IN THE SUPREME COURT OF THE STATE OF UTAH

League of Women Voters of Utah, Mormon Women for Ethical Government, Stephanie Condie, Malcolm Reid, Victoria Reid, Wendy Marin, Eleanor Sundwall, and Jack Markman, Appellees and Cross-appellants (Plaintiffs), v. Utah State Legislature, Utah Legislative Redistricting Committee, Scott Sandall, Brad Wilson, Stuart Adams, and Deidre Henderson, Appellants and Cross-appellees (Defendants).	Case No. 20220991-SC

Amicus Curiae Brief of Ballot Initiative Strategy Center in Support of Appellees and Cross-appellants (Plaintiffs)

On Appeal from the Third Judicial District Court, Salt Lake County, Honorable Dianna M. Gibson, District Court No. 220901712

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IDENTITY AND INTEREST OF AMICUS CURIAE

The Ballot Initiative Strategy Center ("BISC") is a District of Columbia nonprofit corporation exempt from federal tax as a social welfare organization under section 501(c)(4) of the Internal Revenue Code. BISC was formed more than twenty years ago to provide information, analysis and guidance to advocacy organizations, labor and civic organizations, and other groups, about effective utilization of and involvement in the initiative and referendum process in the states. BISC helps coordinate and focus the efforts of organizations in identifying initiatives to support and oppose; conducts survey research to test public attitudes and opinions about the subjects and framing of initiatives; analyzes state laws and rules relating to ballot measures; advocates for fairness, integrity, and transparency in the process of qualifying measures for the ballot and in ballot campaigns; and provides financial and technical assistance to ballot committees.

As state legislative chambers are increasingly under the sway of corporate and wealthy donors and lobbyists, advocates of progressive laws and policies have a keen interest in ensuring that ballot measures can be utilized to advance policy changes, particularly in the areas affecting the structure of government itself and the integrity of our democracy. BISC strongly believes that the right of the voters to use the initiative process in each state should be protected to the greatest extent consistent with that state's constitution and laws.

BISC respectfully submits this Amicus Curiae Brief in support of the appeal of Appellees and Cross-Appellants League of Women Voters of Utah, *et al*., of the Third District Court's dismissal of Count Five of the Complaint. Count Five asserted that the Legislature exceeded its constitutional authority in repealing Proposition 4, because Article I, section 2 of the Utah State Constitution reserves to the people the ultimate "right to alter or reform their government as the public welfare may require."

BISC's interest in this case derives from its mission of promoting the right to direct democracy, that is, the right to use the initiative and referendum process where authorized by a state's constitution and laws. Based on BISC's extensive experience with the initiative process in numerous states, BISC is very concerned that, as explained below, upholding the decision of the District Court on Count Five in this case would lead to rendering the right to initiative in the State of Utah meaningless in circumstances in which the Utah Constitution explicitly retains the people's right to have the final say.

STATEMENT OF TIMELY NOTICE TO FILE BRIEF

Pursuant to Utah R. App. P. 25(a)(1), counsel for BISC provided timely notice to all counsel of record for all parties to this appeal of BISC's intent to file this Brief.

STATEMENT OF CONSENT BY ALL PARTIES

Pursuant to Utah R. App. P. 25(e)(5), undersigned counsel for BISC hereby states that all parties to this appeal have consented under Utah R. App. P. 25(b)(2), to the filing of this Brief *Amicus Curiae*.

STATEMENT PURSUANT TO RULE 25(e)(6)

Pursuant to Utah R. App. P. 25(e)(6), counsel for BISC hereby states that no party or party's counsel authored this Brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparing or submitting this Brief; and no person, other than BISC and its sister nonprofit organization, Ballot Initiative Strategy Center Foundation, contributed money that was intended to fund preparing or submitting this Brief.

ARGUMENT

I. PROPERLY INTERPRETED, THE UTAH CONSTITUTION LIMITS THE LEGISLATURE'S POWER TO REPEAL INITIATIVES THAT ALTER OR REFORM THE GOVERNMENT

The Legislative Power Clause of the Utah Constitution provides, in relevant part, that the "voters of the state of Utah . . . may: (A) initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute[.]" UTAH CONST. art. VI, § 1(2)(a)(i)(A). That provision is preceded and framed by the Inherent Political Powers

Clause, which provides that, "All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require." *Id*. art. I, § 2.

