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The Honorable THOMAS S. ZILLY

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

WASHINGTON STATE REPUBLICAN
PARTY, CHRISTOPHER VANCE,
BERTABELLE HUBKA, STEVE
NEIGHBORS, BRENT BOGER,
MARCY COLLINS, MICHAEL
YOUNG,

Plaintiffs,

v.

DEAN LOGAN, King County Records &
Elections Division Manager; BOB
TERWILLIGER, Snohomish County
Auditor; VICKY DALTON, Spokane
County Auditor, GREG KIMSEY, Clark
County Auditor, CHRISTINA
SWANSON, Cowlitz County Auditor,
VERN SPATZ, Grays Harbor County
Auditor, PAT GARDNER, Pacific
County Auditor, DIANE L. TISCHER,
Wahkiakum County Auditor, and
DONNA M. ELDRIDGE, Jefferson
County Auditor,

Defendants.

NO. 05-0927-Z

**ANSWER OF STATE OF
WASHINGTON INTERVENORS**

1 **I. NATURE OF ACTION**

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

7 2. Paragraph 2 of the Complaint consists of legal argument concerning the
8 “fundamental purposes of the First Amendment” and does not require an answer. To the extent
9 an answer is appropriate, the State asserts that Paragraph 2 is irrelevant to this case, as
10 Washington law does not implicate the principles there advanced.

11 3. Responding to Paragraph 3 of the Complaint, the State admits that Initiative
12 Measure No. 872 (I-872) was enacted through voter approval of an initiative measure, and took
13 effect on or about December 2, 2004. The remainder of Paragraph 3 consists of legal argument
14 concerning the legal effect of Washington state law. To the extent an answer is required, the
15 State denies that Paragraph 3 accurately states the law.

16 4. Paragraph 4 of the Complaint consists of speculation concerning the intent
17 behind the adoption of Initiative 872 and argument concerning its legal effect. To the extent an
18 answer is required, the State denies that Paragraph 4 accurately characterizes the intent of the
19 initiative measure or its effect on political parties.

20 5. Responding to Paragraph 5 of the Complaint, the State understands that the
21 Plaintiffs have filed this action to protect what the Plaintiffs assert to be First Amendment
22 rights. The State denies that Initiative 872 censors or interferes with the rights of the plaintiffs,
23 and denies that Initiative 872 is unconstitutional.

1 **II. JURISDICTION AND VENUE**

2 6. In response to Paragraph 6 of the Complaint, the State admits that this case
3 presents a federal question and that this Court has jurisdiction. The remainder of Paragraph 6
4 consists of legal argument and does not require a response.

5 7. In response to Paragraph 7 of the Complaint, the State admits that the Western
6 District of Washington is a proper venue for this action.

7 **III. PARTIES**

8 8. In response to Paragraph 8 of the Complaint, the State admits that the
9 Republican Party meets the definition of “major political party” set forth in RCW 29A.04.086.
10 The State does not have knowledge sufficient to admit or deny the remaining allegations in
11 Paragraph 8, but has no reason to doubt their truth.

12 9-14. In response to Paragraph 9 through 14 of the Complaint, the State lacks
13 sufficient knowledge to admit or deny the allegations contained therein, but has no reason to
14 doubt the truth of those allegations.

15 15. In response to Paragraph 15 of the Complaint, the State admits that this
16 paragraph accurately names several county officers. These officers have powers and
17 responsibilities as described in state law. The State further admits that all of the counties
18 mentioned in Paragraph 15, except Spokane County, lie within the Western District of
19 Washington.

