No. 20220991-SC

IN THE
SUPREME COURT OF THE STATE OF UTAH

League of Women Voters of Utah, et al.,
Appellees and Cross-appellants (Plaintiffs),
v.
Utah State Legislature, et al.,
Appellants and Cross-appellees (Defendants).

Opening Brief of League of Women Voters of Utah, Mormon Women for Ethical Government, Stephanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, and Jack Markman

On Plaintiffs' Petition (Consolidated No. 20220998-SC)
Appeal from the Third Judicial District Court, Salt Lake County,
Honorable Dianna M. Gibson, District Court No. 220901712

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Introduction

In our system of government, the people are the principal; their representatives, the agents. No tenet of democracy is more fundamental. Yet our representatives would reverse it.

The Legislature asks this Court to recognize, for the first time, an extraordinary power to nullify the people's expressed will. It claims absolute yet assumed authority to repeal any citizen-initiated law at any time, for any reason. This gets the core constitutional promise of popular sovereignty exactly backwards. And it violates Utahns' fundamental constitutional rights—including in article I, section 2 and article VI, section 1—that safeguard the people's choice to secure for themselves the last word on the scope of legislative power.

The Legislature asserts its atextual and ahistorical power over citizen initiatives to defend its complete repeal of Proposition 4, a government reform initiative that voters enacted in 2018 to restructure the redistricting process by prohibiting partisan gerrymandering and giving an independent commission the leading role in drawing district lines. Dissatisfied with the people's exercise of their own lawmaking authority to prohibit gerrymandering, the Legislature swiftly defied the will of the people and repealed the entire initiated law. It then replaced some parts with watered-down alternatives that gutted the law's essential purpose. This was unprecedented—never before has the Utah Legislature nullified a citizen initiative.

Despite text, precedent, and history to the contrary, the Legislature seeks to reduce the voters' core constitutional rights and superior lawmaking authority to nothing more than a parchment promise. This Court should not countenance such an antidemocratic and unconstitutional result.

Statement of the Issues

Issue: Did the Legislature's repeal of Proposition 4 violate the people's constitutional right to initiate legislation and to alter or reform their government?

Standard of Review: On appeal from a decision granting a motion to dismiss, this Court "assum[es] the truth of the allegations in the complaint and draw[s] all reasonable inferences therefrom in the light most favorable to the plaintiff." *Castro v. Lemus*, 2019 UT 71, ¶ 11, 456 P.3d 750 (citation omitted). "Because the issue of constitutionality presents a question of law," this Court "review[s] the trial court's ruling for correctness and accord[s] it no particular deference." *Cook v. Bell*, 2014 UT 46, ¶ 7, 344 P.3d 634 (citation omitted).

Preservation: This issue is preserved. [R.325–29.]

Statement of the Case

1. Legal and Factual Background

1.1 Utahns designed the Constitution to preserve their ultimate authority to structure and reform state government

"The government of the State of Utah was founded pursuant to the people's organic authority to govern themselves." *Carter v. Lehi*, 2012 UT 2, ¶ 21,

269 P.3d 141 (citation omitted). The primacy of the people's sovereign power is embodied in several provisions of the Utah Constitution.

The preamble begins with the recognition that it is "we, the people of Utah" who established the Constitution "to secure and perpetuate the principles of free government." Utah Const. pmbl.

Article I, section 2 of the Constitution then makes clear that, although the people delegated certain powers when they formed a government, they remained the principals—with the government as their agent. It provides: "All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require." Utah Const. art. I, § 2. As this Court has recognized, article I, section 2 reflects the "basic premise, upon which all our government is built, [that] the people have the inherent authority to allocate governmental power in the bodies they establish by law." *Carter*, 2012 UT 2, ¶ 21.[1] Other provisions of the Constitution

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[1] Article I, section 2 represents a "Lockean power clause" that is deeply rooted in the system of American government and designed to "grant sweeping power to the citizens, allowing them great influence over their state governments." Steven Gow Calabresi et al., *Individual Rights Under State Constitutions in 2018: What Rights Are Deeply Rooted in A Modern-Day Consensus of the States?*, 94 Notre Dame L. Rev. 49, 135 (2018). Numerous states, including Utah, recognize that such provisions provide an enforceable right in the people to act as a check on the Legislature and to restructure their government, including by enacting initiative laws within the existing constitutional framework. *E.g.*, *Meyer v. Alaskans for Better Elections*, 465 P.3d 477, 478–79 (Alaska 2020).

reinforce that basic premise, while establishing that any residuum of power reverts to the people, not their grantees in the government. *E.g.*, Utah Const. art. I, §§ 25, 27.

As a prominent Utah historian summarized, these and other constitutional provisions reflect a basic "reluctance to enhance government power—particularly that of the legislature." Jean Bickmore White, *Charter for Statehood: The Story of Utah's Constitution* 102 (1996). That reluctance arose from the historical context in which the Utah Constitution was drafted. At the time, there was a dramatic "rise of corporate monopolies and trusts" and "widespread scandals" involving legislative corruption. *Id.* at 8–9. In response, "writers of late-nineteenth-century constitutions (including Utah's) addressed these problems by limiting legislative power." *Id.* They endeavored to retain the power of the people, among other checks and balances, to prevent an unaccountable legislature and sought constitutional "[l]imits . . . on the powers of legislatures in hopes of curing or curbing their vices." *Id.* at 9; *see also* Thomas Cronin, *Direct Democracy: The Politics of Initiative, Referendum and Recall* 54 (1989) (explaining that the initiative movement arose due to "[p]ublic mistrust of state legislatures . . . at the turn of the century").

Moreover, Utahns sought to secure their popular sovereignty as a bulwark against limitations on the people's fair access to the electoral process. Utahns explicitly provided these constitutional provisions as a response to the

unaccountable and unrepresentative control that the government exerted over Utah's territorial electoral process through the "Utah Commission," which largely controlled elections in the territory. White, *Charter for Statehood*, *supra* at 34–35; *see also* *Anderson v. Tyree*, 42 P. 201, 202 (Utah 1895) (describing the role of the Utah Commission). Utahns were focused on securing political power in themselves to act as a check on their government and ensure their representatives remained accountable, particularly when it came to the proper functioning of the electoral process. *See* White, *Charter for Statehood*, *supra* at 38; *see also* Memorial of the Constitutional Convention of Utah (1887) (describing to Congress the 1887 Constitution drafters' desire to expand the electorate and eliminate the structural restrictions imposed by the Utah Commission).

1.2 Utahns further effectuated these popular sovereignty guarantees by reserving the initiative power in article VI, section 1

Four years after statehood, Utahns amended their Constitution to provide for citizen-enacted legislation—the second of twenty-four states to do so. *Carter*, 2012 UT 2, ¶ 23. Like the Constitution more generally, the initiative amendment was an outgrowth of the Progressive Era, and it was "based on the premise that only free, unorganized individuals could be trusted and that any intermediary body such as politicians, political parties and legislative bodies were inherently corrupt and distorted the public interest." *Id.* (citation and quotation marks omitted). Thus, in 1900, Utahns determined that they must exercise their own

"organic" authority to "retain[] the legislative power" and reserve it for themselves as a check on a recalcitrant legislature. *Id.* ¶¶ 83–86.

Contemporary Utahns understood the initiative amendment as restoring the people's power to "force an unwilling legislature or city council to pass such laws as the people really want."[2] State Representative Samuel H.B. Smith—a champion of the initiative amendment and its sponsor—urged voters to support the amendment to enable "government by direct legislation" and ensure that "the people can compel the submission to themselves of any desired law."[3] In urging voters to approve the constitutional amendment, he explained that the initiative power would "giv[e] the last say to the people" in enacting legislation.[4]

Over time, this Court has repeatedly reinforced the importance of the people's initiative power. For example, this Court has described the initiative power as "sacrosanct and a fundamental right." *Gallivan v. Walker*, 2002 UT 89, ¶ 27, 54 P.3d 1069. And it has made clear that "Utah courts must defend it against encroachment and maintain it inviolate." *Id.* (collecting cases).

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[2] *Initiative, Referendum, Recall—What Do the Words Mean?*, Ogden Evening Standard, Mar. 20, 1911, at 6; *Direct Legislation! Or the "Initiative and Referendum,"* Ogden Daily Standard, Oct. 31, 1900, at 6 (noting that the amendment's purpose was to allow citizens to enact laws if the Legislature "refuse[d] to pass such a law"); *see also Stavros v. Office of Legislative Res. & Gen. Counsel*, 2000 UT 63, ¶ 19, 15 P.3d 1013 (recognizing that the "purpose of a citizen initiative is to present to the voters a measure the legislative branch of government has not enacted, and may have specifically rejected").

[3] Samuel H.B. Smith, Speech at Populist Rally at the Salt Lake Theatre, Oct. 27, 1899, at 8.

[4] *Yesterday's Proceedings*, Ogden Daily Standard, Mar. 8, 1899, at 7.

The initiative power is located in article VI, section 1 of the Constitution, which provides that "[t]he Legislative power of the State shall be vested in: (a) a Senate and House of Representatives which shall be designated the Legislature of the State of Utah; and (b) the people of the State of Utah as provided in Subsection (2)." Subsection 2, in turn, provides that "[t]he legal voters of the State of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may: (A) initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute." Utah Const. art. VI, § 1(2)(a)(i)(A).[5]

The legislative provisions setting forth the procedures for citizen initiatives are codified at Utah Code sections 20A-7-101 to -217. Those provisions impose certain procedural requirements on state-level initiatives, including signature requirements, application procedures, and posting and circulation requirements, among other things. Utah Code §§ 20A-7-201, -205, -202, -202.7, -204.1. This Court

[5] The current article VI, section 1 language is the product of non-substantive amendments enacted in 1972, 1998, and 2000. *See* SJR1 1972 Budget Session; SJR10 1998 General Session; SJR8 2000 General Session, all available at https://adambrown.info/p/research/utah_constitution?index=sections (last visited March 30, 2023). The lone substantive change to article VI, section 1 came in 2000 when the people opted to place limits on their own initiative power with respect to hunting wildlife. *See* Utah Const. art. VI, § 1(2)(a)(ii). The original constitutional amendment that created the initiative power also amended article VI, section 22 to distinguish by name whether laws were enacted by the Legislature or were enacted by the people via initiative. *See* HJR5 § 2 1899 Regular Session.

has held that an initiative may not violate other provisions of the Constitution, but the Legislature itself cannot impose substantive restrictions on the content of initiatives. *Sevier Power Co. v. Bd. of Sevier Cnty. Comm'rs*, 2008 UT 72, ¶ 10, 196 P.3d 583.

If an initiative is placed on a ballot and wins majority approval, the initiative becomes law. Unlike legislation passed by the Legislature, the governor may not veto a citizen-initiated law. Utah Const. art. VII, § 8(1); *Carter*, 2012 UT 2, ¶ 22 n.10. Although the Legislature has assumed the purported ability to "amend" an initiative "at any legislative session," nothing in Utah law recognizes the Legislature's authority to repeal or otherwise nullify citizen-enacted initiatives. *See* Utah Code § 20A-7-212(3).

The Legislature has not attempted to substantially amend or repeal an initiative until recently.[6] To Plaintiffs' knowledge, the Legislature's revision of the Utah Medical Cannabis Act, in 2018, was the first time the Legislature sought

[6] The people of Utah have enacted seven initiatives since article VI, section 1's adoption—the vast majority of proposed initiatives either have failed to qualify for the ballot or were rejected at the polls. *See Historical Election Results*, Utah State Archives, https://vote.utah.gov/historical-election-results/ (providing results for successful initiatives in 1960, 1976, 2000, and 2018); *see also List of Utah ballot measures*, Ballotpedia, https://ballotpedia.org/List_of_Utah_ballot_measures.

to substantially modify a citizen-enacted initiative.[7] Plaintiffs are unaware of any attempt to repeal a citizen-enacted initiative until Proposition 4.

Because the Legislature has never previously repealed or otherwise nullified an initiated law, this Court has never resolved its authority to do so. But in one of the first Utah cases interpreting article VI, section 1, Justice Larson concluded that the Legislature lacked such authority. *Utah Power & Light Co. v. Provo City*, 74 P.2d 1191, 1201–12 (Utah 1937) (Larson, J., concurring). The *Utah Power* case arose from a dispute over Provo City's decision to sell bonds to construct a power system for the city. *Id.* at 1192 (plurality opinion). Two initiative petitions were filed to refer the decision to the voters. *Id.* The city then passed an ordinance to the same effect, i.e., referring the decision to the voters. *Id.* A plurality of the Court concluded that it was unnecessary to resolve the extent to which a legislative body could repeal legislation enacted by the people. *Id.* at 1200. In a concurrence that this Court has repeatedly relied upon, however, Justice Larson addressed the issue. *See Carter*, 2012 UT 2, ¶¶ 21–22 nn.9–10, ¶ 27, ¶ 31 n.22 (approvingly discussing Justice Larson's concurrence); *Gallivan*, 2002 UT 89, ¶ 23 (same).

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[7] Proposition 2 concerned access to medical cannabis. The Legislature amended some aspects of the initiated law and repealed others. *See* Utah Medical Cannabis Act, HB3001, Third Special Sess. (Utah 2018), https://le.utah.gov/~2018S3/bills/hbillenr/HB3001.pdf; *see also Grant v. Herbert*, 2019 UT 42, ¶ 5 & n.2, 449 P.3d 122 (describing how HB 3001 "amended many of the provisions").

Justice Larson concluded that the Legislature lacked authority to nullify an initiative. Citing the same provisions of the Utah Constitution discussed above, he described how the legislative power of the State was divided to "prevent the Legislature" from "infringing the [people's] inalienable rights." *Utah Power*, 74 P.2d at 1202 (Larson, J., concurring). "For economy and convenience the routine of legislation is exercised by the Legislature, but the legislative power of the people directly through the ballot is *superior* to that of the representative body." *Id.* (emphasis added).

Justice Larson explained that the people "are the father of the Legislature, its creator, and in the act creating the Legislature the people provided that its voice should never silence or control the voice of the people in whom is inherent all political power." *Id.* at 1205. "[B]eing coequal in legislative power, the Legislature, the child of the people, cannot limit or control its parent, its creator, the source of all power." *Id.* Thus, "when the people, by the proper exercise of the initiative, their method of legislating, have spoken on a matter essentially within their scope of government, the master has spoken and even the voice of the child, though it may be recalcitrant, is stilled." *Id.*

1.3 The Legislature repealed Proposition 4

For decades, Utahns have endeavored to reform redistricting in the State by taking politics out of the process and giving principal map-drawing responsibility to an impartial citizen commission. After years of building

grassroots support across Utah, in November 2018, the people exercised their lawmaking and government reform authority to enact the Utah Independent Redistricting Commission and Standards Act in Proposition 4 ("Prop 4"), an initiative designed to curb excessive partisan gerrymandering. [R.23-28.]

Prop 4 explicitly proscribed partisanship in the redistricting process. It required adherence to a set of neutral traditional redistricting criteria that are applied by courts, legislatures, and independent redistricting commissions across the country, many of which are embraced in United States Supreme Court precedent. [R.27-28.] And it prohibited the adoption of any district lines that purposefully or unduly favor or disfavor any incumbent or political party. [R.27-28.] Prop 4 backed up these requirements and prohibitions by providing a private cause of action for Utahns to ensure their enforcement. [R.28.]

In addition to these reforms, Prop 4 engaged the people's right to make structural changes within the constitutional bounds of the legislative power. It shifted primary map-drawing responsibility away from the Legislature to the newly created bipartisan, citizen-led Utah Independent Redistricting Commission ("UIRC"). [R.25-27.] In so doing, Utahns endeavored to remove redistricting authority from self-interested legislators and give it to an impartial group of citizens acting on the people's behalf. [R.25-27.] They designed the UIRC to conduct a transparent, community-driven redistricting process free from partisan influence. [R.25-27.]

Once the UIRC had completed its work, Prop 4 mandated that the Legislature consider and act on the UIRC's redistricting plans in a transparent manner. [R.28.] The Legislature had to affirmatively vote on whether to accept the UIRC's redistricting plans without material modification or reject them. [R.28.] If the Legislature rejected a UIRC plan, Prop 4 required the Legislature to make its substituted proposed plan available to the public for at least ten days for Utahns to assess the substitute and provide public input. [R.28.] Utah Code § 20A-19-204(4) (2019). Prop 4 also required the Legislature to issue a detailed written report explaining its decision to reject the UIRC plan and why the Legislature's substituted map better satisfied the mandatory, neutral redistricting criteria. [R.28.] The UIRC then had the opportunity to respond for the public's consideration. [R.28.] Utah Code § 20A-19-204(5) (2019).

A majority of Utah citizens from a range of geographic areas and political backgrounds voted to enact Prop 4. [R.23-25, 28-29.] They did so to restructure the legislative process for redistricting and to reform the government to ensure that their representatives would be elected in districts accountable to the people, not insulated from them. [R.21-25, 28-29.]

Prop 4's proponents explicitly invoked the people's rights to secure their popular sovereignty and reform their government when they presented the initiative to the voters. [R.24-25.] The "Argument in Favor" section in the Prop 4 materials submitted to the voters stated that the initiative was designed to

reform the structure of the redistricting system because "we can't expect legislators to fix the system. It benefits them. We the People must fix it."[8] [Prop 4 Official Overview (2018), Add. J at 3.] The initiative proponents informed voters that "Proposition 4 returns power to the voters and puts people first in our political system," and it "[m]ost importantly . . . forbids drawing districts" for partisan advantage to "ensure that Utah voters have a government of the People." [Add. J at 3.] Likewise, the enacted law's Statement of Intent and Subject Matter explicitly invoked the people's rights and power under article I, section 2, describing how Prop 4's reforms sought to "strengthen our democracy by making our elected officials more accountable to the communities they represent." [Utah Independent Redistricting Commission and Standards Act (Proposition 4) (2018), Add. I at 1-2.]

The Legislature, however, had other ideas. From the beginning, leaders in the Legislature actively opposed Prop 4 and waged an unsuccessful campaign against it. [R.25; *see also* Add. J at 4-5]. As Prop 4's proponents described to the voters, that opposition stemmed from the reality that "[p]oliticians are the only folks that benefit from gerrymandering," and "[t]he current system presents a clear conflict of interest." [Add. J at 5.]

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[8] The Prop 4 official overview and the full text of the enacted law were incorporated by reference in Plaintiffs' Complaint and judicially noticeable in any event. *See, e.g.*, *Oakwood Vill. LLC v. Albertsons, Inc.*, 2004 UT 101, ¶¶ 10–15, 104 P.3d 1226, 1230.

The fact that a majority of Utahns statewide voted to enact Prop 4 did not abate the Legislature's hostility to redistricting reform. Soon after the November 2018 election, the Legislature began working to find ways to nullify the voters' will. [R.29-31.] Legislators—including some Appellants—claimed that they sought to merely "tweak[]" the laws enacted by Prop 4 and would still "make sure that we have an open and fair process when it comes times for redistricting." [R.31.] But these assurances were, of course, hollow. Instead, the Legislature decided to take the extraordinary and unprecedented step of entirely repealing all the provisions enacted by Prop 4 by passing S.B. 200 on March 11, 2020. [R.29–31.]

As the Legislature acknowledged below, S.B. 200 completely "repeal[ed]" every code section created by Prop 4 and then "replace[d]" it with "an alternative version." [R.240 n.17.] That "alternative version" eroded the voters' enacted reforms in Prop 4 beyond recognition. The enrolled copy of S.B. 200 confirms that the Legislature wholly repealed everything Prop 4 enacted; its only amendments were to two of Utah's general governmental immunity statutes that were amended instead of repealed to remove minor changes made concerning Prop 4's private cause of action. [R.29 n.9 (citing Senate Bill 200 (2020), Add. K).]

The Legislature's complete repeal of Prop 4 vitiated its requirements. [*See* R.25-31.] For instance, the Legislature's repeal eliminated the initiative's core prohibition on partisan gerrymandering, mandatory neutral redistricting

standards applied to the Legislature, and private cause of action to enforce these requirements. [R.29-31.] And while the redistricting commission envisioned under S.B. 200 bore a superficial resemblance to the Prop 4 commission, S.B. 200 rendered it toothless. The Legislature's alternative law reduced the independent citizen commission process to a charade, replacing it with a purely advisory version of the UIRC that, in the end, represented little more than a pandering gesture to the voters who fought for and won redistricting reform. [R.28-31, 40-48.]

In fall 2021, the enfeebled citizen commission performed its watered-down role under S.B. 200. [R.31-42.] The UIRC painstakingly synthesized community input and conducted a fully transparent redistricting process to unanimously produce three potential congressional redistricting plans, which the UIRC presented to the Legislature on November 1. [R.31-42.]

The UIRC dutifully performed its role despite continued hostility from the Legislature and notwithstanding the Legislature's own parallel redistricting process—which suggested that it planned to ignore the UIRC. [R.42-51.] Despite the UIRC's unanimous, bipartisan approval of all the proposed redistricting plans, the Legislature did not even pretend to consider the UIRC maps. [R.43-45.] The Legislature instead devised a partisan map even before the UIRC presented its impartial proposals. [R.43-45.]

Indeed, legislative leaders and the governor admitted that partisanship had influenced the Legislature's process, and the details of the gerrymandered map show the success of that influence. [R.43-45, 53-54, 55-71.] Over the course of a few days, the Legislature ultimately produced and enacted a final partisan gerrymandered congressional map. [R.9-10, 45-50, 54.] In a final act of disregard for the expressed will of the people, the Legislature considered and passed Utah's final redistricting plans in a manner that minimized any meaningful opportunity for public scrutiny and input—the antithesis of the transparent UIRC process voters had approved. [R.45-51.]

2. Procedural History

Plaintiffs sued to vindicate their constitutional initiative rights and invalidate the Legislature's extreme partisan gerrymander on March 17, 2022. [R.3-82.] Legislative Defendants sought dismissal of all of Plaintiffs' claims on May 2.[9] [R.209-47.] The district court held a hearing on the motion to dismiss on August 24. [R.441-534.] On October 24, the district court issued a summary ruling denying the Legislature's motion to dismiss Plaintiffs' partisan gerrymandering claims (Counts I-IV) but granted the motion with respect to Plaintiffs' claim challenging the unconstitutional repeal of Prop 4 (Count V). [R.566-68.]

[9] The Legislative Defendants are the Utah State Legislature, Utah Legislative Redistricting Committee, Sen. Scott Sandall, Rep. Brad Wilson, and Sen. J. Stuart Adams. The Plaintiffs also named Lieutenant Governor Deidre Henderson as a Defendant. The Lieutenant Governor did not file a motion to dismiss, nor did she join in the Legislative Defendants' petition for interlocutory appeal.

On November 14, both parties sought interlocutory review in this Court. [R.611-20.] The district court then issued its full opinion concerning the motion to dismiss on November 22. [R.733-93.] On January 6, 2023, this Court granted the cross-interlocutory appeal petitions concerning the district court's motion to dismiss decision. [R.1466.]

Before this Court granted interlocutory review, the parties had engaged in weeks of fact discovery that began immediately after the district court set the trial schedule. [R.874-80.] The parties quickly conducted fact discovery and prepared for expert disclosures ahead of a scheduled May 2023 trial in an effort to resolve this time-sensitive litigation in advance of the 2024 congressional election. [*See, e.g.*, R.874-1465.] The day the Court granted interlocutory review, Legislative Defendants filed their third stay motion in the district court. [R.1467-75.] The district court entered a stay on January 18, putting on hold all discovery and vacating pre-trial deadlines and the May trial date. [R.1544-49.]

Summary of the Argument

The Legislature's repeal of Prop 4 was unconstitutional. The Legislature has no power to repeal any citizen-enacted legislation. The text, structure, and history of the Constitution make clear that Legislature had no authority to repeal Prop 4.

Even were the Legislature empowered to modify some types of citizen-enacted legislation, that power does not extend to citizen-enacted

legislation that alters or reforms governmental structures, as Prop 4 indisputably did. Prop 4 was a quintessential government reform initiative that sought to add a statutory prohibition of partisan gerrymandering, provide a cause of action for the judiciary to enforce that statutory command, and generally restructure legislative redistricting authority.

The district court's contrary conclusion would subjugate the people to the unchecked whims of the Legislature. It would effectively nullify the people's article VI, section 1 power by giving the Legislature a veto over citizen initiatives. And it would negate article I, section 2, which grants the people the primary governmental power and protects their prerogative to alter or reform their government. No provision of Utah's Constitution can be rendered a dead letter in this manner—especially not the provisions designed to protect the people's principal governmental authority.

The Court should reverse the decision below and uphold the people's core constitutional rights. The Court's role in safeguarding the people's constitutional rights and structural role is particularly urgent in an area such as redistricting reform, where the people seek to correct the electoral process and restrain the Legislature. The Court should rule that the Legislature had no authority to repeal Prop 4 and violated Utahns' rights in doing so.

Argument

The Utah Constitution enshrines the people's power and fundamental right to initiate laws to restructure their government and secure their inherent political power. It says nothing of the Legislature's purported authority to frustrate those rights. Instead, multiple provisions of the Constitution—especially article I, section 2 and article VI, section 1—prevent the Legislature from nullifying the people's initiated laws.

This constitutional dynamic is embodied in the core popular sovereignty principles of the Utah Constitution. It is the Court's duty to determine what those principles "encapsulate[] and how th[ose] principle[s] should apply." *S. Salt Lake City v. Maese*, 2019 UT 58, ¶ 70 n.23, 450 P.3d 1092. "The constitution was framed by practical men, who aimed at useful and practical results." *Patterson v. State*, 2021 UT 52, ¶ 137, 504 P.3d 92 (quoting *State v. Elliot*, 44 P. 248, 250 (Utah 1896)). And in this system, it is the Court's role to prevent the "exercise of despotic power or unreasoning action by any official or functionary" and "to safeguard [constitutional] protections." *Super Tire Mkt., Inc. v. Rollins*, 417 P.2d 132, 135 (Utah 1966).

Although the question here is a novel one, the answer is clear under "traditional methods of constitutional analysis." *State v. Tiedemann*, 2007 UT 49, ¶ 37, 162 P.3d 1106. These methods include "look[ing] primarily to the language of the constitution itself" in addition to "historical and textual evidence, sister

state law, and policy arguments in the form of economic and sociological materials to assist . . . in arriving at a proper interpretation of the provision in question." *Id.* (quoting *State v. Gardner*, 947 P.2d 630, 633 (Utah 1997)). Under these interpretative methods, the Legislature's claim to absolute veto authority over the people's initiative and government-reform powers is antithetical to Utah's Constitution.

1. The Repeal of Proposition 4 Was Unconstitutional Because the Legislature Cannot Nullify Citizen-Enacted Legislation

The Legislature has no power to repeal or otherwise negate citizen-enacted legislation. There is no dispute in this case that Prop 4 was a validly enacted initiative and that S.B. 200 repealed it. [R240 n.17; R.29 n.9; Add. K .] And nothing in the Legislature's "replacement" statute restored Prop 4, either in letter or in spirit. [R.25-31.] The substitute statute lacked the initiative's core prohibition on partisan gerrymandering; its mandatory, neutral redistricting standards; and the private cause of action it created to empower the judiciary to enforce these requirements. [R.25-31.] And the substituted bill rendered the independent commission toothless, replacing it with a process that, in the end, represented an empty gesture that the Legislature spurned when it enacted its own partisan map. [R.28-31, 40-48.]

By any standard, the Legislature nullified Prop 4 and thereby violated Utahns' constitutional rights.

In the district court's view, however, the Legislature was free to do this because "the Legislature can amend and repeal legislation enacted by citizen initiative, without limitation." [R.789.] That conclusion cannot be reconciled with Utah's constitutional text, structure, history, or precedent.

1.1 The Utah Constitution prohibits the Legislature from repealing citizen-enacted legislation

As this Court has repeatedly recognized, the people's initiative power is sacrosanct. *E.g.*, *Gallivan*, 2002 UT 89, ¶ 27 (collecting cases). To protect that power, this Court has held that the Legislature cannot impose substantive restrictions on the subject matter of initiatives, and it cannot place undue burdens on the initiative process. *Id.*; *Sevier Power Co.*, 2008 UT 72, ¶¶ 5–11. Repealing an enacted citizen initiative ex post violates the people's right to initiate legislation as surely as burdening or restricting their ability to place initiatives on the ballot ex ante.

Multiple provisions of the Utah Constitution dictate this outcome. As explained above (at 2-5), the Constitution begins with the recognition of the people's supremacy, stating that it is "we, the people of Utah" who establish the Constitution "to secure and perpetuate the principles of free government." Utah Const. pmbl. The Constitution also makes clear that the express "enumeration of rights" does not "impair or deny others retained by the people." Utah Cont. art. I, § 25. And it emphasizes that "[f]requent recurrence to fundamental

principles is essential to the security of individual rights and the perpetuity of free government." Utah Const. art. I, § 27.

Article I, section 2 likewise reflects the supremacy of the people, locating all political power in the people and creating an enforceable right for Utahns to alter or reform their government. It states in full:

> All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

Utah Const. art. I, § 2. As this Court has explained, this provision reflects the "basic premise, upon which all our government is built, [that] the people have the inherent authority to allocate governmental power in the bodies they establish by law." *Carter*, 2012 UT 2, ¶ 21. It makes plain that the people are the principal and government officials are their agents. *Id.* ¶¶ 25, 30; *accord Ritchie v. Richards*, 47 P. 670, 675 (Utah 1896) (Batch, J., concurring). And the reserved rights in article I, section 2 ensure that when a grantee of the people's power strays, Utahns have reserved to themselves the enforceable right to correct course. *See Sevier Power Co.*, 2008 UT 72, ¶¶ 5–11; *Salt Lake City v. Int'l Ass'n of Firefighters, Locals 1645, 593, 1654 & 2064*, 563 P.2d 786, 789 (Utah 1977).

These provisions work in tandem to guarantee the people's ultimate authority over the Legislature, not the other way around.[10] Although the people

[10] This Court has repeatedly interpreted article I, section 2 and article VI,

have chosen to delegate certain powers to the Legislature, they retain the power to "circumscribe[] the limits beyond which their elected officials may not tread." *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 15, 140 P.3d 1235. The people retained the power to operationalize these rights, in part, through article VI, section 1 of the Utah Constitution, which vests legislative authority in the people as well as the Legislature:

> (1) The Legislative power of the State shall be vested in:
>
> (a) Senate and House of Representatives which shall be designated the Legislature of the State of Utah; and
>
> (b) the people of the State of Utah as provided in Subsection (2).
>
> (2)(a)(i) The legal voters of the State of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:
>
> (A) initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute; or
>
> (B) require any law passed by the Legislature, except those laws passed by a two-thirds vote of the members elected to each house of the Legislature, to be submitted to the voters of the State, as provided by statute, before the law may take effect.

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section 1 in tandem as guaranteeing popular sovereign control and providing Utahns a direct lawmaking right to act on their organic power. *See*, *e.g.*, *Carter*, 2012 UT 2, ¶¶ 21–22; *Sevier Power*, 2008 UT 72, ¶¶ 6–7, 10; *Gallivan*, 2002 UT 89, ¶¶ 23–25; *In re City of W. Valley*, 616 P.2d 604, 606 (Utah 1980); *Provo City v. Anderson*, 367 P.2d 457, 461 (Utah 1961); *Duchesne Cnty. v. State Tax Comm'n*, 140 P.2d 335, 340 (Utah 1943); *accord Utah Power*, 74 P.2d at 1205 (Larson, J., concurring). The combined force of the provisions is that they "afford [Utah's] residents . . . an adequate means of self-determination." *City of W. Valley*, 616 P.2d at 606.

As this Court has recognized, "the people's right to directly legislate through initiative and referenda is sacrosanct and a fundamental right." *Gallivan*, 2002 UT 89, ¶ 27; *see Cook v. Bell*, 2014 UT 46, ¶ 9, 344 P.3d 634; *Utah Safe to Learn–Safe to Worship Coal., Inc. v. Utah*, 2004 UT 32, ¶ 28, 94 P.3d 217. It "is democracy in its most direct and quintessential form." *Gallivan*, 2002 UT 89, ¶ 25.

To protect that right, this Court has repeatedly invalidated laws that unduly infringed on the people's initiative power because such laws imposed improper burdens on the people's ability to present initiatives to voters. For example, in *Sevier Power*, this Court held that the Legislature lacked authority to restrict the subject matter of citizen initiatives. 2008 UT 72, ¶ 10. There, the Court considered the constitutionality of a statute prohibiting Utahns from using the initiative power to legislate on the subject of land use. *Id.* ¶¶ 1–2. The Court concluded that the Legislature lacked authority to do so under article I, section 2 and article VI, section 1. *Id.* ¶¶ 6–11. As this Court explained, the Legislature's role in the initiative process is limited to "providing for the orderly and reasonable use of the initiative power." *Id.* ¶ 10. The Constitution gives the Legislature no authority to "limit the substantive scope of citizen initiatives," and the Court was "compelled to deem . . . unconstitutional" a law that purported to claim this authority. *Id.* ¶¶ 9, 11.

In *Gallivan*, this Court invalidated a multi-county signature requirement that made it more difficult for initiatives to get on the ballot. 2002 UT 89, ¶¶ 64,

83. The Court invalidated the requirement on equal protection grounds, and in so holding, the Court recognized that it is "not a legitimate legislative purpose" to "unduly burden or constrict" the people's "fundamental right" to legislate by initiative. *Id.* ¶ 52. The Court emphasized that, "[b]ecause of the fundamental nature of the right of initiative and its significance to the political power of registered voters of the state, the vitality of ensuring that the right is not effectively abrogated, severely limited, or unduly burdened by procedures enacted to enable the right and to place initiatives on the ballot is of paramount importance." *Id.* ¶ 27.

Although this Court has never resolved the constitutionality of an attempt by the Legislature to nullify an initiative after enactment, the same logic applies. The people's initiative right would be meaningless if the Legislature could, as the district court reasoned, negate an initiative-enacted law "without limitation." [R.789.] Otherwise, the Legislature could simply undo any initiative with which it disagreed—effectively allowing the agent to overrule the principal. It would deprive the people of the ability to serve as a check on the Legislature, particularly when it becomes unaccountable or unrepresentative.

Such a rule would virtually guarantee that any time the people exercised their power in a manner that restrained the Legislature, that body would negate it. This is antithetical to the principles and purposes underlying the initiative power, article I, section 2, and other constitutional rights. And it goes against

Utahns' vision of the people's reserved initiative power as a check on the Legislature when it fails to adhere to the will of the people. *See Carter*, 2012 UT 2, ¶ 63; *Gallivan*, 2002 UT 89, ¶¶ 59–60 & n.11; Cronin, *Direct Democracy*, *supra* at 54–59.

Utahns "intended [their rights] to be effective"; adopting the Legislature's invented rule would impermissibly render them "illusory." *Sevier Power*, 2008 UT 72, ¶ 10. It would allow the Legislature to improperly "confiscate to itself the bulk of, if not all, legislative power." *Gallivan*, 2002 UT 89, ¶ 52. Accepting that result "would make hollow the constitutional guarantee that the people of this state retain direct legislative power." *Mouty v. Sandy City Recorder*, 2005 UT 41, ¶ 15, 122 P.3d 521. The initiative and "referendum right, so fundamental to our conception of government, should not and cannot be so easily thwarted." *Id.*

In *Utah Power*, Justice Larson reached precisely that conclusion. 74 P.2d at 1201–12 (Larson, J., concurring). Writing in a concurrence that this Court has favorably relied upon, Justice Larson concluded that the Legislature lacks the authority to nullify laws enacted by initiative. *See Carter*, 2012 UT 2, ¶ 22 n.10, ¶ 30 n.20 (applying Justice Larson's concurrence); *Gallivan*, 2002 UT 89, ¶ 23 (similar). As Justice Larson explained, "the legislative power of the people directly through the ballot is *superior* to that of the representative body." *Utah Power*, 74 P.2d at 1202 (Larson, J., concurring) (emphasis added). Thus, the people are "the father of the Legislature, its creator," and "when the people, by

the proper exercise of the initiative, their method of legislating, have spoken on a matter essentially within their scope of government, the master has spoken and even the voice of the child, though it may be recalcitrant, is stilled." *Id.* at 1205.

That reasoning applies with full force here. To give meaningful effect to the initiative power and protect its sacrosanct status, the Legislature cannot be allowed to accomplish through ex post repeal what this Court has already said it cannot accomplish through ex ante procedural and substantive regulation.

1.2 The district court's contrary ruling conflicts with the text, structure, and history of the Utah Constitution

In reaching a contrary conclusion, the district court principally relied on the absence of any language in the Constitution expressly limiting the Legislature's authority to repeal citizen-enacted legislation. [R.789–90.]

As a threshold matter, that conclusion overlooks this Court's admonition that the "Utah Constitution enshrines principles, not application of those principles." *Maese*, 2019 UT 58, ¶ 70 n.23; *see also* Utah Const. art. I, § 27. Here, the foundational principles of popular self-government underlying the Utah Constitution—especially article I, section 2 and article VI, section 1—cannot be reconciled with a rule giving the Legislature unfettered discretion to veto citizen-enacted legislation.

In any event, the district court's reasoning misapplied basic principles of constitutional interpretation and disregarded history and precedent.

1.2.1 Nothing in the Utah Constitution recognizes the Legislature's authority to nullify initiatives

Nothing in the text of article VI, section 1—or any other constitutional provision—recognizes the Legislature's authority to negate a citizen initiative. That omission should be dispositive. The absence of any textual provision giving the Legislature power to repeal initiatives indicates that no such authority exists and instead the people, as the ultimate source of government authority, maintain an effective power to enact initiated laws. The district court erred when it claimed, without resort to the constitutional text, that there was an "*implication*" that "the Legislature can amend and repeal legislation enacted by citizen initiative, without limitation." [R.789–90 (emphasis added).] This reading would allow the people to check the power of the Legislature only at the sufferance of the Legislature, making the Legislature the people's master rather than their servant. Such a transformative power should not be recognized by unsupported implication.

Instead, the constitutional text confirms that the Legislature lacks such authority. Two—and only two—express limits on the people's initiative power are "contemplated by the constitutional language." *Sevier Power*, 2008 UT 72, ¶ 13.[11] Neither empowers the Legislature to repeal an initiative.

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[11] This Court also has recognized that citizen-initiated statutes are subject to judicial review and cannot violate the Utah Constitution. *Sevier Power*, 2008 UT 72, ¶ 10. Prop 4 satisfies constitutional requirements.

First, article VI, section I provides that Utahns may broadly "initiate any desired legislation." Utah Const. art. VI, § 1(2)(a)(i)(A). This language requires that initiative laws must be "purely legislative," meaning the subject matter cannot fall within the executive, judicial, or administrative purview. *Carter*, 2012 UT 2, ¶ 85. There are "two key hallmarks of legislative power: general applicability and policy weighing." *Mawhinney v. City of Draper*, 2014 UT 54, ¶ 12, 342 P.3d 262. In addition, citizen-enacted legislation may "not [be] purely advisory," nor "so ambiguous, incoherent, or unintelligible as to make interpretation impossible." *Proulx v. Salt Lake City Recorder*, 2013 UT 2, ¶ 15, 297 P.3d 573; *White v. Welling*, 57 P.2d 703, 706 (Utah 1936). So long as an initiative satisfies these requirements—and there is no dispute that Prop 4 does—the people have the broad power to initiate any desired law to at least the same substantive extent that the Legislature can pass legislation.[12]

Second, the text recognizes the Legislature's ability to regulate only the *procedures* by which Utahns exercise their initiative rights in four enumerated and exclusive categories: "numbers," "conditions," "manner," and "time." Utah

[12] Redistricting is a legislative function subject to the initiative power. Redistricting plans are bills that, like any other legislation, must go through the regular lawmaking process. *See, e.g.*, Congressional Boundaries Designation, H.B. 2004 § 7, 2021 Second Special Sess. (Utah 2021) (providing that "this *bill* takes effect *upon approval by the governor*, … or in the case of a veto, the date of veto override" (emphases added)). [*See also* R.53, 667.] And, like all legislation, redistricting bills are subject to initiatives. *Carter*, 2012 UT 2, ¶ 36. The reference to "legislature" in article IX, section 1 only further reinforces this conclusion. *See, e.g.*, *Carter*, 2012 UT 2, ¶¶ 31, 36, 79; *Mawhinney*, 2014 UT 54, ¶¶ 14, 18 & n.25.

Const. art. VI, § 1(2)(a)(i). This manner and conditions clause provides an "obligation" on the Legislature "to establish the process" for proposing initiatives. *Sevier Power*, 2008 UT 72, ¶ 8.

The Legislature's authority under the manner and conditions clause is significantly circumscribed. The text authorizes procedural regulation only; it does not operate "as a substantive limitation on the legislative power of the people." *Carter*, 2012 UT 2, ¶ 30 n.21 (citing *Sevier Power*, 2008 UT 72, ¶ 10); *see also White*, 57 P.2d at 705 (observing that government actors may not "pass upon a question of merit, worth, wisdom, validity, or policy of any proposed law intended to be initiated").

Moreover, the Legislature's power to regulate initiative procedures applies only on the front end of the initiative process, concerning whether a proposal "may be placed on the ballot." *Safe to Learn*, 2004 UT 32, ¶ 2; *see also Sevier Power*, 2008 UT 72, ¶ 8 (manner and conditions clause concerns only the "process by which an initiative is to be presented to voters"). Nothing in the text contemplates ex post restrictions on initiated laws.

Relatedly, any manner and conditions regulation must be tailored to "enable the people to exercise their reserved power and right to directly legislate through initiative." *Safe to Learn*, 2004 UT 32, ¶ 28 (quoting *Gallivan*, 2002 UT 89, ¶ 28). The power is "limited" to "providing for the orderly and reasonable use of the initiative power." *Sevier Power*, 2008 UT 72, ¶ 10. Regulations that do not

sufficiently serve a legitimate purpose and instead operate to make the exercise of the initiative right less effective are prohibited. *Gallivan*, 2002 UT 89, ¶¶ 24–28, 52–53; *Cook*, 2014 UT 46, ¶¶ 9–11.

Beyond these "legislative purpose" and "manner and conditions" requirements, article VI, section 1 expresses no other limits on the people's initiative power. And the manner and conditions clause is the only "grant of authority" to the Legislature in the text. *Mouty*, 2005 UT 41, ¶ 18. In enacting article VI, section I, the people granted no other "delegated authority" to the Legislature. *Cook*, 2014 UT 46, ¶ 38 (Lee, J., concurring). And it is axiomatic that "[a]ny powers not enumerated in that grant may be presumed retained by the people." *Save Beaver Cnty. v. Beaver Cnty.*, 2009 UT 8, ¶ 16, 203 P.3d 937. As such, the "authority of the legislature" in the initiative process "is limited . . . to the role of providing for the orderly and reasonable use of the initiative power." *Cook*, 2014 UT 46, ¶ 25 (alteration in original). It goes no further.

Notably, the framers of article VI, section I purposefully declined to include language in the Constitution that would have given the Legislature authority to revisit citizen-initiated laws. As noted above (at 5-6), Utah was the second state in the country to enact a direct democracy provision. At the time, Utah had only South Dakota's example on which to draw. *See* Cronin, *supra*, at 51. Notably, South Dakota's provision departs from Utah's article VI, section 1 by specifying that "[t]his section shall not be construed so as to deprive the

Legislature or any member thereof of the right to propose any measure." S.D. Const. art. 3, § 1.

In the early twentieth century, several other states adopted language similar to South Dakota's initiative provision.[13] And courts in those states recognized that the "right to propose any measure" language (or words to similar effect) provided the textual basis for a legislature's authority to repeal or amend initiative-enacted laws. *See, e.g.*, *State ex rel. Halliburton v. Roach*, 130 S.W. 689, 693 (Mo. 1910); *In re Senate Resol. No. 4*, 130 P. 333, 336 (Colo. 1913).

Utahns declined to include this additional grant of authority to the Legislature—and that decision matters. As this Court has recognized in a variety of contexts, constitutional interpretation must give effect to purposeful omission of language in the pertinent text. *See, e.g.*, *Rampton v. Barlow*, 464 P.2d 378, 379 (Utah 1970) (giving meaning to framers' decision to omit words).

This Court's recent decision in *Patterson v. State* is illustrative. 2021 UT 52, 504 P.3d 92. There, the Court held that the Legislature lacked authority to diminish the scope of the constitutional writ power. *Id.* ¶ 218. In so holding, the Court emphasized that there was "nothing" in the constitutional text "that would support the conclusion that the people of Utah intended that the

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[13] *See, e.g.*, Colo. Const. art. V, § 1 (as amended Nov. 8, 1910); Ark. Const. art. V, § 1 (as amended Jan. 12, 1911); Or. Const. art. IV, § 1 (as amended June 2, 1902); Mo. Const. art. IV, § 57 (as amended Nov. 3, 1908); *see also* Charles A. Beard, Documents on the State-Wide Initiative, Referendum, and Recall 70–184 (1912) (collecting original initiative language).

Legislature be able to regulate the substance of the writ power." *Id.* ¶ 145. The text gave only "the district court" power over extraordinary writs, omitting standard language that would allow the Legislature to regulate the writ power "as provided by statute." *Id.* ¶ 146 (citation omitted). As this Court explained, "the intention to take from that omission is that the Legislature is not permitted to, by statute, modify the district court's power under article VIII, section 5 to issue writs." *Id.* Likewise, the Court explained that the "*expressio unius* canon" of constitutional construction "would suggest that by explicitly providing that the Legislature could limit" some district court powers but not others, "the people intended that the Legislature could not restrict" the writ authority. *Id.* ¶ 148. Thus, although the Constitution suggested that the Legislature could regulate "procedural aspects of the writ," it could not alter its substantive application. *Id.* ¶¶ 151 n.31, 156–59, 169.

The same reasoning applies here. As in *Patterson*, "nothing" in article VI, section I "even hints at the possibility" that the Legislature can exert ex post control over citizen-initiated laws. *See id.* ¶ 148. Rather, by "explicitly providing that the Legislature could" establish a *procedural* framework for initiatives, "the people intended that the Legislature could not restrict" the substance of initiatives, either ex ante or ex post. *See id.* To hold otherwise would render the

initiative power "wholly dependent upon the will and discretion of the Legislature." *Id.* ¶ 151 (quoting *State v. Durand*, 104 P. 760, 764 (Utah 1908)).[14]

Finally, at least two other provisions reinforce the primacy of the people's lawmaking power over the Legislature. First, legislation adopted by the Legislature is subject to veto by the governor, but initiative-enacted laws are not. *Carter*, 2012 UT 2, ¶ 22 n.10; Utah Const. art. VII, § 8(1); *see also* Utah Code § 20A-7-212(3)(a). Second, the Constitution expressly grants the people the ability to override legislation enacted by the Legislature through referenda, but it provides no corollary for the Legislature to override initiative-enacted legislation. Utah Const. art. VI, § 1(2)(a)(i)(B). In enacting this provision, "[t]he people reserved unto themselves the right to veto and annul by referendum any acts of the legislature." *Duchesne Cnty. v. State Tax Comm'n*, 140 P.2d 335, 340 (Utah 1943); *see also Utah Power*, 74 P.2d at 1202 (Larson, J., concurring) ("By the referendum the people may repeal an act of the Legislature, may prevent it from taking effect, and may suspend its operation until they may express themselves

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[14] As in *Patterson*, the *expressio unius* canon also supports reading article VI, section 1 to mean that the Constitution is designed to obligate the Legislature to enact procedural regulations under the "manner and conditions" clause to facilitate the initiative process, but it does not provide any substantive power to the Legislature to undo an initiated law. *See* 2021 UT 52, ¶ 148; *see also Salt Lake City v. Ohms*, 881 P.2d 844, 856 (Utah 1994) (Howe, J., concurring) ("When the Constitution defines the circumstances under which a right may be exercised . . . , the specification is an implied prohibition against legislative interference to add to the condition" of the exercise of that right (citation omitted)).

thereon by ballot."). Under the *expressio unius* canon, the inclusion in the Constitution of a right of the people to repeal legislation enacted by the Legislature indicates that the *exclusion* of the Legislature's mirror right to repeal citizen-enacted laws was intentional and precludes the Legislature's repeal of Prop 4.

None of this careful constitutional crafting—and none of this balancing of power between the people and their representatives—makes any sense if the district court is correct that, after all is said and done, the Legislature can by a simple majority vote undo the will of the people as expressed through a citizen initiative or popular referendum.

1.2.2 History confirms that the Legislature lacks the power to repeal citizen initiatives

The district court also erred when it suggested that its conclusion was supported by historical practice. [R.790.] Neither the district court nor the Legislature pointed to any historical instance where the Legislature has repealed or otherwise subverted an initiative. Indeed, Plaintiffs are unaware of any prior attempt by the Legislature to do so. Rather than support the district court's conclusion, the "lack of historical precedent" for repealing an initiative is "[p]erhaps the most telling indication of the severe constitutional problem." *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 505 (2010) (quotation marks omitted).

To be sure, the district court pointed to the Legislature's 2018 amendment of the Utah Medical Cannabis Act enacted by Proposition 2. [R.791.] But the peoples' power to enact legislation has existed for over a century. An amendment just five years ago by the Legislature hardly sheds light on the original understanding of the Constitution or the appropriate application of its enduring principles. To Plaintiffs' knowledge, the Legislature did not even attempt to substantially amend an initiative until 2018.[15]

The history surrounding article VI, section 1's enactment confirms that the framers understood the initiative and referendum powers as reserving the people's authority to check and override the Legislature, not the other way around. As explained above (at 5-6), contemporary Utahns understood the initiative amendment as restoring the people's power to force the Legislature to enact laws regardless of the Legislature's own preferences, and that the people—not the Legislature—would have the last word. This historical understanding is incompatible with the decision below, which would permit no restraint on the Legislature's assumed ability to veto initiative-enacted legislation.

[15] The Legislature has enacted minor amendments to a 1960 initiative establishing a merit system for the employment of county sheriffs. But those amendments do not come close to nullifying the initiative, much less purport to repeal it.

1.2.3 Precedent forecloses the Legislature's invented authority to repeal initiated laws

The district court further erred when it suggested that this Court has already recognized the Legislature's authority to repeal initiative-enacted laws. [R.790–91.] In support, the district court pointed to this Court's decision in *Carter*, which noted *Kadderly v. City of Portland*—a century-old decision that recognized the Oregon Legislature's authority to repeal initiated laws in that state. 2012 UT 2, ¶ 27 (citing 74 P. 710, 720 (Or. 1903)). But *Kadderly* was applying a then-extant provision of the Oregon Constitution that materially differs from Utah's Constitution and follows the South Dakota model. (See *supra* at 31-32 & n.13.) In any event, the Legislature's authority to repeal or otherwise subvert initiative-enacted laws was not at issue in *Carter*, so the one-sentence reference to *Kadderly* is, at most, dicta.

