

The Honorable John C. Coughenour

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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,

and

LIBERTARIAN PARTY OF WASHINGTON  
STATE, et al.,

Plaintiff Intervenors,

v.

STATE OF WASHINGTON, et al.,

Defendant Intervenors,

and

WASHINGTON STATE GRANGE,

Defendant Intervenor.

No. CV05-0927 JCC

FIRST AMENDED AND  
SUPPLEMENTAL COMPLAINT IN  
INTERVENTION FOR  
DECLARATORY JUDGMENT AND  
FOR INJUNCTIVE RELIEF  
REGARDING INITIATIVE 872 AND  
PRIMARY ELECTIONS

FIRST AMENDED AND SUPPLEMENTAL COMPLAINT IN  
INTERVENTION FOR DECLARATORY JUDGMENT AND  
FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872  
AND PRIMARY ELECTIONS - 1  
Case No. CV05-0927 JCC

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**NATURE OF ACTION**

1. The First and Fourteenth Amendments to the United States Constitution guarantee the right of individuals to associate in a political party, the right of that party to select its nominees for partisan political office, and the right of the individuals and their party to limit participation in the process of selecting nominees to those voters the party identifies as sharing its interests and persuasions. As the Ninth Circuit noted in striking down Washington’s blanket primary, “... the Washington statutory scheme prevents those voters who share their affiliation from selecting their party's nominees. The right of people adhering to a political party to freely associate is not limited to getting together for cocktails and canapés. Party adherents are entitled to associate to choose their party's nominees for public office.” *Democratic Party of Washington v. Reed*, 343 F.3d 1198, 1204 (9th Cir. 2003), cert. denied, 540 U.S. 1213 (2004) (“*Reed*”).

2. One of the fundamental purposes of the First Amendment is to provide for and promote competition between ideas in American civilization. This purpose is advanced by requiring that the selection of a political party’s candidates and nominees be done by adherents of the party rather than by those opposed to or indifferent to the party.

3. The State of Washington (the “State”) has enacted Initiative 872, attempting to prevent the Washington State Democratic Party (the “Party”) and its adherents from selecting their nominees, and to force the Party to be associated publicly with candidates who have not been nominated by the Party, who will alter the political message and agenda the Party seeks to advance, and who will confuse the voting public with respect to what the Party and its adherents stand for. The State seeks to appropriate the use of the Democratic Party’s name in primaries and general elections in order to protect the political interests of the incumbent and the well-known at the expense of the committed and the innovative. Acting under color of law, State and local officials force the Party and its adherents to include supporters of other

1 parties and political interests in determining which, or whether any, candidate will carry the  
2 Democratic Party name in the general election.

3 4. Initiative 872, as set forth in both Section 2 (“In the event of a final court  
4 judgment invalidating the blanket primary, this People’s Choice Initiative will become  
5 effective....”) and Section 18, was expressly intended to defeat the constitutional right of the  
6 Party and its adherents to nominate candidates, recognized by the U.S. Supreme Court in  
7 *California Democratic Party v. Jones*, 530 U.S. 567, 120 S.Ct. 2402, 147 L. Ed. 2d 502  
8 (2000) and *Reed*. The Initiative, as implemented by State officials, eliminates mechanisms  
9 previously enacted by the State to protect the First Amendment rights of the Party and its  
10 adherents and provides no effective substitute mechanism for the Party to exercise its right to  
11 limit participation in the nomination process and thereby protect its adherents’ right of  
12 association from forced dilution.

13 5. This is an action to protect the First Amendment rights of the Party and its  
14 adherents to advocate and promote their vision for the future without subtle or overt  
15 censorship or interference by the State through the County Auditors acting under color of the  
16 laws of the State of Washington. Initiative 872 is unconstitutional.

17 **JURISDICTION AND VENUE**

18 6. Plaintiffs’ rights of political association and political expression are guaranteed  
19 against abridgement by the State and those acting under color of its laws by the First and  
20 Fourteenth Amendments to the United States Constitution and by 42 U.S.C. § 1983. This  
21 case presents a federal question involving federally-protected rights, including freedom of  
22 association and protection against state intervention into the association rights of the Party and  
23 its adherents, set out in *Reed*. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331,  
24 1343(a)(3), 2201 and 2202.

25  
26 FIRST AMENDED AND SUPPLEMENTAL COMPLAINT IN  
INTERVENTION FOR DECLARATORY JUDGMENT AND  
FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872  
AND PRIMARY ELECTIONS - 3

Case No. CV05-0927 JCC

K:\2052261\00002\20403\_DTM\20403P20J4

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

1 7. Defendants reside in the Western District of the State of Washington (the  
2 “Western District”) and the conduct and threatened conduct that gives rise to Plaintiffs’  
3 claims substantially occurred and threatens to occur within the Western District. Venue for  
4 this action lies within the Western District pursuant to 28 U.S.C. §§ 1391(a) and 1391(b).

