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THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LEAGUE OF WOMEN VOTERS OF UTAH, MORMON WOMEN FOR ETHICAL GOVERNMENT, STEFANIE CONDIE, MALCOLM REID, VICTORIA REID, WENDY MARTIN, ELEANOR SUNDWALL, JACK MARKMAN, and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLATIVE REDISTRICTING COMMITTEE; SENATOR SCOTT SANDALL, in his official capacity; REPRESENTATIVE BRAD WILSON, in his official capacity; SENATOR J. STUART ADAMS, in his official capacity; and

MEMORANDUM OPPOSING DEFENDANTS' MOTION TO STAY

(Hearing Requested)

Civil Action No. 220901712

Honorable Dianna Gibson

LIEUTENANT GOVERNOR DEIDRE HENDERSON, in her official capacity,

Defendants.

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INTRODUCTION

Defendants' request for an immediate and indeterminate stay of these proceedings pending the U.S. Supreme Court's decision in *Moore v. Harper*, Dkt. 21-1271 ("*Moore*") should be denied. *Moore* involves a different state, a different state constitution, different legal claims, and a remedy that the Supreme Court *itself* declined to stay pending resolution of the case. And to Plaintiffs' knowledge, no court in the country has stayed any election law litigation in light of the cert grant in *Moore.* This Court should not be the first.

Undeterred, Defendants ask this Court to take the remarkable step of staying this litigation for at least ten months and perhaps longer because they believe *Moore* "*may*" resolve all or part of this case—a claim based solely on Defendants' unsupported supposition that the U.S. Supreme Court will radically reinterpret the relationship between federal and state law in election matters. Defs. Mot. to Stay at 6 (emphasis added). Their arguments make clear that this is not the normal stay situation where the outcome in one case *will* unquestionably affect the outcome here. There is merely a chance *Moore* will do so—and a remote one at that. Such speculation is not sufficient to justify the requested extraordinary relief that would delay, if not functionally deny, Plaintiffs their day in court.

Defendants' case for a stay is especially weak because, as they effectively admit, some of Plaintiffs' claims may be unaffected regardless of what occurs in *Moore*. At minimum, Count V—Plaintiffs' claim against the Legislature's unlawful repeal of Proposition 4—presents exclusively state-law questions concerning Utahn's legislative power that are unlikely to be resolved by *Moore*. For this and other reasons, a stay would not serve judicial economy.

Additionally, any purported benefit of entering a stay is substantially outweighed by the severe prejudice to Plaintiffs that would come from the requested delay. Waiting for *Moore* to be decided—potentially but not assuredly by next summer—would waste time, harm the evidentiary process, and risk depriving Plaintiffs of the relief they seek should they prevail on the merits. Plaintiffs will prove that Utah's congressional redistricting plan violates individual rights guaranteed by the Utah Constitution, and it is imperative to remedy this harm. But Defendants' requested delay would make it nearly impossible for Plaintiffs to fully litigate their claims and secure relief in time for the 2024 election. The unconstitutionally gerrymandered map would remain in place for another election cycle, irreparably depriving Plaintiffs (and all Utahns) of their constitutional right to vote under an unbiased map.

This Court must exercise its discretion in a manner that "achieve[s] the just, speedy, and inexpensive determination of every action." Utah R. Civ. P. 1. Defendants' effort to delay this case and run out the clock for another election cycle is neither just, speedy, nor less expensive. For these reasons, this Court should deny Defendants' motion to stay this proceeding.

LEGAL STANDARD

While trial courts have flexibility and discretion in determining whether to stay a case, that discretion must be exercised in accordance with the purposes of the Utah Rules of Civil Procedure to assure "just, speedy, and inexpensive determination of every action." Utah R. Civ. P. 1; *Lewis v. Moultree*, 627 P.2d 94, 96 (Utah 1981). Rule 1 compels that, in deciding discretionary questions like whether to grant a stay, courts must balance judicial economy interests with the duty to "effectuate justice" for the parties. *Bunting Tractor Co. v. Emmett D. Ford Contractors*, 2 Utah 2d

275, 277, 272 P.2d 191, 192 (Utah 1954). Courts have a duty "to afford litigants every reasonable opportunity to be heard on the merits of their cases." *Id*.

