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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

AMELIA POWERS GARDNER, *et al.*,
Plaintiffs,

v.

LIEUTENANT GOVERNOR DEIDRE
HENDERSON, in her official capacity.
Defendant.

LEAGUE OF WOMEN VOTERS OF
UTAH, *et al.*,
Proposed Intervenors.

Case No. 2:26-cv-00084
Circuit Judge Timothy M. Tymkovich
District Judge Robert J. Shelby
District Judge Holly L. Teeter

Magistrate Judge Jared C. Bennett

**UTAH LEGISLATURE’S UNOPPOSED MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS’MOTION FOR
A PRELIMINARY INJUNCTION**

The Utah Legislature respectfully moves for leave to file an *amicus curiae* brief in support of Plaintiffs’ motion for a preliminary injunction. Counsel for Plaintiffs and for Defendant have consented to the filing of this brief. No counsel for any party authored the brief in whole or in part, and no entity or person aside from *amici*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

INTEREST OF PROPOSED *AMICUS*

The U.S. Constitution delegates the power to regulate federal elections to state legislatures, subject only to congressional oversight. U.S. Const. art. I, §4. That includes congressional redistricting. *See Moore v. Harper*, 600 U.S. 1, 26 (2023). Likewise, the Utah Constitution expressly vests in “the Legislature” the duty to “divide the state into congressional, legislative, and other districts.” Utah Const. art. IX, §1. Because Plaintiffs’ motion for a preliminary injunction seeks to remedy the unconstitutional infringement of that redistricting authority, the Utah Legislature respectfully moves to submit the attached brief as *amicus curiae* in support of that motion.

In 2020, the Utah Legislature passed legislation by a nearly unanimous vote to govern the redistricting process (“S.B. 200”). A year later, the Census Bureau released 2020 census data, and the Legislature enacted Utah’s 2021 Congressional Plan (“H.B. 2004”). Years of litigation in state court then ensued after proposed intervenors here (state-court plaintiffs) sued to enjoin the enforcement of S.B. 200’s redistricting processes and, separately, the use of the districts themselves. Late last August, the state district judge in that case enjoined S.B. 200, finding that an earlier voter-passed initiative (“Proposition 4”) prevented the Legislature from

setting its own redistricting priorities and procedures embodied in S.B. 200. But the court didn't stop there. It also *permanently* enjoined the Lieutenant Governor from conducting elections using the 2021 districts—even though the lawfulness of that plan has never been litigated and it has never been held unlawful. The court then replaced the 2021 congressional districts with districts of its choosing—those offered by proposed intervenors with the help of academics in Delaware and Michigan.

The Utah Legislature has an acute interest in ensuring state courts do not “transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections.” *Moore*, 600 U.S. at 36. Here, the trial court’s order permanently enjoining the 2021 Plan—based on its finding that a *different* law violates the state constitution—violates the federal Elections Clause as far “exceed[ing] the bounds of ordinary judicial review.” *Id.*

ARGUMENT

This Court’s local rules establish requirements for filing *amicus curiae* briefs. *See* DUCivR 7-6. The Utah Legislature’s proposed brief satisfies the criteria.

First, the brief is timely. “The amicus must file the motion for leave and amicus memorandum no later than 14 days after the moving party files its motion.” DUCivR 7-6(e)(1). The Utah Legislature filed this motion and the attached brief on February 11, 2026—four days after Plaintiffs moved for a preliminary injunction and one day before the deadline to file opposition motions, providing time for Defendant and proposed intervenors to address the arguments. *See* Doc. 25.

Second, the brief is useful. *See* DUCivR 7-6(b)(1)(B). The Utah Legislature and its counsel have been litigating alongside the Lieutenant Governor against proposed intervenors in state court for the last four years. The attached brief provides useful background information for this suit from that state court history and further articulates the federal Elections Clause violation inflicted by the Utah trial court’s injunction against the 2021 Congressional Plan.

CONCLUSION

Because the brief is “timely and useful,” *Ga. Aquarium v. Pritzker*, 135 F. Supp. 3d 1280, 1288 (N.D. Ga. 2015), and Plaintiffs and Defendant do not oppose the motion for leave to file the brief, the Court should grant the motion and accept the proposed brief, which is attached as **Exhibit A**.

Dated: February 11, 2026

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CERTIFICATE OF SERVICE

I certify that I filed this document through the CM/ECF system.

/s/ Tyler R. Green

EXHIBIT A

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Case No. 2:26-cv-00084
Circuit Judge Timothy M. Tymkovich
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District Judge Holly L. Teeter

Magistrate Judge Jared C. Bennett

**[PROPOSED] MEMORANDUM OF UTAH LEGISLATURE AS
AMICUS CURIAE IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

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INTRODUCTION & INTEREST OF PROPOSED *AMICUS*

The U.S. Constitution delegates the power to regulate federal elections to state legislatures, subject only to congressional oversight. U.S. Const. art. I, §4. That includes congressional redistricting. *See Moore v. Harper*, 600 U.S. 1, 26 (2023). Likewise, the Utah Constitution expressly vests in “the Legislature” the duty to “divide the state into congressional, legislative, and other districts.” Utah Const. art. IX, §1. Because Plaintiffs’ motion for a preliminary injunction seeks to remedy the unconstitutional infringement of that redistricting authority, the Utah Legislature respectfully submits this brief as *amicus curiae* in support of that motion.

In 2020, the Utah Legislature passed legislation by a nearly unanimous vote to govern the redistricting process (“S.B. 200”). A year later, the Census Bureau released 2020 census data, and the Legislature enacted Utah’s 2021 Congressional Plan (“H.B. 2004”). Years of litigation in state court then ensued after proposed intervenors here (state-court plaintiffs) sued to enjoin the enforcement of S.B. 200’s redistricting processes and, separately, the use of the districts themselves. Late last August, the state district judge in that case enjoined S.B. 200, finding that an earlier voter-passed initiative (“Proposition 4”) prevented the Legislature from setting its own redistricting priorities and procedures embodied in S.B. 200. But the court didn’t stop there. It also *permanently* enjoined the Lieutenant Governor from conducting elections using the 2021 districts—even though the lawfulness of that plan has never been litigated and it has never been held unlawful. The court then replaced the 2021 congressional districts with districts of its choosing—those offered by proposed intervenors with the help of academics in Delaware and Michigan.

The Utah Legislature has an acute interest in ensuring state courts do not “transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections.” *Moore*, 600 U.S. at 36. The state trial court’s order permanently enjoining the 2021 Plan—based on its finding that a *different* law violates the state constitution—violates the federal Elections Clause as far “exceed[ing] the bounds of ordinary judicial review.” *Id.* at 36. To “safeguard limits imposed by the Federal Constitution” against such “free rein,” *id.* at 34-35, this Court should grant Plaintiffs’ motion for a preliminary injunction.

BACKGROUND

A. After a redistricting-related citizens’ initiative passes by a slim margin, the Legislature enacts S.B. 200 to mitigate constitutional concerns.

In the 2018 Utah general election, “Proposition 4” was on the ballot for Utah voters. Proposition 4 was a redistricting-related citizens’ initiative. *See* 2018 Voter Information Pamphlet (“VIP”) at 78-83, Utah Office of the Lieutenant Governor, bit.ly/3ZqCXCP. Its self-described purpose was to stop “gerrymandering,” install an “Independent Redistricting Commission,” and impose mandatory redistricting criteria and procedural requirements on the Utah Legislature. VIP at 76.

If the initiative passed, it would become a *statute*, not a constitutional amendment. Unlike other States, the Utah Constitution does not permit constitutional amendment by initiative. *See LWV of Utah v. Utah State Legislature*, 554 P.3d 872, 909 (Utah 2024). Utah citizen initiatives may implement only “*statutory* government reforms” “within the bounds of the Constitution.” *Id.* at 891 n.16.

Proposition 4 passed by a 0.6% margin, with a majority of voters in 25 of Utah’s 29 counties voting *against* it.¹ Proposition 4 imposed *procedural*² and *substantive*³ redistricting standards on the Utah Legislature, enforceable in the courts through a private right of action and fee-shifting for plaintiffs. Constitutional concerns loomed. Among others, opponents expressed concerns that Proposition 4 violated Article IX of the Utah Constitution, which vests the Legislature with “the *exclusive* authority over the redistricting process” and that an initiative cannot “grant this legislative authority to other branches of [the state] government” without a constitutional amendment. VIP at 77.

After Proposition 4’s photo finish, its sponsors (known as Better Boundaries) and a bipartisan group of legislators negotiated legislation to respond to those constitutional concerns. Those efforts culminated in S.B. 200, jointly announced by Proposition 4’s sponsors and Utah legislators as a compromise bill amending Proposition 4 that would alleviate constitutional concerns while leaving in place the “valuable” “advisory maps” from an advisory

¹ 2018 Election Results are publicly available at vote.utah.gov/wp-content/uploads/2023/09/2018-General-Election-Canvass.pdf.

² *See, e.g.*, Utah Code §20A-19-204(2) (2018) (mandating the Legislature take an up-or-down vote on maps proposed by the independent redistricting commission without change or amendment); *id.* §20A-19-204(4) (2018) (requiring the Legislature to make any redistricting plan available for public comment for at least 10 days before enactment); *id.* §20A-19-204(5)(a) (2018) (requiring the Legislature, if it rejects a commission’s proposal, to issue “a detailed written report” explaining how the enacted plan better satisfied Proposition 4 than the commission’s plan).

³ *See, e.g.*, Utah Code §20A-19-103(3) (2018) (prohibiting the Legislature from “purposefully or unduly” favoring a political party or candidate in redistricting); *id.* §20A-19-103(2) (2018) (requiring the Legislature to adhere to substantive redistricting criteria in a specific “order of priority” and “to the greatest extent practicable,” with minimizing the division of municipalities at the top, behind complying with federal law); *id.* §20A-19-103(4) (2018) (mandating that the Legislature use “judicial standards and the best available data and scientific and statistical methods” to ensure compliance with Proposition 4’s ban on undue partisan favoritism).

Independent Redistricting Commission. *See* Bethany Rodgers, *Utah lawmakers, Better Boundaries explain how they've compromised on the anti-gerrymandering law*, Salt Lake Trib. (Feb. 27, 2020), bit.ly/4kwDcGb. Those maps would provide “a potential contrast and check with the district designs ultimately adopted by the Legislature.” *Id.*

The Utah Legislature passed S.B. 200 by a nearly unanimous vote with bipartisan support.⁴ *See LWV*, 554 P.3d at 883. S.B. 200 funded and retained the independent redistricting commission and required the Legislature to provide “reasonable time” for the commission to fulfill its role and for public comment before the Legislature enacted a redistricting plan. *Id.* §20A-20-303(3)-(4) (2020). The Legislature was permitted, but not required, to vote on commission proposals. *Id.* §20A-20-303(5) (2020). Proposition 4’s sponsors praised S.B. 200 as “a reasonable approach to redistricting reform” that gave “the Legislature ... the final say” while “preserv[ing] the independence of the Commission and maintain[ing] the public’s voice in the redistricting process.” Better Boundaries, *Why is an independent redistricting commission good for Utah?*, perma.cc/GP6C-U334.

B. The Legislature enacts the 2021 Congressional Plan, and state-court plaintiffs sue.

In 2021, after the Census Bureau released 2020 U.S. Census data, the Legislature followed S.B. 200’s procedures and adopted a new congressional redistricting plan. H.B. 2004, Utah Legislature, bit.ly/4hCfVAE. In March 2022, state-court plaintiffs sued the Utah Legislature, various legislators, and the Lieutenant Governor.

⁴ S.B. 200 Redistricting Amendments, Utah Legislature, bit.ly/3NWJ4sv.

Counts I through IV of their complaint challenged the congressional districts themselves, enacted in H.B. 2004. Those counts alleged that the 2021 congressional districts were an illegal partisan gerrymander under the Utah Constitution. Still today, there has been no decision on those counts by any court. *See LWW*, 554 P.3d at 921 (retaining jurisdiction over Counts I through IV without deciding them).

Count V asked to enjoin a different law—the redistricting priorities and procedures enacted in S.B. 200. Plaintiffs alleged that, by amending Proposition 4, S.B.200 violated their right to “‘alter or reform’ their government” via a statutory citizens’ initiative. *LWW*, 554 P.3d at 887 (addressing Utah Const. art. I, §2).

The district court initially dismissed Count V (the challenge to S.B. 200). The court adhered to the conventional wisdom that statutes can be freely amended or repealed, whether enacted by a legislature or by a citizens’ initiative. *See* Utah D.Ct.Doc. 140, at 58-59 (citing *Grant v. Herbert*, 449 P.3d 122 (Utah 2019); *Kadderly v. City of Portland*, 74 P. 710, 720 (1903)). But the Utah Supreme Court rewrote that conventional wisdom in an interlocutory appeal decided in July 2024. The Court “introduced [a] formulation for the first time” regarding citizens’ initiatives. *LWW*, 554 P.3d at 892. The Court held that if an initiative is one that “alter[s] or reforms” the government, the Legislature cannot “impair” it unless it can satisfy “strict scrutiny.” *Id.* at 909-10, 917. Still, the Court repeated about a dozen times that initiatives cannot “amend the Utah Constitution” or “violate any other provision of the constitution.” *Id.* at 909. The Court remanded for the district court to apply that new “formulation.” *Id.* at 892. The Utah Supreme Court’s *LWW* decision has been widely recognized to be a “new

interpretation of the state Constitution” that “shift[ed the] status quo” and introduced “a wholly new class of laws.” Brigham Tomco, *How we got here: The 8-year fight over political power in Utah*, Deseret News (Feb. 8, 2026), bit.ly/46xLUhn.

In the remanded proceedings, state-court plaintiffs moved for summary judgment on only Count V, challenging S.B. 200 and not the districts themselves.⁵ *See* Ex. B, MSJ Op. at 2 (Utah D.Ct.Doc. 470). In January 2025, the summary judgment motion was briefed and argued and ready for a decision. Seven months after argument, in August 2025, the court granted summary judgment for Plaintiffs on Count V. The court concluded that the Legislature could not set its own redistricting priorities and procedures. *Id.* at 61-62. The court declared S.B. 200 invalid and resurrected Proposition 4 wholesale, even portions that Plaintiffs did not ask to resurrect. *Id.* at 63-68.

But the court didn’t stop there. Though Count V challenged only S.B. 200’s redistricting priorities and procedures, the court permanently enjoined the use of the congressional districts. Again, those congressional districts were enacted as part of a different law (H.B. 2004) that still today has never been held unlawful. The trial court held that state-court plaintiffs’ challenge to S.B. 200 was close enough—H.B. 2004 should be enjoined as a “fruit” of S.B. 200. *Id.* at 70-74.

The trial court retained jurisdiction to replace the 2021 districts with districts of its choosing. The court ordered the Legislature to “enact[] a remedial congressional redistricting

⁵ After moving for summary judgment, state-court plaintiffs amended their complaint to add new counts challenging the validity of the 2021 Congressional Plan as violations of Proposition 4’s requirements. FAC ¶¶320-54 (Utah D.Ct.Doc. 298). Those counts have never been decided by any court.

map in conformity with Proposition 4’s mandatory redistricting standards and requirements,” or else the court would select a proposed remedy that did so.⁶ *Id.* at 76. The court later clarified that, while it was resurrecting Proposition 4 wholesale, the remedial process it ordered need not comply with all of Proposition 4’s procedural requirements, so it issued an order dispensing with most of those requirements. Utah D.Ct.Doc. 506.

Given the seven-month delay and the lack of time for ordinary remedial proceedings, the Legislature immediately asked the Utah Supreme Court for a stay pending appeal.⁷ *LWV v. Utah State Legislature*, 579 P.3d 287, 294-95 (Utah 2025). The Legislature explained there was no time for further proceedings, given the Lieutenant Governor’s November deadline for final districts. The Legislature also highlighted the inconsistency of the ruling—that the 2021 districts had to be enjoined because they did not follow Proposition 4’s procedures, but remedial districts would soon be selected in a process that did not follow Proposition 4’s procedures. The Supreme Court denied relief without passing on any merits issues that are relevant here. *Id.* The Legislature then participated in lightning-fast remedial proceedings, enacting substitute

⁶ The Legislature has disputed—and will continue to dispute—that Proposition 4 permits a state trial court to order a remedial hearing to create a court-ordered map. Proposition 4, at most, contemplates that a court would issue an injunction against using a map, Utah Code §20A-19-301(2), and that the Legislature would then enact any remedial or other maps, *id.* §20A-19-102(3), (4); *compare* Tenn. Code Ann. §20-18-105(b) (expressly authorizing a court-imposed map in limited circumstances).

⁷ In light of the Lieutenant Governor’s then-imminent November 10, 2025, deadline for a redistricting map, the Legislature focused its limited resources on challenging the court’s remedial ruling while preserving its merits challenge for a post-judgment appeal.

redistricting legislation⁸ and participating in the typical battle-of-the-experts, culminating in an evidentiary hearing.

With only minutes to go on November 10, 2025—the Lieutenant Governor’s stated deadline for final districts—the trial court rejected the Legislature’s substitute redistricting legislation and instead ordered the state-court plaintiffs’ proposed districts to be used in “all future congressional elections in Utah . . . until another validly enacted legislative plan takes effect or as otherwise ordered by an appellate court.” *See* Ex. C, Nov. 10, 2025, Remedial Order at 89 (Utah D.Ct.Doc. 735). The timing of the trial court’s ruling left the Legislature no chance to seek meaningful appellate review from the Utah Supreme Court or the U.S. Supreme Court.

On December 9, the Governor convened a special session of the Legislature to push back congressional election deadlines. S.B. 2001, Utah Legislature, bit.ly/4rL9hwj. This change provided more time for the Legislature to appeal as of right, an option otherwise unavailable due to the trial court’s delay. The Legislature immediately moved for entry of final judgment, and, alternatively, for a certification of partial final judgment on state-court plaintiffs’ Count V under Utah Rule of Civil Procedure 54(b). *See* Ex. D, Certification Order (Utah D.Ct.Doc. 822). The day after Christmas, the trial court certified an interlocutory appeal of its August 2025 order. It declared S.B. 200 “void ab initio,” “permanently enjoin[ed]” the defendants from using the 2021 Congressional Plan, and declared that Proposition 4 is “the law on redistricting in Utah.” *Id.* The Legislature noticed its appeal to the Utah Supreme Court on January

⁸ The substitute legislation provides that the 2021 districts will govern if the Legislature prevails on appeal. *See* Utah Code §20A-13-101.1(2)(b)(ii).

7, 2026. State-court plaintiffs objected to partial final judgment before the trial court and have moved the Utah Supreme Court to summarily dismiss the appeal for lack of jurisdiction. On January 23, the Legislature moved the Utah Supreme Court to stay the injunction against the 2021 Congressional Plan pending appeal and requested relief from that court by February 20.

ARGUMENT

I. The state court’s order permanently enjoining the use of the Legislature’s 2021 Congressional Plan exceeds the bounds of ordinary judicial review.

Plaintiffs’ Elections Clause claim here arises from the state court’s order enjoining the 2021 Congressional Plan as a remedy for its finding that *a different law* violated the Utah Constitution. *See* Prelim. Inj. Mot. at 3, 7, 8, 21, 22 n.5, 23, 24 n.6. The federal Elections Clause violation is clear: the state court “exceeded the bounds of ordinary judicial review” of state law by permanently enjoining the 2021 Congressional Plan *even though* the state-court plaintiffs’ claims challenging that plan were not before the court—and even though no faults with the 2021 Plan have been litigated or found. *Moore*, 600 U.S. at 36. To “safeguard” the U.S. Constitution’s “role specifically reserved to state legislatures,” this Court should grant Plaintiffs’ motion for a preliminary injunction. *Id.* at 35, 37.

The U.S. Constitution “entrusts state legislatures with the primary responsibility for drawing congressional districts.” *Alexander v. S.C. NAACP*, 602 U.S. 1, 6 (2024); *see also Rucho v. Common Cause*, 588 U.S. 684, 699 (2019) (“The Framers were aware of electoral districting problems” and “settled” on “assigning the issue to the state legislatures.”). Article I, Section 4, Clause 1—the federal Elections Clause—tasks “the Legislature” specifically with congressional redistricting. While “the Elections Clause does not exempt state legislatures from the

ordinary constraints imposed by state law, state courts do not have free rein.” *Moore*, 600 U.S. at 34. When reviewing redistricting legislation, state courts “may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections.” *Id.* at 36.

Remedial proceedings in redistricting cases are not exempt from the same remedial rules in other cases—narrow in scope, with remedies tailored to any violation found, so that they remain within the limits of “ordinary judicial review.” *Id.* Federal and state remedial principles require courts to tailor any remedy to a proven constitutional violation. *See Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328 (2006) (courts must “limit the solution to the problem”); *Citizen Band Potawatomi Indian Tribe of Okla. v. Okla. Tax Comm’n*, 969 F.2d 943, 948 (10th Cir. 1992) (noting “the well-settled principle that an injunction must be narrowly tailored to remedy the harm shown”); *Spackman v. Bd. of Educ. of Box Elder Cnty. Sch. Dist.*, 16 P.3d 533, 539 n.11 (Utah 2000) (describing “precisely tailored” injunctive relief for procedural due process violations); *Kingston v. Kingston*, 532 P.3d 958, 962 (Utah 2022) (remanding for district court to more narrowly tailor remedy to harms identified).

Those rules follow from basic “principles of equity jurisprudence” dictating that “the scope of injunctive relief is dictated by the extent of the violation established.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). When “a less drastic remedy” is “sufficient to redress [Plaintiffs] injury, no recourse to the additional and extraordinary relief of an injunction [is] warranted.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165-66 (2010). Nor is an injunction warranted for “merely trifling” violations, *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311 (1982),

or where the violation was “on the statutory procedure rather than on the underlying substantive policy” of the law, *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 544 (1987). For example, in recent North Carolina redistricting litigation, the U.S. Supreme Court reversed a redistricting remedy in part as overly broad. *See North Carolina v. Covington*, 585 U.S. 969, 978-79 (2018) (per curiam). There, plaintiffs challenged the districts themselves, and still the Court held that the remedy went too far in redrawing districts; the Court explained that any changes must be limited to redressing the racial gerrymandering claim plaintiffs had proved, not other supposed legal violations unproved. *Id.*

Here, the state court invalidated the 2021 Plan even though no court has ever held that the districts themselves violated any federal or state law. Absent some constitutional defect in the districts themselves, the court did “not have free rein” to redraw congressional districts and thereby remove the redistricting power from the Legislature. *Moore*, 600 U.S. at 34.⁹

First, state-court plaintiffs’ Count V challenged the validity of S.B. 200. It never encompassed a challenge to the 2021 Congressional Plan—a different law, enacted as H.B. 2004. In the complaint’s allegations as to Count V, *not once* did Plaintiffs refer to the “2021 Congressional Plan.” Compl. ¶¶310-19 (Utah D.Ct.Doc. 1). State-court plaintiffs’ representations to the Utah Supreme Court repeatedly confirmed this; they said that “If certain aspects of Proposition 4 become operative, Plaintiffs will amend their complaint to allege the statutory private right of action contemplated under Proposition 4.” Pls. Suppl. Br. 19, *LWV v. Utah State*

⁹ The Legislature does not concede and continues to contest that the Utah Constitution permits judicial review of partisan gerrymandering claims.

Legislature, No. 20220991-SC (July 31, 2023); *see also* Oral Arg. at 2:29:01, *LWV v. Utah State Legis.*, 2024 UT 21 (No. 20220991-SC), bit.ly/3GalwG (state-court plaintiffs’ counsel noting that they would have to “amend our complaint to add ... the statutory cause of action challenging the map under the Prop 4 ... standards that the legislature was obligated to apply”); *id.* at 2:31:00 (acknowledging that “at the moment, there is not a challenge that says that” H.B. 2004 fails to comply with Proposition 4 “because the law’s not in effect”). Based on those representations, the Utah Supreme Court observed that state-court plaintiffs “may bring ... an amended claim” invoking Proposition 4’s private cause of action “on remand in the event that Count V is reinstated.” *LWV*, 2024 UT 21, ¶222. Indeed, when state-court plaintiffs amended their complaint, Count V did not change; Count V said nothing about the “2021 Congressional Plan.” FAC ¶¶310-19 (Utah D.Ct.Doc. 297). That’s why state-court plaintiffs added Counts VI and VII, which challenged the 2021 Congressional Plan under Proposition 4. The state court’s remedy of permanently enjoining the 2021 Plan even though the claims against it were still pending at the motion-to-dismiss stage exceeds the “ordinary bounds of judicial review.” *Moore*, 600 U.S. at 36.

Second, the state court’s remedial order precluded the Legislature from litigating the merits of the 2021 Congressional Plan’s validity *and* the proper remedy for any defect in the 2021 Congressional Plan. It’s a foundational rule that a permanent injunction should “[o]rdinarily” be “granted only after a full trial on the merits.” *Birch Creek Irrigation v. Prothero*, 858 P.2d 990, 993-94 (Utah 1993); *see also Univ. of Texas v. Camenisch*, 451 U.S. 390, 396-97 (1981). To the extent that state-court plaintiffs prevailed on Count V, the most far-reaching relief that

state-court plaintiffs theoretically could have obtained should have been the revival of Proposition 4 and invalidation of S.B. 200.¹⁰ At that point, litigation under Counts VI and VII should have commenced. Yet the district court skipped that entire process and jumped straight to enjoining the 2021 Congressional Plan before there had been any fact or expert testimony or any briefing on the 2021 Plan’s compliance with the Utah Constitution or Proposition 4. The district court simply assumed a legal defect in Utah’s 2021 congressional districts without state-court plaintiffs ever proving any such defect exists or demonstrating that they would prevail on Counts VI and VII. For instance, the district court asserted that “Plaintiffs did establish undisputed facts that [the 2021 Plan] did not comply with the procedural requirements of Proposition 4,” Ex. B at 73, even though the state-court plaintiffs’ claims against that Plan had not advanced past the pleading stage.

The state court short-circuited this inquiry by foreclosing litigation on what the proper remedy should be for any Proposition 4 violations. *See NRDC v. Texaco Ref. & Mktg., Inc.*, 906 F.2d 934, 937 (3d Cir. 1990) (incorrect to determine that “injunction should automatically follow upon a finding of statutory violation”); *Salt Lake County v. Kartchner*, 552 P.2d 136, 138 (Utah 1976) (injunction not appropriate “in every type and circumstance of violation”); *United States v. Ballin*, 144 U.S. 1, 9 (1892) (refusing to enjoin legislation based on arguments that Congress passed that legislation without a quorum). Nor was the district court correct to

¹⁰ The Legislature now has an appeal pending in state court about Proposition 4’s constitutionality and about the serious and separate Elections Clause problems arising from the state district court’s decision that the Legislature could not amend Proposition 4’s redistricting priorities and processes by passing S.B. 200—just as the Legislature can amend any other statute.

enjoin the 2021 Congressional Plan as the “fruit” of S.B. 200. Ex. B at 70-74. With or without S.B. 200, the Legislature has the independent constitutional authority to enact congressional maps under the federal Elections Clause and Article IX of the Utah Constitution. The state trial court “arrogate[d]” to itself “the power vested” in the Utah Legislature “to regulate federal elections” by enjoining the 2021 Congressional Plan when the only definitive finding it made was that S.B. 200—a different law—was invalid. *Moore*, 600 U.S. at 36.

Third, state-court plaintiffs have argued in state court that any departures from Proposition 4’s *procedures* are serious enough to justify the district court’s sweeping injunction. The three procedures state-court plaintiffs have relied on are the mandatory up-down vote, the 10-day notice requirement, and the written report rule. *See supra* at 3 n.2. Even if noncompliance with those rules had been litigated and proven, the court never explained why a permanent injunction that categorically prevents the State from using the 2021 Congressional Plan was the proper remedy for any such violations. Principles of equity command otherwise. Any injunctive relief must be “precisely tailored,” allowing the Legislature “to redo correctly the ‘procedure’ that allegedly lacked the mandated safeguards.” *Spackman*, 16 P.3d 533, 539 n.11.

And if Proposition 4’s procedural requirements are so important, then the trial court’s order to use Plaintiffs’ Map 1 should inflict a similar, intolerable violation of the Utah Constitution’s “alter or reform” right. The district court held, when enjoining the 2021 Plan, that “Proposition 4’s procedural requirements are so integral to the governmental reforms it put into place that any map enacted in their absence is, itself, a violation of the people’s right to alter and reform their government.” Ex. B at 73. To the court (at that time), whether the 2021

Plan “also violated” Proposition 4’s substantive standards was “irrelevant.” *Id.* But days later, the court followed state-court plaintiffs’ lead and determined that those “integral” procedures would not apply to the remedial proceedings where the state trial court ultimately picked state-court plaintiffs’ Map 1 as Utah’s congressional districts. *See* Utah D.Ct.Doc. 506. If those procedural requirements were as “integral” to the governmental reforms as the district court thought, the district court’s remedial order that summarily dispensed with almost all of them also cannot stand. Nor can Plaintiffs’ Map 1, which was drawn by the state-court plaintiffs’ out-of-state expert and adopted without following Proposition 4’s procedural requirements.

In short, state-court plaintiffs cannot have it both ways. If a map adopted in the remedial phase without following Proposition 4’s procedures is permissible, the Legislature’s alleged failure to follow those procedures could not be enough to justify enjoining the 2021 Plan. Neither state-court plaintiffs nor the state court have ever explained this discrepancy. This all confirms that a permanent injunction against the 2021 Congressional Plan was not the “ordinary” way to rectify any departures from those provisions. *Moore*, 600 U.S. at 36.

CONCLUSION

The Court should grant Plaintiffs’ motion for a preliminary injunction.

Dated: February 11, 2026

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CERTIFICATE OF SERVICE

I certify that I filed this document through the CM/ECF system.

/s/ Tyler R. Green

CERTIFICATE OF PAGE AND WORD LIMIT

I certify that this brief was prepared with Garamond size 13 and does not exceed 25 pages or 7,500 words, per District of Utah Local Rule of Civil Practice 7-6(c)(1)-(2)

/s/ Tyler R. Green

EXHIBIT B

**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, JACK MARKMAN, and
DALE COX,

Plaintiffs,

v.

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

Defendants.

**RULING AND ORDER GRANTING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

AND

DENYING LEGISLATIVE
DEFENDANTS' CROSS-MOTION FOR
SUMMARY JUDGMENT**

Case No. 220901712

Judge Dianna M. Gibson

The Utah Supreme Court’s July 11, 2024 ruling in *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶¶ 200-219, 554 P.3d 872, 917-22, reinstated Count V, established the legal standard this Court must apply and remanded Count V back to this court with instructions. On August 28, 2024, Plaintiffs filed a Motion for Summary Judgment on Count V (*Pls.’ Mot.*, Dkt. 293.), asserting that the Legislative Defendants violated article I, section 2 of the Utah Constitution by repealing the Utah Independent Redistricting Commission and Standards Act, *see* Utah Code §§ 20A-19-101 to -301 (2018) (“Proposition 4”) and replacing it with S.B. 200, the Legislature’s version of the Utah Independent Redistricting Commission and Standards Act, *see* Utah Code §§ 20A-20-101 to -303 (2020) (“S.B. 200”). On November 8, 2024, the Legislative Defendants filed a combined Opposition to Plaintiffs’ Motion and a Cross-Motion for Summary Judgment on Count V, asserting among other things, that Proposition 4 was not a proper exercise of the people’s initiative and alter-or-reform powers and that S.B. 200 does not impair or infringe the people’s rights. (*Leg. Defs.’ Opp’n / Cross MSJ*, Dkt. 405.) On November 22, 2024, Plaintiffs filed their Opposition to the Legislative Defendants’ Cross Motion for Summary Judgment and its Reply in support of its own Motion. (*Pls’ Reply*, Dkt 425.). On December 6, 2024, the Legislative Defendants filed their Reply in support of their Cross-Motion for Summary Judgment (*Leg. Defs.’ Reply*, Dkt. 436.). On January 31, 2025, the Court heard oral argument on the parties’ respective motions. On March 31, 2025, this Court requested supplemental briefing. Plaintiffs filed their Supplemental Brief in Support of Motion for Summary Judgment on Count V on April 4, 2025. (*Pls’ Suppl. Br.*, Dkt. 455.) The Legislative Defendants filed their Response to Plaintiffs’ Supplemental Remedies Brief on April 11, 2024, (*Leg. Defs.’ Suppl. Resp. Br.*, Dkt. 457) and Plaintiffs filed their Supplemental Reply Brief on April 15, 2025. (*Pls’ Suppl. Reply Br.*, Dkt. 459.)

The core issue before the Court is whether the Utah State Legislature’s enactment of S.B. 200 unconstitutionally impaired Proposition 4, a citizen initiative designed to reform the redistricting process in Utah and prohibit partisan gerrymandering. Plaintiffs argue that S.B. 200 impaired the people’s fundamental constitutional right to alter or reform their government by eliminating Proposition 4’s core reform provisions. The Legislative Defendants contend that Proposition 4 and its mandatory requirements are unconstitutional, which necessitated the changes reflected in and addressed by S.B. 200.

The parties filed cross-motions for summary judgment. While they dispute the characterizations, implications and relevance of the various facts asserted by the parties, they all agree that the material facts are not in dispute and that the issues presented can be decided as a matter of law. The question before the Court: does S.B. 200 satisfy strict scrutiny under the new legal standard established by the Utah Supreme Court in *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, 554 P.3d 872 (“LWVUT”). For the reasons stated below, the Court concludes – as a matter of law – that it does not.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate “if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” U.R.C.P. 56(a). “[T]he moving party always bears the burden of establishing the lack of a genuine issue of material fact.” *Salo v. Tyler*, 2018 UT 7, ¶¶ 2, 26, 417 P.3d 581.

The purpose of summary judgment *is to eliminate the time, trouble and expense of trial when upon any view taken of the facts as asserted by the party ruled against, he would not be entitled to prevail.* Only when it so appears, is the court justified in refusing such a party the opportunity of presenting his evidence and attempting to persuade the fact trier to his views. And if there is any dispute as to any issue, material to the settlement of the controversy, summary judgment should not be granted.

Holbrook Co. v. Adams, 542 P.2d 191, 193 (Utah 1975) (emphasis added).

In considering whether summary judgment is appropriate, this Court must objectively evaluate whether a genuine issue of material fact exists. *Clegg v. Wasatch County*, 2010 UT 5, ¶ 15, 227 P.3d 1243. “A genuine issue of fact exists where, on the basis of the facts in the record, reasonable minds could differ.” *Jones v. Farmers Ins. Exch.*, 2012 UT 52, ¶ 8, 286 P.3d 301 (citation and quotations omitted). All doubts, uncertainties or inferences concerning issues of fact are resolved in a light most favorable to the party opposing summary judgment. *Mountain States Tel. & Tel. Co. v. Atkin, Wright & Miles, Chartered*, 681 P.2d 1258, 1261 (Utah 1984). Evidence cannot be weighed, credibility cannot be determined and the Court cannot “find” facts that are at issue. *Carr v. Bradshaw Chevrolet Co.*, 464 P.2d 580, 581 (Utah 1970). In addition, inadmissible evidence is not considered on summary judgment and such evidence is insufficient to create a genuine dispute of material fact. *D & L Supply v. Saurini*, 775 P.2d 420, 421 (Utah 1989).

This objective standard considers whether there is only one conclusion that can be reached, *Clegg*, 2010 UT 5, ¶ 15, that effectively precludes, as a matter of law, awarding any relief to the other party. *Smith v. Four Corners Mental Health Ctr., Inc.*, 2003 UT 23, ¶ 24, 70 P.3d 904 (citations omitted).

STATEMENT OF UNDISPUTED MATERIAL FACTS

Both parties agree that there are no genuine disputes of material fact, precluding summary judgment.¹ The undisputed facts material to the Court’s legal analysis focus on the statutes enacted under both Proposition 4 and S.B. 200. The following are the undisputed material facts:

¹ In response to Plaintiffs Motion for Summary Judgment, Defendants assert that Plaintiffs’ statement of material undisputed facts is incomplete and mischaracterizes certain aspects of Proposition 4. (*Leg. Defs.’ Opp’n / Cross MSJ* at 3.) They however admit that “[n]ot one of these factual disputes is material to the discrete constitutional issue before the Court.” (*Id.*) In opposition to Plaintiffs’ Motion for Summary Judgment and in support of their own Cross-Motion, the Legislative Defendants also provide a Statement of Undisputed Material Facts. In reviewing Plaintiffs’ response, Plaintiffs assert many of the facts are irrelevant to the issues before the Court and they dispute the inclusion of what they characterize as legal assertions included as “facts.” Nonetheless, Plaintiffs similarly agree that “*none* of these factual disputes are material nor do they bar this Court from deciding the issue before it, which turns on questions of law.” (*Pls.’ Reply* at 2.)

1. In the November 2018 election, voters in Utah were presented with the question of whether to approve the Utah Independent Redistricting Commission and Standards Act—numbered Proposition 4 and popularly named Better Boundaries (“Proposition 4”).
2. Proposition 4 was a citizen initiative that would, if supported by a majority of voters in Utah, enact a statute governing certain processes related to how the Utah Legislature creates and adopts congressional redistricting plans.
3. As stated in the impartial analysis section of Proposition 4 in the 2018 Voter Information Pamphlet:

Proposition 4 affects redistricting in Utah in three main ways: (1) it creates a seven-member appointed commission to participate in the process of formulating redistricting plans; (2) it imposes requirements on the Legislature's redistricting process; and (3) it establishes standards with which redistricting plans must comply.”

(See 2018 Voter Information Pamphlet, Defs.’ Ex. A, Dkt. 406, p. 5.)

4. That section further described the status of Utah’s redistricting laws in 2018 and the Legislature’s historical redistricting practices:

Under current law, the Legislature performs redistricting according to a process it defines internally, with no limitations or requirements imposed by state law. *The Legislature’s past redistricting process has included opportunities for the public to submit redistricting plans, a legislative redistricting committee to adopt redistricting standards and recommend plans, the posting of plans on the Legislature’s website, and public hearings around the state.*

(*Id.* at 6 (emphasis added).)

5. On November 6, 2018, a majority of Utah voters supported Proposition 4, and, upon its passage, Proposition 4 was codified at Utah Code §§ 20A-19-101 to 301 (2018).

Proposition 4

6. Proposition 4 established the Utah Independent Redistricting Commission, a nonpartisan advisory group that would be charged with preparing and presenting congressional district redistricting plans to the Legislature. *Id.*, § 20A-19-201 (2018).
7. Proposition 4 placed certain eligibility requirements for its members that would restrict membership to individuals who, for at least four years before their appointment, have not acted as a lobbyist as defined under Utah Code § 36-11-102, been a candidate for or holder of elected office, a candidate for or holder of any position in a political party, was appointed by the Governor or Legislature for any other public office, or was employed by

the U. S. Congress or the holder of any position that reports directly to an elected official or a political appointee of the Governor or Legislative. *Id.*, § 20A-19-201(6)(b)(i)-(v) (2018).

8. Proposition 4 also included the requirement that each member sign and submit to the Governor a signed statement certifying, among other things, that the member “will not engage in any effort to purposefully or unduly favor or disfavor any incumbent elected official, candidate or prospective candidate for elective office, or any political party.” *Id.*, § 20A-19-201(7)(a)(iv).
9. It also included a provision to fund the Commission so it could carry out its statutory duties. Section 20A-19-201(12)(a) – (c) provides:

(12)(a) The Legislature shall appropriate adequate funds for the Commission to carry out its duties, and shall make available to the Commission such personnel, facilities, equipment, and other resources as the Commission may reasonably request.

(b) The Office of Legislative Research and General Counsel shall provide technical staff, legal assistance, computer equipment, computer software, and other equipment and resources to the Commission that the Commission reasonably requests.

(c) The Commission has procurement and contracting authority, and upon a majority vote, may procure the services of staff, legal counsel, consultants, and experts, and may acquire the computers, data, software, and other equipment and resources that are necessary to carry out its duties effectively.

Id. § 20A-19-201(12)(a)-(c).

10. Proposition 4 required *both* the Legislature and the Commission to follow the following redistricting standards “to the greatest extent practicable and in the following order of priority:
 - a. adhering to the Constitution of the United States and federal laws, such as the Voting Rights Act, 52 U.S.C. Secs. 10101 through 10702, including, to the extent required, achieving equal population among districts using the most recent national decennial enumeration made by the authority of the United States;
 - b. minimizing the division of municipalities and counties across multiple districts, giving first priority to minimizing the division of municipalities and second priority to minimizing the division of counties;
 - c. creating districts that are geographically compact;
 - d. creating districts that are contiguous and that allow for the ease of transportation throughout the district;
 - e. preserving traditional neighborhoods and local communities of interest;

- f. following natural and geographic features, boundaries, and barriers; and
- g. maximizing boundary agreement among different types of districts.

Id. § 20A-19-103(2).

12. In addition, Proposition 4 included an express prohibition on partisan gerrymandering and specified the situations in which the Legislature and Commission could consider partisan information, stating:

- (3) *The Legislature and the Commission may not divide districts in a manner that purposefully or unduly favors or disfavors any incumbent elected official, candidate or prospective candidate for elective office, or any political party.*
- (4) The Legislature and the Commission shall use judicial standards and the best available data and scientific and statistical methods, including measures of partisan symmetry, to assess whether a proposed redistricting plan abides by and conforms to the redistricting standards contained in this Section, including the restrictions contained in Subsection (3).
- (5) Partisan political data and information, such as partisan election results, voting records, political party affiliation information, and residential addresses of incumbent elected officials and candidates or prospective candidates for elective office, may not be considered by the Legislature or by the Commission, except as permitted under Subsection (4).

Id. § 20A-19-103(3)-(5) (2018) (emphasis added).

- 11. Using the requirements and standards established by Proposition 4, the Commission would create and select up to three redistricting plans, for each map type, to be submitted to the Legislature for consideration. *Id.* § 20A-19-204(1)(a) (2018). The statute required that the recommended maps be submitted, to the greatest extent possible, at least 10 days prior to the date on which the Legislature votes on a redistricting plan. *Id.* § 20A-19-204(1)(b).
- 12. After receiving the recommended maps, “[t]he Legislature shall either enact without change or amendment, other than technical corrections such as those authorized under Section 36-12-12, or reject the Commission's recommended redistricting plans submitted to the Legislature.” *Id.* § 20A-19-204(2)(a) (2018).
- 13. Prior to the enactment of *any* redistricting plan, whether recommended by the Commission or one of the Legislature’s own making, Proposition 4 stated: “[t]he Legislature may not enact a redistricting plan or modification of any redistricting plan unless the plan or modification has been made available to the public by the Legislature, including by making it available on the Legislature's website, or other equivalent electronic platform, for a period of no less than 10 calendar days and in a manner and format that allows the public to assess the plan for adherence to the redistricting standards

and requirements contained in this chapter and that allows the public to submit comments on the plan to the Legislature.” *Id.* § 20A-19-204(4) (2018).

14. If the Legislature rejects the Commission’s proposed redistricting plans, Proposition 4 allows the Legislature to enact a redistricting plan of its own but requires that, “no later than seven calendar days after its enactment the Legislature shall issue to the public a detailed written report setting forth the reasons for rejecting the plan or plans submitted to the Legislature ...[including] a detailed explanation of why the redistricting plan enacted by the Legislature better satisfies the redistricting standards and requirements contained in this chapter.” *Id.* § 20A-19-204(5)(a).
15. Proposition 4 also stated that redistricting is permitted “no later than the first annual general legislative session after the Legislature’s receipt of the results of a national decennial enumeration made by the authority of the United States.” *Id.* § 20A-19-102(1).²
16. Finally, Proposition 4 included a private right of action that would allow Utah residents to challenge any redistricting plans enacted by the Legislature as noncompliant with Proposition 4’s requirements. *Id.* § 20A-19-301 (2018).

17. Proposition 4’s enforcement mechanism provided:

if a court of competent jurisdiction determines in any action brought under this Section that a redistricting plan enacted by the Legislature fails to abide by or conform to the redistricting standards, procedures, and requirements set forth in this chapter, the court shall issue a permanent injunction barring enforcement or implementation of the redistricting plan. In addition, the court may issue a temporary restraining order or preliminary injunction that temporarily stays enforcement or implementation of the redistricting plan at issue if the court determines that:

- (a) the plaintiff is likely to show by a preponderance of the evidence that a permanent injunction under this Subsection should issue, and
- (b) issuing a temporary restraining order or preliminary injunction is in the public interest.

Id. § 20A-19-301(2)(a)-(b) (2018).

18. If a plaintiff is successful in obtaining relief under this section, Proposition 4 provides that

the court shall order the defendant in the action to promptly pay reasonable compensation for actual, necessary services rendered by an attorney, consulting or testifying expert, or other professional, or any corporation, association, or other entity or group of other persons, employed or engaged by

² Of note, Section 20A-19-102 is titled “Permitted Times and Circumstances for Redistricting.” It also lists four other circumstances when redistricting may occur. Those four other circumstances have not been challenged.

the plaintiff, and to promptly reimburse the attorney, consulting or testifying expert, or other professional, or any corporation, association, or other entity or group of other persons, employed or engaged by the plaintiff for actual, necessary expenses. If there is more than one defendant in the action, each of the defendants is jointly and severally liable for the compensation and expenses awarded by the court.

Id., § 20A-19-301(5) (2018).

19. If the court determines that a plaintiff's suit under this section was brought for an improper purpose, the claims are frivolous or not warranted under the law, or the plaintiff's factual claims lack evidentiary support (and such evidence is not likely to result after further discovery or investigation), Proposition 4 permits the Court to order that the plaintiff pay the "actual, necessary services" and the "actual, necessary expenses" for attorneys, consulting or testifying experts, or other entities employed or engaged by the defendant in defending the suit. *Id.*, § 20A-19-301(6)(a)-(c) (2018).

S.B. 200

20. In March 2020, the Legislature enacted S.B. 200,³ which repealed Proposition 4 in its entirety and replaced it with a new law, codified at Utah Code §§ 20A-20-101 to 303 (2020) and available online at <https://le.utah.gov/~2020/bills/static/SB0200.html>.
21. Like Proposition 4, S.B. 200 created an advisory independent redistricting Commission, but it altered the structure of the commission, membership requirements, and the redistricting plan selection process. *Id.*, § 20A-20-201 (2020).
22. S.B. 200 included the membership requirements set forth in paragraph 7 above but removed the requirement that appointees must have met those requirements for at least four years prior to appointment on the commission. *Id.*, § 20A-20-201(5)(a)-(g) (2020).
23. S.B. 200 also removed the requirement that commission members submit a signed statement to the Governor stating that the member will not engage in partisan gerrymandering. *Id.*, § 20A-20-201(7) (2020).

³ Based on representations made by the Legislative Defendants, they assert S.B. 200 was an attempt to strike a compromise between the "spirit" of Proposition 4 and what the Legislature viewed to be an unconstitutional intrusion into their exclusive redistricting authority. The Legislative Defendants include numerous quotes of statements made by several people regarding Proposition 4 and S.B. 200, including what people thought or believed about each and what they believed each were intended to accomplish. To the extent that the statements are offered for the truth of the matter, those statements are inadmissible as hearsay, which cannot be used to create a dispute of material fact on summary judgment. *D & L Supply v. Saurini*, 775 P.2d 420, 421 (Utah 1989). Further, these various representations made regarding what others think or believe about S.B. 200 and Proposition 4 are irrelevant to the Court's legal analysis here.

24. S.B. 200 contemplates that three different maps for congressional districts, Senate districts, state House of Representative districts, and state School Board districts could be created and submitted for consideration, to the extent that each map can be approved by at least five members of the commission. *See generally* § 20A-20-302(1)-(3) (2020).

25. S.B. 200 Section 20A-20-302(4) states: “The commission shall ensure that:

- (a) each map recommended by the commission:
 - (i) is drawn using the official population enumeration of the most recent decennial census;
 - (ii) for congressional districts, has a total population deviation that does not exceed 1%;
 - (iii) for Senate, House of Representatives, and State School Board districts, has a total population deviation of less than 10%;
 - (iv) does not use race as a predominant factor in drawing district lines; and
 - (v) complies with the United States Constitution and all applicable federal laws, including Section 2 of the Voting Rights Act; and
- (b) each district in each map is:
 - (i) drawn based on total population;
 - (ii) a single member district; and
 - (iii) contiguous and reasonably compact.

Id. § 20A-20-302(4).

26. With regard to the substantive redistricting standards, section 20A-20-302(5) states: “*The commission shall define and adopt redistricting standards for use by the commission that require that maps adopted by the commission, to the extent practicable, comply with the following, as defined by the commission:*

- (a) preserving communities of interest;
- (b) following natural, geographic, or man-made features, boundaries, or barriers;
- (c) preserving cores of prior districts;
- (d) minimizing the division of municipalities and counties across multiple districts;
- (e) achieving boundary agreement among different types of districts; and
- (f) prohibiting the purposeful or undue favoring or disfavoring of:
 - (i) an incumbent elected official;
 - (ii) a candidate or prospective candidate for elected office; or
 - (iii) a political party.

Id. § 20A-20-302(5) (emphasis added).

27. In addition, section 20A-20-302(6) states: “The commission *may* adopt a standard that prohibits the commission from using any of the following, except for the purpose of conducting an assessment described in Subsection (8):

- (a) partisan political data;
- (b) political party affiliation information;
- (c) voting records;
- (d) partisan election results; or
- (e) residential addresses of incumbents, candidates, or prospective candidates.

28. Section 20A-20-302(7) and (8) states as follows:

- (7) The commission may adopt redistricting standards for use by the commission that require a smaller total population deviation than the total population deviation described in Subsection (4)(a)(iii) if the committee or the Legislature adopts a smaller total population deviation than 10% for Senate, House of Representatives, or State School Board districts.
- (8) (a) Three members of the commission may, by affirmative vote, require that commission staff evaluate any map drawn by, or presented to, the commission as a possible map for recommendation by the commission to determine whether the map complies with the redistricting standards adopted by the commission.

(b) In conducting an evaluation described in Subsection (8)(a), commission staff shall use judicial standards and, as determined by the commission, the best available data and scientific methods.

Id. § 20A-20-302(7), (8).

29. Section 20A-20-303 title “Submission of maps to Legislature – Consideration by Legislature” states:

- (1) The commission shall, within 10 days after the day on which the commission complies with Subsection 20A-20-302(2), submit to the director of the Office of Legislative Research and General Counsel, for distribution to the committee, and make available to the public, the redistricting maps recommended under Section 20A-20-302 and a detailed written report describing each map's adherence to the commission's redistricting standards and requirements.
- (2) The commission shall submit the maps recommended under Section 20A-20-302 to the [Legislature’s redistricting] committee⁴ in a public meeting of the committee as described in this section.
- (3) The [Legislature’s redistricting] committee shall:
 - (a) hold the public meeting described in Subsection (2):

⁴ Utah Code section 20A-20-102(2) defines “Committee” as the “Legislature’s redistricting committee.

- (i) for the sole purpose of considering each map recommended under Section 20A-20-302; and
- (ii) for a year immediately following a decennial year, no later than 15 days after the day on which the commission complies with Subsection (1); and
- (b) at the public meeting described in Subsection (2), provide reasonable time for:
 - (i) the commission to present and explain the maps described in Subsection (1);
 - (ii) the public to comment on the maps; and
 - (iii) the committee to discuss the maps.

(4) The Legislature may not enact a redistricting plan before complying with Subsections (2) and (3).

(5) *The committee or the Legislature may, but is not required to, vote on or adopt a map submitted to the committee or the Legislature by the commission.*

Id. § 20A-20-303 (emphasis added)

30. S.B. 200 expressly states that *neither* the Legislature’s redistricting committee nor the Legislature is required to vote on or adopt a map submitted by the commission. *Id.* § 20A-20-303(5).

31. Under S.B. 200, the Legislature is not bound to comply with any provision, except it “may not enact a redistricting plan before” the commission submits its recommended map(s) to the Legislature’s redistricting committee and that committee holds public hearings on those maps. *Id.* § 20A-20-303(4).

32. S.B. 200 does not require the Legislature to comply with any redistricting standards in Proposition 4 or in S.B. 200.

33. S.B. 200 does not require the Legislature hold public hearings on its proposed redistricting plan or to provide for any public comment at all.

34. S.B. 200 eliminated the private right of action to enforce Proposition 4’s redistricting reform, including mandatory compliance with standards and procedures and removed the explicit waiver of governmental immunity, precluding any challenge to redistricting plans enacted by the Legislature.

35. S.B. 200 eliminated the requirement that the Legislature appropriate “adequate” funds for the commission to fulfill its duties. Instead, it states:

(12) *Within appropriations from the Legislature, the commission may, to fulfill the duties of the commission: (a) contract with or employ an attorney*

licensed in Utah, an executive director, and other staff; and (b) purchase equipment and other resources, in accordance with [Utah's Procurement Code], to fulfill the duties of the commission.

Id. § 20A-20-201(12)(a)-(b) (2020).

36. On March 17, 2021, H.B. 413 was enacted, making some revisions to Sections 20A-20-301, -302 and -303. See <https://le.utah.gov/~2021/bills/static/HB0413.html>. The changes revised certain provisions related to timing and deadlines.

2020 Census and HB 2004

37. The U.S. Census Bureau delayed the release of the 2020 Census data by five months due to Covid-19. The data was released on August 12, 2021. (*Leg. Defs. 'Opp'n / Cross MSJ*, p. 23, ¶ 86.)
38. Between August 16, 2021 and November 1, 2021, the Legislative Redistricting Committee held some public hearings. The parties dispute the number of hearings and when they occurred. (*Id.* ¶ 89; *Pls. 'Con. Reply*, p. 10, ¶ 89.)
39. On November 1, 2021, the Commission presented its recommendations to the Legislative Redistricting Committee in a public hearing. (*Leg. Defs. 'Opp'n / Cross MSJ*, p. 24, ¶ 90.)
40. The Legislative Defendants do not deny that the House did not vote on all three redistricting plans submitted by the Commission. It disputes only that the Legislature was required to vote on the Commission's plans. (*Id.* p. 9, ¶ 19.) They do admit that the House voted on and rejected "the Purple Map, which was considered as a fourth substitute bill." (*Id.*)
41. On November 5, 2021, the Legislative Redistricting Committee publicly released "its proposed maps and made them available for public view and comments (in person and online) around 10:00 p.m. on Friday, November 5, 2021, and scheduled a public meeting on November 8, 2021. (*Id.* p. 8-9, ¶ 18; p. 24, ¶ 92.)
42. On November 8, 2021, the Legislative Redistricting Committee held the public hearing on its proposed maps, and it unanimously voted to adopt its proposed maps that same day. (*Id.* p. 24, ¶ 93; *Pls. 'Con. Reply*, p. 11, ¶ 93.)
43. On November 9, 2021, the House considered the Committee's proposed maps, including the congressional map, H.B. 2004, and passed H.B.2004 that day. On November 10, the Senate considered and passed H.B. 2004. (*Leg. Defs. 'Opp'n / Cross MSJ*, p. 25, ¶¶ 94-95.)

44. On November 12, 2021, the Legislature passed H.B. 2004, which established new United States Congressional district boundaries for Utah and enacted the new Congressional Map. See <https://le.utah.gov/~2021s2/bills/static/HB2004.html>.
45. The Legislative Defendants do not dispute that the Legislature did not “issue to the public a detailed written report setting forth the reasons for rejecting the plan or plans submitted” by the Commission and “a detailed explanation of why the redistricting plan enacted by the Legislature better satisfies the redistricting standards and requirements contained” in Proposition 4. (*Leg. Defs.’ Opp’n / Cross MSJ*, p. 10, ¶ 22.)
46. The Legislative Defendants state that they “do not concede that ‘the Commission performed its duties under S.B. 200,’” asserting “it is not clear that the commission’s maps did not ‘unduly favor’ a political party because it is not clear what that standard means [in] Utah.” (*Id.* p. 8, ¶ 17.)
47. Proposition 4 was repealed in 2020. Its standards and procedures were not in place in 2021, when the Legislature enacted H.B. 2004, the current 2021 Congressional Map, which has been used for the 2022 and 2024 election cycles.

ANALYSIS

Plaintiffs move for summary judgment under Count V of their Complaint arguing that the Legislature’s repeal of Proposition 4 violated the People of Utah’s fundamental constitutional right to alter or reform their government, under article I, section 2 and article VI, section 1 of the Utah Constitution. The Legislative Defendants filed an opposition and a cross-motion for summary judgment arguing that Proposition 4 was not a proper exercise of the citizen initiative power and that repealing Proposition 4 and enacting S.B. 200 did not infringe the people’s rights and that S.B. 200 was narrowly tailored to advance a compelling government interest.

On remand back to this Court, the Utah Supreme Court in *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, 554 P.3d 872 (“*LWVUT*”), clearly articulated the standard this Court must apply in addressing Count V. The court determined that strict scrutiny applied when considering whether the Legislature infringed on the people’s fundamental constitutional right to alter or reform their government through their initiative power. To prevail on summary judgment, Plaintiffs must establish that the material undisputed facts establish as a matter of law that the Legislature’s enactment of SB200 violated the people’s right to reform their government through initiative. In order to do so, Plaintiffs must establish the following:

- (1) that the people exercised, or attempted to exercise, their initiative power, and the subject matter of the initiative contained government reforms or alterations within the meaning of the Alter or Reform Clause; and
- (2) the Legislature infringed the exercise of these rights because it amended, repealed, or replaced the initiative in a manner that impaired the reform contained in the initiative.

Id. ¶ 74. If Plaintiffs successfully establish these two elements, then the legislative action that impairs the reform is unconstitutional *unless* the Legislative Defendants show that the legislative action “is narrowly tailored to advance a compelling government interest.” *Id.* ¶ 75 (emphasis added).

The Utah Supreme Court also made clear that citizen initiatives, “including those that reform the government,” are limited to enacting “legislation.” *Id.* ¶ 161. Initiatives cannot “amend the Utah Constitution” or “violate any other provision of the constitution.” *Id.* “[T]he people’s right to reform the government must be exercised within the bounds of the constitution itself, so the people must exercise the right through a constitutionally-recognized mechanism—like the constitutional amendment process or the initiative power—and when they use their initiative power, the initiative can accomplish only those reforms that can be achieved by statute and cannot violate other constitutional provisions.” *Id.* ¶ 63 n.15 And any such enacted legislation must be “in harmony with the rest of the constitution” and “within the bounds of the constitution itself.” *Id.* ¶¶ 157, 160; *see also Univ. of Utah v. Shurtleff*, 2006 UT 51, ¶ 17, 144 P.3d 1109, 1114 (stating courts must “harmonize constitutional provisions with one another and with the meaning and function of the constitution as a whole.”).

The Parties’ Cross-Motions for Summary Judgment

The parties each filed a motion for summary judgment on Count V. Plaintiffs assert that they satisfy the first two requirements set forth in *LWVUT*, 2024 UT 21, ¶ 74. They argue that the people of Utah properly exercised their initiative power to alter or reform their government by reforming the current redistricting process, and establishing standards and procedures, binding on both the newly created independent redistricting commission (“Commission”) and the Legislature. They also assert that the Legislature infringed the people’s exercise of that right by repealing Proposition 4 entirely and replacing it with S.B. 200, which eliminated Proposition 4’s core redistricting standards and procedures and effectively made the modified redistricting process non-binding on both the Commission and the Legislature. They assert S.B. 200 impaired the reform, violated the people’s fundamental constitutional right to alter or reform redistricting in Utah and is unconstitutional. They also argue that the Legislature cannot show that completely repealing Proposition 4 and replacing it with S.B. 200 was narrowly tailored to advance a compelling government interest.

The Legislative Defendants argue the exact opposite. They argue that Proposition 4 was unconstitutional, and that redistricting reform is not a proper exercise of the citizen’s initiative. They assert that the Legislature has sole and exclusive authority over redistricting under the Federal Elections Clause and under various provisions in the Utah Constitution. They argue that several Proposition 4 provisions both unconstitutionally limit the Legislature’s redistricting authority and its discretion to make redistricting decisions and delegates it to the Commission and the chief justice. In addition, they argue that S.B. 200 did not impair Proposition 4’s core redistricting reform because it retains the Commission’s advisory function, provides adequate funding for the Commission, provides greater flexibility over substantive redistricting standards, allows public input and comment and, most important, preserves the Legislature’s discretion over redistricting standards, policy decisions and when to redistrict. Finally, they argue that the

repeal of Proposition 4 and the enactment of S.B. 200 was narrowly tailored to advance a compelling state interest.

Each of the three factors set forth in *LWVUT* are addressed in turn.

I. *First LWVUT Factor*

Did Plaintiffs meet their burden to prove that the people exercised their initiative power through Proposition 4, and the subject matter of Proposition 4 contained government reforms or alterations within the meaning of the Alter or Reform Clause? *Yes*.

Proposition 4 proposed substantive binding redistricting legislation to address partisan gerrymandering and to reform how redistricting is accomplished in Utah. Redistricting currently is and historically has been the topic of great debate in our state and throughout our country. Redistricting is not a mere exercise in political line-drawing; it strikes at the very heart of our democracy. The way district boundaries are drawn determines whether the right to vote is meaningful, whether equal protection is honored, and whether the fundamental promises of our state and federal constitutions are upheld. How district lines are drawn can either safeguard representation and ensure accountability by elected representatives or erode public trust, silence voices and weaken the rule of law. Redistricting is among the most critical responsibilities of our government because it ultimately defines how fully people's voices are heard in the institutions that govern them. Partisan gerrymandering is the intentional manipulation of electoral district boundaries purely for partisan or political advantage. This practice calls into question whether votes are meaningful and it distorts how votes translate into representation. When successfully accomplished, as it has been around the United States, it is the politicians who win because they choose their voters to ensure they or their party remain in control.

Redistricting impacts voting. Our Utah Supreme Court has recognized that the right to vote is fundamental; it recognized as a fundamental principle of law “[t]hat no legal voter should be deprived of that privilege by an illegal act of the election authorities.” *Ferguson v. Allen*, 7 Utah 263, 573, 26 P. 570, 574 (1891) (discussing the right to vote in the context of voter fraud allegations). The *Ferguson* court stated: “[a]ll other rights, civil or political, depend on the *free* exercise of this one, and *any material impairment* of it is, to that extent, a subversion of our political system.” *Id.* at 574 (emphasis added). It further reasoned that the “rights and wishes of all people are too sacred to be cast aside and nullified by the illegal and wrongful acts of their servants, no matter under what guise or pretense such acts are sought to be justified.” *Id.*

Through Proposition 4, the people of Utah used their legislative power to pass legislation establishing a standard and more objective and transparent process for redistricting. “The ‘right to alter or reform the government’ refers to a right retained by the people themselves to correct the government they created.” *LWVUT*, 2024 UT 21, ¶ 192. The term “alter” means to “change some of the elements or ingredients or details.” *Alter*, BLACK’S LAW DICTIONARY 64 (1ST ed. 1891). “Reform” means to “correct, rectify, amend, remodel.” *Reform*, BLACK’S LAW DICTIONARY 1011 (1ST ed. 1891). And “government” is defined as “the framework of political institutions, departments and offices.” *Government*, BLACK’S LAW DICTIONARY 544 (1ST ed. 1891). When

Proposition 4 became law, it both altered and reformed our government by changing how redistricting would be accomplished in Utah. It reformed redistricting by establishing a standard process, adopting both redistricting standards and procedures, including but not limited to establishing an independent redistricting commission, ensuring state-wide representation, codifying traditional redistricting standards, providing for public notice and input, requiring the legislature to consider the work done by the commission, re-affirming redistricting occurs once every ten years after receipt of the decennial census, and ensuring the redistricting process was enforceable by the people of Utah. Essential to Proposition 4's core reforms is that this process, including the redistricting standards and the procedures were both mandatory and binding on the commission and the legislature, while preserving the legislature's core legislative function to decide whether to accept or reject any map *recommended* by the commission or to enact its own, but with an explanation to the people regarding how the legislature's chosen redistricting plan better satisfied the mandatory redistricting standards.

Proposition 4 was passed by a majority of Utah voters in the 2018 election, and it became law binding on the people of Utah, the Independent Redistricting Commission and the Utah Legislature. Plaintiffs assert the people properly exercised their right, "within the bounds of the constitution and the legislative power" and therefore Proposition 4 is "constitutionally protected from government infringement, including legislative action that impairs the government reform." *LWVUT*, 2024 UT 21, ¶ 104

The Legislative Defendants make numerous arguments asserting that redistricting reform is not a proper exercise of the people's initiative power. The arguments can be divided into three general categories. First, the Legislative Defendants contend that Proposition 4 is unconstitutional because it attempts to do through "legislation" what can only be done through a constitutional amendment. *See LWVUT*, 2024 UT 21, ¶ 161 (ruling that a citizen initiative cannot amend the Utah constitution). They assert that the Legislature has sole and exclusive constitutional authority over redistricting under both the U.S. and the Utah Constitutions. Therefore, the people have no authority to alter or reform the redistricting process through a citizen initiative.

Second, they contend that Proposition 4 unconstitutionally interferes with the Legislature's core legislative power and functions. They contend the mandatory provisions in Proposition 4, including the express prohibition on partisan gerrymandering, eliminates the Legislature's ability to exercise discretion in redistricting and in particular to determine "whether and how to redistrict across political subdivisions." (*Leg. Defs.' Opp'n / Cross MSJ*, p. 34.) Each of these arguments is premised primarily on the argument that the Legislature has exclusive authority under the U.S. and Utah Constitutions over redistricting.

Finally, the Legislative Defendants also contend that other Proposition 4 provisions are not "in harmony with the rest of the constitution" nor "within the bounds of the constitution." *LWVUT*, 2024 UT 21, ¶¶ 157, 160. Specifically, they assert that Proposition 4 interferes with the Legislature's authority and discretion over appropriations, supplants the legislature's core legislative redistricting function by delegating it to a commission and to the chief justice of the Supreme Court, and it unconstitutionally invades the legislature's sole authority to establish its own internal procedural rules. (*See generally id.*, p. 41-56.)

The Court addresses each of the three categories of arguments.

A. The Legislature does not have sole and exclusive authority over redistricting.

The Legislative Defendants contend that the U.S. Constitution and the Utah Constitution grants sole and exclusive authority over redistricting to the legislature. Therefore, they assert the people’s attempt to “legislate” redistricting is unconstitutional. Plaintiffs argue that neither constitution grants the legislature sole and exclusive authority over redistricting. Rather, they argue redistricting is a legislative function, shared co-equally with the people of Utah. The Court agrees with Plaintiffs.

1. The Federal Elections Clause - Article 1, Section 4 of the U.S. Constitution

The Legislative Defendants argue the federal Elections Clause, article 1, section 4, of the U.S. Constitution, grants the “Legislature” exclusive control over redistricting. The Court disagrees. The federal Elections Clause does not vest the elected Legislature with unfettered authority to redistrict, without any constraints or restrictions imposed by the Utah Constitution. The Elections Clause states: that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, *shall be prescribed in each State by the Legislature thereof.*” U.S. Const., art. I, § 4 (emphasis added). In a series of decisions, the United States Supreme Court has consistently recognized that state legislatures, even when exercising their lawmaking power under the federal Elections Clause, must abide by restrictions imposed by state constitutions and are subject to their state’s ordinary law-making process when redistricting.

In *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, 36 S. Ct. 708 (1916), the U.S. Supreme Court first considered the constitutionality of the people’s referendum power to reject a redistricting plan. In *Hildebrant*, the Ohio Legislature passed a congressional redistricting law. Under the Ohio Constitution, the people reserved the right “by way of referendum to approve or disprove by popular vote any law enacted by the general assembly.” *Id.* at 566. The voters held a referendum on the redistricting law and rejected it. The plaintiff sued on behalf of the State, contending that the referendum “was not and could not be a part of the legislative authority of the State and therefore could have no influence on ... the law creating congressional districts” under the Elections Clause. *Id.* at 567. The *Hildebrant* Court rejected arguments that Ohio's use of the referendum violated the Elections Clause. *Id.*; *see also id.* at 569 (rejecting argument that the referendum “causes a State ... to be not republican” in violation of the Guarantee Clause of the Constitution.). The Court’s analysis relied on the Apportionment Act of 1911, in which Congress left to “each State full authority to employ in the creation of congressional districts its own laws and regulations,” noting “If they include initiative, it is included.” *See also id.* at 568 (citing 47 Cong. Rec. 3437 (statement of Sen. Burton)); *see also Ariz. State Legislature v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787, 809, 135 S. Ct. 2652, 2668-69 (noting, “[i]n drafting the 1911 Act, Congress focused on the fact that several States had supplemented the representative legislature mode of lawmaking with a direct lawmaking role for the people,” through the processes of initiative and referendum, intentionally removed the reference to the “state legislature” and provided that states “should use the Act’s default procedures for redistricting until such State shall be redistricted in the manner provided by the laws thereof.”

(cleaned).) Based on the 1911 Act and the Ohio Constitution, the Court reasoned that the referendum was part of the state’s legislative power, which was vested both in the “senate and house of representatives” and “in the people,” and it upheld the people’s right to use their referendum power to reject the Ohio Legislature’s proposed redistricting plan. *Id.* at 566-67.

Then, in *Smiley v. Holm*, 285 U.S. 355, 369, 52 S. Ct. 397 (1932), the Supreme Court considered the constitutionality of a governor’s veto of a redistricting plan. In *Smiley*, the Minnesota Legislature passed a law adopting new congressional districts and the governor exercised his veto power under the state constitution to veto the law. The *Smiley* Court affirmed the governor’s veto of the proposed congressional map. In addressing arguments like those presented by the Legislative Defendants, that Court reasoned:

The Legislature in districting the state is not strictly in the discharge of legislative duties as a lawmaking body, acting in its sovereign capacity, but is acting *as representative of the people of the state under the power granted by said article 1, s 4*. It merely gives expression as to district lines in aid of the election of certain federal officials; prescribing one of the essential details *-serving primarily the federal government and secondly the people of the state*. *The Legislature is designated as a mere agency to discharge the particular duty*.

Id. at 364. (emphasis added). The *Smiley* Court considered the legislative history of the Elections Clause and concluded that “there is no intimation, either in the debates in the Federal Convention or in contemporaneous exposition, of a purpose to exclude a similar restriction imposed by state Constitutions upon state Legislatures when exercising the lawmaking power.” *Id.* at 369. The Court went on to hold that the Elections Clause did not prevent a state from applying the usual rules of its legislative process—including a gubernatorial veto—in the redistricting process. *Id.* at 373. The Court also recognized that if a state constitution and or laws treats a veto or referendum as part of the legislative power, “*the power as thus constituted should be held and treated to be the state legislative power for the purpose of creating congressional districts by law*.” *Id.* at 371 (emphasis added).

Then, the U.S. Supreme Court in *Arizona State Legis. v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787, 813, 135 S. Ct. 2652 (2015), upheld the people of Arizona’s initiative to amend the Arizona Constitution to create an independent redistricting commission, which removed the state legislature entirely from the redistricting process. In addressing the constitutionality of the wholly independent redistricting commission established by the people, the Court reasoned “the Legislature” to which the Elections Clause confers authority means not only the state’s representative body, but any entity empowered to legislate under the state constitution, including the people by initiative. *Id.* at 813–14. Because the Arizona Constitution vests power in the people to legislate “on equal footing with the representative legislative body,” *id.* at 795, the Court ruled that the people’s legislation, by constitutional amendment, delegating redistricting to an independent commission was a valid exercise of the Federal Elections Clause authority. *Id.* at 814 (*citing* Ariz. Const. art. IV, pt. 1, § 1). That ruling made clear that whatever authority was responsible for redistricting, *i.e.*, also remained subject to constraints set forth in the Arizona state constitution.

