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THIRD JUDICIAL DISTRICT COURT,  
SALT LAKE COUNTY, STATE OF UTAH

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UTAH PHYSICIANS FOR A HEALTHY  
ENVIRONMENT, *et al.*,

Plaintiffs,

v.

UTAH DEPARTMENT OF NATURAL  
RESOURCES, *et al.*,

Defendants,

and

CENTRAL UTAH WATER  
CONSERVANCY DISTRICT, WEBER  
BASIN WATER CONSERVANCY  
DISTRICT, JORDAN VALLEY WATER  
CONSERVANCY DISTRICT, *et al.*

Intervenors.

**PLAINTIFFS' MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION  
ON CLAIMS TWO THROUGH SIX OF  
THEIR SUPPLEMENTAL COMPLAINT**

(Tier 2)

Case No. 230906637  
Honorable Judge Laura Scott

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## INTRODUCTION

Plaintiffs Utah Physicians for a Healthy Environment, Sierra Club, American Bird Conservancy, Center for Biological Diversity, and Utah Rivers Council (collectively, Plaintiffs) hereby request a temporary restraining order and preliminary injunction to prohibit the application to this case of a recently enacted Utah statute—H.B. 392 and its accompanying S.J.R. 5—pursuant to a notice filed this past weekend by State Defendants.

Plaintiffs filed this lawsuit in 2023 to challenge the State’s mismanagement of the Great Salt Lake, which has driven the Lake to the edge of ecological collapse, violating Utah’s public trust doctrine and precipitating an environmental and public health catastrophe. Plaintiffs filed in the Third Judicial District, where the Great Salt Lake and its tributaries are located. Calling the case “one of the most complex and consequential cases on water law to reach Utah courts in the last decade,” State Defendants sought reassignment of the case from Judge Stormont, to whom it was initially assigned, to a judge with water law expertise. Judge Stormont granted this request and the case was reassigned to this Court.

This Court has since issued significant rulings in the case on the scope of the public trust doctrine and the extent of relief available to Plaintiffs. The Court was also poised to rule on State Defendants’ pending motion for judgment on the pleadings, which is fully briefed and was scheduled for a hearing at 9:00 AM on March 11, 2026.

Just three days ago, however, on Sunday, February 22, 2026, State Defendants filed a “notice to convene a panel of three district court judges” pursuant to H.B. 392 and its accompanying S.J.R. 5, which the Utah Legislature enacted on February 13, 2026. The law purports to give the State (and *only* the State) a unilateral and arbitrary power to remove this case from this Court and have it assigned to a brand-new, unconstitutional three-judge panel. What’s more, H.B. 392 and S.J.R. 5 purport to make

that transfer immune from any challenge or judicial review. These one-sided enactments are unconstitutional and therefore require an order enjoining their application to this case.

Accordingly, pursuant to Rule 65A of the Utah Rules of Civil Procedure, Plaintiffs request a temporary restraining order prohibiting application of H.B. 392 and S.J.R. 5 to this case pursuant to State Defendants' notice. Plaintiffs' request is warranted because H.B. 392, and its companion S.J.R. 5, violate (1) the Utah Constitution's Uniform Operation of Law Clause, its prohibition on special laws, and the Open Courts Clause, by allowing only government litigants to unilaterally and arbitrarily decide, in the government litigants' sole and unfettered discretion, how many judges will hear a case; (2) the Due Process and Open Courts Clauses, by purporting to shield notices filed by the government for a three-judge court from judicial review; and (3) Article VIII of the Utah Constitution, by redefining "district court" from its original meaning of a single judge adjudicating a case. These unconstitutional laws "confer[] no rights," rendering their application to this case void *ab initio* and the State Defendants' notice "inoperative." *Egbert v. Nissan Motor Co., Ltd.*, 228 P.3d 737, 739 (Utah 2010) (quoting *Norton v. Shelby County*, 118 U.S. 425, 442 (1886)).

Furthermore, a temporary restraining order is warranted to maintain the status quo and prevent irreparable harm to Plaintiffs' interests. Transferring this case to a three-judge panel will irreparably harm Plaintiffs' constitutional rights by forcing them to litigate the remainder of the case (including the instant motion) before an unconstitutional tribunal. It would also delay the litigation by removing this case from a judge with recognized water law expertise—the very expertise State Defendants sought at the outset of the case. That delay would irreparably harm Plaintiffs' interests, especially given the mounting ecological and environmental crisis facing the Lake. Indeed, Plaintiffs attach to this motion declarations from Plaintiffs, attesting to irremediable harms that the challenged law poses to their core missions and constitutional rights, millions of birds and other imperiled species,

and the health of millions of Utahns. These irreparable harms, along with the public interest and equities, favor entry of a temporary restraining order.

Plaintiffs recognize that H.B. 392 states that the notice it authorizes “is not subject to judicial review,” H.B. 392 § 3(2)(b)(ii), and S.J.R. 5 states that the filing of such a notice robs a district court of authority to “take any further action,” S.J.R. 5 § 2(e)(3). However, such prohibitions are part and parcel of the illegitimate scheme enacted by these unconstitutional provisions, and to give them effect would be to acquiesce to the constitutional violations reflected in these provisions. To the contrary, these laws have no effect and do not tie this Court’s hands.

To avoid the constitutional injury of assigning this motion to an unconstitutional three-judge panel, Plaintiffs respectfully request that the Court grant their request for a temporary restraining order at the earliest possible date, and in any event by March 6, 2026.<sup>1</sup> Plaintiffs are prepared to present whatever briefing or argument would aid this Court in such a swift disposition.

Plaintiffs further request that the Court enter such an order for the maximum period of 14 days. *See* Utah R. Civ. P. 65A(b)(2). That would preserve the status quo until the Court can hold an expedited hearing at 9:00 AM on March 11, 2026,<sup>2</sup> to decide whether to issue a preliminary injunction.<sup>3</sup>

## **BACKGROUND**

This case involves the Great Salt Lake—a national treasure whose navigable waters and submerged lands the State of Utah holds in trust. The State’s mismanagement of this trust resource,

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<sup>1</sup> A panel has not been convened in this case as the Judicial Council has not finalized its rules implementing H.B. 392 and is not obliged to do so until March 7.

<sup>2</sup> The parties previously agreed to this date and time for a hearing on State Defendants’ motion for judgment on the pleadings, so the Court can be guaranteed that the Parties are available to appear.

<sup>3</sup> If, however, the Court determines S.J.R. 5’s changes to Rule 42 preclude the Court from deciding Plaintiffs’ motions for a temporary restraining order and preliminary injunction, Plaintiffs respectfully request that the Court expeditiously issue a signed Minute Entry or signed written Order stating that it is denying the request because Utah R. Civ. P. 42(e)(3) (*as amended*, 2026) provides that “[u]pon the filing of a notice to convene a district court panel, the district court judge assigned to the action at the time the notice is filed may not . . . take any further action.”

however, has driven the Lake to record low levels, threatening ecological collapse and a public health crisis. Plaintiffs thus filed this case in the Third Judicial District, where the Great Salt Lake and its tributaries are located. The case was randomly assigned to the Honorable Judge Charles A. Stormont.

State Defendants subsequently sought to reassign the case to a water law judge under Utah Code of Judicial Administration Rule 6-104. Defs.’ Req. for Appointment of Water Judge (Nov. 9, 2023). State Defendants insisted that a water law judge was warranted because the case presents issues “of sufficient legal complexity as related to water law to warrant assignment to a water judge.” *Id.* at 2. Judge Stormont granted the motion, and the case was randomly reassigned to this Court under Judicial Administrative Rule 6-104 due to its expertise in water law. Mem. Decision & Order Granting Req. for Appointment of Water Judge (Nov. 30, 2023). No party filed a motion to disqualify this Court under Utah Rule of Civil Procedure 63.

