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UTAH APPELLATE COURTS
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No. 20200118-SC

IN THE
SUPREME COURT OF THE STATE OF UTAH

SALT LAKE CITY CORPORATION,

Plaintiff and Appellant,

v.

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

Defendants and Appellees.

BRIEF OF APPELLEE UTAH INLAND PORT AUTHORITY

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

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CURRENT AND FORMER PARTIES

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Parties to the district court proceedings:

There were no parties in the district court proceedings who are not parties to this appeal.

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INTRODUCTION

The creation of the Utah Inland Port Authority (the "UIPA") represents "one of the most important spurs to long-term economic development in Utah's history."[1] The legislation creating the UIPA (the "Act") passed the Utah legislature with the overwhelming support of legislators from across the State—a recognition of the massive and decidedly state-wide impact that an inland port would have and the opportunity it presented for economic growth throughout Utah. The district court found, and neither the City nor the amici[2] can legitimately dispute, that "the inland port is a massive, state-wide project" that, according to the legislature, "may create 24,000 jobs throughout Utah." Memorandum Decision and Order (the "Order") at 27-28 (R. 1514-15). The state-wide impact of the inland port is further evidenced by the fact that twenty of Utah's twenty-nine counties have sought leave to file an amicus brief regarding the benefits the inland port is expected to create for Utahns far outside the boundaries of Salt Lake City and requesting affirmance of the district court's decision.

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[1] Gov. Gary Herbert, FACEBOOK (Jul. 16, 2018), https://www.facebook.com/GovGaryHerbert/posts/the-establishment-of-the-utah-inland-port-authority-this-past-legislative-sessio/1865877920099981/

[2] The "amici" will refer collectively to (1) Amicus Curiae Law Professors and International Municipal Lawyers Association (the "IMLA"), and (2) Amicus Curiae Utah League of Cities and Towns (the "League").

Because the UIPA will have statewide impact, the district court was bound to rule as it did and to reject the City's Ripper Clause[3] challenge to the Act. In the district court's words, once it found that the UIPA is "'sufficiently infused' with a state interest," and does not delegate "activities of 'exclusively local' interest," it was "obligated to follow" the "analytical approach" this Court established in *City of West Jordan v. Utah State Retirement Board*, 767 P.2d 530 (Utah 1988). Order at 19-20 (R. 1506-07).

On appeal, the City does not contend that this Court can or should invalidate the Act if it finds the UIPA serves a statewide purpose. Instead, the City tries to claw back its admission that the UIPA serves a statewide purpose and ignores reality by arguing that no such purpose can be found. But even without the City's admission, the statewide purpose and impact of the UIPA is apparent in, among other things, the extensive catalog of regional and statewide objectives set forth in the Act. *See, e.g.*, Utah Code Ann. § 11-58-203(1) (identifying seventeen "policies and objectives" of the UIPA, including maximizing "long-term economic benefits to the area, the region, and the state"

[3] The "Ripper Clause" refers to Article VI, Section 28 of the Utah Constitution. Although the Constitution itself never uses this phrase, courts and practitioners have widely adopted its use, which the UIPA uses throughout this brief. When referring specifically to the relevant provision in Utah's Constitution, the UIPA uses the capitalized phrase "Ripper Clause." When referring to similar or identical provisions appearing on other states' constitutions the UIPA uses the lower-case "ripper clause."

and "the creation of high-quality jobs"). The importance of this issue is manifest because no Utah appellate court has ever struck down legislation found to serve a statewide purpose on the basis of a Ripper Clause violation.

Recognizing this threshold problem with the City's position, the amici ask this Court to do one of two things to invalidate the Act. First, they attempt to force a decidedly square peg into a round hole by arguing that the Act is more like legislation that has been struck down by courts inside and outside this State. But it is apparent that statutes bearing any resemblance to the Act have uniformly survived ripper clause challenges. Second, the League suggests this Court should abandon a century of Ripper Clause jurisprudence. However, the League's position is based on a myopic analysis of only one of several phrases used in the determinative constitutional provisions and does not come even close to satisfying the standard for abandoning precedent.

The UIPA joins in all of the State's arguments in its concurrently filed brief and asks this Court to affirm the district court's Order in its entirety on the basis of those arguments. Rather than repeat those arguments, this brief addresses arguments raised in the amicus briefs filed in support of the City's appeal.[4]

[4] Although the "League of Cities and Towns" has filed an amicus brief, no Utah city has formally joined the City's appeal, including West Valley City and Magna, both of which are directly impacted by the UIPA's creation. In contrast, 20 of Utah's 29 counties have—in their own names and on their own behalf—

STATEMENT OF ISSUES

Issue 1: Did the district court properly conclude that the Utah Constitution's Ripper Clause does not prohibit Utah Inland Port Authority Act provisions that:

a. allocate property tax differential within, and mostly caused by, the Inland Port development,

b. require cities with land inside the Inland Port area to "allow an inland port as a permitted or conditional use, subject to standards" determined by the cities and consistent with the Act's policies and objectives, and

c. forbid cities with land inside the Inland Port area from barring the "transporting, unloading, loading, transfer, or temporary storage of natural resources."

Preservation: Salt Lake City preserved this issue, R. 605-29, and the district court addressed it. R. 1500-28.

Standard of review: The Court reviews "the constitutionality of a statute for correctness, giving no deference" to the district court's determination. *State v. Greenwood*, 2012 UT 48, ¶ 26, 297 P.3d 556.

Issue 2: Did the district court properly conclude that the Utah Inland Port Authority Act does not violate the Uniform Operations Clause?

Preservation: Salt Lake City preserved this issue, R. 629-35, and the district court addressed it. R. 1532-37.

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sought leave to file an amicus brief supporting the State's and the UIPA's position in this appeal.

Standard of review: The Court reviews "the constitutionality of a statute for correctness, giving no deference" to the district court's determination. *Greenwood*, 2012 UT 48, ¶ 26.

STATEMENT OF THE CASE

In its brief, the State sets forth a comprehensive statement of the case. To avoid undue and unnecessary repetition, the UIPA hereby incorporates by reference the State's statement of the case as if fully set forth herein.

SUMMARY OF THE ARGUMENT

For the reasons discussed in detail in the State's brief, the arguments raised by the City should be uniformly rejected and the district court's order confirming the constitutionality of the Act should be affirmed. The district court's 51-page Order meticulously applied the analytical framework that this Court articulated in *City of West Jordan* and concluded that the Act did not run afoul of the Ripper Clause. That decision was correct.

A. The League's Brief

The League likely recognizes that reversal of the district court's Order is, as a practical matter, impossible unless this Court modifies or completely abandons its *City of West Jordan* framework. Indeed, the League does not challenge the district court's conclusion that the Act, and the UIPA it created, are strongly infused with a statewide purpose, or that the existence of such a

purpose has been the decisive factor between the laws this Court has struck down on Ripper Clause grounds and those it has not.

