No. 11-1263 and No. 11-1266

IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE,

Petitioner,

v.

WASHINGTON STATE GRANGE, et al.,

Respondents.

LIBERTARIAN PARTY OF WASHINGTON STATE; et al.,

Petitioners,

v.

WASHINGTON STATE GRANGE, et al.,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

WASHINGTON STATE GRANGE'S BRIEF IN OPPOSITION TO PETITIONS FOR A WRIT OF CERTIORARI

Thomas Fitzgerald Ahearne
Counsel of Record
Kathryn Carder McCoy
FOSTER PEPPER PLLC
1111 Third Avenue, suite 3400
Seattle, WA 98101
email: Ahearne@foster.com
phone: 206-447-8934
Counsel For Petitioners

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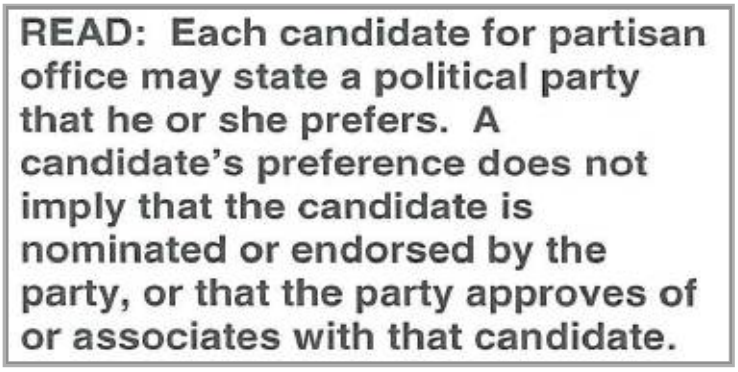
INTRODUCTION

Petitioners' *as applied* challenge claims the ballots Washington used in the last election cycle to implement Initiative 872's "preference" provisions were unconstitutional. Those ballots said:[1]



Those ballots then listed each candidate's stated preference (if he or she had stated one). For example:[2]

[1] Grange's Supplemental Excerpts of Record below ("GSER"), 9th Cir. Dkt. No. 34 in court of appeals no. 11-35122, pages GSER 000049 – GSER 000050, at Agreed Fact ¶9 (State mandated wording for all ballots); King County Ballot at Appendix B to State's Response Brief below, 9th Cir. Dkt. No. 29 at page 86 of 89 ("King County Ballot").

[2] GSER 000049 at Agreed Fact ¶8 (State mandated wording for all ballots); King County Ballot, 9th Cir. Dkt. No. 29 at page 87 of 89.

Respondent Washington State Grange[3] submits this Opposition Brief to state "briefly and in plain terms" why Petitioners' arguments do not warrant the Writ of Certiorari they demand. Cf. Supreme Court Rule 15.2 ("A brief in opposition should be stated briefly and in plain terms").

The Grange joins (rather than repeats) the State's arguments opposing Petitioners' writ request. The Grange submits this Brief simply to focus on the most fundamental and straightforward reason that Petitioners' request has no merit – i.e., the plain, unambiguous wording of the Top Two election ballot the State used.

THE "OTHER" WASHINGTON

Petitioners' discussion and arguments are based on the unstated premise that Washington State has the same type of partisan, political party electoral system familiar to most people working in Washington, D.C..

That is a clever approach because it can readily lead the reader to simply assume conclusions which may be appropriate in the Washington, D.C. context, but have no place in Washington State. The following paragraphs accordingly point out some of

[3] The Washington State Grange is a longstanding party in this case. *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 128 S.Ct. 1184, 170 L.Ed.2d 151 (2008) ("*Grange*"). As this Court noted in its prior decision, the Washington State Grange was originally formed in 1889 to represent the interests of farmers, but has since then advocated a variety of goals including women's suffrage, rural electrification, protection of water resources, universal telephone service, and election reforms by way of Initiative under the Washington State Constitution. *Grange*, 552 U.S. at 446-47 and footnotes 2 &3.

the unique aspects of the "other" Washington over in the northwest corner of the continental United States, 2500 miles outside of the I-495 Beltway.

