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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CHELAN

9 Timothy Borders, Thomas Canterbury, Tom)
10 Huff, Margie Ferris, Paul Elvig, Edward)
11 Monaghan, and Christopher Vance, Washington)
residents and electors, and the Rossi for)
Governor Campaign, a candidate committee,)

12 Petitioners,)

13 v.)

14 King County and Dean Logan, its Director of)
15 Records, Elections and Licensing Services, et al.,)

16 Respondents)

No. 05-2-00027-3

**PETITIONERS' FIRST
INTERROGATORIES AND
REQUESTS FOR
PRODUCTION
[revised per stipulation]**

17
18 TO: LEWIS COUNTY AND ITS AUDITOR

19 Pursuant to Civil Rules 26, 33 and 34 and the orders of the court, you are hereby
20 requested to supply responses to these interrogatories and requests for production, within
21 10 days of the service of these requests upon you. Petitioners request that the responses to
22 the interrogatories and the documents herein designated for production be produced at the
23 offices of Davis Wright Tremaine, LLP, 1501 Fourth Avenue, 2600 Century Square,
24 Seattle, Washington 98101-1688, and that petitioners, or someone acting on their behalf,
25 be permitted to inspect and copy the designated documents.
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27

PETITIONERS' FIRST INTERROGATORIES
AND REQUESTS FOR PRODUCTION - 1

SEA 1597588v1 55441-3

Davis Wright Tremaine LLP
LAW OFFICES
2600 Century Square • 1501 Fourth Avenue
Seattle, Washington 98101-1688
(206) 622-3150 • Fax: (206) 628-7699

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DEFINITIONS

For purposes of these requests for production, the following terms shall have the meaning set forth below:

1. "You" means the respondent county to which these requests are addressed above, its auditor, and their agents, employees, attorneys and representatives.

2. "Relating to" means pertinent, relevant or material to, evidencing, having a bearing on, or concerning, affecting, discussing, dealing with, considering or otherwise relating in any manner whatsoever to the subject matter of the inquiry.

3. A "measure," as in "any measures taken," includes any policy, procedure, practice, effort, plan, or action whose purpose is or was the thing or result referred to.

4. The "November 2004 general election" refers to Washington's statewide general election on November 2, 2004 and all subsequent recounts.

5. "Ballots Cast" means the total number of ballots containing a valid vote for a candidate (whether printed on the ballot or written in) and those not counted because of overvotes and undervotes.

6. "Voters Credited" means the number of voters who received credit for voting in the county's voter registration database. Voters Credited includes voters in the address confidentiality program, voters who cast federal write-in ballots without being registered in the county for which they voted, and voters who had inactive registrations at the time they voted.

7. "Reconciliation Discrepancy" means the difference between Ballots Cast and Voters Credited.

8. When used with respect to provisional or absentee ballots, "verify," "verified," or "verification" refers to the process of matching the information provided with the provisional ballots (such as the voter's name, address, signature, and date of birth)

1 with the voter registration database for the purpose of determining whether the voter is
2 eligible and registered to vote and whether the voter has voted another ballot.

3 **INTERROGATORIES AND REQUESTS FOR PRODUCTION**

4 INTERROGATORY NO. 1: Please state the number of Ballots Cast, the number
5 of Voters Credited, and the Reconciliation Discrepancy in your county in the November
6 2004 general election and describe in detail how you calculated that number.

7 ANSWER:

8 Lewis County November 2004 General election: 32,945 ballots counted and
9 32,916 voters credited. Discrepancy: 29. These totals arrived at by using figures available
10 upon first certification on November 17, 2004. Beyond that date, crediting figures are
11 obscured by additions and deletions from registered voter rolls. In subsequent recounts, no
12 ballots were added to count. Any minor variation on ballots processed attributed to "read
13 check" or "pick check" errors in ballot tabulation in punch card reader machine.

