

HJR 02 - Joint Resolution Amending Rules of Civil Procedure on Injunctions

Sponsor: Rep. Brady Brammer (R-Highland)

This joint resolution revises a rule 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 or preliminary injunctions.

A substitute version of HJR2 approved by the House Judiciary Committee on 1/18/23 allows parties restrained by an injunction (like the state of Utah in the trigger ban lawsuit) to file a "motion to reconsider" to force the court to address whether the injunction is still valid under the new rules created by HJR2.

HJR 02 transparently targets the court order placing SB 174, Utah's abortion trigger ban, on hold. Resolutions to amend Utah's court rules require a two-thirds majority vote in both chambers, take effect immediately upon passage, and do not require the Governor's signature.

Background:

Under current Utah civil procedure, a preliminary injunction may be issued if it satisfies certain grounds, including that (1) there is a "substantial likelihood that the [party seeking an injunction] will prevail on the merits of the underlying claim," or (2) the case presents serious issues on the merits which should be the subject of further litigation."

In July 2022, a state district court in Utah applied this rule when it issued a preliminary injunction to block enforcement of SB 174, Utah's trigger ban criminalizing the provision of abortion in Utah in nearly all circumstances. The court did not reach the question whether Planned Parenthood Association of Utah, which challenged the law in court, is likely to win on its claims because the court had no need to do so: PPAU had, at minimum, raised "serious issues on the merits" of its constitutional claims against the Act. The Utah Supreme Court allowed the State of Utah to appeal from that court order, but it held that the injunction should stay in place during the appeal.

HJR 02 would remove the "serious issues" standard from Utah's court rules, making it more difficult for Utahns to get emergency court relief necessary to prevent permanent harm. In addition, HJR 02 would apply retroactively to injunctions already in place, including the court order blocking SB 174.

If the first substitute for HJR 02 took effect, parties constrained by a current injunction could file a "motion to reconsider" to require Utah courts to revisit all preliminary injunctions currently in place. This retroactive reach would give the State of Utah a new basis for challenging the existing injunction against Utah's abortion ban. This judicial review could result in removal of the injunction, allowing SB 174 to take effect and outlawing all abortions in the state except for a few exceptions. At minimum, the resolution would result in unnecessary and costly emergency litigation on the question whether SB 174 should remain on hold until the lawsuit is resolved.

In statements to the media, Rep. Brammer justified HJR 02 by claiming the changes will align Utah's rules for civil procedure with current federal practices. However, it is clear the real justification for HJR 02 is to weaken the injunction against Utah's total abortion ban.

Key Issue:

HJR 02 is a power grab on the part of anti-abortion lawmakers in this state seeking to weaken the judiciary's ability to maintain the status quo and protect the rights of people in this state. The current rules of civil procedure anticipate that litigation can be lengthy and that those subject to state action will be harmed if invalid laws go into effect while the judiciary reviews those policies. This attempt to amend the rules could mean that Utahns are forced to suffer under government overreach during the course of litigation.

What's more, HJR 02's application to existing injunctions violates separation-of-powers—the idea that courts and the Legislature each have independent roles in Utah—and a court may hold this aspect of the resolution unconstitutional. To avoid these concerns, the resolution would have to be amended to state expressly that it shall not apply in any review of injunctions already issued by Utah courts. During the House Judiciary Committee hearing on 1/18/23, lawmakers voted 8-4 to defeat an amendment to remove the retroactive aspect of the resolution.

Talking points:

- Utah's "serious issues" standard has existed since 1990, works well, and is similar to standards used by numerous other states. No matter what the federal standard is, Utah courts should remain free to provide greater protection to this state's citizens when the government overreaches and violates their rights.
- This wholly unnecessary resolution is aimed at making it more difficult for the people of Utah to protect their rights in our state courts—including rights that protect abortion access. Its impact will reach far beyond PPAU's case challenging SB 174, and would apply, for example, to Utahns challenging laws that violate their religious rights or that result in destruction of their land or other property.
- Those behind this proposal are the same legislators who have made clear that they will stop at nothing to deny the people in this state reproductive freedom and access to abortion—including by subverting fundamental principles of our state judiciary and wreaking havoc on our courts.
- Preliminary injunctions are important tools for plaintiffs to protect themselves from the infringement of their rights. This resolution could prevent courts from using this tool while lawsuits run their course, no matter how much the challenged laws harm Utahns in the meantime.
- Elimination of our injunction against SB 174 would cause real harm to the people of Utah who already are challenged when accessing health care.
- It is shameful that anti-abortion legislators are so committed to denying people their fundamental rights and harming our communities that they would be willing to meddle with the state judicial process and undermine our courts.
- Rules governing civil procedure for Utah courts should be made in a careful and deliberative manner in consultation with the Utah Supreme Court. HJR 02 is a legislative power-grab that shifts power from the courts to the legislature while targeting a specific case that some lawmakers oppose.

Additional Resources:

Utah Constitution, Article VIII, Section 4 - [\[Rulemaking power of Supreme Court -- Judges pro tempore -- Regulation of practice of law\]](#)

Utah Legislature: [About Joint Resolutions](#)

URCP Rule 65A - [Rules of Civil Procedure](#)

[Abortion could be banned again in Utah if this GOP lawmaker's bill passes](#), *Salt Lake Tribune*, January 4, 2023.

[Utah abortion ban could take effect if lawmakers change a procedural rule](#), *KSL News Radio*, January 12, 2023.

[Kathy Adams: Lawmaker is trying to move the judicial goalposts](#), *Salt Lake Tribune* (Opinion), January 15, 2023.