1. Washington State's Electoral System.

Washington State's electoral system is not like that of most States. For example, in Washington State:

- There is no party registration for voters.[4]
- A "partisan office" is simply one whose Declaration Of Candidacy has a line allowing the candidate to state the name of the political party he or she prefers.[5] President of the United States, for example, therefore is not a "partisan" office in Washington's electoral system.[6]
- State parties have long claimed as their own politicians who oppose

[4] RCW 29A.08.166; RCW 29A.08.210.

[5] Initiative 872, section 4 (codified at RCW 29A.04.110). A full copy of the Initiative measure Petitioners challenge was attached as Appendix A to the State's Response Brief below, 9th Cir. Dkt. No. 29 at page 77 of 89 through page 84 of 89 ("Initiative 872").

[6] Initiative 872, section 7 (establishing a 2-stage, top two election system for "partisan offices") and section 4 (identifying those "partisan offices" as being three (and only three) categories of public office: (1) U.S. senator and representative; (2) State offices other than (a) judicial and (b) superintendent of public instruction; and (3) County offices except (a) judicial and (b) offices for which a county home rule charter provides otherwise. (Codified at RCW 29A.52.112 and RCW 29A.04.110).

key elements of that party's platform.[7]

- Voting is done by mail instead of at polling stations.[8]

In short, generalizations and conclusions that might be inferred from the electoral systems common in other States simply do not apply to the electoral system in Washington State.

2. Washington State's Top Two Ballot.

Washington State's election ballot is not like the ballot in other States. And as Petitioners admitted below, every Washington voter had that ballot in front them when they voted on it.[9]

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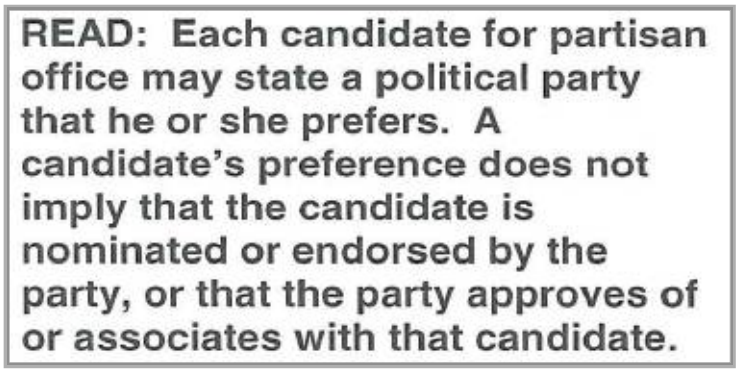
[7] For example, the Petitioner Washington State Democratic Central Committee, as well as its fellow-plaintiff below (the Washington State Republican Party), both openly accept as members of their Washington State legislative caucuses elected officials who oppose the abortion position in their respective State Party platforms. Washington State Grange's November 8, 2005 Supplemental Excerpts of Record in the first round of this case's proceedings below ("2005 GSER"), 9th Cir. Dkt. No. 40 in court of appeals no. 05-35774, pages 119, 123, 139-143, 146, 148, evidence summarized at 151:9-14 & nn. 444-45. As another example of the Petitioner Washington State Democratic Central Committee's lack of any ideological requirements in Washington State, that Petitioner grants membership to anyone who simply says in writing that they're a member. 2005 GSER at 154:1-5, 155:14-16, 134-136, 137, 132, evidence summarized at 151:6-8 & nn. 42-43. In short, political parties in Washington State do not limit their membership to just those persons who share the party's political platform positions.

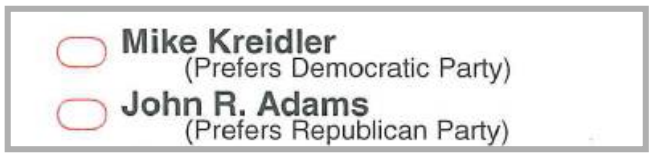
[8] RCW 29A.40.010 (mail ballots issued to all voters). Voting centers are available to assist disabled voters. RCW 29A.40.160.

[9] GSER 000054, Agreed Fact ¶24 ("The ballot the voter votes on is one document that every voter has when voting.").

The Top Two ballot on which every voting voter voted said:[10]



Then, if a candidate had stated a party preference on his or her Declaration Of Candidacy, the preference stated by that candidate was printed on the ballot below his or her name, with parentheses and the first letter of each word capitalized.[11] For example:[12]



[10] Supra footnote 1.

