SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

LIBERTARIAN PARTY OF WASHINGTON STATE, Plaintiff, Vs. SAM REED (in his capacity as Washington State Secretary of State), WASHINGTON STATE REPUBLICAN PARTY, and CATHY McMORRIS ROGERS (in her capacity as Chair of the Mitt Romney for President campaign), Defendants.	**NO.** COMPLAINT

1. OVERVIEW

1.1 This is an action seeking a determination that, following the 2010 General Election in Washington State, the Republican Party became a "minor" party under the definitions set out in ch. 29A.04 RCW, along with a determination that the Republican Party has not submitted the 1,000 signatures in support of a candidate for President as required by ch. 29A.20.111 et seq. to

J. Mills
ATTORNEY AT LAW
705 South 9th Street, Suite 303
Tacoma, Washington 98405
Telephone (253) 226-6362
jmills@jmills.pro

have a candidate's name ***printed*** on the November ballot, and that accordingly, the Secretary of State's decision recently to include on the general election ballot the name of the Republican Party nominee (presumably Mitt Romney) is contrary to law. The suit seeks an order declaring that the Washington State Republican Party is "minor party" for purposes of the 2012 general election and directing the Secretary of State to issue ballots for the November election that do not contain the printed name of any Republican Party nominee. (Although the Republican nominee may run as a write-in.)

II PARTIES

2.1 Plaintiff Libertarian Party of Washington State (LPWA) is a recognized political party holding the status of a "minor" political party under Washington law and one of the "minor" political parties that submitted the signatures of 1,000 registered voters in support of its candidates for president and vice-president for the 2012 general election: Gary Johnson and Jim Gray, respectively, as required by law. The LPWA is acting with approval of its central committee on behalf of its members and on behalf of all Washington State voters to assure that a fair and orderly election is conducted in November of 2012.

2.2 Defendant Sam Reed is Washington State's elected Secretary of State and the state's chief election officer. He is sued here in his official capacity.

J. Mills
ATTORNEY AT LAW
705 South 9th Street, Suite 303
Tacoma, Washington 98405
Telephone (253) 226-6362
jmills@jmills.pro

2.3 Defendant Washington State Republican Party is a recognized political party that has, at times, held the status of a "major" political party under Washington law, but application of the law to the results of the 2010 election result in the Washington State Republican Party becoming a "minor" political party as of the conclusion of the 2010 general election.

2.3 Defendant Cathy McMorris Rogers is the Chair of the Washington State campaign for Mitt Romney, who is the likely Republican Party nominee for president, although the Republican Party nominating convention has not yet occurred and is scheduled to start August 27, 2012 in Tampa, Florida. Ms. Rogers is sued in her official capacity as chair of the Romney campaign who may be an interested party entitled to notice of this action and an opportunity to respond. If the court determines that Ms. Rogers is not an interested party she may be dismissed from this action.

III JURISDICTION AND VENUE

3.1 This action is authorized by and brought pursuant to RCW 29A.68.011(1) providing that the Superior Court may issue orders to state officials directing them to desist from erroneously printing ballots, and has authority to issue orders to show cause why proposed ballot printing errors should not be corrected.

J. Mills
ATTORNEY AT LAW
705 South 9th Street, Suite 303
Tacoma, Washington 98405
Telephone (253) 226-6362
jmills@jmills.pro

3.2 Venue is appropriate in Thurston County pursuant to RCW 4.02.020(2) because the action is principally against a public officer – the Secretary of State, whose office is in Olympia, Thurston County, Washington.

IV. FACTS JUSTIFYING RELIEF

4.1 Going into the 2010 election cycle, the Washington State Republican Party was a recognized "major" political party in Washington State.

4.2 RCW 29A.04.086 defines a "major" political party as a party whose nominee for any state-wide race received at least 5% of the total votes cast in the November general election for the last even-numbered year. Accordingly, to be a "major" political party for purposes of the 2012 election cycle, at least one Republican Party nominee had to receive at least 5% of the vote in a state-wide race in the 2010 general election.

4.3 Under Washington law, a "minor" political party is any political party other than a "major" political party.

4.4 In 2010 there was only one state-wide election that could have qualified political parties for "major" party status, and that was the race for U.S. Senate. There were no other offices for which elections were held that were qualifying races, and accordingly to be a "major" political party for the 2012

J. Mills
ATTORNEY AT LAW
705 South 9th Street, Suite 303
Tacoma, Washington 98405
Telephone (253) 226-6362
jmills@jmills.pro

election cycle, the Republican Party nominee for U.S. Senate must have received at least 5% of the votes cast in the 2010 general election.

4.5 At the Democratic Party state convention in 2010 Patty Murray was an announced candidate. She was nominated officially by the state party at their convention, endorsed by a majority vote of the state convention delegates, and Ms. Murray became the official nominee of the Democratic Party in accordance with state rules on major party nomination which are set out at WAC 434-215-165.

4.5 At the Republican Party state convention in 2010 Clint Didier was an announced candidate for U.S. Senate.

4.6 At the Republican Party state convention in 2010 Dino Rossi was an announced candidate for U.S. Senate.

4.7 At the Republican Party state convention in 2010 both the Dino Rossi supporters~~,~~ and the Clint Didier supporters were uncertain which announced candidate might win if there were an official nomination process and a vote at the convention. Accordingly, there was no nomination and no vote on whether Mr. Didier or Mr. Rossi would be the party nominee; no vote either in conformity with the WAC rules or any party rules for nomination and selection of official party candidates. Instead, the then Republican Party chair reported to the

J. Mills
ATTORNEY AT LAW
705 South 9th Street, Suite 303
Tacoma, Washington 98405
Telephone (253) 226-6362
jmills@jmills.pro

press that the party looked forward to a "competitive and vigorous primary." See attached exhibit 1.

4.8 Both Mr. Didier and Mr. Rossi appeared in Washington's "Top-2" primary election; both indicated a "preference" for the Republican Party. Mr. Rossi along with Patty Murray, who "preferred" the Democratic Party, received the two greatest number of primary election votes and their names were printed on general election ballot in 2010. Ms. Murray won that election.

4.9 Washington's "Top-2" primary election process is not a "nominating" election; but is a "winnowing" election designed to send only two candidates on to the general election without regard to political party nomination or affiliation. Although candidates whose name appears on the primary election ballot are allowed to indicate a "preference" for a political party, the statement of "preference," is not intended to indicate that the candidate is the nominee of the party preferred. See e.g. Washington State Grange v. Washington State Republican Party, 552 U.S. 442 (2008). Under the Top-2 primary election rules, it is possible for two candidates to appear on the general election ballot, both preferring the Democratic Party. That is so because again, the primary election is not a nominating election and the candidates who appear on the general election ballot, regardless of what party they may "prefer," do not become nominees of the party preferred. The primary election does not, and in 2010 did not, nominate

J. Mills
ATTORNEY AT LAW
705 South 9th Street, Suite 303
Tacoma, Washington 98405
Telephone (253) 226-6362
jmills@jmills.pro

any candidate as the nominee of the Republican Party. See brief of Washington State to 9th Circuit Court of Appeals at pages 6-7 ("Under this distinctly different approach, the [Top-2] primary would not serve to select party nominees for the general election ballot."). The state's entire brief is appended as Exhibit 2.

4.10 The 9th Circuit Court of Appeals, accepted the state's argument ruled that the Top-2 primary election system is constitutional precisely because it does not "nominate" a party's candidate. The 9th Circuit opinion is attached as Exhibit 3. The Republican Party has withdrawn all appeals, essentially acknowledging the correctness of the decision, and accordingly is collaterally estopped from asserting some different position here.

4.11 Because the Top-2 primary election results did not nominate Mr. Rossi as the nominee of the Republican Party and because the Republican Party did not choose a nominee as between Mr. Rossi and Mr. Didier at its convention, there was no Republican Party nominee who received at least 5% of the votes in the 2010 general election, and accordingly by law, following the 2010 general election, the Republican Party became a "minor" political party under Washington State's election law pursuant to RCW 29A.04.086 and RCW 29A.04.097.

4.12 Under Washington Law, specifically RCW 29A.20.111 et seq., a minor political party is not entitled to have its presidential and vice-presidential

J. Mills
ATTORNEY AT LAW
705 South 9th Street, Suite 303
Tacoma, Washington 98405
Telephone (253) 226-6362
jmills@jmills.pro

nominee's name printed on the general election ballot unless and until the party gathers the signatures of 1,000 registered voters in support of the party's nominee. Signatures must be submitted on state-approved forms and must be gathered during a signature-gathering period specified by statute.

4.13 For the 2012 general election, the Washington State Republican Party did not gather the required 1,000 signatures during the relevant signature-gathering period. Accordingly, the Washington State Republican Party is not entitled under the R.C.W. to have its nominee's name printed on the November general election ballot, although its candidate (presumably Mr. Romney) is entitled to run as a write-in candidate.

4.14 However, correspondence from the office of the Secretary of State suggests that the Secretary has determined the Republican Party is a "major" party. See Exhibit 4. Relying on WAC 434-208-130, which re-writes RCW 29A.04.086 by defining "major" and "minor" political party by reference to the last presidential general election instead of the last even year general election, the Secretary has given the Washington State Republican Party presidential and vice-presidential nominees a "free pass" to the 2012 general election ballot.

4.15 While under Washington's statute the Republican Party is a "minor" party for the 2012 elections, the WAC would redefine the Republican Party as a "major" political party. However, a WAC regulation cannot modify or alter a

J. Mills
ATTORNEY AT LAW
705 South 9th Street, Suite 303
Tacoma, Washington 98405
Telephone (253) 226-6362
jmills@jmills.pro

statute by interpretation. See, e.g., *Green River Comm'ty College v. Higher Educ. Personnel Bd.*, 95 Wn.2d 108, 112, 622 P.2d 826 (1980), modified in part, 95 Wn.2d 962, 633 P.2d 1324 (1981).

4.16 In its 2009 legislative session, the state legislature re-visited definitions of "major" and "minor" party pursuant to SB 5681, which would have amended RCW 29A.05.086 and .097, redefining "major" and "minor" political parties by reference to the last presidential election, rather than the last even numbered year. However, that bill failed, indicating that the legislature considered, but ultimately abandoned exactly the change purportedly made by the Secretary's WAC regulation. See, http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5681&year=2009. The subject WAC regulation purporting to redefine "major" and "minor" parties is therefor unlawful. A WAC regulation cannot change the definitions for "major" and "minor" political parties set out in the statute. The Republican Party is a "minor" political party for the 2012 election cycle, and has failed to qualify any presidential nominee for the 2012 general election ballot.

WHEREFORE plaintiff requests the following relief:

1. For a determination that the Washington State Republican Party is a minor political party under Washington law applicable to the 2012

J. Mills
ATTORNEY AT LAW
705 South 9th Street, Suite 303
Tacoma, Washington 98405
Telephone (253) 226-6362
jmills@jmills.pro

election cycle and a determination that the Washington State Republican Party did not submit the required 1,000 signatures needed to qualify its presidential and vice-presidential nominees in 2012.

2. For an order directing the Secretary of State to have printed on the November general election ballot **no** nominee of the Washington State Republican Party for president or vice-president, but permitting the Republican nominee to run a write-in campaign only.

3. For costs and disbursements incurred, and for reasonable attorney fees as authorized by any recognized ground in law or equity.

DATED this 13th day of August 2012.

J. Mills, WSBA# 15842

J. Mills
ATTORNEY AT LAW
705 South 9th Street, Suite 303
Tacoma, Washington 98405
Telephone (253) 226-6362
jmills@jmills.pro

EXHIBIT 1

Clint Didier to meet with RNC and NRSC

TAGS: **NRSC**, **Clint Didier**, **NRC**

By **SHIRA TOEPLITZ** | 6/15/10 4:31 PM EDT

Former NFL Player Clint Didier will meet this week in Washington, D.C., with staff from the Republican National Committee and the National Republican Senatorial Committee, the latter of which had a heavy hand in recruiting GOP frontrunner Dino Rossi into the race against Sen. Patty Murray (D-Wash.).

Didier's chief campaign consultant, Kathryn Serkes, said he plans to meet with the NRSC on Wednesday morning for the first time since he got into the race in January. Senate Republicans went to great efforts to get Rossi in the race, and the two-time gubernatorial nominee said 12 senators — including Sen. Scott Brown (R-Mass.) talked to him before he announced his bid.

By most measures, Didier is a longshot for the nomination against Rossi in the Aug. 17 primary, but he has been boosted by an endorsement from former Alaska Gov. Sarah Palin and had a strategy session with the former vice presidential nominee over the weekend.

Didier and Rossi also both appeared at this weekend's state Republican convention, where Serkes alleged that the Republican Party of Washington attempted to endorse Rossi from the floor and sent out a letter to the field of GOP Senate candidates a few days beforehand asking them not to nominate any candidates from the floor for an endorsement. Serkes said

the plan was dropped in the days leading up to the convention.

“They must have whipped their votes and realized they didn’t have the votes for Dino,” Serkes said.

Washington State Republican Party Chairman Luke Esser said Serkes’ claim was “inaccurate.”

“I’d love to see (the letter),” Esser said. “I was of the opinion and told Chuck Beck, the Didier campaign manager … I thought it would be a mistake for anybody to win an endorsement. I think the body and the state party believe at this point that we should have a competitive and vigorous primary. May the best candidate win.”

Also while in the Washington, D.C., area, Didier will return to his old stomping ground at Redskins Park on Thursday morning to hold a fundraiser with some of his former colleagues and teammates from his days as a tight end for the team in the 1980s. Didier also informally met Tuesday with Rep. Joe Wilson (R-S.C.) at the Capitol Hill Club. Serkes said Didier would not attend Grover Norquist’s weekly Americans for Tax Reform gathering, but Didier's staff plans to make a presentation on the race at the weekly meeting for conservative activists and candidates.

Rossi, who, public polls show, has a huge lead for the GOP nomination and is in a competitive race against Murray, made his first trip to Washington, D.C., in March to meet with GOP officials before he announced his candidacy.

EXHIBIT 2

NOS. 05-35780 & 05-35774

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.,
Appellee/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,
Appelant/Defendant Intervenor

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE
No. C05-0927
The Honorable Thomas S. Zilly
United States District Court Judge

BRIEF OF APPELLANTS, STATE OF WASHINGTON, SAM REED, AND ROB MCKENNA

ROB MCKENNA
Attorney General
MAUREEN A. HART, WSBA #7831
Solicitor General
JEFFREY T. EVEN, WSBA #20367
Assistant Attorney General
JAMES K. PHARRIS, WSBA #5313
Sr. Assistant Attorney General
P.O. Box 40100
Olympia, WA 98504-0100
(360) 586-0728

I. NATURE OF THE CASE

In November 2004, the voters of Washington enacted a new primary election system through an initiative measure (Initiative Measure 872, or I-872). I-872 changed Washington's practice of using the primary to select political party nominees to compete in the general election. Instead, under I-872, the two candidates gaining the most votes in the primary for a given office, without regard to political party affiliation, advance to the general election. The Republican, Democratic, and Libertarian Parties challenge the right of the State and its voters to select such a primary election system.

The fact that primary elections historically have been used to nominate party candidates to the general election ballot does not mean that such primaries are the only constitutionally permissible form of primary, that only political party nominees may be given access to a primary election ballot, or that only political party nominees may be allowed to advance to the general election ballot.

