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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CHELAN

Timothy Borders, et al.,
Petitioners,
v.
King County and Dean Logan, its Director of
Records, Elections and Licensing Services, et al.,
Respondents,
v.
Washington State Democratic Central
Committee,
Intervenor-Respondent,
v.
Libertarian Party of Washington State et al.,
Intervenor-Respondents.

No. 05-2-00027-3

PETITIONERS' OPPOSITION TO
WASHINGTON STATE
DEMOCRATIC CENTRAL
COMMITTEE'S MOTION TO
EXCLUDE EXPERT
TESTIMONY OF ANTHONY M.
GILL AND JONATHAN N.
KATZ

I. INTRODUCTION

The Washington State Democratic Central Committee's ("WSDCC's") Motion to Exclude Expert Testimony of Anthony M. Gill and Jonathan N. Katz is the latest in a series of attempts to convince the Court not to decide the merits of Petitioners' claims, and should be denied. Drs. Gill and Katz will testify that given the illegal votes that can be proven at trial, their analysis is the best means available to this Court of deciding the

PETITIONERS' OPPOSITION TO WSDCC'S MOTION IN
LIMINE TO EXCLUDE CONTRIBUTION OF ILLEGAL
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1 impact of those votes on the election result. They will further testify that proportionally
2 deducting the illegal votes proven at trial will clearly and convincingly demonstrate that
3 Mr. Rossi would have prevailed in the 2004 gubernatorial election.

4 The *Frye* test is inapplicable here because Petitioners' expert statistical analysis it
5 is not novel. The testimony is based on the venerable principle of insufficient reason, and
6 nearly identical expert testimony proportionally deducting illegal votes by the percent vote
7 of the precinct in which they were cast has been admitted by at least one other court.
8 Testimony similar to, but less comprehensive than, Petitioners' expert testimony has been
9 accepted by courts across the country through fact witnesses. Moreover, Petitioners' expert
10 witnesses' methodology, a binomial (Katz) and multinomial (Katz and Gill) statistical
11 analysis of the illegal votes, is well accepted in the scientific community, and the
12 WSDCC's complaints about one assumption designed to control for lack of certainty do
13 not implicate *Frye*. Further, contrary to the WSDCC's assertions, Petitioners' expert
14 testimony is based on legally sufficient data. The WSDCC distorts the question at issue in
15 this election contest to ask a different, irrelevant question: Did illegal votes change the
16 election's outcome, if the Court considers an illusory total census of all invalid votes both
17 the illegal votes the parties can and cannot prove? Both WSDCC experts reports are
18 falsely premised on their expressed belief that the Katz and Gill reports are "based on a
19 sample of invalid votes." Katz and Gill's reports are not based on a sample, their reports
20 are based on all illegal votes before this Court at the time of their reports. Finally, the
21 WSDCC's assertion that the Court may dispose of the election contest if it excludes
22 Petitioners' expert witness testimony is incorrect.

23 II. FACTUAL BACKGROUND

24 Petitioners are prepared to call two expert witnesses at trial for direct testimony.
25 Dr. Jonathan N. Katz is Professor of Political Science, California Institute of Technology.
26 Dr. Katz has been an expert witness in numerous voting and redistricting cases throughout

1 the nation and has published extensively in political science and statistics.¹ Dr. Anthony
2 Gill is Associate Professor of Political Science, University of Washington. He has taught
3 courses in political statistics and research design and statistics. Petitioners submitted their
4 expert reports in a timely manner, and Petitioners' experts were deposed by the WSDCC
5 on May 3 (Dr. Gill) and May 5 (Dr. Katz). Drs. Katz and Gill have supplemented their
6 reports as necessary (supplements to which the WSDCC has objected), and provided
7 timely copies of all materials to the WSDCC.

8 Petitioners' experts independently concluded, and will testify at trial, that their
9 method is the best method available given the data possessed by Petitioners and discovered
10 from the WSDCC about the way in which illegal voters cast their ballots. See, e.g., Gill
11 Report at 4 ("Considering the tendency for important demographic traits to cluster in small
12 geographic areas, using the smallest level of aggregation for votes—i.e., the precinct in this
13 case—is the most appropriate means of estimation."); Katz Dep. at 45 ("[G]iven the
14 available data and given this administrative data, this is the best analysis I believe you can
15 do."). All assumptions underlying statistical models are subject to some degree of
16 uncertainty. Even if we possessed a study of illegal voter patterns in Washington, broken
17 down into the same categories that are present in the instant contest, we would still have to
18 infer that the illegal voters would cast their ballots the same way in a subsequent election,
19 with different issues and different candidates. Expert testimony based on this study would
20 even be subject to attack if the illegal votes were cast in different parts of the state. The
21 only way to completely eliminate this uncertainty is with individual voter data, but this
22 evidence is unknowable with a secret ballot.

23 The WSDCC filed their Motion to Exclude Petitioners' Expert Witness Testimony
24 before Petitioners' counsel was permitted to depose the WSDCC expert witnesses. The
25 WSDCC experts are being deposed on Thursday and Friday, May 19 and 20. Even if

26 ¹ This contrast with WSDCC experts who have apparently never been accepted as
27 experts witnesses in any court in any state on any matter.

1 Petitioners believed the WSDCC expert testimony was inadmissible or their experts
2 unqualified, they could not now reasonably file a motion to exclude their testimony before
3 trial. The WSDCC's experts argue that there is no way to determine for whom the illegal
4 votes were cast in the 2004 gubernatorial election, see Adolph Report at 17 ("I consider
5 efforts to estimate from the aggregate data the vote choice of invalid voters in this election
6 to be a hopeless [] endeavor."), and that there is little chance Mr. Rossi would have
7 prevailed, see Hancock Report at 2.

8 III. ARGUMENT

9 A. *Frye* Is Inapplicable To Petitioners' Expert Testimony Because It Is 10 Not Novel.

11 1. Petitioners' Expert Testimony Does Not Involve New Methods of Proof Or New Scientific Principles.

12 *Frye* should not apply to Petitioners' expert witness testimony because the
13 testimony is not novel. If "evidence does not involve new methods of proof or new
14 scientific principles, then the *Frye* inquiry is not necessary." *State v. Hayden*, 90 Wn. App.
15 100, 103 (Ct. App. 1998); *see also State v. Ortiz*, 119 Wn.2d 294, 311 (1992). As posited
16 by Dr. Katz, he used "a very old statistical technique of binomial in its generalization, and
17 multinomial asking how you would assemble a . . . group from a larger group." Katz Dep.
18 at 62. Dr. Gill's analysis is multinomial as well. Even if this were the first time expert
19 statistical testimony was considered by a court to apportion illegal votes—which it is not,
20 see infra Part III.A.2 — the testimony would be admissible without a *Frye* hearing. *See*
21 *State v. Noltie*, 57 Wash. App. 21, 29-30 (1990), *aff'd* 116 Wn. 2d 831 (1991) (old
22 scientific instrument used in new context not subject to *Frye*), *cited in Hayden*, 90 Wn.
23 App. at 106.

