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## IN THE UTAH SUPREME COURT

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**Dr. Tannin Fuja and Megan Fuja,**

Petitioners/Appellants/Plaintiffs,

vs.

**Mr. Corbett Stephens, in his individual capacity,**

Respondent/Appellee/ Defendant.

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Supreme Court No.

Court of Appeals No. 20240293

Petition for Writ of Certiorari  
From the Utah Court of Appeals

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Appeal from Judgment of the Fourth District Court,  
Utah County, Provo Department  
Civil No. 220400256  
Honorable Judge: Robert C. Lunnen

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Dr. Tannin Fuja and Megan Fuja, pro se Petitioners, hereby make this Petition for

Writ of Certiorari.<sup>1</sup>

## **QUESTIONS PRESENTED FOR REVIEW<sup>2</sup>**

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<sup>1</sup> This petition raises only claims under the Utah Constitution and Utah statutory law. Appellants expressly reserve all federal claims, including those under 42 U.S.C. § 1983, pursuant to *England v. Louisiana State Bd. of Medical Examiners*, 375 U.S. 411 (1964), and do not waive or abandon any rights or remedies under federal law.

<sup>2</sup> This case strikes at the core of constitutional governance. As this Court observed in *Scott v. Universal Sales, Inc.*, 2015 UT 64, ¶ 58, 356 P.3d 1172, the UGIA’s broad definition of “governmental function” already risks “encompassing anything the government decides to do.” The Court of Appeals’ interpretation pushes this risk into reality—insulating employees even when they commit fraud, fabricate or conceal evidence, give false testimony, engage in willful misconduct, or cause injury while impaired by drugs or alcohol. Such a construction revives the repudiated maxim that “the King can do no wrong,” granting government actors absolute power without accountability. If left

**Question 1: Heightened Scrutiny, Rational Basis, and Elimination of Remedies:**

Did the Utah Court of Appeals err in upholding an interpretation of the UGIA that eliminates all judicial remedies for intentional governmental misconduct—including fraud, fabrication or concealment of evidence, false testimony, willful misconduct, and DUI/substance-impaired conduct—without narrowly tailoring immunity to a legitimate purpose or providing an adequate substitute remedy, thereby violating the Utah Constitution’s guarantees of due process, open courts, equal protection, and uniform operation of the laws under *Berry v. Beech Aircraft*, 717 P.2d 670 (Utah 1985); *Spackman v. Bd. of Educ.*, 2000 UT 87; *Judd v. Drezga*, 2004 UT 91; and *Waite v. Utah Labor Comm’n*, 2017 UT 86; and does such an interpretation fail both rational basis review and heightened scrutiny?

**Question 2: Statutory Interpretation and Conflict with *Mecham*:** Did the Utah Court of Appeals misapply Utah Code § 63G-7-202(3)(c) by allowing the exclusivity provision in § 63G-7-202(3)(a)–(b) to nullify the express exceptions in § 63G-7-202(3)(c)(i)–(v), and by mischaracterizing those exceptions as applying only to the statutory exclusive remedy rather than to a government employee’s blanket immunity—contrary to the statute’s text, structure, legislative history, the canon against surplusage, and this Court’s controlling precedent in *Mecham v. Frazier*, 2008 UT 60?

**Question 3: Legislative Intent and Statutory Construction:** Did the Utah Court of Appeals further violate legislative intent by rendering the exceptions in Utah Code Ann.

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unreviewed, this precedent will extinguish all remedies for intentional governmental misconduct, collapse deterrence, and erode both judicial integrity and public trust.

§ 63G-7-202(3)(c) meaningless, despite the Legislature’s deliberate choice to enact, preserve, expand, and repeatedly reference them throughout the UGIA—thereby producing absurd and unconstitutional outcomes that deny Petitioners any civil remedy and protect egregious misconduct which cannot constitute a legitimate good-faith governmental interest, in violation of rational basis review, heightened scrutiny, and the constitutional guarantees of due process, equal protection, uniform operation of the law, and open courts?

**Question 4: Procedural Due Process and Pro Se Fairness:** Did the Utah Court of Appeals violate Petitioners’ procedural due process rights and Utah’s guarantee of equal appellate treatment by: (a) sua sponte expanding *Graves v. Utah County*, 2024 UT App 80 (“*Graves II*”), to all of § 63G-7-202(3)(c) without briefing or trial court findings, contrary to *State v. Robison*, 2006 UT 65; (b) misstating the record by asserting Petitioners “did not engage in [Open Courts Clause] analysis,” despite their reply brief applying each prong of the *Berry* test; (c) mischaracterizing Petitioners’ arguments as not challenging *Graves II*, when they asserted that *Graves II* “rendered the UGIA unconstitutional” and conflicted with *Mecham v. Frazier*, 2008 UT 60; (d) denying pro se litigants the supplemental briefing and rehearing opportunities afforded to represented parties; and (e) thereby foreclosing properly preserved constitutional claims, contrary to *Noor v. State*, 2019 UT 3?

