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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.

REPLY BRIEF IN SUPPORT OF LEGISLATIVE DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT OR, ALTERNATIVELY, TO STAY FURTHER PROCEEDINGS

Case No. 220901712

Honorable Dianna Gibson

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Constitutional Provisions

INTRODUCTION

Redistricting involves tough political decisions. That's why the Utah and U.S. Constitutions vest redistricting responsibilities in the Legislature—the most politically accountable branch of government. That fact also dooms Plaintiffs claims to enjoin the 2021 Congressional Plan under Proposition 4's procedural (Count VI) and substantive provisions (Count VII). Those claims are barred by the political-question doctrine and under various provisions of the Utah Constitution. Plaintiffs fail to show otherwise. And Plaintiffs' claim seeking to enjoin the non-existent 2011 Congressional Plan (Count VIII) is moot. Plaintiffs ask this Court to revive the 2011 Congressional Plan just to enjoin it. That would be an improper use of judicial power, and doing so would not serve any purpose or be necessary to grant Plaintiffs relief that they seek related to the 2021 Congressional Plan. Finally, Plaintiffs all but concede that they failed to allege standing to challenge Count VIII, and they try instead to improperly amend their complaint through their brief. For these reasons, this Court should dismiss Counts VI-VIII. Alternatively, this Court should stay the proceedings on Counts VI-VIII until Count V is fully litigated—in this Court and any following appeal—and the pending appeal on Counts I-IV is resolved. The interests of judicial economy warrant a stay so that the parties and this Court can know what the governing law is—whether it's S.B. 200, Proposition 4, or the Utah Constitution—before undertaking any costly fact or expert discovery or further litigation.

ARGUMENT

I. The Court should dismiss Counts VI-VIII.

A. Plaintiffs concede that if they lose on Count V, Counts VI-VIII should be dismissed.

Plaintiffs don't dispute—and thus concede—that Counts VI-VIII necessarily depend on their success on Count V. Their only response is their assertion that they will prevail on Count V. *See* Pls. MTD-Resp. 2. Thus, they effectively concede that if they lose on Count V, Counts VI-VII necessarily fail in full, and Count VIII fails to the extent it expects that the 2021 Congressional Plan would be declared unlawful under Proposition 4. Count V fails for the reasons Legislative Defendants have explained. *See* Leg.-Defs. Cross-MSJ. So, therefore, do Counts VI-VIII.

In contrast, if Plaintiffs succeed on Count V, that wouldn't end the litigation. It's only the starting point. Plaintiffs repeat the incorrect claim that their potential success on Count V means automatic success on Count VI. *See* Pls. MTD-Resp. 1, 3, 18-19. Not so. Contrary to Plaintiffs' contention, Count V does not encompass Count VI. As this Court already held, under Count V, "[t]he sole legal issue is whether the Utah Legislature's repeal of Proposition 4 violated the people of Utah's constitutional right to alter or reform government." Order Denying Intervention 2 (cleaned up). Plaintiffs themselves previously conceded that Count V alone wouldn't be enough; they represented to the Utah Supreme Court that they separately needed to add (and ultimately prove) violations under Proposition 4. *See League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶222. ("Plaintiffs have suggested they may bring [procedural claims] as an amended claim on remand in the event that Count V is reinstated."); *see also* Pls. Suppl. Br. 19, *LWV v. Utah State Legislature*, No. 20220991-SC (July 31, 2023) ("If certain aspects of Proposition 4 become operative, Plaintiffs will amend their complaint to allege the statutory private right of action contemplated under Proposition 4."). Now, Plaintiffs try to reimagine Count V as already encompassing Count VI. But that's not what Count V alleges. *See* FAC ¶¶310-19. After all, if Count V already encompassed Count VI, Plaintiffs would not have needed to amend the complaint to separately add Counts VI-VII. And contrary to Plaintiffs' assertion, the Utah Supreme Court never held that Count V automatically resolves Count VI. It simply suggested that it's "likely"—"if the facts alleged by Plaintiffs are true"—that the 2021 Congressional Map could be found invalid under Proposition 4. *LWV*, 2024 UT 21, ¶222. And the Court's description of Count V as the "broadest" among Plaintiffs' original five claims appeared in the context of comparing it to Counts I-IV, which did not challenge "the redistricting process that led to the Congressional Map." *Id.* ¶61.

