

Hon. John C. Coughenour

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WASHINGTON STATE REPUBLICAN  
PARTY, et al.,

Plaintiffs,

NO. CV05-0927-JCC

WASHINGTON DEMOCRATIC CENTRAL  
COMMITTEE, et al.,

Plaintiff Intervenors,

DECLARATION OF JOHN J. WHITE,  
JR. IN OPPOSITION TO MOTION TO  
RECOVER COSTS AND FEES

LIBERTARIAN PARTY OF  
WASHINGTON STATE, et al.,

Plaintiff Intervenors,

vs.

STATE OF WASHINGTON, et al.,

Defendant Intervenors,

WASHINGTON STATE GRANGE, et al.,

Defendant Intervenors.

I, John J. White, Jr., hereby declare as follows:

1. I am attorney of record for the Washington State Republican Party ("the Party") in this matter. I am over the age of eighteen, have personal knowledge of the matters set forth herein, and am competent to testify thereto. I submit this declaration in opposition to the

1 Motion to Recover Costs and Fees.

2 2. Attached hereto as **Exhibit A** is a true and correct copy of an excerpt from the  
3 Reply of Petitioner Washington State Grange, S. Ct., n. 06-713 and n. 06-730, p.1 - 3.

4 3. Attached hereto as **Exhibit B** is a true and correct copy of the Sample Primary  
5 and Special Election Ballot for Clark County, Washington for the September 19, 2000 primary  
6 election.

7 4. Attached hereto as **Exhibit C** is a true and correct copy of the Sample Primary  
8 Ballot for Clark County, Washington for the September 17, 2002 primary election.

9 6. Attached hereto as **Exhibit D** is a true and correct copy of an excerpt from the  
10 transcript of the Supreme Court hearing, n. 06-723 and n. 06-730, held on October 1, 2007.

11 8. Attached hereto as **Exhibit E** is a true and correct copy of an e-mail dated  
12 September 12, 2006 from David McDonald titled "Republican Party v. Logan/Reed - attorney  
13 fees and costs," transmitting an e-mail dated September 11, 2006 from James Pharris which  
14 was titled the same. The September 11 e-mail from the State contained a typographical error  
15 in my e-mail address. The following day, David McDonald, counsel for the Washington State  
16 Democratic Party, told me of the prior day- e-mail and forwarded a copy to me.

17 9. Attached hereto as **Exhibit F** is a true and correct copy of an e-mail dated  
18 September 14, 2006 from James Pharris titled "Attorney fees - FOR SETTLEMENT  
19 PURPOSES ONLY."

20 10. Attached hereto as **Exhibit G** is a true and correct copy of an e-mail chain dated  
21 September 15, 2006 titled "Republican Party v. Logan - Ninth Circuit fee and cost issues."

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28 DECLARATION OF JOHN J. WHITE, JR. IN  
OPPOSITION TO MOTION TO RECOVER  
COSTS AND FEES - 2  
NO. CV05-0927-JCC

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EXECUTED this 8th day of December, 2008

/s/ John J. White, Jr.  
John J. White, Jr., WSBA #13682  
Kevin B. Hansen, WSBA #28349  
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**CERTIFICATE OF SERVICE**

I hereby certify that on December 8, 2008, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

**James Kendrick Pharris**

**Richard Dale Shepard**

**Thomas Ahearne**

**David T. McDonald**

/s/ John J. White, Jr.  
John J. White, Jr., WSBA #13682  
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**EXHIBIT A**

### SUMMARY OF ARGUMENT

The political parties do not refute the two specific points dispositive to the Constitutional question presented for review.

First, they do not refute that the free speech protected by our First Amendment includes a person's freedom to utter in public the name of the political party he or she personally prefers.

Second, they do not refute the fact that, *as written*, the text of Washington's top-two statute does nothing more than allow such a personal preference statement to publicly appear on the ballot.

