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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' RESPONSE TO PLAINTIFFS' SUPPLEMENTAL REMEDIES BRIEF

Case No.: 220901712

Honorable Dianna Gibson

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INTRODUCTION

Plaintiffs' insistence that the Court could enjoin the use of Utah's existing congressional districts as a remedy for Count V, without any further proceedings, is extraordinary. Such a remedy presupposes a legal defect in the congressional districts that Plaintiffs have not proved based on supposed redistricting requirements not currently in effect. Plaintiffs' arguments are contrary to the elementary principle that a remedy must be tailored to the violation found, contrary to basic notions of due process, and contrary to the federal Elections Clause.

Plaintiffs knew how to challenge Utah's existing congressional districts as unlawful. They did so in Counts I through IV of their complaint when they challenged the congressional redistricting legislation (H.B. 2004) as unconstitutional. *See* Compl. ¶¶257-309. They took a different tack with Count V: they challenged the constitutionality of different legislation (S.B. 200), concededly *not* H.B. 2004. *Id.* ¶¶310-319. It was not until August 2024 that Plaintiffs added new claims challenging H.B. 2004's congressional districts on additional grounds, including Proposition 4's "report" requirement or "unnecessary" municipal splits. *See* Am. Compl. ¶¶320-354. Even then, Plaintiffs did not press those new claims; they moved for expedited summary judgment on Count V alone. There is no time for Plaintiffs to walk back that decision and commence an altogether new challenge to the congressional districts on what would be an extraordinarily expedited schedule, denying the parties a full and fair opportunity to litigate and then appeal questions of significant importance to all Utahns before the 2026 elections.[1]

ARGUMENT

I. Response to Question 1: There is no basis for enjoining enforcement of H.B. 2004 as a remedy for Count V's challenge to S.B. 200.

Plaintiffs invite this Court to assume a legal defect in Utah's congressional districts without Plaintiffs ever proving any such defect exists. That is an invitation to err.

[1] If the Court believes an additional hearing would be helpful, the Legislature will participate expeditiously. Absent that, the Legislature does not request a hearing on these supplemental briefs, both because the remaining time before election deadlines commence is short and the relevant legal principles are sufficiently clear in the briefing.

A. Legal remedies must be tailored to the violation found.

Remedies are not dreamt up in the abstract. 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"); *Citizen Band Potawatomi Indian Tribe of Okla. v. Okla. Tax Comm'n*, 969 F.2d 943, 948 (10th Cir. 1992) (noting "the well-settled principle that an injunction must be narrowly tailored to remedy the harm shown"); *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); *Kingston v. Kingston*, 2022 UT 43, ¶7, 532 P.3d 958 (remanding for district court to more narrowly tailor remedy to the harms identified); *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 419 (1977). Redistricting-related litigation is not an exception to that elementary rule of remedies. For example, in recent North Carolina redistricting litigation, the U.S. Supreme Court reversed a redistricting remedy in part as overly broad. *See North Carolina v. Covington*, 585 U.S. 969, 978-79 (2018) (per curiam). There, plaintiffs challenged the districts themselves, and still the Court held that the remedy went too far in redrawing districts; the Court explained any changes must be limited to redressing the racial gerrymandering claim plaintiffs proved, not other supposed legal violations not proved. *Id.* It necessarily follows here that because Plaintiffs' Count V doesn't even challenge H.B. 2004's district lines, Plaintiffs cannot insist on this Court redrawing H.B. 2004's districts anew. Nor would such a remedy make any sense. There has been no opportunity to test the legality of H.B. 2004's congressional districts, measured against some yet-to-be-decided standard. *Infra* Part I.C.2.

B. Count V challenges S.B. 200, not H.B. 2004's congressional districts.

Plaintiffs' pending summary judgment motion challenges some (but not all) of S.B. 200 and seeks prospective injunctive relief with respect to some (but not all) of S.B. 200's enforcement. *See, e.g.*, Pls. MSJ at 13 n.1, 25-26. As Plaintiffs conceded before the Supreme Court nearly two years ago, Count V does not challenge the congressional districts themselves, distinguishing it from Counts I through IV's constitutional challenge to H.B. 2004 or newly added Counts VI through VIII. Still today, Plaintiffs press Count V alone in their summary judgment motion. Should Plaintiffs prevail on that count, at most they can obtain some prospective injunctive relief with respect to S.B. 200. But it defies

ordinary remedial principles to further enjoin the use of H.B. 2004's congressional districts when H.B. 2004 is not challenged in Count V. Such a remedy would not be tailored to the claim pressed in Count V, which is specific to S.B. 200 and does not challenge the lawfulness of the districts themselves. *Supra* I.A.

Plaintiffs cannot recast Count V as a challenge to H.B. 2004's congressional districts. By its own terms, Count V targets the Legislature's alleged "repeal[of] the Utah Independent Redistricting Commission and Standards Act"—*i.e.*, S.B. 200's changes to Proposition 4—because it "unduly burden[s] the people's authority to make laws through initiatives" in violation of "Article I, Section 2" and "Article VI, Section 1" specifically. Am. Compl. ¶¶310-319; *see also id.* at 86(e)-(f) (seeking a declaration and injunctive relief with respect to Proposition 4 and "SB 200"). Nothing in Count V can "reasonably be read as supporting a claim for relief" for the congressional districts, sufficient to "giv[e] the defendant notice of that claim." *Zubiate v. Am. Fam. Ins. Co.*, 2022 UT App. 144, ¶14, 524 P.3d 148. *see also Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1320, 1323 (11th Cir. 2015) (plaintiffs cannot "confuse the 'enemy' and the court" by "fail[ing] … to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests"); *Stichting Mayflower Mountain Fonds v. United Park City Mines Co.*, 2017 UT 42, ¶54-55, 424 P.3d 72 (affirming district court's determination that complaint's "cryptic nature" did not give defendants "adequate notice regarding what is claimed").

