UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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

Plaintiffs,

vs.

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; and DONNA M. ELDRIDGE, Jefferson County Auditor,

Defendants.

NO. CV05-0927-TSZ

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

NOTE ON MOTION CALENDAR: FRIDAY, JUNE 10, 2005

ORAL ARGUMENT REQUESTED

I. INTRODUCTION AND RELIEF REQUESTED

This case presents once more the question whether the State of Washington ("the State") may force the Washington State Republican Party ("the Party") to have its standard-bearers chosen by persons who are unaffiliated with the party, and who may even be

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antagonistic to its programs and objectives. A preliminary injunction will restore the open primary adopted by the legislature last year and prevent the State from violating the First Amendment rights of the Republican Party and its adherents.

In 2000, the U.S. Supreme Court prohibited states from adulterating the message of political parties through forced association. *See California Democratic Party v. Jones*, 530 U.S. 567 (2000) ("*Jones*"). Following *Jones*, the Ninth Circuit struck down Washington's blanket primary in 2003 because "[t]he 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, 1204 (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*"). In response to *Reed*, the State adopted the "modified blanket primary."[1]

This case also presents the question whether the State may further infringe on the Party's First Amendment rights by forcing the Party to associate with candidates who may not share its core values and whose candidacy is intended to modify the Party's message and will confuse voters. Under the First Amendment, it is clear that a candidate may not force himself or herself upon the Republican Party or misrepresent an affiliation with the Republican Party, and that the State is likewise barred from forcing a candidate upon an unwilling Party.

In November 2004, the State enacted Initiative 872 ("I-872"), now codified in Title 29A RCW and known as the "modified blanket primary," which was intended to (1) prevent the Party and its adherents from selecting their nominees for elected partisan office, and (2) force the Party to be associated publicly with candidates who have neither been nominated by the Party nor qualified under Party rules. Such forced association will alter the political message and agenda of the Party and confuse the voting public with respect to what the Party

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[1] The primary adopted by I-872 has been variously referred to as the "modified blanket primary," the "People's Choice Primary," the "Cajun Primary," and the "Top Two Primary." It is unconstitutional under any pseudonym.

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and its adherents stand for. The Party and its adherents seek this Court's protection of their First Amendment rights to advocate and promote their vision for the future without censorship or interference by governmental officials acting under color of state law.

Specifically, the Party requests that the Court enjoin defendants and those acting in concert with defendants from (1) conducting any partisan primary elections under the provisions of I-872; and (2) identifying on any primary ballot any "Republican" candidate who has not been authorized to carry the Republican label under the rules of the Party, which were provided to defendants prior to the initiation of this litigation.

II. FACTUAL BACKGROUND

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:

> The Ninth Circuit Court of Appeals has threatened [the blanket primary] system through a decision, which, if not overturned by the United States Supreme Court, may require change. In the event of a final court judgment invalidating the blanket primary, this People's Choice Initiative will become effective . . . .
>
> This act shall become effective only if the Ninth Circuit Court of Appeals' decision in *Democratic Party of Washington State v. Reed*, 343 F.3d 1198 (9th Cir. 2003)[,] holding the blanket primary election system in Washington state invalid[,] becomes final and a Final Judgment is entered to that effect.

Declaration of John J. White, Jr., Ex. 1 at 27 & 29. The Washington State Grange, the sponsor of I-872, described the initiative as a "modified blanket primary," promising voters that it would look and operate much like the old blanket primary. *See* White Decl., Ex. 2, Ex. 3 at 2 & 5, Ex. 4. The Voter's Pamphlet statement in support of I-872 trumpets the message adulteration intent: "Parties will have to recruit candidates with broad public support and run campaigns that appeal to all voters." White Decl., Ex. 1 at 12. The purpose was to supplant the standard bearer of the Republican Party and its adherents with someone else: "This proposed initiative will ensure that the candidates who appear on the general election ballot are those who have the most support from the voters, not just the support of the political party leadership." White Decl., Ex. 3 at 6-7. The sponsors point to a gubernatorial race where a major party candidate received less than 40% of the vote in the general election as an example

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of why I-872 was needed. *See* White Decl., Ex. 3 at 5. Elsewhere in their promotional documents for I-872, the sponsoring political committee explained that "[candidates] will not be able to win the primary by appealing only to party activists." White Decl., Ex. 4 at 2.

