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 PLAINTIFF REPUBLICANS' COMPLAINT

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I. ANSWER

In answer to the Complaint For Declaratory Judgment And For Injunctive Relief Regarding Initiative 872 And Primary Elections ("Complaint") alleged by the plaintiff Republicans in this case, the defendant-intervenor Washington State Grange answers and alleges as follows:

1. The allegations in paragraph 1 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.

2. The allegations in paragraph 2 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, the assertions relating to "the selection of a political party's candidates and nominees" 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.

3. This defendant-intervenor admits that our State's voters overwhelmingly enacted Initiative 872, which became effective on or about December 2, 2004. The remaining allegations in paragraph 3 of the Complaint assert self-serving legal arguments and legal conclusions concerning that enactment, 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.

4. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 4 of the Complaint.

5. This defendant-intervenor denies the assertions in paragraph 5 that "Initiative 872 is unconstitutional" and that "this is an action to protect the First Amendment

rights of the Party and its adherents to advocate and promote their vision for the future without censorship or interference by the State and County Auditors". Instead, this is an action by the Political Parties to quash the First Amendment and political speech rights of persons running for public office, to nullify the right of Washington voters to enact their laws by Initiative, and to entice judicial activism by demanding that this federal court impose the type of primary system that the Political Parties could not succeed in getting our State Legislature or our State's voters to enact.

6. This defendant-intervenor admits that this case involves a federal question and that jurisdiction is proper in this Court. The remaining allegations in paragraph 6 of the Complaint assert self-serving legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied.

7. This defendant-intervenor admits that venue lies within this Western District of Washington at Seattle.

8. 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 8 of the Complaint, and therefore denies them. Moreover, what is intended by several allegations in this paragraph (e.g., those relating to "powers inherent" and "functions inherent" in a political party) are too vague to meaningfully admit or deny.

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 of the Complaint, and therefore denies them.

10. 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 10 of the Complaint, and therefore denies them.

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11. 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 11 of the Complaint, and therefore denies them.

12. 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 12 of the Complaint, and therefore denies them.

13. 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 13 of the Complaint, and therefore denies them.

14. 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 14 of the Complaint, and therefore denies them.

15. This defendant-intervenor admits the defendant County Auditors named in paragraph 15 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 15. In further Answer to the Complaint's identification of the defendants in paragraph 15, 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.

16. This defendant-intervenor admits that the primary established by Initiative 872 will be conducted in September 2005, but at this time is currently without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint concerning the County Auditor quotation stated in the last sentence of that paragraph. The remaining allegations in paragraph 16 assert self-serving legal arguments and

legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Those assertions, moreover, are not even an accurate summary or characterization of the law – for they set forth quotations out of context and without acknowledgment of provisions superceded by Initiative 872. More specifically, the election system established by the voters' adoption of Initiative 872 defines "partisan office" as "a public office for which a candidate may indicate a political party preference on his or her declaration of candidacy and have that preference appear on the primary and general election ballot in conjunction with his or her name", and establishes that "any party or independent preferences are shown for the information of voters only". [Initiative §4 & §7(3).] 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 the candidate or nominee for any political party, but rather determines the two candidates or nominees for the general election ballot, while allowing each candidate to disclose to the voters his or her own political party preference.

17. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 17 of the Complaint.

18. For the reasons set forth in this Answer, this defendant-intervenor denies the assertions and allegations in paragraph 18 of the Complaint.

19. This defendant-intervenor admits that Initiative 872 and the voters pamphlet referred to in paragraph 19 speak for themselves. The remaining allegations in paragraph 19 assert self-serving legal arguments and legal conclusions rather than allegations of fact, and therefore need not be admitted or denied. Those assertions, moreover, are not even an accurate summary or characterization of the law. 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 the candidate, nominee, or "standard-bearer" for any political party. Instead, it determines the two candidates or nominees for the general election ballot.

