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

LEAGUE OF WOMEN VOTERS OF UTAH,
MORMON WOMEN FOR ETHICAL GOVERNMENT, STEFANIE CONDIE, MALCOLM REID, VICTORIA REID, WENDY MARTIN, ELEANOR SUNDWALL, and JACK MARKMAN,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLATIVE REDISTRICTING COMMITTEE; SENATOR SCOTT SANDALL, in his official capacity; REPRESENTATIVE MIKE SCHULTZ, in his official capacity; SENATOR J. STUART ADAMS, in his official capacity; and LIEUTENANT GOVERNOR DEIDRE HENDERSON, in her official capacity,

Defendants.

LEGISLATIVE DEFENDANTS' COMBINED MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF LEGISLATIVE DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT ON COUNT V

Case No.: 220901712

Honorable Dianna Gibson

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INTRODUCTION

In 2018, Proposition 4 passed by the slimmest of margins. Proposition 4’s self-described intent was to stop partisan “gerrymandering,” to install an “independent redistricting commission,” to require the Legislature to “abide” by Proposition 4’s redistricting rules, and to otherwise control the legislative redistricting process including by requiring the Legislature to take votes on commission maps and issue detailed explanations about those votes.¹ More than 500,000 Utahns voted against Proposition 4. A mere 6,944 more Utahns voted in favor of it than against it.² In fact, voters in 25 of Utah’s 29 counties rejected Proposition 4. It passed only in Salt Lake, Summit, Grand, and Carbon Counties.³ Proposition 4’s opponents said it violated “the Utah Constitution by creating a redistricting commission and granting that commission ... a role in the redistricting process”—something that the “citizens of Utah” could do only “through a constitutional amendment not an initiative petition.”⁴

In 2020, the Legislature passed Senate Bill 200 after a 15-month negotiation between Better Boundaries (Proposition 4’s sponsors) and a bipartisan group of legislators. As Better Boundaries and legislators—Republicans and Democrats—explained, S.B. 200 furthered Proposition 4’s redistricting reforms, consistent with the Legislature’s redistricting authority under the Utah Constitution. S.B. 200 retained the advisory commission, ensured that the commission was adequately funded, prohibited the commission from taking into account partisan considerations, gave the commission adequate time to create and present its maps, and retained the public’s opportunity to comment. S.B. 200 converted mandatory provisions in Proposition 4 that applied to the Legislature to discretionary provisions. It was widely supported, included by the proponents of Proposition 4.⁵ No senator voted against S.B. 200.⁶ Only four house members—three from Salt Lake County districts—voted against it.⁷

Two years later, Plaintiffs sued. Among their claims was that S.B. 200’s changes to Proposition 4 were unconstitutional because S.B. 200 impaired the initiative right to alter or reform the

¹ **Exhibit A**, 2018 Voter Information Pamphlet, Utah Office of the Lieutenant Governor, at 76, 78, bit.ly/3YUvyMr.

² **Exhibit B**, 2018 Election Results at 54, bit.ly/3YU6WDn.

³ **Exhibit B**, 2018 Election Results at 54.

⁴ **Exhibit A**, Voter Information Pamphlet at 77.

⁵ *See, e.g., Exhibit C*, February 27, 2020 Press Conf. Tr.

⁶ S.B. 200 Redistricting Amendments, Utah Legislature, bit.ly/4hCmzGW.

⁷ S.B. 200 Redistricting Amendments, Utah Legislature, bit.ly/4hEBmAV.

government. Specifically, Plaintiffs challenge S.B. 200 to the extent that it amended or removed Proposition 4's: (1) substantive redistricting requirements on the Legislature⁸; (2) requirement for the Legislature to provide mandatory funding for the commission⁹; (3) special procedural rules for the Legislature to follow when redistricting, such as taking a mandatory vote on the commission's redistricting plans, creating a 10-day public-comment period, and regulating the frequency and timing of redistricting¹⁰; and (4) waiver of sovereign immunity and creation of a private cause of action against the State.¹¹ In doing so, Plaintiffs overlook Proposition 4's constitutional defects that caused concern for Republican and Democratic legislators equally and prompted the Legislature's 15-month remedial negotiations with Better Boundaries. Plaintiffs also incorrectly imply that the Legislature acted in a rushed fashion without due regard for the people's will in enacting Proposition 4's reforms. Plaintiffs also ignore the Legislature's careful steps to respect, honor, and effectuate the people's wishes. And they disregard the fact that S.B. 200 was a compromise bill that passed with the full support from Better Boundaries and legislative minority leaders.

Plaintiffs' claim fails. The Utah Supreme Court made it clear that initiatives cannot amend the Utah Constitution. *See League of Women Voters of Utah v. Utah State Legis.*, 2024 UT 21, ¶161, 554 P.3d 872 ("LWV"). Initiatives must be enacted "in harmony with" the Constitution and cannot violate any other provision of the Constitution. *Id.* Initiatives—"including those that reform the government"—"can accomplish only those reforms that can be achieved by statute." *Id.* ¶¶63 n.15, 161. Proposition 4, however, impermissibly limited the Legislature's constitutionally designated role in redistricting, imposed various mandatory substantive and procedural requirements, and transferred that role to the commission and the Chief Justice by statute in violation of the Utah Constitution and the federal Elections Clause. Because Proposition 4 exceeded the constitutional bounds, it was not a proper exercise of the initiative power to alter or reform the government. Plaintiffs' Count V fails for that reason alone. Plaintiffs' claim fails also because S.B. 200 furthered Proposition 4's reforms by curing

⁸ Utah Code §20A-19-103 (2018); *see also* Pls.-Mot. at 13.

⁹ Utah Code §20A-19-201 (2018); *see also* Pls.-Mot. at 14.

¹⁰ Utah Code §20A-19-102 (2018); Utah Code §20A-19-204 (2018); *see also* Pls.-Mot. at 13-14.

¹¹ Utah Code §20A-19-301 (2018); *see also* Pls.-Mot. at 14.

Proposition 4’s constitutional defects, retaining the advisory commission that would propose maps that were free of partisan considerations, ensuring the commission was adequately funded, and allowing plenty of time for the commission’s map presentation and the public’s comment.

Even if S.B. 200’s changes to Proposition 4 impaired initiative rights, they pass strict scrutiny. The State has compelling interests in ensuring that its laws are constitutional, that all Utahns are represented in the redistricting process, that redistricting plans are enacted in a timely fashion, and that the State’s fiscal health isn’t jeopardized by prolonged litigation cost and mountainous attorney’s fees. S.B. 200’s reforms were narrowly tailored to further these interests. And Plaintiffs’ requested remedy is premature at this juncture. The Court should grant the Legislature’s cross-motion for summary judgment and deny Plaintiffs’ motion.

LEGISLATIVE DEFENDANTS’ RESPONSE TO PLAINTIFFS’ STATEMENT OF FACTS

Plaintiffs’ statement of facts is incomplete. It omits or misdescribes aspects of Proposition 4, the Legislature’s changes to Proposition 4 (S.B. 200), and the 2021 redistricting legislation (H.B. 2004). Not one of these factual disputes is material to the discrete constitutional issue before the Court. *See Clegg v. Wasatch County*, 2010 UT 5, ¶15, 227 P.3d 1243 (explaining that a fact dispute is material if “reasonable jurors, properly instructed, ... might come to different conclusions”). Resolution of that issue turns on questions of law, requiring the interpretation of statutory text, the Utah Constitution, and the U.S. Constitution. The Court interprets those texts *de novo* without deference to Plaintiffs’ retelling of those legal provisions. *See Tindley v. Salt Lake Sch. Dist.*, 2005 UT 30, ¶11, 116 P.3d 295. Even so, Legislative Defendants’ “include a verbatim restatement” of Plaintiffs’ asserted facts that are “disputed with an explanation of the grounds for the dispute.” Utah R. Civ. P. 56(a)(2).

1. In the November 2018 election, Utahns adopted a citizen ballot initiative titled the Utah Independent Redistricting Commission and Standards Act—numbered Proposition 4 and popularly named Better Boundaries. [Utah Lieutenant Governor, Proposition Number 4, <https://vote.utah.gov/wp-content/uploads/sites/42/2023/09/Proposition-4.pdf>; Utah

<https://vote.utah.gov/wp-content/uploads/sites/42/2023/09/2018-General-Election-Canvass.pdf>.]

Response: Undisputed.

2. The sponsors of Proposition 4 invoked the People’s rights under Article 1, Section 2 of the Utah Constitution to “alter or reform their government,” explaining that the initiative would reform the redistricting process in Utah to “return[] power to the voters and put[] people first in our political system.” [*Proposition 4*, in UTAH VOTER INFORMATION PAMPHLET 74, 76 (Sept. 3, 2018), <https://vote.utah.gov/wp-content/uploads/sites/42/2023/09/2018-VIP.pdf> (“Voter Pamphlet”).]

Response: Disputed. The cited “Vote ‘Yes’ on Proposition 4” page in the 2018 Voter Information Pamphlet does not refer to or quote Article I, Section 2’s alter-or-reform clause. And whether Proposition 4’s sponsors properly exercised the initiative right to alter or reform the government through statutory enactment is not a question of fact, but a disputed question of law. *See infra* at 56-63.

3. Proposition 4 was codified at Utah Code §§ 20A-19-101 to 301 (2018)

Response: Undisputed.

4. The law prohibited partisan gerrymandering by expressly prohibiting the practice of “divid[ing] districts in a manner that purposefully or unduly favors any incumbent elected official, candidate or prospective candidate for elective office, or any political party.” [*Id.* § 20A-19-103(3) (2018).]

Response: Legislative Defendants dispute that the legal effect of Proposition 4 was to prohibit only “partisan gerrymandering.” Proposition 4’s prohibition on “unduly favor[ing]” incumbents, candidates, or political parties would have also policed the political side effects of an otherwise lawful redistricting plan, even if those political effects were unintended. Because voters of different parties are not uniformly distributed across the state, because partisan affiliation is not immutable, and because more than one-third of Utahns are not even registered with a major political party, whether a plan “unduly favors” one political party is subjective and based on guesswork. *See infra* at 36, 67. To

the extent this paragraph quotes Utah Code §20A-19-103(3) (2018), that statutory provision speaks for itself and does not require a response.

5. Proposition 4 likewise required district boundaries be configured according to neutral redistricting criteria, including “minimizing the division of municipalities and counties across multiple districts,” “creating districts that are geographically compact,” “contiguous,” and “allow for the ease of transportation throughout the district,” “preserving traditional neighborhoods and local communities of interest,” adhering to “natural and geographic features, boundaries, and barriers,” and “maximizing boundary agreement among different types of districts.” [*Id.* § 20A-19-103(2) (2018).]

Response: Legislative Defendants dispute the assertion that Proposition 4’s substantive criteria were “neutral” and any suggestion that “neutral” is a judicially manageable standard. *See infra* at 67, 78-79. For example, requiring a redistricting plan to prioritize keeping Salt Lake County municipalities whole over keeping rural counties whole will have a non-neutral effect. To the extent this paragraph quotes Utah Code §20A-19-103(2) (2018), that statutory provision speaks for itself and does not require a response.

6. Proposition 4 created the Utah Independent Redistricting Commission to “draw district boundaries through an open and independent process and then submit recommended redistricting plans to the Legislature.” [Utah Code § 20A-19-201(1) (2018); *Statement of Intent & Subject Matter*, UTAH INDEPENDENT REDISTRICTING COMMISSION AND STANDARDS 1 (2018), <https://vote.utah.gov/wp-content/uploads/sites/42/2023/09/Utah-Independent-Redistricting-Commission-And-Standards-Act-Combined-Files.pdf>.]

Response: Legislative Defendants dispute the statement in this paragraph to the extent it suggests that the commission’s plans were nonbinding “recommend[ations].” As explained below, under Proposition 4, the Legislature was required to take a mandatory up-or-down vote on those plans, was prohibited from amending or changing them, and was reduced to a mere ratifying role. *See infra* at 46.

7. Under Proposition 4, the Commission was required to hold open meetings throughout the state to garner public input. [Utah Code § 20A-19-202(5)(b), (7), (9) (2018).]

Response: To the extent that the statement in this paragraph construes the legal effect of Utah Code §20A-19-202(5)(b), (7), (9) (2018), those statutory provisions speak for themselves and do not require a response.

8. Once the Commission selected maps compliant with Proposition 4’s requirements, the Commission was to submit them to the Legislature for consideration. [*Id.* § 20A-19-204(1)(a) (2018).]

Response: Legislative Defendants dispute the statement in this paragraph to the extent it suggests that the commission’s plans were nonbinding recommendations for the Legislature to “consider[.]” As explained below, under Proposition 4, the Legislature was required to take a mandatory up-or-down vote on the commission’s (or the Chief Justice’s) adopted maps, was prohibited from amending or changing them, and was reduced to a mere ratifying role. *See infra* at 46, 53. To the extent this paragraph seeks to construe the legal effect of Utah Code §20A-19-204(1)(a) (2018), that statutory provision speaks for itself and does not require a response.

9. Upon receipt, Proposition 4 required the Legislature to vote on the Commission’s recommended maps and either enact them “without change or amendment” or reject them and propose its own maps. [*Id.* § 20A-19-204(2)(a) (2018).]

Response: Legislative Defendants dispute the statement in this paragraph to the extent it suggests that the commission’s plans were nonbinding recommendations for the Legislature that it was free to “reject.” As explained below, under Proposition 4, the Legislature was required to take a mandatory up-or-down vote on the commission’s (or the Chief Justice’s) adopted maps, was prohibited from amending or changing them, and was reduced to a mere ratifying role. *See infra* at 46, 53. To the extent this paragraph seeks to construe the legal effect of Utah Code §20A-19-204(2)(a)(2018), that statutory provision speaks for itself and does not require a response.

10. The initiative required the Legislature to comply with Proposition 4’s standards if it drew its own maps, including the prohibition on partisan gerrymandering and the neutral redistricting requirements. [*Id.* § 20A-19-103(2)-(6) (2018).]

Response: Disputed. As explained above and below, Proposition 4 in practice required the Legislature to draw maps in a particular way and prioritize redistricting criteria in a particular order of

priority. The effect of those Proposition 4 requirements was to favor the Democratic Party and its voters and candidates. *See infra* at 11, 35. Legislative Defendants further dispute the assertion that Proposition 4’s substantive criteria were “neutral” and any suggestion that “neutral” is a judicially manageable standard. *See infra* at 36, 67. To the extent this paragraph construes the legal effect of Utah Code §20A-19-103(2)-(6) (2018), those statutory provisions speak for themselves and do not require a response.

11. It also required the Legislature to explain to the public its “reasons for rejecting” the Commission’s maps and why the Legislature’s maps “better satisfie[d]” the “redistricting standards and requirements” of Proposition 4. [*Id.* § 20A-19-204(5)(a) (2018).]

Response: To the extent this paragraph construes the legal effect of Utah Code §20A-19-204(5)(a) (2018), that statutory provision speaks for itself and does not require a response.

12. It also required that the Legislature make its proposed maps available for public review for at least 10 calendar days before it could be enacted. [*Id.* § 20A-19-204(4) (2018).]

Response: To the extent this paragraph construes the legal effect of Utah Code §20A-19-204(4) (2018), that statutory provision speaks for itself and does not require a response.

13. Proposition 4 included an enforcement mechanism to allow Utah residents a private right of action to challenge redistricting maps as noncompliant with Proposition 4’s requirements. [*Id.* § 20A-19-301 (2018).]

Response: To the extent this paragraph construes the legal effect of Utah Code §20A-19-301 (2018), that statutory provision speaks for itself and does not require a response.

14. Before the 2020 Census data was released and the redistricting cycle began, the Legislature enacted S.B. 200, which repealed Proposition 4 and replaced it with a new law. [Redistricting Amendments, S.B. 200, 63d Leg., 2020 Gen. Sess. (Utah 2020), <https://le.utah.gov/~2020/bills/static/SB0200.html>; Utah Code §§ 20A-20-101 to 303.]

Response: Legislative Defendants dispute the characterization that S.B. 200 “repealed Proposition 4 and replaced it with a new law.” S.B. 200 left intact various provisions of Proposition 4,

including its core reforms. *See infra* at 56-63. To the extent this paragraph otherwise construes the legal effect of S.B. 200, that statute speaks for itself and does not require a response.

15. S.B. 200 (like Proposition 4) provided for the creation of an advisory redistricting Commission, but also altered the structure of the Commission and the map selection process. [*Id.* § 20A-20-201 (2020); § 20A-20-302 (1)-(3) (2020).]

Response: Legislative Defendants dispute this paragraph to the extent it characterizes the redistricting commission retained by S.B. 200 as a new redistricting commission. Otherwise, to the extent this paragraph construes the legal effect of Utah Code §20A-20-201 (2020), and §20A-20-302(1)-(3) (2020), those statutory provisions speak for themselves and do not require a response.

16. S.B. 200 also made the prohibition on partisan gerrymandering and the neutral redistricting standards inapplicable to the Legislature; eliminated the requirement that the Legislature vote on the Commission’s maps or explain its rejection of them to the public; and eliminated the private right of action, among other changes. [*Id.*]

Response: To the extent this paragraph construes the legal effect of Utah Code §20A-20-201 (2020), and §20A-20-302(1)-(3) (2020), those statutory provisions speak for themselves and do not require a response.

17. After the 2020 Census data was released, the Commission preformed its duties under S.B. 200 and submitted proposed maps to the Legislature, including three proposed congressional maps. [Utah Legislative Redistricting Committee, UIRC Final Recommendations (Purple, Orange, and Public), https://citygate.utleg.gov/legdistricting/utah/comment_links.]

Response: Legislative Defendants do not concede that “the Commission performed its duties under S.B. 200.” For example, it is not clear that the commission’s maps did not “unduly favor” a political party because it is not clear what that standard means Utah.

18. The Legislature never voted to adopt or reject the Commission’s recommended congressional redistricting maps. Instead, the Legislative Redistricting Committee publicly released its own congressional map around 10:00 PM on Friday, November 5, 2021—only two weekend days before

the scheduled public hearing the following Monday, November 8, 2021. [Utah Legislative Redistricting Committee, Congress, https://citygate.utleg.gov/legdistricting/utah/comment_links.]

Response: Legislative Defendants dispute the statement in this paragraph to the extent that it suggests that the Legislature was required to “vote[] to adopt or reject the Commission’s recommended congressional redistricting maps.” And because the commission is not a State Legislative body, and no member of the commission is a member of the Legislature, the commission has no authority to introduce its proposed maps as bills upon which the Legislature must vote. In any event, Plaintiffs’ assertion is inaccurate. The House voted on—and rejected—the Purple Map, which was considered as fourth substitute bill.¹²

19. The Legislature’s map split Salt Lake County into four pieces—across all four congressional districts—including splitting the city of Millcreek across all four districts. [Utah Legislative Redistricting Committee, Enrolled Congressional Map, <https://citygate.utleg.gov/legdistricting/comments/plan/184/12>.]

Response: Legislative Defendants dispute the statement in this paragraph to the extent that it suggests that the congressional map was improper. Utah has four congressional seats. Federal law requires Utah to draw four single-member districts. *See* 2 U.S.C. §2c. Under the U.S. Constitution, “States must draw congressional districts with equal population as close to perfect equality as possible.” *Evenwel v. Abbott*, 578 U.S. 54, 59 (2016); *accord Wesberry v. Sanders*, 376 U.S. 1, 18 (1964). According to the 2020 Census, Utah’s population is approximately 3.27 million.¹³ This means that each of the four congressional districts must have 817,904 people. Thus, the U.S. Constitution precludes the Legislature from placing all of Salt Lake County, which has a population exceeding 1.185 million, within one congressional district.¹⁴ Because Salt Lake County must be split, where and how to do so is necessarily a question of policy, and any redistricting will involve tradeoffs.

20. The following week, the Legislature voted to approve the map in the form of H.B. 2004, which amended Utah Code § 20A-13-101 through 104 to replace the 2011 congressional map

¹² House – 2021 Second Special Session – Day 1, 16:30-17:23, bit.ly/4f7MPYd.

¹³ Utah: 2020 Census, Census Bureau (Aug. 25, 2021), bit.ly/4hASJ5M.

¹⁴ Salt Lake County, Utah, Census Bureau, bit.ly/4hEPEBO.

with the new map. [Congressional Boundaries Designation, H.B. 2004, 64th Leg., 2d Special Sess. (Utah 2021), <https://le.utah.gov/~2021S2/2021S2.HTM/>].

Response: To the extent that this paragraph seeks to characterize public legislative acts and construe the legal effects of H.B. 2004, the public acts and H.B. 2004 speak for themselves and do not require a response.

21. Governor Spencer Cox signed the congressional map into law on November 12, 2021, seven days after it was released to the public. [*Id.*]

Response: Undisputed.

22. The Legislature did not, within seven days of enacting H.B. 2004, “issue to the public a detailed written report setting forth the reasons for rejecting the plan or plans submitted” by the Commission and “a detailed explanation of why the redistricting plan enacted by the Legislature better satisfies the redistricting standards and requirements contained in this chapter.” [Utah Code § 20A-19-204(5)(a) (2018).]

Response: Legislative Defendants dispute the statement in this paragraph to the extent that it suggests that the Legislature was required to “issue to the public a detailed written report.” To the extent that this paragraph construes the legal effect of Utah Code §20A-19-204(5)(a) (2018), that statutory provision speaks for itself and does not require a response.

LEGISLATIVE DEFENDANTS’ STATEMENT OF ADDITIONAL UNDISPUTED MATERIAL FACTS

Under Utah Rules of Civil Procedure 56(a)(1) and (a)(3), Legislative Defendants add the following undisputed material facts for necessary context and in support of their cross-motion for summary judgment.

I. Proposition 4 passes by a slim margin with the heavy support of out-of-state funding.

1. In 2018, a citizens’ initiative about Utah redistricting was on the ballot. Proposition 4’s self-described intent was to stop “gerrymandering,” install an “Independent Redistricting Commission,” and impose mandatory redistricting requirements on the Legislature. **Exhibit A**, 2018 Voter Information Pamphlet (“VIP”) at 76, Utah Office of the Lieutenant Governor.