[11] Initiative 872, sections 4 and 7(3) [codified at RCW 29A.04.110 and RCW 29A.52.112]; supra footnote 2.

[12] Supra footnote 2.

If the candidate had not stated a party preference on his or her Declaration Of Candidacy, then the phrase "(States No Party Preference)" was printed below his or her name.[13] For example:[14]

FIVE PLAIN, BRIEF REASONS WHY PETITIONERS' WRIT REQUEST SHOULD BE DENIED

Petitioners do not identify any conflict among lower federal or state courts that requires resolution by this Supreme Court. Nor do they claim any similar federal issue currently exists in any other State. Instead, they suggest that this Court should grant a Writ of Certiorari in this case because it's possible that some sort of top two system might be adopted in a different State context in the future, and thus it might be of assistance for this Court to issue an advisory opinion now to address issues that might possibly arise in such another State (if any).

But that's not a justification for the Writ Petitioners demand from this Court.

Moreover, as outlined below, there are at least five reasons why the Petitioners' complaints about the lower courts' rulings have no merit.

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[13] Supra footnote 2.
[14] Supra footnote 2.

1. The First Amendment Does Not Grant Petitioners The Right To Censor Speech.

Petitioners assert that the constitutional claim for which they seek a Writ involves the following clauses of the First and Fourteenth Amendments:

> "Congress shall make no law . . . abridging the freedom of speech. . . ."
>
> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law. . . .".

Petition for Writ of Certiorari filed by the Washington State Democratic Central Committee ("Central Committee") (no. 11-1263) at page 5 (section titled "Constitutional Provisions Involved"); Libertarian Party of Washington State, et al. ("LPOWS") (no. 11-1266) at page 3 (section titled "Constitutional Provisions Involved").

Petitioners then proceed to insist that the First Amendment gives them a constitutional right to censor what political candidates say. For example, the Central Committee claims that the First Amendment entitles it to a federal court order that (1) prohibits a candidate's statement that he or she "Prefers Democratic Party" if the Central Committee doesn't like that candidate's statement,[15] and/or (2) requires such a candidate's statement to be

[15] Petition for Writ of Certiorari filed by the Washington State Democratic Central Committee ("Central Committee") (no. 11-1263) at page 26 (prohibit candidate's personal preference statement unless Central Committee consents to candidate's personal statement).

falsified to say "States No Party Preference" instead.[16]

The Central Committee asserts that such censorship orders are a "simple, reasonable, common-sense request for relief."[17]

The Central Committee's censorship proposal is simple. But, at least in this country, it is not reasonable or common-sense – for the censorship that the Central Committee demands turns the First Amendment on its head. Neither Petition cites any persuasive authority for Petitioners' underlying proposition that this Court should grant a Writ to now transform the First Amendment into a censor, rather than protector, of what a political candidate says.

Nor does either Petition present any authority for Petitioners' premise that the First Amendment prohibits a State from allowing a candidate to disclose on the ballot the name of the party he or she personally prefers.

The Central Committee points out that the *Hurley* Court allowed the sponsor of a private parade to dictate who participated in that private sponsor's

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[16] Petition for Writ of Certiorari filed by the Washington State Democratic Central Committee ("Central Committee") (no. 11-1263) at page 40 (require candidate's personal preference statement to be erased and changed instead be "States No Party Preference" if the Central Committee doesn't consents to candidate's personal statement).

[17] Petition for Writ of Certiorari filed by the Washington State Democratic Central Committee ("Central Committee") (no. 11-1263) at page 40 (require candidate's personal preference statement to be erased and changed instead be "States No Party Preference" if the Central Committee doesn't consents to candidate's personal statement).

parade.[18] But unlike the primary election in many other States, the August primary under Washington's Top Two Initiative is not the political parties' parade.

In Washington State, the August primary is not the political parties' method of selecting its nominees. Instead, the August primary is the State's method of winnowing the number of candidates down to the top two vote-getters for a November run-off. No case holds that an entity which is not the parade sponsor (e.g., the Central Committee) can commandeer and dictate rules for the entity which is the parade sponsor (e.g., the State).

The Central Committee also complains that allowing a candidate to disclose the name of the political party (if any) that he or she personally prefers might possibly change the outcome of an election – and might even result in voters electing a person that the Central Committee does not like or did not nominate. But that does not support Petitioners' claim that the First Amendment prohibits personal preference disclosures in Washington. To the contrary, it instead illustrates why core First Amendment principles protect such speech.