This Court has subsequently issued significant rulings in this complex case. After extensive briefing and a full-day hearing, this Court largely denied State Defendants’ motions to dismiss, ruling that “the State, as trustee, has ongoing fiduciary duties to protect and preserve the waters of the Great Salt Lake from substantial impairment so that these waters can be used for the trust purposes of navigation, commerce, fishing, and recreation.” Order Den. Mots. to Dismiss 2 (Mar. 27, 2025) (“Order”). The Court further recognized that “courts play an essential role in declaring and enforcing the public trust.” *Id.* at 17 n.39. Nevertheless, the Court’s disposition was not uniformly favorable for Plaintiffs, as the Court also agreed with the Defendants that it lacks jurisdiction to modify upstream diversions as necessary to protect the public trust. *See id.* at 49.

The Court resolved additional issues raised by the parties through discovery disputes. State Defendants initially sought to limit their discovery responses by narrowly construing the scope of the public trust, constraining the case to the “meander line” of the Great Salt Lake, and withholding relevant documents on grounds of proportionality. Defs’ Statement of Disc. Issues (Oct. 6, 2025).

The Court rejected State Defendants’ arguments, ensuring the disclosure and production of documents relevant to the alleged breach of the State’s public trust duties. Order Re: Pls.’ Statement of Disc. Issues (Oct. 21, 2025). To date, the parties have exchanged thousands of documents and are poised to proceed into depositions of fact witnesses.

State Defendants also filed a motion for judgment on the pleadings, essentially seeking a second bite of the dismissal apple. Defs.’ Mot. for J. on the Pleadings (Oct. 20, 2025). The motion, which raises a novel theory under the public duty doctrine, is fully briefed and pending before the Court. *See* Pls.’ Mem. Opp. St. Defs.’ Mot. for J. on the Pleadings (Nov. 7, 2025); Reply Br. ISO Defs.’ Mot. for J. on the Pleadings (Nov. 21, 2025). To resolve the motion, the Court set a hearing for 9:00 AM on March 11, 2026. During a meet-and-confer on Friday, February 20, 2026, Plaintiffs and State Defendants discussed the likely format of the upcoming hearing before this Court.

Just two days later, however, State Defendants abruptly filed a Notice to Convene Three-Judge Panel pursuant to H.B. 392.<sup>4</sup> This law purports to apply to all civil actions brought in the district court in which a state entity, or a state official in the state official’s official capacity, is a party to the action. *See* Utah Code § 78A-5-102.7(2)(a) (2026). It allows the State (and only the State) to “file a notice in the district court that a panel of three district court judges must be convened to hear and decide the civil action.” *Id.* H.B. 392 provides that this notice “may not be challenged by any party” and “is not subject to judicial review.” *Id.* § 78A-5-102.7(2)(b)(i)-(ii).

H.B. 392 directs the Judicial Council, before March 7, 2026, to establish by rule a process for random assignment of judges, reassignment for disqualification, recusal, or the exercise of change of judge rights, and to maintain a list of judges qualified to serve that contains at least 50% of the district judges from each district. *Id.* § 78A-5-102.7(6)(a)-(c).

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<sup>4</sup> *See* H.B. 392, 2026 Gen. Sess. (Utah 2026), <https://le.utah.gov/~2026/bills/static/HB0392.html>.

The same day it enacted H.B. 392, the Legislature adopted S.J.R. 5, which amended Rule 42 of the Utah Rules of Civil Procedure.<sup>5</sup> The amendment allows the Attorney General, Governor, or the Legislature to file a notice convening a three-judge district court if that notice is filed within 45 days after (1) the action is commenced, (2) an amendment to the complaint is filed, or (3) February 13, 2026, if the action is pending in the district court on February 13, 2026.” Utah R. Civ. P. 42(e)(1) (2026). The district judge in whose court the action was filed must notify the Judicial Council upon receipt of a notice to convene a three-judge court, must transfer the case, and “may not sever any matter from the action or take any further action.” Utah R. Civ. P. 42(e)(3).

### LEGAL STANDARD

A temporary restraining order or preliminary injunction is appropriate if Plaintiffs show that (1) “there is a substantial likelihood that [they] will prevail on the merits of the underlying claim,” (2) “[they] will suffer irreparable harm unless the . . . injunction issues,” (3) “the threatened injury to [them] outweighs whatever damage the proposed . . . injunction may cause the party . . . enjoined,” and (4) “the . . . injunction, if issued, would not be adverse to the public interest.” Utah R. Civ. P. 65A(f). Plaintiffs satisfy all four of these elements, thereby warranting injunctive relief.

### ARGUMENT

#### **I. Plaintiffs are likely to succeed on the merits of their claims because H.B. 392 creates an unconstitutional court staffed by unlawfully empaneled judges.**

Plaintiffs are likely to succeed on the merits of their claims challenging State Defendants’ application of H.B. 392 and its companion S.J.R. 5 to this case pursuant to a notice to convene a three-judge panel. First, H.B. 392 violates the Utah Constitution’s Uniform Operation of Law Clause, its prohibition on special laws, and the Open Courts Clause by privileging state officials to arbitrarily choose whether to have their cases tried before a single-judge district court or a three-judge panel. Second, H.B. 392 violates the Utah Constitution’s Due Process Clause and its Open Courts provision

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<sup>5</sup> S.J.R. 5, 2026 Gen. Sess. (Utah 2026), <https://le.utah.gov/~2026/bills/static/SJR005.html>.

by insulating the government’s notice to convene a three-judge panel from challenge by any party and from judicial review. *See* Utah Const. art. I, §§ 7 & 11. Third, these laws violate Article VIII of the Utah Constitution by redefining, by statute rather than a constitutional amendment enacted by the people of Utah, the meaning of “district court” in a manner that contravenes the original public meaning of “a trial court of general jurisdiction known as the district court” under the Utah Constitution. Utah Const. art. VIII, § 1. Accordingly, these unconstitutional laws confer no rights, rendering their application to this case inoperative. *See Egbert*, 228 P.3d 737 (“An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.”); *State v. Candland*, 104 P. 285, 290 (Utah 1909) (“A legislative act which is in conflict with the Constitution is stillborn and of no force or effect—impotent alike to confer rights or to afford protection.”).

**A. H.B. 392 violates the Utah Constitution’s Uniform Operation of Law Clause, its prohibition on special laws, and the Open Courts Clause by creating disparate rules for state litigants.**

H.B. 392 violates the Utah Constitution’s Uniform Operation of Law Clause, its prohibition on special laws, and the Open Courts Clause by creating a category of super-litigants—the Governor, Attorney General, or Legislature—clothed with the absolute power to pick their tribunal, whether to retain a single district judge to adjudicate a lawsuit or to substitute a three-judge panel. H.B. 392 and S.J.R. 5’s application to currently pending cases is particularly troubling, given that it permits governmental defendants to pick and choose which cases to convert to three-judge courts based on the government’s pleasure or displeasure with the rulings that have occurred in those cases. It also unreasonably empowers the government to engage in abusive litigation tactics that could frustrate citizens’ ability to seek and obtain effective preliminary relief.

**1. H.B. 392 violates the Uniform Operation of Law Clause.**

H.B. 392 violates the Uniform Operation of Law Clause. Article I, Section 24 of the Utah Constitution provides that “[a]ll laws of a general nature shall have uniform operation.” This provision “guards against discrimination within the same class and helps ensure that statutes establishing or recognizing rights for certain classes do so reasonably given the statutory objectives.” *Bingham v. Gourley*, 2024 UT 38, ¶ 39, 556 P.3d 53 (quoting *Judd v. Drezga*, 2004 UT 91, ¶ 19, 103 P.3d 135). To assess whether a statute violates the Uniform Operation of Law Clause, courts apply a three-step framework to determine: (a) “whether the statute creates any classifications,” (b) “whether the classifications impose any disparate treatment on persons similarly situated,” and (c) “if there is disparate treatment, whether the legislature had any reasonable objective that warrants the disparity.” *Taylorville City v. Mitchell*, 2020 UT 26, ¶ 37, 466 P.3d 148 (quoting *Count My Vote, Inc. v. Cox*, 2019 UT 60, ¶ 29, 452 P.3d 1109). H.B. 392 fails all three requirements of this test.

