PARR BROWN GEE & LOVELESS
David C. Reymann (Utah Bar No. 8495)
Cheylynn Hayman (Utah Bar No. 9793)
Kade N. Olsen (Utah Bar No. 17775)
101 South 200 East, Suite 700
Salt Lake City, UT 84111
(801) 532-7840
dreymann@parrbrown.com
chayman@parrbrown.com
kolsen@parrbrown.com

ZIMMERMAN BOOHER
Troy L. Booher (Utah Bar No. 9419)
J. Frederic Voros, Jr. (Utah Bar No. 3340)
Caroline Olsen (Utah Bar No. 18070)
341 South Main Street
Salt Lake City, UT 84111
(801) 924-0200
tbooher@zbappeals.com
fvoros@zbappeals.com
colsen@zbappeals.com

CAMPAIGN LEGAL CENTER
Mark P. Gaber*
Aseem Mulji*
Benjamin Phillips*
Isaac DeSanto*
1101 14th Street NW, Ste. 400
Washington, DC 20005
(202) 736-2200
mgaber@campaignlegalcenter.org
amulji@campaignlegalcenter.org
bphillips@campaignlegalcenter.org
idesanto@campaignlegalcenter.org

Annabelle Harless*
55 W. Monroe Street, Ste. 1925
Chicago, IL 60603
aharless@campaignlegalcenter.org

**Admitted Pro Hac Vice*

Attorneys for Plaintiffs

SUPREME COURT OF THE 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,

Petitioners,

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; LIEUTENANT GOVERNOR DEIDRE HENDERSON, in her official capacity,

Respondents.

EMERGENCY PETITION FOR EXTRAORDINARY RELIEF

No. _____-SC

On petition for extraordinary relief from the
Third Judicial District Court
Honorable Catherine Conklin
Honorable Derek Pullan
Honorable Derek William
District Court No. 220901712

TABLE OF CONTENTS

ADDENDA

A. February 26, 2026 Minute Entry Regarding February 22, 2026 Notice by Utah Attorney General and Utah Legislature to Convene District Court Panel

B. February 26, 2026 Three-Judge Panel Assignment

Pursuant to Rule 19 of the Utah Rules of Appellate Procedure, League of Women Voters of Utah, *et al.* ("Plaintiffs") respectfully submit this petition for extraordinary relief.

INTRODUCTION

The Constitution creates three co-equal branches of government. While it confers some power on the Legislature to shape the structure of the judiciary, that power may not be exercised in a manner that violates the Constitution itself. The Legislature cannot by statute undo the judicial structure created by Article VIII. It cannot devise a judicial system that violates protections guaranteed in the Declaration of Rights. It cannot create special privileges for itself that it withholds from citizens seeking to access the judicial system. The Legislature has violated the Constitution by enacting H.B. 392 and S.J.R. 5.

The Legislature has, by mere statute, redefined "district court" to include three-judge panels, contrary to the Utah Constitution's text and history, and conferred upon the government the exclusive power to demand the convening of such a panel. No standards or guidelines limit this power and the government is allowed to exercise it throughout the life of a case. It can do so after observing the assigned judge for the first 45 days of litigation, including during any preliminary injunction proceedings. It can preempt an expected adverse decision from issuing by merely filing a notice demanding a three-judge court by the 45th day, forcing emergency proceedings to start afresh. Or, if the government becomes dissatisfied with the judge's substantive rulings as the case proceeds, it can await an amended complaint—something that happens in many if not most cases—to demand a three judge-panel. If such an amendment occurs during or even after trial, as Rule 15(b) allows, the government can again upend the case just as it is about to conclude by

demanding a panel of judges. The Legislature did not limit this power to newly filed cases but rather has exercised it in cases that have been pending for years, including this case.

There are no topical limits to this power. The government has the sole and standardless power to invoke it for entirely arbitrary reasons. Worse yet, the Legislature purported to make the government's decision to transfer a case to a three-judge panel exempt from judicial review, even as it usurped judicial power through legislation.

None of this is constitutional. And it is imperative that the Court decide this petition for extraordinary relief. The single-judge district court to which this case was assigned—and before which it has proceeded for four years—has concluded that H.B. 392 and S.J.R. 5 divested it of jurisdiction to decide Plaintiffs' motion for preliminary injunction and temporary restraining order. As Plaintiffs explain in this petition, the three-judge panel to which this case has now been transferred is unconstitutionally constituted. An unconstitutional tribunal cannot provide an "adequate" remedy. *See* Utah R. App. P. 19. While courts have the power to determine their own jurisdiction, that is distinct from deciding whether the court itself is constitutional. Any order it issues is invalid and so this Court provides the only adequate forum to grant Plaintiffs relief. Moreover, it would not provide a "speedy" remedy for the parties to await final judgment to finally determine on appeal whether the three-judge panel to which this case has been transferred had the constitutional power to adjudicate Plaintiffs' case. Deferring resolution of the constitutionality of H.B. 392 and S.J.R. 5 would seriously delay the ultimate resolution of

this case by invalidating the rulings of the three-judge panel and requiring a do-over by a lawful tribunal.[1]

STATEMENT OF ISSUES, RELIEF REQUESTED, AND PARTIES AFFECTED

Issue: Whether H.B. 392 and S.J.R. 5 violate (1) Article VIII of the Utah Constitution because "district court" means a court presided by a single judge, (2) Article I, Section 24; Article VI, Section 26; or Article I, Section 11 by conferring unequal and arbitrary power on government litigants, (3) Article V or Article VIII, Section 12(1) by exercising powers appertaining the Judicial Department, or (4) Article I, Sections 7 or 11 by eliminating judicial review.

