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The Honorable John E. Bridges  
Department 3  
Noted for Hearing: Thursday, May 19, 2005  
WITHOUT ORAL ARGUMENT

SUPERIOR COURT OF WASHINGTON FOR CHELAN COUNTY

Timothy Borders, et al.,	)	
	)	
	)	Petitioners,
v.	)	
	)	No. 05-2-000027-3
Chelan County, et al.,	)	
	)	
	)	Respondents,
v.	)	
	)	KING COUNTY'S RESPONSE TO
Washington State Democratic Central Committee,	)	PETITIONERS' MOTION TO
	)	COMPEL
	)	
	)	Intervenor Respondents,
	)	
Libertarian Party of Washington State,	)	
	)	
	)	Intervenor Respondents.
	)	
	)	

King County provides this response to Petitioners' Motion to Compel and respectfully requests that the motion be denied for the reasons stated below.

- Petitioners failed to serve the motion to compel on King County as required by CR 37(a).

Civil Rule 37(a) provides that a party may apply to the court for an order compelling discovery "upon reasonable notice to other parties and all persons affected thereby". King County is clearly affected by Petitioners' motion, yet Petitioners failed to timely serve a copy of it on the County. Petitioners' own Certificate of Service filed with their Motion to Compel does

1 not list King County as one of the entities that would be served. *See* Attachment A (Declaration  
2 of E-Filing and Service)<sup>1</sup>. Service on the County did not occur until late yesterday, as reflected  
3 in the Petitioners' [amended] Declaration of Service. *See* Attachment B (Certificate of Service).

4 Petitioners failed to meet the notice requirements of CR 37(a) and they are therefore not  
5 entitled to apply for an order compelling discovery that affects King County. King County  
6 requests that the motion be denied.

7 2. King County is diligently responding to the numerous discovery requests it has  
8 received from the parties.

9 King County received Petitioners' Subpoena Duces Tecum at issue in this matter on May  
10 3, 2005.<sup>2</sup> Since that date, King County has received no fewer than six subpoenas seeking records  
11 within the minimal response time allowed by court rules. These have not been subpoenas for a  
12 few records at a time. Instead, the subpoenas have identified hundreds of records including  
13 copies of specific ballot envelopes that must be retrieved from the hundreds of thousands of  
14 ballot envelopes King County received for the November 2004 General Election. Just the one  
15 subpoena at issue in this motion calls for copies of poll book pages, absentee ballot envelopes,  
16 and provisional ballot envelopes related to over 200 specific individuals out of the more than  
17 one-half million people who cast such ballots in the election.

18 King County is responding to the subpoenas from all the parties as best as it can while  
19 still fulfilling its statutory duties to conduct and canvass elections. During the same time period  
20 that it has been locating, copying and producing thousands of records for the parties, King

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21 <sup>1</sup> The undersigned attorneys were able to obtain a copy of the original Certificate of Service late  
22 yesterday afternoon by printing it from the list of documents in this case posted on the Secretary  
of State's website.

23 <sup>2</sup> In their Motion to Compel, Petitioners state that they had to "re-serve" the subpoena on King  
County. However, "re-serve" is not the proper term since King County had no record of ever

1 County has had two special elections. One on April 26 and one yesterday, May 17. King  
2 County officials do not have the option of setting their statutory duties aside in order to respond  
3 to the rush of last minute discovery requests submitted by the parties.

4 Moreover, King County employees have appeared for depositions almost everyday for  
5 the past three weeks. The absence of these employees from the office means someone else must  
6 step in to fulfill that employee's duties and it means that fewer staff members are available to  
7 work on the time intensive requests for documents issued by the parties.

8 King County is doing the best it can to respond to the numerous subpoenas duces tecum it  
9 has received. Work on responding to these subpoenas is a high priority and King County strives  
10 to meet the short deadlines set by the parties. However, King County must also fulfill its  
11 statutory duties, particularly those related to the conduct and canvass of the April 26 and May 17  
12 Special Elections.

13 3. King County expects to have its response to the subpoena completed on May 20.

14 Notwithstanding the foregoing arguments, King County expects to have its response to  
15 Petitioners' May 3 subpoena completed on Friday, May 20. Many of the responsive documents  
16 have already been produced and it is expected that the remaining documents will be ready on  
17 Friday.

18 For the reasons stated above, King County respectfully requests that the Petitioners'  
19 Motion to Compel be denied. Petitioners are not entitled to an order compelling discovery as  
20 they failed to comply with the notice requirements of CR 37(a). Furthermore, King County is  
21 responding the numerous subpoenas it has received as best it can and expects to complete its  
22 response to Petitioners' May 3 subpoena on Friday, May 20.

23 \_\_\_\_\_  
having received the subpoena on April 29.

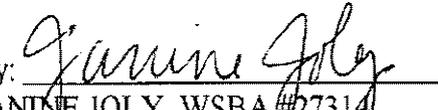
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A proposed order denying Petitioners' Motion to Compel is attached.

DATED this 18th day of May, 2005.

