No. 20170447-SC

IN THE
SUPREME COURT OF THE STATE OF UTAH

TERRY MITCHELL,
Plaintiff,
v.
RICHARD WARREN ROBERTS,
Defendant.

BRIEF OF RICHARD WARREN ROBERTS

On certified question of law from the United States District Court, District of Utah, Honorable Evelyn J. Furse, Case No. 2:16-cv-00843-EJF

Ross C. Anderson
LEWIS HANSEN
Eight East Broadway, Suite 410
Salt Lake City, UT 84111

Attorney for Terry Mitchell

John L. Fellows
Robert H. Rees
Andrea Valenti Arthur
Office of Legislative Research and General Counsel
210 State Capitol Complex
Salt Lake City, UT 84114

Attorneys for the Utah Legislature

Troy L. Booher (9419)
ZIMMERMAN JONES BOOHER
341 South Main Street, Fourth Floor
Salt Lake City, UT 84111
tbooher@zjbappeals.com
(801) 924-0200

Brian M. Heberlig (*pro hac vice*)
Linda C. Bailey (*pro hac vice*)
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
bheberlig@steptoe.com
lbailey@steptoe.com
(202) 429-3000

Neil A. Kaplan (3974)
Shannon K. Zollinger (12724)
CLYDE SNOW & SESSIONS
201 South Main Street, 13th Floor
Salt Lake City, UT 84111-2216
nak@clydesnow.com
skz@clydesnow.com
(801) 322-2516

Attorneys for Richard Warren Roberts

Table of Contents

Addenda

Table of Authorities

Federal Cases

State Cases

Constitutional Provisions

Statutes

Other

Jurisdiction

This court has jurisdiction pursuant to section 78A-3-102(1) of the Utah Code. This case comes to the court on two certified questions from the United States District Court for the District of Utah.

Certified Questions

1. Can the Utah Legislature expressly revive time-barred claims through a statute?

2. Specifically, does the language of Utah Code section 78B-2-308(7), expressly reviving claims for child sexual abuse that were barred by the previously applicable statute of limitations as of July 1, 2016, make unnecessary the analysis of whether the change enlarges or eliminates vested rights?[1]

Introduction

Few certified questions are governed by stare decisis. These are. The certified questions concern whether the Utah Legislature has the power to eliminate a vested right to raise a defense that a claim is time barred. This court has consistently recognized, for more than a century, that the Utah Legislature lacks that power. Under the court's precedent, all parties (as well as their insurers, employers, and families) rely upon the fact that once their right to assert a claim or defense has vested, the legislature cannot eliminate that right with retroactive legislation. This court should stand by its sound precedent.

---

[1] In responding to certified questions, the court is not "present[ed] . . . with a decision to affirm or reverse a lower court's decision; as such, traditional standards of review do not apply." *U.S. Fid. & Guar. Co. v. U.S. Sports Specialty Ass'n*, 2012 UT 3, ¶ 9, 270 P.3d 464. Rather, the court answers the questions posed in the certification order. *Id.*

As recently as 2012, this court held that the legislature lacks the power to eliminate a vested right to rely on an expired statute of limitation, even where the legislature expressly declares the new statute to operate retroactively on expired claims. *State v. Apotex Corp.*, 2012 UT 36, ¶ 67, 282 P.3d 66. The *Apotex* opinion is the latest in a long line of opinions recognizing this principle in Utah.

In *Apotex*, the court cited *Roark v. Crabtree*, a 1995 opinion, for the proposition that "after a cause of action has become barred by the statute of limitations the defendant *has a vested right to rely on that statute as a defense*," and, most important, that the defendant's right "cannot be taken away by legislation." *Id.* (quoting 893 P.2d 1058, 1063 (Utah 1995) (alternation in original)).

In *Roark*, this court cited *Del Monte Corporation v. Moore*, a 1978 opinion reiterating that once "the statute has run on a cause of action, so that it is dead, it cannot be revived by any . . . statutory extension." 893 P.2d at 1062 (quoting 580 P.2d 224, 225 (Utah 1978)). The court in *Roark* also cited *In re Swan's Estate*, a 1938 opinion holding that "a subsequently amended statute of limitations could not operate retroactively to revive a claim for back taxes which was barred under the prior period of limitation." *Id.* (citing 79 P.2d 999, 1002 (Utah 1938)).

This line of cases stems from the seminal case in Utah, *Ireland v. Mackintosh*, 61 P. 901 (Utah 1900). In *Ireland*, this court cited favorably the dissenting opinion in a United States Supreme Court opinion expressing the view that it violates principles of due process to eliminate a vested right to raise a

defense that a claim is time barred. *Id.* at 902 (citing *Campbell v. Holt*, 115 U.S. 620, 630 (1885) (Bradley, J., dissenting)). This court held that when the right of action "became barred under the previous statute, the [defendant] acquired a vested right, in this state, to plead that statute as a defense and bar to the action." *Id.* at 904.

Under the factors set forth in *Eldridge v. Johndrow*, 2015 UT 21, ¶ 22, 345 P.3d 553, this court should not overturn its precedent. That precedent spans more than a century, has operated consistently with other legal principles, has worked in practice, and has been relied upon by all potential defendants, as well as their insurers and employers and families who conduct their business assuming that expired claims cannot be revived with retroactive legislation. And the reasoning is sound. Just as the legislature lacks the power to eliminate a plaintiff's vested right to advance a substantive claim, the legislature lacks the power to eliminate a defendant's vested right to raise a substantive defense to that claim. In answering the certified questions, this court should reaffirm that the legislature lacks the power to eliminate a vested right to raise a defense that a claim is time barred.

Determinative Provisions

Utah Code § 78B-2-308(7), titled "Legislative findings -- Civil actions for sexual abuse of a child -- Window for revival of time barred claims," provides as follows:

> A civil action against a person listed in Subsection (6)(a) or (b) for sexual abuse that was time barred as of July 1, 2016, may be brought within 35 years of the victim's 18th birthday, or within three years of the effective date of this Subsection (7), whichever is longer.

Article I, Section 7 of the Utah Constitution, titled "Due process of law," provides as follows:

> No person shall be deprived of life, liberty or property, without due process of law.

Article I, Section 11 of the Utah Constitution, titled "Courts open - Redress of injuries," provides as follows:

> 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.

Statement of the Case

1. Nature of the Case and Course of Proceedings

For almost 120 years, this court has held that expired civil claims cannot be revived by legislation. Defendants are entitled to repose after a statute of limitation has expired, and that repose cannot be taken away by legislation purporting to extend the limitation period for those claims. Utah has *never* diverged from that settled, black letter rule.

In this case, plaintiff alleges (and defendant disputes) a non-consensual sexual relationship, which occurred in 1981 when plaintiff was sixteen and defendant was twenty-seven.[2] Thirty-five years after the alleged conduct, on March 16, 2016, plaintiff filed her first complaint in the United States District Court for the District of Utah, claiming assault, battery, intentional and negligent infliction of emotional distress, and "sexual abuse of a child." *Mitchell v. Roberts*, No. 2:16-cv-00218-JNP-EJF (D. Utah), ECF No. 2 ("Original Complaint").

After defendant moved to dismiss the Original Complaint, plaintiff voluntarily withdrew the complaint and filed suit again on September 29, 2016. *Mitchell v. Roberts*, No. 2:16-cv-00843-EJF (D. Utah), ECF No. 2 ("Second Complaint") (dropping claim of "sexual abuse of a child"[3] and adding new claim of false imprisonment).

---

[2] Under Utah law in effect in 1981, the plaintiff was *not* a child and was legally capable of validly giving and validly seeking consent. *See* Utah Code § 76-5-401 (as codified in 1981).

[3] "Sexual abuse of a child" is not a valid cause of action under Utah law, as the plaintiff conceded in response to the defendant's motion to dismiss.

It is undisputed that under controlling Utah law, plaintiff's claims were untimely when she first filed them. When she refiled them, she asserted that they had been revived by operation of amended section 78B-2-308(7), which was passed by the Utah Legislature effective May 10, 2016, and which purported to revive child sexual abuse claims that had expired prior to its enactment. That included claims of individuals who, like plaintiff, were of the age of consent (16) at the time the events occurred. [Second Compl. ¶¶ 9, 36.]

Defendant again moved to dismiss, on the ground that the Utah Legislature did not have the power to revive claims that had expired, by operation of the statute of limitation, prior to the effective date of legislation purporting to extend the statute for those claims. [Def.'s Mot. to Dismiss 9-12, ECF No. 9.] Plaintiff argued in response that the legislature had the power to revive expired claims so long as it did so expressly, and that the legislature had expressly revived her expired claims in amended section 78B-2-308(7). [Pl's. Opp. to Mot. to Dismiss 12, ECF No. 12.]

Because the motion presented controlling issues of Utah law and a Utah statute that had not been considered by this court, the United States District Court for the District of Utah (Evelyn J. Furse, M.J.), on June 1, 2017, certified the instant questions to this court. On June 13, 2017, this court accepted the certification. And on June 29, 2017, this court established a briefing schedule.