20 **IV. WASHINGTON’S ELECTION SYSTEM**

21 16. Responding to Paragraph 16 of the Complaint, the State admits that a primary
22 will occur in September of 2005, and that it will include both “partisan offices” and
23 nonpartisan offices as defined by Initiative 872. Initiative 872 defines “partisan office” as “a
24 public office for which a candidate may indicate a political party preference on his or her
25 declaration of candidacy and have that preference appear on the primary and general election
26 ballot in conjunction with his or her name.” I-872, § 4. The initiative measure further provides

1 that for partisan office, if a candidate has expressed a party or independent preference on the
2 declaration of candidacy, then that preference will be shown after the name of the candidate on
3 the primary and general election ballots. I-872, § 7(3). The initiative further states that “any
4 party or independent preferences are shown for the information of voters only and may in no
5 way limit the options available to voters.” *Id.* When a primary is conducted for a partisan
6 office, the top two candidates will be certified as qualified to appear on the general election
7 ballot, unless only one candidate qualifies. I-872, § 7(2). To the extent that Paragraph 16 of
8 the Complaint cites Washington statutes that are inconsistent with Initiative 872, the State
9 asserts that these statutes have been superseded or impliedly amended by Initiative 872. The
10 State specifically asserts that its primary is not used to nominate or select the candidates of any
11 political party for public office. Washington law neither requires political parties to nominate
12 candidates for office, nor prevents them from doing so if they choose. The State has no
13 specific knowledge as to whether defendants Logan, Kimsey, Dalton, and Terwilliger have
14 made the assertions ascribed to them in Paragraph 16, but has no reason to doubt the accuracy
15 of the allegation.

16 17. In response to Paragraph 17, the State denies that state law, including Initiative
17 872, interferes or seriously burdens the rights of political parties and their adherents to exercise
18 their rights of association. State law does not force any political party to participate in state
19 elections, including primaries. The State denies that permitting candidates to list a party
20 preference on the primary ballot constitutes an “association” between the candidate and a
21 political party or, if it does, that such an “association” constitutes any cognizable burden on the
22 associational rights of the parties. The State denies that state law allows any person to
23 appropriate a political party’s name. To the extent this answer does not otherwise fully
24 respond to the allegations in Paragraph 17, they are denied.
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1 18. Paragraph 18 of the Complaint consists entirely of legal argument concerning
2 the alleged legal effect of state law. To the extent an answer is required, the State denies that
3 Paragraph 18 accurately states the law.

4 19. In response to Paragraph 19 of the Complaint, the State asserts that the
5 Washington state primary as established in Initiative 872 does not select “standard-bearers” or
6 party nominees. The remainder of the allegations, which constitute legal argument concerning
7 the effect of the initiative measure and other laws and the purposes behind its enactment, are
8 denied.

9 20. The allegations contained in Paragraph 20 of the Complaint consist of legal
10 argument. To the extent they require answer, they are denied. The Washington election
11 system does not invade the plaintiffs’ rights of political association.

12 21. The State denies the allegations contained in Paragraph 21 of the Complaint.
13 Since Washington does not conduct a primary in which party nominees are selected, these
14 allegations are not material.

15 **V. ALLEGATIONS CONCERNING DENIAL OF EQUAL PROTECTION**

16 22. In response to Paragraph 22 of the Complaint, the State asserts that Washington
17 law no longer makes party nomination a part of the state’s electoral process, although political
18 parties may endorse candidates for any office. To the extent that RCW 29A.20.121 provided
19 that minor party candidates would be placed on the general election ballot by virtue of
20 nomination by convention, it has been superseded by Initiative 872 and is no longer operable.
21 The State denies that its laws invade the associational rights of any political party, or that its
22 laws deny the Plaintiffs the equal protection of the law.

23 23. In response to Paragraph 23 of the Complaint, this Paragraph cites statutes that
24 have been superseded or rendered inoperable by the enactment of Initiative Measure 872. The
25 State denies that its election system denies to any political party the right to nominate its
26 candidates, or to enforce any legally cognizable rights concerning use of a political party’s

1 name. As amended by Initiative 872, state law draws no constitutionally significant
2 distinctions between major and minor parties.

