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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' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON COUNT VIII

Case No.: 220901712

Honorable Dianna Gibson

This Court should deny Plaintiffs' motion for summary judgment on Count VIII, which seeks to revive and then invalidate the repealed 2011 congressional district lines. An injunction against the 2021 Plan (or any subsequent remedial plan) cannot resurrect the 2011 Plan.

RESPONSE TO PLAINTIFFS' STATEMENT OF FACTS

1. The 2011 congressional map was drawn based on the population data from the 2010 Census, and after passing the House and Senate, it was signed by the Governor on October 20, 2011. It was codified at §20A-13-102.

Response: Undisputed.

2. On November 12, 2021, Governor Cox signed H.B. 2004, the 2021 congressional map. H.B. 2004 amended §20A-13-102 to replace the references to the 2011 map with references to the 2021 map.

Response: Legislative Defendants dispute the characterization that "H.B. 2004 amended §20A-13-102 to replace the references to the 2011 map with references to the 2021 map." By enacting H.B. 2004, the Utah Legislature "repeal[ed] current United States Congressional district boundaries for Utah and establish[ed] new United States Congressional district boundaries for Utah." H.B. 2004 Congressional Boundaries Designation, Utah State Legislature, le.utah.gov/~2021s2/bills/static/HB2004.html. To accomplish this repeal of previous district boundaries, H.B. 2004 created new "re-districting boundary data" and amended §§20A-13-101.1, -101.5, -102, -102.2, -103, and -104. To the extent this paragraph construes the legal effect of H.B. 2004, that statute speaks for itself and does not require a response.

3. On August 25, 2025, this Court granted Plaintiffs' Motion for Summary Judgment on Count V and enjoined enforcement of H.B. 2004.

Response: Undisputed.

4. According to the 2020 Census, each district in the 2011 congressional map deviates from the ideal district population of 817,904. Ex. 3 at 12 (Office of Legislative Research and General

Counsel Report showing the following population deviations: CD 1 (-17,807), CD 2 (-16,268), CD 3 (-31,190), CD 4 (+65,265)).

Response: Undisputed.

5. At least two individual plaintiffs reside in the overpopulated CD 4 under the 2011 congressional map.

Response: Undisputed.

ARGUMENT

Plaintiffs' novel theory of remedial redistricting has no basis in law or equity. Plaintiffs think that an injunction against present-day district lines resurrects immediately preceding district lines so that those lines can be enjoined as malapportioned. But following that same logic, enjoining the old lines should then revive older lines; those too should then be enjoined as malapportioned, thus reviving even older lines. Parties and courts do not follow that sequence through remedial redistricting. The Court should deny summary judgment on Count VIII because it attacks a nonexistent law, rendering the claim moot and calling for an impermissible advisory opinion.

First, Plaintiffs wrongly declare that the "2011 map is currently the legally operative congressional map following this Court's injunction against enforcement of H.B. 2004." MSJ at 2. The 2011 Congressional Plan no longer exists. The Legislature "repeal[ed]" that redistricting law in 2021. H.B. 2004 Congressional Boundaries Designation, Utah State Legislature, le.utah.gov/~2021s2/bills/static/HB2004.html. Enjoining the 2021 Plan (or any later remedial plan) cannot revive the repealed and nonexistent 2011 Plan.

Plaintiffs mistakenly rely on one footnote from *In re J.P.* for the idea that earlier versions of a statute may be revived when the current version is declared unconstitutional. MSJ at 2 (citing *In re J.P.*, 648 P.2d 1364, 1378 n.14 (Utah 1982)). That rule conflicts with Utah Code §68-3-5, which adopts an explicit anti-revival approach. *See id.* ("The repeal of a statute does not revive a statute previously

repealed."); *accord State v. Cook*, 2025 UT 6, ¶22.[1] So even if the Legislature itself were to (hypothetically) repeal H.B. 2004, that would not revive the 2011 Plan. Or even under Plaintiffs' faulty view of the people's alter or reform power, if Utahns passed a ballot initiative repealing H.B. 2004, that too would not revive the 2011 Plan. There is no principled reason, then, why an injunction against H.B. 2004 triggers the reactivation of 2011 district lines. That would ascribe to this Court's order a power greater than legislation, which goes too far. *See infra.*

But the Court need not distinguish *In re J.P.* to reject Plaintiffs' argument. The Supreme Court in that case noted (in the same footnote) that the revival rule does not apply when "the Legislature clearly intended the prior statute to be repealed even if the substituted statute were invalidated." 648 P.2d at 1378 n.14. Here, H.B. 2004 clearly communicates the Legislature's intent to repeal and replace the 2011 Congressional Plan. *See* H.B. 2004 Congressional Boundaries Designation, Utah State Legislature, le.utah.gov/~2021s2/bills/static/HB2004.html. And given the dramatic population growth and shifts in the State, it would have made no sense for the Legislature to do anything other than repeal the outdated 2011 district lines and replace them with new lines.