Plaintiffs now claim that it is sufficient that Count V "incorporate[d] by reference all the Complaint's allegations," which elsewhere included factual allegations about H.B. 2004's congressional districts. Pls. Suppl. Br. 7. But there is no mistaking that such factual allegations were germane to Counts I through IV, containing Plaintiffs' constitutional challenges to H.B. 2004's congressional districts, not S.B. 200. Those counts refer to the "2021 Congressional Plan" no fewer than 24 times. Compl. ¶¶257-309. As for Count V, *not once* did Plaintiffs refer to the "2021 Congressional Plan." Compl. ¶¶310-319. When Plaintiffs amended their complaint, Count V did not change; Count V said nothing about the "2021 Congressional Plan." Am. Compl. ¶¶310-319. Plaintiffs instead added new counts challenging the congressional districts on additional grounds. Those new counts refer to the "2021 Congressional

Plan" an additional 20 times. Am. Compl. ¶¶320-362. Plaintiffs' contention that Count V is sufficient to challenge the congressional districts is belied by the addition of Counts VI through VIII.

The Court need not take the Legislature's word that Count V did not purport to challenge the congressional districts. It can take Plaintiffs' own representations to the Utah Supreme Court. Nearly two years ago during the *LWV I* oral argument, Justice Petersen observed that, while Counts I through IV challenged H.B. 2004's congressional districts, Count V was "about the amending or repealing of *the initiative*." Oral Argument at 2:28:45, *LWV v. Utah State Legis.*, 2024 UT 21 (No. 20220991-SC), https://bit.ly/3GalfwG (emphasis added). Plaintiffs' counsel agreed that they would have to "amend our complaint to add … the statutory cause of action challenging the map under the Prop 4 … standards that the legislature was obligated to apply." *Id.* at 2:29:01. Counsel went on to explain that "at the moment, there is not a challenge that says that" H.B. 2004 fails to comply with Proposition 4 "because the law's not in effect." *Id.* at 2:31:00. And Plaintiffs made the same representation in their supplemental brief in *LWV I*: "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." Pls. Suppl. Br. 19, *LWV v. Utah State Legis.*, 2024 UT 21 (No. 20220991-SC). After the Supreme Court's decision, Plaintiffs did exactly that by adding Counts VI through VIII.

Plaintiffs would have this Court forget those representations and err based on ambiguous *dicta* in *LWV I*, despite the Supreme Court's express statement that it did not purport to decide the issues remanded to this Court. Plaintiffs point to passing language that Count V "encompasses the constitutionality of the Congressional Map," *LWV v. Utah State Legis.*, 2024 UT 21, ¶61, 554 P.3d 872, and that "resolving Count V *may* well," but not certainly, "obviate the need to address Counts I through IV," *id.* ¶222 (emphasis added). As this Court observed in its supplemental briefing order, there is no "legal or factual authority" for these passing observations. And Plaintiffs ignore what else the Supreme Court said: that Plaintiffs could raise violations of Proposition 4 standards "as an *amended claim* on remand in the event that Count V is reinstated." *Id.* ¶222 (emphasis added). In context, these paragraphs were not purporting to consider, let alone definitively decide, questions of proper remedies in yet-to-be-had remanded proceedings. *See id.* ¶200. Such questions were not even before the Court.

The Court was deciding only whether Count V presented "a legally cognizable claim" to survive a motion to dismiss. *Id.* ¶190; *accord id.* ¶194 (stating the Court was not deciding "the constitutionality of [Proposition 4's] provisions"). The cited paragraphs simply explained why the Supreme Court would remand Count V alone, *id.* ¶¶61, 222, acknowledged it was breaking new ground, *id.* ¶76, and stated expressly that the Court did "not intent to suggest what should transpire next in the district court," *id.* ¶200. The Court emphasized that it does its "best to avoid unintended consequences from rulings that sweep too broadly." *Id.* ¶63 n.15. The Court's observation that there was a "chance" remanded litigation, which could entail "amended claim[s]," could avoid deciding Counts I through IV's "constitutional" questions, *id.* ¶200, comes nowhere close to pre-deciding that this Court could enjoin the use of the congressional districts as a Count V summary judgment remedy. Plaintiffs' contrary arguments are irreconcilable with Plaintiffs' own understanding of their complaint as they represented it to the Supreme Court.

Even if the Court's opinion could be read to suggest something about proper remedies, those passing statements would be dicta. The question of remedies was "not before [the Court]" and "not necessary to [the] holding in that case." *Id.* ¶170. The question was instead far more preliminary: whether Count V could survive a motion to dismiss despite *Grant v. Herbert*, 2019 UT 42, 449 P.3d 122. As such, only the Court's conclusions about the legal framework to be applied to Count V "bind the court." *Helper State Bank v. Crus*, 81 P.2d. 359, 362 (Utah 1938). Courts are not bound by additional "expressions of opinion on questions the determination of which was not necessary for the decision." *Id.* The Supreme Court did not take its holdings in *LWV I*, let alone *dicta*, to pre-decide such issues on remand. *LWV*, 2024 UT 21, ¶200. Nor should Plaintiffs.

Because Count V challenges only S.B. 200, any remedy must be limited to whatever constitutional violation the Court might find for S.B. 200, such as the remedy Plaintiffs asked for in their own complaint. *See* Am. Compl. at 86(e)-(f) (seeking a declaration that "the Legislature's 2020 repeal of … citizen-initiated Proposition 4 redistricting reforms" violated "Article I, Section 2 and Article IV, Section 1" and an injunction "from administering SB200, the law that repealed and replaced the voters' Proposition 4 redistricting reforms, to the extent of its unconstitutionality and order that the Utah

Independent Redistricting Commission and Standards Act be reinstated"). There is no legal basis for reaching beyond S.B. 200 and enjoining the use of congressional districts not challenged in Count V. *Supra* I.A. Nor is there any evidentiary basis for doing so.

