

IN THE UTAH SUPREME COURT

TERRY MITCHELL,
Plaintiff,

v.

RICHARD WARREN ROBERTS
Defendant.

PUBLIC

Case No. 20170447-SC

BRIEF OF AMICUS CURIAE UTAH LEGISLATURE

**CERTIFICATION FROM THE UNITED STATES DISTRICT COURT,
THE HONORABLE EVELYN J. FURSE, CASE NO. 2:16-cv-00843-EJF**

Ross C. Anderson
Lewis Hansen
8 East Broadway, Suite 410
Salt Lake City, Utah 84111

Attorney for Plaintiff

Brian M. Heberlig
Linda C. Bailey
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Neil A. Kaplan
Shannon K. Zollinger
Clyde Snow & Sessions
201 South Main Street, 13th Floor
Salt Lake City, Utah 84111-2216

Troy L. Booher
Zimmerman Jones Booher LLC
341 South Main Street, 4th Floor
Salt Lake City, Utah 84111

Attorneys for Defendant

Tyler Green
Stanford Purser
Office of the Utah Attorney General
320 Utah State Capitol
P.O. Box 142320
Salt Lake City, UT 84114-2320

Attorneys for the Attorney General

John L. Fellows
Robert H. Rees
Andrea Valenti Arthur
Office of Legislative Research and
General Counsel
W210 State Capitol Complex
Salt Lake City, UT 84114

Attorneys for Utah Legislature

Table of Contents

INTRODUCTION 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

POINT 1: THE COURT SHOULD ANSWER THE FIRST CERTIFIED QUESTION BY AFFIRMING THE LEGISLATURE’S AUTHORITY TO REVIVE A TIME-BARRED CLAIM..... 3

 A. The Legislature has the authority to expressly revive a time-barred claim through a statute..... 3

 B. If the Court addresses the constitutional issues raised by defendant, the Court should conclude that the constitutional provisions relied upon do not provide a basis for invalidating Utah Code Section 78B-2-308(7) 9

POINT 2: THE COURT’S ANSWER TO THE FIRST CERTIFIED QUESTION AFFIRMING THE LEGISLATURE’S AUTHORITY TO REVIVE TIME-BARRED CLAIMS THROUGH A STATUTE MAKES UNNECESSARY ANY FURTHER ANALYSIS OF WHETHER THE CHANGE AFFECTS A VESTED RIGHT 12

CONCLUSION 13

Addenda

- A Legislative Management Committee 07/17/17 Meeting – Draft Minutes
- B Utah Code Section 36-12-7, Legislative Management Committee – Duties.
- C Utah Constitution, art. VI, sec. 1, Power vested in Senate, House, and People.
- D Utah Code Section 78B-2-308, Legislative findings – Civil actions for sexual abuse of a child – Window for revival of time barred claims.

Table of Authorities

Cases

<i>Chase Secs. Corp. v. Donaldson</i> , 325 U.S. 304 (1945).....	4, 5, 11
<i>Ireland v. Mackintosh</i> , 22 Utah 296, 61 P. 901 (Utah 1900)	4
<i>Kuhn v. Mount</i> , 44 P. 1036 (Utah 1896).....	5
<i>Lee v. Gaufin</i> , 867 P.2d 572 (Utah 1993).....	5
<i>Roark v. Crabtree</i> , 893 P.2d 1058 (Utah 1995)	6, 7
<i>State v. Angilau</i> , 2011 UT 3, 245 P.3d 745	10
<i>State v. Apotex Corp.</i> , 2012 UT 36, 282 P.3d 66	8
<i>State v. Robertson</i> , 2017 UT 27.....	6
<i>Univ. of Utah v. Shurtleff</i> , 2006 UT 51, 144 P.3d 1109	4
<i>University of Utah v. Bd. of Exam’rs</i> , 295 P.2d 348 (Utah 1956).....	4, 6
<i>Utah Sch. Bds. Ass’n v. Utah State Bd. of Educ.</i> , 2001 UT 2, 17 P.3d 1125	4

