The Honorable JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al.,

Plaintiffs,

WASHINGTON STATE REPUBLICAN 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, et al.,

Defendant Intervenors.

NO. CV05-0927-JCC

SUPPLEMENTAL AND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND FOR INJUNCTIVE RELIEF REGARDING INITIATIVE 872 AND PRIMARY ELECTIONS

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NATURE OF ACTION

1. The First and Fourteenth Amendments to the United States Constitution guarantee the right of individuals to associate in a political party, the right of that party and its adherents to select their nominees for partisan political office, and the right of that party and its adherents to limit participation in the process of selecting nominees to those voters the party and its adherents identify as sharing their interests and persuasions. As the Ninth Circuit noted in striking down Washington's blanket primary, " ... the Washington statutory scheme prevents those voters who share their affiliation from selecting their party's nominees. The right of people adhering to a political party to freely associate is not limited to getting together for cocktails and canapés. Party adherents are entitled to associate to choose their party's nominees for public office." *Republican Party of Washington v. Reed*, 343 F.3d 1198 (9th Cir. 2003), *cert. denied,* 540 U.S. 1213, *cert. denied sub nom., Washington State Grange v. Washington State Republican Party*, 541 U.S. 957 (2004) ("*Reed*").

2. One of the fundamental purposes of the First Amendment is to provide for and promote competition between ideas in American civilization. This purpose is advanced by requiring the selection of a political party's candidates and nominees by its adherents rather than by those opposed to or indifferent to the party.

3. The State of Washington ("the State") has enacted and implemented Initiative 872, attempting to prevent the Washington State Republican Party ("the Party") and its adherents from selecting their nominees, and to force the Party to be associated publicly with candidates who have not been nominated by the Party, who will alter the political message and agenda the Party seeks to advance, and who will confuse the voting public with respect to what the Party and its adherents stand for. The State seeks to appropriate the use of the Republican Party's name in primaries and general elections and in political advertising in order to protect the political interests of the incumbent and the well-known at the expense of the committed and the innovative. Acting under

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color of law, state and local officials force the Party and its adherents to include supporters of other parties and political interests in determining which, or whether any, candidate will carry the Republican Party name in the general election.

4. Initiative 872, as set forth in both Sections 2 and 18, was expressly intended to defeat the First Amendment rights of the Party and its adherents, recognized by the U.S. Supreme Court in *California Republican Party v. Jones*, 530 U.S. 567 (2000) and *Reed* ("In the event of a final court judgment invalidating the blanket primary, this People's Choice Initiative will become effective...."). The Initiative, as implemented by State and local officials, eliminates mechanisms previously enacted by the state to protect these rights and provides no effective substitute mechanisms for the Party and its adherents to protect their rights of association and of determining the Party's message.

5. I-872 impairs the common-law rights of the Republican Party to control the use of its name and prevent the misappropriation of its name, nicknames and symbols by persons who are not affiliated with the Party, its principles or programs. By so doing, the State interferes with the Party's ability to speak clearly on issues of public importance and authorizes competing and potentially dissonant and confusing messages to be advanced under the Party's banner.

6. This is an action to protect the First Amendment rights of the Party and its adherents to advocate and promote their vision for the future without censorship or interference by the State and County Auditors acting under color of the laws of the State of Washington. Initiative 872 is unconstitutional.

JURISDICTION AND VENUE

7. Plaintiffs' rights of political association and political expression are guaranteed against abridgement by the State and those acting under color of its laws by the First and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. § 1983. This case presents a federal question involving federally-protected rights, including freedom of speech and protection

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against state-imposed burdens upon the associational rights of the Party and its adherents, as set forth in *Jones* and *Reed*. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331, 1343(a)(3), 2201 and 2202.

8. Defendants reside in the Western District of the State of Washington (the "Western District") and the conduct that gives rise to Plaintiffs' claims substantially occurred and threatens to occur within the Western District. Venue for this action lies within the Western District pursuant to 28 U.S.C. § 1391(b).

PARTIES

9. The Party is a "major political party" as defined in RCW 29A.04.086 and is organized for the purposes of promoting the political beliefs of its adherents, selecting and supporting candidates who support the political beliefs of the Party's adherents and electing public officials who will conduct government affairs in a manner consistent with the Party's philosophy. The Party has all the powers inherent in a political organization and is empowered to perform all functions inherent in a political party.

