

The Honorable 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. CV05-0927Z

WASHINGTON DEMOCRATIC CENTRAL  
COMMITTEE, et al.,

Plaintiff Intervenors

WASHINGTON STATE GRANGE'S  
MOTION TO STRIKE WASHINGTON  
STATE REPUBLICAN PARTY'S  
SUPPLEMENTAL AND AMENDED  
COMPLAINT

LIBERTARIAN PARTY OF WASHINGTON  
STATE, et al.,

Plaintiff Intervenors

**NOTE ON MOTION CALENDAR:  
FEBRUARY 26, 2010**

v.

DEAN LOGAN, King County Records &  
Elections Division Manager; et al.,

Defendants,

STATE OF WASHINGTON, et al.,

Defendant Intervenors

WASHINGTON STATE GRANGE,

Defendant Intervenors.

1 **I. MOTION**

2 Defendant-Intervenors Washington State Grange (“the Grange”) moves for an Order  
3 striking the Supplemental and Amended Complaint for Declaratory Judgment and for Injunctive  
4 Relief Regarding Initiative 872 and Primary Elections (“Republicans’ Amended Complaint”)  
5 filed by Plaintiff Washington State Republican Party, *et al.* (“Republicans”) on January 21,  
6 2010. The Republicans failed to seek leave from this Court to file an amended complaint as  
7 required by Federal Rule of Civil Procedure 15(a)(2).

8 The Grange, alternatively, moves for an Order striking specific paragraphs of the  
9 Republicans’ Amended Complaint. The specified paragraphs are outside the scope of this  
10 Court’s August 20, 2009 Order, including seeking relief and asserting allegations that have  
11 already been dismissed by the United States Supreme Court, the Ninth Circuit, and this Court.  
12 The Grange requests that this Order also require the Republicans to first seek leave with the  
13 Court, through a motion to amend including a draft complaint, before re-filing an amended and  
14 supplemental complaint that excludes these paragraphs and complies with this Court’s  
15 August 20, 2009 Order.

16 **II. ARGUMENT**

17 **A. The Republicans’ Failed To Obtain Court Approval Before Filing An Amended**  
18 **Complaint.**

19 Under Rule 15, if 21 days have passed after service of its original complaint, a party  
20 may only amend its complaint “with the opposing party’s written consent or the court’s leave.”  
21 Fed. R. Civ. P. 15(a)(2). The Grange has not provided written consent to the Republicans to file  
22 an amended complaint. Nor, did the Republicans seek leave from the Court by filing a motion  
23 to amend providing the Court with a proposed version of its Amended Complaint. The  
24 Republicans’ entire Amended Complaint should, therefore, be stricken on this ground alone.

25 The Republicans may argue that they were not required to file a motion to amend under  
26 Rule 15, because the Court already granted plaintiffs permission to file amended complaints

1 through its Order entered on August 20, 2009. (Dkt. No. 184.) But the Republicans cannot rely  
2 upon that Order because the amended complaint falls well outside its scope.

3 **B. The Republicans' Amended Complaint Rehashes Allegations Already Dismissed**  
4 **And Does Not Comply With This Court's August 20, 2009 Order.**

5 As explained by Defendant-Intervenors State of Washington, Secretary of State Sam  
6 Reed, and Attorney General Rob McKenna ("the State"), the Republicans' Amended Complaint  
7 falls well outside the scope of this Court's prior ruling on August 20, 2009. (*See* State  
8 Intervenors' Motion to Strike Republicans' Supplemental and Amended Complaint.) That  
9 ruling set out a narrow range of issues that survived after the United States Supreme Court held  
10 that I-872 is constitutional on its face. (Dkt. No. 184.) Instead of repeating and rearguing those  
11 same arguments, to preserve the time of the Court and the parties, the Grange hereby joins in the  
12 State's Motion to Strike, filed with the Court today. (Dkt. No. 213.) The Grange therefore  
13 alternatively asks the Court strike paragraphs 1-6, 12-20, 23-27, 29, 34, 36-38, 39-40, 41-43,  
14 44-46, 48-53, 56-59, 61, 63, 65-67, and the prayer for relief in the Republicans' Amended  
15 Complaint, for the reasons set forth in the State's motion. The Grange further requests that the  
16 Republicans be ordered to file a Rule 15 motion, including a draft complaint, before re-filing an  
17 amended and supplemental complaint that excludes these paragraphs and complies with this  
18 Court's August 20, 2009 Order.

