IN THE UTAH SUPREME COURT

SALT LAKE CITY CORPORATION, a political subdivision existing under the laws of the State of Utah, Plaintiff/Appellant, v. UTAH INLAND PORT AUTHORITY, a political subdivision existing under the laws of the State of Utah; 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. Defendants/Appellees.	**REPLY BRIEF OF APPELLANT** Appeal No. 20200118 District Court No. 190902057 Judge James Blanch

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SUMMARY OF RESPONSE

The Salt Lake City's[1] ripper clause claim challenges three separate and distinct provisions; one redirecting municipally raised tax monies to the Authority;[2] one directing the zoning the City must adopt for one-quarter of the City,[3] and one directing the land uses the City must permit in one-quarter of the City.[4] The State's response[5] improperly conflates these separate and distinct provisions, in an apparent attempt to conceal weaknesses in its position. The Court should not be fooled. Each provision concerns a separate and distinct municipal function and the challenge to each provision must be considered separately and on its merits.

With respect to the redirection of municipal tax monies, the State contends no ripper clause violation is shown because (1) the Authority is a private corporation created under Article XI, section 8, not a special commission; (2) no power is delegated to the Authority to spend the City's tax monies, and (3) even if a power to spend is delegated, spending municipal monies is not a municipal function because the State has plenary power to redirect municipal tax monies. The State is incorrect on all counts.

First, whether a body is a special commission under the ripper clause requires consideration of whether the body was created at the election of the municipality and is

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[1] Referred to hereinafter as "City."

[2] Utah Code § 11-58-601.

[3] Utah Code § 11-58-205(5).

[4] Utah Code § 11-58-205(6).

[5] The Appellee brief filed by the State of Utah, Governor Gary Herbert and Attorney General Sean Reyes will be referred to hereinafter as the "State" the "State's response" or the "State's brief." The appellee brief filed by the Utah Inland Port Authority is referred to as the "Authority," the "Authority's response" or the "Authority's brief"

operated and controlled by the municipality. The semantics of the name of its corporate form plays no part. The Authority was not created by the City, is not operated and controlled by the City, and is a special commission under this Court's definition.

Second, the Act clearly delegates power to the Authority to spend and incur debt and to satisfy those debts with the City's tax monies. Third, no one can seriously question that the Authority's spending of municipal monies violates the ripper clause's prohibition on interference with municipal monies and property, or that it is the performance of a municipal function under the three *City of West Jordan* factors. The State's only response is that the Authority needs funding to perform its claimed statewide duties. While this may be true, it does not show the City's spending of its constitutionally raised municipal funds is a matter of statewide concern. Similarly, there is no support for the State's claim that it has sovereign plenary power to redirect municipal monies that the constitution and this Court state only a municipality can raise and spend. The challenged tax provisions violate the ripper clause.

With respect to the challenged zoning and land use provisions, the State contends these provisions do not violate the ripper clause because legislative mandates escape scrutiny under the provision and, even if scrutinized, these local zoning and land use functions are transformed into statewide functions because the State wishes to ensure a private developer can develop an inland port unhindered by local regulations. Again, the State is incorrect. First, both principles of constitutional interpretation and precedent from this Court show legislative mandates are subject to scrutiny under the ripper clause. Second, local zoning and land use are quintessential municipal functions that easily satisfy

the three *City of West Jordan* factors. Indeed, the State's purported reason for the need for the provisions, to ensure smooth passage of a private development, is exactly the type of interference by the legislature at the behest of special interests that the ripper clause was intended to prevent. The challenged zoning and land use provisions also violate the ripper clause.

With respect to the City's uniform operation of laws challenge, the State contends the Act does not treat similarly situated municipalities disparately because it treats all municipalities with jurisdictional land the same. This reasoning is fundamentally flawed. The characteristic relied on to determine whether an Act treats similarly situated parties disparately cannot be a characteristic that is itself created and imposed by the Act under scrutiny.

The State contends in the alternative that if the Act does treat these municipalities disparately, this Court's "reasonable relationship" test is satisfied because the Authority needs funding and the State needs to ensure the private developer can develop the Inland Port. But this fails to show why it is reasonable to compel just three municipalities to fund the alleged *statewide* functions of the Authority and sets an alarming precedent that will allow the legislature to step in and veto any local land use provision to assist a developer that wishes to develop in an area the local community has designated for other uses. A violation of the uniform operation of laws provision is shown.

Turning to the Authority, despite being a named party, the Authority does not address any of the arguments raised by the City, but instead devotes its entire brief to

responding to the amicus briefs filed by the Utah League of Cities and Towns[6] and the Law Professors and International Municipal Lawyers Association.[7] Notably, the Authority's response fails to dispute the historical context or the import or meaning of the founding-era materials presented by the amicus parties, the linguistic corpus analysis provided by the League, or to present any alternative understanding of the clause. Instead, the Authority adds new argument as to why the Authority is not a special commission and recycles the incorrect arguments presented by the State that the monies at issue are not municipal and the challenged provisions are mandates that escape scrutiny under the ripper clause. The League and IMLA's amicus briefs present a valuable contextual analysis that remains unrebutted and should be carefully considered.

Finally, in stark contrast to the amicus briefs filed in support of the City, the amicus brief filed by several Utah Counties in support of the State and the Authority makes no substantive argument, merely stating in a conclusive fashion that the district court's analysis is correct.

ARGUMENT

I. THE CHALLENGED PROVISIONS VIOLATE THE RIPPER CLAUSE.

A. The Authority is a Special Commission.

The State incorrectly contends the Authority escapes scrutiny under the ripper clause because it is a public corporation, not a "special commission."[8] As demonstrated

[6] Referred to hereinafter as the "League" and the "League's Brief."
[7] Referred to hereinafter as "IMLA" and "IMLA's Brief."
[8] State's Br. 33.

by a long line of cases cited in the City's opening brief,[9] whether a body is a special commission under the ripper clause rests on a determination of whether the entity is one the municipality voluntarily elects to create, which it then governs and controls. It does not turn on the semantics of its claimed corporate form. This issue was squarely addressed in *Logan City v. Public Utilities Commission*,[10] where this Court rejected the almost identical argument that the Public Service Commission is a "general" not a "special" commission.[11] The Court reasoned that "if municipalities are entitled to protection from an agency of the state exercising delegated powers of the kind enumerated, the right thus proposed to be protected would be violated as much by a general commission doing the mentioned acts as by a special commission doing the same things."[12] Just like *Logan City*, the rights at issues here are "violated as much by a [public corporation] doing the mentioned acts as by a special commission doing the same things"[13] and the State's claim that the Authority escapes scrutiny by virtue of its claim that it is a public corporation lacks merit.

Similarly, the State's objection to the definition of special commission, as a body that is not created and subsequently controlled by a municipality, lacks merit.[14] For more than seventy years, this Court has defined special commissions in these terms.[15] Even the

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[9] City's Br. 17-21.
[10] 271 P. 961 (Utah 1928).
[11] *Id.* at 972.
[12] *Id.*
[13] *Id.*
[14] State's Br. 34.
[15] City's Br. 17-21.

cases cited and relied on by the State, *Tribe v. Salt Lake City Corp.* and *Salt Lake County v. Murray City Redevelopment*,[16] apply this definition. Both cases concern a statute that permits a municipality to elect to create a municipal redevelopment agency, which it then governs and controls through its legislature sitting as the board.[17] The key fact in finding the redevelopment agencies did not violate the ripper clause was that "local operation of [the] act . . . hinge[d] on a contingency — the decision of the legislative body of the [city]" to create the entity.[18]

The State's attempt to draw analogies between the Authority and the redevelopment agencies at issue in *Tribe* and *Murray City Redevelopment* lack merit for the same reason. In stark contrast to the municipally created and controlled redevelopment agencies, the Authority was created by the State, over the objection of the City, and the City's super-minority representation on the board demonstrates it is not operated and controlled by the City. As such, the Authority bears no resemblance to the redevelopment agencies at issue in *Tribe* and *Murray City Redevelopment*, despite the State's attempt to draw analogies between the funding model and other characteristics not material to the special commission determination.

