Nos. 05-35774, 05-35780

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WASHINGTON STATE REPUBLICAN PARTY, *et al.*
Appellees/Plaintiffs,
WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE, *et al.*
Appellees/Plaintiff Intervenors,
LIBERTARIAN PARTY OF WASHINGTON STATE, *et al.*,
Appellees/Plaintiff Intervenors,
v.
DEAN LOGAN, King County Records & Elections Division Manager, *et al.*,
Defendants,
STATE OF WASHINGTON, *et al.*
Appellants/Defendant Intervenors,
WASHINGTON STATE GRANGE,
Appellant/Defendant Intervenor.

On Appeal from The United States District Court for the Western District of Washington at Seattle, No. C05-0927Z
The Honorable Thomas Zilly, United States District Court Judge

SUPPLEMENTAL BRIEF BY APPELLEES WASHINGTON STATE REPUBLICAN PARTY , ET AL.

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SUMMARY OF ARGUMENT

The Supreme Court decision addressed only one of the bases for affirming the district court's determination that I-872 is unconstitutional. The Supreme Court made clear that it resolved only the narrow, specific question on which it granted *certiorari*, and expressly noted that other issues were not resolved and should be addressed on remand. *See Wash. State Grange v. Wash. State Republican Party*, 552 U.S. ___, 128 S. Ct. 1184, 1195 n.11, 170 L. Ed. 2d 151 (2008). This Court should affirm the district court's holding that I-872 is unconstitutional.

The State's application of I-872 permits any candidate to appropriate the Party's name and symbols to advance his candidacy. I-872 infringes on the Party's rights under federal trademark laws and is invalid. Under I-872, as applied, "preference" equals "affiliation." The Republican Party must repeat a candidate's "preference" for the Party in all political advertising about that candidate, even to state that the candidate is anathema to the Party and its principles. Such forced speech violates the First Amendment.

I-872 also fails on state constitutional grounds. Article II, § 37 of Washington's constitution, as construed and applied by its Supreme Court in 2007, requires that an initiative set forth all existing law being amended, or the initiative is void. I-872 not only omitted from its text the minor party nomination and name control statutes that the State now contends are repealed, but also omitted the primary

election law that the legislature had substantially amended *before* I-872's proponents launched their campaign. The 2007 decision provides an independent ground to affirm the injunction.[1]

In the alternative, if I-872 retained minor party rights to nominate candidates and limit the use of the party name to nominees, it denies the Republican Party equal protection of law by allowing any candidate to appropriate the Republican Party's name while giving minor parties greater rights.[2] I-872 did not impliedly repeal statutes governing nomination by minor parties and granting them control over their name. It made no reference to minor party convention, nomination and name control statutes. None of these statutes are inconsistent with I-872.

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[1] The Court can and should consider the state constitutional question, even though not previously raised. The intervening decision of the Washington Supreme Court is an exceptional circumstance. *See U.S. v. Shaltry*, 232 F.3d 1046, 1052 (9th Cir., 2000). The question is a purely legal one, with no additional record that need be developed. *See U.S. ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 957, n.2 (9th Cir., 1997).

[2] I-872 also made no reference to RCW 29A.52.116, which requires major political party candidates to be nominated at a primary. The State, without legal basis, also treats this provision as having been impliedly repealed. The Democratic Party brief addresses this issue. Those arguments are not repeated here. If the State conducted the primary required by RCW 29A.52.116, the equal protection problems raised by the unrepealed minor party statutes would not be present. Even were the major party primary required by RCW29A.52.116 validly repealed by implication, the pre-adoption statements by the sponsor and the State's post-adoption implementation of I-872 makes clear that the minor party nomination and name control statutes were not.

ARGUMENT

A. The State's implementation of I-872 infringes on federal trademark rights to use of the Republican name, and compels the Party to identify any candidate claiming a preference for the Party as a "Republican" in campaign advertising.

The implementation of I-872 equates the historic concept of "party affiliation" with "party preference" under I-872, and makes affiliation a one-way street.

> "Party affiliation" as that term is used in [Washington's campaign finance laws] means the candidate's party preference as expressed on his or her declaration of candidacy. A candidate's preference does not imply that the candidate is nominated or endorsed by that party, or that the party approves of or associates with that candidate.