2. Statement of Facts

Plaintiff and defendant met in autumn 1980, in connection with a civil rights murder trial in which plaintiff was a witness and defendant was a prosecuting attorney. They had a brief relationship, the timing and nature of which are disputed: plaintiff claims, 35 years after the fact, that it was non-consensual and occurred before and during the trial; defendant maintains that it was consensual and occurred after the trial.[4]

Plaintiff conceded that all of her claims had expired under the applicable statutes of limitation prior to July 1, 2016. [Second Compl. ¶ 36.] But in her Second Complaint, the plaintiff alleged that her expired claims had been revived by operation of amended section 78B-2-308(7), which was passed by the Utah Legislature in House Bill 279 effective May 10, 2016, and which purported to revive claims that had expired prior to its enactment. *Id.*

> A civil action against a person listed in Subsection (6)(a) or (b) [including a perpetrator of abuse] for sexual abuse that was time-barred as of July 1, 2016, may be brought within 35 years of the victim's 18th birthday, or within three years of the effective date of this Subsection (7), whichever is longer.

Utah Code § 78B-2-308(7); [Second Compl. ¶ 36.]

---

[4] Plaintiff did not make any claim alleging that the relationship was non-consensual until 35 years after it ended, when she first claimed she had "repressed all memory" of the sexual abuse and "only discovered the fact of [the] . . . abuse" in 2013 – a contention she made in her Original Complaint but withdrew in her Second Complaint. [Original Compl. ¶ 30.]

To fall within the scope of the amended statute, plaintiff argued that her claims were time-barred as of July 1, 2016; that her action was filed within 35 years of her 18th birthday as well as within three years of the effective date of the provision; and that her claims were therefore timely under the amended statute. [Second Compl. ¶ 36.]

House Bill 279, which amended section 78B-2-308, passed over the objections of legislators who recognized that the legislature lacked the power to revive expired causes of action. House Judiciary Committee Vice Chair Merrill Nelson, who voted against the bill, noted that the amendment "affects a vested right and therefore, the vested right is for the defendant to assert the statute of limitations and so as we try to revive a barred claim we are taking away a vested right . . . . *[U]nder Utah law we cannot revive an expired statute of limitations.* And so we have the question of law, of constitutionally whether we can do what is being proposed, as much as we might want to do it." Hearing on H.B. 279 Before the H. Judiciary Committee, 2nd Leg., Gen. Sess. (Utah, Feb. 17, 2016) (statement of Rep. Nelson) (emphasis added).[5]

---

[5] Available at http://utahlegislature.granicus.com/mediaplayer.php?clip_id=19805&meta_id=618103. Other legislators similarly warned that the statute was unconstitutional. *See also id.* at 26:53 (Statement of Rep. Cox, who also voted against the bill) and 30:58 ("I have some serious constitutional concerns with what you're doing."). For information on the roll call vote on the bill, see https://le.utah.gov/~2016/bills/static/HB0279.html.

Summary of the Argument

The certified questions ask whether, under Utah law, the legislature has the power to revive claims that long ago expired by operation of Utah law. This court has answered that question many times, in many contexts, over more than a century. In *every instance,* this court has held that the legislature *may not,* under any circumstance, deprive a defendant of a vested right to a defense afforded by a statute of limitation once the applicable limitation period has expired. There have been no exceptions, and the controlling decisions have been unanimous. Simply stated, under Utah law a defendant has the unqualified right to repose, to finality, after the statutory limitation period has expired, and the legislature cannot revoke that finality and eliminate the defendant's vested right.

Below, we consider first the important policies that undergird statutes of limitation, including the state's interests in ensuring that claims can be fairly and reliably litigated and in safeguarding defendants' right to repose—protection against a never-ending specter of stale accusations. (Point 1.) We then review the long line of the court's opinions that have consistently held that the legislature lacks the power to revoke that repose after the statute of limitation has expired by amending the statute of limitation to revive expired claims. (Point 2.) We then demonstrate that the rule against reviving expired claims is protected by the Utah Constitution, as this court has consistently held from its earliest days. (Point 3.) Finally, we address the arguments made by plaintiff as to why Utah's 120 years of settled precedent should be ignored or overruled here. (Point 4.)

Argument

1. Utah Statutes of Limitation Serve Critically Important Purposes of Fairness and Finality

From the outset it is important to note the sweeping and unlimited breadth of plaintiff's position: there is no such thing, in plaintiff's view, as an expired claim that cannot be revived, and therefore no such thing as finality or repose for the judicial system or defendants. Any claim, no matter how remote and no matter how long expired by operation of the then-existing statutes of limitation, may be revived and litigated if the legislature wishes. No one can be certain as to when a claim has expired, because it can always be revived, even after it has passed the date set by the operative statute. That has never been and should not become Utah law. Utah has long recognized the importance of statutes of limitation, and issues of fairness make it imperative that such statutes be given proper effect.

The first year that Utah became a state, this court recognized the importance of limitation periods as "wise and beneficial" and designed to "afford[] protection against ancient demands, whether originally well-founded or not." *Kuhn v. Mount*, 44 P. 1036, 1037-38 (Utah 1896). Limitation periods also "provide a defense against claims which arose at such a distance of time as to leave no way to trace their origin, nature, or extent, and as will frustrate every honest effort to arrive at the truth in relation to them, and render impossible any satisfactory explanation of them because of the death of witnesses and loss of

evidence." *Id.* And limitation periods "prevent oppressive charges, which might be made, almost with impunity, after a distance of time when the transaction has faded from memory, or the evidence has been lost." *Id.* at 1038.

A properly-functioning judicial system requires limitation and finality to prevent stale claims that cannot fairly be litigated from reaching unjust results and undermining public confidence. (Point 1.1.) Defendants are entitled, as a matter of fairness and constitutional right, to know when they may exercise their vested right to be free from claims, so that they (and their insurers, employers, and families) may organize their lives and put the past behind them. (Point 1.2).

1.1 Statutes of Limitation Protect Against Unfair Outcomes From Litigation of Stale Claims and Protect the Judicial System and Parties

Statutes of limitation are necessary to protect the integrity of the judicial system and litigants from the litigation of claims that occurred so remotely that the ability to discern the truth becomes impossible. *See Becton Dickinson & Co. v. Reese*, 668 P.2d 1254, 1257 & n.6 (Utah 1983) (affirming ruling that action was barred by statute of limitation and stating that "statutes of limitations 'are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.'") (quoting *Order of R.R. Telegraphers v. Ry. Express Agency, Inc.*, 321 U.S. 342, 348-49 (1944)).

It is inherently unfair to parties, as well as damaging to the judicial system, for claims to be brought long after the available evidence has become so stale as to be unreliable. *See Davis v. Provo City Corp.*, 2008 UT 59, ¶ 27, 193 P.3d 86 (stating that statutes of limitation prevent "'the injustice which may result from the prosecution of stale claims' due to the 'difficulties caused by lost evidence, faded memories and disappearing witnesses'") (quoting *Lund v. Hall*, 938 P.2d 285, 291 (Utah 1997)); *Horton v. Goldminer's Daughter*, 785 P.2d 1087, 1091 (Utah 1989) (stating that statutes of limitation ensure "that claims are advanced while evidence to rebut them is still fresh").

The importance of these interests has long been recognized, not only in Utah and other states, but also by the United States Supreme Court,[6] by respected commentators,[7] and by leading social scientists.[8]

---

[6] *See, e.g. Texaco, Inc. v. Short*, 454 U.S. 516, 551 (1982) (stating that statutes of limitation "are practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost") (quoting *Chase Secs. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945)); *United States v. Kubrick*, 444 U.S. 111, 117 (1979) (stating that statutes of limitation "protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise"); *id* ("the right to be free of stale claims in time comes to prevail over the right to prosecute them") (*quoting Order of R.R. Telegraphers v. Ry. Express Agency*, 321 U. S. 342, 349 (1944)).

[7] *See* Richard A. Epstein, *The Temporal Dimension in Tort Law*, 53 U. Chi. L. Rev. 1175, 1181–82 (1986) ("With the passage of time, the evidence available regarding a given legal issue necessarily becomes stale. . . . The longer the period between operative fact and legal judgment, the more likely it is that error will creep in: memories will fade, evidence will disappear or become unreliable."); Tyler T. Ochoa & Andrew J. Wistrich, *The Puzzling Purposes of Statutes of Limitation*, 28 Pac.

It cannot be disputed that the risk of judicial error increases significantly in stale, decades-old cases, and that it is necessary to have limits on such cases in order to protect parties as well as the system itself from unfair results and diminished respect for the judicial system.

1.2 Statutes of Limitation Provide Finality and Repose

Beyond their role in ensuring the legitimacy of the judicial system and the other compelling fairness interests outlined above, statutes of limitation also provide another important right for defendants: finality, or repose. Defendants (and anyone else with a stake in claims made against defendants, such as insurers, employers, and families) are entitled to order their affairs based on the knowledge that any claims against them must be brought within the prescribed

---

L. J. 453, 481 (1997) (arguing that statutes of limitation, by limiting proceedings to cases in which evidence is likely to be available and reliable, enhance both the reliability of judicial determinations as well as the public's trust in the legal system).

