

2001

# Lois Crowder v. Salt Lake County & John Does I through X : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

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OF UTAH

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Lois Crowder,  
Plaintiff-Respondent,  
vs.  
Salt Lake County, a body  
politic,  
Defendant-Appellant,  
and John Does I through X,  
Defendants.

BRIGHAM YOUNG UNIVERSITY  
J. Reuben Clark Law School

Case No. 14405

BRIEF OF  
PLAINTIFF-RESPONDENT LOIS CROWDER

Appeal from Order Entered by Bryant H. Croft,  
Judge in the District Court of Salt Lake County,  
State of Utah

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Appellant Salt Lake County

FILED

APR 15 1976

IN THE SUPREME COURT  
OF THE STATE OF UTAH

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Lois Crowder, )  
 )  
 Plaintiff-Respondent, )  
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 vs. )  
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 Salt Lake County, a body )  
 politic, ) Case No. 14405  
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 Defendant-Appellant, )  
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 and John Does I through X, )  
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IN THE SUPREME COURT  
OF THE STATE OF UTAH

---

LOIS CROWDER,	)	
	)	
Plaintiff and	)	
Respondent,	)	
	)	
vs.	)	
	)	
SALT LAKE COUNTY,	)	
a body politic,	)	Case No. 14405
	)	
Defendant and	)	
Appellant,	)	
	)	
and JOHN DOES I	)	
through X,	)	
	)	
Defendants.	)	

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NATURE OF THE CASE

This is an action against appellant for personal injury to respondent resulting from an automobile accident occurring in Salt Lake County.

DISPOSITION IN THE LOWER COURT

Appellant filed a Motion to Dismiss respondent's Complaint on the ground that respondent failed to file a notice of claim with appellant within the ninety days provided for in the Utah Governmental Immunity Act (Utah Code Ann. §63-30-13 (1967)). The respondent filed an Amended Complaint in which she admitted that notice was not given the appellant county within the time provided, but in so amending,

claimed that the notice provisions of the Utah Governmental Immunity Act are unconstitutional as they do not afford due process and equal protection of the law.

The trial court denied the Motion to Dismiss and issued a Memorandum Decision declaring that the ninety day notice requirement violates equal protection and due process of law, and is unconstitutional.

#### RELIEF SOUGHT ON APPEAL

Respondent seeks affirmation of the trial court's Order denying appellant's Motion to Dismiss.

#### STATEMENTS OF FACTS

Respondent agrees with the statement of facts as set forth in appellant's brief.

#### ARGUMENT

##### POINT I

THERE EXISTS NO RATIONAL OR REASONABLE BASIS FOR DIFFERING NOTICE REQUIREMENTS AS IMPOSED BY UTAH STATUTES INVOLVING GOVERNMENTAL ENTITIES.

The State of Utah has waived its sovereign immunity to allow actions against it and its political subdivisions for torts committed by the state, counties, municipalities and governmental entities against



the citizens of this State. In so doing, the State has established varying times within which notice of a claim must be filed against the State of Utah, a political subdivision, a city or incorporated town. Absent filing of such claim within the time specified, actions against the State, its political subdivisions, cities and towns are barred.

The notice provisions require that claims must be filed against the State of Utah within one year after the cause of action arises.<sup>1</sup> Claims against other governmental entities, including counties, must be filed within 90 days after the cause of action arises,<sup>2</sup> and claims against cities and incorporated towns must be filed within six months.<sup>3</sup>

- 
1. Utah Code Ann. §63-30-12 (1967): A claim against the state or any agency thereof as defined herein shall be forever barred unless notice thereof is filed with the attorney general of the State of Utah and the agency concerned within one year after the cause of action arises.
  2. Utah Code Ann. §63-30-13 (1967): A claim against a political subdivision shall be forever barred unless notice thereof is filed within ninety days after the cause of action arises...
  3. Utah Code Ann. §10-7-77 (1967): Every claim against a city or incorporation town for damages or injury, alleged to have been caused by the defective, unsafe, dangerous or obstructed condition of any street, alley, crosswalk, sidewalk, culvert or bridge of such city or town, or from the negligence of the city or town authorities in respect to any such street, alley, crosswalk, sidewalk, culvert or bridge, shall within six months after the happening of such injury or damage be presented to the board of commissioners or city council of such city, or board of trustees of such town, ...

In the event such claims are rejected, legal action must be initiated within one year after notification of the rejection or presumed denial by inaction on the part of the governmental entity.

Fundamental to the basic issue in this case is a determination of the existence of an appropriate governmental interest suitably furthered by the differential treatment and differing notice requirement as imposed by existing State statutes. Absent a showing of the existence of such overriding governmental interest, the legislation must be stricken as a denial of equal protection as guaranteed by the United States Constitution. Weber v. Aetna Casualty & Surety Company, 406 U.S. 164 (1972).