WAC 390-05-274 (reproduced in the Addendum). All political advertising that refers to a candidate must include the "party preference" listed by the candidate. RCW 42.17.510(1). The State "publish[es] a list of abbreviations or symbols that clearly identify political party affiliation or independent status. These abbreviations may be used by sponsors to identify a candidate's political party." WAC 390-18-020(3). The abbreviations are reproduced in a State publication. The Court may judicially notice that "R," "GOP" and "Rep" are traditional abbreviations for the Republican Party. The State publication, Political Advertising, issued by the Public Disclosure Commission in July 2008 (reproduced in the Addendum) requires that advertising about candidates who prefer the Republican Party include the Party's name or one of its established abbreviations. The same publication provides that "official symbols or logos adopted by the state committee of the party may be used in lieu of other

identification . . . ." The State not only requires the Republican Party to identify candidates who claim a preference for the Party as "Republicans" whether they are or not, but also expressly authorizes any candidate to use Party's symbols and logos.

Political parties' names and symbols are protected from unauthorized use by competitors. *See United We Stand Am. v. United We Stand Am. N. Y. State*, 128 F.3d 86, 90 (2nd Cir. 1997). In *Tomei v. Finley*, 512 F. Supp. 695 (N.D. Ill. 1981), use of a traditional abbreviation for the Republican Party by rival candidates on violated federal trademark law and was enjoined. I-872 expressly provides that the party identification provided by a candidate is "for the information of voters." I-872 §7(3). The only possible information that a candidate selecting a "Republican Party" preference conveys is to connect his candidacy to the principals, programs and candidates of the Republican Party, trading on its name and goodwill. The State aids in infringing on the Republican mark by printing the Party name on ballots in association with their candidacies and requiring that political advertising about the candidate carry the Party name. With respect to the Republican Party, I-872 constitutes forced speech by mandating the content of political advertising from the Party. Even candidates whose views are anathema to the Republican Party must be identified as "Republicans" in political advertising.[3]

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[3] The State's decision to treat "party preference" and "party affiliation" as the same is another example of why I-872 was not a complete enactment. *See infra*, p. 6.

B. I-872 violates Article II, § 37 of Washington's constitution.

Washington's constitution requires that "the act revised or the section amended shall be set forth at full length." WASH. CONST. art. II, § 37. The provision applies with equal force to the legislative and initiative processes, *see State v. Thorne*, 129 Wn.2d 736, 752-53, 921 P.2d 514 (1996), and has two purposes: "to ensure disclosure of the general effect of the new legislation *and* to show its specific impact on existing laws in order to avoid fraud and deception." *Wash. Citizens Action v. State*, 162 Wn.2d 142, 152, 171 P.2d 486 (2007) ("*WCA*")(emphasis in original). There is no dispute that I-872 set forth none of the statutes governing minor party convention, nomination or name control rights. An initiative's text cannot be expanded by ancillary documents, including explanatory statements in a Voters' Pamphlet for the election. *See id.* at 155-56. Sound policy underlies this principle, beyond Washington's general policy strongly disfavoring implied repeal. The Voters' Pamphlet is unavailable to voters who sign the initiative petitions required to reach the ballot. A voter who "simply read the text of the initiative" would not have known that the minor party statutes were affected. *See id.* at 156.

If I-872 amended or repealed the minor party nominating statutes, it violates Washington's constitution by failing to set forth the law it amended and repealed. Washington uses a two-part test to determine whether legislation is amendatory:

> First, the court must determine whether the bill is such a complete act that the scope of the rights created or affected by the bill can be

> ascertained without referring to any other statute or enactment. Second, would a determination of the scope of the rights under the existing statutes be made erroneous by the bill?

WCA, 162 Wn.2d at 159.

