

Siri A Woods
Chelan County Clerk

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7 **THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **FOR CHELAN COUNTY**

9 **TIMOTHY BORDERS, et al.,**

10 Petitioners,

11 v.

12 **KING COUNTY AND DEAN LOGAN,**
13 **et al.,**

Respondents.

14 v.

15 **WASHINGTON STATE DEMOCRATIC**
16 **CENTRAL COMMITTEE,**

Intervenor-Respondent,

17 v.

18 **LIBERTARIAN PARTY OF**
19 **WASHINGTON STATE et al.,**

Intervenor-Respondents.

NO. 05-2-00027-3

CLOSING ARGUMENT OF
LEWIS COUNTY AUDITOR

20
21 **COMES NOW** the Lewis County Auditor and, in the interests of conserving
22 judicial economy and preserving the public fisc, and submits closing arguments to the
23 Court in written form.
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1 **BACKGROUND**

2 In recent years, Lewis County has become a predominantly Republican county.
3 Of the elected county office holders, only one is a Democrat. The long time Auditor of
4 Lewis County, Gary Zandell, is a Republican. Despite the tendency of the county's
5 voters to vote Republican, some elections are extremely close. The difference between
6 the outcome of these closely contested elections in Lewis County and the gubernatorial
7 election currently before the Court is that the political parties and the public in Lewis
8 County trust that elections have been properly conducted and the declared winner got
9 the most votes.
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11 **LEGAL ANALYSIS**

12 It appears the Court may be taking a narrow view of its authority under Foulkes v.
13 Hayes, 85 WA2nd 629, 723 P2nd 777 (1975). The Court's evident concern for judicial
14 intervention in the election process is respected by this defendant. Although the likely
15 presence of fraud may have made it easier for the Supreme Court to rule as it did in
16 Foulkes, the Court did not require proof of fraud. The Court found that neglect had
17 been proven by a preponderance of the evidence. In the present matter, there appears
18 to be no question that thousands of illegal votes were cast and counted and that actual
19 result of the voting cannot be ascertained. In Foulkes, the Supreme Court confirmed
20 the trial court's conclusion that where a winner cannot be determined, a new election
21 should be held. Foulkes, supra, pages 636-637.
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23 **ARGUMENT**

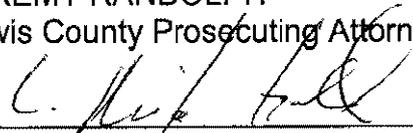
24 There is no dispute that no one knows which candidate received the most valid
25 votes in the 2004 Washington gubernatorial election. That being the case, neither
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1 candidate should be declared the winner. A decision by the Court resulting in one or
2 the other candidate being governor is not the right decision for the people of
3 Washington. The requirement for the elections to be fair and seen to be fair is a crucial
4 part of the social compact. It allows winners to govern, losers to accept defeat and the
5 public to trust the election process. To the extent that voters lose faith in the fairness of
6 the conduct of elections, the fabric of our democracy is torn.
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8 This defendant recognizes that no election is perfect and that it is proper for the
9 Court to exercise restraint in dealing with election contests. There is also a time for a
10 judge to act to preserve the public's confidence in its government. That is the case you
11 have before you. When the actual result of the voting cannot be ascertained, a new
12 election should be held. A new election would not be for the political parties or the
13 politicians, it would be for the people.
14

15 RESPECTFULLY SUBMITTED this 2nd day of June 2005.

16 JEREMY RANDOLPH
17 Lewis County Prosecuting Attorney

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19 L. Michael Golden, WSBA# 26128
20 Senior Deputy Prosecuting Attorney
21 Of Attorneys for Defendant Lewis County Auditor
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