In the Supreme Court of the State of Utah

Salt Lake City Corporation, *Plaintiff-Appellant*, v. Utah Inland Port Authority, et al., *Defendants-Appellees.*	**No. 20200118-SC**

Brief of State Defendants

On appeal from the Third Judicial District Court
Honorable James Blanch, presiding
No. 190902057

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

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Introduction

The Utah Inland Port Authority Act (Act) envisions and enables arguably the biggest economic undertaking and opportunity in the State's history. If strategically planned, developed, and managed, one study estimates the port project could create over 20,000 jobs and generate enormous statewide economic benefits. The Act embraces that vision for the inland port—a world class multi-modal regional and international logistics, transportation, and distribution hub. The main inland port infrastructure, facilities, and development will be located on largely undeveloped land within the boundaries of Salt Lake City, Magna, and West Valley City. But the Act also anticipates and authorizes satellite ports in other parts of the State.

Given the inland port project's statewide scope and economic impact, the Act created the Utah Inland Port Authority (Authority) to work with relevant state and local government entities, property owners, and others to encourage and facilitate the inland port's development "to maximize the long-term economic and other benefit for the state." The legislature reasonably determined that the Authority, governed by a board including state and local government officials, would be better able to facilitate the Act's purposes than would a municipality.

A project this big and far reaching has naturally generated considerable publicity, including business and government support and some opposition. But the Act's wisdom is not up for debate in this

appeal. The Court must defer to the legislature's policy choices and reasonable public purpose determinations. All the Court has to decide is whether Salt Lake City (City) has met its heavy burden to show the Act clearly violates the Utah Constitution. And the answer to that question is "no" as the district court concluded.

For all the briefing this appeal is producing, the City's arguments can be rejected on simple, straightforward grounds. The City first argues that certain provisions in the Act violate article VI, section 28 (commonly referred to as the Ripper Clause). This clause prohibits the legislature from, in relevant part, delegating power to a special commission to perform municipal functions. But the Act's provisions the City challenges do not delegate any power to the Authority. Rather, the challenged provisions' plain language shows they are direct legislative mandates requiring (1) affected cities to allow certain zoning or land use within the inland port area, and (2) relevant tax collecting entities to pay the Authority certain percentages of property tax differential and sales and use tax revenues collected within the inland port area. Because these mandates do not delegate power to the Authority, the City's Ripper Clause claim fails at the outset.

Even if the claim satisfied the delegation element, the City fails to show that the Act's zoning and tax mandates are *exclusively* municipal functions. Functions traditionally performed by municipalities do not trigger the Ripper Clause if they are infused with a state, rather than exclusively local, interest. Here, the taxing and

zoning mandates are not a purely municipal function, and the State's interests in the Inland Port's economic opportunities extend well beyond the City's limits.

The City also argues that the challenged provisions violate article I, section 24 (the Uniform Operation of Laws Clause). But the City never addresses the district court's thorough analysis rejecting this claim and thus cannot satisfy its burden of persuasion on appeal to show district court error. Regardless, the City's claim also fails on the merits. The Act does not treat similarly situated cities differently. And even if it did, the challenged provisions are reasonably related to a legitimate government objective under the deferential rational basis review.

The district court's judgment should be affirmed.

Statement of the Issues

Issue 1: Did the district court properly conclude that the Ripper Clause does not prohibit Act provisions that:

a. require the Authority to be paid some of the property tax differential and sales and use tax within the inland port's authority jurisdictional land,

b. require cities with land inside the inland port's authority jurisdictional land to "allow an inland port as a permitted or conditional use," and

c. forbid cities with land inside the inland port jurisdictional 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 Act does not violate the Uniform Operation of Laws Clause?

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

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

The Long Contemplated and Studied Inland Port

State and local government leaders and business interests have considered potential inland ports for more than 40 years. R. 1037, 1360, 1375-77, 1492. In 1974, the legislature authorized the State, counties, or municipalities to create port authorities to promote and protect commerce. 1974 Utah Laws 6. But that enabling statute didn't spur much port activity. R. 1376. Salt Lake County explored the idea in the late 1980's and commissioned a feasibility study that concluded even a county port authority would have statewide benefits. R. 1360-61, 1376. Any momentum for a port got bogged down pending further study. R. 1361, 1376.

A quarter century later, several events sparked renewed interest in creating an inland port. Union Pacific Railroad constructed an intermodal hub in 2006 not far from Salt Lake City International Airport; the airport in turn started a multi-billion dollar rebuild in 2014; and the legislature voted in 2015 to move the Utah State Prison to land near the airport in the City's northwest quadrant. R. 1360, 1494. And to support the new prison, the State would spend hundreds of millions of dollars on needed infrastructure—including road, water, sewage, and electricity. R. 255, 899-890, 1492-93; Utah Code § 11-58-201(3)(b)(iv).

The timing and location of those developments mattered. The northwest quadrant had long been considered a prime location for a

port because the area contained thousands of acres of still largely undeveloped land close to interstate rail lines, freeways, and the international airport. R. 1038, 1363, 1492.

State and local government leaders and business interests took notice and started to assess economic and inland port possibilities. A 2016 report by the Kem C. Gardner Institute concluded that Salt Lake County (with the northwest quadrant as the likely location) satisfied many essential criteria for developing an inland port, R. 1356-58, and a port "could be an important rural Utah economic development asset." R. 1358. The 2016 report even suggested the legislature should oversee a feasibility study "[s]ince development of an inland port would serve a statewide economic interest and impact multiple jurisdictions." R. 1373. The 2016 report also described various port governance options—from state to municipal—while noting the right type depends on state and local circumstances and the port's objectives, particularly maximizing local, regional, state, or national economic prospects. R. 1366.

A 2017 global trade and investment plan for Salt Lake County took a more worldwide view of the county's economic strengths, weaknesses, and opportunities. *See, e.g.,* The Global Cities Initiative, *Salt Lake County Global Trade & Investment Plan* (2017)[1]; *see also* R. 1044-45 (summarizing findings from the 2017 plan). From that much broader perspective, the plan recommended "[l]everag[ing] legislative

[1] Available at https://inlandportauthority.utah.gov/wp-content/uploads/global-trade-investment-plan1.pdf.

authority and current excitement" to develop an inland port to increase global trade and investment. *Global Trade & Investment Plan* at 25-26.

Then in late 2017, two consulting firms finished a comprehensive inland port feasibility analysis for the Utah Governor's Office of Economic Development and the World Trade Center Utah. R. 1029-1138. The study noted the prior 2016 and 2017 reports, R. 1037, 1044-45, and confirmed that an inland port in the northwest quadrant—if planned, developed, and governed properly—could reap enormous statewide benefits as a world-class multimodal transportation and logistics hub. R. 1038-42, 1107. Among other things, the study estimated the project could create 24,000 jobs in Utah and should be an "integral" part "in growing the State's natural resource/extraction industries." R. 1040, 1103, 1493. More broadly, an inland port had the "ability to play a central role in developing the State's global and trade economy" and "represent[ed] a substantial component of Utah's economic future." R. 1107.

The feasibility study emphasized that those potential benefits were not guaranteed. To fully realize the inland port's possibilities would require careful planning, development, and the right "supporting governance structure." R. 1107. While the focus would be on establishing an inland port in the northwest quadrant, the project would also need "authority and capability to deliver other related transport and logistics projects elsewhere in the State." R. 1110. This broader scope, per the study, "would emphasize that the [inland port]

should be a focus point for the entire State of Utah and support to connecting and export-oriented infrastructure supporting a range of key industries including agriculture and natural resource extraction." R. 1110. So too, relevant market participants would need to see "the full weight of the State of Utah behind" the inland port to maximize its credibility. R. 1110.

After the legislature decided to move the prison, some private landowners in the northwest quadrant started talking to City officials about developing an inland port. R. 1493. Those discussions led to a proposal to create a city-controlled port authority that would manage a new inland port developed on private land in the northwest quadrant. R. 1493. Given the project's statewide importance, some state legislators also met with City and county representatives along with private property owners to discuss a proposed inland port. R. 1493.

The Utah Inland Port Authority Act

With so much statewide economic potential riding on this one-of-a-kind opportunity, the State had to ensure the inland port's development, support, and continuing success were not left to one city's absolute control. So the legislature passed, and the governor signed, the Utah Inland Port Authority Act in 2018. R. 1494; S.B. 234 (4th substitute), Gen. Sess. (2018 Utah).[2] Consistent with the 2016 and

[2] The Act has been amended several times since its inception, including in 2020 after the district court's decision upholding the Act's constitutionality. *See, e.g.,* R. 1494-95; Aplt. Br. at 7 n.29, 9, 47. Salt Lake City's appeal is limited to the current version of the Act. Aplt. Br.

2017 analyses and feasibility studies, the Act envisions and authorizes development of an inland port to be a regional and international multimodal transportation, distribution, and logistics hub. Utah Code § 11-58-102(8).

Authority jurisdictional land and satellite ports

The Act designates certain areas as "authority jurisdictional land" for inland port purposes. Utah Code § 11-58-102(2). The jurisdictional land currently covers approximately 16,000 acres mostly to the west and southwest of the airport along with a strip of land along the airport's eastern edge. R. 688, 1494-95; *see also* Utah Inland Port Authority Amendments, H.B. 2001 interactive map, 2018 2nd Spec. Sess. (Utah).[3] About 13,000 acres lie within the City's northwest quadrant. R. 1495 n.9. The other 3,000 acres are located inside Magna's and West Valley City's boundaries. R. 1494-95. The vast majority of jurisdictional land is privately owned, R. 1495 n.9.[4] Private landowners

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at 9, 47. State Defendants therefore only address and cite to the current Act unless otherwise indicated.

