IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 25-0200

MONTANANS AGAINST IRRESPONSIBLE DENSIFICATION, LLC,

Plaintiff and Appellee/Cross-Appellant,

v.

STATE OF MONTANA,

Defendant and Appellant/Cross-Appellee,

and

SHELTER WF, INC.,

MONTANA LEAGUE OF CITIES AND TOWNS,

Defendant-Intervenors and Appellants/Cross-Appellee,

DAVID KUHNLE,

CLARENCE KENCK,

Defendant-Intervenors/Cross Appellees.

MONTANA LEAGUE OF CITIES AND TOWNS'S RESPONSE/REPLY BRIEF

On Appeal from the Montana Eighteenth Judicial District Court
Gallatin County Cause No. DV-16-2023-1248DK
The Honorable Michael Salvagni, Presiding Judge

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INTRODUCTION

Before the Court is the question of whether the Montana Miracle, drafted by a bipartisan coalition of experienced land use planners, land use attorneys, developers, realtors, housing advocates, and legislators, will have an opportunity to help alleviate our state's housing affordability crisis.

First, this Court should reverse the District Court's finding that MLUPA violates the right to public participation. The District Court did not recognize that MLUPA provides an opportunity for participation and appeal rights. The Legislature has found that this process implements the public's right to participation. If the Court does not find MLUPA is constitutional, it should vacate the District Court's decision because it is either moot or unripe.

Second, the Court should affirm the District Court's equal protection decision. MAID has failed to show that the parties in either of its claims are similarly situated. It therefore fails as a matter of law.

ARGUMENT

I. MLUPA is constitutional because it permits public comment on pertinent land use regulations and provides an avenue for appeal.

The Montana Constitution does not specifically guarantee the public the ability to participate in all preliminary land use decisions.[1] MAID's arguments on the

[1] The League also incorporates by reference the informed arguments made by the American Planning Association in its *amici* brief.

merits fail. First, it claims that citizens have always had the right to a public hearing in subdivisions. That is false. Montana law includes exceptions to permit the timely consideration of specific subdivisions without a public hearing. Second, MAID claims that the public's right to participation necessarily extends to all stages of government review. This is incorrect. The Constitution only requires public participation before a final decision. MLUPA meets this standard by providing appeals and participation in the adoption of land use rules.

A. The Montana Constitution does not guarantee the right to participate at every stage of a site-specific land use decision.

MAID first contends that Article II, Section 8 of the Constitution is self-executing. It provides no citation for this proposition, which is contrary to this Court's decisions. *See Jones v. County of Missoula*, 2006 MT 2, ¶ 53 n. 3, 330 Mont. 205, 127 P.3d 406 ("[Article II,] Section 8 is not self-executing") (emphasis added) (citing Fritz Snyder, *The Right to Participate and the Right to Know in Montana,* 66 Mont. L. Rev. 297, 303 (Summer 2005)). *See also Brown v. Gianforte*, 2021 MT 149, ¶ 23, 404 Mont. 269, 488 P.3d 548 ("To determine whether a provision is self-executing, we ask whether the Constitution addresses the language to the courts or the Legislature.").

It next claims that the Supreme Court can invalidate statutes under non-self-executing provisions of the Montana Constitution if the statute does not adequately

implement the challenged right.[2] Assuming, *arguendo*, that the same logic would apply to the right to public participation, MAID must still show that the Legislature's action in implementing MLUPA was not "exercised in compliance with the provisions of the Constitution."

MAID suggests that "public hearings on site-specific subdivision proposals are required, and have been for fifty years." MAID Br. 26 (emphasis removed). It then implies that this proves that the right to a hearing on land use decisions must be a fundamental right. The argument is a non-sequitur[3] and wrong on the law.

Montana law does not require public hearings on every subdivision application. MAID points to Mont. Code Ann. § 76-3-605. That statute reads:

> Except as provided in 76-3-609 and 76-3-616 and subject to the regulations adopted under 76-3-504(1)(o) and 76-3-615, at least one public hearing on the subdivision application must be held by the governing body, its authorized agent or agency, or both. . . .

