Controversy and Constitutionality: An Analysis of the Convention System in Utah

By Amie Richards

The current caucus-and-convention system used by political parties in Utah to nominate candidates for the primary and general elections has become quite controversial in recent years. Top political minds in the state have been taking divisive stances on the issue, which was brought to center stage with the recent election cycle in 2010. At the party nominating conventions in May, delegates used their narrowing power to unseat three-term Republican incumbent Senator Bob Bennett and force a primary election for four-term Democratic incumbent Congressman Jim Matheson against challenger Claudia Wright. The central focus of the debate targets the selection of state party delegates who are chosen to represent the rest of the voting population. Advocates of the current system maintain its republican, representative nature, while opponents argue the system as it stands violates the principle of equal protection as presented in the United States Constitution. This paper will present both arguments, as well as an in-depth analysis of the caucus and convention system in Utah, and formulate a conclusion on the constitutionality of the system. I will not specifically call for a complete end to the convention system in Utah, but I will argue for the need for immediate reform in the way delegates are allocated within the convention system.

INTRODUCTION

Nomination conventions in Utah have been commonplace for over a century. When taken at face value, the process seems simple: members of respective political parties come together to choose their party’s nominee for various offices, and the rest of us take it from there in the primary or general election. With such a simple process behind a time-honored tradition, what has caused such a commotion that many of our state’s top political minds are calling for change? The ousting of three-term incumbent Republican Senator Bob Bennett and the first-time primary for four-term incumbent Democratic Congressman Jim Matheson at the May 2010 party nominating conventions encouraged intense debate and stringent analysis of the existing process. Those supporting the status quo boast of its republican nature, while opponents argue that it disenfranchises large sections of the population and therefore does not pass constitutional muster. While I am not calling for a complete end to the convention system, my research shows there is sufficient evidence to question the legality of the current delegate allocation method, which points toward immediate reform of the way delegates are allocated within the convention system.

I will begin with an explanation of the current nominating process and the history behind it, presenting both sides of the aforementioned controversy and relevant case law, provide an in-depth statistical analysis of the delegate apportionment scheme, and finish with a discussion of my findings and presentation of my conclusion.

To begin, both of the prominent parties in Utah, Republicans and Democrats, utilize a three-step modified convention system to select their nominees for the primary election. This process begins the third Tuesday in March within the local voting district, or precinct, caucuses. At this initial caucus those eligible to vote at the caucus elect precinct leadership and county delegates to represent the precinct for the next term. In the month and a half following the local district caucuses, elected delegates and party leadership come together at the county level to
make similar decisions. At the county conventions only elected delegates are allowed to vote for county-wide party nominees, party leadership, and delegates to the state convention. As prescribed in Article II Section 3 of the Utah Republican Party Constitution, and alluded to in the Utah Democratic Party Constitution, the state convention must be held in advance of the primary election candidate certification deadline, which traditionally equates to both parties holding their state conventions on the first Saturday in May. At the state conventions, state delegates select the party nominees for federal and statewide offices, as well as state party leadership, national committees and -women, and, in presidential election years, national party delegates.

When voting for party nominees to public office, both parties have similar requirements. For a candidate to secure the party nomination at convention and avoid an intra-party primary election, he or she must obtain 60% of the delegate vote. This rule also maintains that in order for an underdog candidate to force a primary election he or she must obtain at least 40% of the delegate vote. If no candidate reaches the 60% mark, the top two vote earners move on to face each other in the primary election, held the third Tuesday in June.

While the nominating processes outlined in each party’s respective constitution and bylaws are very similar, there are a few notable differences. By definition, the Republican Party system is closed and the Democratic Party system is semi-closed; only registered Republican voters are eligible to vote or be elected to any party position within the Republican Party system; whereas in the Democratic Party system, registered Democrats, as well as those registered as unaffiliated with a political party, can participate. Also, the Republican Party selects a total of 3,500 delegates for the state convention, whereas the Democratic Party selects 2,645. However, both parties allocate delegates according to similar relative party-strength formulas based on the number of votes for respective party candidates in the top four state races compared to the total number of votes cast in those races.

