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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, STEPHANIE CONDIE, MALCOM REID, VICTORIA REID, WENDY MARTIN, ELEANOR SUNDWALL, JACK MARKMAN, and DALE COX,

Plaintiffs,

UTAH DEMOCRATIC PARTY, FRANK BRANNAN, HILARY LAMBERT, and CAROLINE SMITH,

Proposed Intervenor-Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLATIVE REDISTRICTING COMMITTEE; and SENATOR SCOTT SANTALL, REPRESENTATIVE BRAD WILSON, SENATOR J. STUART ADAMS, and LIEUTENANT GOVERNOR DEIRDRE HENDERSON, in their official capacities,

Defendants.

MOTION TO INTERVENE AS PLAINTIFFS

Civil Action No.: 220901712

Judge: Hon. Dianna M. Gibson

TIER III

Pursuant to Utah R. Civ. P. 24, interested parties the Utah Democratic Party, Frank Brannan, Hilary Lambert, and Caroline Smith (collectively, "Proposed Intervenors") hereby move to intervene as plaintiffs in the above-captioned matter and to participate fully in these proceedings.

CONCISE STATEMENT OF INTEREST AND GROUNDS FOR INTERVENTION

Proposed Intervenors—the Utah Democratic Party and three Democratic voters—seek intervention to protect their unique interests in this litigation concerning the partisan fairness of Utah's congressional map. Those interests are not adequately represented by the existing parties, which include exclusively Republican elected officials on the side of Defendants—who have sought to defend the unfair partisan advantage imposed by the current existing congressional map and the unlawful process by which it came about—and a bipartisan collection of Utah voters and nonpartisan organizations on the side of Plaintiffs. In cases such as this, the major political parties are not only routinely recognized to have unique interests at stake that satisfy the more demanding standard for standing, but also are routinely granted intervention if they are not already parties to the action. This Court should come to the same conclusion and grant Proposed Intervenors intervention as of right, or in the alternative, permissive intervention.

In 2018, over 500,000 Utah voters voted in favor of Proposition 4, which established procedures and standards for state legislative and congressional redistricting. The core purpose of the initiative was to prevent partisan gerrymandering. But when the 2020 redistricting cycle approached, the Utah Legislature enacted Senate Bill 200 ("SB 200") to repeal critical portions of Proposition 4 and subsequently enacted a congressional map that blatantly disregards Proposition 4's procedural and substantive requirements. The end result is a congressional map that is transparently drawn to dilute Democratic voting strength in the Salt Lake Valley by splitting the area among four separate districts, combining voters in Salt Lake City's urban core with rural areas in far-flung corners of the state.

On March 17, 2022, a bipartisan group of voters and two nonpartisan organizations filed this action, challenging the constitutionality of both SB 200 and Utah's congressional map. After this Court granted in part Defendants' motion to dismiss, the Utah Supreme Court agreed to hear

an interlocutory appeal on the improper repeal of Proposition 4. On July 11, 2024, the Utah Supreme Court declared—in a case of first impression—that the intersection of the right to reform one's government and enact laws by public initiative is entitled to heightened protections. *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 64. Now that it has been established that Utah voters can vindicate these rights in court, Proposed Intervenors seek to do just that. Proposed Intervenors seek to challenge (1) SB 200 as an unconstitutional repeal of Proposition 4, and (2) Utah's enacted congressional map as a violation of Proposition 4. Because those claims overlap with issues already raised in this case, allowing Proposed Intervenors to intervene in this case—rather than bringing their own separate action—will contribute to the efficient resolution of these issues.

Proposed Intervenors are entitled to intervention as of right under Utah Rule of Civil Procedure 24. Their motion to intervene is timely—the case was remitted to this Court just two weeks ago and remains in its infancy after the more than 18-month stay pending appeal. Second, Proposed Intervenors have direct interests at stake in this litigation. The Utah Democratic Party has an organizational interest in a lawful congressional plan and map drawing process as well as an associational interest on behalf of Democratic voters and candidates, including the individual intervenor-plaintiffs, who supported Proposition 4 and whose voting strength and electoral prospects are directly injured by the Utah Legislature's refusal to abide by its strictures. These interests are not adequately represented by the non-partisan or bipartisan Plaintiffs or the state Defendants.