**a. H.B. 392 creates a classification that imposes disparate treatment on similarly situated litigants.**

H.B. 392 creates a classification that imposes disparate treatment on similarly situated litigants, thereby meeting the first two prongs set forth in *Mitchell*.

First, on its face H.B. 392 creates a classification between two categories of civil litigants: (1) state entities and officials and (2) everyone else. *See* Utah Code § 78A-5-102.7(2)(a).

Second, the classification imposes disparate treatment on persons similarly situated. H.B. 392 imposes disparate treatment because one class of litigants—state entities and officials—is afforded the unilateral and unfettered power to determine whether to have the case adjudicated by the randomly assigned district judge or to instead demand a panel of three district judges. S.J.R. 5 provides a 45-day window for the state litigant to consider that decision, during which time substantive action may occur

in the case. By contrast, the private opposing party cannot make that determination and is instead stuck with the choice made by the government and precluded from challenging it.

Moreover, state- and non-state litigants are similarly situated in the context of H.B. 392. “To determine if individuals are similarly situated, we have frequently looked to the context created by the challenged statute and within which the individuals act[.]” *State v. Outzen*, 2017 UT 30, ¶ 19, 408 P.3d 334; *see also Slater v. Salt Lake City*, 206 P.2d 153, 163 (Utah 1949) (“It may be admitted that under certain circumstances, [one group is] a different class than [another group]. However, under the circumstances of this case, we conclude they are similarly situated.”). The question therefore is not whether there are differences between state and private litigants that cause them to be differently situated. Rather, the question is whether H.B. 392’s features are attributable to any differences that might exist between state and private litigants. They are not.

H.B. 392 empowers state litigants to decide, after a 45-day observational period, whether to keep the assigned single district judge or to convene a three-judge panel. That power is not tethered to any factor premised on state litigants being differently situated from private litigants. The power does not arise based upon the subject matter of the lawsuit, whether it involves constitutional challenges to state laws, or whether it is a matter of public importance. Rather, there are no standards whatsoever; state litigants have unfettered power to make the determination. They can merely watch the proceedings unfold for 45 days and then decide to keep the assigned judge or demand a new three-judge panel based on their assessment of the assigned judge’s favorability to their position in the case. Nothing about a state litigants’ status as a governmental entity or official situates them differently from private litigants when it comes to determining their satisfaction or dissatisfaction with a judge’s rulings. In the context that H.B. 392 creates, state and private litigants are similarly situated.

**b. H.B. 392 is not reasonable under the heightened scrutiny test applicable in cases implicating open courts.**

H.B. 392 also fails the third *Mitchell* factor because there is no “reasonable objective that warrants the disparity” afforded State Defendants. *Mitchell*, 2020 UT 26, ¶ 37, 466 P.3d 148. When open courts rights are implicated, as is the case here, the Utah Supreme Court applies “a higher standard” than *Mitchell* by requiring that the legislation to be (1) “reasonable”; (2) have “more than a speculative tendency to further the legislative objective and, in fact, actually and substantially furthers a valid legislative purpose”; and (3) be “reasonably necessary to further a legitimate legislative goal.” *Bingham*, 2024 UT 38, ¶ 40 (quoting *Judd*, 2004 UT 91, ¶ 19) (citation modified). H.B. 392 fails to meet these heightened requirements.

**i. H.B. 392 is not reasonable.**

H.B. 392 creates a classification that is “arbitrary and unreasonable.” *Merrill v. Utah Labor Comm’n*, 2009 UT 26, ¶ 10, 223 P.3d 1089. It grants unilateral and arbitrary authority to a single class of civil litigants—the Governor, Attorney General, or Legislature—to determine which and how many district judges will adjudicate a case. No standards or rules govern that decision; it can be made for pernicious judge-shopping reasons or gamesmanship, and H.B. 392 even purports (unconstitutionally) to make the decision not subject to judicial review.

In fact, H.B. 392 invites gamesmanship, underscoring the fact that it “singles out similarly situated people or groups *without justification*.” *Merrill*, 2009 UT 26, ¶ 10 (emphasis added). Under H.B. 392 and S.J.R. 5, a state entity or state official parties can file a notice convening a three-judge panel in “pending” cases within 45-days of February 13, 2026. *See* Utah Code § 78A-5-102.7(2)(d) (2026); Utah R. Civ. P. 42(e)(1)(C). The State can therefore unilaterally remove a judge from a pending case because it dislikes certain rulings by the assigned judge. This case is a prime example, given that this Court has already presided over significant rulings in the case. After extensive briefing and a full day

hearing, this Court denied in large part State Defendant's motions to dismiss the case. The Court also subsequently denied State Defendants' attempt to limit the scope of the public trust, confine the case to the meander line, and withhold documents from disclosure. Faced with these setbacks, State Defendants now invoke H.B. 392 to veto this Court's further participation in the case before the Court can rule on the State Defendants' pending and fully briefed motion for judgment on the pleadings. And State Defendants pursue this tactic, despite requesting that this case be reassigned to this Court at the outset of the proceedings due to this Court's expertise in water law. Obviously, something changed between State Defendants' initial demand for a water judge in this case based on its asserted water-law complexity and their more recent filing of a notice under H.B. 392, and the obvious candidate is State Defendants' dissatisfaction with certain aspects of this Court's initial rulings.

H.B. 392 also affords an opportunity for such gamesmanship in future cases. It provides state officials with 45 days after the action is commenced to file a notice that a panel of three district judges must be convened to hear the case. *See* Utah R. Civ. P. 42(e)(1) (2026). A lot can happen in 45 days. A plaintiff may have moved for a temporary restraining order or preliminary injunction, and the assigned district judge may have held a hearing, taken testimony, and even signaled their intended ruling. Yet at that point, having gotten an initial impression of the judge, the state party could file a notice demanding a three-judge panel hear the case. No other litigant can play the system that way.

H.B. 392 adds to this unfair advantage by granting governmental parties (and only government parties) *carte blanche* to file a notice convening a three-judge court in the 45 days after a complaint is amended. *See* Utah Code § 78A-5-102.7(2)(d) (2026); Utah R. Civ. P. 42(e)(1)(B). That means the State could convene a new panel if, for example, a plaintiff sought to amend their complaint *after* trial.<sup>6</sup> This is not just a significant advantage for the State, but a severe burden on private litigants. If litigants

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<sup>6</sup> Rule 15 provides that leave to amend should be "freely give[n]," Utah R. Civ. P. 15(a)(2), and will often occur close to trial. Rule 15(b) further allows for amendments during and *after* trial. *Id.* 15(b).

choose to amend near, during, or after trial, they risk providing the government defendant a chance to abruptly remove the presiding judge and switch to a three-judge panel. If the trial is going poorly for the government, it will have every incentive to do so. If the private litigant wants to avoid this risk, it must forego amending its complaint to advance potentially meritorious legal claims just to avoid the prejudice and delay of starting over before a new tribunal.

**ii. H.B. 392 does not further a valid legislative purpose.**

H.B. 392 does not further a valid legislative purpose. To the extent the purpose is to ensure that more judges from a broader geography adjudicate cases of public importance, H.B. 392 does not further that interest because it provides no guidelines or standards for which cases are to be heard by three-judge courts. It is not, for example, limited to cases involving constitutional challenges. Instead, it grants state entities a litigation weapon available to no other parties: the ability to forum- and judge-shop to advance an interest in legal gamesmanship. That is not a valid legislative purpose. *See, e.g., State v. Brickey*, 714 P.2d 644, 647 (Utah 1986) (labeling forum shopping an “abusive practice[]”).

