

EXHIBIT E

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2 certification of the results of the election and any certification of election issued
3 as a result of the election are void; and direct that a new election be conducted as
4 soon as practicable.
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6 **III. STATEMENT OF CASE**
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8 Pro Se plaintiff charges the Secretary of State of the State of Washington with not
9 carrying out his fiduciary responsibilities as mandated by the office. Mr. Reed had
10 knowledge of and/or failed to investigate discrepancies in votes cast in counties of
11 Washington State including, but not limited to King County, and furthermore
12 certified said votes and fully plans to "swear in" Ms. Christine Gregoire as
13 governor of the State of Washington, even though this act would debase and
14 dilute the weight of Washington State's legally registered voters votes as
15 effectively as by wholly prohibiting free exercise of the franchise.
16

17 Before certifying the vote, Mr. Reed failed to investigate fully the following
18 alleged discrepancies in voting in Washington State counties including, but not
19 limited to King County:
20

- 21 1) More ballots were counted than there were registered voters identified as
22 voting.
23 2) Disputed ballots were "enhanced" in recounts, permanently obscuring each
24 voter's original mark in violation of state law.
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- 3) So-called provisional ballots were placed directly into counting machines instead of being reviewed and validated to ensure that they were cast by eligible voters who did not cast another ballot.
- 4) Illegitimate votes were cast by felons, in the name dead voters, and by people other than the registered voter whose ballot was counted.
- 5) Washington State registered voters who are serving their country in the United States military were not given the chance to vote in that their ballots were distributed to late, their votes were not processed in a legal/timely manner or were misplaced/lost altogether.
- 6) Different Washington state counties including, but not limited to King County, used inconsistent standards in counting and rejecting ballots, and in determining “overvotes” and “undervotes.”
- 7) Private information about provisional ballot voters was wrongly released. Third parties were allowed to use that information in an effort to validate the ballots.
- 8) Questionable Provisional ballots were “commingled “ with legitimate ballots and not kept separate and secure.
- 9) During vote recounts in Washington state counties including, but not limited to King County, “found” and/or ‘newly discovered” ballots where not secured and

1
2 had no "chain of custody" to show that they were not tampered with.
3

4
5 **III. ARGUMENT**

6 By not operating a "free and fair election" as mandated by the Washington State
7 Constitution, the Secretary of the State of Washington, Mr. Sam Reed and the
8 counties of the State of Washington, including, but not limited to King County,
9 violated the plaintiffs rights as set down in the Constitution of the United States
10 and the Constitution of the State of Washington.
11

12 " Every person who, under color of any statute, ordinance, regulation, custom, or
13 usage, of any State or Territory or the District of Columbia, subjects, or causes to
14 be subjected, any citizen of the United States or other person within the
15 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
16 secured by the Constitution and laws, shall be liable to the party injured in an
17 action of law, suit in equity, or other proper proceeding for redress....."
18 *42 U.S.C. 1983, Chapter 21, Subchapter I "Civil Actions for Deprivation of
19 Rights."*

20 The weight of Mr. Webster's vote was illegally debased and diluted by the before
21 mentioned acts and/or omissions perpetrated or not investigated by Mr. Reed
22 and/or the election authorities of the counties of Washington state, including, but
23 not limited to King County. Plaintiff contends that his rights and the rights of
24 legally registered Washington State voters were denied because illegal and/or
25 disputed ballots were counted, thus Mr. Webster and the legally registered voters

1
2 were denied a equally-weighted vote.

3
4 “[T]he right of suffrage can be denied by a debasement or dilution of the weight
5 of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of
6 the franchise.”

7 *Gold Bar Citizens for Good Government v. Whalen*, 99 Wn.2d 724,730 (1983),
8 (quoting *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362 (1963)

9 “...the right to vote must be carefully and meticulously scrutinized.”
10 *Reynolds v. Sims*, 377 U.S. at 555, 562, 84 S. Ct. at 1378, 1381

11 As to the recounting of votes by Washington State counties, including , but not
12 limited to King County, in *Bush v. Gore* 531 U.S. 98, 105-10, 121 S. Ct. 525,
13 530-33 (2000), the Court struck down recount procedures ordered by the Florida
14 Supreme Court, effectively holding that the scheme represented “arbitrary and
15 disparate” treatment of voters”, and would have resulted in “unequal evaluation
16 of ballots.”

17 In a suit brought against Bill Jones, Secretary of State, State of California by
18 Susan Webber, (*Webber v. Jones*, CV 01-11159 SVX (RZx)), the court stated “A
19 claim of vote dilution, premised on the alleged relative inaccuracy of a balloting
20 system, may therefore be cognizable under the Fourteenth Amendment.”

21 In recent news releases, Mr. Reed has called for “ sweeping election reforms.”

22 Mr. Reed has stated in public and print. “We did have serious problems” and “To
23 have partisans on the hunt for select votes is a dangerous precedent that will erode
24 public confidence.” Thus Mr. Reed knew before, during and after the election
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that there was grave problems with the election system and the County election boards/authorities of the State of Washington, including, but not limited to King County, but did not investigate and right these problems. There was a series of errors, omissions, mistakes, neglect and other wrongful acts by election officials of Washington State counties, including, but not limited to King County, that make it impossible to determine with certainty who the rightfully elected governor should be.

“Defendant’s bear the initial burden of establishing the absence of a genuine issue of material fact.”
Tarin v. County of Los Angeles, 123 F.3d 1259, 1263 (9th Cir. 1997)

For these facts, the plaintiff has requested that the Court set aside the election and a new election be conducted as soon as practicable.

“Where appropriate, [the court’s powers] include the power to order a new election where no other remedy would adequately correct distortions in election results caused by fraud or neglect.”
Foulkes v. Hays, 85 Wn.2 629, 633 (1975)

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Respectfully Submitted This Day of January 10, 2005



William D. Webster
Pro Se
1345 California Ave. E.
Port Orchard, WA 98366
1-360-871-4568
Email- wdwflash@aol.com

PROOF OF SERVICE

I certify that I served a copy of this document to Sam Reed. In his capacity as Washington State Secretary of State or a designated representative of his office that is a direct employee of the State Of Washington.

