This motion requires you to respond.
Please see the Notice to Responding Party.

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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, and JACK MARKMAN,

Plaintiffs,

v.

UTAH STATE LEGISLATURE, UTAH LEGISLATIVE REDISTRICTING COMMITTEE; SENATOR SCOTT SANDALL, in his official capacity; REPRESENTATIVE MIKE SCHULTZ, in his official capacity; SENATOR J. STUART ADAMS, in his official capacity; and LIEUTENANT GOVERNOR DEIDRE HENDERSON, in her official capacity,

Defendants.

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ON COUNTS 9-14 OF THEIR FIRST SUPPLEMENTAL COMPLAINT

(Expedited consideration requested)

Case No. 220901712

Honorable Dianna Gibson

HEARING REQUESTED

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RELIEF REQUESTED AND GROUNDS

Pursuant to Rule 65A of the Utah Rules of Civil Procedure, Plaintiffs League of Women Voters of Utah, Mormon Women for Ethical Government, Stefanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, and Jack Markman hereby move for a preliminary injunction on Counts 9-14 of their First Supplemental Complaint. Plaintiffs are entitled to a preliminary injunction because the certified ballot language fails to accurately submit the Amendment to the voters. Instead, it seeks through deception to mislead Utah voters into surrendering their constitutional rights. In doing so, the ballot language violates (1) the Constitution's and Code's requirements for submitting amendments to voters, Utah Const. art. XXIII, § 1; Utah Code § 20A-7-103(3); (2) the Free Election Clause, *id.* art. I, § 17; (3) Plaintiffs' right to "communicate freely their thoughts and opinions," *id.* art. I §§ 1 & 15; (4) Plaintiffs' right to vote, Utah Const. art. IV, § 2; and (5) Plaintiffs' right to be ensured a free government, *id.* art. I, §§ 2 & 27. Plaintiffs are likely to succeed on the merits of their claims, will suffer irreparable harm in the absence of an injunction, that harm outweighs any to Defendants, and an injunction is in the public interest. *See* Utah R. Civ. P. 65A(e).

Expedited Relief Requested: Plaintiffs seek to enjoin Defendants from placing proposed Amendment D on the November 2024 election ballot and if any ballots are issued to voters that include proposed Amendment D, seek for the Court to declare and enjoin Amendment D as void. *See supra* Part III. The relief Plaintiffs seek can be obtained without regard to the printing and mailing of ballots. But the public interest is best served by adjudicating the matter before ballots are mailed with a void Amendment included on them. Ballots will start being mailed to overseas and military voters on **September 20, 2024**. *See* Utah Code § 20A-16-403(1). Ballots are mailed

to most other voters beginning on **October 15, 2024**. *See* Utah Code § 20A-3a-202(2)(a). Plaintiffs thus respectfully request that the Court order expedited briefing and a hearing.

INTRODUCTION

In a rushed special session on August 21, the Legislature declared it an "emergency" that the Supreme Court vindicated Plaintiffs' and all Utahns' fundamental constitutional right to alter or reform the government without legislative impairment. It hurriedly changed statutory election deadlines, stifled the ability of citizens to petition the Legislature during the special session proceedings, and quickly approved a proposed constitutional amendment that would eliminate Utahns' constitutional right to reform their government without legislative interference. In doing so, it proposed text that would *exempt* the Legislature from complying with *any* provision of the Constitution when it acts to repeal or amend citizen initiatives.

Undoubtedly aware of the optics, the House Speaker and Senate President—Defendants in this case—then devised an ballot summary that not only will fail to inform voters that the proposed Amendment eliminates their fundamental constitutional right, but brazenly asserts that the amendment would "strengthen" the initiative process and "require[] . . . the legislature to follow the intent of a ballot initiative." This is the definition of Orwellian doublespeak; the Amendment does the opposite on both counts. By seeking to mislead Utah voters into surrendering their fundamental constitutional rights by deception, Defendants have violated multiple provisions of the Utah Constitution.

FACTUAL BACKGROUND

1. On July 11, 2024, the Utah Supreme Court held that, under Article I, Section 2 and Article VI of the Utah Constitution, the people have a fundamental constitutional right to alter or reform the government through initiatives and that the Legislature cannot subsequently act to

impair such a reform initiative unless it does so in a way that is narrowly tailored to further a compelling government interest. *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 74 ("*LWVUT*").

2. On August 21, 2024, the Utah Legislature convened its Fourth Special Session of the 65th Legislature, proclaiming that the *LWVUT* decision was an "emergency in the affairs of the state." Utah State Legislature, *Legislative Special Session Proclamation*, https://le.utah.gov/session/2024S4/Proclamation.pdf?r=1; Utah Const. art. VI, § 2(3)(a).

3. At the Special Session, the Legislature adopted S.J.R. 401, which proposes a constitutional amendment. The proposed Amendment modifies Article I, Section 2 of the Constitution as follows, with the added language underlined: "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." S.J.R. 401, Proposal to Amend Utah Constitution – Voter Legislative Power, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), https://le.utah.gov/~2024S4/bills/static/SJR401.html. Likewise, the proposed Amendment modifies Article VI, Section 1 of the Utah Constitution to (1) prohibit foreign individuals, entities, and governments from supporting or opposing initiatives or referenda and (2) provides that

> 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.