Though Utah’s party nomination system has developed significantly since its inception, it finds its roots deep in American history. Memoirs show that as far back as 1725 colonists engaged in local caucus meetings to discuss issues and propose agreed upon solutions (Meyer, 1902). From the early 18th century through the mid-19th century the caucus underwent four primary stages of development. The private and often secretive local caucuses of the early 18th century transformed into open, publicly advertised local caucuses around the time of the American Revolution (Meyer, 1902). While caucus meetings remained irregular, by 1787 caucuses began electing representative delegates and dispatching committees of correspondence to surrounding areas to assess opinions of those who could not as easily attend (Meyer, 1902). The caucus concept quickly spread among the states and to the national level and became associated with the respective legislative bodies rather than average citizens. During his congressional tenure, Alexander Hamilton greatly expanded the caucus at the national level as it grew to benefit his dominant Federalist Party. However, by 1824 the public disdain for such an imbalance of political power caused the existing “party in power” caucus to implode giving way for the separate party caucuses we see today (Meyer, 1902).

The third-party Anti-Masons held the first national party convention in 1831, followed by the first Democratic National Convention in 1832, and then by the first Republican National Convention in 1856 (Rowen, 2007). Party-nominating conventions continued as the relatively uncontested means of selecting candidates for the primary ballot through the end of the 19th century. In the 1880s, states began pulling away from nominating conventions in favor of direct primary elections. The Ohio State Legislature first considered switching to a Pennsylvania-style direct primary election in 1887, and New York made the move in 1909 (New York Times, 1887; Special to the New York Times, 1909). In 1889 the Utah State Legislature passed a law providing for a direct primary plan, but the parties never chose to use it (Meyer, 1902).

Though an end to the convention system in favor of direct primaries had been continuously reiterated from Governor Herbert Maw in the 1930s and 1940s to the Democratic State Legislature in the 1960s, Utah’s unique system was revered by others, including Senator Frank Moss, who, in his 1968 Moss Plan, suggested the national nomination process model Utah’s (National Governor’s Association, 2010; Deseret News, 1968). Rather than follow Utah’s system, the national conventions gave way to a presidential primary system as the binding nomination method (Rowen, 2007). The 1990s brought yet another wave of challenges to the Utah nomination system, mostly concerning the 70% vote requirement that was in place for a candidate to secure nomination at the convention (Deseret News, 1990). That threshold was lowered to the current 60% first by the Democratic Party in 1996 followed by the Republican Party in 1999 (Bernick, 1996; Harrie, 1999).

1Utah Code 20A-9-403 2(b)(ii) states that in order for registered political parties to utilize the state primary election system the party must “certify the name and office of all the registered political party’s candidates to the lieutenant governor [and to the county clerks] no later than 5 p.m. on May 13 of each even numbered year.”

2These percentages refer to that of the final ballot. When there are more than two candidates seeking nomination to the same office, multiple ballot rounds are held sequentially, eliminating the lowest vote earner until the top two candidates remain. The top four races are those for governor/lieutenant governor, attorney general, auditor, and treasurer.

3In the 1960s the Democratic State Legislature passed a law requiring direct primary elections. Voters were outraged primarily due to the resulting threat of required registration by party. Subsequently the Republicans were victorious on Election Day and repealed the law the following session (Bernick, 1999).
Going into the 2010 nominating cycle, top political minds from across the state and ideological spectrum began drawing attention to the over-determining role the system could play in the upcoming election. Claims that the parties were being taken over by their extremes ran rampant, and survey data showed that the party delegates were off track with the voters they were supposed to represent.\(^1\) References were made to the 2004 Republican nominating cycle in which incumbent Governor Olene Walker, sitting at an approval rating of 84% among Utahns, was eliminated at convention and Jon Huntsman, Jr. and Nolan Karras were sent on to the primary election (Associated Press, 2004; Bernick, 2010). This pattern was repeated in 2010 when three-term incumbent moderate Republican Senator Bob Bennett was beaten out by up-and-coming conservatives Mike Lee and Tim Bridgewater. On the Democratic side, four-term incumbent and conservative Democrat Jim Matheson found himself facing his first ever primary election against liberal newcomer Claudia Wright in a fight for the nomination in the 2nd Congressional District. Following the state conventions and subsequent primary election, the onslaught of attacks on the current nominating system continued as the debate crossed ideological lines.