The League's unstated but inescapable goal is to persuade this Court to overrule *City of West Jordan* and to find that every statute that usurps or delegates any function a municipality has historically performed is unconstitutional under the Ripper Clause. The League suggests this result is appropriate based principally on its incomplete corpus linguistics analysis of the phrase "municipal functions." But the League's analysis is myopic and unhelpful because it does not analyze other key terms in the Ripper Clause, reveals nothing other than a geographic distinction between municipal and non-municipal functions, and makes no attempt whatsoever to analyze the fundamental reason why so-called "ripper clauses" came into existence.

The League's analysis is also incomplete because it fails to address at least two questions that are fundamental to the constitutional challenges in this case: whether the UIPA is a "special commission," and whether the Act improperly "delegates" any functions of any kind. With respect to the first question, the League never mentions that the UIPA has been designated as a "political subdivision"—a characterization that has its own constitutional significance. Specifically, in 2000, the Utah Constitution was amended to include Article XI, Section 8, which authorizes the legislature to

> by statute provide for the establishment of political subdivisions of the State, or other governmental entities, in addition to counties, cities, towns, school districts, and special service districts, to provide services and facilities as provided by statute. Those other political subdivisions of the State or other governmental entities may exercise those powers and perform those functions that are provided by statute.

Utah Const. Art. XI, § 8. Nothing in the text of that amendment suggests that a "political subdivision" was meant to be constrained by the Ripper Clause or that a "political subdivision" could also be a "special commission" for Ripper Clause purposes.

With respect to whether the Act "delegates" any functions to the UIPA, the League is strangely silent, but it undoubtedly recognizes that the word "delegate," when used as a verb, has a plain and clear meaning that is simply not implicated when the State *directs* specific actions, such as the reallocation of property tax increments.

Finally, the League's suggestion that this Court abandon its long-standing Ripper Clause jurisprudence is unaccompanied by and recognition or analysis of the importance of stare decisis. Because the City has not asked this Court to overrule or modify the *City of West Jordan* framework, the League's omission of a stare decisis analysis means that the issue has not been briefed or properly presented for this Court's consideration. Regardless, even a cursory application of the factors this Court has articulated for determining when precedent may be

abandoned demonstrates conclusively that *City of West Jordan* should remain good law.

B. The IMLA's Brief

The IMLA largely parrots the City's arguments but goes further in attempting to draw parallels between this case and ripper clause cases decided in other jurisdictions. But when each of those cases is examined, clear distinctions become apparent. Most importantly, in each of those cases, the legislature was taking from the municipality a uniquely local function and delegating the power to perform that function to a third-party. That is not the case with respect to the Act or the UIPA. Moreover, the IMLA ignores highly analogous case law from other jurisdictions confirming that courts refuse to strike down legislation that seeks to address issues extending beyond the borders of a single municipality, which is exactly what the Act does.

The IMLA also contends that "the Act violates the Ripper Clause by disrupting the [City's] ability to carry our basic municipal functions" in two ways: (1) interfering with "the City's zoning and land use planning structure and procedures" and (2) "delegating to the [UIPA] the power to develop infrastructure within the [UIPA's] jurisdictional lands . . . ." IMLA Brief at 10-11. These arguments are plainly unavailing because the Act was amended to remove the UIPA's appeal authority over municipal zoning decisions and the Act's

provisions these issues are direct mandates—not delegations of municipal functions to the UIPA.

ARGUMENT

I. THE LEAGUE'S BRIEF

The League presents a "corpus linguistics" analysis of the phrase "municipal function" and contends—based on comments made during the Constitutional Convention that did not relate to the Ripper Clause—that the Act embodies precisely what the Utah Constitution's framers were trying to prevent through the inclusion of the Ripper Clause.[5] In advancing its argument, the League fails to recognize that the Ripper Clause does not apply to the Act and ignores a 2000 amendment to the Utah Constitution that speaks directly to the legislature's authority to delegate authority to political subdivisions like the UIPA.

Because of the 2000 amendment, it is not necessary for this Court to delve into how the Ripper Clause would have been understood at the time the Utah Constitution was enacted. However, even if an understanding of that intent

[5] The League repeats much of the City's arguments regarding the history of Ripper Clause jurisprudence, but it raises no arguments that differ materially from those asserted by the City.[5] Thus, the UIPA incorporates the State's arguments on that issue, which comprehensively address the relevant case law and its application to this case.

were relevant, the League's originalist interpretation of the Ripper Clause would be incomplete and unpersuasive.

A. The Ripper Clause Does Not Apply To The Act Or The UIPA.

The League contends the Act violates the Ripper Clause. But the Ripper Clause does not apply to the Act. The Ripper Clause states that "[t]he Legislature *shall not delegate to any special commission, private corporation 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 capitol site, or to perform any municipal functions." Utah Const. art VI, § 28 (emphasis added). Notably absent from the Ripper Clause is any reference to political subdivisions or public corporations.

In 2000, however, the Utah Constitution was amended to specifically address the legislature's authority to delegate power to political subdivisions. More specifically, Article XI, Section 8 of the Utah Constitution (the "Amendment") authorizes the Legislature to "by statute provide for the establishment of political subdivisions of the State . . . to provide services and facilities as provided by statute." Utah Const. art. XI, § 8. The Amendment further states that political subdivisions "may exercise those powers and perform those functions that are provided by statute." *Id.*

Nothing in the Amendment limits the legislature's authority to delegate "municipal functions" to political subdivisions. And reading such a limitation into the Amendment would place an incredibly onerous limitation on the powers proscribed by the Amendment without any support in its text. Such an interpretation would do violence to the primary rule of constitutional interpretation—to wit, "first and foremost to apply the plain meaning of the text." *Salt Lake City Corp. v. Haik*, 2020 UT 29, ¶ 15, 466 P.3d 178, 182.

Throughout its brief, the League attempts to explain how the framers of the Utah Constitution might have understood the term "municipal function" at the time the Constitution was enacted. That focus is misplaced. The Ripper Clause limits the delegation of "municipal functions" to "special commission[s]" or "private corporation[s] or association[s]." It says absolutely nothing about the delegation of municipal functions to political subdivisions. Accordingly, if the UIPA is a political subdivision and not a special commission—something the League's analysis sheds no light on—the League's focus on the meaning of "municipal function" is unnecessary. So long as this Court determines that the UIPA is a political subdivision, the legislature's delegation of authority to it under the Act is consistent with the powers granted to the legislature through the Amendment and does not implicate the Ripper Clause.

