In the Utah Supreme Court

John Bleazard, Mark Bleazard, and Six Mile Ranch Company, *Plaintiffs-Appellees*, v. Deidre Henderson, Utah Lieutenant Governor, *Defendant-Appellant.*	**No. 20221009-SC**

Appellant's Brief

On interlocutory appeal from the Third Judicial District Court
Case No. 220300134, the Honorable Teresa L. Welch

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Other parties in the district court proceeding:

City of Erda, which is the appellant in the interlocutory appeal

Bleazard v. City of Erda, No. 20221008-SC

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Introduction

To incorporate, a city must complete a process defined by the Utah Municipal Incorporation Code. That process involves several steps, including two elections, and concludes with the Lieutenant Governor issuing a certificate of incorporation.

Appellees (Landowners) own land in Erda. After Erda completed the incorporation process, Landowners filed this lawsuit, claiming the proponents (Sponsors) of Erda's incorporation and Lt. Governor violated the Incorporation Code. For relief, Landowners seek a judicial declaration invalidating Erda's certificate of incorporation.

The Lt. Governor moved to dismiss because the Municipal Incorporation Code doesn't give Landowners a right of action to challenge Erda's incorporation. Landowners agreed they lack a statutory right of action. But they argued they can challenge Erda's incorporation without one, relying on section 10-2a-217(2)(b)(ii) of the Municipal Incorporation Code and principles of constitutional standing.

Section 10-2a-217(2)(b)(ii) presumes an incorporation is lawful unless a "challenge" is brought within two years. Because the Municipal Incorporation Code refers to a "challenge" in section 10-2a-217(2)(b)(ii) but doesn't provide a right of action to bring a challenge, Landowners theorized they can bring a challenge if they have traditional standing. The district court agreed.

The district court's ruling departs from this Court's precedent. Under that precedent, Landowners cannot enforce the Municipal Incorporation Code unless the Code gives them a right of action. Because the Code doesn't do that, this Court should reverse.

Statement of the Issues

1. Did the district court err by ruling that section 10-2a-217(2)(b)(ii) and "traditional standing considerations" give Landowners a right to challenge Erda's incorporation, R. 478, 484-85?

Preservation: The Lt. Governor raised and preserved this issue in her motion to dismiss and its supporting memoranda. R. 134, 142-44, 333-36, 367-70.

Standard of Review: The denial of a motion to dismiss for a failure to state a claim is a question of law, which this Court reviews for correctness, giving no deference to the district court. *Christiansen v. Harrison W. Constr. Corp.*, 2021 UT 65, ¶ 10, 500 P.3d 825.

Statement of the Case[1]

Incorporation requirements

Title 10, Chapter 2a, Part 2 of the Utah Code (Municipal Incorporation Code) defines the requirements for incorporating cities. *See* R. 480. Those requirements include:

- defining boundaries of the area to be incorporated;
- soliciting signatures from landowners for feasibility study request;[2]
- requesting and completing a feasibility study;
- holding public hearings on the feasibility study;
- submitting petition to incorporate;
- holding an election on whether to incorporate;
- holding another election to select city officials (e.g., mayor, council);
- submitting notice of impending boundary action & final entity plat;

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[1] Because of this case's posture, this Statement relies on facts in Landowner's complaint. *Dow v. Gilroy*, 910 P.2d 1249, 1250 (Utah Ct. App. 1996) (stating that on "appeal from denial of a motion to dismiss, all material allegations of the petition are taken as true, and we recite the facts accordingly"). It also relies on district court's description of the facts. R. 475 n.1 (confirming that its ruling "describes the facts in this case" mindful of the standard of review for a motion to dismiss).

[2] A feasibility study estimates the average annual revenue and costs of the proposed municipality over five years. *See* Utah Code §§ 10-2a-205(4)(iv)-(v) (2018). A petition to incorporate may not be filed unless the feasibility study or a supplemental study shows that the projected annual revenue exceeds the projected annual costs "by more than 5%." *Id.* § 10-2a-208(3).

- issuing a certificate of incorporation

See R. 480-81 (citing Utah Code §§ 10-2a-208, -210).

Erda's incorporation process – initial stages

In 2018, Sponsors organized to incorporate an area known as Erda into a city. R. 40. To initiate the incorporation process, the Sponsors prepared a request for a feasibility study. *See* R. 40-41; Utah Code § 10-2a-202(1) (2018) (noting that incorporation process as a city "is initiated by [filing] a request for a feasibility study . . . with the Office of the Lieutenant Governor.").[3]

A feasibility study request must bear the signatures of the owners of 10% of private land by area and 7% of private land by value within the proposed city boundaries. Utah Code § 10-2a-202(2)(a). To comply with that requirement, the Sponsors gathered signatures from landowners within Erda's proposed boundaries. R. 41.

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[3] The 2018 version of the Incorporation Code applies to this case. Utah Code § 10-2a-106(3) (stating that if "a feasibility request for incorporation of a city is filed before May 14, 2019, the process for incorporating the city . . . [is] subject to the municipal incorporation law in effect" when the request is filed); *see* R. 203-204 (Ruling and Order, *Sorenson v. Houghton*, Third District Court, Tooele County, No. 210301631 ("The law governing Erda's incorporation process is the law in place when the incorporation process, i.e., when the feasibility study was requested in 2018."). All subsequent citations the Municipal Incorporation Code refer to the 2018 version, unless otherwise stated.

The Bleazards endorse the request for feasibility study

The Bleazards own residential land within Erda's boundaries. R. 40, 475. And they each own a minority stake in Six Mile Ranch, which owns 6,000 acres within Erda's boundaries. R. 40, 42, 475.

The Bleazards signed the feasibility study request. R. 40, 43. Handwritten in the margins of the signature page, with arrows to the Bleazards' signatures, were the words, "Owners of 'Six Mile Ranch'" (Marginal Note). R. 43. Landowners allege the Sponsors made the Marginal Note. R. 43.

Erda completes the incorporation process

The Sponsors submitted the Erda feasibility study request, with supporting signatures, to the Lt. Governor's Office (LGO) for certification. R. 43. The Lt. Governor granted that request, allowing the feasibility study to proceed. R. 476; Utah Code §§ 10-2a-204(1)(b),-205. A consultant completed the feasibility study, with Six Mile Ranch's land in Erda's proposed boundaries. *See* R. 476.