Id. S.J.R. 401 provides that the amendment will be proposed to the voters at the next general election, that if approved it takes effect January 1, 2025, and purports to establish that the changes other than the foreign influence prohibition have retrospective operation. *Id.*

4. The Legislature also enacted special rules that apply only to this proposed Amendment to rush it onto the November 2024 ballot. Section 20A-7-103.1 was enacted to apply only to this proposed Amendment and it exempted the Amendment from various Code provisions regulating the timing and process for drafting and presenting arguments in favor and opposition to the voters. S.B. 4002, Ballot Proposition Amendments, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), https://le.utah.gov/~2024S4/bills/static/SB4002.html.

5. The Legislature also enacted contingent legislation that takes effect if voters approve the proposed Amendment. That legislation, *inter alia*, adds 20 days to the time voters have to submit referendum signatures and provides that the Legislature should give deference to initiatives by amending them "in a manner that, *in the Legislature's determination*, leaves intact the general purpose 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). But that deference only applies to amendments that occur during the next general session following the initiative's adoption, and the next clause exempts the Legislature from deferring if it decides that the initiative has an "adverse fiscal impact." *Id.*

6. Governor Cox signed both S.B. 4002 and 4003 on August 22, 2024. *2024 4th Spec. Sess. Bills Passed*, Utah State Legislature (Sept. 5, 2024), https://le.utah.gov/asp/passedbills/passedbills.asp?session=2024S4.

7. The Utah Code requires the Speaker of the House and the President of the Senate to "draft and designate a ballot title for each proposed amendment . . . that [] summarizes the subject matter of the amendment . . . and [] summarizes any legislation that is enacted and will become effective upon the voters' adoption of the proposed constitutional amendment." Utah Code § 20A-7-103(3). S.B. 4002 required the presiding officers to submit the ballot title and summary language to the Lieutenant Governor "no later than September 1, 2024." S.B. 4002, Ballot Proposition Amendments, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), https://le.utah.gov/~2024S4/bills/static/SB4002.html. The Lieutenant Governor must certify the ballot title by that same date, and S.B. 4002 offers no time or opportunity for revisions. *See id.*

8. On the evening of September 3, 2024, two days after the deadline, Lieutenant Governor Henderson signed the 2024 General Election Certification, which certified the ballot language for Constitutional Amendment D—the amendment proposed by S.J.R. 401. Office of the Lieutenant Governor, 2024 General Election Certification, https://vote.utah.gov/wp-content/uploads/sites/42/2024/09/2024-Official-General-Election-Certification.pdf.

9. The Certification was not published on the Lieutenant Governor's website until mid-day September 4, 2024. Office of the Lieutenant Governor, 2024 Election Information, https://vote.utah.gov/current-election-information/.

10. The certified ballot language—written by the Speaker and Senate President—reads:

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.

11. The Uniform Military and Overseas Voters Act requires the first ballots for the November 2024 election to be mailed on the 45th day before the election—this year that date is September 20, 2024. Utah Code § 20A-16-403.

LEGAL STANDARD

A preliminary injunction is appropriate if Plaintiffs show that (1) "there is a substantial likelihood that [they] will prevail on the merits of the underlying claim," (2) "[they] will suffer irreparable harm unless the . . . injunction issues," (3) "the threatened injury to [them] 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).

ARGUMENT

I. There is a substantial likelihood Plaintiffs will succeed on the merits of their claims.

A. Plaintiffs are likely to succeed on the merits of their Article XXIII Amendment Submission claim.

Plaintiffs are likely to succeed on the merits of their Amendment Submission claim. Article XXIII, Section 1 of the Utah Constitution provides that if two-thirds of all members elected to each house of the Legislature vote in favor of a proposed amendment, "the said amendment . . . 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 . . . shall become part of this Constitution." Utah Const. art. XXIII, § 1. The plain language of Article XXIII, as it would have

been understood at the time of the Constitution's ratification and today, requires that *the amendment*—and not a misleading and false summary of it—be submitted to voters for approval.

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).

The plain language of Article XXIII requires that "the said amendment" 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 the voters on the ballot. Indeed, while the 1895 Constitution included the same language as today regarding submission of "the said amendment" to the voters, it also provided that the Constitution's text itself need not be on the ratification ballot. *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). Given the contrast, voters in 1895 likely understood Article XXIII—which does not allow a summarized presentation for proposed amendments—to require the amendment's text to appear on the ballot.

Historically, however—and likely for practical reasons related to ballot printing—the actual amendment text has not appeared on the ballot. *See LWVUT*, 2024 UT 21, ¶ 103 (noting that

"historical context" in which constitutional provisions were ratified may be relevant to understanding original public meaning). The Legislature has apparently interpreted Article XXIII to permit for the ballot to include "a ballot title for each proposed amendment . . . submitted by the Legislature that [] summarizes the subject matter of the amendment." Utah Code § 20A-7-103(3)(c). Perhaps Article XXIII can be interpreted as flexible enough to permit a summary of the amendment as opposed to the text of the amendment itself. But the plain meaning of Article XXIII's requirement that "the said amendment" be "submitted to the electors of the state for their approval or rejection" cannot plausibly encompass submitting a summary of the amendment that *falsely* and *misleadingly* describes the effect of the amendment as doing the opposite of what its text accomplishes. A false and misleading ballot summary in no way represents the submission of "the said amendment" to the electorate. Utah Const. art. XXIII, § 1.