20. The legal argument asserted in paragraph 20 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.

21. The allegations in paragraph 21 of the Complaint primarily assert self-serving legal arguments and legal conclusions rather than allegations of fact. Moreover, this paragraph's arguments relating to "the adulteration of the Party'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. Moreover, the arguments in this paragraph relating to "candidates' messages" and the political parties' complaints about the prospect of the voters (rather than the Political Parties) selecting the two candidates for the general election ballot confirm this defendant-intervenor's prior observation that this is really an action by the Political Parties to quash the First Amendment and political speech rights of persons running for public office, and to secure from this federal court the type of primary system that the Political Parties could not succeed in getting our State Legislature or our State's voters to enact.

22. The allegation in paragraph 22 of the Complaint asserts a self-serving legal argument and legal conclusion rather than an allegation of fact, and therefore need not be admitted or denied. Moreover, that assertion is not even an accurate summary or characterization of the law since it ignores the superceding effect of the enactment of Initiative 872.

23. The allegations in paragraph 23 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 since they ignore the superceding effect of the enactment of Initiative 872. The election system established under Initiative 872 does not deny the plaintiff

equal protection of the law as suggested by the section heading above this paragraph of the Complaint.

24. The *Reed* decision selectively quoted and characterized in paragraph 24 of the Complaint speaks for itself, and therefore that paragraph's self-serving partial characterization of that Court decision is denied.

25. The *Jones* and *Reed* decisions selectively quoted and characterized in paragraph 25 of the Complaint speak for themselves, and therefore that paragraph's self-serving partial characterization of those Court decisions is denied.

26. This defendant-intervenor denies the allegations in the first sentence of paragraph 26, and in response to the second sentence admits that the Initiative and voters pamphlet speak for themselves.

27. 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 27 of the Complaint, and therefore denies them. In any event, however, this paragraph's allegation concerning "candidates of the Party" is irrelevant to this suit, because the primary system established by the voters' overwhelming enactment of Initiative 872 does not select the candidate of any political party. Instead, it determines the two candidates or nominees for the general election ballot.

28. The allegations in paragraph 28 of the Complaint concerning plaintiffs' "rights" assert self-serving legal arguments and legal conclusions rather than allegation of fact, and therefore need not be admitted or denied. For the reasons set forth in this Answer, this defendant-intervenor denies the remaining allegations in paragraph 28 of the Complaint.

29. The allegations in paragraph 29 of the Complaint concerning plaintiffs' "rights" assert self-serving legal arguments and legal conclusions rather than allegation of fact, and therefore need not be admitted or denied. For the reasons set forth in this Answer, this defendant-intervenor denies the remaining allegations in paragraph 29 of the Complaint.

30. This defendant-intervenor realleges and incorporates by reference its above answers to the paragraphs that the Complaint realleges and incorporates in paragraph 30.

31. 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 previously noted in this Answer, denies the remaining allegations and assertions in paragraph 31 of the Complaint.

32. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 32 of the Complaint.

33. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 33 of the Complaint.

34. This defendant-intervenor admits that Initiative 872 does not have an express severability clause, but denies the assertion in paragraph 34 of the Complaint that the entire Initiative is therefore void if any portion of it is unconstitutional.

35. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 35 of the Complaint. Moreover, the attorney fee provision alleged does not apply to recovery against this defendant-intervenor.

36. This defendant-intervenor realleges and incorporates by reference its above answers to the paragraphs that the Complaint realleges and incorporates in paragraph 36.

37. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 37 of the Complaint.

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

39. This defendant-intervenor realleges and incorporates by reference its above answers to the paragraphs that the Complaint realleges and incorporates in paragraph 39.

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

41. 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. This defendant-intervenor realleges and incorporates by reference its above answers to the paragraphs that the Complaint realleges and incorporates in paragraph 42.

43. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 43 of the Complaint.

44. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 44 of the Complaint.

45. For the reasons previously noted in this Answer, this defendant-intervenor denies the allegations in paragraph 45 of the Complaint.

46. This defendant-intervenor denies the allegations in paragraph 46 of the Complaint. Moreover, the attorney fee provision alleged does not apply to recovery against this defendant-intervenor.

47. The Complaint's Prayers For Relief require no reply under the Civil Rules, and are therefore denied.

48. 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:

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

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

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51. 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.

52. 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.

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

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;

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

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

RESPECTFULLY SUBMITTED this 10th day of June, 2005.

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WASHINGTON STATE GRANGE.

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