The *Arizona State Leg.* Court recognized the core principle “that redistricting is a legislative function, to be performed in accordance with the State’s prescriptions for lawmaking, which it recognized may include the referendum, the governor’s veto and the initiative process. *Arizona State Leg.*, 576 U.S. at 808, 135 S. Ct. 2652 (emphasis added) (reaffirming the core principles previously espoused in *Hildebrant* and *Smiley*). The Court dismissed the argument that the Elections Clause divests state constitutions of the power to enforce checks against the exercise of legislative power, noting: “Nothing in [the Elections] Clause instructs, nor has this Court ever held, that a state legislature may prescribe regulations on the time, place, and manner of holding federal elections *in defiance of provisions of the State’s constitution.*” *Id.* at 817–818, 135 S. Ct. 2652 (emphasis added). The Court also clarified that “the Federal Elections Clause does not give state legislatures *carte blanche* to act in a manner contrary to the state constitution. *Id.*”

The dissent, authored by Chief Justice John Roberts, argued that the term “Legislature” as used in the U.S. Constitution and in the federal Elections Clause (as opposed to state constitutions) means only the representative legislature and never included nor intended to include the legislative power of the people. *Id.* at 826, 135 S. Ct. 2677 (J. Roberts, dissenting). Notwithstanding this position, the dissent does not challenge and, in fact, recognizes that the Legislature in fulfilling its duties under the Elections Clause is required to comply with the “ordinary lawmaking process,” under the state Constitution. *Id.* at 841–42, 135 S. Ct. at 2687. Justice Roberts writes: “Under the Elections Clause, ‘the Legislature’ is a representative body that, when it prescribes election regulations, may be required to do so within the ordinary lawmaking process, but may not be cut out of that process. Put simply, *the state legislature need not be exclusive in congressional districting, but neither may it be excluded.*” *Id.* (emphasis added). “There is a critical difference between allowing a State to *supplement* the legislature’s role in the legislative process and permitting the State to *supplant* the legislature altogether.” *Id.* at 841 (emphasis added) (challenging the “State’s ability to define lawmaking by excluding the legislature itself”).

The Legislative Defendants argue that the *Arizona State Legis.* decision is distinguishable from this case because the Arizona Constitution reserved for the people the right both to legislate and to amend their constitution, which the people then used to wholly delegate the redistricting power to an entirely independent commission. (*Leg. Defs.’ Opp’n Mot. Summ. J.*, p. 40.) Here, the Legislative Defendants argue that the people of Utah are limited to “legislating,” i.e., lawmaking, and therefore the people of Utah have no authority to “legislate” to effectively amend the constitution to give the people power over redistricting. The Court agrees in part. Because the people of Utah do not have the power to amend the Constitution, they cannot amend the Utah Constitution to exclude the legislature entirely from participating in redistricting. However, the Court disagrees to the extent the Legislative Defendants argue that redistricting is exclusive to the Legislature. As discussed herein, Utah law makes clear that the Legislature and the people of Utah equally share the law-making power. And the U.S. Supreme Court has expressly recognized: “redistricting is a legislative function, to be performed in accordance with the State’s prescriptions for lawmaking,” *Arizona State Leg.*, 576 U.S. at 808, 135 S. Ct. 2652 (emphasis added). Utah’s ordinary lawmaking includes the people’s initiative and referendum

powers and the gubernatorial veto. And, as more fully explained herein, Proposition 4 supplements, and does not supplant, the legislature’s role in redistricting.

Finally, and more recently, in *Moore v. Harper*, 600 U.S. 1, 143 S. Ct. 2065 (2023), the U.S. Supreme Court re-affirmed its prior decisions in *Smiley* and *Arizona State Legislature*, stating: “Our precedents have long rejected the view that legislative action under the Elections Clause is purely federal in character, governed only by restraints found in the Federal Constitution.” *Id.* at 29-30, 37. The *Moore* Court confirmed that the federal “Elections Clause does not insulate state legislatures from the ordinary exercise of state judicial review” or from ordinary constraints in state constitutions. *Id.* at 29-30, 37, 143 S. Ct. 2065. In reaching its decision, the *Moore* Court expressly recognized that:

[e]lections are complex affairs, demanding rules that dictate everything from the date on which voters will go to the polls to the dimensions and font of individual ballots. Legislatures must “provide a complete code for congressional elections,” including regulations “relati[ng] to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns.” *Smiley*, 285 U.S. at 366, 52 S. Ct. 397. . . . But fashioning regulations governing federal elections “*unquestionably calls for the exercise of lawmaking authority.*” *Arizona State Legislature*, 576 U.S. at 808, n. 17, 135 S. Ct. 2652. *And the exercise of such authority in the context of the Elections Clause is subject to the ordinary constraints on lawmaking in the state constitution.*

Id. at 29-30 (emphasis added).

The *Moore* Court re-affirmed long-standing precedent that “[a] state legislature may not ‘create congressional districts independently of’ requirements imposed ‘by the state constitution with respect to the enactment of laws.’ ” *Id.* at 26 (quoting *Smiley*, 285 U.S. at 373). Notably, the *Moore* Court explains:

[I]n *Smiley*, we addressed whether “the conditions which attach to the making of state laws” apply to legislatures exercising authority under the Elections Clause. 285 U.S. at 365, 52 S. Ct. 397. We held that they do. “Much that is urged in argument with regard to the meaning of the term ‘Legislature,’ ” we explained, “is beside the point.” *Ibid.* And we concluded in straightforward terms that legislatures must abide by “restriction[s] imposed by state constitutions ... when exercising the lawmaking power” under the Elections Clause. *Id.*, at 369, 52 S. Ct. 397. *Arizona State Legislature* said much the same, emphasizing that, by its text, nothing in the Elections Clause offers state legislatures *carte blanche* to act “in defiance of provisions of the State's constitution.” 576 U.S. at 818, 135 S. Ct. 2652.

Moore, 600 U.S. at 31.

The United States Supreme Court has concluded repeatedly that the Federal Elections Clause does not trump state constitutional restrictions over the “time, place and manner” of elections. Rather, the Court reaffirms that state legislatures in fulfilling their duties under the Elections Clause are still subject to state constitutional restraints and must comply with the state’s ordinary law-making process.

2. Article IX, Section 1 of the Utah Constitution

Turning to the Utah Constitution, the Legislative Defendants argue that article IX, section 1 of the Utah Constitution (Dividing the State into Districts) expressly vests the “Legislature” with sole and exclusive responsibility, authority and complete discretion over redistricting, to the exclusion of the legislative power of the people. They argue that excerpts from the Constitutional Convention debates support that redistricting is wholly within the province of the legislature. Plaintiffs disagree and argue that article IX, section 1 does not grant the “Legislature” redistricting authority but rather limits it. They argue, consistent with federal case law interpreting the Federal Elections Clause, that redistricting – which is a legislative function – is subject to the state’s ordinary law-making process, which includes, not excludes, the people’s exercise of their legislative powers. The Court agrees with Plaintiffs.

Some principles of constitutional interpretation guide the Court’s analysis. When interpreting state constitutional provisions, it is a “well-recognized principle” that because the legislature is the representative of the people, “wherein lies the residuum of governmental power, constitutional provisions are limitations, rather than grants of power.” *Parkinson v. Watson*, 4 Utah 2d 191, 199, 291 P.2d 400, 405 (1955) (emphasis added). It is presumed that the legislature has full legislative power, “except as to restrictions as the [Utah] Constitution should specifically prescribe.” *Id.*⁵ In addition, we consider “the meaning of the text as understood when it was

⁵ The California Court of Appeal, Third District, in *People's Advoc., Inc. v. Superior Ct.*, 181 Cal. App. 3d 316, 322–23, 226 Cal. Rptr. 640 (Ct. App. 1986) explained the basis for the principle that state constitutions are not grants of authority, rather, they are limitations. That court explained:

The fundamental charter of our state government was enacted by the people against a history of parliamentary common law. That law is implicit in the Constitution's structure and its separation of powers. As was said by the California Supreme Court over 100 years ago: “A legislative assembly, when established, becomes vested with all the powers and privileges which are necessary and incidental to a free and unobstructed exercise of its appropriate functions. These powers and privileges are derived not from the Constitution; on the contrary, they arise from the very creation of a legislative body, and are founded upon the principle of self preservation. *The Constitution is not a grant, but a restriction upon the power of the Legislature, and hence an express enumeration of legislative powers and privileges in the Constitution cannot be considered as the exclusion of others not named unless accompanied by negative terms.* A legislative assembly has, therefore, all the powers and privileges which are necessary to enable it to exercise in all respects, in a free, intelligent, and impartial manner, its appropriate functions, except so far as it may be restrained by

adopted,” with a focus “on the objective original public meaning of the text, not the intent of those who wrote it.” *LWVUT*, 2024 UT 21, ¶ 101 (stating we “interpret 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.”).⁶ And constitutional provisions “must be read in harmony with the rest of the constitution and exercised within the bounds of the constitution itself.” *LWVUT*, 2024 UT 21, ¶ 9.

Starting with the text of article IX, section 1 of the Utah Constitution, both parties cite the current version of this provision, which was amended in 2008. That provision states:

No later than the annual general session next following the Legislature’s receipt of the results of an enumeration made by the authority of the United States, the Legislature shall divide the state into congressional, legislative, and other districts accordingly.

Utah Const. art. IX, § 1 (2008). The proposed amendment appeared on the ballot in 2008 as “Utah Amendment D,”⁷ and it described to voters that the purpose of the amendment was to establish the *timing* for redistricting, not assigning exclusivity for the task. The ballot read:

the express provisions of the Constitution, or by some express law made unto itself, regulating and limiting the same.”

Id. (emphasis added).

⁶ When interpreting constitutional language, the Utah Supreme Court recently stated:

[W]e start with the meaning of the text as understood when it was adopted. Our focus is on the objective original public meaning of the text, not the intent of those who wrote it. Although evidence of the framers’ intent can help with this endeavor, when we use such material—for example, transcripts from the constitutional convention on a particular topic—we have clarified that this is only a means to this end, not an end in itself. So, we interpret the constitution 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. And we have clarified that when we interpret language from early statehood, we do so according to the “general public understanding” at the time.

LWVUT, 2024 UT 21, ¶ 101, 554 P.3d 872, 896–97 (quoting *South Salt Lake City v. Maese*, 2019 UT 58, ¶ 18, 19.n.6, 21 n.7, 450 P.3d 1092) (cleaned up). “There is no magic formula for this analysis – different sources will be more or less persuasive.” *Maese*, 2019 UT 59, ¶ 19. Courts start the analysis with the text and considers it in light of historical evidence of the state of the law and Utah’s particular traditions at the time of drafting. *Id.* ¶ 18.

⁷ Rule 201 of the Utah Rules of Evidence governs judicial notice of “adjudicative” facts, not legislative facts. Utah R. Evid. 201(a). As the Utah Supreme Court has previously recognized, courts may “take judicial notice of the facts from [] publicly available government websites because they are not subject to reasonable dispute and can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” *State v. Cordova*, 2023 UT App 99, 536 P.3d 666, 670, *cert. denied*, 540 P.3d 81 (Utah 2023) (citing Utah R. Evid. 201).

A "yes" vote supported amending the constitution to require the legislature to make redistricting divisions by no later than the annual general legislative session following the receipt of the federal census results.

A "no" vote opposed amending the constitution, maintaining the requirement that redistricting divisions are decided in the legislative session immediately following the federal census.

[https://ballotpedia.org/Utah_Amendment_D,_Change_the_Time_Frame_for_Redistricting_Requirements_Measure_\(2008\)](https://ballotpedia.org/Utah_Amendment_D,_Change_the_Time_Frame_for_Redistricting_Requirements_Measure_(2008)). The proposed amendment – as described to the voters – successfully passed. Interestingly, this provision was amended once before in 1988. The proposed amendment similarly focused on clarifying when redistricting would occur, i.e., “after every U.S. census.”⁸

When Utah’s Constitution was signed following the Constitutional Convention Debates in May 1895 and then ratified by the people of Utah in November 1895, article IX, section 1, stated:

One Representative in the Congress of the United States shall be elected from the State at large on the Tuesday next after the first Monday in November, AD 1895, and thereafter at such times and places, and in such manner as may be prescribed by law. *When a new apportionment shall be made by Congress, the Legislature shall divide the State into congressional districts accordingly.*

Utah Const. art. IX, § 1 (1895) (emphasis added). Both the original and current versions of article IX, section 1, designate the “Legislature” for the task of redistricting. This is not disputed. Article IX, section 1, however, does not grant redistricting authority to the “Legislature.” Rather,

⁸ Article IX, section 1 of the Utah Constitution has been amended twice since 1895; once in 1988 and then in 2008. In 1988, the proposed amendment was placed on the ballot by the legislature as Proposition 2. The ballot title dealing with reapportionment stated as follows: “Shall the Utah Constitution be amended to . . . clarify the Legislature’s duty to reapportion the state after each United States census into congressional, legislative, and other districts, and clarify the number of senators and representatives.” The proposed amendment was described as follows:

A "yes" vote supported amending the constitution to:

- require that the legislature divide the state into congressional and legislative districts after every US census;

A "no" vote opposed amending the constitution to:

- require that the legislature divide the state into congressional and legislative districts after every US census.

[https://ballotpedia.org/Utah_Proposition_2,_Require_Reapportionment_After_US_Census_and_Adjust_Constitutional_Language_Amendment_\(1988\)](https://ballotpedia.org/Utah_Proposition_2,_Require_Reapportionment_After_US_Census_and_Adjust_Constitutional_Language_Amendment_(1988)).

Proposition 2 successfully passed and was amended to state: “At the session next following an enumeration made by the authority of the United States, the Legislature shall divide the state into congressional, legislative, and other districts accordingly.” *See*

<https://50constitutions.org/ut/constitution?date=2025-08-09>. The proposed 1988 amendment also focused on the timing of redistricting, not the exclusivity of it.

in accordance with long-standing Utah law, this provision limits the Legislature’s authority. Specifically, it limits when redistricting shall occur. The original provision states that the “Legislature” shall redistrict “[w]hen a new apportionment shall be made by Congress.” The current version states the “Legislature” “shall” redistrict “[n]o later than the annual general session next following the Legislature’s receipt of the results of an enumeration made by the authority of the United States.” Utah Const. art. IX, § 1 (emphasis added). As supported by the legislative history, this provision is a limitation on when redistricting shall occur.

Article IX’s reference to the term “Legislature” does not exclude the legislative power of the people. The plain language of article IX, section 1 – in both the original and current versions – does not expressly exclude the people from exercising their direct legislative power. Article IX, section 1 does not include any limiting terms such as “exclusive” or “sole” to support an intent to exclude the people’s co-equal legislative power under this provision, unlike other Utah Constitutional provisions that do make clear when authority is exclusively granted to a particular body. For example, article VI, § 17(1) states: “The House of Representatives shall have the *sole* power of impeachment.” (emphasis added). Absent specific language in this provision or elsewhere in the Utah Constitution limiting the people’s legislative power, there is no basis to conclude that the people are prohibited from participating in redistricting legislation. *Matheson v. Ferry*,⁹ 641 P.2d 674, 676–77 (Utah 1982) (recognizing that absent specific language in the Constitution prohibiting the Legislature from participating in judicial selection and appointment procedures in any degree, it has the authority to “provide by law” the procedure for judicial appointment); *see also People’s Advoc., Inc. v. Superior Ct.*, 181 Cal. App. 3d 316, 322, 226 Cal. Rptr. 640, 642 (Ct. App. 1986) (“The [California] Constitution is not a grant, but a restriction upon the power of the Legislature, and hence an express enumeration of legislative powers and privileges in the Constitution cannot be considered as the exclusion of others not named unless accompanied by negative terms.”). In addition, persuasive authority from both federal and state courts have held that the term “Legislature” means “any lawmaking entity,” and not just the elected legislature. *Arizona State Legis.*, 576 U.S. at 813-14; *People ex. Rel. Salazar v. Davidson*, 79 P.3d 1221, 1236 (Colo. 2003) (interpreting a similar provision under the Colorado Constitution, holding the term “General Assembly,” like the term “legislature” “encompasses the entire legislative process,” including voter initiatives).

⁹ In *Matheson*, the court discussed the separation of powers between the executive and the legislative branches in the context of judicial appointments. While recognizing that the executive branch traditionally has exclusive responsibility to appoint judges to the bench, the Utah Constitution establishes the legislature’s power to “provide by law” for the selection of judges. *Matheson*, 641 P.2d at 677. In explaining the legislature’s role, the *Matheson* court held that the legislature’s power to “provide by law” is not unlimited, but is in fact proscribed “by all other applicable provisions of the Constitution, including the separation of powers requirement of Article V, s 1. In other words, while the Legislature has the exclusive constitutional power to provide by law for the selection of judges, the law, which in its wisdom it so provides, must comport with and must not offend against other applicable provisions of the Constitution.” *Id.* Importantly, that court recognized that absent specific language in the Constitution prohibiting the Legislature from participating in judicial selection and appointment procedures in any degree, it has the authority to “provide by law” the procedure for judicial appointment. *Id.* 676–77.

The Legislative Defendants assert that discussions from the Constitutional Convention Debates from March to May 1895 support their position that the “Founder’s [chose] in Article IX to vest the responsibility for redistricting exclusively in the Legislature (and not in the people).” (*Leg. Defs.’ Opp’n / Cross MSJ*, p. 31.). The Legislative Defendants cite several statements made during the Constitutional Convention Debates discussing concerns about redistricting and a desire to establish “an apportionment system that would ensure each voter had a representative who would properly represent local interests,” given the tension between rural and urban areas. (*Id.* at 32-33 (citing *Proceedings & Debates of the Convention, Days 37-38*)); *see also Parkinson v. Watson*, 4 Utah 2d 191, 200, 291 P.2d 400, 405 (1955) (noting “question as to how urban—rural interests could be properly balanced and protected was among the most thoroughly discussed and considered by the convention”). The statements quoted by the Legislative Defendants, however, contain no discussion or commentary about the involvement of the people of Utah in redistricting, then, or in the future. The discussions certainly do not support an intent to exclude the people’s soon to be established direct legislative power.¹⁰ No other legal authority or legislative history has been presented to the Court, post-1900, to support that the Utah Constitution precludes the people from exercising their direct legislative power to initiate redistricting legislation.

3. Redistricting is a legislative function; the Legislature and the People equally share legislative power.

Redistricting is a quintessential legislative function, subject to a state’s “ordinary constraints on law-making” including the gubernatorial veto, citizen referendum and citizen initiatives.¹¹ *Ariz. State Legislature*, 576 U.S. at 808; *Moore*, 600 U.S. at 29. Redistricting under the Utah Constitution is subject to the same lawmaking constraints. Redistricting is specifically addressed in article IX, section 1, which states the “Legislature” shall redistrict “[w]hen a new apportionment shall be made by Congress.” Utah const. art. IX, § 1. Reading this provision “in harmony with the rest of the constitution,” *LWVUT*, 2024 UT 21, ¶ 9, the Utah Constitution also provides that redistricting is subject to approval or veto by the governor, under article VII, section 8. *Id.* art. VII, § 8. It is subject to the people’s initiative and referendum rights under article VI, section 1. *Id.* art. IV, § 1. And it is subject to the people’s fundamental constitutional right to right “alter or reform” the government, under article 1, section 2. *Id.* art. 1, § 2.

Article I, section 2 has been in the Utah constitution, in the same form, since Utah became a state in 1896. *LWVUT*, 2024 UT 21, ¶ 105. This provision states: “All political power

¹⁰ In 1895, when the Utah Constitution was ratified by the people, power within the state was divided between three branches of government: the executive, legislative and judicial. Utah Const. art. V, section 1. At that time, the people of Utah had not yet reclaimed for themselves the power of direct legislation. *See generally LWVUT*, 2024 UT 2, ¶¶ 138-156. From 1895 to 1900, all “legislative power” was vested in only the representative “legislature.” However, the people had the constitutional right to alter or reform their government.

¹¹ The responsibility for redistricting and the limitations set forth under article IX of the Utah Constitution cannot be considered or interpreted in isolation from the rest of the Utah Constitution. Article IX, section 1, “must be read in harmony with the rest of the constitution and exercised within the bounds of the constitution itself.” *LWVUT*, 2024 UT 21, ¶ 9.

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 as the public welfare may require.” Utah Const. art. I, § 2 (emphasis added). Our constitution makes clear that the people “are the font of political power,” and it is “the people” who “hold the power of the sovereign in a constitutional republic.” *LWVUT*, 2024 UT 21, ¶¶ 67, 106. The Utah Supreme Court has recognized that this provision enshrines principles that are so foundational and fundamental to our system of government that “[i]t is the very essence of true republicanism, the vital breath of pure democracy.” *LWVUT*, 2024 UT 21, ¶ 128 (quoting *The Constitutional Convention: The Body Organizes and Begins Work*, *Deseret News*, July 6, 1887, at 4 (stating “the men who occupy the position of rulers are but the servants of the sovereign people. They govern in that capacity and therefore the people are really self-governed.”)). Given the historical review provided in *LWVUT*, 2024 UT 21, there is no doubt that the framers “made a conscious choice to include” and “separately described” these important principles and rights within the Utah Constitution. *Id.* ¶ 135. Article 1, section 2 makes clear that “ ‘the people themselves are not creatures or creations of the Legislature. They are the father of the Legislature, its creator, and in the act [of] creating the Legislature the people provided that its voice should never silence or control the voice of the people in whom is inherent all political power.’ ” *Id.* ¶ 132 (quoting *Utah Power & Light Co. v. Provo City*, 94 Utah 203, 74 P.2d 1191, 1205 (1937) (Larson, J., concurring)). It follows that “ ‘the Legislature, the child of the people, cannot limit or control its parent, its creator, the source of all power.’ ” *Id.*

Article VI, section 1(1) of the Utah Constitution provides that the legislative power of the state is vested in both the Legislature and the people. U.S. Const. art. VI, § 1. The Utah Constitution was amended in 1900 specifically to reclaim and reserve for the people of Utah the right to exercise direct legislative power. *LWVUT*, 2024 UT 21, ¶ 158. Article VI, section 1, states that the people of Utah, through the “legal voters of the State of Utah,” have the power both to “initiate any desired legislation” and to “require any law passed by the Utah Legislature to be submitted to the voters of the State” through a referendum, if statutory requirements are met. Utah const. art. VI, § 1. “The original public understanding of the right was that it would be meaningful and effective and would provide the people with their own legislative power, which was especially important in times of disagreement with the Legislature on particular issues.” *LWVUT*, 2024 UT 21, ¶ 158. “The right to initiative embodies the principle that the people should have the opportunity to govern themselves, ‘unfettered by the distortions of representative legislatures.’ ” *Count My Vote, Inc. v. Cox*, 2019 UT 60, ¶ 81, 452 P.3d 1109, 1125 (Himonas, J., concurring) (quoting *Carter*, 2012 UT 2, ¶ 23, 269 P.3d 141); *Gallivan v. Walker*, 2002 UT 89, ¶ 25, 54 P.3d 1069 (recognizing the initiative process as “democracy in its most direct and quintessential form”). Functionally, the initiative process acts as the people's check on the legislature's otherwise exclusive power to legislate. *Count My Vote, Inc.*, 2019 UT 60, ¶ 81.

Utah law makes clear that the “legislative power” of the state is vested, *equally*, in both the Utah State Legislature and the people of Utah. *Carter v. Lehi City*, 2012 UT 2, ¶ 22, 269 P.3d 141, 148, *abrogated by League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 22, 554 P.3d 872 (“On its face, article VI recognizes a single, undifferentiated ‘legislative power, vested both in the people and in the legislature.’”). The people’s right to exercise their legislative power is a fundamental constitutional right, and “[t]he power of the legislature and the power of the people to legislate through initiative and referenda are *coequal, coextensive, and*

concurrent and share equal dignity.” *Gallivan v. Walker*, 2002 UT 89, ¶¶ 23–24, 54 P.3d 1069 (cleaned up). The people may initiate “*any desired legislation*,” on “*any substantive topic*” and involving “*any legislative act*,” as long as the initiative complies with all “conditions, manner and time restrictions imposed by law” and is not “otherwise forbidden by the constitution.” *Sevier Power Co., LLC v. Bd. Of Sevier Cnty. Comm’rs*, 2008 UT 72, ¶ 10, 196 P.3d 583, 586 (emphasis added) (rejecting the Legislature’s attempt to prohibit the subject of an initiative but recognizing that “the exercise of the initiative power by the people must be read in coordination with the other rights of the people expressed and reserved in the constitution”). The scope of the initiative power is not lesser than the legislature’s power and it is not derived from or delegated by the legislature. *Carter*, 2012 UT 2, ¶ 30.

When the people initiate and pass legislation through article VI, they act as a body “charged with the exercise of powers properly belonging to the Legislative Department.” *Carter*, 2012 UT 2, ¶ 18. “Legislative power generally (a) involves the promulgation of laws of general applicability; and (b) is based on the weighing of broad, competing policy considerations.” *Id.* ¶ 34. “[L]egislative powers are policy making powers,” *id.* ¶ 38, which are not beyond the reach of the people. *See Mawhinney v. City of Draper*, 2014 UT 54, ¶ 12, 342 P.3d 262, 266 (holding local tax levy subject to the referendum power because it is a traditionally legislative function and the people’s legislative power is co-equal to that of the legislature). “The people’s initiative power reaches to the full extent of the legislative power, but no further.” *Carter*, 2012 UT 2, ¶ 31. Simply put, if the state legislature can enact it, then so can the people. *Id.* ¶ 20. The true limit on voter initiatives “is that they must be a valid exercise of legislative rather than executive or judicial power.” *Id.* ¶ 18.

Together, article VI, section 1(1) and article I, section 2 provide the people with a direct, legislative means of exercising their right to reform the government. *LWVUT*, 2024 UT 21, ¶ 104. Because redistricting is a legislative function, and the people have equal legislative power, the people have the fundamental constitutional right to propose legislation to alter or reform redistricting in Utah. They have the right to pass law prohibiting partisan gerrymandering and establishing mandatory redistricting standards and procedures binding on the legislature.

B. Proposition 4 does not unconstitutionally interfere with the Legislature’s core legislative redistricting power, its functions or discretion.

The Legislative Defendants argue that the mandatory provisions in Proposition 4 unconstitutionally encroach on the Legislature’s core legislative power, function and its ability to exercise discretion in redistricting and, in particular, to determine “whether and how to redistrict across political subdivisions.” (*Leg. Defs.’ Opp’n / Cross MSJ*, p. 34.) They specifically challenge the mandatory provisions as unconstitutional interference, specifically those provisions requiring the Legislature to, among other things: (1) give first priority to minimizing the division of counties, *see* Utah Code Ann. §20A-19-103(2)(b); (2) require that substantive redistricting standards be applied in a particular order of priority, *see* Utah Code Ann. §20A-19-103(2); (3) prohibit “purposefully or unduly favor[ing] or disfavor[ing] incumbents, candidates, or political parties, *see* Utah Code Ann. §20A-19-103(3), which it asserts it can elect to do; (4) require application of “judicial standards and the best available data and scientific and statistical methods . . . to assess whether a proposed redistricting plan abides by and conforms’ to

Proposition 4’s ‘redistricting standards,’” *see* Utah Code Ann. §20A-19-103(4); and (5) provide an avenue to enforce the mandatory provisions through a private cause of action, *see* Utah Code Ann. §20A-19-301. (*See generally* *Leg. Defs.’ Opp’n / Cross MSJ*, p. 33-39.).

These challenges to specific mandatory provisions in Proposition 4 are based primarily on the argument that the Legislature has the sole and exclusive authority to redistrict, under the U.S. and Utah Constitutions, which argument this Court rejected. Redistricting, along with determining the specific standards and procedures that will apply, is a legislative function, subject to the “[s]tate’s prescriptions for lawmaking.” *Arizona State Leg.*, 576 U.S. at 808. The people have the right – just like the Legislature – to establish redistricting standards and procedures, and to mandate compliance with substantive redistricting standards, establish priorities, prohibit partisan gerrymandering, require an assessment of compliance with Proposition 4’s redistricting standards by applying judicial standards, the best available data, and scientific and statistical methods, and provide a mechanism for enforcement of Proposition 4’s standards and procedures.

The Legislative Defendants make other specific arguments regarding proposition 4’s mandatory provisions, which are addressed separately.

1. Order of Priority

The Legislative Defendants argue that Proposition 4 “impermissibly cabined legislative discretion with a rigid priority list.” They assert that discretion may be required to balance competing interests in the redistricting process. Notably, Proposition 4 requires both the Legislature and the Commission to abide by the prioritized list of redistricting standards “to the greatest extent practicable.” *See* Utah Code Ann. § 20A-19-103(2) (2018). The statute itself provides some discretion in balancing competing interests and in making policy considerations, but Proposition 4’s redistricting standards cannot be disregarded or ignored merely because the legislature disagrees with them.

2. Express prohibition on partisan gerrymandering

The Legislative Defendants challenge Proposition 4’s express prohibition on gerrymandering on two grounds. Neither are persuasive.

First, they argue that they have the discretion to consider partisan advantage and incumbency protection in redistricting, as it is an “important” and “proper” factor. (*Leg. Defs.’ Opp’n / Cross MSJ*, p. 37 (citing *Vieth*, 541 U.S. at 299 (plurality op.); *Harper v. Hall*, S.E.2d 393, 420-21 (N.C. 2023); *Alexander v. S.C. State Conf. of NAACP*, 602 U.S. 1, 6 (2024) (stating “redistricting is an inescapably political enterprise”)). The people of Utah, however, in passing Proposition 4 determined that partisan advantage and incumbency protection are not “important” nor “proper” considerations for redistricting. The people hold the power of the sovereign. They have properly exercised their fundamental constitutional right to reform redistricting through legislation. Because the legislature is “but the agents of the people,” they are bound to comply with duly proposed and enacted legislation under Proposition 4 which prohibits partisan gerrymandering.

Second, the Legislative Defendants raise concerns that prohibiting the Commission and Legislature from “purposefully or unduly favoring or disfavoring incumbents, candidates, or political parties” is difficult to implement. They raise the hypothetical that a map could be drawn that has the “effect” of favoring or disfavoring incumbents, candidates and political parties, regardless of the intent or purpose. In addition, the Legislative Defendants assert that prohibiting partisan gerrymandering implicates “fairness,” something that is not justiciable. Hence, the importance of and need for the mandatory, neutral, prioritized redistricting standards and procedures enacted under Proposition 4. The obvious defense against challenges of partisan motivation and “unfairness” is compliance with the codified standards and the procedures. Compliance with Proposition 4’s mandatory redistricting standards and procedures establish a justiciable standard that can be reasonably evaluated. *See Rucho v. Common Cause*, 588 U.S. 684, 718, 139 S. Ct. 2484, 2506–07, 204 L. Ed. 2d 931 (2019) (‘[J]udicial action must be governed by *standard*, by *rule*,’ and must be ‘principled, rational, and based upon reasoned distinctions’ found in the Constitution or laws.” (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 278, 279, 124 S. Ct. 1769 (plurality opinion))). The *Rucho* Court expressly recognized that the solution to partisan gerrymandering lies in legislation with the states and specifically recognized that “provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply.” *Rucho v. Common Cause*, 139 S. Ct. at 2507. Proposition 4 is that solution for Utah.

3. Application of judicial standards and scientific and statistical methods

The Legislative Defendants argue that section 20A-19-103(4), which requires evaluation of a plan’s compliance with redistricting criteria using “judicial standards and the best available data and scientific and statistical methods, including measures of partisan symmetry . . . to assess whether a proposed redistricting plan abides by and conforms to” Proposition 4’s redistricting standards” violates article IX by replacing the legislature’s legislative and political redistricting function with a “judicial” one. (*Leg. Defs.’ Opp’n / Cross MSJ*, p. 37.) The Court disagrees that this provision is unconstitutional or that it displaces or supplants any legislative function. Notably, S.B. 200 also provides for the same review using the same standards. S.B. 200 states that if the commission conducts a review “to determine whether the map complies with the redistricting standards adopted by the commission, . . . the commission shall use judicial standards and, as determined by the commission, the best available data and scientific methods.” Utah Code Ann. §20A-20-302(8)(a), (b) (2020). The language enacted by the legislature in S.B. 200 says virtually the same thing. In addition, as Plaintiffs noted, the legislature must consider judicial standards (e.g., U.S. Supreme Court rulings, Utah Supreme Court rulings, and both the Utah and U.S. Constitutions), use available data (e.g., population data, voting patterns, demographics, communities of interest data, etc.) and apply various scientific methods (e.g., tools, methods, computer-based algorithms and simulations) to ensure electoral maps comply with both federal and state laws (e.g., Equal Protection Clause and the Voting Rights Act or 1965), and to confirm that race is not a predominate factor in drawing district lines. Further, given the general, non-specific nature of the language, the legislature retains discretion in determining what judicial standards are applicable and they retain discretion to determine the “best available data and scientific and statistical methods” to use in evaluating redistricting plans for compliance with state and federal law and the Proposition 4 redistricting

standards. This provision does not impair the legislature’s authority under article IX and does not displace the legislature’s legislative redistricting authority.

4. Private cause of action

Finally, the Legislative Defendants assert Proposition 4’s private cause of action, making Proposition 4’s redistricting standards and procedures mandatory on the legislature and enforceable by the courts also impairs the legislature’s power under article IX. As discussed above, the people of Utah hold the power in this state. They exercised their fundamental constitutional right to pass a law establishing redistricting standards and procedures binding on the legislature. They also have the right to provide a mechanism for the people to enforce that law.

C. Proposition 4 does not unconstitutionally intrude on or supplant the Legislature’s core legislative function.

The Legislative Defendants contend that certain Proposition 4 provisions cannot be harmonized with the rest of the constitution or with the legislature’s core legislative functions. *LWVUT*, 2024 UT 21, ¶ 9 (“[C]ourts must ‘harmonize constitutional provisions with one another and with the meaning and function of the constitution as a whole.’” (quoting *Univ. of Utah v. Shurtleff*, 2006 UT 51, ¶ 17, 144 P.3d 1109, 1114)). Specifically, they assert that Proposition 4 interferes with the legislature’s authority and discretion over appropriations. They assert that it delegates the legislature’s core legislative redistricting function to an independent commission and to the chief justice of the Supreme Court. And they assert that certain provisions violate article VI, section 12 of the Utah Constitution by modifying the legislature’s internal procedural rules, over which it has exclusive authority. (See generally *Leg. Defs.’ Opp’n / Cross MSJ*, p. 41-56.). Each argument is addressed in turn.

1. Appropriations

The Legislative Defendants argue that Proposition 4’s mandatory funding provision “was not a proper exercise of the initiative power” because it “restricted the Legislature’s discretion over appropriations.” (*Leg. Defs.’ Opp’n / Cross MSJ*, p. 41.) They argue that this funding provision unconstitutionally intrudes on the Legislature’s fiscal responsibilities. They argue that article XIII, section 5 of the Utah Constitution requires the Legislature to balance the budget each fiscal year and that the legislature is prohibited from establishing appropriations that “bind” future legislatures. (*Id.* p. 41-42.) They explain that budgeting decisions affect the allocation of public resources, level of service provided and the costs of government, all of which are “legislative-political” decisions wholly within the Legislature’s discretion. (*Id.* p. 42-43.) In addition, they argue Proposition 4’s funding provision imposes a funding obligation without any conceivable limit or any check on what constitutes “adequate funds for the Commission to carry out its duties.” (*Id.* p. 43.) And because lawsuits are authorized for noncompliance, Proposition 4 “could” make state courts the arbiter of what constitutes “adequate” funding, which is a violation of separation of powers. (*Id.*) While several arguments are presented, none of them are persuasive.

The Legislative Defendants’ arguments presume that the people do not have the legislative power to enact law that requires and necessarily relies on funding. This is not supported by Utah law. As previously explained, the legislative power of the State is vested in *both* the Legislature and the people of the State of Utah. Utah Const. art. VI, § 1(1)(a)-(b). The people’s power to legislate, through initiative, is equal to that of the Legislature. *Sevier Power Co., LLC*, 2008 UT 72, ¶ 7. If the topic of legislation is appropriate for the Legislature, it is also appropriate for the people. *Carter*, 2012 UT 2, ¶¶22, 30-31. For these reasons, Proposition 4’s funding provision is an appropriate subject for and use of the people’s legislative power via initiative. For this Court to hold that a citizen initiative cannot propose any legislation that requires funding would effectively render the people’s reservation of their right to directly legislate and to directly legislate to reform their government a nullity.

The Legislative Defendants’ argument also presumes that the Commission may be entitled to an unlimited amount of funding. Proposition 4 plainly provided that “[t]he Legislature shall appropriate *adequate funds* for the Commission to carry out its duties, and shall make available to the Commission such personnel, facilities, equipment, and other resources as the Commission may reasonably request.” Utah Code § 20A-19-201(12)(a) (2018) (emphasis added). This provision does not require the Legislature to fund any specific amount. Rather, the Legislature has both the ability and discretion to determine what is “adequate” funding for the Commission to carry out its duties. It also has discretion to consider the “reasonableness” of the resources requested by the Commission.

The Legislative Defendants seem to suggest that the Legislature’s ability to balance the annual budget is jeopardized by Proposition 4. The Court agrees that the Legislature is required under article XIII, section 5 of the Utah Constitution to balance the annual budget each fiscal year. However, it is not clear how Proposition 4 jeopardizes the Legislature’s ability to do that. The Legislative Defendants do not allege any specific fact and offer no evidence supporting the statement that Proposition 4 will jeopardize Utah’s annual budget.

In addition, the Legislative Defendants take the position that Proposition 4’s funding provision is unconstitutional because it establishes appropriations that bind future legislatures. The Court is unclear what specific language in Proposition 4 is offensive and how funding for the Commission would be materially different than what the Legislature enacted in S.B. 200. In S.B. 200, the Legislature appropriated / committed one million dollars to fund the Commission under S.B. 200 and ensured that the funding will “not lapse” for at least the next fiscal year. *See* Utah Code Ann. § 20A-20-13(1)-(2) (2020). This specific language appears to undercut the Legislative Defendants’ argument that a legislature “cannot bind a future legislature’s hands . . . when it comes to budgetary decisions.” (*Leg. Defs.’ Opp’n / Cross-MSJ*, p. 42.). In addition, there are examples where, by law, future legislatures are bound to honor financial commitments made by prior legislatures. *See, e.g.*, Utah Code § 63J-1-205.1 (2020) (effective as of 2020 and requiring the Legislature to “appropriate money each fiscal year sufficient to pay the principal, premium, and interest due on the state’s outstanding general obligation bonds before making any other appropriation in the fiscal year.”). While the Court recognizes that the legislature is entrusted with and plays a crucial role in overseeing the State’s budget, spending, appropriations and its debt, it is unclear how requiring “adequate” funding for the Proposition 4 Commission is unconstitutional while committing one million dollars for the S.B. 200 Commission, which funding will “not lapse” is not.

In addition, given that Proposition 4 passed by a majority vote and was enacted as law, the Legislature simply is not free to reject or decline to follow the law, simply because it disagrees. The Supreme Court has recognized that the legislature cannot impose “overly burdensome restrictions, on the initiative power when the constitutional responsibility and duty of the legislature in enacting initiative enabling legislation is to facilitate the initiative process.” *Gallivan*, 2002 UT 89, ¶59 n. 11.¹² This principle should also apply when the initiative passes and becomes law.

The Legislative Defendants cite *People’s Advocates, Inc. v. Superior Court*, 226 Cal. Rptr. 640, 647, 181 Cal. App. 3d 316, 329 (Ct. App. 1986), arguing that the people’s initiative was invalid to the extent it “displaced the process (budget and budget bill) by which [the constitution] command[ed] the adoption and enforcement of budget” and attempted to bind future legislatures. (*Leg. Defs.’ Opp’n / Cross-MSJ*, p. 42.) The *People’s Advocates* case, however, is not applicable here. In *People’s Advocates*, the initiative in question restricted the operating budget of the legislature in perpetuity using a specific numerical formula and, in so doing, that court concluded that it “divest[ed the Legislature] of the power to enact legislation in violation of the California Constitution. *People’s Advocates*, 226 Cal. Rptr. at 647. By limiting the Legislature’s budget, it necessarily limited the Legislature’s core legislative function. That is not the case here.

Under Proposition 4, the Commission is a public body, appointed by elected officials, that will make *advisory* recommendations in an effort to increase the accountability of the Legislature during the redistricting process. *Cf Salt Lake City v. International Association of Firefighters*, 563 P.2d 786, 789-90 (Utah 1977) (holding legislature could not surrender legislative authority to an unaccountable private commission, appointed by private actors, that issued binding determinations). Given the advisory nature of the Commission under Proposition 4, the Legislature retains the authority and discretion to determine the “adequate funding” that will be appropriated and arguably the reasonableness of the resources requested by the Commission to fulfill its duties.

2. Delegating Core Legislative Functions

The Legislative Defendants assert that Proposition 4 unconstitutionally delegates the Legislature’s redistricting responsibilities to the commission and the chief justice. The Legislative Defendants’ delegation argument relies primarily on the premise that the Legislature has sole and exclusive authority over redistricting, a premise rejected as a matter of federal and Utah law above. They also contend that Proposition 4 has so limited and circumscribed the Legislature’s core legislative redistricting functions that they have essentially been delegated to

¹² The *Gallivan* court stated: “The Legislature is not free to enact restrictions on constitutionally established and guaranteed rights and powers whenever it perceives that the system of checks and balances is misaligned or out of equilibrium. Such a purpose is not a legitimate legislative purpose. Furthermore, it is not a legitimate legislative purpose to impose checks and balances, i.e., overly burdensome restrictions, on the initiative power when the constitutional responsibility and duty of the legislature in enacting initiative enabling legislation is to facilitate the initiative process.” *Gallivan v. Walker*, 2002 UT 89, ¶59 n. 11. “[T]he representative legislative process, while coequal and coextensive with the direct initiative legislative process, has a different character in our constitutional system than the direct legislative process in that the direct initiative legislative process may be considered a constitutional check on the representative legislature if it fails to enact widely supported legislation.” *Id.*

the Commission (and to some extent, if involved, the chief justice) because the Commission has primary responsibility for creating redistricting plans. Plaintiffs, on the other hand, argue that both the Commission and the chief justice serve solely in an advisory role, are bound to follow statutorily required redistricting standards and procedures, and offer only non-binding recommendations for consideration by the Legislature. The Court agrees with Plaintiffs.

Reviewing the provisions of Proposition 4, it is clear that the Legislature retains the ultimate decision-making authority when it comes to redistricting. It is free to reject or adopt any recommended redistricting plan or to create its own, subject to Proposition 4’s redistricting standards and procedures. Proposition 4 creates an Independent Redistricting Commission and empowers it to create and “recommend” redistricting plans, which would be presented to the Legislature for consideration. Utah Code § 20A-19-204(2)(a) (2018). Proposition 4 does not require the Legislature to enact any of the recommended plans. *See* Utah Code Ann. §20A-19-204(2)(a) (“[t]he Legislature shall either enact without change or amendment ... or reject the Commission's recommended redistricting plans submitted to the Legislature ...” (emphasis added)). Instead, the Legislature has the option to “either enact [one of the proposed redistricting plans] without change or amendment . . . or reject” all three of them. *Id.* If it rejects the recommended plans, it can design its own, but the Legislature’s plan – like those recommended by the Commission – must comply with the statutorily required redistricting standards, comply with the procedure (timing, notice, etc.), and the general prohibition on partisan gerrymandering. *See id.* § 20A-19-204(5)(a), § 20A-19-103(1). If the Legislature elects to design and enact its own redistricting plan, it is obligated to issue a report, explaining why it rejected the recommended plans and why it’s redistricting plan “better satisfies the redistricting standards and requirements.” *Id.* § 20A-19-204(5)(a).

The Commission and the chief justice’s role in redistricting is advisory. Under Proposition 4, the Legislature remains free to reject or adopt a recommended plan or to design and enact its own. Proposition 4 does not “delegate” the Legislature’s “core function” or authority to “divide the state into congressional, legislative, and other districts” to the Commission or to the chief justice. Rather, the Commission, in compliance with the mandatory redistricting standards, designs redistricting plans and makes recommendations. The ultimate decision as to which redistricting plan to enact remains with the Legislature. It has the discretion to adopt or reject any redistricting plan proposed by the Commission, or if called upon the chief justice, or it can design and enact its own. *Salt Lake City v. Int'l Ass'n of Firefighters, Locs. 1645, 593, 1654 & 2064*, 563 P.2d 786, 790 (Utah 1977) (stating, to “retain the power to make ultimate policy decisions,” the Legislature must be free to “override decisions made by others.”)

The Utah Supreme Court also reviewed Proposition 4 in ruling that Plaintiff’s Count V stated a viable claim. It also recognized that under Proposition 4, the Legislature still retains the “ultimate responsibility” for “dividing the state into congressional, legislative, and other districts” and enacting the congressional and legislative maps. *LWVUT*, 2024 UT 21, ¶ 198. It also rejected the argument that the Commission’s role was more than advisory. *Id.* Notably, the Legislative Defendants do not address or challenge the *LWVUT* court’s analysis. They do not discuss how the Legislature’s retention of the ultimate decision-making responsibility supports or impacts their delegation argument. Instead, the Legislative Defendants cite specific language from three cases to support their argument that Proposition 4 unconstitutionally delegated the

Legislature's core legislative redistricting function to the Commission. Plaintiffs do not disagree with the law cited in those cases. Rather, the cases are factually distinguishable because Proposition 4 does not delegate the Legislature's core legislative function to the Commission or the chief justice. Each case is discussed in turn.

The Legislative Defendants cite *W. Leather & Finding Co. v. State Tax Comm'n of Utah*, 87 Utah 227, 48 P.2d 526, 528 (1935), stating: "The Legislature is not permitted to abdicate or transfer to others the essential legislative function with which it is thus vested." *Id.* In that case, the Utah Supreme Court reversed a tax commission decision that imposed a tax and then determined who was required to pay the tax. *Id.* The court reasoned that "the imposition of a tax and the designation of those who must pay the same is an essential legislative function that may not be transferred to others." *Id.* In contrast, it recognized that "[t]he power vested in the commission to prescribe rules and regulations for making [tax] returns for ascertaining assessment and collection of the tax imposed by the act does not vest in the commission any discretion whatsoever in the matter of requiring the payment of a sales tax by anyone other than such as are designated in the act." *Id.* at 527–28. In contrast, Proposition 4 authorizes the Commission and the chief justice to only *recommend* redistricting plans. They have no decision-making authority; that authority remains with the Legislature.

They also cite *Int'l Ass'n of Firefighters*, 563 P.2d 786, 790 (Utah 1977) for the proposition that the Legislature's legislative and redistricting power must "be exercised by persons responsible and accountable to the people – not independent of them." In *Int'l Ass'n of Firefighters*, the Utah Supreme Court concluded that the legislature could not "delegate *unlimited discretion*" to "an ad hoc panel of private persons to make basic governmental policy" and make binding decisions. *Id.* at 789 (emphasis added). For context, the legislature passed an act that authorized the appointment of arbitrators, comprised of private citizens to make "binding determinations affecting the quantity, quality and cost of essential public service." *Id.* The arbitrators would ultimately make decisions on "conditions of employment," including retirement plans, workloads, work rules, management-right clauses and safety," including the number of men on duty at a particular time, the number assigned to equipment, and type of equipment used. *Id.* The arbitrator's decisions were final and binding on all matters in dispute, with the exception of salary and wage matters. *Id.* The court concluded that the legislature, who is accountable to the public, must "retain the power to make the *ultimate* policy decisions and override decisions made by others." *Id.* at 790. In support of its decision, the *Int'l Association of Firefighters'* court explained:

It is the unique method of appointment, requiring independent decision makers without accountability to a governmental appointing authority, and the unique dispersal of *decision-making power* among numerous ad hoc decision makers, only temporarily in office, precluding assessment of responsibility for the consequences of their decisions on the level of public services, the allocation of public resources and the cost of government, which renders invalid this particular delegation of legislative power.

Id. (emphasis added) (quoting *Dearborn Fire Fighters Union v. City of Dearborn*, 394 Mich. 229, 231 N.W.2d 226, 241 (1975)).

Under Proposition 4, the Commission does not have unlimited discretion. Rather, it must comply with the redistricting process set forth in Proposition 4, which includes designing redistricting plans in compliance with federal law and Proposition 4’s mandatory redistricting standards and complying with redistricting procedures. The Commission does not have final decision-making authority. And it does not make binding decisions. The Commission merely recommends proposed redistricting plans drawn in accordance with Proposition 4’s standards and procedures. The Legislature has the option to adopt, reject or design its own redistricting plans. Unlike the arbitration panel in *Int’l Ass’n of Firefighters*, the Legislature is the ultimate decision-maker.

Finally, they rely on *Matheson v. Ferry*, 641 P.2d 674 (Utah 1982). In *Matheson*, the legislature amended a statute that established the legal process for the appointment of judges by the governor. The governor at the time challenged the constitutionality of the statute, arguing that it violated separation of powers by unconstitutionally controlling the appointment process and (1) limiting the governor’s options to “one of two or three candidates nominated by the judicial nominating commission, on which two legislators sat, and (2) subjecting the governor’s nominees to advice and consent by the Senate. *Id.* at 678-79. The *Matheson* court analyzed each restriction individually and collectively. It concluded that the legislators’ participation on the nominating commission and the requirement that the governor choose from a “severely narrow[]” field of candidates was not unconstitutional and did not violate separation of powers. *Id.* at 679. However, it did conclude that the “advice and consent” provision, which effectively gave the senate a veto over the governor’s choice, was unconstitutional by violating the separation of powers. *Id.* at 679-80. The Court reasoned that with these statutory restrictions, “the Governor’s discretion and power . . . bec[a]me severely curtailed to a point where his participation in the appointment process could become ineffective, subservient, and perfunctory, amounting to effective control by the Legislature.” *Id.* at 679.

Unlike the statute in *Matheson*, Proposition 4 authorizes the Commission and, when involved, the chief justice only to *recommend* redistricting plans. They have no decision-making authority and no veto. To the extent that the Legislature is required to consider and vote on recommended plans, without amendment and with an up / down vote, the Legislature still remains free to reject all the plans and instead create its own. Contrary to reasoning in *Matheson*, the Legislature’s role in redistricting under Proposition 4 is not “subservient,” “perfunctory,” or controlled by the Commission or the chief justice in any way.

Proposition 4 does not delegate to the Commission or the chief justice or to any other body the Legislature’s core legislative redistricting function. The Legislature retains the ultimate decision-making authority regarding which redistricting plan to enact and it has the authority to adopt or reject any recommended plan and the discretion to create its own in compliance with Proposition 4’s redistricting standards and procedures.

3. The Chief Justice of the Utah Supreme Court

Plaintiffs argue that giving the chief justice a role in the redistricting process does not violate the separation of powers under article V of the Utah Constitution and does not amount to

an advisory opinion. While the Legislative Defendants challenge generally and collectively the Commission's and the chief justice's redistricting roles under Proposition 4 (as discussed above), they do not respond to or oppose these specific arguments. However, they do highlight that Plaintiffs do not challenge S.B. 200's removal of the chief justice's role from the redistricting process. The Court agrees with Plaintiffs.

Article V, section 1 of the Utah Constitution establishes three branches of government and states that “no person charged with the exercise of powers properly belonging to one of [the] departments, shall exercise any functions appertaining to either of the others.” Utah Const. art. V, § 1. To violate this constitutional provision, the Utah Supreme Court has stated that the role undertaken “must be so inherently legislative, executive or judicial in character that they must be exercised exclusively by their respective departments” *In re Young*, 1999 UT 6, ¶ 14, 976 P.2d 581 (cleaned up). The *Young* court clarified that the power or function exercised by one member of one branch must “appertain[] to” another branch, specifically it “must be one that is essential, core, or inherent in the very concept of one of the three branches of a constitutional government.” *Id.* ¶ 26. In so doing, the Court also recognized that there are “powers and functions which may, in appearance, have characteristics of an inherent function of one branch but which may be permissibly exercised by another branch.” *Id.* ¶ 14; *see, e.g., Matheson v. Ferry*, 641 P.2d at 679 (holding legislators' participation on judicial nominating commission was not unconstitutional and did not violate separation of powers). The *Young* court was asked to reconsider its initial ruling in the case. After analyzing prior rulings and considering that members from all three branches provide some amount of cross-branch support, the Court reversed its initial ruling and held that statutes providing for service by four legislators on the Judicial Conduct Commission and for their appointment by house and senate leaders did not violate separation of powers clause of Utah Constitution. *Id.* ¶ 28.

The legal and factual analysis in *Young* is instructive in this case. Here, Proposition 4 tasks the chief justice to play a contingency role, if certain events occur. Section 20A-19-201(10) directs the chief justice to appoint commissioners to the Commission *if* the designated appointing authority fails to do so. Section 20A-19-203(2) directs the chief justice to select at least one compliant plan (from the two submitted to him or her from the Commission) *if* the Commission fails to agree upon a plan to recommend to the Legislature. In this case, like in *Young*, the chief justice's limited role in redistricting is not inherently or exclusively legislative. If called to participate, the chief justice could appoint commissioners to the Commission or would be asked to tie break by selecting a redistricting plan that complies with Proposition 4's redistricting standards to recommend to the Legislature, but only if the Commission fails to or cannot do so. The chief justice makes only nonbinding recommendations, does not decide which redistricting plans to enact and is not lawmaking. For these reasons, the chief justice's limited cross-branch service does not violate separation of powers because the role is a limited, contingent function and not a core legislative power.¹³

¹³ Plaintiffs cite several examples where the chief justice or other members of the judiciary are called upon to recommend the adoption of legislation or participate in cross-branch activities. (*Pls. ' Mot.* at 19, n. 2.) Plaintiffs cite for example Utah Code § 78A-2-104(5)(c)(ii) (requiring the Judicial Council to provide “recommendations for legislation”); Utah Code § 26B-5-803(3) (requiring Utah Behavioral Health Commission, including members of judiciary appointed by the Chief Justice to report

In addition, the chief justice’s role in redistricting is not tantamount to issuing an advisory opinion. The Judicial Power Clause of article VIII, section 1 of the Utah Constitution “implies a prohibition on the issuance of advisory opinions by our *courts.*” *Utah Transit Authority v. Local 382 of Amalgamated Transit Union*, 2012 UT 75, ¶ 23, 289 P.3d 582 (emphasis added). The chief justice of the Utah Supreme Court is but one member of that court. While he or she is tasked to fulfill a limited role under Proposition 4, fulfilling that role and recommending a redistricting plan is not an opinion, advisory or otherwise, by the Utah Supreme Court. In this limited role, the chief justice is not exercising a judicial power. He or she would essentially be making a recommendation based on work done by the Commission, if the Commission is unable to do so. The recommendation is not a “judgment” nor a legal ruling by a “court.” While the chief justice’s participation under Proposition 4 is not unconstitutional and any recommendation made is not an advisory opinion from a “court,” any challenge to the plan the chief recommends or the plan ultimately enacted by the Legislature could lead to the chief justice’s recusal from that case. Voluntary recusals are not uncommon.

4. The Legislature’s Discretion

The Legislative Defendants argue that the Legislature’s exercise of “discretion” inherent in redistricting cannot be limited by statute (i.e., by enacting law) and that Proposition 4 unconstitutionally restrains the Legislature’s discretionary redistricting authority. They challenge all Proposition 4 provisions that require the Legislature to comply with any *mandatory* redistricting process, standards and procedures.¹⁴ The crux of their argument is that the Legislature, alone, has exclusive, constitutionally vested redistricting authority and with that, the unfettered discretion to exercise that authority. This Court has already rejected this argument. The Legislature’s redistricting authority is subject to the state’s ordinary law-making constraints, which include the people’s equal right to propose redistricting legislation. Post-Proposition 4, the Legislature does not have unrestricted or unfettered “discretion” to redistrict as it pleases. Rather, the Legislature is subject to and required to comply with the mandatory redistricting standards and procedures under Proposition 4. The people have the legislative authority to enact redistricting legislation, and it did. Proposition 4 – which was state law – is exactly what was envisioned by the majority in *Rucho* to address issues of partisan gerrymandering.

recommendations to the Legislature); Utah Code § 63O-2-301(1)(c) (requiring State Capitol Preservation Board, which includes the chief justice or a designee to submit a budget request to the Legislature and the Governor).

¹⁴ The mandatory redistricting standards include the specified order of priorities, the requirement to minimize municipality and county splits, the ban on partisan considerations, the requirement to use judicial standards, and the private right of action. They challenge the timing limitations, specifically that the Legislature must allow the Commission and/or the chief justice to fulfill their statutory responsibilities before the Legislature can create its own plan. They challenge the requirement that the Legislature must consider the plans recommended by the Commission, by voting on the plans, without amendment, and with an up or down vote. And, if the Legislature elects to create its own plan, they challenge the requirement to issue a public explanation. They assert that Proposition 4 unconstitutionally limits the Legislature’s redistricting authority and eliminates its discretion in creating a redistricting plan.

Nonetheless, the Legislative Defendants cite select excerpts from *Evans & Sutherland Computer Corp. v. Utah State Tax Comm'n*, 953 P.2d 435, 442 (Utah 1997) and *Salt Lake City v. Ohms*, 881 P.2d 844 (Utah 1994) asserting that the Legislature’s constitutionally-granted redistricting authority, under article IX, section 1, cannot be limited by statute and that it must retain “discretion” to discharge its responsibilities under the Utah Constitution and make policy decisions. (See e.g., Leg. Defs.’ Reply at 3-8.) Neither *Evans* nor *Ohms* stand for nor support the argument that a citizen’s initiative, containing provisions binding on the legislature, is unconstitutional because it limits legislative discretion by statute. Rather, these cases stand for the proposition that the Legislature cannot transfer power constitutionally granted to one legislative body to another nor delegate its core-legislative functions to an independent body, respectively.

In *Evans*, the Utah Supreme Court addressed the constitutionality of a statute that vested district courts with the ability to review Tax Commission decisions “*de novo*,” giving no deference to the State Tax Commission’s decision. *Evans & Sutherland Computer Corp.*, 953 P.2d at 440. Article XIII, section 11 of the Utah Constitution¹⁵ establishes the State Tax Commission and specifically defines the makeup of the commission and its constitutionally established duties. *Id.* at 441. The *Evans* Court held that “this constitutional provision is more than a grant of power to the Commission. It also limits the power of the legislature to confer the Commission’s powers on other governmental entities.” *Id.* at 442. It ultimately concluded that the *de novo* judicial review standard, under these circumstances, was unconstitutional because it effectively removed the Tax Commission’s constitutionally bestowed *power* to decide how to adjust and equalize the valuation and assessment of property and vested that power with the district courts, whenever the Tax Commission’s decision was challenged. *Id.* at 442-43. The court concluded that the statute did not actually provide for review of the Commission decision; rather, it effectively removed a core function from the Commission and effectively placed the Tax Commission’s decision-making with the courts to decide “afresh.” *Id.* at 441, 443. The *Evans* Court held the legislature violated article XIII, section 11 by establishing *de novo* review of the Tax Commission’s decisions. *Id.* at 442.

¹⁵ Article XIII, section 11 states:

There shall be a State Tax Commission consisting of four members, not more than two of whom shall belong to the same political party. The members of the Commission shall be appointed by the Governor, by and with the consent of the Senate, for such terms of office as may be provided by law. The State Tax Commission shall administer and supervise the tax laws of the State. It shall assess mines and public utilities and adjust and equalize the valuation and assessment of property among the several counties. It shall have such other powers of original assessment as the Legislature may provide. Under such regulations in such cases and within such limitations as the Legislature may prescribe, it shall review proposed bond issues, revise the tax levies of local governmental units, and equalize the assessment and valuation of property within the counties. The duties imposed upon the State Board of Equalization by the Constitution and Laws of this State shall be performed by the State Tax Commission.

Utah Const. art. XIII, § 11.

In *Ohms*, the Court considered the constitutionality of a statute that delegated the “ultimate judicial power” to a commissioner, upon a criminal defendant’s waiver of the right to a trial before district court judge with or without jury and consent to have the case tried and final judgment entered by a court commissioner. *Ohms*, 881 P.2d at 846. The *Ohms* Court considered the constitutional power granted to courts under article VIII of the Utah Constitution. It held “[c]ore functions or powers of the various branches of government are clearly nondelegable under the Utah Constitution.” *Id.* at 848. The court explained that while “a legislator can utilize assistants for various purposes, *these assistants cannot exercise the legislator’s voting power since such is a core legislative function.* It is the legislator, not his or her staff, who is elected for that purpose, and it is the legislator who is accountable to the people.” *Id.* (emphasis added). Similarly, the court concluded that “a judge cannot appoint another person to enter final judgments and orders or impose sentence.” *Id.* The *Ohms* court acknowledged that judges can rely on referees, court commissioners and other assistants in supporting roles, but they cannot exercise a judge’s ultimate judicial power because that “core function” is “nondelegable.” *Id.* It also concluded that the legislature’s attempt to grant commissioners judicial authority to perform a “core function” by statute, violated article VIII, section 8’s judicial selection process and separation of powers. *Id.* at 851-52.

Evans and *Ohms* do not apply here. There is no separation of powers issue. The legislature and the people are not separate. Together, they make up the “Legislative Department” and have co-equal law-making authority. Redistricting is a quintessentially legislative function. There is no unconstitutional delegation of core legislative functions. Proposition 4 does not delegate the Legislature’s core legislative function to the Commission or the chief justice. The Commission and, if called upon, the chief justice serve in purely advisory roles. The Legislature does in fact retain discretion in fulfilling its redistricting responsibilities; however, it must do so in compliance with Proposition 4. It also retains the ultimate decision-making authority and the discretion to decide which redistricting plan to enact.

5. Legislature’s Internal Rule Making Authority, under Article VI, Section 12 of the Utah Constitution.

The Legislative Defendants argue that certain provisions in Proposition 4 invade the Legislature’s constitutional authority to determine its own procedural rules under the Utah Constitution.¹⁶ Article VI, section 12: “Each house shall determine the rules of its proceedings and choose its own officers and employees.” Utah Const. art. VI, § 12. They claim that certain Proposition 4 provisions violate the constitution by placing procedural and mandatory

¹⁶ The Legislative Defendants also assert that Proposition 4 transgresses the Legislature’s constitutional law-making procedure. They argue that the Utah Constitution requires “[e]very bill shall be read by title three separate times in each house,” and every bill shall pass “with the assent of the majority of all the members elected to each house.” Utah Const. art. VI, § 22. That “[t]he presiding officer of each house, not later than five days following adjournment, shall sign all bills . . . passed by the Legislature.” *Id.* § 24. And it requires the Legislature to “present” each bill passed “to the Governor” for approval. Utah Const. art. VII, § 8(1). The Legislative Defendants, however, do not explain how Proposition 4 prevents them from complying with these provisions of the Utah Constitution. (*See Leg. Defs.’ Opp’n / Cross MSJ*, p. 43-44.)

restrictions on the Legislature, specifically: (1) that the Legislature take a mandatory up-or-down vote on the plans recommended by the Commission or the chief justice, Utah Code §20A-19-204(2)(a) (2018); (2) that, if the Legislature were to adopt its own plans, it must issue a report and explain how its plan “better satisfies” Proposition 4’s substantive standards, §20A-19-204(5)(a) (2018); (3) that the Legislature accept public comments on the proposed redistricting plan for at least 10 calendar days, §20A-19-204(4) (2018); (4) that the Legislature redistrict only once a decade unless ordered by a court, §20A-19-102 (2018); and (5) that the Legislature only adopt a map after receiving the maps from the Commission or the chief justice, §20A-19-204(3) (2018). (*See generally Leg. Defs.’ Opp’n / Cross MSJ*, p. 43-56.) They contend that the Legislature should not be required to comply with any mandatory procedural provision in Proposition 4 that differs from its internal rules of proceeding.

Plaintiffs assert that article VI, section 12, cannot prohibit or limit a citizen’s initiative to alter or reform the government. They argue article VI, section 12, must be interpreted and applied in light of and in harmony with other constitutional provisions. *See Berry by and through Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 675 (Utah 1985). The other relevant provisions are article 1, section 2 and article VI, section 1, which provide that “[a]ll political power is inherent in the people,” that they have the power and the right to “initiate any desired legislation,” and “to alter or reform their government as the public welfare may require.” Utah Const. art 1, § 2; Utah Const. VI, § 1(2)(a)(i)(A). They assert the people’s right to initiate legislation is co-equal with and “reaches to the full extent of that of the Legislature.” *Carter v. Lehi City*, 2012 UT 2, ¶ 22, 30-31. And, while they appear to accept that the five challenged provisions are procedural, they assert that the “line between procedural and substantive law is hazy.” *Moore*, 600 U.S. at 31 (citations and quotations omitted). Based on all of these principles, Plaintiffs contend that the Legislature’s constitutional authority to determine its rules of internal proceeding cannot trump the people’s fundamental constitutional right to exercise their co-equal and co-extensive legislative power to enact substantive redistricting reform.

The Court agrees, to some extent, with both sides. This Court recognizes the breadth of the people’s legislative power to initiate legislation to alter or reform their government. The Utah Supreme Court’s decisions in *Carter*, *Gallivan*, and recently in *LWVUT*, make clear that the people’s right to enact *law* is fundamental and it is co-equal and co-extensive with the Legislature. Article VI, section 12 of the Utah constitution also expressly grants the Legislature the power to establish and determine its internal rules of operation. This grant of internal rule-making authority ensures that the legislative branch can function independent of the other two branches and is a core aspect of the separation of powers. Utah const. art. V, section 1; *see also People’s Advoc.*, 226 Cal. Rptr. at 642 (“[T]he power of a legislative body to govern its own internal workings has been viewed as essential to its functioning except as it may have been expressly constrained by the California Constitution.”). While the people have co-equal legislative power and the right to initiate legislation to “alter or reform” the government, the Court agrees that the initiative power cannot be used to enact laws *solely* to displace the Legislature’s internal *rule-making* authority under article IV, section 12 of the Utah Constitution. *See, e.g., Paisner v. Att’y Gen.*, 390 Mass. 593, 603, 458 N.E.2d 734, 740 (1983) (declining to certify an initiative with the principal purpose of proposing changes “to the organization and operation of the House and Senate”). But the Court disagrees that that is what Proposition 4 did.

As discussed fully herein, whether the five challenged provisions violate the Legislature's exclusive rule-making authority¹⁷ requires analysis of the subject of and purpose behind the initiative itself. The subject of Proposition 4 was redistricting reform. The purpose was to create an independent redistricting process, including mandatory standards and procedures, applicable to both the newly created commission and the legislature and enforceable through a private right of action. There is no dispute that redistricting is a purely legislative function. The five challenged provisions do not unconstitutionally invade the Legislature's exclusive rule-making authority. While they are procedural in nature, they are not "internal rules" passed under the guise of legislation. Rather, these procedural requirements are inextricably intertwined with Proposition 4's substantive, legislative redistricting reform. But, to the extent that these procedural requirements contradict the Legislature's "internal rules" that apply generally to all proceedings, any incidental infringement on the Legislature's internal rules was both appropriate and necessary to facilitate Proposition 4's substantive redistricting reform.

a. Rules versus Laws

To determine if the challenged provisions in Proposition 4 are unconstitutional invasions into the Legislature's exclusive rule-making authority, the Court must determine if Proposition 4 is enacting *law* or if it is making *rules*, through legislation. The case *Paisner v. Att'y Gen.*, 390 Mass. 593, 599-602, 458 N.E.2d 734, 738-740 (1983) is instructive in explaining the difference between the two.

In *Paisner*, the Massachusetts Supreme Court affirmed a decision, declining to certify a proposed citizen initiative because it exceeded legislative authority. The initiative plainly proposed changes "to the organization and operation of the House and Senate." *Id.* at 736. It proposed sweeping changes to all internal functions, including processes for nominating and appointing presiding officers, majority and minority floor leadership, legislative committee chairs, and committee members. *Id.* at 737. It prescribed committee procedures, including reporting, recording committee votes, notice of committee sessions, and public hearings on every bill. *Id.* It also included provisions covering daily calendars, printing bills, roll calls, and it established a committee on legislative administration and budget, and proposed limitations on salary differentials of legislative leaders. *Id.*

The *Paisner* court concluded that the initiative exceeded the scope of legislative power because it proposed to establish "rules" rather than enact "law." *Id.* at 739. The court distinguished the two explaining that "laws govern conduct external to the legislative body, while rules govern internal procedures." *Id.* A law is binding, but a rule is not because the legislature's internal rules are subject to change by current and future legislatures. *Id.* (stating "future legislative sessions cannot be bound" and the "discretion to determine the method of

¹⁷ Notably, Utah courts have not interpreted article VI, section 12 of the Utah Constitution and have not considered any challenges – via citizen initiative or otherwise – to the Legislature's internal rule-making processes. Utah courts have not addressed how the people's fundamental constitutional right to "alter or reform" their government may impact the Legislature's constitutional authority to determine their internal proceedings, if at all. And Utah courts have never addressed if any "incidental" impact on the Legislature's rule-making authority is unconstitutional. This presents yet another issue of first impression.

procedure cannot under the Constitution . . . be abrogated by action taken by an earlier Legislature.”). And, in that case, given the nature of pure rule-making, “[e]ven if the proposed initiative were to be enacted, the continuing power of the individual branches to ignore its provisions and to determine their own procedures would render the proposal a nullity.” *Id.*

In reaching its decision, the *Paisner* court considered the “principal purpose” of the initiative, which was to change the internal operations of the legislature. *Id.* It ruled that such “[l]egislative rule-making authority is a continuous power absolute and beyond the challenge of any other tribunal.” *Id.* (citing *United States v. Ballin*,¹⁸ 144 U.S. 1, 12 S. Ct. 507, 36 L.Ed. 321 (1892)). It also ruled that the legislature’s internal rule-making was beyond the reach of the people’s initiative power, notwithstanding the co-equal and co-extensive power the people and the legislature shared. *Id.* (holding “the plaintiffs, in their initiative petition which seeks to establish rules for future legislative sessions, claim for the people a power greater than that of the [legislature].”).

The Legislative Defendants cite *People’s Advocates, Inc.*, 226 Cal. Rptr. 640, for the same proposition that citizen initiatives cannot control the legislature’s internal rule-making processes.¹⁹ Notably, the *People’s Advocates* case is factually similar to *Paisner*. In *People’s Advocates*, the people passed a statutory initiative measure titled the “Legislative Reform Act of 1983” (the Act), which proposed “sweeping changes in the organization and operation of the Assembly and Senate and limit[ed] the content of future legislation which appropriates money

¹⁸ The U.S. Constitution contains a provision similar to article VI, section 12 of the Utah Constitution. It states that “[e]ach House may determine the Rules of its Proceedings.” U.S. Const. art. I, § 5, cl. 2. In *United States v. Ballin*, 144 U.S. 1 (1892), the U.S. Supreme Court considered whether an act was legally passed by a “quorum” of voting members, as that term was defined by the internal rules of the house. *Id.* at 3. In interpreting this provision, the *Ballin* Court confirmed that “[t]he constitution empowers each house to determine its rules of proceeding[.]” but recognized that this rule-making power is not unlimited and that such “rules” cannot be used to “ignore constitutional restraints or violate fundamental rights.” *United States v. Ballin*, 144 U.S. 1, 5 (1892). (recognizing “there should be a reasonable relation between the mode or method of proceeding, established by the rule and the result which is sought to be attained.”)

