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IN THE UTAH SUPREME COURT

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UNIVERSITY OF UTAH,

Defendant/Appellant,

v.

JOHN TULLIS and AMELIA TULLIS,  
individually and as parents and natural  
guardians of P.T., a minor child,

Plaintiffs/Appellees.

Case No.: 20230672-SC

Third District Court No.: 190907183  
Honorable Adam T. Mow

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BRIEF OF AMICUS CURIAE  
UTAH ASSOCIATION FOR JUSTICE

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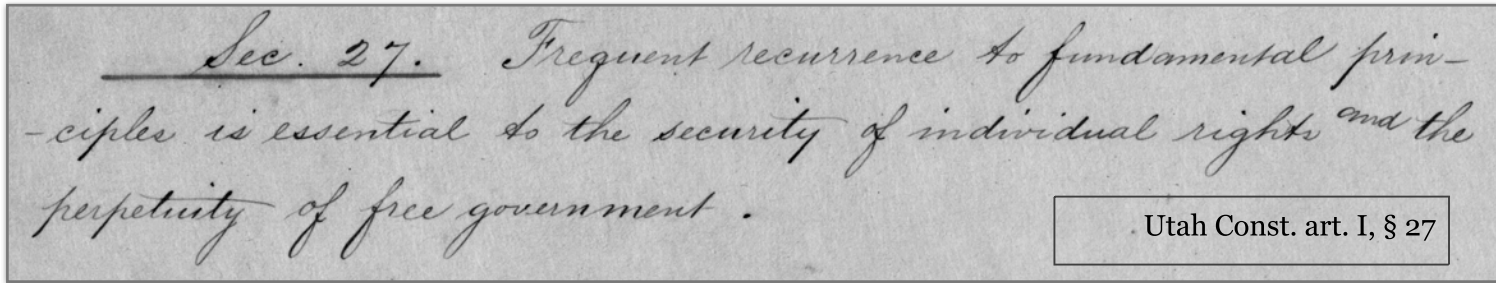
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## ARGUMENT



### 1. BEGIN AT THE BEGINNING: FREQUENT RECURRENCE TO FUNDAMENTAL PRINCIPLES.

Occasionally referred to as “a mere jumble of virtuous words”<sup>1</sup> or a “patriotic utterance that did no harm,”<sup>2</sup> dismissing Utah Const. art. I § 27 as nothing more than the artistic flourish of exuberant constitutional delegates is wrong. While Section 27 is titled “Fundamental *rights*” the text itself admonishes: a failure to recur<sup>3</sup> to “fundamental *principles*” jeopardizes the “security of individual rights and the perpetuity of free government.”<sup>4</sup> Ignoring art. I § 27’s admonishment not only violates the maxim that each

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<sup>1</sup> Robert A. Rutland, *The Papers of George Mason*, p. 281 (1970)(quoting Brant Irving, *James Madison: The Virginia Revolutionist*, p. 242 (1941)).

<sup>2</sup> Jean Bickmore White, *The Utah State Constitution (Oxford Commentaries on the State Constitutions of the United States)* p. 60 (2011 Edition). Notably, the quote comes from a delegate but is incomplete, somewhat out of context, and, gives impression inconsistent with delegates’ actual views as discussed more fully below.

<sup>3</sup> The 1828 Websters dictionary definition states: “RECUR’, verb intransitive 1. To return to the thought or mind. ‘When any word has been used to signify an idea, the old idea will recur in the mind, when the word is heard.’” *Websters American Dictionary of the English Language*, (1828)(<https://webstersdictionary1828.com/Dictionary/Recur>).

<sup>4</sup> Utah Const. art I § 27 (emphasis added).

provision should be given effect,<sup>5</sup> it also dismisses crucial guidance on *how* our framers believed we should approach interpretation and application of our constitution.

Fundamental “principles are not equivalent to specific individual rights, because securing individual rights *results from* recurring to fundamental principles.”<sup>6</sup> The Utah framers chose to bookend<sup>7</sup> our declaration of rights with this instruction on how to assess intrusions into constitutional protections. Art. I § 27 charges that, to secure constitutionally guaranteed rights, we must reference and bring to mind the fundamental principles, the philosophies and ideas, from which the rights themselves arose. But, this leaves unanswered the question as to what is meant by ‘fundamental principles.’

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<sup>5</sup> *Blackrock Copper Min. & Mill. Co. v. Tingey*, 34 Utah 369, 98 P. 180, 183 (1908)(court owes a duty to consider constitution as a whole); *American Bush v. City of South Salt Lake*, 2006 UT 40, ¶ 18, 140 P.3d 1235 (methods of interpretation dictate reference to other provisions to ascertain meaning). The immediately preceding provision, Utah Const. art. I § 26, states constitutional provisions are “*mandatory and prohibitory unless by express words declared otherwise.*”

<sup>6</sup> Paul Wake, *Fundamental Principles, Individual Rights, and Free Government: Do Utahns Remember How to Be Free?*, 1996 Utah L. Rev. 661, 693 (1996). This 1996 article exhaustively covers Utah’s multiple bids to gain statehood, convention debates, and some case authority in attempting to ascertain the meaning of ‘fundamental principles.’ However, in the vernacular of art. I § 27, the article falls short of fully recurring to the fundamental principles underlying the provision and the creation of popular sovereignty discussed *infra*.

<sup>7</sup> As originally drafted and adopted, art. I § 27 was the final provision of Utah’s Declaration of Rights.

The spirit and substance of ‘a frequent recurrence to fundamental principles’ springs from George Mason,<sup>8</sup> one of the authors of the U.S. Constitution. When drafting the Virginia declaration of rights, Mason included the provision that free government can only “be preserved by a firm adherence to justice, moderation, temperance, frugality, and virtue and **by frequent recurrence to fundamental principles.**”<sup>9</sup>

The drafters of the U.S. constitution “sought constantly to recur to those first principles that overlay the workings of politics, agreeing with young Alexander Hamilton that ‘the best way of determining disputes, and of investigating truth is by ascending to elementary principles.’”<sup>10</sup> The founders embraced the propositions of Thomas Hobbes and John Locke.<sup>11</sup>

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<sup>8</sup> George Mason contributed much to the drafting of the U.S. Constitution, but is perhaps best known for declining to be a signatory because the draft did not include a declaration of rights. Paul Finkelman, *The Complete Anti-Federalist*, 70 Cornell L. Rev. 182, 201 (1984).

<sup>9</sup> Virginia Declaration of Rights, Sec. 15 (1776)(emphasis added)(<https://www.archives.gov/founding-docs/virginia-declaration-of-rights>). Five states, including Virginia, adopted language “in a jarring but exciting combination of ringing declarations of universal principles with a motley collection of common law procedures in order to fence [rights] off from” legislative power. Gordon S. Wood, *The Creation of the American Republic, 1776-1787* at 271 (1998 Edition).

<sup>10</sup> Wood, *supra* note 9 at 5.

<sup>11</sup> See, e.g., Ian Bartrum, *The People's Court: On the Intellectual Origins of American Judicial Power*, 125 Dick. L. Rev. 283, 344 (2021); and, Barry Friedman, & Scott B. Smith, *The Sedimentary Constitution*, 147 U. Pa. L. Rev. 1, 60 n. 254 (1998)(“Because the Framers relied on older understandings for some of the most basic aspects of our constitutionalism, these understandings naturally continue to carry weight with us.”).

Hobbes famously described life in the state of nature as “solitary, poor, nasty, brutish, and short.”<sup>12</sup> To escape this state of nature, individuals band together, forming a social contract amongst themselves.<sup>13</sup> Locke agreed on the necessity of a social contract or commonwealth. “The great and chief end, therefore, of men’s uniting into commonwealths, and putting themselves under government, is the preservation of their property.”<sup>14</sup> Locke’s broad use of the term ‘property’ encompassed not only material possessions but also life and liberty.<sup>15</sup> Locke and Hobbes both emphasized that “the only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another.”<sup>16</sup> The government created

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<sup>12</sup> Thomas Hobbes, *Leviathan, Part I, Chapter 13, The Incommodities of Such a War* (1651), (<https://www.gutenberg.org/files/3207/3207-h/3207-h.htm>.)

<sup>13</sup> *Id.* at *Part II, Chapter 17, The Generation Of A Common-wealth* (<https://www.gutenberg.org/files/3207/3207-h/3207-h.htm>.)

<sup>14</sup> John Locke, *Second Treatise of Government, Chp. IX, Sec. 124* (1689), (<https://www.gutenberg.org/files/7370/7370-h/7370-h.htm>.)

<sup>15</sup> In *Chapter II, Section 6*, Locke discusses the state of nature and the law of nature, emphasizing the rights to life and liberty: “The state of nature has a law of nature to govern it, which obliges every one: no one ought to harm another in his life, health, liberty, or possessions...”

<sup>16</sup> Locke, *Second Treatise Chapter VIII, Sect. 95*; Hobbes, *Leviathan, Part II, Chapter 17: Of the Causes, Generation, and Definition of a Commonwealth, The Generation of A Common-wealth* (the only way to erect a common power to protect against “the injuries of one another” is to “Unitie of them all” in a “COMMON-WEALTH.”).

thereby is tasked with protecting the natural rights of life, liberty, and property, including protection against “the injuries of one another.”<sup>17</sup>

“The origin of all civil government, justly established,” said Hamilton in 1775, “must be a voluntary compact, between the rulers and the ruled.”<sup>18</sup> Accordingly, a fundamental principle is that government is formed by the consent of the people with its chief purpose to protect life and liberty.<sup>19</sup> Even after consent, there still remained yet a “certain great first principle” of setting out the boundaries of governmental power and “securing the rights and liberties” of the people through a written constitution.<sup>20</sup>

Having all power consolidated in a single body, even with the consent of the populace, was perceived to be an insufficient guarantee of individual rights to liberty and security in one’s person. Should a ruler/government breach the contract to protect individual rights, the only sanction “was the people’s right of resistance; but revolution was hardly a sanction that could be commonly used ... the remedy must not be worse

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<sup>17</sup> *Id.*

<sup>18</sup> Wood, *supra* note 9, p. 271.

<sup>19</sup> *Fundamental Principles*, also concludes “the most fundamental principle of government is that the people are sovereign; government exists to serve the people, not vice versa.” Wake, *supra* note 6, at 710.

<sup>20</sup> Wood, *supra* note 9.

than the disease.”<sup>21</sup> Thus, Montesquieu argued the need for an independent judiciary.<sup>22</sup> As with Hobbes and Locke, Montesquieu also conceptualized concepts such as “liberty” broadly to include “a person’s security in his life.”<sup>23</sup>

“In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”<sup>24</sup> Another “fundamental principle on which the delegates were in general agreement was that ... the courts would by the very nature of their function have the power to strike down legislative acts if they were in violation of the Constitution.”<sup>25</sup> No one argued to the contrary.<sup>26</sup>

Both John Adams and Alexander Hamilton also understood that the legislature, acting as the majority, could harm and undermine individual rights guaranteed by the constitution. Relying on Montesquieu’s premises, Hamilton “reached the inescapable conclusion,” that individual liberty could only be maintained through an independent

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<sup>21</sup> Wood, *supra* note 9, at 23.

<sup>22</sup> Although Montesquieu did not invent the separation of powers doctrine, he was the first to conceive of a distinct and independent judiciary. *See*, Matthew P. Bergman, *Montesquieu’s Theory of Government and the Framing of the American Constitution*, 18 *Pepp. L. Rev.* 1, 14 (1990); and, Wood, *supra* note 9, at 151-152 (“the immortal Montesquieu” observed “there is no liberty, if the judiciary power be not separated from the legislative and executive.”).

