

1 to this Declaration as Exhibit A are true and correct copies of subpoenas *ad testificatum*
2 directed to Dean Logan and Bill Hucnekens.

3 3. Petitioners anticipated that the testimony of these high level elections
4 officials would answer basic questions that could allow Petitioners to focus any additional
5 discovery on key issues and would likely make it possible to limit the scope of document
6 requests.

7 4. On Thursday, March 10, counsel for King County informed me that King
8 County preferred to make Mr. Logan and Mr. Huennekens available for depositions only
9 once for all parties. King County indicated that the depositions could extend to multiple
10 consecutive days so that the parties would have a full opportunity to ask their questions.
11 King County also indicated that Mr. Logan and Mr. Huennekens were prepared to proceed
12 with the depositions on the March 15 and March 17, but that the WSDCC was not prepared
13 to conduct its depositions at that time. Petitioners told King County that they were
14 amenable to a reasonable extension of the dates for the depositions so that King County
15 could complete the production of documents to the WSDCC with the understanding that if
16 King County had not provided the WSDCC with the documents, Petitioners would be
17 permitted to proceed with their depositions and King County could object later to any
18 attempt by the WSDCC to depose the witnesses again.

19 5. I also discussed the deposition scheduling with counsel for the WSDCC.
20 The WSDCC indicated that it did not object to Petitioners conducting their depositions as
21 scheduled, but would not agree to conduct its own depositions until King County
22 completed its production of documents at some uncertain future date.

23 6. On March 14, in an attempt to avoid taking up the Court's time with a
24 discovery scheduling dispute, to accommodate King County's preference for combined
25 depositions, and to minimize the inconvenience to the witnesses, Petitioners agreed to
26 delay the depositions for one or two weeks anticipating that the WSDCC would have
27

1 received during that time the documents it required. Petitioners indicated that if, however,
2 WSDCC was not in a position to proceed with the depositions in the next two weeks,
3 Petitioners would proceed with their depositions. Attached to this Declaration as Exhibit B
4 is a true and correct copy of a letter from Robert J. Maguire to all parties, dated March 14,
5 2005.

6 7. On March 15, King County requested that Petitioners set Mr. Logan's
7 deposition for March 28 and Mr. Huennekens' deposition for March 31.

8 8. On March 17, Petitioners provided amended notices for the depositions
9 setting them on the dates proposed by King County. Attached to this Declaration as
10 Exhibit C is a letter from Robert J. Maguire to all parties, dated March 17, 2005. The
11 WSDCC again indicated that it had not received sufficient documents to proceed with the
12 depositions but that it did not object to Petitioners conducting their depositions as
13 scheduled. *See* Declaration of Donald J. Porter in Support of King County's Motion for a
14 Protective Order, ¶ 4, Ex. B.

15 9. On March 21, counsel for the interested parties conferred regarding the
16 schedule. Petitioners indicated that they could show some limited flexibility with the
17 deposition dates, but that they had already moved the depositions back two weeks and the
18 depositions and discovery process needed to move forward promptly. The parties were not
19 able to reach an agreement.

20 10. On March 23, King County produced a box of documents containing copies
21 of documents relating to the 348 unverified provisional ballots that were counted on
22 election day after being cast in a manner other than as required by law.

23 11. On March 24, 2005, King County notified Petitioners and the WSDCC that
24 it has files containing canceled voter registrations for the calendar year of 2004 that will be
25 available for the parties on CD's on March 24.

EXHIBIT A



Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

DAVID M. BOWMAN
DIRECT (206) 628-7641
davidbowman@dwt.com

2600 CENTURY SQUARE
1501 FOURTH AVENUE
SEATTLE, WA 98101-1688

TEL (206) 622-3150
FAX (206) 628-7699
www.dwt.com

March 4, 2005

VIA MESSENGER

Don Porter, Esq.
King County Prosecuting Attorney's Office
Civil Division, E550
King County Courthouse,
516 Third Avenue, Room W-400
Seattle, WA 98104

Re: Borders et al. v. King County et al. v. Washington State Democratic Central Committee
Chelan County Cause No. 05-2-00027-3

Dear Mr. Porter:

Enclosed please find subpoenas *ad testificatum* directing Dean Logan and Bill Huennekens to appear at our offices for depositions at 9:00 a.m. on Tuesday, March 15, 2005 and Thursday, March 17, 2005, respectively. If necessary, we can discuss adjusting the dates and times..

