

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,

WASHINGTON DEMOCRATIC CENTRAL
COMMITTEE, et al.,

Plaintiff Intervenors,

LIBERTARIAN PARTY OF
WASHINGTON STATE, et al.,

Plaintiff Intervenors.

v.

STATE OF WASHINGTON, et al.,

Defendant Intervenors,

WASHINGTON STATE GRANGE, et al.,

Defendant Intervenors.

NO. CV05-0927-JCC

RESPONSE OF WASHINGTON STATE
REPUBLICAN PARTY TO STATE'S
MOTION FOR ENTRY OF JUDGMENT

NOTE ON MOTION CALENDAR:

December 11, 2009

The Court should deny the State's motion to enter judgment on the State's request for a fee refund. The State has failed to show any good cause why judgment for a refund of fees should not abide the ultimate disposition of the merits of this case. Furthermore, the Court

1 should deny the State's motion for entry of judgment pending resolution of the State's separate
2 civil prosecution of the WSRP regarding permitted uses of "exempt" funds under the State's
3 campaign finance laws. The State's civil prosecution of the WSRP has a direct impact on
4 sources of funds that are available to pay any amount that may ultimately be due the State at the
5 end of the challenge to the constitutionality of I-872.

6 **A. Under Rule 54(b), entry of judgment before the merits of all claims are resolved is**
7 **disfavored, and the State offers no basis for expediting entry of judgment.**

8 The State's motion for entry of judgment should be denied because it is premature; the
9 order regarding reimbursement of fees and costs does not contain a date certain by which the
10 money is due, the case is ongoing, the State has not requested Rule 54(b) certification, and the
11 policy against granting routine Rule 54(b) certification requests dictates that the Court delay
12 entry of a judgment until the completion of this case.

13 The August 20, 2009 Order merely states that "the State is entitled to be reimbursed" the
14 funds previously paid to the Party for appellate fees and costs. The Order does not state when
15 the funds must be reimbursed.¹ This case is set for trial next October. A proposed amended
16 complaint has been circulated to the defendants for comment by counsel for the Democratic
17 Central Committee.

18 Under Fed. R. Civ. P. 54(a), a "judgment" . . . includes a decree and any order from
19 which an appeal lies." The State is requesting entry of a final judgment well before the
20 conclusion of this case, which involves multiple claims and parties. The State has failed,
21 however, to request certification under Rule 54(b), which provides:

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24 ¹ The State originally sought to obtain a judgment against individual plaintiffs who had neither requested nor
25 been awarded fees. *See* Dkt. No. 194.

1 When an action presents more than one claim for relief – whether as a claim,
2 counterclaim, crossclaim, or third-party claim – or when multiple parties are
3 involved, the court may direct entry of a final judgment as to one or more, but
4 fewer than all, claims or parties only if the court expressly determines that there is
5 no just reason for delay. Otherwise, any order or other decision, however
designated, that adjudicates fewer than all the claims or the rights and liabilities of
fewer than all the parties does not end the action as to any of the claims or parties
and may be revised at any time before the entry of a judgment adjudicating all the
claims and all the parties' rights and liabilities.

6 Rule 54(b) certification has no purpose other than to make final a given decision which would
7 otherwise be non-final because of the continued presence in the lawsuit of other undisposed
8 claims or parties. According to the Supreme Court, only a fully adjudicated whole claim against
9 a party may be certified under Rule 54(b). *See Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737,
10 742-43 (1976).

11 In the current case, this Court's decision regarding the State's entitlement to
12 reimbursement of attorneys' fees and costs is not a fully adjudicated whole claim against the
13 WSRP. The case is ongoing, and if the WSRP ultimately prevails on its as-applied constitutional
14 challenge to Initiative 872, the WSRP will be entitled to an award of fees and costs that will be
15 offset by the reimbursement amount of this Court's August 20 Order. Because the amount is a
16 liquidated sum, the State will likely be entitled to any accrued interest pending the final
17 resolution of this case on the merits.