That the UIPA is a political subdivision is beyond dispute.[6] In the Act, the legislature unambiguously designated the UIPA as a "political subdivision of the state." Utah Code Ann. § 11-58-201(2)(b). And the City confirmed this in its Complaint, its First Amended Complaint, and its Motion for Summary Judgment filed in the district court. Complaint ¶ 2 (R. 2); First Amended Complaint ¶ 2 (R. 36); Second Amended Complaint ¶ 2 (R. 437); City's Motion for Summary Judgment, Statement of Undisputed Fact No. 3 (R. 575) ("The Act creates a new, independent, *political subdivision of the State* called the 'Utah Inland Port Authority.'" (emphasis added)); *see also* City's Motion for Summary Judgment, Statement of Fact No. 47 (R. 583) ("The Authority is a newly formed independent, *political subdivision of the State*." (emphasis added)).

Because the UIPA is a political subdivision, it is not a special commission and does not fall within the Ripper Clause's scope. No case that counsel for the

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[6] The City argued below that the UIPA does not constitute a "political subdivision" and thus was not properly designated as such for purposes of Article XI, Section 8. *See* City's Motion for Summary Judgment at 39-45 (R. 599-605). Significantly, although the district court rejected all of the City's arguments under Article XI, Section 8 (Order at 41-43, R. 1528-1530), the City does not challenge that part of the Order on appeal. In fact, Article XI, Section 8 never appears in the City's Brief. Thus, the City has waived any argument that the UIPA was not properly designated as a "political subdivision" that the Legislature may empower as expressly provided in the Utah Constitution. *See Allen v. Friel*, 2008 UT 56, ¶ 8, 194 P.3d 903, 907 (noting long-standing rule that issues "that were not presented in the opening brief are considered waived and will not be considered by the appellate court." (internal quotations and citations omitted)).

UIPA has found—and certainly no case cited by the City or the amici—has ever held that a "political subdivision" can also be a "special commission" for any purpose, including a Ripper Clause analysis. Notably, this Court has distinguished "special commissions" from "quasi-municipal corporations" and suggested that a state-created entity could be one or the other, not both. *See Tribe v. Salt Lake City Corp.*, 540 P.2d 499, 502-503 (Utah 1975).

There is only one case in the LexisNexis database where the phrase "political subdivision" is found within 30 words of the phrase "special commission." In that case, the Colorado Supreme Court noted that it had previously "defined a special commission as a body or association of individuals separate and distinct from the city government; that is created for different purposes, or else created for some individual or limited object not connected with the general administration of municipal affairs." *Anema v. Transit Constr. Authority*, 788 P.2d 1261, 1264 (Colo. 1990) (internal quotation marks omitted). That definition is very similar to the one articulated in *Tribe*: "A special commission is some body or group separate and distinct from municipal government." *Tribe*, 540 P.2d at 502-503. And in *Anema*, the Colorado Supreme Court specifically stated that: "The governing bodies of municipal or quasi-municipal corporations *are not special commissions*." 788 P.2d at 1264 (emphasis added).

That political subdivisions do not fall within the scope of the Ripper Clause is reflected by the absence of any language in the Amendment limiting the delegation of "municipal functions" to political subdivisions. The Amendment was enacted 15 years after nearly every case interpreting or applying the Ripper Clause was decided. Had there been any sense that the State's power over "municipal functions" needed to be curtailed— particularly with respect to political subdivisions—one would not expect to see a constitutional amendment allowing political subdivisions broad authority to "provide services and facilities."

Moreover, the omission of "political subdivisions" and "public corporations" from the Ripper Clause was presumably intentional. At a minimum, if there was any intent when the Amendment was enacted to subject "political subdivisions" to the Ripper Clause, the Amendment could have said so, but it does not. To view this omission as anything other than intentional would assume that the Amendment was created to give with one hand (Article XI Section 8) and take away with another (the Ripper Clause)—an assumption that makes no logical sense.[7]

[7] As the League itself argues in its brief, "[i]f the Legislature wants [certain] power for itself, it must ask the people to amend the Utah Constitution to grant it that power." League Brief at 2. That is precisely what the legislature did with the 2000 Amendment authorizing the legislature to give broad powers to

In sum, because the legislature's power to delegate authority to the UIPA is not restricted by the Ripper Clause, the League's focus on how the phrase "municipal function" in the Ripper Clause would have been understood when the Ripper Clause was enacted is both unnecessary and misplaced.[8]

B. The Court's Ripper Clause Jurisprudence Should Not Be Overturned.

Even if the legislature's power to delegate authority to the UIPA were subject to the Ripper Clause, which it is not, the League's request that this Court abandon its Ripper Clause jurisprudence—a request that the City never makes—should be rejected.

The League introduces its "corpus linguistics" analysis, and attempts to prop up its purported importance to the questions at issue, by characterizing this Court's Ripper Clause jurisprudence as being "limited." It is not clear what the League views as being an ample *quantity* of case law to provide sufficient guidance to resolve a particular issue. And the League seeks to minimize the

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"political subdivisions" without limiting them to those that were never "municipal functions."

[8] The District court did not reach the question of whether the UIPA is a "special commission"—it assumed for the sake of argument that it was but still found no Ripper Clause violation. It also did not directly address the impact of the 2000 Amendments on the issues at hand. Of course, any court considering a constitutional challenge to legislation has a "duty to investigate and, insofar as possible, discover any reasonable avenues by which the statute can be upheld." *Trade Comm'n v. Skaggs Drug Centers, Inc.*, 446 P.2d 958, 962 (Utah 1968).

importance of the case law the district court relied upon, which has guided the legislature in understanding where the lines of constitutionality will be drawn under the Ripper Clause. What the League ultimately advocates is that this Court's Ripper Clause jurisprudence be abandoned because it allegedly does not embody the original intent of the delegates to the Utah Constitutional Convention. However, that position ignores the importance of stare decisis.

As this Court has consistently explained, "the doctrine of stare decisis . . . is a cornerstone of Anglo-American jurisprudence that is crucial to the predictability of the law and the fairness of adjudication." *State v. Thurman*, 846 P.2d 1256, 1269 (Utah 1993). Although stare decisis does not operate as an absolute bar on a court of last resort's deviation from its own precedent, this Court has noted the tendency to "follow the rule of law which it has established in earlier cases, unless clearly convinced that the rule was originally erroneous or is no longer sound because of changing conditions and that more good than harm will come by departing from precedent." *State v. Menzies*, 889 P.2d 393, 399 (Utah 1994).

Here, the League's limited corpus linguistics analysis falls far short of proving that *City of West Jordan's* analysis "was originally erroneous" and the League's originalist argument is not one relying on "changing conditions" that would merit a departure from precedent.

