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**Pro hac vice*

In the Supreme Court of the State of Utah

League of Women Voters of Utah, Mormon Women for Ethical Government, Stefanie Condie, Malcom Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, Jack Markman

Plaintiffs-Respondents,

v.

Utah State Legislature, Utah Legislative Redistricting Committee, Sen. Scott Sandall, Rep. Mike Schultz, Sen. J. Stuart Adams, Lt. Gov. Deidre Henderson,

Defendants-Petitioners.

No. _____

<u>Emergency</u> Petition for Extraordinary Relief

On petition for extraordinary relief
from the Third Judicial District Court
Honorable Dianna M. Gibson
No. 220901712

INTRODUCTION

The people of Utah can have new congressional maps in place for the 2026 congressional elections. Or they can have new congressional maps resulting from a process that follows *all* of Proposition 4, which the district court has concluded now governs redistricting in Utah. But given the election calendar, Utahns cannot have both. The Lieutenant Governor has said the 2026 congressional elections will occur under whatever maps are in place on November 10, 2025. Drawing new maps that comply with all of Proposition 4 will take longer than that. Thus forced to choose, Plaintiffs sacrificed Proposition 4's means for their preferred ends. To them, having new maps for the 2026 congressional elections matters more than complying with all of Proposition 4. The district court agreed and effectively excised the Independent Redistricting Commission process. It ordered the Legislature to publish a new map for public comment by September 25. That improper exercise of equitable power evinces a mismatch between the district court's merits conclusion and its remedy—and suggests that claims Plaintiffs have repeated about Proposition 4 since this lawsuit started constitute little more than window dressing. It warrants an order from this Court granting extraordinary relief.

The district court entered its relevant orders after this Court remanded Plaintiffs' Count V, which alleged that S.B. 200 invalidly repealed Proposition 4. *LWV v. Utah State Legisl.*, 2024 UT 21, ¶227. On the merits, the district court held that S.B. 200 invalidly repealed Proposition 4. It then resurrected all of Proposition 4—even provisions Plaintiffs had disclaimed—as controlling law. **Exhibit A-64-69.** And it permanently enjoined the implementation of the 2021 Congressional Map (H.B. 2004), calling it a "fruit" of S.B. 200. **Exhibit A-70, 74-76.** To remedy that problem, it directed the Legislature to publish an alternative map by September 25, allowed Plaintiffs to propose a congressional map by October 6 if they don't like the Legislature's map, and scheduled an evidentiary hearing for mid-October to resolve

any disputes about whether the Legislature's new map or any alternative proposed map from Plaintiffs better satisfies Proposition 4. *See* **Exhibit A-76**; **Exhibit B-78:11-16**; *see also* D.Ct. Doc. 500.

The Legislature disagrees with the district court's merits ruling on Count V and reserves all rights to seek further review from this Court or the U.S. Supreme Court after the remedial proceedings conclude. But for the district court's order, the Legislature would not change the boundaries of the congressional districts in H.B. 2004. In other words, were the Legislature properly left to its constitutional prerogatives to redistrict, H.B. 2004 would remain the State's congressional map. *See* Utah Const. art. IX; U.S. Const. art. I, §4. Even so, under compulsion from the district court's order, the Legislature intends to participate in the remedial proceedings and try to enact a replacement map using redistricting criteria it did not adopt while expressly reserving the right to further appellate review on Count V.

This petition, however, doesn't concern or seek review of the district court's merits ruling on Count V. Instead, it concerns only the district court's remedy. As noted, the district court enjoined the 2021 Congressional Map and directed the Legislature to publish a remedial map by September 25 that complies with Proposition 4. Or, more specifically—with only *parts* of Proposition 4. To fully comply with Proposition 4, the Legislature would have to convene a new Independent Redistrict Commission. That commission would need to recommend its maps under Proposition 4's procedural and substantive requirements. The Legislature then would need to take an up-or-down vote on the commission's recommendations. If the Legislature were to enact its own map, the Legislature would have to make its proposal available to the public for 10 calendar days, follow Proposition 4's substantive requirements, and issue a report detailing why its map "better satisfies" Proposition 4 than the commission's recommendations.

But eschewing complete compliance, the district court's remedial order takes a cafeteria approach to the redistricting law it has just reinstated in full, picking and choosing what sections *really* matter. The remedial order avoids some parts of Proposition 4 as statutory empty calories: the commission is not necessary, the Legislature need not take an up-or-down vote on the commission's recommendations, and the Legislature doesn't need to explain why its map is better than the commission's recommendations. **Exhibit B-26:25-27:6**. Others appear to be statutory protein and fiber: the Legislature must follow the substantive redistricting provisions and the 10-day public comment period. **Exhibit B-27:7-17**; **Exhibit A-76**.

