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**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

WASHINGTON STATE REPUBLICAN
PARTY, CHRISTOPHER VANCE,
BERTABELLE HUBKA, STEVE
NEIGHBORS, BRENT BOGER, MARY
COLLINS, MICHAEL YOUNG,

Plaintiffs,

v.

DEAN LOGAN, King County Records &
Elections Division Manager; BOB
TERWILLIGER, Snohomish County
Auditor; VICKY DALTON, Spokane County
Auditor, GREG KIMSEY, Clark County
Auditor, CHRISTINA SWANSON, Cowlitz
County Auditor, VERN SPATZ, Grays
Harbor County Auditor, PAT GARDNER,
Pacific County Auditor, DIANE L.
TISCHER, Wahkiakum County Auditor,
DONNA ELDRIDGE, Jefferson County
Auditor,

Defendants,

WASHINGTON DEMOCRATIC CENTRAL
COMMITTEE, PAUL BERENDT,

Proposed Interveners

LIBERTARIAN PARTY OF
WASHINGTON STATE, RUTH BENNETT
and J. S. MILLS,

Proposed Interveners

Case No:

[Proposed]
LIBERTARIAN PARTY'S
COMPLAINT TO INTERVENE FOR
DECLARATORY JUDGMENT AND
OTHER RELIEF

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PARTY'S COMPLAINT TO INTERVENE FOR DECLARATORY JUDGMENT AND
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SUMMARY OF ACTION

This is an action to protect the First and Fourteenth Amendment rights of the LP and its adherents to assure access to the general election ballot for their nominated candidates and to advocate and promote their vision for the future without subtle or overt censorship or interference by the State through the County Auditors acting under color of the laws of the State of Washington. Initiative 872, the subject of challenge, is unconstitutional.

The Libertarian Party of Washington State (“the LP”) seeks to intervene in the above entitled action to ensure its interests are properly and timely represented to this court. Initiative 872, adopted by Washington State voters in November 2004, was expressly intended to defeat the constitutional right of the LP and its adherents to nominate candidates without outside interference as recognized in *California Democratic Party v. Jones* 530 U.S. 567, 120 S.Ct. 2402, 147 L. Ed. 2d 502 (2000) (“*Jones*”) and *Democratic Party of Washington v. Reed*, 343 F.3d 1198, 1204 (9th Cir. 2003) *cert. denied* 540 U.S. 1213 (2004) (“*Reed*”). I-872 accomplishes this by claiming that the primary does not “nominate” candidates, but rather “qualifies” them for the general election ballot. However, the partisan nature of the primary remains under I-872 and the political parties are deprived of their rights to nominate their own standard bearers.

Consequently I-872 deprives the LP of its ability to determine the political message it wishes to bring to the voters and further adds to voter confusion by removing assurances that the LP label actually means something. I-872 thus violates the LP’s First Amendment rights of expressive association and ultimately impoverishes the guarantees afforded by the First Amendment to the voters.

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1 More specifically, emergency rules implemented by the Washington Secretary of
2 State on May 18, 2005, allegedly to implement I-872, administratively “repeal” statutes
3 expressly authorizing the LP to nominate its candidates by way of convention.

4 Moreover, I-872 allows any candidate regardless of the nature of his/her relationship to
5 the LP or its philosophy to use the “Libertarian” label when running for office.

6 Further, by allowing only two candidates to appear on the general election ballot
7 I-872 erects a constitutionally impermissible standard for minor party and independent
8 candidate access to the general election ballot. I-872 thus violates the LP’s Fourteenth
9 Amendment right to access to the general election ballot.

10 COMPLAINT

11 PARTIES

- 12 1. The Libertarian Party of Washington State (“the LP”) is a political party
13 organized in 1972 for the purposes of promoting the political beliefs of its
14 members, electing public officers who are members of the Libertarian Party, and
15 in advocating principles and policies for operation of government affairs
16 consistent with the libertarian philosophy.
- 17 2. Ruth Bennett is a resident of the Western District of Washington and is Chair of
18 the Libertarian Party of Washington State, elected pursuant to its Constitution and
19 Bylaws. Ms. Bennett is the former Libertarian candidate for governor in the 2004
20 election and a qualified elector within the state of Washington.
- 21 3. J.S. Mills is a resident of the Western District of Washington and a member of the
22 Libertarian Party. Mr. Mills is a former Chair of the Libertarian Party of
23 Washington State, a former Libertarian candidate for U.S. Senator in the 2004
24

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1 election, a likely candidate for U.S. Senator in the 2006 election and a qualified
2 elector within the state of Washington.