At times, this Court also has suggested that the "power of the legislature and the power of the people to legislate through initiative and referenda are coequal, coextensive, and concurrent." *Gallivan*, 2002 UT 89, ¶ 23. But that reference cannot mean that the Legislature has the final say over initiatives. It means only that legislation can originate from both sources and that the people can legislate to the same substantive extent as the Legislature. (See *supra* at 7-8, 29.) In fact, the "coequal" reference originated in Justice Larson's concurrence in *Utah Power*, in which he concluded that the Legislature could not overrule the

people's expressed will through initiatives. *Utah Power*, 74 P.2d at 1202–06 (Larson, J., concurring).

As this Court has since recognized, the initiative power has a "different character in [Utah's] constitutional system" and is, in many respects, "superior" to that of the Legislature. *Gallivan*, 2002 UT 89, ¶¶ 23, 59 n.11; *see also Carter*, 2012 UT 2, ¶ 22 n.10; *Utah Power*, 74 P.2d at 1202–03 (Larson, J., concurring) (recognizing that the people "constitute another legislative body of somewhat superior powers"). But the right cannot be superior—much less coequal—if the Legislature can simply undo any initiative on a whim. This is especially so where, as here, the initiative imposes a restraint on the Legislature's ability to aggregate political power and insulate itself from democratic accountability. (See *infra* at 40-50.)

If there were any doubt, the Legislature itself appears to have recognized that it lacks the power to repeal initiative-enacted legislation. In the provisions of the code providing the procedures for citizen initiatives, the Legislature claims an authority to "*amend* any initiative approved by the people at any legislative session." Utah Code § 20A-7-212(3)(b) (emphasis added). Likewise, the law provides that "[t]he Legislature may *amend* any laws approved by the people at any legislative session after the people approve the law." *Id.* § 20A-7-311(5)(b) (emphasis added). The Legislature's assumption of power to *amend* citizen-enacted legislation illustrates that even the Legislature has never viewed

itself as empowered to *repeal* such legislation.[16] While it is unclear what provision of the Constitution the Legislature believed authorized it to exercise power to amend citizen-enacted legislation, it is apparent that by purporting to authorize the Legislature to amend, the Legislature at a minimum understood it could not repeal or otherwise nullify initiatives.

Even in states whose constitutions permit some amendments to initiative-enacted laws, courts have not endorsed the district court's sweeping conclusion that the power to amend entails the power to repeal. Rather, those courts have developed workable doctrines to help differentiate permissible amendments from those that are unlawful. The touchpoint is whether, post-amendment, the legislation "still effectuate[s] the intent of the electorate," or whether an amendment "so vitiates an act passed by initiative as to constitute its repeal." *Alaska v. Trust the People*, 113 P.3d 613, 623 (Alaska 2005) (citation omitted); *accord People v. Kelly*, 222 P.3d 186, 197–98 & n.19 (Cal. 2010); *State v. Maestas*, 417 P.3d 774, 778 (Ariz. 2018).

Because there is no dispute here that the Legislature wholly repealed—and thereby nullified—Prop 4, the Court need not decide in this case which amendments to citizen initiatives are unlawful and which are not. That is a

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[16] No constitutional provision vests a power in the Legislature to amend citizen-enacted legislation. But even assuming one did, that power would not extend to a legislative amendment of an initiated law that subverts the people's purpose in enacting an initiative. Nor does the Constitution permit amendments of citizen-enacted reforms or alterations of their government. (See *infra* at 40-50.)

question for another day. Here, by eliminating Prop 4's partisan gerrymandering prohibition, mandatory neutral redistricting criteria, and private cause of action, the Legislature gutted the citizen-enacted law. *See* Utah Code §§ 20A-19-103, -204, -301, *repealed by* Laws 2020, c. 288, § 12, eff. March 28, 2020. It formally repealed all of Prop 4's enacted provisions and practically eviscerated its essential purpose, acting contrary to the people's superior and sovereign legislative authority. No matter where the line is as to permissible amendments to initiated laws, the Legislature's negation of Prop 4 crossed it.

2. At a Minimum, the Repeal of Proposition 4 Was Unconstitutional Because It Was an Initiative to Reform the Structure of Government

As explained above, the text, structure, and history of the Constitution all foreclose the Legislature from repealing or otherwise nullifying citizen-enacted legislation. The repeal of Prop 4 can be invalidated on that basis alone.

But even if the Legislature were accorded an unstated authority to repeal *some* types of citizen-enacted legislation, that power would not extend to Prop 4, because the Constitution precludes the Legislature from repealing an initiative exercised pursuant to Utahns' article I, section 2 "right to alter or reform their government." That conclusion flows directly from the text of article I, section 2, historical context, and this Court's precedents giving meaning to its mandate.

2.1 Article I, section 2 guarantees the people the right to reform the structure of their government

Article I, section 2 guarantees that "[a]ll political power is inherent in the people," and that "they have the right to alter or reform their government as the public welfare may require." Utah Const. art. I, § 2.

This provision was designed and understood to center Utah's political authority in the people and to empower them to alter their government within established constitutional bounds. (See *supra* at 3-5.) It founds sovereignty and control in the people, protecting their "inherent authority to allocate governmental power in the bodies they establish by law." *Carter*, 2012 UT 2, ¶ 21. And it protects the right of Utahns to reform the government by an initiative that imposes meaningful restraints on the Legislature's ability to manipulate electoral maps.

2.1.1 The text and history of article I, section 2 confirm that the people intended to enshrine an enforceable right to reform the government

The plain meaning of article I, section 2's language at the time of the founding confirms that the provision was intended to protect the people's right to reform the government.

Guaranteeing "inherent power" in the people meant then, as now, that Utahns have "[a]n authority possessed without its being derived from another," which secures to them the "right, ability, or faculty of doing a thing, without receiving that right, ability, or faculty from another." *Inherent Power*, Black's Law

Dictionary 908 (1st ed. 1891). The significance of the people's retained "power" is that the people have "[a]n authority expressly reserved to a grantor" and they can, in their judgment, assign duties to other government actors. *Power*, Black's Law Dictionary 920 (1st ed. 1891). At its core, the language means that the people are the ultimate grantors of "[l]egal power," and they maintain the "right to command or to act" and "the right and power . . . to require obedience to their orders lawfully issued in the scope of their" duties under the constitutional framework. *Authority*, Black's Law Dictionary 108 (1st ed. 1891).

As contemporary debates surrounding the structure and purpose of state government also reflect, Utahns included this language to make clear that "[a]lthough by their constitutions the people have delegated the exercise of sovereign powers to the several departments, they have not thereby divested themselves of the sovereignty." Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 747 (5th ed. 1883). Instead, Utahns endeavored to "retain in their own hands . . . a power to control the governments they create," and to make clear that "the three departments are responsible to and subject to be ordered, directed, changed, or abolished by them." *Id.*; *see also* Thomas M. Cooley, *Sovereignty in the United States*, 1 Mich. L. J. 81, 85 (1892).

Utahns also understood that "[t]he voice of the people, acting in their sovereign capacity, can be of legal force only when expressed at the times and

under the conditions which they themselves have prescribed and pointed out by the constitution." Cooley, *Constitutional Limitations*, *supra* at 747. So, in enacting article I, section 2, the people specified a critical enforcement tool for engaging their inherent power and authority by securing their "right to alter or reform their government as the public welfare may require." Utah Const. art. I, § 2. This right ensures that when a grantee of the people's power strays, the people reserve to themselves the inherent authority to correct course.

As defined at Utah's founding, the people may engage their inherent authority to "alter" the government by "chang[ing] some of the elements or ingredients or details" and "operat[ing] upon a subject-matter which continues objectively the same while modified in some particular." *Alter*, Black's Law Dictionary 64 (1st ed. 1891). Or, more broadly, the people can "reform" the government by acting "[t]o correct, rectify, amend, remodel" it in some fashion and improve upon a defect that had not "been well enough before." *Reform*, Black's Law Dictionary 1011 (1st ed. 1891). Utahns reserved their rights to make such alterations or reformations to serve the general "public welfare," meaning "[t]he prosperity, well-being, or convenience of the public at large, or of a whole community, as distinguished from the advantage of an individual or limited class." *Public Welfare*, Black's Law Dictionary 964 (1st ed. 1891).

With this understood meaning, Utahns enacted article I, section 2 to ensure that the "government was founded on [the people's] authority, and they could alter or change it as their welfare required." *Duchesne Cnty.*, 140 P.2d at 340.

2.1.2 History and precedent confirm that the people's reform rights under article I, section 2 are enforceable against the Legislature

The people can exercise their article I, section 2 rights through direct legislation. They also can enforce these rights through the judicial process. This Court has repeatedly invalidated legislation on the ground that it violated the people's rights under article I, section 2 to alter and reform their government. *See Sevier Power Co.*, 2008 UT 72, ¶¶ 5–11; *Int'l Ass'n of Firefighters*, 563 P.2d at 789; *see also Utah Power*, 74 P.2d at 1205 (Larson, J., concurring) (interpreting article I, section 2).

As early as 1902, this Court applied article I, section 2 to determine whether a law "violates the fundamental principles upon which our government rests, as they are enunciated and declared by that instrument in the bill of rights." *Openshaw v. Halfin*, 68 P. 138, 139 (Utah 1902).

Since then, the Court has expressly applied the pertinent language of article I, section 2 to impose substantive limits on the Legislature's authority to impede Utahns' sovereign power. In *Sevier Power*, for example, the Court held that article I, section 2—in combination with article VI, section 1—establishes "specifically reserved rights" in the people that are enforceable against the

government. 2008 UT 72, ¶ 6. It ruled that the Legislature violated those rights by enacting an ex ante substantive restriction on the people's initiative power. *Id.* ¶¶ 10–11. Likewise, in *International Association of Firefighters*, the Court applied article I, section 2 to prohibit the Legislature from shifting lawmaking power in a manner that insulated the Legislature from popular accountability. 563 P.2d at 789.

The lesson from these cases is that article I, section 2 provides enforceable rights against the Legislature to ensure the representative body cannot become unmoored from its popular-sovereignty anchor. The people "specifically identified and described certain . . . rights" in article I, section 2 "to prevent any misunderstanding about the scope of [the people's] delegation" of authority to the Legislature. *Sevier Power*, 2008 UT 72, ¶ 5. To give meaning to these rights, article I, section 2 must be understood to prohibit the Legislature from operating in a manner "not consonant with the concept of representative democracy," because "[t]he political power, which the people possess under Article I, Sec. 2, and which they confer on their elected representatives is to be exercised by persons responsible and accountable to the people—not independent of them." *Int'l Ass'n of Firefighters*, 563 P.2d at 790.

This Court's precedents are supported by the history from the constitutional convention, which further confirms that the framers understood that article I, section 2 would give the people an enforceable right to restrain and

reform the Legislature. The Chairman of the Committee on the Preamble and Declaration of Rights, Heber Wells, presented article I, section 2 on the convention floor on March 20, 1895.[17] Another delegate, Charles Varian, moved to strike the provision from the Declaration of Rights because "it is simply affirming and reaffirming a principle that there is no necessity of."[18] But Chairman Wells disagreed, arguing that the provision was necessary to protect Utahns' sovereign rights: "I think when it comes to a matter of a declaration of rights, that it is very pertinent to provide that all political power is inherent in the people."[19] Chairman Wells's view prevailed.[20]

2.2 The district court's decision failed to engage with article I, section 2

Although the district court mentioned article I, section 2 in its decision, it failed to engage with Plaintiffs' arguments as to the ways in which the provision

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[17] *See* Utah State Legislature, Proceedings and Debates of the Convention Assembled to Adopt a Constitution for the State of Utah, Seventeenth Day, Wednesday March 20, 1895, https://le.utah.gov/documents/conconv/17.htm (last visited Mar. 29, 2023).

[18] *Id.*

[19] *Id.*

[20] *Id.*; Chairman Wells additionally stated that "if [the committee] ha[d] inserted rights which ought to be left to the Legislature, we shall not be offended if they are stricken out." *Id.*, Fifteenth Day, Monday March 18, 1895, https://le.utah.gov/documents/conconv/15.htm (last visited Mar. 29, 2023); *see also Am. Bush*, 2006 UT 40, ¶ 42 (describing proceeding testimony). The convention did not vote to strike out the people's right to reform government in favor of leaving the responsibility to the Legislature, as the convention did with other Declaration of Rights proposals.

provides an additional and independent limit on the Legislature's power to repeal citizen-enacted initiatives that seek to reform the structure of state government. [R.787–91.] Whatever power the Legislature may have to repeal or amend initiatives generally—and, as discussed above, that power is either textually unsupported or severely circumscribed—the Legislature cannot repeal an initiative that seeks to reallocate governmental power and restructure the exercise of government authority within existing constitutional bounds.

As this Court has made clear, article I, section 2 protects the people's right to recalibrate legislative authority to ensure that "the people govern themselves in a democracy unfettered by the distortions of representative legislatures." *Carter*, 2012 UT 2, ¶ 23. It ensures that it is "the citizens of Utah" who are empowered to "circumscribe[] the limits beyond which their elected officials may not tread," but "only Utah's citizens themselves ha[ve] the right to limit their own sovereign power." *Am. Bush*, 2006 UT 40, ¶ 14 (citing Utah Const. art. I, § 2). And it is designed to prevent legislators from acting in a manner "not consonant with the concept of representative democracy," including by insulating themselves from popular accountability and attempting to operate "independent of" the popular will. *Int'l Ass'n of Firefighters*, 563 P.2d at 790.

Partisan gerrymandering is the ultimate distortion of representative democracy, constituting an effort by the legislative body to pick favored parties to win elections independent of democratic controls, and to retaliate against

citizens based upon their expression at the ballot box. By enacting Prop 4, Utahns intended to exercise their article I, section 2 powers to prevent such antidemocratic distortions and to ensure that Utah voters can choose their legislators, not the other way around. They did so in three key ways.

First, Prop 4's proponents explicitly invoked the people's rights to secure their popular sovereignty and to reform their government when they presented the initiative to the voters. [R.24–25.] The official submissions to voters in consideration of Prop 4—and the post-enactment statement of purpose—put it beyond a doubt that the people intentionally invoked their article I, section 2 rights to reform their government and exercise their inherent political power. (See *supra* at 12-13.)

Second, Prop 4 restructured legislative authority so that the redistricting power rested principally with an independent citizen commission. Although Prop 4's drafters did not cut the Legislature entirely out of the redistricting process, they clearly intended the newly formed independent commission to take the leading role. Prop 4 created a commission with teeth. Among other things, it mandated that the Legislature consider the UIRC's proposed maps and then vote to either enact them without material change or reject the UIRC-adopted plan. Utah Code § 20A-19-204(2)(a), *repealed by* Laws 2020, c. 288, § 12, eff. March 28, 2020. If the Legislature rejected the UIRC's proposed map, the Legislature had to issue a detailed written report explaining its decision and why its substituted

map satisfied the mandatory, neutral redistricting criteria better than the UIRC's maps. *Id*. § 20A-19-204(5)(a), *repealed by* Laws 2020, c. 288, § 12, eff. March 28, 2020.

Third, Prop 4 ensured that, regardless of whether the Legislature adopted or rejected the UIRC's proposed maps, the resulting redistricting plan would be constrained by a statutory prohibition on partisan gerrymandering, the imposition of neutral redistricting principles, and a statutory cause of action to enforce those enacted provisions in the judiciary. *See* Utah Code §§ 20A-19-103, -204, -301, *repealed by* Laws 2020, c. 288, § 12, eff. March 28, 2020.

Altering and reforming the government in this manner is at the core of improving the structure of government and bolstering accountability with the people. By altering the electoral system and reassigning government authority, Prop 4 is a paradigmatic example of an initiated law that restructures government and engages the people's article I, section 2 rights. Because Prop 4 fit squarely within that power, the Legislature could not nullify it.

As this Court has made clear, "[t]he authority of the legislature" to regulate the initiative power "must be read in coordination with the other rights of the people expressed and reserved in the constitution." *Sevier Power*, 2008 UT 72, ¶ 10. Article I, section 2 is critical to those reserved rights, and it commands that the people have an enforceable "right to alter or reform their government" to secure that "[a]ll political power is inherent in the people; and all free

governments are founded on their authority." Utah Const. art. I, § 2. "[W]hen the people, by the proper exercise of the initiative, their method of legislating, have spoken on" such issues that are "a matter essentially within their scope of government, the master has spoken and even the voice of the child, though it may be recalcitrant, is stilled." *Utah Power*, 74 P.2d at 1205 (Larson, J., concurring); *see also Carter*, 2012 UT 2, ¶ 30 n.20 (quoting *Utah Power*, 74 P.2d at 1205 (Larson, J., concurring)). This is the essential "meaning of article 1 of the State Constitution which declared all political power to be inherent in the people"—the Legislature cannot negate citizen initiatives that seek to reform the government. *Utah Power*, 74 P.2d at 1205 (Larson, J., concurring).

To hold otherwise—and to permit the Legislature to nullify Utahns' initiative rights when they seek to reform the Legislature itself—would in effect allow it to act in a manner "not consonant with the concept of representative democracy" and violate the Legislature's obligation to remain "responsible and accountable to the people—not independent of them." *Int'l Ass'n of Firefighters*, 563 P.2d at 790; *accord Sevier Power*, 2008 UT 72, ¶ 16.

Conclusion

For the reasons above, the Court should reverse the district court's order dismissing Count V of the complaint.

DATED this 31st day of March, 2023.

RESPECTFULLY SUBMITTED,

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Certificate of Compliance

I hereby certify that:

1. This brief complies with the word limits set forth in Utah R. App. P. 24(g)(1) because this brief contains 12,363 words, excluding the parts of the brief exempted by Utah R. App. P. 24(g)(2).

2. This brief complies with the addendum requirements of Utah R. App. P. 24(a)(12).

3. This brief complies with Utah R. App. P. 21(h) regarding public and non-public filings.

DATED this 31st day of March, 2023.

/s/ Troy L. Booher

Certificate of Service

This is to certify that on the 31st day of March, 2023, I caused the *Opening Brief of League of Women Voters of Utah, Mormon Women for Ethical Government, Stephanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, and Jack Markman* to be served via email on:

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Addendum A

October 24, 2022 Summary Ruling Denying in Part and Granting in Part Defendants' Motion to Dismiss [R.566–68]

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LEAGUE OF WOMEN VOTERS OF UTAH, MORMON WOMEN FOR ETHICAL GOVERNMENT, STEFANIE CONDIE, MALCOLM REID, VICTORIA REID, WENDY MARTIN, ELEANOR SUNDWALL, JACK MARKMAN, and DALE COX, Plaintiffs, v. UTAH STATE LEGISLATURE; UTAH LEGISLATIVE REDISTRICTING COMMITTEE; SENATOR SCOTT SANDALL, in his official capacity; REPRESENTATIVE BRAD WILSON, in his official capacity; SENATOR J. STUART ADAMS, in his official capacity; and LIEUTENANT GOVERNOR DEIDRE HENDERSON, in her official capacity, Defendants.	**SUMMARY RULING DENYING IN PART and GRANTING IN PART DEFENDANTS' MOTION TO DISMISS** Case No. 220901712 Judge Dianna M. Gibson

Defendants Utah State Legislature, Utah Legislative Redistricting Committee, Senator Scott Sandall, Representative Brad Wilson, and Senator Stuart Adams (collectively, "Defendants")[1] filed a Motion to Dismiss ("Motion") Plaintiffs' Complaint on May 2, 2022. The Court heard oral argument on August 24, 2022. The Court carefully considered Defendants'

[1] Lieutenant Governor Deidre Henderson is not a party to named Defendants' Motion.

Motion, the memoranda submitted both in support and opposition to the Motion, and counsel's arguments made on August 24, 2022. The Court now issues this Summary Ruling to apprise the parties of the Court's decision. The Court, however, requires additional time to finalize the legal analysis supporting the Ruling and will issue a full written decision in short order.

The Court's Summary Ruling is as follows:

(1) The Court DENIES Defendants' Motion to Dismiss Plaintiffs' Complaint for lack of subject matter jurisdiction.

(2) The Court DENIES Defendants' Motion to Dismiss certain Defendants Utah Legislative Redistricting Committee, Senator Scott Sandall, Representative Brad Wilson, and Senator J. Stuart Adams.

(3) The Court DENIES Defendants' Motion to Dismiss Count One (Free Elections Clause), Count Two (Equal Protection Rights), Count Three (Free Speech and Association Rights), and Count Four (Affirmative Right to Vote) of Plaintiffs' Complaint.

(4) The Court GRANTS Defendants' Motion as to Plaintiffs' Count Five. Therefore, Count Five, "Unauthorized Repeal of Proposition 4 in Violation of Utah Constitution's Citizen Lawmaking Authority to Alter or Reform Government" is DISMISSED, with prejudice.

Dated October 24, 2022.

By the Court:

Dianna M. Gibson

Dianna M. Gibson
Third District Court Judge

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 220901712 by the method and on the date specified.

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10/24/2022 /s/ ALEXANDER GUARDADO

Date: _____ _____

Signature

Addendum B

Nov. 22, 2022, Ruling and Order Granting in Part and Denying in Part Defendants' Motion to Dismiss [R.733–92]

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LEAGUE OF WOMEN VOTERS OF UTAH, MORMON WOMEN FOR ETHICAL GOVERNMENT, STEFANIE CONDIE, MALCOLM REID, VICTORIA REID, WENDY MARTIN, ELEANOR SUNDWALL, JACK MARKMAN, and DALE COX, Plaintiffs, v. UTAH STATE LEGISLATURE; UTAH LEGISLATIVE REDISTRICTING COMMITTEE; SENATOR SCOTT SANDALL, in his official capacity; REPRESENTATIVE BRAD WILSON, in his official capacity; SENATOR J. STUART ADAMS, in his official capacity; and LIEUTENANT GOVERNOR DEIDRE HENDERSON, in her official capacity, Defendants.	**RULING AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS** Case No. 220901712 Judge Dianna M. Gibson

Before the Court is the Motion to Dismiss filed by Defendants Utah State Legislature, Utah Legislative Redistricting Committee, Senator Scott Sandall, Representative Brad Wilson, and Senator Stuart Adams (collectively, "Defendants")[1] on May 2, 2022 ("Motion"). The Court heard oral argument on August 24, 2022. On October 14, 2022, Defendants filed a Notice of Supplemental Authority Regarding Legislative Defendants' Motion to Dismiss and Memorandum in Support. Having considered the Motion, the memoranda submitted both in support and opposition to it, and the arguments of counsel at oral argument, the Court issued a Summary Ruling on October 24, 2022. The Court now issues the legal analysis supporting that Ruling.

BACKGROUND

Defendants move to dismiss this action for lack of subject matter jurisdiction under Rule 12(b)(1) and for failure to state a claim under Rule 12(b)(6) of the Utah Rules of Civil Procedure. In reviewing a motion to dismiss under Rule 12(b)(6), courts accept all the facts alleged in the Complaint as true. *Oakwood Vill. LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 9, 104 P.3d 1226. Legal conclusions or opinions couched as facts are not "facts," and therefore are not accepted as true. *Koerber v. Mismash*, 2013 UT App 266, ¶ 3, 315 P.3d 1053.

With respect to a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), when a defendant mounts only a "facial attack" to the court's jurisdiction, courts presume that "all of the factual allegations concerning jurisdiction are . . . true."[2] *Salt Lake County v. State*, 2020 UT 27, ¶¶ 26-27, 466 P.3d 158. Here, Defendants have mounted a facial

[1] Lieutenant Governor Deidre Henderson is not a party to this Motion.
[2] "Motions under rule 12(b)(1) fall into two different categories: a facial or a factual attack on jurisdiction." *Salt Lake County*, 2020 UT 27, ¶26. Because a factual challenge "attacks the factual allegations underlying the assertion of jurisdiction," courts do not presume the truth of plaintiff's factual allegations. *Id.* However, in a facial challenge, "all of the factual allegations concerning jurisdiction are presumed to be true and the motion is successful if the plaintiff fails to allege an element necessary for subject matter jurisdiction." *Id.*

attack on jurisdiction. Therefore, under Rule 12(b)(1) and 12(b)(6), the Court accepts the allegations in the Complaint as true in reciting the facts of this case. In addition, the Court views those facts and all reasonable inferences drawn from them in the light most favorable to Plaintiffs as the non-moving party." *Oakwood Vill. LLC.*, 2004 UT 101, ¶ 9. The facts recited below are taken from Plaintiffs' Complaint.

In November 2018, Utah voters passed Proposition 4, titled the Utah Independent Redistricting Commission and Standards Act, which was a bipartisan citizen initiative created specifically to reform the redistricting process and establish anti-gerrymandering standards that would be binding on the Utah Legislature. (Compl. ¶¶ 2, 73, 75.) Proposition 4 was presented to Utah voters as a "government reform measure invoking the people's constitutional lawmaking authority." (*Id.* ¶ 77.) Proponents of the measure argued "[v]oters should choose their representatives, not vice versa." (*Id.* ¶ 78.) Under then-existing laws, proponents maintained, "'Utah politicians can choose their voters' because 'Legislators draw their own districts with minimal transparency, oversight or checks on inherent conflicts of interest.'" (*Id.*)

Proposition 4 created the Independent Redistricting Commission, a seven-member bipartisan-appointed commission that would take the lead in formulating various state-wide redistricting plans. (*Id.* ¶¶ 2, 80-82.) The Independent Redistricting Commission was required to conduct its activities in an independent, transparent, and impartial manner, to apply "traditional non-partisan redistricting standards" to establish neutral map-making standards and to abide by certain listed redistricting standards. (*Id.* ¶¶ 83-84, 86.) Specifically, Proposition 4 provided that final maps must "abide by the following redistricting standards to the greatest extent practicable and in the following order of priority:" (a) "achieving equal population among districts" using the most recent census; (b) "minimizing the division of municipalities and counties across

multiple districts;" (c) "creating districts that are geographically compact;" (d) "creating districts that are contiguous and that allow for the ease of transportation throughout the district;" (e) "preserving traditional neighborhoods and local communities of interest;" (f) "following natural and geographic features, boundaries, and barriers;" and (g) "maximizing boundary agreement among different types of districts." (Compl. ¶ 86.)

In addition, all redistricting plans were to be open for public comment, considered in a public hearing, and voted on by the Legislature. (*Id.* ¶¶ 85, 88.) If the Legislature voted to reject the redistricting map, "Proposition 4 required the Legislature to issue a detailed written report explaining its decision and why the Legislature's substituted map(s) better satisfied the mandatory, neutral redistricting criteria." (*Id.* ¶ 88.) Proposition 4 also authorized "Utahns to sue to block a redistricting plan that failed to conform to the initiative's structural, procedural, and substantive standards." (*Id.* ¶ 89.) "A majority of Utah citizens from a range of geographic areas and across the political spectrum voted to approve Proposition 4 and enact it into law." (*Id.* ¶ 90.)

Sixteen months later, on March 11, 2020, Plaintiffs contend that the Legislature effectively repealed the Utah Independent Redistricting Commission and Standards Act and instead passed SB 200, which established new redistricting criteria. (*Id.* ¶ 93.) SB 200 effectively "eliminated all mandatory anti-gerrymandering restrictions imposed by the people on the Legislature as well as Proposition 4's enforcement mechanisms." (*Id.* ¶ 96.) While SB 200 retained the Independent Redistricting Commission, its role is now wholly advisory; the Legislature is not required to consider any recommended redistricting maps and in fact, the Legislature may disregard any recommended maps without explanation. (*Id.* ¶ 94.) "SB200 returned redistricting to the pre-Proposition 4, unreformed status quo where the Legislature could freely devise anti-democratic maps—as if the people had never spoken." (*Id.* ¶ 97.) SB200

eliminated neutral redistricting criteria, enforcement mechanisms and all transparency and public accountability provisions. (*Id.* ¶¶ 97-98.) In April 2021, the Utah Legislature formed its twenty-member Legislative Redistricting Committee (LRC). (*Id.* ¶¶ 142-143.)

Even after SB200's reforms, many legislators represented that the Legislature would honor the people's will to prevent undue partisanship in the mapmaking process. (*Id.* ¶ 99.) For example, Senator Curt Bramble, the chief sponsor of SB200 said he was "committed to respecting the voice of the people and maintaining an independent commission." (*Id.* ¶ 100.) Then-Senate Majority Leader Evan Vickers vowed that the Legislature would "meet the will of the voters" and reinstate in SB200 "almost everything they've asked for." (*Id.*) Representative Brad Wilson indicated the Legislature would leave Proposition 4's anti-gerrymandering provisions largely intact, and Representative Steinquist represented the Legislature would "make sure that we have an open and fair process when it comes time for redistricting." (*Id.* ¶ 101.)

Despite these representations, the LRC conducted a "closed-door" mapmaking process. (*Id.* ¶¶ 142-143.) The LRC did not publish the full list of criteria that guided its redistricting decisions, but instead offered a one-page infographic for public map submissions that stated three criteria the Legislature said it would consider: "population parity among districts, contiguity, and reasonable compactness." (*Id.* ¶ 145.) The LRC "did not commit to avoid unduly favoring or disfavoring incumbents, prospective candidates, and/or political parties in its redistricting process." (*Id.* ¶ 147.) The LRC solicited some public input about Utah's communities and voters' preferences during hearings, but Plaintiffs allege "the LRC does not appear to have used that testimony to guide its redistricting process." (*Id.* ¶ 148.)

Notwithstanding SB200, the Independent Redistricting Commission met thirty-two times from April to November 2021, and fulfilled its duties as originally contemplated under

Proposition 4. (*See generally id.* ¶¶ 104-126, 132-140.) Just before the Commission's final deadline, former Republican Congressman Rob Bishop abruptly resigned from the Commission. (*Id.* ¶ 127.) He cited the proposed map, which he believed would result in one Democrat being elected to Congress, as a reason for his resignation. (*Id.* ¶ 129.) He stated that "[f]or Utah to get anything done" in Congress, the State "need[s] a united House delegation . . . having everyone working together." (*Id.*) On November 1, 2021, the Independent Redistricting Committee presented three maps to the Utah Legislature's LRC and explained in detail the non-partisan process used to prepare the maps. (*Id.* ¶¶ 139-140.)

In early November 2021, the Legislature adopted its own map – the 2021 Congressional Plan ("Plan") – over the three maps created and proposed by the Independent Redistricting Committee. (*Id.* ¶¶ 141, 149.) Despite the Legislature's ostensible goal of hearing public input on the Plan at a public hearing scheduled on Monday, November 8, 2021, the LRC released the Plan publicly on Friday, November 5, 2021 around 10:00 pm, giving the public just two weekend days to review the Plan. (*Id.* ¶¶ 156, 159-60.) The LRC received significant public response at the public hearing and through comments on the LRC's website, hundreds of emails, protests at the Capitol, and a letter to the Legislature from prominent Utah business and community leaders. (*Id.* ¶¶ 161-65, 169.)

Notwithstanding significant public opposition to the LRC's map, on November 9, 2021, the Utah State House voted to approve the 2021 Congressional Plan. (*Id.* ¶¶ 171, 173.) Five House Republicans joined all House Democrats in voting against the Plan. (*Id.*) The next day, November 10, 2021, the Senate voted 21-7 to approve the Plan. (*Id.* ¶ 180.) One Republican Senator joined all Democratic Senators to vote against the Plan. (*Id.*) On November 12, 2021, Governor Cox signed the bill into law. (*Id.* ¶ 201.) While answering questions from the public

about the Plan, Governor Cox "acknowledged there was 'certainly a partisan bend' in the Legislature's redistricting process and conceded that 'Republicans are always going to divide counties with lots of Democrats in them, and Democrats are always going to divide counties with lots of Republicans in them.'" (*Id.* ¶ 200.) Governor Cox additionally "agreed that 'it is a conflict of interest' for the Legislature to 'draw the lines within which they'll run.'" (*Id.*)

The 2021 Congressional Plan splits both Salt Lake and Summit Counties, the two counties that typically oppose Republican candidates. (*Id.* ¶ 192.) The Plan "cracks" urban voters in Salt Lake County—Utah's largest concentration of non-Republican voters—dividing them between all four congressional districts and immersing them into sprawling districts reaching all four corners of the state. (*Id.* ¶¶ 192, 207.) It also divides Summit County into two. (*Id.* ¶ 192.) The Plan, however, leaves intact urban and suburban voters in both Davis and Utah counties, because those voters tend to support Republican candidates. (*Id.*) In addition, fifteen municipalities were divided up into thirty-two pieces, and numerous communities of interest, school districts, and racial and ethnic minority communities were divided. (*See generally* Compl. ¶¶ 205-45, 250-51, 254.) Urban neighborhoods, school districts and communities of interests – that may share common goals and interests based on proximity – do not vote with neighbors within a five-minute walk; they now vote with other rural voters who live eighty and up to three hundred miles away. (*Id.* ¶¶ 242-251.)

Proponents of the Plan maintain that the boundaries were drawn with the intent of ensuring a mix of urban and rural interests in each district. (*Id.* ¶ 158.) In a statement explaining the decision to divide Salt Lake County between all four districts, the LRC said, "[w]e are one Utah, and believe both urban and rural interests should be represented in Washington, D.C. by the entire federal delegation." (*Id.*) Notably, rural voters and rural elected officials opposed the

Legislature's urban-rural justification. Two reported commenters stated: "[a]s a voter in a rural area I'm entirely uncomfortable with my vote being used to dilute the power of another"; and "[a]s a Republican who lives in a more rural part of the state, I have the same complaint as those living in Salt Lake. Please do not dilute our vote by splitting us up between all four districts! I'm far more interested in having everybody fairly represented than I am in electing more people from my own party." (*Id.* ¶¶ 194, 195.) This sentiment was also echoed by Governor Cox, who "stated that he supports a redistricting process that focuses on preserving 'communities of interest,' such as the Commission's neutral undertaking, which he reaffirmed is 'certainly one area where that is a good way to make maps, try to keep people similarly situated together, communities together is something that I think is positive." (*Id.* ¶ 200.)

Plaintiffs assert that the "LRC's process was designed to achieve—and did in fact achieve—an extreme partisan gerrymander." (*Id.* ¶ 144.) Plaintiffs assert the Plan was intentionally created to maximize Republican advantage in all four congressional districts, not to ensure an urban-rural mix. (*Id.* ¶ 190.) Plaintiffs contend that "amplifying representation of rural interests at the cost of urban interests" is not a legitimate redistricting consideration, and the "purported need" to have rural interests represented in all four districts was "a pretext to unduly gerrymander the 2021 Congressional Plan for partisan advantage." (*Id.* ¶¶ 188, 189.)

Based on the 2021 Congressional Plan, each district contains a minority of non-Republican voters "that will be perpetually overridden by the Republican majority of voters in each district, blocking these disfavored Utahns from electing a candidate of choice to any seat in in the congressional delegation." (*Id.* ¶ 226.) While congressional plans from previous years had contained at least one competitive congressional district, all four districts under the 2021 Plan contain a substantial majority of Republican voters. (*Id.* ¶¶ 65, 175, 226, 232.) Notably, Senator

Scott Sandall admitted that political considerations affected the Legislature's redistricting decisions. (*Id.* ¶ 151.) He said the LRC "never indicated the legislature was nonpartisan. I don't think there was ever any idea or suggestion that the legislative work wouldn't include some partisanship." (*Id.*)

Some partisanship is inherent in the redistricting process. Here, however, Plaintiffs contend that the 2021 Congressional Plan subordinates the voice of Democratic voters and entrenches the Republican party in power for the next decade. (*Id.* ¶ 205, 206.) The Plan "protects preferred Republican incumbents and draws electoral boundaries to optimize their chances of reelection." (*Id.* ¶ 197.) And it converts "the competitive 4th District into a safe Republican district to enhance Republican Representative Burgess Owens' prospects to win reelection." (*Id.* ¶ 198.)

As a result, on March 17, Plaintiffs, including two organizational plaintiffs—the League of Women Voters of Utah and Mormon Women for Ethical Government—and seven individual plaintiffs, filed suit, alleging that Defendants violated Plaintiffs' constitutional rights by repealing Proposition 4 and adopting the intentionally-gerrymandered 2021 Congressional Plan. All Defendants, except for Defendant Lieutenant Governor Deidre Henderson, moved to dismiss Plaintiffs' Complaint.[3]

ANALYSIS

Defendants filed a Motion to Dismiss the action, in its entirety, arguing the Court lacks subject matter jurisdiction under Rule 12(b)(1) of the Utah Rules of Civil Procedure. In addition, they move to dismiss each of Plaintiffs' five claims for failure to state a claim for which relief can be granted under Rule 12(b)(6) of the Utah Rules of Civil Procedure. Essentially, Defendants

[3] Because Lieutenant Governor Henderson did not join in the Motion, any claims against her are unaffected by this Court's ruling.

contend that claims of partisan gerrymandering are not justiciable. And, if they are, partisan gerrymandering does not violate the Utah Constitution. Many of the issues raised in this case are matters of first impression, including whether partisan redistricting / gerrymandering presents a purely political question.

A motion to dismiss under Rule 12(b)(1) of the Utah Rules of Civil Procedure "is successful if the plaintiff fails to allege an element necessary for subject matter jurisdiction." *Salt Lake County v. State*, 2020 UT 27, ¶ 26, 466 P.3d 158 (quoting *Titus v. Sullivan*, 4 F.3d 590, 593 (8th Cir. 1993)). A motion under Rule 12(b)(6) challenges a plaintiffs' right to relief based on the alleged facts. *Oakwood Vill. LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 8, 104 P.3d 1226 (citation omitted). At this stage of the litigation, the Court's "inquiry is concerned solely with the sufficiency of the pleadings, and not the underlying merits of the case." *Id.* ¶ 8 (cleaned up).

I. Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction is DENIED. This Court Has Jurisdiction to Hear Plaintiffs' Redistricting Claims. Plaintiffs' Constitutional Claims are Justiciable.

Defendants argue that this Court lacks subject matter jurisdiction because Plaintiffs' redistricting claims (Counts One through Four) present nonjusticiable political questions. (Defs.' Mot. at 5.) The Court disagrees.

Under the political question doctrine, a claim is not subject to the Court's review if it presents a nonjusticiable political question. *See Skokos v. Corradini*, 900 P.2d 539, 541 (Utah Ct. App. 1995). "The political question doctrine, rooted in the United States Constitution's separation-of-powers premise, prevents judicial interference in matters wholly within the control and discretion of other branches of government. Preventing such intervention preserves the integrity of functions lawfully delegated to political branches of government." *Id.* (cleaned up).

Political questions are those questions which have been wholly committed to the sole discretion of a coordinate branch of government, and those questions which can be resolved only

by making "policy choices and value determinations." *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986). When presented with a purely political question, "the judiciary is neither constitutionally empowered nor institutionally competent to furnish an answer." *Harper v. Hall*, 868 S.E.2d 499 (N.C. 2022). In deciding whether a claim presents a nonjusticiable political question, the Court must consider two questions: (1) whether it "involve[es] 'a textually demonstrable constitutional commitment of the issue to a coordinate political department[]"or (2) whether there is "a lack of judicially discoverable and manageable standards for resolving it.'" *Matter of Childers-Gray*, 2021 UT 13, ¶ 64, 478 P.3d 96 (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). Defendants contend that Plaintiffs' claims involve political questions for both these reasons. For the reasons discussed below, Defendants are incorrect on both points.

A. Redistricting is not exclusively within the province of the Legislature.

Defendants first assert that Article IX, Section 1 of the Utah Constitution represents a "textually demonstrable constitutional commitment" of the redistricting power to the Legislature." (Defs.' Mot. at 6.) Article IX, Section 1 states, in relevant part: "the Legislature shall divide the state into congressional, legislative, and other districts accordingly." Utah Const. art. IX, § 1. Defendants argue this provision delegates the responsibility for drawing congressional districts to the Legislature, and because no other provision in the Utah Constitution confers redistricting authority on any other branch or to the people, redistricting authority rests exclusively with the Legislature and is exempt from judicial review. (Defs.' Mot. at 7.)

The Utah Constitution does give the Legislature authority to "divide the state into congressional, legislative and other districts," but nothing in the Utah Constitution restricts that power to the Legislature or states that such power is exclusively within the province of the

Legislature. Even a cursory analysis reveals that the redistricting power is not exercised solely by the Legislature. While redistricting is primarily a legislative function, the governor and the people also exercise some degree of redistricting power. Redistricting laws and maps are submitted to the governor for veto like any other law under Article VII, Section 8 of the Utah Constitution. In addition, the Utah Constitution makes clear that "[a]ll political power is inherent in the people." Utah Const. art. I, § 2. In line with this authority, Utah's citizens have historically exercised power over redistricting through initiatives and referendums, including Proposition 4. *See also Parkinson v. Watson*, 291 P.2d 400, 403 (Utah 1955) (describing redistricting referendum proposing a constitutional amendment, which was submitted to the people in 1954 after the Legislature failed to reach a compromise regarding congressional district apportionment). And in the past, independent citizen redistricting committees have conducted redistricting. *See* 1965 Utah Laws, H.B. No. 8, Section 4, eff. May 11, 1965. At a minimum, because the executive branch and the people share in the redistricting power, both under the Utah Constitution and historically, this Court concludes that redistricting power is not solely committed to the Legislature.

Further, the constitutionality of legislative action is not beyond judicial review. Courts regularly review legislative acts for constitutionality. The United States Supreme Court in *Marbury v. Madison* famously stated that reviewing statutes to determine if they are constitutional is "the very essence of judicial duty" under our constitutional form of government. 5 U.S. (1 Cranch) 137, 178, 2 L.Ed. 60 (1803). In fact, "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Id.* at 177. Courts have a duty to review acts of the Legislature to determine whether they are constitutional. *Matheson v. Ferry*, 641 P.2d 674, 680 (Utah 1982) (stating courts cannot "shirk [their] duty to find an act of the Legislature

unconstitutional when it clearly appears that it conflicts with some provision of our Constitution."); *see also Skokos,* 900 P.2d at 541 ("If a claim involves the interpretation of a statute or questions the constitutionality of a particular political policy, courts are acting within their authority in scrutinizing such claims."). Courts also cannot "simply shirk" their duty by finding a claim nonjusticiable, merely because the case involves "significant political overtones." *Matter of Childers-Gray*, 2021 UT 13, ¶ 67 (quoting *Japan Whaling Ass'n*, 478 U.S. at 230). Were it otherwise, the legislature would be the sole judge of whether its actions are constitutional, which is inconsistent with our Constitution, separation of powers, and longstanding principles of judicial review. *See, e.g.*, *Matheson*, 641 P.2d at 680; *Marbury*, 5 U.S. at 178; *see also Ritchie v. Richards,* 14 Utah 345, 47 P. 670, 675 (1896) (Batch, J., concurring) ("[t]he power to declare what the law shall be is legislative. The power to declare what is the law is judicial.").

Other constitutional provisions designate various duties to the Legislature—e.g., the compensation of state and local officers in art. VII, § 18; public education in art. X, § 2; and gun regulation in art. I, § 6—but that does not mean that the Legislature's power in those areas is beyond judicial review. For example, in the case of public education, the Utah Supreme Court has held:

> [t]he legislature has plenary authority to create laws that provide for the establishment and maintenance of the Utah public education system. . . . However, its authority is not unlimited. The legislature, for instance, cannot establish schools and programs that are not open to all the children of Utah or free from sectarian control . . . for such would be a violation of . . . the Utah Constitution.

Utah Sch. Bds. Ass'n v. Utah State Bd. of Educ., 2001 UT 2, ¶ 14, 17 P.3d 1125. Even though the Utah Constitution explicitly grants authority over education to the Legislature, that authority must be exercised in a manner consistent with the Utah Constitution.

This principle equally applies to redistricting. As Defendants' counsel acknowledged during oral argument, the Legislature is bound to follow the United States and Utah Constitutions when engaging in the redistricting process. And outside the context of this litigation, Defendants have acknowledged that "[t]he redistricting process is subject to the legal parameters established by the United States and the Utah Constitutions, state and federal laws, and caselaw."[4] Given these acknowledgements, it follows that "the mere fact that responsibility for reapportionment is committed to the [Legislature] does not mean that the [Legislature's] decisions in carrying out its responsibility are fully immunized from any judicial review." *Harper*, 868 S.E.2d at 534. That proposition would be wholly inconsistent with this Court's obligation to enforce the provisions of the Utah Constitution. *See Matheson*, 641 P.2d at 680.

In addition, the Utah Supreme Court has previously reviewed the Utah Legislature's redistricting actions. In *Parkinson*, the plaintiffs challenged the Legislature's redistricting act alleging that it created districts with vastly unequal populations. *Parkinson*, 291 P.2d at 401. In its decision, the Utah Supreme Court initially expressed reluctance to interfere with the Legislature's redistricting actions given the importance that the three branches of government remain separate. *See id.* at 403. The Utah Supreme Court, however, did not dismiss the claim as a nonjusticiable political question. *Id.* at 400. Instead, it engaged in judicial review and reviewed the map for constitutionality, ultimately determining that congressional districts with unequal populations were not unconstitutional.

Notably, after previously reviewing partisan gerrymandering cases, the United States Supreme Court, in a 5 - 4 decision, recently concluded that such claims are nonjusticiable in

[4] Plaintiffs cited this quote from a report by Utah State Legislature on Utah's redistricting in 2001. Office of Legislative Research and General Counsel, 2001 Redistricting in Utah (Jan. 2022), le.utah.gov/documents/redistricting/redist.htm (last accessed May 25, 2022). The Court takes judicial notice of the report pursuant to Utah Rules of Evidence 201(b)(2).

federal courts. *Rucho v. Common Cause*, 139 S.Ct. 2484, 2506 (2019). While the United States Supreme Court has backed away from evaluating redistricting claims, it does not follow that such claims are nonjusticiable in Utah courts for several reasons. First and foremost, the *Rucho* Court specifically stated: "Our conclusion does not condone excessive partisan gerrymandering. Nor does our conclusion condemn complaints about districting to echo into a void.... Provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply." *Id.* at 2507.

Utah courts also are not bound by the same justiciability requirements as federal courts under Article III. Several Utah cases have noted that, on matters like standing and justiciability, a lesser standard may apply. *See, e.g., Laws v. Grayeyes*, 2021 UT 59, ¶ 77, 498 P.3d 410 (Pearce, J., concurring); *Gregory v. Shurtleff*, 2013 UT 18, ¶ 12, 299 P.3d 1098; *Brown v. Div. of Water Rts. of Dep't of Nat. Res.*, 2010 UT 14, ¶¶ 17-18, 228 P.3d 747; *Jenkins v. Swan*, 675 P.2d 1145, 1149 (Utah 1983).

Utah courts at times decline to merely follow and apply federal interpretations of constitutional issues. *S. Salt Lake City v. Maese,* 2019 UT 58, ¶ 27, 450 P.3d 1092. They "do not presume that federal court interpretations of federal constitutional provisions control the meaning of identical provisions in the Utah Constitution." *State v. Briggs*, 2008 UT 83, ¶ 24, 199 P.3d 935. They do not merely presume that federal construction of similar language is correct, *State v. Tiedemann*, 2007 UT 49, ¶ 37, 162 P.3d 1106. And they recognize that federal standards are sometimes "based on different constitutional language and different interpretative case law." *Jensen ex rel. Jensen v. Cunningham*, 2011 UT 17, ¶ 45. Utah courts have also interpreted the Utah constitution to provide more protection than its federal counterpart when federal law was an "inadequate safeguard" of state constitutional rights. *Tiedmann*, 2007 UT 49, ¶¶ 33, 42-44.

While the *Rucho* majority decision conclusively resolved the issue justiciability for federal courts, given the split in the decision and the dissent authored by Justice Kagan, the issue was clearly not that cut and dry, even for the federal courts. Justice Kagan wrote that most members of the Supreme Court agree that partisan gerrymandering is unconstitutional. And four of the nine justices agreed that partisan gerrymandering is justiciable, judicially manageable standards exist, and the dissent discussed tests that exist and have been applied by the federal courts. *Rucho v. Common Cause*, 139 S. Ct. at 2509-2525 (Kagan, J., dissenting) (stating, in reference to the majority opinion, "For the first time ever, this Court refuses to remedy a constitutional violation because it thinks it is beyond judicial capabilities."). Federal caselaw may prove helpful in this case as the litigation proceeds, but the majority's holding in *Rucho* – that partisan gerrymandering is not justiciable – is not binding on this Court and this Court declines to follow it.

B. Judicially discoverable and manageable standards exist.

Defendants argue that the Court lacks jurisdiction because there are no judicially discoverable or manageable standards for resolving redistricting claims because redistricting is a purely political exercise, based entirely on the Legislature's consideration and weighing of competing policy interests in deciding where to draw boundary lines. (Defs.' Mot. at 10.) The Court disagrees.

Plaintiffs' Complaint challenges the constitutionality of the 2021 Congressional Plan and the Utah Legislature's action. Determining whether the 2021 Congressional Plan violates the Utah Constitution involves no "policy determinations for which judicially manageable standards are lacking." *Baker*, 369 U.S. at 226. Instead, it involves legal determinations, the standards for which are provided both in the Utah Constitution and in caselaw. Utah courts have previously

addressed the Free Elections, Uniform Operation of Laws, Freedom of Speech and Association and the Right to Vote clauses of the Utah Constitution and, for some clauses, there are well-developed standards that have been applied by Utah courts in various scenarios.[5] And Utah courts are regularly asked to address issues of first impression, to interpret constitutional provisions and statutes for the first time and to apply established constitutional principles to new legal questions and factual contexts.[6] There is no reason why this Court cannot do the same here.

In reviewing Plaintiffs' redistricting claims, the Court will simply be engaging in the well-established judicial practice of interpreting the Utah Constitution and applying the law to the facts. The Utah Supreme Court has stated that "the Utah Constitution enshrines principles, not application of those principles," and it is the court's duty to determine "what principle the constitution encapsulates and how that principle should apply." *Maese,* 2019 UT 58, ¶ 70 n. 23. In applying constitutional principles to new types of claims, the Court uses "traditional methods of constitutional analysis," which starts with analyzing the plain language of the constitution and taking into consideration "historical and textual evidence, sister state law, and policy arguments in the form of economic and sociological materials to assist us in arriving at a proper

[5] While the constitutional provisions Plaintiffs cite have never been applied by Utah courts for redistricting claims, they have been applied in a variety of other contexts. The following are examples, not an exhaustive list. The Utah Supreme Court has applied Article I, Section 17 of the Utah Constitution (Free Elections Clause, Plaintiffs' Count One) while analyzing the right of a political candidate to appear on a party's ticket. *Anderson v. Cook*, 102 Utah 265, 130 P.2d 278, 285 (1942). It has applied Sections 2 and 24 of Article I (Uniform Operation of Laws, Count Two) in the context of a citizen initiative. *Gallivan v. Walker,* 2002 UT 89, 54 P.3d 1069. It has applied Sections 1 and 15 of Article I in an obscenity case. *American Bush v. City of South Salt Lake*, 2006 UT 40, 140 P.3d 1235. And the Utah Supreme Court has applied Article IV, Section 2 in a case in which a prison inmate challenged a residency requirement in registering to vote. *Dodge v. Evans*, 716 P.2d 270, 273 (Utah 1985).