All this makes the district court's remedial prescriptions inconsistent with its merits conclusions. If (as the court concluded) S.B. 200 is invalid because it improperly repealed Proposition 4, and the 2021 Congressional Map is invalid because the Legislature enacted it under S.B. 200 rather than Proposition 4, the remedy cannot be adopting another map through a process that does not fully comply with Proposition 4. And if (as the court concluded) Proposition 4 bests S.B. 200 because the former constitutes a proper exercise of the people's constitutional right to alter or reform the government, the court's remedial order will nullify the people's exercise of that right just as S.B. 200 did. If the Legislature cannot impair the people's right, neither can the court. Whether the order does so is a question of surpassing importance.

Time is of the essence in obtaining an answer. The remedial order harms the Legislature, and disregards what the district court has determined is the proper will of the people, by requiring the Legislature to draw an alternative map using a process that does not comply with Proposition 4. To be meaningful, extraordinary relief must avoid that harm. But because the district court refused to stay its permanent injunction, **Exhibit C**, the Legislature must take steps *right now* to plan and prepare for a special session in time to publish an alternative map by September 25 using a non-Proposition 4 process. Any relief that arrives after the Legislature

has taken those groundwork steps is no relief at all and a de facto denial of this petition; those steps will be finished, and thus the harms irreversible, well before September 25.

As a result, Legislative Defendants ask this Court to grant extraordinary relief and stay the district court's permanent injunction prohibiting the implementation of the 2021 Congressional Map **by no later than September 15**. As explained in the contemporaneously filed Rule 23C motion, Legislative Defendants ask the Court to require any responses to this petition be filed by no later than September 9 and permit Legislative Defendants to submit a reply, if any, by no later than September 11. Again, relief obtained after September 15 will effectively be no relief at all in light of groundwork the Legislature must lay by then to comply with the district court's September 25 publication deadline. And the countless steps the Legislature must take to be able to publish a remedial map on September 25 make interlocutory review of the remedial order between now and then likewise impossible. The press of time makes resolving this petition by September 15 the only feasible way to accord Legislative Defendants relief. And an order staying the district court's injunction will allow the Legislature to prepare new congressional maps using a process that complies with all of Proposition 4 while allowing the 2026 election to run in an orderly fashion under H.B. 2004.

STATEMENT OF ISSUES, RELIEF REQUESTED, AND PARTIES AFFECTED

Issue: Whether the district court abused its discretion in refusing to stay its order permanently enjoining the use of H.B. 2004, the 2021 Congressional Map, because the court's ordered remedial process doesn't require compliance with all of Proposition 4.

Relief Requested: An order from this Court staying the permanent injunction against implementing H.B. 2004, the 2021 Congressional Map. Alternatively, an order directing the district court to stay the permanent injunction against the 2021 Congressional Map.

Respondents:

1. Hon. Dianna Gibson, Judge, Third District Court, denied Legislative Defendants' motion to stay her permanent injunction.
2. Plaintiffs League of Women Voters of Utah, Mormon Women for Ethical Government, Stefanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, and Jack Markman.
3. Defendant Lieutenant Governor Deidre Henderson, in her official capacity.

STATEMENT OF FACTS

1. In 2018, an initiative known as Proposition 4 passed by a 0.6% margin and in only four of 29 counties. Its self-described intent was to stop "gerrymandering," install an "Independent Redistricting Commission," and impose mandatory redistricting requirements on the Legislature. **Exhibit D-54**; **Exhibit E-6**.

2. In February 2020, a bipartisan group of House and Senate legislators joined with Proposition 4's sponsor, Better Boundaries, in a press conference to announce legislation known as S.B. 200 that changed some of Proposition 4's requirements. *See* **Exhibit F**. S.B. 200 passed through both houses and the governor signed it on March 28, 2020.

3. Following the release of U.S. Census Bureau data in August 2021, the Legislature began the redistricting process. In November 2021, it enacted H.B. 2004, which adopted the 2021 Congressional Map.

4. In 2022, Plaintiffs sued, challenging Utah's four congressional districts as a "gerrymander" in violation of various provisions of the Utah Constitution (Counts I-IV) and alleging that S.B. 200 improperly repealed Proposition 4 (Count V). *LWV*, 2024 UT 21, ¶¶48-50. After the district court entered its order on motions to dismiss, this Court granted cross-petitions for an interlocutory appeal. *Id.* ¶57. In July 2024, this Court issued an opinion

announcing it would retain jurisdiction over Counts I-IV but remanded Count V for the district court to assess whether S.B. 200 violated Plaintiffs' right to "alter or reform" their government under the new framework announced by this Court. *Id.* ¶¶76, 220, 227. The Court held that when a citizens' initiative is one to "alter or reform" government, the Legislature may amend such initiatives but cannot "impair" them, *id.* ¶162, unless the Legislature satisfies strict scrutiny, *id.* ¶215. The Court issued a limited remand for the parties and the district court to apply that new "formulation." *Id.* ¶76.