[8] *See, e.g.*, Richard H. Ettinger et al., *Psychology: Science, Behavior and Life* 250-54, 270 (3d ed. 1994) (discussing human processes of forgetting, psychologists' findings that vivid memories "may actually represent our tendency to go back and fill in the details of an event after the fact [and] add or delete details to make new information more consistent" with our preconceptions, and the susceptibility of witnesses to influence by the human "tendency to reconstruct their memory of events to fit their schemas"); Daniel Schacter & Elizabeth Loftus, *Memory and Law: What Can Cognitive Neuroscience Contribute?* 16 Nature Neuroscience 119-123 (2013) (explaining cognitive studies finding that merely imagining that an event took place in an individual's past can increase his or her confidence that the event actually occurred); Susan A. Clancy et al., *False Recognition in Women Reporting Recovered Memories of Sexual Abuse*, 11 Psychol. Sci. 26-31 (2000) (finding that women who reported recovered memories of childhood sexual abuse were more prone to false recognition).

period of time, and that after that time period expires, defendants no longer have to live under the cloud of potential accusation.

This court has made clear that all potential claims and controversies must, at some point, come to an end. *See Kennecott Copper Corp. v. Indus. Comm'n*, 597 P.2d 875, 876 (Utah 1979) ("The purpose of . . . all statutes of limitation is that potential claims or controversies should sometime come to rest."). Statutes of limitation vouchsafe that finality, and the "valid social interest in providing a time of repose—in wiping the slate clean and not allowing possible mistakes of the past to becloud an individual's life forever." *Craftsman Builder's Supply, Inc. v. Butler Mfg. Co.*, 1999 UT 18, ¶ 20, 974 P.2d 1194, (citing *Horton* 785 P.2d at 1095). If claims can be brought without limitation—if expired claims can be revived "upon the whim and vagary of the legislature," *State v. Lusk*, 2001 UT 102, ¶ 30, 37 P.3d 1103, as plaintiff contends here—there can be no finality or repose, a fact this court has long recognized. *Id.* (holding that repose granted by expired statute of limitation must be permanent—an expired claim is "forever barred"—and irrevocable by legislative act).

Permitting the revival of stale claims signals to plaintiffs that it is acceptable to sleep on their rights for an indefinite period and then confront a defendant with surprise litigation decades after the incident occurred. *See Mason v. Mason*, 597 P.2d 1322, 1323 (Utah 1979) (stating that one "purpose of statutes of limitation is that controversies should not lie dormant indefinitely, to spring into

life and action at the whim or caprice of a claimant, but should sometime come permanently to rest").

Accordingly, courts have been vigilant in protecting defendants' vested rights to repose from legislative attempts to revive expired claims. "[E]xtending a limitations period after the State has assured 'a man that he has become safe from its pursuit . . . seems to most of us unfair and dishonest.'" *Stogner v. California*, 539 U.S. 607, 611 (2003) (quoting Judge Learned Hand's opinion in *Falter v. United States*, 23 F.2d 420, 426 (2d Cir.), *cert. denied*, 277 U.S. 590 (1928)). Permitting the revival of stale claims, "by allowing legislatures to pick and choose when to act retroactively [by extending limitations periods that have already expired], risks both 'arbitrary and potentially vindictive legislation,' and erosion of the separation of powers." *Id.* (quoting *Weaver v. Graham*, 450 U.S. 24, 29 & n.10 (1981)).

In sum, Utah's statutes of limitation and repose are not technicalities to be eviscerated or ignored whenever the political winds change. They are an integral part of a fair system of justice. They protect that system by recognizing the need for finality and grant to defendants important, and eventually vested, rights.

2. Under Utah Law, the Legislature Lacks the Power to Revive Expired Claims

For as long as Utah has been a state, this court has recognized and given full effect to the important policy considerations of fairness and repose underlying Utah's statutes of limitation—and has recognized that they grant

important substantive rights that cannot be taken away. The court has *never* permitted the legislative revival of a claim—whether civil or criminal—whose limitation period had expired. Plaintiff here asks the court to overrule that settled law and hold, for the first time, that citizens cannot rely upon a time for repose in Utah. The court should not change Utah law.

The court first recognized the important rights granted by statutes of limitation in *Kuhn v. Mount*, which involved a suit on a promissory note following the expiration of a four-year statute of limitation. 44 P. 1036, 1037 (Utah 1896). The court refused to permit the case to proceed, based on the "purpose and object of the statute," which it called "wise and beneficial." *Id.* It explained that a limitation period "affords protection against ancient demands, whether originally well-founded or not," and whose "purpose is to provide a defense against claims which arose at such a distance of time as to leave no way to trace their origin, nature, or extent, and as well frustrate every honest effort to arrive at the truth in relation to them, and render impossible any satisfactory explanation of them because of the death of witnesses and loss of evidence." *Id.* at 1037-38.

Four years later, the court made clear that these important rights—the repose provided by the statute after it has run—could not be taken away by the legislature. In *Ireland v. Mackintosh*, the court held squarely that an amendment to the statute, which made plaintiff's claim timely, could *not* be applied where the

claim had already expired under the statute as it had existed prior to the amendment. 61 P. 901, 904 (Utah 1900). There, a note was executed on January 2, 1892, when the statute of limitation was four years. *Id.* at 901-02. In 1897, after the expiration of the four-year limitation period, the legislature amended Utah law to provide a six-year statute of limitation for claims on notes. *Id.* at 902. The court held that when plaintiff's right of action on the promissory note "became barred under the previous statute [of limitation], [defendant] acquired a vested right" to a defense "and bar to the action" based on that statute of limitation. *Id.* at 904.

The court explained:

> The object of the statute is attained by depriving the party having a cause of action of the right to recover thereon after a prescribed period has expired, and consequently furnishes the adverse party with a defense to the action. It is clear that unless this defense *is a vested, permanent right*, the statute of limitations cannot be one of repose, because it is by virtue of the permanency of this right that the ends of the statute are accomplished.

Id. at 902 (emphasis added).

The court emphasized that the repose secured by a statute of limitation was "*not temporary, but permanent*, repose in all actions to which the statute is applicable after the expiration of the period prescribed.'" *Id.* at 902-03 (emphasis added). Most important: the court recognized that the legislature lacks the authority to revoke this repose and revive old claims, or there is no repose. Quoting Cooley on Constitutional Limitations, the court explained that, as with a

person "who has satisfied a demand" and therefore "cannot have it revived against him," so too "he who has become released from a demand by the operation of the statute of limitations is equally protected. In both cases the demand is gone, and to restore it would be . . . . *a thing quite beyond the power of legislation.*'" *Id.* at 903 (emphasis added).

For more than a century since *Ireland*, this court has repeatedly and consistently applied this principle to bar the revival of expired claims. *In re Swan's Estate*, 79 P.2d 999 (Utah 1938), involved an action by the state to recover inheritance tax. The one-year statute of limitation had expired as to decedent's estate, but the statute was subsequently amended to extend the time for state tax claims from one year to three years, and the State sought to rely on the amended statute in taxing the estate. *Id.* at 1002.

The court held that the legislature lacked the power to revive the claim, citing *Ireland v. Mackintosh*. *Id.* Because the amendment to the statute of limitation "was after the bar had become effective in this case, [it] cannot affect our decision." *Id.*; *see also Greenhalgh v. Payson City*, 530 P.2d 799, 802 n.14 (Utah 1975) ("'The subsequent passage of an act by the legislature increasing the period of limitation could not operate to affect or renew a cause of action already barred.'" (quoting *Ireland*, 61 P. 901, and citing 51 Am. Jur. 2d, *Limitations of Actions*, § 44)), *superseded on other grounds by* Utah Code § 78-12-36(1) (Supp. 1975));

O'Donnell v. Parker, 160 P. 1192, 1194 (Utah 1916) ("[W]here the time has fully run the right to invoke the statute [of limitation] constitutes a vested right.").

The court has applied the settled rule to sexual abuse cases. In *Roark v. Crabtree*, plaintiff alleged sexual abuse that took place in 1974 and 1975. 893 P.2d 1058, 1060 (Utah 1995). Her claims under existing statutes of limitation expired in 1980. *Id.* But in 1992, Utah enacted a statute allowing lawsuits for sexual abuse to be filed within four years after discovery of the abuse by the victim. *Id.* Plaintiff sued in 1993, relying on this statute and claiming that she had only recently discovered the abuse. *Id.* The trial court granted defendant's motion to dismiss, holding that the new statute could not revive claims that had expired prior to the statute's 1992 enactment. *Id.*

This court affirmed, agreeing in a unanimous opinion that defendant's "right to plead a defense of statute of limitations [was] a vested right" that could not lawfully "be impaired" by subsequent legislative enactment. *Id.* at 1061. The court articulated the issue as follows: "can a claim which was barred under the then-applicable statute of limitations be revived by a subsequent extension of the limitation period?" *Id.* at 1062. The answer was "no" based on the century of "consistent[]" Utah Supreme Court case law on point, beginning with *Ireland v. Mackintosh* in 1900, which the court characterized as "a unanimous opinion" holding "that subsequent passage of an act increasing the period of limitation could not operate to affect or renew a cause of action already barred." *Id.* (citing

Ireland, 61 P. at 904). "[O]nce a party acquired a defense based upon an expired statute of limitations, that defense could not be impaired or affected by subsequent legislation extending the limitation period." *Id.* at 1062 (citing *Greenhalgh*, 530 P.2d at 802 n.14). "[T]he defense of an expired statute of limitations" is a "vested right" subject to the court's "firm" rule that "when 'the statute has run on a cause of action, so that it is dead, it cannot be revived by any . . . statutory extension.'" *Id.* (quoting *Del Monte Corp. v. Moore*, 580 P.2d 224, 225 (Utah 1978), and citing *Dansie v. Anderson Lumber Co.*, 878 P.2d 1155, 1160 (Utah Ct. App. 1994)).[9]

This court has likewise held that alleged criminal sexual misconduct falls within the categorical prohibition against revival of expired claims. The court expressly applied this principle, developed in the civil cases, to bar a criminal prosecution of a stale child sex abuse claim. *State v. Lusk*, 2001 UT 102, 37 P.3d 1103. The case concerned alleged abuse that occurred in 1983 and 1984, and which was covered by a four-year statute of limitation. *Id.* ¶¶ 22-23. In 1999, the

---

[9] The court in *Roark* further noted that its "refus[al] to allow the revival of time-barred claims through retroactive application of extended statutes of limitations" conformed with the majority rule among courts. 893 P.2d at 1063 (citing cases). *See also infra* at note 16 (citing cases from the majority of states that have considered the issue and follow the Utah rule). While different state courts offer different reasons why legislatures cannot revoke repose, the principle in all cases is consistent with that articulated in Utah's case law: "one who has become released from a demand by the operation of the statute of limitations is protected against its revival by a change in the limitation law." *Roark*, 893 P.2d at 1063 (quoting 51 Am. Jur. 2d Limitation of Actions § 44 (1970)).

victim's mother reported the abuse and the state charged the defendant. Id. ¶¶ 4-5.