[2] MAID provides no cases in which this Court has invalidated a legislative enactment of the right to public participation. *See Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 2005 MT 69, ¶ 11, 326 Mont. 304, 109 P.3d 257 (related to the right to a free quality public education). *Brown v. Gianforte*, 2021 MT 149, ¶ 24, 404 Mont. 269, 488 P.3d 548 (judicial appointments). *Held v. State of Montana*, 2024 MT 312, 419 Mont. 403, 560 P.3d 1235 (clean and healthful environment); *Mont. Env'tl. Info. Ctr. v. Dep't. of Env'tl. Sciences*, 1999 MT 248, 296 Mont. 207, 988 P.2d 1236 (same); *Park Co. Env'tl. Council v. Montana Dep't. of Env'tl. Quality*, 2020 MT 303, ¶ 27, 402 Mont. 168, 477 P.3d 288 (same).

[3] It is unclear why, if the Legislature could create a constitutional right by implementing a statute, it would not be able to change that statute.

Mont. Code Ann. § 76-3-605(1). While MAID quotes the statute, it opts to omit the critical exceptions in an ellipsis, without explanation. MAID Br. 28 (quoting Mont. Code Ann. § 76-3-605).

The first sentence provides situations in which no hearing is required. Under Mont. Code Ann. § 76-3-609, "first minor subdivisions"[4] are not subject to public hearings. Mont. Code Ann. § 76-3-616 eliminates the requirement for public hearings when:

a. the subdivision is "entirely within an area inside or adjacent to [a] city or town where the governing body has adopted a growth policy,"

b. the subdivision is "entirely within an area subject to zoning . . . ," and

c. "[t]he subdivision proposal includes a description of future public facilities and services . . . necessary to efficiently serve the projected development."

Mont. Code Ann. § 76-3-616(2).

Specific land use decision is a mirage. Montana law has long allowed for the sort of streamlined review envisioned by MLUPA. Far from proving that an independent right to public hearings on land use decisions exists, the MSPA shows that the state has long known that these hearings are not critical to citizens' fundamental rights.

[4] First minor subdivisions are those that result from a "tract of record [that] has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record . . . since October 1, 2003." Mont. Code Ann. § 76-3-609(2).

B. MAID's arguments ignore the fact that citizens can participate in land use decisions before those decisions are final.

Even if MAID could show that there was a right to public hearings, this Court should still reverse the District Court's public participation holding. The Constitution provides that the right to public participation applies "prior to the final decision" of the agency. Mont. Const., Art. II, § 8. The appeal process provided by MLUPA provides the public with the right to challenge and even litigate a decision before it is final.

MAID argues that this is irrelevant since MLUPA includes no right to public participation at the "critical level" where initial determinations are made. This argument is inconsistent with the Constitution. Though municipalities make some initial site-specific decisions at the administrative level, that determination can be appealed, and then appealed again, before the decision is truly final. MAID provides no authority, anecdotal or otherwise, that would show that its members cannot raise the same concerns they would bring currently at a planning board to the planning commission (and then the governing body) in an appeal.

The public may also participate in crafting the rules that will govern site-specific plans. The Court's decision on this point has significant implications for a panoply of administrative functions. Local governments currently issue a wide variety of licenses, from hunting, business, dog licenses, and independent contractor's licenses to sign permits, hiring decisions, and fee schedules. The

public can participate when a municipality adopts a rule, but not in every administrative decision about whether a specific application is consistent with applicable regulations. To do otherwise would grind businesses and economic development to a halt.

MAID argues that the District Court's decision only applies to certain portions of MLUPA and would not apply beyond that. However, the Court ought to avoid adopting arguments without first considering their logical conclusions. Suppose the public is entitled to participate in a municipality's preliminary, challengeable administrative decisions on land use. In that case, they might also be entitled to participate in what billboards or signs are permitted in their neighborhoods or who can get a fishing permit. The Court should avoid this trap.