Even if this Court resolves Count V in Plaintiffs' favor, Count VI still needs to be litigated in full, just as Count VII would need to be further litigated (as Plaintiffs concede). *See* Pls. MTD-Resp. 20. Count VI is still at the motion-to-dismiss stage. At this stage, this Court asks only whether a plaintiff has stated a claim, accepting the complaint's well-pleaded factual allegations as true. *See* Utah R. Civ. P. 12(b)(6); *Oakwood Vill. LLC v. Albertsons, Inc.*, 2004 UT 101, ¶9. A motion to dismiss "is not an opportunity for the trial court to decide the merits of the case"; nor are the parties expected to

litigate the full case at the motion-to-dismiss stage. *Williams v. Bench*, 2008 UT App 306, ¶20. And a permanent injunction—which Plaintiffs seek under Count VI—should "[o]rdinarily" be "granted only after a full trial on the merits." *Birch Creek Irrigation v. Prothero*, 858 P.2d 990, 993-94 (Utah 1993). Here, Legislative Defendants, like all litigants, are still entitled to a full and fair opportunity to litigate Count VI on the merits, including their constitutional and standing arguments, after discovery. Plaintiffs' assertion that this Court should permanently enjoin the 2021 Congressional Map based on Count V—without litigating Count VI—improperly deprives Legislative Defendants of those rights.

B. Count VI should be dismissed.

Plaintiffs' Count VI—a claim under Proposition 4's procedural provisions—should be dismissed under the Utah Constitution and the federal Elections Clause. *See* Leg.-Defs. MTD 4-8. Plaintiffs repeat their constitutional arguments in responding to Legislative Defendants' motion to dismiss. *See* Pls. MTD-Resp. 3-6. For brevity, as Plaintiffs have done, Legislative Defendants incorporate by reference the relevant arguments from their briefs. *See also* Leg.-Defs. Cross-MSJ 43-51; Leg.-Defs. Cross-MSJ-Reply 13-16.

As to remedy, Plaintiffs fail to explain why, under the facts alleged, a permanent injunction is the appropriate remedy for any violations of Proposition 4's procedural provisions. Plaintiffs fail to cite any basis to override traditional principles of equity. Indeed, a permanent injunction is not automatically granted—even if a statute authorizes and provides for it. *See, e.g.*, *Starbucks Corp. v. McKinney*, 602 U.S. 339, 347-48 (2024) (holding that traditional equity principles apply even if a statute says an injunction "shall be granted" and "seemingly suggests that courts *must* grant injunctive relief"). And Plaintiffs fail to identify what injury was caused by the 2021 Congressional Plan's alleged procedural violations of Proposition 4, or how permanently enjoining the 2021 Congressional Plan would redress such an injury. Nor do Plaintiffs identify what other remedy might be "appropriate upon resolving the merits," Pls. MTD-Resp. 6-7, or how such a hypothetical remedy would redress their injury. Count VI should be dismissed. *See* Leg.-Defs. MTD 7-8.

C. Count VII should be dismissed.

Count VII fails because it presents a nonjusticiable political question and because Proposition 4's substantive provisions improperly constrain the Legislature's authority to redistrict. *See* Leg.-Defs. MTD 8-13.

Political-question doctrine. Plaintiffs acknowledge that "political questions are those questions that have been wholly committed to the sole discretion of a coordinate branch of government, and those questions which can be resolved only by making policy choices and value determinations." Pls. MTD-Resp. 7. Courts cannot resolve such questions. Plaintiffs' efforts to resist the conclusion that Count VII would require this Court to resolve political decisions do not persuade.

