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Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN
PARTY, et al.,

Plaintiffs,

NO. CV05-0927-JCC

WASHINGTON DEMOCRATIC CENTRAL
COMMITTEE, et al.,

Plaintiff Intervenors,

PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT

LIBERTARIAN PARTY OF
WASHINGTON STATE, et al.,

Plaintiff Intervenors,

NOTE ON MOTION CALENDAR:
SEPTEMBER 17, 2010

vs.

ORAL ARGUMENT REQUESTED

STATE OF WASHINGTON, et al.,

Defendant Intervenors,

WASHINGTON STATE GRANGE, et al.,

Defendant Intervenors.

I. INTRODUCTION

This case presents, in part, whether the State of Washington (“the State”) may force the Washington State Republican Party (“the Party”) to have its officers chosen by persons

1 who are unaffiliated with the Party, and who may even be antagonistic to its programs and
2 objectives, or whether the State must limit participation in electing precinct committee officers
3 (“PCOs”) to Republican voters. The State recognizes the importance of broad participation
4 among voters who support the Party’s policy and electoral objectives by requiring that PCOs
5 be elected in a public election for two years.

6 In adopting Initiative 872 (“I-872”), the State represents it intended to “fully occupy”
7 the field, and to replace all inconsistent provisions of prior law. Among the provisions
8 replaced by I-872 was existing law that limited voting for political party officers to those who
9 had affirmatively affiliated with the Republican Party. Instead, I-872 as implemented by the
10 State mandates that the Party’s officers be selected by the general electorate, including
11 members of rival political parties. The State’s implementation of I-872 violates clearly
12 established associational rights of the Party under controlling precedent and is
13 unconstitutional. The Party respectfully requests the Court to enter summary judgment
14 declaring the State’s current implementation of I-872 unconstitutional and requiring that the
15 State administer future PCO elections in a manner that limits the selection of Republican Party
16 PCOs to Republican voters.

17 **II. STATEMENT OF UNDISPUTED FACTS**

18 **A. Precinct committee officers and their role in Republican Party governance.**

19 Precinct committee officers are elected at Washington’s August primary election. *See*
20 RCW 29A.80.051. The most recent primary election in Washington was held August 19,
21 2010. Predecessor statutes, requiring the election of precinct committee officers, go back for
22 100 years. *See* White Decl., Ex. 13.¹

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26 ¹ Previous codification of PCO elections can be found at Rem. Rev. Stat., § 5198 and P.C. § 2243 (Pierce’s
Code).

1 Candidates seeking election as Republican PCOs file as candidates of the Republican
2 Party. *See* White Decl., Exs. 6 & 7 (PCO declaration of candidacy forms); Exs. 1 & 2 (sample
3 ballots from 2010 primary). The State recognizes that PCO elections are “intraparty
4 election[s].” WAC 434-230-100(2). The Secretary of State’s office also recognizes that PCOs
5 are “grassroots leaders” of the political parties, and “the basic building block for the political
6 parties.” White Decl., Exs. 10 & 14. PCO candidates declare actual party membership at the
7 time of filing for office. *See* White Decl., Exs. 4 & 5.

8 PCOs are elected on the same ballot with all other offices voted on at the primary. *See*
9 White Decl., Exs. 1 & 2. The same ballot is received by all voters regardless of party
10 affiliation. The PCO candidate receiving the highest number of votes is declared elected. The
11 PCO statute further provides:

12 However, to be declared elected, a candidate must receive at least ten percent
13 of the number of votes cast for the candidate of the candidate’s party receiving
the greatest number of votes in the precinct.

14 RCW 29A.80.051.

15 The county central committees of the Republican Party are made up of the PCOs
16 elected at the primary. *See* RCW 29A.80.030. In turn, the Republican State Committee of
17 Washington is made up of a state committeeman and state committeewoman elected by the
18 members of each of Washington’s 39 county central committees. *See* RCW 29A.80.020; *see*
19 *also* White Decl., Ex. 5. The Office of Secretary of State has recently summarized PCO
20 duties:

21 Precinct committee officers organize their local precinct for their party and
22 serve as members of the legislative district and county organization. They help
fill vacancies.