5. Count V did not purport to challenge the 2021 Congressional Plan. During the *LWV* oral argument, Justice Petersen observed that, while Counts I through IV challenged H.B. 2004's congressional districts, Count V was "about the amending or repealing of *the initiative*." Oral Argument at 2:28:45, *LWV v. Utah State Legislature*, 2024 UT 21 (No. 20220991-SC), bit.ly/3GalfwG (emphasis added). Plaintiffs' counsel agreed 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 2:29:01. Counsel said 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." *Id.* at 2:31:00. And Plaintiffs made the same representation in their supplemental brief in *LWV*: "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 Legislature*, 2024 UT 21 (No. 20220991-SC).

6. After this Court's decision, Plaintiffs did that by adding Counts VI-VII, which challenge the 2021 Congressional Plan as noncompliant with Proposition 4's procedural requirements (Count VI) and substantive requirements (Count VII).[1]

[1] Plaintiffs also added Count VIII, alleging that the 2011 map is malapportioned.

7. Plaintiffs moved for summary judgment only on Count V—the constitutional challenge against S.B. 200. *See* D.Ct. Doc. 293. Legislative Defendants cross-moved for summary judgment. The district court heard oral argument on the motions in January 2025. *See* D.Ct. Doc. 449.

8. In April, at the district court's request, the parties submitted supplemental briefing about whether an injunction against the 2021 Congressional Plan would be an appropriate remedy for a grant of summary judgment for Plaintiffs on Count V. *See* D.Ct. Docs. 453, 457, 459.

9. On June 17, district court staff notified the parties *sua sponte* by email that a decision would be coming in the next two weeks. **Exhibit G-1**. Then in mid-July, the parties were advised that "there is no specific time frame" for the decision "at this moment." **Exhibit H-1**.

10. On August 25, the district court issued its decision. The district court granted summary judgment for Plaintiffs on Count V. As a remedy, it enjoined the use of the 2021 Congressional Plan in future elections, even though Count V did not challenge any district lines. **Exhibit A-69-76**.

11. The court retained jurisdiction and suggested a timeline governing remedial "proceedings between now and November 1, 2025," the date the Lieutenant Governor had stressed congressional district maps must be in place. **Exhibit A-76**.

12. The court "ordered" and "directed" the Legislature "to design and enact a remedial congressional redistricting map in conformity with Proposition 4's mandatory redistricting standards and requirements," and to share that map with "Plaintiffs and the Court" by September 24, 2025. **Exhibit A-76**. Proposition 4's requirements include establishing and funding an independent redistricting commission, public hearings, proposed commission

plans, a legislative vote on those plans, a legislative report on any commission plan voted down, 10 days of advance public notice of any map proposed by the Legislature, public comment, public access to redistricting data, and more. **Exhibit A-43** (confirming these as "mandatory standards and procedures").

13. The court's order allowed "Plaintiffs and other third parties [to] submit proposed remedial maps, along with any accompanying expert reports and supportive materials," as well as additional briefing "with objections to any congressional map enacted by the Legislature or to any map proposed by Plaintiffs or any other third party." **Exhibit A-76**. And the order contemplated a mid-October evidentiary hearing. *Id.*

14. On August 28, Legislative Defendants asked the district court to clarify its order. *See* D.Ct. Doc. 476. They asked the district court: (1) whether a new commission must be convened under Proposition 4; (2) whether the Legislature needs to take an up-or-down vote on the maps proposed by the commission in 2021 under S.B. 200; (3) whether the Legislature needs to comply with Proposition 4's requirement to issue a written report explaining why its alternative remedial better satisfies Proposition 4 than the 2021 commission's recommendations under S.B. 200; (4) whether the Legislature must make its proposed remedial map available online for at least 10 calendar days before enacting it; (5) whether the Legislature must make the remedial map's data available; and (6) whether the Legislature may also submit objections to any maps proposed by Plaintiffs or any other third parties. The next morning, Plaintiffs filed a brief stating their positions on each of Legislative Defendants' questions. *See* D.Ct. Doc. 486.

