No. 20220991-SC

IN THE
SUPREME COURT OF THE STATE OF UTAH

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

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

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INTRODUCTION

In its order of July 13, 2023, this Court directed the parties to submit supplemental briefing on three questions that arise if the Court were to conclude that a) the people's article I, section 2 right to alter or reform their government is a fundamental right and b) the people exercised that right when they enacted Proposition 4. Those questions are:

> 1) Should a level of scrutiny apply in determining whether SB200 violated the people's right to alter or reform their government?
>
> 2) If so, what level of scrutiny should apply?
>
> 3) Should the level of scrutiny vary based on the nature of the particular changes to Proposition 4 that Plaintiffs challenge?

(Suppl. Br. Order at 2.)

Plaintiffs answer these questions as follows:

1) Yes;

2) Heightened scrutiny should apply to some legislative changes, while lesser, intermediate scrutiny may apply to other changes; and

3) Legislative actions that would infringe on the people's right to reform or alter the government should be reviewed under heightened scrutiny. Any legislative action that would undermine the people's reform purpose necessarily infringes upon that right. Legislative actions that would not infringe upon those rights may be reviewed under a lower degree of scrutiny, *i.e.*, the change must be reasonable, it must have a legitimate legislative purpose, and that purpose must be reasonably furthered by the enactment. *See Utah Safe to Learn-Safe to Worship Coalition, Inc. v. State*, 2004 UT 32, ¶ 35, 94 P.3d 217.

Applying that framework here means that heightened scrutiny should apply to any change enacted by SB200 that frustrated Proposition 4's core governmental reforms—among others, the binding redistricting standards, the prohibition on partisan gerrymandering, and the private right of action—and the provisions necessary to enable those reforms. Other provisions may be subject to lower scrutiny. But the full repeal of Proposition 4 means the changes were not narrowly tailored in any event.

Under this framework, the district court erred in dismissing Claim 5 of the complaint.

ARGUMENT

I. The Court Should Apply Scrutiny in Determining Whether SB200 Violated the People's Right to Alter or Reform Their Government

The Court's first question asks whether courts can and should apply any level of scrutiny to SB200's repeal of Proposition 4. There are three possible answers: a) the Legislature could not change Proposition 4 in any way so no level of scrutiny is needed to declare changes unconstitutional; b) the Legislature could change Proposition 4, but only in certain ways with a sufficiently weighty reason that satisfies a level of scrutiny; or c) the Legislature could change Proposition 4 however it pleased, so no level of scrutiny applies.

The appropriate approach is the middle one—the Court should apply varying levels of scrutiny depending on the nature of the legislative enactment. That result follows directly from this Court's approach to other fundamental rights.

Traditionally, when a plaintiff has alleged that a statute violates their constitutional rights, courts have applied a level of scrutiny that increases or decreases depending upon

the nature of the right. *See, e.g.*, *In re Adoption of K.T.B. v. A.S.A.*, 2020 UT 51, ¶ 32, 472 P.3d 843 ("Whether a statute improperly allows the state to extinguish or foreclose a protected right depends on the nature of the right and its attendant standard of review.").[1]

When a fundamental right is involved, courts "apply a heightened degree of scrutiny," *Gallivan v. Walker*, 2002 UT 89, ¶ 40, 54 P.3d 1069, which is often referred to as strict scrutiny, *see K.T.B.*, 2020 UT 51, ¶ 32 (explaining "strict scrutiny" applies when fundamental right is implicated). As Plaintiffs explain below (at 9-12), this Court should subject SB200 to such heightened scrutiny.

The third possibility, advanced by the Legislature at oral argument, is the notion that the Court lacks the power to apply any level of scrutiny at all. That position is untenable. Balancing the people's article I, section 2 right and the Legislature's article VI power is a serious—but quintessentially judicial—task. As this Court has recognized, "[t]he accommodation of competing, and sometimes clashing, constitutional rights and prerogatives is a task of the greatest delicacy, although a common and necessary one in constitutional adjudication." *Berry ex rel. Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 677 (Utah 1985). This Court accomplishes that task by adjusting its level of scrutiny based upon whether the right at issue is a "fundamental or critical one." *Gallivan*, 2002 UT 89, ¶ 34. The Court should reject Defendants' invitation to exempt the people's article I, section 2

[1] In the context of claims under the Uniform Operation of Laws provision, the nature of the statutory classification also can determine the level of scrutiny. *Gallivan v. Walker*, 2002 UT 89, ¶ 40, 54 P.3d 1069.

right—one of the most foundational rights in the Constitution—from the usual framework of judicial scrutiny.[2]

At oral argument, Defendants suggested that that there was a "temporal" limitation on judicial scrutiny, such that courts could review legislative restrictions on the initiative process before an initiative is enacted but not legislative changes to initiatives post-adoption. (*See* Arg. at 2:39:22.) That argument is nonsensical. Accepting it would render article I, section 2 meaningless and permit the Legislature to repeal a governmental reform adopted by the people before it ever took effect with no judicial recourse. If the "right to initiate legislation directly was intended to be effective," so too was the people's article I, section 2 "specifically reserved right" to alter or reform their government—a right that was included in the Utah Constitution as a condition of statehood. *See Sevier Power Co., LLC v. Bd. of Sevier Cnty. Comm'rs*, 2008 UT 72, ¶¶ 6, 10, 196 P.3d 583. The Legislature cannot evade judicial scrutiny and make these rights "illusory" through an unconstitutional end run. *Id.* ¶ 10.

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[2] Defendants contended at oral argument that there might be serious political consequences for legislators if they repealed an initiative "passed by an overwhelming majority of the people" and that this was a reason not to apply any scrutiny to the Legislature's repeal of initiatives adopted pursuant to the people's article I section 2 right to alter or reform their government. (Arg. at 2:41:20.) But the potential for subsequent political consequences for legislators does nothing to remedy the violation of the people's constitutional rights. There might likewise be serious political consequences if the Legislature banned Sunday worship. That possibility would not somehow make courts unavailable to enforce the people's constitutional right to free exercise of religion. This argument is especially weak in the context of partisan gerrymandering, where the Legislature can insulate itself from future political consequences. Nor should enforcement of the people's article I, section 2 right to alter or reform their government hinge on *how large* a majority vote they achieved, as Defendants' unsupported argument suggests.

Defendants' position would eliminate article I, section 2 as a fundamental, constitutional right. Indeed, at oral argument Defendants essentially conceded as much, characterizing article I, section 2 as merely "belt and suspenders" to the people's article VI initiative power. (Arg. at 2:45:57.) But that position ignores text, history, and this Court's precedent. (LWVUT Op. Br. at 22-23, 41-50; LWVUT Reply Br. at 19-22.) The contention that a provision of the Declaration of Rights is "only a 'philosophical statement' is necessarily inconsistent with the premise of a written constitution which was intended to be, and is, a statement of positive law that limits the powers of government." *Berry*, 717 P.2d at 676. Article I, section 26 makes plain that each provision is "mandatory and prohibitory, unless by express words they are declared to be otherwise." Utah Const. art. I, § 26. And in *Berry*, this Court explained that "[a]rticle 1, section 26 rivets . . . all . . . rights in the Declaration of Rights[] into the fundamental law of the State and makes them enforceable in a court of law." 717 P.2d at 676.

Defendants' argument is especially illogical because, as this Court has explained, the right to initiate legislation in article VI is "self-limiting in that it grants to the legislature the authority to regulate the initiative process." *Safe to Learn*, 2004 UT 32, ¶ 34. Nevertheless, this Court applies a "more exacting analysis" than ordinary minimal scrutiny when reviewing regulations governing the enactment of initiatives. *Id.* ¶ 37. Where additional constitutional rights are involved, the Court applies heightened scrutiny. *Gallivan*, 2002 UT 89, ¶ 28. Given this framework, it makes no sense to contend that the Legislature's post-adoption interference with initiatives—a temporal space in which the Constitution

grants the Legislature *no* affirmative power[3]—is exempt from judicial scrutiny. The Legislature cannot evade judicial scrutiny to make the people's rights "illusory" by negating them after the fact where it is limited from regulating them on the front end. *Sevier Power*, 2008 UT 72, ¶ 10.

