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Counsel for Legislative Defendants

**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'
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION ON
PLAINTIFFS' THIRD SUPPLE-
MENTAL COMPLAINT**

Case No.: 220901712

Honorable Dianna Gibson

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INTRODUCTION

Plaintiffs ask this Court to reverse itself, and to invalidate essential election map standards just weeks before the Lieutenant Governor’s November 10 deadline to adopt a map for the 2026 congressional election. Proposition 4 requires the use of judicial standards, data and statistical methods to assess proposed maps. This Court’s summary judgment order already confirmed that the Legislature retains discretion over which judicial standards, data, and methods to use when evaluating redistricting plans. The bill that Plaintiffs challenge, S.B. 1011, exercises that discretion in line with Art. IX, cl. 1 of the Utah Constitution. It specifies what tests and standards any new election map must meet to be considered neutral—giving effect to Proposition 4’s general language. The ensemble analysis, partisan bias test, and mean-median test are nationally accepted and recognized as the best methods for evaluating election maps. Those standards are squarely within the Legislature’s authority and follow the guidance from this Court’s previous orders. Nothing about S.B. 1011 warrants injunctive relief.

But Plaintiffs now claim that Proposition 4 deprives the Legislature of its Article IX authority, and that any attempt to bring clarity to an already thorny redistricting process impairs the voters’ will. They propose a slew of underdeveloped theories, but each would require this Court to break new ground, and not one is backed by law. Plaintiffs would enjoin the only measures in place to evaluate election maps, with no time left to enact any others. In effect, they want this Court to make *them* the Legislature, specifying the standards this Court—and the *actual* Legislature—should use to assess the proposed maps in the compressed window before the Lieutenant Governor’s deadline.

S.B. 1011 does not impair Proposition 4. Plaintiffs’ effort should be rejected for what it is—an erroneous effort to obtain permanent injunctive relief that would reverse this Court’s own ruling, deprive the Legislature of its article IX discretion, and invalidate carefully chosen, objective measures for assessing fair and unbiased election maps.

BACKGROUND

I. The Court enjoins the 2021 Plan but leaves discretion to the Legislature.

Following a remand from the Utah Supreme Court, *League of Women Voters of Utah v. Utah State Leg.*, 2024 UT 21, ¶¶48-50, 200 (*LWV I*), and additional briefing, the Court entered an order in August 2025 granting summary judgment to Plaintiffs on Count V. Doc. 470 at 69. The Court agreed with Plaintiffs that S.B. 200 violated the people’s right to alter or reform the government by impairing the citizen initiative known as Proposition 4. As a remedy, this Court enjoined the 2021 Congressional Map, H.B. 2004, because it was the “fruit” of S.B. 200’s “unlawful repeal” of Proposition 4. *Id.* at 70.

Among its holdings, the Court emphasized the “need for” the “mandatory, neutral, prioritized redistricting standards and procedures enacted under Proposition 4.” *Id.* at 29. Compliance with these standards, in the Court’s view, provided the “obvious defense against challenges” “that a map [...] ‘unduly favor[s]’” one party or another. *Id.* In addressing whether Proposition 4 interfered with legislative authority over redistricting, the Court also held that “given the general, non-specific nature of the language” in Proposition 4’s prohibition on politically biased maps, “the legislature retains discretion in determining what judicial standards are applicable and they retain discretion to determine the ‘best available data and scientific and statistical methods’ to use in evaluating redistricting plans for compliance with ... Proposition 4 redistricting standards.” *Id.* at 29-30.

The Court ordered the Legislature to “design and enact a remedial congressional redistricting map in conformity with Proposition 4’s mandatory redistricting standards and requirements.” *Id.* at 76. It required any redistricting plan put in place by the Legislature and the Commission to be evaluated using “judicial standards and the best available data and scientific and statistical methods, including measures of partisan symmetry,” to assess whether a proposed plan complied with Proposition 4’s standards. *See* Utah Code §20A-19-103(5).

Legislative Defendants moved the Court to stay its injunction pending remedial proceedings and subsequent appeals. *See* Doc. 482. On September 2, the Lieutenant Governor explained that a congressional map must be in place by November 10 to ensure that her office and the county clerks can conduct the 2026 election in an orderly fashion. *See* Doc. 494. Also on September 2, the Court denied the motion for stay. The Court acknowledged the importance of legal issues and the consequential nature of its injunction. The Court also recognized that the “timelines here are short,” but said that redistricting has been accomplished in other states “under tighter timelines.” *Id.* As examples, the Court referred to Texas and California. *Id.* Those and others, according to the Court, “suggest[]” that “there is time to redistrict and comply with Proposition 4.” *Id.* And as the Court saw it, because the 2026 election was “more than a year away” and because election deadlines “can be moved without impacting the 2026 elections,” it was “not impossible for the parties to have a final decision from the Utah Supreme Court in time for and without impacting the 2026 midterm elections.” Exhibit C-3. The Court added that the 2026 election should proceed “with a lawful congressional plan designed in compliance with Proposition 4’s traditional redistricting standards and its prohibition on partisan gerrymandering.” *Id.*

The parties stipulated by motion to the following schedule for the remedial proceedings and the court adopted it. *See* Docs. 500, 506. By September 25, the Legislature would publish its proposed alternative map. Between September 26 and October 5, the Legislature would make the proposed alternative map available for public comment. By October 6, the Legislature would enact the proposed alternative map and submit it to the Court. If Plaintiffs chose to submit their own proposed map, they would do so also by October 6. The parties would then submit supporting briefs, objections, and expert reports by October 17 and this Court would hold an evidentiary hearing on the alternative map(s) on October 23 and 24. By October 28, the parties would submit any proposed findings of fact and conclusions of law.