Those siding against the current nominating system suggest that it leaves the process open for fraud and manipulation, that it disenfranchises certain segments of the population, and that the delegate allocation method does not pass constitutional muster. Supporters maintain the grassroots, inclusive, republican nature of the convention process. I will present both sides to each of the central arguments before moving on to a more in-depth look at the controversial delegate allocation method.

**Arguments**

**The Convention System**

On March 23, 2010, Representative Sheryl Allen attended her local precinct caucus in Davis County. She and about 75 fellow Republicans discussed local races, the party platform, and moved along to voting procedure. In her one-minute speech explaining why she would like to represent her precinct as a delegate, Allen voiced her support for current United States Senator Bob Bennett. Others seeking the same position staunchly professed their anti-Bennett sentiments. Rather than casting an official ballot, those in attendance simply wrote the name of their preferred candidate on a torn-off sheet of paper and passed it to the presiding chair. There was no official tally or voter-to-vote ratio taken, no ballot box for security. Votes were counted and Representative Allen found herself tied for the final delegate slot with an anti-Bennett opponent. The chair decided a flip of a coin would suffice, a practice used to decide ties even at the state election level, and Representative Allen won. An anti-Bennett attendee stood up and demanded a revote claiming the coin flip was not a valid determinant for a tie. By the time of the revote the number of attendees remaining had significantly dwindled, and again no voter-to-vote ratio was taken. The votes were passed forward and the man who demanded the revote went outside, counted the votes, and returned deeming the anti-Bennett candidate the winner (Sheryl Allen, personal communication, November 5, 2010).

This story is only one of many similar stories from caucuses of both parties depicting the lack of control and accountability present in the convention system as it stands (Rolly, 2010). From personal experience I can attest to the fact that precinct chairs are given little instruction on how to conduct the caucuses, and the “how-to” sheet given leaves room for much discretion in collecting and counting votes. There is no formal process, no security measures, and no accountability in the selection of delegates who make the very official decision on the party’s nominee.

Dave Hansen, former chair of the Utah Republican Party, readily admits that no system, including the caucus-and-convention system currently in use, is perfect. However, he argues that the grassroots nature of the caucus allows for all to participate who wish to do so. Mr. Hansen also points out that precinct chairs and other members of party leadership are provided the opportunity to receive training on how to conduct a caucus, but that most of it is handled on the honor system (personal communication, November 8, 2010). Kirk Jowers, Director of the Hinckley Institute of Politics at the University of Utah, focuses our attention past the probability for fraud and manipulation at the caucus level to the overt ability of interest-group manipulation via the convention system (Jowers, 2010). Both parties maintain lists of elected delegates for purposes of convention reminders and other party updates; however, these lists are far from private as they are often given out to candidates and interest groups for campaign and advertising purposes. While supporters of the convention system argue that any election is subject to interest group influence, simple logic tells that getting a message out to a few thousand delegates is much easier and cheaper than trying to engage the more than 1.9 million that make up the state’s voting age population (U.S. Census Bureau, 2008).

Deeper and more prominent than the influence of interest groups is the stranglehold party insiders have over the entire convention process. Jowers argues “the less people who show up, the more power you have,” noting the current convention system rules favor incumbents and party bosses (Riley Roche, 2010). Scott Konopasek (2010) writing for The Salt Lake Tribune contends that “the current caucus system and political party convention regime for placing names on a ballot takes decisions out of the hands of voters and places it in the hands of a small oligarchy of delegates.” With party lead-

---

\(^1\) April 2010 poll by Dan Jones & Associates showed significant deviations in the opinions of party delegates versus registered party members on the questions of global warming and the United Nations (Bernick, 2010).
Hansen also disputes the incumbency claims by providing the examples of 2004 when Jon Huntsman, Jr. and Nolan Karras eliminated incumbent Governor Olene Walker at convention. Since no one gained the then-required 70%, Bennett was able to come out victorious at the primary and eventually win the general election as well (David Irvine, personal communication, November 4, 2010). Because the nomination decisions are made by such a small percentage of Utah’s voting population, even registered party members in the primary, let alone the many more general election voters, are not given a fair say. That equates to 99.8% of the population being treated as irrelevant during the most determinative stage in our election process (David Irvine, personal communication, November 4, 2010).

