

The Honorable John C. Coughenour

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

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,

and

LIBERTARIAN PARTY OF WASHINGTON  
STATE, et al.,

Plaintiff Intervenors,

v.

STATE OF WASHINGTON, et al.,

Defendant Intervenors,

and

WASHINGTON STATE GRANGE,

Defendant Intervenor.

No. CV05-0927 JCC

DECLARATION OF DAVID T.  
MCDONALD IN SUPPORT OF  
PLAINTIFF INTERVENORS'  
OPPOSITION TO STATE OF  
WASHINGTON'S MOTION FOR  
SUMMARY JUDGMENT

I, David T. McDonald, hereby declare as follows:

1. I am counsel for the Washington State Democratic Central Committee in this matter.

DECLARATION OF DAVID T. MCDONALD IN SUPPORT  
OF PLAINTIFF INTERVENORS' OPPOSITION TO STATE  
OF WASHINGTON'S MOTION FOR SUMMARY  
JUDGMENT - 1  
CV05-0927 JCC

26

1 2. Attached as Exhibit 1 are true and correct copies of deposition excerpts from  
2 the deposition of Catherine Blinn.

3 3. Attached as Exhibit 2 are true and correct copies of deposition excerpts from  
4 the deposition of Sam Reed.

5 4. Attached as Exhibit 3 is a true and correct copy of the glossary of key terms  
6 from the Federal Election Assistance Commission's Voting System Performance Guidelines.

7 A copy of this document can be located at

8 [http://www.eac.gov/assets/1/workflow\\_staging/Page/124.PDF](http://www.eac.gov/assets/1/workflow_staging/Page/124.PDF).

9 5. Attached as Exhibit 4 are true and correct copies of deposition excerpts from  
10 the deposition of Todd Donovan.

11 6. Attached as Exhibit 5 is a true and correct copy of expert witness agreement  
12 between Todd Donovan and State of Washington.

13 7. Attached as Exhibit 6 is a true and correct copy of Todd Donovan's curriculum  
14 vitae.

15 8. Attached as Exhibit 7 is a true and correct copy of Rebuttal of Argument  
16 Against I-872, 2004 Online Voter's Guide. A copy of this document can be located at

17 <http://www.sos.wa.gov/elections/guide/arguments.aspx?n=872&c=1>.

18 9. Attached as Exhibit 8 is a true and correct copy of the Session laws and  
19 outdated statutes referenced on Page 5 of the Opposition Motion.

20 10. Attached as Exhibit 9 is a true and correct copy of the June 11, 2010  
21 Spokesman Review Article. A copy of this document can be located at

22 <http://www.spokesman.com/stories/2010/jun/11/house-senate-races-draw-crowd/>.

23 11. Attached as Exhibit 10 is a true and correct copy of the NW Progressive Blog,  
24 June 6, 2008. A copy of this document can be located at

25 <http://www.nwprogressive.org/weblog/2008/06/filing-week-final-report.html>.

26 DECLARATION OF DAVID T. MCDONALD IN SUPPORT  
OF PLAINTIFF INTERVENORS' OPPOSITION TO STATE  
OF WASHINGTON'S MOTION FOR SUMMARY  
JUDGMENT - 2  
CV05-0927 JCC

K:\2052261\00002\20403\_DTM\20403P20JS

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

1 12. Attached as Exhibit 11 is a true and correct copy of the Top Two study Stewart  
2 Elway performed for the State.

3 13. Attached as Exhibit 12 is a true and correct copy of an email from James  
4 Pharris, Attorney General's office, regarding Top Two educational expenses.

5 14. Attached as Exhibit 13 is a true and correct copy of certain political spending  
6 data. This data is available at:

7 a. [http://www.pdc.wa.gov/MvcQuerySystem/CandidateData/contributions?param  
8 =TUNLRVIgIDAwNg====&year=2008&type=statewide](http://www.pdc.wa.gov/MvcQuerySystem/CandidateData/contributions?param=TUNLRVIgIDAwNg====&year=2008&type=statewide)

9 b. [http://www.pdc.wa.gov/MvcQuerySystem/Committee/initiative\\_committees?  
10 ear=2008](http://www.pdc.wa.gov/MvcQuerySystem/Committee/initiative_committees?year=2008)

11 c. [http://www.fec.gov/DisclosureSearch/mapHSApp.do?drillLevel=state&stateN  
12 ame=WA&election\\_yr=2008](http://www.fec.gov/DisclosureSearch/mapHSApp.do?drillLevel=state&stateName=WA&election_yr=2008)

13 d. [http://www.pdc.wa.gov/MvcQuerySystem/Candidate/sw\\_candidates](http://www.pdc.wa.gov/MvcQuerySystem/Candidate/sw_candidates)

14 15. Attached as Exhibit 14 is a true and correct copy of portions of the State's  
15 Media Plus Contract, including Exhibit B thereto (Request for Proposal 8-02), and the  
16 Technical Proposal from Exhibit C, regarding the Top Two education campaign.