24 Assuming *arguendo* that Petitioners' expert witnesses' assumption are solely that
25 illegal votes are cast in the same percentage as legal votes in a precinct this must be
26 assessed apart from the validity of their binomial and multinomial statistical models, the

1 Court should find that it is not novel (or alternately that it is generally accepted). The
2 “principle of insufficient reason” or “principle of indifference” has a venerable history.²
3 The principle of insufficient reason is a bedrock statistical heuristic that originated in the
4 eighteenth century,³ and is no more problematic than more subjective assumptions of
5 probability. See Lawrence Solum & Stephen Marzen, *Truth and Uncertainty: Legal*
6 *Control of the Destruction of Evidence*, 36 Emory L.J. 1085, 1159-60 (1987). One
7 commentator has described the principle as “a potential rule of decision theory that is
8 *logically and inductively permissible* and that many have argued serves to minimize errors
9 in appropriate circumstances” Charles Yablon, *The Meaning of Probability*
10 *Judgments: An Essay on the Use and Misuse of Behavioral Economics*, 2004 U. Ill. L.
11 Rev. 899, 912 (emphasis added). In light of this history, it does violence to the word
12 “novel” to include Petitioners’ expert witness testimony within its purview.

13
14 **2. Expert Statistical Testimony Similar To Petitioners’ Expert
Testimony Has Been Admitted By Courts Deciding Elections.**

15 Washington courts consider case law from other jurisdictions in determining
16 whether expert testimony is sufficiently “novel” to trigger the *Frye* test. See *In re Thorrell*,
17 149 Wn.2d 724, 756-58 (2003). Expert statistical testimony has been admitted by several
18 courts determining or reviewing election contests. For example, a federal district court in
19 Pennsylvania used expert statistical testimony about proportional deduction to overturn an
20 election canvass in *Marks v. Stinson*. *Marks* was a federal civil rights action resulting from
21 a Pennsylvania State Senate election in which one of the candidates, William Stinson,
22 colluded with the Philadelphia County Commissioners and engaged in absentee ballot
23 fraud. The federal district court issued a preliminary injunction, the effect of which “was to
24 require the decertification of the candidate previously declared to be the winner and the
25

26 ² While Dr. Katz explicitly refers to the “principle of insufficient reason” in his
report, Dr. Gill’s analysis is implicitly based on the principle as well.

27 ³ See Jacob Bernoulli, *Ars Conjectandi* (1713).

1 certification of his opponent.” *Marks v. Stinson*, 19 F.3d 873, 875 (3d Cir. 1994). The
2 United States Court of Appeals for the Third Circuit partially vacated the injunction,
3 stating that “the district court should not direct the certification of a candidate unless it
4 finds, on the basis of record evidence, that the designated candidate would have won the
5 election but for wrongdoing.” *Id.* at 889. In so doing, the Third Circuit cited *Curry v.*
6 *Baker*, 802 F.2d 1302, 1313 (11th Cir. 1986), which approved of a state political party’s
7 use of expert opinion testimony from political scientists in an election contest rather than
8 requiring “mathematically precise voter-by-voter testimony.” *See Marks*, 19 F.3d at 889
9 n.14.⁴ The Third Circuit’s explicit approval of expert statistical testimony sharply contrasts
10 with the WSDCC’s claim that the testimony is novel and not generally accepted.

11 On remand, the district court found that “but for” the absentee vote fraud, candidate
12 Marks would have prevailed. As the scope of the remand was only to determine which
13 candidate had received more legal votes, *Marks*’ unique procedural posture does not
14 distinguish it from the instant situation. The Court in making this determination considered
15 testimony from three expert statisticians. *See Marks v. Stinson*, 1994 U.S. Dist. LEXIS
16 5273 (No. 93-6157) (E.D. Pa. April 26, 1994). One expert, Dr. Brian Sullivan, used
17 proportional deduction *virtually identical* to Dr. Jonathan Katz’s proposed testimony. *See*
18 *id.* at *63-64 (“On the basis of election statistics showing the percentage of absentee
19 ballots cast for Stinson and Marks in each area, the total illegal absentee ballots cast in the
20 election can be allocated to each candidate.”). Dr. Sullivan also used a proportional
21 deduction-type approach to account for the possibility that certain illegal votes were
22 recaptured under Pennsylvania law. *See id.* at *66 (“The recaptured votes can be
23 reallocated to the candidates on the basis of their respective voting machine
24

25 ⁴ *See also Curry*, 802 F.2d at 1317 (“Faced with massive [illegal votes], the contest
26 subcommittee heeded the Supreme Court’s advice in *Rosario* and adopted the only
27 practical approach available to it — it utilized expert statistical and survey testimony as the
most reliable evidence available . . .”).

1 percentages.”).⁵ Notably, the expert statistical testimony was the only evidence sufficient
2 to address the vote recapture issue. The Third Circuit affirmed. Marks v. Stinson, 37 F.3d
3 1487 (3d Cir. 1994).

4 In addition, in Green v. Reyes, 836 S.W.2d 203 (Tex. Ct. App. 1992), the Court
5 was unable to attribute 126 illegal votes to either candidate “because the testimony of the
6 voter was unable to be obtained or the voter did not remember how he or she voted.” Id. at
7 205. The Court heard expert testimony about how the votes should be apportioned, but
8 decided the testimony was “too unreliable to ascertain the true outcome,” and accordingly
9 ordered a new election. Id. at 206. While neither expert testified that votes should be
10 proportionally deducted by precinct, the Court admitted expert opinions based on dueling
11 assumptions about which demographic factors were most relevant without questioning the
12 testimony’s admissibility. Petitioners believe the expert testimony they will proffer will
13 satisfy Mr. Rossi’s burden under RCW 29A.68.110 and RCW 29A.68.070, and merely ask
14 for what the Green Court afforded the litigants: the chance to make their case.

15 Courts’ acceptance of a principle is highly relevant to whether Petitioners’ expert
16 witness’ testimony is novel. The WSDCC’s assertion that Petitioners’ experts’ analysis is
17 novel flies in the face of more than 30 reported cases that have relied on a proportional
18 deduction method of analysis and in so doing made the same basic operative assumption as
19 Petitioners’ expert witnesses. *See* Table attached hereto as **Exhibit A**. Contrary to the
20 WSDCC’s assertions, *see* WSDCC Motion at 20 n.8, the Court cannot infer from
21 *Cauthron’s* method of analysis (examining other jurisdictions’ case law on expert opinion)
22 that the Court should pretend the legal assumptions and method of analysis relied on in at
23 least 30 reported cases are novel. Indeed, the WSDCC is unable to cite even one case in
24 which the Court refused to admit expert statistical testimony conducting a proportional

25
26 ⁵ Vote recapture refers to the possibility that “voters who cast illegal absentee ballot
27 votes would have gone to the polls or otherwise cast legal votes.” *Marks*, 1994 U.S. Dist.
LEXIS at *64.

