

PARR BROWN GEE & LOVELESS
David C. Reymann (Utah Bar No. 8495)
Kade N. Olsen (Utah Bar No. 17775)
Tammy M. Frisby (Utah Bar No. 17992)
101 South 200 East, Suite 700
Salt Lake City, UT 84111
(801) 532-7840
dreymann@parrbrown.com
kolsen@parrbrown.com
tfrisby@parrbrown.com

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

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

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

Attorneys for Plaintiffs

**Admitted Pro Hac Vice*

**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 LEAVE TO FILE
SECOND SUPPLEMENTAL
COMPLAINT**

Case No. 220901712

Honorable Dianna Gibson

INTRODUCTION

Pursuant to Utah Rule of Civil Procedure 15(d), Plaintiffs respectfully move for leave to file a second supplemental complaint. The proposed Second Supplemental Complaint (Ex. A) alleges that Amendment D must be struck from the 2024 general election ballot, or, if time does not permit it to be removed, the proposed amendment nevertheless declared and enjoined as void with no legal effect. The reason is simple: the Legislature has failed to comply with its constitutional duty to ensure the proposed Amendment 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” before it may be submitted to voters in that election. Utah Const. art. XXIII, § 1.

As Plaintiffs explain in the simultaneously filed motion for a preliminary injunction, there are several plausible meanings of the “two months” requirement—ranging in time from the longer (two calendar months, with publication beginning September 1) to the shorter 60 days before the election date (which, this year, would mean publication beginning September 6). Whatever the definition, though, the mandatory deadline to begin newspaper publication has now come and gone. Accordingly, Plaintiffs now have a ripe claim that Defendants have violated the Publication Clause of Article XXIII, Section 1.

ARGUMENT

The Court should grant Plaintiffs’ motion to file their second supplemental complaint, largely for the same reasons it should grant the motion to file their first, which Plaintiffs incorporate here by reference. *See* Pls. Mot. to File Suppl. Compl. at 3-5; Utah R. Civ. P. 15(d). Like their motion filed the evening of September 5, this motion is also timely, justified, and does not

prejudice Defendants; it should therefore be “freely granted.” *Harvey v. Ute Indian Tribe of Uintah & Ouray Rsrvc.*, 2017 UT 75, ¶ 56.

This motion is not untimely because it is filed in the early procedural stages of this litigation, leaving plenty of time for response before trial. *See Daniels v. Gamma W. Brachytherapy, LLC*, 2009 UT 66, ¶ 59, 221 P.3d 256, 272. Plaintiffs’ claim under the Publication Clause is also appropriately based on facts that culminated “after the date of the pleading[s] to be supplemented,” Utah R. Civ. P. 15(d)—namely, Defendants’ failure to publish proposed Amendment D in any newspapers under the most generous constitutional deadline of September 6. Plaintiffs worked diligently to file their motion for supplemental pleading shortly after these facts became apparent.

This motion is not filed in bad faith or after unreasonable neglect and is therefore justified. *Swan Creek Vill. Homeowners v. Warne*, 2006 UT 22, ¶ 22. As previously explained, Plaintiffs moved to supplement their amended complaint with claims challenging the misleading and deceptive nature of Amendment D as soon as that deception became apparent. To avoid filing prematurely and wasting judicial resources on a potentially unnecessary claim, Plaintiffs afforded Defendants all reasonable time to comply with the Publication Clause. They did not. Supplementation has therefore, unfortunately, become necessary.

This motion does not prejudice Defendants. Defendants will have ample time to respond to this pleading before trial. And any inconvenience arising from the proximity of this dispute to the general election is a problem of Defendants’ own making. At the eleventh hour, the Legislature extended various statutory deadlines to force proposed Amendment D onto the ballot. And the Legislature did so in a form so deceptive as to violate several constitutional rights. Indeed, that ballot language was not made public until September 3, 2024. Defendants face no undue or

substantial prejudice in promptly answering for these actions. *See Swan Creek Vill. Homeowners*, 2006 UT 22, ¶ 21.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion for Leave to File Plaintiffs' Second Supplemental Complaint and direct the Clerk to docket as filed the attached proposed Second Supplemental Complaint.