Hand Delivered by Kip Webster

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

DATED this 10th day of JANUARY, 2005



WILLIAM D. WEBSTER

Election Contest Petition

EXHIBIT F

UNITED STATES OF AMERICA

The State of Washington



Certificate of Election

This is to Certify, That at the General Election held in the State of Washington on November 2, 2004,

Christine Gregoire

received the highest number of votes cast for the office of Governor

of said state of Washington, and was therefore duly elected to said office as appears from the official returns of said election as canvassed and certified in the manner provided by law.

In Testimony Whereof, We have hereunto set our hands and caused the Seal of the State of Washington to be affixed this 10th day of January, A.D. 2005, at Olympia, the State Capital.



Attest:

Secretary of State

President of the Senate

Speaker of the House of Representatives

EXHIBIT G

RECEIVED
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05 JAN 10 PM 1:12
BY C. J. HERRITT

76500-6

CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

**AFFIDAVIT OF ERROR OR OMISSION
NO MANDATORY FORM DEVELOPED
(Format as Suggested by RCW 29A.68.030)**

COPY

I, Suzanne D. Karr, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. I am an elector currently registered to vote in the County of Snohomish in the State of Washington.

2. I contest the right of Christine O. Gregoire to be issued a certificate of election for

3. the office of Governor in the 2004 election.

4. The causes of contest are:

(1) For misconduct on the part of election officers and members of the precinct election board involved therein as follows:

A. According to King County Elections Director Dean Logan, an estimated 350 or more provisional ballots in King County were counted without first being verified as valid. (see pg 2 of exhibit 1) Historically provisional ballots are found to be invalid or illegal at a rate that is much higher than other ballots. The reject rate for the 2000 presidential election for King County was 22%. (see exhibit 2)

B. On or about November 12, 2004 King County released the names on 929

provisional ballots where the signature did not match their registration. (see exhibit 3) Officials from both political parties were allowed to contact these voters and obtained affidavits from them which King County then used to verify the questionable signatures. The net result of these actions is that Gregoire increased her vote count by approximately 400.

However, many of the steps in the process whereby Gregoire obtained those additional 400 votes are subject to legal challenge. First, Dean Logan stated that federal law requires information about an individual provisional ballot be restricted to the individual who cast the ballot. (see exhibit 4) Also, according to Nick Handy, elections director for the Secretary of State, it is not clear whether state law permits third parties to submit affidavits on behalf of voters. (see exhibit 5) Also, election procedures had previously required provisional ballot signatures be matched to the voter record and not an affidavit since provisional ballots can so easily be used to perpetrate fraud. The auditor in Yakima County even refused to accept the affidavits. (see exhibit 5) The Building Industry Association of Washington has investigated some of the provisional ballots processed in this situation and indicates (see pg 2 of exhibit 6) there is evidence to show that nine of the voters are felons, one may be dead, fifteen are registered elsewhere and up to half the signatures may be forged.

C. Election Officers in King County failed to obtain all poll voter signatures and/or failed to adequately verify voter signatures on ballots and/or compare them to poll voter signature lists which resulted in the tabulation of about 1,217 more votes than the number of electors listed as having cast a ballot. The discrepancy between

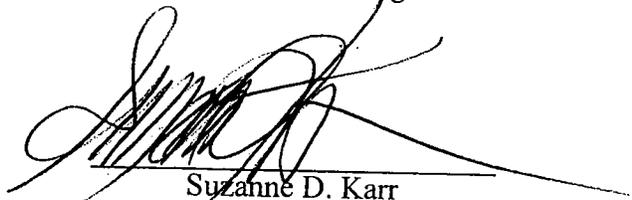
the number of voters and vote count may also have been due in whole or in part to inadequate testing of voting systems. (see exhibit 7)

Dean Logan indicated in his press release (exhibit 8) that he regards the 1,217 votes as an acceptable number of errors given the volume of ballots processed in King County. If the electorate is now required to tolerate a certain number of errors as a legitimate acceptable fact of vote processing, then voting results should be adjusted to allow for those errors. These 1,217 errors should be apportioned between Gregoire and her closest opponent, Dino Rossi, based on the percentage of valid votes received in King County. (58% Gregoire and 40% Rossi) If such an apportioned adjustment is made to allow for error, Gregoire's vote total would be reduced by 706 votes and Rossi's by 487, making Rossi the winner in the election by 90 votes.

- (2) On account of illegal votes which include but are not limited to the following:
- (i) More than one vote cast by a single voter; and (ii) Votes cast by persons disqualified under Article VI, section 3 of the state Constitution.

According to King County Elections Director Dean Logan, 1,217 more votes were tabulated than the number of electors listed as having cast a ballot which makes them suspect as potentially duplicate and or cast by persons not registered to vote. (see exhibit 8)

DATED and SIGNED this 10th day of January 2004⁵ in Olympia, Washington.



Suzanne D. Karr
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Everett, WA 98201
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GOP expected to file suit over Gregoire's win

By David Postman
 Seattle Times chief political reporter

OLYMPIA — The Republican court challenge to Christine Gregoire's election as governor, expected to be filed today, will center on mishandled provisional ballots in King County and lingering questions about why the county shows more votes counted than people voting on Nov. 2.

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- Voting by dead people isn't always a scam
- Database of King County voters

That's Republican candidate Dino Rossi's best bet for getting a judge to overturn Gregoire's 129-vote victory, said former U.S. Sen. Slade Gorton. Gorton, an attorney who lost his Senate seat in a close 2000 race, is not part of Rossi's legal team but is a close adviser to the candidate and has been consulted about the imminent legal challenge.

"That will be the primary ground of any election contest," Gorton said yesterday. "And I've got to say I think it's not only a valid argument, but a compelling argument."

The lawsuit also will likely include allegations of votes by dead people and felons, and multiple votes by the same voter. But those issues, while garnering much attention among Rossi supporters in recent days, will be secondary.

