The Honorable Thomas S. Zilly

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.

DEAN LOGAN, King County Records & Elections Division Manager; et al.,
Defendants,

STATE OF WASHINGTON, et al.,
Defendant Intervenors

WASHINGTON STATE GRANGE,
Defendant Intervenors.

No. CV05-0927Z

WASHINGTON STATE GRANGE'S ANSWER TO INTERVENOR PLAINTIFF LIBERTARIANS COMPLAINT

FOSTER PEPPER & SHEFELMAN PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299 ♦ 206-447-4400

I. ANSWER

In answer to the Libertarian Party's Complaint To Intervene For Declaratory Judgment And Other Relief ("Complaint") alleged by the intervenor plaintiff Libertarians in this case, the defendant-intervenor Washington State Grange answers and alleges as follows:

[Note: The Libertarians' pleading includes several un-numbered paragraphs under the heading "Summary Of Action", which appear before the heading captioned "COMPLAINT". Those un-numbered paragraphs appear to be merely a summary of what the ensuing numbered paragraphs of the Complaint claim rather than separate allegations of fact to be admitted or denied under the Civil Rules. To the extend those un-numbered paragraphs before the "COMPLAINT" allegations were intended to be separate allegations to be admitted or denied, this defendant-intervenor denies them for the reasons stated in the ensuing numbered paragraphs answering the numbered paragraphs of the Complaint.]

1. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint, and therefore denies them.

2. This defendant-intervenor admits that Ms. Bennett was a candidate for governor in the 2004 election, but at this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the other allegations in paragraph 2 of the Complaint, and therefore denies them.

3. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint, and therefore denies them.

4. This defendant-intervenor admits the defendant County Auditors named in paragraph 4 of the Complaint have the responsibilities provided by Washington law. On information and believe, this defendant-intervenor also admits the residence location of those Auditors as alleged in paragraph 4. In further Answer to the Complaint's identification of the

defendants in paragraph 4, this defendant-intervenor notes that the Court has granted the State of Washington, the Washington Secretary of State Sam Reed, the Washington Attorney General Rob McKenna, and the Washington State Grange permission to intervene in this action as defendant-intervenors. The defendant-intervenor Washington State Grange was the proponent of Initiative 872.

5. This defendant-intervenor admits the allegation in paragraph 5 that this case involves a federal question and that jurisdiction is proper in this Court.

6. This defendant-intervenor admits that the allegation in paragraph 6 that venue lies within this Western District of Washington at Seattle.

7. The allegations in paragraph 7 of the Complaint assert self-serving legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Moreover, those assertions are not even an accurate summary or characterization of the law. This defendant-intervenor further notes in answer to paragraph 7 that that paragraph's assertion relating to "the right of a party to select its nominees" is irrelevant to this suit, because the primary system established by the voters' overwhelming enactment of Initiative 872 does not select the candidate or nominee for any political party. Instead, it determines the two candidates or nominees for the general election ballot.

8. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 8 of the Complaint.

9. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 concerning other parties' assertions and/or interpretations. This defendant-intervenor admits that Initiative 872 speaks for itself.

10. This defendant-intervenor admits that Initiative 872 and the voters pamphlet speak for themselves. For the reasons set forth in this Answer, this defendant-intervenor denies the remaining assertions and allegations in paragraph 10 of the Complaint.

11. This defendant-intervenor admits that Initiative 872 and the voters pamphlet speak for themselves. For the reasons set forth in this Answer, this defendant-intervenor denies the remaining assertions and allegations in paragraph 11 of the Complaint.

12. The allegations in paragraph 12 of the Complaint assert legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Moreover, those assertions are not even an accurate summary or characterization of the law.

13. The legal argument asserted in paragraph 13 of the Complaint is too vague to determine if it contains a factual allegation to be admitted or denied, and this defendant-intervenor accordingly denies it.

14. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 14 of the Complaint. Moreover, contrary to the legal arguments asserted in this paragraph of the Complaint, the primary system established by the voters' adoption of Initiative 872 does not select "standard-bearer" for any political party. Instead, it determines the two candidates or nominees for the general election ballot.

15. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 15. This defendant-intervenor admits that the WAC provision cited in the second sentence of paragraph 15 speaks for itself, and accordingly denies that sentence's partial characterization of that provision and its legal effect.

16. This defendant-intervenor admits that §17 of the Initiative is what paragraph 16 apparently refers to as a "repealer section", but denies that the statutes superceded by the primary system established by the enactment of Initiative 872 "remain valid law". At this moment, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in the paragraph 16 regarding what the State has or has not previously "recognized", but admits that to the extent such "recognition" is stated in the court pleadings referred to in this paragraph, those pleadings should speak for themselves.

17. This defendant-intervenor admits that the primary system established by the enactment of Initiative 872 superceded inconsistent provisions of state law, but denies that the law provides plaintiffs the "rights" and protections alleged in paragraph 17 of the Complaint.

18. The argument asserted in paragraph 18 of the Complaint is speculation rather than an allegation of fact as required under the Civil Rules, and is accordingly denied.

19. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 19 of the Complaint.

20. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in the first sentence of paragraph 20 of the Complaint. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the "national trademark" assertion in the second sentence of paragraph 20 or whether plaintiff has taken all steps required to preserve the "trademark" rights alluded to in that sentence, and therefore denies that same.

21. The allegations in paragraph 21 of the Complaint assert speculation, legal arguments, and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Moreover, the *Storer* decision characterized in this paragraph speaks for itself, and thus this paragraph's partial characterization of it is denied.

