

No. 2024-0824, 24-528, 24A529

IN THE

Supreme Court of the United States

PHIL LYMAN, *Petitioner*

v.

SPENCER COX, ET AL., *Respondents*

On Petition for an Extraordinary Writ of Certiorari
to the Utah Supreme Court No. 20240824

**AMICUS CURIAE BRIEF IN SUPPORT OF
PETITIONER PHIL LYMAN BY TRENT
STAGGS, KRIS KIMBALL AND 216 UTAH
CONVENTION DELEGATES AND
REPUBLICANS, et. Al.**

Edward Lacy Tarpley, Jr.
EDWARD L. TARPLEY, JR. APLC
819 Johnston Street
Alexandria, LA 71301
Telephone: (318) 487-1460
Email: Ed@EdTarpley.com

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INTEREST OF PROPOSED *AMICUS CURIAE*

Those hoping to assist the Court as proposed *Amici Curiae*¹ are other candidates for elected office alongside Petitioner Phil Lyman, including voting delegates to the Utah Republican State Party Nominating Convention on April 27, 2024, affected in various ways by the unconstitutionality and/or misapplication of Utah's recently enacted SB 54 (2014).

Proposed *Amici* believe that the primary benefits to this Court from their brief is to assist this Court in understanding the diverse ways that the misapplication and invalidity of the SB 54 session law modifying Utah's Election Code Title 20A affects different offices, candidates, and convention delegates.

Previously, the Utah Supreme Court decided a case mistakenly discussed by others as deciding in favor of SB 54 when – to the contrary – in fact the decision declined to reach the questions.

The Utah Supreme Court ruled that party members have the right to choose their nomination method, *not the party*. *Utah Republican Party v. Cox*, 2016 UT 17, ¶5. Thereby the Utah Supreme Court thus denied *both* the party and its members the right to choose their

¹ No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amicus Curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

nomination method by dodging the question.

Thus, it is important for this Court to know that there is standing for this Court to consider and resolve one or more aspects of this dispute.

Amici Curiae believe that identifying to this Court the various ways that candidates and voters and convention delegates are affected by these mistakes may illuminate the circumstances and the issues and also demonstrate that the problem has widespread and broad-based effects not limited only to Phil Lyman.

First, U.S. Senate candidate Trent Staggs won the Utah Republican Party (“URP”) State Nominating Convention by more than the 60% threshold to become the nominee of the Utah Republican Party. He received 69.74% of the convention votes. Therefore, Staggs was entitled to the nomination for U.S. Senate of the Utah Republican Party.

The Utah State Government (“Utah”) had no right without trampling the First Amendment to the U.S. Constitution political association rights of the URP to decide its own nominee by its own internal processes to require Staggs to stand again for nomination at a primary election.

If the convention had failed to choose a nominee by 60% or more of the delegate votes, the URP Constitution and Bylaws would have required further proceedings only between the top two vote getters until a winner was determined. Ambiguously, this continuing voting among the

top two candidates until one emerges the winner could be pursued at the convention or at a primary.

However, even if the proper reading is to transition from convention to a primary, (a) Staggs won the nomination outright with 69.74% of the convention delegates thus putting the process to an end, and (b) alternatively only Trent Staggs and John Curtis were eligible under the URP Constitution and Bylaws to advance to a further round. *In either case (a) or (b) Trent Staggs would have won the Republican nomination and would now be the U.S. Senate-Elect from Utah.* The general election vote was roughly 62% Republican and 32% Democratic.

Instead, even though Staggs won the nomination at the convention, ending any further proceedings, Utah led by the Lt. Governor as chief election officer forced the URP to a primary where four (4) candidates divided the vote, causing Staggs to lose in the primary to Curtis even though Staggs had already won the nomination.

“If a candidate for an office receives 60% or more of the votes cast,” he or she would secure the Party's nomination for that office and “shall proceed to the general election.” Utah Republican Party Constitution, Article XII, Section 2.I. https://www.utgop.org/governing_documents. (If a candidate does not win 60% of the convention vote, then the top two – and only the top two – vote-getters advance to effectively a run-off.)

Second, Kris Kimball, Republican

candidate for State Board of Education, faced a nearly identical situation. She also received more than the 60% threshold to become the nominee of the Utah Republican Party. She received 65.54% of the convention votes.