When confronted with this issue of repeal and revival, other courts also follow the cardinal rule that legislative intent controls. In *Patapsco Guano Company v. Board of Agriculture of North Carolina*, the U.S. Supreme Court rejected an argument identical to Plaintiffs' here. 171 U.S. 345, 353 (1898). There, a federal district court voided the State's regulation of commercial fertilizers, declaring it to be an unconstitutional privilege tax. *Id.* at 347. North Carolina responded by repealing those unconstitutional laws. *Id.* Plaintiffs, in turn, contended that the repeal revived earlier privilege tax laws, which too must be declared unconstitutional. *Id.* at 353. The Supreme Court rejected this "ingenious" argument, reasoning that it "is impossible to impute to the general assembly the intention, in repealing parts of the Code which had been declared unconstitutional, to revive earlier laws which might render

[1] Legislative Defendants have found no example of a Utah court applying *In re J.P.*'s revival rule to resurrect a repealed law.

the amended law liable to the same objections." *Id.* Similarly, in *Armstrong v. Mitten*, the Colorado Supreme Court, when holding the legislature's apportionment act unconstitutional and void, refused to impute to the legislature an intent "to restore the old apportionment act, and thereby create the chaotic condition that would result." 37 P.2d 757, 759 (Colo. 1934); *see also Davis v. Synhorst*, 225 F. Supp. 689, 691 (S.D. Iowa 1964) ("'If an act is repealed by an unconstitutional amendment, the former act remains in force when the unconstitutional amendment is declared void, providing this result gives effect to the Legislature's intention.' The matter of legislative intent is controlling."). And in *Doe v. Snyder*, after struggling to discern "which iteration and configuration of [the Sex Offender Registration Act] most accurately captures the current manifest intent of the Michigan legislature," the court refused to revive an earlier version of SORA after holding the current version unconstitutional. 449 F. Supp. 3d 719, 735 (E.D. Mich. 2020). At best, the Court here would be speculating to decide that the Legislature intended the 2011 district lines to control if later district lines were enjoined. Speculation would be error.

Besides, treating the injunction itself as repealing legislation forgets that courts do not legislate laws into or out of existence. Courts that issue injunctions do not "erase" or "strike down" statutes; they enjoin *defendants* from enforcing statutes. *See* Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933, 935-37 (2018) (describing flawed "assumption that a judicial pronouncement of unconstitutionality has canceled or blotted out a duly enacted statute"); John Harrison, *Severability, Remedies, and Constitutional Adjudication*, 83 Geo. Wash. L. Rev. 56, 88 (2014) ("Courts do not invalidate statutory rules in a literal sense, and therefore do not, strictly speaking, grant a remedy that makes a statutory provision ineffective."); *see, e.g., Steffel v. Thompson*, 415 U.S. 452, 469 (1974) ("Of course, a favorable declaratory judgment . . . cannot make even an unconstitutional statute disappear."); *Winsness v. Yocom*, 433 F.3d 727, 728 (10th Cir. 2006) (McConnell, J.) ("There is no procedure in American law for courts or other agencies of government—other than the legislature itself—to purge from the

statute books, laws that conflict with the Constitution as interpreted by the courts."); *Arizona v. Biden*, 31 F.4th 469, 483 (6th Cir. 2022) (Sutton, C.J., concurring) ("[Courts] do not remove—'erase'—from legislative codes unconstitutional provisions."); *Pool v. City of Houston*, 978 F.3d 307, 309 (5th Cir. 2020) ("It is often said that courts 'strike down' laws when ruling them unconstitutional. That's not quite right. … Courts hold laws unenforceable; they do not erase them."); *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, No. 22-2036, 2023 WL 4635932, at *15 (Iowa June 16, 2023) (op. of McDonald, J.) (describing that "well settled" principle of American law). This Court cannot erase the 2021 Congressional Plan (or any later remedial legislation) even though it might enjoin its enforcement. Nor can the Court write the 2011 Plan back into existence only to then erase them as malapportioned.