II. The Legislature enacts S.B. 1011 to make Proposition 4 clear and workable.

After the Court’s order and clarification, the Legislative Redistricting Committee began the redistricting process. At the first public hearing, Legislative staff provided an overview of the redistricting process and the status of the ongoing litigation. Staff presented the Proposition 4 standards, noting that the Legislature was required to follow them. Staff clarified that Proposition 4 prohibited dividing districts “in a manner that purposefully or unduly favors or disfavors any incumbent, elected official, candidate or prospective candidate for elective office, or any political party.” Utah Code §20A-19-103; Legis. Redistricting Comm. Meeting (Sept 22, 2025), <https://perma.cc/ZM2F-5FBY>, at 28:41. This standard captures both the legislature’s “intent” and the “results” of the map drawing process. *Id.* Political data could be considered only on the “back end” analysis of the map, not while lines are being drawn.

An attorney from the Office of Legal Research and General Counsel then explained that Proposition 4 requires evaluation of a plan’s compliance with redistricting criteria using “judicial standards and the best available data and scientific and statistical methods, including measures of partisan symmetry ... to assess whether a proposed redistricting plan abides by and conforms to” Proposition 4’s redistricting standards. Utah Code §20A-19-103(5); Legis. Redistricting Comm. Meeting (Sept 22, 2025), <https://perma.cc/ZM2F-5FBY>, at 31:57.

Quoting U.S. Supreme Court Justice Stevens, OLRGC staff defined the concept of “partisan symmetry” as requiring “that the electoral system treat similarly-situated parties equally, so that each receives the same fraction of legislative seats for a particular vote percentage as the other party would receive if it had received the same percentage.” *LULAC v. Perry*, 548 U.S. 399, 466 (2006) (Stevens, J., concurring) (citation omitted). “Under symmetry, the question isn’t whether the seat share is proportional to the vote share, it’s whether if Party A gets a certain percent and has a vote outcome, if we

flipped and Party B got the same vote, do they also get the same outcome.” Legis. Redistricting Comm. Meeting (Sept 22, 2025), <https://perma.cc/ZM2F-5FBY>, at 34:20.

Senator Brady Brammer then presented a bill, which provided a statutory definition of “partisan symmetry” and the standards to use to evaluate whether a map “purposefully or unduly favored” one party or the other. *Id.* at 40:15. The bill’s purpose, Senator Brammer said, was to “facilitate” Proposition 4’s reforms, given the Court’s order. *Id.* at 44:46. Senator Brammer stated that the bill attempted to clarify the applicable standards, because this Court’s order itself recognized the legislature’s discretion to “determin[e] what judicial standards are applicable.” Doc. 470 at 29-30.

Because Proposition 4 expressly requires “partisan symmetry”—the first time a state statute had done so—Senator Brammer’s proposed bill included methods to measure partisan symmetry. Legis. Redistricting Comm. Meeting (Sept 22, 2025), <https://perma.cc/ZM2F-5FBY>, at 44:20. He explained that the key principle behind partisan symmetry is that “the outcome of an election should be determined by the voters and not the map.” *Id.*, at 46:53. This would help provide “clarity for the courts.” *Id.* at 43:02. “We are following what we see in the judge’s order as something that would be helpful to the court.” *Id.* at 43:42. He expressed that the bill would “support what Prop 4 says,” which is “partisan symmetry.” *Id.* at 43:51. He expressed that any review of this provision should be governed by “rational basis,” not “strict scrutiny,” since it effectuates, rather than reforms, Proposition 4. *Id.* at 45:12.

Senator Brammer proposed using a method known as the “partisan bias test” to assess partisan symmetry. He said it was used to “measure partisan symmetry by measuring lines of a district map and determining whether each party has a symmetrical opportunity to win a seat.” *Id.* at 45:49. The hypothetical election used to determine bias is separate from the outcome of any actual election. And the test results demonstrate if the map is skewed to one party or another. The test would help avoid district “packing” and “cracking.” *Id.* at 47:04.

He said the “partisan bias test” is more accurate than other symmetry standards, such as the efficiency gap. Senator Escamilla (D-SD10) agreed that the efficiency gap test did not apply to a jurisdiction with fewer than six districts. She also stated that she would prefer more than one test of partisan symmetry to be in the bill. Representative Doug Owens (D-HD33) similarly expressed concern about only having one test of partisan symmetry in the bill. *Id.* at 1:16:38.

Dr. Sean Trende then addressed the committee. He was retained as an expert for the ongoing litigation, and retained separately by the Legislature to assess maps. *Id.* at 1:32:40. Dr. Trende is an expert in political science, redistricting, and demographics. *See Trende Report at 3-5*¹ (qualifications).

After walking through multiple provisions in Proposition 4, Dr. Trende discussed the partisan symmetry requirement. Proposition 4, he explained, asked two questions: whether a map “purposefully” favors a partisan outcome, and whether it “unduly” does so. Legis. Redistricting Comm. Meeting (Sept 22, 2025), <https://perma.cc/ZM2F-5FBY>, at 1:52:01. The “purpose” test asks “if you were drawing without any political data,” would this map “look like what you would expect it to produce?” Is this map “trying to help Republicans or trying to help Democrats?” *Id.* at 1:52:18.

Dr. Trende explained that the “standard-issue” way to determine whether a map “purposefully” favors a partisan outcome is by using computer simulations. *Id.* at 1:52:32. He explained that he compared the maps he produced to “ensembles,” which are sets of maps generated by computers to conform with certain requirements, such as the Proposition 4 requirements. *Id.* at 1:52:52.

Dr. Trende then explained that each of the proposed maps passed the “partisan bias test.” He said that “partisan symmetry” was the “gold standard” for determining whether the outcome of a map is to favor one party or the other. *Id.* at 1:55:47. He described it as the “do unto others as you would have them do unto you” standard. *Id.* at 1:55:57. He concluded that the best measure of partisan

¹ The expert reports cited in this brief refer to the documents filed at Docs. 612-14, as attachments A, B, and C to the Brief in Support of the 2025 Plan, Doc. 611.

symmetry was the partisan bias test because it was the “only test” that truly measures partisan symmetry. *Id.* at 1:56:51; *see also* Jonathan Katz, Gary King, and Elizabeth Rosenblatt, *Theoretical Foundations and Empirical Evaluations of Partisan Fairness in District-Based Democracies*, 114 AM. POL. SCI. REV. 164, 164 (2020). And because Proposition 4 requires “partisan symmetry,” it is “not an option to *not* include a partisan bias test.” Legis. Redistricting Comm. Meeting (Sept 22, 2025), <https://perma.cc/ZM2F-5FBY>, at 1:57:13.