2. The Voter Information Pamphlet explained that Proposition 4 would (1) “create[] a seven-member appointed commission to participate in the process of formulating redistricting plans,” (2) “impose[] requirements on the Legislature’s redistricting process,” and (3) “establish[] standards with which redistricting plans must comply.” **Exhibit A**, VIP at 74.

3. The Voter Information Pamphlet included arguments against Proposition 4, raising various concerns. *Id.* at 77-78. The argument against Proposition 4 explained that Utah’s “founders thought it was important to grant the legislature the *exclusive* authority over the redistricting process,” that “Proposition 4 blatantly violates the Utah Constitution by creating a redistricting commission and granting that commission and the Utah Supreme Court a role in the redistricting process,” and that these changes must be done “through a constitutional amendment not an initiative petition.” *Id.* at 77. The argument against Proposition 4 said that Proposition 4 “imposes vague and conflicting redistricting requirements” and would subject redistricting plans to “a perfect legal storm for lengthy lawsuits.” *Id.* The argument against Proposition 4 further explained that the vast majority of Proposition 4’s funding came “from out of state special interest groups” and that the practical effect of Proposition 4 would be to “creat[e] an overwhelmingly Democrat district” around Salt Lake City, “insulated from the rest of the state” and to “pack what is now a competitive congressional district with Democrat voters to create a single, safe, and solidly Democrat congressional district.” *Id.* at 77-78.

4. Out-of-state special-interest groups and labor unions provided \$1.5 million of over \$2 million raised by Proposition 4’s sponsors.¹⁵

¹⁵ Disclosure reports for Better Boundaries, registered as Utahns for Responsive Government, are publicly available at disclosures.utah.gov/Search/PublicSearch/FolderDetails/1414774.

5. Contributions from Washington, D.C.-based organizations including the National Education Association,¹⁶ California-based labor and other organizations,¹⁷ and other East Coast groups including the ACLU¹⁸ totaled more than \$421,000.

6. Proposition 4's biggest donor was Houston-based Action Now Initiative, funded by Texans John and Laura Arnold, which contributed more than \$1.1 million in actual and in-kind donations.¹⁹

7. Proposition 4 passed by a 0.6% margin. A majority of voters in 25 of Utah's 29 counties voted *against* it. The proposition carried only in Salt Lake, Summit, Grand, and Carbon counties.²⁰

8. Statewide, more than 505,000 Utahns voted against Proposition 4, or 49.7% of votes cast.²¹ A mere 6,944 more Utahns voted in favor of it than against it, or 50.3% of votes cast.²²

9. Proposition 4 created a seven-member redistricting commission. Utah Code §20A-19-201(1) (2018). Commission members would be appointed by (1) the Governor, (2) the Senate President, (3) the Speaker of the House, (4) the leader of the largest minority party in the Senate, (5) the leadership of the majority party in the House, (6) leadership of the largest majority party in the Senate with the leadership of the same party in the House, and (7) leadership of the largest minority party in the Senate with the leadership of the same party in the House. *Id.* §20A-19-201(3)(a)-(g) (2018); *see also* **Exhibit A**, VIP at 74 (explaining that the Governor appoints one commissioner and that "legislative

¹⁶ Contributions came from NEA, Independent Lines Advocacy, Ballot Initiative Strategy Center, and Election Reformers Network. *See* Utahns for Responsive Government Disclosure, "2018 Initiative Signature Submission"; Utahns for Responsive Government Disclosure, "2018 Convention Report Due 4/16/18"; Utahns for Responsive Government Disclosure, "2018 September 30th Report"; Utahns for Responsive Government Disclosure, "2018 General Report."

¹⁷ Contributions came from SEIU United Healthcare Workers, Southwest Regional Council of Carpenters, Operating Engineers Local Union No. 3, and Campaign for Democracy. *See* Utahns for Responsive Government Disclosure, "2018 Convention Report Due 4/16/18"; Utahns for Responsive Government Disclosure, "2018 General Report"; Utahns for Responsive Government Disclosure, "2018 Year End Report."

¹⁸ Contributions came from the ACLU and Represent.us. Utahns for Responsive Government Disclosure, "2018 Convention Report Due 4/16/18"; Utahns for Responsive Government Disclosure, "2018 Primary Report"; Utahns for Responsive Government Disclosure, "2018 September 30th Report"; Utahns for Responsive Government Disclosure, "2018 General Report"; Utahns for Responsive Government Disclosure, "2018 Year End Report."

¹⁹ Utahns for Responsive Government Disclosure, "2018 Convention Report Due 4/16/18"; Utahns for Responsive Government Disclosure, "2018 September 30th Report"; Utahns for Responsive Government Disclosure, "2018 General Report"; Utahns for Responsive Government Disclosure, "2018 Year End Report."

²⁰ **Exhibit B**, 2018 Election Results at 54.

²¹ *Id.*

²² *Id.*

majority party leaders” and “legislative minority party leaders” would each appoint three commissioners).

10. If those appointing authorities failed to appoint commissioners, then Proposition 4 empowered the Chief Justice of the Utah Supreme Court to make appointments. Utah Code §20A-19-201(10) (2018).

11. Proposition 4 stated that “[t]he Legislature shall appropriate adequate funds for the Commission to carry out its duties.” *Id.* §20A-19-201(12)(a) (2018).

12. Proposition 4 was estimated to “result in a total fiscal expense of approximately \$1 million.” **Exhibit A**, VIP at 83.

13. Proposition 4 required the commission to “adopt at least one and as many as three redistricting plans.” Utah Code §20A-19-203(1) (2018).

14. If the commission failed to adopt plans, Proposition 4 empowered the Chief Justice to select “at least one and as many as three redistricting plans that the chief justice determine[d] divide the state ... in a manner that satisfies the restricting standards” under Proposition 4. *Id.* §20A-19-203(2)(b) (2018).

15. Proposition 4 tasked the commission to “submit” its redistricting plans “to the president of the Senate, the speaker of the House, and the director of the Office of Legislative Research and General Counsel.” *Id.* §20A-19-204(1)(a) (2018).

16. Proposition 4 prohibited the Legislature from “enact[ing] any redistricting plan ... until adequate time has been afforded to the Commission and to the chief justice ... to satisfy their duties under [Proposition 4], including the consideration and assessment of redistricting plans, public hearings, and the selection of one or more recommended redistricting plans.” *Id.* §20A-19-204(3) (2018).

17. Once the commission submitted its redistricting plans, Proposition 4 provided that “[t]he Legislature shall either enact without change or amendment, ... or reject the Commission’s recommended redistricting plans.” *Id.* §20A-19-204(2) (2018).

18. The Legislature was also prohibited from “enact[ing] a redistricting plan ... unless the plan or modification [was] made available to the public by the Legislature ... for a period of no less

than 10 calendar days” and without “allow[ing] the public to submit comments on the plan.” *Id.* §20A-19-204(4) (2018).

19. Under Proposition 4, if the Legislature were to enact its own plan over the commission’s, it had to “issue ... a detailed written report setting forth the reasons for rejecting the [commission’s] plan[s]” and explaining why its plan “better satisfies the redistricting standards and requirements under [Proposition 4].” *Id.* §20A-19-204(5)(a) (2018).

20. Proposition 4’s principal feature was to impose binding redistricting rules on not only the commission but also on the Legislature. The impartial analysis in the Voter Information Pamphlet explained that one of Proposition 4’s “main” features was to “impose[] requirements on the Legislature’s redistricting process.” **Exhibit A**, VIP at 74. It further explained that Proposition 4 “requires ... Legislature-enacted redistricting plans” to follow Proposition 4’s substantive criteria and that it “authorizes any Utah resident to file a lawsuit ... to block implementation of a redistricting plan enacted by the Legislature that fails to conform to the standards and requirements established by Proposition 4.” *Id.* at 75.

21. The keystone of Proposition 4 was its prohibition on so-called partisan gerrymandering. Proposition 4 prohibited the Legislature and the commission from “divid[ing] districts in a manner that purposefully or unduly favors or disfavors any incumbent elected official, candidate or prospective candidate for elective office, or any political party.” Utah Code §20A-19-103(3) (2018). The Voter Information Pamphlet’s “argument in favor” explained that the prohibition on favoring or disfavoring any incumbent, candidate, and political party was Proposition 4’s “[m]ost important[]” feature. **Exhibit A**, VIP at 76.

22. Proposition 4 required the Legislature and the commission to follow these additional redistricting rules in the following “order of priority.” Utah Code §20A-19-103(2) (2018).

- a. Adhering to federal law. *Id.* §20A-19-103(2)(a) (2018).
- b. Minimizing the division of municipalities and counties, in that order. *Id.* §20A-19-103(2)(b) (2018).
- c. Creating geographically compact districts. *Id.* §20A-19-103(2)(c) (2018).

- d. Creating contiguous districts. *Id.* §20A-19-103(2)(d) (2018).
- e. Preserving traditional neighborhoods and communities of interest. *Id.* §20A-19-103(2)(e) (2018).
- f. Following natural and geographic features. *Id.* §20A-19-103(2)(f) (2018).
- g. Maximizing boundary agreement. *Id.* §20A-19-103(2)(g) (2018).

23. Proposition 4 also required the Legislature and the commission to use “judicial standards and the best available data and scientific and statistical methods ... to assess whether a proposed redistricting plan abides by and conforms to [Proposition 4’s] redistricting standards.” *Id.* §20A-19-103(4) (2018).

24. Proposition 4 prohibited the use of “[p]artisan political data and information, such as partisan election results, voting records, political party affiliation information, and residential addresses of incumbent elected officials and candidates or prospective candidates for elective office,” except to ensure compliance with Proposition 4’s redistricting standards. *Id.* §20A-19-103(5) (2018).

25. Under Proposition 4, the Legislature was permitted to redistrict only after receiving the Census data; after a change in the number of congressional, legislative, or other districts “resulting from an event other than” the Census; after a court issues a permanent injunction under Proposition 4; or to make minor technical adjustments. *Id.* §20A-19-102(1)-(5) (2018).

26. Proposition 4 created a private cause of action under which “[e]ach person who resides or is domiciled in [Utah]” could bring a suit alleging that the Legislature “fail[ed] to abide by or conform to the redistricting standards, procedures, and requirements set forth in [Proposition 4].” *Id.* §20A-19-301(1) (2018).

27. Proposition 4 created a fee-shifting provision that required the government to “promptly pay reasonable compensation” for fees incurred by a plaintiff’s attorneys, consultants, and experts, and other expenses incurred by any group engaged by the plaintiff, if the plaintiff “is successful in obtaining any relief.” *Id.* §20A-19-301(5) (2018).

28. Proposition 4 waived the State’s sovereign immunity. *Id.* §20A-19-301(7) (2018).

29. Proposition 4 included a severability provision. *Id.* §20A-19-104 (2018).

II. Better Boundaries and a bipartisan group of legislators announce a compromise bill that would retain and strengthen Proposition 4’s core reforms.

30. On February 27, 2020, a bipartisan group of House and Senate legislators joined with Proposition 4’s sponsor, Better Boundaries, in a press conference to announce legislation with further redistricting changes—S.B. 200. *Redistricting Press Conference*, Utah Senate (Feb. 27, 2020), bit.ly/3O0gqXu (**Exhibit C**, February 27, 2020 Press Conf. Tr.).

31. This was not the first time the Legislature had reached a broad consensus to amend an initiative. In 2018, after a citizens’ initiative legalized medical cannabis, the Governor convened a special session of the Legislature, which “amended many of the provisions” of the medical cannabis initiative. *Grant v. Herbert*, 2019 UT 42, ¶¶1, 5.

32. During the bipartisan press conference about S.B. 200, Representative Francis Gibson, a Republican and then-majority leader of the House, explained that legislators had been meeting with Better Boundaries for over a year to “address some of the constitutional concerns in Prop 4.” **Exhibit C**, Press Conf. Tr. 2:18-19.

33. Representative Gibson explained that under S.B. 200 “much of the original intent and language of Prop 4 is still intact,” but that S.B. 200 “will provide legal clarity [while] still reflecting the will of the people in having an independent commission.” **Exhibit C**, Press Conf. Tr. 2:21-3:2.

34. As Representative Gibson explained, “[t]hroughout the discussions [with] Better Boundaries, it became clear that the independent commission would need to determine [its] own rules” while the “legislative committee will make its own rules.” **Exhibit C**, Press Conf. Tr. 3:12-17.

35. Representative Gibson stated that “this agreement” between Better Boundaries and the legislators “[e]nsured that we are honoring the will of the people” while making sure that Proposition 4 “will be on solid ground.” **Exhibit C**, Press Conf. Tr. 3:18-21.

36. Representative Gibson explained that the legislators “met every other day” during that session with Better Boundaries to reach an agreement. **Exhibit C**, Press Conf. Tr. 4:1-2.

37. Jeff Wright, a co-chair of Better Boundaries, spoke next. He said that Better Boundaries was “satisfied that, through negotiations, [they] have a compromise and a legislative partner that

together will make the process of redistricting more transparent, fair, and accountable.” **Exhibit C**, Press Conf. Tr. 3:16-20.

38. Better Boundaries co-chair Wright said S.B. 200 was a “good compromise that will give the voters of Utah greater confidence in the redistricting process.” **Exhibit C**, Press Conf. Tr. 3:21-4:1.

39. Better Boundaries co-chair Wright explained that he had “a lot of late night phone calls” and “weekend phone calls” with Senator Curtis Bramble, a Republican, whom he described as an “honorable person” and “good-faith negotiator,” to reach an agreement through a “multi-year” negotiation. **Exhibit C**, Press Conf. Tr. 5:3-22.

40. Better Boundaries co-chair Wright called S.B. 200 “a win for the citizens of Utah.” **Exhibit C**, Press Conf. Tr. 6:4-5.

41. Rebecca Chavez-Houck, Better Boundaries’ executive director and a former Democratic representative, praised S.B. 200. She said that the commission under S.B. 200 is “so much more rigorous, so much more accountable, [and] does more than anything that [we] could have ever hoped for.” **Exhibit C**, Press Conf. Tr. 7:2-6.

42. Better Boundaries Executive Director Chavez-Houck explained that it would be “contingent on the public to hold the Commission accountable” based on the “guidelines” and “standards” given under S.B. 200. **Exhibit C**, Press Conf. Tr. 7:4-8.

43. Better Boundaries Executive Director Chavez-Houck confirmed that “[t]he passage of this bill protects the core concept of Prop 4.” **Exhibit C**, Press Conf. Tr. 7:11-13.

44. Better Boundaries Executive Director Chavez-Houck said S.B. 200 added Utah “to the handful of states ... who utilize[] some form of independent redistricting commission to draw maps.” **Exhibit C**, Press Conf. Tr. 7:11-18.

45. Senator Gene Davis, a Democrat and one of the lead negotiators for the Legislature, confirmed that the Legislature’s goal in enacting S.B. 200 was “not to do away with Prop 4 but to make it work.” **Exhibit C**, Press Conf. Tr. 9:20-21.

46. Democratic Senator Davis recognized that “some of [Proposition 4’s provisions] didn’t fit” within “the legislative process.” **Exhibit C**, Press Conf. Tr. 9:22-10:4.

47. Further recognizing that “legislators listen to the people,” Democratic Senator Davis explained that S.B. 200 “give[s] the independent Commission the ability to appear and present their maps in the public forum with the amount of time [it] need[s].” **Exhibit C**, Press Conf. Tr. 10:5-16.

48. Representative Carol Spackman Moss, a Democrat and one of the lead negotiators for the Legislature, confirmed that S.B. 200’s changes were “necessary” and the result of “goodwill compromise” that “still honors the public’s desire to have an independent commission.” **Exhibit C**, Press Conf. Tr. 13:1-20.

49. In response to a reporter’s question, Senator Bramble explained that one of the concerns was that Proposition 4 had constitutional problems because “an initiative cannot change the State constitution regarding the legislative responsibility in ... redistricting” and that S.B. 200 allowed the Legislature and the supporters of Proposition 4 to “move[] beyond that.” **Exhibit C**, Press Conf. Tr. 16:9-21.

50. Senator Bramble further explained that one of the key contentions during the negotiations was the concerns about “what could be imposed upon the legislature in the context of the constitutional framework.” **Exhibit C**, Press Conf. Tr. 18:7-13.

51. Another reporter asked Better Boundaries Executive Director Chavez-Houck what would happen under S.B. 200 if the Legislature decided to adopt its own maps and not the commission’s advisory maps. **Exhibit C**, Press Conf. Tr. 19:12-18.

52. Better Boundaries Executive Director Chavez-Houck explained that that’s why Better Boundaries insisted on “having the standards *for the Commission*” because the commission’s maps—which would be adopted without partisan considerations under S.B. 200—would provide a “contrast that could be made” between “what [map] moves forward and what does not.” **Exhibit C**, Press Conf. Tr. 19:20-20:14 (emphasis added).

III. S.B. 200 passes with Better Boundaries’ full support and a near-unanimous vote in the Legislature.

53. On February 27, 2020—the same day as the press conference—S.B. 200 was introduced in the Legislature. *See* S.B. 200 Redistricting Amendments, Utah Legislature, bit.ly/40xduJy.

54. On March 3, 2020, the full Senate considered S.B. 200. *Id.* Senator Bramble explained that S.B. 200 preserves the “independent voice” in redistricting that the people wanted through Proposition 4 by retaining the commission while “preserv[ing] the constitutional prerogative of the Legislature to do redistricting consistent with [its] constitutional mandate” and removing “issues that would give rise to legal challenges under the constitution.” Senate – 2020 General Session – Day 36, Utah Legislature, bit.ly/4fAqIPt (**Exhibit D**, Senate Tr. 3:1-6, 4:1-4).

55. Senator Bramble also explained that how the commission’s maps would be presented to the Legislature was “one of the sticking points” under Proposition 4, because Proposition 4 “would have required the maps to be presented in the Legislature and required each [legislator] to cast an up or down vote.” **Exhibit D**, Senate Tr. 5:7-11.

56. As Senator Bramble explained, the inability of the Legislature to propose changes and amendments to the commission’s maps under the Proposition 4 constitute “a direct violation of [the] Legislature’s constitutional prerogative.” **Exhibit D**, Senate Tr. 5:17-19.

57. Senator Davis, the Democratic Senate minority leader, agreed that that feature of Proposition 4 was “one of the key sticking points,” because Proposition 4’s provision that the commission “present[]” its maps “on the floor to the body as a whole with a vote” contravened the Legislature’s “own rules” and raised “separation of powers issues.” **Exhibit D**, Senate Tr. 6:9-20.

58. As Senator Davis explained, “we don’t allow bills to go forward without a Senator sponsor or a House sponsor.” **Exhibit D**, Senate Tr. 6:16-17. S.B. 200’s solution, as Senator Davis and Senator Bramble further explained, was to allow the commission to present its maps to the Legislative Redistricting Committee in a public meeting. **Exhibit D**, Senate Tr. 5:4-6:20.

59. Senator Bramble added that Proposition 4’s requirement that the Legislature “explain why” it rejected the commission’s maps and adopted its own posed difficulties because individual

legislators cannot explain the legislative intent other than through “the plain text of the bill we pass” and raised potential issues implicating legislators’ immunity under the Speech or Debate Clause. **Exhibit D**, Senate Tr. 7:4-20.

60. The Senate passed S.B. 200 by a unanimous vote (25 Yeas; 0 Nays; 4 Absent). S.B. 200 Redistricting Amendments, Utah Legislature, bit.ly/3NWJ4sv.

61. The House considered S.B. 200 on March 11, 2020. *See* House – 2020 General Session – Day 44, Utah Legislature, bit.ly/3UK5elQ (**Exhibit E**, House Tr.).

62. Representative Moss, S.B. 200’s Democratic sponsor in the House, explained various features of S.B. 200. **Exhibit E**, House Tr. 2:15-5:6.

63. Democratic Representative Moss said S.B. 200 “protects the core concept of Proposition 4” by adding to “the handful of States like Idaho [and] Montana who utilize[] some form of redistricting commission to draw the maps.” **Exhibit E**, House Tr. 4:2-6.

64. Democratic Representative Moss said S.B. 200 “adequately addresses the concerns about the separation of powers” and “puts to rest any questions about constitutionality by removing the Chief Justice from the process and making other changes.” **Exhibit E**, House Tr. 3:16-21.

65. Democratic Representative Moss said S.B. 200 gives the commission “great deal of latitude to make [its] own decisions about maps.” **Exhibit E**, House Tr. 4:17-22.

66. Democratic Representative Moss said S.B. 200 gives \$1 million to the commission. **Exhibit E**, House Tr. 5:1-6.

67. Democratic Representative Moss explained that S.B. 200 “honor[s] the public’s decision on Prop 4,” “preserve[s] they wanted in this proposition”—“in every way”—and allows the public to hold the commission and the legislators accountable. **Exhibit E**, House Tr. 16:7-10.

68. Representative Brian King, a Democrat, addressed those who were wary of S.B. 200. He explained that the compromise does not “go too far” because it “preserve[s] and maintain[s] the core of what we’re looking for in trying to make significant, incremental progress in removing ... partisan or political consideration.” **Exhibit E**, House Tr. 7:18-8:2.

69. Democratic Representative King lauded S.B. 200's prohibition on the commission's "taking into account favoring or disfavoring" incumbents, candidates, and political parties, which he viewed as "significant" and "important" features of the bill. **Exhibit E**, House Tr. 8:3-9. He explained that S.B. 200 was a "significant improvement over the status quo ... in terms of insulating [redistricting] from political consideration." **Exhibit E**, House Tr. 8:13-9:2.

70. Representative Merrill Nelson, a Republican, also spoke in favor of S.B. 200. He said S.B. 200 was "a significant improvement of the proposition" while recognizing that the legislators must approach "with caution and respect" when they seek to "revise[] what the people have done." **Exhibit E**, House Tr. 9:8-15.

71. Representative Nelson explained that S.B. 200 clarified that the commission would be "advisory only" and ensure that the Legislature "retains the ultimate authority" over redistricting. **Exhibit E**, House Tr. 10:19-11:3.