I-872 was not an enactment complete in itself, but required extensive reference to other statutes and major additional implementation legislation. I-872 did not cover the entire subject matter of primaries and elections. Its title clearly states that it "amends" a number of statutes and adds sections to existing chapters in Washington's election laws. ER 258. I-872's limited scope is further shown by its contrast to the far more comprehensive "top two" statute passed by the legislature (but vetoed in part) in 2004. The legislature's version of the "top two" statute amended forty-seven sections, in contrast to I-872's nine amended sections. ER 264-302. The legislature's version repealed seventy-three provisions, in contrast to I-872's four repealed sections of existing law. ER 356-60. Even more telling against any claim that I-872 was intended to "occupy the field" is the Secretary of State's near-immediate effort to pass additional legislation to "implement" I-872. ER 239. The Secretary's proposed implementation bill purported to "fill[] in the blanks and cure[] conflicts between I-872 and current law . . . [e]liminate[] the minor party and independent candidate convention process, except for nomination of President and Vice-President . . . [and] change[] the campaign finance definitions of 'caucus political committee' and 'primary'." ER

241. The bill to "implement" I-872, SB 5745, is sixty-two pages long and amends eighty-two sections of Washington law. ER 251; *see* http://apps.leg.wa.gov/documents/billdocs/2005-06/Pdf/Bills/Senate%20Bills/5745.pdf (last visited July 28, 2008).

If minor party statutes were repealed *sub silentio*, I-872 would also violate the second test, because determination of the rights of minor parties from the existing statutes would be "erroneous."

On April 1, 2004 the "Montana primary" bill became law. The same day, the Grange announced its campaign for I-872.

> The Washington State Grange announced today that it is now collecting signatures for I-872 (the "People's Choice" initiative) to run on the November ballot.
>
> * * *
>
> The campaign was launched in response to Gov. Locke's partial veto of Engrossed Senate Bill 6453, which was passed by the legislature last month. The bill would have put a top-two system in place, which would then revert to a Montana-style system in the event that legal challenges by the political parties resulted in a successful ruling.

http://www.blanketprimary.org/pressroom/release-2004-04-01.php (last visited July 30, 2008). From the I-872 campaign's inception, its sponsors knew that the "Montana primary" bill had amended the law, and that I-872 did not accurately reproduce the statutes it amended. The sponsors unsuccessfully litigated the validity of the "Montana primary" bill. *See Grange v. Locke*, 153 Wn.2d 475, 105 P.3d 9 (2005).

I-872 made no reference to the "Montana primary" bill adopted by the legislature. Instead, I-872's text advised voters that it would change this Court's decision striking down the blanket primary. ER 258. I-872 misled voters by failing to disclose the legislature's adoption of a new primary system that remedied the constitutional defect at issue in *Democratic Party v. Reed*, 343 F.3d 1198 (9th Cir. 2003), *cert. denied*, 540 U.S. 1213 (2004). An initiative must accurately reflect the law it amends at the time the people vote on the proposition. When the people voted on I-872 in November 2004, the initiative did not accurately reflect the laws it was changing. Therefore, I-872 is void under Article II, § 37 of Washington's constitution. *See WCA*, 169 Wn. 2d at 161-62. In *WCA*, the initiative text was rendered inaccurate by court decisions that occurred after the initiative campaign began. *See id.* at 160. First, an injunction that rendered the initiative text inaccurate was issued after signature gathering had begun. *See id.* at 150. Then, more than three months after the signatures qualifying the initiative for the ballot had been submitted to the Secretary of State, and only about six weeks before the election, state Supreme Court upheld the injunction. *See id.* Despite claims by the State that the sponsors had acted in good faith, the court held the initiative unconstitutional.

I-872's defects are far worse than those in *WCA*. The I-872 campaign was launched immediately upon, and in response to, adoption of the "Montana primary" bill but reproduced none of the new statutes. Initiative proponents bear the risk if they

proceed without taking changes in the law into account. "[W]here we must weigh delay for initiative proponents against constitutionally prescribed clarity for the voters, the constitution must prevail." *Id.* at 158-59. The court noted a simple solution for addressing intervening changes in the law: "[I]nitiative proponents can effectively 'amend' an initiative simply by filing a new version of an initiative under a different number." *Id.* at 157. The proponents' decision to present an initiative that they knew did not reflect the current law in Washington is an independent ground to uphold the permanent injunction.

C. Alternatively, despite the State's effort to administratively repeal statutes, I-872 denies equal protection of law because it retained minor parties' rights to nominate a single candidate to appear on the ballot and control of their names, while allowing any candidate to appropriate the Republican Party's name and symbols.