5 **PARTIES**

6 8. The Party is a “major political party” as defined in RCW 29A.04.086 and is  
7 organized for the purposes of promoting the political beliefs of its adherents, selecting and  
8 supporting candidates who support the political beliefs of the Party’s adherents and electing  
9 public officials who will conduct government affairs in a manner consistent with the Party’s  
10 philosophy. The Party has all the powers inherent in a political organization and is  
11 empowered to perform all functions inherent in a political party.

12 9. Intervenor-Plaintiff Dwight Pelz is a resident of the Western District. He is the  
13 elected Chairman of the Washington State Democratic Central Committee, the governing  
14 body of the Party pursuant to its Charter, and is the political and administrative head of the  
15 Party pursuant to its Charter and Bylaws and RCW 29A.80.020, *et seq.*

16 10. The Defendants are Sam Reed, in his capacity as Secretary of State of the State  
17 of Washington; Robert McKenna, in his capacity as Attorney General of the State of  
18 Washington; and the State of Washington. Secretary Reed is the chief officer in the State,  
19 having the overall responsibility to conduct primary elections within each respective county,  
20 including providing and tabulating ballots for such elections. Secretary Reed and Attorney  
21 General McKenna intervened as defendants. The State was substituted as a defendant for the  
22 original defendants (the County Auditors) by an agreed order of the Court on July 13, 2005.

23 **WASHINGTON’S PARTISAN PRIMARY**

24 11. The Defendants will administer partisan primaries this September. Pursuant to  
25 the laws of the State, including the Montana primary system adopted by the Legislature and

26 FIRST AMENDED AND SUPPLEMENTAL COMPLAINT IN  
INTERVENTION FOR DECLARATORY JUDGMENT AND  
FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872  
AND PRIMARY ELECTIONS - 4

Case No. CV05-0927 JCC

K:\2052261\00002\20403\_DTM\20403P20J4

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

1 RCW 29A.04.311, 29A.20.121, and 29A.52.116, the Party is required to advance its  
2 candidates for Congressional, State and County offices by means of partisan political  
3 primaries administered by the Secretary of State (“the Secretary”) and the County Auditors.  
4 RCW 29A.52.116 states: “Major political party candidates for all partisan elected offices,  
5 except for president and vice-president ... must be nominated at primaries held under this  
6 chapter.” The mandatory notice of the primary must contain “the proper party designation” of  
7 each candidate in the primary. RCW 29A.52.311. RCW 29A.52.112, adopted by I-872,  
8 requires that “For partisan office, if a candidate has expressed a party or independent  
9 preference on the declaration of candidacy, then that preference will be shown after the name  
10 of the candidate on the primary and general election ballots ....” The same statute also  
11 provides that the “top two” vote-getters in the primary required by I-872 will advance to the  
12 general election. The Secretary has asserted that only the two candidates who receive the  
13 most votes on primary day will advance to the primary even if both candidates are associated  
14 with the same political party. Former defendants Logan and Terwilliger have each asserted,  
15 “At this time, I am not aware of any language associated with the Initiative that contemplates  
16 a partisan nomination process separate from the primary.”  
17  
18

19 12. Neither the laws of the State nor the rules adopted or proposed by the Secretary  
20 provide any mechanism for the Party to effectively exercise its right of association in  
21 connection with the partisan primary in which it is forced by State law to participate. Any  
22 individual may appropriate the Party’s name, regardless of whether the Party desires  
23 affiliation with that person.  
24

25 13. The State, through its filing and campaign advertising statutes, also compels

1 the Party to associate with any person who files a declaration of candidacy expressing a  
2 “preference” for the Party, regardless whether the Party desires association with the person.  
3 In addition, the State through its Voter’s Pamphlet propagates to all voters claims of Party  
4 endorsement or nomination by candidates without regard to whether the Party has in fact  
5 endorsed or nominated the candidates.  
6

7 14. In addition to requiring the Party to accept as one of its candidates any  
8 individual without regard to the individual’s political philosophy or participation in Party  
9 affairs RCW 29A.04.127 forces the Party to permit any voter to participate in selection of the  
10 Party’s standard-bearer without regard to the voter’s partisan affiliation or beliefs. The State  
11 thus forces the Party and its adherents to associate with those who do not share their beliefs or  
12 are openly antagonistic to them. Initiative 872 was intended to establish *a de facto* blanket  
13 primary in response to a declaration that the blanket primary is unconstitutional and to  
14 facilitate cross-over and ticket-splitting voting, thus depriving the Party of its right to prevent  
15 supporters of other political parties and interests from participating in its candidate selection  
16 and nomination processes. It was intended to force the Party to modify its message or have a  
17 modified message forced upon it by the simple expedient of eliminating the Party’s selected  
18 spokesperson in favor of a spokesperson selected by non-adherents of the Party. The  
19 sponsors’ official statement in support of the Initiative states, “Parties will have to recruit  
20 candidates with broad public support and run campaigns that appeal to all voters.” This  
21 attempt at forced message modification was rejected as a legitimate state interest by both the  
22 Supreme Court in *Jones* and the Ninth Circuit in *Reed*.