"If you're bringing one of these things, I suppose you throw everything in," Gorton said.

Although it's not definite that the suit will be filed today, party officials say they are close to filing. Earlier this week, former Republican Gov. Dan Evans said any lawsuit should be filed by today to begin the process before Gregoire is sworn in next week, though the legal deadline for a challenge is not until Jan. 22.

"We are all very mindful of two clocks that are ticking," state Republican Party Chairman Chris Vance said. "One is the legal clock. The second is the political and public-perception clock, and there's going to be a big event next week. She is going to raise her hand and take the oath of office. At least she's scheduled to."

Gorton said he was initially skeptical that a lawsuit could succeed. Votes by dead people and felons likely wouldn't have been enough to unseat Gregoire, he advised Rossi's team.

"Earlier this week when it looked like that was all there was, I said, 'Fine, go

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Exhibit 1

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ahead, but you don't have an awful lot," Gorton said.

He was much more optimistic after the discovery this week that an unknown number, perhaps hundreds, of provisional ballots were improperly fed into voting machines on Election Day.

Those ballots are given to voters who show up at the wrong polling place or whose registration is in question. They are supposed to be kept separate and secure from other ballots until election workers can determine if the voter is properly registered. When the ballots were put in the counting machines, it became impossible to separate legitimate ballots from those that should have been disqualified.

The Republican challenge also could include the allegation that King County election workers improperly "enhanced" ballots when the voter intent was not clear, said Republican Party Attorney Peter Schalestock.

The type of challenge the GOP is planning would essentially put the election on trial, with a judge hearing testimony and taking evidence on allegations of fraud or error that resulted in enough "illegal votes" that the true outcome of the election is unknown.

A judge can throw out the claim, declare Rossi the winner or nullify the election and call for a new one.

Two people got the jump on the official Republican challenge and filed complaints with the Supreme Court.

One was from Dr. Arthur Coday Jr., a Shoreline pediatrician and Republican Party donor who did his own research and drafted his own complaint.

"It was an issue of conscience, to be honest," Coday said.

He was particularly bothered that state law allowed the Democrats to order a hand recount if they came up with the \$730,000 or so needed as a deposit to cover the costs if the recount didn't reverse the results.

He said he read the state Constitution, which says elections should be "free and equal."

"Gosh, if private parties can get a recount if they pay and if they can't if they don't, there's something wrong with that. It's not free anymore."

The other complaint was filed by Daniel Stevens of Fall City. He said he filed his complaint Dec. 30, the day Gregoire was certified as governor-elect, and later sent the court the \$250 filing fee.

King County Elections Director Dean Logan concedes there were mistakes made with provisional ballots. He said there may be as many as 350 that were improperly put in the vote-counting machine.

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EXHIBIT 1

But, he said, it would be wrong to "come to a conclusion that those were invalid votes that would have tipped this election."

He said that up to 90 percent of provisional ballots countywide were found to be valid in this year's election, so only a small percentage of the 350 are likely illegitimate votes.

He also said that the county is continuing to reconcile its lists of people who voted Nov. 2 and the number of ballots cast. While there was a difference of about 3,500 in those lists, Logan said that by today it will be down to 1,200 to 1,500.

That, he said, is in line with past elections and what some other counties have seen, and does not present a ripe target for an election challenge.

"That does not clearly indicate that the election would have come out any differently," he said. "There are valid explanations for why there might be a discrepancy."

He will issue a report today detailing the numbers and the reasons for the remaining discrepancy.

An attorney for the Democrats said she doesn't think Republicans will find any strong evidence for an election contest.

"Suspicion is not proof," said Jenny Durkan, a Gregoire confidant representing the state Democratic Party. She is not worried about a judge throwing out the mishandled provisional ballots.

"There is a strong presumption in law that you don't throw out votes just because someone made a clerical mistake," she said. "There's not even a 50-50 chance a court would rule with Republicans to set aside this election."

But this election has seen several unprecedented turns. "That's the only thing that keeps me from saying there's no chance," she said.

David Postman: 360-943-9882

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EXHIBIT I



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Elections

Records, Elections and Licensing Services Division
Department of Executive Services

Nov. 8, 2004

Election officials to tally record number of provisional ballots

King County Election officials estimate a record 31,700 people voted provisional ballots at the polls last Tuesday. Those ballots are being validated and canvassed this week.

The number of provisional ballots includes ballots to be mailed to other counties and states but does **not** include the number of provisional ballots expected to be received by King County from other counties in the next nine days. Valid provisional ballots will be added to the ballot counts beginning later this week with final, certified results scheduled for Wednesday, Nov. 17.

For more than three decades Washington has provided voters with this fail-safe voting method – a process adopted nationwide by Congress following the 2000 Presidential election.

“Election staff is hard at work canvassing Tuesday’s election to ensure every ballot is accounted for,” said Dean Logan, director of King County Records, Elections and Licensing Services. “Though the process can be painstakingly slow, it is imperative staff take the time to research these provisional ballots to ensure every eligible ballot is counted.”

Provisional ballots are researched during the 15-day canvassing period leading up to the certification of the election. Once the voters’ eligibility is determined, their ballot is counted and included in the certified results of the election. Only votes cast in contests for which the voter is eligible will be counted. Provisional ballots for voters in other counties are forwarded to their home county for verification and counting.

There are number of reasons why a voter may be issued a provisional ballot – the most common reasons include:

- Absentee voters who either did not receive their ballot in the mail or who chose to vote at the polls instead;
- Voters whose names do not appear in the poll book;
- Voters registered in another county and unable to get to their polling location before the polls close; or
- Voters who have moved and their voter registration have not been updated.

Voters who cast a provisional ballot are provided with a reference number that allows them to check on the status of their provisional ballot beginning today. This information is available at www.metrokc.gov/elections or by phone at 206-296-VOTE.