Statutes

Utah Code Ann. § 36-12-7(4).....	1
Utah Code Ann. § 78B-2-308(1)	8
Utah Code Ann. § 78B-2-308(7)	passim

Other Authorities

Minutes of Legis. Mgmt. Comm., 62 Leg., July Interim, at 1–2 (Utah 2017) (awaiting committee approval)	1
--	---

Rules

Utah R. App. P. 25..... 1
Utah R. App. P. 25A..... 9,10

Constitutional Provisions

Utah Const. art. I, § 11..... 11
Utah Const. art. I, § 7..... 10
Utah Const. art. V, §1 6
Utah Const. art. VI, § 1, cl. 1..... 3

Pursuant to Rule 25 of the Utah Rules of Appellate Procedure and this Court’s order of August 17, 2017, the Utah Legislature (Legislature) submits this amicus curiae brief in support of the validity of Utah Code Section 78B-2-308(7), which revives a time-barred claim for damages resulting from child sexual abuse.¹

INTRODUCTION

The two questions certified by the federal district court go to the heart of the Legislature’s plenary authority to enact legislation, including legislation that reaches back in time to alter the substantive law or affect vested rights. The questions involve core principles of separation of powers between the Legislature and the Judiciary. The Legislature appreciates the opportunity to submit this amicus curiae brief to the Court to address the important legislative interests implicated by the Court’s answers to the certified questions.² Those questions are:

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

¹ The Legislature’s position is consistent with the position taken by Plaintiff Terry Mitchell on the certified questions. The Legislature takes no position on the merits of the underlying case that is pending in federal district court.

² The Legislative Management Committee of the Legislature voted, on July 17, 2017, to direct legislative counsel to pursue the filing of an amicus curiae brief on the certified questions before the Court. Minutes of Legis. Mgmt. Comm., 62 Leg., July Interim, at 1–2 (Utah 2017) (draft awaiting committee approval) (attached as Addendum A). The Legislature has statutorily delegated to the Legislative Management Committee the authority to “direct the legislative general counsel in matters involving the Legislature’s participation in litigation.” Utah Code Ann. § 36-12-7(4) (West, Westlaw through 2017 General Session) (attached as Addendum B).

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?

SUMMARY OF ARGUMENT

The Legislature has plenary authority to enact legislation reflecting its policy choices for the state. That authority includes the power to enact and modify statutes of limitations, including legislation that modifies a statute of limitations to revive a time-barred civil claim, thereby reaching back in time to alter the substantive law or affect vested rights. A court may limit the Legislature's exercise of its legislative power only when the court determines that the Legislature's actions are proscribed by the federal or state constitution. The Utah constitutional provisions that Defendant Richard Warren Roberts relies upon to support a defense based on the previous statute of limitations do not provide a basis for the Court to ignore or invalidate Utah Code Section 78B-2-308(7).

In enacting Utah Code Section 78B-2-308(7), the Legislature exercised its lawmaking authority with the unmistakable intent to revive a time-barred claim for child sexual abuse. The Court should answer the certified questions by affirming the Legislature's authority to revive time-barred claims and advising the federal district court that it need not analyze whether the revival enlarges or eliminates vested rights.

ARGUMENT

POINT 1

THE COURT SHOULD ANSWER THE FIRST CERTIFIED QUESTION BY AFFIRMING THE LEGISLATURE’S AUTHORITY TO REVIVE A TIME-BARRED CLAIM.

A. The Legislature Has the Authority to Expressly Revive a Time-barred Claim through a Statute.

Defendant argues that the Legislature is without authority to enact a statute that revives time-barred claims for damages for child sexual abuse. Defendant’s argument is based on two fundamental misunderstandings regarding: (1) the inherent plenary authority of the Legislature to fulfill its policymaking responsibility by enacting legislation, including legislation that reaches back in time to alter substantive law or affect vested rights, and (2) the proper application of separation of powers principles. The Court should clarify any ambiguity in existing case law with respect to the Legislature’s plenary authority and answer the first certified question by declaring that the Legislature does have the authority to expressly revive by statute a claim that would otherwise be barred by application of a legislatively created limitation.