Thank you.

Very truly yours,

Davis Wright Tremaine LLP

David M. Bowman

cc: Peter Schalestock, Esq.
Harry J. F. Korrell, Esq.
Robert J. Maguire, Esq.
Counsel for all parties (w/o encl.)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE 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 Campaign, a candidate committee,

Petitioners,

v.

King County and Dean Logan, its Director of
Records, Elections and Licensing Services, et al.,

Respondents,

and

Washington State Democratic Central
Committee,

Intervenor-Respondent,

and

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-2-00027-3

**SUBPOENA
AD TESTIFICATUM
TO DEAN LOGAN**

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STATE OF WASHINGTON

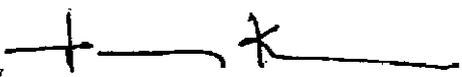
TO: DEAN LOGAN
King County Division of Records, Elections, and Licensing Services
500 4th Avenue, Room 553
Seattle, WA 98104

GREETINGS:

YOU ARE HEREBY COMMANDED to be and appear at the offices of Davis
Wright Tremaine LLP, 1501 4th Avenue, Suite 2600, Seattle, WA 98101, on the 15th day of
March, 2005, at 9:00 a.m., then and there to testify as a witness at the request of Petitioners
in the above-entitled cause, and to remain in attendance until discharged.

DATED this 4th day of March, 2005.

Davis Wright Tremaine LLP
Attorneys for Petitioners

By 
Harry J.F. Korrell, WSBA #23173
Robert J. Maguire, WSBA #29909
1501 Fourth Avenue, Suite 2600
Seattle, Washington 98101-1688
Telephone: (206) 622-3150

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE 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 Campaign, a candidate committee,

Petitioners,

v.

King County and Dean Logan, its Director of
Records, Elections and Licensing Services, et al.,

Respondents,

and

Washington State Democratic Central
Committee,

Intervenor-Respondent,

and

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-2-00027-3

**SUBPOENA
AD TESTIFICATUM
TO BILL HUENNEKENS**

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STATE OF WASHINGTON

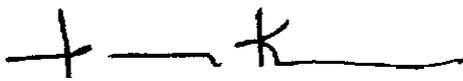
TO: BILL HUENNEKENS
King County Division of Records, Elections, and Licensing Services
500 4th Avenue, Room 553
Seattle, WA 98104

GREETINGS:

YOU ARE HEREBY COMMANDED to be and appear at the offices of Davis
Wright Tremaine LLP, 1501 4th Avenue, Suite 2600, Seattle, WA 98101, on the 17th day of
March, 2005, at 9:00 a.m., then and there to testify as a witness at the request of Petitioners
in the above-entitled cause, and to remain in attendance until discharged.

DATED this 4th day of March, 2005.

Davis Wright Tremaine LLP
Attorneys for Petitioners

By 
Harry J.F. Korrell, WSBA #23173
Robert J. Maguire, WSBA #29909
1501 Fourth Avenue, Suite 2600
Seattle, Washington 98101-1688
Telephone: (206) 622-3150

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

TIMOTHY BORDERS, et al.,)	No. 05-2-00027-3
Petitioners,)	
v.)	CERTIFICATE OF SERVICE
KING COUNTY, et al.)	
Respondents.)	

MARGARET C. SINNOTT states as follows:

1. I am over the age of 18 years and am not a party to the within cause.
2. I am employed by the law firm of Davis Wright Tremaine LLP. My business and mailing addresses are 2600 Century Square, 1501 Fourth Avenue, Seattle, Washington 98101-1688.

3. On March 4, 2005, I caused the documents listed below to be served via U.S. Mail, with First Class postage thereon prepaid, on the parties listed below:

Subpoena ad testificatum to Dean Logan
Subpoena ad testificatum to Bill Nuennekens

this Certificate of Service to the following:

3/3/05 PDF and U.S. Mail to:	Tim O'Neill
Kevin Hamilton, Esq.	Klickitat County Prosecuting Attorney
Perkins Coie LLP	205 South Columbus Ave., MS-CH18
Attorneys for Washington State Democratic	Goldendale WA 98620
Central Committee	
1201 Third Avenue, Suite 4800	
Seattle, WA 98101	

1 **Gary Riesen**
2 Chelan County Prosecuting Attorney
3 PO Box 2596
4 Wenatchee WA 98807-2596