C. The parties have not litigated the legality of the congressional districts as part of Plaintiffs' Count V summary judgment motion.

It puts the cart entirely before the horse for Plaintiffs to presuppose that there is a legal defect in H.B. 2004's congressional districts sufficient to enjoin their use and replace them with Court-drawn districts. As an initial matter, any injunctive relief Plaintiffs would obtain for Count V would operate prospectively. Plaintiffs would transform that prospective relief into retrospective relief, turning back time to invalidate H.B. 2004's congressional districts passed in 2021 when S.B. 200 was the governing law. More fundamentally, even if injunctive relief could operate retrospectively, Plaintiffs have never proved there is a legal defect in H.B. 2004's congressional districts. The Legislature has had no opportunity to disprove any such defect. Nor could the parties do so in this posture, where Plaintiffs are litigating only Count V. With respect to that count, this Court has not even decided whether any portion of S.B. 200 is unconstitutional. There has thus been no occasion to measure H.B. 2004's congressional districts against anything other than S.B. 200—the law in place today.

1. Any yet-to-be-issued Count V injunction would operate prospectively like all other injunctions, not retrospectively.

Plaintiffs' arguments ignore the prospective nature of injunctive relief that they might obtain with respect to S.B. 200. They would instead have that injunction apply *retrospectively* to invalidate H.B. 2004, passed at a time when the governing law was S.B. 200.

Injunctive relief operates *prospectively*, not retrospectively. An injunction is "an *anticipatory* remedy." *Anderson v. Granite Sch. Dist.*, 17 Utah 2d 405, 407 (1966) (emphasis added); *see also Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (characterizing an injunction as "forward-looking relief"). Unlike a damages claim that "looks back in time and is intended to redress a past injury," "[e]quitable relief is a *prospective* remedy." *Adler v. Duval Cnty. Sch. Bd.*, 112 F.3d 1475, 1477 (11th Cir. 1997) (emphasis added); *see also Tenn. Conf. of the NAACP v. Lee*, 105 F.4th 888, 904 (6th Cir. 2024). It operates by

"prevent[ing] the perpetration of a *threatened* wrong," *Anderson*, 17 Utah 2d at 407 (emphasis added), not by rewinding time.

Here, minding the prospective nature of injunctive relief, Plaintiffs could have immediately challenged S.B. 200 when it passed (nearly unanimously) in March 2020. They could have sought preliminary injunctive relief along the same lines that they instead sought years later: an injunction prohibiting Defendants "from administering SB200 … to the extent of its unconstitutionality and order that the Utah Independent Redistricting Commission and Standards Act be reinstated …." Am. Compl. at 86(f). Any such relief would have governed the next year's redistricting efforts. But instead, Plaintiffs waited until March 2022 to challenge S.B. 200 as unconstitutional—two years after it passed and well after the 2021 redistricting efforts. Because of that delay, they find themselves in the untenable position of contending that any S.B. 200 injunction could apply *retrospectively* to invalidate redistricting legislation passed years ago—versus *prospectively* to invalidate future redistricting legislation. *But see Anderson*, 17 Utah 2d at 407 (injunctions are "anticipatory"); *Adler*, 112 F.3d at 1477 (injunctions are intended to prevent *future* injuries").

Plaintiffs have articulated no basis for such an extraordinary use of injunctive relief, and they have no basis for the extraordinary timeline they would impose on this Court, the Utah Supreme Court, the U.S. Supreme Court, and the parties to litigate H.B. 2004's lawfulness. Having waited years after S.B. 200 passed to challenge its constitutionality, Plaintiffs cannot now insist on emergency proceedings to decide whether H.B. 2004, enacted during the years Plaintiffs waited to sue, is now unlawful. *See Petterson v. Ogden City*, 111 Utah 125, 136, 175 P.2d 599 (1947) ("[L]aches and estoppel are bars which in certain circumstances may be raised to defeat a right or claim a party otherwise would have. The courts refuse to give their aid to the party who has slept on his rights or who because of his actions or inaction when action was required is not fairly entitled to relief."). "[E]quity aids the vigilant," *Insight Assets, Inc. v. Farias*, 2013 UT 47, ¶17, 321 P.3d 1021, not those who wait years to change the ground rules for a legislative process long passed. Even if the Court were to determine that S.B. 200 is unconstitutional in part, the solution would be enjoining the enforcement of S.B. 200

prospectively, not to reach back in time and invalidate H.B. 2004, enacted when S.B. 200 was the governing law.

2. Even if an injunction could operate retrospectively, Plaintiffs have not yet proved any defect in H.B. 2004's congressional districts.

Plaintiffs' insistence that the Court can simply enjoin the use of congressional districts also ignores what's at issue, and what's not, in their summary judgment challenge. And it presupposes how the Court will decide that challenge.

Plaintiffs' pending summary judgment motion challenges only some of S.B. 200, not the whole of S.B. 200, and it asks to enjoin only parts of S.B. 200, not the whole of S.B. 200. Plaintiffs agree that even under their theory, some provisions of S.B. 200 will remain in place, meaning Proposition 4 will not be altogether "revived" or "reinstated." *See, e.g.*, Pls. MSJ 26 (explaining that S.B. 200's elimination of the Chief Justice on the commission is a provision that can remain in effect). In response, Defendants have explained why the subset of S.B. 200 provisions challenged were necessary to make Proposition 4's standards constitutional. Leg.-Defs. Cross-MSJ 28-56. For instance, Proposition 4 unconstitutionally restricted the Legislature's substantive discretion over redistricting decisions in violation of both Article IX of the Utah Constitution and the federal Elections Clause. *Id.* at 31-41. It unconstitutionally displaced the Legislature's authority to determine its own rules of procedure. *Id.* at 43-50. It unconstitutionally constrained the Legislature's appropriations power. *Id.* at 41-43. And it unconstitutionally delegated redistricting power to the Chief Justice and a commission. *Id.* at 51-56. These constitutionally defective provisions of Proposition 4 would not be a basis for challenging H.B. 2004's congressional districts then or now, let alone enjoining their use.

