EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al.,

Plaintiffs,

WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiff Intervenors,

LIBERTARIAN PARTY OF WASHINGTON STATE, et al.,

Plaintiff Intervenors.

v.

STATE OF WASHINGTON, et al.,

Defendant Intervenors,

WASHINGTON STATE GRANGE, et al.,

Defendant Intervenors.

NO. CV05-0927-TSZ

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872 AND PRIMARY ELECTIONS

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NATURE OF ACTION

1. The First and Fourteenth Amendments to the United States Constitution guarantee the right of individuals to associate in a political party, the right of that party and its adherents to select their nominees for partisan political office, and the right of that party and its adherents to limit participation in the process of selecting nominees to those voters the party and its adherents identify as sharing their interests and persuasions. As the Ninth Circuit noted in striking down Washington's blanket primary, " ... the Washington statutory scheme prevents those voters who share their affiliation from selecting their party's nominees. The right of people adhering to a political party to freely associate is not limited to getting together for cocktails and canapés. Party adherents are entitled to associate to choose their party's nominees for public office." *Democratic Party of Washington v. Reed*, 343 F.3d 1198 (9th Cir. 2003), *cert. denied,* 540 U.S. 1213, *cert. denied sub nom., Washington State Grange v. Washington State Democratic Party*, 541 U.S. 957 (2004) ("*Reed*").

2. One of the fundamental purposes of the First Amendment is to provide for and promote competition between ideas in American civilization. This purpose is advanced by requiring the selection of a political party's candidates and nominees by its adherents rather than by those opposed to or indifferent to the party.

3. The State of Washington ("the State") has enacted Initiative 872, attempting to prevent the Washington State Republican Party ("the Party") and its adherents from selecting their nominees, and to force the Party to be associated publicly with candidates who have not been nominated by the Party, who will alter the political message and agenda the Party seeks to advance, and who will confuse the voting public with respect to what the Party and its adherents stand for. The State seeks to appropriate the use of the Republican Party's name in primaries and general elections in order to protect the political interests of the incumbent and the well-known at the expense of the committed and the innovative. Acting under color of law, state and local officials

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force the Party and its adherents to include supporters of other parties and political interests in determining which, or whether any, candidate will carry the Republican Party name in the general election.

4. Initiative 872, as set forth in both Sections 2 and 18, was expressly intended to defeat the First Amendment rights of the Party and its adherents, recognized by the U.S. Supreme Court in *California Democratic Party v. Jones*, 530 U.S. 567 (2000) and *Reed* ("In the event of a final court judgment invalidating the blanket primary, this People's Choice Initiative will become effective…."). The Initiative, as implemented by State and local officials, eliminates mechanisms previously enacted by the state to protect these rights and provides no effective substitute mechanisms for the Party and its adherents to protect their rights of association and of determining the Party's message.

5. 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 acting under color of the laws of the State of Washington. Initiative 872 is unconstitutional.

JURISDICTION AND VENUE

6. Plaintiffs' rights of political association and political expression are guaranteed against abridgement by the State and those acting under color of its laws by the First and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. § 1983. This case presents a federal question involving federally-protected rights, including freedom of speech and protection against state-imposed burdens upon the associational rights of the Party and its adherents, as set forth in *Jones* and *Reed*. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331, 1343(a)(3), 2201 and 2202.

7. Defendants reside in the Western District of the State of Washington (the "Western District") and the conduct that gives rise to Plaintiffs' claims substantially occurred and threatens to

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occur within the Western District. Venue for this action lies within the Western District pursuant to 28 U.S.C. § 1391(b).

PARTIES

8. The Party is a "major political party" as defined in RCW 29A.04.086 and is organized for the purposes of promoting the political beliefs of its adherents, selecting and supporting candidates who support the political beliefs of the Party's adherents and electing public officials who will conduct government affairs in a manner consistent with the Party's philosophy. The Party has all the powers inherent in a political organization and is empowered to perform all functions inherent in a political party.

9. Plaintiff Luke Esser is a resident of the Western District. He is the elected Chairman of the Republican State Committee, the governing body of the Party, and is the political and administrative head of the Party pursuant to its Bylaws and RCW 29A.80.020 *et seq.*

10. Plaintiff Marcy Collins is a resident of Washington.

11. Plaintiff Steve Neighbors is a resident of the Western Districtand a registered voter in Snohomish County.

12. Plaintiff Michael Young is a resident of the Western District and a registered voter in King County.

13. The Defendant are Sam Reed in his capacity as Secretary of State of the State of Washington, Robert McKenna in his capacity as Attorney General of Washington and the State of Washington. Secretary Reed is the chief officer in the State, having the overall responsibility to conduct primary elections within each respective county, including providing and tabulating ballots for such elections consistent with the rules established by the Secretary of State ("the Secretary"). Secretary Reed and Attorney General McKenna intervened as defendants. The State was substituted as a defendant for the original defendants, the "County Auditors" by an agreed order of the Court on July 13, 2005.