II. STATEMENT OF JURISDICTION

The district court properly exercised jurisdiction in this case pursuant to 28 U.S.C. §§ 1331, 2201, and 2202. The district court's grant of injunctive relief is presently appealable under 28 U.S.C. § 1292(a)(1). This Court has jurisdiction over the appeal pursuant to 28 U.S.C. §§ 41 and 1294.

The district court entered its order invalidating the primary established by I-872 and granting a preliminary injunction on July 15, 2005. ER 536-75. The district court entered a permanent injunction on July 29, 2005. ER 576-77. The State of Washington, Attorney General Rob McKenna, and Secretary of State Sam Reed timely filed their notice of appeal on July 29, 2005. ER 580-81; Fed. R. Civ. P. 4(a)(1).

III. STATEMENT OF THE ISSUES

The parties stipulated below that this case presents the following issues. ER 133-36.

1. Does the primary system established by I-872 nominate political party candidates for public office?

2. If the primary system under I-872 does not nominate political party candidates for public office, does each political party have the right to select for itself the only candidate who will be associated with it on either a primary or general election ballot?

3. If the primary system under I-872 nominates political party candidates for public office, does I-872 violate the First Amendment by compelling a political party to associate with unaffiliated voters and members of other political parties in the selection of its nominees?

4. Does Washington's filing statute impose forced association of political parties with candidates in violation of the parties' First Amendment associational rights?

5. Does I-872's limitation of access to the general election ballot to only the top two vote-getters in the primary for partisan office unconstitutionally limit ballot access for minor political parties?

6. If any portion of I-872 is unconstitutional, are the remaining portions severable?[1]

IV. REVIEWABILITY AND STANDARD OF REVIEW

Each of the issues on appeal presents a question of law, which this Court reviews *de novo*. *United States v. Carranza*, 289 F.3d 634, 643 (9th Cir. 2002) (constitutionality of a statute reviewed *de novo*); *Carson Harbor Village, Ltd. v. Unocal Corp.*, 270 F.3d 863, 870 (9th Cir. 2001) (en banc) (question of statutory interpretation reviewed *de novo*). This Court reviews grants of injunctive relief *de novo* where that relief rests solely on conclusions of law, and the facts are either established or undisputed. *Harris v. Bd. of Supervisors*, 366 F.3d 754, 760 (9th Cir. 2004). The district court's conclusions of law are reviewed *de novo*. *Brown v.*

[1] Issue No. 6 was not a part of the stipulation below, but arose as the parties briefed and argued the other issues.

California Dep't of Transp., 321 F.3d 1217, 1221 (9th Cir. 2003). The district court's grant of summary judgment is reviewed *de novo*. *Carson Harbor Village*, 270 F.2d at 870.

V. STATEMENT OF THE CASE

A. Systems For Conducting Primaries In Washington

The Washington State Republican Party brought this action challenging I-872, a ballot measure approved by Washington's voters in November 2004. A copy of the initiative is attached as Appendix A and is also contained in the record at ER 258-60. Through that initiative, the voters established a system for conducting primary elections with several key features:

- First, any candidate seeking to run for public office would be free to do so, with no petition, convention, or nominating procedure required to obtain ballot access;[2]

- Second, all voters would be free to fully participate in the primary, with the ability to choose from among all candidates for all offices;

- Third, the two candidates receiving the most votes at the primary would qualify to advance to the general election, without regard to party affiliation;

- Fourth, candidates for partisan offices could indicate their party preference on the ballot, but that preference would be shown only for the information of

[2] At the same time, nothing in I-872 precludes political parties from selecting, by nomination or otherwise, a party candidate who may then file for a spot on the primary election ballot.

> voters and would not determine which candidates would advance to the general election.

2005 Wash. Sess. Laws, ch. 2; ER 258-60 (text of I-872).

Referred to as a "top two" or "qualifying" primary, the system established by I-872 differs markedly from primary election systems used in Washington in recent years. Until ruled unconstitutional in 2003, Washington had a "blanket primary," under which one candidate of each major party was guaranteed a place on the general election ballot. Although, like I-872, the blanket primary permitted all voters to fully participate in this critical stage of the electoral process by choosing from among all candidates, the guarantee of a place on the ballot for one candidate of each party—no matter the relative support of the various candidates—made the blanket primary a party nominating system. *Democratic Party of Washington State v. Reed* (*Wash. Demo.*), 343 F.3d 1198, 1203 (9th Cir. 2003), *cert. denied*, *Reed v. Democratic Party of Washington*, 540 U.S. 1213, 124 S. Ct. 1412, 158 L. Ed. 2d 140 (2004), *and cert. denied*, *Washington State Grange v. Washington State Democratic Party*, 541 U.S. 957, 124 S. Ct. 1663, 158 L. Ed. 2d 392 (2004).

Washington's former blanket primary combined two constitutionally significant features: (1) unrestricted voter participation in the primary, including

the freedom to choose among all candidates for all offices without restriction based on party, and (2) competition between nominees of different parties in the general election. This combination of features led to invalidating the blanket primary. The ability of all voters to choose from among all candidates, coupled with a guarantee that one candidate of each major party would advance to the general election, convinced this Court (relying upon a prior United States Supreme Court decision striking down California's blanket primary), that the system unconstitutionally opened participation in party nominating decisions to voters who were not party members, in violation of the associational rights of political parties. *Id.*

The invalidation of Washington's blanket primary left the State with two choices. First, it could use its primary to select party nominees, thereby ensuring interparty competition at the general election, but sacrificing the opportunity for all voters to choose among all candidates at the primary. Second, it could adopt a distinctly different primary, departing from the more typical and historical practice of using a primary election to select party nominees. Under this distinctly different approach, the primary would not serve to select party nominees for the general election ballot. Party affiliation would not determine which candidates would advance to the general election. Instead, under such a system, the voters would

choose among all candidates for all offices, and their top two choices would advance without regard to political party affiliation.

In response to this Court's decision invalidating the blanket primary, the Washington Legislature initially adopted a preferred nonpartisan primary and "backup" partisan primary system. 2004 Wash. Sess. Laws, ch. 271; ER 261-364. As passed by both houses of the Legislature, the bill enacted, as a first preference, a "top two" primary similar to I-872 that preserved the right of voters to vote freely for any candidate for public office, but provided that the top two vote-getters for each office would advance to the general election without regard to party affiliation. 2004 Wash. Sess. Laws, ch. 271, §§ 1-57; ER 263-303.

Aware that the political parties would probably challenge the constitutionality of this system, the Legislature also enacted a "backup" plan to take effect if the "top two" system was invalidated. The "backup" was the "Montana" primary under which each major party would have a separate ballot in the primary, in addition to a ballot listing nonpartisan offices.[3] A voter could choose one of the party ballots to vote for the candidates of that party for partisan offices, but could not vote for candidates of different parties for various offices.

[3] This system is also sometimes described as the "pick-a-party" primary. See the Secretary of State's explanation of this system posted to his office website, located at http://www.secstate.wa.gov/documentvault/838.pdf (visited Sept. 15, 2005).

Every voter could vote for nonpartisan offices and measures. 2004 Wash. Sess. Laws, ch. 271, §§ 102-193; ER 304-60.

The Montana system essentially is a traditional partisan primary election system. Under that system, election officials prepare separate ballots for each major political party, with only candidates affiliated with a particular party appearing on those ballots. Voters were required to select the ballot of a single party, and their choices were limited to candidates of that party. Alternatively, voters could select a ballot containing only nonpartisan offices and measures. The top candidate of each party would advance to the general election.

When this legislation reached the Governor's desk, he exercised his "section veto" and vetoed out of the bill all references to the "top two" primary. The Governor signed into law the remainder of the bill, consisting of the "Montana" primary provisions. ER 361-64 (Governor Locke's veto message). The validity of the Governor's veto was challenged, but upheld by the Washington Supreme Court. *Washington State Grange v. Locke*, 153 Wash. 2d 475, 105 P.3d 9 (2005). As a result, Washington used the "Montana" primary in 2004.

While the Legislature debated the bill that eventually resulted in a "Montana primary," an initiative was already in circulation to get rid of the "Montana primary" brought into effect by the Governor's veto and, instead, adopt a "top two"

system. This system allows voters to participate fully in the primary by eliminating party affiliation as a factor in determining whether candidates advance to the general election ballot. The general election is a "runoff" between the two candidates gaining the most votes in the primary. ER 254-60 (Voters Pamphlet pages related to I-872). Washington's voters adopted I-872 at the 2004 general election. ER 428. By doing so, they opted to return to a system under which they—and not the political parties—would retain maximum choice over candidates for public office.

B. Procedural Background

The Washington State Republican Party, together with several of its members and officers, commenced this action on May 19, 2005, by filing a complaint for declaratory and injunctive relief challenging the constitutionality of I-872. ER 1-13. The Democratic Party and the Libertarian Party, together with individuals affiliated with each party, intervened as plaintiffs. ER 68-69 (order granting Libertarian Party's Motion to Intervene); ER 85-86 (order granting Democratic Party's Motion to Intervene). Both parties filed complaints substantially similar to that of the Republican Party. ER 70-84 (Libertarians' Compl.); ER 89-102 (Democrats' Compl.). The complaints originally named

several county auditors and other local election officials as defendants. ER 1-13, 70-84, 89-102.

At the same time, the State of Washington and two of its elected officials, Secretary of State Sam Reed and Attorney General Rob McKenna, intervened in defense of I-872. ER 87-88 (order granting State's intervention). The organization that sponsored I-872, the Washington State Grange, also intervened in support of the measure. ER 597 (civil docket entry reflecting minute order granting oral motion to intervene). All parties stipulated to an order substituting the State for the original county auditor defendants, "as though it were the original defendant, for all purposes." ER 531. The county auditors were accordingly dismissed and are no longer parties. ER 531-32.

At the trial court's direction,[4] the parties submitted a Stipulated Statement of Legal Issues (ER 133-35) and submitted the case on summary judgment.[5] The

[4] ER 597 (minute entry dated June 7, 2005).

[5] On appeal, the State has included within the excerpts of record copies of all declarations relied upon in support of summary judgment. Some exhibits to declarations were duplicative, however, and the excerpts accordingly include only one copy of each such exhibit. The omitted exhibits are the same as other included exhibits, as follows:

- Declaration of John J. White, Jr. (ER 14-59), Ex. 1, is the same as Declaration of James K. Pharris (ER 254-60), Ex. A;

district court issued an order on July 15, 2005, ruling in favor of the political parties. ER 536-75. A copy of that order is attached as Appendix B. The court granted summary judgment in favor of the three political parties and entered a preliminary injunction against the enforcement or implementation of I-872. ER 574. The court subsequently converted the preliminary injunction into a permanent one on July 29, 2005. ER 576-77. The result was to set aside I-872 and the top two primary it established, and to reinstate the "Montana" "pick-a-party" primary previously in effect as a result of the 2004 legislation. ER 573. The State and the Grange appealed from both orders. ER 578-82.[6]

- Declaration of Richard Shepard (ER 151-74), Ex. A and Ex. D, are the same as Declaration of James K. Pharris (ER 261-384), Ex. B and Ex. C, respectively;
- Declaration of David T. McDonald (ER 200-25), Ex. C, is the same as Declaration of James K. Pharris (ER 365-84), Ex. C;
- Declaration of Rod Dembowski (ER 385-494), Ex. I and Ex. M, are the same as Declaration of James K. Pharris (ER 261-384), Ex. B and Ex. C, respectively.

[6] After the entry of the July 15, 2005, orders and the filing of both appeals, the Republican Party plaintiffs sought clarification as to whether the court had decided two additional issues: (1) a challenge to the "Montana" primary filing statute, and (2) an equal protection argument. The trial court entered an order on August 12, 2005, clarifying that it had not reached the "Montana" primary challenge issues because they had not been properly raised, and clarified that it did not reach the equal protection issue, having resolved the case on other grounds. ER 587. The court imposed a stay on further proceedings pending the resolution of these appeals. ER 587.

VI. STATEMENT OF FACTS

This case was presented as a facial challenge to the validity of I-872. The relevant facts are those set forth in the Statement Of The Case.

VII. SUMMARY OF ARGUMENT

In contrast to the election systems used by almost every other state, Washington's I-872 does not use the primary election to select party nominees for public office. The initiative leaves the "nomination" of political party candidates to the privately exercised discretion of each party. Candidates qualify for the general election ballot by gaining either the highest or the second-highest votes for an office in a primary in which all voters are free to participate. All primaries are conducted as nonpartisan primaries with the only reference to political party that, for certain offices, any candidate on the primary election ballot may express his or her preference for a political party or independence. These political party preferences, if any, are printed on the ballot only as information for the voters. Therefore, I-872 does not enact a system in which party candidates are nominated for the general election ballot.

I-872 does not create an unconstitutional "association" between a candidate and a party merely by allowing candidates to state on the ballot their personal preference for a particular political party, if any. This mere statement does not

interfere with the rights of parties to select or support their preferred candidates or to conduct their internal affairs. States may constitutionally provide voters with important information about candidates for office (such as their personal party preference), without converting a primary election into a party nominating system.

Nor does I-872 adversely affect the rights of minor parties and their adherents to participate in the political system, because all parties and candidates are treated equally under the initiative. The constitution does not require states to treat minor parties more favorably than other parties with respect to ballot access.

For these reasons, I-872 should be sustained in its entirety. To the extent that any portion of I-872 is deemed unconstitutional, the initiative should be deemed severable. The State should be allowed to implement any portions of the initiative that are constitutional and furthers broad voter choice as the most important goal underlying adoption of the measure.

VIII. ARGUMENT

A. I-872 Does Not Nominate Political Party Nominees For Public Office

By enacting I-872, Washington voters separated the public process of electing candidates to public office from the internal processes by which political parties select their nominees. This essential change in public policy is the most basic characteristic of I-872, representing a fundamental change in the nature of

primaries in Washington's electoral system. In making this change, the voters made their decision to select one of two basic approaches to conducting primary elections left open to states in the wake of *California Democratic Party v. Jones* (*Cal. Demo.*), 530 U.S. 567, 120 S. Ct. 2402, 147 L. Ed. 2d 502 (2000), as followed by this Court in *Democratic Party of Washington v. Reed*. Washington could choose either to keep the Montana primary, in which the candidates appearing on the general election ballot would be determined through a party nominating primary (in which only voters selecting a particular party's ballot would be allowed to participate in selecting that party's candidates), or to adopt a new primary in which all the voters would choose among all candidates, with party nominations made irrelevant to qualifying candidates to the ballot. The voters overwhelmingly selected the latter.

By enacting I-872, Washington voters selected an approach that preserves maximum voter choice rather than guaranteeing interparty competition in the general election. The language of I-872 makes this choice clear in several respects. The voters, through the initiative, explained the new and fundamentally different nature of the primary established by I-872: "A primary is a first stage in the public process by which voters elect candidates to public office." I-872, § 7(1) (ER 258). The voters determined that the primary would no longer constitute a mechanism

for the selection of party nominees, but rather it would be transformed into a "first stage" in electing candidates for office.

1. The Traditional Use Of Primaries As Party Nominating Devices Should Not Obscure The Flexibility Of The States To Fashion Different Primary Election Systems

The historical use of the primary as a method for including voters in the process of selecting party nominees may color thinking and expectations of the role that primaries ordinarily play in an election system. It is important, then, to keep in mind that the historical or typical use of primaries to nominate party candidates to the general election ballot, while certainly permissible, is not the only constitutionally sound form that primary election systems may take. I-872 permissibly serves a distinctly different purpose.