14
15 INTERROGATORY NO. 2: Please (a) list all the reasons for the Reconciliation
16 Discrepancy stated in your answer to the previous interrogatory, (b) state the portion of the
17 Reconciliation Discrepancy, in terms of the number of Ballots Cast in excess of the
18 number of Voters Credited, that you attribute to each reason, and (c) describe in detail how
19 you calculated these numbers. Responsive information will include information regarding
20 how many ballots of the discrepancy are due to provisional ballots' being counted without
21 being verified, information regarding what the other reasons are for the discrepancy and
22 how many ballots are explained by each reason, and information regarding how many of
23 the ballots of the discrepancy you can provide no explanation or reason for.

24 ANSWER:

25 State election protocols require all county offices to maintain the last five voting
26 dates for registered voters. Any voter missing two federal elections is inactivated

1 subsequent to being purged completely from the voter rolls. As such, crediting voters
2 becomes a post-election exercise in order to maintain this record and keep a voter "alive"
3 in the registration system. Counting and verifying valid votes and voters is done upfront by
4 matching ballots cast at a polling place with signatures in a poll book or matching the mail
5 ballot with a voter signature in the registration data base.

6 The crediting process is done on-the-fly as daily mail ballots are returned and after
7 the poll books are returned from polling places. The crediting is done by whatever staff
8 member or temporary hire is available. The crediting of a voter is a mechanical process
9 accomplished by passing a wand over a unique voter registration number on the return
10 label of a mail voter or that same number in a poll book. Some clerks use a key pad to
11 enter this six digit number because they believe that it is faster. In the meantime, the
12 phone is ringing, customers need help at the counter, or nature calls. In a nutshell, a
13 number is easily transposed or omitted in error.

14 Of the 29-vote reconciliation error, two votes are directly attributed to your
15 client/petitioner, Edward Monaghan and his spouse Janice. They allege that their ballots
16 were stolen from their Centralia Post Office box and forged. Both their original ballots
17 and replacement ballots were counted in the November 17 certified results.

18 Of the 29-vote reconciliation error, one vote is attributed to a single valid vote cast
19 and counted by a participant in the address confidentiality program.

20 Three provisional ballots were deposited directly into the ballot box at one polling
21 place without the execution of a provisional ballot envelope. A check of signatures in the
22 back of the poll book reveal that those three individuals were legally registered to vote and
23 their provisional ballots would have been accepted by the canvassing board.

24 The remaining 26 "un-reconciled votes" must be attributed to crediting error
25 explained above.

1 INTERROGATORY NO. 3: Of the Voters Credited in your county in the
2 November 2004 general election, please state the number of them, respectively, who (a)
3 are in an address-confidentiality program; (b) had inactive registrations at the time they
4 voted; or (c) cast federal write-in ballots without being registered to vote in your county
5 and, for each category, describe in detail how you calculated the number.

6 ANSWER:

7 (a) one voter in address confidentiality program;

8 (b) 85 inactive voters were re-activated;

9 (c) no federal write-in ballots were counted without first being registered to vote.

10
11 REQUEST FOR PRODUCTION NO. 1: Please provide copies of all reports and
12 communications sent to the Office of the Secretary of State between January 1, 2005, and
13 the present regarding the Reconciliation Discrepancy in your county.

14 RESPONSE:

15 None.

16
17 INTERROGATORY NO. 4: Please (a) state the number of provisional ballots
18 counted that have never been verified in your county during the November 2004 general
19 election, (b) describe in detail how you calculated that number, and (c) state whether you
20 have identified the persons who cast these ballots and list those persons if identified.

21 ANSWER:

22 All provisional ballots counted in Lewis County for the November 2004 general
23 election were verified as valid votes from valid, registered voters. The three provisional
24 voters discussed above in Interrogatory No. 2 are identifiable by name, address, date of
25 registration and voter registration number.

1 INTERROGATORY NO. 5: Please state whether there is any way to distinguish
2 the provisional ballots cast in your county during the November 2004 general election
3 from other ballots and, if so, describe in detail every way in which such ballots could be
4 distinguished.

