

IN THE  
SUPREME COURT OF THE STATE OF UTAH

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SALT LAKE CITY CORPORATION,  
*Appellant,*

v.

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

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**BRIEF OF AMICUS CURIAE LAW PROFESSORS AND INTERNATIONAL  
MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF APPELLANT**

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

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## **CURRENT AND FORMER PARTIES**

### **Appellant**

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

### **Appellees**

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

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

### **Amicus Curiae**

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

### **Parties Below Not Parties to the Appeal**

None

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## INTRODUCTION

The Utah Inland Port Authority Act (“the Act”), codified as amended at Utah Code Ann. § 11-58-201 *et seq.*, vests sweeping authority in an appointed, state-dominated board over the governance, operations, and finances of Salt Lake City (“the City”) with respect to approximately one-fifth of the City’s land. The City asserts that the Act violates several provisions of the Utah Constitution, particularly Article VI, Section 28—the so-called “Ripper Clause.” That clause denies the legislature “any power to . . . interfere with any municipal improvement, money, property or effects . . . to levy taxes, . . . or to perform any municipal function.” The Third Judicial Court for Salt Lake County rejected the City’s claims, holding *inter alia* that the Act does not violate the Ripper Clause. *Amici curiae* Law Professors and the International Municipal Lawyers Association (“IMLA”) submit this brief to highlight the historical context and purpose of ripper clauses, and to demonstrate that the Act’s intrusion into the City’s governance and its impositions on the City’s taxpayers are precisely the kinds of interference with local self-government that the Ripper Clause was intended to prevent.

## STATEMENT OF INTEREST

*Amici Curiae* are law professors who study and teach state and local government law at law schools around the country. Due to their professional work and expertise regarding issues of state constitutional law and local government, they are interested in the proper interpretation of Utah’s Ripper Clause, which is virtually identical to the Ripper Clause in seven other state constitutions. They submit this brief to ensure that the Ripper Clause’s purpose of protecting local self-government from unconstitutional state

interference is understood and respected. The list and brief descriptions of the *Amici Curiae* law professors are attached as Appendix A.

IMLA is a non-profit, non-partisan professional organization consisting of more than 2,500 members. The membership is composed of local government entities, including cities, counties, and subdivisions thereof, as represented by their chief legal officers, state municipal leagues, and individual attorneys. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the Supreme Court of the United States, the United States Courts of Appeals, and in state supreme and appellate courts.

## **ARGUMENT**

### **I. The Purpose of the Ripper Clause is to Protect Local Self-Government and Local Finances from State Interference.**

#### **A. The Ripper Clause is a Response to State Legislative Abuses that Interfered with Local Self-Government.**

Ripper Clauses are a response to a notorious pattern of state legislative abuse in the middle decades of the nineteenth century in which states took control of critical local functions away from elected city officials or imposed unwanted costs on municipal treasuries. In 1857, for example, the New York state legislature took the New York City police force away from the control of the city's government and vested it in a state-created and state-dominated Metropolitan Police District—"an act which was vigorously protested and so violently resisted that its enforcement led to bloodshed in the city." Howard Lee McBain, *The Law and Practice of Municipal Home Rule* 7 (1916). Following its successful

takeover of the police department, the New York “legislature extended its control” beyond the police to fire departments, public health, public parks and other municipal functions; state “commissions were created to improve city streets.” David O. Porter, *The Ripper Clause in State Constitutional Law: An Early Urban Experiment, Part I*, 1969 Utah L. Rev. 289, 301.

Nor was New York unique. “State legislators in Michigan, Massachusetts, Maryland, and Missouri followed suit and assumed control of police departments in Detroit, Boston, Baltimore, St. Louis, and Kansas City.” Jon Teaford, *City Versus State: The Struggle for Legal Ascendancy*, 17 Am. J. Leg. Hist. 51, 65 (1973). Indeed, “in practically every state with at least one important city, the same conditions of legislative interference with city functions prevailed.” Porter, *supra*, at 302. These actions were often driven by partisan concerns. As one scholar observed at the turn of the last century, “[i]t is further to be noted that legislators are prompted to interfere with local self-government whenever the dominant political machine of whatever party” feels threatened. Amasa M. Eaton, *Ripper Cases*, 15 Harv. L. Rev. 468, 471 (1902). *Accord*, Porter, *supra*, at 299–300 (noting the role of patronage in motivating the creation of special commissions).

