IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LEAGUE OF WOMEN VOTERS OF UTAH, MORMON WOMEN FOR ETHICAL GOVERNMENT, STEFANIE CONDIE, MALCOLM REID, VICTORIA REID, WENDY MARTIN, ELEANOR SUNDWALL, JACK MARKMAN, and DALE COX, Plaintiffs, v. UTAH STATE LEGISLATURE; UTAH LEGISLATIVE REDISTRICTING COMMITTEE; SENATOR SCOTT SANDALL, in his official capacity; REPRESENTATIVE BRAD WILSON, in his official capacity; SENATOR J. STUART ADAMS, in his official capacity; and LIEUTENANT GOVERNOR DEIDRE HENDERSON, in her official capacity, Defendants.	**RULING AND ORDER** **GRANTING PLAINTIFFS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL AND FIRST SUPPLEMENTAL COMPLAINT** **AND** **GRANTING MOTION FOR PRELIMINARY INJUNCTION ON COUNTS 9-14 AND 15** Case No. 220901712 Judge Dianna M. Gibson

Plaintiffs filed two motions for preliminary injunction on September 5, 2024, and September 7, 2024, requesting this court either remove Amendment D from the ballot entirely or rule that it is void and to be given no effect. The Lieutenant Governor's Office represents that the proofs of the final ballots must be sent to the printers as soon as possible before or no later than Thursday, September 11, 2024.

This court has reviewed the parties' written submissions and heard oral argument on September 9, 2024. For the reasons stated below, Plaintiffs' two Motions for Preliminary Injunction are GRANTED. Amendment D is declared void.

BACKGROUND

On July 11, 2024, the Supreme Court issued a decision in *League of Women Voters of Utah v. Utah State Legislature,* 2024 UT 21, affirmed that Utah citizens have the fundamental

constitutional right to alter or reform their government through the citizen initiative process and, importantly, that the Utah Legislature cannot amend or repeal a law passed by citizen initiative that alters or amends government unless it does so in a way "narrowly tailored to further a compelling government interest." *Id.* ¶74. On the heels of that decision, the Utah Legislature quickly moved to propose a constitutional amendment to the citizen initiative process, specifically Article I, Section 2 and Article VI, Section 1, Subsection (2) of the Utah Constitution and took steps to ensure that the proposed amendment would appear on the November 2024 Ballot for the General Election.

To place the constitutional amendment on the ballot, an emergency legislative session was called. A new statute was created.[1] Statutory timelines were shortened and certain statutory processes were deemed not to apply.

The Proposed Constitutional Amendment

In August 2024, the Utah Legislature announced it would hold a special session to introduce a proposed constitutional amendment. "Lawmakers to Convene to Restore and Strengthen the Initiative Process," Utah State Legislature (Aug. 19, 2024), house.utleg.gov/wp-content/uploads/August- 2024-Special-Session-Statement_Press-Release.pdf. The announcement stated the Legislature would *"[r]estore* and strengthen the long-standing practice that voters, the Legislature, and local bodies may amend or repeal legislation." *Id.* (emphasis added.)

On August 21, 2024, the Legislature proposed amendments to Article I, Section 2 and Article VI, Section 1, Subsection (2). The proposed amendments are underlined and are set forth below:

> **Article I, Section 2. All political power inherent in the people.**
>
> 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 through the processes established in Article VI, Section 1, Subsection (2) or through Article XXIII as the public welfare may require.
>
> **Article VI, Section 1. Power vested in Senate, House, and People—Prohibition on foreign influence on initiatives and referenda.**
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> (1) The Legislative power of the State shall be vested in:
>
> (a) a Senate and House of Representatives which shall be designated the

[1] The Legislature enacted Utah Code Section 20A-7-103.1, which provided special rules and a different, expedited and truncated process to get this specific constitutional amendment on the ballot. Section 20A-7-103.1 exempts the proposed Amendment from established requirements for constitutional amendments and specifically eliminated the opportunity to present arguments in favor of and opposition to the proposed amendment, before final approval for the ballot. S.B. 4002, Ballot Proposition Amendments, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), https://le.utah.gov/~2024S4/bills/static/SB4002.html.

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.

(3)(a) Foreign individuals, entities, or governments may not, directly or indirectly, influence, support, or oppose an initiative or a referendum.

(b) The Legislature may provide, by statute, definitions, scope, and enforcement of the prohibition under Subsection (3)(a).