The Legislature’s lawmaking authority is plenary,³ unless proscribed by the federal or state constitution. If the federal or state constitutions do not limit the Legislature from exercising its lawmaking authority, the Legislature may enact any

³ “The Legislative power of the State shall be vested in . . . a Senate and House of Representatives which shall be designated the Legislature of the State of Utah” Utah Const. art. VI, sec. 1, cl. 1 (attached as Addendum C).

legislation it considers appropriate. This is because “[t]he Utah Constitution is not one of grant, but one of limitation.”⁴ “As a general rule, the legislature possesses and may exercise all legislative power, or power to enact statutes, of the state or people of the state, subject only to the limitations or prohibitions imposed by the [federal or] state constitution.”⁵ “The state having thus committed its whole lawmaking power to the legislature, excepting such as is expressly or impliedly withheld by the state or federal constitution, it has plenary power for all purposes of civil government.”⁶

This plenary power necessarily includes the authority to enact and modify statutes of limitations. Statutes of limitations are just that: statutes. They are creatures of legislation; they did not exist at common law.⁷ Under the common law, a plaintiff could assert a claim at any time.⁸ Legislatures choose to place limitations on a plaintiff’s

⁴ *Utah Sch. Bds. Ass’n v. Utah State Bd. of Educ.*, 2001 UT 2, ¶ 11, 17 P.3d 1125.

⁵ *Id.* (quoting 16 C.J.S. *Constitutional Law* § 58, at 150 (1984)); *see also University of Utah v. Bd. of Exam’rs*, 295 P.2d 348, 361 (Utah 1956) (“[A]n act of [the legislative] body is legal when the constitution contains no prohibition against it.” (citation omitted)).

⁶ *Bd. of Exam’rs*, 295 P.2d at 360 (citation omitted); *see also Univ. of Utah v. Shurtleff*, 2006 UT 51, ¶ 31, 144 P.3d 1109 (noting that “the legislature’s authority is absolute and unlimited, except by the express restrictions of the fundamental law” (citation omitted)).

⁷ “[Statutes of limitations] have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate.” *Chase Secs. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945) (citation omitted).

⁸ *Ireland v. Mackintosh*, 22 Utah 296, 61 P. 901, 904 (Utah 1900) (“The common law [has] fixed no time as to the bringing of actions. Limitations derive their authority from statutes.” (alteration in original) (quoting *United States v. Thompson*, 98 U.S. 486, 489 (1878))).

otherwise unbridled time to assert a claim after “weighing a number of general policies,”⁹ including concerns about the correct balance between a plaintiff’s right to redress for torts and a defendant’s interest in finality and repose.¹⁰ A decision to impose a limitation on the time in which a plaintiff may assert a claim is “highly judgmental.”¹¹

Just as the Legislature may decide to enact a statute of limitations after weighing various policy considerations and interests involved, the Legislature may also periodically reevaluate and modify that decision after taking into account evolved understanding and subsequent empirical data about the effect of the decision on the parties involved and society as a whole.¹² As with the Legislature’s authority to enact any statute, the authority to enact or modify a statute of limitations may only be limited by the federal or state constitution.¹³

⁹ *Lee v. Gaufin*, 867 P.2d 572, 575 (Utah 1993).

¹⁰ *See id.* Defendant has described some of the policy considerations that legislatures weigh in determining whether to enact or modify limitations on the time within which a plaintiff may pursue a claim. [Def.’s Brief, pp. 10–15]

¹¹ *Lee*, 567 P.2d at 575.

¹² *See Chase Secs. Corp.*, 325 U.S. at 314 (“[The] shelter [provided by a statute of limitations] has never been regarded as what now is called a ‘fundamental’ right’ [A defendant] may, of course, have the protection of the policy while it exists, but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control.”).

¹³ *Kuhn v. Mount*, 44 P. 1036, 1037 (Utah 1896) (stating that a statute of limitations is “entitled to the same respect as other statutes”).

