HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al.,
Plaintiffs,

WASHINGTON DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiff Intervenors,

LIBERTARIAN PARTY OF WASHINGTON, et al.,

Plaintiff Intervenors,

vs.

DEAN LOGAN, et al.,

Defendants,

STATE OF WASHINGTON, et al.,

Defendant Intervenors,

WASHINGTON STATE GRANGE, et al.,

Defendant Intervenors.

NO. CV05-0927-TSZ

PLAINTIFFS' REPLY IN SUPPORT OF SUMMARY JUDGMENT AND RESPONSE TO STATE AND GRANGE CROSS-MOTIONS FOR SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR: WEDNESDAY, JULY 13, 2005

WITH ORAL ARGUMENT

I. INTRODUCTION

The State and Grange discuss everything but the Supreme Court and Ninth Circuit precedents that control this case. The core First Amendment right to associate applies and Washington may not adulterate the Republican Party message through "forced association" with

LIVENGOOD, FITZGERALD & ALSKOG
121 THIRD AVENUE
P.O. BOX 908
KIRKLAND, WASHINGTON 98083-0908
PHONE: (425) 822-9281 FAX (425) 828-0908

voters or candidates in the guise of a "blanket primary," modified or not. *See California Democratic Party v. Jones*, 530 U.S. 567 (2000) ("*Jones*"). The Ninth Circuit noted that *Jones* "carefully distinguishes blanket primaries, in which a voter can vote for candidates of any party on the same ballot," from other forms of primary and struck down Washington's prior iteration of the blanket primary. *Democratic Party of Washington v. Reed*, 343 F.3d 1198, 1203, 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*").

Initiative 872, on its face, burdens core First Amendment rights. Both the blanket primary and modified blanket primary result in the selection of the Republican Party's candidates. The defendants offer nothing to distinguish I-872 from the original blanket primary, nor do they provide any new justification for the effort to supplant the Party's choice of standard-bearer with somebody else's notion of who the Republican standard-bearer should be. A primary that is not materially distinguishable from a blanket primary is unconstitutional.

II. ARGUMENT

A. Describing the primary as "winnowing" does not create a substantive difference between the two versions of Washington's blanket primary.

The defendants assert that merely calling the blanket primary a "winnowing" primary alters its purpose and effect. However, any primary "winnows" the candidates who will appear on the ballot. *See Morse v. Republican Party*, 517 U.S. 186, 206 (1996). In fact, "the function of the election process is 'to winnow out and finally reject all but the chosen candidates.'" *Burdick v. Takushi*, 504 U.S. 428, 438 (1992) (*quoting Storer v. Brown*, 415 U.S. 724, 735 (1974)). California's new closed primary, replacing its blanket primary, "serves the important function of winnowing out competing partisan candidates." *Van Susteren v. Jones*, 331 F.3d 1024, 1027 (2003), *cert. denied sub nom., Van Susteren v. Shelley*, 540 U.S. 1106 (2004). Similarly, describing the primary as "qualifying" changes nothing. Washington's State Supreme Court noted that "qualifying primary" is a generic term, expansive enough to encompass a "nominating primary." *See Washington State Grange v. Locke*, 153 Wn.2d 475, 498, 105 P.3d 9 (2004). In determining the actual effect of I-872, the Court should not ignore the Grange's interchangeable use of

LIVENGOOD, FITZGERALD & ALSKOG
121 THIRD AVENUE
P.O. BOX 908
KIRKLAND, WASHINGTON 98083-0908
PHONE: (425) 822-9281 FAX (425) 828-0908

"winnowing," "nominating" and "qualifying" to describe the modified blanket primary.[1] Nor should the Court ignore the State's description of the prior blanket primary as a "winnowing" primary.[2] The effect of I-872 depends on its substance, not word play.