(4) Notwithstanding any other provision of this Constitution, the people's exercise of their Legislative power as provided in Subsection (2) does not limit or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature, or by a law-making body of a county, city, or town, on behalf of the people whom they are elected to represent.

The Legislature also enacted contingent legislation that will take effect if voters approve the

proposed Amendment. That legislation, among other things, does add 20 days to the time voters have to submit referendum signatures. It also amends Utah Code Ann. Section 20A-7-212(3)(b) to now state:

> (3)(b) *If, during the general session next following the passage of a law* submitted to the people by initiative petition, the Legislature amends the law, the Legislature:
> (i) shall give deference to the initiative by amending the law in a manner that, *in the Legislature's determination,* leaves intact the general purpose of the initiative; and
> (ii) *notwithstanding Subsection (3)(b)(i), may amend the law in any manner determined necessary by the Legislature to mitigate an adverse fiscal impact of the initiative.*

S.B. 4003, Statewide Initiative and Referendum Amendments, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), https://le.utah.gov/~2024S4/bills/static/SB4003.html (emphasis added). The language does represent that the Legislature will give deference to the initiative if any amendments are made, but this deference is limited in time (to the next general session following the initiative's adoption), is subject to the Legislature's discretion, and subject to amendment to mitigate *any* "adverse fiscal impact." Notably, this statute is trumped by the amendment to Article VI, Section 1, subpart (4) which states that the Legislature's authority to amend, enact or repeal a citizen initiative is not limited, in any way, including by any other constitutional provisions.

The proposed constitutional amendment and contingent enabling legislation was voted on and passed on August 22, 2024. Since that time, the full text of the proposed amendments has been posted on the Lieutenant Governor's official website.

The Proposed Ballot Language

Utah law requires the Speaker of the House and the President of the Senate to "draft and designate a ballot title for each proposed amendment or question submitted by the Legislature that: (i) *summarizes the subject matter of the amendment* or question; and (ii) for a proposed constitutional amendment, *summarizes any legislation that is enacted and will become effective upon the voters' adoption of the proposed constitutional amendment.*" Utah Code Ann. § 20A-7-103(3)(c)(i), (ii) (emphasis added).

On September 3, 2024, the ballot language for the constitutional amendment, titled Amendment D, was certified, and the certified language was published on either September 3 or 4, 2024. Amendment D and a summary of the constitutional amendments appearing on the November 5, 2024 General Election ballots describes that the amendments will "strengthen" and "clarify" the citizen initiative process and "establish requirements for the legislature to follow the intent of a ballot initiative."

The certified ballot language states:

Constitutional Amendment D

Should the Utah Constitution be changed to strengthen the initiative process by:
- Prohibiting foreign influence on ballot initiatives and referendums.
- Clarifying the voters and legislative bodies' ability to amend laws.

If approved, state law would also be changed to:
- Allow Utah citizens 50% more time to gather signature for a statewide referendum.
- Establish requirements for the legislature to follow the intent of a ballot initiative.

For ( ) Against ( ).

Office of the Lieutenant Governor, 2024 General Election Certification at 34-35, https://vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf.

Publication Requirements

Article XXIII, Section 1 of the Utah Constitution provides that after the Legislature approves a proposed constitutional amendment, "the Legislature shall cause the same to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election." Utah Const. art. XXIII, § 1.

Separately, Utah Code § 20A-7-103(2) provides that "[t]he lieutenant governor shall, not more than 60 days or less than 14 days before the date of the election, publish the full text of the amendment . . . as a class A notice under Section 63G-30-102, through the date of the election. Utah Code § 20A-7-103(2). Section 63G-30-102 requires "class A notices" for matters affecting the entire state to be (1) published on the Utah Public Notice Website and (2) published on the relevant official's website if that official maintains one and has "an annual operating budget of $250,000 or more." Utah Code § 63G-30-102(1)(a)-(b) & 4(a).

Pending Motions

Plaintiffs filed two Motions for Preliminary Injunction, asserting that Amendment D violates the Utah Constitution.[2] Plaintiffs first argue that the certified ballot language for Amendment D fails to accurately submit the proposed constitutional amendment to the voters, preventing voters from making an informed decision about whether to vote for or against the Amendment. Plaintiffs assert the summary as presented in Amendment D is not accurate, fails to disclose the impact on each citizen's fundamental rights, and is actually misleading. Plaintiffs assert that Amendment D does not actually "strengthen" citizen initiatives; rather it weakens the

[2] Because the events surrounding the proposed constitutional Amendment D arose entirely after Plaintiffs filed their initial complaint in 2022 and after the Supreme Court's 2024 ruling, Plaintiffs have filed two motions to supplement the original complaint to add additional claims. The two pending motions are based on these new claims.

