PARR BROWN GEE & LOVELESS
David C. Reymann (Utah Bar No. 8495)
Kade N. Olsen (Utah Bar No. 17775)
Tammy M. Frisby (Utah Bar No. 17992)
101 South 200 East, Suite 700
Salt Lake City, UT 84111
(801) 532-7840
dreymann@parrbrown.com
kolsen@parrbrown.com
tfrisby@parrbrown.com

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

CAMPAIGN LEGAL CENTER
Mark P. Gaber*
Aseem Mulji*
Benjamin Phillips*
Isaac DeSanto**
1101 14th Street NW, Ste. 400
Washington, DC 20005
(202) 736-2200
mgaber@campaignlegalcenter.org
amulji@campaignlegalcenter.org
bphillips@campaignlegalcenter.org
idesanto@campaignlegalcenter.org

Annabelle Harless*
55 W. Monroe Street, Ste. 1925
Chicago, IL 60603
aharless@campaignlegalcenter.org

Attorneys for Plaintiffs

**Admitted Pro Hac Vice*
***Pro Hac Vice Motion forthcoming*

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, et al.,

Defendants.

PLAINTIFFS' SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON COUNT V

Case No. 220901712

Honorable Dianna Gibson

INTRODUCTION

Rather than engage with the case law, equitable principles, and statutory provisions cited by Plaintiffs to support their request for an injunction against HB 2004, Defendants offer a grab bag of contradictory objections, scattered across overlapping and repetitive arguments, each of which lacks merit. Among other things, Defendants claim it is both too early and too late for Plaintiffs to seek to invalidate the current Congressional Map based on its violation of Prop 4's criteria. And they contend that it is too late to remedy the map's violation in time for the November 2026 election—an event that is 19 months away and for which the earliest preparatory date is over half a year away.

For reasons explained in Plaintiffs' opening supplemental brief, and again in this reply brief, HB 2004 should be enjoined now both to remedy the constitutional violation and to adhere to Prop 4's express requirement that the map be enjoined if it was not enacted pursuant to the law's procedural requirements.

But the Legislature's response has made apparent that the most expeditious course forward is for the Court to (1) issue its ruling and injunction with respect to SB 200's unconstitutionality, and (2) as to the current Congressional Map's legality under Prop 4, set an expedited status conference for the parties and the Court to schedule preliminary injunction briefing, exchange of expert reports, and an evidentiary hearing on Counts VI-VIII. If this Court rules that SB 200's repeal of Prop 4 violated the Utah Constitution and enjoins HB 2004 as Plaintiffs have requested, then the Legislature will have the opportunity to adopt a new congressional map for the 2026 election, and that map will have to comply with both Prop 4's procedural requirements and its substantive standards, including its prohibition on unduly favoring any political party. But the Legislature's response brief demonstrates that it has no intention of voluntarily complying with

the law. On the contrary, it sees no reason not to reenact its current gerrymandered map, which would violate Prop 4's substantive standards. *See* Defs.' Supp. Br. ("Br.") at 16-17 (suggesting Legislature would simply vote to reenact the same map while following Prop 4's procedural requirements if an injunction against HB 2004 is issue based on pending motion for summary judgment on Count V).

Given the Legislature's stance and the need for a lawful congressional map in time for the 2026 election, Plaintiffs request that the Court issue its ruling enjoining SB 200 and at that time set an expedited scheduling conference to schedule preliminary injunction proceedings on Counts VI-VIII. Plaintiffs are preparing for those potential proceedings now so that they can expeditiously file their preliminary injunction materials after such a status conference. Plaintiffs nevertheless reply below to Defendants' arguments, including their contention that it is somehow too late to conduct preliminary injunction proceedings regarding HB 2004.

ARGUMENT

I. Defendants' various objections to enjoining HB 2004's enforcement are unavailing.

As Plaintiffs have explained, the Court may permanently enjoin HB 2004 under the pending Motion for Summary Judgment on Count V, on either of two independent bases. *See* Pls. Supp. Br. at 1.

