Exhibit 0061

Phil Lyman
Petitioner Pro *se*
333 South Main Street
Blanding, Utah 84511
435-459-2800
phlyman@gmail.com

If you do not respond to this document within applicable time limits, judgment could be entered against you as requested.

SUPREME COURT OF UTAH
450 S. State St.
Salt Lake City, UT 84111

Phil Lyman,

Petitioner,

v.

SPENCER COX, as the individual who is allegedly nominated as the Utah Republican Party nominee,

DEIDRE HENDERSON, Lieutenant Governor of the State of Utah, in her official capacity as chief election officer and authorized agent for the State of Utah and as the individual who is allegedly nominated,

ROBERT AXSON, Utah Republican Party State Party Officer, and Chair, in his official capacity as party liaison with the Lieutenant Governor,

UTAH REPUBLICAN PARTY, Political Party qualified to participate in a Utah election,

Respondent(s.)

Motion for Expedited Preliminary Injunction and Briefing Schedule

Case No. 20240824-SC

MOTION FOR EXPEDITED PRELIMINARY INJUNCTION AND BRIEFING SCHEDULE

1. As more fully set forth in Petitioner's Motion and supporting Memorandum of Law, Petitioner Lyman respectfully requests this Court order an expedite briefing and hearing and Petitioner's pending motion to enjoin the Respondents to: 1) prevent Respondents from certifying any candidates, including those eliminated by receiving less than 60% of votes at the Utah Republican Party Convention, as nominees for the Utah Republican Party; 2) prevent Respondents from placing these candidates' names on the general election ballot; 3) prevent Respondents from approving any legislative bills during Special or General Sessions that would affect the results of this case until all matters have been resolved; and 4) stop Respondents from declaring, promoting, and endorsing incorrect nominees, including halting all related party donations, publications, and provision of party data to them.

2. An expedited briefing and hearing schedule are necessary to preserve First Amendment rights that will be irreparably damaged if the errors and correct application of law are not corrected before the ballots are to be sent out for the general election to be held on November 5, 2024.

3. The Respondents have promoted individuals as the Utah Republican Party nominee without adhering to the proper procedures as outlined by the party constitution, convention, and election laws, causing significant and irreparable harm to Petitioner Lyman and the integrity of the election process.

4. Any delay in preventing continued irreparable harm will further exacerbate the harm suffered by Petitioner Lyman and undermine public confidence in the election process.

5. Rule 23C of the Utah Rules of Appellate Procedure allows for expedited consideration of motions and reviews when time is of the essence and irreparable harm is imminent. Petitioner meets the criteria for expedited relief as the upcoming election and related activities are imminent and immediate judicial intervention is necessary to prevent the "significant risk that he will experience harm that cannot be compensated after the fact by money damages." *RoDa Drilling Co. v. Siegal, 552 F.3d 1203, 1210 (10th Cir. 2009).*

Substantial Likelihood Applicant Will Prevail on Merits

6. As more fully set forth in the Petitioner's Motion for Preliminary Injunction, this is a straightforward case. In fact, Petitioner Lyman asserts that the prevailing binding precedent decisively supports the Petitioner's request for injunctive relief. The strength of this case is such that the Respondents should promptly concede the issue, demonstrating to the people of Utah that, despite any embarrassment they may face, they are committed to upholding justice and the Constitution to which they have sworn allegiance.

7. Accordingly, Petitioner Lyman contends that the requested injunction is appropriate as a matter of well-established case law and based on the undisputed facts of this case. Petitioner Lyman argues that Respondents cannot offer any good faith argument in support of the notion that a state can mandate a candidate to participate in a direct

primary when he has already achieved the party's nominee status through the party's convention process. Forcing Petitioner Lyman to participate in a direct primary election upends the First Amendment. Such a requirement intrudes on Petitioner Lyman's right to free association, undermining the democratic principles that protect the autonomy of political parties — and an individual right to associate with them — to determine their nominees through their chosen methods.

8. The respondents in the Supreme Court Case, *New York State Board of Elections v. Lopez Torres* are candidates who failed to secure the nominations of their parties who had filed suit in the United States District Court for the Eastern District of New York, contending that New York's convention system violated the First Amendment rights of challengers against candidates favored by party leaders. They sought an injunction mandating a direct primary election to select Supreme Court nominees. The District Court gave the relief requested, the Second Circuit affirmed, and the Supreme Court of the United States reversed the judgment and held that New York's election law for convention did not violate the respondents' First Amendment rights. During Justice Scalia's Opinion Announcement of this case on January 16, 2008, Justice Scalia profoundly states "we have permitted States to set their faces against party bosses by requiring party candidate selection through processes more favorable to insurgence such as the direct primary that respondents seek, but to say that the State can – [can] require this is a far cry from saying that the Constitution demands it." Justice Scalia confirmed none of the Supreme Court cases establish a candidate's constitutional right to have a "fair shot" at winning a party's nomination. In Utah, candidates who fail to obtain their party's nomination can still get on

the general election ballot by submitting a declaration of candidacy as a write-in candidate. *See UCA § 20A-9-601* This ensures that Respondents have an opportunity to appear on the general election ballot, "…which is all the protection of their asserted interest requires…" Respondents are inappropriately applying and interpreting the law, denying the "…special factor of the voter's party loyalty...,"only "…turns the First Amendment on its head." — *Justice Scalia, New York State Board of Elections v. Lopez Torres Opinion Announcement - January 16, 2008*

Irreparable Harm Without Preliminary Relief

9. As demonstrated further in Petitioner's Motion for Preliminary Injunction, Petitioner Lyman is experiencing irreparable harm that cannot be compensated by monetary damages due to the exclusion of his name from ballots and the promotion of the wrong party nominee. This harm includes but it is not limited to the trust in the sanctity of free and fair elections, and the "loss of First Amendment right freedoms…," which "…for even minimal periods of time, unquestionably constitutes irreparable injury." *Garbett v. Herbert, 458 F. Supp. 3d 1328, 1349, 2020 BL 160572, at *18 (D. Utah 2020)*

10. The irreparable harm of denying Petitioner Lyman's benefit of becoming the Utah Republican Party nominee through the convention process, effectively punishes and discourages the exercise of the very freedoms that our Constitution protects. Indirectly violating the Petitioner, and members of his political party, right of association, achieving a result that the government is not allowed to impose directly. Be it directly or indirectly, this still is a violation of constitutional rights and is not permissible. "For 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 would allow the government to 'produce a result which [it] could not command directly.'" *Speiser v. Randall, 357 U. S. 513, 526.* "Such interference with constitutional rights is impermissible." *408 U. S., at 597.*

11. Irreparable harm could also extend to Respondent Cox, depending on the possible legal consequences arising from his alleged involvement in the counterfeit ballots, Cox will need to decide whether to qualify as a 'write-in' candidate under Utah Code 20A-9-601. He must make this decision by September 1, 2024. If he lacks sufficient time to consider his options and file the necessary paperwork, he could suffer irreparable harm.

