No. A18-___

In the Supreme Court of the United States

Utah Republican Party, Applicant

v.

Spencer J. Cox, in his official capacity as Lieutenant Governor of Utah, et al.

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI

**Directed to the Honorable Sonia Sotomayor,
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the
United States Court of Appeals for the Tenth Circuit**

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To the Honorable Sonia Sotomayor, Circuit Justice for the United States Court of Appeals for the Tenth Circuit:

The Utah Republican Party (the "Party") respectfully requests a thirty-day extension of the deadline for filing its petition for a writ of certiorari. A split panel of the Tenth Circuit affirmed summary judgment against the Party on March 20, 2018 (App. A, as modified). The Tenth Circuit denied rehearing *en banc* on June 8, 2018 (App B), with Chief Judge Tymkovich noting that the panel decision merits review by this Court. The petition for certiorari is presently due on September 6, 2018. The Party seeks a thirty-day extension to October 6, 2018, which, with the weekend rule, will make the petition due on October 8, 2018. This Court will have jurisdiction under 28 U.S.C. 1254(1).

1. This case concerns the constitutionality of a Utah State law that seeks to shape the Republican Party's choice of candidates. At the urging of a Utah advocacy group that believed the Party's choice of candidates were too "extreme," the Utah Legislature passed a bill designed—in the words of the bill's sponsor—to promote "competing philosophies." In essence, the new law (Senate Bill 54) was designed to pit the Party against itself.

Prior to Senate Bill 54's passage, the Utah Republican Party settled disputes about who its nominees would be through a caucus and convention system. The caucus delegates would vet the delegates and participate in a party

meeting with "competition for delegate slots, and local electioneering in support or opposition to candidates[.]" App. A at 15 (Tymkovich, J., dissenting).[1] Delegates would then vote on candidates at the party convention. Unless the convention vote was close, the winner would automatically become the nominee.

Senate Bill 54 changes all this. The bill adds a second path to the ballot—gathering signatures—which enables potential candidates to "ignore[e] the caucus system altogether." *Id.* Those who qualify for the ballot compete against the caucus/convention winner in a primary where the candidate who receives a majority or plurality wins, be it the convention winner or otherwise. App. A at 3–5 (majority opinion), "In effect, the new procedures transform the Party from a tight-knit community that chooses candidates deliberatively to a loosely affiliated collection of individuals who cast votes on a Tuesday in June." App. A at 16 (Tymkovich, J., dissenting).

The Party sued Utah's Lieutenant Governor in his official capacity, claiming that Senate Bill 54 violated its First Amendment freedom to associate by intentionally influencing its choice of candidate.[2]

A split Tenth Circuit panel affirmed the district court's grant of summary judgment against the Party. In doing so, the majority held that, because the Party is open to hundreds of thousands of individuals, "the associational

[1] The opinion below restarts pagination when the dissent begins.

[2] The Utah Democratic Party intervened and is a technical respondent both here and in the forthcoming petition.

rights of the party are not severely burdened when the will of those voters might reflect a different choice than would be made by the party leadership." App. A at 22 (majority).

2. The Party intends to present two important issues in its petition:

1. Does the First Amendment permit a government to force an objecting political party to select its candidates through a primary rather than a caucus system, in an effort to change the characteristics and views, and hence the messages, of the party's general election candidates?
2. When conducting a First Amendment analysis of a law regulating expressive associations, may a court determine the law's burden based on its alleged impact on the association's members, or must it examine the impact on the association itself, as constituted by its governing documents?

Each of these questions has obvious importance to political parties—and, indeed, all associations.

First, under the Tenth Circuit's rule, when a legislature is dissatisfied with a political party's choices of candidates, it can act explicitly to change the nature of the party's candidates. This puts every political party in danger of having the views of its candidates manipulated a legislature or other government body.

It was for that reason that the last time this Court considered a state law's explicit attempt to moderate a party's choice of candidate, *California Democratic Party* v. *Jones*, the law was ruled unconstitutional. See 530 U.S. 567 (2000). In principle, this case is on all fours with *Jones*, and the Tenth Circuit's disregard of this Court's precedent will damage political parties by forcing them to accept unwanted candidates absent reversal.

The second question is equally or more important to political parties and contrary to the opinions of this Court. The panel opinion affirms that a government may overrule *any* choice a political party makes through its leaders or delegates, simply by requiring the party to submit the choice to the party's membership. In the panel's view, the party is not burdened when the party membership, instead of the party's duly constituted organization, makes a decision. This holding would restructure Utah's political parties.

Moreover, because the same First Amendment protections that apply to political parties apply to other organizations, state legislatures can burden all associations in similar ways. See U.S. Const. Amend. I. Thus, any legislature in the Tenth Circuit may now order the Sierra Club, the Boy Scouts, or even a private school, to open their decisions regarding leaders, teachers, and administrators to all members without violating the First Amendment. While the panel did not formally extend its holding to these other groups, unless corrected, these groups all now face the risk of being forced to have their members vote on significant issues—after all, they are protected by the same First Amendment as political parties are.

This Court rejected the Tenth Circuit's rule in *Boy Scouts of Am*erica v. *Dale*, where it observed that the views of the association itself need not reflect the view of the association's members. 530 U.S. 640, 655 (2000) ("The First Amendment simply does not require that every member of a group agree on every issue in order for the group's policy to be 'expressive association.'"). And

just last term, four Justices explained that First Amendment rights are strengthened, not diminished, when exercised by political parties instead of the individuals that make them up. *Gill* v. *Whitford*, 138 S. Ct. 1916, 1938 (2018) (Kagan, J., concurring) ("[S]ignificant First Amendment concerns arise when a State purposely subject[s] a group of voters or their party to disfavored treatment … [W]hat is true for party members may be doubly true for party officials and triply true for the party itself[.]") (internal quotation marks omitted).

3. To adequately present these issues for the Court's consideration, undersigned counsel needs a thirty-day extension. Counsel's other obligations include:

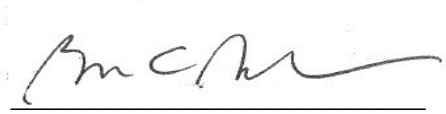
- Counsel of record is filing a petition in this Court in *Patterson* v. *Walgreen* on September 14, 2018. That case involves multiple splits among the circuits on the application of Title VII's religious accommodation provision. Justice Thomas has already granted two extensions regarding that petition, totaling approximately seven weeks, and counsel does not intend to ask for any further extensions.

- For the past twelve weeks, Counsel of Record has also been consumed with representing the six Catholic Dioceses of Puerto Rico, which are at present subject to a multi-million-dollar seizure order to fulfil the pension obligations of three Catholic schools. See *Acevedo Feliciano* v. *Iglesia Católica Apostólica y Romana*, 2018 TSPR 106 (P.R. 2018). Counsel has spent a great deal of time over the past few weeks in litigation regarding this seizure order, which contradicts settled First Amendment and due process precedents, and additional lines of statutory and constitutional authority. Counsel anticipates preparing filings throughout the months of August and September in this matter.

- Counsel has been preparing to teach the Supreme Court Advocacy Clinic at Brigham Young University's J. Reuben Clark Law School this fall.

Because of these and other obligations, counsel needs an additional thirty days to adequately prepare the petition. This extension—from September 6, 2018 to (with the weekend rule) October 8, 2018—will ensure that the important questions the petition will present are adequately explained and supported.

Respectfully submitted,



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CERTIFICATE OF SERVICE

As a member of the Supreme Court bar, I caused a copy of this document to be sent by e-mail and U.S. Mail on August 24, 2018, to:

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