The Constitution is silent as to the authority of the Legislature to repeal a citizen-enacted initiative. Appellees/Cross-Appellants argued in the District Court that the express right of the people to "alter or reform their government" specifically limits the power of the Legislature to repeal an initiative reforming the structure of the government, such as the one at issue in this case—Proposition 4—which passed in November 2018. The District Court disagreed, ruling that, "[g]iven the absence of anything in the Utah Constitution that restricts the Legislature's ability to repeal laws enacted via initiative, there is a clear implication that the Legislature has broad authority to enact and repeal laws, including those enacted by citizen initiatives." District Court Summary Ruling and Order Granting in Part and Denying in Part Defendants' Motion to Dismiss ("Dist. Ct. Order") at 58. In reaching this conclusion, the District Court relied heavily on the holdings of this Court to the effect that the *scope* of the legislative power held by the citizens through the initiative right, in terms of the permissible subject matter of an initiative, is co-equal with that of the Legislature. "The initiative power of the people is thus parallel and coextensive with the power of the legislature." *Carter v. Lehi City*, 2012 UT 2, ¶ 22, 269 P.3d 141

(addressing the issue of whether certain matters were a permissible subject matter for a local initiative). "[T]he people are a 'legislative body coequal in power' with the legislature." *Id*. ¶ 27 (quoting *Utah Power & Light Co. v. Provo City*, 94 Utah 203, 235 (1937)). "The power of the legislature and the power of the people to legislate through initiative and referenda are coequal, coextensive and concurrent, and share 'equal dignity.'" *Gallivan v. Walker*, 2002 UT 89, ¶ 23, 54 P.3d 1069 (quoting *Utah Power & Light*, 94 Utah at 235-36).

That the scope of the initiative power, as to subject matter, is co-extensive with that of the Legislature says nothing about the power of the Legislature to repeal an initiative. In particular, the co-equal power to enact legislation does not imply that the Legislature can specifically exercise that power to repeal a government reform measure. Until now, this Court has not been called upon to address the question of whether the Inherent Political Powers Clause limits the Legislature's power to repeal such a measure.

"'[I]n interpreting the Utah Constitution, prior case law guides us to analyze its text, historical evidence of the state of the law when it was drafted, and Utah's particular traditions at the time of drafting.'" *S. Salt Lake City v. Maese*, 2019 UT 58, ¶ 18, 450 P.3d 1092 (quoting *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 12). Applying these principles of construction, it is clear that the Inherent Powers

Clause must have been intended to limit the Legislature's power to repeal a government reform measure enacted through an initiative.

First, the framers of the Constitution clearly saw the will of the people as the source of the Legislature's power, and thus understood and assumed that the exercise of that power through the initiative would not be nullified by the Legislature. "The framers of Utah's constitution saw the will of the people as the source of constitutional limitations upon our state government." *Am. Bush,* 2006 UT at ¶ 13. That is reflected in the opening language of the Inherent Powers Clause: "[a]ll political power is inherent in the people; and all free governments are founded on their authority . . . ." UTAH CONST. art. I, § 2. "Under this basic premise, upon which all our government is built, the people have the inherent authority to allocate governmental power in the bodies they establish by law." *Carter*, 2012 UT at ¶ 21.

As a logical matter, then, the framers could not have intended the initiative power to be subordinated to the Legislature's powers. As this Court has explained, Article VI, Section 1 "is not merely a grant of the right to directly legislate, but reserves and guarantees the initiative *power* to the people." *Gallivan*, 2002 UT at ¶ 23 (emphasis in original). Indeed, Article VI "nowhere indicates that the scope of the people's initiative power is less than that of the legislature's power or that the initiative power is derived from or delegated by the legislature. Instead, '[u]nder our constitutional assumptions, all power derives from the people, who can delegate it

to representative instruments which they create.'" *Carter,* 2012 UT at ¶ 30 (quoting *City of Eastlake v. Forest City Enters.*, 426 U.S. 668, 672 (1976). "[I]n exercising the initiative power, the people do not act under the authority of the legislature." *Id*.

