# SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

JEFF SMITH,

Plaintiff.

V.

SECRETARY OF STATE SAM REED, in his official capacity,

Defendant.

No.

COMPLAINT FOR CORRECTION OF ERROR IN PRINTING OF WASHINGTON GENERAL ELECTION BALLOT PURSUANT TO RCW 29A.68.011

### INTRODUCTION

Under Washington law, a candidate for partisan office must indicate one of three affiliations on his or her declaration of candidacy form; (1) major party; (2) minor party; or (3) independent. Dino Rossi, the gubernatorial candidate who not only has been formally nominated by the Washington State Republican Party, but who has repeatedly and consistently filed Public Disclosure Commission reports as a member of the "Republican" party, curiously indicated on his declaration of candidacy form a preference for the "G.O.P. Party." No such entity exists and the term "G.O.P" -- as defendant Sam Reed admits and as

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independent polling has confirmed – is a term that fosters substantial public confusion. This is, apparently, precisely the point of the tactic: to confuse Washington voters by seeking to obscure Rossi's membership in and nomination by the Washington State Republican Party. Nonetheless, in direct violation of the unequivocal command of RCW 29A.24.030, defendant Reed has allowed Rossi to proceed and has improperly certified or is about to improperly certify a list of gubernatorial candidates and their party preferences that identify Rossi as preferring the "G.O.P. Party."

This lawsuit seeks an order declaring that including such a "party preference" is improper under Washington law and directing defendant Reed to prepare and to distribute an amended certified list of gubernatorial candidates that, in accordance with the law, accurately identifies Rossi's party preference as the Washington State Republican Party. Allowing Rossi to obscure his true party preference and affiliation directly violates the law, would mislead a substantial portion of the voting public and would breed cynicism and mistrust in our public institutions and, indeed, in our electoral process. This Court has the power and the duty to correct such threatened errors in the preparation and printing of the ballot and should exercise that power to protect the integrity of the electoral process.

### **ALLEGATIONS**

Plaintiff Jeff Smith in and for his complaint, alleges as follows:

#### **PARTIES**

1. Plaintiff Jeff Smith is a citizen of Washington, a resident of King County, a lawful registered voter in King County, and an elector of Washington State as that term is defined in RCW 29A.04.061. An affidavit of plaintiff setting forth the grounds for this complaint is filed herewith.

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2. Defendant Sam Reed is, and at all times relevant to this complaint was, the Secretary of State for the State of Washington.

### JURISDICTION AND VENUE

- 3. Jurisdiction is vested in this Court pursuant to RCW 2.08.010.
- 4. Venue is proper in this Court pursuant to RCW 4.12.020(2), because the defendant is a public officer and the actions complained of by plaintiff occurred in and will cause public harm in King County.

#### FACTS ENTITLING PLAINTIFF TO RELIEF

- 5. Between 1996 and 2004, in connection with campaigns for State Senate and Governor, Dino Rossi made numerous public statements and numerous public filings in which he stated that he was a member of the Washington State Republican Party.
- 6. On December 13, 2004, Mr. Rossi filed a C-1 Candidate Registration Form with the Washington State Public Disclosure Commission. The C-1 form is the official form for providing the statement of organization by candidates and candidate's committees, for designating a campaign treasurer and depository and for reporting information required campaign finance reporting. Rossi declared that he was a candidate for Governor in 2008 and identified himself as a member of the "Republican" party. Mr. Rossi personally signed the registration form and certified that it was truthful. A true and correct copy of this filing is attached to the Declaration of Will Rava ("Rava Decl.") as Exhibit 1.
- 7. On October 25, 2007, Rossi filed another C-1 form, again declaring himself to be a candidate for Governor in 2008 and a member of the "Republican" party. Mr. Rossi again personally signed the form and, again, certified that it was truthful and accurate. A true and correct copy of this filing is attached to the Rava Decl. as Exhibit 2.

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- 8. On February 15, 2008, Rossi filed an amended C-1 form, which again listed him as a member of the "Republican" party. A true and correct copy of this filing is attached to the Rava Decl. as Exhibit 3. On March 5, 2008, Rossi again amended his C-1 form for a second time, and again indicated that he was a member of the "Republican" party. A true and correct copy of this filing is attached to the Rava Decl. as Exhibit 4.
- 9. In March 2008, the United States Supreme Court upheld the "top-two" primary system passed as initiative I-872 in 2004. As a result, on July 11, 2008, the defendant promulgated regulations to implement the top-two primary system, including establishing a declaration of candidacy form on which candidates for partisan political preference could either designate a preference for a major or minor political party or select no party preference.
- 10. The term "major political party" is a defined term under Washington law.

