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**In the Utah Court of Appeals**

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EMIGRATION IMPROVEMENT  
DISTRICT, a Utah Special Service District

Petitioner / Appellee,

v.

UTAH STATE RECORDS COMMITTEE,  
and MARK CHRISTOPHER TRACY d/b/a  
Emigration Canyon Home Owners  
Association

Respondents / Appellants.

PUBLIC

No. 20220525-CA

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**Brief of Appellant**

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Appeal from Summary Judgement Vacating the Order of Utah State Records Committee  
to Produce Government Documents Germane to Pending Federal Litigation  
Against and in the Custody of a For-Profit Utah Corporation and Its Sole Shareholders  
as the Designated Public Records Office of a Government Entity  
entered in the Third Judicial District, Salt Lake County Division,  
the Honorable Laura Scott

No. 210905044

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Oral Argument Requested

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No. 20220525-CA

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IN THE  
UTAH COURT OF APPEALS

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PARTIES ON APPEAL\*

EMIGRATION IMPROVEMENT DISTRICT,

*Appellee and Petitioner Below*

v.

UTAH STATE RECORDS COMMITTEE and MARK CHRISTOPHER TRACY  
d/b/a Emigration Canyon Home Owners Association,

*Appellants and Respondents Below*

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ADDITIONAL PARTIES BELOW

None.

\* -- Counsel for parties are listed on the front cover of this brief.

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- A. GRAMA Request Form, Utah Office of the Government Records Ombudsman, to View or Inspect Fire-Flow Test Results submitted to “Emigration Improvement District aka Emigration Canyon Improvement District c/o Simplifi Company,” dated 2/11/2021 [R015-6].
- B. Decision and Order for Emigration Improvement District to Produce Fire-Flow Test Results, No. 21-45, Utah State Records Committee, dated 8/23/2021 [R008-12].
- C. Order, *Tracy v. Simplifi Company et al.*, No. 20200705 (Utah Ct. App. 2001), *cert. denied*, No. 20210754 (Utah 2021), dated 9/14/2021 [R117-20].
- D. Ruling and Order Granting Petitioner’s Motion for Summary Judgement, Utah Third Judicial District, dated 5/4/2022 [R138-43].

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DISTRICT, a Utah Special Service Water  
District

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v.

UTAH STATE RECORDS COMMITTEE,  
and MARK CHRISTOPHER TRACY d/b/a  
Emigration Canyon Home Owners  
Association

Respondents / Appellants.

PUBLIC

No. 20220525-CA

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**Brief of Appellant**

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**INTRODUCTION**

Emigration Canyon (the “Canyon”) is arguably the most historically significant location in modern Utah and is currently home to approximately 680 domestic units especially prone to wild-fire fatalities.<sup>1</sup>

In the early 1980’s, by currently unknown means, private land-developers stripped water rights from the only active federal-military cemetery created by an Act of Congress and signed into law by United States President Ulysses S. Grant in 1874 to be “forever

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<sup>1</sup> Thomas J Cova, Justin P Johnson, *Microsimulation of Neighborhood Evacuations in the Urban Wildland Interface*, Environment and Planning A 2002, volume 34, 2211-29 available at <https://echo-association.com/wp-content/uploads/Wildfire-Study-Emigration-Oaks.pdf>.



used for the burial of the dead,” to construct the luxurious Emigration Oaks and Emigration Place Private Urban Developments (“Emigration Oaks PUD” and “Emigration Place PUD”<sup>2</sup> respectively).

To finance remediation and massive expansion of the defunct Emigration Oaks PUD water system at taxpayer expense, in August 1998, The Boyer Company LC and City Development, Inc., “gifted” water system UTAH18143 to Emigration Improvement District (“EID” aka Emigration Canyon Improvement District aka ECID),<sup>3</sup> which in turn immediately secured commitment of a federal loan administered by the Utah Division of Drinking Water (“DDW”).

DDW project engineer Dr. Steven J. Onysko (“Dr. Onysko”)<sup>4</sup> however refused to certify compliance with Safe Drinking Water Act rules, as the proposed 1-million-gallon reservoir was “preposterously oversized” for 67 “existing” Canyon homes while water-

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<sup>2</sup> For reasons not germane to the instant litigation, the Emigration Place PUD is connected to Salt Lake City Public Utilities and receive culinary drinking water from the Emigration Canyon tunnel located east of Utah’s Hogle Zoo contrary to water right 57-8865 and a decree issued by the Utah Third District Court. *See Mount Olivet Cemetery Association et al. v. Salt Lake City et al.* (Civil Decree No. 25890, August 11, 1923) available at <https://echo-association.com/wp-content/uploads/Civil-Decree-25890.pdf>; *see also* ECHO Protest, available at <https://waterrights.utah.gov/docImport/0628/06288783.pdf>.

<sup>3</sup> EID has no employees and operates entirely through independent contractors. *See* Petition for Writ of Certiorari at 6, *Tracy v. Simplifi et al.*, (No. 20210754-SC, Utah) available at [https://echo-association.com/?page\\_id=8703](https://echo-association.com/?page_id=8703).

<sup>4</sup> *See e.g.*, Emma Penrod, *The Mormon Church Supplied Tainted Water to Its Members for Years*, High Country News, September 2, 2019, available at <https://www.hcn.org/issues/51.15/corruption-the-mormon-church-supplied-tainted-water-to-its-members-for-years>.

distribution lines were deemed insufficient to provide adequate flow and thus posed "...a danger to the public in the event of a fire emergency in Emigration Canyon."<sup>5,6</sup>

Following an undisclosed meeting with EID general manager/EID Finance Manager/EID Election Specialist Fred A. Smolka† of Management Enterprises, Inc.,<sup>7</sup> and private land developer R. Steve Creamer, CEO of Energy Solutions, Inc., at the law office of Parsons Kinghorn & Harris P.C. eleven (11) days later,<sup>8</sup> the use of federal funds was approved by DDW Director Georgeson.

Following technical default of the federal loan in June 2013, quantity and/or quality impairment of over 40 private wells operated under senior water shares,<sup>9</sup> and total depletion of the Canyon stream in September 2018 for the first time in recorded memory,<sup>10</sup> as predicted in EID's own hydrological studies withheld or misrepresented to

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<sup>5</sup> Emma Penrod, *Paranoia and a 'Preposterously' Oversized Water Tank*, High County News, July 22, 2019, available at <https://www.hcn.org/issues/51.12/water-paranoia-and-a-preposterously-oversized-water-tank-in-utah>.

<sup>6</sup> See also EID Trustee Meeting Minutes regarding installation of 4-inch water lines, dated October 18, 2013, available at [https://echo-association.com/?page\\_id=1129](https://echo-association.com/?page_id=1129).