After public hearings on the feasibility study,[4] the Sponsors filed with the LGO a petition to incorporate, R. 43, under another signature requirement. Utah Code § 10-2a-208(2)(a) (requiring incorporation petition to be signed by 10% of registered voters within proposed incorporated area and in 90% of the voting precincts in that area); *id.* § 10-2a-208(4) (allowing signatures on feasibility study request "to be used toward fulfilling the signature requirement" for a petition to incorporate in some cases).

The Lt. Governor certified the petition and set the incorporation election for November 2020. *See* R. 476. At that election, voters approved Erda's incorporation. R. 476.

Six Mile Ranch then sued the Lt. Governor to invalidate the incorporation election, but the court dismissed that action "for failure to state a claim." R. 476.

The incorporation process proceeded and, in the 2021 general election, voters selected Erda's municipal officers. *See* R. 47. To complete the incorporation process, the newly-elected Erda officials were required to file

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[4] The Lt. Governor was required to hold two public hearings on the results of the Erda feasibility study to "allow the public to express its views about the proposed incorporation, including its view of the proposed boundary," Utah Code § 10-2a-207(2)(c), after publishing notice of the public hearings and a summary of the feasibility study, *id.* § 10-2a-207(3). The Landowners don't claim that the Lt. Governor violated these requirements.

with the LGO a notice of impending boundary action, and a final entity plat approved by the county surveyor, within thirty days of the election canvas (i.e., by December 16, 2021). R. 47; Utah Code § 10-2a-217(1)(a). They didn't file the final entity plat until two weeks after the deadline because they had to obtain a court order compelling the Tooele County surveyor to approve the plat. R. 47; R. 200, 207 (Ruling and Order, *Sorenson*).[5] The court that issued the order determined that the Tooele County surveyor's reasons for refusing to approve the final entity plat were "without merit" and that his wrongful refusal had precluded Erda from submitting a final entity plat by December 16. R. 200-01, 203.

In early January 2022, the Lt. Governor certified Erda's incorporation, R. 40, ¶ 14, making the incorporation effective. Utah Code § 10-2a-217(2)(b)(i) (stating an "incorporation is effective upon the lieutenant governor's issuance of a certificate of incorporation").

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[5] The Lt. Governor refers to the *Sorenson* ruling because the complaint cites to and describes that ruling, R. 47, and an authentic copy of that ruling is part of the record, R. 197-207. *Oakwood Vill. LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 13, 104 P.3d 1226 (stating a court may consider document referenced in complaint if it is central to plaintiff's claim and defendant submits an "indisputably authentic copy" to the court).

The claim in this lawsuit

The Bleazards and Six Mile Ranch (Landowners) then filed this lawsuit. Asserting a single claim for relief under Utah Code § 78B-6-401 (Declaratory Judgment Act), Landowners seek a declaration invalidating the Lt. Governor's certification of Erda's incorporation. R. 48-49. As the district court noted, Landowners argue the certification should be invalidated for two reasons. R. 477.

First, Landowners contend the Sponsors made the Marginal Note on the request for feasibility study "in an effort to misrepresent the capacity in which [the Bleazards'] signed the document" and "to indicate that [the Bleazards] signed on behalf of Six Mile Ranch." R. 42-43, ¶¶ 29-30. Thus, Landowners claim the signatures for Six Mile Ranch were "fraudulent" and the "signature requirements were not met for either the Request for Feasibility Study or for the Petition for Incorporation." R. 45-46, ¶¶ 43, 48; *see also* R. 477 (noting complaint alleges the Sponsors lacked "the requisite signatures to allow the feasibility study or the proposed incorporation to proceed or to be approved by the Lieutenant Governor").

Second, Landowners allege the district court should invalidate the certification because the Erda didn't file a final entity plat with the notice of impending boundary action by the deadline. R. 477. Although Erda couldn't file a final entity plat by the deadline because they had to obtain an order

compelling the county surveyor to approve the plat, R. 47, ¶ 53; R. 201, Landowners claim that "nothing in the Municipal Code allows the Lieutenant Governor to extend the deadline." R. 47, ¶ 55.

District court denies motions to dismiss

The Lt. Governor and Erda (defendants) each moved to dismiss on several grounds, including that Landowners failed to plead a right of action for invalidating Erda's incorporation.[6] R. 474. Landowners' invocation of the Declaratory Judgment Act in their complaint doesn't suffice, the Lt. Governor argued, because the Act's "'creation of relief in the form of a declaratory judgment does not create a cause of action" R. 142 (quoting *Jenkins v. Swan*, 675 P.2d 1145, 1148 (Utah 1983)).

The Lt. Governor also argued the Incorporation Code did not provide a right of action for challenging incorporations and so Landowners lacked statutory standing to assert their statutory claims. R. 143-44 (citing *McKitrick v. Gibson*, 2021 UT 48, ¶ 48, 496 P.3d 147).

Landowners' counterarguments revealed some areas of agreement with the Lt. Governor. They conceded, at oral argument, that the "Declaratory Judgment Act . . . is not a cause of action in and of itself," R. 1003. And they

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[6] Because Erda has separately appealed the denial of its motion to dismiss, *Bleazard v. City of Erda*, No. 20221008-SC, the Lt. Governor doesn't summarize Erda's arguments except as needed for clarity.

agreed that the Incorporation Code does not give them a mechanism for challenging Erda's incorporation. *See* R. 300 (acknowledging the Incorporation Code "does not contain a statutory process for challenging municipal incorporations"); R. 908 (noting the "incorporation code does not provide a mechanism or scheme as to how you pursue judicial relief or challenge" an incorporation); R. 1004 (stating that "nothing in all of 10-2a [provides] a mechanism for making" a "challenge to the validity of an incorporation").

Going even further, Landowners conceded they were "not aware of another "statute that would give that right" to challenge the validity of an incorporation. R. 1007 (noting that if "there was [a statute], we would cite it to your Honor"). Thus, Landowners acknowledged they couldn't assert and weren't asserting a "statutory claim" because the legislature "did not set up the statutory framework." R. 1016-17.

But Landowners disagreed with the Lt. Governor's position that the absence of a statutory right of action for challenging an incorporation required dismissal of their complaint. According to them, *McKitrick* held that a plaintiff must establish statutory standing in addition to traditional standing only when a statute provides a right of action identifying who may sue. *See* R. 299-300, 902. Because the incorporation code doesn't provide a

private right of action, Landowners argued they didn't have to establish statutory standing to challenge Erda's incorporation. *See id*.