The first is Article I, Section 2 itself, because HB 2004 should be enjoined to redress the violation of Plaintiffs' constitutional right to alter and reform their government. *See id.* at 3-6. The constitutional violation began with SB 200—but it culminated in the passage of HB 2004. And as long as HB 2004 stands, the People remain stuck with a map enacted in direct defiance of their reform to the 2021 redistricting cycle, inflicting ongoing constitutional harm in every election where it is applied. Thus, continued enforcement of both SB 200 and HB 2004—the legislative start and end points of the constitutional violation—must be enjoined under the longstanding rule

that equitable remedies must afford "complete relief." *Floor v. Johnson*, 199 P.2d 547, 551-52 (Utah 1948); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15-16 (1971); *Marbury v. Madison*, 5 U.S. 137, 147 (1803). "Equity delights to do justice and not by halves." 30A C.J.S. *Equity* § 131.

The second basis for enjoining enforcement of HB 2004 is Prop 4's statutory cause of action, which expressly provides for injunctive relief for any violation of Prop 4's standards, procedures, and requirements. *See* Pls. Supp. Br. at 6-9. Once the Court declares the relevant aspects of SB 200 unconstitutional, they are void *ab initio*—meaning, as a legal matter, it will be as if the unconstitutionally repealed provisions of Prop 4 were always in effect. *See Egbert v. Nissan Motor Co., Ltd.*, 2010 UT 8, ¶ 12, 228 P.3d 737. In accordance with the requirement to construe all pleadings "to do substantial justice," Utah R. Civ. P. 8(f), the Supreme Court has treated Count V as encompassing the Legislature's undisputed violation of Prop 4 in enacting HB 2004, permitting this Court to enjoin the map pursuant to Plaintiffs' summary judgment motion. And Defendants' half-hearted invocations of "substantial compliance" offer no basis for overlooking the Legislature's noncompliance with Prop 4. *See infra* Part I.4.

Defendants make no effort to confront these fundamental remedial principles, nor the authorities from which they are derived. They simply ignore Plaintiffs' arguments. Instead, spread throughout Defendants' brief are essentially seven categories of objections. None has merit.

(1) Scope of Count V: At the outset, Defendants assert that HB 2004 is "not challenged in Count V." Br. at 3. But Count V expressly incorporates allegations about the congressional map and seeks its invalidation for violating Plaintiffs' rights under Article I, Section 1—the constitutional provision at the heart of Count V. *See* First Am. Compl. at 85(a), ¶¶ 310, 319. If these allegations left any doubt, the Utah Supreme Court resolved it. Assessing identical

allegations in the original complaint, the Court held that Count V encompasses not only SB 200 but also "the constitutionality of the Congressional Map that resulted from SB 200 and was not subject to Proposition 4's requirements." *LWVUT v. Utah State Legislature*, 2024 UT 21, ¶ 61, 554 P.3d 872, 889 ("*LWVUT I*"). The Court contrasted this with Counts I-IV, which presented a "discrete constitutional challenge to the Congressional Map alone." *Id.* Defendants are wrong to dismiss this language as dicta because determining Count V's scope was a necessary predicate to deciding whether the claim, as alleged, was legally cognizable and survived dismissal. *See Maw v. Lee*, 108 Utah 99, 108, 157 P.2d 585, 589 (1945) (a statement is not dicta if it was "necessary to a determination of the ultimate issue").

The Court reiterated this point in explaining its stay of Counts I-IV, noting that those claims could be mooted by the resolution of Count V. *LWVUT I*, ¶ 220. If Plaintiffs win on Count V, Prop 4 "would become controlling law," and if Defendants' noncompliance with Prop 4's requirements and standards were proven true—as they now have been—then "it is likely that the Congressional Map cannot stand." *Id.* ¶ 222. In other words, Count V itself encompassed not only the repeal of Prop 4 by SB 200 but also the failure of the resulting map, HB 2004, to comply with Prop 4's requirements. The Court went on to explain, in the same paragraph, that the map could also be invalidated through any additional statutory claims Plaintiffs "may bring" under Prop 4's private right of action. *Id.* In other words, the Court recognized that HB 2004 could be invalidated through *either* resolution of Count V itself, including by dispositive motion, *id.* ¶ 200, *or* adjudication of statutory claims under Prop 4's private right of action. *Id.* ¶ 222.

If, as the Court stated, the "ultimate resolution of Count V" itself could moot Plaintiffs' other claims against the congressional map, it cannot be that relief against the map is unavailable under Count V. *Id.* ¶ 227. As such, Plaintiffs moved promptly for summary judgment on Count V,

seeking to invalidate both SB 200 and HB 2004, just as the Court contemplated. And, anticipating that Defendants might misread *LWVUT I*, Plaintiffs then moved to amend to add statutory claims under Prop 4. Defendants' attempt to cabin Count V defies the terms of the complaint and the Supreme Court's dispositive reading of it.