Further, the very structure of Constitution implies this understanding and assumption that the power of the people through the initiative would, if anything, be *superior* to that of the Legislature—not in scope, not as to permissible subject matter, but in the ultimate ability to put in effect what the people enact. "Bear in mind that the Constitution vests the Governor with veto power on acts of the Legislature, but he has no veto power on legislation enacted by the people through the initiative." *Utah Power & Light*, 94 Utah at 228 (Larson, J., concurring). And the Constitution explicitly gives the people the right, through exercise of the referendum power, to overturn legislation enacted by the Legislature, but does not expressly confer on the Legislature any power to overturn citizen-enacted initiatives.

Second, it follows from this framework that the silence of the Constitution as to the Legislature's power to overturn initiatives cannot be read, as the District Court would have it, as *implying* such a power. To the contrary, to carry out the intent of the framers, the default position logically must be one of deferring to the will of the people. "Arguably, any rights not specifically granted to state government are already retained by the people." *Sevier Power Co., LLC v. Board of Sevier County Com'rs*, 2008 UT 72, ¶ 5, 196 P.3d 583. One of those rights is the right to enact

through the initiative, laws that actually become the law of the State. To assume that the Legislature has inherent power effectively to nullify that right as to any specific initiative simply by repealing it would defy the fundamental proposition that "[a]ll political power is inherent in the people…" UTAH CONST. art I, § 2.

As Justice Larson explained in his concurring opinion in *Utah Power & Light*:

> For economy and convenience the routine of legislation is exercised by the Legislature but ***the legislative power of the people directly through the ballot is superior to that of the representative body***. By the referendum the people may repeal an act of the Legislature, may prevent it from taking effect and may suspend its operation until they may express themselves thereon by ballot….And if an act enacted by the Legislature and one enacted by the people through the initiative conflict, ***the enactment by the people controls over the act of the Legislature.. . .***

Utah Power & Light, 94 Utah at 228-29 (emphasis added). Justice Larson went on to explain the fundamental basis for those conclusions:

> [T]he people themselves are not creatures or creations of the Legislature. They are the father of the Legislature, its creator, and in the act creating the Legislature the people provided that its voice should never silence or control the voice of the people in whom is inherent all political power; and being co-equal in legislative power, the Legislature, the child of the people, cannot limit or control its parent, its creator, the source of all power.

Id. at 236.

Finally, it follows further that whatever the general interpretation as to the power of the Legislature to repeal initiatives, it must be the case that the Legislature cannot repeal an initiative that alters or reforms the government. Article VI, section 2 confers on legal voters the right to "initiate any desired legislation and cause it to

be submitted to the people for adoption upon a majority vote of those voting . . . ." UTAH CONST. art. VI, § 2(a)(1). That provision does not single out the power of the people to make laws about public employees (Utah Merit System for County Sheriffs, Initiative A, 1960); Medicaid expansion (Medicaid Expansion Initiative, Proposition 3, 2018); medical marijuana (Utah Medical Cannabis Act, Proposition 2, 2018); fluoridation (Freedom from Compulsory Fluoridation and Medication Act, Initiative A, 1976); or confiscation of property by law enforcement in drug cases. (Utah Property Protection Act, Initiative B, 2000). But that provision *does* specifically confer on Utah voters the right of the people to enact measures to "alter or reform their government."

That this power was intended to have real effect—and not be subject to override by the Legislature at will—is underscored by its placement in Article I. "Article I of our constitution is a declaration of those rights felt by the drafters of the document to be of such importance that they be separately described*." Sevier Power Co.*, 2008 UT at ¶ 5.

It makes sense that the framers would single out the people's power to "alter or reform" government in Article I because that power, if not specially protected, would be uniquely vulnerable to being vitiated and undermined by the Legislature. That is because—unlike medical marijuana or Medicaid or fluoridation—government reform can often inherently affect the rights and powers of legislators

themselves and implicate their self-interest. As this Court explained, the Progressive movement that propelled the initiative movement at the dawn of the twentieth century was "based on the premise that 'only free, unorganized individuals could be trusted and that any intermediary body such as politicians, political parties and legislative bodies were inherently corrupt and distorted the public interest.'" *Carter,* 2012 UT at ¶ 23 (quoting Robert Freilich & Derek Gummer*, Removing Artificial Barriers to Public Participation in Land-Use Policy: Effective Zoning and Planning by Initiative and Referenda*, 21 URB. LAW. 511, 516 (1989)).