Although Utah courts have not previously considered this issue, other state Supreme Courts interpreting similar provisions of their Constitutions have held that misleading ballot language is unconstitutional. For example, Article XI, Section 5 of the Florida Constitution requires that "[a] proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election . . . ." Fla. Const. art. XI, § 5. The Florida Supreme Court has held that "[i]mplicit in this provision 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); *see also Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982) ("[T]he voter should not be misled . . . . [T]he Constitution requires . . . that the ballot be fair and

advise the voter sufficiently to enable him intelligently to cast his ballot." (quoting *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954) (cleaned up))); *Smathers v. State*, 338 So. 2d 825, 829 (Fla. 1976).[1]

In *Askew*, the Florida Supreme Court considered a ballot summary for a proposed amendment that would have banned former legislators from lobbying for two years after leaving office unless they fully disclosed their financial interests. 421 So. 2d at 156. Although the ballot summary was consistent with the amendment's text, the Florida Supreme Court struck the proposed amendment from the ballot because the summary failed to disclose that the Constitution prohibited lobbying by former legislators for a two-year period, with no exception for financial disclosures. *Id.* "The problem, therefore, lies not with what the summary says, but, rather, with what it does not say." *Id.* The Court reasoned that had the amendment been a "totally new provision," the ballot summary might have been permissible. But the ballot summary, by failing to explain the *existing* constitutional provision, "fails to give fair notice of an exception to a present prohibition." *Id.* The purpose of the amendment, the Court reasoned, was to "remove the two-year ban on lobbying by former legislators," but the ballot summary was "disguised as something else" and impermissibly "fl[ew] under false colors." *Id.* Because the ballot summary was "so misleading to the public concerning material changes to an existing constitutional provision," the Court ordered that the proposed amendment be stricken from the ballot. *Id.*

Likewise, in *Armstrong*, the Florida Supreme Court struck a proposed constitutional amendment from the ballot where the ballot summary was misleading. The ballot summary said that the proposed amendment would conform the state's "prohibition against cruel and/or unusual

[1] Although the Florida legislature codified more specific requirements that the ballot contain "clear and unambiguous language" that identifies the "chief purpose" of the amendment, Fla. Stat. § 101.161(1), the Florida Supreme Court made clear the "accuracy" requirement stemmed directly from the Constitution's requirement that the amendment be submitted to the voters. *Armstrong*, 773 So.2d at 12-13, 21.

punishment" to the United States Supreme Court's interpretation of the Eighth Amendment and would "preserve the death penalty." 773 So. 2d at 17-18. In fact, the Court held, the summary hid from voters that the existing Constitution prohibited cruel *or* unusual punishment—not "and"—and that the "simple, clear-cut" purpose of the amendment was to "nullify the Cruel or Unusual Punishment Clause" and not to "preserve the death penalty." *Id.* at 18. "Nowhere in the summary, however, is this effect mentioned—or even hinted at. The main effect of the amendment is *not* stated anywhere on the ballot." *Id.* (emphasis in original). The Court thus invalidated the amendment *after its adoption by the voters* because it violated the implicit accuracy requirement of the Florida Constitution that amendments be submitted to the voters. *Id.* at 21. In doing so, the Court explained that the purpose of the accuracy requirement "is to ensure that each voter will cast a ballot based on the *full* truth. To function effectively—and to remain viable—a constitutional democracy must require no less." *Id.* The misleading ballot summary, the Court explained, would have caused voters to favor the amendment "on the false premise that the amendment will promote the basic rights of Florida citizens" and gave "no hint of the radical change in state constitutional law that the text actually foments." *Id.*

Moreover, strict judicial enforcement of the accuracy requirement was particularly necessary, the Court explained, because "the amendment's main effect is to nullify a fundamental state right that has existed in the Declaration of Rights *since this state's birth* over a century and half ago." *Id.* (emphasis in original). The court reasoned that it must be especially vigilant with respect to ballot summaries affecting "the Declaration of Rights." *Id.* When "citizens are being called upon to nullify an original act of the Founding Fathers, each citizen is entitled—indeed, each is duty-bound—to cast a ballot with eyes wide open." *Id.* at 22. Because the amendment "fl[ew] under false colors" and the Legislature "hid[] the ball," the amendment was stricken. *Id.*

State supreme courts across the country have taken the same approach. Much like Utah, the Hawaii Constitution requires that proposed constitutional amendments be "submitted to the electorate for approval or rejection." Haw. Const. art. XVII, §§ 3 & 4. That provision, the Hawaii Supreme Court held, requires that "the ballot must enable the voters to express their choice on the amendments presented and be in such a form and language as not to deceive or mislead the public." *Kahalekai v. Doi*, 590 P.2d 543, 546, 552-53 (Haw. 1979). The Idaho Supreme Court too voided a constitutional amendment, after the election, when the ballot question did not, "attributing to the words employed their usual meaning in common parlance," communicate the effect of the proposed amendment. *Lane v. Lukens*, 283 P. 532, 533-34 (Idaho 1929). And the Maine Supreme Court has held that "an amendment presented to the voters by means of a question which is clearly misleading is void and of no effect." *Opinion of the Justices*, 283 A.2d 234, 236 (Me. 1971). Likewise, the South Carolina Supreme Court invalidated a "voter approved" amendment when "the ballot did not submit the question in the language prescribed by the proposing resolution, but submitted instead the misleading title of the resolution." *Ex parte Tipton*, 93 S.E.2d 640, 642 (S.C. 1956). In doing so, the court explained that "where the question, on its face, is manifestly erroneous and misleading, there is no room for presumption, nor is evidence, other than the ballot itself, needed to demonstrate the deception." *Id.* at 643.

