

_____ No.

IN THE
SUPREME COURT OF THE UNITED STATES

PHIL LYMAN

Petitioner,

v.

Spencer Cox, et al.

Respondent(s).

On

Petition for Extraordinary Writ

For the

Utah Supreme Court

PETITION FOR WRIT OF CERTIORARI

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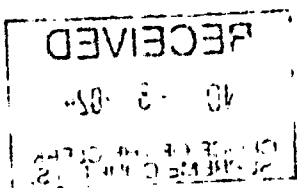
Question(s) Presented

In *New York State Bd. Of Elections v. Lopez Torres*, 552 U.S. 196 (2008), this Court held:

“a political party has a First Amendment right to limit its membership as it wishes, and to choose a candidate selection process that will in its view produce the nominee who best represents its political platform. These rights are circumscribed, however, when the State gives the party a role in the election process—as New York has done here by giving certain parties the right to have their candidates appear with party endorsement on the general-election ballot.”

As in *Torres*, the Utah Republican Party’s associational rights are at issue “only as a shield and not as a sword.” No Utah law prohibits a candidate from attending a political party convention and seeking to persuade the delegates to support him.

Did the Utah Supreme Court run afoul of this Court’s judgment of *Torres* by concluding that a state can mandate a candidate, who won the political party’s nomination through the convention process, to participate in the direct primary because the candidate who lost at convention collected signatures giving the losing candidate a second chance to seek the political party’s nomination?



List of Parties

All parties do not appear in the caption of the case on the cover page. A list of parties to the proceeding in the court whose judgement is the subject of this petition is as follows.

Phil Lyman, Petitioner, (Petitioner Lyman) is a party to this proceeding as a political party member who was seeking nomination for the public office of Governor from the political party he associates with, the Utah Republican Party.

Spencer Cox, Respondent, (Respondent Cox) is a party to this proceeding as a political party member who was seeking nomination for the public office of Governor, as the incumbent, from the political party he associates with, the Utah Republican Party.

Deidre Henderson, Respondent, (Respondent Henderson) is a party to this proceeding as the Lieutenant Governor of the State of Utah, in her official capacity as chief election officer and joint-ticket running mate of Respondent Cox.

Robert Axson, Respondent, (Respondent Axson), is a party to this action as the Utah Republican Party Officer serving as the State Party Chair and included in his official capacity is to serve as liaison with the Lieutenant Governor of the State of Utah on all matters relating to state election laws regarding the political party.

The Utah Republican Party, Respondent, is the organization of registered voters that has qualified to participate in an election by meeting the requirements of Utah election laws.

CORPORATE DISCLOSURE

A corporate disclosure statement as required by Rule 29.6 is not applicable. This petition is not being filed by a non-governmental corporation, but by an individual.

RELATED PROCEEDINGS

Per Rule 14(b)(iii), the following lists related state and federal court proceedings. While *Lyman v. Cox* is the only case before this Court on Writ of Certiorari, the others are relevant as they address the same issues concerning the Utah Republican Party's candidate nomination process.

Supreme Court of the State of Utah, No. 20240824, *Lyman v. Cox*, Order entered on August 13, 2024.

United States Court of Appeals, Tenth Circuit. No. 16-4091, No. 16-4098, *Utah Republican Party v. Cox*, decided June 8, 2018.

Supreme Court of the State of Utah, No. 20160077, *Utah Republican Party v. Cox*, decided April 8, 2016.

District Court of Utah, Central Division, No. 2:16-cv-00038-DN, *Utah Republican Party v. Cox* (U.S District Court for the District of Utah, Central Division), judgment entered April 6, 2016.

District Court of Utah, Central Division, No. 2:14-cv-00876-DN-DBP, *Utah Republican Party v. Herbert*, decided November 3, 2015.

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Introduction

“It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.”¹ Petitioner Phil Lyman (“Petitioner Lyman”) was chosen as the nominee by the Utah Republican Party delegates at the nominating convention held on April 27, 2024, by receiving more than “60% or more of the votes.”² Petitioner Lyman received 67.54%, 2,495 delegate votes.³

Yet, a *direct* primary was held on June 25, 2024, between Petitioner Lyman and Respondent Spencer Cox (“Respondent Cox”) and Respondent Deidre Henderson (“Respondent Henderson”) for the office and joint ticket of Governor and Lieutenant Governor. Respondent Henderson has certified that she and Respondent Cox are the Republican Party nominee.

Petitioner Lyman petitioned the Utah Supreme Court for Extraordinary Writ wherein a single justice determined that he “has not presented a basis for th[e] court to exercise its discretion to grant the relief requested,”⁴ denying his petition for extraordinary relief. Not recognizing the entire ruling from this Court and only quoting a portion of *N.Y. State Bd. of Elections v. Lopez Torres*,⁵ construing it to fit a

¹ See, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460–61 (1958) Quoting *Gitlow v. New York*, 268 U. S. 652, 268 U. S. 666; *Palko v. Connecticut*, 302 U. S. 319, 302 U. S. 324; *Cantwell v. Connecticut*, 310 U. S. 296, 310 U. S. 303; *Staub v. City of Baxley*, 355 U. S. 313, 355 U. S. 321.

² See Utah Republican Party Constitution, Article XII, Section 2.I. <https://legacy.utgop.org/governing-documents/>

³ See URP Nominating Convention Election Results, Statewide, Election Results for Governor Vote – Round 2 <https://legacy.utgop.org/2024-nominating-convention/>

⁴ See *Lyman v. Cox*, 2024 UT 35, 6 (Utah 2024)

⁵ See, Citing *Utah Republican Party v. Cox*, 885 F.3d 1219, 1230 (10th Cir. 2018).

narrative that the State can force Petitioner Lyman to a direct primary after he already achieved the party nomination at convention.

This Court has “often noted constitutional rights would be of little value if they could be indirectly denied.”⁶ Petitioner Lyman, respectfully petitions this Court for a Writ of Certiorari to review the judgment of the Utah Supreme Court, the court of last resort, and remand the case back for further proceedings.

Opinions Below

The Utah State Supreme Court’s opinion is at *Lyman v. Cox*, 2024 UT 35 (Utah 2024), and is reproduced at Appendix A, pages 1-6.

Chapter 1 The United States Court of Appeals for the Tenth Circuit opinion on request for panel rehearing is at *Utah Republican Party v. Cox*, 892 F.3d 1066 (10th Cir. 2018) and is reproduced at Appendix B, pages 7-10.

The United States Court of Appeals for the Tenth Circuit opinion on appeal is at *Utah Republican Party v. Cox*, 885 F.3d 1219 (10th Cir. 2018) and is reproduced at Appendix B, pages 11-97.