Lusk moved to dismiss the charges because the government's claims had expired in 1988. *Id.* ¶ 6. After expiration, however, the legislature, in a series of amendments finally enacted in 1996, changed the statute of limitation for aggravated sexual abuse of a child to allow prosecution within four years after the crimes are reported to law enforcement. *Id.* ¶ 16. Because the charges were timely under the amended statute, the state sought to revive its expired claims against *Lusk*.

The court, citing *Roark v. Crabtree* and other civil cases discussed above, rejected the state's argument and reaffirmed *Roark*'s rule. The court—once again speaking unanimously—held that "a statutory amendment enlarging a statute of limitations" can retroactively "extend the limitation period applicable to a crime already committed" "only if the amendment becomes effective *before* the previously applicable statute of limitations has run." *Id.* ¶ 26 (emphasis added). Once the statute of limitation runs, the claim is "forever barred." *Id.* ¶ 30. The reason, as in the civil context, is that the legislature lacks the power to revive dead claims:

> "[N]o subsequent amendment of a statute that enlarges a limitations period can resurrect the State's ability to prosecute a crime already barred because of the running of the statute of limitations."

Id. ¶ 26; *see also id.* ¶ 29 (quoting *Del Monte*, 580 P.2d at 225, for the proposition that the legislature lacks the "'power'" to "'revive[] by . . . [s]tatutory extension'" a "'dead'" "'cause of action'" on which the "'statute has run,'" and holding that the same rule "applies to criminal prosecutions").

As in *Roark*, the court in *Lusk* based its decision on the unbroken line of "consistent[]" holdings that a defendant's "vested right to rely on the limitations defense" once the statute has run "cannot be rescinded by subsequent legislation extending [the] limitations period." *Id.* ¶ 30 (citing *Roark*, 893 P.2d at 1063; 51 Am. Jur. 2d *Limitations of Actions* § 44 (1970)). The court reiterated that a defendant's right to repose may not be revoked based on the "whim and vagary of the legislature":

> If we permitted a legislative enactment to be applied retroactively to extend the statute of limitations after the limitations period previously applicable to a committed crime had already run, then the defendant's vested right to rely on a limitations defense would be eliminated. Otherwise, the statute of limitations would only imperfectly bar prosecution of a crime to which the limitations period had expired because a subsequent legislative extension of the statute of limitations would resurrect that dead crime, solely upon the whim and vagary of the legislature. Such a result would be untenable.

Id.

The court in *Lusk* accordingly held that, "once the statute of limitations has run on a crime committed, precluding prosecution of a crime, it is *forever barred*,"

and the defendant's vested right to rely on that defense "cannot be eliminated by subsequent legislative action." *Id.* (emphasis added).[10]

The most recent case to address the legislature's lack of authority to revive already-expired claims is *State v. Apotex Corp.*, 2012 UT 36, 282 P.3d 66. *Apotex* involved a lawsuit by the state of Utah against 17 pharmaceutical companies under the Utah False Claims Act ("UFCA"). *Id.* ¶ 1. In 2007, the legislature amended the UFCA to add a six-year statute of limitation, Utah Code § 26-20-15(1), replacing the one-year catchall statute of limitation that had previously applied.[11] *Id.* ¶¶ 65-66. The amendment provided that "[a] civil action brought under this chapter may be brought for *acts occurring prior to the effective date of this section if the limitations period set forth in Section 1* [*i.e.*, six years] *has not elapsed.*" Utah Code § 26-20-15(2) (emphasis added); *see also Apotex*, 2012 UT 36, ¶ 66.

The State argued that the defendants could consequently be charged on any claims that accrued within six years of the effective date of the new

---

[10] This court has relied on the same authorities and reasoning to hold that neither expired criminal nor civil claims can be revived. The necessary implication of plaintiff's position is that criminal claims, like civil claims, are never extinguished, and may always be revived at the legislature's "whim."

[11] The parties contested whether the one-year catchall statute of limitation was appropriate, but that issue was not preserved. *See Apotex*, 2012 UT 36, ¶ 64 n.12. The amended statute of limitation included a discovery rule permitting claims to be brought within ten years of the date that a state official learned of the violation, Utah Code § 26-20-15(1)(b), but this provision was not at issue in *Apotex*.

amendment. But the district court recognized that this argument was foreclosed by Utah law:

> Although the amendments expanded the limitations period and expressly provided for the new limitations period to be retroactive, the court held that "[t]he retroactive application of the amended statute of limitations provision cannot operate to revive claims that were already time-barred under the prior version of the statute."

Apotex, 2012 UT 36, ¶ 14 (alteration in original). This court affirmed, holding that "[t]he amended UFCA *cannot* resurrect claims that have already expired under the one-year limitations period." *Id.* ¶ 67 (emphasis added). As it had so many times before, the court explained that "'[t]his court has consistently maintained that the defense of an expired statute of limitations is a vested right.'" *Id.* (quoting *Roark*, 893 P.2d at 1063). Relying once more on *Roark* for the definitive expression of Utah law on the revival of expired claims, the court reiterated the rule that, "'after a cause of action has become barred by the statute of limitation, the defendant has a vested right to rely on that statute as a defense . . . *which cannot be taken away by legislation* . . . or by affirmative act, such as lengthening of the limitation period.'" *Id.* (quoting *Roark*, 893 P.2d at 1062) (emphasis added).[12]

---

[12] Notably, after advancing the argument that the six-year statute of limitation should serve to revive expired claims in its opening brief, the State effectively abandoned that argument in its reply. *Compare* Appellant's Opening Br., 2010 WL 8926230, at *27-28 (Aug. 5, 2010), *with* Appellant's Reply Br., 2010 WL 8926232, at *25-28 (Nov. 19, 2010). In any event, the court rejected it.

The court thus affirmed the district court's dismissal of all claims that had expired as of the date of the UFCA amendments. *Id.* ¶ 69.[13]

The principle that this court articulated in *Ireland* in 1900—and has applied faithfully for more than a century—applies categorically to claims that have expired, providing to defendants a vested right to defend against such claims on the ground that they are untimely. The legislature remains free to amend and extend statutes of limitation, even retroactively, but those amended statutes apply only as to claims that have *not yet expired.*

In *Del Monte Corp. v. Moore,* the court elaborated on the distinction. 580 P.2d 224 (Utah 1978). The case involved an employer who brought an action seeking reversal of a workers' compensation award. After being injured in 1968, the employee had been awarded compensation and medical expenses. *Id.* at 224. Later, in 1974, the employee's injury was aggravated and he needed more surgery in 1975 and sought additional compensation related to his disability. *Id.*

---

[13] Utah lower courts have continued to follow this settled law after *Apotex,* without exception. In *Lucero v. State,* 2016 UT App 50, ¶ 8 n.16, 369 P.3d 469, the legislature had expanded the statute of limitation applicable to the rape or aggravated sexual abuse of a child to "at any time," while the statute of limitation in effect during the time of the defendant's alleged crimes was still running. The court of appeals applied the rule stated in *Lusk* and *Del Monte,* holding that the legislature had the power to retroactively "'extend the limitations period applicable to a crime already committed *only if* the amendment becomes effective *before* the previously applicable statute of limitations has run, thereby barring prosecution.'" *Id.* ¶ 10 (quoting *Lusk,* 2001 UT 102 ¶ 26) (emphasis added). Because Lucero's "limitations defense ha[d] not accrued to the defendant before the amendment [to the statute of limitations] bec[a]me[] effective,'" it was permissible to retroactively apply the amended, expanded statute of limitation to his case. *Id.* ¶ 12 (internal quotation marks omitted).

at 224-25. When the original injury occurred in 1968, a six-year statute of limitation governed the employee's claims. In 1973, while that cause of action was still viable under the original statute of limitation, the statute of limitation was amended to be eight years. *Id.* at 225.

