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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 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,

Defendant-Intervenor.

NO. CV05-0927-JCC

STATE'S RESPONSE TO
DEMOCRATIC PARTY'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR:
SEPTEMBER 17, 2010

1 **I. INTRODUCTION**

2 The Defendant-Intervenors, State of Washington, Attorney General Rob McKenna,
3 and Secretary of State Sam Reed (collectively, “the State”), respectfully oppose the Motion
4 for Partial Summary Judgment (Dems.’ Mot. for PSJ) filed by the Democratic Party (Dkt.
5 No. 247). The Democratic Party joined in the motion for partial summary judgment filed by
6 the Republican Party (Dkt. No. 250), but added an additional argument that the State has not
7 complied with Wash. Rev. Code § 29A.80.051 when conducting elections of the political
8 parties’ precinct committee officers (PCO’s).¹

9
10 The State responds separately to the Republican Party’s motion for partial summary
11 judgment, and has additionally filed its own Motion for Summary Judgment (Dkt. No. 239).
12 This response is accordingly limited only to the additional arguments offered by the
13 Democratic Party.
14

15 **II. ARGUMENT**

16 Precinct committee officers are officers of private political parties, and comprise the
17 members of each major political party’s county central committee. Wash. Rev. Code
18 § 29A.80.030. State law provides, however, that they be elected at public expense on the
19 same day as the State’s primary. Wash. Rev. Code. § 29A.80.051.
20

21
22 ¹ The Democratic Party also comments that the state constitution provides, “an ongoing role for
23 political parties in the determination of legislative and congressional district boundaries by requiring that
24 redistricting be done by a Commission composed of voting members appointed by the legislative leaders of the
25 largest political parties in the State House and Senate.” Dems.’ Mot. for PSJ at 2-3 (citing Wash. Const. art. II,
26 § 43). The relevance of this observation is unclear, because the members of the redistricting commission are
appointed by elected members of the state legislature, and the party organization, including its precinct
committee officers, plays no role. Wash. Const. art. II, § 43. Similarly, the Democratic Party observes that
under the prior primary system, which was in effect for the 2004 and 2006 primaries, PCO’s were elected on
ballots specific to a particular party. Dems.’ Mot. for PSJ at 3. The Democratic Party fails to explain the
relevance of this observation, and none is apparent.

1 The Democratic Party contends that the State is prohibited from certifying any person
2 as having been elected to the office of PCO unless that person has received a minimum
3 threshold of votes for that office. They base this argument upon Wash. Rev. Code
4 § 29A.80.051, which provides in pertinent part that, “to be declared elected, a candidate must
5 receive at least ten percent of the number of votes cast for the candidate of the candidate’s
6 party receiving the greatest number of votes in the precinct.”
7

8 Initiative 872 (I-872), which established Washington’s Top Two Primary, did not
9 amend Wash. Rev. Code § 29A.51.051. Under I-872, however, candidates do not appear on
10 the ballot as candidates *of* any political party. Rather, they have the option of stating their
11 own personal preference for a political party. Wash. Rev. Code § 29A.52.112(3). As the
12 United States Supreme Court noted in upholding I-872 from a facial challenge, “[t]he law
13 never refers to the candidates as nominees of any party, nor does it treat them as such.”
14 *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 453, 128 S.
15 Ct. 1184, 170 L. Ed. 2d 151 (2008). Accordingly, the ten percent threshold rule of Wash.
16 Rev. Code § 29A.80.051 has no application under I-872. Under this system, the ballot
17 contains no candidates “of the candidate’s party” against which to compare a PCO
18 candidate’s vote totals. Candidates for PCO are the only candidates who appear on the ballot
19 as candidates of a particular political party. Wash. Rev. Code § 29A.80.041 (limiting
20 eligibility to run for PCO to members of a political party).
21
22

23 The Democratic Party does not explain how the “ten percent” standard set forth in
24 Wash. Rev. Code § 29A.51.051 could be meaningfully applied in the context of a primary
25 conducted under I-872. Treating candidates who have merely expressed a preference for a
26

1 political party as candidates of that party would be inconsistent with the law and would be
2 potentially offensive to a political party which does not choose to associate itself with a
3 particular candidate. In addition, since varying numbers of candidates file for office in a
4 given primary, applying the ten percent standard using candidate “preferences” as the
5 yardstick could produce unpredictable or even whimsical results.
6

7 A second possibility, but almost equally problematic, would be to use as a yardstick
8 those candidates who have been nominated by political parties through some private process.
9 However, the law does not require parties to nominate candidates, nor does it provide any
10 mechanism for official recognition of private acts of nomination. Parties could fail to
11 nominate candidates, nominate multiple candidates for a single office, or fall into factions
12 nominating rival candidates for an office. In the absence of a law defining the duties of
13 election officers with respect to such nominations, there is no basis for expecting them to (1)
14 recognize which candidates have been nominated by a party and (2) use this information to
15 determine which candidates for PCO meet the “ten percent” requirement in a particular
16 jurisdiction.²
17

18 In the absence of further legislation, and recognizing that parties are entitled to
19 determine their own forms of organization (*Eu v. San Francisco County Democratic Central*
20 *Committee*, 489 U.S. 214, 229-33, 109 S. Ct. 1013, 103 L. Ed. 2d 271 (1989)), the obvious
21 solution to the “ten percent” issue is to leave it to the parties to determine whether a
22 particular candidate for PCO has garnered sufficient votes to meet the party’s internal
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24
25 ² An even more untenable argument would be the “tail wagging dog” argument that the Top Two
26 primary must be converted into a party nomination process in order to provide a way to apply the “ten percent”
threshold for determining which PCO candidates have qualified to serve. This reading would elevate a minor
detail of the election system over the whole process chosen by the people in I-872.

1 standards for recognition as a party officer. This solution avoids putting election officials in
2 the awkward position of determining who is entitled to serve as an officer of a private
3 organization.

4 The Democratic Party is accordingly wrong in contending that the State should be
5 required to alter its procedures based upon the ten percent threshold of Wash. Rev. Code
6 § 29A.80.051.
7

8 **III. CONCLUSION**

9 For these reasons, and for the reason's expressed in the State's Motion for Summary
10 Judgment (docket no. 239), the Court should deny the Democratic Party's Motion for Partial
11 Summary Judgment.

12 DATED this 13th day of September, 2010.

13
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CERTIFICATE OF SERVICE

I certify that on this date I electronically filed State’s Response To Democratic Party’s Motion For Partial Summary Judgment 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 13th day of September, 2010, at Olympia, Washington.

ROBERT M. MCKENNA
Attorney General

s/ James K. Pharris
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