In the years immediately after the Civil War, Philadelphia “suffered especially under the tyranny of the legislature in the matter of such commissions.” McBain, *supra*, at 45. These commissions “in some instances were endowed with legal power to make almost limitless drafts upon the municipal treasury.” *Id.* at 46. The state legislature passed laws taking away local funds and creating special commissions to construct a local bridge, and a court house and municipal building to be funded by municipal tax dollars, without



municipal consent or municipal participation in the commissions' decision-making. *See City of Philadelphia v. Field*, 58 Pa. 320 (Pa. 1868) (bridge construction); *Baird v. Rice*, 63 Pa. 489 (Pa. 1869) (court house and municipal building); *City of Philadelphia v. Fox*, 64 Pa. 169 (Pa. 1870) (diversion of trust funds). The Pennsylvania Supreme Court at the time observed that as a result of the legislature's action, "a body not chosen by the [Philadelphia] taxpayers, nor removable by them, nor accountable to them, are here authorized to levy upon them any sum of money they may at their discretion require." *Perkins v. Slack*, 86 Pa. 270, 272 (Pa. 1878). The court observed that the legislature's act "tried to the uttermost the law-abiding character of our citizens. . . . This feeling, with other subjects of discontent, found vent . . . in the demand for a new constitution." *Id.*

Indeed, in the immediate aftermath of these so-called "ripper bills," Pennsylvania amended its constitution in 1874 to place a number of restrictions on the legislature, including the prohibition of the creation of special commissions that could "make, supervise or interfere with any municipal improvement, money, or property, or effects . . . to levy taxes, . . . or to perform any municipal function"—the first state constitutional Ripper Clause. Porter, *supra*, at 306–10. Over the next two decades, seven other states followed suit with language close—often virtually identical—to Pennsylvania's. Utah was the last state to do so, when it incorporated a Ripper Clause in its statehood constitution. The Utah Supreme Court has given weight to this history, noting that Utah's Ripper Clause was modeled on Pennsylvania's, and that the "motivation for the Pennsylvania Clause was to protect local government councils from having their particularly local functions usurped by special boards or commissions that were unrepresentative and were often created by the

state legislature at the behest of special interests.” *City of West Jordan v. Utah State Retirement Board*, 767 P.2d 530, 533 (Utah 1988).

**B. The Ripper Clause’s Purpose is to Protect Local Democratic Control over Local Tax Dollars and the Operations of Local Government.**

Courts and commentators agree that the driving force behind the Ripper Clauses was the desire to protect local taxpayers from having their funds diverted to special commissions over which they have no control and, more generally, to assure that the operations of local government are subject to the control of locally elected officials. As one delegate to the Pennsylvania constitutional convention that authored the first Ripper Clause put it, a central purpose of the Clause was that “no public improvement should be authorized without the approval of the persons upon whom the burden of taxation would be placed or their immediate representatives.” Porter, *supra*, at 310. Porter, whose 1969 two-part article in the *Utah Law Review* remains the leading study of the Ripper Clause, agreed that one of the fundamental principles of the Ripper Clause is that it “prohibits granting local taxing power to appointive or independent bodies.” David O. Porter, *The Ripper Clause in State Constitutional Law: An Early Urban Experiment, Part II*, 1969 *Utah L. Rev.* 450, 487. A more recent account reiterates that “the ripper clauses and their history . . . convey the basic understanding” that “the legislature should not have the capability to control, by special legislation, the fiscal affairs of a local government.” Robert M. Bastress Jr., *Localism and the West Virginia Constitution*, 109 *W. Va. L. Rev.* 683, 698 (2007).

