

**Summary Brief of Sen. Mike Lee, Sen. Ted Cruz, Rep. Raúl Labrador
and Rep. Rob Bishop**

The Party or the People?

The Tenth Circuit wrongly upheld Utah's statute ("SB54") which restricts the Utah Republican Party's ability to choose the process it uses to nominate candidates for the general ballot. Specifically, the court's ruling restricts the party's ability to use a caucus system as the sole process for selecting its candidates. At the core of the Tenth Circuit's decision is its premise that, for associational-rights purposes, the Utah Republican Party is defined as comprising the roughly 600,000 Utah citizens who have registered to vote in the Republican primaries. The court therefore reasoned that as long as the collective will of these registered voters are realized in determining a candidate, then the party's associational rights related to determining the process used to nominate candidates are not violated.

Political Parties in American History

The Tenth Circuit's premise is inconsistent with American political history, which shows that parties have always been run as associations of a relative small group of policy-oriented activists who exercise close control over the process for selecting party nominees. Historically, all parties are the creatures of interest groups, ideological activists, and intense policy demanders who organize parties to get the government policies they want. From this perspective, voters who are merely registered to vote in a party's primaries are not actually a part of the party (when viewed as an association or organization) and are not included in the party's governing body. Therefore, historically, it has been the party organization, not the registered voters, that determines the direction of the party and the process used to nominate candidates

History has also shown that in the selection of presidents, the parties, not legislative bodies, have controlled the process of how candidates are selected. For most of the 1800s, state political parties functioned as entirely private associations.

When state regulations were finally imposed, it typically was not over the objection of the political parties but at their behest, as a means of solving administrative difficulties they faced. SB54 is not consistent with historical regulations on political parties in the sense that it was not passed as a means of solving administrative difficulties faced by Utah political parties.

Benefits of a Caucus System

The Tenth Circuit's ruling also precludes the Utah Republican Party from obtaining the valuable benefits of the caucus system. Maintaining a strong brand helps win elections, and the caucus system is widely recognized as one of the best ways to enhance and protect the policy choices of a political party, and in turn, protect its brand. When a party loses control over its nominees it loses control over its brand. Empirical studies that compare primary voters to caucus voters generally show that caucus goers more closely reflect party values and policies than do primary voters. Consequently, caucuses help nominate candidates more closely aligned with a party's platform and create greater brand clarity. Other benefits of a caucus system to a party and to civil society include:

- Caucuses enhance social and community ties;
- Caucuses benefit party organizations by identifying potential activists and volunteers, permitting grass-roots issue debate, and allowing face-to-face meetings of party activists;
- Caucus systems promote a focus on geographical diversity, and a consequent diffusion of political power, which protect citizens who live in thinly populated areas of a state; and
- Caucuses help reduce the incumbency advantage which so often impairs vigorous electoral competition.

Mike Lee is Utah's Senior Senator. He graduated from BYU's Law School in 1997 and went on to serve as law clerk to Judge Dee Benson of the U.S. District Court

for the District of Utah, and then with future Supreme Court Justice Judge Samuel A. Alito, Jr. on the U.S. Court of Appeals for the Third Circuit. Lee spent several years as an attorney with the law firm Sidley & Austin specializing in appellate and Supreme Court litigation, and then served as an Assistant U.S. Attorney in Salt Lake City arguing cases before the U.S. Court of Appeals for the Tenth Circuit. Lee served the state of Utah as Governor Jon Huntsman's General Counsel and was later honored to reunite with Justice Alito, now on the Supreme Court, for a one-year clerkship. He returned to private practice in 2007. He was elected to the U.S. Senate in 2010 and reelected in 2016.

Ted Cruz is the Junior Senator from Texas. He graduated *magna cum laude* from Harvard Law School in 1995. Cruz served as a law clerk to J. Michael Luttig of the United States Court of Appeals for the Fourth Circuit and to William Rehnquist, Chief Justice of the United States. As Solicitor General for the State of Texas and in private practice, Ted authored more than 80 U.S. Supreme Court briefs and argued 43 oral arguments, including nine before the U.S. Supreme Court, where he also won an unprecedented series of landmark national victories. Lee was elected to the U.S. Senate in 2012 and reelected in 2018.

Rob Bishop represents Utah's First Congressional District. He later graduated *magna cum laude* from the University of Utah with a degree in Political Science. He spent nearly 30 years teaching High School focusing on American History and Government. Bishop served sixteen years in the Utah state legislature, including as Majority leader and the unanimously elected Speaker of the House. He is currently serving his eighth term as a member of the United States House of Representatives.

Raúl Labrador served as the U.S. Representative for Idaho's 1st congressional district from 2011 to 2019. He graduated from the University of Washington School of Law in 1995. He practiced law and immigration law in private practice until his election to the Idaho House of Representatives in 2006, where he served for four years.