Finally, it bears note that in its discussion of *Tribe*, the State selectively quotes portions of the opinion that discuss the objectives, purpose, and functions of the body, but not sections that discuss the fact the body is only created if the municipality elects to do

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[16] State's Br. 34-36 citing *Tribe v. Salt Lake City Corp.*, 540 P.2d 499 (Utah 1975) and *Salt Lake Cty. v. Murray City Redevelopment*, 598 P.2d 1339 (Utah 1979).

[17] *Tribe*, 540 P.2d at 501-04; *Murray City Redevelopment*, 598 P.2d at 1340-42.

[18] *Tribe*, 540 P.2d at 502.

so.[19] *Tribe's* conflated analysis of whether the body is a special commission and, if so, whether it is performing a municipal function is certainly confusing in this regard. But *Tribe* also predates the seminal *City of West Jordan* decision, which noted the confusion in prior ripper clause precedent and a lack of any "consistent analytical framework."[20] *Tribe's* conflated discussion of the special commission prong and the municipal function prong is an example of this confusion, but it does not undermine the fundamental conclusion reached — municipal redevelopment agencies are not special commissions because municipalities elect to create them and then control them.[21] Characteristics the Authority does not share.

B. The Provisions Delegating Power to Spend Municipal Tax Monies Violate the Ripper Clause.

1. The Power to Spend Municipal Tax Monies is Delegated.

The State contends the challenged tax provisions are not subject to the ripper clause because they do not delegate a power to the Authority.[22] This argument is difficult to understand. The Act unquestionably delegates power to the Authority — the power to make spending decisions with respect to the tax monies at issue. Specifically, the Act states the Authority may "spend" these tax monies for "any purpose authorized under [the]

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[19] State's Br. 34-35.

[20] *City of W. Jordan v. Utah State Ret. Bd.*, 767 P.2d 530, 533 (Utah 1988).

[21] It is also notable that the performance of a municipal function by an unelected and unaccountable board was not at issue in *Tribe* because the functions were being performed by a body subject to the local electorate. *Tribe*, 540 P.2d at 502-03. Thus, any language regarding statewide concerns appears only to be binding with respect to the legitimacy of the State passing an Act of general application that permits any municipality at its election to create a redevelopment agency, which it then operates and controls.

[22] State's Br. 29-33.

chapter," or for "administrative, overhead, legal, consulting, and other operating expenses of the authority," or for other specifically identified items.[23] Thus, if the monies are "municipal," as the City contends, a power to supervise or interfere with municipal monies or perform the municipal function of appropriating and making spending decisions with respect to these municipal monies is unquestionably delegated to the Authority.

2. The Tax Monies at Issue are Indisputably Municipal.

The State also contends the diverted monies are not municipal. This argument is also hard to understand because the monies at issue were raised pursuant to Article XIII, section 5 and the constitutional framework for municipalities to raise funds for their own purposes. Specifically, Article XIII, section 5 prohibits the State from imposing a tax for a political subdivision, limiting its power to directing by statute how a political subdivision may "assess and collect taxes for their own purposes."[24] In line with this constitutional direction, state statutes direct cities to raise municipal funds by adopting ordinances that impose municipal real and personal property taxes[25] and municipal sales and use taxes.[26] The funds at issue are property and sales and use taxes raised by the City pursuant to ordinances enacted under this constitutional framework.[27] As such, the monies are

[23] Utah Code § 10-9a-602(1).
[24] Utah Const. Art XIII, § 5(4).
[25] Utah Code § 10-6-133.
[26] Utah Code § 59-12-203.
[27] *See* Salt Lake City Ordinance 36 of 2020 (setting the property tax levy for financial year 2021 and directing how those monies are to be distributed between its various funds); Salt Lake City Code § 3.04.050 (ordinance levying a sales and use tax of $^{58}/_{64}$ths of 1%).

indisputably municipal.[28]

The State contends the monies are not "municipal" because the City does not perform the administrative task of collecting the property and sales and use tax.[29] Rather, the County assessor collects property tax and the State Tax Commission collects sales and use tax, which collection occurs after the City sets by ordinance the amount of property tax and sales and use tax it will levy and which of its funds those monies will be placed in.[30] But the identity of the agency charged with collecting the tax the City levies does not set the character of the funds. If that were the case, all property tax monies would be County monies, and all sales and use tax monies would be State monies, because property tax is collected by the County for municipalities statewide[31] and municipal sales and use tax monies are collected by the State Tax Commission statewide.[32] Rather, the municipal character of the funds results from the fact that they are monies the City levied by ordinance pursuant to the constitutional framework for raising municipal funds.[33]

The State's second point, that the funds are diverted after they are levied but before they enter the City's general fund, is equally benign. Again, it is the raising of the monies by the City pursuant to its unique constitutional authority to do so that gives the funds their

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[28] *See also* City's Br. 23, n.107 (stating with authority that property tax has been the vehicle for municipalities to generate revenue since statehood); League's Amicus, 14 (citing authority to support a corpus linguistics analysis that makes clear property tax was considered a key municipal function at the time the Utah constitution was adopted).

[29] State's Br. 31.

[30] *See supra* n.26.

[31] Utah Code § 10-6-134.

[32] Utah Code § 59-12-206(1); Salt Lake City Code § 3.04.040.

[33] Utah Const. Art. XIII, § 5(4); Utah Code § 10-6-133; Utah Code § 59-12-203; Salt Lake City Ordinance 36 of 2020; Salt Lake City Code § 3.04.050.

municipal character. Their diversion after they are raised, but before they reach their intended destination, does not strip them of their municipal identity. To the contrary, this post-raising diversion is precisely the type of conduct the ripper clause precludes.[34] The funds at issue are and remain municipal and the State has not shown otherwise.

3. The Spending of Municipal Tax Monies is Interference with Municipal Monies and the Performance of a Municipal Function.

The function at issue is the spending of taxes levied by the City for its own purposes — clearly an interference with municipal monies and the performance of a municipal function. The State attempts to confuse the issue by discussing the general purpose of establishing an inland port.[35] The Court should not be distracted by this smoke screen. When the actual function at issue is considered, *i.e.*, the spending of municipal tax monies, it is hard to imagine a more obvious example of interference with the City's monies and performance of a municipal function.

For example, the State contends the first two *City of West Jordan* factors are met because the Authority needs funding.[36] But the Authority's need for funds does not show it is in a better position to perform the quintessential municipal function of deciding how to spend the City's funds or that these local spending decisions affect persons beyond the borders of Salt Lake City. If the Authority needs funding to perform its claimed *statewide* functions, the State must fund it with a *statewide* tax or provide the Authority power to

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[34] Utah Const. Art. VI, § 28 (precluding delegation of power to supervise or interfere with municipal monies and property or to perform municipal functions, including the spending of municipal monies).

[35] State's Br. 36-46.

[36] State's Br. 42-44.

impose a statewide tax.[37]

With respect to the third *City of West Jordan* factor, the State contends Salt Lake City residents are not uniquely affected by the spending of their tax monies because the monies at issue make up only a small portion of the City's general fund, the tax revenue at issue is "property tax differential," and it only applies to one quarter of Salt Lake City.[38] Again, the State's arguments bear no relationship to the factor being considered. First, the City does not consider $360 million of tax revenue[39] to be a small or de minimis portion of its general fund. Second, arguing the amount is only small or that the tax-redirecting provisions only apply to a quarter, not the entire City, does not show how the spending of municipal monies is not a local issue.

Third, the State's creation of the term "tax differential" to describe the portion of property tax diverted does not eliminate the local interest. "Property tax differential" is simply property tax.[40] It is the difference (or increase) in amount of property tax collected between stated years.[41] Because the property tax money at issue is municipal, the difference in property tax money collected from one year to another is also municipal.[42]

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[37] Notably, during the 2021 legislative session the State passed amendments to the Act providing the Authority special assessment taxing power. S.B. 243, 2021 Leg. Sess. (2021 Utah) (lines 143-144). A copy can be found here: https://le.utah.gov/~2021/bills/static/SB0243.html.