Alternatively, the Court should permit intervention under Rule 24(b) because it would not impair any proceedings in this case and Proposed Intervenors raise some of the same core legal and factual questions already at issue in this case. Proposed Intervenors would assist the Court's

efficient and effective resolution of this case because their claims "share[] with the main action" several common questions of law and fact. Utah R. Civ. P. 24(b)(1)(B).

Under either standard, Proposed Intervenors' motion should be granted.

STATEMENT OF FACTS

In November 2018, Utah voters overwhelmingly voted to enact Proposition 4 through a public initiative. Proposition 4 included a variety of measures designed to ensure fair maps, including the establishment of an independent redistricting commission and the prohibition against enacting any map that "purposefully or unduly" favors any particular candidate or party. *See* Utah Code §§ 20A-19-101 to -301 (2018).

But in 2020, the Republican-dominated Utah Legislature repealed Proposition 4 and replaced it with a new law, Senate Bill 200 ("SB 200"), which rescinded the prohibition on partisan gerrymandering but kept the Independent Redistricting Commission ("IRC") intact, with a promise that the Legislature would consider the IRC's recommendations.[1] In November 2021, the IRC unanimously proposed three congressional maps that would have created a competitive district centered on Salt Lake County.[2] Despite its promise to consider the IRC's recommendations, however, the Republican-led legislature did not hold a vote on any of the IRC proposals and enacted its own congressional map bearing no resemblance to any of the IRC's proposals. Every Democrat in the legislature—and even a handful of Republicans—voted against the map.[3]

The congressional map enacted by the Legislature is a blatant partisan gerrymander. It splits majority-Democratic Salt Lake County in quarters among the state's four congressional

[1] Redistricting Amendments, S.B. 200, 63d Leg., 2020 Gen. Sess. (Utah 2020), https://le.utah.gov/~2020/bills/static/SB0200.html; Utah Code §§ 20A-20-101 to -303.
[2] *Redistricting Repor*t at 51–57, Utah Indep. Redistricting Comm'n, (Nov. 2021).
[3] Congressional Boundaries Designation, H.B. 2004, 64th Leg., 2021 Second Special Session (Utah 2021), https://le.utah.gov/~2021s2/bills/static/HB2004.html.

districts, each of which extends outward hundreds of miles to incorporate rural and conservative areas, creating four solidly Republican districts.

In March 2022, the League of Women Voters of Utah, Mormon Women for Ethical Government, and a group of Democratic and Republican individual voters who supported Proposition 4 filed this suit. Their complaint alleges that the current congressional map is an unconstitutional partisan gerrymander in violation of four separate provisions of the Utah Constitution. *See* Compl. ¶¶ 257–309. In addition, the complaint alleges that SB 200 is an unconstitutional repeal of Proposition 4 in violation of the Utah Constitution's citizen lawmaking provisions, Art. I, Section 2 and Art. VI, Section 1. *Id.* ¶¶ 310–19.

Defendants moved to dismiss all five of Plaintiffs' claims. On October 24, 2022, this Court denied the motion to dismiss Plaintiffs' partisan gerrymandering claims but granted the motion with respect to the claim that SB 200 constituted an unconstitutional repeal of Proposition 4. Both parties sought—and were granted—permission to file an interlocutory appeal to the Utah Supreme Court, staying all discovery and proceedings in this case as of January 18, 2023. *See* Order Granting Legislative Defs. Renewed Mot. for Stay of Proceedings (Jan. 18, 2023).

On July 11, 2024, the Utah Supreme Court reversed the dismissal of Plaintiffs' challenge to the repeal of Proposition 4. The Court held that there exists a cognizable claim under the Utah Constitution that protects the intersection of the people's right to reform government and to do so through public initiative. *League of Women Voters of Utah*, 2024 UT 21, ¶ 227. The Court declined to reach Plaintiffs' partisan gerrymandering claims because they may be rendered moot by a claim that the current congressional map is violative of Proposition 4. *Id.* ¶ 220. The Supreme Court accordingly retained jurisdiction over Defendants' appeal of this Court's ruling on Counts I through IV of the Complaint and remanded Count V for this Court to apply the Supreme Court's

newly articulated legal framework for evaluating such claims. *Id.* ¶ 227.[4]

Proposed Intervenors are the Utah Democratic Party and three individual Democratic voters, Frank Brannan, Hilary Lambert, and Caroline Smith. The repeal of Proposition 4's redistricting reforms through SB 200 violates the right of individual intervenor-plaintiffs and the Utah Democratic Party's members to reform their government via public initiative, paving the way for the Utah Legislature's enactment of a congressional map that purposefully dilutes Democratic voting strength and electoral prospects. As a result, Proposed Intervenors intend to bring claims challenging SB 200 as an unconstitutional repeal of Proposition 4 and challenging Utah's congressional map as procedurally and substantively violative of Proposition 4.