September 7, 2024

Respectfully submitted,

/s/ David C. Reymann

CAMPAIGN LEGAL CENTER

Mark P. Gaber*
Anabelle Harless*
Aseem Mulji*
Benjamin Phillips*

*Admitted *Pro Hac Vice*

PARR BROWN GEE & LOVELESS

David C. Reymann
Kade N. Olsen
Tammy M. Frisby

ZIMMERMAN BOOHER

Troy L. Booher
J. Frederic Voros, Jr.
Caroline Olsen

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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

September 7, 2024

/s/ Kade N. Olsen

EXHIBIT A

If you do not respond to this document within applicable time limits, judgment could be entered against you as requested.

PARR BROWN GEE & LOVELESS
David C. Reymann (Utah Bar No. 8495)
Kade N. Olsen (Utah Bar No. 17775)
Tammy M. Frisby (Utah Bar No. 17992)
101 South 200 East, Suite 700
Salt Lake City, UT 84111
(801) 532-7840
dreymann@parrbrown.com
kolsen@parrbrown.com
tfrisby@parrbrown.com

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

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

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

Attorneys for Plaintiffs

**Admitted Pro Hac Vice*

**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,

**PLAINTIFFS' SECOND
SUPPLEMENTAL
COMPLAINT**

Case No. 220901712

Honorable Dianna Gibson

Pursuant to Rule 15(d) of the Utah Rules of Civil Procedure, Plaintiffs file this Second Supplemental Complaint setting forth events that occurred after the filing of this action and pleading additional claims based on those events. This Second Supplemental Complaint is filed in addition to, not in replacement of, Plaintiffs' First Amended Complaint and First Supplemental Complaint. Plaintiffs allege as follows:

INTRODUCTION

1. Before any constitutional amendment proposed by the Legislature may be considered submitted to voters, the Utah Constitution requires that the Legislature first ensure that the proposed amendment is "published in at least one newspaper in every county of the state, where newspaper is published, for two months preceding the next general election." Utah Const. art. XXIII, § 1 (hereafter the "Publication Clause").

2. Defendants failed to comply with this constitutional provision. The result is that Utah's voters have fewer opportunities to view the full text of proposed Amendment D in the newspaper, meaning they are more likely to be tricked by Defendants misleading ballot language, and mistakenly vote in favor of an amendment that they actually oppose. Because the Legislature has not complied with the mandatory publication requirements of the Constitution, proposed Amendment D was not properly submitted to voters for the November 5, 2024 general election and is thus void and cannot become law.

PARTIES

3. The League of Women Voters of Utah (“LWVUT”) and its membership are harmed by the Legislature’s failure to comply with the Publication Clause with respect to proposed Amendment D.

4. As a consequence of the Legislature’s non-compliance with the Publication Clause, Utah voters will have fewer opportunities to view the actual text of proposed Amendment D in newspaper notices, and it is more likely they will be deceived by Defendants’ misleading ballot language, which may lead to voters inadvertently voting in favor of an amendment they actually oppose. As a result, LWVUT will have to expend additional resources to educate voters about the Amendment’s scope and impact along with increasing its efforts to encourage voters to oppose proposed Amendment D.

5. Likewise, LWVUT’s members have a constitutional right to be afforded a two-month period to have access to the full text of proposed Amendment D so that they may consider it, and they have been harmed by being denied that opportunity.

6. The Legislature’s non-compliance with the Publication Clause also harms LWVUT because LWVUT’s July 11, 2024 court victory in *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21 (“*LWVUT*”) and potential for a fair district configuration under Proposition 4 are at stake.

7. LWVUT has standing on its own behalf and on behalf of its members, who, on their own, would have standing to challenge proposed Amendment D.

8. Mormon Women for Ethical Government (“MWEG”) and its membership are harmed by the Legislature’s failure to comply with the Publication Clause with respect to proposed Amendment D.

9. As a consequence of the Legislature's non-compliance with the Publication Clause for proposed Amendment D, Utah voters will have fewer opportunities to view the actual text of proposed Amendment D in newspaper notices, and they are more likely to be deceived by Defendants' misleading ballot language, which may lead to voters inadvertently voting in favor of an amendment they actually oppose. As a result, MWEG will have to expend additional resources to educate voters about the Amendment's scope and impact along with increasing its efforts to encourage voters to oppose proposed Amendment D.

10. Likewise, MWEG's members have a constitutional right to be afforded a two-month period to be provided access to the full text of proposed Amendment D so that they may consider it and have been harmed by being denied that opportunity.

11. The Legislature's non-compliance with the Publication Clause also harms MWEG because MWEG's July 11, 2024 court victory in *LWVUT* and potential for a fair district configuration under Proposition 4 are at stake.

12. MWEG has standing on its own behalf and on behalf of its members, who, on their own, would have standing to challenge proposed Amendment D.