Under RCW 29A.04.025, defendants (also referred to herein as "the County Auditors") are election officers in the State, have overall responsibility to conduct primary elections within their respective counties and, consistent with the rules established by the Secretary of State ("the Secretary"), provide and tabulate ballots for such elections. The County Auditors will conduct partisan primaries in September 2005.

Under state election laws, 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. *See* RCW 29A.52.116 ("Major political party candidates for all partisan elected offices . . . must be nominated at primaries held under this chapter."). Prior to the primary, the County Auditors are required to publish notice of the election, which must contain "the proper party designation" of each candidate. RCW 29A.52.311. A candidate who has expressed a political party "preference" on the declaration of candidacy will have that preference "shown after the name of the candidate on the primary and general election ballots." RCW 29A.52.112.

RCW 29A.52.112 also mandates that all primary voters, regardless of political affiliation, will determine which (or whether any) Republican will appear on the general election ballot for a partisan office. Candidates who file as Republicans will carry the Republican standard in the general election. The Secretary has asserted that, under the new modified blanket primary, 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.

The Party has notified the defendant election officials of its rules governing the nomination of its candidates and the eligibility of candidate to be associated with the Republican Party. *See* White Decl., Exs. 5-7. In response, four of the election officials have

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replied: "At this time, I am not aware of any language associated with the Initiative that contemplates a partisan nomination process separate from the primary." White Decl., Ex. 8.

On Tuesday, May 18, 2005, the Party conducted precinct caucuses to elect delegates to nominating conventions in King and Snohomish counties. Special central committee meetings will be held in several counties in late June to nominate the Republican candidate for a vacant seat in the 19th Legislative District.

The Secretary has published an election calendar for 2005. *See* White Decl., Ex. 9. Key dates are rapidly approaching. The filing period for partisan offices to be filled this year runs from July 25-29. Vacancies on the Republican ticket must be filled by August 8. Absentee ballots for the primary must be available from County auditors no later than August 31 and must be mailed to those who have requested them by September 2.

III. LEGAL ARGUMENT

A. Standard for Preliminary Injunction.

To obtain preliminary injunctive relief, the Party must demonstrate

> either: (1) a likelihood of success on the merits and the possibility of irreparably injury; or (2) that serious questions going to the merits were raised and the balance of hardships tips sharply in its favor. . . . These two alternatives represent extremes of a single continuum, rather than two separate tests . . . . Thus, the greater the relative hardship to [the party seeking the preliminary injunction,] the less probability of success must be shown.

Clear Channel Outdoor Inc. v. City of Los Angeles, 340 F.3d 810, 813 (9th Cir. 2003) (brackets and ellipses in original; quotation marks omitted) (quoting *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 731 (9th Cir. 1999)). The Party is entitled to a preliminary injunction under the first of the two alternatives.

B. Binding First Amendment Precedent from the Supreme Court and the Ninth Circuit Gives the Party a High Likelihood of Success on the Merits.

1. Initiative 872 is an invalid primary under *Jones* and *Reed*.

The *Jones* and *Reed* decisions compel the outcome in this case. As with the Party's earlier challenge to the blanket primary in *Reed*, this case is a facial challenge to the constitutionality of the modified blanket primary adopted as its replacement. *See Reed*, 343

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1 F.3d at 1203 ("The Supreme Court does not set out an analytic scheme whereby the political
2 parties submitted evidence establishing that they were burdened. Instead, *Jones* infers the
3 burden from the face of the blanket primary statutes. We accordingly follow the same analytic
4 approach as *Jones*.").

