No. 20200373-SC

IN THE
SUPREME COURT OF THE STATE OF UTAH

WHITNEY CROFT, ROBERT BOHMAN, BRANDON PETERSON,
SHELLEY PAIGE, and DAVID PIKE,
Petitioners/Appellants,
v.
MORGAN COUNTY and STACY NETZ CLARK,
solely in her official capacity as Morgan County Clerk,
Respondents/Appellees,
and
WASATCH PEAKS RANCH, LLC,
Intervenor/Appellee.

BRIEF OF APPELLANTS

On appeal from the Second Judicial District Court, Morgan County,
Honorable Noel Hyde, District Court No. 190500095

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Current and Former Parties

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None

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Introduction

The issue in this appeal is whether the district court has jurisdiction to consider a challenge to a referendum decision. The Utah Code provides that a challenge may be filed in this court "by means of an extraordinary writ, if possible," or alternatively in the district court if an extraordinary writ sought in this court "is prohibited." Utah Code § 20A-7-602.8. The issue is therefore whether petitioners were prohibited from seeking an extraordinary writ in this court.

Here, rule 19 of the Utah Rules of Appellate Procedure prohibited the Petitioners from seeking an extraordinary writ in this court. Under rule 19, a petition for an extraordinary writ is appropriate in this court only if there is "no other plain, speedy, or adequate remedy" and "it is impractical or inappropriate to file the petition for a writ in the district court." Utah R. App. P. 19(b)(4),(5). As long as it is neither impractical nor inappropriate to file the petition in the district court, it must be filed in the district court.

In this case, it was neither impractical nor inappropriate to file the petition in the district court, so rule 19 did not allow the Petitioners to file in this court. The district court could adjudicate the petition, just as district courts have done with similar referendum petitions for years. The district court found otherwise, believing that it lacked jurisdiction. The district court erred in ruling that it lacked jurisdiction. This court should reverse.

Statement of the Issue

Issue: Whether the district court erred in ruling that it lacked jurisdiction to hear the Petitioners' challenge to Morgan County's refusal to place a referendum on the ballot.

Standard of Review: This court reviews questions of statutory interpretation for correctness. *Marion Energy, Inc. v. KFJ Ranch P'ship*, 2011 UT 50, ¶ 12, 267 P.3d 863 (citation omitted). And whether a district court has jurisdiction is a question of law, also reviewed for correctness. *Amundsen v. Univ. of Utah*, 2019 UT 49, ¶ 19, 448 P.3d 1224.

Preservation: This issue is preserved. [R.418-22,540-50,558.]

Statement of the Case

Wasatch Peaks Ranch, LLC (WPR) owns approximately 12,000 acres of land in Morgan County, Utah zoned for Forestry and Multiple-Use 160. [R.7,16.] WPR sought to rezone that property to allow for development of a resort community so it submitted a Rezoning Application to the Morgan County planning office. [R.15-16.] On October 30, 2019, Morgan County adopted Ordinance No. C019-10 (the Ordinance), which approved WPR's application. [R.17.]

The Petitioners apply for a citizen referendum

Whitney Croft, Robert Bohman, Shelley Paige, David Pike, and Brandon Peterson (together, "the Petitioners") submitted an application for citizen referendum of the Ordinance to the Morgan County Clerk. [R.7-11.] The clerk decided that the application was not legally referable to voters and rejected the referendum application. [R.12.]

The Petitioners challenge the denial in the district court

The Petitioners then filed a lawsuit challenging the rejection of their referendum. [R.1-12.] They filed their suit in the district court. [R.1.] They did so pursuant to the Election Code, which provides that a rejection to a proposed referendum may be appealed to the district court if the matter is inappropriate to raise in an extraordinary writ to the supreme court:

> (4)(a) If a county, city, town, or metro township rejects a proposed referendum concerning a land use law, a

> sponsor of the proposed referendum may, within seven days after the day on which a sponsor is notified under Subsection (1)(b), challenge or appeal the decision to:
>
> > (i) the Supreme Court, by means of an extraordinary writ, if possible; or
> >
> > (ii) a district court, if the sponsor is prohibited from pursuing an extraordinary writ under Subsection (4)(a)(i).

Utah Code § 20A-7-602.8(4)(a).

The Petitioners declined to file a petition for an extraordinary writ in this court because they could not satisfy the requirements of rule 19. Specifically, they could not demonstrate that they had "no other plain, speedy, or adequate remedy" or that it would be "impractical or inappropriate" to seek relief in the district court. Utah R. App. P. 19(b)(4),(5). Those requirements might be satisfied when there is an immediate and urgent need to get a referendum on an imminent ballot and petitioners simply do not have time to first seek relief in the district court. [R.421,544-45.] But here, those tight timelines did not exist. [R.421,544-45.] This is a citizen referendum of a newly enacted ordinance—it is not tied to any particular election or deadline.

WPR intervened and filed a motion to dismiss. [R.15,274,288.] WPR argued that the district court lacked jurisdiction because the supreme court—not the district court—has jurisdiction over appeals from rejections to proposed referenda. [R.293.] WPR argued that the Petitioners were required to file an

extraordinary writ in this court, and then only if they were "prohibited" from pursuing that appeal could they file in the district court. [R.294.]

