Brief summary of Eagle Forum Education and Legal Defense Fund

The Republican Platform: History in Context

SB54 cannot be justified based on its underlying goal of reducing extremism in political nominees. The original Republican Party platform was extreme to the mainstream culture of that day. It was the "extremist" new Republican party platform that produced Abraham Lincoln as the Republican nominee for Senate in 1858 in Illinois, by a convention rather than popular vote. Justice Scalia observed nearly two decades ago how important it is for political parties to have nearly unfettered control over their own nominating process. Justice Scalia wrote for the Court as follows:

> *"In the 1860 presidential election, if opponents of the fledgling Republican Party had been able to cause its nomination of pro-slavery candidate in place of Abraham Lincoln, the coalition of intraparty factions forming behind him likely would have disintegrated, endangering the party's survival and thwarting its effort to fill the vacuum left by the dissolution of the Whigs.*"

The Republican Party had a necessarily broad constitutional right to pick its nominee in 1860 without interference by government, and it must continue to have the same right today.

Party Platform Establishment and Enforcement

The Tenth Circuit acknowledge the essential right of a political party to establish its platform, but then ignored the equally important right of being able to enforce it. Party platforms are written for the purpose of enunciating the principles for which that party and its candidates stand, and the candidates for these offices so placed in nomination are pledged to the support of these principles. A nominating convention is the means to that end, and the constitutional right to adopt a platform would be diminished without the right to nominate candidates by a convention. Aside from prohibiting corruption and other wrongdoing, government should not be dictating to private citizens what they may or may not do in selecting the flagbearers for their

political parties. In our constitutional republic, it is improper for government to require political parties to select their nominees solely by media-driven popularity contests.

Protection from Compelled Speech

Additionally, compelled speech doctrine protects persons from being forces to say things with which they disagree. This doctrine prohibits coercing participation in private expressive associations, and hence coercing political parties to adopt processes to choose more moderate leaders is likewise unconstitutional. While ostensibly the State of Utah is not compelling the political parties to espouse a particular political view, in fact the legislation untenably forces the political parties to use a nominating process that is more likely to result in the advocacy of moderate viewpoints. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or at their faith therein." While Utah has not, strictly speaking, required the Utah Republican Party "to confess by word or act their faith" in something, Utah has "prescribed what shall be orthodox in politics": the nomination of candidates by a public election rather than by deliberative caucuses and a convention. It is not for government to prescribe such orthodoxy.

Eagle Forum Education and Legal Defense Fund (ELDF) was founded in 1981 by Phyllis Schlafly, an American constitutional lawyer and conservative activist. Schlafly is most known as founding and serving as CEO of the Eagle Forum. She was a leading proponent of the importance of political parties. The ELDF has been a strong defender of the two-party system, which depends on independent and autonomous political parties. It has defended the rights of political parties to engage fully in freedom of association, and has filed numerous amicus briefs to support First Amendment issues.