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IN THE SUPREME COURT OF THE STATE OF UTAH

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| TANNIN J. FUJA AND MEGAN FUJA,<br><br>Petitioners,<br><br>vs.<br><br>CITY OF WOODLAND HILLS AND CORBETT STEPHENS,<br><br>Respondents. | **RESPONSE TO PETITION FOR CERTIORARI**<br><br>Case No. 20251043-SC |

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

Page(s)

Other Authorities

**STATUTES**



**RULES**

Respondent-Appellee Corbett Stephens respectfully requests the Court deny the Petition for a Writ of Certiorari submitted by Petitioners-Appellants Dr. Tannin Fuja and Megan Fuja.

## QUESTIONS PRESENTED

The Fujas identify five questions for review. (Pet. at 4–6.) Despite that framing, it appears the petition presents three questions.

***Question 1.*** Did the Court of Appeals err, or otherwise violate the Fujas' procedural due process rights, by rejecting as inadequately briefed their constitutional challenges to the Utah Governmental Immunity Act (the UGIA) and by refusing to grant these pro se litigants' other requests?

***Question 2.*** Did the Court of Appeals err by interpreting the UGIA in a manner that conflicts with the statutory text and this Court's precedent?

***Question 3.*** Did the Court of Appeals' application of the UGIA consistent with its decision in *Graves v. Utah County*, 2024 UT App 80, result in constitutional violations?

## STATEMENT OF THE CASE

The Fujas previously owned property in the City of Woodland Hills (R. 95, 626) and, since 2020, have brought a string of lawsuits against the City and its various officials based on complaints about the home constructed by their former neighbors (*see* R. 263–65, 692–93 n.2). Through their petition, the Fujas seek reversal of the Court of Appeals' decision, 2025 UT App 109, affirming the dismissal of their claims against Corbett Stephens, the City's former Building Official.

The Fujas initially filed suit in this matter on February 18, 2022 (R. 1–91) and submitted an amended petition on June 16, 2022 (R. 94–226). The amended petition asserted two claims against the City and its various officials (Woodland Hills, collectivey), and Mr. Stephens individually: "Lack of Enforcement of the Building Permit and City Codes . . . [Was] Illegal, Arbitrary and Capricious" and "Claim for Damages Pursuant to the [UGIA]." (R. 223–25.)

Woodland Hills and Mr. Stephens moved to dismiss the amended petition (R. 259–85), arguing both were immune from suit under the UGIA (R. 265–74). Specifically, Woodland Hills and Mr. Stephens argued the UGIA does not waive of immunity for intentional torts, and, in any event, Section 63G-7-201(4)(c), (d), and (f) operate to retain immunity.[1] (R. 267–74.)

The Fujas did not dispute Woodland Hills was entitled to immunity; they instead argued Section -202(3)(c) "waives employee immunity for specific intentional torts" and overrides the retention of Mr. Stephens' immunity in Sections 63G-7-101(4) and -201. (R. 497; *see generally* R. 495–502.) So, having alleged Mr. Stephens acted through fraud or willful misconduct, the Fujas maintained Section -202(3)(c) waived his immunity. (R.

[1] Under those subsections, immunity is retained for injuries proximately caused by "the issuance . . . of, or the failure or refusal to . . . deny, suspend, or revoke any permit . . . or similar authorization"; "a failure to make an inspection or making an inadequate or negligent inspection"; and "a misrepresentation by an employee whether or not the misrepresentation is negligent or intentional"—all conduct on which the Fujas' claim for damages was based.

495–502.) The Fujas did not explain why the retentions of immunity on which Mr. Stephens relied would not apply if Section -202(3)(c) did not override them. (*See id.*)

The Fujas stipulated to dismissal of their claims against Woodland Hills (R. 542–44), and the district court thus considered the motion to dismiss arguments only with respect to their claims against Mr. Stephens (R. 615). However, shortly after oral argument on the motion to dismiss, the Court of Appeals issued its decision in *Graves v. Utah County*, 2023 UT App 73 (*Graves I*), holding Section 63G-7-202(3)(c)(i) constitutes a waiver of immunity "for the acts of a governmental employee if those acts are fraudulent or the result of willful misconduct." *Id.* ¶ 22. This aligned with the Fujas' position (R. 495–502), and Mr. Stephens alerted the district court to the *Graves I* decision (R. 585–609).

On July 28, 2023, the district court issued its order denying the motion to dismiss. (R. 614–24.) Apart from applying the *Graves I* rationale, holding that Section 63G-7-202(3)(c) waived Mr. Stephens' immunity and that Section 63G-7-201 did not retain it (R. 619), the district court did not provide any other basis to reject the immunity defense. Indeed, it appeared to acknowledge that but for Section -202(3)(c), Mr. Stephens *would* be entitled to immunity. (*See* R. 617–19.)

At the district court's direction (R. 623), the Fujas filed a second amended petition (R. 625–74). Without identifying discrete causes of action, under the heading "Claims for Relief," the Fujas alleged they had "been damaged by Mr. Corbett Stephens's willful misconduct, fraud, false testimony, fabricated evidence, and intentional failure to disclose

material evidence." (R. 662–63; *see generally* R. 662–76.) This allegation mirrors the language of Section -202(3)(c).

Mr. Stephens moved to dismiss the second amended petition (R. 690–709), arguing each of the Fujas' putative claims failed to state a claim (R. 696–706). He additionally noted he "reserves the right to revisit [the immunity] argument in the event *Graves* was altered on reconsideration on certiorari and to appeal this issue." (R. 697 n.4.) After full briefing and hearing (R. 731–53, 754–79, 791), the district court granted the motion to dismiss for failure to state a claim. The Fujas appealed that decision and the resulting final judgment. (R. 809–10.)

Following the Fujas' notice of appeal, on May 23, 2024, the Court of Appeals issued its opinion amending *Graves I*. *See* *Graves v. Utah County*, 2024 UT App 80 (*Graves II*). The Court of Appeals explained in footnote 5 (emphasis added),

> In our previously issued opinion, we concluded that subsection 63G-7-202(3)(c)(i) of the UGIA waived immunity for the Commissioner's and Taylor's alleged intentional conduct. Subsection 63G-7-202(3) provides that "an action under [the UGIA] against a governmental entity for an injury caused by an act or omission that occurs during the performance of an employee's duties, within the scope of employment ... is a plaintiff's exclusive remedy" and precludes "any civil action or proceeding based upon the same subject matter against the employee ... whose act or omission gave rise to the claim." Utah Code § 63G-7-202(3)(a), (c). The provision then lists exceptions to this general rule, including cases where "the employee acted or failed to act through fraud or willful misconduct." *Id.* § 63G-7-202(3)(c)(i). The Appellees asked us to reconsider our conclusion, and, after hearing from both sides, we conclude that we misapprehended the nature and function of this subsection of the UGIA. *Properly understood, this provision reflects an exception to a statutory exclusive remedy, not a blanket waiver of immunity for governmental employees for any fraud or willful misconduct.*

In their principal brief, filed on June 14, 2024, the Fujas represented their "appeal challenges the constitutionality of the UGIA (Addendum 5) in the present case." (Appellants' Br. at 22.) Without addressing the rationale of *Graves II*, they asserted, "Conduct like Stephens' that is intentionally wrongful or egregiously unreasonable is not protected by the UGIA" (*id.* at 24), and they insisted, without supporting authority, that "[i]nterpreting the UGIA in the present case in a manner that did not explicitly waive immunity for government employees for fraud, willful misconduct, fabrication of evidence, failure to disclose material evidence, or giving false testimony renders the UGIA unconstitutional" (*id.* at 24-25).

