting with any consultants, experts, or any persons or entities associated with the Republican National Committee, including but not limited to Adam Foltz, Adam Kincaid, and any representatives of the National Republican Redistricting Trust.

**RESPONSE:** The Legislature incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The Legislature further objects to this request because it is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “documents and communications” with “any persons or entities associated with the Republican National Committee.” Presumably this would include every voter who is registered to vote as a Republican not only in Utah but across the country. Counsel for the Legislature is willing to meet and confer to discuss narrowing the scope of such an overbroad and disproportionate request.

The Legislature objects to this request to the extent it asks the Legislature to gather publicly available documents that are equally accessible to Plaintiffs. Documents responsive to this request are already publicly accessible, including on the websites listed in the Legislature’s response.

The Legislature objects to this request to the extent that it seeks documents and communications subject to legislative privilege or immunity. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including interest groups, constituents, and other stakeholders, to discuss issues that bear on legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege.

The Legislature is conducting a reasonable search of documents within its possession and control and in a manner not inconsistent with the legislative immunity of individual legislators and staff members. Subject to and without waiving the Legislature's objections, the Legislature will produce responsive, non-privileged documents and communications between January 1, 2021, and November 12, 2021, on a rolling basis beginning December 30, 2022. For publicly available non-privileged documents and communications, the Legislature directs Plaintiffs to legislative websites, including the Utah Legislative Redistricting Committee website, and other portions of the legislative record: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>.

**REQUEST FOR PRODUCTION NO. 10:**

Produce any and all communications with the Utah Independent Redistricting Commission, including but not limited to commissioners and staff, concerning redistricting or the 2022 congressional election.

**RESPONSE:** The Legislature incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. The Legislature further objects to this request to the extent that it asks the Legislature to gather publicly available documents that are equally accessible to Plaintiffs. Documents responsive to this request are already publicly accessible, including on the websites listed in the Legislature's response. Plaintiffs have already produced various documents related to the Utah Independent Redistricting Commission, its work, and its communications with the Legislature.



The Legislature objects to this request to the extent that it seeks documents and communications subject to legislative privilege or immunity. Meeting and communicating with persons outside the Legislature to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.*, Utah Code §20A-20-303(1) (requiring the Commission to submit proposed maps to the Legislature). Any non-public documents and communications are subject to the legislative privilege.

The Legislature is conducting a reasonable search of documents within its possession and control and in a manner not inconsistent with the legislative immunity of individual legislators and staff members. Subject to and without waiving the Legislature's objections, the Legislature will produce responsive, non-privileged documents and communications between January 1, 2021, and November 12, 2021, on a rolling basis beginning December 30, 2022. For publicly available non-privileged documents and communications, the Legislature directs Plaintiffs to legislative websites, including the Utah Legislative Redistricting Committee website, and other portions of the legislative record: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>.

DATED this 30th day of December, 2022.

Respectfully submitted,

/s/ Tyler R. Green  
Tyler R. Green  
*Counsel for Legislative Defendants*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of December 2022, I served the foregoing **LEGISLATIVE DEFENDANTS' RESPONSES TO PLAINTIFFS' RULE 34 FIRST SET OF REQUESTS FOR PRODUCTION** via email on the following:

David C. Reymann (Utah Bar No. 8495)  
Kade N. Olsen (Utah Bar No. 17775)  
Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
(801) 532-7840  
dreymann@parrbrown.com  
kolsen@parrbrown.com

Mark Gaber  
Hayden Johnson  
Aseem Mulji  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, D.C. 20005  
(202) 736-2200  
mgaber@campaignlegalcenter.org  
hjohnson@campaignlegalcenter.org  
amulji@campaignlegalcenter.org

Annabelle Harless  
Campaign Legal Center  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
aharless@campaignlegalcenter.org

*Counsel for Plaintiffs*

Troy L. Booher (Utah Bar No. 9419)  
J. Frederic Voros, Jr. (Utah Bar No. 3340)  
Caroline Olsen (Utah Bar No. 18070)  
Zimmerman Booher  
341 South Main Street  
Salt Lake City, Utah 84111  
(801) 924-0200  
tbooher@zbappeals.com  
fvoros@zjbappeals.com  
colsen@zbappeals.com

*Counsel for Plaintiffs*

David N. Wolf  
Lance Sorenson  
Office of the Attorney General  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
lancesorenson@agutah.gov

*Counsel for Defendant,  
Lieutenant Governor Henderson*

/s/ Tyler R. Green  
Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101 tyler@consovoymc-  
carthy.com

## **EXHIBIT 2**

John L. Fellows (4212)  
Robert H. Rees (4125)  
Eric N. Weeks (7340)  
Michael Curtis (15115)  
OFFICE OF LEGISLATIVE RESEARCH  
AND GENERAL COUNSEL  
Utah State Capitol Complex,  
House Building, Suite W210  
Salt Lake City, UT 84114-5210  
Telephone: 801-538-1032  
jfellows@le.utah.gov  
rrees@le.utah.gov  
eweeks@le.utah.gov  
michaelcurtis@le.utah.gov

Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
(703) 243-9423  
tyler@consovoymccarthy.com

Taylor A.R. Meehan\*  
Frank H. Chang\*  
James P. McGlone\*  
CONSOVOY MCCARTHY PLLC  
1600 Wilson Blvd. Suite 700  
Arlington, VA 22209  
(703) 243-9423  
taylor@consovoymccarthy.com  
frank@consovoymccarthy.com  
jim@consovoymccarthy.com

*Counsel for Legislative Defendants*

*\* Admitted pro hac vice*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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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.

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**LEGISLATIVE DEFENDANTS'  
RESPONSES AND OBJECTIONS TO  
PLAINTIFFS' FIRST SET OF  
INTERROGATORIES**

Case No. 220901712

Honorable Dianna Gibson

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Pursuant to Utah Rules of Civil Procedure 26 and 33, the Utah State Legislature, on behalf of all Legislative Defendants, serves these responses and objections. The Legislature reserves the right to supplement these responses and objections. Any responses to Plaintiffs' interrogatories are made subject to the objections stated below. As noted below and consistent with the Utah Rules of Civil Procedure, the Legislature is willing to meet and confer regarding these objections and responses.

### **OBJECTIONS RELEVANT TO EACH INTERROGATORY**

The Legislature asserts and repeats each of the following objections as to each interrogatory below. In the interest of brevity, these objections are listed here to avoid unnecessary repetition.

1. The Legislature objects to Plaintiffs' instruction that all Defendants should answer separately, to the extent Plaintiffs intended for each of the Legislative Defendants to answer separately. The Legislature answers Plaintiffs' requests on behalf of all Legislative Defendants, including the Utah Legislative Redistricting Committee, Senator Scott Sandall, Representative Brad Wilson, and Senator J. Stuart Adams. When the District Court denied the motion to dismiss the Committee and the individual legislators from this lawsuit, the District Court simultaneously acknowledged that the Speech or Debate Clause "issues raised by Defendants are legitimate questions that the Court will address if and when the issues are fully ripe and briefed." Op. 22 n.11 (Nov. 22, 2022), Doc. 140. Whether Plaintiffs can compel a legislative committee and individual legislators to participate in discovery, separate from the Legislature, is such a "legitimate question[]." Article VI, §8 of the Utah Constitution guarantees legislative immunity and privilege, critical protections that enable legislators to be free not only from "the consequences of litigation's results, but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967).

For purposes of responding to these requests, the Committee was a subdivision of the Legislature by the Legislature's creation. The Committee will thus comply with discovery requirements by and through the Legislature.

Individually named legislators will comply with discovery requirements by and through the Legislature in the following way. In responding to these interrogatories, the Legislature will identify what is known by the Legislature but will not search what is known by any and all legislators and staff. Further subjecting these individually named legislators to discovery transgresses their legislative immunity, enshrined in the Utah Constitution’s Speech or Debate Clause. *See, e.g., Edwards v. Vesilind*, 790 S.E.2d 469 (Va. 2016); *In re Perry*, 60 S.W.3d 857 (Tex. 2001). It is also unduly burdensome, unreasonable, and disproportionate to the needs of the case when individual legislators’ knowledge—to the extent not duplicative of the legislative record—would be largely if not entirely privileged.<sup>1</sup>

The Legislature is willing to meet and confer regarding this objection and all other objections contained in these responses to Plaintiffs’ interrogatories.

2. The Legislature objects to these interrogatories to the extent that they seek irrelevant information. Rule 26 allows discovery only of information “which is relevant to the claim or defense of any party.” Utah R. Civ. P. 26(b)(1). “The party seeking discovery always has the burden of showing ... relevance.” Utah R. Civ. P. 26(b)(4).

3. The Legislature also objects to these interrogatories to the extent they are not proportional. As with relevance, the party seeking discovery “always” has the burden “of showing proportionality.” Utah R. Civ. P. 26(b)(4). The Utah Supreme Court significantly amended the Utah Rules of Civil Procedure in 2011 “in large part to ... promote proportionality in costs and procedures in civil litigation.” *Pilot v. Hill*, 2019 UT 10, ¶1, 437 P.3d 362. Discovery requests are proportional if: (A) discovery is “reasonable, considering the needs of the case”; (B) “the likely benefits of the proposed discovery outweigh the burden or expense”; (C) the discovery is consistent with the “overall case management” and will further the “just, speedy, and inexpensive” determination of the case; (D)

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<sup>1</sup> If Plaintiffs press for individual legislators’ knowledge, as distinct from the Legislature’s, and if the Court ultimately rejects individual legislators’ immunity argument, then the individual legislators’ objections to these interrogatories would be the same as those below.

the discovery is “not unreasonably cumulative or duplicative”; (E) “the information cannot be obtained from another source that is more convenient, less burdensome, or less expensive”; and (F) “the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise.” Utah R. Civ. P. 26(b)(3).

4. The Legislature objects to these requests to the extent they seek information that would be protected by legislative immunity or legislative privilege. Under the Utah Constitution, “Members of the Legislature” “shall not be questioned in any other place” “for words used in any speech or debate in either house.” Utah Const. art. VI, §8; *see also Tenney v. Brandhove*, 341 U.S. 367, 375 n.5 (1951) (citing Utah Const. art. VI, §8). Legislative immunity and privilege protect legislators and staff members “not only from the consequences of litigation’s results but also from the burden of defending themselves.” *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (quoting *Tenney*, 341 U.S. at 376). This privilege “protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts.” *In re Hubbard*, 803 F.3d 1298, 1310 (11th Cir. 2015) (emphasis removed) (quoting *United States v. Brewster*, 408 U.S. 501, 525 (1972)). These protections exist to “insur[e] the independence of individual legislators.” *Brewster*, 408 U.S. at 507; *see also, e.g., Biblia Abierta v. Banks*, 129 F.3d 899, 905 (7th Cir. 1997) (“An inquiry into a legislator’s motives for his actions, regardless of whether those reasons are proper or improper, is not an appropriate consideration for the court.”). Relevant here, preparations for the 2023 legislative session are underway, and the time required to address Plaintiffs’ burdensome and overbroad discovery requests substantially impairs the Legislature’s, legislators’, and staff members’ performance of their present and forthcoming legislative duties.

Insofar as these interrogatories seek legislatively privileged information regarding legislative acts, including the non-public information about deliberations related to the passage of the 2021 Congressional Redistricting Plan, such information is not discoverable.

5. The Legislature also objects to the extent that these requests implicate additional privileges, including but not limited to, the attorney-client privilege, common-interest privilege, the attorney work-product doctrine, and the deliberative process privilege. The Legislature will assert these privileges as appropriate.

6. There is currently no protective order in place between Plaintiffs and the Legislature. *See* Utah R. Civ. P. 37(a)(1)(D) (allowing the district court to issue protective orders). To the extent that information may be identified that is discoverable but requires additional protections to prevent public disclosure of certain sensitive information, any such information will be identified but withheld until entry of a protective order.

7. These responses and objections are made without waiving any further objections to, or admitting the relevance or materiality of, any of the information requested. All answers are given without prejudice to Defendants' right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with Plaintiffs' characterization of any facts, circumstances, or legal obligations. The Legislature reserves the right to contest any such characterization as inaccurate and objects to the requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

8. The Legislature will provide responses based on terms as they are commonly understood and consistent with the Utah Rules of Civil Procedure. The Legislature objects and will refrain from modifying any words employed in the requests to go beyond ordinary English.

9. The Legislature will answer the interrogatories to the extent required by the Utah Rules of Civil Procedure and will not otherwise provide additional information to Plaintiffs, not required by the Rules, unless properly directed to the Legislature as a discovery request, within the limitations of Rule 26 for a Tier 2 case.



## DEFINITIONS

1. The Legislature objects to Plaintiffs' instructions and definitions, such as definitions of "communications" or "concern," "concerning," "regarding," as overbroad to the extent that they enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit.

2. The Legislature objects to the definition of "you" and "your" as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit, including by requiring the Legislature to identify information that is not within its possession, custody, or control. The Legislature also objects to the extent that the definition would require the disclosure of information otherwise not subject to discovery in light of legislative privilege or immunity. The Legislature will interpret Plaintiffs' interrogatories to use the terms "you" and "your" to include information knowable to the Legislature by virtue of the Legislature's legislative record. The Legislature also interprets "you" or "your" to exclude the Lieutenant Governor's office.

The Legislature is willing to meet and confer regarding this objection and all other objections contained in these responses.

## RESPONSES AND OBJECTIONS TO PLAINTIFFS' INTERROGATORIES

**INTERROGATORY NO. 1:** Describe the complete and detailed timeline of events that comprise the 2021 congressional redistricting process in the Utah Legislature, including, but not limited to, the viewing and presentation of draft and final maps, and unofficial and official votes on draft or final maps.

**ANSWER:** The Legislature incorporates the above objections, including those to Plaintiffs' instructions and definitions. The Legislature further objects to this interrogatory insofar as it asks the Legislature to repeat publicly available information that is already equally accessible to Plaintiffs. Information responsive to this interrogatory is already publicly accessible on the websites listed in the Legislature's response.

The Legislature objects to the interrogatory’s request for information regarding “the viewing and presentation of draft and final maps” or “unofficial...votes” as vague and potentially overly broad, insofar as the interrogatory seeks information about when any person, without limitation, might have spent a moment viewing and otherwise considering the merits of any one of many maps proposed during redistricting.

The Legislature also objects to this interrogatory to the extent that it seeks information subject to legislative privilege or immunity. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Such information is not discoverable.

Subject to and without waiving those objections, the timeline of events for the 2021 congressional redistricting process was as follows:

May 18, 2021 (4:30:00 PM)	Legislative Redistricting Committee meeting
August 12, 2021	U.S. Census Bureau released official P.L. 94-171 data
August 16, 2021 (11:00:00 AM)	Legislative Redistricting Committee meeting at State Capitol Complex
September 2, 2021	Public redistricting map drawing tool made available
September 2, 2021 (10:00:00 AM)	Legislative Redistricting Committee meeting at State Capitol Complex
September 8, 2021 (6:00:00 PM)	Legislative Redistricting Committee meeting at Grantsville High School in Grantsville
September 9, 2021 (2:00:00 PM)	Legislative Redistricting Committee meeting at Browning Theater in Ogden
September 9, 2021 (7:00:00 PM)	Legislative Redistricting Committee meeting at Mount Logan Middle School in Logan
September 13, 2021 (6:00:00 PM)	Legislative Redistricting Committee meeting at Utah Valley University in Orem
September 14, 2021 (7:00:00 PM)	Legislative Redistricting Committee meeting at North Star Elementary School in Salt Lake City
September 24, 2021 (1:00:00 PM)	Legislative Redistricting Committee meeting at Southern Utah University in Cedar City
September 25, 2021 (10:00:00 AM)	Legislative Redistricting Committee meeting at Dixie State University in St. George

October 6, 2021 (10:00:00 AM)	Legislative Redistricting Committee meeting at Richfield High School in Richfield
October 6, 2021 (6:00:00 PM)	Legislative Redistricting Committee meeting at Grand Convention Center in Moab
October 7, 2021 (1:00:00 PM)	Legislative Redistricting Committee meeting at Utah State University Eastern in Price
October 8, 2021 (10:00:00 AM)	Legislative Redistricting Committee meeting at Uintah Conference Center in Vernal
October 8, 2021 (6:00:00 PM)	Legislative Redistricting Committee meeting at Ecker Hill Middle School in Park City
October 13, 2021 (6:00:00 PM)	Legislative Redistricting Committee meeting at Clearfield High School in Clearfield
October 19, 2021 (6:00:00 PM)	Legislative Redistricting Committee meeting at State Capitol Complex
November 1, 2021 (2:00:00 PM)	Legislative Redistricting Committee meeting (including report from Utah Independent Redistricting Commission) at State Capitol Complex
November 5, 2021	Legislative Redistricting Committee chairs release proposed maps
November 8, 2021 (3:00:00 PM)	Legislative Redistricting Committee meeting at State Capitol Complex
November 9, 2021	H.B. 2004 numbered
November 9, 2021	Numbered bill publicly distributed
November 9, 2021	LFA/bill sent to agencies for fiscal input
November 9, 2021	LFA/fiscal note publicly available
November 9, 2021	House/received bill from Legislative Research
November 9, 2021	House/received fiscal note from Fiscal Analyst
November 9, 2021	House/1st reading (introduced)
November 9, 2021	House/Rules to 3rd Reading Calendar
November 9, 2021 (4:27:45 PM)	House/2nd Reading
November 9, 2021 (4:28:30 PM)	House/3rd Reading
November 9, 2021 (4:33:57 PM)	House/substitute adoption failed from #0 to #1 (voice vote)
November 9, 2021 (4:41:11 PM)	House/substitute adoption failed from #0 to #3 (17 55 2 vote)
November 9, 2021 (4:43:45 PM)	House/substitute adoption failed from #0 to #4 (17 55 2 vote)

November 9, 2021 (4:47:09 PM)	House/passed 3rd reading
November 9, 2021 (4:47:11 PM)	House/to Senate
November 9, 2021	Senate/received from House
November 9, 2021	Senate/1st reading (introduced)
November 10, 2021	Senate/2nd & 3rd readings/suspension
November 10, 2021 (11:26:18 AM)	Senate/substitute adoption failed from #0 to #7 (voice vote)
November 10, 2021 (11:38:29 AM)	Senate/passed 2nd & 3rd readings/suspension (22 7 0 vote)
November 10, 2021	Senate/signed by President/returned to House
November 10, 2021	Senate/to House
November 10, 2021	House/received from Senate
November 10, 2021	House/signed by Speaker/sent for enrolling
November 12, 2021	Bill received from house for Enrolling
November 12, 2021	Draft of Enrolled Bill prepared
November 12, 2021	Enrolled Bill returned to House or Senate
November 12, 2021	House/Enrolled Bill to printing
November 12, 2021	House/to Governor
November 12, 2021	Governor signed

The same information is publicly available on various legislative websites, including the Legislature's webpage for House Bill 2004 (<https://le.utah.gov/~2021S2/bills/static/HB2004.html>) and the Legislature's websites for the Utah Legislative Redistricting Committee (<https://redistricting.utah.gov/> & <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>).

The Legislature reserves its right to supplement this interrogatory response as appropriate.

**INTERROGATORY NO. 2:** Identify all persons and/or entities whom you have consulted, retained, or contracted regarding the redistricting of Utah's congressional districts, including but not limited to with regard to the potential Republican or Democratic performance of any draft or final Utah congressional district plans.

**ANSWER:** The Legislature incorporates the above objections, including those to Plaintiffs’ instructions and definitions. The Legislature further objects to this interrogatory as overly broad, unduly burdensome, unreasonable, and disproportionate because it contains no time constraints. The Legislature interprets this request to ask about the time period between January 1, 2020, and November 12, 2021, the date on which the Governor signed the 2021 congressional redistricting legislation. The Legislature also objects to the interrogatory’s request to identify “all persons and/or entities whom you have consulted ... regarding the redistricting of Utah’s congressional districts” as overly broad, unduly burdensome, unreasonable, and disproportionate because it could conceivably be read to mean hundreds if not thousands of individuals, including anyone who attended one of the Legislative Redistricting Committee meetings, anyone who submitted comments, or anyone who submitted draft maps. The Legislature also objects to the interrogatory’s request for information regarding “the potential Republican or Democratic performance of any draft...or final...plans” as vague and confusing. The Legislature is willing to meet and confer about these and any other objections.

The Legislature objects to this interrogatory insofar as it asks the Legislature to repeat publicly available information that is already equally accessible to Plaintiffs. Information responsive to this interrogatory is already publicly accessible on the websites listed in the Legislature’s response.

The Legislature also objects to this interrogatory to the extent that it seeks information subject to the legislative privilege and immunity, *see* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372, the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges. Such information is not discoverable.

Subject to and without waiving those objections, individuals and entities are identifiable on the Legislature’s webpage for House Bill 2004 (<https://le.utah.gov/~2021S2/bills/static/HB2004.html>) and the Legislature’s websites for the Utah

Legislative Redistricting Committee (<https://redistricting.utah.gov/> & <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>). Those individuals would include every member of the Utah Legislature, including but not limited to those who sponsored the bill and amendments. Those individuals would also include the Legislative Redistricting Committee members: Sen. Scott D. Sandall, Rep. Paul Ray, Sen. Kirk A. Cullimore, Sen. Gene Davis, Sen. Lincoln Fillmore, Sen. Don L. Ipson, Sen. Karen Mayne, Sen. Michael K. McKell, Rep. Carl R. Albrecht, Rep. Jefferson S. Burton, Rep. Joel Ferry, Rep. Sandra Hollins, Rep. Bradley G. Last, Rep. Steven J. Lund, Rep. Ashlee Matthews, Rep. Merrill F. Nelson, Rep. Val L. Peterson, Rep. Candice B. Pierucci, Rep. Robert M. Spendlove, Rep. Andrew Stoddard, and committee staff: Joseph T. Wade, Mike Curtis, Thomas R. Vaughn, Naomi Garrow, and Jerry D. Howe. Those individuals would also include those persons and entities outside the legislature who submitted draft maps and/or comments, and the Citygate and Esri software entities that facilitated the same. All are identifiable on the Legislature's public submissions page: [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links).

The Legislature reserves its right to supplement this interrogatory response as appropriate.

**INTERROGATORY NO. 3:** Identify any person(s) or entities who drew the 2021 Congressional Plan and any draft Utah congressional redistricting plans provided to or considered by the Redistricting Committee or individual legislators from January 1, 2020 to the present.

**ANSWER:** The Legislature incorporates the above objections, including those to Plaintiffs' instructions and definitions. The Legislature further objects to the interrogatory's request to identify "any person(s) or entities" "who drew" "any draft Utah congressional redistricting plans provided to or considered by the Redistricting Committee or individual legislators" as vague, potentially overly broad, unduly burdensome, unreasonable, and disproportionate.

The Legislature also objects to the interrogatory's request to identify any such persons "from January 1, 2020 to the present" as overly broad, unduly burdensome, unreasonable, and disproportionate. The U.S. Census Bureau released the relevant census data on August 12, 2021. The

relevant legislative session occurred in November 2021. The Governor then signed the 2021 congressional redistricting legislation at issue on November 12, 2021. The Legislature therefore objects insofar as the interrogatory seeks information about any draft plans drawn by any person, without limitation, before August 12, 2021, or after November 12, 2021.

The Legislature also objects insofar as the interrogatory seeks information about drafts “considered by ... individual legislators,” which is overly broad, unduly burdensome, unreasonable, disproportionate, and unknowable to the Legislature beyond what is part of the legislative record.

The Legislature objects to this interrogatory insofar as it asks the Legislature to repeat publicly available information that is already equally accessible to Plaintiffs. Information responsive to this interrogatory is already publicly accessible on the websites listed in the Legislature’s response.

The Legislature also objects to this interrogatory to the extent that it seeks information subject to the legislative privilege and immunity, *see* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372, the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges. Such information is not discoverable.

Subject to and without waiving those objections, those legislators who proposed redistricting legislation, including the legislation ultimately enacted, are identifiable on the Legislature’s webpage with the bill history for House Bill 2004 (<https://le.utah.gov/~2021S2/bills/static/HB2004.html>). The Utah Legislative Redistricting Committee Website further identifies that Committee chairs Sen. Scott Sandall and Rep. Paul Ray released proposed maps (<https://redistricting.utah.gov/the-legislative-redistricting-committee-chairs-release-proposed-maps/>). Additional individuals who submitted draft maps, including those outside the legislature, are identifiable on the Legislature’s public submissions page: [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links).

The Legislature reserves its right to supplement this interrogatory response as appropriate.

**INTERROGATORY NO. 4:** For each person and entity identified in response to Interrogatory No. 4, describe the process, data, methods, tools, computer programs, and mapping software used to draw the 2021 Congressional Plan and any draft congressional redistricting plans or districts.

**ANSWER:** The Legislature objects this interrogatory as vague and confusing. The Legislature interprets the reference to “Interrogatory No. 4” to mean “Interrogatory No. 3.”

The Legislature incorporates the above objections, including those to Plaintiffs’ instructions and definitions and all objections to Interrogatory 3. The interrogatory reveals the vagueness, overbreadth, undue burden, and disproportionate nature of Interrogatory 3, insofar as the interrogatory seeks a person-by-person discussion of “the process” or “methods” of any and all persons and entities, including every member of the public who submitted draft proposals, who might have drafted a congressional redistricting plan.

The Legislature objects to this interrogatory as compound and potentially in excess of the number of interrogatories permitted by Utah Rules of Civil Procedure 26(c)(5) and 33(a). Insofar as the interrogatory seeks a person-by-person or entity-by-entity response regarding “the process, data, methods, tools, computer programs, and mapping software” for each person and each entity, each such response should count as one interrogatory. In addition, and alternatively, the interrogatory compounds at least four interrogatories into one by requesting information about “the process,” separate from the “data,” separate from “methods,” separate from “tools, computer programs, and mapping software.”

The Legislature objects to this interrogatory insofar as it asks the Legislature to repeat publicly available information that is already equally accessible to Plaintiffs. Information responsive to this interrogatory is already publicly accessible on the websites listed in the Legislature’s response.

The Legislature also objects to this interrogatory to the extent that it seeks information subject to legislative privilege or immunity, *see* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341



U.S. at 372, the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges. Such information is not discoverable. Such information is not discoverable.

Subject to and without waiving those objections, relevant and non-privileged information regarding redistricting processes, data, methods, tools, programs, and software is identifiable on the Legislature's webpage for House Bill 2004 (<https://le.utah.gov/~2021S2/bills/static/HB2004.html>), the Legislature's websites for the Utah Legislative Redistricting Committee (<https://redistricting.utah.gov/> & <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>), and the U.S. Census Bureau's website (<https://www.census.gov/en.html>). The legislative websites contain committee and floor proceedings, redistricting criteria considered, bills and amendments considered, and public input including recordings of various Legislative Redistricting Committee meetings where public comment was taken. The census website contains relevant population data. Additional data for enacted plans and drafts, including public submissions, is identifiable on the Citygate platform ([https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links)). Information about process, data, methods, tools, computer programs, and the Esri mapping software for public submission of such plans is identifiable on the Committee webpage (<https://redistricting.utah.gov/maps/>).

The Legislature reserves its right to supplement this interrogatory response as appropriate.

DATED this 30th day of December, 2022.