Landowners also argued that a non-statutory right of action must exist because the legislature "recognize[d] that challenges to incorporation may be pursued" in section 10-2a-217(2)(b)(ii). R. 300 (noting section 10-2a-217(2)(b)(ii) provides that a "municipality is only conclusively presumed to be validly incorporated" if "no *challenge to the existence or incorporation* of the municipality has been filed in the district court" within two years) (emphasis added).[7]

In their opposition to the motion to dismiss and the first hearing on the motion, Landowners argued that to have the right to challenge Erda's incorporation, they merely needed to demonstrate they have constitutional (traditional or alternative) standing. R. 300 (citing *S. Utah Wilderness All. v. Kane County Comm'n*, 2021 UT 7, ¶¶ 22-30, 484 P.3d 1146), 902-903, 908-09.

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[7] To be clear, Landowners didn't argue that section 10-2a-217(2)(b)(ii) gives them a right of action to challenge Erda's incorporation. To the contrary, when the district court asked Landowners if they were arguing that "section 217 gives them th[e] right" to "ask this Court to invalidate the certification of Erda," R. 1005, Landowners' counsel responded: "I'm not so sure that 217 really gives us the right to challenge [Erda's incorporation]. It recognizes that the right exists." R. 1006-7. As for the source of that right, Landowners told the district court "to look to traditional standing in the common law to determine whether that incorporation is or is not valid." R. 1007.

But later, during a supplemental hearing on the motion, Landowners modified their argument by acknowledging that they must have a common law right of action on top of constitutional standing. R. 1004 (stating that because the Incorporation code doesn't provide a mechanism for challenging an incorporation, "you have to refer to common law causes of action and common law rights"); *see also* R. 1016 (stating that because of the "void" in the Incorporation Code, "you have to look to traditional notions of standing *and* common law") (emphasis added); R. 1017 ("you have to look for traditional notions of standing and common law"); R. 1102 ("sum[m]ing up" Landowners' position and again advising the district court to "look to traditional notions of standing and common law"). But Landowners didn't allege a common law right of action. R. 38-54.

After oral argument on the motions to dismiss but before the district court ruled, Landowners moved to amend their complaint to add a claim under rule 65B(c)(2), claiming that Erda conceded at oral argument that extraordinary relief was potentially available to Landowners. R. 424, 431, 448-49. Defendants opposed the motion to amend. R. 513-14, 619.[8]

[8] The district court stayed the case pending appeal without ruling on Landowners' motion to amend.

The district court denied defendants' motions to dismiss. R. 474-488, Addendum 1. Defendants filed petitions for interlocutory appeal and this Court granted both petitions. *See Bleazard v. City of Erda*, No. 20221008-SC.

Summary of the Argument

This Court should reverse the district court's ruling denying the Lt. Governor's motion to dismiss. Landowners claim Erda's incorporation process violated the Municipal Incorporation Code and, on that basis, seek a declaration invalidating Erda's incorporation.

But the Municipal Incorporation Code doesn't give Landowners a right of action to sue to enforce the Code. Landowners conceded that. Yet the district court ruled that Landowners could proceed with their claim without a statutory right of action because they alleged an injury sufficient to satisfy the traditional standing test.

That ruling violates established precedent. Under that precedent, the absence of a statutory right of action is fatal to Landowners' claim.

Argument

This Court should reverse the district court's ruling denying the Lieutenant Governor's motion to dismiss. Although Landowners conceded they lack a statutory right of action to challenge Erda's incorporation, e.g., R. 300, 908-09, 1003, 1016-17, the district court erroneously accepted the Landowners argument that they don't need one.

I. The absence of a private right of action is fatal to Landowners' claim

The district court should have dismissed Landowners' claim because they lack a statutory right of action.

Landowners base their lone claim for declaratory relief on violations of the Municipal Incorporation Code. R. 45-49, 477. They claim: (1) the request for feasibility study and petition for incorporation for Erda violated the statutory signature requirements, and (2) Erda violated the statutory deadline for filing a final entity plat. R. 477. Landowners don't allege any violations of the common law or a constitutional provision.

To proceed with a declaratory judgment claim grounded on statutory violations, Landowners must have a statutory right of action. *See Miller v. Weaver*, 2003 UT 12, ¶¶ 16, 25, 66 P.3d 592 (affirming dismissal of declaratory judgment claim alleging statutory violations because statute didn't expressly or impliedly grant right of action). Without a statutory right of action, Landowners lack a legally protectible interest in the controversy, *see id.*, which is one of the "threshold elements to be satisfied before [courts] may proceed with a declaratory judgment action," *see id.* ¶ 15.

Fatal to their claim, Landowners disavowed any reliance on a statutory right of action. *See* R. 1016-17 (acknowledging they couldn't assert and weren't asserting a "statutory claim" because the legislature "did not set up

the [necessary] statutory framework"). Relying on a statutory right of action wasn't an option because, as the Lt. Governor argued and Landowners conceded, *see e.g.*, R. 300, 908, 1003, the legislature didn't provide one. As Landowners acknowledged, the reference to a "challenge" in section 10-2a-217(2)(b)(ii) doesn't give them the right to challenge Erda's incorporation. *See supra* n.7; *cf Miller*, 2003 UT 12, ¶ 21 (stating "we must require more than a mere allusion to 'civil action[s]'" in a statute "as evidence of a legislative intent to impart substantive rights").

Thus, the district court should have dismissed this case.

II. The district court's ruling improperly allows Landowners' claim to proceed without a private right of action

This Court should reverse the district court's ruling because it permits Landowners to proceed without a private right of action. That ruling accepts Landowners' argument that their claim may proceed without one because they have traditional standing. That's wrong.

To arrive at the conclusion that their traditional standing allows them to proceed, Landowners relied on section 10-2a-217(2)(b)(ii).[9] Landowners

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[9] As the district court noted, section 10-2a-217(2)(b)(ii) says "'a municipality is conclusively presumed to be lawfully incorporated and existing if, for two years following the municipality's incorporation . . . (ii) no challenge to the [existence or] incorporation of the municipality has been filed in the district court for the county in which the municipality is located.'" R. 478 (Utah Code § 10-2a-217(2)(b)(ii) (2019)). The 2018 version is substantially

conceded section 10-2a-217(2)(b)(ii) doesn't provide a right of action. *See supra* n.7. But they argued that because section 10-2a-217(2)(b)(ii) refers to a challenge to an incorporation, it recognizes "an incorporation may be challenged" without a statutory right of action "for effectuating a challenge." R. 300. From that, Landowners posited that they simply needed to show they have traditional standing to challenge Erda's incorporation. R. 300-01.[10]

The district court agreed with Landowners. Because section 10-2a-217(2)(b)(ii) "specifically refers to a '*challenge* to the existence or incorporation of [a] municipality'" and "precludes someone from raising a challenge to an incorporation" after two years, the district court reasoned that it "logically follows that there would be some grounds for someone to raise a legal and successful challenge to an incorporation *before* the two-year deadline was triggered." R. 484 (Utah Code § 10-2a-217(2)(b)(ii) (2019)) (brackets in original). And because section 10-2a-217 is silent as to who may

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the same. It differs only in that it uses the term "city" rather than "municipality." Utah Code § 10-2a-217(2)(b)(ii) (2018).

