

THE SUPREME COURT OF THE STATE OF UTAH

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UTAH STATE LEGISLATURE, ET AL.,  
Appellants/Cross-appellees,

*v.*

LEAGUE OF WOMEN VOTERS OF UTAH, ET AL.,  
Appellees/Cross-appellants.

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Brief of Rural Utah Project, Ann Leppanen, Steve Cox, Shaun Dustin, and  
Kenneth Maryboy  
as Amicus Curiae in Support of Appellees/Cross-appellants

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**On Plaintiff's Petition (Consolidated No. 20220998-SC)**  
On appeal from the Third Judicial District Court,  
Honorable Dianna M. Gibson, District Court No. 220901712

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### Parties to the proceeding in the appellate court

*Appellants and Cross-appellees (Defendants):* Petitioner Utah State Legislature, Utah Legislative Re- districting Committee, Sen. Scott Sandall, Rep. Brad Wilson, and Sen. J. Stuart Adams

Represented by Tyler R. Green, Taylor A.R. Meehan, Frank H. Chang, and James P. McGlone of Consovoy McCarthy PLLC; and Victoria Ashby, Robert H. Rees, and Eric N. Weeks of the Office of Legislative Research and General Counsel

*Appellees and Cross-appellants (Plaintiffs):* Respondent League of Women Voters of Utah, Mormon Women for Ethical Government, Stefanie Condie, Malcom Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, Jack Markman, and Dale Cox

Represented by Troy Booher, J. Frederic Voros, Jr., and Caroline Olsen of Zimmerman Booher; David C. Reymann and Kade N. Olsen of Parr Brown Gee & Loveless; and Mark Gaber, Harden Johnson, Aseem Mulji, and Anabelle Harless of Campaign Legal Center

*Cross-appellee (Defendant):* Lt. Governor Deidre Henderson

Represented by Sarah Goldberg, David N. Wolf, and Lance Sorenson of the Utah Attorney General's Office

### Parties below not parties to the appeal

Plaintiff Dale Cox (voluntarily dismissed)

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## Interest of Amicus Curiae

The Legislature asserts that this litigation concerns “[s]even Utah voters and two advocacy groups want[ing] Utah courts to rebalance the politics of Utah’s congressional districts so that their preferred candidates are more likely to win elections.” [Pet.Op.Br. at 1.] That is flatly incorrect.

The Rural Utah Project (“RUP”) is a non-profit voter advocacy group operating in Carbon, Emery, Grand, San Juan, Garfield, Wayne, and Kane counties. Its members and volunteers include both urban and rural Utahns. Most of RUP’s work involves registering voters, updating voter registrations, mobilizing local voters around issues and elections, and supporting local candidates to local offices.

Redistricting has always been a preeminent issue for RUP. *See generally Navajo Nation v. San Juan County*, 929 F.3d 1270 (10th Cir. 2019). RUP has been involved with the present circumstances from the beginning. In 2018, RUP distributed literature supporting Proposition 4 and collected signatures from San Juan and Grand County voters. In 2020, RUP urged these voters to contact their state representatives in opposition to [S.B. 200](#). In 2021, RUP expended significant time and effort encouraging these voters to attend the Independent Redistricting Commission’s (“Commission”) hearings in southwestern Utah. RUP opposes the 2021 Congressional Plan. RUP respectfully files this amicus curiae brief to emphasize that rural Utahns generally oppose partisan gerrymandering despite the Legislature’s pretextual purpose of balancing urban and rural interests.

Multiple public officials join RUP in filing this brief. Ann Leppanen is the current mayor of Bluff, Utah, a small town of 246 people within rural San Juan County. Steve Cox is the former mayor of Boulder, Utah, a small town of 236 people within rural Garfield County. Shaun Dustin is the former mayor of Nibley, Utah, a city of 7,529 people within largely rural Cache County. Kenneth Maryboy is a former San Juan County commissioner. These individuals join this brief to represent their current and former rural constituents' popular opposition to the 2021 Congressional Plan.

### **Notice, Consent, and Authorship**

Counsel for the parties received timely notice.

All parties consented.

No party or party's counsel authored any portion of this brief or contributed money to fund preparing or submitting the brief. No other person other than the amicus, its members, and its counsel contributed money that was intended to fund preparing or submitting the brief.

## Introduction

The Legislature incorrectly states that this litigation concerns “[s]even Utah voters and two advocacy groups want[ing] Utah courts to rebalance the politics of Utah’s congressional districts so that their preferred candidates are more likely to win elections.” [Pet.Op.Br. at 1.] Said differently, the Legislature would have this court believe that Plaintiff’s claims represent merely a few voters’ cynical ploy to elect a Democrat to Congress. For one, this argument is transparent whataboutism given the Legislature’s flagrant Republican gerrymander, as if the Legislature’s consciously<sup>1</sup> partisan gerrymander is excusable because a politically neutral map might have different political results Plaintiffs prefer. For another, it is simply false.

As ably detailed in the Complaint, nearly 200,000 Utahns signed the petition to put Proposition 4 and its express proscription against partisan gerrymandering on the general ballot in 2018. [R.24,28.] Then, “[a] majority of Utah citizens from a range of geographic areas and across the political spectrum voted to approve Proposition 4 and enact it into law.” [R.28.] Even after [S.B. 200](#)<sup>2</sup>

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<sup>1</sup> [R.43–45]; see also Kyle Dunphey & Cindy St. Clair, *Lawmakers Received Hundreds of E-mails in Support of the Independent Redistricting Commission. Why Didn’t They Listen?*, KSL (June 19, 2022, 9:57 PM), <https://ksltv.com/481760/lawmakers-received-hundreds-of-emails-in-support-of-the-independent-redistricting-commission-why-didnt-they-listen/> (“[Sen. Scott] Sandall[, the co-chair of the Legislative Redistricting Committee,] says that [the 2021 Congressional Plan] was drawn using political data, which the redistricting process was intended to be devoid of.”).

<sup>2</sup> Redistricting Amendments, S.B. 200, 2020 Gen. Sess. (Utah 2020), <https://le.utah.gov/~2020/bills/static/SB0200.html>.

guttled Proposition 4's most critical provisions, thousands of Utahns reached out to the Commission to express their opinions on the Commission's maps and process, which likewise proscribed partisan considerations. [R.33-37.] After the Legislature published their gerrymandered map with a tiny fraction of the public input received by the Commission, hundreds of Utahns expressed their opposition to the gerrymander both in-person and online.<sup>3</sup> [R.29-30,43,46-48,52-53.] The overwhelming majority of opinions expressed, including by rural citizens and elected officials, opposed the Legislature's map, its obvious Republican gerrymander, and the fact that the Legislature did not select one of the Commission's politically neutral maps. [R.47-48,54.] In short, the complaint's allegations – which must be taken as true on the Legislature's motion to dismiss – demonstrate that the majority of both urban and rural Utahns prefer congressional districts to be drawn without partisan gerrymandering regardless of the political consequences. Taken as true, Plaintiff's claims align with the majority political voice of Utah.

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<sup>3</sup> See also [Dunphey & Cindy St. Clair, supra note 1](#); Carter Williams, *Utah Business, Community Leaders Call for Legislature, Cox to Adopt Nonpartisan Voting Maps*, KSL (Nov. 8, 2021, 5:30 PM), <https://www.ksl.com/article/50279002/utah-business-community-leaders-call-for-legislature-cox-to-adopt-nonpartisan-voting-maps>.

## Summary of the Argument

The Legislature claims the 2021 Congressional Plan cracks Salt Lake County because “[w]e are one Utah, and believe both urban and rural interests should be represented in Washington, D.C. by the entire federal delegation.” [R.45.] But it is unclear what the Legislature meant by this. They rejected the Commission’s SH2 Plan, which “[b]y any plausible measure, . . . achieves a superior mix of urban and rural components in all four districts” without cracking Salt Lake County into four. [R.38,49–50,64,68.] They made no effort to define “rural-urban” and paid no attention to how Utah law generally defines these terms. [R.42,49.]; [Resp.Op.Br. Add. W.] The overwhelming majority of both urban and rural Utahns opposed the 2021 Congressional Plan. [R.29–30,43,46–48,52–53.]

This is because, as Plaintiffs sufficiently plead, the Legislature’s purpose is pretextual. [R.51–53.] But even taken at face value, the Legislature’s purpose is not meaningfully different than “balancing urban and rural power,” which the United States Supreme Court has found to be an illegitimate purpose when drawing congressional districts. *Davis v. Mann*, 377 U.S. 678, 685–90 (1964); *Reynolds v. Sims*, 377 U.S. 533, 622–23 (1964) (Harlan, J., dissenting).