<sup>7</sup> The for-profit Utah Corporation Simplifi Company assumed operation of water system UTAH18143 from Management Enterprises, Inc. through Eric and Jennifer Hawkes sometime in June 2014.

<sup>8</sup> See legal invoice entry of Gerald H. Kinghorn, Esq. dated October 29, 2002, available at [https://echo-association.com/?page\\_id=1326](https://echo-association.com/?page_id=1326).

<sup>9</sup> See e.g., Brian Maffly, *'We Don't Need Your Water': Emigration Canyon Water Fight Breaks Out In Court*, Salt Lake Tribune, June 18, 2015, at A1, available at <https://archive.sltrib.com/article.php?id=2618507&itype=CMSID>; and Amy Joi O'Donoghue, *Emigration Canyon and Groundwater Pumping in Utah: What's at Risk?* Desert News, January 2, 2019, available at <https://www.deseret.com/2019/1/2/20662500/emigration-canyon-and-groundwater-pumping-in-utah-what-s-at-risk>.

<sup>10</sup> Brian Maffly, *Why is Emigration Creek — a Historic Utah Waterway — Dry? Blame Runs from Climate Change to Drought to Development to Water-Sucking Wells*, Salt

the Government, on September 26, 2014, and July 22, 2021, Respondent Mark Christopher Tracy (“Mr. Tracy”) commenced legal action against private land-developers, EID trustees, managers, and private contractors including Jeremy R. Cook of the Salt Lake City law firm Cohne Kinghorn P.C.<sup>11</sup> (“Utah Attorney Cook”) and the EID public records office consisting of Eric and Jennifer Hawks of the Simplifi Company (“Mr. and Mrs. Hawkes” and “Simplifi” respectively) currently pending with the United States Supreme Court<sup>12</sup> and the Court of Appeals for the 10th Circuit<sup>13</sup> (“FCA” and “Civil Rights Litigation” respectively).<sup>14</sup>

To safeguard public records owned by the State of Utah,<sup>15</sup> in the sole custody of Mr. and Mrs. Hawkes at their private residence, and directly related to imminent and pending federal litigation against Utah Attorney Cook, Simplifi, Mr. and Mrs. Hawkes, beginning in September 2020, Mr. Tracy requested [Addendum A] and then appealed Mr. Hawkes’ repeated “de facto denials” pursuant to the Utah Government Records Access

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Lake Tribune, September 18, 2018, available at

<https://www.sltrib.com/news/environment/2018/09/08/why-is-emigration-creek/>.

<sup>11</sup> Cohne Kinghorn P.C. is successor in interest to Parsons Kinghorn and Harris P.C.

<sup>12</sup> Application for Extension of Time to File Petition for Writ of Certiorari, *US ex rel. Tracy v. Emigration Improvement District et al.* (S.Ct., No. 22A636, approved by Justice Gorsuch, January 13, 2023)

<sup>13</sup> Reply Brief, *Tracy v. Simplifi Company et al.* (10th Cir. No. 22-4032, filed July 25, 2022).

<sup>14</sup> Utah Attorney Cook entered appearance for Mr. Hawkes in the FCA Litigation at taxpayer expense, and then entered appearance for himself, Mr. and Mrs. Hawkes and Simplifi in Civil Rights Litigation also at the apparent cost of Canyon property owners. See SRC audio recording *Tracy v. Emigration Improvement District*, Case No. 2022-162 (part 1), at 30:20, available at <https://drive.google.com/file/d/1DmrZzlrEgZ-5CBmYMGZnOEjVaf43IKtW/view>.

<sup>15</sup> Utah Code Ann. § 63A-12-105(2)(a).

and Management Act (“GRAMA”) eventually securing a Decision and Order of the Utah State Records Committee (“SRC”) directing EID (and not Simplifi)<sup>16</sup> to produce fire-flow test results since August 1, 1998, issued for every home built in the Emigration Oak PUD following payment of federal funds<sup>17</sup> [Addendum B].

Following EID’s appeal to the Utah Third Judicial District for de novo judicial review,<sup>18</sup> despite Utah Attorney Cook’s failure (i) to file *Notice of Intent to Appeal* with the SRC, (ii) to serve Mr. Tracy the complaint and summons, and (iii) to serve the *Motion for Summary Judgement* to the SRC, the district court disregarded Mr. Tracy’s request for the mandatory joinder of Simplifi, but then granted EID’s motion for summary judgment ruling that EID need not comply with the SRC’s order as a matter of law, because the GRAMA request submitted to Mr. Hawkes designated “Emigration Improvement District aka Emigration Canyon Improvement District c/o Simplifi Company” under the rubric “Government Agency or office” and had thus had violated a purported decision of Utah Third Judicial District Judge Mark Kouris (“Judge Kouris”) “prohibiting” Mr. Tracy from identifying Simplifi in a GRAMA request despite Utah Attorney Cook’s own confirmation of Mr. and Mrs. Hawkes’ (and Simplifi) status as the contracted “EID

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<sup>16</sup> Contrary to Mr. Tracy’s GRAMA request directed to “Emigration Improvement District aka Emigration Canyon Improvement District c/o Simplifi Company” pursuant to Utah Code Ann. § 63G-2-103(11)(b), the order issued by the SRC identified only EID as the Respondent [Addendum No. B].

<sup>17</sup> See e.g., *Jana, Inc. v. United States*, 41 Fed.Cl. 735, 743 (Fed. Cl. 1998) and no. 12 supra.

<sup>18</sup> Utah Code Ann. § 63G-2-404(2).

public records office” in proceeding before Judge Kouris,<sup>19</sup> and Mr. Hawkes’ registration as “EID certified public records officer” with the Utah Ombudsman [Addendum D].<sup>20</sup>

This appeal followed.

### **STATEMENT OF ISSUES**

The following issues are now presented to this Court for review.

**Issue No. 1:** Does the district court have jurisdiction to vacate an order of the SRC, if a *Notice of Intent to Appeal* was not filed within 30 days per Utah Code Ann. § 63G-2-403(15)(c)?

**Standard of Review:** Whether the district court has jurisdiction is a question of law that is reviewed for correctness, giving no deference to the lower court. *Salt Lake City v. Weiner*, 2009 UT App 249 at ¶5.

**Preservation:** Preserved in *Respondent Mark Christopher Tracy’s Motion to Dismiss Petition for Judicial Review of the Decision and Order of the Utah State Records Committee* [R049 at subparagraph B].

**Issue No. 2:** Does the district court have jurisdiction to summarily vacate an order of the SRC, if the Respondent & Real Party in Interest was not served the complaint and summons per Utah R. Civ. P. 4(b)?