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WASHINGTON'S PARTISAN PRIMARY

14. The Defendants will administer partisan primaries in 2008. Pursuant to the laws of the State, the Party is required to advance its candidates for congressional, state and county offices by means of partisan political primaries administered by the Secretary and the County Auditors. Under RCW 29A.52.116, "Major political party candidates for all partisan elected offices, except for president and vice-president . . . must be nominated at primaries held under this chapter." The mandatory notice of the primary under RCW 29A.52.311 must contain "the proper party designation" of each candidate in the primary. Under RCW 29A.52.112, adopted by I-872, if a candidate for partisan office "has expressed a party or independent preference on the declaration of candidacy, then that preference will be shown after the name of the candidate on the primary and general election ballots." The same statute also provides that the "top two" vote-getters in the primary will advance to the general election. The Secretary has asserted that only the two candidates who receive the most votes in the primary will advance to the general election even if both candidates are associated with the same political party. Former Defendants Logan, Kimsey, Dalton and Terwilliger have all asserted: "At this time, I am not aware of any language associated with the Initiative that contemplates a partisan nomination process separate from the primary."

15. Neither the laws of the State nor the rules adopted or proposed by the Secretary provide any mechanism for the Party and its adherents to effectively exercise their right of association in connection with the partisan primary in which they are forced by State law to participate. Any person may appropriate the Party's name, regardless of whether the Party desires affiliation with that person.

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16. The State, through its filing statute, compels the Party and its adherents to associate with any person who files a declaration of candidacy expressing a "preference" for the Party, regardless whether the Party and its adherents desire association with that person.

17. In addition to requiring the Party and its adherents to accept as their candidate any person without regard to the person's political philosophy or participation in Party affairs, RCW 29A.04.127 forces the Party and its adherents to permit any voter to participate in selection of the Party's standard-bearer without regard to the voter's partisan affiliation or beliefs. The State thus forces the Party and its adherents to associate with those who do not share their beliefs or are openly antagonistic to them. Initiative 872 was intended to establish a *de facto* blanket primary in response to a judicial determination that the blanket primary is unconstitutional, to facilitate cross-over voting and ticket-splitting, depriving the Party and its adherents of their right to prevent supporters of other political parties and interests from participating in their candidate selection and nomination processes. It was intended to force the Party to modify its message or have a modified message forced upon it by the simple expedient of eliminating the selected spokesmen of the Party and its adherents in favor of a spokesman selected by non-adherents of the Party. The sponsors' official statement in support of the Initiative states, "Parties will have to recruit candidates with broad public support and run campaigns that appeal to all voters." This attempt to force the Party to modify its message was rejected as a legitimate state interest by both the Supreme Court in *Jones* and the Ninth Circuit in *Reed*.

18. The other interests asserted as the basis for adopting I-872, codified as RCW 29A.04.206, were also rejected in *Reed* as legitimate grounds for invading the right of political association.

19. The Party and its adherents are irreparably injured by the forced adulteration of the Party's nomination process, by the State's active encouragement of cross-over voting and ticket-splitting, and by the resulting dilution and potential suppression pf the Party's message. The

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presence and participation of non-party voters in the partisan primary inevitably alters candidates' messages and actions and thereby dilute the Party's message and influence. Dilution of Party adherents' vote in any partisan primary carries with it the risk that the Party will be denied a place on the general election ballot to the extent that only the "top two" vote-getters will appear on the general election ballot. For example, if seven candidates carrying the Party name each receive 10% of the vote at a partisan primary, and two candidates of other parties each receive 15%, the Secretary maintains there would be no Party candidate on the general election ballot, despite the receipt by candidates carrying the Party's identification of 70% of the total vote.

DENIAL OF EQUAL PROTECTION OF LAWS

20. In contrast to the State's invasion of the associational rights of the Party and its adherents by denying their right to nominate candidates, minor parties are expressly authorized to nominate candidates through a convention process under RCW 29A.20.121.

21. The State also affords minor political parties a mechanism to protect themselves from individuals or groups who attempt to hijack the party name or force an association with the minor political party. RCW 29A20.171(1) recognizes that there can be only one nominee of a minor political party. RCW 29A.20.171(2) provides for "a judicial determination of the right to the name of a minor political party." The Defendants intend to administer the State's partisan primary in a manner that denies the Party the right to nominate its candidates and control the use of its name. In doing so, the State protects the First Amendment right of association to minor political parties and their adherents while denying the same protection to the Party and its adherents.

DEMOCRATIC PARTY OF WASHINGTON V. REED

22. In *Reed*, the Ninth Circuit held that Washington cannot force a political party and its adherents to adulterate their nomination process. The *Reed* decision overturned Washington's blanket primary system, which -- like I-872 -- prevented the Party from controlling its own

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nomination process. The court, rejecting a litany of "compelling interests" advanced by the State to justify the invasion of political parties' First Amendment rights, stated that "[t]he remedy available to the Grangers and the people of the State of Washington for a party that nominates candidates carrying a message adverse to their interests is to vote for someone else, not to control whom the party's adherents select to carry their message." *Reed*, 343 F.3d at 1206-1207.