The right to vote is the preservative of all other civil and political rights. *Reynolds*, 377 U.S. at 562. “The right to vote is a fundamental right.” *Gallivan v. Walker*, 2002 UT 89, ¶ 24, 54 P.3d 1069. Neither the U.S. nor Utah Constitutions leave any “room for classification of people in a way that unnecessarily abridges

this right.” *Id.* (quoting *Reynolds*, 377 U.S. at 560). As such, “any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.” *Reynolds*, 377 U.S. at 562. It is almost beyond dispute that extreme partisan gerrymanders are “incompatible with democratic principles” and necessarily infringe on the right to vote. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506 (2019); *id.* at 2514–15 (Kagan, J., dissenting). This court should apply a heightened level of scrutiny to all of Plaintiffs’ constitutional claims.

Under heightened scrutiny, the 2021 Congressional Plan is not necessary to achieve the Legislature’s stated purpose. Under any level of scrutiny, “balancing urban and rural power” in the abstract is not a legitimate legislative purpose. Instead, the legislature may evaluate the “particular circumstances and needs” of specific communities on a case-by-case basis. *Abate v. Mundt*, 403 U.S. 182, 185–86 (1971).

## Argument

“The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). “And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Id.* Yet the Legislature argues that this court has no power to protect Utahns’ fundamental voting rights from the “antidemocratic and un-American practice” of partisan gerrymandering.<sup>4</sup> As demonstrated by the Plaintiff’s principal brief on appeal, this is flatly false. Not only does the court have the power to do so, it has the obligation to do so. Further, a vote can be diluted in meaningful effect as much by partisan gerrymandering as by malapportionment.

This court should therefore scrutinize the Legislature’s alleged purpose carefully. For not only do the facts not support that the Legislature’s purpose is to ensure every congressional district contains both urban and rural areas, but that is not a legitimate purpose when redistricting.

### 1. The Legislature’s Purpose is Pretextual

Plaintiffs have sufficiently plead that the Legislature’s purpose is pretextual, and Utah’s redistricting history and the broad opposition of rural

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<sup>4</sup> Ronald Reagan, *Remarks at the Republican Governors Club Annual Dinner*, REAGAN LIBRARY (Oct. 15, 1987), <https://www.reaganlibrary.gov/archives/speech/remarks-republican-governors-club-annual-dinner>.

Utahns to “rural-urban districts” further demonstrate this is the case. [R.51–53.] “[F]or decades, rural and urban areas have been artificially combined in political districts,” but rather than elevate rural interests, “the result is that rural Utahns’ interests have often been overlooked by lawmakers from urban areas of the state, both in the Utah Legislature as well as in Congress.” All. for a Better Utah Educ. Fund, *Fair Redistricting: A Better Deal for Rural Utah* 1 (2018) [hereinafter “*Fair Redistricting*”] (attached as Addendum A). And since at least 2001, the majority of rural Utahns opposed plans which combined their districts with portions of Salt Lake County. *Id.* at 3.

In 2011, the Legislature publicly announced the criteria it would officially consider in redistricting but omitted the “rural-urban” mix they would actually prioritize. *Compare id.* at 2–3 with [R.42,49.] At that time, Senator Michael Waddoups justified the “rural-urban” mix as maximizing “the number of congressional representatives that would fight against federal regulations on public lands.” *Fair Redistricting* at 2–3. At that time, the majority of Utahns – urban and rural, Republican and Democrat – opposed the “rural-urban” mix plans.<sup>5</sup> *Id.* at 3. For example, Cedar City resident Ron Solomon lamented, “I, and others I have spoken with, really despise the dividing up of the Salt Lake City area and then spreading out [boundaries] to the rest of the state[.] . . . That just

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<sup>5</sup> See also Lee Davidson, *Rural Utahns Want Stronger Voice in Congress*, Salt Lake Tribune (June 11, 2011, 11:35 PM), <https://archive.sltrib.com/article.php?id=51988992&itype=CMSID>.

completely disenfranchises us' in rural areas that have fewer votes." *Davidson, supra note 5*. St. George resident Dorothy Engelman opined that urban and rural Utah's needs are not the same. *Id.* Over ten years later, former Nibley mayor and amicus curiae Shaun Dustin echoed these sentiments:

"I feel like what the legislature did was dilute our voice, as a rural community' . . . [R]ural Utah has an entirely separate list of issues, and should have entirely separate representation. 'I do have a problem with people from the Wasatch Front attempting to represent the interests of areas where they don't reside and where they don't really have contact.'"

*Dunphey & St. Clair, supra note 1*. For example, Mr. Dustin points to the Bear River compact, which allocates water between Utah, Wyoming, and Idaho and thus requires federal action. *Id.* "Now the congressional district that is going to be involved in resolving a lot of this includes interest from both the Great Salt Lake and from northern Utah where that water is[] . . . It puts our congressman, whoever that is, in a very difficult position." *Id.* Mr. Dustin further argues at this time that the 2021 Congressional Plan does not just sell out rural Utah today, but if upheld, ensures that Salt Lake County will forever be able to subsume rural Utah's congressional representation in the same way as it continues to grow and increasingly dominate the political priorities and partisan make-up of the Legislature.

Rural Utah is struggling with relative economic stagnation, decreasing unemployment, and overall population decline, whereas urban Utah is

struggling with a housing shortage, homelessness, and poor air quality. *Fair Redistricting* 8. Rural Utah would benefit disproportionately from expanding Medicaid or other forms of financial assistance to address intergenerational poverty, but urban representatives in the Legislature consistently block that relief. *Id.* at 9–12. Similarly, rural and urban Utah may have different views when it comes to tourism, mining, and the use of public lands. Rather than justify the Legislature’s alleged purpose, these conflicts undermine it as each congressional representative has only one vote to cast, and thus must choose whether to represent the urban or rural perspective with that vote when they conflict.

The foregoing concerns are justified; since 2001 Utah’s congressional districts have consistently elected representatives who reside in either Salt Lake or Utah County, with only a few exceptions. *Fair Redistricting* 6. This includes Utah’s current House representatives, all of whom live along the Wasatch Front. [R.53.] And the mostly urban delegation often prioritizes urban priorities. For example, in 2018, all four of Utah’s congressional representatives voted for a bill that increased work requirements to 20 hours a week for SNAP beneficiaries, most of whom are rural and thus also live where job scarcity is most acute. *Fair Redistricting* 13–14.

And as Plaintiffs alleged, the viewpoints of rural Utahns generally remained the same in 2021, with the vast majority opposing the 2021 Congressional Plan as a partisan gerrymander. [R.29–30,43,46–48,52–53.] For

example, at [the October 6, 2021 hearing of the Legislative Redistricting Committee](#) (“LRC”),<sup>6</sup> former Uintah County commissioner Bart Haslem spoke to the importance of rural representation at Congress now because the rapid economic shifts in rural Utah are occurring far faster than every ten years.

The Legislature’s statements justifying the “rural-urban” purpose are generally framed as being for rural Utah’s benefit, but rural Utah’s broad and consistent opposition to “rural-urban” districts suggests that the Legislature’s purpose is pretextual. And of course, the Legislature’s transparent partisan purpose also suggests the “rural-urban” purpose is pretextual. Sen. Sandall admitted that the LRC included partisan considerations in their redistricting process and that the LRC adopted the urban/rural criterion on an unofficial, *ad hoc* basis. [R.42–43,49.]; [Dunphey & St. Clair, supra note 1](#). And by all accounts, the LRC did not formulate a consistent definition of “urban” and “rural” to guide it in, ostensibly, balancing urban and rural representation. [R.49.] This is striking as the Legislature has prioritized this unspoken criterion since at least 2011. *Fair Redistricting* 3. There is no indication that the Legislature paid any attention to how Utah law already defined “rural” and “urban.” Cf. [Resp.Op.Br. Add. W.] And during a closed-door session between the LRC and the Republican

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<sup>6</sup> *Legislative Redistricting Committee Hearing*, 64th Leg., 2d Spec. Sess. (Utah Oct. 6, 2021) (statement of Comm’r Bart Haslem).  
<https://le.utah.gov/MtgMinutes/publicMeetingMinutes.jsp?Com=SPELRD&meetingId=17675>.

caucus, the caucus “discussed partisan voting trends, and used that information to inform its redistricting decisions.” [R.44–45.] In fact, the Legislature’s process was overall designed to limit public involvement and feedback. [R.9–10,40–51.]

Finally, the Legislature has never articulated why cracking Salt Lake County is the method they continually choose to include urban and rural areas in each district. While the Legislature never detailed what criteria would guide its redistricting decision, they did state that they would consider “reasonable compactness.” [R.42.] Compactness generally refers to maintaining cohesive communities in close geographic proximity. *See Justin Levitt, A Citizen’s Guide to Redistricting 51 (2010)*. But the 2021 Congressional Plan was less compact than any of the Commission’s politically neutral plans, including SH2, which contained urban and rural areas in each district without cracking Salt Lake County. [R.49,64–71.] Further, the 2021 Congressional Plan divides “far more counties, municipalities, and communities of interest than a map based on neutral criteria.” [R.65.] While the 2021 Congressional Plan splits five counties into twelve pieces and fifteen municipalities into thirty-two pieces, the SH2 map splits four counties into eight pieces and seven municipalities into fourteen pieces. [R.65–70.] In short, SH2 demonstrates that each district could have contained urban and rural areas without cracking Salt Lake County, further suggesting that the Legislature’s purpose is pretextual.