1 deduction. In light of this widespread prior use, the Court need not hold a *Frye* hearing
2 before admitting Petitioners' expert witness testimony.

3
4 **B. Petitioners' Expert Testimony Is Admissible Under *Frye*.**

5 **1. Petitioners' Expert Testimony Is Generally Accepted In The**
6 **Scientific Community.**

7 Even if the Court deems Petitioners' expert testimony novel to require a *Frye*
8 analysis, it should find that Petitioners' expert statistical testimony is generally accepted in
9 the scientific community. To satisfy *Frye*, the expert testimony must be "based on
10 established scientific methodology. This involves both an accepted theory and a valid
11 technique to implement that theory." *State v. Cauthron*, 120 Wn.2d 879, 889 (1993).
12 Contrary to the WSDCC's assertion that "[i]f there is a question about the validity of the
13 evidence within the community, the Court must exclude it," WSDCC Motion at 14, the
14 Court may only exclude testimony from qualified experts if "there is a significant dispute
15 between qualified experts as to the validity of scientific evidence," *Cauthron*, 120 Wn.2d
16 at 886.⁶

17 The WSDCC views Petitioners' experts' theories at the wrong level of generality,
18 attacking one particular assumption that has in fact been used for hundreds of years to
19 control for lack of evidence. Petitioners' expert testimony is based on well-established
20 theory—a binomial and/or multinomial statistical proportional reduction. *See, e.g., Katz*
21 *Dep.* at 62.⁷ The WSDCC does not and can not dispute the validity of these statistical
22 techniques.⁸ Similarly, Petitioners' expert testimony is based on a valid technique to

23 ⁶ Petitioners' counsel have not had the opportunity to depose both WSDCC's
24 experts prior to filing the brief. Petitioners accordingly do not concede that the WSDCC's
25 experts are qualified to dispute Petitioners' expert witness testimony.

26 ⁷ Dr. Katz's original report ignored Ruth Bennett's third-party candidacy, and was
27 a binomial analysis. His report has been supplemented and is now a multinomial analysis.
The conclusion remained unchanged.

⁸ While the WSDCC intimates that Petitioners' experts commit the "ecological
fallacy," *see* WSDCC Motion at 17 n.5, this is not correct. Petitioners' experts are not

1 implement the theory — proportional deduction according to demographic factors. If the
2 WSDCC is disputing the ability of any demographic information to serve as the basis for
3 proportional reduction, their argument does not go to the expert testimony, it goes to
4 proportional reduction itself. This argument was foreclosed when the Court denied the
5 WSDCC’s Motion in Limine to Exclude Petitioners’ Proposed Attribution of Illegal Votes.
6 If the WSDCC is arguing that the particular demographic factor used by Petitioners’
7 experts to proportionally deduct illegal votes — percent vote in the precinct where the
8 illegal vote was cast — is unsound, it is running afoul of the rule that “*Frye* is not
9 concerned with the acceptance of the results of a particular study or of the particular testing
10 procedures followed in the case before the court.” *See State v. Russell*, 125 Wn.2d 24, 51
11 (1994).⁹ These concerns go to the testimony’s weight.

12 The WSDCC is also contradicting the dozens of courts throughout the country that
13 have used proportional deduction to decide election cases. *See* Table attached hereto as
14 Exhibit A. Despite the WSDCC’s claims that the cases are not relevant, it is reasonable to
15

16 seeking to explain whether illegal voters voted differently from valid voters, they are
17 determining the likelihood the illegal voters cast their ballots for a particular candidate.
18 Kat Dep. at 112-13. This is not the same problem. (The WSDCC recognizes that
19 Petitioners’ experts do not make an ecological inference later in the Motion, *see* WSDCC
20 Motion at 21, making their extended discussion of the inference irrelevant, *see id.* at 21-
21 23.) Even if Petitioners’ experts had drawn an ecological inference, the WSDCC’s expert
22 witness admitted that his and others criticisms have not stopped “social scientists,
23 journalists, courts, or ordinary folks from making” inferences with which the witness
24 disagrees. Expert Report of Christopher Adolph at 7. This suggests such testimony may
25 well be admissible under *Frye*, either because it is not novel or because it is generally
26 accepted. *See State v. Riker*, 123 Wn.2d 351, 359-60 (1994) (“Under the *Frye* standard, our
27 task is not to determine if the scientific theory underlying the proposed testimony is
correct; rather, we look to see whether it has achieved general acceptance in the
appropriate scientific community.”).

⁹ While the WSDCC cites Cho & Yoons as criticizing Petitioners’ previous
reference to *Garza*, it omits their admission that “there is substantive and empirical support
for neighborhood effects in the political science literature, and it has been validated on
some data sets where the answer is known.” Wendy K. Tam Cho & Albert H. Yoons,
*Strange Bedfellows: Politics, Courts and Statistics: Statistical Expert Testimony in Voting
Rights Cases*, 10 Cornell J.L. & Publ. Pol’y 237, 257 (2001).

1 infer from the actions taken by courts throughout the country that precinct-based
2 proportional deduction is generally accepted. These cases demonstrate conclusively that
3 courts believe this approach reflects the best available judgment on the distribution of
4 illegal votes.¹⁰

5 While the WSDCC cites *State v. Riker*, 123 Wn.2d 351 (1994), for the proposition
6 that Washington courts “exclude[] expert evidence even where it had been admitted in
7 previous cases for different purposes,” WSDCC Motion at 21. *Riker* involved expert
8 testimony extending battered woman syndrome to “a non-battering, non-intimate
9 relationship,” 123 Wn.2d at 363, a situation completely at odds with the fundamental
10 tenets of the defense. More applicable to the present case is *State v. Noltie*, 57 Wn. App.
11 21, 29 (1990), in which the Court refused to apply *Frye* when a well accepted tool —
12 essentially a microscope — was moved from diagnosing cancer to confirming accounts of
13 child abuse. Similarly, the Petitioners’ experts apply binomial and multinomial analyses
14 and the principle of insufficient reason to the illegal votes, as was done (binomially) in
15 *Marks*.

16 In addition, at least one court has held the “principle of insufficient reason,” see
17 Katz Report at 7, to be “generally accepted” under *Frye*. See *Kamner v. Young*, 73 Md.
18 App. 565, 576 (1988) (holding generally accepted under *Frye* expert opinion premised
19 upon the statement “[i]f you know nothing about a set of possibilities then the principle of

20 ¹⁰ The WSDCC complains about Petitioners’ previous reference to Uggen &
21 Manza. WSDCC Motion at 18-20. The WSDCC are correct in noting that Drs. Katz and
22 Gill’s opinions are not dependent on Uggen & Manza. However, their notion that “from a
23 common sense point of view, it is implausible that the demographic characteristics of the
24 other states analyzed by Uggen and Manza are applicable to Washington” is baseless. Most
25 notably, H.B. 2062, currently being considered by the Washington legislature, would
26 automatically restore a felon’s civil rights following the completion of her sentence. The
27 bill is sponsored by 10 Democrats and only 1 Republican. Indeed, there is a nationwide
trend of Democrats sponsoring bills expanding the franchise to felons who have completed
their sentences. See Table attached hereto as **Exhibit B**. Petitioners’ experts — or the
Court — could infer from this information that apportioning illegal votes pursuant to the
precinct results was a very conservative estimate.