Until this Court decides these and other issues presented by Plaintiffs' Count V summary judgment motion, the parties are left to guess which S.B. 200 provisions may remain in force and which may not. Without the answer to that question, Plaintiffs have no legal or evidentiary basis to insist on enjoining the use of H.B. 2004's congressional districts. Their speculation about the future of H.B. 2004's congressional districts is fit for a fortune-teller, not a Court. It requires presupposing there will be a future injunction on Count V. It requires presupposing which provisions of S.B. 200

that future injunction will affect and which it will not. And it requires presupposing that this yet-to-issue injunction will doom H.B. 2004's congressional districts, even though that issue has not been litigated.

For a concrete example of the issues that remain to be decided, Plaintiffs presume that their Count V summary judgment motion can reach H.B. 2004 because their motion seeks to "revive" or "reinstate" Proposition 4's requirement that the Legislature take an up-or-down vote on the redistricting commission's maps. Described above, the Legislature has argued that this requirement could not be constitutionally imposed on the Legislature and thus S.B. 200 lawfully revised it. Leg.-Defs. Cross-MSJ 46-47, 62. The commission is not an elected legislator, and its maps are not proposed bills; just as courts do not command the Legislature to take bills or amendments from the House gallery, it would be passing strange to command the Legislature to introduce "bills" from the commission that no legislator has sponsored as such. *Id.* Even if the Court were to reject that argument, additional proceedings would be required to determine whether the Legislature substantially complied with the procedural requirement to vote down commission maps. *Infra* II.A. After all, when the Legislature voted in favor of H.B. 2004, it necessarily voted against alternative redistricting plans. And even failing that argument (or others), additional proceedings would be required to decide remedial issues. While Plaintiffs simply presume that this Court can enjoin the use of H.B. 2004 for a single procedural violation, they never consider whether such an injunction would be overbroad. Pls. Suppl. Br. 9. An injunction is "an extraordinary remedy" that "should not be lightly granted," *Sys. Concepts, Inc. v. Dixon*, 669 P.2d 421, 425 (Utah 1983), and is not governed by "arbitrary or technical rules," *Kinsman v. Utah Gas & Coke Co.*, 177 P. 418, 422 (Utah 1918). Basic "principles of equity jurisprudence" dictate that "the scope of injunctive relief is dictated by the extent of the violation established." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). When "a less drastic remedy" is "sufficient to redress [Plaintiffs'] injury, no recourse to the additional and extraordinary relief of an injunction [is] warranted." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165-66 (2010). An injunction is not warranted for "merely trifling" violations, *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 314-15 (1982), or where violation was only "procedure rather than on the underlying substantive policy" of the law. *Amoco Prod. Co. v. Vill. of Gambell*,

480 U.S. 531, 544 (1987). The Legislature must have an adequate opportunity to argue that a mandatory injunction, replacing existing congressional districts with Court-drawn districts, would not be tailored to mere procedural violations around the time H.B. 2004 passed.

Plaintiffs' contrary arguments conflate the present dispute about S.B. 200 with some future dispute about H.B. 2004 that has yet to be litigated. To obtain an injunction prohibiting the use of H.B. 2004's congressional districts, Plaintiffs must actually litigate and prove something with respect to those districts. Courts do not reward parties with injunctions prohibiting the enforcement of a law before parties prove there is something wrong with that law. *Sys. Concepts, Inc.*, 669 P.2d at 425-26; *see also supra* I.A. Reaching out to enjoin H.B. 2004 reverses the most basic litigation steps: Plaintiffs believe they can be rewarded with new congressional districts before they ever prove the existing districts are so defective that they require replacing. That is akin to suggesting the Court could order a defendant to pay $1 million in damages because the complaint says he owes the plaintiff. Or take an analogy in the legislative context. Say a group of plaintiffs brought a challenge alleging the Legislature passed all its 2025 bills without a quorum. The Court could agree that a quorum is constitutionally required. But the Court would not jump to enjoin the enforcement of every 2025 bill passed without additional proceedings to prove there wasn't a quorum for particular legislation or to consider whether the absence of a quorum could be a basis for an injunction. *See Nat'l Res. Def. Council v. Texaco Ref. & Mktg., Inc.*, 906 F.2d 934, 937 (3d Cir. 1990) (incorrect to determine that "injunction should automatically follow upon a finding of statutory violation"); *Salt Lake County v. Kartchner*, 552 P.2d 136, 138 (Utah 1976) (injunction not appropriate "in every type and circumstance of violation"); *see also, e.g.*, *United States v. Ballin*, 144 U.S. 1, 9 (1892) (refusing to enjoin legislation based on arguments that Congress passed that legislation without a quorum). Here too, an injunction cannot issue based on mere speculation about legal defects in H.B. 2004 without more.

D. Plaintiffs' insistence on an overly broad remedy enjoining congressional districts exacerbates the federal constitutional issues created by Plaintiffs' suit.

