

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WASHINGTON STATE
REPUBLICAN PARTY, et al.,

Appellants,

v.

WASHINGTON STATE
GRANGE, et al.,

Appellees.

Nos. 11-35122 and 11-35124

WASHINGTON STATE
DEMOCRATIC CENTRAL
COMMITTEE'S AND
WASHINGTON STATE
REPUBLICAN PARTY'S
JOINT MOTION TO ASSIGN
ORIGINAL PANEL

Pursuant to the authority granted by the Federal Rules of Appellate Procedure, Appellants Washington State Democratic Central Committee and Washington State Republican Party hereby move the Court to assign the same panel of judges that heard the prior appeals in this case (Nos. 05-35774 and 05-35780). Specifically, Appellants move that Judges Raymond C. Fisher, Dorothy W. Nelson, and Pamela A. Rymer be assigned to hear this appeal.

Under the Court Structure and Procedures section preceding the Rules, a party may move to have a case heard by the panel that heard an original appeal in the same case:

The only exception to the rule of random assignment of cases to panels is that a case heard by the Court on a prior appeal may be set before the same panel upon a later appeal. If the panel that originally heard the matter does not specify its intent to retain jurisdiction over any further appeal, the parties may file a motion to have the case heard by the original panel.

Fed. R. App. P., Court Structure and Procedures, Part E(4); *see also* United States Court of Appeals for the Ninth Circuit General Orders § 3.7

(December 2010) (“When a new appeal is taken to this court from a district court or agency decision following a remand, the calendaring staff shall notify the panel that remanded the case that the new appeal is pending.”).

The present appeal and the appeal previously before this Court involve similar issues stemming from the same case. The first appeal involved a facial challenge to the constitutionality of Washington State’s Initiative 872 (“I-872”). This Court held I-872 unconstitutional. *Wash. State Republican Party v. Washington*, 460 F.3d 1108, 1125 (2006). The Supreme Court reversed as to facial unconstitutionality and remanded. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 459

(2008). On remand, the case proceeded on plaintiffs' as-applied challenge to the constitutionality of I-872. The trial court's rulings on the as-applied challenge are the subject of the current appeal. The previous panel's research and knowledge of the case would benefit consideration of the current issues. Therefore, in the interest of a streamlined and efficient judicial process, Appellants respectfully request that the Court assign this case to the same panel that heard the original case.

DATED this 4th day of May, 2011.

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9th Circuit Case Number(s) 11-35122, 11-35124

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