ARGUMENT

I. Proposed Intervenors are entitled to intervention as of right under Rule 24(a).

Proposed Intervenors satisfy all four elements for intervention as of right under Rule 24(a): "(1) [their] motion to intervene [is] timely, (2) [they have] an interest relating to the property or transaction which is the subject of the action, (3) [] the disposition of the action may as a practical matter impair or impede [their] ability to protect that interest, and (4) [their] interest is not 'adequately represented by existing parties.'" *Supernova Media, Inc. v. Pia Anderson Dorius Reynard & Moss, LLC*, 2013 UT 7, ¶ 22, 297 P.3d 599 (quoting Utah R. Civ. P. 24(a)). Utah courts routinely look to "federal cases interpreting the identical federal rule for guidance." *Beacham v. Fritzi Realty Corp.*, 2006 UT App 35, ¶ 8, 131 P.3d 271.

A. Proposed Intervenors' motion is timely.

Whether a party moves for intervention as of right or for permissive intervention, the motion must be timely. Utah R. Civ. P. 24(a), (b). In assessing timeliness, the court must consider

[4] The Supreme Court issued its remittitur on August 2, 2024, and it was filed with this Court on August 5.

the "facts and circumstances of each particular case." *Supernova Media*, 2013 UT 7, ¶ 23 (quoting *Jenner v. Real Est. Servs.*, 659 P.2d 1072, 1073-74 (Utah 1983)). The touchstone of the inquiry is whether adding additional parties at this stage would impair "the rights of existing parties" or "the orderly processes of the court." *Id*. In general, a motion to intervene is timely if it is filed "before entry of judgment or dismissal." *Id.* ¶¶ 23–24.

Here, the case remains in its early stages. The case has been stayed for more than eighteen months and was remitted back to this Court just two weeks ago. *Compare Carlsen v. Bd. of Adjustment of City of Smithfield*, 2012 UT App 260, ¶ 28, 287 P.3d 440 (holding motion to intervene was timely given the other circumstances that had already delayed case proceedings). This Court has yet to issue a scheduling order on remand, let alone hold any substantive hearings. Prior to the stay, discovery had only just begun—no expert reports had been exchanged and no depositions had taken place. As a result, there is no risk of prejudice or delay given the posture and circumstances of this case. *See Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1251 (10th Cir. 2001) (finding intervention two and a half years into suit was timely and would not prejudice the parties where discovery had begun but not concluded).

Additionally, Proposed Intervenors have acted swiftly in the wake of guidance from the Utah Supreme Court, which just last month recognized a new constitutional claim regarding the Legislature's repeal of the people's initiative. *League of Women Voters of Utah*, 2024 UT 21, ¶ 64. Given that Proposed Intervenors' interests are grounded in the validity and viability of Proposition 4, it would have made little sense to intervene before the Supreme Court recognized the basis for this claim. *Burr v. Koosharem Irrigation Co.*, 2017 UT App 123, ¶ 14, 402 P.3d 124 (holding motion to intervene was not untimely where movant "had no need to seek intervention earlier than he did").

Proposed Intervenors' motion is timely.

B. Proposed Intervenors have substantial interests in this litigation.

Under Rule 24(a)(2), a proposed intervenor must claim an interest in the underlying litigation. This inquiry turns primarily on the assertions and allegations of the moving party, *see In re United Effort Plan Tr.*, 2013 UT 5, ¶ 22, 296 P.3d 742 (whether an intervenor "claims" an interest "involves a cold-paper review of the pleadings"); a proposed intervenor need not "prove such an interest." *Supernova Media*, 2013 UT 7, ¶¶ 32-33 (cleaned up). That interest "may arise from the intervenor's status or circumstances." *Id.*