In a nearly identical series of events, Kimball having already won the Republican nomination was nevertheless forced into a primary by the Utah State Government, where multiple candidates divided the vote. Whereas Kimball would have won the primary if only the top two candidates had divided the vote, Utah's enforced primary resulted in Kimball losing the primary against many candidates. Kimball's and Stagg's political message and appeal were similar and similar election results would be expected.

Third, 6 current (2024) and previous candidates for elected office as Republicans in Utah wish to be heard as *Amici Curiae*. Their bid for the Republican nomination since SB 54 went into effect in 2014 was also affected by Utah's requirement that the URP's nomination of its own chosen nominees must follow the primary process open to those who did not come in first or second in the state convention, but according to ballot access petition signatures.

Fourth, approximately 71 Republican Party state convention delegates as of this date have also asked to be heard as *Amici Curiae*. These are delegates who stood for being elected in local meetings to be delegates to the state convention. They are not mere observers to these proceedings. They actually voted for the nominee of the URP in

the state convention. Their votes were disregarded by Utah. Utah disregarded the state convention's nominations and instead switched them for a governmental primary election. They are listed in Exhibit 1. Their full addresses and contact information are on file if needed and are filed part of the URP's convention process.

Fifth, approximately 36 County Republican committee (unit) delegates have asked to be heard as *Amici Curiae*. Like the State convention delegates their votes were also disregarded under Utah's treatment of the nomination process "as mis-applied."

Sixth, 171 members of the Republican Party also wish to be heard as *Amici Curiae* urging that the Petition of Phil Lyman be granted and the constitutional issues be heard.

Seventh, 67 Utah voters also wish to be heard as *Amici Curiae* urging that the Petition of Phil Lyman be granted and constitutional issues be heard.

They are disenfranchised because they normally elect their neighbors and friends, whom they know and trust, to vet the candidates and elect the nominees. Their vote is disenfranchised because they voted at the first step, which was caucus meeting on March 5, 2024.

SUMMARY OF ARGUMENT OF THIS BRIEF

This Court has “often noted constitutional rights would be of little value if they could be indirectly denied.” *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)).

Initially, the parties have not slept on their rights since the passage of session law SB 54 in 2014 going into effect in 2015. Phil Lyman’s principal brief chronicles extensive proceedings on this and related questions during this entire period from 2014.

The Democratic Party of Utah (“UDP”) also joined the URP in these legal challenges, Democrats agreeing with Republicans alike that Utah’s post 2014 scheme harms any “continuing” parties.

This Court is not being asked to address these issues from scratch. However, *Amici* believe that the court cases previously have dodged the issues rather than resolving them.

In fact, the Utah Supreme Court considered the core questions in this Petition but admits to not being able to actually decide them: 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.”

Utah Republican Party v. Cox, 2016 UT 17, ¶7.

Therefore the Utah Supreme Court actually took up the question but did not reach a decision.

Furthermore, the Utah Supreme Court declined to answer the second question because it was “purely hypothetical and not ripe for review.” *Id.* at 8. “[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.” *Id.* at 9. The Court stated that there was no process identified “by which the [URP] could or would revoke the membership of a non-compliant candidate.” *Id.* at 9.

Furthermore, the circumstances are different because many of the candidates, some speaking here, exceeded the 60% threshold in 2024 to outright win the nomination at the convention. That was not a circumstance present in the previous explorations of this issue.

Therefore, Phil Lyman’s petition now presents a more compelling case. Nevertheless, the analyses in those prior cases is useful to this Court now and instructive.

The Utah State Government (“Utah”) led by the Lt. Governor as the chief election official,

imposes an unconstitutional condition.

Utah contends that it may exact a price in the abandonment by political parties of their constitutional rights for the price of Utah adding “(R)” or “(D)” next to the name of the nominee of the Republican Party or nominee for the Democratic Party on the general election ballot.

Under the unconstitutional condition doctrine, a State certainly can print things and include or not include “(R)” or “(D)” next to names. But that same State may not, this Court has held repeatedly, exact a price of citizens surrendering their constitutional rights in exchange.

We have said in a variety of contexts that "the government may not deny a benefit to a person because he exercises a constitutional right." *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 545, 103 S.Ct. 1997, 76 L.Ed.2d 129 (1983). See also, e.g., *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 59–60, 126 S.Ct. 1297, 164 L.Ed.2d 156 (2006) ; *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 78, 110 S.Ct. 2729, 111 L.Ed.2d 52 (1990). * * * Those cases reflect an overarching principle, known as the unconstitutional conditions doctrine, that vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up.