23. In *Jones*, the Supreme Court noted that forced political association violates the principles set forth in its earlier cases by forcing "political parties to associate with—to have their nominees, and hence their positions, determined by—those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival." Jones, 530 U.S. at 577. The Supreme Court also noted that

> a corollary of the right to associate is the right not to associate. Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being.
>
> In no area is the political association's right to exclude more important than in the process of selecting its nominee.

530 U.S. at 574-575. (citations and quotation marks omitted). The Ninth Circuit's *Reed* decision followed the Supreme Court's *Jones* decision. See *Reed* 343 F.3d at 1201.

24. There is no constitutionally significant difference between Washington's new "People's Choice" primary system and the previous blanket primary system, which was held unconstitutional by the Ninth Circuit. Indeed, the voter's pamphlet statement prepared by I-872's proponents stated that "I-872 will restore the kind of choice in the primary that voters enjoyed for seventy years with the blanket primary."

DEPRIVATION OF CIVIL RIGHTS BY STATE OFFICIALS UNDER COLOR OF LAW

25. The Party has adopted rules governing the nomination of its candidates and prohibiting candidates not qualified under Party rules to represent themselves as candidates of the

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Party. The Party has provided those rules to the County Auditors.

26. The conduct of any partisan primary by State officials through the County Auditors without implementation of an effective mechanism for the Party to exercise its right to limit participation in connection with that primary to adherents of the Party is action by those officials under law and color of law that deprives Plaintiffs of their civil rights.

27. If the County Auditors are permitted to conduct a "qualifying" partisan primary with multiple "Republican" candidates listed and not chosen by the Party, plaintiffs will be irreparably harmed by the denial of their First Amendment rights. Moreover, if the County Auditors conduct partisan primaries pursuant to procedures which are known to be unconstitutional, then there is a substantial risk that the results of those primaries will be invalid.

FIRST CAUSE OF ACTION: CONDUCTING AN INVALID PRIMARY

28. Plaintiffs reallege and incorporate by reference Paragraphs 1-29 above.

29. An actual controversy exists between Plaintiffs and Defendants with regard to the exercise of Plaintiffs' federally protected rights. Plaintiffs are entitled to declaratory judgment establishing the unconstitutionality of the State's primary system.

30. RCW 29A.04.127 and RCW 29A.52.112 are unconstitutional to the extent that they authorize the County Auditors to permit non-affiliates of the Party to participate in the Party's nominee selection process.

31. RCW 29A.04.127 and RCW 29A.52.112 are unconstitutional to the extent that they authorize the Secretary and County Auditors to facilitate cross-over voting and ticket-splitting by placing Republican primary races on the same ballot as primary races for other political parties or affiliations over the objection of the Party and without requiring mechanisms to prevent voting in violation of the Party's associational rights.

32. Initiative 872 is unconstitutional because, both in isolation and in conjunction with other laws governing elections and election campaigns, it will confuse voters regarding whether

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candidates identified with the Republican Party are affiliated with the Republican Party or represent its views, and will further confuse voters regarding whether messages advanced by candidates bearing the Republican Party name on ballots are those of the Republican Party. Initiative 872 constitutes a misappropriation by the Defendants and unauthorized candidates of the Republican Party's name, which is associated in the mind of the public with the Party and its positions on important issues of the day.

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

34. Pursuant to 42 U.S.C. § 1983 *et seq.*, Plaintiffs are entitled to a declaratory judgment regarding their rights under the First Amendment and to their reasonable attorneys' fees and costs in this case.

SECOND CAUSE OF ACTION: FORCED ASSOCIATION

35. Plaintiffs reallege and incorporate by reference Paragraphs 1-34 above.

36. RCW 29A.24.030, RCW 29A.24.031 and RCW 29A.36.010 are unconstitutional under the First Amendment to the extent that they permit the State to compel the Party during a primary to publicly affiliate with candidates other than those who are qualified under Party rules to represent themselves as candidates of the Party.

37. The State's primary system, including RCW 29A.36.170, is unconstitutional under the First Amendment to the extent that it places upon the general election ballot as a candidate of the Party for any office the name of an individual who has been selected though a voting system that deprives the Party of the ability to limit participation in nominee selection to those the Party has determined should be included.

THIRD CAUSE OF ACTION: DENIAL OF EQUAL PROTECTION UNDER LAW

38. Plaintiffs reallege and incorporate by reference Paragraphs 1-37.

39. The State, through RCW 29A.20.171 and other provisions of state law, protects minor political parties from forced association with candidates who may not share the goals or objectives

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of the minor political parties and their adherents. Through the convention process and the statutory procedures to resolve competing claims to the use of a minor political party's name, that party and its adherents may prevent misrepresentations of affiliation on primary ballots prepared by the Defendants. The State discriminates among political parties by providing a mechanism for minor political parties to protect themselves from forced affiliation with candidates, but denying the same right to the Party and its adherents under RCW 29A.24.030 and RCW 29A.24.031.

