# Exhibit B

**This motion requires you to respond.**
**Please see the Notice to Responding Party.**

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**IN THE THIRD JUDICIAL DISTRICT COURT**
**IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LEAGUE OF WOMEN VOTERS OF UTAH, MORMON WOMEN FOR ETHICAL GOVERNMENT, STEFANIE CONDIE, MALCOLM REID, VICTORIA REID, WENDY MARTIN, ELEANOR SUNDWALL, and JACK MARKMAN,

Plaintiffs,

v.

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

Defendants.

**PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ON COUNTS 9-14 OF THEIR FIRST SUPPLEMENTAL COMPLAINT**

**(Expedited consideration requested)**

Case No. 220901712

Honorable Dianna Gibson

**HEARING REQUESTED**

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## RELIEF REQUESTED AND GROUNDS

Pursuant to Rule 65A of the Utah Rules of Civil Procedure, Plaintiffs League of Women Voters of Utah, Mormon Women for Ethical Government, Stefanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, and Jack Markman hereby move for a preliminary injunction on Counts 9-14 of their First Supplemental Complaint. Plaintiffs are entitled to a preliminary injunction because the certified ballot language fails to accurately submit the Amendment to the voters. Instead, it seeks through deception to mislead Utah voters into surrendering their constitutional rights. In doing so, the ballot language violates (1) the Constitution's and Code's requirements for submitting amendments to voters, Utah Const. art. XXIII, § 1; Utah Code § 20A-7-103(3); (2) the Free Election Clause, *id.* art. I, § 17; (3) Plaintiffs' right to "communicate freely their thoughts and opinions," *id.* art. I §§ 1 & 15; (4) Plaintiffs' right to vote, Utah Const. art. IV, § 2; and (5) Plaintiffs' right to be ensured a free government, *id.* art. I, §§ 2 & 27. Plaintiffs are likely to succeed on the merits of their claims, will suffer irreparable harm in the absence of an injunction, that harm outweighs any to Defendants, and an injunction is in the public interest. *See* Utah R. Civ. P. 65A(e).

**Expedited Relief Requested**: Plaintiffs seek to enjoin Defendants from placing proposed Amendment D on the November 2024 election ballot and if any ballots are issued to voters that include proposed Amendment D, seek for the Court to declare and enjoin Amendment D as void. *See supra* Part III. The relief Plaintiffs seek can be obtained without regard to the printing and mailing of ballots. But the public interest is best served by adjudicating the matter before ballots are mailed with a void Amendment included on them. Ballots will start being mailed to overseas and military voters on **September 20, 2024**. *See* Utah Code § 20A-16-403(1). Ballots are mailed

to most other voters beginning on **October 15, 2024**. *See* Utah Code § 20A-3a-202(2)(a). Plaintiffs thus respectfully request that the Court order expedited briefing and a hearing.

## INTRODUCTION

In a rushed special session on August 21, the Legislature declared it an "emergency" that the Supreme Court vindicated Plaintiffs' and all Utahns' fundamental constitutional right to alter or reform the government without legislative impairment. It hurriedly changed statutory election deadlines, stifled the ability of citizens to petition the Legislature during the special session proceedings, and quickly approved a proposed constitutional amendment that would eliminate Utahns' constitutional right to reform their government without legislative interference. In doing so, it proposed text that would *exempt* the Legislature from complying with *any* provision of the Constitution when it acts to repeal or amend citizen initiatives.

Undoubtedly aware of the optics, the House Speaker and Senate President—Defendants in this case—then devised an ballot summary that not only will fail to inform voters that the proposed Amendment eliminates their fundamental constitutional right, but brazenly asserts that the amendment would "strengthen" the initiative process and "require[] . . . the legislature to follow the intent of a ballot initiative." This is the definition of Orwellian doublespeak; the Amendment does the opposite on both counts. By seeking to mislead Utah voters into surrendering their fundamental constitutional rights by deception, Defendants have violated multiple provisions of the Utah Constitution.

## FACTUAL BACKGROUND

1. On July 11, 2024, the Utah Supreme Court held that, under Article I, Section 2 and Article VI of the Utah Constitution, the people have a fundamental constitutional right to alter or reform the government through initiatives and that the Legislature cannot subsequently act to

impair such a reform initiative unless it does so in a way that is narrowly tailored to further a compelling government interest. *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 74 ("*LWVUT*").

2. On August 21, 2024, the Utah Legislature convened its Fourth Special Session of the 65th Legislature, proclaiming that the *LWVUT* decision was an "emergency in the affairs of the state." Utah State Legislature, *Legislative Special Session Proclamation*, https://le.utah.gov/session/2024S4/Proclamation.pdf?r=1; Utah Const. art. VI, § 2(3)(a).

3. At the Special Session, the Legislature adopted S.J.R. 401, which proposes a constitutional amendment. The proposed Amendment modifies Article I, Section 2 of the Constitution as follows, with the added language underlined: "All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government through the processes established in Article VI, Section 1, Subsection (2), or through Article XXIII as the public welfare may require." S.J.R. 401, Proposal to Amend Utah Constitution – Voter Legislative Power, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), https://le.utah.gov/~2024S4/bills/static/SJR401.html. Likewise, the proposed Amendment modifies Article VI, Section 1 of the Utah Constitution to (1) prohibit foreign individuals, entities, and governments from supporting or opposing initiatives or referenda and (2) provides that

> Notwithstanding any other provision of this Constitution, the people's exercise of their Legislative power as provided in Subsection (2) does not limit or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature, or by a law making body of a county, city, or town, on behalf of the people whom they are elected to represent.

*Id.* S.J.R. 401 provides that the amendment will be proposed to the voters at the next general election, that if approved it takes effect January 1, 2025, and purports to establish that the changes other than the foreign influence prohibition have retrospective operation. *Id.*

4. The Legislature also enacted special rules that apply only to this proposed Amendment to rush it onto the November 2024 ballot. Section 20A-7-103.1 was enacted to apply only to this proposed Amendment and it exempted the Amendment from various Code provisions regulating the timing and process for drafting and presenting arguments in favor and opposition to the voters. S.B. 4002, Ballot Proposition Amendments, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), https://le.utah.gov/~2024S4/bills/static/SB4002.html.

5. The Legislature also enacted contingent legislation that takes effect if voters approve the proposed Amendment. That legislation, *inter alia*, adds 20 days to the time voters have to submit referendum signatures and provides that the Legislature should give deference to initiatives by amending them "in a manner that, *in the Legislature's determination*, leaves intact the general purpose of the initiative." S.B. 4003, Statewide Initiative and Referendum Amendments, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), https://le.utah.gov/~2024S4/bills/static/SB4003.html (emphasis added). But that deference only applies to amendments that occur during the next general session following the initiative's adoption, and the next clause exempts the Legislature from deferring if it decides that the initiative has an "adverse fiscal impact." *Id.*

6. Governor Cox signed both S.B. 4002 and 4003 on August 22, 2024. *2024 4th Spec. Sess. Bills Passed*, Utah State Legislature (Sept. 5, 2024), https://le.utah.gov/asp/passedbills/passedbills.asp?session=2024S4.

7. The Utah Code requires the Speaker of the House and the President of the Senate to "draft and designate a ballot title for each proposed amendment . . . that [] summarizes the subject matter of the amendment . . . and [] summarizes any legislation that is enacted and will become effective upon the voters' adoption of the proposed constitutional amendment." Utah Code § 20A-7-103(3). S.B. 4002 required the presiding officers to submit the ballot title and summary language to the Lieutenant Governor "no later than September 1, 2024." S.B. 4002, Ballot Proposition Amendments, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), https://le.utah.gov/~2024S4/bills/static/SB4002.html. The Lieutenant Governor must certify the ballot title by that same date, and S.B. 4002 offers no time or opportunity for revisions. *See id.*

8. On the evening of September 3, 2024, two days after the deadline, Lieutenant Governor Henderson signed the 2024 General Election Certification, which certified the ballot language for Constitutional Amendment D—the amendment proposed by S.J.R. 401. Office of the Lieutenant Governor, 2024 General Election Certification, https://vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf.

9. The Certification was not published on the Lieutenant Governor's website until mid-day September 4, 2024. Office of the Lieutenant Governor, 2024 Election Information, https://vote.utah.gov/current-election-information/.

10. The certified ballot language—written by the Speaker and Senate President—reads:

**Constitutional Amendment D**

> Should the Utah Constitution be changed to strengthen the initiative process by:
> - Prohibiting foreign influence on ballot initiatives and referendums.
> - Clarifying the voters and legislative bodies' ability to amend laws.
>
> If approved, state law would also be changed to:
> - Allow Utah citizens 50% more time to gather signature for a statewide referendum.
> - Establish requirements for the legislature to follow the intent of a ballot initiative.

For ( ) Against ( ).

Office of the Lieutenant Governor, 2024 General Election Certification at 34-35, https://vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf.

11. The Uniform Military and Overseas Voters Act requires the first ballots for the November 2024 election to be mailed on the 45th day before the election—this year that date is September 20, 2024. Utah Code § 20A-16-403.

## LEGAL STANDARD

A preliminary injunction is appropriate if Plaintiffs show that (1) "there is a substantial likelihood that [they] will prevail on the merits of the underlying claim," (2) "[they] will suffer irreparable harm unless the . . . injunction issues," (3) "the threatened injury to [them] outweighs whatever damage the proposed . . . injunction may cause the party . . . enjoined," and (4) "the . . . injunction, if issued, would not be adverse to the public interest." Utah R. Civ. P. 65A(e).

## ARGUMENT

### I. There is a substantial likelihood Plaintiffs will succeed on the merits of their claims.

#### A. Plaintiffs are likely to succeed on the merits of their Article XXIII Amendment Submission claim.

Plaintiffs are likely to succeed on the merits of their Amendment Submission claim. Article XXIII, Section 1 of the Utah Constitution provides that if two-thirds of all members elected to each house of the Legislature vote in favor of a proposed amendment, "the said amendment . . . shall be submitted to the electors of the state for their approval or rejection, and if a majority of the electors voting thereon shall approve the same, such amendment . . . shall become part of this Constitution." Utah Const. art. XXIII, § 1. The plain language of Article XXIII, as it would have

been understood at the time of the Constitution's ratification and today, requires that *the amendment*—and not a misleading and false summary of it—be submitted to voters for approval.

