

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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WASHINGTON STATE REPUBLICAN	)	
PARTY, et al.,	)	
	)	
Plaintiffs,	)	NO. CV05-0927-JCC
	)	
WASHINGTON STATE DEMOCRATIC	)	
CENTRAL COMMITTEE, et al.,	)	
	)	
Plaintiff Intervenor,	)	
	)	
LIBERTARIAN PARTY OF	)	
WASHINGTON STATE, et al.,	)	
	)	
Plaintiff Intervenor,	)	
	)	
vs.	)	
	)	
STATE OF WASHINGTON, et al.,	)	
	)	
Defendant Intervenor,	)	
	)	
WASHINGTON STATE GRANGE,	)	
et al.,	)	
	)	
Defendant Intervenor	)	

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DEPOSITION UPON ORAL EXAMINATION OF CATHERINE BLINN

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Monday, August 16, 2010  
Olympia, Washington

McDONALD (Catherine Blinn, 8/16/10)

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1 Q Let's see. You said you supervised -- and I caught the --  
2 I missed the other verb, but supervised and something the  
3 training and certification program. Do you recall that?

4 A Um-hmm.

5 Q As part of that program do you train local election  
6 officials in connection with the procedures for certifying  
7 an election?

8 A I do not personally, but the program does. Yes.

9 Q Does the program deal at all with the certification of PCO  
10 elections?

11 A It comes up periodically. It doesn't come up very often,  
12 because in the context of all election -- all races and  
13 ballot measures, they get certified. PCO elections are  
14 just one of quite a few types. So it comes up, but not  
15 very much.

16 Q Is there any training in connection with the 10 percent  
17 threshold in PCO elections?

18 A We have a WAC, and really the training would be relevant to  
19 the WAC, that the 10 percent rule that applied under the  
20 Pick-A-Party Primary does not apply under the Top Two  
21 Primary.

22 Q Is the 10 percent rule still in the statute?

23 A The RCW is still on the books, yeah.

24 Q And I take it in some fashion you have a regulation that  
25 says ignore it; is that correct?

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1 A The WAC explains that it's no longer in effect under the --  
2 under Initiative 872, under the law for Initiative 872,  
3 because if you think about a percent, there's really no  
4 denominator anymore. There's no - the 10 percent rule was  
5 to state that each PCO candidate had to receive at least  
6 10 percent of the votes cast for a candidate of that same  
7 party in that precinct. I believe it's the candidate who  
8 received the most votes of that party in that precinct.  
9 There are no other candidates of that party in that  
10 precinct because the other candidates in the other races  
11 are not appearing on the ballot representing the party.

12 Q Is it Secretary of State's office's position that in my  
13 precinct, for example, in 2008, that there were no  
14 Democrats on the ballot except for me?

15 A And, I'm sorry, you were running as PCO?

16 Q Yes.

17 A There were no other candidates appearing on the ballot as  
18 Democrats, yes.

19 Q My question was: Were there any other candidates on the  
20 ballot who were Democrats?

21 A That would be up to the candidate to tell you that. But in  
22 terms of how they're appearing on the ballot there were no  
23 other candidates appearing on the ballot representing the  
24 Democratic Party.

25 Q So, to the best of your knowledge, does the PCO election

McDONALD (Catherine Blinn, 8/16/10)

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1 statute specify 10 percent of the votes of candidates  
2 appearing on the ballot as of the same party, or does it  
3 specify 10 percent of the votes of the candidates of the  
4 same party?

5 A I don't remember the specific language of the statute.

6 Q But I take it you have advised the various local election  
7 officials to ignore the 10 percent requirement?

8 A Yes.

9 Q Have you also advised them to ignore any nominations issued  
10 by the respective major parties?

11 A They've never been a recipient of those, so it's -- it's in  
12 terms of -- I guess I'd have to ask for clarification on  
13 the question.

14 Q Okay. Has there been any discussion about basing the  
15 10 percent, for example, on the votes obtained by the  
16 highest vote-getter who was nominated by the same party as  
17 the PCO candidate?

18 A I don't think we've had any discussions on that. I think  
19 that's been suggested by the parties, but not by our  
20 office.

21 Q Based on the training, to the best you understand it, will  
22 a candidate for party office who receives one vote, namely  
23 their own, be elected if there's no other candidate on the  
24 ballot?

25 A A candidate for -- I'm sorry -- for county office?

McDONALD (Catherine Blinn, 8/16/10)

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1 Q And if the county -- if the State Legislature defines the  
2 County Central Committee to be the PCO's, is there some  
3 other arm of the party that would be authorized to exercise  
4 this authority? Just ignoring the state statute?

5 A I think they could choose to ignore it if they want to.

6 Q All right. In connection with the Top Two, did you have  
7 any role in the implementation of the Top Two?

8 A I did.

9 Q What was that role?

10 A After the -- after the US Supreme Court decision came down  
11 in March of 2008, I was involved in writing WACs to  
12 implement the Top Two. And I was involved in -- but to a  
13 lesser degree the public education campaign during the  
14 summer of 2008 to educate the public. I was involved in  
15 materials for the state voters pamphlet. I was involved in  
16 a focus group, both prior to and after the primary. I was  
17 involved in reviewing a number of public education messages  
18 that were released in a variety of forms either by this  
19 office or by media outlets to educate the public on the new  
20 form of the primary. And I was involved in training county  
21 and state election officials. And I was involved in a  
22 number of presentations with organizations with the public,  
23 with legislative staff, with just a variety of groups.

24 Q Do you have continuing duties in connection with the Top  
25 Two at this point?

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1 A Yes --

2 Q What are --

3 A -- probably.

4 Q -- those?

5 A Being a part of things like this, monitoring the  
6 litigation. Um-hmm.

7 Q Is there any remaining implementation of the Top Two that  
8 you're involved with?

9 A Not -- I can't think of anything off the top of my head.  
10 For example, this spring we issued the new WAC regarding  
11 PCO declaration, excuse me, PCO filings, but I can't really  
12 think of anything else.

13 Q So as far as you know, the implementation is complete?

14 A I think it's working pretty well.

15 Q I'm not quite sure that was responsive. As far as you  
16 know, is the implementation complete?

17 A You know, I don't think -- that assumes that, for example,  
18 there would never ever be any other change in the law or  
19 whatnot, and a lot could happen down the line. The  
20 Legislature could pass other laws that would impact it.  
21 Obviously, litigation could impact it. The -- if we had  
22 reason to -- if something were to trigger a change, but for  
23 the most part, I don't -- I can't think of anything that  
24 would cause us to implement it differently from here on  
25 out. So I think it is probably, for the most part, done,

McDONALD (Catherine Blinn, 8/16/10)

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1 Q Do you assume that they do that even if they don't realize  
2 they are confused, or are you making that statement about  
3 people --

4 A I think the public understands when they're confused.

5 Q So you're making that statement with respect to people who  
6 may not be aware that they've made a mistake about whether  
7 there's an association, that you would still expect them to  
8 call and say "I'm confused"?

9 A I think when the public doesn't understand what's being  
10 presented to them, they feel free to call and contact us  
11 and complain because they are -- when they feel confused,  
12 they want to complain.

13 Q Is it also true that if they think they do understand  
14 what's being presented to them, they don't call and  
15 complain?

16 A It's a possibility.

17 Q Aside from silence outside, has there been any subsequent  
18 testing that you're aware of with respect to whether  
19 there's any confusion arising out of the Top Two Primary  
20 system with respect to whether the candidates who stated a  
21 preference for a party are associated with that party?

22 A Our office has not done any formal testing. I don't know  
23 about other people.

24 MR. MCDONALD: Let me -- I apologize. Again,  
25 we're going to need to share, but this one was 27 pages.



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1 leads people to think that the other candidate -- leads  
2 them to more think that the other candidate is associated  
3 with the party.

4 Q What's the form that you finally used on the ballots?

5 A States No Party Preference.

6 Q That's essentially No. 4?

7 A Yes.

8 Q With parentheses and states No Party Preference?

9 A With parentheses, and I believe each word is capitalized.

10 Q Is it correct that with respect to example 4, it looks like  
11 12 percent of the folks thought that Jane Doe nevertheless  
12 was endorsed by the party or represented the party or was  
13 associated with the party?

14 A That's what it looks like.

15 Q Am I correct that this survey, since you've done no other  
16 one, is the best data you have about whether the language  
17 you're using is confusing to voters?

18 A We -- I mean, the other testing we did was internal, and I  
19 don't think it was broken down into percentages usually. A  
20 lot of it was very informal, and a lot of it came down to,  
21 just as these questions are posed, which of these provides  
22 the least connection association between the party and the  
23 candidate.

24 Q This is the only data that you have that is based upon a  
25 random selection of voters --

McDONALD (Catherine Blinn, 8/16/10)

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1 A Correct.

2 Q -- looking at voter language?

3 A Yes. Yes.

4 Q And it's the best data of that kind; is that right?

5 A It's the only data we have.

6 Q Secretary Reed indicated that in the event that there was  
7 an allegation of making a false statement to an election  
8 official that it would end up with you to handle. Is that  
9 part of your duties?

10 A An allegation of making a false statement?

11 Q Yeah.

12 A That would probably make its way to me.

13 Q Has anything like that ever occurred?

14 A Not that I know of.

15 Q Okay. Are you just assuming you're the default catcher of  
16 such things?

17 A I am, correct.

18 Q All right. I don't think I have -- well, strike that.

19 Who else participated in the focus groups besides  
20 yourself?

21 A From our office?

22 Q From your office.

23 A Nick Handy attended the focus group itself. I don't think  
24 he was involved in the prep. Joanie Deutsch was involved  
25 in the prep. Sheryl Moss may have been involved in the

WHITE (Catherine Blinn, 8/16/10)

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1 Q And so your implementation of the 10 percent threshold  
2 under the Top Two Primary is based on your understanding  
3 that it was last amended in 2004?