12. In conducting a review of relevant facts and as, Petitioner Lyman has already suffered irreparable harm, which cannot be compensated by monetary damages, and stands to suffer even greater non-monetary irreparable harm without the requested relief. This harm extends to the people of the state of Utah, and with the general election rapidly approaching, it underscores the need for an expedited review of this case to ensure timely resolution and to protect the integrity of the election process.

Applicant's Threatened Injury Outweighs Respondents' Injunction Damage

13. As demonstrated further in Petitioner's Motion for Injunctive Relief, the balance of equities favors granting the requested relief. The irreparable harm to Petitioner Lyman and the public's trust in the election process outweighs any potential inconvenience or bruised egos of the Respondents.

14. Expediting the review of this case, will only provide clarity sooner and avoid causing Petitioner any further irreparable harm of keeping him off the general election ballot, an "experience harm that cannot [*6] be compensated after the fact by monetary damages." Greater Yellow-stone Coal v. Flowers, 321 F.3d 1250, 1258 (10th Cir. 2003) (quoting Adams v. Freedom Forge Corp., 204 F.3d 475, 484-85 (3d Cir. 2000)) (emphasis omitted).

Public Interest

15. Granting the expedited preliminary injunction and setting an expedited briefing schedule only serves the public interest by ensuring that the election process adheres to established legal principles and maintains public confidence in free and fair elections.

16. Because the manner of making and certifying nominations and of preparing official ballots is a matter that not only concerns every officer whose duty it is to pass upon and file nomination certificates and from them prepare the official ballot, but it is also a matter of general public interest and concern to have the statute governing these matters construed. *Payne v. Hodgson, 97 P. 132, 135 (Utah 1908)*

17. The quicker this case is reviewed, the better it serves the public interest. While it is crucial for the will of the voters to be respected, it is equally important to uphold individual rights. *Grayeyes v. Cox, No. 4:18-cv-00041, 2018 BL 285711, at *5 (D. Utah Aug. 9, 2018)* An expedited review will ensure that both public interests and individual rights are protected and properly addressed.

Statement of Facts Justifying Emergency Action

18. Petitioner Lyman has already experienced significant irreparable harm due to the improper forced primary election participation and promotion of other candidates being promoted as the Utah Republican Party Nominee. Petitioner Lyman must resume campaigning for the general election, which is hindered by the ongoing uncertainty and improper certification of candidates who were eliminated through the convention process.

19. The general election is rapidly approaching, and ballots are being prepared. Any delay in resolving these issues will result in irreversible harm to Petitioner Lyman and the election process. The issues related to the primary election can be readily resolved and communicated to the members of the Utah Republican Party and there is still time to place the Petitioner's name on the general election ballot. However, this case must be addressed and resolved as quickly as possible and before the general election proceeds to ensure fairness and compliance with the party's established nomination process of how they choose their candidates.

20. A swift review of this case will enable Petitioner Lyman to resume his campaign and uphold the integrity of the election process. It is imperative that the court grants motion to expedite scheduling order and for preliminary injunction. This will ensure that only the rightful nominees, as determined by the Utah Republican Party nomination process, are certified and listed on the general election ballot.

21. It is well within the capacity of a sitting lieutenant governor to seek judicial clarification, as described in UCA § 20A-1-105(10) and by URAP Rule 46 and especially

given that the office is equipped with government attorneys. Petitioner's Motion for Preliminary Injunction demonstrates this clearly. However, Respondents failed to seek such clarification on how candidates emerging from the Utah Republican Party convention should be treated in relation to primary elections. As a result, we are now in a critical time crunch to resolve this issue promptly to prevent further harm to Petitioner Lyman and other impacted candidates who rightfully belong on the general election ballot.

22. Moreover, there is a risk that new legislation could be enacted during Special or General Sessions, which might alter election laws and potentially render some issues in this case moot, causing further harm. It is essential to resolve the questions raised by Petitioner Lyman to provide clarity to party members on questions they have been asking for quite some time and ensure the integrity of the nominating process. "Mootness is a threshold issue because the existence of a live case or controversy is a constitutional prerequisite to federal court jurisdiction." *McClendon v. City of Albuquerque, 100 F.3d 863, 867 (10th Cir. 1996) (citing Beattie v. United States, 949 F.2d 1092, 1093 (10th Cir. 1991).* It is not enough that the dispute was alive when the case was filed; "the parties must continue to have a personal stake in the outcome" at all stages of the judicial proceedings. *Id.* History has proven, the governor and legislators frequently call Special Sessions in response to election-related cases and claims, which have adversely affected petitioners by altering laws relevant to their cases and potentially rendering their issues irrelevant. The current state offices held by Respondents Cox and Henderson give them ability during legislative sessions to influence and manipulate state laws that could unfairly disadvantage

Petitioner Lyman in his pursuit of justice through the judicial system causing him irreparable harm.

Conclusion

23. The facts demonstrate an urgent need for judicial action to protect the rights of Petitioner Lyman, facilitate his campaign efforts, and maintain the integrity of the nomination and electoral process. Immediate relief is necessary to prevent ongoing and future irreparable harm, maintain public trust, and ensure compliance with established party and election laws.

Relief Requested

For the foregoing reasons, Petitioner Lyman is entitled to relief and respectfully requests that this Court:

1. Grant Motion to expedite Motion for Preliminary Injunction to: 1) prevent Respondents from certifying any candidates, including those eliminated by receiving less than 60% of votes at the Utah Republican Party Convention, as nominees for the Utah Republican Party; 2) prevent Respondents from placing these candidates' names on the general election ballot; 3) prevent Respondents from approving any legislative bills during Special or General Sessions that would affect the results of this case until all matters have been resolved; and 4) stop Respondents from declaring, promoting, and endorsing incorrect Republican nominees, including halting all related party donations, publications, and provision of party data to them.

2. Grant an expedited briefing and hearing schedule necessary to preserve First Amendment rights that will be irreparably damaged if the errors and correct application of law are not corrected before the ballots are to be sent out for the general election to be held on November 5, 2024.