In short, the "freedom of speech" clause of the First Amendment that both Petitions say they base their Writ demand upon is fatal to their Writ request.

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[18] *Hurley v. Irish-American Gay, Lesbian & Bisexual Group*, 515 U.S. 557 (1995).

2. The First Amendment Does Not Require Or Support Federal Court Trials On State Voter Intelligence.

Washington's Top Two ballot during this past election cycle said what it said. And an objective reading of what it said told the voter that each candidate for partisan office may state a political party that he or she prefers, and that a candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate. As noted earlier, the Top Two ballot said:

> READ: Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate.

An objective reading of what that ballot said also told the voter that a candidate prefers a particular party or states no party preference. As noted earlier, for example:

Petitioners insist, however, that an objective reading of what the ballot actually said is not what matters.

Instead, Petitioners posit that the First Amendment requires federal courts to conduct a trial on Washington voter intelligence each election cycle to determine if Washington voters were smart enough to understand what the clear language on their ballots said. Petitioners insist that the First Amendment requires "experiments", expert testimony, and a review of what newspaper reporters thought each election cycle to determine whether Washington voters in that particular year were smart enough to understand, for example, that:

- When their ballot said "each candidate for partisan office may state a political party that he or she prefers", it meant that each candidate for partisan office may state a political party that he or

she prefers. It did not instead mean that the candidate was stating the political party which had nominated or endorsed that candidate.

- When their ballot said "a candidate's preference does not imply that the candidate is nominated or endorsed by the party", it meant that a candidate's preference does not imply that the candidate is nominated or endorsed by the party. It did not instead mean the opposite.
- When their ballot said "a candidate's preference does not imply ... that the party approves of or associates with that candidate", it meant that a candidate's preference does not imply that the party approves of or associates with that candidate. It did not instead mean the opposite.
- When their ballot said "(Prefers Democratic Party)" after a candidate's name, it meant that that candidate prefers the Democratic Party. It did not instead mean that the Washington State Democratic Central Committee had nominated that candidate.

As practical matter, the State could perhaps facilitate the annual federal court trials that Petitioners request by requiring every voter to answer a questionnaire before allowing their votes to be counted (sort of akin to a literacy test) – e.g., requiring each voter to answer questions like "Did you really read your ballot before you voted on it?", "When your ballot told you something, did you think it instead meant the opposite?", or "Did you believe the 'preference' explanation on your ballot?" (Conducting exit polls would not be a viable option in Washington State since, as noted earlier, Washington State votes by mail instead of at polling stations where voters can "exit".)

The Petitioners, however, present no authority for their premise that the First Amendment requires federal court trials each election cycle to determine if the voters in that election were smart enough to subjectively understand that their ballots meant what an objective reading of their ballots said.

The Central Committee complains that looking to the actual wording of the Top Two ballot (instead of having a trial every election cycle with experiments, experts, newspaper reporters, etc.) would elevate form over substance. But the opposite is true. Looking to the substance of what the Top Two ballot said is looking at the substance itself. And looking at the substance of what the ballot said is what the First Amendment should require.

Petitioners' Writ request has no merit because, as the lower courts correctly concluded, the substance of the Top Two ballot Washington State

used to implement Initiative 872 did not violate the First Amendment.

3. Trademark Law Does Not Require Or Support Federal Court Trials On State Voter Intelligence.

Both Petitions invoke trademark law to attack Washington's Top Two election ballots – the Libertarian Party Of Washington State (LPOWS) invokes trademark law directly, and the Central Committee invokes trademark law "by analogy".

The trademark argument in both Petitions fails because, as the State's Opposition Brief explains, trademark law does not even apply to election ballots.

Petitioners' trademark and trademark-by-analogy arguments also fail for a ***second*** reason. The comparative nature of a candidate's stating the name of the political party he or she prefers would be protected even if trademark law somehow applied.