¹⁹ The Legislative Defendants also cite *Alaskans for Efficient Government, Inc. v. State of Alaska*, 153 P.3d 296 (Alaska 2007). In that case, the Alaskan Supreme Court considered, pre-election, whether a proposed initiative that would require a supermajority vote in the Alaska legislature or a majority vote of the people to pass any tax-related bills was the proper subject matter for a citizen initiative. The State argued that the initiative was unlawful because the Alaska Constitution authorized the legislature to pass most laws by simple majority vote. The Alaska Supreme Court addressed the pre-election challenge and affirmed the refusal of state officials to place the initiative on the ballot. *Id.* at 298. (allowing limited challenges pre-election only when “the initiative is challenged on the basis that it does not comply with the state constitutional and statutory provisions regulating initiatives”) (cleaned up). The *Alaska* Supreme Court treated the state constitution’s majority vote requirement as a “constitutionally based subject-matter restriction, prohibiting the enactment of any law that proposes to modify the majority-vote standard.” *Id.* at 302. It then held that state officials properly rejected the initiative at the preelection stage “for failing to comply with constitutional provisions regulating initiatives.” *Id.* This case is consistent with the Utah Supreme Court’s ruling in *LWVUT*, recognizing that a citizen initiative cannot amend the Utah Constitution. And this Court has rejected the argument that Proposition 4 attempted to amend the Utah Constitution.

for their operations.” *Id.* at 642. The proponents of the initiative argued that their constitutional initiative power was superior to and could supersede the legislature’s constitutional rule-making authority and that a statute is superior to a rule. *Id.* at 643-44. They reasoned that the people have the power “to propose statutes ... and to adopt or reject them,” a power shared with its state legislature and the governor. *Id.* In contrast, they argued that an “internal rule is merely a product of the house or houses that created it,” and because the legislature adopted rules by statute, the Act did not violate the California Constitution. *Id.*

The *People’s Advocates* court disagreed. It rejected the argument that a statute is superior to a rule and could supersede and control the subject matter of the legislature’s rule making powers. *Id.* at 644-46. The Court held that “the *form* (statute or rule or resolution) chosen by a house to exercise its rule-making power cannot preempt or estop a house from employing its *substantive* powers under” the constitution and confirmed that a rule of internal proceeding “made in the guise of a statute is nonetheless a *rule* ‘adopted’ by the house and may be changed by an internal rule.” *Id.* at 645. The Court held: “It is not the form by which the rule is adopted but its substance which measures its place in the constitutional scheme.” *Id.* at 646. The *People’s Advocates* court concluded that the Act attempted to enact “law” that effectively replaced the state legislature’s internal “rules” regarding everything from “the selection of the officers of the houses” to “their rules of proceeding,” which, under the California Constitution was within “the exclusive prerogative of each house of the Legislature or the combined houses.” *See id. generally*, at 644-46. For those reasons, the California Court of Appeals concluded that half of the Act violated the California Constitution and was not the proper subject matter for a citizen’s initiative.

Proposition 4 is distinguishable from the legislation proposed in both *Paisner* and *People’s Advocates*. In each of those cases, the principal purpose of the initiative was rule-making through legislation *solely* to govern the internal proceedings of the respective state legislatures. In this case, the “fundamental and overriding purpose” of Proposition 4 was to enact redistricting legislation. *See Coppernoll v. Reed*, 155 Wash. 2d 290, 302, 119 P.3d 318, 324 (2005) (rejecting initiative, pre-election, because it was not within either the state’s or the people’s power to enact). Any intrusion on the Utah Legislature’s internal procedures here is merely “incidental” to fulfilling the purpose of the legislation. *Id.* In evaluating if legislation is properly proposed as an initiative, consideration should be given to the “*fundamental and overriding purpose*” of the initiative, rather than mere “incidental[s]” to the overriding purpose. *Futurewise v. Reed*, 161 Wash. 2d 407, 412–13, 166 P.3d 708, 711 (2007) (rejecting challenge to the constitutionality of an initiative, pre-election)

Redistricting is a legislative function. Proposition 4 both altered how redistricting would be accomplished in Utah and enacted redistricting reform that was binding on the Legislature, the Commission, the chief justice, the people and the courts. Proposition 4 enacted substantive *law* establishing a redistricting process, which includes mandatory standards and procedures. Consistent with the analysis in *Paisner*, Proposition 4 and its redistricting legislation was law-making, not rule-making. Unlike the Act proposed in *Paisner*, which attempted to reform the legislature’s internal procedures and turn “rules” into “laws,” the purpose behind Proposition 4 was to eliminate the opportunity for partisan gerrymandering and to create neutral standards and

procedures for redistricting, which provide, through legislation, manageable and justiciable standards to address partisan gerrymandering.²⁰ Unlike the initiatives challenged in *Paisner* and *People's Advocates*, Proposition 4 does not invade the Legislature's internal rule-making authority or dictate how the Legislature should govern its general internal proceedings.

b. Limitations on the Legislature's internal rule-making authority

This Court respects the Legislature's constitutional authority to determine the rules of its internal proceedings. The Utah Constitution clearly empowers each house and the entire Legislature to do so. Utah Const. art. VI, § 12. And this Court agrees, the form the rule takes, whether it be a "rule" or a "statute," does not limit that power. *People's Advoc., Inc.*, 226 Cal. Rptr. at 642. But that power is not unlimited. The Legislature's internal rule-making power cannot be used to "ignore constitutional restraints or violate fundamental rights." See *United States v. Ballin*, 144 U.S. 1, 5 (1892) (interpreting similar U.S. Constitution provision,²¹ recognizing "there should be a reasonable relation between the mode or method of proceeding, established by the rule and the result which is sought to be attained."); see also *Burt v. Speaker of the House of Representatives*, 173 N.H. 522, 528, 243 A.3d 609, 614 (2020) ("The legislature may not, even in the exercise of its absolute internal rulemaking authority, violate constitutional limitations."). It also should not be used to disregard the legislation enacted by the people through the exercise of fundamental constitutional rights merely because the legislature disagrees with it.

The Legislature's reliance on its internal rule-making authority to reject the substantive procedural requirements of Proposition 4's redistricting reform must be evaluated in light of the people's constitutional right and the Legislature's corresponding constitutional duty. The people have the fundamental constitutional right to exercise their legislative initiative power to alter or reform their government to enact substantive redistricting reform. *LWVUT*, 2024 UT 21, ¶¶ 9-11. The Legislature also has a recognized "constitutional responsibility and duty" to facilitate the citizen initiative process by "enact[ing] initiative enabling legislation." *Gallivan*, 2002 UT 89, ¶ 59 n. 11. The Legislature cannot add barriers to the initiative process "whenever it perceives that the system of checks and balances is misaligned or out of equilibrium." *Id.* That is not a "legitimate legislative purpose." *Id.* It logically follows then, that once a citizen-initiative passes and becomes substantive law, the Legislature also has a similar duty to facilitate the legislation.

²⁰ The U.S. Supreme Court, in various decisions, has discussed the challenges with redistricting and applicable standards to evaluate partisan gerrymandering claims. That Court noted: "Indeed, the multitude of "granular" decisions that are made during redistricting was part of why the *Vieth* plurality concluded, in the context of a statewide challenge to a redistricting plan promulgated in response to a legal obligation to redistrict, that there are no manageable standards to govern whether the predominant motivation underlying the entire redistricting map was partisan." *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 457, 126 S. Ct. 2594, 2632 (2006). This is also why Chief Justice Roberts – writing for the majority – concludes that partisan gerrymandering claims are non-justiciable in federal court in *Rucho v. Commoncause*, 588 U.S. 684, 718, 139 S. Ct. 2484, 2506–07, 204 L. Ed. 2d 931 (2019). *Rucho* then clearly states that this is an issue that must be resolved by the states.

²¹ It states that "[e]ach House may determine the Rules of its Proceedings." U.S. Const. art. I, § 5, cl. 2.

It simply cannot decline to implement it because it does not agree with it or because implementing the substantive legislation may necessitate modification to the Legislature's non-binding internal "rules" in order to facilitate this specific new law.

c. Internal procedure rules vs. substantive law integral to redistricting reform.

The Legislative Defendants challenge five of Proposition 4's provisions, asserting each one "doesn't fit with" the Legislature's standard, internal rules and therefore invades its internal rule-making authority. The five challenged provisions, however, do not actually change or govern the general internal operations of the Legislature. Rather, as discussed further herein, these provisions only apply when the Legislature is involved in redistricting, which is generally once every ten years. These provisions are legal requirements forming the procedural foundation for the substantive redistricting legislation.²² Each provision challenged is integral to the redistricting legislation as passed by a majority of the voters in 2018. This Court's analysis is limited to whether these five challenged provisions violate article VI, section 12 and are therefore unconstitutional "rule-making." They are not.

(i) The mandatory up / down vote

The Legislative Defendants first argue that requiring the legislature to vote on the Commission's or the Chief Justice's proposed redistricting plan, with an up or down vote, and without changes or amendments, does not "fit" with the Legislature's internal process. They specifically raise the concern that there may be no legislator to sponsor any specific recommended plan presented for a vote. *See* Utah Code § 20A-19-203, -204(2)(a). The provisions requiring the legislature to vote on, and not merely disregard, recommended redistricting plans is a substantive requirement of the legislation. It ensures that the work performed by the Commission is at least considered by the legislature and doesn't die in or get tabled by the redistricting committee. Further, the recommended redistricting plans, even if not adopted, provide a basis for the legislature to consider options in designing its own plan in accordance with the statutory redistricting standards. Under the circumstances, this substantive requirement that in fact alters and reforms redistricting should not be rejected just because it does not fit into the legislature's internal rules that apply in all circumstances. Redistricting will occur once every ten years. The Legislature is duty bound to facilitate the implementation of the law passed by the people, which may include determining if and/or how to modify internal rules to facilitate substantive redistricting law and procedure.

(ii) The mandatory report

The Legislative Defendants argue it is both impractical and difficult to issue a report "ascertaining the will of 104 individual legislators" to explain why the legislature rejected the recommended plans and why the Legislature's redistricting plan better complies with the statutory redistricting standards. *See* Utah Code § 20A-19-301(5)(a). Assuming the preparation of such a report would be difficult and impractical, that argument does not make the requirement

²² The Legislature's internal rules are largely procedural. Substantive law may also be procedural. Just because the Legislature is legally required to comply with a "procedure" does not make it an internal rule.

unconstitutional. As Plaintiffs point out, the Legislature has adopted a process to provide counsel or reporting to United States Senators representing Utah, when requested. *See* Utah Code § 36-27-103. This counsel or reporting takes the form of either a joint resolution of the Legislature or a written statement that contains signatures of a majority of the members. *Id.* § 36-27-103(1)(a), (b). Capturing the collective views of legislators is not impractical nor unconstitutional. Requiring some explanation regarding the basis for the Legislature’s decision to reject all recommended plans in favor of its own is a substantive requirement of the redistricting legislation. It ensures the Commission’s work is considered and ensures that enacted maps comply with Proposition 4’s mandatory redistricting standards. It also provides transparency into the redistricting process.

(iii) 10-day notice period

The Legislative Defendants also take issue with the requirement prohibiting the Legislature from enacting any redistricting plan without first “making [it] available on the Legislature’s website . . . for a period of no less than 10 calendar days” and accepting public comments during that time. *See* Utah Code § 20A-19-204(4). They claim it invades their general rule-making authority to decide what they do, when to do it and how. They also argue that it is not necessary because, by virtue of the position, legislators must make themselves available to their constituents anyway. None of these arguments are persuasive. The 10-day notice requirement – as it specifically pertains to the redistricting map the Legislature proposes to enact – is another substantive redistricting requirement, ensuring transparency and public involvement in the redistricting process.

(iv) Requiring the Legislature to wait to enact a redistricting plan until after the Commission / Chief Justice completes statutory duties

The Legislative Defendants challenge the provision prohibiting the Legislature from “enact[ing] any redistricting plan . . . until adequate time [has been] afforded to the Commission and to the chief justice to satisfy their duties . . .”. Utah Code § 20A-19-102, -204(3). They contend this displaces the Legislature’s ability to set procedural rules. To the contrary, it is a substantive procedural requirement of the redistricting legislation. It ensures that the Commission and to the extent necessary, the chief justice, have sufficient time to fulfill their legal obligations and perform the work required by the statute. It also ensures that the Legislature has the opportunity to benefit from the work performed by the Commission, and if necessary the chief justice, before the Legislature selects a recommended plan or elects to design its own. This provision ensures that the Commission actually plays the contemplated advisory role.

(v) Limiting redistricting to once every 10 years

The Legislative Defendants argue that Proposition 4 “intrudes on the Legislature’s constitutional prerogatives.” (*Leg. Defs.’ Opp’n / Cross MSJ*, p. 49.) They argue that article IX of the Utah Constitution grants the Legislature “discretion to decide whether to conduct mid-decade redistricting,” and if there is any limitation on when redistricting should be accomplished, they argue that limitation can only be established by the Legislature through the “rules of [e]ach house,” *see* Utah Const. art. VI, § 12, or by a constitutional amendment. (*Id.* p. 49-50.) The

Legislative Defendants essentially argue that the Legislature can redistrict at any time because they can change their own internal rules to allow redistricting. In addition, they appear to argue that subsection (1)'s limitation on redistricting to once every ten years is an attempt to amend the Utah Constitution by statute, which cannot be accomplished through a citizen initiative. *LWVUT*, 2024 UT 2, ¶ 161. The Court disagrees.

First, as discussed above, the Legislature cannot use their internal rule-making authority to disregard constitutional rights or limitations. *Burt v. Speaker of the House of Representatives*, 173 N.H. 522, 528, 243 A.3d 609, 614 (2020) (“The legislature may not, even in the exercise of its absolute internal rulemaking authority, violate constitutional limitations.”).

Second, Article IX, section 1 of the Utah Constitution expressly limits the Legislature's authority to redistrict once every ten years. Proposition 4, section 20A-19-102(1), does not amend the constitution, rather it is consistent with article IX, section 1 of the Utah Constitution. Section 20A-19-102, is titled “Permitted Times and Circumstances for Redistricting.” Utah Code Ann. § 20A-19-102 (2018). The statute contains five subsections (1) – (5), each addressing different times and circumstances justifying redistricting. The Legislative Defendants challenge only one, specifically section 20A-19-102(1).²³ That challenged provision, section 20A-19-102(1), states:

Division of the state into congressional, legislative, and other districts, and modification of existing divisions, is permitted only at the following times or under the following circumstances: (1) no later than the first annual general legislative session after the Legislature's receipt of the results of a national decennial enumeration made by the authority of the United States.

Utah Code Ann. § 20A-19-102(1).

The Legislative Defendant's correctly assert that the Utah Constitution contains limitations and not “grants” of authority. With this in mind, article IX, section 1 states:

No later than the annual general session next following the Legislature's receipt of the results of an enumeration²⁴ made by the authority of the

²³ While section 20A-19-102 recognizes five circumstances that may trigger redistricting, the Legislative Defendants only challenge one, the express limit of redistricting once a decade under section 20A-19-102(1). Notably, Proposition 4 also substantively *adds* by statute the authorization to redistrict “after a change in the number of congressional, legislative or other districts resulting from an event other than a national decennial enumeration.” *Id.* § 20A-19-102(2). The Legislative Defendants do not challenge subsection (2). Because the other provisions in section 20A-19-102 are not challenged, the Court does not address them here.

²⁴ Notably, the Legislative Defendants' references to the “results of an enumeration made by the authority of the United States” generally refers to the “U.S. Census.” (*See Leg. Defs.' Opp'n / Cross MSJ*, p. at 49 (quoting article IX, section 1 but inserting “U.S. Census”.)

United States, the Legislature shall divide the state into congressional, legislative, and other districts accordingly.

Utah Const. art. IX, § 1 (2008) (emphasis added). As discussed earlier, this provision was amended in 2008. The proposed amendment, which passed, reworded the provision to establish the *timing* for redistricting, specifically amending it to say that redistricting shall occur “no later than the annual general session next following . . . the results of an enumeration made by the authority of the United States.”

The Enumeration Clause, under Article I, Section 2, Clause 3, of the United States Constitution, states:

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers.... *The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.*

U.S. Const. art. I, § 2, cl. 3 (emphasis added). This clause established the decennial census as a fundamental part of the American system of government.²⁵

Under Utah’s Constitution, the “annual general session” refers to Utah’s annual legislative session. It is common knowledge that our annual legislative session begins in January of each year. Interpreting article IX, section 1, of the Utah Constitution as a limitation of

²⁵ The Colorado Supreme Court in *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1237-1243 (Colo. 2003) interpreted the Colorado Constitution and concluded that redistricting under Colorado law was limited to once every ten years. The Court considered its constitution, statutes, other state and federal caselaw and the policy behind limiting redistricting to every ten years. That Court persuasively reasoned:

The framers knew that to achieve accountability, there must be stability in representation. During the debates over the frequency of congressional elections, James Madison said: “Instability is one of the great vices of our republics, to be remedied.” *1787: Drafting the U.S. Constitution* 212 (Wilbourn E. Benton ed., 1986) (notes of Mr. Madison). At the same time, the framers recognized that as the new union evolved, the population of the states would shift and grow and require changes in the distribution of congressional seats. *Id.* at 376. This fundamental tension between stability and equal representation led the framers to require ten years between apportionments. *Armstrong v. Mitten*, 95 Colo. 425, 433–34, 37 P.2d 757, 761 (1934) (citing with approval *People ex rel. Snowball v. Pendegast*, 96 Cal. 289, 31 P. 103, 105 (1892), which says the framers of the state constitution must have consciously balanced the upheaval associated with redistricting with the need for equal representation). This ten-year interval was short enough to achieve fair representation yet long enough to provide some stability.

Id. at 1242 (emphasis added).

authority, and in light of the Enumeration Clause, redistricting “shall” occur “no later than” the “annual general” legislative session immediately following the receipt of the federal census, which occurs every “ten years.” Under the plain language of the Utah Constitution, redistricting is triggered when the legislature receives the decennial census and it is limited to occur once every ten years.

The Legislative Defendants point to article IX, section 2, asserting they can change the number of senators and representatives, at any time, and therefore the Legislature has the discretion to redistrict whenever they decide to change those numbers. But article IX, section 2, does not say that. Article IX, section 2, states only that “[t]he Senate shall consist of a membership not to exceed twenty-nine in number, and the number of representatives shall never be less than twice nor greater than three times, the number of senators.” Utah Const. art. IX, § 2. It does not expressly authorize redistricting at any time or from time to time merely because the Legislature changes the number of members. *Compare* Wyo. Const. art. III, § 49 (“Congressional districts may be altered from *time to time* as public convenience may require.” (emphasis added)). Rather, this provision establishes the membership, which is required to be complied with during the process of redistricting.

The Legislative Defendants also cite *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 418–19, 126 S. Ct. 2594, 2610 (2006), asserting that “ ‘there is nothing inherently suspect about a legislature's decision” to enact a mid-decade plan.” (*Leg. Defs. 'Opp'n / Cross MSJ*, p. 50.) That quote and the holding in the *Perry* case is not so straightforward. The complete quote states: “there is nothing inherently suspect about a legislature's decision to replace mid-decade a court-ordered plan with one of its own.” *Perry*, 548 U.S. at 419. *Perry* involved a challenge to the state legislature's mid-decade congressional redistricting plan, which had been implemented to replace a judicially created plan. The *Perry* Court concluded only that “the fact of mid-decade redistricting alone is no sure indication of unlawful political gerrymanders.” *Id.* (holding the proposed mid-decade redistricting plan violated the Voting Rights Act’s dilution provisions). The *Perry* case, however, does not stand for the proposition that the Legislature has the unfettered discretion to redistrict whenever it chooses.

Persuasive authority from other state courts support that when the constitution establishes a time for a task, by implication, it limits the task from being done at another time. For instance, as it pertains to redistricting, the Colorado Supreme Court stated: “[w]hen the constitution specifies a timeframe for redistricting, then, by implication, it forbids performing that task at other times.” *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1238 (Colo. 2003) (interpreting the Colorado Constitution to limit redistricting to once every ten years); *see also People ex rel. Mooney v. Hutchinson*, 172 Ill. 486, 50 N.E. 599, 601 (1898) (“Where there are provisions inserted by the people as to the time when a power shall be exercised, there is at least a strong presumption that it should be exercised at that time, and in the designated mode only; and such provisions must be regarded as limitations upon the power”); *Denney v. State ex rel. Basler*, 144 Ind. 503, 42 N.E. 929, 931–32 (1896) (“The fixing, too, by the constitution, of a time or a mode for the doing of an act, is, by necessary implication, a forbidding of any other time or mode for the doing of such act.”).

The people of Utah enacted 20A-19-102(1). Utah law provides:

[i]t is a basic principle that legislative enactments are endowed with a strong presumption of validity.” *State v. Mohi*, 901 P.2d 991, 1009 (Utah 1995) (quotations and citations omitted). We should not strike a statute “unless there is no reasonable basis upon which [it] can be construed as conforming to constitutional requirements.” *Id.* When one interpretation results in constitutional conflict, we may adopt another construction, if possible, “so long as the resulting construction does not conflict with the reasonable or actual legislative purposes of the statute.” *Id.* Hence, we need not determine whether there is a single correct interpretation; we need only determine whether there exists a reasonable interpretation that avoids inconsistency.

State v. Ansari, 2004 UT App 326, ¶ 10, 100 P.3d 231, 235–36. The plain language of Section 20A-19-102(1) – limiting redistricting by the “Legislature” to once every ten years, after receipt of the decennial census – is consistent with and does not conflict with nor amend article IX, section 1 of the Utah Constitution. It is a reasonable interpretation. The clarification achieved by adding “decennial” to describe “enumeration” does not result in a constitutional conflict.

Section 20A-19-102(1) is part of the core redistricting reform. It is substantive law, and not an internal rule. It is consistent with the Utah Constitution. It furthers the goal to ensure a transparent process and to ensure that partisan motivation does not drive redistricting. “As one author put it, politicians understand that a census is a necessary prerequisite for redistricting: [T]here is no denying that when a new party gains a legislative majority in mid-decade it does not redistrict the state's congressional delegation right away but waits until the next Census. This is another of the “rules of the game” in legislative life, for everyone wants to avoid violent seesaws in policy. *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1240 (Colo. 2003) (Andrew Hacker, *Congressional Districting: The Issue of Equal Representation*, p. 66 (1963).

d. Incidental infringements on the Legislature’s constitutional authority

For the sake of argument, even if the Court assumes that the five challenged procedural requirements are intrusions on the legislature’s constitutional authority to determine its internal proceedings, these five provisions in Proposition 4 are merely incidental infringements, necessary for the substantive legislation enacted by the people to be fully implemented.

The Utah Supreme Court has recently discussed the interplay between substantive laws and procedural rules.²⁶ In *State v. Rippey*, 2024 UT 45, the court addressed the separation of power between the legislature’s power to enact substantive laws and the judiciary’s authority to adopt procedural rules as applied to the Plea Waiver Statute. *Id.* ¶ 23. The court explained: “[s]ubstantive laws are laws that create, destroy, or alter the rights and duties of parties and

²⁶ The Court notes that neither party discussed *State v. Rippey*. This decision was issued in December 2024, just after briefing was completed. Nonetheless, because this Court’s ruling is based on the law, the Court determined that additional briefing on this issue was unnecessary. The ruling and the application to the undisputed facts here is straightforward.

which may give rise to a cause of action.” *Id.* (cleaned up). “Procedural rules prescribe the practice and procedure or the legal machinery by which the substantive law is made effective.” *Id.* The *Rippey* court acknowledged: “We have previously held that a procedural provision in a statute does not violate separation-of-powers principles when it is attached to a substantive right and ‘cannot be stripped away without leaving the right or duty created meaningless.’ Said another way, ‘a procedural rule may be so intertwined with a substantive right that the court must view it as substantive.’” *Id.* ¶ 41 (quoting *State v. Drej*,²⁷ 2010 UT 35, ¶ 31, 233 P.3d 476, 486). The takeaway – when a statute is enacted that is “*overwhelmingly substantive*, aside from a small procedural component,” any “*incidental infringement*” upon the judiciary’s authority to adopt procedural rules may be “*appropriate*” and “*necessary for the legislature to define the right that it had created.*” *Id.* ¶¶ 45-46 (emphasis added).²⁸

The *Rippey* analysis is helpful here. Although there is no separation of powers issue between the legislature and the people because they are both within the legislative department, the Court is analyzing two competing constitutional rights asserted by the legislature and the people. In the context of redistricting, there is some tension between the Legislature’s internal rule-making authority and certain statutory redistricting procedure. Resolving this tension requires striking a balance between the Legislature’s right to create rules for its internal proceedings and the people’s right to initiate (and pass) substantive legislation to reform their government. Here, there is no question that Proposition 4 is overwhelmingly substantive legislation to reform and establish a statutory redistricting process. And the five challenged provisions are applicable *only* in the context of redistricting, which arguably will only take place once every ten years. These procedural requirements are so intertwined with the substantive redistricting legislation that they must be viewed as “substantive.” Courts have recognized that “the line between procedural and substantive law is hazy,” and that many rules “are rationally capable of classification as either.” *See, e.g., Moore v. Harper*, 600 U.S. 1, 31–32 (2023) (cleaned up). And, in the redistricting context, procedure is often “used as a vehicle to achieve substantive ends.” *Id.*

²⁷ In *Drej*, the Court reasoned: “There will be times when the legislature enacts laws that confer substantive rights. At times, the procedures attached to the substantive right cannot be stripped away without leaving the right or duty created meaningless. The burden of proof associated with special mitigation is one of those instances. Utah’s special mitigation statute creates a substantive right, which the legislature generally has the authority to enact. But the procedural portion of the statute that requires the defendant to prove special mitigation by a preponderance of the evidence is inextricably connected to the right to plead special mitigation in the first place. Thus, the legislature did not act contrary to Utah’s separation of powers provision when it enacted the special mitigation statute by simple majority, as opposed to the super-majority that is required of procedural rules.” *Drej*, 2010 UT 25, ¶ 31.

²⁸ In *Rippey*, the court balanced the “substantive law and procedural infringement,” concluding that the statute was overwhelming procedural and was not inextricably intertwined with the substantive law of the plea withdrawal statute. *Rippey*, 2024 UT 45, ¶ 46.

Here, Proposition 4’s redistricting reform is overwhelmingly substantive. Even Proposition 4’s procedural components are part of the substantive redistricting law. To the extent that the five procedures (up/down vote, reporting, ten-day notice period, waiting period, and decennial redistricting), mandatory on the Legislature, are in fact infringements on its internal rule-making authority, they are incidental infringements. These requirements apply only in the context of redistricting and, likely, will arise only once every ten years. Further, these substantive procedural requirements are appropriate and necessary for the people to establish and define redistricting standards and procedures. These mandatory procedures are not only inextricably intertwined with Proposition 4’s substantive redistricting reform, but they are also core to the reform.

II. *Second LWVUT Factor*

Did Plaintiff’s prove, as a matter of law, that the Legislature impaired the people’s initiative to alter or reform redistricting in Utah when the Legislature repealed Proposition 4 and enacted S.B. 200? *Yes*.

Proposition 4 was a citizen-initiative that was passed by the majority²⁹ of Utah voters in 2018. Proposition 4 was placed on the ballot in the 2018 election. The Voter Pamphlet describing Proposition 4 explained that prohibiting partisan gerrymandering was its “most important” provision. (*See 2018 Voter Information Pamphlet, Leg. Defs.’ Ex. A, Dkt. 406, p. 5.*) Proposition 4 created the “Utah Independent Redistricting Commission and Standards Act.” The statutes enacting Proposition 4’s reforms, codified under Utah Code sections 20A-19-101 to -301 (2018), became Utah law and specifically prohibited the practice of “divid[ing] districts in a manner that purposefully or unduly favors any incumbent elected official, candidate or prospective candidate for elective office, or any political party.” *Id.* § 20A-19-103(3). To further the reform, a new governmental body—the Utah Independent Redistricting Commission—was created; the seven-member commission was required to conduct their activities and prepare redistricting plans in an “independent, honest, transparent and impartial manner.” *Id.* §§ 20A-19-201(1), (2), and -202(2).

Proposition 4 established standards and procedures for the redistricting process, binding on both the Commission and the Legislature. The redistricting standards were required to be applied “to the greatest extent practicable” in the following order: (a) adhering to federal law and achieving equal population between districts; (b) minimizing the division of municipalities and counties in the formation of districts, (c) creating geographically compact districts; (d) making districts contiguous and allow for efficient transportation throughout the district; (e) preserving traditional neighborhoods and communities of interest, (f) following natural and geographic features, and (g) maximizing boundary agreement among different types of electoral and government districts. *Id.* §20A-19-103(2)(a) – (g). The Commission would design and adopt at least one and as many as three redistricting plans, and then conduct public hearings throughout the state, providing an opportunity for public input. *Id.* §§ 20A-19-203(1) and -202(5)(b), (7), (9)(a).

²⁹ The Legislative Defendants point out numerous times that Proposition 4 passed by a small margin. (*Leg. Defs.’ Opp’n / Cross MSJ.*, pp. 1, 10, 12, 67.) But a law passed by a small margin is still a law.

Proposition 4 also established the procedure by which the recommended redistricting plans would be submitted to and considered by the Legislature. *Id.* § 20A-19-204. The Commission was required to submit *recommended* redistricting plans to the Legislature, and then the Legislature was required to vote on the plans “without change or amendment,” or to reject them and propose its own plan. *Id.* § 20A-19-204(2)(a), (5)(a). If it chose to create its own plan, the Legislature would be required to apply the redistricting standards and requirements set forth in section 20A-19-103, and it would be prohibited from enacting any plan until the Commission and chief justice of the Supreme Court had adequate time to satisfy their duties, including designing plans, holding public hearings and selecting one or more plans to recommend. *Id.* § 20A-19-204(3). The legislature was required to make any plan it chooses to enact available to the public on its website or other equivalent electronic platform for no less than 10 calendar days and in a format that allows the public to assess compliance with Proposition 4’s redistricting standards and in a manner that allows for public comment. *Id.* § 20A-19-204(3). And, if the legislature enacts a redistricting plan other than one recommended by the Commission, then, within seven days of enactment, it was required to explain in writing to the people how its redistricting plan better satisfied the statutory redistricting requirements. *Id.* § 20A-19-204(5)(a).

Proposition 4 also expressly states that redistricting is limited to once a decade, occurring no later than the first annual general legislative session after the Legislature’s receipt of the federal decennial census. *Id.* § 20A-19-102. And it provided for a private right of action, ensuring that citizens could enforce the statutory provisions, and provided for injunctive relief if a redistricting plan “fails to abide by or conform to the redistricting standards, procedures, and requirements” of the Act. *Id.* § 20A-19-301(1), (2).

When compared to Utah’s prior redistricting process, it is clear that Proposition 4 substantively reformed the redistricting process in Utah. It established an independent redistricting Commission. It codified a redistricting process, which included mandatory standards and procedures for creating redistricting plans that were binding on the Commission and the Legislature. Proposition 4 required transparency in the creation of the maps and provided a mechanism for state-wide public hearings and input. And it provided a mechanism for enforcement, by providing a private right of action. When Proposition 4 was passed by a majority of Utah voters in the 2018 election, it became law that was binding on the people of Utah, the independent Commission, the Chief Justice and the Legislature. The people properly exercised their right, “within the bounds of the constitution and the legislative power.” *LWVUT*, 2024 UT 21, ¶ 104. Therefore Proposition 4 is “constitutionally protected from government infringement, including legislative action that impairs the government reform.” *Id.*

Citing a concern that Proposition 4 *may* be an “unconstitutional” intrusion into the Legislature’s exclusive redistricting authority, the Legislature enacted S.B. 200 on March 28, 2020, titled “Redistricting Amendments.” S.B. 200 did three things: (1) it repealed all nine of the statutes enacted under Proposition 4: Utah Code sections 20A-19-101 to -301; (2) it enacted nine new statutes: Utah Code sections 20A-20-101 to -303; and (3) it amended two statutes, under the Governmental Immunity Act, specifically Utah Code section 63G-7-201 and -301, thereby removing the citizen’s right to enforce the redistricting process or challenge a congressional map and revoking the waiver of immunity for such claims.

S.B. 200 retained the independent redistricting commission and provided specific funding for the commission. Utah Code Ann. § 20A-20-201; S.B. 200, Section 13 “Appropriation” (authorizing a \$1 million budget for the commission and providing that the funds would not “lapse” at the end of fiscal year 2021).³⁰ It retained a process for public hearings and public input. *Id.* § 20A-20-301. It also retained the requirement that the commission prepare and recommend up to three different “maps” for each map type, including a map for congressional districts, Senate districts, House of Representative Districts, and State School Board Districts. *Id.* § 20A-20-302(1), (2). SB 200 includes a list of redistricting standards, including some listed in Proposition 4, but it gives complete discretion to the commission to define the standards used and then to determine what standards to apply. *See generally id.* § 20A-20-302(4)-(7) (“The commission *shall define and adopt redistricting standards* for use by the commission that require that maps adopted by the commission, to the extent practicable, *comply with the following, as defined by the commission:*” (emphasis added)). No standards are mandatory or binding on either the commission or the Legislature. And while the standards that can be applied include the prohibition on “purposeful or undue favoring or disfavoring of an incumbent elected official, a candidate or prospective candidate for elected office; or a political party,” it is not required. *Id.* § 20A-20-302(5)(f)(i)-(iii). It is also within the commission’s discretion to prohibit the use of partisan political data, political party affiliation information, voting records, partisan election results, or residential addresses of incumbents, candidates, or prospective candidates, although it is not required to do so and the use of this information is not prohibited in any way. *Id.* § 20A-20-302(6).

S.B. 200 contains no provisions binding on the Legislature, with one exception. Section 20A-20-303(4) states that the Legislature may not enact a redistricting plan before the commission submits its recommended maps to the Legislature’s redistricting committee and the committee holds a public hearing. *Id.* The redistricting standards are not binding, and neither the Legislature nor its redistricting committee are required to vote on or even consider any redistricting plans created and recommended by the commission. *Id.* § 20A-20-302(4), (5). S.B. 200 also removed the enforcement mechanism and eliminated the private right of action by amending Utah Code sections 63G-7-201 and -301 of the Utah Governmental Immunity Act. *Id.* § 63G-7-301 (removing the following: “(j) as to any action or suit brought under Section 20A-19-301 and as to any compensation or expense awarded under Section 20A-19-301(5).”).

Simply comparing the two bills and the statutes enacted by them, S.B. 200 is significantly and materially different than Proposition 4. As the Legislative Defendants point out, S.B. 200 does retain some of Proposition 4’s key features. It retained an independent advisory commission, funded the 2021 commission, included a list of redistricting standards for consideration, and allows for some public input and comment. However, it is not merely what S.B. 200 retained, it is what it removed that is material to this analysis. S.B. 200 removed the prohibition on partisan gerrymandering. Now, neither the Commission nor the Legislature is

³⁰ Plaintiffs do not contend that the map selection process created by S.B. 200, under Utah Code section 20A-20-302(1)-(3) impaired the reforms under Proposition 4.

prohibited from “divid[ing] districts in a manner that purposefully or unduly favors any incumbent elected official, candidate or prospective candidate for elective office, or any political party,” a key feature of Proposition 4. Utah Code Ann § 20A-19-103(3) (2020). S.B. 200 includes a list of redistricting standards, but they are no longer mandatory. Instead, the redistricting standards “may” be considered by the commission; however, the commission has the discretion to both establish and define its own redistricting standards for the plans it draws and submits. *See* Utah Code § 20A-20-302(4)-(8) (2020).

The most consequential change that impaired Proposition 4’s redistricting reform is that S.B. 200 removed all mandatory requirements that were binding on the Legislature. The Legislature is no longer required to comply with or consider any redistricting standards. It is not required to comply with any procedures. It is not required to vote on or even consider any redistricting plan submitted to it by the commission. *Id.* § 20A-20-303 (“The [Legislature’s redistricting] committee or the Legislature may, but is not required to, vote on or adopt a map submitted to the committee or the Legislature by the commission.”). If the Legislature creates its own redistricting plan, it does not need to provide any explanation, and it is not required to present its plan to the public for input. All of Proposition 4’s mandatory redistricting standards, both substantive and procedural, were removed. The enforcement provisions established under Proposition 4 were removed, and the waiver of immunity under the Governmental Immunity Act, *see id.* §§ 63G-7-201 and 63G-7-301 (2020), ensuring no state-law based legal challenge can be asserted based on a redistricting plan or an enacted congressional map. It effectively nullified the redistricting reform enacted by the people. Because the Legislature is not required to comply with any redistricting standards or procedures, and partisan gerrymandering is no longer prohibited, the redistricting “law” enacted by S.B. 200 is illusory.

When the Legislature repealed Proposition 4 and replaced it with S.B. 200, it impaired the core redistricting reform enacted under Proposition 4 and infringed the people’s fundamental constitutional right to reform their government. The repeal of Proposition 4 and the enactment of S.B. 200 was unconstitutional.

After considering the parties’ arguments, the Court concludes that Plaintiffs have successfully proven the first two factors set forth in *LWWUT*. First, the people properly exercised their initiative power in passing Proposition 4’s redistricting reform. Redistricting is legislative, and the legislative power is shared co-equally and co-extensively between the Legislature and the people. The people were well within their right to establish redistricting standards and procedures that are both mandatory and binding on the Legislature. And the Legislature retains its core legislative function and legislative authority to adopt or reject any recommended plan or to choose to design and enact its own. Second, it is indisputable that the Legislature infringed the people’s fundamental constitutional right to alter or reform their government by repealing Proposition 4 in its entirety and replacing it with S.B. 200, which removed Proposition 4’s core redistricting reforms. S.B. 200 no longer prohibits partisan gerrymandering. The Legislature is not required to comply with any traditional redistricting standards. It is not required to comply with any procedures. It is not required to consider any redistricting plans submitted by the independent commission. It does not need to explain why it rejected plans submitted by the commission or why it elected to enact its own redistricting plan and it is not required to present the redistricting plan it chooses to enact to the public for comment. And it removed the

enforcement mechanism. As the Court noted before, S.B. 200 is essentially illusory. It does not change nor impact how the Legislature divides the state into congressional or other districts.

III. *Third LWWUT Factor*

The burden now shifts to the Legislative Defendants to show that repealing Proposition 4 in its entirety and replacing it with S.B. 200 was narrowly tailored to advance a compelling state interest. The Legislative Defendants argue that the changes made to Proposition 4 as reflected in S.B. 200 were narrowly tailored to advance compelling state interests. They argue that the state had a compelling interest in ensuring that Utah's redistricting law complied with both the U.S. and Utah Constitutions, that all Utahns are represented in redistricting, that the electoral maps were enacted in time and to safeguard the fiscal health of the state. Plaintiffs contend, *inter alia*, that the last three arguments are merely *post hoc* justifications raised solely in response to this litigation. Each of the Legislative Defendants' arguments are addressed in turn.

Was the legislative action – repealing Proposition 4 in its entirety and replacing it with S.B. 200 – narrowly tailored to advance a compelling state interest? *No*.

A. **Ensuring the constitutionality of redistricting laws.**

The Legislative Defendants argue that repealing Proposition 4 in its entirety and enacting S.B. 200 was necessary to ensure Utah's redistricting laws were constitutional. However, S.B. 200 specifically repealed each and every statute enacted under Proposition 4 in its entirety. The Legislature did not make selective or narrowly tailored changes to address any specific infirmity. Instead, S.B. 200 was drafted from a clean slate. "Where a statute repeals all former laws within its purview, the intention is obvious, and is readily recognized to sweep away all existing laws upon the subjects with which the repealing act deals." *Bd. of Educ. of Ogden City v. Hunter*, 48 Utah 373, 159 P. 1019, 1022 (1916). In addition, this Court addressed and rejected each of the Legislative Defendants' arguments challenging the constitutionality of Proposition 4 under the federal Elections Clause and the Utah Constitution. The people's successful initiative to reform redistricting through legislation was not unconstitutional. As a result, the Legislative Defendants cannot show, as a matter of law, that the wholesale repeal of Proposition 4 and the removal of the core redistricting reforms when the Legislature enacted S.B. 200 was narrowly tailored to advance a compelling state interest.

Nonetheless, they argue that, even if the Legislature incorrectly concluded that Proposition 4's redistricting reform and its various provisions were unconstitutional, strict scrutiny is still satisfied because the Legislature acted in good faith and had "good reason" for repealing Proposition 4 and replacing it with S.B. 200. They cite *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015) asserting that strict scrutiny is satisfied if the Legislature has "good reason" to believe their actions were required and there is a "strong basis in evidence" to support the action. *Id.* (analyzing racial gerrymandering challenge in light of competing Voting Rights Act and Equal Protection obligations.). They also cite *Ricci v. DeStefano*, 557 U.S. 557, 563 (2009), asserting strict scrutiny is satisfied if the Legislature can show it had a "strong basis in evidence" that the legislative action was "necessary to comply with another statute." *Id.* ("We conclude that race-based action like the City's in this case is impermissible under Title VII unless

the employer can demonstrate a strong basis in evidence that, had it not taken the action, it would have been liable under the disparate-impact statute.”). Neither of these cases apply here. Both *Alabama Legis. Black Caucus* and *Ricci* articulate a specific “strong basis in evidence” standard that appears limited to cases evaluating race-conscious governmental actions taken to comply with, or avoid liability under the Voting Rights Act and Title VII, respectively. These cases address circumstances that may mitigate the dilemma faced by government entities trying to navigate potentially conflicting federal anti-discrimination mandates. This case presents a fundamentally different legal and factual landscape.

Here, the Legislature’s enactment of S.B. 200 must be evaluated under the general strict scrutiny framework applicable to the impairment of fundamental rights under the Utah Constitution. This framework, as established by the *LWVUT* court, requires the Legislative Defendants show that the changes made in S.B. 200 were necessary to advance a compelling state interest, such as remedying *actual* constitutional defects in Proposition 4 not merely perceived or speculative ones. *Kitchen v. Herbert*, 755 F.3d 1193, 1196 (10th Cir. 2014) (stating compelling government interest based on “speculation and conjecture” as opposed to concrete facts “cannot carry the day.”). Even if this Court agreed that the “strong basis in evidence” standard could be applied here, the Legislature’s good faith legal mistake – that S.B. 200 was necessary to correct Proposition 4’s perceived constitutional defects – does not satisfy the “strong basis in evidence standard.” See *Cooper v. Harris*, 581 U.S. 285, 306 (2017) (holding strict scrutiny not satisfied where “North Carolina’s belief that it was compelled to redraw District 1 . . . as a majority-minority district rested not on a ‘strong basis in evidence,’ but instead on a pure error of law.”). A legal mistake cannot justify non-compliance with the law, and it cannot justify the impairment of a constitutional right. Given the Court’s rulings above, the Legislature’s passage of S.B. 200 was not necessary to comply with either the U.S or the Utah Constitutions or any specific federal or state statute.

B. Ensuring that all Utahns are represented in redistricting, that electoral maps are timely enacted, and that the States’s fiscal health is protected.

The Legislative Defendants also argue that repealing Proposition 4 in its entirety and replacing it with S.B. 200 was narrowly tailored to advance the state’s compelling interest to ensure that all Utahns are represented, that the electoral maps were enacted in time and to protect Utah’s fiscal health. Plaintiffs contend these concerns are asserted *post hoc*, solely in response to litigation. Having considered both parties positions, the Legislative Defendants fail to prove that these interests – either individually or collectively – compelled the complete repeal of Proposition 4 and the removal of the core redistricting reforms.

1. All Utahns are represented in Proposition 4.

The Legislative Defendants first argue that Proposition 4 was repealed to ensure that all Utahns are represented in redistricting. The Legislative Defendants argue that not all Utahns voted in favor of Proposition 4. This is true, but Proposition 4 passed by a majority of those who voted. The actual vote margin (50.6%) and the alleged funding sources are irrelevant. When Proposition 4 passed by a majority vote in the 2018 election, it became law, passed by the people of Utah. Those voters voted against partisan gerrymandering and in favor of redistricting reform,

including establishing neutral and mandatory redistricting standards and procedures, including an independent commission, public notice and comment, transparency and enforcement. In passing S.B. 200, the Legislature ignored the majority of voters who voted in favor of Proposition 4. The Legislative Defendants do not address the voters' concerns. Instead, they assert, without any evidence, that Proposition 4's mandatory redistricting standards and order of priority essentially prohibits the Legislature from considering the concerns of all Utahns "from all corners of Utah" and it unduly favors Salt Lake City and its Democratic voters. (*Leg. Defs.' Opp'n / Cross MSJ*, p. 67.) These conclusory assertions are insufficient to prove a compelling state interest. They also assert that the Legislature must retain complete discretion to decide redistricting priorities for all voters, that it alone can make policy decisions, and that the Legislature – and not an independent commission – must remain accountable to the people. Each of these discrete issues were addressed and rejected above in this ruling.

Contrary to the Legislative Defendant's assertions, Proposition 4 does ensure representation of all Utahns through different mechanisms. Proposition 4 contemplated that the Commission would be made up of commissioners appointed by legislative leaders representing diverse areas of the state. Redistricting plans would be designed by the Commission in accordance with the mandatory neutral redistricting criteria "to the greatest extent practicable," Utah Code § 20A-19-103 (2), through a transparent and participatory process. The Legislature was required to let the Commission (or the chief justice) complete their duties and then consider and vote on redistricting plans recommended by the Commission. *Id.* §§ 20A-19-204(2)(a), (3). And before any redistricting plan would be enacted, the Legislature would be required to make the plan available to the public for "no less than 10 calendar days and in a manner and format that allows the public to assess the plan for adherence to the redistricting standards" and "that allows the public to submit comments about the plan to the legislature." *Id.* § 20A-19-204(4) (2018). Even under Proposition 4, the Legislature ultimately decides whether to adopt or reject the Commission's recommended plans or to design its own redistricting plan in accordance with Proposition 4's redistricting standards. The Legislature has the ability, even under Proposition 4, to make policy decisions and to decide which electoral map to enact.

2. Enacted in Time

The Legislative Defendants argue that the Legislature had a compelling state interest to ensure that electoral maps were enacted in time, justifying the repeal of Proposition 4 and the enactment of S.B. 200. They assert that S.B. 200 removed the strict procedural timelines, including the 10-day public comment period, to ensure that the maps were available in time for the 2022 state elections. The Legislative Defendants, however, provide no evidence that the Proposition 4 deadlines could not have been met, even after the delayed receipt of the federal census data in August and September 2021. On this point, they offer nothing more than speculation and conjecture, which cannot prove a compelling state interest. *Kitchen*, 755 F.3d at 1226. And to the extent the Legislative Defendants justify the 2020 repeal of Proposition 4 and the enactment of S.B. 200 on the late delivery of the federal census data in 2021, that argument fails as a *post hoc* justification of S.B. 200, made post-litigation. *United States v. Virginia*, 518 U.S. 515, 533 (1996).

The Legislative Defendants also assert in one conclusory sentence that had Proposition 4 been in place after the delayed delivery of the federal census data in 2021, that “its provision authorizing a lawsuit to challenge those 2021 maps would have furthered ‘chaos’ by risking that the maps would be tied up in court during the 2022 election cycle.” (*Leg. Defs.’ Opp’n / Cross MSJ*, p. 70.) This argument is pure speculation. There is no evidence to support this bare assertion, and it is insufficient to show a compelling state interest in repealing Proposition 4 and enacting S.B. 200.

3. Protection of Public Coffers

The Legislative Defendants argue that the Legislature has a compelling interest in protecting the fiscal health of the state. They argue that S.B. 200 made two “modest fixes” to Proposition 4 to avoid jeopardizing the state’s fiscal health. (*Leg. Defs.’ Opp’n / Cross MSJ*, p. 50.)

First, instead of Proposition 4’s directive that the Legislature will appropriate “adequate” funding, S.B. 200 instead provides that the Commission will operate “within appropriations from the Legislature” and it specifically appropriated \$1 million for the Commission. While the Court does not agree that this particular provision justified the complete repeal of Proposition 4 and the removal of the core redistricting reforms, the Court agrees that the Legislature has a compelling state interest in determining the amount of funds to appropriate for the Commission’s work while taking into consideration the State’s budget and fiscal health.

However, the change in wording in Proposition 4 from “shall set aside “adequate” funding for the Commission,” Utah Code Ann. § 20A-19-201(12)(a) (2018), to S.B. 200’s wording: “Within appropriations from the Legislature,” is a material change. The Legislative Defendant’s argue that this change was necessary because Proposition 4 fails to provide “any conceivable limits as to what may constitute ‘adequate funding’ for the commission’s work or what would be a ‘reasonable request’ from the commission.” (*Leg. Defs.’ Opp’n / Cross MSJ*, p. 71.) The Legislative Defendants appear to argue that by including the term “adequate,” Proposition 4 obligates the Legislature to write a blank check to allow the commission to use the state’s money however it chooses. That is not the case. Not only is this argument speculative in the extreme, but it is also severely undermined by the Legislature’s own actions in appropriating \$1,000,000, the same amount that the state fiscal analyst had estimated the commission would need under Proposition 4, to fund the commission under S.B. 200. (*See 2018 Voter Pamphlet*, Ex. A, Dkt. 406, p. 2.) As previously discussed, the term “adequate” ensures the Legislature will fund the commission so that it can fulfill its duties under Proposition 4 while also giving the Legislature discretion to appropriate funds while taking into consideration the State’s budget and fiscal health. The removal of the term “adequate,” along with removing the language providing the commission with reasonably requested resources and support, provides an avenue for the Legislature to control and impact the commission’s ability to fulfill its statutory duties. For this reason, this change is not narrowly tailored to advance the compelling state interest in managing the state’s budget and fiscal health.

Second, the Legislative Defendants contend that the Legislature’s compelling interest in protecting the fiscal health of the state justified S.B. 200’s modifications to Utah’s governmental

immunity statute, removing entirely Proposition 4's enforcement mechanism, which included both the private right of action to enforce Proposition 4's redistricting reform (i.e., the waiver of immunity) and the fee-shifting provision. *See* Utah Code Ann. § 63G-7-201, -301. They argue that redistricting litigation is expensive, citing various news reports and cases in which other states, specifically Texas, Pennsylvania, Alabama, North Carolina and New York, incurred litigation costs or were ordered to pay fees anywhere from \$1 million to \$7 million. (*Leg. Defs.' Opp'n / Cross MSJ*, p. 72.) They then assert, without any evidence, "[t]hat those potential fees could jeopardize the fiscal health of the State." (*Id.*) This statement is nothing more than pure speculation and conjecture. No actual evidence regarding Utah's budget or its current fiscal health has been presented.

Plaintiffs cite the U.S. Supreme Court's decision in *Memorial Hosp. v. Maricopa Cnty.*, 415 U.S. 250, 262, 94 S. Ct. 1076, 1084 (1974) for the proposition that "conservation of the taxpayer's purse is simply not a sufficient state interest to" impair a fundamental right. (Pls.' Reply at 51.) While this case is not factually similar, the analysis is helpful. In *Memorial Hosp.*, the Court addressed whether an Arizona statute, which required a one-year in-county residence as a condition before an indigent patient could receive nonemergency hospitalization or medical care at the county's expense impinged on the right of interstate travel and violated the equal protection clause. In analyzing the question, the Court asked: "whether the State has shown that its durational residence requirement is 'legitimately defensible,' in that it furthers a compelling state interest" and whether, in pursuing its interest, the State "has chosen means that do not unnecessarily burden constitutionally protected interests." *Id.* at 262-63; 94 S. Ct. at 1084. The Court rejected Maricopa County's budgetary arguments stating that the record was devoid of evidence that the county uses the one-year requirement to make predictions and commented that it was speculative to "estimate how many of those indigent newcomers will require medical care their first year in the jurisdiction." *Id.* at 270; 94 S. Ct. at 1088. Ultimately, the Court held the residency requirement created an "invidious classification" that impinges on the right of interstate travel and denies newcomers to the state the "basic necessities of life." *Id.*

In this case, the Legislative Defendants have failed to show that the removal of Proposition 4's enforcement mechanism, both the private right of action and the fee-shifting provision, is legitimately defensible and that it furthers the compelling state interest in protecting the state's fiscal health. As previously discussed, Proposition 4's enforcement mechanism is integral to the core redistricting reform. Without an avenue to enforce the mandatory redistricting provisions, the reform is illusory. The Legislative Defendants justify impairing the people's fundamental constitutional right to enact redistricting legislation to alter or reform their government through Proposition 4 by arguing the enforcement mechanism *could* cost the taxpayers money and *could* jeopardize the state's fiscal health. The Legislative Defendants' justification for removing the enforcement mechanism is the *possibility* of an enforcement action, the possibility that litigation costs will be incurred and the possibility the State of Utah would be required to pay prevailing party attorney's fees. Further, there is no evidence that the state's fiscal health would be jeopardized, even assuming the State was ordered to pay \$7 million in prevailing party attorney's fees. The Legislative Defendants have failed to show that there is a compelling state interest because their asserted interest is based on nothing more than speculation and conjecture.

The Legislative Defendants contend that the Legislature was concerned with ensuring that all Utahns should be represented in redistricting, that maps would be enacted timely and that the state's fiscal health would be protected. However, the repeal of Proposition 4 in its entirety and the replacement with S.B. 200 was not narrowly tailored to advance these specific interests. Instead, S.B. 200 effectively nullified the core redistricting reform passed by the people. After S.B. 200, partisan gerrymandering was no longer prohibited as a matter of law. The Legislature was no longer required to comply with any mandatory redistricting standards. It was not required to comply with any specific procedures, and the private right of action was removed, ensuring that any redistricting standards and procedures that remained were not enforceable. S.B. 200 made redistricting reform illusory, allowing the Legislature to operate largely free from the constraints and accountability measures that the voters had sought to impose. These discrete concerns do not justify impairing the people's fundamental constitutional right to reform the redistricting process.

“A government based upon the will of the people must ever keep such authority within reach of the people's will. Legislatures are but the agents of the people. . . .” *United States v. Church of Jesus Christ of Latter-Day Saints*, 5 Utah 361, 15 P. 473, 477 (1887), *aff'd sub nom. Late Corp. of the Church of Jesus Christ of Latter-Day Saints v. United States*, 136 U.S. 1, 10 S. Ct. 792, 34 L. Ed. 478 (1890). The people's right to reform their government through legislation is fundamental and sacrosanct and should not be “effectively abrogated, severely limited, or unduly burdened.” *Gallivan*, 2002 UT 89, ¶ 27. In this case, the Legislature's repeal of Proposition 4 and its enactment of S.B. 200 unconstitutionally impaired and effectively nullified the people's redistricting reform. That legislative action was not narrowly tailored to advance a compelling state interest.

CONCLUSION

Plaintiffs have successfully met their burden, on summary judgment, to prove as a matter of law that the Legislature's repeal of Proposition 4 and replacement with S.B. 200 failed to satisfy the *LWVUT*'s strict scrutiny analysis. Plaintiffs succeeded on all three *LWVUT* factors, as a matter of law.

First, Plaintiffs established that the people exercised their initiative power to propose redistricting legislation within the alter or reform clause in the Utah Constitution. Neither the U.S. Constitution nor the Utah Constitution grants sole and exclusive authority over redistricting to the Legislature. Because legislative power is shared co-equally and co-extensively between the Legislature and the people, and because redistricting is legislative, the people have the fundamental constitution right and authority to propose redistricting legislation that is binding on the Legislature.

Second, the Legislature infringed on the people's exercise of their right to propose and enact legislation to alter or reform their government and impaired the core redistricting reform. When the Legislature repealed Proposition 4 and replaced it with S.B. 200, the Legislature removed the core redistricting reform, the mandatory redistricting standards and procedures in Proposition 4 were eliminated, and the redistricting “law” that remains is not actually binding on the Legislature or enforceable by the people. While S.B. 200 retains some features, like the

independent redistricting committee, without mandatory and binding redistricting standards and procedures binding on the Legislature, S.B. 200 is illusory. The repeal and replacement of Proposition 4's redistricting reforms was unconstitutional.

Third, the Legislative Defendants failed to prove that the Legislature's legislative action that impairs the reform "is narrowly tailored to advance a compelling government interest." The Legislature repealed Proposition 4 in its entirety. S.B. 200 eliminated all mandatory redistricting standards and procedures binding on the commission and, most importantly, the Legislature. And the government interests offered to justify the legislative action was not compelling. In fact, each of the Legislative Defendant's arguments in support of its action fail to justify overriding the will of the people of Utah.

For these reasons, the Court **GRANTS** Plaintiffs' Motion for Summary Judgment on Count V, and **DENIES** the Legislative Defendants' Motion for Summary Judgment on Count V.

REMEDY

Plaintiffs have proven, as a matter of law, that the Legislature unconstitutionally repealed Proposition 4, and enacted S.B. 200, in violation of the people's fundamental right to reform redistricting in Utah and to prohibit partisan gerrymandering. Under S.B. 200, the Legislature enacted H.B. 2004, the current congressional map, which has been used in the 2022 and 2024 election cycles and will continue to be used until the next federal census data is received.

Plaintiffs are entitled to a remedy. The question is what remedy is appropriate under these circumstances. Plaintiffs request remedies to address both the unconstitutional repeal of Proposition 4's core reforms and the subsequently enacted 2021 congressional map, H.B. 2004. First, with regard to the unconstitutional repeal of Proposition 4, they request that the Court sever the unconstitutional provisions in S.B. 200, revive certain Proposition 4 provisions. They request the Court enjoin H.B. 2004 and, given the upcoming 2026 elections, Plaintiffs request this Court retain jurisdiction to ensure that a new congressional map, compliant with Proposition 4, is enacted in time for the 2026 election cycle.

As the Court addresses the requested remedy, under the circumstances here, the relationship between the elected legislature and the people is clearly articulated by Alexander Hamilton, in Federalist, no 78. He stated:

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act therefore contrary to the constitution can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves.

The Federalist No. 78, at 524–25 (Alexander Hamilton) (Jacob E. Cooke ed., Wesleyan Univ. Press 1961). Each requested remedy is addressed in turn.

Proposition 4 / S.B. 200

To remedy the repeal of Proposition 4, Plaintiffs request the Court “enjoin the unconstitutional aspects of S.B. 200 and sever the rest,” effectively reviving some of Proposition 4’s provisions and leaving the remainder of S.B. 200 in effect. More specifically, Plaintiffs request the Court (1) enjoin those S.B. 200 provisions that actually repealed and removed statutes containing the core reforms enacted by Proposition 4,³¹ (2) sever sections 20a-20-302(4)-(8) and § 20a-20-303³² of S.B. 200 and leave the remainder of S.B. 200 intact, and (3) replace the severed statutes with the corresponding sections of Proposition 4.³³ (*Pls.’ Mot.*, p. 25, n. 6.) In its Opposition to Plaintiff’s Motion for Summary Judgment, the Legislative Defendants originally took the position that any discussion of severability is premature because “the parties cannot adequately identify what provisions of current law are severable without first understanding the nature of any constitutional violation.” (*Leg. Defs.’ Opp’n / Cross MSJ*, p. 74.) They offered no legal analysis regarding any possible remedy and do not discuss whether severing S.B. 200 is even appropriate. Nonetheless, they do take the position that, even if this Court finds a constitutional violation, “a judicial remedy is not the wholesale revival of Proposition 4.” (*Id.*) And they contend that if the Court were to comply with Plaintiffs’ request, it would be an impermissible intrusion on the legislative branch’s constitutional prerogative. (*Id.*)

The Court agrees *in part* with the Legislative Defendants. The Court cannot give Plaintiffs the specific remedy they request. Plaintiffs remedy requests that the Court remove certain provisions in S.B. 200 and replace them with specific provisions of Proposition 4. First, the doctrine of severability does not provide an avenue for this Court to provide Plaintiffs with their requested remedy. Second, granting Plaintiffs’ request would result in a completely new judicially-created redistricting law, which is a clear violation of the separation of powers. As will be discussed in detail below, this Court cannot make law, even as a remedy for a constitutional violation, because to do so would usurp the legislature’s (and in this case, the people’s) exclusive law-making authority under the Utah Constitution. See *In re Young*, 1999 UT 6 (“[F]or powers or functions to fall within the reach of the second clause of article V, section 1, they must be so

³¹ These sections include the express prohibition of partisan gerrymandering, the mandatory redistricting standards with the order of priority, the private cause of action, the requirement that the Legislature appropriate sufficient funds for the Commission, the requirement that redistricting occur only once a decade following receipt of census results, and the severability clause. The Legislature did not include any replacement for these sections after their repeal.

³² These codified sections of S.B. 200 allowed the Commission to alter the mapping standards, removed the requirement that the Legislature adhere to the redistricting standards, removed the requirement that the Legislature vote on Commission maps, removed the requirement that the Legislature provide a statement explaining how any legislatively created and enacted maps better complied with the redistricting requirements, and removed the 10-day notice and public comment period requirement.

³³ Plaintiffs request that the Court revive Proposition 4’s “core reforms” codified at § 20A-19-102, -103, -104, -201, 204, and 301. Plaintiffs assert that these provisions should replace the unconstitutional sections of S.B. 200 codified at § 20A-20-302(4)-(8) and § 20A-20-303.

inherently legislative, executive or judicial in character that they must be exercised exclusively by their respective departments.”). Instead, given the Court’s ruling that S.B. 200 was unconstitutionally enacted in violation of the people of Utah’s fundamental constitutional rights to exercise their legislative initiative power and to reform their government, this Court concludes that S.B. 200 is void *ab initio*. As a result, Proposition 4, and the statutes originally enacted under it, are the law.

Doctrine of Severability

Plaintiffs’ request to “sever” certain portions of S.B. 200. When presented with the question of a statute’s *partial* invalidity, the doctrine of severability allows courts to preserve the constitutionality of a statute while severing any offensive provision from the whole. “It has long been settled that one section of a statute may be repugnant to the Constitution without rendering the whole act void. Because a statute bad in part is not necessarily void in its entirety, provisions within the legislative power may stand if separable from the bad.” *Seila L. LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 233–34, 140 S. Ct. 2183, 2208, 207 L. Ed. 2d 494 (2020) (internal citations omitted). “Generally speaking, when confronting a constitutional flaw in a statute, [courts] try to limit the solution to the problem. [Courts] prefer, for example, to enjoin only the unconstitutional applications of a statute while leaving other applications in force.” *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328–29, 126 S. Ct. 961, 967, 163 L. Ed. 2d 812 (2006); *State v. Lopes*, 1999 UT 24, ¶ 18, 980 P.2d 191 (“[I]f a portion of the statute might be saved by severing the part that is unconstitutional, such should be done.”).

S.B. 200 is unconstitutional because of what it removed from Proposition 4, not because of what is left in S.B. 200 (e.g., the independent redistricting committee). It removed the core redistricting reforms. It removed the prohibition on partisan gerrymandering. It removed the redistricting standards along with the established order of priority for those standards, which were mandatory and binding on the commission and, most importantly, the Legislature. It removed the requirement that the Legislature actually consider and vote on redistricting plans recommended by the commission. It removed the requirement that the Legislature explain how the redistricting plan that it creates and enacts better complies with Proposition 4’s redistricting standards. It removed the requirement that the Legislature provide a 10-day notice and public comment period on any redistricting plans it intends to enact. It removed the enforcement provisions.

Nonetheless, the Court addresses the substance of Plaintiff’s severability argument and concludes that the provisions are not severable. Plaintiffs request the Court sever section 20a-20-302(4)-(8), which set forth non-binding redistricting criteria. While the redistricting criteria are listed, they are listed solely for consideration by the commission. At best, they are suggestions, not requirements. Neither the commission nor the Legislature is required to comply with them when designing re-districting plans. Plaintiffs also request the Court sever section 20a-20-303, which describes the new procedures governing submission of the commission’s plans to the Legislature’s redistricting committee (not the whole Legislature, but its committee) for consideration. While this section appears to include a process, that process and the work accomplished by the independent commission is effectively rendered irrelevant under section 20a-20-303(5), by stating: “The committee or the Legislature *may, but is not required to*, vote on or adopt a map submitted to the committee or the Legislature by the commission.” Utah Code Ann. 20A-20-303(5) (emphasis added). The mandatory “vote” by the Legislature ensured that

the independent commission’s work was considered by the entire Legislature and that it didn’t die or get tabled in the redistricting committee before the plans could be considered by the entire Legislature. Under S.B. 200, the Legislature removed any provisions, standards or processes that were binding on it under Proposition 4. The request to sever sections 20a-20-302(4)-(8) and 20a-20-303 under S.B. 200, however, does not correct the constitutional violation.

As Plaintiffs correctly recognize, legislative intent determines whether a statute is severable. *In re Gestational Agreement*, 2019 UT 40, ¶ 49, 449 P.3d 69, 83. Absent an express statement of legislative intent, courts “turn to the statute itself, and examine the remaining constitutional portion of the statute in relation to the stricken portion.” *Id.* “[I]f the remainder of the statute is operable and still furthers the intended legislative purpose, the statute will be allowed to stand.” *Id.* see also *Gallivan v. Walker*, 2002 UT 89, ¶ 88, 54 P.3d 1069, 1098 (“Upon reviewing the statute as a whole and its operation absent the offending subsection, if the remainder of the statute is operable and still furthers the intended legislative purpose, the statute will be allowed to stand.”). Legislative intent is determined by examining the plain language of the statute. *State v. Flora*, 2020 UT 2, ¶ 21, 459 P.3d 975, 980 (“When conducting statutory interpretation, [courts] focus on the statute’s plain language because it is the best evidence of the legislature’s intent.”).

Reviewing S.B. 200, the Court concludes that the Legislature intended that if any of the nine statutes were determined to be unconstitutional or otherwise invalid, they would not be severable. Proposition 4 included a severability provision under section 20A-19-104, stating “[t]he provisions are severable,” and if “any word, phrase, sentence, or section . . . is held invalid by a final decision . . . the remainder of this chapter must be given effect without the invalid word, phrase, sentence, section or application.” Utah Code Ann. 20A-19-104(1), (2) (2018). S.B. 200 repealed that statute and did not replace it with another. By not including a severability clause, the Legislature communicated its intent that if one provision failed, then S.B. 200 would fail altogether. This appears consistent with the Legislative Defendants’ arguments that the Legislature has sole and exclusive authority over redistricting, which would – in their their view – render the independent redistricting committee and any work done by it unnecessary.³⁴

To the extent S.B. 200 was intended as a compromise³⁵ to Proposition 4, removing sections 20a-20-302(4)-(8) and 20a-20-303 arguably eliminates the entire purpose for even S.B. 200. After severing these provisions, there would be no suggested redistricting criteria or process to consider in designing redistricting plans and no procedure for presenting the independent redistricting commission’s work to the public or the Legislature’s redistricting committee. Without these provisions, the “compromise” intended to be reflected in S.B. 200 could not be achieved. Under these circumstances, “it is not within the scope of the court’s function to select the valid portions of the act and make conjecture the legislature intended they should stand

³⁴ Notably, the legislature also included in S.B. 200 a provision providing for “a review of the commission and the commission’s role in relation to the redistricting process.” Utah Code Ann. § 20A-20-103.

³⁵ The Legislative Defendants have represented throughout their briefing that S.B. 200 was intended to be a compromise. The intent was to retain the “spirit” of Proposition 4 while removing those portions that the legislature claimed to be unconstitutional, which was essentially all of the core redistricting reforms and any standards and procedures that would be mandatory and binding on the legislature.

independent of the portions which are invalid.” *Salt Lake City v. Int’l Ass’n of Firefighters, Locs. 1645, 593, 1654 & 2064*, 563 P.2d 786, 791 (Utah 1977) (stating legislative intent determines “whether the remaining portions of the act can stand alone and serve a legitimate legislative purpose.”) Therefore, the Court concludes that these “unconstitutional provisions” of S.B. 200 cannot be severed from the rest of the act because to do so would not further the legislative intent of S.B. 200.

Even assuming these provisions could be severed, this Court cannot replace any removed provisions. They contend that the severability doctrine allows this Court to invalidate the offending sections of S.B. 200, simultaneously revive the corresponding sections of Proposition 4 into S.B. 200’s existing statutory scheme and retain those sections of SB 200 that did not repeal Proposition 4’s core reforms. Specifically, they request the Court revive six repealed sections of Proposition 4, which reflect the core redistricting reforms, and insert them verbatim into SB 200’s statutory scheme. (*Pls.’ Mot.*, p. 26.) Plaintiffs also assert that some of the changes implemented by SB 200, such as removing any role the Chief Justice might play in the redistricting process and changing the composition of the commission, did not affect Proposition 4’s core reforms and could remain in force. (*Id.*)

The Plaintiff’s request overlooks one small, but important, detail. The severability doctrine allows courts to cut but not paste. In performing a severability analysis, courts “cannot rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole.” *Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 481–82, 138 S. Ct. 1461, 1482 (2018).³⁶ Given the arguments presented in this litigation, it is clear that “cutting and replacing” is not what the Legislature would have intended in enacting S.B. 200. Granting Plaintiffs’ request would be an unconstitutional encroachment by this Court on the Legislature’s, and frankly the people’s, constitutional powers to write and pass laws. Neither the people nor the legislature arguably intended some combination of Proposition 4 and S.B. 200.

There is a necessary separation of powers between the legislature, which makes the laws, and the courts, which interpret those laws. For the courts, the “task is to interpret the words used by the legislature, not to correct or revise them.” *State v. Wallace*, 2006 UT 86, ¶ 9, 150 P.3d 540, 542. And “[i]n matters not affecting fundamental rights, the prerogative of the legislative branch is broad and must by necessity be so if government is to be by the people through their elected representatives and not by judges.” *Gottling v. P.R. Inc.*, 2002 UT 95, ¶ 23, 61 P.3d 989,

³⁶ The Court recognizes that, in certain and limited circumstances, specific provisions of a statute that were unconstitutionally repealed could be given full force and effect. The Utah Supreme Court has previously stated: “It is now well settled that in case it is found that an entire statute, or only a particular provision of a statute, is invalid for any reason, and the statute so found invalid has expressly or by necessary implication repealed another statute or provision upon the same subject, so much of the former statute which was superseded by the invalid portion of the later one is not repealed, but continues in full force and effect.” *Bd. of Educ. of Ogden City v. Hunter*, 48 Utah 373, 159 P. 1019, 1024 (1916). However, in this case, the legislature did not start with Proposition 4 and revise the provisions to create S.B. 200. Rather, it repealed all of Proposition 4 and, starting with a clean slate, drafted S.B. 200. In comparing the statutes enacted under Proposition 4 and S.B. 200 side-by-side, the subject matter in the various sections and provisions vary and the numbering is not aligned. These are two completely different acts, establishing vastly different redistricting processes.

998 (*citing Baker v. Matheson*, 607 P.2d 233, 237 (Utah 1979) (emphasis added)). “One often-declared difference between judicial and legislative power is that the former determines the rightfulness of acts done; the latter prescribes the rule for acts to be done. The one construes what has been; the other determines what shall be.” *Mayhew v. Lab. Comm'n*, 2024 UT App 81, ¶ 41, 552 P.3d 235, 244, *cert. denied*, 554 P.3d 1097 (Utah 2024). Here, the Plaintiffs’ request would not only have this court construe what has been but also determine what will be. Accordingly, the Court concludes that Plaintiffs’ severability argument fails. The requested remedy – to sever S.B. 200’s unconstitutional provisions and replace with repealed Proposition 4 provisions – is not relief that this Court can grant.

