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**Pro hac vice application forthcoming*

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

COMMISSIONER AMELIA POWERS
GARDNER, et al.,

Plaintiffs,

v.

LIEUTENANT GOVERNOR DEIDRE
HENDERSON, in her official capacity,

Defendant.

**MOTION TO INTERVENE BY THE
NATIONAL REDISTRICTING
FOUNDATION**

Civil Action No. 2:26-cv-84-RJS-JCB

Proposed Intervenor the National Redistricting Foundation (“NRF”) moves to intervene as a Defendant in this action as a matter of right under Federal Rule of Civil Procedure 24(a)(2) or permissively under Rule 24(b)(1)(B). Concurrently with this motion, NRF files both a Proposed Answer, as required by Rule 24(c), and a provisional motion to dismiss Plaintiffs’ Complaint, pursuant to the Court’s scheduling order. *See* ECF No. 25.

BACKGROUND

I. Nature of the Case

Plaintiffs ask this Court to interfere in ongoing state redistricting litigation based on a fringe interpretation of the Elections Clause of the U.S. Constitution. In August, a Utah district court enjoined, on state law grounds, the congressional map enacted by the Utah legislature in 2021 (the “2021 Map”). *See* ECF No. 1 (“Compl.”) ¶ 73. The court gave the Legislature an opportunity to remedy the violation by enacting a new map that complied with state law. *Id.* The Legislature enacted a new map, but the court concluded it failed to remedy the state law violations it previously identified, enjoined its use, and ordered Utah election officials to instead conduct the 2026 congressional elections under a state law-compliant map proposed by plaintiffs in the state court action. *Id.* ¶¶ 75, 78. That decision has been appealed to the Utah Supreme Court. *Id.* ¶ 44.

Instead of allowing Utah courts to resolve questions of Utah law, Plaintiffs sued the Lieutenant Governor in federal court to enjoin her from implementing Map 1 as ordered by the Utah district court. *See generally* ECF No. 1. Plaintiffs contend that under the Constitution’s Elections Clause, state courts have no authority to remedy state law redistricting violations by ordering the use of a compliant map. *Id.* ¶ 91 (citing U.S. Const. art. I, § 4, cl. 1). They argue that

the Constitution “conveys the authority to prescribe the times, places, and manner of congressional elections only to ‘the Legislature’ of ‘each State,’” not to state courts. *Id.*

This theory, commonly referred to as the Independent State Legislature (“ISL”) theory, has been widely discredited. In *Moore v. Harper*, the Supreme Court considered and rejected it, holding that “[t]he Elections Clause does not insulate state legislatures from the ordinary exercise of state judicial review.” 600 U.S. 1, 22 (2023). If Plaintiffs were to prevail on their ISL claim, however, it would have radical implications. In its broadest formulation, ISL would all but foreclose *any* state law challenge to *any* state election law—meaning it “would effectively eliminate state constitutions as a source of voting rights protections,” Jason Marisam, *The Dangerous Independent State Legislature Theory*, 2022 Mich. St. L. Rev. 571, 574. And in the formulation Plaintiffs appear to urge in their Complaint, state courts may never order the use of a particular map as a remedy, *see* Compl. ¶ 87–88—a rule that would effectively strip state courts of the power to remedy state-law defects in congressional maps.

II. Proposed Intervenor

Founded in 2017, NRF is a § 501(c)(3) nonprofit advocacy group that seeks to ensure fair maps through litigation that will have a nationwide impact in creating more just and representative electoral districts. To advance this mission, NRF engages in public education and grassroots mobilization efforts to raise awareness of gerrymandering, partners with groups to develop redistricting reforms at the state and federal level, and sponsors and funds litigation to oppose unjust gerrymandering practices that discriminate on the basis of race or party affiliation or otherwise violate state or federal law to the detriment of voters and fair representation.

Because the Supreme Court has held that partisan gerrymandering claims are not justiciable, NRF and the litigants it supports are unable to challenge partisan gerrymanders in federal court. *See Rucho v. Common Cause*, 588 U.S. 684 (2019). However, many state constitutions retain protections against partisan gerrymandering that can be adjudicated in state courts.¹ For this reason—and because of other voter protections in state constitutions—NRF’s ability to develop and promote state court litigation is mission-critical. NRF regularly sponsors and financially supports election-related litigation in state courts. Just this month, plaintiffs supported by NRF filed suit in the Florida Supreme Court challenging the Florida Governor and Secretary of State’s attempts to force the Florida Legislature to undergo mid-decade redistricting in 2026.² NRF is also sponsoring ongoing litigation in Missouri state court, challenging that state’s newly-enacted congressional map as a violation of the Missouri Constitution.³

Because NRF seeks to preserve state-court litigation as an avenue to vindicate voter rights, it has consistently—and vocally—opposed the ISL theory. Indeed, the *Harper* Plaintiffs in *Moore v. Harper* were supported by NRF in both the U.S. Supreme Court and North Carolina state court, resulting in the successful defeat of the ISL theory at the Supreme Court.⁴ As NRF explained at

¹ *See, e.g.*, Harry Black & Emily Lau, State Democracy Rsch. Initiative, *Explainer: Status of Partisan Gerrymandering Claims Across the Country* (2025), <https://statedemocracy.law.wisc.edu/wp-content/uploads/sites/1683/2024/06/Explainer-Status-of-Partisan-Gerrymandering-Claims-Across-the-Country-Harry-Black-Emily-Lau.pdf>.

² *Pines v. DeSantis*, Nat’l Redistricting Found. (Feb. 5, 2026), <https://redistrictingfoundation.org/court-cases/pines-v-desantis/>

³ *Healey v. Missouri*, Nat’l Redistricting Found. (Sep. 28, 2025), <https://redistrictingfoundation.org/court-cases/healey-v-missouri/>.

⁴ *NRF Statement on Moore v. Harper Victory*, Nat’l Redistricting Found. (June 27, 2023), <https://redistrictingfoundation.org/2023/06/27/nrf-statement-on-moore-v-harper-victory/>.

the time: “The independent state legislature theory is an extreme theory that threatens our system of checks and balances, a cornerstone of democracy We renew our calls for the Court to shut down the fringe theory once and for all.”⁵

III. Procedural History

Plaintiffs filed this lawsuit on February 2, 2026, three months after the map they challenge was adopted by the Utah district court. On February 7, the League of Women Voters of Utah, Mormon Women for Ethical Government, and several individual Utah voters (collectively, “LWV Intervenors”)—plaintiffs in the underlying state-court litigation—moved to intervene as Defendants in this case. ECF No. 17. LWV Intervenors explain that they are interested in this case because they obtained injunctive relief against the Utah Legislature’s map in state court, and Plaintiffs’ requested remedy would “result in reversal of LWV Intervenors’ relief.” *Id.* at 8–9. LWV Intervenors also contend that the map Plaintiffs seek to restore “violat[es] their state constitutional rights” as individual Utah voters. *Id.* at 6. In their motion, LWV Intervenors indicated that they “plan to expeditiously move to dismiss Plaintiffs’ suit.” *Id.* at 1 n.1.