15. On August 29, the district court held a status conference. There, the court orally clarified its order. The court adopted each of Plaintiffs' proposed answers to Legislative Defendants' questions and ordered that the Legislature does not need to convene a new

commission, take an up-or-down vote on the 2021 commission's recommendations or a new commission's recommendations, or issue a report. **Exhibit B-26:25-27-6**; *see also* D.Ct. Doc.486. The court also adopted Plaintiffs' reading that the Legislature *does* need to make its map available online for at least 10 calendar days and make the map data available, and that the Legislature may submit its objections to Plaintiffs' proposed maps. **Exhibit B-27:7-17**.

16. On September 2, the Lieutenant Governor filed a notice explaining that a congressional map must be in place by November 10 to ensure that her office and the county clerks can conduct the 2026 election in an orderly fashion. *See* D.Ct. Doc. 494.

17. Before the status conference, Legislative Defendants also moved the district court to stay the permanent injunction pending remedial proceedings and subsequent appeals. *See* D.Ct. Doc. 482. The parties argued the motion during the status conference. **Exhibit B-57:1-75:19**. On September 2, the district court denied the motion for stay. The court acknowledged "the importance of legal issues and the consequential nature" of the permanent injunction. **Exhibit C-2**. The court also recognized that the "timelines here are short," but said that redistricting has been accomplished in other states "under tighter timelines." *Id.* As examples, the district court referred to Texas and California. *Id.* Those examples and others, according to the district court, "suggest[]" that "there is time to redistrict and comply with Proposition 4." *Id.* And as the district court saw it, because the 2026 election was "more than a year away" and because election deadlines "can be moved without impacting the 2026 elections," it was "not impossible for the parties to have a final decision from the Utah Supreme Court in time for and without impacting the 2026 midterm elections." **Exhibit C-3**. The court also stated that the 2026 election should proceed "with a lawful congressional plan designed in compliance with Proposition 4's traditional redistricting standards and its prohibition on partisan gerrymandering." *Id.*

18. The parties have stipulated by motion to the following schedule for the remedial proceedings in the district court and are waiting for the court to act on that motion. *See* D.Ct. Doc. 500. By September 25, the Legislature must publish its proposed alternative map. Between September 26 and October 5, the Legislature must make the proposed alternative map available for public comment. By October 6, the Legislature must enact the proposed alternative map and submit it to the district court. If Plaintiffs choose to submit their own proposed map, they must do so by October 6. If Plaintiffs propose a map, the parties will submit supporting briefs, objections, and expert reports by October 17. The district court will hold an evidentiary hearing on the alternative map(s) on October 23 and 24. By October 28, the parties will submit any proposed findings of fact and conclusions of law to the district court.

WHY RELIEF SHOULD BE GRANTED

Under Utah Rule of Appellate Procedure 19(a), a party may petition an appellate court for extraordinary relief in Utah Rule of Civil Procedure 65B "[w]hen no other plain, speedy, or adequate remedy is available." In turn, under Civil Rule 65B, "[a]ppropriate relief may be granted" if "an inferior court … abused its discretion." Utah R. Civ. P. 65B(d)(2). Legislative Defendants are entitled to relief under those rules.

I. The district court abused its discretion in denying the Legislature's stay motion.

A court abuses its discretion when it misapplies the law. *State v. Boyden*, 2019 UT 11, ¶19. "A decision premised on flawed legal conclusions … constitutes an abuse of discretion." *Lund v. Brown*, 2000 UT 75, ¶9. The abuse-of-discretion standard "necessarily include[s] review to ensure that no mistakes of law affected a lower court's use of its discretion." *State v. Barrett*, 2005 UT 88, ¶17. The proper interpretation of a statute is reviewed for correctness. *Id.* ¶14.

Equitable remedies such as injunctions have limits. Even when exercising their equitable powers, courts are "bound by positive provisions of the statutes" and "cannot … disregard

constitutional and statutory requirements." *Spanish Fork Westfield Irrigation Co. v. Dist. Ct. of Salt Lake Cnty.*, 104 P.2d 353, 359 (Utah 1940); *accord Hedges v. Dixon County*, 150 U.S. 182, 192 (1893) ("Courts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law."). For instance, this Court granted extraordinary relief in *Cox v. Laycock*, holding that the district court abused its discretion by ordering a county clerk to hold a new primary election when the code provision that "sets forth the means of disposition for an election contest" "nowhere authorizes the court to order a new election." 2015 UT 20, ¶38. Even though "the district court sought to fashion the most appropriate remedy given the circumstances," the court's remedial order "contravened the dictates of the election code" and thus embodied a "mistake of law constitut[ing] an abuse of discretion warranting extraordinary relief." *Id.* ¶39; *see also Goodluck v. Biden*, 104 F.4th 920, 926 (D.C. Cir. 2024) (reversing a lower court remedial order requiring the State Department to "keep processing" visa applications past the "clear" "statutory deadline"). The settled principle is that a court "cannot … create a remedy in violation of law." *Rees v. City of Watertown*, 86 U.S. 107, 122 (1874); *see also Spanish Fork*, 104 P.2d at 359.