(2) Prospective/Retrospective Relief: Defendants next contend that injunctive relief for Count V can only count as "prospective" if it affects nothing more than the next mandatory redistricting process in 2031, and that enjoining HB 2004 would amount to "retrospective relief, turning back time to invalidate … districts passed in 2021 when S.B. 200 was the governing law." Br. at 6. This is incorrect.

As an initial matter, these contentions disregard the longstanding principle that if the challenged portions of SB 200 are declared unconstitutional, they were void *ab initio*. *See Egbert*, 2010 UT 8, ¶ 12. It would be as though the unconstitutional parts of SB 200 were never enacted, meaning the relevant parts of Prop 4—not SB 200—were governing law in 2021. *See id.*

Furthermore, an injunction against HB 2004 is prospective, not retrospective. As Defendants' cited authority acknowledges, an injunction is prospective when it prevents future harm, even if that means halting the continuing effects of past conduct. *Anderson v. Granite Sch. Dist.*, 17 Utah 2d 405, 407, 413 P.2d 597, 599 (1966) (holding that injunctive relief may not only prevent "a threatened wrong" but "compel the cessation of a continuing one"); *see also InnoSys, Inc. v. Mercer*, 2015 UT 80, ¶ 33, 364 P.3d 1013, 1020, n.11. Here, an injunction of HB 2004 would address the harm arising from *ongoing* enforcement of the congressional map enabled by Prop 4's unconstitutional repeal. That harm is neither confined to 2021, nor can it be redressed by delivering relief only in 2031, because it recurs with every election conducted under HB 2004. Prop 4 also mandates an injunction upon finding that a map violated its requirements. *See* Utah Code §§ 20A-

19-301(2) (2018) (requiring "permanent injunction barring enforcement" of a redistricting plan that violates any of Prop 4's "standards, procedures, and requirements"); *id.* § 20A-19-102(3)–(4) (2018) (allowing mid-decade redistricting to enact remedial maps, including those ordered by a court).

(3) HB 2004's Legality: Defendants also object to an injunction of HB 2004 because its legality is apparently "yet to be litigated" and proven. Br. at 10. But this ignores the undisputed summary judgment record developed over the last several months on exactly this question. Following the Supreme Court's ruling that Count V encompasses the legality of the congressional map, Plaintiffs' summary judgment motion sought to enjoin HB 2004 for violating certain Prop 4 requirements, including its requirement to vote on all Commission-proposed maps, its 10-day public comment requirement before enacting an alternative map, and its written report requirement. *See* Pls. Mot. for Summ. J. at 26-27. Plaintiffs cited evidence from the public record showing there could be no genuine dispute that the Legislature *in fact* failed to take a vote on all the Commission's maps, afford 10 days of public comment before adopting its own, and issue a detailed report explaining why its plan better satisfies Prop 4's criteria. *Id.* at 6-7, ¶¶ 18, 20-22. Defendants, in opposition, did not—and could not—genuinely dispute these facts. *See* Leg. Defs. Mem. Opp'n to Pls. Mot. for Summ. J. at 8-10.[1] Plaintiffs are thus entitled to judgment as a matter of law that HB 2004 violated Prop 4's requirements and HB 2004 must be enjoined.[2]

[1] Defendants say they "have never conceded" a procedural violation requiring HB 2004's replacement. Br. at 14. But this simply restates their denial of liability and opposition to Prop 4's required remedy. They still have never disputed the material *facts* showing a Prop 4 violation.

[2] Defendants also assert they have not conceded HB 2004's substantive invalidity, as alleged in Count VII, and raise justiciability objections to that Count. Br. at 17-18. This appears unresponsive to any of the Court's stated questions. In any event, Defendants' justiciability arguments are addressed in Plaintiffs' Response in Opposition to Legislative Defendants' Motion to Dismiss or Stay Proceedings, Doc. 426. at 7-12.

(4) Substantial Compliance: Defendants also attempt to raise, for the first time in this case, a "substantial compliance" defense regarding their noncompliance with Prop 4's requirements. Br. at 9, 16. But Plaintiffs moved for summary judgment on the Legislature's failure to abide Prop 4's procedural requirements, and this argument appears nowhere in Defendant's responsive briefing. It is therefore waived. *See State v. Martinez*, 2021 UT App. 11, ¶ 27, 480 P.3d 1103.