Other cases abound. The Wisconsin Supreme Court held that its Constitution's requirement that amendments be "submitted" to the voters for ratification is violated "when the ballot question fails to present the real question or is contrary to the amendment itself." *Wis. Justice Initiative, Inc. v. Wis. Elections Comm'n*, 990 N.W.2d 122, 140 (Wis. 2023). "In other words, voters have not been given the opportunity to vote for or against a proposal when the ballot question is fundamentally counterfactual. When a ballot question is factually inaccurate in a fundamental way,

it cannot be said that the amendment was actually submitted to the people for ratification." *Id.* at 140-41; *see also State ex rel. Thomson v. Zimmerman*, 60 N.W.2d 416, 423 (Wis. 1953) ("If the subject matter is important enough to be mentioned on the ballot it is so important that it must be mentioned in accord with the fact" and not with "misinformation").

Similarly, the Minnesota Constitution requires that proposed amendments be "submitted to the people for their approval or rejection at a general election." Minn. Const. art. IX, § 1. The Minnesota Supreme Court has held that this provision is violated when "the ballot question as framed is 'so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.'" *League of Women Voters of Minn. v. Ritchie*, 819 N.W.2d 636, 647 (Minn. 2012) (quoting *Breza v. Kiffmeyer*, 723 N.S.2d 633, 636 (Minn. 2006)); *see also Knight v. Martin*, 556 S.W.3d 501, 506-07 (Ark. 2018) (providing that a "ballot title must be an impartial summary of the proposed amendment, and it must give the voters a fair understanding of the issues presented and the scope and significance of the proposed changes in the law" (cleaned up)); *see also Dacus v. Parker*, 466 S.W.3d 820, 823, 826 (Tex. 2015) (recognizing common law protection from misleading ballot question and noting that ballots "may affirmatively misrepresent the measure's character and purpose or its chief features" or "omit[] certain chief features that reflect its character and purpose").

Amendment D's summary should suffer the same fate. The language violates the inherent accuracy requirement of Article XXIII, § 1 because it fails to submit the amendment to the voters for a popular vote. The Amendment drastically weakens Utahan's right to alter or reform their government—a fundamental right contained in the Declaration of Rights since 1895—by eliminating the Constitution's prohibition on the Legislature impairing government reform initiatives absent a compelling justification furthered by narrowly tailored means. *See* S.J.R. 401,

Proposal to Amend Utah Constitution – Voter Legislative Power, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), https://le.utah.gov/~2024S4/bills/static/SJR401.html; *see also LWVUT*, 2024 UT 21, ¶ 104.[2] The certified ballot summary for Amendment D flagrantly fails to disclose the effect of the Amendment and misleads and deceives voters. Indeed, the ballot summary voters deceptively asks votes to surrender a fundamental constitutional right they have possessed since 1895 by encouraging them to vote "yes" in order to supposedly *strengthen* their initiative rights.

First, even though Legislature's stated purpose in calling the "emergency" special session was to eliminate the fundamental constitutional right recognized in *LWVUT*, *see* Utah State Legislature, *Legislative Special Session Proclamation*, https://le.utah.gov/session/2024S4/Proclamation.pdf?r=1, the ballot summary says *nothing* about how the Amendment would eliminate the public's constitutional right to alter or reform the government without legislative interference. Instead, the ballot summary asks voters: "Should the Utah Constitution be changed to ***strengthen*** the initiative process by . . . [c]larifying the voters and legislative bodies' ability to amend laws." 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 (emphasis added).

The ballot summary plainly does not communicate that the Amendment *eliminates* a fundamental constitutional right that has existed since 1895. Nor does the Amendment "clarify" the ability of voters or the Legislature to amend laws because, as this Court held in *LWVUT*, the Constitution is already clear on that question. The ballot summary never mentions this existing

[2] Although the Supreme Court's opinion in this case holding that "the Alter or Reform Clause enshrined a fundamental right of the people to alter or reform their government" was issued this year, the Court's opinion interprets the original public meaning of the Constitution. *LWVUT*, 2024 UT 21, ¶¶ 104, 199. The Constitution has always protected this right.

constitutional right or that the Amendment would eliminate it entirely. *See Askew*, 421 So. 2d at 156 (striking Florida constitutional amendment where ballot summary fails to disclose that amendment would eliminate an existing constitutional provision); *Armstrong*, 773 So. 2d at 17-18, 21 (striking Florida constitutional amendment where ballot summary fails to disclose that amendment would nullify fundamental constitutional right). No voter reading the ballot summary would have any idea that the Amendment *eliminates* an existing, fundamental constitutional right by reading text stating that it "[c]larify[ies] the voters and legislative bodies' ability to amend laws." 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. By failing to disclose the fact that Amendment D would nullify an existing constitutional right, the ballot summary "is so misleading to the public concerning material changes to an existing constitutional provision" that the Court must "remove [it] from the vote of the people." *Askew*, 421 So. 2d at 156.

Second, somehow worse than failing to disclose that the Amendment eliminates a fundamental right, the ballot summary misleads voters into believing a vote in favor will *strengthen* their constitutional right to initiate legislation. The purpose of the Amendment is to *weaken* voters' constitutional right to initiate government reform measures by authorizing the Legislature to amend or repeal them as it sees fit. Indeed, the text of the Amendment—in sweeping language—*wholesale exempts* the Legislature from complying with *any* constitutional provision when it acts to amend, repeal, or enact laws in relation to voter-approved initiatives. *See* S.J.R. 401, Proposal to Amend Utah Constitution – Voter Legislative Power, 65th Leg., 2024 4th Spec. Sess. (Utah 2024), https://le.utah.gov/~2024S4/bills/static/SJR401.html ("*Notwithstanding any other provision of this Constitution*, the people's exercise of their Legislative power . . . does not limit

or preclude the exercise of Legislative power, including through amending, enacting, or repealing a law, by the Legislature . . . .") (emphasis added). This Constitution-free zone created by the Amendment's text is a far cry from the existing constitutional provision, which strictly limits the Legislature's power to impair voter-initiated government reforms. And it is an even further cry from "strengthen[ing]" the initiative process. Nowhere does the ballot summary disclose to voters that the Amendment would make legislative action lawful "*notwithstanding any other provision of th[e] Constitution.*"

Moreover, the ballot summary misleads voters by asserting that "[i]f approved, state law would also be changed to . . . [e]stablish requirements for the legislature to follow the intent of a ballot initiative." 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. As it stands today, the *current* Constitution establishes requirements for the legislature to follow the intent of a ballot initiative—it cannot impair government reform initiatives if it does so in a manner that is not narrowly tailored to serve a compelling government interest—a requirement voters can judicially enforce. *LWVUT*, 2024 UT 21, ¶ 74.