The United States District Court for the District of Utah, Central Division opinion is at *Utah Republican Party v. Cox*, 177 F. Supp. 3d 1343 (D. Utah 2016) and is reproduced at Appendix B, pages 98-157.

The United States District Court for the District of Utah, Central Division opinion is at *Utah Republican Party v. Cox*,

⁶ See, *U.S. Term Limits v. Thornton*, 514 U.S. 779, 803-804 (1995). (quoting 1 J. Story, *Commentaries on the Constitution of the United States* § 627, p. 435 (3d ed. 1858))

178 F. Supp. 3d 1150 (D. Utah 2016) and is reproduced at Appendix B, pages 158-257.

The Supreme Court of Utah opinion is at Utah Republican Party v. Cox, 373 P.3d 1286, 2016 UT 17 (Utah 2016) and is reproduced at Appendix B, pages 258-264.

The United States District Court for the District of Utah, Central Division opinion is at Utah Republican Party v. Herbert, 144 F. Supp. 3d 1263 (D. Utah 2015) and is reproduced at Appendix B, pages 265-331.

The United States District Court for the District of Utah, Central Division opinion is at Utah Republican Party v. Herbert, 141 F. Supp. 3d 1195 (D. Utah 2015) and is reproduced at Appendix B, pages 332-361.

The United States District Court for the District of Utah, Central Division opinion is at Utah Republican Party v. Herbert, 133 F. Supp. 3d 1337 (D. Utah 2015) and is reproduced at Appendix B, pages 362-412.

Jurisdiction

Article VIII, Section 3 of the Utah Constitution provides:

“[t]he Supreme Court shall have the original jurisdiction to issue all extraordinary writs and to answer questions of state law certified by a court of the United States. The Supreme Court shall have appellate jurisdiction over all other matters to be exercised as provided by statute, and power to issue all writs and orders necessary for the exercise of the Supreme Court's jurisdiction or the complete determination of any cause.”⁷

⁷ Utah State Constitution, Article VIII, Section 3.

In Utah, the Utah Supreme Court has jurisdiction over extraordinary writs related to election laws. A single justice denied the Petition for Extraordinary Writ of Declaratory and Injunctive Relief, leading Petitioner Lyman to invoke this Court's supervisory power under Rule 10a. The order sought to be reviewed was entered on the 13th day of August 2024, by the Utah Supreme Court in case no. 20240824. Petitioner Lyman invokes this Court's jurisdiction under 28 U.S.C. § 1257(a), having timely filed this petition for a writ of certiorari within ninety days of the Utah Supreme Court's judgment.

No Expected Rehearing

There is no date of any order respecting rehearing, and no date and terms of any order granting an extension of time to file petition.

The Utah Republican Party and its members have been dealing with the question of the constitutionality of SB 54 since its implementation in 2014. In the denial of en banc rehearing for *Utah Republican Party v. Cox*, Chief Judge Tymkovich noted:

“the issues raised here deserve The Supreme Court's attention. The panel majority pledges continued faith in an oft-repeated strand of Supreme Court dicta which, as my dissent argues, *1072 has outlived its reliability. At this point, the Supreme Court's homage to State regulation of the primary election process is little more than a nod to received wisdom.”⁸

⁸ See, *Utah Republican Party v. Cox*, 892 F.3d 1066, 1071-1072 (10th Cir. 2018) *referencing* *Cal. Democratic Party v. Jones*, 530 U.S. 567, 572, 120 S.Ct. 2402, 147 L.Ed.2d 502 (2000); see, e.g., *American Party of Tex. v. White*, 415 U.S. 767, 781, 94 S.Ct. 1296, 39 L.Ed.2d 744 (1974).

Petitioner Lyman invokes this Court's jurisdiction under 28 U.S.C. § 1257(a), having timely filed this petition for a writ of certiorari within ninety days of the Utah Supreme Court's judgment.

This Court is considering the constitutionality of a Utah statute. Deidre Henderson, the Lieutenant Governor of Utah, is a party in this case, acting in her official capacity as chief election officer and as an individual seeking the Republican nomination. According to 28 U.S.C. § 2403(b), the Attorney General of Utah must be served. However, the Utah Supreme Court did not certify to the Attorney General that the statute's constitutionality was in question.

Constitutional and Statute Provisions

The First Amendment, Fourteenth Amendment, and provisions of Utah Code §§§§§§§ 20A-8-101, 20A-9-101, 20A-9-202, 20A-9-406, 20A-9-407, 20A-9-408, and 20A-9-409, and Utah SB 54 of 2014 involved in this case, are set out verbatim with appropriate citation in Appendix C in accordance with Rule 14(I)(i).

Statement of the Case

In Utah, the political landscape has been shaped by the traditions and values of its residents, with political parties enjoying considerable autonomy in nominating candidates for general elections. The Utah Republican Party (URP) is notable for its unique nominating process, rooted in community engagement and grassroots participation.

Before Senate Bill 54 ("SB 54") was introduced in 2014, Utah's election laws allowed parties to choose their own nomination methods. While some followed the state's primary election system, the URP opted for a convention process that reflected its values and member voices.

Party members gather in local precincts for caucus meetings, which serve as the cornerstone of the Republican

Party's nomination process. “[O]pen to all Utah citizens who resides in the precincts,”⁹ who want to participate, and “who will be at least 18 by the time of that year’s general election.”¹⁰ Each caucus meeting begins with a prayer, followed by the recitation of the Pledge of Allegiance and the reading of State and County Platforms, reinforcing attendees' commitment to shared principles and patriotism. These gatherings foster camaraderie and encourage discussions about state and national issues, allowing members to share opinions and rally around common values, which promotes a vibrant local political culture.

A key task of the caucus is selecting delegates to represent their communities at the party convention. This process ensures grassroots voices are heard. Once elected, these delegates attend the party convention, where they participate in nominating candidates by voting after hearing nomination speeches, with the convention open to public participation.

In this process, the stakes are clear in the Utah Republican Party Constitution. If a candidate for an office receives 60% or more of the votes cast,”¹¹ he or she would secure the Party's nomination for that office and “shall proceed to the general election.”¹² However, the process is not as simple when multiple candidates compete for the same position. If more than two candidates are seeking the nomination for a given office, voting occurs in successive ballots until only two remain¹³ or until one candidate achieves the coveted 60% threshold.

⁹ See, Utah Republican Party Constitution, Article XII, Section 1.