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<sup>19</sup> See Petition for Writ of Certiorari, *Tracy v. Hon. Kouris*, No. 20210743 (Utah, filed December 26, 2021); see also Motion Vacate Judgement and Motion to Reinstate, *Tracy v. Simplifi et al.* (No. 200905074, Utah 3rd Dist., filed March 15, 2021 and April 15, 2022).

<sup>20</sup> The district court did not address this Court’s ruling in *Tracy v. Simplifi Company et al.* [Addendum C] issued seven (7) months after the Kouris Order and seven (7) months prior to granting EID’s motion for summary judgment [R117-20].

Standard of Review: Whether the district court has jurisdiction is a question of law that is reviewed for correctness, giving no deference to the lower court. *Id.*

Preservation: Preserved in the *Respondent Mark Christopher Tracy's Motion to Dismiss Petition for Judicial Review of the Decision and Order of the Utah State Records Committee* [R044 at no. 1].

**Issue No. 3:** Does the district court have jurisdiction to grant a motion for summary judgement, if the motion was not served on a necessary party per Utah Code Ann. § 63G-2-404(1)(b) and Utah R. Civ. P. 5(a)(1)(E) in connection with Rule 7(b)(5)?

Standard of Review: Whether the district court has jurisdiction is a question of law that is reviewed for correctness, giving no deference to the lower court. *Id.*

Preservation: *Memorandum Opposing Motion for Summary Judgment* [R106 at no. 1 and R098].

**Issue No. 4:** Did the district court abuse its discretion when it failed to enter judicial determination why it disregarded a request for the mandatory joinder of the public records office in sole custody of government records ordered for production by the SRC under Utah R. Civ. P. 19(a)?

Standard of Review: Although failure to join a party is generally not considered a jurisdictional defect (*Landes v. Capital City Bank*, 795 P.2d 1127, 1131 (Utah 1990)), a trial court's determination properly entered will not be disturbed absent abuse of discretion. *Bonneville Tower v. Thompson Michie Assocs.*, 728 P.2d 1017, 1020 (Utah 1986).

Preservation: *Memorandum Opposing Motion for Summary Judgment* [R113 at subheading C].

### **STATEMENT OF THE CASE**

This is an appeal of the district court's summary judgement vacating the order of the SRC for a government entity to produce public records directly related to imminent and pending federal litigation against Utah Attorney Cook, Mr. and Mrs. Hawkes and Simplifi inter alia in the sole custody Mr. and Mrs. Hawkes at their private residence.

### **SUMMARY OF ARGUMENT**

The instant action asks if a Utah district court has jurisdiction to summarily vacate a lawful order issued by the SRC contrary to multiple procedural and due process requirements set forth in both the Utah State Code and Utah Rules of Civil Procedure mandating notice of intent to appeal, service of the complaint, summons, motion for summary judgement, and mandatory joinder of a party required for "just adjudication."

### **ARGUMENT**

#### **I. Failure to File Notice of Intent to Appeal is a Jurisdictional Bar to De Novo Judicial Review of an Order of the Utah State Records Committee.**

While it does not appear that a Utah court has previously addressed jurisdictional requirements mandated by the Utah State legislature under GRAMA, this Court has ruled that the 30-day filing requirement under the Utah Anti-Discrimination Act is a bar to judicial review in *Maverik Country Stores v. Indus. Com'n*, 860 P. 2d 944 (Utah Ct. App. 1993).

In *Maverik*, this Court cited Utah Code Ann. § 34-35-7.1(11)(a) (Supp.1993) providing that “either party may file a written request for review of the order ... in accordance with Section 63-46b-12” but “[i]f no timely review is filed ‘the order by the presiding officer becomes the final order of the commission’” per subsection (11)(b).

This Court found that the “[t]he clear import of the legislature's omission of orders final under subsection 11(b) is that they are not subject to judicial review.” *Maverik*, 860 P.2d. at 947.

Like the Utah Anti-Discrimination Act, GRAMA specifies that “[u]nless a notice of intent to appeal is filed ... each party to the proceeding *shall comply* with the order of the State Records Committee (emphasis added).<sup>21</sup>

As EID failed to file timely notice of intent to appeal to the SRC, the district court was devoid of jurisdiction. As such, “[w]hen a matter is outside the court's jurisdiction it retains only the authority to dismiss the action.” *Varian-Eimac, Inc. v. Lamoreaux*, 767 P.2d 569, 570 (Utah Ct. App. 1989).

## **II. The District Court Only Has Jurisdiction to Dismiss an Action if the Compliant and Summons are not Served on the Respondent and Real Party of Interest.**

The requirements of Utah R. Civ. P. 4 relating to service of process are likewise jurisdictional as noted by the Utah Supreme Court in *Garcia v. Garcia*, 712 P.2d 288, 290 n.4 (Utah 1986). For a court to acquire jurisdiction, there must be a proper issuance and service of summons. *Murdock v. Blake*, 484 P.2d 164, 167 (Utah 1971). When a matter is

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<sup>21</sup> Utah Code Ann. § 63G-2-403(15)(a).



outside the court's jurisdiction it retains only the authority to dismiss the action. *Varian-Eimac*, 767 P.2d at 570.

As EID through Utah Attorney Cook only served the complaint and summons to the SRC [R098] and only the SRC filed answer to the petition for de novo judicial review [R074-5], the district court was barred from granting motion for summary judgement prior to service of the complaint and summons to Mr. Tracy per Utah R. Civ. P. 4(b).

### **III. The District Court Lacks Jurisdiction to Grant a Motion for Summary Judgement Not Served on a Necessary Party to the Proceedings.**

Utah Code Ann. § 63G-2-404(1)(b) provides that the SRC is a necessary party to judicial review proceedings and must be served per subsection (1)(c) under the rules of civil procedure.

Although EID effectuated service of the complaint and summons to the SRC [R041-2], for unknown reasons Utah Attorney Cook failed to certify service of EID's motion for summary judgment [R098] contrary to the express request of SRC's legal counsel for transmission of all filings and court orders [R075].

Utah R. Civ. P. 5(a)(1)(E) provides that "[e]xcept as otherwise provided in these rules or as otherwise directed by the court, the following papers must be served on every party...[including] a paper filed with the court other than a motion that may be heard ex parte" and Rule 7(b)(5) stipulates that "[a] request for an order must be made by motion" and "motion for summary judgment must follow the procedures of this rule as supplemented by the requirements of Rule 56."

As EID failed to serve its motion for summary judgment on the SRC, the district court lacked jurisdiction to grant the motion.

**IV. The District Court Abused its Discretion When it Disregarded a Request for Mandatory Joinder of the Public Records Office in Sole Custody of Government Documents Ordered for Production by the Utah State Records Committee.**

Utah R. Civ. P. 19(a) requires that “[a] person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties” and under subsection (2)(ii) “[i]f he has not been so joined, the court *shall order* that he be made a party” (emphasis added).