B. The modified blanket primary remains a partisan primary and determines the Republican nominee or standard-bearer.

I-872's modified blanket primary is a *partisan* primary that has the *effect* of selecting the Republican standard-bearers for the general election. The offices subject to the modified blanket primary are "partisan offices." I-872, § 4. The general election of "candidates for partisan office" must be "preceded by a primary conducted under this chapter." I-872, § 7.

I-872 grafted itself onto a much wider body of law that expressly recognizes that "Republican" candidates are Party representatives. Recognizing public officers elected under the Republican banner as Party representatives, the State Constitution authorizes the Party to nominate their successors. Wash. Const. art. II, § 15. "Major political party" status depends on a party *nominee* for stated offices (including those subject to the modified blanket primary) getting at least 5% of the vote. *See* RCW 29A.04.086. Legislators' ability to raise campaign money depends in part on being part of a major political party caucus. *See* RCW 42.17.640 & .020(9). I-872 itself recognizes that elected officials are "of" the Republican Party. I-872, § 15(2) (describing the effect of a vacancy upon "the term of the successor who is *of the same party* as the incumbent" (emphasis added)). The County Auditors' response that no partisan nominating process exists separate from the modified blanket primary also clearly shows that it selects the GOP's standard-bearers. It does so in the same unconstitutional manner as its predecessor.

Comparing key elements of the modified blanket primary and blanket primary reveals the

---

[1] For example: (1) ". . . Washington state will have to adopt a different *nominating* system for partisan offices. The Legislature would have to adopt a new *nominating* system for partisan offices – or the voters could do this through the initiative process," Declaration of John J. White, Jr. in Support of Mot. for Prelim. Inj., Ex. 3 (emphasis added); (2) "We can change our current system to a *qualifying* primary," *id.* (emphasis added); and (3) "'Primary' or 'primary election' means a procedure for *winnowing* candidates for public office. I-872, § 5 (emphasis added).

[2] The State's *amicus curiae* brief in *Jones* described the "*winnowing* of candidates for the general election" as the only "aspect of party associational activities affected by the blanket primary." Brief of the States of Washington & Alaska as *Amicus Curiae*, 1999 U.S. Briefs 401 at *10 (emphasis added).

LIVENGOOD, FITZGERALD & ALSKOG
121 THIRD AVENUE
P.O. BOX 908
KIRKLAND, WASHINGTON 98083-0908
PHONE: (425) 822-9281 FAX (425) 828-0908

same structure and faults that prompted the Ninth Circuit to strike down the original:

Modified blanket primary statute	**Blanket primary statute**
Partisan primary. I-872, § 7	Partisan primary. Former RCW 29.18.010.
Candidate self-designates political party. I-872, §§ 3, 4, 5, 7, 9, 11	Candidate self-designates political party. Former RCW 29.15.010.
All primary candidates appear on a single ballot.	All primary candidates appear on a single ballot.
"Each 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." I-872, § 5.	"[A]ll properly registered voters may vote for their choice at any primary . . . for any candidate for each office, regardless of political affiliation . . . ." Former RCW 29.18.200
Top two vote-getters advance to general election bearing political party name they selected.	Top vote-getter from each major political party advances to general election bearing political party name they selected
State publishes candidate party identification on ballot and in voters' pamphlet. I-872, §§ 7, 11.	State publishes candidate party identification on ballot and in voters' pamphlet. Former RCW 29.30.020
"Major political party" if nominee for statewide partisan office achieves 5% at general election. RCW 29A.04.086.	"Major political party" if nominee for statewide partisan office achieves 5% at general election. Former RCW 29.01.090.
Same political party nominates successor if office becomes vacant. Wash. Const. art. II, §15; I-872, §15(2).	Same political party nominates successor if office becomes vacant. Wash. Const. art. II, §15.

C. The modified blanket primary transfers the right to define the extent of its association from the Republican Party to individual candidates.

The Supreme Court has made it clear. "There is simply no substitute for a party's selecting its own candidates." *Jones*, 530 U.S. at 580-581.

> 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). *Accord Reed*, 343 F.3d at 1201.