S.B. 200 is void *ab initio*

When a portion of an act is unconstitutional, and severing is not possible, the remainder of the act cannot stand and is rendered invalid. *Berry By & Through Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 686 (Utah 1985) (concluding the entire Utah Product Liability Act invalid when one unconstitutional provision in the act was not severable). Therefore, S.B. 200 *could be* declared legally invalid. While this is one legal remedy, it does not perfectly fit here. This is not the situation where the Legislature enacted one statute, within a larger act, that is later deemed unconstitutional. Rather, the Legislature’s act of repealing Proposition 4 entirely and enacting S.B. 200 violated the people’s constitutional right to alter or reform their government through legislation.

Utah law mandates that if the legislature accomplishes what the Constitution does not permit, that act is unconstitutional and is “void and of no effect.” *State v. Barker*, 50 Utah 189, 167 P. 262, 264 (1917). As the Utah Supreme Court has held: “An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.” *Egbert v. Nissan Motor Co.*, 2010 UT 8, ¶ 12, 228 P.3d 737, 739 (*citing Norton v. Shelby County*, 118 U.S. 425, 442, 6 S. Ct. 1121 (1886)). “No other conclusion is permissible if the Constitution is the supreme law.... A legislative act which is in conflict with the Constitution is stillborn and of no force or effect —impotent alike to confer rights or to afford protection.” *State v. Candland*, 36 Utah 406, 104 P. 285, 290 (1909).

Persuasive authority from other jurisdictions supports this principle. The U.S. Supreme Court has stated: “We suppose it clear that no law can be changed or repealed by a subsequent act which is void because unconstitutional. . . . An act which violates the Constitution has no power and can, of course, neither build up nor tear down. It can neither create new rights nor destroy existing ones. It is an empty legislative declaration without force or vitality.” *Frost v. Corp. Comm'n*, 278 U.S. 515, 527, 49 S. Ct. 235, 239–40 (1929) (holding a proviso, added to a statute by amendment, unconstitutional under the equal protection clause but capable of being severed from the original statute.)

The Kentucky Supreme Court similarly stated:

[t]he general rule is that an unconstitutional statute, whether federal or state, though having the form and name of law, is in reality no law but is wholly void and ineffective for any purpose. *Since unconstitutionality dates from*

the time of its enactment and not merely from the date of the decision so branding it, an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed and never existed; that is, it is void ab initio

Legislative Rsch. Comm'n v. Fischer, 366 S.W.3d 905, 917 (Ky. 2012) (emphasis added) (quoting [16A Am.Jur.2d Constitutional Law § 195](#) (citations omitted)) (upholding trial court decision that redistricting plan was unconstitutional and enjoining implementation of districts under 2012 plan and ordering 2002 redistricting plan remain in effect.).

Proposition 4 is the Law in Utah

The Legislative Defendants argue that a judicial remedy in this case could not result in the “wholesale revival of Proposition 4.” The Legislative Defendants contend that this Court has no power to revive Proposition 4 in its entirety because courts cannot “legislate in that way.” (*Leg. Defs.’ Opp. / Cross MSJ*, p. 74.) The Court disagrees. Proposition 4 is the law in Utah by operation of law, not by an act of legislation by this Court.

Our Utah Supreme Court stated, earlier in this case: “In the event Plaintiffs prevail on their claim that S.B. 200 violates the people's right to alter or reform their government via citizen initiative, the act enacted by Proposition 4, Utah Code §§ 20A-19-101 to -301 (2018), would become controlling law.” *LWVUT*, 2024 UT 21, ¶ 222. While this legal issue was not before the *LWVUT* court, there is no other remedy appropriate under the circumstances. Moreover, this remedy is broadly supported throughout the country. The United States Supreme Court has recognized that if an act repealing a valid statute is “void for unconstitutionality, it cannot be given that effect,” and “the original statute must stand as the only valid expression of the legislative intent.” *Frost*, 278 U.S. at 526-27, 49 S. Ct. at 239. Other jurisdictions agree. *Conlon v. Adamski*, 77 F.2d 397, 399 (D.C. Cir. 1935) (“The elementary rule of statutory construction is without exception that a void act cannot operate to repeal a valid existing statute, and the law remains in full force and operation as if the repeal had never been attempted.”); *The Clark Fork Coal. v. Tubbs*, 2016 MT 229, ¶ 40, 384 Mont. 503, 519, 380 P.3d 771, 782 (“We have explained that an invalidated statute is in reality no law, but is wholly void, and in legal contemplation is as inoperative as if it has never been passed. The natural effect of this rule is that the invalidity of a statute leaves the law as it stood prior to the enactment of the invalid statute.”); *State v. Neely*, 604 N.W.2d 120, 123 (Minn. Ct. App. 2000) (“[T]he rule that when a court finds a statute or statutory amendment unconstitutional, the statute is not only inoperative—it is also deemed never to have been enacted. This rule generates a corollary that the statute as it existed prior to the amendment automatically revives in full force and effect.” (internal citation omitted)); *Cassidy v. China Vitamins, LLC*, 2017 IL App (1st) 160933, ¶ 21, 89 N.E.3d 944, 950, *aff'd*, 2018 IL 122873, ¶ 21, 120 N.E.3d 959 (“If an act is unconstitutional in its entirety, the state of the law is as if the act had never been enacted, and the law in force is the law as it was before the adoption of the unconstitutional amendment.” (internal citations omitted)).

The Michigan Supreme Court recently considered the appropriate remedy for the Michigan Legislature’s infringement of the people’s constitutional right of initiative, in *Mothering Justice v. Att’y Gen.*, No. 165325, 2024 WL 3610042 (Mich. July 31, 2024), *opinion clarified*, 10 N.W.3d 845 (Mich. 2024). In *Mothering Justice*, the Michigan Legislature received citizen initiative petitions that proposed raising Michigan's minimum wage, allowing for

compensatory time in lieu of overtime, and providing paid sick leave to employees.” *Id.* at *1. Under Michigan’s constitution, after an initiative is presented to the legislature, it must proceed in one of three ways: adopt the initiative without change or amendment, reject the initiative entirely, or reject the initiative and propose a replacement. *Id.* If the legislature adopts the initiative without change, it is adopted as law if it is passed by a simple majority vote of the legislature. *Id.* If the legislature rejects the initiative without a replacement, the original initiative is placed on the general election ballot. If the legislature rejects the initiative and proposes a replacement, both the replacement and the original initiative are placed on the general election ballot. *Id.*

Prior to the 2018 election, the legislature adopted both initiatives without change and because of this, neither initiative was included in the general election ballot. “After the election was over, however, the legislature voted by a simple majority to amend both laws significantly and to strip away many of their defining features.” *Id.*, at *3. The Michigan Supreme Court found that the “adopt-and-amend” process employed by the legislature was a violation of the state constitution because it was not allowed under the Michigan Constitution and it “obstructed voters’ ability to exercise their direct democracy rights through the initiative process.” *Id.*, at *7. The court concluded that the “amendments were unconstitutional and, therefore, void [*ab initio*]. . . . Thus, the original initiatives,” that were proposed by the people and “as adopted by the Legislature, remain[ed] in place.” *Id.* at *14.

Here, the people of Utah have the constitutionally protected right to alter or reform their government through the initiative process. The people exercised that right through Proposition 4. The Legislature’s subsequent enactment of S.B. 200, repealed all nine statutes enacted by Proposition 4. That act ensured that the people’s redistricting reform was eliminated in its entirety. *See Bd. of Educ. of Ogden City*, 159 P. at 1022 (“Where a statute repeals all former laws within its purview, the intention is obvious, and is readily recognized to sweep away all existing laws upon the subjects with which the repealing act deals.”). It ensured that no redistricting standards or procedures would be binding on the Legislature. It unconstitutionally impaired the people’s fundamental constitutional right to pass legislation to reform how redistricting is accomplished in Utah. And it rejected the people’s directive that, as a matter of Utah law, partisan gerrymandering—regardless of what party is in control—is prohibited. The complete repeal of Proposition 4 was not narrowly tailored to advance any compelling state interest. And there is no compelling state interest that justified the Legislature’s refusal to recognize the will of the people.

S.B. 200 is void *ab initio*. Because Proposition 4 was not effectively repealed, it stands as the only valid law on redistricting.

HB 2004

Plaintiffs also request the Court immediately enjoin the current congressional map, H.B. 2004. The Legislature enacted H.B. 2004, also known as the 2021 Congressional Plan, which has been used in the 2022 and 2024 election cycles. Plaintiffs assert that “the people are stuck with a map enacted in direct defiance” of their fundamental constitutional right to reform redistricting, which has and will continue to directly impact the election of our elected legislature. (*Pls’ Supp. Reply*, Dkt. No. 459, p. 3.) And, it will continue to be used in all future elections, unless it is

immediately enjoined.³⁷ In addition, Plaintiffs request this Court retain jurisdiction to ensure that the Legislature enacts a new congressional map that complies with Proposition 4 in time for the 2026 election.

The Legislative Defendants argue that this Court cannot enjoin the enforcement of HB 2004 on summary judgment because Count V does not directly challenge the validity of HB 2004 and the parties have not litigated the legality of the map it enacted. (*Leg. Defs.’ Suppl. Resp.*, p. 10.) They argue that Count V does not explicitly challenge the validity of the 2021 Congressional Plan, enacted under H.B. 2004, and therefore the parties must first litigate the map’s compliance with Proposition 4’s substantive requirements before that map can be enjoined. The Legislative Defendants also argue that a permanent injunction is a prospective remedy, that would not be appropriate here because it would be awarding Plaintiff’s with retrospective relief. (*Id.*, p. 6.)

There is no dispute that H.B. 2004 was enacted under S.B. 200, after Proposition 4 was repealed. H.B. 2004 cannot be separated from the Legislature’s unconstitutional repeal of Proposition 4. By stripping away the core redistricting reforms passed by the people, and replacing them with S.B. 200, the Legislature cleared the path for a map drawn independent of the mandatory redistricting standards and procedures imposed on the Legislature by Proposition 4. H.B. 2004 is therefore not a fresh or independent act — it is the fruit of that unlawful repeal, an extension of the very constitutional violation that tainted the process from the start.”

Equitable remedies, such as injunctions, are the principal means by which Utah courts redress constitutional injuries. *Spackman ex rel. Spackman v. Bd. of Educ. of Box Elder Cnty. Sch. Dist.*, 2000 UT 87, ¶ 25, 16 P.3d 533, 539. In considering the appropriate remedy, several principles apply. “Once a [constitutional] right and a violation have been shown, the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.” *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15, 91 S. Ct. 1267, 1276 (1971) (addressing remedy for school authorities’ failure to affirmatively eliminate state-imposed segregation, stating “[t]he task is to correct . . . the condition that offends the Constitution.”). A court’s equitable “powers are defined by pragmatic flexibility,” allowing courts to “mold” each remedy “to the necessities of the particular case.” *Mothering Justice*, 2024 WL 3610042, at *14 (Mich. July 31, 2024), *opinion clarified*, 10 N.W.3d 845 (Mich. 2024)(quoting *Hecht Co v Bowles*, 321 U.S. 321, 329-330, 64 S Ct 587 (1944) (“The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims.”); *see also Brown v Bd. of Ed. of Topeka*, 349 U.S. 294, 300, 75 S Ct 753 (1955) (“Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs.”). “The controlling principle consistently expounded . . . is that the scope of the remedy is determined by *the nature and extent* of the constitutional violation.” *Milliken v. Bradley*, 418 U.S. 717, 744, 94 S. Ct. 3112, 3127 (1974)

³⁷ This Court requested supplemental briefing on Plaintiffs’ request to enjoin H.B. 2004, requesting the parties address the remedy requested in light of the procedural posture of Count V and Plaintiffs’ newly added Counts VI – VIII.

(emphasis added). And the remedy must be designed to restore Plaintiffs to the position they would have occupied but for the violation. *Id.* at 746.

Here, the Legislature unconstitutionally repealed Proposition 4, enacted S.B. 200 and then, under that framework, enacted H.B. 2004, the 2021 Congressional Plan that has been in place for the last two election cycles and will continue to be in place until Utah receives the next U.S. census data. The nature of the violation lies in the Legislature's refusal to respect the people's exercise of their constitutional lawmaking power and to honor the people's right to reform their government by enacting redistricting legislation. By repealing Proposition 4, enacting S.B. 200, and then enacting H.B. 2004 under the S.B. 200 framework, the Legislature not only disregarded the redistricting *process* established by the people under Proposition 4, but it affirmatively ensured that Proposition 4 would not apply when it enacted H.B. 2004. The extent of the constitutional violation goes beyond the simple unconstitutional repeal of Proposition 4. H.B. 2004 is the product of an unconstitutional process. The Legislature's unconstitutional act, if left unremedied, will be compounded with each election cycle. Under these circumstances, and as a consequence of the unconstitutional repeal of Proposition 4, Plaintiffs are entitled to a permanent injunction, prohibiting the enforcement of H.B. 2004.

In evaluating the extent of the injunction, consideration must be given to the reliance on the unconstitutional law passed by the Legislature and the potential for injustice. *See Mothering Justice*, 2024 WL 3610042, *14. In certain cases, “a more flexible approach, giving holdings limited retroactive or prospective effect,” may be appropriate. *Id.* (citing *League of Women Voters*, 508 Mich. at 565, 975 N.W.2d 840, quoting *Lindsey v Harper Hosp*, 455 Mich. 56, 68, 564 N.W.2d 861 (1997)). In cases where “a decision establishes a new principle of law, the court considers three factors: (1) the purpose to be served by the new rule, (2) the extent of the reliance on the old rule, and (3) the effect of retroactivity on the administration of justice.” *Id.* (cleaned up) (citing *League of Women Voters*, 508 Mich. at 565-566, 975 N.W.2d 840 (quoting *Pohutski v Allen Park*, 465 Mich. 675, 696, 641 N.W.2d 219 (2002))).

Like in *Mothering Justice*, the relief granted here must be shaped “by a practical flexibility” that reconciles both the integrity of Utah's elections and the expectations associated with the people's rights to the initiative. *Id.* (citing *Brown*, 349 U.S. at 300). First, because S.B. 200 is void *ab initio*, Proposition 4 is and effectively has been the law in Utah on redistricting since 2018. Proposition 4 was passed to reform redistricting, by prohibiting partisan gerrymandering and requiring all redistricting plans be designed in accordance with traditional and mandatory redistricting standards. It was passed to ensure a transparent and standard procedure for redistricting, including requiring the Legislature to consider redistricting plans recommended by an independent redistricting commission, bound to comply with redistricting standards. It was passed to ensure an opportunity for public notice and comment, along with an explanation if the Legislature elected to design and enact its own maps. And it provided an enforcement mechanism to ensure that the people could enforce the redistricting reform. The people are entitled to have their will recognized and Proposition 4 enforced.

Second, S.B. 200 has been relied on since 2020. Under it, H.B. 2004 was enacted and the 2021 Congressional Plan has been used in the last two election cycles in 2022 and 2024. Third, approaching the remedy practically, full retroactivity of Proposition 4 and H.B. 2004, is not practical. Justice would not be served by calling into question or undoing the last to elections.

We can, however, apply Proposition 4 prospectively. As a result, H.B. 2004, and the 2021 Congressional Plan must be enjoined, and the Legislature is required to enact a new congressional plan in compliance with Proposition 4 in time for the upcoming 2026 election cycle.

The Legislative Defendants make several arguments challenging an injunction on H.B. 2004. Each of those arguments are addressed in turn. First, the Legislative Defendants argue that they did not have reasonable notice that Plaintiffs requested to enjoin H.B. 2004 under Count V. (*Leg. Defs.’ Supp. Remedies Br.*, p. 3.) The Legislative Defendants’ argument is not supported by the record. In Plaintiffs’ original Complaint, under Count V, the last paragraph requested “declaratory and injunctive relief as more fully set forth below.” (*Compl.* p. 78, ¶ 319.) The next section, “Relief Sought,” follows. That section states, *inter alia*:

RELIEF SOUGHT

For the foregoing reasons, Plaintiffs request that this Court:

a. Declare that the 2021 Congressional Plan is unconstitutional and invalid because it violates Plaintiffs’ rights under Article I, Section 1; Article I, Section 2; Article I, Section 15; Article I, Section 17; Article I, Section 24; and Article IV, Section 2 of the Utah Constitution;

b. Enjoin Defendants and their agents, officers, and employees from administering, preparing for, or moving forward with Utah’s 2024 primary and general elections for Congress using the 2021 Congressional Plan;

(*Id.* p.78, ¶ a., b. (emphasis added)). When Plaintiffs filed their First Amended Complaint on August 30, 2024, Count V did not change and the substance of the requested relief remained the same. (*First Am. Compl.*, p. 78, ¶ 319, p. 85, ¶ a, b.) In addition, this relief was specifically requested in Plaintiffs’ Motion for Summary Judgment on Count V and in Plaintiffs’ Consolidated Reply. (*See Pls.’ Mot. Sum. J.*, p. 26-30; *Pls.’ Cons. Reply*, p. 51-60.) The Legislative Defendants had notice of this specific request for relief.

The Legislative Defendants argue that Plaintiffs did not specifically challenge H.B. 2004’s compliance with Proposition 4 under Count V; rather Count V focuses solely on S.B. 200, and the repeal of Proposition 4. This is not true. While the Court explains below that Plaintiffs did not need to prove under Count V that H.B. 2004 did not comply with Proposition 4, they did. Plaintiffs’ Motion for Summary Judgment on Count V, specifically alleges and the Legislative Defendants did not dispute that H.B. 2004 was not enacted in compliance with Proposition 4. First, there is no dispute that H.B. 2004 was enacted in 2021, under the framework of then existing law, S.B. 200 and not Proposition 4. There is no dispute that certain Proposition 4 procedures were not complied with. (*See Statement of Undisputed Facts*, ¶¶ 40-47.) The Legislature did not take a vote on the maps presented by the Commission in the 2021 redistricting cycle, as required by Proposition 4. *See U.C.A. § 20A-19-204(2)(a)*. They do not dispute that the map enacted by H.B. 2004 did not comply with Proposition 4’s requirement that the Commission’s redistricting plans be available for review and comment by the public for no less than 10 calendar days. *See U.C.A. § 20A-19-204(4)*. The Legislative Defendants do not deny that, after adoption of the legislatively created map through H.B. 2004, the Legislature did

not provide a detailed written report explaining how the Legislature's chosen plan better complied with Proposition 4's redistricting standards. *See* §20A-19-204(5)(a). There is no dispute that these substantive procedural requirements were not complied with. Plaintiffs did establish undisputed facts that H.B. 2004 did not comply with the procedural requirements of Proposition 4.

The Legislative Defendants argue that enjoining H.B. 2004 is not justified where there is a violation of "procedure" rather than substantive law and where the three procedural requirements amount to "merely trifling violations." (*Leg. Defs.' Supp. Rem. Br.*, p. 9.) This is not the case here. As recognized by the Utah Supreme Court, Proposition 4 established a comprehensive *process* for redistricting.³⁸ While complying with the mandatory redistricting standards in designing a map is critical, following the procedure outlined in Proposition 4 is no less important. Both are part of the core redistricting reform and both are equally important. The U.S. Supreme Court has recognized that "[t]he line between procedural and substantive law is hazy" in the context of redistricting. *Moore v. Harper*, 600 U.S. at 31, 143 S. Ct. at 2086. "Procedure, after all, is often used as a vehicle to achieve substantive ends." *Id.* Failing to comply with Proposition 4's procedural requirements is a failure to comply with the substantive requirements of Proposition 4's redistricting reform. Proposition 4's procedural requirements are so integral to the governmental reforms it put into place that any map enacted in their absence is, itself, a violation of the people's right to alter and reform their government. Accordingly, whether H.B. 2004 also violated other Proposition 4 requirements is therefore irrelevant.

The Legislative Defendants assert that enjoining H.B. 2004 is both premature and unwarranted because "additional proceedings would be required to determine whether the Legislature substantially complied" and to determine whether a "less drastic remedy is sufficient to redress Plaintiff's injury." (*Leg. Defs.' Supp. Rem. Br.*, p. 9.) First, there can be no real dispute that H.B. 2004 was enacted under S.B. 200's redistricting framework and not Proposition 4, given Proposition 4 was repealed. Second, this is not a substantial compliance case. This is not a case where the Legislative Defendants attempted in good faith to comply with the law, i.e., Proposition 4's redistricting process, and arguably failed. Rather, the undisputed facts show that the Legislature repealed Proposition 4 and enacted S.B. 200, ensuring Proposition 4's mandatory redistricting process would not be binding on the Legislature when it enacted H.B. 2004. Third, even if substantial compliance was a legitimate defense, the Legislative Defendants have not asserted it, let alone presented any evidence to support substantial compliance with Proposition 4, on summary judgment. Instead, the Legislative Defendants merely assert that the issue of substantial compliance "must be considered" by the Court. (*Id.*) If substantial compliance had successfully been raised at any time in the briefing and had other options been presented by the Legislative Defendants, then those may have been considered. Finally, the Legislative Defendants assert that "[a]ny remedy here must be tailored to the constitutional violation." *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328 (2006). The Court contends that it does. The violation in this case is not merely a failure to comply with Proposition 4. The

³⁸ The Utah Supreme stated: "Utahns used their legislative power to actively address partisan gerrymandering comprehensively, by completely prohibiting the practice, reforming the redistricting process as a whole," creating an advisory independent redistricting committee, establishing mandatory redistricting standards and procedures, and providing an enforcement mechanism to ensure compliance. *LWVUT*, 2024 UT 21, ¶ 225.

violation is the Legislature’s dismissal of the people’s fundamental right to establish redistricting legislation by both repealing Proposition 4 and enacting S.B. 200 and then enacting H.B. 2004 under S.B. 200.

The Legislative Defendants also argue that an injunction against H.B. 2004 is inappropriate because it provides “retrospective” relief. The Court disagrees. There has been no request to undo the 2022 and 2024 elections. Rather, an order enjoining H.B. 2004 would be prospective only.

Finally, it is both unnecessary and inconsistent with both constitutional principles and equitable remedies to require Plaintiffs to prove, on a district-by-district basis, that H.B. 2004 failed to comply with Proposition 4. The record and the Legislature’s own positions throughout this litigation make clear that H.B. 2004 was designed under S.B. 200, not Proposition 4. The Legislature intentionally stripped away all of Proposition 4’s core redistricting standards and procedures that were mandatory and binding on it. The Legislature has consistently maintained Proposition 4 was both unconstitutional and that it did not apply to the Legislature. It would exacerbate the constitutional violation to let the Legislative Defendants further delay any remedy by attempting to defend H.B. 2004 by claiming it complies with Proposition 4, a law they refused to follow. To permit the 2021 Congressional Plan to remain in place would reward the very constitutional violation this Court has already identified and would nullify the people’s 2018 redistricting reform that they passed through Proposition 4.

Permanent Injunction Standard – H.B. 2004

As discussed above, the appropriate remedy includes a prospective permanent injunction on the use of H.B. 2004, the 2021 Congressional Plan, in future elections. The Court also concludes that Plaintiffs satisfy the four-factors necessary to be entitled to that relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; 3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156–57, 130 S. Ct. 2743, 2756, 177 L. Ed. 2d 461 (2010). “The right to an equitable remedy is an exceptional one, and absent statutory mandate, equitable relief should be granted only when a court determines that damages are inadequate and that equitable relief will result in more perfect and complete justice.” *Timber Lakes Prop. Owners Ass’n v. Cowan*, 2019 UT App 160, ¶ 22, 451 P.3d 277, 285 (citation omitted)).

Here, all four factors are met. First, Plaintiffs, and the people of Utah, will suffer irreparable harm unless the permanent injunction on H.B. 2004 is issued. Utah’s courts define “irreparable injury as wrongs of a repeated and continuing character, or . . . [an injury] which cannot be adequately compensated in damages or for which damages cannot be compensable in money.” *Carrier v. Lindquist*, 2001 UT 105, ¶ 26, 37 P.3d 1112, 1119. In addition, “[a]ny deprivation of any constitutional right fits that bill.” *Free the Nipple-Fort Collins v. City of Fort Collins*, Colorado, 916 F.3d 792, 806 (10th Cir. 2019) (citing *Awad v. Ziri*, 670 F.3d 1111, 1131 (10th Cir. 2012) (“Furthermore, when an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”) “Irreparable harm is generally considered the most important of the ground[s] for injunctive relief.” *Timber Lakes*,

2019 UT App 160, ¶ 24. Here, allowing H.B. 2004, the product of an unconstitutional act, to be used in the upcoming 2026 election is harm that is irreparable. There is no other remedy, monetary or otherwise, that could rectify the violation of the people’s fundamental right to alter or reform their government. In fact, by not enjoining it, this Court would be sanctioning it.

Second, the harm to Plaintiffs outweighs any harm to Legislative Defendants. Without the permanent injunction, another election cycle will proceed in defiance of the will of the people, as expressed in Proposition 4. The Legislative Defendants – as the elected representatives of the people – are duty bound to honor the will of the people.

Third, the Court must “balance the harms that would result from denying the injunction against the harms that would result from granting the injunction.” *Utah Env’t Cong. v. U.S. Bureau of Land Mgmt.*, 119 F. App’x 218, 220 (10th Cir. 2004). Plaintiffs argue that if HB 2004 is not permanently enjoined the people of Utah will be harmed by being bound to a congressional redistricting map that was not enacted according to the requirements of Proposition 4 and that will govern every election between 2026 and 2031. Merely recognizing Proposition 4 as the law on redistricting in Utah without taking steps to ensure that all congressional plans used in future elections comply with it, violates Utah law and continues to violate the people’s constitutional rights. Accordingly, the Court concludes that the balance of harms in this case tips in favor of Plaintiffs and the people of Utah.

Fourth, the injunction will not adversely affect the public interest. Generally, “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013) (citing *Awad v. Ziriax*, 670 F.3d 1111, 1131–32 (10th Cir.2012)). An injunction against HB 2004 is in the public interest because it is the only remedy that will enforce Proposition 4 going forward and prevent the continued violation of the people’s constitutional rights. Issuing a permanent injunction against H.B. 2004 will not adversely affect the public interest.

CONCLUSION AND ORDER


For the reasons stated herein, the **GRANTS** Plaintiffs’ Motion for Summary Judgment on Count V and **DENIES** the Legislative Defendants’ Motion for Summary Judgment on Count V. Proposition 4 is the law in Utah on redistricting. H.B. 2004, the 2021 Congressional Map, which was not enacted under S.B. 200 and not Proposition 4, cannot lawfully govern future elections in Utah.

IT IS HEREBY ORDERED:

1. Plaintiffs’ request to enjoin H.B. 2004, the 2021 Congressional Map, is **GRANTED**.
2. Use of H.B. 2004, the 2021 Congressional Map, in any future elections is hereby **ENJOINED**.
3. Proposition 4 is the law on redistricting in Utah.

4. The Legislature is directed to design and enact a remedial congressional redistricting map in conformity with Proposition 4's mandatory redistricting standards and requirements.
5. The Court retains jurisdiction and proposes that the following timeline shall govern proceedings between now and November 1, 2025:
 - a. The Legislative Defendants shall have thirty (30) days from the date of this decision, until September 24, 2025, to design and enact a remedial congressional map that complies with the mandatory redistricting standards and requirements originally established under Proposition 4. The Legislative Defendants are ordered to make their chosen remedial map available to Plaintiffs and the Court no later than 5:00 p.m. on September 24, 2025 or within 24 hours of enacting the new congressional map, whichever occurs earlier.
 - b. Plaintiffs and other third parties may also submit proposed remedial maps, along with any accompanying expert reports and supportive materials, to this Court, on September 24, 2025, in the event that (i) the Legislature does not enact a remedial map that complies with Proposition 4 by 5:00 p.m. on September 24, 2025, or (ii) Plaintiffs contend that the remedial map fails to abide by and conform to Proposition 4's mandatory redistricting standards and requirements.
 - c. By 11:59 p.m. on Friday, October 3, 2025, Plaintiffs and other interested parties may file briefs with objections to any congressional map enacted by the Legislature or to any map proposed by Plaintiffs or any other third party.
 - d. An evidentiary hearing will be scheduled sometime between October 9 – 14, 2025. Other dates may be available, depending on the parties' availability.
 - e. The Court orders the parties to discuss the proposed schedule in good faith and if possible, reach agreement on any requested modifications. The parties should be prepared to discuss the proposed schedule and the path forward during the hearing on Friday, August 29, 2025, at 10:00 a.m.

DATED August 25, 2025.




DIANNA M. GIBSON
DISTRICT COURT JUDGE


EXHIBIT C

**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, JACK MARKMAN, and
DALE COX,

Plaintiffs,

v.

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

Defendants.

RULING and ORDER

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

**OCTOBER 23 - 24, 2025 EVIDENTIARY
HEARING**

and

**RULING GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION ON COUNT 16**

and

**ORDER ISSUING PRELIMINARY
INJUNCTION ON THE ENFORCEMENT
OF S.B. 1011 and S.B. 1012 (MAP C)**

and

**ORDER ADOPTING MAP 1 AS THE
REMEDIAL CONGRESSIONAL MAP**

Case No. 220901712

Judge Dianna M. Gibson

BACKGROUND

In 2018, Utahns exercised their fundamental constitutional right to alter or reform their government via an initiative that, among other things, banned partisan gerrymandering and ensured that voting maps adhered to neutral criteria like respecting county and municipal lines, compactness, and communities of interest. That initiated law, known as Proposition 4 (“Proposition 4”), was expansive in scope, reflecting the people’s desire to use all available tools, data, and metrics to identify and prohibit increasingly sophisticated gerrymandering schemes.

On August 25, 2025, this Court permanently enjoined both S.B. 200, through which the Legislature had unconstitutionally repealed Proposition 4 in 2020 and the congressional map (“H.B. 2004” or “2021 congressional map”) that directly resulted from that unconstitutional repeal. A remedial process was put in place, creating a process and setting deadlines agreed to by the parties and established by court order, to ensure that a new congressional map would be in place in time for the 2026 elections. The deadline to have a new congressional map in place is November 10, 2025.

On October 6, 2025, the Legislature advanced two pieces of legislation: S.B. 1011, which substantially redefined and narrowed Proposition 4’s prohibition on partisan gerrymandering, and S.B. 1012, which enacted Map C, one of five congressional map options considered by the Legislature.

S.B. 1011 amended Proposition 4’s broad standard defining how its prohibition on undue partisan favoritism should be assessed. Rather than maintain the people’s choice to assess maps using “judicial standards and the best available data and scientific methods, including measures of partisan symmetry,” Utah Code § 20A-19-103(5), S.B. 1011 redefined Proposition 4’s partisan gerrymandering prohibition to make one specific measure of partisan symmetry—the partisan bias test—a mandatory, determinative test to the exclusion of other relevant metrics. It layered on additional metrics (a companion metric called the mean-median difference test and a computer-simulated mapping ensemble with additional metrics), but the partisan bias test remains the primary, gateway metric to filter maps that “pass” or “fail.” But it is widely known—as even Legislative Defendants’ experts testified—that the partisan bias test and the mean-median difference test return paradoxical results in noncompetitive states, and particularly in Utah. The primary feature of the partisan bias test is its hypothetical tied statewide election—a condition that simply does not occur in Utah. In fact, the author of the partisan bias test has repeatedly warned it should not be used to assess partisan favoritism in uncompetitive states.

That same day, Plaintiffs submitted to the Court two proposed maps: Map 1 and Map 2. The next day, on October 7, 2025, Plaintiffs filed a Motion for Leave to File a Third Supplemental Complaint to add six additional causes of action¹ and a Motion for Preliminary Injunction on Counts 16–21. Plaintiffs allege that S.B. 1011 violates Plaintiffs’ fundamental constitutional right to alter and amend their government, under article 1, section 2 of the Utah Constitution, because S.B. 1011 impairs Proposition 4’s core reform to prohibit partisan gerrymandering by narrowly redefining Proposition 4’s prohibition on partisan gerrymandering to effectively mandate, by law, the use of partisan maps that favor the majority Republican party.

¹ The Motion to Amend was not opposed. The Court granted the Motion, in writing, on November 10, 2025.

On October 23 and 24, 2025, this Court held a two-day evidentiary hearing. The testimony and evidentiary record prove that S.B. 1011 unconstitutionally impairs Proposition 4’s reforms in violation of Article I, Section 2 of the Utah Constitution. The evidence shows that the partisan bias test directly contravenes Proposition 4’s neutral redistricting criteria. It fails maps that perform best on those criteria and passes maps the perform worst on them. Likewise, it acts to structurally *mandate* partisan favoritism, by disqualifying most maps that create a single Democratic congressional district under a conclusion that such maps favor *Republicans* and disfavor *Democrats*. In contrast, the partisan bias test nearly universally approves congressional maps that give the majority party, here the Republican party, a 4-0 district advantage. The reality is that, applied in a state like Utah, the partisan bias test acts as a filter to disqualify maps that by any reasonable metric would be considered politically neutral and approve those that by any reasonable metric would be considered Republican gerrymanders. S.B. 1011 effectively mandates the very partisan favoritism that Proposition 4 was enacted to stop.

S.B. 1012 or Map C was enacted as the Legislature’s remedial congressional map. Map C creates four districts in which zero Democratic statewide candidates have prevailed under the assessed elections. The least Republican district has a composite score of at least 56% Republican, reflecting a 12-point loss for Democratic candidates. Under the only reliable ensemble of computer-simulated maps that comply with Proposition 4’s requirements offered by the parties, Map C is an extreme partisan outlier—more Republican than over 99% of expected maps drawn without political considerations.

In addition, Map C fails in many ways to comply with Proposition 4. First, Map C was drawn with partisan political data on display. Map C does not abide by Proposition 4’s traditional redistricting criteria “to the greatest extent practicable.” And, based on the evidence presented, the Court finds that Map C was drawn with the purpose to favor Republicans—a conclusion that follows from even S.B. 1011’s metric for partisan intent—and it unduly favors Republicans and disfavors Democrats.

In short, Map C does not comply with Utah law. Because the Lieutenant Governor’s November 10, 2025, deadline for a map to be finalized is upon us, the Court bears the unwelcome obligation to ensure that a lawful map is in place, which the Court discharges by adopting Plaintiffs’ Map 1 for Utah’s congressional elections.

THE ISSUES

There are several issues before the Court:

1. **Does S.B. 1011, which amended Proposition 4, govern these remedial proceedings? Should Plaintiffs’ Motion for Preliminary Injunction on Counts 16-21 be granted, and should S.B. 1011 be preliminary enjoined?**

No. Yes. Plaintiff’s Motion for Preliminary Injunction on Count 16 should be granted, and the enforcement of S.B. 1011 is preliminarily enjoined.

2. **Which congressional map should govern – Map C, Map 1 or Map 2? If S.B. 1011 is enjoined, does Map C comply with Proposition 4?**

Map C does not comply with Proposition 4. Under Proposition 4, Plaintiffs have satisfied the requirements for a preliminary injunction enjoining the enforcement of Map C.

3. **If Map C does not comply with Proposition 4, then does Map 1 or Map 2 “better satisfies the redistricting standards and requirements contained in” Proposition 4?**

Map 1 better satisfies the redistricting standards and requirements contained in Proposition 4. The Court adopts Map 1 as the remedial congressional map.

FINDINGS OF FACT

The Court held a two-day evidentiary hearing on October 23 and 24, 2025. The Court heard testimony from eight witnesses and received numerous exhibits. Having considered the testimony, the admitted exhibits, including the expert reports, the Court makes the following Findings of Fact:

I. Parties

1. The parties have stipulated the residences of individual Plaintiffs Stefanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, and Jack Markmen under each of Plaintiffs’ Map 1, Plaintiffs’ Map 2, Defendants’ Map C, the 2021 Congressional Plan, and the 2011 Congressional Plan. (*See* Stipulation re Pls.’ Residences, Dkt. 704.) The other named Plaintiffs are organizations the League of Women Voters of Utah and Mormon Women for Ethical Government.

2. Plaintiffs Malcolm Reid and Victoria Reid testified to their personal experience as residents of Millcreek. While Ms. Reid is a registered Republican, she and her husband both testified as to their support of Proposition 4 and their disappointment and frustration with what they saw as the Legislature’s efforts to evade the law’s neutral redistricting standards with respect to both the 2021 Congressional Map and Defendants’ Map C (Millcreek was divided amongst all four congressional districts under the former map, and remains divided into two districts under the latter map).² Ms. Reid testified that Defendants’ Map C was “an improvement” over the 2021 Congressional Map, but her city remained “carved up.”³ Mr. Reid testified that Defendants’ Map C “hurts half as much,” but his voice is still “diluted” and his vote “less effective” under the current map.⁴ Under the 2011 map, the Reids live in District 4, as does Plaintiff Eleanor Sundwall. Dkt. 704.

3. The named Defendants are the Utah State Legislature, the Utah Legislative Redistricting Committee, Representative Mike Schultz, Senator J. Stuart Adams, Senator Scott Sandall, and Lieutenant Governor Deidre Henderson.

4. The Utah Legislative Redistricting Committee (LRC) was a committee of the Utah Legislature that heard testimony from the Legislature’s expert, Dr. Sean Trende, presented and heard testimony on the five proposed Maps labeled A to E, and ultimately voted to advance Map C to the floor where it was voted on and adopted. The LRC likewise heard testimony on an

² 10.23 Tr. at 143:9-12, 144:16-18, 145:13-21 (V. Reid), 291:24-292:9, 292:25-296:4 (M. Reid).

³ *Id.* at 147:1-17 (V. Reid).

⁴ *Id.* at 296:18-297:14, 299:23-300:1 (M. Reid).

early draft of S.B. 1011. The LRC was co-chaired by Sen. Scott Sandall and Rep. Candice Pierucci. Sen. Sandall and Rep. Pierucci chose which five maps of the ten or more presented by the Legislature’s expert, Dr. Sean Trende, would be made public and presented to the Committee.⁵

II. Expert Witnesses

A. Plaintiffs’ Expert Witnesses

5. Plaintiffs’ expert Dr. Jowei Chen is an associate professor in the Department of Political Science at the University of Michigan, Ann Arbor. Dr. Chen is also a research associate professor at the Center for Political Studies of the Institute for Social Research at the University of Michigan and a research associate at the Spatial Social Science Laboratory at Stanford University.⁶ Dr. Chen studies redistricting and gerrymandering. He is one of the preeminent scholars in the field of using computer simulations in redistricting and has published multiple peer-reviewed academic papers on his methodology.⁷ Dr. Chen has authored expert reports in 20 redistricting court cases, and has testified at a deposition or trial in 15 such cases.⁸ The Court accepted Dr. Chen as an expert in the fields of redistricting, political geography, statistical measures of partisan favoritism, and redistricting simulation analysis.⁹ The Court found Dr. Chen’s testimony credible, careful, and lucid. Dr. Chen was clear and precise in his answers on both direct and cross-examination. And while Dr. Chen was challenged about the proprietary, not public nature of the algorithms he uses to generate his ensembles used in the ensemble analysis, he provided his algorithms to the other experts. Those algorithms were not challenged and he was not cross-examined about any identified errors. In fact, his 10,000-map ensemble was the only ensemble of maps that complied with Proposition 4’s ranked order traditional criteria. The Court gives great weight to Dr. Chen’s methods, analysis, and testimony.

6. Plaintiffs’ expert Dr. Christopher Warshaw is a professor at the McCourt School of Public Policy at Georgetown University. He studies and teaches in fields including American politics, political representation, elections, public opinion, and redistricting. Dr. Warshaw has testified or written reports in about a dozen cases, and the Court accepted him as an expert in American politics with specialties in political representation, elections, redistricting, and gerrymandering.¹⁰ The Court found Dr. Warshaw’s testimony credible and helpful to the Court in explaining the various statistical tests at issue. The Court found Dr. Warshaw credible and knowledgeable. He was careful not to overstate conclusions and acknowledged the benefits and

⁵ Legislative Redistricting Committee, Public Hearing, September 22, 2025, <https://le.utah.gov/av/committeeArchive.jsp?mtgID=20165> (2:02:20-2:02:50) (“9.22 LRC Hearing”). The Court takes judicial notice of these and other legislative facts, *see* Utah R. Evid. 201, Advisory Cmte. Note (noting that Rule 201 “does not deal with instances in which a court may notice legislative facts, which is left to the sound discretion of trial and appellate courts”); *Cruz v. Middlekauff Lincoln-Mercury, Inc.*, 909 P.2d 1252, 1260 (Utah 1996) (court “can legitimately consider” “legislative facts” presented to the court by plaintiffs); *Directv, Inc., v. Utah State Tax Com’n*, No. 110402039, 2013 WL 9973019, at *6 (Utah Dist. Ct. June 27, 2013) (result achieved “through taking judicial notice of the legislative record”).

⁶ PX-3 at 104 (Chen Report).

⁷ 10.23 Tr. at 13:11-15 (Chen).

⁸ PX-3 at 1-3 (Chen Report).

⁹ 10.23 Tr. at 16:9-18 (Chen).

¹⁰ PX-1A at 1 (10.7 Warshaw Report); 10.23 Tr. at 153:4-154:3 (Warshaw).

drawbacks of each test he analyzed and discussed. The Court credits Dr. Warshaw's testimony, and his assessment of the statistical tests at issue and their application in Utah.

7. Plaintiffs' expert Dr. Kassra Oskooii is a tenured associate professor of Political Science and International Relations at the University of Delaware, and an affiliated faculty member at the university's Data Science Institute. Dr. Oskooii's research and teaching areas include American political behavior, political methodology, and redistricting. He teaches classes on topics including redistricting and map-drawing. Dr. Oskooii has been an expert witness in over a dozen cases and has had a map he has drawn selected by a court. The Court accepted Dr. Oskooii as an expert in redistricting and mapping.¹¹ Dr. Oskooii was forthcoming and credible as a witness, clearly explaining his mapping process and choices, and answering questions from counsel directly and comprehensively. Dr. Oskooii exhibited an impressive command of details about the maps and other facts in the case.¹² The Court credits Dr. Oskooii's testimony that he did not use or reference political or partisan data while making the adjustments to Plaintiffs' two maps, and recognizes that he used a mapping tool, ESRI for Redistricting, that does not contain any such data.¹³

B. Defendants' Expert Witnesses

8. Defendants' expert Dr. Jonathan Katz is the Kay Sugahara Professor of Political Science and Statistics at the California Institute of Technology and has previously served as an expert in redistricting cases.¹⁴ Dr. Katz is clearly qualified and arguably one of the foremost authorities on the partisan bias test, and he certainly is revered by Dr. Trende. Notwithstanding his expertise, Dr. Katz's testimony was largely academic. He discussed his views on the theoretical definitions of partisan symmetry and partisan bias and his views on other measures like the mean-median difference and the efficiency gap, drawing almost exclusively from his own academic writings.¹⁵ However, he did not offer any opinions relevant to what the Court needs to decide. Dr. Katz stated that he had not examined Proposition 4 or S.B. 1011's partisan bias and mean-median difference tests and was not aware of how they functioned before the hearing. He had not mentioned Utah even once in his expert report and provided no opinion as to how or whether Utah's political geography and lack of competition in statewide elections affect the application of partisan bias, mean-median difference, and other measures.¹⁶ Notably, while being in Utah, Dr. Katz did not mention that his academic writing addressing Utah directly in noting that the partisan bias test would be appealing to Republican lawmakers in Utah given its effects.¹⁷ However, he did admit that no measure should be applied based on knife-edged thresholds as a matter of sound political science and that he would take a holistic approach to evaluating partisan favoritism.¹⁸ On cross-examination, he also admitted that he had declined to apply the mean-median difference in a previous case because he viewed it inapplicable in lopsided states where statewide elections rarely approach 50%.¹⁹ Notable to the Court is what Dr.

¹¹ PX-2 at 2-3 (Oskooii Report); 10.23 Tr. at 229:13-232:4 (Oskooii).

¹² 10.23 Tr. at 237:7-237:16, 264:4-15, 285:6-287:4 (Oskooii).

¹³ 10.23 Tr. at 232:25-233:22, 236:1-3, 243:2-5 (Oskooii).

¹⁴ 10.24 Tr. at 10:10-12:3 (Katz).

¹⁵ 10.24 Tr. at 10:1-32:9 (Katz).

¹⁶ 10.24 Tr. at 32:20-41:15 (Katz).

¹⁷ 10.24 Tr. at 59:17-60:10 (Katz).

¹⁸ 10.24 Tr. at 42:11-43:19 (Katz).

¹⁹ 10.24 Tr. at 68:25-69:10 (Katz).

Katz did not offer – an opinion directly relevant to the application of a test (the partisan bias test) in Utah, in this case, as it relates to S.B. 1011, where he clearly is an authority on the matter. For these reasons, the Court gives little weight to Dr. Katz’s testimony.

9. Defendants’ expert Dr. Sean Trende is the senior elections analyst for Real Clear Politics, a Washington, D.C.-based company which hosts a website that provides data-focused political analysis. Dr. Trende is also a visiting scholar at the American Enterprise Institute and a lecturer at Ohio State University.²⁰ Dr. Trende is extremely qualified. Dr. Trende served as an expert consultant for the Legislature during the map drawing process and drew Map C by hand using Dave’s Redistricting App, with partisan political data displayed on the screen. However, he was not advised to not have political partisan data available as he designed Map C. The Court carefully observed Dr. Trende’s testimony, both on direct and cross examination. He admitted that he was a reluctant expert witness. He seemed to recall certain aspects of his map drawing process in great detail when asked on direct examination but with noticeably less detail when asked on cross examination. His testimony regarding the application of the partisan bias test appeared to rely solely on the fact that “measures of partisan symmetry,” as assessed through the partisan bias test, was required by S.B. 1011. The Court does find that Dr. Trende was forthcoming regarding the visibility of partisan data during the entire time he drew Map C. and that such data was visible to him at a precinct-by-precinct level. He also generally admitted the many errors in his report and in the analysis he conducted as part of the legislative process. The sheer number and magnitude of these errors, however, gives the Court pause and leads the Court generally to give little weight to Dr. Trende’s analysis. Further, Dr. Trende’s explanation that “even if [he] had looked at” the partisan data, it would have been “worthless” because it was a 2012-2020 electoral composite score²¹bears little weight given the express prohibition in Proposition 4.

10. Defendants’ expert Dr. Michael Barber is a professor of political science at Brigham Young University and director of the Center for the Study of Elections and Democracy in Provo, Utah. He has worked as an expert witness in multiple redistricting cases and has analyzed maps and various political and geographic data. Dr. Barber is extremely qualified and knowledgeable as well. On direct examination, Dr. Barber was polished and clear. However, under cross-examination about certain flaws in his ensemble analysis, Dr. Barber’s answers were less clear. Notably, Dr. Barber did not disclose certain relevant information in his report. While describing ensembles as following a “strict” adherence to population equality, he did not mention that the population deviation in his ensemble was not zero. And Dr. Barber did not mention in his report—after stating that he programmed his algorithm to minimize county divisions—that his algorithm in fact excluded Salt Lake County from the definition of “county,” while testifying this was an “intentional design.”²² Dr. Barber, however, was forthright in his expert report and as a witness. He wrote: “The way to be faithful to both Proposition 4 and sound methods is not to search for a perfect test, but to use *multiple appropriate metrics, benchmark them against a neutral ensemble, and read them together.*” (Expert Report of Dr. Barber, Defs’ Ex. 14, 14.) Under the circumstances, the Court finds his testimony helpful and mostly credible.

²⁰ DX-13 at 3 (Trende Report).

²¹ 10.24 Tr. at 256:7-259:10 (Trende).

²² 10.24 Tr. at 377:1-378:12 (Barber).

III. Procedural History

11. In the November 2018 election, the people of Utah passed Proposition 4 to enact the Utah Independent Redistricting Commission and Standards Act. Proposition 4 created the Utah Independent Redistricting Commission and established objective standards, procedures, and requirements for redistricting. It bans partisan gerrymandering by prohibiting any redistricting plan “that purposefully or unduly favors or disfavors . . . any political party” (*i.e.*, that exhibits partisan favoritism). Utah Code § 20A-19-103(4)(a). It requires use of “the best available data and scientific and statistical methods, including measures of partisan symmetry” to evaluate compliance with this prohibition on partisan favoritism. *Id.* § 20A-19-103(5). And it provides a private right of action to enforce its requirements and prohibitions in court. *Id.* § 20A-19-301.

12. On March 11, 2020, the Utah Legislature voted to repeal Proposition 4. The Legislature then enacted a new redistricting law, S.B. 200. S.B. 200 rescinded some of Proposition 4’s critical reforms and enacted watered-down versions of others. It eliminated Proposition 4’s requirement that the Legislature take an up or down vote on each of the Commission’s proposed maps, the requirement that the Legislature provide a written explanation if it chose to reject the Commission’s maps and pass its own, as well as other requirements focused on increasing transparency and accountability in the redistricting process. S.B. 200 also made Proposition 4’s partisan gerrymandering ban binding only on the Commission.²³

13. During the 2021 redistricting process, the Legislature rejected the Commission’s proposed maps and instead enacted its own map, H.B. 2004, in accordance with the requirements of S.B. 200. H.B. 2004 amended the Utah Code to replace references to the 2011 with the 2021 map.²⁴ On March 17, 2022, Plaintiffs filed their initial complaint, claiming, *inter alia*, that Defendants’ repeal of Proposition 4 was a violation of Plaintiffs’ right under Article I, Section 2, and Article VI, Section 1, of the Utah Constitution to alter and reform their government via the initiative process (“Count V”). Dkt. 001 at 77-78.

14. Legislative Defendants filed a motion to dismiss Plaintiffs’ Count V, which the Court granted. Dkt. 095. On appeal, the Utah Supreme Court reversed, holding as a matter of first impression that the Utah Constitution granted a protected alter and reform right. The Court held that, to establish a violation of this right, Plaintiffs must prove that the people exercised or attempted to exercise their initiative rights to pass an “alter and reform” initiative, and that the Legislature “amended . . . the initiative in a manner that impaired the reform contained in the initiative.” If Plaintiffs establish these two elements, the legislative action is unconstitutional unless the Legislature can satisfy strict scrutiny by showing that the impairment is “narrowly tailored to advance a compelling government interest. *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶¶ 74-75, (“*LWVUT I*”).

15. On remand, Plaintiffs and Legislative Defendants filed cross motions for summary judgement on Plaintiffs’ Count V. Following oral argument, on August 25, 2025, the Court granted Plaintiffs’ motion for summary judgment and ruled that S.B. 200 was unconstitutional and void *ab initio*. The Court found that (i) “the people exercised their initiative

²³ Redistricting Amendments, S.B. 200, 2020 Gen. Sess. (Utah 2020), <https://le.utah.gov/~2020/bills/static/SB0200.html>.

²⁴ There is no dispute that the using the 2020 Census data, the 2011 map is malapportioned. Specifically, District 4 in the 2011 map is overpopulated by 65,265 people. Legis. Defs.’ Opp. to MSJ on Count VIII at 1-2 (Doc. 532).

power through Proposition 4, and the subject matter of Proposition 4 contained government reforms or alterations within the meaning of the Alter or Reform Clause;” Dkt. 470 at 15, (ii) “the Legislature impaired the people’s initiative to alter or reform redistricting in Utah when the Legislature repealed Proposition 4 and enacted S.B. 200;” *id.* at 52, and (iii) “the legislative action – repealing Proposition 4 in its entirety and replacing it with S.B. 200 – [was not] narrowly tailored to advance a compelling state interest,” *id.* at 56.

16. The Court also declared unconstitutional the 2021 Congressional Map, concluding that “H.B. 2004 cannot be separated from the Legislature’s unconstitutional repeal of Proposition 4,” because it “is the fruit of that unlawful repeal, an extension of the very constitutional violation that tainted the process from the start.” *Id.* at 70-72. The Court thus ordered a remedial process to implement a new congressional map. *Id.* at 76.

17. The Parties submitted a stipulated proposed scheduling order, which the Court adopted. The order took into account the Lieutenant Governor’s request that a congressional map be in place by November 10, 2025, to ensure sufficient time to conduct the 2026 election in an orderly fashion. The order established the following timeline in the event that the Legislature were to choose to enact a new congressional map. By September 25, the Legislature would publish its proposed alternative map. Between September 26 and October 5, the Legislature would make the proposed alternative map available for public comment. By October 6, the Legislature would enact the proposed alternative map and submit it to the Court. If Plaintiffs chose to submit their own proposed maps, they would do so also by October 6. The parties would then submit supporting briefs, objections, and expert reports by October 17, and the Court would hold an evidentiary hearing on the alternative map(s) on October 23 and 24. By October 28, the parties would submit any proposed findings of fact and conclusions of law. Dkt. 506. The latter deadline was extended to October 29.

18. On October 6, the Legislature met in a special session and passed S.B. 1012, which enacted its proposed remedial map, widely known as Map C.

19. Shortly before doing so, the Legislature also enacted S.B. 1011. S.B. 1011 makes significant amendments to Proposition 4 by mandating the use of specific tests to evaluate whether a redistricting plan “purposefully or unduly” exhibits partisan favoritism. First, S.B. 1011 mandates use of the partisan bias and mean-median difference tests to assess whether a redistricting plan unduly favors or disfavors a political party. *See* Utah Code § 20A-19-103(1)(b)-(d), 4(c). Second, S.B. 1011 requires an ensemble analysis, which requires the use of a sequential Monte Carlo simulation to generate at least 4,000 redistricting plans for comparison with the plan in question using a metric called the ranked marginal deviation. *Id.* § 20A-19-103(1)(a). The ensemble must be generated by adherence to the state’s “legal and geometric criteria” for redistricting. *Id.* § 20A-19-103(1)(f). In certain circumstances, S.B. 1011 requires comparison only to a “culled” set of plans in the ensemble; this culling is done by removing those plans that fail the partisan bias test. *Id.* § 20A-19-103(1)(c)(ii), (a)(iii)(B). Finally, S.B. 1011 increases the evidentiary standard to determine purposeful partisan favoritism to “clear and convincing evidence.” *Id.* § 20A-19-103(4)(b).

20. On October 6, Plaintiffs filed a notice of two remedial map submissions for the Court’s consideration, Plaintiffs’ Map 1 and Plaintiffs’ Map 2.

21. Also on October 6, Plaintiffs filed their Third Supplemental Complaint alleging that S.B. 1011 impairs the core anti-gerrymandering reform of Proposition 4 for no compelling

reason in violation of Plaintiffs' right to alter and reform their government, and violates several other core constitutional rights, including the right to free elections, equal protection, free expression, to vote, and to be assured free government. The next day, Plaintiffs filed a motion for preliminary injunction to enjoin enforcement of S.B. 1011. The Court has set a hearing on the motion for November 4.

IV. Scientific and Statistical Methods for Assessing Partisan Favoritism

22. Partisan favoritism in redistricting often manifests via packing or cracking. In "packing," a disfavored party's voters are concentrated into fewer districts in greater numbers than can be explained by compliance with a state's neutral redistricting criteria or political geography. *See Adams v. DeWine*, 195 N.E.3d 74, 91 (Ohio 2022). This leaves the disfavored party's voters with fewer districts in which they could elect their candidate of choice than they would otherwise have if partisan considerations did not predominate over consideration of neutral redistricting criteria. In contrast, "cracking" spreads the disfavored party's voters across multiple districts so that they lack a majority in more districts than would be expected from complying with the state's neutral redistricting criteria. *Id.* at 88; *see also LWVUT I*, 2024 UT 21, ¶5 ("In general, partisan gerrymandering refers to efforts by incumbent politicians to draw electoral boundaries that benefit themselves and their political party by diluting the votes of citizens they predict will vote for candidates of other parties."). Because Utah's minority party voters are highly concentrated in Salt Lake County and too few to form a majority in more than one reasonably configured district, cracking is the primary means by which their voting strength can be diluted in congressional elections, enabling the majority party to win all four seats.²⁵

23. Political scientists have developed numerous scientific and statistical methods to assess whether a redistricting plan purposefully or unduly favors or disfavors a political party. Some of these methods measure partisan symmetry, or "whether supporters of each of the two parties are able to translate their votes into representation with equal ease." *Common Cause v. Rucho*, 318 F. Supp. 3d. 777, 885 (M.D.N.C. 2018), *vacated on other grounds*, 588 U.S. 684 (2019). There are multiple measures of partisan symmetry, including, but not limited to, partisan bias, mean-median difference, and the efficiency gap.²⁶

24. No singular test or measure is perfect. Each test looks at a different aspect of partisan favoritism or partisan symmetry. Each test provides slightly different information. Every measure depends on assumptions or conditions that may or may not be satisfied in the state, and some measures do not yield reliable results in certain contexts. Whether a measure is appropriate to use to evaluate a redistricting plan can depend on the state's electoral conditions, political geography, competitiveness, number of districts, past election performance, and the type of redistricting plan under review. No single measure should be considered in isolation or divorced from context. The best practice in social science is to apply all appropriate measures and data and consider them together to determine whether a map exhibits partisan favoritism.²⁷

²⁵ PX-1A at 4 (10.7 Warshaw Report); 10.23 Tr. at 178:16-179:11 (Warshaw).

²⁶ PX-1A at 4-6 (10.7 Warshaw Report); 10.23 Tr. at 167:10-21 (Warshaw).

²⁷ PX-1A at 4-6 (10.7 Warshaw Report); 10.23 Tr. at 186:18-187:11 (Warshaw); PX-9 at 330 (Katz et al. 2023) ("[A] single, quantitative bright line rule for detecting gerrymandering . . . is unusual in academia or the courts. In the literature on electoral systems, as in most academic fields, scholars avoid drawing conclusions from single sources of evidence or knife-edged quantitative thresholds and instead seek broader understanding from all available observed

25. **Partisan Bias.** S.B. 1011 codifies the partisan bias test, which is a measure of partisan symmetry that asks: in a hypothetical election where each of the two parties wins 50% of the statewide vote, would each party win exactly 50% of the congressional seats under the proposed map? If yes, the map passes the test; if no, the map fails the test. Evaluating a map under S.B. 1011's partisan bias test begins with calculating the statewide two-party vote share using a "partisan index," which is defined as the average of the parties' vote shares in recent statewide elections. Utah Code § 20A-19-103(1)(e). Each party's district-level vote share under the proposed map is then determined using the same index. Next, each district's vote share for a party is uniformly adjusted by the difference between that party's statewide share and 50%. This creates a hypothetical tied election, where each party has exactly 50% of the vote. Finally, using the adjusted district vote shares, the difference between each party's expected seat share and 50% of the total seats represents the map's partisan bias. Under S.B. 1011, any map with a value other than exactly 0 fails the test.²⁸

26. The Court finds that the partisan bias test is unsuitable for assessing whether a redistricting plan in Utah purposefully or unduly favors or disfavors a political party. It is not among the best available measures to assess partisan favoritism in Utah.²⁹

27. First, because partisan bias assesses favoritism based solely on seat shares under a hypothetical 50-50 statewide election, scholars warn that it should not be applied in states like Utah where statewide elections are uncompetitive and a tied statewide election cannot plausibly be expected. The authors of the metric, Professors Andrew Gelman and Gary King, limited its application to "competitive electoral systems," which they defined as states in which each party had won a majority of seats or votes in at least one election during the preceding two decades. Professor Gary King has since emphasized that partisan bias "is only appropriate for competitive situations where there is a potential for change in partisan outcomes (majority control, in particular)."³⁰

28. The Court finds that Utah's statewide elections are highly uncompetitive. Democrats have not received a majority of the statewide vote in congressional elections in 35 years and have not won a majority of congressional seats since at least 1970. Republicans have also won every statewide election for president, governor, and other offices included in S.B. 1011's partisan index during the last 25 years, nearly always with 20-plus margins.³¹ Utah's highly uncompetitive environment also undermines the validity of the partisan bias test's uniform shift assumption—that is, the assumption that the shift to a 50-50 statewide vote share would occur uniformly across districts. Since this scenario has not even remotely occurred in decades, it is at best unclear how electoral coalitions would shift to produce a 50-50 statewide election and whether the uniform shift assumption underlying the partisan bias test is satisfied in Utah.³²

implications of a theory."); DX-14 at 14-15 (10.17 Barber Report); 10.24 Tr. at 44:12-46:4, 47:10-47:19 (Katz), 340:7-340:21, 341:15-342:18 (Barber).

²⁸ PX-1A at 13 (10.7 Warshaw Report); PX-3 at 30 (Chen Report); 10.23 Tr. at 30:16-31:15 (Chen). *See also* Utah Code § 20A-19-103(1)(d)-(e), (4).

²⁹ PX-1A at 1 (10.7 Warshaw Report); PX-3 at 30 (Chen Report); 10.23 Tr. at 31:16-32:4 (Chen), 156:1-3, 157:5-19 (Warshaw).

³⁰ PX-1A at 13-14 (10.7 Warshaw Report); PX-3 at 30 (Chen Report); 10.23 Tr. at 157:5-19, 160:4-22 (Warshaw).

³¹ PX-1A at 15-16, Figures 4 & 5 (10.7 Warshaw Report); 10.23 Tr. at 157:20-160:3, 160:25-162:15 (Warshaw).

³² 10.23 Tr. at 169:16-171:21 (Warshaw).

Thus, Utah does not satisfy the electoral conditions necessary for valid application of the partisan bias test.³³

29. Second, when applied in Utah to congressional plans, the partisan bias test yields paradoxical results that advantage Republicans and disadvantage Democrats. The test treats most 3-1 maps that include one Democratic-leaning district as biased *in favor* of Republicans and *against* Democrats, because in a hypothetical tied statewide election Democrats would not win two seats. At the same time, it treats 4-0 maps that guarantee Republicans all four seats as neutral. This irrational result stems from the test’s conflict with Utah’s political geography. To pass, a map must disperse Democrats across two districts to ensure they would win two seats in the hypothetical world of a tied statewide election. But because Democrats are a small, geographically concentrated minority, doing so dilutes their only opportunity in the real world to win one seat.³⁴ As the Court finds below, the partisan bias test’s pro-Republican bias in Utah is also evident in the large number of computer-simulated maps it disqualifies (nearly all having one Democratic district) and the smaller number of maps it approves (nearly all having four Republican districts). *See infra*, Findings, Section VI.B.

30. Scholars have recognized this effect as the “Utah paradox”—one that is known to be gameable and the reason why partisan actors in Utah would opt to use partisan bias as their metric to assess congressional plans.³⁵ Notably, the Legislature applied the partisan bias test only to congressional plans. Utah Code § 20A-19-103(1)(c), (g). The Legislature did not apply the partisan bias test to its own legislative maps or the state school board maps, all of which would fail the test for exhibiting pro-Republican bias.³⁶

31. The Court finds that Dr. Katz’s testimony to be purely academic and general in nature. Dr. Katz is greatly respected and certainly qualified to offer an opinion, he did not meaningfully address whether S.B. 1011’s partisan bias test can be reliably applied in Utah’s unique political context to evaluate compliance with Proposition 4. Dr. Katz did not look at Proposition 4 or S.B. 1011, was not asked to opine on the applicability of S.B. 1011’s partisan bias test or any other metric to Utah’s specific political geography, and did not mention Utah in his report.³⁷ Of note, while Dr. Katz is recognized as one of the foremost authorities on the partisan bias test, he did not offer any opinions regarding Map C, Map 1 or Map 2. Although Dr. Katz claims that partisan bias is the only valid measure of partisan symmetry (under his definition), as Dr. Warshaw testified, political science recognizes many other measures that detect asymmetries in how votes translate to seats.³⁸ The Court credits Dr. Warshaw’s testimony as the more complete representation of the relevant literature, more consistent with Proposition 4’s language and more relevant given Dr. Warshaw

32. To the extent Dr. Katz denied any limits on applying the partisan bias test in Utah, the Court finds that his academic writing and his testimony on cross-examination contradicted that position. In an online appendix to his 2020 article (which was not disclosed in his report), Dr. Katz acknowledged that his model of partisan symmetry, including the partisan bias test,

³³ 10.23 Tr. at 31:16-32:4 (Chen), 162:20-163:2 (Warshaw).

³⁴ PX-1A at 20 (10.7 Warshaw Report); 10.23 Tr. at 163:3-165:21 (Warshaw).

³⁵ PX-1A at 18 (10.7 Warshaw Report); 10.23 Tr. at 166:2-167:1 (Warshaw); PX-9 at 329 (Katz et al. 2023); DX-14 at 14 (10.17 Barber Report); 10.24 Tr. at 59:6-60:11 (Katz), 340:12-21, 341:15-25, 344:4-344:12 (Barber).

³⁶ PX-1A at 18-19 (10.7 Warshaw Report); 10.23 Tr. at 165:4-21 (Warshaw).

³⁷ 10.24 Tr. at 33:13-34:24, 36:25-37:6, 37:13-38:6, 39:19-40:5, 40:12-41:14 (Katz).

³⁸ 10.23 Tr. at 167:10-21 (Warshaw).

“seems empty” in “noncompetitive” states where “one party is confident of a statewide majority,” and he identified “minority protection” as another component of partisan fairness in that context.³⁹ Dr. Katz acknowledged that the possible use of a different model “called ‘symmetric democracy with minority party protection,’” which includes a component of fairness or legal and structural rules that would protect a minority party and prevent them from being locked out of office.⁴⁰ Indeed, Dr. Katz acknowledged that he and his co-authors had specifically offered this model in “noncompetitive electoral systems... where one party is confident of a statewide majority.”⁴¹

33. In a 2023 paper responding to the “Utah paradox” critique, Dr. Katz admitted that the partisan bias test is the metric Republican lawmakers in Utah would prefer.⁴² He also conceded that the seats-votes curve underlying the test “is defined coherently only for all districts in an entire legislature” and that applying the test to a state’s congressional districts as they constitute a legislature “is not reasonable.”⁴³

34. **Mean-Median Difference.** S.B. 1011 also codifies a mean-median difference test, which takes the difference between a party’s mean statewide vote share and median district vote share. Utah Code § 20A-19-103(1)(b). A greater distance between the mean and median suggests skew in favor of the other party, whereas closer values suggest the party’s distribution of district vote shares is more symmetric. S.B. 1011 establishes a knife-edged threshold, providing that a map fails the mean-median difference test if the score exceeds 2%.⁴⁴

35. The Court finds that the mean-median difference test is unsuitable for assessing whether a redistricting plan in Utah purposefully or unduly favors or disfavors a political party. It is not among the best available measures, given Utah’s current political geography.⁴⁵

36. First, the mean-median difference test is designed only to detect packing gerrymanders and is insufficient to detect cracking gerrymanders. To detect cracking gerrymanders, other measures must be used.⁴⁶

37. Second, the mean-median difference test is only probative of partisan favoritism in states with reasonably competitive elections, and it breaks down in states with highly uncompetitive elections like Utah. This is because the outcome of the mean-median difference test depends only on the *median* district’s vote shares; this is meaningless where the median district cannot reasonably be expected to shift in party control.⁴⁷ The Court notes that Defendants’ expert Dr. Katz conceded the mean-median difference test “is not appropriate in a state . . . where a single party is dominant and statewide vote shares are far from 50%” and admitted that he declined to apply the test in another such state.⁴⁸

³⁹ PX-8 at 3-4 (Online Appendix B); PX-9 at 329 n.3 (Katz et al. 2023); 10.24 Tr. at 53:13-54:22; 56:17-59:4 (Katz).

⁴⁰ PX-9 at 329 n. 3 (Katz et al. 2023); 10:24 Tr. at 55:20-59:5 (Katz).

⁴¹ 10:24 Tr. at 58:9-16 (Katz) (quotation marks omitted).

⁴² PX-9 at 329 (Katz et al. 2023); 10.24 Tr. at 59:6-60:11 (Katz).

⁴³ PX-9 at 329-30 (Katz et al. 2023); 10.24 Tr. at 63:17-64:6 (Katz).

⁴⁴ PX-1A at 14 (10.7 Warshaw Report); PX-3 at 38 (Chen Report); 10.23 Tr. at 172:9-24 (Warshaw).

⁴⁵ PX-1A at 1 (10.7 Warshaw Report); PX-3 at 38 (Chen Report); 10.23 Tr. at 180:1-7 (Warshaw).

⁴⁶ PX-1A at 14 (10.7 Warshaw Report); 10.23 Tr. at 179:12-25 (Warshaw).

⁴⁷ PX-1A at 14-15 (10.7 Warshaw Report); PX-3 at 38 (Chen Report); 10.23 Tr. at 173:17-174:6 (Warshaw).

⁴⁸ 10.24 Tr. at 66:23-69:10 (Katz); PX-10 at 13-14 (Katz New York Report).

38. Third, when applied in Utah to congressional plans, the mean-median difference test yields paradoxical results that advantage Republicans and disadvantage Democrats. The test prefers maps that more evenly distribute a party's voters around the median district to discourage them from being "packed" into only one district. This has no effect on Republican seat share because the two median districts—the second- and third-most Republican—will remain well above 50% Republican, leaving no realistic scenario in which redistributing Democratic voters could flip them. But the test disfavors Democratic voters given the state's political geography. Because Democratic voters are concentrated in Salt Lake County, their high vote share there tends to inflate the difference between the statewide average vote share and median district vote share. To "pass" the mean-median difference test and close this gap, a map must crack Democratic voters to disperse them into districts on the other side of the median, effectively pulling them out of the only district where they can form a majority and into safely Republican districts. For these reasons, the mean-median difference test irrationally identifies 3-1 maps that include a single majority-Democratic district as pro-*Republican* gerrymanders, while identifying 4-0 Republican maps that crack Democratic voters as unbiased.⁴⁹

39. Scholars have likewise recognized the "Utah paradox" to apply to the mean-median difference test.⁵⁰ The test is recognized to be gameable by partisan actors, especially through the use of knife-edged, pass/fail thresholds, like S.B. 1011's 2%.⁵¹ The mean-median difference test's pro-Republican bias in Utah is also evident in the large number of neutrally drawn computer-simulated maps it disqualifies. Only 6 of the 10,000, or 0.06% of Dr. Chen's 10,000 neutrally drawn ensemble maps have a mean-median difference of less than 2%; the rest are disqualified.⁵²

40. Additionally, Dr. Trende testified at the September 22 LRC hearing that the partisan bias test is "much more useful, in my view, and I think most political scientists would agree, for house and senate chambers where you have a large number of districts to keep track of."⁵³ He reaffirmed and expanded that testimony at the evidentiary hearing, further stating that "I think all of these partisan fairness metrics [including the partisan bias test and the mean-median test] are better in maps where you have lots of districts, and those will tend to be state legislative maps."⁵⁴

41. The Court finds that by mandating the use of the partisan bias and mean-median difference tests, S.B. 1011 favors Republicans and disfavors Democrats in congressional redistricting and is thus fundamentally at odds with Proposition 4's prohibition on partisan favoritism and its requirement that the "best available data and scientific and statistical methods" be used.

42. **Efficiency Gap.** The efficiency gap is a measure of partisan symmetry that evaluates whether each party's votes are translated into seats with equal efficiency. The

⁴⁹ PX-1A at 21-22 (10.7 Warshaw Report); PX-3 at 38-39 (Chen Report); 10.23 Tr. at 174:7-177:17 (Warshaw); DX-14 at 14 (10.17 Barber Report).

⁵⁰ PX-1A at 17-18 (10.7 Warshaw Report); DX-14 at 14 (10.17 Barber Report) ("The signed symmetry implementations (partisan bias, mean-median) can generate well-known paradoxes when the statewide vote share is not near 50-50").

⁵¹ PX-1A at 18 (10.7 Warshaw Report); 10.23 Tr. at 172:19-173:10 (Warshaw).

⁵² PX-3 at 39 (Chen Report).

⁵³ PX-19 (Trende LRC Testimony).