**Question 5: Uniform Operation of the Laws – Arbitrary Classifications:** Did the Utah Court of Appeals’ interpretation of the UGIA violate the Utah Constitution’s Uniform Operation of the Laws Clause by creating arbitrary classifications in which: (a) intentional wrongdoers employed by the government are shielded from all civil liability while private individuals remain liable for the same misconduct; and (b) governmental

entities can be held liable for negligent acts of employees but no governmental party can be held liable for their intentional acts—thus inverting tort law’s hierarchy of culpability, undermining deterrence, incentivizing intentional misconduct, and creating unconstitutional classifications under *Merrill v. Labor Commission*, 2009 UT 26?

## **REASONS FOR GRANTING THE PETITION**

At stake in this case is whether Utah law will tolerate a regime where *fraud, fabrication and concealment of evidence, and false testimony by government officials are absolutely immune from civil accountability*—while mere negligence remains actionable.

This case presents questions of exceptional constitutional and statutory importance. The decision below rewrites the UGIA, immunizing intentional misconduct by government employees—including fraud, fabrication and concealment of evidence, false testimony, willful misconduct, and DUI-related injury—while leaving negligent acts actionable. This inversion of tort law strips Utah citizens of remedies the Legislature explicitly preserved and this Court affirmed in *Mecham v. Frazier*, 2008 UT 6. By disregarding statutory text, legislative history, and binding precedent, the Court of Appeals has created a direct conflict in Utah law, undermined constitutional guarantees of due process, open courts, and uniform operation, and incentivized the most egregious misconduct to escape accountability.

The case also raises urgent procedural questions about fairness in appellate review, particularly the treatment of pro se litigants. The Court of Appeals sua sponte expanded *Graves II* without briefing, mischaracterized the record, and denied Petitioners the same opportunity for rehearing granted to represented parties. These actions closed the courthouse doors to pro se litigants in violation of due process, equal justice, and the

principle that pro se parties must receive “every reasonable indulgence” to be fairly heard.

This case satisfies every consideration set forth in Rule 46 of the Utah Rules of Appellate Procedure. It: (1) presents a question regarding the proper interpretation of a constitutional provision and statute that will affect every future UGIA case, Rule 46(a)(1); (2) raises legal questions of first impression—including whether § 63G-7-202(3)(c) is enforceable as an exception to employee immunity—that are certain to recur, Rule 46(a)(2); (3) creates a direct conflict between *Mecham* and *Graves II*, leaving lower courts without clear guidance, Rule 46(a)(3); and (4) implicates recurring questions of fundamental fairness in appellate procedure, particularly for pro se litigants, Rule 46(a)(4).

Unless this Court intervenes, Utah will declare that government officials who commit fraud, falsify evidence, or give false testimony are beyond the reach of the law. The Court should grant certiorari to reaffirm that in Utah, *the rule of law—not the rule of immunity—governs those who wield government power.*

**Standard of Review:** “On certiorari, [the Utah Supreme Court reviews] the decision of the Court of Appeals for correctness.” *Brookside Mobile Home Park, Ltd. V. Peebles*, 2002 UT 48, ¶ 11 (Utah 2002).

## **REPORT OF COURT OF APPEALS OPINION**

*Fuja v. Stephens*, 2025 UT App 109 (Utah Ct. App. 2025).

Case No. 20240293, Utah Court of Appeals, Order issued on July 10, 2025.

Petition for Rehearing was denied on August 11, 2025.

The Court of Appeals affirmed the district court’s dismissal sua sponte on alternative grounds of governmental immunity and rejected Fujas’ constitutional challenges, ruling:

“Thus, in *Graves II* this court concluded that, when read in context, ‘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.’ 2024 UT App 80, ¶ 21 n. 5.

“*Graves II* clarified that [Utah Code § 63G-7-202(3)(c)] on which the Fujas rely to argue that Stephens’s immunity has been waived actually does no such thing … As a result, Stephens retains immunity from the Fujas’ suit, and on this basis we affirm the dismissal of the Fujas’ claims against Stephens.” *Fuja v. Stephens*, 2025 UT App 109, ¶¶ 19-20 (Utah Ct. App. 2025).

The Utah Court of Appeals also ruled that:

“Because of the particularly high burden imposed on litigants challenging the constitutionality of a statute, the court would expect rigorous briefing on such issues. In this case, the Fujas’ constitutional claims are inadequately briefed, and as a result, the Fujas fall far short of meeting their heavy burden.

