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This Child Sex Abuse Case Could Overturn A Utah Law That Allows Victims To Sue Decades Later

A civil suit over alleged child sex abuse in 1981 is forcing Utah's highest court to weigh the validity of a 2016 state law that revived expired claims.



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The Utah Supreme Court in Salt Lake City.

A Utah woman's lawsuit against a former federal judge accusing him of raping her more than three decades ago is now at the center of a legal fight over how child sex abuse claims are handled in the state, and whether victims can seek justice for old alleged crimes.

Last year, Terry Mitchell sued Richard Roberts — then the chief judge of the federal trial court in Washington, DC — accusing him of taking advantage of her age and repeatedly forcing her to have sex with him in 1981, when he was a 27-year-old prosecutor and she was a 16-year-old witness in one of his cases.



Charles Dharapak / AP
Richard Roberts

Roberts, who has since left the bench, denied the allegations, although he admitted having an “intimate” relationship with Mitchell. His lawyers argued that regardless of what happened, Mitchell had long missed the legal window to sue.

The case has turned into a broader dispute over a Utah law cited by Mitchell's lawyers that revived expired child sex abuse claims in the state. Roberts's lawyers argue that Utah lawmakers lacked authority to resurrect civil claims on which the clock to file had already run out.

The Utah Supreme Court will now decide if the revival law is valid. If the justices conclude that the state legislature overstepped its authority and strike down the law "it's going to do an injustice to adult survivors everywhere," said Lani Wallace, an attorney in Utah who works with child sex abuse survivors.

"It's going to be the final blow. It's going to take away any chance that they have of getting justice or alerting the abuser that what they did was wrong," Wallace said.

Laws around time limits for filing civil child sex abuse claims vary by state. Utah's laws in this area are among the most permissive in the country, and have been cited by advocates trying to loosen limits elsewhere. In 2015, the Utah legislature eliminated the statute of limitations for civil child sex abuse claims against individual perpetrators. The law did not apply to expired claims, prompting the follow-up legislation in 2016 that's now at issue in Mitchell's case.

The Catholic Church has reportedly opposed efforts in other states to revive expired claims, arguing that doing so would lead to a flood of new cases, and unfairly force defendants to litigate decades-old allegations when witnesses may have died or evidence may have disappeared. Utah's revival law, which only applies to cases against individual perpetrators and not against institutions such as churches or schools, faced minimal opposition.

Mitchell's lawyer, Ross "Rocky" Anderson of the Salt Lake City law firm Lewis Hansen said in an interview with BuzzFeed News that keeping the Utah law in place "means all the difference between obtaining justice and not obtaining justice for the vast majority of child sexual abuse victims."

"It has tremendous significance in terms of allowing victims of child sexual abuse to hold their perpetrators to account under the law within a reasonable period, taking into account that it oftentimes takes decades for victims to be able to deal with these matters and finally confront their perpetrators," Anderson said.

One of Roberts's attorneys, Brian Heberlig of Steptoe & Johnson LLP in Washington, DC, declined to comment on the case.

The Utah federal magistrate judge handling Mitchell's case concluded in April that the Utah Supreme Court hadn't clearly answered the question of whether lawmakers could revive expired claims. In June, the judge asked the state

court to step in and decide the issue. Mitchell's case is on hold until the state justices rule.

Lawyers following the fight over the 2016 law say they believe Mitchell's case is the only relevant suit filed in Utah since the law took effect. Wallace said information about the change to the statute of limitations is still spreading, and that many survivors may not yet be aware of it. Depending on the outcome of Mitchell's case, the change may soon be irrelevant.

"Bad lapse in judgment"

Utah is one of eight states, plus Guam, to have eliminated the statute of limitations for at least some types of civil claims in child sex abuse cases, according to Child USA, a think tank that researches child abuse issues. States typically delay starting the clock on time limits to file suit until after a person turns 18, and some also allow the statute of limitations to kick in only when they realize or discover the abuse.