[10] This paragraph summarizes Landowner's argument from its written opposition to the motion to dismiss because that was the argument adopted by the district court. Yet, Landowners retreated from that argument at the supplemental (final) hearing on the motion, telling the district court "you have to refer to common law causes of action and common law rights" on top of traditional standing. R. 1004. But they didn't allege a common law cause of action or a violation of their common law rights.

raise a challenge to the incorporation," the district court determined that "traditional standing considerations apply when the Court determines who has the right to raise a challenge to Erda's incorporation." R. 485.

This Court should reject the district court's reasoning and conclusion.

First, the district court read too much into section 10-2-217(2)(b)(ii). Under that section, a city can't rely on the conclusive presumption against challenges brought within two years of incorporation. From that premise, it does not logically follow that a party may enforce the Municipal Incorporation Code without a private right of action because they have traditional standing. And the district court's leap in logic lacks legal support.

The district court's treatment of section 10-2-217(2)(b)(ii) and its reference to "challenges" deviates from this Court's treatment of the statute in *Miller*, which had a similar reference. In *Miller*, the plaintiff invoked a statute that provided a "civil action" could not be brought for "'at least 60 days'" after certain events. 2003 UT 12, ¶¶ 18-21 (quoting Utah Code § 53A–7–202(1) (1997)). When this Court determined that the statute's reference to a "civil action" did not grant a private right of action to sue for a statutory violation, it affirmed the dismissal of plaintiff's declaratory judgment claim. *Id.* ¶ 25. It did not say the claim could proceed if plaintiff had traditional standing. A federal district court likewise dismissed a case involving a Utah criminal statute that said a prosecution "does not affect an individual's right

to bring a civil action." *Nunes v. Rushton*, 299 F. Supp. 3d 1216, 1237-38 (D. Utah 2018) (quoting Utah Code § 76–9–201(4)(a)) (ruling a claim failed as a matter of law after determining that statute's reference to a "civil action" does not create a cause of action).[11]

The district court also didn't adequately address *McKitrick*, which the Lt. Governor invoked in support of her motion to dismiss. R. 143-44. In *McKitrick*, this Court held a plaintiff suing to enforce GRAMA couldn't rely on traditional standing to sue because he didn't fall within the class of parties the legislature authorized to sue. *See* 2021 UT 48, ¶ 48. Because the district court's ruling permits Landowners to enforce the Municipal Incorporation Code without any legislative authorization to do so, the district court should have explained how its ruling squared with *McKitrick*. But it didn't. The district court cited *McKitrick* only one time—when setting forth the test for traditional standing. R. 485.

Just like *Miller*, *McKitrick* is on point and requires dismissal of Landowners' claim. Landowners tried to distinguish *McKitrick* on the ground that the statute in that case (GRAMA) provides a private right of action identifying who may sue, while the Incorporation Code does not. R. 299-300,

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[11] As noted, Landowners did not argue that section 10-2-217(2)(b)(ii)'s reference to a "challenge" creates or implies a private right of action. *See supra* n.7. Besides, *Miller* and *Nunes* make that argument untenable.

902. That is a distinction without a difference. *McKitrick* is legally indistinguishable from this case. In both cases the party suing isn't authorized to sue under the statute it seeks to enforce. In *McKitrick*, the plaintiff isn't authorized to sue because he doesn't fall in the class of individuals that GRAMA authorizes to sue. 2021 UT 48, ¶¶ 24, 41, 43. In this case, Landowners aren't authorized to sue because the Incorporation Code doesn't provide a private right of action authorizing anyone to sue. Because neither the plaintiff in *McKitrick* nor Landowners here have statutory authorization to sue, neither have a right of action. Without a right of action, they lack a "protectible interest" and may not proceed with their claim. *Miller*, 2003 UT 12, ¶¶ 16, 25.

Besides, to avoid dismissal, Landowners had to do more than distinguish *McKitrick*. They had to provide persuasive legal support for the proposition that traditional standing overcomes a lack of a private right of action when a party is suing to enforce a statute. But neither they nor the district court did that.

Landowners argued that one of this Court's recent opinions supported their position. R. 300 (citing *S. Utah Wilderness All. v. Kane Cnty. Comm'n,* 2021 UT 7, ¶¶ 22-30, 484 P.3d 1146); *see also* R. 799-800 (explaining *Kane*). They claimed that in *Kane* this Court "not[ed] that the Utah Open and Public Meetings Act ('OPMA') did not provide for a specific procedure to bring a

claim but conclude[ed] that the plaintiffs had standing to assert a claim of violation of the statute under traditional standing." R. 300.

Landowners misread *Kane*. This Court didn't note OPMA lacked a specific procedure or right of action to bring a claim. *See, e.g., Kane*, 2021 UT 7, ¶ 26. Rather, this Court noted OPMA provided a right of action to "compel compliance with or enjoin violations" to persons denied certain statutory rights (e.g., to receive notice of meetings). *Id.* (quoting Utah Code § 52-4-303(3)). What's more, this Court stated that OPMA must give plaintiff (SUWA) the right to sue for it to have the legally protectible interest necessary to proceed with its claims. *See id.* ¶¶ 24-25. And this Court determined OPMA gave SUWA that right. *Id.* ¶¶ 25, 30.

So SUWA had what Landowners lack: a statutory right to sue. Thus, Landowners don't have the legally protectible interest necessary to proceed with their claim. *Id.* ¶ 24; *Miller*, 2003 UT 12, ¶¶ 15, 16, 25.

Conclusion

For these reasons, this Court should reverse the district court's order denying the Lieutenant Governor's motion to dismiss and direct the district court to dismiss Landowners' claims against the Lt. Governor.

Respectfully submitted,

/s/ Andrew Dymek
Counsel for Appellant

Certificate of Compliance

1. This brief complies with the total type-volume limitations of Utah Rule of Appellate Procedure 24(g)(1) because this brief contains 5020 words, excluding the parts of the brief exempted by Rule 24(g)(2).