5 ANSWER:

6 Every provisional ballot punch card is identifiable by a sequential number and
7 precinct name which ties back to that same number/name on the provisional ballot
8 envelope. This is so even if that ballot required duplication. Duplication would have been
9 required if the voter voted out of his home precinct (or another county) or voted for an
10 individual or issue for whom or for which he was ineligible to vote. Duplication would
11 have also been required if his ballot had been mutilated in some manner rendering it
12 difficult or impossible to be read by the ballot tabulation equipment. In any event, a record
13 of disposition of each provisional ballot has been maintained.

14
15 INTERROGATORY NO. 6: Please state the number of absentee ballots counted
16 without ever being verified in your county during the November 2004 general election and
17 describe in detail how you calculated that number.

18 ANSWER:

19 All absentee or mail ballots were verified valid before being counted.

20
21
22 INTERROGATORY NO. 7: Please identify the dates on which absentee and
23 military overseas ballots were mailed and the number of each type of ballot, and how many
24 of each type of ballot was received by you after November 16, 2004.

25 ANSWER:

1 On October 8, 2004, Chehalis Post Office employees picked up a total of 259
2 ballots from the Lewis County Auditor's Office for special handling. Those ballots
3 consisted of: 87 APO/AE addressees, 29 "other" overseas, and 143 out-of-state. The out-
4 of-state category included military with stateside addresses e.g. Ft. Benning, GA, Ft. Ord,
5 CA, etc. No returned ballots or new requests for ballots were received by this office after
6 November 16, 2004.

7
8 INTERROGATORY NO. 8: Please describe in detail all measures taken to ensure
9 that ballots cast by felons who had not had their voting rights restored were not counted in
10 your county during the November 2004 general election.

11 ANSWER:

12
13 Washington courts notify the home county of an individual's felony conviction. If
14 the individual is found in our voter registration database he is not placed on inactive status,
15 he is canceled. As such, he is not registered, his name does not appear in a database or a
16 poll book and he is ineligible to receive a mail ballot. Upon completion of probation or
17 parole and restitution he can apply for restitution of civil rights and the courts will issue a
18 Certificate of Discharge. Courts provide election offices with this certificate, but we do
19 nothing with it. It is incumbent upon the individual to re-register to vote if that is his wish.
20 If an individual is not registered they don't get a ballot. If they attempt to vote
21 provisionally, the provisional ballot is not valid.
22

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26 INTERROGATORY NO. 9: Please state the number of ballots cast by felons who
27 had not had their voting rights restored in your county during the November 2004 general

1 election, describe in detail how you calculated that number, and identify the names and
2 voter registration numbers of the felons.

3 ANSWER:

4 To the best of our knowledge, one provisional ballot was cast (and not counted) by
5 a convicted felon in Lewis County. That individual was Chad Anderson, 116 W. Main
6 St./POB 311, Packwood, WA 98351. No voter registration number because he is not
7 registered to vote. His name appeared on a cancellation card maintained in the election
8 department for two years beyond year of cancellation.

9
10 INTERROGATORY NO. 10: Please describe in detail all measures taken to
11 ensure that ballots cast in the name of dead persons were not counted in your county
12 during the November 2004 general election.

13 ANSWER:

14 DSHS provides a quarterly listing of deceased with residence addresses in Lewis
15 County. Further, we actively purge voter registration rolls by reviewing obituary notices in
16 the county's one daily newspaper and two weeklies.

17
18 INTERROGATORY NO. 11: Please state the number of ballots cast in the name
19 of dead persons in your county during the November 2004 general election, describe in
20 detail how you calculated that number, and identify the names and voter registration
21 numbers of the dead persons in whose names the ballots were cast.