When interpreting constitutional language, Utah courts "start with the meaning of the text as understood when it was adopted." *LWVUT*, 2024 UT 21, ¶ 101 (cleaned up). The focus is on "the objective meaning of the text, not the intent of those who wrote it." *Id.* (cleaned up). The Court thus "interpret[s] the [C]onstitution according to how the words of the document would have been understood by a competent and reasonable speaker of the language at the time of the document's enactment." *Id.* (cleaned up). "When [courts] interpret the Utah Constitution, the 'text's plain language may begin and end the analysis.'" *State v. Barnett*, 2023 UT 20, ¶ 10 (quoting *South Salt Lake City v. Maese*, 2019 UT 58, ¶ 23).

The plain language of Article XXIII requires that "the said amendment" be "submitted to the electors of the state for their approval or rejection." Utah Const. art. XXIII, § 1. The most straightforward reading of Article XXIII is that the *actual text* of the amendment must be presented to the voters on the ballot. Indeed, while the 1895 Constitution included the same language as today regarding submission of "the said amendment" to the voters, it also provided that the Constitution's text itself need not be on the ratification ballot. *See* Utah Const. art. XXIV, § 14 (providing for submission of the Constitution to the voters for ratification and specifying that "[a]t the said election the ballot shall be in the following form: For the Constitution. Yes. No," with instructions to the voters to erase Yes or No depending upon their vote). Given the contrast, voters in 1895 likely understood Article XXIII—which does not allow a summarized presentation for proposed amendments—to require the amendment's text to appear on the ballot.

Historically, however—and likely for practical reasons related to ballot printing—the actual amendment text has not appeared on the ballot. *See LWVUT*, 2024 UT 21, ¶ 103 (noting that

"historical context" in which constitutional provisions were ratified may be relevant to understanding original public meaning). The Legislature has apparently interpreted Article XXIII to permit for the ballot to include "a ballot title for each proposed amendment . . . submitted by the Legislature that [] summarizes the subject matter of the amendment." Utah Code § 20A-7-103(3)(c). Perhaps Article XXIII can be interpreted as flexible enough to permit a summary of the amendment as opposed to the text of the amendment itself. But the plain meaning of Article XXIII's requirement that "the said amendment" be "submitted to the electors of the state for their approval or rejection" cannot plausibly encompass submitting a summary of the amendment that *falsely* and *misleadingly* describes the effect of the amendment as doing the opposite of what its text accomplishes. A false and misleading ballot summary in no way represents the submission of "the said amendment" to the electorate. Utah Const. art. XXIII, § 1.

Although Utah courts have not previously considered this issue, other state Supreme Courts interpreting similar provisions of their Constitutions have held that misleading ballot language is unconstitutional. For example, Article XI, Section 5 of the Florida Constitution requires that "[a] proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election . . . ." Fla. Const. art. XI, § 5. The Florida Supreme Court has held that "[i]mplicit in this provision is the requirement that the proposed amendment be *accurately* represented on the ballot; otherwise, voter approval would be a nullity." *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000); *see also Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982) ("[T]he voter should not be misled . . . . [T]he Constitution requires . . . that the ballot be fair and

advise the voter sufficiently to enable him intelligently to cast his ballot." (quoting *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954) (cleaned up))); *Smathers v. State*, 338 So. 2d 825, 829 (Fla. 1976).[1]

In *Askew*, the Florida Supreme Court considered a ballot summary for a proposed amendment that would have banned former legislators from lobbying for two years after leaving office unless they fully disclosed their financial interests. 421 So. 2d at 156. Although the ballot summary was consistent with the amendment's text, the Florida Supreme Court struck the proposed amendment from the ballot because the summary failed to disclose that the Constitution prohibited lobbying by former legislators for a two-year period, with no exception for financial disclosures. *Id.* "The problem, therefore, lies not with what the summary says, but, rather, with what it does not say." *Id.* The Court reasoned that had the amendment been a "totally new provision," the ballot summary might have been permissible. But the ballot summary, by failing to explain the *existing* constitutional provision, "fails to give fair notice of an exception to a present prohibition." *Id.* The purpose of the amendment, the Court reasoned, was to "remove the two-year ban on lobbying by former legislators," but the ballot summary was "disguised as something else" and impermissibly "fl[ew] under false colors." *Id.* Because the ballot summary was "so misleading to the public concerning material changes to an existing constitutional provision," the Court ordered that the proposed amendment be stricken from the ballot. *Id.*

Likewise, in *Armstrong*, the Florida Supreme Court struck a proposed constitutional amendment from the ballot where the ballot summary was misleading. The ballot summary said that the proposed amendment would conform the state's "prohibition against cruel and/or unusual

[1] Although the Florida legislature codified more specific requirements that the ballot contain "clear and unambiguous language" that identifies the "chief purpose" of the amendment, Fla. Stat. § 101.161(1), the Florida Supreme Court made clear the "accuracy" requirement stemmed directly from the Constitution's requirement that the amendment be submitted to the voters. *Armstrong*, 773 So.2d at 12-13, 21.

punishment" to the United States Supreme Court's interpretation of the Eighth Amendment and would "preserve the death penalty." 773 So. 2d at 17-18. In fact, the Court held, the summary hid from voters that the existing Constitution prohibited cruel *or* unusual punishment—not "and"—and that the "simple, clear-cut" purpose of the amendment was to "nullify the Cruel or Unusual Punishment Clause" and not to "preserve the death penalty." *Id.* at 18. "Nowhere in the summary, however, is this effect mentioned—or even hinted at. The main effect of the amendment is *not* stated anywhere on the ballot." *Id.* (emphasis in original). The Court thus invalidated the amendment *after its adoption by the voters* because it violated the implicit accuracy requirement of the Florida Constitution that amendments be submitted to the voters. *Id.* at 21. In doing so, the Court explained that the purpose of the accuracy requirement "is to ensure that each voter will cast a ballot based on the *full* truth. To function effectively—and to remain viable—a constitutional democracy must require no less." *Id.* The misleading ballot summary, the Court explained, would have caused voters to favor the amendment "on the false premise that the amendment will promote the basic rights of Florida citizens" and gave "no hint of the radical change in state constitutional law that the text actually foments." *Id.*

Moreover, strict judicial enforcement of the accuracy requirement was particularly necessary, the Court explained, because "the amendment's main effect is to nullify a fundamental state right that has existed in the Declaration of Rights *since this state's birth* over a century and half ago." *Id.* (emphasis in original). The court reasoned that it must be especially vigilant with respect to ballot summaries affecting "the Declaration of Rights." *Id.* When "citizens are being called upon to nullify an original act of the Founding Fathers, each citizen is entitled—indeed, each is duty-bound—to cast a ballot with eyes wide open." *Id.* at 22. Because the amendment "fl[ew] under false colors" and the Legislature "hid[] the ball," the amendment was stricken. *Id.*

State supreme courts across the country have taken the same approach. Much like Utah, the Hawaii Constitution requires that proposed constitutional amendments be "submitted to the electorate for approval or rejection." Haw. Const. art. XVII, §§ 3 & 4. That provision, the Hawaii Supreme Court held, requires that "the ballot must enable the voters to express their choice on the amendments presented and be in such a form and language as not to deceive or mislead the public." *Kahalekai v. Doi*, 590 P.2d 543, 546, 552-53 (Haw. 1979). The Idaho Supreme Court too voided a constitutional amendment, after the election, when the ballot question did not, "attributing to the words employed their usual meaning in common parlance," communicate the effect of the proposed amendment. *Lane v. Lukens*, 283 P. 532, 533-34 (Idaho 1929). And the Maine Supreme Court has held that "an amendment presented to the voters by means of a question which is clearly misleading is void and of no effect." *Opinion of the Justices*, 283 A.2d 234, 236 (Me. 1971). Likewise, the South Carolina Supreme Court invalidated a "voter approved" amendment when "the ballot did not submit the question in the language prescribed by the proposing resolution, but submitted instead the misleading title of the resolution." *Ex parte Tipton*, 93 S.E.2d 640, 642 (S.C. 1956). In doing so, the court explained that "where the question, on its face, is manifestly erroneous and misleading, there is no room for presumption, nor is evidence, other than the ballot itself, needed to demonstrate the deception." *Id.* at 643.

Other cases abound. The Wisconsin Supreme Court held that its Constitution's requirement that amendments be "submitted" to the voters for ratification is violated "when the ballot question fails to present the real question or is contrary to the amendment itself." *Wis. Justice Initiative, Inc. v. Wis. Elections Comm'n*, 990 N.W.2d 122, 140 (Wis. 2023). "In other words, voters have not been given the opportunity to vote for or against a proposal when the ballot question is fundamentally counterfactual. When a ballot question is factually inaccurate in a fundamental way,

it cannot be said that the amendment was actually submitted to the people for ratification." *Id.* at 140-41; *see also State ex rel. Thomson v. Zimmerman*, 60 N.W.2d 416, 423 (Wis. 1953) ("If the subject matter is important enough to be mentioned on the ballot it is so important that it must be mentioned in accord with the fact" and not with "misinformation").

Similarly, the Minnesota Constitution requires that proposed amendments be "submitted to the people for their approval or rejection at a general election." Minn. Const. art. IX, § 1. The Minnesota Supreme Court has held that this provision is violated when "the ballot question as framed is 'so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.'" *League of Women Voters of Minn. v. Ritchie*, 819 N.W.2d 636, 647 (Minn. 2012) (quoting *Breza v. Kiffmeyer*, 723 N.S.2d 633, 636 (Minn. 2006)); *see also Knight v. Martin*, 556 S.W.3d 501, 506-07 (Ark. 2018) (providing that a "ballot title must be an impartial summary of the proposed amendment, and it must give the voters a fair understanding of the issues presented and the scope and significance of the proposed changes in the law" (cleaned up)); *see also Dacus v. Parker*, 466 S.W.3d 820, 823, 826 (Tex. 2015) (recognizing common law protection from misleading ballot question and noting that ballots "may affirmatively misrepresent the measure's character and purpose or its chief features" or "omit[] certain chief features that reflect its character and purpose").