The Republican Party's First Amendment associational rights "are protected from unequal regulatory burdens under the Equal Protection Clause of the Fourteenth Amendment." *Schrader v. Blackwell*, 241 F.3d 783, 788 (6th Cir. 2001) (citing *Williams v. Rhodes*, 393 U.S. 23, 30 (1968)). When deciding whether a law violates the Equal Protection Clause, a court must "look . . . to three things: the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification." *Dunn v. Blumstein*, 405 U.S. 330, 335 (1972). A law impairing "a fundamental political right" must be supported by interests that "meet close constitutional scrutiny." *Dunn*, 405

U.S. at 336 (quotation marks and citations omitted).

I-872 unlawfully discriminates against the Republican Party by retaining the right of minor political parties to have only their nominees carry the party name on the ballot while denying that right to the Party. Under RCW 29A.20.121, "[a]ny nomination of a candidate for partisan public office by other than a major political party may be made only. . . [i]n a convention." The State also enables minor parties to protect themselves from attempts to hijack the party name or force an association. RCW 29A.20.171(1) recognizes that there can be only one nominee of a minor political party. RCW 29A.20.171(2) provides for "a judicial determination of the right to the name of a minor political party." The differing treatment between minor parties and the Republican Party is solely based on political affiliation. It is unlike the content-neutral limitation in *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997), which prohibited a party from placing on the ballot a candidate who was already on the ballot as a candidate for another party. The Secretary of State's attempt to administratively repeal the minor party nomination and name control statutes was *ultra vires*, but demonstrates the State's acknowledgment that it has no interest to support the statute's different treatment of major and minor parties.

1. I-872 did not change how minor parties select candidates and protect their names.

Under both the former blanket primary and current law, Washington guarantees

minor parties control of their names and protection from unauthorized use. *Compare* former RCW 29.24.045 *with* RCW 29A.20.171.[4] I-872 neither expressly amended, repealed nor referenced minor party convention, nomination or name control statutes. Appellants have argued that I-872 impliedly repealed these statutes. *See* State Opening Br. at 46. However, that is not what the sponsor represented to the public to obtain approval of I-872, nor did it become the State's position until litigation was imminent.

The Grange's announcement of I-872 (ER 513) linked to an express representation that the initiative would not change the right of minor parties to select their candidates and prevent others from using the minor party name on the ballot:[5]

> Would this proposal eliminate minor party candidates from the primary or general election ballot?
>
> No. *Minor parties would continue to select candidates the same way they do under the blanket primary*. Their candidates would appear on the primary ballot for each office (as they do now). . . .

ER 25 (bold emphasis in original omitted; italics added).

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[4] Washington amended and recodified its election laws in 2003. 2003 WASH. LAWS Ch. 111, § 2401. The recodification left in place the provisions of the former blanket primary, because this Court had not yet issued its decision in *Reed*. I-872 was filed on January 8, 2004, based on the 2003 statutes. ER 512. The "Montana primary" bill did not become law until April 1, 2004. ER 261.

[5] At the time of the I-872 campaign, only candidates possessing a certificate of nomination issued by a minor party could file a declaration of candidacy referencing the minor party. *See* RCW 29A.20.201. I-872 did not amend or repeal this statute.

Under the blanket primary, minor parties nominated one candidate to appear in the primary and could prevent other candidates from appropriating their names. The 2004 "Montana primary" left the minor party convention, nomination and name control statutes in place. The only change regarding minor parties was the elimination of the requirement that the minor party candidates run in the primary and receive 1% of the vote to advance to the general election. Under the "Montana primary," minor party nominees automatically advance to the general election.

In December 2004, the Secretary of State proposed to *amend* I-872 to eliminate minor party convention and name control statutes. ER 239-43. In February 2005, the Secretary's office described its proposed legislation: "[W]e are changing the way minor parties or third parties gain access to the ballot." ER 250. In March 2005, the State's assistant director of elections noted that "[I-872] *does not address minor party candidates at all* - one of the biggest reasons why implementing legislation is necessary. ER 251 (emphasis added).

As late as April 19, 2005, the State still advised local election officials that I-872 did not address nominating conventions for minor parties. ER 234. As litigation approached, the State's view of I-872's effect on minor parties changed.

2. The attempt to repeal the minor party statutes by regulation was *ultra vires*, but in essence acknowledges their continued effect.