The Petitioners opposed the motion. [R.412.] They explained that they could not have filed a petition for an extraordinary writ under rule 19 of the Utah Rules of Appellate Procedure because they could not satisfy the rule's requirements—there was, in fact, another "plain, speedy, or adequate remedy" available in the district court. [R.420.]

And the Petitioners pointed out that this court already rejected WPR's argument in *Anderson v. Orem City*, 2016 UT 50, 387 P.3d 1014. [R.419-20.] Specifically, in *Anderson*, this court held that citizens can appeal the rejection of a voter referendum to the supreme court only if the citizens can satisfy the requirements of rule 19. 2016 UT 50, ¶¶ 3-6. Otherwise, citizens must file their petition in the district court. *Id.* ¶ 6. Indeed, this court expressly held that district courts "possess the authority to provide appropriate relief in appropriate circumstances." *Id.* ¶ 5.

The district court rules that only this court has jurisdiction

The district court disagreed and granted WPR's motion to dismiss. [R.513-15.] The court ruled that, under the statute, "it is inappropriate to pursue the matter in the district court." [R.512.] Specifically, the court ruled that, under rule 19, an extraordinary writ can be filed in the supreme court as long as it contains "an explanation why" the writ is being filed. [R.513.]

The court ruled that here, the "explanation why" was that the Election Code permits a petition to be filed in this court. [R.513.] Thus, the district court ruled that the Petitioners could have satisfied rule 19, and therefore could (and should) have filed their petition as a petition for an extraordinary writ in this court. [R.513-15.]

Despite the Petitioners' rule 19 argument, the district court also ruled that "there is neither a rule nor statute that precludes pursuit of a writ in the Utah Supreme Court, and there has been no factual or legal argument suggesting that pursuit of an extraordinary writ would be or was impossible." [R.513-14.] The court did not explain how the Petitioners might have satisfied rule 19's requirement that it is impractical or inappropriate to file in the district court. Utah R. App. P. 19(b)(5).

Summary of the Argument

The district court erred in concluding that it lacked jurisdiction.

Read together, section 20A-7-602.8 and rule 19 demonstrate that a referendum decision may be challenged in this court only with a petition for an extraordinary writ, and only when the requirements for filing an extraordinary writ can be satisfied. Because those requirements are not—and cannot be—satisfied here, the petition was properly filed in the district court.

Under section 602.8, the petition should be filed in the district court if it is not "possible" to file a petition for an extraordinary writ in this court, or if such a petition would be "prohibited." One cannot file such a petition in this court unless one satisfies rule 19's requirements. Rule 19 requires that a petition for extraordinary writ is appropriate only if there is no other plain, speedy, or adequate remedy, and it is impractical or inappropriate to file the petition in the district court.

Rule 19's requirements are not satisfied here. Petitioners cannot demonstrate that they had "no other plain, speedy, or adequate remedy" or that it would be "impractical or inappropriate" to seek relief in the district court. Utah R. App. P. 19(b)(4), (5). Where this case is not tied to any particular election or deadline, it does not present the type of tight timelines that would prevent Petitioners from seeking relief in the district court. [R.421,544-45.] The district court erred in ruling that the Petitioners could or should have filed their petition in this court by means of an extraordinary writ. This court should reverse.

Argument

1. The District Court Erred in Concluding That It Lacked Jurisdiction

The district court erred in concluding that it lacked jurisdiction to consider the petition. The plain language of Utah Code section 20A-7-602.8(4)(a) authorizes the district court to hear this case when read in conjunction with this court's extraordinary writ requirements under rule 19 of the Utah Rules of Appellate Procedure.

1.1 The Plain Language of Section 602.8 Provides Jurisdiction to the District Court

Under rule 19, Petitioners had to file the petition in the district court because it was not "impractical or inappropriate" to file it in the district court. Section 602.8 provides that a petition may be filed in this court "if possible," but if filing is "prohibited" in this court, then the petition should be filed in the district court. And rule 19 provides the requirements for when a petition is possible or prohibited in this court.

Read together, section 602.8 and rule 19 demonstrate that a challenge to a referendum decision may be filed in this court only with a petition for an extraordinary writ, and only when the requirements for filing an extraordinary writ can be met. Because those requirements are not—and cannot be—met here, the petition was properly filed in the district court.

This court interprets statutes according to their plain language. *Marion Energy, Inc. v. KFJ Ranch P'ship*, 2011 UT 50, ¶ 14, 267 P.3d 863. Under the plain

language of section 602.8, a rejection to a proposed referendum may be appealed to the district court if it is not possible to seek an extraordinary writ in this court:

> (4)(a) If a county, city, town, or metro township rejects a proposed referendum concerning a land use law, a sponsor of the proposed referendum may, within seven days after the day on which a sponsor is notified under Subsection (1)(b), challenge or appeal the decision to:
>
> > (i) the Supreme Court, by means of an extraordinary writ, *if possible*; or
> >
> > (ii) a district court, if the sponsor is prohibited from pursuing an extraordinary writ under Subsection (4)(a)(i).

Utah Code § 20A-7-602.8(4)(a) (emphasis added). Section 602.8 therefore reflects the general and longstanding rule that petitions for extraordinary relief may be filed in the district court or in this court, depending on the circumstances—specifically, depending on whether a petition in the supreme court is "possible" or "prohibited."