Amendment D's summary should suffer the same fate. The language violates the inherent accuracy requirement of Article XXIII, § 1 because it fails to submit the amendment to the voters for a popular vote. The Amendment drastically weakens Utahan's right to alter or reform their government—a fundamental right contained in the Declaration of Rights since 1895—by eliminating the Constitution's prohibition on the Legislature impairing government reform initiatives absent a compelling justification furthered by narrowly tailored means. *See* S.J.R. 401,

Proposal to Amend Utah Constitution – Voter Legislative Power, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), https://le.utah.gov/~2024S4/bills/static/SJR401.html; *see also LWVUT*, 2024 UT 21, ¶ 104.[2] The certified ballot summary for Amendment D flagrantly fails to disclose the effect of the Amendment and misleads and deceives voters. Indeed, the ballot summary voters deceptively asks votes to surrender a fundamental constitutional right they have possessed since 1895 by encouraging them to vote "yes" in order to supposedly *strengthen* their initiative rights.

*First*, even though Legislature's stated purpose in calling the "emergency" special session was to eliminate the fundamental constitutional right recognized in *LWVUT*, *see* Utah State Legislature, *Legislative Special Session Proclamation*, https://le.utah.gov/session/2024S4/Proclamation.pdf?r=1, the ballot summary says *nothing* about how the Amendment would eliminate the public's constitutional right to alter or reform the government without legislative interference. Instead, the ballot summary asks voters: "Should the Utah Constitution be changed to ***strengthen*** the initiative process by . . . [c]larifying the voters and legislative bodies' ability to amend laws." Office of the Lieutenant Governor, 2024 General Election Certification at 34-35, https://vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf (emphasis added).

The ballot summary plainly does not communicate that the Amendment *eliminates* a fundamental constitutional right that has existed since 1895. Nor does the Amendment "clarify" the ability of voters or the Legislature to amend laws because, as this Court held in *LWVUT*, the Constitution is already clear on that question. The ballot summary never mentions this existing

[2] Although the Supreme Court's opinion in this case holding that "the Alter or Reform Clause enshrined a fundamental right of the people to alter or reform their government" was issued this year, the Court's opinion interprets the original public meaning of the Constitution. *LWVUT*, 2024 UT 21, ¶¶ 104, 199. The Constitution has always protected this right.

constitutional right or that the Amendment would eliminate it entirely. *See Askew*, 421 So. 2d at 156 (striking Florida constitutional amendment where ballot summary fails to disclose that amendment would eliminate an existing constitutional provision); *Armstrong*, 773 So. 2d at 17-18, 21 (striking Florida constitutional amendment where ballot summary fails to disclose that amendment would nullify fundamental constitutional right). No voter reading the ballot summary would have any idea that the Amendment *eliminates* an existing, fundamental constitutional right by reading text stating that it "[c]larify[ies] the voters and legislative bodies' ability to amend laws." Office of the Lieutenant Governor, 2024 General Election Certification at 34-35, https://vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf. By failing to disclose the fact that Amendment D would nullify an existing constitutional right, the ballot summary "is so misleading to the public concerning material changes to an existing constitutional provision" that the Court must "remove [it] from the vote of the people." *Askew*, 421 So. 2d at 156.

*Second*, somehow worse than failing to disclose that the Amendment eliminates a fundamental right, the ballot summary misleads voters into believing a vote in favor will *strengthen* their constitutional right to initiate legislation. The purpose of the Amendment is to *weaken* voters' constitutional right to initiate government reform measures by authorizing the Legislature to amend or repeal them as it sees fit. Indeed, the text of the Amendment—in sweeping language—*wholesale exempts* the Legislature from complying with *any* constitutional provision when it acts to amend, repeal, or enact laws in relation to voter-approved initiatives. *See* S.J.R. 401, Proposal to Amend Utah Constitution – Voter Legislative Power, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), https://le.utah.gov/~2024S4/bills/static/SJR401.html ("*Notwithstanding any other provision of this Constitution*, the people's exercise of their Legislative power . . . does not limit

or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature . . . .") (emphasis added). This Constitution-free zone created by the Amendment's text is a far cry from the existing constitutional provision, which strictly limits the Legislature's power to impair voter-initiated government reforms. And it is an even further cry from "strengthen[ing]" the initiative process. Nowhere does the ballot summary disclose to voters that the Amendment would make legislative action lawful "*notwithstanding any other provision of th[e] Constitution.*"

Moreover, the ballot summary misleads voters by asserting that "[i]f approved, state law would also be changed to . . . [e]stablish requirements for the legislature to follow the intent of a ballot initiative." Office of the Lieutenant Governor, 2024 General Election Certification at 34-35, https://vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf. As it stands today, the *current* Constitution establishes requirements for the legislature to follow the intent of a ballot initiative—it cannot impair government reform initiatives if it does so in a manner that is not narrowly tailored to serve a compelling government interest—a requirement voters can judicially enforce. *LWVUT*, 2024 UT 21, ¶ 74.

The Amendment does not "establish" that requirement; *it eliminates it.* In its place, the Legislature enacted a contingent *statute* that takes effect if the Amendment is approved that provides that if the Legislature amends an initiative, it shall—but only in the general session following the adoption of an initiative—"give deference to the initiative by amending the law in a manner that, *in the Legislature's determination*, leaves intact the general purpose of the initiative." Yet the Legislature can ignore the initiative's purpose if "determined necessary by the Legislature to mitigate an adverse fiscal impact of the initiative." S.B. 4003, Statewide Initiative and Referendum Amendments, 65th Leg., 2024 4th Spec. Sess. (Utah 2024),

https://le.utah.gov/~2024S4/bills/static/SB4003.html (emphasis added). The Amendment does not change state law to establish requirements that the Legislature follow the intent of a ballot initiative. It changes state law to eliminate such a requirement and replace it with a *non-requirement*—leaving it to the Legislature's determination as to what the purpose of the initiative is, how to respect it, or whether to respect it at all if it requires the expenditure of any funds. Moreover, the Amendment itself renders this "deference" statute unconstitutional by expressly freeing the Legislature from any constraint in undoing initiatives. The ballot summary does not explain any of this.

*Third*, the ballot summary misleads voters about the effect of the Amendment regarding a fundamental right contained since Utah's founding in the Declaration of Rights. As the Florida Supreme Court held in *Armstrong*, courts must be especially vigilant in guarding against deceptive ballot summaries where "the amendment's main effect is to nullify a fundamental state right that has existed in the Declaration of Rights *since the state's birth* . . . ." 773 So.2d at 21 (emphasis in original). Such is the case here. Although the People's right to alter or reform their government without government infringement was recently analyzed by the Utah Supreme Court in this case, it is still a right that has existed since 1895. This Court must act with extra vigilance and scrutiny of the ballot summary because the Amendment eliminates a fundamental constitutional right.

In sum, Plaintiffs are likely to succeed on the merits of their claim that the ballot summary violates Article XXIII, Section 1's requirement that "the said amendment . . . shall be submitted to the electors of the state for their approval or rejection," because it fails to notify voters that the Amendment eliminates an existing fundamental constitutional right and misleads voters about the purpose and content of the Amendment. *See Armstrong*, 773 So.2d at 22 (striking amendment from ballot where "[t]he ballot title and summary 'fly under false colors' and 'hide the ball' as to the

amendment's true effect"); *see also Wis. Justice Initiative, Inc.*, 990 N.W.2d at 140 ("[V]oters have not been given the opportunity to vote for or against a proposal when the ballot question is fundamentally counterfactual. When a ballot question is factually inaccurate in a fundamental way, it cannot be said that the amendment was actually submitted to the people for ratification."); *League of Women Voters of Minn.*, 819 N.W.2d at 647 (holding that ballot language may not be "so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote" (internal quotation marks omitted)).

Amendment D's ballot summary would deceive Utah voters into surrendering a fundamental constitutional right under the false pretense of *strengthening* those rights. It is as an anti-democratic suppression tactic. Because the certified ballot summary fails to submit the Amendment to the voters, it violates Article XXIII, Section 1 of the Constitution and must be struck from the November 2024 ballot.

### B. Plaintiffs are likely to succeed on their statutory Amendment Summarization Claim.

Plaintiffs are also likely to succeed on their statutory Amendment Summarization claim. Under Utah Code § 20A-7-103(3)(c), the Speaker of the House and Senate President must "draft and designate a ballot title for each proposed amendment . . . that [] summarizes the subject matter of the amendment." Courts must "interpret[] statutes according to the 'plain' meaning of their text." *Olsen v. Eagle Mtn. City*, 2011 UT 10, ¶ 9, 248 P.3d 465. In doing so, courts rely frequently on dictionary definitions. *See, e.g.*, *Hi-Country Property Rights Grp. v. Emmer*, 2013 UT 33, ¶ 17. "Summary" is defined as "short, concise" and "[w]ithout the usual formalities." *Summary*, Black's Law Dictionary (12th ed. 2024). "Subject matter" is defined as "[t]he issue presented for consideration, the thing in which a right or duty has been asserted; the thing in dispute." *Subject Matter*, Black's Law Dictionary (12th ed. 2024).

For the reasons explained above, Amendment D's ballot language fails to "summarize the subject matter of the amendment," Utah Code § 20A-7-103(3), because it fails to disclose the actual subject matter of the Amendment: eliminating voter's fundamental constitutional right to alter or reform their government without infringement. The language instead tells voters that the Amendment does what it expressly does *not* do: strengthen the initiative process and change law to require respect for the purpose of voter's initiatives. Ballot language that lies about the Amendment's effect to deceive voters into forfeiting a constitutional right does not in any sense of the words "summarize the subject matter of the amendment."

### C. Plaintiffs are likely to succeed on the merits of their Free Elections Clause Claim.

Plaintiffs are likely to succeed on the merits of their Free Elections Clause claim. The Free Elections Clause provides that "[a]ll elections shall be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Utah Const. art. I, § 17. As this Court has already explained in rejecting Defendants' motion to dismiss Plaintiffs' partisan gerrymandering Free Elections Clause claim, there are no early Utah common law cases interpreting this provision and little debate from the constitutional convention. Order on Mot. to Dismiss at 26-27. But the plain meaning of "free" and "elections" aids in understanding the original public meaning of the Clause.

