

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,

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

MOTION FOR PARTIAL SUMMARY
JUDGMENT

**NOTE ON MOTION CALENDAR:
September 17, 2010**

ORAL ARGUMENT REQUESTED

INTRODUCTION

The Democratic Party of Washington joins in the Motion for Partial Summary Judgment filed today by the Washington State Republican Party. In addition, the Washington

1 State Democratic Central Committee (the “Democratic Party”) hereby makes its own motion
2 for partial summary judgment declaring that the State of Washington’s (the “State”)
3 implementation of I-872 unconstitutionally invades the associational rights of the Democratic
4 Party in connection with the selection of its Precinct Committee Officers (“PCOs”). The
5 Democratic Party requests the Court order election officials in Washington to perform their
6 duties under existing Washington law by requiring them to:

7 (a) Restrict participation in the election of Democratic PCOs to voters who have either
8 chosen a primary ballot which contains only the names of candidates for partisan office
9 affiliated with the Democratic Party or who have indicated their affiliation with the
10 Democratic Party by voting only for candidates for partisan office who are affiliated with the
11 Democratic Party; and

12 (b) Implement the minimum 10% vote requirement codified in RCW 29A.80.051
13 when determining whether to issue certificates of election to PCO candidates.

14 **STATEMENT OF FACTS**

15 There can be no genuine issue about the following material facts:

16 In 1955, the voters of the State of Washington amended the State Constitution to
17 provide a significant and continuing role for political party PCOs in the selection of partisan
18 legislators and local elected officials by requiring that vacancies in such offices be filled from
19 a list of three nominees provided by the county central committee of the same political party
20 as the vacating officeholder. Wash. Const., art. II, § 15 (amended 1955 by Amendment 32).
21 Since 1907, Washington law has specified that a political party’s county central committee is
22 composed of the PCOs of that party from the precincts in the county. Nomination of
23 Candidates for Public Office, ch. 209, 1907 Wash. Sess. Laws 468 (1907); RCW 29A.80.030.

24 The Legislature’s political party composition is not only important in determining the
25 immediate legislative agenda, it is also important in determining the long term shape of the
26 Legislature. In 1983, Washington voters further amended the Constitution to provide an

1 ongoing role for political parties in the determination of legislative and congressional district
 2 boundaries by requiring that redistricting be done by a Commission composed of voting
 3 members appointed by the legislative leaders of the largest political parties in the State House
 4 and Senate. Wash. Const., art II, § 43.

5 Because of their fundamental role in selecting partisan elected officials and senior
 6 party officers, PCOs are required by law to be elected at the primary election in even
 7 numbered years, be members of the political party they represent and, if they run unopposed,
 8 to receive at least 10% of the votes cast for the highest vote getter of their party running in the
 9 precinct that day. RCW 29A.80.041; RCW 29A.80.051.

10 In 2004 Washington voters passed I-872 creating a “Top Two” primary for partisan
 11 offices in Washington. Prior to the State’s implementation of I-872, voters participating in the
 12 election of a party’s PCOs were members of that party as evidenced by their choice of a party
 13 ballot (if separate party ballots were available) or their participation only in the primaries of
 14 that party. RCW 29A.52.151; *see* Declaration of Luke Esser in Support of Motion for Partial
 15 Summary Judgment, filed August 26, 2010, ¶ 3. Under the State’s implementation of I-872,
 16 however, any voter can participate in the selection of a party’s PCOs without regard to the
 17 voter’s affiliation with the party. In addition, the State now ignores the 10% of the highest
 18 vote getter safeguard, asserting that the safeguard was impliedly repealed by the passage of I-
 19 872. *See* McDonald Decl., Ex. 1 (Blinn Dep. 48:1-6; 9:21-10:22).

20 ARGUMENT

21 Allowing non-affiliates of a political party to participate in the selection of the party’s
 22 PCOs violates the First Amendment right of association of the political party. *Ariz.*
 23 *Libertarian Party, Inc. v. Bayless*, 351 F.3d 1277, 1281 (9th Cir. 2003):

24 The district court correctly held that allowing nonmembers to vote for party
 25 precinct committeemen violates the Libertarian Party’s associational rights.
 26 Precinct committeemen are important party leaders who choose replacement
 candidates for candidates who die or resign before an election, *Ariz.Rev.Stat.*
 § 16-343, and collectively constitute the state party committee, *Ariz.Rev.Stat.*
 §§ 16-821, 16-825. In *Eu*, the Supreme Court held that California’s restrictions

1 on how parties should be organized and how they select their leaders
2 unconstitutionally burdened political parties' freedom of association. 489 U.S.
3 at 230-31, 109 S.Ct. 1013 ("Here, party members do not seek to associate with
4 nonparty members, but only with one another in freely choosing their party
5 leaders."). The Court recognized the strength of a party's interest in selecting
6 its own leaders. *See id.* at 230, 109 S.Ct. 1013. It also noted the important role
7 party leaders play in shaping the party's message. *See id.* at 231 n. 21, 109
8 S.Ct. 1013.

9 The State's implementation of I-872 further violates the associational rights of
10 political parties by ignoring the 10% minimum vote threshold for the election of PCOs.
11 Political parties have a right to set reasonable support standards for the selection of their
12 officers. The parties have long relied upon the 10% threshold as one of those safeguards and
13 the Legislature reaffirmed that safeguard as recently as 2004. *See McDonald Decl., Ex. 1*
14 (Blinn Dep. 47:14-17).

15 The State offers no sufficient justification for its implementation of I-872 in such a
16 fashion as to violate the associational rights of political parties with respect to the selection of
17 their officers and nominees. Accordingly the State's implementation of I-872 is
18 unconstitutional. *See Ariz. Libertarian Party v. Bayless, supra.*

19 RCW 29A.68.011 provides that a court may order election officials to perform their
20 duties under law in cases where:

21 (4) A wrongful act other than as provided for in subsections (1) and (3) of this
22 section has been performed or is about to be performed by any election officer; or

23 (5) Any neglect of duty on the part of an election officer other than as provided for
24 in subsections (1) and (3) of this section has occurred or is about to occur; or

25 (6) An error or omission has occurred or is about to occur in the official
26 certification of the election.

27 In order to protect the associational rights of the political parties, this court should order the
28 State to follow existing election statutes which require that voters in PCO elections be
29 members of the party as established by their choice of a ballot containing only candidates
30 affiliated with the party or their decision to vote only for candidates affiliated with that party.
31 The State should additionally be required to implement RCW 29A.80.051 and issue

1 certificates of election only to PCO candidates who receive at least 10% of the votes obtained
2 by the highest vote getter affiliated with their party.

3 **CONCLUSION**

4 The State’s violation of the Democratic Party’s associational rights is clear and it
5 provides no sufficient justification for doing so. The Democratic Party in this motion asks
6 only that election officials follow the laws passed by the Legislature of the State of
7 Washington rather than ignore them. The Democratic Party’s motion for partial summary
8 judgment should be granted.

9 DATED this 26th day of August, 2010.

10 K&L GATES LLP

11
12 By s/ David T. McDonald
13 David T. McDonald, WSBA # 5260
14 Emily D. Throop, WSBA # 42199
15 925 Fourth Avenue, Suite 2900
16 Seattle, WA 98104
17 Tel: (206) 623-7580
18 Fax: (206) 623-7022
19 david.mcdonald@klgates.com

20 Attorneys for Plaintiffs in Intervention,
21 Washington State Democratic Party and
22 Dwight Pelz, Chair
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26