The district court's remedial ruling commits an error identical to *Laycock* and exceeds equity's proper limits by contravening Proposition 4. In its August 25 order, the district court concluded that S.B. 200 unlawfully repealed Proposition 4 and faulted the Legislature for bypassing Proposition 4—which was not then the law—when it enacted the 2021 Congressional Map. *See* **Exhibit A-70**. The district court's premise for enjoining the 2021 Congressional Map as a remedy for S.B. 200's repeal of Proposition 4 was that the Map was "the fruit of that unlawful repeal." *Id.* And the court deemed a permanent injunction necessary because Proposition 4 needed to be "enforce[d] … going forward." **Exhibit A-75**. The court's permanent

injunction "directed" the Legislature to design and enact a remedial map "in conformity with Proposition 4's mandatory redistricting standards and requirements." **Exhibit A-76**.

But Proposition 4 prohibits the Legislature from enacting its own map without first giving "adequate time" for an independent redistricting commission (or the Chief Justice) to recommend a map. Utah Code §20A-19-204(3). To comply with that requirement, a new commission must be convened, and new commissioners must be appointed, under Proposition 4. *Id.* §20A-19-201. And that commission must carry out its functions under Proposition 4 and recommend one to three maps to the Legislature. *Id.* §§20A-19-202, 20A-19-203. Only then can the Legislature take an up-or-down vote on the commission's recommendations and enact its own map if it rejects the commission's recommendations. *Id.* §20A-19-204(2), (4). Proposition 4 also requires the Legislature to make its own plan available for "10 calendar days" before voting on it. *Id.* §20A-19-204(4).

Yet on August 29, the district court held that in the remedial proceedings: (1) an independent commission need not recommend maps as Proposition 4 requires, *see* Utah Code §20A-19-201; (2) thus the Legislature need not take an affirmative up-or-down vote on any commission map as Proposition 4 requires, *id.* §20A-19-204(2), (4); and (3) the Legislature need not issue a report explaining why its enacted map "satisfies" Proposition 4 "better" than the commission's proposals, as Proposition 4 requires, *id.* §20A-19-204(5). **Exhibit B-26:25-27-6**. Days later, the district court denied Legislative Defendants' request for a stay of the permanent injunction, reasoning that "there is time to redistrict and comply with Proposition 4." **Exhibit C-2**.

That's true only if "Proposition 4" means "the parts of Proposition 4 that Plaintiffs convinced the district court should apply." But if Proposition 4 means the entire initiative from 2018, that is wrong. Between now and the September 25 deadline to publish an

alternative map, there is no time to both "redistrict" and "comply with" *all* of "Proposition 4." **Exhibit C-2**. If "Proposition 4 is the law on redistricting in Utah," **Exhibit A-75**, and if (as the district court has said) the Legislature must follow its "mandatory redistricting standards and requirements" when enacting a remedial map, **Exhibit A-76**, there's no legitimate basis in law or equity to "disregard" Proposition 4's commission-related "statutory requirements," *Spanish Fork Westfield Irrigation Co.*, 104 P.2d at 359, or to "contravene[]" Proposition 4, *Laycock*, 2015 UT 20, ¶39, just to beat the November 10 deadline. Yet the stay denial does just that.

To justify that outcome, the district court adopted Plaintiffs' reasoning that Proposition 4's requirement to have a commission—and its later requirements relating to the commission's recommendations—could be ignored because they apply only to redistricting after a decennial census or change in the number of congressional districts. **Exhibit B-11:6-13**; *see* Utah Code §20A-19-102(1)-(2); *see also id.* §20A-19-204(3) ("The Legislature may not enact any redistricting plan permitted under Section 20A-19-102(1)-(2) until adequate time has been afforded to the Commission and to the chief justice … to satisfy their duties under this chapter."). According to the court, the Legislature should redistrict here without following Proposition 4's central provisions because Proposition 4 says that redistricting is also permitted "upon the issuance of a permanent injunction by a court of competent jurisdiction under Section 20A-19-301(2) and as provided in Section 20A-19-301(8)" or "to conform with a final decision of a court of competent jurisdiction." *Id.* §20A-19-102(3)-(4).