It is no answer to contend that article VI affords the Legislature the power to enact, repeal, or amend any law, and therefore article I, section 2 can be reduced to a judicially unenforceable "ping pong" ball in a tournament between the people and the Legislature. (*See* Arg. at 2:40:58 (Defendants' counsel arguing that "as a matter of theory there's nothing wrong with the two branches ping ponging back and forth.").) The Legislature would always win—and the Constitution tells us that is not right. *See* Utah Const. art. I, § 2 ("All political power is inherent in the people; and all free governments are founded on their authority . . . ."). The Constitution limits the Legislature's lawmaking power in a host of ways. For example, where legislation bears on the uniform operation of laws, Utah Const. art. I, § 24; the right to vote, *id.* art. IV, § 2, art. I, § 17; due process rights, *id.* art. I, § 7; speech rights, *id.* art. 1, § 15; or religious liberties, *id.* art. I, § 4, the legislation must satisfy the relevant tier of judicial scrutiny, otherwise it is unconstitutional. *See Count My Vote, Inc. v. Cox*, 2019 UT 60, ¶¶ 83–86, 452 P.3d 1109 (Himonas, J., concurring) (collecting cases).

[3] Notably, Utahns elsewhere expressly granted the Legislature a role in defining the scope of constitutional rights. *See* Utah Const. art. I, § 6 (protecting individual right to bear arms but providing that "nothing herein shall prevent the Legislature from defining the lawful use of arms").

Nothing exempts the Legislature's infringement of the people's article I, section 2 right to alter or reform their government from this scrutiny. Such a proposition is textually bizarre—the very purpose of article I, section 2 is to secure "political power . . . inherent in the people" and make the Legislature subservient to them. Utah Const. art. I, § 2. The Legislature is the "child of the people" and "cannot limit or control its parent." *Utah Power & Light Co. v. Provo City*, 74 P.2d 1191, 1205 (Utah 1937) (Larson, J., concurring); *accord Carter v. Lehi City*, 2012 UT 2, ¶ 30 n.20, 269 P.3d 141. It would be passing strange if this Court could not scrutinize legislative action that infringed upon the main constitutional right aimed at limiting the Legislature's power vis-à-vis the people. Indeed, the whole point of the initiative right is to enable a majority to "wield[] the legislative power" so that "the people [can] govern themselves in a democracy unfettered by the distortions of representative legislatures." *Carter*, 2012 UT 2, ¶ 23.[4] Adopting the Legislature's rule would permit such distortions to fetter the people's government reform rights.

Applying judicial scrutiny would not give "amendment-like status" to initiatives that alter or reform the government, as Defendants have suggested. (Arg. at 2:38:53.) The people retain the power to later amend or repeal their own alterations or reformations of the government through subsequent initiative. *See* Utah Const. art. VI, § 1. As explained below (at 12-18), the Legislature also retains the power to amend governmental reform initiatives subject to the governmental interest and tailoring requirements necessitated by the

[4] The Constitution also ensures that the people have a check on the Governor by giving him no power to veto initiated legislation and affording the people the power to adopt by initiative any measures that the Governor has previously vetoed. *See Gallivan*, 2002 UT 89, ¶ 59 n.11; *Carter*, 2012 UT 2, ¶ 22 n.10; *Grant v. Herbert*, 2019 UT 42, ¶ 23, 449 P.3d 122.

applicable tier of judicial scrutiny.[5] And of course, initiated laws must abide established constitutional provisions, subject to judicial review. (LWVUT Reply Br. at 23-24.)

Defendants may contend that the Court's traditional scrutiny frameworks are inapposite because article I, section 2 has both an individual and a collective component to it, but that argument would also be wrong. Many fundamental rights have both individual and collective elements, like the right to attend judicial proceedings, assemble peaceably, and freely exercise religious beliefs. Yet such rights are routinely reviewed under a scrutiny framework. *E.g.*, *Press-Enter. Co. v. Superior Ct. of Cal.*, 478 U.S. 1, 6–7, 13–15 (1986) (public right to access criminal trials); *Kearns-Tribune Corp. v. Lewis*, 685 P.2d 515, 521–23 (Utah 1984) (similar public right of access under Utah Constitution, partly deriving from the "power [] inherent in the people" under article I, section 2).

[5] This process permits the people to make subsequent changes to their governmental reform initiatives while simultaneously ensuring that the people whose position lost at the ballot box cannot simply convert themselves into winners by the Legislature's contrary enactment. Again, the point of Utahns' initiative rights is to enable a majority of voters to directly legislate apart from "the distortions of" the Legislature. *Carter*, 2012 UT 2, ¶ 23. A subsequent majority of the people may wish themselves to reverse course on their own governmental reform initiative. If a subsequent alteration is performed by the Legislature instead, then subjecting the Legislature's alterations of the people's reform to the appropriate tier of judicial scrutiny will prevent undermining the majority's directly expressed will. *See Gallivan*, 2002 UT 89, ¶¶ 60-61 (rejecting position that would "turn[] . . . on its head" Utah's "system of government," which "is premised on the notion of majority rule."). This guardrail is especially critical where, as here, the reform is about preventing the distortions of districts from which legislators are elected that "subordinate adherents of one political party and entrench a rival party in power" in a manner that is "incompatible with democratic principles." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 791 (2015) (quotation simplified).

Like all laws implicating constitutional rights, SB200 is subject to judicial review and judicial scrutiny.

II. Heightened Scrutiny Should Apply to SB200, but It Fails Any Level of Scrutiny

The Court's second and third questions address the level of scrutiny that should apply to SB200's repeal of Proposition 4. As explained below, Plaintiffs believe a tiered scrutiny framework is appropriate. The provisions of SB200 that infringed the people's right to alter or reform their government should be reviewed under heightened scrutiny. Any legislative action that would undermine the initiative's purpose necessarily infringes upon those rights. Other provisions may be subject to lesser, intermediate scrutiny.

A. The Court should subject SB200 to heightened scrutiny

The premise of all three of the Court's questions is that the right to alter or reform the government protected by article I, section 2 is a fundamental right.[6] Under this Court's case law, that premise dictates that heightened scrutiny applies to most of SB200. *See Jensen ex rel. Jensen v. Cunningham*, 2011 UT 17, ¶ 72, 250 P.3d 465. But heightened scrutiny is likewise warranted because SB200 additionally implicates other fundamental rights.

As this Court has repeatedly made clear, "[a] statute that infringes upon [a] fundamental right is subject to heightened scrutiny and is unconstitutional unless it

[6] This conclusion is undoubtedly correct. (*See* LWVUT Op. Br. at 21-27, 40-50.) "Fundamental rights are 'those rights which form an implicit part of the life of a free citizen in a free society.'" *Tindley v. Salt Lake City Sch. Dist.*, 2005 UT 30, ¶ 29, 116 P.3d 295 (quoting *Utah Pub. Emp. Ass'n v. State*, 610 P.2d 1272, 1273 (Utah 1980)). Article I, section 2 describes the rights it affords as "inherent" and thus fundamental to ordered liberty. Utah Const. art. I, § 2.

(1) furthers a compelling state interest and (2) the means adopted are narrowly tailored to achieve the basic statutory purpose." *Id.* (quotation simplified). "Utah courts and courts across the country overwhelmingly employ strict or heightened scrutiny review when evaluating legislative enactments that implicate fundamental rights." *Count My Vote, Inc.*, 2019 UT 60, ¶ 83 (Himonas, J., concurring). "This practice holds true regardless of the substance of the fundamental right involved or nature of the challenge brought." *Id.*

Heightened scrutiny applies here because SB200 implicates multiple fundamental rights. Independent of the people's fundamental article I, section 2 right, SB200 implicates the people's article VI initiative right—a right that this Court has already described as fundamental. *See Gallivan*, 2002 UT 89, ¶ 24 ("The reserved right and power of initiative is a fundamental right under article VI, section 1 of the Utah Constitution."); *id.* ¶ 27 ("Because the people's right to directly legislate through initiative and referenda is sacrosanct and a fundamental right, Utah courts must defend it against encroachment and maintain it inviolate."). As this Court recognized in *Safe to Learn*, heightened scrutiny is particularly appropriate when legislation implicates both the initiative right and an additional fundamental constitutional right. 2004 UT 32, ¶ 33 (explaining that in *Gallivan* "heightened scrutiny was particularly appropriate because there were two constitutional values that required due recognition"—uniform operation of laws and the initiative right). And in *Sevier Power*, the Court applied what can only be described as heightened scrutiny to prohibit the Legislature's enactment of a law substantively limiting the people's initiative rights, protected in both article I, section 2 and article VI, section 1. *See* 2008 UT 72, ¶¶ 6–16.