10. Plaintiff Luke Esser is a resident of the Western District. He is the elected Chairman of the Republican State Committee, the governing body of the Party, and is the political and administrative head of the Party pursuant to its Bylaws and RCW 29A.80.020 *et seq.*

11. The Defendants are Sam Reed in his capacity as Secretary of State of the State of Washington, Robert McKenna in his capacity as Attorney General of Washington and the State of Washington. Secretary Reed is the chief officer in the State, having the overall responsibility to conduct primary elections within respective counties, including providing and tabulating ballots for such elections consistent with the rules established by the Secretary of State ("the Secretary"). Secretary Reed and Attorney General McKenna intervened as defendants. The State was substituted as a defendant for the original defendants, the "County Auditors," by an agreed order of the Court on July 13, 2005.

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WASHINGTON'S PARTISAN PRIMARY

12. The Defendants will administer partisan primaries this year. Pursuant to the laws of the State, including the Montana primary system adopted by the Legislature and RCW 29A.04.311, 29A.20.121, and 29A.52.116, the Party is required to advance its candidates for Congressional, State and County offices by means of partisan political primaries administered by the Secretary of State ("the Secretary") and the County Auditors. RCW 29A.52.116 states: "Major political party candidates for all partisan elected offices, except for president and vice-president ... must be nominated at primaries held under this chapter." The mandatory notice of the primary must contain "the proper party designation" of each candidate in the primary. RCW 29A.52.311. RCW 29A.52.112, adopted by I-872, requires that "For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, then that preference will be shown after the name of the candidate on the primary and general election ballots ...." The same statute also provides that the "top two" vote-getters in the primary required by I-872 will advance to the general election. The Secretary has asserted that only the two candidates who receive the most votes on primary day will advance to the primary even if both candidates are associated with the same political party. Former defendants Logan and Terwilliger have each asserted, "At this time, I am not aware of any language associated with the Initiative that contemplates a partisan nomination process separate from the primary."

13. Neither the laws of the State nor the rules adopted or proposed by the Secretary provide any mechanism for the Party to effectively exercise its right of association in connection with the partisan primary in which it is forced by State law to participate. Any individual may appropriate the Party's name, regardless of whether the Party desires affiliation with that person.

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14. The State, through its filing and campaign advertising statutes, also compels the Party to associate with any person who files a declaration of candidacy expressing a "preference" for the Party, regardless whether the Party desires association with the person. In addition, the State through its Voter's Pamphlet propagates to all voters claims of Party endorsement or nomination by candidates without regard to whether the Party has in fact endorsed or nominated the candidates.

15. In addition to requiring the Party to accept as one of its candidates any individual without regard to the individual's political philosophy or participation in Party affairs RCW 29A.04.127 forces the Party to permit any voter to participate in selection of the Party's standard-bearer without regard to the voter's partisan affiliation or beliefs. The State thus forces the Party and its adherents to associate with those who do not share their beliefs or are openly antagonistic to them. Initiative 872 was intended to establish *a de facto* blanket primary in response to a declaration that the blanket primary is unconstitutional and to facilitate cross-over and ticket-splitting voting, thus depriving the Party of its right to prevent supporters of other political parties and interests from participating in its candidate selection and nomination processes. It was intended to force the Party to modify its message or have a modified message forced upon it by the simple expedient of eliminating the Party's selected spokesperson in favor of a spokesperson selected by non-adherents of the Party. The sponsors' official statement in support of the Initiative states, "Parties will have to recruit candidates with broad public support and run campaigns that appeal to all voters." This attempt at forced message modification was rejected as a legitimate state interest by both the Supreme Court in *Jones* and the Ninth Circuit in *Reed.*

16. The other interests asserted as the basis for adopting I-872, codified as RCW 29A.04.206, were also rejected in *Reed* as legitimate grounds for invading the right of political association.

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17. The Party and its adherents are irreparably injured by the forced adulteration of the Party's nomination process, by the State's active encouragement of cross-over and ticket-splitting, and by the resulting dilution and potential suppression of its message. The presence and participation of non-party voters in the partisan primary inevitably alters candidates' messages and actions and thereby dilutes the Party's message and influence. Dilution of the Party's vote in any partisan primary carries with it the risk that the Party will be denied a place on the general election ballot to the extent that only the "top two" vote-getters will appear on the general election ballot. For example, if seven candidates carrying the Party name each receive 10% of the vote at a partisan primary, and two candidates of other parties each receive 15%, the Secretary maintains there would be no Party candidate on the general election ballot, despite the receipt by candidates with the Party's identification or 70% of the total vote.