23 White Decl., Ex.10.

1 **B. The important role of precinct committee officers in Washington elections.**

2 **1. PCOs' constitutional role in filling same-party vacancies in partisan**
3 **elected office.**

4 Precinct committee officers have an important role under Washington's constitution
5 in filling vacancies for "partisan" office. Partisan vacancies are filled by the relevant
6 legislative authority in which the office is located and the constitution requires that the person
7 selected be from the same political party as the person who vacated the office, and be
8 previously nominated by the county central committee of the vacating officeholder's political
9 party:

10 . . . the person appointed to fill the vacancy *must be from* the same legislative
11 district, county, or county commissioner or council district and *the same*
12 *political party* as the legislator or partisan county elective officer whose office
has been vacated, and *shall be one of three persons who shall be nominated by*
the county central committee of that party

13 WASH. CONST. Art. II, § 15.

14 If the legislative body does not act within 60 days to fill the vacancy, appointment
15 authority devolves to the governor, subject to the same constitutional requirement that the
16 appointment be from the list of three nominees of the party central committee. *See id.*

17 The Secretary of State's office summarized the process in connection with a 2009
18 vacancy in the 15th legislative district representative position formerly held by "Republican
19 lawmaker Dan Newhouse of Sunnyside":

20 The state Elections Division says Newhouse's House successor will be chosen
21 this way: Republican precinct committee officers from throughout the
22 sprawling 15th District will chose a ranked-order list of three favorites and the
county commissioners from Yakima, Klickitat, Skamania and Clark will pick
an appointee to send to Olympia post-haste . . .

23 Typical protocol is for the commissioners to choose the top choice of the
24 grassroots leaders, but no law requires it.

25 White Decl., Ex. 14.

1 In 2009, three vacancies in the Washington legislature were filled under Art. II, § 15.
2 In addition to the Republican vacancy in the 15th legislative district, a Democratic vacancy was
3 filled in the 16th legislative district due to the death of Representative Bill Grant, and a
4 Republican vacancy filled in the 9th legislative district due to the death of Representative Steve
5 Hailey. *See* White Decl., Ex. 8. As reported by the Secretary of State's office, Republican
6 PCOs in the 15th District nominated the possible replacements for Representative Newhouse.
7 *See* White Decl., Ex. 9.

8 **2. PCOs' role in administering elections and election integrity.**

9 PCOs also perform key duties in filling positions for election officers whose duty is
10 to ensure the smooth running and integrity of the state's election process. PCOs provide
11 names of workers for election boards in their respective precincts to their county chairs. *See*
12 RCW 29A.44.430. The county auditor (or other election official) appoints the election officers
13 from the list provided by the chair of the county central committee. *See* RCW 29A.44.410.
14 The State describes precinct election officers as "[t]he people who run elections at each poll
15 site." White Decl., Ex. 11.

16 Political party observers, selected by the chair of each county central committee,
17 oversee the processing of absentee ballots. County auditors are required to notify the chairs
18 of the party county central committees of the date and location at which the ballots will be
19 processed to enable party observers to be present. *See* WAC 434-250-110(1). Counting center
20 operations must be observed by political party observers, if appointed by the chair of the
21 county central committee. *See* WAC 434-261-020. The county auditor is required to request
22 the appointment of party observers in writing and provide training to the observers appointed
23 by the county chair. *See id.*

24 **3. PCOs and the presidential primary.**

1 The State conducts quadrennial presidential primaries, and expressly provides that
2 Except where necessary to accommodate the national or state rules of a major
3 political party or where this chapter specifically provides otherwise, the
4 presidential primary must be conducted in substantially the same manner as a
state partisan primary under this title.

5 RCW 29A.56.040(1). Thus, except to the extent that the Republican Party's rules provide
6 otherwise, the State's procedures under I-872 would govern. PCOs select the members of the
7 State Committee, which is empowered to adopt rules governing the Republican Party. *See*
8 RCW 29A.80.010 & .011. The State requires that "the state chair of each major party shall
9 submit in writing to the secretary of state the exact wording of any party declaration required
10 by rules of the state or national party" declaration to be signed by voters participating in the
11 presidential primary. WAC 434-219-140.

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14 **C. Washington can and does administer elections that limit participation to
members of a single political party.**

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16 Washington's presidential primary limits participation to voters who affirmatively
17 affiliate with the political parties, if party rule so requires. *See* RCW 29A.56.050; WAC 434-
18 219-140(3). Historically, the State used a separate absentee ballot for the office of precinct
19 committee officer. *See* White Decl., Ex. 16 (RCW 29.36.030 (1991)). In 2006, Washington
20 elected PCOs through separate party ballots, which could be voted only by voters who
21 demonstrated affiliation with the party by choosing its ballot and agreeing to forego
22 participation in voting for candidates of any other party in that primary election, under the
23 Montana primary. *See* Esser Decl., ¶ 3.

24
25 **III. ARGUMENT**

1 **A. The State’s implementation of I-872 directly contravenes Ninth Circuit and**
2 **Supreme Court decisions and is unconstitutional.**

3 “Summary judgment is appropriate if, viewing the evidence in the light most favorable
4 to the nonmoving party, there are no genuine issues of material fact remaining for trial, and
5 the moving party is entitled to judgment as a matter of law.” *Alexander v. City & County of*
6 *San Francisco*, 29 F.3d 1355, 1359 (9th Cir. 1994). The material facts are not disputed.

