

No. 20200118-SC

IN THE
SUPREME COURT OF THE STATE OF UTAH

SALT LAKE CITY CORPORATION
Appellant

v.

UTAH INLAND PORT AUTHORITY, STATE OF UTAH,
GARY R. HERBERT, AND SEAN D. REYES
Appellees

**BRIEF OF AMICI CURIAE BEAVER COUNTY, BOX ELDER COUNTY, CARBON
COUNTY, DAVIS COUNTY, DUCHESNE COUNTY, EMERY COUNTY,
GARFIELD COUNTY, IRON COUNTY, JUAB COUNTY, KANE COUNTY,
MILLARD COUNTY, PIUTE COUNTY, SANPETE COUNTY, SEVIER COUNTY,
TOOELE COUNTY, UINTAH COUNTY, UTAH COUNTY, WASHINGTON
COUNTY, WAYNE COUNTY AND WEBER COUNTY, UTAH IN SUPPORT OF
APPELLEES**

On appeal from the Third Judicial District Court, Salt Lake County,
Honorable James Blanch, District Court No. 190902057

Samantha J. Slark
Catherine L. Brabson
SALT LAKE CITY ATTORNEY'S
OFFICE
451 South State Street, Suite 505A
Salt Lake City, UT 84114

*Attorneys for Appellant Salt Lake City
Corporation*

J. Mark Ward (4436)
BALANCE RESOURCES
3004 West Sweet Blossom Drive
South Jordan, UT 84095
801-783-7643
mark@balanceresources.org

*Attorney for Amici Curiae
Counties*

Additional Parties and Counsel on Following Page

Additional Parties and Counsel

Evan S. Strassberg
Steven J. Joffe
MICHAEL BEST & FRIEDRICH, LLP
2750 East Cottonwood Parkway Suite 560
Cottonwood Heights, UT 84121

Attorneys for Appellee Utah Inland Port Authority

Jayne L. Blakesley
HAYES GODFREY BELL, P.C.
2118 East 3900 South, Suite 300
Salt Lake City, UT 84124-1725

*Attorney for Amici Curiae Law Professors and
International Municipal Lawyers Association*

Evangeline A.Z Burbidge
LEWIS & LEWELLYN, LLP
601 Montgomery Street, Suite 2000
San Francisco, CA 94111

Michal D. Zimmerman
Troy L. Booher
341 South Main Street, Fourth Floor
Salt Lake City, UT 84111

Cameron Diehl
UTAH LEAGUE OF CITIES AND TOWNS
50 South 600 East, Suite 150
Salt Lake City, UT 84102

*Attorneys for Amicus Curiae Utah League
of Cities and Towns*

Melissa A Holyoak
Utah Solicitor General
Stanford E. Purser
Deputy Solicitor General
David N. Wolf
Lance Sorenson
Assistant Attorneys General
UTAH.ATTORNEY. GENERAL'S
OFFICE
PO BOX 140856
Salt Lake City, UT 84114

*Attorneys for Appellees State of
Utah, Gary R. Herbert and
Sean D. Reyes*

Current and Former Parties

Appellant

Plaintiff Salt Lake City Corporation, represented by Samantha J. Slark of the Salt Lake City Attorney's Office

Appellees

Defendant Utah Inland Port Authority, represented by Evan S. Strassberg and Steven J. Joffe of Michael Best & Friedrich, LLP

Defendants State of Utah; Gary R. Herbert, in his official capacity as the Governor of the State of Utah; and Sean D. Reyes, in his official capacity as the Attorney General of the State of Utah, represented by Melissa A. Holyoak, Stanford E. Purser, David N. Wolf and Lance Sorenson of the Utah Attorney General's Office

Amici Curiae

Beaver County, Box Elder County, Carbon County, Davis County, Duchesne County, Emery County, Garfield County, Iron County, Juab County, Kane County, Millard County, Piute County, Sanpete County, Sevier County, Tooele County, Uintah County, Utah County, Washington County, Wayne County, and Weber County, Utah, represented by J. Mark Ward of Balance Resources

Utah League of Cities and Towns, represented by Evangeline A.Z. Burbidge of Lewis & Llewellyn LLP; Michael D. Zimmerman ad Troy L. Booher of Zimmerman Booher; and Cameron Diehl of the Utah League of Cities and Towns

Law Professors and International Municipal Lawyers Association, represented by Jayme L. Blakesley of Hayes Godfrey Bell, P.C.