4 A Really that it was impliedly repealed by Initiative 872,  
5 because the Pick-A-Party Primary was impliedly repealed by  
6 Initiative 872.

7 Q Do you know whether the PCO statute with the 10 percent  
8 threshold was a creature of the Montana Primary, which you  
9 refer to as the Pick-A-Party?

10 A Yeah. I think it predates the Pick-A-Party Primary, but  
11 I'm not. . . I mean, I think it was part of the Blanket  
12 Primary, but this goes back to when PCO's were on the  
13 general election ballot and they were moved from the  
14 general election ballot to the primary in the legislation  
15 that passed in 2004, in March of 2004.

16 Q And is it your understanding of your duties as an election  
17 administrator that if the Legislature passed a bill that  
18 included the 10 percent threshold after the Top Two Primary  
19 became effective, that the 10 percent threshold would be  
20 binding on you?

21 A Well, obviously as we all know, there was a period for  
22 about three years where the Top Two Primary was under an  
23 injunction, so we reverted back to the Pick-A-Party Primary  
24 and a bill did pass during that time period that amended  
25 implementation of the Pick-A-Party Primary, but that was

WHITE (Catherine Blinn, 8/16/10)

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1 while Initiative 872 was -- while we were under an  
2 injunction from implementing Initiative 872. So once that  
3 injunction was lifted, the Pick-A-Party Primary went back  
4 to being impliedly repealed.

5 Q Without reviewing the content of the advice given, has the  
6 Office of the Secretary of State sought legal advice from  
7 the Attorney General with respect to the 10 percent  
8 threshold contained in the PCO election statute?

9 A I don't remember. We may have; we may not have, I don't  
10 remember.

11 Q In implementing the Top Two Primary, has the Office of  
12 Secretary of State taken any steps to assure that voters  
13 who vote in PCO elections are affiliated with the political  
14 party whose PCO they are electing?

15 A Voters are instructed that if they consider themselves a  
16 Republican or a Democrat, they may vote for a candidate of  
17 that party.

18 Q Is that the extent of the State's efforts to assure that  
19 voters who cast ballots for PCO are affiliates of that  
20 political party?

21 A Yes.

22 Q Are you aware of any language in Initiative 872 that would  
23 preclude the Secretary of State from adopting regulations  
24 that would provide for information to voters on whether a  
25 candidate's party preference is reciprocated by the

GROVER (Catherine Blinn, 8/16/10)

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1 initiative is to no longer conduct a nominating primary.

2 That was a philosophy that was strongly rejected in

3 Initiative 872. It's certainly based on the US Supreme

4 Court case, and it's also just based on what I end up

5 hearing about in my line of work, that the political

6 parties are trying to conduct the nominating procedures at

7 the state and local level and are doing so successfully.

8 Q What's your measure of successfully conducting a nominating  
9 process?

10 A I'm not sure. I'm not sure.

11 MR. WHITE: No further questions.

12 EXAMINATION

13 BY MR. GROVER:

14 Q When a party nominates a candidate, what method, if any, do  
15 they have to communicate that to the voter in the voters  
16 pamphlet or on the ballot?

17 A The party does not have a right to communicate their  
18 nominees on the ballot or in the voters pamphlet. They're  
19 free to do that outside the ballot and the voters pamphlet.

20 Q Okay. And do you agree with Secretary Reed and Director  
21 Handy that something like 80 percent of the voters who vote  
22 look at the voters pamphlet?

23 A I actually wouldn't say it's that high. I don't think I'd  
24 give a percentage, but I wouldn't say it's that high.

25 Q What would your range be? 50 percent? Maybe 50 to 80?

GROVER (Catherine Blinn, 8/16/10)

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1 A Of the voters who actually vote in an election?

2 Q Right.

3 A As opposed to all the voters? Of the voters who vote in an  
4 election, maybe -- we did not distribute a written pamphlet  
5 for the primary. We don't have funding for that. In the  
6 general election, maybe 25 percent.

7 Q Okay. When you say you didn't distribute a voters  
8 pamphlet, like the --

9 A A published voters pamphlet, like a paper.

10 Q In the election tomorrow, there's no voters pamphlet?

11 A There's no paper voters pamphlet that's distributed by the  
12 State. Some counties have distributed one, but not by the  
13 State. It's about \$900,000.

14 Q Okay. But even with the counties, there's no way -- no  
15 county is allowing a political party to publish their  
16 nominations in the voters pamphlet?

17 A That's correct. I don't think that state law gives the  
18 counties the authority to do that.

19 Q Okay. And just -- I may be beating a dead horse, but on  
20 the ballot you have to use the word "party," correct? On  
21 the preference line it has to be "Prefers" blank, 16  
22 characters and you have to use the word "Party" after it?

23 A Um-hmm, or your other option is to state "No Party  
24 Preference." Yes, that's correct.

25 MR. GROVER: Okay. That's all.

## C E R T I F I C A T E

I, DIXIE J. CATTELL, a duly authorized Notary Public in and for the State of Washington, residing at Olympia, do hereby certify:

That the foregoing deposition of CATHERINE BLINN was taken before me and completed on the 16th day of August, 2010, and thereafter transcribed by me by means of computer-aided transcription; that the deposition is a full, true and complete transcript of the testimony of said witness;

That the witness, before examination, was, by me, duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the witness reserved signature;

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

That I am herewith securely sealing the deposition of CATHERINE BLINN and promptly serving the same upon MR. JOHN WHITE.

IN WITNESS HEREOF, I have hereunto set my hand and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Dixie J. Cattell, CSR#2346  
Notary Public in and for the State  
of Washington, residing at Olympia.

# **EXHIBIT 2**



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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WASHINGTON STATE REPUBLICAN	)	
PARTY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	NO. CV05-0927-JCC
	)	
WASHINGTON STATE DEMOCRATIC	)	
CENTRAL COMMITTEE, et al.,	)	
	)	
Plaintiff Intervenors,	)	
	)	
	)	
LIBERTARIAN PARTY OF	)	
WASHINGTON STATE, et al.,	)	
	)	
Plaintiff Intervenors,	)	
	)	
vs.	)	
	)	
STATE OF WASHINGTON, et al.,	)	
	)	
Defendant Intervenors,	)	
	)	
	)	
WASHINGTON STATE GRANGE,	)	
et al.,	)	
	)	
Defendant Intervenors	)	

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DEPOSITION UPON ORAL EXAMINATION OF  
SECRETARY OF STATE SAM REED

---

Monday, August 16, 2010  
Olympia, Washington

WHITE (Secretary of State Sam Reed, 8/16/10)

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1 A I think just simply to say that it had -- there had to be  
2 clear delineations between different parts of the ballot  
3 and such so that the voters would understand that we're now  
4 moving on to a different section.

5 Q So that the instructions would be segregated --

6 A Right.

7 Q -- from where voters began to vote?

8 A That is correct.

9 Q Has the Secretary of State's office conducted any studies  
10 to determine what percentage of voters read the  
11 instructions on the ballot?

12 A No, that I recall. No.

13 Q And has the Secretary of State's office -- again, let me  
14 make clear that I'm speaking here during the time that  
15 you've been Secretary of State --

16 A Okay. Right.

17 Q -- so we can narrow that down. Has the Secretary of  
18 State's office conducted any studies to determine whether  
19 ballot instructions are confusing to voters?

20 A Only -- my recollection again, is that in the sense of the  
21 Design for Democracy person working on it, plus we held  
22 some focus groups to see if the voters understood the  
23 instructions when we changed to the Top Two Primary and  
24 that they understood what was -- what it was all about.

25 Q Do you recall what the results of those focus groups were?

McDONALD (Secretary of State Sam Reed, 8/16/10)

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1 A Would you explain what you mean by that?

2 Q Did you have any concern with respect to the degree to  
3 which the voters would interpret the ballots as stating a  
4 partisan affiliation?

5 A Oh, yes, we did. And so we wanted to make sure we  
6 clarified that their statement was that it was candidates  
7 who preferred these parties and not necessarily the parties  
8 who preferred the candidates.

9 Q Other than caution, did you have any basis for your  
10 concern?

11 A Similarly, that that was an important part of the decision  
12 as made by the US Supreme Court was, you know, that this  
13 can be conducted without confusion, you know, that was, you  
14 know, very important to implementing this.

15 Q Have you, to the best of your knowledge, undertaken any  
16 studies after the fact to see how voters understood the  
17 ballot?

18 A Not that I recall. Though we certainly have asked and  
19 monitored, you know, in terms of -- because we get a lot of  
20 feedback from voters over the phones, e-mails, and then all  
21 the 39 county auditors, the same thing, and what are, you  
22 know, what are they hearing back from the voters?

23 And what was interesting is when we did the  
24 Pick-A-Party Primary, because we heard from tens of  
25 thousands of people who were upset over the system and

WHITE (Secretary of State Sam Reed, 8/16/10)

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1 party in -- right now in our state it's -- it was defined  
2 more before when we had the Blanket Primary system.

3 MR. AHEARNE: Okay, that's all.

4 MR. PHARRIS: I have no questions.

5 MR. WHITE: I've got a handful.

6 EXAMINATION

7 BY MR. WHITE:

8 Q Washington law specifies the order in which races appear on  
9 the ballot, correct?

10 A That is correct.

11 Q Partisan offices appear ahead of local nonpartisan offices,  
12 do they not?

13 A That is correct.

14 Q And partisan offices contain more information about the  
15 candidate than listings on the ballot for nonpartisan  
16 offices, do they not?

