

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 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,

Defendant Intervenors.

No. CV05-0927JCC

WASHINGTON STATE GRANGE'S
RESPONSE TO THE
STATE LIBERTARIAN PARTY'S
MOTION FOR A CONTINUANCE

*Noted Without Oral Argument:
December 12, 2008*

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I. RESPONSE

The Washington State Libertarian Party, Ruth Bennett, and J.S. Mills have known since the Supreme Court’s ruling in this case 9 months ago that if they wanted to maintain any claims in the trial court that they thought might have survived that Supreme Court ruling, then they should retain an attorney to represent them in those trial court proceedings.¹

But they chose not to during these past 9 months.

Instead, they waited until now, and have filed a motion demanding that the Grange’s and State’s motions to dismiss the three Complaints in this case be put off and continued for 3 months (until March of 2009) to allow the State Libertarian Party, Ms. Bennett, and Mr. Mills to now do what they should have done last March 2008 – namely, retain an attorney to represent them in the trial court if they actually thought that any of their claims had survived the Supreme Court’s March 2008 ruling.

Their motion for 3 more months of delay should be denied for the straightforward reason that their motion offers no legitimate excuse for their past 9 months of delay in retaining counsel to represent them in this trial court proceeding.

Nor does their motion offer any legitimate reason why the Grange’s and State’s motions with respect to dismissing the other parties’ Complaints in this case must be delayed to accommodate the State Libertarian Party’s failure to timely retain counsel these past 9 months. Thus, at the very least, the pending motions to dismiss should proceed as scheduled, and any significant prejudice to the delinquent State Libertarian Party can be easily avoided by simply making this case’s dismissal of the State Libertarian Party “without prejudice”. That would allow the State Libertarian Party the additional time it now demands to retain an attorney willing to maintain before a court that they have some sort of claim that survived the Supreme Court’s March 2008 ruling.

¹ *Alternatively, Ms. Bennett and Mr. Mills could of course have decided to proceed pro se.*

1 The only possible argument against this approach of proceeding with the pending
2 dismissal motions (i.e., dismissing the State Libertarian Party's Complaint without prejudice
3 while dismissing the Complaints of the State Democratic Central Committee and of the State
4 Republican Party with prejudice) would be that the three Complaints are inextricably
5 interrelated and intertwined. If that is the case, then that only proves the propriety of the
6 approach requested in the State's Response Brief (Doc. #153) – i.e., continuing and staying all
7 motions, discovery, and other proceedings relating to those inextricably intertwined and
8 interrelated Complaints for the 3 month window that the State Libertarian Party, Ms. Bennett,
9 and Mr. Mills demand.

10 The Responses filed by the State Democratic Central Committee (Doc. #154) and by the
11 State Republican Party (Doc. #155) object to the State's above request for a continuance and
12 stay with respect to all parties. But the reason they gave for that objection only confirms the
13 propriety of the State's requested approach if this Court were to decide to excuse the State
14 Libertarian Party's inexcusable delay in retaining trial counsel to represent it in this case. That
15 is because the Democratic Central Committee's and State Republican Party's Responses make it
16 clear that they want this case to proceed with litigating the political parties' interrelated claims
17 during the exact same 3 month window that the State Libertarian Party says it will be
18 unrepresented, naked, and without counsel.

19 **II. CONCLUSION**

20 The State Libertarian Party, Ms. Bennett, and Mr. Mills have either proven excusable
21 neglect and undue prejudice if the motions and activity in this case proceed under the current
22 schedule, or they have not.

23 The Grange believes they have not – especially since this Court can avoid any
24 substantial prejudice to the State Libertarian Party, Ms. Bennett, and Mr. Mills by dismissing
25 their Complaint without prejudice in response to the two pending motions to dismiss.
26

1 If this Court disagrees, however, its ruling should not be piecemeal. This Court's ruling
2 should, as the State requests, continue and stay all motions, discovery, and other proceedings in
3 this case for the 3 month window that the State Libertarian Party, Ms. Bennett, and Mr. Mills
4 demand.

5 RESPECTFULLY SUBMITTED this 9th day of December, 2008.

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Attorneys for the defendant-intervenor
Washington State Grange

CERTIFICATE OF SERVICE

Thomas F. Ahearne states: I hereby certify that on December 9, 2008, I electronically filed the following documents with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties listed below:

1. Grange’s Response To State Libertarian Party’s Continuance Motion; With This Declaration Of Service and attached Proposed Order.

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I certify and declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed at Seattle, Washington this 9th day of December, 2008.

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