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

FOURTH CAUSE OF ACTION: VIOLATION OF WASHINGTON STATE CONSITUTION

41. Plaintiffs reallege and incorporate by reference Paragraphs 1-40. In January 2004, the Washington State Grange announced the filing of Initiative 872. During the 2004 legislative session, the Grange lobbied aggressively for the Washington legislature to adopt a primary election system that was substantially similar to Initiative 872. Washington's legislature adopted a "Top Two" primary in 2004, along with a backup, open primary. The legislature adopted the replacement primary system, and the bill was forwarded to the governor. On April _1, 2004, Governor Locke vetoed the "Top Two" components of the legislation, leaving the open primary provisions of the law to become effective. The I-872 sponsors brought court action seeking to overturn the Governor's veto and reinstitute the vetoed "top two" primary. The sponsors did not seek a referendum on the replacement primary system, but did intervene in litigation related to another person's referendum filing.

42. Following the veto, I-872's sponsors launched a signature-gathering campaign. The sponsors' promotional materials, both during the signature-gathering phase and during the election campaign, represented to voters that the initiative would "restore the kind of choice that voters enjoyed for seventy years with the blanket primary." The initiative sponsors' promotional materials also represented that "minor parties would continue to select candidates the same way they do under the blanket primary. Their candidates would appear on the primary ballot for each office (as they do

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now)." On April _19, 2004, the initiative sponsors were advised in writing that petitions for Initiative 872, being circulated for signature, contained material inaccuracies. The initiative sponsors made no change to the text of the initiative.

43. Initiative 872 identified the portions of Washington's primary and election laws that it amended, that it repealed, and the new provisions added to the existing statutory scheme.

44. Initiative 872 did not include in its text the provisions of existing state law (or prior state law) regarding minor party convention rights or protections for unauthorized use of minor party political names by candidates. Nor did Initiative 872 include such statutory provisions in its list of sections of the law to be repealed.

45. Initiative 872's text violates the provisions of Article II, Section 37 of the Washington State Constitution and is void.

46. The text of Initiative 872 and the initiative sponsor's materials presented to voters in the course of the signature-gathering campaign and during the election campaign confused and misled voters regarding the effect of the initiative, violating Article II, Section 37 of the State Constitution.

FIFTH CAUSE OF ACTION: INJUNCTIVE RELIEF

47. Plaintiffs reallege and incorporate by reference Paragraphs 1-46 above.

48. There exists an imminent and ongoing threat by the County Auditors to deprive Plaintiffs of their civil rights by requiring Plaintiffs to select the candidates and nominees of the Party through a primary process in which Plaintiffs are not permitted to exercise their First Amendment rights of association.

49. Plaintiffs will suffer irreparable injury if the Party's candidates and nominees are selected in a process in which the Party is deprived of its right to define participation.

50. Plaintiffs are entitled to preliminary and permanent injunctive relief restraining the County Auditors from:

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a) conducting any partisan primary without affording the Party reasonable opportunity in advance of that primary to exercise its right to define participation in that primary;

b) conducting any partisan primary without implementing a reasonable mechanism to effectuate the Party's right to select the candidates who will carry the Party's name in that primary;

c) encouraging or facilitating, directly or indirectly, cross-over voting or ticket-splitting in connection with any partisan primary except to the extent expressly authorized by the Party for that primary; and

d) placing on a primary ballot the name of any candidate carrying the Party's name who is not qualified under the rules of the Party to stand for office as a candidate of the Party;

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

PRAYER FOR RELIEF

Plaintiffs respectfully request the Court enter judgment:

1. Declaring RCW 29A.04.127 unconstitutional;

2. Declaring RCW 29A. 24.030 and RCW 29A24.031 unconstitutional to the extent they authorize placing on a primary ballot the name of any candidate carrying the Party's name who is not qualified under the rules of the Party to stand for office as a candidate of the Party;

3. Declaring RCW 29A.36.010 unconstitutional;

4. Declaring RCW 29A.36.170 unconstitutional;

5. Declaring RCW 29A.52.112 unconstitutional;

6. Declaring Initiative 872 unconstitutional under the Constitution of the United States and declaring that the primary system in effect immediately before the passage of I-872 remains in effect;

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7. Declaring Initiative 872 unconstitutional for violating Article II, Section 37 of the Washington State Constitution, and declaring that the primary system in effect immediately before the passage of I-872 remains in effect;

8. Permanently restraining the Defendants and all those acting in active concert and participation with them from:

a) conducting any partisan primary without affording the Party reasonable opportunity in advance of that primary to exercise its right to define participation in that primary;

b) conducting any partisan primary without implementing a reasonable mechanism to effectuate the right to select the candidates who will carry the Party's name in that primary;

c) encouraging or facilitating, directly or indirectly, cross-over voting or ticket-splitting in connection with any partisan primary except to the extent expressly authorized by the Party for that primary; and

d) placing on a primary ballot the name of any candidate carrying the Party's name who is not qualified under the rules of the Party to stand for office as a candidate of the Party.

8. Awarding Plaintiffs their reasonable attorneys' fees and costs; and

9. Granting such further relief as the Court deems appropriate.

DATED this 28th day of March, 2008.