Until the turn of the twentieth century, political parties selected their nominees for office through caucuses and conventions, with no government involvement in the process. These systems of selection by party activists came under criticism as corrupt and undemocratic. "The direct primary was born as a tool to take the nominating process out of the hands of the party elites and place it into the hands of the general electorate." Lauren Hancock, Note, *The Life of the Party: Analyzing Political Parties' First Amendment Associational Rights When the Primary Election Process is Construed Along a Continuum*, 88 Minn. L. Rev.

159, 164-65 (2003) (citing Paul Allen Beck & Frank J. Sorauf, *Party Politics in America* 232-34 (7th ed. 1992)).

Primaries originated as an effort to open the nominating process to all party members. Wisconsin, where the noted Progressive Robert M. La Follette was governor, enacted the first primary legislation in 1902. "This effort was [La Follette's] attempt to return to the earliest principles of democracy by going 'back to the people' to nominate the parties' candidates for election." Hancock, 88 Minn. L. Rev. at 165. The initial vision, therefore, was that primaries constituted the process under which all of the Republican voters on the one hand, and all of the Democratic voters on the other, would engage in separate processes to select "their" nominees, who in turn would square off against each other in the general election.

It does not follow from this history that states *must* use a primary election system for the purpose of selecting party nominees, and the I-872 primary system does not. The primary established by I-872 is distinctly different, and it confuses, rather than enlightens, the discussion to think of it in terms of the type of institution envisioned by La Follette and the Progressive reformers. Dissatisfied by the constraints placed on voter choice if the primary is used to select party nominees (*Cal. Demo.*, 530 U.S. at 575), Washington's voters enacted I-872 in

order to establish a system under which the voters would choose among *all* candidates in order to decide which ones they most supported. Under this system, the primary would simply constitute the first stage of a two-stage electoral process not dictated by party affiliation. ER 257 (Voters Pamphlet statement for I-872).[7]

When the voters enacted I-872, they abandoned the notion of a primary used for choosing party nominees. They replaced the traditional notion of the nominating primary with a new vision of the primary as a preliminary winnowing process. Under this new vision, the voters would select the candidates they prefer to advance to the general election, without regard to party.

Perhaps influenced by the traditional use of primary elections, the district court embraced two erroneous assumptions of the political parties in invalidating this new and different use of a primary. First, the court assumed that because nominating candidates for election is a function of political parties, it also must be the function of a primary. ER 555 (trial court order noting that candidate nomination is a basic function of political parties). The associational rights of political parties that form the basis of the decisions in *Cal. Demo.* and *Wash. Demo.*, derive from the nature of the parties as private organizations. *Cal. Demo.*,

[7] The word "nomination" appears nowhere in the text of I-872, and it is misleading to continue to characterize the new primary it established as "nominating" candidates.

530 U.S. at 574 (political parties are formed when voters "join together in furtherance of common political beliefs"); *Wash. Demo.*, 343 F.3d at 1204 (describing the activities engaged in privately by individuals who choose to actively participate in political parties). Simply because nomination is important to private groups, it does not follow that a primary election system must provide the avenue for making such nominations. States are free to choose a different structure through which voters may select their public officials.

Second, the court below erroneously assumed that permitting candidates to inform the voters of the candidate's personal party preference is tantamount to using the primary to select party nominees. The district court observed that, "[p]arty affiliation undeniably plays a role in determining the candidate voters will select . . . ." ER 558. The fact that this information is permitted and voters may find it useful does not mean that voters are choosing "party nominees."

To illustrate this point, Washington elects numerous offices on a nonpartisan basis. These include judges, many local offices, and even one statewide executive branch office (the superintendent of public instruction). Wash. Rev. Code § 29A.52.111. As in I-872, the top two candidates advance to the general election.

Wash. Rev. Code § 29A.36.171.[8] While the ballot for such offices does not include information on a candidate's party preference, such information may well be available to voters from other sources. The political parties could not seriously contend, however, that the mere fact that voters might be aware of a nonpartisan candidate's party preference and use that information in deciding which candidates to vote for transforms the primary for nonpartisan offices into a party nominating device.

Likewise, the mere fact that such information is provided on the ballot as information for voters cannot transform a primary into a method for selecting party nominees. Properly viewed then, I-872 redefines "partisan offices" in such a way that these offices are filled in exactly the same way as nonpartisan offices, with the exception that candidates are allowed the option of showing their political party preference on the ballot as information for the voters. After the enactment of I-872, certain offices are "partisan" only in the sense that candidates are not precluded from indicating a personal party preference, but they are not "partisan"

[8] The cited statute is a provision of the 2004 "Montana" primary legislation. I-872 amended a prior version of that statute, Wash. Rev. Code § 29A.36.170, to make it broadly applicable to partisan and nonpartisan offices. ER 258 (amending Wash. Rev. Code § 29A.36.170). This provision illustrates that the basic approach of I-872 was to make the procedures for conducting primaries for nonpartisan offices applicable to partisan offices as well, thus reinforcing the principle that the primary is not used to nominate a party's candidates.

in the sense that the candidates are necessarily party nominees, or that party nomination qualifies them for the general election ballot. 2005 Wash. Sess. Laws, ch. 2, § 4; ER 258 (text of I-872).

There is a long history of association between state-conducted primaries and political party nominations. This association is not constitutionally compelled, however, and states retain the authority to structure their elections in other ways.

2. Exercising Flexibility, Washington Voters Permissibly Jettisoned A Nominating Primary And Adopted A Winnowing Primary

In *Cal. Demo.*, the United States Supreme Court determined that states may either permit all voters to choose from among all candidates at the primary, or the states may choose to use primaries as a method of nominating candidates for public office and then place those nominees on the general election ballot. *Cal. Demo.*, 530 U.S. at 577. Washington's voters, through I-872, chose the first option, thereby deciding to elect their public officials without using party nominations as a means of determining which candidates will appear on the general election ballot.

The United States Supreme Court made clear the permissible choice between these two distinctly different approaches to primaries when it struck down California's version of the blanket primary. *Id.* The Court premised its analysis upon the determination that California's blanket primary was used to select party

nominees, since the principal method by which a candidate would qualify to appear on the general election ballot was by winning a party primary. *Id.* at 569-70.[9] The Court recognized that "States have a major role to play in structuring and monitoring the election process, including primaries",[10] that it is "too plain for argument that a State may require parties to use the primary format for selecting their nominees, in order to assure that intraparty competition is resolved in a democratic fashion." *Id.* at 572 (internal punctuation omitted) (quoting *American Party of Texas v. White,* 415 U.S. 767, 781, 94 S. Ct. 1296, 39 L. Ed. 2d 744 (1974) (citing *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 237, 107 S. Ct. 544, 93 L. Ed. 2d 514 (1986) (Scalia, J., dissenting)). But where the process for selecting party nominees included permitting every voter to select among all candidates, as under the blanket primary, the Court found a violation of the parties' associational rights. *Cal. Demo.,* 530 U.S. at 577.

The Supreme Court's decision in *Cal. Demo.* made it clear that Washington's choice is constitutionally permissible—states need not structure their electoral process around party nominations and party primaries. As an alternative,

---

[9] The other method was to qualify as an independent through a petition process. *Cal. Demo.*, 530 U.S. at 569-70.

[10] *Cal. Demo.*, 530 U.S. at 572 (citing *Burdick v. Takushi,* 504 U.S. 428, 433, 112 S. Ct. 2059, 119 L. Ed.2d 245 (1992), *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 217, 107 S. Ct. 544, 93 L. Ed. 2d 514 (1986)).

the Court offered the option that the voters selected when they enacted I-872, that the State decouple the process for deciding which candidates appear on the general election ballot from a party nominating process. *Cal. Demo.*, 530 U.S. at 585-86.

The Court spelled out an alternative approach, which Washington voters enacted through I-872. The Court observed that a state could permit all voters to select from among all candidates at the primary in the following manner:

> Respondents could protect them all [referring to state interests] by resorting to a *nonpartisan* blanket primary. Generally speaking, under such a system, the State determines what qualifications it requires for a candidate to have a place on the primary ballot—which may include nomination by established [political] parties and voter-petition requirements for independent candidates. Each voter, regardless of party affiliation, may then vote for any candidate, and the top two vote getters (or however many the State prescribes) then move on to the general election.

Id. at 585. The Court then explained: "This system has all the characteristics of the partisan blanket primary, save the constitutionally crucial one: *Primary voters are not choosing a party's nominee*." *Id.* at 585-86 (emphasis added).

The essence of the holdings in *Cal. Demo.* and *Wash. Demo.* is therefore that, even though states possess broad authority over the electoral process,[11] states cannot combine two features in the same primary system. That is, they cannot simultaneously use the primary to select party nominees and permit all voters to

[11] *Cal. Demo.*, 530 U.S. at 569-70.

choose from among all candidates at the primary; the states must choose one approach or the other. Washington chose the latter.

I-872 changed the statutory definition of "primary" to reflect the voters' fundamental shift in its purpose:

> "Primary" or "primary election" means a ((~~statutory~~)) procedure for ((~~nominating~~)) winnowing candidates ((~~to~~)) for public office ((~~at the polls~~)) to a final list of two as part of a special or general election. Each voter has the right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation, of either the voter or the candidate.

I-872, § 5 (ER 258) (amending Wash. Rev. Code § 29A.04.127; deletions of prior statutory language shown in strikeout; additions of language underlined). To complete the transition away from a system in which party nominations determined access to the general election ballot, the voters also provided: "For any office for which a primary was held, only the names of the top two candidates will appear on the general election ballot". I-872, § 6(1) (ER 258) (amending Wash. Rev. Code § 29A.36.170). I-872 supplants the prior rule that the candidate receiving the highest number of votes of each party—the party nominee—would advance. I-872, § 17(4) (ER 260) (repealing Wash. Rev. Code § 29A.36.190).[12] The

[12] I-872 was drafted before the enactment of the 2004 legislation that resulted in the Montana primary. Accordingly, it did not repeal Wash. Rev. Code § 29A.36.191, a provision of the 2004 act. As the later-enacted statute, however,

Secretary of State reiterated this point in an administrative rule that captures the understanding of the State's chief election officer as to the nature of the new primary: "Pursuant to chapter 2, Laws of 2005 [I-872], a partisan primary does not serve to determine the nominees of a political party but serves to winnow the number of candidates to a final list of two for the general election." Wash. Admin. Code § 434-262-012 (ER 380).[13]

Finally, the voters made clear their objective of promoting voter choice over party nominations through policy statements set forth in the initiative. The initiative's intent section clearly addresses the concern of "protect[ing] each

---

I-872 supersedes the earlier provision of Wash. Rev. Code § 29A.36.191. *ASARCO, Inc. v. Air Quality Coalition*, 92 Wash. 2d 685, 708, 601 P.2d 501 (1979) (setting forth the standard for the implied repeal of a statute when "(1) the later act covers the entire subject matter of the earlier legislation, is complete in itself, and is evidently intended to supersede prior legislation on the subject; or (2) the two acts are so clearly inconsistent with, and repugnant to, each other that they cannot be reconciled and both given effect by a fair and reasonable construction.").

In addition, the Voters Pamphlet statement in favor of I-872 makes clear that the elimination of a guarantee of one Democrat and one Republican on the general election ballot—of, in other words, party nominations—was one of the major objectives of the initiative. "No political party is guaranteed a spot on the general election ballot." ER 257 (Statement for Initiative 872, Voters Pamphlet 12 (2004)).

[13] The Secretary's rules, promulgated to implement I-872, were repealed following the trial court's decision in this case. They remain, however, the Secretary's authoritative statement as to how he construes the initiative, and they, or rules like them, could be reenacted if this Court upholds the constitutionality of the initiative.

voter's right to vote for any candidate for any office." I-872, § 2 (ER 258). "[T]his People's Choice Initiative will become effective to implement a system that best protects the rights of voters to make such choices, increases voter participation, and advances compelling interests of the state of Washington." I-872, § 2 (ER 258). Among the interests the initiative advances was the protection of several voter rights, including, "[t]he right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation, of either the voter or the candidate." I-872, § 3(3) (ER 258).

The Ninth Circuit determined that Washington's former blanket primary, like California's, was used to select political party nominees. *Wash. Demo.*, 343 F.3d at 1203-04. The Court reasoned that distinctions between California's system and Washington's were immaterial, rejecting the argument that Washington did not use the blanket primary to select party nominees. *Id.* The Ninth Circuit noted the language in *Cal. Demo.* referring to a "nonpartisan blanket primary" in which "voters can vote for anyone on the primary ballot, and then the top vote-getters regardless of party run against each other in the general election." *Id.* at 1203. The guarantee of one place on the general election ballot for each political party is, indeed, the key distinction between a party nominating primary and a "nonpartisan

blanket primary," which led the Ninth Circuit to conclude that Washington's prior system used the primary to select party nominees. *Id.*

The political parties and the court below read a nonexistent requirement into the Court's endorsement of the top two primary in *Cal. Demo.*—that the option of a qualifying primary suggested by the court is limited to a system in which the political parties first nominate their candidates, and then *only* those nominees are permitted access to the primary ballot. Very much to the contrary, the Court states that separate party nominating processes might be used for determining candidate access to the primary election ballot. It plainly does not state that only candidates nominated by the political parties may have access to the primary election ballot.

The Court explained that states could protect all of the interests that underlay the former blanket primary through a system like I-872. *Cal. Demo.*, 530 U.S. at 585. Although the political parties deride this portion of the Court's opinion as dicta, it formed a critical component of the Court's analysis of the blanket primary and it is eminently sound. The Court noted that the blanket primary promoted several legitimate interests, including "promoting fairness, affording voters greater choice, increasing voter participation, and protecting [voter] privacy." *Id.* at 584. The Court embraced the qualifying primary in explaining why the blanket primary was not narrowly tailored to further those interests. *Id.* at 585. The Court

explained that all of those interests would be served by a primary in which voters were free to choose from among all candidates, but only the top two candidates advanced. *Id.* If, as the political parties argue, the Court meant simply that the states could enact such a system if the primary election ballot was limited only to party nominees, then the system would not advance all of those interests. In particular, such a system would not serve the states' interest in affording voters greater choice and increasing voter participation.

In context, the Court cannot have meant that states were constitutionally required to limit their "nonpartisan" primaries to candidates previously selected by private party processes. The Court used the permissive word "may" in stating that a primary "*may* include nomination by established parties". *Cal. Demo.*, 530 U.S. at 585. It seems clear that if the Court had intended to describe a mandatory requirement that it would have used mandatory, rather than permissive, language.