[3] https://www.google.com/maps/d/viewer?mid=1iI1-ZIVBeCAbT6CtRxygAdOEsJCqvGGw&ll=40.76346010799609%2C-112.02969100000001&z=10.

[4] *See* Utah Inland Port Authority Maps (using the Public Parcels and Municipal Boundaries overlays) https://www.arcgis.com/apps/webappviewer/index.html?id=a83f1aad482c4d65b0d1ae58f2db070d&extent=-2499823.7314%2C4964528.565%2C-12441120.0936%2C4988720.8845%2C102100. The Authority is now the repository of the official delineation of the authority jurisdictional land boundaries. Utah Code § 58-11-202(3).

may develop their land for inland port purposes but are not required to. R. 1495 n.9; Utah Code § 11-58-103 (discussing vested rights of landowners).

To help optimize the inland port's statewide benefits, the Act also authorizes "satellite" ports in other areas of the State, Utah Code § 11-58-102(8)(b), and inclusion of satellite-port-related land within a project plan area upon written consent from the landowner and city's or county's legislative body where the land is located. *Id.* § 11-58-501(2). So far, counties from around the State have expressed significant interest in the inland port or developing satellite ports within their boundaries as an economic growth engine. *See, e.g.,* Mot. for Leave to File an Amici Curiae Br. by 20 Counties at 3 (Nov. 9, 2020) (stating "[a]ll movants will benefit both from the Utah inland port in Salt Lake City as well as any other ports and/or satellites that may be established around the State"); *see also* Taylor Stevens, *Eight rural Utah counties are competing to host a satellite inland port*, Salt Lake Tribune (Aug. 30, 2020)[5]; Katie McKellar, *Rural counties vying for a bite of Utah's global trade apple*, Deseret News (Sept. 26, 2020).[6]

The inland port authority's statewide purposes

To oversee the inland port project, the Act created an Inland Port

[5] https://www.sltrib.com/news/politics/2020/08/30/eight-rural-utah-counties/.

[6] https://www.deseret.com/utah/2020/9/26/21445644/news-rural-counties-salt-lake-city-inland-port-authority-fossil-fuel-coal-crude-oil-emery-carbon.

Authority as an independent nonprofit public corporation and political subdivision of Utah. Utah Code § 11-58-201(2). The legislature chose the Authority as the designated entity "to focus resources and efforts" on the State's behalf to ensure the Act's stated "regional and statewide interests, concerns, and purposes . . . are properly addressed from more of a statewide perspective than any municipality can provide." Utah Code § 11-58-201(3)(c). And the Authority's "public statewide purpose" is to work with state and local governments, property owners, and other interested private parties and stakeholders to develop an inland port and "maximize the long-term economic and other benefit[s] for the state." *Id.* § 11-58-201(3)(a).

In keeping with that overall purpose, the Act outlines many policies, duties, and responsibilities the Port Authority should pursue and fulfill. Utah Code § 11-58-203. These objectives include maximizing "long-term economic benefits" to the area, region, and State; maximizing high-quality job creation; improving air quality; respecting the natural environment; promoting development consistent with nearby land uses; coordinating trade opportunities to export Utah products nationally and internationally; supporting and promoting land uses that create economic development, including in rural areas; establishing a regionally significant inland port project; facilitating more regional and global trade; promoting the development of facilities that help connect local business to potential foreign markets or increase foreign direct investment. *Id.* § 11-58-203(1).

The legislature determined those duties and responsibilities "are beyond the scope and capacity of a municipality, which has many other responsibilities and functions that appropriately command the attention and resources of the municipality, and are not municipal functions of purely local concern but are matters of regional and statewide concern, importance, interest, and impact, due to multiple factors, including:" (1) the inland port's strategic location near "significant existing and potential transportation infrastructure, including infrastructure provided and maintained by the state, conducive to facilitating regional, national, and international trade and the businesses and facilities that promote and complement that trade"; (2) "the enormous potential for regional and statewide economic and other benefit that can come from the appropriate development of the authority jurisdictional land, including the establishment of a thriving inland port"; (3) "the regional and statewide impact that the development of the authority jurisdictional land will have"; and (4) the State's considerable investment in relocating and building the prison and associated infrastructure in the inland port jurisdiction area. *Id.* § 11-58-201(3)(b)(i)-(iv).

A board, including state and local elected officials or their designees, governs the Authority

An eleven-member board governs the Authority. Utah Code §§ 11-58-301 & -302(1). The board members represent a cross-section of state and local interests, including the City's mayor (or designee), Magna's mayor (or designee), a West Valley City appointee, a City

council member, Salt Lake County's mayor (or designee), the director of Salt Lake County's Office of Regional Economic Development, and a member of the Permanent Community Impact Fund Board. *Id.* § 11-58-302(2)(d)-(j). The governor also appoints two board members having specified qualifications, and the senate president and speaker of the house each appoint a board member. *Id.* § 11-58-302(2)(a)-(c). The City council member currently serves as the board chair.[7] And the board in turn hired an executive director to manage the Authority's day-to-day operations. Utah Code § 11-58-302(7).

The Act's zoning and land use mandates

The legislature granted the Authority various powers necessary to facilitate development of a world class inland port and potential satellite ports. *Id.* § 11-58-202. But those powers primarily involve (public) business-type activities—planning, coordinating, managing, facilitating, buying or leasing land, entering contracts, receiving and using funds, issuing bonds, hiring employees, etc. *Id.* § 11-58-202(1) – (2).

Whatever else the Authority can do, it "does not have and may not exercise any powers relating to the regulation of land uses on the authority jurisdictional land." Utah Code § 11-58-205(1).[8] At most, the

[7] https://inlandportauthority.utah.gov/the-uipa-board/.

[8] Subsection 205(1) starts with "[e]xcept as otherwise provided in this chapter," which suggests the Authority may have some land-use regulation powers elsewhere in the Act. Utah Code § 11-58-205(1). But that's not the case. While a prior version of the Act permitted the Authority to hear appeals from certain City land-use decisions, R. 1493,

Authority gets to "recommend" to cites any land use and zoning policies and practices that might help achieve the Act's purposes and the "mutual goals" of state and affected local governments. *Id.* § 11-58-203(2)(b). The Authority's lack of zoning and land use power potentially leaves the inland port somewhat vulnerable. A city with land inside the authority jurisdictional land boundaries could try zoning its land in a way that makes inland port activities unduly difficult or functionally impossible.[9] To avoid this problem, the Act expressly (1) requires any city containing authority jurisdictional land to have ordinances that "allow an inland port as a permitted or conditional use, subject" to city standards "consistent with" the Act's policies and objectives, Utah Code § 11-58-205(5); and (2) forbids any city from prohibiting the "transporting, unloading, loading, transfer, or temporary storage of natural resources." *Id.* § 11-58-205(6).

The Act's tax mandates help fund the Authority

The Authority gets funded in several ways. Utah Code § 58-6-602(1). Relevant here, the Act requires that the Authority be paid 75% of the property tax differential—the increase in property taxes collected after a certain date—on new growth within the largely undeveloped authority jurisdictional land for 25 to 40 years. Utah Code § 11-58-601;

Aplt. Br. at 7, no other part of the Act grants the Authority any power over land-use regulations (or the City would be challenging it).

[9] The 2016 inland port assessment noted "Salt Lake City's reputation as a difficult place to do business," with "[z]oning and permitting issues [being] particular concern[s]." R. 1359.

see also id. § 11-58-102(16) (defining property tax differential). Among other things, the property tax differential does not apply to parcels that were already "substantially developed" before December 1, 2018. *Id.* § 11-58-601(5)(b).

The Act also requires that the Authority receive a percentage of certain sales and use tax collected within authority jurisdiction land. Utah Code §§ 11-58-602(6), 59-12-205(2)(b)(iii). The Authority then distributes most of the sales and use tax it receives to the county or cities who would have received it absent the Act. *Id.* § 11-58-602(6)(b).

These property and sales and use taxes from jurisdictional land make up only a small fraction of the City's general fund. R. 716 (reporting $272,848,337 general fund budget for fiscal year 2018); R. 721 (estimating $4,771,715 in property tax and $1,403,922 in sales and use tax revenue generated within authority jurisdictional land for fiscal year 2018). Whether large or small, however, the Act's property tax differential mandate will not decrease City property tax revenues below pre-Act levels. By definition, the property tax differential applies only to *increased* property tax revenues generated after a certain date. *Id.* §§ 11-58-102(16), 11-58-601. And the City's allotted share of those increased revenues is estimated to be millions of dollars over the next five years. *See, e.g.,* Utah Inland Port Authority, *Strategic Business Plan FY2020-2024* at 45.[10]

[10] https://inlandportauthority.utah.gov/wp-content/uploads/UIPA-Biz-Plan_6-18-22.pdf.

The Authority can use its funds only for inland port purposes specified in the Act. Utah Code § 11-58-602. But the Authority cannot spend property tax differential revenue collected within the authority jurisdictional land for a development project in another project area. *Id.* § 22-58-602(4). And the Authority must pay 10% of its property tax differential revenue to an eligible community reinvestment agency to be used for affordable housing. *Id.* § 11-58-601(6).