That is because the First Amendment undisputedly protects a candidate's right to tell voters if he or she prefers one political party over others. In order to tell voters that personal preference, however, the candidate must state the political party's name. Even in commercial speech cases, trademark law allows a person to use someone else's trademark to compare his product to that other person's product. E.g., *New Kids on the Block v. News America Publishing*, 971 F.2d 302, 306 (9th Cir. 1992) ("Indeed, it is often virtually impossible to refer to a particular product for purposes of comparison, criticism, point of reference or any other

such purpose without using the [allegedly infringed upon] mark"); *Smith v. Chanel, Inc.*, 402 F.2d 562, 564-69 (9th Cir. 1968) (defendant free to advertise his perfume by stating that it duplicated 100% the plaintiff's well known Chanel #5).

The same comparative principle applies here – for it is virtually impossible for a candidate to tell voters which political party he or she prefers (if any) without stating that political party's name.

Petitioners' trademark and trademark-by-analogy arguments also fail for a ***third*** reason. A candidate's stating the name of the political party he or she personally prefers falls squarely within trademark law's "nominative use" exemption. That exemption applies if three requirements are meet:

> [1] the product or service in question must be one not readily identifiable without use of the trademark;
>
> [2] only so much of the mark or marks may be used as is reasonably necessary to identify the product or service; and
>
> [3] the user must do nothing that would, in conjunction with the mark, suggest sponsorship or endorsement by the trademark holder.

Playboy Enterprises, Inc. v. Welles, 279 F.3d 796, 801 (9th Cir. 2002).

The *Playboy Enterprises* court accordingly held that Ms. Wells could use the phrase "Playboy Playmate of the Year 1981" to identify herself on her commercial website because her use of the Playboy

Playmate trademark was a nominative use. *Id.* at 799. More specifically, the court explained:

> (1) any other description would be too wordy and awkward – for it would be "impractical and ineffectual" for Ms. Wells to identify herself as the "nude model selected by Mr. Hefner's magazine as its number-one prototype woman for the year 1981";
>
> (2) Ms. Wells was only using the bare title, and not any of Playboy's specialized font or logo; and
>
> (3) Ms. Wells was not using anything else but the 1981 Playboy Playmate title to suggest sponsorship or endorsement by Playboy.

Playboy Enterprises, 279 F.3d at 802-03.

A candidate's stating the name of the political party he or she personally prefers is similarly a "nominative use" of that name – a use that trademark law would (if it applied) expressly permit. That is because:

> (1) it would be unwieldy for the ballot to describe the candidate's stated preference other than by saying that political party's name – e.g., it would be "impractical and ineffectual" for the ballot to state the candidate "prefers the political party whose mascot is a braying donkey" or "prefers the political party whose mascot is a pudgy pachyderm";

(2) the ballot does not "use" a political party's supposed trademark beyond simply stating that party's name in ordinary font with no logo; and

(3) the ballot does not allow for a use suggesting the candidate is endorsed or sponsored by that political party – indeed, the ballot expressly negates that suggestion.

In short, the comparative and nominative use of political party names on Washington State's Top Two ballot provide two additional reasons why that ballot does not violate trademark principles – and thus why neither trademark law nor a trademark-by-analogy theory can create a legitimate legal basis for the Writ Petitioners demand.

4. The First Amendment Does Not Make Math Unconstitutional.

A run-off election between the top two vote-getters is exactly that. A run-off election between the top two vote-getters.

The Libertarian Party Of Washington State (LPOWS) insists that third parties are important to political systems – and from that premise jumps to the conclusion that it's unconstitutional for Washington's Top Two Initiative to "deny" the third, fourth, or fifth place finishers a place on the Initiative's top two run-off ballot. LPOWS's Petition, however, provides no legal authority for that premise.

Nor does their Petition provide any authority for its ultimate claim that when the State of Washington *applied* the provision in Initiative 872 that limited the November run-off election to the top "two" vote-getters, the First Amendment required the number "two" to equal "three" (or "four" or "five").

The Libertarian Party Of Washington State's *as applied* argument against the top two provision that is *on the face* of Initiative 872 does not warrant the Writ it requests because that argument has no legal support.

5. Washington's Top Two Ballot Complied With This Court's Ruling In This Case.

This Court previously noted that the Petitioners' claim in this case is that Initiative 872 burdens their First Amendment rights "because voters will assume that candidates on the general election ballot are the nominees of their preferred parties", and that "even if voters do not assume that candidates on the general election ballot are the nominees of their parties, they will at least assume that the parties associate with, and approve of, them." *Grange*, 552 U.S. at 454 (underline added).

