

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF WASHINGTON
COUNTY OF CHELAN

TIMOTHY BORDERS, THOMAS
CANTERBURY, TOM HUFF, MARGIE
FERRIS, PAUL ELVIG, EDWARD
MONAGHAN, and CHRISTOPHER VANCE,
WASHINGTON RESIDENTS AND
ELECTORS, and the ROSSI FOR GOVERNOR
CHAMPAIGN, a candidate committee,

Petitioners,

v.

KING COUNTY and DEAN LOGAN, its
Director of Records, Elections and Licensing
services; et al.,

Respondents.

No. 05-2-00027-3

DEFENDANTS, BENTON COUNTY AND
BENTON COUNTY AUDITOR BOBBIE
GAGNER’S OPPOSITION TO
PETITIONERS’ MOTION FOR EXPEDITED
DISCOVERY

I. INTRODUCTION

Without waiving objections to improper jurisdiction, venue, service, and timeliness of notice of hearing, Benton County and Benton County Auditor Bobbie Gagner, (hereinafter referred to as “Benton County”) request this Court deny petitioners’ Motion for Expedited Discovery on the grounds that venue is improper, timeliness of notice of hearing is insufficient, and such expedition will be unduly burdensome.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

II. PROCEDURAL HISTORY

On January 7, 2005, the Rossi for Governor Campaign and seven Washington State registered voters filed an Election Contest, claiming that Benton County committed errors, omissions, misconduct, neglect and other wrongful acts in the 2004 election for the Office of Governor and asking this Court to declare the election void and set it aside, and impose election procedures for Benton County to follow. In addition, the petitioners filed a Motion for Expedited Discovery asking that this Court compel responses to request for production of documents and interrogatories within 10 calendar days of service of said discovery and grant leave to compel depositions on two days' notice to a deponent. Petitioners noted a hearing on the Motion for this Friday, January 14, at 9:30 a.m. Benton County received (with improper summons) a copy of the Election Contest, Motion for Expedited Discovery and Note for Motion Docket on Monday January 10, 2005. Discovery requests were received on Tuesday, January 12, 2005.

III. ARGUMENT

17
18
19
20
21
22
23
24
25
26

A. Improper Venue

Petitioners improperly ask the Chelan County Court to determine when Benton County must respond to discovery requests and produce its representatives for deposition. Benton County, Yakima County or Kittitas County are the proper venues for an action claiming wrongdoing on the part of Benton County in performing its election duties in Benton County. RCW 36.10.050 provides that an action against a county shall be brought in the Superior Court of such county or the two nearest judicial districts. RCW 36.10.050. RCW 4.12.020 provides that an action against a public official shall be tried in the county where the cause or some part of arose. RCW 4.12.020.

27
28

Petitioners are requesting extensive documentation and information regarding the 2004 general election in their thirty-three interrogatories, (including thirty-one additional subparts) and eighteen

1 request for production (including nine additional subparts).¹ Benton County’s actions associated with
2 the election arose in Benton County. To respond to the discovery requests, Benton County must
3 review thousands of pages of documents located in Benton County; the election duties fulfilled by
4 Benton County were performed in Benton County, and the Election Board and election officials are all
5 located in Benton County. Benton County and its Auditor performed noting in Chelan County and
6 venue is not proper there.
7

8 **B. Timeliness of Hearing**

9
10 Benton County received a copy of Petitioners’ Note for Motion Docket on Monday, January
11 10; the hearing is set on Friday, January 14, only four days from the receipt of the Note by Benton
12 County. Pursuant to Civil Rule 5(d) for Superior Court, “[a] written motion, other than one which may
13 be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time
14 specified for the hearing, . . .” Washington State Superior Court Rule CR5(d). Petitioners have
15 violated this Court’s CR5(d); petitioners’ Motion for Expedited Discovery should be denied or at least
16 postponed until adequate response may be submitted.
17

18 **C. Unduly Burdensome Discovery**

19
20 Petitioners request that this Court issue an order setting a hearing to determine the election
21 contest within 20 days of the filing of their petition. Benton County agrees with, as petitioners quoted,
22 that “the spirit of the law dictates that contests instituted [under the election contest statute] shall be
23 promptly heard and determined.” Petitioners Motion for Expedited Discovery at page 5, on file herein.