1. Rewarding Plaintiffs with an injunction prohibiting the use of H.B. 2004's congressional districts without first requiring Plaintiffs to prove any legal violation specific to those districts raises due process concerns. The Due Process Clause "imposes on the States the standards necessary to ensure that judicial proceedings are fundamentally fair." *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 33 (1981). The Legislature must have an opportunity to test Plaintiffs' claims regarding H.B. 2004—both its alleged noncompliance with a not-yet-issued injunction and whether such noncompliance could warrant replacing the existing congressional districts with Court-drawn districts. The Court may not, consistent with due process, bypass the Legislature's full and fair opportunity to litigate those yet-to-be-litigated issues. *See Allen v. Georgia*, 166 U.S. 138, 140 (1897) (courts must at least "act[] in consonance with the constitutional laws of a state and its own procedure"); *see also Jordan v. Massachusetts*, 225 U.S. 167, 174 (1912) (noting due process requires at least "two fundamental conditions" of "jurisdiction" and "a fair hearing upon the issue"). This includes the right "to present every available defense." *Lindsey v. Normet*, 405 U.S. 56, 66 (1972). Applied here, prematurely enjoining the use of the existing districts would prevent the Court from hearing and considering the Legislature's liability and remedial defenses to Plaintiffs claims about H.B. 2004's noncompliance, among other arguments. "The remedy mandated by the Due Process Clause of the Fourteenth Amendment is 'an opportunity to refute the charge.'" *Codd v. Velger*, 429 U.S. 624, 627 (1977). Enjoining H.B. 2004 based on Count V alone would remove that opportunity.

2. Plaintiffs' proposed remedy—a redraw of the existing congressional districts—would also compound the federal Elections Clause violation. Giving Plaintiffs their preferred congressional districts as a remedy "transgress[es] the ordinary bounds of judicial review." *Moore v. Harper*, 600 U.S. 1, 36 (2023) ("[S]tate courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections."). Remedial proceedings in redistricting cases must follow the same course as remedial proceedings in other cases—narrow in scope, with remedies tailored to the violation found, so that they remain within the

ordinary limits of judicial review. *Cf. Jeffs v. Stubbs*, 970 P.2d 1234, 1251 (Utah 1998). But here, Plaintiffs would have the Court invalidate H.B. 2004 without any prerequisite finding that H.B. 2004's congressional districts are unlawful or that replacing districts is warranted. Absent such findings, the court "do[es] not have free rein" to redraw congressional districts and thereby remove the redistricting power from the Legislature. *Moore*, 600 U.S. at 34.[2]

II. Response to Question 2: Additional proceedings would be necessary before the Court could enjoin H.B. 2004.

Plaintiffs have yet to prove their claims regarding H.B. 2004's congressional districts, or that those claims would justify replacing those districts. Explained above, Count V is about the lawfulness of S.B. 200, not H.B. 2004's congressional districts. *Supra* I.B. A win for Plaintiffs on Count V would thus entail an injunction specific to S.B. 200, not to H.B. 2004. *Supra* I.A-B. And that injunction would operate prospectively to future redistricting efforts, not retrospectively to invalidate H.B. 2004 enacted years ago. *Supra* I.C.1. Even if Plaintiffs were right that such an injunction could operate retrospectively, a separate injunction would be required to prohibit the use of the existing congressional districts. Before any such injunction could issue, additional proceedings are necessary if this case is to resemble any other case, in which plaintiffs prove their claims before obtaining remedies tailored to those claims. Plaintiffs themselves contemplated those additional proceedings at the *LWV I* argument, in *LWV I* supplemental briefing, and by adding Counts VI and VII to their amended complaint. *See supra* I.B; Am. Compl. ¶¶320-354. Plaintiffs' contrary arguments, Pls. Suppl. Br. 6-8, ignore what their complaint actually says and their representations made to the Utah Supreme Court. *Supra* I.B.

As for what those additional proceedings would entail, no injunction prohibiting the use of the existing congressional districts could issue until Plaintiffs prove both (1) a legal defect with respect to H.B. 2004's congressional districts and (2) that any such legal defect warrants an injunction. Plaintiffs have proved neither. And there is not sufficient time for Plaintiffs to start now. *Infra* III.

[2] Other federal Elections Clause issues remain should the Court conclude that the Legislature is forever bound in its own redistricting legislation by Proposition 4's substantive requirements, with no ability for future Legislatures to amend such requirements. Leg-Defs. Cross-MSJ 39-41.

There has been no fact discovery, no experts, and no briefing on H.B. 2004's compliance with the subset of Proposition 4 provisions that Plaintiffs seek to reinstate. Nor could there be. S.B. 200's modifications of Proposition 4 are the governing law; Proposition 4 isn't. The Court has issued no injunction with the effect of modifying that governing law. *Supra* I.C.2. Contrary to Plaintiffs' arguments, Pls. Suppl. Br. 8, Defendants are not required to predict what that yet-to-be-announced standard might be and then litigate their defenses to alleged procedural or substantive violations based only on those predictions.

Even if Plaintiffs could prove some legal defect and even if they could deny Defendants' opportunity to mount a defense, they have not done the hard work of showing a mandatory injunction replacing the existing districts with new districts is warranted. Such an injunction would be "an extraordinary remedy" that "should not be lightly granted," *Sys. Concepts, Inc.*, 669 P.2d at 425, and "never awarded as of right," *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). "A mandatory injunction will never be granted where it might operate inequitably or oppressively." *Kartchner*, 552 P.2d at 140. So while Plaintiffs point to discrepancies between H.B. 2004's enactment and Proposition 4, there remain questions of whether any such discrepancy, even if proved, could justify such extraordinary relief or, relatedly, whether the federal Elections Clause would tolerate such relief. For instance, had the Legislature made some maps available for fewer than 10 days, does that supposed procedural violation justify a complete redraw of districts years later? Remedies should be limited to what is "necessary to cure any constitutional or statutory defect." *Upham v. Seamon*, 456 U.S. 37, 43 (1982). Applied here, Defendants would have arguments that there are more tailored remedies than a complete redraw of congressional districts for Plaintiffs' asserted "violations," to the extent there even are justiciable violations, *see infra* II.A-B.

