In the Supreme Court of the State of Utah

SALT LAKE COUNTY, DUCHESNE COUNTY, UINTAH COUNTY, WASHINGTON COUNTY, and WEBER COUNTY, political subdivisions of the State of Utah, *Plaintiffs-Appellants*, v. STATE OF UTAH, DELTA AIR LINES, INC. and SKYWEST AIRLINES, INC., *Defendants-Appellees*.	**No. 20180586-SC**

Brief of Appellee State of Utah

On appeal from the Third Judicial District Court
Judge Kara Pettit, District Court No. 170904525

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District Court Parties

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

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INTRODUCTION

In July 2017, Salt Lake County, Duchesne County, Uintah County, and Washington County (the "Counties") filed a declaratory judgment action challenging the constitutionality of three tax laws (the "Challenged Laws"). Specifically, they challenged Utah Code sections 59-2-201(4) ("Valuation Law"), 59-2-804 ("Allocation Law"), and 59-2-1007(2)(b) ("Threshold Law"). The district court dismissed the challenge to the Threshold Law on ripeness grounds, and the challenges to the Valuation and Allocation Laws for failure to exhaust administrative remedies.

The Court should affirm the judgment dismissing the Counties' claims. First, the district court correctly determined that the Counties did not plead facts sufficient to show their challenge to the Threshold Law was ripe. In fact, as the district court correctly observed, the "Complaint does not contain any allegations regarding the application of the Review Threshold Law." (R. 912).

Likewise, the district court correctly dismissed the challenges to the Valuation Law and Allocation Law for failure to exhaust administrative remedies, for the reasons set forth in the Intervenors' initial brief.

STATEMENT OF THE ISSUES

Issue 1: Did the district court correctly dismiss as unripe the Counties' challenge to the Threshold Law because, among other things, their Complaint does not contain any allegations about the application of the Threshold Law?

Preservation: The State preserved this issue and the district court addressed it. (R. 908-916). And the Counties have raised this issue on appeal and have shown it was preserved for review. Appellants' Br. at 2.

Standard of review: The Court applies the correction of error standard to a district court's grant of a motion to dismiss on ripeness grounds. *Barnard v. Utah State Bar,* 857 P.2d 917, 919 (Utah 1993).

Issue 2: Did the district court correctly dismiss the Counties' claims regarding the Valuation Law and Allocation Law because the Counties failed to exhaust administrative remedies?

Preservation: The Counties have raised this issue on appeal and have shown it was preserved for review. Appellants' Br. at 3.

Standard of review: "A district court's grant of a motion to dismiss . . . presents a question of law that we review for correctness." *D.A. Osguthorpe v. Wolf Mountain Resorts, L.C.*, 2010 UT 29, ¶ 10, 232 P.3d 999 (citations omitted). "The grant of a motion for judgment on the pleadings is reviewed

under the same standard as the grant of a motion to dismiss[.]" *Golding v. Ashley Cent. Irrigation Co.,* 793 P.2d 897, 898 (Utah 1990).

STATEMENT OF THE CASE

The constitutionality of the Challenged Laws is not before the Court because the district court dismissed the Counties' claims without reaching the merits. Even so, the State briefly describes the Challenged Laws to put the Counties' claims in context.

Challenges to the Valuation Law

The Valuation Law was enacted in 2017 as Senate Bill 157. It changed, among other things, how the Utah State Tax Commission ("Tax Commission") determines commercial aircraft value. Utah Code § 59-2-201(4). Subject to some exceptions, the Valuation Law requires the Tax Commission to use an aircraft price guide to determine the fair market value of aircraft that is assessed under part 2 of chapter 59. *Id.* § 59-2-201(4)(b)(i). An aircraft price guide is like a Kelley Blue Book for commercial aircraft—it is "a nationally recognized publication that assigns value estimates for individual commercial aircraft that are: (i) identified by year, make, and model; and (ii) in average condition typical for the aircraft's type and vintage." *Id.* § 59-2-201(4)(a).

The Valuation Law requires the Tax Commission to use the airliner price guide as the specific aircraft price guide unless it "is no longer published

or the commission determines that another aircraft pricing guide more reasonably reflects the fair market value of the aircraft," or "if the commission: (i) has clear and convincing evidence that the aircraft values reflected in the aircraft pricing guide do not reasonably reflect fair market value of the aircraft; and (ii) cannot identify an alternative aircraft pricing guide from which the commission may determine aircraft value." *Id.* §§ 59-2-201(4)(b)(ii)(A) and (4)(d).