NORM MALENG  
King County Prosecuting Attorney

By:   
THOMAS KUFFEL, WSBA #20118  
Senior Deputy Prosecuting Attorney  
Attorneys for King County

By:   
JANINE JOLY, WSBA #27314  
Senior Deputy Prosecuting Attorney  
Attorneys for King County

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The Honorable John E. Bridges  
Department 3  
Noted for Hearing: Thursday, May 19, 2005  
WITHOUT ORAL ARGUMENT

SUPERIOR COURT OF WASHINGTON FOR CHELAN COUNTY

Timothy Borders, et al.,	)	
	)	
	)	No. 05-2-000027-3
	)	
Chelan County, et al.,	)	
	)	ORDER DENYING PETITIONERS'
	)	MOTION TO COMPEL
	)	
Washington State Democratic Central Committee,	)	[PROPOSED]
	)	
Intervenor Respondents,	)	
	)	
Libertarian Party of Washington State.	)	
	)	
Intervenor Respondents.	)	
	)	
	)	

THIS MATTER having come before this Court on Petitioners' Motion to Compel, and the Court having reviewed the Petitioners' Motion to Compel; King County's Response to Petitioners' Motion to Compel; Intervenor-Respondent Washington State Democratic Central Committee's Brief in Response to Petitioners' Motion to Compel King County to Produce Certain Documents; and the documents on file herein, and being fully advised in the premises, now, therefore, hereby ORDERS that:

ORDER DENYING AND DISMISSING  
PETITIONERS' MOTION TO COMPEL  
[PROPOSED] - 1

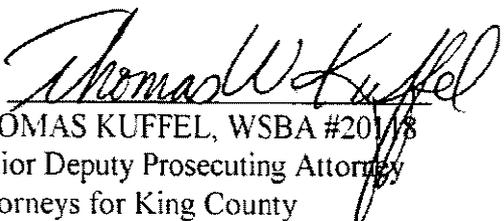
Norm Maleng, Prosecuting Attorney  
CIVIL DIVISION  
E550 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9015/SCAN 667-9015  
FAX (206) 296-0191

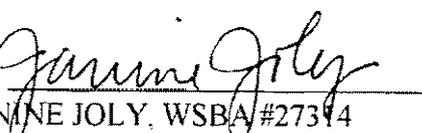
1 Petitioners' Motion to Compel is DENIED.

2 DATED this \_\_\_\_\_ day of May, 2005.

3  
4 \_\_\_\_\_  
The Honorable John E. Bridges

5  
6 NORM MALENG  
King County Prosecuting Attorney

7  
8 By:   
THOMAS KUFFEL, WSBA #20118  
9 Senior Deputy Prosecuting Attorney  
Attorneys for King County

10  
11 By:   
JANINE JOLY, WSBA #27314  
12 Senior Deputy Prosecuting Attorney  
Attorneys for King County

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ORDER DENYING AND DISMISSING  
PETITIONERS' MOTION TO COMPEL  
[PROPOSED] - 2

Norm Maleng, Prosecuting Attorney  
CIVIL DIVISION  
E550 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9015/SCAN 667-9015  
FAX (206) 296-0191

# **ATTACHMENT A**

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.

and

WASHINGTON STATE DEMOCRATIC  
CENTRAL COMMITTEE,  
Intervenor-Respondent,

And

Libertarian Party of Washington State et al.,  
Intervenor-Respondents.

No. 05-2-00027-3

DECLARATION OF E-FILING  
AND SERVICE

DONNA L. ALEXANDER 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 L.L.P. My  
business and mailing addresses are 2600 Century Square, 1501 Fourth Avenue, Seattle,  
Washington 98101-1688.

1 3. On May 16, 2005, I caused the documents listed below:

2 **Note for Motion on Special Setting**

3 **Petitioners' Motion to Shorten Time for Motion to Strike and Motion**  
4 **to Compel;**

5 **Proposed Order Granting Petitioners' Motion to Shorten Time**

6 **Petitioners' Motion to Strike WSDCC's Rebuttal Witness List**

7 **Proposed Order Granting Petitioners' Motion to Strike WSDCC's**  
8 **Rebuttal Witness List**

9 **Petitioners' Motion to Compel**

10 **Proposed Order Granting Petitioners' Motion to Compel King**  
11 **County's Production of Voting Records**

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

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

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

19 **Russell J. Speidel**  
20 Speidel Law Firm  
21 7 North Wenatchee Avenue, Suite 600  
22 Wenatchee, WA 98807

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

23 **Dale M. Foreman**  
24 Foreman, Arch. Dodge, Volyn &  
25 Zimmerman P.S.  
26 124 North Wenatchee Avenue, Suite A  
27 P.O. Box 3125  
Wenatchee WA 98807-3125

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

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

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

10 Gordon Sivley  
11 Michael C. Held  
12 Snohomish County Deputy Prosecuting  
13 Attorneys  
14 2918 Colby Avenue, Suite 203  
15 Everett WA 98201-4011

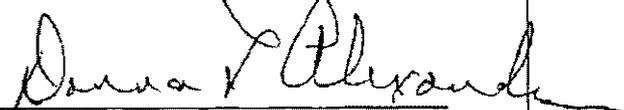
L. Michael Golden  
Lewis County Senior Deputy Prosecuting  
Attorney

