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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, et al.,

Defendants.

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON COUNT VIII

Case No. 220901712

Honorable Dianna Gibson

ARGUMENT

Defendants do not contest the central facts: H.B. 2004's enforcement has been enjoined, and the 2011 map is malapportioned under the 2020 census. The only question is whether the 2011 map was revived as a matter of law once H.B. 2004's enforcement was enjoined. Utah courts have answered that question yes for more than a century—including, most recently, in this very case. Defendants never grapple with this settled precedent and offer nothing to overcome it.

The Utah Supreme Court first established the revival principle in *Board of Education of Ogden City v. Hunter*, 159 P. 1019 (Utah 1916). There, the Legislature enacted a statute that repealed and replaced portions of the existing law governing property taxation. *Id.* at 1020. When the statute was declared unconstitutional, the Court held that the original law "which was superseded by the invalid portion of the later one is not repealed, but continues in full force and effect." *Id.* at 1024. In other words, although the new statute purported to repeal the prior provisions, its invalidity meant that the repeal never took effect, and the original law remained operative.

This holding was immediately reaffirmed in *State ex rel. Shields v. Barker*, 167 P. 262 (Utah 1917). In that case, the Utah Supreme Court struck down a statute that amended the law governing the creation of municipal courts in Ogden City. The Court explained that because the amendment was unconstitutional, it was "impotent to repeal the old law," which "remains in full force and effect as though the amendatory act had not been passed." *Id.* at 265. Decades later, in *In re J.P.*, 648 P.2d 1364 (Utah 1982), the Court once again pronounced the principle: "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." *Id.* at 1378 n.14.

Importantly, the revival principle has already been applied in this case. In rejecting Defendants' motion to dismiss Count V, the Utah Supreme Court explained that if Plaintiffs prevailed on their claim that S.B. 200's repeal and replacement of Proposition 4 was unconstitutional, "Proposition 4 . . . would become controlling law." *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 222, 554 P.3d 872. And when this Court granted summary judgment on Count V and enjoined enforcement of S.B. 200, it accordingly recognized Proposition 4 as the law in Utah. *See* Order Granting Pls.' MSJ on Count V ("Count V MSJ Order") at 68. In reaching this conclusion, this Court grounded its reasoning in longstanding Utah precedent holding that unconstitutional enactments are void *ab initio* and "of no effect." *Id.* at 67 (quoting *Barker*, 167 P. at 264). "When a court declares a statute unconstitutional, the statute becomes void. 'An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.'" *Egbert v. Nissan Motor Co., Ltd.*, 2010 UT 8, ¶ 12, 228 P.3d 737 (quoting *Norton v. Shelby County*, 118 U.S. 425 (1886)). The Court further noted that this principle is consistent with decisions of both the U.S. Supreme Court and other state courts, which likewise hold that unconstitutional enactments are nullities that cannot displace existing law. *See* Count V MSJ Order at 67-69 (citing cases).

The same reasoning applies here, as this Court found in denying Defendants' motion to dismiss Count VIII. *See* Order Denying Mot. to Dismiss the 1st Am. Compl. at 2. H.B. 2004 amended Utah Code §•20A-13-102 to repeal the 2011 map and replace it with the 2021 map. *See* H.B. 2004, 2021 2d Special Session, https://le.utah.gov/~2021s2/bills/static/HB2004.html. The Court has enjoined the enforcement of H.B. 2004, as it is an "extension of the constitutional violation that tainted the [2021 redistricting] process from the start." Count V MSJ Order at 70.

Because H.B. 2004's enforcement has been enjoined as unconstitutional, its repeal of the 2011 map is legally void, "as inoperative as though it had never been passed." *Egbert*, 2010 UT 8, ¶ 12. The 2011 map thus remains "in full force and effect" unless and until lawfully displaced. *Hunter*, 159 P. at 1024.

Defendants ignore this relevant precedent and instead try to recast the issue through a handful of misplaced contentions. None is persuasive.

