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**Pro Hac Vice*

In the Supreme Court of the State of Utah

Utah State Legislature, Utah Legislative Redistricting Committee, Sen. Scott Sandall, Rep. Mike Schultz, Sen. J. Stuart Adams, *Petitioners*, v. League of Women Voters of Utah, Mormon Women for Ethical Government, Stefanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, Jack Markman, *Respondents.*	No. 20251057-SC

Response to Emergency Petition for Extraordinary Relief

On petition for extraordinary relief from the Third Judicial District Court
Honorable Dianna M. Gibson, No. 220901712

INTRODUCTION

It is difficult to avoid the jarring irony running throughout Legislative Defendants' petition—that now, more than five years after defying the will of the voters and gutting every meaningful part of Proposition 4, it is the *Legislature* that wants to be its newfound champion, claiming Utah voters must abide yet another election cycle under an unlawful map because there just isn't enough time to pay adequate fidelity to Proposition 4. On that specious reed, the Legislature asks this Court to invoke its discretionary authority to rescue the Legislature from an "emergency" that is self-created at best and wholly illusory at worst. The district court correctly analyzed the plain text of Proposition 4 and has put in place an orderly process, similar to what courts across the country have used in analogous circumstances. That process will (finally) result in a legal and constitutional map being in place for the 2026 election cycle. There is no "emergency" simply because the Legislature does not want to do the work voters demanded and that it should have done five years ago. The petition, which is heavy on rhetoric and light on analysis, should be denied.

First, this Court lacks jurisdiction over the petition. It was filed eleven days after the district court issued its injunction and seven days after the court clarified the inapplicability of Proposition 4's commission-related provisions to the remedial redistricting process. If Legislative Defendants faced an "emergency" by the district court's interpretation of Proposition 4's requirements for the remedial process, they could have invoked plain, speedy, and adequate remedies. They could have promptly appealed the district court's injunction declaring S.B. 200 and H.B. 2004 unconstitutional. *See* Utah Code § 78B-5-1002. Or they could have promptly filed a Rule 5 petition and sought

expedited interlocutory review. Instead, they delayed nearly two weeks before announcing an "emergency" and asking to invoke this Court's extraordinary writ jurisdiction, demanding an answer in less time than they took to file their petition.

Second, the sole argument of alleged error raised in Legislative Defendants' petition—their contention that Proposition 4's commission-related provisions apply to remedial redistricting following a judicial order—is unpreserved if not invited. When this issue arose at the August 29 hearing, Legislative Defendants' counsel *declined to take a position*. Instead, when asked directly by the district court to respond to Plaintiffs' view that Proposition 4's text made the commission-related provisions inapplicable under the circumstances, Legislative Defendants' counsel responded: "I don't know that we can agree or disagree" and "we're looking at the Court for guidance." Ex. B at 9. A party cannot ask for legal guidance from a district court, withhold their position on the issue when directly asked, and then claim in an "emergency" petition filed in this Court a week later that the district court's answers were egregiously wrong.

Third, the district court's ruling follows the plain text of Proposition 4. The statute requires a commission to be formed in two circumstances: (1) following the decennial census and (2) in the event the number of districts is changed. By its text, the statute does not require a commission to be formed—and thus does not require votes on commission-proposed maps or the issuance of a report—when redistricting occurs in response to judicial orders. The district court did not abuse its discretion in applying Proposition 4's plain text to the questions Legislative Defendants posed.

STATEMENT OF FACTS

1. In *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, 554 P.3d 872 ("*League of Women Voters I*"), this Court held that Plaintiffs stated a valid cause of action that the Legislature's repeal of Proposition 4 violated their Article I, Section 2 right to alter or reform their government. The Court remanded for the district court to determine whether S.B. 200 violated that constitutional right and observed that if it did, then "Proposition 4 would become controlling law." *Id.* ¶ 222 (citations omitted). "And under Proposition 4, if the facts alleged by Plaintiffs are proven true, it is likely that the Congressional Map cannot stand." *Id.* The Court noted that those facts included the Legislature's failure to follow Proposition 4's "procedural requirements." *Id.*

2. On remand, Plaintiffs amended their complaint, D.Ct. Doc. 298, and moved for summary judgment, contending that (1) the repeal of S.B. 200 unconstitutionally infringed their right to alter or reform the government and (2) that H.B. 2004, the 2021 congressional map, was indisputably enacted in violation of Proposition 4's procedural requirements, D.Ct. Doc. 293 at 8-24, 27.

3. Briefing on the summary judgment motion was delayed on account of emergency litigation over the Legislature's attempt through Amendment D to mislead voters into overturning *League of Women Voters I. See League of Women Voters v. Utah State Legislature*, 2024 UT 40, 559 P.3d 11 ("*League of Women Voters II*").

4. After two rounds of briefing, the district court issued a 76-page Ruling and Order on August 25, 2025. The order declared S.B. 200 unconstitutional, reinstated

Proposition 4, permanently enjoined implementation of H.B. 2004 (the 2021 congressional map), and proposed a remedial schedule. Ex. A.