Relief Requested: An order declaring H.B. 392 and S.J.R. 5 unconstitutional and enjoining their implementation and an order or writ directing (1) the three-judge panel to which Plaintiffs' case was transferred not to exercise jurisdiction over Plaintiffs' case, *see* Utah R. Civ. P. 65B(d)(2)(A), and (2) the transferor judge, Hon. Dianna Gibson, to perform the duty of exercising jurisdiction over Plaintiffs' case, *see* Utah R. Civ. P. 65B(d)(2)(B). Plaintiffs also request temporary relief staying (1) the transfer of Plaintiffs' case to the three-judge panel and (2) preliminarily enjoining the operation of H.B. 392 and S.J.R. 5 during the pendency of this Petition to permit the district court proceedings to continue before the originally assigned district judge. *See* Utah R. Civ. P. 65B(d)(2)(3); Utah R. Civ. P. 65A. Plaintiffs have also filed a Rule 8 motion to that effect.

---

[1] Plaintiffs have also filed a Rule 5 Petition for interlocutory appeal from the district court's February 26, 2026 Minute Entry. Plaintiffs file this Rule 19 Petition in the event the Court concludes it cannot resolve Plaintiffs' claims via the Rule 5 Petition.

Respondents:

1. Hon. Dianna Gibson, Judge, Third District Court, declined to exercise jurisdiction over Plaintiffs' case;
2. Hon. Catherine Conklin, Second District Judge; Hon. Derek Pullan, Fourth District Judge; Hon. Derek Williams, Third District Judge, have assumed jurisdiction over Plaintiffs' case as the assigned three-judge panel;
3. 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; Lieutenant Governor Deidre Henderson, in her official capacity.

BACKGROUND

I. Case background

This redistricting case was filed in March 2022 and has resulted in a series of rulings by both the district court and this Court. As this Court recently recognized, the district court has resolved several issues in the case, including by permanently enjoining S.B. 200 (the law that repealed Proposition 4) as violating Article I, Section 2 of the Utah Constitution, declaring Proposition 4 in effect as a result, and permanently enjoining the state's 2021 congressional map. *See* Order at 3-5, *League of Women Voters of Utah v. Utah State Legislature*, No. 20260019-SC (Feb. 20, 2026) ("*League of Women Voters IV*"). But because of the Legislature's eleventh-hour amendment to Proposition 4's standards and its enactment of a map that violated Proposition 4's requirements (Map C), Plaintiffs' remedy for Count V and its challenge to S.B. 1011 are currently in a preliminary injunction posture.

Both before and after the district court's November 2025 order, legislative leaders began objecting to the fact that a single district court judge was presiding over this case.[2]

II. H.B. 392 and S.J.R. 5 create three-judge district court panels

On February 13, 2026, the Legislature passed and the Governor signed H.B. 392, which enacts Utah Code § 78A-5-102.7 and took effect immediately.[3]

H.B. 392 applies to civil actions brought in the district court in which a state entity, or a state official in the state official's official capacity, is a party to the action. Utah Code § 78A-5-102.7(2)(a) (2026). It allows the Attorney General, the Governor, or the Legislature to "file a notice in the district court that a panel of three district court judges must be convened to hear and decide the civil action." *Id.* H.B. 392 provides that this notice "may not be challenged by any party" and "is not subject to judicial review." Utah Code § 78A-5-102.7(2)(b)(i)-(ii) (2026).

The "panel of three district court judges shall hear and decide, by majority decision, the civil action." Utah Code § 78A-5-102.7(3)(a) (2026). Each judge, randomly selected, must come from a different judicial district, and the presiding officer of the Judicial Council selects a chief judge of the panel. Utah Code § 78A-5-102.7(3)(b)(i)-(ii) & (4)(a) (2026).

---

[2] *See* Utah Legislature, Speaker Mike Schultz Statement (Oct. 27, 2025), https://house.utleg.gov/speaker-mike-schultz-decries-outside-groups-pushing-to-alter-utah-maps-through-courts/; M.J. Jewkes and Lindsay Aerts, *'This is not fair to Utahns': State leaders react to Judge Gibson's ruling in redistricting case*, ABC 4 (Nov. 11, 2025), https://www.abc4.com/news/politics/inside-utah-politics/leaders-judge-gibson-redistricting/.

[3] H.B. 392, 2026 Gen. Sess. (Utah 2026), https://le.utah.gov/~2026/bills/static/HB0392.html.

The chief judge "shall conduct all proceedings in an action before a panel," except that "[a] panel shall sit en banc for a trial, an order for an injunction or temporary restraining order, or any motion that would dispose of the action or any claim or defense in the action." Utah Code § 78A-5-102.7(4)(b)-(c) (2026). A judge may concur or dissent. Utah Code § 78A-5-102.7(4)(d) (2026). Venue requirements and requirements to file suit in particular counties or districts do not apply to actions before a panel. Utah Code § 78A-5-102.7(5) (2026).

H.B. 392 directs the Judicial Council, before March 7, 2026, to establish by rule a process for random assignment of judges, reassignment for disqualification, recusal, or the exercise of change of judge rights, and to maintain a list of judges qualified to serve that contains at least 50% of the district judges from each district. Utah Code § 78A-5-102.7(6)(a)-(c) (2026). The Judicial Council has now done so.[4]

The same day it enacted H.B. 392, the Legislature adopted S.J.R. 5, which amended Rule 42 of the Utah Rules of Civil Procedure.[5] The amendment allows the Attorney General, Governor, or the Legislature to file a notice convening a three-judge district court if that notice is filed within 45 days after (1) the action is commenced, (2) an amendment to the complaint is filed, or (3) February 13, 2026, if the action is pending in the district court on February 13, 2026." Utah R. Civ. P. 42(f)(1) (2026). The district judge in whose court the action was filed must notify the Judicial Council upon receipt of a notice to

[4] https://legacy.utcourts.gov/utc/rules-approved/wp-content/uploads/sites/4/2026/02/4-102-rule-draft-NEW-rule-CLEAN-2-24-26.pdf.

[5] S.J.R. 5, 2026 Gen. Sess. (Utah 2026), https://le.utah.gov/~2026/bills/static/SJR005.html.

convene a three-judge court, must transfer the case, and "may not sever any matter from the action or take any further action." Utah R. Civ. P. 42(f)(3) (2026).