17 A Well, if you're referring to them saying prefers certain  
18 party, yes, that is correct.

19 Q Following up on Mr. Ahearne's questions on real political  
20 parties --

21 MR. AHEARNE: I'd object to the extent you're  
22 mischaracterizing the phrase I used, but go ahead.

23 Q (By Mr. White) Is the Salmon Yoga Party a real political  
24 party?

25 A No.

## C E R T I F I C A T E

I, DIXIE J. CATTELL, a duly authorized Notary Public in and for the State of Washington, residing at Olympia, do hereby certify:

That the foregoing deposition of SECRETARY OF STATE SAM REED was taken before me and completed on the 16th day of August, 2010, and thereafter transcribed by me by means of computer-aided transcription; that the deposition is a full, true and complete transcript of the testimony of said witness;

That the witness, before examination, was, by me, duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the witness reserved signature;

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

That I am herewith securely sealing the deposition of SECRETARY OF STATE SAM REED and promptly serving the same upon MR. JOHN WHITE.

IN WITNESS HEREOF, I have hereunto set my hand and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Dixie J. Cattell, CSR#2346  
Notary Public in and for the State  
of Washington, residing at Olympia.

# **EXHIBIT 3**



ELECTION  
ASSISTANCE  
COMMISSION

# VOLUNTARY VOTING SYSTEM GUIDELINES

[www.eac.gov](http://www.eac.gov)

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# **VOLUNTARY VOTING SYSTEM GUIDELINES**

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# **Voluntary Voting System Guidelines**

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### **Volume II National Certification Testing Guidelines**

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- Test for the proper implementation of state-specific requirements
- Establish a baseline for future evaluations or tests of the system, such as acceptance testing or state review after modifications have been made
- Define acceptance tests

State certification test scripts are not included in the *Guidelines*, as they must be defined by the state, with its laws, election practices, and needs in mind. However, it is recommended that they not duplicate the national certification tests, but instead focus on functional tests and qualitative assessment to ensure that the system operates in a manner that is acceptable under state law. If a voting system is modified after state certification is completed, it is recommended that states reevaluate the system to determine if further certification testing is warranted.

Certification tests performed by individual states typically rely on information contained in documentation provided by the vendor for system design, installation, operations, required facilities and supplies, personnel support and other aspects of the voting system. States and jurisdictions may define information and documentation requirements additional to those defined in the *Guidelines*. By design, the *Guidelines* do not address these additional requirements. However, national certification testing will address all the capabilities of a voting system stated by the vendor in the system documentation submitted with the testing application to the EAC, including additional capabilities that are not required by the states.

### **1.4.3 Acceptance Testing**

Acceptance tests are performed at the state or local jurisdiction level upon system delivery by the vendor to:

- Confirm that the system delivered is the specific system certified by EAC and, when applicable, certified by the state
- Evaluate the degree to which delivered units conform to both the system characteristics specified in the procurement documentation, and those demonstrated in the national and state certification tests
- Establish a baseline for any future required audits of the system

Some of the operational tests conducted during certification may be repeated during acceptance testing.

## **1.5 Definitions, References, and Types of Voting Systems**

### **1.5.1 Definitions and References**

The *Guidelines* contain terms describing function, design, documentation, and testing attributes of voting system hardware, software and telecommunications. Unless otherwise specified, the intended sense of technical terms is that which is commonly used by the

information technology industry. In some cases terminology is specific to elections or voting systems. A glossary of terms is contained in Appendix A. Non-technical terms not listed in Appendix A shall be interpreted according to their standard dictionary definitions.

There are a number of technical standards that are incorporated in the *Guidelines* by reference. These are referred to by title in the body of the document. The full citations for these publications are provided in Appendix B. In addition, this appendix includes other references that may be useful for understanding and interpretation.

## 1.5.2 Types of Voting Systems

HAVA Section 301 defines a voting system as the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment), that is used to define ballots; to cast and count votes; to report or display election results; and to maintain and produce any audit trail information. In addition, a voting system includes the practices and associated documentation used to identify system components and versions of such components; to test the system during its development and maintenance; to maintain records of system errors and defects; to determine specific system changes made after initial certification; and to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

Traditionally, a voting system has been defined by the mechanism the system uses to cast votes and further categorized by the location where the system tabulates ballots. In addition to defining a common set of requirements that apply to all voting systems, the *VVSG* states requirements specific to a particular type of voting system, where appropriate. However, the *Guidelines* recognize that as the industry develops new solutions and the technology continues to evolve, the distinctions between voting system types may become blurred. The fact that the *VVSG* refers to specific system types is not intended to stifle innovations that may be based on a more fluid understanding of system types. However, appropriate procedures must be in place to ensure new developments provide the necessary integrity and can be properly evaluated in the certification process.

Consequently, vendors that submit a system that integrates components from more than one traditional system type or a system that includes components or technology not addressed in the *Guidelines* shall submit the results of all beta tests of the new system when applying for national certification. Vendors shall also submit a proposed test plan to the EAC for use in national certification testing. The *Guidelines* permit vendors to produce or utilize interoperable components of a voting system that are tested within the full voting system configuration.

The listing below summarizes the functional requirements that HAVA Section 301 mandates to assist voters. While these requirements may be implemented in a different manner for different types of voting systems, all types of voting systems must provide these capabilities:

## Appendix A: Glossary

This glossary contains terms needed to understand voting systems and related areas such as security, human factors, and testing. Sources consulted in preparing the definitions are listed in section A.2.

### A.1 Glossary

#### A

**abandoned ballot:** Ballot that the voter did not place in the ballot box or record as cast on DRE before leaving the polling place

**absentee ballot:** Ballot cast by a voter unable to vote in person at his or her polling place on election day

**acceptance testing:** Examination of a voting system and its components by the purchasing election authority (usually in a simulated-use environment) to validate performance of delivered units in accordance with procurement requirements, and to validate that the delivered system is, in fact, the certified system purchased

**Access Board:** Independent federal agency whose primary mission is accessibility for people with disabilities and a leading source of information on accessible design

**accessibility:** Measurable characteristics that indicate the degree to which a system is available to, and usable by, individuals with disabilities. The most common disabilities include those associated with vision, hearing and mobility, as well as cognitive disabilities.

**accessible voting station:** Voting station equipped for individuals with disabilities

**accreditation:** Formal recognition that a laboratory is competent to carry out specific tests or calibrations

**accreditation body:** (1) Authoritative body that performs accreditation (2) An independent organization responsible for assessing the performance of other organizations against a recognized standard, and for formally confirming the status of those that meet the standard

**accuracy:** (1) Extent to which a given measurement agrees with an accepted standard for that measurement (2) Closeness of the agreement between the result of a measurement and a true value of the particular quantity subject to measurement. Accuracy is a qualitative concept and is not interchangeable with precision.

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**accuracy for voting systems:** Ability of the system to capture, record, store, consolidate and report the specific selections and absence of selections, made by the voter for each ballot position without error. Required accuracy is defined in terms of an error rate that for testing purposes represents the maximum number of errors allowed while processing a specified volume of data.

**adequate security:** Security commensurate with the risk and the magnitude of harm resulting from the loss, misuse, unauthorized access to, or modification of, information. This includes ensuring that systems and applications operate effectively and provide appropriate confidentiality, integrity, and availability, through the use of cost-effective management, personnel, operational, and technical controls.

**alternative format:** The ballot or accompanying information is said to be in an alternative format if it is in a representation other than the standard ballot language and format. Examples include, but are not limited to languages other than English, Braille, ASCII text, large print, recorded audio.

**audio ballot:** a ballot in which a set of offices is presented to the voter in spoken, rather than written, form

**audio-tactile interface (ATI):** Voter interface designed to not require visual reading of a ballot. Audio is used to convey information to the voter and sensitive tactile controls allow the voter to communicate ballot selections to the voting system.

**audit:** Systematic, independent, documented process for obtaining records, statements of fact or other relevant information and assessing them objectively to determine the extent to which specified requirements are fulfilled

**audit trail:** Recorded information that allows election officials to review the activities that occurred on the voting equipment to verify or reconstruct the steps followed without compromising the ballot or voter secrecy

**audit trail for direct-recording equipment:** Paper printout of votes cast, produced by direct-recording electronic (DRE) voting machines, which election officials may use to crosscheck electronically tabulated totals

**availability:** The percentage of time during which a system is operating properly and available for use

## B

**ballot:** The official presentation of all of the contests to be decided in a particular election. See also, **audio ballot**, **ballot image**, **video ballot**, **electronic voter interface**.

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**ballot configuration:** Particular set of contests to appear on the ballot for a particular election district, their order, the list of ballot positions for each contest, and the binding of candidate names to ballot positions

**ballot counter:** Process in a voting device that counts the votes cast in an election

**ballot counting logic:** The software logic that defines the combinations of voter choices that are valid and invalid on a given ballot and that determines how the vote choices are totaled in a given election

**ballot format:** The concrete presentation of the contents of a ballot appropriate to the particular voting technology being used. The contents may be rendered using various methods of presentation (visual or audio), language or graphics.

**ballot image:** Electronically produced record of all votes cast by a single voter. See also **cast vote record**.

**ballot instructions:** Information provided to the voter during the voting session that describes the procedure for executing a ballot. Such material may (but need not) appear directly on the ballot.

**ballot measure:** (1) A question that appears on the ballot for approval or rejection. (2) A contest on a ballot where the voter may vote yes or no.

**ballot position:** A specific place in a ballot where a voter's selection for a particular contest may be indicated. Positions may be connected to row and column numbers on the face of a voting machine or ballot, particular bit positions in a binary record of a ballot (for example, an electronic ballot image), the equivalent in some other form. Ballot positions are bound to specific contests and candidate names by the ballot configuration.

**ballot preparation:** Selecting the specific contests and questions to be contained in a ballot format and related instructions; preparing and testing election-specific software containing these selections; producing all possible ballot formats; and validating the correctness of ballot materials and software containing these selections for an upcoming election

**ballot production:** Process of generating ballots for presentation to voters, e.g., printing paper ballots or configuring the ballot presentation on a DRE

**ballot rotation:** Process of varying the order of the candidate names within a given contest

**ballot scanner:** Device used to read the voter selection data from a paper ballot or ballot card

**ballot style:** See **ballot configuration**



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**candidate:** Person contending in a contest for office. A candidate may be explicitly presented as one of the choices on the ballot or may be a write-in candidate.