3. Grant any other relief that the Court deems just and proper.

I, Phil Lyman, Petitioner, certify that the motion is presented in good faith and not for delay. Respectfully submitted this 12th day of August 2024.

By: /s/ Phil Lyman
Pro *Se*

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August 2024, I filed the foregoing Motion for Expedited Preliminary Injunction and Briefing Schedule with the Clerk of Court by email.

I further certify that, pursuant to Utah Rule of Appellate Procedure 21, all other Respondents were served a copy of this motion email.

/s/ Phil Lyman

Phil Lyman
Petitioner Pro *se*
333 South Main Street
Blanding, Utah 84511
435-459-2800
phlyman@gmail.com

If you do not respond to this document within applicable time limits, judgment could be entered against you as requested.

SUPREME COURT OF UTAH
450 S. State St.
Salt Lake City, UT 84111

Phil Lyman,

Petitioner,

v.

SPENCER COX, as the individual who is allegedly nominated as the Utah Republican Party nominee,

DEIDRE HENDERSON, Lieutenant Governor of the State of Utah, in her official capacity as chief election officer and authorized agent for the State of Utah and as the individual who is allegedly nominated,

ROBERT AXSON, Utah Republican Party State Party Officer, and Chair, in his official capacity as party liaison with the Lieutenant Governor,

UTAH REPUBLICAN PARTY, Political Party qualified to participate in a Utah election,

Respondent(s.)

Motion for Expedited Preliminary Injunction and Briefing Schedule

Case No. 20240824-SC

MOTION FOR EXPEDITED PRELIMINARY INJUNCTION AND BRIEFING SCHEDULE

1. As more fully set forth in Petitioner's Motion and supporting Memorandum of Law, Petitioner Lyman respectfully requests this Court order an expedite briefing and hearing and Petitioner's pending motion to enjoin the Respondents to: 1) prevent Respondents from certifying any candidates, including those eliminated by receiving less than 60% of votes at the Utah Republican Party Convention, as nominees for the Utah Republican Party; 2) prevent Respondents from placing these candidates' names on the general election ballot; 3) prevent Respondents from approving any legislative bills during Special or General Sessions that would affect the results of this case until all matters have been resolved; and 4) stop Respondents from declaring, promoting, and endorsing incorrect nominees, including halting all related party donations, publications, and provision of party data to them.

2. An expedited briefing and hearing schedule are necessary to preserve First Amendment rights that will be irreparably damaged if the errors and correct application of law are not corrected before the ballots are to be sent out for the general election to be held on November 5, 2024.

3. The Respondents have promoted individuals as the Utah Republican Party nominee without adhering to the proper procedures as outlined by the party constitution, convention, and election laws, causing significant and irreparable harm to Petitioner Lyman and the integrity of the election process.

4. Any delay in preventing continued irreparable harm will further exacerbate the harm suffered by Petitioner Lyman and undermine public confidence in the election process.

5. Rule 23C of the Utah Rules of Appellate Procedure allows for expedited consideration of motions and reviews when time is of the essence and irreparable harm is imminent. Petitioner meets the criteria for expedited relief as the upcoming election and related activities are imminent and immediate judicial intervention is necessary to prevent the "significant risk that he will experience harm that cannot be compensated after the fact by money damages." *RoDa Drilling Co. v. Siegal, 552 F.3d 1203, 1210 (10th Cir. 2009).*

Substantial Likelihood Applicant Will Prevail on Merits

6. As more fully set forth in the Petitioner's Motion for Preliminary Injunction, this is a straightforward case. In fact, Petitioner Lyman asserts that the prevailing binding precedent decisively supports the Petitioner's request for injunctive relief. The strength of this case is such that the Respondents should promptly concede the issue, demonstrating to the people of Utah that, despite any embarrassment they may face, they are committed to upholding justice and the Constitution to which they have sworn allegiance.

7. Accordingly, Petitioner Lyman contends that the requested injunction is appropriate as a matter of well-established case law and based on the undisputed facts of this case. Petitioner Lyman argues that Respondents cannot offer any good faith argument in support of the notion that a state can mandate a candidate to participate in a direct

primary when he has already achieved the party's nominee status through the party's convention process. Forcing Petitioner Lyman to participate in a direct primary election upends the First Amendment. Such a requirement intrudes on Petitioner Lyman's right to free association, undermining the democratic principles that protect the autonomy of political parties — and an individual right to associate with them — to determine their nominees through their chosen methods.

8. The respondents in the Supreme Court Case, *New York State Board of Elections v. Lopez Torres* are candidates who failed to secure the nominations of their parties who had filed suit in the United States District Court for the Eastern District of New York, contending that New York's convention system violated the First Amendment rights of challengers against candidates favored by party leaders. They sought an injunction mandating a direct primary election to select Supreme Court nominees. The District Court gave the relief requested, the Second Circuit affirmed, and the Supreme Court of the United States reversed the judgment and held that New York's election law for convention did not violate the respondents' First Amendment rights. During Justice Scalia's Opinion Announcement of this case on January 16, 2008, Justice Scalia profoundly states "we have permitted States to set their faces against party bosses by requiring party candidate selection through processes more favorable to insurgence such as the direct primary that respondents seek, but to say that the State can – [can] require this is a far cry from saying that the Constitution demands it." Justice Scalia confirmed none of the Supreme Court cases establish a candidate's constitutional right to have a "fair shot" at winning a party's nomination. In Utah, candidates who fail to obtain their party's nomination can still get on

the general election ballot by submitting a declaration of candidacy as a write-in candidate. *See UCA § 20A-9-601* This ensures that Respondents have an opportunity to appear on the general election ballot, "…which is all the protection of their asserted interest requires…" Respondents are inappropriately applying and interpreting the law, denying the "…special factor of the voter's party loyalty...,"only "…turns the First Amendment on its head." — *Justice Scalia, New York State Board of Elections v. Lopez Torres Opinion Announcement - January 16, 2008*

Irreparable Harm Without Preliminary Relief

9. As demonstrated further in Petitioner's Motion for Preliminary Injunction, Petitioner Lyman is experiencing irreparable harm that cannot be compensated by monetary damages due to the exclusion of his name from ballots and the promotion of the wrong party nominee. This harm includes but it is not limited to the trust in the sanctity of free and fair elections, and the "loss of First Amendment right freedoms…," which "…for even minimal periods of time, unquestionably constitutes irreparable injury." *Garbett v. Herbert, 458 F. Supp. 3d 1328, 1349, 2020 BL 160572, at *18 (D. Utah 2020)*