3 4. Defendant Dean Logan, King County Records & Elections Division Manager and
4 Bob Terwilliger, Snohomish County Auditor, Vicky Dalton, Spokane County
5 Auditor, Greg Kimsey, Clark County Auditor, Christina Swanson, Cowlitz
6 County Auditor, Vern Spatz, Grays Harbor County Auditor, Pat Gardner, Pacific
7 County Auditor, Diane L. Tischer, Wahkiakum County Auditor and Donna
8 Eldridge, Jefferson County Auditor, (the "County Auditors") are election officers
9 in the State, having the overall responsibility under RCW 29A.04.025 to conduct
10 primary elections within their respective counties, of primary elections and are
11 responsible, consistent with the rules established by the Secretary, to provide and
12 tabulate ballots for such elections. The County Auditors, except Vicky Dalton,
13 reside in the Western District of Washington. Ms. Dalton resides in the Eastern
14 District.

15 **JURISDICTION AND VENUE**

16 5. This case presents a federal question related to the federal constitutional rights of
17 persons residing within the Western District and other parts of Washington. This
18 court has jurisdiction under 28 U.S.C. §§ 1331, 1343, 2201 and 2202.

19 6. Venue properly lays before this court under 28 U.S.C. § 1391.

20 **FACTS**

21 7. The First and Fourteenth Amendments of the United States Constitution
22 guarantee individuals the right to associate in a political party, the right of a party
23 to select its nominees for public office, the right of a party to determine the basis
24

25 [Proposed] LIBERTARIAN PARTY'S
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1 of selection and the right, upon a minimal showing of support, of access to the
2 general election ballot.

3 8. Initiative 872, as set forth in both Section 2 (“In the event of a final court
4 judgment invalidating the blanket primary, this People’s Choice Initiative will
5 become effective....”) and Section 18, was expressly intended to defeat the
6 constitutional right of the LP and its adherents to nominate candidates, recognized
7 by the U.S. Supreme Court in *Jones, supra*, and *Reed, supra*.

8 9. Under Initiative 872, as interpreted by the Secretary of State and implemented by
9 the County Auditors, the primary is the only means by which the LP can advance
10 its candidates to the general election ballot. However, RCW 29A.52.112, adopted
11 under I-872, states: “For partisan office, if a candidate has expressed a party or
12 independent preference on the declaration of candidacy, then that preference will
13 be shown after the name of the candidate on the primary and general election
14 ballots” The same statute also provides that the “top two” candidates
15 receiving the most votes will advance to the general election. The Secretary has
16 asserted that this means the top two candidates advance whether or not they are
17 the same political party.

18 10. I-872 was intended to force the LP to modify its message. The sponsors’ official
19 statement in support of the Initiative states, “Parties will have to recruit candidates
20 with broad public support and run campaigns that appeal to all voters.” This
21 attempt at forced message modification was rejected as a legitimate state interest
22 by both the Supreme Court in *Jones* and the Ninth Circuit in *Reed*.

23 11. There is no material First Amendment difference between Initiative 872 and
24 Washington’s previous blanket primary system held unconstitutional by the Ninth

1 Circuit. Indeed, the voter’s pamphlet statement prepared by I-872’s proponents
2 stated “I-872 will restore the kind of choice in the primary that voters enjoyed for
3 seventy years with the blanket primary.”

4 12. Initiative 872 was explicitly intended to re-establish a partisan primary that
5 facilitates cross-over and ticket-splitting voting, much like the “blanket primary”
6 invalidated in *Reed*. While the circumstances of a particular election cycle may
7 recommend cross-over votes or ticket splitting to the LP, the right to choose
8 whether to allow it is a clear First Amendment right reserved to the LP. *Tashjian*
9 *v. Republican Party of Connecticut*, 479 U.S. 208, 107 S.Ct. 544, 93 L.Ed.2d 514,
10 (1986), *Beaver v. Clingman*, 363 F.3d 1048, 120 A.L.R.5th 707 (10th Cir. 2004),
11 *cert. granted*, 125 S.Ct. 27, 159 L.Ed.2d 857, (NO. 04-37). By limiting the
12 choices of the LP to include or exclude voters the state is depriving the LP of its
13 First Amendment right to determine the basis of its participation in the election
14 process.