The party seeking a stay therefore bears a heightened burden to delay hearing the merits of a case. "[I]f there is even a fair possibility that the stay . . . will work damage to some one else" the movant "must make out a clear case of hardship or inequity in being required to go forward." *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936).[1] In this balance, there is a heavy weight against issuing a stay: "Where there is doubt, it should inure to the benefit of those who oppose grant of the extraordinary relief which a stay represents." *Williams v. Zbaraz*, 442 U.S. 1309, 1316 (1979) (Stevens, J., in chambers).

In addition, the "common ground" for a stay "is the pendency of another action involving *identical parties and issues* and where a decision in one action settles the issues in another, or when the decision in an action is essential to the decision in another." *Moultree*, 627 P.2d at 96 (emphasis added). In the absence of such an action, the case for a stay is substantially lessened.

ARGUMENT

I. Defendants Fail to Establish That a Stay Would Serve Judicial Economy or the Public Interest.

Defendants have not shown that judicial economy—the only argument they advance in favor of their requested stay—would be served by delaying this case for an indeterminate period. Their argument is that this Court *might* conserve judicial resources if it waits for an outcome in *Moore* that disposes of "most, if not all" of the case. Mot. to Stay at 6. This is sheer speculation.

[1] Because Rule 1 of the Federal Rules is "similarly worded" to Utah's rule, the Court "look[s] to . . . the federal rules and cases interpreting them." *First Sec. Bank of Utah Nat. Ass'n v. Conlin*, 817 P.2d 298, 299 (Utah 1991).

The U.S. Supreme Court granted certiorari in *Moore* to review the North Carolina Supreme Court's decision in *Harper v. Hall* enjoining the state's congressional redistricting map for violating certain state constitutional provisions and ordering a new court-drawn map. *See Harper v. Hall*, 868 S.E.2d 499, 559-60 (N.C. 2022). The *Moore* petitioners claim that the *Harper* decision violated the Elections Clause of the U.S. Constitution because the North Carolina Supreme Court purportedly overstepped in ruling the map unconstitutional and imposing its own remedial plan.[2]

For at least two reasons, the grant of certiorari in *Moore* does not justify a stay on judicial economy grounds. First, the possibility that *Moore* will dispose of *any* of Plaintiffs' claims is anything but certain. Such an outcome would require the U.S. Supreme Court to rule contrary to a century of precedent and history as well as the result reached by every other state court to recently address this issue. Second, even if *Moore* were relevant to some of Plaintiffs' claims, the question presented in that case is unlikely to resolve Plaintiffs' challenge to the Legislature's repeal of Proposition 4 in Count V. Because it is not clear that a ruling from the U.S. Supreme Court will dispose of any of this case, a stay is unwarranted.

A. *Moore* Is Unlikely to Resolve Plaintiffs' Claims.

Defendants contend that judicial economy favors a stay based on their speculation that *Moore* could "prohibit state courts from reviewing congressional districting maps under state

[2] Petition for Writ of Certiorari, *Moore v. Harper*, No. 21-1271, 2022 WL 846144 (U.S. Mar. 17, 2022) ("*Moore* Pet.") (presenting the question:

> Whether a State's judicial branch may nullify the regulations governing the "Manner of holding Elections for Senators and Representatives . . . prescribed . . . by the Legislature thereof," U.S. Const. art. I, § 4, cl. 1, and replace them with the regulations of the state courts' own devising, based on vague state constitutional provisions purportedly vesting the state judiciary with power to prescribe whatever rules it deems appropriate to ensure a "fair" or "free" election.).

constitutional provisions." Mot. to Stay at 1. But Defendants arrive at this broad conclusion only by reading too much into the fact that the U.S. Supreme Court granted certiorari. A grant of certiorari does not mean the Court will rule in any manner that would limit or preclude Plaintiffs' claims. *See Schwab v. Sec'y Dep't of Corr.*, 507 F.3d 1297, 1299 (11th Cir. 2007) ("The grant of certiorari on an issue does not suggest a view on the merits."). Precedent, history, and the Supreme Court's own recent stay practices are better indicators, and they all point to an outcome that preserves state courts' longstanding authority to review congressional plans and apply state constitutional protections.