As this Court has explained, "[t]he term 'free' as defined in the 1891 Black's Law Dictionary meant "[u]nconstrained; having power to follow the dictates of his own will,' '[e]njoying full civic rights,' and '[n]ot despotic; assuring liberty; defending individual rights against encroachment by an person or class; instituted by a free people; said of governments, institutions, etc.'" *Id.* (quoting *Free*, Black's Law Dictionary, 1st ed. 1891). In turn, "unconstrained" means "not held back or constrained," *Id.* at 28 (quoting *Unconstrained*, Merriam-

Webster Dictionary, https://www.merriam-webster.com/dictionary/unconstrained (noting definition first used in 14th century)). "Constrained," this Court noted, "means 'to force by imposed structure, restriction or limitation;' 'to force or produce in an unnatural or strained manner.'" *Id.* at 28 (quoting *Constrained*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/constrain (noting definition used in the 14th century)). This Court likewise relied upon the definition of "despotic," which means, *inter alia*, "a ruler with absolute power and authority; one exercising power tyrannically; a person exercising absolute power in a brutal or oppressive way." *Id.* at 29 (quoting *Despot*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/despot (noting this definition arose with beginning of democracy at the end of the 18th century)). Moreover, this Court has analyzed the meaning of "election" to be "the 'act or process of electing.'" *Id.* at 27 (quoting *Election*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/elections (noting definition arose from 13th century)).

> From the plain meaning of the Clause, this Court explained that
>
> > The first clause 'all elections shall be free' guarantees to Utah citizens an election *process* that is free from despotic and tyrannical government control and manipulation. A 'free election' involves an unconstrained process, that does not 'produce' results 'in an unnatural or strained manner.' And it prohibits governmental manipulation of the election process to either ensure continued control or to attain an electoral advantage. This right given to Utah citizens, necessarily imposes a limit on the legislature's authority when overseeing the election process.

*Id.* at 29. Likewise, the "second clause . . . prohibits a civil or military power from interfering with the free exercise of suffrage." *Id.* The Court likewise noted that the historical understanding from the English Bill of Rights supported this understanding. *See id.* at 31-33.

Even Defendants—who dispute that the Free Elections Clause prohibits partisan gerrymandering[3]—have conceded in their Supreme Court briefing that the Clause "guarantees free elections by prohibiting external or controlling civil or military interference that would hinder voters from voting according to the dictates of their will" such as through "*undue influence* (such as bribery) that act as an external controlling factor." Br. of Petitioners at 40, *LWVUT*, No. 20220991-SC (Mar. 31, 2023), https://campaignlegal.org/document/petitioners-brief (emphasis added). As Defendants have noted, "English common law prohibited voter intimidation and undue influence. Blackstone affirmed that 'elections should be absolutely free'—a guarantee designed to 'strongly prohibit[]' 'all undue influences upon the electors.'" *Id.* at 42 (quoting 1 Blackstone, *Commentaries on the laws of England* 172).

Other state courts have confirmed that their Constitutions' guarantees of free elections prohibits the government from exercising undue influence or coercion at the ballot box. *See, e.g.*, *Oughton v. Black*, 61 A. 346, 347 (Pa. 1905) (explaining that constitutional requirement that elections be free and equal was a guarantee not only that voters be allowed to cast ballots but rather may do so "by no intimidation, threat, improper influence, or coercion of any kind"); *Wallbrecht v. Ingram*, 175 S.W. 1022, 1026 (Ky. 1915) (interpreting Kentucky Constitution's Free and Equal Elections Clause to require elections that "obtain a full, fair, and free expression of the popular will upon a matter" that can be violated even in the absence of "fraud, intimidation, violence, bribery, or other wrongdoing that prevented a full and free expression of the will of the people"); *People v. Hoffman*, 5 N.E. 596, 601 (Ill. 1886) (interpreting Illinois Constitution's Free and Equal Election Clause such that "[e]lections are free when the voters are subjected to no intimidation or

[3] They remain wrong. That the Free Elections Clause prohibits the government from publishing misleading ballot language to unduly influence how voters cast ballots does not minimize the fact that it also prohibits partisan gerrymandering.

improper influence, and when every voter is allowed to cast his ballot as his own judgment and conscience dictate"); *Young v. Red Clay Consolidated Sch. Dist.*, 159 A.3d 713, 764-65 (Del. Ch. 2017) (concluding that School District violated Delaware Constitution's Free Elections Clause by holding events at polling stations for families as a way to induce voters favorable to school funding ballot measure to vote); *Davidson v. Rhea*, 256 S.W. 2d 744, 746 (Ark. 1953) (explaining that that Free and Equal Elections Clause means that "[e]ach individual voter as he enters the booth is given an opportunity to freely express his will . . . *and from the face of the ballot he is instructed how to mark it*" (internal quotation marks omitted) (emphasis added)).

Here, the proposed Amendment's ballot summary violates the Free Elections Clause. On its face, the language exerts undue influence and coercion upon Utah's voters by omitting the central effect of the Amendment—eliminating voters' fundamental constitutional right to alter or reform the government free of government infringement—and misleading voters into believing that the Amendment would "strengthen" the initiative right and require that the purpose of initiatives was respected by the Legislature. *See supra* Part I.A. Because of the deceptive nature of the ballot summary, Utah voters cannot cast their ballots freely according to their own conscience, but rather would be deceived into surrendering existing constitutional rights by language that says they are protecting those rights. Such an election is not free. Even by *Defendants'* own proffered meaning of the Free Elections Clause, the ballot summary is constitutionally infirm. This is especially so because voting is a fundamental right, and thus the burdens Defendants have placed on Utahns' exercise of their right to a free election are subject to heightened scrutiny. Order on Mot. to Dismiss at 51. Defendants have no compelling interest in deceiving Utah voters as to the content of the proposed Amendment.

### D. Plaintiffs are likely to succeed on their free speech and expression claims.

Plaintiffs are likely to succeed on their free speech and expression claims. Utah's Constitution provides that "[a]ll persons have the inherent and inalienable right to…communicate freely their thoughts and opinions," Utah Const. art. I, § 1, while commanding that "[n]o law shall be passed to abridge or restrain the freedom of speech." *Id*. art. I, § 15. The plain language of these provisions prohibits government constraint of free speech through deceptive ballot language.

Safeguarding free speech and association in the electoral process is critical. These freedoms are "not only the hallmark of a free people, but [are], indeed, an essential attribute of the sovereignty of citizenship." *Cox v. Hatch*, 761 P.2d 556, 558 (Utah 1988). As such, this court held that "voting is a fundamental right, and its exercise is a form of protected speech," Order on Mot. to Dismiss at 48. Numerous other courts have also recognized the constitutionally protected expressive interest in voting. *See, e.g., Burdick v. Takushi*, 504 U.S. 428, 438 (1992) (noting that "voters express their views in the voting booth"); *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1893) (noting "the right of qualified voters, regardless of their political persuasion, to cast their votes effectively") (citing *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968)). Article I, sections 1 and 15 protect the expression of free speech through voting and guarantee the "healthy political exchange [that] is the foundation of our system of free speech and free elections." *Jacob v. Bezzant*, 2009 UT 37, ¶ 29.[4]

Utah's citizens also originally understood voting to be speech. At the time of the adoption of the Constitution, "speech" meant "as expressing ideas," and "vote" meant "to express or signify

[4] Moreover, Utah's speech protections are broader than their federal counterpart, *see, e.g., West v. Thompson Newspapers*, 872 P.2d 999, 1007 (Utah 1994); *Provo City Corp. v. Willden*, 768 P.2d 455, 456 n.2 (Utah 1989), and protect rights not found in the First Amendment, such as the right to "communicate freely their thoughts and opinions."

the mind, will, or preference," and to provide an "opinion of a person." Webster's Practical Dictionary (1884). Defendants themselves emphasized that voting is how a voter "express[es]…his will, preference, or choice." Br. of Petitioners at 52, *LWVUT*, No. 20220991-SC (Mar. 31, 2023), https://campaignlegal.org/document/petitioners-brief (quoting *Vote*, Black's Law Dictionary (1891)). Moreover, the history of Article I, Sections 1 and 15 support their application here. At the provisions' core is the belief that "the framers of Utah's constitution saw the will of the people as the source of constitutional limitations upon our state government," with free speech being essential to "guard . . .against the encroachments of tyranny." *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 13; *Stromberg v. California*, 283 U.S. 359, 369 (1931) (describing purpose of free speech as to keep the government "responsive to the will of the people"). As this Court found, "[t]he role of free speech is central to our representative democracy." Order on Mot. to Dismiss at 45.

Free speech has long been understood to safeguard a political system that facilitates dissent and a neutral forum for political debate—not one that deceives voters into giving up their fundamental constitutional rights. For that reason, Defendants' ballot language violates the Constitution's plain language by hindering Utahns' free speech. The Utah Constitution guards against both "abridge[ment]" and "restrain[t]" of speech, and "prohibit[s] laws which either directly limit protected rights or indirectly inhibit the exercise of those rights." *Am. Bush*, 2006 UT 40, ¶¶ 17-18, 21. Under the plain language of the Constitution, voters cannot "communicate freely their thoughts and opinions" if the ballot language presented to them says the *opposite* of the text of the actual amendment at issue and is instead designed to deceive them while voting. And there can be no "healthy political exchange," *Jacob*, 2009 UT 37, ¶ 29, when the ballot language itself

is created to "effectively stifle[]" voters in casting their ballots. *McCullen v. Coakley*, 573 U.S. 464, 489-90 (2014).

By putting an oversized thumb on the scale, Defendants' ballot language "deviat[es] from neutrality [to] undermine[] the competitive mechanism that undergirds the democratic process," and unconstitutionally burdens Plaintiffs' rights. Order on Mot. to Dismiss at 49. Because voting is a fundamental right, these burdens are subject to heightened scrutiny. *Id*. at 51; *Reed v. Town of Gilbert*, 576 U.S. 155, 164 (2015). Defendants' ballot language tricks Utahns into voting *for* the proposed Amendment by presenting a false image of the Amendment, which particularly burdens voters who would vote to *reject* the Amendment (and convince others to do the same) if they were presented an accurate image. This is unconstitutional viewpoint discrimination—of the blatant Orwellian variety—driving Utahns to unwittingly express *Defendants'* preferred opinion on the proposed Amendment rather than their own.

Defendants cannot show a compelling, let alone legitimate, justification for submitting the misleading ballot language to the voters, nor is the ballot language narrowly tailored to achieve any such purpose. Because the proposed Amendment's deceptive ballot language restrains Plaintiffs' speech and fails heightened scrutiny, it violates Article I, Sections 1 and 15 of the Constitution and must be removed from the ballot.