**candidate register:** Record that reflects the total votes cast for the candidate. This record is augmented as each ballot is cast on a DRE or as digital signals from the conversion of voted paper ballots are logically interpreted and recorded.

**canvass:** Compilation of election returns and validation of the outcome that forms the basis of the official results by political subdivision

**cast ballot:** Ballot that has been deposited by the voter in the ballot box or electronically submitted for tabulation

**cast vote record:** Permanent record of all votes produced by a single voter whether in electronic, paper or other form. Also referred to as ballot image when used to refer to electronic ballots.

**catastrophic system failure:** Total loss of function or functions, such as the loss or unrecoverable corruption of voting data or the failure of an on board battery of volatile memory

**central count voting system:** A voting system that tabulates ballots from multiple precincts at a central location. Voted ballots are placed into secure storage at the polling place. Stored ballots are transported or transmitted to a central counting place which produces the vote count report.

**certification:** Procedure by which a third party gives written assurance that a product, process or service conforms to specified requirements. See also **state certification** and **national certification**.

**certification testing:** Testing performed under either national or state certification processes to verify voting system conformance to requirements

**challenged ballot:** Ballot provided to an individual who claim they are registered and eligible to vote but whose eligibility or registration status cannot be confirmed when they present themselves to vote. Once voted, such ballots must be kept separate from other ballots and are not included in the tabulation until after the voter's eligibility is confirmed. Michigan is an exception in that they determine voter eligibility before a ballot is issued. See also **provisional ballot**

**checksum:** Value computed from the content of a document or data record. Typically this is the sum of the numeric representations of all the characters in the text. Checksums are used to aid in detecting errors or alterations during transmission or storage.

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**claim of conformance:** Statement by a vendor declaring that a specific product conforms to a particular standard or set of standard profiles; for voting systems, NASED qualification or EAC certification provides independent verification of a claim

**closed primary:** Primary election in which voters receive a ballot listing only those candidates running for office in the political party with which the voters are affiliated. In some states, non-partisan contests and ballot issues may be included. In some cases, political parties may allow unaffiliated voters to vote in their party's primary

**commercial off-the-shelf (COTS):** Commercial, readily available hardware devices (such as card readers, printers or personal computers) or software products (such as operating systems, programming language compilers, or database management systems)

**Common Industry Format (CIF):** Refers to the format described in ANSI/INCITS 354-2001 "Common Industry Format (CIF) for Usability Test Reports

**component:** Element within a larger system; a component can be hardware or software. For hardware, it is a physical part of a subsystem that can be used to compose larger systems (e.g., circuit boards, internal modems, processors, computer memory). For software, it is a module of executable code that performs a well-defined function and interacts with other components.

**confidentiality:** Prevention of unauthorized disclosure of information

**configuration management:** Discipline applying technical and administrative direction and surveillance to identify and document functional and physical characteristics of a configuration item, control changes to these characteristics, record and report change processing and implementation status, and verify compliance with specified requirements

**configuration management plan:** Document detailing the process for identifying, controlling and managing various released items (such as code, hardware and documentation)

**configuration status accounting:** An element of configuration management, consisting of the recording and reporting of information needed to manage a configuration effectively. This includes a listing of the approved configuration identification, the status of proposed changes to the configuration, and the implementation status of approved changes.

**conformance:** Fulfillment of specified requirements by a product, process or service

**conformance testing:** Process of testing an implementation against the requirements specified in one or more standards. The outcomes of a conformance test are generally a pass or fail result, possibly including reports of problems encountered during the execution. Also known as certification testing.

**contest:** Decision to be made within an election, which may be a contest for office or a referendum, proposition and/or question. A single ballot may contain one or more contests.

**count:** Process of totaling votes. See **tabulation**.

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**counted ballot:** Ballot that has been processed and whose votes are included in the candidates and measures vote totals

**corrective action:** Action taken to eliminate the causes of an existing deficiency or other undesirable situation in order to prevent recurrence

**cross filing:** Endorsement of a single candidate or slate of candidates by more than one political party. The candidate or slate appears on the ballot representing each endorsing political party. Also referred to as cross-party endorsement.

**cryptographic key:** Value used to control cryptographic operations, such as decryption, encryption, signature generation or signature verification

**cryptography:** Discipline that embodies the principles, means, and methods for the transformation of data in order to hide their semantic content, prevent their unauthorized use, prevent their undetected modification and establish their authenticity

**cumulative voting:** A method of voting exclusive to multi-member district election (e.g. county board) in which each voter may cast as many votes as there are seats to be filled and may cast two or more of those votes for a single candidate

## D

**data accuracy:** (1) Data accuracy is defined in terms of ballot position error rate. This rate applies to the voting functions and supporting equipment that capture, record, store, consolidate and report the specific selections, and absence of selections, made by the voter for each ballot position. (2) The system's ability to process voting data absent internal errors generated by the system. It is distinguished from data integrity, which encompasses errors introduced by an outside source.

**data integrity:** Invulnerability of the system to accidental intervention or deliberate, fraudulent manipulation that would result in errors in the processing of data. It is distinguished from data accuracy that encompasses internal, system-generated errors.

**decertification:** Revocation of national or state certification of voting system hardware and software

**decryption:** Process of changing encrypted text into plain text

**device:** Functional unit that performs its assigned tasks as an integrated whole

**digital signature:** An asymmetric key operation where the private key is used to digitally sign an electronic document and the public key is used to verify the signature. Digital signatures provide data authentication and integrity protection

**direct-recording electronic (DRE) voting system:** An electronic voting system that utilizes electronic components for the functions of ballot presentation, vote capture, vote recording,

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and tabulation which are logically and physically integrated into a single unit. A DRE produces a tabulation of the voting data stored in a removable memory component and in printed hardcopy.

**directly verifiable:** Voting system feature that allows the voter to verify at least one representation of his or her ballot with his/her own senses, not using any software or hardware intermediary. Examples include a marksense paper ballot and a DRE with a voter verifiable paper record feature.

**disability:** With respect to an individual; (1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) a record of such an impairment; (3) being regarded as having such an impairment (definition from the Americans with Disabilities Act).

**dynamic voting system software:** Software that changes over time once it is installed on the voting equipment. See also voting system software.

## E

**EAC:** Election Assistance Commission ([www.eac.gov](http://www.eac.gov))

**early voting:** Broadly, voting conducted before election day where the voter completes the ballot in person at a county office or other designated polling place or ballot drop site prior to election day

**election:** A formal process of selecting a person for public office or of accepting or rejecting a political proposition by voting

**election databases:** Data file or set of files that contain geographic information about political subdivisions and boundaries, all contests and questions to be included in an election, and the candidates for each contest

**election definition:** Definition of the contests and questions that will appear on the ballot for a specific election

**election district:** Contiguous geographic area represented by a public official who is elected by voters residing within the district boundaries. The district may cover an entire state or political subdivision, may be a portion of the state or political subdivision, or may include portions of more than one political subdivision.

**election management system:** Set of processing functions and databases within a voting system that defines, develops and maintains election databases, performs election definitions and setup functions, format ballots, count votes, consolidates and report results, and maintains audit trails

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**election officials:** The people associated with administering and conducting elections, including government personnel and poll workers

**election programming:** Process by which election officials or their designees use voting system software to logically define the ballot for a specific election

**electronic cast vote record:** An electronic version of the cast vote record

**electronic voter interface:** Subsystem within a voting system which communicates ballot information to a voter in video, audio or other alternative format which allows the voter to select candidates and issues by means of vocalization or physical actions

**electronic voting machine:** Any system that utilizes an electronic component. Term is generally used to refer to DREs. See also **voting equipment**, **voting system**.

**electronic voting system:** An electronic voting system is one or more integrated devices that utilize an electronic component for one or more of the following functions: ballot presentation, vote capture, vote recording, and tabulation. A DRE is a functionally and physically integrated electronic voting system which provides all four functions electronically in a single device. An optical scan (also known as marksense) system where the voter marks a paper ballot with a marking instrument and then deposits the ballot in a tabulation device is partially electronic in that the paper ballot provides the presentation, vote capture and vote recording functions. An optical scan system employing a ballot marking device adds a second electronic component for ballot presentation and vote capture functions.

**encryption:** Process of obscuring information by changing plain text into ciphertext for the purpose of security or privacy. See also **cryptography** and **decryption**.

**error correcting code:** coding system that allows data being read or transmitted to be checked for errors and, when detected, corrects those errors

## F

**Federal Information Processing Standards:** Standards for federal computer systems developed by NIST. These standards are developed when there are no existing industry standards to address federal requirements for system interoperability, portability of data and software, and computer security.

**firmware:** Computer programming stored in programmable read-only memory thus becoming a permanent part of the computing device. It is created and tested like software.

**Functional Configuration Audit (FCA):** Exhaustive verification of every system function and combination of functions cited in the vendor's documentation. The FCA verifies the accuracy and completeness of the system's Voter Manual, Operations Procedures, Maintenance Procedures, and Diagnostic Testing Procedures.

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**functional test:** Test performed to verify or validate the accomplishment of a function or a series of functions

## G

**general election:** Election in which voters, regardless of party affiliation, are permitted to select candidates to fill public office and vote on ballot issues

**guidelines:** See **product standard**

## H

**hash:** Algorithm that maps a bit string of arbitrary length to a fixed-length bit string.

**hash function:** A function that maps a bit string of arbitrary length to a fixed length bit string. Approved hash functions satisfy the following properties: 1. (One-way) It is computationally infeasible to find any input that maps to any pre-specified output, and 2. (Collision resistant) It is computationally infeasible to find any two distinct inputs that map to the same output.