[6] For example, in *State v. Roberts*, the Utah Supreme Court applied the Utah Constitution to determine whether a reasonable expectation of privacy exists for electronic files shared in a "peer-to-peer file sharing network." 2015 UT 24, ¶ 1, 345 P.3d 1226. *See also State v. Limb*, 581 P.2d 142, 144 (Utah 1978) (addressing automobile exception); *Dexter v. Bosko*, 2008 UT 29, ¶ 19 (unnecessary rigor provision applied to seatbelts); *State v. James*, 858 P.2d 1012, 1017 (Utah Ct. App. 1993) (due process applied to video recorded interrogations).

interpretation of the provision in question." *Soc'y of Separationists, Inc. v. Whitehead*, 870 P.2d 916, 921, n.6 (Utah 1993).

In addition, in addressing redistricting, Utah's court are not without judicially-discoverable or manageable standards. *Rucho* specifically recognized that "provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply." *Rucho v. Common Cause*, 139 S. Ct. at 2507. Here, the people of Utah passed Proposition 4, which codified into law the people's will to apply traditional redistricting criteria in congressional districting. *See supra* pp. 3-4. Other state courts have addressed claims involving partisan gerrymandering. In fact, seven state courts in North Carolina, Pennsylvania, Florida, Ohio, Maryland, New York, and Alaska have concluded that partisan gerrymandering claims are cognizable under their respective state constitutions.[7] Some have set forth criteria and factors that may be considered in such analyses. *See, e.g., League of Women Voters v. Commonwealth*, 645 Pa. 1, 118-21 (Pa. 2018) (discussing consideration of traditional redistricting criteria, including contiguity, compactness, and respect for political subdivisions, and establishing "neutral benchmarks" for evaluating gerrymandering claims). Federal courts have applied various tests to address partisan gerrymandering. *See, e.g., Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting) (discussing application of a three-part test, including consideration of intent, effects, and causation, and discussing generally other tests previously applied). Utah courts have historically relied on case law from other state and federal courts in addressing questions that arise under Utah law. *See, e.g., Am. Bush,* 2006 UT 40, ¶ 11; *Ritchie v. Richards*, 47 P. 670, 677-79 (1896).

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[7] *See Harper*, 868 S.E.2d at 558-60; *League of Women Voters v. Commonwealth*, 645 Pa. 1, 128 (Pa. 2018); *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 371-72 (Fla. 2015); *Adams v. DeWine*, 2022 WL 129092 at *1-2 (Ohio Jan. 14, 2022); *Szeliga v. Lamone*, Nos. C-02-cv-21-001816 & C-02-CV-21-001773 at 93-94 (Anne Arundel Cnty. Cir. Ct. Mar. 25, 2022), https://redistricting.lls.edu/wp-content/uploads/MDSzeliga-20220325-order-granting-relief.pdf; *Harkenrider v. Hochul*, No. 60, 2022 WL 1236822 (N.Y. Apr. 27, 2022); *In the Matter of the 2021 Redistricting Cases*, S-18419 (Alaska May 24, 2022) (applying *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371 (Alaska 1987)) (opinion forthcoming).

This Court can do the same here, taking into consideration material differences in our constitutions and state laws.

This case is in the beginning stages. The parties have not conducted discovery. No evidence has been presented and the parties have not yet presented their positions regarding appropriate tests or criteria that should be considered and applied. As this case proceeds through litigation and with specific input from both parties, this Court can determine what criteria or factors should be considered in this case, under Utah law. *See Harper*, 868 S.E.2d at 547-48 (stating specific standards for evaluating state legislative apportionment schemes should be developed in the context of actual litigation); *accord Reynolds v. Sims*, 377 U.S. 533, 578 (1964) ("What is marginally permissible in one [case] may be unsatisfactory in another, depending on the particular circumstances of the case. Developing a body of doctrine on a case-by-case basis appears to us to provide the most satisfactory means of arriving at detailed constitutional requirements in the area of . . . apportionment.").

Utah courts, including this one, recognize the separation of powers. To be clear, this Court will not review the Legislature's legitimate weighing of policy interests. The judiciary is not a political branch of government; policy determinations are for the Legislature to decide. As the Utah Supreme Court has stated, "[i]t is a rule of universal acceptance that the wisdom or desirability of legislation is in no wise for the courts to consider. Whether an act be ill advised or unfortunate, if it should be, does not give rise to an appeal from the legislature to the courts." *Parkinson*, 291 P.2d at 403. However, even in cases involving political issues, the Court is bound to review the Legislature's actions, not to weigh in on policy matters, but to determine whether there has been a constitutional violation. *Matheson*, 641 P.2d at 680.

Judicial review of legislative action to determine constitutionality does not derogate from the primacy of the state legislature's role in redistricting. However, because redistricting is not wholly within the control of the Legislature, the constitutional claims presented here are not political questions, and because judicially discoverable and manageable standards exist to review constitutional challenges and redistricting claims, the Court concludes that it has jurisdiction in this case to review the Legislature's actions to determine if they are constitutional.

Therefore, Defendants' Motion to Dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) is DENIED.

II. Defendants' Motion to Dismiss the Committee and Individual Defendants is DENIED.

Defendants move to dismiss Defendants Utah Legislative Redistricting Committee, Senator Scott Sandall, Senator J. Stuart Adams, and Representative Brad Wilson (collectively, Committee and Individual Defendants). (Defs.' Mot. at 14.) Defendants' Motion is based on two arguments. First, they argue that the Committee and Individual Defendants are immune from suit based on claims related to their actions as legislators. Second, the Committee and Individual Defendants assert they are unable to provide Plaintiffs' requested relief, and as such, should be dismissed. (*Id.*).

Regarding immunity, the Committee and Individual Defendants are correct that Utah law grants them immunity from certain lawsuits. However, that grant of immunity does not make them immune to all claims. To the contrary, Utah law only grants legislators immunity from claims of *defamation* related to their actions as legislators. Utah has adopted the common law legislative immunity and legislative privilege doctrines through its Speech or Debate Clause,[8]

[8] Utah's Speech or Debate Clause states: "[m]embers of the Legislature, in all cases except treason, felony or breach of the peace, shall be privileged from arrest during each session of the Legislature, for fifteen days next preceding

which Utah courts interpret as providing legislative immunity only from *defamation* liability. *See Riddle v. Perry*, 2002 UT 10, ¶ 10, 40 P.3d 1128. In *Riddle*, the Utah Supreme Court declined to provide absolute legislative immunity in all instances. It explained that the policy consideration behind the legislative immunity doctrine is "the importance of full and candid speech by legislators, even at the possible expense of an individual's right to be free from defamation." *Id.* ¶ 8. Here, Plaintiffs are not seeking relief from defamation. Under this limited view of legislative immunity,[9] the Committee and the Legislative Defendants are not immune.

The Committee and Individual Defendants also assert that they cannot provide the relief requested and that any order from this Court directed at them "would blatantly violate the separation of powers." (Reply at 15.) The Committee's and Individual Defendants' argument on this point is less than two pages. They do not cite any authority, legal or otherwise, to support that the Committee and the Defendants cannot provide *any* relief requested or that any order from the Court, directed at them, would violate the separation of powers.[10] Such unsupported arguments are insufficient to satisfy Defendants' burden on a motion to dismiss. *See Bank of Am. v. Adamson*, 2017 UT 2, ¶ 13, 391 P.3d 196 ("A party must cite the legal authority on which its

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each session, and in returning therefrom; and for words used in any speech or debate in either house, they shall not be questioned in any other place." Utah Const. art. VI, § 8.

[9] The *Riddle* Court explained the limits of the Utah's legislative immunity doctrine:

> In determining the contours of the legislative proceeding privilege, we adopt the privilege as set forth in section 590A of the Restatement (Second) of Torts: "A witness is absolutely privileged to publish defamatory matter as part of a legislative proceeding in which he [or she] is testifying or in communications preliminary to the proceeding, if the matter has some relation to the proceeding."

Id. ¶ 11 (alteration in original).

[10] Notably, Utah courts have allowed lawsuits against individual legislators to proceed. *See, e.g., Matheson v. Ferry*, 657 P.2d 240, 244 (Utah 1982); *Jenkins v. State*, 585 P.2d 442, 443 (Utah 1978); *Rampton v. Barlow*, 23 Utah 2d 383, 384, 464 P.2d 378 (1970); *Romney v. Barlow*, 24 Utah 2d 226, 227, 469 P.2d 4497 (1970). This Court is not aware of any legal authority, either at the state or federal level, that prohibits all lawsuits naming legislators. If any legal precedent exists to justify the dismissal of any defendant, it is incumbent on the moving party to present that authority to the Court.

argument is based and then provide reasoned analysis of how that authority should apply in the particular case."). While Defendants certainly raise important issues that the parties and this Court will consider as this case proceeds,[11] the arguments made at this stage are simply insufficient to justify dismissing the Committee and the Individual Defendants. *See Gardiner v. Anderson*, 2018 UT App 167, ¶ 21 n.14, 436 P.3d 237 ("[I]t is not the district court's burden to research and develop arguments for a moving party.").

Regarding the Committee and Legislative Defendants' separation of powers argument, the Court has a duty to review the Legislature's acts if it appears they conflict with the Utah Constitution. *Matheson*, 657 P.2d at 244. Indeed, to hold otherwise would make the Legislature the ultimate arbiter of what is constitutional, which would in fact violate the separation of powers principle by intruding on this Court's constitutional role. *See id.* At this stage, it appears this Court can give Plaintiffs at least some of the relief requested without intruding on the Legislature's powers, which is sufficient to defeat Defendants' Motion to Dismiss.

Defendants' Motion to Dismiss the Committee and the Legislative Defendants is DENIED.

III. Defendants' Motion to Dismiss Counts One through Four is DENIED; Defendants' Motion to Dismiss Count Five is GRANTED.

Defendants' move to dismiss each of Plaintiffs' four constitutional challenges to the 2021 Congressional Plan asserting that Utah's Constitution, and specifically the Free Elections Clause, Equal Protection Clause, Free Speech and Association Clause and the Right to Vote Clause, does not expressly prohibit partisan gerrymandering. Defendants

[11] The precise relief that Plaintiffs seek and might be entitled to is not entirely clear at this stage of the litigation. Thus, any ruling the Court could make would be merely advisory and the Court declines to do so. *Salt Lake County v. State*, 2020 UT 27, ¶36, 466 P.3d 158 ("[W]e do not issue advisory opinions."). The Court recognizes, however, that the issues raised by Defendants are legitimate questions that the Court will address if and when the issues are fully ripe and briefed.

take the position that these provisions should be interpreted narrowly to protect *only* every citizen's right to cast a vote in an election. Nothing more. They argue generally that the 2021 Congressional Plan does not prohibit any citizen from voting in an election. New boundary lines do not prohibit each citizen from physically casting a vote or from freely speaking and associating with like-minded voters on political issues. Further, they argue that the Utah Constitution does not guarantee "equal voting power," a vote that is politically "equal in its influence," any political success, or a beneficial political outcome. In addition, Defendants move to dismiss Plaintiffs' fifth claim, asserting that the Utah Constitution does not prohibit the Legislature from either amending or repealing the Utah Independent Redistricting Commission and Standards Act, Title 20A, Chapter 19, of the Utah Code, which is the law that went into effect with the successful passage of Proposition 4.

Defendants' motion is made under Rule 12(b)(6) of the Utah Rules of Civil Procedure, asserting that Plaintiffs have failed to state a claim under the Utah Constitution.

> "The purpose of a rule 12(b)(6) motion is to challenge the *formal sufficiency of the claim for relief, not to establish the facts or resolve the merits of a case*." *Van Leeuwen v. Bank of Am. NA*, 2016 UT App 212, ¶ 6, 387 P.3d 521 (cleaned up). Accordingly, "dismissal is justified *only* when the allegations of the complaint clearly demonstrate that the plaintiff does not have a claim." *Id.* (cleaned up).

Pioneer Homeowners Ass'n v. TaxHawk Inc., 2019 UT App 213, ¶ 19, 457 P.3d 393, *cert. denied sub nom., Pioneer Home v. TaxHawk, Inc.*, 466 P.3d 1073 (Utah 2020) (emphasis added). The Court's review of Defendant's Motion at this stage is limited to considering only "the legal viability of a plaintiff's underlying claim as presented in the pleadings." *Lewis v. U.S. Bank Tr. NA*, 2020 UT App 55, ¶ 9, 463 P.3d 694, 697 (internal quotation marks excluded).

Each of Plaintiffs' claims is based on the Utah Constitution. Constitutional interpretation starts with evaluating the plain text to determine "the meaning of the text as understood when it

was adopted." *S. Salt Lake City v. Maese,* 2019 UT 58, ¶ 18, 450 P.3d 1092 (discussing generally process of constitutional interpretation). "The goal of this analysis is to discern the intent[12] and purpose of both the drafters of our constitution and, more importantly, the citizens who voted it into effect." *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 12, 140 P.3d 1235. "While we first look to the text's plain meaning, we recognize that constitutional language is to be read not as barren words found in a dictionary but as symbols of historic experience illumined by the presuppositions of those who employed them." *Id.* ¶ 10. The Court's focus is on "how the words of the document would have been understood by a competent and reasonable speaker of the language at the time of the document's enactment." *Patterson v. State of Utah*, 2021 UT 52, ¶ 91, 405 P.3d 92.

In addition to analyzing the text, prior caselaw guides us to analyze "historical evidence of the state of the law when it was drafted, and Utah's particular traditions at the time of drafting.'" *Maese,* 2019 UT 58, ¶ 18 (quoting *Am. Bush*, 2006 UT 40, ¶ 12). The language of the text, in certain circumstances, may begin and end the analysis. However, "[w]here doubt exists about the constitution's meaning, we can and should consider all relevant materials. Often that will require a deep immersion in the shared linguistic, political, and legal presuppositions and understandings of the ratification era." *Maese,* 2019 UT 58, ¶ 23 (cleaned up) (explaining merely "asserting one, likely true, fact about Utah history and letting the historical analysis flow from that single fact is not a recipe for sound constitutional interpretation.").[13] The Court may also

[12] The Utah Supreme Court has explained that "[w]hile we have at times used language of 'intent' in discussing our constitutional interpretation analysis, our focus is on the objective original public meaning of the text, not the intent of those who wrote it. Evidence of framers' intent can inform our understanding of the text's meaning, but it is only a means to this end, not an end in itself." *Maese*, 2019 UT 58, ¶ 59 n.6.

[13] In interpreting the Utah Constitution, "we consider all relevant factors, including the language, other provisions in the constitution that may bear on the matter, historical materials, and policy. Our primary search is for intent and purpose. Consistent with this view, this court has a very long history of interpreting constitutional provisions in light

consider caselaw from sister states, with similar provisions made contemporaneously to the framing/ratification of Utah's Constitution, and federal caselaw interpreting similar provisions from the United States Constitution. *Am. Bush*, 2006 UT 40, ¶ 11.

Both parties have provided to the Court some relevant material to support their competing interpretations of the Utah Constitution, of which this Court may take judicial notice of under Rule 201 of the Utah Rules of Evidence. At this stage, the Court cannot consider factual matters outside the pleadings on a motion to dismiss without converting the motion into to one for summary judgment. Utah R. Civ. P. 12(b); *Oakwood Vill. LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 12, 104 P.3d 1226. Neither party has made such a request. Therefore, at this stage, the Court need only decide whether Plaintiffs have stated a claim, not whether Plaintiffs will succeed on those claims. Because each claim involves separate legal issues, the Court addresses each individually below.

a. Plaintiffs Sufficiently State a Claim under the Free Elections Clause (Count One).

Defendants assert that Plaintiffs have failed to, and cannot, state a claim under the Free Elections Clause. Defendants argue the plain language of the Free Elections Clause does not expressly prohibit partisan gerrymandering and that it guarantees only "the freedom to *cast a vote* without interference from civil or military power." (Defs.' Reply at 17 (emphasis added).) The Court disagrees.

The Free Elections Clause states: "All elections shall be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Utah

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of their historical background and the then-contemporary understanding of what they were to accomplish. This case, like many others, proves the wisdom of the axiom that '[a] page of history is worth a volume of logic.'" *S. Salt Lake City v. Maese*, 2019 UT 58, ¶ 23, 450 P.3d 1092, 1098 (discussing and quoting *Society of Separationists v. Whitehead*, 870 P.2d 916, 920–21, and n. 6 (Utah 1993)).

Const. art. I, § 17. Defendants argue that this Court must interpret the provision as a whole, arguing that the second clause, which states that "no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage," necessarily modifies or limits the first. (Defs.' Reply at 17.) The Court rejects this interpretation.

1. The Plain Meaning of "All *elections* shall be *free.*"

There are two express rights guaranteed by the Free Elections Clause, not just one. First and foremost, "all *elections* shall be *free.*" The second, "no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." The clause is constructed as a compound sentence, separating two independent clauses by the conjunction "and." This sentence construction supports that these two clauses are to be given equal value. Nothing in the construction or choice of conjunction suggests to this Court that the second independent clause was intended to limit the first. Defendants also provide no authority, legal or otherwise, to support such interpretation.

What did the term "all *elections* shall be *free*" mean to the people of Utah in 1895, when the Utah Constitution was adopted? There is little historical information on Utah's Free Elections Clause. While the Clause was discussed during the Proceedings and Debates of the Convention Assembled to Adopt a Constitution for State of Utah, in Mar. 25, 1895,[14] the discussion provides no guidance as to what the clause was intended to protect or how to interpret the key words. The reported transcript of the proceedings reflects that the Free Elections Clause was passed with no debate. One modification was made to the final text. As originally proposed, the Free Elections Clause stated that "[a]ll elections shall be free and equal." A successful motion was made to remove "equal," but with no discussion. Defendants argue the removal is significant, revealing

[14] Found at le.utah.gov/documents/conconv/22.htm ("Convention Proceedings").

the drafter's intent to not guarantee "voting power." (Defs.' Mot. at 21, n.16.) Plaintiffs, on the other hand, argue that "equal" was removed because it was "superfluous," because the term "free," as defined in 1891, already contained an equality component. (Pls' Opp'n at 26.) Neither party, however, provided any authority to support their respective arguments.[15] And the debate regarding this clause is of little assistance.

There are no early Utah common law cases discussing the Free Elections Clause. There are no Utah cases from any time period defining the term "elections." Notably, neither party focused on this term nor provided a definition or any legal analysis of it.[16] The meaning of the term "elections," however, is critical to this analysis and critical to interpreting this clause.

An "election" is defined by Merriam-Webster as the "act or process of electing." *Election*, Merriam-Webster, https://www.merriam-webster.com/dictionary/elections (noting first known use of this term, with this definition, was the 13th century). To "elect" is "to select by vote for an office, position or membership." *Elect,* Merriam-Webster, https://www.merriam-webster.com/dictionary/elect. Other dictionary sources define the term similarly: "An election is a process in which people vote to choose a person or group of people to hold an official position." *Election*, (noun), Collins Dictionary, https://www.collinsdictionary.com/us/dictionary/english/election.[17]

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[15] The Court agrees with Defendants that the removal means something. But there is insufficient historical information before the Court to determine what was intended by the removal. The Court need not determine why it was removed; instead, the Court focuses on interpreting the clause as it is written.

[16] Notably, neither party provided a definition of "elections." Both parties focused primarily on and provided definitions for the word "free." Based on the Court's analysis, the definition of "elections" does not appear to have changed over time and it does not appear to be subject to widely different interpretations. This Court is not a linguistics expert and did not undertake independent scientific research, but it did resort to standard dictionary definitions to assist in interpreting the plain language of the Free Elections Clause. *See generally State v. Rasabout*, 356 P.3d 1258 (2015) (discussing generally interpretation methods under Utah law).

[17] "*Election* (noun), the act or process of choosing someone for a public office by voting." *Election*, Britannica Dictionary, https://www.britannica.com/dictionary/election. An "election" is "the process of choosing a person or a

"Election" also means the "right, power, or privilege of making a choice." *Election,* Merriam-Webster, https://www.merriam-webster.com/dictionary/elections. Similar definitions were used in the late 1800s. *See e.g., State v. Hirsch,*[18] 125 Ind. 207, 24 N.E. 1062, 1063 (1890) (discussing various definitions of "election" and stating it "is not limited in its definition and meaning to the act or process of choosing a person for a public office by a vote of the qualified electors at the time, place, and manner prescribed by law.").

The term "free" as defined in the 1891 Black's Law Dictionary means: "[u]nconstrained; having power to follow the dictates of his own will;" "[e]njoying full civic rights;" and "[n]ot despotic; assuring liberty;[19] defending individual rights against encroachment by any person or class; instituted by a free people; said of governments, institutions, etc." *Free*, Black's Law Dictionary, 1st ed. 1891. (Pls.' Opp'n at 26-29; Defs.' Reply at 16-20). "Free" was also defined as "[o]pen to all citizens alike[.]" *Free,* Anderson, Dictionary of Law, 1889.

Two notable terms justify further analysis. First, "unconstrained" means "not held back or constrained." *Unconstrained*, Merriam-Webster, https://www.merriam-webster.com/dictionary/unconstrained (noting definition first used in the 14th century). "Constrained" means "to force by imposed stricture, restriction or limitation;" "to force or produce in an unnatural or strained manner." *Constrained*, Merriam-Webster,

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group of people for a position, especially a political position, by voting." *Election (noun)*, Oxford Learner's Dictionaries, https://www.oxfordlearnersdictionaries.com/us/definition/english/election.

[18] In *State v. Hirsch*, 125 Ind. 207, 24 N.E. 1062, 1063 (Ind. 1890), the Indiana Supreme Court analyzed the meaning of the term "elections" to interpret a state statute prohibiting liquor sales on "election day." Notably, the Court recognized that "[u]nder our form of government we have a well-defined system of choosing or electing officers, regulated by law." *Id.*

[19] "Liberty" is defined as "the quality or state of being free; the power to do as one pleases; freedom from physical restraint; freedom from arbitrary or despotic control; the positive enjoyment or various social, political, or economic rights and privileges; the power of choice." *Liberty,* Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/liberty (noting the definition has been used since the 14th century).

https://www.merriam-webster.com/dictionary/constrain (noting definition used in the 14th century).

Second, "despotic" means "of, or relating to, or characteristic of a despot // a despotic government." *Despotic*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/despotic#h1 (noting this term, with this definition, was first used in 1604). "Despot" in turn means "a ruler with absolute power and authority; one exercising power tyrannically; a person exercising absolute power in a brutal or oppressive way." *Despot*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/despot (noting this definition came into being with the beginning of democracy at the end of the 18th century). The United States Supreme Court in 1866 explained what it means to be despotic: "In a despotism the autocrat is unrestricted in the means he may use for the defence of his authority against the opposition of his own subjects or others; and that is what makes him a despot." *Ex parte Milligan*, 71 U.S. 2, 81, 18 L. Ed. 281 (1866).

The first clause "all elections shall be free" guarantees to Utah's citizens an election *process* that is free from despotic and tyrannical government control and manipulation. A "free election" involves an unconstrained process, that does not "produce" results "in an unnatural or strained manner." And it prohibits governmental manipulation of the election process to either ensure continued control or to attain an electoral advantage. This right given to Utah citizens, necessarily imposes a limit on the legislature's authority when overseeing the election process.

The second clause specifically provides that "no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Utah Const. Art. I, § 17. This portion of the clause prohibits a civil or military power from interfering with the free exercise of the right of suffrage. It does not, however, expressly preclude a governmental power, like the

legislature, from providing "by law for the conduct of elections, and the means of voting, and the methods of selecting nominees." *Anderson v. Cook*, 102 Utah 265, 130 P.2d 278, 285 (1942).

Anderson v. Cook is the only Utah case discussing the Free Elections Clause. In *Anderson,* a potential candidate submitted a petition to appear on a primary election ballot, but the acting county clerk refused to certify the nomination of the candidate for the primary election. *Id.* at 280. In affirming the county clerk's decision, the *Anderson* Court concluded that the petition was not timely filed, that the political party could not designate a candidate without an effective petition, and that the primary election laws did not provide for a "write in" candidate (while noting that general election laws did). *Id.* at 281-82. The candidate argued to deny him the right to appear on the ballot would violate the Free Elections Clause. *Id.* at 285. The *Anderson* Court did not fully interpret or analyze the clause. More importantly, it did not conclude that the Free Elections Clause did not apply to the issues presented. Rather, it held:

> While this provision guarantees the qualified elector the free exercise of his right of suffrage, it does not guarantee any person the unqualified right to appear as a candidate upon the ticket of any political party. It cannot be construed to deny the legislature the power to provide regulations, machinery and organization for exercising the elective franchise, or inhibit it *from prescribing reasonable methods and proceedings* for determining and selecting the persons who may be voted for at the election.

Anderson v. Cook, 102 Utah 265, 130 P.2d 278, 285 (1942) (emphasis added).

While the *Anderson* Court found no constitutional violation (i.e., because the candidate's petition was not filed in accordance with the law), the case does support that claims regarding the election *process* cannot be made under the Free Elections Clause. It supports that the Legislature necessarily has a role in providing "reasonable" regulation, machinery, and organization of the exercise of the right to vote. Additionally, the Legislature must "provide by law for the conduct

of elections, and the means of voting, and the methods of selecting nominees." *Anderson*, 130 P.2d at 285.

Based on the Court's analysis, and contrary to Defendants' arguments, Utah's Free Elections clause guarantees more than merely the right to vote.

2. Free Election Clauses and the English Bill of Rights

The history of free election clauses also supports that they were intended to prohibit tyrannical or despotic governmental manipulation of the election process to either ensure continued power or to attain electoral advantage. The first state free election clauses derived from a provision in the English Bill of Rights of 1689. *See Harper v. Hall*, 868 S.E.2d 499, 540 (N.C. 2022) (quoting historical sources discussing the origin of Free Elections Clauses in Virginia, Pennsylvania, and North Carolina). The original provision provided: "election of members of parliament ought to be free," and "was adopted in response to the king's efforts to manipulate parliamentary elections by diluting the vote in different areas to attain electoral advantage." *Id.* (citing Bill of Rights, 1689, 1 W. & M. Sess. 2 c. 2 (Eng.)). The key principle driving these reforms was "avoiding the manipulation of districts that diluted votes for electoral gain." *Id.* North Carolina's free election clause was enacted following passage of similar provisions in Virginia and Pennsylvania, with the intent to "end the dilution of the right of the people to select representatives to govern their affairs," and to "codify an explicit provision to establish protections of the right of the people to fair and equal representation in the governance of their affairs." *Id.* (cleaned up). While not identical to Utah's, North Carolina's free election clause states simply: "All elections shall be free."

Defendants argue there is no evidence that Utah's Free Elections Clause, specifically, was based on the English Bill of Rights. This is true. Utah does not have the same well-

developed caselaw like North Carolina, specifically tracing the origin of this specific constitutional provision directly to the English Bill of Rights. However, the Utah Supreme Court has recognized that at least one provision in the Utah Constitution arose from the English Bill of Rights of 1689. *See, e.g.*, *Bott v. DeLand*, 922 P.2d 732, 737 (Utah 1996) (discussing Utah's cruel and unusual punishment clause), *abrogated by Spackman ex rel. Spackman v. Bd. of Educ. of Box Elder Cnty. Sch. Dist.*, 2000 UT 87, 16 P.3d 533; *see also State v. Houston,* 2015 UT 40, ¶¶ 166-170, 353 P.3d 55, 99-100 (Lee, J. concurring) (discussing English Bill of Rights and English origins of protection against "cruel and unusual punishment"). Based on *Bott,* the English Bill of Rights certainly had some influence on Utah's Constitution, as did other state constitutions and the United States Constitution. *Am. Bush*, 2006 UT 40, ¶ 31 (stating "the drafters of the Utah Constitution borrowed heavily from other state constitutions and the United States Constitution" and English common law.).

The history and evolution of our representative democracy in the United States was well known to the Utah Supreme Court in 1896, as it evaluated legislative action and various challenges to an election process. *See Ritchie v. Richards*, 14 Utah 345, 47 P. 670, 675 (1896) (stating elections should be "honest and fair"). In a concurring opinion, Justice Batch rejected the proposition that all legislative action is presumed constitutional and beyond judicial review. *Id.* at 675. Specifically, he rejected an interpretation of the Utah Constitution that would vest the legislature with "a power so arbitrary" that it likened it to "the parliament of Great Britain, under a monarchial form of government." *Id.*; *see also id.* at 681 (Miner, J., concurring in J. Batch's opinion).

Utah caselaw from 1891 reflects the strong sentiment at that time regarding the fundamental nature of the right to vote and the importance of protecting it from illegal acts of

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

3. *Harper v. Hall* and Defendants' cited cases.

In line with the reasoning in *Ferguson*, the North Carolina Supreme Court in *Harper v. Hall* held that partisan gerrymandering is a cognizable claim under North Carolina's free elections clause, stating:

> partisan gerrymandering, through which the ruling party in the legislature manipulates the composition of the electorate to ensure that members of its party retain control, is cognizable under the free elections clause because it can prevent elections from reflecting the will of the people impartially and by diminishing or diluting voting power on the basis of partisan affiliation. *Partisan gerrymandering prevents election outcomes from reflecting the will of the people* and such a claim is cognizable under the free elections clause.

Harper v. Hall, 868 S.E.2d 499, 542, *cert. granted sub nom. Moore v. Harper,* 142 S. Ct. 2901 (2022) (emphasis added).

Defendants cite two cases from Colorado and Idaho, suggesting that those states narrowly interpret their free elections clauses. They do not. In fact, in reviewing both cases, the Colorado

and Idaho courts apply their respective free elections clauses to address the "process" and not just merely the act of casting voting.

Defendants cite the Colorado case *Neelley v. Farr*, 158 P. 458 (Colo. 1916), stating that the Colorado Supreme Court interpreted Colorado's "free and open elections" provision to mean that "voters' right to the act of suffrage [be] free from coercion." *Id.* at 467. While that quote is part of the analysis, the *Neelley* court's decision does not support that the Court narrowly interpreted the Colorado free and open election clause to mean only that it protects against vote coercion. Notably, the case did not address redistricting. Rather, it addressed whether votes obtained from a "closed precinct," where the non-preferred candidates' party and voter information were prohibited (due to alleged industrial necessity), violated the free and open elections clause. The *Neelley* Court concluded that it did, and it excluded all votes cast, legal and illegal, from the precinct. *Id.* at 515.[20] While there are numerous quotes from the case regarding "free and open elections" that support that free and open elections means more than simply casting a vote, one quote is particularly instructive:

> There can be no free and open election in precincts where the legitimate activity of a political organization is interfered with and its members excluded either by private interests or public agencies or by the co-operation of both. So here a private, extrinsic agency, assisted by a public agency, the board of county commissioners, obtruded itself between a political organization and the electorate, and excluded one side to the controversy from the public territorial entity wherein the right of suffrage must be exercised.

Neelley v. Farr, 61 Colo. 485, 526, 158 P. 458, 472 (1916). This case supports that Colorado's free and open elections clause protects the *process*. In addition, congressional

[20] The *Neelley* court also stated: "under our form of government, if there is anything that should be held sacred, it is the ballot; and, if the aspirants for office, the election officials, and the party leaders so far forget themselves as to commit, or permit the commission of, gross frauds, so that the will of the legal electors cannot be determined, there is nothing left for the courts to do but to set aside the election in the precincts contaminated by such fraudulent conduct." *Neelley v. Farr*, 61 Colo. 485, 515, 158 P. 458, 468 (1916).

districts drawn through partisan gerrymandering to ensure one parties' election success to the exclusion of others does not meet the *Neelley* court's definition of a "free and open" election.

Defendants also cite *Adams v. Lansdon*, 110 P. 280 (Idaho 1910). *Adams* also does not deal with redistricting. Rather, the issue before the *Adams* court was whether requiring voters to vote for a first and second choice violated the portion of the Idaho's free and lawful elections clause, which stated: "No power, civil or military, shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage." *Id.* at 282. In rejecting the argument, the *Adams* court interpreted the provision to prevent only "civil or military officers" from "meddl[ing] with or intimidat[ing] electors" at polls; it ruled that imposing the requirement to vote for a first and second choice was a reasonable exercise of the legislature's power. *Id.* Notably, the *Adams* courts' ruling does not generally determine what "free elections" means. It also does not hold that a congressional map that predetermines elections is a reasonable exercise of the legislature's power and that such map does not meddle or interfere with the lawful exercise of the right to vote.

Based on the plain text of the Free Elections Clause, Utah caselaw, and decisions from other state courts, Utah's Free Elections Clause guarantees more than merely the right to cast a vote. It guarantees an election *process* free from despotic and tyrannical government control and manipulation. A "free election" involves an unconstrained *process*, that does not "produce" results "in an unnatural or strained manner." And it prohibits governmental manipulation of the election process, including through redistricting, to either ensure continued control or to attain an electoral advantage. As such, this Court concludes that partisan gerrymandering is a cognizable claim under Utah's Free Elections Clause.

4. Application of Plaintiffs' "effects-based" test.

Plaintiffs assert that this Court should assess Plaintiffs' Free Elections Clause claim under an effects-based test, which evaluates whether: "(1) the Enacted Plan has the effect of substantially diminishing or diluting the power of voters based on their political views, and (2) no legitimate justification exists for the dilution." (Pls.' Opp. at 17, 29.) The Court notes that this is Defendants' Motion, but Defendants neither address nor object to Plaintiffs' proposed test. Under the circumstances, and without adequate briefing, the Court adopts Plaintiffs' test solely for the purposes of deciding the current motion.

Assuming the allegations in the Complaint to be true, the Court concludes that Plaintiffs have sufficiently pled a claim under Utah's Free Elections Clause. First, Plaintiffs have sufficiently alleged that the 2021 Congressional Plan has the effect of substantially diminishing or diluting the power of democratic voters, based on their political views. Plaintiffs allege that the Plan achieves extreme and durable partisan advantage by cracking Utah's large and concentrated population of non-Republican voters, centered in Salt Lake County, and dividing them between all four of Utah's congressional districts to diminish their electoral strength. (Compl. ¶ 207.) In doing so, the Plan makes it systematically harder for non-Republican voters to elect a congressional candidate. It entrenches a single party in power and will reliably ensure Republicans and Republican incumbents are elected in all of the State's congressional seats for the next decade, despite a compact and sizeable population of non-Republican voters that, in a partisan-neutral map, would comprise a majority of a district covering most of Salt Lake County. (*Id.* ¶¶ 6, 206-209, 226-231.)

Second, there is no legitimate justification to dilute Plaintiffs' vote, and the dilution cannot be explained by application of traditional redistricting principles. (*Id.* ¶¶ 187-98, 233-54.)

The only stated justification is that Defendants intended "to ensure a mix of urban and rural areas in each congressional district." (Defs.' Mot. at 5, 23, 26.) Defendants contend that explanation is nothing more than a pretext. (Compl. ¶¶ 128-130, 177-78, 180-81, 187-198.) At this stage, the Court cannot resolve any disputes of fact. Therefore, it must accept Plaintiffs' well-pled allegations as true.

Further, Plaintiffs allege that the Plan was enacted for partisan advantage, based on the nature of the boundary lines, lack of transparency in the redistricting process, and the actions and statements made by elected officials involved in approving the Plan. (*Id.* ¶¶ 3-5, 141-198, 200, 233-235, 254, 275.) Finally, seeking partisan advantage is neither a compelling nor a legitimate governmental interest, because it "in no way serves the government's interest in maintaining the democratic processes which function to channel the people's will into a representative government." *Harper*, 868 S.E.2d at 549.

Based on the facts alleged in the Complaint, and the Court's legal analysis above, the Court concludes that Plaintiffs have sufficiently stated a claim under the "effects-based" test for violation of Utah's Free Elections Clause.

This Court recognizes that there will always be incidental political considerations and partisan effects during redistricting, even when neutral and traditional redistricting criteria are applied. The United States Supreme Court recognizes that "[n]ot every limitation on the right to vote requires judicial intervention. Some administrative burdens on the franchise are unavoidable. But some so alter the nature of the franchise that they deny a citizen's 'inalienable right to full and effective participation in the political process.'" *Reynolds v. Sims*, 377 U.S. 533, 565 (1964). "Because self-government is fundamentally predicated upon voters choosing winners and losers in the political marketplace, elections must reflect the voters' judgments and

not the state's." *Cal. Democratic Party v. Jones*, 530 U.S. 567, 590 (2000) (Kennedy, J. concurring) ("In a free society the State is directed by political doctrine, not the other way around."). Key to the success of our government is "public confidence in the integrity of the electoral process," which ultimately "encourages citizen participation in the democratic process." *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008). What is clear in a representative democracy, and under Utah's Free Elections clause, is that the way in which a government/legislature regulates, manages, provides for, and ultimately shapes the electoral process matters. As such, government/legislative action in this area should not be, and in this case is not, beyond constitutional challenge.

Plaintiffs should have the opportunity to present their case. Defendants' Motion to Dismiss Count One is DENIED.

b. **Plaintiffs Sufficiently State an Equal Protection Claim (Count Two).**

Next, Defendants maintain that Plaintiffs fail to state an equal protection claim because the Congressional Plan does not impact any fundamental right or the right to vote because each voter can freely vote for the candidate of their choice. Defendants also argue the 2021 Congressional Plan doesn't create a suspect classification. And, Defendants argue, any "perceived inequality" is the "product of the imbalance in the political makeup in the state and the corresponding political outcomes that reflect that imbalance of political opinion." (Defs.' Mot. at 22; Defs.' Rep. at 21.) The Court disagrees. Based on the well-established three-part test set forth in *Gallivan v. Walker*, 2002 UT 89, ¶ 31, 54 P.3d 1069, Plaintiffs sufficiently state a claim for violation of Utah's Equal Protection Clause.

Plaintiffs' equal protection claim is based on their contention that partisan gerrymandering as reflected in the 2021 Congressional Plan violates their equal protection rights

under the Uniform Operation of Laws Clause of the Utah Constitution. (Compl. ¶¶ 187-198, 271-82.) The Utah Constitution states that "all free governments are founded on their authority for their equal protection and benefit." Utah Const. art. I, § 2. The Uniform Operation of Laws Clause states that "[a]ll laws of a general nature shall have uniform operation." *Id.* art. I, § 24. Equal protection is inherent in the basic concept of justice. *Malan v. Lewis,* 693 P.2d 661, 670 (Utah 1984).

In comparing the federal Equal Protection Clause and Utah's equal protection guarantees (which are embodied in the Uniform Operation of Laws Clause), the Utah Supreme Court noted that both embody similar fundamental principles, generally that "persons similarly situated should be treated similarly, and persons in different circumstances should not be treated as if their circumstances were the same." *Gallivan,* 2002 UT 89, ¶ 31 (internal quotation marks omitted). Utah courts have noted that Utah's constitutional protections are "in some circumstances, more rigorous than the standard applied under the federal constitution." *Id.* ¶ 33.[21] In other words, Utah's protections are "at least as exacting," *id.,* but in some cases more protective that its federal counterpart. *Blue Cross & Blue Shield of Utah v. State Tax Comm'n,* 779 P.2d 634, 637 (Utah 1989). For instance, "article I, section 24 demands more than facial uniformity; the law's *operation* must be uniform." *Gallivan,* 2002 UT 89, ¶ 37. The test applied

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[21] The *Gallivan* Court reasoned:

> Even though there is a similitude in the "fundamental principles" embodied in the federal Equal Protection Clause and the Utah uniform operation of laws provision, "our construction and application of Article I, § 24 are not controlled by the federal courts' construction and application of the Equal Protection Clause," *Malan,* 693 P.2d at 670; *see also Ryan v. Gold Cross Servs., Inc.,* 903 P.2d 423, 426 (Utah 1995), and "[w]e have recognized that article I, section 24 ... establishes different requirements from the federal Equal Protection Clause." *Whitmer v. City of Lindon,* 943 P.2d 226, 230 (Utah 1997).

Gallivan v. Walker, 2002 UT 89, ¶ 33.

to determine compliance with the Uniform Operation of Laws Clause remains the same in all cases; however, the level of scrutiny given to legislative enactments varies. *Blue Cross*, 779 P.2d at 637 (stating this provision operates to restrain the legislature from "classifying persons in such a manner that those who are similarly situated with respect to the purpose of a law are treated differently by the law").

Under Utah law,

> A law does not operate uniformly if persons similarly situated are not treated similarly or if persons in different circumstances are treated as if their circumstances were the same. In other words, [w]hen persons are similarly situated, it is unconstitutional to single out one person or group of persons from among the larger class on the basis of a tenuous justification that has little or no merit."

Id. ¶ 37 (cleaned up). The Uniform Operation of Laws Clause "protects against discrimination within a class and guards against disparate *effects* in the application of laws." *Id.* ¶ 38 (emphasis added). The courts have a responsibility to determine "whether a classification operates uniformly on all persons similarly situated within constitutional parameters." *Id.* Utah laws must not "operate unequally, unjustly, and unfairly upon those who come within the same class." *Blackmarr v. City Ct. of Salt Lake City,* 86 Utah 541, 38 P.2d 725, 727 (1934).

Gallivan v. Walker is not a redistricting case, however, the principles espoused in the context of apportionment are no less applicable here. Notably, the *Gallivan* Court stated: "Since the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment, we conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race or economic status." *Gallivan*, 2002 UT 89, ¶ 72 (citing *Reynolds v. Sims,* 377 U.S. 533,

565–66, 84 S. Ct. 1362 (1964) (citing *Brown v. Bd. of Educ.*, 347 U.S. 483, 74 S.Ct. 686 (1954))). *Gallivan* also recognized that "[w]eighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems just." *Id.*

Plaintiffs assert that the right to vote is fundamental, and therefore heightened scrutiny applies based on the test set forth in *Gallivan*, 2002 UT 89, ¶¶ 42-43. Defendants, on the other hand, argue that because no fundamental or critical right or suspect classifications are implicated, the "rational basis" test, set forth in *State v. Angilau,* 2011 UT 3, ¶ 12, 245 P.3d 745, applies. At this stage, the Court need not decide which test applies as a matter of law because Plaintiffs have alleged facts sufficient to satisfy both standards.

Plaintiffs sufficiently allege facts to support that heightened scrutiny should apply. Plaintiffs have alleged that the 2021 Congressional Plan affects their fundamental right to vote. (Compl. ¶¶ 2, 261-262, 276-277, 301-307.) They have alleged that their right to vote has been burdened, diluted, impaired, abridged and is effectively meaningless, solely because of their political views and past votes. (*Id.*) The *Gallivan* court recognizes the right to vote as fundamental, stating:

> [n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

Id. (citing *Reynolds*, 377 U.S. at 560 (1964)).

Under the Uniform Operation of Laws analytical model set forth in *Gallivan*, at this stage, Plaintiffs must allege that (1) the challenged law creates a classification, (2) that the "classification is discriminatory" or "treats the members of the class or subclasses disparately," and that it is (3) reasonably necessary to further a legitimate legislative goal. *Id.* ¶¶ 42-43.

First, Plaintiffs allege that the 2021 Congressional Plan, like the multi-county signature requirement in *Gallivan*, operates to create classifications. (Pls.' Opp'n at 34.) Plaintiffs allege that the district boundary arbitrarily classifies voters based on partisan affiliation and geographic location. (Compl. ¶¶ 4, 207-227, 274-275.) *Gallivan* recognized that the multi-county signature requirement created two subclasses of registered voters based on where they lived, rural and urban voters. *Gallivan*, 2002 UT 89, ¶ 44. Defendants contend that party affiliation is not a "suspect classification." However, at this stage, Plaintiffs have alleged, and this Court accepts as true, that the 2021 Congressional Plan operates to classify voters by both partisan affiliation and geographic location.

Second, Plaintiffs allege that the 2021 Congressional Plan treats similarly situated voters disparately. (*Id.* ¶¶ 4, 15, 23, 29-33, 36, 130, 187-198, 271-276.) Plaintiffs allege that Utah's Republican and non-Republican voters are similarly situated for redistricting purposes because both groups are entitled to equally weighted votes. The same is true for voters living in both urban and rural settings. Plaintiffs allege that the 2021 Congressional Plan diminishes the voting strength of non-Republican and urban voters, while amplifying the strength of Republican and rural voters. (*Id.* ¶¶ 30-33, 36, 188, 265, 276.)

Third, Plaintiffs sufficiently allege that there is no "legitimate" legislative goal in seeking a partisan advantage through redistricting, which effectively pre-determines election outcomes, targets disfavored voters, dilutes their vote and shifts voting power from all the people to a subset of people. (*Id.* ¶¶ 270-82.) They also allege there is no legitimate interest in amplifying the interests of rural or suburban voters to the detriment of urban voters.[22] (*Id.* ¶ 280.) Plaintiffs

[22] The *Gallivan* Court held that the multi-county signature requirement did not further a legitimate legislative purpose because it "invidiously discriminates against urban registered voters in violation of the one person, one vote principle." *Gallivan*, 2002 UT 89, ¶ 49.

also allege that Defendants' stated justification for the placement of district boundaries, to ensure an urban/rural mix, was merely a pretext to ensure partisan advantage and dilution of non-Republican votes. (*Id.* ¶¶ 177, 187-197.) Accepting these facts and the facts in the Complaint as true, Plaintiffs have stated a claim for equal protection under the Uniform Operation of Laws Clause.

Defendants contend that no fundamental right is implicated, and that partisan affiliation is not a suspect classification. As such, they maintain the Court should apply the rational basis standard. Based on that standard, Defendants assert that "the Legislature voted on congressional district lines for the *reasonable* purpose of ensuring balance of urban and rural areas in each congressional district." (Defs.' Mot. at 26 (citing Compl. ¶ 187).). Defendants' argument goes to the merits of Plaintiffs' claim, rather than to whether they have sufficiently stated a claim. While the Complaint does reflect that proponents of the 2021 Congressional Plan represented that the district lines were "necessary" to balance urban and rural interests, it does not state that the purpose was reasonable. In addition, Defendants ignore paragraphs 188 to 198 of the Complaint, in which Plaintiffs allege that rationale was a pretext. On a motion to dismiss, this Court does not decide the merits. Rather, it assumes the well-pleaded facts in the Complaint to be true. Plaintiffs allege that Defendants' urban/rural justification is merely a pretext. For purposes of this motion, this Court assumes that fact to be true. This Court cannot, at this stage, resolve disputes of fact or make credibility determinations.

Even reviewed under the rational basis test, Plaintiffs' Complaint still states a claim. Under that standard, this Court considers: "(1) whether the classification is reasonable; (2) whether the objectives of the legislative action are legitimate, and (3) whether there is a

reasonable relationship between the classification and the legislative purpose."[23] *State v. Angilau*, 2011 UT 3, ¶ 21, 245 P.3d 745 (internal quotation marks omitted). Courts will "uphold a statute under the rational basis standard if [the statute] has a reasonable relation to a proper legislative purpose, and [is] neither arbitrary nor discriminatory." *Id.* ¶ 10 (internal quotation marks omitted) (second alteration in original) (emphasis added). Assuming factors one and three are established, the Complaint alleges sufficient facts to show that there is no legitimate legislative objective in either seeking partisan advantage through redistricting or in establishing districts to predetermine the outcome of elections and to ensure that incumbents continue to hold their seats.

For the reasons stated above, Plaintiffs have stated an equal protection claim under both a heightened scrutiny and rational basis standard. The Motion to Dismiss Count Two is DENIED.

c. Plaintiffs Sufficiently State a Claim for Violation of Plaintiffs' Right to Free Speech and Association (Count Three).

Defendants assert that the 2021 Congressional Plan and the congressional district boundaries established therein neither implicate nor violate Plaintiffs' Free Speech and Association rights. The Court disagrees.

Article I, Section 1 of the Utah Constitution states that "[a]ll persons have the inherent and inalienable right to . . . assemble peaceably, . . . petition for redress of grievances, [and to] communicate freely their thoughts and opinions, being responsible for the abuse of that right." Utah Const. art. I, § 1. Article I, Section 15 states, in pertinent part, that "[n]o law shall be passed to abridge or restrain the freedom of speech." Utah Const. art. I, § 15. The Utah Supreme Court has explained that together, Sections 1 and 15 of Article I "prohibit laws which either directly

[23] The Court also notes that whether a classification is in fact "reasonable" or whether legislative objectives are "legitimate" are inherently factual determinations. At this stage, the Court cannot "find facts" nor decide if the classification is "reasonable" or if the legislative objectives are "legitimate," without a developed factual record. On a motion to dismiss, the only issue before the Court is whether Plaintiffs have alleged sufficient facts to state a claim under Utah's Uniform Operation of Laws Clause.

limit protected [free speech] rights or indirectly inhibit the exercise of those rights." *Am. Bush*, 2006 UT 40, ¶ 21 (noting drafter of Utah's Constitution borrowed heavily from other state constitutions and the United States Constitution and finds its roots in English common law). Notably, the United States Supreme Court has recognized a First Amendment interest in voting. *Doe v. Reed*, 561 U.S. 186, 224 (2010) (Scalia, J., concurring) (citing *Burdick v. Takushi*, 504 U.S. 428, 438 (1992)); *Burdick*, 504 U.S. at 438 (observing that "voters express their views in the voting booth.").

The role of free speech is central to our representative democracy. In *American Bush*, the Utah Supreme Court discussed the history of free speech in Utah. 2006 UT 40, ¶ 13. That court recognized that "[t]he framers of Utah's constitution saw the will of the people as the source of constitutional limitations upon our state government." *Id.* And, because "'[a]ll political power is inherent in the people,' only Utah's citizens themselves had the right to limit their own sovereign power to act through their elected officials." *Id.* ¶ 14 (citing Utah Const. art. I, § 2). "'Once one accepts the premise of the Declaration of Independence—that governments derive 'their just powers from the consent of the governed'—it follows that the governed must, in order to exercise their right of consent, have full freedom of expression both in forming individual judgments and in forming the common judgment.'" *Harper*, 868 S.E.2d at 545 (citing Thomas I. Emerson, *The System of Freedom of Expression* 7 (1970)).

Plaintiffs allege that the 2021 Congressional Plan divides up the only two predominately Democratic counties in Utah. Salt Lake County is divided among the four congressional districts; Summit County is divided among two. Fifteen municipalities are divided up into thirty-two pieces, and numerous communities of interest, school districts, and racial and ethnic minority communities are divided. (*See generally* Compl. ¶¶ 205-45, 250-51, 254.) Plaintiffs allege free

speech and association rights have in fact been burdened by these new boundaries. Urban neighborhoods, school districts and communities of interests – that may share common goals and interests based on proximity – do not vote with neighbors within a five-minute walk; they now vote with other rural voters who live eighty to three hundred miles away. (*Id.* ¶¶ 242-251.) The proximity between voters discourages, burdens, or effectively impacts free speech and association. Plaintiffs allege that these predominately democratic communities were intentionally divided or "cracked" solely because of their political views and past votes. (*Id.* ¶¶ 192, 275.) The effect of the "cracking" is that their non-Republican views are subordinated, votes are diluted, voices are silenced, and Republican-advantage and control is locked in in all four congressional districts for the next decade. (*Id.* ¶¶ 36, 275, 293-94.)