Also on February 7, Plaintiffs filed a preliminary injunction motion that is set for a hearing on February 18. ECF No. 25. The Court set a briefing schedule on Plaintiffs’ preliminary injunction motion and the LWV Intervenors’ motion to intervene. *Id.*

⁵ *NRF-Supported Respondents Submit 2nd SCOTUS Brief Reiterating Dangers Posed by Independent State Legislature Theory*, Nat’l Redistricting Found. (May 11, 2023), <https://redistrictingfoundation.org/2023/05/11/nrf-supported-respondents-submit-2nd-scotus-brief-reiterating-dangers-posed-by-independent-state-legislature-theory/>.

LEGAL STANDARD

Under Rule 24, a party may intervene either as a matter of right or with permission of the Court. Fed. R. Civ. P. 24. To intervene as of right, a proposed intervenor “must establish (1) timeliness, (2) an interest relating to the property or transaction that is the subject of the action, (3) the potential impairment of that interest, and (4) inadequate representation by existing parties.” *Barnes v. Sec. Life of Denv. Ins. Co.*, 945 F.3d 1112, 1121 (10th Cir. 2019) (citation omitted); see Fed. R. Civ. P. 24(a). Permissive intervention is appropriate when the proposed intervenor “has a claim or defense that shares with the main action a common question of law or fact,” Fed. R. Civ. P. 24(b), and the intervention would not “result in an undue delay or prejudice the main action.” *Buhler v. BCG Equities, LLC*, No. 2:19-CV-00814-DAK, 2021 WL 364191, at *1 (D. Utah Feb. 3, 2021) (unpublished).

Courts in the Tenth Circuit have “historically taken a ‘liberal’ approach to intervention and thus favor[ed] the granting of motions to intervene.” *W. Energy All. v. Zinke*, 877 F.3d 1157, 1164 (10th Cir. 2017). This is especially true “in cases raising significant public interests such as this one,” where courts impose “relaxed intervention requirements.” *Kane County v. United States*, 94 F.4th 1017, 1025 (10th Cir. 2024) (citation omitted).

ARGUMENT

I. NRF is entitled to intervene as of right.

A. NRF’s motion is timely.

NRF’s motion is undisputably timely. Courts in the Tenth Circuit consider three factors in evaluating timeliness: (1) the length of time since the proposed intervenor knew of its interests in the case; (2) prejudice to existing parties if intervention is granted; and (3) prejudice to the

proposed intervenor if intervention is denied. *Oklahoma ex rel. Edmondson v. Tyson Foods, Inc.*, 619 F.3d 1223, 1232 (10th Cir. 2010).

All three factors favor intervention. *First*, NRF files this motion only nine days after the case was filed. *See Kane County*, 928 F.3d at 891 (motion filed three months after event triggering intervenor’s interest was timely); *Utah Ass’n of Cnty. v. Clinton*, 255 F.3d 1246, 1251 (10th Cir. 2001) (motion filed three years after complaint was timely). *Second*, little substantial briefing has occurred in this case, and, as demonstrated by the concurrent filing of NRF’s provisional motion to dismiss, NRF will comply with any deadlines imposed by the Court, so there is no risk of undue prejudice or delay. *W. Energy All.*, 877 F.3d at 1164–65 (no prejudice to other parties was likely “[g]iven how early in the lawsuit the [proposed intervenor] moved to intervene”). *Finally*, as set out below, NRF will be substantially prejudiced if it is not permitted to intervene in this case to protect its strong and unique interests in the litigation.

B. NRF has a strong interest in this case that will be impaired by an adverse ruling.

To intervene under Rule 24(a), a proposed intervenor must show an “interest” that could be “impair[ed]”—two requirements that are “closely related.” *FDIC v. Jennings*, 816 F.2d 1488, 1492 (10th Cir. 1987). A proposed intervenor satisfies the “interest” requirement if it identifies a “direct, substantial, and legally protectable” stake in the lawsuit that “would be impeded by the disposition of the action.” *Barnes*, 945 F.3d at 1121–22 (citation omitted). The “interest” requirement is intended to ensure the “involv[ement of] as many apparently concerned persons as is compatible with efficiency and due process,” *Coal. of Ariz./N.M. Cnty. for Stable Econ. Growth v. Dep’t of Interior*, 100 F.3d 837, 841 (10th Cir. 1996) (citation omitted), meaning that establishing a protectable interest “presents a minimal burden,” *Kane County*, 928 F.3d at 891 (citation

omitted). So long as a proposed intervenor could “be substantially affected in a practical sense by the determination made in an action, [it] should . . . be entitled to intervene” as of right. *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 995 (10th Cir. 2009) (citation omitted).

The impairment requirement is similarly “minimal.” *Barnes*, 945 F.3d at 1123 (citation omitted). To satisfy it, an intervenor must show only that impairment of its interest is “possible,” not inevitable, “if intervention is denied.” *Id.* (citation omitted). In evaluating impairment, the Court is not “restricted to a rigid . . . test.” *Id.* (citation omitted). The Court must instead “consider any . . . legal effect [on] the applicant’s interest.” *Coal. of Ariz./N.M. Cntys. for Stable Econ. Growth*, 100 F.3d at 844. This includes circumstances where “the resolution of the legal questions in the case [may] effectively foreclose the rights of the proposed intervenor in later proceedings, whether through *res judicata*, collateral estoppel, or *stare decisis*.” *Ute Distrib. Corp. v. Norton*, 43 F. App’x 272, 279 (10th Cir. 2002) (unpublished); *Utah Ass’n of Cntys. v. Clinton*, 255 F.3d 1246, 1254 (10th Cir. 2001) (“[T]he *stare decisis* effect of the district court’s judgment is sufficient impairment for intervention.” (citation modified)).

An organization can satisfy these requirements by showing that it has a “record of advocacy” related to the subject matter of the dispute and that an adverse ruling may thwart or hinder that advocacy. *W. Energy All.*, 877 F.3d at 1165–67. In *San Juan County v. United States*, for instance, the *en banc* Tenth Circuit found it “indisputable” that an environmental advocacy organization could intervene as of right in a case seeking a right-of-way on public land that could cause “potential damage to the environment.” 503 F.3d 1163 (10th Cir. 2007) (*en banc*), *abrogated on other grounds by Hollingsworth v. Perry*, 570 U.S. 693 (2013). Similarly, in *WildEarth Guardians*, the court held that an environmental group had a “strong . . . interest in defending and

preserving the [National Park Service’s] interpretation of” a statute that was consistent with its organizational mission and goals. 604 F.3d at 1200; *accord W. Energy All.*, 877 F.3d at 1165–67 (environmental organization’s interest in “obviating and/or minimizing the environmental impact of oil and gas development on public lands” warranted intervention in suit seeking oil and gas leases); *Utah Ass’n of Cnty.*, 255 F.3d at 1253 (permitting intervention based on intervenors’ “interest in the preservation and protection of [a national] monument”).

NRF easily satisfies these standards. NRF’s organizational mission includes sponsoring state-court litigation against unlawful redistricting maps, including active cases in Missouri and Florida. *Supra* Background § II. NRF also has a “record of advocacy,” *W. Energy All.*, 877 F.3d at 1165–67, against the ISL theory—the specific claim advanced by Plaintiffs in this case—including its sponsorship of *Moore v. Harper*, the seminal Supreme Court case rejecting the theory. Both of these qualify as “legally protectable interest[s]” under Tenth Circuit precedent. *Barnes*, 945 F.3d at 1121–22.