The District Court Rejects Salt Lake City's Constitutional Challenges to the Act

The City's then mayor ordered the City to file suit challenging the Act's constitutionality under various theories. R. 1-21 (complaint), 436-61 (second amended complaint). The City claimed, in relevant part, that the Act's provisions requiring cities with jurisdiction land to allow inland port uses, forbidding them from blocking certain inland port uses, and directing some property tax differential and sales and use tax revenues to the Authority violated the Ripper Clause by delegating municipal functions to a special commission. R. 453-57. The City also claimed the Act violated the Uniform Operation of Laws Clause by treating Utah cities unequally. R. 459-60. Neither Magna nor West Valley City—the other municipalities with land inside the authority jurisdictional land boundaries—joined the City's lawsuit. Even the Salt Lake City council opposed the mayor-driven lawsuit and worked with state leaders to change the Act. *See, e.g.,* Katie McKellar, *Salt Lake*

City mayor sues over "gross state overreach" in Utah Inland Port Authority's creation, KSL (Mar. 11, 2019).[11]

The parties filed cross-motions for summary judgment and presented oral arguments to the district court. R. 550-636, 847-940, 1487. The court issued a thorough decision rejecting the City's claims based on this Court's settled and binding precedent. R. 1488-1538.

On the Ripper Clause claim, the district court carefully followed the test this Court outlined in *City of West Jordan v. Utah State Retirement Board*, 767 P.2d 530 (Utah 1988). The district court first held the challenged provisions did not violate the Ripper Clause because they were direct legislative mandates imposed on the City rather than delegations of power to the Authority. R. 1491, 1511, 1527.[12] Beyond that, the court concluded that even if the challenged provisions delegated power to the Authority, the provisions did not involve purely municipal functions given the undeniable statewide interests at issue. R. 1491, 1511-12, 1526.

Likewise, the district court held the City's Uniform Operation of Laws claim failed under this Court's precedent. The district court readily found the Act rationally imposed the challenged provisions only

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[11] https://www.ksl.com/article/46509008/salt-lake-city-mayor-sues-over-gross-state-overreach-in-utah-inland-port-authoritys-creation.

[12] The district court did find that the land-use appeals provision delegated power to the Authority. *See, e.g.,* R. 1491. But, as noted, that provision has been repealed and is not at issue on appeal. Aplt. Br. at 7, 9.

on cities with boundaries inside the authority jurisdictional land. R. 1532-37.

The district court entered final judgment, R. 1689-90, and the City timely appealed.

Summary of the Argument

The district court properly rejected the City's constitutional challenges to the Act. The Act was amended after the district court's ruling. But the City still challenges on appeal the Act's provisions that (1) mandate the Authority shall be paid a percentage of property tax differential and sales and use tax revenues generated in the authority jurisdictional lands, and (2) require cities whose boundaries include authority jurisdictional land to allow inland port uses and not prohibit the transport or other activities related to natural resources within the jurisdictional land.

1. The City first argues these provisions violate the Ripper Clause. The clause, in relevant part, prohibits the legislature from (1) delegating (2) to a special commission (3) the power to perform municipal functions. But that's not what the challenged provisions do.

First, the challenged provisions do not delegate any power to the Authority. Rather, as the district court concluded, they are direct mandates from the legislature to taxing entities or cities with land inside the authority jurisdictional land. The provisions do not give the Authority any power over the City's zoning, land use, or tax revenues.

Second, the Authority is not a special commission for Ripper Clause purposes. The Act creates the Authority as a non-profit, public corporation, political subdivision of the State. The Authority is not a special commission under this Court's precedent because it was created to fulfill statewide purposes, can co-exist with and not tread on municipal government, and the governing board includes local government officials or their designees.

Third, even if the challenged provisions actually delegated municipal powers to the Authority (which they do not), the powers and their purposes involve statewide interests and concerns rather than purely municipal functions under this Court's *West Jordan* balancing test. The legislature expressly determined that the inland port authorized by the Act involves statewide economic interests. And those legislative determinations deserve deference. The legislature's conclusions are also buttressed by the feasibility study that similarly concluded a properly planned, developed, and governed inland port would generate benefits for the entire State. Moreover, the State has ultimate authority over municipal land use, zoning, and taxing. Accordingly, the Authority is better positioned to perform the challenged functions in the authority jurisdictional lands, the functions affect statewide interests, and the Act only minimally, if at all, intrudes on the City's ability to control substantive policies that uniquely affect its citizens.

2. The City also argues that the Act violates Utah's Uniform Operation of Laws Clause by forcing some cities to comply with the challenged provisions while all other cities in the State are free to decide whether they want to participate. But the Court should not consider this issue because the City's brief does not address the district court's thorough reasoning rejecting the City's arguments below. Consequently, the City can't meet its burden to show how the district court erred.

On the merits, the claim fails anyway, especially under the deferential rational basis scrutiny. The uniform operation of laws provision prohibits legislative classifications that treat similarly situated persons differently without any rational basis for doing so. Again, that's not what the Act does.

First, the City misunderstands the classifications, if any, that the Act creates. That Act does not single out any cities for forced compliance. Rather the challenged provisions apply equally to any city with boundaries within the authority jurisdictional land.

Second, the Act does not treat similarly situated persons differently. As the district court correctly determined, cities whose boundaries are at least partially within jurisdictional land are not similarly situated to cities lacking any geographical overlap with the jurisdictional land. So the fact that the two groups are treated differently under the Act does not show any disparate treatment of similarly situated persons.

Finally, even if there was disparate treatment, the Act would still be constitutional because the classification is reasonably related to a legitimate state objective. The City does not dispute, and the district court properly found, that the State has a legitimate interest in developing an inland port to maximize economic benefits statewide. And requiring cities having jurisdictional land within their borders to comply with challenged provisions reasonably relates to the Act's (and State's) legitimate objectives. The inland port may not work if an affected city can prevent necessary zoning or land uses within the authority jurisdictional land. Likewise, the Authority needs funds to operate, oversee, and manage inland port development. The property tax differential and sales tax provisions are reasonable ways to fund the Authority.

Presumption of Constitutionality

The City bears a heavy burden to invalidate the Act. *Whitmer v. City of Lindon*, 943 P.2d 226, 230 (Utah 1997). Utah's statutes are presumed constitutional and, wherever possible, must be construed as complying with the state and federal constitutions. *Vega v. Jordan Valley Med. Ctr., LP*, 2019 UT 35, ¶ 12, 449 P.3d 31; *see also Richards v. Cox*, 2019 UT 57, ¶ 12, 450 P.3d 1074 (the Court will "apply a presumption of validity [to a challenged statute] so long as there is a reasonable basis upon which both provisions of the statute and the mandate of the constitution may be reconciled" (quoting *Bennion v. ANR Prod. Co.*, 819 P.2d 343, 347 (Utah 1991)); *Merrill v. Utah Labor*

Comm'n, 2009 UT 26, ¶ 5, 223 P.3d 1089 (recognizing presumption of validity applies to uniform operation of laws analysis); *West Jordan*, 767 P.2d at 532 (noting presumption of validity in case involving Ripper Clause claim).

Any reasonable doubts about a statute's validity are resolved in favor of constitutionality, and a statute may not be declared invalid unless it *clearly* violates a constitutional provision. *Vega*, 2019 UT 35, ¶ 12 (citing cases). That means if a party challenging a statute's constitutionality "fails to provide a sufficient basis for the establishment of a clear constitutional standard, then the presumption of constitutionality kicks in." *South Salt Lake City v. Maese*, 2019 UT 58, ¶ 96 (Lee, A.C.J., concurring).

Here, Salt Lake City has "not overcome the presumption" of the Act's validity. *Richards*, 2019 UT 57, ¶ 12.

Argument

I. The Act's Challenged Provisions Do Not Violate Utah's Ripper Clause.

The district court correctly held that the Act does not violate the Ripper Clause. Since then, the legislature amended the Act in ways that only weaken the City's arguments. But the City persists on appeal to challenge the Act's provisions that (1) mandate the Authority shall be paid 75% percent of property tax differential generated in the authority jurisdictional lands, and (2) require cities whose boundaries include authority jurisdictional land to (i) allow inland port uses and

(ii) not prohibit the transport or other activities related to natural resources within the jurisdictional land. The City's arguments fail under the clause's plain text and this Court's precedent.

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. Put more simply, and for purposes of this case, the provision "prohibits *only* the legislature's [1] delegating [2] certain powers relative to municipal matters [3] to a special commission." *West Jordan*, 767 P.2d at 533 (emphasis added).

The City has not met its burden to show the district court erred and that the Act's challenged provisions *clearly* violate the Ripper Clause.