First, Defendants' reliance on Utah Code § 68-3-5 is unavailing. Defs. Opp'n to MSJ ("Br.") at 2-3. That law codifies default rules for legislative repeals, including repeals of repealers. But the question here is not what happens when the Legislature repeals a law in the ordinary course; it is what happens when a statute that purports to repeal or replace a prior law is itself unconstitutional. On that question, Utah precedent is clear: the unconstitutional statute is void *ab initio* and incapable of effecting a repeal. *See Hunter*, 159 P. at 1024; *Barker*, 167 P. at 264; *In re J.P.*, 648 P.2d at 1378 n.14; *Egbert*, 2010 UT 8, ¶ 12.

Second, Defendants claim that Plaintiffs' motion rests on a single footnote from *In re J.P.* Br. at 2. Not so. The revival principle has its roots in *Hunter*, which Plaintiffs cited in their summary judgment motion and discussed at length in their opposition to Defendants' motion to dismiss. Plaintiffs also relied on this Court's own robust discussion of relevant principles in its Count V ruling. Ignoring all that, Defendants seize upon *In re J.P.* But that case likewise cites *Hunter* and *Barker* for the time-honored principle that an unconstitutional amendment cannot have "superseding effect and the prior statute remains in full force as though no amending legislation had been enacted." 648 P.2d at 1378 n.14. Defendants, again, simply ignore this precedent.

Third, Defendants instead focus on one stray statement from the *In re J.P.* footnote noting a possible exception applied in Idaho, under which "a different result *might* follow where the

Legislature clearly intended the prior statute to be repealed even if the substituted statute were invalidated." *Id.* (citing *Am. Indep. Party in Idaho, Inc. v. Cenarrusa*, 92 Idaho 356, 442 P.2d 766 (1968)) (emphasis added). But the Utah Supreme Court declined to adopt this Idaho exception, stating "we have no basis to attribute such intent to the Legislature in this case." *Id.* In any event, nothing in H.B. 2004's plain text expressly precludes revival of the 2011 map if the 2021 map is ruled unconstitutional. Instead, H.B. 2004 simply amends § 20A-13-102 to substitute the 2021 map for the 2011 map. *See State v. Miller*, 2008 UT 61, ¶ 18, 193 P.3d 92, 95, as amended (Jan. 25, 2024) ("The best evidence of the legislature's intent is the plain language of the statute itself.") (cleaned up). Because that amendment is unconstitutional, it is void *ab initio* and of no effect, and the prior version of § 20A-13-102—including the 2011 map—necessarily remains operative.[1]

Defendants still claim that the Legislature could not have intended reversion to the 2011 map because it would have "made no sense" to revert to a map that may be malapportioned due to population changes. Br. at 3. But that argument only proves why the Legislature wrote H.B. 2004 to make the 2011 map operative if a court were to enjoin its 2021 replacement: the alternative would leave Utah with no congressional map at all. That result would *certainly* violate the Utah Constitution, which requires the state to be divided into congressional districts after each census, *see* Utah Const. art. IX, § 1, and guarantees citizens a fundamental right to vote in lawful districts, *see* Utah Const. art. IV, § 2; *Shields v. Toronto*, 16 Utah 2d 61, 395 P.2d 829, 832-33 (1964).

[1] Defendants' reliance on *Patapsco Guano Co. v. Bd. of Agric. of N.C.*, 171 U.S. 345 (1898), is misplaced. *Patapsco* addressed whether a state legislature's repeal of a repealer intended to revive earlier provisions, concluding it was "impossible to impute to the [legislature] the intention, in repealing parts of the Code which had been declared unconstitutional, to revive earlier laws" that shared the same defect. *Id.* at 353. That ordinary repeal analysis, based on legislative intent, is irrelevant here. Utah law treats unconstitutional enactments, including repeals and amendments, as void *ab initio*—"impotent to repeal the old law"—regardless of the legislature's intent. *Barker*, 167 P. at 264; *Hunter*, 159 P. at 1024.