## 2. This Court Should Apply Heightened Scrutiny to Plaintiffs' Claims

The parties generally disagree as to what degree of scrutiny, if any, is appropriate for Plaintiffs' claims. [R.72-73,768,775-76,783-84,787]; [Pet.Op.Br. at 37,53-55,59.] Plaintiffs argue that heightened scrutiny applies to their equal protection claim "because the 2021 Congressional Plan implicates their fundamental rights and creates impermissible and suspect classifications." [R.72]; [Resp.Op.Br. at 45, 61-64.]; *see also Count My Vote, Inc. v. Cox*, 2019 UT 60, ¶¶ 28-31, 452 P.3d 1109 (outlining the standard for equal protection claims). The Legislative Defendants argue that only rational basis review applies both because "partisan affiliation is not a suspect classification" and because the 2021 Plan does not "unduly burden or constrict" Utahns' ability to "cast a ballot" for their congressional representative. [Pet.Op.Br. at 53-55.]

But Utahns' right to vote also includes their right to "fair and effective representation." *Gallivan v. Walker*, 2002 UT 89, ¶ 72, 54 P.3d 1069; *Count My Vote, Inc.*, 2019 UT 60, ¶ 74 (affirming that "representation" is fundamental to the democratic process of Utah). And the right to vote for representation is undeniably fundamental, being the "preservative of other basic civil and political rights [so that] any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

As Justice Kagan wrote in her *Rucho* dissent, "[t]hough different Justices have described the constitutional harm in diverse ways, nearly all have agreed

on this much: [e]xtreme partisan gerrymandering . . . violates the [United States] Constitution.” *Id.* at 2514–15 (Kagan, J., dissenting). Even the *Rucho* majority agreed: “Excessive partisanship in districting leads to results that reasonably seem unjust. But the *fact* that such gerrymandering is incompatible with democratic principles does not mean that solution lies with the federal judiciary.” *Id.* at 2506 (emphasis added) (quotation simplified) (citing *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787, 791 (2015)).

Said differently, it is almost beyond dispute that partisan gerrymandering *does* unduly burden and constrict voters’ right to “fair and equal representation.” When representatives choose their voters instead of voters choosing their representatives, it renders the government a republic in name only and in a very real sense undermines its constitution. *Cf. Arizona State Legislature*, 576 U.S. at 824 (stating that it is “the core principle of republican government . . . that the voters should choose their representatives, not the other way around”). That being the case, this court should apply heightened scrutiny to all of Plaintiffs’ constitutional claims.

When this court applies heightened scrutiny to equal protection claims, it requires legislative actions implicating fundamental rights to “be reasonably necessary to further, and in fact [to] actually and substantially further, a legitimate legislative purpose.” *Gallivan*, 2002 UT 89, ¶ 42. Further, despite the shared use of the word “legitimate” between rational basis review and this

heightened standard, *see Count My Vote, Inc.*, 2019 UT 60, ¶ 35, here “legitimate legislative purpose” should be construed as equivalent to the federal requirement of “a state interest of compelling importance” because Utah’s “heightened-scrutiny analysis under the uniform operation of laws provision of the Utah Constitution . . . ‘is at least as exacting’ if not more so than” its federal equivalent. *Gallivan*, 2002 UT 89, ¶ 83.

### **3. The Legislative Map Fails a Heightened Scrutiny Analysis**

The Legislature does not attempt to justify the 2021 Congressional Plan under heightened scrutiny and instead summarily asserts that “‘combin[ing] and elevat[ing]’ urban and rural voices together in Utah’s congressional delegation” by ensuring “each district has a ‘foothold’ in both rural and urban areas” is a legitimate governmental purpose because “[t]his policy choice has been repeated for decades.” [Pet.Op.Br. at 13,35,55.]; *see also* [R.38–39,43,51–52 (quoting the Legislature Redistricting Committee’s co-chairs as saying “[w]e are one Utah, and believe that both urban and rural interests should be represented in Washington, D.C. by the entire federal delegation” (alteration in original)).

But this argument conflates the Legislature’s purpose with its means – that is, cracking Salt Lake County so that each congressional district contains both rural and urban areas – making the Legislature’s actual purpose uncertain and vague. Taking Plaintiffs’ allegations as true, this is because this proffered

purpose is pretextual. [R.43–45,49,51–53,64–67.] But even taking the Legislature’s justification at face value, it cannot withstand heightened scrutiny.

### **3.1. The Legislative Map Is Not Reasonably Necessary**

As detailed in part 1, cracking Salt Lake County is not reasonably necessary to include both urban and rural areas in each congressional district. *Supra* at 12–13. Indeed, as the Complaint alleged, the Commission’s SH2 map “achieves a superior mix of urban and rural components in all four districts” “[b]y any plausible measure.” [R.38,49,52.]

Further, drawing each congressional district so that it contains both urban and rural areas is not itself reasonably *necessary* to balance urban and rural representation, or even particularly effective. As noted above, urban and rural Utah face different challenges and may have conflicting interests. When all four of Utah’s congressional representatives represent both urban and rural areas, they must pick whose interests wins out over the other’s. It perhaps goes without saying that if the redistricting is not effective, it cannot possibly be necessary.

### **3.2. Illegitimate Legislative Purpose**

Even if the 2021 Congressional Plan was reasonably necessary to balance urban and rural representation in Utah’s federal delegation, this is not a legitimate or compelling legislative purpose when subjected to Utah’s heightened scrutiny standard. *Gallivan*, 2002 UT 89, ¶¶ 42, 83.

The United States Supreme Court considered the legitimacy of “balancing urban and rural power” in the malapportionment cases. In *Davis v. Mann*, the Virginia legislature drew its chambers’ districts with substantially unequal populations, giving the citizens in some districts more individual voting power than others. 377 U.S. 678, 685–90 (1964). Based on the court’s contemporaneous ruling in *Reynolds v. Sims*, which “held that the Equal Protection Clause requires that seats in both houses of a bicameral state legislature must be apportioned substantially on a population basis,” the court found the Virginian apportionment unconstitutional. *Id.* at 690 (citing 377 U.S. 533 (1964)). Virginia argued that its plan was “sustainable as involving an attempt to balance urban and rural power in the legislature.” *Id.* at 692. The court rejected this justification as not only contrary to the facts, but also summarily as “lack[ing] legal merit.” *Id.*

Justice Marshall Harlan II interpreted the court in *Davis* to rule that it is “unconstitutional for a State to give effective consideration to” balancing urban and rural power “in establishing legislative districts.” *Reynolds*, 377 U.S. at 622–23 (Harlan, J., dissenting). Previous dissents by Justice Harlan and Justice Felix Frankfurter in this line of cases demonstrate that Justice Harlan interpreted *Davis* correctly. In *Baker v. Carr*, both justices expressed the opinion that balancing urban and rural power was a legitimate legislative purpose which might justify malapportionment in future cases. Justice Frankfurter, dissenting, wrote, “I would hardly think it unconstitutional if a state legislature's expressed reason for

establishing or maintaining an electoral imbalance between its rural and urban population were to protect the State's agricultural interests from the sheer weight of numbers of those residing in its cities.” 369 U.S. 186, 336 (1962).

Justice Harlan, dissenting, wrote, “It is said that one cannot find any rational standard in what the Tennessee Legislature has failed to do over the past 60 years. But surely one need not search far to find rationality in the Legislature's continued refusal to recognize the growth of the [ur]ban population that has accompanied the development of industry over the past half decade. The existence of slight disparities between rural areas does not overcome the fact that the foremost apparent legislative motivation has been to preserve the electoral strength of the rural interests notwithstanding shifts in population. And I understand it to be conceded by at least some of the majority that this policy is not rendered unconstitutional merely because it favors rural voters.” *Id.* at 345–49. Justice Harlan maintained this position in his dissent to *Gray v. Sanders*, where he said, “a State might rationally conclude that its general welfare was best served by apportioning more seats in the legislature to agricultural communities than to urban centers, lest the legitimate interests of the former be submerged in the stronger electoral voice of the latter.” 372 U.S. 368, 386 (1963).