Under the modified blanket primary, a candidate's "political party preference [must] appear on the primary and general election ballot *in conjunction with his or her name.*" I-872, § 4

LIVENGOOD, FITZGERALD & ALSKOG
121 THIRD AVENUE
P.O. BOX 908
KIRKLAND, WASHINGTON 98083-0908
PHONE: (425) 822-9281 FAX (425) 828-0908

(emphasis added). "Conjunction" means "the act of joining; the state of being joined." AMERICAN HERITAGE DICT. 399 (3d ed. 1992). The candidate's party self-designation must also appear in the State's Voters' Pamphlet. I-872, § 11. According to the defendants, while a candidate and the GOP are conjoined on the ballot and Voters' Pamphlet, they are not associated.

I-872 compels the Republican Party to associate on official state election materials with all candidates who express a "preference" for the Party, whether or not the Party "prefers" them. *Jones* and *Reed*, and the long line of cases preceding them, recognize that nominating candidates is a basic political party function, protected by the First Amendment. *See Jones*, 530 U.S. at 581; *Reed*, 343 F.3d at 1204. It is essential for the GOP to be able to exclude those hostile or indifferent to its principles at the "moment of choosing the party's nominee, [which] is 'the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community.'" *Jones*, 530 U.S. at 575 (*quoting Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 216 (1986)). Neither *Jones* nor *Reed* even hint that a candidate may hijack a party's name. Courts facing attempted hijackings by candidates have resoundingly affirmed a political party's right to decide who may – and who may not – associate with it. *See, e.g., Duke v. Cleland*, 954 F.2d 1526 (11th Cir. 1992) (barring David Duke as a GOP candidate). The ability to define who is a *bona fide* Republican candidate "is nothing less than the Party's ability to define itself." *LaRouche v. Fowler*, 152 F.3d 974, 995-96 (D.C. Cir. 1998).

In *Duke v. Massey*, 87 F.3d 1226 (11th Cir. 1996), the Court upheld the GOP's right to reject David Duke as a candidate. Duke had a right to run, but not as a Republican. The State dismisses the case, asserting it turns on Georgia law. Georgia law was only a part of the issue and irrelevant to the GOP's right to exclude Duke as a candidate. Duke expressly claimed a First Amendment right to associate with the Republican Party. *See id.* at 1229. If Duke had that right, the statute recognizing the Republican committee's authority to decide if Duke could run as a Republican would have been invalid. Because the statute implicated state action, the court "focus[ed] not only on the interests of the Republican Party but also . . . the state's interests." *Id.* at 1232 n.5. The case

LIVENGOOD, FITZGERALD & ALSKOG
121 THIRD AVENUE
P.O. BOX 908
KIRKLAND, WASHINGTON 98083-0908
PHONE: (425) 822-9281 FAX (425) 828-0908

1 did not turn on the existence of a state statute conferring power.[3] The GOP's power to exclude
2 existed under the First Amendment. The court upheld the Party's exclusion of Duke because his
3 "interests do not trump the Republican Party's right to identify its membership based on political
4 beliefs." *Id.* at 1232-33.

5 The Republican Party name has meaning and electoral value:

6 Parties are known by names . . . which distinguish and differentiate the various parties in the public mind. The name "Democratic" is an important distinguishing
7 mark of the party which carries that appellation, as "Republican," . . . [is of] [an]other similar large organized group[] of voters. Through custom and usage
8 certain rights attach to the use of a party name and emblem.

9 It is a matter of common knowledge that in campaigns at general elections such terms as "Democrat," "Democrats" and "Democratic" have been used for such a
10 length of time as to render their beginnings almost in "time out of memory" to connote the Democratic Party, its members and candidates. The same observation
11 is equally true of "Republican," "Republicans" and "Republican Party."