Respectfully submitted,

/s/ Tyler R. Green  
Tyler R. Green  
*Counsel for Legislative Defendants*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of December 2022, I served the foregoing  
**LEGISLATIVE DEFENDANTS' RESPONSES TO PLAINTIFFS' RULE 33 FIRST SET  
OF INTERROGATORIES** via email on the following:

David C. Reymann (Utah Bar No. 8495)  
Kade N. Olsen (Utah Bar No. 17775)  
Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
(801) 532-7840  
dreymann@parrbrown.com  
kolsen@parrbrown.com

Mark Gaber  
Hayden Johnson  
Aseem Mulji  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, D.C. 20005  
(202) 736-2200  
mgaber@campaignlegalcenter.org  
hjohnson@campaignlegalcenter.org  
amulji@campaignlegalcenter.org

Annabelle Harless  
Campaign Legal Center  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
aharless@campaignlegalcenter.org

*Counsel for Plaintiffs*

Troy L. Booher (Utah Bar No. 9419)  
J. Frederic Voros, Jr. (Utah Bar No. 3340)  
Caroline Olsen (Utah Bar No. 18070)  
Zimmerman Booher  
341 South Main Street  
Salt Lake City, Utah 84111  
(801) 924-0200  
tbooher@zbbappeals.com  
fvoros@zjbappeals.com  
colsen@zbbappeals.com

*Counsel for Plaintiffs*

David N. Wolf  
Lance Sorenson  
Office of the Attorney General  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
lancesorenson@agutah.gov

*Counsel for Defendant,  
Lieutenant Governor Henderson*

/s/ Tyler R. Green  
Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
tyler@consovoymccarthy.com

## **EXHIBIT 3**

Victoria Ashby (12248)  
Robert H. Rees (4125)  
Eric N. Weeks (7340)  
OFFICE OF LEGISLATIVE RESEARCH AND  
GENERAL COUNSEL  
Utah State Capitol Complex,  
House Building, Suite W210  
Salt Lake City, UT 84114-5210  
Telephone: 801-538-1032  
vashby@le.utah.gov  
rrees@le.utah.gov  
eweeks@le.utah.gov

Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
(703) 243-9423  
tyler@consovoymccarthy.com

Taylor A.R. Meehan\*  
Frank H. Chang\*  
James P. McGlone\*  
CONSOVOY MCCARTHY PLLC  
1600 Wilson Blvd. Suite 700  
Arlington, VA 22209  
(703) 243-9423  
taylor@consovoymccarthy.com  
frank@consovoymccarthy.com  
jim@consovoymccarthy.com

*Counsel for State Senator Daniel W. Thatcher*

*\*Admitted pro hac vice*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL GOV-  
ERNMENT, STEFANIE CONDIE, MALCOLM  
REID, VICTORIA REID, WENDY MARTIN,  
ELEANOR SUNDWALL, JACK MARKMAN,  
and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLA-  
TIVE REDISTRICTING COMMITTEE; SENA-  
TOR SCOTT SANDALL, in his official capacity;  
REPRESENTATIVE BRAD WILSON,  
in his official capacity; SENATOR J. STUART AD-  
AMS, in his official capacity; and LIEUTENANT  
GOVERNOR DEIDRE HENDERSON, in her offi-  
cial capacity,

Defendants.

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**STATE SENATOR DANIEL W.  
THATCHER'S RESPONSES AND OB-  
JECTIONS TO PLAINTIFFS' SUB-  
POENA FOR PRODUCTION OF  
DOCUMENTS**

Case No. 220901712

Honorable Dianna Gibson

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Pursuant to Utah Rules of Civil Procedure 26 and 45, State Senator Daniel W. Thatcher serves these responses and objections to Plaintiffs’ subpoena for documents.

Legislators are immune from civil process for their legislative acts. That immunity bars Plaintiffs’ subpoena. Under the Utah Constitution, “Members of the Legislature” “shall not be questioned in any other place” “for words used in any speech or debate in either house.” Utah Const. art. VI, §8; *see also Tenney v. Brandhove*, 341 U.S. 367, 375 n.5 (1951) (citing Utah Const. art. VI, §8). Legislative immunity and privilege protect legislators and staff members “not only from the consequences of litigation’s results but also from the burden of defending themselves.” *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (quoting *Tenney*, 341 U.S. at 376). Legislative immunity and privilege “protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts.” *In re Hubbard*, 803 F.3d 1298, 1310 (11th Cir. 2015) (emphasis removed) (quoting *United States v. Brewster*, 408 U.S. 501, 525 (1972)). These protections exist to “insur[e] the independence of individual legislators.” *Brewster*, 408 U.S. at 507; *see also, e.g., Biblia Abierta v. Banks*, 129 F.3d 899, 905 (7th Cir. 1997) (“An inquiry into a legislator’s motives for his actions, regardless of whether those reasons are proper or improper, is not an appropriate consideration for the court.”). Such protections extend to both current and former legislators. *See, e.g., League of Women Voters of Pennsylvania v. Commonwealth*, 177 A.3d 1000, 1005 (Pa. Commw. Ct. 2017); *Saleem v. Snow*, 460 S.E.2d 104, 107 (Ga. Ct. App. 1995). Subjecting legislative documents to discovery transgresses legislative immunity, enshrined in Utah Constitution’s Speech or Debate Clause. *See, e.g., Edwards v. Vesilind*, 790 S.E.2d 469 (Va. 2016); *In re Perry*, 60 S.W.3d 857 (Tex. 2001). Relevant here, preparations for the 2023 legislative session are underway, and the time required to address Plaintiffs’ burdensome and overbroad discovery requests substantially impairs the legislators’ performance of their present and forthcoming legislative duties.

The remaining objections are made in the alternative, without waiver of legislative immunity or privilege. Sen. Thatcher reserves the right to supplement these responses and objections to the extent further required.

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Sen. Thatcher asserts and repeats each of the following objections as to each request below. In the interest of brevity, these objections are listed here to avoid unnecessary repetition. Counsel for the Sen. Thatcher is willing to meet and confer regarding this objection and all other objections contained in these responses.

1. Sen. Thatcher objects to these requests to the extent they seek information that would be protected by legislative immunity or legislative privilege. Explained above, the subpoena transgresses legislators' immunity. Utah Const. art. VI, §8. Additionally, insofar as the subpoena seeks legislatively privileged documents regarding legislative acts, including the passage of the 2021 Congressional Redistricting Plan, such documents are not discoverable. *See, e.g., In re Hubbard*, 803 F.3d at 1308-10. It is also unduly burdensome, unreasonable, and disproportionate to the needs of the case when individual legislators' documents—to the extent they are not duplicative of the legislative record—will be largely if not entirely privileged.

2. Sen. Thatcher objects to these requests to the extent that they seek irrelevant information. Rule 26 allows discovery only of information “which is relevant to the claim or defense of any party.” Utah R. Civ. P. 26(b)(1). “The party seeking discovery always has the burden of showing ... relevance.” Utah R. Civ. P. 26(b)(4).

3. Sen. Thatcher also objects to these requests to the extent they are not proportional. As with relevance, the party seeking discovery “always” has the burden “of showing proportionality.” Utah R. Civ. P. 26(b)(4). The Utah Supreme Court significantly amended the Utah Rules of Civil Procedure in 2011 “in large part to ... promote proportionality in costs and procedures in civil

litigation.” *Pilot v. Hill*, 2019 UT 10, ¶1, 437 P.3d 362. Discovery requests are proportional if: (A) discovery is “reasonable, considering the needs of the case”; (B) “the likely benefits of the proposed discovery outweigh the burden or expense”; (C) the discovery is consistent with the “overall case management” and will further the “just, speedy, and inexpensive” determination of the case; (D) the discovery is “not unreasonably cumulative or duplicative”; (E) “the information cannot be obtained from another source that is more convenient, less burdensome, or less expensive”; and (F) “the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise.” Utah R. Civ. P. 26(b)(3).

4. Sen. Thatcher also objects to the extent that these requests implicate additional privileges, including but not limited to, the attorney-client privilege, common-interest privilege, the attorney work-product protections, and the deliberative process privilege.

5. There is currently no protective order in place between Plaintiffs and Defendants or any non-parties. *See* Utah R. Civ. P. 37(a)(1)(D) (allowing the district court to issue protective orders). To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure of certain sensitive information, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

6. These responses and objections are made without waiving any further objections to, or admitting the relevance or materiality of, any of the information or document requests. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with Plaintiffs’ characterization of any facts, circumstances, or legal obligations.

7. Sen. Thatcher will provide responses based on terms as they are commonly understood and consistent with the Utah Rules of Civil Procedure.

## **OBJECTIONS TO PLAINTIFFS' DEFINITIONS AND INSTRUCTIONS**

1. Sen. Thatcher objects to Plaintiffs' instructions and definitions, including definitions of "communications," "concern," "concerning," "regarding," "document," and "electronically stored information" or "ESI," as overbroad to the extent that they enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit.

2. Sen. Thatcher objects to the definitions of "legislator" and "Member of Congress" as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit. Plaintiffs' overly broad definitions of a "legislator" and "Member of Congress" would include materials from individuals well beyond those legislators. The definitions also erroneously impute to a legislator anything shared or communicated by "advisors" or others who are not the legislator. The definitions are also overbroad and vague because it is not easily discernible which past or present individuals "puport[ed] to act" on an individual legislator's behalf. Moreover, Sen. Thatcher objects to the extent that this definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity under the Utah or U.S. Constitutions. Sen. Thatcher also objects to the extent that this definition requires the disclosure of materials subject to the attorney-client privilege. Sen. Thatcher intends to interpret Plaintiffs' request to use the term "legislator" and "Member of Congress" to mean the past or present members of the Utah Legislature or U.S. House of Representatives, respectively, during the relevant time period of January 1, 2021, to November 12, 2021.

3. Sen. Thatcher objects to the definition of "you" and "your" as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit, including by requiring a search for and/or production of documents that are not within his possession, custody, or control. Sen. Thatcher objects to the extent that the definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity.



4. Sen. Thatcher objects to Plaintiffs' instruction that requests should be construed to concern the period of time from January 1, 2020, to the present, unless otherwise specified. That date range is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. See Utah R. Civ. P. 26(d)(3). The official P.L. 94-171 census data was not released until August 12, 2021. The relevant legislative session commenced in November 2021. And the Governor signed the challenged legislation on November 12, 2022. Accordingly, Sen. Thatcher intends to interpret Plaintiffs' requests to seek documents from January 1, 2021, to November 12, 2022.

## **RESPONSES AND OBJECTIONS TO PLAINTIFFS' REQUESTS FOR PRODUCTION OF DOCUMENTS**

### **REQUEST FOR PRODUCTION NO. 1:**

Produce any and all drafts of the enacted 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted, including but not limited to shapefiles, geojson files, and/or block assignment files.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Sen. Thatcher incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all drafts" or "other potential congressional plan or configuration of congressional districts that was not adopted." Such an overly broad request creates an undue burden. The request for "any other potential congressional plan or configuration" is also vague, overbroad, unduly burdensome, and disproportionate.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents

responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee's hearings held between May 18, 2021, and November 10, 2021, as well as draft minutes and agenda for those hearings, can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Sen. Thatcher objects to this request insofar as it seeks documents subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public, draft redistricting plans are draft legislation and are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Sen. Thatcher cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Sen. Thatcher objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, or other applicable privileges. To the extent there are drafts created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 2:**

Produce any and all analyses, data, and/or code related to the enacted 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Sen. Thatcher incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “analyses, data, and/or code related to” the 2021 Congressional Plan and other “potential” plans and configurations that were “not adopted.” Such an overly broad request creates an undue burden. Sen. Thatcher also objects to the term “code” as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Sen. Thatcher objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. To the extent Plaintiffs seek any non-public analyses, data, or code related to the enacted plan or drafts, such information, to the extent it exists, would be subject to legislative privilege and is thus not discoverable. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process. It ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Sen. Thatcher cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Sen. Thatcher objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are analyses, data, or code created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 3:**

Produce any and all notes or communications concerning meetings of the Legislative Redistricting Committee, other Legislative Committee, and Legislature that relate to the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Sen. Thatcher incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly

burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “notes or communications concerning meetings of the Legislative Redistricting, other Legislative Committee, and Legislature” relating to the 2021 Congressional Plan. Such an overly broad request creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Sen. Thatcher objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. His notes and communications with others, if they exist, would be subject to legislative privilege and are thus not discoverable. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder

communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Sen. Thatcher objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 4:**

Produce any and all minutes, agendas, notes, and communications from any Republican Caucus meeting or other non-public meeting of Republican legislators concerning the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Sen. Thatcher incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "minutes, agendas, notes, and communications" from any "non-public meeting of Republican legislators." Such an overly broad request creates an undue burden.

Sen. Thatcher objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. On its face,

this request seeks the production of non-public documents involving communications and deliberations among legislators regarding the 2021 Congressional Plan drafts regardless of whether they were adopted. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Sen. Thatcher objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 5:**

Produce any and all documents and communications exchanged with any past or current Member of Congress and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Sen. Thatcher incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are

already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Sen. Thatcher objects insofar as this request seeks documents and communications further subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including Members of Congress, to discuss draft legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Sen. Thatcher objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with



applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 6:**

Produce any and all documents and communications to, from, or shared with any past or current Legislator and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Sen. Thatcher incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "documents and communications with any past or current Legislator" and their agents. This request is facially overbroad and vague and creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Sen. Thatcher also objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341

U.S. at 372. Documents and communications among legislators “related to the planning, negotiation, drafting, consideration, or enactment” of legislation are paradigmatic examples of documents subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Sen. Thatcher objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 7:**

Produce any and all documents and communications to, from, or shared with Governor Cox and his agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at

<https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Sen. Thatcher further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—especially executive branch officials who exercise certain legislative functions under the Utah Constitution—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.,* Utah Const. art. VII, §7 (requiring presentment to the Governor for signature before any bill becomes a law); *Hubbard*, 803 F.3d at 1308 (“[T]he privilege protects the legislative process itself, and therefore covers both governors’ and legislators’ actions in the proposal, formulation, and passage of legislation.”). Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Sen. Thatcher objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.,* ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 8:**

Produce any and all documents and communications exchanged with Lieutenant Governor Henderson and her agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Sen. Thatcher further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—including certain executive branch officials—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g., Almonte v. City of Long Beach*, 478 F.3d 100, 107 (2d Cir. 2007) (observing that discussions of issues with “executive officers” “assist[s] legislators in the discharge of their legislative duty”); *see also* Utah Code §67-1a-2(2)(a) (designating the Lieutenant Governor as “the chief election officer”); Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and impairs legislators’ ability to freely and candidly consider

legislation and to assess alternatives, and thus ultimately impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Sen. Thatcher objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 9:**

Produce any and all communications with the Utah Independent Redistricting Commission, including but not limited to commissioners and staff, concerning redistricting, the UIRC’s processes or operation, or the 2022 congressional election.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Sen. Thatcher incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and

<https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Sen. Thatcher objects to this request insofar as it seeks documents and communications subject to legislative privilege. Meeting and communicating with persons outside the Legislature to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.*, Utah Code §20A-20-303(1) (requiring the Commission to submit proposed maps to the Legislature). Any non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

**REQUEST FOR PRODUCTION NO. 10:**

Produce any and all documents and communications concerning the partisan performance of districts in the 2021 Congressional Plan or any drafts thereof, including voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population, or any other data considered, viewed, or used to assess the partisan performance.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Sen. Thatcher incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calling for the production of "any and all" "documents and communications" involving "any

other data considered” is overbroad and vague and creates an undue burden. Terms such as “partisan voting patterns,” “assessments of candidate performance,” “partisan indexes,” and “partisan performance” are also objectionable as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. For example, the request seeks “election results” that are publicly available on government websites including those of county clerks. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Sen. Thatcher objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. The request for data and other information that individual legislators “considered, viewed, or used to assess the partisan performance of draft or final Utah congressional districts or district maps” is a request for legislators’ thought processes and mental impressions that are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Sen. Thatcher objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other

applicable privileges. To the extent there are legal analyses involving “partisan voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population” for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation, they are privileged and/or attorney work-product and are not discoverable.

**REQUEST FOR PRODUCTION NO. 11:**

Produce any and all documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives that the Legislature considered, or decided not to consider, in developing the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Sen. Thatcher incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites. Redistricting criteria adopted by the Legislative Redistricting Committee are contained in the Committee’s publicly available meeting minutes: <https://le.utah.gov/interim/2021/pdf/00002847.pdf>. Related information is also publicly available on the following legislative websites: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; <https://le.utah.gov/interim/2021/pdf/00002847.pdf>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.



Sen. Thatcher objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Confidential “documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives” that individual legislators and staff members may have “considered” or “not considered” are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Sen. Thatcher objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. Legal analyses involving redistricting criteria for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation would be privileged and/or subject to the attorney work-product protections and are not discoverable.

**REQUEST FOR PRODUCTION NO. 12:**

Produce any all documents related to the designation of areas of the state of Utah as urban or rural in the drafting, consideration, or enactment of the 2021 Congressional Plan and any draft congressional plans or districts.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Sen. Thatcher incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including:

<https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>;  
[https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Sen. Thatcher objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public documents relating to “drafting” or “consideration” of proposed legislation are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Sen. Thatcher objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. For example, legal analyses involving designations of communities of interest for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation would be attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 13:**

Produce any and all documents and communications concerning redistricting with any consultants, experts, or any persons or entities associated with the Republican National Committee, including but not limited to Adam Foltz, Adam Kincaid, and any representatives of the National Republican Redistricting Trust.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Sen. Thatcher incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions.

This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “documents and communications” with “any persons or entities associated with the Republican National Committee.” Presumably this would include every voter who is registered to vote as a Republican not only in Utah but across the country.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Sen. Thatcher objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including interest groups, constituents, and other stakeholders, to discuss issues that bear on legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative

privilege. Revealing such confidential information and communications ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

DATED this 4th day of January, 2023.

Respectfully submitted,

/s/ Tyler R. Green  
Tyler R. Green  
*Counsel for State Senator Daniel W. Thatcher*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of January, 2023, I served the foregoing via email  
on the following:

David C. Reymann (Utah Bar No. 8495)  
Kade N. Olsen (Utah Bar No. 17775)  
Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
(801) 532-7840  
dreymann@parrbrown.com  
kolsen@parrbrown.com

Mark Gaber  
Hayden Johnson  
Aseem Mulji  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, D.C. 20005  
(202) 736-2200  
mgaber@campaignlegalcenter.org  
hjohnson@campaignlegalcenter.org  
amulji@campaignlegalcenter.org

Annabelle Harless  
Campaign Legal Center  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
aharless@campaignlegalcenter.org

*Counsel for Plaintiffs*

Troy L. Booher (Utah Bar No. 9419)  
J. Frederic Voros, Jr. (Utah Bar No. 3340)  
Caroline Olsen (Utah Bar No. 18070)  
Zimmerman Booher  
341 South Main Street  
Salt Lake City, Utah 84111  
(801) 924-0200  
tbooher@zbappeals.com  
fvoros@zjbappeals.com  
colsen@zbappeals.com

*Counsel for Plaintiffs*

David N. Wolf  
Lance Sorenson  
Office of the Attorney General  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
lancesorenson@agutah.gov

*Counsel for Defendant,  
Lieutenant Governor Henderson*

/s/ Tyler R. Green  
Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
tyler@consovoymccarthy.com

## **EXHIBIT 4**

Victoria Ashby (12248)  
Robert H. Rees (4125)  
Eric N. Weeks (7340)  
OFFICE OF LEGISLATIVE RESEARCH AND  
GENERAL COUNSEL  
Utah State Capitol Complex,  
House Building, Suite W210  
Salt Lake City, UT 84114-5210  
Telephone: 801-538-1032  
vashby@le.utah.gov  
rrees@le.utah.gov  
eweeks@le.utah.gov

Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
(703) 243-9423  
tyler@consovoymccarthy.com

Taylor A.R. Meehan\*  
Frank H. Chang\*  
James P. McGlone\*  
CONSOVOY MCCARTHY PLLC  
1600 Wilson Blvd. Suite 700  
Arlington, VA 22209  
(703) 243-9423  
taylor@consovoymccarthy.com  
frank@consovoymccarthy.com  
jim@consovoymccarthy.com

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*Counsel for State Representative James A. Dunnigan*      *\*Admitted pro hac vice*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL GOV-  
ERNMENT, STEFANIE CONDIE, MALCOLM  
REID, VICTORIA REID, WENDY MARTIN,  
ELEANOR SUNDWALL, JACK MARKMAN,  
and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLA-  
TIVE REDISTRICTING COMMITTEE; SENA-  
TOR SCOTT SANDALL, in his official capacity;  
REPRESENTATIVE BRAD WILSON,  
in his official capacity; SENATOR J. STUART AD-  
AMS, in his official capacity; and LIEUTENANT  
GOVERNOR DEIDRE HENDERSON, in her offi-  
cial capacity,

Defendants.

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**STATE REPRESENTATIVE JAMES A.  
DUNNIGAN'S RESPONSES AND OB-  
JECTIONS TO PLAINTIFFS' SUB-  
POENA FOR PRODUCTION OF  
DOCUMENTS**

Case No. 220901712

Honorable Dianna Gibson

Pursuant to Utah Rules of Civil Procedure 26 and 45, State Representative James A. Dunnigan serves these responses and objections to Plaintiffs' subpoena for documents.

Legislators are immune from civil process for their legislative acts. That immunity bars Plaintiffs' subpoena. Under the Utah Constitution, "Members of the Legislature" "shall not be questioned in any other place" "for words used in any speech or debate in either house." Utah Const. art. VI, §8; *see also Tenney v. Brandhove*, 341 U.S. 367, 375 n.5 (1951) (citing Utah Const. art. VI, §8). Legislative immunity and privilege protect legislators and staff members "not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (quoting *Tenney*, 341 U.S. at 376). Legislative immunity and privilege "protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts." *In re Hubbard*, 803 F.3d 1298, 1310 (11th Cir. 2015) (emphasis removed) (quoting *United States v. Brewster*, 408 U.S. 501, 525 (1972)). These protections exist to "insur[e] the independence of individual legislators." *Brewster*, 408 U.S. at 507; *see also, e.g., Biblia Abierta v. Banks*, 129 F.3d 899, 905 (7th Cir. 1997) ("An inquiry into a legislator's motives for his actions, regardless of whether those reasons are proper or improper, is not an appropriate consideration for the court."). Such protections extend to both current and former legislators. *See, e.g., League of Women Voters of Pennsylvania v. Commonwealth*, 177 A.3d 1000, 1005 (Pa. Commw. Ct. 2017); *Saleem v. Snow*, 460 S.E.2d 104, 107 (Ga. Ct. App. 1995). Subjecting legislative documents to discovery transgresses legislative immunity, enshrined in Utah Constitution's Speech or Debate Clause. *See, e.g., Edwards v. Vesilind*, 790 S.E.2d 469 (Va. 2016); *In re Perry*, 60 S.W.3d 857 (Tex. 2001). Relevant here, preparations for the 2023 legislative session are underway, and the time required to address Plaintiffs' burdensome and overbroad discovery requests substantially impairs the legislators' performance of their present and forthcoming legislative duties.



The remaining objections are made in the alternative, without waiver of legislative immunity or privilege. Rep. Dunnigan reserves the right to supplement these responses and objections to the extent further required.

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Rep. Dunnigan asserts and repeats each of the following objections as to each request below. In the interest of brevity, these objections are listed here to avoid unnecessary repetition. Counsel for Rep. Dunnigan is willing to meet and confer regarding this objection and all other objections contained in these responses.

1. Rep. Dunnigan objects to these requests to the extent they seek information that would be protected by legislative immunity or legislative privilege. Explained above, the subpoena transgresses legislators' immunity. Utah Const. art. VI, §8. Additionally, insofar as the subpoena seeks legislatively privileged documents regarding legislative acts, including the passage of the 2021 Congressional Redistricting Plan, such documents are not discoverable. *See, e.g., In re Hubbard*, 803 F.3d at 1308-10. It is also unduly burdensome, unreasonable, and disproportionate to the needs of the case when individual legislators' documents—to the extent they are not duplicative of the legislative record—will be largely if not entirely privileged.

2. Rep. Dunnigan objects to these requests to the extent that they seek irrelevant information. Rule 26 allows discovery only of information “which is relevant to the claim or defense of any party.” Utah R. Civ. P. 26(b)(1). “The party seeking discovery always has the burden of showing ... relevance.” Utah R. Civ. P. 26(b)(4).

3. Rep. Dunnigan also objects to these requests to the extent they are not proportional. As with relevance, the party seeking discovery “always” has the burden “of showing proportionality.” Utah R. Civ. P. 26(b)(4). The Utah Supreme Court significantly amended the Utah Rules of Civil Procedure in 2011 “in large part to ... promote proportionality in costs and procedures in civil

litigation.” *Pilot v. Hill*, 2019 UT 10, ¶1, 437 P.3d 362. Discovery requests are proportional if: (A) discovery is “reasonable, considering the needs of the case”; (B) “the likely benefits of the proposed discovery outweigh the burden or expense”; (C) the discovery is consistent with the “overall case management” and will further the “just, speedy, and inexpensive” determination of the case; (D) the discovery is “not unreasonably cumulative or duplicative”; (E) “the information cannot be obtained from another source that is more convenient, less burdensome, or less expensive”; and (F) “the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise.” Utah R. Civ. P. 26(b)(3).

4. Rep. Dunnigan also objects to the extent that these requests implicate additional privileges, including but not limited to, the attorney-client privilege, common-interest privilege, the attorney work-product protections, and the deliberative process privilege.

5. There is currently no protective order in place between Plaintiffs and Defendants or any non-parties. *See* Utah R. Civ. P. 37(a)(1)(D) (allowing the district court to issue protective orders). To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure of certain sensitive information, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

6. These responses and objections are made without waiving any further objections to, or admitting the relevance or materiality of, any of the information or document requests. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with Plaintiffs’ characterization of any facts, circumstances, or legal obligations.

7. Rep. Dunnigan will provide responses based on terms as they are commonly understood and consistent with the Utah Rules of Civil Procedure.

## **OBJECTIONS TO PLAINTIFFS' DEFINITIONS AND INSTRUCTIONS**

1. Rep. Dunnigan objects to Plaintiffs' instructions and definitions, including definitions of "communications," "concern," "concerning," "regarding," "document," and "electronically stored information" or "ESI," as overbroad to the extent that they enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit.

2. Rep. Dunnigan objects to the definitions of "legislator" and "Member of Congress" as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit. Plaintiffs' overly broad definitions of a "legislator" and "Member of Congress" would include materials from individuals well beyond those legislators. The definitions also erroneously impute to a legislator anything shared or communicated by "advisors" or others who are not the legislator. The definitions are also overbroad and vague because it is not easily discernible which past or present individuals "puport[ed] to act" on an individual legislator's behalf. Moreover, Rep. Dunnigan objects to the extent that this definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity under the Utah or U.S. Constitutions. Rep. Dunnigan also objects to the extent that this definition requires the disclosure of materials subject to the attorney-client privilege. Rep. Dunnigan intends to interpret Plaintiffs' request to use the term "legislator" and "Member of Congress" to mean the past or present members of the Utah Legislature or U.S. House of Representatives, respectively, during the relevant time period of January 1, 2021, to November 12, 2021.

3. Rep. Dunnigan objects to the definition of "you" and "your" as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit, including by requiring a search for and/or production of documents that are not within his possession, custody, or control. Rep. Dunnigan objects to the extent that the definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity.

4. Rep. Dunnigan objects to Plaintiffs' instruction that requests should be construed to concern the period of time from January 1, 2020, to the present, unless otherwise specified. That date range is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. See Utah R. Civ. P. 26(d)(3). The official P.L. 94-171 census data was not released until August 12, 2021. The relevant legislative session commenced in November 2021. And the Governor signed the challenged legislation on November 12, 2022. Accordingly, Rep. Dunnigan intends to interpret Plaintiffs' requests to seek documents from January 1, 2021, to November 12, 2022.

