IN THE UTAH SUPREME COURT

SALT LAKE COUNTY, DUCHESNE COUNTY, UINTAH COUNTY, WASHINGTON COUNTY, and WEBER COUNTY, all political subdivisions of the State of Utah, Plaintiffs/Appellants, vs. STATE OF UTAH, DELTA AIR LINES, INC., AND SKYWEST AIRLINES, INC., Defendants/Appellees.	**BRIEF OF APPELLEES DELTA AIR LINES, INC. AND SKYWEST AIRLINES, INC.** Appellate Case No. 20180586-SC

ON APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT,
SALT LAKE COUNTY, HONORABLE KARA PETTIT, DISTRICT JUDGE

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[1] Note the caption to the Counties' brief misidentifies Delta Air Lines, Inc. as "Delta Airlines, Inc.," and SkyWest Airlines, Inc. as "Sky West, Inc." The caption above corrects the misidentification.

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INTRODUCTION

The Appellants' ("Counties") Complaint raises both facial *and* "as-applied" constitutional challenges, contrary to what the Counties now appear to be arguing. For the Counties' appeal, this is an inconvenient fact. Because all claims of the Counties' pleading are considered to determine whether the Counties' case was correctly dismissed, the Counties cannot challenge the district court's ruling by limiting their focus to facial claims while ignoring their claims that challenge the same statutes as-applied.

The Counties' claims, even their facial claims, cannot proceed without exhaustion of administrative remedies, which, according to the Utah Constitution and Utah statutes, properly occurs before the Utah State Tax Commission ("Commission"). The Counties' claims are also not ripe for review because they do not present a justiciable case and controversy.

In view of this, it is unclear why the Counties have chosen to appeal the district court's dismissal when certain of the Counties have also raised and are pursuing the same constitutional claims in several matters now pending either before a district court tax judge or the Commission.[2] In those cases, the correct procedure should have been

[2] The following pending cases were appealed by Salt Lake County from the Commission to the district court to resolve Salt Lake County's constitutional challenge to the Threshold Law: *Salt Lake Cty. v. Utah State Tax Comm'n, et al.*, Case No. 180902758; *Salt Lake Cty. v. Utah State Tax Comm'n, et al.*, Case No. 180902754; *Salt Lake Cty. v. Utah State Tax Comm'n, et al.*, Case No. 180902757; *Salt Lake Cty. v. Utah State Tax Comm'n, et al.*, Case No. 180902759.
The following additional cases are currently pending before the Commission and involve challenges to the Valuation and Allocation Laws: Appeal No. 17-977, filed June 19, 2017 (*SkyWest, Airlines Inc. v. Prop. Tax. Div.*; *Iron Cty. v. Prop. Tax Div. ex rel. SkyWest Airlines Inc.*; *Washington Cty. v. Prop. Tax Div. ex rel. SkyWest Airlines, Inc.*;

followed as prescribed by the Utah Constitution and Utah statutes for resolving tax appeals. Here, by contrast, the Counties deviate from the proper procedure. Recognizing this, the district court correctly stopped the Counties from circumventing the Commission and Utah's long-established administrative process—the constitutional system prescribed to resolve tax challenges—and from bringing their claims in the district court in the first instance.

This Court should do the same, and affirm the district court's order granting the Motion for Judgment on the Pleadings submitted by Delta Air Lines, Inc. and SkyWest Airlines, Inc. (collectively the "Airlines"), and partially granting the Motion to Dismiss presented by the State.

STATEMENT OF ISSUES

1. Did the district court correctly dismiss the Counties' claims regarding Utah Code § 59-2-201(4) ("Valuation Law") and § 59-2-804 ("Allocation Law") for the Counties' failure to exhaust administrative remedies?

   a. Standard of Review. "The grant of a motion for judgment on the pleadings is reviewed under the same standard as the grant of a motion to dismiss." *Thimmes v. Utah State Univ.*, 2001 UT App 93, ¶ 4, 22 P.3d 257. "A district court's grant of a motion to dismiss . . . presents a question of law that we review for correctness." *Osguthorpe v. Wolf Mountain Resorts,*

Salt Lake Cty. v. Prop. Tax Div. ex rel. SkyWest Airlines, Inc.); Appeal No. 17-979, filed June 22, 2017 (*Delta Air Lines, Inc. v. Prop. Tax Div.*; *Salt Lake Cty. v. Prop. Tax Div. ex rel. Delta Air Lines, Inc.*); Appeal No. 17-1163, filed June 22, 2017 (*Salt Lake Cty. v. Prop. Tax Div. ex rel. Frontier Airlines, Inc.*); Appeal No. 17-1160, filed June 22, 2017 (*Salt Lake Cty. v. Prop. Tax Div. ex rel. JetBlue Airways Corp.*); (R. 287, 294, 817).

L.C., 2010 UT 29, ¶ 10, 232 P.3d 999 (citations omitted). "[I]t is well established that an appellate court may affirm the judgment appealed from if it is sustainable on any legal ground or theory apparent on the record, even if it differs from that stated by the trial court." *Id.* (citations omitted).

b. Preservation of Issue. The Airlines are responding to the Counties' appeal and their asserted preservation of the issue.

2. Did the district court correctly dismiss the Counties' claims regarding Utah Code § 59-2-1007(2)(b) ("Threshold Law") because they were not ripe for review?

a. Standard of Review. "The grant of a motion for judgment on the pleadings is reviewed under the same standard as the grant of a motion to dismiss." *Thimmes*, 2001 UT App 93, ¶ 4. "A district court's grant of a motion to dismiss . . . presents a question of law that we review for correctness." *Osguthorpe*, 2010 UT 29, ¶ 10 (citations omitted). "[I]t is well established that an appellate court may affirm the judgment appealed from if it is sustainable on any legal ground or theory apparent on the record, even if it differs from that stated by the trial court." *Id.* (citations omitted).

b. Preservation of Issue. The Airlines are responding to the Counties' appeal and their asserted preservation of the issue.

STATEMENT OF THE CASE

1. Facts and Procedural History.

The Counties' Complaint requested declaratory and injunctive relief against the State. (R. 1-30). The Complaint alleges that the Valuation, Allocation, and Threshold

Laws (the "Challenged Statutes") are unconstitutional on their face and as-applied. (R. 1-30).

The State moved for dismissal for lack of subject matter jurisdiction (the "State's Motion"), asserting that the Counties' claims were not ripe. (R. 461-76).