Parties Below Not Parties to the Appeal:

None

Table of Contents

Current and Former Parties.....	i
Table of Authorities.....	iii
Introduction.....	1
Identification of Amici Curiae and Statement of Interest in the Issue Presented.....	1
Argument	
The District Court Correctly Determined That the Utah Inland Port Authority Act Is Sufficiently Infused with a Statewide Interest So as to Not Run Afoul of the Utah Constitution’s “Ripper Clause.”	2
A. What the District Court Did.....	2
B. Why the District Court Made the “State Interest” Call Correctly.....	4
Conclusion.....	12
Certificate of Compliance.....	13
Certificate of Service.....	14

Table of Authorities

Cases

<i>City of West Jordan v. Utah State Ret. Bd.</i> , 767 P.2d 530 (Utah 1988)	3, 4
<i>Richards v. Cox</i> , 2019 UT 57, 450 P.3d 1074	2
<i>Univ. of Utah v. Shurtleff</i> , 2006 UT 51, 144 P.3d 1109 (Utah 1990)	2

Constitutional Provisions

Utah Const. Art. VI, § 28.....	3
--------------------------------	---

Statutes

Utah Inland Port Authority Act, Utah Code § 11-58-101, <i>et seq.</i> (201.....	1, 8, 9, 10, 11
Utah Code § 63A-5-225(7).....	9

Rules

Utah R. App. P. 21(h).....	13
Utah R. App. P. 24(g)(1), (2).....	13

Other

Senate Bill (SB) 234 (4 th Substitute) 2018 Leg. Gen. Sess. (2018 Utah)	8
--	---

Introduction

This lawsuit and appeal were filed and pursued based on Appellant Salt Lake City Corporation's pretension to an imagined, exclusively local municipal issue. But there is an elephant in the kitchen. Appellant cannot rationally deny it. It is the statewide roar, as it were, of approval and anticipation for the Utah Inland Port Authority Act, Utah Code §§ 11-58-101, *et seq.* (2018) (the Act) with its planned multi-modal regional and international logistics, transportation and distribution hub in Salt Lake City, West Valley City and Magna and its anticipated satellite ports in other parts of the State. It is unbelievable to County Amici, the notion that this is just a matter of Salt Lake centric, local municipal interest. The twenty Amici Counties will please be excused, but the fact they stepped forward from up and down the Wasatch Front and throughout rural and other urban parts of the State to submit this amici curiae brief, bespeaks an unmistakable infusion of statewide interest in and support for the Act. Amici county governments are keen to see this legislative vision and project through.

Identification of Amici Curiae and Statement of Interest in the Issue Presented

Amici Curiae are the governments of Beaver County, Box Elder County, Carbon County, Davis County, Duchesne County, Emery County, Garfield County, Iron County, Juab County, Kane County, Millard County, Piute County, Sanpete County, Sevier County, Tooele County, Uintah County, Utah County, Washington County, Wayne County, and Weber County, Utah (Amici Counties). They span the Wasatch front (sans Appellant) from Box Elder to Juab, the I-15 corridor from state line to state line, the

prodigious oil and gas fields and coal and oil shale deposits of the Uintah Basin and Carbon and Emery Counties, and the other significant natural resources and industries of central and southern Utah. The Utah Inland Port will greatly enhance, for all Amici Counties, the efficient movement of state domestic product into the regional, national and international flow of commerce. This synergy will only increase with the anticipated satellite ports around the State as envisioned by the Act, all integral to the main hub system. What the State of Utah through its Legislature has undertaken with this Act may arguably be the most important economic development in Utah history. No single county, municipality, special service district, special commission or other State political subdivision could put this together. It is necessarily a statewide vision, made real by the statewide lawmaking body, to harness and synergize Utah’s resources, human capital and industry statewide. Amici Counties are grateful and it is why they are here.