This Court's prior ruling explained, however, that since the lower courts had up to that point barred the State of Washington from conducting any election under Initiative 872,

> we do not even have ballots indicating how party preference will be displayed. It stands to reason that whether voters will be confused by the party-preference designations will

> depend in significant part on the form of the ballot.

Grange, 552 U.S. at 455-57 (footnotes omitted).

The concurring opinion likewise noted that "we have no idea what those ballots will look like". *Grange*, 552 U.S. at 460 (Roberts, C.J., concurring; with Alito, J., joining). That concurring opinion therefore went on to explain the following with respect to the current Petitioners' claims:

> In such a case, it is important to know what the ballot actually says – both about the candidate and about the party's association with the candidate. .... I would wait to see what the ballot says before deciding whether it is unconstitutional.

Grange, 552 U.S. at 461-62 (Roberts, C.J., concurring).

The election ballot's wording is crucial because, as several members of this Court pointed out, the ballot is the <u>only</u> document that all voters are guaranteed to see, and it is the <u>last</u> thing each voter sees before marking his or her vote. *Grange*, 552 U.S. at 460 (Roberts, C.J., concurring) ("The ballot ... is the last thing the voter sees before making his choice") (quoting *Cook v. Gralike*, 531 U.S. 510, 532 (2001) (Rehnquist, C.J., concurring)); *Grange*, 552 U.S. at 465 (Scalia, J., dissenting) (The ballot "is the only document that all voters are guaranteed to see, and it is 'the last thing the voter sees before he makes his choice.'") (citing same).

When this Court issued its decision upholding the constitutionality of Initiative 872's preference provisions *on their face*, two members of this Court indicated some skepticism about whether the State of Washington would, when it *applied* the Initiative's preference provisions, adopt ballots worded along the lines suggested at page 2 of the Grange's Supreme Court Reply Brief.[19]

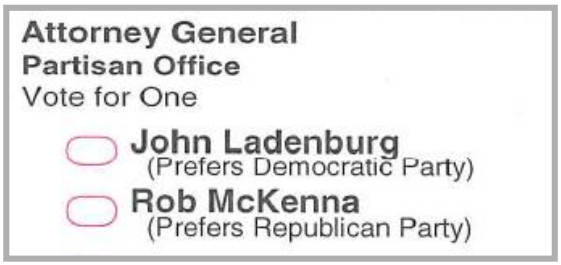
But the State of Washington did adopt ballots worded along those lines.

[19] *Grange*, 552 U.S. at 460 (noting the ballot wording alternative offered at page 2 of the Grange's Reply Brief) and at 462 (C.J. Roberts noting that "I agree with Justice Scalia that the history of the challenged law suggests the State is not particularly interested in devising ballots that meet these constitutional requirements") (Roberts, C.J., concurring). The Grange's Reply Brief – referred to in the Supreme Court Oral Argument as "the Grange Yellow Brief" because of the yellow cover on Supreme Court reply briefs – is available on Westlaw at 2007 WL 2679380. It is also in the record at GSER 000015 – GSER 000042, with the previously-noted page 2 of that Reply being GSER 000024.

The previously-noted page 2 of the Grange's Supreme Court Reply Brief offered the following as one alternative to constitutionally identify a candidate's "preference" under Initiative 872:[20]

> PUBLIC OFFICE – ATTORNEY GENERAL:
> ☐ **Chris R. Jones** (prefers Democratic Party)
> ☐ **Chris D. Jones** (prefers Republican Party)

And that is the type of ballot wording the State of Washington adopted.[21] For example:[22]



[20] GSER 000024.
[21] Supra footnote 2.
[22] Supra footnote 2.

The previously-noted page 2 of the Grange's Supreme Court Reply Brief also offered the following as one constitutional alternative for reminding voters what the candidate's preference statement means:[23]

> The political party name shown next to a candidate identifies the party which that candidate listed as being his or her party preference when filing for office. It is not a statement by the political party identifying that candidate as being a party member or being that party's candidate, nominee, or representative in this election.

And that is the type of ballot wording the State of Washington adopted.[24]

> **READ: Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate.**

In short, Petitioners' Writ request should be denied because the State of Washington *applied* Initiative 872 by adopting ballot language consistent with the prior proceedings before this Court.

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[23] GSER 000024.
[24] Supra footnote 1.

