

## **Brief summary of the U.S. Pastor Council and Christian Life Center**

### **The Slippery Slope of SB54**

The Tenth Circuit upheld SB54, ruling that it is constitutional and does not violate the Utah Republican Party's First Amendment rights. The Tenth Circuit's opinion purports to limit its holding to political parties, but its analysis has alarming implications for the autonomy of all civic and religious organizations. **If the First Amendment permits a State to dictate the process by which a private political party selects its candidates, then there is nothing to stop a State from meddling in the internal affairs of any other private organization.**

### **A Risk to Religion**

There are at least two major issues with the Tenth Circuit's opinion. First, the court incorrectly concluded that SB54 imposes only "minimal" and not "severe" burdens on a political party's First Amendment rights. A law that tells a private organization how it must choose its leaders and public representatives is far from a "minimal" burden on the freedom of association. And **if a court is willing to downplay the intrusion that Utah's law imposes on the autonomy of political parties**—writing off as nothing more than "minimal" burden on First Amendment freedoms—**then laws that attempt to regulate the internal decision-making of other private institutions can be breezily upheld in the same manner.**

Second, the Ten Circuit incorrectly concluded that SB54 does not regulate the internal affairs of the Utah Republican party. How could the court possibly assert that this law—which governs the process by which a political party chooses the candidates that will appear on its primary-election ballot—is concerned only with the party's "external activity" and not its "internal mechanisms"? The Tenth Circuit appears to answer this by saying in its opinion that once a private organization enters the public square—in an effort to influence the government or the culture for the better—it is engaged in "external activity" rather than internal activity," and organizational decisions

that might otherwise be immune from state control now become fair game for government regulators. **This is a dangerous argument that is often invoked to undermine faith-based institutions.** The idea is that the autonomy of religious organizations will be protected so long as they keep to themselves and stay out of the public sphere. But once these organizations in the marketplace accept any form of government benefit, or partner with the government in carrying out social-welfare programs, their activities become “external” and faith-based commitments must give way to government-imposed orthodoxy. The Supreme Court must take up this case to correct the Tenth Circuit’s dangerous reasoning. Otherwise, Religious organizations and all other private organizations have a much to lose as it relates to their First Amendment rights.

### **Reconsidering the “Balancing Test”**

Ultimately, the Supreme Court should hear this case to reconsider or at least limit the scope of the *Anderson-Burdick* balancing test used to uphold the constitutionality of SB54. The balancing test weighs the burden faced by a party from passed legislation against the interests of the state in passing the legislation. The test suffers from the maladies that afflict all judicial balancing tests: It is subjective and indeterminate, and it causes judicial outcomes to hinge on whether individual judges regard the challenged law as normatively desirable. Constitutional rights must be protected by non-malleable standards—especially in an era of polarization when judges are likely to have radically different views on the weight that should be accorded to asserted regulatory interests.

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The U.S. Pastor Council is an interdenominational, interracial coalition of over 1,000 senior pastors who have come together to bring a united, Biblical voice to the nation. It is focused on developing strong, functioning teams of pastors in each city as a means of building a grassroots network. Its mission is to empower pastors and their

congregations to influence the culture and community through concerted prayer, to equip our congregations for effective citizenship, and to provide a voice on spiritual, cultural, social, and moral issues from a Biblical perspective.

Christian Life Center & Layton Christian Academy is a church and private school serving over 3,000 people in the Layton, Utah area and over 200 foreign exchange students from around the world.