<sup>23</sup> Bergman, *supra* note 22, at 14.

<sup>24</sup> Forrest McDonald, *Novus Ordo Seclorum, The Intellectual Origins of the Constitution*, at p. 205 (1985)(quoting Madison, *Federalist No. 51*).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

judiciary “vested with the power to strike down unconstitutional dictates of the legislature.”<sup>27</sup> According to Hamilton, no legislative act “contrary to the Constitution, can be valid.”<sup>28</sup> Hamilton and Adams recognized an “independent judiciary must serve as the neutral third-party for appeals to the rights reserved from the social contract.”<sup>29</sup> Thus, “the courts were designed to be an intermediate body between the people and the legislature, in order ... to keep the [legislature] within the limits assigned to their authority.”<sup>30</sup> Adams argued that, without an institutional separation of powers, “a majority ... would invade the liberties of the minority sooner and deeper than an absolute monarchy.”<sup>31</sup> Hence, another fundamental principle: the necessity of a strong judiciary striking down legislative encroachments into constitutionally guaranteed individual rights.

In the years following the American Revolution, state legislatures soon began running amok. “An excess of power in the people was leading ... to a new kind of tyranny, not by the traditional rulers, but by the people themselves—what John Adams in 1776 had called a theoretical contradiction, a democratic despotism.”<sup>32</sup> Legislation at the

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<sup>27</sup> Bergman, *supra* note 21, at 35 (emphasis added).

<sup>28</sup> Alexander Hamilton, *Federalist No. 78, McLean’s Edition, New York*, <https://guides.loc.gov/federalist-papers/text-71-80#s-lg-box-wrapper-25493470>.

<sup>29</sup> Bartrum, *supra* note 11, at 339.

<sup>30</sup> Alexander Hamilton, *Federalist No. 78, McLean’s Edition, New York*, <https://guides.loc.gov/federalist-papers/text-71-80#s-lg-box-wrapper-25493470>.

<sup>31</sup> Bartrum, *supra* note 11, at 339–40.

<sup>32</sup> Wood, *supra* note 9, at 404.

state level became an “open and outrageous violation of every principle of justice” transgressing “those fundamental principles which first induced men to come into civil compact.”<sup>33</sup> “The law books were filled, as never before, with legislation for individuals and with resolves redressing minor grievances.”<sup>34</sup> Formerly suspicious of the Crown and its agents, American legislatures “had become the institutions to be most feared.”<sup>35</sup> “America had little to fear from the traditional abuse of power by the few over the many. ‘It is much more to be dreaded that the few will be unnecessarily sacrificed to the many.’”<sup>36</sup> Such legislative overreach inevitably undermines both constitutionally guaranteed rights while simultaneously sowing chaos.

During this time of democratic despotism, Territories seeking to become states framed their declaration of rights knowing from experience that “bodies of men as well as individuals are susceptible of the spirit of tyranny.”<sup>37</sup> When the State of Washington began drafting their constitution “Washington’s citizens feared governmental tyranny, a

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<sup>33</sup> Wood, *supra* note 9, at 404 (emphasis in original)(citing Hamilton, *Second Letter from Phocion, Providence Gazette*, Aug. 5, Oct. 21, 1786; *Boston Independent Chronicle*, Jan. 29, 1778; Parsons, *Consideration of Some Unconstitutional Measures*, 10). The legislative conduct at issue revolved largely around property, taxation and meddling in the repayment of debts.

<sup>34</sup> Wood, *supra* note 9, at 408.

<sup>35</sup> Wood, *supra* note 9, at 409.

<sup>36</sup> Wood, *supra* note 9, at 413 (quoting Madison to Jefferson, Oct. 17, 1788, Boyd, ed. *Jefferson Papers*, XIV, 20).

<sup>37</sup> Wood, *supra* note 9, at 272 (quoting Jefferson, Summary View, Boyd, ed., *Jefferson Papers*, I, 124.)

**tyranny they generally identified with the legislative branch”** and the “presence of powerful corporations in Washington was often at the root of the governmental corruption.”<sup>38</sup> Thus, state declaration of rights in the late 1800s express an unmistakable, formidable bias—a deliberately erected bulwark—to safeguard the sanctity of individual liberties against the ever-encroaching tide of legislative overreach. The State of Washington constitution included a version of Mason’s admonition for frequent recurrence to fundamental principles as the concluding provision to their declaration of rights.<sup>39</sup>

The Utah declaration of rights and constitution which paved our way to statehood was drafted in 1895, just six years after Washington in 1889.<sup>40</sup> And, when Utah drafted the declaration of rights, delegates leaned heavily on Washington State’s version.<sup>41</sup>

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<sup>38</sup> Brian Snure, *A Frequent Recurrence to Fundamental Principles: Individual Rights, Free Government, and the Washington State Constitution*, 67 Wash. L. Rev. 669, 671 (1992)(emphasis added). Washington’s provision is used as an interpretive mechanism, involving analysis of “a wide variety of sources to elucidate the purpose and intent behind various constitutional provisions” including “the principles supporting the right to privacy, the right to free speech, the right to an insanity defense, and the restrictions on search and seizure.” *Id.* at 679.

<sup>39</sup> *Id.* at 676 (noting that by this time nine other states had adopted similar provisions).

<sup>40</sup> “The Federal Bill of Rights, in 1889, protected individuals from the actions of the federal government, but not from the actions of state governments. The protection of individual rights remained, as it had been since the colonial era, primarily a function of state constitutions.” *Id.* at 676–77.

<sup>41</sup> “The committee on preamble and declaration of rights knew what they were doing when they made the report. They were fifteen good men, men who knew their business and this article now is copied word for word from the declaration of rights of the state of Washington.” Utah Constitutional Convention, Day 20 at 310, <https://le.utah.gov/documents/conconv/20.htm> (discussing specifically the right to jury trial).

Curiously, two earlier versions of the Utah Constitution incorporated George Mason's original version of fundamental principles as opposed to the version adopted by Washington.<sup>42</sup> Key to the matter at hand, the Washington version explicitly directed recurrence to fundamental principles for the security of individual rights whereas the earlier versions spoke only to the preservation of free government. The concept of 'frequent recurrence,' championed by founder George Mason, thus found its way to Washington where it was extended to explicitly include securing individual rights, traveled to Utah,<sup>43</sup> and was advocated for inclusion during a time when distrust in the legislative branch had reached unprecedented levels. Perhaps most tellingly, other state constitutions did not contain similar provisions and, yet, our Utah delegates elected to include the provision.

Heber M. Wells, chairman for the bill of rights committee at the Utah convention and Utah's first governor, defended the provision. Responding to a motion to strike the provision, Mr. Wells stated "frequent recurrence should be made to fundamental principles, because **the tendency of the times might be as it has been in the past, not**

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<sup>42</sup> See, Wake, *supra* note 6, at 684, 686.

<sup>43</sup> See, *Utah's Constitution: Distinctively Undistinctive*, in *The Constitutionalism of American States* 649, 655-56 (George E. Connor & Christopher W. Hammons eds., 2008) ("Utah delegates leaned heavily on sister state's constitutions in order to avoid the appearance of being radical or different. Utah's Article 1, section 27 of the was borrowed from the Washington constitution.")

**to recur very often to fundamental principles.”**<sup>44</sup> This statement by Wells highlights delegate’s distrust of the legislative process. Wells continued that “[w]hen the people are oppressed and do not get their rights, it may be necessary to recur to fundamental principles.”<sup>45</sup> The motion to strike was lost and the provision remained part of the declaration of rights.

Utah’s declaration of rights begins by affirming all persons have an “inherent and inalienable right to enjoy and defend their lives and liberties.”<sup>46</sup> Our declaration of rights *concludes* with the instruction to frequently return to fundamental principles to protect the enumerated rights.<sup>47</sup> Just two days after adoption of the fundamental rights clause, Utah’s delegates wasted no time referencing the provision in support of adopting the other constitutionally guaranteed rights. Arguing in favor of women’s right to vote as a right under the Utah constitution, Delegate Richards called attention to the need for “frequent recurrence to fundamental principles [as] essential to the security of individual right and the perpetuity of free government.”<sup>48</sup>

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<sup>44</sup> Utah Constitutional Convention, Day 23, at 362, <https://le.utah.gov/documents/conconv/23.htm> (emphasis added).

<sup>45</sup> Utah Constitutional Convention, Day 23, at 362, <https://le.utah.gov/documents/conconv/23.htm>.

<sup>46</sup> Utah Const. art. I, § 1.

<sup>47</sup> Utah Const. art. I, § 27. As originally approved and adopted, the Utah Constitution concluded with the directive. Subsequent amendments have added additional provisions.

<sup>48</sup> Constitutional Convention, Day 25, at 437, <https://le.utah.gov/documents/conconv/25.htm>.

Elaborating on what these fundamental principles and rights included, Mr. Richards continued “[i]t means that all legal qualifications and conditions limiting and defining civil and political rights and duties shall be subordinate to the inalienable rights which every citizen possesses in virtue of being created human.”<sup>49</sup> “Principles come before precedents ... To act from principles is to make truth incarnate, to give it body and form in the world of fact and history. **Principles are eternal.**”<sup>50</sup>

Some of the principles, these truths, Mr. Richards alluded to “are those that are formulated in the Declaration of Independence. They were the full and free expression of the spirit of that moved the hearts of the American people.”<sup>51</sup> The Declaration states “We hold these truths to be self-evident:” all are “created equal” and “endowed” with “certain Unalienable rights,” including “life, liberty and the pursuit of happiness.” However, Government existed for the purpose of securing these ends. The primary principle driving the Declaration of Rights was *government itself became “destructive of these ends.”*<sup>52</sup> The Utah Constitution makes explicit the principle that rights to life and liberty are “inherent and inalienable.”<sup>53</sup> To our Utah delegates recurrence to fundamental principles meant perpetuating a free society where legislative action itself cannot become the mechanism

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Declaration of Independence: A Transcription (July 4, 1776), <https://www.archives.gov/founding-docs/declaration-transcript> (emphasis added).

<sup>53</sup> Utah Const. art. I § 1 Inherent and inalienable rights.