In any event, Prop 4 requires strict compliance with the procedures at issue. In distinguishing between statutes requiring strict or substantial compliance, courts consider whether the provisions are mandatory, legislative intent, and if noncompliance affects substantive rights or may prejudice a party. *See Aaron & Morey Bonds & Bail v. Third Dist. Ct.*, 2007 UT 24, ¶¶ 7-8, 156 P.3d 801, 803. Prop 4 plainly mandates both the 10-day notice and the legislative vote on the Commission maps, Utah Code §§ 20A-19-204(2)(a), (4) (2018), and the report is also mandatory if the Legislature opts for an alternative map, *id.* at (5)(a). These procedures define "the essence of" how redistricting is "to be done" in Utah. *Aaron & Morey Bonds & Bail*, 2007 UT 24, ¶ 8 (citation omitted). And disregard of these procedures affects "substantive right[s]"—the right (i) to know lawmakers' positions on Commission-proposed maps, (ii) to be afforded ample time to inspect and comment on the Legislature's chosen alternative maps, and (iii) to be provided an explanation for why the Legislature's maps better comply with Prop 4's standards. *Id.* Prop 4 also mandates a permanent injunction upon a map's violation of any "standards, *procedures*, and requirements." Utah Code § 20A-19-301(2) (2018) (emphasis added). The Legislature did not attempt in good faith to follow Prop 4's requirements and come up short; they simply ignored them by *unconstitutionally repealing them*, making substantial compliance a particularly inapposite

argument here. *See League of Women Voters v. Utah State Legislature*, 2024 UT 40, ¶¶ 141-42, 559 P.3d 11, 41 ("*LWVUT II*"). These procedures thus require strict compliance.[3]

Even if substantial compliance were allowed, the Legislature's efforts in 2021 didn't cut it. Not one chamber voted on all the Commission's proposed congressional maps. Instead, the Legislative Redistricting Committee released its own congressional map around 10:00 PM on Friday, November 5, 2021, and it was adopted by both chambers by November 10—affording only *half* the required notice. No explanatory report followed. Thus, Defendants' belated substantial compliance defense must fail.

(5) Tailored Remedies: At various points in their brief, Defendants contend that enjoining the congressional map would not be "tailored" to the violation of Prop 4's procedural requirements. *See* Br. at 9, 13, 16. Not so.

Not once do Defendants grapple with the plain text of § 20A-19-301(2), which provides that a "court *shall* issue a permanent injunction" if a map fails to "abide by or conform to the redistricting standards, procedures, and requirements" set forth in Prop 4 (emphasis added). In their summary judgment briefing, Defendants never contended—and thus have waived—any argument that this provision somehow offends the Utah Constitution. Indeed, this remedial provision reflects the People's legislative judgment that a permanent injunction of a redistricting map *is* the tailored remedy for violations of *any* Prop 4 requirements, whether substantive or procedural. And this is hardly the drastic remedy Defendants make it out to be, because Prop 4 also gives the Legislature the first opportunity to enact a remedial map, so long as that map abides

[3] The Supreme Court in *LWVUT I* also indicated as much when it explained that if Defendants did not in fact comply with these procedural requirements, as Plaintiffs alleged, then that would "render the [Congressional] Map invalid," as would a violation of Prop 4's substantive standards. *LWVUT I*, ¶ 222.

Prop 4's "standards, procedures, and requirements." § 20A-19-301(8). Defendants apparently are just unwilling to pass such a map.

Nor do Defendants address the longstanding principle of Utah and federal courts that equitable remedies must fully redress the constitutional violation, which is a corollary of the principle that a remedy's scope should correspond to the nature and extent of the violation. *See, e.g.*, *Floor*, 199 P.2d at 551-52; *Swann*, 402 U.S. at 15-16; *Milliken v. Bradley*, 418 U.S. 717, 744 (1974). As Plaintiffs have explained, complete redress of the Legislature's unconstitutional repeal of Prop 4 requires an injunction against not only SB 200 but also HB 2004, which followed necessarily from that repeal in direct contravention of Prop 4's reforms. Pls. Supp. Br. at 4. Because enjoining HB 2004 is mandated to redress an undisputed violation of Prop 4 and necessary to redress the constitutional violation of Plaintiffs' alter-and-reform right, it is appropriately tailored to remedy Count V.