4 **Barnett N. Kalikow, Esq.**
5 For: Klickitat County Auditor
6 Kalikow & Gusa PLLC
7 1405 Harrison Avenue NW, Suite 207
8 Olympia WA 98502

8 **Gorden Sivley**
9 **Michael C. Held**
10 Snohomish County Deputy Prosecuting
11 Attorneys
12 2918 Colby Avenue, Suite 203
13 Everett WA 98201-4011

L. Michael Golden
Lewis County Senior Dep. Prosec. Attorney
345 West Main Street
Chehalis WA 98532

Jeffrey T. Even, Asst. Attorney General
For: Secretary of State Sam Reed
Attorney General's Office
PO Box 40100
Olympia WA 98504-0100

Thomas Ahearne, Esq.
For: Secretary of State Sam Reed
Foster Pepper & Shefelman
1111 Third Avenue, Suite 3400
Seattle WA 98101

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

14 DATED this 4th day of March, 2005 at Seattle, Washington.

15 
16 Margaret C. Sinnott

EXHIBIT B



Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

ROBERT J. MAGUIRE
DIRECT (206) 628-7756
robmaguire@dwt.com

2600 CENTURY SQUARE
1501 FOURTH AVENUE
SEATTLE, WA 98101-1688

TEL (206) 622-3150
FAX (206) 628-7699
www.dwt.com

March 14, 2005

Kevin Hamilton, Esq.
Perkins Coie LLP
Attorneys for Washington State Democratic
Central Committee
1201 Third Avenue, Suite 4800
Seattle, WA 98101

Tim O'Neill
Klickitat County Prosecuting Attorney
205 South Columbus Ave., MS-CH18
Goldendale WA 98620

Gary Riesen
Chelan County Prosecuting Attorney
PO Box 2596
Wenatchee WA 98807-2596

L. Michael Golden
Lewis County Senior Dep. Prosec. Attorney
345 West Main Street
Chehalis WA 98532

Barnett N. Kalikow, Esq.
For: Klickitat County Auditor
Kalikow & Gusa PLLC
1405 Harrison Avenue NW, Suite 207
Olympia WA 98502

Jeffrey T. Even, Asst. Attorney General
For: Secretary of State Sam Reed
Attorney General's Office
PO Box 40100
Olympia WA 98504-0100

Gorden Sivley
Michael C. Held
Snohomish County Deputy Prosecuting
Attorneys
2918 Colby Avenue, Suite 203
Everett WA 98201-4011

Thomas Ahearne, Esq.
For: Secretary of State Sam Reed
Foster Pepper & Shefelman
1111 Third Avenue, Suite 3400
Seattle WA 98101

Don Porter
King County Prosecuting Attorney's Office
King County Courthouse
516 Third Ave., Room W-400
Seattle, WA 98104

Richard Shepard
John S. Mills
For: Libertarians
Shepard Law Office, Inc.,
818 S. Yakima Ave., #200,
Tacoma, WA 98405,



Re: *Borders v. King County et al.* Depositions of Dean Logan and Bill Huennekens

Dear Counsel:

Petitioners have agreed to postpone the depositions of Dean Logan and Bill Huennekens originally scheduled to occur this week. We anticipate rescheduling the depositions for the week of March 21 or no later than the week of March 28.

Petitioners understand that King County prefers to make each witness available for deposition once each, with the expectation that all parties to the lawsuit will ask their questions of a particular witness during a single deposition. With multiple parties asking questions, the depositions may extend beyond a single day.

We understand that the WSDCC does not object to Petitioners conducting their own depositions this week but is awaiting the production from King County of documents WSDCC believes are necessary to prepare for its own depositions of the witnesses, such that the WSDCC will not be in a position to conduct those depositions this week.

In an effort to accommodate King County's preference for combined depositions and to minimize the inconvenience to the witnesses, Petitioners have agreed to delay these depositions for one or two weeks anticipating that the WSDCC will have received during that time the documents it requires and that combined depositions may occur. If, however, the WSDCC is not in a position to proceed with the depositions in the next two weeks, Petitioners will proceed with their depositions regardless.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in cursive script that reads "Robert J. Maguire for".

Robert J. Maguire

cc: Peter Schalestock, Esq.
Harry J.F. Korrell, Esq.