¹⁰ *Id.*

¹¹ See, Utah Republican Party Constitution, Article XII, Section 2.I.
https://www.utgop.org/governing_documents

¹² See, *Id.*

¹³ See, Utah Republican Party Constitution, Article XII, Section 2.H.
https://www.utgop.org/governing_documents

If the final two candidates lack a majority, the nomination process shifts to a state-run direct primary election. This structure means the Party only resorts to the primary when no candidate receives enough support from convention delegates. A nominee reaching 60% of the convention vote secures the nomination, effectively barring challengers from alternative routes.

The Republican Party designed this convention-based process to ensure candidates reflect its platform. With a maximum of two candidates in a state-run primary, this approach guarantees nominees achieve a majority, not just a plurality, of votes.

Candidate qualification requirements include filing a statement confirming no affiliation with other political parties and acceptance of the Party's platform as a standard for officeholder performance. Certifications must be submitted at least thirty days before the convention, and failures are announced by the Party Chairman before voting.

Additionally, nominees must commit to Party nomination procedures, which exclusively holds accountability, helps maintain Party integrity, and ensures representatives embody the membership's values.

This unique process has fostered grassroots activism and a sense of ownership among members, with delegates acting as community advocates.

The events leading up to this case began in 2013 when Count My Vote, a bipartisan group, lobbied the Utah Republican Party to revise its nomination procedures. They argued that the convention method concentrated power among extreme views and limited broader representation. Count My Vote aimed to ensure nominees had wider support for the general election ballot, advocating for changes like absentee voting and higher vote thresholds for nominations.

When the Party refused to change its rules, Count My Vote registered its initiative and collaborated with the Utah legislature, resulting in the passage of SB 54 in 2014. This law overhauled nomination requirements, requiring registered parties to follow specific processes to have their candidates listed with party affiliation on the ballot.

The state now compels candidates nominated at the convention under Section 20A-9-407 participate in a direct primary, where the party's nominee must compete against those who gathered signatures, including candidates who were eliminated at the party convention or did not attend the convention at all.¹⁴

This means that even if a candidate becomes the nominee at the indirect primary and is set to proceed to the general election according to the party's internal nominating procedures, the lieutenant governor effectively has a veto over the political party's nominee, as the nominee from the convention can—and often does—lose in the direct primary.

This system prohibits a ballot or ballot sheet from indicating a candidate's association with a political party unless the candidate is either nominated by petition or nominated by a Qualified Political Party (“QPP”).¹⁵ A QPP is defined as a “registered political party that permits a delegate to vote on a candidate nomination in the registered political party’s convention remotely” or “provides a procedure for designating an alternate delegate if a delegate is not present at the registered political party’s convention.”¹⁶

A QPP cannot hold its party’s convention before the fourth Saturday in March of an even-numbered year.¹⁷ A QPP must “permit a member to seek the registered political

¹⁴ See, Utah Code 20A-9-409

¹⁵ See, Utah Code 20A-9-406(5).

¹⁶ See Utah Code 20A-9-101(13)(a).

¹⁷ See Utah Code 20A-9-101(13)(b).

party's nomination for any elective office by the member choosing to seek the nomination by either or both of the following methods" — nomination through the registered political party's convention, or nomination by collecting signatures.¹⁸

Although the URP's regular direct primary ballot is a closed primary and only registered party members are able to participate, Utah's election laws allow the candidate seeking the party's nomination "to choose their path to the ballot and the individual may seek a nomination by the use of either or both methods[,] either the nominating convention or by gathering signatures, or both (the "Either or Both Provision").¹⁹

According to Lieutenant Governor Respondent Henderson, a candidate seeking the nomination of a QPP through both the nominating convention and signature collection triggers a direct primary, even if elected as the party's nominee by delegates.²⁰

Petitioner Lyman Petitioner Lyman and Respondent Cox both declared candidacy for the Office of Governor seeking the URP nomination through both the convention process and the signature gathering process.

Petitioner Lyman campaigned diligently to the party state delegates and won the party nomination through the convention process, receiving 67.54% of the Republican delegate vote — "60% or more of the votes cast at any point in the balloting process at the state nominating convention" on April 27, 2024, which qualified him as the party nominee

¹⁸ See Utah Code 20A-9-101(13)(c).

¹⁹ "Letter from Lt. Gov. Spencer J. Cox to URP Chairman James Evans at 1 (Nov. 19, 2015), attached as Ex. 2 to Complaint of Intervenor Utah Democratic Party ("UDP Complaint"), docket no. 20-2, filed Feb. 4, 2016." Utah Republican Party v. Cox, 177 F. Supp. 3d 1343, 1353 n.48 (D. Utah 2016).

²⁰ See, Utah Code 20A-9-408.

for the general election as per the Utah Republican Party Constitution.²¹

Petitioner Lyman successfully secured the party's nomination under Section 20A-9-407 and ceased his signature-gathering efforts on May 6, 2024. However, Respondents argue that Respondent Lyman must still participate in a direct primary, as Respondent Cox has allegedly collected 28,000 signatures under Utah Code 20A-9-408, effectively bypassing the party's nominating convention results.²²

Respondent Robert Axson ("Respondent Axson"), as party chair and state liaison, was to certify the nominees to Respondent Henderson when the convention concluded. "A qualified political party that nominates a candidate under this section shall certify the name of the candidate to the lieutenant governor before the deadline described in Subsection 20A-9-202(1)(b)."²³ [...5 p.m. on the first Monday after the fourth Saturday in April.]²⁴ Respondent Axson claims he provided Respondent Henderson with the URP certification of the results held from the nominating convention on April 27, 2024.

Since this system was implemented in 2014, the URP has claimed it to be unconstitutional, alleging that SB 54 violated the URP's freedom of association under the First Amendment, as applied to the states by the Fourteenth Amendment, and challenged its constitutionality.²⁵ The URP, members, and nominees have suffered deprivation of rights protected by the United States Constitution for approximately ten years.

²¹ See, Utah Republican Party Constitution, Article XII, Section 2.I.

²² See, Utah Code 20A-9-409.

²³ See, Utah Code 20A-9-407(6)

²⁴ See, Utah Code 20A-9-202(1)(b).

²⁵ See, Utah Republican Party v. Herbert, 133 F. Supp. 3d 1337 (D. Utah 2015).

In two separate orders, the United States Court for the District of Utah balanced the URP's First Amendment right of association against the State's interest in managing and regulating elections and rejected the Utah Republican Party's claims. "Re-conducting that balancing de novo on appeal," the United States Court of Appeals for the Tenth Circuit affirmed.²⁶ Chief Justice Tymkovich concurring in part and dissenting in part.