If the Legislature could simply repeal any initiative measure reforming the government in a way that offended the interests of legislators, the right of the people to "alter or reform their government" would be rendered effectively meaningless. This Court has recognized that same logic in restricting the Legislature's ability to "unduly burden or constrict" the initiative right. *Gallivan*, 2002 UT at ¶ 52. The Court explained that:

> Endorsing this legislative purpose would essentially allow the legislature without limitation to restrict and circumscribe the initiative power reserved to the people, thus rendering itself the only legislative game in town. If such a legislative purpose were legitimate, the legislature would be free to completely emasculate the initiative right and confiscate to itself the bulk of, if not all, legislative power. This would obviously contravene both the letter and spirit of article VI of the constitution.

Id.

With respect to the right of the people to "alter or reform their government," the District Court's holding in this case would indeed allow the Legislature "to completely emasculate the initiative right and confiscate to itself" all of the legislative power. *See id.* at ¶ 52. Such a result cannot be squared with the language and intent of Article 1, section 2. In the absence of express language giving the Legislature the effective power completely to deny the right of the people to "alter or reform their government," the only interpretation faithful to the language, structure and intent of the relevant constitutional provisions is that the Legislature does not have that power.

II. THE NEED TO PREVENT THE LEGISLATURE FROM EFFECTIVELY DENYING THE PEOPLE'S RIGHT TO REFORM THE GOVERNMENT IS ESPECIALLY STRONG IN THE AREA OF REDISTRICTING REFORM

As explained above, the right of the people to "alter or reform their government" would be effectively meaningless if any such reform could simply be thwarted by the Legislature at will. There is no better illustration of that need than the use of the initiative power to effectuate redistricting reform, the subject of Prop.

"Redistricting is a context in which legislators' incentives and the public interest are almost diametrically opposed. Legislators want to win reelection handily and to have their party obtain as many seats as possible. Under almost any theory of democracy, on the other hand, the public is more interested in elections whose outcome is not a foregone conclusion, districts that respect pre-existing political

communities, and legislatures whose partisan composition roughly reflects actual vote totals." Nicholas Stephanopoulos, *Reforming Redistricting: Why Popular Initiatives to Establish Redistricting Commissions Succeed or Fail,* 23 J. L. & POL. 331, 36 (2007). "A number of scholars have identified legislator conflict of interest as a central concern of redistricting reform efforts. For democratic theorists concerned about electoral fairness and representative accountability, incumbents determining the boundaries of the districts in which they will ultimately compete is obviously problematic." Richard Diggs, *Regulation Via Delegation: A Federalist Perspective on the Arizona State Legislature v. Arizona Independent Redistricting Commission Decision,* 92 N.Y.U. L. REV. 350, 358 (2017). As the United States Supreme Court observed in upholding a challenge, under the Elections Clause of the United States Constitution, to an initiative enacting an independent redistricting commission, "[c]onflict of interest is inherent when 'legislators dra[w] district lines that they ultimately have to run in.'" *Arizona State Legislature v. Arizona Independent Redistricting Com'n,* 576 U.S. 787, 815 (2015) (quoting Bruce Cain, *Redistricting Commissions: A Better Political Buffer*?, 121 YALE L. J. 1808, 1817 (2012)).

It follows that the initiative power is an especially important means by which this inherent conflict of interest can effectively be addressed. The inability of the Legislature to effectuate reform directly implicates a central rationale for the right

of citizen initiative, identified by this Court in examining the history of the initiative movement and the intent of the framers of the Utah Constitution: the belief that "'legislative bodies were inherently corrupt and distorted the public interest,'" and that "[o]nly by wielding the legislative power could the people govern themselves in a democracy unfettered by the distortions of representative legislatures." *Carter*, 2012 UT at ¶ 23 (quoting Freilich & Gummer, *supra*, at 516). "In the political market for redistricting, initiatives allow voters to avoid the suppression of their free choice caused by legislator conflict of interest and partisanship." Diggs, *supra,* at 361. "Legislators' self-interest and adverse court decisions leave critics of contemporary redistricting with only one promising avenue for reform: the popular initiative." Stephanopoulos, *supra,* at 332.