10. The irreparable harm of denying Petitioner Lyman's benefit of becoming the Utah Republican Party nominee through the convention process, effectively punishes and discourages the exercise of the very freedoms that our Constitution protects. Indirectly violating the Petitioner, and members of his political party, right of association, achieving a result that the government is not allowed to impose directly. Be it directly or indirectly, this still is a violation of constitutional rights and is not permissible. "For 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 would allow the government to 'produce a result which [it] could not command directly.'" *Speiser v. Randall, 357 U. S. 513, 526.* "Such interference with constitutional rights is impermissible." *408 U. S., at 597.*

11. Irreparable harm could also extend to Respondent Cox, depending on the possible legal consequences arising from his alleged involvement in the counterfeit ballots, Cox will need to decide whether to qualify as a 'write-in' candidate under Utah Code 20A-9-601. He must make this decision by September 1, 2024. If he lacks sufficient time to consider his options and file the necessary paperwork, he could suffer irreparable harm.

12. In conducting a review of relevant facts and as, Petitioner Lyman has already suffered irreparable harm, which cannot be compensated by monetary damages, and stands to suffer even greater non-monetary irreparable harm without the requested relief. This harm extends to the people of the state of Utah, and with the general election rapidly approaching, it underscores the need for an expedited review of this case to ensure timely resolution and to protect the integrity of the election process.

Applicant's Threatened Injury Outweighs Respondents' Injunction Damage

13. As demonstrated further in Petitioner's Motion for Injunctive Relief, the balance of equities favors granting the requested relief. The irreparable harm to Petitioner Lyman and the public's trust in the election process outweighs any potential inconvenience or bruised egos of the Respondents.

14. Expediting the review of this case, will only provide clarity sooner and avoid causing Petitioner any further irreparable harm of keeping him off the general election ballot, an "experience harm that cannot [*6] be compensated after the fact by monetary damages." Greater Yellow-stone Coal v. Flowers, 321 F.3d 1250, 1258 (10th Cir. 2003) (quoting Adams v. Freedom Forge Corp., 204 F.3d 475, 484-85 (3d Cir. 2000)) (emphasis omitted).

Public Interest

15. Granting the expedited preliminary injunction and setting an expedited briefing schedule only serves the public interest by ensuring that the election process adheres to established legal principles and maintains public confidence in free and fair elections.

16. Because the manner of making and certifying nominations and of preparing official ballots is a matter that not only concerns every officer whose duty it is to pass upon and file nomination certificates and from them prepare the official ballot, but it is also a matter of general public interest and concern to have the statute governing these matters construed. *Payne v. Hodgson, 97 P. 132, 135 (Utah 1908)*

17. The quicker this case is reviewed, the better it serves the public interest. While it is crucial for the will of the voters to be respected, it is equally important to uphold individual rights. *Grayeyes v. Cox, No. 4:18-cv-00041, 2018 BL 285711, at *5 (D. Utah Aug. 9, 2018)* An expedited review will ensure that both public interests and individual rights are protected and properly addressed.

Statement of Facts Justifying Emergency Action

18. Petitioner Lyman has already experienced significant irreparable harm due to the improper forced primary election participation and promotion of other candidates being promoted as the Utah Republican Party Nominee. Petitioner Lyman must resume campaigning for the general election, which is hindered by the ongoing uncertainty and improper certification of candidates who were eliminated through the convention process.

19. The general election is rapidly approaching, and ballots are being prepared. Any delay in resolving these issues will result in irreversible harm to Petitioner Lyman and the election process. The issues related to the primary election can be readily resolved and communicated to the members of the Utah Republican Party and there is still time to place the Petitioner's name on the general election ballot. However, this case must be addressed and resolved as quickly as possible and before the general election proceeds to ensure fairness and compliance with the party's established nomination process of how they choose their candidates.

20. A swift review of this case will enable Petitioner Lyman to resume his campaign and uphold the integrity of the election process. It is imperative that the court grants motion to expedite scheduling order and for preliminary injunction. This will ensure that only the rightful nominees, as determined by the Utah Republican Party nomination process, are certified and listed on the general election ballot.

21. It is well within the capacity of a sitting lieutenant governor to seek judicial clarification, as described in UCA § 20A-1-105(10) and by URAP Rule 46 and especially

given that the office is equipped with government attorneys. Petitioner's Motion for Preliminary Injunction demonstrates this clearly. However, Respondents failed to seek such clarification on how candidates emerging from the Utah Republican Party convention should be treated in relation to primary elections. As a result, we are now in a critical time crunch to resolve this issue promptly to prevent further harm to Petitioner Lyman and other impacted candidates who rightfully belong on the general election ballot.

22. Moreover, there is a risk that new legislation could be enacted during Special or General Sessions, which might alter election laws and potentially render some issues in this case moot, causing further harm. It is essential to resolve the questions raised by Petitioner Lyman to provide clarity to party members on questions they have been asking for quite some time and ensure the integrity of the nominating process. "Mootness is a threshold issue because the existence of a live case or controversy is a constitutional prerequisite to federal court jurisdiction." *McClendon v. City of Albuquerque, 100 F.3d 863, 867 (10th Cir. 1996) (citing Beattie v. United States, 949 F.2d 1092, 1093 (10th Cir. 1991).* It is not enough that the dispute was alive when the case was filed; "the parties must continue to have a personal stake in the outcome" at all stages of the judicial proceedings. *Id.* History has proven, the governor and legislators frequently call Special Sessions in response to election-related cases and claims, which have adversely affected petitioners by altering laws relevant to their cases and potentially rendering their issues irrelevant. The current state offices held by Respondents Cox and Henderson give them ability during legislative sessions to influence and manipulate state laws that could unfairly disadvantage

Petitioner Lyman in his pursuit of justice through the judicial system causing him irreparable harm.

Conclusion

23. The facts demonstrate an urgent need for judicial action to protect the rights of Petitioner Lyman, facilitate his campaign efforts, and maintain the integrity of the nomination and electoral process. Immediate relief is necessary to prevent ongoing and future irreparable harm, maintain public trust, and ensure compliance with established party and election laws.

Relief Requested

For the foregoing reasons, Petitioner Lyman is entitled to relief and respectfully requests that this Court:

1. Grant Motion to expedite Motion for Preliminary Injunction to: 1) prevent Respondents from certifying any candidates, including those eliminated by receiving less than 60% of votes at the Utah Republican Party Convention, as nominees for the Utah Republican Party; 2) prevent Respondents from placing these candidates' names on the general election ballot; 3) prevent Respondents from approving any legislative bills during Special or General Sessions that would affect the results of this case until all matters have been resolved; and 4) stop Respondents from declaring, promoting, and endorsing incorrect Republican nominees, including halting all related party donations, publications, and provision of party data to them.