The court, in another unanimous opinion, returned to first principles, starting with the categorical rule that, "if the statute has run on a cause of action, so that it is dead, it cannot be revived by any such statutory extension" of the legislature. *Id.* "[I]f the cause of action is still alive," however, then "the legislature has power to increase the time in which an action may be brought," even retroactively as to events that have already occurred, and in such a situation "the new enactment can extend the time in which [the action] may be brought." *Id.* (citing *State Tax Comm'n. v. Spanish Fork*, 100 P.2d 575 (Utah 1940)). The legislature lacks the "power" to "revive[]" only a "dead" "cause of action" whose "statute has run." *Id.*

In *Del Monte*, the employee's "right to assert" claims was "alive and well under" the original six-year statute at the time the legislature extended it to eight years. *Id.* Therefore, the claim he filed within eight years of the original injury was not barred. *Id.; accord Spanish Fork*, 100 P.2d at 576 ("This new statute of limitations became effective . . . before this action was barred by the previous one-year statute. Therefore, the time within which the action could be brought was extended for two years . . . ."); *accord State v. Norton*, 675 P.2d 577, 586 (Utah

1983) ("While the defendants in the foregoing cases had an *expectancy* that the periods of limitation in effect when they committed their crimes would apply, the ex post facto clause did not preclude legislative extension of those periods where the expectancy had not accrued into a perfected defense before the amendment took effect. Thus, the defendants were not deprived of a right or a defense; they were merely deprived of an expectancy."), *overruled on other grounds by State v. Hansen*, 734 P.2d 421 (Utah 1986).[14]

In sum, for almost 120 years the court has recognized that the legislature lacks the power to deprive a defendant of the "vested right" held as the result of an expired statute of limitation.

3. Defendants' Vested Right to Repose After a Statute of Limitation Has Expired Is Protected by Utah's Constitution

A defendant's vested right to repose following the expiration of a statute of limitation is protected by two provisions of the Utah Constitution. The first provision is article I, section 7, which protects all persons from being "deprived of life, liberty or property without due process of law." Utah Const. art. I, § 7. The second provision is article I, section 11, which guarantees that each person "shall have remedy by due course of law" and that "no person shall be barred

---

[14] Utah's courts have faithfully honored this sensible distinction. *See, e.g., Dep't of Hum. Servs. v. Jacoby*, 1999 UT App 52, ¶ 13, 975 P.2d 939 (explaining that "our supreme court has allowed the extension of a limitations period where the original cause of action is still alive when the statute of limitations was amended" but not where "the applicable statute of limitations . . . expired before passage of an act increasing the limitations period") (citing and contrasting *Roark*, 893 P.2d 1058, and *Del Monte*, 580 P.2d 224).

from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party."

As this court has explained, "[b]oth the due process clause of article I, section 7 and the open courts provision of article I, section 11 of the Utah Constitution guarantee that litigants will have [a] 'day in court,'" and that the "constitutional right to a day in court is the right and opportunity, in a judicial tribunal, to litigate a claim, seek relief, or defend one's rights." *Miller v. USAA Cas. Ins. Co.*, 2002 UT 6, ¶ 38, 44 P.3d 663 (internal quotation marks omitted). And that constitutionally guaranteed right to "'a day in court means that each party shall be afforded the opportunity to present claims and *defenses*, and have them properly adjudicated on the merits according to the facts and the law.'" *Daines v. Vincent*, 2008 UT 51, ¶ 46, 190 P.3d 1269 (*quoting Miller*, 2002 UT 6, ¶ 42) (emphasis added).

Although this court has recognized that both provisions protect vested rights to raise defenses, it is worth discussing each provision separately.[15]

3.1 A Vested Right to Protection from Expired Claims is Protected by the Due Process Clause

The court has "consistently" described the right as to repose at issue here as a "'vested right.'" *Roark v. Crabtree*, 893 P.2d 1058, 1062 (quoting *Ireland v.*

---

[15] Plaintiff has argued that defendant waived his right to challenge the revival of an expired statute of limitation on constitutional grounds. [Pl's. Opp. to Mot. to Dismiss 19, ECF No. 12.] Plaintiff is incorrect, but in any event, it is not within the scope of the certified questions pending before this court.

Mackintosh, 61 P. 901,904 (Utah 1900), and citing *In re Swan's Estate*, 79 P.2d 999, 1002 (Utah 1938)). Like all such rights, this right is protected by the Due Process Clause, which "'is not confined to mere tangible property but extends to every species of *vested right*.'" *Miller*, 2002 UT 6, ¶ 39 (quoting *McGrew v. Indus. Comm'n*, 85 P.2d 608, 610 (Utah 1938) (emphasis added by *Miller*)).

Beginning with the first Utah case to recognize that the legislature lacks the power to revive expired claims, this court has held that the right to raise the defense that a statute of limitation has expired has constitutional stature. In *Ireland v. Mackintosh*, this court highlighted the dissenting opinion of Justices Bradley and Harlan in *Campbell v. Holt*, 115 U.S. 620 (1885), in which they stated "that when the statute of limitations gives a man a defense to an action, and that defense has absolutely arisen, *it is a vested right in the place where it has accrued, and is an absolute bar to the action there, and is protected by the fourteenth amendment to the constitution from legislative aggression.*" 61 P. at 902 (emphasis added).[16] This court concluded that when the appellant's right of action became barred, the respondent in that case acquired a constitutionally-protected vested right to plead the statute of limitation as a defense and bar to the action. *Id.* at 904.[17]

---

[16] Notably, this court has quoted *Campbell v. Holt* three times in its history. Each time, this court quoted from Justice Bradley's dissent. *See Miller*, 2002 UT 6, ¶ 39; *McGrew v. Indus. Comm'n*, 85 P.2d 608, 610 (Utah 1938); *Ireland*, 61 P. at 902.

[17] The United States Supreme Court came to a different conclusion regarding the federal Due Process Clause in the majority opinion. *Campbell*, 115 U.S. at 628-29 (holding that the bar of a statute of limitation is not a property right protected by the U.S. Constitution); *accord Chase Secs. Corp. v. Donaldson*, 325 U.S. 304, 311-12 (1945) (declining to overrule *Campbell*). But the federal court also expressly held

This court continued thereafter to recognize the constitutional dimensions of this vested right. *See Roark*, 893 P.2d at 1061-62 (ruling for defendant in sexual abuse case who maintained that "his right to plead a defense of statute of limitations is a vested right which cannot be impaired without denying him due

---

that states "are privileged to" provide greater protections for vested rights, which Utah and 23 other states have done, and it is *Utah* law, and not the federal constitution, that provides the protected right at issue in this case. *Id.* at 312-13 & n.9 (citing state court decisions including *In re Swan's Estate*, 79 P.2d 999 (Utah 1938)). Five of those states primarily ground their analysis in vested rights or similar doctrines. *See Johnson v. Lilly*, 823 S.W.2d 883, 884-85 (Ark. 1992); *Green v. Karol*, 344 N.E.2d 106, 112 (Ind. Ct. App. 1976); *Johnson v. Gans Furniture Indus., Inc.*, 114 S.W.3d 850, 854-55 (Ky. 2003); *Angell v. Hallee*, 92 A.3d 1154, 1157 (Me. 2014); *Overmiller v. D. E. Horn & Co.*, 159 A.2d 245, 247-49 (Pa. Super. Ct. 1960). Seven states hold their state constitution's due process clause - sometimes in conjunction with a vested rights analysis - prohibits retroactive revival of time-barred claims. *See Wiley v. Roof*, 641 So.2d 66, 69 (Fla. 1994); *Doe v. Diocese of Dallas*, 917 N.E.2d 475, 486 (Ill. 2009); *Givens v. Anchor Packing, Inc.*, 466 N.W.2d 771, 773-74 (Neb. 1991); *Colony Hill Condo. I Assoc. v. Colony Co.*, 320 S.E.2d 273, 276 (N.C. Ct. App. 1984); *Kelly v. Marcantonio*, 678 A.2d 873, 883 (R.I. 1996); *Doe v. Crooks*, 613 S.E.2d 536, 538 (S.C. 2005); *Minnesota ex rel. Hove v. Doese*, 501 N.W.2d 366, 370 (S.D. 1993). Eight states base their holdings on state constitutional provisions prohibiting retroactive legislation. *See Johnson v. Garlock, Inc.*, 682 So.2d 25, 28 (Ala. 1996); *Jefferson Cty. Dep't of Soc. Servs. v. D.A.G.*, 607 P.2d 1004, 1006 (Colo. 1980); *Univ. of Miss. Med. Ctr. v. Robinson*, 876 So.2d 337, 340 (Miss. 2004) (citing Miss. Const. art. 4, § 97; Miss. Code Ann. § 15-1-3 (Rev. 2003)) (state constitution and statute prohibit revival of time-barred claims); *Doe v. Roman Catholic Diocese*, 862 S.W.2d 338, 341-42 (Mo. 1993); *Gould v. Concord Hosp.*, 493 A.2d 1193, 1195-96 (N.H. 1985); *Wright v. Keiser*, 568 P.2d 1262, 1267 (Okla. 1977) (citing Okla. Const. Art. V, § 52); *Ford Motor Co. v. Moulton*, 511 S.W.2d 690, 696-97 (Tenn.), *cert. denied*, 419 U.S. 870 (1974) (citing Tenn. Const. Art. 1, § 20); *Baker Hughes, Inc. v. Keco R. & D., Inc.*, 12 S.W.3d 1, 4 (Tex. 1999). One state relies on a state statute prohibiting retroactive legislation. *See Stewart v. Darrow*, 448 A.2d 788, 789-90 (Vt. 1982) (citing 1 V.S.A. § 214(b)) (state statute prohibits retroactive application because defendant acquires a "right" in the operation of the bar). And two states hold that expiration of a statute of limitation creates a constitutionally-protected vested right that must be balanced with the legislature's purpose for imposing retroactivity. *Segura v. Frank*, 630 So.2d 714, 728-31 (La. 1994); *Soc'y Ins. v. Labor & Indus. Review Comm'n*, 786 N.W.2d 385, 396, 399 (Wis. 2010) (concluding retroactive application of an amended statute violated the defendants' due process rights).

process of law"); *McGuire v. Univ. of Utah Med. Ctr.*, 603 P.2d 786, 790 (Utah 1979) (characterizing *Ireland* and *In re Swan's Estate*, as holding "that a right to plead a defense of statute of limitations may become a vested right which cannot be impaired without denying due process of law," but only where "a statute of limitations had run on a cause of action, and a subsequent change in the law enlarged the limitations period, making it possible for plaintiff to file an action that under the old law would have been barred").[18]

Under Utah law, the right to be free, forever, from claims that have expired is a constitutional due process right that cannot be taken away by legislation. The best indication of this right is how this court interpreted principles of due process just after Utah became a state, and which the court reaffirmed multiple times since.