power of citizen initiatives under Utah's constitution, as that right was recognized and affirmed by the Utah Supreme Court on July 11, 2024, in *League of Women Voters of Utah v. Utah State Legislature,* 2024 UT 21 . . . the ruling that initiated the emergency legislative session to amend the Constitution. Plaintiffs assert Amendment D violates the Utah Constitution, specifically Article XXIII, § 1 and Utah Code Section 20A-7-103(c)(Presentation / Summary of Constitutional Amendments to Voters), Article 1, § 17 (Free Elections), Article I, § 1 (Free Speech and Expression), Article IV§2 (Right to Vote), and Article 1, Section 2 (Free Government). Plaintiffs filed a Motion to Supplement Counts 9-14 to add these new claims.

Plaintiffs assert Amendment D has not been published as required by the Utah Constitution and therefore voters will not have sufficient time to review the actual text of the proposed constitutional amendment in advance of the election. The Publication Clause, under Article XXIII, § 1, requires a proposed constitutional amendment to be "published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election." They assert this mandatory publication requirement cannot now be complied with; therefore, voters will not have adequate opportunity to become informed. Plaintiffs filed a Motion to Supplement count 15 to include Article XXIII, §1.

ANALYSIS

Defendant's Justiciability and Redressability Arguments

Before the court addresses the legal requirements for a preliminary injunction, Defendants raise two arguments that the Court must address.

First, Defendants argue that the issue before the court, specifically, reviewing the Amendment D ballot language is not justiciable. The Court disagrees. There is Utah precedent for reviewing ballot language. *See Nowers v. Oakden,* 110 Utah 25, 29, 169 P.2d 108, 116 (1946). Defendants also assert that it is outside of the court's jurisdiction to line-edit the Amendment D summary. That relief has not been requested.

Second, this matter is redressable. Defendants argue that Plaintiffs' failure to name county officials as defendants makes Plaintiff's requested relief a nonstarter. The Legislative Defendants argue that the Lieutenant Governor does not have authority over the county clerks. The Court disagrees. Under Utah Code Section 20A-1-403(1) it states: "The election officer shall, without delay, correct any errors in ballots that the election officer discovers, or that are brought to the election officer's attention, if those errors can be corrected without interfering with the timely distribution of the ballots." Section 20A-1-102 (23)(a), (b) defines an "election officer" as the Lieutenant Governor, for all statewide ballots and elections, and the county clerk, for county ballots and elections. Section 20A-5-405(3)(a) also confirms again that election officers shall, without delay, correct any error discovered in a ballot. The statutes make clear that election officers have an independent duty to ensure the ballots contain no errors. Finally, Section 20A-1-105, details the duties, authority and enforcement obligations of the Lieutenant Governor as the "Chief election officer of the state." Under this statute, it makes clear that all election officers have the obligation to fully assist and cooperate with the Lieutenant Governor. *Id. §* 20A-1-105(3). In addition, she has the authority to issue orders,

that have the effect of law, if it is determined that any election officer is not complying with any law or rule. Under Utah law, the Lieutenant Governor has full authority over county clerks for purposes of administering an election and the ballots.

Motions to Supplement

Plaintiffs filed two Motions to Supplement and two Motions for Preliminary Injunction. Plaintiffs seeks to add new events and claims that have happened post-July 11, 2024. Under Rule 15(d) of the Utah Rules of Civil Procedure, "[t]he court may, on just terms, permit a party to file a supplemental pleading." Utah R. Civ. P. 15(d). In addition, this court has broad discretion in granting a motion to supplement. *Rowley v. Milford City*, 10 Utah 2d 299, 301, 352 P.2d 225, 226 (1960). A motion to file a supplemental pleading "should be freely granted," if doing so would not be "unjust." *Harvey v. Ute Indian Tribe of Uintah & Ouray Rsrv.*, 2017 UT 75, ¶ 56. Additionally, "the fundamental purpose" of Utah's liberalized pleading rules "is to afford parties the privilege of presenting whatever legitimate contentions they have pertaining to their dispute." *Williams v. State Farm Ins. Co.*, 656 P.2d 966, 971 (Utah 1982) (internal citation omitted). Typically, motions to supplement are "liberally" granted unless it includes "untimely, unjustified, and prejudicial factors." *Daniels v. Gamma W. Brachytherapy, LLC,* 2009 UT 66, ¶ 58. Here, the Court concludes that Plaintiffs' motions are timely, justified and not futile. Therefore both Motions to Supplement Complaint to add counts 9-14 and count 15 are GRANTED.[3]