⁵⁴ 10.24 Tr. at 213:6-214:5 (Trende).

efficiency gap is calculated by taking the difference between each party's respective inefficient votes, divided by the total number of votes cast in the election. Inefficient votes refer to votes cast for the party's candidates in the districts where its candidates lost, plus the votes for its candidates in the districts they won in excess of the 50%+1 votes needed for victory. The efficiency gap mathematically captures the practical effects of packing and cracking, which are the main ways partisan favoritism in redistricting is affected. Cracking spreads a disfavored party's voters too thinly to elect their preferred candidates, while packing concentrates the disfavored party's voters in overwhelming majorities, wasting votes that could be translated to seats elsewhere. Both tactics produce inefficient votes, and the efficiency gap measures whether one party has more inefficient votes than the other under a proposed map.⁵⁵

43. The efficiency gap, like every partisan symmetry measure, can exhibit volatility in states like Utah with a relatively small number of congressional districts and can be sensitive to slight changes in the partisanship of districts with vote shares near 50%. However, the Court credits Dr. Warshaw's testimony explaining that these risks are mitigated by his method of calculating the partisan lean of each district based on a weighted index of election results from a range of statewide races across five previous election years and by reporting a map's efficiency gap as the weighted average of its efficiency gap scores across each previous contest in the index.⁵⁶

44. Unlike the partisan bias and mean-median difference tests—which yield wholly incoherent results in uncompetitive states—the efficiency gap is not inapplicable in a state as uncompetitive as Utah. As Dr. Warshaw explains, the original authors of the efficiency gap acknowledged that the efficiency gap may be inapplicable in states where one party consistently wins more than 75% of the vote, “[b]ut Utah does not fall into that category. So . . . Utah is not outside of the boundary conditions of the efficiency gap.”⁵⁷

45. The Court finds that, despite its drawbacks, the efficiency gap is an appropriate symmetry measure to consider in assessing congressional maps in Utah. It correctly identifies the party favored under a proposed congressional map and permits analysis of the extent to which that party is favored via comparison with historical congressional plans in other states. The efficiency gap is thus among the best symmetry measures available to evaluate partisan favoritism in Utah congressional maps and should be considered alongside other appropriate measures.⁵⁸

46. **Ensemble Analysis.** Over the past decade or so, political scientists have developed a method of assessing redistricting maps that involve computers generating large numbers of maps through an algorithm. Properly constructed, the algorithm should generate maps that comply with the relevant redistricting criteria while excluding consideration of partisan political data. The resulting computer-simulated maps can then be assessed to determine the expected partisan characteristics of maps drawn without partisan intent but instead solely to satisfy the state's neutral redistricting criteria. In other words, the ensemble of simulated maps provides a baseline against which to compare when a proposed or enacted map is likely or not to have been drawn with partisan intent in light of how it compares to the distribution of neutrally-

⁵⁵ PX-1A at 7 (10.7 Warshaw Report); 10.23 Tr. at 183:1-186:6 (Warshaw).

⁵⁶ PX-1C at 11 n.13 (10.16 Warshaw Report); 10.23 Tr. at 193:8-197:14, 220:14-221:5 (Warshaw).

⁵⁷ 10.23 Tr. at 187:12-23, 197:15-198:7 (Warshaw).

⁵⁸ PX-1C at 11 (10.16 Warshaw Report); 10.23 Tr. at 187:14-23, 188:21-189:20, 219:24-221:15 (Warshaw).

configured computer-simulated maps.⁵⁹ The Court finds that a properly constructed ensemble analysis is among the best available methods to assess whether a redistricting plan in Utah purposefully or unduly favors or disfavors a political party.

47. **Ranked Marginal Deviation.** S.B. 1011 requires use of the ranked marginal deviation (RMD) test as part of an ensemble analysis to determine whether a proposed congressional plan exhibits partisan purpose. In essence, the RMD test asks how much a proposed plan or computer-simulated plan deviates from the typical computer-simulated plan. The RMD test is assessed by calculating the RMD of the proposed plan and each of the simulated plans using the formula described in S.B. 1011. *See* Utah Code § 20A-19-103(1)(a)(ii). The RMD of the proposed plan is then compared against the distribution of RMDs across the set of simulated plans. If the proposed plan is within the bottom 95% of the simulated plans' RMDs, then the proposed plan passes the RMD test. If the proposed plan's RMD is higher than the bottom 95% of the simulated plans' RMDs, then the proposed plan is deemed extreme and fails the RMD test.⁶⁰

48. **Least Republican Vote Share.** Because Utah's minority party is geographically concentrated and often not large enough to form a majority in more than one district, political scientists have proposed looking to the least Republican district vote share (LRVS) as an indicator of partisan favoritism in redistricting. This measure is a partisan characteristic best evaluated in comparison to a computer-generated ensemble to determine whether a plan's LRVS falls outside the range of expected outcomes under Proposition 4's neutral criteria. Legislative Defendants' expert Dr. Trende, like Plaintiffs' experts, identified and used LRVS in assessing maps.⁶¹ The Court finds LRVS is among the best available measures to assess partisan favoritism in Utah congressional maps.⁶²

49. **Standard Deviation of Vote Shares.** Political scientists also propose looking to the standard deviation of district vote shares (SDVS) as an indicator of partisan favoritism in Utah. This measure captures how even vote shares are across districts. It is a partisan characteristic best evaluated in comparison to a computer-generated ensemble to determine whether a plan's SDVS falls outside the range of expected outcomes under Proposition 4's neutral criteria. An especially low SDVS indicates that vote shares have been made unusually uniform across all four districts, a pattern consistent with cracking a geographically concentrated minority party. The Court finds SDVS is among the best available methods to assess partisan favoritism in Utah congressional maps.⁶³

V. Plaintiffs' and Legislative Defendants' Experts' Ensemble Analyses

50. **Dr. Chen.** Plaintiffs' expert Dr. Chen created an algorithm designed specifically to comply with the priority-ordered Proposition 4 redistricting criteria. *See* Utah Code § 20A-19-103(3). Using his algorithm designed specifically for Utah's legal requirements, Dr. Chen produced 10,000 unique, simulated maps that accounted for each of Proposition 4's criteria, applying them in the priority order in which the law ranked them as the computer made choices

⁵⁹ PX-3 at 5 (Chen Report); DX-13 at 20-22 (Trende Report); DX-14 at 23 (10.17 Barber Report).

⁶⁰ PX-3 at 27 (Chen Report); 10.23 Tr. at 28:10-29:16 (Chen).

⁶¹ 10.24 Tr. at 129:1-11 (Trende).

⁶² PX-1A at 23-24 (10.7 Warshaw Report); 10.23 Tr. at 181:7-17.

⁶³ PX-1A at 10-11, 23 (10.7 Warshaw Report); PX-3 at 23-24 (Chen Report); 10.23 Tr. at 181:18-182:12, 182:19-24 (Warshaw).

in configuring each simulated map.⁶⁴ Dr. Chen's algorithm uses the Sequential Monte Carlo method of simulations, as that term is defined by S.B. 1011.⁶⁵

51. The Court finds that Dr. Chen's ensemble of simulated maps closely adheres to Proposition 4's neutral redistricting criteria without incorporating any racial or political data.⁶⁶

52. Each of Dr. Chen's simulated maps achieves perfect population equality.⁶⁷ The majority have three or fewer divided municipalities and each has only three county divisions (the fewest possible), with no county being split into more than two districts.⁶⁸ Dr. Chen's simulated maps score highly on two common compactness metrics that assess whether the district is compact by area (Reock) and the regularity of its borders (Polsby-Popper).⁶⁹ Each simulated map has contiguous districts and the maps ensure ease of transportation by avoiding district configurations that use the Great Salt Lake or Utah Lake as the sole point of contiguity or cross the Colorado River without including a bridge.⁷⁰ Dr. Chen's maps respect, to the greatest extent practicable, the communities of interest identified both by the Commission (in 2021) and the LRC (in 2025).⁷¹ Finally, the maps ensure boundary agreement with state legislative and board of education districts to the greatest extent practicable.⁷²

53. Below are two sample simulated maps from Dr. Chen's ensemble.⁷³

⁶⁴ PX-3 at 5-6 (Chen Report); 10.23 Tr. at 18:4-19:5 (Chen).

⁶⁵ 10.23 Tr. at 17:22-18:3 (Chen).

⁶⁶ PX-3 at 7-9 (Chen Report); 10.23 Tr. at 18:4-21:16 (Chen).

⁶⁷ PX-3 at 7, 46, Figure 5.1 (Chen Report); PX-4 at 3, Figure 1 (Chen Supplemental Report).

⁶⁸ PX-3 at 92-93, Figures 6.2 & 6.3 (Chen Report).

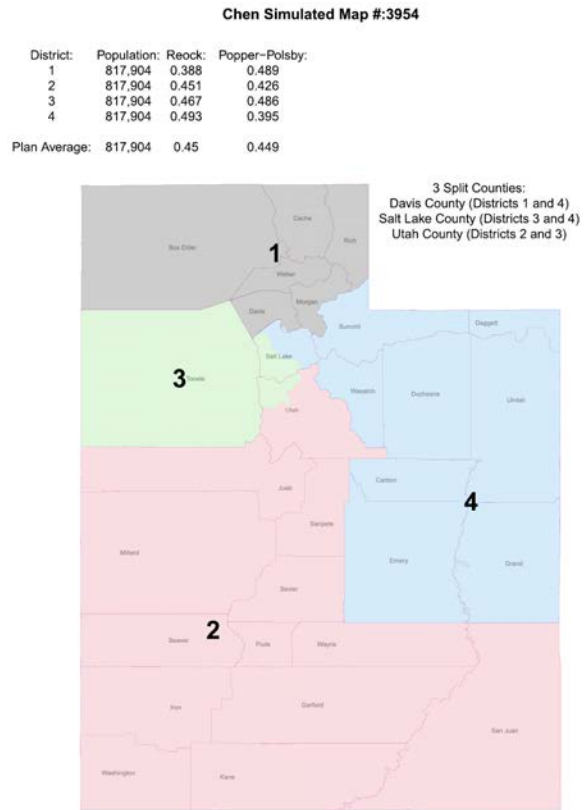
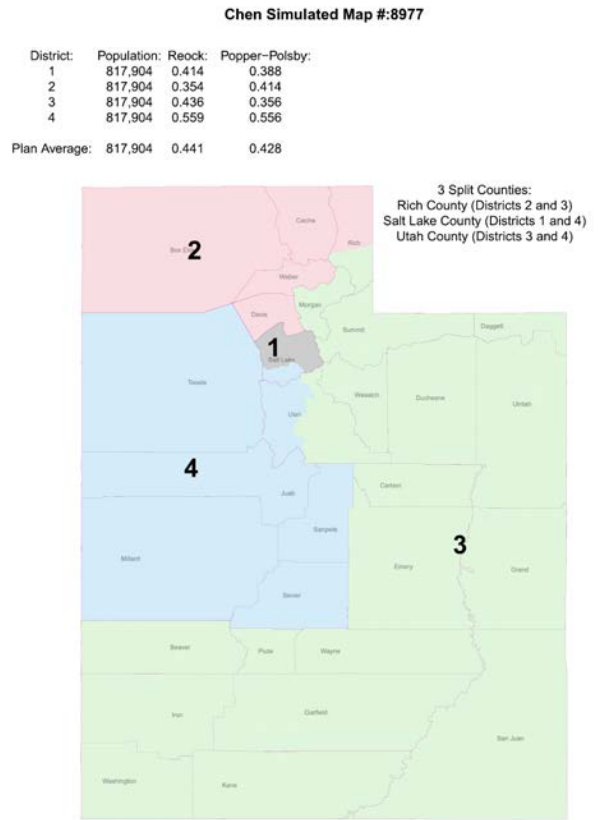
⁶⁹ PX-3 at 91, Figure 6.1 (Chen Report); DX-13 at 15-16 (Trende Report) (describing compactness metrics).

⁷⁰ PX-3 at 8-9 (Chen Report).

⁷¹ PX-3 at 9, 95-98 (Chen Report). Defendants questioned whether partisan information was included in Dr. Chen's algorithm because it sought to respect, where possible, the communities of interest identified by the Commission, and some of the associated public input for a handful of submissions mentioned the political makeup of certain cities and neighborhoods. The Court is unpersuaded by this argument and finds that the incorporation of the Commission's communities of interest did not cause Dr. Chen's algorithm to be based on political data. The Court credits Dr. Chen's testimony that he never reviewed the comments, that none actually stated any electoral or party registration data, that the identified communities were likely already respected because of Proposition 4's higher priority requirement to avoid dividing municipalities, and that is highly unlikely any districts in the simulated set were affected by any of the comments identified by Legislative Defendants given the relatively lower ranking of communities of interest. 10.23 Tr. at 19:22-20:15 (Chen). Legislative Defendants' expert Dr. Barber agreed that the identified comments were few and did not actually communicate any electoral or party registration data, 10.24 Tr. at 385:18-387:3 (Barber), and Legislative Defendants' expert Dr. Trende agreed that it was unlikely that simulations would be affected by community of interest boundaries given the lower priority ranking in Proposition 4, DX-13 at 18 (Trende Report).

⁷² PX-3 at 99-101 (Chen Report).

⁷³ PX-6 (Chen Sample Maps, Nos. 8977 & 3954)



54. Defendants’ expert Dr. Barber criticized Dr. Chen’s simulated maps for frequently creating a district comprising the municipalities in northern Salt Lake County. But Dr. Chen credibly explained that this is an expected outcome from closely adhering to Proposition 4’s priority-ordered criteria. In particular, the Court credits Dr. Chen’s explanation that the presence of two municipalities in southern Salt Lake County, Bluffdale and Draper, that cross the Utah County border will naturally lead an algorithm designed to minimize municipal and county splits to combine the southern portion of Salt Lake County with portions of Utah County.⁷⁴ The Legislature’s Map C illustrates this—it creates an unnecessary additional county split of Utah County by placing Draper and Bluffdale in different districts.⁷⁵ Moreover, the Court credits Dr. Chen’s explanation that a northern Salt Lake County district is likely to arise in simulations designed to avoid districts contiguous only because of the Great Salt Lake.⁷⁶

55. The Court finds that Dr. Chen reliably generated an ensemble of computer-simulated maps that reflect the application of Proposition 4’s priority-ordered redistricting criteria to Utah’s political geography and thus created a reliable distribution of maps that reflect what would be expected to result from a map drawing process designed to adhere to Proposition 4’s requirements without consideration of racial or partisan information.

⁷⁴ 10.23 Tr. at 85:25-88:3 (Chen).

⁷⁵ PX-2 at 10 (Oskooii Report).

⁷⁶ 10.23 Tr. at 85:25-88:3 (Chen).

56. **Dr. Trende.** Defendants’ expert Dr. Trende, as part of the legislative process that culminated in the adoption of Map C, relied upon three sets of computer-simulated maps to assess legislative proposals.⁷⁷

57. The first, referred to as the “ALARM” Project, was generated in 2021 by a group of political scientists affiliated with Harvard University. Dr. Trende got the idea to use the ALARM set of simulated Utah maps to assess the partisan characteristics of proposed maps from a Twitter comment by one of the ALARM founders.⁷⁸ The ALARM set of Utah simulations contained 6,000 maps and was created specifically to follow the redistricting criteria applicable to the commission under S.B. 200, which the Court enjoined as unconstitutional.⁷⁹ The S.B. 200 criteria differ from the Proposition 4 criteria, with the S.B. 200 criteria requiring the preservation of the cores of prior districts, for example. *Compare* Utah Code § 20A-19-103(3) (Proposition 4) *with* Utah Code § 20A-20-302(5).⁸⁰

58. The Court finds that the ALARM Project’s simulated maps are an inappropriate set to use for assessing proposed or enacted maps in Utah because they were generated to follow the enjoined S.B. 200 redistricting criteria rather than Proposition 4’s redistricting criteria, which are meaningfully different in substance and prioritization. The ALARM Project’s ensemble does not provide a relevant comparator.

59. Dr. Trende’s second set of simulations are called his “Base” set, which he generated using an open-source coding software called “R” by running the off-the-shelf redistricting simulation package called “redist”—an algorithm that was developed by the founders of ALARM.⁸¹ He intended this set of 100,000 simulated maps to focus on population equality, minimizing municipal and county splits, and compactness.⁸²

60. Dr. Trende’s third set of simulations are called his “Restricted” set, which he likewise generated using the “redist” package in R. This set also contained 100,000 maps and was intended to focus on imposing various geographical restrictions to prevent districts that were connected via impassable mountains or waterways.⁸³ As Dr. Trende refined his “Restricted” set of simulations, he consulted partisan political data to assess the partisan implications of the geographical restrictions he was applying.⁸⁴

61. Dr. Trende’s “Base” and “Restricted” ensembles suffer substantial and fundamental flaws in their attempted adherence to Proposition 4’s redistricting criteria, making them unreliable—at least in their totality—as a point of reference against which to compare Map C or Plaintiffs’ proposed remedial maps.

62. *Population Deviation.* Dr. Trende’s simulated maps substantially deviate from the precise population equality required for congressional districts, with the middle 95% range of his

⁷⁷ PX-12 (Trende Map Analyses); 10.24 Tr. at 126:18-128:3 (Trende).

⁷⁸ 10.24 Tr. at 126:18-127:21 (Trende).

⁷⁹ 10.23 Tr. at 38:7-39:2 (Chen); 10.24 Tr. at 134:25-135:11, 199:7-11 (Trende).

⁸⁰ At the September 22, 2025 LRC hearing during a colloquy with Dr. Trende, Sen. Sandall noted with reference to the 2021 map and the Commission maps, “they were developed under Senate Bill 200—different criteria” than Proposition 4. 9.22 LRC Hearing at 2:25-2:31.

⁸¹ DX-13 at 36 (Trende Report); 10.24 Tr. at 127:22-128:3 (Trende).

⁸² 10.24 Tr. at 127:22-128:3 (Trende); DX-13 at 36 (Trende Report).

⁸³ 10.24 Tr. at 126:18-128:3 (Trende).

⁸⁴ DX-13 at 37 (Trende Report).

maps having a total sum deviation of roughly 5,500 to 25,000 people, compared to the 0 person deviation in Dr. Chen's maps.⁸⁵ The "redist" package used by Dr. Trende cannot achieve 0 population deviation because it can only assign whole precincts to districts.⁸⁶ Relaxing the allowable population deviation in this manner makes the ensemble less reliable as an indicator of a map's partisan characteristics because it disregards a constraint that could limit the expected partisan distribution of neutrally drawn maps and potentially causes the ensemble to understate the number of municipality divisions that would arise once population equality was achieved.⁸⁷

63. Excessive County Divisions. Dr. Trende's simulated maps do not minimize county divisions to the greatest extent practicable, as Proposition 4 requires. Among his "Base" ensemble, the most common number of county divisions is 8, and over 8% of the "Base" maps have between 10 and 14 county divisions, compared to Dr. Chen's simulations, each of which has only 3 county divisions.⁸⁸ Among Dr. Trende's "Restricted" ensemble, most maps have either 5 or 6 county divisions.⁸⁹

64. Dr. Trende asserted in his expert report that his ensembles limited each county to being divided only once.⁹⁰ In fact, Dr. Trende programmed the algorithm to entirely ignore the county boundaries of several counties, including Salt Lake, Davis, Weber, Summit, and Utah Counties, such that his algorithm did not even recognize them as counties at all and was free to divide them without limit.⁹¹ That instruction rendered Dr. Trende's algorithm wholly inconsistent with Proposition 4's criteria, which place minimizing county divisions high in the priority rank without exception for particular counties. Below is an example from Dr. Trende's simulated maps, illustrating the excessive county divisions (here, 6 counties with 11 divisions) that plague his simulated maps.⁹²

⁸⁵ PX-3 at 45-46, Figure 5.1 & App. F, Figure 5.20 (Chen Report).

⁸⁶ 10.24 Tr. at 230:23-25 (Trende).

⁸⁷ PX-3 at 47 (Chen Report); PX-4 at 16 (Chen Supplemental Report).

⁸⁸ PX-3 at 48-49, Figure 5.2 & App. F, Figure 5.21 (Chen Report).

⁸⁹ PX-3 at App. F, Figure 5.21 (Chen Report).

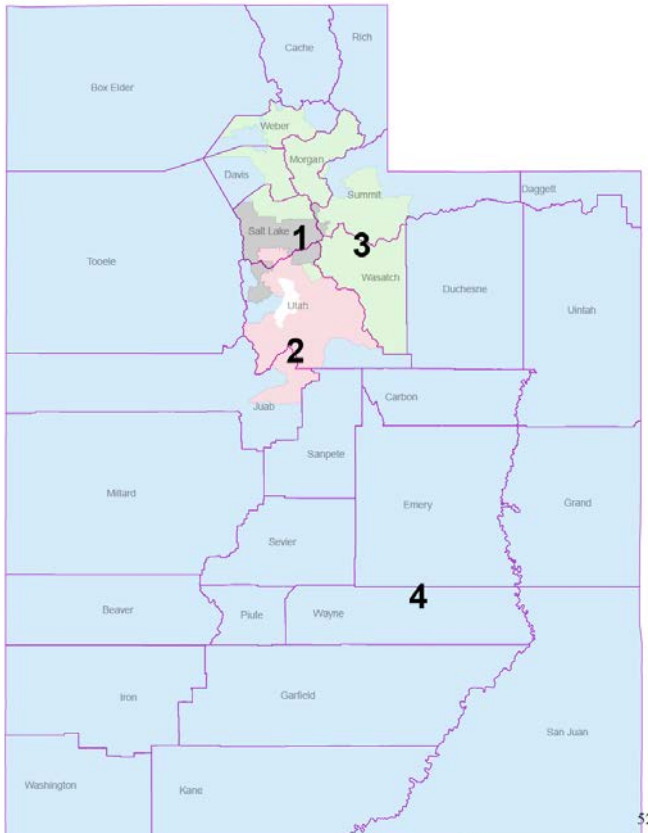
⁹⁰ DX-13 at 36 (Trende Report).

⁹¹ 10.24 Tr. at 228:11-229:7 (Trende).

⁹² PX-3 at 52, Figure 5.3 (Chen Report).

Figure 5.3: Trende 'Base' Simulated Map #13,245 of 100,000

District:	Population:	Reock:	Polsby-Popper:	Contiguity Violation:	
1:	812,563	0.342	0.115	No	6 Divided Counties (11 County Divisions): Davis County (Districts 3 and 4) Juab County (Districts 2 and 4) Salt Lake County (Districts 1,2,3 and 4) Summit County (Districts 1,3 and 4) Utah County (Districts 1,2,3 and 4) Weber County (Districts 3 and 4)
2:	816,505	0.374	0.116	No	
3:	819,096	0.315	0.101	No	
4:	823,448	0.545	0.254	Yes	
Unassigned:	4				
Plan Average:	817,903	0.394	0.146		



65. *Lack of Geographic Compactness.* Dr. Trende’s ensembles did not create districts that are geographically compact to the greatest extent practicable. See Utah Code § 20A-19-103(3)(c). The map image above illustrates as much, as do the others in the record.⁹³ The middle 95% range of Dr. Trende’s maps’ compactness scores (on the Polsby-Popper measure) falls entirely beneath that of Dr. Chen’s.⁹⁴ Indeed, Dr. Trende testified that he was unaware that Proposition 4’s “greatest extent practicable” standard even applied to the compactness criterion.⁹⁵ Commenting on Dr. Chen’s simulated maps, Dr. Trende testified: “I just think his maps are too compact for what real people were thinking when they were drawing.”⁹⁶ But after reviewing examples and summary statistics regarding both Dr. Trende’s and Dr. Chen’s simulated maps, the Court finds that Dr. Chen’s are not “too compact,” but rather adhere to

⁹³ PX-3 at 73, Figure 5.12 & App. E (Chen Report).

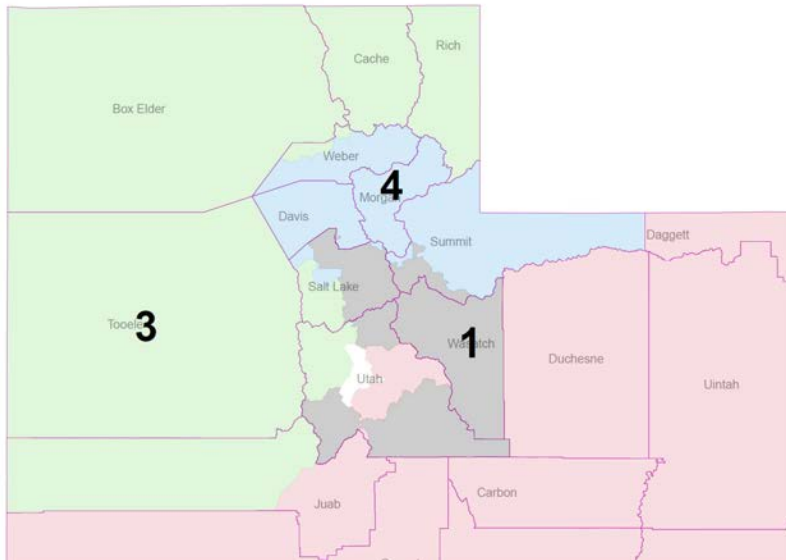
⁹⁴ PX-3 at 71, Figure 5.11 (Chen Report).

⁹⁵ 10.24 Tr. at 254:2-12 (Trende).

⁹⁶ 10.24 Tr. at 255:19-21 (Trende).

Proposition 4’s requirement that districts be drawn to be geographically compact to the greatest extent practicable.⁹⁷ Dr. Trende’s maps do not.

66. *Noncontiguous Districts.* Dr. Trende’s report incorrectly asserted that his “[m]aps are all contiguous.”⁹⁸ Nearly half of the maps in Dr. Trende’s “Base” ensemble and roughly 42% of them in his “Restricted” ensemble contain noncontiguous districts—some in which all four districts are noncontiguous.⁹⁹ An example is shown below from Dr. Trende’s Base Map No. 42,874:¹⁰⁰



67. The Court finds that Dr. Trende’s “Base” and “Restricted” Ensembles were not configured to comply with Proposition 4’s redistricting criteria and thus cannot—at least in their totality—be a proper basis against which to assess other maps’ partisan characteristics. For this reason, Dr. Trende’s ensembles do not satisfy the definition of “sequential Monte Carlo simulation” in S.B. 1011 because they do not accord with “legal and geometric criteria.” Utah Code § 20A-19-103(1)(f).

68. *Republican Favoritism in Dr. Trende’s Ensembles.* The Court also finds that the many shortcomings in Dr. Trende’s ensembles skewed the set to a substantial degree in favor of Republicans. The Court gives great weight to the testimony and evidence proffered by Dr. Chen illustrating as much.

69. The excessive county divisions in Dr. Trende’s ensembles skewed the simulations in favor of Republicans. Dr. Chen persuasively testified that, when county borders are disrespected in this manner, the effect is to randomly assign voters without regard to their counties of residence, leading to districts that simply reflect the statewide partisan composition.¹⁰¹ This was evident in Dr. Trende’s ensembles. There is a direct, inverse

⁹⁷ PX-6 (Sample Chen Maps).

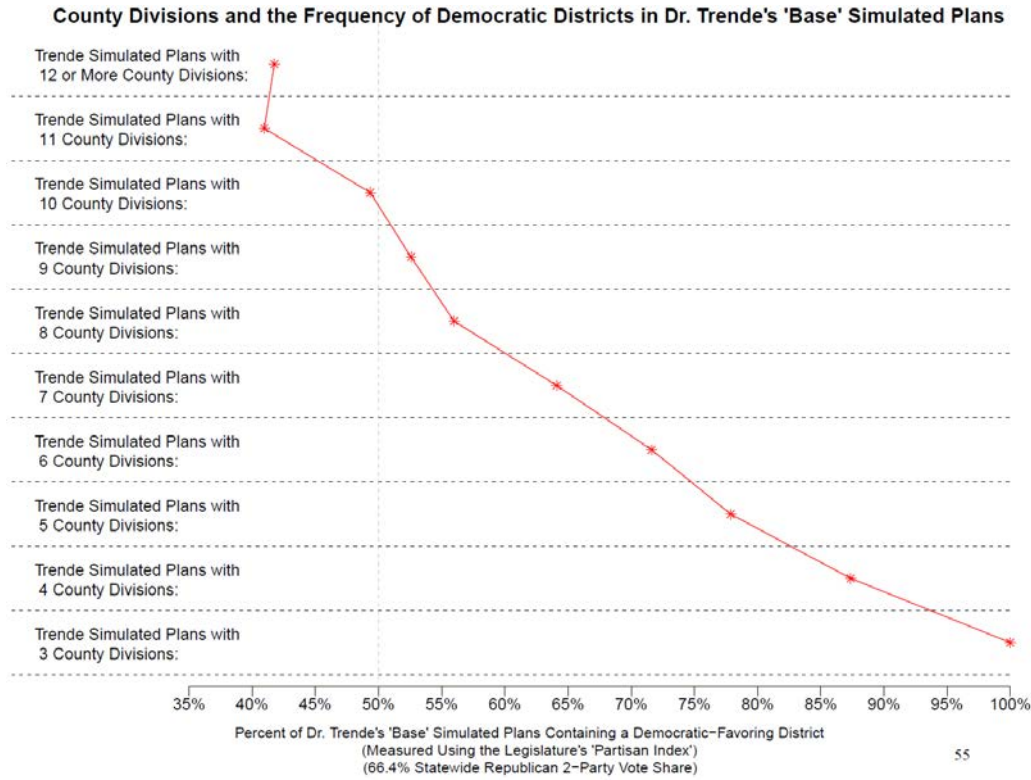
⁹⁸ 10.24 Tr. at 231:14-19 (Trende).

⁹⁹ PX-3 at App. G, Tables G1 and G4 (Chen Report).

¹⁰⁰ PX-3 at App. E, Figure E12 (Chen Report).

¹⁰¹ 10.23 Tr. at 44:7-46:24 (Chen).

relationship between the number of county divisions in Dr. Trende’s simulated maps and the percentage of his maps that contain a Democratic-favoring district, as shown below.¹⁰²



70. Likewise, as the number of county splits increased in Dr. Trende’s ensembles, so too did the Republican vote share of the least Republican district.¹⁰³

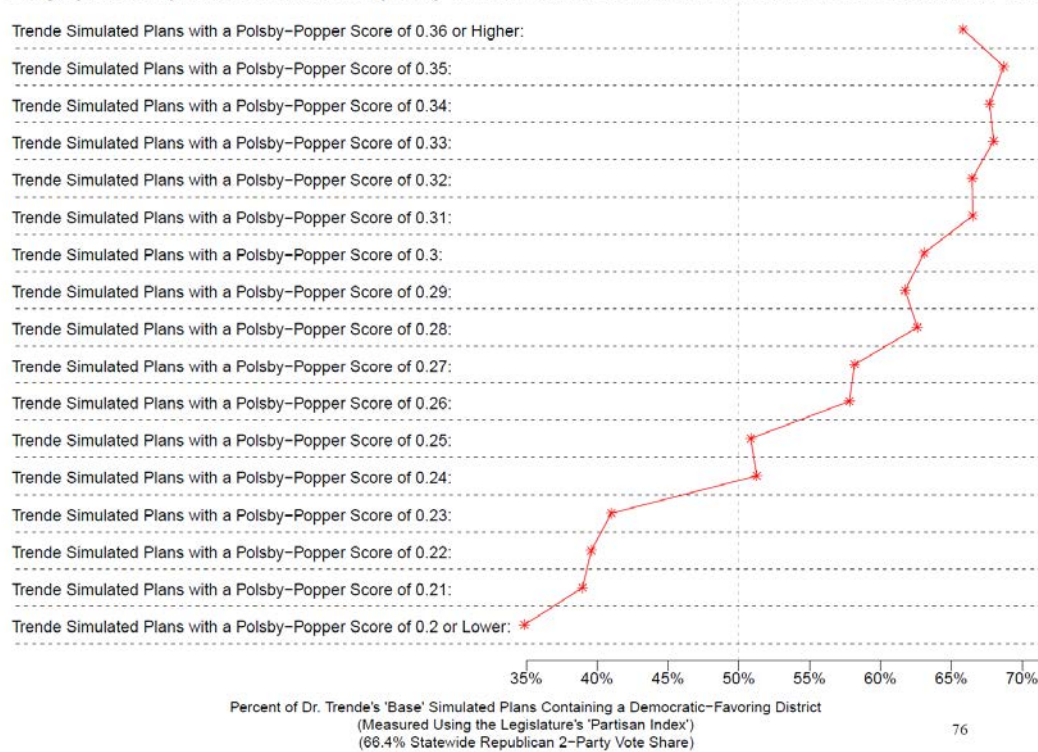
71. The same pattern was evident when considering the compactness scores for Dr. Trende’s maps. As illustrated below, as the compactness scores for Dr. Trende’s simulated maps increased, so too did the percentage of his maps containing a Democratic-favoring district:¹⁰⁴

¹⁰² PX-3 at 55, Figure 5.4 (Chen Report).

¹⁰³ PX-3 at 56, Figure 5.5 (Chen Report); 10.23 Tr. at 44:6-45:22 (Chen).

¹⁰⁴ PX-3 at 76, Figure 5.13 (Chen Report).

Geographic Compactness and the Frequency of Democratic Districts in Dr. Trende's 'Base' Simulated Plans



72. Similarly, as the compactness scores of Dr. Trende’s simulated maps decrease, the Republican vote share of the least Republican districts increases.¹⁰⁵

73. This same pattern holds true for the noncontiguous districts in Dr. Trende’s ensembles. Among Dr. Trende’s “Base” ensemble, as the number of noncontiguous districts rises from 0 to 1 to 2 to 3 to 4, so too does the percentage of maps with 4 Republican districts increase (from 34.5% to 41.6% to 52.6% to 57.2% to 75.0%).¹⁰⁶ Among Dr. Trende’s “Restricted” ensemble, the same pattern is true, with the percentages of maps with 4 Republican districts increasing from 27.7% to 28.7% to 39.5% to 42.3% to 66.7% as the number of noncontiguous districts increases from 0 to 4.¹⁰⁷

74. Dr. Trende’s failure to conform his ensembles to Proposition 4’s requirements caused his simulated maps to be substantially skewed in favor of Republicans. Had he conformed his ensembles to Proposition 4’s criteria, their partisan composition would have shifted substantially. Accordingly, the Court finds them to be an inappropriate benchmark—at least when considered as a full set. If Dr. Trende’s ensembles were to be used to assess maps—as they were by the Legislature—it would have the effect of potentially excusing maps that in fact purposefully favor Republicans while falsely labeling neutral maps as purposefully favoring Democrats.

75. **Dr. Barber.** Dr. Barber generated an ensemble of 50,000 computer-simulated maps using the same “redist” R package as Dr. Trende.¹⁰⁸ Like Dr. Trende’s ensembles, Dr.

¹⁰⁵ PX-3 at 79, Figure 5.14 (Chen Report).
¹⁰⁶ PX-3 at App. G, Table G2 (Chen Report).
¹⁰⁷ PX-3 at App. G, Table G5 (Chen Report).
¹⁰⁸ DX-14 at 23 (10.17 Barber Report).

Barber’s ensemble fails to conform with Proposition 4’s requirements and thus does not serve as an appropriate benchmark against which to assess maps. His ensemble does not satisfy S.B. 1011’s definition of “sequential Monte Carlo simulation” because it does not accord with the “legal and geometric criteria.” Utah Code § 20A-19-103(1)(f).

76. *Population Deviation.* Dr. Barber wrote in his expert report that his simulations were programmed to create districts with “strict population equality.”¹⁰⁹ He did not explain in his report that this meant something other than 0 population deviation, but on cross examination acknowledged that he programmed the “redist” algorithm to have a +/- 0.1% population deviation.¹¹⁰ Legislative Defendants’ other expert, Dr. Trende, testified that taking this approach is inadvisable because it restricts too greatly which precincts can be allocated to which districts, limiting the plan diversity of the ensemble.¹¹¹ Indeed, Dr. Trende testified that the approach taken by Dr. Barber causes “redist” to “stop[] working and you start to really constrain the maps.”¹¹² Dr. Trende agreed that “it wouldn’t be a valid set to compare against” if one were to limit “redist” to producing maps below a 1% deviation range, given “redist’s” inability to split precincts.¹¹³ This is only a limitation of “redist,” as Dr. Trende acknowledged that Dr. Chen’s algorithm can split precincts and assign Census blocks in order to perfectly equalize population.¹¹⁴

77. *Excessive Division of Salt Lake County.* Dr. Barber’s report asserted that he programmed his algorithm to minimize county splits.¹¹⁵ But he did not disclose in his report that in fact he programmed his algorithm to avoid splitting all counties except Salt Lake County.¹¹⁶ Indeed, Dr. Barber instructed his algorithm to eliminate, on the front end, Salt Lake County from the definition of “county” his algorithm used and allow it to make unlimited divisions of Salt Lake County.¹¹⁷

78. Accordingly, Dr. Barber’s algorithm responded as would be expected—it sought to avoid splitting 28 of Utah’s 29 counties and it was forced, by Dr. Barber’s redefinition of “county” to exclude Salt Lake County, to concentrate the dividing lines of the districts in Salt Lake County.¹¹⁸ As far as Dr. Barber’s algorithm was concerned, it could do well on minimizing county splits by focusing its divisions in the highly populated area known in the real world as “Salt Lake County,” but known to the algorithm as a county-less region of sizeable population.

79. In a supplemental report, Dr. Barber acknowledged that his treatment of Salt Lake County was an intentional design.¹¹⁹ Given this, the Court finds it interesting that Dr. Barber did this in his opening report when he asserted that he programmed his algorithm to minimize county divisions.

¹⁰⁹ DX-14 at 23 (10.17 Barber Report).

¹¹⁰ 10.24 Tr. at 368:16-369:17 (Barber).

¹¹¹ 10.24 Tr. at 230:9-231:13 (Trende).

¹¹² 10.24 Tr. at 230:9-17 (Trende).

¹¹³ 10.24 Tr. at 230:18-25 (Trende).

¹¹⁴ 10.24 Tr. at 230:23-231:4 (Trende).

¹¹⁵ DX-14 at 23 (10.17 Barber Report).

¹¹⁶ 10.24 Tr. at 377:1-12 (Barber); PX-4 at 4-5 (Chen Supplemental Report).

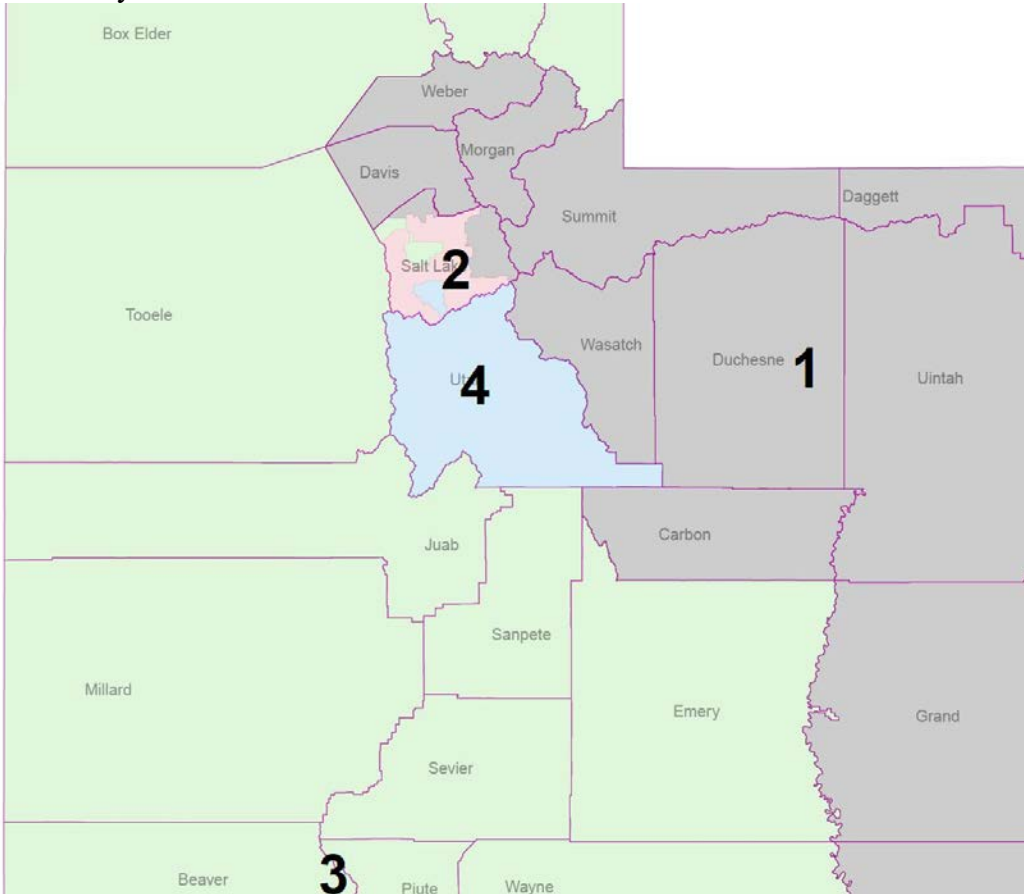
¹¹⁷ 10.24 Tr. at 375:7-16 (Barber); 10.23 Tr. at 71:11-72:14 (Chen); PX-4 at 4-5 (Chen Supplemental Report).

¹¹⁸ PX-4 at 4 (Chen Supplemental Report).

¹¹⁹ DX-15 at 20 (10.22 Barber Report).

80. Nevertheless, the effect of Dr. Barber’s programming his algorithm to blind itself to the existence of Salt Lake County was that his ensemble excessively splits Salt Lake County in the simulated maps, with 63.6% of his maps dividing Salt Lake County into four districts and 34.4% dividing Salt Lake County into three districts. Less than 2% of his maps divide Salt Lake County into two districts—the number necessary to achieve equal population.¹²⁰ The median number of county divisions in Dr. Barber’s ensemble is 4, unlike the minimum 3 in each of Dr. Chen’s simulated maps.¹²¹

81. Below is an example of a simulated map from Dr. Barber’s ensemble splitting Salt Lake County into four districts.¹²²



82. The Court finds that Dr. Barber’s ensemble is an inappropriate set against which to compare maps because it does not comply with Proposition 4’s requirement that maps minimize, to the greatest extent practicable, the division of counties across multiple districts. His algorithm allowed—and in effect encouraged—the division of Salt Lake County into multiple districts. And Dr. Barber acknowledged on cross examination knowing that Salt Lake County was the one county in Utah with a large concentration of Democratic voters.¹²³ The Court finds that Dr. Barber’s ensemble is not a reliable comparator to determine the partisan composition of

¹²⁰ PX-4 at 4-6 (Chen Supplemental Report).

¹²¹ DX-14 at 25 (10.17 Barber Report); PX-3 at 47 (Chen Report).

¹²² PX-22 (Barber Map Samples, 4,244).

¹²³ 10.24 Tr. at 380:12-381:4 (Barber).

maps that could be expected from adhering to Proposition 4's redistricting criteria in a partisan neutral manner.

83. *Other Flaws in Dr. Barber's Ensemble.* There are other flaws in Dr. Barber's ensemble and his report that cause the Court not to credit his analysis. Dr. Barber failed to use the stipulated municipal boundaries from the U.S. Census Bureau, causing him to understate the number of municipal divisions in his simulated maps.¹²⁴ Dr. Barber overstated the Polsby-Popper compactness scores for his simulated maps.¹²⁵ Indeed, like with Dr. Trende, the middle 95% range of Dr. Barber's ensemble falls entirely below the middle 95% range for Dr. Chen's ensemble for the Polsby-Popper compactness metric.¹²⁶

84. Dr. Barber's ensemble also contains a remarkable number of exact duplicates. Indeed, he does not actually have an ensemble of 50,000 distinct maps because 41,629 of the 50,000 maps are identical to at least one other map in his ensemble. One map is repeated—in its exact form—113 times in a row. Removing all exact duplicates, Dr. Barber produced 14,668 unique maps.¹²⁷ The high presence of exact duplicates in Dr. Barber's ensemble is notable in light of the testimony of Legislative Defendants' other expert, Dr. Trende, that constructing the ensemble with the population deviation allowance Dr. Barber used would restrict the possible maps too much. It appears to the Court that Dr. Trende's criticism of Dr. Barber's approach has merit.

85. The Court is unpersuaded by Dr. Barber's insistence that the presence of so many exact duplicate maps in his ensemble is a good thing while he simultaneously criticizes Dr. Chen's ensemble—which had zero exact duplicates—for often generating a northern Salt Lake County district.¹²⁸ Dr. Barber opined that by repeating the same map over and over, his algorithm had landed on one that performed well on the redistricting criteria and should be given greater weight in the ensemble.¹²⁹ But when shown maps from his ensemble that were exactly duplicated many times with oddly-configured districts, Dr. Barber equivocated and refused to directly acknowledge the obvious flaw in his opinion. For example, Dr. Barber insisted the District 2 from Map 4,544 (which is repeated 15 times in his ensemble) shown in pink below, was best described as “wholly contained in Salt Lake County” and refused until multiple questions were asked to acknowledge its odd shape, even then wrongly insisting it was no odder than one of Plaintiffs' proposed maps.¹³⁰

¹²⁴ PX-4 at 16-17, Figure 8 (Chen Supplemental Report); 10.23 Tr. at 75:4-76:12 (Chen); 10.24 Tr. at 372:17-374:3 (Barber).

¹²⁵ 10.24 Tr. at 378:18-21 (Barber); PX-4 at 18 (Chen Supplemental Report).

¹²⁶ PX-4 at 19, Figure 9 (Chen Supplemental Report); 10.24 Tr. at 378:22-379:12 (Barber).

¹²⁷ PX-5 at 1-3, Tables 1 & 2 (Chen Rebuttal Report).

¹²⁸ The Court is also unpersuaded by Dr. Barber's criticism that Dr. Chen's simulated maps have a Salt Lake County based district (with 95% of its population in Salt Lake County) that often has a small part of Davis, rather than Tooele or Summit, Counties, for population equalization. DX-15 at 16 (10.22 Barber Report). Dr. Chen's maps frequently combine Tooele and Summit Counties with Salt Lake County based districts, e.g., PX-20 (Sample Chen Maps), and Dr. Barber's 95% constraint on his definition lacks any apparent relevant meaning other than to arrive at the conclusion he did.

¹²⁹ DX-16 at 4 (10.23 Barber Report).

¹³⁰ 10.24 Tr. at 362:20-366:7; 374:4-375:3 (Barber); PX-22 (Barber Map Samples, 4,244).



86. Dr. Barber likewise did not restrict his ensemble from generating districts whose only source of contiguity was the Great Salt Lake and created many such districts.¹³¹

87. Ultimately, Dr. Barber’s ensemble was not designed to, and does not, comply with Proposition 4’s redistricting criteria and his report contains many errors and omissions. The Court finds that his ensemble is not an appropriate comparator to assess partisanship of maps, and the Court generally gives little weight to Dr. Barber’s analysis and testimony for the reasons discussed above.

VI. S.B. 1011’s partisan bias test contravenes / is at odds with Proposition 4’s neutral redistricting criteria and its prohibition on partisan favoritism.

88. The Court finds that application of the partisan bias test, given Utah’s current electoral conditions and political geography, contravenes Proposition 4’s neutral redistricting criteria and its prohibition on partisan favoritism. This was evident from the testimony and analysis of Drs. Chen, Trende, and Barber.

A. S.B. 1011’s partisan bias test contravenes Proposition 4’s neutral redistricting criteria.

89. S.B. 1011’s partisan bias test works directly at odds with Proposition 4’s neutral redistricting criteria. The evidence shows that it works to reject maps that best comply with those criteria while accepting maps that perform the worst on those criteria.

90. As the Court has found, Dr. Chen produced a reliable ensemble of 10,000 maps that adhere to Proposition 4’s neutral redistricting criteria. But if that ensemble were to be subjected to S.B. 1011’s partisan bias test culling, only 11 maps would remain.¹³² This starkly illustrates the inconsistency with grafting S.B. 1011’s partisan bias test onto Proposition 4’s requirements.

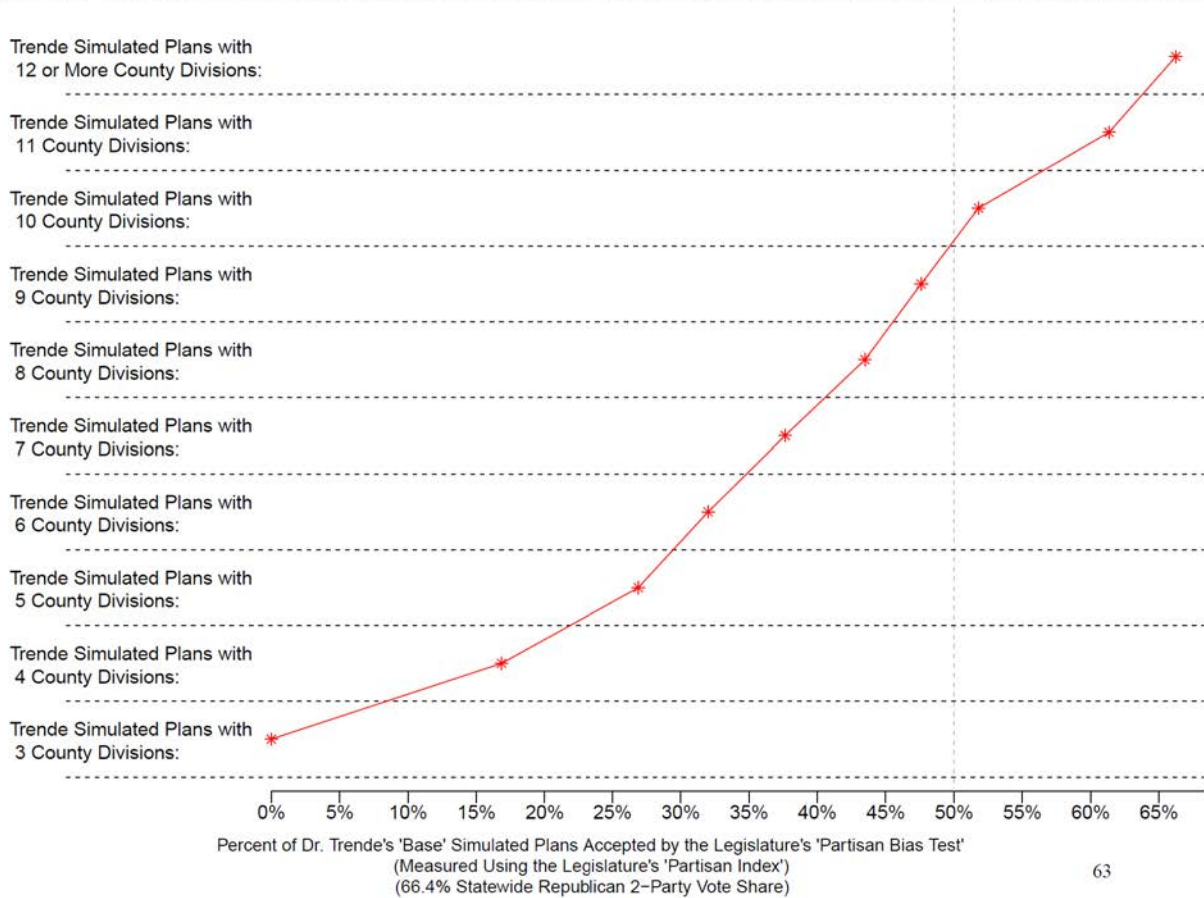
¹³¹ 10.24 Tr. at 366:9-367:7 (Barber); PX-23 (Barber Map Samples).

¹³² PX-3 at 31-32, Table 1 (Chen Report).

91. Dr. Chen also credibly and persuasively analyzed Dr. Trende’s ensemble to determine the relationship between the maps that were accepted as passing the partisan bias test and those that were “culled” for failing the partisan bias test. The result shows that the partisan bias test works at direct cross purposes with Proposition 4’s neutral redistricting criteria.

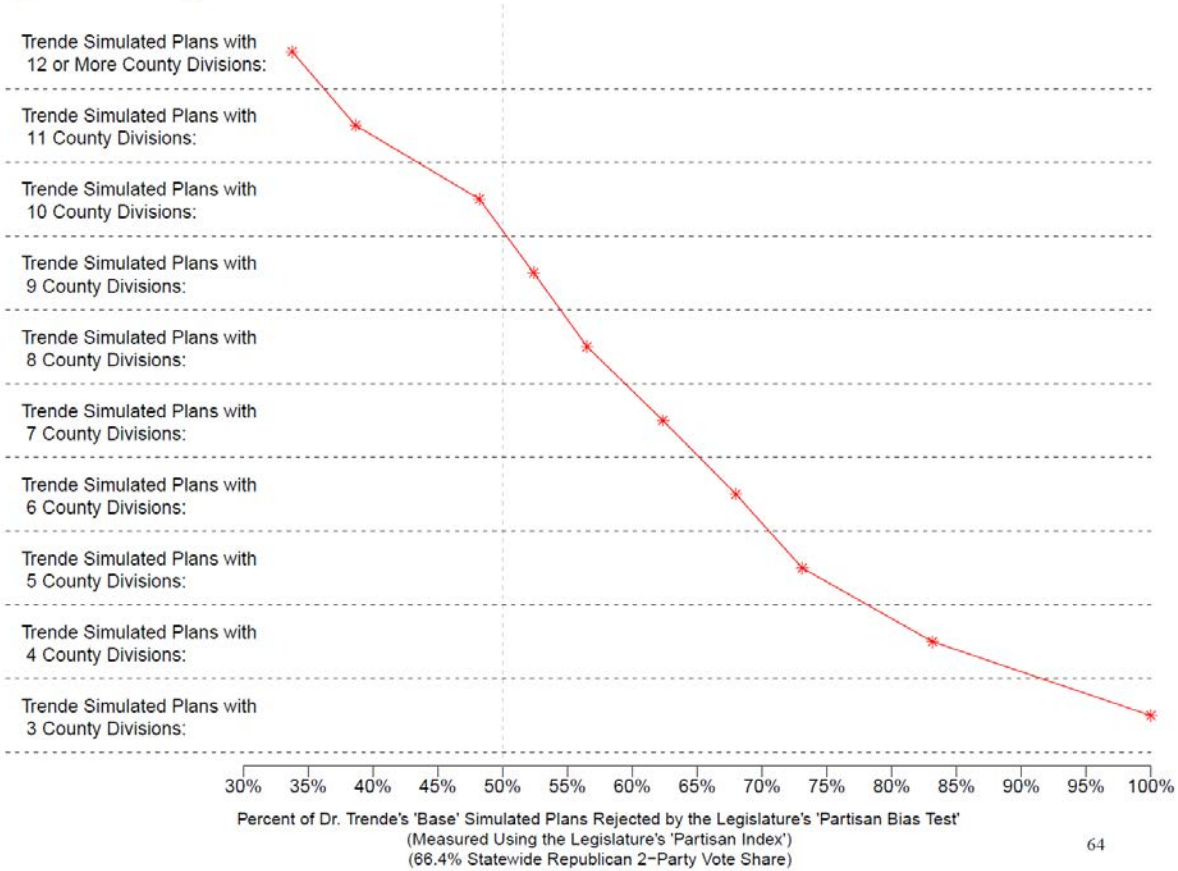
92. County Divisions. As the figures below illustrate, the fewer county divisions a simulated map from Dr. Trende’s set had, the likelier it was to be culled from Dr. Trende’s ensemble for failing to pass the partisan bias test—and vice versa.¹³³

Figure 5.7: County Divisions and the Most-Democratic District in Each of Dr. Trende's 'Base' Simulated Plans



¹³³ PX-3 at 63-64, Figures 5.7 & 5.8 (Chen Report); 10.23 Tr. at 50:11-52:1 (Chen).

Figure 5.8: County Divisions and the Most-Democratic District in Each of Dr. Trende's 'Base' Simulated Plan



93. Geographic Compactness. Likewise, the more geographically compact a map is among Dr. Trende's ensemble, the more likely it is to fail the partisan bias test, and vice versa, as the figures below show.¹³⁴

¹³⁴ PX-3 at 83-84, Figures 5.16 & 5.17 (Chen Report); 10.23 Tr. at 60:6-61:17 (Chen).

Figure 5.16:
Geographic Compactness Simulated Plans Accepted by the Legislature's 'Partisan Bias Test'

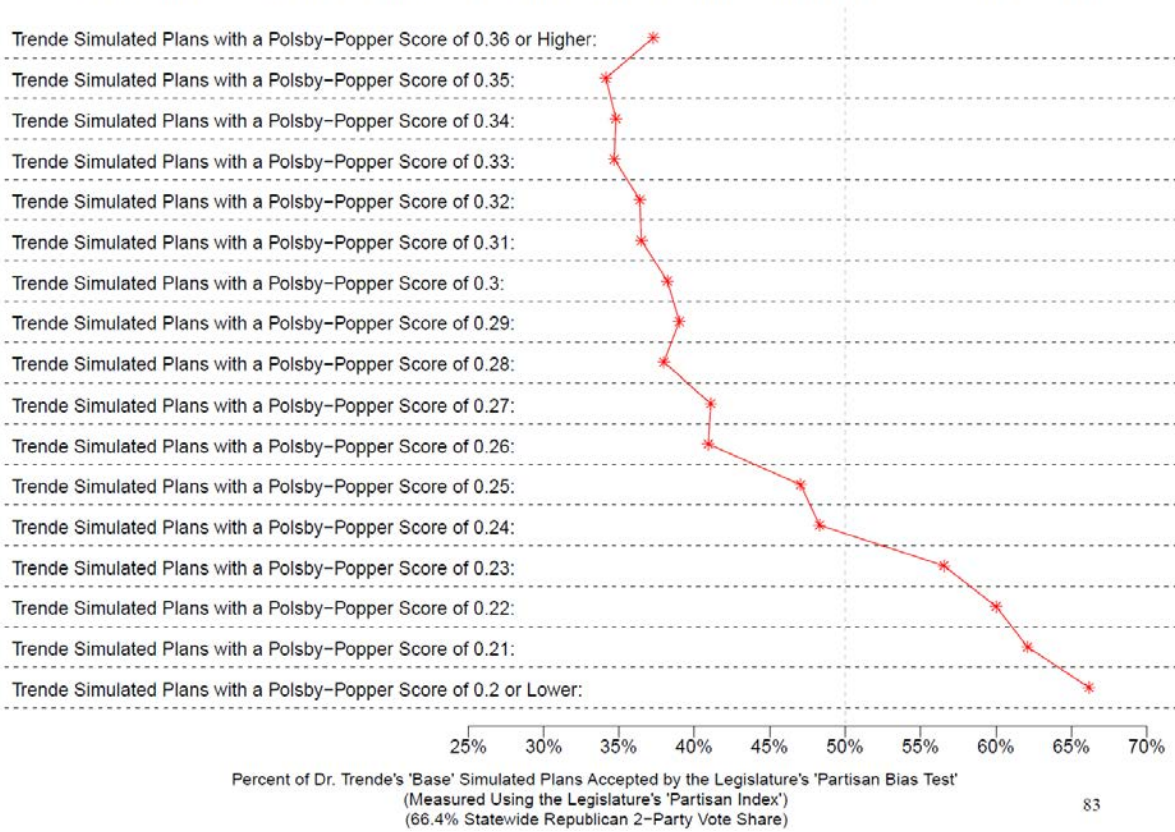
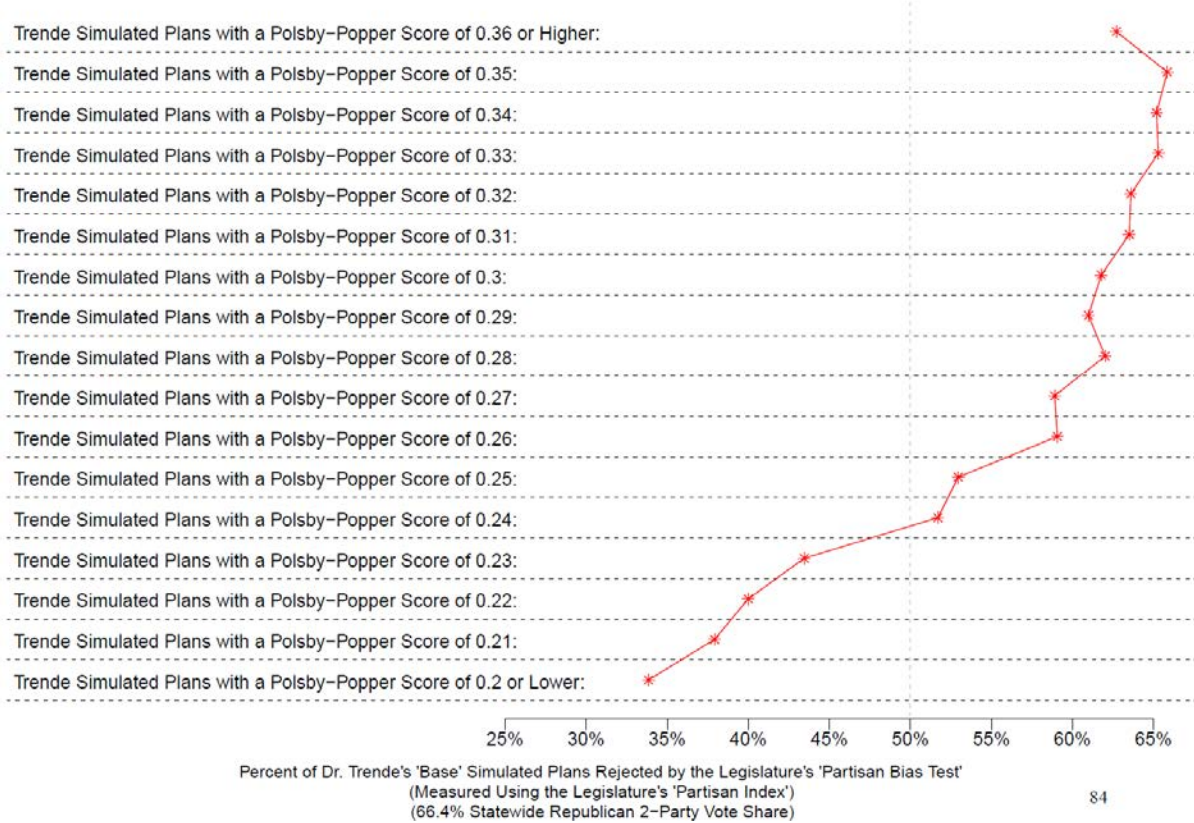


Figure 5.17:
Geographic Compactness and Simulated Plans Rejected by the Legislature's 'Partisan Bias Test'



94. *Contiguity*. The same pattern is true for the contiguous versus noncontiguous districts among Dr. Trende's simulations. The maps with the fewest noncontiguous districts are the least likely to pass S.B. 1011's partisan bias test, while the maps that have the greatest number of contiguity violations are the most likely to pass S.B. 1011's partisan bias test, as the tables below show for Dr. Trende's Base and Restricted Ensembles.¹³⁵

¹³⁵ PX-3 at App. G, Tables G3 & G6 (Chen Report).

Table G3:
Percent of Dr. Trende’s ‘Base’ Simulated Plans Rejected (or “Culled”) by Trende’s Partisan Bias Test:

	Percent of Trende Simulated Plans Rejected by Trende’s Partisan Bias Test:
Trende ‘Base’ Simulated Plans with no contiguity violations:	62.4%
Trende ‘Base’ Simulated Plans containing one non-contiguous district:	58.5%
Trende ‘Base’ Simulated Plans containing two non-contiguous districts:	49.4%
Trende ‘Base’ Simulated Plans containing three non-contiguous districts:	44.9%
Trende ‘Base’ Simulated Plans containing four non-contiguous districts:	25.0%

Table G6:
Percent of Dr. Trende’s ‘Restricted’ Simulated Plans Rejected (or “Culled”) by Trende’s Partisan Bias Test:

	Percent of Trende Simulated Plans Rejected by Trende’s Partisan Bias Test:
Trende ‘Restricted’ Simulated Plans with no contiguity violations:	68.9%
Trende ‘Restricted’ Simulated Plans containing one non-contiguous district:	69.0%
Trende ‘Restricted’ Simulated Plans containing two non-contiguous districts:	57.6%
Trende ‘Restricted’ Simulated Plans containing three non-contiguous districts:	52.7%
Trende ‘Restricted’ Simulated Plans containing four non-contiguous districts:	27.8%

95. As Dr. Chen’s analysis of Dr. Trende’s ensembles shows, S.B. 1011’s partisan bias test works at direct cross purposes with Proposition 4’s neutral redistricting criteria, disqualifying the maps that come closest to adhering to Proposition 4’s neutral redistricting criteria while accepting those maps that perform the poorest on those criteria.

96. The Court finds that S.B. 1011’s partisan bias test thus directly contravenes and interferes with adherence to the neutral redistricting criteria established as one of Proposition 4’s key government reforms.

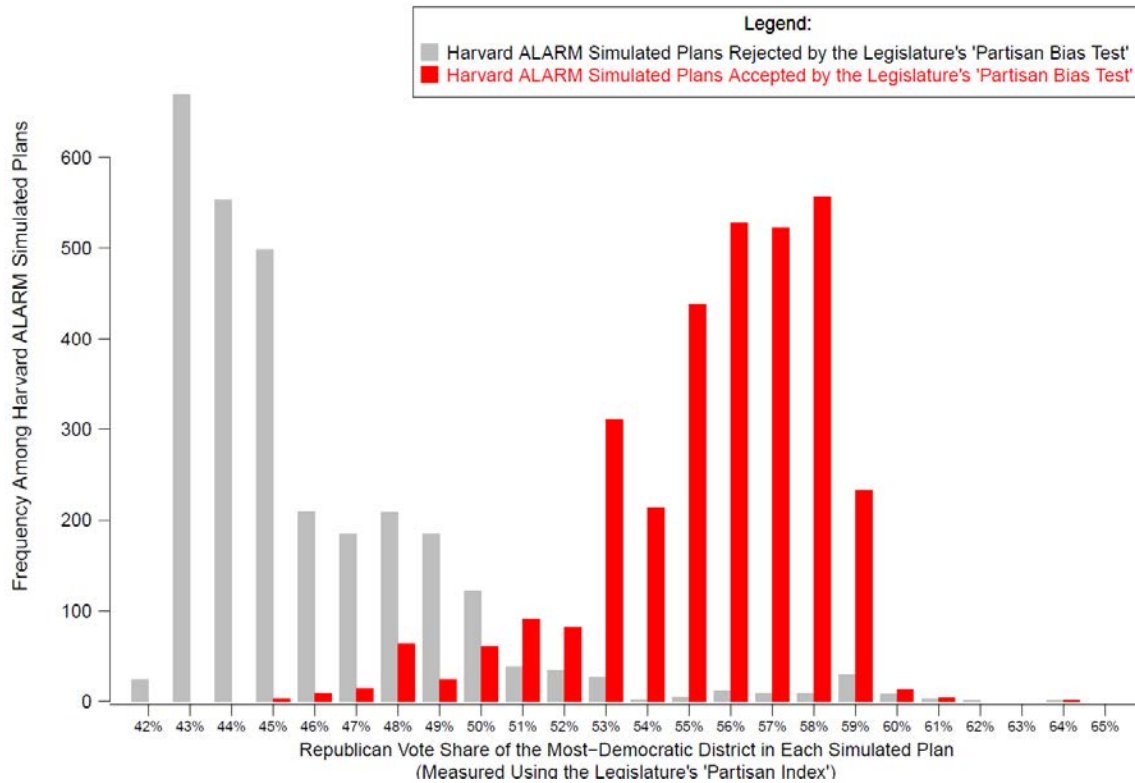
B. S.B. 1011’s partisan bias test structurally mandates partisan favoritism for Republicans under Utah’s current electoral conditions and political geography.

97. The evidence also shows that S.B. 1011’s partisan bias test structurally mandates partisan favoritism for Republicans given Utah’s current electoral conditions and political geography. This is evident from the partisan effect of culling all the various ensembles presented in this case based upon passing or failing the partisan bias test.

98. Among Dr. Chen’s 10,000 simulated maps, only 11 would pass S.B. 1011’s partisan bias test, and 6 of those 11 would create a 4-0 Republican map. Indeed, following Proposition 4’s neutral redistricting criteria, only 7 of Dr. Chen’s simulated maps created a 4-0 Republican map, while 9,993 created a 3-1 map. S.B. 1011’s partisan bias test, if applied to Dr. Chen’s ensemble, would disqualify 9,988 maps that create 1 Democratic district and just 1 map that creates zero Democratic districts.¹³⁶

99. The pattern is similar for the ALARM ensemble, where of the 6,000 maps, S.B. 1011’s partisan bias test would disqualify 2,594 maps that create 1 Democratic district (passing just 130 maps that do so) and 240 maps that create 4 Republican districts (passing 3,037 maps that do so). In essence, S.B. 1011’s partisan bias test filters out the maps that create a Democratic district and accepts those that do not.¹³⁷ The figure below illustrates how the S.B. 1011 partisan bias culling disqualifies (in gray) ALARM maps that create a Democratic district while approving those that create more Republican districts (in red), shifting the composition of the ensemble substantially in favor of Republicans.¹³⁸

Figure 4.4:
The Most-Democratic District in Each Harvard ALARM Simulated Plan



100. This is true as well for Dr. Trende’s Base and Restricted ensembles. Among his Base ensemble, S.B. 1011’s partisan bias test disqualifies 53,665 maps that create 1 Democratic district (and 5,458 that create 4 Republican districts) while accepting 34,143 maps that create 4

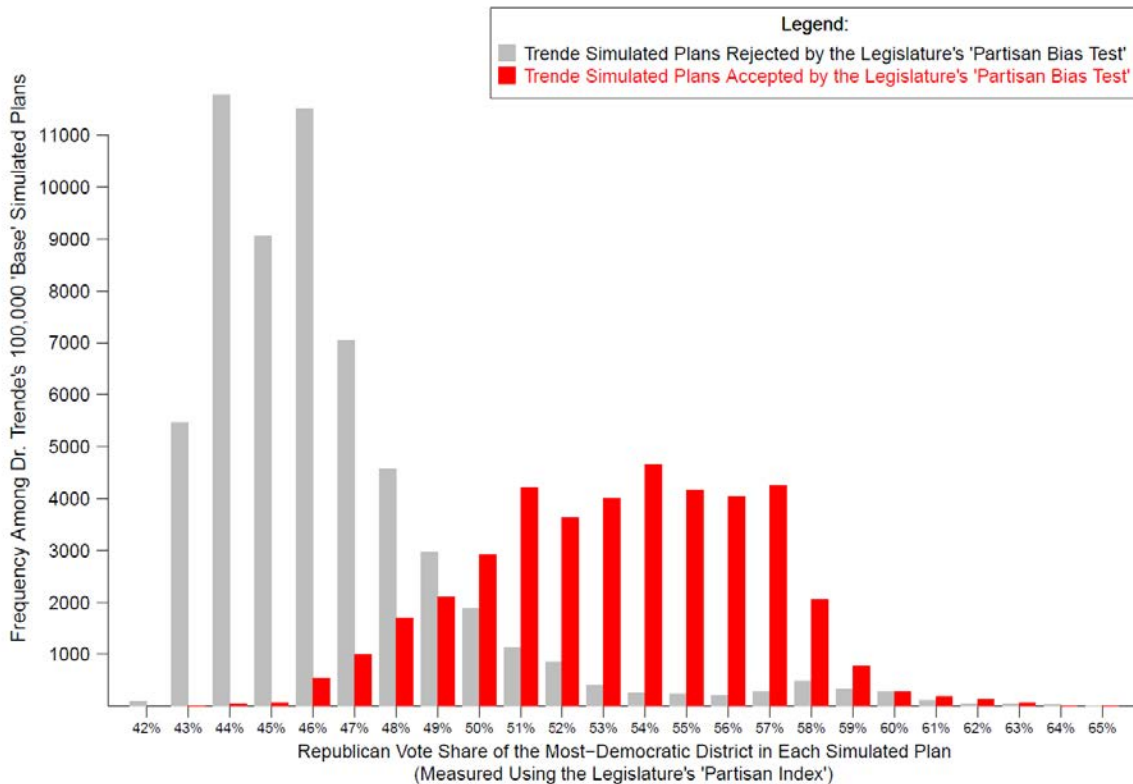
¹³⁶ PX-3 at 32, Table 1 (Chen Report).