72. Representative Nelson said that "[r]ural representation ... is so crucial" and that S.B. 200 safeguards that consideration. **Exhibit E**, House Tr. 12:6-10.

73. Representative Nelson said that S.B. 200's changes were "necessary" to remove problematic provisions such as those giving the Chief Justice a role in selecting the commission members and selecting the maps, and creating a private right of action that would have allowed "any citizen of the state to sue," thereby resulting in "endless chaos" over redistricting. **Exhibit E**, House. Tr. 9:16-12.

74. The House passed S.B. 200 by a vote of 67 Yeas, 4 Nays, and 4 Absent. S.B. 200 Redistricting Amendments, Utah Legislature, bit.ly/40xduJy.

75. The Governor signed it on March 28, 2020. S.B. 200 took effect upon signing. *Id.*; S.B. 200, §14.

76. S.B. 200 retains the redistricting commission and its seven members. Utah Code §20A-20-201 (2020). S.B. 200 no longer authorizes the Chief Justice to make appointments if the appointing officials fail to do so. *See id.*

77. As part of S.B. 200, legislators voted to approve \$1 million in appropriated funding for the commission and provided that the appropriation “would not lapse.” S.B. 200, §13.

78. Under S.B. 200, the commission is required to “recommend three different maps for each map type.” Utah Code §20A-20-302(2) (2020).

79. S.B. 200 requires the commission to follow the following standards, without prescribing an order of priority:

- a. Ensure that each map uses Census data. *Id.* §20A-20-302(4)(a)(i) (2020).
- b. Ensure that the population deviation does not exceed 1% for congressional districts and is less than 10% for other districts. *Id.* §20A-20-302(4)(a)(ii)-(iii) (2020).
- c. Comply with federal law. *Id.* §20A-20-302(4)(a)(iv)-(v) (2020).
- d. Is based on total population, is a single-member district, and is contiguous and reasonably compact. *Id.* §20A-20-302(4)(b) (2020).

80. S.B. 200 states that the commission “shall define and adopt redistricting standards for use by the Commission” that comply with:

- a. Preserving communities of interests. *Id.* §20A-20-302(5)(a) (2020).
- b. Following geographic features. *Id.* §20A-20-302(5)(b) (2020).
- c. Preserving cores of prior districts. *Id.* §20A-20-302(5)(c) (2020).
- d. Minimizing the division of municipalities and counties. *Id.* §20A-20-302(5)(d) (2020).
- e. Achieving boundary agreement. *Id.* §20A-20-302(5)(e) (2020).
- f. Prohibiting the purposeful and undue favoring or disfavoring of incumbents, candidates, and political parties. *Id.* §20A-20-302(5)(f) (2020).

81. S.B. 200 states that the commission “may adopt a standard that prohibits the commission from using any of the following”: partisan political data; political party affiliation information; voting records; partisan election results; and residential addresses of incumbents, candidates, and prospective candidates. *Id.* §20A-20-302(6) (2020).

82. S.B. 200 requires the Legislative Redistricting Committee to hold a public meeting “for the sole purpose of considering” the commission’s recommended maps and to provide “reasonable

time” for the commission to present its maps, for the public to comment on the maps, and for the committee to discuss the maps. *Id.* §20A-20-303(3) (2020).

83. S.B. 200 states that the Legislature “may not enact a redistricting plan before” the commission submits its recommended maps and the Committee holds the public hearing. *Id.* §20A-20-303(4) (2020).

84. S.B. 200 states that “[t]he committee or the Legislature may, but is not required to, vote on or adopt a map submitted ... by the commission.” *Id.* §20A-20-303(5) (2020).

85. After S.B. 200 became law, Better Boundaries praised S.B. 200 as “a reasonable approach to redistricting reform” that gives “the Legislature ... the final say” while “preserv[ing] the independence of the Commission and maintain[ing] the public’s voice in the redistricting process.” **Exhibit F**, Better Boundaries, *Why is an independent redistricting commission good for Utah?* (last visited Oct. 15, 2024), perma.cc/GP6C-U334.

IV. After the 2020 Census, the Legislature enacts H.B. 2004, which draws congressional districts.

86. The U.S. Census Bureau was delayed in releasing the 2020 Census data by about five months due to COVID-19. It released the data on August 12, 2021. *See* 2020 Redistricting Data, OLRGC (Aug. 16, 2021), bit.ly/3AzFj9x.

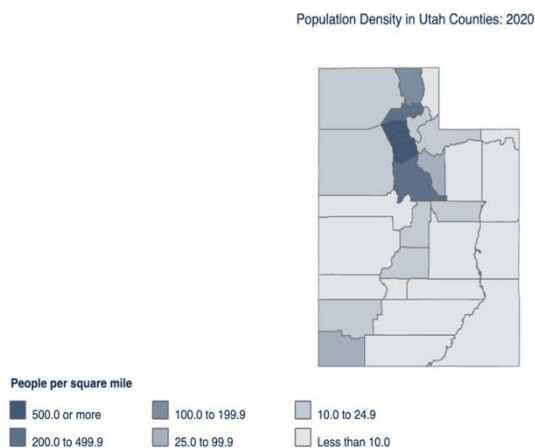


Figure 1 – 2021 Population Density in Utah Counties²³

²³ Population Density in Utah Counties, Utah: 2020 Census, U.S. Census Bureau, bit.ly/3FSO4L7.

87. The Census showed that Utah grew by more than 500,000 people—more than half the size of a congressional district—making it the fastest-growing State of the past decade. *See supra* n.23.

88. The population growth was not uniformly distributed. Salt Lake and Utah Counties grew by more than 150,000 and 140,000 people, respectively; mid-size counties such as Cache, Davis, Weber, and Washington each grew by tens of thousands of people; but rural counties remained roughly the same or declined in population. *See* 2020 Redistricting Data at 6, *supra* ¶86.

89. Between August 16, 2021, and November 1, 2021, the Legislative Redistricting Committee held 17 public hearings across Utah “to gather input, listen to constituents and receive feedback.” Legislative Redistricting Committee Public Hearing Schedule Updated, Utah Legislature, bit.ly/3CbySK7.

90. On November 1, 2021, the commission presented its recommendations to the Legislative Redistricting Committee in a public hearing. *See* Draft Minutes, Utah Legislature, (Nov. 1, 2021), bit.ly/3Chu0TP. The public provided comments on the commission’s recommendations. *Id.*

91. The Governor convened a Second Special Session of the 64th Legislature to begin on November 9, 2021, “to address redistricting and to divide the state into congressional, legislative and other districts pursuant to Utah Constitution Article IX, Section 1.” Governor Spencer Cox, Proclamation (Nov. 5, 2021), bit.ly/4egF1C5.

92. On November 5, 2021, the Legislative Redistricting Committee released its proposed maps and made them available for public view and comments (in person and online). The Legislative Redistricting Committee Chairs Release Proposed Maps, Utah Legislature, bit.ly/4fVcF1N.

93. On November 8, 2021, the Legislative Redistricting Committee held a public hearing to consider and vote on the maps recommended by the Committee. Legislative Redistricting Committee – November 8, 2021, bit.ly/3Chun0F. The Committee accepted public comments on each of the proposed maps. *Id.* The Committee unanimously voted to adopt the proposed maps. *Id.*

94. On November 9, 2021, the House considered the Committee’s proposed maps, including the congressional map, H.B. 2004, and passed H.B. 2004 by a 50-22 vote. HB 2004, Utah Legislature, bit.ly/40BTHJ2.

95. On November 10, the Senate considered H.B. 2004 and passed it by a 22-7 vote. HB 2004, Utah Legislature, bit.ly/4hCfVAE.

96. The population changes required the Legislature to adjust existing congressional district lines to bring each congressional district to equal population. *See Wesberry*, 376 U.S. at 7-8.

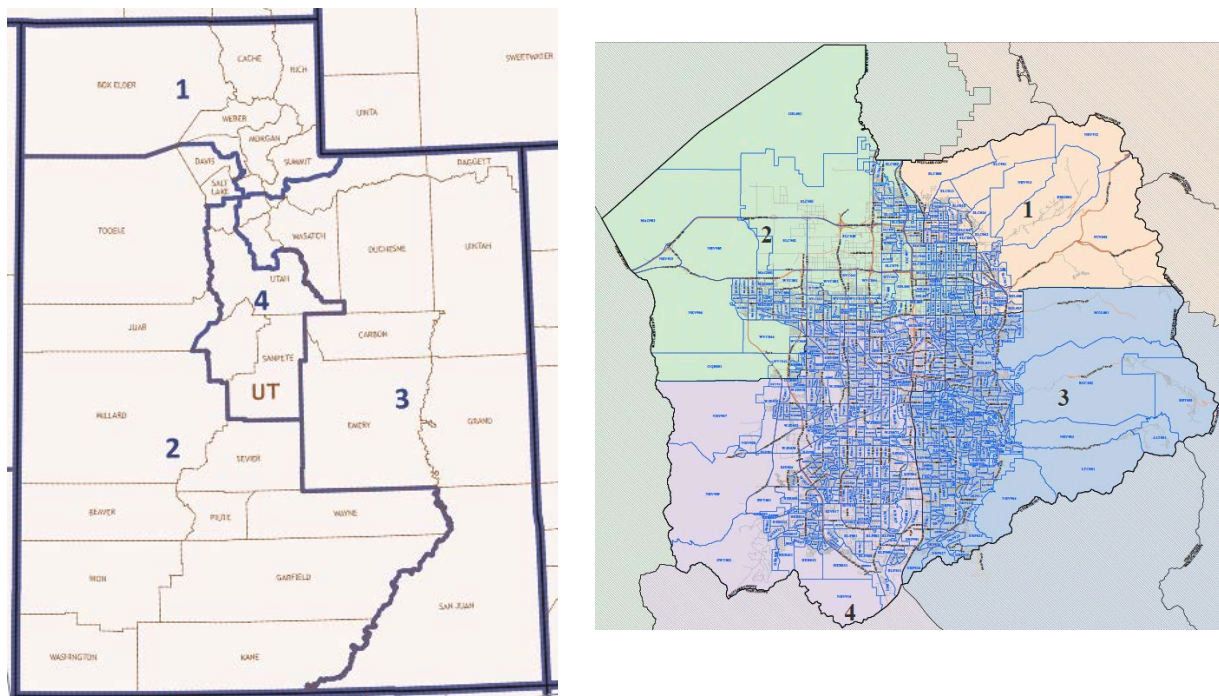


Figure 2 – 2021 Congressional District²⁴

V. Plaintiffs sue to challenge S.B. 200’s changes to Proposition 4.

97. In November 2021, the Legislature redistricted. *See* H.B. 2004 Congressional Boundaries Designation, Utah Legislature, bit.ly/3YDwMKH.

²⁴ *See* 118th Congressional District Wall Map, U.S. Census Bureau (2023), bit.ly/4eiTmht ; Salt Lake County District Maps, Salt Lake County Clerk (Jan. 2022), bit.ly/4fn4LhB.

98. The redistricting committee chairs announced that Utah’s four congressional districts would continue to include urban areas in the Wasatch Front along with rural areas, as past districts did. FAC (Doc. 297) ¶158; Answer (Doc. 127) ¶158.

99. In March 2022, Plaintiffs sued the Utah Legislature. *See generally* Compl. (Doc. 1).

100. Counts I through IV of their complaint alleged that the congressional districts were an unconstitutional partisan gerrymander. Compl. ¶¶257-309.

101. Count V of their complaint alleged that S.B. 200’s redistricting reforms violated Plaintiffs’ right to “alter or reform their government,” Utah Const. art. I, §2, Compl. ¶¶310-19.

102. Defendants moved to dismiss. This Court denied the motion with respect to Counts I through IV but dismissed Count V. *See* MTD-Op. (Doc. 140).

103. Relying on *Grant v. Herbert*, 2019 UT 42, this Court observed that the Legislature’s changes to Proposition 4 were “in line with historical practice.” MTD-Op. at 59.

104. In January 2023, the Utah Supreme Court granted the parties’ cross-petitions for an interlocutory appeal of all issues.

105. In July 2024, the Utah Supreme Court decided the interlocutory appeal. *See L WV*, 2024 UT 21.

106. The Court “retained jurisdiction” over Counts I through IV. *Id.* ¶220. As for Count V, the Court “introduced [a] formulation for the first time” for Plaintiffs’ claim. *Id.* ¶76.

107. The Court held that when a citizens’ initiative is one to “alter or reform” government, the Legislature may amend such initiatives but cannot “impair” them, *id.* ¶162, unless the Legislature satisfies strict scrutiny, *id.* ¶215.

108. The Court issued a limited remand for the parties and this Court to apply that new “formulation.” *Id.* ¶76.

ARGUMENT

The Utah Supreme Court remanded Plaintiffs’ Count V so this Court can answer a discrete question of law: whether the Legislature constitutionally enacted S.B. 200’s redistricting reforms. *See*

LWV, 2024 UT 21, ¶200. The Court’s July 2024 opinion was “not intend[ed] to suggest what should transpire next in the district court,” *id.*, and made “no conclusions” about Proposition 4’s constitutionality,, *id.* ¶194.

On remand, Plaintiffs don’t challenge S.B. 200 in its entirety. *See* Pls.-Mot. at 12-14, 25-26. Plaintiffs concede that S.B. 200’s reforms were appropriate and constitutional in many respects. *See id.* Instead, Plaintiffs argue that only select provisions of S.B. 200 “repealed Proposition 4’s key provisions.” Pls.-Mot. at 12. Specifically, Plaintiffs challenge S.B. 200 to the extent that it amended or removed Proposition 4’s: (1) substantive redistricting requirements on the Legislature²⁵; (2) requirement for the Legislature to provide mandatory funding for the Commission²⁶; (3) special procedural rules for the Legislature to follow when redistricting, such as taking a mandatory vote on the commission’s redistricting plans, creating a 10-day public-comment period, and regulating the frequency and timing of redistricting²⁷; and (4) waiver of sovereign immunity and creation of a private cause of action against the State.²⁸

The Utah Supreme Court created a three-step “legal framework for Count V.” *LWV*, 2024 UT 21, ¶200. First, Plaintiffs bear the burden to show that Proposition 4 was an exercise of the “initiative power” to alter or reform the government through statutory enactment. *Id.* ¶74. Second, Plaintiffs bear the burden to show that the Legislature “infringed the exercise of these rights because it amended, repealed, or replaced the initiative in a manner that impaired the reform contained in the initiative.” *Id.* Third, if Plaintiffs make those two showings, then the burden shifts to Defendants “to show that S.B. 200 is narrowly tailored to advance a compelling state interest.” *Id.* ¶209.

Under this framework, the Court should grant Legislative Defendants’ cross-motion for summary judgment and deny Plaintiffs’ motion for summary judgment. Summary judgment is appropriate because “there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” Utah R. Civ. P. 56(a). The only material dispute here is one of law that turns

²⁵ Utah Code §20A-19-103 (2018); *see also* Pls.-Mot. at 13.

²⁶ Utah Code §20A-19-201 (2018); *see also* Pls.-Mot. at 14.

²⁷ Utah Code §20A-19-102 (2018); Utah Code §20A-19-204 (2018); *see also* Pls.-Mot. at 13-14.

²⁸ Utah Code §20A-19-301 (2018); *see also* Pls.-Mot. at 14.

on the legal meaning of statutory provisions and constitutional rules. Legislative Defendants are entitled to judgment as a matter of law. **First**, Proposition 4 was not a proper exercise of the people’s right to alter-or-reform their government by initiative because it seeks—by statute—to transfer and restrict the Legislature’s redistricting power and other constitutional prerogatives. **Second**, Plaintiffs cannot show that S.B. 200 impaired their right to alter or reform the government. **Third**, even if the burden shifts to the Legislature, S.B. 200 satisfies strict scrutiny.

Finally, even if this Court were to conclude that some aspects of S.B. 200 were unconstitutional, the Court should nevertheless deny or defer Plaintiffs’ remedial arguments. Those remedial arguments are premature. The Court should first decide only the constitutional questions before it and then, only if necessary, request supplemental briefing in remedial proceedings.

I. Proposition 4 was not a proper exercise of the people’s right to alter-or-reform their government by initiative because it unconstitutionally limited and transferred the Legislature’s redistricting authority and constitutional prerogatives.

Plaintiffs’ Count V fails at the first step. They cannot show that the particular Proposition 4 provisions they seek to resurrect were a proper exercise of the people’s right to alter-or-reform their government by initiative. Under *LWV*, Plaintiffs must first show that their claim implicates the right to “initiate legislation” and to “reform the government.” 2024 UT 21, ¶72. “Initiatives, including those that reform the government, are limited to enacting ‘legislation.’” *Id.* ¶161. Initiatives thus cannot ““amend the Utah Constitution” or “violate any other provision of the constitution.” *Id.*; *see id.* ¶63 n.15 (same). Initiatives must be enacted “in harmony with the rest of the constitution” and “within the bounds of the constitution itself.” *Id.* ¶¶157, 160.

For five reasons, Proposition 4 did not operate within those guardrails. **First**, Proposition 4 restricted the substantive redistricting responsibility that Article IX and the federal Elections Clause vest solely in the Legislature. **Second**, Proposition 4 restricted the Legislature’s constitutional responsibility over appropriations. **Third**, Proposition 4 displaced the Legislature’s constitutional prerogative to determine its own procedural rules. **Fourth**, Proposition 4 made its requirements mandatory on the

Legislature by creating a private cause of action. *Fifth*, Proposition 4 transferred redistricting functions to the commission and the Chief Justice.

A. An initiative that purports to change the Utah Constitution or does not conform to constitutional limitations is not an initiative to alter or reform the government.

The Utah Constitution vests “[t]he Legislative power” in two bodies. The first is “the Legislature of the State of Utah,” or the “Senate and House of Representatives.” Utah Const. art. VI, §1(1)(a). The second body is “the people the State of Utah” themselves. *Id.* art. VI, §1(1)(b). But the people’s legislative power is limited. They can act only “as provided in Subsection (2),” *id.*—that is, by passing initiatives or referenda. *Id.* art. VI, §1(2)(a)(i). And initiatives themselves “are limited to enacting ‘legislation’” and “can accomplish only those reforms that can be achieved by statute.” *LWV*, 2024 UT 21, ¶¶63 n.15, 161.

In Utah, there is no initiative power to amend the constitution. *Id.* ¶¶10 n.4, 157, 161. The voters’ power to initiate “any desired legislation,” like the Legislature’s power to pass statutes, does not encompass the power to enact changes that are “forbidden by the constitution.” *Sevier Power Co., LLC v. Bd. of Sevier Cnty. Comm’rs*, 2008 UT 72, ¶10, 196 P.3d 583. Constitutional amendments differ in kind. They require approval from two-thirds of each house of the Legislature and the voters at a general election, or a constitutional convention. Utah Const. art. XXIII, §§1-2. Initiative proponents cannot circumvent that constitutional order through the initiative process. *LWV*, 2024 UT 21, ¶10 n.4. Any initiative must be enacted “within the bounds of the constitution itself” and “in harmony with the rest of the constitution.” *Id.* ¶¶157, 161.

In this way, Utah’s constitution restricts the people’s initiative power more than other States’ constitutions that allow for constitutional amendments through initiatives. Twenty-one States have initiative provisions in their constitutions. Of those, 18 States permit constitutional amendments by initiatives. Nat’l Conf. of State Legislatures, *Initiative and Referendum States* (updated Mar. 15, 2023), www.ncsl.org/elections-and-campaigns/initiative-and-referendum-states. That makes Utah one of a handful of States that permit direct legislation by initiative but *forbid* constitutional amendments by

initiative. *Id.* So while Proposition 4 proponents hoped to duplicate efforts in other States to transform their legislatures’ constitutional redistricting functions through initiative, Utah voters have no corresponding power to amend the state constitution by initiative. *Compare Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 817-18 (2015) (observing that Arizona “placed ... the [independent redistricting commission’s] authority in the portion of the Arizona Constitution delineating the State’s legislative authority” and “regulat[ed] federal elections” through an “initiative-introduced constitutional provision”); *and Vandermost v. Bowen*, 269 P.3d 446, 452-55 (Cal. 2012) (ballot measures amended the California Constitution to “transfer[]” redistricting to a citizen redistricting commission and prescribe substantive redistricting criteria), *with LWV*, 2024 UT 21, ¶121.

Article VI enshrines the people of Utah’s deliberate choice not to authorize constitutional amendments by initiative. The public discourse surrounding the Initiative Clause confirms that the people understood the Clause to enable initiatives that enact only “laws” and “legislation.” Even this limited reconfiguration of the legislative power was met with caution: It initially failed in the House²⁹ and drew opposition from some of the largest publications in the State, including the Salt Lake Tribune³⁰ and the Deseret News,³¹ as being inconsistent with the Republican form of government.³²

Because initiatives enact statutes—which must conform to (and cannot change) the Utah Constitution, *LWV*, 2024 UT 21, ¶¶157-61—an initiative that seeks to institute constitutional changes or overstep existing constitutional “bounds” amounts to an unlawful backdoor constitutional amendment. Any such initiative is not a proper exercise of the initiative power to alter or reform the government “through legislation.” *Id.* ¶159, ¶161; *see also id.* ¶10 n.4. As explained below, the various Proposition 4 provisions that Plaintiffs seek to revive commit those errors.

²⁹ *House Killing Bills*, Salt Lake Herald-Republican (Mar. 7, 1899), bit.ly/3YTHwGh.

³⁰ *The Proposed Amendments*, Salt Lake Trib. (Oct. 6, 1900), bit.ly/3YRP6RJ.

³¹ *To the voters of Utah*, Deseret News (Nov. 3, 1900), bit.ly/3YCNnOP.

³² *Direct Popular Legislation*, Deseret Evening News (Sept. 11, 1900), bit.ly/4fAFHDD.

B. Proposition 4 unconstitutionally impaired the Legislature’s constitutionally assigned responsibility to redistrict.

Proposition 4’s substantive redistricting requirements were not a proper exercise of the initiative power to reform or alter the government through statutory enactment because they exceeded state and federal constitutional bounds. *First*, those substantive provisions impermissibly restricted the redistricting discretion that Article IX assigns solely to the Legislature. *Second*, those provisions restricted the power to draw congressional districts that the federal Elections Clause vests solely in the Legislature.