23 15. The other interests asserted as the basis for adopting I-872, codified as RCW  
24 29A.04.206, were also rejected in *Reed* as legitimate grounds for invading the right of  
25 political association.

26 FIRST AMENDED AND SUPPLEMENTAL COMPLAINT IN  
INTERVENTION FOR DECLARATORY JUDGMENT AND  
FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872  
AND PRIMARY ELECTIONS - 6  
Case No. CV05-0927 JCC

K:\2052261\00002\20403\_DTM\20403P20J4

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

1           16.     The Party and its adherents are irreparably injured by the forced adulteration of  
2 the Party's nomination process, by the State's active encouragement of cross-over and ticket-  
3 splitting, and by the resulting dilution and potential suppression of its message. The presence  
4 and participation of non-party voters in the partisan primary inevitably alters candidates'  
5 messages and actions and thereby dilutes the Party's message and influence. Dilution of the  
6 Party's vote in any partisan primary carries with it the risk that the Party will be denied a  
7 place on the general election ballot to the extent that only the "top two" vote-getters will  
8 appear on the general election ballot. For example, if seven candidates carrying the Party  
9 name each receive 10% of the vote at a partisan primary, and two candidates of other parties  
10 each receive 15%, the Secretary maintains there would be no Party candidate on the general  
11 election ballot, despite the receipt by candidates with the Party's identification or 70% of the  
12 total vote.

13           17.     Defendants-Intervenors Washington State Grange filed Initiative 872 in  
14 January 2004 seeking to convert the State's then blanket primary election system into a Top  
15 Two primary system. During the 2004 legislative session the Grange lobbied aggressively for  
16 the Washington legislature to adopt a primary election system that was substantially similar to  
17 Initiative 872. In the end, however, Washington repealed the blanket primary statutes,  
18 including statutes referred to by Initiative 872, and adopted the "Montana" primary system to  
19 replace the blanket primary.  
20

21           18.     Thereafter the Grange initiated a signature gathering campaign to place  
22 Initiative 872 on the November 2004 ballot. This campaign's promotional materials  
23 represented to voters that the Initiative would "restore the kind of choice that voters enjoyed  
24 for seventy years under the blanket primary." The promotional materials also represented  
25

1 that “minor parties would continue to select candidates the same way they do under the  
2 blanket primary. Their candidates would appear on the ballot for each office (as they do  
3 now).” Voters were told that ballots would look the same after passage as before passage of  
4 Initiative 872. On April 19, 2004, counsel for the Democratic Party advised the Grange that  
5 petitions for Initiative 872 being circulated for signature contained material inaccuracies in  
6 that the Initiative was seeking to replace the blanket primary but the laws had changed.  
7  
8 Despite this warning, the Grange continued to pursue Initiative 872 as filed in January 2004.

9           19. As presented to the voters, Initiative 872 did not properly disclose the statutes  
10 that would be amended if the Initiative passed.

11  
12 **SUPPLEMENTAL ALLEGATIONS REFLECTING MATERIAL EVENTS SINCE**  
13 **THE FILING OF THE ORIGINAL COMPLAINT**

14           20. After the passage of I-872, defendant Secretary of State requested the  
15 Legislature adopt legislation implementing I-872. At the Secretary’s request HB 1750 and  
16 SB5745 were introduced in the 2005 session of the legislation. The Secretary’s proposed  
17 implementation would have amended RCW 29A.36.121(3) to eliminate provisions of the  
18 statute relating to nomination by minor parties but proposed to re-enact the first sentence of  
19 the section to read: “The political party or independent candidacy of each candidate for  
20 partisan office shall be indicated next to the name of the candidate on the primary or general  
21 election ballot.” The Secretary also proposed emergency regulations, WSR 05-11-101, which  
22 provided that on the ballot form to be used “the party preference or independent status of each  
23 candidate shall be listed next to the candidate.” WSR 05-11-101 at WAC 434-230-170

24           21. As a direct result of this litigation challenging the proposed implementation  
25 and this Court’s decision that the I-872 is unconstitutional, defendants repealed their proposed

1 implementation of I-872 in 2005, including the form of ballot that defendants proposed to use.  
2 Thereafter, defendants argued to appellate courts that the form of ballot was not known and  
3 that it might not be the form upon which the District Court’s determination that I-872 is  
4 unconstitutional had been based.