Additionally, this Court has identified "two broad factors that distinguish between weighty precedents and less weighty ones: (1) the persuasiveness of the authority and reasoning on which the precedent was originally based, and (2) how firmly the precedent has become established in the law since it was handed down." *Eldridge v. Johndrow*, 2015 UT 21, ¶ 22, 345 P.3d 553, 557. "The second factor encompasses a variety of considerations, including the age of the precedent, how well it has worked in practice, its consistency with other legal principles, and the extent to which people's reliance on the precedent would create injustice or hardship if it were overturned." *Id.*

Because the League does not even attempt to explain why this Court should disregard its long-established Ripper Clause jurisprudence or how stare decisis should be applied in this case, the Court should not even undertake such an analysis. But even a cursory look at the issue makes clear that both factors weigh decisively against a change in the relevant law.

First, the *City of West Jordan* precedent is extremely strong. The substantive analysis and framework established in *City of West Jordan* were necessary to the Court's decision and was unanimously supported by the justices. *Compare City of West Jordan*, 767 P.2d 530, *with Eldridge v. Johndrow*, 2015 UT 21, ¶¶ 26-27, 345 P.3d 553, 558 (finding the holding in *Pratt v. Prodata, Inc.* was not strong precedent where it was based on the Court's assumption that *Leigh Furniture* was

good law, and only two justices endorsed tortious interference based solely on an "improper purpose").

Furthermore, *City of West Jordan's* reasoning and analysis was followed and applied two years later in *Utah Associated Mun. Power Sys. v. Pub. Serv. Comm'n*, 789 P.2d 298 (Utah 1990). There, in an opinion authored by then-Justice Zimmerman, this Court upheld the statute at issue against a Ripper Clause challenge after stepping through the *City of West Jordan* three-step inquiry. Thus, this Court cemented the importance of that standard for Utah lawmakers and it has not been questioned by this Court in the 30 years since.

Second, the "reliance on precedent" factor weighs strongly against a change in the applicable law. The Utah Legislature and the Governor—the two co-equal branches of the Utah government responsible for drafting, enacting, and implementing the laws of this State—have for decades relied on this Court's well-reasoned precedents in crafting legislation to avoid Ripper Clause invalidation. Substantial state resources have been expended in creating and funding the UIPA with the expectation that a statutory scheme that passes muster under the *City of West Jordan* framework will not be swept out of existence with a sudden sea change in substantive law.

Moreover, even if the Court were inclined to consider overturning its prior precedent, the evidence the League cites in support of its dramatic request—

which the City has never advocated—is inadequate and incomplete for the reasons explained below.

1. The League's Corpus Linguistics Analysis Of The Phrase "Municipal Functions" Is Incomplete And Reveals Nothing Of Consequence.

Although the Ripper Clause contains nearly fifty words, the League undertakes a corpus linguistics analysis of only two of them—"municipal" and "function." The results of the League's analysis of these terms are both unhelpful and dramatically overstated.

According to the League, "the term 'municipal' and its associated functions are distinct from state and national functions." The League acknowledges that this is an obvious point that sheds little light on anything of consequence to this case. Merely acknowledging that such a distinction existed in the 1890s—as it no doubt does today—does not resolve the question of whether the Act violates the Ripper Clause to the extent the Ripper Clause even applies to it.

The League's oversimplistic corpus linguistics analysis also fails to consider the meaning of other key phrases in the Ripper Clause, such as "special privileges," "delegate," and "special commission."[9] *See* Utah Const. art VI, § 28.

[9] The district court did not decide whether the UIPA is a "special commission" but merely assumed that it was and nonetheless upheld the constitutionality of the Act. But this Court may, of course, uphold the constitutionality of legislation

The League's failure to discuss any of these terms renders its attempt to determine how the Ripper Clause would have been understood when it was enacted incomplete, if such a determination is even relevant.

Because the League's corpus linguistics analysis addresses none of these issues, it is far too myopic to be useful even if this Court were inclined to try to discern precisely what the original Delegates to the constitutional convention intended. It should therefore be disregarded.

Porter, who conducted what appears to be the most thorough and comprehensive study of the origins and interpretations of state ripper clauses, acknowledged that "the phrases 'local affairs' and 'municipal functions' have simply not gained any empirical meaning, *even after a century of interpretation*." David O. Porter, *The Ripper Clause in State Constitutional Law: An Early Urban Experiment – Part I*, 1969 Utah L. Rev. 287, 295 (1969) (emphasis added). As he noted, "the only meaning that can be given to the words 'local' and 'municipal' on their face is geographical rather than legal," a point which the League's truncated corpus linguistics analysis underscores. *Id.* Porter went on to note,

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on any ground appearing in the record. Appellees argued in their summary judgment briefing file in the district court that the UIPA is not a "special commission," as the district court recognized in its Order. *See* Order at 24 (R. 1511). On this point the UIPA defers to, and incorporates by reference, the State's arguments.

however, that "a geographical definition would allow cities complete freedom to act within their boundaries, *which would completely disrupt state government*," and is thus untenable when attempting to give legal meaning to the phrase "municipal functions." *Id.* (emphasis added).

The League fails to acknowledge this point, urging instead that *City of West Jordan's* holding that the Ripper Clause is not implicated where statewide interests are at issue "is an overly restricted reading of the phrase as commonly understood when the Utah Constitution was adopted." League Brief at 13. In advancing this position, the League that ignores the fundamental principal that cities have never been allowed to thwart statewide projects by claiming the usurpation of what may, in different contexts, have historically been a "municipal function." Surely the Delegates to the Constitutional Convention did not intend the Ripper Clause to upend the primacy of statewide concerns or make the pursuit of projects that extend beyond a single municipality dependent on the municipality's consent.[10]

[10] The League also asks this Court to undertake an originalist analysis but does not discuss at all the historical motivations underpinning the origins of the ripper clause. As has been well documented, Pennsylvania enacted the first Ripper Clause. Its supreme court has held that the interpretation of "special commission" should be made in light of the purpose of the Ripper Clause, which is to prevent the "separation of the power to incur debts from the duty of providing for their payment by taxation." *Tranter v. Allegheny Cty. Auth.*, 173 A. 289, 295 (Pa. 1934). For that reason, the *Tranter* court refused to find the Allegheny County Authority was a "special commission;" it paid for the public

2. The League's Arguments Regarding Property Tax Assessments Are Misplaced.

Moving beyond the abstract notion that municipal functions may differ from other governmental functions, the League next contends that that "the assessment of property for the purposes of taxation is" a core "municipal function" that the Act usurps. League Brief at 14. But to support that position, the League cites only a single article from 1896. *See id.* The League then asserts without citation that "as applied to Utah in particular, the State does not impose a property tax – only local governments . . . do," and that "collecting property taxes is not only a municipal function, but is uniquely a municipal function." *Id.*

The characterization of "imposing" and "collecting property taxes" as "a uniquely municipal function" is a diversion and red herring. Nothing in the Act changes who imposes or who collects taxes in the State of Utah. Rather, the Act simply allocates or redirects a specified percentage of the incremental increase in the taxes the county collects to fund the UIPA.

