

NO. 05-35774; 05-35780

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

WASHINGTON STATE  
REPUBLICAN PARTY, et al.,

Appellee/Plaintiffs,

WASHINGTON STATE  
DEMOCRATIC CENTRAL  
COMMITTEE, et al.,

Appellee/Plaintiff Intervenors,  
and

LIBERTARIAN PARTY OF  
WASHINGTON STATE, et al.,

Appellee/Plaintiff Intervenors

v.

STATE OF WASHINGTON, et al.,

Appellant/Defendant Intervenors,  
and

WASHINGTON STATE GRANGE,

Appellant/Defendant Intervenor.

DECLARATION OF DAVID T.  
MCDONALD IN SUPPORT OF  
WASHINGTON STATE  
DEMOCRATIC CENTRAL  
COMMITTEE'S RESPONSE IN  
OPPOSITION

I, David T. McDonald, being first duly sworn upon oath, declare as follows:

1. I am over eighteen years of age and competent to testify. I am an attorney licensed to practice law in the State of Washington and admitted to the bar of this Court. I am lead counsel for Plaintiff Intervenor

Washington State Democratic Central Committee (the "Democratic Party") and Dwight Pelz, its chairman in the above captioned action.

2. Attached as **Exhibit A** to this Declaration is a true and correct copy of an e-mail dated September 11, 2006 from James Pharris, counsel for the State of Washington sent to counsel for the Democratic Party.

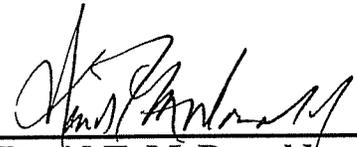
3. Attached as **Exhibit B** to this Declaration is a true and correct copy of a second e-mail from Mr. Pharris sent to counsel for the Democratic Party, dated September 15, 2006.

4. Attached as **Exhibit C** to this Declaration is a true and correct copy of an e-mail from counsel for the Democratic Party to Mr. Pharris, also dated September 15, 2006.

5. Attached as **Exhibit D** to this Declaration is a true and correct copy of a letter dated October 4, 2006 from Mr. Pharris to counsel for the Democratic Party. Enclosed with this letter was a check for \$37,673.97, the full amount of fees and costs agreed upon by the parties in the Stipulation and [Proposed] Order and awarded by the Court in its Order based upon the stipulation.

6. I swear under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and of my own knowledge,

and that I executed this declaration at Seattle, Washington, in the County of King, this seventh day of May, 2008.

  
\_\_\_\_\_  
**David T. McDonald**

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# EXHIBIT A

## Unknown

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**From:** Pharris, James (ATG) [JamesP@ATG.WA.GOV]  
**Sent:** Monday, September 11, 2006 5:08 PM  
**To:** McDonald, David (SEA); richard@shepardlawoffice.com; white@lfs-law.com; hansen@lfs-law.com  
**Cc:** Even, Jeff (ATG)  
**Subject:** Republican Party v. Logan/Reed - attorney fees and costs  
**Follow Up Flag:** Follow up  
**Due By:** Tuesday, September 12, 2006 2:00 PM  
**Flag Status:** Red

The following is for settlement purposes only:

Thanks to each of the three parties for supplying us with bills detailing attorney fees and costs in the above referenced matter. We have not had a chance to discuss this in detail with the client (whose budget will be paying the bill) and tomorrow both Jeff and I will be at the annual Attorney General Conference, so I won't have a chance to get authority for a specific proposal before Wednesday at the earliest. However, here is my general thinking on the subject:

1. We will not raise any objections to the costs as claimed.
2. For now, we prefer to discuss only the attorney fees relating to the Ninth Circuit portion of the case, because (1) those are the ones immediately requiring decisions and (2) it appears likely that there will be further proceedings in the trial court. Ideally, we would wait on the remaining fees until all the work is done and the bills are in, but we're still open to discussion on that point. Today, however, we want to talk about the Ninth Circuit.
3. Each of you has submitted an attorney fee bill. Richard has expressly invited an offer of settlement, John has impliedly done so (by showing the bill both at his discounted and at full market rate), and David's correspondence is silent on the point. While we could simply deal with each of you separately, fairness suggests some sort of common approach.

Subject to discussion with the secretary of state's office, my initial thought is to suggest that all of your proposals are in the ballpark of reasonableness. To protect the public treasury, we would like to hold the fees down to around \$100,000 for the appeal. To accomplish that, I will probably propose applying a common percentage discount to each of the three bills. On the assumption that David's and Richard's bills reflect their full rate, we would probably start the calculation from John's full rate rather than his lower discounted figures, so all three parties are treated about the same. If I'm pulling out the right figures, I think that means we start from the following:

Republicans - \$60,508.50  
Democrats - \$41,623.08  
Libertarians - \$17,965.32

The three numbers add up to slightly more than \$120,000.

My plan is to firm this up into a more definite proposal as soon as I have a chance to discuss this with the client. If my proposed approach is a non-starter, now would be the time to say so. Also, it would be the time to correct any errors I've made in my numbers or in my assumptions.

It seems we are not far apart on this issue, and we're open to discussion about alternatives. As I said, I'll be out of town all day tomorrow, but you're welcome to leave voicemail or e-mail. Or I'd be happy to discuss this on Wednesday.