18. Defendants-Intervenors Washington State Grange filed Initiative 872 in January 2004 seeking to convert the State's then blanket primary election system into a Top Two primary system. During the 2004 legislative session the Grange lobbied aggressively for the Washington legislature to adopt a primary election system that was substantially similar to Initiative 872. In the end, however, Washington repealed the blanket primary statutes, including statutes referred to by Initiative 872, and adopted the "Montana" primary system to replace the blanket primary.

19. Thereafter the Grange initiated a signature gathering campaign to place Initiative 872 on the November 2004 ballot. This campaign's promotional materials represented to voters that the Initiative would "restore the kind of choice that voters enjoyed for seventy years under the blanket primary." The promotional materials also represented that "minor parties would continue to select candidates the same way they do under the blanket primary. Their candidates would appear on the ballot for each office (as they do now)." Voters were told that ballots would look the same after passage as before passage of Initiative 872. On April 19, 2004, counsel for the Republican Party

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advised the Grange that petitions for Initiative 872 being circulated for signature contained material inaccuracies in that the Initiative was seeking to replace the blanket primary but the laws had changed. Despite this warning, the Grange continued to pursue Initiative 872 as filed in January 2004.

20. As presented to the voters, I-872 did not properly disclose the statutes that would be amended if the Initiative passed.

21. Pursuant to Article II, Section 15 of the Washington State Constitution, when any vacancy occurs in a partisan office it must be filled with one of three people nominated by the same political party as the official whose office has been vacated. The nominations are to be made by the county central committee of that party for the county in which the official whose office has been vacated resides. Pursuant to RCW 29A.80.030, the county central committee of a major political party consists of the precinct committee officers from the several voting precincts of the county. Pursuant to RCW 29A.80.041, in order to be eligible to file for the office of precinct committee officer ("PCO") of a party, a candidate must be a member of that political party. Pursuant to RCW 29A.80.051, the PCO from a precinct is the candidate receiving the most votes for the office at the primary and must receive at least 10% of the votes cast for the candidate of the PCO candidate's party receiving the most votes in the precinct.

22. In addition to having a constitutional role in the filling of vacancies in partisan office, Republican PCOs elect the county chair and vice-chair of the Party within their county under RCW 29A.80.030. Moreover, Republican PCOs in each county, pursuant to RCW 29A.80.020, elect two members of the state committee of the Party. In turn, the members of the Republican State Committee elect a Chairman and Vice-Chairman of the Party, and elect Washington's representatives to the Republican National Committee.

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SUPPLEMENTAL ALLEGATIONS REFLECTING MATERIAL EVENTS SINCE THE FILING OF THE ORIGINAL COMPLAINT

23. After the passage of I-872, defendant Secretary of State requested the Legislature adopt legislation implementing I-872. At the Secretary's request HB 1750 and SB5745 were introduced in the 2005 session of the legislation. The Secretary's proposed implementation would have amended RCW 29A.36.121(3) to eliminate provisions of the statute relating to nomination by minor parties but proposed to re-enact the first sentence of the section to read: "The political party or independent candidacy of each candidate for partisan office shall be indicated next to the name of the candidate on the primary or general election ballot." The Secretary also proposed emergency regulations, WSR 05-11-101, which provided that on the ballot form to be used "the party preference or independent status of each candidate shall be listed next to the candidate." WSR 05-11-101 at WAC 434-230-170

24. As a direct result of this litigation challenging the proposed implementation and this Court's decision that the I-872 is unconstitutional, defendants repealed their proposed implementation of I-872 in 2005, including the form of ballot that defendants proposed to use. Thereafter, defendants argued to appellate courts that the form of ballot was not known and that it might not be the form upon which the District Court's determination that I-872 is unconstitutional had been based.

25. In 2006, by more than two-thirds vote, the Washington Legislature reviewed and amended various election statutes. Among other things, the Legislature changed Washington's primary election date to August. In 2007 the Washington adopted a requirement that all partisan primary ballots contain a statement that a voter may only vote for candidates of one party. To the date of this pleading, the Legislature has not amended RCW 29A.36.121(3) and its first sentence continues to read: "The political party or independent candidacy of the each candidate for partisan office shall be indicated next to the name of the candidate on the primary and election ballot."