The League does not argue that determining how property tax revenues are used is now, or has ever been, a core "municipal function" or one in which

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improvements for which it was responsible out of revenues collected for their use. Here, the operations of the UIPA will be funded out of tax differentials generated from area growth. The UIPA does not have power to levy new taxes or set tax rates. The concerns that led to the Ripper Clause are therefore not present here.

the State cannot engage. Nor could it. As the district court recognized, and as the League does not dispute, this Court "has previously held that the Legislature possesses the power to divert tax revenue from municipalities and counties." Order at 40 (R. 1527) (citing *Tribe*, 540 P.2d at 504 ("[T]he law is well settled that in exercising the powers of the state, the legislature may require the revenue of a municipality, raised by taxation, to be applied to uses other than that for which the taxes were levied.")). Because that power is well established and has not been challenged in this case, the mere redirection of tax revenues to fund the UIPA simply cannot constitute a Ripper Clause violation.

Moreover, the League obfuscates what the Act does and thereby misses a key point when it argues that "[t]he ripper clause protects local government from the delegation of its powers to unelected bodies." League Brief at 15. The Act indisputably does not "delegate" to the UIPA the power to assess or collect taxes. Instead, the Act mandates how certain tax revenues, which are assessed and collected by others, will be *allocated*. As discussed above, that has long been held to be the State's prerogative. *See, e.g.*, *Tribe*, 540 P.2d at 504.

Thus, whether or not imposing and collecting property taxes has historically been a municipal function, the Act is not unconstitutional under the Ripper Clause because it does not "delegate" to the UIPA the ability to do either.

3. The Concerns Expressed At The Constitutional Convention Are Not Implicated By The Act Creating The UIPA.

The League acknowledges that none of the comments it cites relates directly to the Ripper Clause, and that "the ripper clause is not discussed outright in the minutes of the constitutional convention . . . ." League Brief at 15. Thus, any comments are of limited or no utility in understanding the framers' intent regarding the Ripper Clause's inclusion in the Utah Constitution.

The League first quotes a dialogue between two Delegates regarding a constitutional provision that the City has never argued is even implicated by the Act—namely, Article XI, Section 9, which bars the Legislature from "grant[ing] the right to construct and operate a street railroad, telegraph, telephone, or electric light plant within a city or town without the consent of the local authorities . . . ." *Id.* at 16, n. 11. This exchange is meaningless to the issues before the Court because the Constitution ultimately included a provision (Article XI, Section 9) providing the very protections of which the Delegates spoke. To extrapolate that this means that a separate provision of the Constitution should be read with these concerns in mind is simply baseless.

The League next notes the "general concern about the Legislature's being swayed by lobbyists and special interests," and Delegate Varian's "passionate speech" warning of out-of-state private interests securing public money to fund various projects. League Brief at 17. As sincere as Delegate Varian may have

been in his pleas that the government ensure the public's future be placed only in the hands of "the solid substantial people who are rooted to the soil, and who help to make up the state," those concerns are in no way tethered to the Act. The UIPA is not a private entity and its Board is not made up of persons who "do not 'live here nor their children after them.'" *Id.* at 18.

To the contrary, the Act specifies precisely how the Board will be selected, and it ensures that at least nine of the eleven members are either elected officials or their direct appointees. See Utah Code Ann. § 11-58-302(2) (Board consists of, among others: (a) the mayor of Salt Lake County, or the mayor's designee; (b) the mayor of Salt Lake City, or the mayor's designee; (c) a member of the Salt Lake City council; (d) the designee of the city manager of West Valley City as consented to by the elected city council; (e) the mayor of the Magna metro township; (f) two persons appointed by our elected governor and (g) designees of the Utah Speaker of the House and President of the Senate (both designees are currently elected officials). The other two seats are reserved for "[t]he director of the Salt Lake County office of Regional Economic Development," and a representative of the Permanent Community Impact Board, ensuring that the majority of the Board will always be persons in the public—rather than the private—sector. *See id.*

Simply put, the UIPA is and will always be a creation of the Utah Legislature that is duty-bound to act in the best interests of the State and its residents. The UIPA Board is composed of persons whose commitment to—and presence in—the State is indisputable. And if the UIPA ever strays from its purpose, the Legislature has the power to amend its enabling legislation or to repeal it altogether. For these reasons, although the concerns Delegate Varian voiced so colorfully by may be legitimate, they are not threatened by the UIPA.

C. The League Dramatically Overstates What The Act Does.

When the League moves beyond its linguistics argument, it spends much of its brief attacking a straw man by repeatedly misstating what the Act does. In particular, and despite its purported emphasis on the importance of word choice, the League largely ignores the word "delegate" in the Ripper clause and either does not discuss or dramatically overstates what powers have actually been "delegated" to the UIPA under the Act. Most problematic is the League's bald assertion that the Act "delegate[s] one-fifth of [the] city's land, revenue, and zoning to a special commission which can dictate all this and more." League Brief at 17. That statement is both unsupported and contrary to the Act's express language.

First, the League is flatly wrong when it contends that the UIPA has been delegated one-fifth of the city's land. The UIPA owns no land whatsoever, let

alone one-fifth of Salt Lake City. *See* Declaration of Jack Hedge, Exhibit A to the UIPA's Memorandum in Opposition to the City's Motion for Preliminary Injunction, ¶ 16 (R. 254-55) ("The City has publicly referred to the creation of UIPA as a "land grab" by the state of Utah. However, the reality is that no land is owned by the UIPA, no land is taken from any landowner, and no right or title to any land in the jurisdictional boundary has been ceded to the UIPA."). The vast majority of the real property that constitutes the jurisdictional land is still owned by private parties who must seek and obtain the very same planning and zoning approval and building and occupancy permits from the City as every other owner of land within the City's jurisdiction. *See* Utah Code Ann. § 11-58-205(1) ("Except as otherwise provided in this chapter, the authority does not have and may not exercise any powers relating to the regulation of land uses on the authority jurisdictional land."). No such land use approval is sought or obtained from UIPA.

Second, the League is simply wrong when it claims that the UIPA has been delegated one-fifth of the City's revenue. The City's total revenues for the fiscal year ending June 30, 2019, were just under $370,000,000, with about $122,000,000 (or roughly one-third) of those revenues coming from property taxes. *See* SALT LAKE CITY CORPORATION, COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2019 24 (2019), http://www.slcdocs.com/

accounting/CAFR2019.pdf. Not one dollar of the property tax revenue that existed before the UIPA was created will be diverted to fund the UIPA. Instead, the UIPA's operations will be funded by allocating 75 percent of the property tax *differential* in the jurisdictional land.[11] In other words, as property values rise in the jurisdictional area, the UIPA's revenues will go up. But the City's revenues will not diminish from what they were before the UIPA was created and funded.