In their Complaint, the Counties allege that the clear and convincing evidence standard of section 201(4)(d)(i) is unconstitutional because it prevents uniformity, prevents finding fair market value, is an unconstitutional delegation of authority, and violates separation of powers. (R. 20-22, 24-25). Thus, the Counties do not challenge the use of an aircraft price guide *per se*, only the application of the "clear and convincing" evidentiary standard as a prerequisite for the Tax Commission to use an alternative aircraft pricing guide or alternative method. *See id.*

The Counties also challenge a provision of the Valuation Law that is identified as a "fleet adjustment." The fleet adjustment provides that, "[t]o reflect the value of an aircraft fleet that is used as part of the operating property of an airline, air charter service, or air contract service, the fair market value of the aircraft shall include a fleet adjustment . . . ." Utah Code § 59-2-201(4)(c)(i). The fleet adjustment is determined either by the aircraft

price guide, if the guide provides for a fleet adjustment, or "by reducing the aircraft pricing guide value of each aircraft in the fleet by .5% for each aircraft over three aircraft up to a maximum 20% reduction." *Id.* § 59-2-201(4)(c)(ii)–(c)(iii).

The Counties contend that the fleet adjustment is unconstitutional because it prevents uniformity, prevents finding fair market value, is an unconstitutional delegation of authority, and violates separation of powers. (R. 22-25).

Challenge to the Allocation Law

The Allocation Law was enacted as Senate Bill 237 in 2008. The Counties challenge a provision of the Allocation Law that determines how the Utah portion of an airline's total value is allocated to the State. (R. 6, ¶ 11(b)).

Under the Allocation Law, airline value is allocated to individual states according to two factors: the revenue ton miles factor (generally how much an airline's aircraft are in a state's skies) and the ground hours factor (generally how much an airline's aircraft are on the ground in a state). Utah Code § 59-2-804; (R. 17, ¶ 71).

In the Complaint, the Counties limit their challenge to the revenue ton miles factor. (R. 18, ¶ 72). Utah law defines revenue ton miles the same as the Code of Federal Regulations, which states that a revenue ton mile is one

ton of revenue traffic transported one mile. *See* 14 CFR 298.2. Revenue ton-miles are computed by multiplying the aircraft-miles flown on each flight stage by the number of pounds of revenue traffic carried on that flight stage and converted to ton-miles by dividing total revenue pound-miles by 2,000 pounds. *Id.* An airline's total revenue ton-miles are then divided, or apportioned, to Utah according to "the total revenue ton miles within the borders of this state: (i) during a calendar year . . . and (ii) from flight stages that originate or terminate in this state." Utah Code § 59-2-804(1)(k).

The Allocation Law defines the challenged revenue ton miles factor as:

$$\frac{Utah\ revenue\ ton\ miles}{airline\ revenue\ ton\ miles}\ X\ .5$$

Utah Code §59-2-804(1)(i). As mentioned previously, .5 is used here because the other half of the equation is the ground hours factor. The Counties contend that the interstate allocation factor is unconstitutional because it prevents uniformity, and is a de facto exemption. (R. 25-26).

Challenge to the Threshold Law

The Threshold Law was enacted in 2015 as Senate Bill 165. The Counties challenge a provision of the Threshold Law that limits counties' ability to challenge an assessment to situations where the county reasonably believes the commission should have assessed the property at a value 50% greater than the assessment for the current calendar year or the prior

calendar year. Utah Code § 59-2-1007(2)(b); (R. 20, ¶81). To object, a county must either apply to the Commission to become a party to a hearing set as a result of an owner's objection to the assessment, or if the owner does not object, by applying to the Commission for a hearing on the county's objection within a specified time. *Id.* § 59-2-1007(2). The 50% requirement applies only when a county objects on its own, not for a county to join a taxpayer's objection. *Id.*

In their Complaint, the Counties allege that the limitation in Utah Code § 59-2-1007(2) violates the Utah Constitution's Open Courts Clause and prevents uniformity. (R. 26-27).