A. The challenged provisions do not delegate any powers to the Authority.

The district court rejected the City's Ripper Clause claims because the challenged provisions do not delegate any power to the Authority. R. 1511-12, 1528. This Court has never defined "delegate" for purposes of article VI, section 28. That's probably because the term's plain meaning in this context is fairly uncontestable. *See, e.g, Salt Lake City Corp. v. Haik*, 2020 UT 29, ¶ 15, 466 P.3d 178 (stating Court's

foremost job in constitutional interpretation is applying the plain meaning of the text in light of the context in which it's used).[13]

Delegate is used as a verb in article VI, section 28. And in the 19th century, as now, the verb "delegate" meant "[t]o entrust; to commit; to deliver to another's care and exercise; as, to *delegate* authority or power to an envoy, representative or judge." An American Dictionary of the English Language (1st ed. 1828) (Reprinted 2002)[14]; *see also* Black's Law Dictionary (1st ed. 1891)[15] (defining delegation as "[a] sending away; a putting into commission; the assignment of a debt to another; *the intrusting another with a general power to act* for the good of those who depute him." (emphasis added)); Bouvier's Law Dictionary and Concise Encyclopedia vol. 1 (3rd rev., 8th ed. 1914)[16] (defining "delegation" at common law as "[t]he transfer of authority from one or more persons to one or more others"); Oxford English

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[13] As the party asking the Court to apply constitutional language a particular way, the City has the burden to "analyze the plain meaning of the constitutional text" but never does so. *State v. Tulley*, 2018 UT 35, ¶ 80, 428 P.3d 1005.

[14] Also available at http://webstersdictionary1828.com/Dictionary/delegate.

[15] http://nfpcar.org/Archive/Blacks_Law/Black's%20Law%20Dictionary.pdf.

[16] https://archive.org/stream/bouvierslawdicti01bouv?ref=ol#page/n8/mode/1up.

Dictionary[17] (delegate: "[t]o entrust (authority, responsibilities, a task, etc.) to another person or group; to confer (authority, power, etc.) on a person or group."); Merriam-Webster Dictionary[18] (delegate: "to entrust to another" or "to appoint as one's representative").

This meaning of "delegate" finds support in the few cases where this Court invalidated statutes under the Ripper Clause. In *Logan City v. Public Utilities Commission*, the Court took issue with the operative statute to the extent it delegated authority to the Public Utilities Commission to direct the internal affairs of, or set rates for, city-owned utilities. 271 P. 961, 971-72 (Utah 1928) (plurality). In *County Water System v. Salt Lake City*, the Court followed *City of Logan's* lead and held that the Ripper Clause prevented the Public Service Commission from exercising its delegated authority over public utilities to regulate a city's sale of water outside its borders. 278 P.2d 285, 287-88, 290-91 (Utah 1954). In *Carter v. Beaver County Service Area No. One*, the Court invalidated a statute allowing for the creation of county service areas that would be authorized to perform "an unlimited number of activities [including] exclusively municipal functions." 399 P.2d 440, 441 (Utah 1965) *overruled in part by Mun. Bldg. Auth. of Iron Cty. v. Lowder*, 711 P.2d 273 (Utah 1985)). And in *Lowder* the Court noted that the statute the Court criticized in dicta in a prior decision "gave the special district the power to levy a property tax." *Lowder*, 711 P.2d

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[17] https://www.oed.com/view/Entry/49313?rskey=YUyBJL&result=3#eid.

[18] https://www.merriam-webster.com/dictionary/delegate.

at 281 (discussing *Backman v. Salt Lake Cty.*, 375 P.2d 756 (Utah 1962) *overruled in part by Lowder*, 711 P.2d at 281).

On the other hand, the Court has also recognized statutes that give direct mandates do not violate the Ripper Clause. In *West Jordan*, the city argued that a law requiring cities offering employee retirement benefits to participate in the state retirement system violated article VI, section 28. 767 P.2d at 533. The Court said the claim was "meritless" and held the statute "has not delegated any powers to anyone; it has simply regulated how municipalities must perform a function." *Id.*

Under both ordinary meaning and relevant caselaw, the term "delegate" means the legislature must grant, authorize, or entrust the Authority with power. None of the challenged provisions do that.

1. The zoning and land use mandates do not delegate any powers to the Authority.

The zoning and land use provisions the City challenges state that (1) "the ordinances of a municipality with authority jurisdictional land within its boundary shall allow an inland port as a permitted or conditional use," and (2) "[t]he transporting, unloading, loading, transfer, or temporary storage of natural resources may not be prohibited on the authority jurisdictional land." Utah Code §§ 11-58-205(5)(a), -205(6).

The plain meaning of these provisions gives express directives about certain land use or zoning that "shall" or "may not" exist on authority jurisdictional land. Neither provision mentions the Authority,

much less delegates any land use or zoning power to the Authority. The City cannot inject a delegation of power into the challenged provisions when the plain language does not do so. *See, e.g., Marion Energy, Inc. v. KFJ Ranch P'ship*, 2011 UT 50, ¶ 14, 267 P.3d 863.

Aside from the challenged provisions' plain language, treating them as delegations of power makes little sense in light of subsection 205(1)'s declaration that the Authority "does not have and may not exercise" any land-use regulation powers on authority jurisdictional land, Utah Code § 11-58-205(1), and subsection 203(2)'s directive that the Authority should recommend zoning and land use policies to city officials. *Id.* § 11-58-203(2)(b). There is no reason for the Authority to recommend land use ordinances to cities if the Authority was already delegated the power to make those regulations itself. *See, e.g., Pinney v. Carrera*, 2020 UT 43, ¶ 22, 469 P.3d 970 (courts should avoid interpretations that render parts of a statute superfluous or inoperative).

Even the City admits these challenged provisions "mandate the zoning the City must adopt and certain land uses it must permit." Aplt. Br. at 31. But then the City argues these direct mandates to the affected cities are somehow delegations of power to the Authority.

First, the City claims the "Legislature cannot accomplish by direct mandate that which it is constitutionally prohibited from achieving through delegation to a third party." Aplt. Br. at 32; *see also id.* at 34. But that ignores the Ripper Clause's plain text, which

prohibits only "delegat[ion]," not direct mandates. Utah Const. art. VI, § 28. It also ignores the full scope of legislative power. The legislature possesses the "whole lawmaking power" and therefore has "plenary power for all purposes of civil government." *Kimball v. City of Grantsville City*, 57 P. 1, 4–5 (Utah 1899). That means "in the absence of any constitutional restraint, express or implied, the legislature may act upon any subject within the sphere of the government." *Id.*; *see also Spence v. Utah State Agric. Coll.*, 225 P.2d 18, 23 (Utah 1950) (noting "state constitution is in no manner a grant of power, it operates solely as a limitation on the legislature, and an act of that body is legal when the constitution contains no prohibition against it"). The Ripper Clause does not contain any express or implied prohibitions on direct legislative mandates.

Still, the City claims several cases support its theory. And the City primarily relies on admitted "obiter dictum" from a case that was at least partially overruled. Aplt. Br. at 32-33 (discussing *Backman*, 375 P.2d 756, *overruled in part by Lowder*, 711 P.2d 273). Dicta or not, *Backman* does not support the City's argument that the Ripper Clause applies to legislative mandates. The Court emphasized that "[t]hree conditions are necessary to violate" the Ripper Clause: "1) *delegation* to a private commission of power to 2) interfere with municipal property or 3) to perform a municipal function." *Backman*, 375 P.2d at 760 (emphasis added). And the Court's Ripper Clause discussion focused on the challenged statute's creation of a special commission. *Id.* at 760-61.

The Court found the statute's "attempt[] to create a special commission offensive to the [Ripper Clause's] plain terms," *Backman*, 375 P.2d at 761. Aplt. Br. at 32. Even the dicta the City quotes targets the legislature's ability to "'create a commission'" to perform municipal functions, not its legislative mandates. Aplt. Br. at 32 (quoting *Backman*, 375 P.2d at 761). In short, *Backman* at most "concluded that the act attempted to delegate to a special commission power to perform a municipal function." 375 P.2d at 761. The case does not show the Ripper Clause applies to legislative mandates.

The City also claims its direct-mandate argument is consistent with cases finding the Ripper Clause applies to state-created agency rules and regulations. Aplt. Br. at 33-34. But that argument misses the point. The cases did not involve direct legislative mandates. The state-created agencies were considered special commissions to which the legislature had delegated certain powers and those agencies were then attempting to use their delegated powers to regulate municipal functions. *See id.*

2. The tax provisions do not delegate any power to the Authority.

The City's arguments about the tax mandates fail for similar reasons. The challenged tax provisions state that the "[A]uthority shall be paid" 75% of property tax differential, Utah Code § 11-58-601(2), (3), and "50% of each dollar collected from the sales and use tax" within an inland port project area "shall be distributed" to the Authority. *Id.* § 59-12-205(2)(b)(iii).

Based on their plain language, the provisions do not delegate any power to the Authority. They simply direct whichever entity collects the respective taxes to "pa[y]" or "distribute[]" a certain percentage of those tax revenues to the Authority. *See, e.g.,* Utah Code § 11-58-601(7) (directing county that collects property tax within a project area to pay and distribute the property tax differential to the Authority); *id.* § 59-2-1317 (county treasurer's duties to collect property taxes); *id.* § 59-12-118 (authorizing Tax Commission to collect sales and use taxes); *id.* § 59-12-206 (dispersing sales and use taxes collected by the Tax Commission). Again, the City cannot force delegation-of-power text into these provisions where none exists. *Marion Energy, Inc.*, 2011 UT 50, ¶ 14.

Undaunted, the City first argues that the tax mandates delegate power to the Authority to "make, supervise, or interfere" with municipal money per the Court's reasoning in *Logan City*. Aplt. Br. at 23-24. In that case, as noted above, the Court faulted the statute to the extent it delegated authority to the Public Utilities Commission to set rates for a city-owned utility or approve or reject the utility's contracts, purchases, and other expenditures and require new ones. *Logan City*, 271 P. at 971-72. But neither the Act nor the challenged provisions delegate any similar power to the Authority in this case. The Authority has no say in how the City spends its monies.

