



# **Summary of in the matter of Sex Change of Childers- Gray and Rice**

## **OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL**

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Health and Human Services Interim Committee

September 15, 2021



# Facts

- **A transgender man and a transgender woman petitioned a district court to have the sex designation on their respective birth certificates changed.**
- **The individuals petitioned the district court under Utah Code Section 26-2-11 to issue an order to the Office of Vital Statistics to make the change.**



# Section 26-2-11

- **“When a person born in this state has a name change or sex change approved by an order of a Utah district court or a court of competent jurisdiction of another state or a province of Canada, a certified copy of the order may be filed with the state registrar with an application form provided by the registrar.”**



# District Court

- **The district court denied both petitions, stating that since the Legislature had not defined a process for the court to issue a sex-change order, that the statute was an unauthorized delegation of legislative authority and thus unconstitutional.**
- **Issue before the Supreme Court:**
  - Whether Utah courts could adjudicate a sex-change petition without an express substantive process defined in statute.



# Ruling

- **The Supreme Court held that the courts had common law authority to adjudicate name-change petitions. When the legislature included sex-change petitions with name-change petitions in Section 26-2-11, the legislature intended to allow courts to rule on sex-change petitions.**
- **The Court held that a sex-change petition will be granted if:**
  - The petition is not sought for a wrongful or fraudulent purpose; and
  - The petition is supported by objective evidence, which includes at a minimum, evidence of clinical care or treatment for gender transitioning.



# Dissent

- The dissent argued that when the sex-change statute was enacted in 1975, the legislature intended it to mean biological sex only, not broader gender identity.



# Invitation for Legislative Action

- **“The legislature may choose to enact a substantive standard for sex changes at any time, but so far it has not done so. Section 26-2-11 is a statute enacted in aid of the court’s common law authority. And should the legislature find issue with our decision today, it has the authority to override the common law with statute.” Childers-Gray, 2021 UT 13, ¶ 54.**