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April 13, 2005

VIA FACSIMILE & U.S. MAIL

Jeffrey T. Even  
Assistant Attorney General  
Office of the Attorney General  
1125 Washington Street S.E.  
P. O. Box 40100  
Olympia, WA 98504-0100

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

Dear Jeff:

Thank you for your cooperation in setting the dates of the depositions of Messrs. Handy, Miller, and Pearson, and Secretary Reed.

I was more than a little surprised by your comments about the deposition of Secretary Reed. I'm familiar, of course, with the general principle that discovery should be sought at lower levels initially and only then should the deposition of a senior government or business executive be taken, including the holdings of the various out-of-state courts you cite for that proposition. Of course, having defended precisely the principles that you cite on numerous occasions in other contexts, I can equally assure you that the rule you identify is far from absolute and certainly contemplates a deposition where the deponent has knowledge relevant to the issues presented in the case or has been actively involved in decisionmaking relevant to the issues or the conduct of the litigation.

In this case, we intend to depose Messrs. Handy, Miller and Pearson first and, only thereafter, to take Secretary Reed's deposition. Although we are certainly more than willing to reconsider our interest in taking the deposition, the Secretary has interjected

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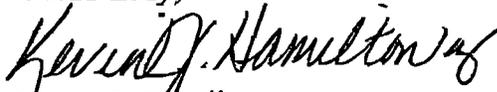
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Page 2

himself directly into this election contest by staking out positions on the issues central to this case -- whether speculating how voters might have voted by using "proportional reduction" analysis is appropriate (in contradiction to previously-articulated positions of the Secretary of State's office), for example; issuing public pronouncements that he was "appalled" at the conduct of the election by King County; by taking positions on the appropriate burdens that ought be placed on election contestants in the litigation, and the like. Now it may be that the Secretary has no knowledge of these issues and that decisions have been made in his name by litigation counsel or others in his office, or statements have been issued in his name without his approval or knowledge, or even that he has been misquoted or otherwise unaware of the positions taken in this litigation. But I frankly think that is unlikely.

Please let me know if you would like to discuss the matter further. We do intend to be respectful of the Secretary's schedule and to conduct the deposition as efficiently as possible. Thank you again for your cooperation.

Yours truly,

  
Kevin J. Hamilton

KJH:cma

cc: Thomas Ahearne



## FACSIMILE COVER SHEET

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RE: Borders, et al. v. King County, et al.

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