“For example, the Fujas argue that the UGIA as interpreted in *Graves II* violates the Open Courts Clause of the Utah Constitution … But the Fujas do not engage in this analysis in any way…

“They have not identified the relevant analysis for any of the constitutional claims they make… Because the Fujas’ constitutional claims are inadequately briefed, they have failed to meet their burden on appeal to support their constitutional challenges to the UGIA.” *Fuja v. Stephens*, 2025 UT App 109, ¶¶ 22, 25-26 (UT Ct. App. 2025).<sup>3</sup>

## STATEMENT OF JURISDICTION

This Court has jurisdiction under Utah Code Ann. § 78A-3-102(3), which grants appellate jurisdiction over judgments of the Court of Appeals, and § 78A-3-102(5), which provides that review by writ of certiorari is within the Supreme Court’s discretion. The

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<sup>3</sup> The Court of Appeals erred in dismissing Petitioners’ constitutional briefing as inadequate, ignoring their Reply Brief’s detailed *Berry* analysis and supporting authority, and further compounded the error by failing to request supplemental briefing—an omission that unfairly prejudiced *pro se* litigants. (See Question 4.)

Court of Appeals issued its decision on July 10, 2025. Petitioners timely filed a petition for rehearing, denied on August 11, 2025. This petition is timely filed within 30 days of that denial under Utah R. App. P. 48(c). Petitioners do not rely on Utah R. App. P. 48(d)(1)(B).

## **CONTROLLING CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND RULES**

### **Utah Constitution**

**Article I, § 7 – Due Process of Law.** “No person shall be deprived of life, liberty or property, without due process of law.”

**Article I, § 11 – Open Courts Clause.** “All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.”

**Article I, § 24 – Uniform Operation of Laws.** “All laws of a general nature shall have uniform operation.”

**Utah Governmental Immunity Act (UGIA)** – Utah Code Ann. §§ 63G-7-101 et seq. included in its entirety in the Appendix.

**Utah Code Ann. § 63G-7-202(3)(a)–(b):** “(a) Except as provided in Subsection (3)(c), an action under this chapter 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, or under color of authority is a plaintiff’s exclusive remedy. (b) Judgment under this chapter against a governmental entity is a complete bar to any action by the claimant, based upon the same subject matter, against the employee whose act or omission gave rise to the claim.

**Utah Code Ann. §63G-7-202(3)(c)(i)–(v):** “(c) A plaintiff may not bring or pursue any 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 willful misconduct; (ii) the injury or damage resulted from 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; (iii) injury or damage resulted from the employee being physically or mentally impaired so as to be unable to reasonably perform the employee's job function because of: (A) the use of alcohol; (B) the nonprescribed use of a controlled substance as defined in Section 58-37-4; or (C) the combined influence of alcohol and a nonprescribed controlled substance as defined by Section 58-37-4; (iv) in a judicial or administrative proceeding, the employee intentionally or knowingly gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false testimony material to the issue or matter of inquiry under this section; or (v) the employee intentionally or knowingly: (A) fabricated evidence; or (B) except as provided in Subsection (3)(d), with a conscious disregard for the rights of others, failed to disclose evidence that: (I) was known to the employee; and (II) (Aa) was known by the employee to be relevant to a material issue or matter of inquiry in a pending judicial or administrative proceeding; or (Bb) was known by the employee to be relevant to a material issue or matter of inquiry in a judicial or administrative proceeding, if disclosure of the evidence was requested of the employee by a party to the proceeding or counsel for a party to the proceeding.”

## **STATEMENT OF THE CASE**

### **A. Statement of Facts**

Petitioners brought this action against Respondent, a government employee, alleging intentional misconduct, including fraud, fabrication and concealment of evidence, false testimony in judicial proceedings, and willful misconduct. *R. 625, 663–676.* Petitioners asserted that these acts fall within the express exceptions to governmental employee immunity set forth in the UGIA, Utah Code Ann. § 63G-7-202(3)(c)(i)–(v). *R. 663–676.* Following the ruling in *Graves II*, Petitioners alleged this new interpretation violated the Utah Constitution, including the Due Process Clause, the Open Courts Clause,

and the Uniform Operation of the Laws Clause. See *Brief of the Appellants*, p. 23-25; *Reply Brief of the Appellants*, p.3.

### **B. Procedural History of Case**

Petitioners filed suit in the Fourth Judicial District Court against Respondent and the City of Woodland Hills. *R. 94-226*. Following stipulation of the parties, the district court dismissed all claims against the City. *R. 542-544, 614-624*. After the Court affirmed Petitioners could pursue claims against Respondent, the Court asked Petitioners to file a Second Amended Petition naming only Respondent in his individual capacity. *R. 625-678*.