### **RESPONSES AND OBJECTIONS TO PLAINTIFFS' REQUESTS FOR PRODUCTION OF DOCUMENTS**

#### **REQUEST FOR PRODUCTION NO. 1:**

Produce any and all drafts of the enacted 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted, including but not limited to shapefiles, geojson files, and/or block assignment files.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Dunnigan incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. See Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all drafts" or "other potential congressional plan or configuration of congressional districts that was not adopted." Such an overly broad request creates an undue burden. The request for "any other potential congressional plan or configuration" is also vague, overbroad, unduly burdensome, and disproportionate.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents

responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee's hearings held between May 18, 2021, and November 10, 2021, as well as draft minutes and agenda for those hearings, can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Dunnigan objects to this request insofar as it seeks documents subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public, draft redistricting plans are draft legislation and are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Rep. Dunnigan cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Dunnigan objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, or other applicable privileges. To the extent there are drafts created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 2:**

Produce any and all analyses, data, and/or code related to the enacted 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Dunnigan incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "analyses, data, and/or code related to" the 2021 Congressional Plan and other "potential" plans and configurations that were "not adopted." Such an overly broad request creates an undue burden. Rep. Dunnigan also objects to the term "code" as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee's hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at

<https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Dunnigan objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. To the extent Plaintiffs seek any non-public analyses, data, or code related to the enacted plan or drafts, such information, to the extent it exists, would be subject to legislative privilege and is thus not discoverable. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process. It ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Rep. Dunnigan cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Dunnigan objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are analyses, data, or code created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 3:**

Produce any and all notes or communications concerning meetings of the Legislative Redistricting Committee, other Legislative Committee, and Legislature that relate to the 2021 Congressional Plan,

drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Dunnigan incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "notes or communications concerning meetings of the Legislative Redistricting, other Legislative Committee, and Legislature" relating to the 2021 Congressional Plan. Such an overly broad request creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee's hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Dunnigan objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. His notes



and communications with others, if they exist, would be subject to legislative privilege and are thus not discoverable. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Dunnigan objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 4:**

Produce any and all minutes, agendas, notes, and communications from any Republican Caucus meeting or other non-public meeting of Republican legislators concerning the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Dunnigan incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular,

this request calls for the production of “any and all” “minutes, agendas, notes, and communications” from any “non-public meeting of Republican legislators.” Such an overly broad request creates an undue burden.

Rep. Dunnigan objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. On its face, this request seeks the production of non-public documents involving communications and deliberations among legislators regarding the 2021 Congressional Plan drafts regardless of whether they were adopted. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Dunnigan objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 5:**

Produce any and all documents and communications exchanged with any past or current Member of Congress and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Dunnigan incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee's hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Dunnigan objects insofar as this request seeks documents and communications further subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including Members of Congress, to discuss draft legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the

legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Dunnigan objects to this request for documents and communications with "attorneys" as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 6:**

Produce any and all documents and communications to, from, or shared with any past or current Legislator and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Dunnigan incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "documents and communications with any past or current Legislator" and their agents. This request is facially overbroad and vague and creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including:

<https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>;  
[https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Dunnigan also objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Documents and communications among legislators “related to the planning, negotiation, drafting, consideration, or enactment” of legislation are paradigmatic examples of documents subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Dunnigan objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 7:**

Produce any and all documents and communications to, from, or shared with Governor Cox and his agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Dunnigan further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—especially executive branch officials who exercise certain legislative functions under the Utah Constitution—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.,* Utah Const. art. VII, §7 (requiring presentment to the Governor for signature before any bill becomes a law); *Hubbard*, 803 F.3d at 1308 (“[T]he privilege protects the legislative process itself, and therefore covers both governors’ and legislators’ actions in the proposal, formulation, and passage of legislation.”). Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other

concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Dunnigan objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 8:**

Produce any and all documents and communications exchanged with Lieutenant Governor Henderson and her agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Dunnigan further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85;

*Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—including certain executive branch officials—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g., Almonte v. City of Long Beach*, 478 F.3d 100, 107 (2d Cir. 2007) (observing that discussions of issues with “executive officers” “assist[s] legislators in the discharge of their legislative duty”); *see also* Utah Code §67-1a-2(2)(a) (designating the Lieutenant Governor as “the chief election officer”); Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus ultimately impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Dunnigan objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 9:**

Produce any and all communications with the Utah Independent Redistricting Commission, including but not limited to commissioners and staff, concerning redistricting, the UIRC’s processes or operation, or the 2022 congressional election.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Dunnigan incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions.



The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Dunnigan objects to this request insofar as it seeks documents and communications subject to legislative privilege. Meeting and communicating with persons outside the Legislature to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.*, Utah Code §20A-20-303(1) (requiring the Commission to submit proposed maps to the Legislature). Any non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

**REQUEST FOR PRODUCTION NO. 10:**

Produce any and all documents and communications concerning the partisan performance of districts in the 2021 Congressional Plan or any drafts thereof, including voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population,

citizen voting age population, or any other data considered, viewed, or used to assess the partisan performance.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Dunnigan incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calling for the production of "any and all" "documents and communications" involving "any other data considered" is overbroad and vague and creates an undue burden. Terms such as "partisan voting patterns," "assessments of candidate performance," "partisan indexes," and "partisan performance" are also objectionable as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. For example, the request seeks "election results" that are publicly available on government websites including those of county clerks. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Dunnigan objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. The request for data and other information that individual legislators "considered, viewed, or

used to assess the partisan performance of draft or final Utah congressional districts or district maps” is a request for legislators’ thought processes and mental impressions that are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Dunnigan objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges. To the extent there are legal analyses involving “partisan voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population” for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation, they are privileged and/or attorney work-product and are not discoverable.

**REQUEST FOR PRODUCTION NO. 11:**

Produce any and all documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives that the Legislature considered, or decided not to consider, in developing the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Dunnigan incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites. Redistricting criteria adopted by the Legislative Redistricting Committee are contained in the Committee’s publicly available meeting minutes: <https://le.utah.gov/interim/2021/pdf/00002847.pdf>. Related information is also publicly available

on the following legislative websites: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; <https://le.utah.gov/interim/2021/pdf/00002847.pdf>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Dunnigan objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Confidential “documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives” that individual legislators and staff members may have “considered” or “not considered” are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Dunnigan objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. Legal analyses involving redistricting criteria for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation would be privileged and/or subject to the attorney work-product protections and are not discoverable.

**REQUEST FOR PRODUCTION NO. 12:**

Produce any all documents related to the designation of areas of the state of Utah as urban or rural in the drafting, consideration, or enactment of the 2021 Congressional Plan and any draft congressional plans or districts.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Dunnigan incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Dunnigan objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public documents relating to “drafting” or “consideration” of proposed legislation are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Dunnigan objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other

applicable privileges. For example, legal analyses involving designations of communities of interest for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation would be attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 13:**

Produce any and all documents and communications concerning redistricting with any consultants, experts, or any persons or entities associated with the Republican National Committee, including but not limited to Adam Foltz, Adam Kincaid, and any representatives of the National Republican Redistricting Trust.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Dunnigan incorporates the objections specified above, including those to Plaintiffs' instructions and definitions.

This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "documents and communications" with "any persons or entities associated with the Republican National Committee." Presumably this would include every voter who is registered to vote as a Republican not only in Utah but across the country.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at

<https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Dunnigan objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including interest groups, constituents, and other stakeholders, to discuss issues that bear on legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

DATED this 4th day of January, 2023.

Respectfully submitted,

/s/ Tyler R. Green  
Tyler R. Green  
*Counsel for State Representative James A. Dunnigan*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of January, 2023, I served the foregoing via email  
on the following:

David C. Reymann (Utah Bar No. 8495)  
Kade N. Olsen (Utah Bar No. 17775)  
Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
(801) 532-7840  
dreymann@parrbrown.com  
kolsen@parrbrown.com

Mark Gaber  
Hayden Johnson  
Aseem Mulji  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, D.C. 20005  
(202) 736-2200  
mgaber@campaignlegalcenter.org  
hjohnson@campaignlegalcenter.org  
amulji@campaignlegalcenter.org

Annabelle Harless  
Campaign Legal Center  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
aharless@campaignlegalcenter.org

*Counsel for Plaintiffs*

Troy L. Booher (Utah Bar No. 9419)  
J. Frederic Voros, Jr. (Utah Bar No. 3340)  
Caroline Olsen (Utah Bar No. 18070)  
Zimmerman Booher  
341 South Main Street  
Salt Lake City, Utah 84111  
(801) 924-0200  
tbooher@zbbappeals.com  
fvoros@zjbappeals.com  
colsen@zbbappeals.com

*Counsel for Plaintiffs*

David N. Wolf  
Lance Sorenson  
Office of the Attorney General  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
lancesorenson@agutah.gov

*Counsel for Defendant,  
Lieutenant Governor Henderson*

/s/ Tyler R. Green  
Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
tyler@consovoymccarthy.com



## **EXHIBIT 5**

Victoria Ashby (12248)  
Robert H. Rees (4125)  
Eric N. Weeks (7340)  
OFFICE OF LEGISLATIVE RESEARCH AND  
GENERAL COUNSEL  
Utah State Capitol Complex,  
House Building, Suite W210  
Salt Lake City, UT 84114-5210  
Telephone: 801-538-1032  
vashby@le.utah.gov  
rrees@le.utah.gov  
eweeks@le.utah.gov

Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
(703) 243-9423  
tyler@consovoymccarthy.com

Taylor A.R. Meehan\*  
Frank H. Chang\*  
James P. McGlone\*  
CONSOVOY MCCARTHY PLLC  
1600 Wilson Blvd. Suite 700  
Arlington, VA 22209  
(703) 243-9423  
taylor@consovoymccarthy.com  
frank@consovoymccarthy.com  
jim@consovoymccarthy.com

*Counsel for State Representative Jeffrey D. Stenquist*

*\*Admitted pro hac vice*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL GOV-  
ERNMENT, STEFANIE CONDIE, MALCOLM  
REID, VICTORIA REID, WENDY MARTIN,  
ELEANOR SUNDWALL, JACK MARKMAN,  
and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLA-  
TIVE REDISTRICTING COMMITTEE; SENA-  
TOR SCOTT SANDALL, in his official capacity;  
REPRESENTATIVE BRAD WILSON,  
in his official capacity; SENATOR J. STUART AD-  
AMS, in his official capacity; and LIEUTENANT  
GOVERNOR DEIDRE HENDERSON, in her offi-  
cial capacity,

Defendants.

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**STATE REPRESENTATIVE JEFFREY  
D. STENQUIST'S RESPONSES AND  
OBJECTIONS TO PLAINTIFFS' SUB-  
POENA FOR PRODUCTION OF  
DOCUMENTS**

Case No. 220901712

Honorable Dianna Gibson

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Pursuant to Utah Rules of Civil Procedure 26 and 45, State Representative Jeffrey D. Stenquist serves these responses and objections to Plaintiffs' subpoena for documents.

Legislators are immune from civil process for their legislative acts. That immunity bars Plaintiffs' subpoena. Under the Utah Constitution, "Members of the Legislature" "shall not be questioned in any other place" "for words used in any speech or debate in either house." Utah Const. art. VI, §8; *see also Tenney v. Brandhove*, 341 U.S. 367, 375 n.5 (1951) (citing Utah Const. art. VI, §8). Legislative immunity and privilege protect legislators and staff members "not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (quoting *Tenney*, 341 U.S. at 376). Legislative immunity and privilege "protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts." *In re Hubbard*, 803 F.3d 1298, 1310 (11th Cir. 2015) (emphasis removed) (quoting *United States v. Brewster*, 408 U.S. 501, 525 (1972)). These protections exist to "insur[e] the independence of individual legislators." *Brewster*, 408 U.S. at 507; *see also, e.g., Biblia Abierta v. Banks*, 129 F.3d 899, 905 (7th Cir. 1997) ("An inquiry into a legislator's motives for his actions, regardless of whether those reasons are proper or improper, is not an appropriate consideration for the court."). Such protections extend to both current and former legislators. *See, e.g., League of Women Voters of Pennsylvania v. Commonwealth*, 177 A.3d 1000, 1005 (Pa. Commw. Ct. 2017); *Saleem v. Snow*, 460 S.E.2d 104, 107 (Ga. Ct. App. 1995). Subjecting legislative documents to discovery transgresses legislative immunity, enshrined in Utah Constitution's Speech or Debate Clause. *See, e.g., Edwards v. Vesilind*, 790 S.E.2d 469 (Va. 2016); *In re Perry*, 60 S.W.3d 857 (Tex. 2001). Relevant here, preparations for the 2023 legislative session are underway, and the time required to address Plaintiffs' burdensome and overbroad discovery requests substantially impairs the legislators' performance of their present and forthcoming legislative duties.

The remaining objections are made in the alternative, without waiver of legislative immunity or privilege. Rep. Stenquist reserves the right to supplement these responses and objections to the extent further required.

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Rep. Stenquist asserts and repeats each of the following objections as to each request below. In the interest of brevity, these objections are listed here to avoid unnecessary repetition. Counsel for Rep. Stenquist is willing to meet and confer regarding this objection and all other objections contained in these responses.

1. Rep. Stenquist objects to these requests to the extent they seek information that would be protected by legislative immunity or legislative privilege. Explained above, the subpoena transgresses legislators' immunity. Utah Const. art. VI, §8. Additionally, insofar as the subpoena seeks legislatively privileged documents regarding legislative acts, including the passage of the 2021 Congressional Redistricting Plan, such documents are not discoverable. *See, e.g., In re Hubbard*, 803 F.3d at 1308-10. It is also unduly burdensome, unreasonable, and disproportionate to the needs of the case when individual legislators' documents—to the extent they are not duplicative of the legislative record—will be largely if not entirely privileged.

2. Rep. Stenquist objects to these requests to the extent that they seek irrelevant information. Rule 26 allows discovery only of information “which is relevant to the claim or defense of any party.” Utah R. Civ. P. 26(b)(1). “The party seeking discovery always has the burden of showing ... relevance.” Utah R. Civ. P. 26(b)(4).

3. Rep. Stenquist also objects to these requests to the extent they are not proportional. As with relevance, the party seeking discovery “always” has the burden “of showing proportionality.” Utah R. Civ. P. 26(b)(4). The Utah Supreme Court significantly amended the Utah Rules of Civil Procedure in 2011 “in large part to ... promote proportionality in costs and procedures in civil

litigation.” *Pilot v. Hill*, 2019 UT 10, ¶1, 437 P.3d 362. Discovery requests are proportional if: (A) discovery is “reasonable, considering the needs of the case”; (B) “the likely benefits of the proposed discovery outweigh the burden or expense”; (C) the discovery is consistent with the “overall case management” and will further the “just, speedy, and inexpensive” determination of the case; (D) the discovery is “not unreasonably cumulative or duplicative”; (E) “the information cannot be obtained from another source that is more convenient, less burdensome, or less expensive”; and (F) “the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise.” Utah R. Civ. P. 26(b)(3).

4. Rep. Stenquist also objects to the extent that these requests implicate additional privileges, including but not limited to, the attorney-client privilege, common-interest privilege, the attorney work-product protections, and the deliberative process privilege.

5. There is currently no protective order in place between Plaintiffs and Defendants or any non-parties. *See* Utah R. Civ. P. 37(a)(1)(D) (allowing the district court to issue protective orders). To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure of certain sensitive information, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

6. These responses and objections are made without waiving any further objections to, or admitting the relevance or materiality of, any of the information or document requests. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with Plaintiffs’ characterization of any facts, circumstances, or legal obligations.

7. Rep. Stenquist will provide responses based on terms as they are commonly understood and consistent with the Utah Rules of Civil Procedure.

## **OBJECTIONS TO PLAINTIFFS' DEFINITIONS AND INSTRUCTIONS**

1. Rep. Stenquist objects to Plaintiffs' instructions and definitions, including definitions of "communications," "concern," "concerning," "regarding," "document," and "electronically stored information" or "ESI," as overbroad to the extent that they enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit.

2. Rep. Stenquist objects to the definitions of "legislator" and "Member of Congress" as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit. Plaintiffs' overly broad definitions of a "legislator" and "Member of Congress" would include materials from individuals well beyond those legislators. The definitions also erroneously impute to a legislator anything shared or communicated by "advisors" or others who are not the legislator. The definitions are also overbroad and vague because it is not easily discernible which past or present individuals "puport[ed] to act" on an individual legislator's behalf. Moreover, Rep. Stenquist objects to the extent that this definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity under the Utah or U.S. Constitutions. Rep. Stenquist also objects to the extent that this definition requires the disclosure of materials subject to the attorney-client privilege. Rep. Stenquist intends to interpret Plaintiffs' request to use the term "legislator" and "Member of Congress" to mean the past or present members of the Utah Legislature or U.S. House of Representatives, respectively, during the relevant time period of January 1, 2021, to November 12, 2021.

3. Rep. Stenquist objects to the definition of "you" and "your" as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit, including by requiring a search for and/or production of documents that are not within his possession, custody, or control. Rep. Stenquist objects to the extent that the definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity.

4. Rep. Stenquist objects to Plaintiffs' instruction that requests should be construed to concern the period of time from January 1, 2020, to the present, unless otherwise specified. That date range is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. See Utah R. Civ. P. 26(d)(3). The official P.L. 94-171 census data was not released until August 12, 2021. The relevant legislative session commenced in November 2021. And the Governor signed the challenged legislation on November 12, 2022. Accordingly, Rep. Stenquist intends to interpret Plaintiffs' requests to seek documents from January 1, 2021, to November 12, 2022.

### **RESPONSES AND OBJECTIONS TO PLAINTIFFS' REQUESTS FOR PRODUCTION OF DOCUMENTS**

#### **REQUEST FOR PRODUCTION NO. 1:**

Produce any and all drafts of the enacted 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted, including but not limited to shapefiles, geojson files, and/or block assignment files.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Stenquist incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all drafts" or "other potential congressional plan or configuration of congressional districts that was not adopted." Such an overly broad request creates an undue burden. The request for "any other potential congressional plan or configuration" is also vague, overbroad, unduly burdensome, and disproportionate.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents

responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021, as well as draft minutes and agenda for those hearings, can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Stenquist objects to this request insofar as it seeks documents subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public, draft redistricting plans are draft legislation and are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Rep. Stenquist cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Stenquist objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, or other applicable privileges. To the extent there are drafts created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.



**REQUEST FOR PRODUCTION NO. 2:**

Produce any and all analyses, data, and/or code related to the enacted 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Stenquist incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "analyses, data, and/or code related to" the 2021 Congressional Plan and other "potential" plans and configurations that were "not adopted." Such an overly broad request creates an undue burden. Rep. Stenquist also objects to the term "code" as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee's hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Stenquist objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. To the extent Plaintiffs seek any non-public analyses, data, or code related to the enacted plan or drafts, such information, to the extent it exists, would be subject to legislative privilege and is thus not discoverable. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process. It ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Rep. Stenquist cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Stenquist objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are analyses, data, or code created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

### **REQUEST FOR PRODUCTION NO. 3:**

Produce any and all notes or communications concerning meetings of the Legislative Redistricting Committee, other Legislative Committee, and Legislature that relate to the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Stenquist incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is

unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “notes or communications concerning meetings of the Legislative Redistricting, other Legislative Committee, and Legislature” relating to the 2021 Congressional Plan. Such an overly broad request creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Stenquist objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. His notes and communications with others, if they exist, would be subject to legislative privilege and are thus not discoverable. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder

communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Stenquist objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 4:**

Produce any and all minutes, agendas, notes, and communications from any Republican Caucus meeting or other non-public meeting of Republican legislators concerning the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Stenquist incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "minutes, agendas, notes, and communications" from any "non-public meeting of Republican legislators." Such an overly broad request creates an undue burden.

Rep. Stenquist objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. On its face,

this request seeks the production of non-public documents involving communications and deliberations among legislators regarding the 2021 Congressional Plan drafts regardless of whether they were adopted. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Stenquist objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 5:**

Produce any and all documents and communications exchanged with any past or current Member of Congress and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Stenquist incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are

already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Stenquist objects insofar as this request seeks documents and communications further subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including Members of Congress, to discuss draft legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Stenquist objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with

applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 6:**

Produce any and all documents and communications to, from, or shared with any past or current Legislator and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Stenquist incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "documents and communications with any past or current Legislator" and their agents. This request is facially overbroad and vague and creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Stenquist also objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341

U.S. at 372. Documents and communications among legislators “related to the planning, negotiation, drafting, consideration, or enactment” of legislation are paradigmatic examples of documents subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Stenquist objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 7:**

Produce any and all documents and communications to, from, or shared with Governor Cox and his agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at



<https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Stenquist further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—especially executive branch officials who exercise certain legislative functions under the Utah Constitution—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.,* Utah Const. art. VII, §7 (requiring presentment to the Governor for signature before any bill becomes a law); *Hubbard*, 803 F.3d at 1308 (“[T]he privilege protects the legislative process itself, and therefore covers both governors’ and legislators’ actions in the proposal, formulation, and passage of legislation.”). Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Stenquist objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.,* ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 8:**

Produce any and all documents and communications exchanged with Lieutenant Governor Henderson and her agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Stenquist further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—including certain executive branch officials—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g., Almonte v. City of Long Beach*, 478 F.3d 100, 107 (2d Cir. 2007) (observing that discussions of issues with “executive officers” “assist[s] legislators in the discharge of their legislative duty”); *see also* Utah Code §67-1a-2(2)(a) (designating the Lieutenant Governor as “the chief election officer”); Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and impairs legislators’ ability to freely and candidly consider

legislation and to assess alternatives, and thus ultimately impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Stenquist objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 9:**

Produce any and all communications with the Utah Independent Redistricting Commission, including but not limited to commissioners and staff, concerning redistricting, the UIRC’s processes or operation, or the 2022 congressional election.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Stenquist incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and

<https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Stenquist objects to this request insofar as it seeks documents and communications subject to legislative privilege. Meeting and communicating with persons outside the Legislature to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.*, Utah Code §20A-20-303(1) (requiring the Commission to submit proposed maps to the Legislature). Any non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

**REQUEST FOR PRODUCTION NO. 10:**

Produce any and all documents and communications concerning the partisan performance of districts in the 2021 Congressional Plan or any drafts thereof, including voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population, or any other data considered, viewed, or used to assess the partisan performance.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Stenquist incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calling for the production of "any and all" "documents and communications" involving "any

other data considered” is overbroad and vague and creates an undue burden. Terms such as “partisan voting patterns,” “assessments of candidate performance,” “partisan indexes,” and “partisan performance” are also objectionable as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. For example, the request seeks “election results” that are publicly available on government websites including those of county clerks. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Stenquist objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. The request for data and other information that individual legislators “considered, viewed, or used to assess the partisan performance of draft or final Utah congressional districts or district maps” is a request for legislators’ thought processes and mental impressions that are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Stenquist objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other

applicable privileges. To the extent there are legal analyses involving “partisan voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population” for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation, they are privileged and/or attorney work-product and are not discoverable.

**REQUEST FOR PRODUCTION NO. 11:**

Produce any and all documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives that the Legislature considered, or decided not to consider, in developing the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Stenquist incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites. Redistricting criteria adopted by the Legislative Redistricting Committee are contained in the Committee’s publicly available meeting minutes: <https://le.utah.gov/interim/2021/pdf/00002847.pdf>. Related information is also publicly available on the following legislative websites: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; <https://le.utah.gov/interim/2021/pdf/00002847.pdf>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Stenquist objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Confidential “documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives” that individual legislators and staff members may have “considered” or “not considered” are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Stenquist objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. Legal analyses involving redistricting criteria for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation would be privileged and/or subject to the attorney work-product protections and are not discoverable.

**REQUEST FOR PRODUCTION NO. 12:**

Produce any all documents related to the designation of areas of the state of Utah as urban or rural in the drafting, consideration, or enactment of the 2021 Congressional Plan and any draft congressional plans or districts.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Stenquist incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including:

<https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>;  
[https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Stenquist objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public documents relating to “drafting” or “consideration” of proposed legislation are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Stenquist objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. For example, legal analyses involving designations of communities of interest for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation would be attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 13:**

Produce any and all documents and communications concerning redistricting with any consultants, experts, or any persons or entities associated with the Republican National Committee, including but not limited to Adam Foltz, Adam Kincaid, and any representatives of the National Republican Redistricting Trust.



**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Stenquist incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions.

This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “documents and communications” with “any persons or entities associated with the Republican National Committee.” Presumably this would include every voter who is registered to vote as a Republican not only in Utah but across the country.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Stenquist objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including interest groups, constituents, and other stakeholders, to discuss issues that bear on legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative

privilege. Revealing such confidential information and communications ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

DATED this 4th day of January, 2023.

Respectfully submitted,

/s/ Tyler R. Green  
Tyler R. Green  
*Counsel for State Representative Jeffrey D. Stenquist*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of January, 2023, I served the foregoing via email  
on the following:

David C. Reymann (Utah Bar No. 8495)  
Kade N. Olsen (Utah Bar No. 17775)  
Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
(801) 532-7840  
dreymann@parrbrown.com  
kolsen@parrbrown.com

Mark Gaber  
Hayden Johnson  
Aseem Mulji  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, D.C. 20005  
(202) 736-2200  
mgaber@campaignlegalcenter.org  
hjohnson@campaignlegalcenter.org  
amulji@campaignlegalcenter.org

Annabelle Harless  
Campaign Legal Center  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
aharless@campaignlegalcenter.org

*Counsel for Plaintiffs*

Troy L. Booher (Utah Bar No. 9419)  
J. Frederic Voros, Jr. (Utah Bar No. 3340)  
Caroline Olsen (Utah Bar No. 18070)  
Zimmerman Booher  
341 South Main Street  
Salt Lake City, Utah 84111  
(801) 924-0200  
tbooher@zbappeals.com  
fvoros@zjbappeals.com  
colsen@zbappeals.com

*Counsel for Plaintiffs*

David N. Wolf  
Lance Sorenson  
Office of the Attorney General  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
lancesorenson@agutah.gov

*Counsel for Defendant,  
Lieutenant Governor Henderson*

/s/ Tyler R. Green  
Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
tyler@consovoymccarthy.com

## **EXHIBIT 6**

Victoria Ashby (12248)  
Robert H. Rees (4125)  
Eric N. Weeks (7340)  
OFFICE OF LEGISLATIVE RESEARCH AND  
GENERAL COUNSEL  
Utah State Capitol Complex,  
House Building, Suite W210  
Salt Lake City, UT 84114-5210  
Telephone: 801-538-1032  
vashby@le.utah.gov  
rrees@le.utah.gov  
eweeks@le.utah.gov

Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
(703) 243-9423  
tyler@consovoymccarthy.com

Taylor A.R. Meehan\*  
Frank H. Chang\*  
James P. McGlone\*  
CONSOVOY MCCARTHY PLLC  
1600 Wilson Blvd. Suite 700  
Arlington, VA 22209  
(703) 243-9423  
taylor@consovoymccarthy.com  
frank@consovoymccarthy.com  
jim@consovoymccarthy.com

*Counsel for State Representative Marsha Judkins*

*\*Admitted pro hac vice*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL GOV-  
ERNMENT, STEFANIE CONDIE, MALCOLM  
REID, VICTORIA REID, WENDY MARTIN,  
ELEANOR SUNDWALL, JACK MARKMAN,  
and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLA-  
TIVE REDISTRICTING COMMITTEE; SENA-  
TOR SCOTT SANDALL, in his official capacity;  
REPRESENTATIVE BRAD WILSON,  
in his official capacity; SENATOR J. STUART AD-  
AMS, in his official capacity; and LIEUTENANT  
GOVERNOR DEIDRE HENDERSON, in her offi-  
cial capacity,

Defendants.

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**STATE REPRESENTATIVE MARSHA  
JUDKINS' RESPONSES AND OBJEC-  
TIONS TO PLAINTIFFS' SUBPOENA  
FOR PRODUCTION OF DOCU-  
MENTS**

Case No. 220901712

Honorable Dianna Gibson

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Pursuant to Utah Rules of Civil Procedure 26 and 45, State Representative Marsha Judkins serves these responses and objections to Plaintiffs' subpoena for documents.