This litigation directly threatens these interests. If Plaintiffs prevail on their ISL-based claim, it could have a *stare decisis* effect “in later proceedings” (or serve as persuasive authority for other courts which later address similar issues), which could preclude state courts from performing judicial review on state election laws or severely limit their ability to impose an appropriate remedy. *Ute Distribution Corp.*, 43 F. App’x at 279. Not only would that “foreclose the rights” of NRF in other cases, *id.*, it would devastate NRF’s ability to perform ongoing, mission-critical work. *See WildEarth Guardians*, 573 F.3d at 995 (any party that might be “affected in a practical sense by the determination made in an action” can intervene). Further, an adverse ruling would hamper NRF’s long-standing, extensive, and expensive advocacy against the ISL

theory, thereby frustrating NRF's organizational mission. *See W. Energy All.*, 877 F.3d at 1164–67; *San Juan County*, 503 F.3d at 1164.

Because an adverse result in this action would undermine years of advocacy and hinder NRF's ability to sponsor crucial litigation to vindicate its mission, NRF easily satisfies the "interest" and "impairment" requirements of Rule 24(a).

C. NRF's interest is not adequately represented by the existing parties.

None of the existing parties adequately represent NRF's interests. The burden of showing inadequacy is "minimal," requiring only that NRF demonstrate that "representation *may be* inadequate." *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 295 F.3d 1111, 1117 (10th Cir. 2002) (citation modified); *accord Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). "The possibility that the interests of the [proposed intervenor] and the parties may diverge need not be great in order to satisfy this minimal burden." *Utah Ass'n of Cntys.*, 255 F.3d at 1254 (citation modified).

Lieutenant Governor Henderson plainly does not represent NRF's interests. She is a *defendant* in the state court litigation that Plaintiffs here collaterally attack. And it is likely that, as in the underlying state court litigation, she will take no position on the requested relief. *See* ECF No. 17-5; *Utah Ass'n of Cntys.*, 255 F.3d at 1256 (government's "silence on any intent to defend the [intervenors'] special interests is deafening" (alteration in original)). But even if Lieutenant Governor Henderson is inclined to defend here, the Tenth Circuit has held that it is "on its face impossible for a government agency to carry the task of protecting the public's interests and the private interests of a prospective intervenor," *WildEarth Guardians*, 604 F.3d at 1200 (citation modified).

Though the LWV Intervenors have not yet been granted intervention and therefore are not “existing parties,” *Barnes*, 945 F.3d at 1124, they also would not adequately represent NRF’s interests. While both the LWV Intervenors and NRF are interested in “defending against, and ultimately defeating, the claims asserted in [Plaintiffs’] complaint,” the fact that they share the same posture in the litigation does not render their interests identical, *cf. id.* at 1125, and “[o]nly ‘when the objective of the applicant for intervention is *identical* to that of one of the parties’ is representation considered to be adequate,” *id.* at 1124 (emphasis added) (citation omitted). The LWV Intervenors have clearly stated their interests and objectives in this litigation: preserving the judgment and relief granted to them in the state-court litigation from which this case springs. ECF No. 17 at 9–10. NRF’s interests and objectives, explained above, lie in preserving its organizational mission of sponsoring state-court litigation against unfair and partisan state election laws and defending its many years of advocacy against the ISL theory. NRF’s objectives thus are not identical to the LWV Intervenors’. *See Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 198 (2022) (permitting intervention where intervenors “s[ought] to give voice to a different perspective” from existing parties).

Because NRF need only show a “possibility” that its interests diverge from those of the other parties, and even that possibility “need not be great” to satisfy their minimal burden, *see Utah Ass’n of Cnty.*, 255 F.3d at 1254 (citation omitted), NRF has demonstrated that its interests are not adequately represented.

II. Alternatively, the Court should grant NRF permissive intervention.

In the alternative, the Court should grant NRF permissive intervention. As indicated by NRF’s Proposed Answer, NRF’s claims and defenses share a “common question of law or fact”

with the main action—namely, whether Plaintiffs have plausibly advanced a cognizable legal theory in the complaint. *See* Fed. R. Civ. P. 24(b). NRF has moved to intervene promptly, and its intervention would not unduly delay the action or unfairly prejudice any party. *See Buhler*, 2021 WL 364191, at *2; *supra* Argument § I.A. And given NRF’s experience with ISL challenges—including its role in *Moore v. Harper*—its presence will assist the Court in analyzing the relevant legal issues. *Corp. of President of Church of Jesus Christ of Latter-Day Saints v. RJ*, No. 2:16-CV-00453-RJS-BCW, 2016 WL 11656351, at *1 (D. Utah Aug. 24, 2016) (citation omitted) (unpublished). Courts in this circuit often grant permissive intervention where, as here, the proposed intervenor would contribute “experience, views, and expertise” that may clarify “the issues in the action.” *Kobach v. U.S. Election Assistance Comm’n*, No. 13-CV-4095-EFM-DJW, 2013 WL 6511874, at *4 (D. Kan. Dec. 12, 2013) (unpublished).

CONCLUSION

The Court should grant NRF’s motion to intervene either as of right or by permission.

Dated: February 11, 2026

Respectfully submitted,

/s/ David P. Billings

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LOCAL RULE 7-1(A)(6) CERTIFICATION

I, David P. Billings, certify that this Motion to Intervene contains 3,098 words and complies with DUCivR 7-1(a)(4).

/s/ David P. Billings
David P. Billings

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Defendant.

Civil Action No. 2:26-cv-84-RJS-JCB

**PROPOSED INTERVENOR NATIONAL REDISTRICTING FOUNDATION'S
PROPOSED ANSWER**

INTRODUCTION

1. Paragraph 1 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited constitutional provisions contain the quoted text. Proposed Intervenor denies the remaining allegations in Paragraph 1.

2. Proposed Intervenor admits that Judge Gibson issued an order adopting a remedial congressional plan on November 10, 2025, and that Lieutenant Governor Henderson is bound to use this plan for the 2026 elections. Paragraph 2 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

3. Paragraph 3 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

4. Paragraph 4 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

5. Proposed Intervenor admits that Plaintiffs purport to seek the relief specified in Paragraph 5, but deny that they are entitled to such relief. Proposed Intervenor denies the remaining allegations in Paragraph 5.

PARTIES

6. Proposed Intervenor admits that the Plaintiffs are elected officials. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to whether the Plaintiffs are registered Utah voters and therefore denies that allegation. Proposed Intervenor denies the remaining allegations in Paragraph 6.

7. Proposed Intervenor admits that Amelia Powers Gardner is a commissioner of Utah County. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to whether Commissioner Gardner is a registered Utah voter and therefore denies that allegation. Proposed Intervenor denies the remaining allegations in Paragraph 7.

8. Proposed Intervenor admits that Greg Miles is a commissioner of Duchesne County. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to whether Commissioner Miles is a registered Utah voter and therefore denies that allegation. Proposed Intervenor denies the remaining allegations in Paragraph 8.

9. Proposed Intervenor admits that Clint Painter is a commissioner of Juab County. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to whether Commissioner Painter is a registered Utah voter and therefore denies that allegation. Proposed Intervenor denies the remaining allegations in Paragraph 9.

10. Proposed Intervenor admits that Victor Iverson is a commissioner of Washington County. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to whether Commissioner Iverson is a registered Utah voter and therefore denies that allegation. Proposed Intervenor denies the remaining allegations in Paragraph 10.

11. Proposed Intervenor admits that Lori Maughan is a commissioner of San Juan County. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to whether Commissioner Maughan is a registered Utah voter and therefore denies that allegation. Proposed Intervenor denies the remaining allegations in Paragraph 11.