This reasoning is wrong. The district court based its Count V merits ruling on the central premise that passing S.B. 200, and enacting maps under it, improperly sidestepped Proposition 4 and the commission, thereby violating Utahns' right to alter or reform the government. But here, the court's remedy for sidestepping Proposition 4 and the commission requires once again sidestepping Proposition 4 and the commission. And neither section cited

by Plaintiffs and adopted by the district court gives the Legislature any assurance that any alternative remedial map it ultimately adopts will be free from yet another challenge under Proposition 4 by a different group of plaintiffs. *See* Utah Code §20A-19-102(3)-(4). After all, the district court permanently enjoined the 2021 Congressional Map after ruling on Plaintiffs' Count V. Plaintiffs brought that claim under Article I, §2 of the Utah Constitution, not under §20A-19-301(3) to secure an order under §§20A-19-301(2) and -301(8)—the only type of claim listed in §20A-19-102(3). And as to §20A-19-301(4), there's been no "final decision" by any court.

Simply put, the current timeline does not leave the Legislature time to comply with all of Proposition 4. An order from this Court staying the permanent injunction against the 2021 Congressional Map will fix that. It will allow the Legislature to adopt a new congressional map after following all of Proposition 4. A new commission can be convened and do its work, and the Legislature can follow the processes Proposition 4 requires of it after that happens. Plaintiffs and the district court rejected that outcome because it would leave the 2021 Congressional Map in place for the 2026 election and while remedial proceedings in the district court, and any appeals, become final. But that only magnifies the point: Do Plaintiffs' preferred ends—having a new map for 2026—matter more than the means of complying with Proposition 4's "mandatory redistricting standards and requirements"? For the reasons just discussed, they do not. The district court abused its discretion in refusing to stay its permanent injunction.

II. The denial of a stay implicates significant legal issues, creates severe consequences, and was egregiously wrong.

This Court also considers "multiple factors" when deciding whether to grant extraordinary relief. *State v. Henriod*, 2006 UT 11, ¶20. Examples include "'the egregiousness of the alleged error, the significance of the legal issue presented by the petitioner, [and] the severity of the consequences occasioned by the alleged error.'" *Id.* (quoting *Barrett*, 2005 UT 88, ¶24).

To obtain relief, "a party need not show each of the above factors." *Id.* ¶21. These factors are "'nonexclusive,'" and the Court may consider any "[a]dditional factors.'" *Boyden*, 2019 UT 11, ¶43. Each factor warrants extraordinary relief here.

Significant legal issues. No one can fairly dispute that this petition implicates critical legal issues. The district court itself acknowledged that Legislative Defendants' stay motion raised important legal issues. **Exhibit C-2**. To be clear, Legislative Defendants are not (yet) asking this Court to review the merits of the district court's Count V ruling. Instead, the district court's remedial ruling itself—issued seven months after oral argument on the summary judgment motions, and just a week after the Texas legislature redistricted its congressional districts—directed the Legislature to draw new maps in a month's time as a remedy for a claim that did not challenge the districts themselves. That raises significant legal issues that warrant relief before the Legislature convenes for a special session to publish an alternative map before September 25. If the district court is right that Proposition 4 is the law, there's no valid legal basis to pick and choose among its requirements, and the district court's remedial order bypassing certain provisions is legal error. The significance of these issues warrants relief.

Severe consequences. Nor can anyone reasonably dispute that severe consequences would follow without extraordinary relief.

The district court's refusal to stay its injunction inflicts a grave separation-of-powers injury on the Legislature. *Cf. Boyden*, 2019 UT 11, ¶44 (granting extraordinary relief when the district court ruling "obstructed" the State "in the exercise of its prosecutorial discretion"). The Legislature is the body that the federal Elections Clause tasks with redistricting. U.S. Const. art. I, §4, cl. 1. The decision below fails to heed the Supreme Court's warning that state courts do not have "free rein" when deciding whether interpretations of state law "evade federal law." *Moore v. Harper*, 600 U.S. 1, 34 (2023). Federal law requires any state constraints on

the Legislature's redistricting authority to be "the ordinary constraints on lawmaking in the state constitution." *Id.* at 29-30. Proposition 4's substantive constraints are statutory—not constitutional—constraints on lawmaking, so they cannot intrude on the Legislature's ability to discharge a federal constitutional function. Unlike the Arizona voters who formally amended the Arizona Constitution through an initiative, *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 792, 817-18 (2015), Utah's voters could not and did not amend the Utah Constitution through Proposition 4, *LWV*, 2024 UT 21, ¶161. Allowing substantive standards in an initiative-passed statute, and found nowhere in the Utah Constitution, to constrain the Legislature's discretion improperly restricts the Legislature's federally delegated redistricting authority. *See Moore*, 600 U.S. at 29-30; *Ariz. State Legis.*, 576 U.S. at 808. Reading the Utah Constitution to allow Proposition 4's statutory standards to override the Legislature's constitutional discretion—as the district court did—"transgress[es] the ordinary bounds of judicial review" in violation of the federal Elections Clause. *Moore,* 600 U.S. at 36.

