THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, BERTABELLE HUBKA, STEVE NEIGHBORS, MARCY COLLINS, MICHAEL YOUNG, DIANE TEBELIUS, MIKE GASTON,

Plaintiffs,

and,

WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE, PAUL BERENDT,

Plaintiff-Intervenors,

and,

LIBERTARIAN PARTY OF WASHINGTON STATE, RUTH BENNETT, J. S. MILLS,

Plaintiff-Intervenors,

v.

WASHINGTON STATE GRANGE,

Defendant-Intervenor,

and,

STATE OF WASHINGTON, ROB MCKENNA, SAM REED,

Defendant-Intervenors.

Case No. C05-0927-JCC

ORDER

This matter comes before the Court on Washington State's Motion for Entry of Judgment (Dkt. No. 194) and Addendum (Dkt. No. 197), Washington State Republican Party's Response (Dkt. No. 198), and Plaintiff's Reply (Dkt. No. 201). Having thoroughly considered the parties' briefing, supporting documentation, and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motion for the reasons explained herein.

I. BACKGROUND

The underlying litigation concerns the constitutionality of Washington's Initiative 872 ("I-872"), which established a "top two" primary system. Plaintiffs claimed that the system was unconstitutional. This Court initially agreed, and the Ninth Circuit affirmed. *Wash. State Republican Party v. Washington*, 460 F.3d 1108, 1125 (9th Cir. 2006). On the same day that it issued its opinion on the merits, the appellate court also concluded that the State of Washington ("the State") was liable for attorneys' fees pursuant to 42 U.S.C. § 1988, because the political parties were "prevailing parties" within the meaning of that statute. After a stipulation by the parties, on October 3, 2006, the Ninth Circuit entered an order awarding fees and costs: the State owed $55,097 to the Republican Party, $37,673.97 to the Democratic Party, and $16,301 to the Libertarian Party. The State promptly paid those awards. (Dkt. No. 130 at 4.)

The United States Supreme Court, however, reversed the Ninth Circuit on the merits, holding that I-872 survived the parties' facial constitutional challenge. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442 (2008). After the State moved for appropriate relief, the Ninth Circuit vacated its prior award of costs and fees in consideration of the Supreme Court's reversal, and stated that this Court "may make appropriate findings concerning the parties' settlement of fees and should determine whether restitution or further fee awards are appropriate in response to [the State's] motion to vacate award of attorney's fees and costs, for judgment awarding restitution of fees and costs and for costs." *Wash. State Republican Party v. Washington*, No. 05-35774, 2008 WL 4426713, at *1 (9th Cir. Oct. 2, 2008). At no point did any party argue that any fee decision waived substantive claims.

On August 20, 2009, this Court considered the State of Washington's Motion to Recover Fees, among other substantive issues presented in motions to dismiss. (*See* Dkt. No. 184 at 24 *et seq*; *see also* Dkt. No. 130.) The State sought to recover the attorneys' fees and costs that it paid to Plaintiffs when the Ninth Circuit determined that they were "prevailing parties." (Order 7 (Dkt. No. 184).) Essentially, the State wanted the money it had already paid to be returned, because the political parties were no longer "prevailing." After a thorough consideration of the applicable statutes and rules, the Court granted this aspect of the State's motion, finding that the State was entitled to be reimbursed for the funds it paid to Plaintiffs in 2006. (Dkt. No. 184 at 27.)

The Court did not, however, set a deadline for payment of those funds. The Democratic Party has already paid in full the amount awarded against it, but neither the Republican nor Libertarian Party has yet paid. The instant dispute concerns whether the political parties are obligated to return the funds now, or whether judgment should wait until the end of the suit.

The State seeks to reduce the portion of this Court's Order concerning reimbursement of these fees to a judgment, triggering post-judgment interest under 28 U.S.C. § 1961(a). (Mot. 2 (Dkt. No. 194); Addendum 2 (Dkt. No. 197).) The Republican Party[1] opposes the motion for two reasons. First, it believes that Federal Rule of Civil Procedure 54(b) prohibits entry of judgment at this time. Second, it argues that entry of judgment would be inequitable, based on current ongoing state campaign finance litigation. (Resp. (Dkt. No. 198).)

II. DISCUSSION

The State requests only that the Court issue a separate document reducing the costs portion of the order to judgment, in order to direct immediate payment. Rule 58(d), the rule that the State cites, simply provides that "[a] party may request that judgment be set out in a separate document as required by 58(a)." FED. R. CIV. P. 58(d).

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[1] The Libertarian Party has not filed a response or joined in the Republican Party's argument.