5. On August 28, Legislative Defendants filed a motion for clarification asking, *inter alia*, whether Proposition 4's commission-related provisions applied to the remedial redistricting process. D.Ct. Doc. 476. The following morning, Plaintiffs responded that Proposition 4's plain text made the commission-related provisions inapplicable in this context. D.Ct. Doc. 486. That same morning, Legislative Defendants sought a stay of the district court's injunction. D.Ct. Doc. 482.

6. On August 29, the district court held a status conference. Legislative Defendants' counsel declined to take any position on the questions posed in his clients' clarification motion, instead saying "I don't know that we can agree or disagree" with Plaintiffs' position and "we're looking at the Court for guidance." Ex. B at 9.

7. The court clarified at the hearing that Proposition 4's text made the commission-related provisions inapplicable to the remedial proceeding, Ex. B at 26-27, clarified that its August 25 Order should be read to provide the Legislature with the opportunity to redistrict and not as an order to do so, Ex. B at 45,[1] and requested that the parties confer to reach an agreed schedule for remedial proceedings, Ex. B at 78.

8. On September 2, the Lieutenant Governor filed a notice identifying November 10 as the deadline to have a final congressional map in place. D.Ct. Doc. 494.

[1] This clarification was made at Plaintiffs' request. D.Ct. Doc. 486 at 6; Ex. B at 45.

9. Also on September 2, the district court issued an order denying the Legislative Defendants' stay motion. Ex. C. The court noted that the motion did "not demonstrate or explain how the Court erred; rather, it repeats arguments this Court previously considered and rejected." Ex. C at 2. The court observed that there was sufficient time to undertake the redistricting process, especially considering precedent where remedial redistricting occurred under tighter schedules. Ex. C at 2. Finally, the court emphasized: "The people of Utah have participated in two elections under the 2021 Congressional Plan, which was enacted in disregard of Proposition 4 and in defiance of the will of the people of Utah. The people of Utah are entitled to proceed in the 2026 election with a lawful congressional plan designed in compliance with Proposition 4's traditional redistricting standards and its prohibition on partisan gerrymandering." Ex. C at 3.

10. On September 6, the district court issued an Amended Ruling and Order that adopted the parties' proposed remedial schedule and clarified its August 25 Order in certain respects. It reiterated the clarification it already made at the August 29 hearing, Ex. B at 45, that the Legislature was being provided an opportunity, but not a directive, to redistrict, explained why Proposition 4's text made the commission-related provisions inapplicable to the remedial process, and adopted the parties' stipulated request that only existing parties to the litigation be permitted to submit proposed maps to the Court as part of the remedial proceeding. Ex. I at 2-4.[2]

[2] To avoid confusion, Plaintiffs are citing to the exhibits attached to the Legislative Defendants' petition rather than reattaching them here. In keeping with the Legislative Defendants' exhibit series, they assign "Exhibit I" to the district court's September 6 Order.

WHY RELIEF SHOULD BE DENIED

I. The Court lacks jurisdiction to grant the requested relief.

The Court lacks jurisdiction over the petition. Extraordinary relief under Rule 19 is restricted to instances "[w]hen no other plain, speedy, or adequate remedy is available." Utah R. App. P. 19(a). When a party has another means to appeal, it "cannot use an extraordinary writ . . . as a remedy for self-imposed emergencies." *Krejci v. City of Saratoga Springs*, 2013 UT 74, ¶ 10, 322 P.3d 662.

Legislative Defendants had other means to appeal. They could have appealed the district court's injunctive order, *see* Utah Code § 78B-5-1002, and sought expedited briefing and decision—or at least a stay pending appeal, Utah R. App. P. 8. They could have timely sought expedited interlocutory review under Rules 5 and 23C. They did neither.

Nor is there any emergency. Legislative Defendants filed their "emergency" Rule 19 petition eleven days after the district court's injunction was issued and seven days after the court provided the legal clarifications about which they now complain. Their delay in seeking the ordinary appellate review available to them does not create Rule 19 jurisdiction to remedy their "self-imposed emergenc[y]." *Krejci*, 2013 UT 74, ¶ 10, 322 P.3d 662.

Legislative Defendants' failure and delay means they cannot invoke Rule 19. And with no other jurisdictional hook, this Court lacks jurisdiction to grant a stay.

II. Legislative Defendants invited the ruling they now seek to challenge.

With limited exceptions, this Court "will not consider an issue unless it has been preserved' by raising it before the district court 'in such a way that the court ha[d] an

opportunity to rule on it.'" *League of Women Voters II*, 2024 UT 40, ¶ 144 (quoting *Patterson v. Patterson*, 2011 UT 68, ¶¶ 12-13, 266 P.3d 828).