LIVENGOOD, FITZGERALD
& ALSKOG, PLLC

By: /s/ John J. White, Jr.
John J. White, Jr., WSBA #13682
Kevin B. Hansen, WSBA #28349
Attorneys for Plaintiffs

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EXHIBIT B

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2. One of the fundamental purposes of the First Amendment is to provide for and promote competition between ideas in American civilization. This purpose is advanced by requiring the selection of a political party's candidates and nominees by its adherents rather than by those opposed to or indifferent to the party.

3. The State of Washington ("the State") has enacted Initiative 872, attempting to prevent the Washington State Republican Party ("the Party") and its adherents from selecting their nominees, and to force the Party to be associated publicly with candidates who have not been nominated by the Party, who will alter the political message and agenda the Party seeks to advance, and who will confuse the voting public with respect to what the Party and its adherents stand for. The State seeks to appropriate the use of the Republican Party's name in primaries and general elections in order to protect the political interests of the incumbent and the well-known at the expense of the committed and the innovative. Acting under color of law, state and local officials

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5. 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 acting under color of the laws of the State of Washington. Initiative 872 is unconstitutional.

JURISDICTION AND VENUE

6. Plaintiffs' rights of political association and political expression are guaranteed against abridgement by the State and those acting under color of its laws by the First and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. § 1983. This case presents a federal question involving federally-protected rights, including freedom of speech and protection against state-imposed burdens upon the associational rights of the Party and its adherents, as set forth in *Jones* and *Reed*. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331, 1343(a)(3), 2201 and 2202.

7. Defendants reside in the Western District of the State of Washington (the "Western District") and the conduct that gives rise to Plaintiffs' claims substantially occurred and threatens to

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occur within the Western District. Venue for this action lies within the Western District pursuant to 28 U.S.C. § 1391(b).

PARTIES

8. The Party is a "major political party" as defined in RCW 29A.04.086 and is organized for the purposes of promoting the political beliefs of its adherents, selecting and supporting candidates who support the political beliefs of the Party's adherents and electing public officials who will conduct government affairs in a manner consistent with the Party's philosophy. The Party has all the powers inherent in a political organization and is empowered to perform all functions inherent in a political party.

9. Plaintiff ~~Christopher Vance~~ Luke Esser is a resident of the Western District. He is the elected Chairman of the Republican State Committee, the governing body of the Party, and is the political and administrative head of the Party pursuant to its Bylaws and RCW 29A.80.020 *et seq.*

~~10.Plaintiff Brent Boger is a resident of the Western District and a member of the Party's State Committee.~~

~~11.~~10. Plaintiff Marcy Collins is a resident of Washington ~~and a member of the Party's State Committee~~.

~~12.Plaintiff Bertabelle Hubka is a resident of the Western District, a Party adherent, and a registered voter in King County.~~

~~13.~~11. Plaintiff Steve Neighbors is a resident of the Western District~~, chairman of the Snohomish County Republican Party,~~ and a registered voter in Snohomish County.

~~14.~~12. Plaintiff Michael Young is a resident of the Western District~~, Chairman of the King County Republican Party,~~ and a registered voter in King County.

~~15.~~13. The Defendants ~~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~~

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~~Harbor County Auditor; Pat Gardner, Pacific County Auditor; Diane L. Tischer, Wahkiakum County Auditor; and Donna M. Eldridge, Jefferson County Auditor ("the County Auditors") are election~~ are Sam Reed in his capacity as Secretary of State of the State of Washington, Robert McKenna in his capacity as Attorney General of Washington and the State of Washington. Secretary Reed is the chief officers in the State, having the overall responsibility ~~under RCW 29A.04.025~~ to conduct primary elections within ~~their~~ each respective county~~ies~~, including providing and tabulating ballots for such elections consistent with the rules established by the Secretary of State ("the Secretary"). ~~The County Auditors, except Vicky Dalton, reside in the Western District.~~ Secretary Reed and Attorney General McKenna intervened as defendants. The State was substituted as a defendant for the original defendants, the "County Auditors" by an agreed order of the Court on July 13, 2005.

WASHINGTON'S PARTISAN PRIMARY

~~16.~~14. The Defendants will administer partisan primaries in ~~September of~~ 200~~5~~. Pursuant to the laws of the State, the Party is required to advance its candidates for congressional, state and county offices by means of partisan political primaries administered by the Secretary and the County Auditors. Under RCW 29A.52.116, "Major political party candidates for all partisan elected offices, except for president and vice-president . . . must be nominated at primaries held under this chapter." The mandatory notice of the primary under RCW 29A.52.311 must contain "the proper party designation" of each candidate in the primary. Under RCW 29A.52.112, adopted by I-872, if a candidate for partisan office "has expressed a party or independent preference on the declaration of candidacy, then that preference will be shown after the name of the candidate on the primary and general election ballots." The same statute also provides that the "top two" vote-getters in the primary will advance to the general election. The Secretary has asserted that only the two candidates who receive the most votes in the primary will advance to the general election even if both

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candidates are associated with the same political party. Former Defendants Logan, Kimsey, Dalton and Terwilliger have all asserted: "At this time, I am not aware of any language associated with the Initiative that contemplates a partisan nomination process separate from the primary."