1. Proposition 4 unconstitutionally impaired the Legislature’s Article IX redistricting power.

Proposition 4’s substantive requirements impermissibly intruded on the Legislature’s constitutionally assigned responsibility to redistrict. Article IX states: “No later than the annual general session next following the Legislature’s receipt of the results of an enumeration made by the authority of the United States, *the Legislature* shall divide the state into congressional, legislative, and other districts accordingly.” Utah Const. art. IX, §1 (emphasis added). Because Article IX gives redistricting power only to “the Legislature”—the House and Senate, *id.* art. VI, §1(1)(a)—Article IX precludes “the people of the State of Utah” from exercising initiative power under article VI, §2 to impair that redistricting responsibility. For Article IX’s “explicit vesting” of redistricting power in the Legislature “is an implicit prohibition against any attempt to vest” that same power “elsewhere.” *Salt Lake City v. Ohms*, 881 P.2d 844, 849 (Utah 1994).

The Founders’ choice in Article IX to vest the responsibility for redistricting exclusively in the Legislature (and not in the people) should come as no surprise. Besides constitutional “text,” the “historical evidence of the state of the law ... at the time of drafting” informs the original public understanding of the Utah Constitution. *South Salt Lake City v. Maese*, 2019 UT 58, ¶22, 450 P.3d 1092. In 1896 (as now), the U.S. Constitution delegated the power to regulate federal elections to state legislatures. It provides: “[t]he Times, Places and Manner of holding Elections for ... Representatives[] shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.” U.S. Const. art. I, §4. The Election Clause’s history confirms that

“[t]he Framers were aware of electoral districting problems and considered what to do about them.” *Rucho v. Common Cause*, 588 U.S. 684, 699 (2019). Their answer was a “characteristic” one—they “assign[ed] the issue to state legislatures, expressly checked and balanced by the Federal Congress.” *Id.* (emphasis added).

The Constitutional Convention Debates illustrate why the Founders vested redistricting functions in the Legislature. See *Maese*, 2019 UT 58, ¶86; see also *Parkinson v. Watson*, 4 Utah 2d 191, 199 (1955) (relying on the Convention Debates to construe Article IX). Utah’s Framers extensively debated the issue of apportionment during the Convention, foreseeing “potential conflicts of interests between the rural and urban areas.” *Id.* at 200. At the Convention, the principal question was whether each county would have at least one state representative in the Legislature, regardless of population. Proceedings & Debates of the Convention, Days 37-38, at 820-64 (Apr. 9-10, 1895). Delegates pushed for an apportionment system that would ensure each voter had a representative who would properly represent local interests. One delegate “h[e]ld that a gentleman in Salt Lake or a gentleman in Cache cannot represent the interests and the demands, the desires and hopes and aspirations of any one in San Juan County.” *Id.*, Day 37, at 835 (Apr. 9, 1895) (Mr. Crane). Another emphasized that “[a] man living in the county is better able to represent it than one who resides in another county. He understands better the wants and needs of the people of that county.” *Id.*, Day 37, at 840 (Apr. 9, 1895) (Mr. Anderson). Yet another warned against an apportionment system in which “Salt Lake City alone would control the State of Utah,” and “with all due respect to Salt Lake City and its representatives,” to “give into Salt Lake City or any other city in the Territory, the power to control the State, (and they would control it, gentlemen representing those centers will not deny that,) I say that they oftentimes would have a tendency to forget that there was any other part of the State than that particular part of the State represented by themselves.” *Id.*, Day 37, at 846 (Apr. 9, 1895) (Mr. Thurman).

The Framers thus knew that giving the Legislature the power to redistrict through elected representatives from every corner of the State ensured that the *people* in every corner of the State would have an equal voice in redistricting decisions. A Salt Lake City commission cannot duplicate that. That’s partly why they ensured that “every county is given a representation” so that its representative

“can then act and speak for his constituents in whatever interests them.” *Id.*, Day 38, at 857 (Mr. Snow). Redistricting requires the same kind of insight from every corner of the State. Redistricting concerns “the makeup of the legislature” and requires “multifarious problems” of balancing competing interests. *Parkinson*, 4 Utah 2d at 196. Inescapably, a “complex interplay of forces ... enter[s] a legislature’s redistricting calculus.” *Alexander v. S.C. State Conf. of NAACP*, 602 U.S. 1, 7 (2024). Legislators are the “elected representatives” best suited to “resolv[e]” thorny “legislative-political issues” like redistricting. *Salt Lake City v. Int’l Ass’n of Firefighters, Local 1645*, 593, 1654, & 2064, 563 P.2d 786, 790 (Utah 1977). Legislators are the experts on their respective districts, the land and neighborhoods they cover, and the constituents they represent. Legislators from Daggett County and Rich County and Washington County bring that local knowledge to bear in redistricting in ways that an unelected commission member from Salt Lake County cannot.

Here, Proposition 4 unconstitutionally impaired the Legislature’s Article IX power to redistrict. Its offending provisions³³ required the Legislature to (b) minimize the division of municipalities and counties, “giving first priority to minimizing the division of municipalities and second priority to minimizing the division of counties”; (c) create “geographically compact” districts; (d) create “contiguous” districts; (e) “preserv[e] traditional neighborhoods and local communities of interests”; (f) follow “natural and geographical features”; and (g) maximize boundary agreement. Utah Code §20A-19-103(2)(b)-(g) (2018). Proposition 4 required the Legislature to follow those criteria in that particular “order of priority.” Utah Code §20A-19-103(2) (2018). Proposition 4 also stated that the Legislature “may not divide districts in a manner that purposefully or unduly favors or disfavors” incumbents, candidates, and political parties. Utah Code §20A-19-103(3) (2018). Those requirements operated as mandatory commands because Proposition 4 further authorized any citizen to sue the State if the Legislature “fail[ed] to abide by or conform to the redistricting standards” and “requirements set forth in [Proposition 4].” Utah Code §20A-19-301(1)-(2) (2018). Proposition 4’s text confirms that those provisions were designed to restrict the Legislature’s substantive discretion over redistricting. On top

³³ Proposition 4’s first requirement was to follow federal law, Utah Code §20A-19-103(2)(a) (2018), which was already the law and not objectionable.

of that, the Voter Information Pamphlet confirmed that Proposition 4’s purpose was to limit the Legislature’s discretion by “requir[ing] ... the Legislature [to] abide by [Proposition 4’s] redistricting standards” and requiring the Legislature to “conform to [Proposition 4’s] standards and requirements.” **Exhibit A**, VIP at 75-76. Consider five ways those provisions impaired the Legislature’s Article IX power.

First, Proposition 4 required the Legislature to “giv[e] first priority to minimizing the division of municipalities and second priority to minimizing the division of counties.” Utah Code §20A-19-103(2)(b) (2018). But under Article IX, the Legislature alone has discretion to decide whether and how to redistrict across political subdivisions. And Article IX expressly requires the Legislature to divide “the state,” with no constraints as to political subdivisions. Utah Const. art. IX, §1. That matters because the Framers knew how to make constitutional rules governing “political subdivision[s]” when they wanted to. *See, e.g., id.* art. IV, §9(4). In Article IX, they did not, but instead vested statewide discretion in the Legislature. This discretion is especially critical given the population distribution of Utah. As explained, given the State’s population distribution, Salt Lake County cannot all fit within one congressional district and must be split between multiple districts. *Supra* Leg Def’s Resp. to Pls.’ Facts ¶19; *see also Wesberry*, 376 U.S. at 7-8. Political-subdivision mandates in redistricting also run headlong into Utah’s constitutional debates about the Framers’ obvious desire that redistricting “properly balance[] and protect[]” the “urban-rural interests.” *Parkinson*, 4 Utah 2d at 200; *see also supra* ¶72 (“rural representation ... is so crucial”). Those debates ended with Article IX committing the question of how to divide “the state”—including its political subdivisions—to the Legislature’s “full power.” *Parkinson*, 4 Utah 2d at 199. The Framers chose the representative body to balance “competing policy considerations,” *Carter v. Lehi City*, 2012 UT 2, ¶34, 269 P.3d 141, and to craft a “legislative-political” decision, *Int’l Ass’n of Firefighters*, 563 P.2d at 790. Proposition 4 improperly sought to limit by statute that constitutional discretion.

Plaintiffs never seriously dispute that Proposition 4’s practical effect would have been to require the Legislature to prioritize keeping cities within Salt Lake County whole over other small counties in areas of the State—and that this would have “severely curtailed” the Legislature’s discretion to

balance urban and rural interests. *Matheson v. Ferry*, 641 P.2d 674, 679 (Utah 1982). Thus, Proposition 4 would have required the Legislature to exercise its discretion in a particular way: to “purposefully” and “unduly favor” Salt Lake City and its Democratic voters. *Cf.* Utah Code §20A-19-103(3) (2018). “[G]iving first priority to minimizing the division of municipalities,” *id.* §20A-19-103(2)(b) (2018), would have meant giving an outsized influence to Democratic voters who dominate Salt Lake City and other cities over Republican and other parties’ voters in Salt Lake *County* and the rest of the State. *See supra* ¶3. Proposition 4’s attempt to require the Legislature to exercise its discretion in a particular way contravened Article IX’s specific vesting of redistricting power solely in the Legislature.

Second, and related, Proposition 4 not only prescribed various substantive requirements, but also required the Legislature to apply them in a particular “order of priority.” Utah Code §20A-19-103(2) (2018). Relevant here, Proposition 4 impermissibly cabined legislative discretion with a rigid priority list: (b) minimizing division of municipalities and then counties; (c) creating geographically compact districts; (d) creating contiguous districts; (e) preserving traditional communities of interests and neighborhoods; (f) following geographical features; and (g) maximizing boundary agreement. *id.* §20A-19-103(2) (2018). No doubt, the Legislature accounts for these considerations when it redistricts. For instance, S.B. 200 continues to direct the commission to recommend maps that preserve communities of interest, preserve natural geographic features, minimize the division of municipalities and counties, and achieve boundary agreement. Utah Code §20A-20-302(5) (2020). And, in 2021, the Legislative Redistricting Committee sought to draw districts that were “contiguous and reasonably compact.” **Exhibit G**, Legis. Redistricting Comm., 2021 Redistricting Principles.

But when exercising its “full power” under Article IX, *Parkinson*, 4 Utah 2d at 199, to “weigh[]” “broad, competing policy considerations,” the Legislature may legitimately prioritize one of these considerations over others, *Carter*, 2012 UT 2, ¶34. Imagine a hypothetical redistricting dispute where a state legislator representing South Jordan wanted her entire city in one congressional district (“minimizing division of municipalities”) but a legislator from Utah County wanted to draw that same congressional boundary so it split South Jordan along the Jordan River (“following geographic features”)—and only one of those outcomes would maintain equal population among the four districts.

Proposition 4 would give the South Jordan legislator’s preference priority even though the Utah County legislator’s proposal might yield other benefits for rural counties and thus garner support from the rest of the Legislature or be the only viable political option. Proposition 4’s rigid priority list improperly limits that discretion. It contravenes the settled principle that “[f]airness is compatible” with “districts that straddle political subdivisions.” *Vieth v. Jubelirer*, 541 U.S. 267, 291 (2004) (plurality op.). And legislators must have “plenty of room” to exercise their redistricting discretion. *Parkinson*, 4 Utah 2d at 196.

Third, Proposition 4 prohibited the Legislature from “purposefully or unduly favor[ing] or disfavor[ing]” incumbents, candidates, or political parties. Utah Code §20A-19-103(3) (2018). Proposition 4 thus purported to prohibit not only maps that intentionally favored any incumbents, candidates, and political parties (“purposefully”), but also maps drawn under so-called neutral redistricting criteria that would have had the *effect* of favoring or disfavoring incumbents, candidates, and political parties, regardless of the maps’ intent or purpose (“unduly”). *See id.*

It’s hard to overstate the serious practical and political difficulties in implementing that provision. In Utah, Democratic voters constitute 14% of the registered voters. *See* Current Voter Registration Statistics, Lt. Governor (last updated Oct. 21, 2024), vote.utah.gov/current-voter-registration-statistics/. Republican voters make up a little over 50% of the registered voters. *Id.* Independents and other party voters constitute the rest. *Id.* Voters are not going to be uniformly dispersed throughout the State and are naturally clustered in a way that they wouldn’t necessarily form a majority in any one district. *Vieth*, 541 U.S. at 343 (Souter, J., dissenting) (noting there is no “mythical state with voters of every political identity distributed in an absolutely gray uniformity”). What’s more, “[p]olitical affiliation is not an immutable characteristic, but may shift from one election to the next; and even within a given election, not all voters follow the party line.” *id.* at 287 (plurality op.). How to best draw districts that do not “unduly” favor or disfavor a political party will thus always be open to debate and guesswork. *Cf. id.* at 291 (“Fairness ... is compatible with a party’s not winning the number of seats that mirrors the proportion of its vote.”); *see Rucho*, 588 U.S. at 715-16.

By design, Article IX leaves such political judgments to “the Legislature.” Utah Const. art. IX, §1; *see also Int’l Ass’n of Firefighters*, 563 P.2d at 790. It vests the Legislature with the “full power” to balance various interests when it redistricts. *Parkinson*, 4 Utah 2d at 199. That includes the discretion to balance not just rural-urban interests, *see id.*, but any other “competing” political interests. *Carter*, 2012 UT 12, ¶34. The Legislature, a body of elected representatives, is the only body that can resolve such political questions. *See Int’l Ass’n of Firefighters*, 563 P.2d at 790. Proposition 4 impaired this discretion.

In addition, given the specific “commit[ment] [of] the redistricting authority [to] the [Legislature],” the Legislature has the “discretion[]” to “consider[] ... partisan advantage and incumbency protection.” *Harper v. Hall*, 886 S.E.2d 393, 420-21 (N.C. 2023); *cf.* MTD-Op. at 33-35 (finding the North Carolina Supreme Court’s interpretation persuasive). And consideration of political objectives is a natural “consequence of assigning the task of redistricting to the political branches of government.” *Johnson v. Wis. Elections Comm’n*, 967 N.W.2d 469, 485 (Wis. 2021), *overruled in part on different grounds* *Clarke v. Wis. Elections Comm’n*, 998 N.W.2d 370 (Wis. 2023). The Supreme Court has long recognized that “redistricting is an inescapably political enterprise.” *Alexander*, 602 U.S. at 6. “[P]olitical considerations” can and do “play an important, and proper, role in the drawing of district boundaries.” *Vieth*, 541 U.S. at 299 (plurality op.). Proposition 4 improperly precluded the Legislature from considering those “important” and “proper” factors when performing its Article IX redistricting functions. *Id.*

Fourth, Proposition 4 required the Legislature to use “judicial standards and the best available data and scientific and statistical methods ... to assess whether a proposed redistricting plan abides by and conforms to” Proposition 4’s “redistricting standards.” Utah Code §20A-19-103(4) (2018). Proposition 4 did not define what “judicial standards” meant or what constituted “the best available data.” *Id.* This requirement purported to replace the Legislature’s legislative and inherently political redistricting function with a “judicial” one. Legislative choices by a multi-member body, which depend on legislators’ many and differing policy judgments and compromises, cannot be readily reduced to “judicial standards.” The Legislature’s redistricting function under Article IX is not a judicial one. “[L]aw

pronounced by the courts must be principled, rational, and based upon reasoned distinctions.” *Vieth*, 541 U.S. at 278 (plurality op.). But there are no “judicial standards” for a large swath of topics subject to the legislative process that necessarily require policymaking and political judgment. *See, e.g., Ogden City v. Stephens*, 21 Utah 2d 336, 339 (1968) (“the necessity, expediency, or propriety of opening a public street or way is a political question”). Laws might seem “inconsistent, illogical, and ad hoc” to some. *Vieth*, 541 U.S. at 278 (plurality op.). But even “unnecessary or unwise” laws can be constitutional and lawful. *State v. Lewis*, 72 P. 388, 389 (Utah 1903). For “[w]hen attempting to resolve problems of policy, the legislature is inevitably forced to draw lines.” *Bingham v. Gourley*, 2024 UT 38, ¶36, 556 P.3d 53. Redistricting under Article IX is no different. Redistricting is “fraught with” “multifarious problems,” requires the balancing of “variety of interests,” *Parkinson*, 4 Utah 2d at 196, and inherently calls for “political compromises,” *Alexander*, 602 U.S. at 44 (Thomas, J., concurring).

Proposition 4’s prohibition on “unduly favor[ing]” incumbents, candidates, and political parties, Utah Code §20A-19-103(3) (2018), further highlights the problem of trying to transform redistricting under Article IX into a process governed by “judicial standards.” *See supra* at 36. “[D]etermining whether” something is “‘due’ or ‘undue’ is ‘inherently standardless.’” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 281 (2022). Whether a map “unduly favors” a candidate or political party would quickly devolve to deciding whether a map is “fair.” Such broad, undefined notions cannot “limit[]” the Legislature’s “districting discretion.” *Vieth*, 541 U.S. at 291 (plurality op.). And because Proposition 4 also subjected the Legislature’s maps to lawsuits, Utah Code §20A-19-301 (2018), it would have required courts to ultimately adjudicate Platonic notions of fairness. The Article IX problem here is that Proposition 4’s making the courts the final arbiters of what is “fair” would have transferred the authority “explicit[ly] vest[ed]” in the Legislature, *Ohms*, 881 P.2d at 849, and required courts to make “legislative-political” decisions, *Int’l Ass’n of Firefighters*, 563 P.2d at 790.

Fifth, Proposition 4 impaired the Legislature’s Article IX power by creating a private cause of action making Proposition 4’s substantive criteria mandatory on the Legislature and enforceable in the courts. *See* Utah Code §20A-19-301 (2018). As Proposition 4’s supporters explained in the Voter Information Pamphlet, the purpose of the private cause of action was to enable any citizen to “block

implementation of a redistricting plan ... that fails to conform to [Proposition 4's] standards and requirements.” **Exhibit A**, VIP at 75.

But Article IX’s “specific[] vest[ing]” of the redistricting function in the Legislature “must be considered as a limitation” on attempts to limit that constitutional function or render the Legislature “a nullity” by statute. *Evans & Sutherland Comput. Corp. v. Utah State Tax Comm’n*, 953 P.2d 435, 442-43 (Utah 1997). To “retain the power to make ultimate policy decisions” under a specific constitutional delegation, the Legislature must be free to “override decisions made by others.” *Int’l Ass’n of Firefighters*, 563 P.2d at 790. The Utah Supreme Court’s decision in *Evans* is instructive. Then, the Utah Constitution provided that the State Tax Commission “shall ... adjust and equalize the valuation and assessment of property among the several counties ... [u]nder such regulations in such cases and within such limitations as the Legislature may prescribe.” Utah Const. art. XIII, §11 (1997). The Legislature enacted a statute allowing district courts to “review by trial de novo Commission decisions on such matters.” *Evans*, 953 P.2d at 442. The Court invalidated the statute because a trial de novo meant that “[t]he Commission’s prior decision becomes a nullity.” *Id.* at 443. Allowing de novo trials not only “limit[ed] the Commission’s discretion in conducting its [constitutional] duties” but also “effectively eliminate[d] the Commission’s role whenever one of the parties chooses to seek review.” *Id.* Likewise, Proposition 4’s private cause of action, which made Proposition 4’s substantive redistricting criteria mandatory upon the Legislature, thereby allowing courts to second-guess an inherently political judgment.

For these reasons, Proposition 4’s substantive redistricting criteria were not a proper exercise of the initiative power to alter or reform the government because they exceeded Article IX’s constitutional bounds.

2. Proposition 4 unconstitutionally impaired the Legislature’s federal Elections Clause authority.

Proposition 4’s substantive provisions also were not a proper exercise of the initiative power because they impaired the Legislature’s power to determine the “Manner” of elections under the U.S. Constitution’s Elections Clause. U.S. Const. art. I, §4 (“The Times, Places and Manner of holding

Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.”).

The federal Elections Clause “entrusts state legislatures with the primary responsibility for drawing congressional districts.” *Alexander*, 602 U.S. at 6. Like Article IX, the federal Elections Clause delegates that responsibility specifically to “the Legislature.” U.S. Const. art. I, §4. Numerous justices of the U.S. Supreme Court have observed that this responsibility vested in the State legislatures by the federal Elections Clause “may [not] be excluded” and is subject to “exclusive” congressional oversight. *Ariz. State Legislature*, 576 U.S. at 841-42 (Roberts, C.J., dissenting, joined by Scalia, Thomas, and Alito, JJ.); *Alexander*, 602 U.S. at 50 (Thomas, J., concurring); *see also Moore v. Harper*, 600 U.S. 1, 56-57 (2023) (Thomas, J., dissenting, joined by Gorsuch, J.). The federal Elections Clause recognizes that redistricting is a function governed by “the ordinary constraints . . . in the *state constitution*.” *Id.* at 29-30 (emphasis added).

Only once has the Supreme Court held that the Elections Clause permitted a body that was *not* “the Legislature,” U.S. Const. art. I, §4, to impair a legislature’s redistricting responsibility. In *Arizona State Legislature*, the Court held that a commission could redistrict Arizona’s congressional districts, even though the Elections Clause vested that authority in “the Legislature.” 576 U.S. at 817. The Court reasoned that the term “the Legislature” in the Elections Clause could include “the people” of Arizona because Arizona voters had amended the Arizona Constitution to transfer redistricting responsibility from the Legislature to a commission in the state constitution’s equivalent of Article IX. *Id.* at 813-14. But *Arizona State Legislature* illustrates how Proposition 4’s proponents overstepped in Utah. The Arizona and Utah constitutions differ in the most fundamental way: Arizona voters can directly amend their constitution through initiatives. *See id.* at 817; *supra* at 29-30. Utah voters, in contrast, cannot; our 1900 amendments adding an initiative power to the Utah Constitution authorized voters to initiate *statutes* but (unlike in Arizona) do not let Utah voters initiate constitutional amendments. *See supra* at 29-30.