Hansen argues that the convention system is the best we have to work with given that all candidates and registered voters, Republicans in his case, are allowed equal opportunity to participate. Anyone eligible to vote in the state of Utah can participate in either party-nominating process so long as they register under the party with whom they wish to participate. As for candidates, Hansen says the convention system provides the most level ground for political newcomers given that all candidates are allowed equal speaking time and equal access to the delegates, whereas in a direct primary election the obvious advertising advantage would go to the rich, famous, or well-known incumbent. Hansen suggests the system “favors the candidate that spends the most time with the delegates” and that the party influence over the candidates is positive because they are then held responsible to the party (personal communication, November 8, 2010). Hansen also disputes the incumbency claims by providing the examples of 2004 when Jon Huntsman, Jr. and Nolan Karras eliminated incumbent Governor Olene Walker at convention, 2008 when Jason Chaffetz eliminated incumbent Congressman Chris Cannon in the primary, and 2010 when Mike Lee and Tim Bridgewater eliminated incumbent Senator Bob Bennett at convention.

While plenty of debate surrounds the convention in and of itself, most of the claims against it are directed at the selection of delegates to the convention. David Irvine, Kirk Jowers, and Sheryl Allen, among others, argue that the few thousand delegates that are selected to represent the rest of the registered voters fail to do so accurately. I will present arguments for three separate categories pertaining to the representativeness of the party delegates: ideology, demographic, and geography, and then proceed with my personal analysis of the delegate-allocation process.

The Delegates
At the 2010 Salt Lake County Republican convention, conservative newcomer Ken Ivory garnered 77% of the delegate votes ousting moderate incumbent Representative Steve Mascaro for the nomination to State House District 47 (Bernick, 2010). Jowers argues that delegates do not accurately represent the majority of Utah voters or their political views. An April 2010 poll by Dan Jones and Associates supports this argument showing that delegates are off track with Utah voters, and a survey I conducted from October 26 to November 13 of 2010 shows that 37% of registered voters believe delegates are more extreme than themselves ideologically. Political analyst Frank Pignanelli notes that in order for a candidate to win the nomination they are forced to appeal to the fringe of the party, and Jowers agrees, stating that candidates must be subservient to the extremes and ignore the moderates if they want to stand a chance at making it out of convention (Pignanelli and Webb, 2010; Jowers, 2010).

According to the poll results, Jowers (2010) compared the top five policy issues for delegates and voters of each party and found significant disparities. The top two issues for the Republicans were protecting states’ rights and creating a business-friendly environment, and the top two issues for the Democrats were improving the quality of K-12 education and improving the ethics and oversight of elected officials. The delegates’ and voters’ opinions were the same for these top two issues, but the remaining issues differed significantly from delegates to voters. Republican delegates were concerned with protecting gun rights, allowing mining and grazing on federal lands, and preventing illegal immigration, while Republican voters were more interested in increasing the number of high-quality jobs, improving the quality of K-12 education, and reducing the size of government.

---

9In the 2010 general election one fourth of Utah House races were unopposed, 74% of partisan county races were unopposed, and seven counties had no opposed races illustrating the power and reach of the party delegates in selecting not only party nominees but also controlling who gets the position (Konopasek, 2010).

1It is for this logical reason that I will not be arguing a claim of due process violations against the current system.

2I argue that this point is moot given the equal access laws set up through the Communications Act of 1934 requiring equal time on non-commercial broadcasts and the FCC rules requiring equal opportunity and equal costs in media advertising.

