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June 3, 2011

COURT FILING

Office of the Clerk
James R. Browning Courthouse
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Washington State Republican Party, et al. v. Washington State Grange, et al.*
Case No. 11-35124

Dear Office of the Clerk:

Appellees, the State of Washington, Rob McKenna, Attorney General of the State of Washington, Sam Reed, Secretary of State of the State of Washington, and the Washington State Grange, jointly submit this response to Appellant Washington State Republican Party's ("WSRP") June 2, 2011 letter requesting that this case be given priority in hearing date. Because this appeal does not present an urgent situation warranting expedited review, the State and the Grange respectfully request that the Court deny the WSRP's request.

The State and the Grange anticipate that our respective response briefing will require the full measure of time allowed by rule, and any applicable extensions provided for by rule. We respectfully request, therefore, that the Court take no action on the WSRP's request that would shorten the briefing schedule otherwise provided under this Court's rules.

Turning to the merits of the WSRP's June 2 request, the State and the Grange do not believe that this case presents the type of urgent situation contemplated by the Court when it established that hearing priority would be accorded to the limited category of civil appeals involving "applications for temporary or permanent injunctions." Ninth Circuit Rule 34-3(3).

The core issue in this case always has been the WSRP's demand for a declaratory ruling that the Top Two election system established by Initiative 872 is unconstitutional. After the United States Supreme Court's 2008 decision rejected the WSRP's *facial* challenge to Washington's Top Two system, the WSRP filed an amended complaint on remand to pursue its demand for a declaratory ruling that the Top Two election system established by Initiative 872 is unconstitutional *as applied*. Although the WSRP included prayers for injunctive relief in that

amended complaint, it did not actively pursue an injunction as such, choosing instead to seek resolution of the case in due course on summary judgment. The WSRP lost, and has appealed – which is its right. But the WSRP's having included an ensuing prayer for injunctive relief in its amended complaint can hardly be deemed to elevate its case to one entitled to expedited review simply because an "injunction" is mentioned.

On a second issue, the WSRP prevailed on its claim that the State's method for electing Precinct Committee Officers (PCO) is unconstitutional. The State is not appealing that ruling. The district court rejected, however, the WSRP's request that Washington be ordered to implement PCO elections in a manner demanded by the WSRP. Noting "the wide range of options" available to the State, including simply to stop conducting PCO elections at public expense, the district court "decline[d] to order an injunction imposing a particular form of election." Order at 23 (Jan. 11, 2011). While technically this ruling denied an application for permanent injunction, the WSRP faces no imminent threat of irreparable harm as a consequence. Under Washington law, PCO elections are held in August of even-numbered years. Wash. Admin. Code § 434-230-100(1) (2008). Assuming Washington continues to hold public PCO elections, the earliest the next PCO election would occur is August 2012, more than one year away. Consequently, expedited review of this appeal is not necessary to safeguard the rights of the WSRP.

In closing, because it is not warranted under the circumstances or under this Court's rule that the WSRP invokes, the State and the Grange respectfully request that the Court deny the WSRP's request to give this case priority in hearing date.

s/ Allyson Zipp
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cc: Parties of Record (via ECF)