**E. Plaintiffs are likely to succeed on their right to vote claim.**

Plaintiffs are likely to succeed on their right to vote claim. The Right to Vote Clause provides that "[*e*]*very citizen* of the United States, eighteen years of age or over, who makes proper proof of residence in this state for thirty days next preceding any election, or for such other period as required by law, *shall be entitled to vote in the election*." Utah Const. art. IV, § 2 (emphasis added). This Court has held that this Clause guarantees "more than the physical right to cast a

ballot," but rather guarantees a "meaningful" right to vote that cannot be "unnecessarily abridged." Order on Mot. to Dismiss at 54 (cleaned up). Government action with respect to elections that prevents "the true public will" from being "ascertained" and causes it to be "distorted," this Court has explained, *id.* at 55, violates the Right to Vote Clause.

Because the ballot summary would deceptively cause voters to cast ballots contrary to their true will and will unduly influence and distort the election outcome, *see supra*, it violates the Right to Vote Clause.

**F. Plaintiffs are likely to succeed on their right to free government claims.**

Plaintiffs are likely to succeed on their right to free government claims. Article I, Section 2, of the Constitution—in addition to guaranteeing to the people the right to alter or reform the government—provides that "[a]ll political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit." Utah Const. art. I, § 2. Likewise, Article I, Section 27 of the Constitution provides that "[f]requent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government." Utah Const. art. I, § 27. As the Supreme Court has explained in enforcing Article I, Sections 2 and 27, "[t]he cornerstone of democratic government is the conviction that governments exist at the sufferance of the people, in whom '[a]ll political power is inherent.'" *In re J.P.*, 648 P.2d 1364, 1372 (Utah 1982) (quoting Utah Const. art. I, § 2); *see also LWVUT*, 2024 UT 21, ¶ 133 (citing Article I, Section 27's "frequent recurrence" requirement and observing that "[t]hese declarations are not mere metaphors . . . but a vital princip[le] adhered to in the formation of the government of this state. . . . The people set up the state as their agent or servant through which they might for convenience *express their sovereign will*." (quoting *Utah Power & Light Co v. Ogden City*, 95 Utah 161, 79 P.2d 61, 74 (1938) (Larson, J., concurring in part and dissenting in

part) (cleaned up))). Utah is not alone in enforcing its constitutional guarantee to free government through frequent adherence to fundamental principles. *See, e.g.*, *Stierle v. Rohmeyer*, 260 N.W. 647, 655 (Wis. 1935) (invalidating provision under frequent adherence/free government clause and noting that "when things so monstrous as this are contemplated as within the language of the statutory provision under consideration, it behooves us to heed the admonition of section 22, art. 1, of our state Constitution.").

Together, Article I, Sections 2 and 27 guarantee free government consistent with fundamental principles of democratic governance, political primacy of the people, and the free expression of the people's will at the ballot box. A government is not "free" if its Constitution is amended by deception. The people are not sovereign in a free government if the government enhances its own power and limits that of the people by electoral deceit. Lying to voters to extinguish fundamental constitutional rights at the ballot box is antithetical to fundamental democratic principles. The ballot summary violates the guarantees of free government and democracy guaranteed by Article I, Sections 2 and 27 of the Utah Constitution.

**II. The remaining factors favor entry of an injunction.**

Plaintiffs are also likely to prevail on the remaining preliminary injunction factors that (1) "[they] will suffer irreparable harm unless the . . . injunction issues," (2) "the threatened injury to [them] outweighs whatever damage the proposed . . . injunction may cause the party . . . enjoined," and (3) "the . . . injunction, if issued, would not be adverse to the public interest." Utah R. Civ. P. 65A(e) (2-4).

First, Plaintiffs will suffer irreparable harm in the absence of an injunction against the proposed Amendment. Irreparable harm "is that which cannot be adequately compensated in damages" and is "fundamentally preventative in nature." *Zagg, Inc. v. Hammer*, 2015 UT App 52,

¶¶ 6, 8 (quotation omitted). Without a preliminary injunction, Defendants' misleading and inaccurate ballot language would have Utahns unwittingly *eliminate* a fundamental constitutional right that has existed since 1895. Subjecting Plaintiffs and other Utahns to such deception constitutes irreparable harm that must be remedied. *See Williams v. Rhodes*, 393 U.S. 23, 30 (1968) ("[T]he right of qualified voters … to cast their votes effectively … rank[s] among our most precious freedoms").

Second, the balance of the equities, which "considers whether the applicant's injury exceeds the potential injury to the defendant," favors Plaintiffs. *Planned Parenthood Assoc. of Utah v. State*, 2024 UT 28, ¶ 210. The harm that Plaintiffs would suffer from the proposed Amendment's ballot language, which tricks voters into surrendering a fundamental constitutional right under the false pretense of *strengthening* that right, outweighs any harm Defendants may suffer if the requested injunction is granted. *See, e.g., United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) (there can be "no harm from the state's nonenforcement of invalid legislation"). Utahns have possessed the fundamental constitutional right discussed in *LWVUT* since the founding; Defendants are not harmed by being unable to advance a false description of the proposed Amendment in the November 2024 election.

Finally, the public interest weighs in favor of an injunction. The "purpose of a preliminary injunction is 'to preserve the status quo pending the outcome of the case.'" *Planned Parenthood*, 2024 UT 28, ¶ 224 (internal citation omitted) (upholding a preliminary injunction as in public interest where it "would maintain the status quo…as it has been legally permitted for nearly fifty years"). Without an injunction here, a fundamental constitutional right that has existed since 1895 would be in jeopardy. Moreover, Defendants deceptive ballot language will impact the over 1.7

million registered Utah voters. The public interest favors removing proposed Amendment D from the November 5, 2024 ballot.

## III. The Court should grant a preliminary injunction striking the proposed Amendment from the November 2024 election ballot.

The Court should grant a preliminary injunction that (1) enjoins Defendants from placing proposed Amendment D on the November 2024 election ballot; (2) provides that if any ballots are issued to voters that include proposed Amendment D, Amendment D is declared void and enjoined; and (3) orders the Lieutenant Governor to notify all County Clerks of the injunction such that they are bound by its terms, *see* Utah R. Civ. P. 65A(d). This relief is consistent with the relief state supreme courts in sister states have ordered when ballot questions are unconstitutionally misleading, both in pre-election and post-election challenges. Although the public interest would be served by resolution of this matter before ballots are mailed to voters, relief voiding the Amendment—which Defendants have acted to unconstitutionally place before voters—is effective regardless of whether an injunction is entered pre- or post-election. *See supra* Part I.A (collecting cases).

## CONCLUSION

For the foregoing reasons, and as detailed above, the Court should grant a preliminary injunction.

September 5, 2024

Respectfully submitted,

*/s/ David C. Reymann*

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Utah R. Civ. P. 7(q)(3), I hereby certify that the foregoing **PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ON COUNTS 9-14 OF THEIR FIRST SUPPLEMENTAL COMPLAINT** complies with the word limits in Utah R. Civ. P. 7(q)(1) and contains 8,651 words, excluding the items identified in Utah R. Civ. P. 7(q)(2).

*/s/ Kade N. Olsen*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5th day of September, 2024, I filed the foregoing **PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ON COUNTS 9-14 OF THEIR FIRST SUPPLEMENTAL COMPLAINT** via electronic filing, which served all counsel of record.

*/s/ Kade N. Olsen*

**Notice to responding party**
You have a limited amount of time to respond to this motion. In most cases, you must file a written response with the court and provide a copy to the other party:

- within 14 days of this motion being filed, if the motion will be decided by a judge, or
- at least 14 days before the hearing, if the motion will be decided by a commissioner.

In some situations a statute or court order may specify a different deadline.

If you do not respond to this motion or attend the hearing, the person who filed the motion may get what they requested.

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Su tiempo para responder a esta moción es limitado. En la mayoría de casos deberá presentar una respuesta escrita con el tribunal y darle una copia de la misma a la otra parte:

- dentro de 14 días del día que se presenta la moción, si la misma será resuelta por un juez, o
- por lo menos 14 días antes de la audiencia, si la misma será resuelta por un comisionado.

En algunos casos debido a un estatuto o a una orden de un juez la fecha límite podrá ser distinta.

Si usted no responde a esta moción ni se presenta a la audiencia, la persona que presentó la moción podría recibir lo que pidió.

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**This motion requires you to respond.**
**Please see the Notice to Responding Party.**

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**IN THE THIRD JUDICIAL DISTRICT COURT**
**IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LEAGUE OF WOMEN VOTERS OF UTAH, MORMON WOMEN FOR ETHICAL GOVERNMENT, STEFANIE CONDIE, MALCOLM REID, VICTORIA REID, WENDY MARTIN, ELEANOR SUNDWALL, and JACK MARKMAN,

Plaintiffs,

v.

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

Defendants.

**PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ON COUNT 15 OF THEIR SECOND SUPPLEMENTAL COMPLAINT**

**(Expedited consideration requested)**

Case No. 220901712

Honorable Dianna Gibson

**HEARING REQUESTED**

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## TABLE OF AUTHORITIES

## RELIEF REQUESTED AND GROUNDS

Pursuant to Rule 65A of the Utah Rules of Civil Procedure, Plaintiffs League of Women Voters of Utah, Mormon Women for Ethical Government, Stefanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, and Jack Markman hereby move for a preliminary injunction on Count 15 of their Second Supplemental Complaint. In addition to the grounds stated in Plaintiffs' motion for a preliminary injunction on Counts 9-14 of their First Supplemental Complaint, Plaintiffs are also entitled to a preliminary injunction on Count 15.

Defendants have now indisputably also violated the Publication Clause of Article XXIII, Section 1 of the Utah Constitution. This Clause requires that "the Legislature shall cause [proposed constitutional amendments] to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election." Utah Const. art. XXIII, § 1. By any conceivable definition of "two months immediately preceding the next general election," Defendants have now failed to timely publish proposed Amendment D. For that reason, the Amendment must be stricken from the November 2024 ballot and otherwise declared void regardless of whether it remains a question on the ballot given ballot printing and mailing deadlines.