1 insufficient reason says you are entitled to assign equal prior probability to those
2 alternatives.”). The Court should accordingly find that Petitioners’ expert witness
3 testimony is admissible under *Frye*.

4 The WSDCC makes much of its purported “gotcha” deposition questions to Drs.
5 Gill and Katz: “[i]s there anything generally accepted in your profession that allows [the
6 assumption that ex-felons vote like the rest of their precinct] to be safely made,” WSDCC
7 Motion at 4, and “[i]s there anything . . . that says, as a matter of generally accepted
8 science, that that expectation is, in fact, accurate,” *id.* at 7. This misstates the purpose of
9 the assumption that illegal voters cast their ballots in the same way that legal voters in the
10 same precincts—to neutrally control for the lack of information available in this election
11 contest. The deposition transcripts indicate that the WSDCC’s questions were asked in the
12 context of previous scientific studies, not regarding the proper way to control for
13 uncertainty, missing (or misrepresenting) the point of the assumption. In addition,
14 Petitioners’ experts cannot be expected to understand that the phrase “generally accepted”
15 has a secondary legal meaning. If the WSDCC’s counsel had instead asked Drs. Katz and
16 Gill whether applying the principle of insufficient reason in light of the lack of available
17 information is generally accepted in their field in assessing the data known to Petitioners’
18 experts, they would have answered differently.

19 2. Petitioners’ Expert Testimony Is Admissible Under ER 702

20 In addition to being generally accepted by the scientific community, expert
21 testimony must be helpful to the trier of fact. *See Russell*, 125 Wn.2d at 51. The Court --
22 agreeing with the Secretary of State -- has previously stated that proportional deduction is
23 circumstantial evidence of affect of the illegal votes on the outcome of the election. *See*
24 *Oral Op. 2/4/05* at 5. The WSDCC suggests that proportional deduction is too simple to
25 necessitate expert testimony. *See WSDCC Motion at 1* (describing Petitioners’ expert
26 testimony as “basic arithmetic”). However, Petitioners’ expert witness testimony will assist
27

1 the Court in resolving this contest by explaining why the Court should deduct illegal votes
2 from each candidate's total vote by the percentage vote of the precinct in which the illegal
3 vote was cast, and by performing the necessary computations. Moreover, certain aspects of
4 the Petitioners' expert opinions, like confidence intervals, *see* Gill Dep. at 39-40, why the
5 principle of insufficient reason applies, *see* Katz Report at 7, and Dr. Gill's tipping point
6 analysis, *see* Gill Report at 8-14, are sufficiently technical as to necessitate expert
7 testimony. The WSDCC asks the Court to refuse expert testimony on a subject that, while
8 not beyond the grasp of lawyers and jurists, is one for which expert testimony would
9 greatly assist the Court. This defies common sense and prejudices fair adjudication of the
10 contest.

11 **C. Petitioners' Expert Testimony Is Based On Legally Sufficient Data.**

12 The WSDCC argues that Petitioners' expert testimony is unreliable because it is
13 not based on a complete census of all illegal votes. *See* WSDCC Motion at 26; *see also*
14 Katz Dep. at 19 (“[I]f the ultimate question here is did the invalid voters cause the election
15 of Governor Gregoire in the 2004 Washington election, would you agree that you cannot
16 state an opinion on that issue of factual causation without knowing whether, in fact, you
17 have an exhaustive census of the invalid voters.”).¹¹ This argument asks the wrong
18 question. Washington law does not require a complete census of illegal votes be proven in
19 an election contest; it requires Petitioners prove that a sufficient number of illegal votes
20 were cast for the putative victor so as to change the election's outcome.

21 RCW 29A.68.100 states:

22 No testimony may be received as to any illegal votes unless
23 the party contesting the election delivers to the opposite

24 ¹¹ The WSDCC position that Drs. Katz and Gill must testify to all illegal votes in
25 the state appears to be based on word games. The WSDCC quotes Petitioners' statement
26 that they had until April 15 to disclose “all illegal votes and errors,” and represent this to
27 mean all illegal votes in the state. *See* WSDCC Motion at 11. This is nonsense since no one
could possibly represent to this Court they have a complete list of all illegal votes.

Petitioners believe it self-evident that this statement referred to the RCW 29A.68.100 list.
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1 party, at least three days before trial, a written list of the
2 number of illegal votes and by whom given, that the
3 contesting party intends to prove at the trial. No testimony
4 may be received as to any illegal votes, except as to such as
5 are specified in the list.

6 (Emphasis added.) RCW 29A.68.100's requirement that only testimony about "illegal
7 votes specified in the list" may be received at trial should be read in conjunction with
8 RCW 29A.68.110, which states:

9 No election may be set aside on account of illegal votes,
10 unless it appears that an amount of illegal votes has been
11 given to the person whose right is being contested that, if
12 taken from that person, would reduce the number of the
13 person's legal votes below the number of votes given to
14 some other person for the same office, after deducting
15 therefrom the illegal votes that may be shown to have been
16 given to the other person.

17 Together, RCW 29A.68.100 and RCW 29A.68.110 create a scheme for challenging illegal
18 votes. RCW 29A.68.100 specifies the illegal votes on which the Court may hear evidence,
19 RCW 29A.68.110 specifies what Petitioners must show through the list. Petitioners prevail
20 if they make this showing. By restricting testimony to the illegal votes "specified in the
21 list," the Washington legislature clearly contemplated that an election contestant would not
22 need prove the whole universe of illegal votes in the State, or anything else about votes not
23 on the list, to successfully contest an election. Petitioners' experts will thus testify about
24 what the illegal votes specified in the list (and the illegal votes introduced by the WSDCC)
25 show.

26 Indeed, it may be that the testimony WSDCC complains is missing would be
27 inadmissible at trial. The plain language of RCW 29A.68.100 states that "No testimony
may be received as to any illegal votes, except as to such as are specified in the list."
Petitioners (and assumedly the WSDCC) have created a list of illegal votes. If a
"representative sampling" necessitates counting illegal votes not on the list, any testimony

1 about the sampling would be testimony “as to” illegal votes not on the list. Regardless of
2 whether the list is representative, a strict construction of RCW 29A.68.100 limits
3 testimony only to the votes on the list — not other illegal votes, and not the characteristics
4 of other illegal votes. The Court should ignore WSDCC’s attempts to recast this statutory
5 mandate as a methodological problem.

