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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 REPUBLICANS'
SUPPLEMENTAL AND
AMENDED COMPLAINT

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

4 **NATURE OF ACTION**

5
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 2. Paragraph 2 consists of legal argument concerning the “fundamental purposes
12 of the First Amendment”. To the extent an answer is appropriate, the State asserts that
13 Paragraph 2 is irrelevant to this case, as Washington law does not implicate the principles
14 there advanced. Any remaining allegations are denied.

15
16 3. Responding to Paragraph 3, the State admits that Initiative Measure No. 872
17 (I-872) was enacted through voter approval of an initiative measure, and took effect on or
18 about December 2, 2004. The remainder of Paragraph 3 consists of legal argument
19 concerning the legal effect of Washington state law. To the extent an answer is required, the
20 State denies that Paragraph 3 accurately states the law or accurately characterizes either the
21 intent or the behavior of the State and its officers and employees. Any remaining allegations
22 are denied.

23
24 4. Paragraph 4 consists of speculation concerning the intent behind the adoption
25 of I-872 and argument concerning its legal effect. To the extent an answer is required, the
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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. The allegations in Paragraph 5 are denied.

4 6. Responding to Paragraph 6, the State understands that the Plaintiffs have filed
5 this action to protect what the Republican Party Plaintiffs assert to be First Amendment
6 rights. The State denies that I-872 censors or interferes with the rights of the Plaintiffs, and
7 denies that I-872 is unconstitutional. Any remaining allegations are denied.
8

9 **JURISDICTION AND VENUE**

10 7. In response to Paragraph 7, the State admits that this case presents a federal
11 question and that this Court has jurisdiction. Any remaining allegations are denied

12 8. In response to Paragraph 8, the State admits that the Western District of
13 Washington is a proper venue for this action.
14

15 **PARTIES**

16 9. In response to Paragraph 9, the State admits that the Republican Party meets
17 the definition of “major political party” set forth in RCW 29A.04.086. The State does not
18 have knowledge sufficient to admit or deny the remaining allegations in Paragraph 9, and
19 therefore denies them.

20 10. In response to Paragraph 10, the State lacks sufficient knowledge to admit or
21 deny the allegations contained therein, but has no reason to doubt the truth of those
22 allegations.
23

24 11. In response to Paragraph 11, the State admits that this paragraph accurately
25 identifies Sam Reed, Secretary of State, and Robert McKenna, Attorney General, as
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1 Defendants. These officers have powers and responsibilities as described in state law. The
2 State further admits that Defendants Reed and McKenna were substituted as defendants in
3 this action in place of several county auditors by an agreed order of the Court on July 13,
4 2005. Any remaining allegations in Paragraph 11 are denied.
5

6 WASHINGTON'S ELECTION SYSTEM

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

9 18. In response to Paragraph 18, the State admits that I-872 was filed and
10 circulated in 2004, and that the legislature enacted various amendments to the state's election
11 laws in that year, which are matters of official record. Any remaining allegations are denied.

12 19. Responding to the allegations in Paragraph 19, the State has no knowledge
13 concerning the contents of promotional materials relating to I-872 or as to communications
14 between the sponsors of I-872 and representatives of the Republican Party, and therefore
15 denies these allegations. The State has no specific knowledge regarding the signature-
16 gathering campaign conducted by the Grange as sponsors of I-872. Any remaining
17 allegations are denied.

18 20. The allegations in Paragraph 20 are denied.

19 21. Paragraph 21 is a summary and paraphrase of constitutional and statutory
20 provisions concerning filling vacancies in certain offices and concerning the powers and
21 duties of precinct committee officers (PCOs). The State admits that Paragraph 21 is a
22 generally accurate (though incomplete) summary of the law, except that the "ten percent"
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1 provisions of RCW 29A.80.051 can no longer be fully implemented because Washington's
2 primary no longer nominates party candidates for office. Any remaining allegations in
3 Paragraph 21 are denied.

4 22. Paragraph 22 is a summary and paraphrase of statutory provisions concerning
5 the powers and duties of PCOs and of the practices and procedures followed by the
6 Washington State Republican Party. The State admits that Paragraph 22 contains a generally
7 accurate (though incomplete) summary of the law. The State has no specific knowledge
8 concerning the organization or procedures followed by the Republican Party, but has no
9 reason to doubt the accuracy of Paragraph 22's allegations on those subjects.
10

11 **SUPPLEMENTAL ALLEGATIONS IN AMENDED COMPLAINT**

12 23. In response to Paragraph 23, the legislation introduced and considered in the
13 2005 session of the Washington State Legislature is a matter of official record. Any rules
14 proposed or adopted by the Secretary of State in 2005 are also matters of official record.
15 Any remaining allegations in Paragraph 23 are denied.
16

17 24. In response to Paragraph 24, the acts of the Washington State Legislature in
18 2005 are a matter of official record. Any remaining allegations in Paragraph 24 are denied.

