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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.

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION ON COUNTS 16-21 OF THIRD SUPPLEMENTAL COMPLAINT

Case No. 220901712

Honorable Dianna Gibson

INTRODUCTION

Instead of simply enacting a compliant map, the Legislature rushed through a law that would give cover for a *non-compliant* map. The result of this latest effort to exempt itself from Prop 4's anti-gerrymandering requirements was S.B. 1011 and its three biased tests that cut to the core of the anti-gerrymandering purpose of Prop 4. Over two days of testimony and thousands of pages of exhibits, this Court now has hard evidence of the specific ways in which S.B. 1011 impairs Prop 4. It mandates the use of congressional districts that favor Republicans and disfavor Democrats. Prop 4 was clear in its prohibition against partisan gerrymandering, and S.B. 1011 mandates the very partisan favoritism that Prop 4 sought to prevent.

Legislative Defendants likewise err in claiming that Plaintiffs seek a "mandatory preliminary injunction." Legislative Defs. Opposition to Mot. for Preliminary Injunction on Pls. Third Supp. Complaint ("Opp.") at 9. An injunction is "mandatory" if "its terms would alter, rather than preserve, the status quo *by commanding some positive act*." *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 797 (10th Cir. 2019) (emphasis added). Plaintiffs seek no such thing. Plaintiffs have asked the Court to enjoin the enforcement of S.B. 1011; in no way would the granting of this request require a positive act on behalf of Legislative Defendants. As such, Plaintiffs' requested injunction is not "disfavored," nor do Plaintiffs face a "heavier burden."

ARGUMENT

I. Plaintiffs are likely to succeed on their alter and reform claim.

Applying the test announced by the Utah Supreme Court, this Court has already demonstrated the proper standard to apply in evaluating a claim under Article I, Section 2 of the Utah Constitution. S.B. 1011 impairs Prop 4's core reform, and for that reason it cannot stand

unless it satisfies strict scrutiny. Legislative Defendants contend that only rational basis applies, premised upon their view that S.B. 1011 does not impair Prop 4 and is enacted pursuant to Article IX. Not so. S.B. 1011 profoundly impairs Prop 4 and does not satisfy strict scrutiny. And Article IX does not relieve Legislative Defendants from strict scrutiny for impairing Plaintiffs' Article I, Section 2 right. Article IX is a limitation on the Legislature's authority by mandating that redistricting occur and when it can and must occur. It is not carte blanche exclusive power over any legislation that bears on redistricting. S.B. 1011 is not a redistricting map enacted in the first session after a Census. Article IX has no bearing on the level of scrutiny that applies, which is dictated by the Utah Supreme Court's decision in this case.

A. S.B. 1011 impairs Proposition 4's prohibition of partisan gerrymandering.

S.B. 1011 significantly impairs Prop 4's prohibition on partisan gerrymandering. When the People exercise their constitutional right to alter and reform their government through the initiative process, the Legislature may not "amend[], repeal[], or replace[] the initiative in a manner that impair[s] the reform contained in the initiative." *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 74 ("*LWVUT I*"). As Plaintiffs explain in their preliminary injunction motion, S.B. 1011 impairs Proposition 4's ban on partisan gerrymandering, which is a core reform of the initiative. *See* Utah Code § 20A-19-101(3) (prohibiting "divid[ing] districts in a manner that purposefully or unduly favors or disfavors . . . any political party"). It does so by mandating that all congressional maps pass biased, cherry-picked tests—the partisan bias test, the mean-median test, and a skewed ensemble analysis—selected to ensure an outcome favorable to the majority party in a state with the political geography of Utah. When Plaintiffs filed their preliminary injunction motion on October 7, it was accompanied by an expert report from Dr. Christopher Warshaw explaining the operation of each of S.B. 1011's mandated tests, and why other tests better

fulfill Prop 4's requirement to use the "best" scientific measures in a state like Utah. Now, in addition to that report from Dr. Warshaw, the Court has the benefit of two days of testimony, and expert reports from Drs. Chen, Katz, Trende, and Barber as well. As described in greater detail in Plaintiffs' Proposed Findings of Fact and Conclusions of law, this mountain of evidence confirms what Plaintiffs' motion first established: the provisions of S.B. 1011 fundamentally impair Prop 4.