Instead, their arguments are all premised on the notion that an election ballot that looks like the one illustrated below implies that the party designation appearing next to a person's name identifies that person as the named party's candidate, representative, or nominee:

<p style="text-align: center;"><b><u>STATE OF WASHINGTON BALLOT</u></b></p> <p style="text-align: center;">INSTRUCTIONS TO VOTERS:</p> <p>1. Use a dark pen to fill in the square next to your choice. 2. You may vote for only one candidate for each public office.</p> <hr/> <p>PUBLIC OFFICE – GOVERNOR:</p> <p><input type="checkbox"/> Bob Smith (R) <input type="checkbox"/> Jane Doe (D)</p> <hr/> <p>PUBLIC OFFICE – ATTORNEY GENERAL:</p> <p><input type="checkbox"/> Chris R. Jones (D) <input type="checkbox"/> Chris D. Jones (R)</p>
--

But the above form of the top-two ballot was never printed.

Nor is it mandated by the statute that the political parties attack.

Instead, Washington's top-two statute allows the ballot to look like either one of the following two examples:

<p style="text-align: center;"><b><u>STATE OF WASHINGTON BALLOT</u></b></p> <p style="text-align: center;">INSTRUCTIONS TO VOTERS:</p> <ol style="list-style-type: none"><li>1. Use a dark pen to fill in the square next to your choice.</li><li>2. You may vote for only one candidate for each public office.</li><li>3. The political party name shown next to a candidate identifies the party which that candidate listed as being his or her party preference when filing for office. It is not a statement by the political party identifying that candidate as being a party member or being that party's candidate, nominee, or representative in this election.</li></ol> <hr/> <p><b>PUBLIC OFFICE – GOVERNOR:</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> <b>Bob Smith</b> (prefers Republican Party)</li><li><input type="checkbox"/> <b>Jane Doe</b> (prefers Democratic Party)</li></ul> <hr/> <p><b>PUBLIC OFFICE – ATTORNEY GENERAL:</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> <b>Chris R. Jones</b> (prefers Democratic Party)</li><li><input type="checkbox"/> <b>Chris D. Jones</b> (prefers Republican Party)</li></ul>
---

**STATE OF WASHINGTON BALLOT**

**INSTRUCTIONS TO VOTERS:**

1. Use a dark pen to fill in the square next to your choice.
2. You may vote for only one candidate for each public office.
3. The political party name shown next to a candidate identifies the party which that candidate listed as being his or her party preference when filing for office. It is not a statement by the political party identifying that candidate as being a party member or being that party's candidate, nominee, or representative in this election.

---

**PUBLIC OFFICE – GOVERNOR:**

- Bob Smith** (this person's Declaration of Candidacy states: "my party preference is the Republican Party")
- Jane Doe** (this person's Declaration of Candidacy states: "my party preference is the Democratic Party")

---

**PUBLIC OFFICE – ATTORNEY GENERAL:**

- Chris R. Jones** (this person's Declaration of Candidacy states: "my party preference is the Democratic Party")
- Chris D. Jones** (this person's Declaration of Candidacy states: "my party preference is the Republican Party")

Washington law, moreover, provides parties ample opportunity to contest the proposed wording of any ballot in court on an expedited basis – ensuring that if a political party objects to the wording of any election ballot under Washington's top-two statute, that objecting party can secure prompt judicial resolution of that objection on an expedited basis.

In short, the hypothetical ballot upon which all of the political parties' arguments are ultimately based (the first example on page 1 above) is not the ballot mandated by the State statute they attack.

**EXHIBIT B**

# **OFFICIAL SAMPLE BALLOT**

**Study this ballot carefully before voting.  
You may mark your sample ballot and  
take it into the voting booth with you on  
election day.**



**SAMPLE PRIMARY AND SPECIAL  
ELECTION BALLOT  
CLARK COUNTY, WASHINGTON  
SEPTEMBER 19, 2000**

**POLLING HOURS  
7:00 A.M. TO 8:00 P.M.**

**If you have any questions about voter  
registration or voting, call the County  
Elections Department. Phone 397-2345.**

**Additional Sample Ballots are  
available from the County Elections  
Office, 1500 D Street, Vancouver**

## NOTE TO VOTERS

This sample ballot contains all candidates who have filed for office and will appear in the Primary on September 19th. You will **not** be entitled to vote on all races that appear on this ballot. When you go to the polls only the Legislative, County Commissioner and other local contests that apply to your precinct will be listed.

Also, state law requires that candidate's names be rotated on the official ballot so that each name appears in the top position an equal number of times. Candidates are listed on the sample and absentee ballots in an order determined by lot. When you go to the polls on election day the candidate's names may not be listed on the official ballot in the same order that you find them in this sample ballot.