Granting a stay here would seemingly make this Court the first in the country to put any election-law litigation on hold in light of the cert grant in *Moore v. Harper*. Even the U.S. Supreme Court in *Moore* itself declined to stay the underlying state supreme court decision pending resolution of the case. *See Moore v. Harper*, 142 S. Ct. 1089 (2022) (denying stay of *Harper*, 868 S.E.2d 499). The U.S. Supreme Court also declined put a similar congressional redistricting matter in Pennsylvania on hold where the appellants advanced a similar Elections Clause theory. *See* Order Denying Emergency Application to Justice Alito for Writ of Injunction, *Toth v. Chapman*, 21A457 (U.S. Mar. 7, 2022). A key criterion for granting a stay in the U.S. Supreme Court is "whether the stay applicant has made a strong showing that he is likely to succeed on the merits." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation omitted). The Supreme Court's refusal to grant a stay in cases raising Defendants' fringe reading of the Elections Clause reveals that their

speculation about the outcome in *Moore* is far from certain.[3]

Moreover, many state court congressional gerrymandering cases remain ongoing despite the status of *Moore*,[4] including the proceedings in *Harper*.[5] If these cases are proceeding while the U.S. Supreme Court conducts its review, there is no reason Plaintiffs' claims should not also continue to be heard. *See Landis*, 299 U.S. at 255 ("Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.").[6]

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[3] *See also, e.g.*, Vikram Amar & Akhil Amar, *Eradicating Bush-League Arguments Root and Branch: The Article II Independent-State-Legislature Notion and Related Rubbish*, 2021 Sup. Ct. Rev. 1, 41 (describing and refuting arguments concerning the Elections Clause).

[4] *See, e.g.*, Complaint for Violation of New Mexico Constitution Article II, Section 18, *Republican Party of New Mexico v. Oliver*, No. D-506-CV-202200041 (N.M. 5th Dist. Jan. 21, 2022), https://bit.ly/3BL8F2O; Complaint for Injunctive and Declaratory Relief, *Black Voters Matter v. Lee*, 2022-CA-0006666 (Fla. 2d Cir. Ct. Apr. 22, 2022), https://bit.ly/3OZWHFm; Complaint for Injunctive Relief and Declaratory Judgment, *Springer v. Thurston*, No. 60CV-22-1849 (Ark. Cir. Ct. Pulaski Cty. Mar. 21, 2022), https://bit.ly/3P4m4pI; Complaint for Declaratory and Injunctive Relief, *Graham v. Adams*, No. 22-CI-00047 (Ky. Cir. Ct. Franklin Jan. 20, 2022), https://bit.ly/3P4ELcJ.

[5] Mot. for Temporary Stay and Petition for Writ of Supersedeas Pending Appeal at App. 84 ("Legislative Defendants' Notice of Appeal"), *Harper v. Hall*, No. 413PA21 (N.C. Feb. 23, 2022), https://bit.ly/3Qj2E1w.

[6] The Supreme Court has also recognized the value of litigation proceeding in lower courts. *See, e.g.*, *United States v. Mendoza*, 464 U.S. 154, 160 (1984) ("Allowing only one final adjudication [by a lower court] would deprive this Court of the benefit it receives from permitting several [lower courts] to explore a difficult question . . . ."); *McCray v. New York*, 461 U.S. 961, 963 (1983) ("[state courts] serve as laboratories in which [important] issues receive[] further study"); *Arizona v. Evans*, 514 U.S. 1, 24 n.1 (1995) (Ginsburg, J., dissenting) (when "frontier legal problems are presented," "diverse opinions from . . . [lower] courts . . . may yield a better informed and more enduring final pronouncement"); *Obergefell v. Hodges*, 576 U.S. 644, 663, App'x A (2015) (citing several pre- and post-certiorari lower court opinions and stating that they "help[ed] to explain and formulate the underlying principles this Court now must consider").

To be clear, this Court need not engage in the predictive exercise Defendants invite and try to determine how the Supreme Court will rule in *Moore*. Indeed, that is the point—the fact that *Moore* may resolve any issues in this case is enough to show that a stay is unwarranted. But it is worth noting, because Defendants do not discuss it, that the merits of the unchecked state legislature theory of the Elections Clause being argued in *Moore* and raised by Defendants in their stay motion are weak. A century of precedent and consistent historical practice confirms the constitutionality of state court review of congressional redistricting plans and imposing checks on legislatures regulating federal elections. *See generally* Amar, *supra* n.3.