The Pennsylvania courts have probably had the most experience with the Ripper Clause, and assuring that local taxpayers, through their local elected representatives, control the use of local tax dollars is a leitmotif that has run through the state's case law for over a century. *See, e.g., Franklin Co. Prison Bd. v. Pennsylvania Labor Rel. Bd.*, 417 A.2d 1138, 1142–44 (Pa. 1980); *Wilson v. School Dist. of Philadelphia*, 195 A. 90, 99 (Pa. 1937); *Porter v. Shields*, 49 A. 785 (Pa. 1901). Concern with the municipal fiscal burden posed by an unelected special commission has also been voiced by the courts of other states.

In *Stewart v. City of Cheyenne*, 154 P.2d 355 (Wyo. 1944), for example, the Wyoming Supreme Court held that giving an independent Board of Public Utilities control over the city of Cheyenne's municipal water works violated the state constitution's Ripper Clause because the board had the power, *inter alia*, to compel the city to undertake condemnation proceedings which would involve the expenditure of municipal tax dollars. The court acknowledged that the taxation question here was indirect, *id.* at 365, but determined that the board's power to compel the city to spend money turned it into an unconstitutional special commission. *Id.* at 369.

A second strand in the Ripper Clause case law and commentary is the concern that special commissions disrupt the integrity of local government by placing municipal functions in the hands of unelected appointees beyond the control of democratically elected local officials. This can be seen in a number of cases in which the state law did not impose an agency on a local government but instead simply authorized the city to create the new entity; however, once created, the entity was no longer subject to the control of

the elected local government. Thus, in *Stewart v. City of Cheyenne*, the board was created by the city but, once created, the state statute placed it beyond the control of the elected city government. *Id.* Indeed, the authority had some control over the elected government as it could compel the elected city government “to pass any ordinances which it may desire” relevant to the operation of the water works. *Id.* In *Moll v. Morrow*, 98 A. 650 (Pa. 1916), the Pennsylvania law authorized Pittsburgh to create a “bureau of public morals” within the police department. Although the decision to create the bureau and the appointments to its governing board were up to the mayor and council, once created the bureau would be able to function independently of the rest of the city government. It was “beyond control” and “not a part of the established system.” *Id.* at 652. Although different from the state impositions that triggered the adoption of the Ripper Clause, that provision, the court concluded, “prohibits not only those of identical character,” *id.*, but also other measures that place municipal functions beyond the control of the municipal government.

The South Dakota Supreme Court’s decision in *Specht v. Sioux Falls*, 526 N.W.2d 727 (S.D. 1995), makes the same point. Again, all the state law did was authorize the city to create a regional emergency medical services (EMS) authority; the decision to create the authority was the city’s. But once created, the state statute placed it beyond the effective control of the municipal government. In the court’s view, “the extent to which” the authority “will intrude upon the ability of [the municipality’s citizens] . . . to control through their elected officials the substantive policies that affect them uniquely” was a “significant constitutional problem” under the Ripper Clause. *Id.* at 730–31. The lack of control by the democratically-elected local government was compounded by the fact that

the authority could require the city to levy a tax for EMS purposes and turn the tax dollars collected over to the authority for its use. *Id.* at 732.

As will be discussed in the next Part, the Utah Inland Port Authority Act is fatally flawed because embedded in the Act are the central vices against which the Ripper Clause is aimed – denial of local control of local taxes and disruption of local self-government.

**II. The Act Violates the Ripper Clause Because It Places Salt Lake City’s Governmental Functions Beyond the Control of the City’s Elected Government.**

**A. The Act Violates the Utah Constitution by Creating a Special Commission That Impermissibly Interferes With the Municipal Fisc.**

The Act unconstitutionally interferes with municipal funds in two ways. First, and more obviously, the Act diverts one hundred percent of the incremental growth in property tax revenue from the land within the jurisdiction of the Authority—approximately one-fifth of the land in Salt Lake City<sup>1</sup>—to the Authority to be used “for any purpose authorized under this chapter” as the Authority deems fit. Utah Code Ann. § 11-58-206. That revenue loss is mandatory for twenty-five years after a certificate of occupancy is issued with respect to a parcel within the authority’s jurisdiction, and *can be extended by the Authority for another fifteen years if it so chooses*. As the District Court acknowledged, property taxes constitute roughly one-third of the City’s general fund, and the City’s initial estimate is that this will take \$360 million in property tax revenue away from the City. In addition, the Authority is also entitled to receive a portion of the sales and use tax revenue collected

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<sup>1</sup> Pl. Salt Lake City Corporation’s Mot. for Summ. J. and Mem. In Supp. at 16.

by the City from points of sale within the jurisdictional land, so the overall financial impact on the City is likely to be quite substantial.