The City likewise argues that the tax mandates have the "practical effect" of giving the Authority power to supervise or interfere

with municipal improvements or property. Aplt. Br. at 24 n.112. The argument again hangs on the notion that the Authority uses property tax differential funds that actually belong to the City to facilitate inland port development within City boundaries. *Id.*

There are at least two problems with this argument. First, it recycles the City's unsupported theory that the State should not be able to directly mandate something that it is prohibited from doing by delegation. *See also* Aplt. Br. at 28-29. That's wrong as a matter of constitutional text and legislative power as explained above.

Second, the tax revenues directed to the Authority are not City money. The City argues as if its existing tax revenues can never be changed by the State or that the tax revenues first go to the City's coffers and then the Authority somehow steals them away to use on the inland port project. In reality, the appropriate taxing entity collects the property or sales taxes and distributes them according to state law to the appropriate recipients. Utah Code § 11-58-601(7); *id.* § 59-2-1317 (property tax collection); *id.* §§ 59-12-118 (Tax Commission authority to collect sales and use tax); -206(1) (sales and use tax collection). The Authority receives its statutorily allocated share, which is Authority money. These monies are not City funds, and it is factually and legally wrong for the City (or amici) to suggest otherwise.

To be sure, the City argues that the district court erred in concluding that the State has plenary power to (re)allocate county or municipal taxes. Aplt. Br. at 29-31. But the City's one-way-ratchet

argument is wrong (and the City notably never offers any cases holding the State lacks that power). Instead, the City tries to factually distinguish some of the cases that the district court cited recognizing State power over taxation. *Id.* The cases may or may not be factually different. That doesn't matter. The district court cited the cases for their general statements of law about State tax power, not necessarily because the cases are factually similar to the instant case. R. 1527-28. And the cases support the district court's conclusion—the State can divert tax revenue from local governments. This Court has repeatedly recognized "the 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." *Tribe v. Salt Lake City Corp.*, 540 P.2d 499, 504 (Utah 1975); *see also Salt Lake Cty. v. Salt Lake City*, 134 P. 560, 564 (Utah 1913) ("The power of appropriation which a Legislature can exercise over the revenues of the state for any purpose, which it may regard as calculated to promote the public good, it can exercise over the revenues of a county, city, or town, for any purpose connected with the present or past condition, except as such revenues may by the law creating them be devoted to special purposes." (internal quotation marks omitted)).

Ultimately, the City's dispute about the State's taxing power is not only inaccurate but also irrelevant to the issue at hand. The fact remains that the challenged provisions are direct legislative mandates.

They do not delegate any powers to the Authority. So the Ripper Clause does not apply.

B. The Authority is not a special commission.

Even if the challenged provisions delegated some power to the Authority, mere delegation would not trigger Ripper Clause scrutiny. The City must also show that the challenged provisions delegate power to a "special commission, private corporation or association." Utah Const. art. VI, § 28. The district court did not reach the issue because it determined the Act does not delegate purely municipal functions. R. 1511. But this Court can affirm on any ground apparent from the record. *Olguin v. Anderton*, 2019 UT 73, ¶ 20, 456 P.3d 760.

The Authority is an independent, nonprofit, political subdivision of the State, and "*a public corporation*, as defined in Section 63E-1-102." Utah Code § 11-58-201 (emphasis added). Section 63E-1-102 defines a public corporation as "an artificial person, public in ownership, individually created by the state as a body politic and corporate for the administration of a public purpose relating to the state or its citizens." *Id.* § 63E-1-102(7). The Authority's board includes public officials or the appointees of public officials, *id.* § 11-58-302(2), and the Authority's objective is "to fulfill the statewide public purpose . . . to maximize the long-term economic and other benefit for the state." *Id.* § 11-58-201(3)(a). The Authority meets the statutory definition of a public corporation.

The City essentially argues that every entity is a special commission unless (1) it is voluntarily created by the local government over which the entity would exercise control, and (2) it is governed and controlled by the elected officials of the local government that created the entity. Aplt. Br. at 18. To be sure, those are factors that some cases considered in making a special commission determination. But the City's test is far too rigid. It fails to acknowledge this Court's more recent recognition that "Utah cases do not give [special commission] any clear meaning." *West Jordan*, 767 P.2d at 533.

The most analogous case is *Tribe*. There, the plaintiff challenged a statute's constitutionality arguing that the redevelopment agency created thereby was a "special commission" performing municipal functions. *Tribe*, 540 P.2d at 501. The agency at issue in *Tribe*, like the Authority, was created to facilitate economic development of a designated blight area, with benefits flowing to a wider area. *Id.* at 502. The redevelopment recognized that "the project area could be improved," thereby "strengthening the tax base and ameliorating the economic health of the entire community." *Id*. at 502. And, as with the Inland Port, the redevelopment project in *Tribe* was funded through the diversion of tax differentials as property values increased due to redevelopment. *Id*.

The Court held that the agency was not a special commission. The determination "hinge[d] on whether the objects and purposes of the Act [were] statewide or local; and whether the Agency [could]

concurrently exist with municipal corporations and assessment units." *Id.* at 502. Where the entity in question is a "public agency created by the Legislature to aid the state in some public work for the general welfare, other than to perform as another community government," then it is not a special commission. *Id.* The Court found that because the agency was created for "beneficial and necessary public purposes" and "designed for state purposes," it was not a special commission and did not run afoul of the Ripper Clause. *Id.* at 503. Rather, the Court characterized it as a "quasi-municipal corporation" to which the legislature could grant "any powers" not otherwise prohibited by the Constitution. *Id.* The Court reaffirmed *Tribe* a few years later emphasizing that a "public agency [may be] created by the legislature to aid the state in some public work for the general welfare." *Salt Lake Cty. v. Murray City Redevelopment*, 598 P.2d 1339, 1341-42 (Utah 1979) (internal quotation marks omitted).

Like the agency in *Tribe*, the Authority has statewide economic objectives to fulfill. Utah Code § 11-58-203(1). And there is no reason the Authority cannot concurrently exist with the City. The Authority has a City council member and a designee from the City mayor's office on the board to ensure a good working relationship with the City. Utah Code § 11-58-302(2)(f)-(g). Plus, one of the Authority's duties is to coordinate with state and local governments to help develop the overall inland port project. Utah Code § 11-58-202(1).

Courts have also considered whether the entity is a "body or group separate and distinct from municipal government." *Tribe*, 540 P.2d at 502-03. Here, the Authority's governing board includes representatives from Salt Lake City (a member of the City council and mayor's designee), Salt Lake County (including the chair of the Salt Lake County office of Regional Economic Development and an appointee of the Mayor), West Valley City, and Magna. Utah Code § 11-58-302(1)-(2). In short, the Authority is governed by a board containing several elected or appointed officials from the most directly affected local governments. This also weighs against finding the Authority is a special commission.

The Authority is not a special commission. The Ripper Clause therefore does not apply to the Act.

C. The challenged provisions do not involve municipal functions.

Finally, even assuming the Act delegates powers to the Authority as a special commission, the City still has to prove that the Authority is performing municipal functions. The district court concluded that none of the challenged provisions involve municipal functions. The City's arguments fail to show the district court erred.

This Court explained the controlling test for determining whether a delegated power involves "municipal functions" for Ripper Clause purposes in *West Jordan*. The Court first reviewed the history and purposes of Ripper Clauses along with several past decisions regarding municipal functions. *West Jordan*, 767 P.2d at 534. The Court noted its

"decisions provide[] relatively little by way of a consistent analytical framework for determining how to characterize a given area of activity" and there was a "sort of uncertainty [in] the case law that purports to give meaning to the term 'municipal functions' in article VI, section 28." *Id.* at 534. "However," the Court continued, "our more recent cases . . . reflect an increasing willingness to recognize that *many functions traditionally performed by municipalities may be sufficiently infused with a state, as opposed to an exclusively local, interest* to escape characterization as 'municipal functions' for purposes of article VI, section 28." *Id.* (emphasis added).

The Court rejected any "hard and fast categorization of specific functions as 'municipal' or 'state.'" *Id.* Rather, the Court adopted a balancing approach with factors that include: (1) the relative abilities of the state and municipal governments to perform the function; (2) the degree to which the performance of the function affects the interests of those beyond the boundaries of the municipality; and (3) 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. *See id.*[19] The Court applied the factors to determine that the State Retirement Board did

[19] The Court emphasized that "[t]his sort of balancing approach is best suited to accomplishing the purposes of the [R]ipper [C]lause 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." *West Jordan*, 767 P.2d at 534.

not perform municipal functions in violation of the Ripper Clause, after finding that the "financial soundness of retirement systems . . . is certainly a subject of statewide concern." *Id.* at 535.

Applying *West Jordan's* balancing test here shows that the challenged provisions do not involve municipal functions for Ripper Clause purposes. As an initial matter, the three *West Jordan* factors were not meant to be exhaustive. *Id.* at 534. Rather, the Court encouraged considering other factors "that are pertinent to the specific legislation at issue." *Id.* Two additional factors should be considered in this case to properly assess the infusion of state interests.