S.J.R. 5 also amended Rule 63 to create procedures for disqualification of judges on a district court panel, and Rule 63A regarding judge changes.

III. Plaintiffs challenge H.B. 392 and S.J.R. 5

On February 21, 2026, Plaintiffs filed a motion for leave to file a Fifth Supplemental Complaint raising claims challenging the constitutionality of H.B. 392 and S.J.R. 5 and filed a motion for a preliminary injunction. D. Ct. Doc. 848 & 850. Plaintiffs requested a scheduling conference for the parties to discuss whether Legislative Defendants would agree to postpone filing a notice to convene a three-judge panel until the district court resolved Plaintiffs' preliminary injunction motion and, if not, Plaintiffs indicated they would seek a temporary restraining order. D. Ct. Doc. 850 at 2. On February 22, 2026, Legislative Defendants and the Attorney General filed a notice to convene a three-judge panel. D. Ct. Doc. 855. On February 23, 2026, Plaintiffs filed a motion for a temporary restraining order to restrain operation of Legislative Defendants' notice until the district court could resolve Plaintiffs' preliminary injunction motion. D. Ct. Doc. 858.

On February 26, 2026, the district court issued a Minute Entry regarding Plaintiffs' motions for a preliminary injunction and a temporary restraining order, noting that because of S.J.R. 5's promulgation of Rule 42(e)(3), "this Court cannot rule on any pending motions because it now lacks jurisdiction." D. Ct. Doc. 864 at 2. The Court continued: "[T]his Court hereby notifies the presiding officer of the Judicial Council that the Utah Attorney General and the Utah Legislature have filed a notice requesting a panel of three district court judges

be convened and that this action be transferred to that panel." *Id.* at 2. On February 26, 2026, Plaintiffs' case was transferred to a three-judge panel. D. Ct. Doc. 865.

WHY RELIEF SHOULD BE GRANTED

Under Utah Rule of Appellate Procedure 19(a), "[w]hen no other plain, speedy, or adequate remedy is available, a person may petition an appellate court for extraordinary relief referred to in Rule 65B of the Utah Rules of Civil Procedure." Utah R. App. P. 19(a). Relief can be granted where an inferior court "exceed[s] its jurisdiction" or "fail[s] to perform an act required by law as a duty of office." Utah R. Civ. P. 65B(d)(2)(A) & (B). By transferring Plaintiffs' case to the three judge-panel pursuant to the unconstitutional provisions of H.B. 392 and S.J.R. 5, the originally assigned district court has failed to exercise its jurisdiction over Plaintiffs' case as required by law, and by accepting the transfer, the three-judge panel has exceeded its jurisdiction.

I. H.B. 392 and S.J.R. 5 violate the Utah Constitution.

A. Article VIII permits only single-judge district courts.

Article VIII, by its text and history, only permits single-judge district courts.

Text. Article VIII, Section 1 provides that "[t]he judicial power of the state shall be vested in a Supreme Court, in a trial court of general jurisdiction known as the district court, and in such other courts as the Legislature by statute may establish." Utah Const. art. VIII, § 1. Article VIII's provisions regarding the two courts it creates must be "read in the light of each other . . . to effect a harmonious construction of the whole." *Wadsworth v. Santaquin City*, 28 P.2d 161, 167 (1933).

Article VIII, Section 2 specifically configures the Supreme Court to be a multi-justice panel, requiring that there be five or more justices, allowing the Court to sit "en banc or in divisions," requiring constitutional rulings to be upon "the concurrence of a majority of all justices," and requiring that disqualified justices be replaced to ensure a full, multi-justice complement to adjudicate a case. *See* Utah Const. art. VIII, § 2. By contrast, the Constitution does not configure the district court to be panels of judges adjudicating cases. *See* Utah Const. art. VIII, § 5. This distinction is meaningful. *See, e.g.*, *State v. Houston*, 2015 UT 40, ¶ 160, 353 P.3d 55 (observing that where Constitution uses different formulations, "the clear implication is that a difference is intended") (Lee, J., concurring in part and concurring in judgment); *Harmelin v. Michigan*, 501 U.S. 957, 978 n.9 (1991) (lead op. of Scalia, J.) ("When two parts of a provision [of the Constitution] use different language to address the same or similar subject matter, a difference in meaning is assumed.").

Article VIII, Section 6 permits the Legislature to change the number of district judge *positions* in the state, but in doing so it does not authorize the Legislature to redefine "district court" to be three-judge panels. This is apparent from its text, which provides that "[n]o change in the number of judges shall have the effect of removing a judge from office during a judge's term of office." Utah Const. art. VIII, § 6. That would be superfluous if Section 6 was aimed at empowering the Legislature to define how many judges preside over a case. Legislation altering the number of judges who preside over a case would never have the effect of removing a judge from *office*—it would merely affect the distribution of cases amongst judges.

Moreover, H.B. 392 is not a proper exercise of the Legislature's power to create "other courts." Utah Const. art. VIII, § 1. The text of Article VIII makes clear that this is a power to create a court with specified jurisdiction and designated judges, not ad hoc panels of judges *within* the district court. This is clear from Article VIII, Section 12, which provides that each court created by the Constitution and by statute elect representatives to the Judicial Council. *See* Utah Const. art. VIII, § 12. H.B. 392 does not purport to create a court "other" than the district court. There are no representatives of the "court" because it has no stable judgeships. H.B. 392 does not purport to, and could not, create the Judicial Council position that Section 12 requires for statutorily created courts.

History. Even if Article VIII's text were ambiguous, the history removes any doubt that the original public meaning of "district court" is a single judge presiding over a case. *See League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 101, 554 P.3d 872 ("*League of Women Voters I*") (inquiry requires ascertaining "objective original public meaning of the text").

