

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 Intervenors.

No. CV05-0927JCC

WASHINGTON STATE GRANGE'S  
REPLY TO WASHINGTON  
LIBERTARIANS' APRIL 6  
OPPOSITION TO DEFENDANTS'  
NOVEMBER MOTIONS TO DISMISS

*Re-Noted by the Court for:  
Friday, April 10, 2009*

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## I. INTRODUCTION

Last November, the Grange and State filed motions to dismiss that fully explained why the Supreme Court's legal rulings require the dismissal of this case. (Doc. #134 and #133.) In December, the Grange and State filed reply briefs that fully explained why the oppositions filed by the Washington Democratic Central Committee and Washington State Republican Party lacked merit. (Doc. #167 and #164.) This reply brief outlines why the April 6 opposition subsequently filed by the Washington Libertarian Party<sup>1</sup> has no merit either.

## II. DISCUSSION

The Washington Libertarian Party's April 2009 opposition brief (Doc. #179) insists that this four year old suit should not be dismissed because the Washington Libertarian Party has thought of ballot access and trademark infringement claims that it now wants to assert and pursue on an *as-applied* basis. The Washington State Grange agrees with the points made in the State's reply on this dismissal issue (Doc. #181). Instead of repeating those points, the Grange simply notes three additional points fatal to the Washington Libertarian Party's opposition.

### A. The Washington Libertarian Party Does Not Refute That Its Suit Alleged No Separate "Ballot Access" Or "Trademark" Claim Independent Of The First Amendment Challenge Rejected By The Supreme Court.

As noted in the Grange's and State's prior briefing, the political parties made some "ballot access" and "trademark-like" arguments to support the First Amendment challenge they made in this case.

But as the Grange's prior briefing pointed out, the political parties' arguments to support their First Amendment challenge were exactly that. Arguments to support their First

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<sup>1</sup> *The Washington Libertarian Party's opposition was also filed on behalf of its two co-plaintiffs, Ruth Bennett and J.S. Mills. Those three plaintiffs are collectively referenced as the Washington Libertarian Party, and are served with this Reply through the attorney of record (Orrin Grover) who filed that opposition on behalf of those three plaintiffs.*

1 Amendment challenge. They were not separate “claims” independent of the suit’s First  
2 Amendment challenge itself. See Doc. #134 at page 3:12-22 (Grange’s Motion at 1:12-22).

3 The Washington Libertarian Party’s opposition brief does not address – never mind  
4 refute – the straightforward point that this suit must be dismissed because it in fact pled no  
5 *separate* “ballot access” or “trademark” cause of action *independent* of the First Amendment  
6 claim the United States Supreme Court rejected. See Doc. 28 (Washington Libertarian Party’s  
7 2005 Declaratory Judgment Complaint).

8 **B. The Washington Libertarian Party Does Not Refute That The Legal Premise For**  
9 **Its Supposed “Ballot Access” Claim Was Rejected By The Supreme Court.**

10 The Supreme Court’s ruling against the political parties in this case held that the “First  
11 Amendment does not give political parties a right to have their nominees designated as such on  
12 the ballot”. *Washington State Grange*, 128 S.Ct. at 1193 n.7 (underline added).

13 The Washington Libertarian Party’s opposition brief does not address – never mind  
14 refute – the fact that the Supreme Court rejected the legal premise for a political party in this  
15 case now claiming it has a ballot access “right” to have its nominee on a ballot. See Doc. #134  
16 at page 4:1-13 (Grange’s Motion at 2:1-13).

17 The Washington Libertarian Party’s opposition brief also fails to address or refute the  
18 fact that Washington’s top-two runoff system provides all candidates for public office virtually  
19 unrestricted access to be on the ballot provided to all voters in the Washington system’s  
20 first-stage, winnowing election. See Doc. #134 at page 4:9-13 (Grange’s Motion at 2:9-13).  
21 For example, in 2008 the Washington Libertarian Party’s co-plaintiff in this case (Ruth Bennett)  
22 ran in that first-stage, winnowing election for the State House of Representatives (37<sup>th</sup> District),  
23 and then appeared on the second-stage, November runoff for that House seat since she was one  
24 of the top two vote getters in the election’s first stage.<sup>2</sup>

25 <sup>2</sup> See <http://your.kingcounty.gov/elections/200811/pamphlets/ED15A-King-Seattle.pdf>  
26 (page 76 of the November 2008 Voters Pamphlet, courtesy copy attached at the end of this Reply).

C. **The Washington State Libertarian Party Does Not Refute That There Is No Legally Valid “Trademark” Claim Pled In This Case.**

The Washington Libertarian Party argues that this four year old suit should not be dismissed because the Washington Libertarian Party now has trademark infringement claims it wants to assert – currently unpled claims that it notes “may be addressed by amendment of the pleadings” some time in the future. (Doc. #179, at page 7:16-25.)