**Expedited Relief Requested**: For the same reasons set forth in Plaintiffs' motion for a preliminary injunction with respect to Counts 9-14, Plaintiffs respectfully request that the Court order expedited briefing and a hearing.

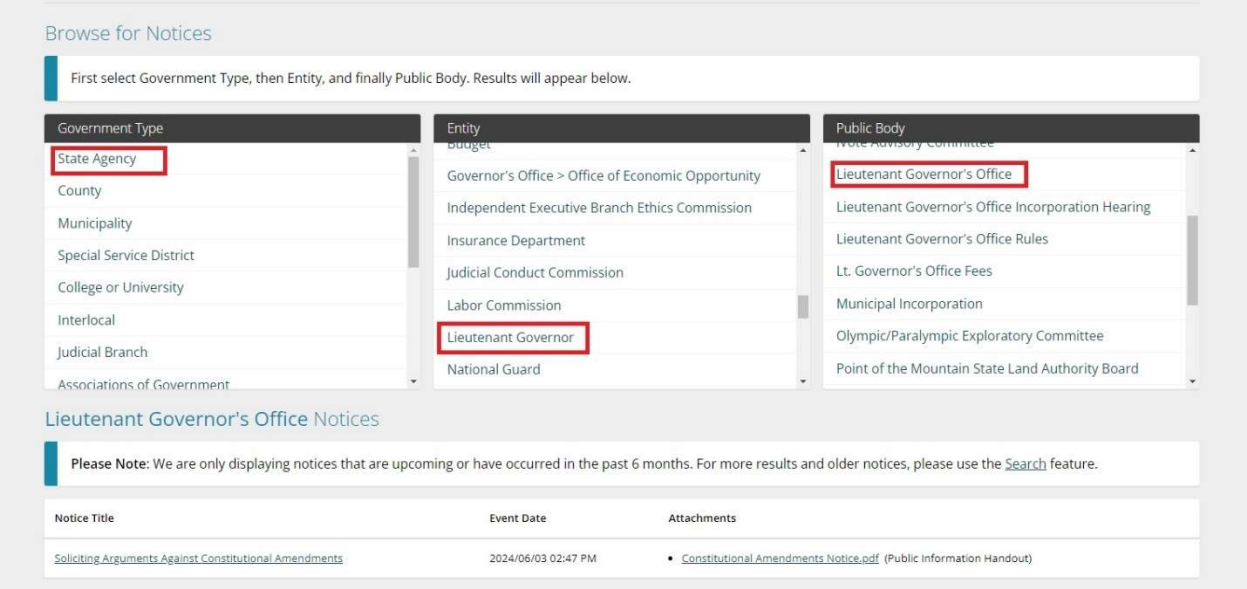
## INTRODUCTION

The Utah Constitution mandates that before a constitutional amendment can be submitted to the voters, its text must be published in at least one newspaper in every county of the state for a two-month period. As the Utah Supreme Court has held, the purpose of this requirement is to

ensure that voters have sufficient time with, and access to, the actual text of proposed amendments in advance of the election. The requirement is mandatory, and the Legislature's failure to follow it renders the submission to the voters on the ballot invalid. The deadline for the Legislature to comply with the publication requirement has now passed, and the Legislature has not caused proposed Amendment D's text to be published in a single newspaper anywhere in Utah.

Instead, in 2023, the Legislature amended the publication *statute* to trade the newspaper publication requirement for publication on an obscure website called the Utah Public Notice website. That statute likewise shrinks the publication time from two months to potentially just two *weeks*. But the Legislature cannot evade the *Constitution's* commands by *statutory* enactment.

The Legislature's shortcomings are not some technicality. As of today, the *text* of proposed Amendment D has not been published, either in a newspaper or even on the Utah Public Notice website. If and when the text is published, the Lieutenant Governor has indicated—consistent with the statute passed by the Legislature but in violation of the Constitution—that it will appear on an obscure website that few voters know exists: www.utah.gov/pmn. Even if a voter got that far, she would need to know that the Lieutenant Governor's office is tasked with posting the text of constitutional amendments in order to navigate the website to locate the proposed Amendment. Below is a screenshot of the relevant section of the website, which is at the bottom of the homepage.




Utah Archives and Records Service, *Public Notice Website*, https://www.utah.gov/pmn/.

As the screenshot illustrates, voters would first need to know to click "State Agency" under "Government Type," then to scroll down under "Entity" and click "Lieutenant Governor," then finally scroll down under "Public Body" to click "Lieutenant Governor's Office." Even if they figure that out, they will have to just keep checking this website until the day it is posted—which may come any time between now and two weeks before the election.

This website demonstrates why our Constitution has a two-month newspaper publication requirement. Defendants plan to bury the text of *proposed amendments to the foundational governing document of the state* on an obscure website in a messy navigational pane, which in turn requires advanced knowledge of the innerworkings of state agencies. Even then, it may not be posted for another month and a half under Defendants' planned approach. The Defendant's own actions show that the Constitution's two-month newspaper publication requirement is not some procedural technicality, but rather a core, substantive requirement in the constitutional amendment process. As the Utah Supreme Court held in *Snow v. Keddington*, "[a]ll voters throughout the state

are entitled to notice," and the two-month newspaper notice requirement "permits the voter time to consider the merits or demerits of the proposed change." 195 P.2d 234, 238 (Utah 1948).

This is especially problematic here given the deceptive and misleading ballot summary language Defendants have certified, that has been widely distributed, and that will appear on the actual ballots. To prevent voters from learning about the Amendments' *actual language*, the Legislature is not even complying with the basic constitutional requirement to inform Utahns of the text of the proposed amendment it has rushed onto the ballot. Complying with the Constitution is not optional, its commands cannot be ignored, and its publication requirements are critical to ensuring an informed citizenry who can freely and fairly cast their ballots.

**FACTUAL BACKGROUND**

1. On August 21, 2024, at an "emergency" special session, two-thirds of legislators in both the Utah House and Senate approved S.J.R. 401, which proposed a constitutional amendment to eliminate Utah voters' constitutional right to alter or reform their government without infringement by the Legislature and instead grant the Legislature unfettered power to repeal voters' initiatives. S.J.R. 401, Proposal to Amend Utah Constitution – Voter Legislative Power, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), https://le.utah.gov/~2024S4/bills/static/SJR401.html; *see* Utah Const. art. I, § 2; *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 74 ("*LWVUT*"). It has been designated proposed Amendment D for the November 5, 2024 ballot.

2. Article XXIII, Section 1 of the Utah Constitution provides that after the Legislature approves a proposed constitutional amendment, "the Legislature shall cause the same to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election." Utah Const. art. XXIII, § 1.

3. Separately, Utah Code § 20A-7-103(2) provides that "[t]he lieutenant governor shall, not more than 60 days or less than 14 days before the date of the election, publish the full text of the amendment . . . as a class A notice under Section 63G-30-102, through the date of the election. Utah Code § 20A-7-103(2).

4. In turn, Utah Code § 63G-30-102 requires "class A notices" for matters affecting the entire state to be (1) published on the Utah Public Notice Website and (2) published on the relevant official's website if that official maintains one and has "an annual operating budget of $250,000 or more." Utah Code § 63G-30-102(1)(a)-(b) & 4(a).

5. The next general election is November 5, 2024, which—including that date in the count—is 59 days from the date of the filing of this Motion.

6. To date, the Legislature has not caused proposed Amendment D to be published in a single Utah newspaper, notwithstanding that November 5, 2024 election is less than two months away under any definition of "two months."

## LEGAL STANDARD

A preliminary injunction is appropriate if Plaintiffs show that (1) "there is a substantial likelihood that [they] will prevail on the merits of the underlying claim," (2) "[they] will suffer irreparable harm unless the . . . injunction issues," (3) "the threatened injury to [them] outweighs whatever damage the proposed . . . injunction may cause the party . . . enjoined," and (4) "the . . . injunction, if issued, would not be adverse to the public interest." Utah R. Civ. P. 65A(e).

## ARGUMENT

### I. Plaintiffs are likely to prevail on the merits of their Article XXIII, Section 1 publication claim.

Plaintiffs are likely to prevail on the merits of their Article XXIII, Section 1 Publication Clause claim. The Utah Constitution provides that after approving a proposed amendment,

> [T]he Legislature shall cause the same to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election, at which time the said amendment or amendments shall be submitted to the electors of the state for their approval or rejection, and if a majority of the electors voting thereon shall approve the same, such amendment or amendments shall become part of this Constitution.

Utah Const. art. XXIII, § 1.

When interpreting constitutional language, Utah courts "start with the meaning of the text as understood when it was adopted." *LWVUT*, 2024 UT 21, ¶ 101 (cleaned up). The focus is on "the objective meaning of the text, not the intent of those who wrote it." *Id.* (cleaned up). The Court thus "interpret[s] the [C]onstitution according to how the words of the document would have been understood by a competent and reasonable speaker of the language at the time of the document's enactment." *Id.* (cleaned up). "When [courts] interpret the Utah Constitution, the 'text's plain language may begin and end the analysis.'" *State v. Barnett*, 2023 UT 20, ¶ 10, 537 P.3d 212 (quoting *South Salt Lake City v. Maese*, 2019 UT 58, ¶ 23, 450 P.3d 1092). But if any doubt exists, courts "can and should consider all relevant materials." *Maese*, 2019 UT 58, ¶ 23 (quoting *In re Young*, 1999 UT 6, ¶ 15, 976 P.2d 581). This includes "the historical context in which [constitutional provisions] were ratified." *LWVUT*, 2024 UT 21, ¶ 103; *see also Salt Lake City Corp. v. Haik*, 2020 UT 29, ¶ 12, 466 P.3d 178 (noting that determining original public meaning requires analyzing the provision's "text, historical evidence of the state of the law when it was drafted, and Utah's particular traditions at the time of drafting." (cleaned up)). One historical source the Utah Supreme Court has found particularly instructive for ascertaining the original public meaning of the Constitution is the 1898 Code. This is so, the Court has explained, because it was the "first effort to codify the law after adoption of our constitution" and thus while it is not a "perfect enshrinement of constitutional principles," it "may help us understand the

contemporaneous public meaning of certain constitutional terms and concepts." *Id.* ¶ 35 (quoting *Maese*, 2019 UT 58, ¶¶ 45-46).

