

**Brief summary of Pacific Legal Foundation, CATO Institute,  
and Freedom Partners Chamber of Commerce**

**Who's in Charge?**

The Tenth Circuit held that, because SB54 allows a majority of party members to select the party's nominee for the general ballot, the statute does not interfere with the Utah Republican Party's freedom of association. **But political parties are more than just the sum total of their membership.** Party Leadership plays an indispensable role in the recruitment and selection of ideologically consistent candidates – usually without the affirmative participation or consent of the majority of its members

**Dueling Decisions: Robust Protection or State Power?**

SB54 demonstrates the tension that commonly exists between a state's regulatory body and the political parties within a state. As noticed by De Tocqueville, because political associations "aspire to rule the state," those in power look upon political parties with an "instinctive abhorrence" and stand ready to "combat them on all occasions." The U.S. Supreme Court has never fully specified the extent to which states can regulate away a political party's autonomy. In fact, there is confusion because the U.S. Supreme Court has supported a robust protection of political association while at the same time supporting a broad understanding of a state's power, thus offering something for everyone but clarity for no one. The U.S. Supreme Court should therefore hear this case to resolve the ongoing tension between political party autonomy and state control of elections.

Another murky area of constitutional jurisprudence that the U.S. Supreme Court should clear up with this case is the nature of group rights and the relationship between group rights and individual rights. For example, can individual members' rights serve as proxies for the rights of the group, or does the group enjoy rights distinct from its individual members' interests? The U.S. Supreme Court has implied that group-specific rights exist, but has yet to make an explicit pronouncement on this point. Groups'

associational rights are necessary for a strong liberal democracy, and the protection of these rights is a matter of nationwide importance, which makes it all the more important that the U.S. Supreme hears this case.

### **The Conflation of Interests**

Ultimately, the U.S. Supreme Court should hear this case because the Tenth Circuit's ruling was wrong. **Key to the Tenth Circuit's ruling was its explicit conflation of the group's interests with the interests of its constituent members.** The group and its individual members do not enjoy identical constitutional interests, and the preservation of the individuals' associational interests does not necessarily entail preservation of the groups' associational interests. Allowing the Tenth Circuit's conflation of group and individual interests – with individual interests often serving as proxy for the group – threatens individual liberty. A group's decision making procedures, which often lack a close analogy to individual member rights, help define the group's identity and purpose. **Conflating a group's interests with the interests of its members allow the state to manipulate the decision-making procedures that affect the group's substantive decisions, and therefore has the power to alter the group's identity, message, and purpose.** Additionally, if groups have no rights distinct from their individual members, then the state can enjoy substantial power to manipulate them, especially those that operate as competitors or dissenters.

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Pacific Legal Foundation was founded in 1973 to advance the principles of individual rights and limited government. It has long defended the freedoms of speech and association. It combines strategic and principled litigation, communications, and research to achieve landmark court victories enforcing the Constitution's guarantee of individual liberty.

The Cato Institute is a nonpartisan public-policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies works to restore the principles of limited constitutional government that are the foundation of liberty.

Freedom Partners Chamber of Commerce is a non-partisan organization whose members support free enterprise, fiscal responsibility, and fair markets. Freedom Partners' vision of a free and open society includes important policy issues such as creating opportunity for all, keeping Americans safe, and protecting free speech.