But Legislative Defendants went further here. Not only did they not preserve their challenge to the district court's ruling, they invited it.[3] "Affirmative representations that a party has no objection to the proceedings fall within the scope of the invited error doctrine because such representations reassure the trial court and encourage it to proceed without further consideration of the issues." *State v. Winfield*, 2006 UT 4, ¶ 16, 128 P.3d 1171.

Here, Legislative Defendants sought clarification on whether Proposition 4's commission-related provisions applied to remedial redistricting. D.Ct. Doc. 476. In response, Plaintiffs stated that Proposition 4's text required a "no" answer. D.Ct. Doc. 486. When the matter arose at the hearing, Legislative Defendants affirmatively represented that they had no position on the question, thus reassuring the court that they did not object to Plaintiffs' reading of Proposition 4:

> THE COURT: Maybe the most efficient way is you've reviewed what Plaintiffs have submitted. Do you disagree with anything that they've represented?
>
> MR. GREEN: So I think – so my clients would probably disagree. I don't know that we can agree or disagree on any of it, Your Honor. I think we're looking for guidance. Again –
>
> THE COURT: Okay.
>
> MR. GREEN: – sort of our baseline is, you know, we still continue to maintain that Proposition 4 – that S.B. 200 should govern, and Proposition 4 shouldn't. So if we're going to redistrict in a world where it does, we're looking at the Court for guidance about how.

[3] As Plaintiffs explain, *see infra* Part III, there was no error.

Ex. B at 9.

Legislative Defendants cannot in the district court seek clarification on a legal question, affirmatively remain neutral on that question when asked about it point blank, and then file an emergency petition contending that the district court committed "egregious error." Pet. at 18. They "may not invoke [the Court's] extraordinary relief jurisdiction by means of [their] own missteps in litigation." *Friends of Great Salt Lake v. Utah Dep't of Nat. Res.*, 2017 UT 15, ¶ 68, 393 P.3d 291. The district court does not abuse its discretion by failing to read minds.[4]

III. The district court did not abuse its discretion in clarifying Proposition 4's requirements for the remedial process.

The district court did not abuse its discretion in providing the clarification that Legislative Defendants sought. The "best evidence" of a law's intent is "a statute's plain language." *Midwest Fam. Mut. Ins. v. Hinton*, 2025 UT 4, ¶ 40, 567 P.3d 524. When the Court "interpret[s] statutes, '[it] read[s] the text of a statute as a whole and interpret[s] its provisions in harmony with other subsections.'" *Id.* (quoting *State v. Maestas*, 2012 UT 46, ¶ 195, 299 P.3d 892).

[4] Legislative Defendants also mentioned these issues in their stay motion below, but that preceded Plaintiffs' response to the clarification motion, which resulted in Legislative Defendants' counsel declining to take a position when asked by the district court.

A. Proposition 4's plain text makes its commission-related provision inapplicable to remedial map-drawing.

Proposition 4 does not require a commission to be formed before the Legislature enacts a remedial map following a court order. The statute requires a commission to be formed within thirty days of two events:

> (a) the receipt by the Legislature of a national decennial enumeration made by the authority of the United States; or (b) a change in the number of congressional, legislative, or other districts resulting from an event other than a national decennial enumeration made by the authority of the United States

Utah Code § 20A-19-201(4)(a) & (b). The statute tethers the commission's required tasks to these two events. *See, e.g.*, Utah Code § 20A-19-202(11)(a) (requiring public hearings "the earlier of the 120th calendar day" after the Legislature's receipt of the decennial census or "August 31st of that year"); *id.* § 20A-19-202(11)(b) (requiring public hearings "no later than 120 calendar days after" the number of seats changed); *id.* § 20A-19-203(1) (requiring commission to adopt proposed maps within 30 days of those public hearings). These are the only two circumstances in which Proposition 4 triggers formation of a commission. As the district court noted, "[w]e are four years past receipt of the federal census and there has been no change in the number of districts." Ex. I at 3.

Yet these are just two of the *five* circumstances in which the statute permits redistricting. *See* Utah Code §§ 20A-19-102(1) (decennial census); -102(2) (change in number of districts); -102(3) (following permanent injunction); -102(4) (to conform with judicial decision); -102(5) (technical corrections). Indeed, the statute excludes the latter three from the circumstances in which the Legislature must await the work of a commission before it engages in redistricting. Section 20A-19-204(3) provides that

> [t]he Legislature may not enact any redistricting plan permitted under Sections 20A-19-102***(1)-(2)*** until adequate time has been afforded to the Commission and to the chief justice of the Supreme Court of the State of Utah to satisfy their duties under this chapter, including the consideration and assessment of redistricting plans, public hearings, and the selection of one or more recommended redistricting plans.