Separately, the Fujas urged that "[g]ranting immunity to government employees for intentional misconduct creates unequal operation of law[,]" (*id.* at 28), and that "the UGIA did not intend to allow governmental actors to knowingly and recklessly break the law, cause damage, and not be held liable for that damage by hiding behind governmental immunity" (*id.* at 42). Despite these unsupported, sweeping pronouncements, however, the Fujas did not meaningfully address *Graves II*, or otherwise provide a reasoned basis for the Court of Appeals to depart from that decision's reading of the UGIA. (*See generally id.* at 22–29.)

Before replying to the Fujas' brief, Mr. Stephens moved for summary disposition of the pending appeal, arguing he was immune from suit because *Graves II*'s reading of Section -202(3) directly undercut the sole basis on which the Fujas opposed his immunity

in the initial motion to dismiss and the sole reason that motion had been denied. (Appellee's Mot. at 11–12.)

In response, the Fujas protested they "must be given an opportunity to raise constitutional issues and challenges to the UGIA which result from the new interpretation of the UGIA rendered in [*Graves II*]." (Appellants' Opp. at 6.) Notably, the Fujas asserted *Graves II* "raises serious constitutional challenges which the Fujas *could not raise with the trial court*" (*id.* (emphasis added)), even though Mr. Stephens' initial motion to dismiss articulated the reading of the UGIA the Court of Appeals endorsed in *Graves II* (*see* R. 267–74). Yet, in support of their opposition, the Fujas offered minimal analysis to support their constitutional challenges. (*See* Appellants' Opp. at 9–10, 11–13.) After a string of rhetorical questions, they proclaimed Mr. Stephens' immunity defense grounded in *Graves II* presents "an interpretation of the UGIA which is unconscionable and would render the UGIA unconstitutional." (*Id.* at 12.) They further suggested Utah's legislature did not intend, and could not have intended, the UGIA to be interpreted as it was in *Graves II*. (*Id.* at 12–13.)

After his motion for summary disposition was denied, Mr. Stephens again argued in his principal brief that dismissal of the Fujas' claims should be affirmed on the basis that, under *Graves II*, his immunity was not waived. (Appellee's Br. at 17–19, 25–27.) He noted the Fujas' position that their appeal challenged the constitutionality of the UGIA (*id.* at 19) but explained they had failed to preserve any such challenge (*id.* at 20–21). At no point at the district court did the Fujas challenge the constitutionality of the UGIA. (*See*

R. 495–02.) Indeed, in their reply, the Fujas responded to Mr. Stephens' preservation argument by protesting they *could not have* preserved their constitutional challenges to the UGIA, given the timing of *Graves II*. (Reply Br. at 2.) They admit they "rais[ed] the issue for the first time on appeal, as anticipated under Rule 25A of the Utah Rules of Appellate Procedure . . . ." (*Id*.) They further asserted they were "justified" in doing so because they "could not challenge the UGIA's constitutionality in district court because the prevailing interpretation did not support such a claim." (*Id.*)

Setting aside that Rule 25A does not excuse or address an appellant's failure to preserve a constitutional challenge, the Fujas' justification for not preserving their constitutional challenges overlooks the procedural history at the district court. When Mr. Stephens moved to dismiss the first amended petition on immunity grounds, there was no settled law whether Section -202(3) constituted a waiver of immunity. The original decision in *Graves I*, which aligned the Fujas' view of Section -202(3), had not yet been issued. And, Mr. Stephens expressly argued Section -202(3) did *not* constitute a waiver. (R. 273–74.) Opposing that initial motion (R. 490–506) was the Fujas' opportunity to raise constitutional concerns. Their appeal was not "the earliest opportunity." (Reply Br. at 2.)

The Court of Appeals ultimately affirmed dismissal of the Fujas' claims against Mr. Stephens because he is immune from suit and such immunity has not been waived, 2025 UT App 109, ¶¶ 11–20, and it rejected the Fujas' cursory constitutional arguments as inadequately briefed, *id.* ¶¶ 21–26.

**RESPONSE TO PETITION FOR CERTIORARI**

The Court should deny the Fujas' petition.

First, the petition does not present a legal question of first impression in Utah. Utah R. App. P. 46(a)(2). Instead, the Fujas ask the Court to reverse the Court of Appeals' decision—and, effectively, overrule *Graves II*—based on unpreserved arguments raising constitutional challenges to the UGIA. Second, the petition does not offer "an opportunity to resolve confusion or inconsistency in a legal standard set forth in a decision of the Court of Appeals, or in a prior decision of the Supreme Court," both because the Fujas failed to preserve their constitutional arguments and because any supposed confusion derives from the Fujas' misreading of precedent and statute. Utah R. App. P. 46(a)(3).

Although *Graves II* "presents a question regarding the proper interpretation of, or ambiguity in, a . . . statute . . . that" may "affect future cases," and the Fujas wish to "challenge[] a decision of the Court of Appeals with regard to a legal issue that has not been addressed by the Supreme Court and" may "recur in future cases," Utah R. App. P. 46(a)(1), (4), the Court should decline to grant the petition given the posture in which these issues reach the Court. While the interpretation of the UGIA set forth in *Graves II* may merit the Court's attention in some future case, the Fujas' petition does not present that opportunity.

**1. The Court of Appeals did not err by rejecting the Fujas' inadequately presented constitutional arguments.**

"On a writ of certiorari, [the Court] review[s] the decision of the court of appeals, not that of the district court[,]" and it "review[s] the court of appeals' decision for correctness." *Prinsburg State Bank v. Abundo*, 2012 UT 94, ¶ 10 (cleaned up). The Fujas

cannot show the Court of Appeals erred by rejecting their constitutional arguments as inadequately briefed. 2025 UT App 109, ¶¶ 21–26.

An appellant's "argument must explain, with reasoned analysis supported by citations to legal authority and the record, why the party should prevail on appeal." Utah R. App. Pro. 24(a)(8). "[T]here is not a bright-line rule determining when a brief is inadequate." *Bank of Am. v. Adamson*, 2017 UT 2, ¶ 12. Instead, "the ultimate question" is "whether the appellant has established a sufficient argument for ruling in its favor—and not on whether there is a technical deficiency in briefing meriting a default." *Id.* (cleaned up). In the context of constitutional challenges, "[w]hen a party argues that a statute . . . violates provisions of the . . . Utah Constitution[], the mere mention of a constitutional right, phrase, or principle does not raise a constitutional claim." *Ramos v. Cobblestone Centre*, 2020 UT 55, ¶ 48 (cleaned up). Identifying constitutional provisions does not suffice: "a party must develop an argument as to how that provision has been violated to meet rule 24's standards." *Id.* (cleaned up).

Adequate briefing "allows [Utah's appellate courts] to properly evaluate a case on its merits," and it was squarely within the Court of Appeals' "discretion to disregard or strike" the Fujas' briefing if it concluded the briefing did not meet "rule 24's substantive requirements." *Id.* ¶ 47 (cleaned up). The Court of Appeals did not err in doing so. *See* 2025 UT App 109, ¶ 23.

In their belated attempt to challenge Mr. Stephens' entitlement to immunity on constitutional grounds, the Fujas specifically invoked the right to possess and protect

property (Art. I, Sect. 1), the right to petition for redress (Art. I, Sect. 1), the Open Courts Clause (Art. I, Section 11), the Due Process Clause (Art. I, Sect. 7), and the Uniform Operation of Laws Clause (Art. I, Sect. 24). (Appellants' Br. at 26–29.) But, for each of these provisions, the Fujas offered only cursory analyses and largely targeted *Mr. Stephens' actions* as allegedly unconstitutional, rather than providing reasoned legal analyses as to why they believe the UGIA, as interpreted in *Graves II*, is unconstitutional. (*See generally id.*) For example, their allegation they have been deprived of the right to possess and protect property focuses *solely* on Mr. Stephens' alleged conduct. (*Id.* at 26.)