Recognizing the Legislature’s plenary legislative authority and respecting separation of powers principles, this Court has consistently deferred to the Legislature’s ability to enact legislation. The Court has appropriately acknowledged that the constitutional vesting of the legislative power in the Legislature means that “[i]t is not within [the court’s] power to nullify a statute on policy grounds” without engaging in an “unwarranted assumption of legislative authority.”¹⁴ The Court recognizes that under the separation of powers doctrine, the Court must leave the creation of law and policy to the Legislature unless the Court concludes that the Legislature’s actions are proscribed “expressly or by necessary implication by the Constitution itself.”¹⁵

That deference to legislative authority includes respecting the Legislature’s prerogative to enact legislation that reaches back in time to alter the substantive law or affect vested rights. In cases cited by both parties in this certification proceeding, this Court has acknowledged the Legislature’s authority to enact legislation with substantive retroactive application.¹⁶ For example, in *Roark v. Crabtree*, 893 P.2d 1058 (Utah 1995), the Court observed:

¹⁴ *State v. Robertson*, 2017 UT 27, ¶ 41 (citation omitted); *see also* Utah Const. art. V, § 1 (“The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.”).

¹⁵ *Univ. of Utah v. Bd. of Exam’rs*, 295 P.2d 348, 360 (Utah 1956).

¹⁶ In section 4 of the Arguments in his brief, Defendant attempts to draw a distinction between a legislative enactment that applies retroactively and one that revives time-

It is a long-standing rule of statutory construction that a legislative enactment which alters the substantive law or affects vested rights will not be read to operate retrospectively unless the legislature has clearly expressed that intention.¹⁷

That rule of statutory construction would be meaningless if the Legislature did not have the authority to enact legislation that retroactively alters the substantive law or affects vested rights. That analysis applies with equal force to a legislative enactment to revive a claim that would otherwise be barred by application of a legislatively established limitation on the time for a plaintiff to assert a claim. Both types of legislation operate to reach back in time to alter the substantive law or affect what might be considered a vested right. The plenary authority of the Legislature permits it to take both actions unless the constitution forbids it.

The Legislature agrees with Plaintiff that this Court's cases, properly understood, reflect the Court's recognition that the Legislature has plenary authority to legislate retroactively, even if the legislation alters the substantive law or affects vested rights.¹⁸ In those cases, the Court affirms the Legislature's authority to legislate retroactively, if the

barred claims. [Def's Br., pp. 33–42] While strictly speaking this certification proceeding does not involve the retroactive application of a statute, but rather a statute that provides for the revival of a time-barred claim, that distinction is one without a difference because the Legislature has the authority to do both.

¹⁷ 893 P.2d at 1061 (quoting *Madsen v. Borthick*, 769 P.2d 245, 253 (Utah 1988)).

¹⁸ Although the cases have arisen in the context of whether legislation is to be given retroactive application, the reasoning in those cases applies with equal force to legislation that also reaches back in time to revive a claim that would otherwise have been barred by a legislatively created limitation on the time for filing a claim.

Legislature expresses its intent to do so.¹⁹ It is only when the Legislature has not expressed its intent for retroactive application that the Court applies a court-made rule that considers whether the legislation is procedural and does not enlarge or eliminate vested rights. Defendant's argument fails to recognize that the vested rights analysis properly occurs only in cases where the Legislature has not expressed its intent that legislation apply retroactively. Defendant grafts a vested rights analysis on the Court's consideration of a statute that the Legislature has clearly expressed should be applied retroactively. The Court's consistent recognition of the Legislature's authority to enact legislation with retroactive application, even when altering the substantive law or affecting vested rights, stands in stark contrast to Defendant's argument.²⁰

¹⁹ The Legislature's intent to revive time-barred civil claims for child sexual abuse through Utah Code Section 78B-2-308(7) could not be more clear. Utah Code Ann. § 78B-2-308(1) (West, Westlaw through 2017 General Session) (attached as Addendum D).

