

NO. 05-35774; 05-35780  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

WASHINGTON STATE  
REPUBLICAN PARTY, et al.,  
  
Appellees/Plaintiffs,

WASHINGTON STATE  
DEMOCRATIC CENTRAL  
COMMITTEE, et al.,  
  
Appellees/Plaintiffs Intervenors,

LIBERTARIAN PARTY OF  
WASHINGTON STATE, et al.,  
  
Appellees/Plaintiffs Intervenors,

v.

STATE OF WASHINGTON, et al.,  
  
Appellants/Defendants Intervenor,

WASHINGTON STATE GRANGE,  
  
Appellant/Defendant Intervenor.

DECLARATION OF JOHN  
J. WHITE, JR. IN  
SUPPORT OF APPELLEE  
WASHINGTON STATE  
REPUBLICAN PARTY'S  
OPPOSITION TO STATE'S  
FEE MOTION

JOHN J. WHITE, JR. declares under penalty of perjury under the laws of the State of Washington and the United States of America as follows:

1. I am one of the attorneys for the plaintiffs in this lawsuit, am competent to testify, and make this declaration of my own personal knowledge. I submit this declaration in support of Appellee Washington State Republican Party's Opposition to State's Fee Motion.

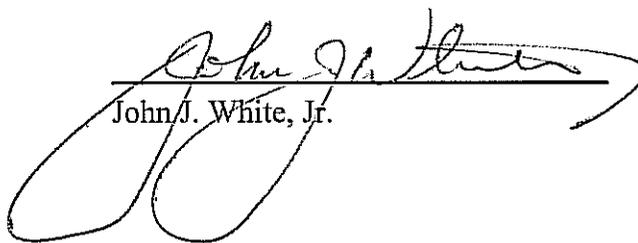
2. Shortly after the Ninth Circuit's decision, counsel for the State contacted me and requested information on the attorneys' fees incurred by the Republican Party. At my direction, the information was prepared and sent to the State. Attached hereto as Exhibit 1 is a true and correct copy of an e-mail dated September 12, 2006 from David McDonald titled "Republican Party v. Logan/Reed – attorney fees and costs." Included with the e-mail was an e-mail dated September 11, 2006 from James Pharris which was titled the same. The September 11 e-mail from the State contained a typographical error in my e-mail address. The following day, David McDonald, counsel for the Washington State Democratic Party, told me of the prior day e-mail and forwarded a copy to me.

3. Attached hereto as Exhibit 2 is a true and correct copy of an e-mail dated September 14, 2006 from James Pharris titled "Attorney fees – FOR SETTLEMENT PURPOSES ONLY."

4. Attached hereto as Exhibit 3 is a true and correct copy of an e-mail dated September 15, 2006 from me to David McDonald titled "Republican Party v. Logan – Ninth Circuit fee and cost issues."

5. Attached hereto as Exhibit 4 is a true and correct copy of an e-mail dated September 18, 2006 from Richard Shepard titled "Republican Party v. Logan – Ninth Circuit fee and cost issues."

SIGNED this 7th day of May, 2008, in Kirkland, Washington.



John J. White, Jr.

**EXHIBIT 1**

**John White**

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**From:** McDonald, David (SEA) [davidm@prestongates.com]  
**Sent:** Tuesday, September 12, 2006 11:18 AM  
**To:** John White  
**Subject:** FW: Republican Party v. Logan/Reed - attorney fees and costs

Here is the mail.

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**From:** Pharris, James (ATG) [mailto: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

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

4/30/2008

## **EXHIBIT 2**

**John White**

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**From:** Pharris, James (ATG) [JamesP@ATG.WA.GOV]  
**Sent:** Thursday, September 14, 2006 5:45 PM  
**To:** John White  
**Subject:** Attorney fees--FOR SETTLEMENT PURPOSES ONLY

I have concurrence from the client about proposing a 10% discount on each attorney fee bill. Tomorrow I'll formalize it in an offer and convey it to you, David, and Richard. I hope I have properly updated your e-mail address.

# **EXHIBIT 3**

**John White**

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**From:** John J. White Jr. [white@lfa-law.com]  
**Sent:** Friday, September 15, 2006 2:26 PM  
**To:** 'McDonald, David (SEA)'; 'Pharris, James (ATG)'; 'richard@shepardlawoffice.com'  
**Cc:** 'Even, Jeff (ATG)'; 'Kevin Hansen'  
**Subject:** RE: Republican Party v. Logan - Ninth Circuit fee and cost issues

The Republican Party also agrees to the terms of the proposed settlement of its costs and fees in the Ninth Circuit proceeding related to the appeal of Judge Zilly's July, 2005 decision through the date of the settlement, irrespective of further proceedings in the case. We will prepare and circulate an order today. I will incorporate the numbers provided by the other political parties' counsel.

My suggestion would be to circulate a copy for review and get confirmation from each counsel by e-mail. I shall then indicate agreement per the e-mail and arrange for transmission to the court.

John J. White, Jr.  
[white@lfa-law.com](mailto:white@lfa-law.com)  
(425) 822-9281 ext. 321

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Tax Advice Notice: IRS Circular 230 requires us to advise you that, if this communication or any attachment contains any tax advice, the advice is not intended to be used, and cannot be used, for the purpose of avoiding federal tax penalties. A taxpayer may rely on professional advice to avoid federal tax penalties only if the advice is reflected in a comprehensive tax opinion that conforms to stringent requirements. Please contact us if you have any questions about Circular 230 or would like to discuss our preparation of an opinion that conforms to these IRS rules.