Argument

The District Court Correctly Determined That the Utah Inland Port Authority Act Is Sufficiently Infused with a Statewide Interest So as to Not Run Afoul of the Utah Constitution’s “Ripper Clause.”

A. What the District Court Did

In weighing Appellant’s constitutional challenges to the Act, the district court correctly heeded this Court’s admonition to “presume the statute to be constitutional” when confronted with a constitutional challenge to it, “resolving any reasonable doubts in favor of constitutionality.” *Richards v. Cox* 2019 UT 57 ¶ 39, 450 P.3d 1074 (quoting *Univ. of Utah v. Shurtleff*, 2006 UT 51, ¶ 30, 144 P.3d 1109). See *Memorandum*

Decision and Order of January 8, 2020, Third Judicial District Court, Case No. 190902057 (district court order) in Record of Appeal (ROA) at 1489, n.1. The district court correctly recognized that City of West Jordan v. Utah State Retirement Board, 767 P.2d 530 (Utah 1988) “remains valid authority that this court must follow.” ROA at 1490, 1506-07.

The Utah Constitution, Art. VI § 28, the so-called “Ripper Clause,” states: “The Legislature shall not delegate to any special commission or association, any power to make, supervise, or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capital site, or to perform any municipal functions.” The district court correctly determined that *West Jordan* construed the Ripper Clause, to prohibit only those legislative measures that delegate, as opposed to mandate, municipal function powers to a special commission or similar entity, unless such delegations are sufficiently infused with a “state interest” as opposed to an “exclusively local interest.” ROA at, *e.g.*, 490, (citing and quoting *West Jordan* at 533, 534).

Appellees amply demonstrate in their filings why the district court correctly determined, in the first instance, that the Utah Inland Port Authority (Authority) is not a “special commission” nor did the Act “delegate” any municipality’s powers to the Authority, but rather the Act “mandated” to the Authority certain limited powers straight out of the Legislature’s plenary authority to do so, thus rendering the Ripper Clause inapplicable. Suffice it for County Amici to simply add this correct characterization of *West Jordan* by the district court:

Also, and very importantly for purposes of this case, the Court clarified in *West Jordan*, that legislative enactments fall outside the ambit of the Ripper Clause unless they involve “delegation” of activities of a special commission, private corporation, or Association. “Article VI, section 28 prohibits *only* the legislature’s *delegating* certain powers relative to municipal matters to a special commission.” *Id.* at 533 (emphasis added). Thus the Ripper Clause does not prohibit legislative interference with municipal activities even those that are significantly disruptive. Unless a legislative mandate involves the “delegation” of an activity to a special commission or other similar entity, as opposed to direct interference with an activity, the legislation does not implicate the Ripper Clause.

ROA at 1508.

Amici Counties’ main focus is on what the district court did next. To complete its analysis for Ripper Clause purposes, the district court indulged in and disposed of two fictions, holding that even if the Act *had* “delegated,” not directly mandated, municipal powers to the Authority, and even if the Act *had* created the Authority to be a “special commission,” again two fictions, still the Ripper Clause is inapplicable under the authority of *West Jordan*, because such delegations are sufficiently infused with a “state interest,” not an “exclusively local interest.”

B. Why the District Court Made the “State Interest” Call Correctly

In regard to *West Jordan*’s three-prong test to determine whether any function of the Authority is a state function or purely a municipal one for Ripper Clause purposes, the district court correctly observed that “nothing in the *West Jordan* opinion prohibits the court simply from assessing directly whether the Act is “sufficiently infused” with a state interest to pass muster under the Ripper Clause.” ROA at 1513-14. Proceeding thusly, the district court correctly found the appellees made a compelling showing that

the Act was sufficiently infused with a state interest to place it beyond the Ripper Clause's reach.