2. This brief complies with the typeface requirements of Utah Rule of Appellate Procedure 27(a) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Century Schoolbook font.

3. This brief complies with the non-public information requirements of Utah Rule of Appellate Procedure 21(h) because this brief contains no non-public information.

/s/ Andrew Dymek

Certificate of Service

I hereby certify that on July 13, 2023 a true and correct copy of the foregoing Appellant's Brief was filed with the Court and served via United States mail or electronic mail as follows:

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Addendum 1

Ruling on defendants' motions to dismiss

THIRD JUDICIAL DISTRICT COURT
TOOELE COUNTY, STATE OF UTAH

JOHN BLEAZARD, an individual, MARK BLEAZARD, an individual, and SIX MILE RANCH COMPANY, a Utah Corporation, Plaintiffs v. CITY OF ERDA, DEIDRE HENDERSON, in her capacity as Lieutenant Governor for the State of Utah, Defendants.	**RULING ON DEFENDANTS' MOTION TO DISMISS** Case No. 220300134 Judge Teresa L. Welch

Before the Court are two Motions to Dismiss: (1) Defendant City of Erda's Motion to Dismiss (Erda's Motion), and (2) Defendant Lieutenant Governor's Motion to Dismiss (Lt. Governor's Motion) (collectively, Defendants' Motions). Defendants' Motions ask the Court to dismiss this case on grounds that Plaintiffs' complaint fails to state a claim for which relief can be granted. Specifically, Defendants argue that (1) Utah's Municipal Code does not provide a means for the Plaintiffs to seek to invalidate the incorporation of Erda, (2) Plaintiffs lack standing, (2) Plaintiffs have not alleged a particularized injury, (3) Res judicata bars this action, (4) Plaintiffs are precluded from pursuing this action under the equitable doctrines of laches and unclean hands, (5) The Incorporation Sponsors and the Lt. Governor substantially complied with Utah Law, and (6) Plaintiffs remedies are limited to disconnection and dissolution relief only as outlined by the Utah Municipal Code.

By contrast, Plaintiffs ask the Court to deny the Motions to Dismiss on grounds that (1) Plaintiffs' claim for declaratory judgment relief is not preempted by Utah's Municipal Code, (2)

Plaintiffs meet traditional standing requirements, (3) Plaintiffs have sufficiently pleaded facts, including harm, to support their claim, and (4) Defendants arguments regarding res judicata, equitable doctrines, and 'substantial compliance' are not properly raised at a motion to dismiss stage, but that if this Court considers these arguments, Plaintiffs prevail on the merits of these various arguments.

The Court held hearings and heard arguments from Counsel on July 21, 2022 and September 29, 2022. After carefully considering the arguments of Counsel, after reviewing the briefing (including the supplemental briefing) and after reviewing pertinent and controlling law, the Court now **DENIES** the Defendants' Motions to Dismiss for the following reasons:

PERTINENT BACKGROUND[1]

The Plaintiffs in this case are John Bleazard, Mark Bleazard, and Six Mile Ranch Company. Per Plaintiffs' Amended Complaint, John Bleazard and Mark Bleazard own residential real property within Erda's boundaries, and they are also minority shareholders of Six Mile Ranch Company. *See* Am.Compl, ¶¶ 10, 11. Moreover, Six Mile Ranch Company owns nearly 6,000 acres of real property within Erda's incorporated area. *See id*, at ¶ 12.

In October of 2018, a group of Erda citizens organized to incorporate the City of Erda. As a means of initiating the incorporation process, the citizens submitted a Request for Feasibility Study (Request). Utah law required the Request to be signed by pertinent owners of private real property. *See id.*, at ¶ 12; *see also* Utah Code § 10-2-202(1)(a). Mark and John Bleazard both signed the Request, though it is disputed by the Parties whether they each signed it on behalf of their own personal real property, or whether they signed it on behalf of Six Mile Ranch. *See* Am.

[1]When deciding a Rule 12(b)(6) Motion to Dismiss, the Court must view the facts and all reasonable inferences drawn therefrom in the light most favorable to the non-movant (Plaintiffs are the nonmovants for purposes of these Motions). *See Legal Tender Servs. PLLS v. Bank of Am. Fork,* 2022 UT App 26, 506 P.3d 1211, 1215. The Court now describes the facts of this case with this standard in mind.

Compl. ¶¶ 21-231; *see also* Lt. Governor's Motion, at 4-5. The Lt. Governor's Office subsequently granted the Request, and the pertinent feasibility study was completed in early February of 2020. A petition for the incorporation of Erda was then placed on the ballot. *See* Lt. Governor's Motion, at 5, Erda's Motion, at ¶ 4.

In April of 2020, John and Mark Bleazard contacted the Lt. Governor's Office to contest the inclusion of Six Mile Ranch as part of Erda City boundaries. *See* Am. Compl. ¶ 36; Erda's Motion, at ¶ 7. Afterwards, on October 14, 2020, John and Mark Bleazard sent letters to the Lt. Governor's Office to protest the inclusion of their personal properties as part of Erda City boundaries. *See* Erda's Motion, at ¶ 8. At some point, the Lt. Governor's Office acknowledged that the Request for Feasibility Study was deficient without the assent of Six Mile Ranch; moreover, that the Office had not "seen any indication… that Mark or John [Bleazard] intended their signature[s] to count for all of Six Mile Ranch." *See* Am. Compl. ¶ 35. In addition, at some point, the Lt. Governor's Office told Erda Sponsors that if John and Mark Bleazard signed the Request on behalf of only their personal property parcels, "then there is an argument that the original petition should not have been certified, and that could be grounds for someone to challenge the validity of the election if the votes are in favor of incorporation." *See id.* at 37.

On November 3, 2020, a general election was held and citizens voted to pass the initiative to incorporate the City of Erda. *See id.*, at ¶ 9. In December of 2020, Six Mile Ranch filed an action seeking to invalidate the incorporation election results; the action was dismissed for failure to state a claim. *See* Erda's Motion, at ¶ 11; *see also Six Mile v. Diedre Henderson*, Case 200301695, Third District Court, State of Utah. The Lieutenant Governor certified the incorporation of Erda on or about January 3, 2022.