Not only will this deny the City's residents control over the funds they need for "public development, municipal infrastructure, improvements, police and fire services, public areas, permitting and licensing, parks and open space, and implementation of other policy objectives," (D. Ct. opinion at 39–40), but it also violates the constitutional requirement that control over municipal tax dollars be vested in the elected municipal government. The constitutional violation will be particularly severe for the present and future residents or landowners who live or own land within the jurisdiction of the Authority. They will be compelled to send an ever-growing share of their taxes to an unelected entity over which they have absolutely no control. While the revenue the Authority collects may very well be spent for the benefit of the jurisdictional lands *as determined by the Authority*, the essence of the democratic self-government protected by the Ripper Clause is that the jurisdictional land's residents and landowners should have a say in how their tax dollars are spent. The Act creates a system of taxation without representation which is antithetical to the history and purpose of the Ripper Clause.

Second, the Act makes the City financially responsible for the upkeep and maintenance of the infrastructure that the Authority will develop on the jurisdictional land. As the District Court noted, that will require City funding "of roads and sidewalks, including pothole repair, paving and snow removal; street lights; water and sewer pipelines; and trash pick-up, traffic control, fire and police service, and storage of hazardous items." (D. Ct. opinion at 37). This is, in effect, a delegation to the Authority of the power to force

the City to spend municipal tax dollars on infrastructure that the Authority has created or required. As cases like *Specht v. Sioux Falls*, *Stewart v. City of Cheyenne*, and a longstanding line of Utah cases discussed in the next part demonstrate, when an unelected body is given the power to force an elected local government to spend tax dollars for the unelected body's program, that is a Ripper Clause violation.

Indeed, the two ways in which the Act violates the municipal fiscal component of the Ripper Clause compound the violation. The Act will force the City to spend tax dollars on infrastructure that will promote the development of the jurisdictional land, raise its value and generate tax revenue, but then it takes that revenue away from the City. Making the City finance through both spending outright and revenue foregone a significant part of the development of a project within its territory but over which it has no control is shockingly similar to the state-mandated, special-commission-controlled, but city-financed projects in Philadelphia in the 1860s that led to the ratification of the first Ripper Clause.

**B. The Act Violates the Constitution by Creating a Special Commission That Impermissibly Interferes With the City's Control Over Municipal Functions.**

In addition to unconstitutionally interfering with municipal funds, the Act violates the Ripper Clause by disrupting the Salt Lake City government's ability to carry out basic municipal obligations. This can be seen in at least two ways. First, the Act interferes with the operation of the City's zoning and land use planning structure and procedures. The Act requires the City to allow an inland port as a permitted or conditional use. *See* Utah Code Ann. § 11-58-205(5). In effect, the Authority may compel the City to legislate zoning matters as determined by an Authority board that is not accountable to the City's voters or

their elected representatives. Similarly, any City land use decision with respect to the inland port is subject to override by the Authority. *See* Utah Code Ann. §§ 11-58-403(2)(b)(ii) & §403(5)(b)(i)-(ii). This means that the Authority can prevent the City from pursuing traditional land use policies designed to mitigate any adverse environmental or other impacts the inland port project may impose both in the lands subject to the Authority's jurisdiction and in the rest of the City that may be affected by the inland port's development.

Second, the Act disrupts the City's ability to control the development of municipal infrastructure—a core responsibility of any municipality—by delegating to the Authority the power to develop infrastructure within the Authority's jurisdictional lands, *see* Utah Code Ann. § 11-58-202(2)(b). The City, however, will ultimately be responsible for the maintenance of much of this infrastructure, thus forcing the City to devote attention to the area's infrastructure regardless of whether that would otherwise have been part of the City's infrastructure priorities. This is not only a matter of the diversion of municipal funds—although it is surely that—but also of the attention and focus of municipal decision-making.