12. Proposed Intervenor admits that Tammy Pearson is a commissioner of Beaver County. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to

whether Commissioner Pearson is a registered Utah voter and therefore denies that allegation. Proposed Intervenor denies the remaining allegations in Paragraph 12.

13. Proposed Intervenor admits that Adam Snow is a commissioner of Washington County. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to whether Commissioner Snow is a registered Utah voter and therefore denies that allegation. Proposed Intervenor denies the remaining allegations in Paragraph 13.

14. Proposed Intervenor admits that Jimmie Hughes is the mayor of St. George. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to whether Mayor Hughes is a registered Utah voter and therefore denies that allegation. Proposed Intervenor denies the remaining allegations in Paragraph 14.

15. Proposed Intervenor admits that Tracy Glover is the sheriff of Kane County. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to whether Sheriff Glover is a registered Utah voter and therefore denies that allegation. Proposed Intervenor denies the remaining allegations in Paragraph 15.

16. Proposed Intervenor admits that Chad Jensen is the sheriff of Cache County. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to whether Sheriff Jensen is a registered Utah voter and therefore denies that allegation. Proposed Intervenor denies the remaining allegations in Paragraph 16.

17. Proposed Intervenor admits that Mike Smith is the sheriff of Utah County. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to whether Sheriff Smith is a registered Utah voter and therefore denies that allegation. Proposed Intervenor denies the remaining allegations in Paragraph 17.

18. Proposed Intervenor admits that Burgess Owens is an incumbent member of the United States House of Representatives from Utah. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to whether Representative Owens is a registered Utah voter and whether he intends to seek reelection, and therefore denies those allegations. Proposed Intervenor denies the remaining allegations in Paragraph 18.

19. Proposed Intervenor admits that Celeste Maloy is an incumbent member of the United States House of Representatives from Utah. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to whether Representative Maloy is a registered Utah voter and whether she intends to seek reelection, and therefore denies those allegations. Proposed Intervenor denies the remaining allegations in Paragraph 19.

20. Admitted.

21. Proposed Intervenor admits that the Lieutenant Governor has stated that she will implement Map 1 unless ordered not to do so. Paragraph 21 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

JURISDICTION AND VENUE

22. Paragraph 22 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

23. Paragraph 23 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

24. Paragraph 24 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

25. Paragraph 25 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

PLAINTIFFS' STANDING

26. Paragraph 26 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

27. Paragraph 27 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

28. Denied.

29. Paragraph 29 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

30. Paragraph 30 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

31. Paragraph 31 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

32. Paragraph 32 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

33. Proposed Intervenor admits that Congressional District 3 contains 17 counties and part of Utah County. Paragraph 33 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

34. Proposed Intervenor admits that Map 1 places Eagle Mountain, Lehi, Santaquin, and Saratoga Springs in Congressional District 4. Proposed Intervenor denies the remaining allegations in Paragraph 34.

35. Proposed Intervenor admits that the previous congressional map enacted by the Utah Legislature split Salt Lake County into four separate congressional districts. Paragraph 35 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

36. Paragraph 36 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

37. Denied.

38. Proposed Intervenor lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 38 regarding Commissioner Gardner's work with Representative Kennedy, and therefore denies them. Proposed Intervenor denies the remaining allegations in Paragraph 38.

39. Paragraph 39 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

40. Proposed Intervenor lacks knowledge and information sufficient to form a belief as to whether the commissioners of Washington County have voted to "refuse to adopt" the map ordered by the Utah district court, and therefore denies that allegation. Paragraph 40 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

41. Denied.

42. Denied.

43. Paragraph 43 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

44. Proposed Intervenor admits that the Utah district court enjoined the use of both the 2021 map and the legislature's proposed replacement, Map C. Proposed Intervenor admits that the Utah district court adopted a remedial map. Proposed Intervenor admits that the Utah Legislature has appealed to the Utah Supreme Court. Proposed Intervenor lacks knowledge and information sufficient to form a belief about the campaign activities of the Representatives, and therefore denies the allegations in the first sentence of Paragraph 44. Paragraph 44 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

45. Proposed Intervenor admits that the filing deadline for congressional candidates in Utah was previously in January. Paragraph 45 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

46. Paragraph 46 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

47. Proposed Intervenor admits that neither Representative Maloy nor Representative Owens have filed for reelection. Paragraph 47 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

48. Proposed Intervenor admits that Representative Maloy’s current district includes Tooele County and parts of Salt Lake and Davis Counties. Proposed Intervenor lacks knowledge and information sufficient to form a belief as to which district Representative Maloy resides in under the state court’s remedial map, and therefore denies that her “new district” includes “multiple other counties.” Paragraph 48 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

49. Denied.

50. Paragraph 50 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

51. Paragraph 51 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

52. Proposed Intervenor admits that the quoted language appears in the cited cases. Paragraph 52 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

53. Proposed Intervenor admits that the quoted language appears in the cited cases. Paragraph 53 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

54. Paragraph 54 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

55. Paragraph 55 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

56. Paragraph 56 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

57. Proposed Intervenor admits that the quoted language appears in the cited case. Paragraph 57 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

58. Paragraph 58 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

59. Paragraph 59 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

ADDITIONAL FACTUAL ALLEGATIONS

60. Proposed Intervenor admits that the cited constitutional provision contains the quoted text. Paragraph 60 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

61. Proposed Intervenor admits that the cited statute contains the quoted text. Paragraph 61 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

62. Proposed Intervenor admits that the quoted language appears in the cited case. Paragraph 62 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

63. Proposed Intervenor admits that the cited constitutional provision contains the quoted text. Paragraph 63 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

64. Proposed Intervenor admits that the quoted language appears in the cited case. Paragraph 64 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

65. Paragraph 65 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

66. Denied.

67. Admitted.

68. Proposed Intervenor admits that Proposition 4 created an Independent Redistricting Commission, and admits that the quoted language appears in the cited case. Paragraph 68 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

69. Proposed Intervenor admits that the Utah Legislature passed SB 200 in 2020, and that plaintiffs including the League of Women Voters of Utah and Mormon Women for Ethical Government sued the Legislature in state court over SB 200. Proposed Intervenor admits that the quoted language appears in the cited case. Paragraph 69 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

70. Proposed Intervenor admits that the quoted language appears in the cited case. Paragraph 70 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

71. Proposed Intervenor admits that the quoted language appears in the cited case.

72. Admitted.

73. Proposed Intervenor admits that the Utah district court issued an order on August 25, 2025. The court's order speaks for itself. Paragraph 73 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

74. Proposed Intervenor admits that the Lieutenant Governor represented to the Utah district court that a map needed to be in place by November 10, 2025. Paragraph 74 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

75. Proposed Intervenor admits that the Legislature passed S.B. 1011 and S.B. 1012. Those statutes speak for themselves. Paragraph 75 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

76. Admitted.

77. Admitted.

78. Proposed Intervenor admits that the Utah district court issued its remedial order on November 10, 2025. The order speaks for itself. Paragraph 78 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

79. Admitted.

80. Admitted.

81. Proposed Intervenor admits that the cited order contains the quoted language. Paragraph 81 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

82. Denied.

83. Denied.

84. Proposed Intervenor admits that the cited statute contains the quoted text. Paragraph 84 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

85. Proposed Intervenor admits that the cited statute contains the quoted text. Paragraph 85 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

86. Paragraph 86 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

87. Paragraph 87 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

88. Denied.

CLAIM

COUNT I

89. Proposed Intervenor Incorporates by reference each of its preceding admissions, denials, and statements as if fully set forth herein.