SB200 also implicates the fundamental right to vote because it repeals Proposition 4's provisions protecting Utahns from discrimination based upon their political viewpoints in assigning them to legislative and congressional districts. Just as the signature gathering requirements in *Gallivan* "impact[ed] . . . [the] right to vote," a "fundamental and critical right[] to which the Utah Constitution has accorded special sanctity," so too does SB200's repeal of Proposition 4's reforms that were designed to end the electorally-distortive and vote-dilutive effects of partisan gerrymandering. 2002 UT 89, ¶ 41. Because Proposition 4 and the Legislature's repeal of it in SB200 sit at the junction of multiple fundamental constitutional rights—including one that directly allocates political power to the people rather than the Legislature—the highest degree of judicial scrutiny is warranted.

Defendants contended at oral argument that, to the extent any level of scrutiny applied to the Legislature's repeal of Proposition 4, it "ha[d] to be rational basis." (Arg. at 2:39:45-50.) But this Court has never held that any provision of the Declaration of Rights is subject to mere rational basis review. Such a standard would make no sense for a fundamental article I right, particularly for the right that ensures that "[a]ll political power is inherent in the people." Utah Const. art. I, § 2.

Moreover, Defendants' position would subject infringements on the people's right to alter or reform their government to lower scrutiny than is applied to the Legislature's article VI regulations to facilitate the initiative process. *See Safe to Learn*, 2004 UT 32, ¶ 37 (applying "a more exacting analysis" than minimal scrutiny review to initiative-process regulations, including examining the burden imposed and the importance of the legislative

purpose). The *Safe to Learn* Court applied an intermediate tier of scrutiny rather than heightened scrutiny to the Legislature's regulations of the pre-enactment initiative process because article VI, section 1(2)'s manner and conditions clause affirmatively empowers the Legislature to adopt such regulations. 2004 UT 32, ¶ 34. Neither article I, section 2 nor article VI, section 1 contains similar language regarding the Legislature's power to alter adopted initiatives. That fact—together with the framers' elimination of the provision from the South Dakota Constitution that affirmatively granted the Legislature the power to enact laws notwithstanding initiatives—counsels in favor of the highest level of scrutiny. (*See* LWVUT Op. Br. at 31-34; LWVUT Reply Br. at 14-15.)

By enacting Proposition 4, the people exercised their fundamental right to alter or reform their government, using their fundamental right to initiate legislation, on the topic of their fundamental right to vote. The highest judicial scrutiny should govern the Legislature's repeal and replacement of Proposition 4.

B. Most of SB200's repeal of Proposition 4 would fail under heightened scrutiny

Much, but perhaps not all, of SB200 would fail under a tiered scrutiny framework.

Most of SB200's provisions directly frustrate the people's right to reform or alter their government by undoing the provisions altering the structure of government—as well as those provisions necessary to achieve that purpose. In particular, SB200 repealed key provisions of Proposition 4, such as:

(1) The restrictions clarifying when redistricting can occur (Utah Code § 20A-19-102);

(2) The Redistricting Standards and Requirements, including the requirements that neither the Commission nor the Legislature purposefully or unduly favor incumbents or political parties in creating districts, and that considered maps be checked for partisan symmetry (Utah Code §§ 20A-19-103, 20A-19-202(6));

(3) The Severability Clause (Utah Code § 20A-19-104);

(4) The requirement that the Legislature appropriate adequate funds and enable resourcing for the Commission (Utah Code § 20A-19-201(12));

(5) The requirement that the Legislature vote on the Commission's plans and issue a report if rejecting Commission's plans (Utah Code § 20A-19-204); and

(6) The private right of action (Utah Code § 20A-19-301).

In addition to the repeals of those provisions, the Legislature's enactment of corollary SB200 provisions likewise infringed on the people's right to reform their government. Those provisions:

(1) Altered the redistricting criteria and restrictions on the Commission, did not extend those criteria and restrictions to the Legislature, and changed the process for analyzing considered maps (Utah Code § 20A-20-302(4)–(8)); and

(2) Changed the Legislature's consideration of the Commission's proposed plans (Utah Code § 20A-20-303).

Each of the above provisions repealed or amended aspects of Proposition 4 that either directly altered or reformed the structure of government or are necessary to effectuate Proposition 4's reform. These provisions all would fail heightened scrutiny.

Partisan gerrymandering by definition serves partisan interests, not governmental ones. The Legislature has no legitimate interest—compelling, rational, or otherwise—in retaining the ability to gerrymander legislative and congressional districts for partisan ends. Partisan gerrymandering "reflect[s] *no* policy" at all, "but simply arbitrary and capricious action." *Vieth v. Jubelirer*, 541 U.S. 267, 316 (2004) (Kennedy, J., concurring) (quoting *Baker v. Carr*, 369 U.S. 186, 226 (1962)).

Defendants' lone argument for repealing Proposition 4 is their suggestion that the Legislature had a legitimate interest in repealing Proposition 4 to "cure[] constitutional defects" that the Legislature perceived. (Defs. Resp. Br. at 32.) In particular, Defendants allege three constitutional concerns they contend justified the repeal: (1) that "Proposition 4 took redistricting away from the Legislature (in violation of Article IX)," (2) that Proposition 4 gave redistricting power "to an 'independent' fourth branch of government, in violation of the separation of powers," and (3) that "Proposition 4 even gave the Chief Justice a role in redistricting, another violation of the separation of powers and a demand for an advisory opinion." (*Id.* at 32-33.) None justifies the Legislature's repeal of Proposition 4.

Critically, the Legislature's mere *assertion* of constitutional concerns regarding an initiative adopted pursuant to the people's article I, section 2 right to alter or reform their government cannot suffice. Were it otherwise, the Legislature could simply cite constitutional concerns—whatever their merit—as a basis to override the people's article I, section 2 governmental reforms. Instead, the constitutionality of the repealed provision should be adjudicated by the Court, just as it would be if a plaintiff brought a legal challenge

against the identified provision. The Court should not simply accept as a legitimate interest the Legislature's assertion of a constitutional infirmity, nor should the Court otherwise defer to the Legislature's views on that question. To do otherwise would be to preclude the people from adopting constitutionally sound governmental reforms that the Legislature wrongly (or disingenuously) contends are unlawful.

In any event, here, the constitutional concerns advanced by the Legislature fail.

First, as has been briefed elsewhere, Proposition 4 does not violate article IX and the Legislature misreads that provision. (*See* LWVUT Resp. Br. at 16-22; LWVUT Reply Br. at 23 & n.12.) Article IX, like its counterpart in Florida, "in terms provides only that the state legislature is bound to redistrict within a certain time after each decennial census"—and not that the Legislature is the "exclusive" body that can act on the topic of redistricting. *Lawyer v. Dep't of Justice*, 521 U.S. 567, 577 n.4 (1997). The provision merely recognizes that the legislative function of the state must be engaged to redistrict at the beginning of each decade, not that the Legislature has exclusive domain over the topic. In this manner, article IX limits the general article VI legislative power by mandating that a specific type of legislation be enacted by a specific date. It in no way forecloses the people from exercising their own legislative authority when it touches on redistricting.

Second, Proposition 4 did not violate the separation of powers by creating a fourth branch of government to decide redistricting. Rather, the Commission's work on redistricting in Proposition 4 falls under the *people*'s power to exercise their legislative function as part of "[t]he Legislative power of the State." Utah Const. art. VI, § 1(1). As the sole case cited by Defendants (Leg. Resp. Br. at 32) makes clear, certain powers may be

delegated so long as the legislative function, accountable to the people, "retain[s] the power to make ultimate policy decisions and override decisions made by others." *Salt Lake City v. Int'l Ass'n of Firefighters, Locals 1645, 593, 1654 & 2064*, 563 P.2d 786, 790 (Utah 1977).

International Association of Firefighters involves the *opposite* situation from Proposition 4. There the Legislature delegated to a commission certain subjects that would insulate it from popular control in a manner that "may be antagonistic to the public interest." *Id.* at 789. Proposition 4, by contrast, brought redistricting *closer* to the people's own legislative prerogative. It mandated public access, input, and transparency in the redistricting process to maximize the people's direct involvement. And it limited the Legislature's ability to gerrymander the district's against the people's will. Because "[t]he people's initiative power reaches to the full extent of the legislative power" in terms of substantive scope, the people transgressed no constitutional limit in imposing redistricting criteria and banning partisan gerrymandering in Proposition 4. *Carter*, 2012 UT 2, ¶ 31.

Third, the constitutionality of specific provisions of SB200—like its removal of the chief justice from the redistricting process—are not before the Court. The question is whether Plaintiffs have stated a claim for a constitutional violation based on SB200's infringement on the people's fundamental right to alter or reform their government.