In the 2000 Presidential election more than 78 percent of the 17,081 provisional ballots cast in King County were found to be valid and counted in the final returns. In the 2004 September primary, 90 percent of the provisional ballots were counted.

King County issued 646,537 absentee ballots of which 553,948, or 85.6 percent, have been returned. Of those ballots returned, 471,960 have been counted. Elections officials expect to count about 50,000 absentee ballots today.

The next ballot count will be issued **today, Monday, Nov. 8 at 4 p.m.** Visit www.metrokc.gov/elections/2004nov/schedule.htm for King County Elections’ report schedule.

Exhibit 2

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Elections

Records, Elections and Licensing Services Division
Department of Executive Services

Nov. 12, 2004

King County Elections responds to Superior Court decision

King County Superior Court Judge Dean Lum today instructed King County Elections to provide the political parties with information about voters who cast a provisional ballot at the polls and whose signature is in question. King County will comply and have lists available for requesting parties by 5 p.m.

"I am grateful that the Court reviewed this case in a timely manner with sensitivity to the elections process. Our focus today and over the weekend will be on verifying and counting the remaining absentee and provisional ballots and certifying this election," said Dean Logan, director of King County Records, Elections and Licensing Services. "I urge all voters who cast a provisional ballot in King County to verify the status of their provisional ballot online or by calling King County Elections by Tuesday, Nov. 16."

In Washington State Democratic Central Committee, et al v. King County Records, Elections and Licensing Services Division, the court ruled in favor of the party to make public a list of some 929 provisional voters whose signature does not match their registration.

"This is the value of judicial review and our legal system," said Logan. "It is appropriate for us to take direction from the Court versus outside political interests when legal provisions are in conflict."

"Election staff will work through the weekend to process and prepare as many eligible ballots for counting," said Logan. "In King County, with more than 31,000 provisional ballots, voters are given the tools to verify the status of their provisional ballot online and by telephone. Our online verification system is ahead of its time and works well for voters in King County."

Election officials will certify the election and make public the number of provisional ballots that are counted Wednesday, Nov. 17.

Updated: Nov. 12, 2004

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Elections

Records, Elections and Licensing Services Division
Department of Executive Services

Nov. 12, 2004

King County Elections' statement regarding Democratic Party lawsuit over provisional ballots

From Dean Logan, director of King County Records, Elections and Licensing Services

"King County recognizes the historical context of the very close race for Governor and respects the political parties' right to advocate for the support of their nominees. In a race this close, this level of scrutiny is to be expected."

"When Congress created the Help America Vote Act following the 2000 presidential election, it was very specific about how provisional ballot information is treated. According to HAVA, information about an individual provisional ballot is restricted to the individual who casts the ballot."

"We are working closely with the Prosecuting Attorney's Office to ensure we uphold the letter of the law and want to reassure voters that King County Elections will continue to conduct the canvassing of the November 2nd General Election with integrity and transparency – and in accordance with the laws and rules that govern the elections process."

"While verification and processing continues, election officials expect more than 80 percent of the estimated 31,700 provisional ballots cast in King County to be validated and counted."

"We have a responsibility to ensure that the results of the election are certified accurately, timely, and without political influence."

By law, King County must complete the processing of absentee and provisional ballots and certify the results of the election by Wednesday, November 17th. The focus for the next five days will be on those tasks. Election results for King County will be updated today, November 12, at 4:00 p.m. Individuals who cast provisional ballots in the General Election can check the status of their ballots at www.metrokc.gov/elections or by calling King County Elections at 206 296-8683.

Updated: Nov. 12, 2004

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Exhibit 4

Only 19 votes separate Rossi, Gregoire

Automatic recount, legal fight likely after today's deadline for tallies

KENNETH P. VOGEL; The News Tribune
Last updated: November 17th, 2004 08:48 AM

Republican Dino Rossi retook the slimmest of leads Tuesday over Democrat Christine Gregoire entering the final day of vote counting in the state's governor's race, but several unexpected twists gave Gregoire hope.

On Tuesday evening, Rossi led Gregoire by 19 votes, with nearly 2.8 million votes counted and an estimated 6,127 ballots left to go before today's close of business deadline for counties to certify their results.

Regardless of who wins, an automatic recount and protracted legal battle are likely – though a King County judge chided the candidates' supporters for dragging the court into the election.

An automatic recount would be triggered if the margin of victory is less than 2,000 votes.

The slow vote count was jolted Tuesday by revelations that bode well for Gregoire in two counties. King County, which has given her 57.7 percent of its votes, increased its estimate of how many ballots remained to be counted by 10,000. Grays Harbor County moved to remedy what officials there said was an unexplained glitch that erroneously boosted Rossi's vote tallies by several hundred votes.

Things are "getting curiouser and curiouser," said state Republican Party Chairman Chris Vance. "If you added a few palm trees, this would start to look like Florida."

Though Vance blasted Democrats for suing the King County elections division Friday, his party also sicced its lawyers on the beleaguered office Tuesday.

King County Superior Court Judge Dean Lum denied the state Republican Party's request to block King County elections workers from counting about 200 provisional ballots that the state Democratic Party had been scrambling last weekend to save.

Last Friday, Lum ordered the county to release the names and addresses of 929 people who didn't sign their provisional ballot security envelopes or whose signatures on the envelopes didn't match those on file with the county.

Volunteers with the Democratic Party, which sued to get the list, tracked down about 200 of those people, as well as 400 voters with at-risk absentee ballots – all deemed sympathetic to Gregoire. The volunteers had voters sign affidavits verifying their signatures and submitted the affidavits to King County's elections division Monday and Tuesday.

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Republicans also are collecting affidavits from voters. Vance confirmed that the GOP might sue Yakima County today for not accepting affidavits.

It's not clear whether state law permits third parties to submit affidavits on behalf of voters, according to Nick Handy, elections director for the secretary of state.

"It's a new issue, and it's the kind of issue that only gets raised" when the margin is razor-thin, he said.

Republicans asserted that the third-party involvement increases the potential for fraud, but Lum said that argument takes a back seat to making sure every vote gets counted.