90. Proposed Intervenor admits that the cited constitutional provision contains the quoted text. Paragraph 90 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

91. Proposed Intervenor admits that the cited constitutional provision contains the quoted text. Paragraph 91 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

92. Proposed Intervenor admits that the quoted text appears in the cited case. Paragraph 92 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

93. Proposed Intervenor admits that the quoted text appears in the cited case. Paragraph 93 otherwise contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, denied.

94. Proposed Intervenor admits that the cited statute contains the quoted text. Otherwise denied.

95. Denied.

96. Denied.

97. Denied.

98. Proposed Intervenor admits that the cited statute contains the quoted text. Otherwise denied.

99. Denied.

100. Denied.

PRAYER FOR RELIEF

Proposed Intervenor denies that Plaintiffs are entitled to any relief.

GENERAL DENIAL

Proposed Intervenor denies every allegation in Plaintiffs' Complaint that is not expressly admitted herein.

AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to state a claim upon which relief can be granted.
2. This Court lacks jurisdiction because Plaintiffs lack standing.
3. Plaintiffs have failed to establish entitlement to injunctive relief.
4. Plaintiffs' claims are barred by abstention doctrines, including under *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941).
5. Plaintiffs failed to join necessary parties.
6. Plaintiffs' claims are barred in whole or in part by equity, including on the basis of laches and unclean hands.
7. Plaintiffs lack a private right of action.
8. Plaintiffs' claims are barred by the doctrine of issue preclusion.

Dated: February 11, 2026

Respectfully submitted,

/s/ David P. Billings

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

COMMISSIONER AMELIA POWERS
GARDNER, et al.

Plaintiffs,

v.

LIEUTENANT GOVERNOR DEIDRE
HENDERSON, in her official capacity,

Defendant.

Civil Action No. 2:26-cv-84-RJS-JCB

**PROPOSED INTERVENOR NATIONAL REDISTRICTING FOUNDATION’S
PROVISIONAL MOTION TO DISMISS**

Proposed Intervenor National Redistricting Foundation (“NRF”), through undersigned counsel, hereby files its provisional motion to dismiss the Complaint with prejudice pursuant to

Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See* ECF No. 25. In the alternative, NRF moves to defer consideration of Plaintiffs’ Complaint pending final resolution of the underlying state court litigation under the doctrine of *Railroad Comm’n of Texas v. Pullman Co.*, 312 U.S. 496 (1941).

In support of this Motion, NRF states as follows:

INTRODUCTION

The relief Plaintiffs seek—a federal court order countermanding a state court’s remedial order on state-law grounds—is squarely foreclosed by Supreme Court precedent. Less than three years ago, the Supreme Court rejected Plaintiffs’ expansive interpretation of the United States Constitution’s Elections Clause, U.S. Const. art. 1, § 4, cl. 1. *Moore v. Harper*, 600 U.S. 1 (2023). It held that, although the Elections Clause requires “the Legislature” of each State to prescribe the rules governing federal elections, it does not “vest[] state legislatures with exclusive and independent authority when setting the rules governing federal elections.” *Id.* at 26. That means “[s]tate courts retain the authority to apply state constitutional restraints when legislatures act under the power conferred upon them by the Elections Clause.” *Id.* at 37. And that authority includes the power to order the use of court-drawn plans to remedy violations of state and federal law. *See Scott v. Germano*, 381 U.S. 407, 409 (1965).

That is exactly what has happened here. Nearly six months ago, a Utah state district court held unconstitutional a state statute that repealed Proposition 4, a voter-approved initiative to restrict partisan gerrymandering in Utah. *League of Women Voters of Utah v. Utah State Legislature*, No. 220901712, 2025 WL 2644292 (Utah Dist. Ct. Aug. 25, 2025) (unpublished). As a result, it concluded that Utah’s existing congressional map, enacted under that state statute and

in violation of Proposition 4, was invalid. *Id.* So it enjoined the map and gave the state Legislature another bite at the apple. *Id.* In response, the Legislature again attempted to amend Proposition 4 and enacted a new map. In a thorough ruling, the Utah district court again concluded that both the amendments to Proposition 4 and the proposed map failed to pass muster under Utah law. ECF No. 1 (“Compl.”) ¶ 78. It did what courts around the country often do when a state legislature fails to remedy legal violations in a redistricting plan: it held a remedial hearing and ordered the adoption of a legally compliant plan. *Id.*

None of this is remotely unusual, and it certainly does not exceed the “ordinary bounds of judicial review.” *Moore*, 600 U.S. at 36. Plaintiffs base their contrary argument on provisions of state law that on their face say nothing to restrict the broad remedial power enjoyed by courts of equity in Utah. They rely on a state constitutional provision that requires the “Legislature” to redistrict soon after the U.S. Census. Utah Const. art. IX, § 1. But that is a limitation on the Legislature, not an exclusive grant of authority. They also claim that Proposition 4’s provision that a court may enjoin an unlawful map necessarily excludes the power to replace it with a remedial map. But that makes no sense—without the ability to order the adoption of a remedial map, courts would be left to play redistricting whack-a-mole with state legislatures that repeatedly adopt non-compliant maps or, worse, refuse to propose a remedial map at all, thus insulating redistricting plans from judicial review entirely. The Utah district court rightly rejected these strained interpretations of state law.

Accordingly, binding Supreme Court precedent mandates dismissal of Plaintiffs’ claim. But even if dismissal were not warranted, abstention doctrines require the Court to, at the very least, stay its hand. This case falls squarely within the *Pullman* doctrine, which requires courts to

abstain from adjudicating constitutional questions that could be obviated by state court interpretations of state law that bear on important state policies. Plaintiffs here ask the Court to conclude that the Utah district court’s interpretation of Utah law is not just wrong, but *so* wrong that the court has “transgress[ed] the ordinary bounds of judicial review” and “arrogate[d] to [itself] the power vested in state legislatures to regulate federal elections.” *Moore*, 600 U.S. at 36. The Utah Supreme Court on appeal, not this Court, must answer these important questions of state law.

BACKGROUND

I. Nature of the Case

The Plaintiffs in this action ask this Court to interfere in state redistricting litigation that has been ongoing for nearly four years based on a fringe interpretation of the Elections Clause of the U.S. Constitution. The League of Women Voters of Utah and other plaintiffs in the state redistricting litigation (the “LWV Plaintiffs”) filed suit in March 2022, challenging on state-law grounds the congressional map enacted by the Utah Legislature in 2021 along with the Legislature’s repeal of Proposition 4, a ballot measure that created an independent redistricting commission and banned partisan gerrymandering, among other things. *See* Compl., *League of Women Voters of Utah et al. v. Utah State Legislature*, No. 220901712 (Utah Dist. Ct. Mar. 17, 2022). After much litigation, including multiple trips to the Utah Supreme Court in which the court ruled unanimously for the LWV Plaintiffs, *see, e.g., League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, 554 P.3d 872 (2024), the Utah district court in August 2025 held that the legislature’s repeal of Proposition 4 violated the Utah Constitution, and accordingly

enjoined the use of the existing Utah congressional map (the “2021 Map”), which was enacted in violation of Proposition 4’s requirements. *See* Compl. ¶ 73.

