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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 BRAD WILSON, in his official capacity; SENATOR J. STUART ADAMS, in his official capacity; and LIEUTENANT GOVERNOR DEIDRE HENDERSON, in her official capacity,

Defendants.

PLAINTIFFS' RESPONSE TO LEGISLATIVE DEFENDANTS' MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND FIRST AMENDED COMPLAINT

Case No. 220901712

Honorable Dianna Gibson

PLAINTIFFS' RESPONSE TO LEGISLATIVE DEFENDANTS' MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND FIRST AMENDED COMPLAINT

The Court should deny Legislative Defendants' request to be provided 51 days—7.5 weeks—to respond to Plaintiffs' summary judgment motion and amended complaint. This is more than 350% of the amount of time—14 days—that the Rules provide. *See* Utah R. Civ. P. 7(d) & 15(a)(3). As Defendants acknowledge, this is not an "ordinary case." Mot. at 2. Contrary to Defendants' conception, however, the extraordinary nature of this case is not that it requires *delayed* action, but rather *expedition*. Expedition is necessary to ensure timely relief for the 2026 election—a deadline that already inflicts injustice by allowing two election cycles to pass under unlawfully configured districts.

The Lieutenant Governor previously indicated her position that a new map must be in place by November 1 of the year preceding an election.[1] As Plaintiffs explain in their summary judgment motion, the following must occur between now and then: (1) completed briefing on the summary judgment motion, (2) a hearing on the summary judgment motion, (3) a reasonable period of time for the Court to consider the motion and issue its decision, (4) a reasonable time period (*e.g.*, 30 days) for the Legislature to attempt to enact a lawful map and submit to the Court for adjudication and for the parties to submit proposed maps to the Court, (5) a time period for the parties to analyze the proposed remedial maps, including any legislatively proposed map, and serve objections and expert analysis on the parties and the Court, (6) an evidentiary hearing for the Court to take evidence and testimony regarding the proposed remedial maps, and (7) a reasonable period of time for the Court to consider the testimony and evidence and determine whether the legislative proposal (if one is successfully enacted) "abides by and conforms to the redistricting standards,

[1] Plaintiffs do not concede this as the deadline but note that it is the position taken by the Lieutenant Governor.

procedures, and requirements" of Proposition 4. *See* Utah Code § 20A-19-301(8) (2018). If it does not, the Court must act to impose a map that does, not merely to comply with Proposition 4, but pursuant to its obligation to ensure—having enjoined the enacted map(s)—that there exists an equally apportioned map as independently required by the Utah Constitution. *See* Utah Const. art. I, §§ 2 & 24; *see Growe v. Emison*, 507 U.S. 25, 33 (1993) (emphasizing power of state courts to "formulate a valid redistricting plan" to equally apportion districts and comply with state redistricting requirements). At that point (or along the way) the Legislative Defendants may seek to appeal.[2]

There is sufficient time for these events to all occur and ensure a lawful map for the 2026 election if the parties adhere to a schedule and the Court does not permit delays. But the process cannot begin with Legislative Defendants consuming nearly *two months* of the remaining calendar merely to complete the first step of the process—submitting their summary judgment response brief. That is particularly so when the ordinary case—*i.e.*, a case that is not one of exceptional public importance that does not require expedited action—permits only two *weeks* to file a responsive brief.

The Legislative Defendants offer several justifications for their proposed extended delay but none has merit.