The political parties put much stock in the dissenting opinion of Justice Stevens in this regard, assuming that the Court's majority silently adopted an assumption that appears in a footnote to that dissent. Justice Stevens described a "nonpartisan primary" as, "a system presently used in Louisiana—in which candidates previously nominated by the various political parties and independent candidates compete." *Id.* at 598 n.8 (Stevens, J., dissenting). Their reliance upon

the dissent is incorrect for several reasons. Most obviously, the description by Justice Stevens occurs in a dissent. A dissenting opinion does not speak for the Court. Further, to the extent that the dissenting opinion assumes that party nominees *would*, rather than merely *could*, be part of the system, there is no indication the Court's majority shared the assumption, since the opinion of the Court used permissive language. Next, although Justice Stevens described Louisiana's system as including a party nominating process, Louisiana law does not provide for party nominations separate from the primary. *See* La. Rev. Stat. Ann. § 18:461 (setting forth the manner in which candidates qualify to the primary ballot); La. Rev. Stat. Ann. § 18:465 (describing nominating petition). Finally, in context, Justice Stevens' argument is more of a warning against another argument that the political parties have advanced than an embrace of their view that the opinion requires a party nominating process in order for a "top two" primary to be valid. The quoted language comes immediately after a sentence in which Justice Stevens warns against a "slippery slope" approach to reviewing state primary systems. He warns against concluding that, "the only nominating options open for the States to choose without party consent are: (1) not to have primary elections, or (2) to have what the Court calls a 'nonpartisan primary'". *Cal. Demo.*, 530 U.S. at 598 n.8. Justice Stevens opposed the notion that the parties could simply "order

up" the form of primary they prefer. *Id*. In context, it makes little sense to read the dissent as requiring precisely what Justice Stevens warned against—the authority of the parties to dictate the process despite the provisions of state law.

Under I-872's approach of using a "qualifying primary" rather than a "nominating primary," party nominations do not determine which candidates will advance to the general election ballot. At the same time, nothing in I-872 precludes parties from nominating their candidates who may then file for office and appear on the primary election ballot. The candidates who appear on the general election ballot are selected by the *voters at large*, not by the parties or by the voters acting as party members. The top two candidates, without regard to party affiliation, advance to the general election. I-872, § 6(1) (ER 258); *see also* I-872, § 7 (ER 258). Since party affiliation plays no role in determining which candidates advance to the general election, the primary established by this initiative cannot in any way be regarded as determining party nominees.[14]

---

[14] The Democratic Party suggested below that candidates selected under the new top two primary will be "political party candidates" because Wash. Rev. Code § 29A.52.116 states that, "[m]ajor political party candidates for all partisan elected offices . . . must be nominated at primaries held under this chapter." That statute was enacted in 2004 as a part of the Montana primary system, which clearly was a party nominating system. The quoted language is clearly inconsistent with the system established in I-872 and should be regarded as obsolete. Wash. Rev. Code § 42.17.510(1), requiring sponsors of public

The political parties make much of the fact that a candidate's party preference appears on the ballot, but this feature falls far short of making I-872's primary a device for selecting party nominees. The initiative requires the declaration of candidacy form to include a space in which candidates for partisan office may "indicate his or her major or minor party preference, or independent status." I-872, § 9(3) (ER 259) (amending Wash. Rev. Code § 29A.24.030). Under I-872, this statement of party preference does not determine which candidates advance to the general election. The candidates with the two highest vote totals will qualify for the general election, without reference to party preference. The optional statement of political preference is provided solely to the voters as one possibly relevant piece of information about the candidate. A statement by the *candidate* as to his or her own preferences, provided as information to the voters, does not equate with a statement that the candidate has been nominated, endorsed, or supported by any political party, and no reasonable voter would believe otherwise.

---

advertising concerning a candidate to clearly identify the candidate's political party, also dates back well before the enactment of I-872. This statute is still enforceable because it is not directly contradictory to I-872, but neither can it serve as evidence that candidates are "nominees" of political parties.

Nothing prevents political parties from nominating candidates.[15] They may certainly do so if they choose. But what the political parties seek, and what the State need not afford them, is a right to have only party nominees on the primary election ballot, or to secure a place on the general election ballot for their nominees, regardless of whether those nominees earn the support of the voters. The parties can point to no authority establishing that political party nominations *must*—as opposed to merely *may*—be used to determine which candidates appear on the general election ballot. Indeed, case law clearly establishes that while political parties have a right to a reasonable opportunity for their candidates to appear on the general election ballot, they have no absolute right for them to actually do so. *Munro v. Socialist Workers Party*, 479 U.S. 189, 193, 107 S. Ct. 533, 93 L. Ed. 2d 499 (1986) (states may condition general election ballot access upon a showing of a modicum of public support). "We think that the State can properly reserve the general election ballot 'for major struggles' . . . by conditioning access to that ballot on a showing of a modicum of voter support." *Id.* at 196 (quoting *Storer v. Brown*, 415 U.S. 724, 735, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974)).

[15] The term "nomination" is no longer useful in discussing the mechanics of the top two primary.

Washington's voters have clearly decided that the "major struggles" to reserve for the general election ballot are those between the two candidates garnering the strongest support, regardless of party, rather than among those candidates nominated by political parties. So long as the system provides a reasonable opportunity to the political parties through which their candidates can enter the competition for voter support, their rights are held intact.

The primary established by I-872 is a "qualifying primary," through which the voters determine which candidates advance to the general election without regard to party affiliation and, for this reason, the I-872 primary does not constitute a party nominating primary. Washington's voters have clearly decided on a system in which voters themselves winnow the field of possible candidates, rather than to assign that role to the political parties. There is no reason why they cannot make this choice.

B. I-872 Does Not Impair The Associational Rights Of Political Parties

Neither the political parties nor the trial court gives I-872 credit for the fact that I-872, in addition to establishing a nonpartisan basis for winnowing candidates for public office, restores to the political parties their unfettered freedom to determine, by whatever process they choose, which candidates to support in the primary and in the general election. As noted earlier, I-872 reverses the trend

begun in the Progressive Era where states "take over" the party nominating process and open it up to wider voter participation. Under I-872, parties are restored to the position they enjoyed prior to Progressive Era reforms: they can choose their favored candidates for office in any way they like. The role they play under I-872 is substantially similar to the roles they played before they were required to conduct primaries.

The political parties have made two basic contentions to the effect that the system established by I-872 denies their constitutional rights to free association: (1) that the system bypasses and thus impairs their asserted constitutional right to nominate candidates, and (2) that I-872, by permitting candidates to state a party preference on the ballot, inevitably compels the parties to associate with candidates not of their choosing.

1. The Associational Rights Of Political Parties Do Not Include The Right To Have Their Nominees Advance To The General Election Ballot

The political parties appear to assert that their right to freedom of association includes the right to ensure that their nominees advance to the general election ballot. It does not. The United States Supreme Court has explicitly rejected the notion that a political party has an unconditional right to "nominate" a candidate and then to demand that this candidate's name appear on the general election

ballot. A party's right to make its own nominating decisions does not mean "that a party is absolutely entitled to have its nominee appear on the ballot as that party's candidate." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359, 117 S. Ct. 1364, 137 L. Ed. 2d 589 (1997). The *Timmons* Court noted several reasons why a party's choice might not be permitted to appear on the ballot, including ineligibility, unwillingness, or selection by another party. *Id.* In the context of I-872, there is another possibility: that the party's chosen candidate might not gain enough votes to participate in the general election. Indeed, lack of sufficient voter support is a perfectly sensible way to winnow candidates, particularly where candidates of all stripes participate in a primary in which all voters are free to participate. Compared with this principle, party affiliation is a relatively arbitrary basis for determining which candidates should advance to the general election.

The case law teaches that where party nomination is the organizing principle of a state's election process, parties have a right to a reasonable opportunity to place their candidates onto the ballot, but they enjoy no constitutional guarantee of success. *Munro*, 479 U.S. at 193 (stating that the parties' rights "are not absolute and are necessarily subject to qualification if elections are to be run fairly and effectively"). The states can impose reasonable requirements for ballot access and, while those requirements may not unduly restrict political opportunity, the parties

enjoy no *per se* right for their preferred candidates to appear on the general election ballot. *Id.* I-872 allows any candidate, including party nominees, to appear on the primary election ballot and vie freely for a spot on the general election ballot. The constitution requires no more.

Again, however, the law does not support the notion that party nomination must be the organizing principle of a state's primary election process. While states may choose to organize their elections around party nominations, they are not constitutionally compelled to do so, and Washington has not. The most common example of an alternative principle is the nonpartisan office in which officers are selected without reference to party affiliation. The political parties have not argued, and could not successfully argue, that making an office nonpartisan infringes on parties' associational rights because to do so would deny them the right to nominate candidates to appear on the general election ballot for such offices.[16] Yet their argument here is not different in any significant sense.

[16] Washington law places no restriction on the right of a political party to support or endorse candidates for nonpartisan office or on the right of a candidate for nonpartisan office to publicly identify a party preference. However, the ballot would not formally reflect the party preference of a candidate for nonpartisan office. Wash. Rev. Code §§ 29A.52.210-.240.

2. Permitting Candidates To State Their Personal Party Preference, If Any, On The Primary Election Ballot Does Not Unconstitutionally Infringe On The Associational Rights Of Parties

The intent of I-872 is to conduct elections for partisan offices in the same manner as for nonpartisan, while allowing candidates to have their political preferences reflected on the ballot. The parties argue that this single factor transforms the election into a process in which an utterly different set of constitutional principles apply, and that states must show a compelling interest in order to justify giving this information to voters.

The parties have not shown how I-872 would actually harm their associational rights in this respect, apparently regarding the proposition as self-evident. Implied in their argument is that the "top two" primary under I-872 would confuse the voters as to which candidates are preferred by the party, and that this confusion somehow would amount to compelling the party's association with disfavored candidates.

Both arguments arise from the fallacious premise that primaries are inherently and unavoidably mechanisms for nominating political party candidates for office and that voters would understand them to be so. First, as discussed above, states do not have a constitutional obligation to assist political parties in

nominating their candidates or granting them access to the general election ballot. *Timmons*. A state may select an election process that winnows the field of candidates without using party nomination as the mechanism for doing so. So long as parties have a full opportunity to participate in the system established by state law, their associational rights are fully accommodated. *Munro*, 479 U.S. at 197 (states are not required to automatically place party nominees onto the ballot).

Second, the parties have made no showing (and it is certainly far from self-evident) that voters cannot distinguish between a party nominating process (say, a party convention) endorsing Candidate A and a state-operated primary resulting in the qualification of Candidate B to compete in the general election. The mere fact that B may publicly identify a preference for the same party as A does not make B the party's nominee, or confuse voters as to whether A or B is the party's preferred candidate. Any reasonably informed voter would be aware of the difference. In addition, the "confused voter" argument depends for its force entirely on the fact that primaries historically were used to nominate political party candidates and the notion that this historic "norm" will lead voters to assume that a "top two" primary serves the same purpose. There is no basis for this assumption.

The implications of accepting the parties' argument are harsh for states exploring their options for structuring the elections of state officers. If the mere

public identification of a candidate as preferring a political party infringes on associational rights of political parties, states are effectively limited to (1) conducting no primary, leaving parties free to nominate candidates by convention or caucus, or (2) conducting a party nominating process that largely defers to party choice in structuring the primary. But even where a state chooses to structure its electoral process around party nominations, the state is not required to defer to party desires in the manner of conducting primaries. S*ee Clingman v. Beaver*, ___ U.S. ___, 125 S. Ct. 2029, 2035, 161 L. Ed. 2d 920 (2005) (state was not required to structure its primary the way the political party demanded); *see also Cal. Demo.*, 530 U.S. at 598 (Stevens, J., dissenting) ("the First Amendment does not mandate that a putatively private association be granted the power to dictate the organizational structure of state-run, state-financed primary elections"). Sovereign states should be free to seek other ways of choosing their officers, so long as they do not intrude on the legitimate speech or associational rights of political parties and other private organizations.

In the trial court, the political parties argued not only that I-872 would violate their candidate nomination rights, but also that it would "force" an unwanted association between parties and candidates. They argued that candidates expressing a party preference were "appropriating" the party name, and the

Libertarian Party asserted that its name was a registered trademark.[17] The parties expressed this argument as a challenge to section 9 of I-872, which permits candidates to express a party preference when filing for office. ER 563.

Since I-872 does not establish a method for selecting party nominees, it does not "force" any party to "associate" with anybody as its nominee. I-872 makes "nomination" an entirely private process, leaving each political party free to structure its candidate selection process as it pleases. Parties are free to associate, or not associate, with any candidate as they please. Yet, the parties argue that the danger of "forced association" entitles them to exclude from the ballot any candidate filing for office and seeking to express a preference for a given party, unless the party has consented to that candidate's use of the party name. Such a sweeping assertion carries staggering implications as to the ability of voters to choose the individuals to serve in public office.

In making this surprisingly broad assertion, the parties have relied primarily on a case relating to the candidacy of David Duke for President of the United States. In *Duke v. Massey*, 87 F.3d 1226 (11th Cir. 1996), the Eleventh Circuit

[17] I-872 allows a candidate to indicate a "party preference" without specifying whether the "preference" relates to a specific organized party, a newly-created organization, or even a generic political philosophy. I-872, § 9(3) (amending Wash. Rev. Code § 29A.24.030). It seems unlikely that the two major national parties could assert "ownership" of the generic terms "Republican" and "Democratic."

upheld a Georgia state statute explicitly granting authority to the presidential candidate selection committee for the Republican Party to strike candidates from the presidential primary ballot. The Committee had voted to exclude David Duke from the Republican presidential primary ballot. The candidate and his supporters sued to invalidate the state law on the ground that it violated their constitutional rights. The trial courts and the Eleventh Circuit upheld the statute.

The *Duke* case does not stand for the proposition that a party has a constitutional right to restrict candidates for office from using the party's name. First, in *Duke*, the rights were statutory in nature, and the courts did not decide that Georgia was constitutionally compelled to exclude Duke from the ballot. Second, the question in *Duke* was whether a particular candidate could be considered a Republican for the purpose of allowing him to compete for the nomination of that party. *Duke* establishes no broad constitutional right for a political party to control the use of its name, nor have the parties cited any other cases establishing such a right.

Merely allowing a candidate to express a party preference does not establish any "association" between the candidate and the party. In a state using a party nominating primary, the party affiliation of the candidate is significant, because candidates filing as Democrats will be seeking the nomination of the Democratic

Party (voters registered as Democrats, or voters electing to use the Democratic Party ballot), while candidates filing as Republicans will be appealing to an entirely different subset of voters. In the "top two" primary established by I-872, the voters are not differentiated by party, and the sole purpose of indicating a party preference is to give the voters a bit of information about the candidate. Voters will understand that the information concerns the candidate's party preference, not the party's candidate preference. As the measure states, "[a]ny party or independent preferences are shown for the information of voters only . . . ." I-872, § 7(3) (ER 258). In no sense does this create a constitutionally significant "association" between the candidate and the party.

Even within the context of a system in which the primary is used to select party nominees, political parties are not afforded what might be described as a "constitutional veto" over all candidates who seek their nomination. Near the beginning of the Supreme Court's decision in *Cal. Demo.*, the Court observed, "[w]e have considered it 'too plain for argument,' for example, that a State may require parties to use the primary format for selecting their nominees, in order to assure that intraparty competition is resolved in a democratic fashion." *Cal. Demo.*, 530 U.S. at 572 (citations omitted). The clear implication of this language is that states may force parties to "open up" their nominating processes to all party

members, even if the parties would prefer not to do so. This principle is inconsistent with any claim that parties can prevent all candidates but those authorized by the party from publicly claiming even a preference for that party.[18]

This is even clearer—indeed the issue does not even arise—when the primary system is divorced from the concept of party nominations. The parties seek to control who may even claim a preference for a particular party in a system that does not utilize the concept of party nomination in determining which candidates will advance to the general election.