**iii. H.B. 392 is not reasonably necessary to further any legitimate legislative goal.**

H.B. 392 is not reasonably necessary to further any legitimate legislative goal. To survive scrutiny under the Uniform Operation of Law Clause, H.B. 392 must be “reasonably necessary to achieve” legitimate legislative goals and “in fact, actually and substantially further[] them.” *Judd*, 2004 UT 91, ¶ 19; *see also Bingham*, 2024 UT 38, ¶ 46. H.B. 392 fails that test. First, as explained above, H.B. 392 advances no legitimate legislative goal. Second, even if it could be characterized as having such a goal, H.B. 392 is not necessary to further it. During the legislative proceedings, H.B. 392’s sponsor, Senator McKell, noted that the three-judge panel created by the Bill would be for “constitutional

cases” and reiterated that “this is to consider our constitutional issues.”<sup>7</sup> But H.B. 392 is both over- and under-inclusive in how it serves this purported goal. It is over-inclusive because it does not limit state litigants’ power to convene a three-judge panel to cases involving constitutional claims, but rather it empowers state litigants to file a notice convening a three-judge panel in *any* case in which they are a party. H.B. 392 is under-inclusive because it does not create a three-judge panel for all cases involving constitutional issues. Rather, it makes that a matter of discretion in the hands of only the state litigant with “no guidelines as to how it is to be exercised.” *State v. Mobi*, 901 P.2d 991, 999 (Utah 1995). And a three-judge panel is possible in constitutional cases in which a state entity or official is *not* a party only if the attorney general chooses to intervene. *See* Utah Code § 67-5-41(1) (2026).

Regardless of how the government might characterize H.B. 392’s goal, its arbitrary features and potential for gamesmanship and abusive litigation tactics are not necessary to further any legitimate goal.

## **2. H.B. 392 violates Article VI, Section 26’s prohibition on special laws.**

H.B. 392 also violates the Utah Constitution’s prohibition on special laws. Article VI, Section 26 provides that “[n]o private or special law shall be enacted where a general law can be applicable.” Utah Const. art. VI, § 26. The prohibition on special laws “can be seen as policing the separation of powers.” *Carter v. Lehi City*, 2012 UT 2, ¶ 43, 269 P.3d 141. A law is general if it “operates uniformly upon all members of any class, places, or things requiring legislation peculiar to themselves in matters covered by the laws in question.” *Hulbert v. State*, 607 P.2d 1217, 1223 (Utah 1980) (quoting *Utah Farm Bureau Ins. Co. v. Utah Ins. Guar. Ass’n*, 564 P.2d 751, 754 (1977)). By contrast, “special legislation relates either to particular persons, places, or things or to persons, places, or things which, though not particularized, are separated by any method of selection from the whole class to which the law might,

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<sup>7</sup> Utah Senate, 2026 Gen. Sess., Day 23 at 30:21 (Feb. 11, 2026) (statement of Sen. McKell), <https://www.utleg.gov/event-streaming/floor/marker/133898>.

but for such legislation, be applied.” *Id.* (quoting *Utah Farm Bureau*, 564 P.2d at 754). Moreover, special legislation privileges a class of persons arbitrarily selected from all those subject to the law:

A law is general when it applies equally to all persons embraced in a class founded upon some natural, intrinsic, or constitutional distinction. It is special legislation if it confers particular privileges or imposes peculiar disabilities, or burdensome conditions in the exercise of a common right; upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law. The constitutional prohibition of special legislation does not preclude legislative classification, but only requires the classification to be reasonable.

*Id.* (quoting *Utah Farm Bureau*, 564 P.2d at 754).

The prohibition on special laws strikes at the heart of free government itself:

[E]very one has a right to demand that he be governed by general rules, and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in all similar cases, would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free government.

*Carter*, 2012 UT 2, ¶ 43 (quotation omitted). Accordingly, the Utah Supreme Court explained, the prohibition against special laws “is more than a guarantee that laws will be applied equally. It is a reflection of the nature of legislative power, which confirms that such power typically is limited to making laws of general applicability based on policy preferences.” *Id.*

H.B. 392 violates the prohibition on special laws in two overarching ways.

First, H.B. 392 takes a general class—civil litigants—and creates a special privilege for only certain among them: the Governor, the Attorney General, and the Legislature. These parties, and not the opposing litigants, are afforded the privilege of deciding whether they are satisfied with the single judge to which the case has been assigned or if they would prefer to have the case heard before three judges. There is no reasonable basis to permit governmental litigants, and no one else, to decide whether a case should be heard by one or three district judges.

Second, H.B. 392 creates no standards or guidelines for which cases involving governmental parties will be heard by a single judge or three judges. Rather, it leaves entirely unilateral and arbitrary

discretion in the hands of the governmental defendant. No private litigant can know whether their case against the government will be before a single judge or three-judge panel, or when in the first 45 days—during which important litigation steps occur—a change may occur. Rather, the government can exercise absolute discretion to determine the forum for any reason. Especially worrisome is the judge-shopping power it unilaterally bestows upon governmental litigants. If the government thinks it has randomly drawn a judge whom it views as likely to rule in its favor, it can choose to remain before a single judge regardless of the statewide public policy importance of the matter. On the other hand, if it views the randomly assigned judge as likely to be unfavorable to its position, it can demand a three-judge panel. This constitutes “an arbitrary mandate [that] is not within the province of free government.” *Carter*, 2012 UT 2, ¶ 43 (citation modified).

This special, arbitrary law is not based on any reasonable classification. There is no reasonable justification for allowing state litigants, and not their opposing party, to unilaterally determine how many judges adjudicate their case for entirely arbitrary—and at worst, pernicious—reasons. And there is certainly no reasonable justification for allowing state litigants to make this election in cases, such as this one, that have been pending for years.

**3. H.B. 392’s creation of asymmetrically available three-judge panels violates the Open Courts Clause.**

H.B. 392 also violates the Open Courts Clause. Article I, Section 11 provides:

All courts shall be open, and every person, for an injury done to the person in his or her person, property, or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, with or without counsel, any civil cause to which the person is a party.

Utah Const. art. I, § 11. H.B. 392’s creation of an asymmetrically available three-judge panel violates the Open Courts Clause in at least three ways.

First, it violates the Open Courts Clause by purporting to funnel certain cases, at the whim of state litigants, into an unconstitutionally constituted tribunal. H.B. 392 lets state litigants force private litigants into having their case heard and decided by a three-judge panel without their consent. Inherent in Article I, Section 11’s guarantee of open courts is a requirement that the court be a constitutionally composed tribunal. *Cf. In re Dallas County*, 697 S.W.3d 142, 150 (Tex. 2024) (“Every litigant has a clear right to have its case decided by a legitimate court staffed only by lawfully empaneled judges.”). H.B. 392 closes to certain private litigants—at the state litigants’ exclusive discretion—the “trial court of general jurisdiction known as the district court,” Utah Const. art. VIII, § 1, and replaces it with a three-judge panel that is not sanctioned by Article VIII, *see infra* Part I.C. Although the Legislature may avoid liability under the Open Courts Clause if it provides “an effective and reasonable alternative,” *Berry By and Through Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 680 (Utah 1985), an alternative that contravenes the Constitution is surely neither effective nor reasonable. Nor can H.B. 392 be justified as eliminating some “clear social or economic evil” in a manner that “is not an arbitrary or unreasonable means.” *Id.* The single-judge district court system—prescribed by Article VIII—is not a “clear social or economic evil” and H.B. 392 is both arbitrary and unreasonable, as explained below.

Second, H.B. 392 violates the Open Courts Clause in the most literal way—it creates a tribunal that is not open to all. *See* Utah Const. art. I, § 11 (“All courts shall be open . . . . [N]o person shall be barred from prosecuting or defending before any tribunal in this State . . . .”). While the operation of the Open Courts Clause has been subject to debate in the context of abrogated causes of action, *see Waite v. Utah Labor Comm’n*, 2017 UT 86, ¶¶ 18-19, 416 P.3d 635, it should hardly be debatable that creating a special tribunal that only one category of litigant can access is not consistent with the Constitution’s guarantee that courts be “open to all” and no person be barred from “prosecuting or defending before *any tribunal* in this State.” Utah Const. art. I, § 11 (emphasis added).