Utah Code § 20A-19-204(3) (emphasis added). Likewise, Proposition 4's requirement for the commission to submit proposed maps to the Legislature is triggered by redistricting (1) in response to the decennial census or (2) a change in the number of districts. *See* Utah Code § 20A-19-204(1)(b) (requiring commission to submit plans to Legislature when Legislature is redistricting pursuant to § 20A-19-102(1)-(2) without reference to -102(3)-(5)). The statute's express application of the commission-related provisions to the first two categories of redistricting but not the latter three indicates an intentional, and not inadvertent, choice. *See State v. Evans*, 2021 UT 63, ¶ 62, 500 P.3d 811 ("The *expressio unius* canon holds that 'the statutory expression of one term or limitation is understood as an exclusion of others.'" (quoting *Nevares v. M.L.S.*, 2015 UT 34, ¶ 31, 345 P.3d 719)). This makes sense. Time is often short in redistricting litigation and the People sensibly fashioned Proposition 4 to respond to that reality and ensure a lawful map is in place.

The district court also correctly ruled that the Legislature is not required, in its forthcoming legislative proceedings, to vote on any commission-proposed maps.[5]

[5] The district court did not *prohibit* the Legislature from voting on the 2021 commission's maps, as the Legislature now surprisingly claims a desire to do. Plaintiffs would welcome the Legislature doing so; Plaintiffs certainly intend to respect the commission's work in any map they proffer. And if the Court concludes that Proposition 4 requires the Legislature to vote on the 2021 commission's maps (and issue a report about that vote), the appropriate

Proposition 4's text specifically ties the vote requirement only to redistricting following (1) the decennial census or (2) a change in the number of districts. *See* Utah Code § 20A-19-204(2)(a) (requiring vote on maps submitted pursuant to § 20A-19-204(1), which in turn refers only to redistricting pursuant to § 20A-19-102(1)-(2), not -102(3)-(5)). While the 2021 commission proposed three congressional maps to the Legislature, that commission was constituted under S.B. 200, with somewhat different processes, standards, and requirements than Proposition 4. *Compare* Utah Code §§ 20A-19-103, -201-203 *with id.* §§ 20A-20-201, 302. Proposition 4's requirement for a vote on the commission's maps is specific to maps created in accordance with *Proposition 4*. *See* Utah Code §§ 20A-19-204(1) & (2)(a) (requiring Legislature to vote on commission maps "recommended under Section 20A-19-203").[6] The Legislature violated the Constitution by repealing Proposition 4 and replacing it with S.B. 200. And because S.B. 200 is void *ab initio*, *see* Ex. A at 69, as a legal matter Proposition 4 was controlling law in 2021 and the Legislature violated its requirements in its enactment of H.B. 2004, even though as a factual matter Proposition 4 had been repealed. The question here is what Proposition 4 requires *now*, given the reality that no commission was lawfully formed in 2021 and considering Proposition 4's plain text making the commission-related provisions inapplicable to this remedial redistricting. The district court answered that question correctly. Contrary to Legislative Defendants'

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relief would merely be to modify the district court's order. *See* Utah R. App. P. 8(a)(1)(B) (allowing an "order . . . modifying . . . injunctive relief").

[6] As the district court observed, "[h]ad the [2021] commission been established under Proposition 4, the result could be different." Ex. I at 3.

assertion, this does not "evince a mismatch between the district court's merits conclusion and its remedy," Pet. at 1, 3, but rather a careful reading of Proposition 4's text.

For the same reasons, the district court correctly concluded that the Legislature is not required in this context to issue a report upon the rejection of commission-proposed maps. The report provision is likewise specifically tied to maps submitted to the Legislature by the commission in relation to redistricting necessitated by the decennial census or a change in the number of districts. *See* Utah Code § 20A-19-204(5) (referring to maps submitted under § 20A-19-204(1), which in turn refers only to redistricting pursuant to § 20A-19-102(1)-(2), not -102(3)-(5)).

The district court correctly interpreted Proposition 4's plain text, which the Legislature entirely ignores in its petition.

B. Legislative Defendants' statutory argument is wrong.

Legislative Defendants' sole response is to wrongly contend that the remedial redistricting will not occur pursuant to either Section 20A-19-102(3) or (4)—which envision redistricting following a permanent injunction under Proposition 4 or to conform to a final decision of a court. Pet. at 14. They are mistaken.

First, the relevant inquiry is whether redistricting is being conducted pursuant to a new decennial census or a change in the number of districts. Utah Code § 20A-19-102(1)-(2). If yes, then a commission must be formed. If no, then a commission is not formed. *See* Utah Code §§ 20A-19-201(4) & 20A-19-204(3). The answer here is plainly "no."

Second, the district court permanently enjoined H.B. 2004 on two grounds: (1) to provide complete relief for the violation of Plaintiffs' constitutional right to alter or reform

their government, and (2) pursuant to Section 20A-19-301(2), because Plaintiffs proved that H.B. 2004 was enacted in undisputed violation of Proposition 4's requirements. Ex. A at 72-74.

