

EXHIBIT K

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN)
PARTY, et al.,)

Plaintiffs,)

WASHINGTON STATE DEMOCRATIC)
CENTRAL COMMITTEE, et al.,)

Plaintiff Intervenors,)

LIBERTARIAN PARTY OF WASHINGTON)
STATE, et al.,)

No. CV05-0927-JCC

Plaintiff Intervenors,)

v.)

STATE OF WASHINGTON, et al.,)

Defendant Intervenors,)

WASHINGTON STATE GRANGE, et al.,)

Defendant Intervenors.)

Deposition Upon Oral Examination
Of
TODD C. NICHOLS

Taken by: Tracey L. Juran, CCR
CCR No. 2699

August 3, 2010
Seattle, Washington

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EXAMINATION

By Mr. Even

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EXHIBITS MARKED

No. 1 (5-page Rules for the
Selection of Democratic
Candidates and Nominees for
Public Office dated September 26,
2009)

29

1 Be it remembered that the deposition upon oral
2 examination of Todd C. Nichols was taken on August 3,
3 2010, at the hour of 10:32 a.m. at 925 Fourth Avenue,
4 Suite 2900, Seattle, Washington, before Tracey L. Juran,
5 CCR, Notary Public in and for the State of Washington
6 residing at Edmonds, Washington.

7 Whereupon the following proceedings were had,
8 to wit:

9 * * * * *

10 TODD C. NICHOLS, having been first duly sworn on
11 oath by the Notary Public to tell
12 the truth, the whole truth, and
13 nothing but the truth, was deposed
14 and testified as follows:

15 EXAMINATION

16 BY MR. EVEN:

17 Q. Good morning.

18 A. Good morning.

19 Q. Begin by asking you to state your name for the record
20 and please spell the last name.

21 A. Todd C. Nichols, N-I-C-H-O-L-S.

22 Q. And have you ever had your deposition taken before?

23 A. I have.

24 Q. So you've been through this before. You realize there's
25 a transcript being made and --

A. Sure.

1 Q. -- it will be the record --

2 A. Mm-hm.

3 Q. -- of what --

4 A. Yes.

5 Q. -- you said?

6 By way of, I guess, other preliminaries, just want
7 to be sure that you feel comfortable, if you don't
8 understand a question that I've asked, that you could
9 stop and ask me to clarify it or ask me to repeat it.
10 Don't try and guess at what it is I'm asking. You
11 understand --

12 A. I will.

13 Q. -- that?

14 A. Yes, I do.

15 Q. And similarly, if you don't know the answer to a
16 question, saying, I don't know, is a perfectly
17 legitimate response.

18 A. Right.

19 Q. Don't need to speculate or --

20 MR. EVEN: And, I guess, just by way also of
21 groundwork, we understand we're -- as far as objections
22 go today, that objections are waived except for
23 objections to the form of the question?

24 MR. MCDONALD: Yes.

25 Q. (by Mr. Even) Why don't we begin with your educational

1 background.

2 A. Okay.

3 Q. Where did you go to school?

4 A. I went -- my undergraduate degree is from the U.S. Naval
5 Academy.

6 Q. And when was that?

7 A. 1972.

8 Q. You said your undergraduate degree. Is there a --

9 A. Yes.

10 Q. Do you have a graduate degree?

11 A. I have a law degree from George Washington University,
12 1981.

13 Q. What did you major in as an undergraduate?

14 A. International security affairs.

15 Q. At the Naval Academy. That must have --

16 A. Right.

17 Q. -- been interesting.

18 A. It was.

19 Q. What is your current position with the Democratic Party?

20 A. I'm on the executive board of the state party and
21 also -- well, my position is, I'm the state committeeman
22 for Snohomish County. But I'm also on the executive
23 board and I'm chair of the rules committee.

24 Q. And we'll talk a little bit more about what all that
25 means, I think, as we go along.

1 And if I can put it this way, what's your day job?

2 A. I'm a lawyer in Everett.

3 Q. In Everett, okay.

4 What kind of practice?

5 A. Mostly civil plaintiff.

6 Q. How long have you been the chair of the rules committee?

7 A. I believe since 2003.

8 Q. And did you have a position with the party before that?

9 A. I was on the rules committee and I've had numerous
10 positions with the party. I've been a platform chair
11 and a county chairman and --

12 Q. In Snohomish?

13 A. -- state committeeman for a legislative district.

14 Snohomish, that's right.

15 Q. What are the duties of the chair of the rules committee?

16 A. The duties of the chair of the rules committee are to
17 preside over the rules committee, which is composed of
18 state committee members, and to do its work.

19 Typically, in a two-year cycle, it means preparing
20 rules for biennial convention and delegate selection,
21 and every four years, of course, to do the national
22 delegate-selection rules. And then we have other -- we
23 have grievance procedures and bylaws issues that people
24 bring up and charter issues, and so we deal with those
25 as well. And in this -- in the last several years,

1 we've dealt with the -- our nomination rules a couple of
2 times.

3 Q. What kind of grievances go before the rules committee?

4 A. No grievances go before the rules committee. We --

5 Q. You do rules.

6 A. We're working on a grievance policy.

7 Q. Oh, for the party as a whole.

8 A. Correct.

9 Q. Do you consider yourself a member of the Democratic
10 Party?

11 A. Yes.

12 Q. How do you become a member?

13 A. By making a public declaration that I wish to be
14 affiliated with the Democratic Party and support its
15 principles.

16 Q. What materials did you review to prepare for this
17 deposition?

18 A. I looked at the charter, the -- and the nomination
19 rules.

20 Q. What is the charter?

21 A. The charter of the party is basically the party's
22 constitution. And so it's a set of principles that we
23 must follow, and it must be consistent with the national
24 Democratic Party's charter as well.

25 Q. Who adopts the charter?

1 A. The -- either the state Central Committee can or the
2 state convention. The state convention is the highest
3 authority in the party.

4 Q. Now, in response to our interrogatories about who they
5 intend to call as witnesses, the description that was
6 given regarding your testimony was -- and I'll just read
7 this to you quickly -- Mr. Nichols will testify with
8 regard to state Democratic Party rules as they relate to
9 selection of delegates to party conventions, nomination
10 and election of party officers, and nomination of party
11 candidates. Is that your understanding of the subjects
12 that you've been asked to address?

13 A. Yes.

14 Q. Is it your understanding that you'd be asked to address
15 anything other than those subjects?

16 A. Well, not at this time. It's my understanding I might
17 be asked about things other than those subjects.

18 Q. That's the description that you've been given, though.

19 With regard to the first of those, first thing on
20 that list was the selection of delegates to party
21 conventions, and I notice that conventions is plural
22 here. What conventions are we talking about? What --
23 well, what conventions does the party hold?

24 A. Well, every two years the party holds a convention. And
25 in the off-presidential years, it's a statewide

1 convention which performs various tasks for the party.

2 And so we adopt rules governing the selection of
3 delegates to the convention. We -- and we do that over
4 the -- pretty much the preceding year.

5 Every four years, because it's a presidential year,
6 there's heightened interest, obviously, in the process,
7 and so we compose delegate-selection rules, which have
8 to be approved by the DNC. And so that process starts
9 earlier than it would for a biennial state convention.