However, he did order King County election workers to keep track of how many provisional ballots were resuscitated with the help of third parties. "If it is

shown later that one or both parties were actually engaged in voter fraud, we will find out, and the consequences flowing from any such misconduct will be serious and long-lasting indeed," Lum wrote in his ruling, which he read from the bench Tuesday.

He also rebuked both state parties for creating a situation "which all reasonable Washingtonians have dreaded for four years: the moment when the court is asked to micromanage an election.

"Everyone would agree that Court is not the proper place to decide an election," Lum said. "Yet this has not stopped both Republicans and Democrats (from rushing) to court at the last minute, seeking emergency restraining orders and injunctions, claiming all sorts of improprieties by the other side, with King County Records, Elections and Licensing Services Division and the Court 'whipsawed' in the middle."

As they have since Election Day, Rossi and Gregoire stayed out of the public eye Tuesday.

Neither political party would rule out challenging the statewide results in court after they're certified. They could

(Exhibits)

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do so by appealing part or all of Lum's decisions Friday and Tuesday, thanks to Lum's Tuesday ruling allowing Republicans to join the Democrats' suit.

Democrats might seek to challenge a Gregoire loss in court, state Democratic Party Chairman Paul Berendt said, "If I felt there was something amiss." He added: "That's a decision that hasn't been made, but I always keep my options open, you bet."

Said Vance, the GOP chairman: "We're not planning on that, but we didn't plan on King County finding 1,000 more ballots. We didn't plan on Grays Harbor losing 500 votes for Dino. And we didn't plan on the Democrats being allowed to change the rules of the game" by using affidavits in King County.

State Republicans are getting legal help from national Republican groups, according to Vance. He pointed out that both King and Grays Harbor counties lean Democratic and he suggested that their elections offices might be tailoring their counting process to boost Gregoire.

That's ludicrous, said the leaders of both counties' elections offices.

"If I wasn't so tired, I'd laugh," Grays Harbor County Auditor Vern Spatz, an elected Democrat, said Tuesday. His office, which reported Rossi ahead by 231 votes on Monday, announced Tuesday it would scan its ballots again because it had mistakenly counted some ballots twice.

After the rescan, Gregoire led by 164 votes in the county. Spatz's office reported it still had more than 1,200 ballots to count.

King County's elections division had to increase its estimate of ballots left to count because projections using previous election results underestimated the number of absentee, overseas, military and provisional ballots it would receive this year, said director Dean Logan, an appointee.

"The contention on the part of Chris Vance and the state Republicans that somehow 10,000 ballots were found somewhere is just not accurate," he said.

He conceded that his office might have been remiss in not recalculating its uncounted ballot estimate sooner. But, he added, "in our defense, for better or for worse, we were spending most of our time in court" defending against the parties' lawsuits.

King County estimated that it had 1,000 ballots left to count today. "It's still an estimate, but you're not going to see 10,000 more ballots," Logan said.



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exhibit 5

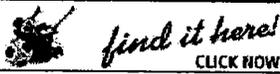
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All evidence points to a revote for governor

2005-01-09

Christine Gregoire calls the idea of rerunning the governor's election "ludicrous. It's particularly unfortunate we're somehow suggesting these county elections officials haven't done their job, when there is absolutely no evidence to support that," she says.

The Seattle P-I goes even further, saying it was a "generally well-conducted election" (which tells you everything you'll ever need to know about the P-I's standards for government efficiency) and calling the revote idea "preposterous."

Preposterous? Ludicrous? Pretend for a moment that you didn't vote for either Dino Rossi or Gregoire. Pretend that you're a judge.

You have to decide whether this election should be successfully contested, which would be grounds for rerunning it. You will make this decision using the following standard: Is there compelling evidence that through suspected fraud, inefficiency or ineptitude, it is not reasonable to know which candidate won the election? The threshold of victory is key here, and according to the third count, Gregoire holds a 129 vote lead. Rossi won the first two counts, but the latest count -- which is the last one unless a new election is ordered -- trumps the others.

Here's some of the evidence in front of you.

* A week or so ago, King County acknowledged having 3,539 more ballots than certified voters. That's a "net" figure. There actually were about 5,000 more ballots than voters, but in some precincts, there was a total of about 1,500 more voters than ballots. In other words, some people's votes disappeared. The head of the elections office, Dean Logan, said that his office could narrow that 3,539 figure, but earlier this week he admitted that nearly 1,500 ballots cannot be reconciled. In other words, there were about 1,500 more ballots than voters in the 2004 election.

One precinct in Seattle had 72 more ballots than voters.

* Again, in King County, elections workers report that hundreds of "provisional" ballots were illegally mixed in with other ballots and fed through the counting machines. There are three kinds of ballots. The first is the poll ballot, the kind you see when you vote at the polling place. The second is the absentee ballot, which is the kind you send through the mail. The third is the provisional ballot, which someone is allowed to fill in when they show up at a polling place and their name is not in the registry. It is assumed that the provisional ballot is not a legal vote, unless it is proven otherwise. Each ballot has to be taken out of an envelope and checked for authenticity. Then and only then

PulsePoll.com

Should there be a revote in the governor's race?

Yes.

No.

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Exhibit 6

can it be counted. Instead, hundreds of these ballots were simply fed through the machines, which makes it impossible to track.

* More than 50,000 ballots were ``enhanced'' by elections workers (just in King County), but original markings on the ballots were permanently obscured (usually by ``white out'' or by darkening circles), which prevented a review as to whether they were properly enhanced or not. That is a violation of state law.

* While King County went out of its way to count 735 absentee ballots earlier rejected because of clerical error, they refused to count numerous uncounted military ballots that were not received back in time due to no fault of the enlisted man or woman.

* And finally, the ``F'' word: Fraud. In Pierce County alone, more than 50 felons that have not had their voting rights restored voted anyway. The actual number might be twice as high. King County has four times the population as Pierce and probably six times as many felons, but King County still won't release its felon list to an organization trying to search for illegal vote casting.