3 **VI. DEMOCRATIC PARTY OF WASHINGTON V. REED**

4 24. Responding to Paragraph 24 of the Complaint, the State admits that the case of
5 *Democratic Party v. Reed* was litigated, and resulted in a court declaration that a previous state
6 primary system was unconstitutional. The State denies any remaining allegations in Paragraph
7 24.

8 25. Paragraph 25 of the Complaint consists of selected quotes from case law and of
9 legal argument. The State admits that the quotations are accurate, though taken out of context.
10 The State denies the remaining allegations in Paragraph 25.

11 26. Paragraph 26 of the Complaint consists of legal argument to the effect that
12 Initiative 872 establishes an election system which has the same constitutional defects as the
13 system invalidated in *Democratic Party v. Reed*. To the extent an answer is required, the State
14 denies that its laws are unconstitutional.

15 **VII. ALLEGATIONS CONCERNING DEPRIVATIONS OF CIVIL RIGHTS**

16 27. Responding to the allegations in Paragraph 27 of the Complaint, the State
17 admits that the Republican Party has adopted rules governing the nomination of its candidates
18 for public office and that those rules have been provided to various parties, including the
19 county auditors.

20 28. The allegations contained in Paragraph 28 of the Complaint are legal argument.
21 To the extent they require an answer, the State denies them.

22 29. The State denies the allegations contained in Paragraph 29 of the Complaint.

23 **VIII. PLAINTIFFS' FIRST CAUSE OF ACTION**

24 30. The State realleges and incorporates by reference Paragraphs 1-29 above.
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1 31. Responding to Paragraph 31 of the Complaint, the State admits that there is a
2 disagreement between the Plaintiffs and the State concerning the constitutionality of state
3 election laws, but denies that the Plaintiffs have stated any cognizable claim for relief.

4 32. The State denies the allegations in Paragraph 32 of the Complaint.

5 33. The State denies the allegations in Paragraph 33 of the Complaint.

6 34. Responding to Paragraph 34 of the Complaint, the State admits that Initiative
7 872 has no specific severability clause, but denies that the absence of a severability clause
8 would require the Court to void the entire enactment upon a finding that any portion is
9 unconstitutional.

10 35. The State denies the allegations in Paragraph 35 of the Complaint.

11 **IX. PLAINTIFFS' SECOND CAUSE OF ACTION**

12 36. The State realleges and incorporates by reference Paragraphs 1 through 35
13 above.

14 37. The State denies the allegations in Paragraph 37 of the Complaint.

15 38. The State denies the allegations in Paragraph 38 of the Complaint.

16 **X. PLAINTIFFS' THIRD CAUSE OF ACTION**

17 39. The State realleges and incorporates by reference Paragraphs 1 through 38
18 above.

19 40. The State denies the allegations in Paragraph 40 of the Complaint.

20 41. The State denies the allegations in Paragraph 41 of the Complaint.

21 **XI. PLAINTIFFS' FOURTH CAUSE OF ACTION**

22 42. The State realleges and incorporates by reference Paragraphs 1 through 41
23 above.

24 43. The State denies the allegations in Paragraph 43 of the Complaint.

25 44. The State denies the allegations in Paragraph 44 of the Complaint.

26 45. The State denies the allegations in Paragraph 45 of the Complaint.

1 46. The State denies the allegations in Paragraph 46 of the Complaint.

2 **XII. STATE'S DEFENSE**

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

4 **XIII. PRAYER FOR RELIEF**

5 The State Intervenor Defendants respectfully request the Court to enter judgment as
6 follows:

7 1. Dismissing the Complaint for failure to state a claim on which relief can be
8 granted.

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

13 3. Denying the declaratory and injunctive relief requested by the Plaintiffs or by
14 Plaintiff Intervenors.

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

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

17 DATED this _____ day of June, 2005.

18 **ROB MCKENNA**
19 Attorney General

20 **MAUREEN A. HART, WSBA #7831**
21 Solicitor General

22 /s/
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