## I

**indirectly verifiable:** Voting system feature that allows a voter to verify his or her selections via a hardware or software intermediary. An example is a touch screen DRE where the voter verifies the ballot selections through the assistance of audio stimuli.

**implementation statement:** Statement by a vendor indicating the capabilities, features, and optional functions as well as extensions that have been implemented. Also known as implementation conformance statement.

**Independent Testing Authority (ITA):** Replaced by “accredited testing laboratories” and “test labs.” Prior usage referred to independent testing organizations accredited by the National Association of State Election Directors (NASD) to perform voting system qualification testing.

**information security:** Protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide integrity, confidentiality, and availability

**inspection:** Examination of a product design, product, process or installation and determination of its conformity with specific requirements or, on the basis of professional judgment, with general requirements. Inspection of a process may include inspection of staffing, facilities, technology and methodology.

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**integrity:** Guarding against improper information modification or destruction, and ensuring information non-repudiation and authenticity

**internal audit log:** A human readable record, resident on the voting machine, used to track all activities of that machine. This log records every activity performed on or by the machine indicating the event and when it happened.

## K

**key management:** Activities involving the handling of cryptographic keys and other related security parameters (e.g., passwords) during the entire life cycle of the keys, including their generation, storage, establishment, entry and output, and zeroization.

## L

**logic and accuracy testing:** Testing of the tabulator setups of a new election definition to ensure that the content correctly reflects the election being held (i.e., contests, candidates, number to be elected, ballot styles) and that all voting positions can be voted for the maximum number of eligible candidates and that results are accurately tabulated and reported.

**logical correctness:** Condition signifying that, for a given input, a computer program will satisfy the program specification and produce the required output

## M

**marksense:** System by which votes are recorded by means of marks made in voting response fields designated on one or both faces of a ballot card or series of cards. Marksense systems may use an optical scanner or similar sensor to read the ballots. Also known as optical scan.

**measure register:** Record that reflects the total votes cast for and against a specific ballot issue. This record is augmented as each ballot is cast on a DRE or as digital signals from the conversion of voted paper ballots are logically interpreted and recorded.

**mechanical lever voting machine:** Machine that directly records a voter's choices via mechanical lever-actuated controls into a counting mechanism that tallies the votes without using a physical ballot

**multi-seat contest:** Contest in which multiple candidates can run, up to a specified number of seats. Voters may vote for no more than the specified number of candidates

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Appendix A: Glossary**N****NASED:** National Association of State Election Directors, ([www.nased.org](http://www.nased.org))**national certification testing:** Examination and testing of a voting system to determine if the system complies with the performance and other requirements of the national certification standards and with its own specifications**national certification test report:** Report of results of independent testing of a voting system by an accredited test lab delivered to the EAC with a recommendation regarding granting a certification number**NIST:** National Institute of Standards and Technology**non-partisan office:** Elected office for which candidates run without political party affiliation**nonvolatile memory:** Memory in which information can be stored indefinitely with no power applied. ROMs and PROMs are examples of nonvolatile memory.**NVLAP:** The National Voluntary Laboratory Accreditation Program operated by NIST**O****open primary:** Primary election in which any voters can participate, regardless of their political affiliation. Some states require voters to publicly declare their choice of party ballot at the polling place, after which the poll worker provides or activates the appropriate ballot. Other states allow the voters to make their choice of party ballot within the privacy of the voting booth.**operational environment:** All software, hardware (including facilities, furnishings and fixtures), materials, documentation, and the interface used by the election personnel, maintenance operator, poll worker, and voter, required for voting equipment operations.**optical scan, optical scan system:** System by which votes are recorded by means of marks made in voting response fields designated on one or both faces of a ballot card or series of cards. An optical scan system reads and tabulates ballots, usually paper ballots, by scanning the ballot and interpreting the contents. Also known as **marksense**.**overvote:** Voting for more than the maximum number of selections allowed in a contest**P****paper-based voting system:** Voting system that records votes, counts votes, and tabulates the vote count, using one or more ballot cards or paper ballots



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**paper record:** Paper cast vote record that can be directly verified by a voter. See also **ballot image**, **cast vote record**.

**partisan office:** An elected office for which candidates run as representatives of a political party

**personal assistive device:** A device that is carried or worn by an individual with some physical impairment whose primary purpose is to help compensate for that impairment

**Physical Configuration Audit (PCA):** Inspection by an accredited test laboratory that compares the voting system components submitted for certification testing to the vendor's technical documentation and confirms that the documentation submitted meets the national certification requirements. Includes witnessing of the build of the executable system to ensure that the certified release is built from the tested components.

**political subdivision:** Any unit of government, such as counties and cities, school districts, and water and conservation districts having authority to hold elections for public offices or on ballot issues

**polling location:** Physical address of a polling place

**polling place:** Facility to which voters are assigned to cast in-person ballots

**precinct:** Election administration division corresponding to a contiguous geographic area that is the basis for determining which contests and issues the voters legally residing in that area are eligible to vote on

**precinct count:** Counting of ballots in the same precinct in which those ballots have been cast

**precinct count voting system:** a voting system that tabulates ballots at the polling place. These systems typically tabulate ballots as they are cast and print the results after the close of polling. For DREs, and for some paper-based systems, these systems provide electronic storage of the vote count and may transmit results to a central location over public telecommunication networks.

**precision:** (1) Extent to which a given set of measurements of the same sample agree with their mean. Thus, precision is commonly taken to be the standard deviation estimated from sets of duplicate measurements made under conditions of repeatability, that is, independent test results obtained with the same method on identical test material, in the same laboratory or test facility, by the same operator using the same equipment within short intervals of time. (2) Degree of refinement in measurement or specification, especially as represented by the number of digits given.

**primary election:** Election held to determine which candidate will represent a political party for a given office in the general election. Some states have an open primary, while others have a closed primary. Sometimes elections for nonpartisan offices and ballot issues are held during primary elections.

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**primary presidential delegation nomination:** Primary election in which voters choose the delegates to the presidential nominating conventions allotted to their states by the national party committees

**privacy:** The ability to prevent others from determining how an individual voted

**private key:** The secret part of an asymmetric key pair that is typically used to digitally sign or decrypt data

**product standard:** Standard that specifies requirements to be fulfilled by a product or a group of products, to establish its fitness for purpose

**provisional ballot:** Ballot provided to individuals who claim they are registered and eligible to vote but whose eligibility or registration status cannot be confirmed when they present themselves to vote. Once voted, such ballots must be kept separate from other ballots and are not included in the tabulation until after the voter's eligibility is confirmed. In some jurisdictions called an affidavit ballot. See also **challenged ballot**.

**public key:** Public part of an asymmetric key pair that is typically used to verify digital signatures or encrypt data

**public network direct-recording electronic (DRE) voting system:** A DRE that transmits vote counts to a central location over a public telecommunication network

## Q

**qualification number:** A number issued by NASED (National Association of State Election Directors) to a system that has been tested by an accredited Independent Testing Authority for compliance with the voting system standards. Issuance of a qualification number indicates that the system conforms to the national standards.

**qualification test report:** Report of results of independent testing of a voting system by an Independent Test Authority documenting the specific system configuration tested, the scope of tests conducted and when testing was completed.

**qualification testing:** Examination and testing of a voting system by a NASED-accredited Independent Test Authority to determine if the system conforms to the performance and other requirements of the national certification standards and the vendor's own specifications.

## R

**ranked order voting:** Practice that allows voters to rank candidates in a contest in order of choice: 1, 2, 3 and so on. A candidate receiving a majority of the first choice votes wins that election. If no candidate receives a majority, the last place candidate is deleted, and all

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ballots are counted again, with each ballot cast for the deleted candidate applied to the next choice candidate listed on the ballot. The process of eliminating the last place candidate and recounting the ballots continues until one candidate receives a majority of the vote. The practice is also known as instant runoff voting, preferences or preferential voting, or choice voting.

**recall issue with options:** Process that allows voters to remove elected representatives from office prior to the expiration of their terms of office. The recall may involve not only the question of whether a particular officer should be removed, but also the question of naming a successor in the event that there is an affirmative vote for the recall.

**recertification:** Re-examination, and possibly retesting of a voting system that was modified subsequent to receiving national and/or state certification. The object of is to determine if the system as modified still conforms to the requirements.

**recount:** Retabulation of the votes cast in an election

**referendum:** Process whereby a state law or constitutional amendment may be referred to the voters before it goes into effect

**reproducibility:** Ability to obtain the same test results by using the same test method on identical test items in different testing laboratories with different operators using different equipment

**requirement:** Provision that conveys criteria to be fulfilled

**residual vote:** Total number of votes that cannot be counted for a specific contest. There may be multiple reasons for residual votes (e.g., declining to vote for the contest, overvoting in a contest).

**risk assessment:** The process of identifying the risks to system security and determining the probability of occurrence, the resulting impact, and safeguards that would mitigate this impact

**runoff election:** Election to select a winner following a primary or a general election, in which no candidate in the contest received the required minimum percentage of the votes cast. The two candidates receiving the most votes for the contest in question proceed to the runoff election.

## S

**secure receptacle:** The container for storing VVPAT paper audit records

**security analysis:** An inquiry into the potential existence of security flaws in a voting system. Includes an analysis of the system's software, firmware, and hardware, as well as the procedures associated with system development, deployment, operation and management.

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**security controls:** Management, operational, and technical controls (i.e., safeguards or countermeasures) prescribed for an information system to protect the confidentiality, integrity, and availability of the system and its information.

**semi-static voting system software:** Software that may change in response to the voting equipment on which it is installed or to election-specific programming.

