

The Honorable John C. Coughenour

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN
PARTY, et al.,

Plaintiffs,

WASHINGTON DEMOCRATIC CENTRAL
COMMITTEE, et al.,

Plaintiff Intervenors

LIBERTARIAN PARTY OF WASHINGTON
STATE, et al.,

Plaintiff Intervenors

v.

DEAN LOGAN, King County Records &
Elections Division Manager; et al.,

Defendants,

STATE OF WASHINGTON, et al.,

Defendant Intervenors

WASHINGTON STATE GRANGE,

Defendant Intervenors.

No. CV05-0927Z

WASHINGTON STATE GRANGE'S
MOTION TO STRIKE WASHINGTON
DEMOCRATIC CENTRAL
COMMITTEE'S FIRST AMENDED
AND SUPPLEMENTAL COMPLAINT

**NOTE ON MOTION CALENDAR:
FEBRUARY 26, 2010**

I. MOTION

1
2 Defendant-Intervenors Washington State Grange (“the Grange”) moves for an Order
3 striking the First Amended and Supplemental Complaint in Intervention For Declaratory
4 Judgment and For Injunctive Relief Regarding Initiative 872 and Primary Elections
5 (“Democrats’ Amended Complaint”) filed by Plaintiff-Intervenors Washington State
6 Democratic Central Committee, *et al* (“Democrats”) on January 21, 2010. The Democrats
7 failed to seek leave from this Court to file an amended complaint as required by Federal Rule of
8 Civil Procedure 15(a)(2).

9 The Grange, alternatively, moves for an Order striking specific paragraphs of the
10 Democrat’s Amended Complaint. The specified paragraphs are outside the scope of this
11 Court’s August 20, 2009 Order, including seeking relief and asserting allegations that have
12 already been dismissed by this Court, the Ninth Circuit, and the United States Supreme Court.
13 The Grange requests that this Order also require the Democrats to first seek leave with the
14 Court, through a motion to amend including a draft complaint, before re-filing an amended and
15 supplemental complaint that excludes these paragraphs and complies with this Court’s
16 August 20, 2009 Order.

II. ARGUMENT

18 A. The Democrats Failed To Obtain Court Approval Before Filing An Amended 19 Complaint.

20 Under Rule 15, if 21 days have passed after service of its original complaint, a party
21 may only amend its complaint “with the opposing party’s written consent or the court’s leave.”
22 Fed. R. Civ. P. 15(a)(2). The Grange has not provided written consent to the Democrats to file
23 an amended complaint. Nor, did the Democrats seek leave from the Court by filing a motion to
24 amend providing the Court with a proposed version of its Amended Complaint. The
25 Democrats’ entire Amended Complaint should, therefore, be stricken on this ground alone.
26

1 The Democrats may argue that they were not required to file a motion to amend under
2 Rule 15, because the Court already granted plaintiffs permission to file amended complaints
3 through its Order entered on August 20, 2009. (Dkt. No. 184.) But the Democrats cannot rely
4 upon that Order because the amended complaint falls well outside its scope.

5 **B. The Democrat's Amended Complaint Rehashes Allegations Already Dismissed And**
6 **Does Not Comply With This Court's August 20, 2009 Order.**

7 As explained by Defendant-Intervenors State of Washington, Secretary of State Sam
8 Reed, and Attorney General Rob McKenna ("the State"), the Democrat's Amended Complaint
9 falls well outside the scope of this Court's prior ruling on August 20, 2009. (*See* State
10 Intervenors' Motion to Strike Democrats' First Amended and Supplemental Complaint.) That
11 ruling set out a narrow range of issues that survived after the United States Supreme Court held
12 that I-872 is constitutional on its face. (Dkt. No. 184.) Instead of repeating and rearguing those
13 same arguments, to preserve the time of the Court and the parties, the Grange hereby joins in the
14 State's Motion to Strike, filed with the Court today. The Grange therefore alternatively asks the
15 Court strike paragraphs 1-5, 11-24, 26, 31-40, 42-46, 53, and 56-58 for the reasons set forth in
16 the State's motion. The Grange further requests that the Democrats be ordered to file a motion
17 to amend including a draft complaint, before re-filing an amended and supplemental complaint
18 that excludes these paragraphs and complies with this Court's August 20, 2009 Order.

19 **III. CONCLUSION**

20 For these reasons, including all reasons stated in State Intervenors' Motion to Strike
21 Democrats' First Amended and Supplemental Complaint, the Grange respectfully requests the
22 Court strike the Democrats' Amended Complaint. Alternatively, the Grange requests that the
23 Court strike paragraphs 1-5, 11-24, 26, 31-40, 42-46, 53, and 56-58 for the reasons set forth in
24 the State's motion. The Grange requests that this Order require the Democrats to file a motion
25 to amend including a draft complaint, before re-filing an amended and supplemental complaint
26

1 that excludes these paragraphs and complies with this Court's August 20, 2009 Order.
2

3 FOSTER PEPPER PLLC

4 /s/ Kathryn Carder

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CERTIFICATE OF SERVICE

Kathryn Carder states: I hereby certify that on February 4, 2010, I electronically filed the following documents with the Clerk of the Court using the CM/ECF system:

1. Washington State Grange’s Motion to Strike Washington Democratic Central Committee’s First Amended and Supplemental Complaint; and

2. this Certificate of Service.

which will send notification of such filing to the parties listed below:

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General Rob McKenna*

I certify and declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

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1 Executed at Seattle, Washington this 4th day of February, 2009.
2

3 /s/ Kathryn Carder

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