EXHIBIT C



Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

ROBERT J. MAGUIRE
DIRECT (206) 628-7756
robmaguire@dwt.com

2600 CENTURY SQUARE
1501 FOURTH AVENUE
SEATTLE, WA 98101-1688

TEL (206) 622-3150
FAX (206) 628-7699
www.dwt.com

March 17, 2005

Kevin Hamilton, Esq.
Perkins Coie LLP
Attorneys for Washington State Democratic
Central Committee
1201 Third Avenue, Suite 4800
Seattle, WA 98101

Tim O'Neill
Klickitat County Prosecuting Attorney
205 South Columbus Avenue, MS-CH18
Goldendale WA 98620

Gary Riesen
Chelan County Prosecuting Attorney
PO Box 2596
Wenatchee WA 98807-2596

L. Michael Golden
Lewis County Senior Dep. Prosec. Attorney
345 West Main Street
Chehalis WA 98532

Barnett N. Kalikow, Esq.
For: Klickitat County Auditor
Kalikow & Gusa PLLC
1405 Harrison Avenue NW, Suite 207
Olympia WA 98502

Jeffrey T. Even, Asst. Attorney General
For: Secretary of State Sam Reed
Attorney General's Office
PO Box 40100
Olympia WA 98504-0100

Gorden Sivley
Michael C. Held
Snohomish County Deputy Prosecuting
Attorneys
2918 Colby Avenue, Suite 203
Everett WA 98201-4011

Thomas Ahearne, Esq.
For: Secretary of State Sam Reed
Foster Pepper & Shefelman
1111 Third Avenue, Suite 3400
Seattle WA 98101

Don Porter
King County Prosecuting Attorney's Office
King County Courthouse
516 Third Avenue, Room W-400
Seattle, WA 98104

Richard Shepard
John S. Mills
For: Libertarians
Shepard Law Office, Inc.
818 S. Yakima Avenue, Suite 200
Tacoma, WA 98405



Re: *Borders v. King County et al.* King County Depositions

Dear Counsel:

Petitioners and King County have agreed to reschedule the depositions of Dean Logan and Bill Huennekens, which had been scheduled to occur March 15 and March 17, 2005, respectively. The deposition of Dean Logan will commence at 9 a.m. on March 28, 2005, and the deposition of Bill Huennekens will commence at 9 a.m. on March 31, 2005, each at the offices of Davis Wright Tremaine LLP, as detailed in the enclosed Notice of Deposition.

Provided these depositions commence on the dates above, they will be considered responsive to the outstanding subpoenas *ad testificatum* directed to Mr. Logan and Mr. Huennekens on March 4, 2005.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in cursive script that reads "Robert J. Maguire for".

Robert J. Maguire

cc: Peter Schalestock, Esq.
Harry J.F. Korrell, Esq.

The Honorable John E. Bridges

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE 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 Campaign, a candidate committee,

Petitioners,

v.

King County and Dean Logan, its Director of Records, Elections and Licensing Services, et al.,

Respondents,

and

Washington State Democratic Central Committee,

Intervenor-Respondent,

and

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-2-00027-3

**NOTICE OF DEPOSITION
OF DEAN LOGAN**

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STATE OF WASHINGTON

TO: ALL PARTIES

PLEASE TAKE NOTICE that the deposition upon oral examination of the following described person shall be recorded stenographically and will be taken before a person authorized to administer oaths on the following date and at the following time and place:

Witness: Dean Logan

Date: Monday, March 28, 2005

Hour: 9:00 a.m.

Place: Davis Wright Tremaine LLP
1501 Fourth Avenue, Suite 2600
Seattle, WA 98101

The said oral examination to be subject to continuance or adjournment from time to time or place to place until completed, and to be taken on the ground and for the reason the said witness will give evidence material to the above-captioned action.

DATED this 17th day of March, 2005.

Davis Wright Tremaine LLP
Attorneys for Petitioners

By 
Harry J.F. Korrell, WSBA #23173
Robert J. Maguire, WSBA #29909
1501 Fourth Avenue, Suite 2600
Seattle, Washington 98101-1688
Telephone: (206) 622-3150

THE HONORABLE JOHN E. BRIDGES

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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, et al.

Respondents.

No. 05-2-00027-3

CERTIFICATE OF SERVICE

MARGARET C. SINNOTT states as follows:

1. I am over the age of 18 years and am not a party to the within cause.

2. I am employed by the law firm of Davis Wright Tremaine LLP. My business and mailing addresses are 2600 Century Square, 1501 Fourth Avenue, Seattle, Washington 98101-1688.