The Airlines moved to intervene because the disposition of the lawsuit would directly impact the Airlines' property interest. (R. 321-47). The district court granted the Airlines' motion on January 29, 2018. (R. 600-06).[3] The Airlines joined in the States' Motion, and also moved for judgment on the pleadings on the ground that the Counties failed to exhaust their administrative remedies before the Commission before seeking judicial review (the "Airlines' Motion"). (R. 562-87). The district court heard argument on these motions on February 20, 2018 (R. 735-36), and later received simultaneous supplemental briefing on April 19, 2018. (R. 791-99, 803-09, 813-22).

2. Disposition in the District Court.

The district court's order dated June 22, 2018: (1) granted the State's Motion with respect to the Threshold Law, finding that it was not ripe for review, (2) denied the State's Motion with respect to the Valuation and Allocation Laws,[4] and (3) granted the Airlines' Motion, dismissing the Counties' remaining claims concerning the Valuation and Allocation Laws for failure to exhaust administrative remedies. (R. 913-15). The Counties filed a notice of appeal on July 20, 2018. (R. 917-20). This Court retained the case.

[3] The Counties do not appeal the Airlines' intervention.
[4] This denial has not been cross-appealed by the State.

SUMMARY OF ARGUMENT

I. The District Court Correctly Dismissed The Counties' Claims Regarding The Valuation And Allocation Laws For Failure To Exhaust Administrative Remedies.

The Counties' appeal focuses only on their facial challenges as though the Complaint contained nothing more. By doing this, the Counties hope to avoid the requirement to exhaust their administrative remedies before seeking judicial review. But the Complaint plainly alleges both facial and "as-applied" challenges. The Counties cannot ignore this fact. The Counties' pleading controls, and the Counties' facial claims should not be viewed in isolation. The Court must consider all allegations of the Complaint to determine if the district court properly dismissed the Counties' claims.

Based on all the Complaint's claims and allegations, factual findings are required to determine whether a constitutional violation is present, or whether the matter may be resolved on alternative grounds that would obviate the need to address the constitutional claims. *See Gardner v. State*, 2010 UT 46, ¶ 93, 234 P.3d 1115 (recognizing Utah Supreme Court's "obligation to avoid addressing constitutional issues unless required to do so") (internal quotation marks omitted). Recognizing this, the district court correctly held that the Counties are required to exhaust their administrative remedies at the Commission.

II. The Cases Pending In The District Court Do Not Satisfy The Case And Controversy And Exhaustion Requirements.

Even if the Counties' claims only involve a facial challenge (and they do not), the Complaint would still fail to satisfy Utah's "ripeness" standards and would have been

properly dismissed for lack of a case and controversy. Perhaps recognizing this, the Counties cite to the four Commission cases which Appellant Salt Lake County appealed to the district court on the Threshold Law (Cty. Br., pp. 23-25), saying it is "senseless" to require exhaustion in this case when "there is no administrative remedy to exhaust because the statute under challenge prevents administrative adjudication in the first instance." (Cty. Br., pp. 24). But affirming the district court's decision does not prevent the Counties' constitutional issues from ever being heard; it only requires the Counties to complete the administrative process at the Commission with respect to all their claims and then follow the prescribed judicial review of the Commission's decisions.

III. The District Court Was Not Required To Analyze Each County Claim Independently.

The district court was not required to provide a claim-by-claim analysis. The Complaint contains eleven claims for relief, and each claim is centered on either the Threshold Law, Valuation Law or Allocation Law. As the district court's order indicates, the claims relating to the Threshold Law were dismissed as unripe, while the claims relating to the Valuation and Allocation Laws were dismissed for failure to exhaust administrative remedies. (R. 911-15). The Counties themselves made arguments to the district court that broadly encompassed all their claims; they did not analyze each claim independently. (R. 356-73, 642-705). And because the Counties did not address the motions to dismiss by independently analyzing each claim, the district court similarly was not required to do so.

IV. The Counties' Claims Are Not Ripe.

The Counties affirmatively declare that (1) their "claims are not dependent on the outcome of any specific assessment," (2) this case is not a "property tax appeal," and (3) they are not challenging "the assessed value of any airline." (Cty. Br., pp. 5, 21). However, these contentions conflict with the allegations of the Complaint. (R. 1-30). And even if the Counties' premises were deemed true, they confirm that the Counties' claims are not ripe for review. (R. 282-95, 461-76). The Counties cannot satisfy the case and controversy requirement by introducing hypothetical examples concerning the application of the Challenged Statutes.

To challenge a tax statute in Utah, a county must raise a justiciable controversy. A claim for lost revenue with a demonstrated personal stake in the outcome must be based on an accrued state of facts as opposed to a hypothetical state of facts. Under these principles, where the Counties' claims do not arise from a disputed assessment of any particular airline, as they concede, then no justiciable case and controversy exists. (Cty. Br., p. 5 ("[T]his case is not a 'property tax appeal' and it does not challenge the assessed value of any airline.")). The district court could not resolve the Counties' constitutional claims without the factual allegations in the Complaint because, without more specific pleadings, the claims would not yet be justiciable. The Counties are free to challenge the statutes whenever they can present an actual controversy based on concrete facts subject to the requirement that they also exhaust their administrative remedies.

ARGUMENT

I. THE COUNTIES' CLAIMS WERE PROPERLY DISMISSED FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

A. How Utah's Property Tax System Works.

The Commission is one of the few remaining executive branch agencies created and delegated authority by the Utah Constitution. *See* Utah Const. Art. XIII, § 6(3).[5] Section 6(3) directs the Commission to:

> (a) administer and supervise the State's tax laws;
> (b) assess mines and public utilities and have such other powers of original assessment as the Legislature may provide by statute;
> (c) adjust and equalize the valuation and assessment of property among the counties;
> (d) as the Legislature provides by statute . . . equalize the assessment and valuation of property within the counties; and
> (e) have other powers as may be provided by statute.

Utah Const. Art. XIII, § 6(3) (emphasis added).

In addition to its authority to assess (value) the tangible taxable property of specified Utah taxpayers under subsection (3), the Commission is also the required beginning point of the constitutionally based process to adjudicate challenges to tax assessments. *See* Utah Const. Art. XIII, § 6(4) ("Notwithstanding the powers granted to the State Tax Commission in this Constitution, the Legislature may by statute authorize any court established under Article VIII to adjudicate, review, reconsider, or redetermine any matter decided by the State Tax Commission relating to revenue and taxation.").

[5] Other constitutionally created executive branch agencies are (1) the Board of Pardons and Parole (Utah Const. Art. VII, § 12(1)), and (2) State Board & Education (Art. X, § 3).