Respondent moved to dismiss under Utah R. Civ. P. 9(c) and 12(b)(6), asserting that Petitioners had not adequately pled claims of fraud or intentional misconduct. *R. 690-709*.

### **C. Disposition of Case at Trial Court**

The district court granted Respondent's motion to dismiss *with prejudice*. *R. 792-799*. The court ruled that Petitioners had failed to state a claim, finding that: (1) Petitioners had not adequately pled reliance with respect to claims sounding in fraud; (2) Claims based on false testimony were not independently actionable; and (3) Respondent owed no duty of care concerning disclosure or concealment of evidence. The district court did not reach Petitioners' claims of fabrication of evidence. *R. 792-799*. The dismissal was issued without stating under which rule the case was dismissed and was entered with prejudice, and Petitioners were not granted leave to amend further. *R. 792-799*.

### **D. Disposition of Case at the Court of Appeals**

Petitioners appealed. *R. 809-810*. During the pendency of the appeal, the Utah Court of Appeals issued *Graves II*, holding that the exceptions in § 63G-7-202(3)(c) do not waive

governmental immunity but instead limit the UGIA's exclusivity provision.

Relying on *Graves II*, the Court of Appeals sua sponte affirmed the district court's dismissal. The court held that fraud, willful misconduct, fabrication or concealment of evidence, and false testimony do not operate as exceptions to governmental employee immunity, but only as limitations on exclusivity, leaving no civil remedy for such acts.

Petitioners sought rehearing under Utah R. App. P. 35, citing *State v. Robison*, 2006 UT 65, 147 P.3d 448, and arguing that dispositive issues had been decided sua sponte without briefing and that the decision mischaracterized Petitioners' arguments. The Court of Appeals denied rehearing on August 11, 2025.

## **ARGUMENT**

### **I(a). Elimination of Remedies for Intentional Government Misconduct Violates the Utah Constitution**

The Court of Appeals sustained an interpretation of the UGIA that extinguishes all remedies for intentional governmental misconduct—fraud, fabrication of evidence, false testimony, willful misconduct, and DUI and substance abuse-related injury—without providing an adequate substitute or demonstrating a legitimate governmental purpose. This violates the Utah Constitution's Open Courts Clause, art. I, § 11, which guarantees that “every person shall have remedy by due course of law.”

In *Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 680 (Utah 1985), this Court held that the Legislature may not abolish remedies unless it either (1) provides a constitutionally adequate substitute or (2) identifies a clear social or economic evil justifying the restriction in a narrowly tailored manner. This principle has been reaffirmed in *Spackman v. Bd. of*

*Educ.*, 2000 UT 87, ¶¶ 23–25; *Judd v. Drezga*, 2004 UT 91, ¶ 11; and *Waite v. Utah Labor Comm'n*, 2017 UT 86, ¶ 19. Legislative limits on remedies must serve legitimate public purposes and survive both rational basis review and, where fundamental rights are impaired, heightened scrutiny. See *Judd v. Drezga*, 2004 UT 91, ¶ 19.

Shielding government employee intentional misconduct from personal accountability serves no legitimate governmental interest. Arbitrary immunities are not “fairly debatable” or “reasonable.” *Judd v. Drezga*, 2004 UT 91, ¶ 15. Nor can the interpretation below satisfy *Waite*’s requirement of narrow tailoring. *Waite v. Utah Labor Comm'n*, 2017 UT 86, ¶ 28. By immunizing fraud and fabrication of evidence—acts universally condemned as antithetical to justice—the Court of Appeals violated due process, equal protection, the uniform operation of laws, and the Open Courts Clause.

This issue warrants certiorari under Utah R. App. P. 46 because it (1) presents a constitutional question of exceptional precedential importance, Rule 46(a)(1); (2) raises a legal question of first impression—whether the UGIA can be construed to bar all remedies for intentional misconduct, Rule 46(a)(2); and (3) implicates recurring issues of extraordinary importance, Rule 46(a)(4).

### **I(b). Governmental Immunity Does Not and Never Did Shield Fraud, Fabrication, or Other Bad-Faith Acts**

Utah law has never conferred immunity for intentional or bad-faith misconduct by individual government employees. Both before and after the 1987 amendments to the UGIA, such acts remained outside the scope of governmental immunity.

Section 63G-7-202(3)(c) explicitly removes immunity for fraud, willful

misconduct, DUI- or drug-related injury, false testimony, and fabrication or concealment of evidence. These carve-outs codify a longstanding principle: while an entity may enjoy immunity, employees remain personally liable for intentional wrongdoing. As this Court held in *DeBry v. Noble*, 889 P.2d 428, 442 (Utah 1995), “even though the governmental agency cannot be liable, an employee who commits fraud in the course of his employment can be held personally liable.”

