

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

THE HONORABLE JOHN E. BRIDGES

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR CHELAN COUNTY

Timothy Borders et al.,

Petitioners,

v.

King County et al.,

Respondents,

and

Washington State Democratic Central  
Committee,

Intervenor-Respondent.

NO. 05-2-00027-3

CR 30(b)(6) SUBPOENA DUCES  
TECUM TO BENTON COUNTY

1 **TO: BENTON COUNTY**

2  
3 YOU ARE HEREBY COMMANDED, at the request of Intervenor-Respondent  
4  
5 Washington State Democratic Central Committee and pursuant to CR 30(b)(6) and CR 45,  
6  
7 to designate one or more officers, directors, managing agents or other persons who consent  
8  
9 to testify on your behalf in the above-entitled case, concerning the following subjects:

10 (1) Challenges to a person's right to vote in Washington's 2004 general election  
11 held on November 2, 2004 ("2004 General Election"), made pursuant to RCW 29A.08.810  
12 and RCW 29A.09.820, and made on or before November 2, 2004 ("Election Day"),  
13  
14 including the name of the challenged voter, the name of the person or entity who made the  
15  
16 challenge, and whether or not the challenged voter was allowed to cast a vote in the 2004  
17  
18 General Election.  
19  
20

21  
22 (2) Complaints relating to the 2004 General Election made against the Benton  
23  
24 County Auditor; the Benton County Canvassing Board; Benton County election inspectors,  
25  
26 judges, counting center staff, or their designees; or any other Benton County employee who  
27  
28 presides over or has responsibilities related to the 2004 General Election ("Election  
29  
30 Official"), including the name of the Election Official, the name of the person making such a  
31  
32 complaint, the substance of the complaint, and any steps taken to investigate or resolve the  
33  
34 complaint.  
35

36 (3) Any communications before November 17, 2004 with Timothy Borders,  
37  
38 Thomas Canterbury, Tom Huff, Margie Ferris, Paul Elvig, Edward Monaghan, Christopher  
39  
40 Vance, or the Rossi for Governor Campaign, including, without limitation, current and  
41  
42 former employees, attorneys, accountants, brokers, bankers and other professional advisors  
43  
44 or consultants and, where applicable, each subsidiary, parent or affiliated entity of such  
45  
46 person or entity and all persons acting on his, her or their behalf ("Petitioners"); the Building  
47

1 Industry Association of Washington; the Washington State Republican Party; the  
2  
3 Republican Governor's Association; the Republican National Committee; or any person  
4  
5 affiliated with those organizations, regarding (a) Benton County's maintenance of voter files,  
6  
7 including but not limited to registration status of felons and deceased people, or Absentee  
8  
9 Ballots issued to addresses outside of Washington State; (b) procedures or rules to be  
10  
11 implemented by Benton County regarding the 2004 General Election; (c) Election Official  
12  
13 error; or (d) voter fraud or efforts to prevent voter fraud.

14  
15 (4) Steps each voter must go through (e.g., signing a document recording the  
16  
17 name of any voter requesting a ballot at a polling place on Election Day ["Log Sheet"]; or  
18  
19 the precinct list of voters used by the inspector and judges appointed pursuant to RCW  
20  
21 29A.44.460 and RCW 29A.44.410 to preside over all Election Day procedures for a precinct  
22  
23 or polling place, including the receipt, deposit, and counting of ballots cast ["Precinct  
24  
25 Election Board"], on Election Day ["Poll Book"]) in order to receive a ballot at a polling  
26  
27 place.

28  
29 (5) The total number of ballots issued to voters at polling places on election day  
30  
31 by the Precinct Election Boards pursuant to RCW 29A.04.088(5) ("Provisional Ballots") in  
32  
33 Benton County for the 2004 General Election.

34  
35 (6) The financial impact of a special election for governor on Benton County,  
36  
37 assuming no recounts were required or requested, including but not limited to personnel  
38  
39 costs, printing and distribution of ballots, envelopes and voters pamphlets, the impact on  
40  
41 other Benton County business, and (a) whether the impact would vary depending on whether  
42  
43 the election was held in 2005 or in November 2006, including the amount and the reason for  
44  
45 that variance, and (b) the financial impact if a primary election were required as well.  
46  
47

1 (7) The total cost to Benton County of conducting the following (a) the machine  
2 recount of votes cast in the election for Washington governor held on November 2, 2004  
3 ("Gubernatorial Election"); and (b) the hand recount of votes cast in the Gubernatorial  
4 Election.  
5  
6  
7

8 (8) The methods used by Benton County to verify that deceased persons and  
9 felons are removed from the voter registration database(s) maintained by Benton County  
10 ("Voter File").  
11  
12  
13

14 (9) The total number of envelopes of ballots issued pursuant to RCW 29A.40  
15 ("Absentee Ballots") opened by Benton County in the 2004 General Election through  
16 December 23, 2004.  
17  
18  
19

20 (10) The total number of Absentee Ballot envelopes left unopened by Benton  
21 County in the 2004 General Election through December 23, 2004.  
22  
23