3.2 A Vested Right to an Affirmative Defense Against Expired Claims Is Protected By the Open Courts Clause

A defendant's right to raise the affirmative defense of an expired statute of limitation is also protected by the Open Courts Clause. This court has interpreted the clause to mean that parties are "constitutionally entitled to . . . their day in court," which includes the "'right and opportunity, in a judicial tribunal, to litigate a claim, seek relief, *or defend one's rights.*'" *Miller*, 2002 UT 6, ¶ 38 (emphasis added) (quoting Black's Law Dictionary 402 (7th ed. 1999)); *see also*

---

[18] The court in *McGuire* distinguished the facts there, which did not involve a barred action under a statute of limitation, and hence did not implicate any vested rights. *Id.*

Daines v. Vincent, 2008 UT 51, ¶ 46, 190 P.3d 1269 (holding that "a day in court means that each party shall be afforded the opportunity to present claims and *defenses*, and have them properly adjudicated on the merits according to the facts and the law" (emphasis added) (internal quotation marks omitted)).

The "purpose" of this clause is "to 'impose some limitation' on the legislature's 'great latitude in defining, changing, and modernizing the law,'" even with *prospective* legislation. *Craftsman Builder's Supply Inc. v. Butler Mfg. Co.*, 1999 UT 18, ¶¶ 15, 17, 974 P.2d 1194 (affirming holding that plaintiff's causes of action were barred and finding that the statute of limitation at issue remedied "hardships" including the "difficulties in defending against claims asserted many years after" events at issue) (quoting *Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 676 (Utah 1985)). The clause prevents the legislature "from closing the doors of the courts against any person who has a legal right which is enforceable in accordance with some known remedy." *Brown v. Wightman*, 151 P. 366, 366-67 (Utah 1915).

Here, the applicable legal right is defendant's right to plead a fully-matured defense based on the expiration of the then-applicable statute of limitation. The known remedy for that vested right is the dismissal of the expired claims. The Utah Legislature has purported to "close the doors of the courts" to that dispositive, vested defense—indeed to eliminate it entirely. Utah Code § 78B-2-308(7). The statute unquestionably infringes on the constitutional

"opportunity to present claims *and defenses*, and have them properly adjudicated on the merits," and accordingly violates the Open Courts Clause. *Daines*, 2008 UT 51, ¶ 46(citing *Miller*, 44 P.3d at 674).

The important constitutional rights at issue here explain why this court has never deviated from its rule protecting those vested rights, and has consistently held that the legislature lacks the power to eliminate repose in Utah by reviving expired claims.

4. Plaintiff Misstates Settled Utah Law and Offers No Grounds to Overrule This Court's Precedent

Plaintiff has argued that Utah law permits the legislature to revive a claim on which the statute of limitation has run, provided the legislature is express in stating its intent. That is incorrect and is based on the conflation of the issue in this case—revival of expired claims—with "retroactive application" of an amended statute to claims that are still viable at the time of the amendment's effective date.[19] While Utah employs a two-part test to assess the validity of

---

[19] The majority opinion in *Cty. of Garfield v. United States*, 2017 UT 41, No. 20150335 (July 26, 2017), did not have reason to address the vested rights issue raised in that case, but the dissent correctly stated the law. After recognizing that "[a] provision of the Utah Code is not retroactive, unless the provision is expressly declared to be retroactive," *Id.* ¶ 71 (Voros, J., dissenting) (quoting Utah Code § 68-3-3 (2010)), the dissent explained that "[e]ven then, other limits may apply. One such limit precludes retroactive amendments that would impair vested rights. We have often stated that retroactive application is permissible if the amended version of the statute [does] not enlarge, eliminate, or destroy vested or contractual rights. A statute-of-limitation or statute-of-repose defense vests when the statutory period expires. . . . Thus, once a party acquire[s] a defense based upon an expired statute of limitations, that defense [can] not be impaired or affected by subsequent legislation extending the limitation period. . . . The federal government acquired its statute-of-repose defense, if at all, well before 2015.

"retroactive" application to still-viable claims, this court has expressly held, on many occasions, that the legislature *may not* revive expired claims, and its intentions do not factor into the analysis. (Point II, *supra.*)[20]

Plaintiff contends that the past century of settled Utah precedent is inapplicable because in none of those cases did the legislature make plain its intent to revive expired claims. But a careful reading of the cases reveals that the court drew no such distinction, and grounded its holdings in the legislature's *lack of power* to revive such claims. No decision of this court interpreting a statute of limitation has ever permitted the legislature to revive extinguished claims with clear statements of its intent to do so.

On the contrary, the court's decisions consistently reflect that no matter how clear the legislature's intent may be, there is no *power* to revive such expired claims. For example, in *State v. Apotex Corp.*, 2012 UT 36, 282 P.3d 66, the court noted that the legislature amended a statute of limitation so that "civil action[s] brought under this chapter may be brought for acts occurring prior to the effective date of this section if the limitations period set forth in Subsection (1)

Accordingly, the 2015 amendments cannot be read to impair or affect that defense." *Id.* ¶¶ 71-72 (Voros, J., dissenting) (internal quotation marks and citations omitted).

[20] *E.g. Ireland*, 61 P. 903 (holding that defendant's interest in a perfected statute of limitation defense is a "vested, permanent right"); *Del Monte Corp.*, 580 P.2d at 225 ("[I]f the statute has run on a cause of action, so that it is dead, it cannot be revived by any statutory exception," and the legislature "cannot . . . take[] away by legislation . . . or by affirmative act, such as lengthening of the limitation period" a defendant's right to rely on the defense of an expired statute of limitation).

has not lapsed." Utah Code § 26-20-15(2); *Apotex*, 2012 UT 36, ¶ 66. Subsection (1) referred to the newly enacted six-year statute of limitation. As the court recognized, "the amendments expanded the limitations period and *expressly* provided for the new limitations period to be *retroactive*" and therefore applicable to claims that had expired prior to the amendment. *Apotex*, 2012 UT 36, ¶ 14 (emphases added).

The court's holding was clear and consistent with settled Utah law: "'[A]fter a cause of action has become barred by the statute of limitations the defendant has *a vested right to rely on that statute as a defense* . . . which cannot be taken away by legislation.'" *Id.* ¶ 67 (quoting *Roark v. Crabtree*, 893 P.2d 1058, 1062 (Utah 1995)).

The court reached the same conclusion in *State v. Lusk*, in which the legislation provided that "[i]f the [statute of limitations] has expired, a prosecution may nevertheless be commenced . . . within one year after the report of the offense to a law enforcement agency." 2001 UT 102, ¶ 14 (quoting Utah Code § 76-1-303(c) (1983)). In the face of this express legislative intent, the court "h[e]ld that once the statute of limitations has run . . . it is forever barred and a defendant's right to rely on that limitations defense cannot be eliminated by subsequent legislative action." *Id.* ¶ 30.

In a recent decision, Utah's federal district court correctly applied this settled Utah law. In *Hyland v. Dixie State Univ.*, the plaintiff failed to sue within

the applicable one-year statute of limitation period for defamation actions.[21] 2:15-CV-36 TS, 2017 WL 2123839, at *1 (D. Utah May 16, 2017). After plaintiff's claim expired, the legislature passed an amendment purporting to revive it:

> A claimant may commence an action after the time limit . . . if: (i) the claimant had commenced a previous action within the time limit . . . ; (ii) the previous action failed or was dismissed for a reason other than on the merits; and (iii) the claimant commences the new action within one year after the previous action failed or was dismissed.

Id. at *2 (quoting Utah Code § 63G-7-403(3)(b) (2017)). The Utah Legislature could not have been clearer in stating its intent to revive plaintiff's claim, because its enactment expressly and precisely addressed the particular circumstances of plaintiff's case and purported to authorize its revival.

The Utah Attorney General's Office moved to dismiss plaintiff's renewed lawsuit because the legislature had no power to revive an expired claim. *Id.* at *2. The district court agreed: "The amendment . . . deprives Defendants of a right to a statute of limitations defense. '[T]he defense of an expired statute of limitations' is a vested right that cannot be taken away by legislation, and 'subsequent passage of an act increasing the period of limitation [cannot] operate to affect or renew a cause of action already barred.'" *Id.* (quoting *Roark*, 893 P.2d at 1062).