This principle has been repeatedly affirmed. *Salo v. Tyler*, 2018 UT 7, ¶¶ 33, 41 (willful misconduct is not shielded by immunity); *Hoyer v. State*, 2009 UT 38, ¶ 31 (UGIA permits personal liability for fraud and willful misconduct); *Mecham v. Frazier*, 2008 UT 60, ¶¶ 13–15 (no immunity for fraud, malice, DUI, or false testimony). Federal courts applying Utah law have followed the same principle. See *Cavanaugh et al v. Woods Cross City et al*, No. 1:2008cv00032 - Document 122 (D. Utah 2009) (police officer potentially liable for willful misconduct); *Anderson v. Richards*, No. 2:2021cv00726 - Document 29 (D. Utah 2023) (willful misconduct negates immunity); *Peay et al v. Utah County et al*, No. 2:2005cv01083 - Document 95 (D. Utah 2009) (same); *Rossi v. University of Utah et al*, No. 2:2015cv00767 - Document 43 (D. Utah 2016) (same).

The post-1987 amendments did not alter this rule. Instead, they expanded “governmental function” broadly, but constitutional limits prevent treating intentional misconduct as a legitimate government act. See *Standiford v. Salt Lake City Corp.*, 605 P.2d 1230 (Utah 1980) (creating a test for determining governmental immunity which broadens governmental liability). The Open Courts Clause, as reaffirmed in *Scott v. Universal Sales, Inc.*, 2015 UT 64, ¶¶ 54–59, prohibits the Legislature from abolishing

causes of action existing before 1987 without providing an adequate substitute or compelling justification. Pre-1987 law recognized suits against government employees for fraud, willful misconduct, and false testimony; those claims therefore remain constitutionally protected.

Bad-faith acts remain outside immunity for four reasons: (1) they are not legitimate governmental functions; (2) § 63G-7-202(3)(c) expressly removes immunity; (3) such claims were actionable before 1987 and cannot be abolished under the Open Courts Clause; and (4) public policy demands accountability (*Francis v. State*, 2013 UT 65, ¶ 36).

This issue warrants certiorari because it (1) presents a statutory and constitutional interpretation question of precedential importance, Rule 46(a)(1); (2) raises a recurring question of first impression—whether the UGIA insulates intentional misconduct, Rule 46(a)(2); and (3) conflicts directly with *Mecham*, *DeBry*, *Salo*, and *Hoyer*, Rule 46(a)(3).

## **II. Statutory Interpretation and Conflict with Precedent**

The Court of Appeals misinterpreted Utah Code Ann. § 63G-7-202(3), in direct conflict with this Court’s binding precedent. Subsections (3)(a)–(b) establish that actions against a governmental entity or employee are generally exclusive. Subsection (3)(c), however, carves out explicit exceptions: “A plaintiff may not bring or pursue any civil action … unless” one of five categories of intentional misconduct applies. The “unless” clause is operative, not surplusage.

In *Mecham v. Frazier*, 2008 UT 6, ¶¶ 13–15, 193 P.3d 630, this Court held unequivocally that governmental employees are not immune when they act through fraud, malice, DUI-related misconduct, or false testimony, and that such claims may proceed

against the employee personally. That decision, issued on federal certification, is a unanimous and binding construction of Utah law. Since *Mecham*, the Legislature has not narrowed these exceptions. To the contrary, it renumbered and expanded them in § 63G-7-202(3)(c), adding willful misconduct, fabrication, and concealment of evidence.

The Court of Appeals' contrary view—that subsection (3)(c) does not waive employee immunity but only qualifies exclusivity of entity claims—renders (3)(c) meaningless and directly contradicts *Mecham*. This violates the canon against surplusage. *Marion Energy, Inc. v. KFJ Ranch P'ship*, 2011 UT 50, ¶ 14, 267 P.3d 863. As this Court held in *Jensen v. Intermountain Health Care, Inc.*, 679 P.2d 903, 906 (Utah 1984), “[t]he meaning of a part of an act should harmonize with the purpose of the whole act. Separate parts of an act should not be construed in isolation from the rest of the act.” The Court of Appeals did exactly what *Jensen* forbids, construing subsection (3)(c) in isolation and depriving it of substantive effect. If left standing, the decision rewrites § 63G-7-202(3)(c) into a nullity and insulates fraud, fabrication, substance-impaired conduct, and willful misconduct from liability, even though these acts were always actionable under Utah law.

