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SUPREME COURT OF WASHINGTON

DAVID T. MCDONALD, ET AL.,

Petitioners,

v.

SECRETARY OF STATE SAM REED, ET AL,

Respondents.

NO.

AFFIDAVIT OF DAVID T. MCDONALD IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

Now comes Affiant, David T. McDonald, after being duly sworn on oath, and states as follows:

AFFIDAVIT OF DAVID T. MCDONALD IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS - 1

[15934-0006-000000/SL043380.028]

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

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1. I am over the age of 18, am competent to be a witness herein, and make this declaration based on my own personal knowledge.

2. I am a duly registered voter of the State of Washington residing in King County.

3. I am an elected Member of the Democratic National Committee representing the Washington State Democratic Party and the Parliamentarian of the Washington State Democratic Party. As such under the rules of the Party, I am an officer of the Party.

4. I was appointed Recount Director for the Party by Paul Berendt, Chair of the Washington State Democratic Party.

5. Attached hereto as Exhibit A is a true and correct copy of a letter and attachment I delivered to Secretary of State Sam Reed requesting that the State of Washington carry out a manual recount of all ballots submitted to State or County election officials by any elector of this State at any time in connection with the 2004 election of the next Governor of the State of Washington. I enclosed a certified check for \$730,000 with that letter.

6. Attached hereto as Exhibit B is a true and correct copy of "Procedural Guidelines for Manual Recount, Governor Race, Draft," which I received by email from the Secretary of State yesterday afternoon.

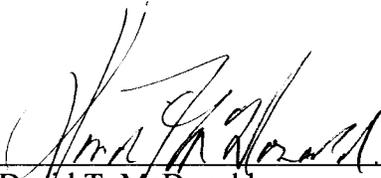
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7. I have reviewed the Petition by Electors and Petition for Writ of Mandamus and Other Relief and believe the allegations therein to be true based upon my knowledge and information provided by my staff.

DATED this 3 day of December, 2004 in Seattle, Washington.



David T. McDonald

SUBSCRIBED AND SWORN to before me this 3rd day of December, 2004.



Elva Gonzalez

Elva Gonzalez

(Print or Stamp Name of Notary)
NOTARY PUBLIC in and for the State of
Washington, residing at King County
My Commission Expires: 12/9/04

EXHIBIT A

Washington State Democrats

Paul Berendt, Chair

December 3, 2004

Sam Reed
Secretary of State
Office of the Secretary of State
520 Union Avenue
P.O. Box 40220
Olympia, WA 98504-0220

Re: Statewide Manual Recount of Ballots in Governors Race

Dear Secretary Reed:

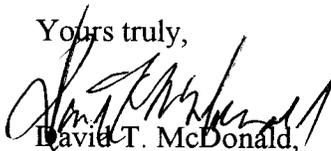
I am an elected Member of the Democratic National Committee representing the Washington State Democratic Party and the Parliamentarian of the Washington State Democratic Party. As such under the rules of the Party, I am an officer of the Party. I am a duly registered voter of the State of Washington residing in King County. To avoid any confusion, I have enclosed a letter from Paul Berendt, confirming my authority and endorsing this request. Mr. Berendt is the duly elected Chair of the State Committee of the Democratic Party, the Washington State Democratic Central Committee, and the Washington State Democratic Party.

On behalf of the Washington State Democratic Party and related entities and all voters everywhere who cherish democracy, fairness, and open government, I hereby request that the State of Washington carry out a manual recount of all ballots submitted to State or County election officials by any elector of this State at any time in connection with the 2004 election of the next Governor of the State of Washington.

Pursuant to RCW 29A.64.030, and in reliance upon the number of ballots which you and the respective auditors have most recently certified as the number of ballots cast in this race, I enclose a certified check made out to the State of Washington in the amount of \$730,000. This should be more than sufficient to cover recounting of all ballots previously counted as well as all ballots previously excluded for some reason.

Please acknowledge timely receipt of this request and advise me immediately of any questions you have with regard to this request or any information you need to direct a statewide manual recount of ballots in the Governor's race.

Yours truly,



David T. McDonald,

Recount Director

Washington State Democratic Party

cc: Paul Berendt
County Auditors (without enclosures)

Washington State Democrats

Paul Berendt, Chair

December 3, 2004

Sam S. Reed
Secretary of State
Office of the Secretary of State
520 Union Avenue
P.O. Box 40220
Olympia, WA 98504-0220

Re: Statewide Manual Recount of Ballots in Governor's Race

Dear Secretary Reed:

I am the Chair of the Washington State Democratic Party. David T. McDonald, who I have named our Recount Director, is an officer of the Democratic Party. On behalf of the Washington State Democratic Party, I endorse and concur in his request for a Statewide Manual Recount of Ballots in the Governor's race.

Sincerely,



Paul Berendt
Chair
WSDCC

EXHIBIT B

**Procedural Guidelines for Manual Recount
Governor Race
Draft**

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.

Chapter 29A.64 is the section in Title 29A of the Revised Code of Washington that deals 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

Rechecking signatures on provisional or absentee ballots are not part of the recount.

Ballots already ruled upon by the canvassing board should be counted as originally directed by the canvassing board.

Previously enhanced or duplicated ballots should be counted as enhanced or duplicated. Matching the duplicated ballot to the original is not part of the manual recount.

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.

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

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, phone, fax, or e-mail. RCW 29A.64.030.

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 judgment 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.

Observers may not handle the ballots or 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).

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)

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.
- Counties should provide training for the official observers.
- Counties should allow as many observers as possible to observe the process, but not fewer than two for each candidate.
- Counties should ensure that the recount is as open and transparent as possible, allowing observers access to as much of the recount process as staff and space permit.
- Two possible methods are recommended for managing observers.
 - Counties may use representatives from each party as part of each counting board. Under this approach, other observers may be limited since a representative from each party is physically viewing each ballot as it is counted by the counting board.
 - Counties may use staff members for the counting board. Under this approach, counties should provide room for extra observers and access to each counting board so, to the extent physically practical, the party observers can view each ballot as it is counted by the counting board.

Canvassing Board

The Canvassing Board 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 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