24 However, justice should not allow petitioners to force the Benton County Auditor’s Office to
25

26
27 ¹ It is our understanding that this Court has a copy of the discovery requests for review and therefore the length
28 and expansiveness of the requests will not be discussed herein, but will be allowed to speak for themselves.

1 essentially shut down in order to meet petitioners’ timeline. Particularly given that Mr. Vance does not
2 specify Benton County as a county where more votes were counted than lawfully registered electors.
3 Affidavit of Chris Vance at ¶ 5, on file herein. Benton County is named as one of many counties who
4 followed instructions of the Secretary of State. Id. at ¶ 5. Benton County is not specifically named in
5 any of the other general allegations which Mr. Vance states “appear[ed]” to have occurred. Id.
6 generally.
7

8 As a result of the petitioners having no evidence or certainty of any wrongdoing on the part of
9 Benton County, they attempt to use this Court to force the Benton County Auditor to shut down her
10 office so as to be able to produce any and all election documents on extremely short notice.
11

12 In sum, the discovery requests served by petitioners on Benton County seek massive amounts
13 of documentation and written responses in an unduly burdensome amount of time; the Benton County
14 has no objection to providing any and all information regarding its election, however expedited
15 discovery as requested by petitioners is overly burdensome. Petitioners seek discovery responses, not
16 ten days from this Court’s ruling on expedited discovery, but ten days from service, or a week from the
17 hearing date. The Benton County Auditor has not only had to push aside general business for the
18 electronic recount, but also the hand recount of this election and it will be impossible for the Benton
19 County Auditor to guarantee that provision of proper responses to petitioners requests will be made
20 within the time requested.
21

22 Furthermore, requiring depositions on a two-day notice is also extremely burdensome. The
23 Benton County Auditor’s Office maintains three offices in Benton County due to the diversity of the
24 cities within the County. There would be a serious threat to the Auditor’s ability to continue to serve
25 the community if her employees or the Auditor herself is required to be out of the office on a two-day
26 notice.
27
28

1 **VI. CONCLUSION**

2 Fore the foregoing reasons, petitioners motion should be denied.

3
4
5 RESPECTFULLY SUBMITTED this 12th day of January, 2005

6 ANDY MILLER,
7 Prosecuting Attorney

8 s/Rea L. Culwell
9 REA L. CULWELL, Deputy
10 Prosecuting Attorney
11 Attorneys for Defendant
12 WSBA #32080
13 OFC ID 91004

14 **CERTIFICATE OF SERVICE**

15 I certify that on January 12, 2005, a copy of this document
16 was properly e-filed and/or e-mailed to:

- 17 TO: Clerk of the Court; and
- 18 TO: Thomas F. Ahearne, Jeffery A. Richard, Hugh D. Spitzer, Marco J. Magnano, Foster Pepper & Schefelman PLLC, 1111 Third Avenue, Ste. 3400, Seattle, WA 98101-3200; AND
- 19 TO: Robert Maguire, Harry J.F. Korrell, Davis Wright Tremaine LLP, Email: robmaguire@dwt.com, Email: harrykorrell@dwt.com; AND
- 20 TO: Janine Joly, Email: Janine.Joly@metrokc.gov; AND
- 21 TO: Lt. Governor Brad Owen, Email: owen_br@leg.wa.gov; AND
- 22 TO: Nancy McBroom, Adams County Auditor
Email: nancym@co.adams.wa.us; AND
- 23 TO: Elaine Johnston, Asotin County Auditor
Email: ejohnston@co.asotin.wa.us; AND
- 24 TO: Evelyn Arnold, Chelan County Auditor
Email: evelyn.arnold@co.chelan.wa.us; AND
- 25 TO: Cathleen McKeown, Clallam County Auditor
Email: cmckeown@co.clallam.wa.us; AND
- 26 TO: Greg Kimsey, Clark County Auditor
Email: greg.kimsey@co.clark.wa.us; AND
- 27 TO: Sharon Richter, Columbia County Auditor
Email: sharon_richter@co.columbia.wa.us; AND
- 28 TO: Kristina Swanson, Cowlitz County Auditor
Email: swansonk@co.cowlitz.wa.us; AND
- TO: Thad Duvall, Douglas County Auditor
Email: tduvall@co.douglas.wa.us; AND
- TO: Clydene Bollinger, Ferry County Auditor
Email: auditor@co.ferry.wa.us; AND
- TO: Zona Lenhart, Franklin County Auditor

