Honorable John C. Coughenour

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. CV05-0927-JCC

WSRP OPPOSITION TO GRANGE MOTION FOR SUMMARY JUDGMENT

The Washington State Republican Party joins in the opposition filed by the Washington State Democratic Central Committee to the Motion of the Washington State Grange for Summary Judgment (Dkt. 249), and makes the following additional points.

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The Supreme Court noted, "Of course, it is *possible* that voters will misinterpret the candidates' party-preference designations as reflecting endorsement by the parties." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 455, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008). The record submitted in response to the State's motion makes it clear that voters, as well as others who are involved with candidates (*e.g.*, the press, election administrators, and the State's own expert), misinterpret the "preference" statement to mean endorsement, association, affiliation or even nominee status of the Republican Party.

The Grange is also incorrect about the effect of the State's implementation of I-872 as part of its integrated election system. The Supreme Court upheld I-872 against a facial challenge based on forced speech because "I-872 does not require the parties to reproduce another's speech against their will; nor does it co-opt the parties' own conduits for speech." *Id.* at 457. The story now, however, is markedly different. As applied as part of the State's implementation of I-872, RCW 42.17.510 requires the Republican Party to repeat candidates' "party preference" in political advertising that identifies the candidate:

> For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, that party or independent designation shall be clearly identified in electioneering communications, independent expenditures, or political advertising.

Thus, as-applied, I-872 violates the First Amendment, by requiring the GOP to include someone else's political speech in its own. *See Pacific Gas & Elec. Co. v. Public Util. Comm'n of Cal.*, 475 U.S. 1, 106 S. Ct. 903, 89 L. Ed. 2d 1 (1986) (state agency prohibited from requiring a utility company to include a third-party newsletter in its billing envelope). When conducting political advertising regarding a candidate who has expressed a party preference under I-872, the WSRP must include that candidate's speech – his stated "party preference" – in its speech.

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As with the State, the Grange has had a full opportunity to present its case. If one party moves for summary judgment and has had a "full and fair opportunity to ventilate the issues involved in the motion," the court may grant summary judgment to the non-moving party. *See Cool Fuel v. Connett*, 685 F.2d 309, 311-12 (9th Cir. 1982). The State's implementation confuses voters. I-872 compels the Republican Party to include others' political speech in its own, thus interfering with the Republican Party's core associational rights. I-872 is unconstitutional as applied and the Court should grant summary judgment to the Republican Party.

DATED this 13th day of September, A.D. 2010

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2010, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

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