C. I-872 Does Not Unconstitutionally Distinguish Between Major And Minor Political Parties

The political parties raised two arguments below relating to the effect of I-872 on minor political parties. Both arguments were premised on the view that

[18] The trial court did not reach the Republicans' apparent effort to claim exclusive control over the use of the party name, even in the context of the "Montana" primary. ER 587 (district court order, issued after the filing of the notices of appeal, clarifying that the court "did not decide whether the 'Montana' primary filing statue, Wash. Rev. Code § 29A.24.031, was unconstitutional as part of the 'Montana' primary system"). The parties' asserted right to control the ability of candidates to identify themselves through the use of such generic preferences as "Republican" and "Democratic" would be even weaker in that context, in which primary participation is restricted to individuals who affiliate with a specific party by deciding to vote a ballot limited to candidates of that party. The Supreme Court has clearly explained that states may require parties to open their nominating process to all voters choosing to affiliate with that party. *Cal. Demo.*, 530 U.S. at 572. This principle is inconsistent with any claim that parties may limit the field of candidates in the primary election.

the initiative would affect minor parties differently from major parties. The Republican Party asserted that a surviving vestige of pre-initiative law would require minor parties to nominate candidates by convention, while denying this option to major parties. The Libertarian Party asserted that a "top two" system would harm the interests of minor parties by making it more difficult for their candidates to qualify for the general election ballot. ER 566 (district court's summary of the parties' contentions).

The district court did not reach the merits of either argument because the court correctly concluded that I-872 treats major political parties and minor political parties the same way. Therefore, I-872 places no special burdens on minor parties, treating candidates of all parties alike. Futhermore, since the court found that the statute asserted to require minor parties to nominate by conventions had been impliedly repealed (see discussion below), there was no basis for the argument that the law disfavored major parties either. ER 568-69 (concluding that I-872 impliedly repealed pre-existing statutes describing how minor party candidates qualified to the ballot).

1. Washington Traditionally Required Minor Parties To Nominate Candidates By Convention

Consideration of the political parties' arguments regarding the effect of I-872 on minor political parties requires a brief examination of how minor parties qualified candidates to the ballot under prior law. Under Washington's former blanket primary system, candidates of major political parties, such as the Republicans and Democrats, simply filed declarations of candidacy and then appeared on the primary ballot.[19] Minor parties, in contrast, first nominated candidates through a convention process that occurred before the primary. Candidates who received a minor party nomination through such a convention, including obtaining a sufficient number of petition signatures of registered voters, would appear on the primary ballot. *Libertarian Party of Washington v. Munro*, 31 F.3d 759, 760-61 (9th Cir. 1994). To advance to the general election ballot, a candidate needed to receive both a plurality of the votes cast for candidates of his

[19] State law defines major political parties as those parties for whom at least one candidate for a statewide partisan office received at least 5 percent of the vote at the last previous general election held in an even-numbered year. Wash. Rev. Code § 29A.04.086. All other political parties are "minor political parties." Wash. Rev. Code § 29A.04.097. Currently, only the Democratic and Republican Parties qualify as major political parties. Although the Libertarian Party enjoyed major party status for a time, it currently qualifies as a minor party. Although I-872 neither repealed nor amended the statutes defining major and minor political parties, the initiative established an election system that treats them in exactly the same way.

or her party, and at least one percent of the total votes cast at the primary for all candidates for that office. *Wash. Demo.*, 343 F.3d at 1201. In the case of minor party and independent candidates, the blanket primary therefore served the purpose of screening those candidates to determine whether they could demonstrate sufficient voter support to advance to the general election. *Munro*, 479 U.S. at 196.

The 2004 legislation that resulted in the "Montana" or "pick-a-party" primary continued the convention requirement for minor party and independent candidates. Wash. Rev. Code § 29A.20.121. Under that system, however, voters were limited to selecting the ballot of a single major party in order to select that party's nominees. Wash. Rev. Code § 29A.36.104 (describing ballot formats for "Montana" primary). The Legislature accordingly provided that candidates nominated at minor party or independent conventions would proceed directly to the general election ballot, rather than appear on the primary ballot as under the blanket primary. Wash. Rev. Code § 29A.36.201. Thus, under both the blanket primary and the Montana primary, minor party and independent candidates qualified to the ballot through a convention process, while major party candidates were nominated in the primary.

2. I-872 Impliedly Repealed Minor Party Convention Statutes

The district court correctly ruled that I-872 impliedly repealed the minor party convention requirements and, therefore, treated all candidates the same without any distinction between major and minor parties. ER 568-69. As the trial court explained, "it was the intent of the voters who enacted I-872 that it be a complete act in itself and cover the entire subject matter of earlier legislation governing minor parties." ER 568.[20] Under Washington law, a statute is impliedly repealed when:

---

[20] To some extent, the voters' effort to do so was complicated by the timing of the measure. I-872 was drafted, and petition circulation began, prior to the enactment by the Legislature of the "Montana" primary system. Thus, I-872 obviously had no opportunity to repeal or amend all the statutes added to the code by that legislation. Under these circumstances, the fact that two pieces of legislation essentially "passed in the night" does not prevent the provisions of the initiative approved by the voters from taking effect. Additionally, in some instances, the legislative act repealed statutes that I-872 amended. When a legislative body amends a repealed statute, the inquiry becomes one of legislative intent. Where the legislative body, here the people, clearly sets forth its purpose and fully provides for the subject, it is reasonable to conclude that the intent was to make the statute enforceable as stated in the more recent act. 1A Norman J. Singer, *Sutherland Statutes and Statutory Construction* § 22:3 (6th ed. Mar. 2005). "The reference to the repealed statute is dismissed as surplusage and the will of the legislature embodied in the provisions of the attempted amendment is enforced as an independent act." 1A Singer at § 22:3 (footnote omitted) (citing, *inter alia*, *Whitfield v. Davies*, 78 Wash. 256, 259, 138 P. 883 (1914)). The application of this rule is particularly important as it relates to the interaction of an initiative with a legislative action that occurred while the initiative was pending. *See Coppernoll v. Reed*, No. 76818-8, 2005 WL 2150637 at *3 (Wash. Sept. 8, 2005) (noting the "constitutional preeminence of the right of initiative"). The people's legislative

> [t]he later act covers the entire subject matter of the earlier legislation, is complete in itself, and is evidently intended to supersede the prior legislation on the subject, or [when] 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.

Washington Fed'n of State Employees v. Office of Fin. Mgmt., 121 Wash. 2d 152, 165, 849 P.2d 1201 (1993).

The central vision of I-872 was to create a primary system divorced from party nominations, in which all candidates compete, and the top two advance without regard for party. This vision is inherently inconsistent with qualifying minor party candidates to the general election ballot by convention.[21] The initiative amended the definition of "primary" to describe it as a "winnowing" process, in which party preference would play no role in determining which candidates advance to the general election. I-872, § 5 (amending Wash. Rev. Code § 29A.04.127) (ER 258). It provided that "*only* the names of the top two

---

intent is clearly expressed within I-872. Particularly, under these circumstances in which two legislative processes temporally overlapped, the technical happenstance that some statutes were repealed while the measure was pending does not prevent the measure enacted by the voters from taking effect. *See also* Wash. Rev. Code § 1.12.025(2) (recognizing that where the same session of the Legislature both amends and repeals the same statute, the resulting law depends upon a determination of legislative intent).

[21] However, minor parties are, of course, free to choose candidates who file and participate in the primary election on the same basis as any other candidates.

candidates [from the primary] will appear on the general election ballot." I-872, § 6 (ER 258) (emphasis added) (amending Wash. Rev. Code § 29A.36.170); *see also* I-872, § 7(2) ("Whenever candidates for a partisan office are to be elected, the general election must be preceded by a primary conducted under this chapter. Based upon votes cast at the primary, the top two candidates will be certified as qualified to appear on the general election ballot[.]"). As explained to the voters in the statewide Voters Pamphlet, "[t]he initiative would replace the system of separate primaries for each party . . . with a system in which all candidates for each partisan office would appear together on the primary ballot. . . . The primary ballot would include all candidates filing for the office, including both major and minor party candidates and independents." ER 256 (Voters Pamphlet explanatory statement).

Both the text of I-872 and its legislative history therefore make clear that the top two qualifying primary applied to *all* candidates, with no exception for minor party or independent candidates to qualify to the ballot through a convention process. The district court, therefore, correctly concluded that I-872 impliedly repealed all prior inconsistent statutes, and that it precludes minor party nominees

from appearing on the ballot without first having appeared on a primary election ballot.[22] ER 567.

3. I-872 Does Not Violate Equal Protection

The Republican Party's equal protection argument falls once it is clear that I-872 treats major and minor political parties the same as a result of the implied repeal of minor party convention statutes. They can scarcely argue that a system that treats all candidates the same discriminates against any of them. Under I-872, all candidates appear on the primary ballot and compete among all the voters. There is no difference in this regard between candidates who express a preference for a major party, a minor party, or no party at all.

4. I-872 Does Not Deny Candidates Who Express A Preference For Minor Political Parties Reasonable Access To The Ballot

The Libertarians contend that, because all candidates appear on the primary ballot together and only the top two advance, their right to ballot access is somehow restricted. Quite to the contrary, by eliminating the convention requirement, I-872 made it easier for candidates who prefer a minor party to appear on a ballot and compete for the support of all voters.

---

[22] This implied repeal does not affect minor party and independent convention statutes to the extent that they relate to candidates for president and vice president of the United States, since those candidates do not qualify through a primary process. *See* Wash. Rev. Code § 29A.56.320.

I-872 provides *all* candidates with virtually automatic access to a ballot through which they can campaign among the entire pool of registered voters. This automatic access to compete for the favor of *all* voters—not merely those voters willing to confine themselves to the choices offered on a ballot dedicated to a specific party—fully satisfies the right of all candidates to reasonable ballot access. Whether such candidates advance from that point is determined by their success in winning the support of the voters, not upon any unconstitutional restriction on ballot access. Accordingly, I-872's limitation of access to the general election ballot to only two candidates does not unconstitutionally limit ballot access for any candidate—whether that candidate's preference is for a major party, a minor party, or independent status.

This conclusion flows from the fundamentally different nature of the top two primary as a vehicle for electing candidates without regard to party nomination. It also finds direct support in a prior decision in which the United States Supreme Court considered Washington's prior blanket primary. In *Munro v. Socialist Workers Party*, the Court rejected a challenge by a minor party to the requirement under Washington's prior blanket primary that a candidate garner at least one percent of the total votes cast (in addition to more votes than any other candidate of that party) in order to advance to the general election. *Munro*, 479 U.S. at 191.

The Court noted that the blanket primary was fundamentally different than primaries in which voters were restricted to ballots containing only the candidates of a single party, in this critical respect. The Court observed, "[b]ecause Washington provides a 'blanket primary,' minor party candidates can campaign among the entire pool of registered voters." *Id.* at 197. As the Court further noted:

> To be sure, candidates must demonstrate, through their ability to secure votes at the primary election, that they enjoy a modicum of community support in order to advance to the general election. But requiring candidates to demonstrate such support is precisely what we have held States are permitted to do.

Id. at 197-98. Since every voter at the primary is free to cast his or her vote for any candidate, providing access to that ballot permits the candidate to compete for support among all voters and fully satisfies their constitutional right to ballot access. *Id.* at 198 (noting that "every supporter of the Party in the State is free to cast his or her ballot for the Party's candidates"). The candidate's challenge at that point is to earn the voters' support, not to compete on a separate playing field.

Reported cases regarding ballot access traditionally involve claims very different from those asserted in this case. Generally, the argument in a ballot access case concerns a claim by a minor party or independent candidate that a state has established requirements that are too stringent for a candidate to appear on a ballot, even if that candidate can prove a modicum of public support. *See, e.g.,*

Anderson v. Celebrezze, 460 U.S. 780, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983) (concerning state law requirements faced by independent presidential candidate to appear on the ballot); *see also Libertarian Party of Washington*, 31 F.3d at 765 (upholding Washington's law on minor party ballot access). In such cases, the concern is the degree to which a ballot access law limits "the field of candidates from which voters might choose." *Anderson*, 460 U.S. at 786.

This is not a concern with regard to I-872, which treats major party candidates and minor party candidates the same. All candidates appear on the primary ballot where they compete for the support of all voters—not merely of voters affiliated with a single party or willing to cast a ballot limited to candidates affiliated with a single party. I-872, § 5 (amending Wash. Rev. Code § 29A.04.127) ("Each voter has the right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation, of either the voter or the candidate."). The initiative contains no threshold requirement for appearing on the primary ballot, other than filing a declaration of candidacy and paying the applicable fee. I-872, § 9 (amending Wash. Rev. Code § 29A.24.030) (describing declaration of candidacy). Under I-872, candidates who express a preference for a minor party compete in precisely the same way as candidates who express a preference for a major party, or no preference at all. "The primary ballot

would include all candidates filing for the office, including both major party and minor party candidates and independents. Voters would be permitted to vote for any candidate for any office, and would not be limited to a single party." ER 256 (Explanatory Statement for I-872). Any general expectation as to how certain candidates will fare when seeking voter support is beside the point; the constitution may guarantee a candidate a right to a reasonable opportunity to appear on the ballot, but it does not guarantee him or her a right to success once presented there.[23]

In this regard, it is important to reflect again on the fundamental difference that I-872 makes as to the role of the primary in the overall electoral process. Primaries are often thought of as a mechanism by which the field of candidates is narrowed for the general election by selecting one candidate from each party to advance. By adopting I-872, Washington voters chose a distinctly different approach. Under I-872, all candidates compete in a manner that makes the primary

[23] It is no answer to suggest that voter turnout may be lower at a primary. Not only is this observation speculative when the primary serves a different role with more opportunities for broad voter participation than in a single-party primary system, but it is irrelevant to constitutional analysis. In *Munro*, the United States Supreme Court rejected the notion that lower primary turnout provided a basis for challenging the blanket primary as it then existed. "We perceive no more force to this argument than we would with an argument by a losing candidate that his supporters' constitutional rights were infringed by their failure to participate in the election." *Munro*, 479 U.S. at 198.

a literal "first stage" in an electoral process. The voters no longer winnow candidates based upon party affiliation, but upon which candidates garner the most support without regard to party. I-872 establishes a system that in important ways bears more resemblance to a general election followed by a runoff than it does to a traditional party primary. *See* I-872, § 5 (amending Wash. Rev. Code § 29A.04.127) (changing definition of "primary" to reflect this two-stage approach to the general election). Since all candidates compete for the support of all voters at that first round, there is no constitutionally significant difference between the ballot access afforded to any candidates based upon their party preference.

The United States Supreme Court held that the former blanket primary "virtually guarantees . . . candidate access to a statewide ballot." *Munro*, 479 U.S. at 199. It can hardly be argued that any candidate's right to ballot access is denied because, under I-872, "they must channel their expressive activity into a campaign at the primary as opposed to the general election." *Id.* As the Court concluded, "Washington simply has not substantially burdened the 'availability of political opportunity.'" *Id.* (quoting *Lubin v. Panish*, 415 U.S. 709, 716, 94 S. Ct. 1315, 39 L. Ed. 2d 702 (1974)). The top two primary established by I-872 goes even further in guaranteeing ballot access to any candidate—major party, minor party, or independent.

