

# HJR2 - Civil Injunctions

A) "A statute is presumed constitutional, and we resolve any reasonable doubts in favor of constitutionality." Utah Supreme Court

(B) Injunctions are an "extraordinary and drastic remedy" and "should not be lightly granted." Utah Supreme Court

(C) Injunction defined: A court order requiring a party to refrain from doing a particular act or to do a particular act.

(D) Legislative Power: Under Article VIII, Section 4, of the Utah Constitution, the Utah Legislature has the authority to amend court rules of procedure and evidence by two-thirds vote of all members of each house of the Legislature.

## 1. Match Our Standard to the Federal Standard

Rule 65A(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.**

NOTE: Utah is the only state in America that uses the red language. 🇺🇸

## **2. Potential Review of Current Injunctions**

Current injunctions **\*granted explicitly upon the deleted portion of the rule\*** can be reviewed under the amended rule.

### **2A. Ability to Retroactively Impact Active Cases**

While the issue of retroactivity of procedural rules has not been the subject of a case in Utah, we can learn by analogy:

Can Statutes be Applied Retroactively? Generally yes.

**Utah Code 68-3-3 provides that a statute may be retroactive when "expressly declared to be retroactive."**

While legislation cannot retroactively eliminate vested rights, vested rights are not rights that "merely dictate **"the practice and procedure or the legal machinery by which the substantive law is determined or made effective."**" Utah Supreme Court

Of the six courts that have analyzed this issue directly **all have permitted retroactive application.** The lone exception was New Mexico, which expressly prohibited it under its constitution.