In effect, Proposition 4 tried to mimic the Arizona amendments at issue in *Arizona State Legislature*, but without an equivalent state constitutional basis to do so. That makes Proposition 4 not

“an ordinary constraint[] on lawmaking in the state constitution.” *Moore*, 600 U.S. at 30. Unlike the Arizona voters who formally amended the Arizona Constitution through initiatives, 576 U.S. at 792, 817-18, Utah’s voters could not and did not amend the Utah Constitution through Proposition 4, *LWV*, 2024 UT 21, ¶161. Allowing substantive standards in a voter-passed statute, and not found in the Utah Constitution, to constrain the Legislature’s discretion would impermissibly restrict the Legislature’s federally delegated redistricting authority. *See Moore*, 600 U.S. at 29-30; *Ariz. State Legislature*, 576 U.S. at 808.

The federal Elections Clause also prohibits “read[ing] state law in such a manner as to circumvent federal constitutional provisions.” *Moore*, 600 U.S. at 35. And under the federal Elections Clause, state-court interpretations of state law “may not transgress the ordinary bounds of judicial review such that [courts] arrogate to themselves the power vested in state legislatures to regulate federal elections.” *Id.* at 36. Reading the Utah Constitution to allow Proposition 4’s voter-passed statutory standard to override the Legislature’s constitutional discretion under Article IX—especially after the Utah Supreme Court held that Proposition 4 cannot amend the Utah Constitution, *LWV*, 2024 UT 21, ¶161—would “transgress the ordinary bounds of judicial review,” *Moore*, 600 U.S. at 36.

C. Proposition 4 impaired the Legislature’s responsibility over appropriations.

Proposition 4 provided that “[t]he Legislature shall appropriate adequate funds for the Commission to carry out its duties, and shall make available to the Commission such personnel, facilities, equipment, and other resources as the Commission may reasonably request.” Utah Code §20A-19-201(12)(a) (2018). Plaintiffs argue that this was a “key” Proposition 4 provision that altered and reformed their government. *See Pls.-Mot.* at 12-13.

Proposition 4’s mandatory-funding provision, however, was not a proper exercise of the initiative power to alter or reform the government because it restricted the Legislature’s discretion over appropriations. The Utah Constitution requires the Legislature to balance the budget each fiscal year. *See Utah Const. art. XIII, §5.* “The Legislature shall provide by statute for an annual tax sufficient, with other revenues, to defray the estimated ordinary expenses of the State for each fiscal year.” *Id.*

§5(1)(a). The Utah Constitution also prohibits the Legislature from “mak[ing] an appropriation or authoriz[ing] an expenditure if the State’s expenditure exceeds the total tax provided for by statute.” *Id.* §5(2)(a).

As the Utah Supreme Court held, “[t]he complexities of budgeting and the selection of programs[] are duties” that “elected” legislators “owe to the electorate.” *Int’l Ass’n of Firefighters*, 563 P.2d at 790. Decisions that “affect[] the allocation of public resources, the level of public service provided, and the costs of government”—and those that affect “taxes”—are quintessentially “legislative-political” decisions. *Id.* The maxim that statutes cannot bind a future legislature’s hands apply with special force when it comes to budgetary decisions. *See, e.g., Frederick v. Presque Isle Cnty. Cir. Judge*, 476 N.W.2d 142, 148 (Mich. 1991) (“[A]ny [appropriations] provision that does not take initial effect during the ensuing fiscal year is intended to function only as an authorization—an intention to appropriate.”); 82 Corpus Juris Secundum §11 (“One legislature cannot bind a succeeding legislature, ... requiring appropriations, except as to valid contracts or rights actually vested.”).

Initiatives are subject to the same constitutional limitations and must be “exercised in harmony with the rest of the constitution.” *LWV*, 2024 UT 21, ¶157. The California Court of Appeal’s decision in *People’s Advocates, Inc. v. Superior Court*, 181 Cal. App. 3d 316 (1986), is instructive. There, a sweeping reform initiative sought to cut the California Legislature’s budget by 30%. *Id.* at 328. The court “agree[d]” with the legislature that the maxim that a previous legislature may not bind the future legislature applied to initiatives. *Id.* That principle, it held, “ha[d] special application” because “[t]he authority to enact statutes which appropriate money for the support of the state government” was vested in the legislature and “set forth” in the California Constitution. *Id.* To the extent that the initiative “displace[d] the process (budget and budget bill) by which [the constitution] command[ed] the adoption and enforcement of budget,” the initiative was “invalid.” *Id.* at 329.

Proposition 4’s mandatory-funding provision for the commission’s operations suffers from the same defect. The Utah Constitution specifically proscribes how the Legislature may appropriate money. *See* Utah Const. art. XIII, §5. Such decisions “affect[] the allocation of public resources, the level of public service provided, and the costs of government.” *Int’l Ass’n of Firefighters*, 563 P.2d at

790. They are “legislative-political” decisions within the Legislature’s discretion. *Id.* Proposition 4’s mandatory-funding provision was especially problematic because it imposed a funding obligation without any conceivable limit or any check on what constitutes “adequate funds for the Commission to carry out its duties.” Utah Code §20A-19-201(12)(a) (2018). What’s more, because Proposition 4 authorized lawsuits for noncompliance, it could make a court the final arbiter of the inherently political and policy question of what constitutes “adequate” funding for the commission. Those provisions impermissibly controlled the Legislature’s discretion and thus were not a proper exercise of the initiative power to alter or reform the government.

D. Proposition 4 displaced the Legislature’s constitutional prerogative to determine its own procedural rules.

Plaintiffs argue that various Proposition 4 provisions that prescribed procedural requirements for the Legislature constituted an exercise of the initiative power to alter or reform the government. *See* Pls.-Mot. at 13-14. Those provisions include the requirements that the Legislature take a mandatory up-or-down vote on the plans adopted by the commission or the Chief Justice, Utah Code §20A-19-204(2)(a) (2018); that, if the Legislature were to adopt its own plans, the Legislature explain why its plan “better satisfies” Proposition 4’s substantive standards, §20A-19-204(5)(a) (2018); that the Legislature accept public comments for at least 10 calendar days, §20A-19-204(4) (2018); that the Legislature redistrict only once a decade unless ordered by a court, §20A-19-102 (2018); and that the Legislature wait on the commission or the Chief Justice, §20A-19-204(3) (2018). These provisions were not a proper exercise of the initiative power because they impermissibly placed procedural restrictions on the Legislature.

Those provisions transgressed various constitutional provisions regarding Legislature’s law-making procedure. The Utah Constitution states, “[e]very bill shall be read by title three separate times in each house,” and every bill shall pass “with the assent of the majority of all the members elected to each house.” Utah Const. art. VI, §22. The Utah Constitution also requires that “[t]he presiding officer of each house, not later than five days following adjournment, shall sign all bills ... passed by the Legislature.” Utah Const. art. VI, §24. And then, the Legislature must “present[]” each passed bill “to

the governor” for his approval. Utah Const. art. VII, §8(1). The Utah Constitution contains no further requirements about the “internal process that le[ads] to the bill’s passage.” *Gregory v. Shurtleff*, 2013 UT 18, ¶52, 299 P.3d 1098; *see also id.* ¶59 n.29 (“We are wary of imposing further requirements.”). Instead, the Utah Constitution expressly states that “[e]ach house shall determine the rules of its proceedings.” Utah Const. art. VI, §12. The ability of each house of the Legislature to set its own rules is “constitutionally established.” *Gallivan v. Walker*, 2002 UT 89, ¶59 n.11, 54 P.3d 1069. That power is “exclusive” and “subject only to clear pronouncements in the constitution as to procedure.” *Pa. AFL-CIO v. Commonwealth*, 563 Pa. 108, 120 (2000). And “[a] rule of resolution is *solely* the product of the house or houses which adopt it.” *People’s Advocs.*, 181 Cal. App. at 325 (emphasis added). This principle has also been the English common law rule: “The maxims upon which [the House of Lords and House of Commons] proceed, together with their method of proceeding, rest entirely in the breast of the parliament itself; and are not defined and ascertained by any particular stated laws.” 1 Blackstone at 159. “The execution of internal rules” also implicates the substantive legislative power because it has always been inextricably “identified with the legislative process.” *Consumers Union of U.S., Inc. v. Periodical Correspondents’ Ass’n*, 515 F.2d 1341, 1351 (D.C. Cir. 1975). Those rules concern “the direct business of passage or rejection of proposed legislation,” which goes to the core of the legislative power and legislative deliberations. *Id.* Thus, “all matters of method are open to the determination of” each house. *NLRB v. Noel Canning*, 573 U.S. 513, 551 (2014).

“[A] statute may not control a rule of internal proceeding” of each house in a binding and irrevocable manner. *People’s Advocs.*, 181 Cal. App. 3d at 325. It’s possible that the Legislature may prescribe its own internal rules by procedural statutes as it would through rules or resolutions. But because the Constitution vests each house with rulemaking authority, “[t]he *form* (statute or rule or resolution) chosen by a house to exercise its rulemaking power cannot preempt or estop a house from employing its *substantive* [rulemaking] powers.” *Id.* at 326. A legislature’s “self-imposed statutory or procedural rules” are merely an “implementation of internally-imposed legislative procedures.” *League of Women Voters of Wis. v. Evers*, 929 N.W.2d 209, 223 (Wis. 2019).

Under these principles, courts have held that initiatives cannot control the internal legislative processes. In *People's Advocates*, the California Court of Appeal held that an initiative that overhauled the California Legislature's internal lawmaking processes violated the California Constitution because it "regulat[ed] the internal workings of the houses" despite the fact that the constitution made those powers "exclusively the province of the houses." 181 Cal. App. 3d at 326-27. The court held that "[r]ules or resolutions which affect ... [the] rules of proceedings or rules for [the] committees ... [were] the exclusive prerogative of '[e]ach house'" under the constitution. *Id.* at 325. And this "power" that was "conferred exclusively upon a house of the Legislature [could not] be delegated." *Id.* at 327. The court further held that "[t]he people's initiative statutory power, being limited to the subject matter of statutes, [did] not extend to these matters." *Id.* at 325; *see also id.* at 327 (the reservation to make laws through initiatives "[did] not include the power to regulate the internal workings of the houses"). The court also held that "[o]nly by means of [a] ... constitutional amendment may the people modify or impinge upon the freedom of the Legislature to exercise its constitutionally granted powers" to set its own internal rules. *Id.*

Similarly, in *Alaskans for Efficient Gov't, Inc. v. State*, the Alaska Supreme Court held that an initiative could not "requir[e] a supermajority vote for the legislature to pass tax-related bills." 153 P.3d 296, 297 (Alaska 2007). The court observed that the Alaska Constitution expressly "directs the legislature to 'establish the procedure for enactment of bills into law'" and stated that "[n]o bill may become law without an affirmative vote of a majority." *Id.* at 300. Because the constitution gave "the legislature the duty to adopt procedural rules for enacting law, while spelling out the precise vote required to enact bills as laws," an initiative could not prescribe a different rule. *Id.*

Applying those principles, Proposition 4 impermissibly displaced the constitutional prerogative of "[e]ach house" to "determine the rules of its proceedings." Utah Const. art. VI, §12.

1. **Requiring a vote on the commission’s or the Chief Justice’s plans (Utah Code §20A-19-204(2)(a) (2018)) impaired the Legislature’s prerogative to determine its own rules and proceedings.**

Proposition 4 *required* the Legislature to vote on the Commission’s or the Chief Justice’s plans by an up-or-down vote without changes or amendments. Utah Code §20A-19-203 (2018), §20A-19-204(2)(a) (2018). But each house is constitutionally free to decide which bills to consider, how to consider them, or when to consider them. *See Lewis*, 72 P. at 389 (“[i]t is wholly within the discretion of the Legislature to determine whether ... such conditions or such facts and circumstances warrant it to act.”); *see also People’s Advocs.*, 181 Cal. App. at 325; *Alaskans for Efficient Gov’t*, 153 P.3d at 297. As Senator Bramble, S.B. 200’s sponsor, explained, the required vote provision was “one of the sticking points” of Proposition 4. *Supra* ¶55. Senator Davis, one of the Democratic senators who negotiated S.B. 200 with Better Boundaries, agreed: Proposition 4’s required vote provision would have violated the Legislature’s “own rules” and raised “separation of powers issues” by requiring the Legislature, as a whole, to take a vote on the commission’s plans—even without “a House sponsor or a Senator sponsor.” *Supra* ¶57. That required vote provision simply “didn’t fit” with “the legislative process” under the Constitution. *Supra* ¶46.

Plaintiffs downplay this provision as merely allowing the commission or the Chief Justice to “make[] ‘nonbinding recommendations.’” Pls.-Mot. at 18. That’s wrong. Proposition 4’s procedural requirements—including requiring the Legislature to take a mandatory vote—triggered yet another procedural hurdle of issuing a public report and were backed up by provisions authorizing voter lawsuits. *See* Utah Code §20A-19-204(5)(a) (2018); *id.* §20A-19-301 (2018). Under Article VI, the Legislature must “retain the power to make ultimate policy decisions and override decisions made by others.” *Int’l Ass’n of Firefighters*, 563 P.2d at 790. Proposition 4 killed that power for redistricting; the Legislature wasn’t entirely free to ignore the commission’s or the Chief Justice’s adopted plans. In fact, that’s precisely what Proposition 4’s sponsors wanted—to “authorize[] ... a lawsuit” to ensure that the Legislature “conforms to ... the requirements established by Proposition 4.” **Exhibit A**, VIP at 75.

In any event, nonbinding or not, prescribing rules governing what bills the Legislature *must* consider constitutes by itself a serious imposition on the Legislature because such rules are bound up

with “the direct business of passage or rejection of proposed legislation.” *Consumers Union*, 515 F.2d at 1351; *see also Int’l Ass’n of Firefighters*, 563 P.2d at 788, 790 (invalidating a statute that empowered an arbitration panel to decide disputes between a city and firefighters even though the panel’s determination as to “salary or wage matters” were “advisory only”). Proposition 4 impermissibly displaced that “exclusive” constitutional prerogative by requiring the Legislature to vote up-or-down on particular bills by statute. *Pa. AFL-CIO*, 563 Pa. at 120.

To be sure, S.B. 200 retains a commission that helps the Legislature by recommending redistricting plans. But unlike Proposition 4’s procedural provisions, S.B. 200’s provisions were voluntarily adopted by each house to retain the helpful reform elements. And S.B. 200 relies on the commission as a helpful auxiliary that can make truly non-binding proposals but does not *require* the Legislature to take up the commission’s proposals as if they were sponsored bills, in contravention of the Legislature’s prerogative to set its own internal rules. *See Utah Code* §20A-20-303(5) (the Legislature “may, but is not required to, vote on or adopt a map submitted ... by the commission”). S.B. 200 preserves each house’s ability to modify procedural rules, if necessary, and preserves each house’s constitutional prerogative to decide which bills to consider and how to consider them, by removing the threat of lawsuits based on alleged procedural violations. *See People’s Advocs.*, 181 Cal. App. 3d at 326; *see also Evers*, 929 N.W.2d at 222 (“How the Legislature meets, when it meets, and what descriptive titles the Legislature assigns to those meetings or their operating procedures constitute parts of the legislative process with which the judicial branch ‘has no jurisdiction or right’ to interfere.”).

2. Requiring a “better plan” report (Utah Code §20A-19-204(5)(a) (2018)) impaired the Legislature’s prerogative to determine its own rules and proceedings.

Proposition 4 stated that, if the Legislature were to adopt its own plans, the Legislature must issue “a detailed written report” explaining why it rejected the commission’s or the Chief Justice’s plans and why the Legislature’s plans are “better.” *Utah Code* §20A-19-301(5)(a). Such a procedural requirement—if it is to be set at all—must come from “[e]ach house” by its own rules, *Utah Const. art. VI, §12*, and not thrust upon the Legislature by the threat of lawsuit through an initiative, *see People’s*

Advocs., 181 Cal. App. 3d at 325. The Utah Constitution provides a specific method for enacting bills and leaves the rest to the Legislature’s discretion and own procedural rules. *See* Utah Const. art. IX; *see also id.* art. VI, §§22, 24; *id.* art. VII, §8. Under “[g]eneral principles of separation of powers,” this Court should be “wary,” *Gregory*, 2013 UT 18, ¶59 n.29, of allowing a statute to supersede the constitutional prerogative of “[e]ach house” of a coordinate branch to set its own internal rules, Utah Const. art. VI, §12; *see also* Utah Const. art. V, §1; *Matheson*, 641 P.2d at 679 (invalidating a statutory Senate approval provision attempting to “control” the Governor’s “process” of appointing judges).

In addition, Proposition 4’s written-report requirement would have imposed on the Legislature the practical difficulty of ascertaining the will of 104 individual legislators through a written report. But legislators speak through their votes and “the plain text of the bills” that pass in the Legislature under the Utah Constitution’s bicameral-passage and presentment requirements. *Supra* ¶59; Utah Const. art. VI, §22; *id.* art. VII, §8(1). The written report that Proposition 4 contemplated would be akin to a committee report which would not undergo a formal passage or be presented to the Governor. The Legislature as a whole does not—and cannot—speak through such reports. Further, requiring the legislators to explain their legislative acts, other than through the text of the bill, formal votes, or floor debates—which in turn could be used in litigation, *see* Utah Code §20A-19-301(2) (2018)—would have contravened the Speech or Debate Clause, which provides that the “Members of the Legislatures ... shall not be questioned in any other place,” Utah Const. art. VI, §8; *supra* ¶59.

3. Requiring a public comment period for 10 calendar days (Utah Code §20A-19-204(4) (2018)) impaired the Legislature’s prerogative to determine its own rules and proceedings.

Proposition 4 also prohibited the Legislature from enacting any redistricting plans without “making [the plans] available on the Legislature’s website ... for a period of no less than 10 calendar days” and accepting public comments during that period. Utah Code §20A-19-204(4) (2018). Again, such a procedural requirement must come from “[e]ach house” by its own rules, Utah Const. art. VI, §12; *cf.* Utah Code §20A-20-303(3)(b) (2020) (requiring the Legislative Redistricting Committee to accept public comments), not from an initiative that threatens to subject the Legislature to lawsuits,

see *People's Advocs.*, 181 Cal. App. 3d at 325. In any event, with or without this provision, legislators are beholden to their constituents, must make themselves available to them, accept input and comments on legislative matters during the legislative process, and be responsive to constituents' concerns. See, e.g., *Abbott v. Perez*, 585 U.S. 579, 603 (2018) ("the good faith of the state legislature must be presumed" (cleaned up)); *Brnovich v. DNC*, 594 U.S. 647, 689-90 (2021) ("legislators have a duty to exercise their judgment and to represent their constituents").

4. Proposition 4's frequency and timing provisions (Utah Code §20A-19-102, §20A-19-204(3) (2018)) impaired the Legislature's prerogative to determine its own rules and proceedings.

Proposition 4 created two provisions about the timing of redistricting legislation. First, Proposition 4 permitted the Legislature to redistrict only once in a decade, unless a court issues a permanent injunction. Utah Code §20A-19-102 (2018). Second, it prohibited the Legislature from "enact[ing] any redistricting plan ... until adequate time [was] afforded to the Commission and to the chief justice." *Id.* §20A-19-204(3) (2018). Both provisions displaced the ability of each house of the Legislature to set its procedural rules. See Utah Const. art. VI, §12; *People's Advocs.*, 181 Cal. App. 3d at 325. If those are to be set, they must come from each house. *Cf.* Utah Code §20A-20-303(4) (2020) ("The Legislature may not enact a redistricting plan" before the commission submits advisory plans). That displacement—coupled with the threat of a lawsuit—restricted the Legislature's constitutional prerogative to set its own rules.

The only-once-a-decade provision independently intruded on the Legislature's constitutional prerogatives. The only *timing* requirement in Article IX is that the Legislature "divide the state into congressional, legislative, and other districts" "[n]o later than the annual general session next following the Legislature's receipt of the results of" the Census. Utah Const. art. IX, §1. The Utah Constitution otherwise leaves the timing and frequency of later redistricting before the next Census to the Legislature's discretion. The Constitution is "not one of grant, but one of limitation," so the Legislature is free to act unless prohibited by the Constitution. *Univ. of Utah v. Shurtleff*, 2006 UT 51, ¶18, 144 P.3d 1109. Article IX further confirms that the Legislature has discretion to decide whether to conduct

mid-decade redistricting. Namely, Article IX, §2 allows the Legislature to determine the number of state representatives between 58 and 77 without any timing or frequency requirements. Utah Const. art. IX, §2. If the Legislature changes the number of state representatives between Censuses, it would have to redraw the legislative districts mid-decade. To the extent there ought to be a frequency limitation on the Legislature’s authority to enact redistricting legislation, that limitation should either come from the “rules of [e]ach house,” Utah Const. art. VI, §12, or from a constitutional amendment, *see Alaskans for Efficient Gov’t*, 153 P.3d at 300.

The once-in-a-decade provision also intruded on the Legislature’s constitutional authority because it operated to limit the Legislature’s ability to exercise its *substantive* legislative discretion. Enacting a mid-decade redistricting plan could be costly and might be unwise under certain circumstances as election officials, candidates, voters, and political parties would have to adjust to the change. But just because certain legislation is “unnecessary or unwise” does not prevent the Legislature from exercising its legislative discretion, because the Legislature is the “sole judge” as to “whether ... to act.” *Lewis*, 72 P. at 389. And “there is nothing inherently suspect about a legislature’s decision” to enact a mid-decade plan. *LULAC v. Perry*, 548 U.S. 399, 419 (2006). What’s more, there are legitimate reasons why the Legislature might enact mid-decade plans. For instance, if the political landscape in the State and the make-up of the Legislature shift dramatically, the Legislature could try to “mak[e] the party balance more congruent to statewide party power” before the next Census. *Id* at 419. And the Legislature could seek to balance the competing interests and weigh the policy considerations differently in response to other dramatic shifts in the State. Article IX and Article VI leave it to the Legislature’s discretion to make these political decisions. That constitutional discretion cannot be cabined by a procedural rule that is not found in the Utah Constitution and contravenes each house’s ability to set procedural rules.