The Washington Libertarian Party’s opposition brief, however, does not address – never mind refute – the fatal fact that such an infringement claim has no legal basis in trademark law. Doc. #134 at page 4:13 – page 7:16 (Grange’s Motion at 2:13-5:16) and Doc. #167 at page 4:7 – page 6:2 (Grange’s Reply at 2:7-4:2). Instead, like the Washington Democratic Central Committee’s and Washington Republican Party’s opposition briefs, the Washington Libertarian Party’s opposition brief opts to ignore the fundamental principles of trademark law which preclude the trademark infringement cause of action it now wants to assert.

### **III. CONCLUSION**

As noted in the Grange’s November 2008 Motion To Dismiss, the fundamental purpose of the Civil Rules is “to secure the just, speedy, and inexpensive determination of every action and proceeding.” Fed.R.Civ.P. 1. But in this case, resolution has been anything but speedy:

- November 2004: The citizens of this State enact Initiative 872, voting 60% - 40% to adopt that Initiative’s Top Two election system effective December 2004.
- May & June 2005: The State Republican Party, the State Democratic Central Committee, and the State Libertarian Party file their Complaints to block implementation of that Top Two election law, asserting facial challenges under the First Amendment of the federal constitution.<sup>3</sup>
- July 2005: This Court agrees with the political parties’ First Amendment challenge. This Court accordingly strikes down Washington’s Top Two election law and enjoins its implementation.

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<sup>3</sup> In addition to challenging the constitutionality of the Top Two system enacted by I-872, the Republican Party also argued that *if* the First Amendment rendered Washington’s Top Two system unconstitutional, then the First Amendment rendered the “Montana” system unconstitutional as well – an argument that was rendered moot by the Supreme Court’s ruling that the First Amendment did **not** render Washington’s Top Two system unconstitutional.

- 1       ▪ Fall 2005: While this Court's decision is on appeal, its injunction stands to prohibit
- 2       Washington citizens from voting in the Top Two election system they had
- 3       overwhelmingly adopted.
- 4       ▪ Fall 2006: While this Court's decision is on appeal, its injunction stands to prohibit
- 5       Washington citizens from voting in the Top Two election system they had
- 6       overwhelmingly adopted.
- 7       ▪ March 2008: The United States Supreme Court reverses this Court's decision.
- 8       ▪ October 2008: The Ninth Circuit Court of Appeals issues its Mandate remanding
- 9       this case back to this Court.
- 10      ▪ November 2008: The defendant Washington State Grange and defendant State of
- 11      Washington file the pending motions to dismiss.
- 12      ▪ April 2009: The plaintiff Washington Libertarian Party files its opposition to the
- 13      defendants' pending motions to dismiss.

14       Like the Democratic Central Committee's and Washington Republican Party's

15       opposition briefs, the Washington Libertarian Party's opposition brief does not refute the

16       Grange's and State's showing that this Court should not delay or extend these proceedings any

17       longer. The political parties had their day before the United States Supreme Court. They lost.

18       This Court should now put an end to this case by entering the dismissal with prejudice that is

19       four years overdue.

20       If the Washington Libertarian Party wants to file a suit based on accusations or

21       complaints it has about the November 2008 election or what might occur in 2009, then, as the

22       State noted in its prior Reply brief (Doc. #164), the Washington Libertarian Party is free to

23       litigate its new accusations or complaints at an appropriate time in an appropriate forum. But

24       the legal challenge that the Washington Libertarian Party brought in this case is over. For the

25       reasons explained in the Grange's and State's prior briefing – and nowhere rebutted or refuted

26       by the Washington Libertarian Party's April 6 opposition brief – this Court should dismiss this

      case.

1 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of April, 2009.

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**CERTIFICATE OF SERVICE**

Thomas F. Ahearne states: I hereby certify that on April 10, 2009, I electronically filed the following documents with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties listed below:

1. Washington State Grange's Reply To Washington Libertarians' April 6 Opposition To Defendants' November Motions To Dismiss.

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I certify and declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

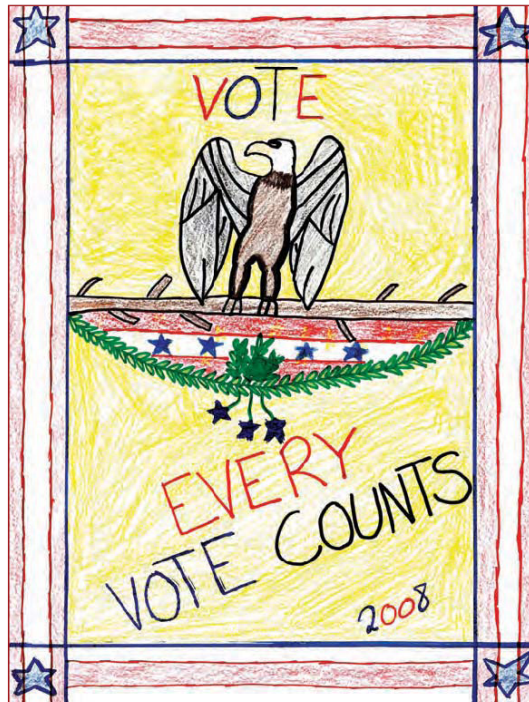
Executed at Seattle, Washington this 10<sup>th</sup> day of April, 2009.