Plaintiffs allege that partisan gerrymandering as reflected in the 2021 Congressional Plan violates their free speech and association protections. They allege the 2021 Congressional Plan is both discriminatory and retaliatory and based solely on their protected political views and past votes. (Compl. ¶ 3-4, 36, 205-207. 209, 283-97.) Plaintiffs allege that the 2021 Congressional Plan burdens free speech and association in multiple ways. Specifically, it "restrains and mutes Plaintiffs' ability to express their viewpoints," "abridges the ability of voters with disfavored views to effectively associate with other people holding similar viewpoints," "impairs Plaintiffs' ability to recruit volunteers, secure contributions, and energize other voters to support Plaintiffs' expressed political views and associations," "retaliates against Plaintiffs for exercising political speech that Defendants disfavor," "prevent[s] [voters] from being able to associate and elect their preferred candidates who share their political views," divides Plaintiffs "to make their voices too diluted to be heard and guarantee they are not represented in any meaningful way because of

their disfavored views," and dilutes non-Republican votes. (*See generally* Compl., Compl. ¶¶ 289-294.)

Defendants assert that the Free Speech and Association Clauses do not apply to the redistricting process. (Defs.' Mot. at 26.) Defendants contend that the placement of a congressional district boundary "does not in any way restrict an individual's speech or impair an individual's ability to communicate," citing two federal district court cases, *Radogno v. Ill. State Bd. Of Elections*, No. 11-CV-04884, 2011 WL 5025251 (N.D. Ill. Oct. 21, 2011) and *Johnson v. Wis. Elections Comm'n*, 967 N.W.2d 469, 487, but without any legal analysis. (Defs.' Reply at 26-27.)

In *Radogno*, the federal district court rejected Plaintiffs' First Amendment claims, holding that such rights were not burdened by the redistricting plan at issue. Specifically, the *Radogno* Court reasoned:

> Plaintiffs are every bit as free under the new redistricting plan to run for office, express their political views, endorse and campaign for their favorite candidates, vote, or otherwise influence the political process through their expression. Plaintiffs' freedom of expression is simply not burdened by the redistricting plan. It may very well be that Plaintiffs' ability to successfully elect their preferred candidate is burdened by the redistricting plan, but that has nothing to do with their First Amendment rights.

Radogno, 2011 WL 5025251, at *7 (N.D. Ill. Oct. 21, 2011).[24] *Radogno*'s First Amendment analysis of partisan political gerrymandering, under federal law, makes sense and is persuasive generally. However, that rationale may not apply to every case or to every fact scenario. In addition, it is not binding on this Court.

[24] Notably, the *Radogno* court did not dismiss outright plaintiffs' equal protection claim under the Fourteenth Amendment, but instead granted plaintiffs' leave to amend to plead a "workable test" or "reliable standard" to evaluate such claim. *Radogno*, 2011 WL 5025251, at *6 (discussing generally partisan gerrymandering cases under federal law, noting that some have reached the conclusion that they are justiciable, but not solvable).

In *Johnson v. Wis. Elections Comm'n*, the Wisconsin Supreme Court noted that in *Rucho v. Common Cause*, 204 L. Ed. 2d 931, 139 S. Ct. 2484, 2499–500 (2019), "[t]he United States Supreme Court recently declared there are no legal standards by which judges may decide whether maps are politically 'fair.'" *Johnson*, 2021 WI 87, ¶ 3, 399 Wis. 2d 623, 631. The *Johnson* court agreed that "fairness" is not a judicially manageable standard and that "deciding what constitutes 'fair' partisan divide . . . would encroach on the constitutional prerogatives of the political branches." *Id.* ¶ 45. The court emphasized that it would not decide whether the maps were fair but would fulfill its judicial role of "declaring what the law is and affording the parties a remedy for its violation." Like the *Johnson* court, this Court is not asserting that it has a role in deciding "fairness." And Plaintiffs here are not arguing that the 2021 Congressional Plan is unfair. They assert that it violates the Utah Constitution, and, as previously emphasized, the Court does not hesitate to engage in constitutional review.

Defendants also assert that the Free Speech and Association clauses of the Utah Constitution do not protect the redistricting process because "the framers of our [Utah] constitution . . . envisioned a limited freedom of speech." *Am. Bush*, 2006 UT 40, ¶ 42. The *American Bush* case, however, has only minimal relevance, if any, to this specific issue. *American Bush* did not involve redistricting, allegations of gerrymandering or voting rights. Instead, the *American Bush* court characterized the right to free speech as "limited" while discussing whether obscenity—in that case, nude dancing—was protected speech. *Am. Bush*, 2006 UT 40, ¶¶ 31-58. Consequently, the holding that the Utah Constitution's free speech protections do not extend to obscenity has little, if any, relevance to the issues at bar. Notably, unlike obscenity, voting is a fundamental right, and its exercise is a form of protected speech.

Laws v. Grayeyes, 2021 UT 59, ¶ 61 (stating "the right to vote is sacrosanct"); *Doe v. Reed*, 561 U.S. at 224 (recognizing a First Amendment interest in voting).

Defendants also assert there can be no First Amendment violation because Plaintiffs have no right to political success. *See Cook v. Bell*, 2014 UT 46, ¶ 34, 344 P.3d 634 (addressing whether the Legislature's limits on the right to initiative imposed severe restrictions on free speech and association). The Court does agree that "First Amendment jurisprudence . . . does not guarantee unlimited participation in political activity, nor does it establish a right to political success." *Id.* ¶ 57. However, it does protect "individuals from regulations that directly discourage or prohibit political expression." *Id.*

This Court notes there is a distinction between incidental political impacts that flow from neutral government action and government action aimed at discouraging, burdening, or prohibiting speech and association in order to secure an electoral advantage. Where "one-party rule is entrenched [because] voters approve of the positions and candidates that the party regularly puts forward," courts cannot and should not intervene in a neutrally administered electoral system. *New York State Bd. Of Elections v. Lopez Torres*, 552 U.S. 196, 208, 128 S. Ct. 791 (rejecting argument that "one-party rule" demands application of First Amendment to ensure competition or a "fair shot at party endorsement"). But when a state takes steps, under either election laws or by redistricting, to grant its preferred party a durable monopoly, this deviation from neutrality undermines the competitive mechanism that undergirds the democratic process, and it burdens a voters' right to participate in a fair election. *See Williams v. Rhodes*, 393 U.S. 23, 31-32, 89 S. Ct. 5, 10-11 (1968) (holding Ohio's ballot-access laws, which favored the long-established Republican and Democratic parties, placed an unequal burden on the right to vote

and the right to associate to form a new political party).[25] "There is no right more basic in our democracy than the right to participate in electing our political leaders." *McCutcheon v. FEC,* 572 U.S. 185, 191, 134 S. Ct. 1434, 1444 (2014). As such, the government cannot and should not "restrict political participation of some in order to enhance the relative influence of others." *Id.*

In *Harper v. Hall,* the North Carolina Supreme Court recognized that there is a cognizable claim for violation of free speech and association rights based on partisan gerrymandering. *Harper v. Hall*, 868 S.E.2d 499, 546 (N.C. 2022). The North Carolina Supreme Court stated:

> When legislators apportion district lines in a way that dilutes the influence of certain voters based on their prior political expression—their partisan affiliation and their voting history—it imposes a burden on a right or benefit, here the fundamental right to equal voting power on the basis of their views. When the General Assembly systematically diminishes or dilutes the power of votes on the basis of party affiliation, it intentionally engages in a form of viewpoint discrimination and retaliation that triggers strict scrutiny."

Id. (holding congressional map subject to strict scrutiny and requiring it to be "narrowly tailored to advance a compelling governmental interest"). This practice "distorts the expression of the people's will." *Id.* Under these circumstances, "[t]he diminution or dilution of voting power based of partisan affiliation . . . suffices to show a burden on that voter's speech and associational rights." *Id.* ¶ 161. This Court is persuaded that partisan gerrymandering that effectively entrenches a state's preferred party in office discriminates on the basis of viewpoint dilutes the

[25] In *Williams,* the State of Ohio asserted "that it has absolute power to put any burdens it pleases on the selection of electors because of the First Section of the Second Article of the Constitution, providing that 'Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors . . . to choose a President and Vice President." *Williams*, 393 U.S. at 28–29. While noting that there "can be no question but that this section does grant extensive power to the States to pass laws regulating the selection of electors," the Court stated: "the Constitution is filled with provisions that grant Congress or the States specific power to legislate in certain areas; these granted powers are always subject to the limitation that they may not be exercised in a way that violates other specific provisions of the Constitution. *Id.*

non-favored party's vote, burdens / impairs the citizens' rights to exercise a meaningful vote and to associate. *See Vieth*, 541 U.S. at 314 (Kennedy, J, concurring); *see also Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. at 2658.

Plaintiffs assert that heightened scrutiny applies to the free speech and association claims. Plaintiffs have also cited several cases in support of that assertion. *See, e.g., Reed v. Town of Gilbert*, Ariz., 135 S. Ct 2218, 2227 (2015); *Harper v. Hall*, 868 S.E.2d at 546. In their Reply, Defendants do not challenge that contention or seek to distinguish these cases with respect to this issue. Thus, in the absence of any contrary argument or authority, the Court assumes, for purposes of analyzing the motion at bar, that strict scrutiny applies to the free speech and association claims.[26] Based on the factual allegations in the Complaint, which this Court must accept as true, Plaintiffs have sufficiently alleged that the 2021 Congressional Plan violates their rights to free speech and association because it discourages and burdens political expression, is discriminatory and retaliatory based on disfavored political views and past voting history, and it dilutes Plaintiffs' voting power. (*See generally* Compl.; Compl. ¶¶ 288-294.) Plaintiffs also allege that Defendants have "cracked" and "packed" the congressional voting districts to intentionally dilute the voting power of those who have disfavored views, namely Democrats.

Plaintiffs also have sufficiently alleged that there is no compelling or legitimate government interest in drawing congressional district boundaries to give Republicans an electoral advantage, to the detriment of non-Republican voters' right to free speech and association. (*Id.* ¶ 295.) Plaintiffs also allege the 2021 Congressional Plan is not narrowly

[26] By applying strict scrutiny for purposes of this Motion, the Court is not necessarily ruling that Plaintiffs' assertion is correct. But given the briefing and accepting the factual allegations in the Complaint as true, including that the Legislature intentionally drawing the maps to punish Plaintiffs for expressing disfavored views, the Court adopts this standard solely for the purpose of determining if Plaintiffs have stated a viable claim for relief.

tailored to serve any legitimate state interest. (*Id.* ¶ 296.) Plaintiffs have sufficiently stated a claim for violation of their Free Speech and Association rights.

For the reasons stated above, Defendants' Motion to Dismiss Count Three is DENIED.

d. Plaintiffs Sufficiently State a Right to Vote Claim (Count Four).

Defendants assert Plaintiffs fail to state a claim for violation of the Right to Vote Clause. Defendants also argue, without citation to any legal authority, that the Right to Vote Clause was intended to deal solely with voter qualifications and that there is no basis in Utah law to interpret the provision to guarantee anything other than the right to physically cast a ballot. Defendants also argue that the 2021 Congressional Plan does not prevent Plaintiffs or any other qualified Utah citizens from voting, therefore there can be no constitutional violation. (Defs.' Mot. at 27-28; Defs.' Rep. at 25-26.) The Court disagrees.

The Right to Vote Clause provides that "[*e*]*very citizen* of the United States, eighteen years of age or over, who makes proper proof of residence in this state for thirty days next preceding any election, or for such other period as required by law, *shall be entitled to vote in the election.*" Utah Const. art. IV, § 2 (emphasis added).[27] Utah law unequivocally acknowledges that the right to vote is fundamental to our democracy and our representative form of government. *Rothfels v. Southworth*, 11 Utah 2d 169, 176, 356 P.2d 612, 617 (1960).[28] In fact, it is said to be "more precious in a free country" than any other right. *Gallivan*, 2002 UT 89, ¶ 24 (quoting *Reynolds*, 377 U.S. at 560). If the right "of having a voice in the election of those who

[27] The Court notes that neither party presented any arguments regarding the plain meaning of this clause, historical evidence regarding the drafting or adoption of this clause or discussed any particular test to be applied.

[28] "The right to vote and to actively participate in its processes is among the most precious of the privileges for which our democratic form of government was established. The history of the struggle of freedom-loving men to obtain and to maintain such rights is so well known that it is not necessary to dwell thereon. But we re-affirm the desirability and the importance, not only of permitting citizens to vote but of encouraging them to do so." *Rothfels v. Southworth*, 11 Utah 2d 169, 176, 356 P.2d 612, 617 (1960).

make the laws under which, as good citizens, we must live," is undermined, "[o]ther rights, even the most basic, are illusory. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges that right." *Id.*

Defendants argue that the Right to Vote Clause deals solely with voter qualifications, implying that it only applies when voter qualifications are at issue. While this clause includes qualifications required to exercise the right, the right to vote is nonetheless expressly guaranteed.

Defendants also assert that this clause guarantees only the right to physically cast a vote. Defendants cite no authority to support such a limited interpretation of this specific clause. To the contrary, when interpreting constitutional provisions, the Utah Supreme Court has stated that individual constitutional provisions

> cannot properly be regarded as something isolated and absolute but must be considered in the light of its background and the purpose it was designed to serve; and in relation to other fundamental rights of citizens set forth in the entire Constitution which are essential to the proper functioning of our democratic from of government. One of the principal merits of our system of law and justice is that it does not function by casting reason aside and clinging slavishly to a literal application of one single provision of law to the exclusion of all others. Its policy is rather to follow the path of reason in order to avoid arbitrary and unjust results and to give recognition in the highest possible degree to all of the rights assured by all of the Constitutional provisions.

Shields v. Toronto, 16 Utah 2d 61, 63, 395 P.2d 829, 830 (1964) (interpreting Article VI, Section 7 of the Utah Constitution in reference to the right to vote).[29] In interpreting this provision, the Court should consider the entire Utah Constitution and its purpose, including the Free Elections Clause, the Equal Protection Clause, the Free Speech and Association Clauses and the long line

[29] Notably, the *Shields* Court recognized the historical and "continuing expansion of the right of suffrage in this country." *Shields v. Toronto*, 16 Utah 2d 61, 66 n. 12, 395 P.2d 829, 833 n. 12 (1964). While discussing the right to vote in the context of voting "freely for the candidate of one's choice," the Court stated that voting "is of the essence of a democratic society, and any restrictions on that right strike at the essence of a representative government." *Id.* Every citizen should have a "right to a vote free of arbitrary impairment by state action." *Id.*

of cases generally discussing the "right to vote." The plane language of the Right to Vote clause guarantees the right. But, read in light of the entire Utah Constitution, the right to vote clearly guarantees more than the physical right to cast a ballot.

Utah law has recognized that the right to vote must be "meaningful." *Shields*, 395 P.2d at 832-33 (explaining "[t]he foundation and structure which give [our democratic system of government] life depend upon participation of the citizenry in all aspects of its operation."). The right must not be "unnecessarily abridged" or "diluted." *Gallivan*, 2002 UT 89, ¶ 72 (stating "'[w]eighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable.'" (quoting *Reynolds*, 377 U.S. at 565-66, 84 S.Ct.). And the right to vote "cannot be abridged, impaired, or taken away, even by an act of the Legislature." *Earl v. Lewis*, 28 Utah 116, 77 P. 235, 237-38 (Utah 1904). The goal of an election "is to ascertain the popular will, and not to thwart it," and "aid" in securing "a fair expression at the polls." *Id.*[30]

Here, Plaintiffs allege that the Legislature drew the 2021 Congressional Map in a way to render Plaintiffs' votes meaningless. While they still can engage in the act of voting, Plaintiffs' votes no longer have any effect. Specifically, Plaintiffs allege that the 2021 Congressional Plan "achieves this extreme partisan advantage for Republicans primarily by cracking Utah's large and concentrated population of non-Republican voters, centered in Salt Lake County, and dividing them between all four of Utah's congressional districts to eliminate the strength of their

[30] There is only one Utah case specifically addressing the Right to Vote Clause. *See Dodge v. Evans*, 716 P.2d 270, 273 (Utah 1985). In *Dodge*, a prison inmate challenged a law requiring him to vote in the county in which he resided prior to incarceration rather than in the county in which he was incarcerated. Plaintiff alleged that his right to vote under the Right to Vote Clause was in effect denied. *Id.* at 272-73. In analyzing that claim, the Utah Supreme Court stated, "Dodge made no contention that his right to vote was improperly burdened, conditioned or diluted." *Id.* at 273. The implication is that a claim under the right to vote clause may include an allegation that the right was "improperly burdened, conditioned or diluted."

voting power." (Compl. ¶ 207.) The result is that the 2021 Congressional Plan "draw[s] district lines to predetermine winners and losers." (Compl. ¶ 306.) Their disfavored vote is meaningless, diluted, impaired and infringed due to the intentional partisan gerrymandering. (*Id.* ¶ 304-06.) In addition, because the election outcomes are now predetermined for the next ten years, the true public will cannot be ascertained and is effectively distorted. (*Id.* ¶ 305-09.) Plaintiffs also allege that this impairment serves no legitimate public interest.[31] (*Id.*) Assuming these facts in the Complaint to be true, the Court concludes that Plaintiffs have properly stated a claim under the Right to Vote Clause.

Defendants' Motion to Dismiss Count Four is therefore DENIED.

IV. Plaintiffs Fail to State a Claim Under Count Five the "Unauthorized Repeal of Proposition 4."

Finally, Defendants assert that the fifth claim should be dismissed because the Legislature's amendment or repeal of Proposition 4 does not violate the Inherent Political Powers and Initiative Clauses of Utah Constitution. The Court agrees.

Plaintiffs' fifth claim alleges that when the Legislature replaced the citizen-enacted Proposition 4 with SB 200, the Legislature infringed on the people's inherent political powers and initiative rights under the Utah Constitution. (Compl. ¶¶ 315-17). The Initiative Clause of the Utah Constitution states, in relevant part: "The legal voters of the state of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may: (A) initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute." Utah Const. art. VI, § 1(2)(a)(i)(A). The Inherent Political Powers Clause provides that "All political power is inherent

[31] The Court notes that neither party has addressed the appropriate standard to be applied in this case, i.e., strict scrutiny or rational basis, for Plaintiffs' Right to Vote claim. However, reviewing Plaintiffs' Complaint, the Court concludes that Plaintiff has sufficiently pled a claim under either standard.

in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require." Utah Const. art. I, § 2. Plaintiffs argue that the Legislature violated these clauses by passing SB 200, effectively repealing Proposition 4, which had been put in place via citizen initiative.

The Utah Supreme Court has explained that "[u]nder [Article I, Section 2], upon which all our government is built, the people have the inherent authority to allocate governmental power in the bodies they establish by law." *Carter v. Lehi City*, 2012 UT 2, ¶ 21, 269 P.3d 141. Under this authority, "the people of Utah divided their political power," vesting

> "The Legislative power of the State" in two bodies: (a) "the Legislature of the State of Utah," and (b) "the people of the State of Utah as provided in Subsection (2)." [Utah Const.] art. VI, § 1(1). On its face, article VI recognizes a single, undifferentiated "legislative power," vested both in the people and in the legislature. Nothing in the text or structure of article VI suggests any difference in the power vested simultaneously in the "Legislature" and "the people." *The initiative power of the people is thus parallel and coextensive with the power of the legislature.* This interpretation is reinforced by the history of the direct-democracy movement, by constitutional debates in states with constitutional provisions substantially similar to Utah's article VI, and by early judicial interpretations of those provisions.

Id. ¶ 22 (emphasis added). In further explaining this shared legislative power, the Utah Supreme Court has stated, "[t]he power of the legislature and the power of the people to legislate through initiative and referenda are coequal, coextensive, and concurrent and share equal dignity." *Gallivan v. Walker*, 2002 UT 89, ¶ 23, 54 P.3d 1069.

The Utah Constitution and Utah law unequivocally recognizes the importance of its citizens' right to initiate legislation to alter or reform their government. Utah Const. art. I, § 2; *Gallivan*, 2002 UT 89, ¶ 23; *Utahns For Better Dental Health-Davis, Inc. v. Davis Cnty. Clerk*, 2007 UT 97, ¶ 10. This is clear. The Constitution, however, does not restrict or limit, in any way, the Legislature's ability to amend or repeal citizen-initiated laws after they become effective.

Through their coequal power, both the Legislature and the people can enact, amend, and repeal legislation. The people can repeal legislation enacted by the Legislature through their referendum power, with some limitation. *See* Utah Const. art. VI, § (2)(a)(1)(B). The Utah Constitution, caselaw, and historical practice, however, shows that the Legislature can amend and repeal legislation enacted by citizen initiative, without limitation.

When we interpret the Utah Constitution, the starting point is the text itself. *Univ. of Utah v. Shurtleff*, 2006 UT 51, ¶ 19, 144 P.3d 1109 (internal quotation marks omitted). In evaluating legislative authority, the provisions in the Utah Constitution are construed as "limitations, rather than grants of power." *Parkinson v. Watson*, 291 P.2d 400, 405 (Utah 1955); *Shurtleff*, 2006 UT 51, ¶ 18 ("The Utah Constitution is not one of grant, but one of limitation."). Article VI of the Utah Constitution vests legislative authority in both the Legislature and the people. *See* Utah Const. art. VI, § 1(1). Notably, the text of article VI broadly confers legislative authority on the Legislature without any express limitation on the Legislature's ability to pass or repeal laws. *See id.* art. VI, § 1(a).

In contrast, the ability of the people to enact or repeal legislation, however, is specifically limited by the text of the Constitution.[32] *See id.* art. VI, § 1(b) (stating that "Legislative power" is "vested in ... the people of the State of Utah as provided in Subsection (2)"). In fact, subsection 2 of article VI explicitly restricts the people's referendum power—or the ability to repeal laws

[32] The citizens' right to legislate through the initiative process is also limited by the plain language of the Utah Constitution. *Gallivan v. Walker*, 2002 UT 89, ¶ 172, 54 P.3d 1069, 1118. Article VI, section (2)(a)(i)(A) states: "The legal voters of the State of Utah, in the numbers, *under the conditions, in the manner, and within the time provided by statute*, may initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, *as provided by statute.*" Utah Const. art. VI, § 2(a)(i)(A). Notably, it is the Legislature that establishes the statutory requirements to initiate, submit and vote on any citizen initiative. *See Sevier Power Co., LLC v. Bd. of Sevier Cty. Comm'rs*, 2008 UT 72, ¶ 10, 196 P.3d 583.

enacted by the Legislature—to laws that were passed with less than a 2/3 majority vote by the Legislature. *See id.* art. VI, § 2(a)(1)(B).

Given the absence of anything in the Utah Constitution that restricts the Legislature's ability to repeal laws enacted via initiative, there is a clear implication that the Legislature has broad authority to enact and repeal laws, including those enacted by citizen initiatives. Reading the Utah Constitution to limit the Legislature's authority to amend or repeal laws originally enacted via citizen initiative would require the Court to read something into the Constitution that is simply not there.[33] The Court declines to do so.

Moreover, Utah law also clearly indicates that the Legislature has power to amend and repeal laws that are passed via citizen initiative.[34] In explaining that the legislative powers of the Legislature and the people are coequal or "parallel," the Utah Supreme Court approvingly quoted the Oregon Supreme Court, which stated that "'[l]aws proposed and enacted by the people under the initiative . . . are subject to the same constitutional limitations as other statutes, and may be amended or repealed by the Legislature at will.'" *Carter*, 2012 UT 2, ¶ 27 (quoting *Kadderly v.*

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[33] The Court further notes that Plaintiffs have not provided any facts from the historical record to suggest that such a restriction was intended. Rather, the historical practice and the caselaw indicate that such a restriction was not intended. In contrast to the Utah Constitution, the constitutions of ten other states expressly restrict their respective legislatures' authority to amend or repeal the statutes/law enacted from a successful citizen initiative. *See* Alaska (Alaska Const. art. XI, § 6); Arizona (Ariz. Const. art. IV, pt. 1, § 1(6)(B)-(C)); Arkansas (Ark. Const. art. V, § 1); California (Cal. Const. art. II, § 10); Michigan (Mich. Const. art. II, § 9; art. XII, § 2); Nebraska (Neb. Const. art. III, § 2); Nevada (Nev. Const. art. XIX, §§ 1-2); North Dakota (N.D. Const. art. III, § 8); Washington (Wash. Const. art. II, § 1); and Wyoming (Wyo. Const. art. III, § 52). Given the lack of any textual limitation, the history of the Legislature repealing citizen initiatives, and examples of other state constitutions that do contain express limits on their respective legislature's ability to make changes to citizen-initiated laws, it would clearly be improper for the Court to read such a limitation into Utah's Constitution.

[34] Utah law also specifically authorizes the Legislature to amend citizen-initiated or approved laws. Under Utah Code Ann. Section 20A-7-212(3)(b), "[t]he Legislature may amend any initiative approved by the people at any legislative session" and Subsection 20A-7-311(5)(b) provides that "[t]he Legislature may amend any laws approved by the people at any legislative session after the people approve the law." The Court agrees with Defendants that adopting Plaintiffs' argument *could* create certain practical challenges to the maintenance of the Utah Code in that the Legislature would be precluded from correcting typographical errors and making any changes, substantive or otherwise. Other than the authority provided in the above-cited statutes, there is no other process or procedure to manage changes to citizen-initiated laws.

City of Portland, 44 Or. 118, 74 P. 710, 720 (1903). Thus, the Utah Supreme Court has seemingly recognized that the Legislature may repeal initiative-enacted law.

Likewise, the Legislature's amendment or effective repeal of Proposition 4 / Title 20A, Chapter 19, Utah Independent Redistricting Commissions Standards Act is in line with historical practice. In 2018, Governor Herbert called a special session of the Utah Legislature to address citizen initiative Proposition 2, the Utah Medical Cannabis Act, the day before it was set to go into effect. *Grant v. Herbert*, 2019 UT 42, ¶ 5, 449 P.3d 122. The Legislature heavily amended the statute, changing many key aspects of the law. *Id.* In response, voters attempted to place the amended statute on the ballot through referendum but were not able to do so because the amendment had passed by a two-thirds vote in the Legislature, making it exempt from referendum. *Id.* ¶ 7. The Utah Supreme Court ultimately upheld Governor Herbert's decision to call the special legislative session which amended Proposition 2. *Id.* ¶¶ 21-24.

In view of the foregoing, including the text of the Utah Constitution, statutory language, the caselaw, and historical practice, the Legislature's exercise of its coequal legislative authority to repeal citizen initiatives does not violate the Citizen Initiative or Inherent Powers Clauses of the Utah Constitution. Therefore, even accepting the factual allegations as true, the Legislature did not act unconstitutionally by either substantially amending or effectively repealing Proposition 4. Plaintiffs' Fifth cause of action, therefore, does not state a valid claim for relief under Utah law. Accordingly, the Court GRANTS Defendants' Motion to Dismiss with respect to Count Five in the Complaint.

CONCLUSION

For the reasons stated above:

(1) The Court DENIES Defendants' Motion to Dismiss Plaintiffs' Complaint for lack of subject matter jurisdiction.

(2) The Court DENIES Defendants' Motion to Dismiss certain Defendants Utah Legislative Redistricting Committee, Senator Scott Sandall, Representative Brad Wilson, and Senator J. Stuart Adams.

(3) The Court DENIES Defendants' Motion to Dismiss Count One (Free Elections Clause), Count Two (Equal Protection Rights), Count Three (Free Speech and Association Rights), and Count Four (Affirmative Right to Vote) of Plaintiffs' Complaint.

(4) The Court GRANTS Defendants' Motion as to Plaintiffs' Count Five. Therefore, Count Five, "Unauthorized Repeal of Proposition 4 in Violation of Utah Constitution's Citizen Lawmaking Authority to Alter or Reform Government" is DISMISSED, with prejudice.

DATED November 22, 2022.

BY THE COURT:

Dianna M. Gibson

DIANNA M. GIBSON
DISTRICT JUDGE

STATE OF UTAH
3RD DISTRICT COURT
SALT LAKE CITY

Addendum C

Utah Const. art. I, § 2

West's Utah Code Annotated
Constitution of Utah
Article I. Declaration of Rights

U.C.A. 1953, Const. Art. 1, § 2

Sec. 2. [All political power inherent in the people]

Currentness

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

Notes of Decisions (70)

U.C.A. 1953, Const. Art. 1, § 2, UT CONST Art. 1, § 2
Current with laws through the 2022 Third Special Session. Some statutes sections may be more current, see credits for details.

End of Document

Addendum D

Utah Const. art. I, § 25

West's Utah Code Annotated
Constitution of Utah
Article I. Declaration of Rights

U.C.A. 1953, Const. Art. 1, § 25

Sec. 25. [Rights retained by people]

Currentness

This enumeration of rights shall not be construed to impair or deny others retained by the people.

Notes of Decisions (6)

U.C.A. 1953, Const. Art. 1, § 25, UT CONST Art. 1, § 25
Current with laws through the 2022 Third Special Session. Some statutes sections may be more current, see credits for details.

End of Document

Addendum E

Utah Const. art. I, § 27

West's Utah Code Annotated
Constitution of Utah
Article I. Declaration of Rights

U.C.A. 1953, Const. Art. 1, § 27

Sec. 27. [Fundamental rights]

Currentness

Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

Notes of Decisions (3)

U.C.A. 1953, Const. Art. 1, § 27, UT CONST Art. 1, § 27
Current with laws through the 2022 Third Special Session. Some statutes sections may be more current, see credits for details.

End of Document

Addendum F

Utah Const. art. VI, § 1

West's Utah Code Annotated
Constitution of Utah
Article VI. Legislative Department

U.C.A. 1953, Const. Art. 6, § 1

Sec. 1. [Power vested in Senate, House, and People]

Currentness

(1) The Legislative power of the State shall be vested in:

(a) a Senate and House of Representatives which shall be designated the Legislature of the State of Utah; and

(b) the people of the State of Utah as provided in Subsection (2).

(2)(a)(i) The legal voters of the State of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:

(A) initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute; or

(B) require any law passed by the Legislature, except those laws passed by a two-thirds vote of the members elected to each house of the Legislature, to be submitted to the voters of the State, as provided by statute, before the law may take effect.

(ii) Notwithstanding Subsection (2)(a)(i)(A), legislation initiated to allow, limit, or prohibit the taking of wildlife or the season for or method of taking wildlife shall be adopted upon approval of two-thirds of those voting.

(b) The legal voters of any county, city, or town, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:

(i) initiate any desired legislation and cause it to be submitted to the people of the county, city, or town for adoption upon a majority vote of those voting on the legislation, as provided by statute; or

(ii) require any law or ordinance passed by the law making body of the county, city, or town to be submitted to the voters thereof, as provided by statute, before the law or ordinance may take effect.

Credits

Nov. 6, 1900; Laws 1998, S.J.R. 10, § 1, adopted at election Nov. 3, 1998, eff. Jan. 1, 1999; Laws 1999, S.J.R. 5, § 3, adopted at election Nov. 7, 2000, eff. Jan. 1, 2001.

Notes of Decisions (216)

U.C.A. 1953, Const. Art. 6, § 1, UT CONST Art. 6, § 1
Current with laws through the 2022 Third Special Session. Some statutes sections may be more current, see credits for details.

End of Document

Addendum G

Utah Code § 20A-7-212

U.C.A. 1953 § 20A-7-212

§ 20A-7-212. Effective date

Effective: May 14, 2019
Currentness

(1) A proposed law submitted to the Legislature by initiative petition and passed by the Legislature takes effect 60 days after the last day of the session of the Legislature in which the law passed, unless:

(a) a later effective date is included in the proposed law; or

(b) an earlier effective date is included in the proposed law and the proposed law passes the Legislature by a two-thirds vote of the members elected to each house of the Legislature.

(2) A proposed law submitted to the people by initiative petition that is approved by the voters at an election takes effect:

(a) except as provided in Subsections (2)(b) through (e), on the day that is 60 days after the last day of the general session of the Legislature next following the election;

(b) except as provided in Subsection (2)(d) or (e), if the proposed law effectuates a tax increase:

(i) except as provided in Subsection (2)(b)(ii), January 1 of the year after the general session of the Legislature next following the election; or

(ii) at the beginning of the applicable taxable year that begins on or after January 1 of the year after the general session of the Legislature next following the election, for a tax described in:

(A) Title 59, Chapter 6, Mineral Production Tax Withholding;

(B) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(C) Title 59, Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act; or

(D) Title 59, Chapter 10, Individual Income Tax Act;

(c) except as provided in Subsection (2)(d) or (e), if the proposed law effectuates a tax decrease:

(i) except as provided in Subsection (2)(c)(ii), April 1 immediately following the election; or

(ii) for a tax described in Subsection (2)(b)(ii)(A) through (D), at the beginning of the applicable taxable year that begins on or after January 1 immediately following the election;

(d) except as provided in Subsection (2)(e), January 1 of the year after the general session of the Legislature next following the election, if the proposed law effectuates a change in a tax described in:

(i) Title 59, Chapter 2, Property Tax Act;

(ii) Title 59, Chapter 3, Tax Equivalent Property Act; or

(iii) Title 59, Chapter 4, Privilege Tax; or

(e) if the proposed law specifies a special effective date that is after the otherwise applicable effective date described in Subsections (2)(a) through (d), the date specified in the proposed law.

(3)(a) The governor may not veto a law adopted by the people.

(b) The Legislature may amend any initiative approved by the people at any legislative session.

Credits

Laws 1994, c. 1, § 22; Laws 2001, c. 20, § 5, eff. Feb. 8, 2001; Laws 2019, c. 206, § 2, eff. May 14, 2019.

U.C.A. 1953 § 20A-7-212, UT ST § 20A-7-212

Current with laws through the 2022 Third Special Session. Some statutes sections may be more current, see credits for details.

End of Document

Addendum H

Utah Code § 20A-7-311

West's Utah Code Annotated
Title 20a. Election Code
Chapter 7. Issues Submitted to the Voters
Part 3. Statewide Referenda

U.C.A. 1953 § 20A-7-311

§ 20A-7-311. Temporary stay--Effective date--Effect of repeal by Legislature

Effective: May 5, 2021
Currentness

(1) If, at the time during the counting period described in Section 20A-7-307, the lieutenant governor determines that, at that point in time, an adequate number of signatures are certified to comply with the signature requirements, the lieutenant governor shall:

(a) issue an order temporarily staying the law from going into effect; and

(b) continue the process of certifying signatures and removing signatures as required by this part.

(2) The temporary stay described in Subsection (1) remains in effect, regardless of whether a future count falls below the signature threshold, until the day on which:

(a) if the lieutenant governor declares the petition insufficient, five days after the day on which the lieutenant governor declares the petition insufficient; or

(b) if the lieutenant governor declares the petition sufficient, the day on which governor issues the proclamation described in Section 20A-7-310.

(3) A proposed law submitted to the people by referendum petition that is approved by the voters at an election takes effect the later of:

(a) five days after the date of the official proclamation of the vote by the governor; or

(b) the effective date specified in the proposed law.

(4) If, after the lieutenant governor issues a temporary stay order under Subsection (1)(a), the lieutenant governor declares the petition insufficient, the proposed law takes effect the later of:

(a) five days after the day on which the lieutenant governor declares the petition insufficient; or

(b) the effective date specified in the proposed law.

(5)(a) The governor may not veto a law adopted by the people.

(b) The Legislature may amend any laws approved by the people at any legislative session after the people approve the law.

(6) If the Legislature repeals a law challenged by referendum petition under this part, the referendum petition is void and no further action on the referendum petition is required.

Credits

Laws 1994, c. 1, § 34; Laws 2020, c. 166, § 7, eff. May 12, 2020; Laws 2021, c. 140, § 25, eff. May 5, 2021.

U.C.A. 1953 § 20A-7-311, UT ST § 20A-7-311
Current with laws through the 2022 Third Special Session. Some statutes sections may be more current, see credits for details.

End of Document

Addendum I

Utah Independent Redistricting Commission
and Standards Act (Proposition 4) (2018)

UTAH INDEPENDENT REDISTRICTING COMMISSION AND STANDARDS ACT

LONG TITLE

General Description:

This initiative enacts provisions in Title 20A (Election Code) and amends provisions in Title 63G (General Government) and in Title 52 (Public Officers) of the Utah Code to establish the Utah Independent Redistricting Commission and to enact standards, procedures, and requirements related to redistricting by the Legislature and redistricting plans recommended by the Utah Independent Redistricting Commission.

Statement of Intent and Subject Matter:

This initiative creates the Utah Independent Redistricting Commission and establishes objective standards, procedures, and requirements for creating the boundaries of Utah's congressional, state legislative, and other districts.

The Utah Constitution provides that "all political power is inherent in the people." Yet, our current redistricting process undermines this fundamental Utah value, because it empowers incumbent politicians to select the people who vote for them and allows incumbent politicians to manipulate the redistricting process for their own personal and political gain. The current system has resulted in less competitive races, less accountability to constituents, and politicians who prioritize the demands of partisan and special interest groups over the needs of their constituents and our Utah communities. Politicians should not get to choose to whom they are accountable.

This initiative will modify the current system of redistricting by establishing the Utah Independent Redistricting Commission, which will draw district boundaries through an open and independent process and then submit recommended redistricting plans to the Legislature to enact or reject. Utahns will be allowed to provide input into how districts are drawn and to submit

their own redistricting plans for the Commission's consideration.

This initiative also establishes redistricting standards and requirements, such as compliance with the Constitution and federal laws, population equality, keeping cities, towns, and counties together, creating compact and contiguous districts, and respecting traditional neighborhoods, communities, and natural features. This initiative also prohibits the Legislature and the Commission from using redistricting to favor or disfavor any particular person, group, or political party.

The improved redistricting system created by this initiative will strengthen our democracy by making our elected officials more accountable to the communities they represent, increasing the competitiveness of our elections, reducing polarization, and strengthening voter participation and civic engagement. This will help restore voter confidence in our government, which is critical to ensuring that the voices of Utahns are heard and that Utahns have a government of the people, by the people, and for the people.

Highlighted Provisions:

This initiative:

- Enacts redistricting standards, procedures, and requirements, including provisions related to the timing of redistricting;
- Establishes the Utah Independent Redistricting Commission;
- Provides that the Commission and the Legislature shall consider redistricting plans in a transparent manner that allows for public input;
- Requires the Commission to recommend redistricting plans for to the Legislature;
- Requires the Legislature to either enact or reject redistricting plans recommended by the Commission;

- Requires the Legislature to issue a detailed explanation if it enacts a redistricting plan other than a plan recommended by the Commission;
- Provides that the Commission may issue public statements, assessments, and reports in response to the Legislature enacting a redistricting plan other than a plan recommended by the Commission;
- Grants a private right of action to Utahns to seek and obtain a court-ordered injunction halting the enforcement or implementation of a redistricting plan that fails to abide by or conform to the redistricting standards, procedures, and requirements set forth in this initiative;
- Amends the Open and Public Meetings Act and the Government Records Access and Management Act to apply to the Commission; and
- Provides a severability clause.

Monies Appropriated in this Initiative:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

- **20A-19-101,** Utah Code Annotated 1953
- **20A-19-102,** Utah Code Annotated 1953
- **20A-19-103,** Utah Code Annotated 1953
- **20A-19-104,** Utah Code Annotated 1953
- **20A-19-201,** Utah Code Annotated 1953

- **20A-19-202,** Utah Code Annotated 1953
- **20A-19-203,** Utah Code Annotated 1953
- **20A-19-204,** Utah Code Annotated 1953
- **20A-19-301,** Utah Code Annotated 1953

AMENDS:

- **63G-7-301,** as last amended by Laws of Utah 2017, Chapter 300
- **63G-2-103,** as last amended by Laws of Utah 2017, Chapter 441
- **52-4-103,** as last amended by Laws of Utah 2017, Chapter 441

Be it Enacted by the People of the State of Utah:

Section 1. Section **20A-19-101** is enacted to read:

CHAPTER 19. UTAH INDEPENDENT REDISTRICTING COMMISSION AND STANDARDS ACT

Part 1. General Provisions

20A-19-101. Title.

This chapter is known as the "Utah Independent Redistricting Commission and Standards Act."

Section 2. Section **20A-19-102** is enacted to read:

20A-19-102. Permitted Times and Circumstances for Redistricting.

Division of the state into congressional, legislative, and other districts, and modification of existing divisions, is permitted only at the following times or under the following

circumstances:

(1) no later than the first annual general legislative session after the Legislature's receipt of the results of a national decennial enumeration made by the authority of the United States;

(2) no later than the first annual general legislative session after a change in the number of congressional, legislative, or other districts resulting from an event other than a national decennial enumeration made by the authority of the United States;

(3) 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);

(4) to conform with a final decision of a court of competent jurisdiction; or

(5) to make minor adjustments or technical corrections to district boundaries.

Section 3. Section **20A-19-103** is enacted to read:

20A-19-103. Redistricting Standards and Requirements.

(1) This Section establishes redistricting standards and requirements applicable to the Legislature and to the Utah Independent Redistricting Commission.

(2) The Legislature and the Commission shall abide by the following redistricting standards to the greatest extent practicable and in the following order of priority:

(a) adhering to the Constitution of the United States and federal laws, such as the Voting Rights Act, 52 U.S.C. Secs. 10101 through 10702, including, to the extent required, achieving equal population among districts using the most recent national decennial enumeration made by the authority of the United States;

(b) minimizing the division of municipalities and counties across multiple districts, giving first priority to minimizing the division of municipalities and second priority to

minimizing the division of counties;

(c) creating districts that are geographically compact;

(d) creating districts that are contiguous and that allow for the ease of transportation throughout the district;

(e) preserving traditional neighborhoods and local communities of interest;

(f) following natural and geographic features, boundaries, and barriers; and

(g) maximizing boundary agreement among different types of districts.

(3) The Legislature and the Commission may not divide districts in a manner that purposefully or unduly favors or disfavors any incumbent elected official, candidate or prospective candidate for elective office, or any political party.

(4) The Legislature and the Commission shall use judicial standards and the best available data and scientific and statistical methods, including measures of partisan symmetry, to assess whether a proposed redistricting plan abides by and conforms to the redistricting standards contained in this Section, including the restrictions contained in Subsection (3).

(5) Partisan political data and information, such as partisan election results, voting records, political party affiliation information, and residential addresses of incumbent elected officials and candidates or prospective candidates for elective office, may not be considered by the Legislature or by the Commission, except as permitted under Subsection (4).

(6) The Legislature and the Commission shall make computer software and information and data concerning proposed redistricting plans reasonably available to the public so that the public has a meaningful opportunity to review redistricting plans and to conduct the assessments described in Subsection (4).

Section 4. Section **20A-19-104** is enacted to read:

20A-19-104. Severability.

(1) The provisions of this chapter are severable.

(2) If any word, phrase, sentence, or section of this chapter or the application of any word, phrase, sentence, or section of this chapter to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of this chapter must be given effect without the invalid word, phrase, sentence, section, or application.

Section 5. Section **20A-19-201** is enacted to read:

Part 2. Utah Independent Redistricting Commission

20A-19-201. Utah Independent Redistricting Commission – Selection of Commissioners – Qualifications – Term – Vacancy – Compensation – Commission Resources.

(1) This Act creates the Utah Independent Redistricting Commission.

(2) The Utah Independent Redistricting Commission comprises seven commissioners appointed as provided in this Section.

(3) Each of the following appointing authorities shall appoint one commissioner:

(a) the governor, whose appointee shall serve as Commission chair;

(b) the president of the Senate;

(c) the speaker of the House of Representatives;

(d) the leader of the largest minority political party in the Senate;

(e) the leader of the largest minority political party in the House of Representatives;

(f) the leadership of the majority political party in the Senate, including the president of

the Senate, jointly with the leadership of the same political party in the House of Representatives and the speaker of the House of Representatives if a member of that political party; and

(g) the leadership of the largest minority political party in the Senate jointly with the leadership of the same political party in the House of Representatives and the speaker of the House of Representatives if a member of that political party.

(4) The appointing authorities described in Subsection (3) shall appoint their commissioners no later than 30 calendar days following:

(a) the receipt by the Legislature of a national decennial enumeration made by the authority of the United States; or

(b) a change in the number of congressional, legislative, or other districts resulting from an event other than a national decennial enumeration made by the authority of the United States.

(5) Commissioners appointed under Subsection (3)(f) and Subsection (3)(g), in addition to the qualifications and conditions in Subsection (6), may not have at any time during the preceding five years:

(a) been affiliated with any political party for the purposes of Section 20A-2-107;

(b) voted in any political party's regular primary election or any political party's municipal primary election; or

(c) been a delegate to a political party convention.

(6) Each commissioner:

(a) must have been at all times an active voter, as defined in Section 20A-1-102(1), during the four years preceding appointment to the Commission;

(b) must not have been at any time during the four years preceding appointment to the Commission, and may not be during their service as commissioner or for four years thereafter:

(i) a lobbyist or principal, as those terms are defined under Section 36-11-102;

(ii) a candidate for or holder of any elective office, including any local government office;

(iii) a candidate for or holder of any office of a political party, excluding the office of political party delegate, or the recipient of compensation in any amount from a political party, political party committee, personal campaign committee, or any political action committee affiliated with a political party or controlled by an elected official or candidate for elective office, including any local government office;

(iv) appointed by the governor or the Legislature to any other public office; or

(v) employed by the Congress of the United States, the Legislature, or the holder of any position that reports directly to an elected official or to any person appointed by the governor or Legislature to any other public office.

(7)(a) Each commissioner shall file with the Commission and with the governor a signed statement certifying that the commissioner:

(i) meets and will continue to meet throughout their term as commissioner the applicable qualifications contained in this Section;

(ii) will comply with the standards, procedures, and requirements applicable to redistricting contained in this chapter;

(iii) will faithfully discharge the commissioner's duties in an independent, honest, transparent, and impartial manner; and

(iv) will not engage in any effort to purposefully or unduly favor or disfavor any incumbent elected official, candidate or prospective candidate for elective office, or any political party.

(b) The Commission and the governor shall make available to the public the statements required under Subsection (7)(a).

(8)(a) A commissioner's term lasts until a successor is appointed or until that commissioner's death, resignation, or removal.

(b) A commissioner may resign at any time by providing written notice to the Commission and to the governor.

(c) A commissioner may be removed only by a majority vote of the speaker of the House of Representatives and the leader of the largest minority political party in the House of Representatives and the president of the Senate and leader of the largest minority political party in the Senate, and may be removed only for failure to meet the qualifications of this Section, incapacity, or for other good cause, such as substantial neglect of duty or gross misconduct in office.

(9)(a) The appointing authority that appointed a commissioner shall fill a vacancy caused by the death, resignation, or removal of that commissioner within 21 calendar days after the vacancy occurs.

(b) If the appointing authority at the time of the vacancy is of a different political party than that of the appointing authority when the original appointment was made, then the corresponding appointing authority of the same political party in the Senate, the House, or the leadership, as the case may be, as the appointing authority that made the original appointment must make the appointment to fill the vacancy.

(10) If an appointing authority fails to appoint a commissioner or to fill a vacancy by the deadlines provided in this Section, then the chief justice of the Supreme Court of the State of Utah shall appoint that commissioner within 14 calendar days after the failure to appoint or fill a

vacancy.

(11)(a) Commissioners may not receive compensation or benefits for their service, but may receive per diem and travel expenses in accordance with:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules of the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) A commissioner may decline to receive per diem and travel expenses.

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

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

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

Section 6. Section **20A-19-202** is enacted to read:

20A-19-202. Commission Code of Conduct – Quorum – Action by the Commission – Assessment of Proposed Redistricting Plans – Open and Public Meetings – Public Hearings – Ex Parte Communications.

(1) The Commission shall conduct its activities in an independent, honest, transparent,

and impartial manner, and each commissioner and member of Commission, including staff and consultants employed or retained by the Commission, shall act in a manner that reflects creditably on the Commission.

(2) The Commission shall meet upon the request of a majority of commissioners.

(3) Attendance of a majority of commissioners at a meeting constitutes a quorum for the conduct of Commission business and the taking of official Commission actions.

(4) The Commission takes official actions by majority vote of commissioners at a meeting at which a quorum is present, except as otherwise provided in this chapter.

(5)(a) The Commission may consider any redistricting plan submitted to the Commission by any person or organization, including commissioners.

(b) The Commission shall make available to each commissioner and to the public all plans or elements of plans submitted to the Commission or to any commissioner.

(6) Upon the affirmative vote of at least three commissioners, the Commission shall conduct the assessments described in Section 20A-19-103(4) of any redistricting plan being considered by the Commission or by the Legislature, and shall promptly make the assessments available to the public.

(7)(a) The Commission shall establish and maintain a website, or other equivalent electronic platform, to disseminate information about the Commission, including records of its meetings and public hearings, proposed redistricting plans, and assessments of and reports on redistricting plans, and to allow the public to view its meetings and public hearings in both live and in archived form.

(b) The Commission's website, or other equivalent electronic platform, must allow the public to submit redistricting plans and comments on redistricting plans to the Commission for

its consideration.

(8) The Commission is subject to Title 52, Chapter 4, Open and Public Meetings Act, Secs. 52-4-101 to 52-4-305, and to Title 63G, Chapter 2, Government Records Access and Management Act, Secs. 63G-2-101 to 63G-2-804.

(9)(a) The Commission shall, by majority vote, determine the number, locations, and dates of the public hearings to be held by the Commission, but the Commission shall hold no fewer than seven public hearings throughout the state in connection with each redistricting that is permitted under Section 20A-19-102(1)-(2) as follows:

(i) one in the Bear River region—Box Elder, Cache, or Rich County;

(ii) one in the Southwest region—Beaver, Garfield, Iron, Kane, or Washington County;

(iii) one in the Mountain region—Summit, Utah, or Wasatch County;

(iv) one in the Central region—Juab, Millard, Piute, Sanpete, Sevier, or Wayne County;

(v) one in the Southeast region—Carbon, Emery, Grand, or San Juan County;

(vi) one in the Uintah Basin region—Daggett, Duchesne, or Uintah County; and

(vii) one in the Wasatch Front region—Davis, Morgan, Salt Lake, Tooele, or Weber County.

(b) The Commission shall hold at least two public hearings in a first or second class county but not in the same county.

(10) Each public hearing must provide those in attendance a reasonable opportunity to submit written and oral comments to the Commission and to propose redistricting plans for the Commission's consideration.

(11) The Commission must hold the public hearings required under Subsection (9) by:

(a) the earlier of the 120th calendar day after the Legislature's receipt of the results of a

national decennial enumeration made by the authority of the United States or August 31st of that year; or

(b) no later than 120 calendar days after a change in the number of congressional, legislative, or other districts that results from an event other than a national decennial enumeration made by the authority of the United States.

(12)(a) A commissioner may not engage in any private communication with any person other than other commissioners, Commission personnel, including consultants retained by the Commission, and employees of the Office of Legislative Research and General Counsel, that is material to any redistricting plan or element of a plan pending before the Commission or intended to be proposed for Commission consideration, without making the communication, or a detailed and accurate description of the communication including the names of all parties to the communication and the plan or element of the plan, available to the Commission and to the public.

(b) A commissioner shall make the disclosure required by Subsection (12)(a) before the redistricting plan or element of a plan is considered by the Commission.