5         22. In 2006, by more than two-thirds vote, the Washington Legislature reviewed  
6 and amended various election statutes. Among other things, the Legislature changed  
7 Washington’s primary election date to August. In 2007 the Washington adopted a  
8 requirement that all partisan primary ballots contain a statement that a voter may only vote for  
9 candidates of one party. To the date of this pleading, the Legislature has not amended RCW  
10 29A.36.121(3) and its first sentence continues to read: “The political party or independent  
11 candidacy of the each candidate for partisan office shall be indicated next to the name of the  
12 candidate on the primary and election ballot.”

13         23. In May 2008, two weeks prior to the commencement of filing of candidacies  
14 for the 2008 election the Secretary adopted emergency regulations implementing I-872,  
15 although this Court had not been requested to modify or vacate its injunction barring the  
16 Secretary from implementing I-872. In his 2008 emergency implementation the Secretary  
17 ignored RCW 29A.36.121(3)’s requirement that partisan primary ballots list the political party  
18 or independent status of each candidate next to the name of the candidate. The Secretary also  
19 ignored the requirements of RCW 29A.24.030 (as amended by I-872) that for partisan offices  
20 declarations of candidacy must include a place for the candidate to indicate his or her major or  
21 minor party preference or independent status. Instead, the Secretary implemented forms that  
22 had no place to indicate independent status, only a box with which to decline to state a  
23 preference. Similarly the Secretary’s emergency regulations did not indicate the independent  
24 status of candidates but instead indicated that the candidate had declined to state a preference.  
25

1 24. As part of their implementation of Initiative 872, defendants have ignored, on  
2 the basis that they are impliedly repealed, numerous valid statutes of the State of Washington.  
3 The repeal of these statutes, or portions thereof, by implication if Initiative 872 were to pass  
4 was not disclosed to the voters in connection with Initiative 872.

5 25. Washington's Public Disclosure Commission also adopted regulations  
6 implementing I-872. In particular, the PDC adopted WAC 390-05-274 declaring that the  
7 terms "party affiliation," "political party," "party" and "political party affiliation" when used  
8 in RCW 42.17, WAC 390 or on forms adopted by the PDC meant a candidate's self-identified  
9 party preference. In addition, the PDC adopted a new brochure in July 2008 providing  
10 information to campaign advertising sponsors advising sponsors with respect to compliance  
11 with RCW 42.17.510's requirement that political advertising and communications must  
12 clearly identify a candidate's party or independent designation, as indicated by his or her  
13 statement of preference on the declaration of candidacy. The PDC brochure indicated that  
14 "Official symbols or logos adopted by the state committee of the party may be used in lieu of  
15 other identification." The PDC brochure also advised advertisers that the traditional  
16 abbreviations for political parties, such as "D., Dem., Demo," could be used to indicate the  
17 candidate's party.

18 26. Election coverage both before and after the primary made no distinction  
19 between candidates carrying the Democratic Party name who were authorized to use the party  
20 name and candidates who did so without authorization. The practical effect of I-872 was to  
21 confuse voters about which candidates carrying the Democratic Party name actually supported  
22 the party and its objectives and candidates who had appropriated the party name for their own  
23 political advancement.

24 27. As implemented by defendants, I-872 unconstitutionally interferes with the  
25 internal affairs of the Democratic Party by allowing non-Democrats to participate in the

1 election of the Party's precinct committee officers and, based on their implementation of I-  
2 872, defendants have even declared non-members of the Democratic Party to be elected to  
3 party positions. Pursuant to RCW 29A.80.030 the county central committee of a political  
4 party consists of its precinct committee officers. Pursuant to Article II, Section 15 of the  
5 Washington State Constitution, vacancies in the legislature or in any partisan county elective  
6 office must be filled by a candidate who has been nominated for the vacancy by the pertinent  
7 county central committee of the same political party as the legislator or local elected official  
8 who caused the vacancy. RCW 29A.80.041 requires that in order to file for the office of  
9 precinct committee officer for a political party a candidate must be a member of that party. In  
10 addition, RCW 29A.80.051 requires that in order to be elected a precinct committee officer of  
11 a party, a candidate must receive at least ten percent of the number of votes cast for the  
12 candidate of the precinct committee officer candidate's party who received the highest  
13 number of votes in the precinct.

14 28. Prior to the 2008 implementation of I-872 by the defendants, a candidate for  
15 the office of Democratic precinct committee officer was required to state as part of his or her  
16 declaration of candidacy that he or she was legally qualified to hold the office if elected and  
17 that he or she was a candidate of the Democratic Party. Under the defendants' 2008  
18 implementation of I-872, a candidate is no longer required to affirm that he or she is legally  
19 qualified to take office if elected nor is the candidate required to request that his or her name  
20 be printed as a candidate of the Democratic Party.