Legislators are immune from civil process for their legislative acts. That immunity bars Plaintiffs' subpoena. Under the Utah Constitution, "Members of the Legislature" "shall not be questioned in any other place" "for words used in any speech or debate in either house." Utah Const. art. VI, §8; *see also Tenney v. Brandhove*, 341 U.S. 367, 375 n.5 (1951) (citing Utah Const. art. VI, §8). Legislative immunity and privilege protect legislators and staff members "not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (quoting *Tenney*, 341 U.S. at 376). Legislative immunity and privilege "protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts." *In re Hubbard*, 803 F.3d 1298, 1310 (11th Cir. 2015) (emphasis removed) (quoting *United States v. Brewster*, 408 U.S. 501, 525 (1972)). These protections exist to "insur[e] the independence of individual legislators." *Brewster*, 408 U.S. at 507; *see also, e.g., Biblia Abierta v. Banks*, 129 F.3d 899, 905 (7th Cir. 1997) ("An inquiry into a legislator's motives for his actions, regardless of whether those reasons are proper or improper, is not an appropriate consideration for the court."). Such protections extend to both current and former legislators. *See, e.g., League of Women Voters of Pennsylvania v. Commonwealth*, 177 A.3d 1000, 1005 (Pa. Commw. Ct. 2017); *Saleem v. Snow*, 460 S.E.2d 104, 107 (Ga. Ct. App. 1995). Subjecting legislative documents to discovery transgresses legislative immunity, enshrined in Utah Constitution's Speech or Debate Clause. *See, e.g., Edwards v. Vesilind*, 790 S.E.2d 469 (Va. 2016); *In re Perry*, 60 S.W.3d 857 (Tex. 2001). Relevant here, preparations for the 2023 legislative session are underway, and the time required to address Plaintiffs' burdensome and overbroad discovery requests substantially impairs the legislators' performance of their present and forthcoming legislative duties.

The remaining objections are made in the alternative, without waiver of legislative immunity or privilege. Rep. Judkins reserves the right to supplement these responses and objections to the extent further required.

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Rep. Judkins asserts and repeats each of the following objections as to each request below. In the interest of brevity, these objections are listed here to avoid unnecessary repetition. Counsel for Rep. Judkins is willing to meet and confer regarding this objection and all other objections contained in these responses.

1. Rep. Judkins objects to these requests to the extent they seek information that would be protected by legislative immunity or legislative privilege. Explained above, the subpoena transgresses legislators' immunity. Utah Const. art. VI, §8. Additionally, insofar as the subpoena seeks legislatively privileged documents regarding legislative acts, including the passage of the 2021 Congressional Redistricting Plan, such documents are not discoverable. *See, e.g., In re Hubbard*, 803 F.3d at 1308-10. It is also unduly burdensome, unreasonable, and disproportionate to the needs of the case when individual legislators' documents—to the extent they are not duplicative of the legislative record—will be largely if not entirely privileged.

2. Rep. Judkins objects to these requests to the extent that they seek irrelevant information. Rule 26 allows discovery only of information “which is relevant to the claim or defense of any party.” Utah R. Civ. P. 26(b)(1). “The party seeking discovery always has the burden of showing ... relevance.” Utah R. Civ. P. 26(b)(4).

3. Rep. Judkins also objects to these requests to the extent they are not proportional. As with relevance, the party seeking discovery “always” has the burden “of showing proportionality.” Utah R. Civ. P. 26(b)(4). The Utah Supreme Court significantly amended the Utah Rules of Civil Procedure in 2011 “in large part to ... promote proportionality in costs and procedures in civil

litigation.” *Pilot v. Hill*, 2019 UT 10, ¶1, 437 P.3d 362. Discovery requests are proportional if: (A) discovery is “reasonable, considering the needs of the case”; (B) “the likely benefits of the proposed discovery outweigh the burden or expense”; (C) the discovery is consistent with the “overall case management” and will further the “just, speedy, and inexpensive” determination of the case; (D) the discovery is “not unreasonably cumulative or duplicative”; (E) “the information cannot be obtained from another source that is more convenient, less burdensome, or less expensive”; and (F) “the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise.” Utah R. Civ. P. 26(b)(3).

4. Rep. Judkins also objects to the extent that these requests implicate additional privileges, including but not limited to, the attorney-client privilege, common-interest privilege, the attorney work-product protections, and the deliberative process privilege.

5. There is currently no protective order in place between Plaintiffs and Defendants or any non-parties. *See* Utah R. Civ. P. 37(a)(1)(D) (allowing the district court to issue protective orders). To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure of certain sensitive information, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

6. These responses and objections are made without waiving any further objections to, or admitting the relevance or materiality of, any of the information or document requests. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with Plaintiffs’ characterization of any facts, circumstances, or legal obligations.

7. Rep. Judkins will provide responses based on terms as they are commonly understood and consistent with the Utah Rules of Civil Procedure.



## **OBJECTIONS TO PLAINTIFFS' DEFINITIONS AND INSTRUCTIONS**

1. Rep. Judkins objects to Plaintiffs' instructions and definitions, including definitions of "communications," "concern," "concerning," "regarding," "document," and "electronically stored information" or "ESI," as overbroad to the extent that they enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit.

2. Rep. Judkins objects to the definitions of "legislator" and "Member of Congress" as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit. Plaintiffs' overly broad definitions of a "legislator" and "Member of Congress" would include materials from individuals well beyond those legislators. The definitions also erroneously impute to a legislator anything shared or communicated by "advisors" or others who are not the legislator. The definitions are also overbroad and vague because it is not easily discernible which past or present individuals "puport[ed] to act" on an individual legislator's behalf. Moreover, Rep. Judkins objects to the extent that this definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity under the Utah or U.S. Constitutions. Rep. Judkins also objects to the extent that this definition requires the disclosure of materials subject to the attorney-client privilege. Rep. Judkins intends to interpret Plaintiffs' request to use the term "legislator" and "Member of Congress" to mean the past or present members of the Utah Legislature or U.S. House of Representatives, respectively, during the relevant time period of January 1, 2021, to November 12, 2021.

3. Rep. Judkins objects to the definition of "you" and "your" as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit, including by requiring a search for and/or production of documents that are not within her possession, custody, or control. Rep. Judkins objects to the extent that the definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity.

4. Rep. Judkins objects to Plaintiffs' instruction that requests should be construed to concern the period of time from January 1, 2020, to the present, unless otherwise specified. That date range is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. See Utah R. Civ. P. 26(d)(3). The official P.L. 94-171 census data was not released until August 12, 2021. The relevant legislative session commenced in November 2021. And the Governor signed the challenged legislation on November 12, 2022. Accordingly, Rep. Judkins intends to interpret Plaintiffs' requests to seek documents from January 1, 2021, to November 12, 2022.

### **RESPONSES AND OBJECTIONS TO PLAINTIFFS' REQUESTS FOR PRODUCTION OF DOCUMENTS**

#### **REQUEST FOR PRODUCTION NO. 1:**

Produce any and all drafts of the enacted 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted, including but not limited to shapefiles, geojson files, and/or block assignment files.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Judkins incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all drafts" or "other potential congressional plan or configuration of congressional districts that was not adopted." Such an overly broad request creates an undue burden. The request for "any other potential congressional plan or configuration" is also vague, overbroad, unduly burdensome, and disproportionate.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents

responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021, as well as draft minutes and agenda for those hearings, can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Judkins objects to this request insofar as it seeks documents subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public, draft redistricting plans are draft legislation and are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Rep. Judkins cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Judkins objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, or other applicable privileges. To the extent there are drafts created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 2:**

Produce any and all analyses, data, and/or code related to the enacted 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Judkins incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “analyses, data, and/or code related to” the 2021 Congressional Plan and other “potential” plans and configurations that were “not adopted.” Such an overly broad request creates an undue burden. Rep. Judkins also objects to the term “code” as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Judkins objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. To the extent Plaintiffs seek any non-public analyses, data, or code related to the enacted plan or drafts, such information, to the extent it exists, would be subject to legislative privilege and is thus not discoverable. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process. It ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Rep. Judkins cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Judkins objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are analyses, data, or code created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

### **REQUEST FOR PRODUCTION NO. 3:**

Produce any and all notes or communications concerning meetings of the Legislative Redistricting Committee, other Legislative Committee, and Legislature that relate to the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Judkins incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly

burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “notes or communications concerning meetings of the Legislative Redistricting, other Legislative Committee, and Legislature” relating to the 2021 Congressional Plan. Such an overly broad request creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Judkins objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Her notes and communications with others, if they exist, would be subject to legislative privilege and are thus not discoverable. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder

communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Judkins objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 4:**

Produce any and all minutes, agendas, notes, and communications from any Republican Caucus meeting or other non-public meeting of Republican legislators concerning the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Judkins incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "minutes, agendas, notes, and communications" from any "non-public meeting of Republican legislators." Such an overly broad request creates an undue burden.

Rep. Judkins objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. On its face,

this request seeks the production of non-public documents involving communications and deliberations among legislators regarding the 2021 Congressional Plan drafts regardless of whether they were adopted. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Judkins objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 5:**

Produce any and all documents and communications exchanged with any past or current Member of Congress and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Judkins incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are



already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Judkins objects insofar as this request seeks documents and communications further subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including Members of Congress, to discuss draft legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Judkins objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with

applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 6:**

Produce any and all documents and communications to, from, or shared with any past or current Legislator and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Judkins incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "documents and communications with any past or current Legislator" and their agents. This request is facially overbroad and vague and creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Judkins also objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341

U.S. at 372. Documents and communications among legislators “related to the planning, negotiation, drafting, consideration, or enactment” of legislation are paradigmatic examples of documents subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Judkins objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 7:**

Produce any and all documents and communications to, from, or shared with Governor Cox and his agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at

<https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Judkins further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—especially executive branch officials who exercise certain legislative functions under the Utah Constitution—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.,* Utah Const. art. VII, §7 (requiring presentment to the Governor for signature before any bill becomes a law); *Hubbard*, 803 F.3d at 1308 (“[T]he privilege protects the legislative process itself, and therefore covers both governors’ and legislators’ actions in the proposal, formulation, and passage of legislation.”). Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Judkins objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.,* ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 8:**

Produce any and all documents and communications exchanged with Lieutenant Governor Henderson and her agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Judkins further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—including certain executive branch officials—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g., Almonte v. City of Long Beach*, 478 F.3d 100, 107 (2d Cir. 2007) (observing that discussions of issues with “executive officers” “assist[s] legislators in the discharge of their legislative duty”); *see also* Utah Code §67-1a-2(2)(a) (designating the Lieutenant Governor as “the chief election officer”); Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and impairs legislators’ ability to freely and candidly consider

legislation and to assess alternatives, and thus ultimately impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Judkins objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 9:**

Produce any and all communications with the Utah Independent Redistricting Commission, including but not limited to commissioners and staff, concerning redistricting, the UIRC’s processes or operation, or the 2022 congressional election.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Judkins incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and

<https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Judkins objects to this request insofar as it seeks documents and communications subject to legislative privilege. Meeting and communicating with persons outside the Legislature to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.*, Utah Code §20A-20-303(1) (requiring the Commission to submit proposed maps to the Legislature). Any non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

**REQUEST FOR PRODUCTION NO. 10:**

Produce any and all documents and communications concerning the partisan performance of districts in the 2021 Congressional Plan or any drafts thereof, including voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population, or any other data considered, viewed, or used to assess the partisan performance.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Judkins incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calling for the production of "any and all" "documents and communications" involving "any

other data considered” is overbroad and vague and creates an undue burden. Terms such as “partisan voting patterns,” “assessments of candidate performance,” “partisan indexes,” and “partisan performance” are also objectionable as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. For example, the request seeks “election results” that are publicly available on government websites including those of county clerks. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Judkins objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. The request for data and other information that individual legislators “considered, viewed, or used to assess the partisan performance of draft or final Utah congressional districts or district maps” is a request for legislators’ thought processes and mental impressions that are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Judkins objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other



applicable privileges. To the extent there are legal analyses involving “partisan voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population” for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation, they are privileged and/or attorney work-product and are not discoverable.

**REQUEST FOR PRODUCTION NO. 11:**

Produce any and all documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives that the Legislature considered, or decided not to consider, in developing the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Judkins incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites. Redistricting criteria adopted by the Legislative Redistricting Committee are contained in the Committee’s publicly available meeting minutes: <https://le.utah.gov/interim/2021/pdf/00002847.pdf>. Related information is also publicly available on the following legislative websites: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; <https://le.utah.gov/interim/2021/pdf/00002847.pdf>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Judkins objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Confidential “documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives” that individual legislators and staff members may have “considered” or “not considered” are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Judkins objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. Legal analyses involving redistricting criteria for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation would be privileged and/or subject to the attorney work-product protections and are not discoverable.

**REQUEST FOR PRODUCTION NO. 12:**

Produce any all documents related to the designation of areas of the state of Utah as urban or rural in the drafting, consideration, or enactment of the 2021 Congressional Plan and any draft congressional plans or districts.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Judkins incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including:

<https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>;  
[https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Judkins objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public documents relating to “drafting” or “consideration” of proposed legislation are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Judkins objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. For example, legal analyses involving designations of communities of interest for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation would be attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 13:**

Produce any and all documents and communications concerning redistricting with any consultants, experts, or any persons or entities associated with the Republican National Committee, including but not limited to Adam Foltz, Adam Kincaid, and any representatives of the National Republican Redistricting Trust.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Judkins incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions.

This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “documents and communications” with “any persons or entities associated with the Republican National Committee.” Presumably this would include every voter who is registered to vote as a Republican not only in Utah but across the country.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Judkins objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including interest groups, constituents, and other stakeholders, to discuss issues that bear on legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege.

Revealing such confidential information and communications ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

DATED this 4th day of January, 2023.

Respectfully submitted,

/s/ Tyler R. Green  
Tyler R. Green  
*Counsel for State Representative Marsha Judkins*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of January, 2023, I served the foregoing via email on the following:

David C. Reymann (Utah Bar No. 8495)  
Kade N. Olsen (Utah Bar No. 17775)  
Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
(801) 532-7840  
dreymann@parrbrown.com  
kolsen@parrbrown.com

Mark Gaber  
Hayden Johnson  
Aseem Mulji  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, D.C. 20005  
(202) 736-2200  
mgaber@campaignlegalcenter.org  
hjohnson@campaignlegalcenter.org  
amulji@campaignlegalcenter.org

Annabelle Harless  
Campaign Legal Center  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
aharless@campaignlegalcenter.org

*Counsel for Plaintiffs*

Troy L. Booher (Utah Bar No. 9419)  
J. Frederic Voros, Jr. (Utah Bar No. 3340)  
Caroline Olsen (Utah Bar No. 18070)  
Zimmerman Booher  
341 South Main Street  
Salt Lake City, Utah 84111  
(801) 924-0200  
tbooher@zbappeals.com  
fvoros@zjbappeals.com  
colsen@zbappeals.com

*Counsel for Plaintiffs*

David N. Wolf  
Lance Sorenson  
Office of the Attorney General  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
lancesorenson@agutah.gov

*Counsel for Defendant,  
Lieutenant Governor Henderson*

/s/ Tyler R. Green  
Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
tyler@consovoymccarthy.com

## **EXHIBIT 7**

Victoria Ashby (12248)  
Robert H. Rees (4125)  
Eric N. Weeks (7340)  
OFFICE OF LEGISLATIVE RESEARCH AND  
GENERAL COUNSEL  
Utah State Capitol Complex,  
House Building, Suite W210  
Salt Lake City, UT 84114-5210  
Telephone: 801-538-1032  
vashby@le.utah.gov  
rrees@le.utah.gov  
eweeks@le.utah.gov

Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
(703) 243-9423  
tyler@consovoymccarthy.com

Taylor A.R. Meehan\*  
Frank H. Chang\*  
James P. McGlone\*  
CONSOVOY MCCARTHY PLLC  
1600 Wilson Blvd. Suite 700  
Arlington, VA 22209  
(703) 243-9423  
taylor@consovoymccarthy.com  
frank@consovoymccarthy.com  
jim@consovoymccarthy.com

*Counsel for Former State Representative  
Merrill Nelson*

*\*Admitted pro hac vice*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL GOV-  
ERNMENT, STEFANIE CONDIE, MALCOLM  
REID, VICTORIA REID, WENDY MARTIN,  
ELEANOR SUNDWALL, JACK MARKMAN,  
and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLA-  
TIVE REDISTRICTING COMMITTEE; SENA-  
TOR SCOTT SANDALL, in his official capacity;  
REPRESENTATIVE BRAD WILSON,  
in his official capacity; SENATOR J. STUART AD-  
AMS, in his official capacity; and LIEUTENANT  
GOVERNOR DEIDRE HENDERSON, in her offi-  
cial capacity,

Defendants.

**FORMER STATE REPRESENTATIVE  
MERRILL NELSON'S RESPONSES  
AND OBJECTIONS TO PLAINTIFFS'  
SUBPOENA FOR PRODUCTION OF  
DOCUMENTS**

Case No. 220901712

Honorable Dianna Gibson



Pursuant to Utah Rules of Civil Procedure 26 and 45, Former State Representative Merrill Nelson serves these responses and objections to Plaintiffs' subpoena for documents.

Legislators are immune from civil process for their legislative acts. That immunity bars Plaintiffs' subpoena. Under the Utah Constitution, "Members of the Legislature" "shall not be questioned in any other place" "for words used in any speech or debate in either house." Utah Const. art. VI, §8; *see also Tenney v. Brandhove*, 341 U.S. 367, 375 n.5 (1951) (citing Utah Const. art. VI, §8). Legislative immunity and privilege protect legislators and staff members "not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (quoting *Tenney*, 341 U.S. at 376). Legislative immunity and privilege "protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts." *In re Hubbard*, 803 F.3d 1298, 1310 (11th Cir. 2015) (emphasis removed) (quoting *United States v. Brewster*, 408 U.S. 501, 525 (1972)). These protections exist to "insur[e] the independence of individual legislators." *Brewster*, 408 U.S. at 507; *see also, e.g., Biblia Abierta v. Banks*, 129 F.3d 899, 905 (7th Cir. 1997) ("An inquiry into a legislator's motives for his actions, regardless of whether those reasons are proper or improper, is not an appropriate consideration for the court."). Such protections extend to both current and former legislators. *See, e.g., League of Women Voters of Pennsylvania v. Commonwealth*, 177 A.3d 1000, 1005 (Pa. Commw. Ct. 2017); *Saleem v. Snow*, 460 S.E.2d 104, 107 (Ga. Ct. App. 1995). Subjecting legislative documents to discovery transgresses legislative immunity, enshrined in Utah Constitution's Speech or Debate Clause. *See, e.g., Edwards v. Vesilind*, 790 S.E.2d 469 (Va. 2016); *In re Perry*, 60 S.W.3d 857 (Tex. 2001).

The remaining objections are made in the alternative, without waiver of legislative immunity or privilege. Former Representative Nelson reserves the right to supplement these responses and objections to the extent further required.

## OBJECTIONS RELEVANT TO EACH REQUEST

Former Representative Nelson asserts and repeats each of the following objections as to each request below. In the interest of brevity, these objections are listed here to avoid unnecessary repetition. Counsel for Mr. Nelson is willing to meet and confer regarding this objection and all other objections contained in these responses.

1. Mr. Nelson objects to these requests to the extent they seek information that would be protected by legislative immunity or legislative privilege. Explained above, the subpoena transgresses legislators' immunity. Utah Const. art. VI, §8. Additionally, insofar as the subpoena seeks legislatively privileged documents regarding legislative acts, including the passage of the 2021 Congressional Redistricting Plan, such documents are not discoverable. *See, e.g., In re Hubbard*, 803 F.3d at 1308-10. It is also unduly burdensome, unreasonable, and disproportionate to the needs of the case when individual legislators' documents—to the extent they are not duplicative of the legislative record—will be largely if not entirely privileged.

2. Mr. Nelson objects to these requests to the extent that they seek irrelevant information. Rule 26 allows discovery only of information “which is relevant to the claim or defense of any party.” Utah R. Civ. P. 26(b)(1). “The party seeking discovery always has the burden of showing ... relevance.” Utah R. Civ. P. 26(b)(4).

3. Mr. Nelson also objects to these requests to the extent they are not proportional. As with relevance, the party seeking discovery “always” has the burden “of showing proportionality.” Utah R. Civ. P. 26(b)(4). The Utah Supreme Court significantly amended the Utah Rules of Civil Procedure in 2011 “in large part to ... promote proportionality in costs and procedures in civil litigation.” *Pilot v. Hill*, 2019 UT 10, ¶1, 437 P.3d 362. Discovery requests are proportional if: (A) discovery is “reasonable, considering the needs of the case”; (B) “the likely benefits of the proposed discovery outweigh the burden or expense”; (C) the discovery is consistent with the “overall case management”

and will further the “just, speedy, and inexpensive” determination of the case; (D) the discovery is “not unreasonably cumulative or duplicative”; (E) “the information cannot be obtained from another source that is more convenient, less burdensome, or less expensive”; and (F) “the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise.” Utah R. Civ. P. 26(b)(3).

4. Mr. Nelson also objects to the extent that these requests implicate additional privileges, including but not limited to, the attorney-client privilege, common-interest privilege, the attorney work-product protections, and the deliberative process privilege.

5. There is currently no protective order in place between Plaintiffs and Defendants or any non-parties. *See* Utah R. Civ. P. 37(a)(1)(D) (allowing the district court to issue protective orders). To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure of certain sensitive information, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

6. These responses and objections are made without waiving any further objections to, or admitting the relevance or materiality of, any of the information or document requests. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with Plaintiffs’ characterization of any facts, circumstances, or legal obligations.

7. Mr. Nelson will provide responses based on terms as they are commonly understood and consistent with the Utah Rules of Civil Procedure.

### **OBJECTIONS TO PLAINTIFFS’ DEFINITIONS AND INSTRUCTIONS**

1. Mr. Nelson objects to Plaintiffs’ instructions and definitions, including definitions of “communications,” “concern,” “concerning,” “regarding,” “document,” and “electronically stored

information” or “ESI,” as overbroad to the extent that they enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit.

2. Mr. Nelson objects to the definitions of “legislator” and “Member of Congress” as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit. Plaintiffs’ overly broad definitions of a “legislator” and “Member of Congress” would include materials from individuals well beyond those legislators. The definitions also erroneously impute to a legislator anything shared or communicated by “advisors” or others who are not the legislator. The definitions are also overbroad and vague because it is not easily discernible which past or present individuals “puport[ed] to act” on an individual legislator’s behalf. Moreover, Mr. Nelson objects to the extent that this definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity under the Utah or U.S. Constitutions. Mr. Nelson also objects to the extent that this definition requires the disclosure of materials subject to the attorney-client privilege. Mr. Nelson intends to interpret Plaintiffs’ request to use the term “legislator” and “Member of Congress” to mean the past or present members of the Utah Legislature or U.S. House of Representatives, respectively, during the relevant time period of January 1, 2021, to November 12, 2021.

3. Mr. Nelson objects to the definition of “you” and “your” as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit, including by requiring a search for and/or production of documents that are not within his possession, custody, or control. Mr. Nelson objects to the extent that the definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity.

4. Mr. Nelson objects to Plaintiffs’ instruction that requests should be construed to concern the period of time from January 1, 2020, to the present, unless otherwise specified. That date range is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just,

speedy, and inexpensive litigation; and otherwise not proportional. See Utah R. Civ. P. 26(d)(3). The official P.L. 94-171 census data was not released until August 12, 2021. The relevant legislative session commenced in November 2021. And the Governor signed the challenged legislation on November 12, 2022. Accordingly, Mr. Nelson intends to interpret Plaintiffs' requests to seek documents from January 1, 2021, to November 12, 2022.

## **RESPONSES AND OBJECTIONS TO PLAINTIFFS' REQUESTS FOR PRODUCTION OF DOCUMENTS**

### **REQUEST FOR PRODUCTION NO. 1:**

Produce any and all drafts of the enacted 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted, including but not limited to shapefiles, geojson files, and/or block assignment files.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Nelson incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all drafts" or "other potential congressional plan or configuration of congressional districts that was not adopted." Such an overly broad request creates an undue burden. The request for "any other potential congressional plan or configuration" is also vague, overbroad, unduly burdensome, and disproportionate.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and

<https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee's hearings held between May 18, 2021, and November 10, 2021, as well as draft minutes and agenda for those hearings, can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Nelson objects to this request insofar as it seeks documents subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public, draft redistricting plans are draft legislation and are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Mr. Nelson cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Nelson objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, or other applicable privileges. To the extent there are drafts created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

## **REQUEST FOR PRODUCTION NO. 2:**

Produce any and all analyses, data, and/or code related to the enacted 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Nelson incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “analyses, data, and/or code related to” the 2021 Congressional Plan and other “potential” plans and configurations that were “not adopted.” Such an overly broad request creates an undue burden. Mr. Nelson also objects to the term “code” as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Nelson objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. To the extent Plaintiffs seek any non-public analyses, data, or code related to the enacted plan or drafts, such

information, to the extent it exists, would be subject to legislative privilege and is thus not discoverable. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process. It ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Mr. Nelson cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Nelson objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are analyses, data, or code created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 3:**

Produce any and all notes or communications concerning meetings of the Legislative Redistricting Committee, other Legislative Committee, and Legislature that relate to the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Nelson incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "notes or communications concerning meetings of



the Legislative Redistricting, other Legislative Committee, and Legislature” relating to the 2021 Congressional Plan. Such an overly broad request creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Nelson objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. His notes and communications with others, if they exist, would be subject to legislative privilege and are thus not discoverable. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Nelson objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 4:**

Produce any and all minutes, agendas, notes, and communications from any Republican Caucus meeting or other non-public meeting of Republican legislators concerning the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Nelson incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "minutes, agendas, notes, and communications" from any "non-public meeting of Republican legislators." Such an overly broad request creates an undue burden.

Mr. Nelson objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. On its face, this request seeks the production of non-public documents involving communications and deliberations among legislators regarding the 2021 Congressional Plan drafts regardless of whether they were adopted. Revealing such confidential information and communications reveals privileged mental

processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Nelson objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 5:**

Produce any and all documents and communications exchanged with any past or current Member of Congress and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Nelson incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and

<https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Nelson objects insofar as this request seeks documents and communications further subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including Members of Congress, to discuss draft legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Nelson objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with

applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 6:**

Produce any and all documents and communications to, from, or shared with any past or current Legislator and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Nelson incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "documents and communications with any past or current Legislator" and their agents. This request is facially overbroad and vague and creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Nelson also objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341

U.S. at 372. Documents and communications among legislators “related to the planning, negotiation, drafting, consideration, or enactment” of legislation are paradigmatic examples of documents subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Mr. Nelson objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 7:**

Produce any and all documents and communications to, from, or shared with Governor Cox and his agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at

<https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Mr. Nelson further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—especially executive branch officials who exercise certain legislative functions under the Utah Constitution—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.,* Utah Const. art. VII, §7 (requiring presentment to the Governor for signature before any bill becomes a law); *Hubbard*, 803 F.3d at 1308 (“[T]he privilege protects the legislative process itself, and therefore covers both governors’ and legislators’ actions in the proposal, formulation, and passage of legislation.”). Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Mr. Nelson objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.,* ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 8:**

Produce any and all documents and communications exchanged with Lieutenant Governor Henderson and her agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Mr. Nelson further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—including certain executive branch officials—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g., Almonte v. City of Long Beach*, 478 F.3d 100, 107 (2d Cir. 2007) (observing that discussions of issues with “executive officers” “assist[s] legislators in the discharge of their legislative duty”); *see also* Utah Code §67-1a-2(2)(a) (designating the Lieutenant Governor as “the chief election officer”); Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and impairs legislators’ ability to freely and candidly consider



legislation and to assess alternatives, and thus ultimately impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Mr. Nelson objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 9:**

Produce any and all communications with the Utah Independent Redistricting Commission, including but not limited to commissioners and staff, concerning redistricting, the UIRC’s processes or operation, or the 2022 congressional election.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Nelson incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and

<https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Mr. Nelson objects to this request insofar as it seeks documents and communications subject to legislative privilege. Meeting and communicating with persons outside the Legislature to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.*, Utah Code §20A-20-303(1) (requiring the Commission to submit proposed maps to the Legislature). Any non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

**REQUEST FOR PRODUCTION NO. 10:**

Produce any and all documents and communications concerning the partisan performance of districts in the 2021 Congressional Plan or any drafts thereof, including voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population, or any other data considered, viewed, or used to assess the partisan performance.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Nelson incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calling for the production of "any and all" "documents and communications" involving "any

other data considered” is overbroad and vague and creates an undue burden. Terms such as “partisan voting patterns,” “assessments of candidate performance,” “partisan indexes,” and “partisan performance” are also objectionable as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. For example, the request seeks “election results” that are publicly available on government websites including those of county clerks. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Nelson objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. The request for data and other information that individual legislators “considered, viewed, or used to assess the partisan performance of draft or final Utah congressional districts or district maps” is a request for legislators’ thought processes and mental impressions that are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Nelson objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other

applicable privileges. To the extent there are legal analyses involving “partisan voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population” for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation, they are privileged and/or attorney work-product and are not discoverable.