In the present case, Simplifi was properly identified in the GRAMA request as the designated EID public records office [Addendum A] and Mr. Tracy specifically argued to the district court why joinder was necessary as the sole party able to fulfill the order of the SRC to produce fire-flow test results in the custody of Mr. and Mrs. Hawkes [R113 at subheading C].

[This Section Intentionally Left Blank]

Moreover, as Mr. and Mrs. Hawkes including Simplifi was previously represented by Utah Attorney Cook in proceedings before both the Utah Third Judicial Court and this Court, joinder would not have deprived the district court of jurisdiction.<sup>22</sup>

The Utah Supreme Court noted “[i]n performing a rule 19 analysis, the court should discuss specific facts and reasoning that lead to the conclusion that a party is or is not necessary under rule 19(a) or indispensable under rule 19(b).” *Landes*, 795 P.2d at 1130 (citing *Manygoats v. Kleppe*, 558 P.2d 556, 559 (10th Cir.1977)).

As the district court disregarded Mr. Tracy’s request for mandatory joinder and failed to enter judicial determination why it declined to ensure effective enforcement of the SRC order for production of documents in the sole custody of Mr. and Mrs. Hawkes, it abused its discretion.

### **CONCLUSION**

For the foregoing reasons, Mr. Tracy respectfully requests this Court (i) vacate the Ruling and Order of the district court; (ii) remand for further proceedings consistent with the Court’s decision including mandatory joinder of Simplifi, Mr. and Mrs. Hawkes; (iii) award reasonable attorney fees and costs for de novo judicial review of the SRC order pursuant to Utah Code Ann. § 63G-2-802(2)(a); and lastly, (iv) direct the district court to refer the case to the SRC for the assessment of a civil penalty not to exceed \$500 per day

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<sup>22</sup> In *Tracy v. Simplifi et al.* this Court expressly rejected Utah Attorney Cook’s argument as “an inapt characterization” that a Utah district court lacked subject matter jurisdiction over Mr. and Mrs. Hawkes and Simplifi under GRAMA [Addendum D at 4, no. 4].

since September 24, 2021, per Utah Code Ann. § 63G-2-404(6)(b)(B) in connection with subsection 403(15)(d)(i)(B).

### **CLAIM FOR ATTORNEY'S FEES**

The Utah Supreme Court has recognized that a party is entitled to reasonable attorney fees and costs on appeal under the authority of statute allowing for reasonable attorney fees at the trial court below. *Buzas Baseball v. Salt Lake Trappers*, 925 P.2d 941, 954 (Utah 1996) (citing *First Southwestern Fin. Servs. v. Sessions*, 875 P.2d 553, 555-6 (Utah 1994)).

Utah Code Ann. § 63G-2-802(2)(a) provides that the district court may assess reasonable attorney fees and costs against governmental entity or political subdivision reasonably incurred in connection with a judicial appeal to determine whether a requester is entitled to access to records under a records request, if the requester substantially prevails.

As EID failed to properly secure the jurisdiction of the district court to grant a motion for summary judgement vacating the lawful order of the SRC to produce fire-flow test results, and was informed of the requestor's position 20 days before the fee and costs incurred per subsection 802(4), the Court should award Mr. Tracy appellate fees and costs in the present action against EID, Mr. and Mrs. Hawkes, and Simplifi following mandatory joinder by the district court.

[This Section Intentionally Left Blank]

Respectfully submitted this 29th day of January 2023.

MARK CHRISTOPHER TRACY DBA  
EMIGRATION CANYON HOME  
OWNERS ASSOCIATION

*/s/ Mark Christopher Tracy*  
Mark Christopher Tracy  
*Qui Tam Relator and Pro se Appellant*

## CERTIFICATE OF COMPLIANCE

In compliance with the type-volume limitation of Utah R. App. P. 24(g)(1), I, Mark Christopher Tracy, certify that this brief contains **3,179 words**, excluding the table of contents, table of authorities, addenda, certificates of compliance and service.

In compliance with the typeface requirements of Utah R. App. P. 27(a), I also certify that this brief has been prepared in a proportionally spaced font using Microsoft Word v.16.69.1 in Time New Romans font, 13-point.

I also certify that this brief contains no non-public information in compliance with the non-public information requirements of Utah R. App. P. 21(h).

MARK CHRISTOPHER TRACY DBA  
EMIGRATION CANYON HOME  
OWNERS ASSOCIATION

*/s/ Mark Christopher Tracy*

Mark Christopher Tracy

*Pro se Appellant*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of January 2023, a true and correct copy of the foregoing Brief of Appellant was sent via electronic mail per Utah R. App. P. 26(b) and Utah Supreme Court Standing Rule No. 11 to the following counsel of record. Two (2) paper copies will be provided upon request.

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*Counsel for Appellant Utah State Records Committee*

MARK CHRISTOPHER TRACY DBA  
EMIGRATION CANYON HOME OWNERS  
ASSOCIATION

*/s/ Mark Christopher Tracy*  
Mark Christopher Tracy

**Addendum A  
to Appellant's Brief**

**Emigration Improvement District v. Utah State Records Committee *et al.*  
Trail Case No. 210905044**

**GRAMA REQUEST FORM**

**to View or Inspect Fire-Flow Test Results**

**Submitted to Emigration Improvement District aka Emigration Canyon  
Improvement District c/o Simplifi Company**



### GRAMA Request Form

**Note:** Utah Code § 63G-2-204 (GRAMA) requires a person making a records request furnish the governmental entity with a written request containing the requester's name, mailing address, daytime telephone number (if available); and a description of the record requested that identifies the record with reasonable specificity.

#### Requester's Information

Name: Mark Christopher Tracy dba EMIGRATION CANYON HOME OWNERS ASSOCIATION Date: February 11, 2021  
Address: 1160 E. Buchnell Dr.  
Sandy, UT 84094  
City/State/zip: 929-208-6010  
Daytime telephone number: \_\_\_\_\_

#### Request made to

Government agency or office: Emigration Improvement District aka Emigration Canyon Improvement District c/o Simplifi Company  
271 N. Margarethe LN  
Address: \_\_\_\_\_  
Salt Lake City, UTAH 84108  
City/State/zip: \_\_\_\_\_

#### Records requested

**Note:** The more specific and narrow the request, the easier it will be for an agency or office to respond to the request. If you are unsure about the records' description, contact the agency or office records officer.

**Note:** Government keeps records in "series" or groups of records. To find out what series an agency or office maintains, visit the Archives' website, <http://archives.utah.gov>. The record series retention schedules on the Archives' website include relevant descriptions.

Title or series number of records (if known): \_\_\_\_\_

Description of records including all relevant information—location of event(s) described in records, city, county, address; date range of the records; names of the person(s); and subject of the request.

