

IN THE
SUPREME COURT OF THE STATE OF UTAH

PHIL LYMAN,
Petitioner,

v.

GOVERNOR SPENCER COX, LIEUTENANT GOVERNOR DEIDRE
HENDERSON, ROBERT AXSON, and UTAH REPUBLICAN PARTY,
Respondents.

No. 20240824
Filed August 15, 2024*

On Petition for Extraordinary Writ

Attorneys:

Phil Lyman, Blanding, UT, pro se petitioner
Stanford E. Purser, Solic. Gen., Salt Lake City, for respondents
Spencer J. Cox and Deidre Henderson

PER CURIAM**:

¶1 This matter is before the court on a petition for extraordinary relief.¹ Phil Lyman seeks relief relating to the recent 2024 primary election for the Utah Republican Party. As Mr. Lyman requests, we

* This decision was originally issued as an order on August 13, 2024. The text is identical.

** Mr. Lyman's petition for extraordinary relief was referred to the full court for consideration. Associate Chief Justice John Pearce has recused himself from this matter and did not participate in this decision. Presiding Judge Michele Christiansen Forster of the Utah Court of Appeals sits in his place.

¹ Mr. Lyman has also filed under this case number a Motion for Preliminary Injunction and a Motion for Expedited Preliminary Injunction and Briefing Schedule (collectively, the injunction motions).

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expedite our review of the petition due to impending general election deadlines.

¶2 Mr. Lyman’s central request is that the court annul the 2024 primary election for the office of Governor and order him certified as the Republican Party nominee in the November 2024 general election. His request is based on his view that the Republican Party’s internal rules trump Utah’s election laws, a claim we rejected in *Utah Republican Party v. Cox*, 2016 UT 17, ¶ 6, 373 P.3d 1286 (per curiam). There, we held that if a party seeks to be a qualified political party under Utah law – as the Utah Republican Party has – the party must comply with state law, including the requirement that members be allowed to seek the party’s nomination for elective office through signature gathering and/or the convention process. *See id.* ¶¶ 3, 6. For this and other reasons, we deny the petition without calling for a response. *See* UTAH R. APP. P. 19(k)(1).

ANALYSIS

¶3 Our rules provide that a party may petition the court for extraordinary relief “[w]hen no other plain, speedy, or adequate remedy is available.” UTAH R. APP. P. 19(a). In addition to showing why relief should be granted, a petitioner must explain “why no other plain, speedy, or adequate remedy exists,” and “why it is impractical or inappropriate to file the petition in the district court.” *Id.* R. 19(e)(4), (6). We have observed that “the more extraordinary the relief the petitioner seeks, the more compelling the showing of an entitlement to that relief should be.” *Durbano v. Utah State Bar (In re Durbano)*, 2019 UT 34, ¶ 29, 449 P.3d 24. Further, because we do not conduct evidentiary hearings, we ordinarily may grant relief only where the relief is based on uncontroverted facts. *See Count My Vote, Inc. v. Cox*, 2019 UT 60, ¶ 9, 452 P.3d 1109; *Zonts v. Pleasant Grove City*, 2017 UT 71, ¶ 3, 416 P.3d 360.

¶4 The relief Mr. Lyman seeks in his petition is extraordinary. Among other things, he asks this court to:

- “[S]et aside and annul” the recent 2024 primary election for any office in which a Utah Republican candidate received at least sixty percent of the vote at the party’s April 2024 nominating convention, including the offices of governor and lieutenant governor;

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- “Certify[] to each county clerk” the names of Mr. Lyman and all Republican candidates who received at least sixty percent of the vote at the party’s April 2024 nominating convention for placement on the November 2024 general election ballot as the Republican party nominees;
- Order Lieutenant Governor Henderson to produce information Mr. Lyman has previously requested under the Government Records Access and Management Act (GRAMA); and
- Order Lieutenant Governor Henderson and Governor Cox removed from their offices for alleged malfeasance. As explained below, we conclude that Mr. Lyman has not shown entitlement to the relief he requests.

I. MR. LYMAN’S REQUESTS TO ANNUL THE 2024 PRIMARY ELECTION FOR MR. LYMAN AND OTHER CANDIDATES AND TO ORDER THE PLACEMENT OF CERTAIN CANDIDATES ON THE NOVEMBER 2024 GENERAL ELECTION BALLOT AS REPUBLICAN PARTY NOMINEES

¶5 Mr. Lyman asks us to set aside and annul the 2024 Republican primary election and order that all Republican candidates nominated through the party’s convention process be placed on the general election ballot. These requests fail for both procedural and substantive reasons.

¶6 First, Mr. Lyman seeks relief not only for himself but for other Republican party candidates. Although Mr. Lyman can assert claims on his own behalf,² he cannot assert claims on behalf of others.³ See *Provo City Corp. v. Thompson*, 2004 UT 14, ¶ 9, 86 P.3d

² Because the legal grounds for Mr. Lyman’s petition aren’t entirely clear, we are unable to fully assess whether he has standing to assert the claims he brings. For purposes of this petition, we resolve our doubts in his favor.

³ There are exceptions to the general rule that a party may generally assert only his or her own rights. For example, a party may assert the rights of parties that are not before the court if the party meets the separate requirements of third-party standing. See, e.g., *Shelledy v. Lore*, 836 P.2d 786, 789 (Utah 1992). But Mr. Lyman has made no suggestion that he meets those requirements.

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735. Thus, we do not consider any claim Mr. Lyman purports to assert on behalf of other candidates.