Legislative Defendants object that Plaintiffs labeled their summary judgment motion as pursuant to Count V, which they contend is limited to S.B. 200's unlawfulness. Pet. at 7, 13-14. But this Court explained that Count V "encompass[es] both matters at issue in this case: Plaintiffs' challenge to the redistricting process that led to the Congressional Map and their challenge to the Congressional map itself." *League of Women Voters I*, 2024 UT 21, ¶ 61. Given this Court's recognition of Count V's scope as pleaded in Plaintiff's initial complaint, on remand Plaintiffs labeled their summary judgment motion as being under Count V and sought relief regarding both the lawfulness of S.B. 200 and the violation of Proposition 4's requirements.[7] The district court thus correctly rejected Legislative Defendants' position as "not true." Ex. A at 72.

In any event, the question is one of semantics, because Legislative Defendants have been on actual notice of the relief Plaintiffs were seeking from the day the summary judgment motion was filed. *See, e.g.*, Utah R. Civ. P. 1 (requiring Rules to be construed "liberally . . . to achieve the just, speedy, and inexpensive determination of every action"); Utah R. Civ. P. 8(f) ("All pleadings will be construed to do substantial justice."). Because

[7] Plaintiffs explained in their summary judgment motion that Count V encompassed both issues and that their amendment to add additional counts was merely pursuant to their ability to state claims as one or separate counts. *See* D.Ct. Doc. 293 at 27 n.8.

Plaintiffs sought and received relief under Utah Code § 20A-19-301(2), the remedial redistricting will occur pursuant to Utah Code § 20A-19-102(3).

Third, Legislative Defendants wrongly contend that Section 20A-19-301(4) is inapplicable because "there's been no 'final decision' by any court." Pet. at 14; *see* Utah Code § 20A-19-102(4) (permitting redistricting "to conform with a final decision of a court of competent jurisdiction"). The district court has permanently enjoined implementation of H.B. 2004, the 2021 map. All that remains is the remedial proceeding regarding the new congressional map and resolution of Plaintiffs' forthcoming attorneys' fees motion. *See* Utah Code § 20A-19-301(5) & (8).[8]

With respect to the 2021 map, the district court's order is final for purposes of Section 20A-19-301(4). As this Court recently explained, "[t]he word 'final' has more than one meaning." *Ross v. Kracht*, 2025 UT 22, ¶ 22, -- P.3d --. The statute does not refer to a court's *final judgment*, but rather a "final decision." It would make no sense to contend that a permanent injunction against implementing a map is insufficiently "final" to permit remedial redistricting in conformance with that decision. That reasoning would prevent the legal violation from being remedied with a compliant map, frustrating the clear purpose of the provision. "[W]e will not interpret the language [of a statute] so that it results in an application that is unreasonably confused, inoperable, or in blatant contradiction of the

[8] Plaintiffs have moved for summary judgment on Count VIII regarding the malapportionment of the 2011 map, which will be resolved if necessary as part of the remedial hearing. *See infra* at 19 & n.12.

express purpose of the statute." *T-Mobile USA, Inc. v. Utah State Tax Comm'n*, 2011 UT 28, ¶ 28 n.13, 254 P.3d 752 (cleaned up).

IV. None of the extraordinary relief factors warrant permitting an unlawful congressional map to govern yet another election cycle.

None of the extraordinary relief factors warrant permitting an unlawful congressional map to govern a *third* election cycle.

Significant legal issues. While this *case* involves significant legal issues, Legislative Defendants' *petition* does not. The petition does not address the merits of Plaintiffs' claims, but instead merely questions whether Proposition 4's commission-related provisions apply to the remedial process. The plain text of Proposition 4 compelled the answers the district court gave. *See supra* Part III. Legislative Defendants' characterization of these as significant legal issues is curious, given their response of "I don't know" when the district court sought their position on them. *See supra* Part II.[9]

Severe consequences. Legislative Defendants identify three "severe consequences" they contend follow absent extraordinary relief. Pet. at 17. None is persuasive.

First, Legislative Defendants' invocation of the federal Constitution's Elections Clause is especially peculiar. Their petition expressly disclaims any merits argument and instead is premised on their newfound desire for a commission, a mandatory vote on

[9] Legislative Defendants observe that the district court's ruling was issued "just a week after the Texas legislature redistricted its congressional districts." Pet. at 15. If they mean to insinuate that the district court intentionally so timed its decision, or was motivated by Texas's redistricting, the accusation is baseless and highly inappropriate. *See Peters v. Pine Meadow Ranch Home Ass'n*, 2007 UT 2, 151 P.3d 962.

commission-proposed maps, and a legislatively issued report—the very things to which Legislative Defendants have objected from the beginning. A remedial process in which *the Legislature* enacts a map free of the commission-related constraints cannot plausibly violate the Elections Clause.