In May 2005, the Secretary's office predicted that the political parties would

"argue that the nominating system for minor party and independent candidates should still be required" and that "[i]f minor parties can hold nominating conventions, major parties should be allowed to also." ER 236. On May 18, 2005, two days before the complaint was filed, the Secretary adopted emergency regulations partially repealing the minor party statutes.[6] WAC 434-215-015 purported to abolish most of the minor party rights that I-872's sponsors represented would continue. The regulation states that RCW 29A.20.110 through 29A.20.201 (nominating rights and control over use of a minor party's name) "are limited to candidates for President and Vice-President of the United States."[7]

3. I-872 and the minor party statutes are easily harmonized to give effect to their terms, but their terms violate the Republican Party's right to equal protection of laws.

The district court rightly noted that

> Repeal by implication is strongly disfavored in Washington. Under Washington law, a statute will be deemed to be impliedly repealed only if: "[T]he later act covers the entire subject matter of the earlier legislation, is complete in itself, and is evidently intended to supersede

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[6] The emergency regulation was beyond the Secretary's power in any event. "An agency may not promulgate a rule that amends or changes a legislative enactment." *Edelman v. State ex rel. Pub. Discl. Comm'n*, 152 Wn.2d 584, 591, 99 P.3d 386 (2004).

[7] The effect of the emergency regulations is that I-872 did not impliedly *repeal* these statutes, but did impliedly *amend* them. However, an initiative that amends a statute without printing it in full is void under Art. II, § 37 of Washington's constitution. *See WCA, supra.*

> the prior legislation on the subject, or unless the two acts are so clearly inconsistent with, and repugnant to, each other that they cannot, by a fair and reasonable construction, be reconciled and both given effect."

377 F. Supp. 2d 907, 928-29 (internal citations omitted). *See also Gross v. Lynnwood*, 90 Wn.2d 395, 583 P.2d 1197 (1978) (whenever possible statutes will be read so both can stand); *State v. Fagalde*, 85 Wn.2d 730, 539 P.2d 86 (1975) (the court's duty is to reconcile and give effect to apparently conflicting statutes). The "top two" candidates advancing to the general election and minor party convention, nomination and name control rights can be reconciled and given effect, just as they co-existed under the blanket primary.

For minor parties, Washington's former blanket primary was a "winnowing election," not a nomination process, just as appellants now describe I-872. Under the old blanket primary, minor parties nominated a candidate by convention, who appeared on the primary ballot. To advance to the general election, the minor party candidate had to obtain 1% of the votes cast in the primary. *See generally Munro v. Socialist Workers Party*, 479 U.S. 193 (1986).[8] The Supreme Court noted that the blanket primary determined whether a nominated candidate qualified for the general election. *See id.* at 197-98. I-872 substituted finishing in the "top two" for the former 1% threshold for minor party access to the general election ballot. Raising the bar for

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[8] Before 1977, candidates nominated at minor party conventions proceeded directly to the general election ballot. *See Munro*, 479 U.S. at 191.

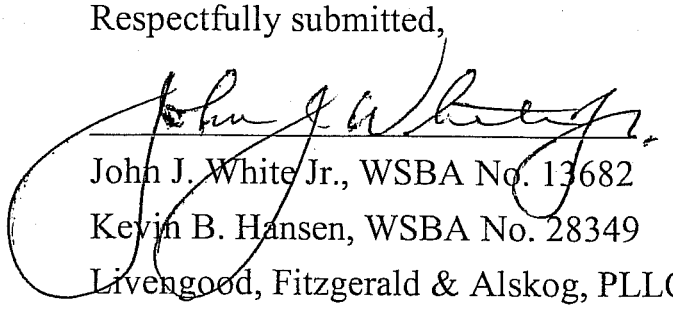
general election access can easily be harmonized with a minor party retaining its historic rights to nominate and limit use of the party name to its nominees. Harmonizing the statutes is consistent with the initiative sponsor's statements about its effect at the time of filing, and the State's pre-litigation determination that additional legislation would be required to eliminate the minor party rights. Harmonizing the statutes does not, however, justify their unequal protection of the right of minor parties to nominate a single candidate to appear on the ballot and prevent misappropriation of their names, and the denial of that right to the Republican Party and its adherents.