**REQUEST FOR PRODUCTION NO. 11:**

Produce any and all documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives that the Legislature considered, or decided not to consider, in developing the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Nelson incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites. Redistricting criteria adopted by the Legislative Redistricting Committee are contained in the Committee’s publicly available meeting minutes: <https://le.utah.gov/interim/2021/pdf/00002847.pdf>. Related information is also publicly available on the following legislative websites: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; <https://le.utah.gov/interim/2021/pdf/00002847.pdf>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Nelson objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Confidential “documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives” that individual legislators and staff members may have “considered” or “not considered” are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Nelson objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. Legal analyses involving redistricting criteria for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation would be privileged and/or subject to the attorney work-product protections and are not discoverable.

**REQUEST FOR PRODUCTION NO. 12:**

Produce any all documents related to the designation of areas of the state of Utah as urban or rural in the drafting, consideration, or enactment of the 2021 Congressional Plan and any draft congressional plans or districts.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Nelson incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including:

<https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>;  
[https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Nelson objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public documents relating to “drafting” or “consideration” of proposed legislation are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Nelson objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. For example, legal analyses involving designations of communities of interest for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation would be attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 13:**

Produce any and all documents and communications concerning redistricting with any consultants, experts, or any persons or entities associated with the Republican National Committee, including but not limited to Adam Foltz, Adam Kincaid, and any representatives of the National Republican Redistricting Trust.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Nelson incorporates the objections specified above, including those to Plaintiffs' instructions and definitions.

This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "documents and communications" with "any persons or entities associated with the Republican National Committee." Presumably this would include every voter who is registered to vote as a Republican not only in Utah but across the country.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Nelson objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including interest groups, constituents, and other stakeholders, to discuss issues that bear on legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege.

Revealing such confidential information and communications ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

DATED this 4th day of January, 2023.

Respectfully submitted,

/s/ Tyler R. Green  
Tyler R. Green  
*Counsel for Former State Representative Merrill Nelson*



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of January, 2023, I served the foregoing via email  
on the following:

David C. Reymann (Utah Bar No. 8495)  
Kade N. Olsen (Utah Bar No. 17775)  
Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
(801) 532-7840  
dreymann@parrbrown.com  
kolsen@parrbrown.com

Mark Gaber  
Hayden Johnson  
Aseem Mulji  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, D.C. 20005  
(202) 736-2200  
mgaber@campaignlegalcenter.org  
hjohnson@campaignlegalcenter.org  
amulji@campaignlegalcenter.org

Annabelle Harless  
Campaign Legal Center  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
aharless@campaignlegalcenter.org

*Counsel for Plaintiffs*

Troy L. Booher (Utah Bar No. 9419)  
J. Frederic Voros, Jr. (Utah Bar No. 3340)  
Caroline Olsen (Utah Bar No. 18070)  
Zimmerman Booher  
341 South Main Street  
Salt Lake City, Utah 84111  
(801) 924-0200  
tbooher@zbappeals.com  
fvoros@zjbappeals.com  
colsen@zbappeals.com

*Counsel for Plaintiffs*

David N. Wolf  
Lance Sorenson  
Office of the Attorney General  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
lancesorenson@agutah.gov

*Counsel for Defendant,  
Lieutenant Governor Henderson*

/s/ Tyler R. Green  
Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
tyler@consovoymccarthy.com

## **EXHIBIT 8**

Victoria Ashby (12248)  
Robert H. Rees (4125)  
Eric N. Weeks (7340)  
OFFICE OF LEGISLATIVE RESEARCH AND  
GENERAL COUNSEL  
Utah State Capitol Complex,  
House Building, Suite W210  
Salt Lake City, UT 84114-5210  
Telephone: 801-538-1032  
vashby@le.utah.gov  
rrees@le.utah.gov  
eweeks@le.utah.gov

Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
(703) 243-9423  
tyler@consovoymccarthy.com

Taylor A.R. Meehan\*  
Frank H. Chang\*  
James P. McGlone\*  
CONSOVOY MCCARTHY PLLC  
1600 Wilson Blvd. Suite 700  
Arlington, VA 22209  
(703) 243-9423  
taylor@consovoymccarthy.com  
frank@consovoymccarthy.com  
jim@consovoymccarthy.com

*Counsel for Former State Representative  
Michael Kent Winder*

*\*Admitted pro hac vice*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL GOV-  
ERNMENT, STEFANIE CONDIE, MALCOLM  
REID, VICTORIA REID, WENDY MARTIN,  
ELEANOR SUNDWALL, JACK MARKMAN,  
and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLA-  
TIVE REDISTRICTING COMMITTEE; SENA-  
TOR SCOTT SANDALL, in his official capacity;  
REPRESENTATIVE BRAD WILSON,  
in his official capacity; SENATOR J. STUART AD-  
AMS, in his official capacity; and LIEUTENANT  
GOVERNOR DEIDRE HENDERSON, in her offi-  
cial capacity,

Defendants.

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**FORMER STATE REPRESENTATIVE  
MICHAEL KENT WINDER'S RE-  
SPONSES AND OBJECTIONS TO  
PLAINTIFFS' SUBPOENA FOR PRO-  
DUCTION OF DOCUMENTS**

Case No. 220901712

Honorable Dianna Gibson

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Pursuant to Utah Rules of Civil Procedure 26 and 45, Former State Representative Michael Kent Winder serves these responses and objections to Plaintiffs' subpoena for documents.

Legislators are immune from civil process for their legislative acts. That immunity bars Plaintiffs' subpoena. Under the Utah Constitution, "Members of the Legislature" "shall not be questioned in any other place" "for words used in any speech or debate in either house." Utah Const. art. VI, §8; *see also Tenney v. Brandhove*, 341 U.S. 367, 375 n.5 (1951) (citing Utah Const. art. VI, §8). Legislative immunity and privilege protect legislators and staff members "not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (quoting *Tenney*, 341 U.S. at 376). Legislative immunity and privilege "protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts." *In re Hubbard*, 803 F.3d 1298, 1310 (11th Cir. 2015) (emphasis removed) (quoting *United States v. Brewster*, 408 U.S. 501, 525 (1972)). These protections exist to "insur[e] the independence of individual legislators." *Brewster*, 408 U.S. at 507; *see also, e.g., Biblia Abierta v. Banks*, 129 F.3d 899, 905 (7th Cir. 1997) ("An inquiry into a legislator's motives for his actions, regardless of whether those reasons are proper or improper, is not an appropriate consideration for the court."). Such protections extend to both current and former legislators. *See, e.g., League of Women Voters of Pennsylvania v. Commonwealth*, 177 A.3d 1000, 1005 (Pa. Commw. Ct. 2017); *Saleem v. Snow*, 460 S.E.2d 104, 107 (Ga. Ct. App. 1995). Subjecting legislative documents to discovery transgresses legislative immunity, enshrined in Utah Constitution's Speech or Debate Clause. *See, e.g., Edwards v. Vesilind*, 790 S.E.2d 469 (Va. 2016); *In re Perry*, 60 S.W.3d 857 (Tex. 2001).

The remaining objections are made in the alternative, without waiver of legislative immunity or privilege. Former Representative Winder reserves the right to supplement these responses and objections to the extent further required.

## OBJECTIONS RELEVANT TO EACH REQUEST

Former Representative Winder asserts and repeats each of the following objections as to each request below. In the interest of brevity, these objections are listed here to avoid unnecessary repetition. Counsel for Mr. Winder is willing to meet and confer regarding this objection and all other objections contained in these responses.

1. Mr. Winder objects to these requests to the extent they seek information that would be protected by legislative immunity or legislative privilege. Explained above, the subpoena transgresses legislators' immunity. Utah Const. art. VI, §8. Additionally, insofar as the subpoena seeks legislatively privileged documents regarding legislative acts, including the passage of the 2021 Congressional Redistricting Plan, such documents are not discoverable. *See, e.g., In re Hubbard*, 803 F.3d at 1308-10. It is also unduly burdensome, unreasonable, and disproportionate to the needs of the case when individual legislators' documents—to the extent they are not duplicative of the legislative record—will be largely if not entirely privileged.

2. Mr. Winder objects to these requests to the extent that they seek irrelevant information. Rule 26 allows discovery only of information “which is relevant to the claim or defense of any party.” Utah R. Civ. P. 26(b)(1). “The party seeking discovery always has the burden of showing ... relevance.” Utah R. Civ. P. 26(b)(4).

3. Mr. Winder also objects to these requests to the extent they are not proportional. As with relevance, the party seeking discovery “always” has the burden “of showing proportionality.” Utah R. Civ. P. 26(b)(4). The Utah Supreme Court significantly amended the Utah Rules of Civil Procedure in 2011 “in large part to ... promote proportionality in costs and procedures in civil litigation.” *Pilot v. Hill*, 2019 UT 10, ¶1, 437 P.3d 362. Discovery requests are proportional if: (A) discovery is “reasonable, considering the needs of the case”; (B) “the likely benefits of the proposed discovery outweigh the burden or expense”; (C) the discovery is consistent with the “overall case management”

and will further the “just, speedy, and inexpensive” determination of the case; (D) the discovery is “not unreasonably cumulative or duplicative”; (E) “the information cannot be obtained from another source that is more convenient, less burdensome, or less expensive”; and (F) “the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise.” Utah R. Civ. P. 26(b)(3).

4. Mr. Winder also objects to the extent that these requests implicate additional privileges, including but not limited to, the attorney-client privilege, common-interest privilege, the attorney work-product protections, and the deliberative process privilege.

5. There is currently no protective order in place between Plaintiffs and Defendants or any non-parties. *See* Utah R. Civ. P. 37(a)(1)(D) (allowing the district court to issue protective orders). To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure of certain sensitive information, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

6. These responses and objections are made without waiving any further objections to, or admitting the relevance or materiality of, any of the information or document requests. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with Plaintiffs’ characterization of any facts, circumstances, or legal obligations.

7. Mr. Winder will provide responses based on terms as they are commonly understood and consistent with the Utah Rules of Civil Procedure.

### **OBJECTIONS TO PLAINTIFFS’ DEFINITIONS AND INSTRUCTIONS**

1. Mr. Winder objects to Plaintiffs’ instructions and definitions, including definitions of “communications,” “concern,” “concerning,” “regarding,” “document,” and “electronically stored

information” or “ESI,” as overbroad to the extent that they enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit.

2. Mr. Winder objects to the definitions of “legislator” and “Member of Congress” as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit. Plaintiffs’ overly broad definitions of a “legislator” and “Member of Congress” would include materials from individuals well beyond those legislators. The definitions also erroneously impute to a legislator anything shared or communicated by “advisors” or others who are not the legislator. The definitions are also overbroad and vague because it is not easily discernible which past or present individuals “puport[ed] to act” on an individual legislator’s behalf. Moreover, Mr. Winder objects to the extent that this definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity under the Utah or U.S. Constitutions. Mr. Winder also objects to the extent that this definition requires the disclosure of materials subject to the attorney-client privilege. Mr. Winder intends to interpret Plaintiffs’ request to use the term “legislator” and “Member of Congress” to mean the past or present members of the Utah Legislature or U.S. House of Representatives, respectively, during the relevant time period of January 1, 2021, to November 12, 2021.

3. Mr. Winder objects to the definition of “you” and “your” as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit, including by requiring a search for and/or production of documents that are not within his possession, custody, or control. Mr. Winder objects to the extent that the definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity.

4. Mr. Winder objects to Plaintiffs’ instruction that requests should be construed to concern the period of time from January 1, 2020, to the present, unless otherwise specified. That date range is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just,

speedy, and inexpensive litigation; and otherwise not proportional. See Utah R. Civ. P. 26(d)(3). The official P.L. 94-171 census data was not released until August 12, 2021. The relevant legislative session commenced in November 2021. And the Governor signed the challenged legislation on November 12, 2022. Accordingly, Mr. Winder intends to interpret Plaintiffs' requests to seek documents from January 1, 2021, to November 12, 2022.

## **RESPONSES AND OBJECTIONS TO PLAINTIFFS' REQUESTS FOR PRODUCTION OF DOCUMENTS**

### **REQUEST FOR PRODUCTION NO. 1:**

Produce any and all drafts of the enacted 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted, including but not limited to shapefiles, geojson files, and/or block assignment files.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Winder incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all drafts" or "other potential congressional plan or configuration of congressional districts that was not adopted." Such an overly broad request creates an undue burden. The request for "any other potential congressional plan or configuration" is also vague, overbroad, unduly burdensome, and disproportionate.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and



<https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee's hearings held between May 18, 2021, and November 10, 2021, as well as draft minutes and agenda for those hearings, can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Winder objects to this request insofar as it seeks documents subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public, draft redistricting plans are draft legislation and are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Mr. Winder cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Winder objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, or other applicable privileges. To the extent there are drafts created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

## **REQUEST FOR PRODUCTION NO. 2:**

Produce any and all analyses, data, and/or code related to the enacted 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Winder incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “analyses, data, and/or code related to” the 2021 Congressional Plan and other “potential” plans and configurations that were “not adopted.” Such an overly broad request creates an undue burden. Mr. Winder also objects to the term “code” as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Winder objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. To the extent Plaintiffs seek any non-public analyses, data, or code related to the enacted plan or drafts, such

information, to the extent it exists, would be subject to legislative privilege and is thus not discoverable. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process. It ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Mr. Winder cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Winder objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are analyses, data, or code created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 3:**

Produce any and all notes or communications concerning meetings of the Legislative Redistricting Committee, other Legislative Committee, and Legislature that relate to the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Winder incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "notes or communications concerning meetings of

the Legislative Redistricting, other Legislative Committee, and Legislature” relating to the 2021 Congressional Plan. Such an overly broad request creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Winder objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. His notes and communications with others, if they exist, would be subject to legislative privilege and are thus not discoverable. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Winder objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 4:**

Produce any and all minutes, agendas, notes, and communications from any Republican Caucus meeting or other non-public meeting of Republican legislators concerning the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Winder incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "minutes, agendas, notes, and communications" from any "non-public meeting of Republican legislators." Such an overly broad request creates an undue burden.

Mr. Winder objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. On its face, this request seeks the production of non-public documents involving communications and deliberations among legislators regarding the 2021 Congressional Plan drafts regardless of whether they were adopted. Revealing such confidential information and communications reveals privileged mental

processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Winder objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 5:**

Produce any and all documents and communications exchanged with any past or current Member of Congress and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Winder incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and

<https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Winder objects insofar as this request seeks documents and communications further subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including Members of Congress, to discuss draft legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Winder objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with

applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 6:**

Produce any and all documents and communications to, from, or shared with any past or current Legislator and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Winder incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "documents and communications with any past or current Legislator" and their agents. This request is facially overbroad and vague and creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Winder also objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341



U.S. at 372. Documents and communications among legislators “related to the planning, negotiation, drafting, consideration, or enactment” of legislation are paradigmatic examples of documents subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Mr. Winder objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 7:**

Produce any and all documents and communications to, from, or shared with Governor Cox and his agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at

<https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Mr. Winder further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—especially executive branch officials who exercise certain legislative functions under the Utah Constitution—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.,* Utah Const. art. VII, §7 (requiring presentment to the Governor for signature before any bill becomes a law); *Hubbard*, 803 F.3d at 1308 (“[T]he privilege protects the legislative process itself, and therefore covers both governors’ and legislators’ actions in the proposal, formulation, and passage of legislation.”). Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Mr. Winder objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.,* ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 8:**

Produce any and all documents and communications exchanged with Lieutenant Governor Henderson and her agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Mr. Winder further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—including certain executive branch officials—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g., Almonte v. City of Long Beach*, 478 F.3d 100, 107 (2d Cir. 2007) (observing that discussions of issues with “executive officers” “assist[s] legislators in the discharge of their legislative duty”); *see also* Utah Code §67-1a-2(2)(a) (designating the Lieutenant Governor as “the chief election officer”); Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and impairs legislators’ ability to freely and candidly consider

legislation and to assess alternatives, and thus ultimately impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Mr. Winder objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 9:**

Produce any and all communications with the Utah Independent Redistricting Commission, including but not limited to commissioners and staff, concerning redistricting, the UIRC’s processes or operation, or the 2022 congressional election.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Winder incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and

<https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Mr. Winder objects to this request insofar as it seeks documents and communications subject to legislative privilege. Meeting and communicating with persons outside the Legislature to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.*, Utah Code §20A-20-303(1) (requiring the Commission to submit proposed maps to the Legislature). Any non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

**REQUEST FOR PRODUCTION NO. 10:**

Produce any and all documents and communications concerning the partisan performance of districts in the 2021 Congressional Plan or any drafts thereof, including voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population, or any other data considered, viewed, or used to assess the partisan performance.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Winder incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calling for the production of "any and all" "documents and communications" involving "any

other data considered” is overbroad and vague and creates an undue burden. Terms such as “partisan voting patterns,” “assessments of candidate performance,” “partisan indexes,” and “partisan performance” are also objectionable as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. For example, the request seeks “election results” that are publicly available on government websites including those of county clerks. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Winder objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. The request for data and other information that individual legislators “considered, viewed, or used to assess the partisan performance of draft or final Utah congressional districts or district maps” is a request for legislators’ thought processes and mental impressions that are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Winder objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other

applicable privileges. To the extent there are legal analyses involving “partisan voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population” for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation, they are privileged and/or attorney work-product and are not discoverable.

**REQUEST FOR PRODUCTION NO. 11:**

Produce any and all documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives that the Legislature considered, or decided not to consider, in developing the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Winder incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites. Redistricting criteria adopted by the Legislative Redistricting Committee are contained in the Committee’s publicly available meeting minutes: <https://le.utah.gov/interim/2021/pdf/00002847.pdf>. Related information is also publicly available on the following legislative websites: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; <https://le.utah.gov/interim/2021/pdf/00002847.pdf>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Winder objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Confidential “documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives” that individual legislators and staff members may have “considered” or “not considered” are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Winder objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. Legal analyses involving redistricting criteria for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation would be privileged and/or subject to the attorney work-product protections and are not discoverable.

**REQUEST FOR PRODUCTION NO. 12:**

Produce any all documents related to the designation of areas of the state of Utah as urban or rural in the drafting, consideration, or enactment of the 2021 Congressional Plan and any draft congressional plans or districts.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Winder incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including:



<https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>;  
[https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Winder objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public documents relating to “drafting” or “consideration” of proposed legislation are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Winder objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. For example, legal analyses involving designations of communities of interest for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation would be attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 13:**

Produce any and all documents and communications concerning redistricting with any consultants, experts, or any persons or entities associated with the Republican National Committee, including but not limited to Adam Foltz, Adam Kincaid, and any representatives of the National Republican Redistricting Trust.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Winder incorporates the objections specified above, including those to Plaintiffs' instructions and definitions.

This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "documents and communications" with "any persons or entities associated with the Republican National Committee." Presumably this would include every voter who is registered to vote as a Republican not only in Utah but across the country.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Winder objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including interest groups, constituents, and other stakeholders, to discuss issues that bear on legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege.

Revealing such confidential information and communications ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

DATED this 4th day of January, 2023.

Respectfully submitted,

/s/ Tyler R. Green

Tyler R. Green

*Counsel for Former State Representative Michael Kent Winder*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of January, 2023, I served the foregoing via email  
on the following:

David C. Reymann (Utah Bar No. 8495)  
Kade N. Olsen (Utah Bar No. 17775)  
Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
(801) 532-7840  
dreymann@parrbrown.com  
kolsen@parrbrown.com

Mark Gaber  
Hayden Johnson  
Aseem Mulji  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, D.C. 20005  
(202) 736-2200  
mgaber@campaignlegalcenter.org  
hjohnson@campaignlegalcenter.org  
amulji@campaignlegalcenter.org

Annabelle Harless  
Campaign Legal Center  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
aharless@campaignlegalcenter.org

*Counsel for Plaintiffs*

Troy L. Booher (Utah Bar No. 9419)  
J. Frederic Voros, Jr. (Utah Bar No. 3340)  
Caroline Olsen (Utah Bar No. 18070)  
Zimmerman Booher  
341 South Main Street  
Salt Lake City, Utah 84111  
(801) 924-0200  
tbooher@zbappeals.com  
fvoros@zjbappeals.com  
colsen@zbappeals.com

*Counsel for Plaintiffs*

David N. Wolf  
Lance Sorenson  
Office of the Attorney General  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
lancesorenson@agutah.gov

*Counsel for Defendant,  
Lieutenant Governor Henderson*

/s/ Tyler R. Green  
Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
tyler@consovoymccarthy.com

## **EXHIBIT 9**

Victoria Ashby (12248)  
Robert H. Rees (4125)  
Eric N. Weeks (7340)  
OFFICE OF LEGISLATIVE RESEARCH AND  
GENERAL COUNSEL  
Utah State Capitol Complex,  
House Building, Suite W210  
Salt Lake City, UT 84114-5210  
Telephone: 801-538-1032  
vashby@le.utah.gov  
rrees@le.utah.gov  
eweeks@le.utah.gov

Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
(703) 243-9423  
tyler@consovoymccarthy.com

Taylor A.R. Meehan\*  
Frank H. Chang\*  
James P. McGlone\*  
CONSOVOY MCCARTHY PLLC  
1600 Wilson Blvd. Suite 700  
Arlington, VA 22209  
(703) 243-9423  
taylor@consovoymccarthy.com  
frank@consovoymccarthy.com  
jim@consovoymccarthy.com

*Counsel for Former State Representative Paul Ray*

*\*Admitted pro hac vice*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL GOV-  
ERNMENT, STEFANIE CONDIE, MALCOLM  
REID, VICTORIA REID, WENDY MARTIN,  
ELEANOR SUNDWALL, JACK MARKMAN,  
and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLA-  
TIVE REDISTRICTING COMMITTEE; SENA-  
TOR SCOTT SANDALL, in his official capacity;  
REPRESENTATIVE BRAD WILSON,  
in his official capacity; SENATOR J. STUART AD-  
AMS, in his official capacity; and LIEUTENANT  
GOVERNOR DEIDRE HENDERSON, in her offi-  
cial capacity,

Defendants.

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**FORMER STATE REPRESENTATIVE  
PAUL RAY'S RESPONSES AND OB-  
JECTIONS TO PLAINTIFFS' SUB-  
POENA FOR PRODUCTION OF  
DOCUMENTS**

Case No. 220901712

Honorable Dianna Gibson

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Pursuant to Utah Rules of Civil Procedure 26 and 45, Former State Representative Paul Ray serves these responses and objections to Plaintiffs' subpoena for documents.

Legislators are immune from civil process for their legislative acts. That immunity bars Plaintiffs' subpoena. Under the Utah Constitution, "Members of the Legislature" "shall not be questioned in any other place" "for words used in any speech or debate in either house." Utah Const. art. VI, §8; *see also Tenney v. Brandhove*, 341 U.S. 367, 375 n.5 (1951) (citing Utah Const. art. VI, §8). Legislative immunity and privilege protect legislators and staff members "not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (quoting *Tenney*, 341 U.S. at 376). Legislative immunity and privilege "protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts." *In re Hubbard*, 803 F.3d 1298, 1310 (11th Cir. 2015) (emphasis removed) (quoting *United States v. Brewster*, 408 U.S. 501, 525 (1972)). These protections exist to "insur[e] the independence of individual legislators." *Brewster*, 408 U.S. at 507; *see also, e.g., Biblia Abierta v. Banks*, 129 F.3d 899, 905 (7th Cir. 1997) ("An inquiry into a legislator's motives for his actions, regardless of whether those reasons are proper or improper, is not an appropriate consideration for the court."). Such protections extend to both current and former legislators. *See, e.g., League of Women Voters of Pennsylvania v. Commonwealth*, 177 A.3d 1000, 1005 (Pa. Commw. Ct. 2017); *Saleem v. Snow*, 460 S.E.2d 104, 107 (Ga. Ct. App. 1995). Subjecting legislative documents to discovery transgresses legislative immunity, enshrined in Utah Constitution's Speech or Debate Clause. *See, e.g., Edwards v. Vesilind*, 790 S.E.2d 469 (Va. 2016); *In re Perry*, 60 S.W.3d 857 (Tex. 2001).

The remaining objections are made in the alternative, without waiver of legislative immunity or privilege. Former Representative Ray reserves the right to supplement these responses and objections to the extent further required.

## OBJECTIONS RELEVANT TO EACH REQUEST

Former Representative Ray asserts and repeats each of the following objections as to each request below. In the interest of brevity, these objections are listed here to avoid unnecessary repetition. Counsel for Mr. Ray is willing to meet and confer regarding this objection and all other objections contained in these responses.

1. Mr. Ray objects to these requests to the extent they seek information that would be protected by legislative immunity or legislative privilege. Explained above, the subpoena transgresses legislators' immunity. Utah Const. art. VI, §8. Additionally, insofar as the subpoena seeks legislatively privileged documents regarding legislative acts, including the passage of the 2021 Congressional Redistricting Plan, such documents are not discoverable. *See, e.g., In re Hubbard*, 803 F.3d at 1308-10. It is also unduly burdensome, unreasonable, and disproportionate to the needs of the case when individual legislators' documents—to the extent they are not duplicative of the legislative record—will be largely if not entirely privileged.

2. Mr. Ray objects to these requests to the extent that they seek irrelevant information. Rule 26 allows discovery only of information “which is relevant to the claim or defense of any party.” Utah R. Civ. P. 26(b)(1). “The party seeking discovery always has the burden of showing ... relevance.” Utah R. Civ. P. 26(b)(4).

3. Mr. Ray also objects to these requests to the extent they are not proportional. As with relevance, the party seeking discovery “always” has the burden “of showing proportionality.” Utah R. Civ. P. 26(b)(4). The Utah Supreme Court significantly amended the Utah Rules of Civil Procedure in 2011 “in large part to ... promote proportionality in costs and procedures in civil litigation.” *Pilot v. Hill*, 2019 UT 10, ¶1, 437 P.3d 362. Discovery requests are proportional if: (A) discovery is “reasonable, considering the needs of the case”; (B) “the likely benefits of the proposed discovery outweigh the burden or expense”; (C) the discovery is consistent with the “overall case management” and will



further the “just, speedy, and inexpensive” determination of the case; (D) the discovery is “not unreasonably cumulative or duplicative”; (E) “the information cannot be obtained from another source that is more convenient, less burdensome, or less expensive”; and (F) “the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise.” Utah R. Civ. P. 26(b)(3).

4. Mr. Ray also objects to the extent that these requests implicate additional privileges, including but not limited to, the attorney-client privilege, common-interest privilege, the attorney work-product protections, and the deliberative process privilege.

5. There is currently no protective order in place between Plaintiffs and Defendants or any non-parties. *See* Utah R. Civ. P. 37(a)(1)(D) (allowing the district court to issue protective orders). To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure of certain sensitive information, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

6. These responses and objections are made without waiving any further objections to, or admitting the relevance or materiality of, any of the information or document requests. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with Plaintiffs’ characterization of any facts, circumstances, or legal obligations.

7. Mr. Ray will provide responses based on terms as they are commonly understood and consistent with the Utah Rules of Civil Procedure.

### **OBJECTIONS TO PLAINTIFFS’ DEFINITIONS AND INSTRUCTIONS**

1. Mr. Ray objects to Plaintiffs’ instructions and definitions, including definitions of “communications,” “concern,” “concerning,” “regarding,” “document,” and “electronically stored

information” or “ESI,” as overbroad to the extent that they enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit.