3Conducted primarily online from October 26, 2010, to November 13, 2010, with a sample size of 200 registered voters and margin of error of 7.5%.
education, and reducing crime. Democratic delegates were concerned with expanding the availability of healthcare, lowering the costs of healthcare, and decreasing pollution, while Democratic voters were more interested in increasing the number of high-quality jobs, reducing crime, and creating a business-friendly economy. Clearly the interests of the average voter are not being represented by party delegates.

Hansen concedes that delegates may be more extreme ideologically, but that they are the most informed voters in the state because of their increased level of involvement. Irvine contests this point, arguing that delegates are some of the least informed members of the electorate because rather than personally looking for unbiased information on candidates, they are constantly getting biased information from candidates and interest groups. Regardless, as Hansen points out, this ideological discussion is nothing new. In the 1970s, people argued that teachers were taking over the parties, and now they argue that the Tea Party is taking over; “In time, things will adjust,” Hansen said (personal communication, November 8, 2010).

Irvine draws attention to demographic inequalities among party delegates. The current system under represents women, ethnic minorities, and people who are not members of The Church of Jesus Christ of Latter-day Saints, the dominant religion in Utah, he argues. While it is near impossible, sans exit polling, to estimate the ethnic and religious makeup of each party’s delegation, statistics show that women are significantly under represented. Jowers (2010) shows that in 2008 women came to the polls in larger numbers than men, yet there are clearly more male delegates than female delegates in either party. Women consist of about 45% of Democratic delegates, and only about 25% of Republican delegates. Yet in the 2008 general election, 60% of Democratic voters were women, and 55% of Republican voters were women. Kitty Dunn, vice chair of the Utah Republican Party, notes that “those who show up make the decisions,” and while she would like to see more women involved it just has not happened (personal communication, November 17, 2010). She says the party is working with women’s organizations to increase female involvement in the process.

The strongest evidence to the claim that delegates are not representative of Utah voters comes from the geographic disenfranchisement of some areas of the state. Rather than being allocated based on population or party registration, delegates are allocated to the counties based on the relative party strength of the county. The resulting distribution of delegates is contrary to the democratic principle of one-person-one-vote. Add in the automatic delegates, elected officials, and party leadership, and there are vast differences in the number of delegates coming from one precinct compared to those surrounding it. Hansen argues that there is not much difference between the allocation by relative strength compared to what it would be by population. He also disputes the relevance of party registration given the fact that in order to participate in either convention voters must register accordingly. Dunn draws attention to the political party as a private entity whereby Utah code10 leaves the decisions to the party. In addition, Title 20A11 of Utah Code outlines the process by which registered political parties are to put forth their candidates for the primary ballot. The fact that Utah code gives discretion to the parties in nominating candidates does not in and of itself excuse the process from review.

This controversy centers on the fundamental ethical concept of political equality at the heart of democracy. In the U.S., we have adopted this principle in the form of equal representation and its constitutional corollary, equal protection. However, the current convention system, in effect, allows parties to select which parts of their respective populations are to count and to leave out the rest.

**RELEVANT CASE LAW**

In addition to these philosophical and ethical concerns, there exists significant relevant case law on the issue. First I will address Dunn’s concern of the classification of political parties as private entities and their resulting independence over the issue. In 1971 the United States Court of Appeals for the District of Columbia ruled in *Georgia v. National Democratic Party* that “by placing the nominee’s name on the ballot, the states, in effect, have adopted the narrowing process [produced by the major political parties] as a necessary adjunct of their election process.” *Bode v. National Democratic Party* (1972) reinforced this decision also finding state action in its acceptance of the party nominees and added that the parties, while being private entities, perform a public function and are therefore subject to the enforcement of applicable laws. The precedent set by both the Georgia and Bode courts is that “the limitation of effective choice resulting from nomination by a major party is such a significant part of the election process that constitutional standards should apply” (Harvard Law Review, 1972). The Supreme Court also ruled that the state has a “not only permissible, but compelling interest in enforcing this narrowing process” (Harvard Law Review, 1972).