6 Ironically, the WSDCC has tacitly acknowledged the impropriety of what it now
7 argues Petitioners’ experts must prove.¹² In the WSDCC’s Motion for Partial Summary
8 Judgment on Petitioners’ Claim of Non-Citizen Voters, the WSDCC argued that it would
9 be improper for Petitioners’ experts to consider the illegal votes of non-citizens that were
10 not challenged on or before the election. Petitioners did not oppose the motion. However,
11 having recognized that not all illegal votes cast in the 2004 gubernatorial election are at
12 issue in this contest, the WSDCC cannot now reverse field and argue that Petitioners’
13 expert testimony is incorrect because Petitioners did not base their analysis on these or
14 other votes WSDCC argues Petitioners may not contest under the statute.

15 **D. The WSDCC’s Assertion That The Court May Dispose Of The Election**
16 **Contest If It Excludes Petitioners’ Experts Is Incorrect.**

17 Even if the Court were to exclude Petitioners’ expert testimony, the WSDCC’s
18 statement that “the Court may dispose of the case” is incorrect. The Court has stated that
19 proportional deduction is circumstantial evidence of who received more votes in the 2004
20 gubernatorial election, *see* Oral Op. 2/4/05 at 5, and denied the WSDCC’s Motion in
21 Limine to Exclude Petitioners’ Attribution of Illegal Votes, *see* Oral Op. 5/2/05. The
22 instant motion concerns only the admissibility of Petitioners’ expert testimony under ER
23

24 ¹² In a similar vein, the WSDCC notes that it is possible “every single allegedly
25 invalid voter actually voted for Dino Rossi.” WSDCC Motion at 8. The flipside is likewise
26 true: every illegal voter may have voted for Ms. Gregoire. This possibility does not
27 undermine Petitioners’ expert testimony, it bolsters Petitioners’ assertions that the outcome
of the 2004 gubernatorial election, if not clearly for Mr. Rossi, is sufficiently in doubt that
a new election is warranted.

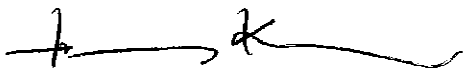
1 702 and *Frye*. Accordingly, if the Court were to exclude Petitioners' expert testimony, the
2 Court's denial of the prior Motion in Limine would hold and Petitioners would be able to
3 introduce evidence of proportional deduction through fact witnesses, as has been done in
4 other election contests. The Petitioners would also continue in their argument that neglect
5 and mistakes permitted fraud (such as casting ballots on behalf of dead people or placing
6 provisional ballots directly into tabulating machines so as to vote multiple times) to occur
7 in sufficient volume to effect the certified results of election.

8 **IV. CONCLUSION**

9 For the foregoing reasons, the WSDCC's Motion to Exclude Expert Testimony of
10 Anthony M. Gill and Jonathan N. Katz should be denied.

11 DATED this 20th day of May, 2005.

12 Davis Wright Tremaine LLP
13 Attorneys for Petitioners

14
15 By 
16 Harry J.F. Korrell, WSBA #23173
17 Robert J. Maguire, WSBA #29909

18 Baker & Hostetler LLP
19 Attorneys for Petitioners

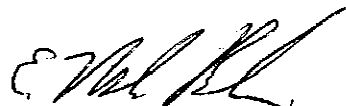
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21 By 
22 E. Mark Braden
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EXHIBIT A

Election Contests Applying Proportional Deduction¹

<u>State</u>	<u>Cases</u>	<u>Type</u>	<u>Overtured or Decided²</u>
Alaska	<i>Finkelstein v. Stout</i> , 774 P.2d 786 (1989)	Recount	No
	<i>Hammond v. Hickel</i> , 588 P.2d 256 (1978)	Contest	No
Arizona	<i>Huggins v. Superior Court</i> , 163 Ariz. 348 (1990)	Contest	No
	<i>Clay v. Gilbert</i> , 160 Ariz. 335 (1989)	Contest	No
	<i>Grounds v. Lawe</i> , 67 Ariz. 176 (1948)	Contest	No
Illinois	<i>In re Durkin</i> , 299 Ill. App. 3d 192 (1998)	Contest	No
	<i>O'Neal v. Shaw</i> , 248 Ill. App. 3d 632 (1993)	Contest	Yes
	<i>People ex rel. Ciaccio v. Martin</i> , 220 Ill. App. 3d 89 (1991)	Contest	Yes
	<i>Gribble v. Willeford</i> , 190 Ill. App. 3d 610 (1989)	Contest	No
	<i>Jordan v. Officer</i> , 170 Ill. App. 3d 776 (1988)	Contest	No
	<i>Frese v. Camferdam</i> , 76 Ill. App. 3d 68 (1979)	Contest	Yes
	<i>Menssen v. Eureka Unit School Dist. No. 140</i> , 70 Ill. App. 3d 9 (1979)	Contest* ³	No
	<i>Whitsell v. Davis</i> , 67 Ill. App. 3d 962 (1978)	Contest	No
	<i>Leach v. Johnson</i> , 20 Ill. App. 3d 713 (1974)	Contest	No
	<i>Webb v. Benton Consol. High Sch. Dist. No. 103</i> , 130 Ill. App. 2d 824 (1970)	Contest*	No
	<i>Drolet v. Stentz</i> , 83 Ill. App. 2d 202 (1967)	Contest	No
	<i>Thornton v. Gardner</i> , 30 Ill. 2d 234 (1964)	Contest	No
	<i>Dirst v. McDonald</i> , 372 Ill. 498 (1939)	Contest	Yes
	<i>Boland v. La Salle</i> , 370 Ill. 387 (1938) ⁴	Contest*	Yes
	<i>Neff v. George</i> , 364 Ill. 306 (1936) ⁵	Contest	No
<i>Rhyan v. Johnson</i> , 364 Ill. 35 (1936)	Contest	Yes	
<i>McNabb v. Hamilton</i> , 349 Ill. 209 (1932) ⁶	Contest	Yes	
<i>Stevenson v. Baker</i> , 347 Ill. 304 (1932)	Contest	Yes	
<i>Talbott v. Thompson</i> , 350 Ill. 86 (1932)	Contest	No	
<i>Flowers v. Kellar</i> , 322 Ill. 265 (1926)	Contest	No	
<i>Humphrey v. Perry</i> , 310 Ill. 373 (1923)	Contest	No	

¹ The cases listed *infra* hold that proportional deduction is appropriate. The table does not include cases approving of proportional deduction in dicta.

² "Overtured" means the appellate court's decision affirmed a lower court decision apportioning votes to reverse the outcome of an election or recount, where apportionment is necessary for reversal.

³ Cases marked with an asterisk involve referenda rather than candidates.

⁴ Overruled on other grounds.

⁵ Overruled on other grounds.

⁶ Overruled on other grounds.