1. The State's compelling interest in an inland port.

West Jordan recognizes that functions that could be considered municipal can be infused with a state interest depending on the circumstances. *Id.* at 534. That's the case here. The 2016 report and the 2017 feasibility analysis both noted the statewide impact that a properly planned, developed, and governed inland port project could have. R. 1038-42, 1107, 1358, 1366, 1373. The legislature made similar determinations in the Act's statement of purposes. Utah Code § 11-58-201(3). The district court rightfully afforded deference to those legislative determinations and rejected the City's arguments to summarily ignore them. R. 1514-15, 1518. As the district court noted, the legislative "'findings are entitled to respect and weight by the judiciary and should not be overturned unless palpably erroneous.'" R. 1518 (quoting *Utah Tech. Fin. Corp. v. Wilkinson*, 723 P.2d 406, 412

(Utah 1986)); *see also Wilkinson*, 723 P.2d at 412-13 (judiciary may reject legislative determination of public purpose only where it is "so clearly in error as to be capricious and arbitrary"); *Redding v. Jacobsen*, 638 P.2d 503, 510 (Utah 1981) (stating "legislative findings are entitled to great weight"); *Utah Hous. Fin. Agency v. Smart*, 561 P.2d 1052, 1053 (Utah 1977) (same).

The City's attempt to pass the legislative findings off as self-serving also ignores the pre-Act reports conducted by third parties. Aplt. Br. at 38-39.

2. The State's sovereign power over zoning, land use and taxation

The district court also correctly factored in the State's sovereign power over zoning, land use, and taxation. R. 1514, 1516-17, 1527-28.

It is well-settled that "cities are the creatures and agencies of the state, which latter possesses plenary power over them." *Salt Lake City v. Tax Comm'n of Utah*, 359 P.2d 397, 399 (Utah 1961). As political subdivisions of the State, a city has only those powers expressed or necessarily implied in their enabling statutes "as essential to carrying out the objectives and responsibilities imposed by law." *Johnson v. Sandy City Corp.*, 497 P.2d 644, 645 (Utah 1972). In particular, cities have no inherent police power and can exercise that power only to the extent it is expressly or impliedly conferred by statute. *Redwood Gym v. Salt Lake Cty. Comm'n*, 624 P.2d 1138, 1143 (Utah 1981).

The State's delegation of its police power to a municipality is not a relinquishment of that power. Rather, the State retains its authority

over municipalities and may exercise its power in furtherance of State goals. *See, e.g., Allgood v. Larson,* 545 P.2d 530, 532 (Utah 1976) (plurality) ("[T]the state may always invade the field or regulation delegated to the cities and supercede, annul, or enlarge the regulation which the municipality has attempted. It may modify or recall the police power of the city as it may abolish the city itself." (internal quotation marks omitted)). For example, the constitution states that a city's authority over municipal affairs "shall not . . . be deemed to limit or restrict the power of the Legislature in matters relating to State affairs, to enact general laws applicable alike to all cities of the State." Utah Const. art. XI, § 5. Similarly, the Utah Municipal Code states that its provisions "may not be considered as impairing, altering, modifying or repealing any of the jurisdiction or powers possessed by any department, division, commission, board, or office of state government." Utah Code § 10-1-108. And no city may "impose a requirement, regulation, condition, or standard that conflicts with" state or federal law. Utah Code § 10-9a-104(2).

The City admits, Aplt. Br. at 35-36, that land use regulation, including zoning, is a state police power delegated to cities. *See Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 387-88 (1926) (holding that a city's zoning ordinance was an appropriate use of state police power); *W. Land Equities, Inc. v. City of Logan*, 617 P.2d 388, 390 (Utah 1980) ("It is established that an owner of property holds it subject to zoning ordinances enacted pursuant to a state's police

power."); *Gibbons & Reed Co. v. N. Salt Lake City*, 431 P.21d 559, 562 (Utah 1967) ("The power of North Salt Lake to zone is derived from the state").

Likewise, "[t]he City's power to tax is derived solely from legislative enactment and it has only such authority as is expressly conferred or necessarily implied." *Moss ex rel. State Tax Comm'n v. Bd. of Comm'rs of Salt Lake City*, 262 P.2d 961, 964 (Utah 1953). In other words, the "authority of a city to tax property is not a vested right. Unless prohibited by some constitutional provision, the Legislature may limit or even deprive cities of their power to tax." *Plutus Mining Co. v. Orme*, 289 P.132, 139 (Utah 1930). That also means the State has authority to divert tax revenue among political subdivisions to further a statewide purpose. *See, e.g., Mountain States Tel. and Tel Co. v. Garfield Cty.*, 811 P.2d 184, 192 (Utah 1991); *Tribe*, 540 P.2d at 504; *Salt Lake Cty.*, 134 P. at 563–64.

In sum, the Court has long recognized that "[b]y conferring upon the cities the right to perform a state affair, the matter is not converted into a municipal function, over which the state has constitutionally relinquished control." *Salt Lake City v. Int'l. Ass'n of Firefighters, Locals 1645, 593, 1654 and 2064*, 563 P.2d 786, 788 (Utah 1977). Rather, "[t]he state may withdraw or modify that portion of its power, which it has conferred." *Id.*

3. The Authority is relatively better positioned to exercise these powers to manage an inland port.

The next factor does not simply compare the parties' relative abilities to zone property or manage tax revenues in the abstract. Aplt. Br. at 27, 35-36. The issue is who is better positioned to exercise these powers in relation to an inland port project intended to have statewide impact. *West Jordan*, 767 P.2d at 534 (balancing approach considers "a number of factors that are *pertinent to the specific legislation at issue*." (emphasis added)).

The State is better situated to oversee the inland port functions through the Authority than is any single municipality. To have a functioning inland port, the legislature has given the Authority power to, among other things, "coordinate the efforts of all applicable state and local government entities [and] property owners" to "develop and implement a business plan," "plan and facilitate the development of inland port uses," and "manage any inland port located on land owned or leased by the authority." Utah Code § 11-58-202(1). Additionally, the Authority has responsibility to "coordinate trade-related opportunities to export Utah products nationally and internationally"; "support . . . rural economic development"; "establish a project of regional significance"; and "promote the development of facilities that help connect local businesses to potential foreign markets for exporting or that increase direct foreign investment." Utah Code § 11-58-203(1). The Authority, governed by a board including state and local government

officials, is far better equipped to manage the multi-jurisdictional inland port functions than any single municipality.

And zoning and land use issues within the jurisdictional lands are crucial for achieving the inland ports full potential. Likewise, the Authority needs adequate funding to fulfill its objectives. The State (and the Authority) are better able to address these issues relative to the massive inland port development project.

4. The inland port will have significant effects outside the City's borders

The City again wrongly focuses on the effects of zoning and tax revenues in the abstract, Aplt. Br. at 27, 36-37, rather than their effects in context of the inland port project. *West Jordan*, 767 P.2d at 534. The district court had no trouble concluding the inland port will affect interests far beyond the City's borders. R. 1521-22. Between the sheer number of potential new jobs created to the potential for satellite ports in more rural areas of the State, the inland port's impact reaches throughout the State. What's more, inland port planning and development will likely involve coordinating with state and local governments, marketing and business recruitment, arranging and accepting federal funding or other assistance, mitigating environmental impacts, and hiring employees and consultants. *See, e.g.,* Utah Code § 11-58-202. All of these activities affect interests inside and outside the City's borders. Plus, twenty counties' interest in filing an amicus brief further illustrates the inland port project's statewide effects.

All these interests could be negatively affected if the Authority lacks necessary funding or cannot develop an inland port due to hostile zoning or land use ordinances within the authority jurisdictional lands. In short, the challenged provisions materially affect the inland port's progress and development, which in turn affects substantial interests outside the City.

5. The challenged provisions do not materially intrude on interests that uniquely affect City residents.

The challenged provisions do not intrude on the City's control of policies that *uniquely* affect City residents. The City again argues this factor largely in a vacuum, as if the inland port doesn't exist or has no statewide purpose or impact. Aplt. Br. at 27-28, 38. That's wrong for several reasons.

First, as discussed multiple times now, the zoning and tax revenue provisions could directly affect the inland port's development, with ripple effects across the state. So those interests are not *unique* to the City. The inland port's success or failure will be felt locally and statewide.

Second, the Authority board has no zoning or land use power and does not control any City funds or budget decisions. In other words, the board "cannot be said to intrude in any significant way in the day-to-day functioning of local government." *West Jordan*, 767 P.2d at 535.

Third, the district court explained that the City was already planning to develop a city-controlled inland port project in the

northwest quadrant funded by tax differential revenues. R. 1493. Presumably, the City had already or was planning to zone the area for inland port uses regardless of the Act. It's therefore hard to see how the challenged provisions intrude on the City's ability to control its unique interests when those provisions appear to (at least largely) do what the City was already doing on its own.

Fourth, City residents do not lack any control over the Authority's governing board. Aplt. Br. at 28, 38. A Salt Lake City council member is the current board chair and the City's mayor or her designee fills another board position. The Salt Lake County mayor or her designee also have a board spot. *See* Utah Code § 11-58-302(2).

Fifth, the City mistakenly and repeatedly asserts that tax mandates interfere with City control over its funds. Aplt. Br. at 27-28. But those tax revenues make up a tiny fraction of the City's general fund. And the amount of City property tax revenue is not decreasing. The mandate applies to property tax differential on new growth within the jurisdictional lands. That means City coffers will not be shrinking due to the mandates.

