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The Honorable John C. Coughenour

**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,

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

STATE INTERVENORS'
ANSWER TO LIBERTARIAN
PARTY'S FIRST AMENDED
COMPLAINT IN
INTERVENTION

1 As and for an Answer to the First Amended Complaint in Intervention filed in this
2 matter by the Libertarian Party of Washington State, the State Defendant Intervenors admit,
3 deny, and allege as follows:
4

5 **SUMMARY OF ACTION**

6 Responding to the “Summary of Action” at the beginning of the First Amended
7 Complaint, the State has no specific knowledge of the intent or motives of the Libertarian
8 Party in joining this action, and therefore denies allegations on that subject. The State denies
9 that Initiative 872 (I-872) is unconstitutional. The State denies that I-872 was enacted to
10 impair the constitutional rights of the Libertarian Party and denies that I-872 interferes with
11 the Libertarian Party’s nomination of candidates for public office. The State denies that
12 I-872 deprives the Libertarian Party of any constitutional right to determine the Party’s
13 political message, or interferes with the Party’s rights of expressive association. The State
14 asserts that I-872 eliminated the nomination of political party candidates for public office in
15 the state-sponsored primary, and asserts that the Secretary of State has from time to time
16 adopted rules implementing I-872. The State asserts that the effect of these rules was not to
17 “repeal” any existing statutes but to implement the Top Two primary after I-872 had been
18 upheld by the Supreme Court. Any remaining allegations in the Summary of Action are
19 denied.
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22 **PARTIES**

23 1. In Response to Paragraph 1, the State has no specific knowledge as to the
24 history of the Libertarian Party or the purposes for which it was organized, but has no
25 specific basis to contest the accuracy of these allegations.
26

1 9. In response to Paragraph 9, the provisions of I-872 are matters of official
2 record and need not be the subject of factual pleadings. The State admits that I-872
3 establishes a system in which qualification for the general election ballot is not based on the
4 political party affiliation or preference of the candidates. The State further admits that under
5 I-872, the top two vote getters in the primary advance to the general election, without regard
6 to party affiliation or preference. Any remaining allegations in Paragraph 9 are denied.
7

8 10. In response to Paragraph 10, the State admits that Paragraph 10 includes a
9 short quote from the voters' pamphlet, taken out of context, but denies that the quote is
10 material to this controversy. Any remaining allegations in Paragraph 10 are denied.
11

12 11. In response to Paragraph 11, the State admits that Paragraph 11 includes a
13 short quote from the voters' pamphlet, taken out of context, but denies that the quote is
14 material to this controversy. Any remaining allegations in Paragraph 11 are denied.
15

16 12. The allegations in Paragraph 12 are denied.

17 13. The allegations in Paragraph 13 are denied.

18 14. The allegations in Paragraph 14 are denied.

19 15. In response to Paragraph 15, the State admits that the Libertarian Party
20 nominated candidates for office by convention in some historical periods. The State admits
21 that the Secretary of State has adopted rules implementing I-872 and that the contents of the
22 rules are matters of official record. The State denies the remaining allegations in Paragraph
23 15.
24

25 16. In response to Paragraph 16, the State admits that I-872 contains language
26 repealing certain earlier statutes. The State further asserts that any previous statutes,

1 expressly repealed or not, that are inconsistent with I-872, have been impliedly repealed or
2 amended by the Initiative. The remaining allegations of Paragraph 16 are denied.

3 17. The allegations in Paragraph 17 are denied.

4 18. The allegations in Paragraph 18 are denied.

5 19. The allegations in Paragraph 19 are denied.

6
7 20. In response to Paragraph 20, the State has no knowledge as to whether the
8 term “Libertarian Party” is trademarked and therefore denies this allegation. The remaining
9 allegations are denied.

10 21. The allegations in Paragraph 21 are denied.

11 22. In response to Paragraph 22, the State has no specific knowledge as to the
12 contents of rules adopted by the Libertarian Party. The State denies that state law governing
13 declaration of candidacy for office involves “affiliations” between parties and candidates for
14 office, and further denies any remaining allegations in Paragraph 22.

15 23. The allegations in Paragraph 23 are denied.

16 24. The allegations in Paragraph 24 are denied.

17
18 25. In response to Paragraph 25, the State denies that the Secretary of State has
19 ever taken a position concerning the hypothetical election set forth in Paragraph 25. The
20 remaining allegations are likewise denied.