12 *Plonski v. Flynn*, 35 Misc. 2d 863, 222 N.Y.S.2d 542 (1961). The modified blanket primary is state
13 action that strips the Republican Party of the right to define itself and transfers that right to others.
14 It allows candidates to appropriate the name and symbols of the Republican Party for their
15 individual political advantage. I-872 is void because it violates core First Amendment rights.[4]

16 **D. The modified blanket primary is not severable.**

17 Severance is impossible when the connection of the unconstitutional part to the rest of the
18 enactment is so strong that it cannot "be believed that the legislature would have passed one without
19 the other; or where the part eliminated is so intimately connected with the balance of the act as to
20 make it useless to accomplish the purposes of the legislature." *Guard v. Jackson*, 83 Wn. App. 325,
21 333, 921 P.2d 544 (1996) (internal quotation marks and citation omitted).

22 Washington adopted its first primary to nominate candidates for partisan office in 1907,
23 replacing political party conventions. *See State ex rel. Wells v. Dykeman*, 70 Wash. 599, 127 P. 218
24
25
26 [3] The modified blanket primary's grant of authority to individual candidates to define the extent of the Republican Party's association on official state election materials likewise implicates "state action."

27 [4] The candidate filing statute generally violates the Republican Party's right to define its association, whether filing
28 under the modified blanket primary or the "Montana" primary.

LIVENGOOD, FITZGERALD & ALSKOG
121 THIRD AVENUE
P.O. BOX 908
KIRKLAND, WASHINGTON 98083-0908
PHONE: (425) 822-9281 FAX (425) 828-0908

(1912). The purpose of direct primaries was to allow more voters to participate in nominating candidates. *See Ray v. Blair*, 343 U.S. 214, 221 (1952).

Immediately after *Reed*, the Grange issued a press release: "Grange leaders expressed disappointment at today's decision by the Ninth Circuit Court of Appeals to side with the political parties on the blanket primary appeal. . . . The Grange *vowed to preserve the primary system*, either with an appeal . . . to the U.S. Supreme Court if necessary, or *through the Legislature*." Supplemental Declaration of Kevin B. Hansen, Ex. 1 (emphasis added). The "system" the Grange vowed to preserve was the unconstitutional blanket primary system. The Grange explained the reason for I-872: "The Washington State Grange opposes primaries in which voters are restricted to voting for candidates of only one party and does not want to see political parties gain control of the primary." White Decl., Ex. 4. In short, the Grange objects to political party members choosing their own spokesmen.

1. The Grange intended and touted I-872 as a way to diminish the power of "party bosses" and supplant others' choices of Republican candidates for those preferred by Republicans.

The Official Voters' Pamphlet evidences I-872's supporters' animus against the First Amendment rights of political parties: "Last year the state party bosses won their lawsuit against the blanket primary."[5] The modified blanket primary's purpose is the same as the original – to substitute different Republican Party representatives for those whom Republicans would choose. To justify the original blanket primary, the Grange asserted that "its members' rights to advance their rural agenda in both parties will suffer if each Granger is forced to choose a party ballot." *Reed*, 343 F.3d at 1206. The Grange's purpose and justification remain unchanged: "Parties will have to recruit candidates with *broad public support* and run campaigns that *appeal to all voters*." White Decl., Ex. 1 at 12 (emphasis added).

Comparing the "compelling interests" advanced by the blanket primary and the modified

[5] The Grange used the same description to justify and defend the original blanket primary before the Ninth Circuit: "The Grange says that it spearheaded the initiative in 1933 that led Washington to adopt the blanket primary, which has successfully prevented 'a politically corrupt nominating process controlled by political bosses or special interests.'" *Reed*, 343 F.3d at 1206.