Preliminary Injunction

A court may issue a preliminary injunction if Plaintiffs show that: (1) "there is a substantial likelihood that [Plaintiffs] will prevail on the merits of the underlying claim," (2) "[Plaintiffs] will suffer irreparable harm unless the . . . injunction issues," (3) "the threatened injury to [Plaintiffs] outweighs whatever damage the proposed . . . injunction may cause the party . . . enjoined," and (4) "the . . . injunction, if issued, would not be adverse to the public interest." Utah R. Civ. P. 65A(e). Plaintiffs have met their burden.

1. **There is a substantial likelihood that Plaintiffs will succeed on the merits of their claim that Amendment D violates the Utah Constitution, specifically Article XXIII, § 1 (Presentation of Constitutional Amendments to Voters), the Article IV§2 (Right to Vote) and Article XXIII (the Publication Clause).**

The Legislature has placed on the ballot a proposal to amend the Utah Constitution in a way that will change each citizen's fundamental right to alter or amend their government through citizen initiatives. This constitutional right has existed since the Utah Constitution was ratified and, on July 11, 2024, the Utah Supreme Court interpreted the provision to impose limits on the Legislature's ability to amend or repeal a law passed by citizen initiative, unless it is narrowly tailored to advance a compelling state interest. The Legislature now requests that Utah's citizens vote on whether to modify their fundamental right to alter or amend their government, as set forth in *League of Women Voters of Utah v. Utah State Legislature,* 2024 UT 21, to give the Legislature unlimited power to

[3] Note, in this Order Granting Preliminary Injunction, the Court substantively addressed three of the six claims. In order to grant this Motion, the Court did not need more than one claim.

amend, repeal and enact any law. While the Legislature has every right to request the amendment, it has the duty and the obligation to accurately communicate the "subject matter" of the proposed amendment to voters and to publish the text of the amendment in a newspaper in each county two months before the election. It has failed to do both.

a. Article XXIII, § 1 and Utah Code Ann. § 20A-7-103(3) (Presentation of Constitutional Amendment to Voters)

Under Article XXIII, Section 1 of the Utah Constitution, a constitutional amendment requires two-thirds of all members elected to each house of the Legislature to vote in favor of the proposed amendment. Once the amendment passes, "the Legislature shall cause *the same* to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election, *at which time the said amendment or amendments shall be submitted to the electors of the state for their approval or rejection*, and if a majority of the electors voting thereon shall approve the same, such amendment or amendments shall become part of this Constitution." Utah Const. art. XXIII, § 1 (emphasis added).[4] The plain language of Article XXIII requires that the proposed amendment presented to the Legislature must be "submitted to the electors of the state for their approval or rejection." Utah Const. art. XXIII, § 1. The most straightforward reading of Article XXIII is that the *actual text* of the amendment must be presented to voters. The actual text of the amendment, however, is not typically presented on the ballot.[5] Instead, Utah Code Section 20A-7-103(3) requires that each proposed amendment appear on the ballot by title, with language "summarizing the subject matter of the amendment." Utah Code § 20A-7-103(3)(c). "Implicit in th[ese] provision[s] is the requirement that the proposed amendment be accurately represented on the ballot; otherwise, voter approval would be a nullity." *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000) (interpreting similar Florida constitutional language).

In the only Utah case addressing ballot language, the Utah Supreme Court in *Nowers v. Oakden*, 169 P.2d 108 (Utah 1946) requires the court evaluate ballot language "in the light of the circumstances of its submission," and determine if it is "framed with such clarity as to enable the voters to express their will." *Id.* 116 (stating the ballot should use "words in such form that the voters are not confused thereby"). Ballot language should ensure that "no reasonably

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[4] When interpreting constitutional language, Utah courts "start with the meaning of the text as understood when it was adopted." *LWVUT*, 2024 UT 21, ¶ 101 (cleaned up). The focus is on "the objective meaning of the text, not the intent of those who wrote it." *Id.* (cleaned up). The Court thus "interpret[s] the [C]onstitution according to how the words of the document would have been understood by a competent and reasonable speaker of the language at the time of the document's enactment." *Id.* (cleaned up). "When [courts] interpret the Utah Constitution, the 'text's plain language may begin and end the analysis.'" *State v. Barnett*, 2023 UT 20, ¶ 10 (quoting *South Salt Lake City v. Maese*, 2019 UT 58, ¶ 23).