The point is not that zoning and land use planning or the operation and maintenance of municipal infrastructure are inherently municipal functions that cannot be addressed by the state. Rather, the vice of the Act—the vice that the Ripper Clause is intended to prevent—is that the Act, while leaving basic responsibility for land use planning and municipal infrastructure with the City, interferes with and disrupts how the City is able to discharge those responsibilities, mandating that it make certain regulatory decisions or



undertake certain services without regard for the municipal decision-making structures in place for making those decisions or providing those services.

As a result, the people of Salt Lake City will no longer be able to control, through their elected representatives, basic decisions that determine the quality of municipal life. Worse still, by vesting power in a locally unaccountable authority, the Act will obscure responsibility for land use decisions or infrastructure priorities within the jurisdictional lands that may negatively impact City residents. The United States Supreme Court focused on a similar problem when it held that the federal government could not “commandeer” states to adopt certain laws or implement federal programs:

[W]here the Federal Government directs the States to regulate, it may be state officials who will bear the brunt of public disapproval, while the federal officials who devised the regulatory program may remain insulated from the electoral ramifications of their decision. Accountability is thus diminished when, due to federal coercion, elected state officials cannot regulate in accordance with the views of the local electorate in matters not pre-empted by federal regulation.

*New York v. United States*, 505 U.S. 144, 169 (1992); *accord*, *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1477 (2018).

Although the federal-state and state-local relationships are marked by great differences, this same concern about lack of accountability when one level of government obscures its role by acting through directives to another level of government is applicable here. Like the federal anti-commandeering doctrine, a central purpose of the Ripper Clause is to assure that when it performs municipal functions, a city is accountable to its residents and protected from disruption by an unelected, unaccountable state commission.

### **III. The Act is Inconsistent with the Utah Supreme Court’s Longstanding Enforcement of the Ripper Clause.**

#### **A. The Utah Supreme Court’s Earlier Ripper Clause Cases Focused on Local Control of the Local Fisc and Protection Against Interference with Local Self-Government.**

In one of its earliest Ripper Clause decisions, the Utah Supreme Court emphasized that “the undoubted purpose of the constitutional provision is to hold inviolable the right of local self-government of cities and towns.” *Logan City v. Public Utilities Comm’n of Utah*, 271 P. 961, 972 (Utah 1928). The Court has been particularly attentive to state laws that threaten to subject the municipal fisc to costs imposed by state-created, appointee-controlled special commissions. Thus, in *Logan City*, the Court held that the state Public Utilities Commission did not have jurisdiction over municipally-owned utilities because, if the Commission could oversee and reject a proposed municipal utility rate increase, that could result in local taxpayers having to cover utility costs. That would mean the “commission in effect may determine when a municipality may and when it may not meet any part of such [utility] expenses by taxation and thereby indirectly supervise, direct, and interfere with the levying of taxes for such purposes by the municipality.” *Id.* Even this indirect impact on municipal taxation of oversight by the state utility commission “is by the constitutional provision forbidden.” *Id.*

On very similar reasoning, the Court subsequently determined that a city water system’s sale and delivery of water beyond the city limits was not subject to the jurisdiction of the state Public Service Commission—the successor of the Public Utility Commission, *see County Water System v. Salt Lake City*, 278 P.2d 285, 290–91 (Utah 1954), and that

due to the Ripper Clause, the state water pollution control board could not apply its sewage system regulations to a municipal sewage system. *See State Water Pollution Control Board v. Salt Lake City*, 311 P.2d 370, 375 (Utah 1957). In so doing, the Court reemphasized that “the very purpose” of the Ripper Clause is “to insure, insofar as practicable, the powers to cities and towns to manage their own internal affairs.” *Id.* at 374.