The Fujas' examination of the Uniform Operations of Laws Clause—uninformed by any constitutional text or legal authority interpreting that text—declares that Mr. Stephens's immunity from suit "erodes public trust in the legal system, undermines the rule of law, and weakens the social contract that binds communities together, fostering a sense of lawlessness and injustice." (Appellants' Br. at 28–29.) A one-paragraph review of the same clause in their reply states, "Denial of civil suits for fraud and willful misconduct by government employees fails to further any valid legislative purpose" and "that it is not sound public policy to protect such actions." (Reply Br. at 5.) But, at no point do they engage in any analysis of the constitutional text or review any judicial standard to evaluate that text. (*See generally id.*; *see generally* Appellants' Br. at 26–29.)

As to their due process rights, the Fujas' one-paragraph argument—again, unsupported by legal analysis—appears mostly to allege *Mr. Stephens* violated their due process rights. (*See id.* at 28.) They do make the assertion that "[p]reventing civil suits

against governmental employees for intentional wrongdoing denies individuals the procedural due process needed to hold officials accountable and seek remedy and recourse for harms suffered" (*id.*), but it is unsupported by legal analysis. Their treatment of Article I, Section 7 in their reply brief similarly focuses on Mr. Stephens' alleged violations of their due process rights. (Reply Br. at 5–6.) While this discussion is book-ended by assertions that "[t]he UGIA, as interpreted in *Graves-2024*, violates the Due Process Clause of Article I, Section 7," and "[t]he *Graves-2024* interpretation renders the UGIA constitutional" (*id.* at 5–6), they are again made without supporting analysis.

On the putative Open Courts Clause challenge, the Fujas offered their interpretation and sweeping public policy concerns in a single paragraph without presenting its text or citing any legal authority. (Appellants' Br. at 27–28.) Without engaging in the operative analysis, they concluded they would be "denied their rights to open courts, redress for grievances, and civil recourse for injuries caused," if the Court of Appeals affirmed on immunity grounds. (*Id.* at 28.)

In the present petition, the Fujas respond to the Court of Appeals' observation they did "not engage in [the three-part Open Courts Clause] analysis in any way," 2025 UT App 109, ¶ 25, by claiming they "applied each prong of the *Berry* test with citations to controlling authority" in their reply brief. (Pet. at 19.) The Fujas thus allege the Court of Appeals "foreclosed consideration of properly preserved constitutional claims." (*Id.*)

Setting aside that they did not preserve any constitutional arguments, the Fujas overstate their putative Open Courts Clause analysis. While they cited *Berry ex rel. Berry*

*v. Beech Aircraft Corp.*, 717 P.2d 670 (Utah 1985), and stated "the Berry Test [ ] requires either a reasonable alternative remedy or a clear social or economic evil to justify eliminating a common law remedy" (Reply Br. at 4), the Fujas then swiftly reached their conclusion in the remainder of that paragraph ("The *Graves-2024* interpretation fails both prongs" of the *Berry* test (*id.*)) without identifying any cause of action they believe has been abrogated by the UGIA or *Graves II*. *See, e.g., Waite v. Utah Labor Comm'n*, 2017 UT 86, ¶ 19 ("Under [the *Berry*] test, we first look to whether the legislature has abrogated a cause of action.") In short, despite referencing the relevant legal standard, the Fujas did not meaningfully develop the analysis. (Reply Br. at 4.)

The Court of Appeals accurately reported that the Fujas' "arguments contain vague and sweeping statements about the Utah Constitution and the rights it protects" but that they did not "engage[] in the relevant analyses to any substantive degree." 2025 UT App 109, ¶ 24. It therefore did not err in concluding that "[b]ecause the Fujas' constitutional claims [were] inadequately briefed, they failed to meet their burden on appeal to support their constitutional challenges to the UGIA." *Id.* ¶ 26.

Given the Fujas' prior inadequate briefing, and the Court of Appeals' proper exercise of its discretion not to reach the challenges the Fujas raised to *Graves II* and the UGIA, this case does not present issues that warrant review on certiorari. *See* Utah R. App. Pro. 46(a)(1)–(4).

### 2. The Fujas did not preserve their constitutional challenges to the UGIA, and no exception applies.

Even if the Court of Appeals erred in rejecting their constitutional arguments as inadequate, the Fujas cannot overcome their failure to preserve these issues.

The "preservation requirement is well-settled: [Utah's appellate courts] require parties to have raised and argued before the district court the issue that they raise and argue before [the courts] on appeal, and if a party does not, it has failed to preserve the issue." *True v. Utah Dept. of Transp.*, 2018 UT App 86, ¶ 23 (cleaned up). "[T]he preservation rule applies to every claim, including constitutional questions, unless a defendant can demonstrate that 'exceptional circumstances' exist . . . ."[2] *State v. Holgate*, 2000 UT 74, ¶ 11.

The Fujas did not assert any constitutional challenges to the UGIA at the district court. They did not state their now-principal complaint that an interpretation of the UGIA under which Mr. Stephens' has not waived immunity is "unconscionable and would render the UGIA unconstitutional." (Appellants' Opp. at 12.) The Fujas readily concede they stated this position for the first time on appeal. (*See* Reply Br. at 2.) And, further, they have no recourse to the exceptional circumstances exception to the preservation requirement.

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[2] The Utah Court of Appeals recently held "plain error review is not available in ordinary civil cases unless expressly authorized by rule." *Kelly v. Timber Lakes Prop. Owners Ass'n*, 2022 UT App 23, ¶ 44.

The exceptional circumstances exception "applies to rare procedural anomalies," and only in "the most unusual circumstance where [the] failure to consider an issue that was not properly preserved for appeal would have resulted in manifest injustice." *Jacob v. Bezzant*, 2009 UT 37, ¶ 34.

Here, as Mr. Stephens explained at length in his principal brief (Appellee's Br. at 21–25), no injustice arises because the Fujas had ample opportunity to present their constitutional arguments to the district court. When Mr. Stephens first raised the immunity defense, the original decision in *Graves I* adopting the Fujas' view of Section -202(3) had not yet been issued. Mr. Stephens expressly argued that section did not constitute a waiver of immunity (R. 273–74), and the Fujas then should have raised their panoply of constitutional concerns.

Further, the Fujas *have* been afforded the opportunity to present these arguments on appeal. The Court of Appeals considered the Fujas' briefing on those issues but found it wanting. *See* 2025 UT App 109, ¶¶ 21–26. Notably, the Court of Appeals did not "address[] the issue of preservation" because it determined it could "easily resolve the constitutional challenges in favor of [Mr.] Stephens." *Id.* ¶ 21 n.5. In essence, the Court of Appeals determined the Fujas did not make use of their opportunity to present constitutional challenges. *See id.* ¶ 24.

Finally, the Fujas' pro se status does not warrant overlooking the preservation requirement. "[A]s a general rule, a party who represents himself will be held to the same standard of knowledge and practice as any qualified member of the bar." *Allen v. Friel*,

2008 UT 56, ¶ 11 (cleaned up). Even in the context of a failure to preserve an issue for appeal, leniency to pro se plaintiffs does not trump the preservation requirement. "Even though th[e] court is understandably loath to sanction pro se litigants for a procedural misstep here or there, we cannot ignore the requirements necessary to preserve an issue for appeal." *State v. Balfour*, 2018 UT App 79, ¶ 25 n.6 (involving unpreserved due process argument).

Given the unpreserved nature of the central issues the Fujas ask the Court to consider on certiorari, the Court should deny the petition.

**3. The Court of Appeals' decision does not conflict with the text of the UGIA or Mecham v. Frazier, 2008 UT 60.**

The Fujas charge that the Court of Appeals' interpretation of Section 63G-7-202(3)(c) "directly contradicts" this Court's opinion in *Mecham v. Frazier*, 2008 UT 60, (Pet. at 16), and "misapprehends legislative intent and violates basic canons of statutory construction" (*id.*). Neither argument succeeds.