* You may remember in mid-November a judge gave state Democrats a couple of days to canvass Seattle neighborhoods to link rejected provisional votes with registered voters, thus allowing the vote to count. The canvassers would go to a home, and ask the occupant who he or she voted for. If the answer was Rossi, they left. If the answer was Gregoire, they got them to sign an affidavit certifying that the disputed ballot was indeed theirs.

The Democrats claimed 400 additional votes this way. But these pieces of paper are public information and can be checked. Nine of these voters now turn out to be felons. One may have been dead. Fifteen were registered elsewhere and may have voted twice. And Tom McCabe from the Building Industry Association of Washington, who checked the signatures, believes up to half are forgeries. He has hired one of the two state handwriting experts authorized to testify in federal court to examine each of these affidavits. A report is due Monday.

Like I said, you be the judge. If you have strong feelings about either of the candidates, pretend you voted for the other one before rendering your decision. But based on what you know, do you think we should have a revote?

John Carlson is founder of Washington Policy Center and can be heard daily from 3-6 p.m. on radio station KVI-570. His column appears every other Sunday. Readers can contact him via e-mail at jcarlson@fisherradio.com.

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SEATTLE POST-INTELLIGENCER

http://seattlepi.nwsourc.com/local/207125_testing08.html

Untested voting systems used

State let seven counties bypass checks for federal standards

Saturday, January 8, 2005

By LEWIS KAMB

SEATTLE POST-INTELLIGENCER REPORTER

Voting systems in King, Pierce, Snohomish and four other counties skipped typically required testing procedures before being used in last fall's elections.

But although the systems weren't tested to ensure they properly functioned to federal standards, Washington Secretary of State Sam Reed said he's confident they tallied and recorded ballots accurately.

The lack of outside testing "didn't affect the way the ballots were counted in King County or anywhere else," Reed, a Republican, said this week. "The systems operated accurately. We ran a lot of our own tests and had a lot of observers to make sure of that."

But some reform activists say Washington's failure to meet its own elections standards by skipping the independent tests -- recommended by federal officials and required under Washington rules -- only raises more questions about the integrity of this state's elections process.

That's especially true in the aftermath of an extremely close governor's race that has cast a spotlight on problems with Washington's election process and caused Republicans to challenge Gov.-elect Christine Gregoire's 129-vote victory over Dino Rossi, some say.

"We had (counties using) untested, uncertified software (to run voting systems) ... and we had the secretary of state making up last-minute emergency rules to circumvent the law to let them do it," said Linda Franz, a member of the non-partisan activist group Citizens For Voting Integrity-Washington. "In my opinion, it raises a lot of questions."

Counties with voting systems that did not receive the federal-standards testing include Chelan, King, Kitsap, Klickitat, Pierce, Snohomish and Yakima. In all, voters in those counties account for more than half of the 2.9 million votes cast in the state's general election.

State and county elections officials say they were forced to forego the outside federal-standards testing on some voting systems simply because of a time crunch caused by the state's new "pick-a-party" primary -- the first-of-its-kind partisan election that emerged last year after Washington's traditional blanket primary was ruled unconstitutional.

While each state has ultimate say over its own voting-systems standards, a federal advisory board of state elections officials has developed and recommended federal standards for voting systems -- including calling for a battery of tests of such systems by designated "independent testing authorities" -- since 1990.

Exhibit 7

Washington and at least 40 other states since have adopted those federal standards, making such independent testing of voter systems a requirement here. That testing is in addition to separate and different tests conducted by the state and individual counties.

Although the basic equipment in each of the voting systems previously had passed the federal-standards tests, each system should have been tested again before last fall's elections.

That's because new software programs had been added to those systems.

"When we ended up with a different kind of primary, we had to change the software (in some county's voting systems) to process the votes for this specific election," Reed said. "There is no software in the nation that could have (counted) the ballots under (the new primary) system."

That in and of itself could have barred those systems from being used here -- state elections rules say voting systems are only allowed in Washington that first have been used in at least one other state. The new software in the modified systems had never been used in any election.

Likewise, the state requirement that the systems be tested to federal standards also wasn't met. There simply wasn't enough time to run the modified systems through the "independent testing authorities" process, which can take several months, said Pam Floyd, the state's assistant elections director for voter services.

Only after the state conducted its own rigorous tests and found the systems to be operating properly did the Secretary of State's Office then grant each county's voting system a "provisional certification," which cleared the systems for use in both the primary and general elections, officials say.

"It's something that had never been done before," Floyd said. "But the secretary of state is allowed to do that in special situations under the law."

Carolyn Diepenbrock, Snohomish County elections manager, added that without the secretary of state taking the emergency action to allow the systems to be used, large counties like hers would have been forced "to hand count all ballots" -- a task that would've taken weeks or more to complete.

But not all county elections officials chose to modify voting systems prior to last year's elections. Daniel Gillespie, elections supervisor for San Juan County, opted against updating the software in the Accuvote optical scan system his county uses.

"Why would I want to have new software right before an election?" Gillespie asked.

In sticking with its old -- and previously tested -- system, San Juan County had to use four different ballots in the primary.

The multiple ballots "just buried us in paper -- and we only have 10,000 voters here," Gillespie said.

So he understands why King, Snohomish and other large counties opted to go with the software changes allowing a single ballot to be used -- even if that meant foregoing the federal-standards testing process.

Besides, Gillespie added, "I don't think software was the issue in this election anyway."

exhibit?

Floyd, of the Secretary of State's Office, agreed, noting the major ballot controversies in the highly scrutinized governor's race involved human -- not machine -- error.

But some elections reform activists aren't as confident in that assessment.

Problems experienced on some Snohomish County voting machines are one example, some say. When some voters in that county tried to choose a candidate on the new touch screen voting systems, the machines instead registered votes to wrong candidates in a few cases.

But Diepenbrock, the county elections manager, said those problems involved individual machines calibrated incorrectly -- not systemwide problems caused by a lack of testing.