D. To The Extent That Any Portion Of I-872 Is Deemed Unconstitutional, The Remainder Should Be Permitted To Take Effect

If only a portion of the initiative is unconstitutional, the Court should save the remaining portions "unless the invalid provisions are unseverable and it cannot reasonably be believed that the . . . elimination of the invalid part would render the remainder of the act incapable of accomplishing the legislative purposes." *State v. Anderson*, 81 Wash. 2d 234, 236, 501 P.2d 184 (1972), citing *Boeing Co. v. State*, 74 Wash. 2d 82, 442 P.2d 970 (1968). The presence or absence of an express "severability clause" is one element to consider in determining the legislative intent, but such a clause is not necessary in order to meet the severability test. *United States v. Hoffman*, 116 P.3d 999, 1008 (Wash. 2005). The Fifth Circuit upheld Louisiana's similar top two primary on a severability analysis, when a portion of their system was found to conflict with a federal statute regarding uniform federal election dates (a concern that does not arise in this case). The court reasoned that, since the remainder of the act was complete within itself, it could be given effect with the problematic provision excised. *Love v. Foster*, 147 F.3d 383, 386 (5th Cir. 1998).

In this case, the portions of I-872 that form the basis for challenge are sections 7 and 9, the provisions that permit candidates to declare their "political

party preference" and provide that this information will appear on the ballot. While the State believes these provisions are well within the State's constitutional authority, a "top two" primary could still be conducted, even if it were found necessary to limit the extent to which some or all candidates could state their "political party preference."

The language of the initiative itself confirms that the voters' primary purpose in enacting I-872 was to allow "the broadest possible participation in the primary election" (I-872, § 2, quoting from *Heavey v. Chapman*, 93 Wash. 2d 700, 705, 611 P.2d 1256 (1980)), and to preserve the "right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation." I-872, § 3(3). Any other result would force an unwanted election system on Washington's voters beyond any constitutional necessity to do so.

IX. CONCLUSION

For these reasons, this Court should reverse the decision of the district court, declare I-872 constitutional, and vacate the injunctive relief granted by the district court.

RESPECTFULLY SUBMITTED this 16th day of September, 2005.

ROB MCKENNA
Washington State Attorney General

MAUREEN A. HART, WSBA #7831
Washington State Solicitor General

JAMES K. PHARRIS, WSBA #5313
Sr. Assistant Attorney General

JEFFREY T. EVEN, WSBA #20367
Assistant Attorney General
P.O. Box 40100
Olympia, WA 98504-0100
360-753-2536

Counsel for Appellants State of Washington, Rob McKenna, and Sam Reed

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Treatises

Regulations

EXHIBIT 3

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WASHINGTON STATE REPUBLICAN PARTY; DIANE TEBELIUS; BERTABELLE HUBKA; STEVE NEIGHBORS; MIKE GASTON; MARCY COLLINS; MICHAEL YOUNG, *Plaintiffs-Appellees,* and WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE; PAUL BERENDT; LIBERTARIAN PARTY OF WASHINGTON STATE; RUTH BENNETT; J.S. MILLS, *Plaintiffs-Intervenors-Appellees,* v. STATE OF WASHINGTON; ROB MCKENNA, Attorney General; SAM REED, Secretary of State; WASHINGTON STATE GRANGE, *Defendants-Intervenors-Appellants.*	Nos. 05-35774 05-35780 D.C. No. CV-05-00927-TSZ OPINION

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Argued and Submitted
February 6, 2006—Seattle, Washington

Filed August 22, 2006

Before: Dorothy W. Nelson, Pamela Ann Rymer and Raymond C. Fisher, Circuit Judges.

Opinion by Judge Fisher

COUNSEL

Rob McKenna, Maureen A. Hart, Jeffrey T. Even and James K. Pharris (argued), Office of the Washington Attorney General, Olympia, Washington, for the State of Washington (defendant intervenor-appellant).

Thomas F. Ahearne (argued), Ramsey Ramerman and Rodrick J. Dembowski, Foster Pepper & Shefelman PLLC, Seattle, Washington, for the Washington State Grange (defendant-intervenor-appellant).

John J. White, Jr. (argued) and Kevin B. Hansen, Livengood, Fitzgerald & Alskog, Kirkland, Washington, for the Washington State Republican Party (plaintiff-appellee).

David T. McDonald (argued) and Jay Carlson, Preston Gates & Ellis, LLP, Seattle, Washington, for the Washington State Democratic Central Committee (plaintiff-intervenor-appellee).

Richard Shepard (argued), Shepard Law Office, Inc., Tacoma, Washington, for the Libertarian Party of Washington State (plaintiff-intervenor-appellee).

OPINION

FISHER, Circuit Judge:

For the second time in three years, political parties in Washington State are challenging the constitutionality of their state's partisan primary system, which was enacted as a result of the passage of Initiative 872 in the November 2004 state general election. In 2003, we concluded that Washington's previous "blanket" primary system was unconstitutional because it was "materially indistinguishable from the California scheme held to violate the constitutional right of free association in *Jones*." *Democratic Party of Wash. v. Reed*, 343 F.3d 1198, 1203 (9th Cir. 2003) (relying on *Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000)).

There are differences between Washington's pre-*Reed* blanket primary and the "modified" blanket primary being challenged in this case, and we are mindful that Initiative 872 reflects the political will of a majority of Washington voters. Nonetheless, although attempting to craft a primary system that does not unconstitutionally burden political parties' right of association under the First and Fourteenth Amendments, Initiative 872 fails to do so. Rather, the Initiative retains a partisan primary, in which each candidate may self-identify with a particular party regardless of that party's willingness to be associated with that candidate. The State of Washington and Initiative 872's sponsor, the Washington State Grange (the Grange),[1] have not identified any compelling state interests — apart from those the Supreme Court rejected in *Jones* — that would justify the Initiative's severe burden on the political

[1]The Washington State Grange is a subsidiary organization of the National Grange, which is described by its Washington chapter as "America's oldest farm-based fraternal organization" and as "a non-partisan, grassroots advocacy group for rural citizens with both legislative programs and community activities." Washington State Grange, *What is the Grange*, Official Website *at* http://www.wa-grange.org/whats_the_grange.htm.

parties' associational rights; nor is Initiative 872's modified blanket primary narrowly tailored. We cannot sever the unconstitutional provisions from Initiative 872 because "it cannot reasonably be believed that" Washington voters would have passed Initiative 872 without its unconstitutional provisions. *McGowan v. State*, 60 P.3d 67, 75 (Wash. 2002). Accordingly, we hold that Washington's modified blanket primary as enacted by Initiative 872 is unconstitutional and affirm the district court's permanent injunction against the implementation of the Initiative.

I. Background

To understand the flaw in Initiative 872's partisan primary system, it is helpful to review the nature and structure of the primary process in general. A political primary is often thought of as a "meeting of the registered voters of a political party for the purpose of nominating candidates . . ."; and a common definition of a primary election is a "preliminary election in which voters nominate party candidates for office." American Heritage College Dictionary 1086 (3d ed. 2000). The Supreme Court has characterized a candidate nominated in a primary as the party's "standard bearer," *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997), or "ambassador to the general electorate in winning it over to the party's views," *Jones*, 530 U.S. at 575. In states that have adopted a "closed" primary system, each party (or traditionally at least each of the two major parties) selects its nominees who are to appear on the general election ballot as that party's candidates for particular offices. This type of primary is referred to as "closed" because only voters who formally associate themselves with a party in some fashion in advance of the primary may vote in that party's primary and thereby select the party's nominee. *See Jones*, 530 U.S. at 577; *see also* Alexander J. Bott, Handbook of United States Election Laws and Practices: Political Rights 21, 43, 139 (1990).

Although many states employ a closed primary, other alternative primary systems have been and continue to be used in some states. One such alternative used to be the "blanket" primary, until the California version was held unconstitutional in *Jones*. In contrast to closed primaries where each party's nominee is selected by voters pre-affiliated with that party who vote only in that party's primary, a blanket primary system uses a common primary ballot shared by all candidates for particular elective offices. All voters, regardless of their own political party affiliations (if any), could — until *Jones* — vote for any candidate appearing on the blanket primary ballot regardless of that candidate's designated political party affiliation.[2] The candidate who received the greatest number of votes in relation to other candidates with the same party affiliation would become that party's nominee who would advance to the general election ballot. For example, each of the Democratic and Republican candidates with the greatest number of votes in the blanket primary would appear as the only candidate identified with that particular party designation on the general ballot. *See Jones*, 530 U.S. at 570. The Supreme Court, however, held that California's blanket primary violated the state political parties' right of association under the First and Fourteenth Amendments, because allowing nonparty members to vote for party candidates forced a party's members to associate with voters who were members of rival parties in the selection of that party's nominee for the general election. *See id.* at 577.

Invoking *Jones*, the political parties in Washington challenged the blanket primary that had operated in that state since 1935. *See Reed*, 343 F.3d at 1201. Like the California primary, the Washington primary at issue in *Reed* advanced each of the top primary election vote-getters within the same

[2]For example, a primary voter could "split the ticket" between a Republican gubernatorial candidate, a Democratic candidate for attorney general and a Libertarian candidate for secretary of state.

party to the general election ballot. *See id.*[3] We held Washington's blanket primary unconstitutional in 2003 because it was "materially indistinguishable from the California scheme" that the Supreme Court invalidated in *Jones*. *Id.* at 1203.[4]

In the aftermath of *Reed*, two parallel efforts ensued to create a replacement primary system — one undertaken by the Washington state legislature and the other a ballot initiative sponsored by the Grange. In January 2004, the Grange filed the text of what was to become Initiative 872 on the November 2004 Washington ballot with the Washington Secretary of State. Initiative 872 made a number of changes to Washington's previous blanket primary system; but significantly, it retained the partisan nature of the primary. As the official voters' pamphlet explaining Initiative 872 stated, the Initiative "concerns elections for *partisan* offices" and "would change the system used for conducting primaries and general elections for *partisan* offices." (Emphasis added.)[5]

---

[3]"Minor" political parties were treated somewhat differently under Washington's pre-*Reed* blanket primary in that they were allowed to avoid splintering their limited constituency at the blanket primary stage. They held their own nominating conventions prior to the blanket primary, and the single candidate each such minor party selected by convention would advance from the blanket primary to the general election ballot if he or she obtained at least one percent of the blanket primary vote. *See, e.g.*, Wash. Rev. Code §§ 29.24.020, 29.30.095 (1993).

[4]Although California explicitly labeled those candidates who advanced to the general elections as "the nominee of [a] party," *Jones*, 530 U.S. at 570, a term Washington did not use, we concluded that Washington's avoidance of the label "nominee" was a "distinction[ ] without a difference." *Reed*, 343 F.3d at 1203.

[5]The Grange sponsored a website — http://www.blanketprimary.org/— as part of its advocacy efforts on behalf of Initiative 872. In early 2004, the "Frequently Asked Questions" portion of that website characterized the primary system that would be enacted by the Initiative as follows:

> The proposed initiative would replace the current nominating system with a qualifying primary, similar to the nonpartisan primaries used for city, school district, and judicial offices. As in

Two of the most important proposed changes were: (1) the redefinition of "partisan office" as "a public office for which a candidate may indicate a political party preference";[6] and (2) the adoption of a "top two" rule whereby the two candidates with the greatest number of votes in the primary advance to the general election regardless of their expressed party preference. Under the Initiative 872 primary system, therefore, those candidates expressing a particular party "preference" would be self-identified only;[7] and the winner of the largest number of votes among candidates with the same party preference would no longer be guaranteed a place on the general election ballot — an entitlement limited to the two top vote getters overall. Indeed, two candidates with the same party preference could be the only candidates for a particular office appearing on the general election ballot.[8]

In March 2004, the Washington legislature adopted two alternative primary systems, subject to the outcome of the

---

> those primaries, the two candidates who receive the greatest number of votes would advance to the general election. Candidates for partisan offices would continue to identify a political party preference when they file for office, and that designation would appear on both the primary and general election ballots. . . .
>
> At the primary, the candidates for each office will be listed under the title of that office, the party designations will appear after the candidates' names, and the voter will be able to vote for any candidate for that office (just as they now do in the blanket primary).

[6]Ballots for partisan office under Washington's pre-*Reed* primary system simply listed a political party or independent designation next to a candidate's name. *See* Wash. Rev. Code § 29.30.020(3) (1993) (repealed 2004); *see also Reed*, 343 F.3d at 1201 & n.3.

[7]The candidates' party preference designation on the ballot cannot be changed between the primary and general elections. *See infra* note 16.

[8]For example, if the 1996 gubernatorial primary had been conducted under the aegis of Initiative 872, two Democratic candidates — Gary Locke and Norman Rice — and no Republican candidate would have advanced from the primary to the general election.

vote on Initiative 872 in the November 2004 general election. As its first choice, the legislature adopted a "top two" primary system similar, though not identical, to the one the Grange proposed in Initiative 872.[9] As a precaution in case the anticipated legal challenges to the "top two" system proved successful, the legislature also adopted a "backup" primary system — the so called "Montana" primary — which is essentially a type of open primary.[10]

Governor Gary Locke vetoed the "top two" primary system in April 2004, so the "Montana" primary became Washington's primary system for the fall 2004 elections. Nevertheless, Initiative 872 passed with nearly 60 per cent of the vote in the November 2004 general election and became effective as Washington law in December 2004. The Washington legislature did not pass any other measure concerning the state's primary system in the first half of 2005, although the secretary of state did promulgate emergency regulations relating to Initiative 872 in May 2005.

The Washington State Republican Party (the Republican Party) filed suit in federal district court in May 2005, seeking a declaratory judgment and injunctive relief under 42 U.S.C. § 1983 against a number of county auditors with respect to the enforcement of Initiative 872 and the conduct of primary elec-

[9]A "top two" primary is also sometimes referred to as a "Cajun" or "Louisiana" primary, after the only other state that employs a similar sort of primary.

[10]*Jones* described an open primary as follows:

> An open primary differs from a blanket primary in that, although as in the blanket primary any person, regardless of party affiliation, may vote for a party's nominee, his choice is limited to that party's nominees *for all offices*. He may not, for example support a Republican nominee for Governor and a Democratic nominee for attorney general.

530 U.S. at 576 n.6. *See also* Bott, Handbook of United States Election Laws and Practices 21, 138.

tions. The Washington State Democratic Central Committee (the Democratic Party) and the Libertarian Party of Washington State (the Libertarian Party) moved to intervene as plaintiffs. The State of Washington and the Grange moved to intervene as defendants. The district court granted all of the motions to intervene and accepted the substitution of the State of Washington as a defendant in lieu of the county auditors, who dropped out as parties to this litigation.

In July 2005, the district court granted the political parties' motions for summary judgment and issued a preliminary injunction enjoining the enforcement of Initiative 872, *see Wash. State Republican Party v. Logan*, 377 F. Supp. 2d 907, 932 (W.D. Wash. 2005), and made the injunction permanent on July 29, 2005. Both the State of Washington and the Washington State Grange filed timely notices of appeal. We now affirm the district court's permanent injunction because the Initiative 872 primary unconstitutionally burdens the Washington state political parties' associational rights by permitting candidates to identify their party "preference" on the ballot, notwithstanding that party's own preference.[11]

II. Discussion

A. Standard of Review

"We review a summary judgment [order] granting or denying a permanent injunction for abuse of discretion and application of the correct legal principles." *Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1079 (9th Cir. 2004) (quoting *EEOC v. Goodyear Aerospace Corp.*, 813 F.2d 1539, 1544 (9th Cir. 1987)). However, "any determination underlying the grant of an injunction [is reviewed under] the standard that

[11]The motion of FairVote — The Center for Voting and Democracy and others for leave to file a brief of *amici curiae* is granted, but we do not consider issues raised by amici that are beyond those argued by the parties.

applies to that determination." *Ting v. AT&T*, 319 F.3d 1126, 1134-35 (9th Cir. 2003). Accordingly, the district court's findings of fact are reviewed for clear error while questions of law are reviewed de novo. *See id.* at 1135.