Rule 19 describes the circumstances under which it is possible to file in this court. Under rule 19, a petition filed in this court must explain why there is no other "plain, speedy, or adequate remedy," and why "it is impractical or inappropriate" to file in the district court:

> **(b) Contents of Petition and Filing Fee.** A petition for an extraordinary writ shall contain the following: . . .
>
> > (4) A statement of the reasons why no other plain, speedy, or adequate remedy exists and why the writ should issue;

> (5) Except in cases where the writ is directed to a district court, a statement explaining why it is impractical or inappropriate to file the petition for a writ in the district court

Utah R. App. P. 19(b)(4),(5).

In interpreting rule 19, this court has held that it is "impractical or inappropriate" to seek extraordinary relief in the district court when, for example, a ballot dispute presents "tight timelines" such that a petitioner does not have time to first present the challenge to the district court. *Anderson v. Provo City*, 2016 UT 50, ¶ 4, 387 P.3d 1014; *Mawhinney v. City of Draper*, 2014 UT 54, ¶ 1, 342 P.3d 262 (hearing petition for extraordinary relief in September 2014 where petitioners sought to place referendum on November 2014 ballot). Even in cases with "tight timelines," petitioners must still demonstrate that there are "practical obstacles" to filing in the district court, followed by an expedited appeal to this court. *Zonts v. Pleasant Grove City*, 2017 UT 71, ¶ 5, 416 P.3d 360; *Baker v. Carlson*, 2018 UT 59, ¶¶ 6–7, 437 P.3d 333 (petitioners initiated their action in district court in August 2018 where they sought to place referendum on November 2018 ballot).

Demonstrating that a petition cannot be filed in the district court "is more than an exercise in ensuring [the petitioner] incant[s] magic words." *Zonts*, 2017 UT 71, ¶ 3 (alterations in original) (quoting *Brown v. Cox*, 2017 UT 3, ¶ 28, 387 P.3d 1040). This limitation "becomes particularly significant in circumstances where the petition is presented on hotly disputed material allegations of fact and

there is no record below to aid this court in resolving those disputes." *Carpenter v. Riverton City*, 2004 UT 68, ¶ 4, 103 P.3d 127. Because this court does not conduct evidentiary hearings, it is "not in a position to arrive at a legal ruling that is dependent on the resolution of disputed facts." *Id.*

Thus, when read together, section 602.8 and rule 19 explain where a petition challenging a referendum decision must be filed. If it is "impractical or inappropriate" to file the petition in the district court—because, for example, an election is looming—then, under rule 19, it is appropriate to file the petition in the supreme court. But if the requirements of rule 19 cannot be met, the petition must be filed in the district court.

1.2 This Court Has Repeatedly Ruled that Challenges Should Be Filed in the District Court Unless Rule 19 Can Be Satisfied

This court has never interpreted the jurisdictional subsections of section 602.8. But in interpreting similar provisions in the Election Code, this court has held—repeatedly—that petitions are properly filed in the district court unless the petitioners can satisfy the requirements of rule 19.

First, in *Low v. City of Monticello*, this court held that the district court had jurisdiction to consider a challenge to a referendum decision. 2002 UT 90, ¶ 16, 54 P.3d 1153, 1158, *overruled on other grounds by Carter v. Lehi City*, 2012 UT 2, ¶ 16, 269 P.3d 141. This was true even though the relevant statute, section 20A-7-607, expressly stated that a petitioner "may" file a petition for an extraordinary writ in the Utah Supreme Court. *Id.* ¶ 16.

Specifically, in *Low*, the statute provided that, "[i]f the local clerk refuses to accept and file any referendum petition, any voter *may* apply to the Supreme Court for an extraordinary writ to compel him [or her] to do so." 2002 UT 90, ¶ 16, 54 P.3d 1153 (quoting Utah Code § 20A-7-607(4)(a) (1998)) (second alteration in original) (emphasis added).[1]

Citing this language, the government argued that the citizens' challenge was barred because the citizens filed it in the district court rather than in this court. *Id.* ¶ 16. This is the same argument that WPR made here. [R.293.]

This court disagreed. *Id.* This court held that the statute does not "limit either the remedies that can be sought or the court in which those remedies can be pursued." *Id.* In other words, the petition was properly filed in the district court even though the statute contemplated that it "may" be filed in this court.

Next, in *Carpenter v. Riverton City*, this court reaffirmed its conclusion that a challenge to a referendum decision may be filed in the district court. The *Carpenter* court considered the same statute that was at issue in *Low*, section 607, which provided that "[i]f the local clerk refuses to accept and file any referendum petition, any voter *may* apply to the Supreme Court for an extraordinary writ to compel [the clerk] to do so." 2004 UT 68, ¶ 4 n.3 (alteration and emphasis in

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[1] This section has since been amended to read "[i]f the local clerk refuses to accept and file any referendum petition, any voter may apply to a court for an extraordinary writ to compel the local clerk to do so . . . ." Utah Code § 20A-7-607 (2020).

original). This court explained that the statute "is permissive in nature and does not designate this court as the exclusive location where relief may be sought." *Id.* In other words, the statute did not require the petition to be filed in this court.

Equally important here, the *Carpenter* court explained that this court has jurisdiction over extraordinary writs only when the requirements of rule 19 are satisfied. *Id.* ¶ 4. As the court put it, "Article VIII, section 3 of the Utah Constitution provides general authority to grant petitions for extraordinary writ," but "[t]his authority is discretionary and limited to circumstances where there is no other 'plain, speedy, or adequate remedy.'" *Id.* (quoting Utah R. App. P. 19(b)(4)).