	<i>Choisser v. York</i> , 211 Ill. 56 (1904)	Contest	No
California	<i>Singletary v. Kelley</i> , 242 Cal. App. 2d 611 (1966)	Contest*	No
	<i>Russell v. McDowell</i> , 83 Cal. 70 (1890)	Contest	No
Kansas	<i>Parker v. Hughes</i> , 64 Kan. 216 (1902)	Contest	No
Tennessee	<i>Moore v. Sharp</i> , 98 Tenn. 491 (1896)	Contest	No
Michigan	<i>Gracey v. Grosse Pointe Farms Clerk</i> , 182 Mich. App. 193 (1989)	Contest	No
	<i>Attorney General ex rel. Miller v. Miller</i> , 266 Mich. 127 (1934)	Contest	No
	<i>Ellis ex rel. Reynolds v. May</i> , 99 Mich. 538 (1894)	Contest	Yes
Montana	<i>Gervais v. Rolfe</i> , 57 Mont. 209 (1920)	Contest	No
	<i>Heyfron v. Mahoney</i> , 9 Mont. 497 (1890)	Contest	Yes
Wisconsin	<i>Ollmann v. Kowalewski</i> , 238 Wis. 574 (1941)	Contest	Yes
North Dakota	<i>Drinkwater v. Nelson</i> , 48 N.D. 871 (1922)	Contest	No

EXHIBIT B

STATE	BILL #			
Alabama	HB351	To provide persons convicted of a felony to have their right to vote automatically restored after release from the Department of Corrections and while continuing on probation or parole if he or she has maintained steady employment, paid taxes, and maintained a crime-free status for a period of one year since release.	2/8/05 - Pending Committee Action (Constitution and Elections) (House)	Alvin Holmes (D, 78)
Alaska	SB26 - "Felons' Right to Vote"	To permit all but those felons in state or federal custody to vote.	2/16/05 - Referred to the State Affairs and Judiciary Committees	Bettye Davis (D, District K)
Alaska	HB139	To provide an effective date to permit all but those felons in state or federal custody to vote.	3/4/05 - Referred to State Affairs Committee (House)	Beth Kerttula (D, 23)
Arizona	HB2490	To provide for automatic restoration of civil rights for persons completing probation or absolutely discharged from imprisonment.	1/24/05 - Second Reading (House)	Ted Downing (D, 28), Ann Kirkpatrick (D, 2), Phil Lopes (D, 27), Pete Rios (23, D), Krysten Sinema (15, D)
California	AB821	Require county elections officials to ascertain the names of persons, including those not yet convicted who are in a custodial facility awaiting a court hearing or sentencing for a minor offense, inmates who are serving a sentence for a traffic offense or misdemeanor conviction, inmates who are not currently sentenced to a prison term or on parole for a felony conviction, and persons who have completed a sentence for a felony conviction, so that the county elections official may notify them of their right to vote, as specified.	4/26/05 - Read Second time and amended	Mark Ridley-Thomas (D, 48)
Connecticut	HB5278 - "An Act Concerning the Restoration of Electoral Privileges"	To provide that a person who has been convicted of a felony and has been discharged from confinement for many years does not need to obtain written proof of such discharge in order to have their electoral privileges restored.	1/18/05 - Referred to Joint Committee on Government Administration and Elections Committee	Marie Lopez Kirkey Bey (D, 5), Toni Walker (D, 93)

STATE	BILL #				
Connecticut	HB5666 - "An Act Concerning the Procedure for the Restoration of Voting Rights for Felons Discharged from Confinement and Parole"	To modify the procedure for the restoration of voting rights for a person convicted of a felony by eliminating the requirement that the person, after paying fines in conjunction with the conviction and being discharged from confinement and, if applicable, parole, provide a document from the Commissioner of Correction certifying such discharge to the admitting official.	1/20/05 - Referred to Committee on Government Administration and Elections 2/10/05 - Public Hearing	Tim O'Brien (D, 24th), Evelyn Mantilla (D, 4), Felipe Reinoso (D, 130th)	
Connecticut	HB6082 - "An Act Concerning the Restoration of Electoral Privileges	To provide that a person who has been convicted of a felony and is no longer in the custody of, or under the supervision of, the Department of Correction shall not be required to contact and obtain a letter from the department in order for their electoral rights to be restored.	1/24/05 - Referred to Joint Committee on Government Administration and Elections	Kirkley-Bay (D, 5), Rep. Walker (D, 93)	
Florida	HJR271	Proposes an amendment to the State Constitution to authorize the Legislature to provide the conditions under which a convicted felon's right to register or vote may be restored by statute.	3/8/05 - First Reading	Bendross-Mindingall (D, 109)	
Florida	HJR1363 - "Right to Vote and Hold Office"	To provide that a felony offender whose offense did not involve the use or threat of physical force or violence against any person would no longer be disqualified from voting and holding office and one whose offense did involve the use or threat of physical force or violence against any person would have such disqualification removed once released from incarceration and post-conviction supervision.	4/13/05 - Temporarily Deferred	Roberson (D, 104)	
Florida	HB269	Provides for automatic restoration of former felons' right to vote following completion and satisfaction of sentence of incarceration and community supervision; provides conditions for such automatic restoration; provides effect contingent on passage of authorizing constitutional amendment.	4/13/05 - Temporarily Deferred	Bendross-Mindingall (D, 109)	

STATE	BILL #				
Florida	HB1653 - "Restoration of Civil Rights of Persons Exonerated of Felony Convictions" Identical to SB146	Provides automatic restoration of the civil rights of a person convicted of a felony who is subsequently exonerated of the offense; amends provisions relating to qualifications to register or vote.	3/23/05 - Criminal Justice Committee	Jennings (D, 81)	
Florida	SJR1190 Linked to SB132	Constitutional amendment to restore felony offender's right to vote & hold office upon his or her release from incarceration & post-conviction supervision.	4/27/05 - In Judiciary Committee	Wilson (D, 30)	
Florida	SB132 - "Citizens' Empowerment Act"	Provides for automatic restoration of former felons' right to vote following completion & satisfaction of sentence of incarceration & community supervision; provides conditions for such automatic restoration.	03/08/05 - Introduced, referred to Ethics and Elections; Criminal Justice; Judiciary	Dawson (D, 29)	
Florida	SB146	Identical to <u>HR1653</u>	03/08/05 - Introduced, referred to Ethics and Elections; Criminal Justice; Judiciary	Lynn (R, 7)	
Florida	SJR148 Linked to SB146	Constitutional amendment to allow Legislature to restore rights to vote & to hold office of person convicted of felony who is subsequently exonerated of offense.	03/08/05 - Introduced, referred to Ethics and Elections; Criminal Justice; Judiciary; Rules and Calendar	Lynn (R, 7)	
Florida	SJR130	A constitutional amendment to authorize Legislature to provide conditions under which convicted felon's right to register or vote may be restored by statute; deletes inoperative provisions re term limits for members of Congress & U.S. Senators, which provisions have been determined by U.S. Supreme Court to violate U.S. Constitution. Amends s. 4, Art VI.	3/8/05 - Introduced, referred to Ethics and Elections; Criminal Justice; Judiciary; Rules and Calendar	Dawson (D, 29)	
Florida	SB514	Requires each board of county commissioners to ensure that certain prisoners in county detention facility receive information concerning process for requesting restoration of prisoner's civil rights; requires that each such prisoner be assisted in initiating process; provides that requirement does not apply to prisoners who are transferred to DOC.	4/27/05 - Placed on Special Order Calendar	Wilson (D, 30)	