10 Q. For an off --

11 A. Yeah.

12 Q. Is that because the state convention is selecting
13 delegates to the national convention? Is that why
14 there's an --

15 A. Well --

16 Q. -- active interest?

17 A. -- that's part of it. I mean, the underlying issue is
18 that -- the delegate-selection process is to select
19 delegates to the Democratic National Convention. And so
20 the DNC, obviously, has an interest in how that happens,
21 whether it's by caucus or by presidential primary, and,
22 if so, how are those allotted. And so we go through
23 that in great detail every four years and the DNC
24 advises us on what options we have to choose from.

25 Q. Could you describe for us the current process for

1 selecting delegates to the state convention.

2 A. Presently, we -- this -- we have precinct caucuses every
3 two years. This past cycle, however, 2010, we dispensed
4 with precinct caucuses and selected delegates at a
5 legislative-district level.

6 Q. Is that done statewide or is that --

7 A. Yes.

8 MR. EVEN: And you got his answer? We're talking
9 over --

10 A. Yes.

11 MR. EVEN: -- each other.

12 THE WITNESS: Sorry.

13 Q. (by Mr. Even) How did that process work? You said this
14 year you dispensed with the precinct caucuses.

15 A. Yes.

16 Q. How did that work in 2008?

17 A. Well, in 2008, it's a presidential year. And so we had
18 precinct caucuses around the state which, because of the
19 excitement about the -- or the disenchantment or
20 whatever about the Bush administration, caused
21 absolutely enormous record turnouts all around the
22 state.

23 And so we usually use schools and churches and
24 other public places to gather. And so each legislative
25 district selects meeting places for the precinct

1 caucuses, and so those are set up well in advance. And
2 the public who wants to participate in the Democratic
3 Party's process arrive and participate.

4 Q. Is there any record kept of who participates in those
5 caucuses?

6 A. Yes.

7 Q. And is there any standard as to who's eligible to
8 participate in those caucuses?

9 A. Well, they have to be a voter or someone who will be
10 eligible to vote by the general election. So they could
11 be a --

12 Q. So somebody who's 17 --

13 A. Is 17 and is --

14 Q. -- might --

15 A. -- going to turn 18.

16 And they have to sign in when they get there that
17 they are a Democrat --

18 Q. Is there any --

19 A. -- participate as a Democrat.

20 Q. Is there any process to determine that they're really
21 Democrats?

22 A. No.

23 Q. What comes out of the precinct caucus in terms of what's
24 ultimately going to lead here to the nation -- or to the
25 state convention?

1 A. The precinct caucuses elect delegates to the
2 legislative-district caucus. The legislative-district
3 caucus -- and to the county convention. The
4 legislative-district caucuses then select delegates to a
5 congressional-district caucus and the state convention.

6 Q. And those are two different things?

7 A. Yes.

8 Q. What's the role of the legislative-district caucus
9 versus the county convention?

10 A. The legislative-district caucus typically adopts the
11 legislative-district platform, but also elects delegates
12 to the next step, whereas a county convention is mostly
13 a platform-writing exercise.

14 Q. At the county level?

15 A. Yes.

16 Q. So there is a --

17 A. But we do have a mechanism where -- in our legislative
18 districts that are made up of multiple counties, you
19 know, we have ways of making this easier on people so
20 that they can do some of these steps simultaneously.

21 Q. So some of these may be going on at the same time?

22 A. Yes. Generally speaking, yeah.

23 Q. What's a legislative-district platform?

24 A. Well, it's a statement of principles by the legislative
25 district.

1 Q. And that's specific to that district?

2 A. Yes.

3 Q. Does it have some role with a statewide platform? Is it
4 a preliminary to that or is it just -- is it a --

5 A. The --

6 Q. -- stand-alone?

7 A. The precinct caucuses and the legislative-district
8 caucuses and the county conventions can propose planks
9 or amendments or provisions of the state platform. And
10 those are passed along and considered by the state-
11 convention-platform committee.

12 Q. And that's something different than a legislative-
13 district or a county platform?

14 A. Yes.

15 Q. Though I assume they're discussed at the same time, the
16 same -- at the same meeting, the same convention.

17 A. Yes.

18 Q. Yeah, okay.

19 And then --

20 A. Although not necessarily. There are other mechanisms
21 for making proposals to the state-platform committee by
22 individuals and by legislative districts outside of the
23 actual caucus or convention process.

24 Q. So you're saying that isn't the only --

25 A. Correct.

1 Q. -- way of making a proposal.

2 A. As a practical matter, if a legislative district decides
3 they want to make a proposal because of some exigent
4 policy issue or something that's current in Congress
5 or -- for example, it would undoubtedly be considered by
6 the platform committee.

7 Q. It doesn't have to come through --

8 A. Right.

9 Q. -- the -- okay.

10 Were there any changes made to the process that
11 you've described here so far as a result of the
12 enactment of Initiative 872?

13 A. Yes. Initially, we nominated our congressional
14 candidates at the congressional-district caucuses. And
15 then in our last amendment to the nominating rules, we
16 changed that for a number of reasons so that the state
17 Central Committee nominates congressional candidates.

18 Q. The state Central Committee does that.

19 A. Yes, the principle reason being we don't have
20 congressional-district caucuses in the off-presidential
21 years because those are used for delegate selection.
22 And so in 2008, for the first time we had a
23 congressional-district caucus electing delegates
24 pursuant to a formula for presidential candidates, and
25 we also had the precinct committee officers within the

1 congressional district nominating congressional
2 candidates.

3 Q. And --

4 A. And because of the -- it's -- becomes unwieldy in an off
5 year to do that, so we changed it.

6 Q. So that's now done by central -- not by the state
7 convention, but by the state Central Committee?

8 A. Correct, although statewide offices are done by the
9 convention. So U.S. Senate and --

10 Q. In what way is that change driven by Initiative 872?

11 A. Well, we feel we need to nominate candidates as a party
12 because of the adulteration of the primary process by
13 872, by the top-two primary. And so we need to let the
14 public know who our nominees are to try to lessen some
15 of the inevitable confusion that the top-two primary
16 brings.

17 Q. Now, the second item that was on the list -- or on
18 the -- in the interrogatory response referred to
19 nomination and election of party officers. I guess
20 maybe this is a point -- we've used a few phrases. We
21 referred to the Central Committee, the caucuses, et
22 cetera. But could you give us a thumbnail description
23 of what an org chart of the Democratic Party would look
24 like. What's the highest governing body, how does it --
25 well, why don't we just start with that. What's the

1 highest governing --

2 A. Well, the highest --

3 Q. -- body?

4 A. -- highest governing body is the state convention. And
5 the state Central Committee is the governing body, if
6 you want to make a little wire diagram. And it's
7 chaired by a chair and there's a vice chair and a
8 treasurer and a -- there are national-committee members
9 and executive-board and Central Committee members. And
10 there are a number of committees within the Central
11 Committee that report to the Central Committee.

12 Q. Well, and maybe it might work here to start from the
13 bottom and move up. But how's a party -- how's the
14 party organized -- I guess, is it correct to speak of
15 the party being organized at the county level or at the
16 legislative-district level or is it both?