Finally, Legislative Defendants have identified no case in which a court has resuscitated old district lines only to enjoin them. This case would appear to be the first. The cases Plaintiffs cited when opposing the Legislature's motion to dismiss Count VIII are not on point. In *Walters v. Boston City Council*, 676 F. Supp. 3d 26 (D. Mass. 2023), the court determined that the city council's 2021 maps were unlawful and enjoined the city council from using them. *Walters*, 676 F. Supp. 2d at 48. But that's all it did. It did not revive a previous map and enjoin *that* map too. After enjoining the 2021 maps, the court observed that "the City Council is best positioned to redraw the lines in light of traditional redistricting principles." *Id.* Nor does *Legislative Research Commission v. Fischer*, 366 S.W.3d 905 (Ky. 2012), justify reviving the 2011 Congressional Plan for the sole purpose of unnecessarily enjoining it. To be sure, after enjoining Kentucky's 2012 legislative maps, that court ordered that the then-upcoming 2012 elections be "conducted using the districts as enacted in the 2002 [maps]." *Id.* at 917. But Plaintiffs never explain how Kentucky precedent comports with Utah law, and Utah courts are not permitted to revive a repealed statute, especially when the Legislature clearly intended to repeal it. *In re J.P.*, 648 P.2d at 1378 n.14; *Workers' Comp. Fund v. State*, 2005 UT 52, ¶22. More to the point, the only reason the Kentucky court gave for reviving the 2002 maps was its view that the 2002 maps

were "the only legislative districts capable of implementation at [that] juncture" and it needed to "ensur[e] the orderly process of the 2012 elections." *Fischer*, 366 S.W.3d at 917, 919. But here, Plaintiffs don't want the 2026 or later congressional elections to be conducted under the 2011 Congressional Plan; they want the 2011 map enjoined. So reviving the 2011 Congressional Plan serves no purpose. Count VIII should be dismissed because the 2011 Congressional Plan has been repealed.

Second, Plaintiffs' claim is moot. The "repeal" of a challenged law "render[s]" the case "moot." *Shipman v. Evans*, 2004 UT 44, ¶33, *abrogated in part on other grounds*, *Utahns for Better Dental Health-Davis, Inc. v. Davis Cnty. Clerk*, 2007 UT 97. Even a statutory amendment will moot a claim "when the amendment actually prevents the requested judicial relief from affecting the rights of the litigants." *In re. J.P.*, 648 P.2d at 1370. In *Salt Lake City Corporation v. Utah Inland Port Authority*, for example, the Utah Supreme Court "decline[d] to reach the merits" of claims targeting a version of the Utah Inland Port Authority Act "no longer in effect." 2022 UT 27, ¶¶21-23. The Court reasoned that a decision "about the constitutionality of the Act's old classification may not 'have a meaningful impact on the practical position of the parties' under the amended statute," and so held the claims moot. *Id.* ¶22. So too in *Natalie R. v. State*, where "the legislature's amendment of the energy policy statute rendered the requested relief—a declaration that the now-repealed challenge language is unconstitutional—legally ineffective." 2025 UT 5, ¶26.

Third, Plaintiffs' claim calls for an advisory opinion. To allow Plaintiffs to "attack" a nonexistent and "unenforceable statutory provision" would amount to allowing for "an advisory opinion without the possibility of any judicial relief." *California v. Texas*, 593 U.S. 659, 673 (2021); *see also Salt Lake County v. State*, 2020 UT 27. No "actual controversy" exists involving the repealed 2011 Congressional Plan. *Salt Lake County*, 2020 UT 27, ¶19. Nor is there "a substantial likelihood that one will develop," *id.*, because the 2011 Congressional Plan has been repealed. Nor will reviving the 2011

Congressional Plan for the sole purpose of enjoining it "serve a useful purpose in resolving or avoiding controversy or possible litigation." *Id.* (cleaned up).

CONCLUSION

The Court should deny Plaintiffs' motion for summary judgment on Count VIII.

Dated: September 18, 2025

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: September 18, 2025

/s/ Tyler R. Green