First, the **partisan bias test** impairs Prop 4. As Plaintiffs have noted, the partisan bias test is universally recognized, including by its lead proponent, as inapt for states like Utah where statewide elections feature lopsided results. *See* Bernie Grofman & Gary King, *The Future of Partisan Symmetry as a Judicial Test for Partisan Gerrymandering after LULAC v. Perry*, 6:1 Election L.J. 2, 19 (2007) ("we only propose to apply the methodology to jurisdictions where it is factually reasonable to assume that elections can be competitive" statewide). Applying the partisan bias test in Utah yields nonsensical, paradoxical results, such as deeming nearly all 4-0 Republican maps that deny Democrats a winnable district as perfectly unbiased while labeling most 3-1 maps that include a Democratic district as biased *against Democrats*. PX-1A at 18 (10.7 Warshaw Report).[1] Dr. Barber acknowledged these paradoxical results, DX-14 at 14 (Barber Report), and Dr. Katz recognized that they might be politically appealing to Utah Republicans, PX-9 at 329 (Katz et al. 2023).

Further, when Dr. Chen applied the partisan bias test to his ensemble of 10,000 maps—which carefully adhere to Prop 4's neutral redistricting requirements—9,989 of them were disqualified. PX-3 at 31-32, Table 1 (Chen Report). Only five of those maps that remained by the contain one majority Democratic district, while six of the remaining eleven maps contain four

[1] The exhibit citations in this brief are to the exhibits admitted during the evidentiary hearing on Oct. 23 and 24, 2025.

solidly Republican districts. *Id.* at 32. In analyzing Dr. Trende's ensemble, Dr. Chen also found that the partisan bias test works at cross-purposes with Prop 4: when Dr. Trende culled his ensemble to comply with the partisan bias test, the maps with the most county divisions, the lowest compactness scores, and most noncontiguous districts were the *most* likely to survive the partisan-bias culling. PX-3 at 63-64, 83-84 (Chen Report). Because of this, S.B. 1011's mandated use of the partisan bias not only impairs the Prop 4's neutral redistricting criteria, but also undermines its core partisan gerrymandering prohibition because the less compact a district is, and the more county splits it has, and the more noncontiguous it is, the more Republican it is likely to be. *Id.*

Second, the **mean-median test** also impairs Prop 4. It has the same limitations and the same nonsensical, biased effect when applied in Utah as the partisan bias test. As Dr. Warshaw found, the mean-median test (as applied according to S.B. 1011) tends to fail maps that unify Salt Lake County Democratic voters in a district as too pro-Republican and pass maps that crack those voters into multiple Republican-majority districts. PX-1A at 21-22 (10.7 Warshaw Report). The mean-median test is designed only to detect packing gerrymanders and yields paradoxical results in the face of cracking gerrymanders like those in Utah. This seriously undercuts Prop 4, which was passed to prevent *all* gerrymanders—including the cracking of Democratic voters in Salt Lake County. PX-1A at 21-22 (10.7 Warshaw Report); PX-3 at 38-39 (Chen Report); DX-14 at 14 (10.17 Barber Report).

Third, the **ensemble analysis** as prescribed in S.B. 1011 impairs Prop 4. That is because S.B. 1011 requires the use of a "culled" ensemble analysis which necessarily reinforces the impairment caused by the partisan bias test, as described above. Even if a map passes the partisan bias test, S.B. 1011 still deems it unlawful if it does not fall within the middle 95% of culled maps in the ensemble—shaving off an additional 2.5% of maps that happen to pass the partisan bias test

while creating a single Democratic-favoring district. Utah Code § 20A-19-103(1)(c)(ii), (4)(c). This defeats the purpose of an ensemble analysis—*i.e.*, comparing a map to a set of neutral and legal maps—and has the effect in Utah of disqualifying congressional plans that include a Democratic district and that comply with Prop 4's neutral criteria, impairing Prop 4.

Fourth, S.B. 1011 impairs Prop 4's provision for meaningful **judicial review**. Rather than allowing judges to utilize the "best" data and scientific methods, and to assess redistricting plans using well-established "judicial standards," S.B. 1011 hamstrings judicial review by limiting judges to only the three flawed tests discussed above. And by imposing a "clear and convincing" standard, S.B. 1011 expressly contradicts the judicial review provision of § 20A-19-301, which sets forth a preponderance of evidence standard, and places a thumb on the scale in favor of the Legislature on the question of partisan intent—the exact opposite of what Prop 4 was adopted to achieve. S.B. 1011 ensures it is more difficult for the People to vindicate the rights that Prop 4 secures.