22 ANSWER:

23 To the best of our knowledge, no vote from a deceased voter was counted in the
24 November General election.

1 INTERROGATORY NO. 12: Please state the number of ballots cast by persons
2 voting more than once—whether by multiple ballots of one or more type(s) (poll,
3 provisional, absentee), by being registered to vote in more than one jurisdiction or using
4 more than one name, or otherwise—in your county during the November 2004 general
5 election and describe in detail how you calculated that number and identify the names and
6 voter registration numbers of the persons voting more than once.

7 ANSWER:

8 One person voted twice in Lewis County in the 2004 November General election.
9 That person is: Luke A. Erwin, 369 Garrard Creek Rd, Rochester, WA 98579, VR#
10 207120, Independence Precinct. Erwin voted a mail ballot sent to his residence (above)
11 and cast a second provisional ballot from the polling place at WWU Viking Union Bldg
12 (Whatcom County) on election day. That provisional ballot envelope was sent to this
13 office and a determination was made that he had already voted in Lewis County. The
14 ballot was not counted. These details were provided to the Lewis County Prosecutor who,
15 in turn, sent the information to the Whatcom County Prosecutor where the violation
16 occurred. Disposition of this case is unknown.

17
18 REQUEST FOR PRODUCTION NO. 2: Please produce the complete countywide
19 Voter File for your county, including permanent and temporary absentee marks and all
20 available vote history through the General Election of November 2, 2004. Please produce
21 this in a machine readable format including a file layout and/or column headers. Such file
22 should include, but not be limited to, the following items:

- 23 a. Voter full name, including first name, middle name or initial, last name, suffix
24 and prefix if applicable
- 25 b. Voter full registration address, including street address and unit number if
26 applicable, city, state, and nine-digit zip code.

1 c. Voter full mailing address, even if identical to voter registration address,
2 including street address and unit number if applicable, city, state, and nine-digit zip
code.

3 d. Voter Registration Number, which also may be called Affidavit Number or
4 Voter ID Number.

5 e. Registration Date

6 f. Registration Status, such as Active or Inactive, and Registration Activity Date,
7 which may also be called Last Voted Date.

8 g. Birthdates

9 h. District designations, including but not limited to Precinct, Legislative District,
10 Congressional District and County Council District

11 RESPONSE:

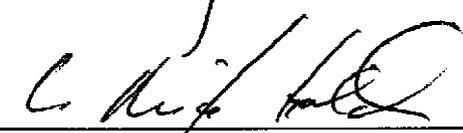
12 See enclosed data file on compact disc marked EXHIBIT I – Lewis County.

13
14 DATED this _____ day of January, 2005.

15 Davis Wright Tremaine LLP
16 Attorneys for Petitioners

17
18 By _____
19 Harry J.F. Korrell, WSBA #23173
20 Robert J. Maguire, WSBA #29909

21
22 RESPONSES DATED this 18th day of January, 2005.

23
24 By 
25 L. Michael Golden, WSBA# 26128
26 Sr. Deputy Prosecuting Attorney
27 Attorneys for Respondents Lewis County and
Gary Zandel, Lewis County Auditor

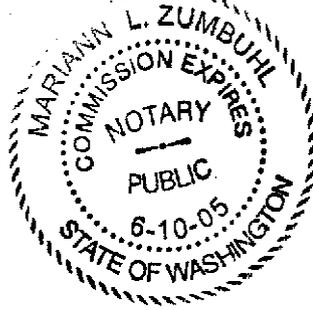
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STATE OF WASHINGTON)
)ss.
COUNTY OF LEWIS)

Gary Zandell, being first duly sworn, upon oath, deposes and states: That he is the respondent Lewis County Auditor in this lawsuit, that he has read the within and foregoing interrogatories and answers thereto, knows the contents thereof, and believes the same to be true and correct to the best of his knowledge.

Gary Zandell
Gary Zandell, Lewis County Auditor

SUBSCRIBED AND SWORN TO before me this 19th day of January, 2005.



Mariann L. Zumbuhl
NOTARY PUBLIC in and for the State of
Washington, residing at TOMINO
My commission expires 6-10-05