On Friday, October 3, 2025, Senator Brammer made public his bill file for S.B. 1011, which established tests to assess whether the congressional map “purposefully or unduly favored” any partisan outcome. Following prior discussion from committee members and public input from the previous weeks calling for more tests, Senator Brammer amended his initial proposal to add two additional tests to “ensure the analysis of maps is more robust to identify undue favoring or disfavoring of any party.” *Proposed Redistricting Standards Bill Now Include Three Tests*, Utah State Senate (Oct. 3, 2025) <https://senate.utah.gov/proposed-redistricting-standards-bill-now-include-three-tests/>; *see also* Legis. Redistricting Comm. (September 22, 2025) at 1:01:12 (Sen. Escamilla criticizing the original Brammer bill as only having one test, and proposing that more, including the mean-median test, be included); *id.* at 1:16:43 (Rep. Owens expressing concern about only having one test of partisan symmetry in the bill) *id.* at 29:46, 44:36, 1:16:22 (members of the public calling for more than one test of partisan symmetry). Legis. Redistricting Comm. Meeting (Sept. 24, 2025), <https://bit.ly/4n2xDyB>, at 2:08:31 (same).

S.B. 1011 defined and required three statistical methods for analyzing maps: the ensemble analysis, the partisan-bias test, and the mean-median difference test. It also established that “any judicial review of a congressional redistricting plan to determine whether the legislature or commission complies with this section regarding purposefully or unduly favoring or disfavoring a political party shall base the review on the outcomes of” those three tests. Utah Code §20A-19-103(8). In other

words, a map that passed the ensemble analysis, partisan-bias test, and the mean-median test would be deemed unbiased, fair, and compliant with Proposition 4's requirements, as shown by the best available data and statistical methods.

S.B. 1011 was introduced in the House and Senate on October 6, passed both chambers, and signed by Governor Cox.²

III. Plaintiffs move to supplement their complaint and oppose S.B. 1011.

The day after S.B. 1011 was passed, Plaintiffs requested leave to supplement their Amended Complaint. *See* Doc. 538-39. The proposed Supplemental Complaint contained allegations challenging S.B. 1011. It requested relief on six counts, numbered 16-21, derived from various provisions in the Utah Constitution: (16) Alter or Reform Clause – Article I, Section 2; (17) Free Election Clause – Article I, Section 17; (18) Equal Protection Rights – Article I, Sections 2 & 24; (19) Free Speech and Association Rights – Article I, Sections 1 & 15; (20) Right to Vote – Article IV, Section 2; (21) Right to Free Government – Article I, Sections 2 & 27. Plaintiffs later amended their proposed supplemental complaint because it quoted a version of S.B. 1011 that was amended before it was enacted. Doc. 548.

Before receiving leave to file their supplemental complaint, Plaintiffs moved for a preliminary injunction on all six counts. Doc. 555 (**PI Mot.**). They also sought expedited consideration of both their leave to supplement and the motion for injunctive relief. Doc. 557-59. Plaintiffs' request comes in the middle of the agreed upon briefing schedule for new congressional maps. Despite the Lieutenant Governor's swiftly approaching deadline, Plaintiffs ask for an injunction against S.B. 1011 in its entirety.

On October 13, the court issued a scheduling order setting the deadline to file this response in opposition on October 22, and any replies by October 29. Doc. 573. The court also ordered a

² A complete factual history of the proceedings that led to the Legislature's contemporaneous adoption of the accompanying 2025 Plan is reproduced in Legislative Defendant's Brief in Support of the 2025 Plan, Doc. 611, at 2-24 and incorporated here by reference.

hearing on the motions. Legislative Defendants submitted their redistricting plan to the Court on October 17, and the Court is scheduled to hear evidence and arguments on the proposed redistricting plans on October 23-24.

STANDARD OF REVIEW

Preliminary injunctions are an extraordinary remedy. They are the exception, not the rule. Plaintiffs must prove (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm, (3) the balance of the equities favors an injunction, and (4) the public interest favors an injunction. Utah R. Civ. P. 65A(e). In elections cases such as this one, the Court must be cognizant of “[t]he overriding importance of the public’s interest in the integrity of the election process and the breadth of a court of equity’s discretion.” *In re Cook*, 882 P.2d 656, 659 (Utah 1994). An inability to conduct an election according to duly enacted laws inflicts “irreparable harm” on the public and the Legislature. *See Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018). Even if a court “find[s] merit” in a claim, a preliminary injunction must still be denied if it will “cause a ‘serious disruption of election process,’ including risk of interference with the rights of absentee and other voters.” *Cook*, 882 P.2d at 658-59 (quoting *Williams v. Rhodes*, 393 U.S. 23, 35 (1968)).

And where, as here, Plaintiffs seek a “disfavored” mandatory preliminary injunction that would “chang[e] the status quo,” and “gran[t] all the relief [Plaintiffs] would expect from a trial win” on its amended complaint, Plaintiffs face “a heavier burden on the likelihood-of-success-on-the-merits and the balance-of-harms factors.” *FTN-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019).³ “A mandatory injunction will never be granted where it might operate inequitably or oppressively.” *Salt Lake County v. Kartchner*, 552 P.2d 136, 140 (Utah 1976).

³ See *PPAU v. State*, 2024 UT 28, ¶86 (“Since we borrowed the preliminary injunction standards from the Tenth Circuit, we look to Tenth Circuit caselaw for guidance.”).

SUMMARY OF ARGUMENT

By clarifying the standards for redistricting plans, the Legislature added scaffolding to the foundation laid by Proposition 4. The scaffolding is neutral, unbiased, and uses the best available methods to detect partisan gerrymanders and ensure partisan symmetry. Plaintiffs' drastic injunction would demolish that scaffolding, with no time to rebuild before the Lieutenant Governor's deadline.