Third, H.B. 392 violates the Open Courts Clause by, as a practical matter, jeopardizing the ability of plaintiffs to secure preliminary relief within the first 45 days of a case. *Id.* (guaranteeing access to courts “without . . . unnecessary delay”). Likewise, it permits even more egregious delay by allowing government litigants to abruptly divest the assigned judge of jurisdiction within 45 days of February 13, 2026 (for any pending case) or any amended complaint—which can occur on the eve of, during, or even after important motions proceedings or trial. *See supra* Part I.A.1.b.i.

**B. H.B. 392 violates the Open Courts and Due Process Clauses by purporting to shield notices invoking three-judge courts from judicial review.**

H.B. 392 violates the Open Courts and Due Process Clauses by purporting to shield the government’s notice invoking a three-judge court from judicial review. *See* Utah Const. art. I, §§ 7 & 11. “Parties to a suit, subject to all valid claims and defenses, are constitutionally entitled to litigate any justiciable controversy between them, *i.e.*, they are entitled to their day in court.” *Miller v. USAA Cas. Ins. Co.*, 2002 UT 6, ¶ 38, 44 P.3d 663. As the *Miller* Court explained, “both the due process clause of article I, section 7 and the open courts provision of article I, section 11 of the Utah Constitution guarantee that litigants will have this ‘day in court.’” *Id.* (quoting *Jenkins v. Percival*, 962 P.2d 796, 799 (Utah 1998)); *see also* *Jenkins*, 962 P.2d at 799 (“Even the most limited reading of [the open courts] provision guarantees a day in court to all parties . . .”); *Berry*, 717 P.2d at 675 (noting that Open Courts Clause “guarantees access to the courts and a judicial procedure that is based on fairness and equality.”); *Celebrity Club, Inc. v. Utah Liquor Control Comm’n*, 657 P.2d 1293, 1296 (Utah 1982) (holding that the due process clause guarantees claimants a day in court).

In *Miller*, the Court explained that “[t]he analysis to determine whether [a party is] denied [its] day in court is the same under both the open courts provision and the due process clause,” though the due process clause requires showing a deprivation of life, liberty, or property. 2002 UT 6, ¶ 38. “Causes of action or claims that have accrued under existing law are vested property rights just as tangible things are property.” *Id.* ¶ 40. Here, Plaintiffs had a vested claim under the public trust

doctrine—and, importantly, the vested constitutional right to advance that claim in a constitutionally constituted court—well before H.B. 392 was enacted. Plaintiffs may thus advance their claim.

H.B. 392 is unconstitutional for all the reasons stated throughout this motion. On its face, the law purports to shield the State’s notice invoking a three-judge court from judicial review. To the extent Defendants were to contend that this precludes this Court—sitting as a single district judge (the only constitutional form of a “district court”)—from hearing and adjudicating Plaintiffs’ constitutional challenge to H.B. 392, that provision is unconstitutional and unenforceable under both the Open Courts and Due Process Clauses. Indeed, that would mean that the new three-judge panel, unreasonably, would immediately be called upon to rule on whether its *own existence* is constitutional. That question cannot be decided by the problematic panel itself. A temporary restraining order is necessary to (1) have an orderly adjudication of Plaintiffs’ motion, (2) provide Plaintiffs with a constitutional forum (*i.e.*, a single-judge district court) to adjudicate their motion, and (3) provide *any* district court forum to adjudicate Plaintiffs’ motion.

### **C. Article VIII permits only single-judge district courts.**

In addition to the foregoing constitutional violations, H.B. 392 defies the very definition of a “district court” under the Utah Constitution. When interpreting constitutional language, Utah courts “start with the meaning of the text as understood when it was adopted.” *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 101, 554 P.3d 872 (quoting *S. Salt Lake City v. Maese*, 2019 UT 58, ¶ 18, 450 P.3d 1092). Moreover, “[t]he different sections, provisions, and amendments relating to the same subject-matter must be construed together and read in the light of each other, as far as possible, to effect a harmonious construction of the whole.” *Wadsworth v. Santaquin City*, 28 P.2d 161, 167 (1933). Applying these fundamental principles to Article VIII compels the conclusion that the term “district court” means a single-judge presiding over a case, not a panel of three district judges as H.B. 392 creates.

**1. The text of Article VIII permits only a single-judge district court.**

Article VIII's text requires a single judge to hear cases in the district court. Article VIII, Section 1 provides that "[t]he judicial power of the state shall be vested in a Supreme Court, in a trial court of general jurisdiction known as the district court, and in such other courts as the Legislature by statute may establish." Article VIII thus establishes two constitutionally defined courts—the Supreme Court and the district court—and leaves to the Legislature the power to establish other types of courts. *See id.* It does not, however, give the Legislature the power to redefine the very meaning of “district court” from its original public meaning.

The sections of Article VIII creating the Supreme Court and the district court must be construed together. *See, e.g., Wadsworth*, 28 P.2d at 167; *see also State v. Houston*, 2015 UT 40, ¶ 160, 353 P.3d 55 (Lee, J., concurring in part and concurring in judgment) (observing that where Constitution uses different formulations, “the clear implication is that a difference is intended”). Sections 2 and 3 specify that the Supreme Court will be a multi-judge panel. Utah Const. art. VIII, §§ 2–3. Section 5, by contrast, does not provide for multi-judge panels hearing cases before the district court. *Id.* § 5.

Where the Constitution creates a multi-judge court, therefore, it says so explicitly. Where Article VIII envisions a multi-judge court sitting en banc, allows certain decisions to be decided by a division of the larger panel of judges hearing a case, or requires a majority vote for certain decisions, it says so explicitly. Article VIII says so with respect to the Supreme Court. Its omission of any such language with respect to the district court must be given meaning. Interpreting the two provisions together, as the Court must, leads to the conclusion that the “district court,” as used in the Constitution, means a single judge presiding over a case.

Construing the plain text of Article VIII's provisions together compels the conclusion that by creating a “trial court of general jurisdiction known as the district court,” the Constitution creates single-judge district courts to preside over cases, not multi-judge panels as H.B. 392 creates.

**2. History shows that the original public meaning of “district court” is a single presiding judge.**

But even if the text left ambiguity, the history of the meaning of “district court” leaves none. It demonstrates that the original public meaning of “district court” is a single presiding judge. Utah courts look to “historical evidence of the state of the law when [the Constitution] was drafted, and Utah’s particular traditions at the time of drafting” to determine a provision’s original public meaning. *Salt Lake City Corp. v. Haik*, 2020 UT 29, ¶ 12, 466 P.3d 178 (quoting *S. Salt Lake City v. Maese*, 2019 UT 58, ¶¶ 18-19, 450 P.3d 1092).

**a. Utah’s pre-statehood era defined “district court” as a single judge presiding over cases.**

For Utah’s entire pre-statehood era, “district court” was defined as a single judge presiding over cases. Utah’s Territorial Organic Act provided that “the judicial power of said Territory shall be vested in a Supreme Court, District Courts, Probate Courts, and in justices of the peace.” *See* Act of Sept. 9, 1850, § 9. ch. 51, 9 Stat. 453. It provided for three Supreme Court justices and required that the “Territory shall be divided into three judicial districts, and a District Court shall be held in each of said districts by *one* of the justices of the Supreme Court.” *Id.* (emphasis added). It provided that the district court and Supreme Court had chancery and common law jurisdiction and that “[e]ach District Court, or *the judge* thereof, shall appoint its clerk . . . .” *Id.* (emphasis added). No one in 1895 Utah would have understood “district court” to mean anything other than a single judge hearing a case.

**b. The 1895 Constitution reflects the original public meaning of “district court” to be a single judge presiding over a case.**

Informed by these antecedents, the 1895 Constitution reflects—in its text and Convention proceedings—that the original “district court” as used in Article VIII meant a single judge presiding over a case, not panels of district judges presiding over a single case.