Allegations in the Complaint about 2017 Tax Year

The Complaint alleges these facts about the 2017 tax year:

- "[T]he [Property] Tax Division ("Division") in 2017 was required by the methodology set forth by the Legislature in SB157 [the Valuation Law] to value airlines at an average of 39% less than what their values would have been using 2016 methods—for a total loss in airline tax revenues of roughly $5 million." (R. 5, ¶ 7).
- "The assessments issued by the State Tax Commission for the January 1, 2017, lien date for the seven major passenger airlines utilized the SB157-required valuation method, rather than the preferred valuation methods used by the Tax Commission for the 2016 assessments. This

significantly affected the assessed value of Airline Property. For example, application of Utah Code section 59-2-201(4), as amended, reduced the 2017 assessed system value of one airline from $26.2 billion to less than $14.7 billion (a roughly 44% decrease)." (R. 15, ¶ 58).

- "By applying the SB157 methodology rather than applying the methodologies used the previous year, the 2017 Utah taxable values for the seven major passenger airlines decreased by roughly 39% overall." (R. 15, ¶ 59).
- "Had the Tax Commission used the preferred valuation methods it used in 2016 instead of the SB157 methodology, the 2017 Utah taxable values for the seven major airlines would be on average 43% higher." (R. 15, ¶ 60).

Proceedings in the District Court

The State moved to dismiss the Counties' complaint for lack of subject matter jurisdiction, (R. 282-95), arguing that the Counties had failed to plead facts in their Complaint showing that their claims against the Challenged Laws were ripe. (R. 290). More specifically, the State argued that "without specific facts and a specific assessment, there is no case or controversy before the Court." (*Id.*)

The Counties opposed the State's motion, contending, among other things, that the "unconstitutional [sic] questions [presented by their Complaint] are not limited to any one particular assessment[.]" (R. 370). And, in their opposition, the Counties did not identify any particular assessment affected by the Challenged Laws. To the contrary, as the State observed in its reply memorandum with respect to the Threshold Law,

> Plaintiffs have not identified any particular assessment at issue or argued that the Tax Commission rejected their challenge based on the 50% threshold. Nor do Plaintiffs contend that they chose to not challenge a certain assessment because of the 50% threshold.

(R. 464).

After the Court allowed Delta Air Lines, Inc., and SkyWest Airlines, Inc. (collectively, the "Airlines"), to intervene, they filed a motion for judgment on the pleadings, arguing the Counties had failed to exhaust administrative remedies. (R. 562-82).

The district court heard oral arguments on both motions. (R. 908).

More than one month later, the Counties filed a "Notice of Supplemental Authority" ("Notice") stating that on March 28, 2018, the Tax Commission "granted summary judgment and dismissed four pending administrative appeals [brought by Salt Lake County] related to taxation of airline property." (R. 750-51). In the Notice, the Counties further stated,

"These recent decisions by the Commission demonstrate that the issues of constitutionality are ripe for this Court's consideration and that there is simply no administrative remedy available for the Tax Commission to resolve those challenges." (R. 752).

Attached to the Notice were Tax Commission orders dismissing four tax appeals for the same reason–the challenges failed to meet the 50% threshold in the Threshold Law. (R. 755-82). The Tax Commission did not consider the Valuation and Allocations Laws in those orders. (*Id.*) The Counties acknowledged in the Notice that Salt Lake County had 30 days from March 28, 2018, to appeal the Tax Commission's orders to the district court. (R. 752).

In response to the Notice, on April 5, 2018, the district court asked the parties to submit supplemental briefs within two weeks "to inform the Court of their positions as to whether and how the recent Commission decisions may affect their arguments on the pending Motion to Dismiss and Motion for Judgment on the Pleadings." (R. 789). The parties timely filed their supplemental briefs. (R. 791-99, 803-09, 813-22).

A few months later, the Court granted the State's motion to dismiss as to the Threshold Law but denied it as to the Valuation and Allocation Laws.