[38] State's Br. 44-46.

[39] R. 00362, ¶ 91; R. 00368-69.

[40] Utah Code § 11-58-102(16).

[41] *Id.*

[42] This is perhaps best illustrated by the fact that, if the City did not exercise its constitutional right to levy property tax to fund its municipal purposes, there would be no property tax and no property tax differential for the Authority to use.

Municipal residents are uniquely affected by the spending of their tax monies and the State has not shown otherwise. Simply changing the name of these monies does not alter this fact.

4. The State's Additional Factors do not Change the Result.

In an attempt to bolster its argument that the spending of municipal monies is in fact a statewide function, the State urges the Court to consider two additional factors this Court has not previously found are part of the municipal function test.[43] First, it urges the Court to consider the State's compelling interest in development of an Inland Port in the State of Utah.[44] But even if this factor is considered, it does nothing to show why the State has a compelling interest in the spending of monies the constitution states only the City can raise and spend.

Second, the State urges the Court to consider its claim to sovereign and plenary power over all taxation.[45] This argument is flawed because the State's power over taxation is not so broad. Rather, the State may direct by statute how a municipality may levy tax monies for its own purposes, but it may not collect those monies itself,[46] create a debt that must be paid by those monies,[47] or otherwise encumber those funds.[48] For example, in *State ex rel. Wright v. Standford* this court considered a statute that required counties having more than 5,000 trees to appoint a fruit tree inspector from a list of inspectors

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[43] State's Br. 38-41.
[44] State's Br. 38-39.
[45] State's Br. 39-41.
[46] *See supra* § I, B..2; *see also* City's Br. 22-23.
[47] 66 P. 1061, 1063 (Utah 1901).
[48] *Id.*

provided by a state created board and to use the County's municipal funds to pay those inspectors and anyone the inspector chose to hire at the rates set forth in the statute.[49] This Court found the statute unconstitutional because the State had no authority to use municipal funds to pay for a State-incurred debt: "Under the constitution the state has no power to make a disposition of [municipal] funds, and require that they be appropriated for other and different purposes than those for which by authority of the [municipality] they were collected."[50] Rather, a municipality must be permitted to make decisions with respect to the spending of its municipal monies, and if the State creates a burden, it must raise and use state taxes to bear that burden. [51]

Just like the statute in *State ex rel. Wright*, the Act uses municipal funds for State created and incurred expenses. It does this directly by giving the Authority the power to incur debts and then pay those debts with the City's municipal tax monies. It also accomplishes this indirectly by giving the Authority the power to create municipal infrastructure, which the City will later bear the financial burden of maintaining.[52] As *Wright* teaches, the State cannot use municipal monies to pay for state created debts. Thus,

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[49] *Id.* at 1061-62.

[50] *Id.* at 1063.

[51] *Id.* at 1062 ("When the county government is established separate from the state, each is compelled to bear its own burdens, and not assume those of the other. The legislature is forbidden to impose taxes for county purposes, as is the county for state purposes, and the state is not authorized to impose taxes for other than state purposes."). *See also,* League Br. 5-7 for additional discussion of this case.

[52] *See* City Br. 24, n.112; IMLA Br. 9-10.

if the Authority is indeed performing a *statewide* function, as the State vehemently contends, it must be funded with a *statewide* tax.[53]

The State's alternative contention, *i.e.*, that it has unlimited power to take tax monies constitutionally raised by one municipality and direct them to another political subdivision, finds no support in the case law cited. To start, the State relies on a quote from *Tribe* to support this bold assertion, but omits critical language that makes clear any power to redirect municipal funds "is, of course, subject to constitutional limitations."[54] Moreover, *Tribe* is of no assistance to the State because it involves a statute that allows a municipality to choose to create a redevelopment agency and then choose to fund the agency it creates and oversees with its municipal monies.[55] This is not at all like the State's creation of the non-municipally controlled Authority, which it then funds with municipal monies.

Finally, the State criticizes the City for factually distinguishing *Tribe* and the other cases relied on by the district court, but these factual distinctions are key because they show the cases relied on by the State and the district court are inapposite and do not support the State's contention that it can simply redirect a municipality's constitutionally raised tax monies to another political subdivision, as the State contends. Rather, the cases cited and relied on show the state may raise a *statewide* tax to fund a *statewide* purpose[56] and that a statute will pass constitutional muster if the municipality has the final decision making

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[53] *See supra* n.47; *see also,* City Br. 30 (discussing *Mountain States Tel. & Tel. Co. v. Garfield Cty.*, 811 P.2d 184, 185 (Utah 1991)).

[54] *Tribe*, 540 P.2d at 504.

[55] *Id.* at 501-04.

[56] State's Br. 41, citing *Mountain States*, 811 P.2d at 185-92 (finding the State could direct the levy of a *statewide* tax on all citizens of Utah).

power as to whether it will incur the debt and encumber its funds.[57] This issue of consent is key.[58] It was important to this Court's reasoning in *State ex rel. Wright,*[59] and numerous cases where this Court found no ripper clause violation,[60] and is the very reason why the provisions of the Act that permit a municipality and a property owner to voluntarily request to become jurisdictional land and incur the subsequent requirement to contribute municipal tax monies to the Authority pass constitutional muster. But the challenged provisions, which offer the City no such choice, do not.

C. The Challenged Zoning and Land Use Provisions Violate the Ripper Clause.

1. The Ripper Clause Applies to Direct Mandates.

Relying on dictionary definitions of "delegate," the State contends the ripper clause does not apply to legislative mandates because it only prohibits legislation that "delegates" municipal power to a special commission.[61] The State is making the threadbare distinction between legislation that delegates power to a special commission and legislation that accomplishes the same result by directing a municipality to perform its municipal functions

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[57] State's Br. 32 & 41, citing *Tribe*, 540 P.2d 501-504 (finding a statute that allows a municipality to choose to create a redevelopment agency and to fund it with its municipal monies passes constitutional muster); *Salt Lake County v. Salt Lake City*, 134 P. 560 (Utah 1913) (finding a statute that required Salt Lake City to pay the County, if it utilized the County detention facility to house its delinquent youth, passed constitutional muster.). *See also,* City's Br. 28-31 (distinguishing cases relied on by the district court on these grounds).

[58] *State ex rel. Wright*, 66 P. at 1063 (finding statute unconstitutional because it "fastened" expenses upon the County and its municipal funds "without its consent.").

[59] *Id.* at 1063 ("Nor can the state compel a county to incur a debt or to levy a tax for the purpose named in the act without its consent.")

[60] City's Br. 17-21 (discussing line of cases that show the municipalities ability to consent to contested action is key to the ripper clause analysis); League's Br. 19-22 (same)

[61] State's Br. 22-33.

in a specific way. This argument fails because it overlooks the well-established principle that constitutional provisions are not to be interpreted "as barren words found in a dictionary."[62] Rather they must be "read in light of the conditions and necessities under which the provisions originated, and in view of the purposes sought to be attained and secured."[63]

Applying these principles in *State ex rel. Wright*, this Court found "[t]he constitution was doubtless framed and adopted with a purpose to protect the local self–governments," concluding that, if not expressly stated, a right to self-government is implied.[64] The Court also wisely observed that the State's power to create local governments is not a plenary power "to administer to such a system when created,"[65] which is directly at odds with the State's claim that its power to create municipalities includes a plenary power to direct municipalities in the performance of their municipal functions once formed. Having reached these conclusions, this Court proceeded to find a statute that mandated a County to hire fruit tree inspectors, and also mandated the amount the County must pay those inspectors, was an invasion of the County's *implied* right to local self-government.[66]

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[62] *American Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 10, 140 P.3d 1235. *See also*, *State ex rel. Wright*, 66 P. at 1062 ("[c]onstitutions are not to be interpreted alone by words abstractly considered").