There are ample undisputed facts of record conclude that the district court made the correct decision. Consider first that the Act's statement of purpose and statement of policies and objectives are replete with references to a compelling state level interest. The district court could not rationally conclude otherwise. The Act's statement of purpose at Utah Code § 11-58-201(3) provides:

(a) The purpose of the authority is to fulfill the *statewide* public purpose of working in concert with applicable state and local government *entities*, property owners and other private parties, and other stakeholders to encourage and facilitate development of the authority jurisdictional land and land in other authority project areas to *maximize the long-term economic and other benefit for the state*, consistent with the strategies, policies, and objectives described in this chapter, including:

(i) the development of inland port uses on the authority jurisdictional land and on land in other authority project areas;

(ii) the development of infrastructure to support inland port uses and associated uses on the authority jurisdictional land and on land in other authority project areas; and

(iii) other development on the authority jurisdictional land and on land in other authority project areas.

(b) The duties and responsibilities of the authority under this chapter are *beyond the scope and capacity of a municipality*, which has many other responsibilities and functions that appropriately command the attention and resources of the municipality, and are *not municipal functions of purely local concern but are matters of regional and statewide concern, importance, interest, and impact*, due to multiple factors, including:

(i) the strategic location of the authority jurisdictional land in proximity to significant existing and potential transportation infrastructure, including *infrastructure provided and maintained by the state*, conducive to facilitating regional, national, and international trade and the businesses and facilities that promote and complement that trade;

(ii) *the enormous potential for regional and statewide economic and other benefit* that can come from the appropriate development of the authority jurisdictional land, including the establishment of a thriving inland port;

(iii) *the regional and statewide impact* that the development of the authority jurisdictional land will have; and

(iv) *the considerable investment the state is making* in connection with the development of the new correctional facility and associated infrastructure located on the authority jurisdictional land.

(c) *The authority is the mechanism the state chooses to focus resources and efforts on behalf of the state to ensure that the regional and statewide interests, concerns, and purposes described in this Subsection (3) are properly addressed from more of a statewide perspective than any municipality can provide.*

(Emphasis added.)

The Authority's policies and objectives expressed at Utah Code § 11-58-203(1) include:

(a) maximize long-term economic benefits to the area, the *region, and the state*;

(b) maximize the creation of high-quality jobs;

(c) respect and maintain sensitivity to the unique natural environment of areas in proximity to the authority jurisdictional land and land in other authority project areas;

(d) improve air quality and minimize resource use;

(e) respect existing land use and other agreements and arrangements between property owners within the authority jurisdictional land and within other authority project areas and applicable governmental authorities;

(f) promote and encourage development and uses that are compatible with or complement uses in areas in proximity to the authority jurisdictional land or land in other authority project areas;

(g) take advantage of the authority jurisdictional land's strategic location and other features, including the proximity to transportation and

other infrastructure and facilities, that make the authority jurisdictional land attractive to:

- (i) businesses that engage in *regional, national, or international trade*; and
- (ii) businesses that complement businesses engaged in *regional, national, or international trade*;
- (h) facilitate the transportation of goods;
- (i) coordinate trade-related opportunities to *export Utah products nationally and internationally*;
- (j) support and promote land uses on the authority jurisdictional land and land in other authority project areas that generate economic development, including rural economic development;
- (k) establish a project of *regional significance*;
- (l) facilitate an intermodal facility;
- (m) support uses of the authority jurisdictional land for inland port uses, including warehousing, light manufacturing, and distribution facilities;
- (n) facilitate an increase in trade *in the region and in global commerce*;
- (o) promote the development of facilities that *help connect local businesses to potential foreign markets for exporting or that increase foreign direct investment*;
- (p) encourage all class 5 through 8 designated truck traffic entering the authority jurisdictional land to meet the heavy-duty highway compression-ignition diesel engine and urban bus exhaust emission standards for year 2007 and later; and
- (q) encourage the development and use of cost-efficient renewable energy in project areas.

Emphasis added.