17 A. It's both, but I think as a practical matter, it's
18 probably the county level. But legislative districts
19 also elect their officers every two years. Officers are
20 elected by elected precinct committee officers.

21 Q. So are the -- well, what's the role of the precinct
22 committee officers in the legislative-district
23 organization?

24 A. They are members of the legislative-district
25 organization and, as elected PCOs, they vote on the

1 officers of the legislative district.

2 Q. A legislative-district chair?

3 A. Correct.

4 Q. And is there anything else at that --

5 A. Well, if there's a vacancy in office. For example, if
6 there's a Democratic vacancy in the state House from
7 that legislative district, those precinct committee
8 officers recommend three candidates pursuant to rules
9 and statute. And under our party's rules, the
10 legislative-district subcaucus in that county or, if
11 it's a legislative district composed of many counties,
12 then those PCOs will recommend the three names for
13 consideration.

14 Q. To county commissioners?

15 A. Right.

16 Q. And is -- and then is the structure similar for the
17 county party?

18 A. The county Central Committee is composed of all the
19 precinct committee officers from the -- who reside in
20 the county, yes.

21 Q. And they similarly elect county officers?

22 A. The elected PCOs elect county officers, correct.

23 Q. You refer to elected --

24 A. And they also recommend replacements for -- we just
25 recommended a replacement in Snohomish County for County

1 Councilman Mike Cooper, who became mayor of Edmonds. So
2 there's a vacancy and he's a Democrat, so we recommended
3 candidates to the county council.

4 Q. At the -- that's at the county level because that's a
5 county office.

6 A. Correct.

7 That was just last Saturday, actually, so it's --

8 Q. It's still in the works.

9 A. -- working as we speak, right.

10 Q. Yeah.

11 You referred to elected PCOs. Can there also --

12 A. Correct.

13 Q. -- be appointed PCOs?

14 A. Yes.

15 Q. And do their roles and responsibilities differ at all
16 from the elected PCOs?

17 A. Appointed PCOs are not allowed to participate in the
18 organization of the county or legislative-district
19 party. They must be elected.

20 Q. When you say organization of the party, meaning --

21 A. The biennial election of new officers, right.

22 Q. Do they participate in the selection of the three names
23 to fill a vacancy to a public office?

24 A. Yes.

25 Q. And then what's the next level up from these two, the

1 county and the legislative district?

2 A. Well, the state Central Committee.

3 Q. How are members of the state Central Committee chosen?

4 A. There are two -- with gender balance, there are two
5 representatives from each legislative district in each
6 county in the Democratic Party.

7 Q. Each legislative district and each county?

8 A. Yes.

9 Q. So how many -- and I could probably do the math myself,
10 but how many members does that give you on the state
11 Central Committee?

12 A. Well, I think that would be 78 plus 98.

13 Q. Yeah.

14 A. Hundred and seventy-six.

15 Q. Hundred and seven --

16 A. Yeah.

17 Q. Yeah, that's right.

18 MR. EVEN: It took me longer than it did you.

19 MR. MCDONALD: No, I just was refraining from
20 mentioning those 176 are the ones who elect me to the
21 national committee. I know exactly how many.

22 MR. EVEN: You probably know them very well.

23 MR. MCDONALD: Yeah.

24 Q. (by Mr. Even) What officers does the party have at the
25 state level?

1 A. We have a chair, we have a vice chair, a treasurer, a
2 secretary, and we have an executive board. And the
3 executive board is elected from each congressional
4 district.

5 Q. How many from each district?

6 A. One.

7 Q. And are those people who are also members of the state
8 Central Committee?

9 A. Yes.

10 Q. So --

11 A. And so there's a subcaucus of the Central Committee
12 members from -- each CD elects a member to the executive
13 board.

14 Q. Plus the officers that you mentioned?

15 A. The full Central Committee elects the officers.

16 Q. Yes, okay.

17 What are the responsibilities of the executive
18 committee?

19 A. The executive committee essentially acts for the state
20 Central Committee between its quarterly meetings.

21 Q. Now, you're the chair of the rules committee. Is that a
22 committee of the Central Committee?

23 A. Yes.

24 Q. It's not a committee of the executive board.

25 A. No. The executive board's much smaller. There are a

1 couple of other members who are automatic or ex officio
2 members. But it's the officers, the DNC members, and
3 the representatives from the congressional districts and
4 then an affirmative-action person and then Federation of
5 Democratic Women, I think.

6 Q. Who are on --

7 A. Who are on executive committee.

8 Q. -- the executive committee.

9 A. Yeah.

10 Q. Has the party made any changes to that statewide party
11 structure as a result of the enactment of 872?

12 A. No, not -- no.

13 Q. Have the responsibilities of any of these organizations
14 changed as a result of 872?

15 A. Yes.

16 Q. In what way?

17 A. The nomination of candidates. That's a very large part
18 of the role now of the particular jurisdiction that's
19 involved.

20 Q. And let's turn to that process now for nominating party
21 candidates. At the state level, if we're talking about
22 a statewide office, could you walk us through what would
23 be the steps to determine who's the nominee of the
24 Democratic Party for Governor, Lieutenant Governor,
25 Attorney General, et cetera.

1 A. Well, that's done by the -- at the state-convention
2 level. The congressional candidates are done by the
3 Central Committee, and so --

4 Q. Including U.S. Senate?

5 A. Well, the way the rules were written, I think we
6 intended to include the U.S. Senate, but they could be
7 read not to include -- or -- so we did that at the state
8 convention. We wrote that into the state-convention
9 rules, which the state convention adopted. And so
10 Senator Murray, for example, was nominated for the U.S.
11 Senate this year by the state convention in June.

12 Q. Would that be true both in a -- well, this is an off
13 year. So I guess -- I'm assuming that would be true
14 whether we're talking about an off year or a
15 presidential year?

16 A. Yes.

17 Q. How about the state offices? Are they -- they're also
18 done by the convention?

19 A. The statewide offices?

20 Q. Statewide offices.

21 A. Yes.

22 Q. Is there a process written down as to how to go about
23 making those decisions, how the convention --

24 A. Yes.

25 Q. -- makes those decisions?

1 A. We have nomination rules.

2 Q. Could you give us a summary?

3 A. I don't know if you have a copy of the rules, but
4 essentially --

5 Q. Actually, I'm not sure if we -- I know we've asked for
6 it, but I'm not sure if we have it.

7 MR. MCDONALD: Yeah, let me say you should have.
8 What I don't know is whether they have been changed
9 since the copy that you got at some point during
10 discovery.