5 In *Reed*, the Ninth Circuit held that Washington could not force the Republican Party
6 and its adherents to adulterate their nomination process. The *Reed* decision overturned
7 Washington's blanket primary system, which – like I-872 – prevented the Party from
8 controlling its own nomination process. The court, rejecting a litany of "compelling interests"
9 advanced by the State to justify its invasion of First Amendment rights, stated that "[t]he
10 remedy available to the Grangers and the people of the State of Washington for a party that
11 nominates candidates carrying a message adverse to their interests is to vote for someone else,
12 not to control whom the party's adherents select to carry their message." *Reed*, 343 F.3d at
13 1206-1207. Despite the Ninth Circuit's admonition, the State again attempts to modify the
14 message of the Republican Party and its adherents through I-872. The Voter's Pamphlet
15 statement in support of I-872 shows that the initiative simply reflects a rejection of the
16 plaintiffs' First Amendment right to associate: "Most of us believe this freedom [to vote for
17 any candidate in the primary] is a basic right. Don't be forced to choose from only one party's
18 slate of candidates in the primary." White Decl., Ex.1 at 12.

19 In *Jones*, the Supreme Court expressly addressed forced political association with
20 primary voters, holding that it violates First Amendment principles set forth in its earlier cases
21 by forcing "political parties to associate with – to have their nominees, and hence their
22 positions, determined by – those who, at best, have refused to affiliate with the party, and, at
23 worst, have expressly affiliated with a rival." *Jones*, 530 U.S. at 577. The Supreme Court also
24 noted that

25 26 27
> 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.
>
> 28 In no area is the political association's right to exclude more important than in

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the process of selecting its nominee.

530 U.S. at 574-575 (citations and quotation marks omitted). The Ninth Circuit explicitly followed *Jones* in its *Reed* decision. *See Reed*, 343 F.3d at 1201.

In a recent decision, *Clingman v. Beaver*, No. 04-37, 2005 U.S. LEXIS 4181 (May 23, 2005), the Supreme Court again recognized the danger of opening a party's nominating primary to "all registered voters regardless of party affiliation": "the candidate who emerges from the [party's] primary may be unconcerned with, if not hostile to, the political preferences of the majority of the [party's] members." *Id.*, slip op. at 11; 2005 U.S. LEXIS 4181 at *25. The Court characterized as important Oklahoma's interest in avoiding "primary election outcomes which would tend to confuse or mislead the general voting population to the extent it relies on party labels as representative of certain ideologies." *Id.*, slip op. at 11-12; 2005 U.S. LEXIS at *26. The modified blanket primary retains partisan party labels to inform voters of candidates' party ideology, while denying the political parties the ability to define that ideology.

In *Reed*, the State argued that its blanket primary should be distinguished from California's invalidated primary because Washington does not register voters by party, and thus "winners of the primary are the 'nominees' not of the parties but of the electorate." *Reed* 343 F.3d at 1203 (internal quotation marks and citations omitted). The State then characterized the blanket primary as "a '*nonpartisan* blanket primary' that under *Jones* does not violate the parties' associational rights." *Id.* (emphasis in original). The Ninth Circuit characterized these as "distinctions without a difference." The attempts to distinguish I-872's modified blanket primary from the blanket primary invalidated in *Reed* are as unavailing.

In its promotional material for I-872, the Grange claimed that it "specifically drafted Initiative 872 to conform to" the Supreme Court's description of a "nonpartisan blanket primary" and that the initiative does not violate the Party's First Amendment rights "[b]ecause the voters are not selecting party nominees." White Decl., Ex. 4. The same *dicta* in *Jones* was unsuccessfully relied upon by the State in *Reed*:

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> Finally, we may observe that even if all these state interests were compelling ones, [California's blanket primary] is not a narrowly tailored means of furthering them. Respondents could protect them all by resorting to a *nonpartisan* blanket primary. Generally speaking, under such a system, the State determines what qualifications it requires for a candidate to have a place on the primary ballot – which may include nomination by established parties and voter-petition requirements for independent candidates. Each voter, regardless of party affiliation, may then vote for any candidate, and the top two vote getters (or however many the State prescribes) then move on to the general election. This system has all the characteristics of the partisan blanket primary, save the constitutionally crucial one: Primary voters are not choosing a party's nominee.