B. S.B. 1011 fails strict scrutiny.

Legislative Defendants have asserted three interests to justify S.B. 1011's impairment of Prop 4, but none is compelling, nor is S.B. 1011 narrowly tailored to address them. First, Legislative Defendants have claimed an interest in "ensuring neutral maps" through their S.B. 1011's mandated tests. Opp. at 20. But mandating statistical tests that fail to detect when redistricting maps disfavor the state's minority party is not a compelling interest, even if those are the tests preferred for partisan reasons by the Legislature. Prop 4 was passed to provide guardrails on the Legislature's redistricting authority, not to provide a blank check for it to adopt tests that mandate certain partisan outcomes that favor the majority party. Moreover, S.B. 1011 is not narrowly tailored to serve any purpose approaching neutrality, as requiring the use of partisan bias,

mean-median difference, and a culled ensemble to the exclusion of other available methods in Utah directly contravenes a prohibition on partisan favoritism.

Second, Legislative Defendants claim that Prop 4's inclusion of the phrase "including measures of partisan symmetry" mandates the use of the ill-fitting tests S.B. 1011 requires. Not so. Nor have Legislative Defendants even been consistent in their arguments on this point. In some instances, Legislative Defendants (and some of their experts) have erroneously claimed that "partisan symmetry" can only be measured by "partisan bias." *E.g.*, DX-13 at 48 (Trende Report). But at other times, Legislative Defendants (and their experts) have acknowledged that there are multiple ways to measure partisan symmetry. *See e.g.*, Opp. at 17 ("partisan bias is *a* measure of deviation from partisan symmetry") (emphasis added); DX-14 at 14 (Barber Report). Legislative Defendants have no compelling interest in using one specific measure of partisan symmetry that yields paradoxical and meaningless results in Utah. And given the existence of better, more applicable measurements—such as the efficiency gap—S.B. 1011 is not narrowly tailored to address this asserted interest. Caselaw also undercuts the contention that the partisan bias test is the only measure of partisan symmetry. *See Gill v. Whitford*, 585 U.S. 48, 71-71 (2018) (referring to "the efficiency gap and similar *measures* of partisan symmetry," and to "[p]artisan-asymmetry metrics such as the efficiency gap") (emphasis added); *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 885 (M.D.N.C. 2018), *vacated on other grounds*, 588 U.S. 684 (2019) (recognizing "three standard measures of partisan symmetry: the 'efficiency gap,' 'partisan bias,' and 'the mean-median difference"); *Ga. State Conf. of NAACP v. State*, 269 F. Supp. 3d 1266, 1284 (N.D. Ga. 2017) ("partisan symmetry, measured by the efficiency gap, is one way to make a political gerrymandering claim").

Third, Legislative Defendants have attempted to justify their impairment of Prop 4 by claiming a need to make Prop 4 "clear and workable." Opp. at 4. This interest is hardly compelling because Prop 4's standards, including its prohibition on partisan favoritism, require no further clarification or amendment to be administrable. Several other states have virtually identical prohibitions on undue partisan favoritism that courts have readily interpreted and administered using the usual tools of statutory interpretation without arbitrary and partisan mandates by the legislature. *See, e.g.*, Ohio Const. art. XIX, § 1(C)(3)(a); Haw. Const. art. IV, § 6; Del. Code Ann. tit. 29, § 804; Va. Code § 24.2-304.04(8); *see also*, *e.g.*, *Adams v. DeWine*, 195 N.E.3d 74, 84 (Ohio 2022). And indeed, in *Rucho v. Common Cause*, the U.S. Supreme Court specifically identified a prohibition on "intent to favor or disfavor a political party" as providing sufficient guidance to courts. 588 U.S. 684, 719 (2019). This Court has also already ruled in this case that even broader constitutional guarantees of the Utah Constitution like the Free Elections Clause can supply a judicially manageable standard to assess partisan gerrymandering. *See* Ruling & Order Granting in Part & Denying in Part Defs.' Mot. to Dismiss (Dkt. 140) ("MTD Op.") at 16-20. To the extent any further clarity is needed to Prop 4 (which it is not), mandating the use of three tests inappropriate to use in Utah and which greenlight gerrymandered plans is not narrowly tailored. Prop 4 is judicially administrable in its unamended form.