The Amendment does not "establish" that requirement; *it eliminates it.* In its place, the Legislature enacted a contingent *statute* that takes effect if the Amendment is approved that provides that if the Legislature amends an initiative, it shall—but only in the general session following the adoption of an initiative—"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." Yet the Legislature can ignore the initiative's purpose if "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 Amendment does not change state law to establish requirements that the Legislature follow the intent of a ballot initiative. It changes state law to eliminate such a requirement and replace it with a *non-requirement*—leaving it to the Legislature's determination as to what the purpose of the initiative is, how to respect it, or whether to respect it at all if it requires the expenditure of any funds. Moreover, the Amendment itself renders this "deference" statute unconstitutional by expressly freeing the Legislature from any constraint in undoing initiatives. The ballot summary does not explain any of this.

Third, the ballot summary misleads voters about the effect of the Amendment regarding a fundamental right contained since Utah's founding in the Declaration of Rights. As the Florida Supreme Court held in *Armstrong*, courts must be especially vigilant in guarding against deceptive ballot summaries where "the amendment's main effect is to nullify a fundamental state right that has existed in the Declaration of Rights *since the state's birth* . . . ." 773 So.2d at 21 (emphasis in original). Such is the case here. Although the People's right to alter or reform their government without government infringement was recently analyzed by the Utah Supreme Court in this case, it is still a right that has existed since 1895. This Court must act with extra vigilance and scrutiny of the ballot summary because the Amendment eliminates a fundamental constitutional right.

In sum, Plaintiffs are likely to succeed on the merits of their claim that the ballot summary violates Article XXIII, Section 1's requirement that "the said amendment . . . shall be submitted to the electors of the state for their approval or rejection," because it fails to notify voters that the Amendment eliminates an existing fundamental constitutional right and misleads voters about the purpose and content of the Amendment. *See Armstrong*, 773 So.2d at 22 (striking amendment from ballot where "[t]he ballot title and summary 'fly under false colors' and 'hide the ball' as to the

amendment's true effect"); *see also Wis. Justice Initiative, Inc.*, 990 N.W.2d at 140 ("[V]oters have not been given the opportunity to vote for or against a proposal when the ballot question is fundamentally counterfactual. When a ballot question is factually inaccurate in a fundamental way, it cannot be said that the amendment was actually submitted to the people for ratification."); *League of Women Voters of Minn.*, 819 N.W.2d at 647 (holding that ballot language may not be "so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote" (internal quotation marks omitted)).

Amendment D's ballot summary would deceive Utah voters into surrendering a fundamental constitutional right under the false pretense of *strengthening* those rights. It is as an anti-democratic suppression tactic. Because the certified ballot summary fails to submit the Amendment to the voters, it violates Article XXIII, Section 1 of the Constitution and must be struck from the November 2024 ballot.

B. Plaintiffs are likely to succeed on their statutory Amendment Summarization Claim.

Plaintiffs are also likely to succeed on their statutory Amendment Summarization claim. Under Utah Code § 20A-7-103(3)(c), the Speaker of the House and Senate President must "draft and designate a ballot title for each proposed amendment . . . that [] summarizes the subject matter of the amendment." Courts must "interpret[] statutes according to the 'plain' meaning of their text." *Olsen v. Eagle Mtn. City*, 2011 UT 10, ¶ 9, 248 P.3d 465. In doing so, courts rely frequently on dictionary definitions. *See, e.g.*, *Hi-Country Property Rights Grp. v. Emmer*, 2013 UT 33, ¶ 17. "Summary" is defined as "short, concise" and "[w]ithout the usual formalities." *Summary*, Black's Law Dictionary (12th ed. 2024). "Subject matter" is defined as "[t]he issue presented for consideration, the thing in which a right or duty has been asserted; the thing in dispute." *Subject Matter*, Black's Law Dictionary (12th ed. 2024).

For the reasons explained above, Amendment D's ballot language fails to "summarize the subject matter of the amendment," Utah Code § 20A-7-103(3), because it fails to disclose the actual subject matter of the Amendment: eliminating voter's fundamental constitutional right to alter or reform their government without infringement. The language instead tells voters that the Amendment does what it expressly does *not* do: strengthen the initiative process and change law to require respect for the purpose of voter's initiatives. Ballot language that lies about the Amendment's effect to deceive voters into forfeiting a constitutional right does not in any sense of the words "summarize the subject matter of the amendment."

C. Plaintiffs are likely to succeed on the merits of their Free Elections Clause Claim.

Plaintiffs are likely to succeed on the merits of their Free Elections Clause claim. The Free Elections Clause provides that "[a]ll 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 Const. art. I, § 17. As this Court has already explained in rejecting Defendants' motion to dismiss Plaintiffs' partisan gerrymandering Free Elections Clause claim, there are no early Utah common law cases interpreting this provision and little debate from the constitutional convention. Order on Mot. to Dismiss at 26-27. But the plain meaning of "free" and "elections" aids in understanding the original public meaning of the Clause.