Importantly, the Act also takes pains to ensure that funds redirected from property taxes will be spent for the benefit of the particular municipality from which they derive. For instance, the Act requires that if UIPA funds are used for the construction of infrastructure, that infrastructure must either be located in, or directly benefit, the city from which the tax revenues were redirected. *See* Utah Code Ann. § 11-58-602(1)(d) and (e).

Third, the UIPA has been delegated no power over zoning decisions within Salt Lake City. The Act mandates that certain UIPA-related activities that are currently permitted by the City's zoning ordinances be allowed to continue in the jurisdictional land. But the Act delegates no land use or zoning power to the UIPA. As discussed in the preceding section, Utah law has long provided

[11] As explained in Section I(B)(2), above, the characterization of property tax revenues of any kind as "the City's revenue" is fallacious because the State retains the unquestioned power to determine how those revenues are allocated.

that local zoning decisions are subordinate to state law, and nothing in the Act constitutes a delegation of zoning decisions to the UIPA.[12]

# # #

In the final analysis, the League's brief presents nothing to explain why, after indulging "every reasonable presumption in favor of constitutionality," the Act "is *clearly and expressly* prohibited by the Constitution." *Utah Farm Bureau Ins. Co. v. Utah Ins. Guar. Ass'n*, 564 P.2d 751, 753 (Utah 1977) (emphasis added). The district court's well-reasoned order, which faithfully and meticulously applied this Court's long-standing Ripper Clause jurisprudence, should be affirmed.

II. THE IMLA BRIEF

As explained below, the IMLA's brief includes at least two material errors and relies on highly distinguishable precedent from other states, while at the same time failing to address cases that demonstrate the flaws in its position. The IMLA also makes arguments regarding the Act's purported "interfere[nce] with municipal funds" and "disrupt[ion] of the City's "ability to carry out basic

[12] The only power that had ever been granted to the UIPA regarding zoning was the authority to hear and resolve appeals over certain zoning decisions, and that power has since been removed from the Act (and was indisputably never used by the UIPA) and it is therefore not at issue in this appeal (formerly Utah Code Ann. § 11-58-401).

municipal obligations" that are largely resolved in the arguments discussed in the preceding section, but will be briefly addressed again herein.

A. Material Errors In The IMLA's Brief

The IMLA's brief includes at least two material errors that must be brought to the Court's attention.

First, the IMLA makes the fundamentally misleading statement that the Ripper Clause "denies the legislature 'any power . . . to interfere with any municipal improvement, money, property or effects . . . to levy taxes . . . or to perform any municipal function.'" IMLA Brief at 1. As the ellipses indicate, the quotation is incomplete. As previously explained, the Ripper Clause states that "[t]he Legislature *shall not delegate to any special commission, private corporation 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 capitol site, or to perform any municipal functions." (Emphasis added). By omitting the critically important limiting phrases "shall not delegate" and "to any special commission, private corporation or association," the IMLA dramatically overstates the reach of the Ripper Clause. And throughout its brief, the IMLA ignores this key language, which undermines the core of its argument.

Second, the IMLA argues that the Act (1) compels the City to forego 100 percent of the property tax differential, and (2) provides that "any City land use decision with respect to the inland port is subject to override by the Authority." In advancing these arguments, the IMLA completely ignores that the Act was amended during the 2020 General Session (HB347) after the district court entered its Order. *See* H.B. 347, 63 Leg. Gen. Sess., 2020 Utah Laws 126. Those amendments reduced the amount of property tax differential the City must forgo to 75% and *eliminated the UIPA's appellate authority to override City land use decisions*. *Id.*

B. The IMLA Relies On Highly Distinguishable Case Law And Ignores More Relevant Case Law.

The IMLA also relies on highly distinguishable precedent from other states and ignores more relevant precedent that undermines its arguments.

The IMLA cites to several cases from other states in an attempt to support its meritless position. But none of those cases found ripper clause violations involving interests or functions that stretched beyond an individual municipality.

For example, in *Moll v. Morrow*, 253 Pa. 442, 98 A. 650 (Pa. 1916), the challenged legislation "establishe[d] a separate board of directors to administer a part of the police affairs of the city [of Pittsburgh] . . . . It is a special agency for the performance of a municipal function." There, unlike with the Act, the state

was empowering a special commission to perform a purely municipal function of a single municipality. This was the perceived "evil" at the heart of the efforts to include ripper clauses in numerous state constitutions, which is found in each of the cases that the IMLA cites.

Similarly, in *Stewart v. City of Cheyenne*, 60 Wyo. 497, 154 P.2d 355 (Wyo. 1944), the law at issue authorized municipalities to establish a "Board of Public Utilities" that would "have the exclusive control of all municipally owned water works," among other powers and responsibilities. *Id.* at 504-505. Thus, there was no argument to be made that there was anything other than purely municipal functions of a single municipality at issue.

Likewise, in *Specht v. Sioux Falls*, 526 N.W.2d 727 (S.D. 1995), the challenged legislation authorized municipalities to create regional emergency medical services authorities to handle the municipalities' ambulance and other emergency medical services. Again, the issue was whether an entity separate from the municipality could be delegated the right to perform purely municipal functions for a specific municipality. That is not the case with the UIPA.

Notably, the IMLA not only relies on cases that can be easily distinguished, but it completely ignores cases from other jurisdictions, including California, which has extensive experience addressing the legislature's creation of authorities that transcend city boundaries. Indeed, Porter—who the IMLA

cites repeatedly in its brief—noted that, while "California appears to have gone further than any other state in setting up Constitutional guarantees to cities of the right to self-government", the California Supreme Court has rejected ripper clause challenges to statutory schemes very much like the Act.[13] David O. Porter, *The Ripper Clause in State Constitutional Law: An Early Urban Experiment Part II*, 453 (internal quotation omitted).