One of the more popular types of redistricting reform has been the kind of independent redistricting commission that was established by Prop. 4. "Independent redistricting commissions—where ordinary citizens instead of politicians draw redistricting plans—have become the premier institutional solution to the problem of partisan gerrymandering." Emily Rong Zhang, *Bolstering Faith with Facts: Supporting Independent Redistricting Commissions with Redistricting Algorithms*, 109 CALIF. L. REV. 987, 1000 (2021). Among the earliest such reforms to be enacted by citizen initiative were those in California and Arizona. *See* Prop. 11 (Cal. 2008) (codified at CAL. CONST. art. XXI, §§ 1-3) (amended 2010); Prop. 20 (Cal. 2010)

(codified at CAL CONST. art. XXI, §§ 1-3); Prop. 106, Ariz. 2000 Ballot Prop (2000) (codified at ARIZ. CONST. art. IV, pt. 2, § 1). "It was only through the ballot initiative, . . . that voters in California and Arizona were able to limit gerrymandering by taking the power to draw legislative districts out of the hands of self-interested incumbent legislators and creating independent redistricting commissions." D. Theodore Rave, *Fiduciary Voters?*, 66 DUKE L. J. 331, 346-47 (2016).

In 2018, in addition to the passage of Prop 4 in Utah, voters in Colorado, Michigan, and Ohio all established redistricting commissions, through ballot initiatives. *See* Colorado Amendments Y & Z (Colo. 2018) (codified at COLO. CONST. art. V, § 44); Issue 1 (Ohio -May 2018) (codified at OHIO CONST. art. XI, §1; *id.* art. XIX, §§ 1-3).

As the U.S. Supreme Court noted in upholding the Arizona initiative establishing an independent redistricting commission, "[i]ndependent redistricting commissions . . . ' . . . have succeeded to a great degree [in limiting the conflict of interest implicit in legislative control over redistricting].' . . . They thus impede legislators from choosing their own voters instead of facilitating the voters' choice of their representatives." *Ariz. State Legislature*, 576 U.S. at 821 (brackets in original) (quoting Cain, *supra,* at 1808). Prop. 4 likewise promises to limit the conflict of interest implicit in legislative control over redistricting.

The point, though, is not that such a goal is meritorious, but that there is no realistic possibility of achieving it—no matter how much the people may desire it--if the Legislature itself can thwart and override the will of the people, as the Utah Legislature did in this case. Redistricting reform is a paradigmatic case of the need to protect the exercise of the right to "alter or reform" government from being effectively nullified by the Legislature. Without such protection the right would be meaningless and the ability of the people to accomplish reforms that affect the legislators' interests would be effectively eliminated. Certainly, such a result cannot be countenanced. given the language and intent of Article 1, section 2.

III. ALLOWING A LEGISLATIVE NULLIFICATION OF THE PEOPLE'S INITIATIVE RIGHT IS PARTICULARLY PROBLEMATIC GIVEN THE DIFFICULTY OF QUALIFYING INITIATIVES IN UTAH

The Utah Legislature has already established rules that, by comparison to those in other states, make it extraordinarily difficult to qualify an initiative for the ballot, notwithstanding this Court's admonition that the Legislature is not "to unduly burden or construct that fundamental right by making it harder to place initiatives on the ballot." *Gallivan,* 2002 UT at ¶ 52. As a result of the singularly burdensome nature of the qualification process, compared with other states, very few initiatives have actually appeared on the ballot in Utah. Those initiatives that have qualified therefore represent an especially strong expression of the will of the people.

Upholding the District Court's decision allowing the Legislature to override and nullify the voter's initiative power would be particularly problematic, as it would eliminate the few cases in which initiatives can successfully be pursued.

In Utah, after submission of a proposed initiative, the Lieutenant Governor has broad authority to reject it. A proposed initiative may be rejected if the Lieutenant Governor finds that the proposed law is: (1) patently unconstitutional, (2) nonsensical, (3) unable to become law if passed, (4) containing of more than one subject, (5) identical or substantially similar to a prior initiative filed in the preceding two years for which signatures were submitted, or (6) the subject of which is not clearly expressed in the law's title. UTAH CODE § 20A-7-202(5)(a)-(f). While other states provide for review by a state official for form, constitutionality, and compliance with legal requirements, to BISC's knowledge, no state grants authority to an official to reject for as broad and subjective a set of reasons as under Utah law.