These lawsuits are not before this court on Writ of Certiorari; however, they are relevant to the present in part because the positions that "SB 54 does not regulate the party's internal process; in fact its grand compromise was to maintain the URP's traditional caucus system as a path onto the primary ballot."²⁷

In the First Lawsuit, the district court denied the URP and Constitution Party of Utah (CPU) a preliminary injunction, ruling that the alleged constitutional burdens were not severe except for the Unaffiliated Voter Provision, which was not yet ripe for review.²⁸ After the URP indicated its intention to become a "qualified political party," that issue ripened and the district court granted summary judgment invalidating the Unaffiliated Voter Provision, finding it imposed a severe burden on the URP's associational rights without a compelling state interest.²⁹ The practical effect of the First Lawsuit invalidated SB 54's Unaffiliated Voter Provision, *see id.*, while upholding the Signature Requirement, the Either or Both Provision, and all other aspects of SB 54, *see id.*; *Utah Republican Party v. Herbert*, 133 F. Supp. 3d 1337, D. Utah 2015.

²⁶ *See*, *Utah Republican Party v. Cox*, 892 F.3d 1066, 1072 (10th Cir. 2018).

²⁷ *See*, *Id.* 892 F.3d 1066, 1080 (10th Cir. 2018)

²⁸ *See*, *Utah Republican Party v. Herbert*, 133 F. Supp. 3d 1337, D. Utah 2015.

²⁹ *See*, *Utah Republican Party v. Herbert*, 144 F. Supp. 3d 1263, D. Utah 2015

After losing its First Lawsuit, the URP announced it would only allow nominations through the caucus method, interpreting the "Either or Both" provision to mean the party could choose the nomination method. The Lieutenant Governor—who was Respondent Cox at the time—disagreed, stating that party members, not the party, could choose their nomination method under SB 54. In response, the URP filed a new lawsuit (the "Second Lawsuit") in federal court on January 15, 2016, arguing that SB 54 violated its First and Fourteenth Amendment rights.

The Utah Democratic Party (the "UDP") intervened in the Second Lawsuit, and two questions were certified to the Utah Supreme Court. "The URP argued first that the plain language of the Either or Both Provision did not require the URP to allow members the option of gathering signatures, but this argument was rejected by the Utah Supreme Court."³⁰ The Utah Supreme Court ruled that party members have the right to choose their nomination method, not the party.³¹ The Utah Supreme Court noted that "to meet the definitional requirements of a QPP, a political party must permit its members to seek its nomination by 'choosing to seek the nomination by either or both' the convention and the signature process."³² The Utah Supreme Court also held that allowing the member to choose the path to the ballot was in harmony with Utah Code §§ 20A-9-406(3) and -406(4).³³

³⁰ See, *Utah Republican Party v. Cox*, 178 F. Supp. 3d 1150, 1153 (D. Utah 2016).

³¹ See, *Utah Republican Party v. Cox*, 2016 UT 17, ¶5.

³² See, *Id.* ¶ 4, *Utah Republican Party v. Cox*, 178 F. Supp. 3d 1150, 1166 (D. Utah 2016) ("The Court stated that it could not accept the URP's first assertion—that the language of the Either or Both Provision actually permits the party, not the member, to choose the path to the ballot—because that argument "simply ignores the structure of the statutory language")

³³ See, *Id.* ¶5.

In rejecting the URP's argument that allowing the member to choose the path to the ballot interfered with the URP's internal procedures, the Utah Supreme Court noted that “[t]he statute does not require the [URP] to seek certification as a [QPP], and it does not purport to mandate the adoption of any provisions in its constitution, bylaws, rules, or other internal procedures.”³⁴ “However, if a party seeks certification as a QPP, it must comply with the statute's requirements.”³⁵ The Utah Supreme Court also stated that it “harbor[ed] some doubt as to whether the [URP] has raised any legitimate constitutional arguments that the State may not regulate the election process and favor particular measures to increase access to the ballot.”³⁶

Finally, the Utah Supreme Court declined to answer the second question because it was “purely hypothetical and not ripe for review.”³⁷ “[T]here are multiple options available to the [URP] once this court's interpretation of the QPP statute is published, and it is not clearly established in the record which of those the party will choose.”³⁸ The Court stated that there was no process identified “by which the [URP] could or would revoke the membership of a non-compliant candidate.”³⁹ In fact, the Court noted,

“counsel for the [URP] in this case made the following statement to the federal district court on February [4], 2016: ‘If the state law says that we have to allow both routes and if that is what the Supreme Court decides and if we have elected to be a QPP, then we would have to figure a way how to change our

³⁴ See, Id. ¶6.

³⁵ See, Id.

³⁶ See, Id. ¶7.

³⁷ See, Id. ¶8.

³⁸ See, Id. ¶9.

³⁹ See, Id.

constitution and by-laws to conform to the state law.’ ”⁴⁰

The Court refrained from providing an advisory opinion on [LG]'s future obligations, as it would need to consider the party's predicted future behavior. Following a ruling from the Utah Supreme Court affirming that members have the right to choose their nomination path, the district court ruled in favor of the State, dismissing the URP's claims that the State was imposing different candidate-selection rules and violating the Party's rights.⁴¹

The court further stated,

“[i]n this balance of power between political parties and state regulation of elections, the political party may not disguise a contradiction of a valid state regulation as a legitimate use of its power to regulate membership, control internal procedure, and enjoy freedom of association. While a political party may do these things, it may not do so in conflict with valid state regulation of election processes.”⁴²

“Thus, a state has the authority to create the process by which candidates appear on the general election ballot, and does not interfere with a political party's internal procedures when it establishes laws regulating primary and general elections. Indeed, rather than interfering with the internal procedures of the party, SB 54 gives the URP and all other

⁴⁰ See, Id. ¶10.

⁴¹ See, *Utah Republican Party v. Cox*, 178 F. Supp. 3d 1150, 1178 (D. Utah 2016)

⁴² See, Id. 178 F. Supp. 3d 1150, 1180 (D. Utah 2016)

QPPs considerable control over how they will govern themselves internally.”⁴³

The URP appealed the summary judgment, while the UDP cross-appealed, challenging the denial of judgment on the pleadings and aspects of the URP's bylaws. The appeals were consolidated and reviewed by the Tenth Circuit of the United States Court of Appeals.

The Tenth Circuit court affirmed that SB 54,

“strikes an appropriate balance between protecting the interests of the state in managing elections and allowing the URP and all other political associations and individuals across Utah to express their preferences and values in a democratic fashion and to form associations as protected by the First Amendment to the Constitution. Not only does *1095 this balance not offend our Constitution, but it is also at its very essence. Accordingly, we AFFIRM.”⁴⁴

Chief Justice Tymkovich concurring in part and dissenting in part.