²⁰ There is one case that appears to be an aberration to the Court's consistent approach when considering legislation that retroactively alters the substantive law or affects vested rights. That case is *State v. Apotex Corp.*, 2012 UT 36, 282 P.3d 66. Language in *Apotex* suggests that the Court applied a court-made rule to override the Legislature's clearly expressed intent to allow a civil action based on acts occurring before the legislation was enacted even when the action was time barred under the previously applicable statute of limitations. As discussed above, the Court has consistently acknowledged that the only basis upon which legislation can be invalidated is if the legislation violates the state or federal constitution. If there was a constitutional basis for the Court's ruling in *Apotex*, it was not articulated. It would be a serious violation of separation of powers principles for the Court to refuse to implement the clear intent of the Legislature based solely on the application of a court-made rule, rather than on a constitutional ground. The Court should disavow any language in *Apotex* that suggests that invaliding legislation by application of a court-made rule is appropriate.

The Legislature has plenary authority to enact legislation reflecting its policy choices for the state. That authority includes the power to enact and modify statutes of limitation, including legislation that modifies a statute of limitations to revive a time-barred claim and thereby reaches back in time to alter the substantive law or affect vested rights. The Court should disavow any suggestion in the case law to the contrary.

B. IF THE COURT ADDRESSES THE CONSTITUTIONAL ISSUES RAISED BY DEFENDANT, THE COURT SHOULD CONCLUDE THAT THE CONSTITUTIONAL PROVISIONS RELIED UPON DO NOT PROVIDE A BASIS FOR INVALIDATING UTAH CODE SECTION 78B-2-308(7).

In his brief, Defendant argues that his right to assert a statute of limitations defense is protected by the due process and open courts provisions of the Utah Constitution.²¹ Although Defendant does not directly challenge the constitutionality of Utah Code Section 78B-2-308(7), he served his brief on the Attorney General under rule 25A of the Utah Rules of Appellate Procedure. The constitutional provisions that Defendant relies on do not provide any basis for altering the Court's answer to the first certified question affirming the Legislature's authority to expressly revive time-barred claims through a statute.

Initially, the Legislature questions whether the constitutional issues raised by Defendant are within the scope of the certified questions. Those issues were not presented, briefed, or argued in connection with Defendant's motion to dismiss in

²¹ Defendant does not claim that any provision of the federal constitution affords protection to his right to assert a statute of limitations defense.

the federal district court and are not addressed explicitly in the certified questions. The Legislature believes that the Court need not address the constitutional issues to answer the certified questions. If the Court does address the constitutional issues, the Court should conclude that they do not provide any basis for determining that the Legislature lacks the authority to expressly revive time-barred claims through a statute.²²

Defendant first claims that the due process clause in article I, section 7 of the Utah Constitution protects his right to assert the previous statute of limitations as a defense.²³ “When undertaking a substantive due process analysis under . . . article I, section 7 of the Utah Constitution . . . , this court applies a rational basis test unless the governmental action implicates a fundamental right or interest.”²⁴ The shelter provided by a legislatively created statute of limitations “has never

²² In response to service of Defendant’s brief under rule 25A of the Utah Rules of Appellate Procedure, the Attorney General has filed his notice of intent to file an amicus brief. Addressing the constitutional issues raised by Defendant seems, in this context, to be more appropriately the role of the Attorney General. Accordingly, the Legislature provides a summary analysis of the constitutional issues to articulate the Legislature’s position on those issues. If the Court decides to fully address the constitutional issues in answering the certified questions, the Legislature would be pleased to provide a more thorough analysis of the constitutional issues at the Court’s request.

²³ The due process clause of the Utah Constitution provides, “No person shall be deprived of life, liberty or property, without due process of law.” Utah Const. art. I, § 7.

²⁴ *State v. Angilau*, 2011 UT 3, ¶ 10, 245 P.3d 745 (citation omitted).

been regarded as what now is called a ‘fundamental’ right.”²⁵ As articulated in Utah Code Section 78B-2-308(1), there is clearly a rational basis for the Legislature’s action to revive time-barred claims in the specific context of child sexual abuse. The principle of substantive due process provides no basis upon which to ignore or invalidate a statute through which the Legislature clearly intends to revive a civil claim for child sexual abuse.