The 1964 *Davis* court was, of course, ignorant of neither *Baker* and *Gray* nor Justice Harlan’s position when it ruled otherwise – that balancing urban and rural power wholly “lack[ed] legal merit” as a legislative purpose. 377 U.S. at

692. Nor did the *Reynolds* majority contradict his interpretation of *Davis*. See generally 377 U.S. 533. One might argue that because these cases all concerned malapportionment, the *Davis* court was only holding that “balancing urban and rural power” was only not a legitimate legislative reason to unequally apportion districts. But that argument would also conflate “purpose” with “means.”

In 1962, the Virginia legislature drew their districts with unequal populations to, ostensibly, “balance urban and rural power in the legislature.” *Davis*, 377 U.S. at 680–81, 692. In 2021, the Utah legislature drew the state’s congressional districts with both urban and rural areas to, ostensibly, ensure “urban and rural interests [are] represented in Washington, D.C. by the entire federal delegation;” in other words, to balance urban and rural power in the federal delegation. [R.45.] The means in 1962 and 2021 differ, but the legislative purpose remains the same and remains illegitimate. For while “particular circumstances and needs of a local [less populous, i.e. rural] community as a whole may sometimes justify departures from strict equality,” *Abate v. Mundt*, 403 U.S. 182, 185–86 (1971), “there is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters within the State.” *Reynolds*, 377 U.S. at 558. Said differently, while the Legislature might have legitimately considered the particular circumstances and needs of Utah’s rural communities of interest, it cannot legitimately prioritize balancing urban and rural representation as its own

abstract end. At minimum, this purpose is not sufficiently compelling to be deemed “legitimate” under heightened scrutiny. *Gallivan*, 2002 UT 89, ¶¶ 42, 83.

### **Conclusion**

The Legislature drew the 2021 Congressional Plan with the alleged purpose of ensuring rural Utah was represented by the entirety of Utah’s federal delegation, but they wholly disregarded the voice of rural Utahns who told them time and again that they wanted fair, politically neutral maps instead of being arbitrarily lumped in with part of Salt Lake County. They likewise would have this court believe that the instant litigation is a cynical ploy by a few unhappy Democrats. But it is not. Rural Utahns – like those who work with RUP and were represented by fellow amicus curiae – still oppose partisan gerrymandering no matter which party benefits, and would prefer congressional representatives who primarily represent rural interests instead of having to compete with urban Utah for that same representative’s vote.

Dated this 19th day of May, 2023.

JULIE J. NELSON LAW

*/s/ Skylar Walker*

Julie J. Nelson

Skylar Walker

*Attorney for Appellees*

## Certificate of Compliance

I hereby certify that:

1. This brief complies with the word limits set forth in [Utah R. App. P. 25\(f\)](#) because this brief contains fewer than 7,000 words, excluding the parts of the brief exempted by [Utah R. App. P. 25\(f\)](#).
2. This brief complies with the typeface requirements of [Utah R. App. P. 27\(a\)](#).
3. This brief complies with [Utah R. App. P. 21\(h\)](#) regarding public and non-public filings.

DATED this 19th day of May, 2023.

/s/ Julie J. Nelson

## Certificate of Service

I certify that on May 19, 2023, a true and correct copy of the foregoing motion was served on the following by electronic mail:

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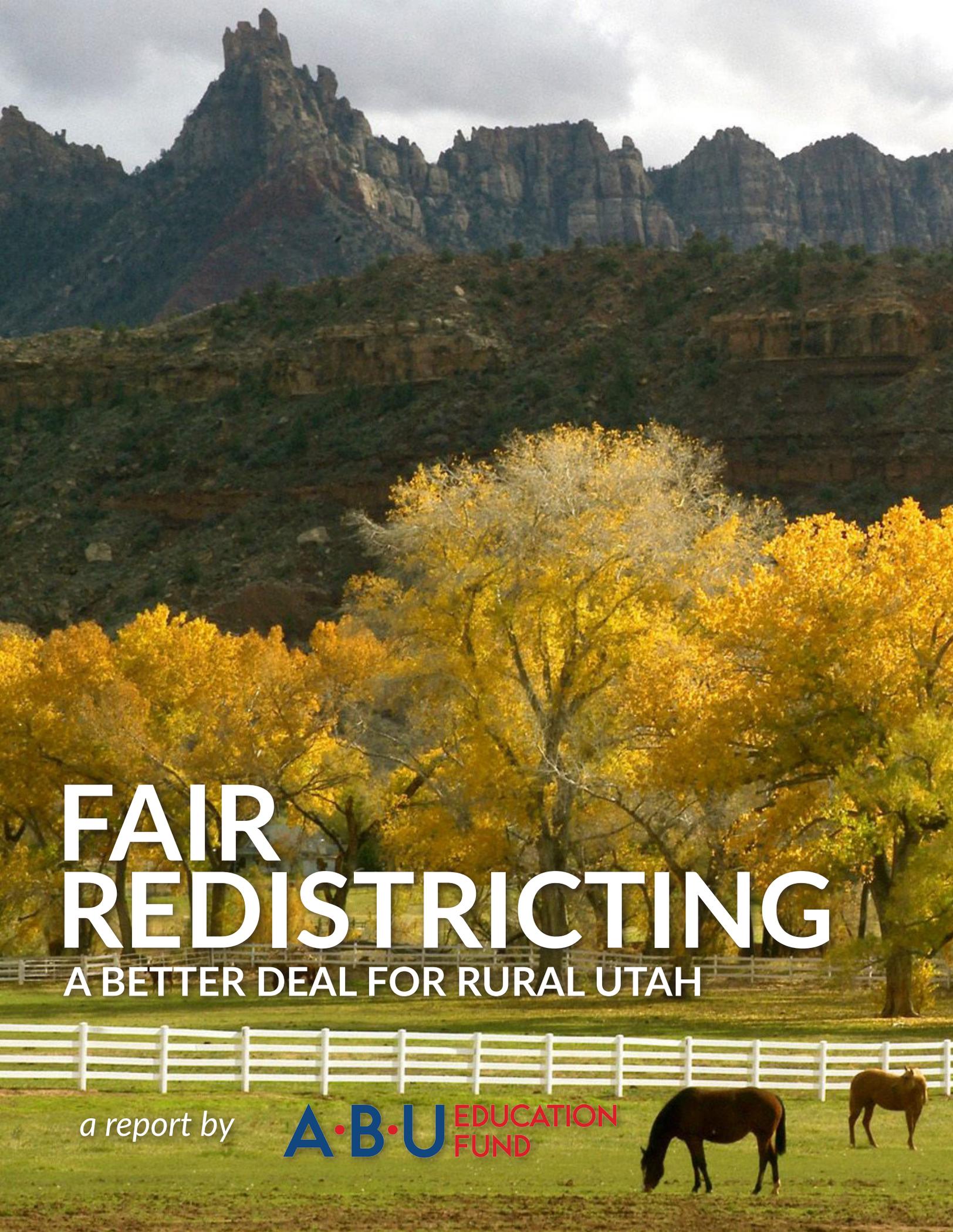
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# Addendum A



# FAIR REDISTRICTING

A BETTER DEAL FOR RURAL UTAH

*a report by*

**A·B·U** EDUCATION  
FUND



The most common mistake made by out-of-state political observers about Utah is a willingness to paint both rural and urban parts of the state with the same broad, red brush.

*The relationship between rural and urban Utah is more nuanced than their political makeups suggest.*

On the surface level, Utah's defining characteristics seem to apply fairly consistently across the state: a politically monochromatic population with a high birth rate, a strong religious tradition, a thriving economy, and a population on the cusp of exponential growth. However, the relationship between rural and urban Utah is more nuanced than their political makeups suggest.

Closer inspection reveals a large gap between the Wasatch Front, which contains four urban counties housing the majority of the population,<sup>1</sup> and the rest of the state. Statistics show that rapid growth in urban parts of the state<sup>2</sup> will widen the already-existing divide between rural and urban Utah.<sup>3</sup> In the coming years, rural Utah's challenges, interests, and opportunities will continue to grow more distinct from their urban counterparts. Attempting to represent both areas together in shared political districts would be a folly, and rural Utahns would pay the price.

In 2021, following the upcoming 2020 Census, Utah will redraw its congressional and state legislative district boundaries. The only question is who those districts will be drawn to represent. This November, voters will have the option to vote for a ballot proposition establishing an independent redistricting committee, which would create district maps for the state legislature to approve. The committee would be bound by the following criteria in creating district maps:

1. Creating districts equal in population, in accordance with the Constitution of the United States and the Voting Rights Act
2. Keeping cities and counties together as much as possible
3. Creating geographically compact districts
4. Creating geographically contiguous districts
5. Preserving traditional neighborhoods and local communities of interest
6. Following natural and geographic boundaries
7. Maximizing boundary agreement across overlapping districts

*- Utah Independent Redistricting Commission and Standards Act*

Rural Utahns would benefit from a more impartial and fair redistricting process—for decades, rural and urban areas have been artificially combined in political districts. The result is that rural Utahns' interests have often been overlooked by lawmakers from urban areas of the state, both in the Utah Legislature as well as in Congress.