From the nation's founding through Utah's statehood, "district court" meant a single judge presiding over a case. The idea that a "district court" could be a three-judge panel would have been entirely foreign when the Constitution was adopted in 1895. The Judiciary Act of 1789, one of Congress's first laws, created a "district court," with each judicial district "to consist of *one judge*." Act of Sept. 24, 1789, ch. 20, 1 Stat. 73 (emphasis added). Although the Act created multi-judge panels for the circuit court[6] and Supreme Court, *id.*,

[6] By the time of Utah's statehood, the circuit court was nearing its end, with the size of its panel reduced over time and its appellate jurisdiction eliminated in 1891. *See* Act of April

at no point from 1789 through 1895 did the federal judiciary ever have a district court with multi-judge panels.

Congress enacted Utah's Territorial Organic Act in 1850 and it expressly provided for a district court with a single judge per district. *See* Act of Sept. 9, 1850, ch. 51, 9 Stat. 453; *id.* § 9 ("Territory shall be divided into three judicial districts, and a District Court shall be held in each of said districts by *one* of the justices of the Supreme Court" (emphasis added)). For some time, there was a single district judge presiding over the entire Territory.[7]

The 1895 Constitution reflected this consistent understanding of "district court." Like today's Article VIII, it established a Supreme Court and a district court and specified that the Supreme Court would be a multi-judge panel. *See* Utah Const. art. VIII, § 1 (1895). It provided that the state would be divided into judicial districts, with each having "at least *one*, and not exceeding three judges." *Id.* art. VIII, § 5 (emphasis added). It provided that "*[a]ny District Judge* may hold a District Court in any county at the request of *the* judge of the district," and allowed for cases to be "tried by *a* judge pro tempore." *Id.* (emphasis added). Like today's Article VIII, it empowered the Legislature to increase or decrease the total number of district judges. *Id.* § 6. The text and history from the founding to statehood

---

10, 1896, ch. 22, 16 Stat. 44, § 2; Act of Mar. 3, 1891, ch. 517, 26 Stat. 826. Indeed, Utah never had a federal circuit court. *See* Utah Div. of Archives & Records Service, *Court Organization*, https://archives.utah.gov/research/guides/courts-system/.

[7] *See* Acts, Resolutions, and Memorials Passed by the First Annual and Special Sessions of the Legislative Assembly of the Territory of Utah at 38, *An Act Concerning the Judiciary, and for Judicial Purposes* (Oct. 4, 1851), https://babel.hathitrust.org/cgi/pt?id=uc1.a0004508107&seq=1&q1=court.

conclusively shows that the original public meaning of "district court" in Utah's Constitution is a single presiding judge.

The 1984 revision to Article VIII did not upset that meaning. That revision, which resulted in its current language, maintained the Supreme Court and the district court as the constitutionally established courts, and revised the judicial selection and judicial conduct provisions. *See generally* Utah Const. art. VIII. Nothing in the text or circumstances surrounding the 1984 vote on Proposition 3 evidence that the voters thought they were being asked to redefine the historic understanding of "district court" by *maintaining* the district court as the constitutionally established trial court of general jurisdiction. The Constitutional Revision Commission's report emphasized that the district court was "essential to a judicial system" and explained that its changes to Section 6, which allows the Legislature to set the number of district judge positions, were largely stylistic and left it "basically unchanged" from the 1895 Constitution.[8] The Voter Information Pamphlet said nothing about redefining the meaning of "district court" and instead focused on relieving the Supreme Court's docket and revising the judicial selection process.[9] The ballot language did not suggest a redefinition of "district court." *Id.* at 14. Newspaper articles and

[8] Report of the Constitutional Revision Comm'n (Jan. 1984) at 28-30, attached as Appendix Part B to Appellant's Supplemental Opening Br., *Patterson v. State of Utah*, No. 20180108-SC (Utah July 19, 2018), https://legacy.utcourts.gov/utc/appellate-briefs/wp-content/uploads/sites/46/2020/02/Appellant-Supplemental-20180108.pdf.

[9] *See* Utah Voter Information Pamphlet, General Election November 6, 1984, Proposition 3, at 14-30 (Sep. 27, 1984), https://vote.utah.gov/wp-content/uploads/2023/09/1984-VIP.compressed.pdf.

editorials from the Commission's leaders and key legislators also focused on these provisions, saying nothing about redefining "district court."[10]

The only example of three-judge districts courts was in the federal system, and they had become rare by 1984. From 1910 through 1976, Congress had established such courts, requiring them any time a state law was challenged on constitutional grounds.[11] But after much criticism from the Supreme Court, litigants, and the bar, Congress abolished federal three-judge district courts in all but one narrow category of litigation—constitutional challenges to legislative and congressional apportionment plans. *See* 28 U.S.C. § 2284.

Notably, Congress was authorized to create three-judge district courts because of the scope of its Article III power to shape the federal judiciary. *See* U.S. Const. art. III, § 1 ("The judicial Power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish."). But when Utahns revised Article VIII in 1984, they did not grant the Legislature such unfettered power to create and define "inferior courts" of any type and membership, but rather maintained the same trial court that had existed since (and before) 1895—the "district

---

[10] *See, e.g.*, Dr. Martin B. Hickman, *Amending the Judicial Article Merits Close Attention*, Salt Lake Tribune at 18A (Oct. 14, 1984), https://newspapers.lib.utah.edu/ark:/87278/s6k98tcs/29127164; Pat McCutcheon, *Proposition 3 would reshape judicial system*, Logan Herald Journal at 1 (Oct. 16, 1984), https://newspapers.lib.utah.edu/ark:/87278/s6dr8s3q/30099471; Sen. E. Verl Asay, *Senator Says Proposition 3 Contains Flaws*, Orem-Geneva Times at 2 (Oct. 17, 1984), https://newspapers.lib.utah.edu/ark:/87278/s6qk18z4/22908281.

[11] *See, e.g.*, Michael E. Solimine & James L. Walter, *The Strange Career of the Three-Judge District Court: Federalism and Civil Rights, 1954-76*, 72 Case W. Res. L. Rev. 909, 917-19 (2022).

court." There is nothing to suggest voters would have understood the state district court to have come to encompass the concept of three-judge panels on account of then-largely abolished federal court concept. Utah's judiciary had no history with such panels, and nothing supports the conclusion that the original public meaning of the phrase, as used in Utah's Constitution, changed so radically in 1984. Indeed, if that was intended, then it was somehow missed for the preceding 42 years until H.B. 392's enactment.