As is typical in redistricting litigation, the court gave the Legislature an opportunity to remedy the violation by enacting a new map that complied with Proposition 4. *Id.* The Utah Legislature passed two bills: S.B. 1011, which amended Proposition 4 to redefine and limit its prohibition on partisan favoritism in redistricting, and S.B. 1012, which enacted a new congressional map, “Map C.” *Id.* ¶ 75. The LWV Plaintiffs sought and received permission to file a supplemental complaint challenging the constitutionality of S.B. 1011 and subsequently moved for a preliminary injunction preventing its enforcement. The court granted the preliminary injunction and enjoined the use of Map C, which it determined violated Proposition 4’s ban on partisan favoritism. Compl. ¶ 78. On November 10, the court ordered Utah election officials, including Lieutenant Governor Deidre Henderson, to conduct the 2026 congressional elections under Map 1—a state-law-compliant map proposed by the LWV Plaintiffs. *Id.* On January 7, 2026, Defendants appealed to the Utah Supreme Court. *Id.* ¶ 44. That appeal remains pending.

Rather than permitting the Utah Supreme Court to resolve these important questions of Utah law, on February 2, 2026, Plaintiffs sued the Lieutenant Governor in federal court to enjoin her from implementing Map 1 as ordered by the Utah district court. *See generally* Compl. Plaintiffs contend that under the Constitution’s Elections Clause, state courts have no authority to remedy state law redistricting violations by ordering the use of a compliant map. *Id.* ¶ 91 (citing U.S. Const. art. I, § 4, cl. 1). They argue that the Constitution “conveys the authority to prescribe the times, places, and manner of congressional elections only to ‘the Legislature’ of ‘each State,’” not to state courts. *Id.*

II. Procedural History

Plaintiffs filed their complaint on February 2, 2026, and filed a motion to expedite the briefing schedule for an anticipated motion for preliminary injunction on February 6, 2026. ECF Nos. 1, 14. On February 7, 2026, the League of Women Voters of Utah, Mormon Women for Ethical Government, and other plaintiffs in the underlying state court litigation (collectively, “LWV Intervenors”) moved to intervene as Defendants in this case. ECF No. 17. In their motion, LWV Intervenors indicated that they “plan to expeditiously move to dismiss Plaintiffs’ suit.” *Id.* at 1 n.1. The same day, Plaintiffs filed their preliminary injunction motion. ECF No. 19. The Plaintiffs sought, and the court granted in part, an extraordinarily expedited schedule to resolve their preliminary injunction motion, with a hearing set for February 18. ECF No. 25. NRF filed its motion to intervene on February 11, 2026.

LEGAL STANDARD

A complaint must be dismissed where it “fail[s] to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted). At the motion-to-dismiss stage, while the Court “must accept as true all of the allegations contained in a complaint,” it need not accept the complaint’s “legal conclusions.” *id.* at 678. “Thus, mere ‘labels and conclusions’” are insufficient. *Kan. Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1214 (10th Cir. 2011) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiffs “must offer specific factual allegations to support each claim.” *Id.*

ARGUMENT

I. Plaintiffs' claim fails under clear Supreme Court precedent.

A. The Elections Clause does not bar state courts from ordering remedial maps.

Plaintiffs argue that under the Elections Clause, only the Utah legislature—and not any Utah court—may enact a congressional redistricting plan. Their Complaint cites no case that has adopted their theory. That is unsurprising: As even Plaintiffs are forced to admit, Compl. ¶ 92, the Supreme Court has rejected the expansive theory of state legislative power that they put forward here, holding that the Elections Clause “does not insulate state legislatures from the ordinary exercise of state judicial review.” *Moore*, 600 U.S. at 22. That means “[s]tate courts retain the authority to apply state constitutional restraints when legislatures act under the power conferred upon them by the Elections Clause.” *Id.* at 37. Just two years ago in *Moore*, the Court identified at least three of its cases—*Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916), *Smiley v. Holm*, 285 U.S. 355 (1932), and *Arizona State Legislature v. Arizona Independent Redistricting Comm’n*, 576 U.S. 787 (2015)—that “rejected the contention that the Elections Clause vests state legislatures with exclusive and independent authority when setting the rules governing federal elections.” *Moore*, 600 U.S. at 26. And it reaffirmed that “State courts are the appropriate tribunals . . . for the decision of questions arising under their local law, whether statutory or otherwise.” *Id.* at 34 (quoting *Murdock v. Memphis*, 20 Wall. 590, 626 (1875)).

This power of state court judicial review under the Elections Clause, the Supreme Court has also explained, includes the power to order remedial maps. The Court has repeatedly held “that state courts have a significant role in redistricting,” and reversed lower courts that “overlooked this . . . teaching.” *Grove v. Emison*, 507 U.S. 25, 33 (1993). Indeed, where a redistricting map

violates state law, as the Utah district court found here, state courts are “specifically encouraged” to take up the map-drawing pen themselves to remedy those violations. *Scott v. Germano*, 381 U.S. 407, 409 (1965). In *Germano*, for example, a federal district court invalidated Illinois’ senate districts and entered an order requiring the State to submit to the court any revised senate districting plan it might adopt. *Id.* at 408. Meanwhile, as here, an action had previously been filed in state court attacking the same redistricting plan. *Id.* The Illinois Supreme Court invalidated that plan, offered the Illinois legislature an opportunity to enact a lawful plan, and retained jurisdiction. The Supreme Court held that the federal district court “should have stayed its hand.” 381 U.S. at 409. It recognized that “[t]he 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.*” *Id.* (citing *State of Maryland Committee for Fair Representation v. Tawes*, 377 U.S. 656, 676 (1964); *City of Scranton v. Drew*, 379 U.S. 40 (1964); *Baker v. Carr*, 369 U.S. 186 (1962)). As a result, it remanded the matter with “directions that the District Court enter an order fixing a reasonable time within which the appropriate agencies of the State of Illinois, *including its Supreme Court*, may validly redistrict the Illinois State Senate.” *Id.* (emphasis added).

In *Grove v. Emison*, the Supreme Court unanimously “renew[ed its] adherence to the principles expressed in *Germano*, which derive from the recognition that the Constitution leaves the States with primary responsibility for apportionment of their *federal congressional* and state legislative districts.” 507 U.S. at 34 (emphasis added). It repeated “what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature *or other body*, rather than of a federal court.” *Id.* (quoting *Chapman v. Meier*, 420 U.S.

1 (1975)). It accordingly held that the district court’s “injunction of state-court proceedings” was “clear error” based on the “mistaken view that federal judges need defer only to the Minnesota Legislature and not at all to the State’s courts.” *Id.* It explicitly underscored the “legitimacy of state *judicial* redistricting,” and explained that “the doctrine of *Germano* prefers *both* state branches to federal courts as agents of apportionment.” *Id.* (emphasis in original). Indeed, the state court’s “issuance of its [redistricting] plan” was “precisely the sort of state judicial supervision of redistricting we have encouraged.” *Id.*

The lesson of these cases is clear: state courts possess not only the power under the Elections Clause to order remedial maps to cure violations of state law, but also the duty to do so. That is precisely what the Utah district court did here. Plaintiffs’ contention that the Elections Clause forbids this is meritless.