(6) Due Process & Election Clause: Even adopting Defendants' assumption that state actors, qua as state actors, can assert Due Process Clause challenges, enjoining HB 2004 to remedy Count V raises no due process concerns. Br. at 11. The essential promise of due process is notice and an opportunity to be heard. *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004). Defendants received notice that Plaintiffs were requesting a permanent injunction of HB 2004 as relief for Count V in their summary judgment motion filed last August. Defendants have had ample opportunities to be heard. They were given months to prepare their responsive brief, in which they offered no factual evidence to refute HB 2004's violation of Prop 4 and declined to brief the question of remedies. The Court then held a three-hour hearing at which Defendants had the opportunity to present argument. More briefing has since been ordered on a potential injunction of HB 2004, and

Defendants have *declined* the Court's invitation for another hearing on that issue. Br. at 1. Defendants have identified no due process issue.

Nor does enjoining HB 2004 raise any issue under the federal Elections Clause. If Prop 4 is revived, the law compels a permanent injunction of HB 2004 because it was enacted in violation of Prop 4's procedural requirements. That violation is undisputed in the summary judgment record. The Court would not transgress—not even approach—"the ordinary bounds of judicial review" by ordering a remedy mandated by a legislative enactment upon finding a violation of that enactment on summary judgment. *Moore v. Harper*, 600 U.S. 1, 36 (2023).

(7) Laches: Finally, Defendants suggest that Plaintiffs' claim for relief against HB 2004 under Count V is barred by laches because Plaintiffs waited too long to challenge Prop 4's repeal. *See* Br. at 7, 14, 19-20. But Defendants have long forfeited this defense. They complain of delay now, but they never moved to dismiss on laches grounds after Plaintiffs filed suit in 2022, never raised laches before the Utah Supreme Court on interlocutory appeal, and never mentioned laches in their Count V summary judgment papers. If ever a defendant must assert a laches defense, it is at the point that the plaintiff moves for *judgment*. Yet only now, in supplemental briefing on the sole question of remedy, do Defendants invoke laches for the first time. If any party has slept on its rights, it is not Plaintiffs.

In any event, Plaintiffs' claim against the congressional map in Count V is not time-barred. "In Utah, laches traditionally has two elements: (1) the lack of diligence on the part of the plaintiff, and (2) an injury to defendant owing to such lack of diligence." *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Horne*, 2012 UT 66, ¶ 29, 289 P.3d 502, 510 (cleaned up). "Laches is not mere delay, but delay that works a disadvantage to another." *Papanikolas Brothers Enterprises v. Sugarhouse Shopping Ctr. Associates,* 535 P.2d 1256, 1260 (Utah 1975). Defendants

articulate no injury or disadvantage owing to Plaintiffs challenging SB 200 a mere two years after its passage. *See Mawhinney v. Jensen*, 120 Utah 142, 149, 232 P.2d 769, 773 (1951) (finding delay of 2.6 years "does not constitute laches as a matter of law" without any showing of prejudicial injury).

Moreover, Plaintiffs' two-year delay was not for a lack of diligence but was induced by lawmakers' false promises. Following SB 200's passage, many legislators represented that the Legislature would honor the spirit of Prop 4's reforms and avoid undue partisanship in the redistricting process. Senator Curt Bramble, SB 200's chief sponsor, declared that he was "committed to respecting the voice of the people" in the redistricting process.[4] Representative Steinquist assured voters that SB 200 would maintain a "fair and open process when it comes time for redistricting."[5]And then-Governor Gary Hebert assured that minority voices would not be "frozen out" of the redistricting process.[6] In reliance on these representations, Plaintiffs engaged in good faith in the redistricting process. *See, e.g.*, Doc. 342, Attachment A, Decl. of Katharine Biele ¶ 5, Decl. of Emma Petty Addams ¶ 5. When lawmakers repudiated these assurances by passing the 2021 Congressional Map, Plaintiffs sued within mere months. Thus, even if Defendants could press their laches defense, it would fail.

Furthermore, any urgency necessary in adjudication of the lawfulness of the congressional map stems from the actions of Defendants, not Plaintiffs. Promptly after remand, Plaintiffs filed their Count V summary judgment motion on August 28, 2024, and their Amended Complaint with

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[4] Lisa Riley Roche, *Is Utah's voter-approved Better Boundaries redistricting initiative headed for repeal?*, Deseret News (Feb. 21, 2020), https://perma.cc/S36X-RFFQ.