15 13. Other interests asserted as the basis for adopting I-872, codified as RCW
16 29A.04.206, are not legitimate grounds for invading the right of political
17 association. See, *Reed*.

18 14. RCW 29A.04.127 forces the LP to permit any voter to participate in selection of
19 the LP’s standard-bearer without regard to the voter’s partisan affiliation or
20 beliefs, and without the LP’s permission. The State forces the LP and its
21 adherents, without option, to associate with those who may not share their beliefs
22 or may be antagonistic to them.

23 15. Historically (except for the 2002 and 2004 elections) the LP has nominated its
24 candidates by convention as provided by prior state law. However, on May 18,

1 2005, the Secretary of State adopted emergency rules allegedly to implement I-
2 872 that effectively preempted and eliminated existing statutory mechanisms
3 (R.C.W. §§ 29A.20.110 through 29A.20.201) for the LP to exercise its right to
4 nominate its candidates by convention, WAC 434-215-015.

5 16. I-872 contained a repealer section. But R.C.W. §§29A.20.110 through
6 29A.20.201 were not repealed by I-872, and remain valid law. The LP's right to
7 nominate by convention was expressly recognized by the State in the blanket
8 primary litigation, see the trial court pleadings in *Reed, supra*, as a device to help
9 the LP protect its message from dilution and/or disbursal of voter support.

10 17. The Initiative, as implemented by State officials, eliminates mechanisms
11 previously enacted by the State to protect the First Amendment rights of the LP
12 and its adherents and provides no effective substitute mechanism for the LP to
13 exercise its right to limit participation in the nomination process and thereby
14 protect its adherents' right of association from forced dilution.

15 18. Because the LP is smaller and not as likely to run as many candidates as the
16 Democratic or Republican Parties, the candidacy of an "imposter" (non-member
17 candidate running under the Libertarian banner) or "renegade" (member of the LP
18 running under the LP banner but without compliance with internal LP nomination
19 rules) in a highly publicized race could result in not only dilution or suppression
20 of the LP message, but in wholesale redefinition of the message. I-872 provides
21 no mechanism to protect the identity of the LP or its message and opens the door
22 to confusion among the voters as to what the LP stands for.

23 19. Neither the laws of the State nor the rules adopted or proposed by the Secretary
24 provide any mechanism for the LP to effectively exercise its right of association

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1 in connection with the partisan primary in which it is forced by State law to
2 participate. Any individual candidate may appropriate the LP's name, regardless
3 of whether the LP desires affiliation with that person.

4 20. I-872 deprives the LP of its proprietary right to the use of the party name, thus
5 leading to voter confusion regarding which candidate(s) are speaking for the party
6 and which are imposters or renegades appropriating the party name for their own
7 purposes. The name "Libertarian Party" is a nationally trademarked name and
8 therefore may be used by candidates only with LP consent.

9 21. The risk of imposter or renegade candidates also increases the risk of splintered
10 parties and unrestrained factionalism, which interest the US Supreme Court has
11 deemed compelling enough to justify denying an otherwise qualified candidate a
12 place on the general election ballot. *Storer v. Brown*, 415 U.S. 724 (U.S., 1974).
13 There is no logical reason why an interest articulated by a state and recognized by
14 the Supreme Court as a compelling interest, should suddenly lose its compelling
15 character because a political party articulates the same interest.

16 22. The Libertarian Party of Washington State has adopted rules governing the
17 nomination of its candidates and prohibiting persons who are not members of the
18 LP from indicating an affiliation with the LP when declaring a candidacy for
19 public office.

20 23. The conduct of any partisan primary by State officials without implementation of
21 an effective mechanism for the LP to exercise its right to determine participation
22 in connection with that primary according to the rules of the LP is an action by
23 those State officials under law and color of law that deprives Plaintiffs of their
24 civil rights.