Jim Pharris

# EXHIBIT B

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**From:** Pharris, James (ATG) [mailto:JamesP@ATG.WA.GOV]  
**Sent:** Friday, September 15, 2006 10:28 AM  
**To:** white@lfa-law.com; McDonald, David (SEA); richard@shepardlawoffice.com  
**Cc:** Even, Jeff (ATG)  
**Subject:** Republican Party v. Logan - Ninth Circuit fee and cost issues

The following is communicated for settlement purpose only:

After consultation with the Secretary of State's office and with some of you, I am prepared to make the following offer of compromise on the claims for costs and attorneys relating to the Ninth Circuit Appeal in this case:

1. The state will agree to compromise fees and costs relating to the Ninth Circuit appeal. Since there will likely be further proceedings, fees and costs at the trial court level will be deferred for later discussion. We do hope to arrive at a reasonable compromise on those at a later date.
2. The state will pay in full all court costs which the prevailing parties could reasonably claim under the applicable court rules.
3. The state will pay 90% of all attorney fees claimed by each respondent as set forth in previous correspondence among the parties.
4. The state understands that this compromise is based primarily upon the state's willingness to make prompt payment, and will undertake to process payment as soon as the claimed amounts for each party are definitely known.

Having agreed to pay 100% of costs and 90% of fees, I'm having trouble sorting out the numbers. Richard's submission (confirmed by a phone conversation) appears to include both fees and costs in his total claim of \$17,965.32. If I read his invoices correctly, the breakdown is \$1622.27 in costs and \$16,343.05 in fees. That would result in a payment of \$1622.27 in costs and \$14,708.75 in fees, or a total of \$16,331.02.

The material I have from David and John appears to relate exclusively to fees, and the numbers don't include costs. I have a memory of seeing cost bills from one or both of you, but a quick search has not turned them up.

Relying on the two of you to retrieve the correct numbers makes more sense (for me that is) than continuing to search for them. Could you let us know the breakdown, and either you can do the math or I can.

If this compromise is agreeable, I suppose it should be incorporated in an agreed order. John, once we have all the numbers, could you draft such an order? These usually come from the prevailing party, but I'm not unwilling to do the work if you want me to.

As soon as we have definite numbers, I'll start the payment process. Jeff did this last time, and I don't remember all the steps, but we'll do everything we can to expedite it.

Jim

# EXHIBIT C

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**From:** McDonald, David (SEA)  
**Sent:** Friday, September 15, 2006 2:20 PM  
**To:** 'Pharris, James (ATG)'; white@lfa-law.com; richard@shepardlawoffice.com  
**Cc:** Even, Jeff (ATG)  
**Subject:** RE: Republican Party v. Logan - Ninth Circuit fee and cost issues

The Democratic Party agrees to this compromise of its current Ninth Circuit Fee and Cost Claims. We understand this settlement will be final as to our claims for attorneys' fees and costs for the Ninth Circuit proceedings related to the appeal of Judge Zilly's July, 2005 decision through the date of the settlement, irrespective of further proceedings in the case. Jim, let me know what additional information or documentation you need from us.

Thank you and your client for your consideration in this matter.

# EXHIBIT D



Rob McKenna  
**ATTORNEY GENERAL OF WASHINGTON**  
1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

October 4, 2006

David T. McDonald  
Preston Gates Ellis LLP  
925 4<sup>th</sup> Avenue, Ste 2900  
Seattle, WA 98104-1158

**RE: Washington State Republican Party v. Logan  
Ninth Circuit Cause Nos. 05-35774 and 05-35780  
United States District Court No. CV-05-00927-TSZ**

Dear Mr. McDonald:

Enclosed is your check for attorneys' fees and costs in the amount of \$37,673.97 awarded pursuant to the Ninth Circuit Court of Appeals' Order filed October 3, 2006 in the above matter.

Please note that by depositing or negotiating the warrant, you are acknowledging that this judgment has been satisfied in full.

If you have any questions or concerns, please contact me at the below number.

Sincerely,

JAMES K. PHARRIS  
Assistant Attorney General  
(360) 664-3027

rs  
enclos.



THIS WARRANT CONTAINS AN ARTIFICIAL WATERMARK ON THE BACK. HOLD AT AN EQUAL DISTANCE FROM THE FRONT AND BACK. DO NOT CASH.

STATE OF WASHINGTON  
OFFICE OF STATE TREASURER OLYMPIA

98-557-1251 561080E

OFFICE OF ATTORNEY GENERAL  
(360) 586-3003

Reg. No.	Agency	Sub. Agcy.	Warrant No.	Mo.	Day	Yr.
06277	1000		561080E	10	04	2006

PAY THIS AMOUNT

PAY TO THE ORDER OF

PAY ONLY THREE THOUSAND SIX HUNDRED SEVENTY THREE AND 97/100 DOLLARS

\$3,673.97

NEGOTIABLE FOR 180 DAYS ON OR AFTER ABOVE DATE

PRESTON GATES & ELLIS LLP  
925 4TH AVE. STE 2900  
SEATTLE WA 98104-1158

*Michael J. Murphy*

MICHAEL J. MURPHY, STATE TREASURER

⑈ 4321 ⑈ ⑆ 25105576 ⑆ 56108005 ⑈