This case satisfies Rule 46 because it (1) presents a statutory interpretation question of exceptional precedential value, Rule 46(a)(1); (2) raises a recurring question of first impression—whether § 63G-7-202(3)(c) creates substantive exceptions to immunity or none at all, Rule 46(a)(2); and (3) directly conflicts with *Mecham v. Frazier*, Rule 46(a)(3).

### **III. Misapprehension of Legislative Intent and Statutory Construction**

The Court of Appeals' interpretation misapprehends legislative intent and violates basic canons of statutory construction. The plain language is the best evidence of legislative

purpose, and “[s]eparate parts of an act should not be construed in isolation from the rest of the act.” *Jensen v. Intermountain Health Care, Inc.*, 679 P.2d 903, 906 (Utah 1984).

In *Fuja v. Stephens*, 2025 UT App 109, ¶ 20, and *Graves II*, 2024 UT App 80, ¶ 14, 551 P.3d 1029, the Court of Appeals held that § 63G-7-301, which governs only governmental entities, is the sole UGIA waiver of immunity, leaving employees absolutely immune for intentional misconduct. That interpretation nullifies multiple statutory cross-references, rendering them surplusage. Section 301 addresses *entity* immunity, while § 202(3)(c) separately governs *employee* liability. While (3)(a)–(b) grants employees broad protection “unless” (3)(c) applies, if (3)(c) is not a waiver, employees enjoy unqualified immunity and (3)(c) becomes surplusage. Courts do not construe statutes to nullify provisions. *Marion Energy, Inc. v. KFJ Ranch P'ship*, 2011 UT 50, ¶ 14, 267 P.3d 863. Further, specific governs general: § 202(3)(c) controls over § 63G-7-101(3); absurdity otherwise results. *Hall v. Utah State Department of Corrections*, 2001 UT 34, ¶ 15.

The UGIA repeatedly incorporates subsection (3)(c) as an operative exception: (1) *Notice of Claim* provisions (§ 63G-7-401(3)(a)(ii), (4)(a)(iv)) require identification of the employee wrongdoer when claims fall under subsection (3)(c). (2) *Exclusive Remedy* (§ 63G-7-202(3)(a)) is expressly limited by the phrase “unless” one of the (3)(c) exceptions applies. (3) *Defense of Employees* (§ 63G-7-902(3)(b)) permits the State to decline a defense if subsection (3)(c) misconduct is alleged. (4) *Recovery of Costs* (§ 63G-7-903(2)(a)–(b)) depends on whether (3)(c) conditions applied. (5) *Express Cross-Reference* (§ 63G-7-202(4)) provides that employees are not liable “except as provided in Subsection (3)(c).” If subsection (3)(c) is not an exception to immunity, all of these provisions collapse

into surplusage—an absurd result contrary to legislative design. See *Monarrez v. Utah Dep’t of Transp.*, 2016 UT 10, ¶ 15, 368 P.3d 846.

Legislative history further confirms this intent. In *Mecham*, this Court recognized that the predecessor statute created exceptions for intentional misconduct, including fraud and DUI. The Legislature has since expanded those exceptions. Had it intended to abolish *Mecham*, it would have deleted subsection (3)(c); instead, it strengthened it.

Nor can intentional misconduct be treated as a “governmental function.” Immunity attaches to good-faith performance of public duties, not fraud or fabrication of evidence. *DeBry v. Noble*, 889 P.2d 428, 442 (Utah 1995). To define governmental function so broadly is, as this Court warned in *Scott v. Universal Sales, Inc.*, 2015 UT 64, ¶ 59, 356 P.3d 1172, to render immunity limitless. The Court of Appeals’ reading effectively resurrects the discredited notion that government officials can do no wrong. The constitutional consequences are severe: eliminating longstanding remedies without substitutes violates the Open Courts Clause, Utah Const. art. I, § 11. See *Berry v. Beech Aircraft Corp.*, 717 P.2d 670 (Utah 1985).

This case thus warrants certiorari because it (1) presents a question of statutory interpretation of statewide precedential value, Rule 46(a)(1); (2) raises a legal question of first impression concerning whether § 63G-7-202(3)(c) functions as an exception to employee immunity, Rule 46(a)(2); and (3) creates direct conflict with this Court’s binding precedent in *Mecham*, Rule 46(a)(3).

#### **IV. Procedural Due Process, Pro Se Litigants, and Fair Appellate Review**

The Court of Appeals compounded its substantive errors with procedural violations

that denied Petitioners a fair hearing and undermined the integrity of appellate review.