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# STATE OF WASHINGTON VOTERS' PAMPHLET



## November 4, 2008 General Election

Washington has a new election system. In each race for partisan office, the two candidates who received the most votes in the August Primary advanced to the November General Election. It is possible that the two candidates in a race will prefer the same party.

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.

The election for President and Vice President is different. Those candidates are the official nominees of their political parties.



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AND KING COUNTY ELECTIONS

EDITION 15A

[source = <http://your.kingcounty.gov/elections/200811/pamphlets/ED15A-King-Seattle.pdf>]

**Legislative District 37****State Representative Position 2 (Partisan Office, 2-year term)****Eric Pettigrew**

(Prefers Democratic Party)

Friends To Elect Eric Pettigrew

PO Box 28660

Seattle, WA 98118

Telephone: (206) 979-5999

Email: e.pettigrew@comcast.net

**Biographical Information****Current Occupation/Employer:** Director of External Relations/  
Safeco Insurance**Education:** B.S. Sociology, Oregon State University; M.S.W.  
Community Organizing, University of Washington**Elected Experience:** Elected Washington House of Representa-  
tives November 2002-Present; Served on the Early Learning and  
Children's Services Committee; Vice Chair of the Community  
Economic and Trade Committee; Served on the Appropriations  
Committee.**Family:** Married to Jada Berteaux-Pettigrew, Son Justin 20 years  
old, Daughter Linda 8 years old**Significant Career Experience:** Public Policy Specialist, The  
Children's Alliance; Deputy Chief of Staff for Public Safety, Mayor  
Norman Rice; Director of Emergency Management, City of Seattle;  
Executive Director Minority Youth Health Project, University of  
Washington.**Candidate Statement***Eric Pettigrew brings people together to get results*

As your Legislator:

Sponsored legislation promoting the purchase of fresh produce  
from local farms to Washington State schools, farmers markets  
and food banks.Successfully primed budget request to help grandparents raising  
their grandchildren, fund capital building projects including the  
Wing Luke and African American museum and parks for children  
with developmental disabilities.Will continue to create more supports and incentives for dense  
housing development in urban areas.Led the passage of legislation that improved wages for child care  
workers.And many more initiatives to improve life in the 37<sup>th</sup>.**Ruth E. Bennett**

(Prefers Libertarian Party)

Bennett for State Rep

3703 S Edmunds #23

Seattle, WA 98118

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Email: BennettforStateRep@comcast.net

Website: www.BennettforStateRep.com

**Biographical Information****Current Occupation/Employer:** • Community activist and  
volunteer lobbyist, • Successful small business owner**Education:** Graduate of WSU in Anthropology**Elected Experience:** Precinct Committee Officer**Family:** Just celebrated 10 years with Life Partner, Dee Elliott, a  
hospice nurse with Group Health**Significant Career Experience:** • President, People's Memorial  
Association and People's Memorial Funeral Cooperative, • Co-  
Chair, SEAMEC, • National Board Member, Funeral ConsumerAlliance, • Volunteer, Columbia City Cinema, • Usher Team Leader  
and Steward, Center for Spiritual Living, • Legislation/Litigation  
Committee Chair, LPWA, • Policy Sub-Committee, Compassion  
& Choices, • Verbena, • LGBT Community Center, • Women's  
Funding Alliance, • Pierce County Blue Ribbon Review Panel on  
Ranked Choice Voting (RCV), • Wrote legislation to implement  
RCV**Candidate Statement**Elect me to *your* Legislature so I can work from the inside to fight  
for more choices for the "little guys" who otherwise won't have a voice.As President of People's Memorial Association (www.  
peoplesmemorial.org), a nonprofit funeral consumer cooperative,  
I lobby legislators and regulators to protect families from unethical  
practices and I work to increase choices by providing affordable,  
dignified cremation and burial services.I also work to increase voters' choices. "Ranked Choice Voting"  
(www.fairvote.org/rcv/) eliminates the Pick-a-Party primary, ends  
"spoiler" concerns and saves taxpayers the cost of a primary. That's  
a win-win solution![source = <http://your.kingcounty.gov/elections/200811/pamphlets/ED15A-King-Seattle.pdf>]