[63] *State ex rel. Wright*, 66 P. at 1062. *See also, American Bush*, 2006 UT 40, ¶ 10 ("constitutional language . . . is to be read not as barren words found in a dictionary but as symbols of historic experience illumined by the presuppositions of those who employed them. We thus inform our textual interpretation with historical evidence of the framers' intent.").

[64] *State ex rel. Wright*, 66 P. at 1062 ("As has been seen, the constitution implies a right of local self–government.").

[65] *Id.* at 1062.

[66] *Id.* at 1062-64.

Implied rights, such as the implied right to self-government recognized in *State ex rel. Wright*, have been recognized throughout the history of this Court.[67] For example, in *State v. Maestas* this Court discussed the implied constitutional right to allocution. That right is nowhere specifically granted in the state constitution, but is recognized by this Court as an "inseparable part" of the right of criminal defendants to be present at their trial and as such is a right that is implied by the state constitution.[68] A municipality's right to be free from legislation that directs the performance of a municipal function is similarly inseparable from the right to be free from legislation that creates a special commission that performs that same municipal function.

As discussed at length in the briefing of the City and the amicus parties, the purpose of the ripper clause is to protect against legislative interference with local government at the behest of special interests. Such interference is accomplished just as effectively (and perhaps more so) by a statute instructing a municipality directly in the performance of its municipal functions as it is by a statute giving a special commission the power to perform or instruct the municipality in the performance of its municipal functions. A few examples are illustrative.

For years, Salt Lake City has faced an almost annual assault on local zoning and

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[67] *See, e.g.*, *In re Gestational Agreement*, 2019 UT 40, ¶¶ 11-18, 449 P.3d 69 (looking to case law and statutes at the time the constitutional provision was adopted to conclude a power not expressly stated was inferred); *State v. Maestas*, 2002 UT 123, ¶¶ 46-78, 63 P.3d 621 (recognizing an implied right to allocution); *Garrett Freight Lines v. State Tax Comm'n*, 135 P.2d 523, 528 (Utah 1943) (recognizing the constitution's restrictions on the State's power can be "express or implied.").

[68] *Maestas*, 2002 UT 123, ¶¶ 46-78 (recognizing an implied right to allocution).

land use powers at the behest of one special interest. Specifically, a well-funded billboard lobby has secured passage of statute after statute directing municipalities to permit billboard owners to have wide relocation rights within a municipality's jurisdictional boundaries, regardless of the municipality's local zoning laws.[69] The penalty for not allowing such relocation is payment of just compensation to the billboard company in amounts the industry claims are upwards of $350,000 per billboard.[70] Such legislation is repeatedly passed over the objections of the City, other Utah municipalities most affected by such legislation, and the residents who must live with the resulting billboard blight. The epitome of legislation interfering with local control passed at the behest of a special interest.

The 2021 legislative session was no different. A bill was introduced that required Utah municipalities to allow the upgrading of a standard billboard to an electronic billboard in almost every location in a city,[71] stripping municipalities of the ability to determine the appropriateness of an electronic billboard in a particular location and depriving the local residents that must live with the resulting glare of electronic billboards of any recourse.[72]

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[69] *See, e.g.,* Utah Code § 10-9a-513(2) (directing circumstances where a municipality must allow billboard owners to take certain actions including relocation of the billboard to a new spot, irrespective of local zoning laws); Utah Code § 72-7-516 (same); Utah Code § 72-7-510.5 (same).

[70] *Id.*

[71] S.B. 61, 2021 Leg. Sess. (2021 Utah). A copy can be found here: https://le.utah.gov/~2021/bills/static/SB0061.html. *See also,* S.B. 144, 2021 Leg. Sess. (2021 Utah) (prohibiting municipalities from taking certain actions with respect to its own property or from entering agreements with respect to that property). A copy can be found here: https://le.utah.gov/~2021/bills/static/SB0144.html.

[72] This bill did not pass this session, but there is every reason to believe it will return next session, especially if this Court finds legislative mandates wholly escape ripper clause

Similarly, (and apparently emboldened by the district court's decision in this matter), a bill was passed that directs municipalities that they must allow internal accessory dwelling units in any area zoned primarily for residential use.[73] Another bill passed that precludes municipalities from imposing "design element" requirements on most one or two family residences, which include such things as regulating the exterior color of a building, the type or style of exterior cladding material, the material, pitch or porch of a roof, the number and size of rooms, the minimum square footage of a building over 1,000 sq. feet, and rear yard landscaping.[74]

Yet another bill, modelled on the Act, sought to subject municipalities abutting Utah Lake to a State-created authority, removing their power to spend certain of their municipal monies.[75] The Inland Port bill was also amended again. This time a new unelected board was delegated power to grant loans to private developers and the ability to forgive those loans, which loans of course are funded with the City's municipal tax monies.[76]

This is just a flavor of the type of bills that will become the norm should this Court conclude that "direct mandates" regarding the exercise of a municipal function wholly escape constitutional scrutiny. That the ripper clause applies to direct mandates is an

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scrutiny.

[73] H.B. 82, 2021 Leg. Sess. (2021 Utah) (Lines 149-150). A copy can be found here: https://le.utah.gov/~2021/bills/static/HB0082.html.

[74] H.B. 98, 2021 Leg. Sess. (2021 Utah) (Lines 588 to 603). A copy can be found here: https://le.utah.gov/~2021/bills/static/HB0098.html.

[75] H.B. 364, 2021 Leg. Sess. (2021 Utah). A copy can be found here: https://le.utah.gov/~2021/bills/static/HB0364.html. This bill also did not pass this session.

[76] S.B. 243 2021 Leg. Sess. (2021 Utah) (Lines 684-733). A copy can be found here: https://le.utah.gov/~2021/bills/static/SB0243.html.

inescapable conclusion that this court already acknowledged (at least implicitly) in both *Backman v. Salt Lake County* and *City of West Jordan*.[77] The district court erred in reaching a contrary conclusion.

2. Local Zoning and Land Use Regulations are Municipal Functions.

With respect to the first of the three *City of West Jordan* factors, the State makes the general assertion that the first factor must be considered in the context of the development of an inland port, but then fails to explain why the State is in a better position than the City to make local zoning decisions with respect to a private development. Given that the City performs the function of making local zoning decisions, and necessarily makes those decisions in the context of private development as a matter of routine, it is clearly better

[77] In *Backman*, a statute mandating local government to put the question of forming of a civic auditorium and sports arena district on the next electoral ballot was found to violate the ripper clause, acknowledging at least implicitly that the ripper clause applies to statutory mandates. *Backman v. Salt Lake County* , 375 P.2d 756, 757-61 (Utah 1962). *See also,* City's Br. 32-33. In *City of W. Jordan,* a statute that mandated municipalities how a municipality must provide retirement benefits to its employees was found not to violate the ripper clause because municipalities were not required to provide retirement benefits and administration of retirement benefits is not a uniquely municipal function. *City of W. Jordan*, 767 P.2d at 533-35. Again, acknowledging at least implicitly that the ripper clause applies to mandates

The State claims that *Backman* does not concern a statutory mandate, but rather concerns the "statute's creation of a special commission." State's Br. 28. This is simply incorrect. The statute at issue in *Backman* did not form a body. *Backman*, 375 P.2d at 757-58. Rather, it attempted to direct that one was formed, by mandating it be put on the ballet. *Id.* As such, a statutory mandate was indisputably reviewed.

Notably, as *Tribe* and *City of West Jordan* teach, had the statutory mandate in *Backman* given local governments the choice of whether to put the question on the ballot or not, the statute would likely have passed constitutional muster. *See Tribe*, 540 P.2d at 501-03 (finding choice in creating municipal redevelopment agency key in ripper clause analysis); *City of W. Jordan*, 767 P.2d at 533 (noting choice municipality had in whether to provide retirement benefits in ripper clause analysis).

positioned.