First, the court sua sponte expanded *Graves II*, to apply its interpretation of § 63G-7-202(3)(c)(i) across all subsections of (3)(c). This dispositive question was neither raised by the parties nor addressed by the trial court. By resolving it sua sponte, the court deprived Petitioners of notice and an opportunity to be heard on a controlling question of law, contrary to *State v. Robison*, 2006 UT 65, ¶ 24 (appellate courts “must honor the adversarial process” and may not decide dispositive unbriefed issues without allowing argument).<sup>4</sup>

Second, the court misstated the record by asserting that Petitioners “did not engage in [Open Courts Clause] analysis in any way.” *Fuja v. Stephens*, 2025 UT App 109, ¶ 25 (UT Ct. App. 2025). Petitioners’ reply brief, however, applied each prong of the *Berry* test with citations to controlling authority. See *Reply Brief of the Appellants*, p.4. This mischaracterization foreclosed consideration of properly preserved constitutional claims.

Third, in footnote 3 of the Court of Appeals’ ruling, the court further distorted the record, stating: “While the Fujas do challenge the constitutionality of the UGIA as it was interpreted in *Graves II*, … they do not argue that *Graves II* should be overruled.” *Fuja v. Stephens*, 2025 UT App 109, ¶ 9 (UT Ct. App. 2025). That is an artificial distinction. Petitioners repeatedly argued in both their opening and reply briefs that the interpretation adopted in *Graves II* “rendered the UGIA unconstitutional” under the Open Courts Clause, Uniform Operation of the Laws, and due process. See *Brief of the Appellants*, p. 23-25;

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<sup>4</sup> Petitioners expressly preserve all rights to appellate review of issues properly preserved in the trial court and raised on appeal. Should this Court grant review, Petitioners respectfully request that unresolved issues be remanded to the Court of Appeals for consideration in the first instance.

*Reply Brief of the Appellants*, p.3. A claim that a precedent's interpretation is unconstitutional is, in substance, a request that the precedent be overruled or disapplied. The Court of Appeals' suggestion that Petitioners somehow preserved one but not the other is a false narrowing of the record that insulated *Graves II* from challenge and deprived Petitioners of a fair adjudication of their constitutional claims. See *Noor v. State*, 2019 UT 3, ¶ 51 (courts must provide pro se litigants every reasonable indulgence). Indeed, the Court of Appeals' ruling confirmed that the prior interpretation of the UGIA upheld in *Graves v. Utah County* ("*Graves I*"), 2022 UT App 135, "supported the Fujas' contention that Stephens's immunity had been waived." *Fuja v. Stephens*, 2025 UT App 109, ¶ 5 (Utah Ct. App. 2025).

Fourth, the court refused to apply *Robison*'s requirement of supplemental briefing when deciding an unbriefed dispositive issue. See *State v. Robison*, 2006 UT 65, ¶ 24. Instead, it granted rehearing in *Graves II* to represented parties raising substantially similar arguments, while denying Petitioners the same procedural safeguard. This disparate treatment contravenes *Noor*'s promise of equal indulgence to pro se litigants and arbitrarily foreclosed Petitioners' claims.<sup>5</sup> See *Noor v. State*, 2019 UT 3, ¶ 51.

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<sup>5</sup> As recognized in *Haines v. Kerner* (404 U.S. 519, 1972), pro se litigants are entitled to leniency in the presentation of their claims. Additionally, **The National Center for State Courts, Center for Judicial Ethics** has explained, "The courts do not treat a litigant fairly when they insist that the litigant — unaided and unable to obtain the services of a lawyer — negotiate a thicket of legal formalities at peril of losing his or her right to be heard. Such a practice manifestly excludes the poor and the unpopular, who may be unable to obtain counsel, from access to justice. Meaningful access requires some tolerance by courts toward litigants unrepresented by counsel. Pro per litigants are by no means exempt from the governing rules of procedure. But neither should courts allow those rules to operate as hidden, lethal traps for those unversed in law. This may require some degree of extra care

These irregularities did more than prejudice Petitioners. They left Utah courts uncertain whether *Mecham* or *Graves II* controls, eroded public confidence in appellate fairness, and signaled that pro se litigants will not receive equal justice when constitutional claims are at stake.

This case therefore squarely satisfies Rule 46. It (1) presents a recurring question of first impression concerning the procedural rights of pro se litigants in appellate proceedings, Rule 46(a)(2); (2) provides an opportunity to resolve inconsistency between *Robison*'s adversarial-process protections and the Court of Appeals' *sua sponte* expansion of *Graves II*, Rule 46(a)(3); and (3) implicates fundamental fairness in appellate practice, a legal issue not previously addressed by this Court but certain to recur, Rule 46(a)(4).