All fire flow test results of water system 18143 owned by Emigration Improvement District and operated by Simplifi Company since August 1, 1998.

Note: If the record has a restricted access, GRAMA provides that certain individuals may still receive access.

- I am the subject of the record
- I am the authorized representative of the subject of the record
- I provided the information in the record

**Considerations about the desired response**

I would like to:

- View or inspect the records only
- Receive a copy of the records and pay associated fees. Please notify me if the amount will exceed \$ 0.00
- Receive a copy of the records and request a fee waiver, according to Utah Code § 63G-2-203, because:
  - Releasing the record primarily benefits the public
  - I am the subject, or authorized representative, of the record
  - My legal rights are directly implicated by the information of the record because \_\_\_\_\_, and I am impecunious
- Receive an expedited response (5 days) because releasing the record benefits the public; I request the information for a story or report for publication or broadcast to the general public

**Addendum B  
to Appellant's Brief**

**Emigration Improvement District v. Utah State Records Committee *et al.*  
Trail Case No. 210905044**

**Decision and Order**

**For Emigration Improvement District to Produce Fire-Flow Test Results  
No. 21-45**

**Utah State Records Committee**

---

BEFORE THE STATE RECORDS COMMITTEE OF THE

STATE OF UTAH

---

MARK TRACY,

Petitioner,

v.

EMIGRATION IMPROVEMENT  
DISTRICT,

Respondent.

**DECISION AND ORDER**

Case No. 21-45

---

By this appeal, Petitioner, Mark Tracy, requests access to records allegedly held by Respondent, Emigration Improvement District (“District”).

**FACTS**

On February 11, 2021, Mr. Tracy made a request for records pursuant to the Government Records Access and Management Act (“GRAMA”) from the District. Mr. Tracy requested all fire flow test results of water system 18143 owned by the District and operated by Simplifi Company since August 1, 1998.

In an e-mail dated February 24, 2021, Jeremy Cook, legal counsel for the District, stated that based upon a decision made on February 10, 2021 awarding attorney fees against Mr. Tracy, the District “will not process the attached GRAMA request until the amounts of \$5,758.50 is paid in full.” Mr. Tracy filed an appeal with the chief administrative officer for the District on March 24, 2021, and after no response was made by the District, an appeal was filed with the State Records

Committee (“Committee”). On August 12, 2021, the Committee held a hearing during which the parties were allowed to participate electronically. At the hearing, the Committee considered the written materials, oral testimony, and oral arguments of the parties. After having carefully considered all evidence presented to the Committee, the Committee issues the following Decision and Order.

**STATEMENT OF REASONS FOR DECISION**

1. Pursuant to GRAMA, a person has the right to inspect a public record free of charge and take a copy of a public record during normal working hours subject to Utah Code §§ 63G-2-203 & -204. Utah Code § 63G-2-201(1)(a). A governmental entity may require payment of fees not paid by the requester from previous requests before beginning to process a request. Utah Code § 63G-2-203(8)(a)(ii).
2. In the present case, the District required Mr. Tracy to pay the judgment amount of \$5,758.50 prior to processing Mr. Tracy’s records request. The judgment was granted on February 10, 2021 after a court hearing with Judge Mark Kouris in *Tracy v. Simplifi, Co.*, 3<sup>rd</sup> Dist. Court Case No. 200905074, and memorialized in a written decision drafted by Mr. Cook and signed by Judge Kouris dated April 15, 2021.
3. A review of the April 15, 2021 Decision and Order shows the following pertinent facts about the case. On June 10, 2020, Mr. Tracy made a records request pursuant to GRAMA “correctly designat[ing]” the governmental entity as the District. After appealing the purported denial of his records request to the District’s board of trustees, Mr. Tracy filed the district court action against two private individuals and the Simplifi Company.
4. Although being informed “at least six times by this Court, Judge Faust, the State Records Committee, [and the District’s] attorney that GRAMA requests should be made only to” the

District, Mr. Tracy continued to include private individuals and the Simplifi Company in new GRAMA requests. Because of Mr. Tracy's actions, Judge Kouris found that "Respondents should be awarded reasonable attorneys' fees" pursuant to Utah Code § 78B-5-825(1) including attorney fees incurred responding to Mr. Tracy's Motion to Vacate the February 10, 2021 decision. The only named parties involved in the case were Mr. Tracy, the two private individuals, and the Simplifi Company, with Judge Kouris noting that Mr. Tracy failed to include the District as a party.

5. The question before the Committee is whether attorney fees awarded in a district court case to two private individuals and a company can be the basis for not processing a request for records pursuant to Utah Code § 63G-2-203(8)(a)(ii). The language used by the statute is that before processing a request, a governmental entity may require payment of fees "from previous requests." Although Judge Kouris ordered Mr. Tracy to pay attorney fees in the district court case, the fees were associated with the *Tracy v. Simplifi, Co.* case and not from a previous records request. As confirmed by the District's legal counsel, Judge Kouris' order did not require Mr. Tracy to pay the District any fees. Additionally, the records being requested have been classified as public records by the District.
6. Accordingly, the Committee finds that the attorney fees that Mr. Tracy has been ordered to pay by Judge Kouris, are not fees "from previous requests" to be paid to the District. Therefore, the District cannot rely upon Utah Code § 63G-2-203(8)(a)(ii) as a basis to deny Mr. Tracy access to public records. However, the District may require payment of future estimated fees before beginning to process Mr. Tracy's request if the fees are expected to exceed \$50 and may charge a reasonable fee to cover the governmental entity's actual cost of

providing the record pursuant to Utah Code § 63G-2-203(8)(a)(i) & -203(1)(a).

**ORDER**

THEREFORE, IT IS ORDERED THAT the appeal of Petitioner, Mark Tracy, is hereby **GRANTED.**

**RIGHT TO APPEAL**

A party to a proceeding before the Committee may seek judicial review in District Court of a Committee's Order by filing a petition for review of the Committee Order as provided in Utah Code § 63G-2-404. Utah Code § 63G-2-403(14). A petition for judicial review of a Committee Order "shall be filed no later than 30 days" after the date of the Committee Order. Utah Code § 63G-2-404(1)(a). The petition for judicial review must be a complaint which is governed by the Utah Rules of Civil Procedure and include the Committee as a necessary party and contain the required information listed in Subsection -404(2). Utah Code § 63G-2-404(1) & (2). The court shall make its decision *de novo* but shall allow introduction of evidence presented to the Committee, determine all questions of fact and law without a jury, and decide the issue at the earliest practical opportunity. Utah Code § 63G-2-404(6). In order to protect parties' rights on appeal, a party may wish to seek advice from an attorney.