Koontz v. St. Johns River Water Mgmt. Dist., 133 S. Ct. 2586, 2594, 186 L. Ed. 2d 697, 570 U.S. 595, 604 (2013). See, also, *NAACP v. Button*, 371 U. S. 415, 371 U. S. 430 (1963); *Bates v. Little Rock*, 361 U. S. 516, 361 U. S. 522-523 (1960).

As Amicus Trent Staggs commented the main purposes of political parties is to nominate candidates, register voters in keeping with its voters, and promote the election of its nominees. Abandoning the ability of a party to nominate its chosen candidate and to communicate its nomination to general election voters cuts to the heart of the political association rights of a political party.

The freedom of association protected by the First and Fourteenth Amendments includes partisan political organization. *Elrod v. Burns*, 427 U. S. 347, 427 U. S. 357 (1976) (plurality opinion); *Buckley v. Valeo*, 424 U. S. 1, 424 U. S. 15 (1976). "The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." *Kusper v. Pontikes*, 414 U. S. 51, 414 U. S. 57 (1973).

As we have said, the freedom to join together in furtherance of common political beliefs "necessarily presupposes the freedom to identify the people who constitute the association." *Democratic Party of United States v. Wisconsin ex rel. La Follette*, 450 U. S. 107, 450 U. S. 122 (1981).

Tashjian v. Republican Party, 479 U.S. 208, 215 (1986)

Furthermore, strict scrutiny applies, or something like it, to the right of political association, political organizing, and political activities implied but long recognized under the First Amendment to the U.S. Constitution.

This Court's precedents have used the terminology of "close scrutiny" and debated whether "close scrutiny" is the same as "strict scrutiny."

"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. . . . Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.

NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460–61 (1958).

Quite apart from the foregoing, the aggregate limits violate the First

Amendment because they are not “closely drawn to avoid unnecessary abridgment of associational freedoms.” *Buckley*, 424 U. S., at 25. In the First Amendment context, fit matters. Even when the Court is not applying strict scrutiny, we still require “a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is ‘in proportion to the interest served,’ . . . that employs not necessarily the least restrictive means but . . . a means narrowly tailored to achieve the desired objective.” *Board of Trustees of State Univ. of N. Y. v. Fox*, 492 U. S. 469, 480 (1989) (quoting *In re R. M. J.*, 455 U. S. 191, 203 (1982)). **Here, because the statute is poorly tailored to the Government’s interest in preventing circumvention of the base limits, it impermissibly restricts participation in the political process.**

McCutcheon v. FEC, 572 U.S. 185, 218, 134 S. Ct. 1434, 188 L. Ed. 2d 468 (2014) (*emphasis added*).

But whatever the standard is called, Utah may not burden First Amendment rights without a compelling state interest and only then when narrowly tailored to that compelling state interest.

What then is Utah's compelling state interest in adding or not adding "(R)" or "(D)" next to the name of the nominee of the Republican Party or nominee for the Democratic Party on the general election ballot? Would earthquakes shake the State if Utah had to print "(R)" or "(D)" on the general election ballot?

No compelling state interest has been identified – nor can any be discerned – for Utah to regulate the placement of "(R)" or "(D)" next to the name of the nominee of the Republican Party or nominee for the Democratic Party on the general election ballot by completely rewriting the internal nomination procedures of the political parties.

Thus, Utah's regulation in SB 54 (now codified in various parts of Title 20A Election Code) falls as unconstitutional. Utah cannot constitutionally infringe on the First Amendment rights of any political party with no compelling state interest for doing so.

Indeed, Utah's regulation of party identification on the general election ballot fails even the "rational basis" test and on the contrary appears to be purely vindictive towards any who do not bow the knee and abandon their rights.

The challenged classification clearly cannot be sustained by reference to this congressional purpose. For if the constitutional conception of "equal protection of the laws" means anything, it must, at the very least,

mean that a bare congressional desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest. * * *

United States Dept. of Agriculture v. Moreno, 413 U.S. 528, 535 (1973)

But let us imagine that there were a compelling state interest. Is the requirement that a political party completely abandon its process for choosing a nominee, turn its entire process on its head, throw out the entire state convention, and force an expensive and unnecessary primary election a “*narrowly tailored*” regulation necessary to vindicate the “compelling state interest?” Once again, this is about whether to put an “(R)” or “(D)” next to the name of the party’s nominee.