Section 7. Section **20A-19-203** is enacted to read:

20A-19-203. Selection of Recommended Redistricting Plan.

(1) The Commission shall prepare and, by the affirmative vote of at least five commissioners, adopt at least one and as many as three redistricting plans that the Commission determines divide the state into congressional, legislative, or other districts in a manner that satisfies the redistricting standards and requirements contained in this chapter as the Commission's recommended redistricting plan or plans no later than 30 calendar days following

completion of the public hearings required under Section 20A-19-202(9); and

(2)(a) If the Commission fails to adopt a redistricting plan by the deadline identified in Subsection (1), the Commission shall submit no fewer than two redistricting plans to the chief justice of the Supreme Court of the State of Utah.

(b) The chief justice of the Supreme Court of the State of Utah shall, as soon as practicable, select from the submitted plans at least one and as many as three redistricting plans that the chief justice determines divide the state into congressional, legislative, and other districts in a manner that satisfies the redistricting standards and requirements contained in this chapter as the Commission's recommended redistricting plan or plans.

(c) Of the plans submitted by the Commission to the chief justice of the Supreme Court of the State of Utah under Subsection (2)(a), at least one plan must be supported by the commissioner appointed under Section 20A-19-201(3)(f), and at least one plan must be supported by the commissioner appointed under Section 20A-19-201(3)(g).

Section 8. Section **20A-19-204** is enacted to read:

20A-19-204. Submission of Commission's Recommended Redistricting Plans to the Legislature – Consideration of Redistricting Plans by the Legislature – Report Required if Legislature Enacts Other Plan.

(1)(a) The Commission shall submit to the president of the Senate, the speaker of the House of Representatives, and the director of the Office of Legislative Research and General Counsel, and make available to the public, the redistricting plan or plans recommended under Section 20A-19-203 and a detailed written report setting forth each plan's adherence to the redistricting standards and requirements contained in this chapter.

(b) The Commission shall make the submissions described in Subsection (1)(a), to the extent practicable, not less than 10 calendar days before the Senate or the House of Representatives votes on any redistricting plan permitted under Section 20A-19-102(1)-(2).

(2)(a) The Legislature shall either enact without change or amendment, other than technical corrections such as those authorized under Section 36-12-12, or reject the Commission's recommended redistricting plans submitted to the Legislature under Subsection (1).

(b) The president of the Senate and the speaker of the House of Representatives may direct legislative staff to prepare a legislative review note and a legislative fiscal note on the Commission's recommended redistricting plan or plans.

(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 of the Supreme Court of the State of Utah to satisfy their duties under this chapter, including the consideration and assessment of redistricting plans, public hearings, and the selection of one or more recommended redistricting plans.

(4) The Legislature may not enact a redistricting plan or modification of any redistricting plan unless the plan or modification has been made available to the public by the Legislature, including by making it available on the Legislature's website, or other equivalent electronic platform, for a period of no less than 10 calendar days and in a manner and format that allows the public to assess the plan for adherence to the redistricting standards and requirements contained in this chapter and that allows the public to submit comments on the plan to the Legislature.

(5)(a) If a redistricting plan other than a plan submitted to the Legislature under

Subsection (1) is enacted by the Legislature, then no later than seven calendar days after its enactment the Legislature shall issue to the public a detailed written report setting forth the reasons for rejecting the plan or plans submitted to the Legislature under Subsection (1) and a detailed explanation of why the redistricting plan enacted by the Legislature better satisfies the redistricting standards and requirements contained in this chapter.

(b) The Commission may, by majority vote, issue public statements, assessments, and reports in response to:

(i) any report by the Legislature described in Subsection (5)(a);

(ii) the Legislature's consideration or enactment of any redistricting plan, including any plan submitted to the Legislature under Subsection (1); or

(iii) the Legislature's consideration or enactment of any modification to a redistricting plan.

Section 9. Section **20A-19-301** is enacted to read:

Part 3. Private Right of Action for Utahns

20A-19-301. Right of Action and Injunctive Relief.

(1) Each person who resides or is domiciled in the state, or whose executive office or principal place of business is located in the state, may bring an action in a court of competent jurisdiction to obtain any of the relief available under Subsection (2).

(2) If a court of competent jurisdiction determines in any action brought under this Section that a redistricting plan enacted by the Legislature fails to abide by or conform to the redistricting standards, procedures, and requirements set forth in this chapter, the court shall issue a permanent injunction barring enforcement or implementation of the redistricting plan. In

addition, the court may issue a temporary restraining order or preliminary injunction that temporarily stays enforcement or implementation of the redistricting plan at issue if the court determines that:

(a) the plaintiff is likely to show by a preponderance of the evidence that a permanent injunction under this Subsection should issue, and

(b) issuing a temporary restraining order or preliminary injunction is in the public interest.

(3) A plaintiff bringing an action under this Section is not required to give or post a bond, security, or collateral in connection with obtaining any relief under this Section.

(4) In any action brought under this Section, the court shall review or evaluate the redistricting plan at issue de novo.

(5) If a plaintiff bringing an action under this Section is successful in obtaining any relief under Subsection (2), the court shall order the defendant in the action to promptly pay reasonable compensation for actual, necessary services rendered by an attorney, consulting or testifying expert, or other professional, or any corporation, association, or other entity or group of other persons, employed or engaged by the plaintiff, and to promptly reimburse the attorney, consulting or testifying expert, or other professional, or any corporation, association, or other entity or group of other persons, employed or engaged by the plaintiff for actual, necessary expenses. If there is more than one defendant in the action, each of the defendants is jointly and severally liable for the compensation and expenses awarded by the court.

(6) In any action brought under this Section, the court may order a plaintiff to pay reasonable compensation for actual, necessary services rendered by an attorney, consulting or testifying expert, or other professional, or any corporation, association, or other entity or group

of other persons, employed or engaged by a defendant, and to promptly reimburse the attorney, consulting or testifying expert, or other professional, or any corporation, association, or other entity or group of other persons, employed or engaged by a defendant for actual, necessary expenses, only if the court determines that:

(a) the plaintiff brought the action for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b) the plaintiff's claims, defenses, and other legal contentions are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; or

(c) the plaintiff's allegations and other factual contentions do not have any evidentiary support, or if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(7) Notwithstanding Title 63G, Chapter 7, Governmental Immunity Act of Utah, a governmental entity named as a defendant in any action brought under this Section is not immune from such action or from payment of compensation or reimbursement of expenses awarded by the court under Subsection (5).

(8) Upon the issuance of a permanent injunction under Subsection (2), 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.

Section 10. Section **63G-7-301, Governmental Immunity Act of Utah,** is amended to read:

63G-7-301. Waivers of immunity.

...

(2) Immunity from suit of each governmental entity is waived:

(a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;

(b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;

(c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;

(d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of Utah Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;

(e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney fees under Sections 63G-2-405 and 63G-2-802;

(f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act;

(g) as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious Land Use Act;

(h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

(i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

(ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement; [~~and~~]

(i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment[~~,~~]; and

(j) as to any action or suit brought under Section 20A-19-301 and as to any compensation or expenses awarded under Section 20A-19-301(5).

Section 11. Section **63G-2-103, Government Records Access and Management Act,** is amended to read:

63G-2-103. Definitions.

As used in this chapter:

. . .

(11)(a) "Governmental entity" means:

(i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Office, the State Board of Education, the State Board of Regents, and the State Archives;

(ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative

committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

(iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iv) any state-funded institution of higher education or public education; or

(v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.

(b) "Governmental entity" also means:

(i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business;

(ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking; and

(iii) as defined in Section 11-13a-102, a governmental nonprofit corporation; [~~and~~]

(iv) an association as defined in Section 53A-1-1601[~~.~~]; and

(v) the Utah Independent Redistricting Commission.

(c) "Governmental entity" does not include the Utah Educational Savings Plan created in Section 53B-8a-103.

...

Section 12. Section **52-4-103, Open and Public Meetings Act,** is amended to read:

52-4-103. Definitions.

As used in this chapter:

...

(9)(a) "Public body" means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

(i) any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

(A) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

(B) consists of two or more persons;

(C) expends, disburses, or is supported in whole or in part by tax revenue; and

(D) is vested with the authority to make decisions regarding the public's business; or

(ii) any administrative, advisory, executive, or policymaking body of an association, as defined in Section 53A-1-1601, that:

(A) consists of two or more persons;

(B) expends, disburses, or is supported in whole or in part by dues paid by a public school or whose employees participate in a benefit or program described in Title 49, Utah State Retirement and Insurance Benefit Act; and

(C) is vested with authority to make decisions regarding the participation of a public school or student in an interscholastic activity as defined in Section 53A-1-1601.

(b) "Public body" includes:

(i) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking; [~~and~~]

(ii) as defined in Section 11-13a-102, a governmental nonprofit corporation[~~.~~]; and

(iii) the Utah Independent Redistricting Commission.

(c) "Public body" does not include:

(i) a political party, a political group, or a political caucus;

(ii) a conference committee, a rules committee, or a sifting committee of the Legislature;

(iii) a school community council or charter trust land council as defined in Section 53A-1a-108.1; or

(iv) the Economic Development Legislative Liaison Committee created in Section 36-30-201.

END OF UTAH INDEPENDENT REDISTRICTING COMMISSION AND STANDARDS ACT INITIATIVE

Persons gathering signatures for the petition may be paid for doing so.

Addendum J

Proposition 4 Official Overview (2018)

PROPOSITION NUMBER 4

☐ FOR
☐ AGAINST

Shall a law be enacted to:

- create a seven-member commission to recommend redistricting plans to the Legislature that divide the state into Congressional, legislative, and state school board districts;
- provide for appointments to that commission: one by the Governor, three by legislative majority party leaders, and three by legislative minority party leaders;
- provide qualifications for commission members, including limitations on their political activity;
- require the Legislature to enact or reject a commission-recommended plan; and
- establish requirements for redistricting plans and authorize lawsuits to block implementation of a redistricting plan enacted by the Legislature that fails to conform to those requirements?

IMPARTIAL ANALYSIS

Background

The state is divided into different types of districts for electing different officers. There are districts for electing representatives to the U.S. House of Representatives, districts for electing members to the Utah Legislature, and districts for electing representatives to the State Board of Education. Under federal constitutional law requiring one person's voting power to be roughly the same as another person's, each type of district is required to have at least a roughly equal population as each other district of that type.

Every 10 years, the federal government conducts a census to count the population of each state. During the 10-year period from one census to the next, the population of the state shifts, resulting in unequal populations within the various districts. Following each census, the Legislature redefines the boundaries of those districts to ensure roughly equal populations within the districts. This redefining of district boundaries is commonly referred to as "redistricting."

Proposition 4

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

1. Redistricting Commission

Current Law

The Utah Constitution states that "the Legislature shall divide the state" into districts. Current Utah law does not provide for the involvement of a commission or any other group in the redistricting process.

Effect of Proposition 4

Proposition 4 creates the "Utah Independent Redistricting Commission," with responsibility to recommend redistricting plans to the Legislature. The redistricting commission consists of seven members. One member is appointed by each of the following:

- the governor;
- the president of the Utah Senate;
- the speaker of the Utah House of Representatives;
- the leader of the largest minority political party in the Utah Senate;
- the leader of the largest minority political party in the Utah House of Representatives;
- Utah Senate and House leadership of the political party that is the majority party in the Utah Senate; and
- Utah Senate and House leadership of the political party that is the largest minority party in the Utah Senate.

Under Proposition 4, a person may not be appointed to the commission if the person has engaged in certain political activity during the four or, in some cases, five years before appointment. The Proposition also places limitations on certain political activity of commission members during their service on the commission and for four years afterwards.

Proposition 4 establishes a process for the commission to follow in recommending redistricting plans. Among other things, the Proposition requires the commission to:

- make redistricting plans available to the public and hold public hearings; and
- assess whether redistricting plans comply with standards established by Proposition 4.

If the commission fails to submit redistricting plans to the Legislature by a specified deadline, the Utah Supreme Court chief justice is required to select plans for the commission to submit.

2. Legislature's Redistricting Process

Current Law

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

Effect of Proposition 4

Proposition 4 places requirements on the process that the Legislature uses to enact redistricting plans, including limits on when and the circumstances under which the Legislature may enact a redistricting plan.

Proposition 4 requires the Legislature to enact or reject a plan that the commission submits but does not limit the Legislature from enacting its own separate plan. The commission may require a plan being considered by the Legislature to undergo a commission assessment to determine whether it complies with standards established by the Proposition. If the Legislature enacts a plan other than one submitted by the commission, the Proposition requires the Legislature to publicly issue a detailed written report explaining why.

3. Standards Applicable to Redistricting Plans

Current Law

Redistricting plans enacted by the Legislature are required to comply with certain provisions of federal law, including a requirement that districts have roughly equal populations. Utah law does not specify additional standards with which redistricting plans must comply.

Effect of Proposition 4

Proposition 4 requires commission-recommended or Legislature-enacted redistricting plans, as much as possible, to:

- minimize the division of counties, cities, and towns;
- create districts that are geographically compact and in one unbroken piece;
- preserve traditional neighborhoods and local communities;
- follow natural and geographic features; and
- maximize boundary agreement among different types of districts.

The Proposition also prohibits the commission or Legislature from favoring or disfavoring incumbent elected officials or from considering partisan political information.

The Proposition authorizes any Utah resident to file a lawsuit requesting a court to block implementation of a redistricting plan enacted by the Legislature that fails to conform to the standards and requirements established by Proposition 4.

Potential Constitutional Conflicts

Proposition 4 raises the following potential conflicts with the United States Constitution or Utah Constitution:

- restricting former commission members from engaging in certain political activity after serving on the commission may conflict with freedom of speech and association guarantees of the First Amendment to the United States Constitution and similar guarantees under Article I, Sections 1 and 15 of the Utah Constitution;
- directing the Utah Supreme Court chief justice to select redistricting plans to recommend to the Legislature may violate separation of powers principles under Article V, Section 1 of the Utah Constitution; and
- requiring redistricting plans enacted by the Legislature to comply with certain standards and imposing other restrictions on the Legislature's redistricting process may violate Article IX, Section 1 of the Utah Constitution.

Fiscal Impact

The legislative fiscal analyst estimates that implementing Proposition 4 may cost the state $1,015,500 every 10 years for commission and other redistricting-related expenses. The state may incur additional costs to defend lawsuits authorized by the Proposition.

PROPOSITION NUMBER 4

ARGUMENT IN FAVOR

VOTE "YES" ON PROPOSITION 4

Voters should choose their representatives, not vice versa.

Yet under current law, Utah politicians can choose their voters. Legislators draw their own legislative districts with minimal transparency, oversight, or checks on inherent conflicts of interest. As a result, politicians wield unbridled power to design districts to ensure their own re-election. This is called "gerrymandering."

Gerrymandering is not new. But in recent years it has gotten out of control. Sophisticated computer modeling allows incumbents to craft districts with a precision the framers of the Utah Constitution could not have foreseen. Incumbents of both parties do this, with the result that Utah is divided into districts that empower politicians, not voters.

For example, Holladay City is splintered into four State House districts, two State Senate districts and two Congressional districts. Who benefits from this? Holladay voters don't, but politicians do. Incumbents in safe districts are less responsive to voters and more responsive to special interests. In short, gerrymandering makes representative democracy less representative.

To be fair, we can't expect legislators to fix the system. It benefits them. We the People must fix it.

Proposition 4 returns power to the voters and puts people first in our political system. It does this by enacting the Utah Independent Redistricting Commission and Standards Act. The Act addresses the problem of gerrymandering in two ways.

First, it creates a seven-member Independent Redistricting Commission. The Governor and Legislative leaders appoint the Commissioners, at least two of whom must be politically unaffiliated. To promote impartiality, lobbyists, current and recently retired elected officials, political party leaders, and government appointees may not serve as Commissioners. With citizen input, the Commission draws proposed district boundaries for Utah's congressional, legislative, and State school board districts. It then submits these electoral maps to the Legislature as required by the Utah Constitution. The Legislature can enact or reject the Commission's proposed maps. If it rejects them, it must explain why to the citizens.

Second, the Act requires that, in drawing districts, the Commission and the Legislature abide by common-sense redistricting standards to the greatest extent practicable. These standards include:

- Adhering to the U.S. and Utah Constitutions and other applicable law
- Preserving equal populations among districts
- Keeping municipalities and counties together
- Creating districts that are compact and contiguous
- Respecting traditional neighborhoods and communities of interest
- Following geographic features and natural barriers

Most importantly, the Act forbids drawing districts to unduly favor or disfavor any incumbent, candidate, or political party. And it allows Utah voters to challenge a map enacted by the Legislature that violates these standards.

By placing common-sense limits on politicians' power to design their districts, Proposition 4 will ensure that our representative government serves people, not politicians. It will make the redistricting process more transparent, increase voter participation, and make the politicians we elect more responsive and accountable to the people who elect them.

In short, it will ensure that Utah voters have a government of the People, by the People, and for the People.

Uthans for Responsive Government/Better Boundaries
2630 East Stringham Avenue
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Jeff Wright (R)
Co-Chair, Better Boundaries
2743 Meadowcreek
Park City, UT 84060

Ralph Becker (D)
Co-Chair, Better Boundaries
5 South 500 West #102
Salt Lake City, UT 84102

PROPOSITION NUMBER 4

REBUTTAL TO ARGUMENT IN FAVOR

Proposition 4 sponsors' best argument seems to be that giving an unelected commission authority in the redistricting process will result in a more accountable government. If that is true, it must be done by a constitutional amendment and not by an initiative petition.
In 2011 the legislative redistricting committee held over thirty public, open, and transparent meetings throughout the state. They received and considered hundreds of public comments and even provided a dedicated website for citizens to draw, submit, and comment on maps.

Backed by Ralph Becker and other liberal Salt Lake City Democrats and funded by out of state interest groups, Proposition 4 is a cleverly disguised partisan power grab.

- It unconstitutionally gives redistricting authority to unelected bureaucrats and judges.
- It deliberately imposes vague and conflicting redistricting requirements to throw the doors wide open for lawsuits.
- 4 out of 5 of its sponsors are liberal Democrats from Salt Lake City (if you include the one who became Republican right before sponsoring).
- 70% of the nearly $1 Million behind the initiative are from OUT OF STATE special interest groups.
- Over half of the in-state donations came from inside of Salt Lake City proper.

The framers of the Utah Constitution ensured that redistricting would be anchored in the voice of the people by exclusively entrusting this authority to the legislature.

A vote for Proposition 4 is a vote to unconstitutionally silence the voice of the majority of people in Utah and allow unelected bureaucrats and judges redistricting authority

Senator Ralph Okerlund
Utah State Senate

ARGUMENT AGAINST

Proposition 4 is a cleverly disguised partisan plan to stifle the voice of the people of Utah as represented by the Legislature and unconstitutionally create an overwhelmingly Democrat congressional district around Salt Lake City.

Violates the Constitution

Inspired by the framers of our United States Constitution, the founders of Utah divided governmental power into three separate branches of government – the Executive, the Legislative, and the Judicial. The founders thought it was important to grant the legislature the *exclusive* authority over the redistricting process.

Proposition 4 blatantly violates the Utah Constitution by creating a redistricting commission and granting that commission and the Utah Supreme Court a role in the redistricting process. If we, as citizens of Utah, wish to grant this legislative authority to other branches of government, we must do it through a constitutional amendment not an initiative petition.

The Perfect Legal Storm

Over the past few redistricting cycles there have been hundreds of redistricting lawsuits in at least 40 states. In that time, not a single successful case has been brought against Utah due to our transparent, fair, and strictly constitutional redistricting process.

Proposition 4 deliberately imposes vague and conflicting redistricting requirements, it leaves multiple key terms undefined, and it grants any person or business with a Utah address the right to legally challenge redistricting plans. These provisions reveal the obvious underlying goal of this initiative is to create a perfect legal storm for lengthy lawsuits that result in the courts unconstitutionally redrawing district boundaries.

Better Boundaries for Whom?

District boundaries are redrawn by the legislature every ten years following the census to ensure that every district is represented by the same number of people. Because Utah's population is growing – the growth in each district must be averaged out. This means slower growing districts must have boundaries that expand, while the surrounding faster growing districts must have boundaries that shrink.

This is precisely what is happening in and around Salt Lake City. Due to their significantly slower population growth rates, district boundaries around Salt Lake City must expand to gain population while the surrounding districts shrink to average out. Despite being their last strong-hold in the state, it is inevitable that these current growth patterns will continue to water-down Democrat representation. Faced with this fact, proponents of Proposition 4 are desperately trying to maintain and even increase their representation by creating an overwhelmingly Democrat district insulated from the rest of the state.

Appropriately named by its Salt Lake City Democrat supporters, the "Better Boundaries Initiative," begs the question: better boundaries for whom? Themselves.

Conclusion

Make no mistake about it, the backers of this initiative are *not* seeking to create a transparent, fair, and constitutionally sound redistricting process – we already have that. They are seeking to unconstitutionally pack what is now a competitive congressional district with Democrat voters to create a single, safe, and solidly Democrat congressional district for themselves.

Do not be fooled. Vote against Proposition 4.

Senator Ralph Okerlund
Utah State Senate
248 S 500 W
Monroe, UT 84754

REBUTTAL TO ARGUMENT AGAINST

Utah voters should not be surprised that the statement against Proposition 4 comes from a politician. Politicians are the only folks that benefit from gerrymandering. The current system presents a clear conflict of interest.

The opposition statement is also misleading; let's focus on the facts.

First, Proposition 4 is a bi-partisan effort, led by members of both major parties. Over 190,000 Utahns from all across the State signed the petition, and polling shows that a majority of Utahns support it.

Second, Utahns overwhelmingly support Proposition 4 because it creates a transparent process. It favors no party or outcome. It merely creates sensible rules so that *no one* can rig the system.

Third, the State Constitution does not say our Legislature has "exclusive" authority to draw electoral maps. Proposition 4 is carefully designed to operate within the framework established by the Utah and U.S. Constitutions.

Fourth, the speculation that this Proposition will encourage litigation is misleading. Proposition 4 enacts common-sense redistricting standards. A map that respects those standards is unlikely to provoke baseless litigation, especially since the initiative also contains provisions to discourage frivolous lawsuits.

The fight against gerrymandering is about patriotism, not party. Ronald Reagan called gerrymandering an "un-American practice" contrary to "American values of fair play and decency."

That's why 18 other states have adopted some form of an independent redistricting commission. We need to end gerrymandering here in Utah once and for all. Don't be distracted by misleading statements and scare tactics.

Vote for Proposition 4.

Jeff Wright and Ralph Becker
Co-Chairs, Better Boundaries

FULL TEXT OF PROPOSITION 4

Be it Enacted by the People of the State of Utah:

Section 1. Section **20A-19-101** is enacted to read:

CHAPTER 19. UTAH INDEPENDENT REDISTRICTING COMMISSION AND STANDARDS ACT

Part 1. General Provisions

20A-19-101. Title.

This chapter is known as the "Utah Independent Redistricting Commission and Standards Act."

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Section 2. Section **20A-19-102** is enacted to read:

20A-19-102. Permitted Times and Circumstances for Redistricting.

Division of the state into congressional, legislative, and other districts, and modification of existing divisions, is permitted only at the following times or under the following circumstances:

(1) no later than the first annual general legislative session after the Legislature's receipt of the results of a national decennial enumeration made by the authority of the United States;

(2) no later than the first annual general legislative session after a change in the number of congressional, legislative, or other districts resulting from an event other than a national decennial enumeration made by the authority of the United States;

(3) 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);

(4) to conform with a final decision of a court of competent jurisdiction; or

(5) to make minor adjustments or technical corrections to district boundaries.

Section 3. Section **20A-19-103** is enacted to read:

20A-19-103. Redistricting Standards and Requirements.

(1) This Section establishes redistricting standards and requirements applicable to the Legislature and to the Utah Independent Redistricting Commission.

(2) The Legislature and the Commission shall abide by the following redistricting standards to the greatest extent practicable and in the following order of priority:

(a) adhering to the Constitution of the United States and federal laws, such as the Voting Rights Act, 52 U.S.C. Secs. 10101 through 10702, including, to the extent required, achieving equal population among districts using the most recent national decennial enumeration made by the authority of the United States;

(b) minimizing the division of municipalities and counties across multiple districts, giving first priority to minimizing the division of municipalities and second priority to minimizing the division of counties;

(c) creating districts that are geographically compact;

(d) creating districts that are contiguous and that allow for the ease of transportation throughout the district;

(e) preserving traditional neighborhoods and local communities of interest;

(f) following natural and geographic features, boundaries, and barriers; and

(g) maximizing boundary agreement among different types of districts.

(3) The Legislature and the Commission may not divide districts in a manner that purposefully or unduly favors or disfavors any incumbent elected official, candidate or prospective candidate for elective office, or any political party.

(4) The Legislature and the Commission shall use judicial standards and the best available data and scientific and statistical methods, including measures of partisan symmetry, to assess whether a proposed redistricting plan abides by and conforms to the redistricting standards contained in this Section, including the restrictions contained in Subsection (3).

(5) Partisan political data and information, such as partisan election results, voting records, political party affiliation information, and residential addresses of incumbent elected officials and candidates or prospective candidates for elective office, may not be considered by the Legislature or by the Commission, except as permitted under Subsection (4).

(6) The Legislature and the Commission shall make computer software and information and data concerning proposed redistricting plans reasonably available to the public so that the public has a meaningful opportunity to review redistricting plans and to conduct the assessments described in Subsection (4).

Section 4. Section **20A-19-104** is enacted to read:

20A-19-104. Severability.

(1) The provisions of this chapter are severable.

(2) If any word, phrase, sentence, or section of this chapter or the application of any word, phrase, sentence, or section of this chapter to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of this chapter must be given effect without the invalid word, phrase, sentence, section, or application.

Section 5. Section **20A-19-201** is enacted to read:

Part 2. Utah Independent Redistricting Commission

20A-19-201. Utah Independent Redistricting Commission – Selection of Commissioners – Qualifications – Term – Vacancy – Compensation – Commission Resources.

(1) This Act creates the Utah Independent Redistricting Commission.

(2) The Utah Independent Redistricting Commission comprises seven commissioners appointed as provided in this Section.

(3) Each of the following appointing authorities shall appoint one commissioner:

(a) the governor, whose appointee shall serve as Commission chair;

(b) the president of the Senate;

(c) the speaker of the House of Representatives;

(d) the leader of the largest minority political party in the Senate;

(e) the leader of the largest minority political party in the House of Representatives;

(f) the leadership of the majority political party in the Senate, including the president of the Senate, jointly with the leadership of the same political party in the House of Representatives and the speaker of the House of Representatives if a member of that political party; and

(g) the leadership of the largest minority political party in the Senate jointly with the leadership of the same political party in the House of Representatives and the speaker of the House of Representatives if a member of that political party.

(4) The appointing authorities described in Subsection (3) shall appoint their commissioners no later than 30 calendar days following:

(a) the receipt by the Legislature of a national decennial enumeration made by the authority of the United States; or

(b) a change in the number of congressional, legislative, or other districts resulting from an event other than a national decennial enumeration made by the authority of the United States.

(5) Commissioners appointed under Subsection (3)(f) and Subsection (3)(g), in addition to the qualifications and conditions in Subsection (6), may not have at any time during the preceding five years:

(a) been affiliated with any political party for the purposes of Section 20A-2-107;

(b) voted in any political party's regular primary election or any political party's municipal primary election; or

(c) been a delegate to a political party convention.

(6) Each commissioner:

(a) must have been at all times an active voter, as defined in Section 20A-1-102(1), during the four years preceding appointment to the Commis-

sion;

(b) must not have been at any time during the four years preceding appointment to the Commission, and may not be during their service as commissioner or for four years thereafter:

(i) a lobbyist or principal, as those terms are defined under Section 36-11-102;

(ii) a candidate for or holder of any elective office, including any local government office;

(iii) a candidate for or holder of any office of a political party, excluding the office of political party delegate, or the recipient of compensation in any amount from a political party, political party committee, personal campaign committee, or any political action committee affiliated with a political party or controlled by an elected official or candidate for elective office, including any local government office;

(iv) appointed by the governor or the Legislature to any other public office; or

(v) employed by the Congress of the United States, the Legislature, or the holder of any position that reports directly to an elected official or to any person appointed by the governor or Legislature to any other public office.

(7)(a) Each commissioner shall file with the Commission and with the governor a signed statement certifying that the commissioner:

(i) meets and will continue to meet throughout their term as commissioner the applicable qualifications contained in this Section;

(ii) will comply with the standards, procedures, and requirements applicable to redistricting contained in this chapter;

(iii) will faithfully discharge the commissioner's duties in an independent, honest, transparent, and impartial manner; and

(iv) will not engage in any effort to purposefully or unduly favor or disfavor any incumbent elected official, candidate or prospective candidate for elective office, or any political party.

(b) The Commission and the governor shall make available to the public the statements required under Subsection (7)(a).

(8)(a) A commissioner's term lasts until a successor is appointed or until that commissioner's death, resignation, or removal.

(b) A commissioner may resign at any time by providing written notice to the Commission and to the governor.

(c) A commissioner may be removed only by a majority vote of the speaker of the House of Representatives and the leader of the largest minority political party in the House of Representatives and the president of the Senate and leader of the largest minority political party in the Senate, and may be removed only for failure to meet the qualifications of this Section, incapacity, or for other good cause, such as substantial neglect of duty or gross misconduct in office.

(9)(a) The appointing authority that appointed a commissioner shall fill a vacancy caused by the death, resignation, or removal of that commissioner within 21 calendar days after the vacancy occurs.

(b) If the appointing authority at the time of the vacancy is of a different political party than that of the appointing authority when the original appointment was made, then the corresponding appointing authority of the same political party in the Senate, the House, or the leadership, as the case may be, as the appointing authority that made the original appointment must make the appointment to fill the vacancy.

(10) If an appointing authority fails to appoint a commissioner or to fill a vacancy by the deadlines provided in this Section, then the chief justice of the Supreme Court of the State of Utah shall appoint that commissioner within 14 calendar days after the failure to appoint or fill a vacancy.

(11)(a) Commissioners may not receive compensation or benefits for their service, but may receive per diem and travel expenses in accordance with:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules of the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) A commissioner may decline to receive per diem and travel expenses.

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

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

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

Section 6. Section **20A-19-202** is enacted to read:

20A-19-202. Commission Code of Conduct – Quorum – Action by the Commission – Assessment of Proposed Redistricting Plans – Open and Public Meetings – Public Hearings – Ex Parte Communications.

(1) The Commission shall conduct its activities in an independent, honest, transparent, and impartial manner, and each commissioner and member of Commission, including staff and consultants employed or retained by the Commission, shall act in a manner that reflects creditably on the Commission.

(2) The Commission shall meet upon the request of a majority of commissioners.

(3) Attendance of a majority of commissioners at a meeting constitutes a quorum for the conduct of Commission business and the taking of official Commission actions.

(4) The Commission takes official actions by majority vote of commissioners at a meeting at which a quorum is present, except as otherwise provided in this chapter.

(5)(a) The Commission may consider any redistricting plan submitted to the Commission by any person or organization, including commissioners.

(b) The Commission shall make available to each commissioner and to the public all plans or elements of plans submitted to the Commission or to any commissioner.

(6) Upon the affirmative vote of at least three commissioners, the Commission shall conduct the assessments described in Section 20A-19-103(4) of any redistricting plan being considered by the Commission or by the Legislature, and shall promptly make the assessments available to the public.

(7)(a) The Commission shall establish and maintain a website, or other equivalent electronic platform, to disseminate information about the Commission, including records of its meetings and public hearings, proposed redistricting plans, and assessments of and reports on redistricting plans, and to allow the public to view its meetings and public hearings in both live and in archived form.

(b) The Commission's website, or other equivalent electronic platform, must allow the public to submit redistricting plans and comments on redistricting plans to the Commission for its consideration.

(8) The Commission is subject to Title 52, Chapter 4, Open and Public Meetings Act, Secs. 52-4-101 to 52-4-305, and to Title 63G, Chapter 2, Government Records Access and Management Act, Secs. 63G-2-101 to 63G-2-804.

(9)(a) The Commission shall, by majority vote, determine the number, locations, and dates of the public hearings to be held by the Commission, but the Commission shall hold no fewer than seven public hearings throughout the state in connection with each redistricting that is permitted under Section 20A-19-102(1)-(2) as follows:

(i) one in the Bear River region—Box Elder, Cache, or Rich County;

(ii) one in the Southwest region—Beaver, Garfield, Iron, Kane, or Washington County;

(iii) one in the Mountain region—Summit, Utah, or Wasatch County;

(iv) one in the Central region—Juab, Millard, Piute, Sanpete, Sevier, or Wayne County;
(v) one in the Southeast region—Carbon, Emery, Grand, or San Juan County;
(vi) one in the Uintah Basin region—Daggett, Duchesne, or Uintah County; and
(vii) one in the Wasatch Front region—Davis, Morgan, Salt Lake, Tooele, or Weber County.

(b) The Commission shall hold at least two public hearings in a first or second class county but not in the same county.

(10) Each public hearing must provide those in attendance a reasonable opportunity to submit written and oral comments to the Commission and to propose redistricting plans for the Commission's consideration.

(11) The Commission must hold the public hearings required under Subsection (9) by:

(a) the earlier of the 120th calendar day after the Legislature's receipt of the results of a national decennial enumeration made by the authority of the United States or August 31st of that year; or

(b) no later than 120 calendar days after a change in the number of congressional, legislative, or other districts that results from an event other than a national decennial enumeration made by the authority of the United States.

(12)(a) A commissioner may not engage in any private communication with any person other than other commissioners, Commission personnel, including consultants retained by the Commission, and employees of the Office of Legislative Research and General Counsel, that is material to any redistricting plan or element of a plan pending before the Commission or intended to be proposed for Commission consideration, without making the communication, or a detailed and accurate description of the communication including the names of all parties to the communication and the plan or element of the plan, available to the Commission and to the public.

(b) A commissioner shall make the disclosure required by Subsection (12)(a) before the redistricting plan or element of a plan is considered by the Commission.

Section 7. Section **20A-19-203** is enacted to read:

20A-19-203. Selection of Recommended Redistricting Plan.

(1) The Commission shall prepare and, by the affirmative vote of at least five commissioners, adopt at least one and as many as three redistricting plans that the Commission determines divide the state into congressional, legislative, or other districts in a manner that satisfies the redistricting standards and requirements contained in this chapter as the Commission's recommended redistricting plan or plans no later than 30 calendar days following completion of the public hearings required under Section 20A-19-202(9); and

(2)(a) If the Commission fails to adopt a redistricting plan by the deadline identified in Subsection (1), the Commission shall submit no fewer than two redistricting plans to the chief justice of the Supreme Court of the State of Utah.

(b) The chief justice of the Supreme Court of the State of Utah shall, as soon as practicable, select from the submitted plans at least one and as many as three redistricting plans that the chief justice determines divide the state into congressional, legislative, and other districts in a manner that satisfies the redistricting standards and requirements contained in this chapter as the Commission's recommended redistricting plan or plans.

(c) Of the plans submitted by the Commission to the chief justice of the Supreme Court of the State of Utah under Subsection (2)(a), at least one plan must be supported by the commissioner appointed under Section 20A-19-201(3)(f), and at least one plan must be supported by the commissioner appointed under Section 20A-19-201(3)(g).

Section 8. Section **20A-19-204** is enacted to read:

20A-19-204. Submission of Commission's Recommended Redistricting Plans to the Legislature – Consideration of Redistricting Plans by the Legislature – Report Required if Legislature Enacts Other Plan.

(1)(a) The Commission shall submit to the president of the Senate, the speaker of the House of Representatives, and the director of the Office of Legislative Research and General Counsel, and make available to the public, the redistricting plan or plans recommended under Section 20A-19-203 and a detailed written report setting forth each plan's adherence to the redistricting standards and requirements contained in this chapter.

(b) The Commission shall make the submissions described in Subsection (1)(a), to the extent practicable, not less than 10 calendar days before the Senate or the House of Representatives votes on any redistricting plan permitted under Section 20A-19-102(1)-(2).

(2)(a) The Legislature shall either enact without change or amendment, other than technical corrections such as those authorized under Section 36-12-12, or reject the Commission's recommended redistricting plans submitted to the Legislature under Subsection (1).

(b) The president of the Senate and the speaker of the House of Representatives may direct legislative staff to prepare a legislative review note and a legislative fiscal note on the Commission's recommended redistricting plan or plans.

(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 of the Supreme Court of the State of Utah to satisfy their duties under this chapter, including the consideration and assessment of redistricting plans, public hearings, and the selection of one or more recommended redistricting plans.

(4) The Legislature may not enact a redistricting plan or modification of any redistricting plan unless the plan or modification has been made available to the public by the Legislature, including by making it available on the Legislature's website, or other equivalent electronic platform, for a period of no less than 10 calendar days and in a manner and format that allows the public to assess the plan for adherence to the redistricting standards and requirements contained in this chapter and that allows the public to submit comments on the plan to the Legislature.

(5)(a) If a redistricting plan other than a plan submitted to the Legislature under Subsection (1) is enacted by the Legislature, then no later than seven calendar days after its enactment the Legislature shall issue to the public a detailed written report setting forth the reasons for rejecting the plan or plans submitted to the Legislature under Subsection (1) and a detailed explanation of why the redistricting plan enacted by the Legislature better satisfies the redistricting standards and requirements contained in this chapter.

(b) The Commission may, by majority vote, issue public statements, assessments, and reports in response to:

(i) any report by the Legislature described in Subsection (5)(a);

(ii) the Legislature's consideration or enactment of any redistricting plan, including any plan submitted to the Legislature under Subsection (1); or

(iii) the Legislature's consideration or enactment of any modification to a redistricting plan.

Section 9. Section **20A-19-301** is enacted to read:

Part 3. Private Right of Action for Utahns

20A-19-301. Right of Action and Injunctive Relief.

(1) Each person who resides or is domiciled in the state, or whose executive office or principal place of business is located in the state, may bring an action in a court of competent jurisdiction to obtain any of the relief available under Subsection (2).

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

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(a) the plaintiff is likely to show by a preponderance of the evidence that a permanent injunction under this Subsection should issue, and

(b) issuing a temporary restraining order or preliminary injunction is in the public interest.

(3) A plaintiff bringing an action under this Section is not required to give or post a bond, security, or collateral in connection with obtaining any relief under this Section.

(4) In any action brought under this Section, the court shall review or evaluate the redistricting plan at issue de novo.

(5) If a plaintiff bringing an action under this Section is successful in obtaining any relief under Subsection (2), the court shall order the defendant in the action to promptly pay reasonable compensation for actual, necessary services rendered by an attorney, consulting or testifying expert, or other professional, or any corporation, association, or other entity or group of other persons, employed or engaged by the plaintiff, and to promptly reimburse the attorney, consulting or testifying expert, or other professional, or any corporation, association, or other entity or group of other persons, employed or engaged by the plaintiff for actual, necessary expenses. If there is more than one defendant in the action, each of the defendants is jointly and severally liable for the compensation and expenses awarded by the court.

(6) In any action brought under this Section, the court may order a plaintiff to pay reasonable compensation for actual, necessary services rendered by an attorney, consulting or testifying expert, or other professional, or any corporation, association, or other entity or group of other persons, employed or engaged by a defendant, and to promptly reimburse the attorney, consulting or testifying expert, or other professional, or any corporation, association, or other entity or group of other persons, employed or engaged by a defendant for actual, necessary expenses, only if the court determines that:

(a) the plaintiff brought the action for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b) the plaintiff's claims, defenses, and other legal contentions are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; or

(c) the plaintiff's allegations and other factual contentions do not have any evidentiary support, or if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(7) Notwithstanding Title 63G, Chapter 7, Governmental Immunity Act of Utah, a governmental entity named as a defendant in any action brought under this Section is not immune from such action or from payment of compensation or reimbursement of expenses awarded by the court under Subsection (5).

(8) Upon the issuance of a permanent injunction under Subsection (2), 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.

Section 10. Section **63G-7-301, Governmental Immunity Act of Utah,** is amended to read:

63G-7-301. Waivers of immunity.

...

(2) Immunity from suit of each governmental entity is waived:

(a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;

(b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;

(c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;

(d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of Utah Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;

(e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney fees under Sections 63G-2-405 and 63G-2-802;

(f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act;

(g)as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious Land Use Act;

(h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

(i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

(ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement; [~~and~~]

(i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment[.]; and

(j) as to any action or suit brought under Section 20A-19-301 and as to any compensation or expenses awarded under Section 20A-19-301(5).

Section 11. Section **63G-2-103, Government Records Access and Management Act,** is amended to read:

63G-2-103. Definitions.

As used in this chapter:

. . .

(11)(a) "Governmental entity" means:

(i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Office, the State Board of Education, the State Board of Regents, and the State Archives;

(ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

(iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iv) any state-funded institution of higher education or public education; or

(v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.

(b) "Governmental entity" also means:

(i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business;

(ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking; and

(iii) as defined in Section 11-13a-102, a governmental nonprofit corporation; [~~and~~]

(iv) an association as defined in Section 53A-1-1601[.]; and

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(v) the Utah Independent Redistricting Commission.

(c) "Governmental entity" does not include the Utah Educational Savings Plan created in Section 53B-8a-103.

...

Section 12. Section **52-4-103, Open and Public Meetings Act,** is amended to read:

52-4-103. Definitions.

As used in this chapter:

...

(9)(a) "Public body" means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

(i) any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

(A) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

(B) consists of two or more persons;

(C) expends, disburses, or is supported in whole or in part by tax revenue; and

(D) is vested with the authority to make decisions regarding the public's business; or

(ii) any administrative, advisory, executive, or policymaking body of an association, as defined in Section 53A-1-1601, that:

(A) consists of two or more persons;

(B) expends, disburses, or is supported in whole or in part by dues paid by a public school or whose employees participate in a benefit or program described in Title 49, Utah State Retirement and Insurance Benefit Act; and

(C) is vested with authority to make decisions regarding the participation of a public school or student in an interscholastic activity as defined in Section 53A-1-1601.

(b) "Public body" includes:

(i) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking; [~~and~~]

(ii) as defined in Section 11-13a-102, a governmental nonprofit corporation[.]; and

(iii) the Utah Independent Redistricting Commission.

(c) "Public body" does not include:

(i) a political party, a political group, or a political caucus;

(ii) a conference committee, a rules committee, or a sifting committee of the Legislature;

(iii) a school community council or charter trust land council as defined in Section 53A-1a-108.1; or

(iv) the Economic Development Legislative Liaison Committee created in Section 36-30-201.

FISCAL IMPACT ESTIMATE

The Governor's Office of Management and Budget estimates that the law proposed by this initiative would result in a total fiscal expense of approximately $1 million.

In addition, the cost of posting information regarding the initiative in Utah's statewide newspapers and for printing the additional pages in the voter information packet is estimated at $30,000 in one-time funds.

Addendum K

Senate Bill 200 (2020)

REDISTRICTING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Carol Spackman Moss

LONG TITLE

General Description:

This bill addresses provisions relating to the Utah Independent Redistricting Commission and redistricting.

Highlighted Provisions:

This bill:

- defines terms;
- modifies redistricting requirements and related provisions;
- modifies the Utah Independent Redistricting Commission;
- establishes the commission's membership and term;
- addresses commission function, action, meetings, and staffing;
- provides for acquisition and use of materials, software, and services, including legal services, by the commission;
- describes the duties of the commission;
- provides for presentation of commission maps to the Legislature's redistricting committee;
- requires the Government Operations Interim Committee to conduct a review of the commission; and
- repeals existing independent redistricting commission provisions.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2021:

- to the Department of Administrative Services – Finance - Mandated – Redistricting Commission, as a one-time appropriation:

- from Legislature – Office of Legislative Research and General Counsel,

One-time, $1,000,000.

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

63G-7-201, as last amended by Laws of Utah 2019, Chapters 229 and 248

63G-7-301, as last amended by Laws of Utah 2019, Chapters 229 and 248

ENACTS:

20A-20-101, Utah Code Annotated 1953

20A-20-102, Utah Code Annotated 1953

20A-20-103, Utah Code Annotated 1953

20A-20-201, Utah Code Annotated 1953

20A-20-202, Utah Code Annotated 1953

20A-20-203, Utah Code Annotated 1953

20A-20-301, Utah Code Annotated 1953

20A-20-302, Utah Code Annotated 1953

20A-20-303, Utah Code Annotated 1953

REPEALS:

20A-19-101, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

20A-19-102, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

20A-19-103, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

20A-19-104, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

20A-19-201, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

20A-19-202, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

20A-19-203, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

20A-19-204, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

20A-19-301, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **20A-20-101** is enacted to read:

CHAPTER 20. UTAH INDEPENDENT REDISTRICTING COMMISSION

Part 1. General Provisions

20A-20-101. Title.

This chapter is known as the "Utah Independent Redistricting Commission."

Section 2. Section **20A-20-102** is enacted to read:

20A-20-102. Definitions.

As used in this chapter:

(1) "Commission" means the Utah Independent Redistricting Commission created in Section 20A-20-201.

(2) "Committee" means the Legislature's redistricting committee.

(3) "Decennial year" means a year during which the United States Bureau of Census conducts a national decennial census.

(4) "Regular decennial redistricting" means redistricting required due to a national decennial census.

(5) "Special redistricting" means redistricting that is not a regular decennial redistricting.

Section 3. Section **20A-20-103** is enacted to read:

20A-20-103. Review by interim committee.

During the 2022 Legislative interim, the Government Operations Interim Committee shall conduct a review of the commission and the commission's role in relation to the redistricting process.

Section 4. Section **20A-20-201** is enacted to read:

Part 2. Commission

20A-20-201. Utah Independent Redistricting Commission -- Creation -- Membership -- Term -- Quorum -- Action -- Meetings -- Staffing -- Website.

(1) (a) There is created the Utah Independent Redistricting Commission.

(b) The commission is housed in the Department of Administrative Services for budgetary purposes only.

(c) The commission is not under the direction or control of the Department of Administrative Services or any executive director, director, or other employee of the Department of Administrative Services or any other government entity.

(2) Except as provided in Subsection (4), the commission comprises seven members appointed as follows:

(a) one member appointed by the governor, which member shall serve as chair of the commission;

(b) one member appointed by the president of the Senate;

(c) one member appointed by the speaker of the House of Representatives;

(d) one member appointed by the legislative leader of the largest minority political party in the Senate;

(e) one member appointed by the legislative leader of the largest minority political party in the House of Representatives;

(f) one member appointed jointly by the president of the Senate and the speaker of the House of Representatives; and

(g) one member appointed jointly by the legislative leader of the largest minority political party in the Senate and the legislative leader of the largest minority political party in the House of Representatives.

(3) An appointing authority described in Subsection (2):

(a) shall make the appointments no later than:

(i) February 1 of the year immediately following a decennial year; or

(ii) if there is a change in the number of congressional, legislative, or other districts resulting from an event other than a national decennial enumeration made by the authority of the United States, the day on which the Legislature appoints a committee to draw maps in relation to the change;

(b) may remove a commission member appointed by the appointing authority, for cause; and

(c) shall, if a vacancy occurs in the position appointed by the appointing authority under Subsection (2), appoint another individual to fill the vacancy within 10 days after the day on which the vacancy occurs.

(4) (a) If the appointing authority described in Subsection (2)(a) fails to timely make the appointment, the legislative leader of the largest political party in the House of Representatives and the Senate, of which the governor is not a member, shall jointly make the appointment.

(b) If the appointing authority described in Subsection (2)(b) fails to timely make the appointment, the appointing authority described in Subsection (2)(d) shall make the appointment.

(c) If the appointing authority described in Subsection (2)(c) fails to timely make the appointment, the appointing authority described in Subsection (2)(e) shall make the appointment.

(d) If the appointing authority described in Subsection (2)(d) fails to timely make the appointment, the appointing authority described in Subsection (2)(b) shall make the appointment.

(e) If the appointing authority described in Subsection (2)(e) fails to timely make the appointment, the appointing authority described in Subsection (2)(c) shall make the appointment.

(f) If the appointing authority described in Subsection (2)(f) fails to timely make the appointment, the appointing authority described in Subsection (2)(g) shall make the appointment.

(g) If the appointing authority described in Subsection (2)(g) fails to timely make the appointment, the appointing authority described in Subsection (2)(f) shall make the appointment.

(5) A member of the commission may not, during the member's service on the

commission:

(a) be a lobbyist or principal, as those terms are defined in Section 36-11-102;

(b) be a candidate for or holder of any elective office, including federal elective office, state elective office, or local government elective office;

(c) be a candidate for or holder of any office of a political party, except for delegates to a political party's convention;

(d) be an employee of, or a paid consultant for, a political party, political party committee, personal campaign committee, or any political action committee affiliated with a political party or controlled by an elected official or candidate for elective office, including any local government office;

(e) serve in public office if the member is appointed to public office by the governor or the Legislature;

(f) be employed by the United States Congress or the Legislature; or

(g) hold any position that reports directly to an elected official, including a local elected official, or to any person appointed by the governor or Legislature to any other public office.

(6) In addition to the qualifications described in Subsection (5), a member of the commission described in Subsection (2)(f) or (g):

(a) may not have, during the two-year period immediately preceding the member's appointment to the commission:

(i) been affiliated with a political party under Section 20A-2-107;

(ii) voted in the regular primary election or municipal primary election of a political party; or

(iii) been a delegate to a political party convention; and

(b) may not, in the sole determination of the appointing authority, be an individual who is affiliated with a partisan organization or cause.

(7) Each commission member shall, upon appointment to the commission, sign and file a statement with the governor certifying that the commission member:

(a) meets the qualifications for appointment to the commission;

(b) will, during the member's service on the commission, comply with the requirements described in Subsection (5);

(c) will comply with the standards, procedures, and requirements described in this chapter that are applicable to a commission member; and

(d) will faithfully discharge the duties of a commission member in an independent, impartial, honest, and transparent manner.

(8) For a regular decennial redistricting, the commission is:

(a) formed and may begin conducting business on February 1 of the year immediately following a decennial year; and

(b) dissolved upon approval of the Legislature's redistricting maps by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

(9) (a) A member of the commission may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(b) A member of the commission may decline to receive per diem or travel expenses.

(10) The commission shall meet upon the request of a majority of the commission members or when the chair calls a meeting.

(11) (a) A majority of the members of the commission constitutes a quorum.

(b) The commission takes official action by a majority vote of a quorum present at a meeting of the commission.

(12) Within appropriations from the Legislature, the commission may, to fulfill the duties of the commission:

(a) contract with or employ an attorney licensed in Utah, an executive director, and

other staff; and

(b) purchase equipment and other resources, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, to fulfill the duties of the commission.

(13) The commission shall maintain a website where the public may:

(a) access announcements and records of commission meetings and hearings;

(b) access maps presented to, or under consideration by, the commission;

(c) access evaluations described in Subsection 20A-20-302(8);

(d) submit a map to the commission; and

(e) submit comments on a map presented to, or under consideration by, the commission.

Section 5. Section **20A-20-202** is enacted to read:

20A-20-202. Software and software services.