To start, Plaintiffs argue that Article IX doesn't exclusively commit redistricting to the Legislature. *See* Pls. MTD-Resp. 8. But Plaintiffs ignore the fact that 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). And courts have found redistricting to be a nonjusticiable political question textually committed to the legislatures. *See, e.g.*, *Harper v. Hall*, 886 S.E.2d 393, 420 (N.C. 2023). Redistricting is an "inescapably political enterprise," and a "complex interplay of forces … enter[s] a legislature's redistricting calculus." *Alexander v. S.C. State of Conf. of NAACP*, 602 U.S. 1, 6-7 (2024). In redistricting, the Legislature must weigh competing interests and make a political decision: which political subdivisions should be split, how to split them, how much of a rural-urban mix a district should have, whether and how to balance competing political and incumbency interests, what the boundaries should look like, and more. Redistricting is "a zero sum game," unavoidably picking losers and winners. *Smith v. Cobb Cnty. Bd. of Elections & Registrations*, 314 F. Supp. 2d 1274, 1304 (N.D. Ga. 2002). Accordingly, redistricting is often a result of "political compromises." *Alexander*, 602 U.S. at 44 (Thomas, J., concurring). No wonder—given those political challenges and ramifications—Article IX vests that responsibility in the Legislature, the most politically accountable branch composed of "elected representatives" best suited to "resolv[e]" the difficult "legislative-political issues" that arise in redistricting. *Salt Lake City v. Int'l Ass'n of Firefighters*, 563 P.2d 786, 790 (Utah 1977). Plaintiffs respond that because this Court previously held that Article IX doesn't

exclusively vest redistricting in the Legislature, the same result should be reached for Plaintiffs' statutory claims under Proposition 4. *See* Pls. MTD-Resp. 8. But that ruling remains pending on appeal. Nor is this Court required to reach the same result. Courts are "generally … free to reconsider earlier interlocutory orders." *Rimbert v. Eli Lilly & Co.*, 647 F.3d 1247, 1251 (10th Cir. 2011).

What's more, this Court did not rule on whether Proposition 4's substantive provisions prescribe judicially manageable standards—an independent and separate reason for applying the political-question doctrine. *See Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004) (plurality op.) (describing "six independent tests" for justiciability under the political-question doctrine). Contrary to Plaintiffs' assertion (at 9), the fact that "a statute provid[es] for judicial review" alone "does not override" the requirement that courts "refrain from deciding political questions." *Jaber v. United States*, 861 F.3d 241, 246 (D.C. Cir. 2017). Legislative Defendants already explained why Proposition 4 fails to create judicially manageable standards. *See* Leg.-Def. MTD 9-11.[1] Plaintiffs respond by saying that various state courts have found partisan-gerrymandering claims to have a judicially manageable standard. Pls. MTD-Resp. 9-10. But other state courts have reached the opposite conclusion. *See, e.g.*, *Rivera v. Schwab*, 512 P.3d 168, 184 (Kan. 2022); *Johnson v. Wis. Election Comm'n*, 967 N.W.2d 469, 482 (Wis. 2021), *overruled in part on different grounds by Clarke v. Wis. Elections Comm'n*, 998 N.W.2d 370 (Wis. 2023). North Carolina (which this Court previously found persuasive) is especially instructive. After briefly endeavoring to take on partisan-gerrymandering claims, the North Carolina Supreme Court changed course, finding that these claims lacked judicially manageable standards. *See Harper*, 886 S.E.2d at 423. After its experiment, the court realized that "no one—not even the four justices who created it—could apply [the previously adopted efficiency-gap test] to achieve consistent results." *Id.* at 426.