11 MR. EVEN: Yes.

12 MR. MCDONALD: I'm happy to --

13 A. Yeah, I can refer to a copy or I can just take this --

14 Q. (by Mr. Even) That would -- that'd be great.

15 A. Yeah.

16 MR. MCDONALD: There's no reason why you shouldn't
17 have a copy.

18 MR. EVEN: Yeah, okay.

19 MR. MCDONALD: Sometimes my own copies are not --

20 MR. EVEN: Not the most current?

21 MR. MCDONALD: Well, I don't get it till the
22 minutes have been --

23 MR. EVEN: Can we make a copy of this that we could
24 make an exhibit for the --

25 MR. MCDONALD: Yeah.

1 I'll let you worry about that.

2 That copy's dated September 26, 2009, so if
3 your copy is earlier than that, you don't have the most
4 current copy.

5 MR. EVEN: Okay. And that might be --

6 MR. MCDONALD: Yeah.

7 MR. EVEN: And --

8 MR. MCDONALD: Let me, before you start, just say
9 on some of these things, if you decide that you would
10 like me to fill in a hole, like the date of that, I'll
11 be happy --

12 MR. EVEN: Okay.

13 MR. MCDONALD: -- to do so, because I may know it.
14 But I'm not going to interfere with your examination of
15 checking his knowledge, so --

16 MR. EVEN: Yeah.

17 MR. MCDONALD: -- I won't say anything unless you
18 ask me to.

19 MR. EVEN: Well, and I don't want to make you a
20 witness. I don't think you want to be one.

21 MR. MCDONALD: No.

22 MR. EVEN: Yeah.

23 MR. MCDONALD: No, I don't.

24 MR. EVEN: Yeah.

25 MR. MCDONALD: Been there, done that.

1 Q. (by Mr. Even) While we're waiting for her to bring
2 back --

3 A. Mm-hm.

4 Q. -- a copy, thinking again about -- well, actually, let's
5 move for just a second away from the statewide offices.

6 How are party nominees for the state legislature
7 determined?

8 A. Each particular jurisdiction in the legislative district
9 has a nominating convention and nominates a candidate
10 for each office.

11 Q. That's done at the legislative-district --

12 A. Right.

13 Q. -- level.

14 A. And if there is a refusal to do it or failure to do it,
15 then the state chair has the authority to nominate a
16 candidate.

17 Q. The state chair as an individual can --

18 A. Yes.

19 Q. -- do that.

20 A. Well, as state chair.

21 Q. Yeah, but it -- but not the state Central Committee
22 meeting to do it. It would be done by the chair.

23 A. It's done by the chair. We've tried to make the rules
24 flexible so that if there's an immediate need, we don't
25 have to reconvene a huge body necessarily.

1 Q. A hundred and seventy-six people --

2 A. Right.

3 Q. -- from all over the state.

4 When these nominating decisions are made either by
5 the legislative district or by -- well, the convention
6 or the state Central Committee, is there any further
7 review of those nominating decisions? Is there somebody
8 else who has to buy off on them?

9 A. No.

10 And we have county nominating conventions too. We
11 still have some counties with partisan offices, so --

12 Q. For county commissioners and --

13 A. Yes.

14 Q. -- auditors, et cetera?

15 A. County executive, right.

16 Q. Yeah, okay.

17 Is that -- now, you said you have some. This isn't
18 universally true?

19 A. Well, I'm not a big fan of nonpartisan offices
20 personally at all, because I think the voters have a
21 right to know what direction people are coming from. I
22 don't like people hiding their affiliation. And in most
23 states, you know, they have many more partisan offices
24 than we do. And so I -- in Snohomish County, we still
25 have a number of partisan offices and in Pierce County

1 they do and in --

2 Q. In --

3 A. -- in county commissioners.

4 Q. We're talking about variations that are made by charter
5 in some cases.

6 A. Correct, yes.

7 Q. Do incumbents have any particular status when it comes
8 to being nominated to seek reelection to the office they
9 already hold?

10 A. No.

11 Q. So there -- you don't have -- we don't have the rules --
12 a copy of the rules back yet, but there -- I take it
13 there isn't anything in them that says an incumbent
14 running for reelection automatically gets the
15 nomination?

16 A. No, there isn't, and there's no incumbent preference or
17 any other provision like that.

18 Q. How common is it to have somebody other than the
19 incumbent -- and we're talking about, you know, the
20 incumbent is running for reelection; there's not a --
21 it's not an open seat -- somebody other than the
22 incumbent being the formal nominee of the party?

23 A. Very rare.

24 Q. Has it occurred this year?

25 A. I'm not sure if it's occurred this year or not.

1 Q. Do you know if it occurred in 2008?

2 A. I don't know. I can think of one race where it may very
3 well have, but I'm not sure as I sit here.

4 MR. EVEN: Thank you.

5 MR. MCDONALD: Emily, could you grab me some
6 Kleenex when you go by there. I've been holding off a
7 sneeze. I got a cold. Thanks.

8 MR. EVEN: Okay, and actually --

9 MR. MCDONALD: Didn't want to suddenly stand up in
10 the middle of a question.

11 MR. EVEN: If we could mark this as an exhibit.

12 MR. WHITE: Can we go off the record for a second?

13 MR. EVEN: Yes.

14 [Off the record - discussion]

15 [Exhibit 1 marked for identification]

16 Q. (by Mr. Even) You have in front of you a copy -- in
17 fact, I'll show you what actually has been marked as
18 Exhibit 1. Do you recognize that document?

19 A. Yes, I do.

20 Q. And could you tell us what it is.

21 A. Well, the first page and a half or so provides the
22 standards by which the Democratic Party will recognize a
23 primary or nominating process. And then starting in the
24 middle of page 2 is an alternative means of selection of
25 Democratic candidates when such a process is not

1 provided.

2 Q. And so I --

3 A. Which would include --

4 Q. Go ahead.

5 A. -- the top-two primary.

6 Q. It's not --

7 A. The principles are easy to see here: A separate
8 Democratic ballot, an opportunity to confirm membership
9 in the party, where voter participation is a public
10 record, and we provided that if there's a voluntary
11 voter-registration system, then that would comply.

12 For example, during the Montana primary, when
13 voters selected a party, if auditors wanted to offer
14 voters the opportunity to -- like people used to sign up
15 permanently for a mail ballot. If they want to sign up
16 permanently for a Republican or a Democratic ballot,
17 that's -- that would -- that's what we had in mind.

18 Q. That was -- in your mind, that would be a form of a
19 party registration?

20 A. Identification with the party, sure.

21 And then the nomination process is described.

22 Q. Beginning with part V, Roman V?

23 A. Yes.

24 Q. So I take -- given that the top-two primary is being
25 used right now, the rules beginning with the heading V,

1 "Alternative Means of Selection," is what's in effect
2 right now?

3 A. That's correct.

4 Q. I wanted -- before we go farther in that, I think I
5 overlooked something here earlier. In talking about
6 party officers earlier and precinct committee officers,
7 have -- has the way that precinct committee officers
8 changed since 872 was adopted?

9 MR. MCDONALD: Object to the --

10 A. I --

11 MR. MCDONALD: -- form of the question. I think
12 you may have left a word out of the question.

13 MR. EVEN: I might have.

14 THE WITNESS: I think you might have, yeah.

15 Q. (by Mr. Even) Let me rephrase it.

16 Has the method for selecting precinct committee
17 officers changed since Initiative 872 was adopted?

18 A. Well, it shouldn't have, but it has.

19 Q. Why do you say it shouldn't have?

20 A. Well, the -- to be elected, a precinct committee officer
21 has to have 10 percent of the vote of the Democratic
22 candidate. And the auditors now, including our auditor
23 in Snohomish County, are just refusing to count
24 precinct-committee-officer votes because they say it's
25 impossible to use that standard. But we disagree with

1 that, because we provide a list of the Democratic
2 nominee for every single partisan office in the state
3 that's on the ballot, and so it's easy to see how many
4 votes that nominee got.

