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The Honorable John C. Coughenour

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

WASHINGTON STATE REPUBLICAN
PARTY, et al.,

Plaintiffs,

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE, et al.,

Plaintiff Intervenors,

LIBERTARIAN PARTY OF
WASHINGTON STATE, et al.,

Plaintiff Intervenors,

v.

STATE OF WASHINGTON, et al.,

Defendant Intervenors,

WASHINGTON STATE GRANGE, et al.,

Defendant Intervenors.

NO. CV05-0927-JCC

STATE INTERVENORS'
ANSWER TO WASHINGTON
STATE DEMOCRATIC
PARTY'S FIRST AMENDED
AND SUPPLEMENTAL
COMPLAINT

1 As and for an Answer to the First Amended and Supplemental Complaint filed in this
2 matter by the Washington State Democratic Central Committee, the State Defendant
3 Intervenors admit, deny, and allege as follows:
4

5 **NATURE OF ACTION**

6 1. Paragraph 1 purports to be a paraphrase and summary of the constitutional
7 rights of political parties, including a quote from case law. This paragraph amounts to legal
8 argument and does not require an answer. To the extent an answer is appropriate, the State
9 denies that Paragraph 1 is an accurate summary of the law. The quote is accurate but
10 misleading when removed from its context.
11

12 2. Paragraph 2 consists of legal argument concerning the “fundamental purposes
13 of the First Amendment”. To the extent an answer is appropriate, the State asserts that
14 Paragraph 2 is irrelevant to this case, as Washington law does not implicate the principles
15 there advanced. Any remaining allegations are denied.
16

17 3. Responding to Paragraph 3, the State admits that Initiative Measure No. 872
18 (I-872) was enacted through voter approval of an initiative measure, and took effect on or
19 about December 2, 2004. The remainder of Paragraph 3 consists of legal argument
20 concerning the legal effect of Washington state law. To the extent an answer is required, the
21 State denies that Paragraph 3 accurately states the law or accurately characterizes either the
22 intent or the behavior of the State and its officers and employees. Any remaining allegations
23 are denied.
24

25 4. Paragraph 4 consists of speculation concerning the intent behind the adoption
26 of I-872 and argument concerning its legal effect. To the extent an answer is required, the

1 State denies that Paragraph 4 accurately characterizes the intent of the initiative measure or
2 its effect on political parties. Any remaining allegations are denied.

3 5. Responding to Paragraph 5, the State understands that the Plaintiffs have filed
4 this action to protect what the Democratic Party Plaintiffs assert to be First Amendment
5 rights. The State denies that I-872 censors or interferes with the rights of the Plaintiffs, and
6 denies that I-872 is unconstitutional. Any remaining allegations are denied.
7

8 **JURISDICTION AND VENUE**

9 6. In response to Paragraph 6, the State admits that this case presents a federal
10 question and that this Court has jurisdiction. Any remaining allegations are denied.

11 7. In response to Paragraph 7, the State admits that the Western District of
12 Washington is a proper venue for this action.
13

14 **PARTIES**

15 8. In response to Paragraph 8, the State admits that the Democratic Party meets
16 the definition of “major political party” set forth in RCW 29A.04.086. The State does not
17 have knowledge sufficient to admit or deny the remaining allegations in Paragraph 8, and
18 therefore denies them.

19 9. In response to Paragraph 9, the State lacks sufficient knowledge to admit or
20 deny the allegations contained therein, but has no reason to doubt the truth of those
21 allegations.
22

23 10. In response to Paragraph 10, the State admits that this paragraph accurately
24 identifies Sam Reed, Secretary of State, and Robert McKenna, Attorney General, as
25 Defendants. These officers have powers and responsibilities as described in state law. The
26

1 State further admits that Defendants Reed and McKenna were substituted as defendants in
2 this action in place of several county auditors by an agreed order of the Court on July 13,
3 2005. Any remaining allegations in Paragraph 10 are denied.

4 **WASHINGTON'S ELECTION SYSTEM**

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6 11. Responding to Paragraph 11, the State will conduct a primary in August (not
7 September) of 2010, that will include both "partisan offices" and nonpartisan offices as
8 defined by state law, including I-872. State statute defines "partisan office" as "a public
9 office for which a candidate may indicate a political party preference on his or her
10 declaration of candidacy and have that preference appear on the primary and general election
11 ballot in conjunction with his or her name." RCW 29A.04.110. State law further provides
12 that for partisan office, if a candidate has expressed a party or independent preference on the
13 declaration of candidacy, then that preference will be shown after the name of the candidate
14 on the primary and general election ballots. RCW 29A.52.112(3). When a primary is
15 conducted for a partisan office, the top two candidates will be certified as qualified to appear
16 on the general election ballot, unless only one candidate qualifies. RCW 29A.52.112(2). To
17 the extent that Paragraph 11 cites Washington statutes that are inconsistent with I-872, these
18 statutes have been superseded or impliedly amended by I-872. The State primary is not used
19 to nominate or select the candidates of any political party for public office. Washington law
20 neither requires political parties to nominate candidates for office nor prevents them from
21 doing so if they choose. The State has no specific knowledge as to whether former
22 Defendants Logan and Terwilliger have made the assertions ascribed to them in Paragraph
23 11, but has no reason to doubt the accuracy of the allegation. However, the State asserts that
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1 the quotation attributed to these former Defendants is misleading, taken out of context, and
2 immaterial to the issues in this case. Any remaining allegations in Paragraph 11 are denied.