Utah contends that because of the privilege of printing only three (3) characters after the party’s nominee it has the power to completely rewrite the party’s entire nomination process.

ARGUMENT

A. THE UTAH REPUBLICAN PARTY, UTAH DEMOCRATIC PARTY, AND UTAH CONSTITUTION PARTY ARE REGISTERED, CONTINUING POLITICAL PARTIES

Initially, as in other States, political parties which have already demonstrated their broad-based appeal in past elections need not do so again

and again. An independent candidate or an untested political party must gather petitions to be placed on the general election ballot to demonstrate their appeal is sufficient for a State to expend the resources to place them on the ballot and to avoid flooding the ballot and causing confusion.

States may require persons to demonstrate “a significant modicum of support” before allowing them access to the general-election ballot, lest it become unmanageable, *Jeness v. Fortson*, 403 U. S. 431, 442 (1971). Utah contends that it may demand a minimum degree of support for a primary ballot. (This makes little sense where a candidate has received 69.74% of the vote of the State-wide nominating convention.)

However, a continuing political party is placed on the general election ballot automatically because it has already met that test in past elections.

20A-9-202. Declarations of candidacy for regular general elections.

- (1) (a) An individual seeking to become a candidate for an elective office that is to be filled at the next regular general election shall:
 - (i) except as provided in Subsection (1)(c), file a declaration of candidacy in person with the filing officer on or after January 1 of the regular general election year, and, if applicable, before

the individual circulates nomination petitions under Section 20A-9-405; and

(ii) pay the filing fee.

(b) Unless expressly provided otherwise in this title, for a registered political party that is not a qualified political party, the deadline for filing a declaration of candidacy for an elective office that is to be filled at the next regular general election is 5 p.m. on the first Monday after the fourth Saturday in April.

(c) Subject to Subsection 20A-9-201(7)(b), an individual may designate an agent to file a declaration of candidacy with the filing officer if:

[unavailable within the State]

* * *

Utah Election Code 20A-9-202

(12) "Qualified political party" means a registered political party that:

* * *

(c) permits a member of the registered political party to seek the registered political party's nomination for any elective office by the member choosing to seek the nomination ***by either or both of the following methods:***

(i) seeking the nomination through the registered political party's convention process, in accordance

with the provisions of Section 20A-9-407; or
(ii) seeking the nomination by collecting signatures, in accordance with the provisions of Section 20A-9-408;

* * *

Utah Election Code 20A-9-101 (*emphasis added*).

Amici Curiae contend that the language “by either or both of the following methods:” excludes Utah’s interpretation that the Utah State Government may disregard the nomination of the Republican state convention and force candidates to undergo a primary regardless of whether the candidate has won the nomination at the convention.

Confirming this interpretation,

20A-9-401. “Primary elections” requires:

* * *

(2) This part may not be construed to govern or regulate the internal procedures of a registered political party.

The “part” referred to is Title 20 A, Chapter 9, Part 4 “Primary Elections.”

https://le.utah.gov/xcode/Title20A/Chapter9/20A-9-S401.html?v=C20A-9-S401_1800010118000101

Furthermore, Utah Election Code 20A-9-407 provides that (*Emphases added*):

20A-9-407. Convention process to seek the nomination of a qualified political party.

- (1) This section describes the requirements for a member of a qualified political party who is seeking the nomination of a qualified political party for an elective office **through the qualified political party's convention process.**
- (2) Notwithstanding Subsection 20A-9-201(7)(a), the form of the declaration of candidacy for a member of a qualified political party who is nominated by, or who is seeking the nomination of, the qualified political party under this section shall be substantially as described in Section 20A-9-408.5.
- (3) Notwithstanding Subsection 20A-9-202(1)(a), and except as provided in Subsection 20A-9-202(4), a member of a qualified political party who, under this section, is seeking the nomination of the qualified political party for an elective office that is to be filled at the next general election, shall:
 - (a) except as provided in Subsection 20A-9-202(1)(c), file a declaration of candidacy in person with the filing officer during the declaration of candidacy filing period described in Section 20A-9-201.5; and
 - (b) pay the filing fee.

* * *

- (5) Notwithstanding Subsection 20A-9-202(3)(a)(iii), a lieutenant governor candidate

who files as the joint-ticket running mate of an individual who is nominated by a qualified political party, under this section, for the office of governor shall, during the declaration of candidacy filing period described in Section 20A-9-201.5, file a declaration of candidacy and submit a letter from the candidate for governor that names the lieutenant governor candidate as a joint-ticket running mate.

