

The Honorable John C. Coughenour

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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,

and

LIBERTARIAN PARTY OF WASHINGTON  
STATE, et al.,

Plaintiff Intervenors,

v.

STATE OF WASHINGTON, et al.,

Defendant Intervenors,

and

WASHINGTON STATE GRANGE,

Defendant Intervenor.

No. CV05-0927 JCC

RESPONSE TO STATE OF  
WASHINGTON AND WASHINGTON  
STATE GRANGE'S MOTIONS TO  
STRIKE DEMOCRATIC PARTY'S  
FIRST AMENDED AND  
SUPPLEMENTAL COMPLAINT

RESPONSE TO STATE OF WASHINGTON AND  
WASHINGTON STATE GRANGE'S MOTIONS TO  
STRIKE DEMOCRATIC PARTY'S FIRST AMENDED  
AND SUPPLEMENTAL COMPLAINT - 1  
Case No. CV05-0927 JCC

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**SUMMARY**

1  
2 The Washington State Democratic Party (“Democratic Party”) moved the Court for  
3 leave to file an Amended and Supplemental Complaint, attaching to its motion an Exhibit  
4 specifically identifying the material it proposed to add to its existing complaint. The Court  
5 granted the Democratic Party’s request in part and denied it in part. Order of August 20,  
6 2009, Dkt. 184 (“Order”). Thereafter, on October 12, 2009, the Democratic Party prepared a  
7 First Amended and Supplemental Complaint for filing and submitted it to the State and  
8 Grange for comment, specifically identifying the material which had been deleted from its  
9 proposed pleading in light of the Order and the material that had been added in response to the  
10 Order.

11 All, please find attached copy of the Amended Complaint I plan to file on behalf of the  
12 Democratic Party in light of the Court's order on the motions to amend and dismiss. If  
13 you believe it is not within the scope of the Court's order, please let me know and we  
can discuss your concern before I file it in the hopes we may avoid unnecessary  
motion practice. The attached document is redlined to the proposed Complaint  
attached to our Motion to Amend rather than to the original Complaint

14 Declaration of David T. McDonald, Exhibit A.

15 Neither the State nor the Grange at any time prior to filing their Motions to Strike  
16 raised any issue with the Democratic Party with respect to the revised First Amended and  
17 Supplemental Complaint and neither asserted in any fashion that the new pleading was in any  
18 way inconsistent with or in violation of the Order. Accordingly, after three and half months  
19 of silence and with the deadline for filing amended pleadings looming, the Democratic Party  
20 filed its First Amended and Supplemental Complaint on January 21, 2010. With the  
21 exception of adding a sentence in paragraph 31 specifically alleging that the implementation  
22 of I-872 confuses voters, the pleading as filed is identical to what was submitted to the  
23 Defendants for their review.<sup>1</sup>

24 <sup>1</sup> The additional sentence in paragraph 31 reads: “As a result of the implementation of I-872  
25 by the defendants, voters are confused about which candidates on the ballot are truly  
representative of and associated with the Democratic Party and which have merely

1 The defendants' surprise Motions seek three kinds of relief: 1) deletion of material  
 2 that has neither been amended nor supplemented, including the Democratic Party's allegation  
 3 that I-872 as implemented by State officials violates its rights;<sup>2</sup> 2) rejection of supplemental  
 4 fact allegations on the basis that the supplemental allegations exceed the leave granted by the  
 5 Court in its Order; and 3) rejection of the Democratic Party's amended prayer for relief on the  
 6 basis that it does not provide specific guidance for the State with respect to what must be done  
 7 to use its current primary system without violating the Party's rights.

8 None of the relief requested by the Defendants is warranted. For the Court's  
 9 convenience attached as Exhibit 1 is a copy of the proposed First Amended and Supplemental  
 10 Complaint which was the subject of the Order on August 20, 2009 and attached as Exhibit 2 is  
 11 a copy of the same document with additional redlining to show the changes made after the  
 12 Order that result in the filed First Amended and Supplemental Complaint. Review of these  
 13 two documents demonstrates the Democratic Party's good faith compliance with the letter and  
 14 the spirit of the Order.

## 15 DISCUSSION

### 16 A. Material Never Proposed for Amendment and Simply Carried Forward

17 The Motions to Strike are, for the most part, not directed to new material amending or  
 18 supplementing the Democratic Party's Complaint. The State and Grange arguments appear to  
 19 confuse "amending" an existing Complaint with starting a new lawsuit based on a new  
 20 Complaint. Their Motions seek to strike the material from the Democratic Party's Complaint  
 21 that was not the subject of any prior motion to amend or strike and is simply reprinted to

22 \_\_\_\_\_  
 23 appropriated the party name for personal electoral advantage – to the detriment of the party,  
 its candidates, programs and message.”