The Right to Reform count fails out of the gate. This Court already held the Legislature "retained discretion" to determine applicable judicial standards and the best data and methods to assess redistricting maps. Doc. 490 at 29. Enacting S.B. 1011 is a valid exercise of legislative power, so it need meet only rational basis review. The judicial standards and statistical tests required by S.B. 1011 are the best measurements of partisan symmetry, prevent partisan gerrymanders, and were selected as the best option to make Proposition 4 workable. Plaintiffs' objections are based on misreadings of Proposition 4, flawed statistical analysis, and misunderstandings of partisan symmetry.

Even if the law impaired Proposition 4, it would meet strict scrutiny because of the compelling interest in having objective, workable redistricting standards, and its narrow tailoring to the reform interests of Proposition 4. Plaintiffs remaining claims are undeveloped and unlikely to succeed.

The proposed injunction would disrupt critical election preparations. And as a result, it would provide total relief to the Plaintiffs even though the motion arises in a preliminary posture. The balance of the equities and the public interest disfavor this outcome, given the impending deadline from the Lieutenant Governor, and the disruption that could result from a lack of guidance or objective tests.

Plaintiffs' efforts make plain the irony here: in their apparent crusade against partisan gerrymandering, Plaintiffs will accept no outcome except one that guarantees a Democrat victory in at least one district. They admit that median election results in Utah are "safely Republican" whenever "lines are drawn neutrally." Doc. 548 at ¶ 97. But Plaintiffs' motion leaves no doubt—they will not be satisfied until they have achieved a purposeful partisan gerrymander of their own.

ARGUMENT

Extraordinary injunctive relief requires a showing that there is a likelihood of success on the merits. Because Plaintiffs seek a mandatory injunction to change the status quo, that burden is even heavier here. Their claims fail that first hurdle. Because there is no likelihood of success on the merits, there is also no likelihood of irreparable harm.

I. Plaintiffs’ Right to Reform claim is likely to fail because S.B. 1011 is within the Legislature’s discretion and does not impair Proposition 4.

Plaintiffs contend that S.B. 1011’s tests and standards impair Proposition 4 and trigger strict scrutiny by violating the Right to Reform. But the Utah Supreme Court held an act of the Legislature only violates the Right to Reform if it “amend[s], repeal[s], or replace[s] the initiative in a manner that impair[s] the reform contained in the initiative.” *LWV I*, 2024 UT at ¶74.

S.B. 1011 does not impair the initiative. It works in harmony with Proposition 4 to enhance its goal of neutral and objective map-drawing. Proposition 4 instructs the legislature to select and use “judicial standards and the best available data and scientific and statistical methods, including measures of partisan symmetry,” to assess any proposed redistricting plan. Utah Code §20A-19-103(5). The Legislature has done just that—exercised its discretion to determine what standards applied, and what methods were best used for evaluating proposed maps, filling the gap left by the initiative.

A. The Legislature may determine what standards, data, and methods are best used to evaluate redistricting plans.

Article IX, sec. 1 of the Utah Constitution requires the legislature to “divide the state into congressional, legislative, and other districts.” Setting standards for elections and redistricting is integral to the legislative redistricting function. *See Parkinson v. Watson*, 4 Utah 2d 191, 203 (1955). And as the Utah Supreme Court held, “the Legislature retained the ultimate responsibility” for redistricting, even under Proposition 4. *LWV I*, 2024 UT at ¶198.

Proposition 4 prohibits “divid[ing] districts in a manner that purposefully or unduly favors or disfavors any incumbent elected official, candidate or prospective candidate for elective office, or any political party.” Utah Code 20A-19-103(4). As this Court held in its summary judgment order, “given the general, non-specific nature of the language, the legislature retains discretion in determining what judicial standards are applicable and they retain discretion to determine the ‘best available data and scientific and statistical methods’ to use in evaluating redistricting plans for compliance with ... Proposition 4 redistricting standards.” Doc. 470 at 29-30.

Yet Plaintiffs claim that this language permits the legislature to choose only which standards, data, and methods to use in its own evaluation. That is not what this Court held. The order reinforced that Proposition 4 did “not impair the legislature’s authority under article IX and does not displace the legislature’s legislative redistricting authority.” *Id.* at 30. Consistent with that holding, the Legislature exercised its Article IX authority to determine what standards applied, and what methods were best used for evaluating proposed maps.

Because S.B. 1011 falls within this core Article IX discretion—enacting standards and tests for the fair administration of redistricting—it need only meet rational basis review. “It is axiomatic that laws enacted by the legislature are presumed to be constitutional and that the legislature is accorded wide latitude in complying with constitutional directives.” *Safe to Learn-Safe to Worship Coal. v. State*, 2004 UT 32, ¶35, (quoting *Owens v. Hunt*, 882 P.2d 660 (Utah 1994)). From early redistricting cases brought in this state, the Utah Supreme Court has shown deference to the Legislature and limited its review of redistricting legislation, because “the court is not the legislature and can nullify” redistricting legislation only if it is “wholly unreasonable and arbitrary.” *Parkinson v. Watson*, 4 Utah 2d 191, 203 (1955). This Court, too, relied on the “well-recognized principle” that it is the legislature “wherein lies the residuum of governmental power,” and that “[r]edistricting is a quintessential legislative function.” Doc. 470 at 21 (quoting *Parkinson*, 4 Utah 2d at 199); *id.* at 25. “[H]eighted scrutiny [of election

legislation] would tie the hands of states seeking to assure that elections are operated equitably and efficiently.” *Utah Safe to Learn-Safe to Worship Coal.*, 2004 UT at ¶ 34 (cleaned up).

S.B. 1011 easily clears rational basis review. It was adopted after careful consideration, expert input, and public comment. It complies with the instructions from this Court and the precepts of Proposition 4. Nothing about it is arbitrary. And “as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)). S.B. 1011’s objective tests and judicial standards ensure that future legislators, judges, and litigants know what requirements an election map must meet. It gives substance to Proposition 4’s “general, non-specific ... language.” Doc. 470 at 29. So Plaintiffs err by contending that S.B. 1011 “neuter[s]” Proposition 4’s prohibition on gerrymandering. Doc. 548 at ¶¶1, 7. Nothing could be further from the truth. S.B. 1011 gives Proposition 4’s redistricting standards teeth.