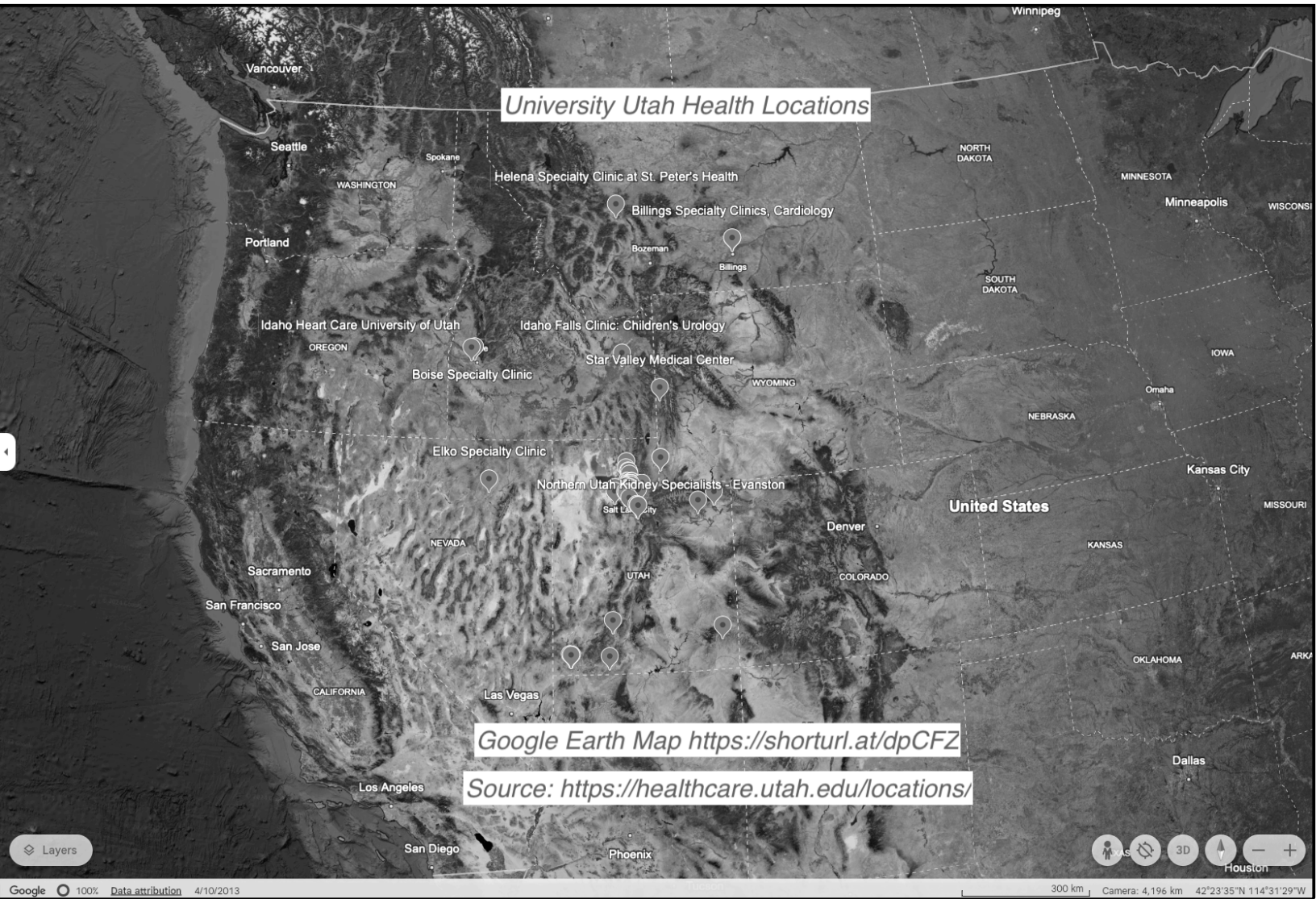
of injustice, destroying the very ends sought to be secured: life liberty and the pursuit of happiness.

This heritage, these ideas and philosophies, and, the context of the times, define the fundamental principles that must be referred to and considered in order to secure individual rights and perpetuity of free government. Fundamental principles from the foregoing can be summarized as: (1) to escape the injustice of might makes right, a short and brutish state of nature, people band together, securing their safety against arbitrary and unpredictable harms; (2) everyone must consent to this mutual endeavor to be bound by civil society and government; (3) consent to be governed is obtained by guaranteeing individual rights; (4) left unchecked, the majority will act against these guaranteed rights more quickly than a monarchical tyrant; (5) the only bulwark against a tyranny of the majority is a strong and independent judiciary.

These first principles provide the guidance by which to measure and weigh whether legislative action impermissibly infringes on constitutionally guaranteed rights to life and liberty, jury trial, due process, court access for redress of injury, and, uniform operation of laws (equal protection).<sup>54</sup>

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<sup>54</sup> Utah Const. art. I §§ 1, 7, 10, 11, and 24.



## 2. UNIVERSITY OF UTAH HEALTH.

University of Utah Health (“UUH”) spans five states (Utah, Nevada, Idaho, Wyoming and Montana).<sup>55</sup> UUH partners with “locations offering primary care services, such as pediatrics, obgyn/women’s health services, and specialized care for teens.”<sup>56</sup> UUH’s “clinical footprint covers roughly 10 percent of the total area of the continental United States.”<sup>57</sup> In 2022, UUH generated \$2.38 billion from patient revenue and their “Excess of Revenue Over Expenses” exceeded \$203,588,179 million.<sup>58</sup>



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<sup>55</sup> See, Tables Summarizing UUH Locations, Addendum “N”, source <https://healthcare.utah.edu/locations/>

<sup>56</sup> University of Utah Health, <https://healthcare.utah.edu/brand>.

<sup>57</sup> Nate Gladwell, University of Utah Health, *Blazing a Trail for the Future of Virtual Care* (Sept. 21, 2022), <https://uofuhealth.utah.edu/notes/2022/09/blazing-trail-future-of-virtual-care>.

<sup>58</sup> See, GRAMA Document Request R004774-021424 Responsive Records, Addendum “O”. Curiously, the State refused to provide the latest annual data in response to the request and also refused to provide historical settlement amounts in response to a separate GRAMA request.

P.T.’s injuries include quadriplegia and permanent brain damage with estimated economic losses of \$22 million.<sup>59</sup> It would take less than 40 days for UUH to generate funds sufficient to compensate for the life-time of economic harm imposed on P.T. and his family.<sup>60</sup> By the time P.T. turned eight years old, just four years after the medical negligence in this case, UUH generated nearly \$10.3 billion dollars in patient revenue with an Excess of Revenue Over Expenses exceeding \$714 million.<sup>61</sup>

### 3. SHIELDING A MULTI-BILLION DOLLAR ENTERPRISE BETRAYS OUR FUNDAMENTAL PRINCIPLES.

Extending governmental immunity for the benefit of a multi-billion dollar enterprise returns us to a state of nature where might (majority) makes right. The first principle is that we all consent to be governed *in exchange* for the promise of safety and security and our constitution guarantees a means of obtaining redress when that promise is broken. When government actions become “*destructive of these ends*,”<sup>62</sup> we must “oblige [the government] to control itself.”<sup>63</sup> The legislature is not a helpless and weak body, wholly subjugated to judicial decisions. When a legislature chooses to eliminate or restrict constitutionally guaranteed rights, they also hold the power to substitute a remedy, compensating for the imposition.

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<sup>59</sup> R. 3498.

<sup>60</sup> Based on the 2022 data UUH generates \$557,775/day after expenses.

<sup>61</sup> GRAMA Document Request R004774-021424 Responsive Records, Addendum “O”.

<sup>62</sup> Declaration of Independence, *supra* note 52 (emphasis added).

<sup>63</sup> McDonald, *supra* note 24.

Art. I § 11 “provides a substantive check against legislative power by imposing some limitation on the legislature’s great latitude in defining, changing, and modernizing the law.”<sup>64</sup> Art. I § 11 “is satisfied if the law provides an injured person an effective and reasonable alternative remedy.”<sup>65</sup> A substitute remedy passes constitutional challenge when “it is substantially equal in value or other benefit to the remedy abrogated.”<sup>66</sup> The determination as to whether the substitute is sufficient is done *ex ante*, i.e. what would a member of the public, before having their rights taken, consider a fair substitute, as exchange for the loss.<sup>67</sup> Our workers compensation scheme illustrates a legislative fix for health, safety and welfare problems that stays within constitutional boundaries, respecting the fundamental principles on which the constitution is founded.

By contrast, extending governmental immunity to all claims<sup>68</sup> against the State, the legislature abandons any pretense of honoring the bargain struck between individuals and government. Imposing harm on individuals and depriving them of meaningful recourse has more in common with a short and brutish state of nature than with a

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<sup>64</sup> *Petersen v. Utah Lab. Comm'n*, 2017 UT 87, ¶ 20, 416 P.3d 583.

<sup>65</sup> *Id.* at ¶ 29. *See, also, Laney v. Fairview City*, 2002 UT 79, ¶¶ 54-55, 80-83 (Russon, J. concurring), 57 P.3d 1007 finding legislative extension of immunity to proprietary governmental actions unconstitutional under art. I § 11 because no alternative remedy and no clear social or economic evil to be addressed.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *See, generally, Utah Code Ann. § 63G-7-102 and 201.*

constitutionally created government. This is not the agreement and foundation upon which Utah gained the status of statehood.

Alternatively, the constitution provides the legislature a method by which constitutional rights themselves can be modified. Utah Const. art. XXIII provides a mechanism permitting modification of constitutional rights by 2/3 vote of all members which right must then be ratified by the general voting public. Or, on a 2/3 vote, a constitutional convention may be called and with voter approval that convention can modify constitutional rights. “The sole and exclusive vehicle of change the Framers provided was the amendment process.”<sup>69</sup>

The legislature can, if it chooses to do so, impose on individual rights while also providing a remedy that passes constitutional muster *or* alter the constitution itself altogether. We should recognize extension of the GIA to UUH for what it is: a legislative shortcut around procedural safeguards against infringement of constitutional rights.

#### 4. LEGISLATIVE USURPATION OF JUDICIAL POWER.

Legislatively setting the total damages that can be recovered for all economic and non-economic damages against UUH usurps judicial power. Utah Const. art. V § 1 separates the three departments of government and expressly prohibits any one of those departments from exercising the powers of the other.<sup>70</sup> Utah Const. art. VIII § 1 reserves

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<sup>69</sup> Jack L. Landau, *Some Thoughts About State Constitutional Interpretation*, 115 Penn St. L. Rev. 837, 856 n. 74 (2011).

<sup>70</sup> Utah Const. art. V § 1 - Three departments of government.

judicial powers to the judicial branch.<sup>71</sup> While district courts have original jurisdiction over all matters except as limited by the constitution or statute,<sup>72</sup> the Utah Supreme Court “shall have ... **power to issue all ... orders necessary for ... the complete determination of any cause.**”<sup>73</sup>

*A complete determination of a cause* necessarily includes due process, open access to the court for redress of injury, and, entry of judgment after a jury assesses the appropriate level of compensation. These judicial powers “connote a sphere of authority to *do something*.”<sup>74</sup> The “ultimate judicial power of entering final judgments belongs to the courts alone. The term judicial power of courts is generally understood to be the power to hear and determine controversies between adverse parties and questions in litigation.”<sup>75</sup> If the legislature pre-determines what amount can be assessed as compensation, the judicial branch is no longer co-equal and the ultimate judicial power of entering final judgments has been appropriated by the legislature.

In *Patterson v. State* the state argued that the legislature holds virtually unchecked power to control constitutionally guaranteed rights.<sup>76</sup> *Patterson* rejected that argument.

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<sup>71</sup> Utah Const. art. VIII § 1 - Judicial powers - Courts.

<sup>72</sup> Utah Const. art. VIII § 5 - Jurisdiction of district court and other courts.

<sup>73</sup> Utah Const. art. VIII § 3 - Jurisdiction of Supreme Court (emphasis added). *See, also, State v. Lambdin*, 2017 UT 46, ¶ 17, 424 P.3d 117 (“orders necessary” includes interpretation of words and phrases).

<sup>74</sup> *Patterson v. State*, 2021 UT 52, ¶ 79, 504 P.3d 92.

<sup>75</sup> *Vega v. Jordan Valley Med. Ctr., LP*, 2019 UT 35, ¶ 20, 449 P.3d 31 (cleaned up).

<sup>76</sup> *Patterson*, 2021 UT 52, ¶ 74.