You are entitled to mark and take this ballot to the polls with you.

The polls are open from 7:00 AM to 8:00 PM.

# SAMPLE BALLOT

## PRIMARY - SEPTEMBER 19, 2000

### UNITED STATES SENATOR

<b>UNITED STATES SENATOR</b>  Full Six Year Term	MARIA CANTWELL	Democrat	
	ROBERT TILDEN MEDLEY	Democrat	
	WARREN E. HANSON	Republican	
	BARBARA LAMPERT	Democrat	
<b>VOTE FOR ONE</b>	SLADE GORTON	Republican	
	JUNE RIGGS	Republican	
	KEN McCANDLESS	Republican	
	DEBORAH SENN	Democrat	
	JEFF JARED	Libertarian	

### UNITED STATES REPRESENTATIVE IN CONGRESS

<b>3RD CONGRESSIONAL DISTRICT</b> Full Two Year Term  VOTE FOR ONE	TRENT R. MATSON	Republican	
	ERNE LEWIS	Libertarian	
	BRIAN BAIRD	Democrat	

### GOVERNOR

<b>GOVERNOR</b> Full Four Year Term	GARY LOCKE	Democrat	
	HAROLD HOCHSTATTER	Republican	
<b>VOTE FOR ONE</b>	META HELLER	Democrat	
	STEVE W. LePAGE	Libertarian	
	JOHN CARLSON	Republican	

### LIEUTENANT GOVERNOR

<b>LIEUTENANT GOVERNOR</b> Full Four Year Term	LONNIE W. WILLIAMS, SR.	Democrat	
	BRAD OWEN	Democrat	
<b>VOTE FOR ONE</b>	JOE K. MITSCHELEN	Republican	
	RUTH E. BENNETT	Libertarian	
	WM. (MIKE) ELLIOTT	Republican	

### SECRETARY OF STATE

<b>SECRETARY OF STATE</b> Full Four Year Term	CHRIS LOFTIS	Reform	
	CHARLES ROLLAND	Democrat	
	DON L. BONKER	Democrat	
	JAMES FINDLEY	Republican	
	SAM REED	Republican	
<b>VOTE FOR ONE</b>	ALLEN NORMAN	Democrat	
	MIKE WENSMAN	Republican	
	J. BRADLEY GIBSON	Libertarian	
	WILL BAKER	Republican	
	RAND DALEY	Democrat	
	BOB TERWILLIGER	Democrat	

**STATE TREASURER**

<b>STATE TREASURER</b>	MIKE MURPHY	Democrat	
	LOUIS BLOOM	Democrat	
Full Four Year Term	DIANE RHOADES	Republican	
VOTE FOR ONE	TIM PERMAN	Libertarian	

**STATE AUDITOR**

<b>STATE AUDITOR</b>	BRIAN SONNTAG	Democrat	
	CHRIS CAPUTO	Libertarian	
Full Four Year Term	RICHARD McENTEE	Republican	
VOTE FOR ONE			

**ATTORNEY GENERAL**

<b>ATTORNEY GENERAL</b>	CHRISTINE GREGOIRE	Democrat	
	STAN LIPPMANN	Natural Medicine	
Full Four Year Term	LUANNE COACHMAN	Natural Law	
VOTE FOR ONE	RICHARD POPE	Republican	
	RICHARD SHEPARD	Libertarian	

**COMMISSIONER OF PUBLIC LANDS**

<b>COMMISSIONER OF PUBLIC LANDS</b> Full Four Year Term  VOTE FOR ONE	GEORGIA GARDNER	Democrat	
	STEVE LAYMAN	Libertarian	
	PATRICK A. PARRISH	Republican	
	BOB PENHALE	Democrat	
	MIKE THE MOVER	Democrat	
	MIKE LOWRY	Democrat	
	JIM O'DONNELL	Democrat	
	TIM REID	Democrat	
	DOUG SUTHERLAND	Republican	

**SUPERINTENDENT OF PUBLIC INSTRUCTION**

<b>SUPERINTENDENT OF PUBLIC INSTRUCTION</b> Full Four Year Term  VOTE FOR ONE	ARTHUR HU	Non-Partisan	
	TERESA (TERRY) BERGESON	Non-Partisan	
	DAVID BLOMSTROM	Non-Partisan	
	DONALD B. CRAWFORD	Non-Partisan	
	NEIL T.B. HELGELAND	Non-Partisan	