As this Court has explained, "[t]he term 'free' as defined in the 1891 Black's Law Dictionary meant "[u]nconstrained; having power to follow the dictates of his own will,' '[e]njoying full civic rights,' and '[n]ot despotic; assuring liberty; defending individual rights against encroachment by an person or class; instituted by a free people; said of governments, institutions, etc.'" *Id.* (quoting *Free*, Black's Law Dictionary, 1st ed. 1891). In turn, "unconstrained" means "not held back or constrained," *Id.* at 28 (quoting *Unconstrained*, Merriam-

Webster Dictionary, https://www.merriam-webster.com/dictionary/unconstrained (noting definition first used in 14th century)). "Constrained," this Court noted, "means 'to force by imposed structure, restriction or limitation;' 'to force or produce in an unnatural or strained manner.'" *Id.* at 28 (quoting *Constrained*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/constrain (noting definition used in the 14th century)). This Court likewise relied upon the definition of "despotic," which means, *inter alia*, "a ruler with absolute power and authority; one exercising power tyrannically; a person exercising absolute power in a brutal or oppressive way." *Id.* at 29 (quoting *Despot*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/despot (noting this definition arose with beginning of democracy at the end of the 18th century)). Moreover, this Court has analyzed the meaning of "election" to be "the 'act or process of electing.'" *Id.* at 27 (quoting *Election*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/elections (noting definition arose from 13th century)).

From the plain meaning of the Clause, this Court explained that

> The first clause 'all elections shall be free' guarantees to Utah 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.

Id. at 29. Likewise, the "second clause . . . prohibits a civil or military power from interfering with the free exercise of suffrage." *Id.* The Court likewise noted that the historical understanding from the English Bill of Rights supported this understanding. *See id.* at 31-33.

Even Defendants—who dispute that the Free Elections Clause prohibits partisan gerrymandering[3]—have conceded in their Supreme Court briefing that the Clause "guarantees free elections by prohibiting external or controlling civil or military interference that would hinder voters from voting according to the dictates of their will" such as through "*undue influence* (such as bribery) that act as an external controlling factor." Br. of Petitioners at 40, *LWVUT*, No. 20220991-SC (Mar. 31, 2023), https://campaignlegal.org/document/petitioners-brief (emphasis added). As Defendants have noted, "English common law prohibited voter intimidation and undue influence. Blackstone affirmed that 'elections should be absolutely free'—a guarantee designed to 'strongly prohibit[]' 'all undue influences upon the electors.'" *Id.* at 42 (quoting 1 Blackstone, *Commentaries on the laws of England* 172).

Other state courts have confirmed that their Constitutions' guarantees of free elections prohibits the government from exercising undue influence or coercion at the ballot box. *See, e.g.*, *Oughton v. Black*, 61 A. 346, 347 (Pa. 1905) (explaining that constitutional requirement that elections be free and equal was a guarantee not only that voters be allowed to cast ballots but rather may do so "by no intimidation, threat, improper influence, or coercion of any kind"); *Wallbrecht v. Ingram*, 175 S.W. 1022, 1026 (Ky. 1915) (interpreting Kentucky Constitution's Free and Equal Elections Clause to require elections that "obtain a full, fair, and free expression of the popular will upon a matter" that can be violated even in the absence of "fraud, intimidation, violence, bribery, or other wrongdoing that prevented a full and free expression of the will of the people"); *People v. Hoffman*, 5 N.E. 596, 601 (Ill. 1886) (interpreting Illinois Constitution's Free and Equal Election Clause such that "[e]lections are free when the voters are subjected to no intimidation or

[3] They remain wrong. That the Free Elections Clause prohibits the government from publishing misleading ballot language to unduly influence how voters cast ballots does not minimize the fact that it also prohibits partisan gerrymandering.

improper influence, and when every voter is allowed to cast his ballot as his own judgment and conscience dictate"); *Young v. Red Clay Consolidated Sch. Dist.*, 159 A.3d 713, 764-65 (Del. Ch. 2017) (concluding that School District violated Delaware Constitution's Free Elections Clause by holding events at polling stations for families as a way to induce voters favorable to school funding ballot measure to vote); *Davidson v. Rhea*, 256 S.W. 2d 744, 746 (Ark. 1953) (explaining that that Free and Equal Elections Clause means that "[e]ach individual voter as he enters the booth is given an opportunity to freely express his will . . . *and from the face of the ballot he is instructed how to mark it*" (internal quotation marks omitted) (emphasis added)).

Here, the proposed Amendment's ballot summary violates the Free Elections Clause. On its face, the language exerts undue influence and coercion upon Utah's voters by omitting the central effect of the Amendment—eliminating voters' fundamental constitutional right to alter or reform the government free of government infringement—and misleading voters into believing that the Amendment would "strengthen" the initiative right and require that the purpose of initiatives was respected by the Legislature. *See supra* Part I.A. Because of the deceptive nature of the ballot summary, Utah voters cannot cast their ballots freely according to their own conscience, but rather would be deceived into surrendering existing constitutional rights by language that says they are protecting those rights. Such an election is not free. Even by *Defendants'* own proffered meaning of the Free Elections Clause, the ballot summary is constitutionally infirm. This is especially so because voting is a fundamental right, and thus the burdens Defendants have placed on Utahns' exercise of their right to a free election are subject to heightened scrutiny. Order on Mot. to Dismiss at 51. Defendants have no compelling interest in deceiving Utah voters as to the content of the proposed Amendment.