5 MR. MCDONALD: Before you go on, could I ask you a
6 question?

7 MR. EVEN: Sure.

8 MR. MCDONALD: When you use as a date reference
9 since the initiative has been adopted, do you mean --

10 MR. EVEN: Let's --

11 MR. MCDONALD: -- since it's been implemented or do
12 you mean since it was passed --

13 MR. EVEN: Yeah, let's --

14 MR. MCDONALD: -- by voters in November 2006?

15 MR. EVEN: That's a very good point.

16 Q. (by Mr. Even) Let's say since it has taken effect,
17 because --

18 A. Okay.

19 Q. -- there were a couple years --

20 A. That's how I took your question.

21 Q. Thank you. That's a helpful clarification.

22 Does the party object to the way that precinct
23 committee officers are selected currently?

24 A. Well, if they're selected in accordance with statute,
25 no. But do we object to how they're selected in the

1 top-two primary?

2 Q. Yes.

3 A. Yes, absolutely.

4 Q. On what basis?

5 A. On the basis that they're not selected by Democrats.

6 They're selected -- or the people who are the backbone

7 and the base of the governance of our party are now

8 selected by Republicans and independents and

9 Libertarians and Salmon Party people and other

10 perversions, you know.

11 Q. If we go back to the way they were selected while the

12 pick-a-party or the Montana primary was in effect,

13 was -- did the Democratic Party have an objection at

14 that time?

15 A. No.

16 Q. And what's the distinction between then and now that

17 causes that change in the party's position?

18 A. The distinction between then and now is simply who is

19 voting for PCOs. And so we don't -- back even in the

20 blanket primary, where the 10 percent rule was in place,

21 to my view, so that we knew that there was a broad

22 enough base of support among people willing to vote for

23 Democratic PCOs, that they're a representative of the

24 jurisdiction of the precinct.

25 But now we have a situation where, in 2008, we were

1 presented with a list of people who got one or more
2 votes, many of whom, by the way, were Republicans. I
3 mean, we had -- in Snohomish County and other
4 counties -- I heard about this from around the state --
5 we had many, many people who, you know, wrote themselves
6 in or filed as a joke and were elected. And so now they
7 have a right under our rules to participate in the
8 governance of our party, which is -- we totally object
9 to.

10 Q. Does the party as a matter of practice seat every PCO
11 candidate who has received a certificate of election
12 from the county?

13 A. They're seated if they have a certificate of election.
14 But we've had a -- we had a great -- a big disagreement
15 about the 10 percent rule. And essentially -- and in
16 Snohomish County, we asked those who didn't receive 10
17 percent to step down and then, if they were actually
18 Democrats, you know, to apply for an appointment.

19 Q. And how successful was that?

20 A. Mostly successful. Not entirely, mostly.

21 Q. But the party doesn't just by its own declaration refuse
22 to seat any of those candidates.

23 A. Well, that's in essence what was happening, but not in
24 those words.

25 Q. Well, what do you mean by in essence?

1 A. Well, we were able to go to each of these people and,
2 for the most part, talk them out of it. Most partisan
3 Republicans on second thought really didn't want to sort
4 of -- so, you know --

5 Q. It didn't sound as much fun in the actual --

6 A. Right.

7 Q. -- practice.

8 A. And when we explained the 10 percent rule to others, you
9 know, they -- that was understandable to them because
10 they do support the party.

11 Q. Is the key to that the format of the ballot or is it the
12 10 percent rule or is it both?

13 A. Well, it's who gets to vote and it's the 10 percent
14 rule.

15 Q. If the 10 percent rule were in effect, would the party
16 have an objection to the method by which -- or the way
17 in which PCO candidates appear on the ballot?

18 MR. MCDONALD: Objection; calls for speculation.

19 Objection; incomplete hypothetical.

20 A. Yeah. I've taken hundreds of depositions and I've -- I
21 agree with the objection. I second that objection.

22 We would have to have a long discussion about that,
23 obviously. And there's a serious issue about
24 Republicans selecting our -- if there are three
25 people -- individuals who have filed for Democratic PCO

1 and no one who's filed for Republican PCO -- that's the
2 whole problem with the top-two primary in the first
3 place, you know, as it relates to candidates too, is
4 that now we have hordes of Republicans coming in and
5 voting for a Democratic PCO. And that's not -- that is
6 objectionable.

7 Q. (by Mr. Even) I think that gets to the essence of what
8 I was looking --

9 A. If, on the other hand --

10 Q. -- to talk about.

11 A. -- you have a Democratic nominee who receives 10,000
12 votes and a PCO who receives 1,000 votes, you can pretty
13 much conclude that most of those 1,000 votes probably
14 came from -- which is 10 percent -- probably came from
15 people who voted for the Democratic nominee who are
16 probably wanting to identify themselves as Democrats.

17 Q. Does --

18 MR. MCDONALD: Before you go on, I just want to
19 clarify he is not here as a 30(b)(6) witness. And
20 whether the party would object to something in a
21 hypothetical that has not yet occurred or whether --

22 MR. EVEN: That --

23 MR. MCDONALD: -- the party has --

24 MR. EVEN: Yeah.

25 MR. MCDONALD: -- additional objections remains to

1 be seen.

2 MR. EVEN: Okay. That's also helpful.

3 Q. (by Mr. Even) Does the party have any system for
4 nominating candidates for PCO?

5 A. No.

6 Q. I mean, prior to the election. I'm not referring to the
7 appointment process.

8 A. No, we don't.

9 Q. Now, let's go back to the rules. In -- well, currently
10 you're operating, I think before we established, under
11 the rules the alternative means of selection beginning
12 on page 2. We may very well have walked through much of
13 this by now, but -- well, we've talked about which body
14 chooses nominees for various offices, but is there any
15 system for vetting which candidates are eligible to be
16 considered for a nomination?

17 A. Only the nomination process itself.

18 Q. What do you mean --

19 A. So --

20 Q. -- by that?

21 A. Well, for example, county partisan-office nominees, if
22 you look at V.B.1., the nominating convention consists
23 of elected and appointed precinct committee officers
24 representing precincts in the county or council
25 district. And so if a person stands for office and

1 wants to receive a nomination, the odds are that if
2 they're not really a Democrat or they're -- they have
3 problems, those issues will arise in the nominating
4 process. That's part of the purpose of the process.

5 Q. Because those people will be familiar with the
6 candidates?

7 A. Yes.

8 Q. In terms of what candidate is eligible to be selected,
9 though, is -- how is that determined? Actually, why
10 don't we strike that for a minute.

11 Let's get to a point here. I see in the same
12 paragraph you were just looking at, B.1. on page 2,
13 the -- it discusses the time frame when this is going to
14 occur.

15 A. Right.

16 Q. When does the nominating -- when is the nominating
17 decision actually made?

18 A. It's made, as you can see here, not later than 45 days,
19 not less than 14 days prior to the filing date for
20 office. So the -- it's done prior to the filing.