[5] *See* Utah Const. art. XXIV, § 14 (providing for submission of the Constitution to the voters for ratification and specifying that "[a]t the said election the ballot shall be in the following form: For the Constitution. Yes. No," with instructions to the voters to erase Yes or No depending upon their vote).

intelligent voter [is] misled as to what he is voting for or against." *Id.* The integrity of the voting process requires that ballot language fairly and accurately present the issue to be decided in order to assure a "free, intelligent and informed vote by the average citizen." *State ex rel. Voters First v. Ohio Ballot Bd.*, 978 N.E.2d 119, 126 (Ohio 2012). The ballot language "ought to be free from any misleading tendency, whether of amplification, or omission." *Id.* (cleaned up). And "any omitted substance of the proposal must not be material, i.e., its absence must not affect the fairness or accuracy of the text." *Id.; see also Askew v. Firestone*, 421 So.2d 151, 154–55 (Fla.1982) ("What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot."). In addition, "where a proposed constitutional revision results in the loss or restriction of an independent fundamental state right, the loss must be made known to each participating voter at the time of the general election." *Armstrong v. Harris*, 773 So. 2d 7, 17–18 (Fla. 2000) (*citing People Against Tax Revenue Mismanagement v. County of Leon*, 583 So.2d 1373, 1376 (Fla.1991) ("This is especially true if the ballot language gives the appearance of creating new rights or protections, when the actual effect is to reduce or eliminate rights or protections already in existence.").[6]

In light of these considerations, the Amendment D ballot language does not fairly and accurately "summarize" the issue to be decided to assure a free, intelligent and informed vote by the average citizen. The "summary" both amplifies by using "strengthen"[7] and simultaneously omits the material and consequential constitutional change, that the Legislature will have the unlimited right to change law passed by citizen initiative. The omission entirely eliminates the voter's fundamental constitutional right.[8] The omission:

> Notwithstanding any other provision of this Constitution, the people's exercise of their Legislative power as provided in Subsection (2) does not limit or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature, or by a law-making body of a county, city, or town, on behalf of the people whom they are elected to represent.

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[6] In Plaintiffs' Motion for Preliminary Injunction Counts 9-14, p. 9-17, Plaintiffs cite numerous cases supporting their argument that inaccurate, misleading and deceptive ballot language justifies removal from the ballot and/or voiding the proposed amendment. The cases are persuasive authority from numerous states, which this Court incorporates by reference as additional authority. (

[7] Plaintiffs suggest that including in the short summary the adjective "strengthen" is suggestive and encourages voters to vote in favor of the proposed amendment, but without fully summarizing all of the amendments on the ballot.

[8] Counsel for the Legislative defendants argued that the constitutional amendments did not change anything. But they did. In August 2024, the Utah Legislature announced it would hold a special session to introduce a proposed constitutional amendment. "Lawmakers to Convene to Restore and Strengthen the Initiative Process," Utah State Legislature (Aug. 19, 2024), house.utleg.gov/wp-content/uploads/August- 2024-Special-Session-Statement_Press-Release.pdf. The announcement stated the Legislature would ***"[r]estore*** and strengthen the long-standing practice that voters, the Legislature, and local bodies may amend or repeal legislation." *Id.* (emphasis added.) Based on the Legislature's representation, its intention was to use the legislation to change or in its words, "restore" the initiative process to its pre-July 11, 2024 status.

This provision does *strengthen* and *clarifies* the *Legislature's* power to change laws passed by citizen initiative for any reason, but at the expense of the people's Legislative power. The plain language of the proposed amendment provides no limitation on Legislative power. Notably, that power is limited today. By modifying Article I, Section 2 of the Constitution ("All Power Inherent in the People"). the people's Legislative power to alter and amend their government is now limited to a specific process, which it was not before. The people's Legislative power is no longer co-equal to the Legislature or to any other "law-making body of a county, city or town" as well, based on the Utah Constitution. And, the first clause - "notwithstanding any other provisions of this Constitution" – it effectively states that any other constitutional right or protection provided in the Constitution effectively gives way to the Legislative power of the Legislature. This significantly impacts and weakens the people's fundamental rights under the Utah Constitution.

Amendment D also states that "Utah citizens [will] have 50% more time to gather signatures for a statewide referendum" and it will "[e]stablish requirements for the legislature to follow the intent of a ballot initiative." While these additions are beneficial, they are not additions to the Utah constitution. Rather, they are proposed as new statutory amendments, which can be amended or repealed by the Legislature at any time for any reason.