**INSURANCE COMMISSIONER**

<b>INSURANCE COMMISSIONER</b> Full Four Year Term  VOTE FOR ONE	MIKE KREIDLER	Democrat	
	DON DAVIDSON	Republican	
	CURTIS FACKLER	Republican	
	JOHN CONNIFF	Democrat	
	MIKE HIHN	Libertarian	

**STATE LEGISLATURE  
17TH LEGISLATIVE DISTRICT**

<b>STATE SENATOR</b> Full Four Year Term VOTE FOR ONE	LOU PETERSON	Democrat	
	DON BENTON	Republican	

<b>STATE REPRESENTATIVE</b> Position No. 1 Full Two Year Term  VOTE FOR ONE	MARC BOLDT	Republican	
	LORI LORANGER	Libertarian	
	CARL DUGGER	Democrat	

<b>STATE REPRESENTATIVE</b> Position No. 2 Full Two Year Term  VOTE FOR ONE	JIM DUNN	Republican	
	JEANNE HARRIS	Democrat	
	ROY RHINE	Republican	

**STATE LEGISLATURE  
18TH LEGISLATIVE DISTRICT**

<b>STATE SENATOR</b> Full Four Year Term VOTE FOR ONE	JOSEPH ZARELLI                      Republican	
	KENT LANDERHOLM                      Democrat	

<b>STATE REPRESENTATIVE</b> Position No. 1 Full Two Year Term VOTE FOR ONE	TOM MIELKE                                  Republican	
	MICHELE COTNER                                  Democrat	

<b>STATE REPRESENTATIVE</b> Position No. 2 Full Two Year Term  VOTE FOR ONE	JOHN PENNINGTON                                  Republican	
	MARLENE ADAMS                                  Democrat	
	JONATHAN FANT                                  Reform	

**STATE LEGISLATURE  
49TH LEGISLATIVE DISTRICT**

<b>STATE SENATOR</b> Full Four Year Term  VOTE FOR ONE	BENJAMIN (BEN) GASSAWAY	Democrat	
	DON CARLSON	Republican	
	DUANE BAIRD	Democrat	

<b>STATE REPRESENTATIVE</b> Position No. 1 Full Two Year Term VOTE FOR ONE	ZACH COURSER	Republican	
	BILL FROMHOLD	Democrat	

<b>STATE REPRESENTATIVE</b> Position No. 2 Full Two Year Term VOTE FOR ONE	VAL OGDEN	Democrat	
	CRAIG SCHMIDT	Republican	

**COUNTY COMMISSIONER  
COMMISSIONER DISTRICT NO. 1**

<b>COUNTY COMMISSIONER</b> Full Four Year Term VOTE FOR ONE	TOM ARMSTRONG	Republican	
	BETTY SUE MORRIS	Democrat	

**COUNTY COMMISSIONER  
COMMISSIONER DISTRICT NO. 2**

<b>COUNTY COMMISSIONER</b> Full Four Year Term VOTE FOR ONE	JUDIE STANTON	Democrat	
	BILLEE SUNDERLAND	Republican	

**EXHIBIT C**

# **OFFICIAL SAMPLE BALLOT**

**Study this ballot carefully before voting.  
You may mark your sample ballot and  
take it into the voting booth with you on  
election day.**



**SAMPLE PRIMARY BALLOT  
CLARK COUNTY, WASHINGTON  
SEPTEMBER 17, 2002**

**POLLING HOURS  
7:00 AM TO 8:00 PM**

**If you have any questions about voter  
registration or voting, call the County  
Elections Department. Phone: 397-2345.**

**Additional sample ballots are  
available from the County Elections  
Department, 1500 D Street, Vancouver**

## NOTE TO VOTERS

This sample ballot contains all candidates who have filed for office and will appear on the Primary and Special elections ballot on September 17th. You will **not** be entitled to vote on all races and issues that appear on this ballot. When you go to the polls only the Legislative, County Commissioner and other local contests that apply to your precinct will be listed.

State law also requires that candidate's names be rotated on the official ballot so that each name appears in the top position an equal number of times. Candidates are listed on the sample and absentee ballots in an order determined by lot. When you go to the polls on election day the candidate's names may not be listed on the official ballot in the same order that you find them in this sample ballot.