To the extent the Legislature's constitutional concerns regarding the chief justice provision are found valid, then it is likely—when the issue is properly before the Court—that SB200's repeal and replacement of that provision could survive heightened scrutiny, because removing an unconstitutional provision would arguably provide the Legislature

with a compelling purpose for altering such a reform. *See In re Gestational Agreement*, 2019 UT 40, ¶ 82, 449 P.3d 69 (Pearce, J., concurring) (noting as unresolved the constitutionality of employees of one branch of government exercising the powers commonly attributed to another branch).

For present purposes, it is clear that the Legislature's wholesale repeal of Proposition 4—including its prohibition of partisan gerrymandering and its private right of action, targeted at neither the Commission nor the chief justice—based on the untested constitutionality of the chief justice provisions simply confirms that SB200 is not narrowly tailored and could not survive heightened scrutiny.[7] The Legislature took a hatchet to Proposition 4, when only a scalpel may have been permissible.

To be clear, other provisions of SB200 might be subject to lesser scrutiny and could potentially survive that review. Specifically, those provisions that are more properly characterized as administrative or implementing provisions rather than alterations or reformations of the structure of government could survive. For example, SB200 enacted § 20A-20-202 that replaced the parts of Proposition 4, § 20A-19-201(12)(b) related to the

[7] Among other things, Proposition 4 required the chief justice to appoint a commissioner to the redistricting commission in the event an appointing authority failed to do so. Utah Code § 20A-19-201(10). The Legislature repealed that provision and replaced it with a requirement that legislative representatives of the opposite party of the failed appointing authority would appoint a commissioner in the event of a failure to appoint or to fill a vacancy. Utah Code § 20A-20-201(4). The latter provision is an example of the kind of alteration the Legislature could potentially adopt under Plaintiffs' proposed framework because it does not appear to frustrate the purpose of Proposition 4. It maintains the functionality of the people's reform to create a fully composed, independent, and bipartisan Commission. And, if adopted as a standalone, line-item amendment, it could prove to be narrowly tailored.

mechanics of procuring computer software for the Commission. These are administrative or implementing provisions that do not themselves alter or reform the government, nor do they undermine provisions that are necessary to achieve the people's purposes to prohibit partisan gerrymandering.

With respect to these provisions, the Court might apply the same level of intermediate scrutiny it applies in the context of the Legislature's regulation of the initiative process and thus assess "whether the enactment is reasonable, whether it has a legitimate legislative purpose, and whether the enactment reasonably tends to further that legislative purpose." *Safe to Learn*, 2004 UT 32, ¶ 35. This standard "bear[s] a resemblance to [the Court's] traditional minimum scrutiny review," but requires a "more exacting analysis" to ensure that the legislative enactment does not unjustifiably burden the overall functioning of the people's reform initiative. *Id.* ¶ 37.

Adopting this level of scrutiny would harmonize the Court's precedent with respect to legislation that seeks to regulate initiatives pre- and post-enactment that may not implicate article I, section 2 rights. It also would generally permit the Legislature to amend initiatives in ways that further rather than frustrate their core purposes, consistent with precedent from other states. (LWVUT Reply Br. at 25-27.) And it would reserve heightened scrutiny for matters at the core of the people's article I, section 2 right to alter or reform their government.

Plaintiffs' proposed standard also will not, in practice, have a dramatic effect on the legislative function in Utah. As noted, Utah is unlike many other states in that voters rarely enact ballot initiatives. (*See* LWVUT Op. Br. at 8 n.6; LWVUT Reply Br. at 12 n.3.) In the

last 123 years, Utahns have enacted *seven* total citizen initiatives. To the extent the court limits the scope of what constitutes an article I, section 2 reform, even fewer of these initiatives would be akin to Proposition 4 on that score. Based on historical practice, and the comparative difficulty of an initiative reaching the Utah ballot in the first place, the Court is unlikely to be involved in these types of disputes often. Overall, Plaintiffs' measured approach fully protects the people's fundamental article I, section 2 right, accounts for reasonable and furthering legislation that alters initiated laws, and recognizes the need for the judiciary's limited—but critical—role to uphold the people's fundamental rights against legislative interference.

RELIEF REQUESTED & CONCLUSION

For the foregoing reasons, a tiered scrutiny framework should govern the determination of whether SB200 violated the people's right to alter or reform their government. Under that framework, heightened scrutiny should apply to provisions of SB200 that infringe on the people's right to alter or reform their government, as reflected in Proposition 4. A lower degree of scrutiny may apply to provisions that do not have that purpose or effect.

Based on that framework, this Court should reverse the district court's dismissal of Count 5 and either apply the framework adopted by the Court to SB200 or remand to the district court to do so. If certain aspects of Proposition 4 become operative, Plaintiffs will amend their complaint to allege the statutory private right of action contemplated under Proposition 4. And if the private right of action is successful, it may ultimately obviate the need for the district court, or this Court, to further address Counts 1–4.

For these reasons, if the Court reverses the district court's dismissal of Plaintiffs' Count 5, it should consider dismissing as improvidently granted Defendants' petition for interlocutory appeal of the district court's denial of Defendants' motion to dismiss Counts 1–4. Because further litigation in the district court could affect the nature of and need to address those claims, this Court need not resolve the Legislature's appeal at this interlocutory stage. *State v. Wood*, 648 P.2d 71, 82 (Utah 1982) ("It is a fundamental rule that we should avoid addressing a constitutional issue unless required to do so."); *see also* Utah R. App. P. 5(g) (providing that interlocutory appeal should only be heard where it will "materially affect the final decision" or "serve the administration and interests of justice").[8]

[8] Plaintiffs note that the Lieutenant Governor has suggested that, under the current statutory deadlines for candidate filing, a new map for the 2024 election would need to be in place by November 2023. Plaintiffs believe that sufficient time remains to decide this appeal—and for the district court to conduct any necessary proceedings on remand—that a new map can be implemented by November 2023 if Plaintiffs prevail on a statutory cause of action under Proposition 4.

Nevertheless, courts have equitable authority to alter election deadlines, such as candidate filing deadlines and primary election dates, to protect their jurisdiction and ensure that a remedy can be implemented. *See, e.g.*, *Sixty-Seventh Minnesota State Senate v. Beens*, 406 U.S. 187, 201 n.11 (1972) ("If time presses too seriously, the District Court has the power appropriately to extend the time limitations imposed by state law.").

Utah voters should not suffer under an unlawful map for a second election cycle.

DATED this 31st day of July, 2023.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the page limit set by this Court's July 13, 2023, Supplemental Briefing Order because this brief contains 20 pages, excluding the parts of the brief exempted by Utah R. App. P. 24(g)(2).

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

DATED this 31st day of July, 2023.

/s/ Troy L. Booher

CERTIFICATE OF SERVICE

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

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Addendum A

Utah Constitutional Provisions

West's Utah Code Annotated
Title 20a. Election Code
Chapter 19. Utah Independent Redistricting Commission and Standards Act [Repealed]
Part 1. General Provisions [Repealed]

This section has been updated. Click here for the updated version.

U.C.A. 1953 § 20A-19-101

§ 20A-19-101. Title

Effective: December 1, 2018 to March 27, 2020

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

Credits
2018, I.P. No. 4, § 1, eff. Dec. 1, 2018.

U.C.A. 1953 § 20A-19-101, UT ST § 20A-19-101
Current with laws of the 2023 General Session eff. through May 2, 2023. Some statutes sections may be more current, see credits for details.

End of Document

West's Utah Code Annotated
Title 20a. Election Code
Chapter 19. Utah Independent Redistricting Commission and Standards Act [Repealed]
Part 1. General Provisions [Repealed]

This section has been updated. Click here for the updated version.

U.C.A. 1953 § 20A-19-102

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

Effective: December 1, 2018 to March 27, 2020

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

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

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

(3) upon the issuance of a permanent injunction by a court of competent jurisdiction under Section 20A-19-301(2) and as provided in Section 20A-19-301(8);

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

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

Credits
2018, I.P. No. 4, § 2, eff. Dec. 1, 2018.

U.C.A. 1953 § 20A-19-102, UT ST § 20A-19-102
Current with laws of the 2023 General Session eff. through May 2, 2023. Some statutes sections may be more current, see credits for details.

End of Document

West's Utah Code Annotated
Title 20a. Election Code
Chapter 19. Utah Independent Redistricting Commission and Standards Act [Repealed]
Part 1. General Provisions [Repealed]

This section has been updated. Click here for the updated version.

U.C.A. 1953 § 20A-19-103

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

Effective: December 1, 2018 to March 27, 2020

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

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

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

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

(c) creating districts that are geographically compact;

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

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

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

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

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

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

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

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

Credits

2018, I.P. No. 4, § 3, eff. Dec. 1, 2018.