¹³⁷ PX-3 at 33, Table 4 (Chen Report); 10.23 Tr. at 35:14-25 (Chen).

¹³⁸ PX-3 at 37 (Chen Report).

Republican districts (and 6,734 maps that create 1 Democratic district).¹³⁹ The two figures below illustrate this effect in Dr. Trende’s two ensembles.¹⁴⁰

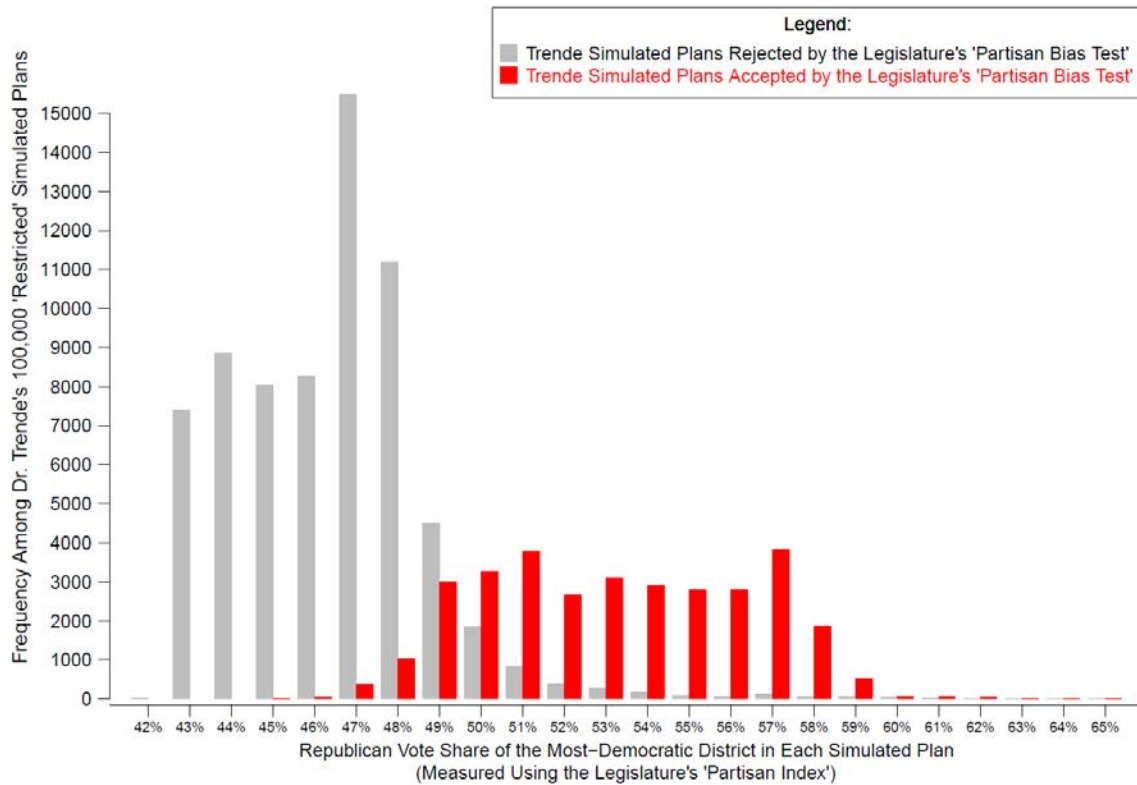
Figure 4.2:
The Most-Democratic District in Each of Dr. Trende's 'Base' Simulated Plans



¹³⁹ PX-3 at 32, Table 2 (Chen Report); 10.23 Tr. at 34:1-35:13 (Chen).

¹⁴⁰ PX-3 at 35-36, Figures 4.2 & 4.3 (Chen Report).

Figure 4.3:
The Most-Democratic District in Each of Dr. Trende's 'Restricted' Simulated Plans



101. This pattern was also evident among Dr. Barber’s ensemble. As the Court found above, Dr. Barber’s set paints an unreliable picture of the expected partisan composition of maps that comply with Proposition 4’s criteria when drawn without partisan data because he allowed Salt Lake County—where the largest concentration of Democratic voters are located—to be split into multiple districts without limitation. But even among this set, prior to culling for S.B. 1011’s partisan bias test, roughly half of Dr. Barber’s simulated maps created 1 Democratic district.¹⁴¹ That number dropped dramatically to just 6.5% among the set culled for passage of S.B. 1011’s partisan bias test, with a remarkable 93.5% of Dr. Barber’s simulated maps that pass S.B. 1011’s partisan bias test creating 4 Republican districts.¹⁴²

102. The Court credits the testimony of Dr. Chen that “the partisan bias test is essentially just a filter. It is effectively just a filter for whether or not a plan has a Democratic district or not.”¹⁴³ While a small number of maps that create a Democratic district satisfy S.B. 1011’s partisan bias test, the vast majority do not. In contrast, the vast majority of maps that create 4 Republican districts satisfy the partisan bias test, while few fail it.

103. The Court finds that S.B. 1011’s partisan bias test works systematically and structurally to favor Republicans and disfavor Democrats in this manner. The ensemble evidence in this case discussed above illustrates this fact, and illustrates the findings above that applying S.B. 1011’s partisan bias test in light of Utah’s unique political geography—where Democratic

¹⁴¹ DX-14 at 30 (10.17 Barber Report).

¹⁴² *Id.*

¹⁴³ 10.23 Tr. at 50:1-4 (Chen).

voters are concentrated in a geographically compact set of municipalities within Salt Lake County—leads to perverse outcomes that would mandate resisting Proposition 4’s neutral redistricting criteria in service of a test that in essence mandates, rather than prohibits, partisan favoritism in redistricting.

VII. Legislative Process

A. The Legislature retains Dr. Trende to assess and draw maps.

104. During the 2025 remedial redistricting process leading up to the October 6, 2025, special session of the Legislature, the Utah Legislature retained Dr. Trende, first to assess maps, and then to draw maps. All of the instructions Dr. Trende received related to his mapping work came via Legislative Defendants’ litigation counsel.¹⁴⁴

105. Sometime after August 25, 2025, Dr. Trende began his mapping work. But Dr. Trende did not start drawing maps from scratch. Instead, he started from the 2021 Map, in which Salt Lake County was split into four quadrants.¹⁴⁵ Starting from this map that quartered Salt Lake County, Dr. Trende drew three maps by hand. The first map combined the two eastern quadrants and two western quadrants of Salt Lake County, creating a north-south dividing line between the districts. In this first map, Salt Lake City was placed in the eastern district with Summit County and southward to San Juan County.¹⁴⁶ This map would ultimately be labeled Map C. Next, Dr. Trende drew another map that also split Salt Lake County on a north-south axis, combining the two eastern quadrants into one district, and the two western quadrants into another district. In this map, Salt Lake City was placed with Tooele County. This map would ultimately be labeled Map A. Dr. Trende also drew a third map. Unlike the other two hand-drawn maps, this map split Salt Lake County on an east-west axis, creating one district that included the northern part of Salt Lake County, and another district containing the southern part of South Lake County.¹⁴⁷

106. In addition to these hand-drawn maps, Dr. Trende also selected maps from the ALARM set and from his own ensembles.¹⁴⁸ In total, Dr. Trende submitted ten or more maps to the Legislature via the attorneys representing Legislative Defendants. These maps included maps from the ALARM set, from Dr. Trende’s ensembles, and the three hand-drawn maps (two with a north-south dividing line in Salt Lake County, and one with an east-west dividing line in Salt Lake County).¹⁴⁹ Along with the maps, Dr. Trende also submitted to the Legislature an information sheet about each map, including whether the maps passed the partisan bias test and whether it was in the middle 95% partisan distribution of his two ensembles and the ALARM ensemble, what he called the “quantile” test.¹⁵⁰ All the maps Dr. Trende submitted to the Legislature passed the partisan bias test.¹⁵¹

¹⁴⁴ 10.24 Tr. at 165:7-166:2 (Trende).

¹⁴⁵ 10.24 Tr. at 190:16-191:6 (Trende).

¹⁴⁶ 10.24 Tr. at 193:10-12, 190:6-191:6 (Trende).

¹⁴⁷ 10.24 Tr. at 172:16-20, 175:8-177:15 (Trende); PX-12 (Trende Map Analyses).

¹⁴⁸ 10.24 Tr. at 172:4-173:1 (Trende).

¹⁴⁹ 10.24 Tr. at 167:21-168:6 (Trende); *see also id.* at 193:10-12, 190:6-191:6 & 172:16-20, 178:5-177:15.

¹⁵⁰ PX-12 (Trende Map Analyses).

¹⁵¹ 10.24 Tr. at 178:23-179:3, 179:22-180:3 (Trende).

107. To conduct his map-drawing, Dr. Trende used the platform Dave’s Redistricting Application (“DRA”).¹⁵² When using DRA to draw a map, the program displays a variety of information including county and city lines, population numbers, racial demographics, and—critically for this case—political data. The partisan political data is displayed for each selected district as well as for each precinct as one selects them for inclusion or exclusion in a district.¹⁵³ There is an option to turn off or hide political data, but Dr. Trende did not hide the data.¹⁵⁴ Instead, he had the political data on the screen while he drew the maps that he ultimately submitted to the Legislature. Dr. Trende testified that no one with whom he was communicating told him not to use a platform that contained political data, or that DRA in particular had been the focus of Sen. Sandall’s ire during both the 2021 and 2025 redistricting processes.^{155, 156}

108. Out of the ten or more maps the Legislature received from Dr. Trende, the co-chairs of the LRC, Sen. Sandall and Rep. Pierucci, selected five maps to make public. These five maps became known as Maps A-E.¹⁵⁷ Three of these public maps came from simulation sets: Maps B and E came from the ALARM set, and Map D came from Dr. Trende’s simulations, with alterations by Dr. Trende. Two of the publicly-released maps were drawn by hand: Maps A and C were the two maps Dr. Trende had drawn that divided Salt Lake County on a north-south axis.¹⁵⁸ The third hand-drawn map Dr. Trende had given the Legislature that divided Salt Lake County on an east-west axis, creating a northern Salt Lake County-based district, was not introduced in the LRC, and was not released to the public.

109. On September 18, 2025, four days before the first meeting of the 2025 Legislative Redistricting Committee, Sen. Sandall appeared on a podcast with Rep. Pierucci where he discussed the redistricting process in 2021 and 2025. On that podcast, Sen. Sandall explained that because one of the maps submitted by the Commission in 2021 was drawn by a constituent who used DRA, a tool that “has political data in it,” as a chair, Sen. Sandall was “really hesitant” with regard to the work the Commission had done.¹⁵⁹ This was not the first time Sen. Sandall shared his views on this subject. On November 1, 2021, Sen. Sandall had told the chair of the Commission that the constituent who drew the SH2 Commission map “admitted to our committee that he drew off of Dave’s Redistricting tool exclusively” and that as a result, the Commission had “accepted a map that has political data involved exclusively in it.”¹⁶⁰ Sen.

¹⁵² 10.24 Tr. at 179:17-180:24 (Trende).

¹⁵³ 10.24 Tr. at 183:24-184:11 (Trende).

¹⁵⁴ 10.24 Tr. at 182:12-184:12 (Trende).

¹⁵⁵ 10.24 Tr. at 258:18-259:11 (Trende).

¹⁵⁶ Dr. Trende claimed that because the composite of elections that is visible on Dave’s Redistricting includes data from 2012 to 2020, it made the data “worthless” and would not have provided any useful information as Dr. Trende was drawing maps. 10.24 Tr. at 259:5-10 (Trende). The Court is not persuaded by this point. Even if it is not the most up-to-date data, knowing the partisanship of each precinct over an 8-year period in the recent past, would surely provide relevant information about the partisanship of the districts. Indeed, this includes two of the three election cycles mandated for consideration by S.B. 1011 (2020 and 2016). And at any rate, Proposition 4’s prohibition on using partisan data is not limited to particular time periods, nor were Sen. Sandall’s admonitions about using DRA.

¹⁵⁷ 10.24 Tr. at 169:18-25 (Trende); 9.22 LRC Hearing at 2:02:20-2:02:50.

¹⁵⁸ 10.24 Tr. at 172:17-173:1 (Trende).

¹⁵⁹ PX-17 (Sandall, 9.18.25 Podcast).

¹⁶⁰ PX-16 (Sandall, 11.1.21 LRC Hearing).

Sandall’s concern about using DRA to draw a map came up once again in his questioning of a member of the public at the September 24, 2025 hearing of the LRC.¹⁶¹

B. Legislative Redistricting Committee holds public meetings.

110. Following the Court’s approval of the parties’ stipulated scheduling order, the LRC held three hearings. The first was held on September 22, the second on September 24, and the third on October 6.

111. At the initial meeting on September 22, Sen. Brammer introduced a bill that would mandate that only the partisan bias test could be used as Proposition 4’s “judicial standards and the best available data and scientific and statistical methods including measures of partisan symmetry” (to the exclusion of any other metrics or standards). Sen. Brammer gave a slideshow presentation about the partisan bias test, legislative counsel provided an illustration of how the partisan bias test would work, and members of the LRC asked Sen. Brammer questions about the partisan bias test.¹⁶²

112. Also at the September 22 hearing, the LRC introduced five map proposals labeled as Maps A-E. The Legislature’s litigation expert and map drawer, Dr. Trende, testified at the hearing as to the specifics of the Proposition 4 neutral redistricting criteria and how he had applied them to the LRC maps. He also testified that he had applied the partisan bias test to all five maps, and that all five maps had passed.¹⁶³ In particular, Dr. Trende produced a one-page analysis sheet for each proposed map (and each map submitted by a legislator) assessing whether it satisfied the partisan bias test and whether it fell within the middle 95% range of the partisan distribution for the least Republican district among six simulations sets: the ALARM set, his Base set, his Restricted set, and then each of those three sets as culled to remove maps failing the partisan bias test.¹⁶⁴ He called this latter analysis the “quantile” test.

113. Again, at the September 24 hearing, the LRC discussed each of its maps in turn.¹⁶⁵

114. On Friday, October 3, a revised version of Sen. Brammer’s bill was posted on the Legislature’s website as S.B. 1011. This new version retained the requirement to use the partisan bias test but also included significant changes. Specifically, S.B. 1011 also mandates the use of additional metrics, including the use of the mean-median test and an ensemble analysis subject to “culling” for maps that fail the “partisan bias” test.¹⁶⁶

¹⁶¹ Legislative Redistricting Committee, Public Hearing, September 24, 2025, <https://le.utah.gov/av/committeeArchive.jsp?mtgID=20167> (2:00:47-2:01:56) (“9.24 LRC Hearing”) (Sen. Sandall: “My question is, around the maps that you’ve drawn and submitted. In the past you’ve drawn them on Dave’s Redistricting tool, is that correct?” Stuart Hepworth: “Dave’s Redistricting has an option, before you begin drawing the map, to turn off partisan data.” Sen. Sandall: “So when you submitted your video—which I watched—on drawing, what are the red and the blue shades on that map? And what is the box in the right-hand corner that looks at political data? . . . So at least that map was drawn with political data available? . . . As part of all the maps I’m considering, I want to make sure.”)

¹⁶² Leg. Redistricting Cmte. Minutes, Sep. 22, 2025, <https://le.utah.gov/interim/2025/pdf/00003658.pdf>.

¹⁶³ Leg. Redistricting Cmte. Minutes, Sep. 22, 2025, available at <https://le.utah.gov/interim/2025/pdf/00003658.pdf>.

¹⁶⁴ PX-12 (Trende Map Analyses).

¹⁶⁵ Leg. Redistricting Cmte. Minutes, Sep. 24, 2025, available at <https://le.utah.gov/interim/2025/pdf/00003705.pdf>.

¹⁶⁶ S.B. 1011, 10-03 17:19, <https://le.utah.gov/~2025S1/bills/static/SB1011.html>.

115. At the third meeting on October 6, the LRC voted to advance Map C to the full Legislature and then adjourned. The LRC did not discuss the changes to Sen. Brammer’s bill, nor did they discuss S.B. 1011. There was no public comment.¹⁶⁷

C. October 6, 2025 special legislative session

116. The Utah Legislature met for a special legislative session on October 6, 2025. Both S.B. 1011 and S.B. 1012, the Legislature’s Map C, were considered.

117. During the brief debate of S.B. 1011 on the House floor, Rep. Thurston moved to substitute an updated version of the bill. This new version further explained and altered the description of how the ensemble analysis mandated in S.B. 1011 was to be conducted, with the addition of the RMD test. This updated version of S.B. 1011 also retained all the metrics from the previous version.

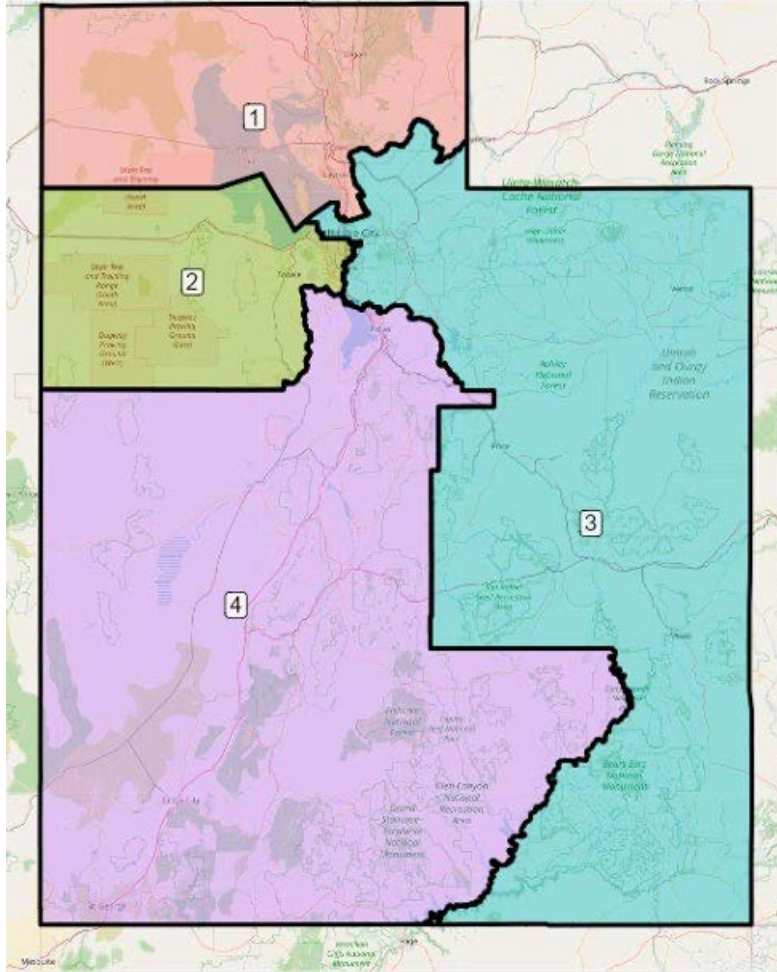
118. S.B. 1011 was passed by both chambers of the Legislature and then signed into law shortly thereafter by the Governor. Following S.B. 1011’s enactment into law, the Legislature passed S.B. 1012 (Map C), which the Governor also signed promptly after its passage.

VIII. Map C

119. Map C is depicted below.¹⁶⁸

¹⁶⁷ Leg. Redistricting Cmte. Audio/video, Oct. 6, 2025, available at <https://le.utah.gov/av/committeeArchive.jsp?mtgID=20174>.

¹⁶⁸ DX-13 at 9 (Trende Report).



120. Map C splits three municipalities into eleven pieces total. It splits North Salt Lake into two pieces, it splits Pleasant Grove into three pieces, and it splits Millcreek into six pieces scattered across two districts.¹⁶⁹ Map C also splits three counties four times. It splits Salt Lake and Davis counties once, and it splits Utah County twice, resulting in four total county divisions.¹⁷⁰ Splitting a municipality into multiple pieces can have multiple negative effects. It can make it more confusing for residents to know which district they are in, and it can make it more difficult for election officials to assign precinct boundaries.¹⁷¹ These municipal and county divisions were not necessary, and could have easily been minimized, as Dr. Oskooii's adjustments demonstrate. Starting from Map C, Dr. Oskooii was able to easily adjust the map to eliminate the excess county division, reduce the number of split municipalities from three to one, and further minimize the pieces into which the remaining split municipality is divided.¹⁷²

121. Map C's compactness is comparable or slightly worse than Plaintiffs' Maps 1, and on par with Plaintiffs' Map 2. All three maps have identical Reock scores of .49. Map C has a

¹⁶⁹ PX-2 at 16, Table 2A (Oskooii Report); 10.23 Tr. at 247:16-248:14 (Oskooii); DX-14 at 25 (10.17 Barber Report).

¹⁷⁰ PX-2 at 16, Table 2A (Oskooii Report).

¹⁷¹ 10.23 Tr. at 241:13-242:11 (Oskooii); 10.23 Tr. at 147:6-22 (V. Reid).

¹⁷² PX-2 at 10-11 (Oskooii Report); 10.23 Tr. at 237:4-239:7 (Oskooii).

Polsby-Popper score .04 lower than Map 1 and .03 higher than Map 2. Overall, the Court finds all three maps have similar compactness scores.¹⁷³

122. The Court finds that Map C's districts are contiguous and allow ease of transportation. Map C generally preserves the communities of interest identified by the Legislature, and it follows geographic and natural boundaries in most instances. Maps C's boundary agreement with state senate and house districts is lower than that of Plaintiffs' maps, and Dr. Trende noted he did not prioritize this criterion while drawing maps.¹⁷⁴

123. With respect to partisanship, the Court finds that Map C is an extreme partisan outlier, exhibiting a level of pro-Republican favoritism that dramatically departs from those of thousands of computer-simulated plans drawn to accord with Proposition 4's neutral redistricting criteria. As the Court has found above, Dr. Chen algorithmically generated 10,000 plans that were reliably programmed to follow Proposition 4's neutral criteria in priority order. Dr. Chen's ensemble reveals that Utah's political geography nearly always produces—when maps are drawn without regard to partisan data—a Democratic-leaning district anchored in the northern portion of Salt Lake County, with a Republican vote share generally between 42% and 46%.¹⁷⁵ By contrast, Map C splits northern Salt Lake County into two districts, cracking Democratic voters, placing them in Republican districts, and eliminating a moderately Democratic-majority seat that appears in 99.94% of neutrally-configured simulations.¹⁷⁶

124. As shown in red below, the least Republican district in Map C (CD-3) has a 56.1% Republican vote share, higher than the least Republican vote share in 99.97% of simulated plans, making it an extreme statistical outlier.¹⁷⁷ This inflated Republican vote share in CD-3 is achieved by pulling Republican voters out of the other safely Republican districts (CD-1, CD-2, and CD-4), producing an unnaturally low (but still safe) Republican vote share in the third-most Republican district (CD-2). Indeed, CD-2's Republican vote share is lower than in 99.99% of the simulations, making it an extreme statistical outlier as well.¹⁷⁸ Dr. Chen estimates these two-party party vote shares in each district based on an index of 17 statewide contests in recent elections, but the same partisan outlier pattern is observed using S.B. 1011's partisan index.¹⁷⁹

¹⁷³ PX-2 at 16, Table 1A (Oskooii Report); 10.23 Tr. at 246:14-247:15 (Oskooii).

¹⁷⁴ DX-13 at 19 (Trende Report).

¹⁷⁵ PX-3 at 18 (Chen Report); 10.23 Tr. at 21:17-23:4 (Chen)

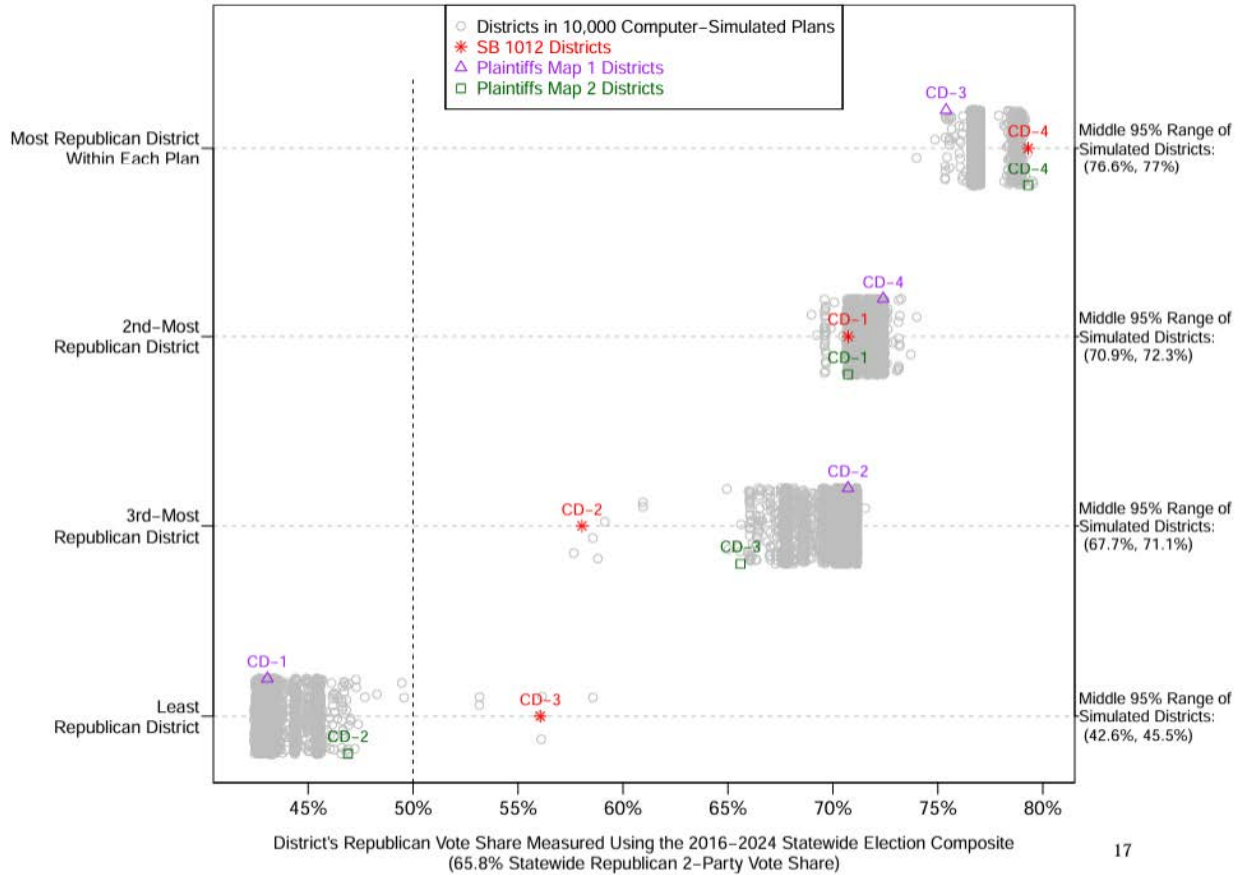
¹⁷⁶ PX-3 at 18-19 (Chen Report).

¹⁷⁷ PX-3 at 19 (Chen Report); 10.23 Tr. at 23:5-15 (Chen).

¹⁷⁸ PX-3 at 19-20 (Chen Report); 10.23 Tr. at 23:25-24:21 (Chen).

¹⁷⁹ PX-3 at App. A, Figure 3.1 (Chen Report); 10.23 Tr. at 24:22-25:24 (Chen).

Figure 3.1:
District-Level Comparisons of SB 1012 and Plaintiffs' Maps 1 and 2 to 10,000 Computer-Simulated Plans



125. Map C thus creates four Republican-leaning districts and not a single Democratic-leaning district, based on Dr. Chen’s index of past elections. This is a result observed in only 0.06% percent of Dr. Chen’s neutral simulations, making Map C an extreme statistical outlier more favorable to Republicans than nearly all neutral simulated plans.¹⁸⁰ Dr. Barber’s analysis confirms that Map C forecloses Democratic representation: Democrats would not win a single district under S.B. 1011’s partisan index or in any one of the election contests comprising that index.¹⁸¹

126. Map C is also an extreme statistical outlier in terms of its standard deviation of district vote shares (SDVS). As shown below, the vast majority of Dr. Chen’s neutral computer simulations have a SDVS of about 0.14 or 0.15, but Map C has an SDVS of 0.11, lower than 99.96% of the simulations. This divergence makes Map C’s SDVS an extreme outlier. It shows that Map C’s cracking of Democratic voters in Salt Lake County to disperse them across four majority-Republican districts could not plausibly have emerged from a map drawing process applying only neutral redistricting criteria.¹⁸² The same partisan outlier pattern is observed when SDVS based on S.B. 1011’s partisan index.¹⁸³

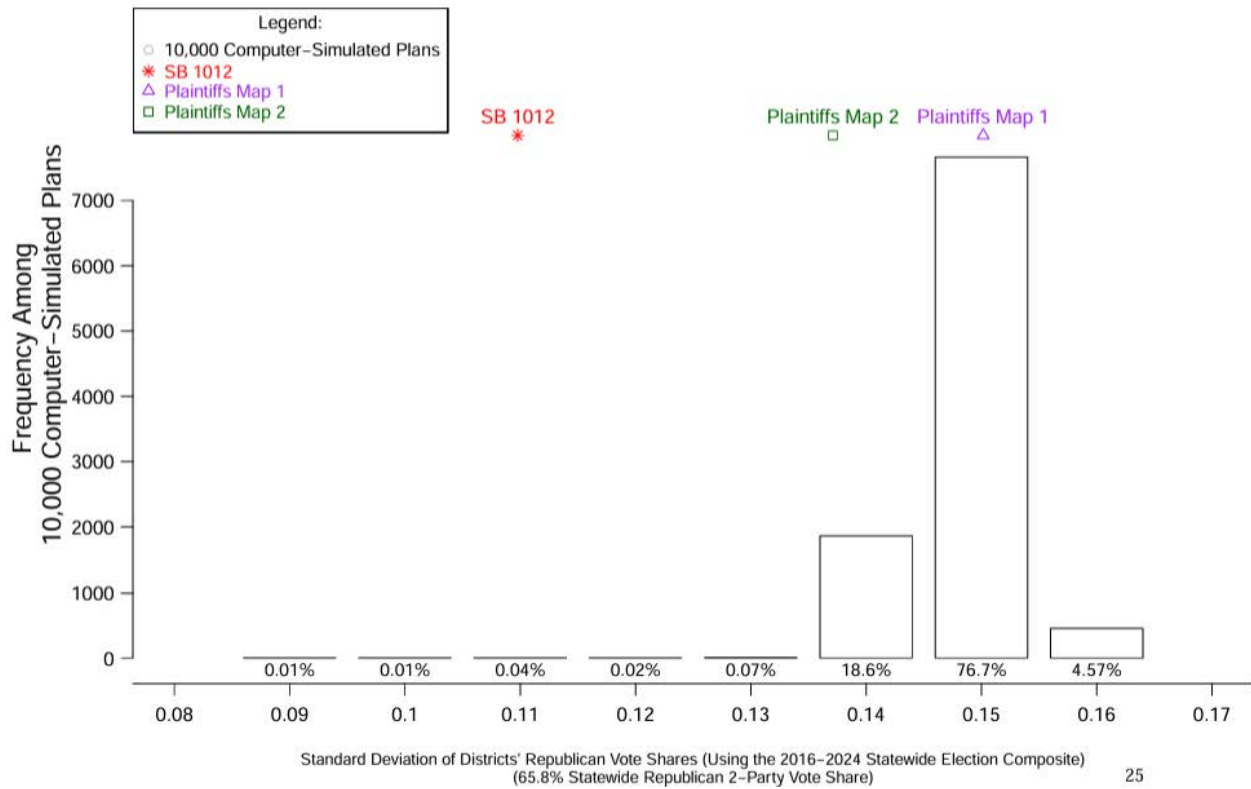
¹⁸⁰ PX-3 at 21-22, Figure 3.2 (Chen Report).

¹⁸¹ DX-14 at 33 (10.17 Barber Report).

¹⁸² PX-3 at 26 (Chen Report); 10.23 Tr. at 25:25-28:3 (Chen).

¹⁸³ PX-3 at 26, App. A (Chen Report).

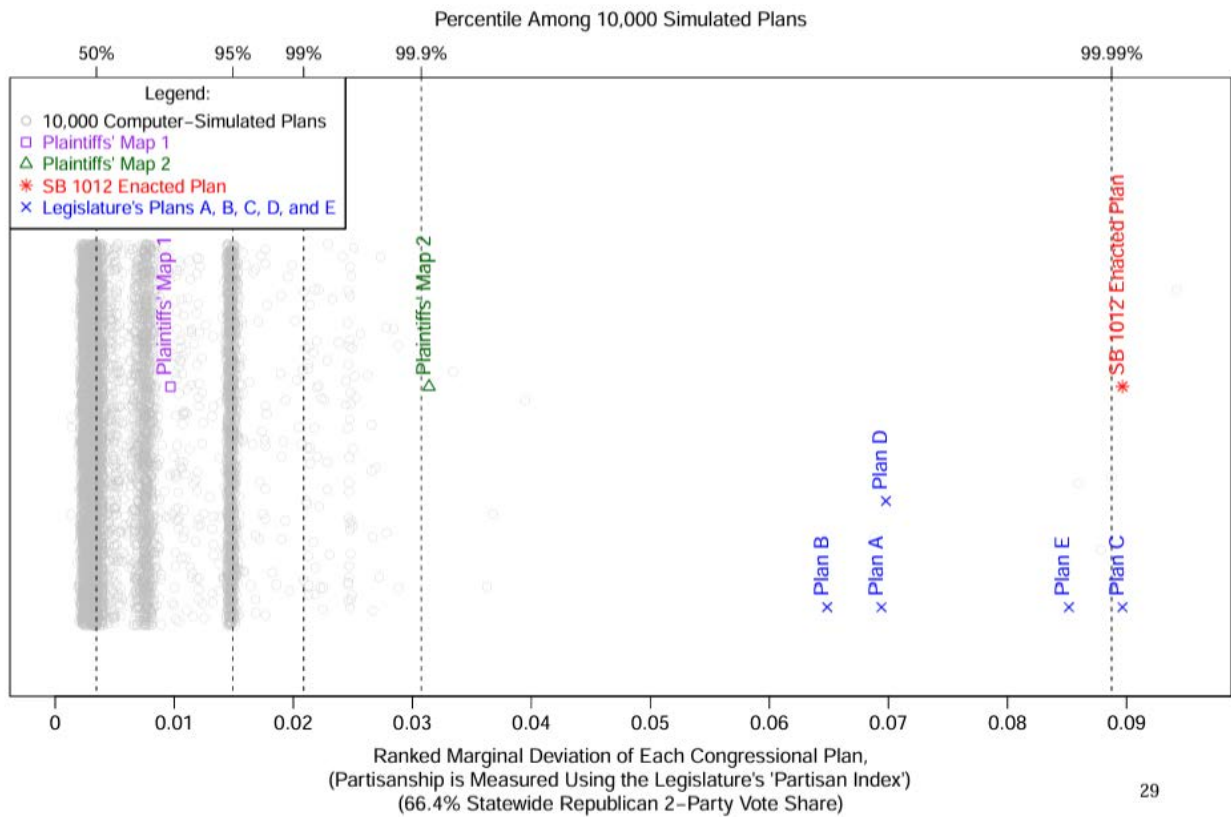
**Figure 3.3:
Standard Deviation of Districts' Republican Vote Shares:
Comparisons of SB 1012 and Plaintiffs' Maps 1 and 2 to 10,000 Computer-Simulated Plans**



127. The Court finds that Map C also fails the RMD test set out in S.B. 1011. Recall that the RMD measures how different a proposed map is from a typical computer-simulated plan’s district-level partisanship. If a proposed map’s RMD exceeds that of 95% of an ensemble, then it is deemed extreme and fails the test. As shown below, Map C is an extreme outlier in terms of its RMD, exceeding the RMD of 99.99% of Dr. Chen’s simulated plans.¹⁸⁴

¹⁸⁴ PX-3 at 27-29, Figure 4.1 (Chen Report); 10.23 Tr. at 28:10-30:15 (Chen).

Figure 4.1:
Ranked Marginal Deviation of Plaintiffs' Map 1, Plaintiffs' Map 2,
the SB 1012 Enacted Plan, and 10,000 Computer-Simulated Plans

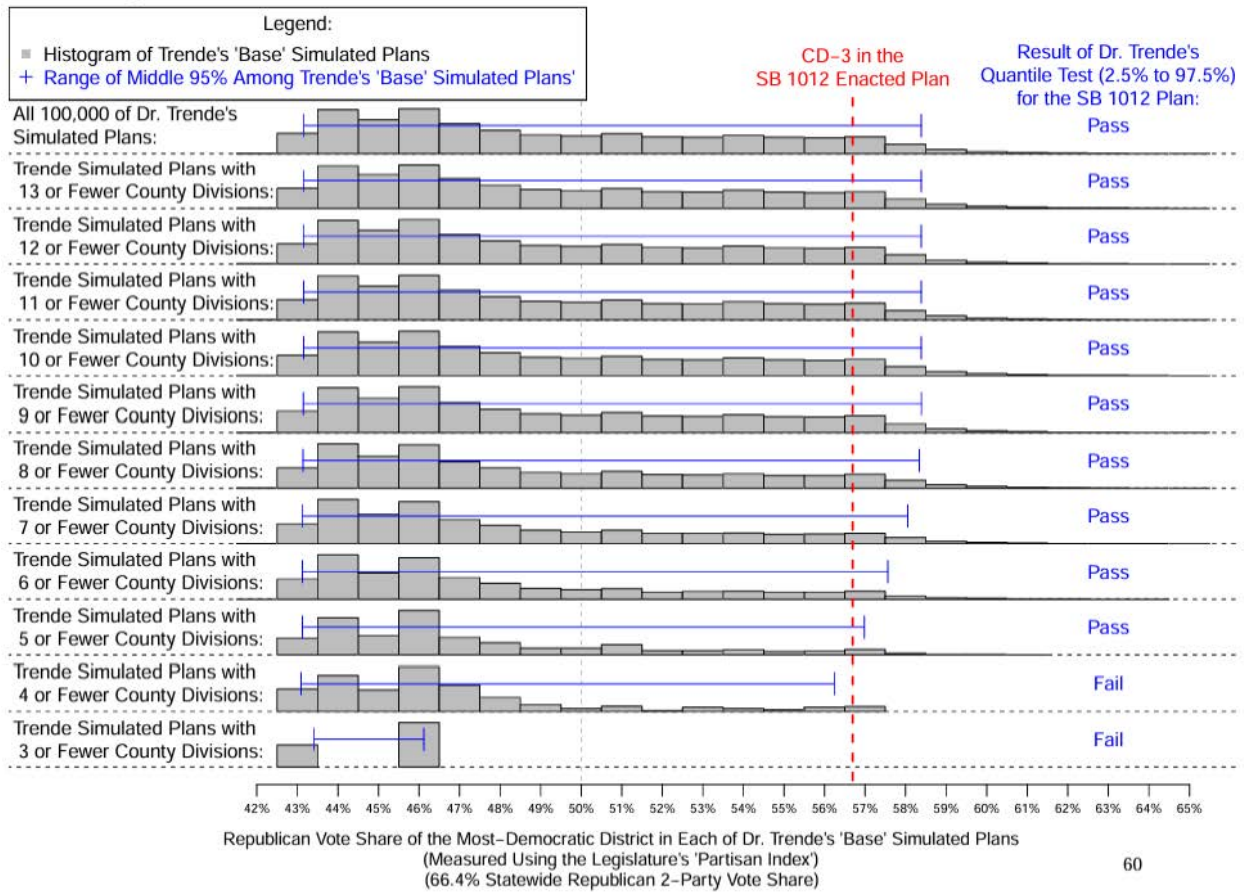


128. Map C is also an extreme partisan outlier compared to Dr. Trende’s “Base” and “Restricted” simulations, after limiting those ensembles to plans that comply with Proposition 4’s requirements to minimize county divisions and create geographically compact districts to the greatest extent practicable.¹⁸⁵ As shown in the below, Map C fails Dr. Trende’s “quantile test” once his simulation sets are filtered to include maps that have four or fewer county divisions.¹⁸⁶

¹⁸⁵ PX-3 at 44, 58-60, 65-68, 87-88 (Chen Report).

¹⁸⁶ PX-3 at 58-60, Figure 5.6 (Chen Report); *id.* at App. F (showing same result for Dr. Trende’s “restricted” simulation set); 10.23 Tr. at 46:25-49:16, 63:12-64:10 (Chen).

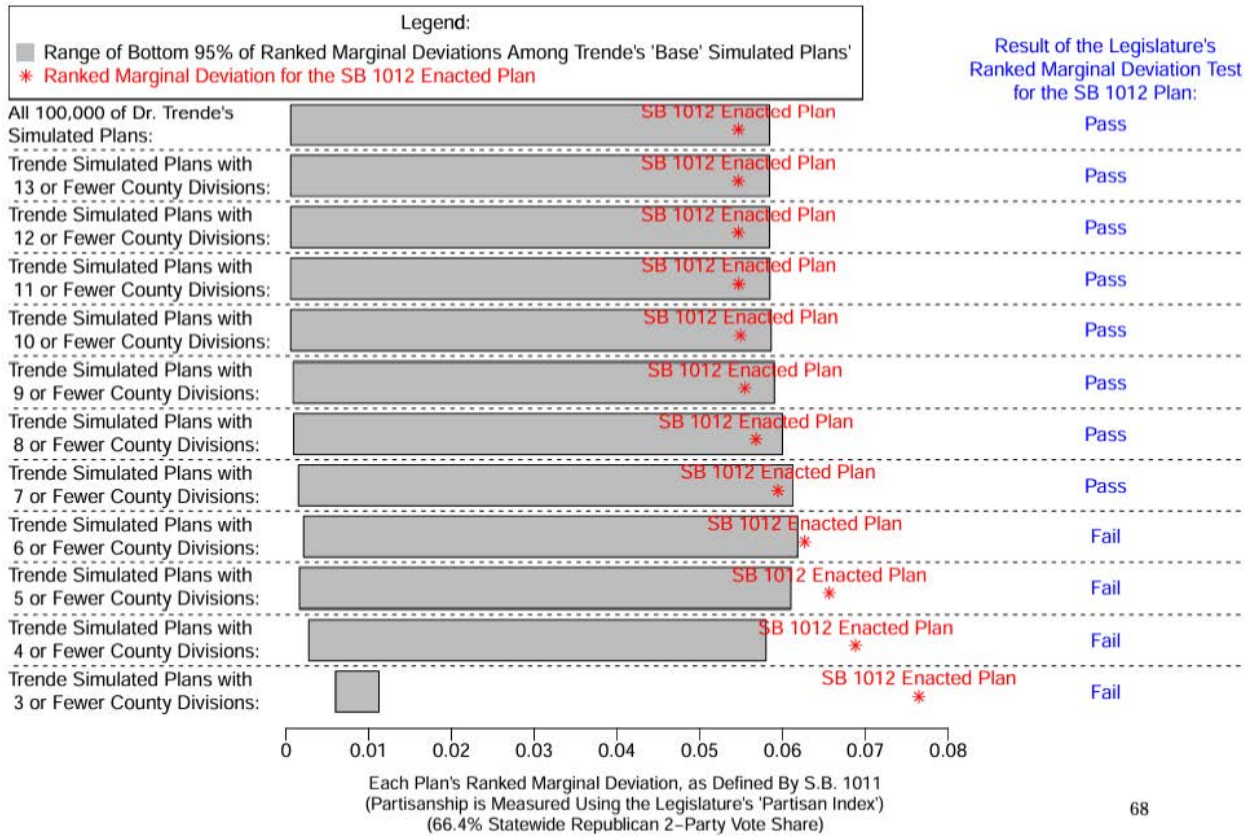
Figure 5.6:
County Divisions and the Most-Democratic District in Each of Dr. Trende's 'Base' Simulated Plans



129. Similarly, as shown in Figure 5.10, Map C likewise fails the RMD test once Dr. Trende's simulation sets are filtered to include maps that have six or fewer county divisions.¹⁸⁷

¹⁸⁷ PX-3 at 65-68, Fig. 5.10 (Chen Report); *id.* at App. F (showing same result for Dr. Trende's "restricted" simulation set); 10.23 Tr. at 52:2-53:14, 63:12-64:10 (Chen).

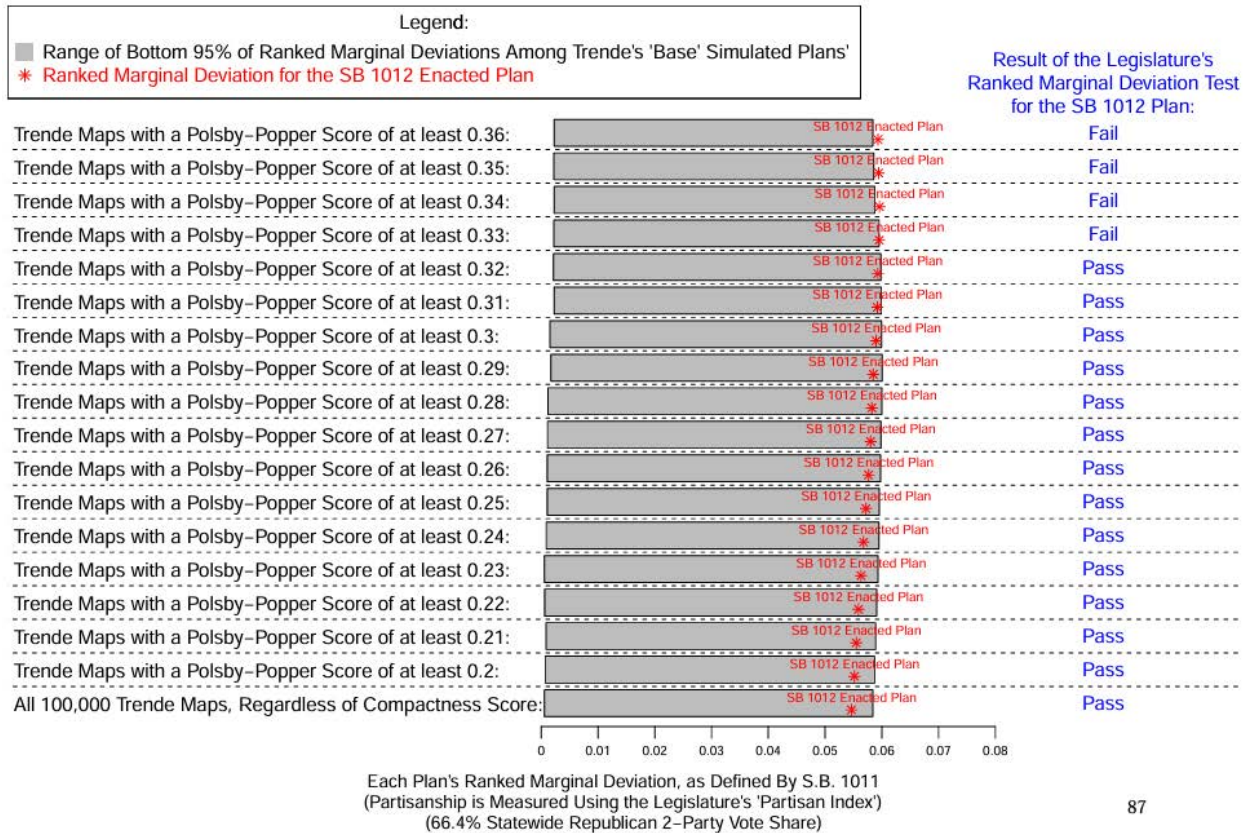
Figure 5.10: The 'Ranked Marginal Deviation' Test for the SB 1012 Plan Using Subsets of Dr. Trende's 'Base' Simulated Plans



130. And, as shown in Figure 5.19, Map C also fails the RMD test once Dr. Trende's simulation sets are filtered to include maps that have Polsby-Popper compactness scores of at least 0.33.¹⁸⁸

¹⁸⁸ PX-3 at 87-88, Fig. 5.19 (Chen Report); *id.* at App. F (showing same result for Dr. Trende's "restricted" simulation set); 10.23 Tr. at 61:23-63:11, 63:12-64:10 (Chen).

Figure 5.19: The 'Ranked Marginal Deviation' Test for the SB 1012 Plan Using Subsets of Dr. Trende's 'Base' Simulated Plans



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131. The Court therefore finds that Map C is an extreme statistical outlier not only when compared to Dr. Chen’s simulations, which universally comply with Proposition 4’s neutral criteria, but also when compared to subsets of Dr. Trende’s simulations as they approach compliance with Proposition 4’s neutral criteria.

132. Given Map C’s level of pro-Republican favoritism and extreme statistical departure from maps drawn to comply with Proposition 4’s neutral criteria given the state’s political geography, the Court credits Dr. Chen’s conclusion that Map C’s partisan characteristics cannot be attributed to compliance with those criteria or the state’s political geography.¹⁸⁹

133. Map C’s pro-Republican favoritism is further confirmed by its pro-Republican efficiency gap. Dr. Warshaw calculated the efficiency gap of Map C, as well as the four additional plans proposed by the Legislature’s redistricting committee (Maps A, B, D, and E) and Plaintiffs’ maps.¹⁹⁰ Consistent with best practice, Dr. Warshaw used the turnout-adjusted efficiency gap¹⁹¹ and based the calculation on a weighted composite index of 17 recent contested statewide elections.¹⁹² As shown in the figure below, Dr. Warshaw then compared the efficiency

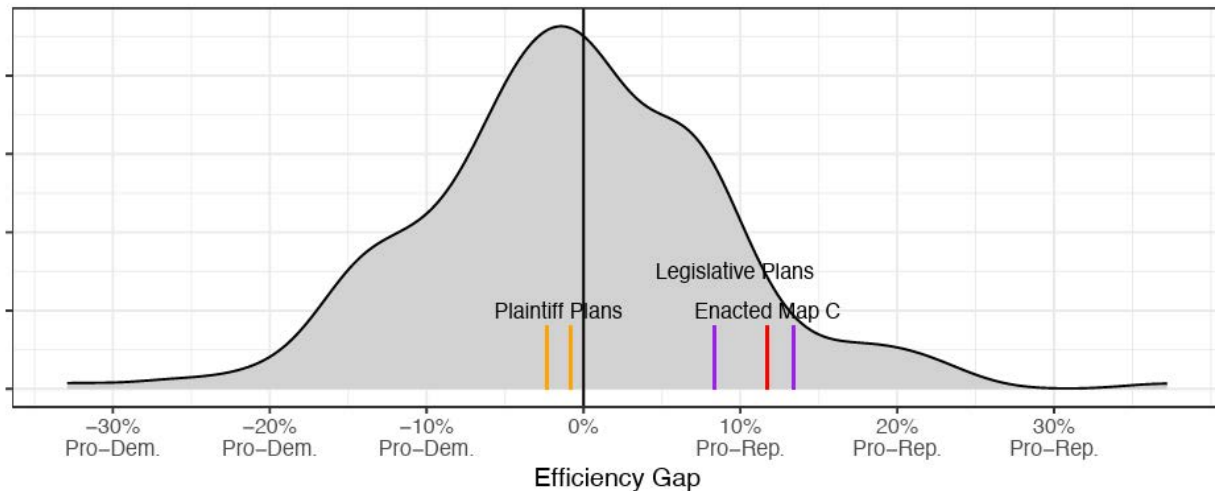
¹⁸⁹ PX-3 at 90-103 (Chen Report); 10.23 Tr. at 88:23-89:6 (“[W]hen you apply Utah’s natural political geography, combined with strict adherence to the Proposition 4 redistricting criteria, [you] end up with, as I found in over 99 percent of my simulated plans, a three-one plan”).

¹⁹⁰ 10.23 Tr. at 188:21-189:4 (Warshaw).

¹⁹¹ 10.23 Tr. at 185:2-25 (Warshaw).

¹⁹² PX-1C at 11 n.13 (10.16 Warshaw Report); 10.23 Tr. at 194:7-19 (Warshaw).

gap of these plans to all congressional plans in all states with at least four districts over the last 50 years.¹⁹³ The efficiency gap of Map C (indicated in red) is 11.7% pro-Republican, which is more biased than 80% of all prior congressional redistricting plans in all states with at least four districts over the last 50 years, and more pro-Republican than 88% of those historical plans.¹⁹⁴ Dr. Warshaw described Map C’s efficiency gap as not the largest he’d ever seen but “historically large.”¹⁹⁵ Map C’s efficiency gap is also higher than three of the other maps considered by the LRC and higher than that of plaintiffs’ maps, which have scores very close to zero, or “almost perfectly fair.”¹⁹⁶



134. Dr. Warshaw notes that he calculated the efficiency gap conservatively in the Legislature’s favor by including in his composite index the 2022 Senate race and treating Evan McMullin as the Democratic candidate of choice.¹⁹⁷ There is no dispute that Dr. Warshaw correctly calculated the efficiency gap, and Dr. Barber’s exclusion of the 2022 Senate race indeed results in a higher pro-Republican efficiency gap of 18.06%.¹⁹⁸

135. Dr. Trende claims that Dr. Warshaw’s efficiency gap calculation is unreliable because Democrats have historically over-performed in Utah’s congressional elections, making past statewide results a poor predictor of future outcomes. As Dr. Warshaw credibly explains, while Democrats could occasionally outperform expectations, it is now Republicans who consistently outperform presidential baselines, and the nationalization of elections has made it increasingly difficult for any candidate to exceed a district’s underlying partisanship.¹⁹⁹

136. The Court therefore finds that the efficiency gap offers persuasive evidence of Map C’s pro-Republican bias, corroborating other evidence showing that Map C systematically favors Republicans and disfavors Democrats.

¹⁹³ PX-1C at 11-12, Fig. 10 (10.16 Warshaw Report).

¹⁹⁴ *Id.* at 11; 10.23 Tr. at 189:14-20, 190:18-20, 191:18-192:5 (Warshaw).

¹⁹⁵ 10.23 Tr. at 192:1-5 (Warshaw).

¹⁹⁶ PX-1C at 11 (10.16 Warshaw Report); 10.23 Tr. at 189:14-25, 190:18-191:2 (Warshaw).

¹⁹⁷ PX-1C at 11 n.14 (10.16 Warshaw Report); 10.23 Tr. at 190:1-11 (Warshaw).

¹⁹⁸ DX-14 at 44 (10.17 Barber Report).

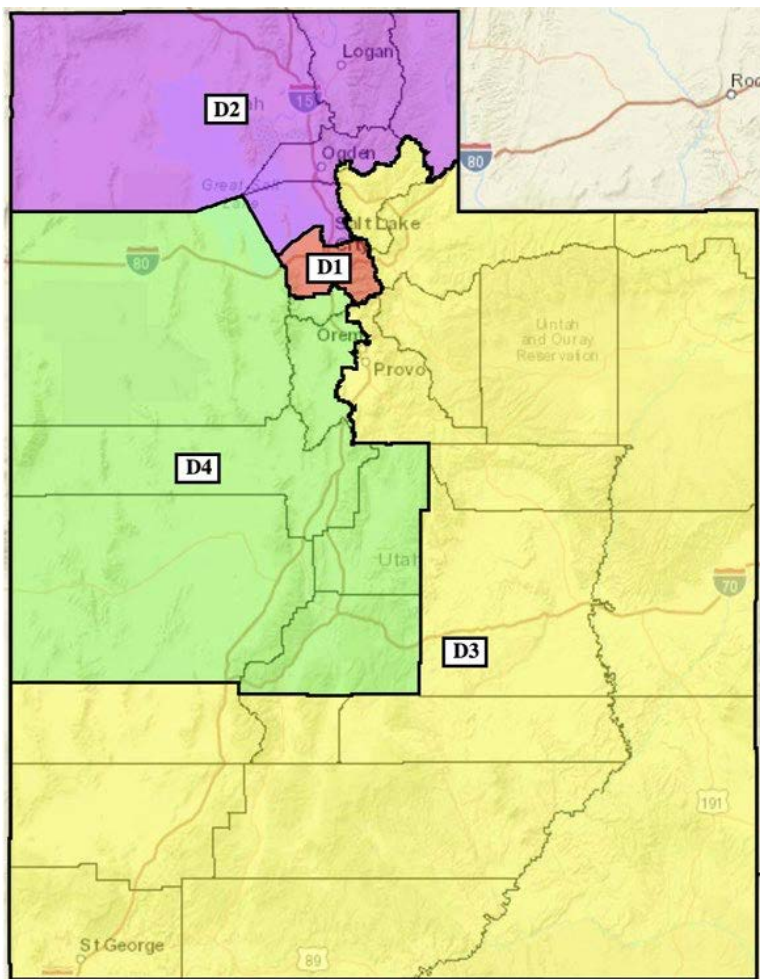
¹⁹⁹ 10.23 Tr. at 198:8-200:6 (Warshaw).

137. Under S.B. 1011, Map C passes the partisan bias test and likewise has a passing mean-median difference of 1.45.²⁰⁰ However, the Court finds that the partisan bias and mean-median difference tests are not probative of partisan favoritism in Utah given its current political geography and electoral context. Neither test can contradict evidence of Map C’s clear pro-Republican skew evident from the efficiency gap and a slew of other metrics benchmarked against a neutral ensemble. For this reason, the Court accords these results little to no weight.

138. The Court thus finds that Map C favors Republicans and disfavors Democrats.

IX. Plaintiffs’ Map 1

139. Plaintiffs’ Map 1 is depicted below.²⁰¹



140. Map 1 was derived from Dr. Chen’s ensemble of computer-generated maps²⁰² programmed to follow only Proposition 4’s neutral criteria without any regard to partisanship, with minor adjustments made by Dr. Oskooii.²⁰³ Dr. Oskooii used the program ESRI for

²⁰⁰ DX-14 at 19, 22 (10.17 Barber Report).

²⁰¹ PX-2 at 13 (Oskooii Report).

²⁰² PX-6 (Chen Sample Maps, 8,977).

²⁰³ PX-2 at 3-4 (Oskooii Report); PX-6 (Chen Sample Maps, 8,977); 10.23 Tr. at 234:41-14 (Oskooii); 10.23 Tr. at 250:21-251:14 (Oskooii); PX-3 at 5 (Chen Report).

Redistricting which does not contain partisan or political data to make these adjustments, nor did he reference any such data.²⁰⁴

141. There is no meaningful dispute that Map 1 adheres to all of Proposition 4's neutral criteria.

142. Map 1 has perfect population equality across the districts.²⁰⁵

143. Map 1 minimizes the division of municipal and county splits. In Map 1, only one municipality is split: Midvale is divided one time into two pieces. Map 1 splits three counties only one time each: Salt Lake, Utah, and Weber counties are split into two districts each.²⁰⁶

144. Map 1 has districts that are reasonably compact, as Dr. Oskooii and Dr. Barber both agreed, using a variety of compactness metrics.²⁰⁷

145. Map 1 has districts that are contiguous.²⁰⁸ Additionally, Map 1 has districts that allow for ease of transportation throughout the district. While some drive times between certain points in the state can be four to five hours, this is a feature of the geography and population distribution in the state.²⁰⁹ There is road connectivity throughout the districts that would allow a member of Congress to reasonably traverse the district.

146. Traditional neighborhoods and local communities of interest are preserved in Map 1. Maintaining communities of interest is largely accounted for by keeping municipalities and counties whole which Map 1 does, splitting only one municipality and three counties one time each. Additionally, Map 1 was derived from Dr. Chen's ensemble which included the approximately 590 communities of interest identified by the Commission.²¹⁰ Finally, Map 1 preserves the four communities of interest identified by the LRC: the Uintah Basin is preserved by keeping Duchesne and Uintah Counties together in a district, while tribal reservations and lands, and institutions of higher education, do not cross district boundaries. Military installations are also largely kept intact across the map.²¹¹

147. Map 1 follows natural and geographic features, boundaries and barriers. Dr. Chen's algorithm, which produced the neutral ensemble of maps from which Map 1 was derived, was programmed to account for geographic features such as the Great Salt Lake and the Colorado River.²¹²

148. Map 1 maximizes boundary agreement among different types of districts. Map 1 was derived from Dr. Chen's ensemble of maps produced by an algorithm which was programmed to maximize boundary agreement with state house and senate districts and state

²⁰⁴ PX-2 at 4 (Oskooii Report); 10.23 Tr. at 233:4-22 (Oskooii).

²⁰⁵ PX-2 at 7 (Oskooii Report); 10.23 Tr. at 235:19-21 (Oskooii).

²⁰⁶ PX-2 at 16, Table 2A (Oskooii Report).

²⁰⁷ PX-2 at 16, Table 1A (Oskooii Report); 10.23 Tr. at 235:24-25, 246:14-247:15 (Oskooii); DX-14 at 24-25 (10.17 Barber Report).

²⁰⁸ 10.23 Tr. at 235:22-23 (Oskooii); PX-2 at 7 (Oskooii Report).

²⁰⁹ 10.24 Tr. at 255:22-256:6 (Trende).

²¹⁰ 10.23 Tr. at 19:12-22 (Chen).

²¹¹ 10.23 Tr. at 244:13-246:13 (Oskooii); PX-2 at 17-18 (Oskooii Report); PX-3 at 96-98 (Chen Report).

²¹² PX-3 at 8-9 (Chen Report); 10.23 Tr. at 87:8-16 (Chen)

board of education districts wherever doing so did not violate any of the previous criteria. Map 1 keeps more house and senate districts whole within districts than Map C or Plaintiffs' Map 2.²¹³

149. With respect to partisanship, Map 1 does not exhibit partisan favoritism.

150. Map 1 falls within the norm of Dr. Chen's neutrally drawn ensembles. Like nearly all ensemble maps, Map 1 includes one Democratic-leaning district anchored in northern Salt Lake County.²¹⁴ Map 1's least Republican district (CD-1) has a Republican vote share of approximately 43%, well within the LRVS distribution among the ensemble maps.²¹⁵ Map 1's SDVS of 0.15 matches that of 77% of Dr. Chen's computer-simulated plans, confirming that the map does not exhibit cracking.²¹⁶ Map 1 likewise passes S.B. 1011's RMD test, falling well below the 95th percentile of RMDs in Dr. Chen's ensemble.²¹⁷

151. Map 1 has a slightly pro-Democratic efficiency gap of -2.4%, which is close to perfectly fair and at the center of the distribution of efficiency gap of historical congressional maps across all states with at least four districts.²¹⁸

152. Map 1 does not pass S.B. 1011's partisan bias test and has a mean-median difference of -5.82 below S.B. 1011's +/- 2% passing threshold.²¹⁹

X. Plaintiffs' Map 2

153. Plaintiffs' Map 2 is depicted below.²²⁰

²¹³ PX-3 at 9, 99-101 (Chen Report).

²¹⁴ PX-3 at 15, 17, Fig. 3.1, 21-22, Fig. 3.2 (Chen Report).

²¹⁵ PX-3 at 17, Fig. 3.1 (Chen Report); DX-14 at 33 (10.17 Barber Report).

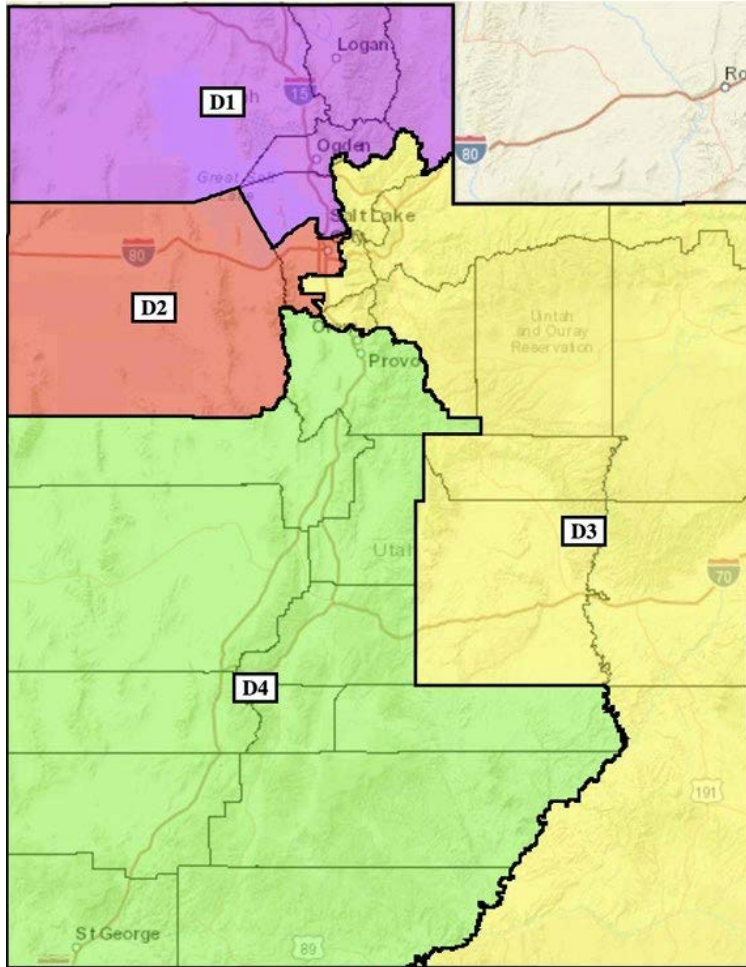
²¹⁶ PX-3 at 24-25, Fig. 3.3 (Chen Report).

²¹⁷ PX-3 at 28-29, Fig. 4.1 (Chen Report).

²¹⁸ PX-1C at 11-12, Fig. 10 (10.16 Warshaw Report); 10.23 Tr. at 189:14-20, 190:21-191:2 (Warshaw).

²¹⁹ DX-14 at 19, 22 (10.17 Barber Report).

²²⁰ PX-2 at 15 (Oskooii Report).



154. Plaintiffs' Map 2 is based on the Legislature's Map C. Dr. Oskooii created Map 2 by making adjustments to Map C to reduce municipal and county splits. Dr. Oskooii did not consult political or partisan data while he made these adjustments, and he used the application ESRI for Redistricting to do so, which does not include any partisan or political data.²²¹ The adjustments made by Dr. Oskooii reduced the municipal and county divisions while making the least disruptive changes to the map, largely preserving the legislative choices underlying Map C.²²² Map 2 has a high core retention with Map C: CD-1 retains 99.96% of the population from Map C, CD-2 retains 69.65%, CD-3 retains 69.51%, and CD-4 retains 99.91%. Overall, Map 2 has an 84.76% core retention compared to Map C.²²³

155. There is no dispute Map 2 adheres to all the neutral criteria of Proposition 4.

156. Map 2 has perfect population equality across the districts.²²⁴

157. Map 2 minimizes divisions of municipalities and counties. To do this, Dr. Oskooii eliminated Map C's splits of North Salt Lake and Millcreek, and eliminated the extra division of Utah County. In Map 2, Pleasant Grove is the only municipality that is split, and Map 2 reduces

²²¹ 10.23 Tr. at 233:4-22, 243:2-5 (Oskooii); PX-2 at 3-4 (Oskooii Report)

²²² 10.23 Tr. at 266:14-19 (Oskooii).

²²³ PX-2 at 11 (Oskooii Report).

²²⁴ *Id.*; 10.23 Tr. at 242:18-22 (Oskooii).

the pieces into which Pleasant Grove is split from three in Map C to two in Map 2. As a result, Map 2 splits only one municipality (Pleasant Grove) and three counties (Salt Lake, Utah, and Weber).²²⁵

158. Map 2 has districts that are reasonably compact, as both Dr. Oskooii and Dr. Barber agreed.²²⁶

159. Map 2 has districts that are contiguous and allow for ease of transportation throughout each district.²²⁷

160. Traditional neighborhoods and local communities of interest are preserved in Map 2. Maintaining communities of interest is largely accounted for by keeping municipalities and counties whole which Map 2 does, splitting only one municipality and three counties one time each. Additionally, Map 2 was derived from the Legislature's Map C, so to the extent the Legislature's map respects communities of interest around the state, Map 2 largely respects those same ones. Specifically, Map 2 preserves the four communities of interest identified by the LRC: the Uintah Basin is preserved by keeping Duchesne and Uintah Counties together in a district, while tribal lands and institutions of higher education do not cross district boundaries. Military installations are also largely kept intact across the map, and where they span districts, they do so to the same extent as in Map C.²²⁸ Legislative Defendants attempted to suggest that Map 2 fails to preserve communities of interest because certain cities are not in the same district, or because some of the canyons in Salt Lake County are in a different district from the communities at the "mouths" of those canyons. The Court finds these arguments unpersuasive.²²⁹ As Defendants' expert Dr. Trende testified, communities of interest can often "be used as post-hoc rationalizations or justifications," especially if those communities of interest are identified only after a map has been drawn.²³⁰ The Court finds that to be the case with Legislative Defendants' criticisms of Plaintiffs' Map 2.

161. Map 2 follows natural and geographic features, boundaries and barriers. The Colorado River forms part of the boundary between districts 3 and 4, and districts are configured so that the Great Salt Lake and Utah Lake do not form the only connection between parts of the district.

162. Map 2 maximizes boundary agreement among different types of districts. While this is the lowest ranked of the neutral criteria, Map 2 respects these boundaries where possible with numbers comparable to Maps 1 and C.²³¹

163. With respect to partisanship, Map 2 does not exhibit partisan favoritism.

164. Map 2 falls within the norm of Dr. Chen's neutrally drawn ensembles in that it does not crack Democratic voters in northern Salt Lake County and includes one Democratic-leaning district.²³² The least Republican district (CD-2) in Map 2 has a Republican vote share of

²²⁵ PX-2 at 16, Table 2A (Oskooii Report); 10.23 Tr. at 236:4-242:17 (Oskooii).

²²⁶ PX-2 at 16, Table 1A (Oskooii Report); 10.23 Tr. at 242:25-243:1, 246:14-247:15 (Oskooii); DX-14 at 25, Table 5 (10.17 Barber Report).

²²⁷ 10.23 Tr. at 242:23-24 (Oskooii); PX-2 at 11 (Oskooii Report).

²²⁸ 10.23 Tr. at 244:13-246:13 (Oskooii); PX-2 at 17-18 (Oskooii Report).

²²⁹ 10.23 Tr. at 284:4-287:4 (Oskooii); 10.23 Tr. at 300:2-23 (M. Reid).

²³⁰ 10.24 Tr. at 235:9-21 (Trende).

²³¹ PX-3 at 99-101 (Chen Report).

²³² PX-3 at 21-22, Fig. 3.2 (Chen Report).

approximately 47%, which is at the higher end of the LRVS distribution of the ensemble maps given Map 2's deliberate resemblance to Map C.²³³ Map 2's SDVS of 0.137 is within the SDVS distribution of Dr. Chen's computer-simulated plans.²³⁴ Map 2 does not pass S.B. 1011's RMD test, but is a less distant outlier than Map C.²³⁵

165. Map 2 has a slightly pro-Democratic efficiency gap of -0.8%, which is close to perfectly fair and at the center of the distribution of efficiency gap of historical congressional maps across all states with at least four districts.²³⁶

166. Map 2 passes S.B. 1011's partisan bias test and has a mean-median difference of -2.38.²³⁷

ANALYSIS

There are three issues relevant to assessing the remedial congressional redistricting proposals before the Court.