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26. In May 2008, two weeks prior to the commencement of filing of candidacies for the 2008 election the Secretary adopted emergency regulations implementing I-872, although this Court had not been requested to modify or vacate its injunction barring the Secretary from implementing I-872. In his 2008 emergency implementation the Secretary ignored RCW 29A.36.121(3)'s requirement that partisan primary ballots list the political party or independent status of each candidate next to the name of the candidate. The Secretary also ignored the requirements of RCW 29A.24.030 (as amended by I-872) that for partisan offices declarations of candidacy must include a place for the candidate to indicate his or her major or minor party preference or independent status. Instead, the Secretary implemented forms that had no place to indicate independent status, only a box with which to decline to state a preference. Similarly the Secretary's emergency regulations did not indicate the independent status of candidates but instead indicated that the candidate had declined to state a preference.

27. As part of their implementation of Initiative 872, defendants have ignored, on the basis that they are impliedly repealed, numerous valid statutes of the State of Washington. The repeal of these statutes, or portions thereof, by implication if Initiative 872 were to pass was not disclosed to the voters in connection with Initiative 872.

28. Washington's Public Disclosure Commission also adopted regulations implementing I-872. In particular, the PDC adopted WAC 390-05-274 declaring that the terms "party affiliation," "political party," "party" and "political party affiliation" when used in RCW 42.17, WAC 390 or on forms adopted by the PDC meant a candidate's self-identified party preference. In addition, the PDC adopted a new brochure in July 2008 providing information to campaign advertising sponsors advising sponsors with respect to compliance with RCW 42.17.510's requirement that political advertising and communications must clearly identify a candidate's party or independent designation, as indicated by his or her statement of preference on the declaration of candidacy. The PDC brochure indicated that "Official symbols or logos adopted by the state committee of the party

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may be used in lieu of other identification." The PDC brochure also advised advertisers that the traditional abbreviations for political parties, such as "R., Rep., GOP," could be used to indicate the candidate's party.

29. Election coverage both before and after the primary made no distinction between candidates carrying the Republican Party name who were authorized to use the party name and candidates who did so without authorization. The practical effect of I-872 was to confuse voters about which candidates carrying the Republican Party name actually supported the party and its objectives and candidates who had appropriated the party name for their own political advancement.

30. As implemented by defendants, I-872 unconstitutionally interferes with the internal affairs of the Republican Party by allowing non-Republicans to participate in the election of the Party's precinct committee officers and, based on their implementation of I-872, defendants have even declared non-members of the Republican Party to be elected to party positions. Pursuant to RCW 29A.80.030 the county central committee of a political party consists of its precinct committee officers. Pursuant to Article II, Section 15 of the Washington State Constitution, vacancies in the legislature or in any partisan county elective office must be filled by a candidate who has been nominated for the vacancy by the pertinent county central committee of the same political party as the legislator or local elected official who caused the vacancy. RCW 29A.80.041 requires that in order to file for the office of precinct committee officer for a political party a candidate must be a member of that party. In addition, RCW 29A.80.051 requires that in order to be elected a precinct committee officer of a party, a candidate must receive at least ten percent of the number of votes cast for the candidate of the precinct committee officer candidate's party who received the highest number of votes in the precinct.

31. Prior to the 2008 implementation of I-872 by the defendants, a candidate for the office of Republican precinct committee officer was required to state as part of his or her declaration of candidacy that he or she was legally qualified to hold the office if elected and that he or she was a

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candidate of the Republican Party. Under the defendants' 2008 implementation of I-872, a candidate is no longer required to affirm that he or she is legally qualified to take office if elected nor is the candidate required to request that his or her name be printed as a candidate of the Republican Party.

32. Prior to the 2008 implementation of I-872 by the defendants, a voter could only vote in a Republican precinct committee officer election if the voter had taken a separate Republican Party ballot, had responded affirmatively that he or she wanted to affiliate with the Republican Party or had voted only for candidates of the Republican Party in partisan races on the ballot. As part of their implementation of I-872, defendants directed that all voters, without regard to whether such voters were adherents of the Republican Party, would be offered the opportunity to vote in Republican precinct committee officer elections. Defendants further directed that votes in the Republican precinct committee officer elections would be counted without regard to how the voter voted in other partisan races on the ballot. Defendants finally directed that the requirement that in order to be elected a candidate must receive at least ten percent of the votes received by the highest vote getter of that candidate's party in the precinct would be ignored.