[1] Plaintiffs also latch on to a passing reference to "state … law" in a document the Office of Legislative Research and General Counsel created in 2002 to say that Legislative Defendants somehow agree that Proposition 4 can provide judicially manageable standards. *See* Pls. MTD-Resp. 8-9. But the point of the political question doctrine is that not all politically or legislatively manageable considerations are also judicially manageable. Besides, certain state laws necessarily set the parameters for redistricting without wholesale giving rise to justiciable claims. For instance, the Legislature—by statute—sets the number of seats (and districts) in the House of Representatives. *See* Utah Const. art. IX, §2; Utah Code §36-1-201.5(1). That doesn't mean that Proposition 4 provides a judicially manageable standard should someone challenge the Legislature's decision on that issue.

Plaintiffs further contend that Proposition 4 itself prescribes judicially manageable standards. *See* Pls. MTD-Resp. 9-11. But this argument falls short. To start, Proposition 4's so-called partisan-gerrymandering ban prohibited the Legislature from "*unduly* favor[ing] or disfavor[ing] any incumbent elected official, candidate or prospective candidate for elective office, or any political party." Utah Code §20A-19-103(3) (2018) (emphasis added). But Plaintiffs never explain how this Court should decide how much favor qualifies as *too* much. "[T]oo much" is not a judicially manageable standard. *Rucho v. Common Cause*, 588 U.S. 684, 704 (2019); *see also* Leg.-Defs. Cross-MSJ 78-79. *Rucho*'s mention of the Delaware statute cited by Plaintiffs, Pl. MTD-Resp. 9, occurred in the context of simply stating a fact that the States were attempting to "address[]" the perceived problem with redistricting, 588 U.S. at 720. The Court did so without examining whether Delaware's statute in fact provides a judicially manageable standard; if anything, *Rucho* held that "too much" is not a judicially manageable standard. And whether the political-question doctrine bars Proposition 4's substantive claims demands careful analysis given Utah courts' political-question doctrine.

Nor, as Plaintiffs assert, *see* Pls. MTD-Resp. 10-11, do Proposition 4's other redistricting criteria provide judicially manageable standards. Proposition 4 required the Legislature to "follow[] to the greatest extent practicable and in the following order of priority" the following: (b) minimizing the division of municipalities and counties; (c) creating compact districts; (d) creating contiguous districts; (e) preserving communities of interest; (f) following natural and geographic features; and (g) maximizing boundary agreement. Utah Code §20A-19-103(2) (2018). Plaintiffs contend that these are manageable standards. Pls. MTD-Resp. 11. But there's no judicially manageable standard to discover what constitutes "the greatest extent practicable" or the optimal level of minimizing or maximizing something. Even weighing those factors requires policymaking and exercising political discretion. *See* Leg.-Def. Cross-MSJ 79. Those criteria are full of tradeoffs and likewise require policy judgments beyond the Article VIII "judicial power." *See also* Utah Const. art. V, §1 ("no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted"); *id.* art. IX, §1 ("the Legislature shall divide the state into congressional, legislative, and other districts").

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). Satisfying those requirements involves tradeoffs: 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]," *id.* §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).

Plaintiffs also suggest that the Utah Supreme Court somehow held in *Parkinson* that all types of redistricting claims are reviewable. *See* Pls. MTD-Resp. 8 (citing *Parkinson v. Watson*, 4 Utah 2d 191 (1955)). This is wrong. In *Parkinson*, the Court, at most, observed that malapportionment claims could be reviewed under some circumstances. 4 Utah 2d at 409. Malapportionment claims—unlike Plaintiffs' claims under Proposition 4—have a judicially manageable standard: equal population. *Rucho*, 588 U.S. at 700. For these reasons, this Court should hold that Count VII is barred by the political-question doctrine.

Constitutional arguments. Legislative Defendants explained that Count VII impermissibly constrained the Legislature's redistricting power vested under Article IX and the federal Elections

Clause. *See* Leg.-Defs. MTD 11-13. In response, Plaintiffs repeat the same arguments that they raised in their summary-judgment briefs. *See* Pls. MTD-Resp. 12-13. Legislative Defendants already extensively briefed those issues and responded to Plaintiffs' arguments. For brevity, Legislative Defendants incorporate those arguments here as relevant. *See* Leg.-Defs. Cross-MSJ 31-41; Leg.-Defs. Cross-MSJ-Reply 3-11. For these reasons, Count VII should be dismissed.