According to the URP Constitution “[a] candidate for an office that receives 60% or more of the votes cast at any point in the balloting process at the state nominating conventions[,]” that candidate “shall proceed to the general election” and is the party nominee.⁴⁵

In contrast, if no candidate receives 60% or more at any point in the balloting process at the state nominating convention, the “top two candidates shall participate in the

⁴³ See, Id. 178 F. Supp. 3d 1184-85 (D. Utah 2016)

⁴⁴ See, Utah Republican Party v. Cox, 892 F.3d 1066, 1094-95 (10th Cir. 2018).

⁴⁵ See, Utah Republican Party Constitution, Article XII, Section 2.I.

final ballot,” which is the state’s regular direct primary election.⁴⁶

According to Respondent Henderson, the Lieutenant Governor and joint-ticket running mate of Respondent Cox, because Respondent Cox allegedly gathered 28,000 signatures in accordance with Section 20A-9-408(8)(b)(i), Petitioner Lyman faced an additional challenge despite the Party’s Constitution and Bylaws, the internal procedures of the Party, provide that a candidate seeking nomination through the convention process reaches 60% or more and becomes the nominee to be placed on the general ballot. The collection of signatures vetoes the delegate nomination that took place at the convention process described in Section 20A-9-407.

On April 8, 2016, the Utah Supreme Court ruled on a certified question arising from the District Court case *Utah Republican Party vs. Cox*, that the structure of the statutory language “permits a member” and “by the member choosing to seek the nomination by....” Our reading is also consistent with the language of Utah Code section 20A–9–406(3), which provides that “[t]he following provisions apply to a qualified political party: ... an individual may only seek the nomination of the qualified political party by using a method described in Section 20A–9–407, Section 20A–9–408, or both.”⁴⁷

In defiance of the Utah Supreme Court's ruling and the provisions outlined in Section 20A-9-407(6)— which clearly state that “a qualified political party that nominates a candidate under this section” retains the authority to select its nominee at a nominating convention — Respondents have disregarded established judicial opinions affirming this right.

⁴⁶ See, Utah Republican Party Constitution, Article XII, Section 2.H.

⁴⁷ See, *Utah Republican Party v. Cox*, 2016 UT 17 ¶ 5 (Utah 2016), 1287 (Utah 2016).

The 10th Circuit acknowledged this approach as a vital compromise to balance the need for direct primaries with the preservation of the caucus system. However, Respondents have wrongfully forced candidates to seek the party's nomination a second time, undermining the principles of fair electoral processes.— “It is clear from our review of the record that this ‘two-path’ system was a compromise crafted between Utah legislators hoping to preserve the URP's caucus system and outside interests pushing a pure primary system.”⁴⁸

Respondent Henderson included Petitioner Lyman and Respondents Cox and Henderson in the primary ballot certification, with regular primary ballots mailed on June 4, 2024, for a direct primary on June 25, 2024. This timeline left Petitioner Lyman with only one month and seven days to campaign statewide before party members received their ballots.

On July 22, 2024, Respondent Henderson certified the election results for the “Democratic and Republican Regular Primary elections held on June 24, 2024” declaring Respondents Cox and Henderson the Republican Party nominee receiving 232,164 votes and Petitioner Lyman receiving 194,639 votes.

August 2, 2024, Petitioner Lyman Petitioned the Utah Supreme Court for Extraordinary Writ, asking for an expedited review and preliminary injunction. August 13, 2024, one justice — Chief Justice Durrant — denied the petition stating, “Mr. Lyman has not presented a basis for this court to exercise its discretion to grant the relief requested. Accordingly, we deny his petition for extraordinary relief. Because the petition is dismissed, Mr. Lyman’s injunction motions are denied as moot.”⁴⁹

⁴⁸ See, *Utah Republican Party v. Cox*, 892 F.3d 1066, 1073 (10th Cir. 2018).

⁴⁹ See, *Lyman v. Cox*, 2024 UT 35.

For reasons set out below, we seek this Court's review and grant of this petition for certiorari and remand it back for further proceedings.

Reasons for Granting the Petition

Petitioner Lyman recognizes that a writ of certiorari is not a matter of right, but an exercise of judicial discretion granted under compelling circumstances. What could be more compelling than forcing a candidate to face an additional challenge after already receiving their party's nomination? This predicament exists solely because the Respondents could not secure their own nomination at the convention. Lyman's situation is not merely inconvenient; it is a profound injustice that calls for this Court's supervisory intervention.

Forcing a candidate who has been nominated through the convention process under Section 20A-9-407 to seek nomination again via the direct primary "turns the First Amendment on its head." The Utah Supreme Court's ruling was both dismissive and unjust, ignoring First Amendment rights that "protect a party from excessive state interference in party affairs."⁵⁰

Utah Republican Party v. Cox, Chief Justice Tymkovich's dissenting opinion rings true that:

"Utah's 2014 election law reforms purposely try to change the substantive type of candidate the Party nominates, all the while masquerading as a mere procedural reform. If true, such a project would severely burden the Party's associational rights, and

⁵⁰ See, *New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196 (2008). Opinion Announcement, Justice Scalia.

without compelling justifications, it would be unconstitutional.”⁵¹

This nominating procedure has significant repercussions, interfering with the Utah Republican Party’s internal processes, altering the types of nominees produced, and providing unwanted candidates a way to veto the Party’s nomination.

SB 54 "substitute[s]" the Utah legislature's "judgment for that of the party as to the desirability of a particular internal party structure."⁵² The law is, in effect, a sort of state-created majority veto over the candidates a party selects through its carefully crafted convention process.

URP’s internal nominee selection process has impacted a political party’s ability to define itself. Candidates can evade the scrutiny of delegates chosen at the party’s caucus, ignoring the caucus system altogether. The new procedures reshape the Party from a close-knit community that thoughtfully selects candidates to a more loosely connected assembly of individuals who simply cast their votes on a Tuesday in June.

SB 54 has altered the types of candidates nominated by the Party, which was the goal of its advocate, Count My Vote. A nomination process that relies on convention delegates will yield different candidates compared to one that involves a broader audience, which has included many individuals with only a nominal affiliation to the Party. Count My Vote recognized this dynamic, as did the Party itself. The new signature-gathering method for nominations has led to more moderate candidates, as Count My Vote intended. This process has produced "nominees and nominee positions other

⁵¹ See, *Utah Republican Party v. Cox*, 892 F.3d 1066, 1095 (10th Cir. 2018.)

⁵² See, *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 233, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989).

than those the part[y] would choose if left to [its] own devices."⁵³

The law violates the right not to associate with an unwanted candidate, a "corollary of [its] right to associate."⁵⁴ "In no area is the political association's right to exclude more important than in the process of selecting its nominee."⁵⁵ Yet under this regime, a person who collects signatures can be named the Party's nominee in spite of the fact that they lost at the party's nominating convention.

