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July 9, 2008

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TOTAL PAGES: 7

Honorable Sam Reed
Secretary of State
Legislative Building
Post Office Box 40220
Olympia, Washington 98504-0220

Dear Secretary Reed:

I am writing to ask that your office immediately comply with the Permanent Injunction entered in Washington State Republican Party et al. v. Dean Logan, et al., United States District Court for the Western District of Washington at Seattle, No. C05-927Z on July 29, 2005. This injunction prohibits the State of Washington and its political subdivisions from conducting “Top Two” primary elections under the provisions of Initiative 872. This injunction has not been reversed, modified, vacated or stayed in any way. This injunction remains under appeal in the U.S. Court of Appeals for the Ninth Circuit Nos. 05-35774, 05-35780. An appellate decision affirming the Permanent Injunction was recently reversed by the United States Supreme Court, but no final decision has been made on the underlying appeal by the Ninth Circuit. In fact, the Ninth Circuit entered an order on July 3, 2008 directing the parties to do additional briefing.

Since Initiative 872 remains enjoined by valid court orders, the law governing primary elections in the State of Washington continues to be Laws 2004, Chapter 271, the so-called “Pick-A-Party” primary, which has been used successfully in the 2004, 2005, 2006 and 2007 election cycles. You need to make sure that the primary election scheduled for August 19, 2008 and the general election scheduled for November 4, 2008 are conducted in accordance with the provisions of the “Pick-A-Party” primary, and not under your intended “Top Two” primary.

Your office has already accepted Declarations of Candidacy during the normally scheduled filing week of June 2 to 6, 2008. The vast majority of candidates chose to designate themselves with one of the two major parties, the Democratic Party or the Republican Party.

For these Democratic Party and Republican Party candidates, it will be a very simple matter to place their names on the appropriate party primary ballots for the August 19, 2008 primary election. The Democratic Party candidates will go on the Democratic Party ballot (or Democratic Party portion of the ballot) and the Republican Party candidates will go on the Republican Party ballot (or Republican Party portion of the ballot). The top vote getters in each party’s primary would be placed on the general election ballot as the nominees of their parties.

The situation would be more complicated for non-major party candidates. This year, many candidates filed without a party designation or with designations of various minor parties, such as the Libertarian Party, the G.O.P Party, the Constitution Party, and other minor parties.

Under the “Pick-A-Party” primary, when a minor party or independent candidate files for office, their name does not appear on any primary ballot, and is placed directly on the general election ballot, as provided for under RCW 29A.36.201. However, both RCW 29A.36.201 and RCW 29A.20.121 to 29A.20.201 require that a minor party nomination convention be held for a minor party or independent candidate to file for office or be placed on the general election ballot.

RCW 29A.20.121(1) would require that a minor party nomination convention be held either in the eight day period commencing with the first Saturday in May or in the seven day period commencing with the last Monday in May. However, since your office decided to use the “Top Two” primary system, in violation of the Permanent Injunction, prospective minor party and independent candidates were informed that nomination conventions were not necessary.

It would seem to be appropriate to require nomination conventions for all minor party and independent candidates this year, since state law clearly requires this to be done. At the same time, it would also seem appropriate to allow additional time for minor party and independent candidates to hold their nomination conventions, given that the normal statutory deadline for these conventions has passed, and candidates relied on your office’s advice in not holding them.

I would note, that when the Permanent Injunction was issued on July 29, 2005, minor party and independent candidates were allowed an additional 29 days, or until August 27, 2005, to hold nomination conventions, since the rules were basically being changed on them during the middle of the game. A similar extension of at least four weeks would seem appropriate in this case, from the date that your office announces that nomination conventions will be required. There is less urgency in a short deadline this year, since the primary election will not be certified until September 9, 2008, and the general election ballot need not be finalized before then.