The Office of Legislative Research and General Counsel shall, when procuring software, licenses for using the software, and software support services for redistricting by the Legislature, include in the requests for proposals and the resulting contracts that the commission may purchase the same software, licenses for using the software, and software support services, under the contracts at the same cost and under the same terms provided to the Legislature.

Section 6. Section **20A-20-203** is enacted to read:

20A-20-203. Exemptions from and applicability of certain legal requirements -- Risk management -- Code of ethics.

(1) The commission is exempt from:

(a) except as provided in Subsection (3), Title 63A, Utah Administrative Services Code;

(b) Title 63G, Chapter 4, Administrative Procedures Act; and

(c) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) (a) The commission shall adopt budgetary procedures, accounting, and personnel and human resource policies substantially similar to those from which the commission is

exempt under Subsection (1).

(b) The commission is subject to:

(i) Title 52, Chapter 4, Open and Public Meetings Act;

(ii) Title 63A, Chapter 1, Part 2, Utah Public Finance Website;

(iii) Title 63G, Chapter 2, Government Records Access and Management Act;

(iv) Title 63G, Chapter 6a, Utah Procurement Code; and

(v) Title 63J, Chapter 1, Budgetary Procedures Act.

(3) Subject to the requirements of Subsection 63E-1-304(2), the commission may participate in coverage under the Risk Management Fund created by Section 63A-4-201.

(4) (a) The commission may, by majority vote, adopt a code of ethics.

(b) The commission, and the commission's members and employees, shall comply with a code of ethics adopted under Subsection (4)(a).

(c) The executive director of the commission shall report a commission member's violation of a code of ethics adopted under Subsection (4)(a) to the appointing authority of the commission member.

(d) (i) A violation of a code of ethics adopted under Subsection (4)(a) constitutes cause to remove a member from the commission under Subsection 20A-20-201(3)(b).

(ii) An act or omission by a member of the commission need not constitute a violation of a code of ethics adopted under Subsection (4)(a) to be grounds to remove a member of the commission for cause.

Section 7. Section **20A-20-301** is enacted to read:

Part 3. Proceedings

20A-20-301. Public hearings -- Private conversations.

(1) (a) The commission shall, by majority vote, determine the number, locations, and dates of public hearings to be held by the commission, but shall hold no fewer than seven public hearings throughout the state to discuss maps, as follows:

(i) one in the Bear River region, which includes Box Elder, Cache, and Rich counties;

(ii) one in the Southwest region, which includes Beaver, Garfield, Iron, Kane, and

Washington counties;

(iii) one in the Mountain region, which includes Summit, Utah, and Wasatch counties;

(iv) one in the Central region, which includes Juab, Millard, Piute, Sanpete, Sevier, and Wayne counties;

(v) one in the Southeast region, which includes Carbon, Emery, Grand, and San Juan counties;

(vi) one in the Uintah Basin region, which includes Daggett, Duchesne, and Uintah counties; and

(vii) one in the Wasatch Front region, which includes Davis, Morgan, Salt Lake, Tooele, and Weber counties.

(b) The commission shall hold at least two public hearings in a first or second class county but not in the same county.

(c) The committee and the commission may coordinate hearing times and locations to:

(i) avoid holding hearings at, or close to, the same time in the same area of the state; and

(ii) to the extent practical, hold hearings in different cities within the state.

(2) Each public hearing must provide those in attendance a reasonable opportunity to submit written and oral comments to the commission and to propose redistricting maps for the commission's consideration.

(3) The commission shall hold the public hearings described in Subsection (1) no later than August 1 of the year following a decennial year.

(4) (a) A member of the commission may not engage in any private communication with any individual other than other members of the commission or commission staff, including consultants retained by the commission, that is material to any redistricting map or element of a map pending before the commission or intended to be proposed for commission consideration, without making the communication, or a detailed and accurate description of the communication including the names of all parties to the communication and the map or element of the map, available to the commission and to the public.

(b) A member of the commission shall make the disclosure required by Subsection (4)(a) before the redistricting map or element of a map is considered by the commission.

(5) The committee chairs and the chair of the commission shall, no later than two business days after the day on which the Legislature appoints a committee, under Subsection 20A-20-201(3)(a)(ii), for a special redistricting, jointly agree on a schedule for the commission that:

(a) reasonably ensures that the commission may complete the commission's duties in a timely manner, consistent with the time frame applicable to the committee and the Legislature;

(b) establishes deadlines for the following:

(i) holding the public hearings described in Subsection (1);

(ii) preparing and recommending maps under Subsection 20A-20-302(2);

(iii) submitting the maps and written report described in Subsection 20A-20-303(1); and

(iv) holding the public meeting described in Subsection 20A-20-303(2); and

(c) provides that the commission dissolves upon approval of the Legislature's redistricting maps by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section 8. Section **20A-20-302** is enacted to read:

20A-20-302. Selection of recommended maps -- Map requirements and standards.

(1) As used in this section:

(a) "Map type" means one of four map types, as follows:

(i) a map of all Utah congressional districts;

(ii) a map of all state Senate districts;

(iii) a map of all state House of Representatives districts; and

(iv) a map of all State School Board districts.

(b) "Total population deviation" means a percentage determined as follows:

(i) calculating the ideal district population by dividing the total population by the

number of districts;

(ii) calculating the percentage difference between the population of the district with the greatest population and the ideal district population;

(iii) calculating the percentage difference between the population of the district with the lowest population and the ideal district population; and

(iv) combining the percentage differences described in Subsections (1)(b)(ii) and (iii).

(2) The commission shall, no later than 20 days after the day of the final public hearing described in Subsection 20A-20-301(1), prepare and recommend three different maps for each map type, as follows:

(a) three different maps for congressional districts, with the number of congressional districts apportioned to Utah;

(b) three different maps for state Senate districts, with 29 Senate districts;

(c) three different maps for state House of Representatives districts, with 75 House of Representative districts; and

(d) three different maps for State School Board districts, with 15 State School Board districts.

(3) (a) To the extent possible, each map recommended by the commission shall be approved by at least five members of the commission.

(b) If the commission is unable to obtain the approval of at least five members for all maps required under Subsection (2) for a particular map type, the commission shall, for that map type:

(i) if possible, recommend one map that is approved by at least five members of the commission; and

(ii) recommend two additional maps that are approved by a majority of commission members, as follows:

(A) one of the maps shall be approved by a majority that includes the commission member described in Subsection 20A-20-201(2)(f); and

(B) one of the maps shall be approved by a majority that includes the commission

member described in Subsection 20A-20-201(2)(g).

(4) The commission shall ensure that:

(a) each map recommended by the commission:

(i) is drawn using the official population enumeration of the most recent decennial census;

(ii) for congressional districts, has a total population deviation that does not exceed 1%;

(iii) for Senate, House of Representatives, and State School Board districts, has a total population deviation of less than 10%;

(iv) does not use race as a predominant factor in drawing district lines; and

(v) complies with the United States Constitution and all applicable federal laws, including Section 2 of the Voting Rights Act; and

(b) each district in each map is:

(i) drawn based on total population;

(ii) a single member district; and

(iii) contiguous and reasonably compact.

(5) The commission shall define and adopt redistricting standards for use by the commission that require that maps adopted by the commission, to the extent practicable, comply with the following, as defined by the commission:

(a) preserving communities of interest;

(b) following natural, geographic, or man-made features, boundaries, or barriers;

(c) preserving cores of prior districts;

(d) minimizing the division of municipalities and counties across multiple districts;

(e) achieving boundary agreement among different types of districts; and

(f) prohibiting the purposeful or undue favoring or disfavoring of:

(i) an incumbent elected official;

(ii) a candidate or prospective candidate for elected office; or

(iii) a political party.

(6) The commission may adopt a standard that prohibits the commission from using any of the following, except for the purpose of conducting an assessment described in Subsection (8):

(a) partisan political data;

(b) political party affiliation information;

(c) voting records;

(d) partisan election results; or

(e) residential addresses of incumbents, candidates, or prospective candidates.

(7) The commission may adopt redistricting standards for use by the commission that require a smaller total population deviation than the total population deviation described in Subsection (4)(a)(iii) if the committee or the Legislature adopts a smaller total population deviation than 10% for Senate, House of Representatives, or State School Board districts.

(8) (a) Three members of the commission may, by affirmative vote, require that commission staff evaluate any map drawn by, or presented to, the commission as a possible map for recommendation by the commission to determine whether the map complies with the redistricting standards adopted by the commission.

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

Section 9. Section **20A-20-303** is enacted to read:

20A-20-303. Submission of maps to Legislature -- Consideration by Legislature.

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

(2) The commission shall submit the maps recommended under Section 20A-20-302 to

the committee in a public meeting of the committee as described in this section.

(3) The committee shall:

(a) hold the public meeting described in Subsection (2):

(i) for the sole purpose of considering each map recommended under Section 20A-20-302; and

(ii) for a year immediately following a decennial year, on or before September 15; and

(b) at the public meeting described in Subsection (2), provide reasonable time for:

(i) the commission to present and explain the maps described in Subsection (1);

(ii) the public to comment on the maps; and

(iii) the committee to discuss the maps.

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

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

Section 10. Section **63G-7-201** is amended to read:

63G-7-201. Immunity of governmental entities and employees from suit.

(1) Except as otherwise provided in this chapter, each governmental entity and each employee of a governmental entity are immune from suit for any injury that results from the exercise of a governmental function.

(2) Notwithstanding the waiver of immunity provisions of Section 63G-7-301, a governmental entity, its officers, and its employees are immune from suit for any injury or damage resulting from the implementation of or the failure to implement measures to:

(a) control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;

(b) investigate and control suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act;

(c) respond to a national, state, or local emergency, a public health emergency as

defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health related activities, including the use, provision, operation, and management of:

(i) an emergency shelter;

(ii) housing;

(iii) a staging place; or

(iv) a medical facility; and

(d) adopt methods or measures, in accordance with Section 26-1-30, for health care providers, public health entities, and health care insurers to coordinate among themselves to verify the identity of the individuals they serve.

(3) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury if the injury arises out of or in connection with, or results from:

(a) a latent dangerous or latent defective condition of:

(i) any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or viaduct; or

(ii) another structure located on any of the items listed in Subsection (3)(a)(i); or

(b) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement.

(4) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment, if the injury arises out of or in connection with, or results from:

(a) the exercise or performance, or the failure to exercise or perform, a discretionary function, whether or not the discretion is abused;

(b) except as provided in Subsections 63G-7-301(2)[~~(k)~~](j), (3), and (4), assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or

violation of civil rights;

(c) the issuance, denial, suspension, or revocation of, or the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization;

(d) a failure to make an inspection or making an inadequate or negligent inspection;

(e) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;

(f) a misrepresentation by an employee whether or not the misrepresentation is negligent or intentional;

(g) a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;

(h) the collection or assessment of taxes;

(i) an activity of the Utah National Guard;

(j) the incarceration of a person in a state prison, county or city jail, or other place of legal confinement;

(k) a natural condition on publicly owned or controlled land;

(l) a condition existing in connection with an abandoned mine or mining operation;

(m) an activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire, and State Lands;

(n) the operation or existence of a pedestrian or equestrian trail that is along a ditch, canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river, if:

(i) the trail is designated under a general plan adopted by a municipality under Section 10-9a-401 or by a county under Section 17-27a-401;

(ii) the trail right-of-way or the right-of-way where the trail is located is open to public use as evidenced by a written agreement between:

(A) the owner or operator of the trail right-of-way or of the right-of-way where the trail is located; and

(B) the municipality or county where the trail is located; and

(iii) the written agreement:

(A) contains a plan for operation and maintenance of the trail; and

(B) provides that an owner or operator of the trail right-of-way or of the right-of-way where the trail is located has, at a minimum, the same level of immunity from suit as the governmental entity in connection with or resulting from the use of the trail;

(o) research or implementation of cloud management or seeding for the clearing of fog;

(p) the management of flood waters, earthquakes, or natural disasters;

(q) the construction, repair, or operation of flood or storm systems;

(r) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6a-212;

(s) the activity of:

(i) providing emergency medical assistance;

(ii) fighting fire;

(iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;

(iv) an emergency evacuation;

(v) transporting or removing an injured person to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service; or

(vi) intervening during a dam emergency;

(t) the exercise or performance, or the failure to exercise or perform, any function pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;

(u) an unauthorized access to government records, data, or electronic information systems by any person or entity; or

(v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a public or private road.

Section 11. Section **63G-7-301** is amended to read:

63G-7-301. Waivers of immunity.

(1) (a) Immunity from suit of each governmental entity is waived as to any contractual

obligation.

(b) Actions arising out of contractual rights or obligations are not subject to the requirements of [~~Sections~~] Section 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

(c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.

(2) Immunity from suit of each governmental entity is waived:

(a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;

(b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;

(c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;

(d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of Utah Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;

(e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney fees under Sections 63G-2-405 and 63G-2-802;

(f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act;

(g) as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious

Land Use Act;

(h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

(i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

(ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement;

(i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment; and

[~~(j) as to any action or suit brought under Section 20A-19-301 and as to any compensation or expenses awarded under Section 20A-19-301(5); and~~]

[~~(k)~~] (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from a sexual battery, as provided in Section 76-9-702.1, committed:

(i) against a student of a public elementary or secondary school, including a charter school; and

(ii) by an employee of a public elementary or secondary school or charter school who:

(A) at the time of the sexual battery, held a position of special trust, as defined in Section 76-5-404.1, with respect to the student;

(B) is criminally charged in connection with the sexual battery; and

(C) the public elementary or secondary school or charter school knew or in the exercise of reasonable care should have known, at the time of the employee's hiring, to be a sex offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a background check under Section 53G-11-402.

(3) (a) As used in this Subsection (3):

(i) "Appropriate behavior policy" means a policy that:

(A) is not less stringent than a model policy, created by the State Board of Education, establishing a professional standard of care for preventing the conduct described in Subsection

(3)(a)(i)(D);

(B) is adopted by the applicable local education governing body;

(C) regulates behavior of a school employee toward a student; and

(D) includes a prohibition against any sexual conduct between an employee and a student and against the employee and student sharing any sexually explicit or lewd communication, image, or photograph.

(ii) "Local education agency" means:

(A) a school district;

(B) a charter school; or

(C) the Utah Schools for the Deaf and the Blind.

(iii) "Local education governing board" means:

(A) for a school district, the local school board;

(B) for a charter school, the charter school governing board; or

(C) for the Utah Schools for the Deaf and the Blind, the state board.

(iv) "Public school" means a public elementary or secondary school.

(v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

(vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering the term "child" in that section to include an individual under age 18.

(b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim against a local education agency for an injury resulting from a sexual battery or sexual abuse committed against a student of a public school by a paid employee of the public school who is criminally charged in connection with the sexual battery or sexual abuse, unless:

(i) at the time of the sexual battery or sexual abuse, the public school was subject to an appropriate behavior policy; and

(ii) before the sexual battery or sexual abuse occurred, the public school had:

(A) provided training on the policy to the employee; and

(B) required the employee to sign a statement acknowledging that the employee has read and understands the policy.

(4) (a) As used in this Subsection (4):

(i) "Higher education institution" means an institution included within the state system of higher education under Section 53B-1-102.

(ii) "Policy governing behavior" means a policy adopted by a higher education institution or the State Board of Regents that:

(A) establishes a professional standard of care for preventing the conduct described in Subsections (4)(a)(ii)(C) and (D);

(B) regulates behavior of a special trust employee toward a subordinate student;

(C) includes a prohibition against any sexual conduct between a special trust employee and a subordinate student; and

(D) includes a prohibition against a special trust employee and subordinate student sharing any sexually explicit or lewd communication, image, or photograph.

(iii) "Sexual battery" means the offense described in Section 76-9-702.1.

(iv) "Special trust employee" means an employee of a higher education institution who is in a position of special trust, as defined in Section 76-5-404.1, with a higher education student.

(v) "Subordinate student" means a student:

(A) of a higher education institution; and

(B) whose educational opportunities could be adversely impacted by a special trust employee.

(b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim for an injury resulting from a sexual battery committed against a subordinate student by a special trust employee, unless:

(i) the institution proves that the special trust employee's behavior that otherwise would constitute a sexual battery was:

(A) with a subordinate student who was at least 18 years old at the time of the behavior; and

(B) with the student's consent; or

(ii) (A) at the time of the sexual battery, the higher education institution was subject to a policy governing behavior; and

(B) before the sexual battery occurred, the higher education institution had taken steps to implement and enforce the policy governing behavior.

Section 12. **Repealer.**

This bill repeals:

Section **20A-19-101, Title.**

Section **20A-19-102, Permitted Times and Circumstances for Redistricting.**

Section **20A-19-103, Redistricting Standards and Requirements.**

Section **20A-19-104, Severability.**

Section **20A-19-201, Utah Independent Redistricting Commission -- Selection of Commissioners -- Qualifications -- Term -- Vacancy -- Compensation -- Commission Resources.**

Section **20A-19-202, Commission Code of Conduct -- Quorum -- Action by the Commission -- Assessment of Proposed Redistricting Plans -- Open and Public Meetings -- Public Hearings -- Ex Parte Communications.**

Section **20A-19-203, Selection of Recommended Redistricting Plan.**

Section **20A-19-204, Submission of Commission's Recommended Redistricting Plans to the Legislature -- Consideration of Redistricting Plans by the Legislature -- Report Required if Legislature Enacts Other Plan.**

Section **20A-19-301, Right of Action and Injunctive Relief.**

Section 13. **Appropriation.**

The following sums of money are appropriated for the fiscal year beginning July 1, 2020, and ending June 30, 2021. These are additions to amounts previously appropriated for fiscal year 2021. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To Department of Administrative Services -- Finance-Mandated

From Legislature -- Office of Legislative Research and

General Counsel, One-time $1,000,000

Schedule of Programs:

Redistricting Commission $1,000,000

The Legislature intends that:

(1) appropriations provided under this section be used for the Utah Independent Redistricting Commission, for the purposes of, and in accordance with, Title 20A, Chapter 20, Utah Independent Redistricting Commission; and

(2) under Section 63J-1-603, appropriations provided under this item not lapse at the close of fiscal year 2021 and the use of any nonlapsing funds is limited to the purposes described in Subsection (1) of this provision of legislative intent.

Section 14. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Addendum L

Memorial of Constitutional Convention of Utah (1887)

50TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { MIS. DOC. No. 104.

MEMORIAL

OF THE

CONSTITUTIONAL CONVENTION OF UTAH.

JANUARY 12, 1888.—Referred to the Committee on Territories and ordered to be printed.

To the President and the Senate and House of Representatives of the United States of America in Congress assembled:

GENTLEMEN: For the fifth time the people of Utah present to your honorable body a constitution providing for a republican form of government, and respectfully ask admission into the Union as a free and sovereign State.

Your memorialists are delegates in a constitutional convention, chosen by the people of this Territory in mass meetings, to which all citizens of every party were publicly invited. The constitution presented herewith was framed by your memorialists with a desire to effect a political settlement of the questions which have heretofore interposed, as the sole objections, when Utah has applied for the rights and privileges of statehood.

Under recent acts of Congress no person practicing polygamy can vote or hold office in this Territory. Your memorialists are registered voters, and the constitution which they adopted on 7th day of July, 1887, was ratified at the general election, August 1, 1887, by a popular legal vote of 13,195, only 502 voting against it. The total number of votes cast at the same election for precinct and county officers and members of the legislative assembly was 16,640. This shows a balance of 2,943 who refrained from voting on this question; the voters of the minority party having been so directed, openly, by their political leaders, who do not favor any movement for the removal of those disabilities which are common to the Territorial system, unless likely to be specially favorable to them.

The number of the voting population has been considerably reduced by the operations of Congressional statutes. The act of March 22, 1882, disfranchised all polygamists. The act of March 3, 1887, excluded all women from the polls. The test oath prescribed by the same law was so distasteful to many persons of all classes who were otherwise qualified that they abstained from registration. And, as only registered voters could cast their ballots at the general election, for or against the constitution framed by your memorialists, the total vote in its favor was, under the circumstances, remarkably large.

The people who have adopted and ratified this constitution are law-abiding citizens of the United States. They have not violated any law of Congress. The special provisions they have framed in reference to practices condemned by the popular voice were made in good faith, and

so worded that they are practically unrepealable. In these Congress has not imposed unusual requirements upon a new State, but the people have placed these restrictions upon themselves in order to meet prevailing objections and secure political harmony with the existing States. In doing this they consider they have but exercised a reserved and constitutional right. If Utah shall be admitted into the Union, these provisions will be strictly and fairly enforced.

Your memorialists have no hesitation in stating that almost the entire population of Utah are desirous of becoming fully identified as a State with the institutions of this great Republic and taking part in national affairs as loyal and peaceable citizens. They have demonstrated their fitness for the duties, responsibilities, and privileges of statehood. They are thrifty, temperate, industrious, intelligent, and progressive. They form a vigorous, stable, and permanent community, out of debt and ready to move forward in step with existing States.

The Territory has a population of not less than 200,000. Her wealth, exclusive of mines, which are untaxed and represent unknown millions, aggregates not less than $150,000,000. Her resources, products, interests, and prospects are conceded by all to be amply sufficient to sustain a State government, and have so frequently been presented to Congress and the nation, with statistics, that we deem it unnecessary to detail them in this memorial. The soil, irrigated by mountain streams diverted through canals and ditches over large areas once a desert, brings forth grain and fruit in rich abundance. Cattle and sheep roam upon a thousand hills and supply both home and foreign markets. Her woolen and other manufactories have become famous for their honest and useful products. Factories and workshops supply labor to skilled and common artisans, who are content with reasonable wages and among whom strikes and troubles with capital have hitherto been unknown. The necessities and many of the luxuries of life are abundant and cheap. Minerals of all kinds abound within her borders, and the mining output aggregates from $7,000,000 to $10,000,000 annually. Apart from the precious metals there are valuable deposits so varied in character and immense in quantity as to afford in themselves material for untold wealth. These await but the touch of the capital that a settled condition will draw to Utah, to be brought forth for the benefit of her people and the enrichment of the nation. The great railroads which already have their termini in or near her capital city, with others in process of construction, place her people in easy communication with the rest of the country and facilitate commercial relations. The telegraph, the telephone, the electric light, and other modern improvements are utilized extensively by her citizens. Her business status and reputation in the great centers of trade are unimpeachable. Her taxes are phenomenally low, and her internal affairs have been honestly and economically conducted. Her school system, with the best text-books used in the foremost schools of the country, provide strictly secular education for the children in every city and settlement. Her school statistics bear very favorable comparison with even the older States. Nothing now stands in the way of her march to that proud position to which everything just and natural points as her destiny but those political disabilities which only statehood can remove.

We appeal to your honorable body to regard the wishes of a people who earnestly desire to aid in promoting the welfare and glory of the Union, and who, from the day their pioneers first unfurled the stars and stripes, on this then Mexican soil, have looked forward to the time when they should enter the Union as a State, as guarantied to them

in common with other residents on the territory acquired by the treaty of Guadalupe Hidalgo.

We ask that the constitution of the new proposed State of Utah shall receive the close and impartial attention of your honorable body. It guaranties "a republican form of government." It provides for equal rights and privileges before the law to citizens of all parties, creeds, and conditions. It is broad and liberal and contains the best provisions to be found in other State constitutions. It meets the demands that have been made upon the majority of the people of Utah when they have previously asked admission into the Union. What more can be required of any people?

The admission of Utah will relieve the Government of a question that has troubled it for a quarter of a century, and remove it from national to local regulation, where it properly belongs. It will add one more star to the national galaxy, increase the strength of the Union, save the country many thousands of dollars annually, and bind to the interests of the nation a body of honest, patriotic, and grateful people, who will be found, when the mists of misrepresentation and prejudice are cleared away, to be a community of which any government might be proud.

We ask for "a republican form of government," and we ask that it be given us now. For nearly forty years Utah has been pleading for statehood. Shall a deaf ear be still turned to her entreaties? We hope for better things. In behalf of the great majority of the voters who represent the vast majority of the people of Utah, we submit that having broken no law we should not be deprived of our liberties on account of objections raised against others. We ask for justice and a fair consideration of our cause, with the solemn pledge that Utah as a State will be faithfully devoted to true republican principles, and to the interests and welfare of the Government of the United States; and your memorialists will ever pray.

Adopted in convention at Salt Lake City, Utah Territory, on the 8th day of October, A. D. 1887, by unanimous vote, and ordered to be signed by the president and secretary.

JOHN T. CAINE,
President.
HEBER M. WELLS,
Secretary.

CONSTITUTION OF THE STATE OF UTAH.

PREAMBLE.

We, the people of Utah, grateful to Almighty God for our freedom, in order to secure its blessings, insure domestic tranquillity, and form a more perfect government, do establish this

CONSTITUTION.

ARTICLE I.—*Bill of Rights.*

SECTION 1. All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.

SEC. 2. All free governments are founded on the authority of the people, and instituted for their equal protection and benefit.

SEC. 3. There shall be no union of church and State, nor shall any church dominate the State.

SEC. 4. The right to worship God, according to the dictates of conscience, shall never be infringed, nor shall the State make any law respecting an establishment of religion or prohibiting the free exercise thereof; nor shall any control of, or interference with the rights of conscience be permitted. No religious test or property qualification shall be required for any office or public trust, nor for any vote at any election, nor shall any person be incompetent to testify on account of religious belief, or the absence thereof.

SEC. 5. The right of trial by jury shall remain forever inviolate; but the legislature may provide that in civil actions five-sixths of a jury may render a verdict; and that in inferior courts a number less than twelve may constitute a jury.

SEC. 6. The privilege of the writ of habeas corpus shall not be suspended, unless, when in cases of rebellion or invasion, the public safety may require its suspension.

SEC. 7. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted; nor shall witnesses be unreasonably detained, nor confined in any room where criminals are actually imprisoned.

SEC. 8. All persons shall be bailable by sufficient sureties; unless for capital offenses, when the proof is evident or the presumption great.

SEC. 9. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land and naval forces, or in the militia when in actual service in time of war or public danger, nor shall any person for the same offense be twice put in jeopardy; nor be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken or damaged for public use without just compensation.

SEC. 10. In all criminal prosecutions the accused shall have the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

SEC. 11. The State shall pass no law abridging the freedom of speech or of the press, or the right of the people peaceably to assemble, and petition the Government for the redress of grievances.

SEC. 12. The military shall be subordinate to the civil power.

SEC. 13. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law, and no standing army shall be maintained by this State in time of peace.

SEC. 14. Representation shall be apportioned according to population.

SEC. 15. There shall be no imprisonment for debt, except in cases of fraud.

SEC. 16. No bill of attainder, *ex post facto* law, or law impairing the obligation of contracts shall be passed.

SEC. 17. All laws of a general nature shall have a uniform operation.

SEC. 18. Foreigners who are, or who may hereafter become, bona fide residents of this State, shall have the same rights in respect to the possession, enjoyment, transmission, and inheritance of property as native-born citizens.

SEC. 19. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons or things to be seized.

SEC. 20. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. And no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

SEC. 21. The right of citizens to keep and bear arms for common defense shall not be questioned.

SEC. 22. The blessings of free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

SEC. 23. This emuneration of rights shall not be construed to impair or deny others retained by the people.

ARTICLE II.—*Right of Suffrage.*

SECTION 1. Every male citizen of the United States, not laboring under the disabilities named in this constitution, of the age of twenty-one years and over, who shall have resided in the State six months, and in the county and voting precinct thirty days, next preceding any election, shall be entitled to vote for all officers that now are or hereafter may be elected by the people, and upon all questions submitted to the electors at such election: *Provided*, That no person who has been or may be convicted of treason or felony,

in any State or Territory of the United States, or in any district over which the United States has jurisdiction, unless restored to civil rights, shall be entitled to the privileges of an elector.

SEC. 2. During the day on which any general election shall be held, no elector shall be obliged to perform military duty, except in time of war or public danger.

SEC. 3. All elections by the people shall be by secret ballot.

SEC. 4. Provisions shall be made by law for the registration of the names of the electors within the counties and voting precincts of which they may be residents, and for the ascertainment, by proper proofs, of the persons who shall be entitled to the right of suffrage.

ARTICLE III.—*Distribution of Powers.*

SECTION 1. The powers of the government of the State of Utah shall be divided into three separate departments: the legislative, the executive, and the judicial; and neither of said departments shall exercise any functions appertaining to either of the others except in the cases herein expressly directed or permitted.

ARTICLE IV.—*Legislative Department.*

SECTION 1. The legislative authority of this State shall be vested in a legislature, which shall consist of a senate and house of representatives, and the sessions thereof shall be held at the seat of government.

SEC. 2. The sessions of the legislature shall be biennial, and, except at the first session thereof, shall commence on the second Monday in January next ensuing the election of members of the house of representatives unless the governor shall convene the legislature by proclamation.

SEC. 3. The members of the house of representatives shall, except at the first election, be chosen biennially, by the qualified electors of their respective districts, at the general election, and their term of office shall be two years from and including the first Monday in December next succeeding their election.

SEC. 4. The senators shall be chosen by the qualified electors of their respective districts, at the same time and places as the members of the house of representatives, and their term of office shall be four years from and including the first Monday in December next succeeding their election, except as otherwise provided in section 10 of Article XVII of this constitution.

SEC. 5. The first legislature shall consist of twelve senators and twenty-four representatives; the number of senators and representatives may be increased, but the senators shall never exceed thirty in number, and the number of representatives shall never be less than twice that of the senators. The apportionment and increase of the members of both houses shall be as prescribed by law.

SEC. 6. No person shall be a senator who shall not have attained the age of twenty-five years, nor shall any person be a senator or representative who shall not be a citizen of the United States, and who, except at the first election, shall not have been two years a resident of this State and for six months next preceding his election a resident of the district in which he is elected. No person holding any State office, except officers of the State militia, commissioners of deeds, and notaries public, and no executive or judicial officer shall have a seat in the legislature.

SEC. 7. The members of the legislature shall, before entering upon their official duties, take an oath or affirmation to support the Constitution of the United States and of this State, and faithfully to discharge the duties of their respective offices.

SEC. 8. Each house shall judge of the qualifications, elections, and returns of its own members, may punish them for disorderly conduct, and with the concurrence of two-thirds of its whole number, expel a member.

SEC. 9. No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which shall have been increased during such term, except such office as may be filled by election by the people.

SEC. 10. Members of the legislature, in all cases except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the legislature, and for fifteen days next before the commencement and after the termination thereof; and for any speech or debate in either house they shall not be questioned in any other place.

SEC. 11. When a vacancy occurs in either house, the governor shall order an election to fill such vacancy.

SEC. 12. A majority of all the members elected to each house shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may prescribe.

SEC. 13. Each house shall establish its own rules, keep a journal of its own proceedings, and publish them, except such parts as require secresy, and the yeas and nays of the members of either house, on any question shall, at the desire of any three members present, be entered on the journal.

SEC. 14. The door of each house shall be kept open during its session, except the senate while sitting in executive session; and neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which it may be holding session.

SEC. 15. The enacting clause of every law shall be as follows: "Be it enacted by the legislature of the State of Utah."

SEC. 16. Any bill or joint resolution may originate in either house of the legislature, and shall be read three times in each house before the final passage thereof, and shall not become a law without the concurrence of a majority of all the members elected to each house. On the final passage of all bills the vote shall be by yeas and nays, which shall be entered on the journal.

SEC. 17. No law shall be revised or amended by reference to its title only, but the act as revised, or section as amended, shall be enacted and published at length.

SEC. 18. All bills or joint resolutions passed by the legislature shall be signed by the presiding officers of the respective houses.

SEC. 19. The legislature shall not grant any special privilege or bill of divorce, nor authorize any lottery, gift enterprise, or game of chance.

SEC. 20. No money shall be drawn from the treasury except as appropriated by law.

SEC. 21. Provision shall be made by law for bringing suit against the State.

SEC. 22. The first regular session of the legislature may extend to one hundred and twenty days, but no subsequent regular session shall exceed sixty days, nor shall any session convened by the governor exceed twenty days.

SEC. 23. The members and officers of the legislature shall receive for their services a compensation to be fixed by law, and no increase of such compensation shall take effect during the term for which the members and officers of either house shall have been elected.

SEC. 24. Every bill passed by the legislature shall be presented to the governor. If he approve it, he shall sign it, whereupon it shall become a law; but if not, he shall return it, with his objections, to the house in which it originated, which house shall cause such objections to be entered upon its journal, and proceed to reconsider it. If, after such reconsideration, it again pass both houses, by a vote of two-thirds of the members elected to each house, it shall become a law, notwithstanding the governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him, Sundays excepted, exclusive of the day on which he received it, the same shall be law in like manner as if he had signed it, unless the legislature, by its final adjournment, prevent such return, in which case it shall not become a law unless the governor, within ten days after the adjournment, shall file such bill, with his approval thereof, in the office of the secretary of state: *Provided*, That every general appropriation bill shall be presented to the governor at least five days before the day of final adjournment, and in case he vetoes the same, in whole or in part, he shall return it, with his objections to the whole or to the separate items of which he may disapprove, not less than two days before said final adjournment, whereupon each house shall proceed to consider his objections to the whole or to the separate items of which he may disapprove, and any item not receiving the necessary two-thirds vote shall not become law.

ARTICLE V.—*Executive department.*

SEC. 1. The supreme executive power of this State shall be vested in a governor.

SEC. 2. The governor shall be elected by the qualified electors at the time and places of voting for the members of the legislature, and shall hold his office for the term of two years from and including the first Monday in December next succeeding his election, and until his successor shall be qualified.

SEC. 3. No person shall be eligible to the office of governor who is not a qualified elector, and who, at the time of such election, has not attained the age of twenty-five years, and who, except at the first election under this constitution, shall not have been a citizen resident of this State for two years next preceding the election.

SEC. 4. The governor shall be commander-in-chief of the military forces of this State, and may call out the same to execute the laws, suppress insurrection, and repel invasion, and when the governor shall, with the consent of the legislature, be out of the State in time of war, and at the head of any military force thereof, he shall continue commander-in-chief of the military forces of the State.

SEC. 5. He shall transact all executive business for and in behalf of the State, and may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices.

SEC. 6. When any office shall from any cause become vacant, and no mode is prescribed by the constitution or laws for filling such vacancy, the governor shall have power to fill such vacancy by appointment, which vacancy shall expire when such vacancy shall be filled by due course of law.

SEC. 7. He shall see that the laws are faithfully executed.

SEC. 8. The governor may, on extraordinary occasions, convene the legislature by proclamation, and shall state to both houses when organized the purpose for which they have been convened.

SEC. 9. He shall communicate by message to the legislature, at every regular session, the condition of the State, and recommend such measures as he may deem expedient.

SEC. 10. The governor shall have power to grant reprieves, commutations, and pardons, after conviction, of all offenses except impeachment, subject to such restrictions and regulations as are named in this constitution or as may be provided by law.

SEC. 11. A lieutenant-governor shall be elected at the same time and places and in the same manner as the governor, and his term of office and his eligibility shall also be the same. He shall be the president of the senate, but shall only have a casting vote therein. In case of impeachment of the governor, or his removal from office, death, inability to discharge the duties of said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease; and in case of the disability of both the governor and lieutenant-governor, the powers and duties of the executive shall devolve upon the secretary of state until such disability shall cease or the vacancy be filled.

SEC. 12. A secretary of state, a treasurer, an auditor, a surveyor-general, and an attorney-general shall be elected at the same time and places and in the same manner as the governor; the term of office of each shall be the same as is prescribed for the governor. Any elector who, except at the first election, shall have resided in this State two years next preceding such election shall be eligible to any of said offices, except the secretary of state, whose qualifications shall be the same as those of the governor.

SEC 13. There shall be a seal of the State, kept by the secretary of state, which shall be called the "Great Seal of the State of Utah."

SEC. 14. All grants and commissions shall be in the name and by the authority of the State of Utah, and shall be signed by the governor, and countersigned by the secretary of state, who shall affix the great seal of the State thereto.

SEC. 15. The secretary of state shall be the custodian of the official acts of the legislature, and shall keep a true record of the proceedings of the executive department of the government, and shall, when required, lay the same and all other matters relative thereto before either branch of the legislature.

SEC. 16. The secretary of state, treasurer, auditor, surveyor-general, and attorney-general shall perform such other duties as may be prescribed by law.

SEC. 17. The governor shall not, during the term for which he is elected and qualified, be elected to the senate of the United States.

ARTICLE VI.—*Judicial department.*

SECTION 1. The judicial power of this State shall be vested in a supreme court, circuit courts, and such inferior courts as shall be established, and whose jurisdiction shall be determined by law.

SEC. 2. The supreme court shall consist of a chief-justice and two associate justices, a majority of whom shall constitute a quorum.

SEC. 3. The justices of the supreme court shall be elected by the qualified electors of the State at the general election, and except as otherwise provided in section 12 of Article XVII of this constitution, shall hold office for the term of six years from and including the first Monday in December next succeeding their election, and until their successors are qualified; the senior justice in commission shall be chief-justice, and in case the commissions of any two or more of said justices shall bear the same date, they shall determine by lot who shall be chief-justice.

SEC. 4. The supreme court shall have appellate jurisdiction in all cases arising under the laws of the State, including special proceedings. The court shall have original jurisdiction to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the supreme court, or before any circuit court in the State, or before any judge of said courts.

SEC. 5. The State shall be divided into a convenient number of judicial circuits, in each of which shall be elected, by the electors thereof, at the general election, one judge, who shall be the judge of the circuit court therein, and whose term of office shall

be four years from and including the first Monday in December next succeeding his election and until his successor shall be qualified. Until otherwise provided by law, there shall be four circuits, as follows: The counties of Weber, Box Elder, Cache, Rich, and Morgan shall constitute the first circuit; the counties of Salt Lake, Summit, Davis, and Tooele shall constitute the second circuit; the counties of Utah, Juab, Emery, San Pete, Sevier, Millard, Wasatch, and Uintah shall constitute the third circuit; and the counties of Beaver, Iron, Washington, Kane, Garfield, San Juan, and Piute shall constitute the fourth circuit.

SEC. 6. The circuit courts shall have both chancery and common-law jurisdiction; and such other jurisdiction, both original and appellate, as may be prescribed by law: *Provided*, That nothing herein shall be so construed as to prevent the legislature from conferring limited common-law or chancery jurisdiction upon inferior courts.

SEC. 7. The judges of the circuit courts may hold court for each other, and shall do so when required by law.

SEC. 8. The judges of the supreme and circuit courts shall be ineligible to election to any other than a judicial office, or to hold more than one office at the same time.

SEC. 9. No person shall be eligible to the office of supreme or circuit judge who is not a male citizen of the United States, and has not attained the age of twenty-five years, and who, except at the first election, has not been a resident of this State at least two years next preceding his election. But nothing in this section shall be construed to prevent the legislature from prescribing additional qualifications.

SEC. 10. The judges of the supreme and circuit courts shall each receive for his services a salary to be fixed by law, which shall not be diminished for the term for which he shall have been elected.

SEC. 11. The legislature shall determine by law the places in each circuit at which the circuit courts shall be held, and fix the terms thereof.

SEC. 12. The supreme court shall always be open for business, except in case of adjournment, which in no case shall exceed thirty days. Its sessions shall be held at the seat of government.

SEC. 13. The style of all process shall be "The State of Utah," and all prosecutions shall be conducted in the name and by the authority of the same.

ARTICLE VII.—*Impeachment.*

SEC. 1. The house of representatives shall have the sole power of impeachment, and all impeachments shall be tried by the senate. When sitting as a court of impeachment the senators shall be upon oath or affirmation to do justice according to law and evidence, and no person shall be convicted without the concurrence of two-thirds of all the senators.

SEC. 2. The governor, judges of the supreme and circuit courts, and other State officers shall be liable to impeachment. When the governor or lieutenant-governor is tried the chief justice of the supreme court shall preside, and in all cases judgment shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under this State, but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment according to law.

SEC. 3. When an impeachment is directed the house of representatives shall elect from their own body three members, whose duty it shall be to prosecute such impeachment. No impeachment shall be tried until the final adjournment of the legislature, when the senate shall proceed to try the same.

SEC. 4. In all impeachment trials the accused shall have the right to appear, and in person, and by counsel, to demand the nature and cause of the accusation, and to have a copy thereof; to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf.

SEC. 5. Any State officer shall be liable to impeachment for corrupt conduct in office, for immoral conduct, for habitual drunkenness, or for any act which, by the laws of the State, may be made a felony.

SEC. 6. The legislature shall determine by law the cause, and provide for the removal, of any officer whose removal is not herein provided for.

ARTICLE VIII.—*Municipal and other Corporations.*

SEC. 1. The legislature shall pass no special act conferring corporate powers.

SEC. 2. The legislature shall by general laws provide for the orginization of cities, towns, and villages, and restrict their powers of taxation and assessment.

SEC. 3. The legislature shall provide, by general laws, for the organization of private corporations.

ARTICLE IX.—*Finance and State debt.*

SEC. 1. The legislature shall provide by law for an annual tax, sufficient to defray the expenses of the State.

SEC. 2. The State shall not assume or guarantee the debts of, nor loan money or its credit to, or in aid of, any county, city, town, village, school district, private corporation, or any individual, nor be interested in the stock of any company, association, or corporation.

SEC. 3. The State debt shall not at any time exceed 3 per centum of the taxable property of the State, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness.

SEC. 4. No subdivision of the State shall be allowed to become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding the following percentages of the taxable property therein; to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness, viz: School districts, 2 per centum; counties, 2 per centum; cities, 5 per centum: *Provided,* That cities of 5,000 inhabitants and upwards (to be ascertained by the preceding census) may for the purpose of furnishing water increase their indebtedness to an additional amount of not exceeding 5 per centum of the taxable property, as aforesaid, upon a two-thirds vote of the qualified voters at an election called for that purpose. Any city, county, or school district incurring any indebtedness as aforesaid shall before, or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty-five years from the time of contracting the same.

ARTICLE X.—*Taxation.*

SECTION 1. The legislature shall by law provide for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory: *Provided,* That mines and mining claims bearing gold, silver, and other precious metals, except the surface improvements thereof, shall be exempt from taxation for a period of ten years from the date of the adoption of this constitution, and thereafter may be taxed as provided by law.

SEC. 2. The property of the United States and the property of this State, and such property as may belong to any county or municipal corporation or as may be used exclusively for agricultural, horticultural, and scientific societies, chartered or controlled by the State or for school, religious, cemetery, or charitable purposes, shall be exempt from taxation; and ditches, canals, dams, reservoirs, and flumes owned and used by individuals or corporations for irrigating lands owned by such individuals or corporations or by the individual members thereof shall not be taxed so long as they shall be owned and used exclusively for such purposes.

SEC. 3. The legislature shall not impose taxes for the purpose of any county, city, town, or other corporation, but may by law vest in the corporate authorities thereof respectively the power to assess and collect taxes for all purposes of such corporations.

ARTICLE XI.—*Education.*

SECTION 1. The legislature shall provide for a uniform system of public schools, the supervision of which shall be vested in a State superintendent and such other officers as the legislature shall provide. The superintendent shall be chosen by the qualified electors in the State in such manner as the legislature shall provide. His powers, duties, and compensation shall be prescribed by law.

SEC. 2. The legislature may establish free schools: *Provided,* That no sectarian or denominational doctrine shall be taught in any school supported in whole or in part by public funds. Nor shall any professor, instructor, or teacher be preferred, employed, or rejected in said schools on account of his religious faith or belief or affiliation or sympathy with any denomination, creed, or sect.

SEC. 3. All legislation in regard to education shall be impartial, guarantying equal rights and privileges to all persons, irrespective of race, color, or religion.

SEC. 4. The proceeds of all lands that have been or may be granted by the United States to this State for the support of schools shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands and such other means as the legislature may provide, shall be appropriated to the support of the public schools throughout the State.

SEC. 5. The University of Deseret shall be the university of this State, and be under the control of the legislature. The proceeds of all lands that have been granted by Congress for university purposes shall be and remain a perpetual fund, the interest of which,

together with the rents of unsold land, shall be appropriated to the support of said university.

SEC. 6. The legislature shall foster and encourage moral, intellectual, and scientific improvement. They shall make suitable provisions for the education of the blind and mute, and for the organization of such institutions of learning as the best interests of general education in the State may demand.

ARTICLE XII.—*The militia.*

SECTION 1. The legislature shall provide by law for organizing and disciplining a militia of this State in such manner as they shall deem expedient, not incompatible with the Constitution and laws of the United States nor the constitution of this State.

SEC. 2. Officers of the militia shall be elected or appointed in such manner as the legislature shall, from time to time, direct, and shall be commissioned by the governor.

SEC. 3. The legislature shall provide for calling forth the militia to execute the laws of the State, to suppress insurrections and repel invasions.

ARTICLE XIII.—*Public institutions.*

SECTION 1. Institutions for the care and benefit of the insane, the blind, the deaf and dumb, and such other benevolent institutions as the public good may require, shall be fostered and supported by the State, subject to such regulations as may be prescribed by law.

SEC. 2. A State prison shall be established and maintained in such manner as may be prescribed by law, and provision shall be made by law for the establishment and maintenance of a house of correction for juvenile offenders.

SEC. 3. The respective counties of the State shall provide, as may be prescribed by law, for those persons who, by reason of age, infirmity, or misfortune, may have claim upon the sympathy and aid of society.

ARTICLE XIV.—*Boundary.*

The boundary of the State of Utah shall be as follows:

Commencing at a point formed by the intersection of the thirty-second degree of longitude west from Washington with the thirty-seventh degree of north latitude; thence due west along said thirty-seventh degree of north latitude to the intersection of the same with the thirty-seventh degree of longitude west from Washington; thence due north along said thirty-seventh degree of west longitude to the intersection of the same with the forty-second degree of north latitude; thence due east along said forty-second degree of north latitude to the intersection of the same with the thirty-fourth degree of longitude west from Washington; thence due south along said thirty-fourth degree of west longitude to the intersection of the same with the forty-first degree of north latitude; thence due east along said forty-first degree of north latitude to the intersection of the same with the thirty-second degree of longitude west from Washington; thence due south along said thirty-second degree of west longitude to the place of beginning.

ARTICLE XV.—*Miscellaneous provisions.*

SECTION 1. The seat of government shall be at Salt Lake City, until the legislature may otherwise determine.

SEC. 2. No person shall be eligible to any elective office who is not a qualified elector.

SEC. 3. The general election shall be held on the first Monday in August of each year, unless otherwise provided by law.

SEC. 4. The legislature shall provide for the speedy publication of all laws of this State.

SEC. 5. The compensation of all State officers shall be as prescribed by law: *Provided*, No change of salary or compensation shall apply to any officer, except a judge of the supreme or circuit court, during the term for which he may have been elected.

SEC. 6. All executive officers of the State shall keep their respective offices at the seat of government.

SEC. 7. A plurality of votes given at any election by the people for officers shall constitute a choice, where not otherwise provided by the constitution.

SEC. 8. No person holding any office of honor or profit under the government of the United States, shall hold office under the government of this State, except postmasters whose annual compensation does not exceed $300, and except as otherwise provided in this constitution.

SEC. 9. The legislature at their first session shall prescribe the methods of conducting all general and special elections in this State, and for canvassing all votes cast at such elections, and declaring the results thereof.

SEC. 10. All officers, executive, judicial, and ministerial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath or affirmation: I ——— do solemly swear (or affirm) that I will support the Constitution of the United States, and of the State of Utah, and will faithfully discharge the duties of the office of——— according to the best of my ability.

SEC. 11. Until otherwise provided by law, the several counties, as they now exist, are hereby recognized as legal subdivisions of this State.

SEC. 12. Bigamy and polygamy being considered incompatible with "a republican form of government," each of them is hereby forbidden and declared a misdemeanor.

Any person who shall violate this section shall, on conviction thereof, be punished by a fine of not more than $1,000 and imprisonment for a term not less than six months nor more than three years, in the discretion of the court. This section shall be construed as operative without the aid of legislation, and the offenses prohibited by this section shall not be barred by any statute of limitation within three years after the commission of the offense; nor shall the power of pardon extend thereto until such pardon shall be approved by the President of the United States.

ARTICLE XVI.—*Amendments.*

SECTION 1. Any amendment or amendments to this constitution, if agreed to by a majority of all the members elected to each of the two houses of the legislature, shall be entered on their respective journals, with the yeas and nays taken thereon, and referred to the legislature then next to be elected, and shall be published for three months next preceding the time of such election, and if, in the legislature next elected as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the legislature shall prescribe, and if the people shall approve and ratify such amendment or amendments, by a majority of the qualified electors voting thereon, such amendment or amendments shall become a part of the constitution: *Provided,* That section 12 of Article XV shall not be amended, revised, or in any way changed until any amendment, revision, or change as proposed therein shall, in addition to the requirements of the provisions of this article, be reported to the Congress of the United States and shall be by Congress approved and ratified, and such approval and ratification be proclaimed by the President of the United States, and if not so ratified and proclaimed said section shall remain perpetual.

SEC. 2. If at any time the legislature, by a vote of two-thirds of the members elected to each house, shall determine that it is necessary to cause a revision of this constitution, the electors shall vote at the next election for members of the legislature, for or against a convention for that purpose, and if it shall appear that a majority of the electors voting at such election shall have voted in favor of calling a convention, the legislature shall, at its next session, provide by law for calling a convention, to be held within six months after the passage of such law; and such convention shall consist of a number of members not less than that of the two branches of the legislature.

ARTICLE XVII.—*Schedule and election.*

SECTION 1. That no inconvenience may arise by reason of a change from a Territorial to a State government, it is hereby declared that all rights, actions, prosecutions, judgments, claims, and contracts, as well of individuals as of bodies corporate, both public and private, shall continue as if no change had taken place, and all process which may issue under the authority of the Territory of Utah previous to its admission into the Union shall be as valid as if issued in the name of the State of Utah.

SEC. 2. All laws of the Territory of Utah, in force at the time of the admission of this State, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are altered or repealed by the legislature.

SEC. 3. All fines, penalties and forfeitures accruing to the Territory of Utah, or to the people of the United States in the Territory of Utah, shall inure to this State, and all debts, liabilities and obligations of said Territory shall be valid against the State, and enforced as may be provided by law.

SEC. 4. All recognizances heretofore taken, or which may be taken before the change from a Territorial to a State government, shall remain valid, and shall pass to and be prosecuted in the name of the State; and all bonds executed to the governor of the Territory, or to any other officer or court, in his or their official capacity, or to the people

of the United States in the Territory of Utah, shall pass to the governor or other officer or court, and his or their successors in office, for the uses therein respectively expressed, and may be sued on and recovery had accordingly; and all revenue, property, real, personal, or mixed, and all judgments, bonds, specialties, choses in action, claims, and debts, of whatsoever description, and all records and public archives of the Territory of Utah, shall issue and vest in the State of Utah, and may be sued for and recovered in the same manner and to the same extent by the State of Utah as the same could have beeen by the Territory of Utah. All criminal prosecutions and penal actions which may have arisen, or which may arise before the change from a Territorial to a State government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the State. All offenses committed against the laws of the Territory of Utah before the change from a Territorial to a State government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the authority of the State of Utah, with like effect as though such change had not taken place; and all penalties incurred shall remain the same as if this constitution had not been adopted. All actions at law and suits in equity, and other legal proceedings which may be pending in any of the courts of the Territory of Utah at the time of the change from a Territorial to a State government, may be contiuued and transferred to and determined by any court of the State having jurisdiction; and all books, papers, and records relating to the same shall be transferred in like manner to such court.