This system enables nominal members or even those opposed to the Party's policies to potentially take control of the Party's platform. If an individual can gather enough signatures—whether through fame or wealth—they can challenge the candidate chosen by the Party at the convention in a primary election. This poses a significant threat to the Party's right to disassociate itself, as the rewards for winning the primary extend beyond mere placement on the general election ballot; they include the title of the Party's official nominee.

Even counsel for the Utah Democratic Party admitted during oral argument for *Utah Republican Party v. Cox* 892 F.3d 1066 (10th Cir. 2018) that SB 54 presented a "[California Democratic Party v.] Jones problem,"⁵⁶ because it is the kind of violation of the freedom not to associate that the Supreme Court condemned in *Jones*.⁵⁷ In that case, California enacted a partisan blanket primary in which all voters, regardless of party affiliation, could vote for any party's nominees.⁵⁸ The

⁵³ See, *California Democratic Party v. Jones*, 530 U.S. 567, 582, 120 S.Ct. 2402, 147 L.Ed.2d 502 (2000).

⁵⁴ See, *Id.* at 574, 120 S.Ct. 2402.

⁵⁵ See, *Id.* at 575, 120 S.Ct. 2402.

⁵⁶ See, *Utah Republican Party v. Cox*, 892 F.3d 1066 (10th Cir. 2018) – Oral Argument at 16:40-17:45.

⁵⁷ See, *California Democratic Party v. Jones*, 530 U.S. 567, 120 S.Ct. 2402, (2000).

⁵⁸ See, *Id.* at 569–70, 120 S.Ct. 2402.

Court held that scheme unconstitutional in part because it created the possibility parties would be "saddled with an unwanted, and possibly antithetical, nominee."⁵⁹ Forcing the Party to accept nominees who circumvent the Party's chosen nomination method by appealing to members at the fringes of the Party accomplishes the same thing. It has "saddle[d]" the Party with a nominee who is "antithetical" to the integrity of the Party and its long-term message.

Since the implementation of SB 54, it has caused nothing but divisiveness within the Party ranks, which was predicted by Chief Justice Tymkovich.⁶⁰ In fact, at the URP's party convention, Respondent Cox was welcomed with widespread disapproval from the delegates where Respondent Cox responded in saying that he would win the primary election regardless of whether he won at the convention, only causing more anger within the Party.

SB 54 has undermined the very reason for the convention process—accountability. Members no longer feel they are heard, and nominees and representatives are more independent knowing it is impossible to remove them from their position once elected. "[W]hen their nomination *1103 depends on the general electorate rather than on the party faithful," it is less likely that "party nominees will be equally observant of internal party procedures and equally respectful of party discipline."⁶¹ The same logic in *Jones* applies here. The faithful delegates are no longer able to hold rogue candidates accountable.

Although the URP's regular direct primary ballot is a closed primary and only registered party members can participate, not all members are the same. As this Court has recognized, "the act of formal enrollment or public affiliation

⁵⁹ See, *Id.* at 579–81, 120 S.Ct. 2402.

⁶⁰ See, *Utah Republican Party v. Cox*, 892 F.3d 1066, 1102 (10th Cir. 2018)

⁶¹ See, *California Democratic Party v. Jones*, 530 U.S. 567, 581, 120 S.Ct. 2402, (2000).

with the Party is merely one element in the continuum of participation in Party affairs and need not be in any sense the most important."⁶²

Despite the foregoing burdens, the majority of past court opinions have concluded that SB 54's overall burden on the members and political parties associational right is light. The majority bases this conclusion on five main reasons: (1) its conclusion the law does not regulate the Party's internal process, (2) the Party's continued ability to use traditional advertising channels to endorse the candidate of its choice, (3) the fact the Party's members still get to choose the nominee, (4) states' ability to regulate "the scope" of party primaries, and (5) the Supreme Court's dicta on the power of states to mandate primaries.

The majority in *Utah Republican Party v. Cox*, 892 F.3d 1066 (10th Cir. 2018) held that SB 54 does not "regulate the party's internal process" because "in fact its grand compromise was to maintain the [Party's] traditional caucus system as a path onto the primary ballot."⁶³ Although, Section 20A-9-407(6) does allow for a candidate nominated under the convention process and proceed to the general election, that is not what happened in the Governor's race between Petitioner Lyman and Respondents Cox and Henderson. The Party has not been able to use the caucus system as its exclusive means of nomination since the passage of Senate Bill 54.

Next, like the district courts, argues the Party's freedom not to associate with unwanted candidates is sufficiently protected because the Party's leadership can publicly disavow signature gathering candidates. This is completely the opposite of what has transpired. Utah Republican Party officers threaten removal of delegate positions if support is

⁶² See, *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 215, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986).

⁶³ See, *Utah Republican Party v. Cox* 892 F.3d 1066, 1080 (10th Cir. 2018).

not given to the signature gather who always wins the direct primary, vetoing the delegate nominations. The party's associational rights have clearly been trampled upon and now delegates question what the point of their position is—there is not much left of the right to associate.

In *Jones*, the "ability of the party leadership to endorse a candidate" did not lessen the burden on "party members' ability to choose their own nominee."⁶⁴ So too, the ability to publicly disavow a candidate does not alleviate the forced association imposed on the Party here. Candidates who seek the nomination through gathering signatures are listed as the Party's candidates in the Party's primary ballot and can become the Party's nominee in the general election ballot—all in contradiction of the Party's express rules. Previous Court's decisions that the ability to publicly deny those candidates is a solution, has failed to consider *Jones*. In fact, tactical considerations have seriously constrained the ability in practice because the denounced candidates, such as Respondents Cox and Henderson have ended up certified as the Party's nominee in the general election.

The majority in *Utah Republican Party v. Cox*, further suggested, again like the district court, that there can be no severe burden on the Party so long as the Party's members choose nominees. The majority argued we must "define the association with the requisite specificity" and proceed to define the Party as a collection of "roughly 600,000 registered Republicans."⁶⁵ Because SB 54 still permits those party members to choose the nominee, the majority concluded the burden is minimal.

This theory presents two key issues. First, it assumes that the transfer of nomination from the party's established convention-based system to a large-scale member vote does

⁶⁴ See, *California Democratic Party v. Jones*, 530 U.S. at 580, 120 S.Ct. 2402, (2000).

⁶⁵ See, *Utah Republican Party v. Cox*, 892 F.3d 1066, 1081-82 (10th Cir. 2018)

not result in any significant changes. However, as demonstrated in the present case, it has been established that nomination procedures are substantive, and dismissing such a change as insignificant has been misguided.