You are entitled to mark and take this ballot to the polls with you.

The polls are open from 7:00 AM to 8:00 PM.

**PRIMARY - SEPTEMBER 17, 2002**

**UNITED STATES CONGRESS  
3rd Congressional District**

UNITED STATES REPRESENTATIVE Full Two Year Term VOTE FOR ONE	Joseph Zarelli	Republican	
	Brian Baird	Democrat	

**STATE LEGISLATURE  
15TH LEGISLATIVE DISTRICT**

SENATOR Full Four Year Term VOTE FOR ONE	Jim Honeyford	Republican	
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REPRESENTATIVE Position No. 1 Full Two Year Term VOTE FOR ONE	Bruce Chandler	Republican	
	Erwin J. Salvatori	Democrat	

REPRESENTATIVE Position No. 2 Full Two Year Term VOTE FOR ONE	Dan Newhouse	Republican	
	Don Vlieger	Republican	
	Michael H. Kepcha	Democrat	

**STATE LEGISLATURE  
17TH LEGISLATIVE DISTRICT**

REPRESENTATIVE Position No. 1 Full Two Year Term VOTE FOR ONE	Marc Boldt	Republican	
	Pat Campbell	Republican	

REPRESENTATIVE Position No. 2 Full Two Year Term VOTE FOR ONE	Jim Dunn	Republican	
	Deb Wallace	Democrat	

**STATE LEGISLATURE  
18TH LEGISLATIVE DISTRICT**

REPRESENTATIVE Position No. 1 Full Two Year Term VOTE FOR ONE	Bill Crego	Democrat	
	Tom Mielke	Republican	

REPRESENTATIVE Position No. 2 Full Two Year Term VOTE FOR ONE	Dave Seabrook	Democrat	
	Ed Orcutt	Republican	
	Michele Cotner	Democrat	

**PRIMARY - SEPTEMBER 17, 2002**

**STATE LEGISLATURE  
49TH LEGISLATIVE DISTRICT**

<b>REPRESENTATIVE</b> Position No. 1 Full Two Year Term VOTE FOR ONE	Mike W. Smith	Republican	
	Bill Fromhold	Democrat	

<b>REPRESENTATIVE</b> Position No. 2 Full Two Year Term VOTE FOR ONE	Catherine Rich-Daniels	Democrat	
	Marlene Korczakowski Adams	Independent	
	Jim Moeller	Democrat	
	Barbara A. Peterson	Republican	

**CLARK COUNTY**

<b>COUNTY ASSESSOR</b> Full Four Year Term VOTE FOR ONE	Darrell Grigg	Republican	
	Mike Webber	Republican	
	Don Benton	Republican	
	Linda Franklin	Democrat	

<b>COUNTY AUDITOR</b> Full Four Year Term VOTE FOR ONE	Jim Gallagher	Democrat	
	Greg Kimsey	Republican	

<b>COUNTY CLERK</b> Full Four Year Term VOTE FOR ONE	Mark Stratton	Republican	
	Jo Anne McBride	Democrat	

<b>COUNTY COMMISSIONER</b> District No. 3 Full Four Year Term VOTE FOR ONE	Al Raines	Republican	
	Craig Pridemore	Democrat	

<b>COUNTY PROSECUTING ATTORNEY</b> Full Four Year Term VOTE FOR ONE	Art Curtis	Democrat	
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<b>COUNTY SHERIFF</b> Full Four Year Term VOTE FOR ONE	Garry Lucas	Republican	
	Craig Hogman	Democrat	

<b>COUNTY TREASURER</b> Full Four Year Term VOTE FOR ONE	Doug Lasher	Democrat	
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**EXHIBIT D**

Official - Subject to Final Review

1 applied --

2 CHIEF JUSTICE ROBERTS: Do you agree that if  
3 it were that way, in other words if the ballot looked  
4 like the ballot on page 1 of the Grange reply brief,  
5 that that would be unconstitutional?

6 MR. McKENNA: Yes, Your Honor, it would be  
7 harder to argue from our side. But Your Honor, the  
8 Ninth Circuit only assumed that the ballot would look  
9 like the ballot on page 1 of the Grange yellow brief.  
10 They assumed that the ballot would look exactly like the  
11 ballot in a nominating primary, and our point here is  
12 that it will not.