Although discrimination between classes of citizens has been upheld as not violative of the Equal Protection Clause of the United States Constitution, such legislation has only been upheld where the classification has been deemed to be reasonable and have some rational relationship to a legitimate legislative objective.

Respondent asserts that the classifications and differences existing in the Utah notice statutes are wholly irrelevant to the purpose of the statutes and legislative objective in waiving governmental immunities in certain instances, and that there exists no reasonable justification for such differing notice periods.

The Utah statutes waiving sovereign immunity of the State, its political subdivisions, incorporated towns and cities, is a law of general application throughout the State of Utah and is a matter of State-wide interest and concern. Article I, Section 24 of the Utah Constitution provides:

All laws of a general nature shall have uniform operation.

It is apparent that the differing notice requirements as provided in Utah Code Ann. §63-30-12, §63-30-13 and §10-7-77 are not uniform in their operation.

Section 1 of the Fourteenth Amendment to the United States Constitution forbids any state to "deny to any person within its jurisdiction the equal protection of the laws." As stated in Toronto v. Sheffield, 118 Utah 460.222 Pac. 2d 594 (1950):

"Under these provisions in State v. Mason, 94 Utah 501, at page 507, and 78 P. 2d 920, at page 923 and 117 A.L.R. 330 through Mr. Justice Wolfe, we said: "Of course, every legislative act is in one sense discriminatory. The Legislature cannot [in one act] legislate as to all persons or all subject matters. It is inclusive as to some class or group and as to some human relationships, transactions or functions and exclusive as to the remainder. For that reason, to be unconstitutional the discrimination must be unreasonable or arbitrary. A classification is never unreasonable or arbitrary in its inclusion or exclusion

features so long as there is some basis for the differentiation between classes or subject matters included as compared to those excluded from its operation, provided the differentiation bears a reasonable relation to the purposes to be accomplished by the act."

To the same effect see Gronlund v. Salt Lake City, Utah, 194 P. 2d 464; Broadbent v. Gibson, 105 Utah 53, 140 P. 2d 939; State v. Walker, 100 Utah 523, 116 P.2d 766; State v. Sopher, 25 Utah 318, 71 P. 482, 60 L. R. A. 468, 95 Am. St. Rep. 845.

222 Pac. 2d at 599.

Appellant argues that these differentiations between classes and subject matters mentioned above are founded in the beneficial effect of giving governmental entities an opportunity to settle meritorious claims prior to the institution of litigation; that they provide an opportunity to investigate the claims at the earliest opportunity; and further, that they allow the entity to anticipate, in a fiscal sense, the payment of claims along with granting an opportunity to make proper repairs of dangerous defects. The appellant further argues that the notice statutes give the added benefit of facilitating the orderly and expeditious administration of public business. The respondent, on the other hand, argues to this Court that the interests of the State of Utah, with a substantially longer notice period, are as direct and

immediate in avoiding needless litigation; are as involved with a prompt investigation of claims; and find it as desirable fiscally and from the standpoint of the elimination of defects as those interests of the county government. It may well be said that all governmental entities share equally in these stated goals. However, by virtue of the fact that the respondent herein collided with a bridge owned by Salt Lake County, the applicable notice period is dramatically less than would have obtained had she collided with a bridge owned by Salt Lake City (six months) or the State of Utah (one year).

The appellant suggests that a shorter notice of claim period is required by Salt Lake County than is required by the State or a municipality since there may be no other way for city or county personnel promptly to discover and correct defective conditions. Respondent, however, suggests that the investigative ability of the Salt Lake County Sheriff's Office in connection with automobile accidents and the activities of insurance investigators of the liability insurance carrier of Salt Lake County adequately enables appellant conveniently and promptly to become aware of potential claims involving appellant county and to transmit to appropriate county departments the existence of any unsafe or defective road or highway conditions, bridges, etc. In reality, appellant is better prepared and equipped to investigate and defend negligence actions than are

most private tortfeasors to whom no special notice privilege has been granted by the Legislature. Grubaugh v. St. Johns, 384 Mich. 165, 180 N.W. 2d 778, 44 A.R.L. 3d 1095 (1970). That appellant's need for a shorter notice period than that of the State of Utah or an incorporated town or city is not apparent from the notice statutes. Appellant assumes a legislative purpose and history not evident from the record of this case in its suggestions at pages 8-12 of appellant's brief that the Legislature took into account certain facts regarding geographical and population differences, differences in services, differences in budgeting and revenues and manpower, which facts are not in evidence in this case or part of the record hereof.

The Nevada Supreme Court, in striking down the Nevada Revised Statutes requiring the filing of a notice of claim in a period shorter than the general statutes of limitation, stated in the case of Turner v. Staggs, 89 Nev. 230, 510 P. 2d 879 (1973); cert. den. 414 U.S. 1079 (1973):

"[W]e believe that the notice of claim requirements found in NRS 244.245 and NRS 244.250 as applied to governmental torts deny equal protection guaranteed by the United States Constitution. Within our present scheme of government, claim statutes serve no real beneficial use . . . but they are indeed a trap for the unwary."