B. The tests chosen by the Legislature measure partisan symmetry and prevent bias as required by Proposition 4.

Plaintiffs’ requested injunction not only contradicts the plain language of the summary judgment order but also requires the inference that Proposition 4 meant for its opaque language to be the final say on all matters of redistricting, with no additional specification or clarification allowed. The ensemble analysis, partisan-bias test, and mean-median difference test do not impair Proposition 4; they clarify and build on its general terms. These measures identify and eliminate bias and promote partisan symmetry, as required. *See* Utah Code §20A-19-103(4)-(5).

Partisan symmetry “is widely accepted by scholars as providing a measure of partisan fairness in electoral systems.” *LULAC*, 548 U.S. at 466 (Stevens, J., concurring) (citation omitted). “The symmetry standard requires that the electoral system treat similarly-situated parties equally, so that each receives the same fraction of legislative seats for a particular vote percentage as the other party would receive if it had received the same percentage.” Bernard Grofman & Gary King, *The Future of Partisan*

Symmetry as a Jud. Test for Partisan Gerrymandering after LULAC v. Perry, 6 ELECTION L. J. 1, 6 (2007). In Utah, partisan symmetry would require that if the population’s political balance were reversed—if Democrats enjoyed the same majority of voters that Republicans currently have—they would win the same number seats. The tests chosen by the Legislature ensure that elections are symmetrical, exactly as Proposition 4 requires.

Still Plaintiffs resort to terms like “partisan favoritism.” *See, e.g., PI Mot. at 12, 13, 15, 16, 18, 19.* They ignore that Proposition 4 specifically mandates partisan symmetry—and the accepted definition of partisan symmetry is to “treat similarly-situated parties equally.” Grofman & King, *The Future of Partisan Symmetry*, 6 ELECTION L. J. at 6. Plaintiffs disregard the meaning of partisan symmetry throughout their brief. They insist that S.B. 1011 requires maps that show partisan *favoritism* because there are no safe Democrat seats when maps are “drawn neutrally.” Doc. 548 at ¶97. But under the same maps, if Democrats held an equivalent majority, they would win the same number of seats as Republicans do now. “Partisan symmetry only requires that the electoral playing field be level for both parties.” **Katz Report at 4** (“[I]t is not necessarily unfair for the Democrats to win 65% of the seats with 55% of the statewide vote, as long as the same opportunity is available to the Republicans.”).

Plaintiffs insist that Proposition 4 somehow meant to prohibit the Legislature from establishing standards to evaluate maps. Not so. Proposition 4 forbids plans that *purposefully* or *unduly* favor a political party, and requires using the best tests to root out plans that do so. Utah Code §20A-19-103(4). And Proposition 4 already lists factors that the legislature may not rely on. *See id.* §20A-19-103(6). It excludes voting records, political party affiliations, and residential addresses of incumbents from consideration. “And under the *expressio unius* canon, the expression of that limitation is an implied rejection of others.” *Nevares v. M.L.S.*, 2015 UT 34, ¶31. Neutral tests for partisan symmetry like the ensemble test, partisan-bias test, and mean-median difference test are not listed among the prohibited considerations.

Plaintiffs still object to the way the Legislature defines and implements S.B. 1011’s tests. Their objections rely exclusively on the expert report of Dr. Warshaw.⁴ Each falls far short of showing a likelihood that S.B. 1011 impairs Proposition 4 or any right to reform.

1. The ensemble analysis ensures neutral maps and prevents outlier districts.

S.B. 1011 first requires a proposed redistricting plan to be compared against a set of computer-drawn simulations to determine whether the plan exhibits evidence of partisan purpose. *See* Utah Code §20A-19-103(1)(a)(ii). In an ensemble analysis, an algorithm produces thousands or tens of thousands of maps subject to a variety of neutral parameters like population equality, contiguity, compactness, or keeping cities or counties intact. This creates an “ensemble” of maps that reflect what would be expected in a state where maps are drawn without respect to partisan criteria. A proposed map drawn without partisan input should fall within a similar range to most maps that appear in the ensemble, because those maps are randomly generated by a computer. The more the map deviates from that set, the more likely it is that partisan considerations played a role.

Simulation analysis is widespread in political science and is the industry-standard way to ensure that maps are not drawn with partisan intent or bias. It has since been accepted and used in multiple courts for redistricting purposes, including state courts in Maryland, New York, Ohio, North Carolina, New Mexico, and Pennsylvania. *See, e.g., Harkenrider v. Hochul*, 197 N.E.3d 437 (N.Y. 2022), *Harper v. Hall*, 868 S.E.2d 499 (N.C. 2023); *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa 2018); *Republican Party of N.M. v. Oliver*, No. D-506-CV-202200041 (N.M. 5th Dist. Oct. 6, 2023); *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, 195 N.E.3d 974 (Ohio 2022). As Dr. Trende told the Legislative Redistricting Committee, ensemble tests are the “standard-issue” way to determine

⁴ Dr. Warshaw’s report was based on a “preliminary assessment” of the tests in S.B. 1011. It included such erroneous calculations that Dr. Warshaw was later forced to supplement his report with new conclusions, presumably once he realized his error. Plaintiffs motion, however, includes only the original report and conclusions.

whether a map “purposefully” favors a partisan outcome. Legis. Redistricting Comm. Meeting (Sept 22, 2025), <https://perma.cc/ZM2F-5FBY>, at 1:52:32.

S.B. 1011 uses the “ranked marginal deviation” test to compare the simulations to the enacted map. This is a standard method of evaluating how a particular map stacks up to the computer-simulated ensemble. S.B. 1011 requires that after a set of at least 4,000 maps are produced, the set should be culled “to include only redistricting plans that pass the partisan bias test to ensure the plan is within the statistical bounds of passing plans.” Utah Code §20A-19-103(1)(iii)(c). Any proposed redistricting plan must exhibit less deviation than the 95% cutoff for both the culled and unculted set of maps, further ensuring only neutral maps are drawn. This is the “standard statistical significance threshold and is used by the vast majority of scientific and statistical research to indicate something as statistically significant or an outlier.” **Barber Report at 24**. This safeguard against purposeful partisan gerrymandering does not impair Proposition 4.

