

HJR2 - Amendments to Rules of Civ. Proc.

Rule 65A

**General
Background**

Current Law

**Proposed
Change**

General Statement of Laws: "[a] statute is presumed constitutional, and we resolve any reasonable doubts in favor of constitutionality."

- Utah Sch. Bds. Ass'n v. Utah State Bd. of Educ., 2001 UT 2, 17 P.3d 1125 (Sup.Ct.)

**Current
Events**

Dobbs Held: "The Constitution does not confer a right to abortion; Roe and Casey are overruled; and the authority to regulate abortion is returned to the people and their elected representatives."

Preliminary Injunction Granted to Prevent SB174 from going into effect. As part of the ruling the court relied upon the following language in the court procedures:
the case presents serious issues on the merits which should be the subject of further litigation."

General Statement of Laws: "[a] statute is presumed constitutional, and we resolve any reasonable doubts in favor of constitutionality."

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**Current
Events**

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Rule 65A(e)

Grounds. A restraining order or preliminary injunction may issue only upon a showing by the applicant that:

(e)(1) The applicant will suffer irreparable harm unless the order or injunction issues;

(e)(2) The threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined;

(e)(3) The order or injunction, if issued, would not be adverse to the public interest; and

(e)(4) There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, **or the case presents serious issues on the merits which should be the subject of further litigation.**

Advisory Committee Notes

[C]ourts and litigants would benefit from explicit standards drawn from sound authority. The standards set forth in paragraph (e) are derived from *Tri-State Generation & Transmission Ass'n. v. Shoshone River Power, Inc.*, 805 F.2d 351, 355 (10th Cir. 1986), and *Otero Savings & Loan Ass'n. v. Federal Reserve Bank*, 665 F.2d 275, 278 (10th Cir. 1981). Federal courts require proof of compliance with each of the four standards, but the weight given to each standard may vary. The substantial body of federal case authority in this area should assist the Utah courts in developing the law under paragraph (e).

Where it
comes from

Use and
Interpretation

Current Rule 65A

"...or the case presents serious issues on the merits which should be the subject of further litigation."

Cont'l Oil Co. v. Frontier Ref. Co.,
338 F.2d 780, 782 (10th Cir. 1964)
"To justify a temporary injunction it is not necessary that the plaintiff's right to a final decision, after a trial, be absolutely certain, wholly without doubt; if the other elements are present (i.e., the balance of hardships tips **decidedly** toward plaintiff), it will ordinarily be enough that the plaintiff has raised questions going to the merits so **serious, substantial, difficult and doubtful**, as to make them a fair ground for litigation and thus for more deliberate investigation.'

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Where it
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Use and
Interpretation

Only two cases have had any treatment of this portion of the URCP. Both declined any analysis beyond stating that the other elements of rule 65A were not met and therefore it needed no further analysis.

- Zagg, Inc. v. Harmer, 2015 UT App 52, ¶ 5 n.2, 345 P.3d 1273

- Utah Med. Prods. v. Searcy, 958 P.2d 228, 232 (Utah Sup.Ct. 1998)

Most litigants only brief the issue of "substantial likelihood of success."

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Where it
comes from

Use and
Interpretation

Advisory Committee Notes

[C]ourts and litigants would benefit from explicit standards

Neither case cited by the advisory committee includes the language "or the case presents serious issues on the merits which should be the subject of further litigation."

No other state uses this language

Utah courts in developing the law under paragraph (e).

Where it
comes from

Use and
Interpretation

Rule 65A(e)

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The First Substitute also Permits a Motion for Reconsideration

Retroactivity

106-109

(f) (1) If a court granted a restraining order or preliminary injunction on the ground that the case presented serious issues on the merits which should be the subject of further litigation, a party restrained by the order or injunction on the effective date of this resolution may move the court to reconsider whether the order or injunction should remain in effect.

Retroactivity

Issue of First Impression

**Statutes
Retroactive?**

**Similar
Cases?**

**Other
States?**

Utah Code Annotated 68-3-3

A statute can be applied retroactively when it is “expressly declared to be retroactive.”

Retroactivity

Issue of First Impression

**Statutes
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**Similar
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**Other
States?**

State v. Clark,
2011 UT 23, ¶
12, 251 P.3d
829 (Sup.Ct.)

“With respect to procedural statutes enacted subsequent to the initiation of a suit, on the other hand, we have held that the new law applies not only to future actions, but also to accrued and pending actions, and that further proceedings in a pending case are governed by the new [procedural] law.”

Retroactivity

Issue of First Impression

**Statutes
Retroactive?**

**Similar
Cases?**

**Other
States?**

Other States

Minnesota: Allows when clearly manifested

Illinois: Allows

California: Allows

Vermont: Allows

New York: Allows

Virgin Islands: Allows

New Mexico: Disallows by state constitutional provision

Retroactivity

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