The Commission also has a statutory duty to assess by May 1 of each year the property under its jurisdiction "at 100% of fair market value, as valued on January 1, in accordance with this chapter." Utah Code § 59-2-201(1) (emphasis added). And "this chapter" includes the two "airline"-specific statutes challenged by the Counties—the Valuation Law (§ 59-2-201(4)) and the Allocation Law (§ 59-2-804).

The Legislature and the citizens of Utah amended the Utah Constitution in 1998, changing Utah's taxation and adjudication system. Under these provisions, the Commission is intended, with respect to the property under its assessment jurisdiction, to be the initial and primary adjudicator of fair market value and determiner of property subject to taxation subject to the prescribed judicial review of its decisions.[6]

Utah Const. Art. XIII, § 6(4) also authorizes the Legislature to establish a process for judicial review. The Utah Legislature exercised this constitutional delegation in Utah Code § 59-1-601(1). This section provides that "the district court shall have jurisdiction to review by trial de novo all decisions issued by the commission . . . [after July 1, 1994] resulting from formal adjudicative proceedings." And this Court further implemented that constitutional directive by promulgating Rule 6-103 of the Code of Judicial Administration, which provides: "The Judicial Council shall formally designate at least three district court judges who volunteer as tax judges." Utah CJA Rule 6-103. "Tax

[6] During the 1998 General Session of the Utah Legislature, Senate Joint Resolution No. 13 was enacted. *See* S.J. Res. 13, 1998 Leg. Sess. This Resolution proposed to amend Art. XIII, § 6 (formerly section 11) of the Utah Constitution to allow for Art. VIII judges to review Commission decisions. This proposition was included on the ballot as Proposition No. 6 and was passed by the citizens of the State at the 1998 General Election to take effect on January 1, 1999. *Id.*

judges" are authorized to hear cases that include "appeals from and petitions for review of decisions of the Utah State Tax Commission."[7] *Id.*

For property under the Commission's assessment jurisdiction (often referred to as "centrally" or "state" assessed properties), Utah's property tax system operates as follows: The Commission has delegated to its Property Tax Division ("Division") the duty to prepare and issue assessments of the fair market value of these properties by May 1 of each year. *See* Utah Code § 59-2-201(1)(a); Utah Admin. Code r. R861-1A-16(1-4). Notice of the assessment is provided to the taxpayer and to each county in which the taxpayer has property. *See* Utah Code § 59-2-201(1)(a) and (5).

In 2017, a taxpayer could appeal the assessment by June 1 of that year.[8] Subject to the provisions of § 59-2-1007(2), an affected County may appeal the assessment within 30 days after a taxpayer files an appeal, or within 30 days of the last day on which a taxpayer could have filed an appeal.[9] *See* Utah Code § 59-2-1007(2). An appeal is made to the Commission which exercises its authority as a quasi-adjudicative body to hear and resolve the appeal. *See* Utah Code § 59-2-1007(10-12). Adjudicative proceedings before the Commission generally follow the Utah Administrative Procedures Act ("UAPA"); however, the Legislature (1) enacted special provisions in the UAPA dealing with tax matters, and (2) enacted special provisions in the tax code that apply to proceedings

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[7] The district court judge in the court below on this appeal is not designated a tax judge.
[8] Utah Code § 59-2-1007 was amended in 2018. The amendment changed the date from June 1 to on or before the later of August 1 or "90 days after the day on which the commission mails the notice of assessment." *See* Utah Code § 59-2-1007(1)(a)(i) and (ii) (2018).
[9] The same 2018 amendment also changed the County's 30-day deadline to 60 days. *See* Utah Code § 59-2-1007(2) (2018).

before the Commission. The Commission has promulgated rules implementing the UAPA. *See* Utah Code §§ 63G-4-102(2)(b); 59-1-601, 602, 604, 608, and 610; Utah Admin. Code r. R861-1A-22 through R861-1A-31.

A party's right to appeal a Commission decision is also provided in the tax code. If an annual assessment is not timely appealed, the assessment becomes final and no adjudicative proceeding is commenced. If a taxpayer files a timely appeal, an affected County may intervene and participate as a party. *See* Utah Code §§ 59-2-1007(2)(a); 59-1-602(2). A County may also directly appeal the assessment. *See* Utah Code §§ 59-2-1007(2)(b); 59-1-602(1)(a). After the Commission fulfills its quasi-judicial role, a final decision rendered by the Commission is appealable by a taxpayer or a party County to either (1) a tax judge of the district court for a trial *de novo*, or (2) the Utah Supreme Court on the record created before the Commission at the formal adjudicative proceeding. *See* Utah Code §§ 59-1-602(1)(a), 59-1-601(1), 59-1-610(1); *see also* Utah Code § 78A-3-102(3)(e)(ii)

Although the Division is a party in adjudicative proceedings before the Commission and is represented by counsel, it is not authorized to appeal a final Commission decision; the Division, being subservient to its own agency, the Commission, is bound by the Commission's final decision. *See* Utah Code § 59-1-601 and 602; Utah Admin. Code r. R861-1A-24(3)(a)(iv). However, if a Commission decision is appealed by a taxpayer or a county, the Commission itself can appear as a party before the court to defend its appealed decision.

Commission orders appealed to a district court tax judge are reviewed *de novo*. In its ruling, the court may "affirm, reverse, modify, or remand any order of the commission, and shall grant other relief, invoke such other remedies, and issue such orders, in accordance with its decision, as appropriate." Utah Code. §§ 59-1-601(1-2) and 604.

B. The Counties Are Required to Exhaust Administrative Remedies.

In Utah, "parties must exhaust applicable administrative remedies as a prerequisite to seeking judicial review." *Nebeker v. Utah State Tax Comm'n*, 2001 UT 74, ¶ 14, 34 P.3d 180 (quoting *State Tax Comm'n v. Iverson*, 782 P.2d 519, 524 (Utah 1989)). "Exceptions to this rule exist in unusual circumstances where it appears that there is a likelihood that some oppression or injustice is occurring such that it would be unconscionable not to review the alleged grievance or where it appears that exhaustion would serve no useful purpose." *Id.*

Here, the Counties do not argue that the exception provided for "unusual circumstances" is applicable, but argue it would serve no useful purpose. However, the Counties themselves acknowledged the potential for dismissal for failure to exhaust administrative remedies in their opposition to the State's Motion to Dismiss. (R. 370). In response to the State's argument that the Counties must challenge an actual tax assessment to create a justiciable case, the Counties argued:

> The State's reference to certain appeals filed by one Plaintiff County is irrelevant to the State's erroneous 'ripeness' arguments. At best, the existing [sic] of pending appeals or 'objections' would be relevant to an alleged failure to exhaust argument, which the State did not raise and did not brief.