3. On March 17, 2005, I caused the documents listed below to be served via facsimile and U.S. Mail, with First Class postage thereon prepaid, on the parties listed below:

**Notice of Deposition of Dean Logan
and this Certificate of Service to the following:**

PDF and U.S. Mail to:
Kevin Hamilton, Esq.
Perkins Coie LLP
Attorneys for Washington State Democratic
Central Committee
1201 Third Avenue, Suite 4800
Seattle, WA 98101

Tim O'Neill via FAX and U.S. Mail
Klickitat County Prosecuting Attorney
205 South Columbus Ave., MS-CH18
Goldendale WA 98620

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Gary Riesen via FAX and U.S. Mail
Chelan County Prosecuting Attorney
PO Box 2596
Wenatchee WA 98807-2596

Barnett N. Kalikow, Esq.
via FAX and U.S. Mail
For: Klickitat County Auditor
Kalikow & Gusa PLLC
1405 Harrison Avenue NW, Suite 207
Olympia WA 98502

L. Michael Golden
via FAX and U.S. Mail
Lewis County Senior Dep. Prosec. Attorney
345 West Main Street
Chehalis WA 98532

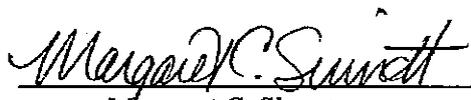
Jeffrey T. Even, Asst. Attorney General
via FAX and U.S. Mail
For: Secretary of State Sam Reed
Attorney General's Office
PO Box 40100
Olympia WA 98504-0100

Gorden Sivley via FAX and U.S. Mail
Michael C. Held via FAX and U.S. Mail
Snohomish County Deputy Prosecuting
Attorneys
2918 Colby Avenue, Suite 203
Everett WA 98201-4011

Thomas Ahearne, Esq.
via FAX and U.S. Mail
For: Secretary of State Sam Reed
Foster Pepper & Shefelman
1111 Third Avenue, Suite 3400
Seattle WA 98101
Richard Shepard via FAX and U.S. Mail
John S. Mills via FAX and U.S. Mail
For: Libertarians
Shepard Law Office, Inc.
818 S. Yakima Avenue, #200
Tacoma, WA 98405

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

DATED this 17th day of March, 2005 at Seattle, Washington.



Margaret C. Sinnott

The Honorable John E. Bridges

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE 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 Campaign, a candidate committee,

Petitioners,

v.

King County and Dean Logan, its Director of Records, Elections and Licensing Services, et al.,

Respondents,

and

Washington State Democratic Central Committee,

Intervenor-Respondent,

and

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-2-00027-3

**NOTICE OF DEPOSITION
OF BILL HUENNEKENS**

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STATE OF WASHINGTON

TO: ALL PARTIES

PLEASE TAKE NOTICE that the deposition upon oral examination of the following described person shall be recorded stenographically and will be taken before a person authorized to administer oaths on the following date and at the following time and place:

Witness: Bill Huennekens

Date: Thursday, March 31, 2005

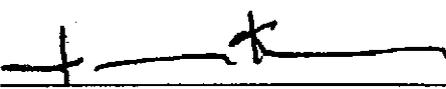
Hour: 9:00 a.m.

Place: Davis Wright Tremaine LLP
1501 Fourth Avenue, Suite 2600
Seattle, WA 98101

The said oral examination to be subject to continuance or adjournment from time to time or place to place until completed, and to be taken on the ground and for the reason the said witness will give evidence material to the above-captioned action.

DATED this 17th day of March, 2005.

Davis Wright Tremaine LLP
Attorneys for Petitioners

By 
Harry J.F. Korrell, WSBA #23173
Robert J. Maguire, WSBA #29909
1501 Fourth Avenue, Suite 2600
Seattle, Washington 98101-1688
Telephone: (206) 622-3150

THE HONORABLE JOHN E. BRIDGES

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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, et al.

Respondents.

No. 05-2-00027-3

CERTIFICATE OF SERVICE

MARGARET C. SINNOTT states as follows:

1. I am over the age of 18 years and am not a party to the within cause.

2. I am employed by the law firm of Davis Wright Tremaine LLP. My business and mailing addresses are 2600 Century Square, 1501 Fourth Avenue, Seattle, Washington 98101-1688.