“[W]e do not embrace [the] assertion that the Legislature has near unfettered power to regulate”<sup>77</sup> rights reserved to the judiciary. The power and the duty of the judiciary to act as a check against legislative action is well-established and accepted.<sup>78</sup>

But, as a fundamental principle, *only the judicial branch holds the power through which we also realize our individual rights*. The right to jury trial, the right to due process, the right to redress for injury. Each of these rights can only be realized *through* the judiciary.<sup>79</sup> Legislative action that unreasonably limits, restricts or otherwise diminishes those rights, turning them from something of substance into nothing more than a consolation prize, violates the fundamental principle that an independent judiciary defends guaranteed individual rights.

Reservation of judicial powers under Utah Const. art. VIII, and encroachment of those powers through a legislatively fixed damages cap does not appear to have been

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<sup>77</sup> *Id.*

<sup>78</sup> *State v. Walker*, 2011 UT 53, ¶ 35, 267 P.3d 210 (Lee, J. concurring)(Our state constitution is not just supreme, it “establishes the fundamental ground rules for lawmaking and fixed bulwarks against potential tyrannies of the majority... [forming] the fundamental and paramount law of the nation, establishing certain limits not to be transcended and designed to be permanent.”); *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 77, 140 P.3d 1235 (“The will of the majority is checked by established constitutional protections. Our role as judges is to identify and fortify the wall protecting those rights specified in the constitution from majoritarian override.”)(Durrant, J. concurring).

<sup>79</sup> *Berry By & Through Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 679 (Utah 1985)(“the open courts provision is an extension of the due process clause... [their] overlapping function[s]” operating against “the abrogation of causes of action.”).

previously addressed by this Court. *Judd v. Drezga*<sup>80</sup> found a cap focused solely on non-economic damages in medical malpractice cases did not offend Utah Const. art. 5 § 1.

But, *Judd* did not consider the specific powers reserved under Utah Const. art. VIII.

Further, *Judd*'s finding no violation of art. 5 § 1 stands on questionable grounds.

*Judd* cited *Ritchie v. Richards*,<sup>81</sup> for the proposition that the legislature can lock-in damages prior to any consideration by a jury. Per *Judd*'s quote of *Ritchie* ““power to declare what the law shall be is legislative. The power to declare what is the law is judicial.”<sup>82</sup> Importantly, the quoted portion of *Ritchie* continued: “... and therefore the courts have the unquestioned right to declare any act of the government, in any of the departments, which violates the constitution, to be utterly void.”<sup>83</sup> Read in its entirety, the *Ritchie* quote supports the unique nature of judicial powers as fenced off from legislative. The quoted section from *Ritchie* hearkens back to *Marbury v. Madison*'s holding that “an act of the legislature, repugnant to the constitution, is void.”<sup>84</sup>

*Marbury* predated the adoption of the Utah constitution by more than 90 years. Yet, just last year in *Moore v. Harper* the Court reaffirmed *Marbury*'s holding. The “concept of judicial review was so entrenched by the time the Court decided *Marbury*

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<sup>80</sup> *Judd v. Drezga*, 2004 UT 91, ¶ 37, 103 P.3d 135.

<sup>81</sup> 14 Utah 345, 47 P. 670, 675 (1896).

<sup>82</sup> *Id.*

<sup>83</sup> *Ritchie v. Richards*, 14 Utah 345, 47 P. 670, 675-676 (1896)(Bartch, J., concurring).

<sup>84</sup> *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

that Chief Justice Marshall referred to it as one of society's ‘fundamental principles.’”<sup>85</sup>

*Moore* also recognized that it was the states which championed this fundamental principle of a separate and independent judiciary.<sup>86</sup>

Here, and consistent with fundamental principles, the power to issue orders necessary for the complete determination of any cause lies with the judiciary, not the legislature. Applying the GIA damages cap to limit recovery against UUH imposes a legislative judgment, trespassing on exclusive judicial territory wherein final judgments and orders for a complete determination of a cause may be obtained.

Article I § 11 imposes a limitation on legislative power “for the benefit of those **persons who are injured in their persons, property, or reputations since they are generally isolated in society, belong to no identifiable group, and rarely are able to rally the political process to their aid.**”<sup>87</sup> Individuals harmed by preventable medical errors represent perhaps the smallest of the small. Of the 1,487,748 cases filed in state district courts from 2018 through 2023, 975 were medical malpractice, i.e. .07% of total cases filed.<sup>88</sup> Only 87 of the 975 medical malpractice cases involved UUH as a defendant.<sup>89</sup>

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<sup>85</sup> *Moore v. Harper*, 600 U.S. 1, 22 (2023).

<sup>86</sup> *Id.* at 600 U.S. 20-21.

<sup>87</sup> *Berry*, 717 P.2d at 676 (Utah 1985)(emphasis added).

<sup>88</sup> Utah State Courts, *Utah Courts Caseload*, <https://www.utcourts.gov/en/court-records-publications/publications/court-statistics.html>

<sup>89</sup> *See*, Addendum “P” gathering and summarizing data.

The failure to exercise reasonable care in the medical context alone causes devastating injury and loss of life. The Institute of Medicine estimates that, on a national level: 487,200 - 621,600 are injured by preventable medical error and 44,000 - 98,000 individuals die as a result.<sup>90</sup> Although the total number of people harmed or killed by medical errors is shocking, they still represent a voiceless group as a percentage of the whole. Total U.S. population at the time of the study was 281,421,906<sup>91</sup> meaning that individuals harmed by medical negligence represent, at most, just .2% of the total population. The combination of these incidents being one-off events and the relative infrequency on a per person basis severely disadvantages this minority group at the legislative level.

Individuals harmed by medical negligence are the proverbial canaries in the coal mine, a barometer by which we can measure how well we honor the promise, the guarantees to safety and security in one's person, equal protection under the law, the right to court redress when harms have been imposed, and, an independent judiciary capable of securing those rights. Applying the GIA to UUH re-writes our mutual consent to be governed as a "pledge [of] allegiance ... with liberty and justice for all most."<sup>92</sup> A multi-

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<sup>90</sup> National Academy of Sciences, Institute of Medicine, *To Err Is Human: Building a Safer Health System* (1999).

<sup>91</sup> United States Census Bureau, *Decennial Census by Decade* (April 1, 2000), <https://www.census.gov/programs-surveys/decennial-census/decade.2000.html>.

<sup>92</sup> 4 U.S.C. § 4

billion dollar, self-sustaining organization needs no protection, especially when such protection comes at the cost of constitutionally guaranteed rights to a four year old child.

Passing special legislation eliminating constitutional guarantees is easily accomplished and within the reach of large organizations and industries, including the State itself. *Archuleta v. St. Mark's Hospital*<sup>93</sup> provides a concrete example. One year after this Court found negligent credentialing to be a simple “common law principle[] of negligence,”<sup>94</sup> the state legislature, at the behest of lobbying by the medical industry, passed a law abrogating such a claim.<sup>95</sup> The statute, without stating any need or legislative findings, declared it to be “the policy of this state” that “negligent credentialing ... is not recognized as a cause of action.”<sup>96</sup> When legislative acts can effortlessly abolish a cause of action, without explanation or regard for constitutional rights, that is legislation run amok.<sup>97</sup> Reading modifications to the GIA as altering precedent follows the same course, sowing disorder when constitutional rights can be abrogated without consequence.

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<sup>93</sup> *Archuleta v. St. Mark's Hospital*, 2009 UT 36, 238 P.3d 1044.

<sup>94</sup> *Id.* at ¶ 15.

<sup>95</sup> *See*, Utah Code Ann. § 78B-3-425; *and*, *Waddoups v. Noorda*, 2013 UT 64, 321 P.3d 1108.

<sup>96</sup> *Id.*

<sup>97</sup> *See, generally*, Wood, *supra* note 9 at 403-408 (discussing chaos and uncertainty generated by legislative overreach).

A guarantee of protection from the Crown, the Sovereign, or *from constitutional promises* induces our allegiance. Permitting the legislature to extend the GIA to protect a multi-billion dollar enterprise is an obscenity and offense against the first principle that we should each of us be safe and secure in our person. If applied to UUH, the governmental immunity act becomes the means by which we not only break our promise, but also abandon our values and principles.

Just recently, this Court ruled that the risk of a sentence less than 30 days or imposing a minor financial burden did not implicate the right to trial by jury.<sup>98</sup> Presumably, sentences greater than 30 days or imposing a significant financial burden *do* implicate constitutional guarantees to jury trial. Here, medical negligence subjects individuals to extreme financial burdens and cause a lifetime of harm. Yet these individuals are never given their full due in court, never given the opportunity to seek complete redress because a legislative determination has already been made about the value of that harm and loss. The majority legislature sacrifices a random few to appease a speculative economic volcano god, or, perhaps just to save a few dollars.

This is not a bargain that any rational person would make in advance and, in fact, it is definitively and demonstrably *not the bargain we struck* when agreeing to be bound by the laws of our civil society. Application of the GIA to shield UUH offends our

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<sup>98</sup> *S. Salt Lake City v. Maese*, 2019 UT 58, ¶ 84, 450 P.3d 1092, 1100. “[T]he framers highly valued the right to a jury trial and anticipated that it would play a crucial role in preserving the liberty interests of the people of Utah.” *Id.* at ¶ 33 (emphasis added).

fundamental principles, impermissibly and unconstitutionally undermining judicial powers.

## 5. WHY RECURRENCE TO FUNDAMENTAL PRINCIPLES MATTERS.

Words and phrases that originally inspired and carried weight lose their strength through overuse, repetition and the passage of time. Semantic bleaching, a known linguistic phenomenon, is a “progressive deterioration of previously autonomous words ... a weakening ... of the concrete sense of the words, and of the expressive value of words and groupings of words.”<sup>99</sup> For example: “Life, Liberty and the pursuit of Happiness.”<sup>100</sup> Endlessly incorporated into political speeches, appropriated as the name of rock bands,<sup>101</sup> as the name of ‘lifestyle’ magazines,<sup>102</sup> used as ad-copy to sell beer<sup>103</sup>

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<sup>99</sup> Eve E. Sweetser, *Grammaticalization and Semantic Bleaching*, p. 389, *Proceedings of the Fourteenth Annual Meeting of the Berkeley Linguistics Society* (1988).

<sup>100</sup> Declaration of Independence, *supra* note 52.

<sup>101</sup> *The Pursuit of Happiness (band)*, [https://en.wikipedia.org/wiki/The\\_Pursuit\\_of\\_Happiness\\_\(band\)](https://en.wikipedia.org/wiki/The_Pursuit_of_Happiness_(band)).

<sup>102</sup> Claus Sproll, *LILIPOH The Spirit in Life: About LILIPOH*, <https://lilipoh.com/about-lilipoh/> LILIPOH. LILIPOH is an acronym for “Life, Liberty and the Pursuit of Happiness” used as the name of “a lifestyles magazine for ... ‘culture-creatives,’ folks interested in holistic health, well-being, creativity, spirituality, gardening, education, art, and social health.”