---

[21] Hyland filed within one year but failed to file the $300 "undertaking" that Utah law requires plaintiffs to pay before they can bring suit against a state government entity. Therefore, the court granted a motion to dismiss for lack of jurisdiction. Because of this defect his claim became time-barred after the one-year statute of limitation expired. *Id.*

Plaintiff's argument that retroactive revival of expired claims is permitted upon express statements of legislative intent is largely premised on a mistaken reading of a Utah decision that does not address the revival of expired claims, much less depart from the settled law set forth in more than a century of this court's decisions.

In *Waddoups v. Noorda*, the court addressed a new Utah law barring negligent credentialing claims. 2013 UT 64, ¶ 1, 321 P.3d 1108. The court was asked to decide whether this law could be applied to claims that arose prior to its passage. *Id.* The court stated that there is a "statutory bar against the retroactive application of newly codified laws." Id. ¶ 6 (quoting *State v. Clark*, 2011 UT 23, ¶¶ 11-12, 251 P.3d 829). The court noted, however, "a single exception" for provisions that are "expressly declared to be retroactive." *Id.* ¶ 6 (quoting Utah Code § 68-3-3). Not finding any clear statement in favor of retroactivity, the court concluded that the amendment effected a substantive (rather than procedural) change in the law. *Id.* ¶ 8. It then concluded that, in light of the statutory presumption against retroactivity, the new amendment was not retroactive. *Id.* ¶ 10.

The court in *Waddoups* was not required to address a question of reviving expired claims, and did not do so. It held only that this particular statute did not apply retroactively at all, even to claims still viable at the time of its passage. It is therefore inapposite and provides no support for plaintiff's position.

Similarly misplaced is plaintiff's resort to United States Supreme Court authority, decided under the Fourteenth Amendment of the United States Constitution. Whatever may or may not be the limitations imposed by that provision on the revival of expired state law claims, it is wholly distinct from, and not applicable to, the limitations imposed by Utah law, especially where this court has disapproved of the those cases. *Ireland v. Mackintosh*, 61 P. 901, 902 (Utah 1900) (citing with approval the dissenting opinion of Justices Bradley and Harlan in *Campbell v. Holt*, 115 U.S. 620 (1885)).

Moreover, the United States Supreme Court itself recognizes the long-honored rule that states may protect individual rights that are different from, and more expansive than, those imposed federally. *See, e.g., Chase Secs. Corp. v. Donaldson*, 325 U.S. 304, 312-13 ("[S]tate courts have not followed" federal precedent on the revival of expired claims; "[m]any have, as they are privileged to do, so interpreted their own easily amendable constitutions to give restrictive clauses a more rigid interpretation than we properly could impose upon them from without by construction of the federal instrument which is amendable only with great difficulty and with the cooperation of many States."). Notably, the United States Supreme Court recognized that *Utah* was an example of a state that had rejected the federal approach and had refused to permit legislative revival of expired claims. *Id.* at 312 n.9 (citing *In re Swan's Estate*, 79 P.2d 999 (Utah 1938)).

Utah is not an outlier in its constitutional protection for vested rights. The substantial majority of states to have considered the issue (a total of 24 including Utah) hold that expired claims cannot subsequently be revived. *See supra* at 29 & n. 17. Like Utah, numerous states expressly hold that an expired statute of limitation defense is a vested right that cannot be eliminated by subsequent legislation. *See, e.g., Doe A. v. Diocese of Dallas*, 917 N.E.2d 475, 484 (Ill. 2009) ("[O]nce a statute of limitations has expired, the defendant has a vested right to invoke the bar of the limitations period as a defense to a cause of action. . . . These principles date back more than a century. They have been consistently followed by this court. . . . They remain valid today." (internal quotation marks and citations omitted)); *Hall v. Summit Contractors, Inc.*, 158 S.W.3d 185, 188 (Ark. 2004) ("[W]e have long taken the view, along with a majority of the other states, that the legislature cannot expand a statute of limitation so as to revive a cause of action already barred. . . . [T]he defendant has a vested right to rely on that statute as a defense, and neither a constitutional convention nor the Legislature has power to divest that right and revive the cause of action." (first alteration in original) (emphasis, citations, and internal quotation marks and citations omitted)); *Johnson v. Gans Furniture Indus., Inc.*, 114 S.W.3d 850, 854-55 (Ky. 2003) ("Although an amendment that extends the period of limitation may be applied to a claim in which the period has not already run, it may not be applied to

revive a claim that has expired without impairing vested rights.").[22] Plaintiff asks the court not merely to break from its own 120-year precedent, but to do so for the purpose of adopting a position that the majority of Utah's sister states have rejected. The court should decline to do so.

Finally, this court's unbroken line of cases prohibiting the legislative revival of expired claims is based on sound considerations that the court has addressed and articulated on many occasions and in many different contexts.

The court has often held that the doctrine of stare decisis, "under which the first decision by a court on a particular question of law governs later decisions by the same court, is a cornerstone of Anglo-American jurisprudence

---

[22] *See also, e.g., Doe v. Crooks*, 613 S.E.2d 536, 538 (S.C. 2005) ("Ordinarily, a new statute of limitations applies retroactively. However, it cannot operate to revive an action for which the limitations period has already expired."); *Morrissette v. Kimberly-Clark Corp.*, 837 A.2d 123, 128 (Me. 2003) ("[A]mendments to the statute of limitations may be applied retroactively to extend the statute of limitations, but not to revive cases in which the statute of limitations has expired."); *Givens v. Anchor Packing, Inc.*, 466 N.W.2d 771, 773 (Neb. 1991) ("While we have never applied to the statute and amendment in question the rule that the Legislature cannot remove a limitations bar which has become complete, the maxim states a broad principle on the limits of legislative power, clearly applicable to the question certified. . . . [An] amendment cannot resurrect an action which the prior version of the statute had already extinguished."); *Green v. Karol*, 344 N.E.2d 106, 112 (Ind. Ct. App. 1976) ("[I]t is well-established that if, while the old statute was in force and before plaintiff's suit was commenced, plaintiff's right of action was barred by that statute, no statute subsequently passed can renew defendant's liability."); *Overmiller v. D. E. Horn & Co.*, 159 A.2d 245, 248-49 (Pa. Sup. Ct. 1960) ("It is accepted, almost without exception or qualification, that after an action has become barred by an existing statute of limitations, no subsequent legislation will remove the bar or revive the action. . . . Even if the legislature by specific language had indicated its intention to accomplish such results, our Supreme Court has held that such statutory provision should not be carried out").

that is crucial to the predictability of the law and the fairness of adjudication." *State v. Thurman*, 846 P.2d 1256, 1269 (Utah 1993). In fact, "[t]he very viability of the common law depends in large part on the doctrine." *Id.* The court does not overrule its precedents "lightly," *State v. Hansen*, 734 P.2d 421, 427 (Utah 1986), and it should not overrule its long-established precedents here.

The court considers two "broad factors" to determine the weight that a precedential decision warrants: "(1) the persuasiveness of the authority and reasoning on which the precedent was originally based, and (2) how firmly the precedent has become established in the law since it was handed down." *Eldridge v. Johndrow*, 2015 UT 21, ¶ 22, 345 P.3d 553. This second factor encompasses considerations such as "the age of the precedent, how well it has worked in practice, its consistency with other legal principles, and the extent to which people's reliance on the precedent would create injustice or hardship if overturned." *Id.*

Taking the second factor first, the prohibition against legislative revival of expired claims has been settled Utah law for the entire history of the state. It is firmly established and present in many decisions over many years and in many contexts. These decisions provide defendants (as well as anyone else who relies upon the expiration of claims, such as their insurers, employers, and families) assurance that they can exercise their vested right to defend against an untimely claim. There has never been a dissent from the application of this rule; the

governing decisions articulating the rule have been unanimous. It is consistent with other legal principles, has never been called into question, and is a bedrock rule that has protected the integrity of the judicial system as well as defendants' rights.

The persuasiveness of the authority is similarly compelling. Given the undisputed importance of statutes of limitation and repose, *see* Point I, *supra,* there must be a rule that prohibits the legislative revival of expired claims, or else there can be no reliance on such limitations and repose. The legislature would always be free to revive, "at its whim" and at any time, hoary claims that the system cannot properly or fairly resolve, and that defendants have justifiably and appropriately put behind them.

Our research has identified at least seven cases spanning 112 years in which 25 different justices all concluded – without a single dissent on this point – that Utah law does not permit the legislature to revive expired claims.[23] It is difficult to imagine better evidence of the persuasiveness of this authority, or worse circumstances for upsetting the state's settled law.

---

[23] *See Ireland v. Mackintosh*, 61 P. 901 (Utah 1900); *In re Swan's Estate*, 79 P.2d 999 (Utah 1938); *Greenhalgh v. Payson City*, 530 P.2d 799 (Utah 1975); *Roark v. Crabtree*, 893 P.2d 1058, 1063 (Utah 1995); *Del Monte Corp. v. Moore*, 580 P.2d 224, 225 (Utah 1978); *State v. Lusk*, 2001 UT 102, ¶ 30, 37 P.3d 1103; *State v. Apotex Corp.*, 2012 UT 36, ¶ 67, 282 P.3d 66.

