

IN THE UTAH SUPREME COURT

TANNIN J. FUJA AND
MEGAN N. FUJA,

Petitioners-Appellants,

v.

CITY OF WOODLAND HILLS AND
CORBETT STEPHENS,

Respondents-Appellees.

No. 20251043-SC

**REPLY BRIEF OF PETITIONERS
IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI**

On Writ of Certiorari to the Utah Court of Appeals

On appeal from the Fourth Judicial District Court, Utah County,
The Honorable Robert Lunnen, No. 220400256

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INTRODUCTION

Since the founding, Utah law has provided that public officials are not entitled to immunity for intentional wrongdoing. In this case, however, the Court of Appeals applied a newfound interpretation of the Utah Governmental Immunity Act (UGIA), first set forth on rehearing in [*Graves v. Utah County*, 2024 UT App 80](#) (*Graves II*), that upends this pillar of state law. The rule announced in [*Graves II*](#) and applied here clashes with this Court’s precedent, the UGIA’s text, and the Utah Constitution. The Court’s review is sorely needed to ensure the availability of a remedy for Petitioners Tannin and Megan Fuja and for future litigants harmed by intentional government misconduct. Under the factors set forth in [Utah Rule of Appellate Procedure 46\(a\)](#), the Court should grant review.

ARGUMENT

I. The Fujas adequately briefed and preserved their constitutional arguments.

Respondent Corbett Stephens, a former city building official sued for fraudulently performing his duties, does not dispute that the Fujas adequately briefed and preserved their statutory-interpretation arguments. Indeed, he recognizes that the statutory issues here mirror those in [*Graves II*](#), and he effectively concedes that this Court’s review would have been warranted in that case. *See* Resp. to Pet. 8.

Mr. Stephens does, however, spend “considerable time arguing over the adequacy” of the Fujas’ constitutional briefing, “rather than addressing the merits.” [*State v. Roberts*, 2015 UT 24, ¶ 19](#). His arguments are unavailing. Even Mr. Stephens acknowledges that the Fujas invoked the Open Courts Clause, cited seminal case law, and discussed a relevant legal test. Resp. to Pet. 11–12. That concession alone dooms his adequacy argument, but

there is more: The Fugas also cited four additional open-courts cases, as well as cases interpreting other constitutional provisions, all of which he ignores. Appellants’ COA Reply Br. 3–5 (discussing Open Courts Clause, [Utah Const. art. I, § 11](#); Uniform Operation of Laws Clause, [id. § 24](#); and Due Process Clause, [id. § 7](#), with supporting case law); *see also* Appellants’ COA Br. 26–29 (invoking property rights and the right to petition, [Utah Const. art. I, § 1](#)). Mr. Stephens’ only substantive quibble with the Fugas’ open-courts analysis (at 12) is that they supposedly did not identify an abrogated cause of action. But they pleaded intentional torts in this case and resisted the availability of immunity for Mr. Stephens as to any of those claims. Moreover, their brief invoked “common law rights,” and cited [Berry ex rel. Berry v. Beech Aircraft Corp., 717 P.2d 670 \(Utah 1985\)](#), a case involving common-law torts, associated remedies, and constitutional limitations on their abrogation. Appellants’ COA Reply Br. 4.

Further, this Court’s preservation rule—designed to promote “judicial economy and fairness,” [Patterson v. Patterson, 2011 UT 68, ¶ 15](#)—does not require litigants to plead constitutional claims whenever their opponent advances a constitutionally questionable defense lacking in precedent. That point applies with even greater force here, where Mr. Stephens’ immunity defense when raised was at odds with more than a century of practice and case law. In any event, as Mr. Stephens recognizes, Resp. to Pet. 4–5, the Fugas raised constitutional issues in their first brief after [Graves II](#), with notice to the Attorney General, *see* Appellants’ COA Br. 22–29, 50. And any “new *arguments*, when brought under a properly preserved issue or theory” (here, that Mr. Stephens has no immunity), “do not require an exception to preservation.” [State v. Johnson, 2017 UT 76, ¶ 14 n.2](#).

Finally, were there any doubt, the procedural history supports relaxing any preservation rule: [Graves I](#), 2023 UT App 73, decided during district court proceedings, merely accorded with longstanding precedent and practice. And [Graves II](#), which marked a legal sea change, was decided only after the Fujas appealed. These circumstances are clearly a “rare procedural anomaly” amounting to an “exceptional circumstance[],” should one be required. Appellants’ COA Reply Br. 2–3 (quoting [Johnson](#), 2017 UT 76, ¶ 37).

II. Review is warranted to resolve the manifest conflict between the Court of Appeals decision and the UGIA’s text, case law, and the Utah Constitution.

The decision below is inconsistent with the UGIA’s text, this Court’s precedent, and the Utah Constitution. Mr. Stephens does not respond to the merits of the Fujas’ constitutional arguments, and his arguments based on the text and case law are unavailing.