D. Plaintiffs are likely to succeed on their free speech and expression claims.

Plaintiffs are likely to succeed on their free speech and expression claims. Utah's Constitution provides that "[a]ll persons have the inherent and inalienable right to…communicate freely their thoughts and opinions," Utah Const. art. I, § 1, while commanding that "[n]o law shall be passed to abridge or restrain the freedom of speech." *Id*. art. I, § 15. The plain language of these provisions prohibits government constraint of free speech through deceptive ballot language.

Safeguarding free speech and association in the electoral process is critical. These freedoms are "not only the hallmark of a free people, but [are], indeed, an essential attribute of the sovereignty of citizenship." *Cox v. Hatch*, 761 P.2d 556, 558 (Utah 1988). As such, this court held that "voting is a fundamental right, and its exercise is a form of protected speech," Order on Mot. to Dismiss at 48. Numerous other courts have also recognized the constitutionally protected expressive interest in voting. *See, e.g., Burdick v. Takushi*, 504 U.S. 428, 438 (1992) (noting that "voters express their views in the voting booth"); *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1893) (noting "the right of qualified voters, regardless of their political persuasion, to cast their votes effectively") (citing *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968)). Article I, sections 1 and 15 protect the expression of free speech through voting and guarantee the "healthy political exchange [that] is the foundation of our system of free speech and free elections." *Jacob v. Bezzant*, 2009 UT 37, ¶ 29.[4]

Utah's citizens also originally understood voting to be speech. At the time of the adoption of the Constitution, "speech" meant "as expressing ideas," and "vote" meant "to express or signify

[4] Moreover, Utah's speech protections are broader than their federal counterpart, *see, e.g., West v. Thompson Newspapers*, 872 P.2d 999, 1007 (Utah 1994); *Provo City Corp. v. Willden*, 768 P.2d 455, 456 n.2 (Utah 1989), and protect rights not found in the First Amendment, such as the right to "communicate freely their thoughts and opinions."

the mind, will, or preference," and to provide an "opinion of a person." Webster's Practical Dictionary (1884). Defendants themselves emphasized that voting is how a voter "express[es]…his will, preference, or choice." Br. of Petitioners at 52, *LWVUT*, No. 20220991-SC (Mar. 31, 2023), https://campaignlegal.org/document/petitioners-brief (quoting *Vote*, Black's Law Dictionary (1891)). Moreover, the history of Article I, Sections 1 and 15 support their application here. At the provisions' core is the belief that "the framers of Utah's constitution saw the will of the people as the source of constitutional limitations upon our state government," with free speech being essential to "guard . . .against the encroachments of tyranny." *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 13; *Stromberg v. California*, 283 U.S. 359, 369 (1931) (describing purpose of free speech as to keep the government "responsive to the will of the people"). As this Court found, "[t]he role of free speech is central to our representative democracy." Order on Mot. to Dismiss at 45.

Free speech has long been understood to safeguard a political system that facilitates dissent and a neutral forum for political debate—not one that deceives voters into giving up their fundamental constitutional rights. For that reason, Defendants' ballot language violates the Constitution's plain language by hindering Utahns' free speech. The Utah Constitution guards against both "abridge[ment]" and "restrain[t]" of speech, and "prohibit[s] laws which either directly limit protected rights or indirectly inhibit the exercise of those rights." *Am. Bush*, 2006 UT 40, ¶¶ 17-18, 21. Under the plain language of the Constitution, voters cannot "communicate freely their thoughts and opinions" if the ballot language presented to them says the *opposite* of the text of the actual amendment at issue and is instead designed to deceive them while voting. And there can be no "healthy political exchange," *Jacob*, 2009 UT 37, ¶ 29, when the ballot language itself

is created to "effectively stifle[]" voters in casting their ballots. *McCullen v. Coakley*, 573 U.S. 464, 489-90 (2014).

By putting an oversized thumb on the scale, Defendants' ballot language "deviat[es] from neutrality [to] undermine[] the competitive mechanism that undergirds the democratic process," and unconstitutionally burdens Plaintiffs' rights. Order on Mot. to Dismiss at 49. Because voting is a fundamental right, these burdens are subject to heightened scrutiny. *Id*. at 51; *Reed v. Town of Gilbert*, 576 U.S. 155, 164 (2015). Defendants' ballot language tricks Utahns into voting *for* the proposed Amendment by presenting a false image of the Amendment, which particularly burdens voters who would vote to *reject* the Amendment (and convince others to do the same) if they were presented an accurate image. This is unconstitutional viewpoint discrimination—of the blatant Orwellian variety—driving Utahns to unwittingly express *Defendants'* preferred opinion on the proposed Amendment rather than their own.

Defendants cannot show a compelling, let alone legitimate, justification for submitting the misleading ballot language to the voters, nor is the ballot language narrowly tailored to achieve any such purpose. Because the proposed Amendment's deceptive ballot language restrains Plaintiffs' speech and fails heightened scrutiny, it violates Article I, Sections 1 and 15 of the Constitution and must be removed from the ballot.

E. Plaintiffs are likely to succeed on their right to vote claim.

Plaintiffs are likely to succeed on their right to vote claim. 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). This Court has held that this Clause guarantees "more than the physical right to cast a

ballot," but rather guarantees a "meaningful" right to vote that cannot be "unnecessarily abridged." Order on Mot. to Dismiss at 54 (cleaned up). Government action with respect to elections that prevents "the true public will" from being "ascertained" and causes it to be "distorted," this Court has explained, *id.* at 55, violates the Right to Vote Clause.