B. H.B. 392 and S.J.R. 5 violate the Utah Constitution's Uniform Operation of Law Clause, its prohibition on special laws, and the Open Courts Clause by creating disparate rules.

Even if Article VIII permitted multi-judge district court panels (it does not), H.B. 392 and S.J.R. 5 create unequal, arbitrary rules in violation of the Uniform Operation of Law Clause, the prohibition on special laws, and the Open Courts Clause.

1. H.B. 392 violates the Uniform Operation of Law Clause.

H.B. 392 violates the Uniform Operation of Law Clause. Article I, Section 24 of the Utah Constitution provides that "[a]ll laws of a general nature shall have uniform operation." This provision "guards against discrimination within the same class and helps ensure that statutes establishing or recognizing rights for certain classes do so reasonably given the statutory objectives." *Bingham v. Gourley*, 2024 UT 38, ¶ 39, 556 P.3d 53 (quoting *Judd v. Drezga*, 2004 UT 91, ¶ 19, 103 P.3d 135). A three-part test governs claims. *See Taylorsville City v. Mitchell*, 2020 UT 26, ¶ 37, 466 P.3d 148 (requiring showing of (1) a classification that (2) imposes disparate treatment on similarly situated persons (3) without reasonable justification). In *Bingham*, the Court explained that it applies heightened scrutiny to the third prong of the test in cases implicating open courts:

> Upholding legislation implicating open courts rights against a uniform operation challenge requires the legislation (1) to be "reasonable"; (2) to have "more than a speculative tendency to further the legislative objective and, in fact, actually and substantially furthers a valid legislative purpose"; and (3) to be "reasonably necessary to further a legitimate legislative goal."

Id. ¶ 40 (quoting *Judd*, 2004 UT 91, ¶ 19) (citation modified). H.B. 392 fails this test.

H.B. 392 creates a classification that treats state and private litigants differently in their power to determine the composition of their district court. And in the context of H.B. 392, state and private litigants are similarly situated. "To determine if individuals are similarly situated, we have frequently looked to the context created by the challenged statute and within which the individuals act[]." *State v. Outzen*, 2017 UT 30, ¶ 19, 408 P.3d 334; *see also Slater v. Salt Lake City*, 206 P.2d 153, 163 (Utah 1949) ("It may be admitted that under certain circumstances, [one group is] a different class than [another group]. However, under the circumstances of this case, we conclude they are similarly situated.").

H.B. 392 is standardless and arbitrary. The government can divest the assigned judge of the power to hear the case merely because it disagrees with the judge's rulings. That unilateral right springs to life each time the complaint is amended. There is nothing unique about the government's wish to remove judges with whom it disagrees that situates it differently from private litigants. While government litigants might be differently situated from private litigants in other contexts in which a law creates classifications, *see, e.g.*, Utah Code § 67-5-41(1) (unconditional right for attorney general to intervene in cases challenging constitutionality of statutes), that is not the case with H.B. 392's three-judge panels. Nothing special about the government's status justifies the asymmetrical right to periodically remove the assigned judge because it dislikes the judge's rulings.

H.B. 392 fails any level of scrutiny. It is not reasonable because it is wholly arbitrary, imposing no standards for when a case will be shifted to a three-judge panel. *See Merrill v. Utah Labor Comm'n*, 2009 UT 26, ¶ 10, 223 P.3d 1089. And in providing government litigants the sole power to determine the composition of the tribunal, it likewise imposes a severe burden on private litigants. In urgent cases, a plaintiff suing the government may have sought relief under Rule 65A and put on an evidentiary hearing in the first 45 days of litigation. If the government dislikes the direction of the proceedings, it could upend the matter by demanding a three-judge panel—perhaps foreclosing timely preliminary relief. For example, in *this* case, the district court resolved Plaintiffs' preliminary injunction motion against S.B. 1011 and preliminarily enjoined Map C over a period of just 35 days. Had H.B. 392 been in effect, Legislative Defendants could have filed a notice to convene a three-judge panel on November 9, 2025, to insulate Map C from judicial review.

Moreover, H.B. 392 allows government litigants to remove cases to a three-judge panel each time the complaint is amended—including amendments during and after trial. *See* Utah R. Civ. P. 15(a)(2) & (b). By bestowing a recurring right on government litigants to disrupt the case throughout its lifespan—and well after the assigned judge has issued substantive rulings—H.B. 392 invites one-sided gamesmanship. No legitimate legislative purpose is served by H.B. 392's arbitrary features. And contrary to its sponsors' claim that its purpose was to provide a forum for constitutional challenges,[12] it is both over- and

[12] Utah Senate, 2026 Gen. Sess., Day 23 at 30:21 (Feb. 11, 2026) (statement of Sen. McKell), https://www.utleg.gov/event-streaming/floor/marker/133898

under-inclusive—covering *any* civil action but not requiring *all* constitutional claims to be transferred to a three-judge panel.[13]

2. H.B. 392 violates Article VI, Section 26's special law prohibition.

H.B. 392 violates Article VI, Section 26's special law prohibition. *See* Utah Const. art. VI, § 26 ("No private or special law shall be enacted where a general law can be applicable."). Laws that "confer[] particular privileges or impose[] peculiar disabilities . . . upon a class of persons arbitrarily selected" violate this provision. *Hulbert v. State*, 607 P.2d 1217, 1223 (Utah 1980) (quoting *Utah Farm Bureau Ins. Co. v. Utah Ins. Guar. Ass'n*, 564 P.2d 751, 754 (1977)). For the same reasons that H.B. 392 violates the Uniform Operation of Law Clause, it creates an unconstitutional special law. It privileges state litigants with the power to determine the tribunal—a privilege that reemerges whenever the complaint is amended. It is wholly arbitrary, with no standards guiding when that power can be exercised. That is not legal.