The Supreme Court has repeatedly held that the Elections Clause commits congressional redistricting to state legislatures *subject to* limits on the exercise of legislative power found in state constitutions, as interpreted by state courts. *See Arizona Ind. Redistricting Comm'n*, 576 U.S. at 817-18 ("Nothing in [the Elections Clause] instructs, nor has this Court ever held, that a state legislature may [regulate] the . . . manner of holding federal elections in defiance of provisions of the State's constitution."); *Smiley v. Holm*, 285 U.S. 355, 367 (1932) ("[T]he exercise of the authority [to regulate congressional elections] must be in accordance with the method which the State has prescribed for legislative enactments."); *Ohio ex rel. Davis v. Hildebrandt*, 241 U.S. 565, 567-68 (1916) ("As to the state power" concerning voters' ability to reject a legislature's gerrymandered map, "it is obvious that the decision below [of the state supreme court] is conclusive on the subject.").

More recently, the Court in *Rucho v. Common Cause* ruled that state courts are important backstops against partisan gerrymandering. 139 S. Ct. 2484, 2507 (2019). The *Rucho* Court noted that it did "not condone excessive partisan gerrymandering" and held that even though partisan

gerrymandering claims were not justiciable in federal court, "provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply." *Id*. The Court justified its holding by observing that "[t]he States . . . are actively addressing the issue on a number of fronts" and favorably cited a 2015 Florida Supreme Court decision striking down a congressional redistricting plan as a violation of the Florida Constitution. *Id.* (citing *League of Women Voters of Florida v. Detzner*, 172 So. 3d 363 (2015)).

State courts, in accordance with federal precedent, have also rejected arguments that the Elections Clause bars their review of congressional redistricting plans for compliance with state constitutions. *See, e.g.*, *Rivera v. Schwab*, 512 P.3d 168, 177-78 (Kan. 2022); *League of Women Voters v. Pennsylvania*, 178 A.3d 737, 821-24 (Pa. 2018); *Detzner*, 172 So. 3d at 370 n.2; *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1232 (Colo. 2003); *Moran v. Bowley*, 179 N.E. 526, 531-32 (Ill. 1932); *State v. Polley*, 127 N.W. 848, 849, 851 (S.D. 1910). And, as Plaintiffs argued in their Motion to Dismiss opposition brief, the history of Utah's redistricting practices supports that the Legislature has engaged this legislative function subject to checks from other state actors and limitations in the Utah Constitution. *See* Mem. Opp'n to Mot. to Dismiss at 9-11.

In sum, the mere possibility that a decision in *Moore* could impact this case is not a sufficient reason to stay the proceedings. As a federal court concluded in declining to stay a prior partisan gerrymandering challenge in the face of a Supreme Court cert grant, "[i]t makes little sense to 'delay consideration of this case for possibly a year or more, waiting for a decision that may not ultimately affect it.'" *Common Cause v. Rucho*, No. 1:16-CV-1026, 2017 WL 3981300, at *6 (M.D.N.C. Sept. 8, 2017) (citation omitted). By all indication, doing so will save neither time

nor resources necessary to resolve pressing issues in this case and only serve to delay their just, speedy, and inexpensive resolution.

B. *Moore* is Unlikely to Have Any Bearing on Plaintiffs' Claim Under Article I, § 2 and Article VI, § 1 of the Utah Constitution.

Even if *Moore* were relevant to some issues in this case, it is unlikely to bear on the issues raised in Count V of Plaintiffs' Complaint, which challenges the Legislature's repeal of Proposition 4 as violating voters' constitutional rights under Article I, § 2 and Article VI, § 1 of the Utah Constitution to reform their government. That claim will likely proceed regardless of the outcome in *Moore*. And if Plaintiffs prevail on that claim they will be entitled to seek relief under Proposition 4's statutory cause of action to enforce its specific ban on partisan gerrymandering. Thus, *Moore* neither involves "identical parties and issues" nor is "essential to the decision in [this case]," so the decision is unlikely to "settle[] the issues" in a way that could justify a stay. *Lewis*, 627 P.2d at 96.