The Fujas begin by asserting that in *Mecham*, 2008 UT 60, ¶¶ 13–15, "this Court held unequivocally that governmental employees are not immune when they act through fraud, malice, DUI-related conduct, or false testimony, and that such claims may proceed against the employee personally." (Pet. at 15–16.) Setting aside that the Fujas misstate

*Mecham*'s holding,[3] the Fujas overlook two significant, relevant differences between the version of the UGIA considered by the Court in *Mecham* and the current governing statute.

First, the UGIA provision under consideration in *Mecham*—Utah Code Section 63-30-3 (1997)—"clearly grant[ed] immunity from suit to governmental *entities*" but "[did] not contain a similarly explicit grant of immunity from suit to government *employees*." 2008 UT 60, ¶¶ 13, 14 (emphases original). This is not the case anymore. Through the 2004 amendments to the UGIA, the Legislature added "employees" to the express, general grant of immunity. *See* Utah Code § 63-30d-201(2) (2004); Laws 2004, c. 267, § 11 (eff. July 1, 2004). Then, as now, the relevant provision states, "Except as otherwise provided in this chapter, each governmental entity *and each employee of a governmental entity* are immune from suit for any injury that results from the exercise of a governmental function." Utah Code § 63G-7-201(1) (emphasis added).

Second, under the current UGIA, "[a] governmental entity and an employee of a governmental entity retain immunity from suit *unless that immunity has been expressly waived* in this chapter." Utah Code § 63G-7-101(3) (emphasis added). There was no similar provision in the version of the UGIA analyzed by the *Mecham* Court. *See* Utah Code § 63-30-1 *et seq.* (1997).

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[3] The Court held that then-governing version of the UGIA conferred immunity from suit on government employees, not merely immunity from liability, and that compliance with the UGIA notice of claim requirements did not "require the use of specific words, such as 'fraud' or 'malice.'" 2008 UT 60, ¶ 22.

Because the *Mecham* Court correctly observed the then-governing UGIA contained no express grant of immunity to governmental employees, the *only* source of protection from suit for employees was the exclusive remedy provision. 2008 UT 60, ¶¶ 13–14. After identifying that sole protection for employees, the Court took note of the three exceptions under which "a government employee can be sued individually." *Id.* ¶ 15. So, because there was no express grant of immunity for employees—and as there was no statutory requirement that any waiver of immunity be expressly stated—the Court reasoned an employee could be held personally liable if it was established one of the exclusive remedy exceptions were met. *Id*. Incidentally, the Court in *Mecham* properly identified these as "exceptions" to the protection from suit arising from the UGIA's exclusive remedy provision—*not* as waivers of immunity. *Id.*

The current version of the UGIA provides express waivers in Part 3 at Section 63G-7-301. On the other hand, the UGIA's exclusive remedy provision, found in Part 2 of the UGIA at Section 63G-7-202(3), still lists *exceptions* to a plaintiff's statutory exclusive remedy. As explained aptly by the Court of Appeals, "Properly understood, [Section 63G-7-202(3)(c)(i)] reflects an exception to a statutory exclusive remedy, *not a blanket waiver of immunity for governmental employees* for any fraud or willful misconduct." 2024 UT App 80, ¶ 21 n.5 (emphasis added). Indeed, had the Legislature intended to enumerate waivers of governmental immunity in Section -202(3), it would have used express language to do so, just as it has in Section 63G-7-301. Again, "an employee of a governmental entity

retain[s] immunity from suit *unless that immunity has been expressly waived*" in the UGIA. Utah Code § 63G-7-101(3) (emphasis added).

The Fujas' contention *Graves II* is at odds with the text of the UGIA or *Mecham* does not hold up to scrutiny. Because they overlook the differences between the text analyzed in *Mecham* and that under review in *Graves II*, their petition does not "provide[] an opportunity to resolve confusion or inconsistency in a legal standard set forth in a decision of the Court of Appeals." Utah R. App. P. 46(a)(3). The Court of Appeals has not sewn any such confusion or inconsistency.

**4. The Fujas' alleged procedural injuries do not warrant a grant of certiorari.**

Finally, the Fujas recite a host of purported errors by the Court of Appeals, which, allegedly, effect a deprivation of their "procedural due process rights and Utah's guarantee of equal appellate treatment." (Pet. at 5.) Each of these alleged errors, according to the Fujas, "signal[] that pro se litigants will not receive equal justice when constitutional claims are at stake," and implicate "the procedural rights of pro se litigants in appellate proceedings" to the extent that this Court must weigh in. (*Id.* at 21.) The Court should not grant certiorari based on the Fujas' perceived procedural injuries.

First, the Fujas charge that the Court of Appeals "sua sponte expanded *Graves II*" and thereby "deprived [the Fujas] of notice and an opportunity to be heard on a controlling question of law." (*Id.* at 19.) But, no expansion of *Graves II* occurred. After explaining the development from *Graves I* to *Graves II*, the Court of Appeals simply applied the *Graves II* interpretation—that Section -202(3) does not function to waive immunity—to

the circumstances of this case. 2025 UT App 109, ¶¶ 17–20. And, given Mr. Stephens' prior articulations of the very same position (*see* R. 267–74; Appellee's Mot. at 10–12; Appellee's Br. at 17–19), the Fujas have no basis to complain they had no notice of this potential result.

The Fujas additionally complain the Court of Appeals "distorted the record" when it described the Fujas as having challenged the UGIA as interpreted in *Graves II*, but not having sought that decision's overruling. (Pet. at 19.) They contend this is "an artificial distinction" (*id.*) which, allegedly, "insulated *Graves II* from challenge and deprived [the Fujas] of a fair adjudication of their constitutional claims" (*id.* at 20). As the Court of Appeals made clear, however, the Fujas' constitutional arguments were rejected because they were inadequately briefed, not because the Fujas failed to expressly request that *Graves II* be overruled. 2025 UT App 109, ¶ 26.

Next, the Fujas argue the Court of Appeals "refused to apply" a "requirement of supplemental briefing when deciding an unbriefed dispositive issue," citing *State v. Robison*, 2006 UT 65, ¶ 24, as the source of this supposed requirement. (Pet. at 20.) There is no such requirement. In *Robison*, this Court addressed "several ways appellate courts can test a notion of their own invention before using it to justify a reversal, most notably by inviting supplemental briefing." *Robison*, 2006 UT 65, ¶ 24. In its discussion of the options available to appellate courts in such circumstances, the Court spells out the various procedural stages at which supplemental briefing "could" be requested, "would be wise" to request, or "should" be allowed. *Id.* ¶ 24 n.4. But, the present case does not involve the

Court of Appeals "test[ing] a notion of [its] own invention before using it to justify a reversal," *id.* ¶ 24, such that this guidance does not apply.

Finally, the Fujas complain they were unfairly denied the "procedural safeguard" of a rehearing, even though the Court of Appeals had done so in *Graves*. (Pet. at 20.) This is not the unfair "disparate treatment" of pro se litigants. (*Id.*) No portion of Rule 35 suggests an aggrieved appellant is entitled to a rehearing, *see* Utah R. App. P. 35, and the denial of a rehearing did not "contravene[] [a] promise of equal indulgence to pro se litigants" made in *Noor v. State*, 2019 UT 3, ¶ 51 (Pet. at 20). *Noor* makes no such promise. It counsels reasonable leniency with pro se litigants. *See* 2019 UT 3, ¶ 51 n.64. But, neither *Noor*, nor any other authority recognizing indulgences afforded to pro se litigants, mandates they receive a rehearing upon request. The Fujas, not unlike the pro se litigant in *Lundahl,* "avail[] [themselves] of the judicial machinery as a matter of routine," and so "special leniency on the basis of pro se status is manifestly inappropriate." *Lundahl v. Quinn*, 2003 UT 11, ¶ 4.

The Court of Appeals has not deprived the Fujas of any procedural due process rights, and the purported errors attributed to the Court of Appeals do not provide a reason to grant certiorari. *See* Utah R. App. P. 46(a)(1)–(4).