21 29. Prior to the 2008 implementation of I-872 by the defendants, a voter could  
22 only vote in a Democratic precinct committee officer election if the voter had taken a separate  
23 Democratic Party ballot, had responded affirmatively that he or she wanted to affiliate with  
24 the Democratic Party or had voted only for candidates of the Democratic Party in partisan  
25 races on the ballot. As part of their implementation of I-872, defendants directed that all

26 FIRST AMENDED AND SUPPLEMENTAL COMPLAINT IN  
INTERVENTION FOR DECLARATORY JUDGMENT AND  
FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872  
AND PRIMARY ELECTIONS - 11

Case No. CV05-0927 JCC

K:\2052261\00002\20403\_DTM\20403P20J4

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

1 voters, without regard to whether such voters were adherents of the Democratic Party, would  
2 be offered the opportunity to vote in Democratic precinct committee officer elections.

3 Defendants further directed that votes in the Democratic precinct committee officer elections  
4 would be counted without regard to how the voter voted in other partisan races on the ballot.

5 Defendants finally directed that the requirement that in order to be elected a candidate must  
6 receive at least ten percent of the votes received by the highest vote getter of that candidate's  
7 party in the precinct would be ignored.

8 30. It is unconstitutional to allow non-party members to vote for a party's precinct  
9 committee officers. *Arizona Libertarian Party v. Bayless*, 351 F.3d 1277 (9th Cir. 2003).

10 Defendant's implementation of I-872 is unconstitutional.

11 31. Subsequent to defendants' implementation of I-872, state officials, voters and  
12 the press treated a candidate's statement in his or her declaration of candidacy that he or she  
13 prefers the Democratic Party as indicating that he or she is associated with the Democratic  
14 Party. The absence of any opportunity for the Party to object to association with a candidate,  
15 the association of the candidate with the Party on ballots and in voter's pamphlets, the  
16 requirement that all advertising referring to a candidate treat the candidate's party preference  
17 statement as indicating the candidate's party affiliation, the encouragement by State to  
18 candidates and advertisers to use the Party's symbols and logos, and the characterization by  
19 state officials of candidates as "Democratic candidates" based on party preference statements  
20 under I-872, all create a forced association between the Democratic Party and candidates  
21 stating a preference for the Democratic Party. As a result of the implementation of I-872 by  
22 the defendants, voters are confused about which candidates on the ballot are truly  
23 representative of and associated with the Democratic Party and which have merely  
24 appropriated the party name for personal electoral advantage – to the detriment of the party,  
25 its candidates, programs and message.

26 FIRST AMENDED AND SUPPLEMENTAL COMPLAINT IN  
INTERVENTION FOR DECLARATORY JUDGMENT AND  
FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872  
AND PRIMARY ELECTIONS - 12

Case No. CV05-0927 JCC

K:\2052261\00002\20403\_DTM\20403P20J4

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

1 **DENIAL OF EQUAL PROTECTION OF LAWS**

2 32. In contrast to its invasion of the associational rights of the Party, by denying a  
3 right to nominate candidates, the State expressly authorizes minor parties to nominate  
4 candidates through a convention process. RCW 29A.20.121, re-adopted by the legislature in  
5 2006, after this Court’s issuance of an injunction against I-872 on other grounds, provides,  
6 “Any nomination of a candidate for partisan public office by other than a major political party  
7 may be made only in a convention ....” (internal punctuation omitted).

8 33. The State also affords minor political parties a mechanism to protect  
9 themselves from individuals or groups who attempt to hijack the party name or force an  
10 association with the minor political party. RCW 29A.20.171(1) recognizes that there can be  
11 only one nominee of a minor political party. RCW 29A.20.171(2) provides for “a judicial  
12 determination of the right to the name of a minor political party ....” The Defendants intend to  
13 administer the State’s partisan primary in a manner that denies the Party the right to nominate  
14 its candidates and the right to its name. In doing so, the State improperly protects the First  
15 Amendment right of association to minor political parties and their adherents, but denies the  
16 same protection to Plaintiffs.

17 **DEMOCRATIC PARTY OF WASHINGTON V. REED**

18 34. In *Reed*, the Ninth Circuit held that Washington cannot force a political party  
19 and its adherents to adulterate their nomination process. The *Reed* decision overturned  
20 Washington’s blanket primary system, which—like I-872—prevented the Party from  
21 controlling its own nomination process. The court, rejecting a litany of “compelling interests”  
22 advanced by the State to justify the invasion of First Amendment rights, stated that “[t]he  
23 remedy available to the Grangers and the people of the State of Washington for a party that  
24 nominates candidates carrying a message adverse to their interests is to vote for someone else,  
25

1 not to control whom the party's adherents select to carry their message.” *Reed*, 343 F.3d at  
2 1206-07.