3. On March 17, 2005, I caused the documents listed below to be served via facsimile and U.S. Mail, with First Class postage thereon prepaid, on the parties listed below:

**Notice of Deposition of Bill Huennekens
and this Certificate of Service to the following:**

PDF and U.S. Mail to:
Kevin Hamilton, Esq.
Perkins Coie LLP
Attorneys for Washington State Democratic
Central Committee
1201 Third Avenue, Suite 4800
Seattle, WA 98101

Tim O'Neill via FAX and U.S. Mail
Klickitat County Prosecuting Attorney
205 South Columbus Ave., MS-CH18
Goldendale WA 98620

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Gary Riesen via FAX and U.S. Mail
Chelan County Prosecuting Attorney
PO Box 2596
Wenatchee WA 98807-2596

Barnett N. Kalikow, Esq.
via FAX and U.S. Mail
For: Klickitat County Auditor
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 17th day of March, 2005 at Seattle, Washington.

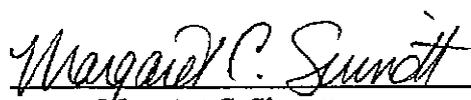

Margaret C. Sinnott

EXHIBIT D

SEATTLE POST-INTELLIGENCER

http://seattlepi.nwsourc.com/local/216525_ballots18.html

Democrats still looking for votes -- just in case

Provisional ballots tossed out in governor's race under scrutiny

Friday, March 18, 2005

By GREGORY ROBERTS
SEATTLE POST-INTELLIGENCER REPORTER

Even as Republicans are ferreting out any illegal votes they can find in the 2004 governor's election, Democrats continue looking to add any ballots that were wrongfully excluded by elections officials.

David McDonald, who is defending Democratic Gov. Christine Gregoire's 129-vote victory from a court challenge by Republican candidate Dino Rossi, said yesterday his side will ask King County elections officials why they tossed out some provisional ballots that apparently were filled out by legally registered voters.

"The thing that we've been doing almost all the time is trying to get people's legitimate votes counted," McDonald said of the wrangling over the election. "It seems to me the better exercise in democracy is to try to get people enfranchised, not disenfranchised."

But state Republican Party Chairman Chris Vance said that effort is an act of desperation.

"It just helps reinforce our case that this thing is so messed up that it's impossible to know who won the election," Vance said.

The Republicans' post-election research has focused on identifying felons who voted in violation of the state constitution, voters who cast two ballots and other illegalities. They have developed a list with more than 1,100 names of allegedly illegal voters and hope to use it in the court case.

The GOP assault has been directed largely at King County, which Gregoire carried by more than 150,000 votes.

Provisional ballots are issued to would-be voters on Election Day if their names do not appear on the roster when they show up at a polling place. Elections workers later check information the voter provides on a ballot envelope, and they count only those ballots cast by registered voters.

Nearly 33,000 provisional ballots were processed in King County in the November election, according to elections officials. Of those, 4,432 were thrown out for a variety of reasons, including mismatches with voter signatures on file or previous cancellations of voters' registrations.

The Democrats want to look at whether those 4,432 ballots were rejected appropriately, McDonald said. As a first step, he said, they're reviewing the cases of 208 voters whose ballots were excluded under the category "not registered, needed further research" as it appears on a post-election report, he said.

A preliminary check on about 10 of those names turned up five or six that seemed to match with names on a voter registration list, McDonald said.

King County Elections Superintendent Bill Huennekens said late yesterday that he would be surprised if a significant number of those 208 provisional voters could be positively identified on registration lists. Elections workers may judge a ballot improper for several reasons, he said, such as lack of a legible name or, for common names, absence of confirming information such as date of birth or address.

The provisional ballot envelopes are kept on file and can be re-examined, he said.

If valid votes were set aside because of errors by elections officials, McDonald said, the judge in the court case should be able to order them counted.

The good votes-bad votes exchange is part of the parties' positioning before the election trial in Chelan County Superior Court. Judge John Bridges has not set a trial date.

The Republicans have argued that if the number of improper votes exceeds the margin of victory, the result should be set aside. The judge in the case, John Bridges, has rejected that argument in pretrial hearings, saying the GOP needs to show that Gregoire apparently received enough improper votes to make the difference in the election.

But Bridges has not spelled out how Republicans may demonstrate that.

One argument the GOP has put forward is to apportion improper votes between the candidates according to the overall percentage each received in that electoral district, and then subtracting the results.