B. The Utah district court did not “transgress the ordinary bounds of judicial review” under Utah law in ordering a remedial map.

Plaintiffs cannot escape through the narrow window left open by the Supreme Court in *Moore* for instances where state courts “transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections.” 600 U.S. at 36. Behind this limited proviso is “the concern that state courts might read state law in such a manner as to circumvent federal constitutional provisions.” *Id.* at 35. That standard is extraordinarily high, and no court has ever applied *Moore*’s narrow exception to hold that a state court’s application of state law violated the federal Elections Clause. This Court should not be the first.

Importantly, Plaintiffs’ Complaint does not question the Utah district court’s ruling that both the 2021 Map and Map C violated state law, nor do they question that the Utah district court

had the power to enjoin the use of those maps. Having failed to identify any legal error in the Utah district court’s state law analysis, Plaintiffs can hardly argue that these decisions “exceeded the bounds of ordinary judicial review.” *Id.* at 36. Instead, the Complaint contends only that the Utah district court lacked authority under the United States and Utah constitutions to order the adoption of a remedial map to cure the violations of state law that it found. *E.g.*, Compl. ¶ 94.

Although the Supreme Court in *Moore* declined to adopt any “test by which we can measure state court interpretations of state law in cases implicating the Elections Clause,” nothing about the state court’s remedial order here “transgress[ed] the ordinary bounds of judicial review” under any plausible standard. *Moore*, 600 U.S. at 36. Indeed, it is quite “ordinary” for a court—state or federal—to adopt a remedial redistricting plan to cure a violation of law and ensure that the upcoming election will take place under a legally compliant map. That is commonplace in redistricting litigation. *See, e.g., Norelli v. Sec’y of State*, 175 N.H. 186, 195 (2022) (holding that state courts have jurisdiction “to formulate a remedy if the current congressional districting statute is unconstitutional and no redistricting plan is timely enacted by the legislature”); *Carter v. Chapman*, 672 Pa. 172, 216-17 (2020) (adopting a congressional redistricting plan); *Hippert v. Ritchie*, 813 N.W.2d 391, 403 (Minn. 2012) (adopting a congressional redistricting plan); *Perry v. Del Rio*, 67 S.W.3d 85, 91 (Tex. 2001) (“The Legislature is the department constitutionally responsible for apportioning the State into federal congressional legislative districts. When the Legislature does not act, citizens may sue and, then, it is the judiciary’s role to determine the appropriate redistricting plan.” (citations omitted)) *cf. Hoffmann v. N.Y. State Independent Redistricting Comm’n*, 41 N.Y.3d 341, 348-351 (2023) (recounting the long history of federal court-drawn maps in New York); *Milligan v. Allen*, No. 2:21-cv-1530-AMM, 2025 WL 2451593,

at *4 (N.D. Ala. Aug. 7, 2025) (adopting congressional plan to remedy violations of Section 2 of the VRA).

Plaintiffs’ principal basis for arguing that the Utah court transgressed its authority under Utah law is the Utah Constitution’s provision that “[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, the Legislature shall divide the state into congressional, legislative, and other districts accordingly.” Utah Const. art. IX, § 1. That provision, by its plain terms, says nothing to limit the judicial power of the Utah courts. Instead, as the Utah district court previously explained, Article IX, Section 1, far from “grant[ing] redistricting authority to the ‘Legislature,’” instead “limits the Legislature’s authority” as to “when redistricting shall occur.” *League of Women Voters of Utah v. Utah State Legislature*, No. 220901712, 2025 WL 2644292, at *18 (Utah Dist. Ct. Aug. 25, 2025) (unpublished).

The Constitutions of other states contain similar provisions to Utah’s Article IX, Section 1, but courts in those states routinely order new district maps to remedy violations of state and federal law. The Minnesota Constitution, for instance, provides that “the legislature shall have the power to prescribe the bounds of congressional and legislative districts.” Minn. Const. art. IV, § 3. But Minnesota courts regularly draw maps. *E.g.*, *Watson v. Simon*, 970 N.W.2d 56, 59-66 (Minn. 2022); *Hippert*, 813 N.W.2d at 394-95. Wisconsin’s Constitution similarly provides that “[a]t its first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly.” Wis. Const. art. IV, § 3. But that provision has not stopped the Wisconsin Supreme Court from imposing remedial maps. *See Johnson v. Wis. Elections Comm’n*, 967 N.W.2d 469 (Wis. 2021); *Clarke v. Wis. Elections*

Comm’n, 998 N.W.2d 370, 396 (Wis. 2023). New Hampshire’s constitution provides that “the legislature shall divide the state into single-member [senate] districts,” and that it “shall form the single-member districts . . . at the regular session following each decennial federal census. N.H. Const. Pt. 2, Art. 26th. Again, that did not stop the New Hampshire Supreme Court from “undertak[ing] the unwelcome obligation” of choosing a new Senate map to remedy the state legislature’s failure to enact a lawful map. *Below v. Gardner*, 963 A.2d 785, 788 (N.H. 2002). And as the Texas Supreme Court has explained, though the “Legislature shall, at its first regular session after the publication of each United States decennial census, apportion the state into senatorial and representative districts,” Tex. Const. art. III, § 28, “[w]hen the Legislature does not act, citizens may sue, and, then, it is the judiciary’s role to determine the appropriate redistricting plan.” *Perry*, 67 S.W.3d at 91 (citing *Grove*, 507 U.S. at 33–34).

Utah courts, like these other state courts, “have broad authority to grant equitable relief as needed.” *Jeffs v. Stubbs*, 970 P.2d 1234, 1243 (Utah 1998); *see also Spanish Fork Westfield Irr. Co. v. Dist. Ct. of Salt Lake Cnty.*, 104 P.2d 353, 359 (Utah 1940) (“Generally speaking, courts of equity exercise a broad and flexible jurisdiction to grant remedial relief where justice and good conscience requires it.”). “A trial court is accorded considerable latitude and discretion in applying and formulating an equitable remedy.” *Thurston v. Box Elder Cnty.*, 892 P.2d 1034, 1041 (Utah 1995). Moreover, the Utah Constitution provides that “[a]ll courts shall be open, and every person, for an injury done to the person in his or her person, property, or reputation, shall have remedy by due course of law.” Utah Const. art. I, § 11. The Oklahoma Supreme Court, for instance, has relied on the Oklahoma Constitution’s similar “open courts” provision to hold that its state courts have

jurisdiction to “grant remedies for violations of congressional redistricting disputes.” *Alexander v. Taylor*, 51 P.3d 1204, 1212–13 (Okla. 2002) (citing Okla. Const. art. 2, § 6).

Nor does it matter that Proposition 4 permits the Court to “issue a permanent injunction barring enforcement or implementation of the redistricting plan.” Utah Code § 20A-19-301(2); *see* Compl. ¶ 84. That section in no way limits the Utah district court’s broad remedial authority under the Utah constitution and common law—it does not say that courts may *not* adopt remedial plans as an equitable remedy. Moreover, under Proposition 4, “[u]pon the issuance of a permanent injunction, the legislature *may* enact a new or alternative redistricting plan that abides by and conforms to the redistricting standards, procedures, and requirements of this chapter.” Utah Code § 20A-19-301(8) (emphasis added). This permissive language further underscores that, absent a legally compliant remedial plan from the Utah legislature, the court must step in and devise a remedy. Although the legislature “may” enact a remedial plan, it is not required to do so, which would leave it to the court to remedy the violation. Any other interpretation would render the availability of an injunction under Proposition 4 entirely meaningless: the Legislature could simply refuse to avail itself of the opportunity to cure the violation, thus leaving in place a map drawn in violation of state law. Proposition 4’s strictures are not so toothless.