First, is S.B. 1011 enforceable, such that it effectively amends Proposition 4 to establish a new governing standard to assess whether a congressional redistricting plan purposefully or unduly favors or disfavors a political party? No. This issue was presented to the Court through Plaintiffs' Motion for Preliminary Injunction on Count 16. As explained below, this Court GRANTS the Motion for Preliminary Injunction, concluding that S.B. 1011 likely violates Plaintiffs' right to alter and reform their government under Article I, Section 2, of the Utah Constitution.²³⁸ The enforcement of S.B. 1011 is preliminarily enjoined.

Second, the Legislature enacted Map C as a remedial congressional plan, after the Court's August 25, 2025 Ruling enjoining Utah's 2021 congressional plan. The issue before the Court is does Map C comply with Proposition 4? The Court finds that it does not for several reasons. The evidence shows that Map C was created using a web-based tool called Dave's Redistricting App ("DRA"), which allows users to draw electoral district maps. Dr. Trende testified that the political data available on the map was available and in view while he designed Map C. Proposition 4 expressly prohibits the consideration of such data in designing redistricting plans. In addition, Map C does not comply with Proposition 4's mandate to minimize the division of municipalities and counties across multiple districts to the greatest extent practicable. It violates Proposition 4's prohibition on partisan favoritism by dividing districts in a manner that both unduly and purposefully favors the majority Republican Party and disfavors the minority Democratic Party. And, even if S.B. 1011 did apply, Map C still fails its test for purposeful partisan favoritism. As a result, pursuant to Proposition 4, section 20A-19-301(2), the Court issues a preliminary injunction and enjoins the Legislative Defendants from using or enforcing S.B. 1012 (Map C). Because this Court previously enjoined the enforcement of the 2021 Congressional Map, the 2011 map remains the state's operative map but that map has been

²³³ PX-3 at 17, Fig. 3.1 (Chen Report); DX-14 at 33 (10.17 Barber Report).

²³⁴ PX-3 at 24-25, Fig. 3.3 (Chen Report).

²³⁵ PX-3 at 28-29, Fig. 4.1 (Chen Report).

²³⁶ PX-1C at 11-12, Fig. 10 (10.16 Warsaw Report); 10.23 Tr. at 189:14-20, 190:21-191:2 (Warsaw).

²³⁷ DX-14 at 19, 22 (10.17 Barber Report).

²³⁸ Plaintiffs have also alleged and sought preliminary relief premised on violations of other constitutional rights. Because the Court finds S.B. 1011 likely violates Article I, Section 2, it declines to address the other asserted constitutional violations.

repealed by the Legislature and the parties agree it is malapportioned.²³⁹ Given the November 10, 2025 deadline from the Lieutenant Governor for a map to be in place, the Court is obligated, as a matter of law, to order the use of a different congressional map to ensure a constitutionally apportioned map compliant with Proposition 4 is in effect so that Utah’s 2026 elections are not jeopardized.

Third, because Map C is enjoined, the Court must consider Plaintiffs’ proposed Map 1 and Map 2. After considering the evidence presented by the parties and the testimony of the experts, this Court concludes that Plaintiffs’ Map 1 technically satisfies Proposition 4’s neutral criteria *to the greatest extent practicable* and it complies with Proposition 4’s prohibition on purposeful and undue partisan favoritism. Therefore, the Court approves and adopts Map 1 as the judicial remedy.

The Court addresses each issue in turn.

I. S.B. 1011 does not govern this remedial proceeding because it likely violates Plaintiffs’ fundamental constitutional right to alter and reform their government; The enforcement of SB1011 is preliminarily enjoined.

Plaintiffs ask the Court to issue a preliminary injunction enjoining the enforcement of S.B. 2011. Utah law provides that a court may issue a preliminary injunction if Plaintiffs show that: (1) “there is a substantial likelihood that [Plaintiffs] will prevail on the merits of the underlying claim,” (2) they “will suffer irreparable harm unless the order or injunction issues,” (3) “the threatened injury to [Plaintiffs] outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined,” and (4) the “injunction, if issued, would not be adverse to the public interest.” Utah R. Civ. P. 65A(f)(2)–(4); *see also* Utah Code § 20A-19-301(2)(b) (allowing preliminary injunction relief if it is in the public interest).

Having analyzed each of the four factors, as detailed below, the Court concludes—based on the evidence presented—that Plaintiffs have met their burden and are entitled to a preliminary injunction enjoining the enforcement of S.B. 1011. S.B. 1011 is preliminarily enjoined. As a result, S.B. 1011 is not the governing law for this remedial proceeding.

*

Having analyzed each of the four factors, as detailed below, the Court concludes—based on the evidence presented—that Plaintiffs have met their burden and are entitled to a preliminary injunction enjoining the enforcement of S.B. 1011.

A. There is a substantial likelihood that Plaintiffs will succeed on the merits of their claim that S.B. 1011 violates the Alter or Reform clause, under Article 1, Section

The Utah Supreme Court in *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, 554 P.3d 872 (“*LWVUT*”), clearly articulated the standard this Court must apply in considering whether S.B. 1011’s amendments to Proposition 4 violate the people’s right to alter and reform their government under article 1, section 2 of the Utah Constitution. S.B. 1011, like

²³⁹ Plaintiffs’ filed a Motion for Summary Judgment on Count VIII, seeking summary judgment that the 2011 congressional map is malapportioned. The Legislative Defendants asserted that the motion was unnecessary because they agree that the 2011 map was repealed, no one has requested that it be “revived” for any reason or as an operation of law, and both parties agree that it is in fact malapportioned.

S.B. 200, is the Legislature’s attempt to modify the law enacted by the people of Utah through a citizen initiative.

In *LWWUT*, the Utah Supreme Court determined that strict scrutiny applies when considering whether the Legislature infringed on the people’s fundamental constitutional right to alter or reform their government through their initiative power. The court established a three-part test. First, Plaintiffs must establish the following: “(1) that the people exercised, or attempted to exercise, their initiative power, and the subject matter of the initiative contained government reforms or alterations within the meaning of the Alter or Reform Clause; and (2) the Legislature infringed the exercise of these rights because it amended, repealed, or replaced the initiative in a manner that impaired the reform contained in the initiative.” *Id.* ¶ 74. If Plaintiffs successfully establish these two elements, “then the legislative action that impairs the reform is unconstitutional *unless* the [Legislative Defendants show] that the [legislative action] is narrowly tailored to advance a compelling government interest.” *Id.* ¶ 75 (emphasis added).

1. The people of Utah altered and reformed redistricting in Utah to prohibit partisan gerrymandering through Proposition 4.

The people’s reform to prohibit partisan gerrymandering is protected by the alter or reform clause of the Utah Constitution. In its August 25, 2025 Ruling Granting Summary Judgment on Count V, this Court concluded as a matter of law that the people of Utah exercised their right to alter and reform redistricting in Utah through Proposition 4.

a. The people have the legislative power to pass law, by initiative, establishing standards to govern how the Legislature fulfills its duty to redistrict.

The U.S. Supreme Court has repeatedly recognized redistricting as a quintessential legislative function, subject to a state’s “ordinary constraints on lawmaking” including the gubernatorial veto, citizen referendum, and citizen initiatives. *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 808 (2015); *Moore v. Harper*, 600 U.S. 1, 30 (2023). The Utah Constitution establishes that the legislative power in the State of Utah is vested in *both* the Legislature and the people. Utah Const. art. VI, § 1. Utah law makes clear that “legislative power” is vested *equally* in both the Utah State Legislature and the people of Utah. *Carter v. Lehi City*, 2012 UT 2, ¶ 22, 269 P.3d 141, *abrogated by League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 22, 554 P.3d 872 (“On its face, article VI recognizes a single, undifferentiated ‘legislative power,’ vested both in the people and in the legislature.”). The people’s right to exercise their legislative power is a fundamental constitutional right, and “[t]he power of the legislature and the power of the people to legislate through initiative and referenda are *coequal, coextensive, and concurrent and share equal dignity.*” *Gallivan v. Walker*, 2002 UT 89, ¶ 23, 54 P.3d 1069 (cleaned up) (emphasis added). The people may initiate “*any desired legislation,*” on “*any substantive topic*” and involving “*any legislative act,*” as long as the initiative complies with all “conditions, manner and time restrictions imposed by law” and is not “otherwise forbidden by the constitution.” *Sevier Power Co., LLC v. Bd. of Sevier Cnty. Comm’rs*, 2008 UT 72, ¶ 10, 196 P.3d 583 (emphasis added) (rejecting the Legislature’s attempt to prohibit the subject of an initiative but recognizing that “the exercise of the initiative power by

the people must be read in coordination with the other rights of the people expressed and reserved in the constitution”). The scope of the initiative power is not lesser than the legislature’s power, and it is not derived from or delegated by the legislature. *Carter*, 2012 UT 2, ¶ 30.

The people’s exercise of their initiative power is “democracy in its most direct and quintessential form.” *Gallivan v. Walker*, 2002 UT 89, ¶ 25, 54 P.3d 1069. “The right to initiative embodies the principle that the people should have the opportunity to govern themselves, ‘unfettered by the distortions of representative legislatures.’” *Count My Vote, Inc. v. Cox*, 2019 UT 60, ¶ 81, 452 P.3d 1109, 1125 (Himonas, J., concurring) (quoting *Carter*, 2012 UT 2, ¶ 23, 269 P.3d 141). Functionally, the initiative process acts as the people’s check on the legislature’s otherwise exclusive power to legislate. *Count My Vote, Inc.*, 2019 UT 60, ¶ 81.

The people of Utah established redistricting standards through Proposition 4 that are binding on the Legislature when it undertakes to fulfill its duty to enact redistricting plans, including enacting a congressional map, like Map C.

b. Proposition 4’s core reform was prohibiting partisan gerrymandering.

On August 25, 2025, Proposition 4 once again became the law on redistricting in Utah. The primary goal of Prop 4 was to end partisan gerrymandering in Utah. Prop 4’s Voter Pamphlet explained to voters that prohibiting partisan gerrymandering was its “most important” provision.²⁴⁰ Proposition 4 requires electoral maps to be designed in accordance with neutral traditional districting criteria and expressly prohibited the Legislature from “divid[ing] districts in a manner that purposefully or unduly favors or disfavors any incumbent elected official, candidate or prospective candidate for elective office, or any political party.” Utah Code Ann. § 20A-19-103(2), (3) (effective August 25, 2025). To that end, Prop 4 adopted redistricting standards that are enforceable by the people of Utah. Essential to those core reforms is that the standards and the process chosen by the people are binding on the Legislature. When the U.S. Supreme Court ultimately concluded that partisan gerrymandering was nonjusticiable in *federal court* under the *federal constitution*, it explained that a solution to partisan gerrymandering could be found in “[p]rovisions in state statutes . . . [that] provide standards and guidance for state courts to apply.” *Rucho v. Common Cause*, 588 U.S. 684, 719 (2019). Proposition 4 is that solution for Utah.

To prohibit partisan gerrymandering, Proposition 4 codified traditional neutral redistricting criteria to constrain manipulation of electoral lines for partisan advantage. Proposition 4 requires redistricting plans to abide by a ranked-ordered set of neutral criteria, “*to the greatest extent practicable*.” Utah Code § 20A-19-103(3) (emphasis added). The traditional redistricting criteria includes—in this order—equal population/compliance with federal laws, minimizing the division of municipalities and counties, creating geographically compact districts, creating contiguous districts, preserving traditional neighborhoods and local communities of interest, following natural and geographic features, boundaries, and barriers, and maximizing boundary agreement. *Id.* In addition, Proposition 4 expressly prohibited any plans that “divide districts in a manner that purposefully or unduly favors or disfavors . . . any political party.” *Id.* § 20A-19-103(4)(a). This express prohibition on partisan favoritism, whether

²⁴⁰ 2018 Voter Information Pamphlet, Leg. Defs.’ Ex. A, Dkt. 406, p. 5.

intentional or in effect, is similar to language used in other states’ anti-gerrymandering provisions. *See, e.g.*, Ohio Const. art. XIX, § 1(C)(3)(a); Haw. Const. art. IV, § 6; Del. Code Ann. tit. 29, § 804; Va. Code § 24.2-304.04(8).

To ensure that the prohibition on partisan favoritism is effective, Proposition 4 states the Legislature “*shall use judicial standards and the best available data and scientific and statistical methods*, including measures of partisan symmetry, to assess whether a proposed redistricting plan abides by and conforms to the redistricting standards” and the prohibition in Subsection (3) on “unduly favor[ing] or disfavor[ing]” a political party. Utah Code § 20A-19-103(4) (effective August 25, 2025) (emphasis added). As this Court noted in its August 25, 2025 Ruling, this standard allows for some discretion to determine what qualitative tests and quantitative metrics are “best” suited for this analysis—based on Utah’s political geography, the available data, and the evolving scientific and statistical methods at the time a redistricting map is assessed. This standard necessarily includes a quality requirement that the applied methods must be appropriate to the context (*i.e.*, “best”), an understanding that the methods and their applicability may evolve over time (*i.e.*, “available”), and flexibility in the types of evidence that can serve as proof (*i.e.*, “data and scientific and statistical methods, including measures of partisan symmetry”). This is a common legal standard that government bodies and courts routinely apply. *See, e.g., Keep the N. Shore Country v. Bd. of Land & Nat. Res.*, 506 P.3d 150, 169 (Haw. 2022) (interpreting “best scientific and other reliable data available” to require evaluation of “applicability and quality of the information” and to allow some information to be deemed inapplicable or insufficiently reliable); *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999) (holding that “best available information” standard allowed agency assessments to “depend on the circumstances” of a given case and what information is available); *Cent. Coast Forest Ass’n v. Fish & Game Comm’n*, 389 P.3d 840, 845 (Cal. 2017) (interpreting requirement under California Endangered Species Act that assessments be “based upon the best scientific information available” to be “legislative recognition that information and scientific understanding are subject to change” (cleaned up)).

The requirement to apply “judicial standards” and the “best available” methods also aligns with how state courts have assessed other states’ similarly worded prohibitions in practice. *See, e.g., Adams v. DeWine*, 195 N.E.3d 74, 84 (Ohio 2022) (relying on competing expert testimony to weigh evidence derived from a wide range of scientific and statistical methods applicable to Ohio). And it makes eminent sense in the redistricting context. There is a wide variety of scientific and statistical methods to assess partisan gerrymandering. The appropriateness of any given method or measure depends on the context (including the state’s political environment, political geography, and the type of plan under review) and may change over time. And in some contexts, certain methods cannot yield reliable or interpretable results. *See FOF*, Section IV.

2. The Legislature infringed on the people’s right to alter and reform their government by enacting S.B. 1011 to amend Proposition 4 in a manner that impairs the core reform to prohibit partisan gerrymandering.

S.B. 1011 amended Proposition 4 in manner that effectively nullifies the reform. This is accomplished by specifically redefining key terms to mandate specific tests known to have paradoxical outcomes resulting in partisan favoritism for the supermajority party in states with

similar political geography and conditions like Utah. Based on the evidence presented to this Court—over two days of testimony from six experts—the evidence overwhelmingly supports that the particular tests mandated and the manner in which they must be performed do not provide “the best available data” and are not the best “scientific and statistical methods” that should be considered in a state like Utah. Rather than merely being tools of “assessment,” these tests effectively operate as a “filter,” ensuring that only maps that effectively provide an advantage to the majority party pass the tests and can be considered as “compliant” with Proposition 4. Proposition 4 required the “best” data and methods to assess compliance not to ensure partisan favoritism. But that is what Proposition 4, with S.B. 1011’s amendments, now does.

a. S.B. 1011’s Amendments to Proposition 4.

To start the analysis, it is helpful to understand the changes S.B. 1011 made to Proposition 4. S.B. 1011 amended Proposition 4, as it applies to *congressional plans*, in four material ways. First, S.B. 1011 mandates that only three specific qualitative and quantitative tests and metrics be used to assess “partisan symmetry” and whether a congressional redistricting plan “unduly favor[s] or disfavor[s]” a political party, under Utah Code sections 20A-19-103(1)(c), (g), (4)(a), (b), (c) (effective October 6, 2025). The three tests include the partisan bias test, the mean-median difference test, and an ensemble analysis applying a ranked marginal deviation. *Id.* § 20A-19-103(1)(a)–(f). Second, S.B. 1011 amended Proposition 4 to define “unduly favor or disfavor” in congressional redistricting to mean “the map is asymmetrical under the measures of partisan symmetry and fails the mean-median difference test.” *Id.* § 20A-19-103(1)(g). It also defined “measures of partisan symmetry” to mean *only* “for a congressional redistricting plan: the partisan bias test; and an ensemble analysis with subsequent culling to include only redistricting plans that pass the partisan bias test to ensure the plan is within the statistical bounds of passing plans.” *Id.* § 20A-19-103(1)(c). Third, S.B. 1011 establishes a presumption of validity under Section 20A-19-103(4), stating: “A redistricting plan that is symmetrical under the measures of partisan symmetry and passes the mean median different test, does not unduly favor or disfavor a political party under Subsection (4)(a).” *Id.* § 20A-19-103(4)(c). Finally, S.B. 1011 limits judicial review of a congressional redistricting plan to consider only the outcomes of the codified partisan bias test, the mean-median difference test, and the ensemble analysis. *Id.* § 20A-19-103(8). And it increases the evidentiary standard to determine purposeful partisan favoritism to “clear and convincing evidence.” *Id.* § 20A-19-103(4)(b). These changes increase the bar on enforcing Proposition 4 through a private right of action.

b. S.B. 1011 ensures partisan favoritism rather than prohibiting it.

S.B. 1011 not only impairs Proposition 4’s prohibition on partisan gerrymandering, but it also effectively mandates the practice by ensuring that only maps favoring the majority party—which, at this time, is the Republican party—will pass the codified tests. Instead of assessing compliance with Proposition 4 by using the “best” scientific and statistical methods that yield meaningful results for Utah, S.B. 1011 mandates the exclusive use of three statistical tests—the partisan bias, mean-median difference, and an ensemble analysis (culled to exclude maps that don’t comply with the partisan bias test)—that have been shown to have questionable application in states like Utah because they cannot reliably detect partisan favoritism in Utah. Instead, they yield false, paradoxical results that favor the majority party voters and disfavor minority party voters. This “paradox” is so well known, it is called “the Utah paradox.” S.B. 1011 also

substantively restricts the ability of courts to conduct any meaningful judicial review. S.B. 1011 ensures partisan favoritism in several ways.

First, S.B. 1011 effectively renders meaningless the original Proposition 4 requirement that “*the best available data and scientific and statistical methods*” be used to assess compliance with the traditional redistricting criteria and confirm that any proposed redistricting map does not unduly favor or disfavor a political party. The codified approach of considering only the partisan bias test and the mean-median difference test does not provide the best “data,” and the experts uniformly agreed that it is not the best “scientific and statistical method” to approach an evaluation of partisan favoritism.

Before addressing the substantive issues with each of the codified tests, it is helpful to understand the experts’ perspectives on how they approach analyzing redistricting plans for partisan favoritism. What can be summarized from their testimony is that no singular test or measure is perfect. Each test looks at a different aspect of partisan favoritism or partisan symmetry. Each test provides slightly different information. Every measure depends on assumptions or conditions that may or may not be satisfied in the state, and some measures do not yield reliable results in certain contexts. Whether a measure is appropriate to use to evaluate a redistricting plan can depend on the state’s electoral conditions, political geography, competitiveness, number of districts, past election performance, and the type of redistricting plan under review. No single measure or quantitative metric should be considered in isolation or divorced from the context in which it is applied. The best practice in social science is to apply all appropriate measures and data and consider them together to determine whether a map exhibits partisan favoritism.

While the Court can quote extensively from Plaintiffs’ experts, Dr. Chen and Dr. Warshaw, about their perspectives on the best way to approach a partisan favoritism analysis, it is more impactful to evaluate what Dr. Barber and Dr. Katz, the Legislative Defendants’ experts, said during cross-examination. Dr. Barber, an expert who lives here in Utah and is a professor at BYU, confirmed that in evaluating whether there is partisan favoritism or disfavor in a redistricting map, he would take “an expansive approach and look at all available metrics and data and glean what we can from them in the context of their usefulness for a particular situation.” (10.24 Tr. at 342:1–8 (Barber).) He stated: “A single particular metric . . . is not ideal.” (*Id.* at 342:13–14.) And he confirmed the well-known paradoxes and misinformation that can be generated by application of the partisan bias and mean-median tests in a state like Utah, where the statewide competitive vote is not near 50/50. (*Id.* at 342:19–25.) During his testimony, he re-affirmed what he had written in his expert report, which states:

No single metric is perfect, especially in Utah. Every test carries assumptions that can misfire in a four-seat, lopsided state. The signed symmetry implementations (partisan bias, mean-median) can generate well-known paradoxes when the statewide vote is not near 50-50; ensemble analysis depends on how the ensemble is specified and filtered; the efficiency gap is sensitive to turnout patterns and small-N bodies; least republican vote share (LRVS) focuses on only a single district; and dispersion measures like the standard deviation of vote share (SDVS) or the ranked marginal deviation that summarize spread

reduce a map to a single score that can hide important variation. *The way to be faithful to both Proposition 4 and sound methods is not to search for a perfect test, but to use multiple appropriate metrics, benchmark them against a neutral ensemble, and read them together.*

(*Id.* at 340:7–341:25; Expert Report of Dr. Barber, Defs’ Ex. 14, 14 (emphasis added).) He confirmed during his cross-examination that he would take an “expansive” approach when assessing partisan favoritism. (10.24 Tr. 341:15–25 (Barber).)

Dr. Katz, one of the foremost experts on partisan bias and partisan symmetry, testified that with respect to the appropriateness of using only one or two quantitative tests to assess partisan favoritism, Dr. Katz clearly stated that it would be inappropriate to do so. Dr. Katz testified that he would not “rely on one or two knife-edge, bright-line rules” to conclude that a redistricting “plan includes a partisan gerrymander.” (*Id.* at 42:21–43:1 (Katz).) Likewise, Dr. Katz agreed with the testimony from Dr. Barber (although he did not read his report) that “relying on a single measure” or “bit of evidence” is ordinarily “[n]ot how political scientists generally conceive of whether a [redistricting] plan ... is a partisan gerrymander.” (*Id.* at 47:2–9.) Elaborating further on this issue, Dr. Katz affirmed and stood by statements made in a 2023 article he co-authored, titled “Essential Role of Statistical Inference in Evaluating Electoral Systems.” (*Id.* at 44–47; Expert Report of Dr. Katz, Pls.’ Ex. 9, 330). He confirmed that “quantitative measures are employed as one element of a holistic evaluation. In the many situations where partisan symmetry has been employed by courts, it is one substantive prong in evaluating the fairness of redistricting plans alongside an evaluation of procedural fairness and other concerns.” (*Id.* at 47:13–20.) In this article, he criticized another author’s analysis stating, “many of the issues in DeFord, et al., result from its goal of a single quantitative bright-line rule for detecting gerrymandering, which is unusual in academia or the courts.” (*Id.* at 44:18–45:12.) He agreed that in assessing partisan symmetry and bias, most scholars and courts “avoid drawing conclusions from a single source—from single sources of evidence or knife-edged quantitative thresholds and instead seek broader understanding from all available observable implications of a theory.” (*Id.* at 45:13–20.) Dr. Katz also agreed with the statement that in assessing partisan symmetry or bias, “few legal tests adopted by the courts employ bright-line rules based on quantitative measures alone. Instead, quantitative tests are typically employed as part of a multi-pronged factor test.” (*Id.* at 45:23–46:3.)

Plaintiffs’ experts—Dr. Chen and Dr. Warshaw—agree that a more holistic approach should be taken, as demonstrated by their expert reports, testimony and their analysis of the current maps. *See* FOF Section VI. Notably, Dr. Warshaw also stated: “Courts and scholars recognize that no single measure is perfect; best practice dictates applying all measures appropriate to the given state and context to ensure robust conclusions.” He recognized that there are a variety of methods, measures and metrics applied by political scientists, scholars and courts. (Warshaw Report, Pls.’ Ex. 1A, 4-5; 10.23 Tr. 155, 177, 189.) Dr. Warshaw also recognized that “all of the partisan fairness metrics” can be less reliable in small states. (*Id.* at 193:23–24.) Because of this, Dr. Warshaw opines that multiple metrics are “complementary to each other” and essential for performing “robustness checks” for a partisan fairness analysis. (*Id.* at 187:1, 192:21.) Multiple metrics provide “robustness of our conclusions and sort of try to get a sense of how strong of a conclusion we can draw from the data that we have.” (*Id.* at 187:9–11.)

Second, S.B. 1011 materially changes and impairs the “partisan favoritism” standard codified by Proposition 4 (*i.e.*, “purposefully or unduly favors or disfavors . . . any political party”) and limits the assessment to mandate a singular focus on “partisan symmetry” based exclusively on two bright line tests with “edge-knifed” quantitative metrics. In addition, the two measures mandated have well-known limitations and paradoxical outcomes when the partisan bias test and the mean-median difference test are applied in states like Utah. The application of these tests effectively facilitates partisan favoritism in Utah to advantage the majority party, effectively eviscerating the prohibition on partisan favoritism and paving the way for partisan gerrymandering.

Partisan favoritism v. Partisan symmetry: Proposition 4 states that the “Legislature and the Commission may not divide districts in a manner that purposefully or unduly favors or disfavors any incumbent elected official, candidate or prospective candidate for elective office, or any political party.” *See* Utah Code Ann. § 20A-19-103(4)(a). Compliance with this standard requires the use of “the best available data and scientific and statistical methods, including measures of partisan symmetry, to assess whether a proposed redistricting plan abides by and conforms to the redistricting standards contained in this section.” *See* Utah Code Ann. § 20A-19-103(5). What Proposition 4 expressly prohibits is partisan favoritism. Partisan symmetry is but one of many methods used to evaluate partisan favoritism.

As described by Plaintiff’s witness, Dr. Christopher Warshaw, “[p]artisan favoritism in a redistricting plan occurs when one party’s voters are ‘packed’ into a small number of districts in larger numbers than needed to elect their preferred candidates, or ‘cracked’ across multiple districts so that they cannot elect a candidate of their choice anywhere.” (Warshaw Report, Pls.’ Ex. 1A, 4.) Utah’s political geography is such that it is more often subject to “cracking” because the minority party’s voters are clustered in Salt Lake County. By cracking Salt Lake County and dividing it between the four districts like what was done in the 2021 congression map, “this impairs the minority party’s ability to translate its statewide support into representation, enabling the favored party to entrench its advantage by winning every seat.” (*Id.*) The experts testified about several methods to evaluate partisan favoritism, including the Efficiency Gap, the Least Republican Vote Share (LRVS), Standard Deviation of Vote Shares (SDVS), Ensemble Analysis using the Ranked Marginal Deviation. Notably, Dr. Warshaw recognized that methods like the LRVS and the SDVS were developed by scholars specifically for Utah. (Warshaw Report of October 16, 2025, Pls.’ Ex. 1C, 1.)

“Partisan symmetry” measures how easily each party can convert votes into seats. Under the plain language of Proposition 4, partisan symmetry is just one method used to consider whether a redistricting plan favors or disfavors a party. Indeed, at the evidentiary hearing the experts provided examples of different measures that have been proposed to determine partisan symmetry in redistricting maps, including the PBT, the MMD, and the efficiency gap. However, “[c]ourts and scholars recognize that no single measure or approach is perfect; best practice is to apply all measures appropriate to the given state and context to ensure robust conclusions.” (Warshaw Report, Pls.’ Ex. 1A, 5.)

Partisan bias test: S.B. 1011 mandates the use of the partisan bias test to assess partisan symmetry and undue partisan favoritism to the exclusion of other more applicable tests. The statutory mandate to use this test both impairs Proposition 4’s prohibition on partisan favoritism and is at odds with the neutral traditional redistricting criteria. The partisan bias test cannot reliably detect partisan favoritism in a state like Utah because the test relies on an unrealistic counterfactual that Utah has tied (50/50) statewide elections that bears no resemblance to the reality of Utah’s uncompetitive environment. (FOF ¶ 25, 10.23 Tr. at 30:16-31:15 (Chen).) This test asks whether in a hypothetical election where each of two parties win 50% of the statewide vote, will each party win 50% of the congressional seats, *see* Utah Code § 20A-19-103(1)(d), (e), and draws conclusions from those unrealistic assumptions. This is why scholars, including the creator of the partisan bias test, warn that the partisan bias test should only be applied “to jurisdictions where it is factually reasonable to assume that elections can be competitive” statewide. Bernie Grofman & Gary King, *The Future of Partisan Symmetry as a Judicial Test for Partisan Gerrymandering after LULAC v. Perry*, 6:1 Election L.J. 2, 19 (2007). Utah is not such a state.

Utah’s statewide elections are highly uncompetitive. (FOF ¶ 28.) Democrats have not received a majority of the statewide vote in congressional elections in 35 years and have not won a majority of congressional seats since at least 1970. (*Id.*) Republicans have also won every statewide election for president, governor, and other offices included in S.B. 1011’s partisan index during the last 25 years, nearly always with 20-plus margins. (*Id.*) Utah’s highly uncompetitive environment also undermines the validity of the partisan bias test’s uniform shift assumption—that is, the assumption that the shift to a 50-50 statewide vote share would occur uniformly across districts. Since this scenario has not even remotely occurred in decades, it is at best unclear how electoral coalitions would shift to produce a 50-50 statewide election and whether the uniform shift assumption underlying the partisan bias test is satisfied in Utah. Based on Utah’s political geography, a super-majority party, and only four congressional seats, Utah does not satisfy the electoral conditions necessary for valid application of the partisan bias test. (10.23 Tr. at 31:16-32:4 (Chen), 162:20-163:2 (Warshaw).)

When the partisan bias test is used in a state like Utah, where there are only 4 districts and a supermajority party, the partisan bias test generates well-known paradoxes, like identifying 3-1 plans that include one Democratic district as biased *against* Democrats and *in* favor Republicans and, at the same time, identifying 4-0 Republican plans as unbiased. (FOF ¶¶ 29, 97-103.) This irrational result stems from the test’s conflict with Utah’s political geography. To pass, a map must disperse Democrats across two districts to ensure they would win two seats in the hypothetical world of a tied statewide election. But because Democrats are a small, geographically concentrated minority, doing so dilutes their only opportunity in the real world to win one seat. (FOF ¶ 29; *see also* PX-1A at 20 (10.7 Warshaw Report); (10.23 Tr. at 163:3-165:21 (Warshaw).) Dr. Warshaw offered an example of the irrational results achieved by applying the partisan bias test in Utah. Dr. Warshaw evaluated Utah’s prior 2021 congressional map, which split Salt Lake County into each of the four districts, using both the efficiency gap and the partisan bias test. The efficiency gap test registered the 2021 congressional map as one of the most extreme partisan gerrymanders in the country. Other metrics applicable to states like Utah had similar outcomes. The partisan bias test, however, gives the 2021 congressional map a

perfect passing score of “zero bias,” because “in the hypothetical world of a 50-50 statewide vote,” Democrats would win two seats. (PX-1A (10.7 Warshaw Report).)

The partisan bias test’s pro-majority bias in Utah is also evident in the large number of computer-simulated maps it disqualifies (nearly all having one Democratic district) and the smaller number of maps it approves (nearly all having four Republican districts). Applying the partisan bias test, as codified, to Dr. Chen’s 10,000 simulated maps that comply with the redistricting criteria, only 11 maps would pass S.B. 1011’s partisan bias test, and 6 of those 11 would create a 4-0 Republican map. Indeed, following Proposition 4’s neutral redistricting criteria, only 7 of Dr. Chen’s simulated maps created a 4-0 Republican map, while 9,993 created a 3-1 map. S.B. 1011’s partisan bias test, if applied to Dr. Chen’s ensemble, would disqualify 9,988 maps that create 1 Democratic district and just 1 map that creates zero Democratic districts. (FOF ¶198.) Notably, all the experts – Dr. Chen, Dr. Warshaw, Dr. Katz,²⁴¹ Dr. Barber and Dr. Trende – acknowledged what has come to be known as the “Utah paradox.”

Further, the mandate to comply with the partisan bias test is at odds with the Proposition 4 requirement that redistricting plans comply with the neutral redistricting criteria. The evidence of this was clear. Dr. Chen created 10,000 computer simulated maps that comply with Proposition 4’s neutral redistricting criteria, including respect for municipal and county lines, geographic compactness, contiguity, etc. Of those 10,000 simulated maps, 99.9% of them failed S.B. 1011’s partisan bias test. (FOF Section VI.A, *see also* 10.23 Tr. at 33:7-20 (Chen).) Likewise, even among Defendants’ expert’s ensemble of computer-simulated maps, an inverse relationship exists: the more likely a map is to comply with Proposition 4’s neutral redistricting criteria, the more likely that map will fail S.B. 1011’s partisan bias test. (FOF ¶ 95.) The fewer counties split, the more likely map is to fail. The more counties it splits, the more likely it is to pass. (FOF ¶ 92.) The more compact it is, the more likely the map will fail. The less compact it is, the more likely the map will pass. (FOF ¶ 93.) The more contiguous districts are, the more likely the map will fail. The fewer contiguous districts a map has, the more likely it will pass. (FOF ¶ 94.) This stark, inverse relationship between a map’s compliance with Proposition 4’s neutral traditional redistricting criteria and its ability to pass S.B. 1011’s partisan bias test illustrates in clear terms how the latter profoundly impairs the former. (FOF ¶¶ 95-96.) This evidence was not disputed or challenged.

While both Dr. Trende and Dr. Katz – to some extent – attempt to downplay the paradoxical impact, Dr. Katz acknowledged that in one of the articles he co-authored, he reported that the strict use of the partisan bias test may not be an appropriate “standard[] of fairness for electoral systems when one party has an overwhelming majority of votes and is likely to keep it.” (FOF ¶¶ 32-33; *see also* 10.24 . Tr. at 55:8-12 (Katz) .) Where that situation exists, “the partisan

²⁴¹ With regard to the experts, there is no doubt that each of these experts are extremely qualified. However, not all of them were helpful to the Court and the credibility of their testimony was questioned. For instance, while Dr. Katz is one of the foremost authorities on partisan symmetry and the partisan bias test, he offered no opinion on S.B. 1011, the mandated tests, the application of the partisan bias test in Utah, whether it is the best method to evaluate partisan fairness, and he offered no opinion on the maps at issue. His opinion, therefore, is not helpful to the Court and his opinion about partisan symmetry and the actual application of the partisan bias test – generally—is not very helpful. The Court, however, does find his candor about how he approaches a partisan fairness analysis – considering all appropriate metrics – to be credible. Notably, given Dr. Katz’s expertise in this area, what is striking to the Court is that he offered no opinion specific to Utah.

symmetry promise to a minority party of eventually receiving a controlling seat proportion when in a future election the party has more voter support seems empty.” (*Id.* at 55:13-19.) Therefore, the authors suggested the possible use of a different model “called ‘symmetric democracy with minority party protection.’” Dr. Katz testified this model would be used if there was some legal and structural reason why the minority party cannot eventually win votes. (*Id.* at 55:20-57:5.) Indeed, Dr. Katz acknowledged that he and his co-authors had specifically offered this model in “noncompetitive electoral systems... where one party is confident of a statewide majority.” (*Id.* at 58:9-16 (quotation marks omitted).) With respect to this alternative model, Dr. Katz also acknowledged that he and his co-authors had specifically noted in the article that “Republican decision-makers in Utah, one of the most Republican states in the nation, favors our symmetric democracy model of electoral systems [or partisan bias test] rather than the symmetric democracy with minority protection model.” (*Id.* at 59:18-25.)

In addition, Dr. Trende defended the use of the partisan bias test in Utah, while simultaneously acknowledging the paradoxical results. He, however, acknowledged, indirectly, that the partisan bias test may not be the best test for a state with only 4 congressional seats like Utah. On cross-examination, Dr. Trende admitted that he advised the Legislature, during the September 22, 2025 Legislative Redistricting Committee Hearing, that the partisan bias test was more useful as a tool to assess state legislative maps, where there are more seats/districts. He then clarified: “I think *all of these partisan fairness metrics* are better in maps where you have lots of districts and those will tend to be state legislative maps.” (FOF ¶ 40; 10.24 Tr., 213:6 - 214:5; PX-19 (Trende LRC Testimony) (emphasis added).) Notably, S.B. 1011 does not mandate the application of the partisan bias test to Utah’s legislative districts, *see* Utah Code § 20A-19-103(1)(g), which Dr. Trende recommends these tests are better suited for. And, ironically, the evidence presented by Dr. Warshaw shows that Utah’s current legislative districts would actually fail the partisan bias test. (10.24 Tr., 164:11-165:21 (Warshaw).)

Mean-median difference test. S.B. 1011’s mandated use of the mean-median difference test, to the exclusion of other more applicable tests, impairs Proposition 4 for similar reasons. Like the partisan bias test, the mean-median difference only tends to be probative in states with competitive statewide elections and produces similarly paradoxical results in Utah that singularly favor the state’s majority party. This is due in part because the mean-median difference test was designed only to detect packing gerrymanders, not cracking gerrymanders, which is the more likely way to disfavor the minority voters, here Democrats, in Utah given their concentration in Salt Lake County. Like the partisan bias test, the mean-median test also yields paradoxical results when applied in Utah that systematically favor Republicans and disfavor Democrats. (FOF ¶ 38-39.) The Legislative Defendants’ expert, Dr. Katz, conceded the mean-median difference test “is not appropriate in a state . . . where a single party is dominant and statewide vote shares are far from 50%” and admitted that he declined to apply the test in another such state. (FOF ¶ 37; 10.24 Tr. at 66:23-69:10 (Katz); PX-10 at 15 (Katz New York Report).) Dr. Warshaw testified that this test is “gameable” by partisan actors. (FOF ¶ 39.) And by setting an arbitrary, and as Dr. Katz would describe, a “knife-edged” cut-off of 2% for a passing score, S.B. 1011 ensures that most 3-1 maps that include a Democratic-leaning district will fail the test, while maps with more uniform vote shares across districts favoring Republicans will pass the test. The evidence shows that the mean-median test blesses maps that unduly favor Republicans and disfavor Democrats. *See supra*, FOF, Section IV. The mean-median difference test’s pro-Republican bias in Utah is demonstrated by the large number of neutrally drawn computer-simulated maps it disqualifies.

Only 6 of the 10,000, or 0.06% of Dr. Chen’s 10,000 neutrally drawn ensemble maps have a mean-median difference of less than 2%; the rest are disqualified. (FOF ¶ 39.) Because Proposition 4 seeks to prohibit such manipulation and partisan favoritism, the Court concludes that S.B. 1011’s imposition of the mean-median test impairs its reform.

“Culled” Ensemble Analysis. S.B. 1011’s “culled” ensemble analysis also undermines Proposition 4’s prohibition on undue partisan favoritism and its neutral criteria. Even if a plan passes the partisan bias test, S.B. 1011 still deems the map unlawful if it does not also pass a version of an ensemble analysis where the ensemble is “culled” to exclude all maps that do not pass the partisan bias test. Utah Code § 20A-19-103(1)(c)(ii), (4)(c). This defeats the purpose of an ensemble analysis and has the effect in Utah of disqualifying congressional plans that include a Democratic district and that comply with Proposition 4’s neutral criteria, impairing Proposition 4. (FOF, Section VI.) In addition, the Court questions whether this manner of “culling” provides the “best available data” or is the “best scientific and statistical method” to run an ensemble analysis, given that no expert testified that they have performed an ensemble analysis in this way before. Specifically, Dr. Barber testified that, in his experience, he has never “culled” an ensemble analysis against a partisan metric like the partisan bias test; rather, he has only “culled” to screen for compliance with redistricting criteria, like a statutory requirement regarding county splits. (10.24 Tr. 346:11-25 (Barber).)

In addition, culling Dr. Chen’s and Dr. Trende’s ensembles to remove all maps that don’t comply with the partisan bias test further compounds the problem, illustrating how the partisan bias test is effectively a “filter” removing all maps except those that give the majority party a 4-0 advantage. Under the circumstances, the application of the tests mandated by S.B.1011 codifies partisan favoritism for the majority party—the Republicans—under Utah’s current electoral conditions and political geography, impairing Proposition 4’s fundamental purpose of prohibiting partisan favoritism and partisan gerrymandering. *See supra*, FOF, Section VI.B.

Third, S.B. 1011 also effectively eliminates any meaningful judicial review of proposed congressional plans. S.B. 1011 expressly restricts judicial review of partisan favoritism (i.e., “purposefully or unduly favoring or disfavoring a political party” to consider only the “outcomes” of the ensemble analysis, the partisan bias test, and the mean-median difference test. Utah Code § 20A-19-103(8). This limitation on judicial review expressly precludes a court from considering more applicable methods that can actually detect partisan favoritism in states like Utah. While Proposition 4 requires that redistricting maps be assessed for compliance with its prohibition on undue partisan favoritism according to “judicial standards” and the “best” data and scientific methods available, S.B. 1011 instead mandates the exclusive use of arguably the worst methods for a state like Utah. If not the worst, certainly based on the evidence presented, tests that have demonstrated questionable application in Utah.

S.B. 1011 likewise impairs Proposition 4’s judicial review provision—one of its key reforms to ensure enforcement of its provisions—by elevating the standard of proof to clear and convincing evidence of *purposeful* partisan favoritism. *Id.* § 20A-19-103(4)(b). In addition, S.B. 1011 codifies a presumption of validity that if any congressional map passes the partisan bias test and also passes the ensemble test (culled for compliance with the partisan bias test) it is presumed to not *unduly* favor or disfavor a political party. These restrictions on judicial review to only the “outcomes” of tests that cannot detect partisan gerrymandering in Utah, the presumption of validity and the increase in the standard of proof all conflict with Proposition 4’s existing

judicial review provision, which sets both a de novo and preponderance of evidence standard, *see* Utah Code § 20A-19-301(2) & (4). It also works to protect and insulate legislative action from effective review. It affords the Legislature greater protection at the expense of voters in Utah—the exact opposite of the purpose behind Proposition 4.

Finally, S.B. 1011 mandates tests – even by the testimony of the Legislative Defendants’ own experts – either do not apply (the mean-median test, per Dr. Katz), collectively are not the best test for congressional maps (per Dr. Trende), and/or provides paradoxical outcomes (acknowledged by all three). In addition, both Dr. Katz and Dr. Barber testified that their approach to partisan favoritism is a holistic one, not limited to one or two bright-knifed metrics. The predominate “outcome” of these three tests, as applied to a 4-district congressional plan, in a politically uncompetitive state like Utah, provides a partisan advantage to the super-majority Republican party because of the paradoxical outcome. The evidence clearly and convincingly shows that these tests do not provide the best data and are not the best statistical methods to determine whether a congressional plan “unduly favors or disfavors a party in Utah.”

The Court concludes that S.B. 1011 impairs, and in fact nullifies, the core reform of Proposition 4 to prohibit partisan favoritism that leads to partisan gerrymandering.

3. The Legislative Defendants have failed to show that S.B. 1011’s amendments to Proposition 4 were “narrowly tailored to advance a compelling government interest.”

The burden now shifts to the Legislative Defendants to prove that the amendments to Proposition 4, embodied in S.B. 1011, were narrowly tailored to advance a compelling government interest. The evidence clearly shows that S.B. 1011 materially impairs Proposition 4’s core reform to prohibit gerrymandering. Collectively, the changes in S.B. 1011 sanction partisan favoritism, ensure that only congressional maps with a 4-0 advantage to the Republican party will comply with the three codified tests, and insulate Legislative action and congressional maps from any meaningful judicial review.

The Legislative Defendants assert that this broad, sweeping amendment to Proposition 4 effected by S.B. 1011 was compelled and actually “ordered” by this Court. The Legislative Defendants assert there is a compelling government interest to amend Proposition 4 to make it “clear and workable” and that the amendments were necessitated by this Court’s August 25, 2025 Ruling. The Legislative Defendants point to this portion of the Court’s August 25, 2025 Ruling, which states:

given the general, non-specific nature of the language, the legislature retains discretion in determining what judicial standards are applicable and they retain discretion to determine the “best available data and scientific and statistical methods” to use in evaluating redistricting plans for compliance with state and federal law and the Proposition 4 redistricting standards. *This provision does not impair the legislature’s authority under article IX and does not displace the legislature’s legislative redistricting authority.*

(August 25, 2025 Ruling at 29-30 (emphasis added), Dkt 470.) In the context of the Court’s August 25, 2025 Ruling, this statement was made to address and explain why Proposition 4 did

not unconstitutionally interfere with the Legislature’s core legislative redistricting power, its functions or its discretion. (*See generally id.* at 27-30.) This Court did not rule that Proposition 4 failed to provide workable, clear or manageable standards. The Court also did not conclude that the terms “judicial standards” or “best available data and scientific and statistical methods” or “purposefully or unduly favoring or disfavoring a political party” were not clear, not workable and did not provide manageable standards. This Court did not direct or invite the Legislative Defendants to enact S.B. 1011.

Notwithstanding the Court’s Ruling, the Legislative Defendants argue that they have a compelling government interest to determine and define what standards, data and methods are best to use in evaluating a congressional redistricting plan and that doing so is within their discretion. They rely on article IX, section 1 of the Utah Constitution asserting that it “requires the legislature to ‘divide the state into congressional, legislative, and other districts,’” and that under *LWWUT*, 2024 UT 21, ¶ 198, the Utah Supreme Court acknowledges that the Legislature retained the ultimate responsibility for redistricting. (Leg. Defs.’ Opp’n at 11.) This is true, it is the representative body of the Legislature that has the ultimate duty to enact redistricting plans. That core function cannot be delegated away. But, as this Court explained in its August 25, 2025 Ruling, the people of Utah share equal power with the Legislature and they have the power, via citizen initiative, to pass laws that alter and reform redistricting in Utah and provide standards that govern how redistricting must be accomplished by the Legislature, when it fulfills its duty. The people also have the legislative power to prohibit partisan gerrymandering. That is what Proposition 4 accomplished.

The Legislative Defendants asserts it has discretion to determine what “best” data, measures and judicial standards there are to “assess” that any proposed redistricting plan – designed in compliance with the neutral redistricting criteria – complies with Proposition 4. But that discretion must be exercised in a manner consistent with Proposition 4, not in contravention of it. And clearly that discretion does not extend to the *impairment* of Proposition 4. Indeed, as the Court recognized, fundamental to Proposition 4’s privately enforceable prohibition on partisan favoritism is that the Legislature *lacks* discretion to disobey it. (August 25, 2025 Ruling, at 81, Dkt. 470.)

The Legislative Defendants assert an interest in determining and defining the various clauses and terms related to the assessment of partisan favoritism in Proposition 4 and claim a compelling government interest to make the terms clear and workable. Several other states have virtually identical prohibitions on undue partisan favoritism that courts have readily interpreted and administered using the usual tools of statutory interpretation. These terms are clear and workable and require no further clarification or amendment to be administrable. In *Adams*, for example, the Ohio Supreme Court rejected the legislature’s contention that identical language there was not judicially administrable. *Adams*, 195 N.E.3d at 84. The court reasoned that it presents no less manageable a standard than the Fourteenth Amendment’s prohibition on racial discrimination. The *Adams* court also noted the U.S. Supreme Court’s assessment in *Rucho* specifically identifying a prohibition on “intent to favor or disfavor a political party” as providing sufficient guidance to courts. *Id.* at 84 (citing *Rucho v. Common Cause*, 588 U.S. 684, 719, 139 S. Ct. 2484, 2507 (2019) (quoting Justice Roberts: “Provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply. (We do not understand

how the dissent can maintain that a provision saying that no districting plan “shall be drawn with the intent to favor or disfavor a political party” provides little guidance on the question.”) And, in recognizing that the voters of Ohio (as here) “intended that th[eir] anti-gerrymandering requirements . . . have teeth,” the Ohio court concluded that they had “articulate[d] a standard that is ‘grounded in a limited and precise rationale and [that is] clear, manageable, and politically neutral.’” *Id.* (quoting *Rucho*, 688 U.S. 703). There can be no “compelling” government interest in redefining partisan favoritism in a way that undermines and impairs Proposition 4.

The Legislative Defendants assert an interest in ensuring neutral maps through their preferred tests. But mandating statistical tests that fail to detect when redistricting maps disfavor the state’s minority party is not a compelling interest, even if those are the tests preferred by the Legislature. Proposition 4 was passed to constrain the manipulation of electoral lines by codifying traditional redistricting criteria that establish guidelines for designing redistricting maps, not to authorize the adoption of tests that mandate certain partisan outcomes that favor the majority party. Nor is S.B. 1011 narrowly tailored to serve any purpose approaching neutrality, as requiring the use of partisan bias, mean-median difference, and a culled ensemble to the exclusion of other available methods directly contravenes a prohibition on partisan favoritism.

The Legislative Defendants seek to justify their selection of these exclusive tests for undue partisan favoritism by asserting that Proposition 4 specifically identifies “measures of partisan symmetry” among the methods that may be considered in assessing compliance with its standards. But “measures of partisan symmetry” are just one *non-exclusive* method contemplated under Proposition 4’s plain language. *See* Utah Code § 20A-19-103(5). The Legislative Defendants also contend that the *only* measure of partisan symmetry is the partisan bias test. But Proposition 4 refers to measures of partisan symmetry, in the plural, not just one. *Id.* Indeed, courts and political scientists understand partisan symmetry broadly to mean “whether supporters of each of the two parties are able to translate their votes into representation with equal ease.” *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 885 (M.D.N.C. 2018), *vacated on other grounds*, 588 U.S. 684 (2019). By the time Proposition 4 was enacted in 2018, the U.S. Supreme Court and other courts had recognized multiple metrics qualify as measures of partisan symmetry, including the efficiency gap, which is effectively barred from consideration under S.B. 1011. Indeed, in June 2018, the U.S. Supreme Court issued its decision in *Gill v. Whitford*, 585 U.S. 48 (2018), a case about whether Wisconsin’s state legislative districts were unlawful partisan gerrymanders. While the Court’s holding addressed standing, the decision specifically spoke about “partisan symmetry,” and its conception was not nearly as blinkered as that proffered by S.B. 1011. The *Whitford* Court spoke of “the efficiency gap and similar *measures* of partisan asymmetry[,]” and to “[p]artisan-asymmetry metrics such as the efficiency gap.” *Id.* at 71-72 (emphasis added); *id.* at 72 (referring again to the “efficiency gap” and “other measures of partisan symmetry”); *see also Rucho*, 318 F. Supp. 3d at 885 (recognizing “three standard measures of partisan symmetry: the ‘efficiency gap,’ ‘partisan bias,’ and ‘the mean-median difference’”); *Ga. State Conf. of NAACP v. State*, 269 F. Supp. 3d 1266, 1284 (N.D. Ga. 2017) (“partisan symmetry, measured by the efficiency gap, is one way to make a political gerrymandering claim”). Political scientists also recognize multiple metrics as measuring aspects of partisan symmetry.²⁴² And indeed, Legislative Defendants have themselves conceded that the mean-median difference is a measure of partisan symmetry (although not defined as such in S.B.

²⁴² PX-1A at 4-6 (10.7 Warshaw Report); 10.23 Tr. at 167:10-21, 186:1-6 (Warshaw).

1011). *See* Leg. Defs. Opp. to Pls. Mot. for Preliminary Injunction on Pls. Third Supp. Complaint (“PI Opp”) at 13, 18.

At the time Utah voters adopted Proposition 4 in 2018, the state of legal affairs was such: the U.S. Supreme Court had recognized that there were multiple measures of partisan symmetry, including the efficiency gap, that the partisan bias test had a major drawback in that it relied upon measuring partisan bias in a hypothetical state of affairs, and that these measures “alone” should not dictate whether a map is lawful or not. Accordingly, the text of Proposition 4 makes *measures* (plural) of partisan symmetry relevant to the assessment but provides that such metrics are non-exclusive and instead part of a broad range of methods, data, and information to be considered. Indeed, even in this case, Dr. Katz, Dr. Barber, Dr. Warshaw and Dr. Chen stated that they take an expansive approach, looking at all available metrics and data, and consider the usefulness of the information for that particular situation.

Evaluating partisan favoritism based on a single metric and a bright-line quantitative measures is not the approach advocated by these experts in their field. Not only does the evidence and the experts question the application of the partisan bias test as applied to Utah, the U.S. Supreme Court has also questioned the reliability of the partisan-bias test in certain circumstances. In *Gill v. Whitford*, 585 U.S. 48, 64 (2018), the Court noted a major problem with using the partisan bias test to measure partisan symmetry. Discussing Justice Kennedy’s opinion in *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006) (“*LULAC*”), the Court recognized that “Justice Kennedy noted some wariness at the prospect of ‘adopting a constitutional standard that invalidates a map based on unfair results that would occur in a hypothetical state of affairs.’” *Whitford*, 585 U.S. at 64 (quoting *LULAC*, 548 U.S. at 419 (Kennedy, J.)). In *LULAC*, this concern about the hypothetical-world nature of the partisan bias test led him to conclude that it “alone is not a reliable measure of unconstitutional partisanship.” *LULAC*, 548 U.S. at 420.

S.B. 1011’s rewrite of Proposition 4 cannot be justified by a contention that its partisan bias test is the exclusive metric that Utah voters intended in adopting Proposition 4. Such a view comports neither with the plain text of Proposition 4 nor the contemporary legal understanding at the time the law was adopted.²⁴³ In any event, mandating use of the partisan bias test *to the exclusion* of other measures is not narrowly tailored to ensure consideration of the Legislature’s preferred measure of partisan symmetry.

Finally, Legislative Defendants note that Proposition 4 does not prohibit the consideration of certain tests such as partisan bias or mean-median difference. (Leg. Defs.’ Opp’n at 14.) But Legislative Defendants confuse the lack of such a prohibition as invitation to

²⁴³ The Court is likewise unpersuaded by the legal interpretation proffered by Defendants’ expert Dr. Trende. Dr. Trende professed to dislike the partisan bias standard but claimed that the text of Proposition 4 mandated partisan bias alone as a metric of partisan symmetry because in 2020—two years *after* Proposition 4 was adopted—three political science professors (including the author of the partisan bias test) disputed the claim that any other metric could possibly measure partisan symmetry and asserted that their measure alone was the true metric. The Court need not wade into this academic dispute because it suffices that voters in 2018 could not possibly have based their understanding of Proposition 4’s text on a 2020 political science journal article. Nor does that article define the scope of the plain meaning of partisan symmetry from a legal perspective but rather engages in a technical dispute of academic concepts. That differs greatly from how courts interpret statutes. *See, e.g., Croft v. Morgan County*, 2021 UT 46, ¶ 21, 496 P.3d 83 (interpreting statute to give it its “common, ordinary usage and understanding of language” (internal quotation marks omitted)).

require *only* the use of such tests, even where doing so would undermine the core reforms of Proposition 4 and appears to be contrary to the evidence provided by even its own experts. The Court finds that while Proposition 4 does not prohibit the use of any particular test outright, Proposition 4 mandates that any tests be given the weight they are due in context.

The Court concludes that the Legislative Defendants have failed to meet their burden to show that they have a compelling government interest in amending Proposition 4. They also offer no persuasive argument and no credible evidence that S.B. 1011 – which undermines Proposition 4 and now ensures a partisan advantage for the majority party – is narrowly tailored to advance those interests. Without this showing, S.B. 1011 fails strict scrutiny under the standard established in *LWWUT*, 2024 UT 21, ¶¶ 74-75.

B. The remaining factors favor granting Plaintiffs’ requested injunction on S.B. 1011.

Plaintiffs must also satisfy the remaining preliminary injunction factors. Plaintiffs must show 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(f)(2)-(4); *see also* Utah Code § 20A-19-301(2)(b) (allowing preliminary relief if it is in the public interest). The Court addresses each in turn.

1. Plaintiffs will suffer irreparable harm in the absence of an injunction.

Irreparable harm is harm that “cannot be adequately compensated in damages or for which damages cannot be compensable in money.” *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 40, ¶ 148, 559 P.3d 11, 42 (quoting *Hunsaker v. Kersh*, 1999 UT 06, ¶ 9, 991 P.2d 67). “Any deprivation of any constitutional right fits that bill.” *Free the Nipple-Fort Collins v. City of Fort Collins*, Colorado, 916 F.3d 792, 806 (10th Cir. 2019) (*citing* *Awad v. Ziriya*, 670 F.3d 1111, 1131 (10th Cir. 2012) (“Furthermore, when an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”) Without a preliminary injunction, any congressional map chosen during this remedial process will be required to satisfy S.B. 1011, which as this Court has determined is likely another violation of the people’s constitutional right to alter and reform their government. Because the Court concludes that there is a substantial likelihood that Plaintiffs will succeed on their claim that S.B. 1011 violates the people’s fundamental constitutional right to alter or reform their government, there is no other remedy, except an injunction, available to rectify this violation before November 10, 2025, the deadline for submission of the congressional map for the 2026 election.

2. The threatened injury to Plaintiffs and the people of Utah outweighs whatever damage the proposed injunction may cause the Legislative Defendants.

Under the circumstances in this case, the balance of the equities weigh in favor of Plaintiffs. The citizens of Utah voted and successfully passed Proposition 4 in 2018. The Legislature repealed Proposition 4 and enacted S.B. 200, which nullified the core reform to prohibit partisan gerrymandering. After several years of litigation and after participating in two elections in 2022 and 2024 under a congressional map that complied with S.B. 200, Proposition 4 is now the law again in Utah as of August 25, 2025. On October 6, 2025, the Legislature

enacted H.B. 1011, which again impairs the core anti-partisan gerrymandering reforms of Proposition 4. Without the requested relief, Plaintiffs and the people of Utah will again go through another election cycle with a congressional map that does not comply with the core reforms of Proposition 4 and continues to disregard the will of the people to prohibit partisan favoritism and partisan gerrymandering.

On the other hand, the Legislative Defendants desire to enforce their legislation. However, there is no cognizable harm from being enjoined from enforcing what is likely an unconstitutional statute that violates the people's fundamental constitution right. *See United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) (there can be "no harm from [a] state's nonenforcement of invalid legislation"). In addition, even with Proposition 4 in place and S.B. 1011 enjoined, the Legislature can still advocate that the partisan bias test, the mean-median test, or any other statistical test is the "best" available data and scientific and statistical methods to assess compliance with Proposition 4's redistricting criteria and undue partisan favoritism.

The Legislative Defendants assert that the effect of issuing a preliminary injunction on S.B. 2011 is equivalent to a permanent injunction. The Court disagrees. This preliminary injunction will preclude S.B. 2011 from being enforced now and will not be relevant to the Court's decision in selecting a map – Map C, Map 1 or Map 2 – by the November 10, 2025. However, this case will proceed through litigation (with Proposition 4 as the current Utah law), just like the dispute over Proposition 4 did (while S.B. 200 was the binding law). The Court disagrees that this preliminary injunction permanently decides the issue. Accordingly, the Court concludes that the balance of harms in this case tips in favor of Plaintiffs.

3. Issuing the preliminary injunction would not be adverse to the public interest.

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 Ass'n of Utah v. State*, 2024 UT 28, ¶ 224, 554 P.3d 998 (citing *Hunsaker v. Kersh*, 1999 UT 106, ¶ 8, 991 P.2d 67). Injunctions are also necessary to restore the parties to the "last uncontested status between the parties which preceded the controversy." *Planned Parenthood Ass'n of Utah v. State*, 2024 UT 28, ¶ 226. In the Court's August 25, 2025 Ruling and its September 6, 2025 Amended Ruling and Scheduling Order, the Court stated that Proposition 4 is the law in Utah and established a remedial process to ensure the adoption of a congressional map that complied with Proposition 4 in time for use in the 2026 midterm election. This new controversy arose on October 6, 2025, when the Legislature enacted S.B. 1011 and amended Proposition 4 to mandate that any congressional map pass the partisan bias test and the mean-median difference test in order to not "unduly favor or disfavor" any party. The evidence overwhelmingly – and arguably clear and convincingly – supports that these tests are well known for providing paradoxical outcomes in states like Utah and, when applied here, ensure a partisan advantage to the majority party. The public has an interest in proceeding with a congressional map in the 2026 election that complies with Proposition 4, not one that undermines the core reforms.

Plaintiffs have met their burden and have successfully established that they are entitled to a preliminary injunction under Rule 65A(f). The enforcement of S.B. 1011 is hereby enjoined.

II. Map C does not comply with Proposition 4.

The Legislature enacted Map C as the remedial congressional plan on October 6, 2025. Plaintiffs challenge Map C asserting that it does not comply with Proposition 4. They make several arguments, including that Map C should be disqualified, effectively *ipso facto*, because it was drawn on Dave’s Redistricting App (DRA) while partisan political data was displayed. They assert that Map C violates Proposition 4’s anti-gerrymandering provisions because it both unduly and purposefully favors Republicans. And they assert it fails to comply with Proposition 4’s neutral redistricting criteria “to the greatest extent practicable.” This Court need not decide if any one of these challenges, alone, is sufficient. Collectively, the preponderance of the evidence supports that Map C does not comply with Proposition 4. Even if this Court required a higher standard of proof, like clear and convincing, that standard is met.

A. Map C was drawn with consideration of partisan political data.

On repeated occasions since 2021, Sen. Sandall (the Legislative Redistricting Committee (LRC) co-chair) has objected to the commission having accepted a map drawn in DRA with political data shown on the screen—including recently in a September 2025 podcast released just days before the first LRC hearing on the proposed remedial maps. Yet the Legislature’s map drawer, Dr. Trende, admitted on cross-examination that he used DRA, the very same map drawing program to design Map C, and he admitted the political data was not hidden from view and in fact was displayed while he drew Map C. Indeed, the partisan political score was on display for each individual precinct as it was selected for inclusion or exclusion from a district. The Court notes that it does not appear that Dr. Trende intentionally drew the map on DRA to have access to the partisan political data. In fact, he appeared surprised to know that the LRC co-chair had disqualified other congressional plans drawn on this same platform. However, intentional or not, that data was on display and readily available while Map C was drawn.

Proposition 4 requires that “[p]artisan political data and information . . . may not be considered by the Legislature” in drawing maps. Utah Code § 20A-19-103(6). In 2021, Sen. Sandall, co-chair of the LRC, pointedly criticized the commission because one of its proposed maps, the SH-2 map, was submitted by a member of the public who drew the map using the platform DRA, which has a default setting that displays partisan political information regarding the districts as they are being drawn—including precinct-by-precinct partisan information as they are being selected for inclusion or exclusion from a district. Below is what Sen. Sandall said to Commissioner Rex Facer in 2021.²⁴⁴

Sen. Sandall: So uh, a couple of follow up questions. That [the Green Map] then was replaced by the SH congressional map 2?

Comm’r Facer: That’s correct.

Sen. Sandall: Will you confirm to me that was submitted by a Stuart Hepworth?

Comm’r Facer: That is correct.

Sen. Sandall: Were you also aware that he admitted to our committee that he drew off of Dave’s Redistricting tool exclusively and

²⁴⁴ PX-16 (Sandall, 11.1.21 LRC Hearing).

imported his data into our systems and thus you have accepted a map that has political data involved exclusively in it?

Sen. Sandall continued his objections to maps drawn using DRA in the lead up to the adoption of Map C in 2025. In a House Republicans podcast released on September 18, 2025, just days before the first public hearing on September 22, Sen. Sandall said the following about the commission's map proposals in 2021:²⁴⁵

The independent redistricting commission came back with three maps. Of those three maps, I've got to back up for a second because I think this is important. One of those maps was actually a substitute of a map they were working on and it was from a constituent who actually drew the map on a tool called Dave's Redistricting tool, and it has political data in it. So when we observed that as a committee – first of all as a chair, I was really hesitant at the work they had done. But at the end of the day, we did not adopt any of those three maps.

Despite considering the public's and the Commission's use of DRA to draw maps disqualifying, the Legislature's Map C was drawn by its expert consultant, Dr. Trende, using DRA. Dr. Trende testified that he hand drew Map C using DRA. He proceeded by navigating to DRA's homepage and from there to the Utah page, where he created a copy of the official version of Utah's 2021 congressional map to commence his drawing. He used the now enjoined 2021 map—including its four-way division of Salt Lake County—as the starting point for his map drawing. He did not select the option to hide political data from the screen, and instead he left the partisan political composite score (for elections from 2012-2020) displayed on the screen during his map drawing process. This included partisan data on the left panel of the screen about the district under consideration as well as partisan data about each precinct being considered for inclusion or exclusion from a district on the right panel of the screen.²⁴⁶

Dr. Trende only revealed this information on cross-examination. On direct examination he claimed not to have considered political data while drawing the map. When confronted about his map drawing process on cross examination, he testified that “even if I had looked at [the political data displayed on the DRA screen], it wouldn't have told me anything” because it included in the composite 2012 elections.²⁴⁷ Moreover, Dr. Trende testified that neither any member of the Legislature nor their counsel advised him that he should not use DRA to draw the map and that he should not display political data while drawing the map.²⁴⁸

The Court is unpersuaded by Dr. Trende's contention that “even if” he looked at the political data it would not have been useful to him and does not credit it. Dr. Trende had a partisan political composite with election data from, *inter alia*, the 2016, 2018, and 2020 elections—including data for each voting precinct—displayed prominently on the computer screen during the entirety of the map drawing process. He could have chosen to hide that data but did not. No one from the Legislature—despite repeatedly and pointedly disqualifying public and commission maps that were drawn on DRA with political data visible—advised him not to use DRA and not to display political data while drawing the map. It is difficult to merely discount

²⁴⁵ PX-17 (Sandall, 9.18.25 Podcast).

²⁴⁶ 10.24 Tr. at 181:2-183:19, 259:2-11 (Trende).

²⁴⁷ 10.24 Tr. at 259:2-11 (Trende).

²⁴⁸ 10.24 Tr. at 257:1-259:11 (Trende).

that partisan political data was prominently displayed on the screen using the very program that Sen. Sandall had considered disqualifying when used by others. The Court finds that the Legislature violated Proposition 4’s prohibition on considering political data in drawing Map C. Given that maps drawn on the same platform had previously been disqualified, there is evidentiary support – based on the Legislatures’ course of conduct – to disqualify Map C from consideration here.

But, given the consequential nature of any decision related to Map C, the Court will address and analyze Plaintiffs’ other challenges.

B. Map C violates Proposition 4’s partisan gerrymandering prohibition.

Proposition 4 provides that “[t]he Legislature . . . may not divide districts in a manner that purposefully or unduly favors or disfavors any incumbent elected official, candidate or prospective candidate for elective office, or any political party.” Utah Code § 20A-19-103(4). Proposition 4 thus prohibits partisan favoritism in both *purpose* and *effect*. In accordance with Proposition 4, the Court “shall review or evaluate the redistricting plan at issue de novo” in ascertaining its compliance with Proposition 4’s requirements. *Id.* § 20A-19- 301(4). In doing so, the Court “shall use judicial standards and the best available data and scientific and statistical methods, including measures of partisan symmetry.” *Id.* § 20A-19-103(5). The Court considers whether Map C both unduly favors and/or purposefully favors a party.

1. Map C unduly favors the Republican Party and disfavors the Democratic Party.

The question before the Court is whether Map C “unduly favors” a political party. Generally speaking, courts have recognized that “a redistricting plan adhering to traditional criteria such as compactness, contiguity, and respect for political subdivisions provides the best assurance of fairness and the least opportunity for political manipulation.” *In re Legislative Districting of the State of Maryland*, 370 Md. 312 (2002). “Applying neutral redistricting criteria tends to produce maps that mirror the natural political geography of a state. Because those criteria constrain manipulation, they reduce the chance that districts will be intentionally ‘cracked’ or ‘packed’ to favor a party or incumbent. However, due to geographic clustering of partisan voters, even neutral maps can yield asymmetric results—reflecting natural, not engineered, advantage.” *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015). Indeed, the U.S. Supreme Court has recognized “the ‘natural political geography’ of a State—such as the fact that urban electoral districts are often dominated by one political party—can itself lead to inherently packed districts.” *Rucho v. Common Cause*, 588 U.S. 684, 707, 139 S. Ct. 2484, 2500, 204 L. Ed. 2d 931 (2019). Thus, courts recognize that it is entirely possible for a neutral redistricting plan to naturally create districts that seem to favor one party over another but, in actuality, the plan is just reflecting the political geography of the state and not an amplification of partisan advantage. Based on the evidence that has been presented in this case, as presented by Dr. Chen, it appears that adherence to Proposition 4’s neutral redistricting criteria will likely result in redistricting plans that largely respect Utah’s natural political geography.

Courts in Utah have not considered what “undue favoritism” means in the context of redistricting. Other states similarly prohibit maps that have the effect of unduly favoring or disfavoring parties without a showing of intent. *See* Ohio Const. art. XIX, § 1(C)(3)(a); Haw. Const. art. IV, § 6; Del. Code Ann. tit. 29, § 804; Va. Code § 24.2-304.04(8). And other courts

have in practice applied “judicial standards and the best available data and scientific and statistical methods, including measures of partisan symmetry” to assess redistricting plans. Utah Code § 20A-19-103(5).

In construing the Ohio Constitution’s prohibition on maps that unduly favor a political party, the Ohio Supreme Court looked to dictionary definitions of “unduly” for guidance, concluding that it meant “[e]xcessive or unwarranted.” *Adams v. DeWine*, 195 N.E.3d 74, 84 (Ohio 2022) (quoting *Black’s Law Dictionary* 1838 (11th ed. 2019); see also *Webster’s Third New Int’l Dictionary* 2492 (2002) (defining “unduly” as “in an undue manner, esp: EXCESSIVELY” and defining “undue” as “exceeding or violating propriety or fitness: EXCESSIVE, IMMODERATE, UNWARRANTED”). The Ohio Supreme Court then observed that “[t]his, of course, raises questions: In excess of what? Or, unwarranted by what?” *Adams*, 195 N.E. 3d at 84. The answer, the court held, was found in the Ohio Constitution’s neutral redistricting criteria. Ohio requires, *inter alia*, that congressional maps comply with federal law, consist of contiguous territory, avoid splitting municipalities and counties, and be compact. *Id.* at 85 (citing Ohio Const. art. XIX, § 2). Applying the principle that provisions addressing like subjects “be read *in pari materia* and harmonized if possible,” the court concluded that its Constitution “prohibits the General Assembly from passing . . . a plan that favors or disfavors a political party . . . to a degree that is in excess of, or unwarranted by, the application of [the neutral redistricting criteria] to Ohio’s natural political geography.” *Id.* “In other words, [the provision] does not prohibit a plan from favoring or disfavors a political party . . . to the degree that inherently results from the application of neutral criteria, but it does bar plans that embody partisan favoritism or disfavoritism in excess of that degree—i.e., favoritism not warranted by legitimate, neutral criteria.” *Id.*

The *Adams* court determined that a congressional map unduly favored Republicans to a degree in excess of what the neutral criteria would require. The court considered expert testimony and evidence about various scientific and statistical methods applicable to Ohio. *Id.* at 85-92. In arriving at its ultimate conclusion, the court relied on the testimony and analysis of the petitioners’ experts, including Dr. Chris Warshaw and Dr. Jowei Chen. *Id.* at 86-87. The court noted that Dr. Warshaw opined “that Republicans [were] likely to win 80 percent of the congressional seats (12 out of 15) under the enacted plan, even though Republicans have received about 53 percent of the vote in recent statewide elections.” *Id.* at 86. Dr. Warshaw offered expert testimony about measures of partisan symmetry, including the efficiency gap, and the court credited his finding that the challenged Ohio map was “more extremely biased than 70 percent of previous plans and ‘more pro-Republican’ than 85 percent of previous plans.” *Id.* at 92. Likewise, the court relied upon the analysis and testimony of Dr. Chen, who generated 1,000 maps using the Ohio Constitution’s neutral redistricting criteria and found that “only 1.3 percent of the simulated plans created 12 Republican-favoring districts. Dr. Chen concluded that the enacted plan is a ‘statistical outlier’ and that the plan’s ‘extreme’ partisan bias cannot be attributable to Ohio’s political geography, which he accounted for in his simulations.” *Id.* at 87.