13 CHIEF JUSTICE ROBERTS: Do these preference  
14 statements continue under the general election?

15 MR. McKENNA: Yes, Your Honor, they do.

16 CHIEF JUSTICE ROBERTS: Can you change  
17 between the primary and the general election? Can you  
18 say my preferred party is the Republican Party, so you  
19 get more Republican votes to get you over the hump so  
20 you are one of the two, and then in the general election  
21 say, my preference is the Democratic Party, because  
22 there are more Democratic voters?

23 MR. McKENNA: No, Mr. Chief Justice. State  
24 law would not permit that.

25 JUSTICE ALITO: Well, why can't you do that,

Official - Subject to Final Review

1 relating.

2 REBUTTAL ARGUMENT OF ROBERT McKENNA

3 ON BEHALF OF THE PETITIONERS.

4 MR. McKENNA: Thank you, Mr. Chief Justice.

5 First of all, Justice Kennedy, the State's  
6 interest is what we have said it is all along. It is to  
7 convey some information on the ballot in the same way  
8 that the party label does. I have noticed that the  
9 political parties have never objected to having their  
10 nominees listed on the ballot as -- you know, as such.

11 In this case it's an expression of party  
12 preference, to be sure, and nothing more than that; and  
13 there is useful information which is conveyed. We are  
14 not required to allow it, but the voters have chosen to  
15 allow it.

16 JUSTICE ALITO: Can I ask you to clarify  
17 something you said during your initial argument? I  
18 understood you to say that the sample ballot on page 1  
19 of the Grange reply would be unconstitutional.

20 MR. McKENNA: No, Your Honor. I did not say  
21 that it would be unconstitutional. I said that that  
22 would be a different argument. It might be a more  
23 difficult argument. The Ninth Circuit assumed that that  
24 is what the ballot would look like, even though there  
25 was not basis for the Ninth Circuit reaching that

Official - Subject to Final Review

1 conclusion.

2 CHIEF JUSTICE ROBERTS: Maybe I'm wrong. I  
3 thought you did say it would be unconstitutional.

4 JUSTICE SCALIA: I did, too.

5 CHIEF JUSTICE ROBERTS: And could you --

6 JUSTICE SCALIA: You should have said that.

7 CHIEF JUSTICE ROBERTS: I mean how would you  
8 defend that? I mean --

9 MR. McKENNA: Well, I would defend it, Your  
10 Honor, by saying that this is a facial challenge. Let's  
11 apply it. And if there is evidence --

12 CHIEF JUSTICE ROBERTS: Well, we are  
13 assuming it is applied in the way that is shown on the  
14 Grange reply brief at page 1. If it were applied in  
15 that way, would that be unconstitutional? It just says  
16 R or D.

17 MR. McKENNA: It would -- it could be  
18 unconstitutional, Mr. Chief Justice, if there were  
19 evidence that the voters were misled or confused.

20 Mr. Chief Justice, this is an excellent  
21 opportunity to point out that the letter after the name,  
22 whether it's the letter as on page one of the Grange  
23 ballot or an expression of party preference on pages two  
24 and three, is not the only information on the ballot.

25 As we've shown in the samples, there will be

Official - Subject to Final Review

1 lots of other information on the ballot which clearly  
2 distinguishes the expression of party preference.

3 JUSTICE STEVENS: Isn't it also true that,  
4 by hypothesis, there will be other candidates beside the  
5 one R and the one D? If there aren't at least two R's  
6 and two D's, there is no problem.

7 MR. McKENNA: In the scenario or the ballot  
8 on page 1, Justice Stevens, I believe that what would  
9 happen is the Secretary of State would still provide the  
10 additional language. If that additional language is not  
11 provided, if it were just that bare ballot with no  
12 explanatory language, then, yes, it would be much harder  
13 to defend as being constitutional. But that, in fact,  
14 is not the way it's going to work.

15 JUSTICE STEVENS: But my point is there  
16 could never be a ballot just like this, what your  
17 opponents are talking about, because there are always  
18 going to be at least two or three R's and two or three  
19 D's. And the sample shows there is only one, which must  
20 then be the party chosen -- I mean the nominee chosen at  
21 the convention.