Indeed, a petition for an extraordinary writ must "provide 'a statement explaining why it is impractical or inappropriate to file the petition for a writ in the district court.'" *Id.* (quoting Utah. R. App. P. 19(b)(5)). The "general restrictions" under rule 19 are consistent with this court's "typical[]" practice of "limit[ing] itself to addressing only those petitions that cannot be decided in another forum." *Id.* Thus, the statute recognizes that a petition may be filed in this court but only if rule 19 is satisfied—otherwise, it must be filed in the district court.

And most recently, in *Anderson v. Provo City*, this court again reaffirmed its conclusion that a challenge to a referendum decision may be filed in the district court. 2016 UT 50, ¶ 4, 387 P.3d 1014. Like *Low* and *Carpenter*, the *Anderson* court

considered section 607 of the Election Code. *Id.* ¶¶ 4–6. And like the government in *Low* (and WPR here), the government in *Anderson* argued that the statute "mandates that a petition be filed in this court." *Id.* ¶ 4.

This court again disagreed. *Id.* ¶¶ 4–6. This court held that a petition for an extraordinary writ is appropriately in this court only if the requirements of rule 19 are satisfied. *Id.* Specifically, under rule 19, a petition for an extraordinary writ is appropriate in this court only if "it is impractical or inappropriate to file the petition for a writ in the district court." *Id.* ¶ 3 (quoting Utah R. App. P. 19(b)(5)). Rule 19 has not changed since these decisions.

And in those decisions the court explained that the Election Code did not change those requirements. Where the statute provides that a petitioner "may" file a petition for an extraordinary writ in this court, the petition must still satisfy rule 19 in order to do so. *Id.* ¶¶ 4–6. Indeed, "[w]hile many ballot disputes will present tight timelines that will make it either impractical or inappropriate to file in the district court, that will not always be the case." *Id.* ¶ 4. And where it is not the case, "our district courts possess the authority to provide appropriate relief in appropriate circumstances." *Id.* ¶ 5. In other words, the statute did not require the petition to be filed in this court.

The same is true here. Section 602.8 provides that citizens "may" challenge a referendum decision by filing an extraordinary writ in this court, "if possible." Utah Code § 20A-7-602.8(4)(a)(i). It is only "possible" for petitioners to file in this

court if they cannot successfully file in the district court or otherwise obtain relief. Utah R. App. P. 19(b).

Otherwise, if a petition for extraordinary writ is "prohibited" in this court, then citizens may challenge the decision in the district court. Utah Code § 20A-7-602.8(4)(a)(ii). The statute therefore allows petitioners to file in the district court where they are "prohibited from pursuing an extraordinary writ" because they still have a "plain, speedy, [and] adequate remedy" in the district court. *Id.* § 20A-7-602.8(4)(a)(ii); Utah R. App. P. 19(b)(4). Section 602.8, like section 607, "does not designate this court as the exclusive location where relief may be sought." *Carpenter*, 2004 UT 68, ¶ 4 n.3. Indeed, it expressly authorizes petitioners to file in the district court.

Here, it was not "possible" to pursue an extraordinary writ in this court because the Petitioners could not satisfy the requirements of rule 19. There is nothing impractical or inappropriate preventing this case from being heard in the district court—a plain, speedy, and adequate remedy exists in that court. Specifically, the referendum at issue is not tied to any particular election or deadline. There are no "tight timelines" that would prevent Petitioners from seeking relief in the district court.

1.3 The District Court Erred in Ruling that the Statutory Reference to an Extraordinary Writ Satisfies Rule 19

The district court nonetheless ruled that the Petitioners *could* satisfy rule 19, and thus were required to file a petition for an extraordinary writ in this

court. [R.513.] Specifically, the court ruled that, under rule 19, an extraordinary writ can be filed in the supreme court as long as it contains "an explanation why" the writ is being filed. [R.513.] The court ruled here that the "explanation why" was that the Election Code permits a petition to be filed in this court. [R.513.]

Thus, the district court ruled that the reference to filing in this court in section 602.8 was sufficient to satisfy the requirements under rule 19. The district court therefore ruled that, because the Petitioners could have satisfied rule 19, they could (and should) have filed their petition as a petition for an extraordinary writ in this court. [R.513-15.]

But the court misinterpreted rule 19's requirements. Rule 19 does not require "an explanation why" the petition is filed in this court. [R.513.] Instead, the rule requires "[a] statement of the reasons why no other plain, speedy, or adequate remedy exists and why the writ should issue," and "a statement explaining why it is impractical or inappropriate to file the petition for a writ in the district court." Utah R. App. P. 19(b)(4),(5). The fact that the Election Code contemplates that some petitions will be filed in this court is insufficient to establish that *this* petition should have been filed in this court. The requirements of rule 19 must still be satisfied, and they cannot be satisfied here.

More important, under the district court's reasoning, *all* challenges under section 602.8 must be filed in this court. Indeed, if the statutory language satisfies

rule 19's requirements as the district court suggests, then every challenge to a referendum decision must be filed in this court. This court would review every petition as a petition for an extraordinary writ. Only after this court denied the petition could it be refiled in the district court. This cannot be—and is not—what the statute requires.