The principle of one-person-one-vote was established in 1963 by way of the Supreme Court decision in *Reynolds v. Sims*. The court ruled that the equal protection clause of the Fourteenth Amendment demands “no less than substantially equal … representation for all citizens.” Because of the state action present in the party convention process as determined in both Georgia and Bode, there should be no doubt that the state can intervene if violations of equal protection, or any other right, are found. However, the ruling in *Reynolds v. Sims* does not directly apply to the case at hand. The impor-

---

1 Dunn is referring to 20A-9-401 (2) of Utah code which states “this part may not be construed to govern the internal procedures of a registered political party.”

2 Specifically 20A-9-403 (2a) which begins, “As a condition for using the State’s election system, each registered political party that wishes to participate in the primary election shall:” and lists several requirements.
tant distinction to draw concerning the party convention system is, as declared by the Georgia court, that the political parties represent their respective voters whereas legislators represent the entire population. Therefore, parties cannot be forced to allocate their delegates based strictly on population. The Georgia court established and the Bode court supported the political party principle as “one-Democrat/Republican-one vote.”

A later case, the Ripon Society v. National Republican Party (1975), further defines the issue. Questioning the legality of the victory bonus delegates given to states based on a party-strength formula the Ripon court ruled that “measurement of party strength in terms of states instead of in terms of people who have in the past or may in the future vote Republican is permissible under the Electoral College system.” However, taken out of context of the Electoral College system the allocation based on party strength would be invalid “if it produces a substantial deviation from the one-person-one-vote standard.” Drawing distinction between legal and statistical significance, the Ripon court established legal significance at a 5% deviation from the equality of party-respective registered voters. Therefore, if the calculated deviations exceed 5%, the use of the party-strength formula to allocate party delegates should be challenged and reconsidered in order to ensure fair representation of party members.

STATISTICAL ANALYSIS

The question at hand is: how does the delegate allocation formula used in Utah’s party convention system fare by those legal standards? Again, both parties in Utah allocate delegates based on a relative strength formula:

\[
P_{strength} = \frac{\Sigma votescastparty}{\Sigma votescasttotal}
\]

wherein \(P_{strength}\) represents relative party strength, \(\Sigma votescastparty\) represents the sum of the votes cast for the respective party’s candidate for the top four state races and \(\Sigma votescasttotal\) represents the total number of votes cast for all candidates in the same four races. The resulting percentage is then applied to the total number of delegates for each party to determine how many delegates each county is to receive. For Republicans this formula is:

\[
Delegates = \% P_{strength} \times 3500
\]

given there are 3,500 delegates to the state Republican convention. Democrats, who give each county five delegates to start, follow this formula to allocate their 2,645 delegates:

\[
Delegates = 5 + \% P_{strength} \times 2500.
\]

For comparison’s sake, the formula to allocate delegates based on party registration14 would be:

\[
R_{strength} = \frac{registeredparty}{registeredtotal}
\]

wherein \(R_{strength}\) represents the registration strength, \(registeredparty\) represents the number of voters registered with the respective party, and \(registeredtotal\) represents the total number of registered voters in the county. Again, the resulting percentage would be applied to the total number of delegates for each party to determine the number of delegates each county is to receive. For Republicans this formula is:

\[
Delegates = \% R_{strength} \times 3500
\]

Given there are 3,500 delegates to the state Republican convention Delegates = \% R_{strength} \times 3500. Democrats, who give each county five delegates to start, follow this formula to allocate their 2,645 delegates:

\[
Delegates = 5 + \% R_{strength} \times 2500
\]

Using a basic formula of \(|(A-B) + B| \) to determine the difference between the two variables17 I will evaluate the legal significance thereof. The differences for both parties are shown in Table 1.

Based on the legal significance level of 5% deviation from the party registration allocation, it is clear that both the Republican and Democratic parties in Utah are allocating their delegates illegally.