- (6) (a) 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). * * *

- (7) **Notwithstanding Subsection 20A-9-701(2), the ballot shall, for each candidate who is nominated by a qualified political party under this section, designate the qualified political party that nominated the candidate.**

B. CONSTITUTIONAL VIOLATIONS ARE IN FACT OCCURRING, ALTHOUGH THEY SHOULD NOT BE UNDER UTAH LAW

No part of Title 20A, the Election Code of Utah, applies in contravention of the internal nomination procedures of a registered political party. Utah is prohibited from imposing its primary election procedures, rules, or regulations upon the nomination process of a political party.

Yet Utah is doing exactly that.

But... this Court may think... that error is a question of Utah's State level mistake. That's not correct. Because **as applied (or mis-applied)** Utah is in fact trampling the U.S. Constitutional rights of the *Amici*, the Petitioner Phil Lyman, and the voting delegates of the state convention. The fact that Utah should not be doing that does not change the fact that Utah is in fact doing that.

* * * 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).”

Lyman v. Cox, No. 2024 UT 35.

This analysis is flat wrong under the statutes of Utah. **And yet that is the ruling of the Utah Supreme Court that this Petition is an appeal from.** Incorrect or not, that is the rule that Utah is forcing upon the political parties.

Utah's treatment of this subject is unconstitutional as applied (as mis-applied).

Whether the State government arrives at an unconstitutional error intentionally, willfully, or through misapplication of statutes and rules, the end result is that the State is infringing upon constitutional rights. How we got here does not change that.

The actions of the Utah State Government *as applied* in this case – or more accurately as ***mis-applied in this case*** violate the constitutional rights of Phil Lyman and the *Amici* here, even where Utah should not be doing what it is in fact doing.

Utah's 20A-9-408 is not to the contrary. That statute on its face applies “**(1) This section describes the requirements for a member of a qualified political party who is seeking the nomination of the qualified political party for an elective office through the signature-gathering process described in this section.**” *Id.* (emphasis added).

Thus, the Utah statutes do not require ballot petition signature gathering but only describe the procedures *if* that method is being used. Yet the Utah Supreme Court – again in the decision being appealed from here – and the Utah State Government are in fact forcing an unconstitutional requirement on the *Amici*.

Utah's 20A-9-409 provides (*emphases added*):

* * *

(2)

(a) A qualified political party that nominates one or more candidates for an elective office under Section 20A-9-407 and does not have a candidate qualify as a candidate for that office under Section 20A-9-408, may, **but is not required to, participate in the primary election for that office.**

(b) A qualified political party that has only one candidate qualify as a candidate for an elective office under Section 20A-9-408 and does not nominate a candidate for that office under Section 20A-9-407, **may, but is not required to, participate in the primary election for that office.**

C. SB 54 SESSION LAW AMENDMENTS VIOLATE THE REPUBLICAN PARTY'S CONSTITUTIONAL RIGHTS

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. *Democratic Party of United States v. Wisconsin ex rel. La Follette*, 450 U. S. 107, 122 (1981); *California Democratic Party v. Jones*, 530 U. S. 567, 574–575 (2000).

In *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 without compelling justifications, it would be unconstitutional.”

Utah Republican Party v. Cox, 892 F.3d 1063, 1095 (10th Cir. 2018) (*Tymkovich dissenting*) (*emphasis added*).

SB 54 "substitute[s]" the Utah legislature's "judgment for that of the party as to the desirability of a particular internal party structure." *Id.*

The court rejected the State's argument that the ban served a compelling state interest in preventing internal party dissension and factionalism: "The government simply has no legitimate interest in protecting political parties from disruptions of their own making." *Id.* at 834.

The court noted, moreover, that the State had not shown that banning primary endorsements protects parties from factionalism. *Ibid.* The court concluded that the ban was not

necessary to protect voters from confusion, stating, "California's ban on preprimary endorsements is a form of paternalism that is inconsistent with the First Amendment." *Id.* at 836.