The district court also ruled that "there is neither a rule nor statute that precludes pursuit of a writ in the Utah Supreme Court, and there has been no factual or legal argument suggesting that pursuit of an extraordinary writ would be or was impossible." [R.513-14.] But there is a rule. The district court's ruling overlooks the Petitioners' legal argument that rule 19 prohibited filing a petition for an extraordinary writ in this court. [R.420.] Indeed, the district court did not explain how the Petitioners might have satisfied rule 19's requirement that there be "no other plain, speedy, or adequate remedy" and how it was impractical or inappropriate to file in the district court. Utah R. App. P. 19(b)(4)-(5).

The ruling also reflects a misunderstanding of the statute's requirements. And to the extent the district court believed that the statute circumvents this court's rule 19 requirements, that understanding would be erroneous. The legislature may only amend this court's rules "upon a vote of two-thirds of all members of both houses of the Legislature." Utah Const., art. VIII, § 4. Any attempt to do so by other means would violate the separation of powers

"between the legislative and judicial branches guaranteed by article V, section 1 of the Utah Constitution." *Allred v. Saunders*, 2014 UT 43, ¶ 11, 342 P.3d 204.

Because the Petitioners could not satisfy rule 19's requirements, their petition was properly filed in the district court. The district court erred in ruling otherwise. The district court also erred in ruling that it lacked jurisdiction. This court should reverse.

Conclusion

For the reasons discussed above, this court should reverse and remand to the district court with instructions to exercise its jurisdiction over the Petitioners' claims.

DATED this 25th day of August, 2020.

ZIMMERMAN BOOHER

/s/ Troy L. Booher
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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 4,131 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 25th day of August, 2020.

/s/ Troy L. Booher

Certificate of Service

This is to certify that on the 25th day of August, 2020, I caused the Brief of Appellants to be served via email on:

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Addendum A

The Order of the Court is stated below:
Dated: April 06, 2020 10:59:24 AM **/s/** NOEL S. HYDE
District Court Judge

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THE SECOND JUDICIAL DISTRICT COURT – MORGAN DEPARTMENT

MORGAN COUNTY, STATE OF UTAH

WHITNEY CROFT, ROBERT BOHMAN, BRANDON PETERSON, SHELLEY PAIGE, and DAVID PIKE, **Petitioners,** **v.** **MORGAN COUNTY and STACY NETZ CLARK, solely in her official capacity as Morgan County Clerk,** **Respondents.**	**ORDER GRANTING MOTION TO DISMISS FOR LACK OF JURISDICTION AND FINAL JUDGMENT** **Case No.: 190500095** **Honorable Noel S. Hyde**
WASATCH PEAKS RANCH, LLC, **Intervenor.**	

Before the Court is Intervenor Wasatch Peaks Ranch, LLC's ("WPR") motion to dismiss for lack of jurisdiction and, in the alternative, for summary judgment. The matter came before

the Court for hearing on March 11, 2020 at 10:15 a.m. Mark R. Gaylord and Nathan R. Marigoni of Ballard Spahr LLP appeared on behalf of WPR. Richard H. Reeve of Reeve Law Group appeared on behalf of Petitioners Whitney Croft, Robert Bohman, Brandon Peterson, Shelley Paige, and David Pike ("Petitioners").

Having consider the pleadings, papers, and arguments of the parties, the Court GRANTS the motion and rules as follows:

STATEMENT OF MATERIAL FACTS

1.On October 30, 2019, the County adopted the Ordinance No. C019-10 (the "Ordinance") which approved WPR's Resort Special District ("RSD") Rezoning Application to designate certain property in Morgan County as a Resort Special District and approve a Development Agreement between WPR and the County.

2.On November 6, 2019, the Petitioners submitted an application for citizen referendum of the Ordinance (the "Application") to the Morgan County Clerk, Stacy Netz Clark (the "Clerk").

3.On November 21, 2019, the Clerk rejected the Application by letter to the first three sponsors as required by Utah Code Ann. § 20A-7-602.8(1)(b).

4.On November 27, 2019, Petitioners appealed the Clerk's rejection by filing the instant Petition with the Second District Court, Morgan County.

5.Petitioners did not file an extraordinary writ with the Utah Supreme Court.

6.On January 23, 2020, the Court granted WPR's motion to intervene in this matter.

7.On January 24, 2020, WPR filed a motion to dismiss on jurisdictional grounds

under Rule 12(b)(1) of the Utah Rules of Civil Procedure, arguing that this Court lacked appellate jurisdiction to consider this matter.

ANALYSIS AND CONCLUSIONS OF LAW

8.This matter is an appeal from the decision of the Morgan County Clerk rejecting Petitioners' Application for a referendum petition under Utah Code Ann. § 20A-7-601 et seq.

9.As a threshold matter, this Court must determine whether it has jurisdiction, appellate or otherwise, to consider this matter.

10.Generally, the district courts of the state of Utah do not have appellate jurisdiction. The general grant of civil jurisdiction in matters to the district court does not provide the district court generally with jurisdiction to consider appellate matters.

11.For the district court to exercise appellate jurisdiction, there must be a specific statutory grant of jurisdiction with respect to this particular appeal which is being pursued. Thus, the district court must find a source of jurisdiction in some statutory provision before any appellate jurisdiction may be exercised.