Utah is one of three states, plus Guam, to allow expired claims to be revived, although other states have temporarily reopened the window to sue, according to Child USA. Under Utah's 2016 law, plaintiffs can bring expired civil claims against alleged abusers within 35 years of their 18th birthday, or within three years of May 10, 2016.

"Utah was not on the front edge of this, but it's part of that national movement to create more justice for the victims," said Marci Hamilton, CEO of Child USA and a professor at UPenn, who advocated for Utah's legislation. "Beginning with the Boston Globe story about the coverup in the [Catholic] church, there has been this push to figure out what to do about all those victims shut out by unreasonably short statute of limitations."

The majority of states, including Utah, have no time limit for filing criminal charges for child sex abuse, according to Child USA. But Mitchell's case would likely have been a challenge for prosecutors.



Handout / Missouri Department of Corrections / Reuters
Joseph Paul Franklin

In 1981, Mitchell was a witness in a federal civil rights case. The defendant, Joseph Paul Franklin, was a serial killer and white supremacist accused of killing two black men who were jogging with Mitchell — who was described in court filings as half white, half Latina — and another woman, who was white. Mitchell claimed that Roberts took advantage of her vulnerability and age, and forced her to have sex with him before, during, and after the trial.

Mitchell sued Roberts in March 2016 over the allegations, which Roberts’s lawyers called “categorically false,” according to the National Law Journal. Roberts had an “intimate relationship” with Mitchell, his lawyers’ statement said, but it was consensual and did not take place until after the trial.

“Roberts acknowledges that the relationship was indeed a bad lapse in judgment,” his lawyers said.

A report about the Mitchell case, prepared last year for the Utah attorney general’s office by former Utah US attorney Paul Cassell, concluded that Utah law criminalized sex with minors under the age of 16 in 1981, when Mitchell was already 16. Cassell also wrote that a rape charge would be “impossible to prosecute,” given Roberts’s and Mitchell’s different accounts of what happened and whether their encounters were consensual.

Cassell declined to comment about the revival statute now at issue in

Mitchell's case, citing his earlier involvement.

Seeking clarity

Roberts's lawyers argued that the time limits had already expired for Mitchell's civil claims for assault and battery and for emotional distress by the time she sued. They said the Utah Supreme Court has been clear that defendants have a right to rely on statutes of limitations as a defense against expired claims, and that those rights can't be taken away by legislation.

US Magistrate Judge Evelyn Furse, who has been presiding over the Mitchell case, wrote in an April order that, historically under Utah law, there has been a two-part test to evaluate whether a new law could apply retroactively: First, whether lawmakers clearly expressed an intent for the law to be retroactive, and second, if not, whether the text of the law nevertheless allowed for retroactive application.

Roberts's lawyers cited a 2012 decision from the state supreme court in an unrelated case, *State v. Apotex*, which rejected an argument by Utah that the statute of limitations in an amended anti-fraud law could apply retroactively. Furse found that the Utah court in that case hadn't addressed whether lawmakers explicitly said the anti-fraud law was meant to be retroactive. As a result, Furse wrote, it wasn't clear if the supreme court was getting rid of the two-part test, or had skipped the first part because the anti-fraud law didn't contain a clear statement of retroactivity.



Rick Bowmer / AP
Utah Rep. Ken Ivory

That uncertainty prompted Furse to turn to the state justices for clarity in Mitchell's case, something federal judges can do when they have questions on how to interpret state law. Furse sent the case to the Utah Supreme Court in early June. The first round of briefs are due later this summer.

Utah Rep. Ken Ivory, who sponsored the 2016 law, told BuzzFeed News that it was "unmistakably" lawmakers' intention to make the elimination of the statute of limitations retroactive. He said they made a point of putting the legislature's intent to revive expired claims in the bill.

“We knew for decades that we had gotten our policy in protecting children wrong,” Ivory said. “It wasn’t like this was a hard bill to pass through. It was an overwhelming statement by the legislature that we not only intend to protect children abused now, but [we’re] also going to go back and provide relief.”