[13] Even if H.B. 392 had created a court distinct from the district court empowered to adjudicate constitutional claims, that too would have raised serious constitutional questions. While the Legislature has the power to create "other courts" and to create "exceptions" to the district court's general jurisdiction, *see* Utah Const. art. VIII, §§ 1 & 5, enforcing the Constitution is perhaps the most core power of the district court conferred by the Constitution itself. Removing the district court's jurisdiction to enforce the Constitution, and instead placing that power in a statutory court, goes far beyond the Legislature's power to create an "exception" to the district court's constitutionally conferred general jurisdiction. The exception, at that point, would have swallowed the rule of general jurisdiction conferred on the district court by the Constitution itself. That would exceed the Legislature's power.

3. H.B. 392's unequal and arbitrary features violate the Open Courts Clause.

These same features violate the Open Courts Clause of Article I, Section 11. First, the guarantee to open courts necessarily means courts configured in compliance with Article VIII. An unconstitutionally configured court does not protect Utahns' right to have open courts. *Cf. In re Dallas County*, 697 S.W.3d at 150 ("Every litigant has a clear right to have its case decided by a legitimate court staffed only by lawfully empaneled judges."); Utah Code § 20A-19-301 (providing that Proposition 4 may be enforced in "court of competent jurisdiction"). Second, even if Article VIII permitted three-judge panels within the district court, H.B. 392 violates the Open Courts Clause in a very literal way—it creates a tribunal (a three-judge panel) that is not "open to all." Utah Const. art. I, § 11. Third, H.B. 392 violates the Open Courts Clause's command that courts be available "without . . . unnecessary delay" by creating recurring 45-day periods in which a plaintiffs' case may be upended merely because they amend their complaint—no matter the nature or scope of the amendment and even if it occurs during or after trial. H.B. 392 empowers the government to obfuscate justice and in doing so violates the promise of open courts.

C. H.B. 392 exceeds the Legislature's authority under Separation of Powers and Article VIII by encroaching on power of Supreme Court and Judicial Council.

H.B. 392 also unconstitutionally encroaches on the power of the Supreme Court and the Judicial Council in violation of Article V and Article VIII, § 12(1).

The Supreme Court, not the Legislature, has "the authority to supervise and oversee the administration of the lower courts of this state." *Hi-Country Estates Homeowners Ass'n*

v. Bagley & Co., 2000 UT 27, ¶ 13, 996 P.2d 534; *see also Pleasant Grove City v. Terry*, 2020 UT 69, ¶¶ 49-50, 478 P.3d 1026 (noting that this Court has "constitutionally sanctioned supervisory authority" over lower courts). That includes, specifically, the "administrative rules or procedures governing the transfer of a case from one judge to another." *Hi-Country Estates*, 2000 UT 276, ¶ 13. "Whatever power was conferred upon the courts by the Constitution cannot be enlarged or abridged by the Legislature," regardless of whether the Legislature's action is "reasonable." *Patterson v. State*, 2021 UT 52, ¶¶ 150, 151, 504 P.3d 92 (citation modified).

Because the Legislature has exceeded its authority to define district court jurisdiction or create other courts, *see supra* Part I.A, its redesign of the district court and attempt to control assignment of cases is without constitutional authority and instead encroaches on this Court's authority to supervise the district court in violation of separation of powers. *See* Utah Const. art. V (providing that "no person charged with the exercise of powers properly belonging" to one department "shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.").

H.B. 392 also violates Article VIII, Section 12, which provides that "[t]here is created a Judicial Council which shall adopt rules for the administration of the courts of the state." Utah Const. art. VIII, § 12(1). The Legislature has no authority to compel the Judicial Council to create rules. Nor can it pass a statute that is in the nature of "rules for the administration of the courts of the state," because that is a judicial power reserved to the Judicial Council. Yet H.B. 392 purports to do exactly that, by requiring the Judicial Council to promulgate certain rules, *see* Utah Code § 78A-5-102.7(6), and by enacting a

law dictating the administration and structure of proceedings in the district court—a power reserved to the Judicial Council. In doing so, the Legislature violates not only Article VIII, § 12(1) but Article V as well by commanding the Judicial Department to undertake a judicial function.

D. H.B. 392 and S.J.R. 5 violate the Open Courts and Due Process Clauses by purporting to preclude judicial review.

H.B. 392 and S.J.R. 5 violate the Open Courts and Due Process Clauses by purporting to shield the government's notice invoking three-judge panels from judicial review. "Parties to a suit, subject to all valid claims and defenses, are constitutionally entitled to litigate any justiciable controversy between them, *i.e.*, they are entitled to their day in court." *Miller v. USAA Cas. Ins. Co.*, 2002 UT 6, ¶ 38, 44 P.3d 663. As the *Miller* Court explained, "both the due process clause of article I, section 7 and the open courts provision of article I, section 11 of the Utah Constitution guarantee that litigants will have this 'day in court.'" *Id.* (quoting *Jenkins v. Percival*, 962 P.2d 796, 799 (Utah 1998)). Plaintiffs have vested causes of action—including to litigate their claims in a "court of competent jurisdiction," Utah Code § 20A-19-301—and H.B. 392 and S.J.R. 5 purport to prevent Plaintiffs from having their day in court to challenge the three-judge panel notice. That is unconstitutional and void.

E. The remaining injunction factors favor Plaintiffs.

The remaining irreparable harm, balance of harms, and public interest factors all favor entry of an injunction. *See* Utah R. Civ. P. 65A(f)(2)-(4). Plaintiffs are irreparably harmed by being forced to proceed before an unconstitutionally constituted tribunal, whose

eventual invalidation will result in delay and significant wasted resources. By contrast, Legislative Defendants are unharmed by proceeding before a single-judge district court—the judicial system that has governed Utah since its founding. Moreover, the public has an obvious interest in a constitutionally constituted judicial system. Public confidence in the judiciary is eroded by unconstitutional legislative manipulation of the judiciary.