13. Plaintiff Stefanie Condie is harmed by Defendants' non-compliance with the Publication Clause for proposed Amendment D. The fewer opportunities Utah voters have to view the actual text of proposed Amendment D in newspaper notices, the more likely they are to be deceived by Defendants' misleading ballot language, which may lead to voters inadvertently voting in favor of an amendment they actually oppose. This harms Plaintiff Condie, who not only opposes proposed Amendment D, but whose July 11, 2024 court victory in *LWVUT* and potential for a fair district configuration under Proposition 4 is at stake.

14. Plaintiff Wendy Martin is harmed by Defendants' non-compliance with the Publication Clause for proposed Amendment D. The fewer opportunities Utah voters have to view the actual text of proposed Amendment D in newspaper notices, the more likely they are to be deceived by Defendants' misleading ballot language, which may lead to voters inadvertently voting in favor of an amendment they actually oppose. This harms Plaintiff Martin, who not only opposes proposed Amendment D, but whose July 11, 2024 court victory in *LWWUT* and potential for a fair district configuration under Proposition 4 is at stake.

15. Plaintiff Malcom Reid is harmed by Defendants' non-compliance with the Publication Clause for proposed Amendment D. The fewer opportunities Utah voters have to view the actual text of proposed Amendment D in newspaper notices, the more likely they are to be deceived by Defendants' misleading ballot language, which may lead to voters inadvertently voting in favor of an amendment they actually oppose. This harms Plaintiff Reid, who not only opposes proposed Amendment D, but whose July 11, 2024 court victory in *LWWUT* and potential for a fair district configuration under Proposition 4 is at stake.

16. Plaintiff Victoria Reid is harmed by Defendants' non-compliance with the Publication Clause for proposed Amendment D. The fewer opportunities Utah voters have to view the actual text of proposed Amendment D in newspaper notices, the more likely they are to be deceived by Defendants' misleading ballot language, which may lead to voters inadvertently voting in favor of an amendment they actually oppose. This harms Plaintiff Reid, who not only opposes proposed Amendment D, but whose July 11, 2024 court victory in *LWWUT* and potential for a fair district configuration under Proposition 4 is at stake.

17. Plaintiff Jack Markman is harmed by Defendants' non-compliance with the Publication Clause for proposed Amendment D. The fewer opportunities Utah voters have to view

the actual text of proposed Amendment D in newspaper notices, the more likely they are to be deceived by Defendants’ misleading ballot language, which may lead to voters inadvertently voting in favor of an amendment they actually oppose. This harms Plaintiff Markman, who not only opposes proposed Amendment D, but whose July 11, 2024 court victory in *LWWUT* and potential for a fair district configuration under Proposition 4 is at stake.

18. Plaintiff Eleanor Sundwall is harmed by Defendants’ non-compliance with the Publication Clause for proposed Amendment D. The fewer opportunities Utah voters have to view the actual text of proposed Amendment D in newspaper notices, the more likely they are to be deceived by Defendants’ misleading ballot language, which may lead to voters inadvertently voting in favor of an amendment they actually oppose. This harms Plaintiff Sundwall, who not only opposes proposed Amendment D, but whose July 11, 2024 court victory in *LWWUT* and potential for a fair district configuration under Proposition 4 is at stake.

SUPPLEMENTAL FACTUAL ALLEGATIONS

19. Under the Utah Constitution, “[a]ny amendment or amendments to this Constitution may be proposed in either house of the Legislature, and if two-thirds of all the members elected to each of the two houses, shall vote in favor thereof, such proposed amendment or amendments shall be entered on their respective journals with the yeas and nays taken thereon; and 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, at which time the said amendment or amendments shall be submitted to the electors of the state for approval or rejection” Utah Const. art. XXIII, §1.

20. The original public meaning of the phrase “two months immediately preceding the next general election” plausibly could mean (1) the two calendar months, September and October,

(2) the same date in September as the relevant date for the November election, (3) or 60 days before the November election.

21. Under any definition, however, the Legislature has not caused proposed Amendment D to be published in at least one newspaper in every county of the state where a newspaper is published, nor can it conceivably do so for two months immediately preceding the next general election, on November 5, 2024.

22. As of the conclusion of September 6, 2024—the last possible publication commencement date under any plausible definition of “two months” in the Publication Clause—the text of proposed Amendment D has not been published in any newspaper in any county of the state where a newspaper is published.

23. For example, as of September 6, 2024, the text of proposed Amendment D did not appear in the one newspaper published in Utah’s Washington County, the *St. George Spectrum*.