~~17.~~15. Neither the laws of the State nor the rules adopted or proposed by the Secretary provide any mechanism for the Party and its adherents to effectively exercise their right of association in connection with the partisan primary in which they are forced by State law to participate. Any person may appropriate the Party's name, regardless of whether the Party desires affiliation with that person.

~~18.~~16. The State, through its filing statute, compels the Party and its adherents to associate with any person who files a declaration of candidacy expressing a "preference" for the Party, regardless whether the Party and its adherents desire association with that person.

~~19.~~17. In addition to requiring the Party and its adherents to accept as their candidate any person without regard to the person's political philosophy or participation in Party affairs, RCW 29A.04.127 forces the Party and its adherents to permit any voter to participate in selection of the Party's standard-bearer without regard to the voter's partisan affiliation or beliefs. The State thus forces the Party and its adherents to associate with those who do not share their beliefs or are openly antagonistic to them. Initiative 872 was intended to establish a *de facto* blanket primary in response to a judicial determination that the blanket primary is unconstitutional, to facilitate cross-over voting and ticket-splitting, depriving the Party and its adherents of their right to prevent supporters of other political parties and interests from participating in their candidate selection and nomination processes. It was intended to force the Party to modify its message or have a modified message forced upon it by the simple expedient of eliminating the selected spokesmen of the Party and its adherents in favor of a spokesman selected by non-adherents of the Party. The sponsors' official statement in support of the Initiative states, "Parties will have to recruit candidates with broad public support and run campaigns that appeal to all voters." This attempt to force the Party to modify its

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message was rejected as a legitimate state interest by both the Supreme Court in *Jones* and the Ninth Circuit in *Reed*.

~~20.~~18. The other interests asserted as the basis for adopting I-872, codified as RCW 29A.04.206, were also rejected in *Reed* as legitimate grounds for invading the right of political association.

~~21.~~19. The Party and its adherents are irreparably injured by the forced adulteration of the Party's nomination process, by the State's active encouragement of cross-over voting and ticket-splitting, and by the resulting dilution and potential suppression pf the Party's message. The presence and participation of non-party voters in the partisan primary inevitably alters candidates' messages and actions and thereby dilute the Party's message and influence. Dilution of Party adherents' vote in any partisan primary carries with it the risk that the Party will be denied a place on the general election ballot to the extent that only the "top two" vote-getters will appear on the general election ballot. For example, if seven candidates carrying the Party name each receive 10% of the vote at a partisan primary, and two candidates of other parties each receive 15%, the Secretary maintains there would be no Party candidate on the general election ballot, despite the receipt by candidates carrying the Party's identification of 70% of the total vote.

DENIAL OF EQUAL PROTECTION OF LAWS

~~22.~~20. In contrast to the State's invasion of the associational rights of the Party and its adherents by denying their right to nominate candidates, minor parties are expressly authorized to nominate candidates through a convention process under RCW 29A.20.121.

~~23.~~21. The State also affords minor political parties a mechanism to protect themselves from individuals or groups who attempt to hijack the party name or force an association with the minor political party. RCW 29A20.171(1) recognizes that there can be only one nominee of a minor political party. RCW 29A.20.171(2) provides for "a judicial determination of the right to the name of a minor political party." The Defendants intend to administer the State's partisan primary in a

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manner that denies the Party the right to nominate its candidates and control the use of its name. In doing so, the State protects the First Amendment right of association to minor political parties and their adherents while denying the same protection to the Party and its adherents.

DEMOCRATIC PARTY OF WASHINGTON V. REED

~~24.~~22. In *Reed*, the Ninth Circuit held that Washington cannot force a political party and its adherents to adulterate their nomination process. The *Reed* decision overturned Washington's blanket primary system, which -- like I-872 -- prevented the Party from controlling its own nomination process. The court, rejecting a litany of "compelling interests" advanced by the State to justify the invasion of political parties' First Amendment rights, stated that "[t]he remedy available to the Grangers and the people of the State of Washington for a party that nominates candidates carrying a message adverse to their interests is to vote for someone else, not to control whom the party's adherents select to carry their message." *Reed*, 343 F.3d at 1206-1207.

~~25.~~23. In *Jones*, the Supreme Court noted that forced political association violates the principles set forth in its earlier cases by forcing "political parties to associate with—to have their nominees, and hence their positions, determined by—those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival." Jones, 530 U.S. at 577. The Supreme Court also noted that

> a corollary of the right to associate is the right not to associate. Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being.
>
> In no area is the political association's right to exclude more important than in the process of selecting its nominee.

530 U.S. at 574-575. (citations and quotation marks omitted). The Ninth Circuit's *Reed* decision followed the Supreme Court's *Jones* decision. See *Reed* 343 F.3d at 1201.

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~~26.~~24. There is no constitutionally significant difference between Washington's new "People's Choice" primary system and the previous blanket primary system, which was held unconstitutional by the Ninth Circuit. Indeed, the voter's pamphlet statement prepared by I-872's proponents stated that "I-872 will restore the kind of choice in the primary that voters enjoyed for seventy years with the blanket primary."