II. Plaintiffs' remaining claims are likely to succeed on the merits.

Plaintiffs' remaining claims are likely to succeed on the merits. Legislative Defendants' opposition to Plaintiffs' remaining claims all proceed from the flawed premise that S.B. 1011 has no partisan effect. As two days of testimony and thousands of pages of evidence establish, that is incorrect. In fact, the tests mandated in S.B. 1011 have the effect of disqualifying nearly every neutrally drawn map that gives Democratic voters a chance to elect a candidate of their choice in

one district, and mostly allowing only those maps that virtually guarantee a Republican sweep of every congressional district in the state. If the Legislature passed a law that said "only districts likely to elect Republican candidates shall be drawn, regardless of the political geography of the state," few would question that such a law would "interfere to prevent the free exercise of the right of suffrage." Utah Const. art. I, § 17. Similarly, such a law that mandated the drawing of districts to blatantly favor one political group and disfavor another would be not exhibit "uniform operation" nor offer the people "equal protection and benefit." Utah Const. art. I, §§ 2, 24. Instead it would be an "arbitrary law[] that favor[s] the interests of the politically powerful over the interests of the politically vulnerable." *Lee v. Gaufin*, 867 P.2d 572, 581 (Utah 1993). Similarly, such a law would plainly interfere with the people's rights to "petition for redress of grievances," and to "communicate freely their thoughts and opinions," and would instead "abridge or restrain the freedom of speech." Utah Const. art. I, §§ 1, 15. This hypothetical law would surely "abridge[]" or "impair[]" the right to vote that the constitution guarantees to "[e]very citizen." Utah Const. art. IV, § 2; *Earl v. Lewis*, 77 P.235, 237-38 (Utah 1904). And finally, such a law would result in a government not "founded on" the people's authority nor for their "equal protection and benefit." Utah. Const. art. I, § 2.

Legislative Defendants have attempted to disguise the effect of S.B. 1011 through the use of statistical tests, but the effect on Plaintiffs' rights is the same as if Legislative Defendants had stated the law's effective outcome plainly. When the Legislature passes a law that virtually mandates a particular partisan outcome despite the realities of the state's political geography or neutral redistricting principles, such a law is unconstitutional and cannot stand. While Plaintiffs acknowledged during the evidentiary hearing that S.B. 1011 does not literally prevent them from casting a ballot, that is not the standard by which these claims should be adjudicated. For example,

as this Court already held, the meaning of "elections" covers more than the simple act of casting a ballot, encompassing the full "process in which people vote to choose a person . . . to hold an official position." MTD Op. at 27. Legislative Defendants make no effort to address this Court's prior decision addressing the Free Elections Clause. That constitutional provision—like many of the others—protects against manipulation in the drawing of district lines, as well as subversion of the metrics by which the resulting districts are evaluated.

III. The balance of the equities favors an injunction.

Finally, the balance of the equities favors an injunction. An injunction would restore the parties to the "last uncontested status between the parties which proceeded the controversy." *Planned Parenthood Ass'n of Utah*, 2024 UT 28, ¶ 226. That status is the fully functioning Prop 4, unimpaired by the biased metrics S.B. 1011 mandates. An injunction would not prevent this Court from considering the partisan bias test, the mean-median test, or any other statistical test advocated for by the parties. And it would certainly not cause any disruption to the Lieutenant Governor's elections timelines, as Legislative Defendants perplexingly contend.

Legislative Defendants complain that an injunction would leave this Court with "nothing but Proposition 4's vague language to evaluate the newly enacted map." Opp. at 25. But nothing in this Court's August 25 order required the Legislature to pass S.B. 1011, and this Court was well-equipped to evaluate the map proposals before it without the mandatory and limiting dictates of S.B. 1011. Indeed, now this Court has the benefit of two days of testimony and a dozen expert reports to use as it evaluates the map proposals before it using "judicial standards and the best available data and scientific methods, including measures of partisan symmetry," as Prop 4 requires. Utah Code § 20A-19-103(5). S.B. 1011 presents a fundamental impediment to that task, as dictated by the voters, and its use should be enjoined.

CONCLUSION

For the foregoing reasons, plaintiffs' motion for preliminary injunction should be granted.

RESPECTFULLY SUBMITTED this 29th day of October 2025.

/s/ David C. Reymann

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