21 26. The allegations in Paragraph 26 are denied.

22 27. The allegations in Paragraph 27 are denied.
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1 28. Responding to Paragraph 28, the legislation introduced and enacted in the
2 legislature is a matter of official record. The rules proposed and adopted by the Secretary of
3 State are also a matter of official record. Any other allegations are denied.

4 29. The allegations in Paragraph 29 are denied.

5 30. Responding to Paragraph 30, the acts of the Washington State Legislature in
6 2006 are a matter of official record. Any other allegations are denied.

7 31. Responding to Paragraph 31, the rules adopted by the Secretary of State in
8 2008 are a matter of official record. The State denies the implication that the rules were
9 inconsistent with Washington State statute and denies any remaining allegations in Paragraph
10 31.

11 32. The allegations in Paragraph 32 are denied.

12 33. Responding to Paragraph 33, the rules adopted by the Public Disclosure
13 Commission (PDC) are a matter of official record. The State admits that the PDC issued a
14 brochure in 2008 and that Paragraph 33 contains accurate (but incomplete) quotes from the
15 brochure. Any remaining allegations are denied.

16 34. Responding to Paragraph 34, the State has no knowledge as to the contents of
17 election coverage before and after the primary, and therefore denies allegations concerning
18 that subject. The remaining allegations in Paragraph 34 are denied.

19 35. The allegations in Paragraph 35 are denied.
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FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT

36. The State realleges and incorporates by reference Paragraphs 1 through 35.

37. In response to Paragraph 37, the State admits that there is a controversy between the parties concerning the constitutionality of Washington’s election system. The State denies that its election system is unconstitutional.

38. The allegations in Paragraph 38 are denied.

39. In response to Paragraph 39, the State alleges that RCW 29A.20.110 through .201 were impliedly repealed by the enactment of I-872, except to the extent the older statutes can be implemented in harmony with the Initiative. The State further alleges that the Secretary of State has authority to implement the Initiative through rules. The remaining allegations in Paragraph 39 are denied.

40. Responding to Paragraph 40, the State admits that the Libertarian Party is entitled to nominate its standard bearers through conventions if the Party so chooses. The State denies that state or county officials have ever interfered, or threatened to interfere, with the party convention process. Any remaining allegations are denied.

41. The allegations in Paragraph 41 are denied.

42. The allegations in Paragraph 42 are denied.

43. The allegations in Paragraph 43 are denied.

44. The allegations in Paragraph 44 are denied.

SECOND CAUSE OF ACTION: INJUNCTIVE RELIEF

45. The State realleges and incorporates by reference Paragraphs 1 through 44 above.

1 46. The allegations in Paragraph 46 are denied.

2 47. The allegations in Paragraph 47 are denied.

3 48. The allegations in Paragraph 48 are denied.

4 49. The allegations in Paragraph 49 are denied.

5
6 **STATE'S DEFENSE**

7 1. The Libertarian Party's First Amended Complaint fails to state a claim on
8 which relief can be granted.

9 **PRAYER FOR RELIEF**

10 The State Defendant Intervenors respectfully request the Court to enter judgment as
11 follows:

12 1. Dismissing the First Amended Complaint in Intervention for failure to state a
13 claim on which relief can be granted.

14 2. Declaring that Washington's election laws, and the conduct of elections under
15 those laws, do not deprive the Plaintiffs or Plaintiff Intervenors of any legally cognizable
16 constitutional or other rights protected by either the Constitution and laws of the United
17 States or the laws of the state of Washington.

18 3. Denying the declaratory and injunctive relief requested by the Plaintiffs or by
19 Plaintiff Intervenors.

20 4. Granting the State its reasonable fees and costs to the extent permitted by law.

21 5. Granting such other relief as the Court may deem appropriate.
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DATED this 27th day of April, 2010.

ROBERT M. MCKENNA
Attorney General

s/ James K. Pharris
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Deputy Solicitor General

s/ Jeffrey T. Even
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CERTIFICATE OF SERVICE

I certify that on this date I electronically filed State Intervenors' Answer To Libertarian Party's First Amended Complaint In Intervention with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Executed this 27th day of April, 2010, at Olympia, Washington.

ROBERT M. MCKENNA
Attorney General

s/ James K. Pharris
James K. Pharris

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