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April 28, 2005

HAND DELIVERED

The Honorable John E. Bridges
Chelan County Superior Court
Department No. 3
401 Washington Street
Wenatchee, WA 98807

Re: ***Borders v. King County, et al.***
Chelan County Superior Court Cause No. 05-2-00027-3

Dear Judge Bridges:

As you know, we are scheduled to appear in your courtroom on Monday, May 2, at 8:30 a.m. for a hearing in *Borders, et al. v. King County, et al.* on a number of pending motions. In advance of that hearing, I wanted to provide you with our proposal for the order in which these motions should be heard.

At the outset, the WSDCC motion for summary judgment dismissing the claims regarding non-citizen voters has been supported by the Secretary of State and is unopposed by the Petitioners. As we mentioned in our reply papers, we would respectfully suggest that this motion be summarily granted without oral argument as there appears to be no dispute on the point.

A. Whether Petitioners' "Proportional Analysis" is Admissible under Washington Law

We suggest that the Court begin with argument regarding the fundamental question of how it is to be determined at trial whether "illegal votes" or "election official errors" in fact changed the outcome of the election.

[15934-0006/SL051160.222]

WSDCC's motion in limine to exclude proportional analysis addresses this issue at the most fundamental level and makes for a logical starting place for the discussion. This issue has already been addressed by the parties in earlier briefing in this case. Resolution of this issue will provide important guidance to the parties as to the other motions and how this case will be presented at trial. Accordingly, we would respectfully suggest that it should be decided at the outset of the hearing.

B. Whether WSDCC Can Introduce Evidence of Errors and Illegal Votes

Next, we suggest that the Court address the Petitioners' motion to preclude the WSDCC from introducing evidence of off-setting errors in WSDCC's case.

C. Required Elements to Prove an "Illegal Vote"

We suggest that the Court then address two related motions: WSDCC's motion in limine regarding elements necessary to prove illegal felon voters and the Petitioners' motion to clarify burden of proof on illegal votes. Because these motions are so closely related, we suggest that they be argued simultaneously. The Secretary of State has made the same suggestion. *See* Secretary of State's Response to WSDCC's Motion in Limine to Exclude Evidence of Petitioners' Erroneously Listed "Illegal Convicted Felon Voters" at n.1. Both of these motions address the elements of proof and the applicable standard of proof.

D. Whether "Crediting Files" Are Admissible

Finally, we suggest that the Court conclude with WSDCC's motion to require proof of "illegal votes" through the actual evidence of that voting – poll book pages or ballot envelopes containing the voters' signatures (as opposed to problematic and often erroneous "crediting files").

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Unfortunately, I will be unable to attend the hearing on May 2. As a result of the death of my brother-in-law (who lives in Europe), I will be out of the country on Monday to attend the funeral. I apologize for my inability to attend this important hearing and have asked my partner, David J. Burman, to present argument along with Ms. Durkan.

Thank you again for your gracious consideration and assistance in resolving this case.

Yours truly,

Kevin J. Hamilton

KJH:cma

cc: All Counsel