22. At this time, this defendant-intervenor is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22, and therefore denies the same.

23. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 23 of the Complaint.

24. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 24 of the Complaint. Moreover, this paragraph's arguments relating to "the adulteration of the LP's nomination process" are irrelevant to this suit, because the primary system established by the voters' overwhelming enactment of

Initiative 872 does not select the candidate or nominee for any political party. Instead, it determines the two candidates or nominees for the general election ballot.

25. The argument asserted in paragraph 25 of the Complaint alleges a hypothetical rather than allegation of fact to be admitted or denied under the Civil Rules.

26. The allegations in paragraph 26 of the Complaint assert legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Moreover, the *Williams* decision selectively quoted in this paragraph speaks for itself, and the legal conclusion proposed by this paragraph is not an accurate characterization of the law as it relates to this case.

27. The allegations in paragraph 27 of the Complaint assert legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Moreover, the cases and statute selectively quoted and characterized in this paragraph speak for themselves, and the legal conclusions proposed by this paragraph are not an accurate characterization of the law as it relates to this case. This defendant-intervenor denies that Initiative 872 is arbitrary and denies due process rights for LP candidates.

28. This defendant-intervenor realleges and incorporates by reference its above answers to the paragraphs that the Complaint realleges and incorporates in paragraph 28.

29. This defendant-intervenor admits a controversy exists concerning the Complaint's claim that our State's primary system under Initiative 872 is unconstitutional, but for the reasons noted in this Answer, denies the remaining allegations and assertions in paragraph 29 of the Complaint.

30. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 30 of the Complaint.

31. This defendant-intervenor denies the argument in paragraph 31 of the Complaint that statutes which were superceded by the primary system established by the enactment of Initiative 872 "remain valid law" and therefore cannot be "overridden" by the Secretary's rules.

32. The allegation in paragraph 32 of the Complaint asserts a legal conclusion rather than an allegation of fact, and is therefore denied.

33. The allegation in paragraph 33 of the Complaint asserts a legal conclusion rather than an allegation of fact, and is therefore denied.

34. The allegation in paragraph 34 of the Complaint asserts a legal conclusion rather than an allegation of fact, and is therefore denied.

35. This defendant-intervenor admits that Initiative 872 does not have an express severability clause, but denies the assertion in paragraph 35 of the Complaint that the entire Initiative is therefore void if any portion of it is unconstitutional.

36. For the reasons noted in this Answer, this defendant-intervenor denies the allegations in paragraph 36 of the Complaint. Moreover, the attorney fee provision alleged does not apply to recovery against this defendant-intervenor.

37. This defendant-intervenor realleges and incorporates by reference its above answers to the paragraphs that the Complaint realleges and incorporates in paragraph 37.

38. For the reasons noted in this Answer, this defendant-intervenor denies the allegations in paragraph 38 of the Complaint.

39. For the reasons noted in this Answer, this defendant-intervenor denies the allegations in paragraph 39 of the Complaint.

40. For the reasons noted in this Answer, this defendant-intervenor denies the allegations in paragraph 40 of the Complaint.

41. For the reasons noted in this Answer, this defendant-intervenor denies the allegations in paragraph 41 of the Complaint. Moreover, the attorney fee provision alleged does not apply to recovery against this defendant-intervenor.

42. The Complaint's Prayer For Relief requires no reply under the Civil Rules, and is therefore denied.

43. All allegations in the Complaint not specifically admitted above are denied.

II. DEFENSES

By way of further answer to the Complaint, and as further defenses, this defendant-intervenor alleges:

44. The Complaint fails to state a claim upon which relief can be granted.

45. To the extent the Complaint alleges "as applied" rather than "facial" invalidity of the upcoming September 2005 primary, this action is prematurely brought.

46. To the extent that the Complaint alleges any sort of trademark or tradename type protection of the party "label", the Complaint's allegations are barred by, e.g., the doctrines of laches, waiver, and estoppel. To the extent that these plaintiffs are alleging rights based on their alleged national "trademark" of the libertarian label, this defendant-intervenor further answers that these plaintiffs have not pled or demonstrated their prior conduct protecting that label from unauthorized use under the trademark laws.

47. To the extent that the Complaint alleges any sort of equitable protection of the party "label" or entitlement to a Court Order imposing the previously existing "Montana" primary system upon the State of Washington, the Complaint's allegations are barred by, e.g., the doctrines of unclean hands.

III. PRAYER FOR RELIEF

Having fully Answered the Complaint, this defendant-intervenor respectfully requests the following relief from this Court:

1. Entry of a judgment dismissing the Complaint with prejudice, and denying the Complaint's requested injunctive, declaratory, and other relief;

2. Entry of a judgment declaring that Washington's election law as established by Initiative 872 does not deprive the plaintiffs of any legally cognizable rights protected by the constitution or laws of the United States or the State of Washington;

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3. Entry of a judgment awarding defendant-intervenor recovery of its costs and attorney fees to the full extent allowed by law;

4. Permission to amend the pleadings to add additional matters verified during discovery or to conform to the evidence offered at the time of hearing or trial; and

5. Such other relief as the Court deems proper, just, or equitable.

RESPECTFULLY SUBMITTED this 10th day of June, 2005.

FOSTER PEPPER & SHEFELMAN PLLC

Thomas F. Ahearne, WSBA No. 14844
Attorneys for Defendant-Intervenor
WASHINGTON STATE GRANGE.

FOSTER PEPPER & SHEFELMAN PLLC
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SEATTLE, WASHINGTON 98101-3299 ♦ 206-447-4400