More importantly, the reallocated property tax differential and sales and use tax revenues are not City funds to begin with as discussed above. So it is a legal fallacy for the City to claim that the Authority is interfering with City funds, much less how the City spends its actual funds.

Finally, the challenged provisions apply to less than one-fourth of the City's land in an area that has remained largely vacant and undeveloped for decades. Any intrusion on City control is therefore geographically limited.

For all these reasons, the intrusion-on-unique-interests factor weighs heavily in favor of finding the challenged provisions do not involve purely municipal functions.

* * *

In sum, the City's Ripper Clause claims fail each of the three elements: the challenged provisions do not (1) delegate (2) to a special commission (3) the power to perform any municipal functions. The district court's ruling should be affirmed.

II. The Act's Challenged Provisions Do Not Violate the Uniform Operation of Laws Clause.

The City argues that the Act's challenged provisions violate the Uniform Operation of Laws Clause. Aplt. Br. at 40-46. The Court should reject the argument for two independent reasons: (1) the City fails to address the district court's reasoning rejecting the claim, and (2) the district court got it right under settled precedent.[20]

[20] The district court held municipalities can assert claims under the Uniform Operation of Laws Clause. R. 1533. State Defendants do not necessarily agree, R. 931-33, 1440-43, but have chosen not to argue the issue on appeal given the other flaws with the City's claim.

A. The City failed to address the district court's reasoning.

The Court should not consider the City's uniform-operation-of-law arguments in this appeal. As the appellant, the City has the burden to show that "the lower court committed an error that the appellate court should correct." *Allen v. Friel*, 2008 UT 56, ¶ 7, 194 P.3d 903. The City has not done so.

The district court carefully considered and rejected the City's summary judgment arguments in a well-written, thorough decision. R. 1532-37. Yet the City's arguments on appeal never address the district court's reasoning, much less explain why the district court was wrong. Instead, the City essentially repeats the same arguments it made in its summary judgment motion as if this appellate proceeding is an original action and the district court had not already considered and rejected the City's arguments. *Compare* Aplt. Br. at 40-46 *with* R. 629-35.

But appeals—even on de novo review—"are not do-overs. They are opportunities to correct error." *Bad Ass Coffee Co. of Haw. Inc. v. Royal Aloha Int'l LLC*, 2020 UT App 122, ¶ 55, 473 P.3d 624 (citing *State v. Thornton*, 2017 UT 9, ¶ 49, 391 P.3d 1016). And the City cannot meet its burden of persuasion "that the district court erred without addressing the district court's decision on its own terms." *Bad Ass Coffee Co.*, 2020 UT App 122, ¶ 55; *see also Living Rivers v. Executive Dir. of the Utah Dep't of Envtl. Quality*, 2017 UT 64, ¶ 51, 417 P.3d 57 (refusing to address appellant's argument because it failed to explain how the final agency decision under review "got it

wrong"); *Federated Capital Corp. v. Shaw*, 2018 UT App 120, ¶ 20, 428 P.3d 12 (stating that an appellant who "does not meaningfully engage with the district court's reasoning" necessarily "falls short of demonstrating any error on the part of the district court").

For this reason alone, the Court need not consider the City's uniform-operation-of-laws arguments. But even if the Court is inclined to reach the merits of this issue, the district court's decision should be affirmed.

B. The district court properly upheld the Act.

The uniform operation of laws provision states that "[a]ll laws of a general nature shall have uniform operation." Utah Const. art. I, § 24. This state constitutional guarantee has come to "embody the same general principle" as the federal Equal Protection Clause: "persons similarly situated should be treated similarly, and persons in different circumstances should not be treated as if their circumstances were the same.'" *ABCO Enterprises v. Utah State Tax Comm'n*, 2009 UT 36, ¶ 14, 211 P.3d 382 (quoting *Gallivan v. Walker,* 2002 UT 89, ¶ 31, 54 P.3d 1069 (quoting *Malan v. Lewis,* 693 P.2d 661, 669 (Utah 1984))).[21]

[21] The Court has also recognized the provision's more historical understanding as requiring "'consistency in application of the law to those falling within the classifications adopted by the legislature.'" *Taylorsville City v. Mitchell*, 2020 UT 26, ¶ 36, 466 P.3d 148 (quoting *State v. Canton*, 2013 UT 44, ¶ 34, 308 P.3d 517). But the City has not argued (and could not credibly assert) that type of violation. So State Defendants will not address it.

1. The uniform operation of laws analysis affords the Act substantial deference.

The Court applies a three-step test to determine a statute's constitutionality under the Uniform Operation of Laws Clause: "'(1) whether the statute creates any classifications; (2) whether the classifications impose any disparate treatment on persons similarly situated; and (3) if there is disparate treatment, whether the legislature had any reasonable objective that warrants the disparity.'" *Taylorsville City v. Mitchell*, 2020 UT 26, ¶ 37, 466 P.3d 148 (quoting *Count My Vote, Inc. v. Cox*, 2019 UT 60, ¶ 29, 452 P.3d 1109 (citation omitted)).

The first two inquiries ferret out whether a discriminatory classification exists in the first place. *State v. Drej*, 2010 UT 35, ¶ 34, 233 P.3d 476. If it doesn't, the analysis ends and the law passes muster. *Id.* ¶¶ 35-39. The precise contours of the third inquiry will vary depending on the level of scrutiny applied to the statutory classification—most of which are presumptively permissible and subject only to rational basis review. *Mitchell*, 2020 UT 26, ¶ 37.

Rational basis scrutiny, which the City agrees applies here, Aplt. Br. at 41-46, poses a "low hurdle." *Mitchell*, 2020 UT 26, ¶ 45; *see also Peterson v. Coca-Cola USA*, 2002 UT 42, ¶ 23, 48 P.3d 941 (noting rational basis review is a "low threshold"). This minimal review requires only that (1) the classification is reasonable, (2) the legislative objectives are legitimate, and (3) the classification reasonably relates to the legislative purposes. *Mitchell*, 2020 UT 26, ¶ 43; *State v. Outzen*,

2017 UT 30, ¶ 20, 408 P.3d 334. Courts must give "substantial deference to the legislature" when making these determinations. *Mitchell*, 2020 UT 26, ¶ 44; *see also Outzen*, 2017 UT 30, ¶ 23 ("Broad deference is given to the legislature when assessing 'the reasonableness of its classifications and their relationship to legitimate legislative purposes.'"). And courts may consider both an actual statutory objective given by the government and any other *reasonable* legislative purpose. *Mitchell*, 2020 UT 26, ¶ 44 (citing *Outzen*, 2017 UT 30, ¶ 21); *Ryan v. Gold Cross Servs., Inc.*, 903 P.2d 423, 427 (Utah 1995).

Added all together, the applicable tests and review standards mean the City bears a "heavy" burden to show the Act's challenged provisions are invalid under the Uniform Operation of Laws Clause. *Whitmer*, 943 P.2d at 230.

2. The City fails to show the Act's provisions clearly violate the Uniform Operation of Laws Clause.

The City argues on appeal, as it did below, that the Act irrationally creates two classes: (1) three cities—Salt Lake City, Magna, and West Valley City—that are forced to comply with the challenged provisions, and (2) all other cities, none of which are subject to the Act unless the city and the affected landowner consent. R. 1533, Aplt. Br. at 41-46. This theory fails for multiple reasons. The district court correctly rejected it as should this Court.

a. The City misunderstands the Act's classifications.

The City's argument starts down the wrong path by misunderstanding the classifications at issue. The City claims the Act "single[s] out three municipalities" for compelled compliance, Aplt. Br. at 44, because "the legislature was concerned that these municipalities" did not want to participate. Aplt. Br. at 43. But that ignores the Act's "plain language," which "determine[s] what classification[s] [were] created." *Drej*, 2010 UT 35, ¶ 35. The Act itself never mentions or singles out any particular city.

Rather, the Act's plain language makes the challenged provisions mandatory within "authority jurisdictional land" or a "project area," which by definition includes authority jurisdiction land. Utah Code § 11-58-102(12) (defining project area); *id.* §§ 11-58-205(5)(a) and (6) (zoning and land use mandates apply to "authority jurisdictional land"); *id.* §§ 11-58-601(1) to (3) (the property tax differential mandates apply to "authority jurisdictional land" and "project area[s]"); *id.* §§ 11-58-602(6) & 59-12-205(2)(b)(iii) (sales and use tax mandate applies to "project area[s]").

So to the extent the Act classifies cities, the classification turns solely on whether a city's boundaries include authority jurisdictional land. Those that do are in one class, and those that do no are in another class.

b. The classifications do not impose disparate treatment on similarly situated cities.

The City's classification error leads to another mistake—a faulty disparate treatment comparison. The City argues that "the classes created by the Act are treated differently" because one class must obey the challenged provisions while the other class does not. Aplt. Br. at 41. But the question is not whether legislative classifications are treated differently. Every statute arguably does that. *State v. Merrill*, 2005 UT 34, ¶ 34, 114 P.3d 585. So "disparate treatment alone is insufficient to trigger uniform operation scrutiny." *Count My Vote, Inc. v. Cox*, 2019 UT 60, ¶ 34, 452 P.3d 1109. The real question, and the constitutional concern, focuses on whether "'those who are *similarly situated with respect to the purpose of a law* are treated differently by that law, to the detriment of some of those so classified.'" *Merrill*, 2009 UT 26, ¶ 6 (quoting *Blue Cross,* 779 P.2d at 637 (emphasis added)).