While Section 2 of Article VIII of the 1895 Constitution explicitly provided for a multi-judge Supreme Court, Section 5 provided that “[t]he State shall be divided into seven judicial districts, for each of which, at least *one*, and not exceeding three judges, shall be chosen by the qualified electors thereof.” Utah Const. art. VIII, § 5 (1895) (emphasis added). It provided that the term of office of “*the* district judges shall be four years,” *id.* (emphasis added), and that “[*a*]ny District Judge may hold a District Court in any county at the request of *the* judge of the district, and upon a request of the Governor, it shall be his duty to do so.” *Id.* (emphasis added). Moreover, it provides that “[*a*]ny cause in the district court may be tried by *a* judge pro tempore . . . .” *Id.* (emphasis added).

The Convention debates confirm that the original public meaning of “district court” was a single judge. For example, during the April 23, 1895, debate about judicial salaries, the delegates’ remarks demonstrated an understanding—consistent with the constitutional text they wrote—that the “district court” *meant* a court presided over by a single judge. *See, e.g.,* Proceedings & Debates of the Convention Assembled to Adopt a Constitution for the State of Utah, Day 51, at 1382 (Apr. 23, 1895), <https://le.utah.gov/documents/conconv/51.htm> (statement of Mr. Thurman) (“As far as the work is concerned, *the judge* who has to attend to the business in Sanpete, Carbon, Emery, Grand, and San Juan, will have as much work to do, he will have a far more difficult job to perform in order to do it, than *the judge* who sits here in Salt Lake City, who only has to go out of the courthouse to go to his residence a few blocks away, and from his residence back to the courthouse to attend to the business . . . .” (emphasis added)); *id.* at 1388 (statement of Mr. Page) (“In the seventh district, particularly, that will work a hardship upon *the judge.*” (emphasis added)). Given this history, the original public meaning of “district court” in the 1895 Constitution can only have meant a single judge presiding over a case, and not a panel of district judges deciding cases by majority vote.

**c. The original public meaning of “district court” in the Utah Constitution did not change with the 1984 amendments**

Article VIII of the Utah Constitution was revised upon the passage of Proposition 3 in November 1984, resulting in the text as it appears today. “[W]hen the people of Utah amend the constitution, we look to the meaning that the public would have scribed to the amended language when it entered the constitution.” *Patterson v. State*, 2021 UT 52, ¶ 92, 504 P.3d 92.

Proposition 3 left the “district court” as a constitutionally established court, just as it was in 1895. And nothing in the text or history of the 1984 amendment indicates that a redefinition of “district court” from its original public meaning of a case decided by a single judge was intended. The 1984 amendment was the culmination of years of study by the Constitutional Revision Commission.<sup>8</sup> The Commission’s Report provided rationales for the proposed changes, none of which reflect an intention to redefine the concept of a district court.

\* \* \*

In sum, the original public meaning of “district court” in the Utah Constitution is a trial court with a single presiding judge. That is apparent from the overwhelming textual and historical record. The Legislature cannot by statute redefine one of the two constitutionally created courts to mean the opposite of what it has always meant. For this reason too, H.B. 392 is unconstitutional, and its application to this case is void *ab initio*.

**II. The remaining factors favor entry of an injunction.**

The remaining irreparable harm, balance of harms, and public interest factors all favor entry of an injunction. *See* Utah R. Civ. P. 65A(f)(2)-(4).

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<sup>8</sup> *See* Report of the Constitutional Revision Comm’n (Jan. 1984), attached as Appendix Part B to Appellant’s Supplemental Opening Br., *Patterson v. State of Utah*, No. 20180108-SC (Utah July 19, 2018), <https://legacy.utcourts.gov/utc/appellate-briefs/wp-content/uploads/sites/46/2020/02/Appellant-Supplemental-20180108.pdf>.

First, Plaintiffs will suffer irreparable harm in the absence of an injunction against application of H.B. 392 and S.J.R. 5 to this case pursuant to State Defendants’ notice. Irreparable harm “is that which cannot be adequately compensated in damages” and is “fundamentally preventive in nature.” *Zagg, Inc. v. Harmer*, 2015 UT App 52, ¶¶ 6, 8, 345 P.3d 1273 (cleaned up). In particular, “the violation of a constitutional right must weigh heavily in the irreparable harm analysis,” as “damages cannot right” a “constitutional wrong.” *League of Women Voters v. Utah State Legislature*, 2024 UT 40, ¶ 148, 559 P.3d 11 (cleaned up); *see also Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 805 (10th Cir. 2019) (“Most courts consider the infringement of a constitutional right enough and require no further showing of irreparable injury.”). This is so for the rights at stake here. *See Roe v. Utah High Sch. Activities Ass’n*, No. 220903262, 2022 WL 3907182, at \*9 (Utah Dist. Ct. Aug. 19, 2022) (“Looking to persuasive federal authority, the Court concludes that the Plaintiffs face irreparable harm due to violations of their rights under Utah’s uniform operation of law clause.” (collecting authority)).

Forcing Plaintiffs to adjudicate the remainder of their lawsuit before an unconstitutionally constituted tribunal is not a harm that can be redressed after-the-fact. This is especially so considering that this litigation has proceeded for well over two years, requiring an enormous amount of work by the Parties and by the Court, and the Parties are now in the midst of fact discovery. The Court has conducted extensive proceedings, which need not, under the Rules, be repeated before final judgment is ultimately entered. *See Utah R. Civ. P. 65A(a)(2)*. Yet an abrupt change of the judge hearing this case—at the whim of State Defendants—would remove from the case the expert water law judge that engaged deeply with the law and facts of this case and issued a 49-page ruling on the motions to dismiss. Doing so would both delay resolution of this case and unnecessarily rob Plaintiffs, who bear the burden of proof, of the benefit of the judge who has deep familiarity with the issues and the law.

Attached to this Motion, Plaintiffs have submitted declarations further attesting to the irreparable harm they face. As those declarations explain, “[t]he State’s attempt to apply these laws to

this case introduces significant uncertainty and delay.” Decl. of Jonny Vasic ¶ 8 (Feb. 24, 2026) (“Vasic Decl.”); *see also* Decl. of Deeda Seed ¶¶ 9–10 (Feb. 24, 2026) (“Seed Decl.”). This not only “interferes with our constitutional rights” but “also threatens irreparable harm to UPHE’s animating concern and core mission: protecting the public health of Utah and Utahns.” Vasic Decl. ¶ 9; *see also* Seed Decl. ¶ 8 (application of the law “threatens to irreparably harm CBD’s interests—and, by extension, the lives and lifeways of the millions of species that depend on the Great Salt Lake”). “Every day in which unsustainable diversions, approved and overseen by the State, continue to desiccate the Great Salt Lake, the public health threat grows.” Vasic Decl. ¶ 10. Likewise, “[t]he millions of birds and other species that depend on the Great Salt Lake cannot afford to wait for the assignment of new judges, the necessary catch-up period for those judges and their staffs, and the consequent rescheduling of major case milestones, such as the motion for judgment on the pleadings hearing.” Seed Decl. ¶ 12. This is especially so with spring bird migration along the Pacific Flyway set to begin in March, and with the Lake recently hitting its third-lowest end-of-year elevation on record. *Id.* ¶¶ 12–13. Plaintiffs seek an expeditious resolution to begin addressing these threats. “For this reason, any further delay in our litigation poses harm that is likely to be irreparable. Our very ecosystem is at stake.” *Id.* ¶ 13.

Second, the balance of the equities, which “considers whether the applicant’s injury exceeds the potential injury to the defendant,” favors Plaintiffs. *Planned Parenthood Ass’n of Utah v. State*, 2024 UT 28, ¶ 210, 554 P.3d 998; *see also* Utah R. Civ. P. 65A(f)(3) (prescribing balance-of-equities analysis). The entry of preliminary injunctive relief merely maintains the status quo—that is, the case remains before this Court—which prevents significant constitutional injury to Plaintiffs and risks *no* injury to Defendants. Defendants are not harmed by being foreclosed from engaging in forum shopping and delay tactics. Nor are they harmed by litigating this case consistent with how the phrase “district court” has been understood since (and before) Utah’s founding. *See United States v. U.S. Coin & Currency*, 401

U.S. 715, 726 (1971) (Brennan, J., concurring) (“[A] government has no legitimate interest in upholding an unconstitutional [law].”).