3 35. In *Jones*, the Supreme Court noted that forced political association violates the  
4 principles set forth in earlier cases, by forcing “political parties to associate with—to have  
5 their nominees, and hence their positions, determined by—those who, at best, have refused to  
6 affiliate with the party, and, at worst, have expressly affiliated with a rival.” 530 U.S. at 577.  
7 The Supreme Court also noted that “a corollary of the right to associate is the right not to  
8 associate. ‘Freedom of association would prove an empty guarantee if associations could not  
9 limit control over their decisions to those who share the interests and persuasions that underlie  
10 the association’s being.’ In no area is the political association’s right to exclude more  
11 important than in the process of selecting its nominee.” 530 U.S. at 574-575 (citations  
12 omitted). The Ninth Circuit decision followed the U.S. Supreme Court decision in *California*  
13 *Democratic Party v. Jones*, 530 U.S. 567 (2000). *Reed*, 343 F.3d at 1201.

14 36. There is no constitutionally significant difference between Washington’s  
15 previous blanket primary system held unconstitutional by the Ninth Circuit and the “People’s  
16 Choice” primary system. Indeed, the voter’s pamphlet statement prepared by I-872’s  
17 proponents stated that “I-872 will restore the kind of choice in the primary that voters enjoyed  
18 for seventy years with the blanket primary.”

19  
20 **DEPRIVATION OF CIVIL RIGHTS BY STATE OFFICIALS  
UNDER COLOR OF LAW**

21 37. The Washington State Democratic Central Committee has adopted rules  
22 governing the nomination of its candidates, requiring Democratic candidates and nominees to  
23 be selected pursuant to rules adopted by the Party, and prohibiting candidates not qualified  
24 under Party rule to represent themselves as candidates or the Party. The Party has provided  
25 those rules to the Defendants.

26 FIRST AMENDED AND SUPPLEMENTAL COMPLAINT IN  
INTERVENTION FOR DECLARATORY JUDGMENT AND  
FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872  
AND PRIMARY ELECTIONS - 14  
Case No. CV05-0927 JCC

K:\2052261\00002\20403\_DTM\20403P20J4

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

1 38. The conduct of any partisan primary by State officials without implementation  
2 of an effective mechanism for the Party to exercise its right to limit participation in  
3 connection with that primary to adherents of the Party is action by those State officials under  
4 law and color of law that deprives Plaintiffs of their civil rights.

5 39. The conduct of any partisan primary by State officials in which the state  
6 promotes, permits or encourages claims by candidates in or on widely distributed State  
7 election materials, including ballots and voter's pamphlets, to be associated with, members of,  
8 endorsed by or nominated by the Democratic Party without regard to whether such candidates  
9 are in fact associated with, members of, endorsed by or nominated by the Democratic Party  
10 modulates and alters, and thus interferes with, the political message of the Democratic Party.  
11 The conduct of any partisan primary by State officials in which the Democratic Party is  
12 required to repeat in its own materials unwanted claims of association by candidates  
13 unconstitutionally compels political speech from the Party. Requiring that the officers of the  
14 Democratic Party be selected in a process that permits voters who are not affiliated with the  
15 Democratic Party to determine the outcome unconstitutionally interferes with the internal  
16 affairs of the Democratic Party. These actions by Defendants, acting under color of law,  
17 deprive plaintiffs of their civil rights.

18 40. If the State is permitted to conduct a "qualifying" partisan primary with  
19 multiple "Democratic" candidates listed and not chosen by the Party, plaintiffs will be denied  
20 their First Amendment rights and will be irreparably injured. Moreover, if the State conducts  
21 partisan primaries pursuant to procedures which are known to be unconstitutional, then there  
22 is a substantial risk that the results of those primaries will be invalid.

23 **FIRST CAUSE OF ACTION: CONDUCTING AN INVALID PRIMARY**

24 41. Plaintiffs reallege and incorporate by reference Paragraphs 1-40.  
25

1 42. An actual controversy exists between Plaintiffs and Defendants with regard to  
2 the exercise of Plaintiffs' federally protected rights. Plaintiffs are entitled to declaratory  
3 judgment establishing the unconstitutionality of the State's primary system as applied to them.

4 43. RCW 29A.04.127 and RCW 29A.52.112 are unconstitutional to the extent that  
5 they authorize the County Auditors to permit non-affiliates of the Party to participate in the  
6 Party's nominee selection process.

7 44. RCW 29A.04.127 and RCW 29A.52.112 are unconstitutional to the extent that  
8 they authorize the Secretary and County Auditors to facilitate cross-over voting and ticket-  
9 splitting by placing Democratic primary races on the same ballot as primary races for other  
10 political parties or affiliations over the objection of the Party and without requiring  
11 mechanisms to prevent voting in violation of the Party's associational rights.

12 45. Initiative 872 lacks a severability clause. Therefore, if any portion of I-872 is  
13 unconstitutional, the entire enactment is void.

14 46. Pursuant to 42 U.S.C. § 1983, *et seq.*, Plaintiffs are entitled to a declaratory  
15 judgment regarding their rights under the First Amendment and to their reasonable attorneys'  
16 fees and costs in this case.

17 **SECOND CAUSE OF ACTION: FORCED ASSOCIATION**

18 47. Plaintiffs reallege and incorporate by reference Paragraphs 1-47.

