

Supreme Court, U.S.
FILED
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No. 24-528

IN THE
SUPREME COURT OF THE UNITED STATES

PHIL LYMAN
Petitioner,

v.

Spencer Cox, et al.
Respondent(s).

APPLICATION FOR EMERGENCY INJUNCTION
OF CERTIFICATION OF THE UTAH GENERAL ELECTION
FOR THE OFFICE OF GOVERNOR
PENDING REVIEW
OF WRIT OF CERTIORARI

Phil Lyman
Petitioner, *Pro se*
333 South Main Street
Blanding, Utah 84511
801-688-3594
phlyman@gmail.com

Stanford E. Purser
Deputy Solicitor General
PO Box 140858
Salt Lake City, Utah 84114
801-366-0375
spurser@agutah.gov

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SUPREME COURT, U.S.

This application is addressed to Justice Neil Gorsuch.

Petitioner, Phil Lyman, as candidate for Utah Governor, respectfully requests upon Application to this Court, pursuant to Rule 22 to grant an emergency injunction for the certification of the office for Utah Governor, as it is set to occur imminently on November 25, 2024, pending review by this Court of the petition for a writ of certiorari filed on October 17, 2024, and placed on the docket November 12, 2024, as case number 24-528.

Relief Requested

This case holds significant public importance, warranting an emergency injunction for the certification of the office for Utah Governor. Petitioner Lyman has challenged the validity of the primary election, which consequently calls into question the validity of the general election. Granting this injunction would allow the Petitioner—an aggrieved party who is the party nominee in accordance with the political party's internal procedures—time to obtain a writ of certiorari. The petition for a writ of certiorari seeks clarification on the authority of a state to require a candidate to participate in a direct primary election despite the candidate having received nomination from a political party through its convention process.

The Case Presented

Lyman seeks a writ of certiorari to review the Utah Supreme Court's ruling that allows state interference in a political party's candidate selection, citing *N.Y. State Bd. of Elections v. Lopez Torres*, 552 U.S. 196. The court denied Lyman's request, stating the state can mandate a direct primary, overriding the party's

convention nomination because Respondent Cox gathered enough signatures for the primary ballot. Although Lyman was nominated at the convention, the state argues that a losing candidate can gather signatures for a second chance at nomination through a direct primary, undermining the party's process.

Stay is Appropriate

This stay is appropriate and should be granted because the relief sought is not available from any other court or judge and this Court has already ruled that a state cannot force a direct primary in order to give a candidate a “second chance” to receive a political party's nomination. Petitioner Lyman sought relief from the Utah Supreme Court and was denied by the action of only one justice, even though the court consists of five, who ruled a state can mandate a candidate who won the nomination of the political party—through its convention process—to a direct primary. This gave the incumbent governor a second chance to win the nomination. This case holds significant national importance, as it pertains to a fundamental right of representation and organizational determination enshrined in the Constitution. It addresses the essence of a republican form of government guaranteed by Article IV, Section 4 of the United States Constitution, where the caucus and convention system operate in its purest form.

On March 5, 2024, the Utah Republican Party conducted its presidential caucus, allowing party members within their precincts to elect not only their presidential nominee but also their state and county delegates to represent them in the nomination process of county and state public offices. These delegates

subsequently elected Phil Lyman as the party nominee for Governor at the nominating convention held on April 27, 2024. According to the party's nominating rules, because Lyman received over 60% of the delegate votes, he was to proceed directly to the general election.

Contrary to the party's established nominating rules, Respondents forced Lyman to participate in a direct primary on June 25, 2024, and declared themselves the Utah Republican Party nominees for the November 5, 2024, general election, overriding the delegates' nomination. Lyman, in response to this legal breach, opted to run as a write-in candidate. Although Utah is still counting votes, as of November 20, 2024, the Petitioner has garnered 200,551 write-in votes, around 13.57% of the total. This highlights the significant support of the Petitioner. Phil Lyman represents that actual choice of bona fide Republicans, overwhelmingly, as confirmed through the rigorous caucus and convention process. Respondent Cox was booed continuously at the Party's convention, he was able to enjoy the support of Democrats registered as Republicans in the direct primary, and he benefited from an enormous financial advantage from incumbency to undermine the interests of Utah Republicans as expressed at the state convention.

Irreparable Harm

Given that the Republican Party is the dominant political force in Utah, with its candidates typically securing over 60% of the vote in statewide races, the stakes are particularly high. This situation underscores the extraordinary circumstances surrounding the rightful nominee for the office of the governor, necessitating

judicial intervention to ensure a fair and impartial review of Lyman's claims and avoid the irreparable harm that could befall Lyman.

The principal issue in the appeal is whether Respondents Cox and Henderson are legitimate candidates and if a candidate who gathers signatures can bypass a political party's nominating process and override delegate votes from a convention. This undermines the party's right of association and threatens irreparable harm to Lyman, the state of Utah, and the country, jeopardizing the individual right to assemble and select nominees through a republican form of government. Allowing Respondents to assume office before the petition is heard will exacerbate concerns regarding their legitimacy.

Likelihood of Success

The First Amendment protects the right of political parties to associate freely and select their candidates, recognizing that such participation is a vital function in our Nation and representation of its citizens. This Court has already affirmed these principles. See, e.g., *New York State Bd. Of Elections v. Lopez Torres*, 552 U.S. 196 (2008); *California Democratic Party v. Jones*, 530 U.S. 567 (2000); *Tashjian v. Republican Party*, 479 U.S. 208 (1986).

Equity and Public Interest

Protecting the caucus and convention processes is not just a party issue; it is a constitutional imperative necessary for preserving the republic and ensuring government responsiveness to the will of the people. Those who associate with the political party and participate in selecting its nominees through this method are

being vitiated, denying their rights to engage in the democratic process. A grant of stay by a Justice of the Supreme Court is needed to prevent the irreparable harm pending this review.

Without a stay to provide the necessary time to resolve the presented questions, irreparable harm will occur, leading to confusion and enabling individuals who seek to exploit the situation. This situation results in voter disenfranchisement, hindering meaningful participation in the political process. The electorate is frustrated, and allowing those reasonably perceived as illegitimate to assume office could trigger unnecessary civil discord.

This Court has previously granted emergency injunctions, illustrating how judicial intervention can affect electoral outcomes. The injunction in *Bush v. Gore* was pivotal, allowing the courts to resolve election disputes while reviewing certiorari on substantial national questions. See, e.g., *Bush v. Gore.*, 531 U.S. 98 (2000).

Considering these reasons, Lyman respectfully requests an emergency injunction to prevent the certification of the Respondents for the offices of Governor and Lieutenant Governor.

Respectfully submitted this 21st day of November, 2024.

/s/ Phil Lyman
Petitioner, *Pro se*
333 South Main Street
Blanding, Utah 84511
801-688-3594
phlyman@gmail.com