By respecting rural needs and experiences as important and distinct, an independent redistricting commission could keep rural Utah united as a community of interest, finally allowing rural Utahns to have their own zealous representation.



## UTAH'S REDISTRICTING HISTORY

Over 75 percent of Utah's population lives within four urban counties along the Wasatch Front: Salt Lake, Utah, Davis, and Weber.<sup>4</sup> The remainder of the state's population is spread throughout Utah's remaining 25 counties: Washington, Cache, Tooele, Box Elder, Iron, Summit, Uintah, Wasatch, Sanpete, Sevier, Carbon, Duchesne, San Juan, Millard, Morgan, Juab, Emery, Grand, Kane, Beaver, Garfield, Wayne, Rich, Piute, and Daggett.<sup>5</sup>

Following the 2010 Census, population increases in Utah resulted in the creation of a new, fourth Congressional district. Prior to the 2010 reapportionment, Utah had three congressional districts. In 2011, the Utah State Legislature had the task of deciding where the new congressional district should be located, in addition to updating the district maps for Utah's 29 Senate seats and 75 House seats. This redistricting process sparked intense debate as to where the new congressional seat would be located, and who the new district would benefit.

The Joint Redistricting Committee of the Utah Legislature was responsible for drafting the district boundaries. Committee members were selected by House Speaker Rebecca Lockhart and Senate President Michael Waddoups. The committee consisted of 19 legislators in total: 13 representatives and 6 senators, 14 Republicans and 5 Democrats, 13 legislators from urban counties and 6 legislators from rural counties.<sup>6</sup>

At the outset, the committee adopted six redistricting principles which would govern the 2011 redistricting process.<sup>7</sup> These principles ensured equality of population, so as to not violate the Voting Rights Act, relying on the 2010 Census data. Two traditional redistricting principles were also included: that districts would be contiguous and reasonably compact. To reduce the risk of litigation, the Office of Legislative Research and General Council recommended that the legislature not adopt additional traditional redistricting principles, such as preserving political subdivisions and keeping communities of interest intact. Thus, the Legislature was licensed to split up pre-existing political subdivisions, such as cities or counties, as well as communities of interest in both state and federal districts.

Although not officially adopted as a 2011 redistricting principle, it soon became clear that many Republican lawmakers in Utah had an additional redistricting principle in mind: creating a mix of rural and urban areas in each of Utah's congressional districts. The push for a rural-urban mix was championed by then-Senate President Michael Waddoups, who wanted to maximize the number of congressional representatives that



would fight against federal regulations on public lands.<sup>8</sup> This was commonly referred to as a “pizza slice” model, with wedge-shaped districts extending outward from Salt Lake City. An alternative favored by Democrats was the “doughnut hole” model, with concentrated urban districts surrounded by a larger, more sparsely populated rural district.

The committee held 17 public hearings across the state to gather public input on how the new district

lines should be drawn. Most rural Utahns who testified at hearings in Ephraim, Richfield, Cedar City, and Saint George opposed the pizza slice model, favoring the “doughnut hole” model that would keep rural Utah together.<sup>9</sup> As one resident explained, “I feel we have more in common here in Cedar City with the folks in Brigham City and Logan than with the folks in the avenues in Salt Lake.”<sup>10</sup> A state poll conducted at the same time as the public hearings found that statewide, a majority of both republicans and democrats favored the “doughnut hole” approach.<sup>11</sup>

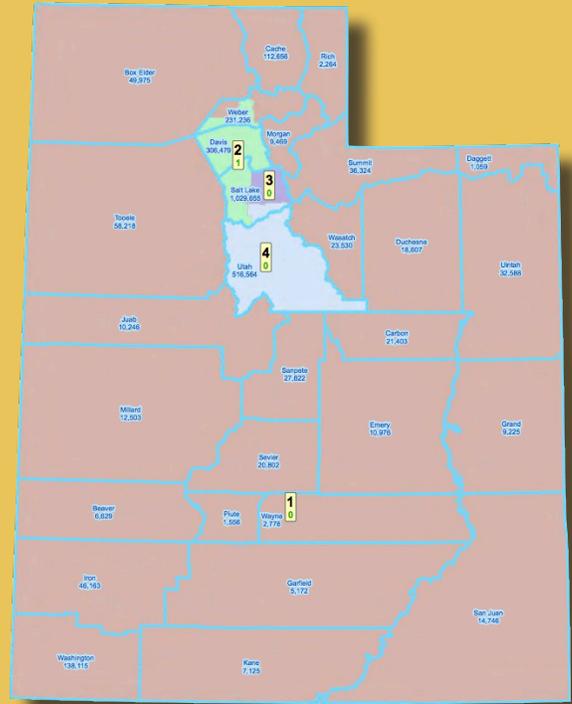
The clamor for a predominantly rural district was not new, nor was the Legislature’s insistence on a rural-urban mix. In 2001, the last time Utah redistricting occurred, Republican legislators drew new maps carving up Salt Lake County and spreading rural Utah out among three congressional districts. Rural Utahns vocally opposed the plan, saying the rural-urban mix effectively prevented them from having a congressional representative who was part of their cultural base.<sup>12</sup> One proposal, introduced by Rep. Curt Webb, R-Logan, as a “rural bias map,” went at odds with GOP leadership by featuring two mostly rural districts surrounding two urban districts.<sup>13</sup>

The 2011 redistricting process was hailed by legislators as unimpeachably fair—in addition to the 17 public hearings across the state, the public had the opportunity to submit their own maps using a free version of redistricting software on the state website. The Legislature received over 160 submissions through the website. However, the Redistricting Committee declined to seriously consider any maps featuring an all-rural district. Of the six map finalists selected, all adopted the rural-urban mix, breaking rural Utah into wide areas and combining them with portions of Salt Lake County.<sup>14</sup>

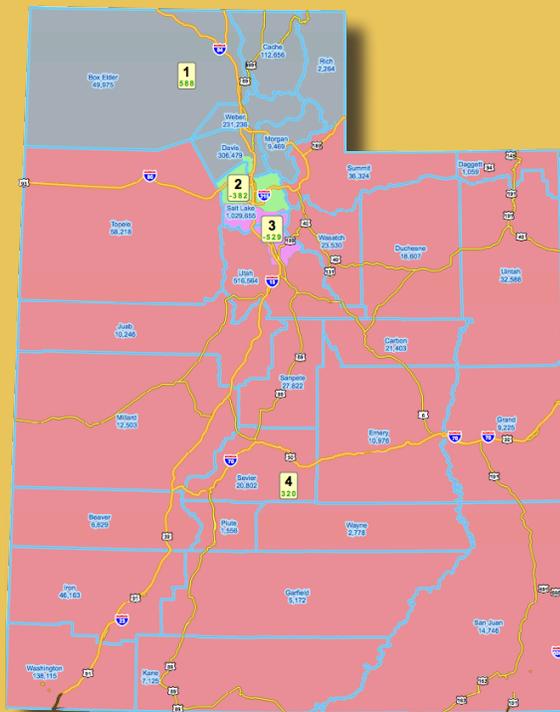
Ultimately, the Legislature did not keep rural Utah united. The final map adopted by the Legislature was a modification of a pseudo-doughnut hole map created by Rep. Ken Sumison, dividing rural Utah into three large sections. The first district combined Weber County and half of Davis County with Utah’s more rural northern counties. The second district combined all of southwestern Utah with Salt Lake City and the lower half of Davis County. The third district combined all of rural southeastern Utah with portions of Salt Lake and Utah Counties. The new fourth district combined parts of Salt Lake and Utah Counties with portions of Juab and Sanpete Counties, thereby creating a rural-urban mix in all four congressional districts.



Pre-2011 Congressional District Map



Example of a Proposed "Doughnut Hole" Map



"Rural Bias" Map from Rep. Curt Webb



Final 2011 Map Passed by Legislature



## THE RATIONALE FOR RURAL-URBAN DISTRICTS: PUBLIC LANDS

Why was the Legislature so insistent upon breaking up both rural and urban Utah?