24 (11) The total number of signatures recorded as signatures of registered voters in  
25 the Poll Books, Log Sheets, or any other document signed at the poll on Election Day in  
26 Benton County, including the number of signatures broken down by precinct.  
27  
28  
29

30 (12) The total number of signatures recorded as signatures of voters receiving  
31 Provisional Ballots in the Poll Books, Log Sheets, or any other document signed at the poll  
32 on Election Day in Benton County, including the number of signatures broken down by  
33 precinct.  
34  
35  
36  
37

38 (13) What changes, if any, Benton County would make in election procedure if a  
39 new election were required.  
40  
41

42 (14) What precincts in Benton County had more voters credited with casting  
43 ballots than there were ballots counted in such precinct, including the total number of these  
44 discrepancies and the number in each precinct.  
45  
46  
47

1 (15) What precincts in Benton County had fewer voters credited with casting  
2 ballots than there were ballots counted in such precinct, including the total number of these  
3 discrepancies and the number in each precinct.  
4  
5

6 (16) The names, addresses, and phone numbers of all Precinct Election Board  
7 members or representatives of any political party or committee who observed Election Day  
8 procedures at any precinct or polling place pursuant to WAC 434-253-090 ("Poll Watchers")  
9 who were stationed on Election Day at precincts in which there was a discrepancy between  
10 the number of voters credited with casting ballots and the number of ballots counted.  
11  
12

13 (17) Ballots issued to out-of-state voters pursuant to RCW 29A.40.010 ("Out-of-  
14 State Ballots"), ballots issued to overseas voters pursuant to RCW 29A.40.010 ("Overseas  
15 Ballots"), ballots issued to service voters pursuant to RCW 29A.40.010 ("Service Ballots"),  
16 or ballots issued under the Uniformed and Overseas Citizens Absentee Voting Act ("Federal  
17 Write-In Absentee Ballots") in the 2004 General Election, including (a) whether Benton  
18 County received such ballots, (b) whether identification information regarding the person  
19 casting such a ballot is included in the Voter File; and (c) the manner in which such ballots  
20 are treated in any document reconciling or compiling votes cast in the 2004 General  
21 Election, including but not limited to forms completed by Election Officials to document the  
22 number and type of ballots issued at each precinct on Election Day ("Ballot Accountability  
23 Forms"), Log Sheets, or documents related to the certification of the election.  
24  
25

26 (18) Steps Benton County takes to verify registration before issuing an Absentee  
27 Ballot to a voter.  
28  
29

30 (19) Benton County's process for identifying felons whose right to vote has been  
31 restored.  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

1 (20) The policies and practices adopted or employed by Benton County for the  
2  
3 2004 General Election with respect to voter crediting.

4  
5 (21) The policies and practices adopted or employed by Benton County for the  
6  
7 2004 General Election with respect to the issuance, receipt and processing of provisional  
8  
9 ballots and what specific steps were taken, if any, to ensure compliance with the emergency  
10  
11 regulations issued by the Secretary of State and codified at WAC 434-253-047, and when  
12  
13 each such step was taken.

14  
15 (22) The policies and practices adopted or employed by Benton County for the  
16  
17 2004 General Election with respect to the verification of signatures on provisional ballots.

18  
19 (23) The extent to which Benton County counted provisional ballots in the 2004  
20  
21 General Election prior to signature verification, including the specific number of such  
22  
23 ballots and the names, addresses, phone numbers of all such voters, their precincts, and their  
24  
25 voter registration numbers.

26  
27 (24) If Benton County counted provisional ballots prior to signature verification,  
28  
29 what steps were taken subsequent to the tabulation of the ballots to verify signatures, who  
30  
31 did each such step, what or who caused that step to be taken, and what was the result of  
32  
33 those steps (i.e., how many, if any, of the provisional ballots were determined to have been  
34  
35 voted by lawfully registered voters).

36  
37 (25) The extent to which Benton County counted provisional ballots in the 2004  
38  
39 General Election prior to confirmation of voter registration or determination of whether the  
40  
41 voter had already voted, including the specific number of such ballots and the names,  
42  
43 addresses, phone numbers of all such voters, their precincts, and their voter registration  
44  
45 numbers.  
46  
47

1 (26) If Benton County counted provisional ballots prior to confirmation of voter  
2 registration or determination of whether the voter had already voted, what steps were taken  
3 subsequent to the tabulation of the ballots to confirm voter registration or to determine  
4 whether the voter had already voted, who did each such step, what or who caused that step  
5 to be taken, and what was the result of those steps (i.e., how many, if any, of the provisional  
6 ballots were determined to have been voted by lawfully registered voters).  
7  
8  
9  
10  
11  
12  
13  
14

15 Such person shall appear at the time, date and place listed below to testify in the  
16 above-entitled case, and shall remain in attendance until discharged.  
17  
18