(R. 370). However, the Airlines' Motion did "raise" and "brief" the "failure to exhaust argument." (R. 562-87; 715-31).

No longer able to challenge the preservation of this issue, the Counties now ask to be excused from exhausting required administrative remedies, suggesting it will serve no purpose where the claims involve constitutional challenges. (Cty. Br., pp. 22-25). But this view is incorrect because (i) the administrative proceedings could obviate the Counties' constitutional challenges; and (ii) administrative proceedings are needed to help frame and develop the factual issues before an appropriate court.

(i) Administrative Proceedings Could Obviate the Counties' Constitutional Claims.

"Although the [Tax] Commission cannot determine questions of legality or constitutionality of legislative enactments, . . . the introduction of a constitutional issue does not necessarily avoid the requirement to exhaust administrative remedies." *TDM, Inc. v. Tax Comm'n*, 2004 UT App 433, ¶ 4, 103 P.3d 190 (citations omitted); *see also Patterson v. Am. Fork City*, 2003 UT 7, ¶ 18, 67 P.3d 466 (holding as incorrect the assertion "that administrative remedies need not be exhausted to pursue state constitutional claims"). "Exhaustion of remedies is still required when the administrative proceeding may obviate the need to reach the constitutional question." *TDM*, 2004 UT App 433, ¶ 5 (emphasis added); *see also Nebeker*, 2001 UT 74, ¶ 16 ("If an administrative proceeding might leave no remnant of the constitutional question, the administrative remedy plainly should be pursued."). Since there is a presumption a statute is constitutional, the Commission should conduct administrative proceedings in an

effort to resolve such appeals without reaching the constitutional issues. *See Salt Lake City v. Kidd*, 2019 UT 4, ¶ 21, --- P.3d --- ("All statutes are presumed to be constitutional and the party challenging a statute bears the burden of proving its invalidity.") (citations omitted); *see also Rio Algom Corp. v. San Juan Cty.*, 681 P.2d 184, 191 (Utah 1984) ("The presumption of constitutionality applies with particular force to tax statutes."). Contrary to the Counties' assertion, Utah law does not require the Airlines to predict outcomes and show that an administrative proceeding before the Commission *will* obviate the need to reach the constitutional question; the mere possibility is enough to require exhaustion. *See Nebeker*, 2001 UT 74, ¶ 16.

In *Nebeker*, the plaintiff claimed that the imposition of interest on a fuel tax deficiency assessed by the Commission was unconstitutional. *Nebeker*, 2001 UT 74, ¶ 7. The district court dismissed plaintiff's petition for failing to exhaust administrative remedies. On appeal, the plaintiff argued that exhaustion served no useful purpose "because the only claims he raised before the district court were constitutional." *Id.* at ¶¶ 12 and 15. This Court affirmed and required the plaintiff to exhaust his administrative remedies because a decision by the Commission "*could have determined*" the imposition of interest "was unwarranted." *Id.* at ¶ 17 (emphasis added).

As in *Nebeker*, a decision by the Commission with respect to the Valuation and Allocation Laws raised in the four pending County appeals of airline assessments, could leave no remnant of the constitutional challenges. For example, the Counties do not challenge the constitutionality of using the Airliner Price Guide as an accepted

methodology for determining fair market value.[10] Instead, they argue that § 59-2-201(4) is unconstitutional because (1) the statute makes this valuation method the primary valuation method used by the Commission, (2) of the fleet discount provided in the Airliner Price Guide, and (3) of the "clear and convincing" evidentiary standard. (R. 1-30). The Counties further claim that the clear-and-convincing evidentiary standard prevents the Commission from finding fair market value in all instances based on a "preponderance of the evidence." (R. 22). But the Counties' argument is based on unproven factual and legal assumptions that the Airlines dispute.

For example, without factual findings and a final adjudicative decision by the Commission concerning implementation of the Challenged Statutes and of the fair market value of airline property, a court cannot determine the validity of the claim that "the clear and convincing standard is difficult, if not impossible, to satisfy." (R. 22). The Counties ignore, among other likelihoods, that the Commission may conclude that the Counties do not have sufficient evidence of an undervaluation of airline property under any evidentiary standard. As fundamental, the Commission may conclude that, contrary to the Counties' construction, the plain language of § 59-2-201(4)(d) does not require the Commission to use clear and convincing evidence to determine fair market value, but only to determine if the "values reflected in the aircraft pricing guide do not reasonably

[10] With respect to the March 19, 2009 Commission case referenced and attached as Exhibit 8 to the Counties' Complaint (Tax Commission Appeal No. 06-0725), it was Salt Lake County that actively participated in that administrative appeal, engaged the publisher of the Airliner Price Guide as its expert witness, and advocated for the use of that Guide as the exclusive valuation methodology for airline mobile flight equipment. (*See* R. 210-12).

reflect fair market value of the aircraft." *See* Utah Code § 59-2-201(4)(d)(i) (emphasis added); (Cty. Br., pp. 4, 19-23).[11]

The Commission could also avoid the constitutional challenge to the Allocation Law by applying the provisions of a federal statute in 49 U.S.C. § 40116, regarding state taxation. Section 40116 provides that "[a] State or [County] may levy or collect tax on or related to a flight of a commercial aircraft or an activity or service on the aircraft only if the aircraft takes off or lands in the State or [County] as part of the flight." 49 U.S.C. § 40116(c) (emphasis added). The Commission could conclude that federal law prohibits the taxation of "flyover" aircraft and that federal law supersedes state law. Thus, in light of these and other real possibilities, the constitutional challenges could be rendered moot by adjudication of these claims before the Commission. Without an evidentiary hearing, the Commission would not be able to identify what portion of airline property is not being taxed, if any, and whether the State has a sufficient nexus with any such property to subject it to taxation in Utah.