Still, Franz and others say the recent recount in Washington's governor's race provides ample reason to worry about whether the voting systems worked properly.

As statewide machine tabulations of votes changed between the first mechanical count and a recount, "we already know that voting machines didn't accurately count the governor's race," Franz said.

Rod Kiewiet, a California Institute of Technology political science professor and member of the Caltech/MIT Voter Technology Project, said it's unfortunate the software modifications couldn't be made in time for the systems to be tested.

The same thing happened to some systems in California during the governor's recall election there.

"You really want people not to be suspicious about the process," Kiewiet said.

Under the secretary of state's provisional certifications, each county's voting systems vendor is to get the systems independently tested and certified "as early as possible in 2005 but no later than July 15."

So far, none of the systems has completed the tests.

P-I reporter Lewis Kamb can be reached at 206-448-8336 or lewiskamb@seattlepi.com

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exhibit 7

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Records, Elections and Licensing Services Division
Department of Executive Services

Jan. 7, 2005

King County updates voter registration file

Elections officials today released its updated voter registration file.

After recent allegations of people casting ballots under the names of dead voters, officials remind the public that the number of voters credited for voting could change slightly depending on this ongoing investigation. The number of ballots cast will not change.

"The process of crediting voters is a post-election administrative process, that has no bearing on the authenticity of the election results," said Dean Logan, director of Records, Elections and Licensing Services.

Updates to the CD include additional registrations, cancellations, and changes to individual voter records. To prepare for the upcoming February election and as required by law, staff has been updating the voter registration database. This results in a noticeable difference between the file released Wednesday, Dec. 29 and the updated file released today.

Using this data to compare precinct results in the General Election will not be accurate, as some voters' precincts have changed due to list maintenance. It is important to note that voting history follows the voter and not the particular precinct or jurisdiction. When a voter moves from one address to another and transfers their voter registration, the voting history transfers with them to their new precinct.

Summary

The reconciliation work done this week reduced the difference between ballots cast and voters credited from 3,539 to 1,217. This number includes 348 provisional ballots mistakenly put through vote tabulation machines at polling places.

Through the reconciliation process, staff corrected and credited 1,654 voting records not credited in the preliminary file released last week.

Staff confirmed 69 Address Confidentiality Program voters cast ballots and 251 federal write-in absentee ballots were tabulated. These represent validly cast ballots, that are not accounted for in the registration database.

Given this work, staff can confirm that an additional 1,654 voters were credited for voting during the reconciliation process and 668 ballots were accounted for but not represented in the registration system.

The remaining difference in the number of votes cast versus the number of registrations credited with voting in the 2004 General Election is 1,217 – an accuracy rate of 99.99% based on close to 900,000 ballots cast.

This number is consistent with historic reconciliation rates for King County. In 2000 this number was 1,230.

Updated: Jan. 7, 2005

Pg1

exhibit 8

EXHIBIT H

Filing Venue for Actions Against Counties

Substitute House Bill 2721 was passed by the 2000 Legislature amending **RCW 36.01.050**. It now requires actions against counties to be commenced **in the superior court of either of the two nearest judicial districts** or in the superior court of the county responding to the petition. The legislation requires the Administrative Office Of The Courts to determine the nearest two judicial districts as measured by the travel time between county seats using major surface routes.

Below is a chart indicating for each county the nearest two judicial districts. These determinations were established using the Washington State Department of Transportation travel times from city to city.

List of Two Nearest Judicial Districts pursuant to RCW 36.01.050

County Name	Filing Venues	
Adams	Spokane	Lincoln
Asotin	Whitman	Walla Walla
Benton	Kittitas	Yakima
Chelan	Douglas	Grant
Clallam	Kitsap	Jefferson
Clark	Cowlitz	Skamania
Columbia	Walla Walla	Franklin
Cowlitz	Wahkiakum	Lewis
Douglas	Grant	Chelan
Ferry	Lincoln	Okanogan
Franklin	Walla Walla	Columbia
Garfield	Walla Walla	Whitman
Grant	Kittitas	Chelan
Grays Harbor	Pacific	Thurston
Island	Snohomish	Skagit
Jefferson	Clallam	Kitsap
King	Pierce	Snohomish
Kitsap	Pierce	Mason
Kittitas	Grant	Yakima
Klickitat	Clark	Yakima
Lewis	Cowlitz	Thurston
Lincoln	Spokane	Adams
Mason	Grays Harbor	Thurston
Okanogan	Ferry	Douglas
Pacific	Lewis	Grays Harbor
Pend Oreille	Spokane	Lincoln
Pierce	King	Thurston
San Juan	Skagit	Whatcom

Skagit	Snohomish	Whatcom
Skamania	Cowlitz	Clark
Snohomish	King	Skagit
Spokane	Pend Oreille	Lincoln
Stevens	Lincoln	Spokane
Thurston	Lewis	Mason
Wahkiakum	Cowlitz	Clark
Walla Walla	Franklin	Columbia
Whatcom	Skagit	Snohomish
Whitman	Garfield	Spokane
Yakima	Kittitas	Benton

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EXHIBIT I

Procedural Guidelines for Manual Recount Governor Race

The Secretary of State is providing the following procedural guidelines to assist County Auditors in the upcoming manual recount. These procedural guidelines are not new law or a change in the current law governing the November 2004 election. They do not in any way change the statewide substantive standards with respect to determining the validity of or vote on a ballot. Instead, these procedural guidelines are a recitation of current law focusing on the process and procedures of a manual recount.

Title 29A of the Revised Code of Washington sets forth the election laws of this state, and Chapter 29A.64 is the section that deals specifically with recounts. No rules have been promulgated in the Washington Administrative Code addressing recounts specifically. Counties should, however, review WAC 434-261-070 through WAC 434-261-090 regarding inspection of ballots and other issues which may be pertinent to a manual recount. The provisions contained in these rules should, where appropriate, be applied throughout the manual recount process in the same manner as applied in the original count and the mandatory machine recount.