24. As of September 6, 2024 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*.

25. According to the Legislature, the procedures in Utah Code § 20A-7-103 “govern when the Legislature submits a proposed constitutional amendment or other question to the voters.”

26. 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, question, or statute for the state, as a class A notice under Section 63G-30-102 through the date of the election.”

27. However, a statute does not trump the Constitution, and Utah Code § 20A-7-103(2)'s requirements are at odds with the plain text of Article XXIII, Section 1 regarding timing and publication.

28. Article XXIII, Section 1 requires the timing of publication to be “the two months immediately preceding the next general election,” whereas Utah Code § 20A-7-103(2) allows the timing of publication to be “not more than 60 days or less than 14 days before the date of the election.”

29. Article XXIII, Section 1 requires publication of proposed Amendment D to be in “at least one newspaper in every county of the state, where a newspaper is published,” whereas Utah Code § 20A-7-103(2) allows publication “as a class A notice under Section 63G-30-102,” which does not include newspapers. Utah Code § 63G-30-102.

30. The Legislature’s failure to comply with the plain text of Article XXIII, Section 1 regarding the timing and publication of the full text of proposed Amendment D violates the Utah Constitution.

CAUSES OF ACTION

Count Fifteen

Violation of the Utah Constitution’s Publication Clause for Proposed Constitutional Amendments – Article XXIII, Section 1

31. Plaintiffs restate and incorporate by reference all allegations in this Complaint as though fully set forth in this paragraph.

32. Article XXIII, Section 1 provides that if two-thirds of all members elected to each house of the Legislature vote in favor of 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”

33. This Publication Clause is a prerequisite to submitting any proposed constitutional amendment to Utah voters.

34. If the Legislature fails to comply with the Publication Clause for any constitutional amendment it has voted to propose, that amendment cannot be placed on the next general election ballot and/or cannot become law and is void.

35. The Legislature failed to comply with the Publication Clause for proposed Amendment D.

36. On August 21, 2024, the Legislature voted to adopt S.J.R. 401, which proposes Amendment D.

37. The “next general election” following the adoption of S.J.R. 401 is the 2024 General Election, which will take place on November 5, 2024.

38. The Legislature did not cause proposed Amendment D “to be published in at least one newspaper in every county of the state where a newspaper is published for the two months immediately preceding” the 2024 General Election on November 5, 2024.

39. Thus, under Article XXIII, Section 1, proposed Amendment D cannot be submitted to voters at the November 5, 2024 general election and cannot become law.

40. To the extent the Legislature’s statutory procedures for publication applicable to all constitutional amendments in Utah Code § 20A-70-103(2) conflict with the Publication Clauses of Article XXIII, Section 1, and they are therefore unconstitutional.

RELIEF SOUGHT

For the foregoing reasons, and in addition to relief sought in Plaintiffs' First Amended Complaint and First Supplemental Complaint, Plaintiffs request that this Court:

- a. Declare that placement of Defendants' Amendment D on the 2024 General Election ballot is unconstitutional because the Legislature did not comply with the Publication Clause of the Utah Constitution Article XXIII, Section 1;
- b. Declare that the publication procedures applicable to proposed constitutional amendments set out in Utah Code § 20A-7-103(2) are unconstitutional to the extent they conflict with the Publication Clause of the Utah Constitution Article XXIII, Section 1;
- c. Preliminarily and permanently enjoin Defendants and their agents, officers, and employees, and those acting in concert with them, from placing proposed Amendment D on the November 2024 General Election ballot;
- d. Declare that, if any ballots are issued to voters that include proposed Amendment D, Amendment D is void;
- e. Order 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);
- f. Retain jurisdiction of this action to render any further orders that this Court may deem appropriate;
- g. Award Plaintiffs their reasonable attorneys' fees and costs as available;
- h. Grant such other and further relief as the Court deems just and appropriate.

September 7, 2024

Respectfully submitted,

/s/ David C. Reymann

CAMPAIGN LEGAL CENTER

Mark P. Gaber*

Anabelle Harless*

Aseem Mulji*

Benjamin Phillips*

*Admitted *Pro Hac Vice*

PARR BROWN GEE & LOVELESS

David C. Reymann

Kade N. Olsen

Tammy M. Frisby

ZIMMERMAN BOOHER

Troy L. Booher

J. Frederic Voros, Jr.

Caroline Olsen

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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

Dated: September 7, 2024

/s/ Kade N. Olsen