2. Grant an expedited briefing and hearing schedule necessary to preserve First Amendment rights that will be irreparably damaged if the errors and correct application of law are not corrected before the ballots are to be sent out for the general election to be held on November 5, 2024.

3. Grant any other relief that the Court deems just and proper.

I, Phil Lyman, Petitioner, certify that the motion is presented in good faith and not for delay. Respectfully submitted this 12th day of August 2024.

By: /s/ Phil Lyman
Pro *Se*

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August 2024, I filed the foregoing Motion for Expedited Preliminary Injunction and Briefing Schedule with the Clerk of Court by email.

I further certify that, pursuant to Utah Rule of Appellate Procedure 21, all other Respondents were served a copy of this motion email.

/s/ Phil Lyman

Phil Lyman
Petitioner Pro *se*
333 South Main Street
Blanding, Utah 84511
435-459-2800
phlyman@gmail.com

SUPREME COURT OF UTAH
450 S. State St.
Salt Lake City, UT 84111

Phil Lyman,

Petitioner,

v.

SPENCER COX, as the individual who is allegedly nominated as the Utah Republican Party nominee,

DEIDRE HENDERSON, Lieutenant Governor of the State of Utah, in her official capacity as chief election officer and authorized agent for the State of Utah and as the individual who is allegedly nominated,

ROBERT AXSON, Utah Republican Party State Party Officer, and Chair, in his official capacity as party liaison with the Lieutenant Governor,

UTAH REPUBLICAN PARTY, Political Party qualified to participate in a Utah election,

Respondent(s.)

Memorandum in support of Motion for Preliminary Injunction and Expedited Briefing

Case No. 20240824-SC

Memorandum in support of Motion for Preliminary Injunction and Expedited Briefing

I. INTRODUCTION

The Count My Vote initiative was indeed a significant political development in Utah. After Senate Bill 54 was passed and enacted in 2014 by the Utah State Legislature, the dual-path nominating process became a controversial topic. The Utah Republican Party (the "URP") challenged the constitutionality of SB 54 in federal court, arguing that the law infringed on their right to determine how they choose their nominees. This legal battle has had lasting implications for Utah's electoral process and the relationship between political parties and state regulations. This situation has created significant division within the URP.

II. STATEMENT OF THE FACTS

SB54 was signed into law on March 10, 2014, prompting the URP to file a lawsuit later that year (the "First Lawsuit") seeking an injunction and declaratory judgment that the law was unconstitutional as applied to the URP. The Constitutional Party of Utah (the "CPU") also joined the lawsuit, specifically challenging the Signature Requirement.

The district court denied the URP and 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. *Utah Republican Party v. Herbert, 133 F. Supp. 3d 1337, D. Utah 2015*. After the URP indicated its intention to become a "qualified political party," that issued 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 *(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 disagreed, stating that party members, not the party, could choose their nomination method under SB54. In response, the URP filed a new lawsuit (the "Second Lawsuit") in federal court on January 15, 2016, arguing that SB54 violated its First and Fourteenth Amendment rights.

The Utah Democratic Party (the "UDP") intervened in the lawsuit, and two questions were sent to this court, the Utah Supreme Court. The first question, the Utah Supreme Court ruled that party members have the right to choose their nomination method, not the party. The second question, about what happens if a party fails to meet "qualified political party" requirements, was not answered as it was deemed hypothetical.

The district court later ruled in favor of the State, rejecting the URP's claims, including arguments related to the Signature Requirement and viewpoint discrimination. 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 SB54, as modified in the First Lawsuit, appropriately balanced state interests in election management with the rights of political associations and individuals under the First Amendment. The regulations are deemed

consistent with constitutional protections, and the court upheld the balance struck by SB54. Chief Justice Tymkovich concurring in part and dissenting in part.

This brings us to this case that we have before this court. Both Petitioner Lyman and Respondent Cox, filed a declaration of candidacy, opting to seek the URP nomination through either the party convention or the signature process for the office of Governor.

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 for the general election as per the Utah Republican Party Constitution. *See Utah Republican Party Constitution, Section 2.* Petitioner no longer needed to utilize any other processes to secure the nominee for the general election and ceased signature gathering on May 6, 2024.

At the party convention, Respondent Cox, being welcomed with widespread disapproval from the delegates, made statements that directly undermined the integrity of the URP caucus convention system but also revealed a deliberate effort to dismantle it. Specifically, Respondent Cox stated: "*I'm a little worried about our caucus convention system, there are a whole bunch of people out there who want to get rid of this. They are telling us that the caucus convention system has been hijacked by extremists who don't represent the real Republicans in our state, and I hope that we are not giving them more ammunition today*."

This statement not only disrespects the legitimate right of political parties to associate with their members but also constitutes a threat to eliminate the foundational element of party participation—the selection of candidates in a manner that best represents their political platforms.

Respondent Cox further went on to say that he would win the primary election regardless, citing the history of other governors who lost at convention but won in the primary. However, this outcome is historically due to situations where no candidate secured 60% or more of the delegate votes, thus necessitating a primary election. By forcing Petitioner Lyman, who had already been nominated as the Party's official candidate through the convention process, into a primary ballot challenge, did exactly what Respondent Cox said in his statements addressing the delegates — it got "rid of it" — effectively bypassed and nullified the convention system allowed under Utah law.

The URP nominated a candidate under Section 20A-9-407 — "Convention process to seek the nomination of a qualified political party." Respondent Axson, as URP liaison, was to certify the nominees to the lieutenant governor, "before the deadline described in Subsection 20A-9-202(1)(b)[,]" which was April 29, 2024, in accordance with Utah Code 20A-9-407(6).

Respondents forced Petitioner Lyman onto the June 25, 2024, primary ballot, blatantly disregarding the party's convention results and treating the convention as irrelevant. This action not only undermines the party's constitution and its associational rights, but also left Petitioner Lyman with the nearly impossible task of campaigning across

the entire state in just one month and seven days. A herculean effort necessary to reach the Republican electorate before primary ballots were mailed out on June 4, 2024.