Likewise, respondent urges that these diversified claim requirements vis-a-vis city, county and State are not founded on a reasonable classification. The result of such legislation has been, indeed, to trap

this unwary respondent and, if the appellant prevails, deny to her the availability of our courts.

Respondent suggests that in the interest of uniform application of the law, that the notice requirements applicable to all governmental entities be standardized and given a general application throughout the State regardless of the type of governmental entity or political subdivision involved. The existing differences have no apparent relationship to any demonstrable legislative purpose. Respondent suggests that the notice requirement as applied to counties should be at least the minimum six month requirement imposed on incorporated towns and cities. To the extent that appellant's argument concerning geographical distance and area has any merit in comparison of cities, towns, counties and the State, respondent suggests it would be more reasonable to provide a longer notice requirement applicable to counties and a shorter notice requirement to cities and towns. See generally, Farrell, Delay in Notice of Tort Claims Against a Governmental Agency, 20 Cleveland State Law Review 23 (1971).

## POINT II

THIS COURT SHOULD EXERCISE ITS  
CONSTITUTIONAL PREROGATIVE IN  
REVIEW OF IMPUGNED LEGISLATION  
AND DECLARE UTAH CODE ANNOTA-  
TED §63-30-13 TO BE UNCONSTITU-  
TIONAL AS VIOLATIVE OF THE FED-  
ERAL AND STATE CONSTITUTIONS.

This Court has the power to declare any act of any department of government violative of the Federal or State constitutions to be utterly void, and in exercising this function in regard to an act of the Legislature it does not trench on the domain of the legislative branch of government. Ritchie v. Richards, 14 Utah 345, 47 Pac. 670 (1896).

Effective use of the court system of this State should not be needlessly complex. Rather, a simple basis for allowing a victim of governmental tort access to our courts should be the standard. Inconsistencies existing among statutes involving notice requirements should be resolved in favor of the injured citizen to allow plaintiff-litigants maximum free access to our courts. This is consistent with our constitutional mandates and legislative history.

Article I, Section 2 of the Constitution of Utah provides:

"All courts shall be open and every person, for an injury done to him in his 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, by himself or counsel, any civil cause to which he is a party."

Notwithstanding the above-cited State Constitutional provision, the first section of the Fourteenth Amendment of the Constitution of the



United States prohibits the State from making or enforcing any law "which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The notice of claim statutes operate in reality as a statute of limitations. Albert v. Deitz 283 Fed. Supp. 854 (D.Haw. 1968). Yet public policy expressed by the Utah Governmental Immunity Act is clearly in favor of allowing recovery to persons of this State injured by governmental tortfeasors.

To uphold the validity of Utah Code Ann. §63-30-13 would effectively deprive respondent of her day in court, denying her access to the judicial system, which access historically has been equated to the "inalienable rights recognized by the United States Supreme Court". See Boddie v. Connecticut, 401 U.S. 371, 375-80, 28 L.Ed. 2d 113, 91 S.Ct. 780 (1971).

It has been stated by the United States Supreme Court in Armstrong v. Manzo, 380 U.S. 545, 552, 35 S.Ct. 1187, 14 L.Ed. 2d 62, 66 (1965):

"[T]he right to a meaningful opportunity to be heard. . . must be protected against denial by particular laws that operate to jeopardize it for particular individuals."

The State of Utah cannot deny the plaintiff a reasonable opportunity to litigate plaintiff's action and prevent her access to the courts. It follows such access cannot be unreasonably constrained for a particular class of persons without violating the Equal Protection Clause. The so-called notice requirements have become traps for the unwary and exhibit no justification in the furtherance of any legitimate governmental or legislative purpose.

### CONCLUSION

The differing notice requirements lack the constitutionally required standard of a rational classification and reasonable basis of legislative purpose. Further, they appear to be nothing more than an arbitrary exercise of legislative drafting in pursuit of no apparent legislative purpose, and certainly not the legitimate purposes required by the Federal and State constitutions. The thrust of the Utah Governmental Immunity Act is to ameliorate the hardship caused by the now generally repudiated doctrine of "the king can do no wrong."

By affirming the trial court's finding of the unconstitutionality of Utah Code Ann. §63-30-13, this Court could further the purpose and spirit of the Utah Governmental Immunities Act and give to that

legislation the general application of the laws required by our  
State constitution.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I served two copies of the foregoing Brief of Plaintiff-Respondent by mailing same, postage prepaid, respectively to Merlin R. Lybbert and Scott Daniels, 700 Continental Bank Building, Salt Lake City, Utah 84101, Attorneys for Defendant-Appellant, this 15 day of April, 1976.

Warren M. Waggeland