The City never confronts that critical issue. Aplt. Br. at 41. Instead, the City's argument presupposes that both classes of cities are similarly situated based on its view that the Act singles out three cities for the mere sake of curtailing their rights involuntarily. Aplt. Br. at 43. But that ignores the statute's purpose and text. The whole point of the Act is to enable inland port development on authority jurisdictional land given that land's "strategic location . . . in proximity to significant existing and potential transportation infrastructure . . . conducive to facilitating regional, national, and international trade." Utah Code § 11-58-201(3)(b)(i). And, as noted already, the Act's classifications are

expressly based on a city's boundary overlap with the authority jurisdictional land. Utah Code §§ 11-58-205(5)-(6); -601(2)(a). As the district court put it, the "three cities currently subject to the mandatory provisions of the Act are not similarly situated to other municipalities because those [three] cities have within their borders portions of the jurisdictional land." R. 1534.

Recognizing this critical difference between the two classes allows for a proper disparate treatment analysis. Focusing only on cities that are similarly situated, the Act treats the same all those municipalities whose boundaries contain authority jurisdictional land. The City has not asserted, and cannot assert, otherwise. The Act also treats the same all those municipalities whose boundaries do not contain authority jurisdictional land. In other words, the Act's classifications do not treat similarly situated cities differently and do not treat dissimilar cities the same. *Malan,* 693 P.2d at 669 ("[P]ersons similarly situated should be treated similarly, and persons in different circumstances should not be treated as if their circumstances were the same.").

In the absence of any disparate treatment of similarly situated cities, the Court's analysis is done and it need not address the third step of the uniform operation of laws test. *State v. Robinson*, 2011 UT 30, ¶ 17, 254 P.3d 183.

c. The classifications are reasonably related to legitimate government objectives

Even assuming the Act imposes some disparate treatment, it still passes the uniform operation test because the legislature had a "reasonable objective that warrants the disparity." *Mitchell*, 2020 UT 26, ¶ 37 (internal quotation marks omitted). Under rational basis review, as noted, this third and final inquiry poses a "low bar" in which the classifications are presumed permissible. *Id.* ¶ 43. This standard requires only that (1) a reasonable classification (2) is reasonably related (3) to a legitimate legislative purpose. *Id.* ¶ 43. The Act readily satisfies this low threshold.

The classification is reasonable. The district court understood the basis for the Act's classification—authority jurisdictional lands—and properly concluded that it is reasonable "to require only municipalities containing jurisdictional land within their boundaries to conform to the purposes of the Act in order for the inland port to achieve" its statutorily expressed purposes. R. 1534-35. For example, if the Act did not require these cities' zoning ordinances to permit inland port uses or prohibit them from forbidding the transport of natural resources, the cities—particularly the City, where most of the jurisdictional land is—could try to regulate the inland port project to a standstill any time they wanted. R. 1520 (district court recognizing that "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"). So, as the district court determined, "it is important for purposes of the

Act that Salt Lake City, where the proposed inland port would have its epicenter, not be permitted to opt out of the Act." R. 1535; *see also* R. 1536-37 (district court holding that "[t]o the extent Salt Lake City, Magna, and West Valley City are treated differently under the Act, that is because they contain jurisdictional land within their borders, and it is therefore reasonable for the Act to treat them differently than municipalities that lack jurisdictional land").

The City ignores the district court's common-sense reasoning. Instead, as already discussed, the City says "the only conceivable" reason to mandate some cities' compliance was legislative concern that the cities did not want to participate. Aplt. Br. at 43. And it is unreasonable and unfair to force some cities to comply while other cities do not have to. Aplt. Br. at 44. State Defendants won't repeat all the reasons the City's argument misses the mark. Suffice it to say, the City's assertions disregard the Act's text and purposes and afford the legislature no deference. Properly viewed, the classifications are more than reasonable under the rational basis test.

The Act pursues a legitimate objective. The legislature identified several purposes for the Act, including to: (1) maximize the long-term economic benefits to the area, the region, and the state; (2) maximize the creation of high-quality jobs; (3) respect and maintain sensitivity to the unique natural environment of areas in proximity to the authority jurisdictional land and land in other project areas; (4) improve air quality and minimize resource use; (5) take advantage of the authority

jurisdictional land's strategic location and other features, including the proximity to transportation and other infrastructure and facilities; (6) coordinate trade-related opportunities to export Utah products nationally and internationally; (7) establish a project of regional significance; (8) facilitate an increase in trade in the region and in global commerce; and (9) promote the development of facilities that help connect local businesses to potential foreign markets for exporting or that increase foreign direct investment. Utah Code § 11-58-203.

The district court acknowledged these statutory purposes and also confirmed for itself under well-established precedent that "economic welfare is a legitimate governmental objective." R. 1535-36 (citing *Sun Valley Water Beds of Utah, Inc. v. Herm Hughes & Son, Inc.,* 782 P.2d 188, 191 (Utah 1989) and *Baker v. Matheson*, 607 P.2d 233, 243 (Utah 1979)). The court therefore determined that the Act's stated purposes "are legitimate state objectives for the economic benefit of Utah residents." R. 1536. The City did not dispute this issue below, R. 1535-36, and does not contest it on appeal either.

The classifications are reasonably related to the Act's objectives. At this point, there can be no serious debate that the challenged classifications are reasonably related to the Act's legitimate legislative purposes, especially under the deferential rational basis standard. And the district court had no trouble holding as much. R. 1536 (The Act's provisions "regarding land-use, zoning, and property tax differentials are a permissible means of achieving the goals of the Act").

The City asserts, however, that there is no rational relationship between the zoning or tax differential provisions and generating statewide economic or job growth. Aplt. Br. at 45-46. That's wrong. State Defendants have already explained how the zoning and land-use mandates reasonably help ensure that one or two cities cannot stymie an inland port project meant to benefit the entire State. These provisions make sure the inland port will always have the necessary zoning and land use permission to develop as intended on the authority jurisdictional land. The zoning mandates are reasonably related to the inland port's development, which in turn will foster economic and job growth.

Likewise, the tax differential provisions are reasonably related to the Act's purposes. The Act creates the Authority and tasks it with coordinating, overseeing, and managing the inland port's development on the authority jurisdictional lands and potentially in satellite locations too. Utah Code §§ 11-58-201 to -203. The Authority needs funds to operate and accomplish its myriad inland-port related duties. The tax differential mandate provides one reasonable mechanism to fund the Authority. And as the Authority receives sufficient funding, it will be better positioned to fulfill its objectives of establishing a world-class inland port that will in turn create jobs and reap other statewide benefits. Utah Code § 11-58-602. There's no question under rational basis review that the tax differential provisions are reasonably related to the Act's objectives of developing a thriving inland port.

The City asserts that if the Act is valid, the State will start overriding local zoning ordinances "at the behest or request of a business or other special interest." Aplt. Br. at 46. But comparing the State's interest, involvement in, and legislation regarding the inland port development—arguably the biggest economic undertaking in the State's history—with the average local business makes little sense on a number of levels. To have any effect, slippery slope arguments must be plausible. This one is not.[22]

The same goes for the City's analogy to the Governor's Office of Economic Development. Aplt. Br. at 46. GOED and the inland port project share a common interest in statewide economic development. But they are two different entities with different specific objectives and needs. *See, e.g.,* Utah Code § 63N-1-201 (outlining GOED's responsibilities). The fact that GOED has never needed zoning or tax differential mandates to achieve its objectives says nothing about whether those mandates reasonably relate to the inland port's purposes.

The district court properly concluded the Act's challenged provisions do not violate the Uniform Operation of Laws Clause. The City has failed its heavy burden to prover otherwise. This Court should affirm.

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[22] The Utah League of Cities and Towns also warns about far fetched consequences if the Act is upheld. ULCT Br. at 23. But the Act doesn't take possession of anyone's property or profits, much less turn them over to some third-party commission.

III. The Entire Act Cannot Be Invalidated

Although challenging only a few of the Act's provisions, the City's brief sometimes says that the Act is unconstitutional. *See, e.g.,* Aplt. Br. at 48. The City is wrong to the extent it is arguing the entire Act should be invalidated if the Court finds one of the challenged provisions unconstitutional. The Court usually tries to save a statute by severing the part that is unconstitutional. *Gallivan*, 2002 UT 89, ¶ 87. And in determining the severability of an unconstitutional provision, the Court looks to legislative intent. *In re Gestational Agreement*, 2019 UT 40, ¶ 49, 449 P.3d 69.

Here, the Act contains a severability clause stating that the remainder of the Act shall remain in effect if a court determines that any part of it is invalid. Utah Code § 11-58-104. To be sure, State Defendants maintain that the entire Act is valid and the City's challenges should be rejected. But if the Court disagrees and determines that one of the challenged provisions is unconstitutional, only that provision should be declared invalid. The rest of the Act should remain in effect.

Conclusion

For the foregoing reasons, the Court should affirm the district court's decision.

Respectfully submitted,

s/ Stanford E. Purser
Stanford E. Purser

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Certificate of Service

I hereby certify that on 30 November 2020 a true, correct and complete copy of the foregoing Brief of State Appellees was filed with the court and served via United States mail or electronic mail as follows:

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