Jones, 530 U.S. at 585-86 (emphasis in original).

Even assuming that the state interests advanced by I-872 are compelling, I-872 does not meet this description because the modified blanket primary remains a *partisan* blanket primary. The following chart illustrates the material similarities between the blanket primary held unconstitutional in *Reed* (left column) and the modified blanket primary (right column):

Major political parties required to nominate their candidates in Washington's primary.	Major political parties required to nominate their candidates in Washington's primary.[2]
Voters could vote for any candidate for each office without limitation on party.[3]	Voters can vote for any candidate for each office without limitation on party.[4]
The top candidate of each party advances to the general election.	Only the top candidate of each party advances to the general election.[5]
Candidates are identified on the ballot by party.	Candidates are identified on the ballot by party.
Minor party candidates who receive 1% of the total vote advance to general election	Minor party candidates advance to the general election only if they are among the top two candidates in the primary.[6]

In all material respects, except for the right of minor party candidates to advance to the general election, the modified blanket primary is identical to the blanket primary held unconstitutional in *Reed*.

Even Justice Stevens, in his *Jones* dissent, recognized the right of the various political parties under a "nonpartisan primary" system to nominate their candidates *prior* to the primary

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[2] *See* RCW 29A.52.113.
[3] *See former* RCW 29.18.200.
[4] *See* RCW 29A.04.127.
[5] *See* RCW 29A.36.191. If the top two candidates are from the same party, only one candidate advances to the general election. *Compare* RCW 29A.46.191 *and* RCW 29A.36.170.
[6] *See* RCW 29A.36.170.

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election. *See Jones*, 530 U.S. at 598 n.8 (Stevens, J., dissenting).[7] Under Washington's modified blanket primary, the Party is provided no mechanism or right to select its own candidates. In contrast, the Supreme Court "vigorously affirm[s] the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party selects a standard-bearer who best represents the party's ideologies and preferences." *Jones*, 530 U.S. at 575 (internal quotation marks omitted).

There is no constitutionally significant difference between Washington's new modified blanket primary and the previous blanket primary held unconstitutional by the Ninth Circuit. Indeed, the Voters' 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." White Decl., Ex. 1 at 12. As in *Reed*, in which the State characterized candidates advancing to the general election as "nominees not of the parties but of the electorate," *Reed*, 343 F.3d at 1204, I-872's re-characterization of nominees as "candidates" of the electorate identifies "the problem with the system, not a defense of it." *Id.* Voters of any political party, and even those antagonistic to the Republican Party, are still free to vote for candidates identified as Republican on the ballot and to therefore determine which Republican candidate will advance to the general election. "Put simply," the modified blanket primary follows the blanket primary in "prevent[ing] a party from picking its nominees." *Id.*

2. The State is also prohibited from forcing the Party to associate with candidates.

Jones and *Reed* make clear that the State is prohibited from conducting a primary that forces the Republican Party to associate with all voters in nominating its candidates. The filing statutes under both I-872 and prior state law also constitute an unconstitutional effort by the State to force the Party to be affiliated with candidates who may not be qualified under Party rules to run as "Republican" candidates. *See* RCW 29A.24.030 and .031. Both statutes force

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[7] Justice Stevens correctly observed that a nonpartisan primary is, in reality, "a general election with a runoff." *Id.*

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the Party to be publicly associated with any candidate who seeks to appropriate the Republican Party's name, regardless of whether they share or oppose Republican positions. Any candidate, regardless of his relationship to the Republican Party and even those antagonistic to the Party, may designate himself as a Republican candidate and thus appear on the primary ballot as a standard bearer for the Party. Forced association with a candidate during the Party's nomination process is no less a violation of the First Amendment right to exclude recognized in *Jones* and *Reed* than is forced association with voters. *See also Duke v. Massey*, 87 F.3d 1226, 1234 (11th Cir. 1996) (recognizing that "[t]he Republican Party has a First Amendment right to freedom of association and an attendant right to identify those who constitute the party based on political beliefs" and holding that David Duke did not have "the right to associate with an 'unwilling partner'"); *LaRouche v. Fowler*, 152 F.3d 974 (D.C. Cir. 1998).[8] A prospective candidate has no right to force himself upon an unwilling political party.