In this case, Plaintiffs argue that the Lieutenant Governor's certification of incorporation for Erda City is invalid. *See* Am. Compl., ¶¶ 6,39-62. Specifically, Plaintiffs claim that Erda's incorporation did not satisfy statutory requirements where, in part, the Request for Feasibility Study was improperly based on material misrepresentations of landowner signatures and fraudulent signatures on Six Mile Ranch's behalf. *See id.*, ¶¶ 6,39-62. More specifically, Plaintiffs allege that (1) the Request for Feasibility Study and the subsequent Petition for Incorporation did not contain the requisite signatures to allow the feasibility study or the proposed incorporation to proceed or to be approved by the Lieutenant Governor, *see id.* at ¶¶ 44-48, and that (2) Erda did not timely make submissions to complete its incorporation where the Sponsors for Erda did not submit a notice of impending boundary action with an approved final local entity plat by December 16, 2021 (i.e., Petitioners raise untimely notice concerns), *see id.* at ¶¶ 49-57.

MOTION TO DISMISS STANDARD

Under Utah law, when addressing a motion to dismiss under Utah Rule of Civil Procedure 12(b)(6), a district court must accept the factual allegations in a complaint as true and draw all reasonable inferences in a light most favorable to the non-moving party—in this case, Plaintiffs. *See Oakwood Vill., LLC v. Albertsons, Inc.*, 2004 UT 101, ¶9, 104 P.3d 1226. The Court's inquiry is concerned solely with the sufficiency of the pleadings and not the merits of the underlying claims. *Id.*, ¶8. "'A dismissal is a severe measure and should be granted by the trial court only if it is clear that a party is not entitled to relief under any state of facts which could be proved in support of its claim.'" *Mackey v. Cannon*, 2000 UT App 36, ¶9, 996 P.2d 1081. "The purpose of a rule 12(b)(6) motion is to challenge the formal sufficiency of the claim for relief, not to establish the facts or resolve the merits of a case, and accordingly, dismissal is justified only when the

allegations of the complaint clearly demonstrate that the plaintiff does not have a claim." *Kirkham v. Widdison*, 2019 UT App 97, ¶22, 447 P.3d 89.

DISCUSSION

I. The Utah Municipal Code Allows Plaintiffs to Challenge the Incorporation of Erda.

Defendants argue that the Utah Municipal Code does not allow Plaintiffs the ability to request that Erda's incorporation be invalidated. Defendants further argue that now that Erda's incorporation has occurred, the municipal code now only provides Plaintiffs an opportunity to pursue the remedies of disconnection or disincorporation (but not the right to seek the invalidation of the incorporation). By contrast, Plaintiffs argue that Section 10-2a-217(2)(b)(ii) of the Utah Municipal Code, and traditional standing considerations, provides them a means to challenge the incorporation and request its invalidation. Plaintiffs also argue that disconnection and disincorporation are remedies, but not exclusive remedies, that the municipal code provides.

The plain language of Section 10-2a-217(2)(b)(ii) of Utah's Municipal Code, upon which Plaintiffs rely to challenge Erda's incorporation, states the following:

> (b) Notwithstanding any other provision of law, a municipality is conclusively presumed to be lawfully incorporated and existing if, for two years following the municipality's incorporation…(ii) no challenge to the incorporation of the municipality has been filed in the district court for the county in which the municipality is located.
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> Utah Code § 10-2-217(2)(b)(ii) (2019).

Plaintiffs ask this Court to read Section 10-2a-217(2)(b)(ii) as permitting them to raise a challenge to Erda's incorporation so long as their challenge is raised within two years of the incorporation. By contrast, Defendants argue that the plain language of this statute lacks any language that expressly grants a private citizen the right to challenge an incorporation.[2]

[2] At the September 29, 2022 hearing, Defendants' Counsel appeared to concede during oral arguments (regarding the supplemental briefing) that Section 10-2a-217(2)(b)(ii) would permit a Governmental agency the right to

Defendants also argue that that in applying section (2)(a) of the statute, a challenge to incorporation is not permitted by anyone once the Lieutenant Governor issues a certificate of incorporation. *See* Utah Code § 10-2-217(2)(a) (stating that "[t]he incorporation of a new municipality is effective upon the lieutenant governor's issuance of a certificate of incorporation under Section 67-1a-6.5"); moreover, according to Defendants, section (2)(b) of this statute (and the language regarding a 'challenge' to an incorporation) only applies in those instances when certification by the Lieutenant Governor has not yet occurred.[3]

A. Cannons of Statutory Construction

In deciding the pending Motions to Dismiss, this Court is tasked with deciding whether Plaintiffs' claim for declaratory relief is preempted by the plain language of Section 10-2a-217 of Utah's Municipal Code. In doing so, the Court applies cannons of statutory interpretation as fleshed out in Utah law. First, according to the Utah Supreme Court, when a court is faced with a question of statutory interpretation, the "primary goal is to evince the true intent and purpose of the Legislature." *Duke v. Graham,* 2007 UT 31, ¶ 16, 158 P.3d 540; *see also State v. Davis*, 2011 UT 57, ¶21, 266 P.3d 765. Moreover, "[t]o discern legislative intent, [Utah courts] first look to the plain language of the statute... [and] read the language of the statute as a whole and also in its relation to other statutes." *Davis*, 2011 UT 57, ¶21. Thus, under the cannon of 'whole statute' interpretation, a court construes statutory provisions "in harmony with other provisions in the same statute and with other statutes under the same and related chapters." *State v. Schofield,* 2002 UT 132, ¶ 8, 63 P.3d 667. This is done because '[a] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or

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challenge an incorporation. This Court need not decide whether this code section allows a Governmental agency the right to challenge an incorporation because the Plaintiffs in this case are not Governmental agencies.

[3] Counsel for Defendants made this argument regarding how the Court should interpret Sections 10-2a-217(2)(a) & (2)(b) at the hearing on September 29, 2022.

section should be construed in connection with every other part or section so as to produce a harmonious whole.' *Sill v. Hart,* 2007 UT 45, ¶ 7, 162 P.3d 1099 (citations omitted); *see also Archuleta v. St. Mark's Hosp.*, 2009 UT 36, ¶ 8, 238 P.3d 1044, 1046–47.