Defendants argue that the language certified in Amendment D is not inaccurate or misleading. They argue the Legislature has broad discretion to describe the amendments. The Court does not disagree. But this is not a situation where the language used is ambiguous. The Court is not asserting that it would have chosen different words. Rather, the short summary the Legislature chose does not disclose the chief feature, which is also the most critical constitutional change – that the Legislature will have the unlimited right to change laws passed by citizen initiative. Given this glaring omission, the ballot is "counterfactual." *See Lane v. Lukens,* 283 P. 532, 533 (Idaho 1929) (holding ballot fundamentally counterfactual when it told voters terms limited to four years when they were actually extended.)

It is the Legislature's duty and obligation to inform voters and accurately describe constitutional amendments that impact a citizen's fundamental rights. Only the Legislature can propose constitutional amendments. If Amendment D passes, and citizens don't like it, only the Legislature change the constitution. Citizens cannot.

A voter has a right to know what they are being asked to vote upon. In many instances, the only real knowledge a voter may have on an issue is when the voter enters the polling location and reads the description of the proposed amendment on the ballot. This court cannot say that the Amendment D ballot language fairly and accurately summarizes the proposed constitutional amendments for the average voter.[9] Therefore, there is a substantial likelihood that Amendment D violates Article XXIII, § 1 of the Utah Constitution.

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[9] The parties submitted competing affidavits from citizens verifying that they either were or were not mislead. Whether the language is *subjectively* clear or confusing is not the issue. The question is whether objectively the ballot language accurately summarizes the proposed amendment for the average voter.

b. Article IV § 2 (Right to Vote)

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).[10] 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).[11] 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 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.*

This Clause guarantees "more than the physical right to cast a ballot." Utah law has recognized that the right to vote must be "meaningful." *Shields v. Toronto*, 16 Utah 2d 61, 66, 395 P.2d 829, 832-33 (1964) (explaining the foundation and structure our democratic system of government depends upon participation of the citizenry in all aspects of its operation."). And it "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.*[12] The Amendment D ballot language does not accurately summarize the proposed amendments. In fact, it shifts power from the people to the Legislature without full disclosure. Without transparent, accurate and complete disclosure about the amendments, there can be no meaningful right to vote. Plaintiffs are likely to succeed on their right to vote claim.

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[10] 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.

[11] "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).

[12] 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."

c. Article XXIII, § 1 (the Publication Clause).

Article XXIII, § 1 of the Utah Constitution mandates that, prior to submitting a proposed amendment for approval or rejection by the people, "the Legislature shall cause the [proposed amendment] to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election…"

Plaintiffs argue that the Legislative Defendants failed to fulfill their constitutional duty to publish the full text of the amendment in a newspaper for two months immediately preceding the next general election. The Legislative Defendants argue that, despite the language requiring publication in a newspaper, the requirements of Art. XXIII, § 1 were satisfied when the legislature "caused" the amendment to be published by directing the Lieutenant Governor to publish the text of Amendment D on the Lieutenant Governor's website, since August 2024 and more recently since September 9, 2024.[13] In addition, they appear to argue that they have substantially complied, given the numerous news stories related to this case. Under the circumstances presented here, the court disagrees.

The Court is not persuaded by the Legislative Defendants' argument that it has either complied by posting on the Lieutenant Governor's website or that Utah recognizes or that the facts support substantial compliance in this case. Article I, Section 26 of the Utah Constitution expressly states that all constitutional provisions are "mandatory and prohibitory, unless by express words that are declared to be otherwise." Utah Const. art. I, § 26. The Utah Supreme Court interpreted this provision to mean that "courts are not free to pick and choose which parts of the constitution they will enforce." *State v. Barnett*, 2023 UT 20, ¶ 27, 537 P.3d 212, 217. It follows that this court cannot simply ignore the explicit requirement in Article XXIII, § 1 of the Utah Constitution mandating that the Legislative Defendants publish the full text of Amendment D in a "newspaper" for at least two months prior to the November 5, 2024 general election. In addition, given Utah's rules of constitutional construction, it is unclear how the court could interpret "newspaper" to mean an "on-line website."