The Court of Appeals also found that California's regulation of internal party affairs "burdens the parties' right to govern themselves as they think best." *Id.* at 827. This interference with the parties' and their members' First Amendment rights was not justified by a compelling state interest, for a State has a legitimate interest "in orderly elections, not orderly parties." *Id.* at 831. In any event, the court noted, the State had failed to submit

"a shred of evidence," id. at 833 (quoting Civ. No. C-83-5599 (ND Cal. May 3, 1984)), that the regulations of party internal affairs helped minimize party factionalism. Accordingly, the court held that the challenged provisions were unconstitutional under the First and Fourteenth Amendments.

IIA State's broad power to regulate the time, place, and manner of elections

"does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens."

Eu v. S.F. Cty. Democratic Cent. Comm., 489 U.S. 214, 222 (1989).

To assess the constitutionality of a state election law, we first examine whether it burdens rights protected by the First and Fourteenth Amendments. *Id.* at 479 U. S. 214; *Anderson v. Celebrezze*, 460 U. S. 780, 460 U. S. 789 (1983). If the challenged law burdens the rights of political parties and their members, it can survive constitutional scrutiny only if the State shows that it advances a compelling state interest, *Tashjian, supra*, at 479 U. S. 217, 479 U. S. 222; *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U. S. 173, 440 U. S. 184 (1979); *American Party of Texas v. White*, 415 U. S. 767, 415 U. S. 780, and n. 11 (1974); *Williams v. Rhodes*, 393 U. S. 23, 393 U. S. 31 (1968), and is narrowly tailored to serve that interest, *Illinois Bd. of Elections, supra*, at 440 U. S.

185; *Kusper v. Pontikiss*, 414 U. S. 51, 414 U. S. 58-59 (1973); *Dunn v. Blumstein*, 405 U. S. 330, 405 U. S. 343 (1972).

Id., 489 U.S. at 222.

SB 54's redesign of 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. Rather than deeply involved members who can get to know potential nominees personally, Utah's SB 54 replaces the nomination process with those who often do not know the party's candidates for the nomination but instead are victims of big-money campaign expenditures buying votes with mailers and radio and television ads.

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 entrenched Party leaders. The new signature-gathering method for nominations has led to more status quo candidates, as Count My Vote intended.

This process has produced "nominees and nominee positions other than those the part[y] would choose if left to [its] own devices." *California Democratic Party v. Jones*, 530 U.S. 567, 582, 120 S.Ct. 2402, 147 L.Ed.2d 502 (2000)

To advance the transparent purpose of altering the outcomes of elections in Utah, a citizen group Count the Votes starting in 2013 pressured the legislature to amend election laws in Utah by session law SB 54 which passed in 2014. That is, rather than winning elections for its agenda at the ballot box special interest groups manipulated the nomination process directly.

D. RIGHT OF POLITICAL ASSOCIATION INCLUDES THE RECOGNIZED RIGHT TO EXCLUDE

Amici contend that Utah's treatment is an unconstitutional infringement of the Republican party's right of political association and political organizing implied but well-recognized as rights under the First Amendment to the U.S. Constitution.

The law violates the right not to associate with an unwanted candidate, a "corollary of [its] right to associate." *California Democratic Party v. Jones* at 574, 120 S.Ct. 2402.

In no area is the political association's right to exclude more important than in the process of selecting its nominee. That process often determines the party's positions

on the most significant public policy issues of the day, and even when those positions are predetermined it is the nominee who becomes the party's ambassador to the general electorate in winning it over to the party's views. See *Timmons v. Twin Cities Area New Party*, 520 U. S. 351, 372 (1997) (STEVENS, J., dissenting) ("But a party's choice of a candidate is the most effective way in which that party can communicate to the voters what the party represents and, thereby, attract voter interest and support").

Id. at 575 and 120 S.Ct. at 2402.

The U.S. Supreme court ruled that California's scheme was unconstitutional in part because it created the possibility parties would be "saddled with an unwanted, and possibly antithetical, nominee." *Id.* at 579–81, 120 S.Ct. 2402.

Yet under Utah's 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.

E. UTAH MIS-APPLIES ITS STATUTES

After imposing a primary on the URP, Utah then also incorrectly imposed petition-gathering requirements that do not apply.

Confusing a scenario in which a candidate seeks to be on the general election ballot without being the nominee of a registered political party with what is in effect, in substance, a run-off for the Republican nomination, Utah requires candidates for the party primary to start over from scratch and compete in a primary as if the party convention had never occurred.

This scrambles the voting process and the candidates. Thus Utah failed to recognize that Staggs won the GOP nomination at the convention but the misapplication of SB 54 (2014) then created a whole new set of candidates in the primary, resulting in the party nominee not winning its own primary election.