**split precinct:** A precinct that contains an election district subdivision, e.g., a water district or school board district, requiring an additional ballot configuration

**spoiled ballot:** Ballot that has been voted but will not be cast

**state certification:** State examination and possibly testing of a voting system to determine its compliance with state requirements for voting systems

**static voting system software:** Software that does not change based on the election being conducted or the voting equipment upon which it is installed, e.g., executable code

**straight party voting:** Mechanism that allows voters to cast a single vote to select all candidates on the ballot from a single political party

**support software:** Software that aids in the development, maintenance, or use of other software, for example, compilers, loaders and other utilities

**symmetric (secret) encryption algorithm:** Encryption algorithms using the same secret key for encryption and decryption

## T

**tabulation:** Process of totaling votes. See also **count**.

**t-coil:** Inductive coil used in some hearing aids to allow reception of an audio band magnetic field signal, instead of an acoustic signal. The magnetic or inductive mode of reception is commonly used in conjunction with telephones, auditorium loop systems and other systems that provide the required magnetic field output.

**tabulator:** Device that counts votes

**technical data package:** Vendor documentation relating to the voting system required to be submitted with the system as a precondition of certification testing

**telecommunications:** Transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received

**test:** Technical operation that consists of the determination of one or more characteristics of a given product, process or service according to a specified procedure

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**test campaign:** Sum of the work by a voting system test lab on a single product or system from contract through test plan, conduct of testing for each requirement (including hardware, software, and systems), reporting, archiving, and responding to issues afterwards

**testing standard:** Standard that is concerned with test methods, sometimes supplemented with other provisions related to testing, such as sampling, use of statistical methods or sequence of tests

**test method:** Specified technical procedure for performing a test

**test plan:** Document created prior to testing that outlines the scope and nature of testing, items to be tested, test approach, resources needed to perform testing, test tasks, risks and schedule

**touch screen voting machine:** A voting machine that utilizes a computer screen to display the ballot and allows the voter to indicate his or her selections by touching designated locations on the screen

## U

**undervote:** Occurs when the number of choices selected by a voter in a contest is less than the maximum number allowed for that contest or when no selection is made for a single choice contest

**usability:** Effectiveness, efficiency and satisfaction with which a specified set of users can achieve a specified set of tasks in a particular environment. Usability in the context of voting refers to voters being able to cast valid votes as they intended quickly, without errors, and with confidence that their ballot choices were recorded correctly. It also refers to the usability of the setup and operation in the polling place of voting equipment.

**usability testing:** Encompasses a range of methods that examine how users in the target audience actually interact with a system, in contrast to analytic techniques such as usability inspection

## V

**valid vote:** Vote from a ballot or ballot image that is legally acceptable according to state law

**validation:** Process of evaluating a system or component during or at the end of the development process to determine whether it satisfies specified requirements

**verification:** Process of evaluating a system or component to determine whether the products of a given development phase satisfy the conditions (such as specifications) imposed at the start of the phase

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**video ballot:** Electronic voter interface which presents ballot information and voting instructions as video images. See also **ballot**.

**vote for N of M:** A ballot choice in which voters are allowed to vote for a specified number ("N") of candidates in a multi-seat ("M") contest

**voted ballot:** Ballot that contains all of a voter's selections and has been cast

**voter verifiable:** A voting system feature that provides the voter an opportunity to verify that his or her ballot selections are being recorded correctly, before the ballot is cast

**voter verifiable audit record:** Human-readable printed record of all of a voter's selections presented to the voter to view and check for accuracy

**voting equipment:** All devices, including the voting machine, used to display the ballot, accept voter selections, record voter selections, and tabulate the votes

**voting machine:** The mechanical, electromechanical and electric components of a voting system that the voter uses to view the ballot, indicate their selections, verify their selections. In some instances, the voting machine also casts and tabulates the votes. See **voting equipment**.

**voting officials:** Term used to designate the group of people associated with elections, including election personnel, poll workers, ballot designers and those responsible for the installation, operation and maintenance of the voting systems.

**voting position:** Specific response field on a ballot where the voter indicates the selection of a candidate or ballot proposition response

**voting station:** The location within a polling place where voters may record their votes. A voting station includes the area, location, booth or enclosure where voting takes place as well as the voting machine. See **voting machine**.

**voting system:** The total combination of mechanical, electromechanical or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used to define ballots; to cast and count votes; to report or display election results; and to maintain and produce any audit trail information; and the practices and associated documentation used to identify system components and versions of such components; to test the system during its development and maintenance; to maintain records of system errors and defects; to determine specific system changes to be made to a system after the initial qualification of the system; and to make available any materials to the voter (such as notices, instructions, forms or paper ballots).

**voting system software:** All the executable code and associated configuration files needed for the proper operation of the voting system. This includes third party software such as operating systems, drivers, and database management tools. See also **dynamic voting system software**, **semi-static voting system software**, and **static voting system software**.

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**voting system testing:** Examination and testing of a computerized voting system by using test methods to determine if the system complies with the requirements in the *Voluntary Voting System Guidelines* and with its own specifications.

**voting system test laboratory:** Test laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) to be competent to test voting systems. When NVLAP has completed its evaluation of a test lab, the Director of NIST will forward a recommendation to the EAC for the completion of the accreditation process.

## W

**write-in voting:** To make a selection of an individual not listed on the ballot. In some jurisdictions, voters may do this by using a marking device to physically write their choice on the ballot or they may use a keypad, touch screen or other electronic means to enter the name.

## A.2 Sources

Definitions in this glossary are either extracted from or based on the following sources:

44 U.S.C. 35	United States Code, Title 44, Chapter 35, Information Security, Section 3542, Definitions.
ACM SIGCHI	ACM's Special Interest Group on Computer-Human Interaction, <a href="http://www.acm.org/sigchi/">http://www.acm.org/sigchi/</a> (February 2005).
ADA	Americans with Disabilities Act of 1990.
ANSI Dictionary	American National Dictionary for Information Processing Systems, American National Standards Committee X3, Information Processing Systems, 1982.
ANSI 354	American National Standards Institute, International Committee for Information Technology Standards, Common Industry Format for Usability Test Reports, ANSI/INCITS 354-2001
ANSI C63.19	American National Standards for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids, 2001.
electionline	<a href="http://electionline.org/">http://electionline.org/</a> , (March 2005).

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FIPS 81	Federal Information Processing Standard 81, DES Modes of Operations, December, 1980.
FIPS 140-2	Federal Information Processing Standard 140-2, Security Requirements for Cryptographic Modules, May 2001.
FIPS 199	Federal Information Processing Standard 199, Standards for Security Categorization of Federal Information and Information Systems, December 2003.
FIPS 201	Federal Information Processing Standard 201, Personal Identity Verification for Federal Employees and Contractors, February 2005.
HAVA	Help America Vote Act of 2002 - Public Law 107-252.
IEA	International Ergonomics Association, <a href="http://www.iea.cc/">http://www.iea.cc/</a> , (February 2005).
IEEE 1583	IEEE P1583/D5.3.2 Draft Standard for the Evaluation of Voting Equipment, December 6, 2004.
ISO 5725	ISO/IEC 5725:1994 Accuracy (trueness and precision) of measurement methods and results.
ISO 9241	ISO/IEC 9241:1997 Ergonomic requirements for office work with visual display terminals (VDT).
ISO 17000	ISO/IEC 17000:2004 Conformity assessment -- Vocabulary and general principles.
ISO Guide 2-4	ISO/IEC Guide 2:2004 Standardization and related activities - General vocabulary.
ISO Guide 2-6	ISO/IEC Guide 2:1996 Standardization and related activities - General vocabulary.
NASS	National Association of Secretaries of State Election Reform Key Terms, <a href="http://www.nass.org/Election%20Reform%20Key%20Terms.pdf">http://www.nass.org/Election%20Reform%20Key%20Terms.pdf</a> (February 2005).
NIST HB 143	NIST Handbook 143 State Weights and Measures Laboratories Program Handbook.
NIST HB 150	NIST Handbook 150:2001 NVLAP Procedures and General Requirements.
NIST HF Rpt.	NIST Special Publication 500-256 Improving the Usability and Accessibility of Voting Systems and Products, May 2004.



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NIST SP 800-30	NIST Special Publication 800-30 Risk Management Guide for Information Technology Systems, July 2002.
NIST SP 800-49	NIST Special Publication 800-49 Federal S/MIME V3 Client Profile, November 2002.
NIST SP 800-53	NIST Special Publication 800-53 Recommended Security Controls for Federal Information Systems, Appendix B, Glossary.
NIST SP 800-59	NIST Special Publication 800-59 Guideline for Identifying an Information System as a National Security System, August 2003.
NIST SP 800-63	NIST Special Publication 800-63 Electronic Authentication Guideline: Recommendations of the National Institute of Standards and Technology, June 2004.
OMB A130	OMB Circular A-130, Appendix III.
Section 508 of the Rehabilitation Act of 1973, as amended.	Electronic and Information Technology Accessibility Standards (2002) Architectural and Transportation Barriers Compliance Board, 36 CFR Part 1194, <a href="http://www.accessboard.gov/sec508/508standards.htm">http://www.accessboard.gov/sec508/508standards.htm</a> .
Usability Glossary	Usability First Usability Glossary, <a href="http://www.usabilityfirst.com/glossary/main.cgi">http://www.usabilityfirst.com/glossary/main.cgi</a> , (February 2005).
VIM	The ISO International Vocabulary of Basic and General Terms in Metrology (VIM), 1994.
VSS	2002 <i>Voting Systems Standards</i> , Volumes I and II. Federal Election Commission.
Whatis.com	<a href="http://Whatis.com">http://Whatis.com</a> , IT Encyclopedia

# **EXHIBIT 4**

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 Intervenor,	)	
	)	
LIBERTARIAN PARTY OF WASHINGTON	)	
STATE, et al.,	)	No. CV05-0927-JCC
	)	
Plaintiff Intervenor,	)	
	)	
v.	)	
	)	
STATE OF WASHINGTON, et al.,	)	
	)	
Defendant Intervenor,	)	
	)	
WASHINGTON STATE GRANGE, et al.,	)	
	)	
Defendant Intervenor.	)	

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Deposition Upon Oral Examination  
OF  
TODD DONOVAN, PH.D.