U.C.A. 1953 § 20A-19-103, UT ST § 20A-19-103

Current with laws of the 2023 General Session eff. through May 2, 2023. Some statutes sections may be more current, see credits for details.

End of Document

West's Utah Code Annotated
Title 20a. Election Code
Chapter 19. Utah Independent Redistricting Commission and Standards Act [Repealed]
Part 1. General Provisions [Repealed]

This section has been updated. Click here for the updated version.

U.C.A. 1953 § 20A-19-104

§ 20A-19-104. Severability

Effective: December 1, 2018 to March 27, 2020

(1) The provisions of this chapter are severable.

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

Credits
2018, I.P. No. 4, § 4, eff. Dec. 1, 2018.

U.C.A. 1953 § 20A-19-104, UT ST § 20A-19-104
Current with laws of the 2023 General Session eff. through May 2, 2023. Some statutes sections may be more current, see credits for details.

End of Document

Addendum B

Senate Bill 200 (2020)

REDISTRICTING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Carol Spackman Moss

LONG TITLE

General Description:

This bill addresses provisions relating to the Utah Independent Redistricting Commission and redistricting.

Highlighted Provisions:

This bill:

- defines terms;
- modifies redistricting requirements and related provisions;
- modifies the Utah Independent Redistricting Commission;
- establishes the commission's membership and term;
- addresses commission function, action, meetings, and staffing;
- provides for acquisition and use of materials, software, and services, including legal services, by the commission;
- describes the duties of the commission;
- provides for presentation of commission maps to the Legislature's redistricting committee;
- requires the Government Operations Interim Committee to conduct a review of the commission; and
- repeals existing independent redistricting commission provisions.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2021:

- to the Department of Administrative Services – Finance - Mandated – Redistricting Commission, as a one-time appropriation:

- from Legislature – Office of Legislative Research and General Counsel,

One-time, $1,000,000.

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

63G-7-201, as last amended by Laws of Utah 2019, Chapters 229 and 248

63G-7-301, as last amended by Laws of Utah 2019, Chapters 229 and 248

ENACTS:

20A-20-101, Utah Code Annotated 1953

20A-20-102, Utah Code Annotated 1953

20A-20-103, Utah Code Annotated 1953

20A-20-201, Utah Code Annotated 1953

20A-20-202, Utah Code Annotated 1953

20A-20-203, Utah Code Annotated 1953

20A-20-301, Utah Code Annotated 1953

20A-20-302, Utah Code Annotated 1953

20A-20-303, Utah Code Annotated 1953

REPEALS:

20A-19-101, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

20A-19-102, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

20A-19-103, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

20A-19-104, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

20A-19-201, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

20A-19-202, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

20A-19-203, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

20A-19-204, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

20A-19-301, as enacted by Statewide Initiative -- Proposition 4, Nov. 6, 2018

Be it enacted by the Legislature of the state of Utah:

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

CHAPTER 20. UTAH INDEPENDENT REDISTRICTING COMMISSION

Part 1. General Provisions

20A-20-101. Title.

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

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

20A-20-102. Definitions.

As used in this chapter:

(1) "Commission" means the Utah Independent Redistricting Commission created in Section 20A-20-201.

(2) "Committee" means the Legislature's redistricting committee.

(3) "Decennial year" means a year during which the United States Bureau of Census conducts a national decennial census.

(4) "Regular decennial redistricting" means redistricting required due to a national decennial census.

(5) "Special redistricting" means redistricting that is not a regular decennial redistricting.

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

20A-20-103. Review by interim committee.

During the 2022 Legislative interim, the Government Operations Interim Committee shall conduct a review of the commission and the commission's role in relation to the redistricting process.

Section 4. Section **20A-20-201** is enacted to read:

Part 2. Commission

20A-20-201. Utah Independent Redistricting Commission -- Creation -- Membership -- Term -- Quorum -- Action -- Meetings -- Staffing -- Website.

(1) (a) There is created the Utah Independent Redistricting Commission.

(b) The commission is housed in the Department of Administrative Services for budgetary purposes only.

(c) The commission is not under the direction or control of the Department of Administrative Services or any executive director, director, or other employee of the Department of Administrative Services or any other government entity.

(2) Except as provided in Subsection (4), the commission comprises seven members appointed as follows:

(a) one member appointed by the governor, which member shall serve as chair of the commission;

(b) one member appointed by the president of the Senate;

(c) one member appointed by the speaker of the House of Representatives;

(d) one member appointed by the legislative leader of the largest minority political party in the Senate;

(e) one member appointed by the legislative leader of the largest minority political party in the House of Representatives;

(f) one member appointed jointly by the president of the Senate and the speaker of the House of Representatives; and

(g) one member appointed jointly by the legislative leader of the largest minority political party in the Senate and the legislative leader of the largest minority political party in the House of Representatives.

(3) An appointing authority described in Subsection (2):

(a) shall make the appointments no later than:

(i) February 1 of the year immediately following a decennial year; or

(ii) if there is a change in the number of congressional, legislative, or other districts resulting from an event other than a national decennial enumeration made by the authority of the United States, the day on which the Legislature appoints a committee to draw maps in relation to the change;

(b) may remove a commission member appointed by the appointing authority, for cause; and

(c) shall, if a vacancy occurs in the position appointed by the appointing authority under Subsection (2), appoint another individual to fill the vacancy within 10 days after the day on which the vacancy occurs.

(4) (a) If the appointing authority described in Subsection (2)(a) fails to timely make the appointment, the legislative leader of the largest political party in the House of Representatives and the Senate, of which the governor is not a member, shall jointly make the appointment.

(b) If the appointing authority described in Subsection (2)(b) fails to timely make the appointment, the appointing authority described in Subsection (2)(d) shall make the appointment.

(c) If the appointing authority described in Subsection (2)(c) fails to timely make the appointment, the appointing authority described in Subsection (2)(e) shall make the appointment.

(d) If the appointing authority described in Subsection (2)(d) fails to timely make the appointment, the appointing authority described in Subsection (2)(b) shall make the appointment.

(e) If the appointing authority described in Subsection (2)(e) fails to timely make the appointment, the appointing authority described in Subsection (2)(c) shall make the appointment.

(f) If the appointing authority described in Subsection (2)(f) fails to timely make the appointment, the appointing authority described in Subsection (2)(g) shall make the appointment.

(g) If the appointing authority described in Subsection (2)(g) fails to timely make the appointment, the appointing authority described in Subsection (2)(f) shall make the appointment.

(5) A member of the commission may not, during the member's service on the

commission:

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

(b) be a candidate for or holder of any elective office, including federal elective office, state elective office, or local government elective office;

(c) be a candidate for or holder of any office of a political party, except for delegates to a political party's convention;

(d) be an employee of, or a paid consultant for, a political party, political party committee, personal campaign committee, or any political action committee affiliated with a political party or controlled by an elected official or candidate for elective office, including any local government office;

(e) serve in public office if the member is appointed to public office by the governor or the Legislature;

(f) be employed by the United States Congress or the Legislature; or

(g) hold any position that reports directly to an elected official, including a local elected official, or to any person appointed by the governor or Legislature to any other public office.

(6) In addition to the qualifications described in Subsection (5), a member of the commission described in Subsection (2)(f) or (g):

(a) may not have, during the two-year period immediately preceding the member's appointment to the commission:

(i) been affiliated with a political party under Section 20A-2-107;

(ii) voted in the regular primary election or municipal primary election of a political party; or

(iii) been a delegate to a political party convention; and

(b) may not, in the sole determination of the appointing authority, be an individual who is affiliated with a partisan organization or cause.

(7) Each commission member shall, upon appointment to the commission, sign and file a statement with the governor certifying that the commission member:

(a) meets the qualifications for appointment to the commission;

(b) will, during the member's service on the commission, comply with the requirements described in Subsection (5);

(c) will comply with the standards, procedures, and requirements described in this chapter that are applicable to a commission member; and

(d) will faithfully discharge the duties of a commission member in an independent, impartial, honest, and transparent manner.

(8) For a regular decennial redistricting, the commission is:

(a) formed and may begin conducting business on February 1 of the year immediately following a decennial year; and

(b) dissolved upon approval of the Legislature's redistricting maps by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

(9) (a) A member of the commission may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(i) Section 63A-3-106;

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

(iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(b) A member of the commission may decline to receive per diem or travel expenses.

(10) The commission shall meet upon the request of a majority of the commission members or when the chair calls a meeting.

(11) (a) A majority of the members of the commission constitutes a quorum.

(b) The commission takes official action by a majority vote of a quorum present at a meeting of the commission.