In any event, contrary to Legislative Defendants' contention, *see* Pet. at 16, Proposition 4's status as a statute rather than a constitutional amendment is irrelevant to the Elections Clause analysis. Nothing in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015), supports the distinction Legislative Defendants assert. Indeed, the *Arizona State Legislature* Court favorably cited a California initiative-passed *statute* regulating voting in congressional elections in reasoning that the Election Clause's reference to "legislature" includes initiated legislation. *See id.* at 822. And in *Moore v. Harper*, the Court held that "the Elections Clause does not exempt state legislatures from the ordinary constraints imposed by *state law*," not just state constitutions. 600 U.S. 1, 34 (2023) (emphasis added); *see also id.* at 39 (Kavanaugh, J., concurring) (noting that the standard of review for Elections Clause claims "should apply not only to state court interpretations of state statutes, but also to state court interpretations of state constitutions"). In any case, Proposition 4 *does* stem from constitutional restraints on the Legislature—the People's right to alter or reform the government via an initiative. *See* Utah Const. art. I, § 2; art. VI, § 2.

Second, Legislative Defendants do not explain how the 2021 Legislature's hearing schedule or its enactment of the current map by a supermajority vote, Pet. at 16-17, demonstrate "the severity of the consequences occasioned by the alleged error." *State v.*

Henriod, 2006 UT 11, ¶ 20, 131 P.3d 232. The petition alleges that the district court erred by interpreting Proposition 4's commission-related provisions not to apply to the remedial redistricting. While Legislative Defendants suddenly embrace the commission-related provisions of Proposition 4 as a pathway to delay, the district court's adherence to Proposition 4's text and its avoidance of delay do not constitute a "severe consequence" warranting extraordinary relief.

Third, the district court has neither "redlined" Proposition 4 nor infringed the People's government reform; it has merely applied the law's plain text to the questions Legislative Defendants posed. Indeed, forming a commission now, when Proposition 4 says not to, would subvert the People's reform by misapplying its plain text.

Defendants also complain that the district court's order allows Plaintiffs to submit proposed maps, which Defendants contend raises separation of powers concerns. Pet. at 17. Their argument mischaracterizes the remedial process.

Proposition 4 provides that "[u]pon the issuance of a permanent injunction . . . the Legislature may enact a new or alternative redistricting plan that abides by and conforms to the redistricting standards, procedures, and requirements of this chapter." Utah Code § 20A-19-301(8).[10] As the district court recognized at both the status conference, Ex. B at 46, and in its amended order, Ex. I at 2, it is not *requiring* the Legislature to enact a remedial

[10] The Legislature must abide by the requirements that are pertinent to the circumstance in which it is redistricting. Proposition 4's text makes the commission-related procedures inapplicable to the remedial redistricting at issue here, and thus they are definitionally not "requirements" to be abided in this context.

map, but rather providing a reasonable amount of time for the Legislature to do so if it chooses. *Cf. Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (noting that federal courts should, "whenever practicable, [] afford a reasonable opportunity for the legislature to . . . adopt[] a substitute measure").

The court provided 42 days (until October 6). *See* Ex. I. This is longer than courts ordinarily wait in redistricting cases before proceeding to impose their own remedy. Following the U.S. Supreme Court's *Allen v. Milligan* decision, the federal district court provided the Alabama legislature 31 days to adopt a remedial congressional map—an order the Supreme Court declined to stay. *See* Order, *Caster, et al. v. Allen, et al.*, No. 2:21-cv-01536-AMM (N.D. Ala. June 20, 2023), Doc. 156, *stay denied*, *Allen v. Milligan*, 144 S. Ct. 476 (2023) (Mem.). Courts generally provide between 14 and 30 days, depending upon the exigencies of the case. *See, e.g.*, *Robinson v. Ardoin*, 37 F.4th 208, 232 (5th Cir. 2022) (affirming order providing 14 days); *Calvin v. Jefferson Cnty. Bd. of Comm'rs*, 172 F. Supp. 3d 1292, 1326 (N.D. Fla. 2016) (providing 16 days); *Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016) (providing 14 days); *Larios v. Cox*, 300 F. Supp. 2d 1320, 1356 (N.D. Ga. 2004), *aff'd*, 542 U.S. 947 (2004) (providing 19 days); *Williams v. City of Texarkana*, 861 F. Supp. 756, 767 (W.D. Ark. 1992), *aff'd* 32 F.3d 1265, 1268 (8th Cir. 1994) (providing 16 days).

The district court has scheduled an October 23-24 remedial hearing at which the court will determine whether any legislatively-enacted remedial map "abides by and conforms to the redistricting standards, procedures, and requirements" of Proposition 4. Utah Code § 20A-19-301(8). If the Legislature either fails to submit a map or submits a

map that violates Proposition 4—including its prohibition on maps that have the purpose or effect of unduly favoring or disfavoring a political party—the district court will order implementation of a compliant map by the Lieutenant Governor's November 10, 2025 deadline. In that circumstance, the district court would be acting not only pursuant to Proposition 4,[11] but pursuant to its broad equitable power to remedy the fact that the *2011* congressional map is malapportioned in violation of the Utah Constitution.[12]

A state court's power to order a map into effect to remedy a malapportionment violation is well established and expressly encouraged by the U.S. Supreme Court. *See Scott v. Germano*, 381 U.S. 407, 409 (1965) ("The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged."); *Growe v. Emison*, 507 U.S. 25, 33 (1993) (explaining that "state courts have a significant role in redistricting" and requiring federal court to abstain from

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[11] *See* Utah Code § 20A-19-102(4) (providing for division of state into congressional districts "to conform with a final decision of a court of competent jurisdiction").