Applying a similar approach to determine if a redistricting map has the “effect” of unduly favoring a political party, this Court first considers the “best available” data and methods, including applicable “measures of partisan symmetry,” the Court assesses whether a map has the effect of favoring or disfavors any political party. Utah Code § 20A-19-103(5). Second, if the evidence shows that the map favors or disfavors any political party, the Court assesses whether it does so unduly, *i.e.*, “to a degree that is in excess of, or unwarranted by, the application of

[Proposition 4’s neutral redistricting criteria] to [Utah’s] natural political geography.” *See Adams*, 195 N.E.3d at 85; Utah Code § 20A-19-103(3) (neutral criteria).

Applying this analysis to the evidence presented, the Court finds that Map C unduly favors Republicans and disfavors Democrats in violation of Proposition 4 for several reasons.

First, the “best available data and scientific and statistical methods, including measures of partisan symmetry,” demonstrate that Map C favors Republicans and disfavors Democrats to an extreme degree. Utah Code § 20A-19-103(5). To begin, the *Adams* court “examine[d] how the two major political parties are expected to perform under the enacted plan,” based on “voting history in prior elections,” to assess whether the plan creates a significant disparity between a party’s statewide vote share and expected seat share. *Adams*, 195 N.E.3d at 85. Here, as Dr. Chen’s analysis shows, although Democratic voters comprise about 34.2% of voters in recent statewide elections, they can expect to win *none* of the state’s four congressional seats while Republicans win 100% of the seats under Map C.²⁴⁹ Dr. Barber’s analysis confirms this fact: Democrats would not carry a single district in Map C under any of the thirteen recent statewide elections he analyzed.²⁵⁰ This level of disproportionality raises a serious question that the plan may be biased in favor of Republicans.²⁵¹ *See Adams*, 195 N.E.3d at 86 (striking down map granting Republicans 80% of congressional seats despite comprising 53% of statewide vote share).

The best available methods and measures of symmetry applicable in this case confirm that Map C exhibits an extreme level of pro-Republican favoritism. Map C’s pro-Republican skew is apparent from an ensemble analysis, which involves comparing the map’s partisan characteristics to a set of many thousands of computer-generated maps programmed to consider only Proposition 4’s neutral criteria and no partisan data. *See supra*, Findings, Section IV. Courts rely upon ensemble analyses to assess undue partisan favoritism in redistricting plans. *See Adams*. 195 N.E.3d at 87, 92; *Rucho*, 588 U.S. at 737 (Kagan, J., dissenting) (describing this “extreme outlier approach” as an established way to demonstrate a map’s partisan effects).²⁵² Here, Dr. Chen credibly compared Map C with 10,000 computer-simulated maps and observed that over 99.94% of simulations create one Democratic-leaning district including northern Salt Lake County and three Republican-majority districts—reflective of Utah’s political geography and makeup. By contrast, Map C cracks Salt Lake County’s Democratic voters in half, creating four safe Republican districts, a result almost never observed among neutral simulations programmed to follow Proposition 4’s neutral criteria. *See supra*, Findings, Section VIII. Map C is thus “an extreme partisan outlier in favor of Republicans.”²⁵³

Map C’s pro-Republican bias is also apparent from comparison with simulation maps along two additional measures—the least Republican vote share (LRVS) and standard deviation of Republican vote shares (SDVS)—which are among the best methods to assess partisan bias in Utah given its political geography. Both methods show statistically how Map C cracks Salt Lake County Democratic voters into heavily Republican districts to prevent them from electing a congressional representative.

²⁴⁹ PX-3 at 17 (Chen Report).

²⁵⁰ DX-14 at 33 (10.17 Barber Report).

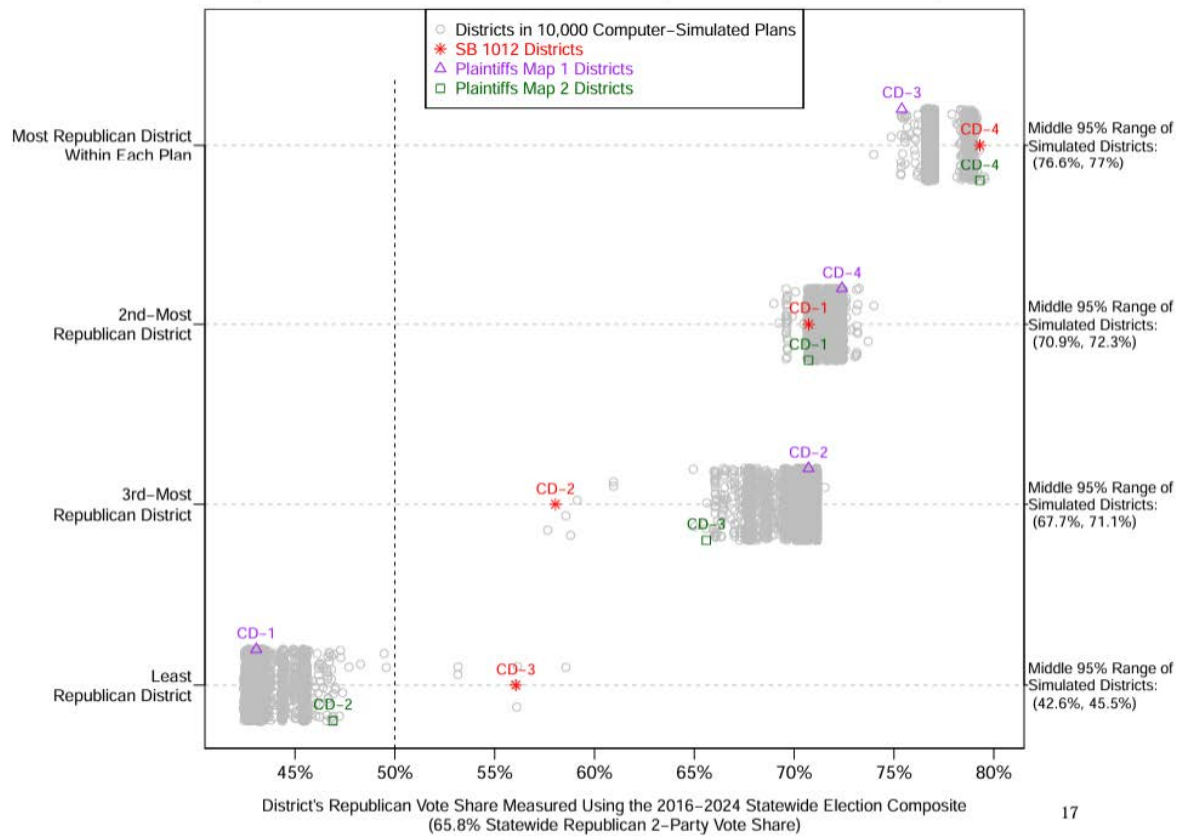
²⁵¹ 10.23 Tr. at 200:25-201:7 (Warshaw).

²⁵² PX-3 at 7 n.3 (Chen Report) (citing cases).

²⁵³ PX-3 at 3 (Chen Report).

The LRVS method compares the two-party vote share in the least Republican districts in the enacted map with that of ensemble maps. Dr. Chen found that in the middle 95% of neutral Proposition 4 simulations, the expected Republican vote share in the least Republican district ranges from 42.6-45.5%—meaning it is a district Democrats should expect to carry. But the LRVS in Map C (CD-3) is 56.1%, a comfortable Republican majority and an outlier greater than 99.97% of neutral simulations.²⁵⁴ This inflated Republican vote share in CD-3 is achieved by pulling Republican voters out of the other safely Republican districts, resulting in an unnaturally low (but still safe) Republican vote share in the third-most Republican district (CD-2) compared to the ensemble.²⁵⁵

Figure 3.1:
District-Level Comparisons of SB 1012 and Plaintiffs' Maps 1 and 2 to 10,000 Computer-Simulated Plans



The standard deviation of Republican vote shares across Map C’s districts is also anomalously low and, as Dr. Chen found, much smaller than any deviation produced by neutral computer simulations. This deviation quantifies how unusually and severely Democratic voters in the Salt Lake area are cracked and dispersed among safe Republican-majorities across all districts. Map C’s SDVS is an outlier compared to the simulated maps, indicating that Democrats naturally concentrated in northern Salt Lake County are efficiently cracked under the map.²⁵⁶

Although it is not required to be considered, S.B. 1011’s ranked marginal deviation (RMD) metric provides further persuasive evidence of Map C’s pro-Republican bias. The RMD

²⁵⁴ PX-3 at 19 (Chen Report); 10.23 Tr. at 23:5-15 (Chen).

²⁵⁵ PX-3 at 19-20 (Chen Report); 10.23 Tr. at 23:25-24:21 (Chen).

²⁵⁶ PX-3 at 26 (Chen Report); 10.23 Tr. at 25:25-28:3 (Chen).

metric essentially shows how similar a map's district-level vote shares are to the average ensemble map.²⁵⁷ S.B. 1011 considers an RMD greater than 95% of an ensemble to be a statistical outlier. Map C exceeds the RMD of 99.99% of Dr. Chen's simulated maps, confirming it is an extreme partisan outlier. Map C even registers an RMD above 95% of Dr. Trende's simulated maps, after limiting his simulated maps to those that comply with Proposition 4's requirements to minimize county divisions and create geographically compact districts. *See supra*, Findings, Section VIII.

Finally, Map C's pro-Republican bias is reflected in its efficiency gap, which measures the asymmetry between each party's respective inefficient votes due to cracked or packed districts.²⁵⁸ A positive efficiency gap suggests Republican votes are made more inefficient. A negative score indicates Democratic votes are made more inefficient. And zero means perfect symmetry between each party's inefficient votes.²⁵⁹ Based on recent election results, Map C has a 11.7% pro-Republican efficiency gap, a bias greater than "80% of all prior congressional plans in all U.S. states with at least 4 districts over the last 50 years" and "more pro-Republican than 88% of all previous districting plans."²⁶⁰ Courts have invalidated maps with less bias relative to past plans. *See Adams*, 195 N.E.3d at 92 (invalidating map more biased than 70% and more pro-Republican than 85% of past plans).²⁶¹

In sum, the record overwhelmingly supports the Court's conclusion that Map C exhibits substantial pro-Republican bias.

Second, having concluded that Map C has pro-Republican bias, the next question under the *Adams* inquiry is whether it does so unduly, or "to a degree that is in excess of, or unwarranted by, the application of" Proposition 4's neutral redistricting criteria to the state's natural political geography. 195 N.E.3d at 84-85. Dr. Chen's "extreme outlier" analysis confirms that that it is. *Rucho*, 588 U.S. at 737. Dr. Chen's algorithm followed Proposition 4's neutral criteria exactly, using Utah's political geography represented in its census population data, political boundaries, and natural features. And, most critically, it ignored partisan data. As Dr. Chen credibly opines, because Map C's "degree" of Republican advantage is "in excess of" nearly all of the 10,000 neutral simulations drawn to follow Proposition 4's criteria (99.94%), its bias cannot be explained by geography or application of those criteria.²⁶² *Adams*, 195 N.E.3d at 86. The contrast with Plaintiffs' Map 2 underscores the point. Map 2 retains 84.76% of Map C's population in the same district but improves compliance with Proposition 4's neutral criteria, namely minimization of municipal and county divisions.²⁶³ This improvement substantially reduces Map C's pro-Republican partisan bias, bringing it closer to that of the neutral ensemble.

²⁵⁷ PX-3 at 27-29 (Chen Report); 10.23 Tr. at 28:10-30:15 (Chen).

²⁵⁸ PX-1A at 7-9 (10.7 Warshaw Report).

²⁵⁹ PX-1C at 11 n.15 (10.16 Warshaw Report).

²⁶⁰ PX-1C at 11 (10.16 Warshaw Report).

²⁶¹ The Court notes that Map C passes the partisan bias test and mean-median tests under S.B. 1011. The Court gives these results low weight commensurate to their unreliability in a lopsided state like Utah. *See supra*, Findings, Section VIII. The Court further notes that measures of partisan symmetry are just one non-exclusive scientific method among others contemplated by Proposition 4. *See Utah Code* § 20A-19-103(5).

²⁶² PX-3 at 90-103 (Chen Report); 10.23 Tr. at 88:23-89:6 (Chen) ("[W]hen you apply Utah's natural political geography, combined with strict adherence to the Proposition 4 redistricting criteria, [you] end up with, as I found in over 99 percent of my simulated plans, a three-one plan").

²⁶³ PX-2 at 10-11 (Oskooii Report).

Thus, Map C's pro-Republican bias cannot plausibly be attributed to the neutral criteria or Utah's political geography and is therefore undue.

The Court finds that Map C unduly favors the Republican Party and disfavors the Democratic Party, meaning it has the unlawful *effect* of favoring or disfavors a political party in violation of Utah Code § 20A-19-103(4) of Proposition 4.

2. Map C purposefully favors the Republican Party and disfavors the Democratic Party.

In addition to prohibiting redistricting maps that have the *effect* of unduly favoring or disfavors political parties, Proposition 4 also prohibits maps that *purposefully* favor or disfavors political parties.

To determine whether a map purposefully favors or disfavors a party, the “focus of the analysis must be on both direct and circumstantial evidence of intent.” *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 375-76 (Fla. 2015), *abrogated by Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec'y, Fla. Dep't of State*, 415 So. 3d 180 (Fla. 2025); *see also Harkenrider v. Hochul*, 197 N.E.3d 437, 452 (N.Y. 2022) (unlawful partisan intent “could be demonstrated directly or circumstantially through proof of a partisan process excluding participation by the minority party and evidence of discriminatory results”). “One piece of evidence in isolation may not indicate intent, but a review of all of the evidence together may lead this Court to the conclusion that the plan was drawn for a prohibited purpose.” *Detzner*, 172 So. 3d 363, 376 (Fla. 2015). In construing a similar prohibition on maps that purposefully favor or disfavors political parties, the *Detzner* court recognized “there is no acceptable level of improper intent.” *Id.* at 375. A finding of an unlawful partisan purpose “does not necessarily mean that those who made the decisions acted with malevolent or evil purpose, which is not required” to find a violation. *Id.* at 378 (cleaned up). Finding improper intent merely requires a showing that there was an intention to benefit one political party. Unlike other contexts, where legislative intent is assessed by reviewing statutory text and context, questions of unlawful intent to benefit a particular political party may be based primarily on “the actions and statements of legislators and staff, especially those directly involved in the map drawing process” may also be considered. *Id.* at 388 (cleaned up). In addition, unlawful partisan intent “could be demonstrated directly or circumstantially through proof of a partisan process excluding participation by the minority party and evidence of discriminatory results (*i.e.*, lines that impactfully and unduly favor or disfavors a political party . . .).” *Harkenrider*, 197 N.E.3d at 452.

In redistricting cases, comparing a challenged map to computer-simulated redistricting maps provides probative evidence of unlawful partisan intent. *See, e.g., League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, 192 N.E.3d 379, 412 (Ohio 2022) (“The fact that the adopted plan is an outlier among 5,000 simulated plans is strong evidence that the plan’s result was by design.”); *City of Greensboro v. Guilford Cnty. Bd. of Elections*, 251 F. Supp. 3d 935, 943 (M.D.N.C. 2017) (“[C]redible evidence based on computer simulations by Dr. Jowei Chen establishes that it is highly unlikely for a Greensboro redistricting process to result in four Republican-leaning districts absent an intentional effort to draw lines giving Republicans an advantage.”); *Allen v. Milligan*, 599 U.S. 1, 44 (2023) (Kavanaugh, J., concurring) (“[C]omputer simulations might help detect the presence or absence of *intentional* discrimination.” (emphasis in original)).

Here, Map C exhibits unlawful partisan purpose for at least several reasons.

First, as Dr. Chen’s analysis shows, the map is an extreme outlier compared to 10,000 computer-simulated maps drawn using Proposition 4’s neutral criteria. Of those 10,000 maps, over 99.94% resulted in three Republican districts and one Democratic district. Stated another way, the odds that the partisan skew in Map C was created using only neutral criteria are less than 1 in 1,000, which is extremely unlikely. Furthermore, as Dr. Chen reports, Map C has an unusually low standard deviation among the districts—meaning they are all more evenly Republican and Democratic than would be expected from a map drawn solely to follow neutral criteria, particularly in light of the state’s natural political geography where only two or three of Utah’s twenty-nine counties lean democratic. This unnatural result indicates excessive cracking of Democratic voters concentrated in Salt Lake County and is unlikely to occur unintentionally. As Dr. Chen opines, given the computer-simulated mapping results, Map C’s partisan skew in favor of Republicans is not the product of adherence to Proposition 4’s neutral redistricting criteria or Utah’s political geography. *See supra*, Findings, Section VIII.

Second, Map C even fails S.B. 1011’s RMD test. While the Court need not consider the RMD test because S.B. 1011 is likely unconstitutional, the fact that Map C fails the RMD test is additional probative evidence that Map C was drawn with the improper intent of benefitting the Republican Party. Under S.B. 1011, the RMD (ranked marginal deviation) is a measure of how similar a map’s district vote shares are to the average ensemble map’s district vote shares. A proposed map fails the RMD test if it exceeds 95% of an ensemble consisting of at least 4,000 maps drawn to comply with the state’s “legal and geometric criteria.” Utah Code § 20A-19-103(1)(a), (f). The RMD test “indicates whether a proposed redistricting plan shows a partisan intent.” *Id.* § 20A-19-103(1)(a)(ii). As the Court notes above, Map C decisively fails the RMD test, registering an RMD greater than 99.99% of Dr. Chen’s ensembles. Map C is an extreme statistical outlier not only under Dr. Chen’s ensembles, but also Dr. Trende’s ensembles when subsetted for simulated maps that “plausibly comply” with Proposition 4’s neutral criteria. *See supra*, Findings, Section VIII.

Third, Map C’s far-and-away outlier status is sufficient to conclude that it was drawn to favor Republicans, *see, e.g., City of Greensboro*, 251 F. Supp. 3d at 943 (finding intent based on outlier analysis compared to computer-simulated maps), but other facts surrounding its creation, assessment, and adoption confirm its partisan intent. *Detzner*, 172 So. 3d at 388. As the Court discusses in detail above, *see supra*, Conclusions, Section II.A, Dr. Trende drew Map C starting from the 2021 map on a tool that displays partisan data, including for each precinct considered—which Dr. Trende declined to hide or turn off. Map C was also presented to the Legislature alongside at least one other map drawn by Dr. Trende that split Salt Lake County along an east-west axis, which would avoid cracking Democratic voters concentrated in the north of the County. But Map C was made public and voted on, while that other map was not. *See supra*, Findings, Section VII.A.

Fourth, the Legislature relied on Dr. Trende’s analysis of Map C for assurance that it was not drawn with partisan intent. But, as Dr. Chen credibly explains, Dr. Trende’s ensemble analysis, which he used to assess Map C’s partisan intent, was “deeply flawed” and was itself infected with partisan bias from start to finish.²⁶⁴ Every simulated plan Dr. Trende generated to assess whether Map C is a partisan outlier failed to comply with Proposition 4’s neutral redistricting criteria. This alone makes it virtually impossible that Map C’s partisan outcome

²⁶⁴ PX-3 at 4 (Chen Report).

could have resulted from following the Prop 4 criteria rather than partisan motivations. Further, these violations of neutral criteria—which Dr. Trende built into his map-drawing algorithm—caused maps in his ensemble to skew significantly pro-Republican. *See supra*, Findings, Section V. Dr. Trende’s algorithm from its inception thus “caused him to conduct his partisan analysis using simulated plans that exhibit unnatural pro-Republican bias.”²⁶⁵ Rather than correct this error, Dr. Trende compounded it by then “culling” his ensembles to remove from consideration all simulations he identified as failing the partisan bias test. The effect was to disqualify an extraordinary number of maps from his ensembles, and consistent with the understood pro-Republican effect of applying partisan bias in a state like Utah, the maps removed from Dr. Trende’s ensembles were largely those that included one Democratic-leaning district. *See supra*, Findings, Section VI.B. It was the culled set of mostly pro-Republican 4-0 maps that Dr. Trende used as his baseline to assure the Legislature that no partisan intent was involved in Map C.²⁶⁶ *See supra*, Findings, Section VII.B.

The Legislature, for its part, endorsed Dr. Trende’s biased analysis by *requiring* its use in S.B. 1011 for evaluating undue partisan favoritism to the exclusion of other more appropriate metrics. *See Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 n.25 (1979) (“Certainly, when the adverse consequences of a law upon an identifiable group are . . . inevitable . . . a strong inference that the adverse effects were desired can reasonably be drawn.”). When put in the context of the Legislature’s recent efforts to preclude non-Republican representation in the state’s congressional delegation,²⁶⁷ these facts indicate strong circumstantial evidence of partisan intent.

Finally, the other circumstantial and direct evidence surrounding the Legislature’s adoption of Map C is also evidence that Map C is intended to favor the Republican Party and disfavor the Democratic Party. As Plaintiffs note, both Map C and S.B. 1011—which changed the law in Utah to favor adoption of Map C—were passed the same day. The Republican Party publicly communicated its endorsement of Map C and party leaders encouraged legislators and constituents to vote in favor of Map C.

Dr. Trende testified that the starting point for Map C was the now enjoined 2021 redistricting map, which did not comply with the procedural or substantive requirements of Prop 4. While there were modifications made to make Map C fit some of Prop 4’s requirements, Map C nevertheless perpetuated many of the existing dividing lines and problems with the original map that appear to be designed to favor the Republican Party and disfavor the Democratic Party. Moreover, under the law as it existed at the time the Legislature adopted Map C—and for the reasons discussed in this ruling—Map C does not comply with the requirements of Proposition 4. The Legislature sought to change Proposition 4 by enacting S.B. 1011 in order to ensure that Map C could be adopted. At the very least, these additional facts are circumstantial evidence—if not direct evidence—that Map C was designed and S.B. 1011 was enacted to ensure a congressional map that favors the Republican Party and disfavors the Democratic Party.

For the foregoing reasons, the Court concludes that Map C was purposefully configured to favor the Republican party and to disfavor the Democratic Party in violation of Proposition 4. And even under S.B. 1011, Map C likewise fails the RMD test for partisan intent.

²⁶⁵ PX-3 at 41 (Chen Report).

²⁶⁶ PX-12 (Trende Map Analyses).

²⁶⁷ PX-1C at 2-7 (10.16 Warshaw Report) (recounting historical context of congressional redistricting in Utah).

C. In comparison to Map 1, Map 2 and others generated in Dr. Chen’s ensemble, Map C does not appear to comply with Proposition 4’s requirement to minimize the division of municipalities and counties across multiple districts “to the greatest extent practicable.”

Proposition 4 requires that maps in Utah “shall abide by” the redistricting standards in Proposition 4 “to the greatest extent practicable” and in the priority order delineated in the statute. Utah Code § 20A-19-103(3). Preceded only by adherence to the federal constitution (including population equality), Proposition 4’s second priority-ordered requirement is that maps must be drawn to “minimiz[e] the division of municipalities and counties across multiple districts, giving first priority to minimizing the division of municipalities and second priority to minimizing the division of counties.” *Id.* at § 20A-19-103(3)(b).

To “minimize” means to “reduce or keep to a minimum,” and “reduce” in turn means “to diminish in size, amount, extent, or number.” *Minimize, Reduce*, Merriam-Webster. Furthermore, “multiple” means “consisting of, including, or involving more than one.” *Multiple*, Merriam-Webster. Proposition 4’s plain language thus requires that maps be drawn to reduce both the extent and number of municipalities and counties divided across more than one district. In other words, the requirement necessitates minimizing both the extent that any one municipality or county is divided and the total number of municipalities and counties that are divided. *Cf. Hall v. Moreno*, 2012 CO 14, ¶ 47, 270 P.3d 961, 971 (discussing practical benefits to reducing division of communities of interest “across multiple districts”).

This requirement to minimize division of municipalities and counties, and in that order, is mandatory. It is preceded by the imperative “shall,” and its plain language prescribes first minimizing the division of municipalities, and second that of counties. *See Pugh v. Draper City*, 2005 UT 12, ¶ 13, 114 P.3d 546, 549; *see also LWVUT I*, 2024 UT 21, ¶ 87 (discussing Proposition 4’s “mandatory neutral redistricting criteria”). While Proposition 4 specifies that its requirements be met “to the greatest extent practicable,” Utah Code § 20A-19-103(3), that phrase provides flexibility in the manner in which maps may comply with the requirements but does not excuse non-compliance.

To give meaning to the phrase “to the greatest extent practicable,” the Court looks to analogous language interpreted by other courts. The Georgia Supreme Court analyzed the phrase “to the greatest extent practicable,” finding that for something to be “practicable” means that it reasonably can be done. *See City of Marietta v. Summerour*, 807 S.E.2d 324, 334 (Ga. 2017). In *City of Marietta*, a Georgia statute provided a list of policies and practices that the city must follow “to the greatest extent practicable” when exercising its eminent domain power. *Id.* The city argued that “to the greatest extent practicable” indicated that the policies were “effectively nothing more than suggestions” from which it could depart “whenever it conclude[d] that another course would be better.” *Id.* at 330. The court rejected this reading, holding that something is practicable if it is “capable of being accomplished,” “feasible in a particular situation,” or “able to be effected, accomplished, or done.” *Id.* at 334 (citing dictionaries). As the *City of Marietta* court explained, “‘to the greatest extent practicable’ is not to say that [one] must comply with it only ‘if [one] feels like complying’ or ‘if [one] thinks it a good idea.’” *Id.* at 330 (citing *Brown v. Bd. of Ed.*, 349 U.S. 294, 300 (1955)). Rather, the phrase communicates some degree of flexibility in complying with mandatory requirements. *Id.* at 331. The Georgia Supreme Court’s reading accords with other courts’ interpretations of the same and similar phrases. *See, e.g., City of Columbia v. Costle*, 710 F.2d 1009, 1013 (4th Cir. 1983) (concluding

that “to the greatest extent practicable” requires compliance “to the fullest extent . . . capable”); *see also Maryland Dep’t of Env’t v. Anacostia Riverkeeper*, 134 A.3d 892, 917-18 (Md. Ct. App. 2016) (“maximum extent practicable” required regulated party to continue until “all reasonable opportunities” were “exhausted”).

Applying these principles to redistricting in Utah, Proposition 4 requires that, to the greatest extent practicable, a map should reduce the total number of municipalities and counties that are divided and the extent that any one municipality or county is divided, first prioritizing municipalities and then counties. Map C does not appear to do this, at least in comparison with the 10,000 ensemble maps created by Dr. Chen and in reference to Plaintiffs’ Maps 1 and 2. These examples demonstrate that reducing the number of municipal and county divisions in Map C is “capable of being accomplished,” “feasible in a particular situation,” and “able to be effected, accomplished, or done.” Map C divides three municipalities into 11 pieces.²⁶⁸ In Map C, North Salt Lake is split into two pieces across two districts, Millcreek is split into six pieces across two districts, and Pleasant Grove is split into three pieces across two districts. In Plaintiffs’ Map 1, only Midvale is split, and into two pieces across two districts. In Plaintiffs’ Map 2, only Pleasant Grove is split, and into two pieces across two districts.²⁶⁹ Given that both of Plaintiffs’ maps easily divide only one municipality one time—and that Map 2 does so while maintaining a high degree of fidelity to Map C—the Court finds that Map C fails to minimize the division of municipalities to the greatest extent practicable.

Proposition 4 also requires a redistricting map to minimize county divisions. Though Map C divides the same number of counties as Maps 1 and 2 (three counties total), Map C includes an additional division of Utah County.²⁷⁰ As Dr. Chen explained, having more than three county divisions is never necessary in Utah to achieve population equality in the congressional map, and in the 10,000 equally populated and legally compliant maps in his ensemble, no map ever had more than three county splits.²⁷¹ This demonstrates that it is “practicable” to create a compliant map with only three county divisions.

Of the three maps before the Court, Map C does not comply with Proposition 4’s requirement to minimize the division of municipalities and country divisions, to the greatest extent practicable.

Based on the evidence and this Court’s analysis above, Map C does not comply with Proposition 4. It was designed with partisan political data on display. The evidence supports that Map C both unduly and purposefully favors the Republican party and disfavors Democratic party. And, in comparison to Map 1 and 2 and the ensemble of Proposition 4 compliant maps generated by Dr. Chen, Map C also does not comply with the requirement to minimize splits in both municipalities and counties to the greatest extent practicable.

D. Map C is enjoined under Proposition 4.

Proposition 4, allows the court to issue a “preliminary injunction that temporarily stays enforcement or implementation of the redistricting plan at issue if the court determines that: (a) the plaintiff is likely to show by a preponderance of the evidence that a permanent injunction

²⁶⁸ PX-2 at 16 (Oskooii Report).

²⁶⁹ PX-2 at 16 (Oskooii Report).

²⁷⁰ PX-2 at 9-10 (Oskooii Report); 10.23 Tr. at 238:2-18 (Oskooii).

²⁷¹ PX-3 at 93, Figure 6.3 (Chen Report); 10.23 Tr. at 41:10-42:12 (Chen).

under this Subsection should issue, and (b) issuing a temporary restraining order or preliminary injunction is in the public interest.” Utah Code § 20A-19-301(2).

As discussed, Plaintiffs have prevailed on the merits of their claim that Map C fails to comply with Proposition 4. They are substantially likely to prevail on their claim that S.B. 1011, which both amends and impairs Proposition 4’s core reform, violates Plaintiffs’ fundamental right to alter or reform their government under article 1, section 2 of the Utah Constitution. They are likely to succeed on the claim that Map C, which was enacted under S.B. 1011, is unconstitutional. And as the Court has previously found, the preponderance of the evidence supports that Plaintiffs will suffer irreparable harm in the absence of an injunction against Map C as it violates the people’s fundamental constitutional right to alter or reform their government and there is no other remedy, except an injunction, available to rectify this violation before November 10, 2025, the deadline for submission of the congressional map for the 2026 election. Under the circumstances, the balance of equities and the public interest favor Plaintiffs. Without enjoining Map C, Plaintiffs and the people of Utah will again go through another election cycle with a congressional map that does not comply with the core reforms of Proposition 4 and continues to disregard the will of the people to prohibit partisan favoritism and partisan gerrymandering.

Plaintiffs satisfy the requirements for a preliminary injunction, enjoining the enforcement of Map C, under Proposition 4. The Legislative Defendants are **ENJOINED** from implementing or using S.B. 1012 (Map C).

III. The Court has the unwelcome obligation to order the use of a lawful congressional map for use in the 2026 election; the Court’s obligation and authority is recognized by federal and state law and this task is supported by long-standing precedent.

As the Court previously noted, “[u]pon issuance of a permanent injunction under [Utah Code Ann. § 20A-19-301(2)], the Legislature may enact a new or alternative redistricting plan that abides by and conforms to the redistricting standards, procedures, and requirements of” Proposition 4. Utah Code § 20A-19-301(8). The Legislature enacted Map C; however, as this Court found, Map C does not comply with Proposition 4 and this Court has found that the requirements for a preliminary injunction under Proposition 4 have been met. Map C has been enjoined.

The Lieutenant Governor has advised the Court that a map must be in place by November 10, 2025, to avoid interfering with the 2026 election calendar. That date is here. The Court is thus “left with the unwelcome obligation” of ensuring that a lawful congressional map is in effect for Utah’s elections. *Connor v. Finch*, 431 U.S. 407, 415 (1977).

A. The Court has both the duty and the authority to adopt a congressional map.

Legislative Defendants have questioned whether the Court has the authority to impose a map in the absence of one lawfully enacted by the Legislature, noting that Proposition 4 envisions the Legislature having the option of enacting a map in the event its chosen map is enjoined. But that provision does not foreclose a court-imposed map to ensure the state’s elections can proceed under a lawful map in the absence of a compliant map enacted by the Legislature.

First, Proposition 4 provides that redistricting may occur upon the issuance of a permanent injunction or to conform with the final decision of a court. Utah Code § 20A-19-102(3) & (4). It does so without limiting that function to the Legislature.

Second, the Court is not remedying only a violation of Proposition 4 at this point. With both Map C and the 2021 congressional map now enjoined, Plaintiffs suggested the possibility that the 2011 map, which was previously repealed by the Legislature, could necessarily be revived by operation of law, without action by this Court, and by default become the operative map governing the forthcoming 2026 election. Plaintiffs cite several cases for this proposition, many of which were cited by this Court in its August 25, 2025 Ruling granting Plaintiff's Motion for Summary Judgment and holding that Proposition 4 was operative as the law on redistricting in Utah. *See Bd. of Educ. of Ogden City v. Hunter*, 159 P. 1019, 1024 (Utah 2016); *State ex rel. Shields v. Barker*, 167 P. 262, 265 (Utah 1917); *In re J.P.*, 648 P.2d 1364, 1378 n.14 (Utah 1982); *Egbert v. Nissan Motor Co., Ltd.*, 2010 UT 8, ¶ 12, 228 P.3d 737; *LWWUTI*, 2024 UT 21, ¶ 222. The Legislative Defendants contend that the 2011 map is not revived by an injunction against H.B. 2004, which repealed the 2011 map in 2021. They agree the 2011 map is malapportioned and they are not asking that the 2011 map be revived.

Regardless of whether the 2011 map may be reinstated by enjoining H.B. 2004, doing so would violate Proposition 4. It is undisputed that the 2011 map is unconstitutionally malapportioned under both the federal and Utah constitutions. It is likewise indisputable that the *absence* of a lawful congressional map is unsustainable. *See* 2 U.S.C. § 2c (requiring states to create single-member congressional districts). Even if Legislative Defendants were correct (they are not) that Proposition 4 does not authorize a court-imposed map, no one disputes that state courts are empowered—and in fact on many occasions have the “unwelcome obligation”—to remedy an unconstitutionally malapportioned map or the absence of a legal one. The U.S. Supreme Court and federal and state courts across the country have recognized as much for decades. *See Scott v. Germano*, 381 U.S. 407, 409 (1965) (“The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged.”); *Grove v. Emison*, 507 U.S. 25 (1993) (same); *see also Wattson v. Simon*, 970 N.W.2d 56 (Minn. 2022) (same); *Johnson v. Wis. Elections Comm’n*, 967 N.W.2d 469 (Wis. 2021) (same); *Alexander v. Taylor*, 51 P.3d 1204, 1208 (Okla. 2002) (same); *Clarke v. Wis. Elections Comm’n*, 998 N.W.2d 370, 396 (Wis. 2023) (same); *Norelli v. Sec. of State*, 292 A.3d 458, 462-64 (N.H. 2022) (same). State and federal courts recognize that in the absence of a legally compliant map, courts are empowered to take necessary action to ensure a legally compliant map is in place. *See, e.g., Maryland Comm. for Fair Representation v. Tawes*, 377 U.S. 656, 676 (1964) (finding that Maryland's state legislative maps violated the U.S. Constitution and allowing the Legislature the opportunity to redraw the maps, but noting that the Court should take action if the legislature fails to enact a legally valid map, and that “under no circumstances should the [upcoming] election . . . be permitted to be conducted pursuant to the existing or any other unconstitutional plan”).

In addition to the decades of consistent U.S. Supreme Court precedent, federal court precedent, and other state courts' precedent, the Utah Constitution expressly provides that every person “shall have remedy by due course of law” for “an injury done to the person.” Utah Const. art. I, § 11. Interpreting a similar provision in Oklahoma's constitution, the Oklahoma Supreme Court held that such a provision provides the textual constitutional authority for a state court to

order the adoption of a lawful redistricting map in the absence of lawful legislative action doing so. *See Alexander*, 51 P.3d at 1208-10. The same is true here, where the legislature has failed to adopt a redistricting map that complies with Proposition 4, no other legally valid map is in place, and the Lt. Governor has stated that a map must be in place by November 10, 2025.

B. The Court is not weighing policy by picking a congressional map; the Court is merely applying Utah law.

Legislative Defendants assert that by selecting a congressional map this Court would be improperly intruding into a purely legislative area by weighing policy. The Court, however, is not being asked to judge or second guess the Legislature’s policy-making decisions with respect to designing a redistricting map. The issues at stake here pertain solely to whether the proposed maps and enacted legislation comply with Utah law, including both the Utah Constitution and Prop 4. The issues leading to judicial involvement in this case involve constitutional challenges to S.B. 200, which repealed Prop 4; S.B. 1011, which was enacted one month ago and which this Court found to have materially impaired, if not nullified, Prop 4’s core anti-partisan gerrymandering reform; and determining whether the proposed and enacted maps comply with the requirements of Prop 4. Determinations regarding the meaning of Utah law and whether an action complies with the requirements of the law are matters that are squarely within the province of the judiciary.

This Court approaches this task somewhat reluctantly. But this is the remedial process recognized by the U.S. Supreme Court and by other state courts, agreed to by the parties in this case, and ordered by the Court. Based on the evidence – and after an evidentiary hearing – the Court found that Map C does not comply with Proposition 4’s requirements. In order to ensure that Utahns cast ballots under a congressional map that is equally apportioned under both federal and state constitutional requirements and that otherwise complies with Utah’s law on redistricting in Proposition 4, this Court must now choose a congressional map by the November 10, 2025 deadline. The Court’s ruling on which congressional map will be adopted is not based on any policy. Rather, it will be based on the law.

IV. The Court adopts Map 1 as the judicial remedy to ensure that a congressional map, compliant with both federal laws and Proposition 4, is in place in time to meet the November 10, 2025 deadline.

Plaintiffs submitted to the Court two proposed maps, designated as Map 1 and Map 2 on October 6, 2025, the same day the Legislative Defendants enacted S.B. 1012, which adopted Map C. In reviewing the maps submitted by Plaintiffs, both maps comply with Proposition 4’s traditional redistricting criteria and fall within acceptable ranges when analyzed under Dr. Chen’s ensemble analysis. Both show no sign of partisan favoritism. In order to decide between the two, the Court will evaluate which of the two maps “better satisfies the redistricting standards and requirements contained in” Proposition 4. *See also* Utah Code § 20A-19-204 (5)(a) (requiring the Legislature to explain the reasons for rejecting redistricting plans submitted by the Independent Commission and explain why the plan enacted by the Legislature “better satisfied the redistricting standards and requirements contained in this chapter.”)

Option 1: Plaintiffs’ Map 1

As explained in the Court’s Findings of Fact, Plaintiffs’ Map 1 abides by Proposition 4’s neutral redistricting criteria to the greatest extent practicable. Among other features, it is equally

populated, divides only 1 municipality (which is divided into just 2 pieces), has the fewest necessary county divisions (3), and has geographically compact districts. It complies with the other neutral criteria as well.

As explained in detail in Findings of Fact ¶¶ 139-152, Plaintiffs' Map 1 has neither the purpose nor effect of unduly favoring or disfavoring a political party. It was configured by a reliable computer algorithm programmed to closely adhere to Proposition 4's neutral redistricting criteria without any partisan data. It falls comfortably in the distribution of expected partisan outcomes under that ensemble of Proposition 4 compliant maps. Likewise, using Dr. Chen's ensemble analysis, it fares well under relevant metrics like the efficiency gap, as well as LRVS, SDVS, and RMD test and shows no sign of partisan favoritism. It does not guarantee one-party control of the congressional delegation but rather accords with Utah's natural political geography and electoral conditions.

Option 2: Plaintiffs' Map 2

As explained in detail in Findings of Fact ¶¶ 153-166, Plaintiffs' Map 2 also abides by Proposition 4's neutral redistricting criteria to the greatest extent practicable. Among other features, it is equally populated, divides only 1 municipality (which is divided into just 2 pieces), has the fewest necessary county divisions (3), and has geographically compact districts. It complies with the other neutral criteria as well.

Plaintiffs' Map 2 was offered as a "least change" version of the Legislature's Map C with the goal of remedying the violations of Proposition 4 that Plaintiffs identified in Map C. It retains 84.76% of Utah voters in the same districts to which Map C assigned them. Plaintiffs' Map 2 attempts to adhere to policy choices made in configuring Map C, including two districts that almost completely overlap with Map C's districts. In this respect, Plaintiffs' Map 2 respects to a great degree the policy choices of the Legislature, while correcting the major deficiencies found in Map C. While the Court recognizes that Map C was created by Plaintiffs as a type of compromise, there is no indication to this Court that the Legislature would actually agree that these are compromises the Legislature would choose to make.

The challenge with Map 2 is this Court found some serious deficiencies in the process by which Map C was adopted—including, in particular, the consideration of political data in its adoption, which violates Proposition 4—and in its original purpose and effect of favoring the majority Republican Party. Plaintiffs' expert Dr. Oskooii credibly and reliably testified that he adjusted Map C using a redistricting program that included no partisan or political data, and he referenced no such information. The map's reconfiguration of districts in Salt Lake County in particular resolved excess municipal and county divisions. While these modifications may have addressed these concerns, there is no escaping the fact that Map 2 started off as Map C.

Looking at other metrics, Plaintiffs' Map 2 does not purposefully or unduly favor or disfavor any political party. The changes made to Map C ameliorate concerns regarding Map C's configuration, and Plaintiffs' Map 2 performs well on the relevant metrics like the LRVS, SDVS, and the efficiency gap, showing no sign of partisan favoritism. But, by using these metrics to compare Map 1 with Map 2, it appears that Map 1 fares better in these quantitative evaluations. Plaintiffs' Map 2, however, falls short of passage of the RMD test using Dr. Chen's ensemble analysis. But, because the Court has enjoined implementation of S.B. 1011, the RMD test is no longer controlling. The Court nevertheless considered Plaintiffs' Map 2's performance on the RMD test. After doing so, the Court concludes that Plaintiff's Map 2 sufficiently improves upon

Map C's extreme failure on that metric and is far less of an outlier in terms of its pro-Republican favoritism than Map C. It does not guarantee one-party control of the congressional delegation but rather is in accord with Utah's political geography and electoral conditions.

In comparing how the two maps were created and their performance using the various statistical methods, the Court finds that Map 1 better satisfies the redistricting standards and requirements contained in Proposition 4. Accordingly, the Court adopts Map 1 as the judicial remedy.

CONCLUSION OF LAW AND ORDER

For the foregoing reasons, the Court orders as follows:

1. Plaintiffs' Motion for Preliminary Injunction on Count 16 alleging that S.B. 1011 violates the people's fundamental right to alter or reform their government under the Utah Constitution, is **GRANTED**. The Court hereby **ORDERS** the enforcement of S.B. 1011 is preliminarily enjoined.

2. Because the Court grants the Motion for Preliminary Injunction on Count 16, the Court declines to address Plaintiffs' claims on Counts 17 – 21.



3. The Court finds that S.B. 1012, Map C, fails to abide by and conform with the requirements of Proposition 4, and therefore, the Court preliminarily **ENJOINS** its use or implementation by Defendants;

4. Based on the parties' oral stipulation entered onto the record during the November 4, 2025 hearing, the Court recognizes that the 2011 congressional map was legally repealed, is malapportioned, and no one has presented a valid argument that it has been or should be revived by operation of law. For this reason, the Court **DENIES** Plaintiffs' motion for summary judgment on Count 8 but does so without prejudice. Plaintiffs may ask the Court to reconsider if the circumstances represented by the parties change;

5. The Court **APPROVES** Plaintiffs' Map 1 as the judicial remedy to meet the Lieutenant Governor's November 10, 2025 deadline to have a congressional plan that complies with both federal and Utah law in place in time to prepare for the 2026 elections;

6. The Court hereby **ORDERS** that Map 1 be implemented for use in Utah's congressional elections. The Court **ORDERS** the Lieutenant Governor, as Utah's chief elections officer, to implement and administer all future congressional elections in Utah in accordance with Map 1 as the judicially approved congressional plan, until another validly enacted legislative plan takes effect or as otherwise ordered by an appellate court.

DATED: NOVEMBER 10, 2025.


DIANNA M. GILSON
DISTRICT COURT JUDGE


CERTIFICATE OF NOTIFICATION

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

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11/10/2025

/s/ AUSTIN MELINE

Date: _____

Signature

EXHIBIT D

FILED DISTRICT COURT
Third Judicial District

~~DEC 26 2025~~

THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

Salt Lake County

By: _____ Deputy Clerk

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

Plaintiffs,

v.

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

Defendants.

RULING and ORDER
DENYING LEGISLATIVE
DEFENDANTS' MOTION FOR ENTRY
OF FINAL JUDGMENT

and

GRANTING LEGISLATIVE
DEFENDANTS' MOTION FOR RULE
54(b) CERTIFICATION

Case No. 220901712

Judge Dianna M. Gibson

The Legislative Defendants filed two motions with the Court on December 9, 2025¹ and on December 11, 2025 requesting that the Court either enter a *final* judgment under rule 58A, effectively ending this case, or certify its August 25, 2025 Ruling and Order as final under rule 54(b) of the Utah Rules of Civil Procedure. Both motions request expedited consideration. Not surprisingly, Plaintiffs oppose both motions. On December 22, 2025, the Court held a hearing to

¹ The Court notes, ironically, that this motion was filed 29 days after the Court's November 10, 2025 Ruling and still within the time for the Legislative Defendants to seek an immediate and direct appeal of that ruling (which arguably encompasses the August 25, 2025 Ruling and Order) – as a matter of right – to the Utah Supreme Court and obtain a faster appellate decision.

seek clarification from the parties. In the late afternoon of December 23, 2025, the Legislative Defendants filed a Notice of Supplemental Authority and Clarification. Late that same evening, Plaintiffs filed their Response.

The December 22, 2025 hearing confirmed what the Court suspected. With election deadlines imminent, the Legislative Defendants repeatedly stated they intended to appeal but then intentionally elected not to utilize the more appropriate appellate tools available to them. Specifically, under rule 7 of the Utah Rules of Appellate Procedure, they could have petitioned to appeal any one of the Court's interlocutory (i.e., non-final) orders within 21 days of any of the Court's three orders. Under Utah Code section 78B-5-1002(2), they could have filed a direct appeal to the Utah Supreme Court within 30 days² of each order and obtained an expedited appellate ruling based on this Court's August 25, 2025 Ruling and Order (as amended by the September 6 Ruling and Order) permanently enjoining S.B. 200 and H.B. 2004 (the 2021 Congressional Map) and on this Court's November 10, 2025 Ruling and Order preliminarily enjoining S.B. 1011 and S.B. 1012 (Map C).

Instead, the Legislative Defendants attempt to argue to this Court that this entire case and Plaintiffs' Count V are "essentially" final. That is, they contend all of the relief that can be given in this case has been, and we are "close enough" to call this case done.

Quite literally – this Court is between the proverbial rock and a hard spot. This entire case is not "final." Count V is not final. But the Court agrees that the important legal issues decided by this Court and reflected in each of its rulings – the August 25, 2025 Ruling and Order, the September 6, 2025 Ruling and Order and the November 10, 2025 Ruling and Order – should be reviewed by the Utah Supreme Court as quickly as possible. But this Court and the Utah Supreme Court are bound by the law and by procedure on how we proceed.

The Court first addresses the concept of "finality" and then considers each of the Legislative Defendants' Motions.

Finality

"As a general rule, an appellate court does not have jurisdiction to consider an appeal unless the appeal is taken from a final order or judgment that ends the controversy between the litigants." *Copper Hills Custom Homes, LLC v. Countrywide Bank, FSB*, 2018 UT 56, ¶ 10, 428 P.3d 1133 (quotation simplified). "The obvious and principal rationale for limiting the right to appeal in this way is to promote judicial economy by preventing piecemeal appeals in the same

² Rule 4(a) of the Utah Rules of Appellate Procedure provides: "in a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 must be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from." Utah R. App. P. 4(a). This deadline establishes appellate court jurisdiction. *State v. Collins*, 2014 UT 61, ¶ 22, 342 P.2d 789 (stating "an appellate court simply has no power to hear the case if a notice of appeal is untimely.").

litigation.” *Id.* ¶ 11 (quotation simplified). “Strict adherence to the final judgment rule” is necessary to “maintain[] the proper relationship between [the appellate courts] and the district courts.” *Id.* (quotation simplified).

There are only three exceptions to the final judgment rule: (1) when the legislature has provided a “statutory avenue for appealing nonfinal orders,” *Powell v. Cannon*, 2008 UT 19, ¶ 13, 179 P.3d 799; (2) when the appellate court grants a petition for an interlocutory appeal, *see* Utah R. App. P. 5(a); and (3) when the district court *properly* certifies an order as final under rule 54(b) of the Utah Rules of Civil Procedure. *Hillam v. Hillam*, 2022 UT App 24, ¶ 13, 507 P.3d 380, 383. When rule 54(b) is properly invoked, “an appellate court can ‘weigh in on a matter even though not all of the causes of action for all of the parties have been adjudicated,’ and even if the ruling in question did not ‘end the controversy between [all] the litigants.’” *Id.* ¶ 15 (citing *Copper Hills*, 2018 UT 56, ¶ 15, 428 P.3d 1133, and *Anderson v. Wilshire Invs., LLC*, 2005 UT 59, ¶ 9, 123 P.3d 393 (quotations simplified)).³

Motion For Entry of Final Judgment

The Legislative Defendants first move for entry of a final judgment in this case. They also submit a proposed final judgment for the Court to execute. The proposed final judgment states that Plaintiffs prevailed on Count 5 and Count 16, enters permanent injunctions on S.B. 200 and H.B. 2004 (the 2021 Congressional Map), enters *permanent* injunctions on S.B. 1011 and S.B. 1012 (Map C) (when only *preliminary* injunctions have been entered as of November 10, 2025), and legally concludes that all remaining counts are just dismissed as moot. In response to the Court’s questions regarding how the remaining claims were “resolved,” the Legislative Defendants asserted that they did not propose and are not proposing to settle the case. The parties have not reached a stipulated resolution regarding any or all outstanding claims. And there is no dispute that the several unadjudicated claims that remain (some recently added in November 2025) have not been the subject of a motion to dismiss, a motion for summary judgment nor any subsequent legal proceeding that would allow this Court to consider or decide if the remaining claims are moot as a matter of law. Under the circumstances, the proposed form of the final judgment submitted by the Legislative Defendants does not actually reflect the legal status of this case or the status of the various claims in the case.⁴ This case is far from over and is not yet final.

³ Whether appellate jurisdiction exists is a question of law. *Copper Hills Custom Homes, LLC v. Countrywide Bank, FSB*, 2018 UT 56, ¶ 22 n. 6, 428 P.3d 1133, 1140 n. 6 (citations omitted). Whether a district court properly determined there is “no just reason for delay” is reviewed “for an abuse of discretion.” *Id.*

⁴ Generally speaking, there are twenty-one causes of action in this case: Counts 1 to 4 are before the Utah Supreme Court on interlocutory appeal; Counts 6 to 8 remain unadjudicated; Counts 9 to 15 involve Amendment D, which has been enjoined, and Counts 16 to 21 are newly added as of November 2025 (and focus on S.B. 1011 and S.B. 1012). None of them are final.

“To be final, the trial court's order or judgment must dispose of all parties and claims to an action.” *Bradbury v. Valencia*, 2000 UT 50, ¶ 10, 5 P.3d 649. Even liberally construing the collective “effect” of the Court’s three rulings from August 25, September 6, and November 10, 2025, those rulings do not dispose of all of the pending claims. There are several unadjudicated claims in this case, and the parties continue to actively litigate the case. Utah law does not authorize this Court to just “deem” that issues are effectively resolved or enter a proposed *final* judgment because some relief has been granted. *See e.g., Anderson v. Wilshire Invs., L.L.C.*, 2005 UT 59, ¶ 37, 123 P.3d 393, 400 (holding district court’s summary determination that lien was not wrongful did not directly or by implication resolve quiet title issue).

Rule 58A of the Utah Rules of Civil Procedure governs the form of judgments. However, it does not and cannot create finality where it does not otherwise exist. And while the Legislative Defendants would like this case to be over, there is no legal basis supporting entry of a final judgment. The Motion for Entry of Final Judgment is DENIED.

Motion For Rule 54(b) Certification

Rule 54(b) of the Utah Rules of Civil Procedure states: “When an action presents more than one *claim* for relief—whether as a claim, counterclaim, cross claim, or third party claim—and/or when multiple parties are involved, the court may enter judgment as to one or more but fewer than all of the *claims* or parties *only if the court expressly determines that there is no just reason for delay.*” Utah R. Civ. Pro. 54(b) (emphasis added). The Utah Supreme Court has adopted a “narrow approach” to rule 54(b) certifications, requiring district courts closely examine certifiability because “Utah’s rules of appellate procedure provide ample avenues for interlocutory appeals.” *Kennecott Corp. v. Utah State Tax Comm’n*, 814 P.2d 1099, 1104 (Utah 1991).

Timing Rule 54(b) and Waiver

Before addressing the legal requirements, Plaintiffs argue that the Legislative Defendants’ Rule 54(b) Motion is not timely and that they have waived their right to make this motion now.

Regarding timing, it appears that a motion to certify a claim as final under rule 54(b) can be made at any time. *Ross v. Kracht*, 2025 UT 22, ¶ 10. There is no deadline set forth in the rule, and earlier decisions from our Utah appellate courts seem to agree that – if the requirements are met – this motion can be brought at any time, and even after a failed certification. The rule 54(b) motion is therefore timely.

Regarding waiver, Plaintiffs contend that where the Legislative Defendants had a clear “right” to appeal created under Utah Code section 78B-5-1002(2), its failure to do so precludes as a matter of law the Legislative Defendants’ attempt to appeal the exact same ruling and order by seeking certification under rule 54(b). This issue has not been addressed in Utah. Plaintiffs, however, cite to a federal district court case from Georgia that supports this very proposition. In *National Association of Boards of Pharmacy v. Board of Regents of the University System of*

Georgia, the defendant missed a 30-day deadline to file a notice of appeal under a rule that gave him a direct right of appeal and then subsequently moved for a rule 54(b) certification to facilitate an immediate appeal. 2009 WL 1109824, at *1 (M.D. Ga. April 23, 2009). That court denied the motion, explaining:

The collateral order doctrine would have permitted [defendant] to appeal the Court's April 18, 2008 denial of qualified immunity within 30 days. [Defendant] missed the deadline, so he now sees a second chance under Rule 54(b). [Defendant] cites no authority in support of his argument that Rule 54(b) provides a second chance for a litigant who has missed an appeal deadline, and the Court declines to create one.

Id. Because Legislative Defendants have a statutory right to immediately appeal an injunction of a state law, their failure to exercise that right precludes their appeal until another appealable order or the final judgment is entered.

Legislative Defendants argue that they were not required to request permission for an interlocutory appeal of the August 25, 2025 Ruling and Order before seeking certification under rule 54(b). In addition, they explain that any appeal of the August 25, 2025 Ruling and Order under section 78B-5-1002(2) “would have resulted in the parties simultaneously briefing likelihood of success review in the appellate courts while conducting remedial proceedings before this Court, thereby unnecessarily complicating the proceedings and wasting judicial and party resources.” (*Legislative Defendants' Reply to Plaintiffs' Opposition to Motion for Entry of Final Judgment*, at 7.) In other words, it would have been a lot of work in both courts. While that may be true, this statement reveals that the Legislative Defendants were aware of these avenues to an immediate appeal but chose not to use them.

While this Court finds the *National Association of Boards of Pharmacy* case persuasive, it is not binding. Based on representations made by the Legislative Defendants, it does appear that they knowingly elected to forego their statutory right to a direct appeal under Utah Code section 78B-5-1002(2). It is unclear to this Court what an appeal under section 78B-5-1002 looks like, including the scope of review, the decision issued and the timing. It is arguably new ground for everyone, given this is a new statutory right. So, the Court cannot say that a decision from an appeal under section 78B-5-1002 and under rule 54(b) would be the exact same; although, given the importance of the issue, this Court is confident the Utah Supreme Court would have issued whatever ruling was necessary to address the issues presented on appeal. But, nonetheless, this Court cannot conclude that the Legislative Defendants' decision not to pursue an appeal under section 78B-5-1002(2) is a waiver that now precludes them as a matter of law from seeking certification under Rule 54(b), if the requirements for finality can be separately met.

Requirements – Rule 54(b) Certification

The Utah Supreme Court clearly detailed what is required to support a rule 54(b) certification in *Copper Hills Custom Homes, LLC v. Countrywide Bank, FSB*, 2018 UT 56, 428 P.3d 1133. District courts must provide a “clear articulation” of their “reasons for granting certification” so that the appellate courts can have a “basis for conducting a meaningful review” of that certification. *Id.* ¶ 22 (quotation simplified). This Court must make “findings supporting the conclusion that the certified orders are final.” *Copper Hills Custom Homes, LLC*, 2018 UT 56, ¶ 21 (quotation simplified). The findings must “detail the lack of factual overlap between the certified and remaining claims” to avoid any potential res judicata impact an appeal may have on the remaining issues in the case and the findings should “advance a rationale as to why” there “is no just reason for delay.” *Id.* (quotation simplified). The detailed findings allow the appellate courts to evaluate if extending appellate jurisdiction over a certified claim can be done in a manner to avoid piecemeal appeals that would “needlessly increase the risk of inconsistent or erroneous decisions” on factually intertwined issues. *Id.* ¶ 11 (citing *Anderson*, 2005 UT 59, ¶ 9, 123 P.3d 393 (quotation simplified)); *see also Hillam v. Hillam*, 2022 UT App 24, ¶¶ 17-22, 507 P.3d 380, 384-85 (discussing district court’s rule 54(b) certification obligations).

In order to properly certify a claim as final, three requirements must be met: (1) “there must be multiple claims for relief or multiple parties to the action;” (2) “the judgment appealed from must have been entered on an order that would be appealable but for the fact that other claims or parties remain in the action;” and (3) the district court, in its discretion, must make an express determination and “set forth a clear rationale as to why there is no just reason” for delay.” *Copper Hills Custom Homes, LLC*, 2018 UT 56, ¶ 16.

The Court addresses each of the three requirements separately. Regarding the *first requirement*, there are multiple claims for relief in this case and this litigation involves multiple parties. The first requirement is met.

The *second requirement* in this case is candidly the hardest to satisfy: “the judgment appealed from must have been entered on an order that would be appealable but for the fact that other claims or parties remain in the action.” To be clear, no “judgment” has been entered in this case. In the August 25, 2025 Ruling and Order, this Court merely granted Plaintiffs’ Motion for Summary Judgment on Count 5, concluding that the Legislative Defendants violated Plaintiffs’ constitutional right to alter or reform their government when the Legislature repealed Proposition 4 and replaced it with S.B. 200. The Court issued a permanent injunction, enjoining S.B. 200 and the resulting 2021 Congressional map, ruled that Proposition 4 is the law in Utah and ordered remedial proceedings pursuant to Proposition 4. *If Plaintiff’s Count V requested only that S.B. 200 and the 2021 Congressional map be enjoined*, then the August 25, 2025 Ruling and Order would in fact be final and appealable as to Count V. But that is not the only remedy requested under Count V, it is not the only remedy available under Proposition 4 and the parties are in the midst of those remedial proceedings.

The relief requested by Plaintiffs in Count 5 goes beyond what was granted in the August 25, 2025 Ruling and Order. Because the August 25, 2025 Ruling and Order ruled that Proposition 4 is the law in Utah, Proposition 4 itself includes a process to provide relief to Plaintiffs. So, while the August 25, 2025 Ruling and Order grants summary judgment to Plaintiffs on Count 5, *and* it permanently enjoins S.B. 200 and the 2021 Congressional Map, it also is the genesis for the remedial process that the Court and the parties engaged in as reflected in the September 6, 2025 Amended Ruling and Order Adopting the Parties' Scheduling Order and Clarifying the Court's August 25, 2025 Ruling ("September 6, 2025 Amended Ruling and Order"). That process led to the Legislature enacting S.B. 1011 (modifications to Proposition 4) and S.B. 1012 (Map C), which led to Plaintiffs' Motion for Leave to File Third Supplemental Complaint with six new causes of action (Counts 16-21) and a new Motion for Preliminary Injunction seeking to enjoin S.B. 1011 and S.B. 1012. On October 23-24, 2025, a two-day evidentiary hearing was conducted and ultimately this Court issued the November 10, 2025 Ruling and Order, which itself is *not* "final." Rather, the November 10, 2025 Ruling and Order made findings of fact and conclusions of law and granted Plaintiffs motion for a preliminary injunction on S.B. 1011 (the October 6, 2025 modifications to Proposition 4) and S.B. 1012 (Map C, which was enacted under S.B. 1011). Because S.B. 1011 and S.B. 1012 were preliminarily enjoined, the Court choose between the two maps proposed by Plaintiffs and ultimately ordered that Plaintiffs' Map 1 be used as the remedial congressional map, pending further proceedings in this Court, pending an appeal or pending a new legislatively enacted congressional map.

Nonetheless, the Legislative Defendants request that this Court certify the August 25, 2025 Ruling and Order as "final." In complete candor to the Utah Supreme Court and to provide as much information as possible for the Court's review of this rule 54(b) certification, this Court makes clear – the August 25, 2025 Ruling and Order does not completely resolve Plaintiffs' *claim* in Count V. Rule 54(b) plainly refers to the "finality" of "claims." Utah's appellate courts regularly reject certifications of summary judgment rulings that have not been finalized. *See e.g., Am. Sav. & Loan Ass'n v. Gibson*, 839 P.2d 797, 798 (Utah 1992) (holding summary judgment ruling on liability alone was not final because "the question of the remedy remain[s] to be determined."); *see also Maddox v. Maddox*, 2024 UT App 130, ¶ 5, 557 P.3d 604, 606-607 (rejecting district court's attempt to certify a ruling on summary judgment as final, explaining that a summary judgment ruling that an excess insurance policy is not applicable to cover damages in the case "is not a ruling that resolves any party's claims in the case."). This case is no different – the remedy for Count V is only partially complete. This Court could not find a case certifying an "issue" as final or suggesting that "a partial remedy" met the requirements under rule 54(b). Although, the Court notes – by operation of time (not law) – the Court's rulings on Count 5 to date (e.g., enjoining the 2021 Congressional Map, enjoining Map C, and ordering the use of Map 1) will be rendered final for purposes of the next upcoming 2026 election cycle.

In addition, there will be some *legal* and *factual* overlap moving forward. Count 5 and the newly added Count 16 are both based on Plaintiffs' claim that the Legislative Defendants

violated Plaintiffs' right to alter or reform their government by impairing Proposition 4. Count 5 alleges S.B. 200 violated the alter or reform clause by repealing Proposition 4 entirely. Count 16 alleges that S.B. 1011 violates the alter or reform clause by impairing the core anti-gerrymandering goals of Proposition 4. While it is true that the underlying facts are different (different laws enacted in different years), both claims are based on the same type of legislative conduct. And both claims will rise and fall based on this Court's and, if the Utah Supreme Court accepts the rule 54(b) certification, the Utah Supreme Court's legal analysis of the alter and reform clause and both the Legislature's and the people's legislative authority on redistricting. The factual overlap is that resolution of Count 16 is integral to completely addressing the remedy Plaintiffs requested in Count 5. Count 16 is also a new stand-alone claim. So, this Court cannot say that what happens on appeal will not have a res judicata effect on the case as it continues in district court. But some overlap does not necessarily preclude a rule 54(b) certification as a matter of law. *See Copper Hills Custom Homes, LLC v. Countrywide Bank, FSB*, 2018 UT 56, ¶ 21, 428 P.3d 1133, 1141 (requiring district courts to explain overlap between certified and remaining claims and why certification is still appropriate).

With regard to the *third requirement*, and notwithstanding that the remedy under Count 5 is not yet complete nor final, this Court in its discretion is certifying that there is no just reason to delay appellate review⁵ of the legal rulings in the August 25, 2025 Ruling and Order (as amended in the September 6, 2025 Amended Order). Utah courts have concluded that there is no just reason to delay entry of a final judgment if there is a decision that “finally dispos[es] of either an individual claim or an individual party.” *Wash. Townhomes, LLC v. Wash. Cnty. Water Conserv. Dist.*, 2016 UT 43. ¶ 9, 388 P.3d 753. In explaining the relationship between finality and certification, the United States Supreme Court in *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 437, 76 S. Ct. 895, 900–01 (1957):

The District Court cannot, in the exercise of its discretion, treat as “final” that which is not “final” But the District Court may, by the exercise of its discretion in the interest of sound judicial administration, release for appeal final decisions upon one or more, but less than all, claims in multiple claims actions. The timing of such a release is, with good reason, vested by the rule primarily in the discretion of the District Court as the one most likely to be familiar with the case and with any justifiable reasons for delay. With equally good reason, any abuse of that discretion remains reviewable by the Court of Appeals.

Id. (emphasis added); see also *Pate v. Marathon Steel Co.*, 692 P.2d 765, 768 (Utah 1984).

There is no doubt that Count V as pled by Plaintiffs is not completely resolved even if all three rulings from August 26, September 6 and November 10, 2025 are read together. Complete relief requested in Count V remains to be finalized. But, based on this Court's ruling granting

⁵ issuing a final judgment capturing the permanent injunction and certifying that portion of the August 25, 2025 Ruling and Order as final.

Plaintiffs' summary judgment on Count V and awarding relief that *permanently* enjoins S.B. 200 and the 2021 Congressional Map and declares that Proposition 4 is the law in Utah, this Court can say that it does "finally dispose" of the claims regarding the constitutionality of S.B. 200, the 2021 Congressional Map and Proposition 4. There is nothing further to be done on Count V *as it pertains to those specific legal rulings and that specific relief granted*.

The Court also certifies that there is no just reason to delay issuing a final judgment reflecting the permanent injunction of S.B. 200 and the 2021 Congressional Map, as reflected in the August 25, 2025 Ruling and Order. That Ruling and Order thoroughly explains the Court's application of the standard created by the Utah Supreme Court in *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT ¶ 21. It thoroughly explains this Court's legal analysis and reasoning regarding the people's right to alter or reform their government under the Utah Constitution, how Proposition 4 was the people's exercise of that right, how the Legislature impaired that right, and how repealing Proposition 4 was not narrowly tailored to advance a compelling state interest. It also thoroughly explains the legal basis for entering the permanent injunction on both S.B. 200 and the 2021 Congressional Map and explaining why Proposition 4 is the law in Utah.

This case is unique. Most cases before district courts involve private parties and private transactions. Redistricting cases are the exact opposite. They are very public and have a state-wide impact. Every Utah voter, every Utah congressional candidate and arguably every Utah citizen is impacted by this case. Issuing a final ruling – on even a portion of this case – ultimately serves the public's interest and will lead to a faster resolution of the entire case. While it was the Legislative Defendants' duty to seek appellate review of these decisions as soon as possible (if in fact that is what they wanted), they have offered no legitimate explanation for failing to do so when they had the chance, either by interlocutory appeal or by exercising their statutory right to immediately appeal an injunction of a state law. Nonetheless, this Court still believes that there is no reason to delay appellate review. If the Court does not certify the August 25, 2025 Ruling and Order now, any appellate review will have to wait until the end of the case, which could be months to years away.

Until there is a final decision on these legal issues from our Supreme Court, there will be a cloud on Utah's congressional elections and an open question regarding the power of the Legislature and the power of the people. The Utah Supreme Court can decide *now* if the Legislature is the sole and exclusive authority over redistricting in Utah or if it shares that responsibility with the people. It can decide if the people of Utah, through the exercise of their right to alter or reform government through a citizen initiative, can also pass binding laws regarding how the Legislature performs its redistricting duty. And the Utah Supreme Court should decide now if the order granting the permanent injunction of S.B. 200 and the 2021 Congressional Map should stand or if it should be vacated. These legal questions should be put to rest as soon as possible. There is no just reason to delay the Utah Supreme Court's review of

those legal rulings in the August 25, 2025 Ruling and Order. There is no reason to delay bringing some finality on these important issues to the people of Utah.

Based on the findings detailed above and the Court's certification that there is no reason to delay appellate review of the August 25, 2025 Ruling and Order or to delay finalizing the permanent injunction of S.B. 200 and the 2021 Congressional Map or the order ruling that Proposition 4 is the law in Utah, the Court GRANTS the Legislative Defendants' Motion for Rule 54(b) Certification of the August 25, 2025 Ruling and Order. *The Court expressly DENIES the Motion to the extent it requests certification of Count 5 as final. Because the remedy requested by Plaintiffs in Count 5 (and now Count 16) is not complete nor final, 54(b) certification of Count 5 – and all other claims – is DENIED.*

CONCLUSION

This was not an easy call. The Legislative Defendants had a direct, non-discretionary right to immediately and directly appeal to the Utah Supreme Court from both the August 25, 2025 Ruling and Order which enjoined S.B. 200 and the 2021 Congressional Map and the November 10, 2025 Ruling and Order which enjoined S.B. 1011 and Map C. They chose not to appeal. No legitimate reason was offered for failing to appeal. Now, they seek a third imperfect avenue requesting the Court certify its August 25, 2025 Ruling and Order as final, to allow them to appeal under Utah law.

To comply with Utah law, this Court has attempted to provide a clear statement explaining the status of the case, what is final and what is not, and the reasons why this Court – even under these circumstances – believes there is no just reason to delay appellate review of the legal issues resolved and the permanent relief granted by this Court in the August 25, 2025 Ruling and Order, as modified by the September 6, 2025 Amended Ruling and Order. The Court leaves it to the Utah Supreme Court to determine if, as a matter of law, this suffices to establish appellate jurisdiction.

The Court ORDERS the Legislative Defendants to prepare a form of a final judgment consistent with this Court's ruling, specifically reflecting a final judgment related to the permanent injunction of S.B. 200 and the 2021 Congressional Map and declaring that Proposition 4 is the law in Utah, as reflected in the August 25, 2025 Ruling and Order. Legislative Defendants should submit the proposed final judgment to Plaintiffs for review as quickly as possible and then submit to the Court. Given timing, please notify the Court directly once the proposed Order is ready for the Court's review.

DATED December 26, 2025.


Judge Dianna M. Gibson
Third District Court



CERTIFICATE OF NOTIFICATION

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

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12/26/2025

/s/ SHAI ALVAREZ

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

AMELIA POWERS GARDNER, *et al.*,
Plaintiffs,

v.

LIEUTENANT GOVERNOR DEIDRE
HENDERSON, in her official capacity.
Defendant.

LEAGUE OF WOMEN VOTERS OF
UTAH, *et al.*,
Proposed Intervenors.

Case No. 2:26-cv-00084
Circuit Judge Timothy M. Tymkovich
District Judge Robert J. Shelby
District Judge Holly L. Teeter

Magistrate Judge Jared C. Bennett

**[PROPOSED] ORDER GRANTING UTAH LEGISLATURE’S
MOTION FOR LEAVE TO FILE MEMORANDUM AS AMICUS CURIAE**

Before the Court is the Utah Legislature’s motion for leave to file a memorandum as *amicus curiae* in support of Plaintiffs’ motion for a preliminary injunction (Doc. 19). Upon consideration of the Utah Legislature’s motion, it is hereby:

ORDERED that the motion for leave to file a memorandum as *amicus curiae* in support of Plaintiffs' motion for a preliminary injunction is GRANTED.

Dated: _____

BY THE COURT:

HON. JARED C. BENNETT
UNITED STATES MAGISTRATE JUDGE