19 48. RCW 29A.24.030, RCW 29A.24.031 and RCW 29A.36.010 are  
20 unconstitutional under the First Amendment to the extent that they permit the State to compel  
21 the Party during a primary to publicly affiliate with candidates other than those who are  
22 qualified under Party rules to represent themselves as candidates of the Party.

23 49. The State's primary system, including RCW 29A.36.170, is unconstitutional  
24 under the First Amendment to the extent that it places upon the general election ballot as a  
25 candidate of the Party for any office the name of an individual who has been selected though a

26 FIRST AMENDED AND SUPPLEMENTAL COMPLAINT IN  
INTERVENTION FOR DECLARATORY JUDGMENT AND  
FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872  
AND PRIMARY ELECTIONS - 16

Case No. CV05-0927 JCC

K:\2052261\00002\20403\_DTM\20403P20J4

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

1 voting system that deprives the Party of the ability to limit participation in nominee selection  
2 to those the Party has determined should be included.

3 50. The State's primary system resulting from implementation of I-872 is  
4 unconstitutional because, both in isolation and in conjunction with other laws governing  
5 elections and election campaigns, it will confuse voters as to whether candidates publically  
6 affiliated with the Democratic Party are, in fact, affiliated with the Democratic Party or  
7 represent its views, and will further confuse voters regarding whether messages advanced by  
8 candidates bearing the Democratic Party name on ballots, in the voter's pamphlet, and in  
9 political advertising are those of the Democratic Party. Initiative 872 as implemented  
10 constitutes a misappropriation by the Defendants and potentially by unauthorized candidates  
11 of the Party's name, which is associated in the mind of the public with the Party and its  
12 positions on important issues of the day.

13 51. Initiative 872, as implemented by Defendants, is unconstitutional because it  
14 permits voters who are not adherents of the Democratic Party to elect directly officers of the  
15 Party and indirectly to select higher officials of the Party and its nominees to fill vacancies in  
16 partisan office.

17 **THIRD CAUSE OF ACTION: DENIAL OF EQUAL PROTECTION UNDER LAW**

18 52. Plaintiffs reallege and incorporate by reference Paragraphs 1-52.

19 53. The State, through RCW 29A.20.171 and other provisions of state law,  
20 provides protection for minor political parties from forced association with candidates who  
21 may not share the goals or objectives of the minor political party and its adherents. Through  
22 the convention process and the statutory procedures to resolve competing claims to the use of  
23 a minor political party's name, those parties and their adherents may prevent  
24 misrepresentations of affiliation on primary ballots prepared by the Defendants. The State  
25 discriminates among political parties by providing a mechanism for minor political parties to

26 FIRST AMENDED AND SUPPLEMENTAL COMPLAINT IN  
INTERVENTION FOR DECLARATORY JUDGMENT AND  
FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872  
AND PRIMARY ELECTIONS - 17

Case No. CV05-0927 JCC

K:\2052261\00002\20403\_DTM\20403P20J4

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

1 protect themselves from forced affiliation with candidates, but denying the same right to the  
2 Party and its adherents under RCW 29A.24.030 and RCW 29A.24.031 by permitting any  
3 person to represent himself or herself as a candidate of the Party.

4 54. Plaintiffs are entitled to their reasonable attorneys' fees and costs in connection  
5 with this action pursuant to 42 U.S.C. § 1983, *et seq.*

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

7 55. Plaintiffs reallege and incorporate by reference Paragraphs 1-60.

8 56. There exists an imminent and ongoing threat by State officials to deprive  
9 Plaintiffs of their civil rights by selectively enforcing laws and permitting the State to blur the  
10 candidates and nominees of the Party through a primary process in which Plaintiffs are not  
11 permitted to exercise their First Amendment rights of association and exclusion.

12 57. Plaintiffs will suffer irreparable injury if the Party's candidates and nominees  
13 are selected in a process in which the Party is deprived of its right to define participation.

14 58. Plaintiffs are entitled to preliminary and permanent injunctive relief restraining  
15 State officials from:

16 a) conducting any partisan primary in which candidate(s) are selected to  
17 appear on a general election ballot associated with the Party's name in such a fashion as to  
18 imply affiliation of the candidate with or approval of the candidate by the Party without also  
19 limiting participation in that primary in accordance with rules adopted by the Party and  
20 conveyed to State officials in advance of the primary;

21 b) referring to, reprinting, restating or distributing in any public document  
22 or communication a statement of party preference

23 (i) made by a candidate in connection with his or her declaration of  
24 candidacy, or in any other communication or filing with State officials;

25 (ii) without, if the Party whose name is being used so requests,

26 FIRST AMENDED AND SUPPLEMENTAL COMPLAINT IN  
INTERVENTION FOR DECLARATORY JUDGMENT AND  
FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872  
AND PRIMARY ELECTIONS - 18