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

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

13 DATED this 16<sup>th</sup> day of May, 2005, at Seattle, Washington.

14 

15 Donna L. Alexander  
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# **ATTACHMENT B**



1           3.     On May 17, 2005, I served the documents listed below:

- 2           o     **Motion to Compel**  
3           o     **Proposed Order Granting Petitioners' Motion to Compel King**  
4           o     **County's Production of Voting Records and**  
5           o     **Certificate of Service**

6     by sending true and correct copies out for service by Washington Legal Messengers to be  
7     office served at the Prosecuting Attorney's Office – Civil, Attn: Don Porter, 500 4<sup>th</sup>  
8     Avenue, Suite 900, Seattle, Washington, 98104. The Certificate of Service is being sent  
9     via e-filing on this date to Chelan County Superior Court, which will then serve copies  
10    electronically to the following persons as follows:

11    **Kevin Hamilton, Esq.**  
12    Perkins Coie LLP  
13    Attorneys for Washington State Democratic  
14    Central Committee  
15    1201 Third Avenue, Suite 4800  
16    Seattle, WA 98101  
17    Email: [KHAMILTON@perkinscoie.com](mailto:KHAMILTON@perkinscoie.com)

18    **Thomas Ahearne**  
19    For: Secretary of State Sam Reed  
20    Foster Pepper & Shefelman  
21    1111 Third Avenue, Suite 3400  
22    Seattle WA 98101  
23    Email: [ahearne@foster.com](mailto:ahearne@foster.com)

24    **Dale M. Foreman**  
25    Foreman, Arch, Dodge, Volyn &  
26    Zimmerman P.S.  
27    124 North Wenatchee Avenue, Suite A  
28    P.O. Box 3125  
29    Wenatchee WA 98807-3125  
30    Email: [dalef@fadvz.com](mailto:dalef@fadvz.com)

31    **Richard Shepard**  
32    **John S. Mills**  
33    For: Libertarians  
34    Shepard Law Office, Inc.  
35    818 S. Yakima Avenue, #200  
36    Tacoma, WA 98405  
37    Email: [richard@shepardlawoffice.com](mailto:richard@shepardlawoffice.com)  
38    Email: [jmillslaw@gmail.com](mailto:jmillslaw@gmail.com)

39    **Gary Riesen**  
40    Chelan County Prosecuting Attorney  
41    PO Box 2596  
42    Wenatchee WA 98807-2596  
43    Email: [Gary.Riesen@co.chelan.wa.us](mailto:Gary.Riesen@co.chelan.wa.us)

44    **Tim O'Neill**  
45    Klickitat County Prosecuting Attorney  
46    205 South Columbus Ave., MS-CH18  
47    Goldendale WA 98620  
48    Email: [timo@co.klickitat.wa.us](mailto:timo@co.klickitat.wa.us)

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**Barnett N. Kalikow, Esq.**  
For: Klickitat County Auditor  
Kalikow & Gusa PLLC  
1405 Harrison Avenue NW, Suite 207  
Olympia WA 98502  
Email: [barnett.kalikow@gte.net](mailto:barnett.kalikow@gte.net)

**L. Michael Golden**  
Lewis County Senior Deputy Prosecuting  
Attorney  
345 West Main Street  
Chehalis WA 98532  
Email: [LMGolden@co.lewis.wa.us](mailto:LMGolden@co.lewis.wa.us)

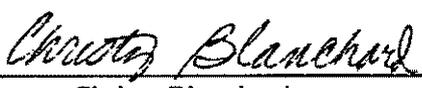
**Gorden Sivley**  
**Michael C. Held**  
Snohomish County Deputy Prosecuting  
Attorneys  
2918 Colby Avenue, Suite 203  
Everett WA 98201-4011  
Email: [gsivley@co.snohomish.wa.us](mailto:gsivley@co.snohomish.wa.us)  
Email: [mheld@co.snohomish.wa.us](mailto:mheld@co.snohomish.wa.us)

**Jeffrey T. Even, Asst. Attorney General**  
For: Secretary of State Sam Reed  
Attorney General's Office  
PO Box 40100  
Olympia WA 98504-0100  
Email: [jeffe@atg.wa.gov](mailto:jeffe@atg.wa.gov)

**Russell J. Speidel,**  
Speidel Law Firm,  
7 North Wenatchee Avenue, Suite 600,  
Wenatchee, WA 98807  
Email: [RussSpeidel@speidellaw.com](mailto:RussSpeidel@speidellaw.com).

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

DATED this 17<sup>th</sup> day of May, 2005, at Seattle, Washington.

  
\_\_\_\_\_  
Christy Blanchard

2/22/2005 Martha Alcazar Miami Finical Director 305 349 7393  
Call back tomorrow

2/22/2005 Elva Doonesbush Jay Stevens Clerk 770 528 1350 new 334  
Would like to see Shelby when ready

2/23/2005 Dana L. Forehand FACC 205-8214  
Follow-up call on CheckAgain