3 12. The allegations in Paragraph 12 are denied.

4 13. The allegations in Paragraph 13 are denied.

5 14. The allegations in Paragraph 14 are denied.

6 15. The allegations in Paragraph 15 are denied.

7 16. The allegations in Paragraph 16 are denied.

8 17. In response to Paragraph 17, the State admits that I-872 was filed and
9 circulated in 2004, and that the legislature enacted various amendments to the state's election
10 laws in that year, which are matters of official record. Any remaining allegations are denied.

11 18. Responding to the allegations in Paragraph 18, the State has no knowledge
12 concerning the contents of promotional materials relating to I-872 or as to communications
13 between the sponsors of I-872 and representatives of the Democratic Party, and therefore
14 denies these allegations. The State has no specific knowledge regarding the signature-
15 gathering campaign conducted by the Grange as sponsors of I-872. Any remaining
16 allegations are denied.

17 19. The allegations in Paragraph 19 are denied.

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21 **SUPPLEMENTAL ALLEGATIONS IN AMENDED COMPLAINT**

22 20. In response to Paragraph 20, the legislation introduced and considered in the
23 2005 session of the Washington State Legislature is a matter of official record. Any rules
24 proposed or adopted by the Secretary of State in 2005 are also matters of official record.
25 Any remaining allegations in Paragraph 20 are denied.

1 21. In response to Paragraph 21, the acts of the Washington State Legislature in
2 2005 are a matter of official record. Any remaining allegations in Paragraph 21 are denied.

3 22. In response to Paragraph 22, the acts of the Washington State Legislature in
4 2006 and 2007 are a matter of official record. Any remaining allegations in Paragraph 22 are
5 denied.
6

7 23. In response to Paragraph 23, the rules adopted by the Secretary of State in
8 2008 are a matter of official record. The State denies the implication that the rules were
9 inconsistent with Washington State statute and denies any remaining allegations in Paragraph
10 23.

11 24. The allegations in Paragraph 24 are denied.

12 25. In response to Paragraph 25, the rules adopted by the Public Disclosure
13 Commission (PDC) are a matter of official record. The State admits that the PDC issued a
14 brochure in 2008 and that Paragraph 25 contains accurate (but incomplete) quotes from the
15 brochure. Any remaining allegations are denied.
16

17 26. Responding to Paragraph 26, the State has no knowledge as to the contents of
18 election coverage before and after the primary, and therefore denies allegations concerning
19 that subject. The remaining allegations in Paragraph 26 are denied.
20

21 27. In response to the allegations in Paragraph 27, the State denies that I-872
22 unconstitutionally interferes with the internal affairs of the Democratic Party. The remainder
23 of Paragraph 27 consists of paraphrases of various provisions of the Washington Constitution
24 or of state statutes. The State denies that the paraphrases are fully accurate or complete. Any
25 factual allegations in Paragraph 27 are denied.
26

1 28. The allegations in Paragraph 28 are denied because I-872 contains no
2 provisions concerning the election of precinct committee officers (PCOs).

3 29. In response to Paragraph 29, the State denies that any changes in the manner
4 in which PCOs are elected are the result of the implementation of I-872, except that the
5 enactment of I-872 renders it impossible to apply the requirement that a candidate for PCO
6 receive at least ten percent of the votes received by the highest vote getter of the candidate's
7 party in the precinct because, under I-872, the ballot contains no "vote getters" of any party.
8 The ballot contains language restricting votes for PCOs of any political party to voters who
9 affiliate with that party. Any remaining allegations in Paragraph 29 are denied.
10

11 30. In response to Paragraph 30, the State denies that any change in the manner in
12 which PCOs are elected renders I-872 unconstitutional, and denies that the current manner of
13 electing PCOs is unconstitutional. Any remaining allegations in Paragraph 30 are denied.
14

15 31. The allegations in Paragraph 31 are denied.