22 MR. McKENNA: But the key here, Your Honor,  
23 is that even under the ballot on page one, what is not  
24 happening under top- two is that the nominee of the  
25 party is not being selected. That's not happening any

**EXHIBIT E**

**John White**

---

**From:** McDonald, David (SEA) [davidm@prestongates.com]  
**Sent:** Tuesday, September 12, 2006 11:18 AM  
**To:** John White  
**Subject:** FW: Republican Party v. Logan/Reed - attorney fees and costs

Here is the mail.

---

**From:** Pharris, James (ATG) [mailto:JamesP@ATG.WA.GOV]  
**Sent:** Monday, September 11, 2006 5:08 PM  
**To:** McDonald, David (SEA); richard@shepardlawoffice.com; white@lfs-law.com; hansen@lfs-law.com  
**Cc:** Even, Jeff (ATG)  
**Subject:** Republican Party v. Logan/Reed - attorney fees and costs

The following is for settlement purposes only:

Thanks to each of the three parties for supplying us with bills detailing attorney fees and costs in the above referenced matter. We have not had a chance to discuss this in detail with the client (whose budget will be paying the bill) and tomorrow both Jeff and I will be at the annual Attorney General Conference, so I won't have a chance to get authority for a specific proposal before Wednesday at the earliest. However, here is my general thinking on the subject:

1. We will not raise any objections to the costs as claimed.
2. For now, we prefer to discuss only the attorney fees relating to the Ninth Circuit portion of the case, because (1) those are the ones immediately requiring decisions and (2) it appears likely that there will be further proceedings in the trial court. Ideally, we would wait on the remaining fees until all the work is done and the bills are in, but we're still open to discussion on that point. Today, however, we want to talk about the Ninth Circuit.
3. Each of you has submitted an attorney fee bill. Richard has expressly invited an offer of settlement, John has impliedly done so (by showing the bill both at his discounted and at full market rate), and David's correspondence is silent on the point. While we could simply deal with each of you separately, fairness suggests some sort of common approach.

Subject to discussion with the secretary of state's office, my initial thought is to suggest that all of your proposals are in the ballpark of reasonableness. To protect the public treasury, we would like to hold the fees down to around \$100,000 for the appeal. To accomplish that, I will probably propose applying a common percentage discount to each of the three bills. On the assumption that David's and Richard's bills reflect their full rate, we would probably start the calculation from John's full rate rather than his lower discounted figures, so all three parties are treated about the same. If I'm pulling out the right figures, I think that means we start from the following:

Republicans - \$60,508.50  
Democrats - \$41,623.08  
Libertarians - \$17,965.32

The three numbers add up to slightly more than \$120,000.

My plan is to firm this up into a more definite proposal as soon as I have a chance to discuss this with the client. If my proposed approach is a non-starter, now would be the time to say so. Also, it would be the time to correct any errors I've made in my numbers or in my assumptions.

It seems we are not far apart on this issue, and we're open to discussion about alternatives. As I said, I'll be out of town all day tomorrow, but you're welcome to leave voicemail or e-mail. Or I'd be happy to discuss this on Wednesday.

Jim Pharris

4/30/2008

**EXHIBIT F**

**John White**

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**From:** Pharris, James (ATG) [JamesP@ATG.WA.GOV]  
**Sent:** Thursday, September 14, 2006 5:45 PM  
**To:** John White  
**Subject:** Attorney fees--FOR SETTLEMENT PURPOSES ONLY

I have concurrence from the client about proposing a 10% discount on each attorney fee bill. Tomorrow I'll formalize it in an offer and convey it to you, David, and Richard. I hope I have properly updated your e-mail address.

**EXHIBIT G**

**John White**

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**From:** John J. White Jr. [white@lfa-law.com]  
**Sent:** Friday, September 15, 2006 2:26 PM  
**To:** 'McDonald, David (SEA)'; 'Pharris, James (ATG)'; 'richard@shepardlawoffice.com'  
**Cc:** 'Even, Jeff (ATG)'; 'Kevin Hansen'  
**Subject:** RE: Republican Party v. Logan - Ninth Circuit fee and cost issues

The Republican Party also agrees to the terms of the proposed settlement of its costs and fees in the Ninth Circuit proceeding related to the appeal of Judge Zilly's July, 2005 decision through the date of the settlement, irrespective of further proceedings in the case. We will prepare and circulate an order today. I will incorporate the numbers provided by the other political parties' counsel.