The constitutionality of a state law is reviewed de novo. *See Am. Acad. of Pain Mgmt. v. Joseph*, 353 F.3d 1099, 1103 (9th Cir. 2004). "[W]e review the application of facts to law on free speech questions de novo." *Brown v. Cal. Dep't of Transp.*, 321 F.3d 1217, 1221 (9th Cir. 2003) (citing *Planned Parenthood v. Am. Coalition of Life Activists*, 290 F.3d 1058, 1070 (9th Cir. 2002) (en banc)). Lastly, "severability is a question of state law that we review de novo." *Ariz. Libertarian Party, Inc. v. Bayless*, 351 F.3d 1277, 1283 (9th Cir. 2003) (per curiam).

B. Right of Association

[1] "[T]he freedom to join together in furtherance of common political beliefs" — to form and join political parties — falls squarely within the right of association protected by the First Amendment and the Due Process Clause of the Fourteenth Amendment against interference by the states. *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214 (1986); *see also NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958). "Representative democracy in any populous unit of governance is unimaginable without" such freedom. *Jones*, 530 U.S. at 574. The right of association protects not only the activities of party stalwarts who "devote substantial portions of their lives to furthering [their party's] political and organizational goals," but also the more limited associational ties of those who "limit their participation [in the party] to casting their votes for some or all of the [p]arty's candidates." *Tashjian*, 479 U.S. at 215. Indeed, even if "it is made quite easy for a voter to change his party affiliation the day of the primary," that eleventh hour "cross[ing] over" still constitutes an act of association in that the voter "must formally become a

member of the party." *Jones*, 530 U.S. at 577 (emphasis omitted).

[2] The principle underlying the breadth of the right of association is one of mutuality: both the putative party member and the political party must consent to the associational tie. Accordingly, the freedom to associate necessarily includes some freedom to exclude others from the association. *See id.* at 574. "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." *Democratic Party of U.S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 122 n.22 (1981) (quoting Laurence H. Tribe, American Constitutional Law 791 (1978)). Neither voters nor political candidates can force a political party to accept them against the will of the party. *See Tashjian*, 479 U.S. at 215 n.6 ("[A] nonmember's desire to participate in the party's affairs is overborne by the countervailing and legitimate right of the party to determine its own membership qualifications."); *see also Duke v. Cleland*, 954 F.2d 1526, 1531 (11th Cir. 1992) ("[David] Duke has no right to associate with the Republican Party if the Republican Party has identified Duke as ideologically outside the party.").

[3] The right of association, however, especially when it intersects with the public electoral process, is not "boundless." *Clingman v. Beaver*, 544 U.S. 581, 589 (2005). "States have a major role to play in structuring and monitoring the election process, including primaries." *Jones*, 530 U.S. at 572. Constitutionally permissible state regulations touching upon political party affairs include those "requir[ing] parties to use the primary format for selecting their nominees, in order to assure that intraparty competition is resolved in a democratic fashion," "requir[ing] parties to demonstrate a significant modicum of support before allowing their candidates a place on [the general election] ballot" and "requir[ing] party registration a reasonable period of time before a primary election"

in order to prevent "party raiding."[12] *Id.* (internal quotation marks and citations omitted). Accordingly, when we are faced with a state electoral law that allegedly violates associational rights:

> we weigh the character and magnitude of the burden the State's rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary. Regulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.

Timmons v. Twin Cities Area New Party, 520 U.S. 351, 358 (1997) (internal quotation marks and citations omitted). Therefore, we must first determine whether Initiative 872 severely burdens the Washington political parties' associational rights; if it does, we must then determine whether a compelling state interest justifies that burden and whether Initiative 872 is narrowly tailored to further that state interest.

1. Severe burden

Washington and the Grange contend that Initiative 872 does not severely burden the political parties' associational rights. They point to dictum in *Jones* discussing with approval a *nonpartisan* blanket primary, *see* 530 U.S. at 585-86, and argue that Initiative 872 created just such a primary. We disagree, because the primary under Initiative 872 is not the kind of nonpartisan election *Jones* contemplated.

[12]Party raiding is "a process in which dedicated members of one party formally switch to another party to alter the outcome of that party's primary." *Jones*, 530 U.S. at 572.

The *Jones* dictum is found in that part of the opinion discussing the state interests California had identified in defense of its blanket primary. The Court identified four legitimate state interests that might justify allowing voters to vote for any candidate regardless of the candidate's party affiliation — "promoting fairness, affording voters greater choice, increasing voter participation, and protecting privacy" — but denied that these were compelling reasons to burden political parties' associational rights "*in the circumstances of [that] case*." 530 U.S. at 584. The Court went on to reason, however, that even if these four interests *were* compelling, California's blanket primary was "not a narrowly tailored means of furthering them":

> Respondents could protect them all by resorting to a *nonpartisan* blanket primary. Generally speaking, under such a system, the State determines what qualifications it requires for a candidate to have a place on the primary ballot — which may include nomination by established parties and voter-petition requirements for independent candidates. Each voter, regardless of party affiliation, may then vote for any candidate, and the top two vote getters (or however many the State prescribes) then move on to the general election. This system has all the characteristics of the partisan blanket primary, save the constitutionally crucial one: Primary voters are not choosing a party's nominee. Under a nonpartisan blanket primary, a State may ensure more choice, greater participation, increased "privacy," and a sense of "fairness" — all without severely burdening a political party's First Amendment right of association.

Id. at 585-86. In light of this statement, we agree that to the extent Initiative 872 can be fairly characterized as enacting a

nonpartisan blanket primary, *Jones* would lead us to uphold Washington's modified blanket primary.[13]

Initiative 872 resembles the *Jones* hypothetical nonpartisan blanket primary in some respects, but it differs in at least one crucial aspect. On the one hand, the "top two" feature of Initiative 872 seems indistinguishable from that referred to in *Jones*, as does the aspect of Initiative 872 that allows "[e]ach voter, regardless of party affiliation, [to] vote for any candidate." 530 U.S. at 585. However, the crucial point of divergence between Initiative 872 and *Jones* lies in the concept of partisanship. Although the Court did not specify in what sense it was using the term "nonpartisan," an election is customarily nonpartisan if candidates' party affiliations are not identified on the ballot. *See* Bott, Handbook of United States Election Laws and Practices 145 ("Nonpartisan elections are ones in which persons running for public office have their names listed on the ballot but not their party affiliation."). *Jones*' use of "nonpartisan" also appears to contemplate elections in which primary voters play no role in the nomination of any candidate as the representative of a political party. *See Jones*, 530 U.S. at 585-86 (asserting that the "constitutionally crucial" element in the inquiry is the parties' choice of their own representative, and noting that states may condition access to a nonpartisan primary ballot in part on prior and independent nomination by an established political party). We therefore understand the Court to align the term "nonpartisan" with the process of nominating a candidate to appear on a general bal-

[13]The Republican Party emphasizes that the statement in *Jones* is only dictum. But as we have recognized, Supreme Court dicta is generally entitled to "great weight," *Coeur D'Alene Tribe of Idaho v. Hammond*, 384 F.3d 674, 683 (9th Cir. 2004), and "appropriate deference," *United States v. Montero-Camargo*, 208 F.3d 1122, 1132 n.17 (9th Cir. 2000). "[W]e do not blandly shrug them off because they were not a holding," *id.* (internal quotation marks omitted), and therefore we accord the *Jones* dictum the persuasive authority that it is due.

lot, without thereby nominating a candidate to represent a political party as its standard bearer.[14]

[4] In contrast to the *Jones* hypothetical primary, the primary envisioned by Initiative 872 is still overtly partisan. The Initiative redefined the concept of "partisan office," but those offices remain partisan and so does the primary.[15] By including candidates' self-identified political party preferences on the primary ballot, Washington permits all voters to select individuals who may effectively become the parties' standard bearers in the general election. Whether or not the primary candidate is a party's nominee, any candidate may appear on the ballot showing that party as his or her "preference" and (if

[14]The political parties argue that not only is Initiative 872 a partisan blanket primary, but it is indistinguishable from the primaries invalidated by *Jones* and *Reed* because it "nominates" candidates for the general election. Washington and the Grange counter that Initiative 872 merely "winnows" candidates. This debate is not particularly illuminating because "nominate" and "winnow" are two sides of the same coin — candidates who are not nominated are necessarily winnowed — and the Supreme Court has used both terms to describe the function of primaries. *See, e.g.*, *Storer v. Brown*, 415 U.S. 724, 734, 735 (1974) ("After long experience, California came to the direct party primary as a desirable way of nominating candidates for public office . . . . The direct party primary . . . functions to winnow out and finally reject all but the chosen candidates.").

Furthermore, even if Initiative 872's modified blanket primary can be said to "nominate" candidates, it does so in a way that is distinguishable from Washington's pre-*Reed* or California's pre-*Jones* blanket primaries. Unlike those primaries, the top vote-getters in each party under Initiative 872 are not guaranteed a place on the general election ballot; candidates advance only if they finish in the top two overall. There is therefore a real possibility that one of the political parties' top vote-getters will not even make it into general election or that two candidates from the same party will advance. This is not a situation squarely contemplated by *Jones* or the cases upon which it relies, all of which share the underlying assumption that only one candidate emerges from a partisan primary as the party's nominee. *See Jones*, 530 U.S. at 575 ("In no area is the political association's right to exclude more important than in the process of selecting *its nominee*.") (emphasis added) (citing cases).

[15]*See supra* note 5 and accompanying text.

one of the two top vote getters) may emerge as the only one bearing that designation in the general election. Whether or not the party wants to be associated with that candidate, the party designation is a powerful, partisan message that voters may rely upon in casting a vote — in the primary and in the general election. The Initiative thus perpetuates the "constitutionally crucial" flaw *Jones* found in California's partisan primary system. Not only does a candidate's expression of a party preference on the ballot cause the primary to remain partisan, but in effect it forces political parties to be associated with self-identified candidates not of the parties' choosing. This constitutes a severe burden upon the parties' associational rights.

Washington and the Grange argue against interpreting the Initiative 872 primary as partisan, and assert that a party "preference" is distinguishable from a party "designation" or some other stronger affirmative indication of party affiliation, such as membership. Such a distinction exists as a matter of logic, but it is not meaningful in the circumstances of this case. The district court came to the commonsense conclusion that "[p]arty affiliation plays a role in determining which candidates voters select, whether characterized as 'affiliation' or 'preference.' " *Wash. State Republican Party v. Logan*, 377 F. Supp. 2d 907, 926 (W.D. Wash. 2005). Washington urges that a candidate's political party preference simply provides "information for the voters." But a statement of party preference on the ballot is more than mere voter information. It represents an expression of partisanship and occupies a privileged position as the only information about the candidates (apart from their names) that appears on the primary ballot. Moreover, it also carries over onto the general election ballot.[16]

[16]The Washington Secretary of State appears implicitly to have recognized that voters' reliance on candidates' party preferences was comparable to their reliance on candidates' party designations, by amending Wash. Admin. Code § 434-230-040 (2005) to read as follows: "A candidate for partisan office who indicated a party preference on the declaration of can-

Importantly, "party labels provide a shorthand designation of the views of party candidates on matters of public concern . . . ." *Tashjian*, 479 U.S. at 220. Voters rely on party labels on the ballot in deciding for whom to vote. This political reality is illustrated by the Sixth Circuit's decision in *Rosen v. Brown*, 970 F.2d 169 (6th Cir. 1992). *Rosen* held unconstitutional the provision in Ohio's election law that "prohibit[ed] nonparty candidates for elective office from having the designation Independent or Independent candidate placed on the ballot next to their name." *Id.* at 171. The court relied on evidence that

> [v]oting studies conducted since 1940 indicated that party identification is the single most important influence on political opinions and voting. . . . [T]he tendency to vote according to party loyalty increases as the voter moves down the ballot to lesser known candidates seeking lesser known offices at the state and local level.

Id. at 172. Thus voters "are afforded a 'voting cue' on the ballot in the form of a party label which research indicates is the most significant determinant of voting behavior." *Id.* Similarly, to the extent Initiative 182 allows candidates to self-identify with a particular party — even if only as a "preference" — it cloaks them with a powerful voting cue linked to that party.

[5] Given that the statement of party preference is the *sole* indication of political affiliation shown on the ballot, that statement creates the impression of associational ties between

---

didacy *may not change the party preference between the primary election and the general election*." (Emphasis added.) The regulation previously stated that "[n]o person who has offered himself or herself as a candidate for the nomination of one party at the primary, shall have his or her name printed on the ballot of the succeeding general election as the candidate of another political party." Wash. Admin. Code § 434-230-040 (1997).

the candidate and the preferred party, irrespective of any actual connection or the party's desire to distance itself from a particular candidate. The practical result of a primary conducted pursuant to Initiative 872 is that a political party's members are unilaterally associated on an undifferentiated basis with *all* candidates who, at their discretion, "prefer" that party.

A hypothetical may help illustrate the situation confronting the political parties and the voters of Washington in an Initiative 872 primary. Let us assume the Republican Party holds its own privately run party convention prior to the modified blanket primary to select the Party's nominee for the primary ballot for a particular state office. *Cf. Jones*, 530 U.S. at 585 (noting that candidates appearing on a nonpartisan blanket primary ballot may be nominated by established political parties).[17] Let us further assume that two Republican candidates (both of whom are bona fide party members) — Candidate C, a conservative, and Candidate M, a moderate — compete against one another for the nomination and that Candidate C wins the Republican nomination at the convention. Lastly, let us assume the existence of a third candidate — Candidate W, a wild-eyed radical — who purports to "prefer" the Republican Party but who is not a Party member, whose views are anathema to the Party's membership and who does not participate in the Party's convention process. Despite Candidate C's party nomination, Candidate M and Candidate W decide that they want to appear on the primary ballot.[18] Given these

[17]In fact, the Washington State Republican and Democratic Parties adopted contingency rules in anticipation of Initiative 872's enactment whereby those parties would select their nominees for state offices through private nominating conventions conducted before the state-run blanket primary.

[18]It is quite easy to put one's name on the Washington partisan primary ballot with any given political party preference under Initiative 872. All that is required is (1) a declaration of registered voter status in the appropriate jurisdiction (along with an address in that jurisdiction); (2) a decla-

assumptions, how would each of these candidates be designated on the ballot, and how would voters be able to distinguish among them?[19]

[6] Presented with this scenario at oral argument, the State of Washington conceded that all three candidates would be designated in an identical fashion on the primary ballot — all

---

ration of the position the candidate seeks; (3) *a declaration of party preference* or independent status; (4) a filing fee; and (5) a signed declaration that the candidate will support the Constitution and the laws of the United States and Washington State. The emergency regulations promulgated by the Washington Secretary of State in May 2005 confirmed the parties' inability to control who runs using their name: "neither endorsement by a political party nor a nominating convention are [sic] required in order to file a declaration of candidacy and appear on the primary election ballot." Wash. Admin. Code § 434-215-015 (2005).