If that argument prevails, establishing the number of proper and improper votes could prove critical.

P-I reporter Gregory Roberts can be reached at 206-448-8022 or gregoryroberts@seattlepi.com

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EXHIBIT E

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voting in Washington and in another state, and (iv) by persons voting more than once in Washington. If so, identify the documents and identify:

- a. The person casting the vote and whether he or she was a felon, cast a vote on behalf of a deceased person, voted in two or more states, or voted more than once in Washington;
- b. The date that the county in which the person voted learned of the person's status or conduct;
- c. Any facts indicating that the person voted in the Gubernatorial Election;
- d. Any facts indicating which candidate the person voted for in the Gubernatorial Election; and
- e. The precinct in which the vote was cast.

ANSWER: The WSDCC refers petitioners to the documents identified and produced in response to Interrogatory Nos. 3, 5, 7 and 9. To the extent it identifies or uncovers additional documents during discovery, the WSDCC will supplement its answer.

INTERROGATORY NO. 20: Identify any communications you have had with any person identified in response to the preceding interrogatory.

ANSWER: The WSDCC objects to this request as duplicative of other requests, and refers petitioners to its answers to Interrogatory Nos. 4, 6, 8 and 10, above.

INTERROGATORY NO. 21: Identify all communications between you or anyone acting on your behalf or in concert with you and persons whose absentee or provisional ballots were initially rejected by any county because of a mismatched signature, no signature on file, or no voter registration on file.

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ANSWER: To the extent this request relates to petitioners' equal protection claims relating to the submission of signature verification forms after November 16, 2004, the WSDCC objects to this request as beyond the scope of permissible discovery and not reasonably calculated to lead to the discovery of admissible evidence. The Court has dismissed such claims. Otherwise, the WSDCC's investigation is ongoing and it will supplement its answer as appropriate.

INTERROGATORY NO. 22: Identify all documents recording, calculating, showing, or analyzing any differences between (i) the total number of ballots cast in the 2004 General Election (and all recounts) and (ii) the number of ballots indicated as having been voted for a gubernatorial candidate or excluded on some basis.

ANSWER: The WSDCC objects to this request to the extent it calls for the production of documents protected by the attorney-client privilege and/or work-product doctrine. The WSDCC refers petitioners to documents and information provided by the various counties in response to discovery in this case and/or public records requests. To the extent petitioners do not already have the information provided by the counties, the WSDCC will make the discovery responses and/or public records request responses available. To the extent other non-privileged and responsive documents exist, the WSDCC will produce them.

INTERROGATORY NO. 23: Referring to the Petition by Electors and Petition for Writ of Mandamus and Other Relief attached as Exhibit A, please describe in detail the factual basis for each of the contentions made in paragraphs 20, 29, 31, 32, 37, and 51 and identify all documents supporting or otherwise relating to those allegations and all person with knowledge of the factual basis for those allegations.

1 Observers or "voting protection team" members regarding the 2004 General Election or
2
3 Gubernatorial Election. The training given to or procedures used by such individuals has no
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5 tendency to make any fact at issue in this action more or less likely. The WSDCC is not
6
7 producing documents in response to this request.
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11 **REQUEST FOR PRODUCTION NO. 5:** Produce all documents referring or
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13 relating to persons whose absentee or provisional ballots were initially rejected by any
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15 county because of a mismatched signature, no signature on file, or no voter registration of
16
17 file in the 2004 General Election.

18 **RESPONSE:** To the extent this request relates to equal protection claims relating to
19
20 the submission of signature verification forms after November 16, 2004, the WSDCC
21
22 objects to this request as beyond the scope of permissible discovery and not reasonably
23
24 calculated to lead to the discovery of admissible evidence. The Court has dismissed such
25
26 claims. Otherwise, the WSDCC's investigation is ongoing and it will supplement its answer
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28 as appropriate.
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32 **REQUEST FOR PRODUCTION NO. 6:** Produce all documents shown to, given
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34 to, or received from persons whose absentee or provisional ballots were initially rejected by
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36 any county because of a mismatched signature, no signature on file, or no voter registration
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38 on file in the 2004 General Election.