Beyond that, a legislative supermajority enacted the 2021 Congressional Map after the legislative redistricting committee held numerous hearings over a six-month period to gather Utahns' input in Salt Lake City, Grantsville, Ogden, Logan, Orem, Rose Park, Cedar City, St. George, Richfield, Moab, Price, Vernal, Park City, and Clearfield. *See* Utah State Legis., *H.B. 2004 Congressional Boundaries Designation*, le.utah.gov/~2021s2/bills/static/HB2004.html; Leg. Redistricting Comm., *2021 Meeting Schedule*, le.utah.gov/interim/2021/pdf/00002796.pdf. The "inability" to conduct elections under the Legislature's "duly enacted" redistricting plan "clearly inflicts irreparable harm" on the Legislature and the members of the public it represents. *See Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018); *accord Trump v. CASA*, 145 S. Ct. 2540, 2562 (2025). If, after the 2026 elections, the district court's "judgment is ultimately reversed, the State cannot run the election over again, this time applying" H.B. 2004. *Veasey v. Perry*,

769 F.3d 890, 896 (5th Cir. 2014) (issuing stay pending appeal). Without relief, a single judge's decision will forever block Utahns from voting under a map they have voted under twice before, that was passed by a supermajority of their representatives, and that further appellate proceedings may determine was lawful. *Cf. Snow, Christensen & Martineau v. Lindberg*, 2013 UT 15, ¶25 (appellate court's inability to "unring the bell" warrants extraordinary relief).

The time constraints here only heighten the separation-of-powers harms to the Legislature. Without relief, the district court's refusal to stay its permanent injunction and the Lieutenant Governor's November 10 deadline force the Legislature into at least one special session to try to enact an alternative remedial map under a redistricting scheme that overrides key elements of Proposition 4. The shortened period to enact an alternative map already constrains the Legislature's ability to perform its constitutional redistricting duty. Coupled with the district court's order directing the Legislature to follow a hollowed-out version of Proposition 4, principles of comity and separation-of-powers counsel in favor of leaving the Legislature's 2021 Congressional Map in place while a remedial processes fully compliant with Proposition 4 occurs. *Compare* Utah Const. art. V, §1 *with id.* art. IX, §1.

Those separation-of-power concerns are real. By redlining vast swaths of Proposition 4, the district court's order undermines not only the Legislature's constitutional prerogatives to redistrict but also what the district court has deemed a proper exercise of the people's alter or reform right. The district court's order allows Plaintiffs to "propose[]" "any map," thus effectively replacing commission maps with Plaintiffs' own proposed map. **Exhibit A-76**. None of this comports with Proposition 4's text. Indeed, the district court's remedial process parachutes Utah into a national redistricting spotlight when intensely partisan redistricting fights are being waged across the country. *See, e.g.*, Kamisar, *Texas Senate passes new Republican-drawn congressional map*, NBC News (Aug. 23, 2025),

www.nbcnews.com/politics/elections/texas-senate-passes-new-republican-drawn-congressional-map-rcna226278; Ballotpedia News, *California Legislature approves congressional redistricting amendment for November 2025 ballot* (Aug. 23, 2025), news.ballotpedia.org/2025/08/25/california-legislature-approves-congressional-redistricting-amendment-for-november-2025-ballot/. An anonymous "Democratic operative" has already described the district court's order and remedial process as a glidepath to "at least one safe, blue seat." Mondeaux, *Democrats see opening in Utah after judge orders new maps to be drawn*, Deseret News (Aug. 27, 2025), www.deseret.com/politics/2025/08/27/democrats-see-opening-in-utah-with-new-maps/. The only way to square that confident prediction with the assurances from Proposition 4's sponsors that its redistricting process "favors no party or outcome," **Exhibit E-8**, is to conclude that the court's remedial order allows something Proposition 4 does not. Relief from this Court will neutralize those concerns, protecting not only what the people thought they voted for but also the Legislature's constitutional prerogatives. The severity of these consequences independently warrants extraordinary relief staying the permanent injunction against the 2021 Congressional Map and letting remedial proceedings take place in an orderly fashion fully consistent with Proposition 4.

Egregious error. As explained above, the district court's remedial ruling—picking and choosing which provisions of Proposition 4 should be followed, cafeteria style—cannot be reconciled with its merits order resurrecting *all* of Proposition 4 to govern redistricting in Utah. *See supra* at 10-14. This error warrants extraordinary relief.