[12] The legal effect of enjoining implementation of legislation enacting a redistricting map is to revive the prior decade's map as the legally operative map. This is so because legislation enacting a new map amends the Code to replace references to the prior decade's map with the new map. *See In re J. P.*, 648 P.2d 1364, 1378 n.14 (Utah 1982) ("Where amendatory legislation repealing or displacing a former statute addressing the same subject matter is held unconstitutional, the amendment has no superseding effect and the prior statute remains in full force as though no amending legislation had been enacted."); *see* H.B. 2004, 2021 2d Spec. Sess. (Utah 2021) https://le.utah.gov/%7E2021s2/bills/static/HB2004.html (amending Utah Code § 20A-13-101 *et seq.* to refer to 2021 map rather than 2011 map). As Plaintiffs have established in their pending summary judgment motion on their malapportionment claim (Count VIII), the 2011 map is now unequally populated in violation of the Utah Constitution.

deciding malapportionment challenge to Minnesota's congressional and legislative maps in favor of allowing state court to formulate valid map); *id.* at 34 (noting that U.S. Supreme Court has "encouraged" "state judicial supervision of redistricting" to impose lawful map). And in remedying that malapportionment violation, the district court would be obligated to ensure that it imposes a map that accords with all relevant laws, including Proposition 4. *See, e.g.*, *Clarke v. Wis. Elections Comm'n*, 998 N.W.2d 370, 396 (Wis. 2023) ("[A] court fashioning a remedy in an apportionment challenge must ensure that remedial maps comply with state and federal law.").

Courts commonly select among maps submitted by parties to the litigation, consistent with the court's role in adjudicating a dispute between litigants. *See, e.g.*, *Johnson v. Wis. Elections Comm'n*, 971 N.W.2d 402, 407 (Wis. 2022), *cert. granted and rev'd in part on other grounds*, *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398 (Wis. 2022) (selecting Governor's proposed congressional map to remedy malapportionment violation); *Carter v. Chapman*, 270 A.3d 444, 450 (Pa. 2022) (selecting private petitioner's proposed congressional map over the legislature's proposed map to remedy malapportionment violation).

The district court's remedial process recognizes the primary role of the Legislature while at the same time ensuring that in 2026 Utahns will finally—seven years after adopting Proposition 4—vote under a lawful congressional map.

CONCLUSION

Legislative Defendants' petition for extraordinary relief should be denied.

DATED this 9th day of September, 2025.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF COMPLIANCE

1. This response does not exceed 20 pages, excluding any tables or attachments, in compliance with Utah Rule of Appellate Procedure 19(i).

2. This response has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Times New Roman font in compliance with the typeface requirements of Utah Rule of Appellate Procedure 27(a).

3. This response contains no non-public information and complies with Utah Rule of Appellate Procedure 21(h).

DATED this 9th day of September, 2025.

/s/ Troy L. Booher

CERTIFICATE OF SERVICE

This is to certify that on the 9th day of September, 2025, I caused the foregoing Response to Petition for Extraordinary Relief to be served via email on:

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Attachments

(I) The District Court's September 6, 2025, Amended Ruling and Order Adopting the Parties' Scheduling Order and Clarifying the Court's August 25, 2025 Ruling (Doc. 506)

Exhibit I

The Order of the Court is stated below:
Dated: September 06, 2025 11:31:27 AM **/s/** DIANNA GIBSON
District Court Judge

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.	**AMENDED RULING AND ORDER ADOPTING THE PARTIES' SCHEDULING ORDER AND CLARIFYING THE COURT'S AUGUST 25, 2025 RULING** Case No. 220901712 Honorable Dianna M. Gibson

In the August 25, 2025 Ruling and Order, this Court set a status conference to address the path forward with input from the parties. On September 28, 2025, the Legislative Defendants filed a Motion to Clarify, raising questions regarding the application of Proposition 4 under the circumstances. On September 29, 2005, just hours before the status conference, Plaintiffs filed a response to the Motion to Clarify. The parties each addressed the issues raised by the Motion to Clarify and the Response. In addition, the Court requested information from the Lieutenant Governor's office regarding the deadline that will govern the path forward. At the end of the hearing, the Court requested the parties discuss in good faith the path forward and attempt to agree on how to proceed and a schedule. On September 4, 2025, the parties submitted a stipulated proposed Scheduling Order.