Here is how obeying the Permanent Injunction would affect the election for Governor, which is a high profile race with four major party candidates (two each from the Democratic Party and the Republican Party, four minor party candidates, and two independent candidates:

Democratic Party:	Christine Gregoire Christian Pierre Joubert
Republican Party:	John W. Aiken, Jr. Javier O. Lopez
G.O.P. Party:	Dino Rossi
Green Party:	Duff Badgley
Independent Party:	James White
Reform Party:	Will Baker
No Party Preference:	Mohammad Hasan Said Christopher A. Tudor

On the August 19, 2008 primary election for Governor, the Democratic Party ballot would list Ms. Gregoire and Mr. Joubert. The candidate receiving the largest number of primary votes would be placed on the November 4, 2008 general election ballot as the Democratic Party nominee for Governor. The Republican Party ballot would list Mr. Aiken and Mr. Lopez. The candidate receiving the largest number of primary votes would be placed on the November 4, 2008 general election ballot as the Republican Party nominee for Governor.

As for minor party candidates Mr. Rossi, Mr. Badgley, Mr. White and Mr. Baker, and for independent candidates Mr. Said and Mr. Tudor, they would be placed directly on the November 4, 2008 general election ballot as nominees of their respective minor parties or as independent candidates. As I stated previously, they should be required to first hold nomination conventions attended by the requisite number of registered voters, by a reasonable future deadline that your office should establish, as a prerequisite to be listed as minor party or independent candidates.¹

Since there are some minor party candidates raising and spending significant amounts of money this year, particularly G.O.P. Party candidate Dino Rossi in his race for Governor, the “Pick-A-Party” primary system will have a major impact on the maximum permissible campaign contribution, as compared to the enjoined “Top Two” primary system. The maximum campaign contribution limits in RCW 42.17.640 apply on a “per election” basis for candidates for statewide, legislative, and certain county-level offices. Statewide candidates may receive \$1,600 per election, legislative candidates \$800 per election, and certain county-level offices either \$800 or \$1,600 per election. These limits apply to each election that a candidate is on the ballot.

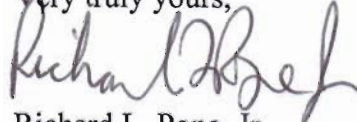
Had the “Top Two” primary system been used this year, Mr. Rossi’s name would have appeared on the August 19, 2008 primary election ballot, and if he was one of the “Top Two” vote getters in the primary election, again on the November 4, 2008 general election ballot. Mr. Rossi would have been able to receive up to \$1,600 from each of his contributors prior to the August 19, 2008 primary election, and another \$1,600 from each of his contributors for the November 4, 2008 general election (which could be received prior to the primary election, but could only be spent after the primary election, and only if he qualified for the general election).

However, since the “Top Two” primary system remains enjoined, Mr. Rossi’s name, as a minor party candidate from the G.O.P. Party, can appear only on the November 4, 2008 general election ballot. Therefore, Mr. Rossi will be participating in only one election, and will not be entitled to receive an additional \$1,600 primary election contribution from his largest donors. Mr. Rossi will be limited to a single \$1,600 per donor maximum contribution this election cycle.

I expect to hear from your office no later than the close of business on Friday, July 11, 2008 that you will not be holding a “Top Two” primary under the provisions of Initiative 872, and will be taking appropriate steps to hold a “Pick-A-Party” primary under the provisions of Laws 2004, Chapter 271 for the scheduled August 19, 2008 primary election date. If not, I will consider taking appropriate action on account of your violation of the Permanent Injunction.

Thank you for your careful attention in this matter.

Very truly yours,



Richard L. Pope, Jr.

Cc: Robert M. McKenna, Attorney General of Washington
David McDonald, Attorney for Washington State Democratic Central Committee
John White, Attorney for Washington State Republican Party
Richard Shepard, Attorney for Libertarian Party of Washington State

¹ Normally, a minor party or independent candidate is not even permitted to file, until a sufficient nomination convention petition has been filed. If any minor party or independent candidate is unable to hold a proper nomination convention for any reason, their previously paid candidate filing fee should be refunded to them.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN
PARTY, et al.,

Plaintiffs,

and

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE, et al.,

Plaintiff Intervenors,

and

LIBERTARIAN PARTY OF
WASHINGTON STATE, et al.,

Plaintiff Intervenors,

v.