One answer typically proffered by Democrats was political gerrymandering—asserting that the primary objective of the GOP-dominant legislature was to break up the traditionally Democratic voting bloc in Salt Lake County. Indeed, one self-described Republican political elections blog endorsed an early version of the final map, advising Utah readers to “call your legislator in support of this solid 4-0 SLC crackin’ beauty.”<sup>15</sup>

An alternate explanation, typically proffered by Republicans, is that a mix of rural and urban areas in each district would unify and balance Utah’s congressional delegation, ensuring that each would be able to advocate on behalf of both rural and urban constituents. Congressman Rob Bishop said, “[I]t’s disingenuous to say rural people think one way and urban people think another way,” claiming that Utah’s House delegates, like senators and governors, should represent both rural and urban interests.<sup>16</sup>

Specifically, the GOP leadership push for simultaneous rural and urban representation was largely focused on ensuring that all four representatives would deal with public lands issues like federal regulation and energy development.<sup>17</sup> As reported by the *Deseret News*, Sen. Waddoups said “he would like to see each congressional district include some public lands in order have more representation on that issue in Washington D.C.”<sup>18</sup>



However, critics of the rural-urban mix warned that districts which diluted communities of interest would not be capable of representing any of those communities particularly well. The *Daily Herald* editorial board, advocating for an all-Utah County district, wrote, “It’s absurd to expect the House of

Representatives to be made up solely of bland, wishy-washy ‘moderates.’ Rather, it should, on the whole, represent a wide spectrum of beliefs.”<sup>19</sup>

During the 2001 redistricting process, Rep. Patrice Arent said artificially combining rural and urban areas was contrary to the intent of the Founding Fathers. “I think it’s mixing the roles of the U.S. Senate and the U.S. House.... The Senate balances the interests of the state, while the House represents people in a specific area.”<sup>20</sup>

*In practice, congressional districts with a rural-urban mix usually do not elect rural representatives.*

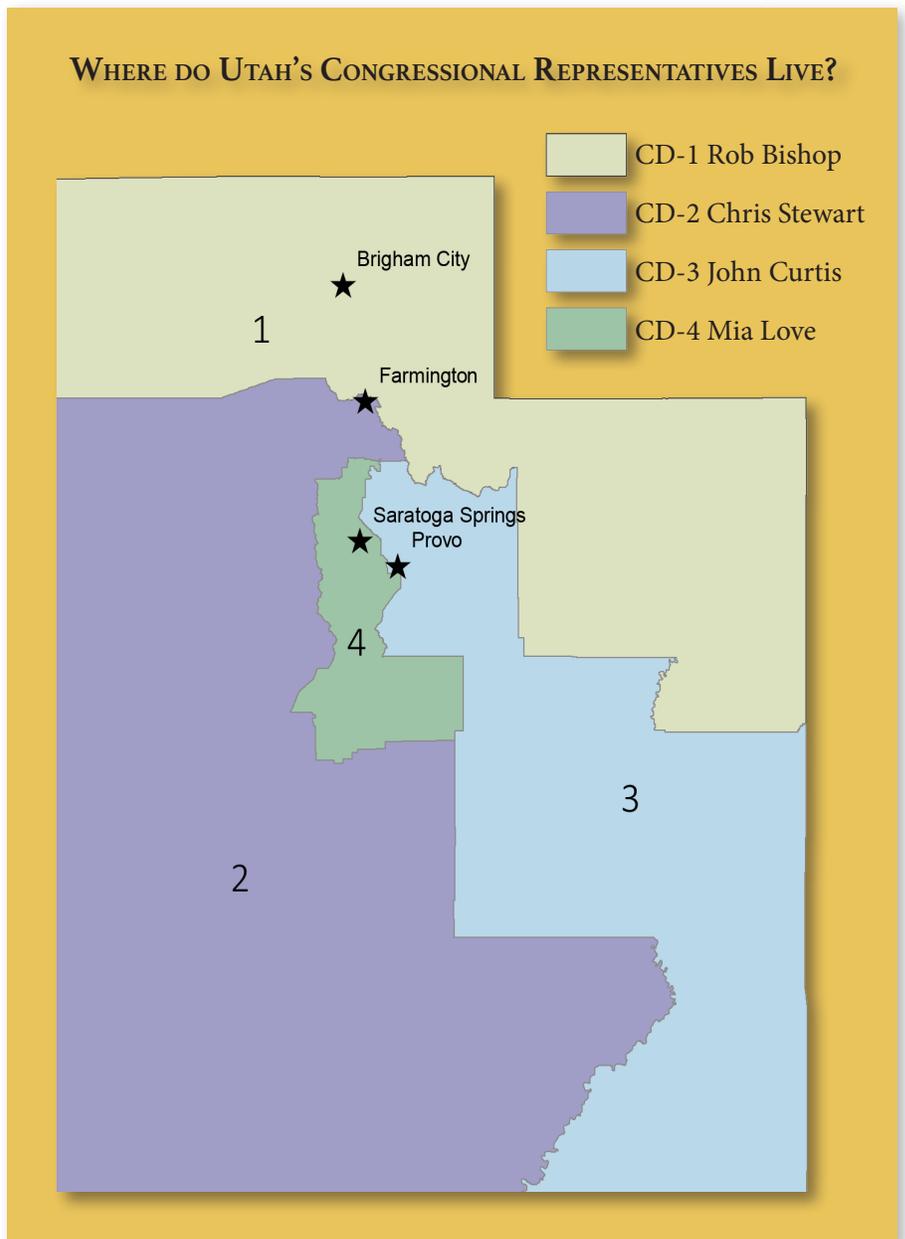
In practice, congressional districts with a rural-urban mix usually do not elect rural representatives. In 2003, Utah’s second congressional district shifted from an urban district concentrated in Salt Lake County to a rural-urban mixed district combining parts of Salt Lake County with the southern and eastern borders of the state. Since incorporating vast rural territory into the formerly urban district, the district has never had a representative hailing from rural

Utah.

Utah’s third and fourth congressional districts illustrate the same pattern—since their creations in 1983 and 2013, respectively, both have always featured a rural-urban mix. Neither district has ever elected a representative outside of Salt Lake or Utah County, the two most populous counties in the state.

Currently, Utah has one congressional representative from rural Utah: Rep. Rob Bishop, from Brigham City in Box Elder County. Utah’s first congressional district, which he represents, encompasses 8 rural counties, along with urban Weber County and part of Davis County. Unfortunately, Utah’s 17 other rural counties do not enjoy rural representation. Based on county population data from the 2010 Census, this means 61.3 percent of rural Utahns—or 417,009 individuals—are not represented at the federal level by a person from rural Utah.<sup>21</sup>

Thanks to the rural-urban mix, most rural areas in the state have an urban representative. Utah’s second, third, and fourth Congressional districts encompass all of central and southern Utah, yet the current representatives for these districts all live within an hour’s drive from each other along the Wasatch front.





## RURAL UTAH HAS DISTINCT NEEDS

One could argue that it should not matter to rural Utahns where their representative lives, as long as he or she advocates for policies that benefit rural Utah. As Rep. Sumison quipped after the 2011 public hearings, “I’m not sure what we’ve learned, really...Most people want a representative who lives in the neighborhood.”<sup>22</sup> Obviously, placing too high a value on locational representation can present a tremendous obstacle to realistic congressional representation. Yet in Utah, combining rural areas together as a community of interest could both rectify a perceived lack of authentic representation as well as result in stronger advocacy for legislation and policy benefiting rural Utahns.

Demographically, rural Utah has distinct needs that can differ substantially from the needs of urban counties within the state. Often, representation centered around the priorities of urban Utah—even representation from a member of the same political party—will leave rural Utah without a true advocate.

Although rural and urban counties in Utah often share the same political preferences, the two areas should not be confused. The demographic gap between rural and urban Utah has grown substantially in the past decade.

While Utah overall has enjoyed the strongest job growth in the nation,<sup>23</sup> that success has largely been limited to the Wasatch Front and surrounding bedroom communities, along with the St. George metropolitan area in Washington County and Moab in Grand County. Rural Utah, by contrast, has undergone a “silent recession,” with employment decreasing since 2007 in 11 rural counties.<sup>24</sup> The job divide between rural and urban Utah is only projected to widen. According to the Utah Economic Council’s 2018 Economic Report to the Governor, nearly 90 percent of the new jobs created in 2018 will be located in Utah’s four urban counties (Salt Lake, Utah, Davis, and Weber), along with the rapidly developing Washington County.<sup>25</sup>

Additionally, Utah’s unemployment rate hit a low 3.0 percent in 2018, nearly a full percentage point from the national unemployment rate, which dipped below 4.0 percent for the first time in 18 years. However, Utah’s unusually low unemployment rate fluctuates widely by county: along the Wasatch Front, Utah, Morgan, and Cache counties had the lowest annual unemployment rates in 2017, all under 3 percent.<sup>26</sup> Meanwhile, in rural Utah, Garfield, Wayne, and San Juan counties all had unemployment rates over 7 percent.<sup>27</sup>

Poverty is also highest in rural Utah. While the median poverty rate in urban and “transitional” urban-adjacent counties has increased more dramatically since the 2000 Census, the rate in rural counties remains higher.<sup>28</sup> Additionally, rural counties exhibit a high rate of intergenerational poverty,<sup>29</sup> defined by the state-run Utah Intergenerational Poverty Initiative as “poverty in which two or more successive generations of a family continue in the cycle of poverty, as measured through utilization of public assistance for at least 12 months as an adult and at least 12 months as a child.”<sup>30</sup> Rural San Juan County has the highest level of children experiencing intergenerational poverty, at 34 percent—more than triple the rate of Weber County, the urban county with the highest level of child intergenerational poverty, at 10 percent.<sup>31</sup>

Another key issue unique to rural Utah is population decline. Overall, Utah’s population is expected to nearly double in the next 50 years, reaching an estimated 5.8 million by 2065.<sup>32</sup> But that growth is only expected to occur along the I-15 corridor and surrounding bedroom communities. Thanks to a high birth rate as well as increased number of people moving in from out of state,<sup>33</sup> urban and suburban areas of Utah will continue to swell.