1 Email: zlenhart@co.franklin.wa.us; AND
2 TO: Donna Deal, Garfield County Auditor
3 Email: ddeal@co.garfield.wa.us; AND
4 To: Bill Varney, Grant County Auditor
5 Email: bvarney@co.grant.wa.us; AND
6 TO: Vern Spatz, Grays Harbor County Auditor
7 Email: vspatz@co.grays-harbor.wa.us; AND
8 TO: Suzanne Sinclair, Island County Auditor
9 Email: Suzannes@co.island.wa.us; AND
10 TO: Donna Eldridge, Jefferson County Auditor
11 Email: deldridge@co.jefferson.wa.us; AND
12 TO: Karen Flynn, Kitsap County Auditor
13 Email: kflynn@co.kitsap.wa.us; AND
14 TO: Judy Pless, Kittitas County Auditor
15 Email: auditor@co.kittitas.wa.gov; AND
16 TO: Diana Housden, Klickitat County Auditor
17 Email: dianah@co.klickitat.wa.us; AND
18 TO: Gary Zandell, Lewis County Auditor
19 Email: Gzandell@co.lewis.wa.us; AND
20 TO: Shelly Johnston, Lincoln County Auditor
21 Email: sjohnston@co.lincoln.wa.us; AND
22 TO: Allan T. Brotche, Mason County Auditor
23 Email: auditor@auditor.co.mason.wa.us; AND
24 TO: Peggy Robbins, Okanogan County Auditor
25 Email: robb7673@co.okanogan.wa.us; AND
26 TO: Pat Gardner, Pacific County Auditor
27 Email: pgardner@co.pacific.wa.us; AND
28 TO: Carla M. Heckford, Pend Oreille County Auditor
Email: checkford@pendoreille.org; AND
TO: Pat McCarthy, Pierce County Auditor
Email: pmccart@co.pierce.wa.us; AND
TO: Si A. Stephens, San Juan County Auditor
Email: sis@co.san-juan.wa.us; AND
TO: Norma Brummett, Skagit County Auditor
Email: normab@co.skagit.wa.us; AND
To: Mike Garvison, Skamania County Auditor
Email: garvison@co.skamania.wa.us; AND
TO: Bob Terwilliger, Snohomish County Auditor
Email: county.auditor@co.snohomish.wa.us; AND
TO: Vicky Dalton, Spokane County Auditor
Email: vdalton@spokanecounty.org; AND
TO: Tim Gray, Stevens County Auditor
Email: tgray@co.stevens.wa.us; AND
TO: Kim Wyman, Thurston County Auditor
Email: wymank@co.thurston.wa.us; AND
TO: Diane L. Tischer, Wahkiakum County Auditor
Email: tischerd@co.wahkiakum.wa.us; AND
TO: Karen Martin, Walla Walla County Auditor
Email: kmmartin@co.walla-walla.wa.us; AND
TO: Shirley Forslof, Whatcom County Auditor
Email: sforslof@co.whatcom.wa.us; AND
TO: Eunice Coker, Whitman County Auditor
Email: eunicec@co.whitman.wa.us; AND
TO: Corky Mattingly, Yakima County Auditor
Email: corky.mattingly@co.yakima.wa.us

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Date: January 12, 2005

Signature s/Shannon Slaughter
SHANNON C. SLAGHT