Finally, even if the Court were to disagree with the Utah district court’s interpretation of the Utah Constitution as to its own remedial authority, that would not be sufficient to show that the Utah district court “transgressed the ordinary bounds of judicial review.” *Moore*, 600 U.S. at 36. As the persuasive authorities cited above demonstrate, the Utah district court’s interpretation of Utah law—even if erroneous—certainly does not “impermissibly distort[]” Utah law “beyond what a fair reading required.” *Id.* (quoting *Bush v. Gore*, 531 U.S. 98, 115 (2000) (Rehnquist, J.,

concurring)). Nor does it “transcend[] the limits of reasonable statutory interpretation to the point of supplanting the statute enacted by the ‘legislature’ within the meaning of Article II.” *Id.* (quoting *Bush*, 531 U.S. at 133 (Souter, J., dissenting)). Short of that demanding standard, any error in the district court’s interpretation of Utah law is a matter for the Utah Supreme Court to address on appeal.

II. In the alternative, the Court should abstain from deciding this case under *Pullman*.

If the Court does not dismiss the Complaint outright for failure to state a claim, it should at the very least defer consideration of Plaintiffs’ claim until after resolution of the state court proceedings, as this is a paradigmatic case for abstaining under *Railroad Comm’n of Texas v. Pullman Co.*, 312 U.S. 496 (1941). “The policy underlying *Pullman* abstention is that federal courts should avoid premature constitutional adjudication and the risk of rendering advisory opinions.” *Caldara v. City of Boulder*, 955 F.3d 1175, 1178 (10th Cir. 2020) (citations omitted). Accordingly, the Court should abstain under *Pullman* where: (1) “an uncertain issue of state law underlies the federal constitutional claim”; (2) “the state issues are amenable to interpretation and such an interpretation obviates the need for or substantially narrows the scope of the constitutional claim” and (3) “an incorrect decision of state law . . . would hinder important state law policies.” *Id.* (quoting *Lehman v. City of Louisville*, 967 F.2d 1474, 1478 (10th Cir. 1992)).

This case plainly satisfies all three elements. *First*, as Plaintiffs’ complaint demonstrates, there are multiple uncertain issues of state law that precede any federal constitutional question. Plaintiffs challenge a state trial court order issued on November 10, 2025, that invalidates the Utah Legislature’s 2021 map and replaces it with a different map. Compl. ¶ 2. That order rests on a determination of state law—namely, that the 2021 map violates Proposition 4, a Utah statute that

the legislature attempted to unconstitutionally repeal. *Id.* Plaintiffs contend that the state court order is unlawful because (1) the Utah constitution allegedly “vest[s] congressional apportionment authority exclusively in the state” legislature and (2) Utah statutes do not “grant any authority to adopt or impose a map” to state courts—both state law arguments. *Id.* ¶¶ 63, 84–85. These “threshold state law issue[s]” necessarily precede the federal constitutional issue Plaintiffs present, which depends on whether the Utah district court’s interpretation of state law is so erroneous as to violate the United States Constitution. *See Clajon Prod. Corp. v. Petera*, 70 F.3d 1566, 1567 (10th Cir. 1995); *Moore*, 600 U.S. at 36.

Second, the state law issues are not only “amenable to interpretation” in the abstract, *Caldara*, 955 F.3d at 1178, but in fact are the subject of ongoing litigation before the Utah Supreme Court. *Pullman* abstention applies even when resolution of threshold state-law issues is merely hypothetical—when those issues “*might be . . .* presented in a different posture by a state court determination of pertinent state law.” *S & S Pawn Shop Inc. v. City of Del City*, 947 F.2d 432, 442 (10th Cir. 1991) (emphasis added) (affirming *Pullman* abstention over ambiguous Oklahoma statute). These facts present an even stronger case for abstention, because the state law questions are pending on appeal in proceedings before Utah’s high court. *Cf. Morrow v. Winslow*, 94 F.3d 1386, 1393 (10th Cir. 1996) (noting, in the context of another abstention doctrine, the “strong federal policy against federal court interference with pending state judicial proceedings” (citation omitted)).

And, importantly, resolution of any of the state-law issues Plaintiffs present could “make [this court’s] constitutional ruling unnecessary.” *Clajon Prod. Corp.*, 70 F.3d at 1576. At least according to Plaintiffs’ complaint, the Utah Supreme Court could decide that the trial court (1)

mis-applied Proposition 4 in invalidating the 2021 map, (2) violated separation-of-powers principles in the Utah constitution, or (3) violated Utah statutes limiting the court’s remedial authority, *see* Compl. ¶¶ 2, 63, 84–84—all questions of state law. Should the Utah Supreme Court rule that the trial court erred on any of these issues, “there would be no need for [this Court] to resolve the federal constitutional questions.” *Caldara*, 955 F.3d at 1181 (applying *Pullman* abstention given uncertain issue of Colorado state law); *see also City of Chicago v. Fieldcrest Dairies*, 316 U.S. 168, 173 (1942) (applying *Pullman* abstention where federal constitutional “issue may not survive [parallel] litigation in the state courts”); *Am. Const. L. Found., Inc. v. Meyer*, 113 F.3d 1245 (10th Cir. 1997) (*declining* to apply *Pullman* abstention when “no possible state court ruling . . . would obviate the need for a determination” of the federal constitutional question); *Fed. Home Loan Bank Bd., Washington, D.C. v. Empie*, 778 F.2d 1447, 1451 (10th Cir. 1985) (similarly declining to abstain because “no foreseeable state court ruling on the scope of existing state law . . . will render moot the [federal constitutional] question”).

Third, any disposition of this case plainly touches on important state policies. “Reapportionment [of congressional districts] . . . is primarily the duty and responsibility of the States, not the federal courts.” *Allen v. Milligan*, 599 U.S. 1, 29 (2023) (quotations omitted; citation modified); *see Large v. Fremont Cnty., Wyo.*, 670 F.3d 1133, 1146 (10th Cir. 2012) (highlighting federalism concerns when federal courts become involved in state redistricting efforts); *Caldara*, 955 F.3d at 1181–82 (applying *Pullman* abstention where “federalism issues [we]re salient”). Among other issues, Plaintiffs’ arguments here implicate the balance of power between the Utah legislature and Utah courts, and the meaning of several constitutional and statutory provisions of

Utah law. *See Caldara*, 955 F.3d at 1182 (*Pullman* abstention was appropriate to avoid “balanc[ing] two competing state policy choices”).

In short, Plaintiffs ask the Court to wade into important questions of Utah law that are the subject of ongoing litigation in the state’s highest court. A ruling in their favor would deprive the Utah Supreme Court of even the opportunity to opine on these issues and declare that the Utah district court’s interpretation of state law is not just wrong, but *so* wrong that it violates the Elections Clause. Such intrusions on the comity between state and federal courts are exactly what abstention doctrines are meant to avoid.

CONCLUSION

The Court should dismiss Plaintiffs’ complaint or, alternatively, defer pending the Utah Supreme Court’s adjudication of the underlying state law action.

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Respectfully submitted,

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** Pro hac vice application forthcoming*