By contrast, rural Utah is struggling to retain its population, as young people move away for school or work to urban areas of the state. The consequences for rural Utah can be severe—a shrinking population often means fewer available jobs and less access to health services. Public schools, dependent on a critical mass of students in order to function, can find themselves particularly at risk.<sup>34</sup>

Rural Utah also suffers from a lack of basic infrastructure, compared to its urban neighbors. According to Linda Gillmor, director of the Office of Rural Development in the Governor’s Office of Economic Development, “the high cost of infrastructure development is one of the biggest factors to inhibit growth and business recruitment in rural Utah.”<sup>35</sup> Common infrastructure needs in Utah include roads and maintenance, power lines and substations, natural gas lines, and water self-supply systems. For rural economies to survive and flourish, they need the initial investment of necessary infrastructure.

In sum, rural Utah is facing significant challenges, such as relative economic stagnation, as well as decreasing employment and an overall population decline. These issues are markedly different from the challenges associated with rapid growth that urban Utah struggles with, such as a housing shortage, homelessness, and poor air quality. As urban Utah continues to experience rapid growth, the gap between rural and urban areas of the state is projected to widen. Lawmakers should be aware of this gap and be careful not to attend to the challenges facing urban Utah at the expense of rural Utah. Just as rural Utah’s needs and priorities are different, the solutions to address those needs will likely be different as well.





## IGNORING RURAL ISSUES BY STATE LAWMAKERS

The risk that rural Utah's needs will go unnoticed is increased by the political makeup of the state. Rural Utahns consistently vote for Republican candidates, as do urban voters living in Utah, Davis and Weber counties, as well as parts of Salt Lake County. On a federal level, Utah's rural-urban mix across its congressional districts results in both rural and urban voters usually electing GOP candidates.

In an era of increased political tribalism, voters are mostly concerned about poor representation through a candidate of another party, rather than a candidate from their same party. Yet solutions to the complex issues facing rural Utah cannot be pigeonholed as right vs. left—and often, opposition to solutions that would benefit rural Utah comes from representatives of the same party, living in urban areas of the state.

Rural Utah, like much of urban Utah (with the exception of Salt Lake County) tends to consistently vote for Republican candidates. In theory, an alignment in party affiliation would result in a consistent set of legislative priorities across the state. With regard to rural Utah, the impetus to help create a strong economy seems clear. In Governor Gary Herbert's State of the State address in January 2017, he challenged Utah businesses to create 25,000 new jobs in rural parts of Utah over the next four years.<sup>36</sup> Two months later, the Utah Legislature unanimously passed a joint resolution encouraging business development and expansion in rural Utah in endorsement of that goal.<sup>37</sup>

However, based on legislative voting records, an alignment in party affiliation between rural and urban lawmakers does not necessarily translate into a shared set of legislative priorities or perspective. Generally, the legislators who voted against bills specifically designed to benefit rural Utahns were Republicans from urban parts of the state.

One day after the 2017 Utah Legislature passed S.J.R. 14, Joint Resolution Regarding Jobs in Rural Utah, the House and Senate voted on the S.B. 267, Utah Rural Jobs Act.<sup>38</sup> This bill, sponsored by rural resident Sen. Ralph Okerlund, supported rural Utah businesses by creating a nonrefundable state tax credit for investments in eligible small businesses primarily located in rural counties. The bill passed, but was opposed by six Republican representatives, all living in Utah or Salt Lake Counties—and all of whom had voted in favor of the joint resolution supporting rural jobs the day before. Because these urban representatives are not in touch with the issues affecting rural Utah, they fail to support important policies benefiting rural Utah. These lawmakers want rural Utah's economy to get back on its feet, but aren't willing to offer a hand up to rural businesses.

## RECENT BILLS EXPLICITLY AIMED AT HELPING RURAL UTAH GET BACK ON ITS FEET

### S.J.R. 14, Joint Resolution Regarding Jobs in Rural Utah (2017)

- Sponsor: Sen. Kevin Van Tassell
- Resolution encouraging business development and expansion in rural Utah
- Voted against: no one

### S.B. 267, Utah Rural Jobs Act (2017)

- Sponsor: Sen. Ralph Okerlund
- Created a state nonrefundable tax credit for investments in small businesses in rural counties
- Voted against: 6 republicans from urban counties (Reps: Kay Christofferson, Brian Greene, Corey Maloy, Dan McCay, Marc Roberts, Mike Winder)

### H.B. 390, Rural Economic Development Incentives (2018)

- Sponsor: Rep. Carl Albrecht
- Created the Rural Employment Expansion Program, which provides grants to companies that create high-paying jobs in rural areas.
- Voted against: 2 republicans from an urban county (Reps: Marc Roberts, Norm Thurston)

### S.B. 232, School Transportation Amendments (2018)

- Sponsor: Sen. David Hinkins
- Provides reimbursement for student transportation costs to rural school districts where at least 65 percent of students qualify for free or reduced lunch.
- Voted against: 12 republicans from urban counties, 4 democrats from urban counties, 3 republicans from rural counties (Reps: Stewart Barlow, Joel Briscoe, Craig Hall, Timothy Hawkes, John Knotwell, Bradley Last, Karianne Lisonbee, Dan McCay, Jefferson Moss, Val Peterson, Marie Poulson, Susan Pulsipher, Tim Quinn, Adam Robertson, Angela Romero, Mike Schultz, Travis Seegmiller, Norm Thurston, Elizabeth Weight)

### H.B. 414, Utah Broadband Outreach Center (2015)

- An extension of the Utah Broadband Project where the Governor's Office of Economic Development coordinates with stakeholders to "promote the voluntary expansion of broadband infrastructure in both rural and urban communities," and map where commercial services were being provided.
- Voted against: 10 republicans from urban counties, 1 republican from rural Utah (Reps: Jacob Anderegg, Brian Greene, Michael Kennedy, John Knotwell, Dan McCay, Marc Roberts, Norm Thurston; Sens: Deidre Henderson, David Hinkins, Mark Madsen, Howard Stephenson)

### H.B. 327, Rural Online Initiative (2018)

- Sponsor: Rep. Michael Noel
- Created a pilot program to help rural Utahns take advantage of freelance, job, and business opportunities available online
- Voted against: 2 republicans from urban county (Rep. Marc Roberts, Sen. Deidre Henderson)

### H.B. 422, Natural Gas Infrastructure Amendments (2018)

- Sponsor: Rep. Michael Noel
- Allows gas companies to spread the cost of new rural gas infrastructure out to their larger customer base. This enables the expansion of natural gas infrastructure into unserved rural areas that would not otherwise be able to support the high installation costs.
- Voted against: 3 republicans from urban counties, 2 republicans from rural counties (Reps: Francis Gibson, Kelly Miles, Scott Sandall, Norm Thurston, Logan Wilde)

The Utah Legislature has also voted on bills that, while not explicitly targeted toward rural Utah, would disproportionately benefit people living there.

A key example is the Legislature's reluctance to fully expand Medicaid. Expanding Medicaid up to 138 percent of the federal poverty line would allow an estimated 130,000 Utahns health coverage under the program.<sup>39</sup> Currently, Utahns from rural counties enroll in Medicaid at higher rates than those from urban counties.<sup>40</sup> If the Legislature were to fully expand Medicaid, rural Utahns- whose remote locations afford them limited access to other social service programs-could stand to benefit most.



However, the state has yet to fully extend the program. In 2018, the Legislature passed H.B.472, authorizing Medicaid expansion capped at up to 100 percent of the federal poverty line-a relatively modest measure that took five years to pass.<sup>41</sup> It is still unclear whether the federal government will approve Utah's waiver application for partial Medicaid expansion.

In 2015, momentum had gathered around S.B.164, Access to Healthcare Amendments, a compromise Medicaid expansion bill championed by Governor Gary Herbert.<sup>42</sup> Polls showed a majority of Utahn voters supported the "Healthy Utah" plan, and 88 percent of voters favored the plan over doing nothing at all.<sup>43</sup> A study conducted by an independent non-profit showed the state would receive a return on its investment of 24.4 dollars for every dollar spent.<sup>44</sup> Yet former House

Speaker Greg Hughes, a Republican from Salt Lake County, initially blocked the bill from receiving a committee hearing, claiming a lack of support.<sup>45</sup> The bill eventually made it to committee, where it was voted down by nine representatives.<sup>46</sup> All nine were Republican, and all but one lived in urban parts of the state.