12.The Court rules that the controlling statute in this matter is Utah Code § 20A-7-602.8(4)(a), which includes an express grant of authority to the district court to consider appellate matters relating to the rejection of an application for a referendum petition concerning land use law.

Utah Code § 20A-7-602.8(4)(a) states:

> (4)(a) If a county, city, town, or metro township rejects a proposed referendum concerning a land use law, a sponsor of the proposed referendum may, within seven days after the day on which a sponsor is notified under Subsection (1)(b), challenge or appeal the decision to:

(i) the Supreme Court, by means of an extraordinary writ, if possible; or

(ii) a district court, if the sponsor is prohibited from pursuing an extraordinary writ under Subsection (4)(a)(i).

13.Subsection (ii) of Utah Code § 20A-7-602.8(4)(a) identifies the district court as having a role and that language includes a grant of appellate jurisdiction to the district court. However, the grant of appellate jurisdiction in subsection (ii) is conditional.

14.The condition to the exercise of the appellate court's jurisdiction is the final language of subparagraph (ii), which permits the district court to exercise jurisdiction only "if the sponsor is prohibited from pursuing an extraordinary writ under Subsection (4)(a)(i)." Subsection (4)(a)(i) is an internal reference to pursuit of the writ in the Utah Supreme Court.

15.Thus, the Court rules this is not a general grant of jurisdiction to the district court that permits anyone to simply make a choice between the Utah Supreme Court and the district court.

16.Rather, the Court, recognizing the narrow nature of the Court's appellate jurisdiction, must determine if that condition is satisfied before it may exercise jurisdiction.

17.The use of the word "may" in the prefatory language of this subsection is not determinative of whether this Court may exercise jurisdiction over this appeal.

18.That language provides that the petition "may" be filed within the statutory time period, but that does not answer the question as to the jurisdiction between the Supreme Court and the district court.

19.Under Section 20A-7-602.8(4), because there are alternative courts in which an appeal may be filed, a party seeking to pursue an appeal may pursue the appeal by either of the alternatives so long as they do so in conformance with the requirements of the statute.

20.That is, the use of "may" in this provision provides for a right to appeal to one of the available courts, but does not permit unconditional resort to either court.

21.By comparison, Utah Code § 20A-7-607, which also uses permissive language, does not provide alternative courts in which the petition may be brought. And as the Utah Supreme Court recognized in *Anderson v. Orem City*, 2016 UT 50, 387 P.3d 1014, that statute does permit appeal to the district court.

22.But Utah Code § 20A-7-602.8(4)(a) does make specific reference both to the roles of the Utah Supreme Court and the district court, and the conditions under which those courts may entertain appeals. This is a significant distinction between those provisions. *Anderson* is accordingly not determinative here.

23.The critical question then is the effect of the conditional language: "if the sponsor is prohibited from pursuing an extraordinary writ under Subsection (4)(a)(i)."

24.The only argument that has been presented to the Court on that specific issue is that Rule 19 of the Utah Rules of Appellate Procedure includes specific requirements to bring an extraordinary writ in the Supreme Court.

25.If those restrictions constitute a prohibition on the pursuit of such a writ in the Utah Supreme Court under these circumstances, then the condition may be met.

26.This requires the Court to analyze Rule 19. The only provision that deals

directly with the issue is subparagraph (b)(5). That provision states, "Except in cases where the writ is directed to a district court, a statement explaining why it is impractical or inappropriate to file the petition for a writ in the district court."

27.Ordinarily, the contemplation is that a writ is sought to compel a district court to take some action. In this case, the writ that is being sought is not being directed to the district court, it is being directed to the county clerk. Subsection (b)(5) thus applies to this situation.

28.The requirement imposed by this provision is that, before a party may seek an extraordinary writ from the Supreme Court, it must explain why it is either impractical or inappropriate to file in the district court.

29.Here, the petitioners argue that, because of the language of the statute, it is appropriate to file the petition in the district court and, accordingly, they could not have made a showing that it was impractical or inappropriate to file in the district court.

30.Rule 19 is in the disjunctive. Thus, it is not just a question of practicality, but is also a question of legal appropriateness.

31.In this circumstance, the Court rules that the condition contained in Utah Code § 20A-7-602.8(4)(a)(ii), provides precisely that it is inappropriate to pursue the matter in the district court.

32.The language of the condition states that an appeal can be pursued in the district court if the sponsor "is <u>prohibited</u> from pursuing an extraordinary writ."

33.That is, the condition is not met if the sponsor has pursued and been denied the opportunity to obtain a writ. Rather, it is met only where the sponsor has been prohibited

from pursuing a writ.

34.Subparagraph (b)(5) of Rule 19 of the Utah Rules of Appellate Procedure does not preclude the pursuit of an extraordinary writ, it only contains a requirement that must be included when that writ is pursued.

35.This is not a prohibition against pursuing the writ in the Utah Supreme Court, it only requires that, when the writ is sought in the Utah Supreme Court, there has to be an explanation why.

36.The explanation in this case would be that Section 20A-7-602.8(4)(a)(ii) expressly provides that parties are to pursue an appeal by writ to the Utah Supreme Court and can only pursue an appeal in the district court if they are "prohibited" from pursuing a writ in the Utah Supreme Court.