Third, the public interest weighs in favor of an injunction. The “purpose of a preliminary injunction is ‘to preserve the status quo pending the outcome of the case.’” *Planned Parenthood*, 2024 UT 28, ¶¶ 224, 225 (internal citation omitted) (upholding a preliminary injunction as in public interest where it “would maintain the status quo . . . as it has been legally permitted for nearly fifty years”). The public has an obvious interest in a constitutionally constituted judicial system. *See Roe*, 2022 WL 3907182, at \*10 (“As a matter of law, protecting constitutional freedoms is in the public interest.”); *see also Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) (“[E]nforcement of an unconstitutional law is always contrary to the public interest.”). “[I]t is this court’s duty to ensure that the constitution is followed. Because it was not followed here, the public’s interest is best served by [preliminary injunctive relief].” *League of Women Voters*, 2024 UT 40, ¶ 160. Moreover, if the Utah Supreme Court ultimately holds that H.B. 392 is unconstitutional and its implementation is not in the meantime enjoined, any adjudications that occur before three-judge courts in the meantime would be subject to vacatur afterwards—an event that would be significantly contrary to the public interest. *Cf. Planned Parenthood*, 2024 UT 28, ¶ 227 (“[I]t would not be adverse to the public interest to enjoin the law’s enforcement while the parties litigate the serious constitutional issues.”).

## CONCLUSION

For the foregoing reasons, the Court should temporarily and preliminarily enjoin application of H.B. 392 and S.J.R. 5 to this case pursuant to Defendants’ recently filed notice. Plaintiffs request a ruling on their request for a temporary restraining order at the Court’s earliest convenience.

DATED this 24th day of February, 2026.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 24th of February, 2026, the foregoing was filed via the court's electronic filing system on the following:

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THIRD JUDICIAL DISTRICT COURT,  
SALT LAKE COUNTY, STATE OF UTAH

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UTAH PHYSICIANS FOR A HEALTHY  
ENVIRONMENT, *et al.*,

Plaintiffs,

v.

UTAH DEPARTMENT OF NATURAL  
RESOURCES, *et al.*,

Defendants,

and

CENTRAL UTAH WATER  
CONSERVANCY DISTRICT, WEBER  
BASIN WATER CONSERVANCY  
DISTRICT, JORDAN VALLEY WATER  
CONSERVANCY DISTRICT, *et al.*

Intervenors.

**DECLARATION OF  
DEEDA SEED**

(Tier 2)

Case No. 230906637  
Honorable Judge Laura Scott

## DECLARATION OF DEEDA SEED

I, Deeda Seed, declare as follows:

1. I live in the East Central neighborhood of Salt Lake City, Utah.
2. I am the Senior Utah Campaigner for the Center for Biological Diversity (CBD), a position I have held since 2018. CBD is 501(c)(3) non-profit. In my position at CBD, I work to protect land, water, air, wildlife, and people, with a specific focus on issues related to Great Salt Lake and the Great Basin. Before this, I fought for social justice and environmental causes in Utah, which included serving a four-year term on the Salt Lake City Council and working in city government.
3. In 2023, CBD joined the other plaintiff groups in filing *Utah Physicians for a Healthy Environment v. Utah Department of Natural Resources*, Case No. 230906637, which challenges the State of Utah's mismanagement of the Great Salt Lake. The suit claims that the State's actions have driven the Lake to the verge of ecological collapse, violating Utah's public trust doctrine and promising a biodiversity crisis of epic proportions.
4. CBD filed this suit because our organization has longstanding and significant concerns about the threats to wildlife posed by the declining elevation of the Great Salt Lake. The Great Salt Lake and its wetlands constitute the most significant migratory shorebird site in North America, providing habitat for as many as 12 million birds from an astonishing 338 species, as well as all manner of reptiles, amphibians, and 64 species or subspecies of mammals. Today, however, this remarkable biodiversity hotspot is faced with the grave risk of a sharply declining Great Salt Lake.
5. As I understand it, the Lake's decline is largely tied to State actions that have enabled unsustainable and wasteful upstream diversions of the water that should naturally flow into the Great Salt Lake. As more water is diverted away, inflows to the Lake are reduced, and the Lake level falls. This leads to the emergence of land bridges connecting the Lake's islands to the shore, which allows predators to threaten birds that have used those islands for refuge, breeding, and migratory stopover since time immemorial. For instance, in recent years a land bridge has linked Gunnison Island to the shore, which allows predators access to the 20,000 nesting American White Pelicans that rely on that island (one of the

species' largest colonies); as a result, only half of the pelicans' peak number has been stopping at the Lake.

6. The decline in the Lake's elevation also leads to reduced water cover of "microbialites," which are the organic sedimentary deposits that cover about 20 percent of the lakebed. This has ripple effects across the food web, since brine flies and brine shrimp feed on microbialites, and shorebirds in turn rely on brine flies and brine shrimp as a key food source. The Lake's falling elevation therefore has massive implications for species like Wilson's phalarope, which depends on brine flies and brine shrimp to refuel them on their epic, 3,000–4,000-mile journey from South America. As CBD outlined in a recent petition to the U.S. Fish and Wildlife Service, asking the agency to list the Wilson's phalarope under the Endangered Species Act and to designate the Lake as part of its critical habitat, the Great Salt Lake is one of "just a few key sites" on which the phalarope depends on its annual migration, and the crisis at the Lake helps explain the species' astonishing 70 percent decline since the 1980s.

7. On February 11, 2026, I learned of H.B. 392, a new bill working its way through the Utah legislature, which threatened to give the State of Utah an exclusive right to convene a three-judge panel to hear civil cases, even active ones like our public trust suit. In the coming weeks, I learned that H.B. 392 passed, along with S.J.R. 5, and that the law allows the State to effectively yank a case away from a district court judge and convene a new three-judge panel, with apparently no ability of other parties to object. Finally, I learned that late on Sunday, February 22, 2026, the State of Utah sought to apply this law to our case by filing a "notice" to remove Judge Scott and convene a new three-judge panel.

8. This notice filed under H.B. 392 and its accompanying S.J.R. 5 threatens to irreparably harm CBD's interests—and, by extension, the lives and lifeways of the millions of species that depend on the Great Salt Lake. This law gives the State of Utah carte blanche to transfer our case to a three-judge panel, which, as I understand it, deprives CBD of our constitutional right to have this case heard by a competent court. In fact, we apparently cannot challenge the "notice" the State filed—and even Judge Scott can't review it or take "any further action" in our case.

9. This notice and the prospect of judicial reassignment are introducing massive uncertainty into our case. Judge Scott has overseen our case for well over two years. In fact, she was assigned to the case because the *State of Utah* asked that an expert water law judge oversee the case. It is astounding that the State now seeks to take the case away from this expert water judge and reassign it, so many years into the litigation. Now we're stuck in legal limbo: our judge has been blocked from taking any action on our case, but we haven't yet been assigned a three-judge panel, and (constitutional issues aside) the prospect of a three-judge panel promises to bring in new judges who are not familiar with our case and likely lack any expertise in water law.

10. The new law also risks introducing considerable delay in this case. After we prevailed at the motion to dismiss stage, the State of Utah filed a motion for judgment on the pleadings, essentially seeking a dismissal do-over. As I understand it, that motion was fully briefed and a hearing was scheduled for March 11, which I was planning to attend. Now, however, that hearing has been cancelled, with no rescheduling in sight. Even once the three-judge panel is assigned, those judges will need to get caught up to speed, reviewing multiple years of filings, orders, and discovery disputes.

11. Just as importantly, the delay and uncertainty portend irreparable harm to CBD's important mission: protecting the threatened biodiversity of Utah and elsewhere.