17 16. There is no Exhibit 15 (it was omitted due to consolidation of exhibits at the  
18 last minute).

19 17. Attached as Exhibit 15 is a true and correct copy of the State's contract with  
20 Media Plus § 3.3 (Technical Proposal).

21 18. Attached as Exhibit 16 is a true and correct copy of Matthew Manweller's  
22 Report, The Very Partisan Non-Partisan Top-Two Primary: Understanding What Voters  
23 Don't Understand.

24 19. Attached as Exhibit 17 are true and correct copies of deposition excerpts from  
25 the deposition of Nick Handy.

26 DECLARATION OF DAVID T. MCDONALD IN SUPPORT  
OF PLAINTIFF INTERVENORS' OPPOSITION TO STATE  
OF WASHINGTON'S MOTION FOR SUMMARY  
JUDGMENT - 3  
CV05-0927 JCC

K:\2052261\00002\20403\_DTM\20403P20JS

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

1           20. Attached as Exhibit 18 are true and correct copies of deposition excerpts from  
2 the deposition of Dwight Pelz.

3           21. Attached as Exhibit 19 is a true and correct copy of SCOTUS Oral Argument  
4 Transcript 26:23-27:23. A copy of this document can be located at  
5 [http://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/06-713.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/06-713.pdf).

6           22. Attached as Exhibit 20 is a true and correct copy of Fortune Dynamic v.  
7 Victoria's Secret, -- F.3d --, 2010 WL 3258703 (9<sup>th</sup> Cir. Aug. 19, 2010).

8           23. Attached as Exhibit 21 are true and correct copies of current RCWs and WACs  
9 referenced in the Opposition Motion. Included are the following:

10           a. WAC-230-035

11           b. RCW 29A.36.121

12           c. RCW 29A.52.112

13           d. WAC 434-230-015

14           e. WAC 434-230-036

15           f. RCW 42.17.040

16           g. RCW 42.17.510

17           h. WAC 390-05-274. A copy of this WAC is located at

18           [http://www.pdc.wa.gov/archive/commissionmeetings/meetingshearings/pdfs/2](http://www.pdc.wa.gov/archive/commissionmeetings/meetingshearings/pdfs/2010/V.1%20Emergency%20Rules%205.27.10.pdf)  
19           [010/V.1%20Emergency%20Rules%205.27.10.pdf](http://www.pdc.wa.gov/archive/commissionmeetings/meetingshearings/pdfs/2010/V.1%20Emergency%20Rules%205.27.10.pdf)

20           i. WAC 434-230-100

21           j. RCW 29A.52.151

22           k. RCW 29A.80.051

23           l. RCW 29A.80.030

24           m. Wash. Const., Art. II, § 15

25           n. WAC 434-262-075

26 DECLARATION OF DAVID T. MCDONALD IN SUPPORT  
OF PLAINTIFF INTERVENORS' OPPOSITION TO STATE  
OF WASHINGTON'S MOTION FOR SUMMARY  
JUDGMENT - 4  
CV05-0927 JCC

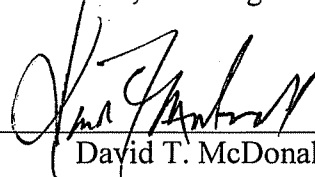
K:\205226\100002\20403\_DTM\20403P20JS

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

1           24. Attached as Exhibit 22 is a true and correct copy of the 1961 Session Laws  
2 referenced in Note 4 of the Opposition to the Grange's Motion.

3  
4 I declare under penalty of perjury that the foregoing is true and correct:

5 EXECUTED this 13th day of September, 2010 at Seattle, Washington.

6   
7 \_\_\_\_\_  
8 David T. McDonald

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 DECLARATION OF DAVID T. MCDONALD IN SUPPORT  
OF PLAINTIFF INTERVENORS' OPPOSITION TO STATE  
OF WASHINGTON'S MOTION FOR SUMMARY  
JUDGMENT - 5  
CV05-0927 JCC

K:\2052261\00002\20403\_DTM\20403P20JS

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

**CERTIFICATE OF SERVICE**

I hereby certify that on September 13, 2010, 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 all counsel of record.

s/ David T. McDonald  
David T. McDonald, WSBA # 5260

DECLARATION OF DAVID T. MCDONALD IN SUPPORT  
OF PLAINTIFF INTERVENORS' OPPOSITION TO STATE  
OF WASHINGTON'S MOTION FOR SUMMARY  
JUDGMENT - 6  
CV05-0927 JCC

K:\2052261\00002\20403\_DTM\20403P20JS

K&L GATES LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022