33. It is unconstitutional to allow non-party members to vote for a party's precinct committee officers. *Arizona Libertarian Party v. Bayless*, 351 F.3d 1277 (9th Cir. 2003). Defendant's implementation of I-872 is unconstitutional.

34. Subsequent to defendants' implementation of I-872, state officials, voters and the press treated a candidate's statement in his or her declaration of candidacy that he or she prefers the Republican Party as indicating that he or she is associated with the Republican Party. The absence of any opportunity for the Party to object to association with a candidate, the association of the candidate with the Party on ballots and in voter's pamphlets, the requirement that all advertising referring to a candidate treat the candidate's party preference statement as indicating the candidate's party affiliation, the encouragement by State to candidates and advertisers to use the Party's symbols and logos, and the characterization by state officials of candidates as "Republican candidates" based

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on party preference statements under I-872, all create a forced association between the Republican Party and candidates stating a preference for the Republican Party. As a result of the implementation of I-872 by the defendants, voters are confused about which candidates on the ballot are truly representative of and associated with the Republican Party and which have merely appropriated the party name for personal electoral advantage – to the detriment of the party, its candidates, programs and message.

35. As implemented by the Defendants, any primary voter, without regard to that voter's party affiliation, may participate in the election of the Republican PCO in the voter's precinct. As implemented by the Defendants, a candidate for the office of PCO need not be a member of the Republican Party in order to file for the office of Republican PCO. Moreover, Defendants permit candidates to stand for election to the office of Republican PCO by means of write-in candidacies, again without regard to whether the candidates are members of the Republican Party. Under WAC 434-262-075, Defendants declare candidates elected to the position of Republican PCO without regard to whether the candidates have received the 10% required by RCW 29A.80.051. In July 2008, the Party adopted a resolution requiring that PCO candidates receive more than 10% of the votes received by the top Republican vote-getting candidate on the ballot in the PCO candidate's precinct in order to be elected.

36. On November 25, 2008, the Secretary publicly released advice from the Attorney General regarding implementation of the PCO election provisions. The State's interpretation of the effect of I-872 in WAC 434-262-075 is that partisan primary "candidates for public office do not represent a political party." This interpretation denies the effectiveness of party nominations, and is consistent with official statements made by elections officials during the initial implementation of I-872 denying the right of the Party to nominate candidates. Former Defendants Logan, Kimsey, Dalton and Terwilliger all asserted in 2005: "At this time, I am not aware of any language

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associated with the Initiative that contemplates a partisan nomination process separate from the primary."

37. In 2008, the Republican Party nominated candidates for statewide partisan office and congressional office. The State permitted candidates who did not receive the nomination of the Party to appear on the primary ballot, using names and abbreviations traditionally associated with the Party's nominees. Political advertising produced by candidates who were not Party nominees used the Party's name and traditional abbreviations or nicknames, without distinction from Party nominees. Newspaper articles and other materials provided to voters both before and after the primary made no distinction between Party-nominated candidates and those who had appropriated the Party name and symbols without authorization.

38. In August 2008, the Party circulated, exclusively to its members, information identifying its nominated candidate for governor and calling for his support and the support of the rest of the Republican-nominated state slate in the August primary. Multiple candidates who were not the Party's nominee had filed for office under the Party name and would appear on the ballot under the Party name. In September 2008, the State Public Disclosure Commission found the communication to the party's members violated Washington's campaign finance laws, and commenced civil proceedings seeking penalties. On December 22, 2009, the King County Superior Court granted summary judgment to the State on the grunds that the membership communication mailed by the Republican Party violated state law. The State's implementation of I-872, in the context of its administration of its campaign finance laws, materially impairs the associational and speech rights of the Party by restricting its ability to communicate to its members the identity of Party nominees, and increases the likelihood of confusion on the ballot.

DENIAL OF EQUAL PROTECTION OF LAWS

39. In contrast to the State's invasion of the associational rights of the Party and its adherents by denying their right to nominate candidates, minor parties are expressly authorized to

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nominate candidates through a convention process under RCW 29A.20.121, re-adopted by the legislature in 2006, after this Court's issuance of an injunction against I-872 on other grounds.