C. MAID's other public participation arguments fail as well.

MAID relies on *Robinson Twp. v. Commonwealth*, 623 Pa. 564, 651, 83 A.3d 901, 954 (2013). The case is non-binding, based on a different state constitution, and distinguishable. *Robinson* arises from a challenge to environmental laws implemented by the Commonwealth of Pennsylvania. *Id*. Specifically, plaintiffs contended that the oil and gas law at issue violated their right to a clean environment and the right to public trust of the state's natural resources. *Id*. Though the Court references "expectations" of landowners in describing the bill, the reference only relates to their beliefs about the environment.

The Court reiterated "that the citizens raise claims which implicate primarily the Commonwealth's duties as trustee under the Environmental Rights Amendment. *Id.* at 623 Pa. at 683, 83 A.3d at 974.

MAID does not show that this Court has ever adopted any authority that a citizen's "expectations" of public participation can expand Article II, Section 8 of the Montana Constitution. That approach does violence to the plain language of the Constitution, which entrusts the implementation of that provision to the Legislature. *See* Constitution of Montana, Art. II, § 8 (the right to participation is "as may be provided by law").

Finally, MAID ignores the fact that S.B. 121 specifically amended the Legislature's implementation of the public's right to participate. Section 2 of S.B. 121 provides that a local government complies with Constitutional public participation requirements when it ". . . adopts and implements the public participation plan required in 76-25-106 for the purposes of agency actions taken in accordance with Title 76, chapter 25." This section, unlike other amendments to MLUPA enacted by S.B. 121, is a permanent adoption of legislative intent concerning MLUPA's framework for public participation.

II. The case was not ripe, and the changes to MLUPA make it less so.

MAID is asking the Court to find that the Montana Constitution would be violated despite public participation guarantees that set forth more than adequate

opportunities for public participation in development decisions in the MLUPA communities. This matter is too abstract and hypothetical for a decision.

MAID's argument is based on a false premise. It contends that MLUPA is ripe for review because it prevents individuals from participating in site-specific development decisions. Thus, MAID contends, MLUPA is the "barrier" to their participation in the site-specific process.

MAID conflates the elimination of site-specific public hearings with the elimination of site-specific public participation, but even the 2023 version of MLUPA provided a site-specific appeals process. *See* Mont. Code Ann. § 76-25-503(2023) and (2025). MLUPA rigorously encourages public participation throughout planning and implementation. Members of the public are encouraged to participate in the development and adoption of the land use plan and future land use map, as well as the regulatory implementation of that plan and map. The public may also participate if new impacts are likely.

Finally, members of the public are permitted to challenge site-specific land use decisions through an appeal process that exists in the original iteration of MLUPA and has been carried forward in the 2025 MLUPA amendments. Specifically, affected parties may seek review of the planning administrator's decision at a public hearing by the planning commission. Mont. Code Ann. § 76-25-503. An aggrieved citizen may then appeal to the governing body. *Id.*

Unlike in *Mont. Democratic Party v. Jacobsen*, 2024 MT 66, ¶ 73, 416 Mont. 44, 545 P.3d 1074,[5] MLUPA does not strictly impose the barrier about which plaintiffs complain. Instead, MLUPA streamlines the review process while still providing site-specific participating rights. In *Advocates for School Trust Lands v. State*, 2022 MT 46, ¶¶ 26, 31, the Montana Supreme Court found that a facial challenge to a law was not ready for review because it was not clear how the government would apply the law. In that case, the plaintiffs challenged a statute—House Bill 286—that changed how the State could claim ownership of certain water rights on school trust lands. Although the law cancelled the State's previous ownership claims, the Court said it was not clear if or how the State would use the new process laid out in the law to reclaim those rights. Because of that uncertainty, the Court decided the claim was not based on a real, present injury—it was only potential future harm. As the Court explained, the claim is unripe when it is hypothetical.

The same reasoning applies here. Just as H.B. 286 changed how the State could claim water rights, MLUPA revises when and where public comments can be provided and must be considered during the land use review process.