Case No. CV05-0927 JCC

K:\2052261\00002\20403\_DTM\20403P20J4

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

1 conspicuously and in close proximity making a statement disclaiming any association  
2 between the candidate and the party whose name is being used and any approval by the party  
3 of the candidate;

4 c) encouraging or facilitating, directly or indirectly, cross-over voting or  
5 ticket-splitting in connection with any partisan primary in which candidate(s) are selected to  
6 appear on a general election ballot associated with the Party's name in such a fashion as to  
7 imply affiliation with or approval by the Party without also limiting participation in that  
8 primary in accordance with rules adopted by the Party and conveyed to State officials in  
9 advance of the primary; and

10 d) conducting elections of officers of the Party, directly or indirectly,  
11 including Precinct Committee Officers, in any manner that is not approved by the Party  
12 provided that conducting such elections in a manner that is the same as, or substantially  
13 similar to, the process approved by the Party for the selection of this state's delegates to the  
14 Party's National Convention shall be deemed acceptable for the selection of Precinct  
15 Committee Officers.

16 59. Plaintiffs are entitled to their reasonable attorneys' fees and costs in connection  
17 with this action pursuant to 42 U.S.C. § 1983, *et seq.*

18 **PRAYER FOR RELIEF**

19 Plaintiffs respectfully request the Court enter judgment:

- 20 1. Declaring RCW 29A.04.127 unconstitutional;
- 21 2. Declaring RCW 29A.24.030 and RCW 29A24.031 unconstitutional under the  
22 Constitution of the United States to the extent they authorize placing on a primary ballot the  
23 name of any candidate in association with the Party who has not qualified under the rules of  
24 the Party to stand for office as a candidate of the Party;
- 25 3. Declaring RCW 29A.36.010 unconstitutional;

26 FIRST AMENDED AND SUPPLEMENTAL COMPLAINT IN  
INTERVENTION FOR DECLARATORY JUDGMENT AND  
FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872  
AND PRIMARY ELECTIONS - 19  
Case No. CV05-0927 JCC

K:\2052261\00002\20403\_DTM\20403P20J4

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

- 1 4. Declaring RCW 29A.36.170 unconstitutional;
- 2 5. Declaring RCW 29A.52.112 unconstitutional;
- 3 6. Declaring Initiative 872 unconstitutional;
- 4 7. Declaring that the primary system in effect immediately before the passage of

5 I-872 remains in effect;

6 8. Permanently restraining Defendants and all those acting in active concert and  
7 participation with them from:

8 a) Conducting any partisan primary in which candidate(s) are selected to  
9 appear on a general election ballot associated with the Party's name in such a fashion as to  
10 imply affiliation of the candidate with or approval of the candidate by the Party without also  
11 limiting participation in that primary in accordance with rules adopted by the Party and  
12 conveyed to State officials in advance of the primary;

13 b) Referring to, reprinting, restating or distributing in any public document  
14 or communication a statement of party preference

15 (i) made by a candidate in connection with his or her declaration of  
16 candidacy, or in any other communication or filing with State officials

17 (ii) without, if the Party whose name is being used so requests,  
18 conspicuously and in close proximity making a statement disclaiming any association  
19 between the candidate and the party whose name is being used and any approval by the party  
20 of the candidate;

21 c) Encouraging or facilitating, directly or indirectly, cross-over voting or  
22 ticket-splitting in connection with any partisan primary in which candidate(s) are selected to  
23 appear on a general election ballot associated with the Party's name in such a fashion as to  
24 imply affiliation with or approval by the Party without also limiting participation in that  
25 primary in accordance with rules adopted by the Party and conveyed to State officials in

26 FIRST AMENDED AND SUPPLEMENTAL COMPLAINT IN  
INTERVENTION FOR DECLARATORY JUDGMENT AND  
FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872  
AND PRIMARY ELECTIONS - 20

Case No. CV05-0927 JCC

K:\2052261\00002\20403\_DTM\20403P20J4

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022



**CERTIFICATE OF SERVICE**

I hereby certify that on January 21, 2010, 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 all counsel of record.

s/David T. McDonald  
David T. McDonald, WSBA #5260  
K&L GATES LLP  
925 Fourth Avenue, Suite 2900  
Seattle, WA 98104  
Tel: (206) 623-7580  
Fax: (206) 623-7022  
[david.mcdonald@klgates.com](mailto:david.mcdonald@klgates.com)

Attorneys for Plaintiffs in Intervention,  
Washington State Democratic Party and  
Dwight Pelz, Chair

FIRST AMENDED AND SUPPLEMENTAL COMPLAINT IN  
INTERVENTION FOR DECLARATORY JUDGMENT AND  
FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872  
AND PRIMARY ELECTIONS - 22  
Case No. CV05-0927 JCC

K:\2052261\00002\20403\_DTM\20403P20J4

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022