Plaintiffs object that the unculted ensemble will inevitably include maps that would violate other measures of partisan bias and insist that the ensemble should be culled according to neutral criteria. But Plaintiffs then also object to culling the ensemble. The Legislature, it seems, cannot win. The first objection—comparison to an unculted ensemble—ignores that the ensemble itself is generated using neutral redistricting criteria. Utah Code §20A-19-103(1)(f). At no point is the ensemble generator given partisan data to incorporate into its maps. An ensemble analysis allows map-drawers to ensure their map “looks typical of nonpartisan plan construction.” **Barber Report at 23**. And the 95% cutoff ensures that proposed maps are not compared favorably to any statistical outliers. The second objection—comparison to the culled ensemble—is only that it incorporates the standards from the partisan bias test.

2. The partisan bias test is the best assessment of partisan symmetry.

Partisan bias is a measurement of deviation from partisan symmetry. Under the partisan bias test, a symmetrical map is one in which the electoral playing field is level for both parties. In other words, if Republicans have 55% of the vote and win 65% of the seats, then when Democrats receive 55% of the vote, they should also receive 65% of the seats. The test measures a map's symmetry by taking the two parties' statewide vote share in a particular election and then imposing a uniform swing of the magnitude necessary to make the parties split the statewide vote equally. *See Common Cause v. Rucho*, 318 F.Supp.3d 777, 891-92 (M.D. N.C. 2018); *see also LULAC*, 548 U.S. at 419 (explaining that partisan bias is measured by "comparing how both parties would fare hypothetically if they each (in turn) had received a given percentage of the vote" (citation omitted)). The test then calculates the number of seats each party would win after performing the uniform swing. When partisan bias is close to zero, a districting plan does not favor one party or the other.

Recent academic research has shown partisan bias is the most accurate measure of partisan symmetry. *See* Jonathan N. Katz, Gary King & Elizabeth Rosenblatt, *Theoretical Foundations and Empirical Evaluations of Partisan Fairness in District-Based Democracies*, 114 AM. POL. SCI. REV. 164 (2020)); **Trende Report at 49** ("a statute that uses the 'best available data and scientific and statistical methods' to measure 'partisan symmetry' would employ the partisan bias test."); *see* **Katz Report at 9-12** (describing the problems with alternative tests).

Plaintiffs criticize the partisan-bias test because it is based on a "hypothetical" or "imaginary" world. But it is this measure of a potential future that makes the partisan bias test the only appropriate test for long-term partisan symmetry. A map would be truly partisan if it had to be redrawn based on which party held the majority at any given time. No one can predict how populations or vote shares will shift between elections. And any measure of partisan symmetry should account for the fact that another party may win a majority of Utah voters' support someday. To ensure that any map adopted

as unbiased today will still be unbiased tomorrow, the partisan bias test looks to a world where demographics have shifted. That is not contrary to any provision in Proposition 4. Rather, it operationalizes Proposition 4’s requirement of partisan symmetry.

Plaintiffs also argue, based on the report of Dr. Warshaw, that the partisan bias test is not applicable in states like Utah with non-competitive districts. But “this concern is unfounded.” **Katz Report at 8.** The reliability of “partisan vote swing”—the extent to which demographics must shift to measure partisan bias—does not “degrade with the size of the partisan swing.” *Id.* Even “exceedingly unlikely” electoral outcomes “such as Washington DC voting overwhelming Republican” or Utah voting overwhelming Democrat can be simulated and measured for symmetry using the partisan bias test. *Id.* (quoting Jonathan N. Katz, Gary King & Elizabeth Rosenblatt, *Theoretical Foundations and Empirical Evaluations of Partisan Fairness in District-Based Democracies*, 114 AM. POL. SCI. REV. 164 (2020)).

3. The mean-median difference test measures for partisan symmetry and prevents packing.

The mean-median difference test complements partisan bias as another measure of partisan symmetry. It measures “the difference between a party’s average statewide vote share and the party’s median vote share across all districts in a proposed redistricting plan.” Utah Code §20A-19-103(1)(b). If the difference “is greater than a 2% deviation from the mean,” then the proposed plan “fails the mean-median difference test” and is not a symmetrical map. *Id.* The smaller the difference, the less a plan is biased. The higher the divergence, the more a distribution is skewed in favor of one party and against its opponent. This prevents partisan packing and ensures that parties are spread out enough across districts that they do not unfairly dominate any one district that they could not otherwise win.

Plaintiffs object to this test—as they do the others—because these tests do not “bless” Plaintiffs’ preferred map outcome of creating a reliable Democrat seat. *See, e.g., PI Mot. at 14* (objecting that the partisan bias test gives a passing score to maps that do not include a Democrat seat). This argument starts from the premise that *any* fair map requires a safe Democrat seat. But an unbiased,

nonpartisan redistricting plan cannot start from the premise that any *specific* party *must* win any given seat. That is why S.B. 1011 incorporates multiple neutral tests.

C. Proposition 4 mandates judicial standards—not unguided preference.

Plaintiffs also argue that the judicial review provisions of S.B. 1011 impair Proposition 4’s reforms. First, Plaintiffs object to Section (8), which instructs that judicial review of a congressional redistricting plan under Proposition 4 must turn on the outcome of the three tests established by the statute. Second, Plaintiffs object to Section 4(b), which requires clear and convincing evidence of purpose before a court concludes that any map within the acceptable bounds of the ensemble analysis purposefully favors or disfavors a political party.