(R. 908-916). Agreeing with the State that the challenge to the Threshold Law was not ripe, the district court stated:[1]

> *[T]he Complaint does not contain any allegations regarding the application of the Review Threshold Law*. For instance, the Complaint does not allege that the Counties attempted to appeal an assessment but could not because of the 50% limitation imposed by the Review Threshold Law. Although the Commission dismissed four appeals under § 59-2-1 007(2)(b) since the Complaint in this case was filed, the Court agrees with the State that this does not fix the deficiencies in the Counties' Complaint. *The Complaint does not specifically reference any of the dismissed appeals or otherwise identify a specific assessment* or Commission decision that creates a justiciable controversy regarding the Review Threshold Law. *See e.g*. Complaint 77-82 and 121-124.
>
> Because Plaintiffs have not identified a specific instance in which they were denied the opportunity to pursue an appeal of an airline assessment under the Review Threshold Law, their constitutional claims as to that law are not ripe for adjudication and must be dismissed. *Baird v. State*, 574 P .2d 713, 716 (Utah 1978) ("When it is ascertained 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.").

(R. 912-13) (emphasis added).

With respect to the Valuation and Allocation Laws, the district court observed that the "Complaint does not set forth the specifics of a particular assessment . . . ." (R. 912). But the district court declined to conclude that the Counties' constitutional claims as to these laws were unripe. Rather, the

[1] The district court referred to the Threshold Law as the "Review Threshold Law."

district court concluded that a "justiciable controversy exists" because the Complaint in this case "alleges that the Commission used the Valuation and Allocation Laws to determine airline assessments in 2017, which resulted in reduced tax revenue from airlines." (R. 912).

Yet, the district court dismissed the challenges to the Valuation and Allocation Laws for failure to exhaust administrative remedies, as argued by the Airlines in their motion for judgment on the pleadings. (R. 562-87).

SUMMARY OF THE ARGUMENT

The district court properly dismissed the Counties' challenge to the Threshold Law as unripe. Even under notice pleading, a plaintiff must plead facts sufficient to show subject matter jurisdiction. One essential element of subject matter jurisdiction is ripeness. But, as the district court correctly determined, the Counties' complaint was devoid of allegations addressing the ripeness of the Threshold Law challenge. Thus, the district court correctly dismissed this challenge. The Tax Commission orders that the Counties introduced late in the proceedings at best support granting the Counties leave to amend. But the Counties did not seek leave to amend.

The district court also correctly dismissed the Counties' challenges to the Valuation and Allocation Laws for failure for exhaust administrative remedies, as demonstrated by the Airlines in their brief.[2]

ARGUMENT

The District Court Correctly Dismissed as Unripe the Counties' Challenge to the Threshold Law

The district court correctly granted the State's motion to dismiss the Counties' challenge to the Threshold Law on ripeness grounds. A claim may be dismissed for a "lack of subject matter jurisdiction." Utah R. Civ. P. 12(b)(1). Courts lack subject matter jurisdiction in the absence of a justiciable controversy between adverse parties. *Carlton v. Brown*, 2014 UT 6, ¶ 29, 323 P.3d 571 (citing *Williams v. Univ. of Utah*, 626 P.2d 500, 503 (Utah 1981)). A controversy is not justiciable unless it is ripe. *Id.*, ¶ 30.

These principles apply equally to declaratory judgment actions. That is, like other actions, declaratory judgment actions must satisfy the requisite jurisdictional requirements, including ripeness. *Jenkins v. Swan*, 675 P.2d 1145, 1148 (Utah 1983) (stating that "before the district court can proceed in

[2] The State adopts by reference the facts, arguments, and legal authorities set forth in the Airlines' brief, *see* Utah R. App. P. 24(c), with the following qualifications: To the extent the Airlines' Brief describes possible Tax Commission factual findings or applications of the challenged statutes that show the benefits of exhaustion, the State is not adopting those possible findings or applications. The Tax Commission requires an opportunity to hear those arguments on the merits before making a determination.

an action for declaratory judgment: 1) there must be a justiciable controversy; . . . and (4) the issues between the parties must be ripe for judicial determination.") (citation omitted).

Because an action must be justiciable and ripe for a party to be entitled to relief, a plaintiff must plead facts sufficient to show its claims are justiciable and ripe, consistent with notice pleading requirements. This conclusion follows from Utah Rule of Civil Procedure 8(a), which requires plaintiffs to plead facts sufficient to show "that the party is entitled to relief." *See also Harvey v. Ute Indian Tribe of Uintah & Ouray Reservation*, 2017 UT 75, ¶ 60, 416 P.3d 401.