SEC. 5. For the purpose of taking the vote of the electors of this Territory for the ratification or rejection of this constitution, the registration officers appointed by the Utah Commission in the several counties are hereby each requested to add to the notices which they are required by law to post in each precinct, designating the offices to be filled at the general election to be held on the first Monday in August, 1887, the further notice, as follows, to wit:

"At the same time and place, the question of the ratification or rejection of the State constitution adopted by the constitutional convention in Salt Lake City, July 7, 1887, will be submitted to the registered voters of the precinct; those who are in favor of ratification will write or cause to be written or printed on the bottom of their ballots the words 'Constitution, yes,' and those in favor of rejection, 'Constitution, no.'"

If the registration officers or either of them shall refuse or neglect to post the notice herein provided for, the county clerks of the respective counties are hereby requested to post a notice to the same effect in each precinct on the 16th day of July, 1887.

SEC. 6. The judges of election, or either of them, appointed by the Utah Commission in each precinct to canvass and count the votes are hereby requested, after the polls are closed, to canvass and count the ballots cast for and against this constitution and make returns of the same forthwith, by the most safe and expeditious conveyance, to Heber M. Wells, Salt Lake City, the secretary of this convention, marked "Constitution election returns." Upon the receipt of said returns, or within fourteen days after the election, if the returns are not sooner received, it shall be the duty of the president and secretary of this convention and the probate judge of Salt Lake County, or any two of the persons named in this section, to canvass the returns of said election in the presence of all who may choose to attend, and immediately publish an abstract of said returns in one or more of the newspapers published in the Territory of Utah, and forward a copy of said abstract, duly certified by them, to the President of the United States, the President of the Senate, the Speaker of the House of Representatives, and the Delegate in Congress from Utah Territory.

SEC. 7. Until otherwise provided by law, the apportionment of senators and representatives shall be as follows:

REPRESENTATIVE DISTRICTS.

No. 1.—All of Rich County and Logan, Hyde Park, Smithfield, and Providence precincts, Cache County.

No. 2.—Balance of Cache County.

No. 3.—Box Elder County.

No. 4.—Ogden precinct, Weber County.

No. 5.—Balance of Weber County.

No. 6.—Morgan County, Davis County, and Pleasant Green, Hunter, and North Point precincts, in Salt Lake County, and Henneferville precinct, Summit County.

No. 7.—Summit County (except Henneferville, Peoa, Woodland, and Kamas), and Mountain Dell and Sugar House Ward, in Salt Lake County.

No. 8.—All of Tooele County, Tintic precinct, Juab County and Bingham precinct, Salt Lake County.

No. 9.—First Salt Lake City precinct.

No. 10.—Second Salt Lake City precinct.

No. 11.—Third and Fourth Salt Lake City precincts, and Brighton and Granger precincts, in Salt Lake County.

No. 12.—Fifth Salt Lake City precinct, including Fort Douglas.

No. 13.—North Jordan, West Jordan, South Jordan, Fort Herriman, Riverton, Bluff Dale, South Cottonwood, Union, and Sandy precincts, in Salt Lake County.

No. 14.—Farmer's Mill Creek, East Mill Creek, Big Cottonwood, Little Cottonwood, Butler, Granite, Draper, and Silver precincts, in Salt Lake County.

No. 15.—Lehi, Cedar Fort, Fairfield, Alpine, Goshen, Santaquin, Spring Lake, Payson, and Spanish Fork precincts, in Utah County.

No. 16.—American Fork, Pleasant Grove, Provo Bench, Lakeview, and Provo precincts, in Utah County.

No. 17.—Springville, Thistle, Pleasant Valley Junction, Benjamin, and Salem precincts, in Utah County; all of Emery County and Winter Quarters precinct, in San Pete County.

No. 18.—All of Uintah and Wasatch Counties, and Kamas, Woodland, and Peoa precincts, in Summit County.

No. 19.—Nephi, Mona, Levan, and Juab precincts, of Juab County, and all of Millard County.

No. 20.—Thistle, Fairview, Mount Pleasant, Spring City, Moroni, Fountain Green, and Ephraim precincts, in San Pete County.

No. 21.—Chester, Wales, Manti, Pettyville, Mayfield, Gunnison, Fayette, and Freedom precincts, in San Pete County, and all of Sevier County.

No. 22.—All of Beaver and Piute Counties.

No. 23.—All of Iron and Garfield Counties, New Harmony precinct, of Washington County, and Bluff City and McElmo precincts, in San Juan County.

No. 24.—All of Kane and the balance of Washington County.

SENATORIAL DISTRICTS.

No. 1.—First and sixth representative districts.

No. 2.—Second and third representative districts.

No. 3.—Fourth and fifth representative districts.

No. 4.—Seventh and ninth representative districts.

No. 5.—Tenth and twelfth representative districts.

No. 6.—Eleventh and fourteenth representative districts.

No. 7.—Eighth and thirteenth representative districts.

No. 8.—Fifteenth and sixteenth representative districts.

No. 9.—Seventeenth and eighteenth representative districts.

No. 10.—Nineteenth and twentieth representative districts.

No. 11.—Twenty-first and twenty-second representative districts.

No. 12.—Twenty-third and twenty-fourth representative districts.

SEC. 8. A copy of this constitution, certified to be correct by the president and secretary of this convention, shall be published by them on or before the 15th day of July, 1887, in one or more of the newspapers in Utah Territory. The president and secretary shall also, immediately after its ratification, forward copies of this constitution, duly certified, to the President of the United States, the President of the Senate, the Speaker of the House of Representatives, and the Delegate in Congress from Utah Territory, and shall deliver or forward a copy, certified as aforesaid, to each of the delegates who may hereafter be elected by this convention.

SEC. 9. The terms of all officers named in this constitution, except judicial and senatorial, elected at the first election, shall continue from the time of qualification until the expiration of two years from and including the first Monday in December next succeeding their election, and until the qualification of their successors.

SEC. 10. The State senators to be elected at the first election under this constitution shall draw lots, so that the term of one-half of the number, as nearly as may be, shall expire at the end of two years from the first Monday in December next succeeding their election, and the term of the other half shall expire in four years from the first Monday in December next succeeding their election, so that one-half, as nearly as may be, shall be elected biennially thereafter: *Provided*, That in drawing lots for all senatorial terms, the senatorial representation shall be allotted so that in the counties having two or more senators the terms thereof shall be divided as equally as may be between the long and short terms, and in case of increase in the number of senators they shall be so annexed by lot to one or the other of the two classes as to keep them as nearly equal as practicable.

SEC. 11. Unless otherwise provided by Congress, the first election for all officers named in this constitution shall be held on the first Monday in the second month next succeeding the passage of an enabling act or the approval of this constitution by Congress, and

such election shall be conducted and returns thereof made in the manner provided by law. The first session of the legislature shall commence, and all officers herein provided for shall enter upon the duties of their respective offices, on the first Monday of the second month next succeeding said election.

SEC. 12. The justices of the supreme court, elected at the first election, shall hold office from and including the first Monday of the second month next succeeding their election, and continue in office thereafter two, four, and six years, respectively, from and including the first Monday in December next succeeding their election. They shall meet as soon as practicable after their election and qualification, and, at their first meeting, shall determine by lot the term of office each shall fill, and the justice drawing the shortest term shall be chief-justice, and after the expiration of his term the one having the next shortest term shall be chief-justice.

SEC. 13. All officers under the laws of the Territory of Utah, at the time this constitution shall take effect, shall continue in office until their successors are elected and qualified. The time of such election and qualification not herein otherwise provided for shall be as prescribed by law.

SEC. 14. After the admission of this State into the Union, and until the legislature shall otherwise provide, the several judges shall hold courts in their respective circuits at such times and places as they may respectively appoint; and until provisions shall be made by law for holding the terms of the supreme court, the governor shall fix the time and place of holding such court.

SEC. 15. This constitution shall be deemed ratified by the people of Utah if at any election to which it is submitted a majority of the votes cast on the question of its adoption be in the affirmative.

SEC. 16. Hons. Franklin S. Richards, Edwin G. Woolley, and William W. Riter are hereby elected delegates from this convention to proceed to Washington, D. C., and with the Hon. John T. Caine, Delegate in Congress from Utah, present this constitution to the President of the United States and to the Senate and House of Representatives in Congress assembled and urge the passage of an act of Congress admitting the State of Utah into the Union.

Done in Convention and signed by the Delegates at Salt Lake City, Territory of Utah, this seventh day of July, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and eleventh.

Beaver County.—Philo T. Farnsworth, Franklin R. Clayton.

Box Elder County.—Oliver G. Snow, Richard H. Baty, William Lowe.

Cache County.—James T. Hammond, John E. Carlisle, Joseph Howell, Aaron D. Thatcher, John T. Caine, jr., Ingwald C. Thoresen, William J. Kerr.

Davis County.—Joseph Barton, David Stoker, Thomas F. Roueche.

Emery County.—Jasper Robertson.

Iron and San Juan Counties.—Robert W. Heyborne.

Juab County.—Wm. A. C. Bryan, Frederick W. Chappell.

Kane County.—James L. Bunting.

Millard County.—George Crane, Joshua Greenwood.

Morgan County.—Samuel Francis.

Piute County.—Matthew Mansfield.

Salt Lake County.—John T. Caine, James Sharp, William W. Riter, Samuel P. Teasdel, Franklin S. Richards, John Clark, Le Grand Young, Elias A. Smith, Richard Howe, Samuel Bennion, Andrew Jenson, Francis Armstrong, Junius F. Wells, John R. Winder, Feramorz Little, Lewis S. Hills.

Sanpete County.—Luther T. Tuttle, Lewis Anderson, Jens Peter Christensen, John Bartholomew, Christian N. Lund.

Sevier County.—William Henry Seegmiller, James S. Jensen, William A. Warnock.

Summit County.—Alma Eldredge, John Boyden, Ward E. Pack.

Tooele County.—Daniel B. Houtz, William G. Collett.

Utah County.—Samuel R. Thurman, Warren N. Dusenberry, Abram Noe, George Webb, John E. Booth, William Creer, Jonathan S. Page, James O. Bullock.

Wasatch and Uintah Counties.—Abram Hatch.

Washington County.—Edwin G. Woolley, Robert C. Lund.

Weber County.—Lewis W. Shurtliff, David H. Peery, Charles C. Richards, Henry H. Rolapp, Nathaniel Montgomery, George W. Bramwell, jr.

Attest:

HEBER M. WELLS, *Secretary.*

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Addendum M

Initiative, Referendum, Recall – What Do the Words Mean?,
Ogden Evening Standard, Mar. 20, 1911

INITIATIVE, REFERENDUM, RECALL
WHAT DO THE WORDS MEAN?

Repeatedly we have been asked, "What is the Initiative, the Referendum and the Recall?" For awhile we believed that those who asked the questions were making sport of this paper because we have consistently, for years, favored those progressive measures. But as more and more people asked the questions, we became convinced that many were actually ignorant of the meaning of the words, INITIATIVE, REFERENDUM and RECALL. Only recently, while the legislature was considering the commission form of government for Ogden and Salt Lake City, we were surprised to learn that not one out of ten members of the Utah legislature thoroughly understood the meaning of those words, the INITIATIVE, the REFERENDUM and the RECALL.

One member said: "To —— with those socialistic and anarchistic doctrines," and five other members of the legislature, who were in a group with the same member and the writer, promptly agreed with the remarks, made by the said member. The writer concluded to play "foxy" with the said six legislators and, when the others had expressed themselves very emphatically against the Initiative, Referendum and Recall, the writer said, "Yes, I suppose you fellows would rather pattern after and adopt the elective system of the great Swiss republic than to take even one little principle from the Socialists' platform?"

"Would you believe it, the six of them bit like suckers in a June freshet at the first hook thrown in the river.

"Yes, sir," said the leader, "the laws of Switzerland have stood the test of centuries and they are good enough for the United States."

Of course each of the six legislators wanted Swiss laws for this country, and, after playing with them a while, we said:

"Now, gentlemen, I owe you an apology. I should not have permitted you to show your ignorance at length on this subject, but my only excuse was that I hoped at least one of you would know that the Initiative and Referendum and the Recall are all laws from the Swiss government."

Continuing, we said, "Gentlemen, the Referendum is only seven hundred years old and was adopted orginally in Switzerland by the cantons (states) of Uri, Unterwalder, Appenzell and Glarus and has continued by those cantons or states of Switzerland from the thirteenth century down to the present time with little change. For over 50 years every canton in Switzerland has had the progressive doctrines and even the Swiss nation, or confederation, has adopted the Initiative, Referendum and the Recall for the government of the Swiss republic."

Then one of the legislators, with his face lightening up, said, "Then, they are not Socialistic doctrines at all?" We answered, "Not in the sense that the American Socialists are the originators of the Initiative, Referendum and the Recall. The Socialists of America borrowed or stole the doctrines from the Populists, and the latter stole the doctrines from the Farmers' Alliance and the National Granger movement and they in turn borrowed the Initiative, Referendum and Recall from the Swiss nation, where those laws have been in force for many centuries."

"The American Socialists, however, will say that they first discovered the progressive doctrines in the Swiss Republican form of government and, that, probably is true, but the Socialists thirty and forty years ago were not numerous in America and had no organization at all and while the real Socialist writers undoubtedly first promulgated the doctrines of the Initiative, Referendum and the Recall in America, it was the Granger movement and the Farmers Alliance that first adopted the Initative and Referendum as a plank in their platforms.

The Recall is not as old as the other two doctrines. As a matter of fact, however, the Swiss republic is more a Socialistic government than a Republican form of government. The Swiss themselves call their government a real Democratic form of government. As a matter of fact it is just half Democratic and half Republican. The word Democratic means "government by the people," while the word Republican means "the people through representatives elected by them."

The Swiss people elect representatives and then vote on the acts of their representatives, which is called the Referendum."

Now, these six legislators, when they discovered that the American Socialists did not originate the Initiative, Referendum and the Recall, were very eager to know more about the measures. What has the Socialist done, anyhow, that anything coming from him should as a foregone conclusion, be considered to be bad?

THE INITIATIVE.

The Initiative, as the word itself, suggests, means nothing more or less than to initiate, to start in, get up a movement, to start a proposition or to originate, to propose a measure, an introductory act, procedure or enterprise, the commencement of anything.

Therefore the word Initiative, in governmental affairs, naturally adheres much to its original definition and stands for just what the dictionary defines it to be. In governmental affairs the word Initiative, therefore, means that the people have a right to propose a law to the city council or state legislature and ask such bodies to pass the proposed law initiated or started or conceived by the people themselves. Of course, the right to initiate must be governed by rules. In one canton in Switzerland the right is reserved for one man to place in force the Initiative. He can propose a law all by himself and force a vote on it. The canton, state or province is a small one and it has no legislature. The people meet in mass convention once each year and make their laws, and hence to submit a proposed law to a vote at a mass meeting is not expensive. But the rules at times have required that a measure proposed at such mass meeting should be published several times before the meeting.

In six Swiss cantons it requires only 70 names to put the initiative in force; in all the other cantons or provinces it requires from 1,000 to 12,000 names to initiate or propose a new law direct from the people in each canton. But if it is proposed to initiate a new measure for the whole Swiss nation, it must be signed by 30,000 people.

In the state of Oregon it requires only 8 per cent of the voters to initiate or propose a new law, while the city of Los Angeles, California, requires 25 per cent of the voters to propose or initiate a new law. Both, in our opinion, require too small a number of signers. The Oregon plan of only 8 per cent should be increased to 25 per cent. Where the number of signers is as low as 8 per cent, it causes the proposal of many laws that cannot secure a majority of the people at the polls, and makes for a great expense in printing the proposed laws. It is safe to say that at least 25 per cent of the legal voters of a state should be required to sign a proposed law before it be placed on the ballot. And in cities it should be as high as 35 or 40 per cent.

The object of the right to initiate a law is only granted to the people in order to force an unwilling legislature or city council to pass such laws as the people really want, and it is safe to say that if a majority of the people really want a certain law passed, it would not be burdensome to get 35 or 40 per cent of the people to sign for such proposed laws in cities where the people can easily and quickly be reached. It will be seen that the Initiative can be a bad as well as a good measure. When only a few signers are required, any cranky notion can be proposed as a law each and every year and cause no end of expense in printing the same for distribution and placing the same on the ballot.

The commission form of government asked for by the Weber club required that at least 25 per cent of the legal voters of Ogden should sign a proposed bill before the council should be bound to consider it. That this number of signers is not prohibitive is proven in the cases of Los Angeles and Seattle, where it only required a few days to secure that number of signers. We, personally, believe it should require 35 per cent of the voters to enforce the Initiative. It is better to have the percentage too high than too low, but in either event the matter could be corrected in two years.

Now we have briefly described the various methods and dangers of the Initiative. We will now tell how it works. Suppose the labor unions wanted an ordinance passed by the Ogden City council, that all work on the streets of Ogden by city employes should be done by AMERICAN CITIZENS on the basis of 8 HOURS as a day's work at the price of 30 CENTS per hour. The labor unions would draw up the ordinance just as it should be on the city books of law. They would then get 25 per cent of the people of Ogden to sign a petition requesting the city council to pass the proposed ordinance and to make it a law. The city council would then have 60 days to make such law. If, however, the city council believed such law unwise, the council would call a special election (unless the regular election took place within six months) and submit the proposed law to a vote of the people, and if a majority of the votes cast were in favor of the proposed law, it would at once become the legal and binding law of the city without further notice. If, however, a majority of the voters were against such law, then it is declared rejected and cannot again be proposed except at a regular election and then not for two years.

That, briefly told, is the Initiative, or the right of the people to initiate or propose their own laws and have them accepted or rejected by the lawful voters.

It will be seen from the foregoing that the Initiative is a measure forcing an unwilling city council to perform the will of a majority of the lawful voters of a city. It will be seen that this progressive doctrine, "the Initiative," forces the city councilmen and all public servants to obey the people and not the political bosses. Take any convention of Republicans or Democrats of the past few years and what are the acts in relation thereto? A few political bosses, as a rule, dominate the convention and name the candidates. Of course the lucky candidate tries to obey the wishes of his boss or leader. Under the Initiative, Referendum and the Recall the political boss becomes a nonenity and the public servant tries to obey the wishes of the majority of the people. The curse of the American government today is that the "interests," the "system" or the trusts of the country own or control the leaders of both the Democratic and Republican parties of the nation. It makes no difference whether Cleveland or McKinley is president, the trusts are in the saddle. It makes no difference whether that great, big, brainy man, Joe Cannon, or Mr. Champ Clark is speaker of the house of congress, both are for the trusts and the "interests." Each side occasionally throws a sop to the common people to get their vote in order to get four years more of power, but if the people had the right of the Initiative, Referendum and Recall, the sop would go to the trusts and the people would come into their own.

In this issue, we have shown how the initiative works; one week from today, or next Monday, we will tell all about the Referendum, and the following Monday we will explain the Recall.

While several states have adopted the Initiative, the state of Oregon has given the doctrine its severest tests, because Oregon requires the unusual small number of signatures of only 8 per cent, and has thus made it easy to propose laws, or, in the words of the political economist, has made it easy to initiate a new law.

To show that the people in Oregon display a discriminating judgment in voting, and to disprove the statement made by the ememies of the progressive measures, that the people fall aver themselves voting "Yes" on any law proposed, we publish herewith the result of all the laws proposed in Oregon through the initiative of the people. Seven out of twenty-three laws proposed were voted down, some by very substantial majorities.

To show the familiarity of the average voter in Oregon with the proposed laws, the figures need only to be studied. To begin with, on the same ballot in 1904, the first year of the Initiative, when there might have been excuse for a confusion of the voters, it is shown the people voted "yes" for direct primary laws 56,205 against 16,354, and at the same time reversed the vote to 13,316 "yes" to 40,198 "noes" on local option, and on all the other laws proposed in Oregon by the Initiative since 1904 the same sound judgment has been exercised by the voter.

The man who says the common people do not understand the meaning o the word "Initiative" has another guess coming and is invited to study the following table of figures from the official Oregon election returns:

POPULAR VOTE UPON MEASURES SUBMITTED TO THE PEOPLE OF OREGON UNDER THE INITIATIVE.

1904.	Yes.	No.
Direct primary law with direct selection of United States senator	56,205	16,354
Local-option law	13,316	40,198
1906.		
Equal suffrage constitutional amendment	36,902	47,075
Local option bill proposed by liquor people	35,297	45,144
Bill for purchase by state of Barlow toll road	31,525	44,527
Amendment requiring referendum on any act calling for constitutional convention	47,661	18,751
Amendment giving cities sole power to amend their charters	52,567	19,852
Legislature authorized to fix pay of state printer	63,749	9,571
Initiative and referendum to apply to all local, special and municipal laws	47,678	16,735
Bill prohibiting free passes on railroads	57,281	16,779
Gross earnings tax on sleeping, refrigerator and oil car companies	69,635	6,441
Gross earnings tax on express, telephone and telegraph companies	70,872	6,360
1908.		
Equal suffrage amendment	36,858	58,670
Fishery bill proposed by fish wheel operators	46,582	40,720
Fishery bill proposed by gill net operators	56,130	30,280
Amendment giving cities control of liquor selling, poolrooms, theaters, etc., subject to local option law	39,442	52,346
Modified form of single tax amendment	32,066	60,871
Recall power on public officials	58,381	31,002
Bill instructing legislators to vote for people's choice for United States senators	69,668	21,162
Amendment authorizing proportional representation law	48,868	34,128
Corrupt practices act governing elections	54,042	31,301
Amendment requiring indictment to be by grand jury	52,214	28,487
Bill creating Hood River county	43,948	26,778

Addendum N

Direct Legislation! Or the "Initiative and Referendum,"
Ogden Daily Standard, Oct. 31, 1900

DIRECT LEGISLATION!

Or the "Initiative and Referendum."

DEFINITION:

DIRECT LEGISLATION—Lawmaking by the voters.

THE INITIATIVE—The proposal of a law by a per centage of the voters, which, should the Legislature or law making body refuse to pass, must then go to the referendum.

THE REFERENDUM—The vote at the polls on a law proposed through the initiative, or on any law passed by a law making body, whose reference is petitioned for by a percentage of the voters.

Many misunderstand the above subject, and it is the purpose of these few lines to define it, that the Constitutional Amendment now pending pertaining to the same, may receive proper consideration. To make the subject more clear the Amendment now before the voters of this state for their adoption or rejection is published in another column of this paper.

A careful reading of the above will render the purpose and practical worth of the Amendment plain. It does not contemplate that every law passed by our State Legislature, and every act or ordinance passed by our City Council, shall be referred to the people for their approval or rejection, nor does it contemplate that all our legislation for our cities and for our State shall be "initiated" by the people. It's effect is, that should a certain per centage of the voters of the State, or of a city or precinct (said per centage to be fixed by law), desire that a certain law be passed, they may petition their City Council or the State Legislature, as the case may be, and if said law making body refuse to pass such a law, said proposed law shall be referred to the people for their approval or rejection, thus making the petitions of the voters effective. This part of the Amendment is known as the 'Initiative."

The "Referendum" is of even more importance. It provides that should our Legislature pass a law that is corrupt, the people, the voters of the State, may petition that said law shall be referred to them for their approval or rejection before it shall become effective. Also, should our City Council or County Commissioners attempt to give away a valuable franchise, the people may, by petition demand that said ordinance be submitted to them before said ordinance will be valid.

In fact the "Initiative" gives the voters the power to suggest and if necessary pass legislation. The "Referendum" gives the voters the veto power over their law making bodies, both in city and State, and makes these bodies the people's "servants" instead of their "masters." This Amendment is in no wise a partisan measure. It was introduced in the last Legislature by a Populist championed by both Republicans and Democrats, and passed by a vote of two-thirds of each House regardless of their political proclivities. Vote for this amendment.

Addendum O

Yesterday's Proceedings, Ogden Daily Standard, Mar. 8, 1899

YESTERDAY'S PROCEEDINGS

Of the Legislature, Transacted after The Standard Went to Press.

Jackson's House bill No. 34, passed, requiring street car and other railroad corporations to protect their drivers and motormen from inclemency of the weather by providing vestibules on their cars.

During the joint session recess the House took up Mansfield's House bill No. 14, providing for the change of county boundaries. It requires the petitioning by the inhabitants of not less than one township for the submission to the people at a general election, a proposition for annexation to an adjoining county. It also provided that if the proposition failed to carry it could not be presented again for four years. To prevent too frequent contentions in boundary questions, McQuarrie extended the time to ten years, and the amendment carried. Mansfield was called upon to explain two or three involved sentences and some grammatical abstruseness. The joint session intervened, and the bill was taken up again at the afternoon session, when Mansfield argued the merits of the bill and it was passed by a vote of 23 to 12.

Smith got a reconsideration of his "initiative and referendum" resolution, and asked for its passage on the ground that no harm could come from the question of direct legislation to the people. Bywater and Johnson spoke for its adoption, the latter saying that any proposition giving the last say to the people was a good thing, whether it was a Populist proposition or not. The resolution was adopted by a vote of 20 to 12.

Bennion likewise received a reconsideration of his resolution No. 3, separating the control of city and district schools. Cummings defended the resolution on the ground that free schools were a state institution, and the taxes for their support should be evenly distributed, even if Salt Lake suffered financially. Per contra, he argued that the country contributed one-third of the support of the county poor-farm and district courts, in which this city was the greatest beneficiary. He advocated generosity to our "country cousins." The "previous question" shut off further debate against the protests of Shepard and Hansen. The resolution passed, 36 to 4.

Two reports came from the committee on elections on Nebeker's Senate bill No. 44, to enable voters to indicate a choice for United States senator. The majority recommended its rejection, and Jackson and Smith favored its passage. Stewart's House bill No. 113, covering the same subject, was rejected on the committee's recommendation. Shepard spoke for the adoption of the majority report on the Senate bill on the ground that the indication of a choice for senator would have no effect, and would probably serve to entangle future legislatures worse than this one has been. The majority report was adopted, 16 to 9, and the bill was rejected.

Under suspension of the rules, the House passed Whitney's Senate joint resolution No. 9, directing the Secretary of State to deliver to the Brigham Young Memorial association all the funds and property received from the Semi-Centennial Jubilee commission. A similar resolution providing only for the deliverance of the funds, had been passed, but was recalled on the governor's suggestion.

The once-defeated local option bill was taken up again on reconsideration, and Harris of Weber undertook to perfect it with amendments. Originally the bill provided that saloon keepers should close up three days after the traffic was prohibited, but this was corrected, and the time was extended to ninety days. Jackson offered amendments doubling the fines and imprisonments provided for the illegal selling of liquor, and they were defeated. Shepard went to the other extreme and cut the penalties to a low notch, believing that as they stood no jury would convict. His propositions also failed. Harris went on making minor amendments, and the opposition tried to get a recommitment and finally succeeded by a vote of 18 to 16.

The defeat of Rideout's Senate bill No. 20, providing that eight hours shall constitute a day's labor on all public works was reconsidered, and the measure was passed by a vote of 28 to 11.

Fisher's House bill No 19, doing away with the requirement for the publication in county auditor's annual statements of a list of warrants issued and to whom, was taken up for passage. It provides that only the totals of expenditures on each account shall be published. Harris of Weber proceeded to mix up all the laws relating to the fiscal year by proposing an amendment changing the time for the auditor to make his report from July to February, and for the year ending December 31st instead of June 30th. Several other laws will be in conflict with the change. The bill was passed unanimously in this shape.

BILLS INTRODUCED.

Consent was given to Jackson to introduce the following:

House Bill No. 181, by Jackson—To amend section 322 Revised Statutes, in regard to powers of corporations.

It provides that corporation mortgages shall include personal property as fixtures and a part of real estate. The same bill as No. 76 was killed in committee and is reintroduced. Referred to committee on private corporations.

Fisher presented a petition from several prominent citizens asking for the continued maintenance of the mineral exhibit now in the Hall of Relics, and he received consent to introduce the following bill:

House bill No. 182, by Fisher—Making an appropriation for the maintenance of the Utah mineral exhibit of the International Mining Congress.

The sum of $1500 is appropriated for the purpose for the next two years. Referred to the committee on Appropriations.

Stewart was permitted to introduce:

House bill No. 183, by Stewart—To amend section 1744, Revised Statutes, relating to poll-tax.

It changes the time of giving notice to persons required to work on roads for poll-tax from April 1st to November, to from January 1st to December—making persons subject to such work during the entire year. Referred to committee on judiciary.

The committee on education recommended the consideration of Mrs. Cannon's Senate bill No. 37, providing for the teaching of the effects of alcoholic drinks and other narcotics on the human system.

The public land committee recommended for passage Evans' Senate bill No. 84, granting preference rights to state lands, and of Senate bill No. 56, by Evans, creating and defining the powers and duties of the state board of land commissioners.

Johnson withdrew his bill No. 123, relating to reviving of judgments, stating that he believed it would be killed anyway.

Senate bill No. 84, by Evans, granting preference right to purchase state lands, was referred to the committee on public lands.

SENATE.

Senators Will Nebeker and Abel John Evans were near a conflict on the floor of the Senate yesterday afternoon. The controversy came up during the discussion of Senator Evan's bill No. 83, which, requires railroads to fence their tracks on all improved land. When the bill was called up by its author, a report of the railroad committee of which Senator Nebeker is chairman, was read, recommending the rejection of the bill. The adoption of the report was moved and Senator Rideout, who was in the chair was about to put the question when Abel John jumped up to his feet with a protest.

"I object to this most earnestly," he said, "and I do it for the reason that I do not think it has been properly considered before the committee. Senator Nebeker has said that he couldn't get a quorum of the committee, and that he simply submitted the report after having obtained a consensus of opinion on the bill. This is no way to do business. I believe we ought not to adopt the report and that we should consider the bill here."

Senator Nebeker took exception to Evans's criticism. He did not believe the senator had any right to utter such remarks. "Then why didn't you submit amendments to the bill and let us consider them here," shouted Evans, "I am going to criticise this in any language I choose, and we'll see whether this bill is to be killed or not."

"We; who's we?" retorted Senator Nebeker.

"Well, we'll show you who we are," replied Able John, his face turning pale with anger, "and when we do you won't be one of us."

The motion to adopt the report was lost and the bill will be taken up in regular order.

A substitute for McQuarrie's House bill No. 97, providing for the establishing of a branch experiment station in one of the southern counties, met defeat in the Senate.

House bill No. 103, by Shepard, relating to the examination of attorneys, was called up and passed.

BILLS INTRODUCED.

The following bills were introduced:

Senate bill No. 92, by Tanner to amend sections 1719 and 1720, Revised Statutes, relating to the fees of registered pharmacists and heir assistants.

The bill increases the registration fee of pharmicists and their assistants. It went to the judiciary committee.

Senate bill No. 93, by Rideout to provide for the holding of primary elections and to punish offenses at such elections.

The bill was referred to the committee on elections.

Addendum P

Samuel H.B. Smith, Speech at Populist Rally
at the Salt Lake Theatre, Oct. 27, 1899

A SPEECH

BY

SAMUEL H. B. SMITH,

AT A

POPULIST RALLY AT THE SALT LAKE THEATRE,

OCTOBER, 27th, 1899.

Mr. Chairman, Ladies and Gentlemen:—

One of my Democratic friends said recently that if he voted for me for Police Judge, he would be throwing his vote away. I reminded the gentleman that the great Democratic party to which he belonged had been throwing their votes away for 24 years, from 1860 till the year 1884, when Grover Cleveland was elected president, who was the very prince of gold-bugs; and still they claim that the Democratic party is a free silver party. Could anything be more absurd? and then, again, they elected Grover Cleveland for a second term in 1892, having control of the Senate and House of Representatives, and was in full control of Congress, with all of the Populist members in favor of free silver. They voted down every free silver bill presented to Congress and repealed the Sherman law, thereby placing the country upon a gold basis, where it still remains. "Consistency is a jewel," but it is not found in the Democratic party.

The Democratic party is the party of redemption and wild-cat money. I will say right here, as it might not occur to me further on, what Henry Clay once said, that "I would rather be right than be President of the United States," and I would rather vote for men and reforms that the people need and not get them, than to vote to continue the reign of our present moneyed oligarchy in power, with all its black list of attendant evils, and get them; for the great common people are

plunging deeper and deeper in debt and industrial slavery.

James G. Blaine, one of America's greatest statesmen, once upon a time said that "trusts are private affairs with which neither government nor any private individual has any right to interfere." Had James G. Blaine lived till now, no doubt but he would have changed his mind.

The sentiments of the farmer and laboring men are, if you will only give us a fair chance, we will wipe these trusts from the face of the earth. The great subsidzed press of the country advises the controlling of them, and Wm. J. Bryan says that they are robbing the people and should be licensed. But the Populists say that the trusts should be treated as you would a rattlesnake in your front yard. The trusts are drawing usury on about ten thousand million dollars mostly watered stock. If there are any preachers of the gospel present, I would very respectfully suggest to them that they take for their next Sabbath's sermons, Proverbs 29th chapter, verses 2nd, 7th and 27th: "When the righteous are in authority the people rejoice; but when the wicked rule, the people mourn: the righteous consider the cause of the poor, but the wicked regardeth not to know it." "An unjust man is an abomination to the just and he who is upright in his way is hated by the wicked;" and I would further suggest that all the different preachers advise the poor to go to their respective voting places on election day and vote for the men and measures that will be for the best good of themselves and their poor neighbors; and if they should find out that their rich neighbor has a two month's vacation every year, then the poor should insist that they also should have a similar vacation; for does not the Declaration of Independence declare that "all men are created equal?" and therefore should not all men have equal rights? Does it not declare that they shall be protected in life, liberty and the pursuit of

happiness? and in order that these blessings may be obtained, a vacation is an absolute necessity. Therefore, the men you put up for office should give a positive guarantee that they will see to it, that the rich are accorded no special privileges that are denied to the poor. That these desirable results may be realized, insist that they labor for direct legislation through the initiative and referendum and be willing to bind themselves by the imperative mandate, that if they fail to act in good faith they will step down and out.

I see before me some who are members of the "Mormon" church, and I will ask you to read in the Doctrine and Covenants, section 78, verse 6, "For if ye are not equal in earthly things, ye cannot be equal in obtaining heavenly things." This and many other passages might be quoted, showing that the gospel that Joseph Smith taught was a gospel of equality, and when any political party teaches a system of inequality, it is not only opposed to the teachings of Joseph Smith, but is opposed to the teachings of that greatest of all teachers, Jesus of Nazareth, who was annointed to preach the gospel to the poor and proclaim liberty to the captive. But when the people heard his teachings, they were filled with wrath, because their deeds were evil.

There is no such a thing as reforming the Democratic and Republican parties. If reforms come, they must come up from the common people. Under the pure light of the stars, the old party reforms quietly sleep. Wrapped in the solitude of a masterly inactivity, they peacefully sleep. Ages might come and go; time stretch out to golden, unbarred gate of eternity; but old party reforms would still sleep on. The moon might go out in the starry vault of night; earth might die and return to her mother sun; new stars wink in the immeasurable distance of space; new worlds spring from the womb of infinity; but old party reforms would still sleep on.

If seventy-five per cent of the people are without homes, or have their homes mortgaged beyond redemption under the Democratic or Republican rule, why not leave the two old parties and vote with the Populist party for free homes for all the people, to be brought about by the enactment of just and wholesome laws?

Had it not been for plutocratic greed, the blessings, honor and glory that would have come to our country, the pen of an angel could scarce describe. There would have been no homeless men, women and children in all the land. There would have been no bonds for Shylock to draw usury on. There would have been no national banking system, drawing usury on debts through bank notes, robbing the people out of millions of dollars every year, which Shylock says is the best banking system in the world. There would have been no public strengthening steal, robbing the people out of sixty million dollars at one fell blow. There would have been no expanding and contracting of the volume of money to create panics and bankruptcy. Why! The amount of money that has been paid to these plutocratic usurers would have furnished homes for every homeless family of fifty million people in all this broad land.

"One hand that I saw was large and brown,
Mis-shaped and rough and marred.
'Twas stained with the toil of weary years,
By many a seam 'twas scarred.
'Twas a strong right hand that had helped to fill
The coffers of more than one,
But 'twas crippled by want thro' a dreary life,
And was empty when life was done.

"The other I saw was a blue veined hand,
So soft, so white, and so warm;
Bedecked by many a shining gem;
'Twas perfect in beauty and form.
It never knew want, tho' it never had toiled,
Nor seam nor scar it bore;
But it held the keys to the treasures of earth,
That were won by the toiling poor."

God is just, and His justice will not sleep forever, and when justice overtakes these conspirators who have foisted on the innocent toilers of this country, this load of poverty and suffering, producing ten thousand murders and five thousand suicides a year, causing untold misery and crime, there will be a fearful retribution.

Why! this devilish system of mammon worship has made of our country a veritable hell. Usury is the "sum of all villianies" and the only remedy is to let it kill itself, just as chattel slavery did in ante-bellum times.

Slavocracy became insolent in the temple of justice; and when the Republican party declared that chattel slavery should extend no further, the slave power shouted absolution! Absolution!! These Republicans intend to destroy our investments; they intend to stop our incomes from chattel slavery. Every Republican was called an abolitionist, and every soldier a Lincoln hireling. The slave power threw down the gauntlet, and that good and great man, that grand and patriotic Abraham Lincoln picked it up; and with one stroke of the pen—which is mightier than the sword—he struck the shackles from the limbs of four million of chattel slaves; and thus it will be with this hydra-headed monster of usury.

When the people vote to take control of this government and wrest it from the grip of Shylock, then the cry will go up from plutocratic headquarters in London, "These Populists intend to destroy our investments; they intend to stop our incomes on usury." They will then shout repudiation! repudiation!! Then will be the times that will try men's souls. Then will the Populist take up the gauntlet thrown down by the money power, and they will destroy their pet institution of usury that has enslaved mankind of all shades and colors; this usury that has produced millions of bond and industrial slaves; this devilish octopus which has been the cause of land monoply, depriving the people of land, God's

free gift to all the children of men; this destroyer of the human race; this secret lurking, incarnate devil, the greatest of all the curses that have tormented and tortured humanity in all ages of the world. Yes! Populism will kill usury, the pet institution of plutocracy so dead it will never live again in this world, and will bury it so deep that its father—the devil—cannot resurrect it.

Our present representative government vests the entire law-making power in the hands of representatives. Often times these representatives do not know the will of their constituents and when they do sometimes, they disregard it. Legislative bodies are sometimes controlled by corrupt influences, therefore legislation is in the interests of the rich few and against the interests of the voiceless many. Under this system the people are practically disfranchised on all matters of legislation where their interests are at stake. They are permitted to vote for men but not for measures. The people are therefore governed by laws which they did not enact and which they cannot repeal. Great abuses have arisen as the result of this false and corrupt system, but the people being powerless to bring about any needed remedy, have divided up into parties, contending with each other over minor issues, being encouraged all the time by plutocratic politicians, press and pulpit; for they know perfectly well that they must keep the people in ignorance on economic questions. The politicians shout for their grand old parties; the corrupt subsidized press stands ready to keep honest public opinion out of the papers; sectarian preachers are ready to preach for hire, to divine for money and make merchandise of the souls of men; and are very careful not to offend the millionare members of their churches by preaching against the sin of usury; which is condemned in the scriptures about two hundred times.

> But they will pray in a doleful tone
> For the thief in the felon's cell,

And tell of his punishment here on earth,
  And his endless days in hell;
But the thief that sat in the best front pew,
  That he might be seen and heard,
The Shylock thief of the helpless poor,
  The preacher said never a word.

He told of the harlot all steeped in sin,
  And the rum seller's dreadful doom,
And said if they didn't cease to increase
  That hell would be short of room;
But the tyrants that have stolen the earth,
  And their brother's blood has shed,
The preacher smiled as he winked at them,
  And never a word he said.

Lord have mercy on these sectarian preachers
  When the morning sun shall arise,
And cast the veil that has hidden their shame,
  Away from the people's eyes.
The big thief then, in the best front pew,
  And the man with the blood-stained hand
Shall stand alone in the daylight clear,
  In sight of all the land.

There are many people bound
  In superstition's chain,
So that sectarian preachers
  Can a few more dollars gain.
There are ten thousand churches
  With spires that point the sky to glorify some god,
While many thousand children starve and die for
    want of food.
  This has been told many a time,
And will be told again,
  While the rich and robbing class combine,
They will the minds of men enchain.

The sectarian preachers are willing to label the sin of usury "politics" and let it go at that. The people in their frantic endeavor to free themselves from hard times and the many "ills that flesh is heir to" run to and fro in hopes of finding relief; but no relief will come until they study the cause and cure of hard times. But so long as they have no voice in legislation affecting their best interests, it is useless for them to contend with each other

about legislation which they need and cannot obtain under our present system.

Therefore in order to bring about needed legislation and have a government of, by, and for the people; which will provide for the peace, prosperity and happiness of all; they should have instead of a representative government, a government by direct legislation, whereby the people shall rule and their will be supreme; therefore all persons who believe in the principles of liberty, and the Declaration of Independence, should unite to support at our next fall election of 1900 an amendment to our state constitution giving unto the people direct legislation through the "initiative and referendum." Under the "initiative," the people can compel the submission to themselves of any desired law; when, if it receives a majority of the votes cast it is thereby enacted. Under the "referendum," the people can compel the submission to themselves of any law which has been adopted by any legislative body, when, if such law fails to receive a majority of the votes cast it will thereby be rejected. This system will virtually take the law making power out of the hands of representatives and place it in the hands of the entire people.

If the people want free silver or any other reform they can get it through the initiative and referendum.

Now, in conclusion, I wish to say that I believe that the spirit of God broods o'er all creation, and that in due time under its magic spell, it will search out and reward true merit. When the time shall come that the two old corrupt parties shall die with their own innate corruption, and their shells, smitten with death, are left void; then will the principles of Populism arise in their strength like a giant refreshed with new wine and carry the banner of the Declaration of Independence and plant it upon the citadel of our national capital, declaring that all men shall be protected in life, liberty and the pursuit of happiness.

Addendum Q

Thomas M. Cooley, *Sovereignty in the United States*,
1 Mich. L.J. 81 (1892)

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*SOVEREIGNTY IN THE UNITED STATES.**

HON. THOMAS M. COOLEY.

In speaking heretofore on the subject of rights I thought it well to make some reference to the origin of rights; to show how they spring up, and how some that are considered fundamental in their nature generally or, perhaps, even at once became incorporated into what is called a Constitution, whether embodied in written form or existing merely in the customs of the people; I referred also to the fact that every people had its theory of government, and that this theory went far to qualify the rights of the people; that rights were construed with reference to it, and in a measure modified by it, and that they might be different in one country from what they were in another, though known by the same name. I remarked upon the fact that changes were likely to follow in fundamental rights and in the terms that were made use of under different governments, without necessarily any change of words, so that the same word implied a different thing in one age, perhaps, from what it did in another, as well as in one country from what it did in others. For example, William the Conqueror was called sovereign, and so is Victoria called sovereign, although William had nearly absolute power and Victoria has little more than nominal power; and now by the existing theory of government, which has come silently into recognition, the sovereign authority is in the Parliament of the country, which is supposed to be capable of making laws that no one can resist or refuse to obey. I spoke of our own National Government as being that of a sovereingty formed by the people of thirteen others—thirteen sovereign states who assigned to it certain complete or soverign powers in respect to which it was not to be subject in any degree to them, and doing this by a Constitution in written form which in express terms reserved to those thirteen and to the people the powers which had not in terms or by necessary implication been conferred upon the general Government. In mentioning this, I, of course, only gave the theory as it was understood in this country; the theory which I find thus expressed by Judge Hare as the result of authoritative decisions: "It

* A lecture delivered in a course on "Rights" to a class of post-graduates. Somewhat expanded as here given.

was at length, [in the Constitutional Convention] after much anxious deliberation, perceived that a national government might be established which, acting not upon or through the states, but directly on the citizen, would be supreme through the whole range of its powers, but yet, being confined within fixed limits, would not divest the jurisdiction of the states over the matters committed to their care. State sovereignty would remain, although curtailed in its proportions; and out of what states surrendered, a new government would be formed, not only sovereign, but for all the purposes of existence, paramount. The power of regulation and adjustment would devolve on the judiciary of the United States, which would act as a balance-wheel of the Constitution, keeping the National Government and the states to their respective orbits; and as it would belong to the Supreme Court to declare the law, so it would be the duty of the president to enforce it with the whole power of the government. But the states would retain a legislative power, embracing the ordinary concerns of life and trade, and absolute within its peculiar sphere. Their sovereignty, like that of the United States, would be derived immediately from the people, and they would be responsible to their constituents and not to the General Government, for the manner in which it was exercised. Each man, each rod of ground, every navigable stream, would, agreeably to this scheme, have two masters, both entitled to command and to enforce their orders by appropriate penalties, but with powers so nicely harmonized and adjusted that neither could in the ordinary course of events be brought into conflict with the other." (*) This is the theory deduced from Federal decisions, and upon which the legislative and executive authorities have administered the government.

It was soon found, however, that there were parties inclined to take a different view of the federal system to that above expressed. The Kentucky and Virginia resolutions of 1798 and 1799, growing out of a distrust, on the part of the Republican party of the day, of the purposes of the Federalists, were thought by many difficult to reconcile with the idea of self-perpetuating national powers, though Mr. Jefferson, with whom they originated, defended them. The New England Federalists soon retorted upon Jefferson, by claiming the right to nullify his embargo measures through the exercise of state powers. The history of that crisis,—for it was really a serious crisis,—is well given in the History of New England Federalism, by Mr. Henry Adams. I leave it with merely this reference.

The nullification episode during the administration of President Jackson was even more serious than this. The claim of a right to nullify federal laws, based upon the sovereign rights of the states, as it was expounded by Mr. Calhoun made the Federal Government little more than an agency of the states, and was one that threatened to call for the exercise of armed force to maintain national supremacy in respect to national affairs; but it was got along with, for a time, by the compromise

* Hare's American Constitutional Law, pp. 22-23. See also pp. 33-37.

legislation brought forward by Mr. Clay. This did not settle the question in controversy, however, for those who had followed Mr. Calhoun continued to insist upon the correctness of the positions taken by him until the great civil war was over, and some of them afterwards.

The theory of state sovereignty was pushed to the extreme when the doctrine of secession was attempted to be put into force by the withdrawal of dissatisfied states from the union. It required four years of bloody war and an immense expenditure of treasure to put the claim of right then advanced absolutely at rest. And I think I may add that it was then believed that the American theory, as it has been presented above, was from that time forward to be received and acted upon as forever settled.

Recently, however, a disposition to depart from this theory has shown itself on another side. Instead of state sovereignty being pushed to the extreme that would destroy the union which had been agreed upon, it is now national sovereignty which it is said is inconsistent with the existence of any state sovereignty whatever. This last claim is supposed to represent the best modern thought, but it is only a new phase of the doctrine, that sovereignty is indivisible, which was at the bottom of nullification and secession, though then it presented its face to the states while now it turns its back upon them. Those advancing it say that Mr. Calhoun, from the facts as he stated them, namely, that in the formation of the Constitution sovereign powers were retained by the states, proved clearly the doctrine of the rightful nullification of national powers. This I think a great mistake. Certainly the American statesmen were not convinced, nor were the American jurists, nor American historians, nor the American people, except those who desired to be convinced that they might follow him into nullification and secession. For while the people and those who authoritatively spoke for them did not in general question that sovereign powers were reserved to the states, they would have done in 1832 what was in fact done a generation later—taxed to the utmost their war resources, if necessary, in resistance to his conclusions, which to them seemed wholly untenable and baseless. And an apologist for the late secession may well say that if in forming a national union with certain sovereign powers the reservation of others to the states was impossible, then the right of secession must be unquestionable; for this was precisely what was attempted, and if it was impossible of accomplishment, then our National Government has never been legitimately formed at all, and the separate states must be at liberty to march out at will. But if in point of fact a union was formed which is itself sovereign, and which absorbed all the sovereignty of the states, then it is a union which the states never agreed to form, and never would have formed, but would have resisted to the last; and therefore, their right to secede from it must, on moral grounds at least, be unquestionable. They cannot with justice be held to a consolidated union when they did not understand they were forming one,

and never did and never would have yielded their assent to one. But we have no interest in suggesting a justification for secession, as the doctrine in question appears to do.

The difficulty of understanding and accepting the theory, as stated by Judge Hare, seems to come from the fact that sovereignty is by its definition the supreme and irresistible will of a state, and cannot be otherwise than entire and indivisible within its territorial limits. The facts of history in the case of any state it is supposed must be read in the light of this fundamental fact, and their interpretation must conform to the definition. No exception is to be admissible, but the application must be made in every case, whether the soverign state be an absolute despotism or a federal republic which its founders have endeavored to make altogether unique.

Now this seems to be making the definition the master where it should properly be the mere servant. It subordinates facts to the terms in which they are to be described, and it sets limits by iron rules for no other apparent reason than that the rules are in existence, and whatever happens must therefore conform to them. But coming to the particular subject we have in hand, I think I may say with abundant authority to support me, that an event in history so great and striking as was the formation of the federal constitution—the greatest event of the age as the consequences flowing from it demonstrated—is quite beyond being distorted in meaning or dwarfed in significance or converted into something different from what the actors in it intended, by any such assumption as that it must in definition come into conformity with other facts whose history is different, or that the work which the actors accomplished must be measured by standards to which they made no reference whatever, and which it is plain it was their purpose to avoid. The great interests involved cannot be made to depend upon the meaning of terms which for metaphysical or academic reasons those who come after them may think proper to apply, especially when the application is plainly antagonistic to the intent. If what was done was meant to be and was really unique, so that any word or words in use do not accurately define it, it is entitled to have and demand a definition that will fit it, though it will fit no other, and for the very reason that it will fit no other: it is entitled to stand out by itself, distinct from all that in substance is found to be different. Nations are not limited in their powers by any supposed deficiency in language to accurately describe their acts, but commentators must take facts as they are, and find words which, in description, shall place them before the world accurately.