21 Q. So candidate filing hasn't yet taken place.

22 A. Correct.

23 Q. So it's not a matter of looking to see who filed for
24 office saying, I prefer the Democratic Party?

25 A. Sure. And obviously, the purpose of that is so that if

1 there's a nominated Democratic candidate, it would
2 discourage others -- which is part of our problem with
3 the top-two primary -- would discourage others from
4 associating with us when they know we've already
5 associated with another candidate.

6 Q. With somebody else.

7 A. Right.

8 Q. What's the procedure -- if a candidate wants to be
9 considered for that nomination, what do they do?

10 A. Typically, they are nominated at the nominating
11 convention and they --

12 Q. They --

13 A. -- identify themselves as a Democrat --

14 Q. They go to the --

15 A. -- agree --

16 Q. -- convention and they --

17 A. Yes. And we often ask them to agree to abide by the
18 nomination rules, meaning if they're not the nominee,
19 they won't run. It's -- that doesn't always work, which
20 is part of the confusion and the problem.

21 Q. That was going to be my question. How -- does that
22 typically work?

23 A. I think it works in many cases, but it doesn't always
24 work.

25 Q. Are there examples this year of candidates who are on

1 the ballot who sought the party nomination and didn't
2 receive it?

3 A. You mean who sought the nomination but later filed even
4 though they didn't get the nomination?

5 Q. Correct.

6 A. Yes.

7 Q. Do any names come to mind?

8 A. Well, in the 44th Legislative District, Steven Hobbs is
9 the incumbent Senator and he received the nomination.
10 He has a Democratic opponent, Lillian Kaufer. I'm not
11 sure if she sought the nomination. I think she may have
12 been asked to file afterwards. But Mr. Hobbs himself
13 applied for -- or wanted to be nominated for the county
14 council and another candidate, Dave Somers, got the
15 nomination. And Mr. Hobbs -- this is a few years ago --
16 filed anyway and lost. But he did even though --
17 despite -- you know, despite the party's --

18 Q. So --

19 A. -- desire that he not do that.

20 Q. -- Hobbs had the nomination and Somers --

21 A. No, Somers had the nomination.

22 Q. Oh, and Hobbs ran.

23 A. Hobbs ran anyway, right.

24 And we have a number of races where individuals
25 have not sought the nomination and filed anyway. For

1 example, Senator Jean Berkey in the 38th has an
2 opponent, Nick Harper, who's a self-described committed
3 Democrat who is attempting to unseat her, but she is the
4 nominated candidate. So we have a number of races where
5 there is a nominated candidate and challengers from
6 within the party.

7 Q. Who did not -- well, in the example you gave --

8 A. Right.

9 Q. -- this is a candidate who did not ask for a party
10 nomination --

11 A. Right.

12 Q. -- didn't seek it.

13 A. Second Congressional District, Congressman Larsen
14 received the nomination for reelection and then Larry
15 Kalb filed notwithstanding the --

16 Q. In both --

17 A. And he did seek the nomination.

18 Q. He did seek the nomination.

19 A. Yes.

20 Q. Is he a real Democrat?

21 A. He says he is. Yeah, he -- yes, he's a real Democrat.

22 Q. And in the race with Senator Berkey, same question: Is
23 the other candidate really a Democrat?

24 A. I don't know Mr. Harper personally, but he self-
25 identifies as a Democrat and supports basic Democratic

1 Party principles.

2 Q. And let's turn to that for a minute. We've talked about
3 some party platforms. There's a -- am I correct there's
4 a state platform, a county platform, and a legislative-
5 district platform?

6 A. Usually. There are some legislative districts that
7 don't complete platforms, but --

8 Q. That's an option to them?

9 A. -- generally speaking, that's correct.

10 Q. Are there any other platforms?

11 A. No.

12 Q. Is there any -- well, could you -- in your
13 understanding, what does --

14 A. There's the national platform.

15 Q. The -- yes.

16 In your understanding, what is -- what's the
17 purpose of the party platform?

18 A. The party platform is an annunciation of party
19 principles and positions on various issues in areas of
20 governance.

21 Q. Is there any relationship between that platform and the
22 decision of who receives a party nomination?

23 A. Well, in the minds of precinct committee officers, there
24 undoubtedly is. It's a set of guidelines that the party
25 generally follows. And not every candidate supports

1 every provision of the platform, nor is every -- any
2 candidate required to follow every provision of the
3 platform for various reasons.

4 Q. Is there any test of how much of the platform a
5 candidate has to support?

6 A. No.

7 Q. If a candidate -- well, strike that.

8 A. Not -- no.

9 Q. Now, we've been talking about this as it's currently in
10 effect. Were these rules materially different in 2008
11 than they are now?

12 A. No, they weren't.

13 Q. And what about -- if we go back to the time that the
14 pick-a-party primary was in effect, did the party have
15 nominating rules at that time?

16 A. Yes, we did, because we flipped back and forth a --
17 between processes. So we had the -- that's when we
18 initially did the rules.

19 Q. Well, when did you initially do the rules?

20 A. 2003? I'm not absolutely certain.

21 MR. MCDONALD: I'll answer if you want me to,
22 but --

23 MR. EVEN: We can leave that for another time, I
24 think.

25 A. Or 2005.

1 Q. (by Mr. Even) Did the -- well, and in what ways were
2 the nominating rules different when the pick a party was
3 in effect, let's say, from 2004, 2006, those two
4 election cycles?

5 A. What way were these nomination rules different?

6 Q. Different from the way they are now.

7 A. Well, when that primary was in effect, we didn't need to
8 use the rules because that primary complied with our
9 rules.

10 Q. Or that is to say you were under the first part here,
11 the rules governing primaries?

12 A. Correct.

13 But the rules themselves, to answer your question,
14 weren't a whole lot different. What we did -- when we
15 redid the rules in 2009, there were dates that were out
16 of date that referred to -- I'm thinking 2005. And we
17 nominated congressional candidates by the state Central
18 Committee instead of congressional-district caucuses of
19 PCOs.

20 Q. So wait a minute; I'm not sure I followed that answer.

21 When the pick a party was in effect, was there a
22 process separate from the primary for determining
23 Democratic Party nominees?

24 A. Oh, like they do in some states to qualify for the --
25 no, no.

1 Q. So the candidate who got the most votes in the primary
2 was the party nominee?

3 A. Right. The organization's more likely to endorse
4 candidates, but they didn't nominate candidates if there
5 was an appropriate primary.

6 Q. What do you see as the distinction between a nomination
7 and an endorsement?

8 A. Well, a nomination is a designation of a candidate to go
9 forward to the general election on behalf of the party.
10 An endorsement is simply a statement that, you know, we
11 support a candidate, but it's not -- it doesn't make
12 them the nominee.

13 You know, I mean, the top-two primaries -- you
14 know, back when I was in D.C. and working with southern
15 states, you know, they basically had a system where 30
16 candidates run in what amounts to a general and then
17 there's a runoff. And so you kind of look at the top
18 two now as a sort of general election, with the general
19 election being a runoff between two candidates.