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**From:** McDonald, David (SEA) [mailto:davidm@prestongates.com]  
**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.

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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

4/29/2008

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 4**

**John White**

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**From:** richard@shepardlawoffice.com  
**Sent:** Monday, September 18, 2006 10:50 AM  
**To:** McDonald, David (SEA); John White; Pharris, James (ATG)  
**Cc:** Even, Jeff  
**Subject:** RE: Republican Party v. Logan - Ninth Circuit fee and cost issues

This is OK with me.

Richard Shepard, Attorney at Law  
Shepard Law Office, Inc.  
818 S. Yakima Ave., #200  
Tacoma, WA 98405  
253-383-2235

-----Original Message-----

**From:** McDonald, David (SEA) [mailto:davidm@prestongates.com]  
**Sent:** Monday, September 18, 2006 10:40 AM  
**To:** John White; Pharris, James (ATG); Richard Shepard (E-mail)  
**Cc:** Even, Jeff  
**Subject:** FW: Republican Party v. Logan - Ninth Circuit fee and cost issues

John, I made one minor edit to avoid an ambiguity (though the sentence that follows the edit in the original would probably also cover the ambiguity in a pinch). Otherwise, fine with me.

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**From:** John J. White Jr. [mailto:white@lfa-law.com]  
**Sent:** Monday, September 18, 2006 10:25 AM  
**To:** McDonald, David (SEA); 'Pharris, James (ATG)'; richard@shepardlawoffice.com  
**Cc:** 'Even, Jeff (ATG)'  
**Subject:** RE: Republican Party v. Logan - Ninth Circuit fee and cost issues

I have re-worked the order to reflect David's concerns about ambiguity as to future fees and proceedings. Jim Pharris has indicated his agreement with the concept, and has authorized me to affix his name, unless I hear from him to the contrary. If anyone has any remaining concerns, or proposed changes, please let me know.

John J. White, Jr.  
[white@lfa-law.com](mailto:white@lfa-law.com)  
(425) 822-9281 ext. 321

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you have any questions about Circular 230 or would like to discuss our preparation of an opinion that conforms to these IRS rules.

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**From:** McDonald, David (SEA) [mailto:davidm@prestongates.com]  
**Sent:** Friday, September 15, 2006 5:57 PM  
**To:** white@lfa-law.com; Pharris, James (ATG); richard@shepardlawoffice.com  
**Cc:** Even, Jeff (ATG)  
**Subject:** RE: Republican Party v. Logan - Ninth Circuit fee and cost issues

John, I don't think the limitation in this order is as clear as it should be. We are not foregoing any claims for fees related to any petitions for cert (which would fit within "appeal" as defined). I think it should be limited to fees and costs incurred to date in the Ninth Circuit portion of the Appeal and that no waiver is intended of any claims for further proceedings in the appeal or in any other aspect of the case (including district court proceedings).

As to my amount of costs:

The combined number of pages in my two briefs was 57 (23+34) and the binding charge on each of the two briefs was \$1.25 a copy. At 26 copies of each brief, 10 cents a page plus binding charge totals \$213.20 in costs.

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**From:** John J. White Jr. [mailto:white@lfa-law.com]  
**Sent:** Friday, September 15, 2006 5:11 PM  
**To:** 'Pharris, James (ATG)'; richard@shepardlawoffice.com; McDonald, David (SEA)  
**Cc:** 'Even, Jeff (ATG)'  
**Subject:** RE: Republican Party v. Logan - Ninth Circuit fee and cost issues

Here is the draft stipulation and order. I have left the Democrats' cost figure blank, because I do not have the number handy.

John J. White, Jr.  
[white@lfa-law.com](mailto:white@lfa-law.com)  
(425) 822-9281 ext. 321

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**From:** Pharris, James (ATG) [mailto:JamesP@ATG.WA.GOV]  
**Sent:** Friday, September 15, 2006 3:14 PM  
**To:** richard@shepardlawoffice.com; white@lfa-law.com; McDonald, David (SEA)  
**Cc:** Even, Jeff (ATG)  
**Subject:** RE: Republican Party v. Logan - Ninth Circuit fee and cost issues

We'll accept your figures.

-----Original Message-----

**From:** richard@shepardlawoffice.com [mailto:richard@shepardlawoffice.com]  
**Sent:** Friday, September 15, 2006 12:55 PM  
**To:** Pharris, James (ATG); white@lfa-law.com; McDonald, David (SEA)  
**Cc:** Even, Jeff (ATG)  
**Subject:** RE: Republican Party v. Logan - Ninth Circuit fee and cost issues

The Libertarian Party agrees to the outlined settlement structure. However, my calculations are slightly at variance with Jim's calculations.

By my calculation the LP invoices show \$16,642.00 for fees, but \$1,323.32 for costs. Thus,  $\$16,642.00 \times .9 = \$14,977.80$ , and  $\$14,977.80 + \$1,323.32 = \$16,301.12$

Assuming the LP receives a check in the amount of \$16,301.12 by the end of this month, and assuming further that I will not be required to file a Form 9 or otherwise petition for an award, I will sign an appropriate order.

Richard Shepard, Attorney at Law  
Shepard Law Office, Inc.  
818 S. Yakima Ave., #200  
Tacoma, WA 98405  
253-383-2235

-----Original Message-----

**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

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Jim