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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

STATE INTERVENORS'
ANSWER TO COMPLAINT IN
INTERVENTION OF
WASHINGTON DEMOCRATIC
CENTRAL COMMITTEE

/////

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

4 **I. NATURE OF ACTION**

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

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

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

20 4. Paragraph 4 of the Complaint consists of speculation concerning the intent
21 behind the adoption of I-872 and argument concerning its legal effect. To the extent an answer
22 is required, the State denies that Paragraph 4 accurately characterizes the intent of the initiative
23 measure or its effect on political parties.

24 5. Responding to Paragraph 5 of the Complaint, the State understands that the
25 Plaintiffs have filed this action to protect what the Democratic Party Plaintiffs assert to be First
26

1 Amendment rights. The State denies that I-872 censors or interferes with the rights of the
2 plaintiffs, and denies that I-872 is unconstitutional.

3 **II. JURISDICTION AND VENUE**

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

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

9 **III. PARTIES**

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

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

17 10. In response to Paragraph 10 of the Complaint, the State admits that this
18 paragraph accurately names several county officers. These officers have powers and
19 responsibilities as described in state law. The State further admits that all of the counties
20 mentioned in Paragraph 15, except Spokane County, lie within the Western District of
21 Washington.

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

23 11. Responding to Paragraph 11 of the Complaint, the State admits that a primary
24 will occur in September 2005, and that it will include both “partisan offices” and nonpartisan
25 offices as defined by I-872. Initiative 872 defines “partisan office” as “a public office for
26 which a candidate may indicate a political party preference on his or her declaration of

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

18 12. In response to Paragraph 12, the State denies that state law, including I-872,
19 interferes or seriously burdens the rights of political parties and their adherents to exercise their
20 rights of association. State law does not force any political party to participate in state
21 elections, including primaries. The State denies that permitting candidates to list a party
22 preference on the primary ballot constitutes an “association” between the candidate and a
23 political party or, if it does, that such an “association” constitutes any cognizable burden on the
24 associational rights of the parties. The State denies that state law allows any person to
25 appropriate a political party’s name. To the extent this answer does not otherwise fully
26 respond to the allegations in Paragraph 12, they are denied.

1 13. Paragraph 13 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 13 accurately states the law.

4 14. In response to Paragraph 14 of the Complaint, the State asserts that the
5 Washington state primary as established in I-872 does not select “standard-bearers” or party
6 nominees. The remainder of the allegations, which constitute legal argument concerning the
7 effect of the initiative measure and other laws and the purposes behind its enactment, are
8 denied.

9 15. The allegations contained in Paragraph 15 of the Complaint consist of legal
10 argument. To the extent they require answer, they are denied.

11 16. The State denies the allegations contained in Paragraph 16 of the Complaint.
12 Since Washington does not conduct a primary in which party nominees are selected, these
13 allegations are not material.

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

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

22 18. In response to Paragraph 18 of the Complaint, this Paragraph cites statutes that
23 have been superseded or rendered inoperable by the enactment of I-872. The State denies that
24 its election system denies to any political party the right to nominate its candidates, or to
25 enforce any legally cognizable rights concerning use of a political party’s name. As amended
26

1 by I-872, state law draws no constitutionally significant distinctions between major and minor
2 parties.

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

4 19. 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
6 state primary system was unconstitutional. The State denies any remaining allegations in
7 Paragraph 19.

8 20. Paragraph 20 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 20.

11 21. Paragraph 21 of the Complaint consists of legal argument to the effect that
12 I-872 establishes an election system that has the same constitutional defects as the system
13 invalidated in *Democratic Party v. Reed*. To the extent an answer is required, the State denies
14 that its laws are unconstitutional.

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

16 22. Responding to the allegations in Paragraph 22 of the Complaint, the State
17 admits that the Washington State Democratic Central Committee has adopted rules governing
18 the nomination of its candidates for public office and that those rules have been provided to
19 various parties, including the county auditors.

20 23. The allegations contained in Paragraph 23 of the Complaint are legal argument.
21 To the extent they require an answer, the State denies them.

22 24 The State denies the allegations contained in Paragraph 24 of the Complaint.

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

24 25. The State realleges and incorporates by reference Paragraphs 1 through 24
25 above.

1 26. Responding to Paragraph 26 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 27. The State denies the allegations in Paragraph 27 of the Complaint.

5 28. The State denies the allegations in Paragraph 28 of the Complaint.

6 29. Responding to Paragraph 29 of the Complaint, the State admits that I-872 has
7 no specific severability clause, but denies that the absence of a severability clause would
8 require the Court to void the entire enactment upon a finding that any portion is
9 unconstitutional.

10 30. The State denies the allegations in Paragraph 30 of the Complaint.

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

12 31. The State realleges and incorporates by reference Paragraphs 1 through 30
13 above.

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

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

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

17 34. The State realleges and incorporates by reference Paragraphs 1 through 33
18 above.

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

20 36. The State denies the allegations in Paragraph 36 of the Complaint.

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

22 37. The State realleges and incorporates by reference Paragraphs 1 through 36
23 above.

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

25 39. The State denies the allegations in Paragraph 39 of the Complaint.

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

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

2 42. All allegations in the Complaint not specifically admitted above are denied.

3 **XII. STATE’S DEFENSE**

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

5 **XIII. PRAYER FOR RELIEF**

6 The State Intervenor Defendants respectfully requests the Court to enter judgment as
7 follows:

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

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

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

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

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

18 DATED this 7th day of July, 2005.

19 ROB MCKENNA
20 Attorney General

21 MAUREEN A. HART, WSBA #7831
22 Solicitor General

23 /s/
24 JAMES K. PHARRIS, WSBA #5313
25 Sr. Assistant Attorney General

26 JEFFREY T. EVEN, WSBA #20367
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CERTIFICATE OF SERVICE

I certify that on this date I electronically filed State Intervenors' Answer to Complaint in Intervention of Washington Democratic Central Committee with the clerk of the Court using the CM/ECF system, which will send notification of such filing electronically to the following: James Baker, Jay Carlson, Kevin Hansen, Frederick Johnson, Janine Joly, Steven Kinn, Thomas Kuffel, Ronald Marshall, David McDonald, Robert Seder, Richard Shepard, Gordon Sivley, John White, Thomas Ahearne, and Curtis Wyrick.

I sent the above-mentioned by facsimile and by first class United States Mail, postage prepaid, to the following:

Donna Eldridge
Jefferson County Auditor
PO Box 563
Port Townsend, WA 98368
FAX 360-385-9228

Vicky Dalton
Spokane County Auditor
W. 1116 Broadway
Spokane, WA 99263
FAX 509-477-6607

Executed this 8th day of July, 2005, at Olympia, Washington.

/s/ James K. Pharris
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