Consider also these twenty-seven undisputed facts put before the district court by Defendants/Appellees' in their cross motion for summary judgment and opposition to Plaintiffs/Appellants' motion for summary judgment, (*quoting the ROA at 898-901*):

1. In December 2017, the Utah Governor’s Office of Economic Development received a feasibility analysis for a potential Utah Inland Port (the “Feasibility Analysis”).
2. The Feasibility Analysis was the latest of multiple studies over the past 40 years to analyze the practical feasibility of an Inland Port in and around the Salt Lake City area.
3. The Feasibility Analysis found that “[b]ecause of the State’s business-friendly orientation, underlying competitiveness, and it’s logistics connectivity, . . . a well-executed and well-structured logistics and logistics-enabled manufacturing project of scale would be quite successful in Utah.”
4. The feasibility analysis recommended that a “port-authority like entity should be created” to maximize the benefit to Utah’s economic future.
5. The Utah Inland Port Authority Act was passed and signed into law during the 2018 General Session. (S.B. 234 (4th Substitute) 2018 Leg. Gen. Sess. (2018 Utah).)
6. The Port Authority is a nonprofit, public corporation. Utah Code § 11-58-201(2).
7. The Legislature determined that the development of an Inland Port fulfills a statewide public purpose. Utah Code § 11-58-201(3)(a).
8. The Legislature determined that the duties and responsibility of the Port Authority are beyond the scope and capacity of a municipality. Utah Code § 11-58-201(3)(b).

9. The Legislature determined that the duties and responsibilities of the Port Authority are not municipal functions of purely local concern; rather, they are matters of regional and statewide concern. *Id.*

10. The Legislature determined that the Port Authority's jurisdictional land ("authority jurisdictional land") is in a strategic location for regional and statewide economic and other benefit. Utah Code §11-58-201(3)(b)(i)-(ii).

11. The State is making a considerable investment in the development of infrastructure on the authority jurisdictional land associated with the new correctional facility. Utah Code § 11-58-201(3)(b)(iv).

12. That valuable infrastructure is paid for by the State, not the City. Utah Code § 63A-5-225(7).

13. The investment of infrastructure to support the development of the new correctional facility site benefits all surrounding property owners.

14. The State's infrastructure investment in the area results in property value increases.

15. The Act authorizes the Port Authority to establish a foreign trade zone. Utah Code § 11-58-202(1)(d).

16. The Port Authority's land use regulation power is limited. The Port Authority "does not have and may not exercise any powers relating to regulation of land uses on the authority jurisdictional land" except as provided in Part 4 of the Act. Utah Code § 11-58- 205(1).

17. The Act provides that a “municipality whose boundary includes authority jurisdictional land shall provide the same municipal services to the area of the municipality that is within the authority jurisdictional land as the municipality provides to other areas of the municipality with similar zoning and a similar development level.” Utah Code § 11-58- 205(7)(a)(i).

18. The Act provides that the Port Authority shall share with the municipality providing services an appropriate amount of the tax differential to cover the cost of providing municipal services. Utah Code § 11-58-205(7)(b)(i).

19. The Act also provides that the authority shall share with the municipality some of the increase in property tax differential that occurs over time. Utah Code § 11-58-205(8)(a).

20. The Act mandates that the Port Authority’s board (the “Board”) meet with taxing entities every other year to review and reassess the amount of tax differential it retains and shares. Utah Code § 11-58-205(9) & (10).

21. The Act provides that voting members of the Board, nonvoting members of the Board and employees of the Port Authority may not receive direct financial benefit from the development of authority jurisdictional land. Utah Code § 11-58-304(5)(a).

22. The Act authorizes the Board to establish an appeals panel consisting of the Board or one or more individuals designated by the Board (“Appeals Panel”). Utah Code § 11-58- 402.

23. The Act provides that the Appeals Panel may consider appeals from a municipality's Inland Port administrative land use decision (administrative land use decisions regarding parcels located within the authority jurisdictional land). Utah Code § 11-58-401 & 403.

24. The Act limits the Appeals Panel's authority. The Appeals Panel may not consider an appeal of a municipality's inland port land use decision to the extent that the appeal involves municipal requirements concerning the construction of public utilities, the administration of construction codes, the permitting and building plan review for a development project (unless the appeal involves the denial an inland port use application), the municipality's enforcement of a violation of municipal code provision (unless the provision is inconsistent with the purposes of this chapter), and fees or fines. Utah Code § 11-58-403(1)(b).

25. The Act also mandates certain procedural requirements the Appeals Panel must follow. *See* Utah Code § 11-58-403(3)-(4).