Based on the Legislative Defendants' Motion to Clarify, Plaintiffs' Response, the Lieutenant Governor's Notice of the November 10, 2025 deadline, the parties' arguments and representations during the September 29, 2025 hearing and the subsequently submitted proposed Scheduling Order, the Court amends and also clarifies the August 25, 2025 Ruling and Order on pages 75-76 as follows:

IT IS HEREBY ORDERED:

1. Plaintiffs' request to enjoin H.B. 2004, the 2021 Congressional Map, is GRANTED.
2. Use of H.B. 2004, the 2021 Congressional Map, is hereby ENJOINED.[1]
3. Proposition 4 is the law on redistricting in Utah.
4. Proposition 4 provides that "[u]pon the issuance of a permanent injunction under [Utah Code Ann. § 20A-19-301(2)], the Legislature *may enact* a new or alternative redistricting plan that abides by and conforms to the redistricting standards, procedures, and requirements of this chapter." Utah Code § 20A-19-301(8) (emphasis added).[2]
5. The Court retains jurisdiction over the next steps. Based on the November 10, 2025 deadline and based on the Stipulated Motion for Scheduling Order filed by both Plaintiffs and the Legislative Defendants, it is hereby ORDERED that the following schedule shall govern the remedial proceedings in this case:

Sept. 25, 2025	Legislature to publish proposed map
Sept. 26 – Oct. 5, 2025	Public comment period
Oct. 6, 2025	Legislature's final vote on map and submission of map to the Court; Plaintiffs' deadline to submit any proposed map to the Court
Oct. 17, 2025	Parties file briefs, expert reports, and other materials in support of respective map submissions and in opposition to any map submissions, if necessary
Oct. 23-24, 2025	Evidentiary hearing, if necessary
Oct. 28, 2025	Parties file proposed findings of fact and conclusions of law with Court, if necessary

[1] The Court amended its Order to remove the words "in any future elections." These words are unnecessary and arguably go beyond the relief requested and necessary in this case to address the constitutional violation.

[2] The Court amends its Ruling and Order to remove the "order" requiring the Legislature "to design and enact" a new congressional plan in the next 30 days. That "order" failed to recognize the separation of powers between our courts and our legislature and unintentionally failed to respect the Legislature's authority to determine how to address the Court's order enjoining H.B. 2004. This Court overstepped its authority by *ordering* the Legislature to *enact* a new congressional plan.

6. Having considered the parties' questions, positions and arguments regarding how to apply Proposition 4 to a mid-decade redistricting process under these circumstances, and given the necessity to comply with the November 10, 2025 deadline to avoid impacting the 2026 midterm elections, the Court clarifies the ruling as follows:

    a. A new independent redistricting commission does not need to be convened under Proposition 4 before the Legislature enacts a remedial plan. Under Proposition 4, specifically Utah Code Section 20A-19-201(4)(a) and (b), the independent redistricting commission is created by appointment "no later than 30 calendar days following . . . the receipt by the Legislature of a national decennial enumeration made by the authority of the United States, or a change in the number of congressional, legislative or other districts resulting from an event other than a national decennial enumeration made by the authority of the United States." We are four years past receipt of the federal census and there has been no change in the number of districts. In addition, some of the commission's work, specifically holding public hearings, is timed from the occurrence of these events. *See* Utah Code Ann. § 20A-19-202(11) (requiring public hearings "the earlier of the 120th calendar day" after the decennial census or change in districts or "August 31st of that year").

    b. The House is not required to take an up-or-down vote on the previously recommended "Orange" and "Public" maps, and the Senate is not required to take an up-or-down vote on all three of the previously recommended "Purple," "Orange," and "Public" maps. The Legislature also is not required to issue a detailed written report setting forth the reasons for rejecting any previously submitted commission plan. Those maps were recommended by the independent redistricting commission established under S.B. 200. Its work was performed under S.B. 200 and not Proposition 4. Accordingly, the up/down vote and the report are not necessary here and cannot effectively rectify the violation. Had the commission been established under Proposition 4, the result could be different.

    c. The work performed by the independent redistricting commission and the congressional plans it recommended can be considered by the Legislature as it redesigns the congressional plan for future elections. The prior public comments received by the commission and by the Legislature's redistricting committee can

also be considered in this process. The work done and the information previously gathered are still viable to this remedial process.

d. Proposition 4's traditional redistricting standards and requirements specifically listed under section 20A-19-103 apply to the Legislature. Section 20A-19-103(6) specifically requires the Legislature to make "computer software and information and data concerning proposed redistricting plans reasonably available to the public so that the public has a meaningful opportunity to review" the proposed remedial redistricting plan.

e. Proposition 4's ten-day notice and comment period, under section 20A-19-204(4) applies. That requirement states that the Legislature "may not enact a redistricting plan or modification of any redistricting plan unless the plan or modification has been made available to the public, by the Legislature, including making it available on the Legislature's website, or other equivalent electronic platform, for a period of no less than 10 calendar days and in a manner and format that allows the public to access the plan for adherence to the redistricting standards and requirements contained in this chapter and that allows the public to submit comments on the plan to the Legislature."

f. The Court further clarifies that only existing parties to this case may file proposed maps with the Court as part of these remedial proceedings.