19 **III. CONCLUSION**

20 For these reasons, including all reasons stated in State Intervenors' Motion to Strike  
21 Republicans' First Amended and Supplemental Complaint, the Grange respectfully requests the  
22 Court strike the Republicans' Amended Complaint. Alternatively, the Grange requests that the  
23 Court strike paragraphs 1-6, 12-20, 23-27, 29, 34, 36-38, 39-40, 41-43, 44-46, 48-53, 56-59, 61,  
24 63, 65-67, and the prayer for relief in the Republicans' Amended Complaint. The Grange  
25 requests that this Order require the Republicans to file a Rule 15 motion, including a draft  
26

1 complaint, before re-filing an amended and supplemental complaint that excludes these  
2 paragraphs and complies with this Court's August 20, 2009 Order.

3 DATED this 5<sup>th</sup> day of February, 2010.

4 FOSTER PEPPER PLLC

5  
6 /s/ Kathryn Carder

7 Thomas F. Ahearne, WSBA No. 14844

8 Marco J. Magnano, WSBA No. 1293

9 Kathryn Carder, WSBA No. 38210

10 Attorneys for Defendant-Intervenor

11 Washington State Grange

12 Foster Pepper PLLC

13 1111 Third Ave. Suite 3400

14 Seattle, WA 98101

15 Telephone: 206-447-4400/Fax: 206-749-1902

16 Email: [ahearne@foster.com](mailto:ahearne@foster.com), [magnm@foster.com](mailto:magnm@foster.com)

17 [cardk@foster.com](mailto:cardk@foster.com)

**CERTIFICATE OF SERVICE**

Kathryn Carder states: I hereby certify that on February 5, 2010, I electronically filed the following documents with the Clerk of the Court using the CM/ECF system:

- 1. Washington State Grange’s Motion to Strike Washington State Republican Party’s Supplemental and Amended Complaint;
- 2. [Proposed] Order Granting Washington State Grange’s Motion to Strike Washington State Republican Party’s Supplemental and Amended Complaint; and
- 3. this Certificate of Service.

which will send notification of such filing to the parties listed below:

John J. White, Jr.  
 Kevin B. Hansen  
 Livengood, Fitzgerald & Alskog  
 121 Third Avenue  
 Kirkland, WA 98033-0908  
 Email: [white@lfa-law.com](mailto:white@lfa-law.com),  
[hansen@lfa-law.com](mailto:hansen@lfa-law.com)  
*Attorneys for Plaintiffs Washington State  
 Republican Party et. al,*

David T. McDonald  
 Alex Wagner  
 K&L Gates  
 925 Fourth Avenue, Suite 2900  
 Seattle, WA 98104-1158  
 Email: [david.mcdonald@klgates.com](mailto:david.mcdonald@klgates.com) ;  
[alex.wagner@klgates.com](mailto:alex.wagner@klgates.com)  
*Attorneys for Intervenor Plaintiffs Washington  
 Democratic Central Committee and Paul R.  
 Berendt*

Orrin Leigh Grover, Esq.  
 Orrin L. Grover, P.C.  
 416 Young Street  
 Woodburn, OR 97071  
 Email: [orin@orringrover.com](mailto:orin@orringrover.com) ,  
[gkiller3@earthlink.net](mailto:gkiller3@earthlink.net)  
*Attorneys for Intervenor Plaintiffs Libertarian  
 Party of Washington State, Ruth Bennett and  
 J.S. Mills*

Allyson Zipp  
 James K. Pharris  
 Jeffrey T. Even  
 1125 Washington Street SE  
 Olympia, WA 98501-0100  
 Email: [allysonz@atg.wa.gov](mailto:allysonz@atg.wa.gov);  
[Jamesp@atg.wa.gov](mailto:Jamesp@atg.wa.gov); [jeffe@atg.wa.gov](mailto:jeffe@atg.wa.gov)  
*Attorneys for Defendants State of Washington,  
 Secretary of State Sam Reed and Attorney  
 General Rob McKenna*

I certify and declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

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1 Executed at Seattle, Washington this 5<sup>th</sup> day of February, 2009.  
2

3 /s/ Kathryn Carder

4 Thomas F. Ahearne, WSBA No. 14844

5 Marco J. Magnano, WSBA No. 1293

6 Kathryn Carder, WSBA No. 38210

7 Foster Pepper PLLC

8 1111 Third Avenue, Suite 3400

9 Seattle, WA 98101

10 Telephone: (206) 447-4400/Fax: (206) 749-1902

11 E-mail: [ahearne@foster.com](mailto:ahearne@foster.com), [magnm@foster.com](mailto:magnm@foster.com)

12 [cardk@foster.com](mailto:cardk@foster.com)  
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