Utah ignores in the petition gathering process for the primary that the Party convention had disqualified some candidates.

As Lyman's principal extraordinary writ petitioning for *certiorari* explains on page 8:

"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 [15 See, Utah Code 20A-9-406(5).]

And further explains:

“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 [See Utah Code 20A-9-101(13)(a).]

F. GUARANTEE OF A REPUBLICAN FORM OF GOVERNMENT

Finally, the foregoing principles and concerns are undergirded by the force of Article IV, Section IV of the U.S. Constitution. Those considerations recognized by this Court over time become enforced and enforceable by the guarantee of the Constitution that a State shall have a republican form of government.

Naturally, the term as understood by the drafters of the U.S. Constitution has nothing to do with the names of political parties today. And this Court has rarely addressed this guarantee and has analyzed it differently at times, sometimes contrasting a pure democracy with a constitutional republic. Nevertheless, the guarantee should lead us not to dismiss lightly the importance of the electoral process and the rule of law.

CONCLUSION

Amici asks the Court to consider these circumstances, details and analyses and to support

the Petition of Phil Lyman and ask that the Court grant a *writ of certiorari* and injunction.

Respectfully submitted, *BY COUNSEL*
/s/ Edward Lacy Tarpley, Jr.
Edward Lacy Tarpley, Jr. Esq.
Edward L. Tarpley, Jr. APLC
819 Johnston Street
Alexandria, LA 71301
Telephone: (318) 487-1460
Email: Ed@EdTarpley.com

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APPENDIX 1

Complete contact information is available and indeed the State and County delegates filed with the State Republican Party and County Republican Committees as delegates with their complete contact information. Candidates have filed declarations of candidacy with contact information. Nevertheless, to avoid third party mis-use of the information outside the court procedure only the names are provided here.

TRENT STAGGS, Utah Republican Party
Convention Nominee for United States Senate

KRIS KIMBALL, Candidate for Utah State
School Board

STATE CONVENTION	DELEGATES
Tracie Halvorsen Amy Lloyd Jennifer Garner Phoebe Fournier Heather Rasmussen Rachel Thomas Shelly Witt Dala Evans	Casey Gale Jennifer Savage Blaine Nay Ashley Baker Charles Beickel Janet Eyring Kathryn Gritton Todd Holland

Angela Applonie	James Owens
Sarah Bailey	Karen Ballash
Marcy Baliel	Jeri Brooke
Maryann Christensen	Jensen Vasic
Kimber Furr	Glen Sjoberg
Richard Genck	April Pinkston
Ilene Hacker	Nathan Affleck
Linzi Hansen	Dawn Bates
Edwin Holland	Rebecca Colley
Michele Lee	Brenda Griffith
Susan Lee	Patricia Kent
Shannon Macinnes	Gary Leany
Pamela McKinnon	Leisa Lingwall
Janet Monsen	Kriss Martenson
Lynda Ogden	Renelle McEwan
Quinn Kotter	Rosie Moore
Shirley Hutson	Stephanie Pena
Jennifer Pennington	Kendall Perry
Kaye Sanderson	Elizabeth Rivera
Patrick Sherrill	Michelle Roberts
Melanie Sorensen	Chuck Stewart
Patricia Sprunt	Hoc Vu
Eleni Wilding	Bruce Miklautsch

Mark Ziegler	Connie Peterson
Sandra Layland	Jennifer Eaves
David Johnson	William Olson
Michael Hirschi	
Neil Sebring	
Tony Lawrence	

COUNTY CONVENTION DELEGATES	
Guy Smith	Kristin Richey
Melissa Brisko	Michelle Robb
Lorrie Callaway	Barbara Shelton
Lisa Campbell	Tiffany Skelton
Denise Clark	Heather Fry
Jay Clark	Maria Dowdle
Tonya Clark	Seth Stewart
Mark Colley	Steven Stromness
Cassidy Cowley	Rhanda Todd
Rulon Crandall	Lynn Tromley
Joyce Dea	Janet Tyler
Maria Dowdle	Jessica Walters
Don Guymon	Candis Ward

Sheila Killeen	Lynda Olsen
Anne Knizley	Catherine Paquette- Richardson
Lori Lisonbee	Patricia Jones
Jan Ostler	Wendy Ruf
Kim Pack	
Teena Horlacher	

