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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,

vs.

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

Defendants,

STATE OF WASHINGTON, et al.,

Defendant Intervenors,

WASHINGTON STATE GRANGE, et al.,

Defendant Intervenors.

NO. CV05-0927-TSZ

[PROPOSED]

ORDER GRANTING
PERMANENT INJUNCTION

THIS MATTER came before the Court on Plaintiffs' proposed permanent injunction
in response to this Court's Order dated July 15, 2005, docket no. 87.

FINDINGS OF FACT

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1. Initiative 872, enacted by Washington voters in November 2004, established a “top two” primary system in which a properly registered voter has “the right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation of either the voter or the candidate.” Initiative 872, Sec. 5.

2. On May 18, 2005, the Secretary of State adopted “emergency regulations” for the purpose of implementing the provisions of Initiative 872 and instructing local election officials to treat as repealed various statutes that were either expressly repealed by Initiative 872 or, in the Secretary’s opinion, impliedly repealed by Initiative 872.

3. Plaintiff Republican Party has asked the Court to (a) rule as a matter of law that Initiative 872 and Washington’s filing statutes, RCW 29A.24.030 and RCW 29A.24.031, impose an unconstitutional burden on its First Amendment rights; and (b) grant a permanent injunction preventing any partisan election under Initiative 872 and the identification of any candidate as “Republican” if not authorized by the Republican Party.

4. Plaintiff Democratic Party has asked the Court to (a) rule as a matter of law that Initiative 872 imposes an unconstitutional burden on its First Amendment rights by (i) allowing any candidate, regardless of the candidate’s party affiliation or relationship to the party, to self-identify as a member of a political party and to appear on the primary and general election ballots as a candidate for that party, and (ii) allowing any voter, regardless of party affiliation, to vote for any political party candidate in the primary election; and (b) grant a permanent injunction preventing the State of Washington or any political subdivision of the State from enforcing or implementing Initiative 872 at any partisan election.

5. Plaintiff Libertarian Party has asked the Court to (a) rule as a matter of law that Initiative 872 and Washington’s filing statutes, RCW 29A.24.030 and RCW 29A.24.031, impose an unconstitutional burden on its First Amendment rights and unconstitutionally limit minor party ballot access; and (b) grant a permanent injunction preventing any partisan election pursuant to Initiative 872, the identification of any candidate as “Libertarian” if not authorized

1 by the Libertarian Party, and any election which requires more than a “modicum of support”
2 to secure general election ballot access.

3 6. Each of the Plaintiff political parties have adopted rules governing participation
4 by voters and candidates in the selection of the political party’s standard-bearers.

5 7. Defendants State of Washington and Washington State Grange argued that
6 Initiative 872 does not impose a severe burden on the political parties’ First Amendment rights
7 and did not demonstrate that the Initiative is narrowly tailored to meet a compelling state
8 interest.

9 8. The effect of WAC 434-215-015, one of the Secretary’s “emergency
10 regulations,” was to strike statutory provisions providing for minor party and independent
11 nominating conventions. Pursuant to the law as it existed prior to the passage of Initiative 872,
12 the time period for minor party and independent candidate nominating conventions for partisan
13 office has expired under RCW 29A.20.121.

14 9. There is no good reason to deprive independent and minor party candidates of
15 the right to run for office this year or minor political parties of their right to nominate their
16 candidates solely because the Secretary adopted emergency regulations that the Court has now
17 determined have no basis in law other than Initiative 872. The State took the position that
18 Initiative 872 had repealed those provisions and by means of its emergency regulations, made
19 any attempt by independents and minor parties to conduct the required conventions an
20 apparently meaningless action. Further, given the response of County Auditors to
21 correspondence from the Republican Party, any such nominating conventions would have been
22 disregarded by the State, under its regulations and I-872.

23 10. Under the law as it existed prior to the passage of Initiative 872, independent
24 and minor party candidates only appear on the November ballot. Inasmuch as County Auditors
25 cannot know what the November ballot will look like until the September primary has been
26 conducted, neither the State nor the County Auditors will suffer any prejudice if the Court
27 provides as part of this Order an opportunity for independent and minor party candidates to
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1 qualify to file for office that is consistent with the opportunity they would have had but for the
2 passage of Initiative 872.

3 **CONCLUSIONS OF LAW**

4 1. Primary elections constitute a “critical juncture” in the elective process and a
5 “vital forum” for expressive association among voters and political parties; “a basic function
6 of a political party is to select the candidates for public office to be offered to the voters at
7 general elections.” Clingman v. Beaver, __ U.S. __, 125 S. Ct. 2029, 2042 (May 23, 2005)
8 (O’Connor, J. concurring).

9 2. Although a political party does not have a constitutional right to have its
10 candidates on the general election ballot, it does have a constitutional right to nominate its
11 “standard bearers.”

12 3. Initiative 872 is identical, in all constitutionally relevant respects, to the blanket
13 primary invalidated in Reed: the Initiative (1) allows candidates to designate a party preference
14 when filing for office, without participation or consent of the party; (2) requires that political
15 party candidates be nominated in Washington’s primary; (3) identifies candidates on the
16 primary ballot with party preference; (4) allows voters to vote for any candidate for any office
17 without regard to party preference; (5) allows the use of an open, consolidated primary ballot
18 that is not limited by political party and allows crossover voting; and (6) advances candidates
19 to the general election based on open, “blanket” voting.