1. The Complaint alleges "as-applied" facts and claims, not just facial challenges.

The Counties also attempt to avoid the exhaustion issue outright by diverting attention to their "facial" challenges while fundamentally ignoring their multiple "as-

[11] Regardless how the Commission applies Section 59-2-201(4)(d), if the Commission determines there is insufficient proof to overcome the Division's assessment of an airline's mobile flight equipment under the applicable standard of proof, the Counties could appeal the decision to the District Court's Tax Division for a *de novo* review, where they could assert their argument. *See T-Mobile USA, Inc. v. Utah State Tax Comm'n*, 2011 UT 28, ¶¶ 16-18, 254 P.3d 752 (if petitioner appeals to the District Court Tax Division under § 59-1-601, they are "entitled to a *de novo* proceeding to determine property value in which no deference is given to the previous Commission decision.").

applied" challenges. (Cty. Br., pp. 17-25). They suggest the Complaint involves "pure legal threshold questions" and that "none of the Counties' claims in this appeal involve administrative claims or require administrative determinations that would obviate the constitutional issues." (Cty. Br., pp. 6, 16, 19, 22-23, 25).

The Complaint undermines these characterizations. A survey of the Complaint's allegations brings to light that, in fact, the Counties contest the *application* of the Challenged Statutes. (R. 1-30).[12] The Complaint offers sweeping allegations of "fact", especially in framing the claim that the Challenged Statutes will force the Commission to value airline property of all airlines below fair market value:

> 5. The Challenged Laws violate important principles of due process, equal protection, uniformity, and fairness . . . . For example, if the tax shift from one Centrally Assessed industry is $5 million per year, then individual and small business taxpayers will collectively pay $5 million more, in perpetuity, to make up that difference.
>
> 11. [The Challenged Laws] result[] in property and value escaping taxation.
>
> 59. [The Challenged Laws decrease by 39% the] "taxable values for the seven major passenger airlines . . . ."

[12] The Counties are not entirely candid in saying that they do not challenge "the assessed value of any airline." (Cty. Br., p. 5). Rather, their claims categorically challenge the assessed property values of ALL airlines. (R. 1-30). The Counties in their memorandum opposing the State's Motion stated that: "[The] Counties' as-applied challenge relies not on specific decisions made for specific taxpayers based on specific and unique facts, but instead in the impact of SB157 on the 2017 airline assessments industry-wide. Specifically, application of SB157 in 2017 resulted in the Commission being required to value airlines at an average of approximately 39% less than what their values would have been using 2016 methods . . . for a total loss in airline tax revenues of what Plaintiff Counties contend was approximately $5 million in 2017 alone." (R. 367) (emphasis in original).

> 60. [Without the Challenged laws,] the 2017 Utah taxable values for the seven major airlines would be on average 43% higher.
>
> 74. [U]se of the Section 59-2-804 allocation results in . . . taxable property and its value not being allocated to any taxing jurisdiction, including Utah.
>
> 91. [Section 59-2-201(4)] prevents a finding of fair market value . . . .
>
> 92. [Section 59-2-201(4)] facially violates Utah Constitution Article XIII, section 2(1) by preventing fair market value due to the Clear and Convincing Threshold.
>
> 93. [Section 59-2-201(4)] violates Utah Constitution Article XIII, section 2(1) as applied because fair market value is not reached . . . .
>
> 103. Utah Code section 59-2-201(4)'s 20% Discount does not result in fair market value.
>
> 113. The 'revenue ton miles factor' set forth in Utah Code section 59-2-804 results in an allocation of less than 1 (or 100%), if applied uniformly by all taxing jurisdictions, which leaves property and value untaxed . . . .

(*See also* ¶¶ 4, 6-9, 36-39, 41, 73, 90, 101, 104, and 115). (R. 1-30).

Thus, contrary to the Counties' contention, the Complaint does not simply raise "pure legal threshold questions"; the Complaint's factual allegations are inherent in, and intertwined with, all of the Counties' constitutional claims, whether facial or as-applied. And to develop these claims, factual findings by the Commission are required. By putting these facts at issue in the Complaint, the Counties cannot disavow them now in a bid to avoid the requirement to exhaust administrative remedies.

In fact, the Counties acknowledged this in their opposition to the State's Motion which recognized the need for factual development and argued that the ripeness requirement had been met ostensibly because

> [a]ll of the challenged laws are in force, have been applied, and have had real world effects on taxpayers. SB157 required the Commission to use a new valuation standard for 2017, which it did, resulting in significantly lower values for airlines. However, regardless of the result, SB157 is in full force and effect on the Commission and the Commission has no choice but to apply the statute, which it did when issuing the 2017 assessments. The controversy over SB157 is anything but hypothetical.

(R. 372) (emphasis added). The Airlines disagree with these characterizations and denied them in their Answer. The Airlines are entitled to defend against these allegations. However, it is clear that the Counties' underlying claims are fact dependent and require factual development. And to resolve these claims, the following facts, among others, must be developed: (1) whether the 2017 values of all airlines are "significantly lower," and if so, by how much; and (2) what are the actual "real world effects on taxpayers." Missing from the Counties' rudimentary and unproven estimates, assumptions, hypotheticals and comparisons, is the necessary level of factual development to allow for proper adjudication of the Counties' constitutional challenges.

Finally, the Counties acknowledged below in their opposition memorandum to the State's Motion that their "claims challenge the constitutionality of the Challenged Law . . . as applied." (R. 649). They cannot deny this premise now to sidestep the exhaustion requirement. Indeed, "as-applied" constitutional challenges require factual determinations. *See*

("When asserting an as-applied challenge, the party claims that, under the facts of his particular case, the statute was applied . . . in an unconstitutional manner.") (citing *Sanjour v. Envtl. Prot. Agency*, 56 F.3d 85, 92 n.10 (D.C. Cir. 1995) (stating an "as-applied" challenge "ask[s] only that the reviewing court declare the challenged statute or regulation unconstitutional *on the facts of the particular case*.") (emphasis added)). These authorities instruct that the Counties' "as-applied" challenges cannot be decided in a vacuum; factual determinations are required to provide the predicate to properly adjudicate them.

2. The Commission (not the district court) is initially responsible for developing the facts.

The Constitution grants to the Commission—not the district court—the initial and primary jurisdiction and duty to develop and adjudicate the facts, and it created a sound and sufficient judicial review process to review Commission decisions. And as discussed above, the Commission's ruling under this system could obviate the need to reach the Counties' constitutional challenges. (*See* pp. 13-14, *supra*). For example, the Commission could conclude that the Division fairly determined the fair market value of mobile flight equipment (*i.e.* aircraft) by applying the challenged statutes. The Commission could also rule that a different valuation is warranted if the petitioner (whether a county or taxpayer) in any appeal satisfies the requisite burden of proof. Thus, whether all of the Counties' constitutional issues will remain "regardless of any affirmative action or inaction by the Commission," is far from clear. (Cty. Br., p. 10).

