

July 7, 2008

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Re: Order of 9th Circuit Dated July 3, 2008

Gentlemen:

Last Thursday all counsel received an order from the 9th Circuit Court of Appeals requesting supplemental briefing in connection with the State's pending appeal of the injunction against implementation of I-872 that was entered by Judge Zilly in 2005. As is evident, the appeals of the State and Grange have not been fully resolved. The State has not requested Judge Zilly to modify his earlier injunction.

When Secretary Reed first proposed to attempt to implement the Top Two Primary via emergency powers and without regard to Judge Zilly's injunction, the Democratic Party responded on April 22, 2008 by noting:

It seems to [us] that it would have been better had you decided to wait until Judge Zilly had decided how to modify the existing injunction related to I-872 and then determined what, if any, steps to implement I-872 in 2008 would be appropriate. [We] hope that you will reconsider whether you have committed the resources of your office in a prudent fashion in connection with I-872.

Unfortunately, the Secretary elected to continue on his course of action asserting that the challenge to I-872 had been fully resolved. The 9th Circuit's order confirms that the litigation pending since 2005 is not over. The injunction entered in that case against implementing I-872 is still in effect. The State has made no effort to modify or vacate it. Proceeding with the planned August primaries and November elections in violation of this injunction will expose all of the results to challenge, potentially wasting significant taxpayer resources on elections that have to be redone.

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We urge you once again to reconsider the course of action the State is taking and continue to follow the existing Open (Montana) Primary law until such time, if ever, as the validity of I-872 is fully and finally upheld.

Very truly yours,

K&L GATES LLP

By 
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cc: John J. White
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