19 25. In response to Paragraph 25, the acts of the Washington State Legislature in
20 2006 and 2007 are a matter of official record. Any remaining allegations in Paragraph 25 are
21 denied.
22

23 26. In response to Paragraph 26, the rules adopted by the Secretary of State in
24 2008 are a matter of official record. The State denies the implication that the rules were
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1 inconsistent with Washington State statute and denies any remaining allegations in Paragraph
2 26.

3 27. The allegations in Paragraph 27 are denied.

4 28. In response to Paragraph 28, the rules adopted by the Public Disclosure
5 Commission (PDC) are a matter of official record. The State admits that the PDC issued a
6 brochure in 2008 and that Paragraph 28 contains accurate (but incomplete) quotes from the
7 brochure. Any remaining allegations are denied.
8

9 29. Responding to Paragraph 29, the State has no knowledge as to the contents of
10 election coverage before and after the primary, and therefore denies allegations concerning
11 that subject. The remaining allegations in Paragraph 29 are denied.
12

13 30. In response to the allegations in Paragraph 30, the State denies that I-872
14 unconstitutionally interferes with the internal affairs of the Republican Party. The remainder
15 of Paragraph 30 consists of paraphrases of various provisions of the Washington Constitution
16 or of state statutes. The State denies that the paraphrases are fully accurate or complete. Any
17 factual allegations in Paragraph 30 are denied.

18 31. The allegations in Paragraph 31 are denied because I-872 contains no
19 provisions concerning the election of PCOs.
20

21 32. In response to Paragraph 32, the State denies that any changes in the manner
22 in which PCOs are elected are the result of the implementation of I-872, except that the
23 enactment of I-872 renders it impossible to apply the requirement that a candidate for PCO
24 receive at least ten percent of the votes received by the highest vote getter of the candidate's
25 party in the precinct because, under I-872, the ballot contains no "vote getters" of any party.
26

1 The ballot contains language restricting votes for PCOs of any political party to voters who
2 affiliate with that party. Any remaining allegations in Paragraph 32 are denied.

3 33. In response to Paragraph 33, the State denies that any change in the manner in
4 which PCOs are elected renders I-872 unconstitutional, and denies that the current manner of
5 electing PCOs is unconstitutional. Any remaining allegations in Paragraph 33 are denied.
6

7 34. The allegations in Paragraph 34 are denied.

8 35. In response to Paragraph 35, the State denies that primary voters may
9 participate in the election of a Republican PCO without affiliating with the Republican Party.
10 The State counts votes for write-in candidates for the office of PCO, following state law, but
11 takes no position as to which candidates are affiliated with the Republican Party or would be
12 eligible to serve as PCOs. The State cannot implement the “ten percent” requirement in
13 RCW 29A.80.051 because the ballot is no longer used to nominate the candidates of any
14 party. The State has no knowledge concerning the content of resolutions adopted by the
15 Party, but has no reason to doubt the accuracy of allegations in Paragraph 35 on that subject.
16 Any remaining allegations in Paragraph 35 are denied.
17

18 36. In response to Paragraph 36, the State admits that the Secretary of State
19 publicly released advice from the Attorney General regarding implementation of the PCO
20 election provisions, and admits that Paragraph 36 contains a short and incomplete quote from
21 WAC 434-262-075. The State denies that this interpretation denies the effectiveness of party
22 nominations. While state law plays no role in nominating party candidates for office, the
23 State neither encourages nor interferes with political party private processes for nominating
24 candidates. The State has no knowledge concerning specific statements made by former
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1 Defendants Logan, Kimsey, Dalton, and Terwilliger, but the statements quoted are consistent
2 with the State's understanding that state law describes no procedure by which political
3 parties nominate their candidates for public office, and that the state primary does not serve
4 this purpose. Any remaining allegations in Paragraph 36 are denied.

5
6 37. In response to Paragraph 37, the State has no specific knowledge as to the
7 actions of the Republican Party with respect to the nomination of candidates for public
8 office, but has no reason to doubt the accuracy of the allegations on this subject. State law
9 permits candidates for partisan office to state a preference for a political party and to have
10 that preference reflected on the ballot, without reference to whether the candidate is the
11 nominee of a party. The State denies that a candidate expressing a preference for a political
12 party thereby "appropriates" the name or symbols of the Party, and denies that such an
13 expression impairs the rights of any Party. The State has no knowledge concerning the
14 contents of political advertising produced by various candidates, or the content of news
15 reports, and therefore denies the allegations in Paragraph 37 relating to those subjects. Any
16 remaining allegations in Paragraph 37 are also denied.