D. Count VIII should be dismissed.

Count VIII alleges that the 2011 Congressional Plan—not the 2021 Congressional Plan—is malapportioned in violation of the Utah Constitution. Legislative Defendants explained why this claim challenging a non-existent congressional plan is moot, is unsupported by standing, and should be dismissed. *See* Leg.-Defs. MTD at 13-15. Even if Plaintiffs were to prevail on Counts I-VII (which they cannot), Count VIII—seeking to revive the repealed 2011 Congressional Plan just to enjoin it—serves no purpose in facilitating the relief Plaintiffs seek regarding the 2021 Congressional Plan.

Mootness. Plaintiffs' response to the Legislature's mootness argument turns entirely on their assertion that "[w]hen a statute that amends or repeals a previous statute is declared invalid, the previous statute is once again in effect." Pls. MTD-Resp. 13. But that's not the rule if "the Legislature clearly intended the prior statute to be repealed even if the substituted statute were invalidated." *In re J.P.*, 648 P.2d 1364, 1378 n.14 (Utah 1982). Here, H.B. 2004—which enacted the 2021 Congressional Plan—clearly repealed the 2011 Congressional Plan. *See* H.B. 2004 Congressional Boundaries Designation, Utah State Legislature, le.utah.gov/~2021s2/bills/static/HB2004.html; *see also* Pls. MTD-Resp. 14 (conceding that the Legislature repealed the 2011 Congressional Plan). Given the dramatic population growth and shifts in the State, it would have made no sense for the Legislature to leave an outdated congressional plan in place and to do anything other than repeal it. *See In re J.P.*, 648 P.2d at 1378 n.14.

Plaintiffs also assert that Legislative Defendants raise only a "semantic point" that courts cannot "erase" statutes and that principle is "irrelevant" because "[i]f this court enjoins the enforcement of H.B. 2004, its provisions—including the one repealing the 2011 Congressional Plan—will not be

enforced." Pls. MTD-Resp. 15 n.3. But "[n]either this court, nor any party, has the power to resurrect statutory language that has been repealed or significantly changed through proper amendment by the legislature." *Workers' Comp. Fund v. State*, 2005 UT 52, ¶22. And Plaintiffs don't explain why a broad injunction that would *create* constitutional problems by resurrecting an outdated map would be permissible, equitable, or consistent with severability principles.

Plaintiffs' cited cases do not support their arguments. Plaintiffs cite *Walters v. Boston City Council*, 676 F. Supp. 3d 26 (D. Mass. 2023), for the proposition that it revived a previous map, *see* Pls. MTD-Resp. 15, but that's false. There, the court determined that the city council's 2021 maps were unlawful and enjoined the city council from using them. *Walters*, 676 F. Supp. 2d at 48. But that's all it did. It did not revive a previous map and enjoin *that* map too. After enjoining the 2021 maps, the court observed that "the City Council is best positioned to redraw the lines in light of traditional redistricting principles." *Id.* Nor does *Legislative Research Commission v. Fischer*, 366 S.W.3d 905 (Ky. 2012), justify reviving the 2011 Congressional Plan for the sole purpose of unnecessarily enjoining it. To be sure, after enjoining Kentucky's 2012 legislative maps, that court ordered that the then-upcoming 2012 elections be "conducted using the districts as enacted in the 2002 [maps]." *Id.* at 917. But Kentucky's precedent has little bearing on what the Utah courts are permitted to do, and Utah courts are not permitted to revive a repealed statute, especially when the Legislature clearly intended to repeal it. *In re J.P.*, 648 P.2d at 1378 n.14; *Workers' Comp. Fund*, 2005 UT 52, ¶22. More to the point, the only reason the Kentucky court gave for reviving the 2002 maps was its view that the 2002 maps were "the only legislative districts capable of implementation at [that] juncture" and it needed to "ensur[e] the orderly process of the 2012 elections." *Fischer*, 366 S.W.3d at 917, 919. But here, Plaintiffs don't want the 2026 or later congressional elections to be conducted under the 2011 Congressional Plan; they want that map enjoined too. So here, reviving the 2011 Congressional Plan serves no purpose. Count VIII should be dismissed because the 2011 Congressional Plan has been repealed and Plaintiffs' challenge against it is moot.