Finally, Plaintiffs have yet to explain how they can insist on another round of severely expedited proceedings to replace districts before the 2026 elections. Preliminary injunctions are based on "procedures that are less formal and evidence that is less complete than in a trial on the merits," depriving the parties of "a full opportunity to present their cases." *Univ. of Texas v. Camenish*, 451 U.S. 390, 395-96 (1981). They can result in records that are "simply insufficient to allow th[e] court to

consider fully the grave, far-reaching constitutional questions presented." *Brown v. Chote*, 411 U.S. 452, 457 (1973). According to the Lieutenant Governor, any new districts would need to be in place by November 1, 2025, to be used in the 2026 elections. Lt. Governor Notice of 2026 Cong. Election Timeline (Doc. 441). That leaves mere months for the parties to litigate Plaintiffs' newly added claims about the lawfulness of H.B. 2004's districts and potentially denies the parties any opportunity to appeal important questions of state and federal constitutional law to the Utah Supreme Court and U.S. Supreme Court respectively. Plaintiffs could have challenged S.B. 200 as early as March 2020, well before the redistricting process even began. Discussed in Part III, Plaintiffs should not be rewarded for sitting on their rights then and, more recently, choosing not to press newly added Counts VI and VII when they pressed Count V. *See Jacobson v. Jacobson*, 557 P.2d 156, 158 (Utah 1976) (laches bars relief where party is "dilatory in seeking his remedy"); *see also Reynolds v. Sims*, 377 U.S. 533, 585 (1964) (contemplating that "under certain circumstances," there may be delay between a finding of liability and any remedial map); *Kinsman*, 177 P. at 422 (considering whether a party has been "cognizant of his rights" and timely "take[n] those steps to assert them which are open to him").

A. Response to Question 2-a: The Legislature has not conceded that H.B. 2004 was procedurally invalid, as alleged in Count VI, or that any alleged procedural violations could justify replacing H.B. 2004's congressional districts.

Plaintiffs claim that it is "undisputed" that the Legislature violated "Prop 4's procedural requirements" when enacting H.B. 2004 and that these asserted violations warrant replacing the existing congressional districts. Pls. Suppl. Br. 9. But S.B. 200, not "Prop 4's procedural requirements," were in place when H.B. 2004 was enacted. And Defendants have never conceded that their enactment of H.B. 2004 violated any procedural requirements such that H.B. 2004's districts need replacing.

i. As an initial matter, Plaintiffs' Count V seeks to "reinstate" some (but not all) of Proposition 4's requirements with an injunction. *See* Am. Compl. at 86(f). Discussed above, any such injunction operates *prospectively* to future redistricting efforts; it is not a time machine that can be deployed retrospectively to invalidate years' old redistricting legislation enacted when S.B. 200 was the law. *Supra* I.C.1. If Plaintiffs wanted something other than S.B. 200 to guide the redistricting process, then it was

incumbent on Plaintiffs to challenge S.B. 200 before that process began, not after. *Id.*; *see, e.g.*, *Tenn. Conf. of the NAACP*, 105 F.4th at 904 (explaining while "a past injury might support a request for damages," it "cannot support a request for an injunction").

ii. On the merits of Plaintiffs' asserted procedural violations, this Court has not yet decided what, if any, Proposition 4 procedures are "reinstated." *Supra* I.C.2. As the Legislature has argued, those procedures transgress the Legislature's constitutional authority to set its own rules of procedure. *E.g.*, Leg.-Defs. Cross-MSJ at 46-47. Plaintiffs' arguments about how certain Proposition 4 procedures were violated only illustrates Proposition 4's constitutional flaws. Plaintiffs say the Legislature didn't take a formal vote on the commission's maps. How was the Legislature to do so when the commission is not a legislator and its maps are not bills? Plaintiffs say the Legislature didn't issue a written report, which similarly raises a host of constitutional questions under the bicameral-passage and presentment requirements, the Speech or Debate Clause, and each house's authority to set its own rules of proceeding. *Id.* at 47-48; Utah Const. art. VI, §§8, 12, 22; *id.* art. VII, §8(1). How was the Legislature to distill the body's view when it is composed of 104 independently minded legislators? The Legislature speaks through its votes and the legislative record of legislation passed or not passed. And Plaintiffs say that the Legislature didn't wait 10 days before acting on legislation, again conflicting with the Legislature's authority to set its own rules and ignoring the reality on the ground in 2021. The Covid-19 pandemic delayed the release of census data, which delayed redistricting in Utah and many other states. Leg.-Defs. Cross-MSJ 70. The State enacted the 2021 redistricting legislation in November 2021, with just days to spare before 2022 election deadlines commenced. *E.g.*, Utah Code §20A-9-403(3)(c) (2021) (requiring the Lt. Governor to publish "for each elective office the total number of signatures" necessary for primary qualification by "November 30 of each odd-numbered year"); *accord* Lt. Governor Notice of 2026 Cong. Election Timeline (Doc. 441) (asserting any modifications to districts must be in place by November 1, 2025, for 2026 elections). Should the Legislature have waited even longer, abiding by the 10-day requirement that the Legislature had modified nearly unanimously in S.B. 200 and ignored the State's election calendar?

Even if the Court were to "reinstate" any of Proposition 4's procedural requirements as part of a Count V injunction, the parties must litigate whether those implicate H.B. 2004. *Supra* I.C. For instance, even if those procedural requirements could operate retrospectively, Defendants expect they will have legal and factual arguments that the Legislature substantially complied with requirements among other liability and remedial arguments. *See Amoco Prod. Co.*, 480 U.S. at 542-43 (injunction not appropriate for failure to follow procedural requirements where the "purpose of the [act] would not be undermined"). Noted above, the vote to approve H.B. 2004 is necessarily a vote against the commission's alternatives. For another example, the legislative record is as close as the whole Legislature will get to a "written report." And for yet another example, the Legislature's timing was adequate in the light of Covid-19 delays and looming election deadlines. These are but a few examples of arguments the Legislature might have; it makes no sense to require the Legislature to predict all such arguments now when the Court has not even ruled on Count V and when Plaintiffs have not put Count VI—specific to these alleged procedural violations—before the Court. Once the Legislature has an adequate opportunity to litigate such issues, the Court will have to make findings on those questions and hold a hearing to the extent there are material disputes of fact. Plaintiffs cannot simply declare a violation.