With respect to the second factor, the State contends it is permitted to direct local zoning and land use out of a fear the private development might otherwise not be permitted to proceed. If such a fear were sufficient, there would be no limit on the State's power to veto local land use regulation at the behest of special interests — An absurd result as that was the very reason for adoption of the ripper clause.

The State's claims of satellite ports and jobs statewide are also red herrings. Again, the inland port is a private development and any satellite port will also be a private development. As such, the State's interest is no different than Fed Ex opening locations in Salt Lake City, Logan and St. George or a developer building homes on private property in Odgen, Provo and Cedar City.[78] Each municipality should be permitted to determine the zoning and land uses appropriate for its city, regardless of the fact that Fed Ex or the home builder have locations in and will create jobs in a few different cities.

With respect to the third element, the State offers no response to the obvious fact that zoning and land use regulation affect Salt Lake City residents uniquely because they are the individuals that live in the vicinity of the port. Similarly, pointing out that two of the eleven member board (a super-minority) are Salt Lake City representatives, is no response to the fact the Act and its zoning and land use provisions were passed over the objection of every representative that represents Salt Lake City residents.[79]

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[78] *See also,* League Br. 23-24 (demonstrating with examples that a statewide interest requires more than simply a private development that crosses municipal boundaries).

[79] City's Br. 37-38.

The zoning and land use functions at issue are municipal and the statute directing their performance is a violation of the ripper clause.

3. The State's Additional Factors do not Change the Result.

As with the tax monies argument, the State urges the Court to consider the State's "compelling" interest in development of an inland port and its claimed plenary power over zoning.[80] Again, a claimed "compelling" interest in seeing a private development proceed cannot be support for wholesale State override of local functions because that flies in the face of everything the ripper clause is intended to prevent: legislative interference in local self-government at the behest of a private interest.

Similarly, the State's contention that zoning and regulation of land use are not municipal functions because they find their source in statute must be rejected.[81] First, to adopt such a rule renders the ripper clause meaningless because (as the State argues) the source of all municipal power eventually finds its source in statute. Second, this Court has already rejected the adoption of "hard and fast categorization of specific functions as 'municipal' or 'State.'"[82] Directing that the determination be made "without erecting mechanical conceptual categories that, without serving any substantial interest, may hobble the effective government which the state constitution as a whole was designed to permit."[83] The State's contention that all municipal power that originates in statute is a state power, is exactly the type of rigid rule rejected by this Court. Third, *Salt Lake City v. Int'l Ass'n*

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[80] State's Br. 38-39.
[81] State's Br. 39-41.
[82] *City of W. Jordan*, 767 P.2d at 534.
[83] *Id.*

of Firefighters,[84] the case relied on by the State to promote this rule,[85] predates the seminal and controlling *City of West Jordan* decision that rejected the adoption of such rigid rules, and is overruled to the extent it propounds a different standard. Moreover, several other decisions that pre-date *City of West Jordan*, find exactly the opposite and that the statutory delegation of power to a municipality shows the function ***is*** municipal. For example, in *County Water Systems v. Salt Lake City*, the court found Salt Lake City's ability to sell surplus water beyond municipal boundaries was a municipal function, based specifically on the finding that the power had been delegated to the city by statute.[86] Similarly, in *State Water Pollution Control Board v. Salt Lake City*, the court found "so patent as to hardly require demonstration that the maintenance of a sewerage disposal system" was a municipal function, citing the statute specifically granting that power to municipalities.[87]

Finally, and perhaps most importantly, if the legislature takes away a municipal power, it must do so uniformly by removing the same power from all municipalities statewide.[88] The Act does not do so. Rather, it identifies a geographic area and directs the

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[84] 563 P.2d 786 (Utah 1977).

[85] State's Br. 41.

[86] 278 P.2d 285, 290 (Utah 1954) ("It is to be kept in mind that the authority of the city to sell its surplus water beyond the city limits is derived in the same manner and from the identical section of the statute which permits it to supply its own inhabitants. Such sale of surplus water, being authorized by law as a municipal function, is as much a municipal function as the supplying of water within the city limits . . ..").

[87] 311 P.2d 370, 374-75 (Utah 1957).

[88] Utah Const. Art. XI, § 5 (permitting enactment of "general laws applicable alike to all cities and towns."); *Int'l Ass'n of Firefighters*, 563 P.2d at 788-91 (finding *uniform* removal of power for municipalities to determine conditions of employment for firefighters, such as residency requirements, retirement plans, workloads etc.,[88] but ultimately finding the statute unconstitutional because it delegated important policy decisions and the allocation of public resources to decision-makers that were not

zoning and land use for that area, thus restricting zoning and land use powers for just those municipalities, sometimes with bizarre and completely illogical results. For example, as a result of the borders of the authority jurisdictional land, Salt Lake City is stripped of municipal planning, land use regulation, and certain tax monies for the north side of 2550 South, but retains those powers for the south side of that road.[89] This is not the careful and uniform withdrawal of a specifically identified power contemplated by the constitution or this court's prior holdings.

The statutory source of municipal zoning and land use power is of no consequence.

II. THE ACT VIOLATES THE UNIFORM OPERATION OF LAWS PROVISION.[90]

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accountable to the electorate).

[89] Also, strangely, due to the boundaries of the authority jurisdictional land, the City retains its municipal powers for all properties east of the airport, except an island of land added in the amendments to the Act made in the July 2018 Special Session. R. 00576 (footnote 14); R. 00688; R. 01210 (footnote 82).

[90] The State contends the Court should not address this issue at all claiming it is inadequately briefed. State's Br. 47-48. This Court recently considered this issue, in a matter involving counsel for the State, stating the briefing requirement is that "both appellant and appellee briefs contain reasoned analysis supported by citations to legal authority and the record." *Utah Dep't of Transportation v. Coalt, Inc.*, 2020 UT 58, ¶¶ 43, 472 P.3d 942 (addressing court of appeals finding that UDOT inadequately briefed an issue when it did not include a separate section addressing appellant's challenges on the issue of valuation.) This Court went on to explain that "[t]here is no bright-line rule determining when a brief [meets this standard], noting a distaste for "toss[ing] aside partially briefed but still discernable arguments." *Id.* at ¶ 44. Finally, this Court made clear that "the 'ultimate question' is not whether there is a technical deficiency in [briefing] meriting a default," but rather whether the appellant has "met its burden of persuasion on appeal" by presenting a "plausible basis for reversal." *Id.* at ¶¶ 44-45.

As reflected by the cases cited and relied on by the State, inadequate briefing is generally found where the appellant wholly fails to raise an issue relied on by the district court, raises an argument for the first time in a reply, or fails to provide adequate discussion of the applicable law, leaving the burden of research to the Court. *See, e.g.,* State's Br. 47-48, citing *Allen v. Friel*, 2008 UT 56, ¶¶ 7-18, 194 P.3d 903 (discussing inadequate briefing of a pro-se party appealing denial of his petition for post-conviction relief); *Living Rivers*

A. The City and the State Agree on the Classifications Created by the Act.

The City and the State agree scrutiny of a statute under the uniform operation of laws requires a three-part analysis.[91] First, a determination of the classification the statute creates; second a determination of whether the statute treats similarly situated persons differently; and third, if there is a rational basis for the disparate treatment.[92]

With respect to the first determination, the classification drawn by the statute, the parties agree the classification drawn is Salt Lake City, Magna and West Valley in one class and all other Utah municipalities in another class.[93] The State contends that the classification is in fact municipalities within the Authority's jurisdictional land and municipalities that do not fall within the Authority's jurisdictional land.[94] But this draws a distinction without a difference. Salt Lake City, Magna and West Valley are the only municipalities within the jurisdictional land and all other Utah municipalities are the

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v. Exec. Dir. of the Utah Dept. of Environmental Quality, 2017 UT 64, ¶¶ 31-51, 417 P.3d 57 (where appellant did not raise in its opening brief a challenge to an independent ground relied on by the agency to reach its decision).