CONCLUSION

The Supreme Court's narrow opinion on the First Amendment facial invalidity of I-872 in no way prevents this Court from affirming the permanent injunction on any of the alternate grounds presented. The judgment of the district court should be affirmed.

Dated: August 4, 2008

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

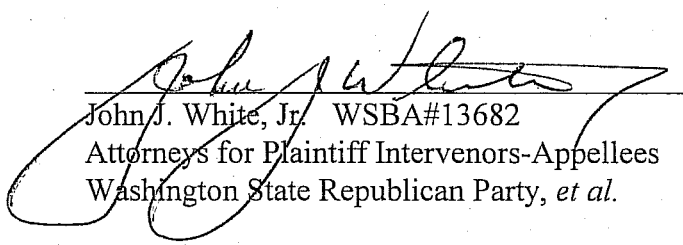
1. This brief complies with the format requirements of Fed. R. App. P. 32 and Ninth Circuit Rule 32-3(1) as a monospaced brief of the designated number of pages (15) pursuant to Order of this Court.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Corel Word Perfect in 14 point font size and Times New Roman type style.

DATED: August 4, 2008

Respectfully submitted.

LIVENGOOD, FITZGERALD
& ALSKOG, PLLC



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ADDENDUM

NEW SECTION

WAC 390-05-274 Party affiliation--Party preference. (1) "Party affiliation" as that term is used in chapter 42.17 RCW and Title 390 WAC means the candidate's party preference as expressed on his or her declaration of candidacy. A candidate's preference does not imply that the candidate is nominated or endorsed by that party, or that the party approves of or associates with that candidate.

(2) A reference to "political party affiliation," "political party," or "party" on disclosure forms adopted by the commission and in Title 390 WAC refers to the candidate's self-identified party preference.

ID Size and Placement

According to state law, on written or printed political advertising, the sponsor's full name and address and the candidate's party preference must:

- appear on the first page of the communication in at least 10 point type, or
- for ads such as billboards or posters, appear in type at least 10% of the largest size type used in the ad, and
- not be screened or half-toned (i.e., not made lighter through some printing or photographic process), and
- be set apart from any other ad text.

In any radio or TV political ad, the sponsor's full name and candidate's party preference must be clearly identified.

Abbreviations

The following abbreviations may be used to identify the candidate's political party preference:

Communist – Com

Constitution – CP

Democrat – D, Dem, Demo

Independent – Ind, Indep

Libertarian – L, LP, LBT, LBTN

Progressive – P, PP, Prog

Republican – R, GOP, Rep

Socialist – Soc

Socialist Workers – Soc Workers, SWP

Official symbols or logos adopted by the state committee of the party may be used in lieu of other identification; a copy of the symbol or logo should be provided to PDC.

Independent Expenditure Advertising & Electioneering Communications

Political advertising that meets **all** of the following criteria must include more details about the sponsor(s):

1) the ad supports or opposes a candidate for state or local office;

2) the ad is paid for by someone other than a candidate, a candidate's committee or agent;

3) the sponsor does the advertising completely independently of any candidate supported in the ad (or the opponent of the candidate opposed), or a candidate's committee or agent;

4) the sponsor did not receive the candidate's encouragement or approval to do the ad; and

5) the ad costs at least $800, or the cost of this ad when combined with the cost of earlier ads supporting or opposing the candidate total $800 or more.

If all 5 conditions are met, the ad must contain the following:

FOR WRITTEN ADS –
"NOTICE TO VOTERS (Required by law): This advertisement is not authorized or approved by any candidate. It is paid for by (name, address, city, state.)"

Further, if this type of ad is sponsored by a political committee required to file with the PDC, the following must also appear: "Top Five Contributors" followed by a list of the names of the five persons or entities making the largest contributions in excess of $700 to the PAC during the 12 months before the ad runs. If a political committee keeps records necessary to track contributions according to the use intended by contributors, that committee may identify the top five contributors giving for that purpose.

Both the "Notice to Voters" and "Top Five Contributors" messages must comply with the ID Size and Placement standards noted in this brochure.

Bona fide political parties are not required to include the Notice to Voters or Top 5 contributor information in written ads that they sponsor.