[5] *Jacobsen* arose from a situation in which plaintiffs had already been harmed. *Mont. Democratic Party v. Jacobsen*, 416 Mont. 44, 82, 2024 MT 66, ¶ 93, 545 P.3d 1074, 1101. MAID's members have not and cannot show that they have already been harmed by MLUPA, so the case is distinguishable and inapplicable.

Nevertheless, it ensures that affected parties can challenge an administrative decision, which only becomes final if not appealed. Further, municipalities have yet to comply with MLUPA fully, let alone apply it in specific permit decisions. Any harm claimed now is based on what might happen, not what has happened. Just like in *Advocates*, the challenge here is not ripe for review because it is based on a potential injury that depends on future decisions by government officials and the actual participation by the public before those decisions.

MAID extends its argument, stating that "even as amended by S.B. 121, the challenge to MLUPA continues to be ripe." MAID Br. 53. In fact, the amendments to MLUPA add a further layer of ambiguity and abstraction to the questions before the Court. As in *Advocates*, this augurs in favor of finding the matter unripe for adjudication. The Court would be deciding based on the hypothetical actions of the municipality, based on the speculative future of the MLUPA amendments, that might apply if theoretical actions are taken by MAID's members under conceptual public participation plans.

Disputes rarely get more conjectural. *See Barrett v. State*, 2024 MT 86, ¶ 18, 416 Mont. 226, 547 P.3d 630 ("A court must evaluate standing at every stage of the litigation.") (citation omitted); *350 Mont. v. State*, 2023 MT 87, ¶ 22, 412 Mont. 273, 529 P.3d 847 ("The basic purpose of the ripeness requirement is to

prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.").

III. The Legislature's changes have mooted the challenge to the 2023 MLUPA.

The League contends that the District Court erred, and the 2023 MLUPA meets the constitutional requirement for public participation. If this Court does not agree, it should still find that the 2025 amendment to MLUPA mooted the challenge, and the District Court's order should be vacated. The District Court struck from the law the portions that prevented municipalities from considering public comment if a site-specific development substantially complied with applicable standards. The 2025 Legislature removed those sections from the statute and provided additional opportunity for public participation to address the District Court's order. MAID challenged a MLUPA that no longer exists, and those changes will sunset, be amended, or adopted permanently by the Legislature. The Court should disregard MAID's extra-jurisdictional case law as it is inconsistent with this Court's holdings. If the Court does not find that MLUPA is constitutional, it should find the case moot and order vacatur of the District Court's order.[6]

[6] MAID argues that the 2025 amendments to MLUPA are unconstitutional. That issue was never before the District Court, and the Court may not consider them now. *See Mont. Deaconess Med. Ctr. v. Doherty*, 241 Mont. 243, 246-47, 786 P.2d 669, 671-72 (1990) ("on appeal [, this court will] review only those issues decided by the District Court) (citing *Wyman v. DuBray Land Realty*, 231 Mont. 294, 752 P.2d 196, 200 (1988)).

MAID argues that the Legislature did not substantially change MLUPA, and therefore, the Court's decision could still afford meaningful relief. Its arguments ignore the actual changes imposed by S.B. 121. The bill reworks the specific sections struck down by the District Court. First, it eliminates Mont. Code Ann. § 76-25-106(4)(d). S.B. 121 § 9. S.B. 121 also removed the requirement that the public participation plan emphasize the importance of this stage of public participation.

S.B. 121 also amends Mont. Code Ann. § 75-25-305. It removes the passage, "the application must be approved, approved with conditions, or denied by the planning administrator and is not subject to any further public review or comment." S.B. 121 § 11. The public can now comment on site-specific applications and whether the development poses new impacts that the municipality did not consider previously. *Id*. S.B. 121 also grants an opportunity to comment on the decision of the planning administrator regarding whether these criteria above are satisfied.

Any affected member of the public also retains the right to appeal the decision of the planning administrator. S.B. 121 still permits challenges to the planning commission and then the municipality's governing body. Mont. Code Ann. § 76-25-503.