Article I, Section 26 provides that "[t]he provisions of this Constitution are mandatory and prohibitory, unless by express words that are declared to be otherwise." Utah Const. art. I, § 26. The Supreme Court has explained that "Section 26 means that . . . courts cannot ignore the constitution. That is, courts are not free to pick and choose which parts of the constitution they will enforce." *State v. Barnett*, 2023 UT 20, ¶ 27. This is all the more important when the provision at issue regulates how the Constitution may be amended.

The Utah Supreme Court has only once addressed the Publication Clause of Article XXIII, Section 1. In *Snow v. Keddington*, a statute required county clerks to post at polling stations the existing constitutional text along with the proposed amendment's text, but a county clerk failed to include the proposed amendment's effective date on the poster. 195 P.2d 234, 237-38 (Utah 1948). The Court observed that the Legislature had delegated to the Secretary of State the requirement in Article XXIII, Section 1 to publish the amendment in newspapers for two months preceding the election and that "the amendment was published as required." *Id.* at 238. The Court observed that because the text of the amendment is not printed on the ballot in full, "the notice of importance to the voter is the publication in the newspapers prior to the general election. This is the publication that permits the voter time to consider the merits or demerits of the proposed change." *Id.* The Court reasoned that "[a]ll voters throughout the state are entitled to notice," and that "[u]nder our constitutional requirements, notices *must* be carried in the newspapers." *Id.* (emphasis added). The Court further explained that

> the probabilities and possibilities of the voter being fully informed of the context of an amendment are reasonably assured if the publication is in the newspapers. Accordingly, the method of notice prescribed by the constitution is one reasonably calculated to give notice to the voters, and this method was here complied with.

> This is sufficient to sustain a finding that the proposed amendment . . . was submitted to the voters for approval or disapproval.

*Id.*

*Snow* thus makes clear that compliance with the Publication Clause is mandatory and a proposed amendment that fails to comply has not been "submitted to the electors of the state" as Article XXIII, Section 1 requires.

*Snow* did not address the original public meaning of the components of the Publication Clause, however, because it was undisputed that it had been satisfied. But under any plausible conception of the Clause's original public meaning, Defendants in this case have failed to comply with respect to proposed Amendment D. Plaintiffs nevertheless address the meaning of the Clause to illustrate Defendants' failure and why it requires the Court to strike Amendment D from the November 2024 ballot and/or otherwise declare and enjoin it as void regardless of whether it remains on the ballots because of printing and mailing deadlines.

***Published in one newspaper in every county*.** There can be no doubt as to what the phrase "published in at least one newspaper in every county of the state, where a newspaper is published" meant to Utahns in 1895. The internet did not exist in 1895, and thus the original public meaning of "newspaper" could only mean a physical, printed newspaper—thus the word news*paper*. Moreover, the balance of the Clause requires not merely the publication in one newspaper with statewide circulation, but rather publication in at least one newspaper that physically publishes its papers within each county. There would be no purpose to the phrase "where a newspaper is published" were it otherwise. Moreover, this understanding accords with the practice of the day, where small local newspapers delivered news and information in communities across the State. *See, e.g.*, Utah Digital Newspapers, https://digitalnewspapers.org/browse/holdings (project of the University of Utah, Brigham Young University, Utah State University, and Salt Lake Community

College digitizing historic newspapers) (listing historic Utah newspapers by county of publication).

***For two months immediately preceding the next general election.*** Unlike the newspaper publication requirement, the temporal requirement of the Publication Clause is susceptible to more than one plausible meaning. Are the two months immediately preceding the next general election the two *calendar* months that do so—*i.e.*, September and October? Or does the phrase refer to a quantity of days that immediately precede election day itself (*e.g.*, either 60 days before the election or beginning on the same date in September as the relevant date in November)?

There is textual support for both interpretations. The text of the Publication Clause supports the former interpretation—the full two calendar months of September and October—because a "month" is not a precise number of days. In even-numbered years, a month can be 28 days (February), 29 days (February in leap years), 30 days, or 31 days. In this regard, the text supports counting two calendar months that precede the election. On the other hand, the phrase "immediately preceding the next general election" suggests proximity to election day itself, while the former interpretation leaves one to six "extra" days depending on when election day falls in November.

The historical record likewise provides mixed evidence. The "Rules of Construction" provision of the 1898 Code provides that "[t]he word 'month' means a calendar month unless otherwise expressed." Utah Code § 65-2-2498(1) (1898). This understanding of the word "month" as used in the law at the time "provide[s] persuasive evidence about what the people of Utah would have understood our state constitution to mean." *Haik*, 2020 UT 29, ¶ 35 (cleaned up).

On the other hand, there is mixed evidence from the early Legislatures' practice of publishing proposed amendments in newspapers. The 1899 Legislature approved the first three

proposed amendments to Utah's Constitution for submission to the voters at the November 6, 1900 election. It appears that the initial publication date effectuated by the Legislature in 1900 depended upon the circulation frequency of the newspapers. For the weekly newspapers, the publication began in either late August or September 1.[1] By contrast, the initial publication for newspapers with more frequent circulation, however, began after September 1, starting September 3 in the Cache County's *Logan Nation* and September 5 in Weber County's *Ogden Daily Standard*.[2] Given the election date of November 6 and the initial publication of September 5 in the *Ogden Daily Standard*—as its name suggests, a daily circulation newspaper—one could deduce that the Legislature at the time interpreted "two months immediately preceding the next general election" as meaning the same numbered date in September as the date immediately preceding the election date in November. For the weekly publications with editions that were issued either before or after that date, the Legislature began publication in the earlier issue to ensure a full two months of publication occurred.

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[1] Utah Digital Newspapers, *Park Record* (Summit County), https://newspapers.lib.utah.edu/search?page=2&facet_paper=%22Park+Record%22&facet_type=issue&date_tdt=%5B1900-01-01T00%3A00%3A00Z+TO+1900-12-31T00%3A00%3A00Z%5D; *id.*, *Eastern Utah Advocate* (Carbon County), https://newspapers.lib.utah.edu/search?page=2&facet_paper=%22Eastern+Utah+Advocate%22&facet_type=issue&date_tdt=%5B1900-01-01T00%3A00%3A00Z+TO+1900-12-31T00%3A00%3A00Z%5D; *id.*, *Beaver County Blade* (Beaver County), https://newspapers.lib.utah.edu/search?page=2&facet_paper=%22Beaver+County+Blade%22&facet_type=issue&date_tdt=%5B1900-01-01T00%3A00%3A00Z+TO+1900-12-31T00%3A00%3A00Z%5D.

[2] *Id.*, *Logan Nation* (Cache County); https://newspapers.lib.utah.edu/search?facet_paper=%22Logan+Nation%22&facet_type=issue&date_tdt=%5B1900-01-01T00%3A00%3A00Z+TO+1900-12-31T00%3A00%3A00Z%5D; *id.*, *Ogden Daily Standard* (Weber County), https://newspapers.lib.utah.edu/search?page=5&facet_paper=%22Ogden+Daily+Standard%22&facet_type=issue&date_tdt=%5B1900-01-01T00%3A00%3A00Z+TO+1900-12-31T00%3A00%3A00Z%5D.

The interpretation reflected in the publication practice for the first three amendments in 1900 perhaps best accords with the constitutional text among the potential meanings, by giving a harmonized meaning to both the phrase "two months" and the phrase "immediately preceding the next general election." Utah Const. art. XXIII, § 1.

***At which time said amendment . . . shall be submitted to the electors.*** Structurally, this phrase makes clear that only after the Publication Clause's requirements have been satisfied may the amendments be submitted to the electors. Article XXIII, Section 1 is written as a series of necessary steps, with each subsequent step dependent upon satisfaction of the prior step. First, proposed amendments must be approved by two-thirds of each house of the legislature, then they must be entered in the respective chambers' journals, then they must be published in newspapers, then they must be submitted to the voters, and only then—if a majority of voters approve—do they become part of the Constitution. *See* Utah Const. art. XXIII, § 1. The only time the text of Article XXIII, Section 1 permits amendments to be submitted to the electors is "[a]t which time" they have completed being published in newspapers for two months immediately preceding the election day. *Id.* Publication is thus a mandatory condition precedent to submission to the voters. Indeed, the *Snow* Court made clear that publication in the newspapers was a mandatory requirement and necessary in order for the amendment to be considered to have been lawfully "submitted to the voters for approval or disapproval." *Snow*, 195 P.2d at 238.

But in this case, the Court need not decide the precise original public meaning of Article XXIII, Section 1's Publication Clause. It is indisputable that Defendants have failed to comply with it under *any* plausible interpretation—whether "two months" means (1) the full calendar months of September and October, (2) the period commencing on September 4, 2024 (consistent with the 1900 Legislature's practice given the November 5, 2024 election date), (3) the period

commencing on September 5, 2024 (including election day in the count), or (4) 60 days before November 5, 2024 (*i.e.,* September 6, 2024).

This is because each of these potential trigger dates for the Publication Clause's requirements has now come and gone and Defendants have failed to cause the text of Amendment D to be published in *any* newspaper in *any* county in Utah, let alone in at least one newspaper in each county in Utah. *See* Utah Const. art. XXIII, § 1. For example, there is one print edition newspaper that published in Washington County—*The St. George Spectrum*. *See The Spectrum*, https://www.thespectrum.com/; *see also* Utah's Online School Library, *Utah's Local Newspapers by County*, https://utahsonlinelibrary.org/countynews/ (identifying newspapers that are currently in circulation across Utah's counties). *The Spectrum* publishes print editions on Thursdays and Sundays.[3] Under any definition of "two months," Defendants were required to publish the text of Amendment D in *The Spectrum* beginning with the Thursday, September 5 edition, given that the next publication was not until Sunday, September 8. Yet Defendants did not do so. *See The Spectrum*, Utah Public Notices, https://www.thespectrum.com/public-notices (showing no publication of proposed Amendment D's text). Likewise, the text of proposed Amendment D has not appeared in either of Salt Lake County's printed newspapers—the *Salt Lake Tribune* and the *Deseret News.* Indeed, the Utah Press Association provides a free public database of the Legal and Public Notices that are published in Utah's newspapers. *See* Utah Press Association, *Utah Legals & Public Notices*, https://www.utahlegals.com/(S(oy51nxsefg1gf5u5gjbnmey2))/default.aspx. A search for "constitution," "amendment," "amend," and "resolution" reveals no publication of

[3] *See The Spectrum*, Choose Your Plan, https://subscribe.thespectrum.com/offers?gps-source=CPTOPNAVBAR&itm_campaign=2024LOCFLSHSEPT&itm_medium=ONSITE&itm_content=bluebutton&gnt-eid=control.