24 <sup>2</sup> This allegation is found, in part, at paragraph 4 of the Complaint (“The Initiative, as  
 implemented by State Officials...”). This specific allegation was quoted by the Court in the  
 25 Order at 8 as alleging “as applied” challenges to I-872. The State’s Motion at 5 urges the  
 Court to strike paragraph 4 of the Democrat’s Complaint. The Grange’s Motion at 3 makes  
 the same request.

26 RESPONSE TO STATE OF WASHINGTON AND  
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1 make the document complete, including the Democratic Party's original allegation that I-872,  
2 as implemented, violated its rights. Neither the State nor the Grange cite to any law requiring  
3 such a butchering of the pleading record. Instead the Defendants' argue that unless the  
4 original complaint material is stricken the parties will be free to ignore or treat as reversed all  
5 prior rulings of the Court on the allegations of the original Complaint. There is no basis for  
6 this position. The Democratic Party has no intention of ignoring decisions of this Court or  
7 any other court. By the same token, the Democratic Party reserves its rights to appeal  
8 decisions in the usual course. Deleting material from the pleadings in the fashion proposed by  
9 the Defendants creates a risk of confusion about the record if and when it is later reviewed.

10 **B. Deletion of Proposed New Causes of Action for Which Leave Was Not**  
11 **Granted**

12 In its Motion the Democratic Party sought leave to add a new cause of action alleging  
13 violation of Article II, Section 37 of Washington's Constitution. The Court denied this  
14 request. As is apparent from comparing Exhibit 3 with Exhibit 2 this proposed cause of  
15 action was deleted in creating the filed pleading.

16 **C. Supplemental Allegations**

17 The Court granted permission for the Democratic Party to update its pleadings to add  
18 relevant facts that have occurred since the original filing, Order at 20:10-12, and to add facts  
19 about the history of the litigation or context, even though such historical or contextual facts  
20 may appear irrelevant at this juncture of the litigation, provided that allegations of  
21 constitutional violation were limited to the current implementation of I-872, Order at 20:17-  
22 21. Comparison of Exhibit 3 to Exhibit 2 will show that the Democratic Party deleted  
23 proposed allegations that the Initiative had been superseded. The new material does not make  
24 any allegation of constitutional violations other than with respect to the current  
25 implementation of I-872. The proposed supplemental allegations that were included in the

1 filed First Amended and Supplemental Complaint are within the permission granted by the  
2 Court.

3 **D. Specific Relief Request to Remedy Issues**

4 Defendants complain that the changes made by the Democratic Party in its request for  
5 relief do not specify what the State needs to do to fix its implementation of I-872 as required  
6 by the Order at 20:22-24 and 21:10-14. However, the Democratic Party's amendments have  
7 made the request for injunctive relief very specific in terms of what must be done:

8 a. The State must not imply affiliation between a candidate and the Party  
9 on a general election ballot unless the candidate has been selected by members of the Party  
10 (Prayer for Relief 8(a), 8(c));

11 b. The State must not distribute statements of party preference without,  
12 upon request by the Party, "conspicuously and in close proximity making a statement  
13 disclaiming any association between the candidate and the party." (Prayer for Relief 8(b))<sup>3</sup>

14 c. The State must not conduct elections of Party officers except in one of  
15 two ways:

- 16 i. in a manner substantially similar to the process approved by the
- 17 Party for the selection of this State's delegates to the National Convention of the Party; or
- 18 ii any other manner approved by the Party.

21 <sup>3</sup> This relief is at least as specific as the standard set forth by the State in RCW 62A.2-316(2)  
22 for disclaiming warranties in a sales contract:

23 to exclude or modify the implied warranty of merchantability or any part of it the  
24 language must mention merchantability and in case of a writing must be conspicuous,  
25 and to exclude or modify any implied warranty of fitness the exclusion must be by a  
writing and conspicuous. Language to exclude all implied warranties of fitness is  
sufficient if it states, for example, that "There are no warranties which extend beyond  
the description on the face hereof

1 **CONCLUSION**

2 The Defendants' Motions are simply an attempt to reargue the Motions decided by the  
3 Court in its August 20, 2009. The Motions should be denied.

4 DATED this 22<sup>nd</sup> day of February, 2010.

5  
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15 Attorneys for Plaintiffs in Intervention,  
16 Washington State Democratic Party and  
17 Dwight Pelz, Chair

**CERTIFICATE OF SERVICE**

1 I hereby certify that on February 22, 2010, I caused to be electronically filed the  
2 foregoing with the Clerk of the Court using the CM/ECF system which will send notification  
3 of such filing to all counsel of record.  
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11 Washington State Democratic Party and  
Dwight Pelz, Chair  
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