40. The State also affords minor political parties a mechanism to protect themselves from individuals or groups who attempt to hijack the party name or force an association with the minor political party. RCW 29A20.171(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 Defendants intend to administer the State's partisan primary in a manner that denies the Party the right to nominate its candidates and control the use of its name. In doing so, the State protects the First Amendment right of association to minor political parties and their adherents while denying the same protection to the Party and its adherents.

REPUBLICAN PARTY OF WASHINGTON V. REED

41. In *Reed*, the Ninth Circuit held that Washington cannot force a political party and its adherents to adulterate their nomination process. The *Reed* decision overturned Washington's blanket primary system, which – like I-872 – prevented the Party from controlling its own nomination process. The court, rejecting a litany of "compelling interests" advanced by the State to justify the invasion of political parties' First Amendment rights, stated that "[t]he remedy available to the Grangers and the people of the State of Washington for a party that nominates candidates carrying a message adverse to their interests is to vote for someone else, not to control whom the party's adherents select to carry their message." *Reed*, 343 F.3d at 1206-1207.

42. In *Jones*, the Supreme Court noted that forced political association violates the principles set forth in its earlier cases by forcing "political parties to associate with – to have their nominees, and hence their positions, determined by – those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival." *Jones*, 530 U.S. at 577. The Supreme Court also noted that

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> a corollary of the right to associate is the right not to associate. Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being.
>
> In no area is the political association's right to exclude more important than in the process of selecting its nominee.

530 U.S. at 574-75 (citations and quotation marks omitted). The Ninth Circuit's *Reed* decision followed the Supreme Court's *Jones* decision. *See Reed*, 343 F.3d at 1201.

43. There is no constitutionally significant difference between Washington's new "People's Choice" primary system and the previous blanket primary system, which was held unconstitutional by the Ninth Circuit. Indeed, the Voter's Pamphlet statement prepared by I-872's proponents stated that "I-872 will restore the kind of choice in the primary that voters enjoyed for seventy years with the blanket primary."

DEPRIVATION OF CIVIL RIGHTS BY STATE OFFICIALS UNDER COLOR OF LAW

44. The Party has adopted rules governing the nomination of its candidates and prohibiting candidates not qualified under Party rules to represent themselves as candidates of the Party. The Party has provided those rules to the Defendants.

45. The conduct of any partisan primary by State officials in which the State promotes, permits or encourages claims by candidates in or on widely distributed State election materials, including ballots and Voter's Pamphlets, to be associated with, members of, endorsed by or nominated by the Party without regard to whether such candidates are in fact associated with, members of, endorsed by or nominated by the Party modulates and alters, and thus interferes with, the political message of the Party. The conduct of any partisan primary by State officials in which the Party is required to repeat in its own materials unwanted claims of association by candidates unconstitutionally compels political speech from the Party. As evidenced by the 2008 election cycle, candidates who express a "preference" for the Party are indistinguishable from party nominees in

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common political discourse, and are *de facto* affiliated with the Party in a manner that is confusing to voters.

46. If the Defendants are permitted to continue to conduct a "qualifying" partisan primary with multiple "Republican" candidates listed and not chosen by the Party, Plaintiffs will be irreparably harmed by the denial of their First Amendment rights. Moreover, if the Defendants conduct partisan primaries pursuant to procedures which are known to be unconstitutional, then there is a substantial risk that the results of those primaries will be invalid. Requiring that the officers of the Party be selected in a process that permits voters who are not affiliated with the Party to determine the outcome unconstitutionally interferes with the internal affairs of the Party. These actions by Defendants, acting under color of law, deprive plaintiffs of their civil rights.

FIRST CAUSE OF ACTION: CONDUCTING AN INVALID PRIMARY

47. Plaintiffs reallege and incorporate by reference Paragraphs 1-46 above.

48. An actual controversy exists between Plaintiffs and Defendants with regard to the exercise of Plaintiffs' federally protected rights. Plaintiffs are entitled to declaratory judgment establishing the unconstitutionality of the State's primary system.

49. RCW 29A.04.127 and RCW 29A.52.112 are unconstitutional to the extent that they authorize the County Auditors to permit non-affiliates of the Party to participate in the Party's nominee selection process.