Second, the Utah Supreme Court indicates that the 'surplusage canon' applies when a court is faced with a question of statutory interpretation. According to this canon, "[i]f possible, every word and every provision [of a statute] is to be given effect… [t]he canon rests on the presumption that the legislature did not intend to adopt a nullity." *Croft v. Morgan Cnty.*, 2021 UT 46, ¶ 32, 496 P.3d 83 (cleaned up). In short, the surplusage canon stands for the proposition that no words in a statute should be ignored or interpreted by a court to have no consequence. *See id.*

In applying these statutory interpretation canons, this Court first decides that the Utah Legislature intended that every word of Section 10-2a-217(2)(b)(ii) has meaning and significance, and that this statute is best interpreted in harmony with other sections of the Utah Municipal Code. The Court's analysis is as follows:

B. What Utah's Municipal Code permits before and after Incorporation.

The statutory provisions in Utah's Municipal Code indicate that the incorporation process includes various requirements and stages. *See* Utah Code Ann. § 10-2a-201 *et seq*. Some of these requirements and stages include the following: drawing proposed incorporation area boundaries, obtaining of signatures that support a request for a feasibility study, commissioning and completing a formal feasibility study, and providing public notice of (and holding public hearings) regarding the feasibility study. *See id.* Next, incorporation sponsors must circulate and submit a second petition for incorporation that includes the signatures of residents and landowners within the proposed incorporation area. *See* Utah Code Ann. § 10-2a-208. The

petition must then be certified to be on the ballot. *See* Utah Code Ann. § 10-2a-210. Voters will then have an opportunity to vote on the incorporation, and if a majority of voters vote in favor of incorporation, the area shall incorporate. *See* Utah Code Ann. § 10-2a-210(6).

Importantly, during this incorporation process, property owners who do not want to incorporate can seek the remedy of annexation according to terms as outlined in Utah's Municipal code. *See* Utah Code Ann. § 10-2a-403. Over the last few years, the Utah Legislature has enacted various changes to the annexation process (and the timing requirements that apply when a party requests annexation), but despite these changes, Utah's Municipal Code clearly gives private property owners, such as Plaintiffs, a process that they can follow if they seek to annex their property so that their property is not included in the incorporation area.[4]

Utah's Municipal Code also indicates that after an incorporation occurs, there are other options for landowners who are displeased with an incorporation; these options are disconnection and disincorporation. *See* Utah Code Ann. § 10-2-501. Disconnection allows persons to disconnect an "area" from a municipality. *See id.*, at (1)(ii).[5] And disincorporation is available if a petition is filed more than two years after the official date of the municipality's incorporation. *See* Utah Code Ann. § 10-2-710.[6]

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[4] The details of the recent statutory changes to the Annexation process in Utah's Municipal Code are not pertinent to the issues that the Court must decide in the Motions to Dismiss.

[5] A petitioner files a request for disconnection with the municipality's legislative body. *See* Utah Code Ann. § 10-2-501(1). A petitioner is (1) one who owns title to real property within the area proposed for disconnection and signs a request for disconnection, or (2) the mayor of the municipality within which the area proposed for disconnection is located. *See id.* The legislative body of the municipality then holds a public hearing, and within 45 calendar days of the hearing, it decides whether to grant or deny the request. *See* Utah Code Ann. § 10-2-502.5. Following the decision, a petition against the municipality challenging the decision may be filed in the district by the petitioner or the county in which the area proposed for disconnection is located. *See id.*

[6] Disincorporation is initiated by a petition bearing signatures "equal in number to 25% of all votes cast from the municipality at the last congressional election." Utah Code Ann. § 10-2-701. If the district court determines that the petition comports with other provisions of the code and is complete, the court shall order that the question of dissolution "be placed before the voters of the municipality." *Id.*

In sum, Utah's Municipal Code provides for a number of procedures and remedies both before and after a city is incorporated. Specifically, the code permits certain individuals to participate in public hearings, to raise oppositions to an incorporation, to annex property before an incorporation occurs, and to disconnect or disincorporate after an incorporation has already taken place.

C. Interpreting the plain language of Section 10-2a-217(2)b)(ii)

Defendants ask the Court to read Utah Code 10-2a-217(2)(b)(ii) within the context of other provisions of the Utah Municipal Code to mean that the only relief that Plaintiffs can now seek is disconnection and disincorporation. By contrast, Plaintiffs argue that disconnection and disincorporation are not exclusive remedies afforded to them, and that Utah Code 10-2a-217(2)(b)(ii) allows Plaintiffs the right to challenge Erda's incorporation. To answer this debate, the Court now examines what is, and is not, contained in the plain language of Utah Code 10-2a-217(2)(b)(ii)

i. *What Utah Code § 10-2a-217 does not contain.*

Plaintiffs point to all that is missing from the plain language of Utah Code 10-2a-217. Specifically, this statutory provision does not indicate *who* may file a challenge (government agency or private citizen), *what* exactly may be challenged (the entire incorporation process or only certain aspects of it), *how* a challenge to an incorporation should be pursued, what constitutes a *successful or unsuccessful* challenge, and what the *remedy* is for a successful challenge to an incorporation.[7] This lack of specificity in Utah Code 10-2a-217(2)(b) can be compared to the plain language of the code's statutory provisions for disconnection and

[7] This Court urges the legislature to consider amending Utah Code Ann. § 10-2a-217 to the extent it deems appropriate to clarify the 'who, what, how, etc.' regarding challenges to incorporations.

disincorporation which outline (1) who may file a petition and (2) what is required for a valid petition, and which specifically require public involvement (either through public hearings or by voting). *See* Utah Code Ann. § 10-2-501 *et seq*; Utah Code Ann. § 10-2-710 *et seq.*

It is also noteworthy that the title of Utah Code 10-2a-217 makes no reference to the statutory provision being a process for invalidating an incorporation. Rather, the title of the section is "Filing of notice and approved final local plat with lieutenant governor-Effective date of incorporation-217-Necessity of recording documents and effect of not recording." *See id.*

ii. What Utah Code § 10-2a-217 does contain.

The plain language of Utah Code section 10-2a-217 outlines the steps that are required to finalize the incorporation process; the section also establishes the effective date of an incorporation. These steps include that the mayor will file a copy of a notice of impending boundary action and approved final local entity plat with the Lieutenant Governor. *See id.* at (1)(a)&(b). The Lt. Governor will then issue a certificate of incorporation. *See id.* The municipality then submits documents to the recorder of the county. *See id.* In addition, Section 217(3) discusses the effective date of an incorporation for purposes of assessing property.

