



Contact: Justin Lee
(801) 928-6948
justinlee@utah.gov

Voter and Candidate Clarification

SALT LAKE CITY (Jan, 19, 2016) - Lt. Gov. Spencer J. Cox issued the following memo offering clarification to voters and candidates:

The 2016 election cycle is officially underway. This year, voters will once again have the opportunity to vote for many offices, including president, Congress, governor, state legislators and others. As the State's chief election officer, I have the statutory responsibility to enforce Utah's election laws; this includes the interpretation of laws and all initial decisions related to election matters. Additionally, I am required to provide election information to the public.

Recently there has been significant attention given to legislation passed in 2014 that altered Utah election law and the way candidates make their way to the ballot. This change is commonly known as SB54. The passage of SB54 has become controversial and divisive. There has already been one completed lawsuit and another was filed late last week. Consequently, there have been many rumors, media reports and speculation adding confusion and uncertainty to the process. Regardless of my personal feelings on these changes, or the views of others, my office is tasked with implementing and enforcing this legislation. Equally important, I have the duty of ensuring a fair, orderly and smooth election process. In doing so, we rely heavily on the legal guidance and interpretation of Utah's Attorney General and his staff.

On January 4th candidates began filing their declarations to gather signatures. To date, more than 70 candidates have declared their intent to do so. Thousands of signatures have already been gathered and submitted. As such, we are officially in the middle of an election cycle and my job is to move forward and help Utahns navigate this new process.

The purpose of this memo is simply to provide clarity and guidance to candidates and voters regarding the law and its implementation. More specifically, this memo answers several questions that have come to my office directly or through media reports. This is not intended to

be a legal brief, nor a comprehensive explanation of law. Furthermore, I do not attempt to outline the disputes and differing interpretations of the law. Please note that this memo is not meant to be adversarial in any way. Instead, I merely set out to explain how the law will be interpreted and implemented by my office. In the interest of brevity, this memo assumes that readers have some previous knowledge of SB54. While many of these questions come from members of the Republican Party, the same issues apply to all candidates and parties equally. I hope this memo will help those participating in the election to make decisions and rely in good faith on an orderly process.

Question #1: Do candidates get to decide which path they take to the ballot?

Yes. After an extensive review of SB54 with the Attorney General's Office, I have determined the clear wording of the statute allows candidates, and not parties, to determine whether to gather signatures, participate in the caucus/convention system or do both. While my office had been working with the Republican Party to get final clarification on this issue from the Utah Courts, we recently received notice that they had changed their mind and decided to file suit in federal court against the state to challenge this and other provisions of the Election Code. That lawsuit was filed on 1/15/16.

Question #2: Will political parties be allowed to remove candidates that gather signatures?

No. Because SB54 specifically allows candidates to choose signature gathering, candidates that rely on the law and meet all other legal requirements will be placed on the primary ballot. Any attempts to remove candidates from the ballot for following the law and gathering signatures will be rejected.

Question #3: Can voters be removed from a party for signing candidate petitions?

No. While there has been much rumor and speculation on this question, the Republican Party has specifically stated that the speculation was unfounded and unintended. Furthermore, there is no basis in law to support such an action. Under SB54 any voter "affiliated" with the party, based upon the voter's party affiliation designation submitted by the voter and entered into the official register, is allowed to sign a petition on behalf of a candidate for that party. As such, any attempt to remove an otherwise qualified and affiliated voter that signs a candidate petition will be rejected.

Question #4: Can the Lt. Governor's Office and county clerks begin verifying signatures immediately?

Yes. There is some confusion regarding a required March 1st declaration from the parties over who will be allowed to participate in their primaries--and thus who would be eligible to sign petitions. This provision existed prior to SB54 and simply has to do with the categories of voters that are allowed to participate in primary elections, as opposed to individual voters. The statute has always contemplated that a party's own affiliated voters would be able to participate in that party's primary election. However, if a party decides to allow voters from another party to participate in their primary, the party must notify my office by March 1st. As this was the primary focus of the previous lawsuit, my office is operating under the assumption that the Republican party will only allow Republican voters to participate in its primary election. As such, my office will only accept signatures from Republican affiliated voters. However, if the Republican Party notifies my office that it has decided to open its primary to other parties or unaffiliated voters by March 1st, my office would then allow signatures from those other party's voters.

Question #5: Is it possible that the Republican Party will lose its Qualified Political Party (QPP) status and that candidates who choose only the caucus/convention path will be removed from the ballot?

No. Because there is nothing in the law that anticipates what happens if a party fails to follow the requirements of a QPP, and because there is no provision to subsequently disqualify a party, this has been subject to different legal interpretations. On August 17, 2015, the Utah Republican Party certified their designation as a QPP and specifically stated their intention to follow all of the statutory QPP provisions and requirements. As such, my intention is to rely on this certification, and allow candidates access to the ballot through the caucus/convention process, unless and until the party officially revokes that certification. While I reject the possibility of removing candidates that rely on the law to get on the ballot by gathering signatures, I also reject the possibility of removing candidates that rely on the law to participate in the caucus/convention system.

Question #6: In light of the uncertainty surrounding potential litigation, do you have a recommendation on which path a candidate should take to ensure access to the ballot?

This is the question I receive most often from candidates. The decision and calculation on which path to choose will be different and personal for each campaign. While there are many different reasons to choose one path over another, I can only speak to ballot access. While I am attempting to provide as much information and clarity as possible to help candidates make an informed decision, I recognize that additional litigation makes a final outcome difficult to predict. Although judges are historically averse to removing candidates from the ballot, it is impossible to know with 100% certainty whether a judge could invalidate the signature path or remove the

party's QPP status, thus eliminating the caucus/convention path. In short, while I can ensure ballot access for either ballot paths, a judge could alter that determination. As such, it appears that the only way to completely guarantee ballot access, regardless of any judicial outcome, would be for candidates to choose BOTH routes (gathering signatures AND participating in the caucus/convention).

I sincerely hope this clarification is helpful and is received in the spirit it is intended. I recognize there are honest and passionate voices on both sides of this debate and that legal cases could potentially impact these determinations. However, I also know how difficult and stressful campaigns can be for all those involved. Accordingly, I ask only that candidates, county clerks, parties and my office work together closely this year to ensure the election moves forward in a collaborative and orderly manner. I wish the very best to all involved this election year.

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