In *Snow v. Keddington*, 195 P.2d 234 (Utah 1948), the Utah Supreme Court considered the validity of a constitutional amendment where a county clerk posted the text of the proposed amendment, as required by statute, but did not include the effective date of the amendment on the poster. The Court found that the exclusion of the effective date of the amendment did not render the amendment void because the legislature had complied with the notice requirements in Article XXIII, § 1. As stated in *Snow*, "all voters throughout the state are entitled to notice." *Id.* at 238. And "the notice of importance to the voter is the publication in the newspapers prior to the general

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[13] Separately, Utah Code § 20A-7-103(2) provides that "[t]he lieutenant governor shall, not more than 60 days or less than 14 days before the date of the election, publish the full text of the amendment . . . as a class A notice under Section 63G-30-102, through the date of the election. Utah Code § 20A-7-103(2). Section 63G-30-102 requires "class A notices" for matters affecting the entire state to be (1) published on the Utah Public Notice Website and (2) published on the relevant official's website if that official maintains one and has "an annual operating budget of $250,000 or more." Utah Code § 63G-30-102(1)(a)-(b) & 4(a). There is no indication that the Lieutenant Governor will not comply with these publication requirements. And, as of September 9, 2024, Defendants proffer that the proposed amendments currently appear on the Lieutenant Governor's website. They, however, do not satisfy the Legislature's constitutional requirement.

election. This is the publication that permits the voter time to consider the merits of demerits of the proposed change. At most, the card in the voting booth could only be a helpful reminder of the general sense of the proposed change." *Id.* The court continued, "[u]nder our constitutional requirements, notice must be carried in the newspapers." *Id.* (finding that "the probabilities and possibilities of the voter being fully informed of the context of an amendment are reasonably assured if the publication is in the newspapers."). Accordingly, the *Snow* court concluded that the "method of notice prescribed by the constitution is one reasonably calculated to give notice to the voters." *Id.* The constitutional requirement has not changed and *Snow* remains good law.

Election day is November 5, 2024. As of September 11, 2024, it was 55 days to the election. No evidence has been presented that either the Legislature or the Lieutenant Governor "has caused" the proposed constitutional amendment to appear in any newspaper in Utah.[14] The parties do not dispute that there are numerous new articles about the Legislature's emergency session and this dispute and that the text of the amendment, along with the Amendment D ballot language, has been published by various news outlets. The fact that there are news reports and stories, offering pros and cons and opinions, about Amendment D does not satisfy the constitutional publication requirement. Further, the voter information pamphlet will be published, but made available only on-line. It will not be printed nor mailed to voters along with the ballot. The complete text of the amendment will only be printed and posted at polling locations on Election Day. However, it was noted that most Utah voters vote by mail. While more opportunities to provide notice of the actual text of the proposed amendment is better for voters, these additional opportunities to provide notice do not satisfy the constitutional publication requirement.

Finally, the Legislative Defendants argue against this interpretation because "[t]he Legislature has no way to force an unwilling publisher to post the proposed amendment because doing so would constitute compelled speech under the First Amendment." (*Legislative Defendants' Combined Opposition to Plaintiffs' Motions for Preliminary Injunction*, Docket No. 352, p. 39.) The Court finds this argument to be completely unpersuasive because, even if true, the Legislative Defendants have failed to establish that forcing publishers to print the text of the amendment against their will is the only way by which the legislature could cause publication of the amendment in a newspaper. Furthermore, the Legislative Defendants' argument on this point is undermined by their acknowledgment that Utah newspapers and other media outlets have printed numerous stories about the proposed amendment and by its recent update, despite the fact that the legislature took no independent steps to publish the text of the amendment. In addition, this argument is now moot, given the recent representation that the Legislative Defendants have contacted 35 newspapers to publish the text.

Plaintiffs will likely succeed on its claim that Defendants violated Article XXIII, § 1 of the

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[14] At 5:00 a.m. the Court noticed a supplemental filing from the Legislative Defendants, with an affidavit submitted by Abby Osborne. The supplemental filing was filed sometime after the 3:00 hearing on 9/11/2024. Ms. Osborne represents that she has purchased space in 35 papers to publish the ballot title and the full text of each proposed constitutional amendment certified to appear on the November 2024 general ballot. This information was not presented during the hearing. The Court considers it, however, given the plain language of both Articles 23, Section 1 and Article 1, Section 26, the requirement is mandatory. No legal authority was submitted to support substantial compliance. The Court does not suggest that there is no possible argument for it, however, the facts of this case do not support it.

Utah Constitution.