LIVENGOOD, FITZGERALD & ALSKOG
121 THIRD AVENUE
P.O. BOX 908
KIRKLAND, WASHINGTON 98083-0908
PHONE: (425) 822-9281 FAX (425) 828-0908

blanket primary makes clear that the "modified" primary serves the same ends as the original:

Asserted modified blanket primary interests[6]	Asserted blanket primary interests
The right of qualified voters to vote at all elections	Fundamental fairness because it permits all voters, regardless of party affiliation, to participate in all stages[7]
The right of absolute secrecy of the vote – no voter may be required to disclose political faith or adherence in order to vote	Full participation in the election process without forcing them to publicly reveal their political party affiliation[8]
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	All the voters should help choose the nominees for all offices to provide maximum choice[9]

The history behind a law can illuminate its true purpose. A court is not bound by a law's stated purpose. *See Edwards v. Aguillard,* 482 U.S. 578 (1986) (giving no deference to stated purpose of Louisiana "creation science" law as enhancing academic freedom). The Court noted the contemporaneous and historical link between "the teachings of certain religious denominations" and statutes regulating the teaching of evolution, stating that it "need not be blind" to the law's real purpose. *Edwards,* 482 U.S. at 590. This Court should not be blind to the Grange's historical and *contemporaneous* opposition to political party rights and desire to advance its own political agenda by influencing candidate nominations. *See Reed*, 343 F.3d at 1206.

2. Sponsor's statements carry substantial weight in construing legislation's intent.

A sponsor's contemporaneous statements to the public regarding legislation's scope and intent are relevant legislative history. *See Schwenk v. Hartford*, 204 F.3d 1187, 1199 (9th Cir. 2000)

---

[6] Initiative 872, § 3.

[7] Rejected as a compelling interest regarding primary elections because primaries are not elections under Washington's constitution. *Reed*, 343 F.3d at 1205 (*citing State ex rel. Zent v. Nichols,* 50 Wash. 508, 97 P. 728 (Wash. 1908). *See* Wash. Const. art. VI, § 8 ("[T]he elections for such state officers shall be held in every fourth year . . . on the Tuesday succeeding the first Monday in November.").

[8] Rejected as compelling because party affiliation must be disclosed under the Presidential Primary. *Reed*, 343 F.3d at 1205

[9] Rejected as a compelling state interest because the "supposed unfairness of depriving those voters who do not choose to affiliate with a party from picking its nominee 'seems to us less unfair than permitting nonparty members to hijack the party.'" *Reed*, 343 F.3d at 1205 (*quoting Jones*, 530 U.S. at 584.)

LIVENGOOD, FITZGERALD & ALSKOG
121 THIRD AVENUE
P.O. BOX 908
KIRKLAND, WASHINGTON 98083-0908
PHONE: (425) 822-9281 FAX (425) 828-0908

(bill sponsor's press release is "compelling" evidence of law's intent). The sponsor's statements regarding intent, while not necessarily controlling, "are an authoritative guide to the statute's construction." *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 526-527 (1982).[10]

The Supreme Court also considers the historical context of statutes and the "specific sequence of events leading to the passage of the statute." *Edwards*, 482 U.S. at 594-95. The historical context here is subordinating the rights of the Republican Party to give greater political voice to others. Announcing its filing of I-872, the Grange stated:

> For seventy years under the blanket primary system, the voters of this state have chosen which candidates advance to the general election ballot. Now the major political parties are trying to take that away from the voters. [I-872] 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.
>
> The voters of Washington overwhelmingly support the blanket primary. In a blanket primary, the voter does not have to declare political party affiliation at any stage of the process and may vote for any candidate for any office on the primary ballot.

Hansen Supp. Decl., Ex. 2.

The plain meaning of statutes, along with their context and contemporaneous legislative history, can control the determination of legislative purpose. The plain meaning of I-872's declaration of rights is nothing less than a repudiation of *Jones* and *Reed*. "The preamble or statement of intent can be crucial to interpretation of a statute." *Spokane Health Dist. v. Brockett*, 120 Wn.2d 140, 151, 839 P.2d 324 (1992). I-872's statement of intent makes clear that its sponsors objected to *Reed* and intended to give all voters the right to select Republican candidates, contravening the Party's right to select its own candidates. I-872's unconstitutional intent permeates the entire initiative and cannot be severed.