DISCUSSION

The Ripon case prescribed a 5% allowable deviation from the delegate allocation via the relative strength formula and what it would be via the party-registration formula. This means that if the difference in the number of delegates allocated by the two formulas is more than 5% of the allocation under the party-registration formula, use of the party-strength formula is not acceptable. Establishing this threshold for legal significance also drew distinction from the more stringent evaluation of statistical significance given via the chi-squared goodness of fit test. Each party falls within the allowable 5% in only five18 of Utah’s 29 counties. Davis County is the only county in the state that falls within the allowable 5% for both parties, and each of the 28 other counties have double-digit devia-

---

14Delegates were apportioned based on the number of electoral votes each state had, crossed with a formula to determine party strength within the state. This system was accepted because winning the presidential election was determined the primary goal of the party, and therefore electoral votes were the basis of attaining that goal.

15Again, referring to political parties this standard was amended by the Georgia court to “one-Democrat/Republican-one vote.”

16Again, the top four state races are those for governor, lieutenant governor, attorney general, auditor, and treasurer.

17The same formula is used by the counties to determine delegate allocation to the precincts.


19Where \(A\) represents the number of delegates allocated under the relative strength formula and \(B\) represents the number of delegates allocated under the party-registration formula.
The critical value for the Republican Party at 25 degrees of freedom is 18.92, and for the Democratic Party it is 21.88. A chi-squared goodness of fit analysis null hypothesis that the two formulas of delegate allocation do not produce statistically significant differences, must be rejected. Thus, I conclude that the party-strength formula currently used to allocate delegates by Utah’s political parties does create statistically significant deviations from what the allocation would be under the party-registration formula.

**Deviance Between Variables A and B**

<table>
<thead>
<tr>
<th>County</th>
<th>Republican Party</th>
<th>Democratic Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beaver</td>
<td>9.09%</td>
<td>23.08%</td>
</tr>
<tr>
<td>Box Elder</td>
<td>8.14%</td>
<td>34.31%</td>
</tr>
<tr>
<td>Cache</td>
<td>8.43%</td>
<td>25.24%</td>
</tr>
<tr>
<td>Carbon</td>
<td>16.67%</td>
<td>20.56%</td>
</tr>
<tr>
<td>Daggett</td>
<td>66.67%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Davis</td>
<td>2.04%</td>
<td>4.29%</td>
</tr>
<tr>
<td>Duchesne</td>
<td>17.24%</td>
<td>36.90%</td>
</tr>
<tr>
<td>Emery</td>
<td>15.00%</td>
<td>25.00%</td>
</tr>
<tr>
<td>Garfield</td>
<td>30.77%</td>
<td>3.13%</td>
</tr>
<tr>
<td>Grand</td>
<td>10.00%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Iron</td>
<td>17.07%</td>
<td>18.24%</td>
</tr>
<tr>
<td>Juab</td>
<td>13.33%</td>
<td>23.44%</td>
</tr>
<tr>
<td>Kane</td>
<td>33.33%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Millard</td>
<td>20.83%</td>
<td>21.88%</td>
</tr>
<tr>
<td>Morgan</td>
<td>6.27%</td>
<td>21.43%</td>
</tr>
<tr>
<td>Piute</td>
<td>40.00%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Rich</td>
<td>0.00%</td>
<td>10.71%</td>
</tr>
<tr>
<td>Salt Lake</td>
<td>7.33%</td>
<td>26.61%</td>
</tr>
<tr>
<td>San Juan</td>
<td>6.67%</td>
<td>11.96%</td>
</tr>
<tr>
<td>Sanpete</td>
<td>18.60%</td>
<td>31.03%</td>
</tr>
<tr>
<td>Sevier</td>
<td>21.95%</td>
<td>23.91%</td>
</tr>
<tr>
<td>Summit</td>
<td>15.00%</td>
<td>26.34%</td>
</tr>
<tr>
<td>Tooele</td>
<td>193.22%</td>
<td>20.39%</td>
</tr>
<tr>
<td>Uintah</td>
<td>12.24%</td>
<td>47.86%</td>
</tr>
<tr>
<td>Utah</td>
<td>11.99%</td>
<td>33.55%</td>
</tr>
<tr>
<td>Wasatch</td>
<td>18.92%</td>
<td>23.53%</td>
</tr>
<tr>
<td>Washington</td>
<td>4.37%</td>
<td>17.81%</td>
</tr>
<tr>
<td>Wayne</td>
<td>0.00%</td>
<td>10.71%</td>
</tr>
<tr>
<td>Weber</td>
<td>1.71%</td>
<td>18.68%</td>
</tr>
</tbody>
</table>