20 4. The political parties cannot be forced to associate on a ballot with unwanted
21 candidates. Allowing any candidate, including those who may oppose party principles and
22 goals, to appear on the ballot with a party designation will foster confusion and dilute the
23 party’s ability to rally support behind its candidates. There is no material difference between
24 the filing statute under I-872, RCW 29A.24.030, and the prior filing statute, RCW 29A.24.031.

25 5. Initiative 872 imposes a severe burden on the Plaintiffs’ First Amendment right
26 to associate by: (a) allowing any voters, regardless of their partisan affiliation, to choose a
27 party’s nominees; and (b) allowing any candidate to force an association with a political party
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1 without being authorized to do so by the internal rules of that party merely by self-designation
2 at the time of filing. Because Initiative 872 is not narrowly tailored to advance any legitimate
3 and compelling state interest, it is unconstitutional.

4 6. Initiative 872 is not severable because the deletion of its unconstitutional
5 provisions would substantially dismantle the partisan primary system approved by the voters.

6 7. In Washington, an invalid statute is a nullity – as inoperative as if it had never
7 been passed. The law there remains as it existed prior to the passage of Initiative 872.

8 8. RCW 29A.24.031(3) imposes a severe burden on the Plaintiffs' First
9 Amendment right to associate insofar as it allows any candidate to force an association
10 between him or herself and a political party, whether or not authorized to do so under the
11 internal rules of the party, and to appear on the primary and general election ballots as a
12 candidate for that party merely by making a choice to do so at the time of filing his or her
13 candidacy. Because RCW 29A.24.031(3) is not narrowly tailored to advance any legitimate
14 and compelling state interest, it is unconstitutional.

15 9. It would be inequitable to deprive minor party or independent candidates access
16 to the general election ballot as a result of the State's position that Initiative 872 repealed
17 statutory provisions regarding nominating conventions and the emergency regulations, coupled
18 with the expiration of the statutory period in which to hold nominating conventions. The
19 invalidation of Initiative 872 revived the nominating procedures available for minor party and
20 independent candidates, but such revival of the right to nominate would be meaningless if the
21 current deadline is held to apply.

22 10. Because the Court declares Initiative 872 unconstitutional on the grounds that
23 it violates the political parties' associational rights, the Court does not reach the equal
24 protection argument raised by the Republican Party or the minor party ballot access argument
25 raised by the political parties.

26 **ORDER**

27 The Court hereby GRANTS all Plaintiffs a Permanent Injunction as follows:
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1 1. The Court enjoins the State of Washington, or any political subdivision of the
2 State, from enforcing, implementing, or conducting any election under the provisions of
3 Initiative 872, as codified in Title 29A RCW.

4 2. The Court enjoins the State of Washington, or any political subdivision of the
5 State, from enforcing or implementing the “party preference” provision of the filing statute
6 under Initiative 872, RCW 29A.24.030(3), or the “party designation” provision of the filing
7 statute, RCW 29A.24.031(3), as part of any election to the extent that doing so would allow
8 a candidate to force an association on ballots and in publicly-financed documents between him
9 or herself and a political party without having been authorized to be so associated by the
10 internal rules of that political party.

11 3. The Court enjoins the State of Washington, or any political subdivision of the
12 State, from placing on the ballot the name of a candidate along with a designation of a political
13 party, unless the candidate is authorized by the political party to appear on the ballot as a
14 candidate of that party.

15 4. The Court enjoins the State of Washington, or any political subdivision of the
16 State, from placing in the Voters’ Pamphlet the name of a candidate along with a designation
17 of a political party, unless the candidate is authorized by the political party to appear on the
18 ballot as a candidate of that party.

19 5. The Court enjoins the State of Washington, or any political subdivision of the
20 State, from enforcing or implementing the following emergency regulations adopted by the
21 Secretary of State on May 18, 2005: (1) amendments to WAC 434-208-060; WAC 434-215-
22 012; WAC 434-215-070; WAC 434-230-010; WAC 434-230-040; WAC 434-230-050; WAC
23 434-230-060; WAC 434-230-170; WAC 434-262-160; WAC 434-381-120; (2) new sections:
24 WAC 434-215-010; WAC 434-215-015; WAC 434-230-035; WAC 434-262-012; and (3)
25 repealed sections: WAC 434-230-210; WAC 434-262-005.

26 6. The Court enjoins the State of Washington, or any political subdivision of the
27 State, from refusing to recognize the validity of any minor party or independent candidate
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1 nominating convention held on or before August 27, 2005, on the grounds that the convention
2 did not comply with the dates set forth in RCW 29A.20.121, provided that the notice
3 provisions of RCW 29A.20.131 have been complied with and the convention otherwise
4 complies with Title 29A.20 RCW.

5 7. The Court enjoins the State of Washington, or any political subdivision of the
6 State, from refusing to recognize the validity of any minor party or independent candidacy on
7 the grounds that a declaration of candidacy filed on or before September 23, 2005 did not
8 comply with the dates set forth in RCW 29A.20.200, RCW 29A.20.201, RCW 29A.24.030,
9 or RCW 29A.24.031.

10 8. The Court retains jurisdiction in this action to enforce the terms of this
11 injunction.

12 DATED this _____ day of July, 2005.

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JUDGE THOMAS S. ZILLY
UNITED STATES DISTRICT COURT

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Presented by:

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/s/ John J. White, Jr.

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