A. Rule 54(b)

The Republican Party first argues that Rule 54(b) precludes early judgment here. (*See* Resp. 2–3 (Dkt. No. 198); Reply 3 (Dkt. No. 201).) That rule provides, in full:

> **(b) Judgment on Multiple Claims or Involving Multiple Parties.** When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

The Republican Party argues that this Rule precludes entry of judgment on part of a claim, based on a policy against piecemeal resolution of cases. But the Party's arguments are overblown. In the first place, the text of Rule 54(b) specifically contemplates certification of "fewer than all" claims if the Court determines that there is no just reason for delay.[2] The Court must simply consider the factual overlap between the two claims and determine whether justice requires waiting until final resolution of all claims. *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 954 (9th Cir. 2006). Moreover, the Rule is primarily considered in the context of an appeal. No party has argued for interlocutory appeal here, and for good reason—the Ninth Circuit has already vacated its order regarding fees in light of the Supreme Court's reversal on the merits, and remanded to this Court for entry of judgment awarding restitution if the Court found it appropriate. *Wash. State Republican Party*, 2008 WL 4426713, at *1. An interlocutory appeal from a fees judgment under these circumstances—while theoretically possible—would be a very unusual litigation tactic.

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[2] Based on the plain text of the rule, it was not, as the Republican Party intimates, the State's burden to demonstrate good cause. (*See* Resp. 1 (Dkt. No. 198).) Rather, the decision is within the broad discretion of the district court. *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 954 (9th Cir. 2006).

Even if the Republican Party were to appeal the judgment of fees, however, the Court observes that this issue is based on a separate statute (42 U.S.C. § 1988), and is therefore factually divorced from the underlying constitutional allegations. The Ninth Circuit would not have to "review[] the same set of facts in a routine case more than once." *Wood v. GCC Bend, LLC*, 422 F.3d 873, 879 (9th Cir. 2005). This observation dispels the specter of an overloaded appellate court hostile to piecemeal appeals, and properly considers what appears to be the most important factor on review. *See id*; *see also Noel v. Hall*, 568 F.3d 743, 747 (9th Cir. 2009) (judgment on single claim was proper where claims were not particularly related); *AmerisourceBergen*, 465 F.3d at 954 (same).[3] Certification under Rule 54(b) is proper under these circumstances.

B. State-Court Lawsuit

As above, in addition to considering whether the claims are factually interdependent, a district court must consider the equities of the situation and determine whether there is "no just cause for delay." *AmerisourceBergen*, 465 F.3d at 954. According to the Republican Party, one "just cause" militating against entry of judgment concerns ongoing state campaign finance litigation. The State and the Republican Party are currently embroiled in litigation in King County Superior Court over the Party's use of its state-regulated "exempt" funds account. (Resp. 4 (Dkt. No. 198).) In that separate lawsuit, the State is arguing that any payment from the exempt account not specifically authorized by statute violates Washington state law. (*Id.*) The Republican Party alleges that, should the Court grant the State's request, the Party would

[3] The Republican Party also cites *Liberty Mutual Insurance Co. v. Wetzel* for the proposition that only a fully adjudicated whole claim against a party may be certified under Rule 54(b). 424 U.S. 737, 742–43 (1976). *Wetzel* concerned the jurisdiction of the Court of Appeals in considering a claim that had not been fully adjudicated, because the District Court had not considered the issue of relief. *Wetzel*, 424 U.S. at 745–46. The facts and posture of this case are, obviously, quite different.

have to gamble on the outcome of the state-court suit before choosing the source of the funds—and would suffer "irreparable" harm either way. (*Id.* at 5.)

The Court finds this argument to be irrelevant. The State is merely asking for funds *back*—funds that it already paid to the Republican Party, and to which the Party is no longer entitled. If the Party intermingled the award of costs in a way that subjected it to outside liability, this is of no concern to the Court. The equities of the situation do not demand delay.

III. CONCLUSION

Under the circumstances of this case, the Court finds no just reason for delay in ordering immediate payment. *See Curtiss-Wright Corp. v. Gen Elec. Co.*, 446 U.S. 1, 7–8 (1980). The Ninth Circuit has vacated its previous award of fees; the State merely requests restitution of funds that it already disbursed. This request is simple and reasonable. The fees dispute has reached a final disposition in this Court, and this issue is unrelated to the other constitutional claims involved in this lawsuit. *Wood v. GCC Bend, LLC*, 422 F.3d 873, 878 (9th Cir. 2005); *AmerisourceBergen*, 465 F.3d at 954. For the foregoing reasons, the State's Motion for Entry of Judgment (Dkt. No. 194) is GRANTED. The Washington State Republican Party is ORDERED to repay the State of Washington $55,097.25, plus post-judgment interest compounding as of the date of this Order and accompanying Judgment, as provided in 28 U.S.C. § 1961(a). The Libertarian Party of Washington State is ORDERED to repay the State of Washington $16,301.12, plus post-judgment interest. A separate judgment accompanies this Order.

DATED this 5th day of January, 2010.

John C. Coughenour
UNITED STATES DISTRICT JUDGE