Proposed Intervenors have substantial interests in this litigation. The Utah Democratic Party has an organizational interest in Utah's congressional districts. In particular, where those districts were drawn in blatant violation of Proposition 4's prohibition on partisan gerrymandering to the direct injury of the electoral prospects of candidates affiliated with the Utah Democratic Party, the party has a distinct interest in the litigation over that map, the process leading up to it, and any remedial proceedings. Indeed, courts regularly recognize that partisan entities are appropriate intervenors in redistricting litigation.[5]

Additionally, the Utah Democratic Party represents the interests of its members—including Proposed Intervenors Frank Brannan, Hilary Lambert, and Caroline Smith—who supported

[5] *Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 632 (E.D. Wis. 1982) (granting intervention to legislative leaders from Wisconsin Democratic Party and Wisconsin Republican Party in malapportionment suit); *Cano v. Davis*, 211 F. Supp. 2d 1208, 1213 (C.D. Cal. 2002) (granting intervention to California Republican Party in racial gerrymandering suit); *Desena v. Maine*, 793 F. Supp. 2d 456, 458 (D. Me. 2011) (granting intervention to Maine Democratic Party in malapportionment suit); *NAACP v. Snyder*, 879 F. Supp. 2d 662, 665 (E.D. Mich. 2012) (granting intervention to Michigan Democratic Party and Michigan Republican Party in racial gerrymandering suit); *Perrin v. Kitzhaber*, 191 Or. App. 439, 444, 83 P.3d 368, 370 (2004) (granting intervention to representatives of Oregon Democratic Party in malapportionment suit); *Perry v. Del Rio*, 66 S.W.3d 239, 247–48 (Tex. 2001) (granting intervention to representatives of Texas Republican Party in malapportionment suit).

Proposition 4 and are entitled to a congressional map that complies with the procedural and substantive requirements of the public initiative they helped to enact. *League of Women Voters of Utah*, 2024 UT 21, ¶ 227. And all of the Proposed Intervenors have a vested interest in remedying that "ongoing, unfair advantage" of Utah's congressional map that deliberately and illegally dilutes their voting strength and electoral power on the basis of their partisan affiliation. *Mecinas v. Hobbs*, 30 F.4th 890, 898–99 (9th Cir. 2022) (holding political parties have standing to challenge laws that create a "state-imposed disadvantage"); *see also Gill v. Whitford*, 585 U.S. 48, 69 (2018) (explaining that "a voter's placement in" an allegedly gerrymandered district is an injury for standing purposes).

C. Proposed Intervenors' interests may be impaired by the disposition of this action.

To satisfy the third element of intervention as of right, Proposed Intervenors need not show that their interests will be certainly impaired; it is enough that the interest "may be impacted by the judgment." *Supernova Media*, 2013 UT 7, ¶ 32. The Utah Supreme Court has counseled that courts should "view the effect on the intervenor's interest with a practical eye." *Id.* ¶ 40. *Accord San Juan Cnty., Utah v. United States*, 503 F.3d 1163, 1193 (10th Cir. 2007) (*en banc*) ("The central concern in deciding whether intervention is proper is the practical effect of the litigation on the applicant for intervention."). Regardless of the standard, there is no question that Proposed Intervenors' interests in Proposition 4 and the congressional map are directly at stake in this litigation.

On remand, this Court will determine whether a public initiative supported by Proposed Intervenors and the Utah Democratic Party's members was unconstitutionally repealed. In addition, this Court may also be charged with determining whether the current congressional map illegally dilutes the voting power of the Utah Democratic Party's members, including the

individual intervenors. Finally, if this case proceeds to a remedial phase, this Court will oversee the establishment of new congressional districts in which the individual intervenors will vote and Utah Democratic Party candidates will run. These injuries are sufficient to establish standing, let alone the lower bar for intervention as of right. *See Jenkins v. Swan*, 675 P.2d 1145, 1150 (Utah 1983) (anyone "adversely affected by governmental actions has standing" to challenge it); *see also Hoyle v. Monson*, 606 P.2d 240, 242 (Utah 1980) (a plaintiff has standing if they can demonstrate government action "denied them a constitutionally guaranteed right").

D. Proposed Intervenors' interests are not adequately represented in this action.

Proposed Intervenors' unique interests are not adequately represented by the existing parties. To satisfy this element, Proposed Intervenors need only present "some evidence of diverging or adverse interests, such as that the representative party has an interest adverse to the applicant, has colluded with the opposing party, or is otherwise unable to diligently represent the applicant's interest." *Kodiak Am. LLC v. Summit County*, 2021 UT App 47, ¶ 18, 491 P.3d 962 (cleaned up). This is a "minimal burden." *Id.* That burden is easily met with respect to both the Defendants and the existing Plaintiffs because their interests notably differ.