---

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

August 30, 2010

Seattle, Washington

Tracey Juran

94683219-2d74-4332-93a2-05207709d73e

1 A. Again, in a vacuum with no other information, I would  
2 expect any single piece of information could affect some  
3 voters in some direction and some the other direction.

4 Q. Even though they couldn't define it, that might affect  
5 their voting behavior?

6 A. Potentially. It's not something -- I'm not aware of  
7 anybody actually testing that.

8 Q. Is that a situation that can occur when you get very far  
9 down the ballot and voters have less and less  
10 information about the candidates?

11 A. Yeah, it would be more likely. The less information  
12 there is, the more that any one piece -- particularly in  
13 like a nonpartisan race among unknown candidates.

14 Q. The footnote 4 down there has a sentence partway through  
15 that says, "Others argue that minimally informed  
16 citizens are able to act rationally by relying on  
17 shortcuts and heuristics"?

18 A. Mm-hm.

19 Q. What are some examples of shortcuts and heuristics?

20 A. That could be almost anything: An endorsement from an  
21 interest group, party label, gender.

22 Q. Have there been any studies as to the extent to which  
23 people rely on shortcuts and heuristics?

24 A. Yes. I've done some of them.

25 Q. Is it a small percentage of the population that does

1 that or is it a large percentage?

2 A. It's a bit of a debate in the literature, I think. But  
3 depending on like if you're talking about low-  
4 information elections, ballot propositions, could be a  
5 substantial proportion. I think the point isn't whether  
6 or not people use the cues, it's -- the debate's more  
7 how many. It's what are the most important ones or at  
8 what levels of election are they more relevant.

9 Q. What are the most important ones?

10 A. Party identification -- or party labels.

11 Q. At what levels of election is that most important?

12 A. Any partisan election. But yeah, it's probably, as you  
13 go down the ballot, more relevant than -- I mean, more  
14 information about the candidates' personalities are  
15 known at the top of the ballot.

16 Q. If you could turn to page 5 of this report, in the first  
17 paragraph, second sentence reads, "For example, in early  
18 2010 (during intensive media coverage of health care  
19 legislation in Congress), respondents were asked,"  
20 quote, "In the United States Senate, opponents to  
21 legislation can delay a vote by filibustering. Do you  
22 know how many senators are needed to break a filibuster  
23 and bring a bill to the floor," question mark, "51, 60,  
24 67 or 75," closed quote. What was the reason that you  
25 mentioned that this was during intensive media coverage?

1 Q. Yeah.

2 A. -- there's just a lot of confusion out there generally.

3 Q. At page 7 of this report in the bottom paragraph, the  
4 paragraph that begins, "It is highly likely," the  
5 sentence that opens that paragraph reads, "It is highly  
6 likely that given the general baseline level of voter  
7 confusion, and given the lack of any disclaimer on a  
8 partisan primary ballot, and given the use of robust  
9 party labels on partisan primary ballots, many voters  
10 would" probably "be confused by a partisan primary  
11 ballot," paren, "in the sense that Dr. Manweller  
12 measures confusion," closed paren, "because many voters  
13 would probably respond," paren, "wrongly," closed paren,  
14 "that candidates listed with partisan labels on the  
15 partisan primary ballot are party nominees."

16 Do you see that sentence?

17 A. Mm-hm.

18 Q. My actual question is, what do you mean by robust party  
19 labels? It was a long sentence to read.

20 A. Social scientists use that word too often. Just simple,  
21 clear; what we were saying earlier, just the name of the  
22 party.

23 Q. What would be an example of a nonrobust party label?

24 A. Prefers party, you know. That -- I mean, robust isn't a  
25 great -- but just simple, direct is more what I mean by

1 L robust.

2 Q. Let's see; I asked you that question.

3 At page 9, I'll read you the sentence. It'll take  
4 you a minute to find it, but it's near the bottom of the  
5 first full paragraph. The sentence reads, "A proper  
6 experiment would use mock ballots that replicated the  
7 actual voting experience." And my question is going to  
8 be about the actual voting experience. What was it that  
9 you thought was missing in that connection?

10 A. Something that looked very -- well, exactly like a  
11 ballot, maybe with the extra pamphlet of some sort.  
12 It's not just that the experiment would use the exact  
13 sort of replica ballot, but then you're designing the  
14 survey to measure concepts that are represented by the  
15 ballot.

16 Q. Is that because you need to have the response generated  
17 in the same context as it would otherwise appear? In  
18 other words, a real voter has these additional  
19 disclaimers and you want that context for the response  
20 to be valid?

21 A. It makes you more confident you can generalize from  
22 beyond it.

23 Q. Would the perception of what's said on the ballot be  
24 influenced by other aspects of context, such as all the  
25 political advertising that will have happened around

1 others, others -- there's a lot of variation across the  
2 counties.

3 Q. Have you -- are you familiar with any research about the  
4 extent to which voters recall instructions all the way  
5 through the ballot?

6 A. I'm not.

7 Q. Is there any reason to believe that as they proceed  
8 through a long ballot, they might forget instructions  
9 that they read at the beginning of the exercise?

10 MR. AHEARNE: Objection; foundation.

11 A. I don't know.

12 Q. (by Mr. McDonald) At page 46 of your report, the last  
13 full sentence of the paragraph B says, "This would  
14 suggest that a reasonable person would conclude that  
15 most Democratic candidates listed on the Top Two general  
16 election ballot are in fact the official nominee of the  
17 Party." Which are the Democratic candidates listed on  
18 the ballot?

19 A. Let me read the whole paragraph.

20 Q. Sure.

21 A. Okay, your question is which --

22 Q. You said the "Democratic candidates listed on the Top  
23 Two." Did you mean the candidates who had said they  
24 preferred the Democratic Party?

25 A. Yeah. The point is, there are candidates. This



1 my knowledge, at least with respect to that particular  
2 declaration, these are the only materials that were  
3 attached in connection with the 2008 general election  
4 from Jefferson County.

5 So with that background, do you have an  
6 understanding of what the term "partisan office" means?

7 A. In terms of political science?

8 Q. Yes.

9 A. Yes.

10 Q. What is it?

11 A. An office that is elected with partisan candidates.

12 That's a bit of an oversimple definition there. Where  
13 the election is structured so that party labels appear  
14 on the ballot.

15 Q. Isn't it the case that a partisan office -- a general  
16 election for partisan office is one in which  
17 representatives or nominees of parties are running  
18 against each other?

19 A. We -- saying the same thing I just said? I'm sorry; I  
20 don't --

21 Q. That's what I'm -- I'm trying to find out if I'm saying  
22 the same thing.

23 A. Yeah, where -- I mean, where party labels appear on the  
24 ballot is -- I think would be sort of the way most  
25 people in political science would define it.

1 initially had them in was just not the raw data, but the  
2 frequencies. I now have the raw data, but I haven't  
3 done the cross-tabs.

4 Q. Then on page 4 of your report you say, "Many (perhaps  
5 most) Americans lack basic factual knowledge about" the  
6 "political process related to parties, candidates, and  
7 nominations." You see where it says that? It's --

8 A. Yeah.

9 Q. -- the first sentence --

10 A. Yes.

11 Q. -- top of the page? Okay.

12 As to Americans lacking basic factual knowledge as  
13 to parties, is that many or most Americans?

14 A. You -- it would probably depend on what specific item  
15 we're asking them about. There may be some things that  
16 are more visible to people than others. So what -- you  
17 know, if you're asking them what is a party nominee,  
18 what is a party endorsement, what is a precinct  
19 committee officer, who is the Democratic nominee for  
20 President, those will elicit more or less correct  
21 answers depending on the item you're asking about.

22 But my assumption is, and I think I'm supporting it  
23 with data, on a lot of these things, we measure very  
24 high levels of error in response to factual questions.

25 Q. Well, specifically relating to parties, for example,

1 But nominations are separate -- you have three  
2 things in the sentence --

3 A. Okay.

4 Q. -- parties, candidates, and nominations. I haven't  
5 gotten to nominations yet. I'm just asking about  
6 candidates.

7 A. Okay. Well, the sentence is meant to say, the relations  
8 between parties, candidates, and nominations in terms of  
9 the political process and how those three entities  
10 interact is not something most Americans have detailed  
11 factual knowledge about.

12 Q. So actually, the sentence should read, many, perhaps  
13 most, Americans lack basic factual knowledge about how  
14 the political process relates as between parties,  
15 candidates, and nominations?

16 A. I like the sentence the way I wrote it, but --

17 Q. But I thought you just said it was that you meant  
18 something a little bit different than what it says.

19 A. I -- it means what it says, that most Americans lack  
20 basic factual knowledge about political process related  
21 to parties, candidates, and nominations. I was trying  
22 to --

23 Q. Well, let's focus on nominations, then. What factual  
24 knowledge about political -- about the political process  
25 related to nominations do most Americans lack?

1 Q. (by Mr. Grover) I understand that.

2 But you teach constitutional law, right?

3 A. No, no.

4 Q. Oh, I'm sorry; I'm -- never mind. I take that back.

5 You've read the Supreme Court decisions with regard  
6 to electoral politics.

7 A. Several of them, yeah. But I don't claim to be an  
8 expert in the law.

9 Q. Have you read *Eu v. San Francisco*?

10 A. Not in a long time, and I wouldn't claim to have any  
11 expertise in that.

12 Q. You don't really remember what that case was about?

13 A. Something about California's parties being able to  
14 endorse candidates in nonpartisan races. Am I right?  
15 I'm just guessing.

16 Q. Pretty good.

17 A. No, I -- honestly, I don't claim to have any expertise  
18 in electoral law. I mean, I try to keep up on some of  
19 that stuff, but it's not my area of expertise.