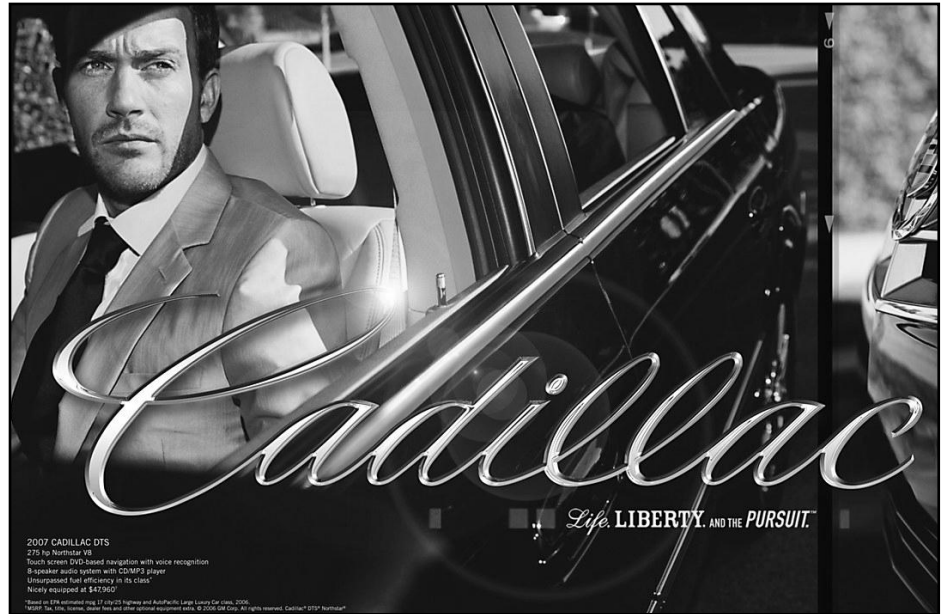
<sup>103</sup> *Samuel Adams Boston Lager TV Spot ‘Independence’* (June 17, 2013), <https://www.ispot.tv/ad/7ncc/samuel-adams-boston-lager-independence> “Unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

and Cadillacs,<sup>104</sup> ‘Life, liberty and the pursuit of happiness’ becomes a rote autocomplete quote, lacking the strength necessary to support the principles behind it.

Hamilton and Madison recognized such “semantic instability” even while drafting and ratifying the federal constitution.<sup>105</sup> Modern courts also see the problem that “all

**too often legal argument consists of a litany of [] buzz words memorized like baseball cards.”<sup>106</sup>**

Referring to art. I § 11 as the “open courts” provision demonstrates the problem. The shorthand “open courts” used in case law, briefing and journal articles cuts off the intention of the provision, expressed in the title itself, “Courts open -- **Redress of**



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<sup>104</sup> *Cadillac - Life, Liberty, Pursuit* (July 30, 2020), <https://vimeo.com/443088483> “Life. Liberty. And the Pursuit.”

<sup>105</sup> John A. Bruegger, *Original-Intent Originalism, Semantic Instability, and the Impact of Linguistics on American Constitutionalism: A Reply to Professor Boykin*, 61 Washburn L.J. 379, 390 (2022).

<sup>106</sup> *State v. Jewett*, 146 Vt. 221, 223, 500 A.2d 233 (1985)(cited with approval by *State v. Earl*, 716 P.2d 803, 806 (Utah 1986)).

**injuries.**<sup>107</sup> The body of the provision itself reinforces the substantive check on legislative powers: “*no person shall be barred from prosecuting ... before any tribunal in this State ... any civil cause to which he is a party.*”<sup>108</sup> If there has been confusion in the application of *Berry* over the years, it can likely be explained by semantic drift away from the underlying principles giving rise to our constitutional remedies provision.

However, fundamental *principles* return us to the truths behind dog-eared and shopworn words representing our constitutionally guaranteed *rights*: liberty, life, right to trial, due process, open courts, and, equal protection. We begin again, thinking about what brought these words together, thinking about the need for individuals to escape the state of nature and be safe and secure in their person. We are called to remember the principle that, without sufficient oversight, a majority will override individual rights for their own benefit.

Fundamental principles drove separation from the United Kingdom, induced our consent to be bound by a sovereign of our own creation, inspired bills of rights, and gave rise to the notion that securing rights against legislative encroachment requires an independent and co-equal judiciary. The judicial power to *do something* means more than affixing a stamp of approval to a legislatively pre-determined judgment. Abrogation of individual constitutional rights to benefit the majority is a clear breach of the promise made and an offense against our principles, permitting UUH to escape all accountability.

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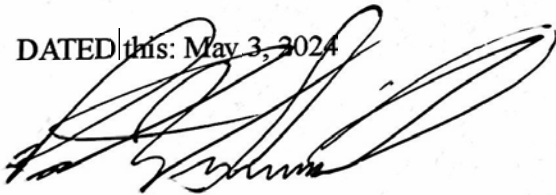
<sup>107</sup> Utah Const. art. I § 11.

<sup>108</sup> *Id.*

## CONCLUSION

*Condemarin*'s<sup>109</sup> outcome in 1989 would be the same today. The underlying, fundamental, principles remain unshaken regardless of the specific constitutional right relied upon. The principles giving rise to each provision are equally offended if the GIA shields multi-billion dollar enterprises like UUH regardless of who bears the burden of showing a provision to be constitutional or unconstitutional or what level of deference applies. Recurrence to fundamental principles forces frank discussion and assessment of whether a legislative act oversteps constitutional boundaries. This Court should embrace the opportunity to reaffirm *Condemarin*'s continuing precedential value and, in so doing, reaffirm the independence and strength of the judiciary at curbing legislative over-reach.

DATED this: May 3, 2024



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## STATEMENT OF INTEREST

The Utah Association for Justice (“UAJ”) is a statewide organization comprised of attorneys committed to protecting the rights of persons injured in their person or property,

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<sup>109</sup> *Condemarin v. Univ. Hosp.*, 775 P.2d 348, 366 (1989)(holding “the recovery limits statutes are unconstitutional as applied to University Hospital.”).

and who turn to the courts for redress. UAJ is committed to ensuring the constitutional rights of individuals are given a voice. UAJ members represent injured people in the vast majority of medical malpractice and other personal injury actions in this state. The Court's decision in this case impacts individuals injured through medical negligence of UUH personnel and their ability to seek full redress through the courts for that negligence.

**RULE 25(E) CERTIFICATE OF COMPLIANCE: WORD COUNT; *AMICUS* CONSENT, NOTICE, AUTHORSHIP, AND, FINANCING**

All parties consented to filing this *amicus* brief. (Docket 2/5/2024 Notice of Intent to File *Amicus Brief*). No party or counsel contributed to financing or authorship and no person other than UAJ provided funding.

The above-signed certifies that the brief complies with Utah R. App. P. Rules 24(a)(11) & 24(e)(7) because it is no more than 7,000 words.

CERTIFICATE OF SERVICE

I certify that I filed this **BRIEF OF AMICUS CURIAE UTAH ASSOCIATION FOR JUSTICE** with the Supreme Court of Utah via email to [supremecourt@utcourts.gov](mailto:supremecourt@utcourts.gov) and served it on counsel of record as follows:

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<p><i>Counsel for Amicus Curiae State of Utah</i>  Andrew Dymek  Asst. Utah Solicitor General  adymek@agutah.gov</p>	

*/s/ Peter W. Summerill*  
Peter W. Summerill

## ADDENDA

Addendum A	Utah Constitution Article I § 1 Inherent and inalienable rights
Addendum B	Utah Constitution Article I § 7 Due process of law
Addendum C	Utah Constitution Article I § 10 Trial by jury
Addendum D	Utah Constitution Article I § 11 Courts open - Redress of injuries
Addendum E	Utah Constitution Article I § 24 Uniform operation of laws
Addendum F	Utah Constitution Article I § 27 Fundamental rights
Addendum G	Utah Constitution Article V § 1 Three departments of government
Addendum H	Utah Constitution Article VIII § 1 Judicial powers - Courts
Addendum I	Utah Constitution Article VIII § 3 Jurisdiction of Supreme
Addendum J	Utah Constitution Article VIII § 5 Jurisdiction of district court and other courts
Addendum K	Utah Constitution Article XXIII Amendment and Revision
Addendum L	Utah Code Ann. § 78B-3-425
Addendum M	4 U.S.C. § 4
Addendum N	Tables Summarizing UUH Locations
Addendum O	GRAMA Document Request R004774-021424 Responsive Records
Addendum P	UUH Medical Malpractice Cases in State of Utah District Courts 2018 - 2023

# ADDENDUM A

***Effective 1/1/2021***

**Article I, Section 1 [Inherent and inalienable rights.]**

All persons have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

# ADDENDUM B

**Article I, Section 7 [Due process of law.]**

No person shall be deprived of life, liberty or property, without due process of law.

# ADDENDUM C

**Article I, Section 10 [Trial by jury.]**

In capital cases the right of trial by jury shall remain inviolate. In capital cases the jury shall consist of twelve persons, and in all other felony cases, the jury shall consist of no fewer than eight persons. In other cases, the Legislature shall establish the number of jurors by statute, but in no event shall a jury consist of fewer than four persons. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.

# ADDENDUM D

***Effective 1/1/2021***

**Article I, Section 11 [Courts open -- Redress of injuries.]**

All courts shall be open, and every person, for an injury done to the person in his or her person, property, or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, with or without counsel, any civil cause to which the person is a party.

# ADDENDUM E

**Article I, Section 24 [Uniform operation of laws.]**

All laws of a general nature shall have uniform operation.

# ADDENDUM F

**Article I, Section 27 [Fundamental rights.]**

Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

# ADDENDUM G

**Article V, Section 1 [Three departments of government.]**

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

# ADDENDUM H

**Article VIII, Section 1 [Judicial powers -- Courts.]**

The judicial power of the state shall be vested in a Supreme Court, in a trial court of general jurisdiction known as the district court, and in such other courts as the Legislature by statute may establish. The Supreme Court, the district court, and such other courts designated by statute shall be courts of record. Courts not of record shall also be established by statute.

# ADDENDUM I

**Article VIII, Section 3 [Jurisdiction of Supreme Court.]**

The Supreme Court shall have original jurisdiction to issue all extraordinary writs and to answer questions of state law certified by a court of the United States. The Supreme Court shall have appellate jurisdiction over all other matters to be exercised as provided by statute, and power to issue all writs and orders necessary for the exercise of the Supreme Court's jurisdiction or the complete determination of any cause.

# ADDENDUM J

**Article VIII, Section 5 [Jurisdiction of district court and other courts -- Right of appeal.]**

The district court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs. The district court shall have appellate jurisdiction as provided by statute. The jurisdiction of all other courts, both original and appellate, shall be provided by statute. Except for matters filed originally with the Supreme Court, there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause.

# ADDENDUM K

## **Article XXIII Amendment and Revision**

### **Article XXIII, Section 1 [Amendments: proposal, election.]**

Any amendment or amendments to this Constitution may be proposed in either house of the Legislature, and if two-thirds of all the members elected to each of the two houses, shall vote in favor thereof, such proposed amendment or amendments shall be entered on their respective journals with the yeas and nays taken thereon; and the Legislature shall cause the same to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election, at which time the said amendment or amendments shall be submitted to the electors of the state for their approval or rejection, and if a majority of the electors voting thereon shall approve the same, such amendment or amendments shall become part of this Constitution.

The revision or amendment of an entire article or the addition of a new article to this Constitution may be proposed as a single amendment and may be submitted to the electors as a single question or proposition. Such amendment may relate to one subject, or any number of subjects, and may modify, or repeal provisions contained in other articles of the Constitution, if such provisions are germane to the subject matter of the article being revised, amended or being proposed as a new article.

### **Article XXIII, Section 2 [Revision of the Constitution.]**

Whenever two-thirds of the members, elected to each branch of the Legislature, shall deem it necessary to call a convention to revise or amend this Constitution, they shall recommend to the electors to vote, at the next general election, for or against a convention, and, if a majority of all the electors, voting at such election, shall vote for a convention, the Legislature, at its next session, shall provide by law for calling the same. The convention shall consist of not less than the number of members in both branches of the Legislature.