Plaintiff seeks immediate relief for violations of his First Amendment rights to association with likeminded members and delegates of the URP, as well as his right to choose his nomination method under the "Either or Both" provision of Utah Code § 20A-9-406(3). This provision allows candidates to seek nomination through either the party convention, collecting signatures, or both. *Utah Republican Party v. Cox, 885 F.3d 1219, 1249 (10th Cir. 2018)* Without this relief, Petitioner Lyman will continue to suffer irreparable harm to his reputation and campaign efforts. The actions of the Respondents have already caused significant damage by forcing him into a primary election that was neither lawful nor warranted. Without immediate relief, this harm will only be exacerbated, potentially affecting the outcome of the general election.

III. Argument

It is clear, and has been confirmed by three different courts, one of those courts being this one, Utah Code "…requires that, to be a QPP, a registered political party must permit its members to seek access to nomination for electoral office by either or both the signature-gathering method or the convention method." *Utah Republican Party v. Cox, 2016 UT 17, 373 P.3d 1286*.

In Utah Republican Party v. Cox, 2016, the Republican party argued that the plain language construction of the code would violate Utah Code § 20A-9-401, "this part may not be construed to govern or regulate the internal procedures of a registered political party,

and this court disagreed, "[t]he statute does not require the Republican Party to seek certification as a qualified political party, and it does not purport to mandate the adoption of any provisions in its constitution, bylaws, rules, or other internal procedures." *Id.* Petitioner Lyman agrees with this court's interpretation that the code does not mandate the adoption of any provisions to amount to internal control or regulation by the State.

In fact, Petitioner Lyman argues that Utah Code § 20A-9-401 was intended to direct the lieutenant governor not to "construe" Part 4 — Primary Elections— under Chapter 9 of the code — in a manner that would regulate or control the internal procedures of registered parties. Petitioner Lyman further contends that Respondent Henderson, who Respondent Cox named to be his Lieutenant Governor and has a vested interest, did precisely what this code said not to do — "construed" the code in a way that favored Respondents Cox and Henderson's candidacy. Interpreting the Utah code to read that the State could determine the party constitution and internal procedures were null and void and require nominees who emerged from the URP's convention to participate in the state primary election. Petitioner Lyman's argument in this case is not that Utah election law itself is unconstitutional, but rather that Respondent Henderson's interpretation and application of the law were unconstitutional, resulting in irreparable harm to Petitioner Lyman.

According to Utah Code, "political parties" are defined as "an organization of registered voters that has qualified to participate in an election by meeting the requirements of Chapter 8, Political Party Formation and Procedures." *See Utah Code § 20A-1-102(46)*.

Petitioner Lyman believes that precise definitions are crucial for the correct application of the law. Accordingly, we review the definitions in Chapter 8 to understand the formation procedures required for an entity to be recognized as a political party in Utah.

First, we look at the definition of "continuing political party" and what it means to be considered one. "Continuing political party means an organization of voters that" — "participated in the last regular general election;" and "in at least one of the last two regular general elections, polled a total vote for any of its candidates for any office equal to 2% or more of the total votes cast for all candidates for the United States House of Representatives in the same regular general election." *See Utah Code § 20A-8-101(1)*.

Utah's political landscape is predominantly Republican. As of July 29, 2024, registration statistics disclosed, on the state website, 906,085 active Republican voters out of a total of 1,715,097 registered voters. This means that Republican voters make up over 52% of the active voter population in Utah. Clearly, the URP would meet the 2% requirement and given their long-standing participation in every regular general election since their founding in 1854, URP is considered a "continuing political party,"

Next, we look at what a "registered political party" means. It "means a an organization of voters that "participated in the last regular general election;" — "and" — "in at least one of the last two regular general elections, polled a total vote for any of its candidates for any office equal to 2% or more of the total votes cast for all candidates for the United States House of Representatives in the same regular general election;" — "*or"* — "has complied with the petition and organizing procedures of this chapter. " *See Utah Code § 20A-8-101(5)*.

Since the definition of a "continuing political party" aligns closely with that of a "registered political party," under Utah Code § 20A-8-101(5)(a), the URP would also be considered a "registered political party."

Given the definition and placement in the section of the codes for those types of political parties, it is the argument of Petitioner Lyman that a "qualified political party" should not be confused with the general definition of "political party," but it should be considered as a process of "qualifying" to participate in state primary election if it so needs.

Instead, a "qualified political party" appears only in Chapter 9 of the Election Code, which addresses Candidate Qualification and Nominating Procedures. Petitioner Lyman contends that a "qualified political party" is merely a political party that has "qualified" to participate in the state's primary elections and notified the state of its intent to do so; however, this is not a forced participation on a candidate. Just as this court and others have determined that the "Either or Both" provision of Utah Code § 20A-9-406(3) was not a choice for the party, it is similarly not within the State's discretion to compel a candidate to participate in a primary election when the candidate has already secured the nomination from a qualified party in accordance with Section 20A-9-407.

The Utah Code clearly allows for a party to nominate their nominees through a convention process under Section 20A-9-407 and have them proceed to the general election ballot. In fact, that is the very argument to the certified questions addressed for the district court from the Utah Supreme Court.

The Utah Supreme Court concluded "… that its contents, including its grammatical structure, clearly evince the legislature's meaning: 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." *Id.*

This interpretation led the district court to conclude that the "Either or Both Provision," allowed URP members to "choose to access the primary election ballot by either signature gathering, or **[*1154]** through Utah's more traditional caucus and convention route, or both, does not impair the URP's constitutional rights but is a legitimate exercise of the state's power to regulate elections." *Utah Republican Party v. Cox, 178 F. Supp. 3d 1150 (D. Utah 2016), Court Opinion*

The URP argued in opposition to Utah Supreme Court's interpretation of the statute's plain language, that the language actually permitted the party, not the member to choose either or both of the methods, which was a violation of Utah Code 20A-9-401(2), stating that Part 4 of the code "may not be construed to govern or regulate the internal procedures of a registered political party."

This court disagreed with the URP, because of its interpretation the statute did not require the URP to "seek as a certification as a qualified political party, and it does not purport to mandate the adoption of any provisions in its constitution, bylaws, rules, or other internal procedures. A registered political party that chooses to function as such incurs no obligation" under the definition of qualified political party. *Utah Republican Party v. Cox, 2016 UT 17, 373 P.3d 1286, Court Opinion*

Petitioner Lyman concurs with this court's interpretation and opinion. Although the URP, as a registered party, qualified to participate in the state primary election and notified the state of its intent to do so, the members retain the choice of how they become nominees.

They can select the convention process, the signature-gathering process, or both. This does not imply any change to the URP Constitution or Bylaws, and the URP's Constitution provides for "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 shall proceed to the general election."