MAID claims these fundamental revisions are irrelevant because the planning administrator still makes an initial decision before public comment. S.B. 121 eliminated this prohibition. Citizens are free to comment on whether a site-specific development threatens or will pose additional risks before the final decision of the planning administrator. Mont. Code Ann. § 75-25-305(4)(a)-(c). MAID's citation to *Plains Grains L.P. v. Bd. Of County Comm'rs.*, 2010 MT 155, 357 Mont. 61, 238 P.3d 332, underscores the League's point because its holding turned on whether the plaintiff could be returned to its original position. There, the Supreme Court found that the matter was not moot after new zoning regulations were implemented because the zoning change under challenge remained in effect. *Id*. at ¶¶ 34, 67. Cascade County had rezoned a parcel from Agricultural (A-2) to Heavy Industrial (I-2). *Id*. at ¶ 6. While the case was on appeal, the County adopted several amendments to its zoning regulations, which it contended mooted the action. *Id*. at ¶ 18.

The Court found the matter was not moot. The changes to the zoning regulations did not impact the actual zoning designation of the property at issue. *Id*. at ¶ 31. The case was not moot because "[a] remedy exists because a favorable ruling would restore Plains Grains to its original position—the 668 acres at issue would revert to its original Agricultural designation." *Id*. at ¶ 34.

In other words, the Court in *Plains Grains* could still afford relief; it could return the property to its original zoning. This case is much different. A determination regarding the 2023 version of MLUPA does not "restore" MAID or anyone else to its original position because MLUPA has not been implemented.

IV. MLUPA does not violate equal protection.

The District Court correctly held that MLUPA does not violate MAID's equal protection rights.[7] First, regarding their claims related to restrictive covenants, this Court has already held that classes are not similarly situated when the legislative distinction is based on a party's contractual relationships. In addition, MLUPA neither creates nor exacerbates any differences. Second, MAID's equal protection claims arising out of the size of different communities fail because it failed to prove to the District Court that the classes were similarly situated (which they are not). This Court should affirm the District Court on this point.

A. MAID's "restrictive covenants" equal protection argument fails because the classes are not similarly situated.

"The basic rule of equal protection is that persons similarly situated concerning a legitimate governmental purpose of the law must receive like treatment." *Goble v. Mont. State Fund*, 2014 MT 99, ¶ 28, 374 Mont. 453, 325

[7] The League incorporates by reference the arguments by Shelter WF and the Institute for Justice.

P.3d 1211 (quoting *Rausch v. State Comp.* Ins. Fund, 2005 MT 140, ¶ 18, 327 Mont. 272, 114 P.3d 192) (emphasis added). "When analyzing an equal protection claim, the Court follows a three-step process: (1) identify the classes involved and determine if they are similarly situated; (2) determine the appropriate level of scrutiny to apply to the challenged legislation; and (3) apply the appropriate level of scrutiny to the challenged statute." *Goble*, ¶ 28.

The first step is determinative. "The goal of identifying a similarly situated class is to isolate the factor allegedly subject to impermissible discrimination." *Planned Parenthood v. State*, 2024 MT 178, ¶ 27, 417 Mont. 457, 554 P.3d 153, citing *Goble*, ¶ 29. If classes are not similarly situated, an equal protection claim fails. *Id.* "It is necessary for a similarly situated class to be identified because [d]iscrimination cannot exist in a vacuum; it can be found only in the unequal treatment of people in similar circumstances." *Id.* (internal quotations omitted) (quoting *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1187 (9th Cir. 1995); *see also Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 27, 325 Mont. 148, 104 P.3d 445; *Oberson v. USDA*, 2007 MT 293, ¶¶ 19-20, 339 Mont. 519, 171 P.3d 715.

The District Court correctly found that, "[i]n this case, the classes are not similarly situated." Order at 35. The classes—(1) property owners subject to private contracts like restrictive covenants and (2) property owners who have not

entered such contracts—are distinct. As the District Court noted, "MLUPA did not create that difference. It existed before the enactment of MLUPA." *Id*.