19 **Time and Date**  
20 **of Deposition**

21 **Place of**  
22 **Deposition**

23 Tuesday, April 19, 2005 at 1:00 p.m.

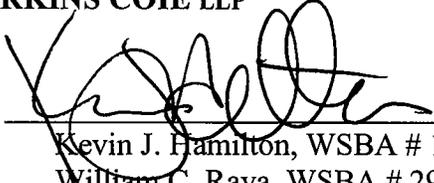
24 Prosser Courthouse, 620 Market Street,  
25 Prosser, Washington, 99350

26 The deposition shall be subject to continuance or adjournment from time to time and place  
27 to place until completed.  
28

29 YOU ARE FURTHER COMMANDED pursuant to CR 45 to bring with you at  
30 said place and time, or such other place and time prior to the deposition as may be agreed  
31 upon, the documents described in Exhibit A to this subpoena for examination and copying.  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

1 DATED: April 8, 2005.  
2  
3

4 **PERKINS COIE LLP**

5  
6  
7 By 

8 Kevin J. Hamilton, WSBA # 15648  
9 William C. Rava, WSBA # 29948  
10 1201 Third Avenue, Suite 4800  
11 Seattle, WA 98101-3099  
12  
13

14 Attorneys for Intervenor-Respondent  
15 Washington State Democratic Central  
16 Committee  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

**SPEIDEL LAW FIRM**

Russell J. Speidel, WSBA # 12838  
7 North Wenatchee Avenue, Suite 600  
Wenatchee, WA 98807

**JENNY A. DURKAN**

Jenny A. Durkan, WSBA # 15751  
c/o Perkins Coie LLP  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

**EXHIBIT A**

The term "document" in this subpoena means any written, typed, graphic, recorded, or electronically stored matter whatsoever. The term "document" thus includes, without limitation, emails, letters, faxes, pictures, files, summaries, spreadsheets, notes, drafts, and working papers.

1. All forms completed by the Benton County Auditor; the Benton County Canvassing Board; Benton County election inspectors, judges, counting center staff, or their designees; or any other Benton County employee who presides over or has responsibilities related to the 2004 General Election ("Election Officials") to document the number and type of ballots issued at each precinct on November 2, 2004 ("Election Day") ("Ballot Accountability Forms").

2. All documents used to track the circulation by or receipt of completed ballots issued pursuant to RCW 29A.40 ("Absentee Ballots") by Benton County ("Absentee Logs").

3. To the extent they have not already been produced to WSDCC, all precinct lists of voters used by the inspector and judges appointed pursuant to RCW 29A.44.460 and RCW 29A.44.410 to preside over all Election Day procedures for a precinct or polling place, including the receipt, deposit, and counting of ballots cast ("Precinct Election Board") on Election Day ("Poll Books").

4. All documents recording the name of any voter requesting a ballot at a polling place on Election Day, other than poll books ("Log Sheets").

5. Any other documents signed at the poll on Election Day.

6. To the extent they have not already been produced to the Washington State Democratic Central Committee, any other documents related to each certification of Washington's 2004 general election held on November 2, 2004 ("2004 General Election").

1           7.       To the extent they have not already been produced to the Washington State  
2 Democratic Central Committee, all documents Benton County has produced or will produce  
3 to Timothy Borders, Thomas Canterbury, Tom Huff, Margie Ferris, Paul Elvig, Edward  
4 Monaghan, Christopher Vance, or the Rossi for Governor Campaign, including, without  
5 limitation, current and former employees, attorneys, accountants, brokers, bankers and other  
6 professional advisors or consultants and, where applicable, each subsidiary, parent or  
7 affiliated entity of such person or entity and all persons acting on his, her or their behalf  
8 ("Petitioners"); the Building Industry Association of Washington; the Washington State  
9 Republican Party; Re-vote.org; Soundpolitics.com; the Republican Governor's Association;  
10 the Republican National Committee; or any person affiliated with those people or  
11 organizations in response to any Public Disclosure Act request.  
12

13           8.       An electronic version of the voter registration database(s) maintained by  
14 Benton County ("Voter File"). If the Voter File is available as it existed on November 17,  
15 2004, please produce it in that form.  
16

17           9.       To the extent they have not already been produced to WSDCC, all documents  
18 identifying voters with active, inactive or cancelled registration status as of November 17,  
19 2004.  
20

21           10.      All documents, records, emails, notes, spreadsheets or other materials in your  
22 possession, custody, or control, relating to provisional ballots counted in Benton County  
23 without first (a) being verified or (b) a determination of whether the voter had already voted  
24 or (c) having their signatures checked or verified. Without limitation, responsive material  
25 should include:  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

(a) Documents sufficient to identify, for each such ballot, the voter's name, registration address, registration number, and precinct of registration, as well as the precinct in which the ballot was cast.

(b) Copies of the envelopes of all such provisional ballots that were counted.

(c) All internal documents and communications relating to such provisional ballots.

(d) All external documents and communications relating to such provisional ballots.

(e) Any communications with the Secretary of State or anyone employed by his office or representing his office regarding such ballots or the issue of verifying provisional ballots or checking the signatures on provisional ballots.