Because the ballot summary would deceptively cause voters to cast ballots contrary to their true will and will unduly influence and distort the election outcome, *see supra*, it violates the Right to Vote Clause.

F. Plaintiffs are likely to succeed on their right to free government claims.

Plaintiffs are likely to succeed on their right to free government claims. Article I, Section 2, of the Constitution—in addition to guaranteeing to the people the right to alter or reform the government—provides that "[a]ll political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit." Utah Const. art. I, § 2. Likewise, Article I, Section 27 of the Constitution provides 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. As the Supreme Court has explained in enforcing Article I, Sections 2 and 27, "[t]he cornerstone of democratic government is the conviction that governments exist at the sufferance of the people, in whom '[a]ll political power is inherent.'" *In re J.P.*, 648 P.2d 1364, 1372 (Utah 1982) (quoting Utah Const. art. I, § 2); *see also LWVUT*, 2024 UT 21, ¶ 133 (citing Article I, Section 27's "frequent recurrence" requirement and observing that "[t]hese declarations are not mere metaphors . . . but a vital princip[le] adhered to in the formation of the government of this state. . . . The people set up the state as their agent or servant through which they might for convenience *express their sovereign will*." (quoting *Utah Power & Light Co v. Ogden City*, 95 Utah 161, 79 P.2d 61, 74 (1938) (Larson, J., concurring in part and dissenting in

part) (cleaned up))). Utah is not alone in enforcing its constitutional guarantee to free government through frequent adherence to fundamental principles. *See, e.g.*, *Stierle v. Rohmeyer*, 260 N.W. 647, 655 (Wis. 1935) (invalidating provision under frequent adherence/free government clause and noting that "when things so monstrous as this are contemplated as within the language of the statutory provision under consideration, it behooves us to heed the admonition of section 22, art. 1, of our state Constitution.").

Together, Article I, Sections 2 and 27 guarantee free government consistent with fundamental principles of democratic governance, political primacy of the people, and the free expression of the people's will at the ballot box. A government is not "free" if its Constitution is amended by deception. The people are not sovereign in a free government if the government enhances its own power and limits that of the people by electoral deceit. Lying to voters to extinguish fundamental constitutional rights at the ballot box is antithetical to fundamental democratic principles. The ballot summary violates the guarantees of free government and democracy guaranteed by Article I, Sections 2 and 27 of the Utah Constitution.

II. The remaining factors favor entry of an injunction.

Plaintiffs are also likely to prevail on the remaining preliminary injunction factors that (1) "[they] will suffer irreparable harm unless the . . . injunction issues," (2) "the threatened injury to [them] outweighs whatever damage the proposed . . . injunction may cause the party . . . enjoined," and (3) "the . . . injunction, if issued, would not be adverse to the public interest." Utah R. Civ. P. 65A(e) (2-4).

First, 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' misleading and inaccurate ballot language would have Utahns unwittingly *eliminate* a fundamental constitutional right that has existed since 1895. Subjecting Plaintiffs and other Utahns to such deception constitutes irreparable harm that must be remedied. *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").

Second, 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 tricks voters into surrendering a fundamental constitutional right under the false pretense of *strengthening* that right, 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"). Utahns have possessed the fundamental constitutional right discussed in *LWVUT* since the founding; Defendants are not harmed by being unable to advance a false description of the proposed Amendment in the November 2024 election.

Finally, the public interest weighs in favor of an injunction. The "purpose of a preliminary injunction is 'to preserve the status quo pending the outcome of the case.'" *Planned Parenthood*, 2024 UT 28, ¶ 224 (internal citation omitted) (upholding a preliminary injunction as in public interest where it "would maintain the status quo…as it has been legally permitted for nearly fifty years"). Without an injunction here, a fundamental constitutional right that has existed since 1895 would be in jeopardy. Moreover, Defendants deceptive ballot language will impact the over 1.7

million registered Utah voters. The public interest favors removing proposed Amendment D from the November 5, 2024 ballot.

III. The Court should grant a preliminary injunction striking the proposed Amendment from the November 2024 election ballot.

The Court should grant a preliminary injunction that (1) enjoins Defendants from placing proposed Amendment D on the November 2024 election ballot; (2) provides that if any ballots are issued to voters that include proposed Amendment D, Amendment D is declared void and enjoined; and (3) orders the Lieutenant Governor to notify all County Clerks of the injunction such that they are bound by its terms, *see* Utah R. Civ. P. 65A(d). This relief is consistent with the relief state supreme courts in sister states have ordered when ballot questions are unconstitutionally misleading, both in pre-election and post-election challenges. Although the public interest would be served by resolution of this matter before ballots are mailed to voters, relief voiding the Amendment—which Defendants have acted to unconstitutionally place before voters—is effective regardless of whether an injunction is entered pre- or post-election. *See supra* Part I.A (collecting cases).

CONCLUSION

For the foregoing reasons, and as detailed above, the Court should grant a preliminary injunction.

September 5, 2024

Respectfully submitted,

/s/ David C. Reymann

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CERTIFICATE OF COMPLIANCE

Pursuant to Utah R. Civ. P. 7(q)(3), I hereby certify that the foregoing **PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ON COUNTS 9-14 OF THEIR FIRST SUPPLEMENTAL COMPLAINT** complies with the word limits in Utah R. Civ. P. 7(q)(1) and contains 8,651 words, excluding the items identified in Utah R. Civ. P. 7(q)(2).

/s/ Kade N. Olsen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of September, 2024, I filed the foregoing **PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ON COUNTS 9-14 OF THEIR FIRST SUPPLEMENTAL COMPLAINT** via electronic filing, which served all counsel of record.

/s/ Kade N. Olsen

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