Thus, a complaint that does not allege facts sufficient to show standing, ripeness, or any other element of subject matter jurisdiction, is subject to dismissal. *See Alpine Homes, Inc. v. City of W. Jordan*, 2017 UT 45, ¶¶ 30-33, 424 P.3d 95, 106. For example, in *Alpine Homes*, this Court affirmed an order granting a motion to dismiss on standing grounds because there was no showing in the complaint that the plaintiffs sustained a direct and redressable injury. *Id*. ¶¶ 32-33.

A. The district court did not err in holding that the Counties failed to allege facts showing their Review Threshold challenge is ripe

The district court correctly determined that the Counties' failed to plead facts sufficient to show their claims against the Threshold Law are

ripe. In reviewing a grant of summary judgment, this Court has stated that "[t]o render the constitutionality of [a tax law] ripe for adjudication, the Counties must *produce* a tax assessment that has been challenged and reduced under the [challenged act] 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 County v. Bangerter*, 928 P.2d 384, 385 (Utah 1996) (citation and quotation marks omitted) (emphasis added). Thus, under *Bangerter*, a challenge to a tax law is not ripe without a tax assessment that has been challenged and reduced under the challenged law.

To be sure, the procedural posture here differs from the posture in *Bangerter*. In the context of a motion to dismiss at the pleadings stage, the Counties are not required to *produce* a reduced tax assessment; rather, the Counties must allege facts in their complaint showing that there was a specific tax assessment to which the Threshold Law was applied to their detriment.

The Counties failed to allege such facts, and thus the district court correctly dismissed the Counties' challenges to the Threshold Law as unripe. (R. 911-913). In fact, as the district court correctly observed, the Counties' "Complaint does not contain any allegations regarding the application of the

Review Threshold Law." (*Id*. at 912-13). And, further, "the Complaint does not allege that the Counties attempted to appeal an assessment but could not because of the 50% limitation imposed by the Review Threshold Law." (*Id*. at 912-13).

But the Counties argue that the district court erroneously relied on *Bangerter* because the court supposedly "misse[d] the point of the Counties' unconstitutional challenge to the Threshold Law." Appellants' Br. at 6, 11. The point of the Counties' challenge, they say, is that the Threshold Law is allegedly "facially unconstitutional and belies principles of uniformity." Appellants' Br. at 2. As such, the Counties argue, the district court erred by focusing on their failure to "specify concrete action" in their Complaint as "opposed to the language on the face of the statute itself." Appellants' Br. at 6. And the Counties further argue that it "smacks of legislative overreach" to "depriv[e] the Counties of the ability to challenge the entirety of the statutory scheme unless and until it can allege facts to show that the scheme which is unconstitutional on its face has also been unconstitutionally applied." Appellants' Br. at 9.

The Counties are mistaken. As *Bangerter* illustrates, the fact that the Counties are raising a facial challenge does not relieve the Counties of their burden to plead facts showing their challenge is ripe based on the application of the challenged law to a specific assessment. Although the Court did not

use the term "facial" in *Bangerter*, that case plainly involved a facial challenge: the counties in *Bangerter* sought a declaratory judgment that Utah Code § 59–2–1004(3)(d) (the "Equalization Act") "violates article XIII, section 3 of the Utah Constitution, which requires that property be assessed at its fair market value." *Bangerter*, 928 P.2d at 385. Yet, despite the facial challenge, this Court affirmed the district court's dismissal of the counties' complaint on ripeness grounds because they had not produced a reduced assessment. *Id.*

The Counties try but fail to distinguish *Bangerter*. They contend that *Bangerter* "involved a statutory remedy under the Equalization Act that could be applied only if and when invoked by the taxpayer," and "the county could not show the remedy had ever been, or would ever be, invoked." Appellants' Br. at 11. But, contrary to the Counties' assertion, this was not the reason this Court stated the matter was unripe. Rather, it was the "absence of . . . reduced assessment" that caused the Court to declare the matter unripe. *Bangerter, 928 P.2d at 385.*

Bangerter's ripeness principles apply equally in this case's posture because subject matter jurisdiction must exist at every stage of a case. *See Brown v. Div. of Water Rights of Dep't of Nat. Resources*, 2010 UT 14, ¶ 13, 228 P.3d 747. The nature of the challenge, the parties, and the requested relief in *Bangerter* are strikingly similar to this case. In *Bangerter*, "[t]he

Counties maintain[ed] that the Act violate[d] article XIII, section 3 of the Utah constitution, which requires that property be assessed at its fair market value." *Id.* The Counties bring a similar facial challenge here. In *Bangerter*, Salt Lake County "and the Utah Association of Counties" sued the State of Utah, specifically the Tax Commission. *Id.* Virtually the same is true here. And in *Bangerter* the counties sought "a declaratory judgment that [the challenged law] [was] unconstitutional." *Id.* The same is true here. Thus, the district court was correct to rely on the rule in *Bangerter,* notwithstanding the difference in its procedural posture.