Another example is H.B. 326, Intergenerational Poverty Initiative, which passed in 2018, creating a pilot program to address intergenerational poverty.<sup>47</sup>

Through the program, the state provides funding to counties to implement local solutions. Because rural counties have the highest rates of intergenerational poverty, they stand to benefit the most from this program. Three representatives and one senator voted against the bill, all Republicans from Utah and Weber Counties.

H.B. 57, Intergenerational Poverty Work and Self-Sufficiency Tax Credit, was also put before the Legislature in 2018.<sup>48</sup> This bill would have created a refundable state earned income tax credit for individuals experiencing intergenerational poverty; on average, families would have received \$242. Bill sponsor Rep. John Westwood, R-Cedar City, said it would help "those who need it the most," particularly in "rural parts of Utah, like Iron County, [which] have a high poverty and intergenerational poverty rate."<sup>49</sup> The bill received votes in the House and Senate, but died before it could be signed into law. Thirty-two representatives and four senators voted against the bill—all were Republican, and all but five legislators were from Utah's urban counties.<sup>50</sup>

Of course, there are other issues pertinent to rural Utah where Republican representatives from rural and urban Utah are aligned with each other, and at odds with Democratic representatives from urban Utah:

#### H.J.R. 1, Joint Resolution Urging Exemption from the Antiquities Act (2018)

- Sponsor: Rep. Carl Albrecht
- Called on Congress to pass legislation exempting Utah from the Antiquities Act, which would restrict the president's ability to designate new national monuments.
- Voted against: 17 Democrats and 2 Republicans, all from Salt Lake County

#### S.C.R. 8, Concurrent Resolution in Support of the Creation of a New National Park, (2018)

- Expressed support for Congress creating a new national park and three new national monuments after President Trump dramatically reduced the boundaries of the Grand Staircase-Escalante National Monument.
- Voted against: 21 Democrats and 4 Republicans, all from urban counties except for one representing St. George

#### S.B. 246, Funding for Infrastructure Revisions (2016)

- Indirectly committed \$53 million in state funds to help build a deep-water port in California.
- Then-Rep. Brad King, D-Price defended the controversial bill, saying that the port would save jobs by opening new markets for Utah coal, particularly in China.<sup>51</sup>
- Voted against: 14 Democrats and 10 Republicans, all but one from urban counties





## IGNORING RURAL ISSUES BY FEDERAL LAWMAKERS

The interests of rural Utahns are also often overlooked on a federal level, in addition to the state level. Due to the rural-urban mix implemented in Utah's redistricting process, all four congressional districts contain rural and urban parts of the state. As a result, most rural Utahns are represented by a Congressman who lives on the Wasatch Front.

On issues concerning public lands—the stated rationale for rural-urban blended districts—Utah's current all-Republican congressional delegation has been united, consistently opposing federal ownership or management of rural lands. Representatives Rob Bishop,<sup>52</sup> Chris Stewart,<sup>53</sup> John Curtis,<sup>54</sup> Mia Love,<sup>55</sup> as well as former Rep. Jason Chaffetz<sup>56</sup> have all sponsored (or in the case of Rep. Love, co-sponsored) bills seeking to limit the scope of Utah's public lands.

However, outside of public lands issues, Utah's congressional representatives often do not recognize nor effectively advocate for issues affecting rural areas. It is here that the rural-urban district mix becomes a double-edged sword for rural representation—although federal land issues receive ample attention from Utah's congressional delegates, no representative is championing the many other causes important to rural Utahns. While many rural Utahns may align with legislators on issues of environmental deregulation, their needs go far beyond land use designations—and do not fit neatly within the platform of one political party.



Tom Vilsack, the former USDA secretary under President Obama, says what's often lost in the conversation is that without the federal government, many isolated, rural communities couldn't exist today.<sup>57</sup> And without advocates who understand and fight for important government programs, rural Utahns can lose out on benefits by urban members of their own party.

For example, according to data provided by the Utah's Office of Legislative Research and General Counsel, Utahns in rural State House districts disproportionately rely on Supplemental Nutrition Assistance Program

(SNAP) benefits, formerly known as food stamps, compared to the rest of the state.<sup>58</sup> The Farm Bill passed in June 2018 by the U.S. House of Representatives cracked down on SNAP benefits, adding stricter work requirements than the current law.<sup>59</sup> The new House Farm Bill will require SNAP recipients to spend 20 hours a week working or participating in a state-run job training program in order to receive benefits. These requirements would be the most difficult to fulfil in rural areas, where jobs are already hard to come by, and where access to a job training program will be the most difficult to access. As a result, the new program would place the greatest burden on the people already experiencing the most food insecurity in the state.<sup>60</sup> Still, all four of Utah's congressional representatives voted in favor of the Farm Bill.<sup>61</sup> The margin was thin; if just two of Utah's representatives had voted against it, the bill would not have passed the House.<sup>62</sup>



Of course, no community of interest is ideologically homogeneous. Some individuals from rural Utah oppose investment in coal and favor strong public land protections, just as some rural Utahns oppose social welfare programs. The point is not that rural Utahns all think the same way—it is that neither Republican nor Democrat representatives from urban Utah can presume they speak for the interests of rural Utah. Only rural Utahns can speak for themselves, and they should have the power to elect their own representatives.



## FAIR REDISTRICTING WOULD BENEFIT RURAL UTAH

Rural Utahns deserve to have advocates fighting for their community who are from their community. Even though their party preferences are often similar to their urban neighbors, their needs and priorities are distinct. Treating rural Utahns as a community of interest, rather than artificially separating them into different districts, will allow their voices to have maximum impact.

The way to achieve fair redistricting for rural Utah is to respect it as a distinct population, drawing boundaries that reflect a rural demographic rather than insisting on a rural-urban mix. On a federal level, this would mean grouping cities and suburbs together along the Wasatch Front, creating more concentrated urban districts and allowing rural voters to stay together. Rural Utah should not be treated as a solvent for urban areas—either to dilute Salt Lake County’s urban liberal influence by splitting it three ways or to bolster Utah county’s urban Republican influence by splitting it in two. (As former House Speaker Rebecca Lockhart said of Utah’s 2011 redistricting process, “I feel the people of Utah county would be best served by having two members in Congress.”)<sup>63</sup>

The rural-urban mix should also be eradicated from Utah’s state legislative districts. Currently, Utah’s House Districts 3 and 4 split the city of Logan in half, combining each half with more rural surrounding areas. The two current representatives live in Logan and North Logan. State Senate Districts 7 and 16 do the same to the city of Provo—one half is combined with rural parts of Wasatch County, while the other stretches down to the bottom of the county and picks up half of Santaquin. Senate District 18 takes half of Ogden, where the current senator resides, and combines it with a large portion of Morgan County. Senate District 19 captures the rest of the Ogden, combining it with the remainder of Morgan County and part of Summit County; the current senator lives in North Ogden.

As the gap between rural and urban Utah continues to widen, rural Utah’s unique opportunities and challenges will continue to grow more distinct from the rest of the state. As a result, it cannot be well represented by urban lawmakers, regardless of their political affiliation. The only people equipped to represent and zealously advocate for the needs of rural Utah are rural Utahns themselves. By eliminating the false redistricting principle of the rural-urban mix—and instead prioritizing keeping communities of interest together—rural Utah can have better, stronger representation in both state and federal government.

*The only people equipped to represent and zealously advocate for the needs of rural Utah are rural Utahns themselves.*

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Utah Counties, 2010				Utah Congressional District Makeup			
	<b>Utah Population</b>	2,763,885					
				<b>UT-1</b>	<b>UT-2</b>	<b>UT-3</b>	<b>UT-4</b>
<b>Rural Counties</b>	<b>2010 Population</b>	<b>Urban Counties</b>	<b>2010 Population</b>	Box Elder	Beaver	Carbon	Juab
Beaver County	6,629	Davis County	306,479	Cache	Davis	Emery	Salt Lake
Box Elder County	49,975	Salt Lake County	1,029,655	Daggett	Garfield	Grand	Sanpete
Cache County	112,656	Utah County	516,564	Davis	Iron	Utah	Utah
Carbon County	21,403	Weber County	231,236	Duchesne	Juab	Salt Lake	
Daggett County	1,059	<b>Total</b>	2,083,934	Morgan	Kane	San Juan	
Duchesne County	18,607			Rich	Millard	Wasatch	
Emery County	10,976			Summit	Piute		
Garfield County	5,172			Uintah	Salt Lake		
Grand County	9,225			Weber	Sanpete		
Iron County	46,163				Sevier		
Juab County	10,246				Tooele		
Kane County	7,125				Washington		



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