II. No other plain, speedy, or adequate remedy is available.

No other plain, speedy, or adequate remedy is available.[14] The single-judge district court before which Plaintiffs filled their preliminary injunction motion and motion for a temporary restraining order has concluded it lacks jurisdiction to decide Plaintiffs' challenge to H.B. 392 and S.J.R. 5. That leaves only the three-judge panel to which Plaintiffs' case has been transferred. But that tribunal is unconstitutionally constituted and as such cannot provide Plaintiffs an adequate remedy. While courts are empowered to decide their own jurisdiction, that principle cannot sensibly extend to determining whether their own *existence* is constitutional. No rulings or orders of an unconstitutionally constituted court could have legal effect—such a ruling included—and thus this Court's adjudication is necessary.

Moreover, only this Court can provide a speedy remedy. Forcing the parties to await appellate review upon final judgment for a final determination of the constitutionality of H.B. 392 and S.J.R. 5 is insufficiently speedy given the burden and cost on the parties and

[14] Plaintiffs have simultaneously filed a Rule 5 petition from the district court's Minute Entry. In the event this Court cannot take jurisdiction over Plaintiffs' Rule 5 Petition, the applicability of Rule 19 is apparent.

the judiciary to undertake proceedings that may ultimately be invalidated on appeal because of the unconstitutionality of the tribunal. That would delay resolution of the case and require a do-over of all proceedings held before the three-judge panel.

This litigation has proceeded for four years and has developed a large and complicated record. The district court has conducted extensive proceedings with technical evidence—all of which need not, under the Rules, be repeated before final judgment is ultimately entered. *See* Utah R. Civ. P. 65A(a)(2). Yet an abrupt change of the judge(s) hearing this case—at the whim of Legislative Defendants—would remove from the case the judge that oversaw the evidence and observed the witness demeanor at the October 2025 evidentiary hearing. Doing so could both delay resolution of this case and unnecessarily rob Plaintiffs, who bear the burden of proof, from the benefit of the judge who has overseen and witnessed the testimony and evidence already part of the record.

Moreover, this case satisfies the factors the Court typically considers when exercising its discretion to grant extraordinary relief. *See State v. Henriod*, 2006 UT 11, ¶ 20, 31 P.3d 232 (relevant factors include the egregiousness of the alleged error, the significance of the legal issues presented by the petitioner, and the severity of the consequences caused by the alleged error). The errors are egregious. The Legislature has rewritten the structure of the judicial branch to grant itself a weapon to engage in judicial gamesmanship. Only the government is empowered to abruptly—at repeated junctures during a case—divest the assigned judge of jurisdiction and move the case to a bespoke panel of new judges. The government can do this simply because it dislikes the rulings it has received. H.B. 392 and S.J.R. 5 are entirely arbitrary and even purport to shield the

government from judicial review. The trampling on the Constitution's protection of separation of powers, open courts, uniform operation of laws, general application of laws, and due process is egregious.

These issues are of immense significance and importance. The validity of the Legislature's one-sided renovation of judicial branch to its benefit strikes at the core of Utahns' system of government and justice. And the consequences, not just to Plaintiffs but to the public's confidence in the judicial branch itself, are stark.

CONCLUSION

For the reasons above, the Court should grant Plaintiffs' petition for extraordinary relief, preliminarily enjoin the transfer of Plaintiffs' case to the three-judge panel and the implementation of H.B. 392 and S.J.R. 5 pending resolution of Plaintiffs' petition, issue an order or writ providing that the Honorable Dianna Gibson has jurisdiction to preside over Plaintiffs' case while the petition in is pending before this Court, declare H.B. 392 and S.J.R. 5 unconstitutional and permanently enjoin their implementation, and direct the three-judge panel not to exercise jurisdiction over Plaintiffs' case and the Honorable Dianna Gibson to instead exercise jurisdiction.

DATED this 26th day of February, 2026.

RESPECTFULLY SUBMITTED,

/s/ Troy L. Booher
Troy L. Booher
J. Frederic Voros, Jr.
Caroline A. Olsen
ZIMMERMAN BOOHER
341 South Main Street, Fourth Floor
Salt Lake City, Utah 84111
tbooher@zbappeals.com
fvoros@zbappeals.com
colsen@zbappeals.com
(801) 924-0200

/s/ David C. Reymann
David C. Reymann
Cheylynn Hayman
Kade N. Olsen
PARR BROWN GEE & LOVELESS
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
dreymann@parrbrown.com
chayman@parrbrown.com
kolsen@parrbrown.com
(801) 532-7840

/s/ Mark P. Gaber
Mark P. Gaber (pro hac vice)
Aseem Mulji (pro hac vice)
Benjamin Phillips (pro hac vice)
Isaac DeSanto (pro hac vice)
CAMPAIGN LEGAL CENTER
1101 14th Street NW, Suite 400
Washington, D.C. 20005
mgaber@campaignlegalcenter.org
amulji@campaignlegalcenter.org
bphillips@campaignlegalcenter.org
idesanto@campaignlegalcenter.org
(202) 736-2200

Annabelle Harless (pro hac vice)
CAMPAIGN LEGAL CENTER
55 West Monroe Street, Suite 1925
Chicago, Illinois 60603
aharless@campaignlegalcenter.org
(202) 736-2200

Attorneys for Respondents League of Women Voters of Utah, Mormon Women for Ethical Government, Stephanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, and Jack Markman

CERTIFICATE OF COMPLIANCE

1. This petition contains 6,515 words, excluding any tables and attachments, in compliance with Utah Rule Appellate Procedure 19(i).

