

NOS. 05-35780 & 05-35774

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

WASHINGTON STATE REPUBLICAN PARTY, et al.,
Appellees/Plaintiffs,

WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE, et al.
Appellees/Plaintiff Intervenors,

LIBERTARIAN PARTY OF WASHINGTON STATE, et al.,
Appellee/Plaintiff Intervenors,

v.

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

STATE OF WASHINGTON, et al.
Appellants/Defendant Intervenors,

WASHINGTON STATE GRANGE,
Appellant/Defendant Intervenor

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

No. C05-0927

The Honorable Thomas S. Zilly
United States District Court Judge

**STATE OF WASHINGTON'S OPPOSITION TO MOTION FOR LEAVE
TO FILE BRIEF OF AMICI CURIAE, FAIRVOTE, ET AL.**

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Appellants State of Washington, Sam Reed, Secretary of State of Washington, and Rob McKenna, Attorney General of Washington, oppose the Motion for Leave to File Brief of Amici Curiae, filed on behalf of FairVote and various individuals, for three reasons: (1) the proposed brief addresses issues not properly presented on appeal and, therefore, would not be helpful to the Court; (2) this Court has already granted an order expediting the consideration of this case, and the acceptance of an amicus brief raising new and additional issues should not be permitted to interfere with expedited consideration of this case; and (3) the brief was not timely filed.

This Court does not consider an argument raised by an amicus that has not been raised or adopted by a party. *Russian River Watershed Prot. Comm. v. City of Santa Rosa*, 142 F.3d 1136, 1141 n.1 (9th Cir. 1998). FairVote’s proposed amicus brief consists entirely of arguments related to “ranked choice voting.” No such issues are presented by this case. At issue, rather, is the constitutionality of the system established by Washington’s Initiative 872 for conducting primary elections. The proposed brief is utterly irrelevant to the issues presented on this appeal.

Additionally, because the brief consists entirely of new issues not briefed by the parties, its acceptance by the Court would raise the prospect of requests by other parties (whose briefing is otherwise complete) for leave to file additional briefs addressing the new issues that amici propose to interject. This Court has already entered an order expediting its consideration of this appeal, based upon the need for prompt review to enable the Washington Legislature to promptly address any matters that the resolution of this case may make necessary. Order (filed Aug. 19, 2005). This Court should not permit any effort to expand the issues presented for review to delay its consideration of this case on an expedited basis.

Finally, the proposed amicus brief was not timely filed. Although captioned as an amicus brief in support of Appellees, the brief in fact does not support the position of any party to this case. Accordingly, it should have been filed, if at all, “no later than 7 days after the appellant’s or petitioner’s principal brief is filed.” Fed. R. App. P. 29(e). Even if viewed as supporting Appellees, it was due no later than seven days after the filing of their principal brief. *Id.* Appellees’ principle briefs were due October 17, 2005.¹ Order (filed Aug. 19, 2005). The proposed amicus brief was not filed until October 25, 2005, beyond that deadline.

¹ Counsel for one Appellee, the Democratic Party, was granted special leave for additional time, for personal reasons. Order (filed Aug. 31, 2005).

For these reasons, the Court should deny the motion for leave to file amicus brief on behalf of FairVote, et al.

RESPECTFULLY SUBMITTED this 27th day of October, 2005.

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