37.Thus, the Court rules that Section 20A-7-602.8(4) provides that a party may appeal the rejection of an application for a referendum petition by extraordinary writ to the Utah Supreme Court, and there is no limitation on that right.

38.There is a limitation on the right to file in the district court, and that limitation is that an appeal can be filed in the district court only if the sponsor is prohibited from pursuing a writ in the Utah Supreme Court.

39.The language in Utah Code 20A-7-602.8(4)(a)(i), permitting appeal by extraordinary writ to the Utah Supreme Court "if possible," means exactly what it says. If it is possible for a writ to be sought in the Utah Supreme Court, that is an appropriate alternative.

40.In this case, there is neither a rule nor statute that precludes pursuit of a writ in

the Utah Supreme Court, and there has been no factual or legal argument suggesting that pursuit of an extraordinary writ would be or was impossible.

41.To the contrary, the undisputed facts and controlling law expressly provide that pursuit of an extraordinary writ to the Utah Supreme Court is available to the petitioners.

42.If it is not possible for a party to pursue a writ in the Utah Supreme Court, then a Court would analyze whether the appeal can be brought in the district court.

43.It may very well be that the impossibility of pursuing the writ in the Utah Supreme Court is the result of a prohibition that exists by statute or otherwise. But in this case, the language "if possible" does not change the condition imposed on the district court's jurisdiction.

44.There has been no showing or argument, legal or factual, of any impossibility to bring the writ in the Utah Supreme Court. Thus, the language is not determinative of any question before this Court today.

45.The *Anderson* case doesn't suggest it is impossible to bring an extraordinary writ in the Utah Supreme Court, it held only that under the language of Utah Code § 20A-7-607, relief could also be sought in the district court

46.The language "if possible" does not constitute either an enhancement to, or a limitation of, the appellate jurisdiction of the district court.

47.The Court rules in this case that the Petitioners were not prohibited from pursuing an extraordinary writ in the Utah Supreme Court. Rule 19 does not constitute a prohibition against seeking a writ in the Supreme Court.

48.Because the Petitioners were not prohibited from pursuing an appeal by extraordinary writ to the Utah Supreme Court, the condition on this Court's appellate jurisdiction contained in Utah Code § 20A-7-602.8(4)(a)(ii) is not met.

49.Accordingly, the statute does not provide this Court with jurisdiction, appellate or otherwise, to consider the Petitioners' appeal, and a motion to dismiss for want of jurisdiction is appropriate.

ORDER AND FINAL JUDGMENT

Based on the foregoing, it is hereby ORDERED, ADJUDGED, AND DECREED THAT this Court lacks jurisdiction over the appeal filed by Petitioners. WPR's motion to dismiss for lack of jurisdiction is granted, and Petitioners' appeal is dismissed with prejudice. WPR's complaint in intervention is dismissed without prejudice as moot.

*** * * END OF ORDER * * ***
Pursuant to Rule 10(e) of the Utah Rules of Civil Procedure, this order will be Entered by the Court's signature at the top of the first page.

Approval as to Form:

No objection served or filed within 7 days of service of proposed order on 3/24/2020
Richard H. Reeve, Esq.
REEVE LAW, P.C.
Attorney for Petitioners

Approved via email on 3/31/2020
Jann L. Farris
MORGAN COUNTY ATTORNEY
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct of copy of the foregoing **ORDER GRANTING MOTION TO DISMISS FOR LACK OF JURISDICTION AND FINAL JUDGMENT** was served to the following this 1st day of April 2020, in the manner set forth below:

[x] Electronic Filing

[ ] Hand Delivery

[ ] U.S. Mail, postage prepaid

[ ] Fed-Ex Priority Overnight

[ ] E-mail: jfarris@morgan-county.net; rreeve@reevelawgroup.com

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/s/ Lisa D. Brown

Addendum B

West's Utah Code Annotated
Title 20a. Election Code
Chapter 7. Issues Submitted to the Voters
Part 6. Local Referenda--Procedures

U.C.A. 1953 § 20A-7-602.8

§ 20A-7-602.8. Referability to voters of local land use law

Effective: May 14, 2019
Currentness

(1) Within 20 days after the day on which an eligible voter files an application to circulate a referendum petition under Section 20A-7-602 for a land use law, the county, city, town, or metro township to which the referendum pertains shall:

(a) review the application to determine whether the proposed referendum is legally referable to voters; and

(b) notify the first three sponsors, in writing, whether the proposed referendum is:

(i) legally referable to voters; or

(ii) rejected as not legally referable to voters.

(2) For a land use law, a proposed referendum is legally referable to voters unless:

(a) the proposed referendum challenges an action that is administrative, rather than legislative, in nature;

(b) the proposed referendum challenges a land use decision, rather than a land use regulation, as those terms are defined in Section 10-9a-103 or 17-27a-103;

(c) the proposed referendum challenges more than one law passed by the local legislative body; or

(d) the application for the proposed referendum was not timely filed or does not comply with the requirements of this part.

(3) After the end of the 20-day period described in Subsection (1), a county, city, town, or metro township may not, for a land use law:

(a) reject a proposed referendum as not legally referable to voters; or

(b) except as provided in Subsection (4), challenge, in a legal action or otherwise, a proposed referendum on the grounds that the proposed referendum is not legally referable to voters.