The first objection effectively reiterates Plaintiffs’ other arguments against the ensemble analysis, partisan-bias test, and mean-median test. As discussed, the Legislature’s decision to rely on those tests fell comfortably within its discretion. The Legislature had ample basis in the social science literature to conclude that those tests are the best methods available for achieving partisan symmetry, and do not impair Proposition 4. Plaintiffs insist judges must start and end with Proposition 4’s blank language of “judicial standards and the best data and scientific methods.” But this Court’s prior order recognizes that there are no judicially manageable standards for enforcing Proposition 4’s general and non-specific language without S.B. 1011’s clarification.

The second objection fares no better. Plaintiffs contend that requiring clear and convincing evidence impairs Proposition 4 because §20A-19-301 sets a preponderance of the evidence standard for judicial review. That ignores the fact that Section 4(b) only requires “clear and convincing evidence *of purpose*.” (emphasis added). It is a standard for assessing intent and limited to whether favoring or disfavoring a political party was purposeful. It does not impair the more general preponderance of the evidence standard.

D. Even if strict scrutiny applies, S.B. 1011 passes it because its objective standards are narrowly tailored to achieve Proposition 4’s goals of neutral redistricting and partisan symmetry.

Plaintiffs are wrong that S.B. 1011 triggers strict scrutiny. But even if it did, S.B. 1011 clears that high bar. The tests chosen by the Legislature serve Proposition 4’s compelling interests of neutral redistricting and partisan symmetry, and they are narrowly tailored to achieve those aims. *LWV I*, 2024 UT at ¶ 75.

Adopting specific, objective metrics for redistricting maps serves the compelling interest of ensuring neutral maps. Those metrics provide guidance as the Legislature considers redistricting plans, standards for judges who evaluate them, and confidence for the public who vote under them. That is why both Proposition 4 and S.B. 200 contained key language requiring judicial standards and statistical methods.

S.B. 1011 is narrowly tailored to establishing objective metrics for redistricting maps. As Dr. Trende testified, tests for partisan symmetry are non-optional, given the language of Proposition 4, and the tests chosen are the “gold standard” and “best practice” for measuring symmetry. Legis. Redistricting Comm. Meeting (Sept 22, 2025), <https://perma.cc/ZM2F-5FBY>, at 1:55:47. Plaintiffs suggest that a system without standards is somehow more narrowly tailored to Proposition 4’s aims than objective and established metrics. But that ignores Proposition 4’s own command for the Legislature to use judicial standards. And consider any judge who would evaluate the legality of any map with no more guidance than Proposition 4’s vague language. “[J]udicial action must be governed by *standard*, by *rule*, and must be principled, rational, and based upon reasoned distinctions found in the Constitution or laws.” *Rucho v. Common Cause*, 588 U.S. 684, 718 (2019) (internal quotation marks omitted). What one judge considers the “best evidence” may not be what another judge considers the best. Likewise, one judge might decide that a proposed map shows a partisan bias based on one test, while

her colleague in another courthouse finds the same map unbiased because he uses a different test. Proposition 4’s general language provides no consistent way to resolve such differences of opinion.

Plaintiffs suggest that enjoining S.B. 1011 would allow this Court to consider a wider range of evidence that would better serve Proposition 4’s aspirations. But their proposed alternatives have been thoroughly rejected as inapplicable in Utah. *See generally* **Katz Report at 9-12** (describing the problems with each test). Many of these tests were “never intended to be used in a state with four congressional districts” or in “uncompetitive states.” **Trende Report at 57**. The efficiency gap, for example, performs “poorly in small delegations like Utah’s four seats because its arithmetic is too course and volatile at that scale.” **Barber Report at 39; see also id. at 38** (“There is substantial peer-reviewed criticism that the efficiency gap does not actually measure partisan bias and can behave perversely.”); Annika King, Jacob Murri, Jake Callahan, Adrienne Russell, & Tyler J. Jarvis, *Mathematical Analysis of Redistricting in Utah*, 9 Stat. & Pub. Pol’y 136, 136-48 (2022) (applying the efficiency gap to Utah is “deeply problematic”). The Chief Justice of the United States has even described it as “sociological gobbledygook.” Tr. of Oral Arg., *Gill v. Whitford*, 585 U.S. 48 (2018) (No. 16-1161) (Roberts, C.J.).

To the extent Proposition 4’s aim was to make redistricting more accountable, S.B. 1011 is narrowly tailored to that goal too. The alternative—an open-ended inquiry without guidance—leaves redistricting to the preferences of the judiciary, a branch that by design is *less* politically accountable than the Legislature. And as discussed, decreased guidance in this area would be worse for the aims of Proposition 4 by opening a world of inconsistent rulings. S.B. 1011’s standards are narrowly tailored not to impair any reforms actually memorialized in Proposition 4’s text.

II. Plaintiffs’ remaining claims are likely to fail on the merits.

Counts 17-21 rely on theories of injuries to rights so attenuated that S.B. 1011 could not harm them. Each count would require this Court to strike new ground as the Plaintiffs pursue novel theories never upheld by any court. Furthermore, these counts all start from the premise that S.B. 1011 impairs

Proposition 4 or creates a partisan gerrymander. As laid out above, it does not. Not one of these counts is likely to succeed on the merits.

A. Free Elections Clause Claim

The Free Elections Clause states that “[a]ll elections shall be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Utah Const. art. I, §17. The Utah Supreme Court held in *Anderson v. Cook*, 130 P.2d 278, 285 (Utah 1942), that legislation which is part of election “machinery” does not violate the Free Elections Clause; that the Free Elections Clause does not interfere with the Legislature’s freedom “to provide by law for the conduct of elections, and the means of voting, and the methods of selecting nominees”; and that the Free Elections Clause “did not answer every question of elections law.” *See also*, *LWV I*, 2024 UT at ¶186 n.39 (discussing *Anderson*). It has never been applied to an alleged partisan gerrymander.

That is because the Free Elections Clause is concerned with the right to cast a vote, not with any particulars in how representation is apportioned. *See generally* *Anderson*, 130 P.2d at 285. It prohibits intimidation or undue influence (i.e., bribery) upon voters. *See Adams v. Lansdon*, 110 P. 280, 282 (Idaho 1910) (the free elections clause prohibited only “officers, civil or military,” from “meddl[ing] with or intimidat[ing] electors”); *see also* 1 Blackstone, *Commentaries on the Laws of England* 172 (the free-elections analogue in English common law prohibited “executive magistrate[s]” from “employ[ing] the force, treasure, and offices of the society, to corrupt the representatives”). S.B. 1011 does not interfere with the right to cast a vote.