As the Fujas have explained, the UGIA purports to provide immunity to government defendants in suits seeking monetary relief. See Utah Code §§ [63G-7-101\(3\)](#), [102\(2\)](#), [201\(1\)](#).¹ It then narrows that immunity through exceptions established across multiple provisions. See, e.g., [id.](#) § [63G-7-202\(3\)\(c\)](#) (waivers of employee immunity); [id.](#) § [63G-7-202\(4\)](#) (confirming employees may not be held personally liable “[e]xcept as permitted in Subsection (3)(c)"); [id.](#) § [63G-7-301](#) (waivers of entity immunity). As relevant here, the provisions now housed at [202\(3\)\(c\)](#) and [202\(4\)](#) have long provided—in language varying over time—that government employees are not immune from suit for intentional misconduct. See [Mecham v. Frazier](#), 2008 UT 60, ¶ 15 & nn.15–16 (interpreting provisions

¹ Contrary to Mr. Stephens’ claim (at 2 n.1), [Section 201\(4\)](#) is inapplicable: it confers immunity only for negligence, as even [Graves II](#) recognized. [2024 UT App 80](#), ¶¶ 20–21.

as waiving immunity when “the employee acted or failed to act through fraud or malice” (quoting [Utah Code § 63-30-4\(3\)\(b\) \(1997\)\)](#); [Peak Alarm Co. v. Salt Lake City Corp.](#), 2010 UT 22, ¶ 29 (same); Pet. 14 (collecting cases). In its current form, the UGIA specifically withdraws any employee immunity from suits based on “fraud or willful misconduct,” “false testimony,” “fabricated evidence,” or “fail[ure] to disclose evidence” when the wrongful acts are “intentional[] or knowing[.]” Utah Code [§§ 63G-7-202\(3\)\(c\)\(i\), \(iv\), \(v\)](#).

Because the Fugas alleged that Mr. Stephens engaged in fraud, gave false testimony, fabricated evidence, failed to disclose evidence, and intentionally allowed construction at odds with city code, R. 663–76, and those actions are either specified in [Section 202\(3\)\(c\)](#) or otherwise meet the definition of willful misconduct, [Utah Code § 63G-7-102\(11\)](#), Mr. Stephens is not immune, and the Court of Appeals erred in holding otherwise.

Mr. Stephens responds that the UGIA’s 2004 amendments broadened the initial grant of immunity by adding *employees* to a provision that had long immunized *entities*. Resp. to Pet. 16; [Utah Code § 63G-7-201\(1\)](#). In his view, these amendments to the immunity grant abrogated this Court’s prior construction of exceptions to that immunity, including in [Mecham](#). Resp. to Pet. 15–18. The remarkable sweep of this position—and its implications for future litigants—underscores why review is warranted. See [Utah R. App. P. 46\(a\)\(1\), \(3\)](#). Mr. Stephens’ position could, for example, open the door to broad immunity for prison guards who viciously beat inmates, and teachers who physically abuse students.

Moreover, Mr. Stephens’ statutory arguments are plainly wrong. It makes no difference whether the UGIA purports to erect blanket immunity for government employees, because both before and after the 2004 amendments, the UGIA has limited any

conceivable immunity through its exceptions. Before 2004, as today, [Section 202\(3\)\(c\)](#) codified the common-law rule that while government employees may generally be entitled to immunity, there is no immunity for harms caused by intentional misconduct. *Cf. Ross v. Schackel*, 920 P.2d 1159, 1163 (Utah 1996) (citing *Garff v. Smith*, 86 P. 772, 773 (Utah 1906)). The Fugas have provided ample support for this reading of [Section 202\(3\)\(c\)](#), see Pet. 14, 16–18, and the legislature has acquiesced to that reading by leaving cases like *Mecham* “untouched,” *Rutherford v. Talisker Canyons Fin., Co.*, 2019 UT 27, ¶ 67.

In any event, even if the UGIA were ambiguous, it should be interpreted to avoid “serious constitutional doubts.” *State v. Garcia*, 2017 UT 53, ¶ 59 (quoting *Clark v. Martinez*, 543 U.S. 371, 381 (2005)). Such doubts—and in the Fugas’ view, the Act’s constitutional invalidity—would be plain if the UGIA abrogated longstanding remedies for intentional torts without providing any alternative relief. Pet. 12–13; Appellants’ COA Br. 26–29; [Utah Const. art. I, § 11](#) (Open Courts Clause); [id. § 24](#) (Uniform Operation of Laws Clause); [id. § 7](#) (Due Process Clause); [id. § 1](#) (property rights and right to petition).

CONCLUSION

The Fugas urge this Court to grant review to address whether Utah law still provides remedies for intentional government misconduct.

DATED this 22nd day of December, 2025.

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with [Utah Rule of Appellate Procedure 50\(d\)](#) because, excluding exempted parts of the document, it does not exceed five pages.
2. This brief complies with the typeface requirements of [Utah Rule of Appellate Procedure 27\(a\)](#) because it has been prepared in 13-point Times New Roman font.
3. This brief complies with [Utah Rule of Appellate Procedure 21\(h\)](#) as it contains no non-public information.

DATED this 22nd day of December, 2025.

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CERTIFICATE OF SERVICE

I certify that on December 22, 2025, a copy of Reply Brief of Petitioners in Support of Petition for Writ of Certiorari was filed via the Utah Appellate Courts electronic filing system, and a copy was served via email to the following:

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