[19]The questions posed by this hypothetical illustrate that a number of the arguments advanced by the State of Washington and the political parties need not be settled in order to resolve the central issue on appeal. First, the State of Washington argues that states are not compelled to provide political parties with a publicly financed primary to select party nominees and that by enacting the provisions of Initiative 872, it is "getting out of the 'party nomination' business." However, the inclusion of candidates' party preferences on the primary ballot suggests that Washington has not gotten out of the party nomination business entirely because Initiative 872 permits "spoiler" candidates from the same party and nonparty members to present themselves on an equal footing with party nominees on the ballot.

Second, Washington argues that "the associational rights of political parties do not include the right to have their nominees advance to the general election ballot." But even if we construed the political parties' argument to be that they have a right to have their respective nominees appear on the general election ballot, that argument misses the mark because it only addresses the "top two" nature of the Initiative 872 primary. The concern in this case is not that the top two vote-getters advance from the primary to the general election. Rather, it is that Initiative 872 provides candidates with a designated space on the ballot to express their party preference, notwithstanding the political parties' unwillingness to associate with a particular candidate or nominate that person as a standard bearer.

would be shown to have "Republican" as their "party preference."[20] This is the essence of Initiative 872's constitutional flaw. Because candidates can freely designate their political party preferences on the primary ballot, but the ballot does not show which candidates are the political parties' official nominees (or even true party members), voters cannot differentiate (1) bona fide party members such as Candidates C and M from outsiders who purportedly prefer the party such as Candidate W; or (2) party nominees such as Candidate C from "spoiler" intraparty challengers such as Candidate M.[21] The net effect is that parties do not choose who associates with them and runs using their name; that choice is left to the candidates and forced upon the parties by the listing of a candidate's name "in conjunction with" that of the party on the primary ballot. Wash. Rev. Code § 29A.04.110 (2004). Such an assertion of association by the candidates against the will of the parties and their membership constitutes a severe burden on political parties' associational rights. *See Tashjian*, 479 U.S. at 215 n.6; *Duke*, 954 F.2d at 1531.

In so holding, we do not question a political candidate's fundamental right to express a political viewpoint, including a political preference, more generally. *See, e.g.*, *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971) ("[I]t can hardly be doubted that the [First Amendment's] constitutional guar-

[20]The text of Initiative 872 does not itself clearly prescribe how the candidates' party preferences are to be worded on the primary ballot, nor do the Washington Secretary of State's emergency rules, issued on May 18, 2005, implementing the provisions of Initiative 872. For instance, the ballots could indicate party preference with letters like "D" and "R" or abbreviations like "Dem." and "Rep." following the names of the primary candidates, without stating that they are "preferences" only. For purposes of this appeal, however, we assume that the ballots clearly state that a particular candidate "prefers" a particular party.

[21]The second of these two scenarios of voter confusion would not be present if a party did not nominate a single standard bearer in a private convention prior to the modified blanket primary, but that would not cure the first problem.

antee has its fullest and most urgent application precisely to the conduct of campaigns for political office."). We are not deciding that an expression of a party preference other than as a ballot designation — such as in campaign literature or advertising, a candidate statement in the voters' pamphlet or a news conference — constitutes a forced association between the candidate stating the preference and the political party being preferred. Rather, we are focused on the specific primary election ballot created by Initiative 872, and the one-sided expression of party preferences on that ballot. There is a constitutionally significant distinction between ballots and other vehicles for political expression. "Ballots serve primarily to elect candidates, not as forums for political expression." *Timmons*, 520 U.S. at 363. Here the ballot communicates a political association that may be unreciprocated and misleading to the voters, to the detriment of the political parties and their bona fide members.

The State of Washington attempts to counter our concern with this one-sidedness by itself invoking *Timmons*. It suggests that the lack of distinction between Candidates C, M and W on the primary ballot could be cured by the more detailed candidate statements that would likely reveal party membership and a candidate's status as a political party's nominee. Washington also contends that it is permissible to place candidates' party preferences on the ballot without regard to the parties' candidate preferences, because parties have no more right to use the ballot to send a message to voters than other politically minded, nonparty organizations do. *Cf. id.* We address and reject each of these contentions in turn.

Candidate statements cannot cure Initiative 872's one-sided party-preference labeling on the primary ballot. As previously discussed, political parties' names matter; they are shorthand identifiers that voters traditionally rely upon to signal a candidate's substantive and ideological positions. *See Rosen*, 970 F.2d at 172. For some voters, the party label may be enough; other voters may seek out more information about a candi-

date. As the Supreme Court observed in *Tashjian*, "[t]o the extent that party labels provide a shorthand designation of the views of party candidates on matters of public concern, the identification of candidates with particular parties plays a role in the process by which voters inform themselves for the exercise of the franchise." 479 U.S. at 220. When the Libertarian Party challenged Oklahoma's semi-closed primary law by seeking to open the Libertarian Party primary beyond registered Libertarians and independents to *all* voters regardless of affiliation, the Court expressed its concern about the possibility of voters' being misled by party labels: "Opening the [Libertarian Party's] primary to all voters not only would render the [Libertarian Party's] *imprimatur* an unreliable index of its candidate's actual political philosophy, but it also would make registered party affiliations significantly less meaningful . . . ." *Clingman*, 544 U.S. at 595 (internal quotation marks omitted).

A party should not be placed in the position of having to overcome a false association between itself and a candidate by relying on the candidate's off-ballot clarifying statements.[22] It is too much to expect candidate statements to clear up the confusion engendered by the primary ballot regarding who is the "real" Republican, Democratic or Libertarian standard bearer for his or her respective party, never mind whom party members would acknowledge as a fellow member.[23]

---

[22]Although the political parties have not expressed their argument in exactly these terms, we note that the Supreme Court has long recognized that "the choice to speak includes within it the choice of what not to say." *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal.*, 475 U.S. 1, 16 (1986). When a law "impermissibly requires [someone] to associate with speech with which [he or she] may disagree," that person "may be forced either to appear to agree . . . or to respond." *Id.* at 15. "That kind of forced response is antithetical to the free discussion that the First Amendment seeks to foster." *Id.* at 16.

[23]We recognize that party affiliations and political views of candidates in races for high profile state offices, such as governor, will be widely and publicly known, and in such cases, voters may not be relying on the party preference designation on the ballot. However, the same cannot be said for lower profile state offices where the expression of party preference on the ballot may well provide the decisive "voting cue." *Rosen*, 970 F.2d at 172.

We are similarly unconvinced by Washington's argument that the political parties' associational rights are not severely burdened because their inability to indicate their candidate preference on the primary ballot is no different from the inability of other, nonparty organizations, such as labor unions or better business bureaus, to indicate their candidate preferences. First, Washington's argument is undermined by the fact that Initiative 872 singles out candidates' political party preferences to be listed on the primary ballot, but not preferences with respect to any other organization. Second, a political party is historically different from other organizations with political interests in that it nominates candidates to run for political office in the party's name.[24] *See Jones*, 530 U.S. at 575-77; *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973) ("Under our political system, a basic function of a political party is to select the candidates for public office to be offered to the voters at general elections."). We therefore reject the premise of an equivalency between political parties and other organizations that lies at the heart of Washington's argument.

In sum, because a party label — even if expressed more ambiguously as a party preference — conveys to voters "a shorthand designation of the views of party candidates on matters of public concern," *Tashjian*, 479 U.S. at 220, Initiative 872's party "preference" designation allows some candidates to create a mistaken impression of their true relationship with a political party. That severe burden on parties' associational rights is not negated by requiring voters to rely on candidates' or parties' off-ballot statements to clarify the nature or even lack of an actual party association.

[24]Like political parties, other organizations with political interests — from the National Rifle Association to the Sierra Club — may endorse candidates for office, but endorsement is not the equivalent of nomination. *Cf. Jones*, 530 U.S. at 580 ("The ability of the party leadership to endorse a candidate is simply no substitute for the party members' ability to choose their own nominee.").

2. Compelling state interest and narrow tailoring

[7] Washington and the Grange have focused their arguments on appeal on the contention that Initiative 872 does not severely burden the political parties' associational rights at all. They have not articulated any compelling state interest that justifies such a burden. To the extent that we can read compelling state interests between the lines of their arguments — essentially those interests articulated and found inadequate by the Supreme Court in *Jones* — we conclude that such interests could be sufficiently served by a more narrowly tailored primary system. One obvious approach would be to create a true nonpartisan primary, such as the one discussed in *Jones*, where only a candidate's name without any party preference or designation appears on the ballot. Therefore, we hold that the modified blanket primary enacted by Initiative 872 in November 2004 is unconstitutional.

C. Severing Unconstitutional Provisions

[8] As a fallback position, Washington and the Grange argue that any unconstitutional provisions in Initiative 872 — namely those that provide for the designation of candidate party preferences — can be severed from the rest of the Initiative. Following Washington law, which guides our severability inquiry, *see Ariz. Libertarian Party, Inc. v. Bayless*, 351 F.3d 1277, 1283 (9th Cir. 2003) (per curiam), we conclude that it is not possible to sever the constitutionally deficient portions from the rest of Initiative 872.

[9] The Washington Supreme Court has set forth its state severability doctrine as follows:

> [A]n act or statute is not unconstitutional in its entirety unless invalid provisions are unseverable and it cannot reasonably be believed that the legislative body would have passed one without the other, or unless elimination of the invalid part would render

> the remaining part useless to accomplish the legislative purposes. A severability clause may provide the assurance that the legislative body would have enacted remaining sections even if others are found invalid. It is not necessarily dispositive on that question, though. . . . The independence of the valid from the invalid parts of an act does not depend on their being located in separate sections. The invalid provision must be grammatically, functionally, and volitionally severable.

McGowan v. State, 60 P.3d 67, 75 (Wash. 2002) (internal punctuation marks, footnote and citations omitted).[25]

Conceptually speaking, severing all references to party preference from Initiative 872 seems fairly straightforward even though, as a practical matter, a fair number of provisions or portions of provisions would have to be severed.[26] However, even if we assume without deciding that the problematic provisions are "grammatically" or even "functionally" severable,[27] they are not "volitionally" severable. Volitional severability is another way of stating the *McGowan* requirement that "it cannot reasonably be believed" that Washington voters would have passed the remaining portions of Initiative 872 without the excised party preference provisions. *Id.*

---

[25]Initiative 872 contains no severability clause, although under *McGowan*, this fact is not dispositive. 60 P.3d at 75.

[26]The district court identified Sections 4, 5, 7(2), 7(3), 9(3), 11 and 12 as provisions of Initiative 872 that were "potentially severable." We need not decide whether or not the district court accurately identified all of the Initiative's provisions that are "potentially severable" because Initiative 872 fails the volitional prong of *McGowan*.

[27]We understand functional severability to be a restatement of the *McGowan* requirement that "elimination of the invalid part would [not] render the remaining part useless to accomplish the legislative purposes." 60 P.3d at 75.

[10] Even if we grant Washington and the Grange's argument that Washington voters understood that Initiative 872 redefined candidate partisanship (i.e., as a party preference rather than as a stronger form of party affiliation), excising all mentions of party preference from the modified blanket primary would transform a partisan primary into a nonpartisan one. It is not reasonable to believe that Washington voters would have passed Initiative 872 if they knew it would result in nonpartisan primaries for all statewide offices. Because the party preference provisions in Initiative 872 do not pass the volitional severability test in *McGowan*, we conclude that Initiative 872 cannot be saved by severing its provisions for candidate party preferences. We hold that Initiative 872 is unconstitutional in its entirety.[28]

III. Conclusion

Although the Constitution grants States "a broad power . . . to regulate the time, place, and manner of elections[, that power] does not justify, without more, the abridgement of fundamental rights, such as . . . the freedom of political association." *Tashjian*, 479 U.S. at 217 (internal citations omitted). A political party's "determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution." *Id.* at 224. Initiative 872 severely burdens the Washington political parties' associational rights by allowing all candidates to state their party preferences on the primary ballot. This one-sided statement of party preferences on the ballot has the potential to force a political party into an unwanted association with a candidate who may be anathema to everything the party stands for. We hold that Initiative 872 is unconstitutional in its entirety because the party preference provisions are not severable from the rest of Initiative 872

[28]Because we have held Initiative 872 to be unconstitutional under the First and Fourteenth Amendments, we do not reach any of the other arguments that the political parties advance with respect to Initiative 872.

under Washington law. The judgment of the district court is affirmed.

AFFIRMED.

EXHIBIT 4

Six minor-party tickets qualify for White House ballot in WA

by Steven Gilbert | August 9th, 2012

Washingtonians will have no lack of variety this fall when it comes to their presidential choices.

By state law, the Democrats' Obama-Biden ticket and the Republicans' Romney ticket will be given automatic ballot slots here after their conventions, and six additional minor-party tickets have been certified. The state Elections Division recently checked petition signatures submitted for six additional tickets and all qualified for the fall ballot.

Mail ballots will go out by Oct. 19 — earlier for military and overseas voters. Ballots may be voted and returned as soon as the voter wishes, with a postmark or dropbox deadline of Nov. 6.

It's fairly easy for minor parties to get their presidential tickets on the Washington ballot. Organizers need to hold a nominating convention or conventions in Washington during the timeline designated in state law. Each convention must be attended by at least 100 Washington registered voters, with the political organization or independent candidate collecting valid signatures of at least 1,000 registered voters from Washington.

The petition signatures, along with a certificate of nomination, are filed with the Secretary of State's office where our Elections Division checks to make sure there are enough valid signatures. This year's deadline for minor-party candidates to submit their paperwork and petitions was Aug. 3.

The Constitution and Green parties were the last of the tickets to qualify, and none was disqualified. All parties submitted a full list of electors. Here's the full list of minor party candidates and their running mates:

Libertarian Party

Pres: Gary Johnson PO Box 1858, El Prado, NM 87529

Vice: James P. Gray 2531 Crestview Dr, Newport Beach, CA 92663

Constitution Party

Pres: Virgil Goode 90 E Church St, Rocky Mount, VA 24151

Vice: James N. Clymer 301 Letort R, Millersville, PA 17551

Green Party

Pres: Jill Stein 17 Trotting Horse Dr, Lovington, MA 02421

Vice: Cheri Honkala 1928 Mutter St, Philadelphia, PA 19122

Socialism & Liberation Party

Pres: Peta Lindsay 123 – 1/2 S Edgemont St, Los Angeles, CA

Vice: Yari Osorio 43-15 54th St Apt 1F, Woodside, NY

Socialist Workers Party

Pres: James Harris 3024 S Kenwood Ave #3, Los Angeles, CA 90007

Vice: Alyson Kennedy 2229 W 23rd Pl, Chicago, IL 60608

Justice Party

Pres: Ross C. (Rocky) Anderson 418 Douglass St, Salt Lake City, UT 84102

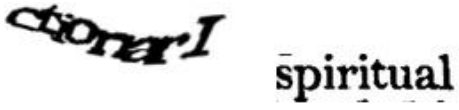
Vice: Luis J. Rodriguez 716 Orange Grove Ave, San Fernando, CA 91340

Leave a Reply

Name (required)

Mail (will not be published) (required)

Website



Type the tw o w ords:

Submit Comment