STATE	BILL #			
Hawaii	SB5 - "Convicted Felons: Right to Vote"	Allows convicted felons voting rights in elections	1/27/05 - Referred to Judiciary & Hawaiian Affairs	Chun Oakland (D, 13)
Hawaii	SB565 - "Felons Right to Vote; Constitutional Amendment"	Amendment to the state constitution to allow persons convicted of felonies to vote.	1/31/05 - Referred to Judiciary & Hawaiian Affairs, Ways & Means	Chun Oakland (D, 13)
Illinois	HB114	Amends the Election Code: specifies that confinement or detention in a jail or prison pending acquittal or conviction of a crime is not a disqualification for voting. Makes confinement or detention a specified reason for absentee voting.	4/20/05 - Placed on Calendar Order of 2nd Reading (S)	Sara Feigenholtz (D, 12), John J. Cullerton (D, 6)
Illinois	HB1454	Amends the Election Code: specifies that confinement or detention in a jail or prison pending acquittal or conviction of a crime is not a disqualification for voting. Makes such confinement or detention a specified reason for absentee voting.	3/10/05 - Re-referred to Rules Committee	John A. Fritchey (D, 11)
Iowa	HF75 - same as HF80	To provide for the restoration of the right to vote and hold elective office for certain persons who have made full restitution and who have been discharged from probation, parole, or work release, or who have been released from confinement.	1/14/05 - Introduced, referred to State Government 1/20/05 - Subcommittee, State Government	Raecker (R, 63), Elgin (R, 37)
Iowa	HF80 - same as HF75	To automatically restore the right to vote and hold elective office for certain persons who have made full restitution and who have been discharged from probation, parole, or work release, or who have been released from confinement.	1/19/05 - Introduced, referred to State Government 1/20/05 - Subcommittee, State Government	Jochum (D, 27)
Iowa	SF63	To provide for the restoration of the right to vote and hold elective office for certain persons.	1/25/05 - Introduced, referred to State Government 1/26/05 - Subcommittee, State Government	Bolkcom (D, 39)
Kentucky	HB384	To permit persons convicted of a felony to vote.	2/10/05 - Sent to Elections, Const. Amendments & Intergovernmental Affairs (House) 2/15/05 - Posted in Committee	T. Riner (D, 41)

STATE	BILL #				
Kentucky	SB177	To require automatic restoration of civil rights, under specified circumstances, for persons convicted of felonies by distinguishing the requirements based upon the length and completion of prison sentence; to require automatic removal of the disability of certain felons to serve in public office, under specified circumstances.	2/14/05 - Sent to State and Local Government	G. Neal, D. Harper Angel (D, 35)	
Maryland	HB12 Crossfiled with SB462	Altering specified qualifications for voter registration; providing that an individual is not qualified to register to vote if the individual has been convicted of a crime and is awaiting or actually serving a sentence of imprisonment for the conviction; repealing specified conditions relating to the eligibility of felons convicted of specified crimes of violence to register to vote; etc.	1/18/05 - Hearing set for 1/26/05	Marrlott (D, 40), Patterson (D, 26), and Cane (D, 37) Exum (D, 24), Britt (D, 47), Conway (D, 38), Gladden (D, 41), Grosfeld (D, 15), Hughes (D, 40), Jones (D, 44)	
Maryland	HB126	Altering the qualifications for voter registration to allow individuals convicted of specified crimes to qualify to register to vote on completion of the sentence imposed and on release from correctional custody; repealing a prohibition that disqualifies felons convicted of a specified subsequent crime from being qualified to register until a specified period has elapsed; repealing the absolute voting disqualification applicable to individuals convicted multiple times of specified crimes; etc.	2/14/05 - Withdrawn	Holmes (R, 23B)	
Maryland	SB462 - "Voter Registration Eligibility Requirements - Convicted Criminals" Crossfiled with HB12	Altering specified qualifications for voter registration; providing that an individual is not qualified to register to vote if the individual has been convicted of a crime and is awaiting or actually serving a sentence of imprisonment for the conviction; repealing specified conditions relating to the eligibility of felons convicted of specified crimes of violence to register to vote; etc.	3/24/05 - Unfavorable Report by Education Health and Environmental Affairs	Exum (D, 24), Britt (D, 47), Conway (D, 38), Gladden (D, 41), Grosfeld (D, 15), Hughes (D, 40), Jones (D, 44) Marrlott (D, 40), Patterson (D, 26), and Cane (D, 37)	

STATE	BILL #				
Minnesota	HF607 Companion bill - SF1752 -	The bill would restore the right to vote to a convicted felon who is not incarcerated but may still be under some form of supervision; Requires the commissioner of corrections to notify an individual released from incarceration that the individual is restored to civil rights and has the right to vote while on supervised release, conditional release, or parole, or has completed all of these; Requires the chief executive office of a local correctional facility to notify an individual released from incarceration that the individual is restored to civil rights and is eligible to vote.	1/31/05 - Introduction and first reading, referred to Civil Law and Elections (House)	Elison (D, 58); Mariani (D, 65); Rukavina (D, 05A); Sertich (D, 5); Kahn (D, 59B); Nelson, M. (D46A)	
Minnesota	HF778 - Companion bill SF1292	Voting eligibility notice provision to certain offenders required.	2/3/05 - Introduction and first reading, referred to Civil Law and Elections (House)	Elison (D, 58); Walker (R, 104); Clark (R, 74)	
Minnesota	SF1292	Criminal offenders notice of eligibility to vote.	2/28/05 - Referred to Crime Prevention and Public Safety (Senate)	Moua (D, 67); Higgins (D, 27); Chaudhary (D, 50)	
Minnesota	SF1752 - Companion bill HF607	To restore civil rights and eligibility to vote to certain convicted felons no longer incarcerated, specifying certain notice requirements of the commissioner of corrections or chief executive officers of local correctional facilities.	3/17/05 - Introduction and First Reading. Referred to Elections	Holtinger (D, 23); Higgins (D, 27)	
Mississippi	HB382	An Act to amend sections of state code that prohibit the issuance of an absentee ballot to incarcerated persons.	2/1/05 - Died in Committee	Rotenberry (R, 77)	
Mississippi	HB54	An Act to amend sections of the state code that prohibit persons who have been convicted in a court of this state or any other state or in any federal court of any felony from being a qualified elector.	2/1/05 - Died In Committee (House)	Denny (R, 64), Fillingane (R, 101), Martinson (R, 59), Lott (R 104)	
Mississippi	SCR504	A concurrent resolution proposing an amendment to section 241, Mississippi Constitution of 1890, to provide that persons convicted of a felony shall not be eligible to vote.	2/1/05 - Died In Committee (Senate)	Nunnelee (R, 6)	