None of these are present here. The City's opening brief identifies the issues it is challenging, including the ruling that found the Uniform Operation of Laws provision was not violated. The City's brief outlines the three-step analytical framework applicable to a uniform operation of laws analysis, including "reasoned analysis supported by citations to the legal authority" identifying why the City believes the three-part analysis shows the Act at issue does not pass constitutional muster. As such, its burden of presenting "a plausible basis for reversal" is met. *Coalt*, 2020 UT 58, ¶ 45.

[91] City's Br. 40; State's Br. 49.

[92] *Id.*

[93] City's Br. 41; State's Br. 51.

[94] State's Br. 51.

municipalities not within the jurisdictional land. The district court's opinion also appears to agree that these are the classifications.[95]

B. The Act Treats Otherwise Similarly Situated Municipalities Disparately.

With respect to the second determination, whether the statute treats similarly situated persons differently, the parties disagree. To determine if a statute treats those similarly situated disparately, the Court must look at characteristics or conditions that exist independent of the Act, not the conditions created and imposed by the Act. For example, in *Count My Vote, Inc. v. Cox*, this Court declined to reach the third prong of the uniform operation of laws analysis and conduct a rational basis review of a statute that required initiative sponsors (but not initiative opponents) to hold public hearings and file applications because initiative sponsors are not similarly situated to initiative opponents.[96] The former is looking to change the law and the other is looking to keep the law the same.[97] These are characteristics that exist independent of the different treatment imposed by the Act. Similarly, in *State v. Drej*, this Court again declined to conduct a rational basis analysis because it found a criminal defendant that is suffering from a certain mental health condition is not similarly situated to a criminal defendant that is not suffering from that mental health condition.[98] Again, the condition analyzed to determine if the classes are similarly situated exists independent of the statute at issue.

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[95] Notably, the district court's memorandum decision does not contain a discussion of the classifications. R. 01533. Rather, the district court proceeded directly to a discussion of the third prong of the uniform operation of laws analysis. R.01532-37.

[96] 2019 UT 60, ¶¶ 28-41, 452 P.3d 1109.

[97] *Id.*

[98] 2010 UT 35, ¶¶ 32, 233 P.3d 476.

In stark contrast, the condition the State relies on to argue the City is not similarly situated to all other Utah municipalities is a condition created by the statute under review. Specifically, the State argues that the City is not similarly situated to other Utah municipalities because the City is located in the jurisdictional land[99] — a condition and characteristic created and applied to Salt Lake City by the challenged Act. In addition to finding no support in Utah law, relying on the disparate condition created and imposed on the City by the Act to argue the City is not similarly situated to other Utah jurisdictions makes a mockery of the protections of the uniform operation of laws provision. For example, if this were the standard, a statute that required Alta to allow a developer to create another resort in its town could avoid analysis under the uniform operation of laws provision by asserting Alta is not similarly situated to all other municipalities because it has the mountain on which the ski resort developer wishes to develop. The State's argument is no different. The land on which a private developer wishes to develop an inland port lies within Salt Lake City — Thus, the State argues the City is not similarly situated to other Utah municipalities because the developer wishes to develop on land in Salt Lake City. [100]

[99] State's Br. 51.

[100] The district court's decision does not contain a separate analysis of whether the Act treats similarly situated municipalities disparately, but rather seems to conflate this discussion into its analysis of the third prong of the uniform operation of laws analysis. R.01532-37.

Salt Lake City, Magna and West Valley are similarly situated to all other Utah municipalities and the analysis should proceed to the third prong of the uniform operation of laws analysis.

C. The Disparate Treatment is not Reasonably Related to the Legitimate Legislative Objective.

1. There is no Support for the Contention that the Classification at Issue is Reasonable.

The third prong of the analysis considers whether the classification is reasonable and, if so, if there is a reasonable relationship between the classification and the objective. With respect to the first question, the State (and district court) contend the classification is reasonable for the very reason the City contends the classification is unreasonable. Namely, Salt Lake City must be compelled to participate to ensure the private developer can develop an inland port in that location.[101] Notably, neither the State nor the district court cite any case to support the conclusion drawn, *i.e.*, that such a classification is reasonable. Indeed, none can be found. For example, the classifications this court expressly or implicitly finds reasonable are classifications of sectors of an industry for the purposes of imposing a tax to cover costs related to that industry[102] or classifications of criminal defendants for the purpose of imposing a criminal sentence.[103] No Utah case finds

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[101] State's Br. 57; R. 01535.

[102] *See, e.g.,* *Kennecott Corp. v. Utah State Tax Comm'n*, 858 P.2d 1381, 1388-89 (Utah Sup.Ct. 1993) (finding that beyond being centrally assessed, Kennecott and railroad companies are not similarly situated for purposes of imposing a tax).

[103] *See, e.g.,* *State v. Outzen*, 2017 UT 30, ¶¶ 16-19, 408 P.3d 334 (finding those that legally ingest a drug are not similarly situated to those that do not).

the classification of municipalities to ensure smooth passage of a private development is reasonable.

To the contrary, this Court found unconstitutional a statute that classified municipalities based on the number of fruits trees in their jurisdiction and the size of their population.[104] Those with 5,000 fruit trees and a population exceeding 20,000 were required to hire fruit tree inspectors and pay them at a rate dictated by the statute, while those that did not meet those characteristics were not.[105] The argument made by the State (and adopted by the district court) is no different. In short, the classification of municipalities based on characteristics such as the number of fruit trees and population did not pass constitutional muster; the classification of municipalities based on characteristics such as proximity to transport channels and being in the location where a private developer wishes to develop does not either. The district court erred in reaching a contrary conclusion.

2. The Relationship Drawn is not Reasonable.

To pass constitutional muster, the relationship between the challenged provisions and the stated legislative purpose must be reasonable.[106] The State contends the disparate treatment of Salt Lake City by redirecting its tax increment to the Authority is reasonably related to its stated purpose because the Authority needs funds to perform its alleged statewide purpose.[107] But, more is required than a claim that funds are required — the

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[104] *State ex rel. Wright,* 66 P. at 1061-64.
[105] *Id.*
[106] *See, e.g., State v. Angilau*, 2011 UT 3, ¶¶ 24-32, 245 P.3d 745.
[107] State's Br. 57. Notably, this is not the reason proffered by the district court,

burden placed on the taxed entity must be "[ ]reasonable in light of the reasons for the tax classification."[108] Here. the State makes no attempt to explain why it is reasonable to redirect funds only from Salt Lake City to fund a project it claims is for the benefit of residents statewide. Similarly, no attempt is made to explain a reasonable relationship between the sheer amount of dollars being siphoned from Salt Lake City, which amounts to hundreds of millions,[109] and the costs of the functions of the Authority.

Similarly, no explanation is offered to show a reasonable relationship between the necessity for imposing zoning and land use regulations on Salt Lake City past a fear that the private developer may not be permitted to develop an inland port or that it will be required to develop it in compliance with the standards Salt Lake City residents require. If this is the case, then the State has admitted its own ripper clause violation — legislative interference with the municipal function of zoning at the behest of a special interest.

III. THE AUTHORITY DOES NOT ADDRESS THE ACTUAL ARGUMENTS RAISED IN THE LEAGUE AND IMLA'S AMICUS BRIEFS.[110]

A. Entities Created Under Article XI, Section 8 are not Exempt from Scrutiny Under the Ripper Clause.

The Authority attempts to divert attention from the historical context provided by the briefs of the League and IMLA by arguing the Authority escapes scrutiny under the

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which conducted no reasonable relationship analysis, relying instead on the incorrect conclusion that the State has the power to redirect municipal funds. R. 01536. No further analysis was conducted.

[108] *Little Am. Hotel Corp. v. Salt Lake City*, 785 P.2d 1106, 1108 (Utah 1989).

[109] R. 00362, ¶ 91; R. 00368-69.