5. Proposition 4’s impairment of the legislative process also transgresses the federal Elections Clause

These procedural limitations on the Legislature’s redistricting role also were impermissible under the federal Elections Clause. *See supra* at 39-41. These statutory provisions were not “the

ordinary constraints on lawmaking in the state constitution.” *Moore*, 600 U.S. at 29; *see also Ariz. State Legislature*, 576 U.S. at 808; *cf. Smiley v. Holm*, 285 U.S. 355, 368 (1932) (Minnesota Constitution subjected redistricting legislation to gubernatorial approval); *Davis v. Hildebrandt*, 241 U.S. 565, 569 (1916) (Ohio Constitution permitted the rejection of a congressional plan by referendum). And interpreting the Utah Constitution to allow voter-passed statutory procedural requirements to control the Legislature’s constitutional redistricting functions would “exceed[] the bounds of ordinary judicial review” and “violate[]” the federal Elections Clause. *Moore*, 600 U.S. at 36.

E. Proposition 4 effectively transferred and delegated redistricting responsibilities to the commission and the Chief Justice.

Proposition 4 effectively transferred and delegated redistricting responsibilities to the commission and the Chief Justice. Rather than merely authorizing the commission or the Chief Justice to make nonbinding recommendations to the Legislature, Proposition 4 mandated that the Legislature take an up-or-down vote on the commission’s plans, reducing the Legislature’s role to a simple ratifying function. And Proposition 4 required the Legislature to explain why its plan was better than the commission’s plans under a threat of lawsuits, leaving the Legislature unable to freely exercise *its* own discretion when discharging its constitutionally assigned redistricting functions. The combined effect of these provisions was to effectively transfer and delegate redistricting responsibilities to the commission and the Chief Justice.

1. The people, through the Utah Constitution, allocated the legislative power (between the Legislature and the people) and the redistricting authority (exclusively to the Legislature). *See* Utah Const. art. V, §1; *id.* art. IX, §1. Article I, §2 buttresses this intentional separation-of-powers choice. Because the people—who have the “inherent” “political power”—“confer[red]” the legislative and redistricting powers to the Legislature, those powers are “to be exercised by persons responsible and accountable to the people—not independent of them.” *Int’l Ass’n of Firefighters*, 563 P.2d at 790. Under the Utah Constitution, “[t]he Legislature is not permitted to abdicate or transfer to others the essential legislative function with which it is thus vested.” *W. Leather & Finding Co. v. State Tax Comm’n of Utah*, 48 P.2d 526, 528 (Utah 1935).

The Utah Supreme Court's decision in *International Association of Firefighters* illustrates these non-delegation principles under Article V. There, a state statute created a board of firefighters "to organize, for the purposes of bargaining collectively." 563 P.2d at 788. If the board and the city were "unable to reach an agreement ... after negotiations," then the state statute "require[d] all unresolved issues to be submitted to arbitration." *Id.* The firefighters would select one arbitrator, the city would select a second arbitrator, and those two arbitrators would select the third. *Id.* The arbitration panel's determination was "final and binding on all matters, except salary or wage matters," which would be "advisory only." *Id.* The Court held that this delegation violated Article V. The Utah Constitution requires "those who have been selected, by a given process, and from a given constituency" to "retain the power to make ultimate policy decisions and override decisions made by others." *Id.* This was especially true in the realm of "budgeting," and "these policy decisions [could] not be delegated to a private ad hoc panel of arbitrators." *Id.* at 790. The Court held that it would be "an enormous departure" for a body other than the Legislature to make "legislative-political" decisions "as an alternative to [the Legislature's] facing up to vexing problems in the halls of [the] state ... legislature[.]" *Id.* It was an "invalid" "delegation of legislative power" also to "requir[e] independent decision makers without accountability ... and the unique dispersal of decision-making power among numerous ad hoc decision makers, only temporarily in office." *Id.* (quoting *Dearborn Fire Fighters Union v. City of Dearborn*, 231 N.W.2d 226, 241 (Mich. 1975)). Any attempt to "insulate the decision-making process and the results from accountability within the political process" is unconstitutional. *Id.* at 789.

The Utah Supreme Court's decision in *Matheson* is also instructive. There, the Legislature sought to limit the Governor's power to appoint judges by (1) limiting the Governor's appointments to "one of two or three candidates nominated by the [judicial nominating] commissions," on which legislators sat, and (2) subjecting the Governor's appointment to Senate approval. 641 P.2d at 678-79. The Court held that this kind of control was unconstitutional because the Governor's "discretion and power ... bec[a]me severely curtailed to a point where his participation in the appointment process could become ineffective, subservient, and perfunctory, amounting to effective control by the Legislature" in violation of "article V, §1." *Id.* at 679.

Article IX’s specific vesting of the redistricting functions confirms that “the Legislature” re-districts, and that the redistricting power cannot be farmed out to an unelected commission. Utah Const. art. IX, §1. Article IX’s “specific[] vest[ing]” of the redistricting function to the Legislature “must be considered as a limitation” on delegating or transferring that function to “any other officer or commission” by statute. *Evans*, 953 P.2d at 442; *see also, e.g., State ex rel. Salt Lake City v. Eldredge*, 76 P. 337, 338, 341 (Utah 1904) (the power to assess taxes “within [a] respective county” constitutionally vested in each county board of equalization cannot by statute be shared with the State Board of Equalization); *State ex rel. Pub. Serv. Comm’n v. S. Pac. Co.*, 79 P.2d 25, 39-40 (Utah 1938) (the power to assess public utilities constitutionally vested in the State Tax Commission “cannot be directly exercised by the Legislature or by it conferred on any other officer or board,” such as the Public Service Commission); *Kennecott Corp. v. Salt Lake County*, 702 P.2d 451, 457 (Utah 1985) (the power to assess mines constitutionally vested in the State Tax Commission cannot by statute be subjected to “trial de novo” in district courts); *Ohms*, 881 P.2d at 849 (court commissioners, who are not judges, cannot be given judicial authority by statute because Article VIII’s “explicit vesting of jurisdiction” in courts was “an implicit prohibition against any attempt to vest such jurisdiction elsewhere”).

2. Here, Proposition 4 effectively transferred and delegated redistricting responsibilities to the commission and the Chief Justice in violation of Article IX, Article VI, and Article V.

Proposition 4 vested the commission and the Chief Justice with the primary redistricting role. Under Proposition 4, the commission was tasked with “prepar[ing]” the districting plans. Utah Code §20A-19-203(1) (2018). If the commission failed to do so, that responsibility fell on the Chief Justice. *Id.* §20A-19-203(2) (2018). And the Legislature was prohibited from “enact[ing] any redistricting plan” unless the commission and the Chief Justice had adequate time to “satisfy their duties under [Proposition 4], including the consideration and assessment of redistricting plans, public hearings, and the selection of [the] recommended redistricting plans.” Utah Code §20A-19-204(3) (2018). Other provisions of Proposition 4 also made it clear that the commission and the Chief Justice would have the primary redistricting role. The Legislature was required to vote on the commission’s or the Chief Justice’s redistricting plans “submit[ted]” to the Legislature. Utah Code §20A-19-204(1), (2)(a) (2018).

The Legislature was further prohibited from making any “change[s]” or proposing “amendment[s]” to the commission’s or the Chief Justice’s plans. Utah Code §20A-19-204(2)(a) (2018). And if the Legislature were to adopt its own plans, it had to issue a written report explaining why its own plans “better satisf[y]” Proposition 4’s substantive standards than the commission’s or the Chief Justice’s plans. Utah Code §20A-19-204(5)(a) (2018).

This delegation of redistricting functions exceeded the constitutional bounds in Article IX, Article VI, and Article V. The power to propose legislation is the power to legislate, and “the decision whether or not to introduce legislation is one of the most purely legislative acts that there is.” *Yeldell v. Cooper Green Hosp., Inc.*, 956 F.2d 1056, 1063 (11th Cir. 1992). But by empowering the commission and the Chief Justice to “submit” legislation that the Legislature was required to take a mandatory vote on, Utah Code §20A-19-204(1)-(2) (2018), Proposition 4 transferred and delegated legislative power to the commission and the Chief Justice. The legislative power must be exercised solely by the legislators who were “selected[] by”—and thus “accountable to”—the people in accordance with Article VI, not by the unelected commission and Chief Justice who are “independent of” and “insulate[d]” from the political process. *Int’l Ass’n of Firefighters*, 536 P.2d at 790. This delegation of legislative power does not work “in harmony” with Article VI, Article IX, and Article V. *LWV*, 2024 UT 21, ¶161.

Plaintiffs argue that Proposition 4 posed no delegation problem because the Commission or the Chief Justice could only make “‘non-binding recommendations’ to the Legislature.” Pls.-Mot. at 18. Even if the Plaintiffs were right, they could not avoid the serious delegation problem. In *International Association of Firefighters*, the Court invalidated a statute that empowered the arbitration panel to make only “advisory” recommendations on “salary or wage matters” as an “[in]appropriate means of resolving legislative-political issues.” 563 P.2d at 788, 790.

In any event, Plaintiffs are wrong. Under Proposition 4, the commission’s or the Chief Justice’s plans were binding on the Legislature to the extent it required the Legislature to take a mandatory vote on those plans. Proposition 4 thus both displaced the legislative process, regulated by the rules of “[e]ach house,” Utah Const. art. VI, §12, and functioned as an improper delegation of the legislative

power to introduce legislation, *Yeldell*, 956 F.2d at 1063. And the prohibition on amending or changing the commission’s and the Chief Justice’s plans improperly eliminated the Legislature’s “traditional lawmaking” function, reducing it instead to a mere “ratifying function.” *Moore*, 600 U.S. at 28. More to the point, under Proposition 4, the commission’s and the Chief Justice’s plans were not truly non-binding. The Legislature risked lawsuits if it were to enact its own maps or failed to explain why its own maps were not “better” than the commission’s and the Chief justice’s plans. Utah Code §20A-19-204(5) (2018), §20A-19-301 (2018). But to “retain the power to make ultimate policy decisions,” the Legislature must be free to “override decisions made by others.” *Int’l Ass’n of Firefighters*, 563 P.2d at 790. Under Proposition 4, the Legislature was not free to do so.

This is not to say that the Legislature may not rely on a truly advisory commission in discharging its constitutional duties, as S.B. 200 permits. But that reliance must be appropriately limited, retaining in “the Legislature” sufficient discretion to redistrict. *See State v. Gallion*, 572 P.2d 683, 685, 688 (Utah 1977) (the Legislature cannot delegate to the Attorney General “essential legislative functions” such as classifying what conduct is criminal). Under S.B. 200, the advisory commission allows the Legislature to retain its “essential legislative functions,” *id.* at 688, because the Legislature retains the full control over whether to introduce the advisory commission’s proposals, whether to amend them, whether to vote on them, and whether to enact them—all without a threat of litigation. For these reasons, Proposition 4 improperly delegated and transferred the Legislature’s redistricting role to the commission and the Chief Justice.

3. Proposition 4’s delegation of legislative functions to the commission and the Chief Justice also violated the federal Elections Clause as to congressional districts. *See supra* at 39-41. The federal Elections Clause assigns redistricting duties to each State’s “Legislature.” U.S. Const. art. I, §4. Neither the commission nor the Chief Justice is the Legislature. *See* Utah Const. art. VI, §1. Nor did Proposition 4 amend the Utah Constitution. *See LWV*, 2024 UT 21, ¶63 n.15, ¶161. Thus, Proposition 4’s delegation of redistricting functions was not an “ordinary constraint[] on lawmaking in the state constitution.” *Moore*, 600 U.S. at 30. To be sure, the U.S. Supreme Court in *Arizona State Legislature* interpreted the federal Elections Clause to mean that a State could displace its legislature from the

redistricting process entirely. 576 U.S. at 817-18. However, in *Arizona State Legislature*, those structural changes occurred through an initiative that amended the state constitution. *Id.* at 792. That was not the case here. And interpreting the Utah Constitution to allow the *statutory* provisions in Proposition 4 to displace the Legislature from redistricting would “transgress the ordinary bounds of judicial review.” *Moore*, 600 U.S. at 36.

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For these reasons, Proposition 4 was not a proper exercise of the initiative power to alter or reform the government. Proposition 4 limited the Legislature’s substantive discretion, displaced its prerogative to govern its procedures, and transferred and delegated its redistricting function to the commission and the Chief Justice. Plaintiffs thus cannot establish this crucial “element” of Count V, so Count V fails for that reason. *LWV*, 2024 UT 21, ¶74.

II. S.B. 200 does not impair or infringe on the right to “alter or reform” the government through an initiative.

Under *LWV*’s second step, Plaintiffs still bear the burden to show that S.B. 200 “infringed” their right to alter or reform the government through Proposition 4. *LWV*, 2024 UT 21, ¶73. Because this showing is an “element[]” of the claim under the initiative and alter-or-reform clauses, Plaintiffs’ Count V fails if they cannot make this showing. *Id.* ¶74. *LWV* held that not all modifications made by the Legislature to an initiative rise to the level of impairing any reform contained in an initiative. The Legislature still can “amend a government-reform initiative in a way that does not infringe the people’s reform right” by “further[ing],” “facilitat[ing],” or “at least ... not impair[ing]” such reform. *Id.* ¶162. Only those changes that “amend[], repeal[], or replace[] the initiative in a manner that impaired the reform contained in the initiative” are subject to strict scrutiny. *See id.* ¶74.

As a threshold matter, Plaintiffs concede that not every provision in Proposition 4 was a “key” provision such that the Legislature’s amendment impaired Proposition 4’s reforms. *Cf.* Pls.-Mot. at 12. They also concede that numerous provisions of S.B. 200 were proper. *See* Pls.-Mot. 25-26. For instance, Plaintiffs don’t argue that Proposition 4’s vesting of redistricting functions in the Chief Justice was a “key” provision. *Cf.* Pls.-Mot. at 12. They concede that S.B. 200’s removal of the Chief

Justice’s role in redistricting did not impair Proposition 4’s reforms. Pls.-Mot. at 19. And they also concede that numerous S.B. 200 reforms—such as the changes to “the Commission structure and map selection process”—were proper. *See* Pls.-Mot. at 26 n.26.

Ultimately, Plaintiffs allege that eight categories of alterations in S.B. 200 improperly impaired Proposition 4’s reforms. *See* Pls.-Mot.13-14. But contrary to Plaintiffs’ allegations, S.B. 200 did not impair Proposition 4’s main purpose or reforms for six reasons. **First**, S.B. 200 retained the commission, which still can recommend advisory maps and was adequately funded by the Legislature. **Second**, the public can still provide input and comments to the Legislature regarding redistricting. **Third**, allowing the Legislature to retain discretion over the frequency of redistricting furthers Proposition 4’s reforms. **Fourth**, allowing the commission to have greater flexibility over substantive standards did not impair Proposition 4’s reforms. **Fifth**, removing unconstitutional and mandatory aspects of Proposition 4 did not impair Proposition 4’s reforms. **Sixth**, construing S.B. 200’s reforms to impair Proposition 4 would convert an initiative-enacted statute into a constitutional amendment.

A. S.B. 200 retained the commission’s advisory functions and provided adequate funding.

Plaintiffs argue that S.B. 200 “impaired Proposition 4’s central reforms.” Pls.-Mot. at 12. That argument would have surprised Better Boundaries—Proposition 4’s sponsor—and S.B. 200’s Democratic sponsors, who in 2020 repeatedly said that S.B. 200 did not “impair” Proposition 4’s reforms. S.B. 200 facilitated the reforms by retaining the commission, allowing it to recommend advisory maps, and providing it with adequate funding. *LWV*, 2024 UT 21, ¶162. Plaintiffs’ account of S.B. 200 rewrites history by ignoring Better Boundaries’ and minority legislative leaders’ full support for S.B. 200.

First, the commission was Proposition 4’s central feature, and S.B. 200 retained it. The Voter Information Pamphlet explained that Proposition 4 would “create[] the ‘Utah Independent Redistricting Commission,’ with responsibility to recommend redistricting plans to the Legislature.” **Exhibit A**, VIP at 74. S.B. 200, of course, retains the commission. *See* Utah Code §20A-20-201 (2020). On this issue, Better Boundaries praised S.B. 200 as a “reasonable” “compromise” that “preserve[d] the

independence of the Commission and maintain[ed] the public’s voice in the redistricting process.” *Supra* ¶¶ 38, 85. Better Boundaries’ co-chair Jeff Wright was “satisfied” that S.B. 200 would “make the process of redistricting more transparent, fair, and accountable.” *Supra* ¶37. And Better Boundaries’ executive director Rebecca Chavez-Houck said that the commission under S.B. 200 is “so much more rigorous, [is] so much more accountable, and [does] so much more than anything [Better Boundaries] could have ever hoped for.” *Supra* ¶41. As she explained, S.B. 200 “protect[ed] the core concept of Prop 4” by adding Utah as one of the few States that “utilize some form of independent redistricting commission.” *Supra* ¶43.

Legislators echoed the sentiment. Representative Gibson, a Republican, explained that “the will of the people” was to “hav[e] an independent commission” and understood the importance of allowing “the independent commission ... to determine [its] own rules.” *Supra* ¶¶33-34. The “agreement” with Better Boundaries—in retaining the commission—“honor[ed] the will of the people.” *Supra* ¶35. Representative Moss, a Democrat, also stated that S.B. 200 was a “good-will compromise” between the Legislature and Better Boundaries that “honor[ed] the public’s desire to have an independent commission.” *Supra* ¶48. Representative King, a Democrat, agreed that S.B. 200 “preserve[s] and maintain[s] the core of ... mak[ing] significant, incremental progress.” *Supra* ¶68

Second, S.B. 200 retained the commission’s advisory functions. A key feature of the commission under Proposition 4 was for the commission (or the Chief Justice) to adopt redistricting plans. *See supra* at 57. S.B. 200 removed certain mandatory provisions of Proposition 4 to eliminate grave and obvious constitutional concerns, *see infra* at 61-62, but S.B. 200 continued the commission’s role in providing advisory redistricting plans. Utah Code §20A-20-303 (2020). S.B. 200 continues to facilitate an “independent voice” in redistricting by retaining an advisory commission. *Supra* ¶54 (Sen. Bramble). Again, Better Boundaries endorsed S.B. 200’s continued advisory use of the commission as “reasonable”: “[T]he Commission will prepare three plans for each map type.” **Exhibit F**, Better Boundaries at 2-3. And Better Boundaries further explained that “[w]hile [S.B. 200] didn’t preserve all of Prop 4, [it was] optimistic that it will allow the Commission to carry out its work while giving legislative leaders confidence in the redistricting process.” *Id.* at 7.

Third, S.B. 200 provided the commission with adequate funding. The Voter Information Pamphlet estimated that Proposition 4’s creation of the commission would “result in a total fiscal expense of approximately \$1 million.” **Exhibit A**, VIP at 83. In S.B. 200, the Legislature expressly appropriated \$1 million for the commission’s use. *See* S.B. 200, §13(1). And the Legislature further provided that the commission’s appropriations would “not lapse at the close of fiscal year 2021.” *Id.* §13(2). Plaintiffs argue that S.B. 200 “undermined the role of the commission by removing the statutory requirement for the Legislature to appropriate adequate funds for the Commission’s work.” Pls.-Mot. at 14. But S.B. 200 not only appropriated to the commission the exact amount that Proposition 4 estimated, but also ensured that the appropriation would “not lapse.” S.B. 200, §13(2).

Particularly given the public statements from Better Boundaries’ co-chair and executive director, Plaintiffs cannot seriously dispute that S.B. 200 retained and facilitated the central feature of Proposition 4’s reforms by retaining the commission, allowing it to recommend advisory maps, and funding it adequately. In short, Plaintiffs cannot show that S.B. 200 impaired Proposition 4’s reforms.

B. Allowing the commission to have greater flexibility over substantive standards furthered Proposition 4’s reforms.

Plaintiffs also argue that S.B. 200 “impaired” Proposition 4’s reforms by amending the substantive redistricting criteria that Proposition 4 required the commission to consider. Pls.-Mot. at 12-13. That argument is meritless. Proposition 4 applied its substantive standard and a rigid “order of priority” on the commission. Utah Code §20A-19-103(2) (2018). S.B. 200 gives the commission greater flexibility over crafting advisory maps. As a threshold matter, S.B. 200 retains for the commission virtually all of the substantive criteria from Proposition 4, but it does so without imposing a rigid order of priority. S.B. 200 instructs the commission to recommend a map that (i) uses the Census, (ii) doesn’t create population deviation of more than 1% between congressional districts, (iii) doesn’t create population deviation of more than 10% or more for other districts, and (iv-v) complies with federal law. *Id.* §20A-20-302(4)(a) (2020). S.B. 200 instructs the commission—again without a rigid order of priority, but with greater flexibility—that it “*shall* define and adopt redistrict standards” that would (a) preserve communities of interest, (b) follow geographical features, (c) preserve cores of prior districts,

(d) minimize division of municipalities and counties, (e) achieve boundary agreements, and (f) prohibit the purposeful or undue favoring of incumbents, candidates, and political parties. *Id.* §20A-20-302(5) (2020) (emphasis added). Besides those mandatory provisions, S.B. 200 gives the commission express permission to “prohibit[]” consideration of “partisan political data,” “political party affiliation information,” “voting records,” “partisan election results,” and residences of incumbents and candidates when discharging its recommending functions. *Id.* §20A-20-302(6) (2020).

As Better Boundaries itself explained, under S.B. 200, the commission was still “prohibited from drawing districts to unduly favor or disfavor any incumbent, candidate, or political party.” **Exhibit F**, Better Boundaries at 5. Representative King also spoke in support of S.B. 200, observing that it “make[s] significant, incremental progress in removing ... partisan or political consideration.” *Supra* ¶68.