This Court has found that groups treated differently based on their private contractual affairs are not similarly situated. In *Gazelka v. St. Peter's Hosp*., 2018 MT 152, ¶¶ 21-23, 392 Mont. 1, 420 P.3d 528, plaintiffs argued that a law discriminated against uninsured people by allowing insurance companies to negotiate with hospitals for lower prices for those who were insured. Specifically, the law permitted insurers to enter into Preferred Provider Agreements that would reduce treatment costs for insured patients. Uninsured patients pay the full charge minus any provider discounts, while insured patients benefit from the reduced rates negotiated through the PPA. *Id.*

The Court held that the classes—(1) those who entered insurance contracts and (2) those who had not—were not similarly situated. The Court reasoned that insured patients pay premiums and are party to contracts that provide them access to negotiated rates, while uninsured patients do not. "Indeed," the Court concluded, "if the Court were to accept that Gazelka, as an uninsured, was similarly situated to those who pay for insurance benefits, any contract facilitated by a statute could become the basis for an equal protection challenge by those who have not received the benefit of the contract." *Id*. at ¶ 23.

MAID fails to address this case, instead relying on inapplicable secondary sources. It cannot escape *Gazelka*'s application, though. Homeowners choose to enter contractual arrangements with their neighbors, either through implementing, changing, or eliminating restrictive covenants, just as the insurers in *Gazelka* chose to enter beneficial arrangements with hospitals. Some choose to purchase homes in areas where restrictive covenants apply. Others do not. MLUPA does not create these preexisting or bargained-for distinctions. Moreover, MLUPA does not create a difference in treatment; contractual relationships do. Under MAID's theory, all zoning in Montana would be unconstitutional as a violation of equal protection. The District Court therefore correctly held that the classes are not similarly situated.

B. The District Court correctly held that MAID failed to prove an equal protection violation based on the sizes of towns and counties.

MAID failed to develop this claim in the District Court, and that failure is fatal to this appeal. Moreover, even if the Court considers MAID's new arguments, the classes it identifies are not similarly situated.

1. MAID did not show how its "urban-rural" classes are similarly situated below.

MAID failed to analyze whether the classes on its second equal protection claim—(1) those citizens subject to MLUPA and (2) those who were not—were similarly situated. It only stated that some citizens would be subject to MLUPA

and some would not. (Dkt. 93, pp. 23-24). The District Court therefore correctly found that MAID failed to prove its second equal protection claim.

Courts are "under no obligation to formulate arguments for a party." *State v. Humphrey*, 2008 MT 328, ¶ 12, 346 Mont. 150, 194 P.3d 643. The summary judgment movant must meet its burden of proof based on its analysis and presentation of the case. *In re Hart*, 178 Mont. 235, 249-50, 583 P.2d 411, 414 (1978) (discussing burden of proof in *habeas* petitions). Each party must also support arguments with citations to relevant authority. *State v. Rodarte*, 2002 MT 317, ¶ 15, 313 Mont. 131, 60 P.3d 983 (discussing requirements on appeal).

In constitutional matters, the party asserting a claim bears an especially heavy burden. "The constitutionality of a legislative enactment is prima facie presumed," and "[e]very possible presumption must be indulged in favor of the constitutionality of a legislative act." *Powell v. State Comp. Ins. Fund*, 2000 MT 321, ¶ 13, 302 Mont. 518, 15 P.3d 877. A reviewing court must work to determine if it can uphold the statute. *Satterlee v. Lumberman's Mut. Cas. Co.,* 2009 MT 368, ¶ 10, 353 Mont. 265, 222 P.3d 566.

Below, MAID failed to meet its burden. It now seeks to backfill its failed analysis with a raft of new arguments and citations. The Court should not consider them for the first time on appeal. *See Jensen v. State*, 2009 MT 246, ¶ 10, 351 Mont. 443, 214 P.3d 1227 (this Court "generally do[es] not consider arguments not

presented to the district court and raised for the first time on appeal); *State v. Mallak*, 2005 MT 49, ¶ 31, 326 Mont. 165, 109 P.3d 209.