The most analogous example of this jurisprudence is *People ex rel. Younger v. County of El Dorado*, 5 Cal. 3d 480, 487 P.2d 1193 (Cal. 1971) (en banc). That case arose from two California counties' challenges to certain statutory commands that they pay specified sums to fund the operating budget of the Tahoe Regional Planning Agency. As the *Younger* court explained, "California and Nevada, with the approval of Congress, entered into the Tahoe Regional Planning Compact (Compact)," which was created "to provide for the region as a whole the planning, conservation and resource development essential to accommodate a growing population within the region's relatively small area

[13] Porter notes: "As the growth of urban and metropolitan areas has produced problems which cannot be solved within the boundaries of existing cities, the California courts have interpreted the constitutional guarantees of local self-government not to preclude the creation of new, more appropriate units of government as solutions for these larger problems." David O. Porter, *The Ripper Clause in State Constitutional Law: An Early Urban Experiment Part II*, 454. (emphasis added) (included in the Addendum to the City's Opening Brief). That, of course, is precisely what the State has done with the creation of the UIPA.

without destroying the environment." *Id.* at 487. The Compact "establishe[d] the Tahoe Regional Planning Agency [the "Agency"] with . . . broad powers to make and enforce a regional plan of an unusually comprehensive scope" that included, among other things, "plans for land-use, transportation, conservation, recreation, and public services and facilities." *Id.* The Agency was governed by a board with ten members, "five from California and five from Nevada," and the governing bodies of the three California counties included within the Compact each had the right to appoint a member of the board. *Id.* at 488. In this and many other respects, the Compact bore a strong resemblance to the UIPA, whose 11-member governing Board includes the Mayors of Salt Lake City and Salt Lake County (or their designees), and a member of the Salt Lake City Council. *See* Utah Code Ann. § 11-58-302(d), (f), and (g).

The enabling California legislation provided that the Agency would be financed by apportioning a portion of its operating budget "among the counties within the region on the same ratio to the total sum required as the full cash valuation of taxable property within the region in each county bears to the total full cash valuation of taxable property within the region." *Younger*, 5 Cal. 3d at 489. Each county was then required to pay those sums on an annual basis. *Id.* The *Younge*r case arose after two California counties—Placer and El Dorado—refused to make the required payments and the state sued to enforce compliance.

The Counties argued, inter alia, that the Compact and its California legislation violated three discrete sections of the California Constitution, including its then-operative ripper clause, which was nearly identical to Utah's.[14]

The California Supreme Court found that "[t]he Compact is unaffected by any of the [constitutional] provisions since its subject matter is of regional, rather than local, concern." *Id.* at 492. Turning specifically to the ripper clause, the court noted that "our cases have recognized that the section was intended to prohibit only legislation interfering with purely local matters. Special commissions have been upheld if they either fulfill a more than local purpose . . . or promote a statewide purpose." *Id.* at 500 (internal quotations omitted).

This, of course, is precisely how Utah courts have interpreted and understood the Utah Ripper Clause for decades. In *Tribe*, for example, this Court held that a "[special] commission is not offensive to the constitution by its creation, but only when such a commission is delegated powers which intrude into areas of *purely* municipal concern." *Tribe v. Salt Lake City Corp.*, 540 P.2d 499, 503 (Utah 1975) (emphasis added). Indeed, the *Tribe* court found that the

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[14] The relevant language was found in former Section 13 of Article XI of the California Constitution: "The Legislature shall not delegate to any special commission, private corporation, company, association or individual any power to make, control, appropriate, supervise or in any way interfere with any county, city, town or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments or perform any municipal function whatever." *Id.* at 499.

constitutional question posed in that case "hinge[d] on whether the objects and purposes of the Act are statewide or local . . . ." *Id.* at 502.

Tribe was not an outlier. One of the prevailing inquiries in Utah's Ripper Clause jurisprudence is discerning whether the legislation at issue serves a purpose broader than the interests or issues of a single municipality. Where the legislature has usurped purely municipal concerns of a single municipality, the Ripper Clause is implicated, and legislation has been struck down. But where the legislature has empowered a body to address issues that extend outside a single municipality, the Ripper Clause has never been held to be a legal impediment.

For instance, in *Lehi v. Meiling*, 87 Utah 237, 48 P.2d 530 (Utah 1935), this Court sustained the creation of a metropolitan water district, reasoning that some projects are not best done by a single municipality but require management from larger authorities. Likewise, here, the legislature has determined that the functions of the UIPA are beyond the scope and capacity of any single municipality. *See* Utah Code Ann. § 11-58-201(3)(b); *see also Tribe*, 540 P.2d at 503 ("The problem of 'urban blight' we recognize as one of statewide concern, and not merely a local or municipal problem.").

The *Younger* court also explained that the Ripper Clause analysis is not nearly as simple as the IMLA would suggest because it does not turn on asking

only whether the statute at issue delegates some traditionally municipal functions to a special commission. Rather, the *Younger* court acknowledged that what functions are municipal for Ripper Clause purposes depends on the specific purpose for which they are performed—not simply whether those functions have historically been performed by municipalities:

> Furthermore, problems which exhibit exclusively local characteristics at certain times in the life of a community, acquire larger dimensions and changed characteristics at others. *It is settled that the constitutional concept of municipal affairs is not a fixed or static quantity.* It changes with the changing conditions under which it is to operate. *When the effects of change are felt beyond the point of its immediate impact, it is fatuous to expect that controlling such change remains a local problem to be solved by local methods.* Old attitudes confer no irrevocable license to continue looking with unseeing eyes. *The Compact gives the Agency the power to adopt regional planning and regional zoning ordinances to solve regional problems of resource management; it does not delegate to the Agency the same powers granted to the counties.*

Younger, 5 Cal. 3d at 497-98 (emphases added).

So, too, with the UIPA. The Act does not delegate to the UIPA the ability to control the minutia of local zoning decisions—those remain in the hands of the City. The Act instead ensures that "regional planning" of the efficient movement of goods to and through the state of Utah will not be obstructed by a particular city simply zoning UIPA uses out of existence or making individualized determinations as to whether land within the jurisdictional area can be used for

what is clearly an Inland Port purpose. The State cannot realistically have the development of the UIPA subject to the zoning whims of each municipality in which it is developed. *See* Order at 33 (R. 1520) ("Here, were the City to make land use decisions contrary to the goals of the Act, it could frustrate and impede the State's ability to promote the inland port."). And ensuring that the jurisdictional land can be used for UIPA purposes is not usurping local control and most certainly is not delegation of zoning to a "special commission." Rather, it is the same "regional planning and regional zoning" that transcends any single city and thus is not implicated by the Ripper Clause.[15]

Indeed, the centrality of the distinction between purely local matters and those with a broader scope is reflected in the *City of West Jordan's* guidance on what constitutes a "municipal function" for Ripper Clause purposes. This Court there found that one of the factors to be considered is "the degree to which the performance of the function affects the interests of those *beyond the boundaries of the municipality* . . . ." *City of West Jordan*, 767 P.2d at 534 (emphasis added). The

[15] But even if the Ripper Clause were otherwise implicated, Utah law has long provided that "[a] municipality may not impose a requirement, regulation, condition, or standard that conflicts with a provision of this chapter [the Utah Municipal Code], other state law, or federal law." Utah Code Ann. § 10-9a-104. Thus, municipal zoning must always yield to conflicting state law, and the Act's embodiment of this requirement with respect to UIPA uses is simply not a delegation of a municipal function that would constitute a Ripper Clause violation.

same can be said of the analysis of "the extent to which the legislation under attack will intrude upon the ability of the people within the municipality to control through their elected officials the substantive policies *that affect them uniquely*." *Id.* (emphasis added). The UIPA is not aware of any case in which any court—in Utah or otherwise—has found that the performance of a particular function authorized by a challenged statute indisputably impacts multiple municipalities but also struck the statute under the relevant ripper clause.