The Court has also been attentive to the Ripper Clause’s concern to preclude unwanted outside disruption of local control of local governance. Many of the cases in which the Court declined to find that an entity was not an unconstitutional special commission involved situations in which the local government, acting pursuant to state law, created or controlled the commission, so that there was no interference with local control of local functions. *See, e.g., Lehi City v. Meiling*, 48 P.2d 530, 536 (Utah 1935) (before the entity can be organized, “it must have a majority vote of the electors within the district in support thereof”); *Tribe v. Salt Lake City Corp.*, 540 P.2d 499 (Utah 1975) (redevelopment agency of Salt Lake City created by the Salt Lake City Corp.); *Municipal Bldg Auth. of Iron Co. v. Lowder*, 711 P.2d 273 (Utah 1985) (authority created by the county to finance a new jail); *see id.* at 281–82 (“local control is . . . retained over a locally created entity”; the authority cannot impose a tax or commit the taxpayers to pay for the jail; there is “no diminution in local control over the local government process”).

**B. The Act Violates the Standard Articulated by the Court in *City of West Jordan v. Utah State Retirement Board*.**

As the District Court recognized, the Supreme Court’s current standard for considering Ripper Clause claims was articulated in *City of West Jordan v. Utah State*

*Retirement Board*, 767 P.2d 530 (Utah 1988). The District Court, however, misapplied the *West Jordan* standard.

At the heart of *West Jordan* is the recognition that concepts like “state” or “local” affairs or “state” or “municipal” functions are elusive and may vary from place to place, time to time, and context to context. *Id.* at 533–34. As “no bright line test” exists for distinguishing state from local, the court “reject[ed] as a general matter, the search for any hard and fast characterization of specific functions as ‘municipal’ or ‘state.’” *Id.* at 534. The District Court, however, failed to abide by *West Jordan*’s admonition to avoid “hard and fast characterization,” *id.*, of a matter as state or local. Instead, the court repeatedly determined that since the development of the inland port had some significance for statewide economic development and employment, all aspects of the Act, including those burdening the municipal fisc and interfering with the integrity of local self-governance, were saved by the characterization of the inland port as essentially a state matter. *West Jordan*’s “balancing approach,” *id.*, demands a more fine-tuned treatment, requiring consideration of each of the particular powers vested in the Authority to determine whether the exercise of such a power violates the Ripper Clause.

As the *West Jordan* Court explained, the balancing approach entails, *inter alia*, consideration of “the relative abilities of the state and municipal governments to perform *the function*, the degree to which the performance of *the function* affects the interests of those beyond the boundaries of the municipality, and the extent to which the legislation under attack will intrude upon the ability of the people within the municipality to control through their elected officials *the substantive policies that affect them uniquely.*” *Id.*

(emphasis supplied). The emphasis on individual functions in the first two factors and on locally significant substantive policies in the third rather than on the act as a whole indicates the need to consider the individual powers delegated to the Authority rather than simply assume that the broader state concern with an inland port subsumes the specific interferences with municipal money and governance that the Act authorizes.

Assuming the state has the authority to support the creation of an inland port facility in Salt Lake City, that does not justify the Act's diversion of local property taxes or the imposition of an infrastructure expenditure mandate on the City. So, too, the power to create an inland port does not justify the disruption of how the City exercises its zoning and land use planning processes.

The District Court's departure from *West Jordan* becomes even more apparent when the *West Jordan* court's application of its balancing factors is considered. *West Jordan* addressed a state law limiting the ability of political subdivisions which had chosen to participate in the state's public employee retirement system to withdraw from that system. As the court explained, with respect to the relative ability of states and local governments to address the problem, "there is every reason to believe that the state, by consolidating funds from many smaller political subdivisions and providing for continuity and expertise in the management of the funds, can do a better job than each separate local unit of government." *Id.* at 535. By contrast, there is no reason to believe that the Authority, which has no experience in zoning or land use planning, can do a better job in developing the jurisdictional land than a city with a long history of land use planning, a sizeable planning staff, and considerable expertise in the field.

More importantly, *West Jordan* paid particular attention to what it referred to as “the critical question of the challenged legislation’s intrusiveness on local officials’ control of policies that uniquely affect their citizenry.” *Id.* As the *West Jordan* court emphasized, the state retirement system law left “local units of government with complete autonomy in deciding whether to offer any retirement benefits. It also permits the local governments to provide additional benefits over and above those provided by the state system.” *Id.* The Inland Port Authority Act, by contrast, leaves no such autonomy with the City with respect to the mandated zoning, land use planning, infrastructure maintenance and finance, and diversion of tax dollars. All the *West Jordan* law required was that a local government that chose to offer retirement benefits do so in a manner consistent with state law. As a result, the “level of intrusiveness on local self-government resulting from this legislation is minimal.” *Id.* The same clearly cannot be said for a law that displaces municipal land use and zoning from one-fifth of the city, imposes uncertain but potentially substantial new infrastructure costs, and strips the municipality of substantial future tax revenues.