DATED this 15th day of December, 2025.

SPENCER FANE, LLP

/s/ *Dani Cepernich*
Robert C. Keller
Dani Cepernich
*Attorneys for Respondents*

## CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of December, 2025, the foregoing **RESPONSE TO PETITION FOR CERTIORARI** was filed with the Utah Supreme Court via the Utah Appellate Courts electronic filing system, and a copy was served via email and regular U.S. Mail to

Dr. Tannin and Megan Fuja
2279 N. University Pkwy #262
Provo, Utah 84604-1543
megan@myxojo.com
Petitioners

/s/ Dani Cepernich

## APPENDICES

3. Utah Code Title 63, C Chapter 30 (1997)

4. Utah Code Section 63-30d-201 (2004)

# APPENDIX 1

(2) The state planning coordinator shall review and forward the comments and recommendations of the RDCC to:

(a) the governor;

(b) the initiating state agency, in the case of a proposed state action; and

(c) the Office of Legislative Research and General Counsel. 1994

**63-28a-6. Powers of state agencies and local governments not limited.**

This chapter shall not limit powers conferred upon departments, agencies, or instrumentalities of state or local governments by existing law. 1981

**63-28a-7. Repealed.** 1994

## CHAPTER 29

## UTAH STATE FIRE PREVENTION LAW

**(Renumbered by L. 1991, ch. 220, §§ 1 to 22.)**

**63-29-1 to 63-29-27. Renumbered as §§ 63-27-101 to 63-27-122.**

## CHAPTER 29a

## LIQUEFIED PETROLEUM GAS BOARD

**(Renumbered by Laws 1993, ch. 234, §§ 324 to 338).**

**63-29a-101 to 63-29a-112. Renumbered as §§ 53-7-302 to 53-7-316.**

## CHAPTER 30

## GOVERNMENTAL IMMUNITY ACT

Section



**63-30-1. Short title.**

This act shall be known and may be cited as the "Utah Governmental Immunity Act." 1965

**63-30-2. Definitions.**

As used in this chapter:

(1) "Claim" means any claim or cause of action for money or damages against a governmental entity or against an employee.

(2) (a) "Employee" includes a governmental entity's officers, employees, servants, trustees, commissioners, members of a governing body, members of a board, members of a commission, or members of an advisory body, officers and employees in accordance with Section 67-5b-104, student teachers certificated in accordance with Section 53A-6-101, educational aides, students engaged in providing services to members of the public in the course of an approved medical, nursing, or other professional health care clinical training program, volunteers, and tutors, but does not include an independent contractor.

(b) "Employee" includes all of the positions identified in Subsection (2)(a), whether or not the individual holding that position receives compensation.

(3) "Governmental entity" means the state and its political subdivisions as defined in this chapter.

(4) (a) "Governmental function" means any act, failure to act, operation, function, or undertaking of a governmental entity whether or not the act, failure to act, operation, function, or undertaking is characterized as governmental, proprietary, a core governmental function, unique to government, undertaken in a dual capacity, essential to or not essential to a government or governmental function, or could be performed by private enterprise or private persons.

(b) A "governmental function" may be performed by any department, agency, employee, agent, or officer of a governmental entity.

(5) "Injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, or estate, that would be actionable if inflicted by a private person or his agent.

(6) "Personal injury" means an injury of any kind other than property damage.

(7) "Political subdivision" means any county, city, town, school district, public transit district, redevelopment agency, special improvement or taxing district, or other governmental subdivision or public corporation.

(8) "Property damage" means injury to, or loss of, any right, title, estate, or interest in real or personal property.

(9) "State" means the state of Utah, and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state. 1994

**63-30-3. Immunity of governmental entities from suit.**

(1) Except as may be otherwise provided in this chapter, all governmental entities are immune from suit for any injury which results from the exercise of a governmental function, governmentally-owned hospital, nursing home, or other governmental health care facility, and from an approved medical, nursing, or other professional health care clinical training program conducted in either public or private facilities.

(2) (a) For the purposes of this chapter only, the following state medical programs and services performed at a state-owned university hospital are unique or essential to the core of governmental activity in this state and are considered to be governmental functions:

(i) care of a patient referred by another hospital or physician because of the high risk nature of the patient's medical condition;

(ii) high risk care or procedures available in Utah only at a state-owned university hospital or provided in Utah only by physicians employed at a state-owned university acting in the scope of their employment;

(iii) care of patients who cannot receive appropriate medical care or treatment at another medical facility in Utah; and

(iv) any other service or procedure performed at a state-owned university hospital or by physicians employed at a state-owned university acting in the scope of their employment that a court finds is unique or essential to the core of governmental activity in this state.

(b) If any claim under this subsection exceeds the limits established in Section 63-30-34, the claimant may submit the excess claim to the Board of Examiners and the Legislature under Title 63, Chapter 6.

(3) The management of flood waters and other natural disasters and the construction, repair, and operation of flood and storm systems by governmental entities are considered to be governmental functions, and governmental entities and their officers and employees are immune from suit for any injury or damage resulting from those activities.

(4) Officers and employees of a Children's Justice Center are immune from suit for any injury which results from their joint intergovernmental functions at a center created in Title 62A, Chapter 4. 1991

**63-30-4. Act provisions not construed as admission or denial of liability — Effect of waiver of immunity — Exclusive remedy — Joinder of employee — Limitations on personal liability.**

(1) (a) Nothing contained in this chapter, unless specifically provided, may be construed as an admission or denial of liability or responsibility by or for governmental entities or their employees.

(b) If immunity from suit is waived by this chapter, consent to be sued is granted, and liability of the entity shall be determined as if the entity were a private person.

(c) No cause of action or basis of liability is created by any waiver of immunity in this chapter, nor may any provision of this chapter be construed as imposing strict liability or absolute liability.

(2) Nothing in this chapter may be construed as adversely affecting any immunity from suit that a governmental entity or employee may otherwise assert under state or federal law.

(3) (a) Except as provided in Subsection (b), an action under this chapter against a governmental entity or its employee for an injury caused by an act or omission that occurs during the performance of the employee's duties, within the scope of employment, or under color of authority is a plaintiff's exclusive remedy.

(b) A plaintiff may not bring or pursue any other civil action or proceeding based upon the same subject matter against the employee or the estate of the employee whose act or omission gave rise to the claim, unless:

(i) the employee acted or failed to act through fraud or malice; or

(ii) the injury or damage resulted from the conditions set forth in Subsection 63-30-36(3)(c).

(4) An employee may be joined in an action against a governmental entity in a representative capacity if the act or omission complained of is one for which the governmental entity may be liable, but no employee may be held personally liable for acts or omissions occurring during the performance of the employee's duties, within the scope of employment, or under color of authority, unless it is established that the employee acted or failed to act due to fraud or malice. 1991

**63-30-5. Waiver of immunity as to contractual obligations.**

(1) Immunity from suit of all governmental entities is waived as to any contractual obligation. Actions arising out of contractual rights or obligations shall not be subject to the requirements of Sections 63-30-11, 63-30-12, 63-30-13, 63-30-14, 63-30-15, or 63-30-19.