As explained above, the question in *Moore* is limited to whether state courts have the power to enforce *general* state constitutional provisions against legislature-enacted congressional maps and order their own judicially-crafted remedial maps. *See Moore* Pet. at i. That question is distinct from what Plaintiffs claim in Count V in this case. Count V does not contest Utah's enacted congressional plan itself but instead seeks to reinstate the Utah Independent Redistricting Commission and Standards Act enacted by Proposition 4, on the ground that the Legislature's repeal of that law violated Utahns' constitutional lawmaking power to alter or reform their government. *See* Compl. ¶¶ 310-19. The Supreme Court held just seven years ago in *Arizona Independent Redistricting Commission* that the Elections Clause does not prevent the people from exercising their right to legislate redistricting standards and procedures via ballot initiative in

accordance with the applicable state constitutional standards. *See* 576 U.S. at 808. The appellants in *Moore* have not argued otherwise. They have instead explicitly accepted that *Arizona Independent Redistricting Commission* is binding precedent that affirms that "redistricting is a legislative function, to be performed in accordance with the State's prescriptions for lawmaking." *See Moore* Pet. at 30-31 (quoting 567 U.S. at 808). Count V therefore implicates the right to citizen initiatives that falls squarely within the activity the U.S. Supreme Court protected in *Arizona Independent Redistricting Commission*, and the issue is not again before the Court in *Moore*.

If Plaintiffs are successful in reinstating Proposition 4, they can pursue the statutory cause of action created by that law to enforce the law's prohibition on partisan gerrymandering—precisely the kind of legislation that the Supreme Court has identified as one means of addressing the problem. *See Rucho*, 139 S. Ct. at 2507. Under that cause of action, Plaintiffs would prove a statutory partisan gerrymandering violation using much the same factual and expert evidence that it will present for its constitutional claims under Counts I to IV. *See* Compl. ¶ 89 (citing Utah Code § 20A-19-301(2), *repealed by* Laws 2020, c. 288, § 12, eff. March 28, 2020).[7] Putting Counts I to IV on hold would only delay the development of claims the Court will almost certainly adjudicate under Count V anyway.

Defendants seem to recognize that the Elections Clause theory presented in the *Moore* certiorari petition is probably irrelevant to Plaintiffs' Count V challenge to the repeal of Proposition 4. The only mention of the issue in Legislative Defendants' Motion to Dismiss is a

[7] In their Motion to Dismiss, Legislative Defendants fault Plaintiffs for seeking to vindicate their constitutional rights under the broad guarantees of the Utah Constitution rather than redistricting-specific provisions, but it was Defendants who eliminated these voter-enacted, specific provisions when they unconstitutionally repealed Proposition 4.

single footnote made in relation to their arguments challenging the justiciability of Plaintiffs' partisan gerrymandering claims in Counts I to IV. *See* Legis. Defs. Mot. to Dismiss at 10 n.10. Defendants have nowhere argued that the Elections Clause has anything to do with Plaintiffs' claim in Count V; nor have they raised any jurisdictional bar to hearing that claim. *See id.* at 5, 6, 10, 14 (limiting jurisdictional arguments to Counts I to IV).

In sum, *Moore* will not unquestionably affect the outcome of this case. There is merely a chance that *Moore* will affect *some* of Plaintiffs' claims—and a remote one at that. Such a speculative possibility is insufficient to support a stay.

II. A Stay Would Severely Prejudice Plaintiffs, Far Outweighing Any Potential Conservation of Judicial Resources.

No matter the purported efficiencies from staying this case, they are far outweighed by the prejudice Plaintiffs would suffer. When considering whether to grant a stay, a court must balance judicial economy with the goals of ensuring "just" and "speedy" adjudication. Utah R. Civ. P. 1; *see also Bunting Tractor Co.*, 272 P.2d at 192. In this balance, the party seeking a stay "must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay . . . will work damage to some one else." *Landis*, 299 U.S. at 255.

Here, the balance of these interests weighs strongly against a stay. Defendants fail to carry their burden to show otherwise because they specify no hardship or inequity they would face from proceeding with the litigation. And as explained above, the purported judicial economy benefits are illusory. But on the other side of the balance, staying the proceedings for a year, at minimum, would substantially prejudice Plaintiffs for three principal reasons.

