

Eight Facts about [HJR2](#)

HJR2 revises Rule 65A that Utah courts apply when deciding whether to temporarily block the enforcement of a law while a legal challenge over constitutionality proceeds. The resolution would narrow the grounds for granting these emergency orders, which are sometimes called temporary restraining orders (TRO) or preliminary injunctions (PI), by removing the grounds that the case presents “serious issues on the merits which should be the subject of further litigation” as a basis for an injunction.

Fact #1: HJR2 will create a damaging ripple effect across a wide range of legal cases in Utah.

Legal professionals in employment, civil, and family law, as well as representatives from the Utah Medical Association, and the Salt Lake County District Attorney’s office testified to the House Judiciary Committee that HJR2 will not only remove a tool from their legal toolkit, but also open up a wide range of cases for re-litigation. This testimony contradicts the sponsor’s assertion that, “there will be very, very little that will change” if HJR2 passes and demonstrates the breadth of current and future cases that could be negatively impacted by this bill.

Fact #2: The total number of current and future cases in Utah impacted by HJR2 is unknown.

The [fiscal note for HJR2](#) states that “every 10 applicable cases” would cost the state Courts \$6,500 in additional litigation costs, before adding “the total amount of applicable cases is unknown.”

Fact #3: Three recent cases in the Utah courts demonstrate the importance of the “serious issue” prong in granting preliminary injunctions and temporary restraining orders in land use and commercial law.

Two land use cases (*Erda Community Association, Inc., vs. Braydee Baug*; and *Ryan Sorensen vs. Grantsville City*) involving private property rights in Tooele County relied on preliminary injunctions based on the “serious issues” clause that HJR2 would remove from Utah’s civil procedure code. A third case (*Waveguard International et al v. Synergy Science et al*) involved a temporary restraining order where the court declined to find that the plaintiffs were likely to prevail on the merits and issued the TRO solely based on the “serious issues” prong in Rule 65A.

Fact #4: HJR2 removes language that family law attorneys use to protect children from harmful situations.

Family law attorneys in Utah assert they routinely use the “serious issues” clause in Rule 65A that HJR2 removes to fast-track injunctions in cases where children face potentially harmful situations or to protect financial assets from being removed or concealed.

A family law attorney explained that he used Rule 65A to address “*an immediate safety issue related to visitation of a child in a secure location.*”

This attorney also said that the “substantial likelihood” of success language for injunctions (the section that HJR2 keeps in place) is difficult to establish in family law because of the nuanced considerations in assessing a child’s best interest, especially for safety issues. As a result, family law attorneys rely on the “serious issues” grounds that HJR2 erases, thereby removing a crucial legal tool these lawyers use to protect children from potential harm.

Another family law attorney said, “*We use [Rule] 65A to get in front of the family law court immediately.*” Without this option, it can take well over a month for family law attorneys to receive judicial review of their motions.

Fact #5: The difference between state and federal civil procedure rules is intentional and effective.

Since the Utah Constitution and the U.S. Constitution are different documents, it makes sense to have different civil procedure rules. Under current state law, Utah residents enjoy more personal rights against government intrusion than the federal Constitution allows. Passing HJR2 will make it harder for individuals to assert and preserve their rights in state courts.

Fact #6: Utah’s civil procedure rules for granting injunctions have been in place for decades.

The section of Utah’s civil procedure amended by HJR2 has remained unchanged since 1990.

Fact #7: Changes to Utah’s civil procedure are traditionally made in close consultation with the Utah Courts, the Utah Bar, and other legal representatives.

Key members of Utah’s legal community were not closely consulted during the drafting of HJR2. In addition, a representative of the Utah Courts testified about the negative impacts of HJR2 at the House Judiciary Committee.

Fact #8: Other states besides Utah retain a “serious issues” or similar standard for injunctions.

Among the states, there is a range of preliminary injunction standards similar to Utah’s model, allowing for preliminary injunctions without requiring that the plaintiff demonstrate a likelihood of success on the merits in state court. These other states include Alaska (“serious and substantial questions going to the merits”); Illinois (“prima facie case of a “fair question”); as well as Hawaii and Arizona.