Defendant also argues that the open courts provision found in Utah Const. art. I, sec. 11 protects the right to assert a statute of limitations defense.²⁶ Defendant’s argument—based solely on dicta from Utah cases—is not supported by the plain language of the constitution. The open courts provision speaks in terms of ensuring a “remedy by due course of law” for “every person, for an injury done to him [or her] in his [or her] person, property or reputation.”²⁷ It defies reason to suggest that a provision designed to ensure that an individual has access to the courts to seek a remedy for an “injury done to . . . his [or her] person, property or reputation” also restricts the Legislature from fashioning legislatively created statutes of limitations to more

²⁵ *Chase Secs. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945).

²⁶ Article I, section 11 of the Utah Constitution provides in its entirety:

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.

Utah Const. art. I, § 11.

²⁷ *Id.*

appropriately reflect society's updated and enlightened understanding of the difficulties that an individual faces in asserting a claim for child sexual abuse. Defendant did not cite—and the Legislature has not found—a single case supporting that novel reading of Utah's open courts provision.

Thus, the Court should answer the first certified question by affirming the Legislature's authority to expressly revive a time-barred claim. The Utah constitutional provisions that Defendant relies on do not change that conclusion.

POINT 2

THE COURT'S ANSWER TO THE FIRST CERTIFIED QUESTION AFFIRMING THE LEGISLATURE'S AUTHORITY TO REVIVE TIME- BARRED CLAIMS THROUGH A STATUTE MAKES UNNECESSARY ANY FURTHER ANALYSIS OF WHETHER THE CHANGE AFFECTS A VESTED RIGHT.

As stated above, in answering the first certified question, the Court should affirm the Legislature's authority to expressly revive time-barred claims through a statute. Under this Court's cases, the vested right analysis becomes relevant only if the Legislature does not express its intent to reach back in time to alter the substantive law or affect vested rights. It is undisputed that in enacting Utah Code Section 78B-2-308(7) the Legislature clearly expressed its intent for the statute to revive time-barred claims. Because the Legislature expressed that intent when it enacted Utah Code Section 78B-2-308(7) and there are no constitutional limitations on the Legislature's authority to enact that statute, there is no need to analyze whether the change affects a vested right.

The Court, therefore, should answer the second certified question by concluding that the federal district court need not undertake any further analysis of the vested nature of Defendant's statute of limitations defense.

CONCLUSION

For the foregoing reasons, the Legislature respectfully requests the Court to answer the certified questions as follows:

(1) Yes, the Legislature may expressly revive time-barred claims through a statute; and

(2) Yes, the Legislature's express language in Utah Code Section 78B-2-308 makes unnecessary an analysis of whether the amendment enlarges or eliminates a vested right.

Respectfully submitted this 31st day of August, 2017.

OFFICE OF LEGISLATIVE RESEARCH
AND GENERAL COUNSEL

/s/ Andrea Valenti Arthur
John L. Fellows (#4212)
Robert H. Rees (#4125)
Andrea Valenti Arthur (#12020)

Attorneys for the Utah Legislature

ADDENDUM A

(Draft-Awaiting Approval)
MINUTES OF THE
LEGISLATIVE MANAGEMENT COMMITTEE
Monday, July 17, 2017 • 5:00 p.m. • 445 State Capitol

Members Present:

Speaker Gregory H. Hughes, Vice Chair
Sen. Luz Escamilla
Sen. Peter C. Knudson
Sen. Karen Mayne
Sen. Ralph Okerlund
Rep. Joel K. Briscoe
Rep. Brian S. King
Rep. Angela Romero
Rep. Brad R. Wilson

President Wayne L. Niederhauser, Chair
Sen. J. Stuart Adams
Sen. Gene Davis
Sen. Jani Iwamoto
Rep. Francis D. Gibson
Rep. Sandra Hollins
Rep. John Knotwell

Staff Present:

Mr. Michael E. Christensen, Director
Mr. John L. Fellows, General Counsel
Ms. Denise Johnson, Administrative Assistant

Members Absent:

Note: A copy of related materials and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

2. Letters to Legislative Management Committee

Jerry Howe, Managing Policy Analyst, Office of Legislative Research and General Counsel, spoke to the issue.

MOTION: Sen. Ralph Okerland moved to approve all requests in letters from committees with the International Trade Commission approved for one site visit per member.