3. The defendants' late suggestion that voters intended to revert to party conventions if part of I-872 is stricken is contrary to I-872's terms and intent.

The candidate party affiliation provisions also permeate I-872. The very definition of "partisan office" depends on a candidate's chosen political party preference appearing on the

---

[10] The Grange's statements of legislative purpose and intent were not limited to the general intent to re-institute the invalidated blanket primary. The Grange also stated that I-872 had no effect on *minor* party nomination and name rights. *See* White Decl., Ex. 3. The sponsor's express statement to that effect is entitled to significant weight.

LIVENGOOD, FITZGERALD & ALSKOG
121 THIRD AVENUE
P.O. BOX 908
KIRKLAND, WASHINGTON 98083-0908
PHONE: (425) 822-9281 FAX (425) 828-0908

primary ballot. I-872, § 4. Section 7 requires a candidate's party preference to be shown on the primary ballot. Section 9 expressly authorizes candidates to self-designate their party affiliation. These provisions were so important that I-872 added a section to state law mandating that the state publish the candidate's self-proclaimed party affiliation in the official voters' guide. I-872, § 11. A candidate's "party preference" is part of six of I-872's fourteen substantive sections (excluding the title, codification and repealer sections), including its declaration of fundamental "rights."

I-872 enacted a primary intended to restrict the power of "party bosses." Now its sponsor argues that I-872 can be saved by having Washington revert to nominating conventions, saying this would not do substantial violence to its basic purposes. The Grange asks the Court to preserve I-872 by vesting exclusive nominating power in those very "party bosses" as part of the voters' intent. The argument in favor of severability is contrary to the statute's purpose, common sense and Washington's history.

E. The Court should disregard the Secretary's litigation position masquerading as emergency regulations.

Neither the State nor the Grange respond to the evidence submitted that the "emergency" regulations were issued with a view to this litigation. Given the Secretary's "Dear Election Administrators" e-mail seeking comment on part of the "emergency" regulations, there would be little basis to deny that the regulations were adopted with a view to this case.

> There are two reasons the [Declaration of Candidacy Form] needs to be finalized in such an expeditious manner. One, the form needs to be adopted by emergency WAC prior to the political party's [sic] lawsuits, which are expected to be filed first thing next week.

Hansen Decl., Ex. 3 at 7. The regulatory repeal of minor party convention rights was presented to county auditors on May 12, 2005. The slide on repealing minor party nominating rights is captioned "Lawsuit."

The emergency regulations' claim that "a partisan primary does not serve to determine the nominees of a political party but serves to winnow the number of candidates . . . for the general election" has already been reviewed and rejected as a basis for upholding a primary system that "prevents a party from picking its nominees." *Reed*, 343 F.3d at 1204. In *Reed*, the State argued,

LIVENGOOD, FITZGERALD & ALSKOG
121 THIRD AVENUE
P.O. BOX 908
KIRKLAND, WASHINGTON 98083-0908
PHONE: (425) 822-9281 FAX (425) 828-0908

as here, that the blanket primary selected nominees of the electorate not the political parties. *See id.* at 1203. This was "the problem with the system, not a defense of it." *Id.* at 1204.

1. The "emergency regulations" even go beyond the prior litigating position, repealing minor party convention rights that the sponsors and Secretary said were unaffected by I-872 and which the legislature refused to strike.

The emergency regulations strike minor party convention rights that were unaffected by I-872. The Grange expressly disavowed any impact on how *minor* parties' candidates reached the primary ballot. They retained the convention and name rights under existing law. Secretary Reed knew the sponsor's interpretation, and the legislature's view, that striking the minor party convention rights would amend the initiative.