### **Article XXIII, Section 3 [Submission to electors.]**

No Constitution, or amendments adopted by such convention, shall have validity until submitted to, and adopted by, a majority of the electors of the State voting at the next general election.

# ADDENDUM L

**78B-3-425 Prohibition on cause of action for negligent credentialing.**

It is the policy of this state that the question of negligent credentialing, as applied to health care providers in malpractice suits, is not recognized as a cause of action.

Enacted by Chapter 430, 2011 General Session

# ADDENDUM M

**4 USC 4: Pledge of allegiance to the flag; manner of delivery**

Text contains those laws in effect on January 23, 2000

**From Title 4-FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES**

CHAPTER 1-THE FLAG

**Jump To:****Source Credit****§4. Pledge of allegiance to the flag; manner of delivery**

The Pledge of Allegiance to the Flag, "I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.", should be rendered by standing at attention facing the flag with the right hand over the heart. When not in uniform men should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Persons in uniform should remain silent, face the flag, and render the military salute.

(Added Pub. L. 105-225, §2(a), Aug. 12, 1998, 112 Stat. 1494 .)

## HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4	36:172.	June 22, 1942, ch. 435, §7, 56 Stat. 380 ; Dec. 22, 1942, ch. 806, §7, 56 Stat. 1077 ; Dec. 28, 1945, ch. 607, 59 Stat. 668 ; June 14, 1954, ch. 297, 68 Stat. 249 ; July 7, 1976, Pub. L. 94-344, (19), 90 Stat. 813 .

# ADDENDUM N

## University of Utah Healthcare Locations

Source: <https://healthcare.utah.edu/locations/>

<b>Locations Part of UUHC Campus</b>	<b>Locations Outside UUHC Campus</b>
University of Utah Hospital 50 N. Medical Drive Salt Lake City, UT 84132	Alpine Sports Physical Therapy in Salt Lake City 2645 Parleys Way Salt Lake City, UT 84109
Andrology Laboratory 675 Arapeen Drive, 201 Salt Lake City, UT 84108	Autism Spectrum Disorder Clinic & Neurobehavior HOME Program 240 East Morris Ave Salt Lake City, UT 84115
Balance & Mobility Clinic 520 Wakara Way Salt Lake City, UT 84108	Billings Specialty Clinics, Cardiology 801 N 29th St, 4th floor Billings, MT 59101
Burn Outpatient Clinic 50 N. Medical Drive Salt Lake City, UT 84132	Billings Specialty Clinics, Cardiovascular Consultants of Montana 1101 N 27th St F Billings, MT 59101
COVID-19 Long-Hauler Clinic at University of Utah Hospital 50 N Medical Drive Salt Lake City, UT 84132	Blanding Family Practice Health Center - General Cardiology and EP 802 South 200 West Blanding, UT 84511
Cancer Hospital North - Building 1 1950 Circle of Hope Salt Lake City, UT 84112	Boise Specialty Clinic at St. Luke's Meridian Medical Center 520 S Eagle Rd Meridian, ID 83642
Cardiovascular Center 50 Medical Drive Salt Lake City, UT 84132	Centerville Health Center 26 S. Main Street Centerville, UT 84014
Clinical Neurosciences Center 175 N. Medical Drive Salt Lake City, UT 84132	Dermatology at Midvalley Health Center 243 East 6100 South Murray, UT 84107
Neilsen Rehabilitation Hospital 85 North Medical Drive Salt Lake City, UT 84132	Elko Specialty Clinic 247 Bluffs Ave, #102 Elko, NV 89801
ENT Clinic 50 Medical Drive, E12 Salt Lake City, UT 84132	Evanston Regional Hospital 196 Arrowhead Drive Evanston, WY 82930

Eccles Primary Children's Outpatient Services 81 North Mario Capecchi Drive, Level 2, Station 3 Salt Lake City, UT 84113	Farmington Health Center 165 N. University Ave Farmington, UT 84025
Fertility Services: Utah Center for Reproductive Medicine 675 Arapeen Drive, 205 Salt Lake City, UT 84108	Geriatric Psychiatry Clinic 240 E Morris Ave Salt Lake City, UT 84115
HHT Center 30 North 1900 East, 1A71 Salt Lake City, UT 84132	Greenwood Health Center 7495 S. State Street Midvale, UT 84047
HMHI Downtown Behavioral Health Clinic (Formerly UNI) 525 East 100 South Salt Lake City, UT 84102	HMHI Farmington Behavioral Health Clinic (Formerly UNI) 291 South 200 West Farmington, UT 84025
Health & Wellness Center Williams Building - 295 Chipeta Way, 248 Salt Lake City, UT 84108	HMHI Park City Behavioral Health Clinic 1820 Sidewinder Dr., Ste 100 Park City, UT 84060
Housing for Patients & Families 500 South Main Street Salt Lake City, UT 84101	Helena Specialty Clinic at St. Peter's Health 1005 Partridge Place, #3 Helena, MT 59602
Huntsman Cancer Institute 1950 Circle of Hope Dr. Salt Lake City, UT 84112	Idaho Falls Clinic: Children's Urology 2330 Desoto St. Idaho Falls, ID 83404
Huntsman Mental Health Institute 501 Chipeta Way Salt Lake City, UT 84108	Idaho Heart Care from University of Utah Health 6140 West Curtisian, Suite 300 Boise, ID 83704
Imaging & Neurosciences Center in Research Park 729 Arapeen Drive Salt Lake City, UT 84108	Intensive Outpatient Clinic 168 N. 1950 W. Suite 201 Salt Lake City, UT 84116
Injury Clinic at University Orthopaedic Center 590 Wakara Way Salt Lake City, UT 84108	Kanab Kidney (Nephrology) 355 N. Main St. Kanab, UT 84741

Intermountain - Rock Canyon Pediatric Specialists 50 N. Medical Drive Salt Lake City, UT 84132	Layton Pediatric Orthopedics 201 W. Layton Parkway, 3B Layton, UT 84041
Intermountain Cystic Fibrosis Center: Adult Program 26 North 1900 East Salt Lake City, UT 84132	Midvalley Health Center 243 East 6100 South Murray, UT 84107
Intermountain Cystic Fibrosis Center: Pediatric Program 100 Mario Capecchi Drive Salt Lake City, UT 84132	Midvalley Specialty Pharmacy 6056 Fashion Square Dr, Suite 1000 Murray, UT 84107
Internal Medicine Clinic 50 Medical Drive, E16 Salt Lake City, UT 84132	Moran Eye Center at Midvalley Health Center 243 East 6100 South Murray, UT 84107
John A. Moran Eye Center 65 Mario Capecchi Drive Salt Lake City, UT 84132	Mountain West Medical Group Specialty Clinic at MWMC 196 E 2000 N Ste 100 Tooele, UT 84074
Kidney & Liver Clinic 50 Medical Drive, E24 Salt Lake City, UT 84132	Northern Utah Kidney Specialists 4403 Harrison Blvd, Suite 2635 Ogden, UT 84403
L.S. Skaggs Patient Wellness Center 530 Wakara Way Salt Lake City, UT 84108	Northern Utah Kidney Specialists - Evanston 196 Arrowhead Dr, Suite 7 Evanston, WY 82930
Life Skills Clinic 540 Arapeen Drive, 200 Salt Lake City, UT 84108	Obstetrics & Gynecology Avenues Clinic 324 10th Avenue, Suite 200 Salt Lake City, UT 84103
Madsen Health Center 555 S. Foothill Blvd Salt Lake City, UT 84112	Panguitch Kidney (Nephrology) Clinic 224 N. 400 E. Panguitch, UT 84759
Obstetrics/Pregnancy Care University of Utah Hospital 50 N Medical Dr Salt Lake City, UT 84132	Parkway Health Center 145 West 1300 South Orem, UT 84058

PEAK Health & Fitness HPER East Building - 260 South 1850 East, Rm 217 Salt Lake City, UT 84112	Primary Children's Hospital - Lehi 2250 N Miller Campus Drive Lehi, UT 84043
Pain Management Center 615 Arapeen Drive, 100 Salt Lake City, UT 84108	Primary Children's Layton Outpatient Services 201 W Layton Parkway Layton, UT 84041
Primary Children's Hospital 100 Mario Capecchi Dr Salt Lake City, UT 84113	Provo Kidney Clinic 1675 N Freedom Blvd Provo, UT 84604
Ray & Tye Noorda Oral Health Sciences Building 530 Wakara Way Salt Lake City, UT 84108	Provo Pediatric Orthopedics 1157 N. 300 W., Suite 302 Provo, UT 84604
Sleep   Wake Center 375 Chipeta Way, A200 Salt Lake City, UT 84108	Redstone Health Center 1743 Redstone Center Dr., Suite 115 Park City, UT 84098
Speech-Language-Hearing Clinic 417 Wakara Way Salt Lake City, UT 84108	Redwood Health Center 1525 West 2100 South Salt Lake City, UT 84119
Spencer F. and Cleone P. Eccles Health Sciences Education Building 26 South 2000 East, 5775 Salt Lake City, UT 84112	Riverton Hospital - Moran & Primary Children's Hospital Outpatient 3773 West 12600 South Riverton, UT 84065
Surgical Specialty Center 729 Arapeen Drive Salt Lake City, UT 84108	Riverton Pediatric Orthopedics 3773 W. 12600 S., Suite 302 Riverton, UT 84065
Transplant Center 50 N. Medical Drive, Level A Salt Lake City, UT 84132	Rose Park Primary Care Clinic 168 N 1950 W, Suite 201 Salt Lake City, UT 84116
Travel Clinic 50 N. Medical Drive Salt Lake City, UT 84132	Snowbird Clinic 9385 Snowbird Center Snowbird, UT 84092
U of U Hospital GI Clinic/ Gastroenterology Clinic 50 Medical Drive, E10 Salt Lake City, UT 84132	South Jordan Health Center 5126 W. Daybreak Parkway South Jordan, UT 84009

University Orthopaedic Center 590 Wakara Way Salt Lake City, UT 84108	South Main Clinic 3690 South Main St. Salt Lake City, UT 84115
University Pediatric Clinic 50 N Medical Dr, Level A, B01 Salt Lake City, UT 84132	St. George Infectious Disease (ID) Specialty Clinic 2276 E Riverside Dr. St. George, UT 84790
Utah Diabetes & Endocrinology Center 615 Arapeen Drive, 100 Salt Lake City, UT 84108	St. George Neurology Specialty Clinic at Richens Eye Center 161 W 200 N Suite 105 St. George, UT 84770
	St. George Regional Hospital 720 S. River Rd, D-1100 St. George, UT 84790
	St. Mark's Hospital 1200 E 3900 S Salt Lake City, UT 84115
	Stansbury Health Center 220 Millpond Road, 100 Stansbury Park, UT 84074
	Star Valley Medical Center 901 Adams St Afton, WY 83110
	Sugar House Health Center 1280 E. Stringham Avenue Salt Lake City, UT 84106
	Sugar House Therapy Services 1280 E. Stringham Avenue Salt Lake City, UT 84106
	TeenScope 51 West 3900 South Salt Lake City, UT 84107
	Uintah Specialty Clinic at Basin Clinic, Roosevelt 250 West 300 North, Ste 203 Roosevelt, UT 84066
	Uintah Specialty Clinic at Basin Clinic, Vernal 405 North 500 West, Bldg 1, Ste 301 Vernal, UT 84078

	<p>University of Utah Home Infusion Pharmacy  6056 Fashion Square Dr, 1100  Murray, UT 84107</p>
	<p>Wasatch Kidney Specialists  St. Mark's East Medical Office Bldg,  1250 East 3900 South, Suite 410  Salt Lake City, UT 84124</p>
	<p>West High School Clinic  241 N 3 W STE T-104  Salt Lake City, UT 84103</p>
	<p>Westridge Health Center  3730 W. 4700 S.  Taylorsville, UT 84129</p>
	<p>Youth Residential Treatment  51 West 3900 South  Salt Lake City, UT 84107</p>

# ADDENDUM O

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## [Records Center] GRAMA Request :: R004774-021424

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University of Utah Public Records Center <universityofutah@govqa.us>  
To: "carli@attorneysummerill.com" <carli@attorneysummerill.com>

Tue, Apr 9, 2024 at 12:01 PM

--- Please respond above this line ---



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April 09, 2024

RE: PUBLIC RECORDS REQUEST of February 14, 2024, Reference # R004774-021424.