[5] House - 2020 General Session - Day 44, House Floor Debate and Vote on S.B. 200 Redistricting Amendments, Utah State Legislature, at 1:37:11 (Mar. 11, 2020), https://perma.cc/N9ZR-MTR4.

[6] Tr. of Governor's Monthly News Conf., *Utah Education Network* (Mar. 7, 2020) https://perma.cc/97AD-LBFK.

separately pled Counts VI-VIII two days later. But summary judgment proceedings were delayed because Defendants tried to place a misleading constitutional amendment on the November ballot to trick voters into ceding their right to alter and reform their government—and then used this as an excuse to request a months-long briefing extension. If this means Defendants will have to respond with greater expedition on the merits of Counts VI, VII, or VIII this Spring, it is because they chose to act unconstitutionally last Fall. *See LWVUT II*, 2024 UT 40, ¶ 163.

Plaintiffs' claims for relief under Count V are not barred by laches, and Defendants' various objections to enjoining HB 2004 pursuant to Plaintiffs' summary judgment motion likewise fail.

II. There is ample time for robust preliminary injunction proceedings on Counts VI, VII, and VIII.

There is ample time for the parties and the Court to conduct robust preliminary injunction proceedings on Counts VI-VIII. Defendants contend that there remains "only a few months' time before the 2026 elections." Br. at 21. It is currently April ***2025***. The next election, set for November 2026, is 19 months away. And even the Lieutenant Governor's requested date for the map to be resolved (November 1, 2025) is 6.5 months away. Defendants' contention that over half a year is insufficient time to resolve a preliminary injunction motion and ensure a lawful remedial map is in place is not credible.

First, Defendants contend that Plaintiffs have delayed in pressing Counts VI-VIII, even mentioning "laches." *See supra* Part I.7 (responding to laches argument). This is a mystifying accusation, considering it comes in the same Brief in which Defendants contend that it is impossible for the parties to litigate those claims until the Court issues its SB 200 ruling. *See, e.g.*, Br. at 1 (characterizing Prop 4's criteria as "supposed redistricting requirements not currently in effect"); *id.* at 8 ("[T]he parties are left to guess which S.B. 200 provisions may remain in force."); *id.* ("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."). Defendants cannot simultaneously contend that Plaintiffs are both too early and too late in pressing their claims that HB 2004 violated Prop 4. Defendants offer no explanation to untangle these inconsistent arguments. Nor is there any merit to Defendants' contention that Plaintiffs should have amended their complaint after the July 2023 Utah Supreme Court oral argument. *See* Br. at 20. At that point, Count V remained dismissed, and it would be a year before the Utah Supreme Court reinstated it. Defendants do not explain how Plaintiffs could have added claims dependent upon Prop 4's reinstatement before Count V was revived by the Supreme Court's July 2024 decision, and while the case remained stayed in the district court. Defendants have repeatedly argued in the summary judgment proceedings that litigation about Counts VI-VIII had to await a ruling on SB 200. They cannot now say the opposite.

Second, there is ample time. Plaintiffs respectfully request that the Court expeditiously issue its SB 200 ruling and simultaneously set an expedited status conference to determine a schedule for preliminary injunction proceedings, including the filing of briefs, expert reports, and an evidentiary hearing for expert and lay witness testimony—all the "trappings of litigation" that Defendants request. *See* Br. at 17. Plaintiffs are currently preparing their preliminary injunction materials to be filed expeditiously pursuant to such a scheduling order. Such a schedule would be in keeping with the typical pace of redistricting cases. *See, e.g.*, Judgment, *North Carolina League of Conservation Voters v. Harper*, No. 21 CVS 500085, at 5-6, 11-12 (N.C. Super., Wake Cty. Jan. 11, 2022) (filed November 16, 2021; Trial January 3, 2022; Decision January 11, 2022); *Adams v. DeWine*, 195 N.E.3d 74 (Ohio 2022) (filed November 22, 2021 and decided January 14, 2022); *League of Women Voters v. Commonwealth*, 178 A.3d 737, 766-67 (Pa. 2018) (filed November 9, 2017; trial held and decided by December 31, 2017). The parties are represented by counsel who

routinely litigate redistricting cases from filing to final trial on the same or tighter schedules, followed by emergency appellate proceedings.