Canvass Results

Final results for the manual recount should be reported in the same manner as the machine recount of ballots. If the machine recount was reported by precinct, with poll site and absentee totals separate, the manual recount results should be in the same format.

Overvotes and undervotes need not to be reported on the amended abstract submitted to the Secretary of State. Overvotes and undervotes should be available in each county, however, for any party review and for purposes of ballot reconciliation.

Preparation for the Recount

Opening sealed boxes and preparing ballots is part of the recount. The two day notification of candidates and observers applies to this part of the recount. RCW 29A.64.041 Thus, counties should not begin opening sealed boxes or preparing ballots until the required 2-day notice has been provided to the candidates and the recount process begins.

Recount Procedures

We are not aware of any statutory authority that prevents each county from determining the order in which the ballots will be recounted.

Counties should use recount procedures adopted by their canvassing board if such procedures have been adopted. No local procedure should be adopted that conflicts with state law or the Washington Administrative Code.

Such procedures should include provisions regarding:

- recount location;
- counting team procedures;
- totaling precinct results;
- discrepancies between manual and machine recount results;
- numbers of observers;
- observer guidelines;
- removal of observers and authorizing circumstances;
- procedures for the physical handling of ballots needing further consideration;
- procedures for ballots sorted in wrong precincts; and
- security measures.

Ballots

All ballots cast for the office of Governor must be included in the recount. RCW 29A.64.011

Counties are reminded that RCW 29A.60.210 provides that whenever the canvassing board finds that there is an apparent discrepancy or an inconsistency in the returns of an election, the board may recanvass the ballots or voting devices in any precincts of the county, and that the canvassing board shall conduct any necessary recanvass activity on or before the last day to certify the election and correct any error and document the correction of any error that it finds.

Ballots needing enhancement, duplication, or canvassing board determination should be handled in the same manner as during the machine recount. WAC 434-261-080; WAC 434-261-085; WAC 434-261-090.

Snohomish and Yakima Counties will be required to print out poll site ballots to recount, unless exempted by the recount request. (That is because they are the only two electronic poll site system counties in Washington.)

Skamania and Yakima Counties will need to recount the original absentee and vote-by-mail ballots. (That is because they are the only Hart ballot system counties in Washington.)

Any write-in votes for Christine Gregoire, Dino Rossi, or Ruth Bennett must be added to final results for those candidates. As a reminder, the following situations are counted under the existing statewide standards:

- A write-in vote is valid if the voter included the candidate's name, office, and party. For optical scan counties, the voter indicates the office by writing in the name in the spot for write-ins under the office heading. RCW 29A.60.021.

- As Christine Gregoire, Dino Rossi, and Ruth Bennett were declared candidates, exact spelling of the candidate's name and including the office and party would not be required for the write-in to be valid. RCW 29A.60.021
- In an optical scan county, the oval or arrow does not need to be marked for the write-in to be valid.
- If a voter marks a candidate for a race and writes in the same candidate, it is not an overvote. It is a valid vote for that candidate. WAC 434-261-075

Security

Secretary of State recommendations are as follows:

- all precincts should be counted to conclusion;
- a record of each precinct should be kept as it is recounted;
- tally results should be secured from day to day by:
 - securing the results in a sealed container, with one observer from each party initialing the seal log, and/or
 - having one observer from each party initial the tally sheets at the end of the day, and
 - each morning confirming with the observers that the tally sheets are the same as from the day before;
- provide security for off-site counting; and
- use full security measures before and during the recount.

Observers

Notice of the recount must be made to all candidates by mail plus by telephone, fax, e-mail or other electronic means. At least three attempts must be made over a two-day period to notify the affected parties or until the affected parties have received notification. RCW 29A.64.030.

Observers shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots. RCW 29A.64.041(1). Observers may not make a record of the names, addresses, or other information on the ballots, poll books, or applications for absentee ballots. RCW 29A.64.041(3). Each candidate is allowed to have at least two observers present during the recount. The county may limit the number of additional observers over the two allowed for each candidate if, in his or her opinion additional observers would cause undue delay or disruption of the recount process. RCW 29A.64.041(3). Legal counsel may accompany the observers. RCW 29A.64.030.

We are not aware of any statutory authority for observers to challenge any ballot or request that a ballot be considered or reconsidered by the canvassing board.

Secretary of State makes the following recommendations regarding observers.

- Counties should provide written instructions and rules for observers to ensure their observation activity does not disrupt the recount process.
- Counties should provide training for the official observers to ensure each observer understands and agrees to follow those written instructions and rules.
- Counties should allow as many observers as possible to observe the ballots and the process of tabulating the votes, but not fewer than two observers for each candidate.
- Counties should ensure that our State's upcoming manual recount is as open and transparent as possible, allowing observers as much access to view each ballot and each ballot's tabulation as staff and space reasonably permit. Reasonable rules and restrictions on the conduct of such observers should be able to maintain the orderly, trustworthy, and accurate recount process essential to preserving public confidence in the ultimate recount results.

Canvassing Board

The Canvassing Board or their designee does not need to be present during the entire recount if they have delegated that responsibility to the County Auditor in writing. RCW 29A.60.140.

The Canvassing Board or their designee must meet to certify the final results of the manual recount. RCW 29A.64.061.

Canvassing Board meeting notices can be posted as an emergency meeting, requiring 24 hours notification of the media. RCW 42.30.080.

Certifying the Results

Counties should not enter any interim results into the Secretary of State website—only final results.

The canvassing board must meet to certify the results. RCW 29A.64.061.

Once the ballot counting is finished, counties are requested to promptly enter the results on the Secretary of State's website. Only votes for Christine Gregoire, Dino Rossi, and Ruth Bennett (including any valid write-in votes for those candidates) should be entered on the website. Vote tallies for other write-in candidates are submitted with the hard copy report.

Hard copy results should be sent by overnight mail (FedEx or other) to the Office of the Secretary of State, 1007 Washington St. SE, Olympia WA 98501, immediately after the canvassing board certifies the results.

December 3, 2004
Secretary of State
Elections Division