3. Fact finding is not the province of this Court.

The Counties also contend—without authority—that "[a]ny factual findings that could conceivably assist in framing or developing the validity of the statutes, therefore, are squarely within the province of this Court." (Cty. Br., p. 25). This misstates the law and ignores the constitutionally-mandated review process. The Constitution authorizes the Commission to be the first forum to adjudicate factual disputes relating to valuation and assessment of taxpayer property. *See* Utah Code § 59-1-210(4), (7). After a Commission ruling, courts have authority to "adjudicate, review, reconsider, or redetermine any matter decided by the State Tax Commission relating to revenue and taxation." Utah Const. Art. XIII, § 6(4).[13] Under Utah's constitutional tax system, if the Commission is unable to resolve the legal issues, or if the Counties disagree with the Commission's decision, the Counties will have preserved their issues and may appeal for *de novo* review by a tax judge in the district court, as they correctly did in the other pending matters (*see* note 2, p. 2, *supra*), or appeal directly to this Court on the

[13] Though the Commission cannot decide "threshold" constitutional questions, even the Counties acknowledged the Commission has been granted exclusive jurisdiction "for the assessment of property"—a factual underpinning to their constitutional challenges. (R. 658). To the extent the Commission would be able to apply applicable law (including constitutional principles) in such a way as to avoid deciding constitutional questions, it should be allowed to fulfill its constitutional and statutory mandates. *See Johnson v. Utah State Ret. Office*, 621 P.2d 1234, 1237 (Utah 1980) ("Administrative agencies do not generally determine the constitutionality of their organic legislation. But the mere introduction of a constitutional issue does not obviate the need for exhaustion of administrative remedies[,] if an administrative proceeding might leave no remnant of the constitutional question, the administrative remedy plainly should be pursued.") (citations omitted); *see also West v. Thomson Newspapers*, 872 P.2d 999, 1004 (Utah 1994) (demonstrating "adherence to the general rule that courts should avoid reaching constitutional issues if the case can be decided on other grounds") .

administrative record. *See* Utah Code §§ 59-1-602(1)(a), 59-1-601(1), 59-1-610(1). This mandated process applies to each of the Counties' constitutional challenges.

In sum, "because the court need not accept legal conclusions as true" on a motion to dismiss or on a motion for judgment on the pleadings,[14] and because the Complaint raises both fact and legal questions, the Counties must exhaust their remedies before the Commission—before requesting judicial review—in order to resolve their constitutional claims. The district court correctly agreed.

(ii) The District Court Properly Found that Administrative Proceedings are Needed to Help Frame and Develop the Factual Issues before the Appropriate Tribunal.

The Counties also raise facial constitutional claims to the Challenged Statutes. (Cty. Br., pp. 17-25). But "[e]ven if the constitutional issue is not avoided entirely, an administrative proceeding may be useful to better frame the issues before the court." *TDM*, 2004 UT App 433, ¶ 5. This is particularly so under the specific (and constitutionally required) adjudicative judicial review procedures for tax appeals from the Commission.

The Commission is unlike most other state agencies in that it is created and empowered by the Utah Constitution. *See* Utah Const. Art. XIII, § 6(4). And it is required to comply with constitutional mandates concerning "fair market value," "uniform and equal" assessments of tangible property, and the taxation of all tangible property. Utah Const. Art. XIII §6. The Commission has been appointed to administer and supervise the State's tax laws and is most qualified to ensure these mandates are met.

[14] *See Biedermaann v. Wasatch Cty.*, 2015 UT App 274, ¶ 11, 362 P.3d 287.

The Counties assert that the "airline valuation" statute undervalues airline mobile flight equipment, and that they will always struggle to prove this to the Commission under the system currently "provided by law" which, they say, requires "clear and convincing" evidence of fair market value. (R. 13-17). In order to establish that the "airline valuation" statute unconstitutionally undervalues mobile flight equipment, the Counties must prove that airline mobile flight equipment is, in fact, undervalued. This cannot be determined without an evidentiary hearing regarding the 2017 assessments. Conducting such an evidentiary hearing, and making determinations of fair market value, are the province of the Commission in the first instance, not a court's. Courts are constitutionally and statutorily empowered to "review" the Commission's determinations. *See* Utah Const. Art. XIII, § 6(4); Utah Code §§ 59-1-601(1); 59-1-602.

Each property tax year stands on its own, and property values often change from year-to-year. Thus, it is insufficient for the Counties to suggest that values reflected in the 2017 assessments are below "fair market value" just because the 2016 values for the property of the same mobile flight equipment (as assessed by the Commission) were higher, or that the 2017 assessments would allegedly be higher if the 2016 valuation methodology were used. (R. 3-4, 11, 20). These postulates pre-suppose: (1) that the 2016 assessments of airline mobile flight equipment accurately reflected fair market value; (2) that the 2017 assessments of mobile flight equipment do not reflect the fair market value of the equipment as of January 1, 2017; (3) that the Valuation Law does not better reflect fair market value of the mobile flight equipment; (4) that the type, number, age, and condition of the mobile flight equipment assessed in 2016 are the same as those

assessed in 2017; (5) that the value of mobile flight equipment does not change from year-to-year; (6) that the Division would have used the same methodologies, and to the same extent for each airline, as it did in 2016; and (7) that any difference in value of such equipment between 2016 and 2017 is due exclusively to the use of a different valuation methodology and not, for instance, due to changes in the age and condition of equipment, changes in technology or changed economic conditions. All this underscores that "fair market value" is a fact question. *See T-Mobile USA, Inc.*, 2011 UT 28, ¶ 49 ("The choice of a valuation methodology and the resulting fair market value are questions of fact . . . ."). The Commission is constitutionally appointed to make the initial factual determination of fair market value of airline property.

Fact questions are also raised by the Counties' disputed claim that the Allocation Law incorrectly permits some airline property to avoid being taxed. (R. 17-19). The Airlines view this differently. The Airlines assert that section 59-2-804 fairly allocates an appropriate portion of their property to the State of Utah. Given this disagreement, a factual determination needs to be made to identify what, if any, property has not been fully taxed, and whether that property is subject to taxation under Utah law. Tax nexus and the situs of property for tax purposes requires a factual determination to ascertain whether an airline's property has sufficient physical presence in and "contacts" with a taxing jurisdiction. *See Salt Lake City Corp. v. Prop. Tax Div. of Utah State Tax Comm'n*, 1999 UT 41, ¶ 25, 979 P.2d 346. The Commission remains the entity constitutionally responsible to determine in the first instance what property is subject to taxation.