**PENALTY NOTICE**

Pursuant to Utah Code § 63G-2-403(15)(c), if the Committee orders the governmental entity to produce a record and no appeal is filed, the government entity herein shall comply with the order of the Committee and shall: (1) Produce the record; and (2) File a notice of compliance with the Committee. If the governmental entity ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the Committee may do either or both of the following:

(1) Impose a civil penalty of up to \$500 for each day of continuing noncompliance; or (2) Send written notice of the entity's noncompliance to the Governor. Utah Code § 63G-2-403(15)(d)(i)(B). In imposing a civil penalty, the Committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional. Utah Code § 63G-2-403(15)(d)(ii).

Entered this 23 day of August 2021

BY THE STATE RECORDS COMMITTEE



KENNETH R. WILLIAMS  
Chair, State Records Committee

**CERTIFICATE OF SERVICE**

I hereby certify that I mailed a true and correct copy of the foregoing **Decision and Order**, U.S. mail postage prepaid and electronic mail, this 23 day of August 2021 to the following:

MARK TRACY  
1160 E. Buchnel Dr.  
Sandy, Utah 84094  
[m.tracy@echo-association.com](mailto:m.tracy@echo-association.com)  
*Petitioner*

JEREMY R. COOK  
Cohne Kinghorn, P.C.  
111 E. Broadway, Suite 1100  
Salt Lake City, Utah 84114  
[jcook@ck.law](mailto:jcook@ck.law)  
*Counsel for Respondent, the Emigration  
Improvement District*



---

Rebekkah Shaw  
Executive Secretary



**Addendum C  
to Appellant's Brief**

**Emigration Improvement District v. Utah State Records Committee *et al.*  
Trail Case No. 210905044**

**Order**

**Tracy v. Simplifi Company et al. (No. 20200705)  
Utah Court of Appeals**

FILED  
UTAH APPELLATE COURTS

SEP 14 2021

IN THE UTAH COURT OF APPEALS

<p>MARK CHRISTOPHER TRACY, Appellant, <i>v.</i> SIMPLIFI COMPANY, JENNIFER HAWKES, AND ERIC HAWKES, Appellees.</p>	<p>ORDER  Case No. 20200705-CA</p>
--	--

Before Judges Christiansen Forster, Harris, and Hagen.

Mark Christopher Tracy filed a petition for review in the district court complaining that Simplifi Company, Jennifer Hawkes, and Eric Hawkes (collectively, Respondents) had violated Utah's Government Records Access and Management Act (GRAMA), and asking the court for an injunction and other relief. Respondents filed a motion asking the district court to dismiss Tracy's petition. The court granted that motion, and Tracy now appeals. We affirm the district court's determination, and we do so in this unpublished order. Our rules of appellate procedure empower us to decide any case in an expedited manner, without issuing a published opinion; we elect to do so here, determining on our own motion that this matter is appropriate for such disposition. *See* Utah R. App. P. 31(a) ("The court may dispose of any qualified case under this rule upon its own motion before or after oral argument."); *id.* R. 31(b)(1), (5).

Emigration Improvement District (the District) is a governmental entity created by Salt Lake County that is authorized to provide water and sewer services to houses located in Emigration Canyon. Eric Hawkes is the District's representative and its designated records officer. Simplifi is a private company contracted to operate and maintain the public water system owned by the District. Eric and Jennifer Hawkes are directors of Simplifi.

On July 2, 2020, Tracy submitted a GRAMA request via email to the District. On its face, the request was made to "Emigration Improvement District," and was not directed to any of the Respondents. The request was delivered to Eric Hawkes, at his official District email address (eric@ecid.org), apparently in his capacity as the District's designated records officer. The request was not sent to any email associated with Simplifi or Jennifer Hawkes. In the request, Tracy sought "[a]ll laboratory test results

(‘chemical analysis’) for the presence of lead contamination in public drinking water system No. ‘18143’ (Emigration Improvement District) for the past ten (10) years.” Tracy also asked for an expedited response to the request.

On July 9, 2020, Eric Hawkes, on behalf of the District, responded by email to Tracy’s GRAMA request, stating as follows:

The District received your GRAMA request regarding the Lead Testing for the past 10 years. Your request for an expedited response has been denied. We are looking at the costs associated with providing this information to you and will get back with you as soon as possible.

Tracy considered this response a complete denial of his GRAMA request—a position apparently not shared by the District, who viewed the July 9 email as a denial only of the request for expedited treatment—and subsequently appealed the denial to the District’s chief administrative officer.

On July 27, 2020, Eric Hawkes, on behalf of the District, sent another email to Tracy, this time stating as follows:

I have attached a copy of the results of the latest lead & copper testing. I believe you have already received the previous testing results from [the Utah Division of Drinking Water] as per your [separate] GRAMA request. Thank you for your patience as we have been processing these results and working with [the Utah Division of Drinking Water]. The District has sent the homeowners a copy of their results and sent a public notice to water users on the copper results. Please let me know if you have any questions.

About two weeks later, Tracy filed a petition for judicial review of the allegedly denied GRAMA request and requested an injunction along with an award of attorney fees. *See* Utah Code Ann. §§ 63G-2-404, -802 (LexisNexis 2019) (establishing the procedure for seeking judicial review of a denied GRAMA request, and authorizing a district court to enjoin a governmental entity and award attorney fees under GRAMA when appropriate). Importantly, Tracy’s petition did not name the District as a respondent from whom relief was sought; instead, the petition named Respondents as the parties from whom relief was sought. In the petition, however, Tracy clearly identified the GRAMA request at issue as the one he submitted to the District on July 2, 2020. Indeed, a copy of that GRAMA request was attached to the petition, and (as noted

above) that GRAMA request was directed only to the District, and not to any of the Respondents.<sup>1</sup>

Instead of answering the petition, Respondents filed a motion, pursuant to Utah Rule of Civil Procedure 12(b)(6), asking the court to dismiss Tracy's petition. In the motion, Respondents asserted that Tracy had failed to state a claim upon which relief could be granted because there was "no basis for [Tracy] to sue Simplifi, Mr. Hawkes, and Mrs. Hawkes based on a claim that the Emigration Improvement District ('the District') did not respond to a GRAMA request." The district court ultimately granted Respondents' motion to dismiss, concluding among other things that Respondents were not proper parties to the action and Tracy was entitled to no relief against them.

Tracy now appeals. "A ruling on a motion to dismiss presents a legal question that we review for correctness, affording no deference to the district court's decision." *Turner v. Staker & Parson Cos.*, 2012 UT 30, ¶ 7, 284 P.3d 600. "A motion to dismiss is appropriate only where it clearly appears that the plaintiff would not be entitled to relief under the facts alleged or under any set of facts he could prove to support his claim." *Larsen v. Davis County School Dist.*, 2017 UT App 221, ¶ 9, 409 P.3d 114 (quotation simplified).