[110] The Authority devotes its entire responsive brief to addressing arguments raised by the amicus parties, leaving the State to address the arguments raised by the City in its principle brief.

ripper clause because it was created under Article XI, section 8. There is no support for the claim that this 2000 amendment was intended to inoculate these bodies from ripper clause scrutiny. First, nothing in the language of Article XI, section 8 states that entities created under this provision, as opposed to some other statutory or constitutional provision, are not subject to the ripper clause. Indeed, the voter pamphlet issued at the time Article XI, section 8 was put on the ballot states that the purpose of the addition of this provision was to "clarify and modernize the local government provisions of the Utah Constitution."[111] It noted that the constitutional provisions that existed at the time "relating to local government [were] inconsistent and unclear, making them subject to different interpretations."[112] Further, "other provisions [were] simply outdated and need[ed] to be modernized to reflect current understanding and practice. Proposition 1 modernizes local government provisions of the Utah Constitution and adds precision and clarity where they were lacking."[113] There was no opposition to this constitutional clean up and, in reference to the political subdivision language, the pamphlet said nothing about an intention to fundamentally change the protections afforded local government under other provisions of the constitution, including the ripper clause.[114] The addition of Article XI, section 8 cannot be legitimately read to have effected such fundamental change.[115]

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[111] Utah Voter Information Pamphlet, Gen. Election, Nov. 7, 2000, available at: https://elections.utah.gov/Media/Default/Historical%20VIPs/2000%20VIP.compressed.pdf.

[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] *See* League's Br. 2 (identifying the "legislative tendency to be captured by private interests that want to bend municipal power to their financial purposes" and that

Second, and by way of confirming the de minimis importance of the 2000 amendment, there was no mention of an effort to alter the operation of the ripper clause at the time Article XI, section 8 was presented to the public. Therefore, the new provision must be read as leaving undisturbed the constitutional protections afforded local government that existed at the time it was adopted.[116] Here, that requires harmonization with Article XI, section 5, which prohibits the creation of cities and towns by special law, Article XI, section 7, which allows municipalities and counties to elect to create local service districts to perform certain municipal functions, and Article VI, section 28, the ripper clause. To avoid conflict with these provisions, the power to create entities set forth in Article XI, section 8 must be read as a power to create entities that will perform state functions or provide services not ordinarily or customarily provided by municipalities, and nothing more.[117]

Finally, the Authority criticizes the City and the League for not identifying a case where a political subdivision created under this amendment was found to be a special

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"[i]f the Legislature wants to obtain power over local functions it must "ask the people to amend the constitution to grant that power.").

[116] *See, e.g.*, *Berry By & Through Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 675 & 677 (Utah 1985) (stating the meaning of a constitutional provision "must be taken not only from its history and plain language, but also from its functional relationship to other constitutional provisions" and that "constitutional rights, must be weighed against and harmonized with other constitutional provisions"); *American Bush*, 2006 UT 40, ¶ 18 (stating that "when determining the meaning of a constitutional provision, 'other provisions dealing generally with the same topic . . . assist us in arriving at a proper interpretation" and that "it is in fact necessary, that we construe these two provisions together'").

[117] *See, e.g.*, Utah Code § 63E-1-102(4)(b) (listing independent entities created directly by the State that perform state functions); Utah's Office of Legislative Research and General Council, A Guide to Utah's Independent Entities (Oct. 2018) (available at https://le.utah.gov/interim/2018/pdf/IndependentEntitiesGuide_Oct.pdf).

commission. The failure of any party to identify such a case is hardly surprising. The political subdivision amendment was adopted in 2000 and the most recent ripper clause decision by a Utah appellate court was in 1990.[118] Moreover, the Authority ignores the League's analysis of *State ex rel. Wright*,[119] which explicitly rejected the idea that a political subdivision could force a municipality to go into debt without its consent[120] — a decision that has been cited in the interpretation of the ripper clause.[121]

The categorization of the Authority as a "political subdivision" does not offer a safe harbor from the reach of the ripper clause.

B. The League Does Not Propose Reversal of Precedent.

The Authority suggests that the League is seeking to have *City of West Jordan* overruled. Again, the Authority manufacturers an argument by the League because it cannot address the League's analysis head-on. The Authority devotes pages to a stare decisis analysis. Yet, the League never argues that the Court should abandon the *City of*

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[118] The United States District Court of Utah issued a decision referencing the ripper clause in 2006, but it was raised as a defense and the decision does not discuss or address the special commission element. *See* *Qwest Corp v. Utah Telecomm. Open Infrastructure Agency*, 438 F. Supp. 2d 1321, 1325-26 (D. Utah 2006).

[119] League's Br. 5-7; *see also, supra* § I.B.4.

[120] The provision cited by the 1901 court has been slightly modified from the original, but the meaning remains the same. The original provision read: "Sec. 5. [Local authorities to levy local taxes.] The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by law, vest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation." Utah Const. art. XIII, § 5 (1895), *available at* https://archives.utah.gov/research/exhibits/Statehood/1896text.htm.

[121] *See, e.g.*, *Branch v. Salt Lake Cty. Serv. Area No. 2-Cottonwood Heights*, 460 P.2d 814, 821-22 (Utah 1969) (*superseded by statute* to the extent it defined municipalities as "the instrumentality of the state" *see* *GeoMetWatch Corp. v. Utah State Univ. Rsch. Found.*, 2018 UT 50, 428 P.3d 1064, 1072, n.6.)

West Jordan line of cases. Instead, it carefully aligns that precedent with the founding-era context it describes. In so doing, the League argues that the district court improperly applied the *City of West Jordan* standard. Specifically, it points out that by examining the decisions in *City of West Jordan*,[122] *Municipal. Building Authority of Iron Cty. v. Lowder*,[123] and *Utah Associated Mun. Power Sys. v. Pub. Serv. Comm'n of Utah*,[124] one finds a clear through-line that is not satisfied by the Inland Port Authority legislation: the municipalities in those cases chose to make themselves subject to the provisions of the Act and/or the particular special commission at issue.[125] Moreover, the voters of the municipality could remove those who had made that decision if they did not like the outcome.[126] The Authority and the State cannot dispute this critical point. Rather than asking this Court to diverge from precedent, the League and the City are asking this Court to confirm that precedent, and to find that it is the State and the Authority that are seeking to subvert the *City of West Jordan* line of cases.

C. The Authority does not Challenge the League and IMLA's Founding Era Context.

1. The League's Analysis of Early 1900 Case Law Remains Unchallenged.

Notably, the Authority fails to even mention the League's analysis of three cases[127]

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[122] 767 P.2d 530 (Utah 1988).
[123] 711 P.2d 273 (Utah 1985).
[124] 789 P.2d 298 (Utah 1990).
[125] League's Br. 19-22.
[126] *Id*.
[127] These critical cases—decided shortly after the Utah Constitution was adopted—are (1) *State ex rel. Wright*, 66 P. 1061 (Utah 1901); *State ex rel. Salt Lake City v. Eldredge*, 76 P. 337 (Utah 1904); and *Salt Lake County v. Salt Lake City*, 134 P. 560 (Utah 1913).

that provide critical, early 1900s context regarding the ripper clause and the associated suite of constitutional provisions that protect local government. Because the Authority offers no alternative guidance regarding these cases, and because the district court failed to consider them at all, this Court should look to the League's brief to understand these decisions and how they inform analysis of the ripper clause.[128]

2. The League's Corpus Linguistics Context Remains the Only Corpus Linguistics Context.

While the Authority criticizes the League's corpus linguistics analysis, it offers no corpus analysis of its own. It's three criticisms — that the League's work is "myopic and unhelpful" because it (a) does not analyze other key terms of the ripper clause beyond "municipal function," (b) does not analyze the historical genesis of the ripper clause (which another amicus does), and (c) only allegedly reveals a "geographic distinction" between municipal and non-municipal functions — are easily discarded. The League's brief explains why "municipal function" requires a corpus analysis, particularly given the district court's overly narrow reading of this central phrase.[129] A cursory reading of the brief shows that the League considers — and focuses on — the larger context surrounding the passage of Utah's ripper clause, while noting that IMLA's amicus brief is dedicated to the history of ripper clauses generally.[130] Finally, the League's corpus analysis is far more significant than the Authority would like to acknowledge. It does more than distinguish

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The State addresses *Salt Lake County* in its Opposition, but it fails to properly contextualize it with these earlier decisions.

