Primary Permutations and Politics

**Moderator:** Senator Daniel A. Ivey-Soto, New Mexico  
**Panelist:** Dr. Charles Bullock, University of Georgia  
**Panelist:** Elaine Kamarck, Brookings Institution, Washington, D.C.  
**Panelist:** John Opdycke, Open Primaries, New York  
**Panelist:** Representative Mark A. Pody, Tennessee
Four Important Cases Regarding Primaries

▪ Utah Republican Party v. Herbert (2016)
▪ Crum v. Duran (2017)
Tashjian v. Republican Party of Conn. (1986)

- **Issue:** State law prohibiting independents from voting in party primaries.

- **SCOTUS Ruling:** Connecticut’s statute prohibiting the state Republican party from engaging in open primaries violated the party’s First Amendment associational rights.

- **Key Point:** The Court specifically rejected the State of Connecticut’s argument that the law could be justified as a defense of the two-party system and easing the administrative burden of holding elections.
**Utah Republican Party v. Herbert (2016)**

- **Issue:** State law mandating that all primaries be open to a party’s members and independent voters.

- **District Court’s Ruling:** Utah’s law was not *facially* unconstitutional, but could be unconstitutional as-applied.

- **Key Point:** The case is still largely in the district court, although small pieces of it have been appealed to the 10th Circuit in Denver. If the key holding is affirmed, states would need to be careful in how they craft laws mandating open primaries as to not violate parties’ First Amendment associational rights.

- **Issue:** State law abolished official party registration with state, permitting voters to vote for any slate of candidates on primary day.

- **9th Circuit’s Ruling:** Hawaii’s law involved issues of fact—not issues of law—and any burden would have to be proven by the Democratic Party, which it did not. Ruling for State.

- **Key Point:** Always make sure your state has a clear record of data to support its laws in court. Any legal challenge, even decades after a statute is enacted, can topple keystones of your electoral system.
**Crum v. Duran (2017)**

- **Issue:** Independent voter challenged state law mandating closed primaries, saying it violated the New Mexico Constitution’s clause promoting voter participation.

- **N.M. Supreme Court Ruling:** State constitutional clause at issue is balanced against legislature’s power to enact election regulations, and the burden on independent voters is small. Thus, the state law is constitutional.

- **Key Point:** State constitutional provisions must always be balanced against a state legislature’s power to enact time, place, and manner regulations of elections.