As to the second question, the Utah Supreme Court declined to address that question for lack of ripeness. After the Utah Supreme Court issued its ruling on the certified questions, the district court ruled the "Either or Both" provision did not violate the constitutional rights of the URP.

It is Petitioner Lyman's argument that it is the registered political party, not the member, who certifies that they will participate in the primary. *See Utah Code 20A-9101(13)*

The registered political party must agree to permit "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" — "through the registered political party's convention process, in accordance with the provisions of Section 20A-9-407" or "by collecting signatures, in accordance with the provisions of Section 20A-9-408[.]" *See Utah Code § 20A-9-101(13)(c)*.

Since the passing of SB54, the URP has allowed its members seeking the party nominee to use "either or both" of these methods. As this court has clearly stated, it must comply with the statute's requirements, but it did not amount to internal control or regulation of the party by the State. Therefore, the URP did not change its party constitution

and still allowed for a candidate to emerge out of the nominating convention and proceed straight to the general election. *Utah Republican Party v. Cox, 2016 UT 17, 373 P.3d 1286, Court Opinion*

This is exactly what Petitioner Lyman did. He sought nomination by using the method in section 20A-9-407 and campaigned to the party delegates who elected their party nominee on April 27, 2024, through the convention process — and 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). *See Utah Code 20A-9-407(6)(a).* That deadline is the same deadline "for a registered political party that is not a qualified political party" — 5 p.m. on the first Monday after the fourth Saturday in April. *See Utah Code 20A-9-202(1)(b).*

Respondent Henderson denied Petitioner Lyman's First Amendment rights as a member of a registered political party to seek their nomination through their nominating conventions. Members of the URP have the right to associate with their members, enact rules to limit their membership, and have internal proceedings as to how to select their candidates in a manner that best represents their political platforms. Such a right, the Supreme Court of the United States has held, protects a party from excessive state interference in party affairs. *N.Y. State Bd. of Elections v. Lopez Torres, 552 U.S. 196 , 202-03 , 128 S. Ct. 791 , 169 L. Ed. 2d 665 (2008)* Forcing Petitioner Lyman to participate in a primary after he had already secured his party's nomination, was a blatant violation of his Constitutional rights and a violation to the oath Respondent Henderson swore an allegiance to.

What Respondents would like to have exist, but doesn't exist and isn't required under the Constitution, is the opportunity control a party's internal affairs, and require the party's to give party candidates "two shots" at the party's nominee for the general election when their preferred candidate fails to obtain their party's nomination through the convention process, requiring only the results from the primary election to count, not the results from the party's convention process.

The code does not permit such actions, but it appears that Respondent Henderson has concocted, out of thin air, and imposed a "Grand Old Blanket" primary system, an arrangement tailored exclusively for Republican Party candidates who became nominees at the party's convention. This system is designed to favor incumbents and limit opportunities for candidates who lack substantial financial resources, making it a direct descendant of the issues addressed in *California Democratic Party v. Jones*. By prioritizing those with greater wealth and name recognition, this approach undermines the grassroots nature of the URP and restricts the ability of the less "stinking rich" candidates to compete on a level playing field.

Although in Jones, the only means by which a party could nominate their candidates for the ballot was through a "blanket primary" system that was found unconstitutional, Respondent Henderson's concocted primary system still makes the issue of party affiliation and ideology irrelevant.

Ignoring party nomination rules and forcing all candidates onto the ballot, regardless of internal procedures, effectively undermines party autonomy and fundamental rights. Such actions resemble dictatorial control and represent a significant infringement on the

First Amendment rights of political parties. Respondent Henderson's actions constitute a serious assault on these constitutional protections.

Petitioner Lyman invoked his First Amendment rights as a member of a registered political party, which as the right to associate with their members, to limit their membership and to select their candidates in a manner that best represents their political platforms. Such a right, the Supreme Court of the United States has held, protects a party from excessive state interference in party affairs. *N.Y. State Bd. of Elections v. Lopez Torres, 552 U.S. 196, 202-03, 128 S. Ct. 791, 169 L. Ed. 2d 665 (2008)*

If it is the argument of the Respondents that Utah Code does allow for the party's internal procedures to be controlled by the State in any manner, under Utah Code 20A-9-409, then this court would have to agree with Chief Judge Tymkovich and his dissenting opinion of Utah Republican Party v. Cox, 885 F.3d 1219 (10th Cir. 2018). Chief Judge Tymkovich dissented that SB54 was unconstitutional. In his opinion, "the law was a sort of state-created majority veto over the candidates a party selects through its carefully crafted convention process. And it gives aspiring candidates license to ignore a party's chosen convention procedures without ever having to convince other members to vote to change those procedures." *Utah Republican Party v. Cox, 885 F.3d 1219, 1252, 2018 BL 94102, at *27 (10th Cir. 2018)* This is exactly what happened when Petitioner Lyman was forced to participate in the state primary election — "state-created veto."

If Utah Code 20A-9-409 is interpreted and applied to force a candidate into a primary despite having already secured the party's nomination, then SB54 has substantively altered the Utah Republican Party's procedures for selecting nominees. Such

a change contradicts the principles repeatedly upheld by the United States Supreme Court, which has found similar alterations unconstitutional. — "…States play a major role in structuring and monitoring the primary election process, but the procedures by which political parties select their nominees are not wholly public affairs that States may regulate freely." *Cal. Democratic Party v. Jones, 530 U.S. 567 , 572 , 120 S. Ct. 2402 , 147 L. Ed. 2d 502 (2000).*

Past judicial decisions have upheld the constitutionality of SB54, primarily because the party retained the ability to nominate its candidate through the convention process, as outlined in Utah Code 20A-9-407. However, Respondent Henderson's misapplication of the law undermines this process, effectively stripping the party of its intended nomination rights. This misapplication constitutes a clear violation of constitutional principles. Therefore, Petitioner Lyman respectfully request that this court grant the necessary relief to restore the integrity of the party's nomination process.

IV. CONCLUSION

In conclusion, the votes cast for Respondents Cox and Henderson were illegal. As candidates seeking the nomination of a political party, they were disqualified through the party's internal procedures and convention process. This court should declare that there was no primary election for the office of Governor because of the illegal votes cast, including other elections that were impacted for the same error. This improper conduct will result in a change for the Governor's office; therefore, it is grounds by Utah Code 20A-4-402 to be set aside and deemed void.