Further, during the Lieutenant Governor's review, proposed ballot initiatives are subject to a uniquely extensive public hearing requirement in Utah. While other states also require public hearings, Utah is the only state where the hearings take place during the review and revision process prior to circulating petitions for signature statewide. UTAH CODE § 20A-7-204.1(1)(a); *compare e.g.,* ALASKA STAT. § 15.45.195 (2022) (public hearings held by lieutenant governor or designee occur outside of the review process); ARIZ. REV. STAT. § 19-123(E) (2022) (at least three

public meetings required but only after certification of an initiative); CAL. ELEC. CODE § 9007 (public hearings held by legislature upon preparation of the circulating title and summary of proposed initiative); MISS. CODE ANN. § 23-17-45 (2019) (public hearings held by the Secretary of State are required in every congressional district that will have the measure on the ballot).

Between the fiscal review and the collection of signatures, initiative sponsors must host seven public hearings around the State, subject to rules regarding the geographic distribution of these hearings. UTAH CODE § 20A-7-204.1(1)(a) (2021). There must be one meeting in each of the following regions: Bear River, Southwest, Mountain, Central, Southeast, Uintah Basin, and Wasatch Front. *Id*. At least two of the public hearings are required to be in a "first or second class county," but not the same county. *Id*. (1)(b).

There are also limitations on when a required public hearing may be held. Sponsors are prohibited from holding a public hearing until after the later of (1) "one day after the day on which a sponsor receives a copy of the initial fiscal impact estimate" or (2) "if three or more sponsors file a petition challenging the accuracy of the initial fiscal impact statement…[then] the day after the day on which the action is final." *Id*. (1)(c)(i)-(ii). Additionally, sponsors are required to provide widespread notice of each hearing. Written notice must be published in a "newspaper of general circulation" within the county of the hearing and include the time, date, and location

of the public hearing at least three days in advance. *Id.*(2)(b)(i)(A). If there is no newspaper of general circulation in the county, then notices must be posted in "places within the county that are most likely to give notice to the residents" at least three days in advance of the hearing. *Id*. (2)(b)(i)(B). BISC has not been able to identify any other state in which the initiative sponsors themselves are required to host public hearings and to meet such an imposing set of requirements.

Once the review process is completed, Utah law then imposes a particularly demanding set of requirements for the collection of the voter signatures. For direct ballot initiatives submitted to a vote of the people for approval, proponents must collect signatures equal to 8 percent of the active registered voters (calculated as of the January 1 immediately following the last regular general election) in at least 26 of the 29 Utah State Senate districts. UTAH CODE § 20A-7-201(2)(a). In 2023, this equals approximately 4000-5000 signatures per State Senate district. By comparison, most states base the signature requirement for a proposed initiative on the number of votes cast in the last general election for a statewide office or offices. In those states that do base their minimum requirement on the number of registered voters, the percentage is significantly lower: for example, in Nebraska, 7 percent (NEB. CONST. art. III-2); in South Dakota, 5 percent (S.D. CONST. art. III, § 1); in Montana, 5 percent (MONT. CONST. art. III, § 4); and in Idaho, 6 percent (IDAHO CODE § 34-1805).

And no other state has a geographic distribution requirement as onerous as that of Utah. There is no geographic distribution requirement at all in Arizona, California, Colorado, North Dakota, Oklahoma, Oregon, South Dakota or Washington State. Montana law requires collection of signatures equal in number to 5 percent of the registered voters in only one-third of the State House districts (MONT. CONST. art. III, § 4). In Nebraska, the requirement is to collect signatures equal in number to 5 percent of the registered voters in as few as 38 of the 93 Counties (NEB. CONST. art. III-2).

As a result of the high barriers imposed by Utah law to qualifying a citizen initiative for the ballot, compared with other states, very few ballot initiatives are ever put to a vote in Utah. Since adopting the initiative and referendum instruments in 1900,[1] only 23 initiatives have appeared on the Utah ballot, with the first in 1952.[2] Of the few initiatives, only seven have passed.[3] Meanwhile, since 1952, North

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[1] W. David Patton, *The Initiatives and Referendum Process in Utah*, Policy Perspectives by Center of Public Policy & Administration at the University of Utah (2006), https://gardner.utah.edu/_documents/publications/governance/pp-initiatives-referendum-process.pdf (last visited, Mar. 29, 2023).