III. No other plain, speedy, and adequate remedy is available.

"[T]he nature of the issues" and "the procedural posture" of the case inform whether extraordinary relief is the only plain, speedy, and adequate remedy. *F.L. v. Court of Appeal*, 2022 UT 32, ¶33. Here, the district court's order denying the Legislature's stay request, its

permanent injunction of H.B. 2004, the within-a-week steps the Legislature must take to facilitate publishing a map by September 25, and the Lieutenant Governor's November 10 deadline make extraordinary relief from this Court the only plain, speedy, and adequate remedy.

Legislative Defendants seek a stay of the district court's permanent injunction before the Legislature finishes the necessary preliminary steps to convening a special session to publish a remedial map before September 25. The Legislature needs an immediate answer from this Court about whether remedial proceedings before the district court should be governed by all of Proposition 4 or by only the parts of Proposition 4 that Plaintiffs convinced the district court matter most in the initiative. The Legislature needs that answer before it convenes a special session.

Without extraordinary relief, Legislative Defendants cannot seek a review of the district court's stay denial. To avoid doubt, the Legislature again reserves all rights to seek plenary appellate review *after* remedial proceedings and final judgment. But Legislative Defendants cannot appeal directly to this Court from the district court's denial of stay, an interlocutory order. *See Copper Hills Custom Homes, LLC v. Countryside Bank, FSB*, 2018 UT 56, ¶10 ("an appellate court does not have jurisdiction to consider an appeal unless the appeal is taken from a final order or judgment that 'end[s] the controversy between the litigants'").

The Legislature has not filed a separate petition for permission to appeal the stay denial, *cf.* Utah R. App. P. 5(a), because the timing of the district court's permanent injunction precludes interlocutory review of the courts' merits or remedial orders. The district court heard arguments on the parties' cross-motions for summary judgment on Count V on January 31. It then called for and received supplemental briefing in April. After that, court staff advised the parties *sua sponte* by email on June 17 that "rulings" on the summary judgment motions "will be issued sometime within the next two weeks." Had a ruling arrived then, the Legislature

would have had more time and a greater practical opportunity to seek interlocutory appeal. But when Plaintiffs asked court staff for an update on July 16, the parties were advised that "there is no specific time frame" for the decision "at this moment." Issuing the decision on August 25 effectively precluded the Legislature from seeking interlocutory review of the merits of that decision from this Court or the U.S. Supreme Court before November 10. And the countless steps the Legislature must take to be able to publish a remedial map on September 25 make interlocutory review of the remedial order between now and then likewise impossible.

The Legislature's constitutional prerogatives should not be prejudiced or undermined by mere accident of time. H.B. 2004 should remain in place until remedial proceedings and any appeals are finally resolved. Given the unprecedented nature of the district court's remedial ruling, the court's September 25 deadline for publishing a remedial map, and the Lieutenant Governor's November 10 deadline to have a map in place for the 2026 elections, extraordinary relief from this Court by September 15 that stays the district court's August 25 permanent injunction constitutes the Legislature's only "plain," "speedy," and "adequate" remedy.

CONCLUSION

The Court should grant the Legislature's petition for extraordinary relief by September 15 and stay the district court's order permanently enjoining the 2021 Congressional Map pending the final outcome of remedial proceedings and subsequent appeals.

Dated: September 5, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This petition does not exceed 20 pages, excluding any tables or attachments, in compliance with Utah Rule of Appellate Procedure 19(i).
2. This petition has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Garamond font in compliance with the typeface requirements of Utah Rule of Appellate Procedure 27(a).
3. This brief contains no non-public information and complies with Utah Rule of Appellate Procedure 21(h).

/s/ *Tyler R. Green*

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2025, a true, correct and complete copy of the foregoing Petition for Extraordinary Relief was filed with the Court and served via United States Mail or electronic mail to the following:

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Attachments

(A) The District Court's August 25, 2025, Summary Judgment Order and Permanent Injunction (D.Ct. Doc. 470)

(B) Transcript of the August 29, 2025, Status Conference

(C) The District Court's September 2, 2025, Order Denying Stay (D.Ct. Doc. 496)

(D) 2018 General Election Canvass (D.Ct. Doc. 407)

(E) 2018 Voter Information Pamphlet (D.Ct. Doc. 406)

(F) Transcript of the February 27, 2020, Press Conference (D.Ct. Doc. 408)

(G) June 17, 2025, Email Correspondence from Chambers

(H) July 16, 2025, Email Correspondence from Chambers