Finally, even if the Court were to find a violation of Proposition 4's procedural requirements, Plaintiffs would have to show such a violation warrants new districts, and Defendants would be entitled a full and fair opportunity to counter those arguments. Remedies must be tailored to what is "necessary to cure any constitutional or statutory defect." *Upham*, 456 U.S. at 43; *Monsanto Co.*, 561 U.S. at 165-66 (injunction not appropriate where "less drastic remedy … was sufficient"); *Spackman*, 2000 UT 87, ¶25 n.11. There are far more tailored means of remedying asserted procedural violations than replacing existing congressional districts with Court-drawn districts. Presumably—and without waiving the Legislature's arguments that these procedural requirements transgress the Legislature's constitutional authority—the Legislature could remedy the lack of written report by issuing one; it could take up or down votes on the Commission's maps; or it could vote anew on the existing districts after tabling them for at least 10 days. *Amoco*, 480 U.S. at 543, *Monsanto*, 456 U.S. at 165-66. Plaintiffs

disagree, saying that "the Legislature would be ill advised to merely reenact" the same map. Pls. Suppl. Br. 11 n.3. Why, they do not explain, if the only violations are procedural? Plaintiffs' far more drastic remedy of replacing the Legislature's congressional districts would raise Elections Clause problems. *Supra* I.D. The remedy simply does not follow from the alleged procedural violations and "exceed[s] the bounds of ordinary judicial review." *Moore*, 600 U.S. at 36. Such a result, moreover, would give Proposition 4 constitutional amendment-like status, despite the limits of the initiative power and despite the state and federal Constitutions' delegation of redistricting authority to "the legislature." *Compare Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 817-18 (2015) (Arizona "placed both the initiative power and the [commission's] redistricting authority in the portion of the Arizona Constitution delineating the State's legislative authority.").

B. Response to Question 2-a: The Legislature has not conceded that H.B. 2004 was substantively invalid, as alleged in Count VII.

Plaintiffs do not seriously press the argument that the Court today could enjoin the use of the existing congressional districts for failure to comply with Proposition 4's so-called "substantive" requirements. Defendants have argued how S.B. 200 revised Proposition 4's substantive requirements given the state and federal constitutional problems they created. Leg.-Defs. Cross-MSJ 31-41. Even if the Court were to reinstate some of those requirements prospectively, such injunctive relief does not operate retrospectively to invalidate years' old laws. *Supra* I.C.1. Even if such substantive requirements could operate retrospectively, Plaintiffs would then have to prove H.B. 2004's congressional districts violated them. And Defendants would be entitled all the regular trappings of litigation to defend against those claims. At the very least, that dispute would entail complex expert reports, live expert testimony, and credibility determinations by this Court.

The yet-to-be-had dispute over Count VII would also raise the same justiciability problems still before the Utah Supreme Court for Counts I through IV. For example, Plaintiffs' Count VII contends that H.B. 2004 "unduly" favors a political party, even if that was not the Legislature's intent. Am. Compl. ¶¶ 330, 332-333, 335. But any division of voters into separate districts will "carr[y] some consequences for politics." *See Vieth v. Jubelier*, 541 U.S. 267, 343 (2004) (Souter, J., dissenting).

Deciding whether district lines have some "undue" political effect is "inherently standardless." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 281 (2022). This is especially true when "[p]olitical affiliation is not an immutable characteristic, but may shift from one election to the next," so the effects of a redistricting decision are not static. *Vieth*, 541 U.S. at 287. Courts would have 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 v. Common Cause*, 588 U.S. 684, 705 (2019).

Plaintiffs' quest for political neutrality isn't Plaintiffs' only Count VII contention that is standardless. Proposition 4's "neutral" redistricting criteria entail judgments beyond the judicial power to make. How is a court to decide what are "traditional neighborhoods" or "communities of interest" and then choose *which* neighborhoods, communities, and municipalities to prioritize over others when they cannot all be kept whole given the federal Constitution's strict requirement that congressional districts be equally populated? *Id.*; *see Wesberry v. Sanders*, 376 U.S. 1, 18 (1964). Similarly, how is a Court to decide that a municipal or county split was "unnecessary"? Am. Compl. ¶¶328, 343. Plaintiffs would not dispute that some municipalities and counties must be split to achieve equal population, so how is a Court to determine that it was "unnecessary" to split Millcreek, as the Amended Complaint alleges, but it would have been fine to split Herriman, Eagle Mountain, or Saratoga Springs? These questions are inevitably "based on policy preferences" and remain within the Legislature's competence and beyond the judiciary's. *Jones v. Barlow*, 2007 UT 20, ¶34, 154 P.3d 808.

C. Response to Question 2-b: Plaintiffs added Counts VI and VII because those counts, unlike Count V, challenge H.B. 2004's congressional districts.

Plaintiffs' response to this Court's Question 2-b is revisionist history. As Plaintiffs repeatedly told the Utah Supreme Court, Count V does not challenge the lawfulness of the congressional districts. *Supra* I.B (discussing Oral Argument, *supra*, at 2:29:01. Pls. Suppl. Br. 19, *LWV v. Utah State Legis.*, 2024 UT 21 (No. 20220991-SC)). Plaintiffs indicated they would have to amend their claims to do so, and the Supreme Court acknowledged the prospect of that amendment. *Id.*; *see LWV*, 2024 UT 21,

¶222. True to their word, Plaintiffs added Counts VI and VII to challenge H.B. 2004's compliance with Proposition 4. The addition of those claims belies Plaintiffs' contention that Count V is sufficient to enjoin not just portions of S.B. 200 but also H.B. 2004's districts themselves. Plaintiffs do not add claims willy-nilly. Finally, Plaintiffs' delay concerns ring hollow given that Plaintiffs' delay in challenging S.B. 200's constitutionality, enacted years ago, is compounded by Plaintiffs' delay in pressing Counts VI and VII, added eight months ago. *Infra* III.