[2] *IRI Historical Database*, IRI Initiative & Referendum Inst., http://www.iandrinstitute.org/data.cfm (last visited, Mar. 30, 2023) (spreadsheet linked "Initiatives (number, approved) by state and year, 1909-2019)," http://www.iandrinstitute.org/docs/Number%20initiatives%20by%20state-year%20(1904-2019).xls); *List of Utah Ballot Measures*, Ballotpedia, https://ballotpedia.org/List_of_Utah_ballot_measures (last visited, Mar. 29, 2023).

[3] *Id.*; Benjamin Wood, *They've Wiped Out Prop 2 and Prop 3, But Lawmakers Say Utah's Anti-Gerrymandering Initiative May Survive – For Now*, Salt Lake Trib.

Dakota has had 99 ballot initiatives appear on the ballot,[4] Montana has had 65,[5] South Dakota has had 64,[6] and Nevada has had 59.[7] By one account, Utah ranks 20th out of 23 states in the all-time number of initiatives qualified for the ballot. *See* David Carillo, Stephen Duvernay, Benjamin Gevercer & Meghan Fenzel, *California Constitutional Law: Direct Democracy*, 92 S. CAL L. REV. 557, 567 (2019).

As previously noted, only seven qualifying initiatives have passed in Utah, corresponding to a passage rate of 30 percent. From 1904 to 2019, the passage rate was 42 percent in North Dakota, 67 percent in Nevada, 56 percent in Montana, and 41 percent in South Dakota.[8]

(Feb. 17, 2019), https://www.sltrib.com/news/politics/2019/08/09/ballot-initiative/; Bryan Schott, *Redistricting Process Results In Bad Blood Between Utah Lawmakers and Anti-Gerrymandering Group*, Salt Lake Trib. (Nov. 13, 2021), https://www.sltrib.com/news/politics/2021/11/13/redistricting-process/.

[4] IRI Initiative & Referendum Inst., *supra* note 2; *List of North Dakota Ballot Measures*, Ballotpedia, https://ballotpedia.org/List_of_North_Dakota_ballot_measures (last visited, Mar. 30, 2023).

[5] IRI Initiative & Referendum Inst., *supra* note 2; *List of Montana Ballot Measures*, Ballotpedia, https://ballotpedia.org/List_of_Montana_ballot_measures (last visited, Mar. 30, 2023).

[6] IRI Initiative & Referendum Inst., *supra* note 2; *List of South Dakota Ballot Measures*, Ballotpedia, https://ballotpedia.org/List_of_South_Dakota_ballot_measures (last visited, Mar. 30, 2023).

[7] IRI Initiative & Referendum Inst., *supra* note 2; *List of Nevada Ballot Measures*, Ballotpedia, https://ballotpedia.org/List_of_Nevada_ballot_measures (last visited, Mar. 30, 2023).

[8] *See Supra*, note 2, 4-7.

Given the difficulty of qualifying a direct citizen initiative for the ballot in Utah, those initiatives that do qualify should be regarded as particularly strong expressions of the will of the people. Articles I and VI of the Utah Constitution are intended to give voice to these strong expressions, particularly as to measures that propose to "alter or reform" the government as in this case where – despite the onerous requirements – Prop. 4 successfully qualified. And it would be highly problematic to give the Legislature the complete power to veto and override the will of the people. The Legislature's effective nullification of the people's initiative right would fly in the face of the language and intent of Article I, section 1 and Article VI, section 1 of the Utah Constitution.

CONCLUSION

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

DATED this 7th day of April 2023.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF COMPLIANCE

Pursuant to Utah R. App. P. 25(e)(8) and 24(a)(11), I hereby certify that:

1. This brief complies with the word limits set forth in Utah R. App. P. 25(f) because this brief contains 5,552 words, excluding the parts of the brief exempted by Utah R. App. P. 25(f). Times New Roman 14-point font used.
2. This brief complies with Utah R. App. P. 21(h) regarding public and nonpublic filings.

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CERTIFICATE OF SERVICE

This is to certify that on the 7th day of April 2023, I cause the Amicus Curiae Brief of Ballot Initiative Strategy Center to be served via email on:

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