But let us examine a little this term sovereignty. Possibly applying it to the American states and their union also, which modern thought is supposed to find absolutely impossible, may not be so difficult as it is claimed to be. Sovereignty is spoken of not infrequently as if it were some specific thing, the peculiar characteristic of every independent state

and the same everywhere; the supreme will of the people of that state; the irresistible force, or, as Vice-President Stephens in his defense of Secession after the war was over described it, the paramount authority.* Any one of these definitions is sufficient for our purpose, but if we take either and undertake to apply it in the strict sense of the words, we may be compelled to inquire at the outset whether any such thing exists on the face of the globe at this time, unless perhaps we are to find it in the country of some barbarous chief who may order men up for instant execution without cause, or direct a man's wife to be taken from him and delivered to another at pleasure, or feed children to wild beasts. Such a chief, if possessing undisputed authority within his dominions, might well be spoken of as a sovereign possessing and exercising at pleasure the supreme will; but outside of such dominions if we look among civilized or even barbarous people we shall find such supreme authority as exists in any state is invariably to some extent qualified, and generally to a very considerable extent; that there are many powers within the compass of the supreme will, which arbitrary rulers exercise, that are not understood to be powers which can be exercised by any organ of the state under the existing government, or under any other that could rightfully be formed. We find also that in every country the sovereignty as it actually exists is somewhat different from what it is in any other; that somethings may be done in one which in any other are considered as outside the province of any governmental force whatever. A man in Morocco might perhaps be tried for supposed crimes secretly and without opportunity to make defense, but this would not be within the compass of sovereignty in France. From Russia a man might be banished to unknown regions by the arbitrary exercises of power, but not from Italy. In Great Britain a state church might be maintained, but not in the United States or in any one of the forty-four states composing the union.

This inability of what is called sovereign power to perform the acts indicated is not merely temporary, and does not depend upon the existing form of government; it is something that springs from the thoughts and purposes of the people, and qualifies sovereignty because the people do not understand the supreme will of the state to extend to such powers. We may say that in England, at this time, the Parliament has the sovereign power; that it may enact any laws it pleases; but if Parliament were to enact a law that was destructive in any respect to the fundamental rights of Englishmen as understood and accepted since the time of Magna Charta, the law would utterly fail of effect, either because the people and the authorities treated it with contempt, as unauthorized and beyond the proper compass of sovereignty, or because they would successfully rebel against any attempt to put it in force, even to the extent of revolution should that be necessary. This, I take it was what Lord Coke meant

*War between the States, Vol. 2, p. 22.

should be understood when he said, on the suggestion being made that the Petition of Right should be accepted with a reservation of the rights of the sovereign, "Magna Charta is such a fellow that he will have no sovereign:" Magna Charta, as here used, being a synonym for The Fundamental Rights of Englishmen. Moreover, sovereignty is not only different in every country, but it is continually changing; a process of exclusion is going on which takes some subjects from its sphere, and to some extent also a process of addition which brings in some subjects which it has come to be thought may properly fall within the compass of government, although formerly it was supposed they were outside its province. We speak sometimes of a paternal government, and the contrary, but we understand at once that the definition takes us back of the organized government to the ideas prevailing among the people, which in one country admit of many things that in another would be held to belong, not by permission of sovereign power merely, but of right, to families or to communities, and should not be dealt with at all by any public authority except by way of protection; in other words, they are not within the proper compass of the governmental authority of the state. I refer you in this connection to what is said by Mr. Edward Everett, scholar and statesman and eminent in both capacities, on this peculiar feature of the differences in what is understood by sovereignty in different countries.*

It may well be said, however, that sovereignty implies only the supreme will of the state, as interpreted and measured by the Constitution, the customs and prevailing opinions of the people, which limit it, and therefore the definition is well enough notwithstanding the differences that are to be found in different countries. Admitting this, I think we may then say that if we are to understand sovereignty to extend to all matters of government in the state, and to embrace whatever authority the people of the state as individuals or as a political body are expected to obey, and that no higher will or higher law can exist as to any of these, then there is not to-day and there has never been any such thing as one sole and supreme will in any country in Christendom; because always and everywhere there has been a code of laws which were above the sovereignty itself as to the matters coming within their provisions, and which every state was expected and bound to obey. I refer now to the laws of nations, which are supposed to be created by the sovereignties themselves, and to which all must pay obedience. These relate to some of the higher powers of government; and although it is quite true that any sovereign may break through them or refuse to obey any single one of them, it is not true that this may be done rightfully. Germany, for example, in the great war of 1870 might have butchered all the French prisoners, but if it had done so it would have been recognized by the whole world as a great criminal, which might rightfully, and which ought to be punished for its barbarous

*4 Everett's Orations and Speeches, 362-3.

conduct. It may be that it would have been impossible to inflict the punishment, but this would not affect the fact that this sovereignty had violated a great law which was obligatory upon it. It often happens in private life that a man's right fails to be enforced because of the difficulty of an adequate remedy, or because officers do not do their duty, but the wrong may be just as patent notwithstanding; the sanction which the sovereignty ought to give to the right may have failed of application, but this does not affect the rule of law; and just as little would the theory of the law of nations that all sovereignties are subordinate to it be affected by the failure in any particular instance to enforce any one of its provisions. The code itself cannot be changed by a single sovereignty at will. Nor is there any difficulty in the code being enlarged by positive agreement, as it has been heretofore by implied agreement, nor in two or more nations uniting by agreement to add to its provisions so far as relates to their own interests, as has sometimes been done by important treaties which were intended as permanent limitations upon sovereignty. The neutralization of the Low Countries may be taken as an instance.

But, if all sovereignties may thus be subject to a code of laws which they are understood to have by their own will created, and which they cannot rightfully depart from or alter without general concurrence, what is the difficulty when there are thirteen in a union of all under a constitution which shall create a common government, with certain specified but supreme powers, while retaining to themselves other powers undiminished and unimpaired? Possibly it may be argued that such an agreement if made by states would be only a treaty; and as a treaty must always be a treaty, it could not be a constitution. But a people is not restricted by mere technical rules in the framing of institutions. Suppose that thirteen sovereignties merge into one by a treaty which specifies the conditions; does this not thus become the fundamental law of that one? We shall probably find that from time to time such things will take place hereafter. And surely the supreme will or irresistible force of states is not so hampered by the chains of definition as to prevent. And if sovereignties can thus merge altogether, surely there can be no fatal impediment to their forming a single sovereignty as to certain powers, by an instrument of whatever name, which they agree shall be the fundamental law. To call states thus hampered, sovereignties, in the sense that makes sovereignty expressive of the supreme will or paramount authority, seems a contradiction in terms. It is very certain, I think, that great statesmen, when the crisis shall present itself that seems to call for some such action in the interests of their states respectively, will pay little attention to any mere definition which is interposed as an obstacle. They will expect a proper and fitting definition to come in due time.

In the light of what has been said, is it not manifest that sovereignty consists rather in an aggregate of powers, each more or less complete in itself, which it is understood in the country where the term is used are

proper governmental powers, and does not include others which it is agreed government in that country has no right to exercise? And in this understanding of the term where is the insurmountable difficulty in a people, with state organization and exercising sovereign powers, entering into binding and perpetual arrangements, by whatsoever name called, with other like states whereby a portion of these powers shall be granted to a new state which is created by all uniting for their common good, while other powers are preserved unimpaired? It is certainly not one of a practical nature, for this is what was done in founding the Federal constitution, if we judge by the intent, and the government has been successfully administered under it in accordance with the intent ever since, and without serious friction except when treasonable hands have assailed it.

It may be said that this is a mere matter of definition. The people of the United States saw fit to create state and National Governments as two organs through which to give effect to the one sovereign will, which was in them as an aggregate. It is not denied that the several governments are to exercise their respective powers without restraint or interruption except as provided for, but they do this because the supreme will resting in the people of all the states as one people has so determined. This is reasoning which springs from the necessity of finding the one indivisible supreme will somewhere, and it disregards or treats as of no moment the fact that the people as an aggregate had no agency in creating the thirteen original states, did not act together as such in any of the steps preceding the adoption of the Constitution, or in the adoption, and that the Constitution contemplates they never will act together as such. And it makes the reservations to the states something less than sovereign powers, although they were understood to be such before. I must insist that this is making the definition of a term not found in the Constitution, and itself, as employed, of variable meaning, have greater force in construing facts than the facts themselves.

I shall now refer you to what has been said by two persons entitled to speak with some authority respecting the establishment of the Federal Constitution, and what is its true theory; Madison, who was one of the makers, and who assisted in expounding it to the people when it was before them for adoption, and who afterwards administered it as president, and Webster, who by reason of his great expositions in public speeches has been called in this country and others, "The Great Expounder." I regret that I am unable for want of time to read the words of these great men, but I refer you here to their works, where you will find what they say upon this subject.* I name these two in part because they belong to two distinct and different schools of politics in this country, and together may be said to express views prevailing in both. You will find what is said not to be out of harmony with what is stated by Judge Hare, as quoted above, so far as relates to the question now immediately in hand. I call your attention also to what is said by Mr. George Bancroft,

who made American history the study of a lifetime, both in private life and in high official stations. His history of the Constitution of the United States was the careful work of his mature years, and the world may be searched in vain for one better entitled to give respecting it an expression of the best modern thought.† His theory of the Constitution has the prime merit that it is based upon the facts of history, and does not depend at all upon the sort of philosophical mysticism, which forms a general theory first and then undertakes the impossible task of making the diverse systems of different nations conform to it. Certainly Mr. Bancroft is far better entitled to be considered a correct expositor of the Constitution than is any one who comes to its examination with a general theory of government and general definitions, which it is supposed are of universal application, and simply addresses himself to the task of forcing our peculiar system of government to accommodate itself to the theory and to assume the dress of the definitions. And the guidance of those who assisted in the making or in the administration of the Constitution is far safer than that of those who, reasoning from the general doctrines they lay down, and treating as of little or no importance the peculiarities of the particular subject under consideration, tell us about the impossibility of such a thing existing as two sovereignties within the same territorial limits. The obvious answer is to them is, that they do exist, and have existed, working out great and beneficent results for a century. When the thirteen states severally assented to the national Constitution it was agreed without dissent that up to that time they were severally sovereign states; a large proportion of their powers were reserved to the states as a sphere of action into which the national authority could not enter, while other specified powers were granted to the United States. The powers were sovereign, but of course the term is to be understood with proper regard to the facts. Whoever denies the possibility of a division of sovereign powers by any other than a geographical line denies the necessary conclusions deduced from the action of the constituted authorities of the country, judicial, legislative, and executive, and antagonizes the leading historical writers and commentators, who have kept to the facts and endeavored to present them in their true features. It must be obvious on very slight reflection that the theory of exclusive national sovereignty will naturally tend to affect the balance of constitutional power as between the nation and the states. How can a supreme, paramount, irresistible will be a usurper?, will naturally be the question in men's minds.

When Mr. Webster made his great speech in vindication of Federal power, the national authority was in great need of being strengthened as against the aggressions of what were claimed to be state rights. But the time had gone by when secession was put down that the fear of aggression

*4 Madison's Writings, p. 61, 320, 390.
5 Webster's Works, p. 389.
†Bancroft's Constitution of the U. S. Book V. Ch., 1.
See also Bryce, American Commonwealth, Vol. 1, Ch. 4 and 36.

upon constitutional authority from that side had plausible foundation. The immense interests now under the control of the Federal Government, the great number of persons in its service, the vast sums of money collected and disbursed by it, have given a tendency in the direction of centralization of powers which needs no special acceleration from any criticism of the judicial or other decisions that have protected the states in the sovereign authority retained by them. The dogma of indivisible sovereignty which, when it last had formidable support in the country, was urged in defense of unfounded claims in the states, will be harmful on the other side precisely in the degree that it finds lodgment in the minds of the people. The very confusion it creates in the public mind regarding the correct theory of our government as authoritatively expounded is of itself a mischief, since it tends to weaken the respect for authority or to mislead the thoughts of men regarding it.

The theory of the Federal Constitution is obvious enough on its face, and no reasoning upon what is implied in the word "sovereignty" is of any weight whatever in opposition to the clear provisions of the Constitution itself. It is idle to tell us that the parties to the American Confederacy were powerless to do what in forming the Constitution they undertook; they did accomplish it by ratifying in their several state conventions a proposed fundamental law which expressed their purposes clearly, and which ever since has been administered according to their understanding. The theory founded upon a supposed meaning of the uncertain term "sovereignty" which they did not even have occasion to make use of in their work, has been authoritatively overruled every time it has made its appearance, for the plain reason that as applied to the United States it is a theory without facts to support it, and antagonistic to the most prominent feature of our political system.*

A short statement of the real case is this: The people in adopting the Constitution declared therein in express terms that it should be the supreme law; and it is the supreme law not more when it grants specified sovereign powers to the nation over some subjects than when it reserves to the states respectively complete powers on other subjects. Its supremacy in either particular cannot be taken away or qualified by abstract reasoning on the general nature of a state, for the terms employed are simple, plain, and clear, being intended for the comprehension of every intelligent citizen. Such a citizen coming to a consideration of the fundamental law will have no difficulty in understanding the co-ordinate existence of the national with the state sovereignty, which it was its purpose to establish on a firm and lasting basis, and which has already been in operation for a century. He will see very clearly with Mr. Bancroft that "the supremacy of the states in the powers which have not been granted is as

* See what is said by Gov. D. H. Chamberlain in Constitutional Hist. U. S. as seen in the Development of American law. p. 247.

essentially a part of the system as the supremacy of the general government in its sphere." *

Mr. Webster, in his great speech in reply to Hayne, says: "That the states are sovereign in many respects, nobody doubts,"† and this expression has peculiar force from the fact that it occurs in a vindication of national sovereignty made more than forty years after the Constitution had been put in force, during all which time it had been administered upon the understanding that Mr. Webster's contention, which admitted of state and national sovereignty within the same territorial limits, was unquestionably the true construction. Mr. George T. Curtis, the author of a history of the Constitution which has long been a standard authority, says: "I never was able to see how the opposite doctrine was consistent with the facts respecting the establishment of the Constitution and its unquestioned language."‡ Well might he say this, for the features of co-existence of sovereign powers in nation and states is not only more prominent in the Constitution and in its daily administration than any other, but it has been more generally praised than any other. It was devised and agreed upon by able men, well versed in political philosophy, and the document which established it was expressed in terms selected with unusual care and painstaking, that it might be understood by the common mind, and at the same time stand, as it has done, the tests of severest criticism. Mr. Curtis says of Mr. Webster's great defense of this unique feature of the Constitution, that it "constitutes the chief glory of his own great fame;" and such we have every reason to believe was Mr. Webster's own opinion. The merit of this great effort consisted in its demonstration that national sovereignty could be vindicated though state sovereignty was undeniable. It is suggested that he should have taken a position directly the opposite of this, and planted himself upon an exclusive sovereignty in the nation. Had he done so, the great glory of which Mr. Curtis speaks, and which is now one of the cherished treasures of the nation, would never have come to him, for his vindication of federal sovereignty, which was regarded at the time as so complete, and which was in fact so effective as almost to close the argument against nullification, would have fallen without effect, or, so far as it had any influence whatever, would have strengthened nullification by assuming to present as its opposite a doctrine still more unfounded and indefensible. Whoever is at all versed in the early history of this country up to the time when this vindication was made, cannot fail to understand that the assent of the people to the doctrine of an exclusive

* Bancroft. Hist. of Const. of U. S., Book 5, Ch. 1. Hamilton in the Federalist, No. 39, speaks of the "Constitutional recognition of the portion of sovereignty remaining in the individual states;" and of their "residuary sovereignty."

† Mr. Webster, in his speech on Foote's resolution, said: "The states are unquestionably sovereign, so far as their sovereignty is not affected by this supreme law." 3 Works, p. 321. They had, when national powers were established, as Justice Story says, "the residuary sovereignty." Story on Const., § 209.

‡ This passage occurs in a review by Mr. Curtis of the work of A. H. Stephens, referred to above. The review is reprinted by Mr. Stephens in Reviewers Reviewed, p. 62.

sovereignty in the Union could never have been obtained at any time, even as a mere theory. The doctrine itself was repulsive and would have been rejected at once, and had Mr. Webster planted himself upon it the great fame which he afterwards attained would in all probability never have reached important proportions. Fortunately for the country and his own glory Mr. Webster had been too close a student of the history of the Constitution, and had far too much practical wisdom, to make so fatal a blunder. He planted himself upon what he knew was the theory which the founders of the government had of the work they had created, and he had no difficulty in vindicating the rights of the states and of the nation respectively in such manner that when he declared unhesitatingly that the sovereignty of the states "in many respects nobody doubts" he had the concurrent sentiment of the country nearly unanimous with him, and his demonstration of the co-existence of national sovereignty and state sovereignty within the same territorial limits suggested to few minds then loyal to the government any difficulty whatever.

We do well to follow Mr. Webster in his employment of terms, not only because he planted himself upon the facts of history, but because he has with him the general concurrence of authority. We have no interest in showing if we could that he based his argument upon a fallacy, because the showing could benefit no one, cure no evil, remove no defect. The old doctrine that sovereignty is indivisible is seen to have reason for its foundation when it is proposed to introduce two or more sovereigns into the same territory with like powers. Then there arises the practical difficulty of a divided allegiance with subjects who are liable to inconsistent demands, and all the difficulties and dangers of a continual conflict of duties. But all this is completely provided against by the Constitution; there can be no conflicting duties arising from federal and state sovereign authority, and the laws enacted can be concurrently enforced with no more possibility of conflict or confusion than when a state and one of its municipalities enforce their respective laws contemporaneously. To refuse to recognize the exceptional in the definitions and then to base important principles of government upon supposed difficulties which have been effectually provided against, savors more of caviling than of statesmanship. It was admissible in Mr. Vice-President Stephens, who was assailing the constitutional theory, but Mr. Webster was concerned to show, as he so nobly did, that the Constitution was a masterpiece of workmanship, especially in the feature that was then being so vigorously assailed.

In all I have said, I have avoided entering upon any discussion of controverted questions which, however interesting, I regard as of no practical importance. And in making use of the word "State" I mean always not the government for the time being, but the people in whom is the qualified sovereignty which the states possess.

Addendum R

Excerpts from Black's Law Dictionary (1891)

A

DICTIONARY OF LAW

CONTAINING

DEFINITIONS OF THE TERMS AND PHRASES OF AMERICAN AND ENGLISH JURISPRUDENCE, ANCIENT AND MODERN

INCLUDING

THE PRINCIPAL TERMS OF INTERNATIONAL, CONSTITUTIONAL, AND COMMERCIAL LAW; WITH A COLLECTION OF LEGAL MAXIMS AND NUMEROUS SELECT TITLES FROM THE CIVIL LAW AND OTHER FOREIGN SYSTEMS

By Henry Campbell Black, M.A.

Author of Treatises on "Judgments," "Tax-Titles," "Constitutional Prohibitions," etc.

ST. PAUL, MINN.

WEST PUBLISHING CO.

1891

ALTARAGE. In ecclesiastical law. Offerings made on the altar; all profits which accrue to the priest by means of the altar. Ayliffe, Parerg. 61.

ALTER. To make a change in; to modify; to vary in some degree; to change some of the elements or ingredients or details, without substituting an entirely new thing or destroying the identity of the thing affected.

This term is to be distinguished from its synonyms "change" and "amend." To change may import the substitution of an entirely different thing, while to alter is to operate upon a subject-matter which continues objectively the same while modified in some particular. If a check is raised, in respect to its amount, it is altered; if a new check is put in its place, it is changed. To "amend" implies that the modification made in the subject improves it, which is not necessarily the case with an alteration. An amendment always involves an alteration, but an alteration does not always amend.

ALTERATION. Variation; changing; making different.

An act done upon a written instrument, which, without destroying the identity of the document, introduces some change into its terms, meaning, language, or details. This may be done either by the mutual agreement of the parties concerned, or by a person interested under the writing without the consent, or without the knowledge, of the others. In either case it is properly denominated an alteration; but if performed by a mere stranger, it is more technically described as a spoliation or mutilation. The term is not properly applied to any change which involves the substitution of a practically new document. And it should in strictness be reserved for the designation of changes in form or language, and not used with reference to modifications in matters of substance.

An alteration is an act done upon the instrument by which its meaning or language is changed. If what is written upon or erased from the instrument has no tendency to produce this result, or to mislead any person, it is not an alteration. 5 Neb. 444.

An alteration is said to be *material* when it affects, or may possibly affect, the rights of the persons interested in the document.

Alterius circumventio alii non præbet actionem. The deceiving of one person does not afford an action to another. Dig. 50, 17, 49.

ALTERNAT. A usage among diplomatists by which the rank and places of different powers, who have the same right and pretensions to precedence, are changed from time to time, either in a certain regular order or one determined by lot. In drawing up treaties and conventions, for example, it is the usage of certain powers to alternate, both in the preamble and the signatures, so that each power occupies, in the copy intended to be delivered to it, the first place. Wheat. Int. Law, § 157.

ALTERNATIM. L. Lat. Interchangeably. Litt. § 371; Townsh. Pl. 37.

Alternativa petitio non est audienda. An alternative petition or demand is not to be heard. 5 Coke, 40.

ALTERNATIVE. One or the other of two things; giving an option or choice; allowing a choice between two or more things or acts to be done.

ALTERNATIVE OBLIGATION. An obligation allowing the obligor to choose which of two things he will do, the performance of either of which will satisfy the instrument.

Where the things which form the object of the contract are separated by a disjunctive, then the obligation is *alternative*. A promise to deliver a certain thing or to pay a specified sum of money, is an example of this kind of obligation. Civil Code La. art. 2066.

ALTERNATIVE REMEDY. Where a new remedy is created in addition to an existing one, they are called "alternative" if only one can be enforced; but if both, "cumulative."

ALTERNATIVE WRIT. A writ commanding the person against whom it is issued to do a specified thing, or show cause to the court why he should not be compelled to do it.

ALTERNIS VICIBUS. L. Lat. By alternate turns; at alternate times; alternately. Co. Litt. 4*a*; Shep. Touch. 206.

ALTERUM NON LÆDERE. Not to injure another. This maxim, and two others, *honeste vivere*, and *suum cuique tribuere*, (*q. v.*,) are considered by Justinian as fundamental principles upon which all the rules of law are based. Inst. 1, 1, 3.

ALTIUS NON TOLLENDI. In the civil law. A servitude due by the owner of a house, by which he is restrained from build-

AUTHORITY. In contracts. The lawful delegation of power by one person to another.

In the English law relating to public administration, an authority is a body having jurisdiction in certain matters of a public nature.

In governmental law. Legal power; a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in the scope of their public duties.

Authority to execute a deed must be given by deed. Com. Dig. "Attorney," C, 5; 4 Term, 313; 7 Term, 207; 1 Holt, 141; 9 Wend. 68, 75; 5 Mass. 11; 5 Bin. 613.

AUTO ACORDADO. In Spanish colonial law. An order emanating from some superior tribunal, promulgated in the name and by the authority of the sovereign. Schm. Civil Law, 93.

AUTOCRACY. The name of an unlimited monarchical government. A government at the will of one man, (called an "autocrat,") unchecked by constitutional restrictions or limitations.

AUTOGRAPH. The handwriting of any one.

AUTONOMY. The political independence of a nation; the right (and condition) of self-government.

AUTOPSY. The dissection of a dead body for the purpose of inquiring into the cause of death. Pub. St. Mass. 1882, p. 1288.

AUTRE. L. Fr. Another.

AUTRE VIE. L. Fr. Another's life. A person holding an estate for or during the life of another is called a tenant "*pur autre vie*," or "*pur terme d'autre vie.*" Litt. § 56; 2 Bl. Comm. 120.

AUTREFOIS. At another time; formerly; before; heretofore.

AUTREFOIS ACQUIT. In criminal law. Formerly acquitted. The name of a plea in bar to a criminal action, stating that the defendant has been once already indicted and tried for the same alleged offense and has been acquitted.

AUTREFOIS ATTAINT. In criminal law. Formerly attainted. A plea that the defendant has already been attainted for one felony, and therefore cannot be criminally prosecuted for another. 4 Bl. Comm. 336.

AUTREFOIS CONVICT. Formerly convicted. In criminal law. A plea by a criminal in bar to an indictment that he has been formerly convicted of the same identical crime. 4 Bl. Comm. 336; 4 Steph. Comm. 404.

AUXILIUM. In feudal and old English law. Aid; a kind of tribute paid by the vassal to his lord, being one of the incidents of the tenure by knight's service. Spelman.

AUXILIUM AD FILIUM MILITEM FACIENDUM ET FILIAM MARITANDAM. An ancient writ which was addressed to the sheriff to levy compulsorily an aid towards the knighting of a son and the marrying of a daughter of the tenants *in capite* of the crown.

AUXILIUM CURIÆ. In old English law. A precept or order of court citing and convening a party, at the suit and request of another, to warrant something.

AUXILIUM REGIS. In English law. The king's aid or money levied for the royal use and the public service, as taxes granted by parliament.

AUXILIUM VICE COMITI. An ancient duty paid to sheriffs. Cowell.

AVAIL OF MARRIAGE. In feudal law. The right of marriage, which the lord or guardian in chivalry had of disposing of his infant ward in matrimony. A guardian in socage had also the same right, but not attended with the same advantage. 2 Bl. Comm. 88.

In Scotch law. A certain sum due by the heir of a deceased ward vassal, when the heir became of marriageable age. Ersk. Inst. 2, 5, 18.

AVAILABLE MEANS. This phrase, among mercantile men, is a term well understood to be anything which can readily be converted into money; but it is not necessarily or primarily money itself. 13 N. Y. 219; 32 N. Y. 224.

AVAILS. Profits, or proceeds. This word seems to have been construed only in reference to wills, and in them it means the *corpus* or proceeds of the estate after the payment of the debts. 1 Amer. & Eng. Enc. Law, 1039. See 3 N. Y. 276; 34 N. Y. 201.

AVAL. In French law. The guaranty of a bill of exchange; so called because usually placed at the foot or bottom (*aval*) of the bill. Story, Bills, § 394, 454.

The act of subscribing one's signature at

INFRA TRIDUUM. Within three days. Formal words in old appeals. Fleta, lib. 1, c. 31, § 6; Id. c. 35, § 3.

INFRACTION. A breach, violation, or infringement; as of a law, a contract, a right or duty.

In French law, this term is used as a general designation of all punishable actions.

INFRINGEMENT. A breaking into; a trespass or encroachment upon; a violation of a law, regulation, contract, or right. Used especially of invasions of the rights secured by patents, copyrights, and trademarks.

INFUGARE. To put to flight.

INFULA. A coif, or a cassock. Jacob.

INFUSION. In medical jurisprudence. The process of steeping in liquor; an operation by which the medicinal qualities of a substance may be extracted by a liquor without boiling. Also the product of this operation. "Infusion" and "decoction," though not identical, are *ejusdem generis* in law. 3 Camp. 74. See DECOCTION.

INGE. Meadow, or pasture. Jacob.

INGENIUM. (1) Artifice, trick, fraud; (2) an engine, machine, or device. Spelman.

INGENUITAS. Liberty given to a servant by manumission.

INGENUITAS REGNI. In old English law. The freemen, yeomanry, or commonalty of the kingdom. Cowell. Applied sometimes also to the barons.

INGENUUS. In Roman law. A person who, immediately that he was born, was a free person. He was opposed to *libertinus*, or *libertus*, who, having been born a slave, was afterwards manumitted or made free. It is not the same as the English law term "*generosus*," which denoted a person not merely free, but of good family. There were no distinctions among *ingenui;* but among *libertini* there were (prior to Justinian's abolition of the distinctions) three varieties, namely: Those of the highest rank, called "*Cives Romani;*" those of the second rank, called "*Latini Juniani;*" and those of the lowest rank, called "*Dediticii.*" Brown.

INGRATITUDE. In Roman law, ingratitude was accounted a sufficient cause for revoking a gift or recalling the liberty of a freedman. Such is also the law of France, with respect to the first case. But the English law has left the matter entirely to the moral sense.

INGRESS, EGRESS, AND REGRESS. These words express the right of a lessee to enter, go upon, and return from the lands in question.

INGRESSU. In English law. An ancient writ of entry, by which the plaintiff or complainant sought an entry into his lands. Abolished in 1833.

INGRESSUS. In old English law. Ingress; entry. The relief paid by an heir to the lord was sometimes so called. Cowell.

INGROSSATOR. An engrosser. *Ingrossator magni rotuli*, engrosser of the great roll; afterwards called "clerk of the pipe." Spelman; Cowell.

INGROSSING. The act of making a fair and perfect copy of any document from a rough draft of it, in order that it may be executed or put to its final purpose.

INHABITANT. One who resides actually and permanently in a given place, and has his domicile there.

"The words 'inhabitant,' 'citizen,' and 'resident,' as employed in different constitutions to define the qualifications of electors, mean substantially the same thing; and one is an inhabitant, resident, or citizen at the place where he has his domicile or home." Cooley, Const. Lim. *600. But the terms "resident" and "inhabitant" have also been held not synonymous, the latter implying a more fixed and permanent abode than the former, and importing privileges and duties to which a mere resident would not be subject. 40 Ill. 197.

INHABITED HOUSE DUTY. A tax assessed in England on inhabited dwelling-houses, according to their annual value, (St. 14 & 15 Vict. c. 36; 32 & 33 Vict. c. 14, § 11,) which is payable by the occupier, the landlord being deemed the occupier where the house is let to several persons, (St. 48 Geo. III. c. 55, Schedule B.) Houses occupied solely for business purposes are exempt from duty, although a care-taker may dwell therein, and houses partially occupied for business purposes are to that extent exempt. Sweet.

INHERENT POWER. An authority possessed without its being derived from another. A right, ability, or faculty of doing a thing, without receiving that right, ability, or faculty from another.

INHERETRIX. The old term for "heiress." Co. Litt. 13*a*.

from extradition treaties, this term denotes crimes which are incidental to and form a part of political disturbances; but it might also be understood to include offenses consisting in an attack upon the political order of things established in the country where committed, and even to include offenses committed to obtain any political object. 2 Steph. Crim. Law, 70.

POLITICAL OFFICE. Civil offices are usually divided into three classes,—political, judicial, and ministerial. Political offices are such as are not immediately connected with the administration of justice, or with the execution of the mandates of a superior, such as the president, or the head of a department. 13 Wall. 575.

POLITICAL QUESTIONS. Questions of which the courts of justice will refuse to take cognizance, or to decide, on account of their purely political character, or because their determination would involve an encroachment upon the executive or legislative powers; *e. g.*, what sort of government exists in a state, whether peace or war exists, whether a foreign country has become an independent state, etc. 7 How. 1; 14 How. 38; 11 Amer. Law Reg. 419.

POLITICAL RIGHTS. Those which may be exercised in the formation or administration of the government. 90 Ill. 563.

POLITICS. The science of government; the art or practice of administering public affairs.

POLITY. The form of government; civil constitution.

POLL, *v.* In practice. To single out, one by one, of a number of persons. To examine each juror separately, after a verdict has been given, as to his concurrence in the verdict. 1 Burrill, Pr. 238.

POLL, *n.* A head; an individual person; a register of persons.

POLL, *adj.* Cut or shaved smooth or even; cut in a straight line without indentation. A term anciently applied to a deed, and still used, though with little of its former significance. 2 Bl. Comm. 296.

POLL-MONEY. A tax ordained by act of parliament, (18 Car. II., c. 1,) by which every subject in the kingdom was assessed by the head or poll, according to his degree. Cowell. A similar personal tribute was more anciently termed "poll-silver."

POLL-TAX. A capitation tax; a tax assessed on every head, *i. e.*, on every male of a certain age, etc., according to statute.

POLLARDS. A foreign coin of base metal, prohibited by St. 27 Edw. I. c. 3, from being brought into the realm, on pain of forfeiture of life and goods. 4 Bl. Comm. 98. It was computed at two pollards for a sterling or penny. Dyer, 82*b*.

POLLENGERS. Trees which have been lopped; distinguished from timber-trees. Plowd. 649.

POLLICITATION. In the civil law. An offer not yet accepted by the person to whom it is made. Langd. Cont. § 1.

POLLIGAR, POLYGAR. In Hindu law. The head of a village or district; also a military chieftain in the peninsula, answering to a hill *zemindar* in the northern *circars*. Wharton.

POLLING THE JURY. To *poll* a jury is to require that each juror shall himself declare what is his verdict.

POLLS. The place where electors cast in their votes.

Heads; individuals; persons singly considered. A challenge to the *polls* (*in capita*) is a challenge to the individual jurors composing the panel, or an exception to one or more particular jurors. 3 Bl. Comm. 358, 361.

POLYANDRY. The civil condition of having more husbands than one to the same woman; a social order permitting plurality of husbands.

Polygamia est plurium simul virorum uxorumve connubium. 3 Inst. 88. Polygamy is the marriage with many husbands or wives at one time.

POLYGAMY. In criminal law. The offense of having several wives or husbands at the same time, or more than one wife or husband at the same time. 3 Inst. 88.

The offense committed by a layman in marrying while any previous wife is living and undivorced; as distinguished from bigamy in the sense of a breach of ecclesiastical law involved in any second marriage by a clerk.

Polygamy, or bigamy, shall consist in knowingly having a plurality of husbands or wives at the same time. Code Ga. 1882, § 4530.

A bigamist or polygamist, in the sense of the eighth section of the act of congress of March 22, 1882, is a man who, having contracted a bigamous or

POURVEYANCE. In old English law. The providing corn, fuel, victual, and other necessaries for the king's house. Cowell.

POURVEYOR, or PURVEYOR. A buyer; one who provided for the royal household.

POUSTIE. In Scotch law. Power. See LIEGE POUSTIE. A word formed from the Latin "*potestas.*"

POVERTY AFFIDAVIT. An affidavit, made and filed by one of the parties to a suit, that he is not able to furnish security for the final costs. The use of the term is confined to a few states. 36 Kan. 263, 13 Pac. Rep. 275.

POWER. A power is an authority to do some act in relation to real property, or to the creation or revocation of an estate therein, or a charge thereon, which the owner granting or reserving such power might himself perform for any purpose. Civil Code Dak. § 298; How. St. Mich. § 5591.

"Power" is sometimes used in the same sense as "right," as when we speak of the powers of user and disposition which the owner of property has over it, but, strictly speaking, a power is that which creates a special or exceptional right, or enables a person to do something which he could not otherwise do. Sweet.

Technically, an authority by which one person enables another to do some act for him. 2 Lil. Abr. 339.

An authority enabling a person to dispose, through the medium of the statute of uses, of an interest, vested either in himself or in another person. Sugd. Powers, 82. An authority expressly reserved to a grantor, or expressly given to another, to be exercised over lands, etc., granted or conveyed at the time of the creation of such power. Watk. Conv. 157. A proviso, in a conveyance under the statute of uses, giving to the grantor or grantee, or a stranger, authority to revoke or alter by a subsequent act the estate first granted. 1 Steph. Comm. 505. See POWER OF APPOINTMENT.

POWER COUPLED WITH AN INTEREST. By this phrase is meant a right or power to do some act, together with an interest in the subject-matter on which the power is to be exercised. It is distinguished from a *naked* power, which is a mere authority to act, not accompanied by any interest of the donee in the subject-matter of the power.

Is it an interest in the subject on which the power is to be exercised, or is it an interest in that which is produced by the exercise of the power? We hold it to be clear that the interest which can protect a power after the death of a person who creates it must be an interest in the thing itself. In other words, the power must be engrafted on an estate in the thing. The words themselves would seem to import this meaning. "A power coupled with an interest" is a power which accompanies or is connected with an interest. The power and the interest are united in the same person. But, if we are to understand by the word "interest" an interest in that which is to be produced by the exercise of the power, then they are never united. The power to produce the interest must be exercised, and by its exercise is extinguished. The power ceases when the interest commences, and therefore cannot, in accurate law language, be said to be "coupled" with it. 8 Wheat. 204.

POWER OF APPOINTMENT. A power or authority conferred by one person by deed or will upon another (called the "donee") to appoint, that is, to select and nominate, the person or persons who are to receive and enjoy an estate or an income therefrom or from a fund, after the testator's death, or the donee's death, or after the termination of an existing right or interest.

Powers are either: *Collateral*, which are given to strangers; *i. e.*, to persons who have neither a present nor future estate or interest in the land. These are also called simply "collateral," or powers not coupled with an interest, or powers not being interests. These terms have been adopted to obviate the confusion arising from the circumstance that powers in gross have been by many called powers collateral. Or relating to the land. These are called "appendant" or "appurtenant," because they strictly depend upon the estate limited to the person to whom they are given. Thus, where an estate for life is limited to a man, with a power to grant leases in possession, a lease granted under the power may operate wholly out of the life-estate of the party executing it, and must in every case have its operation out of his estate during his life. Such an estate must be created, which will attach on an interest actually vested in himself. Or they are called "in gross," if given to a person who had an interest in the estate at the execution of the deed creating the power, or to whom an estate is given by the deed, but which enabled him to create such estates only as will not attach on the interest limited to him. Of necessity, therefore, where a man seised in fee settles his estate on others, reserving to himself only a particular power, the power is in gross. A power to a tenant for life to appoint the estate after his death among his children, a power to jointure a wife after his death, a power to raise a term of years to commence from his death, for securing younger children's portions, are all powers in gross. An important distinction is established between *general* and *particular* powers. By a general power we understand a right to appoint to whomsoever the donee pleases. By a particular power it is meant that the donee is restricted to some objects designated in the deed creating the power, as to his own children. Wharton.

We have seen that a general power is *beneficial*

the public, affording notice or information to the public, or open to public inspection.

PUBLIC REVENUE. The revenue of the government of the state or nation; sometimes, perhaps, that of a municipality.

PUBLIC RIVER. A river where there is a common navigation exercised; otherwise called a "navigable river." 1 Crabb, Real Prop. p. 111, § 106.

PUBLIC SALE. A sale made in pursuance of a notice, by auction or public outcry. 4 Watts, 258.

PUBLIC SCHOOLS. Schools established under the laws of the state, (and usually regulated in matters of detail by the local authorities,) in the various districts, counties, or towns, maintained at the public expense by taxation, and open without charge to the children of all the residents of the town or other district.

PUBLIC SEAL. A seal belonging to and used by one of the bureaus or departments of government, for authenticating or attesting documents, process, or records.

An impression made of some device, by means of a piece of metal or other hard substance, kept and used by public authority. 7 Port. (Ala.) 534.

PUBLIC STATUTE. See PUBLIC ACT.

PUBLIC STOCKS. The funded or bonded debt of a government or state.

PUBLIC STORE. A government warehouse, maintained for certain administrative purposes, such as the keeping of military supplies, the storing of imported goods under bonds to pay duty, etc.

PUBLIC TRIAL. A trial held in public; in the presence of the public, or in a place accessible and open to the attendance of the public at large, or of persons who may properly be admitted.

"By this [public trial] is not meant that every person who sees fit shall in all cases be permitted to attend criminal trials, because there are many cases where, from the character of the charge and the nature of the evidence by which it is to be supported, the motives to attend the trial, on the part of portions of the community, would be of the worst character, and where a regard to public morals and public decency would require that at least the young be excluded from hearing and witnessing the evidences of human depravity which the trial must necessarily bring to light. The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions; and the requirement is fairly observed if, without partiality or favoritism, a reasonable proportion of the public is suffered to attend, notwithstanding that those persons whose presence could be of no service to the accused, and who would only be drawn thither by a prurient curiosity, are excluded altogether." Cooley, Const. Lim. *312.

PUBLIC, TRUE, AND NOTORIOUS. The old form by which charges in the *allegations* in the ecclesiastical courts were described at the end of each particular.

PUBLIC USE, in constitutional provisions restricting the exercise of the right to take private property in virtue of eminent domain, means a use concerning the whole community as distinguished from particular individuals. But each and every member of society need not be equally interested in such use, or be personally and directly affected by it; if the object is to satisfy a great public want or exigency, that is sufficient. 18 Cal. 229.

PUBLIC VERDICT. A verdict openly delivered by the jury in court. See PRIVY VERDICT.

PUBLIC VESSEL. One owned and used by a nation or government for its public service, whether in its navy, its revenue service, or otherwise.

PUBLIC WAR. This term includes every contention by force, between two nations, in external matters, under the authority of their respective governments. 4 Dall. 40.

PUBLIC WAYS. Highways, (*q. v.*)

PUBLIC WELFARE. The prosperity, well-being, or convenience of the public at large, or of a whole community, as distinguished from the advantage of an individual or limited class. See 4 Ohio St. 499.

PUBLIC WORKS. Works, whether of construction or adaptation, undertaken and carried out by the national, state, or municipal authorities, and designed to subserve some purpose of public necessity, use, or convenience; such as public buildings, roads, aqueducts, parks, etc.

PUBLIC WORSHIP. This term may mean the worship of God, conducted and observed under public authority; or it may mean worship in an open or public place, without privacy or concealment; or it may mean the performance of religious exercises, under a provision for an equal right in the whole public to participate in its benefits; or it may be

REFERENDO SINGULA SINGULIS. Lat. Referring individual or separate words to separate subjects; making a distributive reference of words in an instrument; a rule of construction.

REFERENDUM. In international law. A communication sent by a diplomatic representative to his home government, in regard to matters presented to him which he is unable or unwilling to decide without further instructions.

In the modern constitutional law of Switzerland, the *referendum* is a method of submitting an important legislative measure to a direct vote of the whole people. See PLEBISCITE.

REFORM. To correct, rectify, amend, remodel. Instruments *inter partes* may be *reformed*, when defective, by a court of equity. By this is meant that the court, after ascertaining the real and original intention of the parties to a deed or other instrument, (which intention they failed to sufficiently express, through some error, mistake of fact, or inadvertence,) will decree that the instrument be held and construed as if it fully and technically expressed that intention.

It is to be observed that "reform" is seldom, if ever, used of the correction of defective pleadings, judgments, decrees or other judicial proceedings; "amend" being the proper term for that use. Again, "amend" seems to connote the idea of improving that which may have been well enough before, while "reform" might be considered as properly applicable only to something which before was quite worthless.

REFORM ACTS. A name bestowed on the statutes 2 Wm. IV. c. 45, and 30 & 31 Vict. c. 102, passed to amend the representation of the people in England and Wales; which introduced extended amendments into the system of electing members of the house of commons.

REFORMATION. See REFORM.

REFORMATORY. This term is of too wide and uncertain signification to support a bequest for the building of a "boys' reformatory." It includes all places and institutions in which efforts are made either to cultivate the intellect, instruct the conscience, or improve the conduct; places in which persons voluntarily assemble, receive instruction, and submit to discipline, or are detained therein for either of these purposes by force. 49 Conn. 35.

REFORMATORY SCHOOLS. In English law. Schools to which convicted juvenile offenders (under sixteen) may be sent by order of the court before which they are tried, if the offense be punishable with penal servitude or imprisonment, and the sentence be to imprisonment for ten days or more. Wharton.

REFRESHER. In English law. A further or additional fee to counsel in a long case, which may be, but is not necessarily, allowed on taxation.

REFRESHING THE MEMORY. The act of a witness who consults his documents, memoranda, or books, to bring more distinctly to his recollection the details of past events or transactions, concerning which he is testifying.

REFUND. To repay or restore; to return money had by one party of another.

REFUNDING BOND. A bond given to an executor by a legatee, upon receiving payment of the legacy, conditioned to *refund* the same, or so much of it as may be necessary, if the assets prove deficient.

REFUNDS. In the laws of the United States, this term is used to denote sums of money received by the government or its officers which, for any cause, are to be refunded or restored to the parties paying them; such as excessive duties or taxes, duties paid on goods destroyed by accident, duties received on goods which are re-exported, etc.

REFUSAL. The act of one who has, by law, a right and power of having or doing something of advantage, and declines it.

REFUTANTIA. In old records. An acquittance or acknowledgment of renouncing all future claim. Cowell.

REG. GEN. An abbreviation of "*Regula Generalis*," a general rule, (of court.)

REG. JUD. An abbreviation of "*Registrum Judiciale*," the register of judicial writs.

REG. LIB. An abbreviation of "*Registrarii Liber*," the register's book in chancery, containing all decrees.

REG. ORIG. An abbreviation of "*Registrum Originale*," the register of original writs.

REG. PL. An abbreviation of "*Regula Placitandi*," rule of pleading.

REGAL FISH. Whales and sturgeons.

turn for one year, kept the controlment books of all grants that passed the great seal. The six clerks were superseded by the clerks of records and writs.

RIDINGS, (corrupted from *trithings.*) The names of the parts or divisions of Yorkshire, which, of course, are three only, viz., East Riding, North Riding, and West Riding.

RIEN. Nothing. It appears in a few law French phrases.

RIEN CULP. L. Fr. In old pleading. Not guilty.

RIEN DIT. L. Fr. In old pleading. Says nothing, (*nil dicit.*)

RIEN LUY DOIT. L. Fr. In old pleading. Owes him nothing. The plea of *nil debet.*

RIENS EN ARRERE. L. Fr. Nothing in arrear. A plea in an action of debt for arrearages of account. Cowell.

RIENS LOUR DEUST. L. Fr. Not their debt. The old form of the plea of *nil debet.* 2 Reeve, Eng. Law, 332.

RIENS PASSA PER LE FAIT. L. Fr. Nothing passed by the deed. A plea by which a party might avoid the operation of a deed, which had been enrolled or acknowledged in court; the plea of *non est factum* not being allowed in such case.

RIENS PER DISCENT. L. Fr. Nothing by descent. The plea of an heir, where he is sued for his ancestor's debt, and has no land from him by descent, or assets in his hands. Cro. Car. 151; 1 Tidd, Pr. 645; 2 Tidd, Pr. 937.

RIER COUNTY. In old English law. After-county; *i. e.*, after the end of the county court. A time and place appointed by the sheriff for the receipt of the king's money after the end of his county, or county court. Cowell.

RIFLETUM. A coppice or thicket. Cowell.

RIGA. In old European law. A species of service and tribute rendered to their lords by agricultural tenants. Supposed by Spelman to be derived from the name of a certain portion of land, called, in England, a "rig" or "ridge," an elevated piece of ground, formed out of several furrows. Burrill.

RIGGING THE MARKET. A term of the stock-exchange, denoting the practice of inflating the price of given stocks, or enhancing their quoted value, by a system of pretended purchases, designed to give the air of an unusual demand for such stocks. See L. R. 13 Eq. 447.

RIGHT. As a *noun*, and taken in an *abstract* sense, the term means justice, ethical correctness, or consonance with the rules of law or the principles of morals. In this signification it answers to one meaning of the Latin "*jus*," and serves to indicate law in the abstract, considered as the foundation of all rights, or the complex of underlying moral principles which impart the character of justice to all positive law, or give it an ethical content.

As a *noun*, and taken in a *concrete* sense, a right signifies a power, privilege, faculty, or demand, inherent in one person and incident upon another. "Rights" are defined generally as "powers of free action." And the primal rights pertaining to men are undoubtedly enjoyed by human beings purely as such, being grounded in personality, and existing antecedently to their recognition by positive law. But leaving the abstract moral sphere, and giving to the term a juristic content, a "right" is well defined as "a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others." Holl. Jur. 69.

The noun substantive "a right" signifies that which jurists denominate a "faculty;" that which resides in a determinate person, by virtue of a given law, and which avails against a person (or answers to a duty lying on a person) other than the person in whom it resides. And the noun substantive "rights" is the plural of the noun substantive "a right." But the expression "right," when it is used as an adjective, is equivalent to the adjective "just," as the adverb "rightly" is equivalent to the adverb "justly." And, when used as the abstract name corresponding to the adjective "right," the noun substantive "right" is synonymous with the noun substantive "justice." Aust. Jur. § 264, note.

In a narrower signification, the word denotes an interest or title in an object of property; a just and legal claim to hold, use, or enjoy it, or to convey or donate it, as he may please. See Co. Litt. 345*a*.

The term "right," in civil society, is defined to mean that which a man is entitled to have, or to do, or to receive from others within the limits prescribed by law. 6 Neb. 40.

That which one person ought to have or receive from another, it being withheld from him, or not in his possession. In this sense, "right" has the force of "claim," and is prop-

erly expressed by the Latin "*jus.*" Lord Coke considers this to be the proper signification of the word, especially in writs and pleadings, where an *estate is turned to a right;* as by discontinuance, disseisin, etc. Co. Litt. 345*a*.

Classification. Rights may be described as *perfect* or *imperfect*, according as their action or scope is clear, settled, and determinate, or is vague and unfixed.

Rights are either *in personam* or *in rem*. A right *in personam* is one which imposes an obligation on a definite person. A right *in rem* is one which imposes an obligation on persons generally; *i. e.*, either on all the world or on all the world except certain determinate persons. Thus, if I am entitled to exclude all persons from a given piece of land, I have a right *in rem* in respect of that land; and, if there are one or more persons, A., B., and C., whom I am not entitled to exclude from it, my right is still a right *in rem*. Sweet.

Rights may also be described as either *primary* or *secondary*. *Primary* rights are those which can be created without reference to rights already existing. *Secondary* rights can only arise for the purpose of protecting or enforcing primary rights. They are either preventive (protective) or remedial (reparative.) Sweet.

Preventive or *protective secondary* rights exist in order to prevent the infringement or loss of primary rights. They are judicial when they require the assistance of a court of law for their enforcement, and extrajudicial when they are capable of being exercised by the party himself. *Remedial* or *reparative secondary* rights are also either judicial or extrajudicial. They may further be divided into (1) rights of restitution or restoration, which entitle the person injured to be replaced in his original position; (2) rights of enforcement, which entitle the person injured to the performance of an act by the person bound; and (3) rights of satisfaction or compensation. Id.

With respect to the ownership of external objects of property, rights may be classed as *absolute* and *qualified*. An absolute right gives to the person in whom it inheres the uncontrolled dominion over the object at all times and for all purposes. A qualified right gives the possessor a right to the object for certain purposes or under certain circumstances only. Such is the right of a bailee to recover the article bailed when it has been unlawfully taken from him by a stranger.

Rights are also either *legal* or *equitable*. The former is the case where the person seeking to enforce the right for his own benefit has the legal title and a remedy at law. The latter are such as are enforceable only in equity; as, at the suit of *cestui que trust*.

There is also a classification of rights, with respect to the constitution of civil society. Thus, according to Blackstone, "the rights of persons, considered in their natural capacities, are of two sorts,—*absolute* and *relative;* absolute, which are such as appertain and belong to particular men, merely as individuals or single persons; relative, which are incident to them as members of society, and standing in various relations to each other." 1 Bl. Comm. 123.

Rights are also classed as *natural*, *civil*, and *political*.

We mean by *natural* rights those which, by fair deduction from the present physical, moral, social, and religious characteristics of man, he must be invested with, and which he ought to have realized for him in a jural society, in order to fulfill the ends to which his nature calls him. Wools. Pol. Science, I. 26.

Political rights consist in the power to participate, directly or indirectly, in the establishment or administration of government.

Civil rights are such as belong to every citizen of the state or country, or, in a wider sense, to all its inhabitants, and are not connected with the organization or administration of government. These rights are such as belong to the juristic personality of the individual, or pertain to him as a member of the community. They include the right of freedom, of property, of marriage, of protection by the laws, etc.

As an *adjective*, the term "right" means just, morally correct, consonant with ethical principles or rules of positive law. It is the opposite of wrong, unjust, illegal.

"Right" is used in law, as well as in ethics, as opposed to "wrong." Thus, a person may acquire a title by wrong.

In old English law. The term denoted an accusation or charge of crime. Fitzh. Nat. Brev. 66 F.

See, also, DROIT; JUS; RECHT.

RIGHT CLOSE, WRIT OF. An abolished writ which lay for tenants in ancient demesne, and others of a similar nature, to try the right of their lands and tenements in the court of the lord exclusively. 1 Steph. Comm. 224.