3. Initiative 872 violates the Equal Protection clause by allowing minor political parties to nominate candidates and control their message, but denying the same right to the Republican Party.

Finally, the State's primary election system violates the Equal Protection rights of the Party by authorizing minor political parties to nominate candidates through a convention process while at the same time denying a similar right to the Party. Under RCW 29A.20.121, "[a]ny nomination of a candidate for partisan public office by other than a major political party

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> [I]t is the *sine qua non* of a political party that it represents a particular political viewpoint. And it is the purpose of a party convention to decide on that viewpoint, in part by deciding which candidate will bear its standard: the liberal or the conservative, the free trader or the protectionist, the internationalist or the isolationist.
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>
> The Party's ability to define who is a "bona fide Democrat" is nothing less than the Party's ability to define itself.

LaRouche, 152 F.3d at 995-96.

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may be made only. . . [i]n a convention." The State also provides minor parties with 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 29A.20.171(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."[9] The defendants intend to administer the State's partisan primary in a manner that denies the Party the right to nominate its candidates and the right to 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, but improperly denies the same protection to plaintiffs.[10]

C. The Party and its Adherents Will Be Irreparably Harmed by the State's Invasion of Their First Amendment Rights if a Preliminary Injunction Is Not Granted.

"The Supreme Court has made clear that 'the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury' for purposes of the issuance of a preliminary injunction." *Sammartano v. First Judicial Dist. Ct.*, 303 F.3d 959, 973 (9th Cir. 2002) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). It is very likely that the Party will prevail on its claim that I-872 has severely burdened its First Amendment rights.

Even if the likelihood of success were not as high as the Party asserts, however, "the fact that [this] case raises serious First Amendment questions compels a finding that there exists the potential for irreparable injury, or that at the very least the balance of hardships tips sharply in [the Party's] favor." *Sammartano*, 303 F.3d at 973 (internal quotation marks and citation omitted). In the Ninth Circuit, "a party seeking preliminary injunctive relief in a First Amendment context can establish irreparable injury . . . by demonstrating the existence of a colorable First Amendment claim." *Id.* (citation omitted). An injunction here will prevent an

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[9] The Secretary has promulgated regulations that purport to strike minor party nominating provisions in the statutes, but the Secretary does not have that power.

[10] The Party is allowed to name a candidate only if no candidate files under the Republican name for an office. RCW 29A.28.011.

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invasion of First Amendment rights and will not leave Washington without a primary or cause electoral disarray. Enjoining implementation of I-872 will leave the State with the open primary conducted last year. Even if the Court determines that balancing of interests is required, the scales tip decisively in favor of the plaintiffs.

The Party's claim in this case is far more than "colorable." With candidate filing scheduled for late July 2005 and primary elections scheduled for September 2005, it is urgent that the Party obtain the relief sought in this motion. The expressed intent of I-872 was to force the Party to modify its message or have a modified message forced upon it by the simple expedient of eliminating the Party's selected spokesmen in favor of spokesmen 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." White Decl., Ex. 1 at 12, Ex. 4. This attempt at forced message modification was rejected as a legitimate state interest by both the Supreme Court in *Jones* and the Ninth Circuit in *Reed*. A political party's choice of its candidates is the most effective way in which the party can communicate to the voters what the party represents. "[I]t is the nominee who becomes the party's ambassador to the general electorate in winning it over to the party's views." *Jones*, 530 U.S. at 575.