169.07 for the Democratic Party; both parties exceed their critical values. As prescribed by the chi-squared goodness of fit analysis the null hypothesis that the two formulas of delegate allocation do not produce statistically significant differences, must be rejected. Thus, I conclude that the party-strength formula currently used to allocate delegates by Utah’s political parties does create statistically significant deviations from what the allocation would be under the party-registration formula.

**CONCLUSION**

Based on these statistics I find that the deviation in delegate allocation using the current relative strength formula and what the allocation should be based on party registration exceeds the standard for legal significance set by the Ripon court. I have referenced the legal precedent set by the Georgia and Bode cases that find state action in the party convention system thus making the equal protection clause of the Fourteenth Amendment applicable to this situation. I conclude that the use of the current relative strength formula by political parties in Utah does in fact create legally significant territorial deviations in the allocation of delegates for the party nominating conventions thereby denying swaths of registered party members equal access to the vote according to the modified principle of one-Democrat/Republican-one-vote and should therefore be deemed unconstitutional on the basis of the equal protection clause of the Fourteenth Amendment.

That having been said, a change in the system is needed immediately. State House Minority Leader Representative David Litvack, D-Salt Lake, introduced a bill that would call for direct primary elections during the 2011 legislative session; however, the bill never made it out of the House Rules Committee. Another option is by citizen initiative as in the California case.19 In Utah, however, that is unlikely to happen. As suggested by Representative Allen, the only way change will happen is if someone successfully brings a lawsuit alleging the same findings mentioned throughout this paper against the state and the political parties.

I am not directly calling for the end to the convention system in our state, as I recognize it as a time-honored tradition valued within our political history; however, I am calling for immediate change in the way delegates are allocated within the system.20 We need to provide a better way to represent the voters of our state. It is my opinion that the best way to eliminate any undue restriction on equal access to the vote would be to move to an open direct primary system similar to the one passed in California. I am inclined to agree with

---

19For the Republican Party: Davis (2.04%), Rich (0.00%), Washington (4.37%), Wayne (0.00%), and Weber (1.71%); and for the Democratic Party: Daggett (0.00%), Davis (4.29%), Garfield (3.13%), Kane (0.00%), and Piute (0.00%).

20In the 2010 general election California voters passed the Top 2 Primaries Act that will call for a single open primary to select the top two vote getters for the general election.
Meyer in his claim that “the voter who can cast an intelligent ballot for each of many classes of delegates and vote for men who may safely be trusted with the free choice of candidates, unhampered by instructions, possesses sufficient intelligence to exercise that choice directly” (Meyer, 1902). We already use direct primaries at the city and municipal level, and 38 states utilize a direct primary already (Pignanelli and Webb, 2010; Rolly, 2010). However, switching to a true direct primary would likely limit the influence of political parties in the nomination process, and could very well eliminate this influence completely. I recognize, though disagree with, the popular value of political parties and their respective role in the nomination process. It is clear that a true direct primary would undermine the parties’ current gatekeeping function and high level of influence.

The state of Utah has the highest barrier to the primary ballot in the United States, and the lowest percentage of voting-age population that is involved in the crucial nomination process. We must act now to recognize these inequities and rightfully intervene in the interests of preserving the integrity of our elections process. We can, and must, do better.

REFERENCES


Harrie, Dan (1999, June 5). Republicans will vote to change election policy: Republicans will vote on changing nominee selection proposed change would parallel current Democratic Party policy. The Salt Lake Tribune.


Konopasek, Scott (2010, November 16). The real reasons Utah voter turnout could be low. The Salt Lake Tribune.


Amie Richards