(12) Within appropriations from the Legislature, the commission may, to fulfill the duties of the commission:

(a) contract with or employ an attorney licensed in Utah, an executive director, and

other staff; and

(b) purchase equipment and other resources, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, to fulfill the duties of the commission.

(13) The commission shall maintain a website where the public may:

(a) access announcements and records of commission meetings and hearings;

(b) access maps presented to, or under consideration by, the commission;

(c) access evaluations described in Subsection 20A-20-302(8);

(d) submit a map to the commission; and

(e) submit comments on a map presented to, or under consideration by, the commission.

Section 5. Section **20A-20-202** is enacted to read:

20A-20-202. Software and software services.

The Office of Legislative Research and General Counsel shall, when procuring software, licenses for using the software, and software support services for redistricting by the Legislature, include in the requests for proposals and the resulting contracts that the commission may purchase the same software, licenses for using the software, and software support services, under the contracts at the same cost and under the same terms provided to the Legislature.

Section 6. Section **20A-20-203** is enacted to read:

20A-20-203. Exemptions from and applicability of certain legal requirements -- Risk management -- Code of ethics.

(1) The commission is exempt from:

(a) except as provided in Subsection (3), Title 63A, Utah Administrative Services Code;

(b) Title 63G, Chapter 4, Administrative Procedures Act; and

(c) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) (a) The commission shall adopt budgetary procedures, accounting, and personnel and human resource policies substantially similar to those from which the commission is

exempt under Subsection (1).

(b) The commission is subject to:

(i) Title 52, Chapter 4, Open and Public Meetings Act;

(ii) Title 63A, Chapter 1, Part 2, Utah Public Finance Website;

(iii) Title 63G, Chapter 2, Government Records Access and Management Act;

(iv) Title 63G, Chapter 6a, Utah Procurement Code; and

(v) Title 63J, Chapter 1, Budgetary Procedures Act.

(3) Subject to the requirements of Subsection 63E-1-304(2), the commission may participate in coverage under the Risk Management Fund created by Section 63A-4-201.

(4) (a) The commission may, by majority vote, adopt a code of ethics.

(b) The commission, and the commission's members and employees, shall comply with a code of ethics adopted under Subsection (4)(a).

(c) The executive director of the commission shall report a commission member's violation of a code of ethics adopted under Subsection (4)(a) to the appointing authority of the commission member.

(d) (i) A violation of a code of ethics adopted under Subsection (4)(a) constitutes cause to remove a member from the commission under Subsection 20A-20-201(3)(b).

(ii) An act or omission by a member of the commission need not constitute a violation of a code of ethics adopted under Subsection (4)(a) to be grounds to remove a member of the commission for cause.

Section 7. Section **20A-20-301** is enacted to read:

Part 3. Proceedings

20A-20-301. Public hearings -- Private conversations.

(1) (a) The commission shall, by majority vote, determine the number, locations, and dates of public hearings to be held by the commission, but shall hold no fewer than seven public hearings throughout the state to discuss maps, as follows:

(i) one in the Bear River region, which includes Box Elder, Cache, and Rich counties;

(ii) one in the Southwest region, which includes Beaver, Garfield, Iron, Kane, and

Washington counties;

(iii) one in the Mountain region, which includes Summit, Utah, and Wasatch counties;

(iv) one in the Central region, which includes Juab, Millard, Piute, Sanpete, Sevier, and Wayne counties;

(v) one in the Southeast region, which includes Carbon, Emery, Grand, and San Juan counties;

(vi) one in the Uintah Basin region, which includes Daggett, Duchesne, and Uintah counties; and

(vii) one in the Wasatch Front region, which includes Davis, Morgan, Salt Lake, Tooele, and Weber counties.

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

(c) The committee and the commission may coordinate hearing times and locations to:

(i) avoid holding hearings at, or close to, the same time in the same area of the state; and

(ii) to the extent practical, hold hearings in different cities within the state.

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

(3) The commission shall hold the public hearings described in Subsection (1) no later than August 1 of the year following a decennial year.

(4) (a) A member of the commission may not engage in any private communication with any individual other than other members of the commission or commission staff, including consultants retained by the commission, that is material to any redistricting map or element of a map pending before the commission or intended to be proposed for commission consideration, without making the communication, or a detailed and accurate description of the communication including the names of all parties to the communication and the map or element of the map, available to the commission and to the public.

(b) A member of the commission shall make the disclosure required by Subsection (4)(a) before the redistricting map or element of a map is considered by the commission.

(5) The committee chairs and the chair of the commission shall, no later than two business days after the day on which the Legislature appoints a committee, under Subsection 20A-20-201(3)(a)(ii), for a special redistricting, jointly agree on a schedule for the commission that:

(a) reasonably ensures that the commission may complete the commission's duties in a timely manner, consistent with the time frame applicable to the committee and the Legislature;

(b) establishes deadlines for the following:

(i) holding the public hearings described in Subsection (1);

(ii) preparing and recommending maps under Subsection 20A-20-302(2);

(iii) submitting the maps and written report described in Subsection 20A-20-303(1); and

(iv) holding the public meeting described in Subsection 20A-20-303(2); and

(c) provides that the commission dissolves upon approval of the Legislature's redistricting maps by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section 8. Section **20A-20-302** is enacted to read:

20A-20-302. Selection of recommended maps -- Map requirements and standards.

(1) As used in this section:

(a) "Map type" means one of four map types, as follows:

(i) a map of all Utah congressional districts;

(ii) a map of all state Senate districts;

(iii) a map of all state House of Representatives districts; and

(iv) a map of all State School Board districts.

(b) "Total population deviation" means a percentage determined as follows:

(i) calculating the ideal district population by dividing the total population by the

number of districts;

(ii) calculating the percentage difference between the population of the district with the greatest population and the ideal district population;

(iii) calculating the percentage difference between the population of the district with the lowest population and the ideal district population; and

(iv) combining the percentage differences described in Subsections (1)(b)(ii) and (iii).

(2) The commission shall, no later than 20 days after the day of the final public hearing described in Subsection 20A-20-301(1), prepare and recommend three different maps for each map type, as follows:

(a) three different maps for congressional districts, with the number of congressional districts apportioned to Utah;

(b) three different maps for state Senate districts, with 29 Senate districts;

(c) three different maps for state House of Representatives districts, with 75 House of Representative districts; and

(d) three different maps for State School Board districts, with 15 State School Board districts.

(3) (a) To the extent possible, each map recommended by the commission shall be approved by at least five members of the commission.

(b) If the commission is unable to obtain the approval of at least five members for all maps required under Subsection (2) for a particular map type, the commission shall, for that map type:

(i) if possible, recommend one map that is approved by at least five members of the commission; and

(ii) recommend two additional maps that are approved by a majority of commission members, as follows:

(A) one of the maps shall be approved by a majority that includes the commission member described in Subsection 20A-20-201(2)(f); and

(B) one of the maps shall be approved by a majority that includes the commission

member described in Subsection 20A-20-201(2)(g).

(4) The commission shall ensure that:

(a) each map recommended by the commission:

(i) is drawn using the official population enumeration of the most recent decennial census;

(ii) for congressional districts, has a total population deviation that does not exceed 1%;

(iii) for Senate, House of Representatives, and State School Board districts, has a total population deviation of less than 10%;

(iv) does not use race as a predominant factor in drawing district lines; and

(v) complies with the United States Constitution and all applicable federal laws, including Section 2 of the Voting Rights Act; and

(b) each district in each map is:

(i) drawn based on total population;

(ii) a single member district; and

(iii) contiguous and reasonably compact.

(5) The commission shall define and adopt redistricting standards for use by the commission that require that maps adopted by the commission, to the extent practicable, comply with the following, as defined by the commission:

(a) preserving communities of interest;

(b) following natural, geographic, or man-made features, boundaries, or barriers;

(c) preserving cores of prior districts;

(d) minimizing the division of municipalities and counties across multiple districts;

(e) achieving boundary agreement among different types of districts; and

(f) prohibiting the purposeful or undue favoring or disfavoring of:

(i) an incumbent elected official;

(ii) a candidate or prospective candidate for elected office; or

(iii) a political party.

(6) The commission may adopt a standard that prohibits the commission from using any of the following, except for the purpose of conducting an assessment described in Subsection (8):

(a) partisan political data;

(b) political party affiliation information;

(c) voting records;

(d) partisan election results; or

(e) residential addresses of incumbents, candidates, or prospective candidates.

(7) The commission may adopt redistricting standards for use by the commission that require a smaller total population deviation than the total population deviation described in Subsection (4)(a)(iii) if the committee or the Legislature adopts a smaller total population deviation than 10% for Senate, House of Representatives, or State School Board districts.