STATE	BILL #			
Missouri	SB542	No person shall qualify as a candidate for elective public office in the state of Missouri who has been convicted of or pled guilty to a felony or misdemeanor under the federal laws of the United States.	4/27/05 - S Formal Calendar S Bills for Perfection	Callahan (R, 35)
Nebraska	LB53	To restore a felon's right to vote upon completion of his or her felony sentence, including parole. Upon completion of the sentence, the felon's right to vote is automatically restored.	3/8/05 - Presented to Governor 3/9/05 - Returned by Governor without approval 3/9/05 - Motion to override veto printed 3/10/05 - Override veto passed 3/14/05 - Explanation of vote	Schimek (D, 27), Chambers (D, 11), Kruse (D, 13) Dw. Pedersen (D, 39)
New Jersey	S1031	Allows persons on probation and certain persons on parole to vote; provides assistance in registering to vote to persons on probation, certain parolees and certain persons completing sentences.	1/11/2005 - Withdrawn from Consideration	Wayne Bryant (D, 5), Shirley Turner (D, 15)
New Jersey	S2215	Allows certain persons on parole and probation to vote.	3/21/05 - Senate Substitution	Wayne Bryant (D, 5), Shirley Turner (D, 15)
New Mexico	HB64	Requiring the Corrections Department and Court Clerks to notify the Secretary of the State when a person convicted of felony becomes eligible for registration; requiring the Corrections Department to provide a certificate of completion to a person convicted of a felony who has satisfied all conditions of a sentence.	4/4/05 - Signed by governor	Gail C. Beam (D, 18)
New York	A731	Grants a convicted felon the right to register to vote at any election at such time that he is released from imprisonment on parole; includes state felony conviction, federal felony conviction and conviction in another state for a crime or offense which would constitute a felony under the laws of this state.	1/18/05 - Referred to Election Law	Benjamin Wright
Oklahoma	HB1843	Incarcerated felons shall be ineligible for registration for the duration of incarceration; however, while on probation or parole a person may petition the State Election Board for voter registration.	2/8/05 - Second Reading referred to Rules	Shumate (D, Tulsa)

STATE	BILL #			
Oklahoma	SB662	Incarcerated felons shall be ineligible for registration for the duration of incarceration, however, while on probation or parole a person may petition the State Election Board for voter registration.	2/9/05 - Second Reading referred to General Government	Eason McIntyre (D, 11)
South Dakota	HB1007	Deletes provision allowing county auditor to request that a convicted felon provide the proper release documents, certifying that the entire sentences has been completed, to the county auditor when registering to vote.	2/2/05 - Signed by Governor	The Committee on Local Government at the request of the Secretary of State
Texas	HB429	To require the Texas Department of Criminal Justice to provide notice to certain persons of the right to vote.	4/27/05 - Scheduled for public hearing	Dutton (D, 142)
Virginia	HB2755	Eliminates the requirement that persons convicted of nonviolent felonies must wait five years after completion of sentence to petition through the courts for restoration of their right to vote.	1/28/05 - Tabled in Courts of Justice	Bland (D, 9)
Virginia	SB82 (Carried over from 2004)	Provides that a person convicted of a felony for the distribution of marijuana or possession with the intent to distribute marijuana where the amount of marijuana was five pounds or less, who completed his sentence at least 10 years previously and has no other criminal convictions can petition for restoration of his civil right to be eligible to vote. The existing Code requirement of the demonstration of civic responsibility through community or comparable service will apply. In addition, the applicant must go through the procedure established by the Governor, who will determine whether to grant the petition.	12/10/04 - Left in M., P. & P. S. (House)	Puller (D, 11)
Washington	HB2062	Restores a convicted felon's right to vote if he or she has completed all the requirements of his or her sentence except payment of legal financial obligations.	3/16/05 - Referred to Rules Consideration	Darnelle (D, 27), Nixon (R, 45), Simpson (D, 47), Hunt (D, 22), Uptegrove (D, 33), Green (D, 28), Chase (D, 32), Dickerson (D, 36), Moeller (D, 49), Flannigan (D, 27) and Pettigrew (D, 37)

STATE	BILL #			
Washington	SB5743 Companion Bill1753	Enhancing voter registration recordkeeping.	4/4/05 - Passed to Rules Committee for second reading. (House)	Kastama (D, 25), Roach (R, 31), Fairley (D, 32), Benson (R, 6), Berkeley (D, 38), Haugen (D, 10) McAuliffe (D, 1), Shin (D, 21), Parlette (R, 12), Keiser (D, 33), Mulliken (R, 13) and Rockefeller (D, 23); by request of Secretary of State

1 3. On May 20, 2005, I caused the documents listed below:

2 **Petitioners' Opposition to Washington State Democratic Central**
3 **Committee's Motion to Exclude Expert Testimony of Anthony M. Gill**
4 **and Jonathan N. Katz**

5 **Certificate of Service**

6 to be filed with the Clerk of Chelan County Superior Court via Electronic Filing Legal
7 Services (E-Filing.com) which sent notification of such filing to the following persons,
8 with this Certificate to follow:

9 **Kevin Hamilton, Esq.**

10 Perkins Coie LLP
11 Attorneys for Washington State Democratic
12 Central Committee
13 1201 Third Avenue, Suite 4800
14 Seattle, WA 98101

15 **Thomas Ahearne**

16 For: Secretary of State Sam Reed
17 Foster Pepper & Shefelman
18 1111 Third Avenue, Suite 3400
19 Seattle WA 98101

20 **Russell J. Speidel**

21 Speidel Law Firm
22 7 North Wenatchee Avenue, Suite 600
23 Wenatchee, WA 98807

24 **Richard Shepard**

25 **John S. Mills**
26 For: Libertarians
27 Shepard Law Office, Inc.
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29 Tacoma, WA 98405

30 **Dale M. Foreman**

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32 Zimmerman P.S.
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36 **Tim O'Neill**

37 Klickitat County Prosecuting Attorney
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50 For: Klickitat County Auditor
51 Kalikow & Gusa PLLC
52 1405 Harrison Avenue NW, Suite 207
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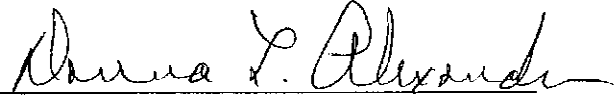
54 **Jeffrey T. Even, Asst. Attorney General**

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58 Olympia WA 98504-0100

1 **Gorden Sivley**
2 **Michael C. Held**
3 Snohomish County Deputy Prosecuting
4 Attorneys
5 2918 Colby Avenue, Suite 203
6 Everett WA 98201-4011

7 I certify under penalty of perjury under the laws of the State of Washington that the
8 foregoing is true and correct.

9 DATED this 20th day of May, 2005, at Seattle, Washington.

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11 Donna L. Alexander
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