Dilution of the Party's vote in the State's 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 Republican name each receive 10% of the vote under the modified blanket primary, and two candidates of other parties each receive 15%, the Secretary maintains there would be no Republican candidate on the general election ballot, despite the receipt of 70% of the total vote by candidates labeled as Republicans. The above example shows that the ability to nominate a single candidate and exclude others is an essential exercise of First Amendment rights under the modified blanket primary.

If the County Auditors are permitted to conduct a modified blanket primary as the

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partisan primary with multiple "Republican" candidates listed and not nominated by the Party, plaintiffs will be denied their First Amendment rights and will be irreparably injured. Moreover, if the State conducts partisan primaries pursuant to procedures known to be unconstitutional, then there is a substantial risk that the results of those primaries will be invalid.

D. <u>The Public Has a Strong Interest in Having First Amendment Rights Vindicated.</u>

Under Ninth Circuit precedent, this Court must also "examine the public interest in determining the appropriateness of a preliminary injunction." *Sammartano*, 303 F.3d at 974. The primary concern is the impact of the Court's decision on non-parties. "Courts considering requests for preliminary injunctions have consistently recognized the significant public interest in upholding First Amendment principles." *Id.* (citing *Homans v. City of Albuquerque*, 264 F.3d 1240, 1244 (10th Cir. 2001); *Iowa Right to Life Comm. v. Williams*, 187 F.3d 963, 970 (8th Cir. 1999); *Suster v. Marshall*, 149 F.3d 532, 530 (6th Cir. 1998); *Elam Constr., Inc. v. Regional Transp. Dist.*, 129 F.3d 1343, 1347 (10th Cir. 1997); *G&V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994); *Cate v. Oldham*, 707 F.2d 1176, 1190 (11th Cir. 1983)). Upholding constitutional principles does not, however, require that the result be popular with the public. *See Thorsted v. Gregoire*, 841 F. Supp. 1068 (W.D. Wash. 1994) (finding Washington's "Term Limits Initiative" [I-573] unconstitutional despite the initiative's passage by a margin of 52% to 48%).

In contrast, the interest of unaffiliated or rival party voters in selecting the Republican nominee is not only not compelling, it is not a legitimate interest. *See Jones*, 530 U.S. at 583-84 Nor is there a constitutional right to participate in the partisan primary of more than one party. *See id.* at 573 n.5 ("As for the associational 'interest' in selecting the candidate of a group to which one does not belong, that falls far short of a constitutional right, if indeed it can even be fairly characterized as an interest. It has been described in our cases as a 'desire' – and rejected as a basis for disregarding the First Amendment right to exclude.").

The Supreme Court recently upheld Oklahoma's semiclosed primary, which prohibited

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voters affiliated with one political party from voting in the primary election of another party. *Clingman v. Beaver*, No. 04-37, 2005 U.S. LEXIS 4181 (May 23, 2005). The Court determined that this prohibition "places no heavy burden on associational rights" and is justified by important regulatory interests: "It 'preserves political parties as viable and identifiable interest groups'; enhances parties' electioneering and party-building efforts; and guards against party raiding and 'sore loser' candidacies by spurned primary contenders." *Id.*, slip op. at 10-11; 2005 U.S. LEXIS 4181 at *24-25 (internal citations and brackets omitted). If the "interests" upheld by I-872 were valid (*e.g.* voter choice), a semiclosed primary, like Oklahoma's, would always be unconstitutional because it limited "voter choice," as would any partisan primary system other than the State's modified blanket primary.

IV. CONCLUSION

I-872 attempts again to force the Republican Party to allow non-party adherents to select its nominees and to affiliate with any candidate who claims the Party's label. By doing so, the modified blanket primary, like the blanket primary, seeks to change the political message of the Republican Party. The result in this case should be no different than the result in *Reed*. The Court should enjoin the State from implementing I-872, carrying out a primary under its terms, or forcing the Republican Party to associate with candidates who are not authorized to represent it to the electorate.

DATED this 26th day of May, 2005.

/s/ John J. White, Jr.
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