2. Mr. Ray objects to the definitions of “legislator” and “Member of Congress” as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit. Plaintiffs’ overly broad definitions of a “legislator” and “Member of Congress” would include materials from individuals well beyond those legislators. The definitions also erroneously impute to a legislator anything shared or communicated by “advisors” or others who are not the legislator. The definitions are also overbroad and vague because it is not easily discernible which past or present individuals “puport[ed] to act” on an individual legislator’s behalf. Moreover, Mr. Ray objects to the extent that this definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity under the Utah or U.S. Constitutions. Mr. Ray also objects to the extent that this definition requires the disclosure of materials subject to the attorney-client privilege. Mr. Ray intends to interpret Plaintiffs’ request to use the term “legislator” and “Member of Congress” to mean the past or present members of the Utah Legislature or U.S. House of Representatives, respectively, during the relevant time period of January 1, 2021, to November 12, 2021.

3. Mr. Ray objects to the definition of “you” and “your” as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit, including by requiring a search for and/or production of documents that are not within his possession, custody, or control. Mr. Ray objects to the extent that the definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity.

4. Mr. Ray objects to Plaintiffs’ instruction that requests should be construed to concern the period of time from January 1, 2020, to the present, unless otherwise specified. That date range is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy,

and inexpensive litigation; and otherwise not proportional. See Utah R. Civ. P. 26(d)(3). The official P.L. 94-171 census data was not released until August 12, 2021. The relevant legislative session commenced in November 2021. And the Governor signed the challenged legislation on November 12, 2022. Accordingly, Mr. Ray intends to interpret Plaintiffs' requests to seek documents from January 1, 2021, to November 12, 2022.

## **RESPONSES AND OBJECTIONS TO PLAINTIFFS' REQUESTS FOR PRODUCTION OF DOCUMENTS**

### **REQUEST FOR PRODUCTION NO. 1:**

Produce any and all drafts of the enacted 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted, including but not limited to shapefiles, geojson files, and/or block assignment files.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Ray incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all drafts" or "other potential congressional plan or configuration of congressional districts that was not adopted." Such an overly broad request creates an undue burden. The request for "any other potential congressional plan or configuration" is also vague, overbroad, unduly burdensome, and disproportionate.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and

<https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee's hearings held between May 18, 2021, and November 10, 2021, as well as draft minutes and agenda for those hearings, can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Ray objects to this request insofar as it seeks documents subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public, draft redistricting plans are draft legislation and are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Mr. Ray cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Ray objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, or other applicable privileges. To the extent there are drafts created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

## **REQUEST FOR PRODUCTION NO. 2:**

Produce any and all analyses, data, and/or code related to the enacted 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Ray incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “analyses, data, and/or code related to” the 2021 Congressional Plan and other “potential” plans and configurations that were “not adopted.” Such an overly broad request creates an undue burden. Mr. Ray also objects to the term “code” as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Ray objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. To the extent Plaintiffs seek any non-public analyses, data, or code related to the enacted plan or drafts, such information, to

the extent it exists, would be subject to legislative privilege and is thus not discoverable. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process. It ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Mr. Ray cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Ray objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are analyses, data, or code created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 3:**

Produce any and all notes or communications concerning meetings of the Legislative Redistricting Committee, other Legislative Committee, and Legislature that relate to the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Ray incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "notes or communications concerning meetings of the

Legislative Redistricting, other Legislative Committee, and Legislature” relating to the 2021 Congressional Plan. Such an overly broad request creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Ray objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. His notes and communications with others, if they exist, would be subject to legislative privilege and are thus not discoverable. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Ray objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 4:**

Produce any and all minutes, agendas, notes, and communications from any Republican Caucus meeting or other non-public meeting of Republican legislators concerning the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Ray incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "minutes, agendas, notes, and communications" from any "non-public meeting of Republican legislators." Such an overly broad request creates an undue burden.

Mr. Ray objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. On its face, this request seeks the production of non-public documents involving communications and deliberations among legislators regarding the 2021 Congressional Plan drafts regardless of whether they were adopted. Revealing such confidential information and communications reveals privileged mental processes and



impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Ray objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 5:**

Produce any and all documents and communications exchanged with any past or current Member of Congress and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Ray incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and

<https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Ray objects insofar as this request seeks documents and communications further subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including Members of Congress, to discuss draft legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Ray objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable

federal and state legal requirements of redistricting or otherwise related to this ongoing litigation).

Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 6:**

Produce any and all documents and communications to, from, or shared with any past or current Legislator and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Ray incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "documents and communications with any past or current Legislator" and their agents. This request is facially overbroad and vague and creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Ray also objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Documents and communications among legislators "related to the planning, negotiation,

drafting, consideration, or enactment” of legislation are paradigmatic examples of documents subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Mr. Ray objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 7:**

Produce any and all documents and communications to, from, or shared with Governor Cox and his agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and

<https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Mr. Ray further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—especially executive branch officials who exercise certain legislative functions under the Utah Constitution—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.,* Utah Const. art. VII, §7 (requiring presentment to the Governor for signature before any bill becomes a law); *Hubbard*, 803 F.3d at 1308 (“[T]he privilege protects the legislative process itself, and therefore covers both governors’ and legislators’ actions in the proposal, formulation, and passage of legislation.”). Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Mr. Ray objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.,* ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 8:**

Produce any and all documents and communications exchanged with Lieutenant Governor Henderson and her agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Mr. Ray further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—including certain executive branch officials—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g., Almonte v. City of Long Beach*, 478 F.3d 100, 107 (2d Cir. 2007) (observing that discussions of issues with “executive officers” “assist[s] legislators in the discharge of their legislative duty”); *see also* Utah Code §67-1a-2(2)(a) (designating the Lieutenant Governor as “the chief election officer”); Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and impairs legislators’ ability to freely and candidly consider

legislation and to assess alternatives, and thus ultimately impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Mr. Ray objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 9:**

Produce any and all communications with the Utah Independent Redistricting Commission, including but not limited to commissioners and staff, concerning redistricting, the UIRC’s processes or operation, or the 2022 congressional election.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Ray incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and

<https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Mr. Ray objects to this request insofar as it seeks documents and communications subject to legislative privilege. Meeting and communicating with persons outside the Legislature to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.*, Utah Code §20A-20-303(1) (requiring the Commission to submit proposed maps to the Legislature). Any non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

**REQUEST FOR PRODUCTION NO. 10:**

Produce any and all documents and communications concerning the partisan performance of districts in the 2021 Congressional Plan or any drafts thereof, including voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population, or any other data considered, viewed, or used to assess the partisan performance.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Ray incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calling for the production of "any and all" "documents and communications" involving "any other data considered" is overbroad and vague and creates an undue burden. Terms such as "partisan voting



patterns,” “assessments of candidate performance,” “partisan indexes,” and “partisan performance” are also objectionable as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. For example, the request seeks “election results” that are publicly available on government websites including those of county clerks. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Ray objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. The request for data and other information that individual legislators “considered, viewed, or used to assess the partisan performance of draft or final Utah congressional districts or district maps” is a request for legislators’ thought processes and mental impressions that are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Ray objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges. To the extent there are legal analyses involving “partisan voting patterns, election

results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population” for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation, they are privileged and/or attorney work-product and are not discoverable.

**REQUEST FOR PRODUCTION NO. 11:**

Produce any and all documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives that the Legislature considered, or decided not to consider, in developing the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Ray incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites. Redistricting criteria adopted by the Legislative Redistricting Committee are contained in the Committee’s publicly available meeting minutes: <https://le.utah.gov/interim/2021/pdf/00002847.pdf>. Related information is also publicly available on the following legislative websites: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; <https://le.utah.gov/interim/2021/pdf/00002847.pdf>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Ray objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372.

Confidential “documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives” that individual legislators and staff members may have “considered” or “not considered” are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Ray objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. Legal analyses involving redistricting criteria for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation would be privileged and/or subject to the attorney work-product protections and are not discoverable.

**REQUEST FOR PRODUCTION NO. 12:**

Produce any all documents related to the designation of areas of the state of Utah as urban or rural in the drafting, consideration, or enactment of the 2021 Congressional Plan and any draft congressional plans or districts.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Ray incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and

<https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Ray objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public documents relating to “drafting” or “consideration” of proposed legislation are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Ray objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. For example, legal analyses involving designations of communities of interest for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation would be attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 13:**

Produce any and all documents and communications concerning redistricting with any consultants, experts, or any persons or entities associated with the Republican National Committee, including but not limited to Adam Foltz, Adam Kincaid, and any representatives of the National Republican Redistricting Trust.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Ray incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions.

This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “documents and communications” with “any persons or entities associated with the Republican National Committee.” Presumably this would include every voter who is registered to vote as a Republican not only in Utah but across the country.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Ray objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including interest groups, constituents, and other stakeholders, to discuss issues that bear on legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege.

Revealing such confidential information and communications ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

DATED this 6th day of January, 2023.

Respectfully submitted,

/s/ Tyler R. Green  
Tyler R. Green  
*Counsel for Former State Representative Paul Ray*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of January, 2023, I served the foregoing via email  
on the following:

David C. Reymann (Utah Bar No. 8495)  
Kade N. Olsen (Utah Bar No. 17775)  
Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
(801) 532-7840  
dreymann@parrbrown.com  
kolsen@parrbrown.com

Mark Gaber  
Hayden Johnson  
Aseem Mulji  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, D.C. 20005  
(202) 736-2200  
mgaber@campaignlegalcenter.org  
hjohnson@campaignlegalcenter.org  
amulji@campaignlegalcenter.org

Annabelle Harless  
Campaign Legal Center  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
aharless@campaignlegalcenter.org

*Counsel for Plaintiffs*

Troy L. Booher (Utah Bar No. 9419)  
J. Frederic Voros, Jr. (Utah Bar No. 3340)  
Caroline Olsen (Utah Bar No. 18070)  
Zimmerman Booher  
341 South Main Street  
Salt Lake City, Utah 84111  
(801) 924-0200  
tbooher@zbappeals.com  
fvoros@zjbappeals.com  
colsen@zbappeals.com

*Counsel for Plaintiffs*

David N. Wolf  
Lance Sorenson  
Office of the Attorney General  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
lancesorenson@agutah.gov

*Counsel for Defendant,  
Lieutenant Governor Henderson*

/s/ Tyler R. Green  
Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
tyler@consovoymccarthy.com

## **EXHIBIT 10**



Victoria Ashby (12248)  
Robert H. Rees (4125)  
Eric N. Weeks (7340)  
OFFICE OF LEGISLATIVE RESEARCH AND  
GENERAL COUNSEL  
Utah State Capitol Complex,  
House Building, Suite W210  
Salt Lake City, UT 84114-5210  
Telephone: 801-538-1032  
vashby@le.utah.gov  
rrees@le.utah.gov  
eweeks@le.utah.gov

Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
(703) 243-9423  
tyler@consovoymccarthy.com

Taylor A.R. Meehan\*  
Frank H. Chang\*  
James P. McGlone\*  
CONSOVOY MCCARTHY PLLC  
1600 Wilson Blvd. Suite 700  
Arlington, VA 22209  
(703) 243-9423  
taylor@consovoymccarthy.com  
frank@consovoymccarthy.com  
jim@consovoymccarthy.com

*Counsel for State Representative Raymond P. Ward*

*\*Admitted pro hac vice*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL GOV-  
ERNMENT, STEFANIE CONDIE, MALCOLM  
REID, VICTORIA REID, WENDY MARTIN,  
ELEANOR SUNDWALL, JACK MARKMAN,  
and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLA-  
TIVE REDISTRICTING COMMITTEE; SENA-  
TOR SCOTT SANDALL, in his official capacity;  
REPRESENTATIVE BRAD WILSON,  
in his official capacity; SENATOR J. STUART AD-  
AMS, in his official capacity; and LIEUTENANT  
GOVERNOR DEIDRE HENDERSON, in her offi-  
cial capacity,

Defendants.

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**STATE REPRESENTATIVE RAY-  
MOND P. WARD'S RESPONSES AND  
OBJECTIONS TO PLAINTIFFS' SUB-  
POENA FOR PRODUCTION OF  
DOCUMENTS**

Case No. 220901712

Honorable Dianna Gibson

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Pursuant to Utah Rules of Civil Procedure 26 and 45, State Representative Raymond P. Ward serves these responses and objections to Plaintiffs' subpoena for documents.

Legislators are immune from civil process for their legislative acts. That immunity bars Plaintiffs' subpoena. Under the Utah Constitution, "Members of the Legislature" "shall not be questioned in any other place" "for words used in any speech or debate in either house." Utah Const. art. VI, §8; *see also Tenney v. Brandhove*, 341 U.S. 367, 375 n.5 (1951) (citing Utah Const. art. VI, §8). Legislative immunity and privilege protect legislators and staff members "not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (quoting *Tenney*, 341 U.S. at 376). Legislative immunity and privilege "protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts." *In re Hubbard*, 803 F.3d 1298, 1310 (11th Cir. 2015) (emphasis removed) (quoting *United States v. Brewster*, 408 U.S. 501, 525 (1972)). These protections exist to "insur[e] the independence of individual legislators." *Brewster*, 408 U.S. at 507; *see also, e.g., Biblia Abierta v. Banks*, 129 F.3d 899, 905 (7th Cir. 1997) ("An inquiry into a legislator's motives for his actions, regardless of whether those reasons are proper or improper, is not an appropriate consideration for the court."). Such protections extend to both current and former legislators. *See, e.g., League of Women Voters of Pennsylvania v. Commonwealth*, 177 A.3d 1000, 1005 (Pa. Commw. Ct. 2017); *Saleem v. Snow*, 460 S.E.2d 104, 107 (Ga. Ct. App. 1995). Subjecting legislative documents to discovery transgresses legislative immunity, enshrined in Utah Constitution's Speech or Debate Clause. *See, e.g., Edwards v. Vesilind*, 790 S.E.2d 469 (Va. 2016); *In re Perry*, 60 S.W.3d 857 (Tex. 2001). Relevant here, preparations for the 2023 legislative session are underway, and the time required to address Plaintiffs' burdensome and overbroad discovery requests substantially impairs the legislators' performance of their present and forthcoming legislative duties.

The remaining objections are made in the alternative, without waiver of legislative immunity or privilege. Rep. Ward reserves the right to supplement these responses and objections to the extent further required.

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Rep. Ward asserts and repeats each of the following objections as to each request below. In the interest of brevity, these objections are listed here to avoid unnecessary repetition. Counsel for Rep. Ward is willing to meet and confer regarding this objection and all other objections contained in these responses.

1. Rep. Ward objects to these requests to the extent they seek information that would be protected by legislative immunity or legislative privilege. Explained above, the subpoena transgresses legislators' immunity. Utah Const. art. VI, §8. Additionally, insofar as the subpoena seeks legislatively privileged documents regarding legislative acts, including the passage of the 2021 Congressional Redistricting Plan, such documents are not discoverable. *See, e.g., In re Hubbard*, 803 F.3d at 1308-10. It is also unduly burdensome, unreasonable, and disproportionate to the needs of the case when individual legislators' documents—to the extent they are not duplicative of the legislative record—will be largely if not entirely privileged.

2. Rep. Ward objects to these requests to the extent that they seek irrelevant information. Rule 26 allows discovery only of information “which is relevant to the claim or defense of any party.” Utah R. Civ. P. 26(b)(1). “The party seeking discovery always has the burden of showing ... relevance.” Utah R. Civ. P. 26(b)(4).

3. Rep. Ward also objects to these requests to the extent they are not proportional. As with relevance, the party seeking discovery “always” has the burden “of showing proportionality.” Utah R. Civ. P. 26(b)(4). The Utah Supreme Court significantly amended the Utah Rules of Civil Procedure in 2011 “in large part to ... promote proportionality in costs and procedures in civil

litigation.” *Pilot v. Hill*, 2019 UT 10, ¶1, 437 P.3d 362. Discovery requests are proportional if: (A) discovery is “reasonable, considering the needs of the case”; (B) “the likely benefits of the proposed discovery outweigh the burden or expense”; (C) the discovery is consistent with the “overall case management” and will further the “just, speedy, and inexpensive” determination of the case; (D) the discovery is “not unreasonably cumulative or duplicative”; (E) “the information cannot be obtained from another source that is more convenient, less burdensome, or less expensive”; and (F) “the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise.” Utah R. Civ. P. 26(b)(3).

4. Rep. Ward also objects to the extent that these requests implicate additional privileges, including but not limited to, the attorney-client privilege, common-interest privilege, the attorney work-product protections, and the deliberative process privilege.

5. There is currently no protective order in place between Plaintiffs and Defendants or any non-parties. *See* Utah R. Civ. P. 37(a)(1)(D) (allowing the district court to issue protective orders). To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure of certain sensitive information, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

6. These responses and objections are made without waiving any further objections to, or admitting the relevance or materiality of, any of the information or document requests. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with Plaintiffs’ characterization of any facts, circumstances, or legal obligations.

7. Rep. Ward will provide responses based on terms as they are commonly understood and consistent with the Utah Rules of Civil Procedure.

## **OBJECTIONS TO PLAINTIFFS' DEFINITIONS AND INSTRUCTIONS**

1. Rep. Ward objects to Plaintiffs' instructions and definitions, including definitions of "communications," "concern," "concerning," "regarding," "document," and "electronically stored information" or "ESI," as overbroad to the extent that they enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit.

2. Rep. Ward objects to the definitions of "legislator" and "Member of Congress" as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit. Plaintiffs' overly broad definitions of a "legislator" and "Member of Congress" would include materials from individuals well beyond those legislators. The definitions also erroneously impute to a legislator anything shared or communicated by "advisors" or others who are not the legislator. The definitions are also overbroad and vague because it is not easily discernible which past or present individuals "puport[ed] to act" on an individual legislator's behalf. Moreover, Rep. Ward objects to the extent that this definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity under the Utah or U.S. Constitutions. Rep. Ward also objects to the extent that this definition requires the disclosure of materials subject to the attorney-client privilege. Rep. Ward intends to interpret Plaintiffs' request to use the term "legislator" and "Member of Congress" to mean the past or present members of the Utah Legislature or U.S. House of Representatives, respectively, during the relevant time period of January 1, 2021, to November 12, 2021.

3. Rep. Ward objects to the definition of "you" and "your" as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit, including by requiring a search for and/or production of documents that are not within his possession, custody, or control. Rep. Ward objects to the extent that the definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity.

4. Rep. Ward objects to Plaintiffs' instruction that requests should be construed to concern the period of time from January 1, 2020, to the present, unless otherwise specified. That date range is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. See Utah R. Civ. P. 26(d)(3). The official P.L. 94-171 census data was not released until August 12, 2021. The relevant legislative session commenced in November 2021. And the Governor signed the challenged legislation on November 12, 2022. Accordingly, Rep. Ward intends to interpret Plaintiffs' requests to seek documents from January 1, 2021, to November 12, 2022.

## **RESPONSES AND OBJECTIONS TO PLAINTIFFS' REQUESTS FOR PRODUCTION OF DOCUMENTS**

### **REQUEST FOR PRODUCTION NO. 1:**

Produce any and all drafts of the enacted 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted, including but not limited to shapefiles, geojson files, and/or block assignment files.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Ward incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all drafts" or "other potential congressional plan or configuration of congressional districts that was not adopted." Such an overly broad request creates an undue burden. The request for "any other potential congressional plan or configuration" is also vague, overbroad, unduly burdensome, and disproportionate.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents

responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee's hearings held between May 18, 2021, and November 10, 2021, as well as draft minutes and agenda for those hearings, can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Ward objects to this request insofar as it seeks documents subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public, draft redistricting plans are draft legislation and are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Rep. Ward cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Ward objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, or other applicable privileges. To the extent there are drafts created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 2:**

Produce any and all analyses, data, and/or code related to the enacted 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Ward incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “analyses, data, and/or code related to” the 2021 Congressional Plan and other “potential” plans and configurations that were “not adopted.” Such an overly broad request creates an undue burden. Rep. Ward also objects to the term “code” as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.



Rep. Ward objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. To the extent Plaintiffs seek any non-public analyses, data, or code related to the enacted plan or drafts, such information, to the extent it exists, would be subject to legislative privilege and is thus not discoverable. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process. It ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Rep. Ward cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Ward objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are analyses, data, or code created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 3:**

Produce any and all notes or communications concerning meetings of the Legislative Redistricting Committee, other Legislative Committee, and Legislature that relate to the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Ward incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly

burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “notes or communications concerning meetings of the Legislative Redistricting, other Legislative Committee, and Legislature” relating to the 2021 Congressional Plan. Such an overly broad request creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Ward objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. His notes and communications with others, if they exist, would be subject to legislative privilege and are thus not discoverable. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder

communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Ward objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 4:**

Produce any and all minutes, agendas, notes, and communications from any Republican Caucus meeting or other non-public meeting of Republican legislators concerning the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Ward incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "minutes, agendas, notes, and communications" from any "non-public meeting of Republican legislators." Such an overly broad request creates an undue burden.

Rep. Ward objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. On its face, this

request seeks the production of non-public documents involving communications and deliberations among legislators regarding the 2021 Congressional Plan drafts regardless of whether they were adopted. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Ward objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 5:**

Produce any and all documents and communications exchanged with any past or current Member of Congress and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Ward incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already

publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Ward objects insofar as this request seeks documents and communications further subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including Members of Congress, to discuss draft legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Ward objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with

applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 6:**

Produce any and all documents and communications to, from, or shared with any past or current Legislator and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Ward incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “documents and communications with any past or current Legislator” and their agents. This request is facially overbroad and vague and creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Ward also objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Documents and communications among legislators “related to the planning, negotiation,

drafting, consideration, or enactment” of legislation are paradigmatic examples of documents subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Ward objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 7:**

Produce any and all documents and communications to, from, or shared with Governor Cox and his agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and

<https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Ward further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—especially executive branch officials who exercise certain legislative functions under the Utah Constitution—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.,* Utah Const. art. VII, §7 (requiring presentment to the Governor for signature before any bill becomes a law); *Hubbard*, 803 F.3d at 1308 (“[T]he privilege protects the legislative process itself, and therefore covers both governors’ and legislators’ actions in the proposal, formulation, and passage of legislation.”). Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Ward objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.,* ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.



**REQUEST FOR PRODUCTION NO. 8:**

Produce any and all documents and communications exchanged with Lieutenant Governor Henderson and her agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Ward further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—including certain executive branch officials—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g., Almonte v. City of Long Beach*, 478 F.3d 100, 107 (2d Cir. 2007) (observing that discussions of issues with “executive officers” “assist[s] legislators in the discharge of their legislative duty”); *see also* Utah Code §67-1a-2(2)(a) (designating the Lieutenant Governor as “the chief election officer”); Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and impairs legislators’ ability to freely and candidly consider

legislation and to assess alternatives, and thus ultimately impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Ward objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 9:**

Produce any and all communications with the Utah Independent Redistricting Commission, including but not limited to commissioners and staff, concerning redistricting, the UIRC’s processes or operation, or the 2022 congressional election.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Ward incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and

<https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Ward objects to this request insofar as it seeks documents and communications subject to legislative privilege. Meeting and communicating with persons outside the Legislature to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.*, Utah Code §20A-20-303(1) (requiring the Commission to submit proposed maps to the Legislature). Any non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

**REQUEST FOR PRODUCTION NO. 10:**

Produce any and all documents and communications concerning the partisan performance of districts in the 2021 Congressional Plan or any drafts thereof, including voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population, or any other data considered, viewed, or used to assess the partisan performance.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Ward incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calling for the production of "any and all" "documents and communications" involving "any other

data considered” is overbroad and vague and creates an undue burden. Terms such as “partisan voting patterns,” “assessments of candidate performance,” “partisan indexes,” and “partisan performance” are also objectionable as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. For example, the request seeks “election results” that are publicly available on government websites including those of county clerks. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Ward objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. The request for data and other information that individual legislators “considered, viewed, or used to assess the partisan performance of draft or final Utah congressional districts or district maps” is a request for legislators’ thought processes and mental impressions that are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Ward objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other

applicable privileges. To the extent there are legal analyses involving “partisan voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population” for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation, they are privileged and/or attorney work-product and are not discoverable.

**REQUEST FOR PRODUCTION NO. 11:**

Produce any and all documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives that the Legislature considered, or decided not to consider, in developing the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Ward incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites. Redistricting criteria adopted by the Legislative Redistricting Committee are contained in the Committee’s publicly available meeting minutes: <https://le.utah.gov/interim/2021/pdf/00002847.pdf>. Related information is also publicly available on the following legislative websites: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; <https://le.utah.gov/interim/2021/pdf/00002847.pdf>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Ward objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Confidential “documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives” that individual legislators and staff members may have “considered” or “not considered” are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Ward objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. Legal analyses involving redistricting criteria for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation would be privileged and/or subject to the attorney work-product protections and are not discoverable.

**REQUEST FOR PRODUCTION NO. 12:**

Produce any all documents related to the designation of areas of the state of Utah as urban or rural in the drafting, consideration, or enactment of the 2021 Congressional Plan and any draft congressional plans or districts.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Ward incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including:

<https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>;  
[https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Ward objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public documents relating to “drafting” or “consideration” of proposed legislation are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Ward objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. For example, legal analyses involving designations of communities of interest for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation would be attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 13:**

Produce any and all documents and communications concerning redistricting with any consultants, experts, or any persons or entities associated with the Republican National Committee, including but not limited to Adam Foltz, Adam Kincaid, and any representatives of the National Republican Redistricting Trust.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Ward incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions.

This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “documents and communications” with “any persons or entities associated with the Republican National Committee.” Presumably this would include every voter who is registered to vote as a Republican not only in Utah but across the country.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Ward objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including interest groups, constituents, and other stakeholders, to discuss issues that bear on legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege.



Revealing such confidential information and communications ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

DATED this 4th day of January, 2023.

Respectfully submitted,

/s/ Tyler R. Green  
Tyler R. Green  
*Counsel for State Representative Raymond P. Ward*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of January, 2023, I served the foregoing via email  
on the following:

David C. Reymann (Utah Bar No. 8495)  
Kade N. Olsen (Utah Bar No. 17775)  
Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
(801) 532-7840  
dreymann@parrbrown.com  
kolsen@parrbrown.com

Mark Gaber  
Hayden Johnson  
Aseem Mulji  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, D.C. 20005  
(202) 736-2200  
mgaber@campaignlegalcenter.org  
hjohnson@campaignlegalcenter.org  
amulji@campaignlegalcenter.org

Annabelle Harless  
Campaign Legal Center  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
aharless@campaignlegalcenter.org

*Counsel for Plaintiffs*

Troy L. Booher (Utah Bar No. 9419)  
J. Frederic Voros, Jr. (Utah Bar No. 3340)  
Caroline Olsen (Utah Bar No. 18070)  
Zimmerman Booher  
341 South Main Street  
Salt Lake City, Utah 84111  
(801) 924-0200  
tbooher@zbappeals.com  
fvoros@zjbappeals.com  
colsen@zbappeals.com

*Counsel for Plaintiffs*

David N. Wolf  
Lance Sorenson  
Office of the Attorney General  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
lancesorenson@agutah.gov

*Counsel for Defendant,  
Lieutenant Governor Henderson*

/s/ Tyler R. Green  
Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
tyler@consovoymccarthy.com

## **EXHIBIT 11**

Victoria Ashby (12248)  
Robert H. Rees (4125)  
Eric N. Weeks (7340)  
OFFICE OF LEGISLATIVE RESEARCH AND  
GENERAL COUNSEL  
Utah State Capitol Complex,  
House Building, Suite W210  
Salt Lake City, UT 84114-5210  
Telephone: 801-538-1032  
vashby@le.utah.gov  
rrees@le.utah.gov  
eweeks@le.utah.gov

Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
(703) 243-9423  
tyler@consovoymccarthy.com

Taylor A.R. Meehan\*  
Frank H. Chang\*  
James P. McGlone\*  
CONSOVOY MCCARTHY PLLC  
1600 Wilson Blvd. Suite 700  
Arlington, VA 22209  
(703) 243-9423  
taylor@consovoymccarthy.com  
frank@consovoymccarthy.com  
jim@consovoymccarthy.com

*Counsel for Former State Representative  
Stephen G. Handy*

*\*Admitted pro hac vice*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL GOV-  
ERNMENT, STEFANIE CONDIE, MALCOLM  
REID, VICTORIA REID, WENDY MARTIN,  
ELEANOR SUNDWALL, JACK MARKMAN,  
and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLA-  
TIVE REDISTRICTING COMMITTEE; SENA-  
TOR SCOTT SANDALL, in his official capacity;  
REPRESENTATIVE BRAD WILSON,  
in his official capacity; SENATOR J. STUART AD-  
AMS, in his official capacity; and LIEUTENANT  
GOVERNOR DEIDRE HENDERSON, in her offi-  
cial capacity,

Defendants.