The Utah Supreme Court has decided only one Ripper Clause case since *West Jordan*. In *Utah Assoc. Mun. Power Sys. v. Public Serv. Comm’n*, 789 P.2d 298 (Utah 1990), the Court held that that the Public Service Commission’s (“PSC”) regulation of the Utah Associated Municipal Power Systems’ (“UAMPS”) construction of power transmission lines did not violate the Ripper Clause. As the court explained, UAMPS is composed of more than twenty cities, towns, and local agencies throughout the state and its power lines would run through and affect communities that were not part of the system, thus potentially inflicting “environmental harms in areas outside the boundaries of any

member of UAMPS.” *Id.* at 302–03. This considerable extra-local impact on communities not represented in UAMPS, plus the longstanding expertise of the PSC in overseeing power lines, justified any financial or other burden PSC regulation might place on the local governments in UAMPS. *Id.* at 303–04. Indeed, such regulation might have been necessary to protect other municipalities from the adverse impact of the UAMPS project.

Plainly, both *West Jordan* and *UAMPS* are easily distinguishable from the Inland Port Authority Act. Unlike in *West Jordan*, the Act does not require initial local consent to state regulation or provide for continuing local autonomy with respect to the core functions subject to Authority regulation. Unlike in *UAMPS*, the City is not projecting its activities beyond its borders or potentially adversely affecting other communities. And unlike both cases, the powers granted to the Authority are far more intrusive into the day-to-day operations of the City’s government and into the ability of City residents to control their government through their elected representatives than the limited powers given to the Retirement System Board with respect to municipal retirement benefits or to the PSC with respect to extra-local power transmission lines.

## CONCLUSION

Utah has long been committed to the value of local self-government. As Justice Gideon wrote in 1928, “local self-government . . . is not an innovation in this country. It is nothing new for municipalities, in Utah or elsewhere in the United States, to enjoy home rule or local self-government.” *Logan City*, 271 P. at 974 (Gideon, J., concurring). The Ripper Clause does not grant local self-government but protects it by placing a “limitation

of the power of the Legislature to delegate [municipal functions] to anybody, save only the regularly elected officers of the municipalities.” *Id.*

Decades later, this Court confirmed that “effective local self-government . . . [is] an important constituent part of our system of government” and that “the history of our political institutions is founded in large measure on the concept at least in theory if not in practice that the more local the unit of government is that can deal with a political problem, the more effective and efficient the exercise of power is likely to be.” *State v. Hutchinson*, 624 P.2d 1116, 1120–21 (Utah 1980).

The Ripper Clause is intended to protect the ability of the people to govern themselves at the local level by prohibiting state disruption of local governments through the creation of appointive special commissions empowered to interfere with local control of local finances and local government operations. Like the Pennsylvania special commissions that triggered the ratification of the first Ripper Clause, the Inland Port Authority Act creates an Authority with the power to burden the municipal treasury and undermine the ability of the people of Salt Lake City to govern themselves. As a result, the Act violates Article VI, Section 28 of the Utah Constitution.

RESPECTFULLY SUBMITTED this 25th day of August, 2020.

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## Certificate of Compliance

I hereby certify that:

1. This brief complies with the word limits set forth in Utah R. App. P. 24(g)(1) because this brief contains 5,448 words, excluding the parts of the brief exempted by Utah R. App. P. 24(g)(2).
2. This brief complies with Utah R. App. P. 21(h) regarding public and non-public filings.

DATED this 25<sup>th</sup> day of August, 2020.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25th day of August, 2020, a true and correct copy of the foregoing **BRIEF OF AMICUS CURIAE LAW PROFESSORS AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF APPELLANT** was served via electronic mail, upon the following:

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