My suggestion would be to circulate a copy for review and get confirmation from each counsel by e-mail. I shall then indicate agreement per the e-mail and arrange for transmission to the court.

John J. White, Jr.  
[white@lfa-law.com](mailto:white@lfa-law.com)  
(425) 822-9281 ext. 321

The contents of this message and any attachments may contain confidential information and be protected by the attorney-client privilege, work product doctrine or other applicable protection. If you are not the intended recipient or have received this message in error, please notify the sender and promptly delete the message. Thank you for your assistance.

**Tax Advice Notice:** IRS Circular 230 requires us to advise you that, if this communication or any attachment contains any tax advice, the advice is not intended to be used, and cannot be used, for the purpose of avoiding federal tax penalties. A taxpayer may rely on professional advice to avoid federal tax penalties only if the advice is reflected in a comprehensive tax opinion that conforms to stringent requirements. Please contact us if you have any questions about Circular 230 or would like to discuss our preparation of an opinion that conforms to these IRS rules.

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**From:** McDonald, David (SEA) [mailto:davidm@prestongates.com]  
**Sent:** Friday, September 15, 2006 2:20 PM  
**To:** Pharris, James (ATG); white@lfa-law.com; richard@shepardlawoffice.com  
**Cc:** Even, Jeff (ATG)  
**Subject:** RE: Republican Party v. Logan - Ninth Circuit fee and cost issues

The Democratic Party agrees to this compromise of its current Ninth Circuit Fee and Cost Claims. We understand this settlement will be final as to our claims for attorneys' fees and costs for the Ninth Circuit proceedings related to the appeal of Judge Zilly's July, 2005 decision through the date of the settlement, irrespective of further proceedings in the case. Jim, let me know what additional information or documentation you need from us.

Thank you and your client for your consideration in this matter.

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**From:** Pharris, James (ATG) [mailto:JamesP@ATG.WA.GOV]  
**Sent:** Friday, September 15, 2006 10:28 AM  
**To:** white@lfa-law.com; McDonald, David (SEA); richard@shepardlawoffice.com  
**Cc:** Even, Jeff (ATG)  
**Subject:** Republican Party v. Logan - Ninth Circuit fee and cost issues

4/29/2008

The following is communicated for settlement purpose only:

After consultation with the Secretary of State's office and with some of you, I am prepared to make the following offer of compromise on the claims for costs and attorneys relating to the Ninth Circuit Appeal in this case:

1. The state will agree to compromise fees and costs relating to the Ninth Circuit appeal. Since there will likely be further proceedings, fees and costs at the trial court level will be deferred for later discussion. We do hope to arrive at a reasonable compromise on those at a later date.
2. The state will pay in full all court costs which the prevailing parties could reasonably claim under the applicable court rules.
3. The state will pay 90% of all attorney fees claimed by each respondent as set forth in previous correspondence among the parties.
4. The state understands that this compromise is based primarily upon the state's willingness to make prompt payment, and will undertake to process payment as soon as the claimed amounts for each party are definitely known.

Having agreed to pay 100% of costs and 90% of fees, I'm having trouble sorting out the numbers. Richard's submission (confirmed by a phone conversation) appears to include both fees and costs in his total claim of \$17,965.32. If I read his invoices correctly, the breakdown is \$1622.27 in costs and \$16,343.05 in fees. That would result in a payment of \$1622.27 in costs and \$14,708.75 in fees, or a total of \$16,331.02.

The material I have from David and John appears to relate exclusively to fees, and the numbers don't include costs. I have a memory of seeing cost bills from one or both of you, but a quick search has not turned them up. Relying on the two of you to retrieve the correct numbers makes more sense (for me that is) than continuing to search for them. Could you let us know the breakdown, and either you can do the math or I can.

If this compromise is agreeable, I suppose it should be incorporated in an agreed order. John, once we have all the numbers, could you draft such an order? These usually come from the prevailing party, but I'm not unwilling to do the work if you want me to.

As soon as we have definite numbers, I'll start the payment process. Jeff did this last time, and I don't remember all the steps, but we'll do everything we can to expedite it.

Jim