DEPRIVATION OF CIVIL RIGHTS BY STATE OFFICIALS UNDER COLOR OF LAW

~~27.~~25. The Party has adopted rules governing the nomination of its candidates and prohibiting candidates not qualified under Party rules to represent themselves as candidates of the Party. The Party has provided those rules to the County Auditors.

~~28.~~26. The conduct of any partisan primary by State officials through the County Auditors without implementation of an effective mechanism for the Party to exercise its right to limit participation in connection with that primary to adherents of the Party is action by those officials under law and color of law that deprives Plaintiffs of their civil rights.

~~29.~~27. If the County Auditors are permitted to conduct a "qualifying" partisan primary with multiple "Republican" candidates listed and not chosen by the Party, plaintiffs will be irreparably harmed by the denial of their First Amendment rights. Moreover, if the County Auditors conduct partisan primaries pursuant to procedures which are known to be unconstitutional, then there is a substantial risk that the results of those primaries will be invalid.

FIRST CAUSE OF ACTION: CONDUCTING AN INVALID PRIMARY

~~30.~~28. Plaintiffs reallege and incorporate by reference Paragraphs 1-29 above.

~~31.~~29. An actual controversy exists between Plaintiffs and Defendants with regard to the exercise of Plaintiffs' federally protected rights. Plaintiffs are entitled to declaratory judgment establishing the unconstitutionality of the State's primary system.

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~~32.~~30. RCW 29A.04.127 and RCW 29A.52.112 are unconstitutional to the extent that they authorize the County Auditors to permit non-affiliates of the Party to participate in the Party's nominee selection process.

~~33.~~31. RCW 29A.04.127 and RCW 29A.52.112 are unconstitutional to the extent that they authorize the Secretary and County Auditors to facilitate cross-over voting and ticket-splitting by placing Republican primary races on the same ballot as primary races for other political parties or affiliations over the objection of the Party and without requiring mechanisms to prevent voting in violation of the Party's associational rights.

32. Initiative 872 is unconstitutional because, both in isolation and in conjunction with other laws governing elections and election campaigns, it will confuse voters regarding whether candidates identified with the Republican Party are affiliated with the Republican Party or represent its views, and will further confuse voters regarding whether messages advanced by candidates bearing the Republican Party name on ballots are those of the Republican Party. Initiative 872 constitutes a misappropriation by the Defendants and unauthorized candidates of the Republican Party's name, which is associated in the mind of the public with the Party and its positions on important issues of the day.

~~34.~~33. Initiative 872 lacks a severability clause. Therefore, if any portion of I-872 is unconstitutional, the entire enactment is void.

~~35.~~34. Pursuant to 42 U.S.C. § 1983 *et seq.*, Plaintiffs are entitled to a declaratory judgment regarding their rights under the First Amendment and to their reasonable attorneys' fees and costs in this case.

SECOND CAUSE OF ACTION: FORCED ASSOCIATION

~~36.~~35. Plaintiffs reallege and incorporate by reference Paragraphs 1-3~~45~~ above.

~~37.~~36. RCW 29A.24.030, RCW 29A.24.031 and RCW 29A.36.010 are unconstitutional under the First Amendment to the extent that they permit the State to compel the Party during a

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primary to publicly affiliate with candidates other than those who are qualified under Party rules to represent themselves as candidates of the Party.

~~38.~~37. The State's primary system, including RCW 29A.36.170, is unconstitutional under the First Amendment to the extent that it places upon the general election ballot as a candidate of the Party for any office the name of an individual who has been selected though a voting system that deprives the Party of the ability to limit participation in nominee selection to those the Party has determined should be included.

THIRD CAUSE OF ACTION: DENIAL OF EQUAL PROTECTION UNDER LAW

~~39.~~38. Plaintiffs reallege and incorporate by reference Paragraphs 1-3~~78~~.

~~40.~~39. The State, through RCW 29A.20.171 and other provisions of state law, protects minor political parties from forced association with candidates who may not share the goals or objectives of the minor political parties and their adherents. Through the convention process and the statutory procedures to resolve competing claims to the use of a minor political party's name, that party and its adherents may prevent misrepresentations of affiliation on primary ballots prepared by the Defendants. The State discriminates among political parties by providing a mechanism for minor political parties to protect themselves from forced affiliation with candidates, but denying the same right to the Party and its adherents under RCW 29A.24.030 and RCW 29A.24.031.

~~41.~~40. Plaintiffs are entitled to their reasonable attorneys' fees and costs in connection with this action pursuant to 42 U.S.C. § 1983 *et seq.*

FOURTH CAUSE OF ACTION: VIOLATION OF WASHINGTON STATE CONSITUTION

41. Plaintiffs reallege and incorporate by reference Paragraphs 1-40. In January 2004, the Washington State Grange announced the filing of Initiative 872. During the 2004 legislative session, the Grange lobbied aggressively for the Washington legislature to adopt a primary election system that was substantially similar to Initiative 872. Washington's legislature adopted a "Top Two" primary in 2004, along with a backup, open primary. The legislature adopted the replacement primary system, and the bill was forwarded to the governor. On April 1, 2004, Governor Locke

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vetoed the "Top Two" components of the legislation, leaving the open primary provisions of the law to become effective. The I-872 sponsors brought court action seeking to overturn the Governor's veto and reinstitute the vetoed "top two" primary. The sponsors did not seek a referendum on the replacement primary system, but did intervene in litigation related to another person's referendum filing.