16 **DENIAL OF EQUAL PROTECTION OF LAWS**

17 32. The allegations in Paragraph 32 are denied. RCW 29A.20.121 was adopted to
18 implement a different form of primary at a time when the implementation of I-872 was
19 enjoined. RCW 29A.20.121 is inconsistent with the implementation of I-872, and is
20 therefore no longer an operative statute.
21

22 33. The allegations in Paragraph 33 are denied. To the extent it is inconsistent
23 with I-872, RCW 29A.20.171 has been impliedly amended, and Washington does not
24 currently distinguish between major and minor parties in determining who has the right to the
25 name of a political party.
26

DEMOCRATIC PARTY OF WASHINGTON v. REED

34. Responding to Paragraph 34, the State admits that the case of *Democratic Party v. Reed* was litigated and resulted in a court declaration that a previous state primary system was unconstitutional. The State denies any remaining allegations in Paragraph 34.

35-36. Responding to Paragraphs 35 and 36, these allegations have been fully resolved by the Supreme Court decision in this case, are apparently included in the Amended Complaint for historical context, and require no further answer.

ALLEGATIONS CONCERNING DEPRIVATIONS OF CIVIL RIGHTS

37. Responding to Paragraph 37, the State is aware that the Democratic Party has adopted rules on various matters, and the Party has provided the State with copies of some of those rules. Any remaining allegations are denied.

38. Responding to Paragraph 38, the State denies that I-872, as enacted or as implemented, deprives Plaintiffs of their civil rights. Any other allegations are denied.

39. Responding to Paragraph 39, the State denies that I-872, or the implementation of I-872, deprives the Plaintiff of any constitutionally protected rights. Any remaining allegations are denied.

40. The allegations in Paragraph 40 are denied.

FIRST CAUSE OF ACTION: ALLEGEDLY INVALID PRIMARY

41. The State realleges and incorporates by reference its answers to Paragraphs 1 through 40 above.

42. The allegations in Paragraph 42 are denied.

1 43. The allegations in Paragraph 43 are denied. RCW 29A.04.127 and RCW
2 29A.52.112 do not affect or interfere with the Party's nominee selection process.

3 44. The allegations in Paragraph 44 are denied.

4 45. The allegations in Paragraph 45 are denied.

5 46. The allegations in Paragraph 46 are denied.

6
7 **SECOND CAUSE OF ACTION: ALLEGED FORCED ASSOCIATION**

8 47. The State realleges and incorporates by reference its answers to Paragraphs 1
9 through 46 above.

10 48. The allegations in Paragraph 48 are denied.

11 49. The allegations in Paragraph 49 are denied.

12 50. The allegations in Paragraph 50 are denied.

13 51. The allegations in Paragraph 51 are denied.

14
15 **THIRD CAUSE OF ACTION: ALLEGED DENIAL OF EQUAL PROTECTION**

16 52. The State realleges and incorporates by reference its answers to Paragraphs 1
17 through 51 above.

18 53. The allegations in Paragraph 53 are denied.

19 54. The allegations in Paragraph 54 are denied.

20
21 **FOURTH CAUSE OF ACTION: INJUNCTIVE RELIEF**

22 55. The State realleges and incorporates by reference its answers to Paragraphs 1
23 through 54 above.

24 56. The allegations in Paragraph 56 are denied.

25 57. The allegations in Paragraph 57 are denied.

1 58. The allegations in Paragraph 58 are denied.

2 59. The allegations in Paragraph 59 are denied.

3 **STATE'S DEFENSE**

4 1. The Complaint fails to state a claim on which relief can be granted.

5 **PRAYER FOR RELIEF**

6 The State Defendant Intervenors respectfully request the Court to enter judgment as
7 follows:
8

9 1. Dismissing the First Amended and Supplemental Complaint for failure to state
10 a claim on which relief can be granted.

11 2. Declaring that Washington's election laws, and the conduct of elections under
12 those laws, do not deprive the Plaintiffs or Plaintiff Intervenors of any legally cognizable
13 constitutional or other rights protected by either the Constitution and laws of the United
14 States or laws of the state of Washington.

15 3. Denying the declaratory and injunctive relief requested by the Plaintiffs or by
16 Plaintiff Intervenors.

17 4. Granting the State its reasonable fees and costs to the extent permitted by law.

18 5. Granting such other relief as the Court may deem appropriate.

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1 DATED this 12th day of April, 2010.

2 ROBERT M. MCKENNA
3 Attorney General

4 s/ James K. Pharris
5 James K. Pharris, WSBA #5313
6 Deputy Solicitor General

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CERTIFICATE OF SERVICE

I certify that on this date I electronically filed State Intervenor's Answer To Washington State Democratic Party's First Amended And Supplemental Complaint with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties listed below:

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Executed this 12th day of April, 2010, at Olympia, Washington.

ROBERT M. MCKENNA
Attorney General

s/ James K. Pharris
James K. Pharris