The University of Utah received the following request for records from Carli Abernethy on February 14, 2024:

**“Please produce:**

- The University of Utah School of Medicine Operating Budget for fiscal years 2018-2023.
- The University of Utah Hospital and Clinics Operating Budget for fiscal years 2018-2023.
- University of Utah Health Care Operating Budget for fiscal years 2018-2023.

**Please make available documents in electronic form by email or download. If it is not possible to send the responsive documents electronically, please notify me and I will provide a FedEx mailing label.”**

**Record Access Considerations**

The University, as a governmental entity of the State of Utah, is subject to the Government Records Access and Management Act, Utah Code sections 63G-2-101 to -901 (“GRAMA”). The University of Utah has reviewed its files and has located existing records responsive to the portion of your request for the University of Utah School of Medicine Operating Budget and the University of Utah Hospital and Clinics Operating Budget for 2018 to 2022. Please log in to the University of Utah Public Records Center at the following link to access the responsive records:

GRAMA Request - R004774-021424

With respect to the remainder of your requests, the University has performed a reasonable search of its files and has been unable to locate any existing records containing the data you seek in your request. See Utah Code § 63G-2-201(8)(b). The University is not required to create a record or to compile, format, manipulate, package, summarize, or tailor information in order to fulfill a GRAMA request. In addition, the University may consider whether it is able to fulfill certain requests without unreasonably interfering with its duties and responsibilities. Id. § 63G-2-201(8). Because the University does not maintain any single record that provides the remaining data you seek in your request, the University cannot fulfill your request without creating a record or undertaking substantial compilation, manipulation, and tailoring of information. Utah Code §§ 63G-2-201(7)(a)(i) & (ii).

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To monitor the progress of this request please log into the University of Utah Public Records Center



## Income Statement by Year

	2018	2019	2020	2021	2022
	Budgeted	Budgeted	Budgeted	Budgeted	Budgeted
Patient Care Revenue					
Inpatient Revenue	1,618,128,334	1,647,410,269	1,775,146,600	1,836,951,003	2,002,413,181
Outpatient Revenue	2,170,082,211	2,422,114,779	2,755,023,458	3,104,341,615	3,319,961,867
<b>Total Patient Revenue</b>	<b>3,788,210,545</b>	<b>4,069,525,048</b>	<b>4,530,170,058</b>	<b>4,941,292,618</b>	<b>5,322,375,048</b>
<b>Total Deductions</b>	<b>2,011,838,530</b>	<b>2,202,729,637</b>	<b>2,471,044,594</b>	<b>2,735,701,419</b>	<b>2,939,669,291</b>
<b>Net Patient Revenue</b>	<b>1,776,372,016</b>	<b>1,866,795,411</b>	<b>2,059,125,464</b>	<b>2,205,591,199</b>	<b>2,382,705,757</b>
Other Operating Revenue	65,585,232	65,253,532	100,102,673	105,309,567	124,715,450
<b>Total Operating Revenue</b>	<b>1,841,957,248</b>	<b>1,932,048,943</b>	<b>2,159,228,136</b>	<b>2,310,900,765</b>	<b>2,507,421,207</b>
Operating Expenses					
Salaries and Wages	617,633,877	677,849,691	743,824,757	805,226,426	865,368,220
Benefits	233,328,176	240,683,881	265,015,684	292,030,267	308,763,016
Purchased Services	237,582,261	211,104,766	233,959,637	244,956,863	260,255,578
Supplies	185,870,146	186,024,108	201,879,803	212,168,724	226,332,520
Drugs and Medicine	246,727,592	297,728,553	368,833,958	402,763,951	450,599,289
Other Operating Expenses	127,900,196	122,929,802	141,137,616	148,744,836	139,862,223
Depreciation	71,942,219	72,485,949	81,239,237	95,329,362	99,914,745
<b>Total Operating Expenses</b>	<b>1,720,984,468</b>	<b>1,808,806,751</b>	<b>2,035,890,692</b>	<b>2,201,220,429</b>	<b>2,351,095,591</b>
<b>Operating Gain (Loss)</b>	<b>120,972,780</b>	<b>123,242,192</b>	<b>123,337,444</b>	<b>109,680,336</b>	<b>156,325,616</b>
Nonoperating Revenue	6,017,664	21,032,055	15,228,398	66,817,275	67,181,838
Interest Expense	(18,340,627)	(14,871,186)	(18,021,923)	(23,980,659)	(19,919,275)
<b>Total Non Operating Revenue Less Expense</b>	<b>(12,322,963)</b>	<b>6,160,869</b>	<b>(2,793,525)</b>	<b>42,836,616</b>	<b>47,262,563</b>
<b>Excess of Revenue Over Expenses</b>	<b>\$108,649,816</b>	<b>\$129,403,061</b>	<b>\$120,543,919</b>	<b>\$152,516,952</b>	<b>\$203,588,179</b>

# 5 Year Comparison

101300\_PARENT - SCHOOL OF MEDICINE

REVENUE	BUDGET 2018	BUDGET 2019	BUDGET 2020	BUDGET 2021	BUDGET 2022
STATE	51,372,869	64,661,456	41,748,451	39,717,493	43,650,763
CLINICAL INCOME/FUND 2000	651,295,703	712,294,847	729,027,616	714,196,561	736,705,446
UUHC SUPPORT	103,514,104	18,837,345	62,031,412	92,887,394	86,667,134
DEAN'S/SVPHS SUPPORT	15,122,575	15,514,423	39,744,221	47,142,858	44,978,663
FACILITIES & ADMIN RETURN	3,125,970	1,714,455	1,659,056	1,393,215	729,610
GRANTS AND CONTRACTS	118,457,815	126,729,862	136,293,452	134,563,299	152,637,040
GIFTS	29,303,625	23,424,026	27,892,278	25,850,693	30,007,163
OTHER	2,183,622	1,582,276	1,294,066	0	0
<i>*Transfer In/Transfer Out From/(To) Endowments</i>	<i>(90,000)</i>	<i>133,333</i>	<i>133,333</i>	<i>-</i>	<i>1,717</i>
<b>TOTAL REVENUE</b>	<b>\$974,376,282</b>	<b>\$964,758,690</b>	<b>\$1,039,690,552</b>	<b>\$1,055,751,514</b>	<b>\$1,095,375,819</b>
<b>EXPENSE</b>					
FACULTY	383,759,904	377,222,609	407,197,888	421,638,947	446,224,617
SALARY STAFF	127,354,252	130,088,647	148,485,483	155,339,455	158,408,662
HOURLY STAFF	54,284,573	54,366,515	54,950,567	55,943,910	55,999,985
TRAINEE	13,012,450	14,380,580	15,228,641	16,514,833	22,674,690
OTHER PERSONNEL	2,043,913	2,064,407	2,259,471	2,152,383	2,802,671
<b>TOTAL SALARIES AND WAGES</b>	<b>\$580,455,092</b>	<b>\$578,122,758</b>	<b>\$628,122,050</b>	<b>\$651,589,529</b>	<b>\$686,110,625</b>
BENEFITS	174,972,511	175,200,806	193,987,727	196,745,489	202,850,564
<b>TOTAL PERSONNEL EXPENSE</b>	<b>\$755,427,603</b>	<b>\$753,323,564</b>	<b>\$822,109,777</b>	<b>\$848,335,018</b>	<b>\$888,961,189</b>
CONSULTANTS	13,732,455	11,964,872	11,679,763	11,876,579	12,208,473
EQUIPMENT	9,069,740	9,661,608	9,057,465	5,533,160	5,337,981
INSURANCE	-195,615	-1,457,254	-1,219,472	-1,682,571	-1,895,156
REPAIRS & MAINTENANCE	2,540,991	2,711,599	2,327,019	3,249,915	2,439,266
SCHOLARSHIPS/FELLOWSHIPS	5,532,286	6,760,301	5,380,839	6,239,139	6,823,989
SPACE RENTAL	9,576,674	10,097,902	10,696,013	10,818,056	9,654,291
SUBCONTRACTS	17,836,994	17,689,030	17,696,603	14,493,744	16,729,682
SUPPLIES	26,842,345	28,146,950	30,775,654	30,029,342	20,076,553
TRAVEL	10,129,510	11,089,005	11,955,821	11,892,280	7,736,725
UH FACILITIES & ENGINEERING	358,451	524,141	117,217	1,924,990	748,483
UNIVERSITY SERVICES	7,353,480	7,927,505	9,421,967	10,162,529	11,426,918
OTHER	61,000,693	55,321,365	56,119,593	56,630,167	51,691,270
EXPENDITURE RECOVERIES	57,771	-431,814	-1,004,021	-2,717,553	-2,911,730
INTERDEPARTMENTAL TRANSFERS	4,153,956	18,708,105	14,477,584	16,981,057	17,642,438
DEAN/UUMG/COMPLIANCE	22,254,954	22,993,678	25,180,082	25,536,717	26,014,985
EPIC COSTS	1,516,744	1,676,916	1,634,414	1,704,241	1,452,274
UMB COSTS	28,913,077	25,402,250	29,700,086	30,192,368	33,514,219
<b>TOTAL NON-PERSONNEL EXPENSE</b>	<b>\$220,674,505</b>	<b>\$228,786,159</b>	<b>\$233,996,627</b>	<b>\$232,864,161</b>	<b>\$218,690,660</b>
<b>TOTAL EXPENSE</b>	<b>\$976,102,108</b>	<b>\$982,109,723</b>	<b>\$1,056,106,404</b>	<b>\$1,081,199,178</b>	<b>\$1,107,651,849</b>
<b>REVENUE LESS EXPENSE</b>	<b>-\$1,725,826</b>	<b>-\$17,351,033</b>	<b>-\$16,415,852</b>	<b>-\$25,447,665</b>	<b>-\$12,276,031</b>

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## [Records Center] GRAMA Request :: R004775-021424

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University of Utah Public Records Center <universityofutah@govqa.us>  
To: "carli@attorneysummerill.com" <carli@attorneysummerill.com>

Tue, Apr 9, 2024 at 12:03 PM

--- Please respond above this line ---



04/09/2024

RE: PUBLIC RECORDS REQUEST of February 14, 2024, Reference # R004775-021424.