Second, this perspective reduces political parties to mere collections of individuals, failing to recognize that “[a] political party is more than the sum of its members. Political science literature has long observed parties have several components, only one of which is their membership.⁶⁶ Consequently, political parties possess associational rights that are distinct from those of their individual members. The structure of the party—comprised of its bylaws, customs, and leadership—also enjoys protection under the First Amendment.

SB 54 provided the State ultimate authority to alter the internal regulations of political parties, and courts have ruled this to be a minimal burden so long as the ultimate nomination decisions are left up to party membership. But this Court has already rejected that theory. It has held that “[f]reedom of association also encompasses a political party’s decisions about the identity of, and the process for electing, its leaders” and that “a State cannot substitute its judgment for that of the party as to the desirability of a particular internal party structure.”⁶⁷ And contrary to the majority’s opinion in *Utah Republican Party v. Cox*, these are not confined to “internal activity.”⁶⁸ These rights extend to a party’s choice of nominee too. This Court has already

⁶⁶ See, *Id.*, 892 F.3d 1066, 1105 (10th Cir. 2018) giving example, e.g., Nathaniel Persily & Bruce E. Cain, *The Legal Status of Political Parties: A Reassessment of Competing Paradigms*, 100 *Colum. L. Rev.* 775, 778 (2000) (describing the distinction between the “party-in-the-electorate,” the “party-in-the-government,” and “professional political workers”).

⁶⁷ See, *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 229, 232–33, 109 S. Ct. 1013, 103 L.Ed.2d 271 (1989).

⁶⁸ See, *Utah Republican Party v. Cox*, 892 F.3d 1066, 1078 (10th Cir. 2018).

explained that a “Party’s determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.”⁶⁹

In addition to the reasons cited by the majority in *Utah Republican Party v. Cox*, the Utah district court argued that Senate Bill 54 does not significantly limit the Party's associational rights because it is not obligated to register as a qualified political party. This means the Party can function as an unregistered entity and implement its preferred nomination procedures, with the only drawback being the loss of its endorsements on the ballot. The district court pointed out that the Supreme Court has ruled that the “[f]irst Amendment does not give political parties a right to have their nominees designated as such on the ballot,”⁷⁰ lending the district court to conclude there was little, if any, burden.

The district court minimized the issue by stating that, while there is no constitutional right to have endorsements printed on the ballot, the “unconstitutional conditions doctrine holds that the government may not deny a benefit to a person on a basis that infringes his ... freedom of speech” or association, “even if he has no entitlement to that benefit.”⁷¹ According to precedent, “if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This

⁶⁹ See, *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 107 S. Ct. 544, (1986) (emphasis added).

⁷⁰ See, *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 453 n.7, 128 S.Ct. 1184, 170 L.Ed.2d 151 (2008).

⁷¹ See, *Bd. of Cty. Comm'rs, Wabaunsee Cty., Kan. v. Umbehr*, 518 U.S. 668, 674, 116 S.Ct. 2342, 135 L.Ed.2d 843 (1996) (internal quotation marks and citation omitted)

would allow the government to produce a result which it could not command directly.”⁷²

While URP may lack a constitutional right to have its endorsement on the ballot, Utah's requirement to "change your party rules to accommodate our preferred kinds of nominees or lose your ballot access" is unconstitutional. This condition is coercive due to the significant electoral disadvantages if the Party remains unregistered, failing to mitigate the law's impact on First Amendment rights. The arguments from the majority and district court do not refute that SB 54 imposes a heavy burden. Forcing candidates who secured the Party's convention nomination is as restrictive as a ban on endorsements or forcing nonmembers into primaries. As the Supreme Court noted in *Jones*, SB 54 forces the Republican Party "to adulterate [its] candidate-selection process—a political party's basic function."⁷³

"A political party has a First Amendment right to limit its membership as it wishes, and to choose a candidate-selection process that will in its view produce the nominee who best represents its political platform."⁷⁴ "[W]hen their nomination depends on the general electorate rather than on the party faithful," it is less likely that "party nominees will be equally observant of internal party procedures and equally respectful of party discipline."⁷⁵

The First Amendment rights of political parties to associate with their members, limit their membership, and

⁷² See, *O'Hare Truck Serv., Inc. v. City of Northlake*, 518 U.S. 712, 717, 116 S.Ct. 2353, 135 L.Ed.2d 874 (1996) (internal quotation marks and citation omitted).

⁷³ See, *California Democratic Party v. Jones*, 530 U.S. 568, 120 S. Ct. 2402 (2000).

⁷⁴ See, *New York Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 202, 128 S.Ct. 791, 169 L.Ed.2d 665 (2008) (citations omitted) (approving convention nomination process).

⁷⁵ See, *California Democratic Party v. Jones*, 530 U.S. 581, 120 S. Ct. 2402 (2000)

select candidates in a manner that best represents their political platforms is in danger of becoming extinct for the citizens of Utah. This precarious situation has the potential to influence similar law throughout the country and conflicts with this Court's decision of *New York State Bd. Of Elections v. Lopez Torres* where Respondents' contention that New York's electoral system "does not assure them a fair chance of prevailing in their parties' candidate-selection process finds no support in this Court's precedents."⁷⁶

The Utah Supreme Court denied Petitioner Lyman's Extraordinary Writ, creating conflict with this Court's statements in *Torres*, which further complicate the legal landscape surrounding the associational rights of a political party and its members.

"These rights are circumscribed, however, when the State gives the party a role in the election process — [for example] by giving certain parties the right to have their candidates appear with party endorsement on the general-election ballot. Then the State acquires a legitimate governmental interest in ensuring the fairness of the party's nominating process, enabling it to prescribe what that process must be."

"*Id.* (cleaned up) (quoting *Lopez Torres*, 552 U.S. at 202-03). This statement, quoted in its entirety, is consistent with what we said in *Utah Republican Party*, 2016 UT 17, and does not support Mr. Lyman's view that a qualified political party's internal rules trump state law."⁷⁷

⁷⁶ See, *Id.*, 552 U.S. 196 (2008).

⁷⁷ See, *Lyman v. Cox*, No. 2024 UT 35, ¶5 (Utah 2024).

This ruling contravenes with this Court's understanding of "a State's power to prescribe party use of primaries or conventions to select nominees for the general election is not without limits."⁷⁸

To say that a state can require a party or a candidate to participate in a direct primary after becoming the nominee through the political party's nominating convention, is a "far cry" from saying that this is not a constitutional violation.