By December 1, 2004, the Secretary had outlined bills amending I-872, and planned to have the bill approved by two-thirds of the legislature, because it amended the initiative. The Secretary circulated a bill summary to County Auditors and the Attorney General's office. *See* Hansen Decl., Ex. 3 at 228. The draft bill "[e]liminate[d] the minor party and independent convention process, except for the nomination of President and Vice-President." *Id.* at 231. The draft bill also filled in "blanks" and cured "conflicts" between I-872 and other law. *Id.* A later summary contains a similar point regarding minor party rights. *See id.* at 453.

On March 8, 2005, Katie Blinn, Assistant Director of Elections, reported to Secretary Reed and others that a two-thirds legislative vote was required because the I-872 website had expressly stated that "Minor parties would continue to select candidates the same way they do under the blanket primary." *Id.* at 728. By March 24, the Secretary's bill was dead, and his staff was designing strategy with the Attorney General's office and the Grange to deal with the legislature's rejection of his bill. The Secretary's elections director, Nick Handy, advised him that the legislature's rejection of the proposed legislation "supports our recommendation last week to resolve this issue through the rulemaking process," and that Secretary Reed should "communicate our change in thinking on this to the Grange soon." *Id.* at 467.

The Secretary and his staff, while the legislation was being considered, advised both elections officials and the public that striking the minor party convention process changed I-872.

LIVENGOOD, FITZGERALD & ALSKOG
121 THIRD AVENUE
P.O. BOX 908
KIRKLAND, WASHINGTON 98083-0908
PHONE: (425) 822-9281 FAX (425) 828-0908

At Secretary Reed's request in February 2005, his office answered a public inquiry:

> We are in the process of passing legislation . . . changing the way minor parties . . . gain access to the ballot. They used to have a petition and convention system. The new legislation removes all those requirements . . . .

Id. at 583. A month before this lawsuit, Ms. Blinn responded to a request from King County to confirm the accuracy of certain "statements" regarding the primary election, including: "Minor political parties do not need to have nominating conventions anymore." Ms. Blinn responded: "NOT ADDRESSED IN THE INITIATIVE." *Id.* at 11.

On the eve of litigation, the Secretary "repealed" the minor party convention statutes, apparently fearing that the major parties would argue that "[i]f minor parties can hold nominating conventions, major parties should be allowed to also." *Id.* at 11. As noted in the Republican Party Supplement to its motion for summary judgment, bootstrapping regulations are disfavored, and the Secretary cannot amend a statute by regulation. Washington protects minor party nomination rights and minor party names, while I-872 denies the same protection to the GOP. This denies equal protection of law, and is grounds to invalidate the initiative.

IV. CONCLUSION

Both the State and the Grange fail to address the central issue that governs the result in this case: the modified blanket primary, like the former blanket primary, denies the Republican Party and its adherents the right to choose their nominees.

DATED this 6th day of July, 2005.

/s/ John J. White, Jr.
John J. White, Jr., WSBA #13682
Kevin B. Hansen, WSBA #28349
of Livengood, Fitzgerald & Alskog, PLLC
Attorneys for Plaintiffs
P.O. Box 908, 121 Third Avenue
Kirkland, WA 98083-0908
Ph: 425-822-9281 Fax: 425-828-0908
E-mail: white@lfa-law.com
hansen@lfa-law.com

1 **CERTIFICATE OF SERVICE**

2

3 I hereby certify that on July 6, 2005, I caused to be electronically filed the foregoing and the Supplemental Declaration of Kevin B. Hansen with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

4

5 **James Kendrick Pharris**

6 **Richard Dale Shepard**

7 **Thomas Ahearne**

8 **David T. McDonald**

9

10 /s/ John J. White, Jr.

11 John J. White, Jr., WSBA #13682
Kevin B. Hansen, WSBA #28349
12 of Livengood, Fitzgerald & Alskog, PLLC
Attorneys for Plaintiffs
13 121 Third Avenue, P.O. Box 908
Kirkland, WA 98083-0908
14 Ph: 425-822-9281 Fax: 425-828-0908
E-mail: white@lfa-law.com
15 hansen@lfa-law.com

16

17

18

19

20

21

22

23

24

25

26

27

28