DEAN LOGAN, King County Records &
Elections Division Manager, et al.,

Defendants,

STATE OF WASHINGTON,

Defendant Intervenors,

and

WASHINGTON STATE GRANGE,

Defendant Intervenors.

No. C05-927Z

PERMANENT INJUNCTION

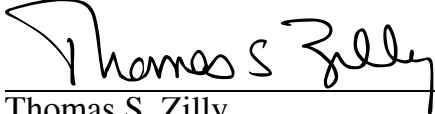
1 This matter comes before the Court on Plaintiffs' Proposed Permanent Injunction,
2 docket no. 88, submitted in response to this Court's Order and Preliminary Injunction, docket
3 no. 87, filed on July 15, 2005.

4 The Court hereby incorporates by reference its Order, docket no. 87, and enters the
5 following Permanent Injunction:

- 6 1. The Court enjoins the State of Washington, or any political subdivision of the
7 State, from enforcing, implementing, or conducting any election pursuant to the
8 provisions of Initiative 872, as codified in Title 29A, Wash. Rev. Code.
- 9 2. The Court enjoins the State of Washington, or any political subdivision of the
10 State, from enforcing or implementing the filing statute under Initiative 872,
11 Wash. Rev. Code § 29A.24.030, as part of any primary or general election.
- 12 3. The Court enjoins the State of Washington, or any political subdivision of the
13 State, from refusing to recognize the validity of any minor party or independent
14 candidate nominating convention held on or before August 27, 2005, on the
15 grounds that the convention did not comply with the dates set forth in Wash.
16 Rev. Code § 29A.20.121, provided that the notice provisions of Wash. Rev.
17 Code § 29A.20.131 have been complied with and the convention otherwise
18 complies with Title 29A.20, Wash. Rev. Code.
- 19 4. The Court retains jurisdiction in this action to enforce the terms of this
20 injunction.

21 IT IS SO ORDERED.

22 DATED this 29th of July, 2005.

23
24 
25 Thomas S. Zilly
26 United States District Judge

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WASHINGTON STATE REPUBLICAN
PARTY; CHRISTOPHER VANCE;
BERTABELLE HUBKA; STEVE
NEIGHBORS; BRENT BOGER; MARCY
COLLINS; MICHAEL YOUNG,

Plaintiffs - Appellees,

and

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE; PAUL
BERENDT; LIBERTARIAN PARTY OF
WASHINGTON STATE; RUTH BENNETT;
J. S. MILLS,

Plaintiff-Intervenors - Appellees,

v.

STATE OF WASHINGTON; ROB
MCKENNA, Attorney General; SAM REED,
Secretary of State,

Defendant-Intervenors -
Appellants,

and

WASHINGTON STATE GRANGE,

Defendant-Intervenor -
Appellant.

Nos. 05-35774
05-35780

D.C. No. CV-05-00927-TSZ
Western District of Washington,
Seattle

ORDER

Before: D.W. NELSON, RYMER and FISHER, Circuit Judges.

Within 30 days of the filing of this order, the parties shall submit supplemental briefs not exceeding 15 pages each addressing the impact of the Supreme Court's ruling in *Washington States Republican Party v. Washington*, 128 S. Ct. 1184 (2008), on the issues raised but not resolved in the appeal before this three-judge panel. The parties should also address any intervening authority on the ballot access and trademark claims that has been filed since these issues were originally briefed.

HP LaserJet 3050

Fax Call Report



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Jul-9-2008 09:19

Job	Date	Time	Type	Identification	Duration	Pages	Result
350	7/ 9/2008	09:01:14	Send	13605865629	2:21	7	OK
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352	7/ 9/2008	09:07:01	Send	2066237022	3:38	7	OK
353	7/ 9/2008	09:10:44	Send	4258280908	2:21	7	OK
354	7/ 9/2008	09:13:10	Send	12536271990	2:05	7	OK
355	7/ 9/2008	09:15:20	Send	13606640228	3:48	7	OK

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