20 Q. What about when the blanket primary was in effect? Were
21 there rules that correspond to Exhibit 1 for party
22 nominations at that time?

23 A. No, not at that time, except our charter, you know,
24 requires that our nominees be selected by Democrats.
25 And so to the extent that our charter required that, the

1 blanket primary clearly didn't comply with our charter
2 and our rules.

3 Q. But was there --

4 A. But we didn't have nomination rules.

5 Q. You didn't have nomination rules.

6 Was there a practice at that time of doing
7 nominations?

8 A. Well, if you mean since 1938, I don't know. I don't --

9 Q. Yeah.

10 A. -- go back that far.

11 Q. And neither do I.

12 A. No, but we did endorsements.

13 Q. When a -- I think we talked about before that this
14 nominate -- currently now, the nominating process takes
15 place before candidate filing. Is there a practice
16 of -- as to what would happen if a candidate who is
17 nominated by the Democratic Party is not one of the top
18 two? Does -- what's the party's practice with regard to
19 the general election in that case?

20 A. We might decide to nominate after the primary.

21 Q. After the primary?

22 So if --

23 A. Or renominate; we could do that. But typically, you
24 know, if our candidate -- our nominated candidate
25 doesn't make it past the two top, then we lose.

1 Q. So if there's a -- if one of the other candidates or
2 maybe both of the other candidates that have -- that are
3 in the top two have filed stating their own preference
4 for the Democratic Party, does the party have the option
5 of nominating one or both of them?

6 MR. MCDONALD: Object to the form.

7 A. Yeah, can you --

8 Q. (by Mr. Even) Yeah.

9 Let's assume --

10 A. -- say that again.

11 Q. -- a scenario in which the candidate who has received
12 the nomination of the Democratic Party is not in the top
13 two --

14 A. Okay.

15 Q. -- but at least one of the candidates in the top two
16 filed for office expressing a preference for the
17 Democratic Party. Is the scenario clear?

18 A. Yes.

19 Q. Does the party have the option of nominating one of the
20 candidates who have -- who are in the top two --

21 A. We have the --

22 Q. -- after the primary?

23 A. We have the authority to do that, yes.

24 Q. And in that case, who would make that decision?

25 A. That decision could be made by the appropriate body or

1 potentially by the state chair.

2 Q. And are those the same bodies we --

3 A. Or the Central Committee if it meets. But, you know,
4 that's -- we have the authority to do that, but we don't
5 want to do that.

6 Q. Are you aware of any case in 2008 in which the party did
7 do that?

8 A. Not specifically offhand, no.

9 Q. Do you know if it happened?

10 A. I don't know if it happened. I do know of cases where a
11 nominated candidate was not selected.

12 Q. Was not selected.

13 A. Right.

14 Q. It's the second step that you're -- you're not sure if
15 the party --

16 A. Correct.

17 Q. -- did that.

18 A. Yeah.

19 Q. Does the party monitor statements or positions taken by
20 candidates who have been nominated to track whether they
21 adhere to the party platform?

22 A. No. Who have been nominated?

23 Q. Who have been nominated.

24 A. No, there's no system to do that.

25 Q. Is there a system for doing that with regard to

1 candidates who have expressed a preference for the party
2 but have not been nominated?

3 A. And who have filed for office?

4 Q. And have filed for office, yes.

5 A. Well, no. That's sort of an impracticality. The
6 nominating convention or, in an otherwise compliant
7 primary, an endorsement process allows the greater group
8 of PCOs and appointees to vet the candidates and see if
9 they're generally compliant with Democratic Party
10 principles.

11 Q. So that takes place --

12 A. But --

13 Q. -- upfront.

14 A. But there's no practical way to do that after filing,
15 which is part of the problem with this process.

16 Q. Well, how's that a problem with the process?

17 A. Well, there are -- you know, there are jurisdictions in
18 the state, as you're probably aware, where it's --
19 you're much more likely to be elected if you're a
20 Democrat or a Republican. And we've had experience with
21 that in our county, where a candidate basically walked
22 in and said, I'm a Republican, I vote with them all the
23 time, but I'm running as a Democrat because I can't get
24 elected as a Republican. And so those are some of the
25 characters that you get on that kind of thing in the top

1 two, where people monkey with the system.

2 In the blanket primary, if you had a powerful vote
3 getter in one party, they might direct all their people
4 to vote for a very weak candidate from the other party
5 so that in the general election, they'll have an easier
6 time. I mean, that's pretty well known and kind of
7 upsetting.

8 And now, for example, if you have a Democrat who
9 decides that the incumbent Democratic congressman, which
10 there is in most districts, wasn't Democratic enough,
11 you know, didn't support the president enough or
12 whatever, they now can vote for a Republican candidate
13 just because they're mad and do that. And we don't
14 think that's right. I mean, and we don't want our own
15 people doing it any more than we want anybody else doing
16 it to us. We just don't think it's -- it's not right.
17 It's unfair.

18 Q. Are you aware of any candidate ever falsely claiming to
19 be the nominee of the Democratic Party?

20 A. No, but there are candidates, for example, who say, I'm
21 the real Democrat in this race, and that sort of thing,
22 and that confuses people. Or they say, I'm the long-
23 time Democrat, or, I'm a better Democrat, or whatever,
24 and people assume -- or can assume that they must be the
25 Democrat that everybody's supporting, as opposed to the

1 nominated candidate.

2 Q. But you're not aware of anybody using the word
3 "nominee," saying, I'm the nominee, when they're, in
4 fact, not.

5 A. No, but I'm aware of them saying they are when they are
6 the nominee.

7 Q. Excuse me; I'm not sure I --

8 A. No. They've said that they're the nominated candidate
9 when they are the nominated candidate, but I'm not aware
10 personally of anybody who said that when they're not,
11 yeah.

12 Q. Thank you.

13 And are you aware of an incident in -- are you
14 aware of the press ever, say, in an article or in a news
15 story identifying somebody as the Democratic nominee
16 who, in fact, is not the Democratic nominee?

17 A. I'm not aware of that personally.

18 MR. EVEN: Okay. Well, thank you. I don't have
19 any more questions.

20 MS. CARDER: I'll just --

21 MR. EVEN: Do you --

22 MS. CARDER: -- make a statement that I'm Kate
23 Carder. I'm here on behalf of the Washington State
24 Grange and I'm filling in for my colleague, Tom Ahearne,
25 who was unable to attend today's deposition. He was

1 planning to attend and participate, but is stuck in the
2 Detroit airport because of a flight cancellation. So --

3 MR. EVEN: Okay.

4 MR. WHITE: I have no questions.

5 MR. EVEN: David?

6 MR. MCDONALD: I don't think I have any questions
7 either, so --

8 MR. EVEN: Okay.

9 MR. GROVER: And the Libertarian Party has no
10 questions.

11 MR. EVEN: I'm sorry, Orrin; I shouldn't have
12 stepped on you there.

13 MR. GROVER: Nobody -- I didn't feel stepped on at
14 all, so --

15 MS. ZIPP: Can we take a short break?

16 MR. EVEN: Yeah, we might have just a handful.

17 [Off the record - recess]

18 Q. (by Mr. Even) Referring back -- what we want to do here
19 is actually pick up or clarify a couple of points that
20 have already been discussed. One of them was, you
21 mentioned earlier an incident in which -- was his name
22 Steve Hobbs -- ran for county council -- actually, I had
23 this backwards before; do I have it backwards now -- ran
24 for county council, although Somers had the nomination?
25 Was that --

1 A. Both Hobbs and Somers sought the nomination and agreed
2 not to run if they -- if -- whichever one didn't get the
3 nomination -- you know, they said, if I don't get the
4 nomination, I won't run, I won't file. And Somers got
5 the nomination and Hobbs filed anyway.