18 The issue of the State's entitlement to reimbursement is ordinary. The Ninth Circuit has
19 made clear that granting Rule 54(b) certification requests in such routine circumstances "does
20 not comport with the interests of sound judicial administration." *Wood v. GCC Bend, LLC*, 422
21 F.3d 873, 879 (9th Cir. 2005). A careful consideration of these interests "is necessary to assure
22 that application of the Rule effectively preserves the historic federal policy against piecemeal
23 appeals." *Id.* at 878. In *Wood*, the Ninth Circuit described its "already huge" caseload and stated
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1 that it “cannot afford the luxury of reviewing the same set of facts in a routine case more than
 2 once without a seriously important reason.” *Id.* at 882. In its motion, the State offers no reason
 3 why judgment should be entered at this time. The Court should deny the State’s motion and at
 4 the conclusion of this case, either (1) offset the reimbursement amount against any fees and costs
 5 that the WSRP is entitled to, or (2) enter judgment against the WSRP should the Court rule in
 6 favor of the State on the merits.

7 **B. The State is civilly prosecuting the WSRP regarding permitted uses of “exempt”**
 8 **funds as defined under state campaign finance law.**

9 The State seeks entry of judgment because the WSRP has not reimbursed fees previously
 10 paid by the State. The State does not disclose that it and the WSRP are engaged in separate
 11 litigation in King County Superior Court (Case No. 08-2-34030-9 SEA) that has a direct effect
 12 on the WSRP’s ability to refund the money the State seeks. Resolution of that civil prosecution
 13 will determine which sources of funds may be used legally to make any refund of fees.

14 Under Washington campaign finance law, the WSRP maintains two state-regulated
 15 accounts, a non-exempt account and an exempt account.² The State, through the Public
 16 Disclosure Commission (“PDC”), has brought a civil enforcement action against the WSRP,
 17 asserting that any payment from the exempt account not explicitly listed in the statute violates
 18 RCW 42.17.640(15). Penalties for violation of RCW 42.17.640 can be treble the amount spent
 19 or contributed. *See* RCW 42.17.390(3); White Decl., Ex. 4 (The complete pleading from the
 20 State may be accessed via the Superior Court’s electronic filing system). RCW 42.17.640(15)
 21 provides:
 22

23 _____
 24 ² The “non-exempt” account may be used for direct contributions to candidates; contributions to the non-exempt
 25 account are limited to varying degrees, depending on the identity of the contributor. The “exempt” account may not
 be used for contributions to candidates. *See* White Decl., Exs. 2 & 3.

1 The following contributions are exempt from the contribution limits of this
2 section:

3 (a) An expenditure or contribution earmarked for voter registration, for
4 absentee ballot information, for precinct caucuses, for get-out-the-vote
5 campaigns, for precinct judges or inspectors, for sample ballots, or for ballot
6 counting, all without promotion of or political advertising for individual
7 candidates; or

8 (b) An expenditure by a political committee for its own internal organization
9 or fund raising without direct association with individual candidates.

10 In addition to a penalty of up to *treble* the amount of the contribution or expenditure,
11 “intentional” violations of the statute *double* the amount of the applicable penalty. *See*
12 RCW 42.17.120. The PDC enforcement action is the genesis of Judge Zilly’s recusal in this
13 case. *See* Dkt. No. 135.

14 In the King County litigation, there are pending cross-motions for summary judgment set
15 for argument on December 18, 2009. The State’s counsel in this matter have been aware of the
16 pending summary judgment motions since September 21. *See* White Decl., ¶¶ 2-4 & Ex. 1.

17 If the WSRP is forced to repay the fees immediately, it may suffer substantial, irreparable
18 harm. Given the pending litigation, it is exposed to penalties if it uses exempt funds. If it uses
19 non-exempt (candidate-eligible) funds to repay the fees, there is no mechanism to recoup the
20 funds so expended. The State is not an eligible contributor to the non-exempt account. If the
21 final merits result in an award of fees to the WSRP, it will still have forever lost \$55,000.00 in
22 funds it may contribute to candidates. Payment of fees may be “irreparable harm” if the payor
23 may have difficulty getting the money back. *See People Who Care v. Rockford Bd. of Educ.*, 921
24 F.2d 132, 134-35 (7th Cir. 1991); *In re Deit Drugs Prod. Liab. Lit.*, 401 F.3d 143, 167 (3rd Cir.
25 2005) (Aubro, J., concurring).

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CONCLUSION

The State offers no reason to expedite entry of a judgment on part of the issues presented by this litigation. Furthermore, the State's pending civil prosecution of the WSRP in King County Superior Court has a direct effect on the WSRP's ability to refund the fees received. The motion for entry of judgment should be denied.

DATED this 7th day of December, 2009

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2009, 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

Orrin Grover

Thomas Ahearne

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