(8) (a) Three members of the commission may, by affirmative vote, require that commission staff evaluate any map drawn by, or presented to, the commission as a possible map for recommendation by the commission to determine whether the map complies with the redistricting standards adopted by the commission.

(b) In conducting an evaluation described in Subsection (8)(a), commission staff shall use judicial standards and, as determined by the commission, the best available data and scientific methods.

Section 9. Section **20A-20-303** is enacted to read:

20A-20-303. Submission of maps to Legislature -- Consideration by Legislature.

(1) The commission shall, within 10 days after the day on which the commission complies with Subsection 20A-20-302(2), submit to the director of the Office of Legislative Research and General Counsel, for distribution to the committee, and make available to the public, the redistricting maps recommended under Section 20A-20-302 and a detailed written report describing each map's adherence to the commission's redistricting standards and requirements.

(2) The commission shall submit the maps recommended under Section 20A-20-302 to

the committee in a public meeting of the committee as described in this section.

(3) The committee shall:

(a) hold the public meeting described in Subsection (2):

(i) for the sole purpose of considering each map recommended under Section 20A-20-302; and

(ii) for a year immediately following a decennial year, on or before September 15; and

(b) at the public meeting described in Subsection (2), provide reasonable time for:

(i) the commission to present and explain the maps described in Subsection (1);

(ii) the public to comment on the maps; and

(iii) the committee to discuss the maps.

(4) The Legislature may not enact a redistricting plan before complying with Subsections (2) and (3).

(5) The committee or the Legislature may, but is not required to, vote on or adopt a map submitted to the committee or the Legislature by the commission.

Section 10. Section **63G-7-201** is amended to read:

63G-7-201. Immunity of governmental entities and employees from suit.

(1) Except as otherwise provided in this chapter, each governmental entity and each employee of a governmental entity are immune from suit for any injury that results from the exercise of a governmental function.

(2) Notwithstanding the waiver of immunity provisions of Section 63G-7-301, a governmental entity, its officers, and its employees are immune from suit for any injury or damage resulting from the implementation of or the failure to implement measures to:

(a) control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;

(b) investigate and control suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act;

(c) respond to a national, state, or local emergency, a public health emergency as

defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health related activities, including the use, provision, operation, and management of:

(i) an emergency shelter;

(ii) housing;

(iii) a staging place; or

(iv) a medical facility; and

(d) adopt methods or measures, in accordance with Section 26-1-30, for health care providers, public health entities, and health care insurers to coordinate among themselves to verify the identity of the individuals they serve.

(3) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury if the injury arises out of or in connection with, or results from:

(a) a latent dangerous or latent defective condition of:

(i) any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or viaduct; or

(ii) another structure located on any of the items listed in Subsection (3)(a)(i); or

(b) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement.

(4) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment, if the injury arises out of or in connection with, or results from:

(a) the exercise or performance, or the failure to exercise or perform, a discretionary function, whether or not the discretion is abused;

(b) except as provided in Subsections 63G-7-301(2)[~~(k)~~](j), (3), and (4), assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or

violation of civil rights;

(c) the issuance, denial, suspension, or revocation of, or the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization;

(d) a failure to make an inspection or making an inadequate or negligent inspection;

(e) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;

(f) a misrepresentation by an employee whether or not the misrepresentation is negligent or intentional;

(g) a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;

(h) the collection or assessment of taxes;

(i) an activity of the Utah National Guard;

(j) the incarceration of a person in a state prison, county or city jail, or other place of legal confinement;

(k) a natural condition on publicly owned or controlled land;

(l) a condition existing in connection with an abandoned mine or mining operation;

(m) an activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire, and State Lands;

(n) the operation or existence of a pedestrian or equestrian trail that is along a ditch, canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river, if:

(i) the trail is designated under a general plan adopted by a municipality under Section 10-9a-401 or by a county under Section 17-27a-401;

(ii) the trail right-of-way or the right-of-way where the trail is located is open to public use as evidenced by a written agreement between:

(A) the owner or operator of the trail right-of-way or of the right-of-way where the trail is located; and

(B) the municipality or county where the trail is located; and

(iii) the written agreement:

(A) contains a plan for operation and maintenance of the trail; and

(B) provides that an owner or operator of the trail right-of-way or of the right-of-way where the trail is located has, at a minimum, the same level of immunity from suit as the governmental entity in connection with or resulting from the use of the trail;

(o) research or implementation of cloud management or seeding for the clearing of fog;

(p) the management of flood waters, earthquakes, or natural disasters;

(q) the construction, repair, or operation of flood or storm systems;

(r) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6a-212;

(s) the activity of:

(i) providing emergency medical assistance;

(ii) fighting fire;

(iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;

(iv) an emergency evacuation;

(v) transporting or removing an injured person to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service; or

(vi) intervening during a dam emergency;

(t) the exercise or performance, or the failure to exercise or perform, any function pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;

(u) an unauthorized access to government records, data, or electronic information systems by any person or entity; or

(v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a public or private road.

Section 11. Section **63G-7-301** is amended to read:

63G-7-301. Waivers of immunity.

(1) (a) Immunity from suit of each governmental entity is waived as to any contractual

obligation.

(b) Actions arising out of contractual rights or obligations are not subject to the requirements of [~~Sections~~] Section 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

(c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.

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

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

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

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

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

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

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

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

Land Use Act;

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

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

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

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

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

[~~(k)~~] (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from a sexual battery, as provided in Section 76-9-702.1, committed:

(i) against a student of a public elementary or secondary school, including a charter school; and

(ii) by an employee of a public elementary or secondary school or charter school who:

(A) at the time of the sexual battery, held a position of special trust, as defined in Section 76-5-404.1, with respect to the student;

(B) is criminally charged in connection with the sexual battery; and

(C) the public elementary or secondary school or charter school knew or in the exercise of reasonable care should have known, at the time of the employee's hiring, to be a sex offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a background check under Section 53G-11-402.

(3) (a) As used in this Subsection (3):

(i) "Appropriate behavior policy" means a policy that:

(A) is not less stringent than a model policy, created by the State Board of Education, establishing a professional standard of care for preventing the conduct described in Subsection

(3)(a)(i)(D);

(B) is adopted by the applicable local education governing body;

(C) regulates behavior of a school employee toward a student; and

(D) includes a prohibition against any sexual conduct between an employee and a student and against the employee and student sharing any sexually explicit or lewd communication, image, or photograph.

(ii) "Local education agency" means:

(A) a school district;

(B) a charter school; or

(C) the Utah Schools for the Deaf and the Blind.

(iii) "Local education governing board" means:

(A) for a school district, the local school board;

(B) for a charter school, the charter school governing board; or

(C) for the Utah Schools for the Deaf and the Blind, the state board.

(iv) "Public school" means a public elementary or secondary school.

(v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

(vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering the term "child" in that section to include an individual under age 18.

(b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim against a local education agency for an injury resulting from a sexual battery or sexual abuse committed against a student of a public school by a paid employee of the public school who is criminally charged in connection with the sexual battery or sexual abuse, unless:

(i) at the time of the sexual battery or sexual abuse, the public school was subject to an appropriate behavior policy; and

(ii) before the sexual battery or sexual abuse occurred, the public school had:

(A) provided training on the policy to the employee; and

(B) required the employee to sign a statement acknowledging that the employee has read and understands the policy.

(4) (a) As used in this Subsection (4):

(i) "Higher education institution" means an institution included within the state system of higher education under Section 53B-1-102.

(ii) "Policy governing behavior" means a policy adopted by a higher education institution or the State Board of Regents that:

(A) establishes a professional standard of care for preventing the conduct described in Subsections (4)(a)(ii)(C) and (D);

(B) regulates behavior of a special trust employee toward a subordinate student;

(C) includes a prohibition against any sexual conduct between a special trust employee and a subordinate student; and

(D) includes a prohibition against a special trust employee and subordinate student sharing any sexually explicit or lewd communication, image, or photograph.

(iii) "Sexual battery" means the offense described in Section 76-9-702.1.

(iv) "Special trust employee" means an employee of a higher education institution who is in a position of special trust, as defined in Section 76-5-404.1, with a higher education student.

(v) "Subordinate student" means a student:

(A) of a higher education institution; and

(B) whose educational opportunities could be adversely impacted by a special trust employee.