Defendants—Republican elected officials who used the power of their offices to shore up their own political party's electoral prospects by unlawfully repealing Proposition 4 and diluting Democratic voting strength—plainly do not represent Proposed Intervenors' interests. All four individual Defendants—Senator Scott Sandall, Representative Brad Wilson, Senator J. Stuart Adams, and Lieutenant Governor Dierdre Henderson—are Republican elected officials, while both chambers of the Utah Legislature are controlled by Republican super-majorities. Their interests, as demonstrated by the actions that gave rise to this lawsuit, are diametrically opposed to Proposed Intervenors' interests in competing for election to office under maps that (1) are not unfairly skewed to favor Republican candidates, (2) are not structured to dilute their voting

strength, and (3) comport with the procedural and substantive requirements of a Proposition 4.

While Proposed Intervenors and the non-partisan and bipartisan Plaintiffs may have similar claims, they represent dramatically different interests. Specifically, the existing Plaintiffs represent a bipartisan group of voters and multiple non-partisan organizations who, by definition, do not share Proposed Intervenors' partisan interests in competing for election to public office under maps that are not unfairly distorted to favor their political opponents. This distinction is important for at least three reasons. *First*, the bipartisan Plaintiff group must balance and attend to the interests of its Republican and nonpartisan members, who are likely to have interests distinct from those of the Utah Democratic Party and Democratic voters. *Second*, only Proposed Intervenors represent the interests of the Utah Democratic Party as a whole, rather than a handful of individual voters who may have idiosyncratic interests not shared by the Party more broadly. *Finally*, if Plaintiffs and Proposed Intervenors prevail on their overlapping claims, they may have different views of the appropriate remedy. While the Republican Party will be well-represented in any remedial process that results from this litigation—through the Republican legislative defendants—the Democratic Party will not, unless Proposed Intervenors are granted intervention. Such partisan asymmetry is precisely what the reforms enacted by Proposition 4 were meant to avoid.

II. Alternatively, the Court should permit intervention under Rule 24(b).

In the alternative, the Court should permit intervention under Rule 24(b). Courts may exercise their discretion to permit intervention "when an applicant's claim or defense and the main action have a question of law or fact in common." *Interstate Land Corp. v. Patterson*, 797 P.2d 1101, 1108 (Utah Ct. App. 1990). The court must consider whether the party's intervention "would unduly delay a pending action or if permitting him to intervene would unduly complicate the issues." *Id.*

Here, that standard is easily met: like Plaintiffs, Proposed Intervenors would challenge the

constitutionality of the repeal of Proposition 4. And Proposed Intervenors' additional claim that the enacted congressional map violates Proposition 4 shares questions of law and fact with the claims already raised by Plaintiffs. Because Proposed Intervenors independently possess standing to pursue these claims, *League of Women Voters of Utah*, 2024 UT 21, ¶ 227 ("an alleged violation of the people's exercise of [their right to reform government through public initiative] presents a legally cognizable claim on which relief may be granted"), granting intervention would "conserve the parties' and the court's resources by avoiding duplicative litigation." *Wealth Assistants LLC v. Thread Bank*, No. CV H-24-040, 2024 WL 1348441, at *4 (S.D. Tex. Mar. 29, 2024).

Given the posture of the case, there is also no of risk prejudice. Proposed Intervenors' timely motion comes before any meaningful discovery has taken place or trial schedule has been set because the case has been stayed for more than eighteen months. Moreover, Proposed Intervenors' claims would not broaden the scope of the litigation because they raise the same core legal and factual issues that are currently before the Court. Proposed Intervenors are prepared to contribute to the complete development of the factual and legal issues before this Court to permit a timely resolution of these issues on the Court's schedule and without undue duplication.

CONCLUSION

For the reasons stated above, the Proposed Intervenors should be granted intervention as of right under Rule 24(a)(2). Alternatively, the court should permit Proposed Intervenors to intervene under Rule 24(b).

Dated: August 16, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August, 2024, I caused to be filed a true and correct copy of the foregoing **MOTION TO INTERVENE AS PLAINTIFFS** with the Court's GreenFiling system, which sent notice of such filing to the following:

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