2. The classes are not similarly situated.

Even if MAID preserved this matter below, the State correctly showed that those living in primarily urban areas are not similarly situated to those residing in mainly rural areas. "[O]nce again, neither classification has similarly situated classes. These population disparities existed before the regulations. And the Legislature catered different treatment to the unique challenges those densely populated counties face." (Dkt. 113 at 10.) Indeed, housing pressures, development, and growth are not consistent from rural to urban Montana. As such, a distinction based on those differences cannot be the basis of an equal protection claim.

Furthermore, these distinctions exist in the statutes already. Cities of the first, second, third classes, or other population distinctions have different authorities granted to them and responsibilities and duties required of them. *See*, *e.g.*, Mont. Ann. § 7-33-4101 (requiring a municipal fire department only for first-class cities); Mont. Code Ann. § 2-3-214 (imposing different recording requirements for meetings of different-sized counties, cities, and towns); Mont. Code Ann. § 15-7-103(1)(c) (distinguishing between rural and urban improvements).

The distinction is also drawn in the land use and planning statutes. *See* Mont. Code Ann. § 76-6-104(6) (defining "urban area" in the Open-Space Land and Voluntary Conservation Easement Act). Some counties and cities have no growth policy or zoning at all, while others have substantial land use regulations. In jurisdictions without a growth policy, the law does not allow for the adoption of zoning. Mont. Code Ann. § 76-2-304(1)(a). These different requirements do not violate equal protection; they are the results of a flexible land use system that recognizes the various needs of a geographically, socially, and economically diverse state.

3. The Court must review differences between MLUPA and the MSPA for a rational basis, which MLUPA passes.

MAID would not prevail even if it preserved this issue or showed the classes were similarly situated. It claims strict scrutiny applies because the difference in the statute's treatment threatens fundamental rights. The League concedes that the right to public participation is fundamental. However, as shown above, MLUPA provides both classes with the right to participate. Under MSPA, the public can often (though not always) participate in a public hearing, and under MLUPA, they can participate in the decisions regarding land use rules and appeal any municipal decision they feel was wrong. Therefore, no fundamental right is "threatened." The rational basis standard is thus appropriate. It requires a statute to bear a rational

relationship to a legitimate governmental interest. *Goble v. Mont. State Fund,* 2014 MT 99, ¶ 36, 374 Mont. 453, 325 P.3d 1211.

MLUPA's differential treatment of urban, fast-growing areas, where there is a desperate need for more housing units, and rural areas, where there is little reason to upend the land use regulatory status quo, is reasonably related to a legitimate state interest. MLUPA's mandatory applicability to more densely populated cities rather than all cities and towns in Montana bears a rational relationship to a legitimate governmental interest. One of MLUPA's stated purposes is to coordinate and plan growth so that municipalities provide adequate public services and infrastructure in the most cost-effective manner possible. Additionally, local consideration, participation, and review of plans for projected population changes and impacts resulting from those plans are encouraged and supported. Mont. Code Ann. §§ 76-25-102(2)(a) and (g). These are different issues in scale for more densely populated cities and cities near each other, compared to smaller and more isolated cities and towns. The Legislature acted rationally when it enacted different processes for larger communities.

CONCLUSION

The Court should reverse the District Court's finding that MLUPA is unconstitutional. If it does not, it should find the legislative changes moot the issue

or that the question is not ripe. This Court should affirm the District Court's finding that MLUPA does not violate equal protection.

RESPECTFULLY SUBMITTED this 6th day of August 2025.

JACKSON, MURDO & GRANT, P.C.

By: _____

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this reply brief is printed with proportionately spaced Times New Roman text typeface of 14 points, is double-spaced except for footnotes and for quoted and indented material, and the word count calculated by Microsoft Word for Windows is 4,962 words, excluding certificates of service and compliance.

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