First, they highlight the "novel legal claims" at issue that have "never before been analyzed" by Utah courts and the need for Defendants to "compil[e] [] a summary-judgment record with evidence regarding the 2018 and 2020 redistricting laws." Mot. at 3. But just three business

[2] If Plaintiffs do not succeed on the pending summary judgment motion, there must be time for the Supreme Court to issue its decision on the Legislative Defendants' appeal of Counts I-IV, which remain stayed in the Supreme Court because of the likelihood Plaintiffs will succeed on Count V and thus moot those remaining claims, and for subsequent trial and remedial proceedings on those claims. *See League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 222.

days ago, the Legislative Defendants—in opposing the pending intervention motion of various third parties—said the following: "The parties' and this Court's job on remand is answering a straightforward question of law: whether S.B. 200 was constitutionally enacted." *See* Legislative Defs.' Opp. to Mot. to Intervene at 5. Indeed, Legislative Defendants characterized Plaintiffs' summary judgment motion as presenting a straightforward legal question *three times*. *See id* at 4, 5, 9. Likewise, in opposing intervention, Legislative Defendants highlighted the need not to "decelerate these proceedings." *Id.* at 4, 5. On both counts, Legislative Defendants are correct. Identifying (1) whether Proposition 4 was an initiative that contained government reforms and (2) whether S.B. 200 impaired those reforms, *see League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶¶ 71-74 ("*LWVUT*"), *is* straightforward—so much so that they have not disputed these questions to date, *see id.* at ¶¶ 83, 87. And Defendants do not need months to search for the compelling justification necessary to survive strict scrutiny—*post hoc* justifications are impermissible. Likewise, Legislative Defendants are correct that any deceleration of this case—like the one they seek here—is improper.

Second, Legislative Defendants complain that Plaintiffs did not provide advance notice that a motion for summary judgment was forthcoming and that Plaintiffs had since the Supreme Court's July 11 decision to submit their motion. But the Rules provide no requirement of such advance notice and the Supreme Court's opinion nevertheless provided it. *See LWVUT*, 2024 UT 21, ¶ 200 (noting Plaintiffs may file "dispositive motion" on Count V). And Legislative Defendants have likewise had since the July 11 opinion to prepare for the "straightforward question of law" it posed for remand. In any event, the time to respond to motions is not governed by earlier events, but by the filing of the motion. *See* Utah R. Civ. P. 7(d).

Third, Legislative Defendants cite (at 2) their counsels' "other courts deadlines" in other cases. But lawyers always have other court deadlines and Plaintiffs sought to accommodate them by first offering a 1.5 week extension (to September 20) and ultimately a 2.5 week extension (to September 27). Offering over 50% and then over 100% of the time allowed by the Rules is more than reasonable. This is especially so where Legislative Defendants have at least seven counsel of record and the ability to staff the case with more as necessary.[3]

Ultimately, the Court must ensure that it has sufficient time to adjudicate the pending motion and supervise the subsequent remedial proceedings to ensure relief for the 2026 election. Plaintiffs believe that Defendants' proposed two month delay unjustifiably reduces the time the Court has to adjudicate the motion and is unwarranted. The default rule—14 days—is *per se* reasonable, especially for "straightforward questions of law." If the Court believes the calendar permits it, Plaintiffs likewise believe a one- or two-week extension (to September 20 or 27) are reasonable to accommodate Defendants' counsel. But further delay is unjustified and would needlessly eat time the parties and the Court will later need to complete the proceedings and ensure a lawful map for 2026.

Moreover, Plaintiffs respectfully request that the Court schedule an early- to mid-October hearing date on their motion for summary judgment to ensure that the Court can timely take the matter under advisement for expeditious consideration.

[3] It is surprising that Legislative Defendants were unwilling to compromise for a *one month* response period—twice what the Rules envision—when that was just one week less than their final suggestion of October 4. They have called upon this Court's limited resources in order to seek five instead of four weeks.

CONCLUSION

For the foregoing reasons, the Legislative Defendants' motion should be denied. The Court should enforce the default response deadlines, or—at most—permit a one- or two-week extension. Moreover, Plaintiffs' respectfully request the Court schedule an early- or mid-October hearing on the pending motion for summary judgment to ensure the Court has adequate time to adjudicate the motion.

September 4, 2024

Respectfully submitted,

/s/ David C. Reymann

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CERTIFICATE OF SERVICE

I filed this response on the Court's electronic filing system, which will email everyone requiring notice.

Dated: September 4, 2024 */s/ Kade N. Olsen*