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- 1 **24.** The State, through its filing statute, compels the LP to associate with any person
2 who files a declaration of candidacy expressing a “preference” for the LP,
3 regardless whether the LP desires association with the person or believes that
4 person best articulates the LP’s chosen temporal message for that election cycle.
5 The LP and its adherents are irreparably injured by the forced adulteration of the
6 LP’s nomination process and the risk of diluted or disbursed support for the LP
7 message.
- 8 **25.** Dilution and/or dispersal of the LP vote in any partisan primary carries with it the
9 risk that no LP candidate will obtain enough votes to advance to the general
10 election ballot. For example, if six candidates carrying the LP name each receive
11 10% of the vote at a partisan primary, and one candidate of each of the other
12 parties receives 20%, the Secretary maintains there would be no LP candidate on
13 the general election ballot, despite the receipt by LP candidates of 60% of the
14 total vote.
- 15 **26.** The Fourteenth Amendment equal protection and due process clauses guarantee
16 reasonable access for minor party and independent candidates to the general
17 election ballot. “The right to form a party for the advancement of political goals
18 means little if a party can be kept off the election ballot and thus denied an equal
19 opportunity to win votes. So also, the right to vote is heavily burdened if that vote
20 may be cast only for one of two parties at a time when other parties are clamoring
21 for a place on the ballot.” *Williams v. Rhodes*, 393 U.S. 23, 31, 89 S.Ct. 5,
22 11 (1968).
- 23 **27.** “States may condition access to the general election ballot by a minor-party or
24 independent candidate upon a showing of a modicum of support among the

1 potential voters for the office.” *Munro v. Socialist Workers Party*, 479 U.S. 189,
2 193, 107 S.Ct. 533, 536 (1986), but no state may require a minor party or
3 independent candidate to show support of more than 5% of the voters to be placed
4 on the general election ballot. Compare, *Rhodes, supra*, to *Jenness v. Fortson*,
5 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971). I-872 requires the minor
6 party or independent candidate to receive at least the second highest number of
7 votes to advance to the general election ballot, a threshold that amounts to a
8 moving target, dependent on the number of candidates for a particular office as
9 well as other variables completely outside the minor party or independent
10 candidate’s control. This threshold is thus arbitrary and a denial of due process
11 rights for LP candidates.

12 **FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT**

- 13 28. Plaintiffs reallege and incorporate by reference Paragraphs 1-27.
- 14 29. An actual controversy exists between Plaintiffs in Intervention and Defendants
15 regarding federally protected rights. Plaintiffs are entitled to declaratory
16 judgment establishing the unconstitutionality of the State’s primary system.
- 17 30. R.C.W. § 29A.24.031 and newly promulgated WAC 434-215-015 are
18 unconstitutional to the extent they, or either of them, allow any person who
19 wishes to be a candidate to appropriate the Libertarian Party label without
20 compliance with the LP nomination rules.
- 21 31. R.C.W. §§29A.20.110 through 29A.20.201 were not repealed by I-872, and
22 remain valid law. The Secretary of State was not entitled to override them by
23 emergency rule.
- 24

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1 32. The LP is constitutionally entitled to nominate its standard bearers for election to
2 public office by convention and/or caucus without substantive interference from
3 the State and/or the Defendant County Auditors.

4 33. Initiative 872 is unconstitutional to the extent it deprives the LP of the right to
5 determine who may participate in the nomination of its standard bearers.

6 34. Initiative 872 is unconstitutional to the extent it requires the LP to demonstrate
7 any more than a “modicum of support” for advancing to the general election
8 ballot.

9 35. Initiative 872 lacks a severability clause. Therefore, if any portion of I-872 is
10 unconstitutional, the entire enactment is void.

11 36. Pursuant to 42 U.S.C. § 1983 *et seq.*, Plaintiffs in Intervention are entitled to a
12 declaratory judgment regarding their civil rights and to their reasonable attorneys’
13 fees and costs in this case.

14 **SECOND CAUSE OF ACTION: INJUNCTIVE RELIEF**

15 37. Plaintiffs reallege and incorporate by reference Paragraphs 1-36 above.

16 38. There exists an imminent and ongoing threat by State officials to deprive
17 Plaintiffs in Intervention of their civil rights by requiring Plaintiffs to select the
18 nominees of the LP through a primary process in which Plaintiffs are not
19 permitted to exercise their First Amendment rights of association and exclusion.

20 39. Plaintiffs will suffer irreparable injury if the LP’s nominee is selected in a primary
21 in which the LP is deprived of its right to define participation in that primary.