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**FORMER STATE REPRESENTATIVE  
STEPHEN G. HANDY'S RESPONSES  
AND OBJECTIONS TO PLAINTIFFS'  
SUBPOENA FOR PRODUCTION OF  
DOCUMENTS**

Case No. 220901712

Honorable Dianna Gibson

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Pursuant to Utah Rules of Civil Procedure 26 and 45, Former State Representative Stephen G. Handy serves these responses and objections to Plaintiffs' subpoena for documents.

Legislators are immune from civil process for their legislative acts. That immunity bars Plaintiffs' subpoena. Under the Utah Constitution, "Members of the Legislature" "shall not be questioned in any other place" "for words used in any speech or debate in either house." Utah Const. art. VI, §8; *see also Tenney v. Brandhove*, 341 U.S. 367, 375 n.5 (1951) (citing Utah Const. art. VI, §8). Legislative immunity and privilege protect legislators and staff members "not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (quoting *Tenney*, 341 U.S. at 376). Legislative immunity and privilege "protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts." *In re Hubbard*, 803 F.3d 1298, 1310 (11th Cir. 2015) (emphasis removed) (quoting *United States v. Brewster*, 408 U.S. 501, 525 (1972)). These protections exist to "insur[e] the independence of individual legislators." *Brewster*, 408 U.S. at 507; *see also, e.g., Biblia Abierta v. Banks*, 129 F.3d 899, 905 (7th Cir. 1997) ("An inquiry into a legislator's motives for his actions, regardless of whether those reasons are proper or improper, is not an appropriate consideration for the court."). Such protections extend to both current and former legislators. *See, e.g., League of Women Voters of Pennsylvania v. Commonwealth*, 177 A.3d 1000, 1005 (Pa. Commw. Ct. 2017); *Saleem v. Snow*, 460 S.E.2d 104, 107 (Ga. Ct. App. 1995). Subjecting legislative documents to discovery transgresses legislative immunity, enshrined in Utah Constitution's Speech or Debate Clause. *See, e.g., Edwards v. Vesilind*, 790 S.E.2d 469 (Va. 2016); *In re Perry*, 60 S.W.3d 857 (Tex. 2001).

The remaining objections are made in the alternative, without waiver of legislative immunity or privilege. Former Representative Handy reserves the right to supplement these responses and objections to the extent further required.

## OBJECTIONS RELEVANT TO EACH REQUEST

Former Representative Handy asserts and repeats each of the following objections as to each request below. In the interest of brevity, these objections are listed here to avoid unnecessary repetition. Counsel for Mr. Handy is willing to meet and confer regarding this objection and all other objections contained in these responses.

1. Mr. Handy objects to these requests to the extent they seek information that would be protected by legislative immunity or legislative privilege. Explained above, the subpoena transgresses legislators' immunity. Utah Const. art. VI, §8. Additionally, insofar as the subpoena seeks legislatively privileged documents regarding legislative acts, including the passage of the 2021 Congressional Redistricting Plan, such documents are not discoverable. *See, e.g., In re Hubbard*, 803 F.3d at 1308-10. It is also unduly burdensome, unreasonable, and disproportionate to the needs of the case when individual legislators' documents—to the extent they are not duplicative of the legislative record—will be largely if not entirely privileged.

2. Mr. Handy objects to these requests to the extent that they seek irrelevant information. Rule 26 allows discovery only of information “which is relevant to the claim or defense of any party.” Utah R. Civ. P. 26(b)(1). “The party seeking discovery always has the burden of showing ... relevance.” Utah R. Civ. P. 26(b)(4).

3. Mr. Handy also objects to these requests to the extent they are not proportional. As with relevance, the party seeking discovery “always” has the burden “of showing proportionality.” Utah R. Civ. P. 26(b)(4). The Utah Supreme Court significantly amended the Utah Rules of Civil Procedure in 2011 “in large part to ... promote proportionality in costs and procedures in civil litigation.” *Pilot v. Hill*, 2019 UT 10, ¶1, 437 P.3d 362. Discovery requests are proportional if: (A) discovery is “reasonable, considering the needs of the case”; (B) “the likely benefits of the proposed discovery outweigh the burden or expense”; (C) the discovery is consistent with the “overall case management”

and will further the “just, speedy, and inexpensive” determination of the case; (D) the discovery is “not unreasonably cumulative or duplicative”; (E) “the information cannot be obtained from another source that is more convenient, less burdensome, or less expensive”; and (F) “the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise.” Utah R. Civ. P. 26(b)(3).

4. Mr. Handy also objects to the extent that these requests implicate additional privileges, including but not limited to, the attorney-client privilege, common-interest privilege, the attorney work-product protections, and the deliberative process privilege.

5. There is currently no protective order in place between Plaintiffs and Defendants or any non-parties. *See* Utah R. Civ. P. 37(a)(1)(D) (allowing the district court to issue protective orders). To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure of certain sensitive information, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

6. These responses and objections are made without waiving any further objections to, or admitting the relevance or materiality of, any of the information or document requests. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with Plaintiffs’ characterization of any facts, circumstances, or legal obligations.

7. Mr. Handy will provide responses based on terms as they are commonly understood and consistent with the Utah Rules of Civil Procedure.

### **OBJECTIONS TO PLAINTIFFS’ DEFINITIONS AND INSTRUCTIONS**

1. Mr. Handy objects to Plaintiffs’ instructions and definitions, including definitions of “communications,” “concern,” “concerning,” “regarding,” “document,” and “electronically stored

information” or “ESI,” as overbroad to the extent that they enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit.

2. Mr. Handy objects to the definitions of “legislator” and “Member of Congress” as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit. Plaintiffs’ overly broad definitions of a “legislator” and “Member of Congress” would include materials from individuals well beyond those legislators. The definitions also erroneously impute to a legislator anything shared or communicated by “advisors” or others who are not the legislator. The definitions are also overbroad and vague because it is not easily discernible which past or present individuals “puport[ed] to act” on an individual legislator’s behalf. Moreover, Mr. Handy objects to the extent that this definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity under the Utah or U.S. Constitutions. Mr. Handy also objects to the extent that this definition requires the disclosure of materials subject to the attorney-client privilege. Mr. Handy intends to interpret Plaintiffs’ request to use the term “legislator” and “Member of Congress” to mean the past or present members of the Utah Legislature or U.S. House of Representatives, respectively, during the relevant time period of January 1, 2021, to November 12, 2021.

3. Mr. Handy objects to the definition of “you” and “your” as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit, including by requiring a search for and/or production of documents that are not within his possession, custody, or control. Mr. Handy objects to the extent that the definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity.

4. Mr. Handy objects to Plaintiffs’ instruction that requests should be construed to concern the period of time from January 1, 2020, to the present, unless otherwise specified. That date range is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just,



speedy, and inexpensive litigation; and otherwise not proportional. See Utah R. Civ. P. 26(d)(3). The official P.L. 94-171 census data was not released until August 12, 2021. The relevant legislative session commenced in November 2021. And the Governor signed the challenged legislation on November 12, 2022. Accordingly, Mr. Handy intends to interpret Plaintiffs' requests to seek documents from January 1, 2021, to November 12, 2022.

## **RESPONSES AND OBJECTIONS TO PLAINTIFFS' REQUESTS FOR PRODUCTION OF DOCUMENTS**

### **REQUEST FOR PRODUCTION NO. 1:**

Produce any and all drafts of the enacted 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted, including but not limited to shapefiles, geojson files, and/or block assignment files.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Handy incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all drafts" or "other potential congressional plan or configuration of congressional districts that was not adopted." Such an overly broad request creates an undue burden. The request for "any other potential congressional plan or configuration" is also vague, overbroad, unduly burdensome, and disproportionate.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and

<https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee's hearings held between May 18, 2021, and November 10, 2021, as well as draft minutes and agenda for those hearings, can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Handy objects to this request insofar as it seeks documents subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public, draft redistricting plans are draft legislation and are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Mr. Handy cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Handy objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, or other applicable privileges. To the extent there are drafts created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

## **REQUEST FOR PRODUCTION NO. 2:**

Produce any and all analyses, data, and/or code related to the enacted 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Handy incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “analyses, data, and/or code related to” the 2021 Congressional Plan and other “potential” plans and configurations that were “not adopted.” Such an overly broad request creates an undue burden. Mr. Handy also objects to the term “code” as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Handy objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. To the extent Plaintiffs seek any non-public analyses, data, or code related to the enacted plan or drafts, such

information, to the extent it exists, would be subject to legislative privilege and is thus not discoverable. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process. It ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Mr. Handy cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Handy objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are analyses, data, or code created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 3:**

Produce any and all notes or communications concerning meetings of the Legislative Redistricting Committee, other Legislative Committee, and Legislature that relate to the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Handy incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "notes or communications concerning meetings of

the Legislative Redistricting, other Legislative Committee, and Legislature” relating to the 2021 Congressional Plan. Such an overly broad request creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Handy objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. His notes and communications with others, if they exist, would be subject to legislative privilege and are thus not discoverable. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Handy objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 4:**

Produce any and all minutes, agendas, notes, and communications from any Republican Caucus meeting or other non-public meeting of Republican legislators concerning the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Handy incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "minutes, agendas, notes, and communications" from any "non-public meeting of Republican legislators." Such an overly broad request creates an undue burden.

Mr. Handy objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. On its face, this request seeks the production of non-public documents involving communications and deliberations among legislators regarding the 2021 Congressional Plan drafts regardless of whether they were adopted. Revealing such confidential information and communications reveals privileged mental

processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Handy objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 5:**

Produce any and all documents and communications exchanged with any past or current Member of Congress and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Handy incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and

<https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Handy objects insofar as this request seeks documents and communications further subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including Members of Congress, to discuss draft legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Handy objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with



applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 6:**

Produce any and all documents and communications to, from, or shared with any past or current Legislator and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Handy incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "documents and communications with any past or current Legislator" and their agents. This request is facially overbroad and vague and creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Handy also objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341

U.S. at 372. Documents and communications among legislators “related to the planning, negotiation, drafting, consideration, or enactment” of legislation are paradigmatic examples of documents subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Mr. Handy objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 7:**

Produce any and all documents and communications to, from, or shared with Governor Cox and his agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at

<https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Mr. Handy further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—especially executive branch officials who exercise certain legislative functions under the Utah Constitution—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.,* Utah Const. art. VII, §7 (requiring presentment to the Governor for signature before any bill becomes a law); *Hubbard*, 803 F.3d at 1308 (“[T]he privilege protects the legislative process itself, and therefore covers both governors’ and legislators’ actions in the proposal, formulation, and passage of legislation.”). Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Mr. Handy objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.,* ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 8:**

Produce any and all documents and communications exchanged with Lieutenant Governor Henderson and her agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Mr. Handy further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—including certain executive branch officials—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g., Almonte v. City of Long Beach*, 478 F.3d 100, 107 (2d Cir. 2007) (observing that discussions of issues with “executive officers” “assist[s] legislators in the discharge of their legislative duty”); *see also* Utah Code §67-1a-2(2)(a) (designating the Lieutenant Governor as “the chief election officer”); Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and impairs legislators’ ability to freely and candidly consider

legislation and to assess alternatives, and thus ultimately impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Mr. Handy objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 9:**

Produce any and all communications with the Utah Independent Redistricting Commission, including but not limited to commissioners and staff, concerning redistricting, the UIRC’s processes or operation, or the 2022 congressional election.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Handy incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and

<https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Mr. Handy objects to this request insofar as it seeks documents and communications subject to legislative privilege. Meeting and communicating with persons outside the Legislature to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.*, Utah Code §20A-20-303(1) (requiring the Commission to submit proposed maps to the Legislature). Any non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

**REQUEST FOR PRODUCTION NO. 10:**

Produce any and all documents and communications concerning the partisan performance of districts in the 2021 Congressional Plan or any drafts thereof, including voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population, or any other data considered, viewed, or used to assess the partisan performance.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Handy incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calling for the production of "any and all" "documents and communications" involving "any

other data considered” is overbroad and vague and creates an undue burden. Terms such as “partisan voting patterns,” “assessments of candidate performance,” “partisan indexes,” and “partisan performance” are also objectionable as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. For example, the request seeks “election results” that are publicly available on government websites including those of county clerks. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Handy objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. The request for data and other information that individual legislators “considered, viewed, or used to assess the partisan performance of draft or final Utah congressional districts or district maps” is a request for legislators’ thought processes and mental impressions that are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Handy objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other

applicable privileges. To the extent there are legal analyses involving “partisan voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population” for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation, they are privileged and/or attorney work-product and are not discoverable.

**REQUEST FOR PRODUCTION NO. 11:**

Produce any and all documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives that the Legislature considered, or decided not to consider, in developing the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Handy incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites. Redistricting criteria adopted by the Legislative Redistricting Committee are contained in the Committee’s publicly available meeting minutes: <https://le.utah.gov/interim/2021/pdf/00002847.pdf>. Related information is also publicly available on the following legislative websites: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; <https://le.utah.gov/interim/2021/pdf/00002847.pdf>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.



Mr. Handy objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Confidential “documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives” that individual legislators and staff members may have “considered” or “not considered” are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Handy objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. Legal analyses involving redistricting criteria for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation would be privileged and/or subject to the attorney work-product protections and are not discoverable.

**REQUEST FOR PRODUCTION NO. 12:**

Produce any all documents related to the designation of areas of the state of Utah as urban or rural in the drafting, consideration, or enactment of the 2021 Congressional Plan and any draft congressional plans or districts.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Handy incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including:

<https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>;  
[https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Handy objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public documents relating to “drafting” or “consideration” of proposed legislation are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Mr. Handy objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. For example, legal analyses involving designations of communities of interest for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation would be attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 13:**

Produce any and all documents and communications concerning redistricting with any consultants, experts, or any persons or entities associated with the Republican National Committee, including but not limited to Adam Foltz, Adam Kincaid, and any representatives of the National Republican Redistricting Trust.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Mr. Handy incorporates the objections specified above, including those to Plaintiffs' instructions and definitions.

This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "documents and communications" with "any persons or entities associated with the Republican National Committee." Presumably this would include every voter who is registered to vote as a Republican not only in Utah but across the country.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Mr. Handy objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including interest groups, constituents, and other stakeholders, to discuss issues that bear on legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege.

Revealing such confidential information and communications ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

DATED this 4th day of January, 2023.

Respectfully submitted,

/s/ Tyler R. Green

Tyler R. Green

*Counsel for Former State Representative Stephen G. Handy*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of January, 2023, I served the foregoing via email  
on the following:

David C. Reymann (Utah Bar No. 8495)  
Kade N. Olsen (Utah Bar No. 17775)  
Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
(801) 532-7840  
dreymann@parrbrown.com  
kolsen@parrbrown.com

Mark Gaber  
Hayden Johnson  
Aseem Mulji  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, D.C. 20005  
(202) 736-2200  
mgaber@campaignlegalcenter.org  
hjohnson@campaignlegalcenter.org  
amulji@campaignlegalcenter.org

Annabelle Harless  
Campaign Legal Center  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
aharless@campaignlegalcenter.org

*Counsel for Plaintiffs*

Troy L. Booher (Utah Bar No. 9419)  
J. Frederic Voros, Jr. (Utah Bar No. 3340)  
Caroline Olsen (Utah Bar No. 18070)  
Zimmerman Booher  
341 South Main Street  
Salt Lake City, Utah 84111  
(801) 924-0200  
tbooher@zbappeals.com  
fvoros@zjbappeals.com  
colsen@zbappeals.com

*Counsel for Plaintiffs*

David N. Wolf  
Lance Sorenson  
Office of the Attorney General  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
lancesorenson@agutah.gov

*Counsel for Defendant,  
Lieutenant Governor Henderson*

/s/ Tyler R. Green  
Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
tyler@consovoymccarthy.com

## **EXHIBIT 12**

Victoria Ashby (12248)  
Robert H. Rees (4125)  
Eric N. Weeks (7340)  
OFFICE OF LEGISLATIVE RESEARCH AND  
GENERAL COUNSEL  
Utah State Capitol Complex,  
House Building, Suite W210  
Salt Lake City, UT 84114-5210  
Telephone: 801-538-1032  
vashby@le.utah.gov  
rrees@le.utah.gov  
eweeks@le.utah.gov

Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
(703) 243-9423  
tyler@consovoymccarthy.com

Taylor A.R. Meehan\*  
Frank H. Chang\*  
James P. McGlone\*  
CONSOVOY MCCARTHY PLLC  
1600 Wilson Blvd. Suite 700  
Arlington, VA 22209  
(703) 243-9423  
taylor@consovoymccarthy.com  
frank@consovoymccarthy.com  
jim@consovoymccarthy.com

*Counsel for State Representative Steven Eliason*

*\*Admitted pro hac vice*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL GOV-  
ERNMENT, STEFANIE CONDIE, MALCOLM  
REID, VICTORIA REID, WENDY MARTIN,  
ELEANOR SUNDWALL, JACK MARKMAN,  
and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLA-  
TIVE REDISTRICTING COMMITTEE; SENA-  
TOR SCOTT SANDALL, in his official capacity;  
REPRESENTATIVE BRAD WILSON,  
in his official capacity; SENATOR J. STUART AD-  
AMS, in his official capacity; and LIEUTENANT  
GOVERNOR DEIDRE HENDERSON, in her offi-  
cial capacity,

Defendants.

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**STATE REPRESENTATIVE STEVEN  
ELIASON'S RESPONSES AND OB-  
JECTIONS TO PLAINTIFFS' SUB-  
POENA FOR PRODUCTION OF  
DOCUMENTS**

Case No. 220901712

Honorable Dianna Gibson

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Pursuant to Utah Rules of Civil Procedure 26 and 45, State Representative Steven Eliason serves these responses and objections to Plaintiffs' subpoena for documents.

Legislators are immune from civil process for their legislative acts. That immunity bars Plaintiffs' subpoena. Under the Utah Constitution, "Members of the Legislature" "shall not be questioned in any other place" "for words used in any speech or debate in either house." Utah Const. art. VI, §8; *see also Tenney v. Brandhove*, 341 U.S. 367, 375 n.5 (1951) (citing Utah Const. art. VI, §8). Legislative immunity and privilege protect legislators and staff members "not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (quoting *Tenney*, 341 U.S. at 376). Legislative immunity and privilege "protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts." *In re Hubbard*, 803 F.3d 1298, 1310 (11th Cir. 2015) (emphasis removed) (quoting *United States v. Brewster*, 408 U.S. 501, 525 (1972)). These protections exist to "insur[e] the independence of individual legislators." *Brewster*, 408 U.S. at 507; *see also, e.g., Biblia Abierta v. Banks*, 129 F.3d 899, 905 (7th Cir. 1997) ("An inquiry into a legislator's motives for his actions, regardless of whether those reasons are proper or improper, is not an appropriate consideration for the court."). Such protections extend to both current and former legislators. *See, e.g., League of Women Voters of Pennsylvania v. Commonwealth*, 177 A.3d 1000, 1005 (Pa. Commw. Ct. 2017); *Saleem v. Snow*, 460 S.E.2d 104, 107 (Ga. Ct. App. 1995). Subjecting legislative documents to discovery transgresses legislative immunity, enshrined in Utah Constitution's Speech or Debate Clause. *See, e.g., Edwards v. Vesilind*, 790 S.E.2d 469 (Va. 2016); *In re Perry*, 60 S.W.3d 857 (Tex. 2001). Relevant here, preparations for the 2023 legislative session are underway, and the time required to address Plaintiffs' burdensome and overbroad discovery requests substantially impairs the legislators' performance of their present and forthcoming legislative duties.



The remaining objections are made in the alternative, without waiver of legislative immunity or privilege. Rep. Eliason reserves the right to supplement these responses and objections to the extent further required.

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Rep. Eliason asserts and repeats each of the following objections as to each request below. In the interest of brevity, these objections are listed here to avoid unnecessary repetition. Counsel for Rep. Eliason is willing to meet and confer regarding this objection and all other objections contained in these responses.

1. Rep. Eliason objects to these requests to the extent they seek information that would be protected by legislative immunity or legislative privilege. Explained above, the subpoena transgresses legislators' immunity. Utah Const. art. VI, §8. Additionally, insofar as the subpoena seeks legislatively privileged documents regarding legislative acts, including the passage of the 2021 Congressional Redistricting Plan, such documents are not discoverable. *See, e.g., In re Hubbard*, 803 F.3d at 1308-10. It is also unduly burdensome, unreasonable, and disproportionate to the needs of the case when individual legislators' documents—to the extent they are not duplicative of the legislative record—will be largely if not entirely privileged.

2. Rep. Eliason objects to these requests to the extent that they seek irrelevant information. Rule 26 allows discovery only of information “which is relevant to the claim or defense of any party.” Utah R. Civ. P. 26(b)(1). “The party seeking discovery always has the burden of showing ... relevance.” Utah R. Civ. P. 26(b)(4).

3. Rep. Eliason also objects to these requests to the extent they are not proportional. As with relevance, the party seeking discovery “always” has the burden “of showing proportionality.” Utah R. Civ. P. 26(b)(4). The Utah Supreme Court significantly amended the Utah Rules of Civil Procedure in 2011 “in large part to ... promote proportionality in costs and procedures in civil

litigation.” *Pilot v. Hill*, 2019 UT 10, ¶1, 437 P.3d 362. Discovery requests are proportional if: (A) discovery is “reasonable, considering the needs of the case”; (B) “the likely benefits of the proposed discovery outweigh the burden or expense”; (C) the discovery is consistent with the “overall case management” and will further the “just, speedy, and inexpensive” determination of the case; (D) the discovery is “not unreasonably cumulative or duplicative”; (E) “the information cannot be obtained from another source that is more convenient, less burdensome, or less expensive”; and (F) “the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise.” Utah R. Civ. P. 26(b)(3).

4. Rep. Eliason also objects to the extent that these requests implicate additional privileges, including but not limited to, the attorney-client privilege, common-interest privilege, the attorney work-product protections, and the deliberative process privilege.

5. There is currently no protective order in place between Plaintiffs and Defendants or any non-parties. *See* Utah R. Civ. P. 37(a)(1)(D) (allowing the district court to issue protective orders). To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure of certain sensitive information, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

6. These responses and objections are made without waiving any further objections to, or admitting the relevance or materiality of, any of the information or document requests. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with Plaintiffs’ characterization of any facts, circumstances, or legal obligations.

7. Rep. Eliason will provide responses based on terms as they are commonly understood and consistent with the Utah Rules of Civil Procedure.

## **OBJECTIONS TO PLAINTIFFS' DEFINITIONS AND INSTRUCTIONS**

1. Rep. Eliason objects to Plaintiffs' instructions and definitions, including definitions of "communications," "concern," "concerning," "regarding," "document," and "electronically stored information" or "ESI," as overbroad to the extent that they enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit.

2. Rep. Eliason objects to the definitions of "legislator" and "Member of Congress" as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit. Plaintiffs' overly broad definitions of a "legislator" and "Member of Congress" would include materials from individuals well beyond those legislators. The definitions also erroneously impute to a legislator anything shared or communicated by "advisors" or others who are not the legislator. The definitions are also overbroad and vague because it is not easily discernible which past or present individuals "puport[ed] to act" on an individual legislator's behalf. Moreover, Rep. Eliason objects to the extent that this definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity under the Utah or U.S. Constitutions. Rep. Eliason also objects to the extent that this definition requires the disclosure of materials subject to the attorney-client privilege. Rep. Eliason intends to interpret Plaintiffs' request to use the term "legislator" and "Member of Congress" to mean the past or present members of the Utah Legislature or U.S. House of Representatives, respectively, during the relevant time period of January 1, 2021, to November 12, 2021.

3. Rep. Eliason objects to the definition of "you" and "your" as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit, including by requiring a search for and/or production of documents that are not within his possession, custody, or control. Rep. Eliason objects to the extent that the definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity.

4. Rep. Eliason objects to Plaintiffs' instruction that requests should be construed to concern the period of time from January 1, 2020, to the present, unless otherwise specified. That date range is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. See Utah R. Civ. P. 26(d)(3). The official P.L. 94-171 census data was not released until August 12, 2021. The relevant legislative session commenced in November 2021. And the Governor signed the challenged legislation on November 12, 2022. Accordingly, Rep. Eliason intends to interpret Plaintiffs' requests to seek documents from January 1, 2021, to November 12, 2022.

## **RESPONSES AND OBJECTIONS TO PLAINTIFFS' REQUESTS FOR PRODUCTION OF DOCUMENTS**

### **REQUEST FOR PRODUCTION NO. 1:**

Produce any and all drafts of the enacted 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted, including but not limited to shapefiles, geojson files, and/or block assignment files.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Eliason incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all drafts" or "other potential congressional plan or configuration of congressional districts that was not adopted." Such an overly broad request creates an undue burden. The request for "any other potential congressional plan or configuration" is also vague, overbroad, unduly burdensome, and disproportionate.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents

responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021, as well as draft minutes and agenda for those hearings, can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Eliason objects to this request insofar as it seeks documents subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public, draft redistricting plans are draft legislation and are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Rep. Eliason cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Eliason objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, or other applicable privileges. To the extent there are drafts created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 2:**

Produce any and all analyses, data, and/or code related to the enacted 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Eliason incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “analyses, data, and/or code related to” the 2021 Congressional Plan and other “potential” plans and configurations that were “not adopted.” Such an overly broad request creates an undue burden. Rep. Eliason also objects to the term “code” as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Eliason objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. To the extent Plaintiffs seek any non-public analyses, data, or code related to the enacted plan or drafts, such information, to the extent it exists, would be subject to legislative privilege and is thus not discoverable. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process. It ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Rep. Eliason cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Eliason objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are analyses, data, or code created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

### **REQUEST FOR PRODUCTION NO. 3:**

Produce any and all notes or communications concerning meetings of the Legislative Redistricting Committee, other Legislative Committee, and Legislature that relate to the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Eliason incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly

burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “notes or communications concerning meetings of the Legislative Redistricting, other Legislative Committee, and Legislature” relating to the 2021 Congressional Plan. Such an overly broad request creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Eliason objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. His notes and communications with others, if they exist, would be subject to legislative privilege and are thus not discoverable. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder



communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Eliason objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 4:**

Produce any and all minutes, agendas, notes, and communications from any Republican Caucus meeting or other non-public meeting of Republican legislators concerning the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Eliason incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "minutes, agendas, notes, and communications" from any "non-public meeting of Republican legislators." Such an overly broad request creates an undue burden.