(2) Notwithstanding Subsection (1), the Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water. 1991

**63-30-6. Waiver of immunity as to actions involving property.**

Immunity from suit of all governmental entities is waived for the recovery of any property real or personal or for the possession thereof or to quiet title thereto, or to foreclose mortgages or other liens thereon or to determine any adverse claim thereon, or secure any adjudication touching any mortgage or other lien said entity may have or claim on the property involved. 1965

**63-30-7. Repealed.** 1991

**63-30-8. Waiver of immunity for injury caused by defective, unsafe, or dangerous condition of highways, bridges, or other structures.**

Unless the injury arises out of one or more of the exceptions to waiver set forth in Section 63-30-10, immunity from suit of all governmental entities is waived for any injury caused by a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them. 1991

**63-30-9. Waiver of immunity for injury from dangerous or defective public building, structure, or other public improvement — Exception.**

Unless the injury arises out of one or more of the exceptions to waiver set forth in Section 63-30-10, immunity from suit of all governmental entities is waived for any injury caused from a dangerous or defective condition of any public building, structure, dam, reservoir, or other public improvement. 1991

**63-30-10. Waiver of immunity for injury caused by negligent act or omission of employee — Exceptions.**

Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of employment except if the injury arises out of, in connection with, or results from:

(1) the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused;

(2) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation of civil rights;

(3) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization;

(4) a failure to make an inspection or by making an inadequate or negligent inspection;

(5) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;

(6) a misrepresentation by an employee whether or not it is negligent or intentional;

(7) riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances;

(8) the collection of and assessment of taxes;

(9) the activities of the Utah National Guard;

(10) the incarceration of any person in any state prison, county or city jail, or other place of legal confinement;

(11) any natural condition on publicly owned or controlled lands, any condition existing in connection with an abandoned mine or mining operation, or any activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire and State Lands;

(12) research or implementation of cloud management or seeding for the clearing of fog;

(13) the management of flood waters, earthquakes, or natural disasters;

(14) the construction, repair, or operation of flood or storm systems;

(15) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6-14;

(16) a latent dangerous or latent defective condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them;

(17) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement;

(18) the activities of:

(a) providing emergency medical assistance;

(b) fighting fire;

(c) regulating, mitigating, or handling hazardous materials or hazardous wastes;

(d) emergency evacuations; or

(e) intervening during dam emergencies; or

(19) the exercise or performance or the failure to exercise or perform any function pursuant to Title 73, Chapter 5a or Title 73, Chapter 10 which immunity is in addition to all other immunities granted by law. 1996

**63-30-10.5. Waiver of immunity for taking private property without compensation.**

(1) As provided by Article I, Section 22 of the Utah Constitution, immunity from suit of all governmental entities is waived for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation.

(2) Compensation and damages shall be assessed according to the requirements of Title 78, Chapter 34, Eminent Domain. 1991

**63-30-10.6. Attorneys' fees for records requests.**

(1) Immunity from suit of all governmental entities is waived for recovery of attorneys' fees under Sections 63-2-405 and 63-2-802.

Notwithstanding Section 63-30-11:

(a) a notice of claim for attorneys' fees under Subsection (1) may be filed contemporaneously with a petition for review under Section 63-2-404; and

(b) Sections 63-30-14 and 63-30-19 shall not apply.

(2) Any other claim under this chapter that is related to a claim for attorneys' fees under Subsection (1) may be brought contemporaneously with the claim for attorneys' fees or in a subsequent action. 1992

**63-30-11. Claim for injury — Notice — Contents — Service — Legal disability.**

(1) A claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

(2) Any person having a claim for injury against a governmental entity, or against an employee for an act or omission occurring during the performance of his duties, within the

scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.

(3) (a) The notice of claim shall set forth:

(i) a brief statement of the facts;

(ii) the nature of the claim asserted; and

(iii) the damages incurred by the claimant so far as they are known.

(b) The notice of claim shall be:

(i) signed by the person making the claim or that person's agent, attorney, parent, or legal guardian; and

(ii) directed and delivered to the responsible governmental entity according to the requirements of Section 63-30-12 or 63-30-13.

(4) (a) If the claimant is under the age of majority, or mentally incompetent and without a legal guardian at the time the claim arises, the claimant may apply to the court to extend the time for service of notice of claim.

(b) (i) After hearing and notice to the governmental entity, the court may extend the time for service of notice of claim.

(ii) The court may not grant an extension that exceeds the applicable statute of limitations.

(c) In determining whether or not to grant an extension, the court shall consider whether the delay in serving the notice of claim will substantially prejudice the governmental entity in maintaining its defense on the merits. 1991

**63-30-12. Claim against state or its employee — Time for filing notice.**

A claim against the state, or against its employee for an act or omission occurring during the performance of his duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the attorney general and the agency concerned within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as governmental. 1987

**63-30-13. Claim against political subdivision or its employee — Time for filing notice.**

A claim against a political subdivision, or against its employee for an act or omission occurring during the performance of his duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the governing body of the political subdivision within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as governmental. 1987

**63-30-14. Claim for injury — Approval or denial by governmental entity or insurance carrier within ninety days.**

Within ninety days of the filing of a claim the governmental entity or its insurance carrier shall act thereon and notify the claimant in writing of its approval or denial. A claim shall be deemed to have been denied if at the end of the ninety-day period the governmental entity or its insurance carrier has failed to approve or deny the claim. 1965

**63-30-15. Denial of claim for injury — Authority and time for filing action against governmental entity.**

(1) If the claim is denied, a claimant may institute an action in the district court against the governmental entity or an employee of the entity.

(2) The claimant shall begin the action within one year after denial of the claim or within one year after the denial period specified in this chapter has expired, regardless of whether or not the function giving rise to the claim is characterized as governmental. 1987

**63-30-16. Jurisdiction of district courts over actions — Application of Rules of Civil Procedure.**

The district courts shall have exclusive original jurisdiction over any action brought under this chapter, and such actions shall be governed by the Utah Rules of Civil Procedure in so far as they are consistent with this chapter. 1983

**63-30-17. Venue of actions.**

Actions against the state may be brought in the county in which the claim arose or in Salt Lake County. Actions against a county may be brought in the county in which the claim arose, or in the defendant county, or, upon leave granted by a district court judge of the defendant county, in any county contiguous to the defendant county. Leave may be granted ex parte. Actions against all other political subdivisions including cities and towns, shall be brought in the county in which the political subdivision is located or in the county in which the claim arose. 1983

**63-30-18. Compromise and settlement of actions.**

(1) A political subdivision, after conferring with its legal officer or other legal counsel if it does not have a legal officer, may compromise and settle any action as to the damages or other relief sought.

(2) The risk manager in the Department of Administrative Services may:

(a) compromise and settle any claim of $25,000 or less in damages filed against the state for which the Risk Management Fund may be liable;

(b) with the concurrence of the attorney general or his representative and the executive director of the Department of Administrative Services, compromise and settle any claim of $25,000 to $100,000 in damages for which the Risk Management Fund may be liable; and

(3) The risk manager shall comply with procedures and requirements of Title 63, Chapter 38b, in compromising and settling any claim of $100,000 or more. 1995

**63-30-19. Undertaking required of plaintiff in action.**

At the time of filing the action the plaintiff shall file an undertaking in a sum fixed by the court, but in no case less than the sum of $300, conditioned upon payment by the plaintiff of taxable costs incurred by the governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover judgment. 1965

**63-30-20. Judgment against governmental entity bars action against employee.**

Judgment against a governmental entity in an action brought under this act shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee whose act or omission gave rise to the claim. 1965

**63-30-21. Repealed.** 1978

**63-30-22. Exemplary or punitive damages prohibited — Governmental entity exempt from execution, attachment, or garnishment.**

(1) (a) No judgment may be rendered against the governmental entity for exemplary or punitive damages.

(b) The state shall pay any judgment or portion of any judgment entered against a state employee in the employee's personal capacity even if the judgment is for or includes exemplary or punitive damages if the state

would be required to pay the judgment under Section 63-30-36 or 63-30-37.