12. The millions of birds and other species that depend on the Great Salt Lake cannot afford to wait for the assignment of new judges, the necessary catch-up period for those judges and their staffs, and the consequent rescheduling of major case milestones, such as the motion for judgment on the pleadings hearing. Each day that passes in which the wasteful upstream diversion of water, the result of State actions, deprives the Lake of vital inflows further renders this critical habitat unsuitable for the species that depend on it. These species cannot wait: spring migration will begin in March, just weeks away. As Judge Scott herself recognized, the Lake's decline "imperils the many bird species that depend on brine shrimp as a food source."

13. This is, in fact, an especially dangerous time for State Defendants to invoke this law and introduce so much uncertainty and delay into our case. After a couple very good, very lucky years of

precipitation, we are facing the prospect of a “bad” water year for the Great Salt Lake. As the *Salt Lake Tribune* reported recently, the Lake began 2026 “in pretty rough shape”: its average elevation had just clocked in at 4,191 feet, the third-lowest end-of-year elevation on record. This places the Lake within what the Great Salt Lake Strike Team calls the “serious adverse effects” range. For this reason, any further delay in our litigation poses harm that is likely to be irreparable. Our very ecosystem is at stake.

I certify under penalty of perjury, in accordance with the laws of the State of Utah, and to the best of my knowledge, that the foregoing is correct and true.

Executed on the 24th day of February, 2026, in Salt Lake City, Utah.



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# DECLARATION OF JONATHAN VASIC

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THIRD JUDICIAL DISTRICT COURT,  
SALT LAKE COUNTY, STATE OF UTAH

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UTAH PHYSICIANS FOR A HEALTHY  
ENVIRONMENT, *et al.*,

Plaintiffs,

v.

UTAH DEPARTMENT OF NATURAL  
RESOURCES, *et al.*,

Defendants,

and

CENTRAL UTAH WATER  
CONSERVANCY DISTRICT, WEBER  
BASIN WATER CONSERVANCY  
DISTRICT, JORDAN VALLEY WATER  
CONSERVANCY DISTRICT, *et al.*

Intervenors.

**DECLARATION OF  
JONATHAN VASIC**

(Tier 2)

Case No. 230906637  
Honorable Judge Laura Scott

## DECLARATION OF JONATHAN VASIC

I, Jonathan Vasic, declare as follows:

1. I live in the Sandy City neighborhood of Salt Lake City, Utah.
2. I am executive director of Utah Physicians for a Healthy Environment (“UPHE”) and have been in this position since 2018. UPHE is 501(c)(3) non-profit. In my position at UPHE, I direct all aspects of the non-profit including our advocacy and education work.
3. UPHE is one of the plaintiff groups in *Utah Physicians for a Healthy Environment v. Utah Department of Natural Resources*, Case No. 230906637, which challenges the State of Utah’s management of the Great Salt Lake. The suit asserts that the State’s actions have driven the Lake to the edge of ecological collapse, violating Utah’s public trust doctrine and portending an environmental and public health catastrophe.
4. UPHE joined the other plaintiff groups in filing this suit because our organization is profoundly concerned about the unhealthy air quality in Salt Lake City, a situation greatly exacerbated by the deterioration of the Great Salt Lake. Bad air quality and regular inversions have long been a hallmark of living in Salt Lake City, but the crisis at the Lake threatens to make this situation significantly worse.
5. As UPHE and partner groups noted in our 2025 report, *Downwind: How Failed Great Salt Lake Water Policy and Toxic Dust Create Generational Debt and Jeopardize Utah’s Future* (based on 18 months of research and the consultation of some 577 published references), we can say with assurance that the Lake’s decline is largely tied to State actions that have led to the unsustainable diversion of water that should naturally flow into the Great Salt Lake. As more water is diverted away upstream, inflows to the Lake diminish, and the Lake level falls. As the Lake’s elevation shrinks, more and more lakebed is exposed. Dangerous sediments that are stored in the Lakebed are then unsettled by wind and blown into surrounding communities, harming air quality and posing a grave risk to human health. If excessive and sustainable upstream diversions and harmful State actions continue, still more lakebed will be exposed, endangering many lives and costing the State millions of dollars per year in healthcare and mitigation.

6. On February 23, 2026, I learned that the State of Utah had filed a “notice to convene a panel of three district court judges” in our public trust suit, pursuant to a new Utah law, H.B. 392 and its accompanying S.J.R. 5. As I understand it, this law gives the State of Utah (and only the State of Utah) the absolute right to remove our suit from the judge who has been overseeing it for more than two years, Judge Laura Scott, and instead have it assigned to a brand-new three-judge panel.

7. The notice filed under H.B. 392 and its accompanying S.J.R. 5 threatens to irreparably harm UPHE’s interests (and, by consequence, the broader public health of Utah). This law entitles the State to transfer our case to an unconstitutional “panel,” depriving us of our constitutional right to have this case heard by a competent court. According to the law, we cannot challenge this “notice,” and in fact Judge Scott can’t review it either—or, indeed, take “any further action” in our case. This too deprives us of due process and the rights we are guaranteed under the Utah constitution.

8. The State’s attempt to apply these laws to this case introduces significant uncertainty and delay. First and foremost, there is a pending motion for judgment on the pleadings in our case. Our attorneys have fully briefed that motion, and UPHE members and supporters were planning to attend the hearing on this motion on March 11, 2026. Because of State Defendants’ notice, however, that hearing has already been cancelled, and now we’re not certain when it can or will be rescheduled. This delays the resolution of an important motion, and therefore the entire case. It also risks taking this motion—and the entire case—out of the hands of the judge who knows our case and the legal issues deeply, has particular expertise and experience in water law, and instead assigning them to new judges who are not familiar with the case (and may not live near the Great Salt Lake).

9. This delay interferes with our constitutional rights. But it also threatens irreparable harm to UPHE’s animating concern and core mission: protecting the public health of Utah and Utahns.

10. Every day in which unsustainable diversions, approved and overseen by the State, continue to desiccate the Great Salt Lake, the public health threat grows. As Judge Scott already recognized, “Exposure of the lakebed results in the emission of harmful lakebed dust pollution, which

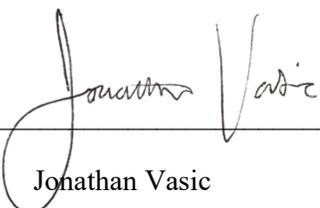
creates a public health hazard.” Introducing further delay and uncertainty into a lawsuit that has already been ongoing for more than two years is an unacceptable threat to our state’s public health.

11. It is also a significant threat. As UPHE and partner groups wrote *Downwind*, the vast majority of studies from around the world confirm “adverse health effects from dust,” especially dust from dried up lake beds. In one meta-review of epidemiological studies of populations near dried-up lakes, 17 of 22 studies found adverse health impacts. These health impacts include, but are certainly not limited to, cancer, heart disease, liver disease, reproductive dysfunction, neurologic diseases, cognitive impairment, premature birth, birth defects, and cerebral palsy. It is hard to overstate the threat introduced by a law that will add delay and uncertainty to an already time-consuming legal process. The harm to UPHE’s work and core mission—and to the health and future prospects of all Utahns—is profound and irreparable. Delay of cleaner air is health protection denied, especially damaging for those at the earliest stages of life, i.e., fetuses, neonates, infants, and children, as permanent harm can be done to organ development that increases the lifetime risk of multiple chronic diseases and shortened life expectancy.

12. This threat is exacerbated by projections that the coming year will be a “bad” year for the Great Salt Lake. The Lake’s south arm ended 2025 at just 4,191 feet above elevation, which is the third-lowest end-of-year level ever recorded. Further, the Great Salt Lake relies on snowmelt reaching its tributary rivers and then flowing into the Lake, but a recent report in the *Salt Lake Tribune* revealed that the Provo and Jordan river basins have snowpack that’s at just 68 percent of normal; all told, the *Tribune* said the snowpack “paints a pretty dismal picture.” This is not the time, therefore, to introduce delay and uncertainty into our case, much less through unconstitutional means.

I certify under penalty of perjury, in accordance with the laws of the State of Utah, and to the best of my knowledge, that the foregoing is correct and true.

Executed on the 24th day of February, 2026, in Salt Lake City, Utah.

  
Jonathan Vasic