III. Response to Plaintiffs' additional arguments: There is not sufficient time to begin new litigation over the legality of H.B. 2004's districts, distinct from Plaintiffs' pending claims regarding S.B. 200.

The Legislature agrees that any remaining proceedings need to move quickly. The constitutional questions raised by Count V alone will warrant further appellate review, including a possible petition to the U.S. Supreme Court. The Legislature adds that it is too late to commence a not-yet-commenced challenge to the lawfulness of H.B. 2004's congressional districts. Courts cannot change election rules like district lines too close to election deadlines, because that threatens the integrity of elections, the ability of candidates to collect signatures and campaign, and the ability of citizens to intelligently participate. *See Purcell v. Gonzalez*, 549 U.S. 1 (2006); *see, e.g.*, *Merrill v. Milligan*, 142 S. Ct. 879 (2022) (staying district court's redistricting injunction); *id.* at 880-81 (Kavanaugh, J., concurring).

Plaintiffs' delay in pressing Counts VI through VIII should not be rewarded with another round of super-expedited proceedings. Proceeding in this super-expedited way is contrary to the doctrine of laches and the equitable principles informing that doctrine. Plaintiffs could have challenged S.B. 200 five years ago. They didn't. They could have added Counts VI through VIII three years ago when they commenced this litigation. They didn't. They could have moved for expedited proceedings not just on Count V but also on Counts VI through VIII eight months ago. They didn't. Only now do Plaintiffs suggest that the parties could simply litigate these counts starting now on a most expedited basis in a preliminary injunction posture. Pls. Suppl. Br. at 12-14. That indisputably prejudices Defendants by requiring them to litigate Plaintiffs' eleventh-hour claims at a full sprint and likely leaving no time before the election for a chance to appeal important federal Elections Clause problems to the

U.S. Supreme Court. *See, e.g.*, *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Horne*, 2012 UT 66, ¶37, 289 P.3d 502 ("Laches is designed to shelter a prejudiced defendant from the difficulties of litigating meritorious claims after an unexplained delay."). The parties would have only months to litigate the lawfulness of H.B. 2004's congressional districts before the Lieutenant Governor's stated November 2025 deadline. That litigation would entail substantial expert discovery, including expert-proposed alternative maps. It would necessitate trial proceedings so that the Court can make credibility determinations.

That eleventh-hour threat to pursue expedited preliminary injunction proceedings comes far too late. Since 2023, Plaintiffs have acknowledged that they would need to amend their complaint to challenge the lawfulness of H.B. 2004's congressional districts on non-constitutional grounds. *Supra* I.B (discussing Oral Argument, *supra*, at 2:28-2:31:30 (explaining that Plaintiffs would have to "amend our complaint to add … the statutory cause of action challenging the map under the Prop 4 … standards that the Legislature was obligated to apply" because "at the moment, there is not a challenge that says that")). They waited more than a year to amend and still have not pressed those new counts; they pressed only Count V in their expedited summary judgment motion.

There is no requirement that Plaintiffs now be rewarded with a rapid-fire preliminary injunction remedy for claims they did not timely pursue. *See, e.g.*, *Reynolds*, 377 U.S. at 585 (contemplating that "under certain circumstances," there may be delay between a finding of liability and any remedial map); *Kinsman*, 177 P. at 422 (considering whether a party has been "cognizant of his rights" and timely "take[n] those steps to assert them which are open to him"). Laches bars Plaintiffs from such a rushed remedy because Plaintiffs' "lack of diligence" causes "an injury to defendant." *Horne*, 2012 UT 66, ¶29. Here, the Legislature has acted in good faith to defend against the claims Plaintiffs chose to press when they chose to press them. To now rush to judgment on newly added challenges to H.B. 2004 greatly prejudices the Legislature's ability to fully and fairly litigate such claims and then seek appellate review, if necessary, before the 2026 election. Plaintiffs were "cognizant of [their] rights" for S.B. 200 since March 2020 and cognizant of their need to amend since at least July 2023 but did "not take those

steps to assert them." *Kinsman*, 177 P. at 422. Expedited proceedings on Counts VI through VIII would "inflict[] great injury" upon the Legislature at this point. *Id.*

*

Plaintiffs have not offered this Court any justification for enjoining the use of congressional districts and replacing them with Plaintiffs' preferred alternative as a remedy for County V. The only claim presently before this Court is the constitutionality of S.B. 200, not the lawfulness of H.B. 2004's congressional districts. Plaintiffs' contrary arguments give away the game. They want their preferred congressional districts in place—a remedy in no way tailored to the alleged constitutional violation before the Court. It remains to be seen whether Plaintiffs' preferred redraw would even abide by Proposition 4's standards.[3] But one thing is clear: Plaintiffs waited too long to press these claims in only a few months' time before the 2026 elections. The Court should decide Count V and then, if necessary, additional proceedings can unfold on a normal schedule with adequate time to litigate the thorny questions of law and fact that would remain with respect to H.B. 2004's congressional districts.

CONCLUSION

For these reasons, enjoining the use of H.B. 2004's congressional districts would go far beyond an appropriate remedy for Count V and compound the constitutional problems raised by Plaintiffs' suit.

[3] If Defendants were given a reasonable opportunity to litigate Plaintiffs' new claims, Defendants anticipate they would marshal their own expert evidence to respond to any remedial districts proposed by Plaintiffs, including evidence illustrating how those remedial districts also "unduly" favor political parties or are otherwise inconsistent with Proposition 4.

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Respectfully submitted,

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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: April 11, 2025 */s/ Tyler R. Green*