6 Q. Do you remember when that was?

7 A. I don't. I'm thinking 2005.

8 Q. So that was --

9 A. Whether or not --

10 Q. -- prior to 872 taking effect?

11 A. You know, I'm not sure. There was a window of time
12 where we weren't sure if we were going to have a Montana
13 primary or not and --

14 Q. Well --

15 A. -- and so we had the --

16 Q. Yeah.

17 A. -- rules in case.

18 Q. Did --

19 A. So we were a jurisdiction where we had this little
20 window where we had to use the rules, but they weren't
21 used.

22 Q. Does Snohomish County elect county-council members in
23 the odd-numbered year?

24 A. Yes.

25 Q. So it could have been 2005.

1 A. Could have been, right.

2 Q. Early on, I think, in the deposition we talked about the
3 functions of the rules committee and one of them was
4 adopting rules dealing with grievances. And I think we
5 established the committee doesn't actually hear
6 grievances, but adopts rules about them. But what is a
7 grievance? What kind of an issue are we talking about?

8 A. Well, we're still working on those. So I -- anybody who
9 has a complaint about how the organization's being run
10 or somebody's action or -- of any particular kind --

11 Q. Meaning any voter?

12 A. Well, if someone is -- if a minority person is offended
13 by somebody's actions or that sort of thing, who do they
14 turn to? You know, trying to formulate a procedure so
15 that people feel comfortable in airing their grievances
16 and questions.

17 Q. Are there other examples besides that one that you can
18 think of that would be addressed through a grievance
19 process?

20 A. Occasionally, I suppose, someone might complain that a
21 body in the party took an action that they weren't
22 authorized to take.

23 Q. Perhaps could that include a decision to award a
24 nomination?

25 A. I suppose theoretically it could.

1 Q. I take it that's still a process that's in the works.

2 A. Yes.

3 Q. When the pick-a-party primary was being used, did the
4 party regard -- well, is it your understanding that the
5 party regarded the candidate who received the most votes
6 in the pick a party on a Democratic ballot as the
7 nominee of the party?

8 A. Yes.

9 Q. Were there ever any occasions in which the party did not
10 regard that person, that candidate, as the nominee?

11 A. No, not that I'm aware of.

12 Q. Was there any other process besides the conduct of the
13 primary itself at that point used to determine party
14 nominees?

15 A. No.

16 Q. You mentioned earlier -- I think we were talking about
17 congressional candidates -- a scenario in which some
18 Democrats might regard the incumbent Democratic member
19 of Congress as not being Democratic enough or, I think
20 you said, supporting the president enough and,
21 therefore, vote for Republicans. If we had a pick-a-
22 party primary, in your view, how would that process
23 be -- how would that phenomenon play out differently?

24 A. It would be eliminated. If you have a primary where a
25 ballot has all the candidates of one party, then it's

1 literally impossible to vote for a candidate of another
2 party unless you try to write them in. And so --

3 Q. Or unless you took the ballot of that party?

4 A. Or you took the ballot of that party, correct. But, you
5 know, a committed Republican or a committed Democrat or
6 a Libertarian is highly unlikely to take a ballot of
7 the -- all the way up and down of the other party just
8 because they're upset with one candidate. I mean, we're
9 willing to recognize what people are more likely than
10 not to do.

11 So would -- you know, it'd be great -- in my
12 personal opinion, it would be great to have voter
13 registration and require people to vote the ballot of
14 their registration. That would be the purest way to do
15 it. But the party's rules provide for variances so that
16 we can have a compliant primary without going to that
17 extent.

18 Q. And so having a ballot that's limited to a single party,
19 as was the case under the pick a party, satisfies that
20 concern.

21 A. Yes.

22 MR. EVEN: Okay, okay. Okay, now I think I'm done.

23 THE WITNESS: Okay.

24 MR. EVEN: And thank you for indulging that.

25 MR. MCDONALD: Orrin, I think everybody up here

1 before me doesn't have any questions. Did you have any
2 questions in light of the additional questions?

3 MR. GROVER: No.

4 MR. MCDONALD: And --

5 MR. GROVER: -- ask what companies he was in when
6 he was in the Naval Academy.

7 THE WITNESS: 36th.

8 MR. GROVER: Were you at 36 the whole four years?

9 THE WITNESS: Yes.

10 MR. GROVER: I was back in the day when they used
11 to trade, you know, from one regiment to the other.

12 THE WITNESS: Right. That's usually what they do,
13 yeah. Not my year.

14 MR. GROVER: I'm sorry?

15 THE WITNESS: I said they didn't do -- yeah, they
16 didn't do that my year, but they usually do do that.

17 MR. GROVER: No other questions.

18 MR. MCDONALD: I have no questions.

19 MR. EVEN: That doesn't spur anything for me.

20 MR. MCDONALD: Okay, thank you.

21

22 (Whereupon the deposition
concluded at 11:41 a.m.)

23

24

25

CERTIFICATE

STATE OF WASHINGTON)

)

COUNTY OF SNOHOMISH)

I, the undersigned Notary Public in and for the State of Washington, do hereby certify:

That the foregoing is a full, true, and correct transcript of the testimony of the witness named herein, including all objections, motions, and exceptions;

That the witness before examination was by me duly sworn to testify truthfully and that the transcript was made available to the witness for reading and signing upon completion of transcription, unless indicated herein that the witness waived signature;

That I am not a relative or employee of any party to this action or of any attorney or counsel for said action and that I am not financially interested in the said action or the outcome thereof;

That I am sealing the original of this transcript and promptly delivering the same to the ordering attorney.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 12th day of August, 2010.

Notary Public in and for the State of Washington
residing at Edmonds, Washington.

(Notary expires 3/09/13)

(CCR No. 2699)

AFFIDAVIT

STATE OF WASHINGTON)
)
COUNTY OF SNOHOMISH)

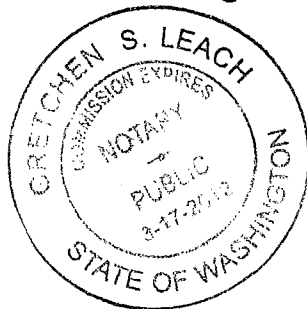
I have read my within deposition and the same is true and accurate except for any changes and/or corrections, if any, as noted by me on the correction sheet hereof. *No corrections.*

Todd C. Nichols

TODD C. NICHOLS

SUBSCRIBED AND SWORN to before me on this, the

26th day of August, 2010.



Gretchen S. Leach

NOTARY PUBLIC in and for the State of Washington residing at Lake Stevens, Washington.

Notary expires: 3/17/2012