22 40. Plaintiffs are entitled to preliminary and permanent injunctive relief restraining
23 State officials from:
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1 a) conducting any partisan primary without affording the LP
2 reasonable opportunity in advance of that primary to exercise its right to define
3 participation in that primary, by voters and by candidates, and including whether the LP
4 wishes to participate in a primary or alternatively nominate its candidates to the general
5 election ballot by convention or caucus;

6 b) conducting any partisan primary without implementing a
7 reasonable mechanism to effectuate the LP's exercise of its right to limit participation in
8 that primary to candidates who are current members of the LP;

9 c) conducting any general election without affording the LP clear and
10 easily ascertainable standards for showing a "modicum" of voter support necessary for
11 access to the general election ballot;

12 d) encouraging or facilitating, directly or indirectly, cross-over voting
13 or ticket-splitting in connection with any partisan primary except to the extent expressly
14 authorized by the LP for that primary.

15 41. Plaintiffs are entitled to their reasonable attorneys' fees and costs in connection
16 with this action pursuant to 42 U.S.C. § 1983 *et seq.*

17 **PRAYER FOR RELIEF**

18 Plaintiffs respectfully request the Court enter judgment:

- 19 1. Declaring R.C.W. § 29A.24.031 and newly promulgated WAC 434-215-015
20 unconstitutional.
- 21 2. Declaring that R.C.W. §§29A.20.110 through 29A.20.201 remain valid law and
22 ordering the defendants to place on the general election ballot any candidate who
23 complies with their provisions.

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- 1 3. Declaring that the LP is entitled to nominate its standard bearers for election to
2 public office by convention and/or caucus without substantive interference from
3 the State and/or the Defendant County Auditors.
- 4 4. Declaring Initiative 872 unconstitutional to the extent it deprives the LP of the
5 right to determine who may participate in the nomination of its standard bearers.
- 6 5. Declaring Initiative 872 unconstitutional to the extent it requires the LP to
7 demonstrate any more than a “modicum of support” for advancing to the general
8 election ballot.
- 9 6. Declaring Initiative 872 unconstitutional in its entirety because it lacks a
10 severability clause.
- 11 7. Preventing State officials from depriving the LP and its adherents of their civil
12 rights by requiring the LP to select the nominees of the LP through a primary
13 process in which LP members not permitted to exercise their First Amendment
14 rights of association and exclusion.
- 15 8. Grant Plaintiffs preliminary and permanent injunctive relief restraining State
16 officials from:
 - 17 a) conducting any partisan primary without affording the LP
18 reasonable opportunity in advance of that primary to exercise its right to define its
19 participation in that primary, by voters and by candidates, and including whether the LP
20 wishes to participate in a primary or alternatively nominate its candidates to the general
21 election ballot by convention or caucus;
 - 22 b) conducting any partisan primary without implementing a
23 reasonable mechanism to effectuate the LP’s exercise of its right to limit participation in
24 that primary to candidates who are current members of the LP;

1 e) conducting any general election without affording the LP clear and
2 easily ascertainable standards for showing a “modicum” of voter support necessary for
3 access to the general election ballot;

4 f) encouraging or facilitating, directly or indirectly, cross-over voting
5 or ticket-splitting in connection with any partisan primary except to the extent expressly
6 authorized by the LP for that primary.

7 9. Awarding Plaintiffs reasonable attorneys’ fees and costs in connection with this
8 action pursuant to 42 U.S.C. § 1983 *et seq.*

9 10. Granting such further relief as the Court deems appropriate, including leave to
10 amend these pleadings as discovery proceeds.

11 DATED Thursday, May 19, 2005, at Tacoma, Washington.

12 SHEPARD LAW OFFICE, INC.,
13

14
15 RICHARD SHEPARD, WSBA # 16194
16 Attorney for Proposed Intervenors LIBERTARIAN
17 LP OF WASHINGTON STATE, RUTH
18 BENNETT, and J. S. MILLS
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VERIFICATION OF COMPLAINT

I, RUTH BENNETT, declare on penalty of perjury under 28 U.S.C. § 1746 that I am a Plaintiff in the above entitled matter. I have reviewed the facts alleged in the foregoing complaint and certify the same are true and correct to be best of my knowledge and belief.

Dated this ____ day of May 19, 2005, at Seattle, Washington.

RUTH BENNETT, Plaintiff

I, J. S. MILLS, declare on penalty of perjury under 28 U.S.C. § 1746 that I am a Plaintiff in the above entitled matter. I have reviewed the facts alleged in the foregoing complaint and certify the same are true and correct to be best of my knowledge and belief.

Dated this ____ day of May 19, 2005, at Tacoma, Washington.

J. S. MILLS, Plaintiff