Defendants' invocation of the *Purcell* principle—which arises in part out of federalism concerns of federal courts altering state court election deadlines—is puzzling. *See* Br. at 19 (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006)). They cite no example of a court declining to adjudicate a redistricting claim—or staying a trial court's injunction against a redistricting map—19 months in advance of an election and over 6 months in advance of the government's requested map finalization date. In *Merrill v. Milligan*, the sole redistricting case cited by Defendants, a lawsuit was filed challenging Alabama's congressional map as a violation of Section 2 of the Voting Rights Act on November 16, 2021, and a preliminary injunction hearing was held beginning January 4, 2022. *Singleton v. Merrill*, 582 F. Supp. 3d 924, 940-43 (M.D. Ala. 2022). The district court issued its order granting the preliminary injunction on January 24, 2022. *Id.* Over the dissents of Chief Justice Roberts and Justices Kagan, Breyer, and Sotomayor, the U.S. Supreme Court stayed the preliminary injunction. *Merrill v. Milligan*, 142 S. Ct. 879 (2022) (Mem.). Concurring in the grant of the stay, Justice Kavanaugh reasoned that the *Purcell* principle applied because *voting* for the congressional primary would begin March 30, 2022, just over two months after the district court's injunction issued. *Id.* at 879 (Kavanaugh, J., concurring). This, Justice Kavanaugh concluded, would lead to voter and candidate confusion. *Id.* The stay was later lifted and the district court's preliminary injunction affirmed. *See Allen v. Milligan*, 599 U.S. 1 (2023).

The posture of this case is nothing like *Milligan*, even if the *Purcell* principle applied in Utah state court. Utah's congressional primary election will be the fourth Tuesday in June 2026, over a year from now. *See* Utah Code § 20A-1-201.5. Prospective congressional candidates cannot even begin to declare their candidacies until January 1, 2026. *See* Utah Code § 20A-9-202(1)(a)(i).

The parties are not required to notify the Lieutenant Governor of the date of their 2026 nominating conventions until this October. *See* Utah Code § 20A-8-402.5. In 2024, those conventions occurred on April 27. If a similar schedule is adopted for 2026, that too is over a year from now.

None of the concerns that animated Justice Kavanaugh's vote granting a stay in *Milligan* are present here. The Court has ample time to hold a robust evidentiary hearing at which Defendants will have a full opportunity to cross-examine Plaintiffs' witnesses and present their own. There is ample time for the Court to issue its decision, the Legislature to propose a remedial map if it chooses, the Court to conduct a hearing to adjudicate the lawfulness of any such proposed remedy, and the Legislature to pursue appellate options. All of that can occur before November 1, 2025, the date by which the Lieutenant Governor has requested a map decision be finalized. Indeed, that is *greater* time than existed in *Milligan*, the case Defendants cite.

Defendants observe that they will likely wish to appeal any ruling regarding SB 200 to the Utah Supreme Court and even may file "a possible petition to the U.S. Supreme Court." Br. at 19. They of course can pursue those options. Plaintiffs will vigorously oppose any stay of the proceedings in this Court, even if the Utah Supreme Court permits an interlocutory appeal regarding Count V. And the U.S. Supreme Court will undoubtedly require a coherently articulated federal issue, something that Defendants have yet to advance. But Defendants' plan to seek yet more interlocutory appeals is no reason to delay adjudication of Plaintiffs' remaining claims.

Defendants' contention that there is insufficient time to conduct preliminary injunction proceedings on Counts VI-VIII is meritless.

April 15, 2025

Respectfully submitted,

/s/ David C. Reymann

CAMPAIGN LEGAL CENTER
Mark P. Gaber*
Annabelle Harless*
Aseem Mulji*
Benjamin Phillips*
Isaac DeSanto**

PARR BROWN GEE & LOVELESS
David C. Reymann
Kade N. Olsen
Tammy M. Frisby

ZIMMERMAN BOOHER
Troy L. Booher
J. Frederic Voros, Jr.
Caroline Olsen

*Admitted *Pro Hac Vice*
***Pro Hac Vice* application forthcoming

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April, 2025, I filed the foregoing **PLAINTIFFS' SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON COUNT V** via electronic filing, which served all counsel of record.

/s/ David C. Reymann