First, a stay would make it nearly impossible for Plaintiffs to obtain any meaningful relief before the 2024 congressional election. By requesting a stay "until the United States Supreme

Court issues a decision in the *Moore* case," Mot. to Stay at 6, Defendants ask to put this case on hold for an indeterminate period of time. Although Defendants roughly estimate that the stay would last until June or July of 2023, that prediction is uncertain. It is not uncommon, including in recent terms, for the U.S. Supreme Court to grant plenary review in high-profile cases and then hold them for longer than initially anticipated or extend the schedule by setting the case for re-argument.[8] Courts may not order a stay "of indefinite duration in the absence of a pressing need." *Landis*, 299 U.S. at 255. Defendants point to no such need here. To the contrary, it appears they are simply trying to run out the clock to avoid the merits.

Even assuming *Moore* is issued by mid-summer 2023, that timeline could effectively deny Plaintiffs' request for relief in advance of the 2024 election. Such delay risks leaving insufficient time before the pertinent election deadlines to conduct discovery and fully litigate Plaintiffs' claims in this Court, resolve any appeals, and if Plaintiffs prevail, administer an appropriate remedy. Mindful of these potential timing considerations for 2022, Plaintiffs filed suit to secure relief in time for the 2024 election. "Delaying . . . consideration of this case until after [*Moore*] creates a substantial risk that, in the event Plaintiffs prevail, this Court will not have adequate time to afford Plaintiffs the relief they seek—constitutionally compliant districting maps for use in the [2024] election." *Rucho*, 2017 WL 3981300, at *7.

Second, because a stay risks leaving an unconstitutional congressional map in place for an additional election cycle, it also risks irreparably injuring Plaintiffs who would have to vote under

[8] *See, e.g.*, *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (taking over two years to resolve case between granting review and holding over additional term for re-argument); *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018); *Reno v. Bossier Par. Sch. Bd.*, 528 U.S. 320 (2000).

a map that dilutes their fundamental right to vote, impairs their ability to express their views and associate, and deprives them of a fair opportunity to elect their preferred representatives. *See* Compl. ¶¶ 29-33; *Gallivan v. Walker*, 2002 UT 89, ¶ 24 (recognizing that "the right to vote is a fundamental right"). Such deprivations of core constitutional rights "unquestionably constitute[] irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). A stay would mean that Plaintiffs, and all Utahns, would have to endure gerrymandered congressional representation until at least 2026, more than half the decade.

Third, a year-long delay, at minimum, would also prejudice Plaintiffs' ability to gather evidence in discovery to support their claims. The relevant factual events largely took place last year. *See* Compl. ¶¶ 104-201. If a trial in this case is pushed further away from these events, the evidence could become staler as the memories of witnesses fade over time. *See Davis v. Provo City Corp.*, 2008 UT 59, ¶ 27 (acknowledging the effect of time on quality of evidence).

Even if the U.S. Supreme Court ultimately decides *Moore* in a way that precludes Plaintiffs' partisan gerrymandering claims (Counts I to IV), the discovery conducted in the intervening time would not be wasted effort because Plaintiffs could still pursue Count V and prevail on that claim, the remedy for which would be reinstating the Proposition 4 requirements and reviving a cause of action that would rely on the same discovery. *See* Compl. ¶ 89. But if the case is stayed pending a decision in *Moore*, then Plaintiffs will have lost critical time to gather quality evidence.

At bottom, Defendants' requested stay would severely prejudice Plaintiffs—including by potentially inflicting irreparable injury in the 2024 election—while continued litigation harms no one and is unlikely to result in wasted time or resources. In fact, staying the case now would

squander the significant time and effort already invested by the parties to brief the pending Motion to Dismiss and to prepare for the upcoming hearing on August 24, 2022. Defendants fail to carry their heavy burden to prove the need for the extraordinary relief of a stay. The more prudent course is to resolve the Motion to Dismiss, promptly open discovery, and evaluate *Moore*'s impact, if any, after the Supreme Court renders its decision in the normal course.

CONCLUSION

For the foregoing reasons, the Court should deny Defendants' motion to stay the proceeding. Plaintiffs respectfully request this Motion be heard concurrently with the Legislative Defendants' Motion to Dismiss at the hearing on August 24, 2022.

Date: August 4, 2022

RESPECTFULLY SUBMITTED,

/s/ Briggs Matheson

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CERTIFICATE OF SERVICE

I, Janet Hancock, HEREBY CERTIFY that on the 4th day of August 2022, I filed the foregoing **MEMORANDUM OPPOSING DEFENDANTS' JOINT MOTION TO STAY AND MEMORANDUM IN SUPPORT** via electronic filing, which served all counsel of record.

/s/ Janet Hancock