(2) Execution, attachment, or garnishment may not issue against a governmental entity. 1991

**63-30-23. Payment of claim or judgment against state — Presentment for payment.**

Any claim approved by the state as defined by Subsection 63-30-2(1) or any final judgment obtained against the state shall be presented to the state risk manager, or to the office, agency, institution or other instrumentality involved for payment, if payment by said instrumentality is otherwise permitted by law. If such payment is not authorized by law then said judgment or claim shall be presented to the board of examiners and the board shall proceed as provided in Section 63-6-10. 1987

**63-30-24. Payment of claim or judgment against political subdivision — Procedure by governing body.**

Any claim approved by a political subdivision or any final judgment obtained against a political subdivision shall be submitted to the governing body thereof to be paid forthwith from the general funds of said political subdivision unless said funds are appropriated to some other use or restricted by law or contract for other purposes. 1965

**63-30-25. Payment of claim or judgment against political subdivision — Installment payments.**

If the subdivision is unable to pay the claim or award during the current fiscal year it may pay the claim or award in not more than ten ensuing annual installments of equal size or in such other installments as are agreeable to the claimant. 1965

**63-30-26. Reserve funds for payment of claims or purchase of insurance created by political subdivisions.**

Any political subdivision may create and maintain a reserve fund or may jointly with one or more other political subdivisions make contributions to a joint reserve fund, for the purpose of making payment of claims against the co-operating subdivisions when they become payable pursuant to this chapter, or for the purpose of purchasing liability insurance to protect the co-operating subdivisions from any or all risks created by this chapter. 1983

**63-30-27. Tax levy by political subdivisions for payment of claims, judgments, or insurance premiums.**

(1) Notwithstanding any provision of law to the contrary, all political subdivisions may levy an annual property tax sufficient to pay the following:

(a) any claim;

(b) any settlement;

(c) any judgment, including any judgment against an elected official or employee of any political subdivision, including peace officers, based upon a claim for punitive damages but the authority of a political subdivision for the payment of any judgment for punitive damages is limited in any individual case to $10,000;

(d) the costs to defend against any claim, settlement, or judgment; or

(e) the establishment and maintenance of a reserve fund for the payment of claims, settlements, or judgments as may be reasonably anticipated.

(2) It is legislative intent that the payments authorized for punitive damage judgments or to pay the premium for such insurance as authorized is money spent for a public purpose within the meaning of this section and Article XIII, Sec. 5, Utah Constitution, even though as a result of the levy the maximum levy as otherwise restricted by law is exceeded. No levy under this section may exceed .0001 per dollar of taxable value of taxable property. The revenues derived from this levy may not be used for any other purpose than those stipulated in this section. 1988

**63-30-28. Liability insurance — Purchase of insurance or self-insurance by governmental entity authorized — Establishment of trust accounts for self-insurance.**

(1) Any governmental entity within the state may purchase commercial insurance, self-insure, or self-insure and purchase excess commercial insurance in excess of the statutory limits of this chapter against any risk created or recognized by this chapter or any action for which a governmental entity or its employee may be held liable.

(2) (a) In addition to any other reasonable means of self-insurance, a governmental entity may self-insure with respect to specified classes of claims by establishing a trust account under the management of an independent private trustee having authority with respect to claims of that character to expend both principal and earnings of the trust account solely to pay the costs of investigation, discovery, and other pretrial and litigation expenses including attorneys' fees, and to pay all sums for which the governmental entity may be adjudged liable or for which a compromise settlement may be agreed upon.

(b) The monies and interest earned on said trust fund shall be subject to investment pursuant to Title 51, Chapter 7, State Money Management Act of 1974, and shall be subject to audit by the state auditor.

(3) Notwithstanding any law to the contrary, the trust agreement between the governmental entity and the trustee may authorize the trustee to employ counsel to defend actions against the entity and its employees and to protect and safeguard the assets of the trust, to provide for claims investigation and adjustment services, to employ expert witnesses and consultants, and to provide such other services and functions necessary and proper to carry out the purposes of the trust. 1991

**63-30-29. Repealed.** 1983

**63-30-29.5. Liability insurance — Government vehicles operated by employees outside scope of employment.**

A governmental entity that owns vehicles driven by employees of the governmental entity with the express or implied consent of the entity, but which, at the time liability is incurred as a result of an automobile accident, is not being driven and used within the course and scope of the driver's employment is considered to provide the driver with the insurance coverage required by Title 41, Chapter 12a. However, the liability coverages considered provided are the minimum limits under Section 31A-22-304. 1985

**63-30-30. Repealed.** 1978

**63-30-31. Liability insurance — Construction of policy not in compliance with act.**

Any insurance policy, rider or endorsement hereafter issued and purchased to insure against any risk which may arise as a result of the application of this chapter, which contains any condition or provision not in compliance with the requirements of the chapter, shall not be rendered invalid thereby, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider or endorsement been in full compliance with this chapter, provided the policy is otherwise valid. 1983

**63-30-32. Liability insurance — Methods for purchase or renewal.**

No contract or policy of insurance may be purchased or renewed under this chapter except upon public bid to be let to the lowest and best bidder; except that the purchase or renewal of insurance by the state shall be conducted in accordance with the provisions of Sections 63-56-1 through 63-56-73. 1983

**63-30-33. Liability insurance — Insurance for employees authorized — No right to indemnification or contribution from governmental agency.**

(1) (a) A governmental entity may insure any or all of its employees against liability, in whole or in part, for injury or damage resulting from an act or omission occurring during the performance of an employee's duties, within the scope of employment, or under color of authority, regardless of whether or not that entity is immune from suit for that act or omission.

(b) Any expenditure for that insurance is for a public purpose.

(c) Under any contract or policy of insurance providing coverage on behalf of a governmental entity or employee for any liability defined by this section, regardless of the source of funding for the coverage, the insurer has no right to indemnification or contribution from the governmental entity or its employee for any loss or liability covered by the contract or policy.

(2) Any surety covering a governmental entity or its employee under any faithful performance surety bond has no right to indemnification or contribution from the governmental entity or its employee for any loss covered by that bond based on any act or omission for which the governmental entity would be obligated to defend or indemnify under the provisions of Section 63-30-36. 1991

**63-30-34. Limitation of judgments against governmental entity or employee — Insurance coverage exception.**

(1) (a) Except as provided in Subsection (2), if a judgment for damages for personal injury against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds $250,000 for one person in any one occurrence, or $500,000 for two or more persons in any one occurrence, the court shall reduce the judgment to that amount.

(b) A court may not award judgment of more than $250,000 for injury or death to one person regardless of whether or not the function giving rise to the injury is characterized as governmental.

(c) Except as provided in Subsection (2), if a judgment for property damage against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds $100,000 in any one occurrence, the court shall reduce the judgment to that amount, regardless of whether or not the function giving rise to the damage is characterized as governmental.

(2) The damage limits established in this section do not apply to damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation. 1991

**63-30-35. Expenses of attorney general, general counsel for state judiciary, and general counsel for the Legislature in representing the state, its branches, members, or employees.**

(1) (a) After consultation with appropriate state agencies, the state risk manager shall provide a comprehensive liability plan, with limits not lower than those set forth in Section 63-30-34, that will protect the state and its indemnified employees from claims and liability.

(b) The risk manager shall establish deductibles and maximum limits of coverage in consultation with the executive director of the Department of Administrative Services.

(2) (a) The Office of the Attorney General has primary responsibility to provide legal representation to the judicial, executive, and legislative branches of state government in cases where Risk Management Fund coverage applies.

(b) When the attorney general has primary responsibility to provide legal representation to the judicial or legislative branches, the attorney general shall consult with the general counsel for the state judiciary and with the general counsel for the Legislature, to solicit their assistance in defending their respective branch, and in determining strategy and making decisions concerning the disposition of those claims. The decision for settlement of monetary claims in those cases, however, lies with the attorney general and the state risk manager.

(3) (a) If the Judicial Council, after consultation with the general counsel for the state judiciary, determines that the Office of the Attorney General cannot adequately defend the state judiciary, its members, or employees because of a conflict of interest, separation of powers concerns, or other political or legal differences, the Judicial Council may direct its general counsel to separately represent and defend it.