CANDIDATES (PREVIOUS AND CURRENT)	
Christopher Herrod	Carlton Bowen (Independent)
Alena Ericksen	
Andrew Badger	
Steven Aste	
Christina Boggess	

REPUBLICAN PARTY MEMBERS

Steven Huber

Jilene Burger

Catherine Duke

Angie Martun

Elisha Peterson

Michelle Peterson

George Pollard

Shelley Scholzen

Jilene Burger

Robert Brooke

RoMay Allen

Breonah Anderson

David Arnold

Carol Bartz

Camille Bell

Cheryl Bird

Jennifer Black

David Blair

Shellene Bown

Jen Brown

Deborah Connor

Adam Coulter

Joseph Lyman

Sabrina Lytle

Sue Mantyla

Carolyn Manwaring

Kellie Martenson

Angie Martin

Genise Martin

Cheri Maughan

Connie May

Victor May

Lisa McConnell

Julie Mohler

Ranae Murphy

Rebecca Olson

Cameron Ortiz

Melanee Oteo

Kevin Park

C Smith

Sandra Smith

Violet Snyder

Ann Tolley

Nadine Washburn

James DeSpiegelaere	Brenda Watkins
Catherine Dunn	Dale Whittle
Troy Duran	Tammy Williams
Penni Eads	Lee Young
Chad Ellis	Kathleen Clark
Lyska Emerson	Sydnee Stowe
Darla Everill	Dr. Kristin N Isham
Laurel Fetzer	Tami Hirsch
Craig Foster	Karolyne Johnson
Rick Funk	Jennifer Chamberlain
Brent Garner	Kurt Griffith
Emily Green	Annamarie Reed
Michael Hafen	Elizabeth Carlin
Daniel Hansen	Tamara Long
Rick Harper	Debbie Gerrity
James Harwell	Jon Thomas
Charles Parker	Sheena Brady
Winnie Seamons	Barbara Garrett
Bridgette Server	Amy Kraync
Kevin Thompson	Dan Cooper
Debra Hendrickson	Jerome Halgren
Paul Hertzberg	Barbara Brewer
Trina Hertzberg	Natalee Pemberton

Heber Hess	Jim Perkins
Garth Hood	Louene Perry
Maren Ingles	Shauna Phelps
Justin Jamison	Braden Rasmussen
Jeanie Jenkins	Hannah Rasmussen
Evelyn Jensen	Kevin Richey
Jodi Johnson	Derrick Ricks
Robert Judd	Caleb Sanchez
Debra Korsack	Judy Sceili
Lanae Larson	Judith Hay
Marilyn Larson	Brit Server
Gaye Latimer	Jennie Shaw
Julia Lee	Jacob Sorensen
Dave Liffick	Mary Stewart
Marilyn Light	Anthony Tahy
John Loveland	Jennifer Vallem
Francis Lyman	Blaine Murray
Linnea Pearson	Jeffrey Ostler
Bruce Williams	Nicole Eversull
Marie Coletti	

Utah Voters

Matt Adams	Karlene Kidman
Zoey Adams	Cindy Lindsay
Lilia Allen	Cindi MacDonnell
Kenya Amann	Dana McCabe
Sonja Booker	Carola Michel
Natalie Brisk	Paula Moxley
Jennifer Brown	Eric Myers
Alan Bylund	Melissa Nichols
Melanie Cameron	Marilyn Oveson
Josiah Campbell Sanchez	Benjamin Parker
Hailey Carmichael	Marilyn Poulsen-Jones
Vicki Christian	Judy Rapp
Julian Chung	Aida Reynolds
John Collings	Sharon Sadd
Laura Collings	Laura Sanger
Wendi Cordon	Ronald Seamons
Aaron Corsi	James Speidel
Doug Court	Jessy Spruell
Brendan Dalley	Cara Street
Toni Davis	Dawn Sutherland
Ryan Dowdle	Rick Sutherland
David Else	Catherine Tanner
Renae Fillmore	Bob Taylor

James Fournier	Ginger Taylor
Christine Garcia	Leslie Wilkins
Gary Greene	Kathy Young
Liesa Hafen	Jennifer Pate
Robert Hall	Michele Wright
Donald Hansen	Ili Tiffany Jessop
Matt Hawker	Elizabeth Jewkes
Rachelle Hawker	Brooke Jones
Eric Haws	Cindy E Jones
Brad Holdaway	Mark Jones
	Mary Judd

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