17
18 38. In response to Paragraph 38, most of the allegations concern the facts leading
19 to separate litigation between the Republican Party and the PDC on a matter unrelated to the
20 issues in this case. The proceedings before the PDC and superior court in that separate case
21 are a matter of official record. The State denies that the administration of campaign finance
22 laws implicates the implementation of I-872, or in any way renders I-872 unconstitutional.
23 Any remaining allegations in Paragraph 38 are denied.
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1 **ALLEGATIONS CONCERNING DENIAL OF EQUAL PROTECTION**

2 39. The allegations in Paragraph 39 are denied. RCW 29A.20.121 was adopted to
3 implement a different form of primary at a time when the implementation of I-872 was
4 enjoined. RCW 29A.20.121 is inconsistent with the implementation of I-872, and is
5 therefore no longer an operative statute.
6

7 40. The allegations in Paragraph 40 are denied. To the extent it is inconsistent
8 with I-872, RCW 29A.20.171 has been impliedly amended, and Washington does not
9 currently distinguish between major and minor parties in determining who has the right to the
10 name of a political party.
11

12 **DEMOCRATIC PARTY OF WASHINGTON v. REED**

13 41. Responding to Paragraph 41, the State admits that the case of *Democratic*
14 *Party v. Reed* was litigated and resulted in a court declaration that a previous state primary
15 system was unconstitutional. The State denies any remaining allegations in Paragraph 41.
16

17 42-43. Responding to Paragraphs 42 and 43, these allegations have been fully
18 resolved by the Supreme Court decision in this case, are apparently included in the Amended
19 Complaint for historical context, and require no further answer.
20

21 **ALLEGATIONS CONCERNING DEPRIVATIONS OF CIVIL RIGHTS**

22 44. Responding to Paragraph 44, the State is aware that the Republican Party has
23 adopted rules on various matters, and the Party has provided the State with copies of some of
24 those rules. Any remaining allegations are denied.
25
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1 45. Responding to Paragraph 45, the State denies that I-872, or the
2 implementation of I-872, deprives the Plaintiffs of any constitutionally protected rights. Any
3 remaining allegations are denied.

4 46. The allegations in Paragraph 46 are denied.

5
6 **FIRST CAUSE OF ACTION: ALLEGEDLY INVALID PRIMARY**

7 47. The State realleges and incorporates by reference Paragraphs 1 through 46
8 above.

9 48. Responding to Paragraph 48, the State admits that there is a disagreement
10 between the Plaintiffs and the State concerning the constitutionality of state election laws, but
11 denies that the Plaintiffs have stated any cognizable claim for relief.

12 49. The allegations in Paragraph 49 are denied.

13 50. The allegations in Paragraph 50 are denied.

14 51. The allegations in Paragraph 51 are denied.

15 52. The allegations in Paragraph 52 are denied.

16 53. The allegations in Paragraph 53 are denied.

17 54. The allegations in Paragraph 54 are denied.

18
19 **SECOND CAUSE OF ACTION: ALLEGED FORCED ASSOCIATION**

20 55. The State realleges and incorporates by reference Paragraphs 1 through 54
21 above.

22 56. The allegations in Paragraph 56 are denied.

23 57. The allegations in Paragraph 57 are denied.

24 58. The allegations in Paragraph 58 are denied.

1 59. The allegations in Paragraph 59 are denied.

2 **THIRD CAUSE OF ACTION: ALLEGED DENIAL OF EQUAL PROTECTION**

3 60. The State realleges and incorporates by reference Paragraphs 1 through 59
4 above.

5 61. The allegations in Paragraph 61 are denied.

6 62. The allegations in Paragraph 62 are denied.

7 63. The allegations in Paragraph 63 are denied.

8 **FOURTH CAUSE OF ACTION: INJUNCTIVE RELIEF**

9 64. The State realleges and incorporates by reference Paragraphs 1 through 63
10 above.

11 65. The allegations in Paragraph 65 are denied.

12 66. The allegations in Paragraph 66 are denied.

13 67. The allegations in Paragraph 67 are denied.

14 68. The allegations in Paragraph 68 are denied.

15 **STATE'S DEFENSE**

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

17 **PRAYER FOR RELIEF**

18 The State Defendant Intervenors respectfully request the Court to enter judgment as
19 follows:

20 1. Dismissing the Supplemental and Amended Complaint for failure to state a
21 claim on which relief can be granted.
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CERTIFICATE OF SERVICE

I certify that on this date I electronically filed State Intervenors' Answer To Republicans' Supplemental and Amended Complaint with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all 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