Rep. Brad R. Wilson spoke to the motion.

The motion to approve all requests in letters from committees with the International Trade Commission approved for one site visit per member passed with a vote of 9-0-7.

Yeas-9

Rep. J. Briscoe
Sen. L. Escamilla
Rep. G. Hughes
Rep. B. King

Nays-0

Absent-7

Sen. J. Adams
Sen. G. Davis
Rep. F. Gibson
Rep. S. Hollins

Sen. P. Knudson
Sen. K. Mayne
Sen. R. Okerlund
Rep. A. Romero
Rep. B. Wilson

Sen. J. Iwamoto
Rep. J. Knotwell
Sen. W. Niederhauser

3. Discussion Regarding Initiation of Litigation

John Fellows, General Counsel, OLRGC presented "Filing an Amicus Brief with the Utah Supreme Court: Facts, Issue, Arguments, and Recommendation."

MOTION: Rep. Brian King moved to authorize the filing of the amicus brief recommended by the General Counsel.

Terry Mitchel spoke to the issue.

Rep. Brian King's motion to authorize the filing of the amicus brief recommended by the General Counsel passed with a vote of 9-0-7.

Yeas-9

Rep. J. Briscoe
Sen. L. Escamilla
Rep. G. Hughes
Rep. B. King
Sen. P. Knudson
Sen. K. Mayne
Sen. R. Okerlund
Rep. A. Romero
Rep. B. Wilson

Nays-0

Absent-7

Sen. J. Adams
Sen. G. Davis
Rep. F. Gibson
Rep. S. Hollins
Sen. J. Iwamoto
Rep. J. Knotwell
Sen. W. Niederhauser

4. Other Items / Adjourn

MOTION: Rep. Joel Briscoe moved to adjourn. The motion passed with a vote of 9-0-7.

Yeas-9

Rep. J. Briscoe
Sen. L. Escamilla
Rep. G. Hughes
Rep. B. King
Sen. P. Knudson

Nays-0

Absent-7

Sen. J. Adams
Sen. G. Davis
Rep. F. Gibson
Rep. S. Hollins
Sen. J. Iwamoto

Sen. K. Mayne
Sen. R. Okerlund
Rep. A. Romero
Rep. B. Wilson

Rep. J. Knotwell
Sen. W. Niederhauser

ADDENDUM B

Utah Code Section 36-12-7. Legislative Management Committee -- Duties.

- (1) The Senate or House Management Committee shall:
 - (a) receive legislative resolutions directing studies on legislative matters and may assign these studies to the appropriate interim committee of its house;
 - (b) assign to interim committees of the same house, matters of legislative study not specifically contained in a legislative resolution but considered significant to the welfare of the state;
 - (c) receive requests from interim committees of its house for matters to be included on the study agenda of the requesting committee. Appropriate bases for denying a study include inadequate funding to properly complete the study or duplication of the work;
 - (d) establish a budget account for interim committee day as designated by Legislative Management Committee and for all other legislative committees of its house and allocate to that account sufficient funds to adequately provide for the work of the committee; and
 - (e) designate the time and place for periodic meetings of the interim committees.
- (2) To maximize the use of legislators' available time, the Senate and House Management Committees should attempt to schedule the committee meetings of their respective houses during the same one or two-day period each month. This does not preclude an interim committee from meeting at any time it determines necessary to complete its business.
- (3) The Legislative Management Committee shall:
 - (a) employ, after recommendation of the appropriate subcommittee of the Legislative Management Committee, without regard to political affiliation, and subject to approval of a majority vote of both houses, persons qualified for the positions of director of the Office of Legislative Research and General Counsel, legislative fiscal analyst, legislative general counsel, and legislative auditor general. Appointments to these positions shall be for terms of six years subject to renewal under the same procedure as the original appointment. A person may be removed from any of these offices prior to the expiration of his term only by a majority vote of both houses of the Legislature or by a 2/3 vote of the management committee for such causes as inefficiency, incompetency, failure to maintain skills or adequate performance levels, insubordination, misfeasance, malfeasance, or nonfeasance in office. In the event a vacancy occurs in any of these offices after adjournment of the Legislature, the committee shall appoint an individual to fill the vacancy until such time as the person is approved or rejected by majority vote of the next session of the Legislature;
 - (b) develop policies for personnel management, compensation, and training of all professional legislative staff;