(b) If the general counsel for the state judiciary undertakes independent legal representation of the state judiciary, its members, or employees, the general counsel shall notify the state risk manager and the attorney general in writing before undertaking that representation.

(c) If the state judiciary elects to be represented by its own counsel under this section, the decision for settlement of claims against the state judiciary, its members, or employees, where Risk Management Fund coverage applies, lies with the general counsel for the state judiciary and the state risk manager.

(4) (a) If the Legislative Management Committee, after consultation with general counsel for the Legislature, determines that the Office of the Attorney General cannot adequately defend the legislative branch, its members, or employees because of a conflict of interest, separation of powers concerns, or other political or legal differences, the Legislative Management Committee may direct its general counsel to separately represent and defend it.

(b) If the general counsel for the Legislature undertakes independent legal representation of the Legislature, its members, or employees, the general counsel shall notify the state risk manager and the attorney general in writing before undertaking that representation.

(c) If the legislative branch elects to be represented by its own counsel under this section, the decision for settlement of claims against the legislative branch, its members, or employees, where Risk Management Fund coverage applies, lies with the general counsel for the Legislature and the state risk manager.

(5) (a) Notwithstanding the provisions of Section 67-5-3 or any other provision of this code, the attorney general, the general counsel for the state judiciary, and the general counsel for the Legislature may bill the Department of Administrative Services for all costs and legal fees expended by their respective offices, including attorneys' and secretarial salaries, in representing the state or any indemnified employee against any claim for which the Risk Management Fund may be liable and in advising

state agencies and employees regarding any of those claims.

(b) The risk manager shall draw funds from the Risk Management Fund for this purpose. 1990

**63-30-36. Defending government employee — Request — Cooperation — Payment of judgment.**

(1) Except as provided in Subsections (2) and (3), a governmental entity shall defend any action brought against its employee arising from an act or omission occurring:

(a) during the performance of the employee's duties;

(b) within the scope of the employee's employment; or

(c) under color of authority.

(2) (a) Before a governmental entity may defend its employee against a claim, the employee shall make a written request to the governmental entity to defend him:

(i) within ten days after service of process upon him; or

(ii) within a longer period that would not prejudice the governmental entity in maintaining a defense on his behalf; or

(iii) within a period that would not conflict with notice requirements imposed on the entity in connection with insurance carried by the entity relating to the risk involved.

(b) If the employee fails to make a request, or fails to reasonably cooperate in the defense, the governmental entity need not defend or continue to defend the employee, nor pay any judgment, compromise, or settlement against the employee in respect to the claim.

(3) The governmental entity may decline to defend, or subject to any court rule or order, decline to continue to defend, an action against an employee if it determines:

(a) that the act or omission in question did not occur:

(i) during the performance of the employee's duties;

(ii) within the scope of his employment; or

(iii) under color of authority;

(b) that the injury or damage resulted from the fraud or malice of the employee; or

(c) that the injury or damage on which the claim was based resulted from:

(i) the employee driving a vehicle, or being in actual physical control of a vehicle:

(A) with a blood alcohol content equal to or greater by weight than the established legal limit;

(B) while under the influence of alcohol or any drug to a degree that rendered the person incapable of safely driving the vehicle; or

(C) while under the combined influence of alcohol and any drug to a degree that rendered the person incapable of safely driving the vehicle; or

(ii) the employee being physically or mentally impaired so as to be unable to reasonably perform his job function because of the use of alcohol, because of the nonprescribed use of a controlled substance as defined in Section 58-37-4, or because of the combined influence of alcohol and a nonprescribed controlled substance as defined by Section 58-37-4.

(4) (a) Within ten days of receiving a written request to defend an employee, the governmental entity shall inform the employee whether or not it shall provide a defense, and, if it refuses to provide a defense, the basis for its refusal.

(b) A refusal by the entity to provide a defense is not admissible for any purpose in the action in which the employee is a defendant.

(5) Except as provided in Subsection (6), if a governmental entity conducts the defense of an employee, the governmental entity shall pay any judgment based upon the claim.

(6) A governmental entity may conduct the defense of an employee under a reservation of rights under which the governmental entity reserves the right not to pay a judgment, if the conditions set forth in Subsection (3) are established.

(7) (a) Nothing in this section or Section 63-30-37 affects the obligation of a governmental entity to provide insurance coverage according to the requirements of Subsection 41-12a-301(3) and Section 63-30-29.5.

(b) When a governmental entity declines to defend, or declines to continue to defend, an action against its employee under the conditions set forth in Subsection (3), it shall still provide coverage up to the amount specified in Sections 31A-22-304 and 63-30-29.5. 1991

**63-30-37. Recovery of judgment paid and defense costs by government employee.**

(1) Subject to Subsection (2), if an employee pays a judgment entered against him, or any portion of it, which the governmental entity is required to pay under Section 63-30-36, the employee may recover from the governmental entity the amount of the payment and the reasonable costs incurred in his defense.

(2) If a governmental entity does not conduct the defense of an employee against a claim, or conducts the defense under an agreement as provided in Subsection 63-30-36(6), the employee may recover from the governmental entity under Subsection (1) if:

(a) the employee establishes that the act or omission upon which the judgment is based occurred during the performance of his duties, within the scope of his employment, or under color of authority, and that he conducted the defense in good faith; and

(b) the governmental entity does not establish that the injury or damage resulted from:

(i) the fraud or malice of the employee;

(ii) the employee driving a vehicle, or being in actual physical control of a vehicle:

(A) with a blood alcohol content equal to or greater by weight than the established legal limit;

(B) while under the influence of alcohol or any drug to a degree that rendered the person incapable of safely driving the vehicle;

(C) while under the combined influence of alcohol and any drug to a degree that rendered the person incapable of safely driving the vehicle; or

(iii) the employee being physically or mentally impaired so as to be unable to reasonably perform his job function because of the use of alcohol, because of the nonprescribed use of a controlled substance as defined in Section 58-37-4, or because of the combined use of alcohol and a nonprescribed controlled substance as defined in Section 58-37-4. 1987

**63-30-38. Indemnification of governmental entity by employee not required.**

If a governmental entity pays all or part of a judgment based on or a compromise or settlement of a claim against the governmental entity or an employee, the employee may not be required to indemnify the governmental entity for the payment. 1983

## CHAPTER 30a

## REIMBURSEMENT OF LEGAL FEES AND COSTS TO OFFICERS AND EMPLOYEES

Section

# APPENDIX 2

# Utah Statutes Annotated - 2004

U.C.A. 1953 § 63-30d-201

West's Utah Code Annotated Currentness
Title 63. State Affairs in General
Chapter 30D. Governmental Immunity Act of Utah (Refs & Annos)
Part 2. Governmental Immunity—Statement, Scope, and Effect
**§ 63-30d-201. Immunity of governmental entities from suit**

(1) Except as may be otherwise provided in this chapter, each governmental entity and each employee of a governmental entity are immune from suit for any injury that results from the exercise of a governmental function.

(2) Notwithstanding the waiver of immunity provisions of Section 63-30d-301, a governmental entity, its officers, and its employees are immune from suit for any injury or damage resulting from the implementation of or the failure to implement measures to:

(a) control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;

(b) investigate and control suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act; and

(c) respond to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health related activities.

Laws 2004, c. 267, § 11, eff. July 1, 2004.

HISTORICAL AND STATUTORY NOTES

Prior Laws:

Laws 1991, c. 15.

Laws 1991, c. 248.

Laws 2003, c. 3, § 5.

C. 1953, § 63-30-3.

CROSS REFERENCES

Hazardous substances, governmental immunity, see § 19-6-321.
Jails, liability insurance, see § 10-8-58.5.
Public agency insurance mutual considered government entity, see § 31A-1-103.
Technology finance corporation, immunity of corporation and state, see § 9-13-401.
Underground storage tanks, governmental immunity, see § 19-6-427.

LIBRARY REFERENCES

Municipal Corporations 724.

  