"To be sure, we have, as described above, permitted States to set their faces against 'party bosses' by requiring party-candidate selection through processes more favorable to insurgents, such as primaries. But to say that the State can require this is a far cry from saying that the Constitution demands it."⁷⁹

The URP and its nominees, its core associational activity protected by the First Amendment is being circumvented by the same reasons the New York Legislatures were opposed to the direct primary over one hundred years ago, because it leaves the selection of party nominees to "...voters uninformed about" the candidates' qualifications, "and places a high premium upon the ability to raise money."⁸⁰ It discourages candidate participation and will eventually stifle delegate participation. Selection by convention has been a traditional means of choosing party nominees and to suggest that having multiple parties or more unrestricted access to the primary ballot does not automatically justify limiting how a political party can choose its candidates for nomination.

The States can, within limits (that is, short of violating the parties' freedom of association), discourage party

⁷⁸ See, *California Democratic Party v. Jones*, 530 U. S. 567, 577 (2000).

⁷⁹ See, *New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, II A (2008).

⁸⁰ See, *Id.*

monopoly—for example, by refusing to show party endorsement on the election ballot. But the Constitution provides protections of a party’s associational rights, and a state has no authority to veto a party’s nomination of a candidate through its convention process when the State has allowed for such a process to be a part of the Primary election system.

The decisions made by the Utah Supreme Court significantly impact the associational rights of parties and their members. Senate Bill 54 squarely imposes a mandatory primary on unwilling political parties. These decisions have strayed so far from the principles of the First Amendment that they threaten to undermine the fundamental right of association to “choose a candidate-selection process that will in its view produce the nominee who best represents its political platform[.]”⁸¹

This decision allows the state to overreach in setting election law frameworks, heavily burdening the URP, its members, and nominees beyond their capacity. Without this Court’s review, SB 54 uses state power to force a political party into endorsing a nominee through a direct primary, bypassing the party’s internal convention-based nominating procedures that legislators claim to have protected for the URP.

Petitioner Lyman achieved the nomination by reaching 60% or more of the delegate votes at the nominating convention, and since has suffered “from intrusion by those with adverse political principles.”⁸²

The URP delegate votes were disqualified and the striking display of indifference by the Utah State Supreme Court — turning a blind eye to the urgent pleas for

⁸¹ See, *California Democratic Party v. Jones*, 530 U.S. 567, 577, 120 S.Ct. 2402, 147 L.Ed.2d 502. *Id.*, 552 U.S. 196, (2008)

⁸² *Ray v. Blair*, 343 U. S. 214, 343 U. S. 221-222 (1952).

extraordinary relief is improper and denying Petitioner Lyman's request for relief for reasons:

“based on his view that the Republican Party's internal rules trump Utah's election laws, a claim we rejected in *Utah Republican Party V. Cox*, 2016 UT 17, ¶ 6,373 P.3d 1286 (per curiam). There, we held that if a party seeks to be a qualified political party under Utah law—as the Utah Republican Party has—the party must comply with state law, including the requirement that members be allowed to seek the party's nomination for elective office through signature gathering and/or the convention process. See *id.* ¶¶ 3, 6. For this and other reasons, we deny the petition without calling for a response. See UTAH R. APP. P. 19(k)(1).”⁸³

Forcing a candidate onto the primary ballot after earning the Party's nomination by convention votes undermines members' collective associational rights. This interference disrupts a political party's established candidate selection process, stripping members of their fundamental ability to self-govern and choose their representatives.

This Court's “past decisions have made clear, a significant encroachment upon associational freedom cannot be justified upon a mere showing of a legitimate state interest.”⁸⁴ Even when acting to pursue a legitimate interest, a state cannot adopt means that unnecessarily infringe upon constitutionally protected liberties.

It is constitutional for a state to require some significant modicum of support, which URP demonstrates by its candidates polling “2% or more of the total votes cast for all

⁸³ See, *Lyman v. Cox*, 2024 UT 35.

⁸⁴ See, *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973) (citing *Bates v. Little Rock*, *supra*, at 524; *NAACP v. Alabama*, *supra*, at 463).

candidates for the United States House of Representatives in the same regular general election.”⁸⁵ This qualifies the URP to be able to participate in “nominating the registered political party’s candidates in accordance with the provision of Section 20A-9-406.”⁸⁶

Compelling a candidate to a direct primary after winning party nomination at a convention violates the First Amendment, raising doubts about whether the convention is a genuine election or merely symbolic.

“Utah’s election code states that candidates for office “that are to be filled at the next regular general election shall be nominated in a regular primary election by direct vote of the people in the manner prescribed” by Utah law. Utah Code § 20A-9-403(1)(a). Utah’s election code further instructs that “[a] candidate who, at the regular primary election, receives the highest number of votes cast for the office sought by the candidate is . . . nominated for that office by the candidate’s registered political party. Id. § 20A-9-403(5)(a)(i).

Despite these provisions, Mr. Lyman argues that the Utah Republican Party’s Constitution and Bylaws require that any candidate who receives sixty percent or more of the votes at the party’s nominating convention proceeds to the general election—regardless of the primary election’s outcome. In other words, Mr. Lyman contends that the Republican Party’s internal procedures trump state election law. We disagree.”⁸⁷

⁸⁵ *Utah Code* §§ 20A-8-101(1) and 101(5).

⁸⁶ *Utah Code* § 20A-9-101(13)(d).

⁸⁷ *See, Lyman v. Cox*, 2024 UT 35, 4 (Utah 2024)

Petitioner Lyman did not contend that the “Republican Party’s internal procedures trump state law.” Petitioner Lyman Extraordinary Writ argues that the decision made by Respondent Henderson to place Petitioner and Respondents on the direct primary ballot held June 25, 2024, was in direct conflict of decisions of previous courts and the decisions of the Utah Supreme Court when it certified the meaning of questions surrounding the member seeking the party’s nomination by “either” or “both” methods set forth in § 20A-9-407 and § 20A-9-408.”

Petitioner argues that Respondent Henderson’s decision to force a direct primary, despite delegate votes, contradicts Section 20A-9-407(6), which allows for convention-based nomination. The Utah Supreme Court’s denial of the Petitioner’s writ conflicts with its previous rulings and raises constitutional concerns over state control of party nominating processes. Both Petitioner Lyman and Respondent Cox sought nomination through conventions and signature gathering, with Lyman already nominated at the convention. Thus, a direct primary for Governor was unnecessary as the URP had its nominee. The Utah Supreme Court has resolved a significant federal question in a manner conflicting with this Court’s decisions. Petitioner Lyman requests that this Court accept the Petition for Writ of Certiorari to review the matter and then remand it back for further proceedings.

Dated: October 2, 2024

Respectfully submitted,

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