B. The district court did not abuse its discretion by deciding the State's motion to dismiss based only on the allegations in the complaint

Approximately one month after oral argument on the State's motion to dismiss and the Airlines' motion for judgment of the pleadings, the Counties filed a "Notice of Supplemental Authority" to which they attached orders dismissing four Tax Commission appeals for failure to meet the 50% threshold of the Threshold Law. (R.751-82). The Counties argued in the Notice that these orders "demonstrate that the issues of constitutionality are ripe." (R. 752). After allowing the parties to submit supplement briefing on the import of these orders to the pending motions, the Court partially granted the State's motion on the basis of the insufficiency of the Counties' pleadings relating to the ripeness of the Threshold Law challenge. (R. 913).

The Counties argue that the district court's "disregard of [this] subsequent factual evidence," i.e., the four Tax Commission orders, was "error when reviewing the claim under Utah Rule of Civil Procedure 12(b)(1)" because a court "should consider materials outside the pleadings, including supplemental factual allegations" under Rule 12(b)(1). Appellants' Br. at 12.

The Counties put it too strongly. This is a question of discretion, not correctness. That is, a district court has the discretion to consider evidence outside the complaint in deciding motions to dismiss under Rules 12(b)(1) to (5). *See Nevares v. Adoptive Couple*, 2016 UT 39, ¶ 25, 384 P.3d 213 ("A district court *can* consider evidence outside the pleadings on a rule 12(b)(1) motion without converting it to a motion for summary judgment.") (emphasis added); *cf. Coombs v. Juice Works Dev. Inc.*, 2003 UT App 388, ¶ 7, 81 P.3d 769, (stating a "court *may* consider facts alleged outside the complaint" in reviewing a rule 12(b)(3) motion) (emphasis added).

It does not appear Utah appellate courts have had the opportunity to provide much guidance on the contours of a district court's discretion with respect to extrinsic facts in deciding a Rule 12(b)(1) motion. But the following guidance from a persuasive authority supports the conclusion that the district court acted within its discretion in dismissing the complaint.

> If the allegations are not sufficient . . . the district judge has at least two possible courses of action. When the pleader's affidavits or other evidence show

> either that the court actually has subject matter jurisdiction over the case or that the nonmoving party might be able to amend to allege jurisdiction, the district court may deny the motion and direct the pleader to amend the pleading or it *may dismiss with leave to amend* within a prescribed period of time. Only when the affidavits show that the pleader cannot truthfully amend to allege subject matter jurisdiction should the court dismiss without leave to replead.

5B Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1350 (3d ed. 2004) (emphasis added).

Based on this guidance, having correctly determined that the allegations regarding the Threshold Law were insufficient, the district court acted within its discretion when it dismissed the "claims regarding the Review Threshold Law without prejudice." (R. 913). The Tax Commission's Orders are relevant only to the issue of whether the counties should have leave to amend. And, the Counties did not request leave to amend.

The Counties have overlooked something else. The Counties describe the Tax Commission's Orders as "subsequent factual evidence." Appellants' Br. at 12. But the Counties have not shown that Utah law allows them to rely on events that occurred after the filing of the complaint to establish ripeness. *See Baird v. State*, 574 P.2d 713, 715 (Utah 1978) ("Generally, courts have held that the conditions which must exist <u>before</u> a declaratory judgment action can be maintained are: . . . the issues between the parties involved must be ripe for judicial determination.") (emphasis added);

Barnard v. Utah State Bar, 857 P.2d 917, 919 (Utah 1993) ("While it is entirely possible that the matter might have matured into a full-blown controversy at a later time, no actual conflict existed when Barnard commenced his lawsuit.").

CONCLUSION

For the foregoing reasons, the Court should affirm the district court's dismissal of the Counties' Complaint.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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s/ Andrew Dymek

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2019 a true, correct and complete copy of the foregoing Brief of Appellant was filed with the court and served via electronic mail as follows:

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