FOR RADIO, TV, AND TELEPHONE ADS –
The following statement must be clearly spoken, or for TV advertisements, appear in print and be visible for at least four seconds, appear in letters greater than 4% of the visual screen height, and have a reasonable color contrast with the background: "No candidate authorized this ad. Paid for by (name, city, state)." In addition, top five contributor information, as discussed under "written advertisements," is necessary if the ad is sponsored by a political committee required to file with the PDC. The Top 5 contributor information is also required for telephone transmissions.

Bona fide political parties are required to include the Notice to Voters statement in radio or TV ads that they sponsor, but not the Top 5 contributor information.

Independent expenditure advertising in the form of yard signs, bumper stickers, skywriting or other items exempt from sponsor ID (as discussed on the reverse), is also exempt from the Notice to Voters and Top Five Contributors requirements.

MAILINGS: Any person or entity, except a political party or political committee, that in one calendar year mails 1,000 identical or nearly identical pieces of advertising supporting or opposing a candidate or ballot measure as an independent expenditure must provide the appropriate county auditor with a copy of the ad and written notice of the number of pieces mailed within two working days of the mailing. Contact PDC for more information.

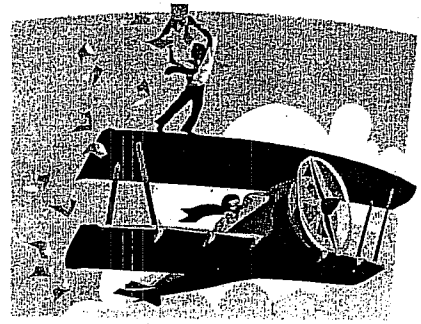
REPORTING:

ELECTIONEERING COMMUNICATIONS –
Anyone that sponsors an advertisement that clearly identifies at least one candidate for state, local, or judicial office; appears within 60 days of an election in the candidate's jurisdiction; is distributed through radio, television, postal mailing, billboard, newspaper or periodical; and, either alone, or in combination with other communications by the sponsor identifying the same candidate has a fair market value of $5,000 or more must file electioneering communication reports (Form C-6) within 24 hours.

INDEPENDENT EXPENDITURES –
Anyone (except a committee already filing with PDC) that spends $100 or more supporting or opposing a candidate or ballot measure—and the expenditures are not made in conjunction with a candidate or ballot issue committee—must file independent expenditure reports (Form C-6). All sponsors of last minute independent expenditure political ads valued at $1,000 or more presented to the public within 21 days of an election must be report within 24 hours.

Additionally, any business, union, association or other entity that during one calendar year makes independent expenditures totaling over $800 supporting or opposing state office candidates and statewide ballot measures must also file PDC Form C-7 (unless the entity reports the expenditures as a political committee or lobbyist employer.

Political Advertising



PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

July 2008

"Political Advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign.

General Requirements

Sponsor ID: Written ads must identify the sponsor's name and address unless exempt.*

Exempt From Sponsor ID: Yard signs (8' x 4' or smaller) and some other items are exempt. See list at far right.

Broadcast Ads: Radio and TV ads must state the sponsor's full name, but not the address.*

Party Preference: All forms of advertising must clearly state the candidate's party preference if the candidate is seeking partisan office. This requirement applies regardless of whether the ad is sponsored by the candidate or someone else.

Size and Placement: See back side of brochure for size and placement criteria regarding sponsor and party ID.

Photographs: If candidate photos are used in any ad, at least one of them must have been taken within the last 5 years and be no smaller than the largest candidate photo in the ad.

Office Sought: State law does not require ads to include the office or position a candidate is seeking.

*Advertising that qualifies as an "independent expenditure" is subject to different sponsor ID requirements (unless the sponsor is a political party). See reverse side.

The Law Forbids:

- Using an assumed name when identifying the sponsor.
- Distributing campaign material deceptively similar in design or appearance to the voters and candidate's pamphlets published by the Secretary of State.
- Using the state seal or its likeness to assist or defeat a candidate.

Until further notice, pending possible legislative action, the Public Disclosure Commission will not be enforcing RCW 42.17.530 and WAC 390-18-040 regarding false political advertising.

"Sponsor" means the candidate, committee or other person who pays for the advertisement. If a person acts as an agent for another or is reimbursed for payment, the original source of the payment is the sponsor.