2. **Plaintiffs will suffer irreparable harm in the absence of an injunction.**

Plaintiffs will suffer irreparable harm in the absence of an injunction against the proposed Amendment. Irreparable harm "is that which cannot be adequately compensated in damages" and is "fundamentally preventative in nature." *Zagg, Inc. v. Hammer*, 2015 UT App 52, ¶¶ 6, 8 (quotation omitted). Without a preliminary injunction, Defendants' inaccurate ballot language would have Utahns unwittingly *eliminate* a fundamental constitutional right that has existed since 1895. Subjecting Plaintiffs and other Utahns to this outcome is irreparable harm. *See Williams v. Rhodes*, 393 U.S. 23, 30 (1968) ("[T]he right of qualified voters … to cast their votes effectively … rank[s] among our most precious freedoms").

3. **The threatened injury to Plaintiffs outweighs whatever damage the proposed injunction may case the party enjoined.**

The balance of the equities, which "considers whether the applicant's injury exceeds the potential injury to the defendant," favors Plaintiffs. *Planned Parenthood Assoc. of Utah v. State*, 2024 UT 28, ¶ 210. The harm that Plaintiffs would suffer from the proposed Amendment's ballot language, which omits the impact on Utah citizens' fundamental constitutional rights but appears to represent to the people that it *strengthens* rights, outweighs any harm Defendants may suffer if the requested injunction is granted. *See, e.g., United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) (there can be "no harm from the state's nonenforcement of invalid legislation"). If Amendment D proceeds to vote, Utah citizens may vote based on the ballot language, without being fully informed, and the proposal could pass. The proposed constitutional amendments will become effective and in fact will be retroactive, which will moot Plaintiffs' claims on remand.

In attempting to balance the equities, Defendants are somewhat responsible for the impact on ballot printing for the November 2024 election. They truncated the deadlines, sidestepped normal processes, and proposed in short order a constitutional amendment, with inaccurate descriptions, to shift power from the people to the Legislature. Under the circumstances, the court cannot say that Defendants will be harmed by being unable to advance an inaccurate description of the proposed Amendment in the November 2024 election.

4. **The injunction will not be adverse to the public interest.**

The injunction promotes the public interest. The people of Utah are entitled to an accurate summary of any proposed constitutional amendment that impacts their fundamental rights and they are entitled to the constitutionally required notice, by publication in a newspaper two months before the election. These requirements are fundamental to the integrity of our democracy.

CONCLUSION

The injunctive relief requested – to either strike Amendment D or rule that it is void – is an extraordinary remedy. The court's discretion "should be exercised within the purview of sound equitable principles, taking into account all the facts and circumstances of the case." *System Concepts, Inc. v. Dixon*, 669 P.2d 421, 425 (Utah 1983) (citation omitted). "A

preliminary injunction is an anticipatory remedy purposed to prevent the perpetration of a threatened wrong or to compel the cessation of a continuing one." *Hunsaker v. Kersh*, 1999 UT 106, ¶ 8 991 P.2d 67. (Internal citations omitted.) Plainiffs have established that they are entitled to a preliminary injunction.

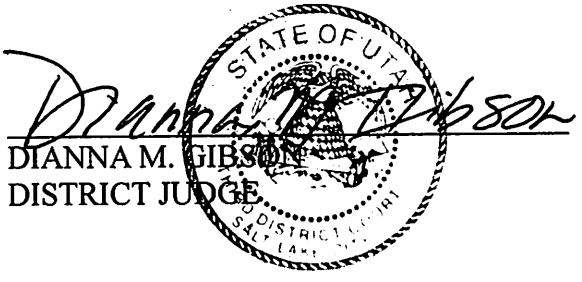
A preliminary injunction should serve "to preserve the status quo pending the outcome of the case." *Id.* In addition the Court must consider all of the facts and circumstances in the case and should attempt to mitigate the associated risks and impact of the court's ruling on all parties and non-parties, including all the voters of Utah. While striking Amendment D is legally justifiable, it may jeopardize Utah's ability to comply with all election deadlines and may significantly increase the parties' exposure to legal, financial and timing risks associated with the November 5, 2024 election.

For the reasons discussed above, Plaintiffs' preliminary injunction is GRANTED. The Court ORDERS as follows:

1. Amendment D is void and shall be given no effect.
2. Ballots may be printed as certified.
3. The Lieutenant Governor's Office represented that a process is in place for handling matters removed from the ballot, pre-election, to ensure that they are not counted. That process shall be applied to Amendment D.
4. The Lieutenant Governor's Office shall notify all County Clerks of the injunction and ensure that they are bound by these terms, subject to further order of this or another court.

DATED September 12, 2024.

BY THE COURT:



DIANNA M. GIBSON
DISTRICT 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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09/12/2024 /s/ KACI BOBO

Date: _____ _____

Signature