20 Q. I've got to check one thing here.

21 What is your opinion with regard to the statement  
22 that after looking at the ballot, no reasonable voter in  
23 Washington State will regard the listed candidates as  
24 members of or otherwise associated with the political  
25 parties that the candidates claim to prefer? And I'd be

1 glad to have the court reporter read that back again so  
2 you can hear it again.

3 A. Yeah, that'd be good.

4 [Record read back as requested]

5 A. Social scientists don't ever talk in absolutes like  
6 that, so I would -- you know, and this gets to the  
7 report on voter confusion. On any ballot, any  
8 structure, you're still going to find some levels of  
9 confusion.

10 Q. (by Mr. Grover) Among reasonable voters.

11 A. Certainly. There's no perfection.

12 MR. GROVER: I don't have any other questions at  
13 this time.

14 MR. AHEARNE: I have just a handful.

15  
16 EXAMINATION

17 BY MR. AHEARNE:

18 Q. If I can ask you to look at Donovan Exhibit 7, please.

19 A. Is that the ballot? Oh, got it.

20 Q. And what's listed as page 40, the last page of that  
21 exhibit, the Democrats' attorney asked you some  
22 questions about this partisan-office definition. Do you  
23 recall that generally?

24 A. Yeah.

25 Q. And that several times throughout your deposition,

## 1 CERTIFICATE

2 STATE OF WASHINGTON )  
3 )  
4 COUNTY OF SNOHOMISH )

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

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

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

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

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

21 IN WITNESS WHEREOF, I have hereunto set my hand and  
22 seal this 6th day of September, 2010.

23  
24 Notary Public in and for the State of Washington  
25 residing at Edmonds, Washington.  
(Notary expires 3/09/13)  
(CCR No. 2699)

Tracey Juran

# EXHIBIT 5

RECEIVED  
2010 FEB 10 A 8:40  
ATTORNEY GENERAL  
WASHINGTON

AGREEMENT

RE: *WASHINGTON STATE REPUBLICAN PARTY, ET AL, V. REED, ET AL*, No. CV05-0927  
JCC (W.D. Wash.)

THIS AGREEMENT is between: Todd Donovan, PhD, Professor of Political Science at Western Washington University, with expertise in political science, referred to as the EXPERT; and the ATTORNEY GENERAL and SECRETARY OF STATE OF THE STATE OF WASHINGTON, jointly referred to as the CLIENT.

The parties agree to the promises, conditions and performances as set forth below:

**I. CONTACT INFORMATION**

Contacts for both parties for all matters concerning this Agreement are as follows:

1. For the EXPERT:

Dr. Todd Donovan  
Department of Political Science  
Western Washington University  
MS 9082  
Bellingham, WA 98225

Telephone: (360) 650-3018

2. For the Office of the Secretary of State:

Steve Excell  
Assistant Secretary of State  
PO Box 40220  
Olympia, WA 98504-0220

Telephone (360) 902-4155  
Fax: (360) 586-5629

3. For the Office of the Attorney General:

James K. Pharris  
Jeffrey T. Even  
Deputy Solicitors General  
Office of the Attorney General  
PO Box 40100  
Olympia, WA 98504-0100

Telephone: (360) 586-0728  
Fax: (360) 664-0229



## **II. SCOPE OF SERVICES TO BE RENDERED**

A. Upon receipt of notification to proceed by the Office of the Attorney General, the EXPERT shall assist the CLIENT and the assigned Assistant Attorneys General in analyzing and evaluating in a thorough and professional manner, any issues and evidence arising in the litigation and in preparing testimony and reports within the scope of the EXPERT'S area of expertise. The EXPERT shall serve as an expert witness for Defendants in this action, and shall take direction from the assigned Assistant Attorneys General.

B. The EXPERT shall provide an analysis, within the scope of his expertise, of any expert witness reports submitted by or on behalf of experts for Plaintiff in this case, as well as conduct such research concerning Washington's Top 2 Primary as the undersigned counsel may direct. The EXPERT shall prepare written reports, and testify as needed, concerning the results of this analysis and research. The EXPERT may, within the overall budget limitations of this Agreement, hire such graduate students and other appropriate assistants as necessary to perform the services called for under this agreement.

C. The EXPERT shall provide information, affidavits, declarations, and deposition or trial testimony for the Assistant Attorneys General in this case for the CLIENT relative to issues arising in the case within the EXPERT'S area of expertise. The EXPERT shall work with the CLIENT and the assigned Assistant Attorney General in preparing for any needed testimony or in evaluating any information, affidavits, declarations, and deposition or trial testimony of other experts engaged by the CLIENT or by other parties to this case.

D. When requested by an Assistant Attorney General assigned the litigation, the EXPERT shall be available to prepare information for affidavits, to attend depositions, conferences and the trial, and to testify at the trial if necessary. The EXPERT shall help prepare an expert witness report pursuant to Federal Rules of Civil Procedure (FRCP) 26(a) (2) (B) within 72 hours from the request by an Assistant Attorney General. The CLIENT shall provide information about the nature, contents, context and analysis necessary for the report, with as much advance notice as possible.

E. At the request of an Assistant Attorney General, the EXPERT shall review all relevant court proceedings and assist the CLIENT in preparing for the examination and cross-examination of witnesses.

## **II. CONFIDENTIALITY**

All information developed by the EXPERT and all information made available to the EXPERT and all analyses, conclusions and/or opinions reached by the EXPERT shall be confidential as between the EXPERT and the CLIENT. Such information shall not be revealed by the EXPERT to any other person, organization, or entity without the express consent of an Assistant Attorney General assigned to the lawsuit, or without an order of the court. Any information or material that has been filed with the court in this action, other than pursuant to a court order making the information or material confidential, shall not be deemed confidential and may be used by the EXPERT for other purposes, including teaching.

## **III. TERMINATION**

In the event this Agreement is terminated prior to completion, the original copies of all documentation furnished to the EXPERT by the CLIENT or the Office of the Attorney General and

documents prepared by the EXPERT prior to said termination shall become and remain the property of the CLIENT and may be used by it without restriction. Such unrestricted use, not occurring as a part of this contract, shall be without liability or legal exposure to the EXPERT.

The CLIENT may, by ten days written notice beginning on the second day after mailing, terminate this Agreement in whole or in part. If this Agreement is so terminated, the CLIENT shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

#### **IV. PAYMENT**

A. Hourly Rate: Compensation for professional services shall be at the rate of **\$140.00**. The hourly rate shall include all normal overhead and operating costs. Time of any graduate students engaged by the EXPERT pursuant to this agreement shall be compensated at the rate of **\$20.00** per hour. Any additional authorized expenditures for which reimbursement is sought must be supported by actual receipts. If the term of this Agreement is extended into fiscal years beyond that in which it is executed, funding is subject to the availability of appropriated funds.

B. Travel Expenses: Lodging and subsistence, if required, will be allowed at the current regular state per diem rate, for necessary and reasonable travel away from Bellingham, Washington, relating to the performance of this Agreement. Mileage shall be allowed at the current rate authorized for state employees, or the actual cost of a rental car for which a receipt will be required. For travel outside the State of Washington, reimbursement will be allowed only for travel authorized in writing by the CLIENT.

C. Contract Maximum: All fees will not exceed **\$20,000**, including travel expenses reimbursed at the rates specified in paragraph B. above, without prior agreement and written amendment to this contract. Travel expenses and hourly fees will be identified separately on any billings from the EXPERT.

D. Contract Termination Date: This contract will expire on June 30, 2011. This Agreement must be amended before the expiration date if the services are still ongoing. If not amended, before the Expert provides any further services, a new Agreement is necessary.

E. Billing and Payment: The ATTORNEY GENERAL shall pay the EXPERT for services under this Agreement within 30 days of receipt of a properly executed voucher, which shall be submitted not more often than monthly. The voucher will indicate clearly that it is for services rendered in performance under this Agreement, and shall describe and document the work performed. If travel expenses are involved it shall provide a detailed description of those expenses.

#### **V. TAX INFORMATION**

The EXPERT shall provide the CLIENT with all information, including the EXPERT'S Federal I.D. or Social Security Number and Washington Department of Revenue Registration Number, necessary to properly report the EXPERT's compensation under this Agreement for tax purposes. The CLIENT shall provide the EXPERT with required records required for reporting income for tax purposes, such as form 1099 misc, as appropriate.

#### **VI. ADDITIONAL TERMS AND CONDITIONS**

A. Time is of the essence in this Agreement.

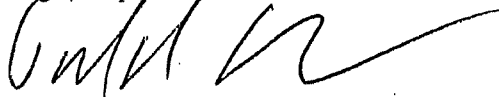
B. This Agreement contains the entire contract between the parties. No alteration or amendment to its terms is effective until signed by all parties. This Agreement shall be governed by

the laws of the State of Washington, and venue for any dispute concerning the contract shall lie only in the Superior Court of Thurston County.

C. Signatures on this Agreement may be executed in counterpart.

The signatures below constitute acceptance of this Agreement and will enable processing of payment for the services agreed upon herein.

For the EXPERT:

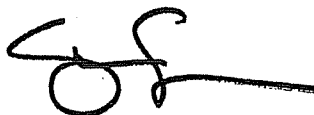


DATE: FEB 5 2010

DR. TODD DONOVAN  
Professor of Political Science  
Western Washington University

TAX I.D. NO. [REDACTED]

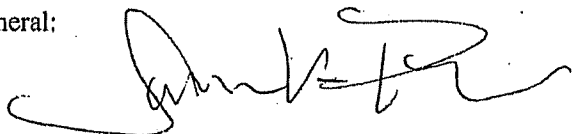
For the CLIENT:



DATE:

STEVE EXCELL  
Assistant Secretary of State

For the Office of the Attorney General:



DATE:

JAMES K. PHARRIS  
Senior Assistant Attorney General

2/10/10