Given both S.B. 200’s mandate that the commission “define and adopt” standards that “prohibit[] the purposeful or undue” favoring of incumbents, candidates, and political parties—and its express permission for the commission to prohibit the consideration of partisan data—S.B. 200 retains the advisory commission’s role in recommending maps that Plaintiffs would welcome. Plaintiffs are thus wrong to suggest that S.B. 200’s reforms giving the commission greater flexibility somehow impaired Proposition 4’s reforms. *Cf.* Pls.-Mot. at 12-13.

C. The public still can provide input and comments to the Legislature.

Plaintiffs also argue that S.B. 200’s amendment to Proposition 4’s public-comment provision impaired Proposition 4’s reforms, alleging that S.B. 200 “no longer ... require[s] opportunities for public input.” Pls.-Mot. at 12, 14; Utah Code §20A-19-204(4) (2018). But this argument runs headlong into S.B. 200’s plain text, which still requires that the Legislature, through the Legislative Redistricting Committee, “hold public meeting[s]” and “provide reasonable time for ... the public to comment on the maps.” Utah Code §20A-20-303(3)(b)(ii) (2020). And the Legislative Redistricting Committee’s website enabled the public to view and comment on the plans proposed by the legislators and the commission. *See* Utah Legislative Redistricting Comm., *MyDistricting* (last visited Oct. 15, 2024),

<https://bit.ly/4hxrBON>. As discussed above, legislators are accountable to—and always open to comments from—their constituents. *See supra* at 48-49. That’s why Better Boundaries agreed that S.B. 200 still requires the Legislature, through the Legislative Redistricting Committee, to “have a public hearing dedicated to reviewing the Commission’s maps and taking public comment.” **Exhibit F**, Better Boundaries at 4. Plaintiffs don’t explain how S.B. 200, which still enables public comments, impairs this Proposition 4 reform. *See* Pls.-Mot. at 14. Plaintiffs thus cannot show that S.B. 200’s amendment to Proposition 4’s public-comment provision impaired Proposition 4.

D. Allowing the Legislature to retain discretion over the timing of redistricting furthers reform.

Plaintiffs also contend that S.B. 200 “impaired” Proposition 4’s reforms by ensuring that the Legislature retains discretion over the timing of redistricting. Pls.-Mot. at 12-13; *see* Utah Code §20A-19-102 (2018). Again, Article IX does not prescribe rules regarding the timing of redistricting, other than requiring the Legislature to redistrict “[n]o later than the annual general session next following the Legislature’s receipt of” the Census. Utah Const. art. IX, §1. Proposition 4 stated that the Legislature may only redistrict once, unless a court issued a permanent injunction. Utah Code §20A-19-102 (2018). S.B. 200 repealed this provision of Proposition 4. Plaintiffs argue that this change “impaired” Proposition 4’s reforms, because the only-once-a-decade rule “was aimed to ensure that the redistricting process is a response to population growth and shifts, not a ready means to improve one party’s or one politician’s chances in the next election.” Pls.-Mot. at 12-13. But S.B. 200 did not impair that goal. As explained, if a goal of Proposition 4 were to limit the influences of “partisan gerrymandering,” as Plaintiffs claim, Pls.-Mot. at 12, allowing the Legislature to retain discretion to conduct mid-decade redistricting could serve to “mak[e] the party balance more congruent to statewide party power” if the political landscape in the State were to shift dramatically before the next Census, *Perry*, 548 U.S. at 419; *see supra* at 50. Allowing for legislative discretion in this manner would “further[],” “facilitate[],” and “at least ... not impair” Proposition 4’s reforms.

E. Removing unconstitutional and mandatory aspects of Proposition 4 did not “impair” its reforms.

Plaintiffs argue that S.B. 200’s amendment to Proposition 4’s various mandatory provisions “impaired” Proposition 4’s reforms. Pls.-Mot. at 12-14. Specifically, Plaintiffs contend that S.B. 200 impaired Proposition 4’s reforms by removing: (1) the substantive standards applicable to the Legislature, including the ban on partisan gerrymandering and other substantive criteria governed by a rigid order of priority; (2) the requirement that the Legislature take a mandatory up-or-down vote on the commission’s adopted plans; (3) the requirement for the Legislature to explain why its maps are “better” than the commission’s; and (4) a private cause of action for alleged substantive and procedural violations of Proposition 4. Pls.-Mot. at 13-14. But as discussed, those provisions were constitutionally defective. *See supra* at 28-57. Removing those constitutionally defective provisions necessarily furthered Proposition 4’s reforms by making them efficacious and legally compliant. Removing unconstitutional aspects of a statute cannot impair the right to alter or reform the government. Better Boundaries itself agreed that S.B. 200’s reforms were “reasonable” and that S.B. 200’s compromise will ensure “confidence in the redistricting process.” **Exhibit F**, Better Boundaries at 7.

In addition, S.B. 200’s amendments to those provisions did not impair Proposition 4’s central reforms. The advisory commission still exists. It is independent, is adequately funded, and must submit recommended maps, just as Proposition 4 envisioned. And S.B. 200 lets the commission “define and adopt” redistricting standards free of purposeful or undue favoring of an incumbent, candidate, or political party. *Supra* ¶80. In other words, S.B. 200 still requires the commission to submit maps that are free of “partisan gerrymandering,” just as Proposition 4 envisioned. Better Boundaries’ executive director agreed that the commission was “[t]he heart of Prop. 4” and that S.B. 200’s retention of the commission was “a win.” Katie McKellar, *Utah Legislature approves Better Boundaries deal* (Mar. 11, 2020), <https://bit.ly/3UG3EkK>; *see also supra* ¶¶43-44. And as Better Boundaries further explained, “[t]he 2020 SB 200 compromise preserves the independence of the Commission and maintains the public’s voice in the redistricting process.” **Exhibit F**, Better Boundaries at 2. Even without Proposition 4’s

mandatory provisions applied to the Legislature, S.B. 200 was “a reasonable approach to redistricting reform.” *Id.*

Because S.B. 200 retains the independent commission that recommends plans free of partisan gerrymandering, the people of Utah can compare the commission’s maps against the Legislature’s maps. That’s one reason Better Boundaries’ executive director explained that the “contrast” between “what [map] moves forward and what does not” serves Proposition 4’s goals. *See supra* ¶52. S.B. 200 thus further enables the people to hold legislators accountable if, in their view, partisan gerrymandering occurred. Or, as Representative Moss put it, “the public” will serve as a check on the Legislature. *See supra* ¶67. As Better Boundaries explained, this “contrast and check” retains Proposition 4’s “valuable” reform. Better Boundaries, *Utah Lawmakers, Better Boundaries explain how they’ve compromised on the anti-gerrymandering law* (Feb. 28, 2020), perma.cc/XXM5-NYYD (**Exhibit H**). Rather than “impair” Proposition 4’s reforms, S.B. 200 furthered and facilitated them.

*

For these reasons, S.B. 200 “further[ed],” “facilitate[d],” and did “not impair” Proposition 4’s reforms. *LWV*, 2024 UT 21, ¶73. Plaintiffs’ Count V must fail. *Id.* ¶74.

III. The Legislature’s changes to Proposition 4 satisfy strict scrutiny.

Plaintiffs first contend that S.B. 200 fails strict scrutiny by strawmanning the interests underlying S.B. 200. They assert that S.B. 200 cannot survive strict scrutiny because the Legislature has no interest “in engaging in partisan gerrymandering or configuring districts without regard to neutral, traditional criteria.” Pls.-Mot. at 15. But those are not the interests underlying S.B. 200. Nor, Plaintiffs argue, is there an interest “in shielding the government from litigation” or remedying “perceived ... constitutional flaws.” Pls.-Mot. at 15-16. But of course the State has an interest in remedying the perceived constitutional flaws in Proposition 4. The State also has compelling interests in:

- ensuring that all Utahns are represented in the redistricting process;

- ensuring that redistricting plans are enacted in a timely fashion without the risk of winding up in prolonged litigation that would cast uncertainty over the district lines and voter representation; and
- safeguarding the fiscal health of the State, which Proposition 4’s private cause of action and fee-shifting provision jeopardized.

S.B. 200 is narrowly tailored to advance each of those compelling government interests.

A. S.B. 200 was narrowly tailored to ensure the constitutionality of redistricting laws.

S.B. 200 furthered the compelling state interest in ensuring that redistricting laws in Utah are constitutional. “[C]omplying with ... constitutional obligations” is “compelling.” *Widmar v. Vincent*, 454 U.S. 263, 271 (1981). Legislative Defendants’ arguments above, incorporated by reference here, confirm that Proposition 4 suffered from a host of constitutional infirmities under the Utah Constitution and the federal Elections Clause, which the Legislature and initiative proponents set out to remedy. *See supra* at 28-57. Legislators had serious and justified concerns with “what could be imposed upon the Legislature” by Proposition 4 “in the context of the constitutional framework.” *Supra* ¶50. They were deeply concerned about ensuring that the Legislature “retains the ultimate authority” over redistricting and ensuring that the commission would serve “only” an “advisory” role so that it did not intrude on the Legislature’s exclusive constitutional prerogatives. *Supra* ¶71. A Democratic legislator further recognized that Proposition 4’s reforms—such as the mandatory up-or-down vote—“didn’t fit” within “the legislative process” under the Utah Constitution because it displaced the Legislature’s “own rules.” *Supra* ¶¶46, 57. S.B. 200 was enacted to “adequately address[] the concerns about separation of powers” and to “put[] to rest any questions about constitutionality” of Proposition 4. *Supra* ¶64.

The changes in S.B. 200 were narrowly tailored to addressing those infirmities. First, as Representative Moss, the House Democratic sponsor of S.B. 200, explained, the Legislature tried in every way to preserve what the Proposition did.” *Supra* ¶67. Senator Davis, another Democrat, explained that S.B. 200 did “not do away with Prop 4” but “ma[de] it work.” *Supra* ¶45. Representative King,

another Democrat, agreed that S.B. 200 didn't go too far, but that it "preserve[s] and maintain[s] the core of what we're looking for in trying to make significant, incremental progress in removing ... partisan or political consideration." *Supra* ¶68. And as explained above, S.B. 200 creates a commission that is "more rigorous, [is] more accountable, and [does] more than anything that [Better Boundaries] could have ever imagined." *Supra* ¶41. The commission still exists. It's funded with the exact amount that Proposition 4 estimated. The commission still gets to submit three maps to the Legislature, through the Legislative Redistricting Committee. S.B. 200 prohibits the commission from taking into account partisan and political considerations. The public still has many opportunities to weigh in as part of the public hearing process. *Supra* ¶83.

Second, S.B. 200's removing the mandatory nature of Proposition 4's redistricting criteria that applied to the Legislature was narrowly tailored to cure constitutional defects. *See supra* at 33. As Better Boundaries' executive director explained, even without the mandatory redistricting criteria being applied to the Legislature, S.B. 200 would still let the public hold the Legislature accountable by seeing the "contrast" between the Legislature's and the commission's maps. *Supra* ¶52. And as Representative King, a Democrat, explained, S.B. 200—even without the mandatory provision applied to the Legislature—was a "significant, incremental progress in removing ... partisan or political consideration" precisely because *the commission* would be prohibited from considering political objectives. *Supra* ¶68. Therefore, removing the mandatory substantive provisions in Proposition 4 was narrowly tailored to curing Proposition 4's constitutional defect and ensuring that the Legislature retained its exclusive constitutional prerogatives.

Third, S.B. 200's removing a host of Proposition 4's procedural requirements on the Legislature was narrowly tailored. By removing those procedural hoops, S.B. 200 restored the Legislature's exclusive constitutional prerogative to make decisions according to its own internal rules and timelines. *See supra* ¶54; *id.* at 43-45. At the same time, S.B. 200 expressly contemplates that the Legislature, through the Legislative Redistricting Committee, would hold a public hearing, give the commission adequate time to present its maps, and allow for public input. *See Utah Code* §20A-20-303(3) (2020)

(requiring the Committee to hold a public hearing for the “sole purpose” of the commission’s presentation of its maps and public comment).

Even if the Court were to ultimately disagree with the Legislature about the constitutionality of each provision that the Legislature found suspect, Legislative Defendants have sufficiently established that there were widely shared concerns about Proposition 4’s unconstitutionality such that S.B. 200’s changes to Proposition 4 were justified. The Legislature should be given the “breathing room” to adopt measures “that may prove, in perfect hindsight, not to have been needed.” *Cooper v. Harris*, 581 U.S. 285, 293 (2017). For example, compliance with the Voting Rights Act may constitute a compelling state interest for Equal Protection purposes, and in those cases “the narrow tailoring requirement insists only that the legislature have a ‘strong basis in evidence’ in support of” its action. *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015). Similarly, in a Title VII case, an employer may show its otherwise discriminatory action is permissible if it “can demonstrate a strong basis in evidence” that the action was necessary to comply with another statute. *Ricci v. DeStefano*, 557 U.S. 557, 563 (2009). And Utah caselaw reflects a similar preference for deference to the Legislature. *E.g., Parkinson*, 4 Utah 2d at 195 (asking whether the “Act represents a *bona fide attempt* to carry out the constitutional mandate” (emphasis added)).

In other words, strict scrutiny is met when legislators “have good reasons” to believe their actions are required “even if a court does not find that the actions were necessary for statutory [or constitutional] compliance.” *Ala. Legis. Black Caucus*, 575 U.S. at 278. To satisfy strict scrutiny, the Legislature need not show with one hundred percent certainty that a constitutional violation would have occurred. *Accord Walker v. Beard*, 789 F.3d 1125, 1136-37 (9th Cir. 2015). This makes sense. Any other rule would leave the Legislature “‘trapped between the competing hazards of liability’ by the imposition of unattainable requirements under the rubric of strict scrutiny.” *Bush v. Vera*, 517 U.S. 952, 977 (1996) (quoting *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 291 (1986) (O’Connor, J., concurring in part and concurring in judgment)). Here, the Legislature had “good reasons” to believe that their actions amending Proposition 4 were required to prevent the structural constitutional concerns discussed above. *Ala. Legis. Black Caucus*, 575 U.S. at 278. Therefore, the Legislature’s actions were

narrowly tailored to address its compelling interest in ensuring that Proposition 4 complied with both the Utah and federal Constitutions.

B. S.B. 200 was narrowly tailored to ensure that all Utahns are represented in redistricting.

The State has a compelling interest in ensuring that all Utahns are represented when deciding how to divide the State into electoral districts, and S.B. 200 was narrowly tailored to further that interest. Voters in 25 of Utah’s 29 counties rejected Proposition 4; it garnered majorities in only Salt Lake, Summit, Grand, and Carbon counties. *Supra* ¶7. It passed by only a 0.6% margin and more than 500,000 Utahns voted against it. *Supra* ¶8. The measure was funded overwhelmingly by out-of-state unions and special interest groups. *Supra* ¶4. After the initiative passed, the Legislature, with help from Proposition 4’s proponents, set out to pass a bill carrying out and facilitating its reforms. *Supra* ¶¶30. S.B. 200 was a compromise bill supported by Proposition 4’s sponsors and proponents to ensure that the initiative was constitutional and reflected the will of people from all corners of Utah.

One such change made by S.B. 200 was to remove the mandatory nature of the redistricting criteria set out in Proposition 4, which tied the hands of legislators representing Utahns throughout the State. For example, a legislator representing southeast Utah might have good reason to see those counties kept whole in redistricting plans, whereas legislators in more populated regions might value different redistricting priorities. The effect of S.B. 200 was to restore in those legislators the ability to choose between and prioritize redistricting criteria, rather than have those criteria dictated by 50.3% of voters supporting Proposition 4, largely from Salt Lake and Summit counties. *See supra* ¶72 (“rural representation ... is so crucial”); *see also id. supra* ¶3 (explaining that Proposition 4’s practical effect would be to “creat[e] an overwhelmingly Democrat district” around Salt Lake City “insulated from the rest of the state”). S.B. 200’s changes ensured that the Legislature could consider concerns of voters from all corners of Utah as it set its own standards applicable to redistricting.

Plaintiffs make much of the fact that S.B. 200 eliminated Proposition 4’s gerrymandering provision. But Plaintiffs ignore that Proposition 4 broadly prohibited plans giving any political advantage to either party, whether intended or not. Proposition 4 broadly prohibited any district that “*unduly*

favors any incumbent elected official, candidate or prospective candidate for elective office, or any political party.” Utah Code §20A-19-103(3) (2018) (emphasis added). That language goes beyond what the Legislature *intends* to encompass whether the Legislature’s proposed districts might, in *effect*, favor one party too much more than another. But it is “impossible to assess the effects of partisan gerrymandering” when “[p]olitical affiliation is not an immutable characteristic, but may shift from one election to the next.” *Vieth*, 541 U.S. at 287 (plurality op.). And Proposition 4 stops short of defining how much favor for one party over another would qualify as “unduly.” Other criteria, too, while characterized by Plaintiffs as “neutral,” are full of policy judgments. Take Proposition 4’s requirement that districts “preserv[e] traditional neighborhoods and local communities of interest.” Utah Code §20A-19-103(2)(e) (2018). Deciding which neighborhoods to favor and which local communities should be split will require policy judgments that do not remain “neutral.” Even determining what qualifies as a “community of interest” is a huge policy decision. *See* Legislative Redistricting Committee 2021, Utah Legislature at 3:40 (Nov. 1, 2021) bit.ly/3CjEYZ1 (statement of Rex Facer, Utah Redistricting Commission Chair, noting that public comments resulted in “nearly a thousand descriptions of communities of interest”).

These few examples illustrate that the Legislature’s interest is not quite as simple as Plaintiffs would make it. The question is not whether the Legislature has an interest in “configuring districts without regard to neutral, traditional criteria,” because properly understood, no such thing exists. Pls.-Mot. at 15. Instead, it is whether the Legislature has an interest in ensuring that *it* is the body making those choices, rather than an independent, unelected commission not meaningfully accountable to the voters. *Cf. Jones v. Barlow*, 2007 UT 20, ¶ 34, 154 P.3d 808 (“The responsibility for drawing lines in a society as complex as ours—of identifying priorities, weighing the relevant considerations and choosing between competing alternatives—is the Legislature’s, not the judiciary’s.”). The Legislature has a compelling interest in removing unmanageable standards and ensuring that the body to answer these questions is representative of and accountable to all Utahns. S.B. 200’s changes that remove the language in Proposition 4 abridging the Legislature’s authority to do that are narrowly tailored to achieving that goal.

C. S.B. 200 was narrowly tailored to ensure maps were enacted in time.

The State also has a compelling state interest in ensuring that the redistricting plans are enacted in a timely manner, and S.B. 200 was narrowly tailored to further that interest.

Ensuring that the Legislature redistricts in a timely fashion is a compelling interest. When the Legislature redistricts, “the makeup” of congressional representation and the Legislature is at stake. *Parkinson*, 4 Utah 2d at 196. And timely redistricting is necessary to ensure that the State complies with federal law. Federal law provides that “[u]ntil a State is redistricted in a manner provided by the law thereof after any apportionment,” the U.S. Representatives would be elected “from the State at large,” rather than from a single-member district, if the number of congressional seats for the State changes. 2 U.S.C. §2a(c). For a fast-growing State like Utah, there’s a real risk of gaining an additional seat in the U.S. House of Representatives, only to run that seat “at large” for failing to redistrict in a timely manner, which would in turn make that Representative less responsive to a smaller number of district-based constituents.

And failing to update the congressional, legislative, and other districts in a timely fashion after a new Census creates the risks that the districts violate the one-person, one-vote principle for congressional districts, and that other districts remain within the permissible population deviation. The U.S. Supreme Court has held that the congressional districts must ensure “equal numbers of people” in each district. *Wesberry*, 376 U.S. at 18. For other districts, each district’s population cannot deviate “above 10%.” *Evenwel*, 578 U.S. at 60. The maps from a previous decade may have complied with these mandates. But a new Census will often show a shift in population from one geographical area of the State to another (and from one district to another). If the Legislature doesn’t act in a timely manner, the population shifts shown in the Census data may reveal that the previous district lines result in too much population deviation. Beyond that, redistricting plans affect election administration, which runs on strict and tight deadlines. *See Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of applications for stays) (“state and local election officials need substantial time to plan for elections”).

S.B. 200’s key changes removed the strict procedural timelines created by Proposition 4, including changing the rigid 10-day public comment period to a “reasonable time” provision for the commission’s presentation and the public’s comment. Utah Code §20A-20-303(3)(b) (2020). S.B. 200’s amendment to some of Proposition 4’s procedural requirements was narrowly tailored to the compelling interest of ensuring that maps were available in time for officials to take other necessary measures to comply with state election law so that the 2022 elections ran smoothly.

Because of S.B. 200’s changes, the Legislature was better able to act quickly in making redistricting decisions in 2021 when the federal government was delayed in releasing the Census data. Because of the Covid-19 pandemic, Census results were extremely delayed. While in past years, data was released early in the spring following the Census year,³⁴ after the 2020 Census, States did not begin receiving the data needed for redistricting until August 12, 2021, and a final redistricting data toolkit was not delivered until September 16.³⁵

This delayed release meant that the Legislature had to work quickly to draw districts so that other election deadlines were not bypassed. For example, state law governing primary elections requires the Lieutenant Governor to determine and publish the number of signatures required for primary nominations in each district “no later than November 30 of each odd-numbered year.” Utah Code §20A-9-403(3)(c) (2021). The Legislative Redistricting Committee’s meetings confirm that the Committee was working hard to complete the maps in 2021. *See* Legislative Redistricting Committee 2021, Utah Legislature at 2:52:20 (Nov. 8, 2021) bit.ly/3Chun0F (statement of Rep. Nelson noting that the Legislature was working on a compressed schedule due to the “late provision of numbers by the Census Bureau”). Had Proposition 4 been in place after the delayed-because-of-the-Census 2021 redistricting, its provision authorizing a lawsuit to challenge those 2021 maps would have furthered “chaos” by risking that the maps would be tied up in court during the 2022 election cycle. *See supra* ¶73.

³⁴ *See, e.g., Interactive Timeline*, United States Census 2010 (Dec. 20, 2010-Feb. 16, 2013), bit.ly/4ejSyJo (noting that Census Bureau delivered data to states in January 2011).