50. RCW 29A.04.127 and RCW 29A.52.112 are unconstitutional to the extent that they authorize the Secretary and County Auditors to facilitate cross-over voting and ticket-splitting by placing Republican primary races on the same ballot as primary races for other political parties or affiliations over the objection of the Party and without requiring mechanisms to prevent voting in violation of the Party's associational rights.

51. Initiative 872 is unconstitutional because, both in isolation and in conjunction with other laws governing elections and election campaigns, it will confuse voters regarding whether

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candidates identified with the Republican Party are affiliated with the Republican Party or represent its views, and will further confuse voters regarding whether messages advanced by candidates bearing the Republican Party name on ballots are those of the Republican Party. Initiative 872 constitutes a misappropriation by the Defendants and unauthorized candidates of the Republican Party's name, its symbols, abbreviations and nicknames, all of which are associated in the mind of the public with the Party and its positions on important issues of the day.

52. In conjunction with the State's administration of its campaign finance laws, I-872 materially impairs core political speech and association by restricting the Party's ability to communicate with its members to identify to them the candidates who have been nominated by the Party outside the "top two" primary system.

53. Initiative 872 lacks a severability clause. Therefore, if any portion of I-872 is unconstitutional, the entire enactment is void.

54. Pursuant to 42 U.S.C. § 1983 *et seq.*, Plaintiffs are entitled to a declaratory judgment regarding their rights under the First Amendment and to their reasonable attorneys' fees and costs in this case.

SECOND CAUSE OF ACTION: FORCED ASSOCIATION

55. Plaintiffs reallege and incorporate by reference Paragraphs 1-54 above.

56. RCW 29A.24.030, RCW 29A.24.031 and RCW 29A.36.010 are unconstitutional under the First Amendment to the extent that they permit the State to compel the Party during a primary to publicly affiliate with candidates other than those who are qualified under Party rules to represent themselves as candidates of the Party.

57. The State's primary system, including RCW 29A.36.170, is unconstitutional under the First Amendment to the extent that it places upon the general election ballot as a candidate of the Party for any office the name of an individual who has been selected though a voting system that

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deprives the Party of the ability to limit participation in nominee selection to those the Party has determined should be included.

58. Initiative 872 as implemented by Defendants is unconstitutional because, both in isolation and in conjunction with other laws governing elections and election campaigns, it confuses voters as to whether candidates publically affiliated with the Party are, in fact, affiliated with the Party or represent its views, and will further confuse voters regarding whether messages advanced by candidates bearing the Party name on ballots, in the voter's pamphlet, and in political advertising are those of the Party. Initiative 872 constitutes a misappropriation by the Defendants and potentially by unauthorized candidates of the Party's name, which is associated in the mind of the public with the Party and its positions on important issues of the day.

59. Initiative 872, as implemented by Defendants, is unconstitutional because it permits voters who are not adherents of the Party, and may in fact be adherents of rival political parties, to elect directly officers of the Party and indirectly to select higher officials of the Party and its nominees to fill vacancies in partisan office.

THIRD CAUSE OF ACTION: DENIAL OF EQUAL PROTECTION UNDER LAW

60. Plaintiffs reallege and incorporate by reference Paragraphs 1-59.

61. The State, through RCW 29A.20.171 and other provisions of state law, protects minor political parties from forced association with candidates who may not share the goals or objectives of the minor political parties and their adherents. Through the convention process and the statutory procedures to resolve competing claims to the use of a minor political party's name, that party and its adherents may prevent misrepresentations of affiliation on primary ballots prepared by the Defendants. The State discriminates among political parties by providing a mechanism for minor political parties to protect themselves from forced affiliation with candidates, but denying the same right to the Party and its adherents under RCW 29A.24.030 and RCW 29A.24.031.

62. Plaintiffs are entitled to their reasonable attorneys' fees and costs in connection with this action pursuant to 42 U.S.C. § 1983 *et seq.*

63. The readoption of the minor party convention system in 2006 supersedes the implied

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repeal of the 2004 statute by I-872 and is a new claim for violation of equal protection.

FOURTH CAUSE OF ACTION: INJUNCTIVE RELIEF

64. Plaintiffs reallege and incorporate by reference Paragraphs 1-63 above.

65. There exists an imminent and ongoing threat by State officials to deprive Plaintiffs of their civil rights by selectively enforcing laws and permitting the Defendants to blur the candidates and nominees of the Party through a primary process in which Plaintiffs are not permitted to exercise their First Amendment rights of association, as well as to invade core associational rights of the Party by permitting nonaffiliates to select its leaders.