42. Following the veto, I-872's sponsors launched a signature-gathering campaign. The sponsors' promotional materials, both during the signature-gathering phase and during the election campaign, represented to voters that the initiative would "restore the kind of choice that voters enjoyed for seventy years with the blanket primary." The initiative sponsors' promotional materials also represented that "minor parties would continue to select candidates the same way they do under the blanket primary. Their candidates would appear on the primary ballot for each office (as they do now)." On April 19, 2004, the initiative sponsors were advised in writing that petitions for Initiative 872, being circulated for signature, contained material inaccuracies. The initiative sponsors made no change to the text of the initiative.

43. Initiative 872 identified the portions of Washington's primary and election laws that it amended, that it repealed, and the new provisions added to the existing statutory scheme.

44. Initiative 872 did not include in its text the provisions of existing state law (or prior state law) regarding minor party convention rights or protections for unauthorized use of minor party political names by candidates. Nor did Initiative 872 include such statutory provisions in its list of sections of the law to be repealed.

45. Initiative 872's text violates the provisions of Article II, Section 37 of the Washington State Constitution and is void.

46. The text of Initiative 872 and the initiative sponsor's materials presented to voters in the course of the signature-gathering campaign and during the election campaign confused and misled voters regarding the effect of the initiative, violating Article II, Section 37 of the State

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Constitution.

~~SECOND FOURTH~~ FIFTH CAUSE OF ACTION: INJUNCTIVE RELIEF

~~42.~~47. Plaintiffs reallege and incorporate by reference Paragraphs 1-~~46~~44 above.

~~43.~~48. There exists an imminent and ongoing threat by the County Auditors to deprive Plaintiffs of their civil rights by requiring Plaintiffs to select the candidates and nominees of the Party through a primary process in which Plaintiffs are not permitted to exercise their First Amendment rights of association.

~~44.~~49. Plaintiffs will suffer irreparable injury if the Party's candidates and nominees are selected in a process in which the Party is deprived of its right to define participation.

~~45.~~50. Plaintiffs are entitled to preliminary and permanent injunctive relief restraining the County Auditors from:

a) conducting any partisan primary without affording the Party reasonable opportunity in advance of that primary to exercise its right to define participation in that primary;

b) conducting any partisan primary without implementing a reasonable mechanism to effectuate the Party's right to select the candidates who will carry the Party's name in that primary;

c) encouraging or facilitating, directly or indirectly, cross-over voting or ticket-splitting in connection with any partisan primary except to the extent expressly authorized by the Party for that primary; and

d) placing on a primary ballot the name of any candidate carrying the Party's name who is not qualified under the rules of the Party to stand for office as a candidate of the Party;

~~46.~~51. Plaintiffs are entitled to their reasonable attorneys' fees and costs in connection with this action pursuant to 42 U.S.C. § 1983 *et seq.*

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PRAYER FOR RELIEF

Plaintiffs respectfully request the Court enter judgment:

1. Declaring RCW 29A.04.127 unconstitutional;

2. Declaring RCW 29A.~~.~~24.030 and RCW 29A24.031 unconstitutional to the extent they authorize placing on a primary ballot the name of any candidate carrying the Party's name who is not qualified under the rules of the Party to stand for office as a candidate of the Party;

3. Declaring RCW 29A.36.010 unconstitutional;

4. Declaring RCW 29A.36.170 unconstitutional;

5. Declaring RCW 29A.52.112 unconstitutional;

6. Declaring Initiative 872 unconstitutional under the Constitution of the United States and declaring that the primary system in effect immediately before the passage of I-872 remains in effect;

7. Declaring Initiative 872 unconstitutional for violating Article II, Section 37 of the Washington State Constitution, and declaring that the primary system in effect immediately before the passage of I-872 remains in effect;

8~~7~~. Permanently restraining the ~~County Auditors~~ Defendants and all those acting in active concert and participation with them from:

a) conducting any partisan primary without affording the Party reasonable opportunity in advance of that primary to exercise its right to define participation in that primary;

b) conducting any partisan primary without implementing a reasonable mechanism to effectuate the right to select the candidates who will carry the Party's name in that primary;

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c) encouraging or facilitating, directly or indirectly, cross-over voting or ticket-splitting in connection with any partisan primary except to the extent expressly authorized by the Party for that primary; and

d) placing on a primary ballot the name of any candidate carrying the Party's name who is not qualified under the rules of the Party to stand for office as a candidate of the Party.

8. Awarding Plaintiffs their reasonable attorneys' fees and costs; and

9. Granting such further relief as the Court deems appropriate.

DATED this ~~19th~~ 28th day of ~~May~~ March, 200~~5~~.

LIVENGOOD, FITZGERALD
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