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*\*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.*

**LEGISLATIVE DEFENDANTS AND  
NON-PARTY LEGISLATORS' OBJEC-  
TION TO PLAINTIFFS' SUPPLE-  
MENT TO STATEMENT OF DISCOV-  
ERY ISSUES RE: LEGISLATIVE PRIV-  
ILEGE**

Case No. 220901712

Honorable Dianna Gibson

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The Court should deny both Plaintiffs’ initial statement of discovery issues and what Plaintiffs have called their “supplement to statement of discovery issues.” Those statements seek an advisory opinion from this Court when the parties have not even met and conferred about, or briefed arguments specific to, particular discovery requests. *See* Utah R. Civ. P. 37(a)(2)(B).

To start, Plaintiffs’ request that this Court decide the legislative immunity and privilege issues raised in the discovery requests served on Legislative Defendants remains unripe and improper. In early December, Plaintiffs propounded interrogatories and requests for production on Legislative Defendants. On December 16, 2022—weeks before responses were due—Plaintiffs filed their initial statement of discovery issues, seeking an advisory opinion from this Court. On December 30, 2022, Legislative Defendants—through the Legislature—responded to Plaintiffs’ requests. Contrary to Plaintiffs’ assertion, counsel for the Legislature provided detailed responses, stated they were willing to meet and confer regarding objections, and simultaneously produced more than 600 pages of responsive documents.

In response, Plaintiffs said nothing. Plaintiffs never asked to confer with counsel for the Legislative Defendants. This fails to satisfy Rule 37(a)(2)’s requirement to confer in “good faith” to “resolve the dispute without court action.” Utah R. Civ. P. 37(a)(2)(B). Indeed, Plaintiffs’ “Supplement to Statement of Discovery Issues” is devoid of such certification. This failure alone warrants denying the statement. *See, e.g., Pitcher v. iSchool Campus, LLC*, 2015 WL 5177799, at \*2 (Utah Dist. Ct.—Summit Cnty. July 7, 2015) (awarding defendants fees because plaintiff “did not act in good faith in filing the SODI before conducting a proper meet and confer”); *Schoonover Plumbing & Heating v. Benedica LLC*, 2014 WL 11071540, at \*1 (Utah Dist. Ct.—Utah Cnty. May 20, 2014) (denying SODI as “premature” when the party filing SODI failed to meet and confer “to resolve the purported deficiencies”).

Separately, Plaintiffs’ statement of discovery issues is improper as to the *non-party* legislators who responded to Plaintiffs’ subpoenas in accordance with Rule 45. Plaintiffs served subpoenas duces

tecum on 11 Utah state legislators on December 14 and 16, 2022. These subpoenaed legislators are not named defendants in this case. And Plaintiffs' initial statement of discovery issues was not about those non-party subpoenas. Again, Plaintiffs have circumvented the normal course: meeting and conferring regarding the individual legislators' objections and then (if necessary) filing a motion specific to the actual discovery requests, not a motion for an advisory opinion. *See* Utah R. Civ. P. 45(e)(5) ("If objection is made, ... the party ... issuing the subpoena is not entitled to compliance but may request an order to compel compliance under Rule 37(a)."); *id.* 37(a)(2)(B) (good-faith conferral requirement); *In re Estate of Roberson*, 2017 WL 7791583, at \*1 (Utah Dist. Ct.–Salt Lake Cnty. July 27, 2017) (denying SODI involving a subpoena for failure to meet and confer).

Plaintiffs' request for an advisory opinion should be rejected, and Plaintiffs should be required to follow the usual course by meeting and conferring, with the prospect of crystallizing and possibly narrowing the scope of the parties' disagreements, and then filing a statement of discovery issues with sufficient briefing to address particular discovery requests if necessary.

Dated: January 6, 2023

Respectfully submitted,

/s/ Tyler R. Green  
Tyler R. Green  
*Counsel for Legislative Defendants and Non-Party Legislators*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true, correct and complete copy of the foregoing document was e-filed which notifies all registered counsel.

/s/ Tyler R. Green