## **V. Uniform Operation of the Laws – Arbitrary and Irrational Classifications**

The Court of Appeals' interpretation of the UGIA violates the Uniform Operation of the Laws Clause, Utah Const. art. I, § 24, by creating arbitrary and irrational classifications that invert justice and undermine public policy. Under the ruling below, governmental employees who intentionally commit fraud, fabricate or conceal evidence, give false testimony, drive under the influence, or otherwise engage in willful misconduct are entirely shielded from civil liability. Private individuals remain fully accountable for identical misconduct, and governmental entities are only liable when claims arise out of negligent actions, foreclosing accountability for intentional acts. The result is an irrational

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and effort on the part of trial judges who already labor long and hard at a mushrooming caseload. But the alternative slams the courthouse door in the face of those who may be in greatest need of judicial relief, all for the sake of ease of administration.”

inversion: negligence is actionable, but intentional fraud and fabrication are immune.

This classification cannot withstand constitutional scrutiny. The Uniform Operation Clause prohibits distinctions that treat similarly situated persons differently without a reasonable justification. See *Merrill v. Labor Commission*, 2009 UT 26, ¶ 6. Shielding intentional tortfeasors while exposing negligent actors does the opposite of rational: it rewards culpability, incentivizes harm, and nullifies deterrence. Worse still, it creates an incentive for government defendants to characterize misconduct as “intentional” to evade all civil accountability.

By exempting intentional torts but not negligent acts, the decision below collapses tort law’s hierarchy of culpability. Tort law imposes the greatest responsibility for intentional misconduct because it is the most blameworthy. Immunizing deliberate fraud, fabrication, and willful misconduct while punishing negligence inverts this hierarchy, destroys deterrence, and erodes public trust in government.

The result is also inconsistent with *Mecham v. Frazier*, 2008 UT 60, ¶¶ 13-15, which held that intentional acts fall within exceptions to immunity. The Court of Appeals’ contrary construction immunizes the very conduct *Mecham* recognized as actionable.

This issue satisfies Rule 46 on all grounds: it (1) presents a constitutional question of exceptional precedential importance under the Uniform Operation of the Laws Clause, Rule 46(a)(1); (2) raises a recurring question of first impression—whether intentional torts by government employees may be categorically immunized while negligence remains actionable, Rule 46(a)(2); (3) creates direct conflict with *Mecham*, Rule 46(a)(3); and (4) is certain to recur in future UGIA cases across the state, Rule 46(a)(4).

## CONCLUSION

The decision below cannot stand. By construing the UGIA to eliminate all remedies for intentional governmental misconduct, the Utah Court of Appeals misread statutory text, disregarded binding precedent, and stripped Utahns of Constitutional protections.

That ruling: (1) *Conflicts with this Court's precedent*, including *Mecham v. Frazier*, 2008 UT 6, which held that specific intentional torts remain actionable against government employees; (2) *Nullifies express legislative carveouts* in § 63G-7-202(3)(c), violating the canon against surplusage and rendering key provisions meaningless; (3) *Erodes constitutional safeguards* by abolishing remedies under the Open Courts Clause, creating irrational classifications under the Uniform Operation of the Laws Clause, and excusing fraud, fabrication, and willful misconduct while punishing mere negligence; and (4) *Denies Petitioners due process*, by deciding unbriefed issues *sua sponte*, misstating preserved arguments, and affording pro se litigants less process than represented parties.

The consequences are staggering. Under the Court of Appeals' approach, a Utah government employee may commit fraud, fabricate or conceal evidence, give false testimony, or injure a citizen while intoxicated — yet remain wholly immune from civil liability. This outcome inverts tort law, rewards intentional harm over negligence, and revives the discredited notion that government actors are above the law.

This case meets every ground for certiorari under Rule 46. It presents questions of statutory and constitutional interpretation of exceptional precedential importance, Rule 46(a)(1); raises recurring issues of first impression with sweeping statewide effect, Rule

46(a)(2); creates direct conflict with this Court's precedent in *Mecham* and related cases, Rule 46(a)(3); and is certain to recur in future UGIA cases across the state, Rule 46(a)(4). The systemic stakes are profound: unless corrected, Utahns will be left without remedy for the most egregious governmental abuses, and confidence in the rule of law will erode.

The Utah Constitution guarantees that courts shall be open, that every person shall have a remedy by due course of law, that laws shall operate uniformly, and that due process shall extend equally to all. The decision below repudiates these guarantees. For these reasons, Petitioners respectfully request that this Court grant certiorari and reaffirm the bedrock principle that in Utah, no person, including government officials, is above the law.

DATED this 2nd day of September, 2025.

  
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Dr. Tarnin Fuja, Pro Se

  
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Megan Fuja, Pro Se

#### CERTIFICATE OF SERVICE

I, hereby, certify that on the 2nd day of September, 2025, I caused a true and correct copy of the foregoing **PETITION FOR WRIT OF CERTIORARI** to be delivered electronically to counsel for Mr. Corbett Stephens and the Attorney General of Utah at the following:

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