[128] League's Br. 5-11.

[129] League's Br. 13.

[130] League's Br. 4, n.3.

between geographic zones. It shows, clearly, that the plain meaning of the phrase "municipal function" covered local taxes and those taxes were considered a keystone for the proper functioning of municipalities at the time.[131] Neither the Authority nor the State performs the additional corpus work that they claim the League should have done. The logical conclusion is that this is because the League's corpus analysis would remain unchanged. Therefore, while the Court may give the League's analysis whatever weight it deems fit, this is the ***only*** corpus analysis before the Court.

3. The League's Constitutional Convention Context Remains the Only Constitutional Convention Context.

The Authority shrugs off the League's references to Utah Constitutional convention. But again, neither the Authority nor the State offer any alternate for this Court to consider. The framers of the Utah Constitution wanted Utah's municipalities to have the final word on decisions that impacted their infrastructure, as Delegate Evans made clear: "I do not think that the Legislature ought to have the right to say that there shall be railroads, telephone lines, or anything else of that description located and passed through these cities without the authorities being consulted and their consent obtained[.]"[132] The Authority cannot counter the clarity of this language.

The response offered by the Authority is that this references a different section of the Utah Constitution so this "exchange is meaningless to the issues before the Court[.]"[133]

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[131] League's Br. 14.

[132] Utah Constitutional Convention, Day 52 (Apr. 24, 1895) (discussing Utah Constitution art. XII, § 8, which is now located in art. XI, § 9); s*ee also* League's Br. 15-17.

[133] Authority Br. 24.

That argument misses the point. This Court has "long looked to founding-era materials like the records of the constitutional convention in ascertaining the meaning of the Utah Constitution."[134] It has not required that those materials be considered only if there is a verbatim discussion of the issue currently before the Court. Here, as the League addresses in detail, the provision being discussed by Delegate Evans and his colleagues was among the suite that were intended to protect local governments from legislative interference, a suite which included the ripper clause.[135] The Authority attempts to unbundle this packet of provisions, but the briefs submitted by the League and the IMLA show why that cannot be done. They also make clear that the founders' intent in passing the ripper clause was the same as the intent behind these other provisions.[136] Again, the Authority offers no alternative founding-era materials for this Court to consider.

4. The Authority's Criticism of IMLA's Brief is Unfounded.

The Authority criticizes IMLA's analysis of cases from across the country that show a primary purpose of the ripper clause is to protect against the burdening of municipal budgets without municipal consent on the grounds IMLA did not reference *People ex rel.*

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[134] *Mitchell v. Roberts*, 2020 UT 34, ¶ 37, 469 P.3d 901.

[135] *See, e.g.,* 3 John Forrest Dillon, Commentaries on the Law of Municipal Corporations 1933-36 (5th ed. 1911) (constitutional provisions protected municipal streets because, for example, "the plenary power of the [New York] legislature over highways and streets . . . had been exercised so often with such manifest injustice to the municipalities."). *See also,* David O. Porter, *The Ripper Clause in State Constitutional Law: An Early Urban Experiment Part I*, 1969 Utah L. Rev. 287, 311 (discussing suite of constitutional provisions protecting local governance, which included the ripper clause); *Wright,* 66 P. at 1063-64 (also discussing the suite of provisions protecting local governance, which had recently been adopted from California and Pennsylvania).

[136] *See, e.g.,* League's Br. 15-19.

Younger v. Cty. of El Dorado.[137] To start, there are hundreds of cases from the seven jurisdictions that have adopted a ripper clause and IMLA can hardly be faulted for not discussing this one case. Moreover, this case does nothing to alter the analysis or conclusion reached because the financial burden at issue in *Younger* could be satisfied by the levy of a new regionwide tax, thus no burdening of municipal budget without municipal consent occurred.[138] Thus, there was no need for IMLA to discuss this case.

Similarly, the Authority's response to IMLA's application of the Act to its ripper clause analysis shows no material flaw. That the redirected monies were reduced from 100% to 75% in 2020, does not negate the fact that these municipal monies are still burdened, and the conclusory statements that the provisions at issue are mandates that escape scrutiny under the ripper clause, or that the State has plenary power to redirect municipal funds, are incorrect for the reasons set forth above. The only substantive analysis the Authority engages in is to claim that anytime anyone other than the City builds infrastructure, the City's planning and municipal funds are affected. But that does not

[137] Authority Br. 33-37 citing *People ex rel. Younger v. Cty. of El Dorado*, 487 P.2d 1193 (1971).

[138] *Id.* at 1197. The Authority's attempts to draw further analogies between *Younger* and the Act are equally flawed. *Younger* concerned the Lake Tahoe Regional Authority, which was created by an interstate compact and authorized by congress. *Id.* at 1195-96. Its purpose was to set *minimum* standards for development that would preserve the environmental integrity of the lake, leaving local government to elect to choose more stringent standards if it so chose. *Id.* at 1196. In contrast, the Act imposes the inverse, requiring the City to *allow* certain land uses regardless of a local government's desire to adopt more stringent standards. It cannot be sensibly argued that the functions are the same — the adoption of *minimum* standards preserves local control to require something more, but the adoption of a requirement to allow a certain use preserves no such local control.

address the point raised.[139] When the State builds a road it does so with State funds and the road is maintained by the State with State funds. Here, when the Authority decides to build a road it will do so with City funds and when built it will be maintained with City funds. Preventing the creation of a municipal debt by unelected unaccountable boards is a bedrock principle of the ripper clause and the Authority has not shown otherwise.

IV. THE COUNTIES' AMICUS BRIEF MAKES NO SUBSTANTIVE ARGUMENT.

The amicus brief filed by twenty Utah counties in support of the State and Authority simply repeats in a conclusive fashion that development of an Inland Port is a matter of statewide concern, counties other than Salt Lake County support it, and the district court's analysis was correct. As such, it provides no additional or unique perspective and is of no assistance in resolving the important legal questions before this Court. It also bears note that nothing in the City's challenge prevents these counties or any municipality in these counties from developing an inland port in their jurisdiction or from following the non-mandatory provisions of the Act and requesting to be subject to the Authority and the provisions of the Act.

CONCLUSION

The State and the Authority have not rebutted the inevitable conclusion that the Act violates the ripper clause by (1) delegating power to the Authority to spend municipal monies; and (2) directing the City in the performance of its municipal functions of adopting zoning and land use regulations. The State and Authority have also failed to show the

[139] Authority Br. 42-43.

disparate treatment of Salt Lake City, Magna and West Valley is reasonably related to the stated legislative objective. A finding that the challenged provisions of the Act violate Article VI, § 28 and Article I, § 24 is respectfully requested.

DATED this 31st day of March, 2021.

/s/ Samantha J. Slark
Attorney for Salt Lake City Corporation

CERTIFICATE OF COMPLIANCE

This brief, submitted under Utah Rule of Appellate Procedure 24(g)(1), exceeds the type-volume limitation. The word processing system used to prepare this brief, states that it contains 11,889 words in Times New Roman type, which is a proportionally spaced font. On March 22, 2021, the City filed a Motion for Overlength attaching a draft brief, as directed by Rule 24(h) of the Utah Rules of Appellate Procedure. At the time of filing this brief, that motion is still pending before the Court.

Further, the undersigned certifies that this brief complies with Utah Rule of Appellate Procedure 21(g) regarding public and non-public filings.

/s/ Samantha J. Slark

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 31st day of March, 2021, a true and correct copy of the foregoing **REPLY BRIEF OF APPELLANT** was electronically filed with the Clerk of the Court, and further sent by email to:

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