Amendment D's text in any Utah newspaper. Under no conception of the Publication Clause's meaning have Defendants complied with the Constitution.

Indeed, the Legislature has, over time, seemingly ignored the Publication Clause's central requirements in the enacting *statutory* requirements related to the publication of proposed amendments. In 2002, the Legislature amended § 20A-7-103(2) as follows, with strikethrough showing deletions and underline showing additions:

> § 20A-7-103
>
> (2) ~~The~~ In addition to the publication in the voter information pamphlet required by Section 20A-7-702, the lieutenant governor shall, not ~~later~~ more than 60 days or less than ten days before the regular general election, publish the full text of the amendment, question, or statute in at least one newspaper in every county of the state where a newspaper is published.

2002 Utah Laws Ch. 127, § 1 (H.B. 86), 54th Leg., 2002 Gen. Sess. With this amendment, the Legislature by *statute* permitted the Lieutenant Governor to choose to publish amendments for only *ten days* prior to the election, rather than the two months required by the Constitution.

In 2008, the Legislature amended § 20A-7-103(2) again to increase the ten-day minimum publication period to a fourteen-day minimum period. *See* 2008 Utah Laws Ch. 225, § 11 (S.B. 12), 57th Leg., 2008 Gen. Sess. And in 2020, the Legislature again amended § 20A-7-103(2) to delete the first sentence regarding the publication of the voter information pamphlet but left the remainder of the provision unchanged. *See* 2020 Utah Laws 5th Sp. Sess. Ch. 20, § 4 (S.B. 5012), 63d Leg., 5th Sp. Sess.

Then, in 2023, the Legislature amended § 20A-7-103(2) as follows:

> § 20A-7-103
>
> (2) The lieutenant governor shall, not more than 60 days or less than 14 days before the date of the election, publishes the full text of the amendment, question, or statute ~~in at least one newspaper in every county of the state where a newspaper is~~

~~published~~ for the state, as a class A notice under Section 63G-28-102, through the date of the election.

2023 Utah Laws Ch. 435, § 136 (S.B. 43), 65th Leg., 2023 Gen. Sess. Having previously taken the statute out of compliance with the Constitution's two-month publication requirement, the Legislature in 2023 dealt the final blow to the statute's conformity with the Constitution—eliminating the newspaper publication requirement entirely. An attorney for the Utah Office of Legislative Research and General Counsel spoke at the committee hearing, noting that he drafted the bill (which affected a number of different notice requirements across the Code), and observing that it was designed to make the Code's various notice provisions uniform and to modernize the format to eliminate all newspaper publication requirements and move all notices to a central state-run website. *See* House Gov't Operations Comm. Mt'g Video (S.B. 43), 65th Leg., 2023 Gen. Sess., at 1:57:22, https://le.utah.gov/av/committeeArchive.jsp?timelineID=218312. It does not appear that any legislator or staff mentioned or discussed the *Constitution's* contrary requirement for proposed constitutional amendments.[4]

Unsurprisingly then, in her response to Plaintiffs' Motion for a Preliminary Injunction on Counts 9-14 of Plaintiffs' First Supplemental Complaint, the Lieutenant Governor says nothing about publishing the text of the proposed Amendment in at least one newspaper in every county for the two months preceding the election, as the Publication Clause of Article XXIII, § 1 plainly requires. She instead explains that her office will "publish the full text of the amendment not more than 60 days or less than 14 days before the date of the election in accordance with Utah Code

[4] Because this change occurred in 2023, the four proposed amendments on the November 2024 ballot—including proposed Amendment D—are the first ones in Utah history where the Legislature has failed to cause publication in newspapers entirely.

§ 63G-30-102." Resp. of Lt. Governor to Mot. for Prelim. Inj. at 3; *see also id.* (Declaration of Shelly Jackson, Exhibit 1, ¶ 8).

It is axiomatic, of course, that the publication *statute* cannot trump the *Constitution's* Publication Clause requirements. The Constitution mandates that the Legislature cause the text of proposed Amendment D to be published in at least one newspaper in every county of the state (other than those lacking a newspaper), and that it do so for two months prior to the election. Defendants have indisputably failed to satisfy this mandatory constitutional requirement.

In *Snow*, it was precisely *because* the Legislature complied with the newspaper publication requirement that the amendment at issue was not invalidated by the Court post-election for failing to "submit[] [it] to the voters for approval or disapproval" as required by Article XXIII, § 1. 195 P.2d at 283. As *Snow* recognizes and as the plain text of Article XXIII provides, compliance with the Publication Clause's requirements is the mandatory condition precedent for a proposed amendment to "be submitted to the electors of the state." Utah Const. art. XXIII, § 1. Because Defendants have violated this straightforward, plain text requirement of the Constitution, Amendment D is void.

**II. The remaining factors favor entry of an injunction.**

The remaining factors favor entry of an injunction. *See* Utah R. Civ. P. 65A(e). Plaintiffs—who seek to persuade other Utah voters to oppose Amendment D—are stymied in their efforts by Defendants' failure to comply with the constitutionally prescribed publication requirements, especially because of the misleading nature of the ballot language. Defendants' failure to publish the text in conformity with the Constitution irreparably harms Plaintiffs. The double-effect of Defendants' failure to publicize the proposed Amendment's text along with Defendants' misleading ballot language means that like-minded Utahns who would oppose the Amendment if

they *were told what it said* might be duped into voting in favor of Amendment D. Increasing the likelihood of Amendment D being approved by the voters through deceit in turn irreparably harms Plaintiffs by threatening their chances of success in the underlying litigation, which challenges their placement in congressional districts that are severe partisan gerrymanders. *See* Exhibit A (Declarations of Plaintiffs). These harms are irreparable in the absence of an injunction barring Amendment D from the November 2024 ballot or, if altering the ballot printing and mailing is not feasible, absent an order declaring and enjoining Amendment D as void.

The public interest clearly favors an injunction. The public has a strong interest in not being forced to vote on a misleading ballot question where Defendants have failed to provide them the notice of the *text* of the Amendment as the Constitution requires.

In her response to Plaintiffs' Motion for a Preliminary Injunction on Counts 9-14, filed on September 6, the Lieutenant Governor states that "county clerks will submit ballot proofs to third-party printing vendors beginning Monday, September 9, 2024 so that they may print ballots." Resp. of Lt. Gov. at 2. The Lieutenant Governor contends that it is too late to stop the presses on printing the ballots because doing so would be costly and may jeopardize the timely preparation for the election. For that reason, the Lieutenant Governor contends that "the harms to the State and the harms to the public interest far exceed the alleged harm suffered by Plaintiffs." *Id.* at 6. Of course, to the extent the State suffers any harm, that is harm of its own making. Putting that aside, it is hard to understand how reprinting ballots—or briefly delaying the printing of ballots—qualifies as "irreparable harm." Indeed, on Friday the North Carolina Court of Appeals—on the day ballots were to begin being mailed under North Carolina law—enjoined the dissemination of ballots and ordered the removal of Robert F. Kennedy, Jr. from the ballot. *See Robert F. Kennedy, Jr. v. N.C. State Bd of Elections*, No. P24-624 (N.C. Ct. App. Sept. 6, 2024),

https://appellate.nccourts.org/dockets.php?court=2&docket=2-P2024-0624-001&pdf=1&a=0&dev=1. North Carolina has substantially more ballots to print than does Utah, yet North Carolina election officials report they will be able to comply notwithstanding having to reprint 2.9 million ballots. *See* N.C. State Bd. of Elections, Press Release (Sept. 6, 2024), https://www.ncsbe.gov/news/press-releases/2024/09/06/state-board-appeals-decision-take-robert-f-kennedy-jr-nc-ballots; *see also DeMora v. LaRose*, 217 N.E.3d 715, 726 (Ohio 2022) ("[W]e will not hesitate to order that a wrongly excluded candidate be added to the ballot, notwithstanding the UOCAVA date."). Here, the "proof" for the ballots has not yet been sent to printers in Utah and the upcoming deadline for overseas ballots involves only 4,451 ballots statewide. *See* Resp. of Lt. Gov. at 5.

But in any event, the Lieutenant Governor does not address Plaintiffs' request that Amendment D be declared and enjoined as void regardless of whether it is included on the ballot. None of the Lieutenant Governor's arguments have any bearing on that requested relief. And that relief is consistent with a substantial body of case law, where unlawfully presented proposed Amendments are stricken whether pre- or post-election. *See, e.g.*, *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982); *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000); *Lane v. Lukens*, 283 P. 532, 533-34 (Idaho 1929); *Ex parte Tipton*, 93 S.E.2d 640, 642 (S.C. 1956); *State ex rel. Thomson v. Zimmerman*, 60 N.W.2d 416, 423 (Wis. 1953).

Regardless of whether time permits the removal of Amendment D from the physical ballots (it does), Plaintiffs are entitled to an injunction voiding Amendment D such that it will have no effect. It violates every conceivably applicable constitutional provision and cannot stand.[5]

[5] If deemed desirable for the public interest, the Court could order the Lieutenant Governor to direct county clerks to post notices at polling places and to mail notices along with the ballots informing voters that the Court has ordered Amendment D void for failing to comply with the

## CONCLUSION

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

September 7, 2024

Respectfully submitted,

*/s/ David C. Reymann*

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constitutional requirements for presenting a proposed amendment to voters for approval or rejection.

**CERTIFICATE OF COMPLIANCE**

Pursuant to Utah R. Civ. P. 7(q)(3), I hereby certify that the foregoing **PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ON COUNT 15 OF THEIR SECOND SUPPLEMENTAL COMPLAINT** complies with the word limits in Utah R. Civ. P. 7(q)(1) and contains 5,139 words, excluding the items identified in Utah R. Civ. P. 7(q)(2).

*/s/ Kade N. Olsen*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 7th day of September, 2024, I filed the foregoing **PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ON COUNT 15 OF THEIR SECOND SUPPLEMENTAL COMPLAINT** via electronic filing, which served all counsel of record.

*/s/ Kade N. Olsen*