

1 Democrat Intervenor’s motion is predicated, at least in part, upon the understanding
2 that CFR’s do not contain information sufficient to prove that a particular person was
3 convicted of a felony. Intervenor Democrats explain that, in their understanding, a CFR
4 provides information identifying a person, information as to whether a criminal case was
5 resolved by guilty plea or trial and the date of completion, as well as information as to the
6 original charges filed against the person. According to Intervenor Democrats, the documents
7 do not set forth the specific offenses for which the individual was convicted and do not state
8 whether the person was convicted of a felony or a misdemeanor. Motion at 1-2.

9 The record presently before the Court is not sufficiently detailed or helpful in order to
10 determine the nature of the records that are the subject of this Motion. Democrat Intervenor
11 have failed to establish what these documents are, under what circumstances they are
12 generated, and for purpose they are generated. Given this lack of context, it would be
13 premature for this Court to rule upon the sufficiency of this evidence based upon this record.
14 Petitioners should, instead, be permitted to lay a proper foundation for admission of this
15 evidence, potentially including *voir dire* by other parties as to its nature and foundation. Only
16 then will the Court be in a position to rule upon its sufficiency or admissibility.

17 It is true (as Democrat Intervenor discuss) that, in the context of criminal sentencing,
18 the ordinary method approved by Washington law for proving a felony conviction is the
19 introduction into evidence of a felony judgment and sentence. *State v. Mitchell*, 81 Wn. App.
20 387, 390, 914 P.2d 771 (1996) (“The best evidence of a prior conviction is a certified copy of
21 the judgment of conviction . . . but the State may use any documents of record or transcripts of
22 prior proceedings to establish criminal history.”). The court of appeals has held that an NCIC
23 report (or “FBI rap sheet”) is insufficient, by itself, to prove a conviction. *State v. Gill*, 103
24 Wn. App. 435, 449, 13 P.3d 646 (2000).

25 It is also true, however, that the Legislature has directed county auditors to cancel the
26 registration of a voter “upon receiving official notice of a person’s conviction of a felony in

1 either state or federal court”. RCW 29A.08.520. That statute does not require that the notice
2 come in the specific form of a felony judgment and sentence, and therefore establishes that in
3 the context of voter registration, there may be other documents that are sufficient to provide a
4 legal basis for cancellation of a registration.

5 Given this background, and given the absence of sufficient contextual information in
6 Democrat Intervenor’s Motion to clearly establish the nature, source, and purpose of the
7 documents at issue, it would be premature for this Court to rule based on this record as to the
8 admissibility or evidentiary sufficiency of the documents at issue. Accordingly, the Secretary
9 respectfully suggests that this Court deny this Motion without prejudice. After Petitioners are
10 afforded at trial the opportunity to establish a sufficient evidentiary foundation to support the
11 admissibility of this evidence, the Court may consider again the question of whether these
12 records are admissible or sufficient based upon a record that clearly shows their nature,
13 source, and purpose.

14 DATED this 19th day of May, 2005.

15 ROB MCKENNA
16 Attorney General

17 Maureen Hart, WSBA No. 7831
18 Solicitor General

19 /s/ _____
20 Jeffrey T. Even, WSBA No. 20367
21 Assistant Attorney General

22 FOSTER PEPPER & SHEFELMAN PLLC
23 Special Assistant Attorneys General
24 Thomas F. Ahearne, WSBA No. 14844
25 Hugh D. Spitzer, WSBA No. 5827
26 Marco J. Magnano, WSBA No. 1293

Attorneys for Respondent Secretary
of State Sam Reed