Conclusion

For the reasons set forth above, defendant respectfully submits that the court should answer the certified questions as follows:

1. Can the Utah Legislature expressly revive time-barred claims through a statute?

   ANSWER: No. The legislature has no power to revive time-barred claims through a statute.

2. Specifically, does the language of Utah Code section 78B-2-308(7), expressly reviving claims for child sexual abuse that were barred by the previously applicable statute of limitations as of July 1, 2016, make unnecessary the analysis of whether the change enlarges or eliminates vested rights?

   ANSWER: The legislature cannot revive expired claims, regardless of its express intention to do so in section 78B-2-308(7).

DATED this 8th day of August, 2017.

ZIMMERMAN JONES BOOHER

/s/ Troy L. Booher
Troy L. Booher

STEPTOE & JOHNSON LLP
Brian M. Heberlig
Linda C. Bailey

CLYDE SNOW & SESSIONS
Neil A. Kaplan
Shannon K. Zollinger

Attorneys for Appellee Richard Warren Roberts

Certificate of Compliance With Rule 24(f)(1)

I hereby certify that:

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because this brief contains 12,050 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).

2. This brief complies with the typeface requirements of Utah R. App. P. 27(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 13-point Book Antiqua.

DATED this 8th day of August, 2017.

/s/ Troy L. Booher

Certificate of Service

This is to certify that on the 8th day of August, 2017, I caused two true and correct copies of the Brief of Richard Warren Roberts to be served on the following via first-class mail, postage prepaid:

Ross C. Anderson
LEWIS HANSEN
Eight East Broadway, Suite 410
Salt Lake City, UT 84111

Attorney for Terry Mitchell

John L. Fellows
Robert H. Rees
Andrea Valenti Arthur
Office of Legislative Research and General Counsel
210 State Capitol Complex
Salt Lake City, UT 84114

Attorneys for the Utah Legislature

And pursuant to rule 25A of the Utah Rules of Appellate Procedure:

Office of the Utah Attorney General
Attn: Utah Solicitor General
320 Utah State Capitol
P.O. Box 142320
Salt Lake City, UT 84114-2320

/s/ Troy L. Booher

Addendum A

The Order of the Court is stated below:
Dated: June 13, 2017 10:05:06 PM

/s/ Thomas R. Lee
Associate Chief Justice

IN THE SUPREME COURT OF THE STATE OF UTAH

---oooOOOooo---

Terry Mitchell, Appellant, v. Richard Warren Roberts, Appellee.	ORDER Appellate Case No. 20170447-SC Federal Case No. 2:16-cv-00843-EJF

This matter is before the Utah Supreme Court upon the Certification of Question of State Law to this Court by the United States District Court for the District of Utah.

The certification is granted. The Utah Supreme Court accepts the following question certified to it:

1. Can the Utah Legislature expressly revive time-barred claims through a statute?

2. Specifically, does the language of Utah Code section 78B-2-308(7), expressly reviving claims for child sexual abuse that were barred by the previously applicable statute of limitations as of July 1, 2016, make unnecessary the analysis of whether the change enlarges of eliminates vested rights?

The certifying court has not filed any portion of its record in this matter with the Supreme Court. Within fourteen days of the date of receipt of this order, counsel for the parties shall advise this Court as to what portions of the record they believe necessary for consideration of the certified question.

Following the expiration of the fourteen days, this Court will request those portions of the record from the United States District Court and provide notice to the parties as to a briefing schedule.

End of Order - Signature at the Top of the First Page

Addendum B

West's Utah Code Annotated
Title 78b. Judicial Code
Chapter 2. Statutes of Limitations
Part 3. Other than Real Property

U.C.A. 1953 § 78B-2-308
Formerly cited as UT ST § 78-12-25.1

§ 78B-2-308. Legislative findings--Civil actions for sexual abuse of a child--Window for revival of time barred claims

Currentness

(1) The Legislature finds that:

(a) child sexual abuse is a crime that hurts the most vulnerable in our society and destroys lives;

(b) research over the last 30 years has shown that it takes decades for children and adults to pull their lives back together and find the strength to face what happened to them;

(c) often the abuse is compounded by the fact that the perpetrator is a member of the victim's family and when such abuse comes out, the victim is further stymied by the family's wish to avoid public embarrassment;

(d) even when the abuse is not committed by a family member, the perpetrator is rarely a stranger and, if in a position of authority, often brings pressure to bear on the victim to ensure silence;

(e) in 1992, when the Legislature enacted the statute of limitations requiring victims to sue within four years of majority, society did not understand the long-lasting effects of abuse on the victim and that it takes decades for the healing necessary for a victim to seek redress;

(f) the Legislature, as the policy-maker for the state, may take into consideration advances in medical science and understanding in revisiting policies and laws shown to be harmful to the citizens of this state rather than beneficial; and

(g) the Legislature has the authority to change old laws in the face of new information, and set new policies within the limits of due process, fairness, and justice.

(2) As used in this section:

(a) "Child" means a person under 18 years of age.

(b) "Discovery" means when a person knows or reasonably should know that the injury or illness was caused by the intentional or negligent sexual abuse.

(c) "Injury or illness" means either a physical injury or illness or a psychological injury or illness. A psychological injury or illness need not be accompanied by physical injury or illness.

(d) "Molestation" means that a person, with the intent to arouse or gratify the sexual desire of any person:

(i) touches the anus, buttocks, or genitalia of any child, or the breast of a female child;

(ii) takes indecent liberties with a child; or

(iii) causes a child to take indecent liberties with the perpetrator or another person.

(e) "Negligently" means a failure to act to prevent the child sexual abuse from further occurring or to report the child sexual abuse to law enforcement when the adult who could act knows or reasonably should know of the child sexual abuse and is the victim's parent, stepparent, adoptive parent, foster parent, legal guardian, ancestor, descendant, brother, sister, uncle, aunt, first cousin, nephew, niece, grandparent, stepgrandparent, or any person cohabiting in the child's home.

(f) "Perpetrator" means an individual who has committed an act of sexual abuse.

(g) "Sexual abuse" means acts or attempted acts of sexual intercourse, sodomy, or molestation by an adult directed towards a child.

(h) "Victim" means an individual who was intentionally or negligently sexually abused. It does not include individuals whose claims are derived through another individual who was sexually abused.

(3)(a) A victim may file a civil action against a perpetrator for intentional or negligent sexual abuse suffered as a child at any time.

(b) A victim may file a civil action against a non-perpetrator for intentional or negligent sexual abuse suffered as a child:

(i) within four years after the person attains the age of 18 years; or

(ii) if a victim discovers sexual abuse only after attaining the age of 18 years, that person may bring a civil action for such sexual abuse within four years after discovery of the sexual abuse, whichever period expires later.

(4) The victim need not establish which act in a series of continuing sexual abuse incidents caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse.

(5) The knowledge of a custodial parent or guardian may not be imputed to a person under the age of 18 years.

(6) A civil action may be brought only against a living person who:

(a) intentionally perpetrated the sexual abuse;

(b) would be criminally responsible for the sexual abuse in accordance with Section 76-2-202; or

(c) negligently permitted the sexual abuse to occur.

(7) A civil action against a person listed in Subsection (6)(a) or (b) for sexual abuse that was time barred as of July 1, 2016, may be brought within 35 years of the victim's 18th birthday, or within three years of the effective date of this Subsection (7), whichever is longer.

(8) A civil action may not be brought as provided in Subsection (7) for:

(a) any claim that has been litigated to finality on the merits in a court of competent jurisdiction prior to July 1, 2016, however termination of a prior civil action on the basis of the expiration of the statute of limitations does not constitute a claim that has been litigated to finality on the merits; and

(b) any claim where a written settlement agreement was entered into between a victim and a defendant or perpetrator, unless the settlement agreement was the result of fraud, duress, or unconscionability. There is a rebuttable presumption that a settlement agreement signed by the victim when the victim was not represented by an attorney admitted to practice law in this state at the time of the settlement was the result of fraud, duress, or unconscionability.

Credits

Laws 2008, c. 3, § 672, eff. Feb. 7, 2008; Laws 2015, c. 82, § 1, eff. March 23, 2015; Laws 2016, c. 379, § 1, eff. May 10, 2016.

Notes of Decisions (9)

U.C.A. 1953 § 78B-2-308, UT ST § 78B-2-308
Current through the 2017 General Session.

End of Document

Utah State Courts

Utah Supreme Court <supremecourt@utcourts.gov>

Mitchell v. Roberts No. 20170447-SC - Brief of Richard Warren Roberts

1 message

Jeffrey Welch <jwelch@zjbappeals.com> Tue, Aug 8, 2017 at 4:44 PM
To: Utah Supreme Court <supremecourt@utcourts.gov>
Cc: "bheberlig@steptoe.com" <bheberlig@steptoe.com>, "lbailey@steptoe.com" <lbailey@steptoe.com>, "nak@clydesnow.com" <nak@clydesnow.com>, "skz@clydesnow.com" <skz@clydesnow.com>, "Troy L. Booher" <tbooher@zjbappeals.com>

Dear Clerk:

Attached for filing in the referenced case is the Brief of Richard Warren Roberts. Please confirm receipt of this filing by return email. Thank you.

Best regards,

Jeffrey K. Welch

Assistant

ZIMMERMAN
JONES
BOOHER

Tel: 801-924-0200

Felt Building, Fourth Floor

341 South Main Street

Salt Lake City, UT 84111

zjbappeals.com

2017 0808 Roberts OB.PDF
452K