"GRAMA establishes a process through which an individual may request access to a government record." *McKitrick v. Gibson*, 2021 UT 48, ¶ 20 (citing Utah Code Ann. § 63G-2-204(1)). "And when a governmental entity denies such a request, GRAMA establishes a process to appeal that decision." *Id.* (citing Utah Code Ann. §§ 63G-2-401 to -404, -701(5)-(6)). Specifically, GRAMA permits a party to file "[a] petition for judicial review of an order or decision." *See* Utah Code Ann. § 63G-2-404(1)(a).

In the present case, Tracy apparently attempted to seek judicial review of the District's alleged denial of a GRAMA request he made to and served upon the District on July 2, 2020. But Tracy did not name the District as a party to this action. Instead, he filed his action against Respondents, none of whom—at least according to the allegations set forth in the petition<sup>2</sup>—were ever named in a GRAMA request. Tracy has

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1. In deciding whether to grant a motion to dismiss, courts may properly consider documents attached to the complaint, in addition to the complaint itself. *See Oakwood Village LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 10, 104 P.3d 1226.

2. In reviewing a district court's order dismissing a case for failure to state a claim, "we assume the truth of the factual allegations in the complaint and draw all reasonable inferences therefrom in the light most favorable to the plaintiff." *See Fehr v. Stockton*, 2018 UT App 136, ¶ 8, 427 P.3d 1190 (quotation simplified).

no grounds to bring an action against Respondents for judicial review of a denied GRAMA request when he never submitted a GRAMA request to Respondents in the first place. In short, Tracy is not entitled to relief under the facts alleged in his petition because the alleged denial of the GRAMA request was made by the District, not Respondents. If Tracy had alleged that he had submitted a GRAMA request to Respondents, or if he had sued the District instead of Respondents, the situation may be different.<sup>3</sup> But here, where Tracy's GRAMA request was directed only to the District, but his petition for review is addressed only to Respondents, his petition states no claim upon which relief may be granted.<sup>4</sup>

Accordingly, we AFFIRM the district court's order granting the Respondents' motion to dismiss.

Dated this 14th day of September, 2021.

FOR THE COURT:

  
\_\_\_\_\_  
Ryan M. Harris, Judge

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3. We do not mean to suggest that it would have been proper to serve a GRAMA request on Respondents. Although the parties spent much of their briefing energy on whether GRAMA applies to nongovernmental entities and individuals, it is not necessary for us to reach that issue to resolve this appeal.

4. Respondents attempt to characterize the problem with Tracy's petition as one grounded in subject-matter jurisdiction. But that is an inapt characterization. Utah district courts—which are courts of general jurisdiction—of course have subject-matter jurisdiction to consider petitions for judicial review regarding potential GRAMA violations. *See* Utah Code Ann. § 63G-2-404 (LexisNexis 2019). The fact that Tracy may not have sued the right parties, or that he otherwise does not meet the statutory requirements for a GRAMA claim, does not implicate the court's subject-matter jurisdiction; rather, it simply means that Tracy's claim lacks merit. *See, e.g., Zion Village Resort LLC v. Pro Curb U.S.A. LLC*, 2020 UT App 167, ¶¶ 51–55, 480 P.3d 1055.

**Addendum D  
to Appellant's Brief**

**Emigration Improvement District v. Utah State Records Committee *et al.*  
Trail Case No. 210905044**

**Ruling and Order Granting Petitioner's Motion for Summary Judgement**

**Judge Laura Scott  
Utah Third Judicial District**

MAY 04 2022

Salt Lake County

IN THE THIRD JUDICIAL DISTRICT COURT,  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

By: \_\_\_\_\_  
Deputy Clerk

<p>EMIGRATION IMPROVEMENT DISTRICT,</p> <p>Petitioner,</p> <p>vs.</p> <p>UTAH STATE RECORDS COMMITTEE, and MARK CHRISTOPHER TRACY d/b/a EMIGRATION CANYON HOME OWNERS ASSOCIATION,</p> <p>Respondents.</p>	<p><b>RULING AND ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY JUDGMENT</b></p> <p>Case No. 210905044</p> <p>May 4, 2022</p> <p>Judge Laura S. Scott</p>
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Before the Court is Petitioner Emigration Improvement District's (EID) Motion for Summary Judgment (Motion). Although Respondent Mark Christopher Tracy d/b/a Emigration Canyon Home Owners Association (Mr. Tracy) requested a hearing, the Court declines to hold one because the issue has been authoritatively decided. *See* Utah R. Civ. P. 7(h).

**EID'S PETITION FOR JUDICIAL REVIEW**

On September 20, 2021, EID filed the Petition for Judicial Review of Decision and Order of State Records Committee (Petition), which seeks to "set aside the [State Records Committee's] Decision and find that EID was not required to provide documents in response to the GRAMA request because [Mr. Tracy] violated the decision and order of Judge Kouris." Alternatively, EID asks the Court to find that Mr. Tracy "is required to pay the judgment due and owing for his pervious frivolous and vexatious GRAMA request appeals prior to EID responding [to] the GRAMA request at issue in this matter."

The SRC's Decision and Order was issued on August 23, 2021. It relates to Mr. Tracy's request for records pursuant to the Government Records Access and Management Act (GRAMA). According to the Decision and Order, the "question before the Committee is whether attorney fees awarded in a district court case to two private individuals and a company can be the basis for not processing a request for records pursuant to Utah Code § 63G-2-203(8)(a)(ii)." The SCR determined "that the attorney fees that Mr. Tracy has been ordered to pay by Judge Kouris, are not fees 'from previous requests' to be paid to [EID]" and, consequently, Mr. Tracy's failure to pay those fees is not a basis "to deny Mr. Tracy access to public records."

On November 1, 2021, Mr. Tracy filed a Motion to Dismiss. After a hearing on February 4, 2022, the Court granted the Motion to Dismiss as to EID's argument that Mr. Tracy was required to pay the attorney fees awarded by Judge Kouris before it was required to respond to the GRAMA request but denied it as to EID's argument that its refusal to respond to the GRAMA request was proper based on the previous decisions of Judge Kouris and Judge Faust. *See* Order entered February 17, 2022.

**UNDISPUTED MATERIAL FACTS FOR MOTION FOR SUMMARY JUDGMENT**

1. After a hearing on February 10, 2021 in Case No. 200905074 (Kouris Case), Judge Mark S. Kouris issued an oral ruling, which was reflected in a Memorandum Decision and Order entered on February 24, 2021 (First Kouris Order).
2. After the oral ruling on February 10<sup>th</sup> but before the First Kouris Order was entered on February 24, 2021, Mr. Tracy emailed a Revised GRAMA Request – Fire Flow Test Results (GRAMA Request) to Eric Hawkes on February 11, 2021,. He copied Jennifer Hawkes on the email. The email states as follows:

Dear Emigration Improvement District Certified Records Officer  
Eric Hawkes of the Simplifi Company,



Pursuant to the decision of the Utah State Records Committee this morning, I hereby resubmit the following request for governmental documents regarding the fire-flow test results of water system 18143 operated by the Simplifi Company.