Importantly, Section 217(2) focuses on when a new municipality is effective. This section establishes that a municipality is "conclusively presumed" to be lawful if no challenge to the existence or incorporation of the municipality is filed in the district court within two years following the incorporation. *See id.,* at (2)(b). Utah case law provides helpful guidance on what it means for something to be "conclusively presumed." Specifically, Utah case law indicates that conclusive presumptions are different from ordinary presumptions. Ordinary "[p]resumptions operate to give one party an opening advantage as to the burden of proof, an advantage that can be lost by a showing of contrary facts by the opposing side." *Davis v. Provo City Corp.*, 2008 UT

59, ¶ 22. But "[i]n the case of a *conclusive presumption* . . . there is no opportunity for rebuttal." *Id.*, ¶ 22 (emphasis added). If the conditions are met for a "conclusive presumption, [] it would be impossible for the challenger to prevail on the merits of their claim." *Id.*, ¶ 19. Thus, conclusive in this sense means final, so that once the conditions are met and the presumption applies, it is no longer possible for someone to raise a challenge to rebut the presumption for any reasons and on any grounds[8]

For two reasons, this Court now decides that the plain language of Utah Code section 10-2a-217 indicates that the Utah legislature contemplated that there would be lawful challenges to the incorporation of a municipality, so long as these challenges were made within two years after the incorporation is effective. First, in applying the surplusage canon and the proposition that no words in a statute should be ignored or interpreted by a court to have no consequence, the plain language of this section specifically refers to a "*challenge* to the existence or incorporation of [a] municipality." *Id.* (emphasis added). Thus, the plain language contemplates that legal challenges to incorporations would be raised *after* an incorporation is already effective. Second, in applying Utah case law regarding "conclusive presumptions," the plain language of the statute precludes someone from raising a challenge to an incorporation (for any reason and on any grounds) after the two-year period expires. It therefore logically follows that there would be some grounds for someone to raise a legal and successful challenge to an incorporation *before* the two-year deadline was triggered. *See id.*, at (2)(b).

The Court is therefore persuaded by Plaintiffs' argument that Utah's Municipal code does not limit Plaintiffs to the exclusive remedies of annexation, disconnection, or dissolution. Rather,

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[8] The Utah Legislature uses the term "conclusive presumption" in other sections of the Utah Code. For example, when discussing annexations to a municipality, the legislature indicates when an area is "conclusively presumed" to be validly annexed. *See* Utah Code Ann. § 10-2-422 (2017).

the plain language of Utah Code section 10-2a-217 contemplates that a party may also pursue a lawful and successful challenge to the incorporation of a municipality. In short, the Court now decides that a plain language reading of Utah Code section 10-2a-217 indicates that Plaintiffs claim for declaratory relief is not preempted by the Municipal Code.[9]

II. Plaintiffs meet standing requirements

Utah Code section 10-2a-217 is silent as to who may raise a challenge to the incorporation of a municipality. Consequently, traditional standing considerations apply when the Court determines who has the right to raise a challenge to Erda's incorporation during the two years after its incorporation. Under Utah law, "[t]o establish traditional standing, [a] petitioning party must allege that it has suffered or will suffer some distinct and palpable injury that gives it a personal stake in the outcome of the legal dispute." *McKitrick v. Gibson*, 2021 UT 48, ¶ 44, 496 P.3d 147; *see also Southern Utah Wilderness Alliance v. Kane County Commission*, 2021 UT 7, 484 P.3d 1146. The Court now decides that, when viewing the factual allegations in the complaint as true, and in drawing all reasonable inferences in a light most favorable to the nonmoving party (which the Court must do at this stage), Plaintiffs have sufficiently alleged a distinct and palpable injury that gives them a personal stake in the outcome of the legal dispute. Here, Plaintiffs allege that they are property owners within the incorporation area, that their signatures were misrepresented, that the statutory requirements for incorporation were not met, and that the incorporation of Erda directly and negatively affects their properties. *See* Am. Compl., ¶¶ 6,39-62.

[9] The Court is also persuaded by Plaintiffs argument that the Municipal code expressly recognizes other sources of law, and that it contains neither an express nor an implied displacement of other remedies, such as declaratory relief. See Utah Code Ann. § 10-1-101; *see also* Plaintiffs' Supp. Br. at 2-7.

III. In viewing the facts in the light best to Plaintiffs, which the Court is required to do at a motion to dismiss stage, Plaintiffs did not unreasonably delay in bringing this action.

Defendants argue that Plaintiffs unreasonably delayed by waiting to bring this action for over two years. Defendants point out that while Plaintiffs contacted the Lt. Governor's Office to contest the inclusion of their property, they took no legal action prior to the November 2020 election. *See* Erda's Motion, at 10-12. Importantly, at this Motion to Dismiss stage, the Court is to consider the facts in the light best to Plaintiffs, as they are the nonmovants. In doing so, the facts indicate that Plaintiffs were not aware of the misrepresentation of their signatures at the time of the request for the feasibility study. *See* Am. Compl., ¶¶ 29-31. In addition, before the election in 2020, Plaintiffs contacted the Lt. Governor's office to inform them that their signatures were misrepresented. *See* Plaintiffs' Opp., at 24. Thus, in viewing the facts in the light best to the nonmovants, Plaintiffs did not unreasonable delay in bringing this action.

IV. Defendants' arguments regarding res judicata, equitable doctrines, and 'substantial compliance' are not properly raised at a motion to dismiss stage.

Defendants' other arguments and affirmative defenses (regarding res judicata, equitable doctrines, and 'substantial compliance') are more properly raised at a motion for summary judgment and not in a motion to dismiss as they require this Court to look at facts and evidence that is contained outside of the complaint. See *Tucker v. State Farm Mut. Auto. Ins. Co.*, 2002 UT 54, ¶ 7, 53 P.3d 947, 950 (stating that "affirmative defenses, which often raise issues outside of the complaint, are not generally appropriately raised in a motion to dismiss under rule 12(b)(6)"). The Court will therefore not address these arguments at this stage, but Defendants may raise these arguments again at a later stage (after the discovery process has been completed) if the facts and evidence obtained in discovery support these arguments.

CONCLUSION

There is no basis for dismissing Plaintiffs' complaint where, when viewing the facts and reasonable inferences therefrom, Plaintiffs' claim for declaratory judgment relief is not preempted by Utah's Municipal Code, where Plaintiffs meet traditional standing requirements, where Plaintiffs have sufficiently pleaded facts, including harm, to support their claim, where Plaintiffs did not unreasonably delay in bringing forth this action, and where the Defendants arguments regarding res judicata, equitable doctrines, and 'substantial compliance' are not properly raised at a motion to dismiss stage.

Based on the foregoing, Defendants' Motions to Dismiss are **DENIED.**

DATED this 27th day of October, 2022.

BY THE COURT:

Teresa L. Welch
DISTRICT JUDGE

STATE OF UTAH
THIRD DISTRICT COURT
TOOELE

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 220300134 by the method and on the date specified.

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Date: 10/27/2022

/s/ TRACY WALKER

Signature