

STATE OF UTAH
OFFICE OF THE LIEUTENANT GOVERNOR



SPENCER J. COX
LIEUTENANT GOVERNOR

November 19, 2015

Chairman James Evans
Utah Republican Party
117 E. South Temple
Salt Lake City, Utah 84111
Email: james@gop.org

Dear Chairman Evans,

I am in receipt of your letter dated November 10, 2015. Please forgive my delay in responding as I anticipated an additional letter from you. However, in the interest of time--and because I believe your initial letter sufficiently lays out your concerns--I feel it is appropriate to respond and, hopefully, move forward.

Let me begin with your legal concerns. From your November 10th letter, press release and media statements, I understand there is a conflict between the Utah Republican Party's reading of two sections of the Utah Code enacted in 2014 by SB 54 and the reading by my office of those same sections, namely Utah Code Sections 20A-9-406(3) and 20A-9-101(12)(d).

Under Utah Code Section 20A-9-406(3), the law states that "an individual," meaning the candidate, "may only seek the nomination of the qualified political party by using a method described in Section 20A-9-407 [the convention system], Section 20A-9-408 [signature gathering] or both." This provision very clearly states that it is the individual who has the right to choose their path to the ballot and the individual may seek a nomination by the use of both methods. Continued reading of this section provides even more clarification: Section 20A-9-406(4) states that "a qualified political party shall comply with the provisions of Sections 20A-9-407 [the convention system], 20A-9-408 [signature gathering], AND 20A-9-409 [primary election participation]."

In defining a qualified political party, Utah Code Section 20A-9-101(12)(d) states:

(12) "Qualified political party" means a registered political party that:

(d) permits 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 of the following methods [convention system or signature gathering].

The Party's reading of these two sections, as I understand it, is the Party can be a qualified political party so long as it permits its candidates to seek the nomination by one of these methods, either the convention system OR signature gathering. Under this reading, the Party holds the right to choose between the convention system or signature gathering on behalf of its candidates. Additionally, I understand that you intend to object to the declaration of candidacy of any individual who chooses to gather signatures.

While I understand your argument and your reasons for making it, after consulting with the Attorney General's Office, this reading of the statute fails in at least three ways. First, Section 20A-9-101(12)(d) specifically includes the phrasing, "by the MEMBER choosing." This specification of the actor is clearly in opposition to the idea that the party makes the choice on behalf of the member. Second, the Party's reading of the statute would, of your own admission, be in direct contradiction to Section 20A-9-406(3), which also specifically leaves this decision to the "individual" or candidate. Additionally, Section 20A-9-406(4) specifically requires a qualified party to provide for both a convention and a signature gathering path to the primary election ballot. And, finally, your interpretation would render the entire statute meaningless and, I think you would agree, completely undermine the legislative intent.

As such, I must, and intend to, allow candidates, in a qualified political party, the opportunity to choose between the convention system, gathering signatures or both. Any objection by a qualified political party to reject candidates who gather signatures will be not be sustained by my office.

Now, let me respond on a more personal note. While I am the chief elections officer of the state, I am also a devoted member of the Republican Party. As you well know, before I became Lieutenant Governor, I was actively engaged in the opposition to the Count My Vote petition. I am a proud member of the Republican party, I am product of the caucus/convention system, and I respect your efforts to protect that system.

I fully recognize that as the Lieutenant Governor, I have sworn an oath to “discharge the duties of my office with fidelity.” One of those duties is to enforce the laws of the State of Utah, even when I may not personally like a particular law, or it is personally difficult, or my party disagrees. We have too many examples of those who pick and choose which laws to enforce. I am committed to do my duty.

That being said, being wedged between the law and my party has been one of the most difficult parts of my job. And, because of that, I know that things have been tense for everyone involved. In light of that, I would like to extend an apology on behalf of me and my office. When the situation was posited that candidates like Senator Lee and members of our House delegation would be kicked out of the party if they chose to pursue both the convention and signature route, my Chief Deputy responded by calling everything that was swirling around as “crazy stuff.” While this may have sounded like a direct attack on you, it was not intended to be. I sincerely hope you will accept my personal apology and an apology from my entire staff. We have both been placed in difficult situations, and I truly respect your willingness to navigate this new law together.

The question we face is what now? I want to thank you for proposing a joint effort to receive clarification from the courts. I can see the wisdom in this process and agree wholeheartedly that the sooner this is resolved, the better for all. The uncertainty that currently exists is bad for voters, it’s bad for candidates, it’s bad for parties, and it’s bad for the state of Utah. We need certainty and we need it soon. I know that is a point on which we can all agree. I am committed to working with you to expedite this question and get the judicial clarity that Utah deserves.

Thank you for your patience, dedication and service.

Sincerely,

A handwritten signature in black ink, appearing to be 'Spencer J. Cox', written in a cursive style.

Spencer J. Cox
Lieutenant Governor