According to the URP Constitution and Bylaws, the political party only delegates its authority to a state primary ballot election to choose their nominee when a candidate does not achieve "60% or more of the votes cast at any point in the balloting process at the state nominating conventions," and there are two candidates remaining. URP acted within its rights, and any objections raised against the authority to place Petitioner Lyman onto a general ballot because Respondent Cox gathered signatures that supposedly "qualified" him to challenge the convention nominee under Utah Code 20A-9-408, are not valid.

The primary goal should be to protect the voter's right to make informed decisions. As discussed in *New York State Bd. Of elections v. Lopes Torres 552 U.S. 196 (2008)*, the theory of the convention process, voters elect convention delegates through their neighborhood caucus, and those delegates choose the official nominee. The reason for the convention process is because the State has made the judgment that it is more likely that the delegates would be more informed about the qualifications of candidates than the primary voters. Utah's election laws are relatively effective in safeguarding both the political parties and individuals. Although SB54 has weakened some of those safeguards, there is the fact that Section 20A-9-407 still safeguards a party's right to nominate through convention and for a candidate to choose that process in earning that nomination, as interpreted by this very court.

Respondent Henderson has no judicial power; her duty is purely ministerial and extended only to receiving the certification from the party to put the party nominees from the nomination convention to the general election ballot. "When a ministerial officer leaves his proper sphere and attempts to exercise judicial functions, he is exceeding the limits of

the law and guilty of usurpation. * * * To permit a mere ministerial officer arbitrarily to reject returns at his mere caprice or pleasure, is to infringe or destroy the right of parties, without notice or opportunity to be heard, a thing which the law abhors and prohibits." *State v. Sears, 44 Mo. 223. Lyman v. Martin, 2 Utah 136, 148 (Terr. Sup. Ct. 1880)*

Just because Respondent Henderson has already made a mistake and held a primary election placing Respondents Cox and Henderson on the ballot, who were not actually entitled to a state primary election, does not mean that this court should not correct it. There has been a clear improper conduct that would result in the election of a person who did not receive the highest number of "legal" votes, and such improper conduct would change the results for that office. *See Utah Code 20A-4-402*

It is unlawful for any person to forge or counterfeit any election returns from any election. "In accordance with Utah Code 20A-4-407, the inclusion of Petitioner Lyman and Respondents Cox and Henderson on the primary election ballot was unlawful, rendering those ballots, "election returns," counterfeit. This willful misconduct constitutes a third-degree felony and malfeasance of office, causing significant harm to the integrity of the election process and to the affected parties. *See Utah Code 20A-4-501*

> Counterfeit: To forge, copy, or imitate without authority or right, with the intent to deceive or defraud by passing off the copy as the original or genuine item. In common parlance, "counterfeit" signifies the fabrication of a false image or representation. Counterfeiting an instrument involves falsely creating it, and in its broadest sense, refers to making a copy without authorization or right, with the intent to

deceive or defraud by presenting the copy as if it were the original or genuine article. Smith v. State, 7 Md.App. 457,256 A.2d 357, 360, 361. — Black's Law Dictionary – Sixth Edition

The fact that the Respondents have already held a state primary election is no reason why Respondent Lyman should be denied the Extraordinary Writ, nor does it change the fact that it was illegal to hold it in the first place. There are numerous cases that support that his Writ should not be denied. State v. Trimbell, 12 Wash. 440, 41 Pac. 183; People v. Hilliard, 29 Ill. 413; Smith v. Lawrence, 2 S. D. 185, 49 N. W. 9; Coll v. City Board, 83 Mich. 367, 47 N. W. 227; State v. Howe, 28 Neb. 618, 44 N. W. 878; Election Board v. State, 43 Okl. 337, 142 Pac. 984; State v. Canvassing Board, 13 Mont. 23, 31 Pac. 883; People v. Rives, 27 Ill. 242; State v. Wilson, 24 Neb. 139, 38 N. W. 31.

To obtain preliminary injunctive relief, a petitioner must demonstrate four key elements: (1) a substantial likelihood of success on the merits; (2) the likelihood of suffering irreparable harm if the injunction is not granted; (3) that the harm to the petitioner outweighs any potential harm to the opposing party if the injunction is granted; and (4) that the injunction is not adverse to the public interest.

Petitioner Lyman has clearly demonstrated that he meets the criteria necessary for the granting of relief.

Substantial Likelihood of Success on the Merits: Petitioner Lyman has presented compelling evidence showing that the inclusion of names on the primary election ballot was in direct violation of Utah Code 20A-4-407. The unlawful placement of his name, along with Respondents Cox and Henderson, on the ballot significantly undermines the

legitimacy of the election process. Given the strength of this legal argument, there is a substantial likelihood that Petitioner Lyman will succeed on the merits of his claims.

Likelihood of Suffering Irreparable Harm: If the injunction is not granted, Petitioner Lyman will continue to suffer irreparable harm to his reputation and campaign efforts. The counterfeit ballots have already caused significant damage by forcing him into a primary election that was neither lawful nor warranted. Without immediate relief, this harm will only be exacerbated, potentially affecting the outcome of the general election.

Balance of Harms: The harm to Petitioner Lyman significantly outweighs any potential harm to Respondents if the injunction is granted. The only harm they may suffer is a bruised ego, and possible legal consequences for their alleged involvement in the counterfeit ballots. However, the public has been deceived by their actions, which undermines trust in the electoral process, and any discomfort or penalties they face are a direct result of their own misconduct. On the other hand, Petitioner Lyman faces ongoing and irreparable harm to his campaign and reputation if relief is not granted. Granting the injunction is essential not only to protect Petitioner Lyman but also to restore public confidence in the fairness and legality of the election.

Public Interest: Granting the injunction is not adverse to the public interest; rather, it serves to uphold the integrity of the election process. The public has a vested interest in ensuring that elections are conducted lawfully and that candidates are treated fairly. By granting this injunction, the court would reinforce public confidence in the legal and electoral systems.

Given that Petitioner Lyman has clearly met all these elements, the granting of preliminary injunctive relief is warranted and necessary to prevent further harm and to uphold the principles of justice.

I, Phil Lyman, Petitioner, certify that the memorandum in support is presented in good faith and not for delay. Respectfully submitted this 12th day of August 2024.

By: /s/ Phil Lyman
Pro *Se*

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August 2024, I filed the foregoing Memorandum in support of Motion for Preliminary Injunction and Expedited Briefing with the Clerk of Court by email.

I further certify that, pursuant to Utah Rule of Appellate Procedure 21, all other Respondents were served a copy of this motion email.

/s/ Phil Lyman
Pro *Se*