



# Shepard Law Office, P.L.L.C.

Richard Shepard, J. D., Attorney at Law

July 15, 2008

Ms. Maureen Hart, Solicitor General  
Washington State Attorney General's Office  
1125 Washington St., SE  
POB 40100  
Olympia, WA 98504-0100

**Re: Washington State Grange, et al. v Washington State Republican Party, et al.**

Dear Ms. Hart:

It was with some dismay that I learned yesterday that neither my client nor I was included in the distribution of your July 11, 2008 letter to Mr. White and Mr. McDonald regarding the above litigation and the State's plans to proceed with the "top two" primary despite the existence of a permanent injunction against it. Sad to say, this oversight appears as ironic evidence of the underlying problem we all face now.

The Libertarian Party has been involved in the continuing litigation over the nature of Washington's primary system since 2000, shortly after the U.S. Supreme Court handed down *California Democratic Party v Jones*, 530 U.S. 567 (2000). Throughout the ensuing eight years, and at every judicial level, the Libertarian Party has raised claims in addition to and distinct from those raised by the Democratic and Republican Parties.

The Libertarian Party's trademark, ballot access and campaign finance claims have been squarely presented in this case, and several times. Nonetheless, responses to these unique Libertarian Party arguments, to the extent the State made any response at all, have been short and dismissive. Because attention has largely been focused on the associational rights issues of the cases, none of the prior court opinions reached the unique Libertarian Party claims.

In *Washington State Grange v Washington State Republican Party*, \_\_\_ U.S. \_\_\_ (2008), the U.S. Supreme Court made clear its decision related to a facial challenge to Initiative 872 on the associational rights issue only, and that the unique Libertarian Party claims remain to be resolved on remand. Surely, if the U.S. Supreme Court thought those claims lacked merit it would not have enumerated them separately in footnote 11, or at least would not have clarified that it was deciding the appeal on one issue only. Yet your comments in your letter regarding those same claims were dismissive, as have been all the State's previous responses to the Libertarian Party.

# Shepard Law Office, P.L.L.C.

Ms. Maureen Hart, Solicitor General

**Re: Washington State Grange, et al. v Washington State Republican Party, et al.**

July 15, 2008

Page 2 of 2

If the Ninth Circuit Court of Appeals agrees with the Libertarian Party on even one of the issues presented the permanent injunction will be affirmed. As Mr. McDonald pointed out, the Ninth Circuit has the prerogative to affirm Judge Zilly on any legally valid basis shown in the record.

Yet the State apparently thinks it can ignore a permanent injunction. Here is where my dismay turns to shock. By your letter, the State has declared that it can and will substitute its judgment on the merits for the courts' judgment. We can dispense with the rules of civil procedure, according to this logic, because the State knows what the law is, and because the Libertarian Party's constitutional rights, which are currently protected by the injunction, aren't important enough to be bothered with in due course.

The Libertarian Party recognizes the difficulties created by those who choose to ignore the injunction. But there are no practical difficulties involved in obeying the injunction. All the State needs to do is reopen filing to allow duly nominated Libertarian candidates to submit the necessary paperwork in time for the November ballot. Clearly, if the State insists on proceeding with its current plans in the face of a permanent injunction it risks severely harming Libertarian Party candidates by discouraging them even from filing.

If the State proceeds with its current plans, and without appropriate accommodations (1) protecting Libertarian Party trademark rights and (2) allowing candidates who wish to file as Libertarian Party candidates to appear on the general election ballot, and (3) allowing the Libertarian Party to financially support its chosen candidates on levels commensurate with other political parties, the Libertarian Party believes that the State will have acted in contempt of the permanent injunction issued on July 29, 2005 by Judge Zilly, and it reserves the right to seek its remedies accordingly, including appropriate legal proceedings against any state and local officers who willfully violate the injunction.

Sincerely,

SHEPARD LAW OFFICE, P.L.L.C.



RICHARD SHEPARD

Attorney for Libertarian Party of Washington

RS:mas

cc: client

All Parties of Record – email only

All County Auditors and/or their legal counsel – email only