26. The Act authorizes the Appeals Panel to rule in favor of a person adversely affected by the municipality's Inland Port land use decision if, inter alia, the Appeals Panel determines the municipality's Inland Port land use decision is clearly contrary to the policies and objectives of the Act. Utah Code § 11-58-403(5)(b)(i).

27. The Act authorizes a person adversely affected by a decision of the Appeals Panel to seek judicial review. Utah Code § 11-58-403(7)(a).

Conclusion

The very fact that compelled Amici Counties to seek leave to file this brief, and the very fact that defeats Appellant’s constitutional challenge under the Ripper Clause,¹ are one and the same: The undisputed *state interest* at play here, as opposed to the unfounded notion of an exclusively local Salt Lake-centric municipal interest that finds no support in the record or case authorities. The Utah Inland Port Authority Act, the Inland Port Authority it establishes, and the eventual expansion into satellite ports that the Act anticipates, are all infused by, built around and animated by, the State’s interest.

For this and all other issues on appeal, Amici Counties join in and support the points and authorities argued by the Appellees, and respectfully urge the Court to affirm the Memorandum Decision and Order of the district court.

DATED this 30th day of December, 2020.

/s/ J Mark Ward

J. Mark Ward

BALANCE RESOURCES

Attorney for Amici Curiae Beaver County, Box Elder County, Carbon County, Davis County, Duchesne County, Emery County, Garfield County, Iron County, Juab County, Kane County, Millard County, Piute County, Sanpete County, Sevier County, Tooele County, Uintah County, Utah County, Washington County, Wayne County, and Weber County, Utah

¹ Not to mention the Act “delegated” nothing to a special commission but instead directly “mandated” something to a public, nonprofit political subdivision.

Certificate of Compliance

I hereby certify that:

1. This brief complies with the word limits set forth in Utah R. App. P. 24(g)(1) because this brief contains 3,622 words, excluding the parts of the brief exempted by Utah R. App. P. 24(g)(2).
2. This brief complies with Utah R. App. P. 21(h) regarding public and non-public filings.

DATED this 30th day of December, 2020.

/s/ J Mark Ward

Certificate of Service

This is to certify that on the 30th day of December, 2020, I caused the Brief of Amicus Curiae Utah League of Cities and Towns in Support of Appellant to be served via email on:

Samantha J. Slark (Samantha.Slark@slcgov.com)
SALT LAKE CITY ATTORNEY'S OFFICE
451 South State Street, Suite 505A
Salt Lake City, UT 84114

Attorneys for Appellant Salt Lake City Corporation

Evan S. Strassberg (esstrassberg@michaelbest.com)
Steven J. Joffe (sjoffe@michaelbest.com)
MICHAEL BEST & FRIEDRICH, LLP
2750 East Cottonwood Parkway, Suite 560
Cottonwood Heights, UT 84121

Attorneys for Appellee Utah Inland Port Authority

Stanford E. Purser (spurser@agutah.gov)
David N. Wolf (dnwolf@agutah.gov)
Lance Sorenson (lancesorenson@agutah.gov)
UTAH ATTORNEY GENERAL'S OFFICE
160 East 300 South, 6th Floor
Salt Lake City, UT 84114

Attorneys for State of Utah, Gary R. Herbert and Sean D. Reyes

Jayne L. Blakesley (jblakesley@hgblaw.net)
HAYES GODFREY BELL, PC
2118 East 3900 South, Suite 300
Salt Lake City, UT 84124-1725

Attorneys for Amici Curiae Law Professors and International Municipal Lawyers Association

Evangeline A.Z Burbidge (eburbidge@lewislewellyn.com)
LEWIS & LEWELLYN, LLP
601 Montgomery Street, Suite 2000
San Francisco, CA 94111

Michal D. Zimmerman (mzimmerman@zbappeals.com)
Troy L. Booher (tbooher@zbappeals.com)
341 South Main Street, Fourth Floor
Salt Lake City, UT 84111

Cameron Diehl (cdiehl@ulct.org)
UTAH LEAGUE OF CITIES AND TOWNS
50 South 600 East, Suite 150
Salt Lake City, UT 84102

Attorneys for Amicus Curiae Utah League of Cities and Towns

/s/ J Mark Ward