To identify the sponsor, use the words "Paid for by" or "Sponsored by" followed by the name and address of the sponsor. *

What's Needed for Sponsor ID

State, Local & Judicial Candidates—show the candidate's name and address or the candidate's committee name and address.

Federal Candidates—only subject to federal law. (Contact FEC at 1-800-424-9530)

Political committees—show the committee's name and address. The treasurer's name is not required.*

Organizations or businesses—show the organization or business name and address. President or treasurer's name is not required.*

Multiple sponsors—show each sponsor's name and address. If one person pays for printing and another pays for mailing, list both as sponsors.*

Printed ads—show the sponsor's name, mailing address and, if applicable, the candidate's party preference in an area apart from the ad text. If the ad is more than one page, identify the sponsor (and party preference) on the first page. Identification on a mailing envelope is optional; the ad enclosed in the envelope must be properly identified.*

Radio and TV ads—clearly say the sponsor's name. The address is not required.*

*Advertising that qualifies as an "independent expenditure" is subject to different sponsor ID requirements. See reverse side.

Items Exempt from Sponsor ID

- ashtrays
- badges & badge holders
- balloons
- bingo chips
- brushes
- bumper stickers (4" x 15" or smaller)
- business cards
- buttons
- cigarette lighters
- clothes pins
- clothing
- coasters
- combs
- cups
- earrings
- emery boards
- envelopes
- erasers
- Frisbees
- glasses
- golf balls & tees
- hand-held signs
- hats
- horns
- ice scrapers
- inscriptions
- key rings
- knives
- labels
- letter openers
- magnifying glasses
- matchbooks
- nail clippers & files
- newspaper ads (one column inch or smaller)
- noisemakers
- official state or local voter pamphlets
- paper & plastic cups
- paper & plastic plates
- paperweights
- pencils
- pendants
- pens
- pinwheels
- plastic tableware
- pocket protectors
- pot holders
- reader boards with moveable letters
- ribbons
- rulers (12" or smaller)
- shoe horns
- skywriting
- staple removers
- stickers (2-3/4" x 1" or smaller)
- sun glasses
- sun visors
- swizzle sticks
- tickets to fund raisers
- water towers
- whistles
- yard signs (8' x 4' or smaller)
- yo-yo's
- all similar items

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WASHINGTON STATE REPUBLICAN PARTY, *et al.*, Appellees/Plaintiffs, WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE, *et al.*, Appellees/Plaintiff Intervenors, LIBERTARIAN PARTY OF WASHINGTON STATE, *et al.*, Appellees/Plaintiff Intervenors, v. STATE OF WASHINGTON; ROB MCKENNA, Attorney General; SAM REED, Secretary of State, Defendant-Intervenors,-Appellants, WASHINGTON STATE GRANGE, Defendant-Intervenor-Appellant.	Nos. 05-35774, 05-35780 (Dist. Ct. No. CV05-0927Z) APPELLEE WASHINGTON STATE REPUBLICAN PARTY'S PROOF OF SERVICE PURSUANT TO CIRCUIT RULE 25(d)(1)(B)(3)

The undersigned certifies that he caused to be mailed via Federal Express, or

first class mail, postage prepaid, a copy of Appellees Washington State Republican Party, *et al.*'s Supplemental Brief to the following:

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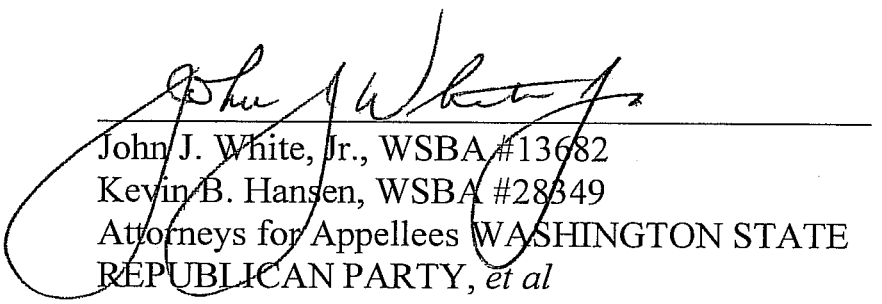

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