The University of Utah received the following request for records from Carli Abernethy on February 14, 2024:

**Please produce:**

**Copies of all settlement agreements entered into after July 1, 2018 involving medical malpractice claims against either University of Utah Hospitals and Clinics or University of Utah Health Care system where the gross settlement amount was greater than \$745,200.**

Settlement agreements are governed by the rules applied to general contract actions. *Pioneer Builders v. K D A Corp.*, 2018 UT App 206, ¶ 10, 437 P.3d 539, 541-542. Contracts entered into by a governmental entity are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Utah Code § 63G-2-305. Utah Code § 63G-2-301(3)(d). To the extent that you believe the record contains information that may be classified in a manner preventing disclosure, such information may be maintained as non-public through redaction including identification of individuals named within the agreement.

**Please make available documents in electronic form by email or download. If it is not possible to send the responsive documents electronically, please notify me and I will provide a FedEx mailing label.**

**Records access considerations**

The University, as a governmental entity of the State of Utah, is subject to the Government Records Access and Management Act, Utah Code sections 63G-2-101 to -901 (“GRAMA”).

Your request has been denied for the following reason:

Utah Code §§ 63G-2-302(1)(b). “[R]ecords containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data” are classified as “private.”

**Appeals**

To the extent your request is denied, you have the right to appeal this decision pursuant to Utah Code §§ 63G-2-401(1)(a), (2) & (3). Any such appeal should be submitted to the University’s GRAMA chief administrative officer, Todd Samuelson, J. Willard Marriott Library, by email to [gramaappeals@lists.utah.edu](mailto:gramaappeals@lists.utah.edu) or by U.S. mail to 295 South 1500 East, Salt Lake City, Utah, 84112. A notice of appeal must be submitted within thirty (30) days of this denial and must include your

name, mailing address, daytime telephone number, and statement of the relief sought. It may also include any facts, reasons, or legal support for your appeal.

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To monitor the progress of this request please log into the University of Utah Public Records Center



# ADDENDUM P

UUH Medical Malpractice Cases in State of Utah District Courts 2018 - 2023

Year	Medical Malpractice State Court Cases Opened (n. 1)	Medical Malpractice Cases UUH Named Defendant (n. 2)	Total State Court Cases Filed (n.1)	Medical Malpractice as % of All Cases Filed	UUH as % of Total Medical Malpractice Cases	UUH Medical Malpractice as % of Total Cases Filed
2018	151	16	252,080	0.06%	10.60%	
2019	139	16	260,308	0.05%	11.51%	
2020	186	12	253,039	0.07%	6.45%	
2021	187	14	240,827	0.08%	7.49%	
2022	149	16	233,265	0.06%	10.74%	
2023	163	14	248,229	0.07%	8.59%	0.006%
<b>Totals</b>	975	88	1,487,748	0.07%	9.03%	0.006%

Source:

1. <https://www.utcourts.gov/en/court-records-publications/publications/court-statistics.html>
2. <https://xchange.utcourts.gov/XchangeWEB/XchangeWebServlet> (search conducted for all medical malpractice cases involving UUH, results attached on following pages).

xChange Search Case Type: "Malpractice-Medical" Last Name/Company "University\*" Date Range 01/01/2018 - 12/31/2018

County	Court	Case Type	Case Number ↑	Filing Date	First Name	Last Name	Birth Date	Party Code	Documents
SALT LAKE	Salt Lake City District	MM	<a href="#">180901148</a>	2018-02-13		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">180901722</a>	2018-03-08		UNIVERSITY OF UTAH ORO HOSPITAL		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">180902000</a>	2018-03-21		UNIVERSITY HEALTHCARE		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">180902187</a>	2018-03-28		UNIVERSITY OF UTAH HEALTH SERV		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">180902985</a>	2018-05-04		UNIVERSITY OF UTAH HEALTH SERV		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">180903214</a>	2018-05-15		UNIVERSITY OF UTAH HOSPITALS A		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">180903706</a>	2018-06-01		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">180905554</a>	2018-08-02		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">180906636</a>	2018-09-11		UNIVERSITY OF UTAH HOSPITALS A		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">180906821</a>	2018-09-14		UNIVERSITY OF UTAH HEALTH CARE		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">180907038</a>	2018-09-20		UNIVERSITY HEALTH HOSPITAL		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">180908136</a>	2018-10-29		UNIVERSITY OF UTAH ON BEHALF O		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">180908410</a>	2018-11-07		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">180909184</a>	2018-12-06		UNIVERSITY OF UTAH HEALTH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">180909239</a>	2018-12-07		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">180900595</a>	2018-01-22		STATE OF UTAH		DEF	<a href="#">View</a>

xChange Search Case Type: "Malpractice-Medical" Last Name/Company "University\*" Date Range 01/01/2019 - 12/31/2019

County	Court	Case Type	Case Number ↓	Filing Date	First Name	Last Name	Birth Date	Party Code	Documents
SALT LAKE	Salt Lake City District	MM	<a href="#">190910114</a>	2019-12-30		UNIVERSITY HEALTHCARE		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">190909938</a>	2019-12-20		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">190909464</a>	2019-12-04		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">190909070</a>	2019-11-18		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">190908179</a>	2019-10-16		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">190908117</a>	2019-10-15		UNIVERSITY OF UTAH HEALTH SERV		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">190907184</a>	2019-09-13		UNIVERSITY HEALTH HOSPITAL AND		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">190907183</a>	2019-09-13		UNIVERSITY HEALTH HOSPITAL AND		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">190906978</a>	2019-09-05		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">190906138</a>	2019-08-07		UNIVERSITY OF UTAH COLLEGE OF		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">190905752</a>	2019-07-18		UNIVERSITY OF UTAH HEALTH CARE		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">190904762</a>	2019-06-14		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">190904756</a>	2019-06-14		UNIVERSITY OF UTAH HOSPITAL AN		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">190901591</a>	2019-02-22		UNIVERSITY OF UTAH HOSPITAL AN		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">190900836</a>	2019-01-28		UNIVERSITY OF UTAH DBA UNIVERS		DBA	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">190900159</a>	2019-01-07		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>

xChange Search Case Type: "Malpractice-Medical" Last Name/Company "University\*" Date Range 01/01/2020 - 12/31/2020

County	Court	Case Type	Case Number ↓	Filing Date	First Name	Last Name	Birth Date	Party Code	Documents
SALT LAKE	Salt Lake City District	MM	<a href="#">200907384</a>	2020-11-27		UNIVERSITY OF UTAH MEDICAL CEN		DBA	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">200907085</a>	2020-11-12		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">200906950</a>	2020-11-05		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">200906029</a>	2020-09-18		UNIVERSITY OF UTAH HOSPITAL		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">200905442</a>	2020-08-21		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">200903954</a>	2020-06-18		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">200903850</a>	2020-06-15		UNIVERSITY OF UTAH HOSPITALS A		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">200903298</a>	2020-05-13		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">200903245</a>	2020-05-11		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">200902985</a>	2020-04-28		UNIVERSITY OF UTAH HEALTH CARE		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">200902980</a>	2020-04-27		UNIVERSITY OF UTAH MEDICAL CEN		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">190900159</a>	2019-01-07		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>

xChange Search Case Type: "Malpractice-Medical" Last Name/Company "University\*" Date Range 01/01/2021 - 12/31/2021

County	Court	Case Type	Case Number ↓	Filing Date	First Name	Last Name	Birth Date	Party Code	Documents
SALT LAKE	Salt Lake City District	MM	<a href="#">210905749</a>	2021-10-25		UNIVERSITY HEALTHCARE		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">210905367</a>	2021-10-04		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">210904102</a>	2021-08-04		UNIVERSITY OF UTAH SCHOOL OF D		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">210902480</a>	2021-05-07		UNIVERSITY OF UTAH HOSPITALS		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">210902153</a>	2021-04-21		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">210902082</a>	2021-04-16		UNIVERSITY OF UTAH HOSPITALS		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">210902081</a>	2021-04-16		UNIVERSITY OF UTAH HOSPITAL		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">210901964</a>	2021-04-13		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">210901916</a>	2021-04-09		UNIVERSITY OF UTAH HOSPITALS A		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">210901545</a>	2021-03-19		UNIVERSITY OF UTAH SCHOOL OF M		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">210901469</a>	2021-03-16		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">210901092</a>	2021-02-25		UNIVERSITY OF UTAH MEDICAL SCH		DBA	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">210900737</a>	2021-02-08		UNIVERSITY OF UTAH DBA UNIVERS		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">210900323</a>	2021-01-19		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>

xChange Search Case Type: "Malpractice-Medical" Last Name/Company "University\*" Date Range 01/01/2022 - 12/31/2022

County	Court	Case Type	Case Number ↓	Filing Date	First Name	Last Name	Birth Date	Party Code	Documents
SALT LAKE	Salt Lake City District	MM	<a href="#">220907760</a>	2022-12-22		UNIVERSITY OF UTAH OBO ITS HOS		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">220907616</a>	2022-12-19		UNIVERSITY OF UTAH HOSPITAL		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">220906943</a>	2022-11-16		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">220906732</a>	2022-11-05		UNIVERSITY OF UTAH SOUTH JORDA		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">220906722</a>	2022-11-04		UNIVERSITY OF UTAH HOSPITAL		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">220906122</a>	2022-10-11		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">220904143</a>	2022-07-11		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">220903516</a>	2022-06-10		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">220901780</a>	2022-03-21		UNIVERSITY OF UTAH ON BEHALF O		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">220901774</a>	2022-03-18		UNIVERSITY OF UTAH HOSPITAL		DBA	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">220901576</a>	2022-03-11		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">220901550</a>	2022-03-10		UNIVERSITY OF UTAH HOSPITAL		DBA	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">220901491</a>	2022-03-08		UNIVERSITY OF UTAH MEDICAL CEN		DBA	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">220901372</a>	2022-03-02		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">220900600</a>	2022-01-28		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SUMMIT	Silver Summit District	MM	<a href="#">220500426</a>	2022-12-14		UNIVERSITY OF UTAH SCHOOL OF M		DEF	<a href="#">View</a>

xChange Search Case Type: "Malpractice-Medical" Last Name/Company "University\*" Date Range 01/01/2023 - 12/31/2023

County	Court	Case Type	Case Number ↓	Filing Date	First Name	Last Name	Birth Date	Party Code	Documents
SALT LAKE	Salt Lake City District	MM	<a href="#">230909445</a>	2023-12-14		UNIVERSITY OF UTAH HOSPITAL		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">230908555</a>	2023-11-09		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">230908281</a>	2023-10-30		UNIVERSITY OF UTAH DBA UNIVERS		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">230908123</a>	2023-10-25		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">230908030</a>	2023-10-23		UNIVERSITY OF UTAH HOSPITAL		DBA	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">230906964</a>	2023-09-15		UNIVERSITY OF UTAH ON BEHALF O		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">230906879</a>	2023-09-13		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">230906183</a>	2023-08-21		UNIVERSITY OF UTAH HOSPITALS A		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">230905442</a>	2023-07-24		UNIVERSITY OF UTAH MEDICAL CEN		DBA	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">230905365</a>	2023-07-20		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">230901851</a>	2023-03-20		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">230901814</a>	2023-03-17		UNIVERSITY OF UTAH		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">230901277</a>	2023-02-23		UNIVERSITY OF UTAH DBA UNIVERS		DEF	<a href="#">View</a>
SALT LAKE	Salt Lake City District	MM	<a href="#">230900509</a>	2023-01-23		UNIVERSITY OF UTAH MEDICAL CEN		DBA	<a href="#">View</a>