CONCLUSION

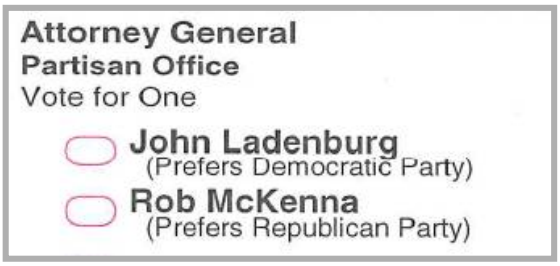
The ballot language Washington State adopted to implement Initiative 872's preference provision negates the essential premise underlying the Petitioners' *as-applied* challenge in this case – namely, their premise that that ballot misleads reasonable well-informed voters into thinking that when the ballot says "(Prefers Democratic Party)" after a candidate's name, the ballot instead means that that candidate is nominated or endorsed by the Democratic Party, or that the Democrat Party approves of or associates with that candidate.

This Court previously reiterated in this case that federal courts must maintain great faith in the ability of individual voters in Washington to inform themselves about election issues. *Grange*, 552 U.S. at 454. Petitioners provide no legal authority for their essential premise that the First Amendment requires this Court to now instead ignore what Washington's Top Two ballot clearly and unambiguously said.

Nor do Petitioners provide any applicable legal authority for their argument that the First Amendment requires federal courts to embark on a subjective examination every election cycle in Washington, with the constitutionality of each year's election being determined by a battle of "experts", "experiments", and newspaper reporters opining on whether or not the voters in Washington that year were smart enough to realize that the ballot they voted on meant what it said. Petitioners provide no such authority because the proper (and only workable) standard for courts to employ is an

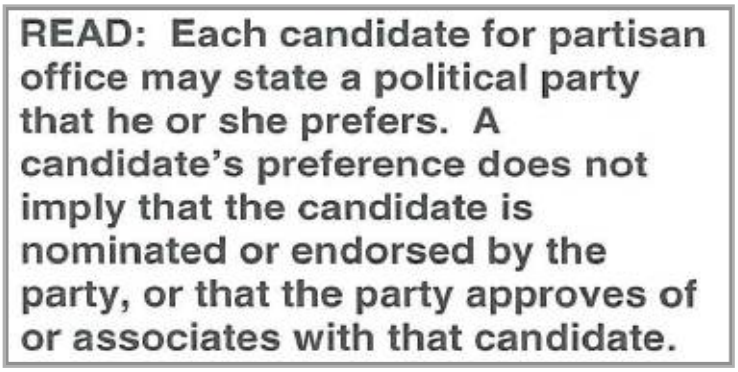
objective "reasonable voter" test that focuses on the substance of the written communication made to each voter on the election ballot itself. Accord, *Federal Election Commission v. Wisconsin Right to Life*, 551 U.S. 449, 469, 127 S.Ct. 2652, 168 L.Ed.2d 329 (2007) (proper standard for an *as applied* challenge is an objective one which focuses on the communication's substance rather than amorphous considerations of intent and effect).

The substance of the Top Two ballot the State of Washington adopted to *apply* Initiative 872's preference provision defeats Petitioners' claim – for that ballot clearly and unambiguously lists party name as what the candidate prefers – e.g.:[25]



[25] Supra footnote 2.

The substance of the Top Two ballot adopted by the State to *apply* the Initiative's preference provision also clearly and unambiguously states that a candidate's preference does not imply that that candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate:[26]



In short, the Top Two ballot adopted by the State of Washington to apply Initiative 872 says what it means and means what it says. And what that ballot says does not violate the First Amendment. For that reason, as well as all the other reasons outlined above and in the State's Opposition Brief, the Washington State Grange respectfully submits that the four lower court judges below were all correct when they rejected Petitioners' *as-applied* challenge to the Washington State elections at issue in this case – and that Petitioners' demand for a Writ of Certiorari should accordingly be denied.

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[26] Supra footnote 1.

RESPECTFULLY SUBMITTED.

Thomas Fitzgerald Ahearne
Counsel of Record
for Washington State Grange

Kathryn Carder McCoy
FOSTER PEPPER PLLC
1111 Third Avenue, suite 3400
Seattle, WA 98101
email: Ahearne@foster.com
phone: 206-447-8934

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