66. Plaintiffs will suffer irreparable injury if the Party's candidates and nominees are selected in a process in which the Party is deprived of its right to define participation.

67. Plaintiffs are entitled to preliminary and permanent injunctive relief restraining the County Auditors from:

a) conducting any partisan primary in which candidate(s) are selected to appear on a general election ballot associated with the Party's name in such a fashion as to imply affiliation of the candidate with or approval of the candidate by the Party without also limiting participation in that primary in accordance with rules adopted by the Party and conveyed to State officials in advance of the primary;

b) referring to, reprinting, restating or distributing in any public document or communication a statement of party preference

(i) made by a candidate in connection with his or her declaration of candidacy, or in any other communication or filing with State officials

(ii) without, if the Party whose name is being used so requests, conspicuously and in close proximity making a statement disclaiming any association between the candidate and the party whose name is being used and any approval by the party of the candidate;

c) encouraging or facilitating, directly or indirectly, cross-over voting or ticket-

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splitting in connection with any partisan primary in which candidate(s) are selected to appear on a general election ballot associated with the Party's name in such a fashion as to imply affiliation with or approval by the Party without also limiting participation in that primary in accordance with rules adopted by the party and conveyed to State officials in advance of the primary;

d) conducting elections of officers of the Party, directly or indirectly, including Precinct Committee Officers, in any manner that is not approved by the Party provided that conducting such elections in a manner that is the same as, or substantially similar to, the process approved by the Party for the selection of this state's delegates to the Party's National Convention shall be deemed acceptable for the selection of Precinct Committee Officers.

68. Plaintiffs are entitled to their reasonable attorneys' fees and costs in connection with this action pursuant to 42 U.S.C. § 1983 *et seq.*

PRAYER FOR RELIEF

Plaintiffs respectfully request the Court enter judgment:

1. Declaring RCW 29A.04.127 unconstitutional;

2. Declaring RCW 29A. 24.030 and RCW 29A24.031 unconstitutional to the extent they authorize placing on a primary ballot the name of any candidate carrying the Party's name who is not qualified under the rules of the Party to stand for office as a candidate of the Party;

3. Declaring RCW 29A.36.010 unconstitutional;

4. Declaring RCW 29A.36.170 unconstitutional;

5. Declaring RCW 29A.52.112 unconstitutional;

6. Declaring Initiative 872 unconstitutional under the Constitution of the United States and declaring that the primary system in effect immediately before the passage of I-872 remains in effect;

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7. Declaring Initiative 872 unconstitutional for violating Article II, Section 37 of the Washington State Constitution, and declaring that the primary system in effect immediately before the passage of I-872 remains in effect;

8. Permanently restraining the Defendants and all those acting in active concert and participation with them from:

a) Conducting any partisan primary in which candidate(s) are selected to appear on a general election ballot associated with the Party's name in such a fashion as to imply affiliation of the candidate with or approval of the candidate by the Party without also limiting participation in that primary in accordance with rules adopted by the Party and conveyed to State officials, in advance of the primary;

b) Referring to, reprinting, restating or distributing in any public document or communication a statement of party preference

(i) made by a candidate in connection with his or her declaration of candidacy, or in any other communication or filing with State officials

(ii) without, if the Party whose name is being used so requests, conspicuously and in close proximity making a statement disclaiming any association between the candidate and the party whose name is being used and any approval by the party of the candidate;

c) Encouraging or facilitating, directly or indirectly, cross-over voting or ticket-splitting in connection with any partisan primary in which candidate(s) are selected to appear on a general election ballot associated with the Party's name in such a fashion as to imply affiliation with or approval by the Party without also limiting participation in the primary in accordance with rules adopted by the Party and conveyed to State officials in advance of the primary;

d) Conducting elections of officers of the Party, directly or indirectly, including Precinct Committee Officers, in any manner that is not approved by the Party provided that conducting such elections in a manner that is the same as, or substantially similar to, the process

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approved by the Party for the selection of this state's delegates to the Party's National Convention shall be deemed acceptable for the selection of Precinct Committee Officers.

9. Awarding Plaintiffs their reasonable attorneys' fees and costs; and

10. Granting such further relief as the Court deems appropriate.

DATED this 22nd day of January, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on January 22, 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 recocrd.

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