- (c) develop a policy within the limits of legislative appropriation for the authorization and payment to legislators of compensation and travel expenses, including out-of-state travel;
 - (d) approve special study budget requests of the legislative directors; and
 - (e) assist the speaker-elect of the House of Representatives and the president-elect of the Senate, upon selection by their majority party caucus, to organize their respective houses of the Legislature and assume the direction of the operation of the Legislature in the forthcoming annual general session.
- (4) The Legislature delegates to the Legislative Management Committee the authority, by means of a majority vote of the committee, to direct the legislative general counsel in matters involving the Legislature's participation in litigation.

(West, Westlaw through 2017 General Session.)

ADDENDUM C

Utah Constitution Article VI, Section 1. [Power vested in Senate, House, and People.]

- (1) The Legislative power of the State shall be vested in:
 - (a) a Senate and House of Representatives which shall be designated the Legislature of the State of Utah; and
 - (b) the people of the State of Utah as provided in Subsection [\(2\)](#).
- (2) (a) (i) The legal voters of the State of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:
 - (A) initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute; or
 - (B) require any law passed by the Legislature, except those laws passed by a two-thirds vote of the members elected to each house of the Legislature, to be submitted to the voters of the State, as provided by statute, before the law may take effect.
- (ii) Notwithstanding Subsection [\(2\)\(a\)\(i\)\(A\)](#), legislation initiated to allow, limit, or prohibit the taking of wildlife or the season for or method of taking wildlife shall be adopted upon approval of two-thirds of those voting.
- (b) The legal voters of any county, city, or town, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:
 - (i) initiate any desired legislation and cause it to be submitted to the people of the county, city, or town for adoption upon a majority vote of those voting on the legislation, as provided by statute; or
 - (ii) require any law or ordinance passed by the law making body of the county, city, or town to be submitted to the voters thereof, as provided by statute, before the law or ordinance may take effect.

ADDENDUM D

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

- (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

(Effective May 10, 2016) (West, Westlaw through General Session 2017).

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS.**

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because:

this brief contains 3,521 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B), or

this brief uses a monospaced typeface and contains ____ lines of text, 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 2016 in 13 point Times New Roman, or

this brief has been prepared in a monospaced typeface using _____ [*name and version of word processing program*] with _____ [*number of characters per inch and name of type style*].

/s/ Andrea Valenti Arthur
Andrea Valenti Arthur
Attorney for the Utah Legislature

Dated: August 31, 2017

CERTIFICATE OF DELIVERY

I hereby certify that on the 31st day of August, 2017, a true and correct copy of the foregoing Brief of *Amicus Curiae* Utah Legislature was sent by email, with two copies by first class mail, postage prepaid, to the following:

Ross C. Anderson
Lewis Hansen
The Judge Building
8 East Broadway, Suite 410
Salt Lake City, Utah 84111
randerson@lewishansen.com

Troy L. Booher
Zimmerman Jones Booher LLC
341 South Main Street, 4th Floor
Salt Lake City, Utah 84111
tbooher@zjbappeals.com

Brian M. Heberlig
Linda C. Bailey
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
bheberlig@steptoe.com
lbailey@steptoe.com

Tyler Green
Stanford Purser
Office of the Utah Attorney General
320 Utah State Capitol
P.O. Box 142320
Salt Lake City, UT 84114-2320
notices@agutah.gov

Neil A. Kaplan
Shannon K. Zollinger
Clyde Snow & Sessions
201 South Main Street, 13th Floor
Salt Lake City, Utah 84111-2216
nak@clydesnow.com
skz@clydesnow.com

By: /s/ Andrea Valenti Arthur
Andrea Valenti Arthur
Attorney for the Utah Legislature

Case No. 20170447-SC
Federal Case No. 2:16-cv-00843-EJF