Standing. Plaintiffs failed to allege standing. *See* Leg.-Defs. MTD 14-15. Contrary to Plaintiffs' assertion, no "actual controversy" exists involving the repealed 2011 Congressional Plan. *Salt Lake*

County v. State, 2020 UT 27, ¶19. Nor is there "a substantial likelihood that one will develop," *id.*, because the 2011 Congressional Plan has been repealed. Nor will reviving the 2011 Congressional Plan for the sole purpose of enjoining it "serve a useful purpose in resolving or avoiding controversy or possible litigation." *Id.* (cleaned up). Count VIII is not at all necessary to grant Plaintiffs relief on Counts I-VII even if they were to prevail.

Even if a live controversy could somehow arise, the first amended complaint fails to contain specific allegations that would support Plaintiffs' standing. The organizational Plaintiffs failed to include any allegations about where their members used to live under the 2011 Congressional Plan. *See* FAC ¶¶13-27. Their allegations turn entirely on where their members allegedly live under the 2021 Congressional Plan. *Id.* The same is true of the individual Plaintiffs: Their allegations turn entirely on where they live under the 2021 Congressional Plan. *Id.* ¶¶28-37. Given those obvious pleading deficiencies, Plaintiffs seek to amend their first amended complaint through their brief. But it's a fundamental principle that "[a] plaintiff cannot amend the complaint … in a memorandum in opposition to a motion to dismiss …, because such amendment fails to satisfy Utah's pleading requirements." *Holmes Dev., LLC v. Cook*, 2002 UT 38, ¶31 (citing Utah R. Civ. P. 7, 8, 9, 10); *see also* Utah R. Civ. P. 15(a). Plaintiffs' assertion that Plaintiffs Malcolm Reid and Victoria Reid's standing can be established by judicially noticeable materials also fails. *See* Pls. MTD-Resp. 15-16. It's a concession that other individual Plaintiffs failed to allege standing to challenge the 2011 Congressional Plan. And as to the Reids, their declarations do not say where in Millcreek they live; they simply say that they live in Millcreek and vote in Congressional District 2 under the 2021 Congressional Plan. Though Plaintiffs' brief asserts that where the Reids live now used to "overlap" with what was a portion of Congressional District 4 under the 2011 Congressional Plan, Pls. MTD-Resp. 16 n.5, their declarations don't say that, and neither does the complaint. Because Plaintiffs lack standing to challenge the non-existent 2011 Congressional Plan, Count VIII should be dismissed.

II. The Court should stay further proceedings pending the full resolution of Count V.

Staying further proceedings until this Court and the parties know what the governing law is—whether it's S.B. 200, Proposition 4, or the various provisions of the Utah Constitution—will ensure a "just, speedy, and inexpensive determination" of this case. Utah R. Civ. P. 1; *see* Leg.-Defs. MTD 15-16. This Court previously agreed to as much when it granted a stay in January 2022. *See* Stay Order at 1. Knowing the governing law will "significantly impact this case," including by "limit[ing] Plaintiffs' claims and/or narrow[ing] the scope of discovery." *Id.* Currently, the only issue remanded for this Court's resolution on summary judgment is Plaintiffs' Count V, which will decide whether S.B. 200 or Proposition 4 should apply in this case. If Legislative Defendants prevail on Count V, then S.B. 200 remains the governing law and disposes of Plaintiffs Counts VI-VII entirely and Count VII in part. And the Utah Supreme Court will then address the extent to which Plaintiffs claims under the Utah Constitution (Counts I-IV) should go forward in this Court, if any. And even if Plaintiffs show that certain provisions of Proposition 4 should be revived—after succeeding on the merits and remedy issues on Count V—requiring the parties to conduct expensive discovery and further litigation on Counts VI-VIII before the Legislature can exhaust appellate review of this Court's decision disserves the interests of judicial economy.