7
8 In *Ariz. Libertarian Party, Inc. v. Bayless*, 351 F.3d 1277 (2003), the Ninth Circuit
9 held that “allowing nonmembers to vote for precinct committeemen violates the party’s
10 associational rights.” 351 F.3d at 1281. The Arizona statute permitting non-members of the
11 party to vote for precinct committee officers infringed on the First Amendment right of
12 association because state law vested the PCOs with authority to fill vacancies for candidates
13 and made the PCOs members of the governing body of the political party. Washington law
14 vests PCOs with similar authority. PCOs nominate candidates to fill vacancies in partisan
15 office under the State’s constitution and are members of the county central committee, which
16 in turn selects the state committeeman and state committeewoman from the county. The State
17 itself describes PCOs as “grassroots leaders” of the political parties and “the basic building
18 block for the political parties.” White Decl., Exs. 10 & 14. The State acknowledges that the
19 election of PCOs is an “intraparty” election. *See* WAC 434-230-100(2). Nonetheless, the
20 State’s implementation of I-872 opens this intraparty election to all voters.
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23 The State has available ready mechanisms to limit participation in selecting Republican
24 PCOs to Republican voters, but has chosen not to use those mechanisms. The use of the
25 party oath, as under the presidential primary, would meet the requirement that party officers
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1 be chosen by party members. “[A] State cannot justify regulating a party’s internal affairs
 2 without showing that such regulation is necessary to ensure an election that is orderly and
 3 fair.” *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 233 (1989). The
 4 State can offer no justification based on fairness or orderliness to warrant its invasion of core
 5 First Amendment rights.
 6

7 The long-standing requirement of Washington law that the Republican Party resolve
 8 the intraparty election of PCOs through a public election is not challenged. The State may
 9 require that its political parties resolve their intraparty contests through a public primary. *See*
 10 *Am. Party of Tex. v. White*, 415 U.S. 767, 781 (1974). The State’s implementation of I-872,
 11 and use of a consolidated, blanket ballot which may be voted without regard to whether the
 12 voter provides evidence of affiliation with the Republican Party, opens the process of selecting
 13 Republican PCOs to voters who are wholly unaffiliated with the Party and violates the Party’s
 14 First Amendment rights.² *See Cal. Democratic Party v. Jones*, 530 U.S. 567, 581-82 (2000).
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16 **B. A mandatory affirmative injunction is proper here, where the law is clear and the**
 17 **State has continued its unconstitutional implementation in the face of requested**
 18 **injunctive relief.**

19 In general, injunctive relief is fashioned in terms of a prohibition on conduct.
 20 However, where the rights of a party and the facts are clear, a mandatory injunction requiring
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 24 ² The State’s implementing regulation that “creates” an affiliation by virtue of casting a vote for PCO cannot
 25 unilaterally create a valid affiliation with the Republican Party where there is none; it simply makes clear that
 26 the State is forcing associations on the Party with the Party’s consent. *See* WAC 434-230-100(6) (“For the limited
 27 purpose of voting in a precinct committee officer election, a voter affiliates with a major political party when he
 28 or she votes for a candidate of that party.”). Otherwise, administrative regulations could validate a “blanket
 primary” by declaring a temporary affiliation at the moment each vote is cast.

1 affirmative conduct is proper. *See Dahl v. HEM Pharm. Corp.*, 7 F.3d 1399, 1403 (9th Cir.
2 1993); *Anderson v. United States*, 612 F.2d 1112, 1214 (9th Cir. 1980).

3
4 A mandatory affirmative injunction is appropriate when, as here, a party with notice
5 of a pending claim for an injunction performs an action sought to be restrained in those
6 proceedings. *See, e.g., Porter v. Lee*, 328 U.S. 246, 251 (1946); *F. Alderete Gen. Contractors*
7 *v. United States*, 715 F.2d 1476, 1480 (Fed. Cir. 1983). The Complaint seeks to enjoin
8 participation by non-Republicans in electing Republican PCOs. *See Suppl. & Am. Compl.* at
9 22:23 - 23:2 (Dkt. No. 206).

10
11 The State knows how to administer elections of PCOs that are limited to voters who
12 affiliate generally with the parties. During the 2006 election cycle, the State limited
13 participation in PCO elections to voters who affiliated with the Republican Party either by
14 checking a box indicating affiliation, or by restricting themselves to voting for party candidates.
15 The presidential primary is another example of the State administering election laws that limit
16 participation to party voters. The State's implementation of I-872 in 2008 and 2010, which
17 consolidated PCO ballots with Top Two primary ballots, did not limit participation to
18 Republican affiliates — the State has simply refused to administer the election of PCOs in a
19 constitutional manner, notwithstanding clear Ninth Circuit and Supreme Court precedent.
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21 **IV. CONCLUSION**

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23 For the foregoing reasons, the Court should grant the Republican Party's motion and
24 require the State to conduct the Republican PCO elections in a manner that limits participation
25 to Republican voters.

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DATED this 26th day of August, 2010

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 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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