Rep. Eliason objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. On its face,

this request seeks the production of non-public documents involving communications and deliberations among legislators regarding the 2021 Congressional Plan drafts regardless of whether they were adopted. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Eliason objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 5:**

Produce any and all documents and communications exchanged with any past or current Member of Congress and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Eliason incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are

already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Eliason objects insofar as this request seeks documents and communications further subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including Members of Congress, to discuss draft legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Eliason objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with

applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 6:**

Produce any and all documents and communications to, from, or shared with any past or current Legislator and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Eliason incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "documents and communications with any past or current Legislator" and their agents. This request is facially overbroad and vague and creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Eliason also objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341

U.S. at 372. Documents and communications among legislators “related to the planning, negotiation, drafting, consideration, or enactment” of legislation are paradigmatic examples of documents subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Eliason objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 7:**

Produce any and all documents and communications to, from, or shared with Governor Cox and his agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at

<https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Eliason further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—especially executive branch officials who exercise certain legislative functions under the Utah Constitution—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.,* Utah Const. art. VII, §7 (requiring presentment to the Governor for signature before any bill becomes a law); *Hubbard*, 803 F.3d at 1308 (“[T]he privilege protects the legislative process itself, and therefore covers both governors’ and legislators’ actions in the proposal, formulation, and passage of legislation.”). Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Eliason objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.,* ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 8:**

Produce any and all documents and communications exchanged with Lieutenant Governor Henderson and her agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Eliason further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—including certain executive branch officials—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g., Almonte v. City of Long Beach*, 478 F.3d 100, 107 (2d Cir. 2007) (observing that discussions of issues with “executive officers” “assist[s] legislators in the discharge of their legislative duty”); *see also* Utah Code §67-1a-2(2)(a) (designating the Lieutenant Governor as “the chief election officer”); Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and impairs legislators’ ability to freely and candidly consider

legislation and to assess alternatives, and thus ultimately impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Eliason objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 9:**

Produce any and all communications with the Utah Independent Redistricting Commission, including but not limited to commissioners and staff, concerning redistricting, the UIRC’s processes or operation, or the 2022 congressional election.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Eliason incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and



<https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Eliason objects to this request insofar as it seeks documents and communications subject to legislative privilege. Meeting and communicating with persons outside the Legislature to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.*, Utah Code §20A-20-303(1) (requiring the Commission to submit proposed maps to the Legislature). Any non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

**REQUEST FOR PRODUCTION NO. 10:**

Produce any and all documents and communications concerning the partisan performance of districts in the 2021 Congressional Plan or any drafts thereof, including voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population, or any other data considered, viewed, or used to assess the partisan performance.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Eliason incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calling for the production of "any and all" "documents and communications" involving "any

other data considered” is overbroad and vague and creates an undue burden. Terms such as “partisan voting patterns,” “assessments of candidate performance,” “partisan indexes,” and “partisan performance” are also objectionable as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. For example, the request seeks “election results” that are publicly available on government websites including those of county clerks. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Eliason objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. The request for data and other information that individual legislators “considered, viewed, or used to assess the partisan performance of draft or final Utah congressional districts or district maps” is a request for legislators’ thought processes and mental impressions that are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Eliason objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other

applicable privileges. To the extent there are legal analyses involving “partisan voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population” for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation, they are privileged and/or attorney work-product and are not discoverable.

**REQUEST FOR PRODUCTION NO. 11:**

Produce any and all documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives that the Legislature considered, or decided not to consider, in developing the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Eliason incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites. Redistricting criteria adopted by the Legislative Redistricting Committee are contained in the Committee’s publicly available meeting minutes: <https://le.utah.gov/interim/2021/pdf/00002847.pdf>. Related information is also publicly available on the following legislative websites: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; <https://le.utah.gov/interim/2021/pdf/00002847.pdf>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Eliason objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Confidential “documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives” that individual legislators and staff members may have “considered” or “not considered” are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Eliason objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. Legal analyses involving redistricting criteria for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation would be privileged and/or subject to the attorney work-product protections and are not discoverable.

**REQUEST FOR PRODUCTION NO. 12:**

Produce any all documents related to the designation of areas of the state of Utah as urban or rural in the drafting, consideration, or enactment of the 2021 Congressional Plan and any draft congressional plans or districts.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Eliason incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including:

<https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>;  
[https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Eliason objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public documents relating to “drafting” or “consideration” of proposed legislation are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Eliason objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. For example, legal analyses involving designations of communities of interest for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation would be attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 13:**

Produce any and all documents and communications concerning redistricting with any consultants, experts, or any persons or entities associated with the Republican National Committee, including but not limited to Adam Foltz, Adam Kincaid, and any representatives of the National Republican Redistricting Trust.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Eliason incorporates the objections specified above, including those to Plaintiffs' instructions and definitions.

This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "documents and communications" with "any persons or entities associated with the Republican National Committee." Presumably this would include every voter who is registered to vote as a Republican not only in Utah but across the country.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Eliason objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including interest groups, constituents, and other stakeholders, to discuss issues that bear on legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege.

Revealing such confidential information and communications ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

DATED this 4th day of January, 2023.

Respectfully submitted,

/s/ Tyler R. Green  
Tyler R. Green  
*Counsel for State Representative Steven Eliason*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of January, 2023, I served the foregoing via email  
on the following:

David C. Reymann (Utah Bar No. 8495)  
Kade N. Olsen (Utah Bar No. 17775)  
Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
(801) 532-7840  
dreymann@parrbrown.com  
kolsen@parrbrown.com

Mark Gaber  
Hayden Johnson  
Aseem Mulji  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, D.C. 20005  
(202) 736-2200  
mgaber@campaignlegalcenter.org  
hjohnson@campaignlegalcenter.org  
amulji@campaignlegalcenter.org

Annabelle Harless  
Campaign Legal Center  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
aharless@campaignlegalcenter.org

*Counsel for Plaintiffs*

Troy L. Booher (Utah Bar No. 9419)  
J. Frederic Voros, Jr. (Utah Bar No. 3340)  
Caroline Olsen (Utah Bar No. 18070)  
Zimmerman Booher  
341 South Main Street  
Salt Lake City, Utah 84111  
(801) 924-0200  
tbooher@zbappeals.com  
fvoros@zjbappeals.com  
colsen@zbappeals.com

*Counsel for Plaintiffs*

David N. Wolf  
Lance Sorenson  
Office of the Attorney General  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
lancesorenson@agutah.gov

*Counsel for Defendant,  
Lieutenant Governor Henderson*

/s/ Tyler R. Green  
Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
tyler@consovoymccarthy.com



## **EXHIBIT 13**

Victoria Ashby (12248)  
Robert H. Rees (4125)  
Eric N. Weeks (7340)  
OFFICE OF LEGISLATIVE RESEARCH AND  
GENERAL COUNSEL  
Utah State Capitol Complex,  
House Building, Suite W210  
Salt Lake City, UT 84114-5210  
Telephone: 801-538-1032  
vashby@le.utah.gov  
rrees@le.utah.gov  
eweeks@le.utah.gov

Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
(703) 243-9423  
tyler@consovoymccarthy.com

Taylor A.R. Meehan\*  
Frank H. Chang\*  
James P. McGlone\*  
CONSOVOY MCCARTHY PLLC  
1600 Wilson Blvd. Suite 700  
Arlington, VA 22209  
(703) 243-9423  
taylor@consovoymccarthy.com  
frank@consovoymccarthy.com  
jim@consovoymccarthy.com

*Counsel for State Representative Susan Pulsipher*

*\*Admitted pro hac vice*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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LEAGUE OF WOMEN VOTERS OF UTAH,  
MORMON WOMEN FOR ETHICAL GOV-  
ERNMENT, STEFANIE CONDIE, MALCOLM  
REID, VICTORIA REID, WENDY MARTIN,  
ELEANOR SUNDWALL, JACK MARKMAN,  
and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLA-  
TIVE REDISTRICTING COMMITTEE; SENA-  
TOR SCOTT SANDALL, in his official capacity;  
REPRESENTATIVE BRAD WILSON,  
in his official capacity; SENATOR J. STUART AD-  
AMS, in his official capacity; and LIEUTENANT  
GOVERNOR DEIDRE HENDERSON, in her offi-  
cial capacity,

Defendants.

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**STATE REPRESENTATIVE SUSAN  
PULSIPHER'S RESPONSES AND OB-  
JECTIONS TO PLAINTIFFS' SUB-  
POENA FOR PRODUCTION OF  
DOCUMENTS**

Case No. 220901712

Honorable Dianna Gibson

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Pursuant to Utah Rules of Civil Procedure 26 and 45, State Representative Susan Pulsipher serves these responses and objections to Plaintiffs' subpoena for documents.

Legislators are immune from civil process for their legislative acts. That immunity bars Plaintiffs' subpoena. Under the Utah Constitution, "Members of the Legislature" "shall not be questioned in any other place" "for words used in any speech or debate in either house." Utah Const. art. VI, §8; *see also Tenney v. Brandhove*, 341 U.S. 367, 375 n.5 (1951) (citing Utah Const. art. VI, §8). Legislative immunity and privilege protect legislators and staff members "not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (quoting *Tenney*, 341 U.S. at 376). Legislative immunity and privilege "protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts." *In re Hubbard*, 803 F.3d 1298, 1310 (11th Cir. 2015) (emphasis removed) (quoting *United States v. Brewster*, 408 U.S. 501, 525 (1972)). These protections exist to "insur[e] the independence of individual legislators." *Brewster*, 408 U.S. at 507; *see also, e.g., Biblia Abierta v. Banks*, 129 F.3d 899, 905 (7th Cir. 1997) ("An inquiry into a legislator's motives for his actions, regardless of whether those reasons are proper or improper, is not an appropriate consideration for the court."). Such protections extend to both current and former legislators. *See, e.g., League of Women Voters of Pennsylvania v. Commonwealth*, 177 A.3d 1000, 1005 (Pa. Commw. Ct. 2017); *Saleem v. Snow*, 460 S.E.2d 104, 107 (Ga. Ct. App. 1995). Subjecting legislative documents to discovery transgresses legislative immunity, enshrined in Utah Constitution's Speech or Debate Clause. *See, e.g., Edwards v. Vesilind*, 790 S.E.2d 469 (Va. 2016); *In re Perry*, 60 S.W.3d 857 (Tex. 2001). Relevant here, preparations for the 2023 legislative session are underway, and the time required to address Plaintiffs' burdensome and overbroad discovery requests substantially impairs the legislators' performance of their present and forthcoming legislative duties.

The remaining objections are made in the alternative, without waiver of legislative immunity or privilege. Rep. Pulsipher reserves the right to supplement these responses and objections to the extent further required.

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Rep. Pulsipher asserts and repeats each of the following objections as to each request below. In the interest of brevity, these objections are listed here to avoid unnecessary repetition. Counsel for Rep. Pulsipher is willing to meet and confer regarding this objection and all other objections contained in these responses.

1. Rep. Pulsipher objects to these requests to the extent they seek information that would be protected by legislative immunity or legislative privilege. Explained above, the subpoena transgresses legislators' immunity. Utah Const. art. VI, §8. Additionally, insofar as the subpoena seeks legislatively privileged documents regarding legislative acts, including the passage of the 2021 Congressional Redistricting Plan, such documents are not discoverable. *See, e.g., In re Hubbard*, 803 F.3d at 1308-10. It is also unduly burdensome, unreasonable, and disproportionate to the needs of the case when individual legislators' documents—to the extent they are not duplicative of the legislative record—will be largely if not entirely privileged.

2. Rep. Pulsipher objects to these requests to the extent that they seek irrelevant information. Rule 26 allows discovery only of information “which is relevant to the claim or defense of any party.” Utah R. Civ. P. 26(b)(1). “The party seeking discovery always has the burden of showing ... relevance.” Utah R. Civ. P. 26(b)(4).

3. Rep. Pulsipher also objects to these requests to the extent they are not proportional. As with relevance, the party seeking discovery “always” has the burden “of showing proportionality.” Utah R. Civ. P. 26(b)(4). The Utah Supreme Court significantly amended the Utah Rules of Civil Procedure in 2011 “in large part to ... promote proportionality in costs and procedures in civil

litigation.” *Pilot v. Hill*, 2019 UT 10, ¶1, 437 P.3d 362. Discovery requests are proportional if: (A) discovery is “reasonable, considering the needs of the case”; (B) “the likely benefits of the proposed discovery outweigh the burden or expense”; (C) the discovery is consistent with the “overall case management” and will further the “just, speedy, and inexpensive” determination of the case; (D) the discovery is “not unreasonably cumulative or duplicative”; (E) “the information cannot be obtained from another source that is more convenient, less burdensome, or less expensive”; and (F) “the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise.” Utah R. Civ. P. 26(b)(3).

4. Rep. Pulsipher also objects to the extent that these requests implicate additional privileges, including but not limited to, the attorney-client privilege, common-interest privilege, the attorney work-product protections, and the deliberative process privilege.

5. There is currently no protective order in place between Plaintiffs and Defendants or any non-parties. *See* Utah R. Civ. P. 37(a)(1)(D) (allowing the district court to issue protective orders). To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure of certain sensitive information, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

6. These responses and objections are made without waiving any further objections to, or admitting the relevance or materiality of, any of the information or document requests. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with Plaintiffs’ characterization of any facts, circumstances, or legal obligations.

7. Rep. Pulsipher will provide responses based on terms as they are commonly understood and consistent with the Utah Rules of Civil Procedure.

## **OBJECTIONS TO PLAINTIFFS' DEFINITIONS AND INSTRUCTIONS**

1. Rep. Pulsipher objects to Plaintiffs' instructions and definitions, including definitions of "communications," "concern," "concerning," "regarding," "document," and "electronically stored information" or "ESI," as overbroad to the extent that they enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit.

2. Rep. Pulsipher objects to the definitions of "legislator" and "Member of Congress" as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit. Plaintiffs' overly broad definitions of a "legislator" and "Member of Congress" would include materials from individuals well beyond those legislators. The definitions also erroneously impute to a legislator anything shared or communicated by "advisors" or others who are not the legislator. The definitions are also overbroad and vague because it is not easily discernible which past or present individuals "puport[ed] to act" on an individual legislator's behalf. Moreover, Rep. Pulsipher objects to the extent that this definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity under the Utah or U.S. Constitutions. Rep. Pulsipher also objects to the extent that this definition requires the disclosure of materials subject to the attorney-client privilege. Rep. Pulsipher intends to interpret Plaintiffs' request to use the term "legislator" and "Member of Congress" to mean the past or present members of the Utah Legislature or U.S. House of Representatives, respectively, during the relevant time period of January 1, 2021, to November 12, 2021.

3. Rep. Pulsipher objects to the definition of "you" and "your" as overbroad and likely to enlarge the scope of discovery beyond what Utah Rules of Civil Procedure permit, including by requiring a search for and/or production of documents that are not within her possession, custody, or control. Rep. Pulsipher objects to the extent that the definition would require the disclosure of documents otherwise not subject to discovery in light of legislative privilege or legislative immunity.

4. Rep. Pulsipher objects to Plaintiffs' instruction that requests should be construed to concern the period of time from January 1, 2020, to the present, unless otherwise specified. That date range is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. See Utah R. Civ. P. 26(d)(3). The official P.L. 94-171 census data was not released until August 12, 2021. The relevant legislative session commenced in November 2021. And the Governor signed the challenged legislation on November 12, 2022. Accordingly, Rep. Pulsipher intends to interpret Plaintiffs' requests to seek documents from January 1, 2021, to November 12, 2022.

### **RESPONSES AND OBJECTIONS TO PLAINTIFFS' REQUESTS FOR PRODUCTION OF DOCUMENTS**

#### **REQUEST FOR PRODUCTION NO. 1:**

Produce any and all drafts of the enacted 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted, including but not limited to shapefiles, geojson files, and/or block assignment files.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Pulsipher incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. See Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all drafts" or "other potential congressional plan or configuration of congressional districts that was not adopted." Such an overly broad request creates an undue burden. The request for "any other potential congressional plan or configuration" is also vague, overbroad, unduly burdensome, and disproportionate.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents

responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021, as well as draft minutes and agenda for those hearings, can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Pulsipher objects to this request insofar as it seeks documents subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public, draft redistricting plans are draft legislation and are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Rep. Pulsipher cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Pulsipher objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, or other applicable privileges. To the extent there are drafts created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.



**REQUEST FOR PRODUCTION NO. 2:**

Produce any and all analyses, data, and/or code related to the enacted 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Pulsipher incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “analyses, data, and/or code related to” the 2021 Congressional Plan and other “potential” plans and configurations that were “not adopted.” Such an overly broad request creates an undue burden. Rep. Pulsipher also objects to the term “code” as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Pulsipher objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. To the extent Plaintiffs seek any non-public analyses, data, or code related to the enacted plan or drafts, such information, to the extent it exists, would be subject to legislative privilege and is thus not discoverable. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process. It ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, Rep. Pulsipher cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Pulsipher objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are analyses, data, or code created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 3:**

Produce any and all notes or communications concerning meetings of the Legislative Redistricting Committee, other Legislative Committee, and Legislature that relate to the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Pulsipher incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is

unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of “any and all” “notes or communications concerning meetings of the Legislative Redistricting, other Legislative Committee, and Legislature” relating to the 2021 Congressional Plan. Such an overly broad request creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Pulsipher objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Her notes and communications with others, if they exist, would be subject to legislative privilege and are thus not discoverable. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder

communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Pulsipher objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 4:**

Produce any and all minutes, agendas, notes, and communications from any Republican Caucus meeting or other non-public meeting of Republican legislators concerning the 2021 Congressional Plan, drafts of the 2021 Congressional Plan, or any other potential congressional plan or configuration of congressional districts that was not adopted.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Pulsipher incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; is inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "minutes, agendas, notes, and communications" from any "non-public meeting of Republican legislators." Such an overly broad request creates an undue burden.

Rep. Pulsipher objects to this request insofar as it seeks documents subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. On its face,

this request seeks the production of non-public documents involving communications and deliberations among legislators regarding the 2021 Congressional Plan drafts regardless of whether they were adopted. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder communicating and deliberating with other legislators about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Pulsipher objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, the attorney work-product protections, and other applicable privileges. To the extent there are notes and documents created by or at the direction of counsel for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation), those are attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 5:**

Produce any and all documents and communications exchanged with any past or current Member of Congress and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Pulsipher incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are

already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Specifically, audio and/or video recordings of the Legislative Redistricting Committee’s hearings held between May 18, 2021, and November 10, 2021—as well as draft minutes and agenda for those hearings—can be found at <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Pulsipher objects insofar as this request seeks documents and communications further subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including Members of Congress, to discuss draft legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Pulsipher objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with

applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 6:**

Produce any and all documents and communications to, from, or shared with any past or current Legislator and their agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Pulsipher incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "documents and communications with any past or current Legislator" and their agents. This request is facially overbroad and vague and creates an undue burden.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Pulsipher also objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341

U.S. at 372. Documents and communications among legislators “related to the planning, negotiation, drafting, consideration, or enactment” of legislation are paradigmatic examples of documents subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Pulsipher objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 7:**

Produce any and all documents and communications to, from, or shared with Governor Cox and his agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at



<https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Pulsipher further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—especially executive branch officials who exercise certain legislative functions under the Utah Constitution—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.,* Utah Const. art. VII, §7 (requiring presentment to the Governor for signature before any bill becomes a law); *Hubbard*, 803 F.3d at 1308 (“[T]he privilege protects the legislative process itself, and therefore covers both governors’ and legislators’ actions in the proposal, formulation, and passage of legislation.”). Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Pulsipher objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.,* ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 8:**

Produce any and all documents and communications exchanged with Lieutenant Governor Henderson and her agents, staff, or attorneys, related to the planning, negotiation, drafting, consideration, or enactment of the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Pulsipher further objects to this request insofar as it seeks documents and communications subject to the legislative privilege. *See* Utah Const. art. VI, §8; *see, e.g., Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting and communicating with persons outside the Legislature—including certain executive branch officials—to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g., Almonte v. City of Long Beach*, 478 F.3d 100, 107 (2d Cir. 2007) (observing that discussions of issues with “executive officers” “assist[s] legislators in the discharge of their legislative duty”); *see also* Utah Code §67-1a-2(2)(a) (designating the Lieutenant Governor as “the chief election officer”); Any such non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and impairs legislators’ ability to freely and candidly consider

legislation and to assess alternatives, and thus ultimately impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters.

Likewise, Rep. Pulsipher objects to this request for documents and communications with “attorneys” as seeking documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other applicable privileges, to the extent such documents and communications were for purposes of performing legal analyses (*e.g.*, ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation). Such privileged documents and communications are not discoverable.

**REQUEST FOR PRODUCTION NO. 9:**

Produce any and all communications with the Utah Independent Redistricting Commission, including but not limited to commissioners and staff, concerning redistricting, the UIRC’s processes or operation, or the 2022 congressional election.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Pulsipher incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and

<https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>. Other responsive materials are presumably publicly available on executive branch websites.

Rep. Pulsipher objects to this request insofar as it seeks documents and communications subject to legislative privilege. Meeting and communicating with persons outside the Legislature to discuss issues that bear on legislation is inherent in the legislative process. *See, e.g.*, Utah Code §20A-20-303(1) (requiring the Commission to submit proposed maps to the Legislature). Any non-public documents and communications are subject to the legislative privilege. Revealing such confidential information and communications reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. Among other concerns, the disclosure of such information could substantially hinder freely communicating and deliberating about ongoing or future legislative matters. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

**REQUEST FOR PRODUCTION NO. 10:**

Produce any and all documents and communications concerning the partisan performance of districts in the 2021 Congressional Plan or any drafts thereof, including voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population, or any other data considered, viewed, or used to assess the partisan performance.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Pulsipher incorporates the objections specified above, including those to Plaintiffs' instructions and definitions. This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calling for the production of "any and all" "documents and communications" involving "any

other data considered” is overbroad and vague and creates an undue burden. Terms such as “partisan voting patterns,” “assessments of candidate performance,” “partisan indexes,” and “partisan performance” are also objectionable as vague.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. For example, the request seeks “election results” that are publicly available on government websites including those of county clerks. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Pulsipher objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. The request for data and other information that individual legislators “considered, viewed, or used to assess the partisan performance of draft or final Utah congressional districts or district maps” is a request for legislators’ thought processes and mental impressions that are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Pulsipher objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, attorney work-product protections, and other

applicable privileges. To the extent there are legal analyses involving “partisan voting patterns, election results, partisan indexes, assessments of candidate performance, uniform swing analyses, voting age population, citizen voting age population” for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation, they are privileged and/or attorney work-product and are not discoverable.

**REQUEST FOR PRODUCTION NO. 11:**

Produce any and all documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives that the Legislature considered, or decided not to consider, in developing the 2021 Congressional Plan.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Pulsipher incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites. Redistricting criteria adopted by the Legislative Redistricting Committee are contained in the Committee’s publicly available meeting minutes: <https://le.utah.gov/interim/2021/pdf/00002847.pdf>. Related information is also publicly available on the following legislative websites: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; <https://le.utah.gov/interim/2021/pdf/00002847.pdf>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Pulsipher objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Confidential “documents and communication, including memoranda, reports, communications, data, or analyses, concerning any redistricting criteria or objectives” that individual legislators and staff members may have “considered” or “not considered” are subject to the legislative privilege. Revealing such confidential information and communications ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Pulsipher objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. Legal analyses involving redistricting criteria for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise relating to this ongoing litigation would be privileged and/or subject to the attorney work-product protections and are not discoverable.

**REQUEST FOR PRODUCTION NO. 12:**

Produce any all documents related to the designation of areas of the state of Utah as urban or rural in the drafting, consideration, or enactment of the 2021 Congressional Plan and any draft congressional plans or districts.

**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs’ subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Pulsipher incorporates the objections specified above, including those to Plaintiffs’ instructions and definitions. The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including:

<https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>;  
[https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Pulsipher objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Non-public documents relating to “drafting” or “consideration” of proposed legislation are subject to the legislative privilege. Revealing such non-public draft legislation that legislators may or may not have considered reveals privileged mental processes and impressions during the legislative process and ultimately impairs legislators’ ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

Likewise, Rep. Pulsipher objects to this request to the extent it seeks documents covered by the attorney-client privilege, common-interest privilege, work-product protections, and other applicable privileges. For example, legal analyses involving designations of communities of interest for purposes of ensuring compliance with applicable federal and state legal requirements of redistricting or otherwise related to this ongoing litigation would be attorney-client privileged and/or subject to the attorney work-product doctrine and are not discoverable.

**REQUEST FOR PRODUCTION NO. 13:**

Produce any and all documents and communications concerning redistricting with any consultants, experts, or any persons or entities associated with the Republican National Committee, including but not limited to Adam Foltz, Adam Kincaid, and any representatives of the National Republican Redistricting Trust.



**RESPONSE:** Legislative immunity, as conferred by the Utah Constitution, forbids Plaintiffs' subpoena for documents related to legislative acts.

Alternatively, and without waiving legislative immunity, Rep. Pulsipher incorporates the objections specified above, including those to Plaintiffs' instructions and definitions.

This request is unduly burdensome; unreasonable considering the needs of the case; inconsistent with just, speedy, and inexpensive litigation; and otherwise not proportional. *See* Utah R. Civ. P. 26(d)(3). In particular, this request calls for the production of "any and all" "documents and communications" with "any persons or entities associated with the Republican National Committee." Presumably this would include every voter who is registered to vote as a Republican not only in Utah but across the country.

The request is also objectionable because it asks a third-party subpoena recipient to gather publicly available documents that are equally accessible to Plaintiffs. Non-privileged documents responsive to this request are already publicly accessible on various legislative websites, including: <https://le.utah.gov/~2021S2/bills/static/HB2004.html>; <https://redistricting.utah.gov/>; [https://citygate.utleg.gov/legdistricting/utah/comment\\_links](https://citygate.utleg.gov/legdistricting/utah/comment_links); and <https://le.utah.gov/committee/committee.jsp?com=SPELRD&year=2021>. Audio and video recordings of the House and Senate Debates for the Congressional Plan, as well as all Redistricting Committee Meetings, can be found at <https://le.utah.gov/~2021S2/bills/static/HB2004.html> and <https://le.utah.gov/committee/committee.jsp?year=2021&com=SPELRD>.

Rep. Pulsipher objects to this request insofar as it seeks documents and communications subject to legislative privilege. *See* Utah Const. art. VI, §8; *Dombrowski*, 387 U.S. at 85; *Tenney*, 341 U.S. at 372. Meeting with persons outside the Legislature, including interest groups, constituents, and other stakeholders, to discuss issues that bear on legislation is inherent in the legislative process. Such confidential documents and communications relating to such interactions are subject to the legislative

privilege. Revealing such confidential information and communications ultimately impairs legislators' ability to freely and candidly consider legislation and to assess alternatives, and thus impairs legislative decision-making. And to the extent that other legislators were involved in such non-public communications, a legislator cannot unilaterally waive the privilege that also belongs to other legislators.

DATED this 4th day of January, 2023.

Respectfully submitted,

/s/ Tyler R. Green  
Tyler R. Green  
*Counsel for State Representative Susan Pulsipher*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of January, 2023, I served the foregoing via email  
on the following:

David C. Reymann (Utah Bar No. 8495)  
Kade N. Olsen (Utah Bar No. 17775)  
Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
(801) 532-7840  
dreymann@parrbrown.com  
kolsen@parrbrown.com

Mark Gaber  
Hayden Johnson  
Aseem Mulji  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, D.C. 20005  
(202) 736-2200  
mgaber@campaignlegalcenter.org  
hjohnson@campaignlegalcenter.org  
amulji@campaignlegalcenter.org

Annabelle Harless  
Campaign Legal Center  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
aharless@campaignlegalcenter.org

*Counsel for Plaintiffs*

Troy L. Booher (Utah Bar No. 9419)  
J. Frederic Voros, Jr. (Utah Bar No. 3340)  
Caroline Olsen (Utah Bar No. 18070)  
Zimmerman Booher  
341 South Main Street  
Salt Lake City, Utah 84111  
(801) 924-0200  
tbooher@zbappeals.com  
fvoros@zjbappeals.com  
colsen@zbappeals.com

*Counsel for Plaintiffs*

David N. Wolf  
Lance Sorenson  
Office of the Attorney General  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
lancesorenson@agutah.gov

*Counsel for Defendant,  
Lieutenant Governor Henderson*

/s/ Tyler R. Green  
Tyler R. Green (10660)  
CONSOVOY MCCARTHY PLLC  
222 S. Main Street, 5th Floor  
Salt Lake City, UT 84101  
tyler@consovoymccarthy.com