Fourth, Defendants emphasize that injunctions do not erase statutes but merely enjoin their enforcement. Br. at 4-5. That is true—but here the Court has enjoined the enforcement of H.B. 2004's *repeal* of the 2011 map precisely because that repeal was void from its inception. Thus, the 2011 map remains in effect.

Fifth, Defendants claim to identify "no case in which a court has resuscitated old district lines only to enjoin them." Br. at 5. As an initial matter, Count VIII does not ask the Court to resuscitate district lines or to do so for the purpose of enjoining them. The Court has already ruled unconstitutional H.B. 2004, an enactment that sought to repeal a prior redistricting plan. That simply means, by operation of law, the Legislature's attempted repeal was never effected, and the prior redistricting plan—though now malapportioned—remains operative.

This is similar to *Legislative Research Commission v. Fischer*, 366 S.W.3d 905 (Ky. 2012). There, the Kentucky Supreme Court held that the state's 2012 legislative districts violated the state constitution's equal population and county split minimization requirements. *Id.* at 908. The relevant maps were enacted in a bill that repealed and replaced the previous decade's districts. *See* House Bill 1, Kentucky Gen. Assem. (2012), https://apps.legislature.ky.gov/record/12rs/hb1.html. The state supreme court ruled that as an unconstitutional statute, House Bill 1 was void *ab initio*, "inoperative as if it had never been passed and never existed." *Fischer*, 366 S.W.3d at 917. Citing precedent recognizing the "necessary result" to be reinstatement of the immediately previous redistricting plan, the court ruled that the state was required to use the 2002 maps. *Id.* at 917-18. The court acknowledged that those maps were likewise unconstitutionally malapportioned, but concluded they were "the only legislative districts capable of implementation" due to quickly approaching elections. *Id.* at 917.

Here, H.B. 2004 is similarly unconstitutional, and the prior decade's map, though malapportioned, is in effect by operation of law. The difference is that Utah need not be stuck with the 2011 map because this Court has before it an already pending malapportionment claim against the map ripe for adjudication and ample time to ensure a lawful remedial map is in place for the next election.[2]

Finally, Defendants suggest that recognizing the 2011 map as operative once H.B. 2004's enforcement was enjoined would amount to judicial legislation. Br. at 4. Not so. The principle that unconstitutional enactments, including repeals and amendments, are void *ab initio* is a rule of construction long applied by Utah courts. This Court itself put it plainly when it enjoined the enforcement of S.B. 200 in adjudicating Count V: "Proposition 4 is the law of the land by operation of law, not by an act of legislation by this Court." Count V MSJ Order at 68. So too here.

Because the 2011 map remains in effect until lawfully displaced, Plaintiffs' claim is not moot. It will remain live until either the Court orders a remedial map to cure the malapportionment or the Legislature enacts a lawful map. Nor does Count VIII seek an advisory opinion. The 2011 plan was never lawfully repealed; the enactment purporting to repeal it was unconstitutional and thus void *ab initio*. Determining the legal consequences of that fact is not an advisory opinion but a straightforward application of Utah precedent. Because the 2011 map is operative and undisputedly malapportioned in violation of the Utah Constitution, Plaintiffs are entitled to summary judgment on Count VIII.

[2] As Plaintiffs have explained, the U.S. Supreme Court has also specifically encouraged state courts to remedy malapportioned districts. *See Scott v. Germano*, 381 U.S. 407, 409 (1965); *Growe v. Emison*, 507 U.S. 25, 33 (1993).

CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs' motion for summary judgment on Count VIII and impose an equally apportioned map that complies with Proposition 4's requirements in the event the Legislature fails to enact a remedial map or such map is enjoined as violative of Proposition 4's requirements following the upcoming remedial proceeding.

RESPECTFULLY SUBMITTED this 25th day of September 2025.

/s/ David C. Reymann

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