Plaintiffs resist this common-sense approach with several unpersuasive arguments. To start, Plaintiffs ask this Court not just to continue the proceedings but to skip litigation entirely and go straight to enjoining the 2021 Congressional Plan under Count VI. *See* Pls. MTD-Resp. 1, 3, 18-19. But as explained, Count VI is only at the motion-to-dismiss stage and should be litigated further. To take just one issue, Plaintiffs' standing to assert Count VI should be further litigated. Standing is a threshold, jurisdictional requirement. *Carlton v. Brown*, 2014 UT 6, ¶29. Plaintiffs bear the burden to demonstrate standing at every stage of litigation, and that burden increases at each "successive stage[] of the litigation." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). At the motion-to-dismiss stage, a plaintiff must only "claim" or "allege" facts showing a legal injury. *S. Utah Wilderness All. v. San Juan Cnty. Comm'n*, 2021 UT 6, ¶14 n.11. "But where plaintiffs' factual, standing-related allegations are in dispute at later stages, plaintiffs must show or prove standing by satisfying the applicable burden of

proof." *Id.* And Plaintiffs can "no longer rest on … 'mere allegations'" to support standing. *Lujan*, 504 U.S. at 561. Legislative Defendants are entitled to keep developing their standing arguments, dispute Plaintiffs' standing "at later stages," and require Plaintiffs to "prove standing by satisfying the applicable burden of proof." *S. Utah Wilderness All.*, 2021 UT 6, ¶14 n.11. So too are Legislative Defendants entitled to continue developing their constitutional defenses. Plaintiffs' request to skip over Count VI by granting a permanent injunction based on a completely different claim (Count V) would cut short the litigation procedures that Legislative Defendants are entitled to. But before diving into that costly discovery and further litigation, it serves the interest of judicial economy to set the ground rules for litigation by knowing what the governing law is. If the parties proceed to fact and expert discovery and further litigation on Counts VI-VIII, but this Court's ruling on Count V is later reversed, Utah's taxpayers will have needlessly incurred those litigation costs.

Plaintiffs also worry that a stay would tie up this litigation for an indeterminate period of time. But that fear is unfounded. Count V concerns only a question of law. And as the recent Amendment D litigation showed, the Utah Supreme Court can expeditiously adjudicate time-sensitive appeals. Plaintiffs also assert that they should not be "forced" to vote under the 2021 Congressional Plan. Pls. MTD-Resp. 20. But other equities and the public interest are also at play. Voters, candidates, and government officials have relied on—and continue to rely on—the 2021 Congressional Plan to conduct and plan for elections. And here, the Legislature's constitutional prerogative to redistrict the State is also squarely at issue. So are many weighty constitutional questions of first impression in Utah courts. These circumstances call for nothing short of the most careful deliberation and analysis. That's why courts often grant a stay and leave in place redistricting plans while they carefully assess them, even if they ultimately conclude that the plans should be invalidated. *See, e.g.*, *Merrill v. Milligan*, 142 S. Ct. 879 (2022).

CONCLUSION

For these reasons, the Court should grant Legislative Defendants' motion to dismiss Counts VI-VIII. Alternatively, this Court should stay further proceedings on those counts until Count V is

fully resolved—both in this Court and in any following appeal—and until the Utah Supreme Court resolves Counts I-IV.

Dated: December 6, 2024

Respectfully submitted,

/s/ Tyler R. Green

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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: December 6, 2024 */s/ Tyler R. Green*