³⁵ *2020 Census Timeline of Important Milestones*, United States Census Bureau, bit.ly/3UJK3jB (May 31, 2022).

D. S.B. 200 was narrowly tailored to safeguard the State’s public fisc.

The State has a compelling interest in protecting its fiscal health, and S.B. 200 was narrowly tailored to further that interest.

The State has a compelling interest in ensuring its fiscal health. The Utah Constitution requires the Legislature to balance the budget each fiscal year. Utah Const. art. XIII, §5(2)(a). The Legislature is constitutionally prohibited from both “mak[ing] an appropriation” and “authoriz[ing] an expenditure” if the State’s expenditure “exceeds the total tax provided for by statute and applicable to the particular appropriation or expenditure.” *Id.* To meet this obligation, the Legislature needs to rely on taxes and other revenues—or make cuts to existing programs. *See* Utah Const. art. XIII, §5(1)(a). Utah’s lawmakers take their constitutional obligation to “pass a balanced budget . . . seriously.” Deseret News Ed. Bd., *Utah’s Legislature is known for many things, but people should appreciate its fiscal management more*, Deseret News (Jan. 17, 2024), bit.ly/4hFCBA8. While other States like California are suffering from budget crises, Utah ranks first among the States in “economy and fiscal stability.” *Id.* Ultimately, having a well-managed and balanced budget means providing the necessary services to the people, lowering tax burdens for taxpayers, and saving for a “rainy day” for any future emergencies. *Id.* The State has a “clearly . . . compelling state interest” in ensuring the fiscal health of the State and avoiding “a revenue crisis.” *Chiles v. United Faculty of Fla.*, 615 So. 2d 671, 674 (Fla. 1993) (Overton, J., dissenting). And it has a “compelling state interest” in achieving “a balanced state budget.” *Id.* at 677 (McDonald, J., dissenting).

S.B. 200 made modest fixes to Proposition 4 to avoid jeopardizing the State’s fiscal health. First, S.B. 200 ensured that while the Legislature would appropriate adequate funding for the commission, the commission would operate “[w]ithin appropriations from the Legislature.” Utah Code §20A-20-201(12) (2020). And as explained above, S.B. 200 appropriated \$1 million for the commission, exactly what Proposition 4 estimated the commission would need. *Supra* ¶¶12, 77. Proposition 4, on the other hand, simply required the Legislature to “appropriate adequate funds” without any conceivable limits to what may constitute “adequate funding” for the commission’s work or what would be a “reasonabl[e] request” from the commission. Utah Code §20A-19-201(12)(a) (2018).

issue under the applicable framework. *See Bingham*, 2024 UT 38, ¶16 (three-part test, with first part asking “whether the legislature has abrogated a common law cause of action”).

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For these reasons, even if the burden shifts to the Legislature, S.B. 200’s changes to Proposition 4 are narrowly tailored to further compelling state interests.

IV. Plaintiffs’ Remedial Arguments Are Premature.

At this time, Defendants cannot fully engage with Plaintiffs’ remedial arguments (at 25-30). The Court must first determine what parts of S.B. 200, if any, unconstitutionally impaired Plaintiffs’ asserted rights. That is “the sole legal issue” at this juncture. Intervention Denial Order (Doc. 390) at 2 (cleaned up). Any remedial issues become relevant only “*if* the court rules in favor of Plaintiffs and *if* redrawing congressional maps is the remedy.” *Id.* at 4. Indeed, even were Plaintiffs to prevail on Count V and revive some of Proposition 4, Plaintiffs would still need to prove their new claims (Counts VI-VII) after appropriate discovery. *See* FAC ¶¶320-54. Only after a final liability determination on Counts V-VII should the Court set a briefing schedule to address remedial-stage proceedings.

Plaintiffs’ remedial arguments are premature because any remedy must be tailored to the constitutional violation found. *See Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328 (2006) (courts must “limit the solution to the problem”); *Milliken v. Bradley*, 433 U.S. 267, 280 (1977) (“the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation” and must “be related to the condition alleged to offend the Constitution” (cleaned up)); *Spackman v. Bd. of Educ. of Box Elder Cnty. Sch. Dist.*, 2000 UT 87, ¶ 25 n.11, 16 P.3d 533 (describing “precisely tailored” injunctive relief for procedural due process violations); *Dayton Bd. of Ed. v. Brinkman*, 433 U.S. 406, 419 (1977) (faulting “disparity between the evidence of constitutional violations and the sweeping remedy”); *United States v. Morrison*, 449 U.S. 361, 364 (1981) (applying “general rule that remedies should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests” in Sixth Amendment case).

Here too—the Court cannot decide “what tool should be deployed to protect” Plaintiffs’ “right[s]” before deciding what rights, if any, have been violated and how. *State v. Rees*, 2005 UT 69, ¶14, 125 P.3d 874. Permanent injunctive relief is not automatic, let alone sweeping mandatory injunctive relief of a court-drawn map. *See, e.g., Parkinson*, 4 Utah 2d at 205 (refusing “to interfere with the legislative prerogative”); *Lamb v. Cunningham*, 53 N.W. 35, 53-54 (Wis. 1892) (similar); *see also Meza v. State*, 2015 UT 70, ¶¶41-42 & n.6, 359 P.3d 592 (Lee, J., concurring in part and concurring in the judgment) (describing the difference between violations of rights and available remedies); *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006) (describing “well-established principles of equity” that “a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief,” showing “irreparable injury,” the inadequacy of remedy at law, the balance of hardships, and the public interest.³⁶

A. With respect to Plaintiffs’ severability arguments (at 25-26), the parties cannot adequately identify what provisions of current law are severable without first understanding the nature of any constitutional violation. *See, e.g., Seila L. LLC v. CFPB*, 591 U.S. 197, 234-35 (2020) (op. of Roberts, C.J.) (conducting severability analysis specific to the “only constitutional defect” found); *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 513 (2010) (concluding “petitioners are not entitled to broad injunctive relief against the Board’s continued operations” but “are entitled to declaratory relief sufficient to ensure that the reporting requirements and auditing standards ... will be enforced only by a constitutional agency accountable to the Executive”).

If this Court finds a constitutional violation, a judicial remedy is not the wholesale revival of Proposition 4. Not even Plaintiffs presume that the judicial power could legislate in that way. *Contra* Utah Const. art. V, §1; *Utah Transit Auth. v. Loc. 382 of Amalgamated Transit Union*, 2012 UT 75, ¶ 18, 289 P.3d 582 (explaining that limits on “judicial power” are more than “judicial convenience or ascetic act[s] of discretion”); *accord Evers*, 929 N.W.2d at 221 (“judicial power cannot legislate”). Rather, any

³⁶ *See also, e.g., Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312-13 (1982) (“courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.”); *Vanderwood v. Woodward*, 2019 UT App 140, ¶ 44, 449 P.3d 983 (explaining “injunctive relief is not automatic”); *Pure Milk Prod. Co-op v. Nat’l Farmers Org.*, 280 N.W.2d 691 (Wis. 1979) (“injunctions are not to be issued lightly.”); *Lord & Taylor, LLC v. White Flint, L.P.*, 780 F.3d 211, 216 (4th Cir. 2015) (“injunctive relief is not automatic.”).

judicial remedy would entail, at most, an injunction barring the enforcement of certain provisions of current law. Plaintiffs’ own severability arguments illustrate that point, identifying provisions that Plaintiffs believe would be implicated in a remedy and others that would not be. *Compare* Pls.-Mot. at 26 (asking to enjoin enforcement of Utah Code §§20A-20-302(4)-(8) (2020) and 20A-20-303 (2020) because those provisions “neuter Proposition 4’s redistricting standards and its requirement that the Legislature consider the Commission’s proposed maps”), *with id.* (describing S.B. 200’s elimination of the Chief Justice on the commission as a provision that can stay in effect).³⁷

It is premature for the parties to engage in that remedial analysis now. Any such analysis would depend on the particulars of the Court’s holding, because the Court would be deciding how to “limit the solution to the problem,” severing any “problematic portions while leaving the remainder intact.” *Ayotte*, 546 U.S. at 328-29. A particular “section of a statute may be repugnant to the Constitution without rendering the whole act void,” *Loeb v. Columbia Twp. Trs.*, 179 U.S. 472, 490 (1900), and a “statute bad in part is not necessarily void in its entirety” so long as “[p]rovisions within the legislative power may stand if separable from the bad.” *Dorchy v. Kansas*, 264 U.S. 286, 289-290 (1924); *see, e.g., Gallivan*, 2002 UT 89, ¶86 (asking whether unconstitutional provision was “an integral part of the statute” or whether “it can be severed from the overall statutory scheme, leaving the rest of the initiative enabling statute operable and effective”). Before the parties talk “solution[s],” they must know the Court’s view on the extent of “the problem.” *Ayotte*, 546 U.S. at 328-29.

³⁷ Plaintiffs describe (at 24-25) “enjoin[ing] the unconstitutional aspects of S.B. 200” or “enjoin[ing] H.B. 2004.” But courts do not enjoin or “erase” or “strike down” statutes; they enjoin *defendants* from enforcing statutes. *See* Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933, 935-37 (2018) (describing as flawed the “assumption that a judicial pronouncement of unconstitutionality has canceled or blotted out a duly enacted statute”); John Harrison, *Severability, Remedies, and Constitutional Adjudication*, 83 Geo. Wash. L. Rev. 56, 88-89 (2014) (“Courts do not invalidate statutory rules in a literal sense, and therefore do not, strictly speaking, grant a remedy that makes a statutory provision ineffective.... Courts do not excise parts of statutes on grounds of inseparability, they determine that parts of statutes are ineffective as written for that reason.”); *see, e.g., Steffel v. Thompson*, 415 U.S. 452, 469 (1974) (“Of course, a favorable declaratory judgment . . . cannot make even an unconstitutional statute disappear.”); *Winsness v. Yocom*, 433 F.3d 727, 728 (10th Cir. 2006) (McConnell, J.) (“There is no procedure in American law for courts or other agencies of government—other than the legislature itself—to purge from the statute books, laws that conflict with the Constitution as interpreted by the courts.”); *Arizona v. Biden*, 31 F.4th 469, 483 (6th Cir. 2022) (Sutton, C.J., concurring) (“[Courts] do not remove—‘erase’—from legislative codes unconstitutional provisions.”); *Pool v. City of Houston*, 978 F.3d 307, 309 (5th Cir. 2020) (“It is often said that courts ‘strike down’ laws when ruling them unconstitutional. That’s not quite right. Courts hold laws unenforceable; they do not erase them.”).

B. With respect to Plaintiffs’ arguments about the current congressional districts (at 26-29), Plaintiffs similarly put the cart before the horse. At this stage, it is far from clear that an appropriate remedy to Plaintiffs’ challenge to S.B. 200 (legislation revising Proposition 4’s redistricting standards) would entail enjoining the Lieutenant Governor’s use of H.B. 2004 (legislation demarcating new congressional districts).

Plaintiffs are wrong to suggest that the Utah Supreme Court already decided that “the Congressional Map cannot stand.” Pls.-Mot. at 27 (quoting in part *LWV*, 2024 UT 21, ¶222). The Supreme Court said its opinion did “not intend to suggest what should transpire next in the district court.” *LWV*, 2024 UT 21, ¶200. And the full text of Plaintiffs’ partially quoted paragraph stated that “resolving Count V *may* well” resolve the case and that “under Proposition 4, if the facts alleged by Plaintiffs are proven true, it is *likely* that the Congressional Map cannot stand.” *Id.* ¶222 (emphasis added). But the parties did not even brief these remedial issues at the Supreme Court, and the Supreme Court did “not intend” to decide them. *Id.* ¶200. Even now, the parties could not possibly debate whether enjoining the use of the existing congressional districts is a proper remedy for Count V, when the Court has not yet decided whether, how, and to what degree S.B. 200 infringed Plaintiffs’ asserted right to alter or reform their government through Proposition 4. And Plaintiffs still must prove their new claims. Legislative Defendants are entitled to test Plaintiffs’ standing on those claims and to brief the merits after appropriate fact and expert discovery on those claims.

That said, the Court can deny outright Plaintiffs’ request to present their own redistricting plans as a remedy, alongside “expert reports and supportive materials,” “briefs,” and a “remedial hearing.” Pls.-Mot. at 29. Current law allows for no such remedy—substituting legislatively drawn districts with litigation-drawn districts. Even Proposition 4 would not have allowed for such a remedy. Proposition 4’s private right of action would have allowed a court to enjoin enforcement of a redistricting plan, and then “the *Legislature* may enact a new or alternative redistricting plan.” Utah Code §20A-19-301(2) & (8) (2018) (emphasis added). The Court cannot ignore those constraints when evaluating an appropriate remedy. *See, e.g., United States v. Oakland Cannabis Buyers’ Co-op.*, 532 U.S. 483, 497 (2001)

(“a court sitting in equity cannot ignore the judgment of Congress, deliberately expressed in legislation” (cleaned up)); *Petersen v. Utah Lab. Comm’n*, 2017 UT 87, ¶28, 416 P.3d 583 (similar).

Even in more typical redistricting cases, litigation is not an excuse for a wholesale redraw of districts that Plaintiffs seek. The remedy is limited to “correcting only those unconstitutional aspects of a state’s plan.” *Johnson v. Miller*, 922 F. Supp. 1556, 1559 (S.D. Ga. 1995) (remedies limited to “correcting only those unconstitutional aspects of a state’s plan”), *aff’d sub nom.*, *Abrams v. Johnson*, 521 U.S. 74, 79 (1997) (“When faced with the necessity of drawing district lines by judicial order, a court, as a general rule, should be guided by the legislative policies underlying the existing plan, to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act.”).³⁸ Applied here, Plaintiffs contend that the existing congressional districts violated “procedural requirements” without explaining why redrawn congressional districts is an appropriate remedy for any such “procedural” violations. *See* Pls.-Mot. at 27 (arguing that the Legislature did not formally vote on the commission maps, that the Legislature made H.B. 2004 available for 7 days and not 10 days, and that the Legislature did not “issue a written report” about H.B. 2004, while stating “the Court need not resolve” whether congressional districts violate “Proposition 4’s substantive redistricting criteria”). A prospective mandatory injunction with redrawn congressional districts is not at all tailored to past procedural violations—for example, making proposed districts publicly available for 7 days instead of 10 days.

Nor would courts be competent to decide between proposed redistricting plans as Plaintiffs envision. The remedial proceedings that Plaintiffs propose will entail all the same justiciability problems as Plaintiffs’ original partisan-gerrymandering claims.³⁹ Plaintiffs presume courts can decide whether a map “abides by and conforms to the redistricting standards, procedures, and requirements’

³⁸ *Accord North Carolina v. Covington*, 138 S. Ct. 2548, 2554-55 (2018) (per curiam) (partially reversing remedy for going beyond eliminating racial gerrymander); *Perry v. Perez*, 565 U.S. 388, 393 (2012) (courts “should take guidance from the State’s recently enacted plan in drafting an interim plan” to “avoid being compelled to make such otherwise standardless decisions”); *White v. Weiser*, 412 U.S. 783, 795 (1973) (courts “should not pre-empt the legislative task nor ‘intrude upon state policy any more than necessary’”); *Upham v. Seamon*, 456 U.S. 37, 42 (1982) (court “erred in fashioning a court-ordered plan that rejected state policy choices more than was necessary to meet the specific constitutional violations involved”).

³⁹ The Utah Supreme Court retained jurisdiction over Plaintiffs’ Counts I through IV and whether those claims are justiciable. *LWV*, 2024 UT 21, ¶220.

of Proposition 4,” Pls.-Mot. at 29 (quoting Utah Code §20A-19-301(8) (2018)), but consider just two examples of the difficulties courts trying to apply those standards will face.

First, section 20A-19-103(3) of Proposition 4 would prohibit not only “purposefully” favoring a political party but also “unduly” favoring a political party. Written this way, subsection (3) would prohibit certain *effects* of a redistricting plan, regardless of *intent*. Policing those *effects* will elude Utah courts no less than partisan gerrymandering claims elude courts in other States.⁴⁰ Because Utah is not the “mythical State with voters of every political identity distributed in an absolutely gray uniformity,” any division of voters into separate districts will “always carr[y] some consequence for politics,” whether intended or unintended. *Vieth*, 541 U.S. at 343 (Souter, J., dissenting). A court cannot decide whether those political consequences “unduly” favor a political party without first deciding what the baseline is—that is, what is “fair”? Deciding what is “fair” will first require judges to act as pollsters, predicting how voters will vote and how candidates will fare in future elections that have not yet occurred. *Rucho*, 588 U.S. at 711-13; *see Vieth*, 541 U.S. at 287 (plurality op.) (a voter’s political affiliation “is not immutable,” but may shift “from one election to the next” and “even within a given election,” not all voters follow the party line”). That task is especially difficult in Utah when more than one-third of Utahns are not registered with either major political party.⁴¹ “These facts make it impossible to assess the effects of” alleged “partisan gerrymandering.” *Vieth*, 541 U.S. at 287 (plurality op.). And even if courts could predict the future, deciding what is “fair” would next require them to “make their own political judgment about how much representation particular parties *deserve*—based on the votes of their supporters [statewide]—and to rearrange the challenged districts to achieve that end.” *Rucho*, 588 U.S. at 705. In a State like Utah, where only 14% of registered statewide voters are Democrats, what “unduly” disfavors the major party? And how is the Court to factor in that the federally required system of single-member districts will seem inherently unfair to some? After all, “the voting strength of less evenly distributed groups will *invariably be diminished*” in single-member, winner-take-all districts

⁴⁰ *See, e.g., Rucho v. Common Cause*, 588 U.S. 684, 691 (2019) (describing how the U.S. Supreme Court “struggled without success over the past several decades to discern judicially manageable standards for deciding such claims”); *Rivera v. Schwab*, 512 P.3d 168, 182 (Kan. 2022); *Harper*, 886 S.E.2d at 424-25, 427.

⁴¹ “Current Voter Registration Statistics” (Sept. 23, 2024), bit.ly/4fVpVU7.

“as compared to at-large proportional systems for electing representatives.” *Davis v. Bandemer*, 478 U.S. 109, 159 (1986) (O’Connor, J., concurring in judgment) (emphasis added). These questions are questions of political philosophy, not judicial remedies.

Second, section 20A-19-103(2) of Proposition 4 would prescribe seemingly neutral redistricting criteria. But those criteria are full of tradeoffs and likewise require policy judgments beyond the Article VIII “judicial power.” For example, districts must be equally populated, and each district must comprise contiguous territory allowing “for the ease of transportation throughout the district.” Utah Code §20A-19-103(2)(a) & (d) (2018). There is a tradeoff for those requirements: some municipalities must inevitably be split into two or more districts. Does a redistricting plan “minimiz[e] the division of municipalities,” *id.* §20A-19-103(2)(b) (2018), if the plan achieves population equality by splitting Millcreek along 3900 South while keeping similarly large cities such as Herriman, Eagle Mountain, or Saratoga Springs whole? How is a court to judge whether Millcreek or some other municipality should be split in furtherance of Proposition 4’s prescribed criteria? More broadly, how is a court to decide whether a district’s “compact[ness],” Utah Code §20A-19-103(2)(c) (2018), takes priority over “following natural and geographic features,” *id.* §20A-19-103(2)(f) (2018), or other criteria in tension with compactness? And what exactly qualifies as “traditional neighborhoods” or “communities of interest,” *id.* §20A-19-103(2)(e) (2018), and how should a redistricting plan choose between them if all cannot be kept whole due to population equality requirements? Deciding between such arguments will inevitably be “based upon policy preferences.” *Jones*, 2007 UT 20, ¶34; *see also* N. Persily, *When Judges Carve Democracies*, 73 Geo. Wash. L. Rev. 1131, 1158 (2005) (“there are no such things as ‘neutral’ districting principles”); *cf. Holder v. Hall*, 512 U.S. 874, 894 (1994) (Thomas, J., concurring in judgment) (warning against “highly political judgments-judgments that courts are inherently ill-equipped to make” in vote-dilution redistricting cases).

Finally, Plaintiffs’ proposed redraw of congressional districts could implicate the federal Elections Clause. U.S. Const. art. I, §4. The Elections Clause “expressly vests power to carry out its provisions in ‘the Legislature’ of each State.” *Moore*, 600 U.S. at 34. When remedial proceedings “transgress the ordinary bounds of judicial review,” such that courts “arrogate to themselves the power

vested in state legislatures to regulate federal elections,” there is a violation of the Elections Clause. *Id.* at 36. State courts “do not have free rein” to redraw congressional districts. *Id.* at 34. Especially not in Utah, where the state constitution still vests the power to redistrict solely in “the Legislature.” Utah Const. art. IX, §1; *accord Parkinson*, 4 Utah 2d at 205. Should Plaintiffs insist on replacing the Legislature’s districts with court-drawn districts, then it will be for the U.S. Supreme Court to decide whether that interpretation of state law “evade[s] federal law.” *Moore*, 600 U.S. at 34; *see also id.* at 35 (explaining how the Court in the past has “tempered ... deference” to state courts’ interpretation of state law “when required by [its] duty to safeguard limits imposed by the Federal Constitution”). Any remedial proceedings must be narrow in scope and within the ordinary limits of judicial review to avoid such federal constitutional problems. *Cf. Jeffs v. Stubbs*, 970 P.2d 1234, 1251 (Utah 1998) (describing how “remedy provided” to religious entities was “in a manner that minimizes the burden upon free exercise”).

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For the foregoing reasons, Plaintiffs’ remedial arguments are premature. Should the Court decide Count V in Plaintiffs’ favor, the parties can then litigate the merits of Counts VI-VII and submit remedial-stage briefs to address how to tailor a remedy to the constitutional violation found, consistent with longstanding equitable principles and the federal Elections Clause.

CONCLUSION

For these reasons, the Court should grant Legislative Defendants’ cross-motion for summary judgment, deny Plaintiffs’ motion for summary judgment, and enter judgment for Defendants.

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CERTIFICATE OF SERVICE

I filed this brief on the Court's electronic filing system, which will email everyone requiring notice.

Dated: November 8, 2024

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