(b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim for an injury resulting from a sexual battery committed against a subordinate student by a special trust employee, unless:

(i) the institution proves that the special trust employee's behavior that otherwise would constitute a sexual battery was:

(A) with a subordinate student who was at least 18 years old at the time of the behavior; and

(B) with the student's consent; or

(ii) (A) at the time of the sexual battery, the higher education institution was subject to a policy governing behavior; and

(B) before the sexual battery occurred, the higher education institution had taken steps to implement and enforce the policy governing behavior.

Section 12. **Repealer.**

This bill repeals:

Section **20A-19-101, Title.**

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

Section **20A-19-103, Redistricting Standards and Requirements.**

Section **20A-19-104, Severability.**

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

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

Section **20A-19-203, Selection of Recommended Redistricting Plan.**

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

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

Section 13. **Appropriation.**

The following sums of money are appropriated for the fiscal year beginning July 1, 2020, and ending June 30, 2021. These are additions to amounts previously appropriated for fiscal year 2021. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To Department of Administrative Services -- Finance-Mandated

From Legislature -- Office of Legislative Research and

General Counsel, One-time $1,000,000

Schedule of Programs:

Redistricting Commission $1,000,000

The Legislature intends that:

(1) appropriations provided under this section be used for the Utah Independent Redistricting Commission, for the purposes of, and in accordance with, Title 20A, Chapter 20, Utah Independent Redistricting Commission; and

(2) under Section 63J-1-603, appropriations provided under this item not lapse at the close of fiscal year 2021 and the use of any nonlapsing funds is limited to the purposes described in Subsection (1) of this provision of legislative intent.

Section 14. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Addendum C

Statutes

U.C.A. 1953 § 20A-20-103

§ 20A-20-103. Review by interim committee

Effective: March 28, 2020
Currentness

During the 2022 Legislative interim, the Government Operations Interim Committee shall conduct a review of the commission and the commission's role in relation to the redistricting process.

Credits
Laws 2020, c. 288, § 3, eff. March 28, 2020.

U.C.A. 1953 § 20A-20-103, UT ST § 20A-20-103
Current with laws of the 2023 General Session eff. through May 2, 2023. Some statutes sections may be more current, see credits for details.

End of Document

U.C.A. 1953 § 20A-20-201

§ 20A-20-201. Utah Independent Redistricting Commission--Creation--Membership--Term--Quorum--Action--Meetings--Staffing--Website

Effective: July 1, 2021
Currentness

(1)(a) There is created the Utah Independent Redistricting Commission.

(b) The commission is housed in the Department of Government Operations for budgetary purposes only.

(c) The commission is not under the direction or control of the Department of Government Operations or any executive director, director, or other employee of the Department of Government Operations or any other government entity.

(2) Except as provided in Subsection (4), the commission comprises seven members appointed as follows:

(a) one member appointed by the governor, which member shall serve as chair of the commission;

(b) one member appointed by the president of the Senate;

(c) one member appointed by the speaker of the House of Representatives;

(d) one member appointed by the legislative leader of the largest minority political party in the Senate;

(e) one member appointed by the legislative leader of the largest minority political party in the House of Representatives;

(f) one member appointed jointly by the president of the Senate and the speaker of the House of Representatives; and

(g) one member appointed jointly by the legislative leader of the largest minority political party in the Senate and the legislative leader of the largest minority political party in the House of Representatives.

(3) An appointing authority described in Subsection (2):

(a) shall make the appointments no later than:

(i) February 1 of the year immediately following a decennial year; or

(ii) if there is a change in the number of congressional, legislative, or other districts resulting from an event other than a national decennial enumeration made by the authority of the United States, the day on which the Legislature appoints a committee to draw maps in relation to the change;

(b) may remove a commission member appointed by the appointing authority, for cause; and

(c) shall, if a vacancy occurs in the position appointed by the appointing authority under Subsection (2), appoint another individual to fill the vacancy within 10 days after the day on which the vacancy occurs.

(4)(a) If the appointing authority described in Subsection (2)(a) fails to timely make the appointment, the legislative leader of the largest political party in the House of Representatives and the Senate, of which the governor is not a member, shall jointly make the appointment.

(b) If the appointing authority described in Subsection (2)(b) fails to timely make the appointment, the appointing authority described in Subsection (2)(d) shall make the appointment.

(c) If the appointing authority described in Subsection (2)(c) fails to timely make the appointment, the appointing authority described in Subsection (2)(e) shall make the appointment.

(d) If the appointing authority described in Subsection (2)(d) fails to timely make the appointment, the appointing authority described in Subsection (2)(b) shall make the appointment.

(e) If the appointing authority described in Subsection (2)(e) fails to timely make the appointment, the appointing authority described in Subsection (2)(c) shall make the appointment.

(f) If the appointing authority described in Subsection (2)(f) fails to timely make the appointment, the appointing authority described in Subsection (2)(g) shall make the appointment.

(g) If the appointing authority described in Subsection (2)(g) fails to timely make the appointment, the appointing authority described in Subsection (2)(f) shall make the appointment.

(5) A member of the commission may not, during the member's service on the commission:

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

(b) be a candidate for or holder of any elective office, including federal elective office, state elective office, or local government elective office;

(c) be a candidate for or holder of any office of a political party, except for delegates to a political party's convention;

(d) be an employee of, or a paid consultant for, a political party, political party committee, personal campaign committee, or any political action committee affiliated with a political party or controlled by an elected official or candidate for elective office, including any local government office;

(e) serve in public office if the member is appointed to public office by the governor or the Legislature;

(f) be employed by the United States Congress or the Legislature; or

(g) hold any position that reports directly to an elected official, including a local elected official, or to any person appointed by the governor or Legislature to any other public office.

(6) In addition to the qualifications described in Subsection (5), a member of the commission described in Subsection (2)(f) or (g):

(a) may not have, during the two-year period immediately preceding the member's appointment to the commission:

(i) been affiliated with a political party under Section 20A-2-107;

(ii) voted in the regular primary election or municipal primary election of a political party; or

(iii) been a delegate to a political party convention; and

(b) may not, in the sole determination of the appointing authority, be an individual who is affiliated with a partisan organization or cause.

(7) Each commission member shall, upon appointment to the commission, sign and file a statement with the governor certifying that the commission member:

(a) meets the qualifications for appointment to the commission;

(b) will, during the member's service on the commission, comply with the requirements described in Subsection (5);

(c) will comply with the standards, procedures, and requirements described in this chapter that are applicable to a commission member; and

(d) will faithfully discharge the duties of a commission member in an independent, impartial, honest, and transparent manner.

(8) For a regular decennial redistricting, the commission is:

(a) formed and may begin conducting business on February 1 of the year immediately following a decennial year; and

(b) dissolved upon approval of the Legislature's redistricting maps by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

(9)(a) A member of the commission may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(i) Section 63A-3-106;

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

(iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(b) A member of the commission may decline to receive per diem or travel expenses.

(10) The commission shall meet upon the request of a majority of the commission members or when the chair calls a meeting.

(11)(a) A majority of the members of the commission constitutes a quorum.

(b) The commission takes official action by a majority vote of a quorum present at a meeting of the commission.

(12) Within appropriations from the Legislature, the commission may, to fulfill the duties of the commission:

(a) contract with or employ an attorney licensed in Utah, an executive director, and other staff; and

(b) purchase equipment and other resources, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, to fulfill the duties of the commission.

(13) The commission shall maintain a website where the public may:

(a) access announcements and records of commission meetings and hearings;

(b) access maps presented to, or under consideration by, the commission;

(c) access evaluations described in Subsection 20A-20-302(8);

(d) submit a map to the commission; and

(e) submit comments on a map presented to, or under consideration by, the commission.

Credits

Laws 2020, c. 288, § 4, eff. March 28, 2020; Laws 2021, c. 344, § 8, eff. July 1, 2021.

U.C.A. 1953 § 20A-20-201, UT ST § 20A-20-201

Current with laws of the 2023 General Session eff. through May 2, 2023. Some statutes sections may be more current, see credits for details.

End of Document

U.C.A. 1953 § 20A-20-202

§ 20A-20-202. Software and software services

Effective: March 28, 2020
Currentness

The Office of Legislative Research and General Counsel shall, when procuring software, licenses for using the software, and software support services for redistricting by the Legislature, include in the requests for proposals and the resulting contracts that the commission may purchase the same software, licenses for using the software, and software support services, under the contracts at the same cost and under the same terms provided to the Legislature.

Credits
Laws 2020, c. 288, § 5, eff. March 28, 2020.

U.C.A. 1953 § 20A-20-202, UT ST § 20A-20-202
Current with laws of the 2023 General Session eff. through May 2, 2023. Some statutes sections may be more current, see credits for details.

End of Document