B. Equal Protection Clause claim

For a law to be unconstitutional under Utah’s Uniform Operation of Laws Clause, the law must create a classification that is discriminatory, without reasonable necessity to further a legitimate legislative goal. *See Gullivan v. Walker*, 2002 UT 89, 42-43. S.B. 1011 does not create classifications, is not discriminatory, and is necessary to further a legitimate legislative goal—neutral redistricting and

partisan symmetry. The Uniform Operation of Laws Clause has never been applied to a redistricting plan.

Plaintiffs claim that the use of the tests and standards in S.B. 1011 creates a de facto classification that discriminates based on political party. It does not. S.B. 1011 requires multiple measures of nonpartisan neutrality and does not dilute anyone's vote, much less on a partisan basis. In fact, the partisan-bias test and the mean-median test are specifically designed to ensure that districts are drawn fairly and neutrally *even if* political demographics shifted. That symmetry means they would have the same effect on Republicans and Democrats alike. *See Gallivan*, 2002 UT 89 at 45 (“A classification is discriminatory when the members of the class or subclass are treated disparately”) (cleaned up).

C. Free Speech and Association claim

Plaintiffs claim that S.B. 1011 retaliates against minority party voters based on their expressive conduct. This underdeveloped claim is not supported by well-pleaded factual allegations sufficient to state a claim for relief, much less to provide for a likelihood of success on the merits to warrant injunctive relief.

Plaintiffs cite no opinion from any court holding that redistricting legislation—much less a law establishing merely the *standards* for redistricting—could bear retaliatory animus, impair speech or associational rights, or give rise to any free speech claims. And while voting may be expressive, and political parties associational, neither right is diminished because a voter does not get his chosen outcome. Regardless, S.B. 1011 would not implicate this right, because it does not affect minority party voters any differently from majority party voters. On the contrary, it facilitates the drawing of a redistricting plan that treats members of both parties the same—that is, symmetrically.

D. Right to Vote claim

Plaintiffs' Right to Vote claim rests on a myriad of flawed assumptions. Two of those bear mentioning here. First: The only way Democrat voters enjoy a full right to vote in Utah is if the congressional map contains one majority Democrat district. This assumption finds no support in

caselaw, and once again reveals that the actual goal of the Plaintiffs' requested injunction is to guarantee a Democrat seat, not a fair map. Second: S.B. 1011 dilutes Democrat votes. But S.B. 1011 enacts only neutral measures ensuring partisan symmetry. It treats Democrat and Republican voters the same.

E. Free Government claim

Plaintiffs provide no additional reasoning to justify their claim under the Free Government clause, save “for the same reasons it violates the constitutional rights discussed above.” **PI Mot. at 29.** This underdeveloped claim is not supported by well-pleaded factual allegations sufficient to state a claim for relief, much less to provide for a likelihood of success on the merits to warrant injunctive relief. Even if other claims were to succeed, Plaintiffs' failure to provide any supporting analysis or allegations would doom this claim.

III. The balance of the equities and the public interest weigh against disrupting the election process right before the Lieutenant Governor's deadline.

Because this is an election-law case, and the impending deadline for the Lieutenant Governor's election organization is nearly at hand, injunctive relief is disfavored. And even if it were available, the standard would be heightened because any injunction would afford Plaintiffs total relief.

This context calls for the Court to heed “[t]he overriding importance of the public's interest in the integrity of the election process and the breadth of a court of equity's discretion.” *In re Cook*, 882 P.2d 656, 659 (Utah 1994). Even if a court “find[s] merit” in a claim, a preliminary injunction must still be denied if it will “cause a ‘serious disruption of election process,’ including risk of interference with the rights of absentee and other voters.” *Id.* at 658-59 (quoting *Williams v. Rhodes*, 393 U.S. 23, 35 (1968)). The combination of the public's interest in an orderly election and the balance of the harms faced by the Legislature under the proposed injunction counsel against any equitable relief. *See Salt Lake County v. Kartchner*, 552 P.2d 136, 139-140 (Utah 1976) (“A mandatory injunction will never be granted where it might operate inequitably or oppressively.”).

Here, the Legislature passed S.B. 1011 in a special session to comply with this Court’s August 25th Order. The parties carefully mapped out and agreed to the deadlines for this compressed timetable to facilitate compliance with all provisions of Proposition 4 that this Court held apply here. The Lieutenant Governor has set a firm deadline, and any disruptions from an injunction at this point risk pushing past the deadline, to the detriment of an orderly election.

Enjoining S.B. 1011 would leave Legislative Defendants and this Court with nothing but Proposition 4’s vague language to evaluate the newly enacted map. Beyond that, the proposed injunction can hardly be called “preliminary.” Granting Plaintiffs their requested relief would prevent applying S.B. 1011 to this dispute before the Lieutenant Governor’s fast approaching deadline to organize the 2026 election. The “inability” to conduct elections under the Legislature’s “duly enacted” redistricting standards “clearly inflicts irreparable harm” on the Legislature and the members of the public it represents. *See Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018). If the proposed injunction were granted, and allowed to stand for even a few weeks, it will have the same effect as if Plaintiffs had filed suit long ago and ultimately prevailed on their supplemental complaint. But if the Court grants the requested injunction, and the Plaintiffs ultimately lose, “the State cannot run the election over again, this time applying” S.B. 1011. *Veasey v. Perry*, 769 F.3d 890, 896 (5th Cir. 2014). In short, there is nothing “preliminary” about the injunction Plaintiffs seek. The Court should evaluate Plaintiffs’ motion with the increased scrutiny required for permanent injunctive relief.

CONCLUSION

For these reasons, the Court should deny Plaintiffs’ motion for preliminary injunction.

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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: October 22, 2025

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