The Counties argue that each of the Challenged Laws violate uniformity requirements of Article XIII of the Utah Constitution. (Cty. Br., pp. 4, 19-22). But this argument necessarily raises a factual question of fair market value because "uniformity is satisfied when the property valuation is made at fair market value" and "the . . . determination of fair market value . . . is a question of fact. *See Nelson v. Bd. of Equalization*, 943 P.2d 1354, 1357 (Utah 1997); *see also Salt Lake City S. R.R. Co. v. State Tax Comm'n*, 1999 UT 90, ¶ 13, 987 P.2d 594. This supports the need for the Counties to exhaust their administrative remedies.

The Airlines agree with the State: "Contrary to [the Counties'] assertion, [the State] is not arguing that Plaintiffs may never challenge the statutes at issue, or that Plaintiffs' claims—if stated in terms of an actual assessment—could not state claims upon which relief may be granted." (R. 463). Rather, the Counties may challenge the statutes on appeal from the Commission to the tax court or to this Court. But this is not the course the Counties have followed here. The Counties have ignored the mandated system and their Complaint was correctly dismissed. The Counties' efforts to circumvent this system should be rejected so the Counties' allegations of unconstitutionality may be properly and fully developed, resolved, mooted, or otherwise disposed of by the Commission, subject to judicial review, in the manner provided by law.

Finally, if this Court recognizes, as the district court did, that the Counties' claims involve both facial and as-applied theories, then the Court should affirm the dismissal for failure to exhaust administrative remedies. *See TDM*, 2004 UT App 433, ¶ 5 ("Even if the constitutional issue is not avoided entirely, an administrative proceeding may be

useful to better frame the issues before the court."). Even absent an "as-applied" component, strict facial constitutional challenges cause judicial concern. *See, e.g.*, *State v. Ansari*, 2004 UT App 326, ¶ 31, 100 P.3d 231 (holding "courts [should] adopt a 'skeptical approach'" to facial challenges because "facial adjudication carries too much promise of premature interpretation of statutes on the basis of factually bare-bones records"); *see also State v. Herrera*, 1999 UT 64, ¶ 50, 993 P.2d 854 ("Facial challenges succeed, however, only if the statutes at issue are incapable of any valid application.").

II. THE CASES PENDING IN THE DISTRICT COURT DO NOT SATISFY THE CASE AND CONTROVERSY AND EXHAUSTION REQUIREMENTS.

The Counties identify four separate administrative cases which Appellant Salt Lake County appealed to the district court concerning the Threshold Law. These appeals followed the correct constitutional and statutory procedure to challenge a Commission tax assessment and to review a Commission decision, and have now been assigned to a tax court judge. (Cty. Br., pp. 23-25). Referring to these cases, the Counties suggest that they make application of the exhaustion requirement "senseless" here. (Cty. Br., p. 23). They go further and claim "there is no administrative remedy to exhaust because the statute under challenge prevents administrative adjudication in the first instance." (Cty. Br., pp. 23-24). First, the Counties make this argument broadly, but fail to make clear that the cases currently pending in the district court only involve the Threshold Law, but not the Valuation and Allocation Laws, which remain as issues before the Commission in four other administrative appeals.

Second, Salt Lake County has already exhausted its administrative remedies in the four cases pending in the district court. The Division's motions for summary judgment were argued and decided by the Commission as a matter of law on undisputed facts. No further factual development was required for the Commission to enter its decision. Thus, the Counties cannot argue here that exhaustion of administrative remedies with respect to the Threshold Law in the administrative cases on appeal in the district court, somehow vicariously excuses the Counties from their exhaustion requirement relating to the Valuation and Allocation Laws that are still pending and awaiting factual development before the Commission. And for the reasons discussed in Part IV, *infra*, the administrative cases on appeal do not vicariously create a case and controversy in the instant case.

The four administrative cases pending in the district court were all commenced before the Commission, all following the correct process contemplated by the Utah Constitution, the statutes, and related court rules governing appeals from Commission decisions. Like those cases, the issues raised in the Counties' Complaint in this case should have been pursued in the Commission for required factual development. This is the Commission's role. (*See* pp. 8-12, *supra*). And until the Commission has fulfilled that role by determining the proper valuation and allocation of airline property, the Counties cannot argue they have exhausted their administrative remedies with respect to all of their claims. Accordingly, the four cases pending before the district court do not

excuse the Counties from satisfying the exhaustion requirement with respect to the Challenged Laws or otherwise impact this Court's decision.[15]

The pendency of the district court cases, however, raises a question: why are the Counties prolonging resolution of the Threshold Law issue by filing this appeal when the same issue has been properly framed in the district court since April 2018? This question also extends to the four other administrative appeals pending before the Commission (the proper forum for factual development) regarding the Valuation and Allocation Laws.[16] Why aren't the Counties pursuing their constitutional claims there? The Counties have correctly followed the prescribed administrative process with respect to the other administrative cases that are now appealed to the district court, as Utah's Constitution and statutes contemplate. In all events, the Counties should not be allowed to leapfrog that process here by asserting unsubstantiated claims of unconstitutionality. Affirming the district court's dismissal allows the Counties to fully adjudicate their claims by following the administrative process before the Commission, as they have in the other cases.

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[15] If, as the Counties suggest, no administrative remedy is available (and the existence of the pending district court cases confirms that an appropriate remedy exists), remanding this case to the district court could also spawn an impermissible risk of inconsistent decisions in simultaneous parallel judicial actions involving the same constitutional issue and almost the same parties. *See McRae & DeLand v. Feltch*, 669 P.2d 404, 405 (Utah 1983) ("[J]urisdiction of a declaratory judgment will not be entertained if there is at the time of the commencement of the declaratory action another action or proceeding to which the same persons are parties, in which are involved and may be adjudicated the identical issues that are involved in the declaratory action."). Courts endeavor to avoid this. *Cf. Beaver Cty. v. Utah State Tax Comm'n*, 2010 UT 50, 254 P.3d 158.

[16] *See, e.g.*, note 2, p. 2, *supra*.

III. A DISMISSAL RULING NEED NOT ANALYZE EACH COUNTY CLAIM INDEPENDENTLY.

The Counties assign error to the district court for not analyzing each claim separately. (Cty. Br., pp. 16-17). But the Counties overlook that, with one exception,[17] each dismissed claim is directly linked to the Threshold Law, Valuation Law or Allocation Law. (R. 20-27). Claims relating to the Threshold Law were dismissed as unripe and claims relating to the Valuation and Allocation Laws were dismissed for failure to exhaust administrative remedies. (R. 911-15). The district court was not therefore also required to give a claim-by-claim analysis.