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

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

/s/ Troy L. Booher

CERTIFICATE OF SERVICE

This is to certify that on the 26th day of February, 2026, I caused the foregoing to be served via email on:

Victoria Ashby (vashby@le.utah.gov)
Christine R. Gilbert (cgilbert@le.utah.gov)
Alan R. Houston (ahouston@le.utah.gov)
OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL

Tyler R. Green (tyler@consovoymccarthy.com)
Taylor A.R. Meehan (taylor@consovoymccarthy.com)
Frank H. Chang (frank@consovoymccarthy.com)
Mari E. Sayer (mari@consovoymccarthy.com)
Soren Geiger (soren@consovoymccarthy.com)
Olivia Rogers (orogers@consovoymccarthy.com)
CONSOVOY MCCARTHY PLLC

Attorneys for Petitioners Utah State Legislature, Utah Legislative Redistricting Committee, Sen. Scott Sandall, Rep. Mike Schultz, and Sen. J. Stuart Adams

David N. Wolf (dnwolf@agutah.gov)
Lance Sorenson (lancesorenson@agutah.gov)
Sarah Goldberg (sgoldberg@agutah.gov)
UTAH ATTORNEY GENERAL'S OFFICE

Attorneys Respondent Lt. Gov. Deidre Henderson

Keisa Williams
General Counsel
Administrative Office of the Courts
keisaw@utcourts.gov

Attorney for Respondents Hon. Dianna Gibson, Hon. Catherine Conklin, Hon. Derek Pullan, and Hon. Derek Williams

Utah R. App. P. 25A notice to:
Office of the Utah Attorney General (notices@agutah.gov)
Attn: Utah Solicitor General

/s/ Troy L. Booher

Addendum A

THIRD JUDICIAL DISTRICT COURT

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, JACK MARKMAN, and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLATIVE REDISTRICTING COMMITTEE; SENATOR SCOTT SANDALL, in his official capacity; REPRESENTATIVE BRAD WILSON, in his official capacity; SENATOR J. STUART ADAMS, in his official capacity; and LIEUTENANT GOVERNOR DEIDRE HENDERSON, in her official capacity,

Defendants.

MINUTE ENTRY REGARDING FEBRUARY 22, 2026 NOTICE BY UTAH ATTORNEY GENERAL AND UTAH LEGISLATURE TO CONVENE DISTRICT COURT PANEL

Case No. 220901712

Judge Dianna M. Gibson

The Court has received the Notice by the Utah Attorney General and the Utah Legislature to Convene District Court Panel Pursuant to Utah Code § 78A-5-102.7 (effective February 13, 2026), filed on February 22, 2026. One day earlier, on February 21, Plaintiffs filed a Motion for Leave to File Fifth Supplemental Complaint and a Motion for Preliminary Injunction. On February 23, Plaintiffs filed an Emergency Motion for Temporary Restraining Order and Expedited Hearing requesting that this case not be transferred to the three-judge panel and that this Court consider the constitutionality of H.B. 392 and S.J.R. 5, which established the panel.

Section 78A-5-102.7(2)(b) states: "A notice to convene a panel . . . (i) may not be challenged by any party; and (ii) is not subject to judicial review." In addition, Utah Rule of Civil

Procedure 42(e)(3) (effective February 13, 2026) provides that once a notice to convene a district court panel is filed, "the district court judge assigned to the action at the time the notice is filed may not sever any matter from the action or take any further action." Based on this new Utah law, this Court cannot rule on any pending motions because it now lacks jurisdiction.

Pursuant to Utah Rule of Civil Procedure 42(e)(2)(A), this Court hereby notifies the presiding officer of the Judicial Council that the Utah Attorney General and the Utah Legislature have filed a notice requesting a panel of three district court judges be convened and that this action be transferred to that panel.

DATED February 26, 2026.

JUDGE DIANNA M. GIBSON
THIRD DISTRICT COURT JUDGE

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 220901712 by the method and on the date specified.

EMAIL: DAVID BILLINGS DBILLINGS@FABIANVANCOTT.COM

EMAIL: ABHA KHANNA AKHANNA@ELIAS.LAW

EMAIL: MARCOS MOCINE MCQUEEN mmcqueen@elias.law

EMAIL: RICHARD MEDINA rmedina@elias.law

EMAIL: TYLER GREEN TYLER@CONSOVOYMCCARTHY.COM

EMAIL: VICTORIA ASHBY VASHBY@LE.UTAH.GOV

EMAIL: MARIE E SAYER mari@consovoymccarthy.com

EMAIL: CHRISTINE GILBERT CGILBERT@LE.UTAH.GOV

EMAIL: ALAN HOUSTON AHOUSTON@LE.UTAH.GOV

EMAIL: SOREN GEIGER soren@consovoymccarthy.com

EMAIL: OLIVIA ROGERS orogers@consovoymccarthy.com

EMAIL: LANCE SORENSON LANCESORENSON@AGUTAH.GOV

EMAIL: DAVID WOLF DNWOLF@AGUTAH.GOV

EMAIL: DAVID REYMANN DREYMANN@PARRBROWN.COM

EMAIL: ASEEM MULJI amulji@campaignlegalcenter.org

EMAIL: ANNABELLE HARLESS aharless@campaignlegalcenter.org

EMAIL: J FREDERIC VOROS FVOROS@ZBAPPEALS.COM

EMAIL: TROY BOOHER TBOOHER@ZBAPPEALS.COM

EMAIL: CAROLINE OLSEN COLSEN@ZBAPPEALS.COM

EMAIL: MARK GABER mgaber@campaignlegalcenter.org

EMAIL: KADE OLSEN KOLSEN@PARRBROWN.COM

EMAIL: BENJAMIN PHILLIPS bphillips@campaignlegalcenter.org

EMAIL: ISAAC DESANTO idesanto@campaignlegalcenter.orig

EMAIL: CHEYLYNN HAYMAN CHAYMAN@PARRBROWN.COM

EMAIL: JUDICIAL COUNCIL OFFICER JudicialCouncilChair@utcourts.gov

02/26/2026 /s/ SHAI ALVAREZ

Date: _____ _____

Signature

Addendum B

District Court Panel #2

Generated: 2/26/2026 11:20:38 AM

Panel Members

Judge Derek Pullan (District 4)

Judge Derek Williams (District 3)

Judge Catherine Conklin (District 2) - **Chief Judge**

Historical Log & Changes

[2/26/2026, 11:20:38 AM] Judge Catherine Conklin randomly selected as Chief Judge.