We thank-you for your assistance in this matter.

3. The email attached a GRAMA Request Form. It identifies the government agency or office as “Emigration Improvement District aka Emigration Canyon Improvement District c/o Simplifi Company.”

4. EID denied the GRAMA Request on the ground that Mr. Tracy had not paid fees from a prior request – *i.e.*, the attorney fees awarded in the First Kouris Order – and “EID will not process the [GRAMA Request] until the amount of \$5,758.50 is paid in full (see attached Judgment).”

5. Mr. Tracy appealed and the SRC ruled that Mr. Tracy’s failure to pay those fees was not a basis for denying the GRAMA Request. *See* SRC Decision and Order dated August 23, 2021.

6. On April 7, 2021, prior to the issuance of the SRC Decision and Order, a hearing was held in the Kouris Case on Mr. Tracy’s Motion to Vacate Memorandum Decision and Judgment (Motion to Vacate). In the Motion to Vacate, Mr. Tracy references the GRAMA Request and EID’s denial of the GRAMA Request

7. On April 15, 2021, Judge Kouris issued a Decision and Order Denying Motion to Vacate, Awarding Attorney Fees, and Finding Petitioner Mark Christopher Tracy to be a Vexatious Litigant and Subject to Rule 83 of the Utah Rules of Civil Procedure (Second Kouris Order) on April 15, 2021.

8. Relevant to the Motion for Summary Judgment, the Second Kouris Order states as follows:

On February 11, 2021 (the day after this Court's decision), Mr. Tracy submitted a new GRAMA request to EID in which he again cc'd Jennifer Hawkes and again stated that the governmental entity was "Emigration Improvement District aka Emigration Canyon Improvement District c/o Simplifi Company." (the 'New GRAMA Request'). In response to the New GRAMA Request, EID's attorney sent Mr. Tracy an email informing Mr. Tracy that based on his continued inclusion of Simplifi Company and Mrs. Hawkes in the New GRAMA Request, the fees awarded by this Court would need to be paid prior to a response to the New GRAMA Request (the 'Response Email')

Mr. Tracy was informed at least six times by this Court, Judge Faust, the State Records Committee or EID's attorney that GRAMA requests should be made only to the public entity, Emigration Improvement District. *At the hearing, Mr. Tracy was not able to provide any plausible explanation for disregarding the decision of this Court and continuing to include Simplifi Company or Mrs. Hawkes in the New GRAMA Request, which leads this Court to conclude that Mr. Tracy's reason for continuing to include Simplifi Company and Mrs. Hawkes was to continue to harass Respondents.* Simply put, Mr. Tracy could have easily avoided any issues by following the decision and order of this Court, but inexplicably chose to disregard the Court's decision and continue to harass Respondents by including them in GRAMA requests that Mr. Tracy knew should be served only on EID. The Court has previously found that an award of attorney fees is proper pursuant to Utah Code Ann. § 78B-5-825(1), and the Court finds that Respondents should be awarded their reasonable attorneys' fees responding to the Motion.

The Court finds that Mr. Tracy has violated Rule 83(a)(1)(B) and 83(a)(1)(C). With respect to Rule 83(a)(1)(B), Mr. Tracy served and prosecuted this action after Judge Faust previously issued a decision on the same issue of law. See Case No. 200905123. After this Court issued its decision, *Mr. Tracy ignored both decisions, again served GRAMA request to EID that were served c/o Simplifi Company and included Mrs. Hawkes, and then Mr. Tracy attempted to utilize EID's response to again argue to this Court that filing an action against on Respondents, and not EID, was proper.* With respect to 83(a)(1)(C), the Court has previously found that the Petition in this action including redundant and immaterial allegations that appear to relate to other claims and issues that Mr. Tracy has against EID, and that the Petition was frivolous and filed for the purpose of harassment. The Court also finds that the Motion was unmeritorious.

(emphasis added).

9. The GRAMA Request in this case is the “New GRAMA Request” referenced in the Second Kouris Order.

### **RULING AND ORDER**

The Court grants EID’s Motion for Summary Judgment because Judge Kouris has already determined the GRAMA Request violates the First Kouris Order and, consequently, EID is not required to respond to it. And the Court declines to overrule the Second Kouris Order. *See In Calsert v. Estate of Flores*, 2020 UT App 102, ¶ 16 (“[a] district judge presiding over one case ordinarily does not possess authority to declare invalid an order entered by another district judge in another case.”); *Mascaro v. Davis*, 741 P.2d 938, 946 (Utah 1987) (“One district judge cannot overrule another district court judge of equal authority.”); *Richardson v. Grand Central Corp.*, 572 P.2d 395, 397 (Utah 1977) (“Ordinarily one judge of the same court cannot properly overrule the decision of another judge of that court.”).

Indeed, given that Judge Kouris “has made a specific factual determination applicable to the parties in that case” – that the GRAMA Request violates the First Kouris Order because it improperly includes Simplifi and the Hawkes – the Court “possesses no authority to second-guess [his] determination.” Rather, the Second Kouris Order must be taken as it is found and the “authority to reverse, vacate, or otherwise invalidate [the Second Kouris Order] rests with appellate courts, not with [this Court]. *See Calsert* at ¶ 16. Indeed, if Mr. Tracy believes that Judge Kouris incorrectly ruled that Simplifi and the Hawkes should not be included in any GRAMA request to EID and/or that EID does not have to respond to any GRAMA request that includes them, then Mr. Tracy’s avenue for redress is to appeal the First Kouris Order and/or the Second Kouris Order and/or any of Judge Kouris’ other rulings.

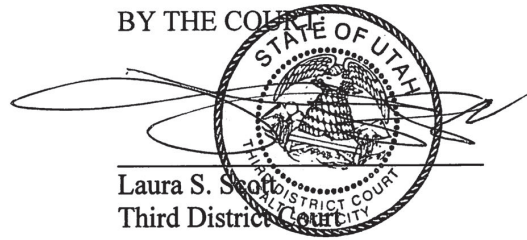
Accordingly, EID is entitled to judgment as a matter of law that it is not required to respond to the GRAMA Request because Judge Kouris has already decided that it violates the First Kouris Order.

**CONCLUSION**

For these reasons, the Court GRANTS the Motion for Summary Judgment. SO ORDERED.

Dated this 4th day of May, 2022.

BY THE COURT



Laura S. Scott  
Third District Court