The district court's ruling was consistent with the manner by which the Counties' briefed and orally argued their case below. The Counties made general arguments that grouped all their claims; they did not analyze each claim independently. (R. 356-73, 642-705). The district court was not itself required to undertake a claim-by-claim analysis.

The Counties cite *Nurse & Griffin Ins. Agency v. Erie Ins. Group*, 1999 Ohio App. LEXIS 4992 (Ohio Ct. App. 1999) for the proposition that it was error for the district court to dismiss claims as a group on exhaustion grounds when some claims, they contend, did not require exhaustion. (Cty. Br., pp. 16-17). Even if this Ohio case

[17] The Counties' Sixth Claim for Relief concerns the violation of the separation of powers doctrine. (R. 25). And because the Counties have not adequately briefed that issue on appeal, it is not before the Court. *See State v. Thomas*, 961 P.2d 299, 305 (Utah 1998) ("Implicitly, rule 24(a)(9) requires not just bald citation to authority but development of that authority and reasoned analysis based on that authority . . . [and] this court is not a depository in which the appealing party may dump the burden of argument and research." (quotations and citations omitted); *see also* *Cox v. Cox*, 2003 WL21543810, *2 (Utah Ct. App. July 3, 2003) (holding courts "will consider an issue inadequately briefed when the overall analysis of the issue is so lacking as to shift the burden of research and argument to [the] court.") (citations omitted).

applied, the Counties' do not identify on appeal which claims they believe do not require exhaustion. As in the district court, the Counties simply conclude that "the claims for relief are not of the type which are cognizable before the Tax Commission nor do they require administrative review subjecting them to dismissal." (Cty. Br., p. 17). This falls short of a claim-by-claim argument.

Moreover, the record of the parties' pleadings and motions supplies additional foundation for the district court's ruling. (R. 1-30, 260-71, 282-95, 356-73, 461-76, 562-87, 610-22, 642-705, 715-31, 791-99, 803-09, 813-22). This Court may affirm on any basis finding support in the record. *See State v. Van Huizen*, 2019 UT 01, ¶39, ---P.3d --- ("[A]n appellate court *may affirm* the judgment appealed from on any legal ground or theory apparent on the record.") (citation omitted) (emphasis in original). The district court's ruling was proper.

IV. THE COUNTIES' CLAIMS ARE NOT RIPE.

The Counties say their "claims are not dependent on the outcome of any specific assessment," that this case is not a "property tax appeal," and that they are not challenging "the assessed value of any airline." (Cty. Br., pp. 5, 21). However, these contentions conflict with the allegations of the Complaint. (R. 1-30); (*see also* pp. 15-17, *supra*). And even if the Counties' premises were deemed true, they confirm that the Counties' claims are not ripe for review. (R. 282-95, 461-76). Thus, even if the Counties are not required to exhaust their administrative remedies, the Counties cannot satisfy the

case and controversy requirement by merely introducing hypothetical examples concerning the application of the Challenged Statutes. [18]

To challenge a tax statute in Utah, a county must:

> produce a tax assessment that has been challenged and reduced under the [challenged statute] with a resulting loss of revenue to the relevant county. In the absence of such a reduced assessment, [the court's] hands are tied because a justiciable controversy necessarily involves an accrued state of facts as opposed to a hypothetical state of facts.

Salt Lake Cty. v. Bangerter, 928 P.2d 384, 385 (Utah 1996); (*see also* note 18, p. 31, *supra*). Without a justiciable controversy, courts do not acknowledge jurisdiction for a case, as this Court previously explained:

> One of our earliest explications of justiciability noted that "[e]ven courts of general jurisdiction have no power to decide abstract questions or to render declaratory judgments, in the absence of an actual controversy directly involving rights." We have since reiterated that when a court ascertains that there is no jurisdiction in the court because of the absence of a justiciable controversy, then the court can go no further, and its immediate duty is to dismiss the action. Thus, we have unequivocally declared that courts are not a forum for hearing academic contentions or rendering advisory opinions.

Utah Transit Auth. v. Local 382 of Amalgamated Transit Union, 2012 UT 75, ¶ 19, 289 P.3d 582 (citing *Univ. of Utah v. Indus. Comm'n of Utah*, 229 P. 1103, 1104 (Utah 1924)) (additional citation omitted); *see also Jenkins v. Swan*, 675 P.2d 1145, 1149

[18] *See also Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Lindberg*, 2010 UT 51, ¶ 40, 238 P.3d 1054 ("A dispute is ripe when a conflict over the application of a legal provision has sharpened into an actual or imminent clash of legal rights and obligations between the parties thereto.") (citations omitted) (emphasis in original); *see also Boyle v. Nat'l Union Fire Ins. Co.*, 866 P.2d 595, 598 (Utah Ct. App. 1993) ("Therefore, because of the hypothetical nature of plaintiffs' declaratory judgment action . . . as a matter of law . . .the action [is] not ripe for adjudication.").

(Utah 1983) ("The requirement that a plaintiff have a personal stake in the outcome of a dispute is intended to confine the courts to a role consistent with the separation of powers, and to limit the jurisdiction of the courts to those disputes which are most efficiently and effectively resolved through the judicial process.").

Under these principles, if the Counties' claims do not arise from a disputed assessment, as they concede, then no justiciable case and controversy exists. (Cty. Br., p. 5 ("[T]his case is not a 'property tax appeal' and it does not challenge the assessed value of any airline.")). The district court could not resolve the Counties' constitutional claims without the factual allegations in the Complaint because the claims would not yet be justiciable. The Counties "are free to challenge the statute[s] whenever they can present an actual controversy based on concrete facts." *Bangerter*, 928 P.2d at 386. The district court properly dismissed the Counties' claims as unripe.

CONCLUSION

For the above reasons, the Airlines request that the Court affirm the district court's ruling.

DATED THIS 13th day of February, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2019, I caused a true and correct copy of the foregoing to be served via U.S. Mail and electronic mail to:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Utah R. App. P. 24(g) because this brief contains less than 14,000 words, excluding the parts of the brief that are exempted by Utah R. App. P. 24(g)(2), as calculated by Microsoft Word. I further certify that this brief complies with Utah R. App. P. 21.

DATED THIS 13th day of February, 2019.

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