C. The Act Does Not Impermissibly Interfere With The City's Control Over Municipal Functions.

The IMLA asserts that "[t]he Act unconstitutionally interferes with municipal funds in two ways" by (1) "divert[ing[one hundred percent of the incremental growth in property tax revenue from the land within the jurisdiction of the Authority . . ."; and (2) making "the City financially responsible for the upkeep and maintenance of the infrastructure that the Authority will develop on the jurisdictional land." IMLA Brief at 8-9. The IMLA also contends that "the Act violates the Ripper Clause by disrupting the Salt Lake City government's ability to carry our basic municipal functions," citing two alleged examples: (1) interference with "the City's zoning and land use planning structure and procedures"; and (2) "delegating to the Authority the power to develop infrastructure within the Authority's jurisdictional lands . . . ." *Id.* at 10-11. As explained below, these arguments are meritless.

1. Municipal Funds

The IMLA is incorrect in asserting that 100% of the property tax differential is used to fund the UIPA—it has now been reduced to 75 percent. Regardless, and as explained in detail above, the redirection of property tax revenues from the City to the UIPA (a) is not a delegation of power but a direct legislative mandate, and (b) is something this Court has long held the State has the power to do. The IMLA's characterization of any future property tax revenues as "municipal funds" is presumptuous and incorrect, because the State ultimately maintains the ability to decide who receives those funds.

With respect to the argument that "the Act makes the City financially responsible for the upkeep and maintenance of the infrastructure that the Authority will develop," the IMLA ignores the language of the Act, which provides:

> 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 Ann. § 11-58-205(7)(a)(i). Contrary to the IMLA's contention, this is not "a delegation to the Authority" of any kind, but is plainly a mandate that is, for reasons discussed above and in the State's brief, not implicated by the Ripper Clause.

2. Zoning And Land Use Planning

As a threshold matter, the IMLA repeats the incorrect assertion that the Act continues to allow the UIPA to "override" the City's land use decisions. IMLA Brief at 11. However, as discussed above, it is undisputed that this power is no longer part of the Act. Accordingly, any argument relating to this authority is moot.

The IMLA also incorrectly asserts that "the [UIPA] may compel the City to legislate zoning matters as determined by an [UIPA] board that is not accountable to the City's voters or their elected representatives." IMLA Brief at 10. But the statutory section that the IMLA cites for that proposition, Utah Code Ann. § 11-58-205(5), is the legislative mandate that municipalities "shall allow an inland port as a permitted use without regard to any contrary provision in the municipality's land use ordinances." Thus, the UIPA does not "compel the City" to do anything with respect to zoning—the State has done that through a mandate. Again, no zoning power has been delegated to the UIPA, and the Ripper Clause is therefore not implicated.

3. Development Of Infrastructure

The IMLA's position on this issue presumes that, in the ordinary course, each municipality has the exclusive right to develop infrastructure within its boundaries. But that is plainly not the case. There are myriad examples of

situations where either the State or a third-party develops infrastructure within a municipality. Obvious examples include the State's construction of roads, highways, offramps, and a host of other infrastructure improvements, which will always be within the boundaries of municipalities.

The IMLA seems to acknowledge that the Ripper Clause does not prevent these kinds of projects, which of course impact how the affected municipalities use and develop property within their boundaries. Instead, the IMLA makes a vague argument that "the vice of the Act . . . is that the Act, while leaving basic responsibility for land use planning and municipal infrastructure with the City, interferes with and disrupts how the City is able to discharge those responsibilities, mandating that it make certain regulatory decisions or undertake certain services without regard for the municipal decision-making structures in place for making those decisions or providing those services." IMLA Brief at 11-12. This argument seems to argue for a distinction without a difference and is fundamentally flawed.

First, in every case where a body other than the municipality develops some items of infrastructure within the municipality, the "basic responsibility for land use planning and municipal infrastructure" remains with the municipality. And the municipalities presumably would not have it any other way. The IMLA cannot seriously contend that the lesser of two evils is for the State or other body

to completely usurp the municipalities' "land use planning" or "municipal infrastructure" whenever a discrete project is undertaken. In any event, because that happens every time an entity other than a municipality constructs infrastructure within the municipality's boundaries, the IMLA's argument either proves nothing or proves too much.

Second, it is unclear what the IMLA is referring to in the context of the Act when it complains of "one level of government obscur[ing] its role by acting through directives to another level of government . . . ." IMLA Brief at 12. To the extent the IMLA is talking about state-imposed mandates, such as the requirement that the City allow certain uses, it is, for reasons discussed at length herein and in the State's brief, not implicated by the Ripper Clause. To the extent the IMLA suggests that the UIPA has some power to issue "directives to another level of government," the IMLA cites no specific examples. The Act does, however, make clear that the UIPA "does not have and may not exercise any powers relating to the regulation of land uses on the authority jurisdictional land," other than as specifically enumerated in the Act. Utah Code Ann. § 11-58-205(1).

Thus, whatever abstract concerns the IMLA is trying to articulate regarding the problems that could arise when a city must permit the construction of infrastructure within its boundaries by someone other than itself, those are

issues that are in no way unique to the UIPA or the Act. And absent a ruling from this Court that such acts always infringe upon a city's municipal functions in a way that violates the Ripper Clause—which is a ruling neither the City nor the amici seek—those arguments are of no consequence to this appeal.

# # #

In sum, nothing in the IMLA's brief supports reversing the district court's order, or remotely overcomes the strong presumption in favor of finding legislation constitutional, and the IMLA's arguments should therefore be rejected.

CONCLUSION

For the reasons set forth above, the district court's Order should be affirmed in its entirety.

DATED this 30th day of November 2020.

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CERTIFICATE OF COMPLIANCE WITH RULES 24(F)(1) AND 21

I hereby certify that:

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because this brief contains 10,488 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).

2. This brief also complies with the typeface requirements of Utah R. App. P. 27(b) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Book Antiqua.

3. This brief complies with Utah R. App. P. 21, which governs public and private records, because no part of this brief has been filed as private.

DATED this 30th day of November 2020.

/s/ Evan S. Strassberg

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November, 2020, a true and correct copy of the foregoing Brief of Appellees was served via electronic mail on the following:

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