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40 **RESPONSE:** To the extent this request relates to equal protection claims relating to
41
42 the submission of signature verification forms after November 16, 2004, the WSDCC
43
44 objects to this request as beyond the scope of permissible discovery and not reasonably
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46 calculated to lead to the discovery of admissible evidence. The Court has dismissed such
47

1 claims. Otherwise, the WSDCC's investigation is ongoing and it will supplement its answer
2 as appropriate.
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6 **REQUEST FOR PRODUCTION NO. 7:** Produce all documents containing,
7 reflecting, or referring to communications between David McDonald and Christine
8 Gregoire, Foster Pepper & Shefelman, or any person affiliated with those organizations
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10 regarding the 2004 General Election or Gubernatorial Election.
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13 **RESPONSE:** The WSDCC objects to this request as vague and potentially
14 overbroad in its reference to "all documents containing, reflecting, or referring to" the
15 identified communications. The WSDCC also objects to this request as beyond the scope of
16 permissible discovery and not reasonably calculated to lead to the discovery of admissible
17 evidence and seeking information protected as work product or by the attorney-client
18 privilege. With the exception of communications between Mr. McDonald and counsel for
19 the Secretary of State, as to which the WSDCC does not have any objections, the WSDCC is
20 not producing documents in response to this request.
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31 **REQUEST FOR PRODUCTION NO. 8:** Produce all documents containing,
32 reflecting, or referring to communications between Jenny Durkan and Christine Gregoire or
33 Gregoire for Governor regarding the 2004 General Election or Gubernatorial Election.
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38 **RESPONSE:** The WSDCC objects to this request as vague and potentially
39 overbroad in its reference to "all documents containing, reflecting, or referring to" the
40 identified communications. The WSDCC also objects to this request as beyond the scope of
41 permissible discovery and not reasonably calculated to lead to the discovery of admissible
42 evidence and seeking information protected as work product or by the attorney-client
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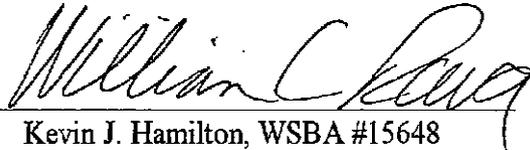
1 privilege. Further to an agreement between petitioners and the WSDCC, the WSDCC is not
2 producing documents in response to this request.
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6 **REQUEST FOR PRODUCTION NO. 9:** Please produce all documents
7 containing, reflecting, or referring to any communications between you and America
8 Coming Together ("ACT"), MoveOn.org, Western States Center, and any organizations
9
10 working to increase voter turnout or working to register voters.
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13 **RESPONSE:** The WSDCC objects to this request as vague and potentially
14 overbroad in its reference to "all documents containing, reflecting, or referring to" the
15 identified communications. The WSDCC also objects to this request as beyond the scope of
16 permissible discovery and not reasonably calculated to lead to the discovery of admissible
17 evidence. To the extent such communications exist, they would have no tendency to make
18 any fact at issue in this action more or less likely. Further to an agreement between
19 petitioners and the WSDCC, the WSDCC is not producing documents in response to this
20 request.
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32 **DATED:** March 17, 2005.
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36 **PERKINS COIE LLP**

37 By 

38 Kevin J. Hamilton, WSBA #15648

39 William C. Rava, WSBA #29948

40 Attorneys for the Washington State Democratic
41 Central Committee
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ANSWERS, RESPONSES & OBJECTIONS
PETITIONER'S FIRST INTERROGATORIES AND
REQUESTS FOR PRODUCTION TO WSDC - 28

[15934-0006-000000/SL050476.195]

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VERIFICATION

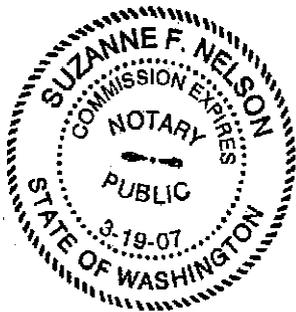
STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

Paul Berendt, being first duly sworn, upon oath, depose and states: That he/she an officer of the Washington State Democratic Central Committee in this lawsuit, that he has read the within and foregoing interrogatories and requests for production and answers

thereto, knows the contents thereof, and believes the same to be true and correct to the best of his knowledge.

Paul Berendt

SUBSCRIBED AND SWORN to before me this 17th day of March 2005.



Suzanne F. Nelson
(Signature of Notary)

Suzanne F. Nelson
(Print or Stamp Name of Notary)
NOTARY PUBLIC in and for the State of
Washington, residing at Seattle
My Commission Expires: 3/19/07