(4)(a) If a county, city, town, or metro township rejects a proposed referendum concerning a land use law, a sponsor of the proposed referendum may, within seven days after the day on which a sponsor is notified under Subsection (1)(b), challenge or appeal the decision to:

(i) the Supreme Court, by means of an extraordinary writ, if possible; or

(ii) a district court, if the sponsor is prohibited from pursuing an extraordinary writ under Subsection (4)(a)(i).

(b) Failure of a sponsor to timely challenge or appeal a rejection under Subsection (4)(a) terminates the referendum.

(5) If, on challenge or appeal, the court determines that the proposed referendum is legally referable to voters, the local clerk shall comply with Subsection 20A-7-604(2) within five days after the day on which the determination, and any challenge or appeal of the determination, is final.

Credits

Laws 2019, c. 203, § 27, eff. May 14, 2019.

U.C.A. 1953 § 20A-7-602.8, UT ST § 20A-7-602.8
Current through 2020 Fifth Special Session. Some statutes sections may be more current, see credits for details.

End of Document

Addendum C

Rule 19. Extraordinary writs.

(a) Petition for extraordinary writ to a judge or agency; petition; service and filing. An application for an extraordinary writ referred to in Rule 65B, Utah Rules of Civil Procedure, directed to a judge, agency, person or entity shall be made by filing a petition with the clerk of the appellate court. Service of the petition shall be made on the respondent judge, agency, person, or entity and on all parties to the action or case in the trial court or agency. In the event of an original petition in the appellate court where no action is pending in the trial court or agency, the petition shall be served personally on the respondent judge, agency, person or entity and service shall be made by the most direct means available on all persons or associations whose interests might be substantially affected.

(b) Contents of petition and filing fee. A petition for an extraordinary writ shall contain the following:

(b)(1) A statement of all persons or associations, by name or by class, whose interests might be substantially affected;

(b)(2) A statement of the issues presented and of the relief sought;

(b)(3) A statement of the facts necessary to an understanding of the issues presented by the petition;

(b)(4) A statement of the reasons why no other plain, speedy, or adequate remedy exists and why the writ should issue;

(b)(5) Except in cases where the writ is directed to a district court, a statement explaining why it is impractical or inappropriate to file the petition for a writ in the district court;

(b)(6) Copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition;

(b)(7) A memorandum of points and authorities in support of the petition; and

(b)(8) The prescribed filing fee, unless waived by the court.

(b)(9) Where emergency relief is sought, the petition must comply with Rule 23C(b), including any additional requirements set forth by that subpart.

(b)(10) Where the subject of the petition is an interlocutory order, the petition must state whether a petition for interlocutory appeal has been filed and, if so, summarize its status or, if not, state why interlocutory appeal is not a plain, speedy or adequate remedy.

(c) Response to petition . The judge, agency, person, or entity and all parties in the action other than the petitioner shall be deemed respondents for all purposes. Two or more respondents may respond jointly. If any respondent does not desire to appear in the proceedings, that respondent may advise the clerk of the appellate court and all parties by letter, but the allegations of the petition shall not thereby be deemed admitted. Where emergency relief is sought, Rule 23C(d) shall apply. Otherwise, within seven days after service of the petition, any respondent or any other party may file a response in opposition or concurrence, which includes supporting authority.

(d) Review and disposition of petition. The court shall render a decision based on the petition and any timely response, or it may require briefing or the submission of further information, and may hold oral argument at its discretion. If additional briefing is required, the briefs shall comply with Rules 24 and 27. Rule 23C(f) applies to requests for hearings in emergency matters. With regard to emergency petitions submitted under Rule 23C, and where consultation with other members of the court cannot be timely obtained, a single judge or justice may grant or deny the petition, subject to review by the court at the earliest possible time. With regard to all petitions, a single judge or justice may deny the petition if it is frivolous on its face or fails to materially comply with the requirements of this rule or Rule 65B, Utah Rules of Civil Procedure. The denial of a petition by a single judge or justice may be reviewed by the appellate court upon specific request filed within seven days of notice of disposition, but such request shall not include any additional argument or briefing.

(e) Transmission of record. In reviewing a petition for extraordinary writ, the appellate court may order the record, or any relevant portion thereof, to be transmitted.

(f) Number of copies. For a petition presented to the Supreme Court, petitioner shall file with the clerk of the court an original and five copies of the petition. For a petition pending in the Supreme Court, respondent shall file with the clerk of the court an original and five copies of the response. For a petition presented to the Court of Appeals, petitioner shall file with the clerk of the court an original and four copies of the petition. For a petition pending in the Court of Appeals, respondent shall file with the clerk of the court an original and four copies of the response.

(g) Issuance of extraordinary writ by appellate court sua sponte. The appellate court, in aid of its own jurisdiction in extraordinary cases, may issue a writ of certiorari sua sponte directed to a judge, agency, person, or entity. A copy of the writ shall be served on the named respondents in the manner and by an individual authorized to accomplish personal service under Rule 4, Utah Rules of Civil Procedure. In addition, copies of the writ shall be transmitted by the clerk of the appellate court, by the most direct means available, to all persons or associations whose interests might be substantially affected by the writ. The respondent and the persons or associations whose interests are substantially affected may, within four days of the issuance of the writ, petition the court to dissolve or amend the writ. The petition shall be accompanied by a concise statement of the reasons for dissolution or amendment of the writ.