  RCW 29A.04.086. There are only two in Washington State. The defendant publishes a list of all political parties in Washington State. According to defendant, the only major political parties are the Washington State Democratic Party and the Washington State Republican Party and the only minor political parties are the Constitution Party of Washington, the Green Party of Washington State, and the Libertarian Party of Washington State. A true and correct copy of the Secretary's list is attached to the Rava Decl. as Exhibit 6.
- In June 2008, Rossi filed a Declaration of Candidacy for Governor, in which he indicated his party preference as "G.O.P. Party." There is no such political party in Washington State. Instead, "G.O.P." is an *abbreviation* of a *nickname* ("Grand Old Party") sometimes used to refer to the Republican Party. The term is unfamiliar to a significant number of Washington voters.

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- 12. The defendant specifically urged other Republican candidates to indicate their preference for the "Republican" party, rather the "G.O.P." Party, on their declaration of candidacy forms, stating that he believed that it would be "clearer to the voters" if Rossi indicated a preference for the *actual name* of his political party (or at least a party that actually exists).
- 13. A significant number of Washington voters are unfamiliar with the acronym "G.O.P." and do not associate "G.O.P." with the Washington State Republican Party.
- 14. Under Washington law, the defendant must certify to each county auditor a list of the relevant candidates who have filed declarations of candidacy. For each office, the certificate must include the name of each candidate, his or her address, and his or her party designation, if any. The party preference or absence of party preference must appear on the ballot after the candidate's name.
- 15. Although Rossi misleadingly declared himself to "prefer" a non-existent political party, and the party designation on his declaration of candidacy conflicts with that indicated on his filings with the Public Disclosure Commission and numerous other public statements, the defendant nonetheless certified or is about to certify a list of gubernatorial candidates to county auditors that indicates that Rossi "prefers the G.O.P. Party."
- 16. Washington State's 2008 general election will take place on November 4, 2008. Unless the Secretary's certification is corrected to indicate Rossi's preference for the Republican Party, the ballot in King County, as with other counties, will be printed in error, and will confuse or mislead a significant number of voters who may not know that "G.O.P." is an abbreviation of a nickname sometimes used to refer to the Republican Party.

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## FIRST CAUSE OF ACTION VIOLATIONS OF WASHINGTON ELECTION LAW

- 17. Plaintiff realleges and incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-16 above.
- 18. Pursuant to RCW 29A.24.030, a candidate who desires to have his or her name printed on the ballot for election to state office must complete and file a declaration of candidacy. For partisan offices, the declaration of candidacy form must include "a place for the candidate to indicate his or her major or minor party preference, or independent status."
- A "major political party" is defined by Washington law as "a political party 19. of which at least one nominee for president, vice president, United States senator, or a statewide office received at least five percent of the total vote cast at the last preceding state general election in an even-numbered year." RCW 29A.04.086. A "minor" political party is defined as "a political organization other than a major political party." RCW 29A.04.097. All political committees, of course, must register with the Public Disclosure Commission pursuant to RCW 42.17.040.
- WAC 434-215-120 sets forth the requirements for identifying party affiliation 20. on a declaration of candidacy form, and requires the Secretary of State to print the candidate's party preference, or the fact that the candidate states no preference on the ballot and in any voters' pamphlets. If the candidate does not indicate a preferred party, the candidate is deemed to have selected "no preference."
- 21. Pursuant to RCW 29A.68.011(2), any judge of the proper superior court shall, by order, require any person charged with error in printing the ballot to correct the error, whenever appears that an error in printing the ballot has been or is about to be committed.

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22. Defendant Reed's certification of Rossi's declaration of candidacy has resulted or will result in an error within the meaning of RCW 29A.68.011.

## PRAYER FOR RELIEF

WHEREFORE, plaintiff Jeff Smith prays for the following relief:

- A. Enter judgment in favor of plaintiff, finding that defendant's conduct violates Washington election law;
- B. Enter an order compelling defendant Reed to prepare and to distribute an amended certified list of gubernatorial candidates indicating that Dino Rossi "prefers Republican Party";
- C. For plaintiff's costs of suit, including plaintiff's reasonable attorneys' fees; and
  - D. For such other relief as the Court may deem just and proper.

DATED this 23rd day of September, 2008.

PERKINS COIE LLP

By:

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Attorneys for Plaintiff Jeff Smith