¶7 Second, Mr. Lyman has not shown that it would be impractical or inappropriate to seek this relief in the district court. Mr. Lyman disagrees, stating that it would be “inappropriate to file the petition in the district court because [Senate Bill] 54⁴— the crux of the petition— has been an issue since it was signed into law on March 10, 2014,” and because issues relating to that legislation have been subject to litigation in state and federal courts. Mr. Lyman is correct that Senate Bill 54 has been the subject of litigation in this and other courts. To the extent he raises issues already resolved by those cases, those cases foreclose his arguments, as we explain below. To the extent he raises new issues, he has not explained why he cannot raise those issues in the district court.

¶8 Third, Mr. Lyman has not shown a legal basis for setting aside the 2024 Republican primary election. Utah’s election code states that candidates for office “that are to be filled at the next regular general election shall be nominated in a regular primary election by direct vote of the people in the manner prescribed” by Utah law. UTAH CODE § 20A-9-403(1)(a). Utah’s election code further instructs that “[a] candidate who, at the regular primary election, receives the highest number of votes cast for the office sought by the candidate is . . . nominated for that office by the candidate’s registered political party.” *Id.* § 20A-9-403(5)(a)(i).

¶9 Despite these provisions, Mr. Lyman argues that the Utah Republican Party’s Constitution and Bylaws require that any candidate who receives sixty percent or more of the votes at the party’s nominating convention proceeds to the general election— regardless of the primary election’s outcome. In other words, Mr. Lyman contends that the Republican Party’s internal procedures trump state election law. We disagree.

¶10 Mr. Lyman cites no authority to support his assertion that a political party’s internal rules override state election law. And he overlooks that we reached the opposite conclusion in *Utah Republican Party v. Cox*, 2016 UT 17, 373 P.3d 1286 (per curiam).

⁴ In 2014, the Utah Legislature passed Senate Bill 54, which created a signature-gathering path for candidates to the primary election ballot as an alternative to state nominating conventions. *See* UTAH CODE §§ 20A-9-407 & -408.

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There, we concluded that if a party seeks to be certified under state law as a qualified political party, “it must comply with the statute’s requirements,” and we further concluded that this requirement “does not amount to internal control or regulation of the party by the State.” *Id.* ¶ 6. Thus, as long as the Utah Republican Party seeks to be a qualified political party, it is subject to these requirements.

¶11 Still, Mr. Lyman appears to advocate for a different result, quoting the United States Supreme Court as stating: “A political party has a First Amendment right to limit its membership as it wishes, and to choose a candidate-selection process that will in its view produce the nominee who best represents its political platform.” (Quoting *Utah Republican Party v. Cox*, 885 F.3d 1219, 1230 (10th Cir. 2018) (quoting *N.Y. State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 202–03 (2008)), *revised and superseded*, 892 F.3d 1066 (10th Cir. 2018).) But notably, Mr. Lyman omits the qualification that immediately follows that statement. In recognizing a party’s First Amendment rights, the Supreme Court also stated:

These rights are circumscribed, however, when the State gives the party a role in the election process — [for example] by giving certain parties the right to have their candidates appear with party endorsement on the general-election ballot. Then the State acquires a legitimate governmental interest in ensuring the fairness of the party’s nominating process, enabling it to prescribe what that process must be.

Id. (cleaned up) (quoting *Lopez Torres*, 552 U.S. at 202–03). This statement, quoted in its entirety, is consistent with what we said in *Utah Republican Party*, 2016 UT 17, and does not support Mr. Lyman’s view that a qualified political party’s internal rules trump state law.

II. MR. LYMAN’S REQUESTS TO ORDER LIEUTENANT GOVERNOR
HENDERSON TO PRODUCE INFORMATION MR. LYMAN HAS
PREVIOUSLY REQUESTED UNDER GRAMA

¶12 Next, Mr. Lyman explains that Lieutenant Governor Henderson has denied his request for the names of registered voters who signed nominating petitions for those Republican candidates who relied on signatures to qualify for the primary ballot. Mr. Lyman argues that Utah law does not protect the privacy of the signatures and that the Lieutenant Governor and

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other custodians should be ordered to provide the signatures and any other requested records relating to the 2024 Republican primary election.

¶13 We decline Mr. Lyman’s request because he has not shown that he has no other plain, speedy, or adequate remedy. Mr. Lyman has recently sought similar, if not identical, relief in the Third District Court. *See Lyman for Utah LC v. Henderson*, Case No. 240905195. Although Mr. Lyman recently withdrew from that case, the matter is still pending and undermines his claim that his invocation of this court’s writ authority is warranted. Further, to the extent Mr. Lyman seeks to adjudicate a different issue in his petition than the one he raised in his district court complaint, he has not shown that he has exhausted his administrative remedies under GRAMA, nor has he provided documentation to support the factual allegations on which his challenge is based. Without these necessary showings, we are in no position to provide Mr. Lyman the relief he requests.

III. MR. LYMAN’S REQUEST TO ORDER LIEUTENANT GOVERNOR
HENDERSON AND GOVERNOR COX REMOVED FROM OFFICE

¶14 Last, Mr. Lyman seeks a directive that Lieutenant Governor Henderson and Governor Cox be removed from office pursuant to section 78B-6-606 of the Utah Code. *See UTAH CODE* § 78B-6-606 (“If a defendant is found guilty of usurping, intruding into or unlawfully holding or exercising an office, franchise, or privilege, the court shall order the defendant removed from the office . . .”). Mr. Lyman is not entitled to relief under this provision because he has offered no viable factual or legal basis for the remedy he requests.

CONCLUSION

¶15 Mr. Lyman has not presented a basis for this court to exercise its discretion to grant the relief requested. Accordingly, we deny his petition for extraordinary relief. Because the petition is dismissed, Mr. Lyman’s injunction motions are denied as moot.