THE HONORABLE JOHN E. BRIDGES
Noted for Calendar: Monday, May 23, 2005
Without Oral Argument

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

TIMOTHY BORDERS, et al.,

Petitioners,

v.

KING COUNTY AND DEAN LOGAN, its Director of Records, Elections and Licensing Services, et al.,

Respondents,

v.

WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE,

Intervenor-Respondent,

v.

LIBERTARIAN PARTY OF WASHINGTON STATE, et al.,

Intervenor-Respondents.

No. 05-2-00027-3

PETITIONERS' BRIEF IN RESPONSE TO WSDCC'S MOTION ON DUAL VOTES

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INTRODUCTION

WSDCC's motion presents two issues, one procedural and one substantive. The procedural issue is whether questions relating to voters who voted more than once should be resolved in the course of the trial or by this motion. The substantive issue is whether those who cast multiple ballots should have any of their votes counted. We address each issue in turn.

I. THE QUESTION OF MULTIPLE VOTERS SHOULD BE RESOLVED AT TRIAL

A. WSDCC Has Not Complied with Civil Rule 56(c).

Civil Rule 56(c) provides:

> The motion and any supporting affidavits, memoranda of law, or other documentation shall be filed and served ***not later than 28 calendar days before the hearing***. . . . Summary judgment motions shall be heard ***more than 14 calendar days before the date set for trial*** unless leave of court is granted to allow otherwise. . . .

(emphasis added). WSDCC noted this motion for May 23, the first day of trial, 10 days after it served and filed the motion. As far as Petitioners know, WSDCC has not obtained leave of court to proceed in this manner.

The purpose of summary judgment motions is to resolve issues in advance of trial. The timing requirements of Rule 56(c) recognize that the policy of judicial economy embodied in summary judgment practice is not served when summary judgment motions are decided during or on the eve of trial. WSDCC's motion is not timely.

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B. Petitioners are Awaiting King County's Production of the Evidence Relating to Multiple Voters.

WSDCC's motion claims that "Petitioners lack the requisite proof" of voters who cast multiple votes and that Petitioners' claims relating to multiple voters should be dismissed as a result. WSDCC Motion at 1-2, 7-8. Such an argument is inappropriate in light of Petitioners' pending requests for the relevant evidence. The facts are as follows:

- On April 13, 2005, WSDCC filed a motion *in limine* to exclude evidence of "voter crediting" and to require that Petitioners introduce signed poll book pages, returned absentee ballot envelopes, and provisional ballot envelopes as the best evidence that an individual voted in the 2004 general election.
- On April 18, 2005, the earliest date permitted by the Court, Petitioners questioned Dean Logan, Director of King County Records, Elections and Licensing Services ("King County REALS"), about a spreadsheet Petitioners had received from King County in February 2005 (the "348 Spreadsheet"). Mr. Logan was unable to explain the 348 Spreadsheet. At the conclusion of Mr. Logan's deposition, King County REALS produced a second spreadsheet (the "437 Spreadsheet").
- On April 21, 2005, Petitioners questioned Bill Huennekens, Elections Superintendent of King County REALS, regarding both the 348 Spreadsheet and the 437 Spreadsheet. Mr. Huennekens could not explain the spreadsheets with certainty, but his testimony was Petitioners' first indication that the spreadsheets reflected voters who had cast multiple ballots.

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- On April 29, 2005, in light of the pending motion on voter crediting, and in light of the Huennekens deposition, petitioners issued a subpoena to King County REALS. The subpoena requested all poll book pages, returned absentee ballot envelopes, and provisional ballot envelopes for voters suspected of having cast multiple ballots in the 2004 election. The 348 Spreadsheet suggested that approximately 2-3 dozen individuals in King County had cast such ballots. King County REALS was required to produce these documents by May 6, 2005.
- On May 2, this Court granted WSDCC's motion with respect to voter crediting.
- On May 3, 2005, at the request of the representative for King County REALS, Petitioners re-served the April 29, 2005 subpoena.
- On May 5, Petitioners deposed Colleen Kwan, an employee of King County REALS, who was responsible for preparing the 348 Spreadsheet and the 437 Spreadsheet. Upon being questioned regarding the spreadsheets, Ms. Kwan interpreted them and testified that they reflected a number of voters—many more than King County had previously disclosed—whom King County had identified as having had both (1) provisional ballots counted and (2) additional votes counted via voting at the poll, via an absentee ballot, or via another provisional ballot.
- On May 10, based upon Ms. Kwan's disclosure of the methodology that King County used to identify dual voters, Petitioners issued a subpoena to King County, requesting all poll book pages, returned absentee ballot

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envelopes, and provisional ballot envelopes for 129 individuals believed to have cast more than one ballot.

- On May 11, 2005, Petitioners issued a 30(b)(6) notice to King County, asking that the county produce a witness for deposition on May 19, 2005 to be deposed on the subject of "the number of provisional ballots that King County determined were cast by persons who cast more than one ballot."
- On at least two occasions during the week of May 9, 2005, counsel for Petitioners asked counsel for King County REALS about the status of the April 29 subpoena and was told that King County REALS was working on a response and that counsel did not yet have an estimated time when the response would be provided.
- On May 16, 2005, counsel for Petitioners and King County REALS met and conferred with respect to outstanding discovery requests, including those relating to the voters who had cast more than one ballot. Petitioners offered to provide King County REALS with people to assist with gathering and copying the responsive documents. Counsel for King County REALS stated that King County REALS could not promise to produce responsive documents prior to the close of discovery.
- With little time before trial, and in the absence of any alternative, on May 16, 2005, Petitioners filed a Motion to Compel with the Court, seeking an Order compelling King County to immediately comply with Petitioners' April 29 subpoena.

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- On May 17, 2005, counsel for King County REALS stated that King County would produce some responsive documents on May 18, but could not promise that it would provide all responsive documents prior to the close of discovery.
- Today, May 18, 2005, King County REALS did produce approximately 85 records responsive to the April 29 subpoena. Only two of those records, however, concern the issue of multiple voters. Thus, Petitioners still await production by King County REALS of nearly all of the documents concerning multiple voters that were requested in the subpoenas of April 29 and May 10. The 30(b)(6) deposition relating to this subject is scheduled for May 19, 2005.

Declaration of David Bowman ¶¶ 1-12; Declaration of Robert Maguire ¶¶ 1-4.

Petitioners expect the documents received in response to the pending subpoenas will establish that some or all of the individuals identified in the subpoenas and the Kwan Deposition voted more than once in the 2004 General Election.

Pursuant to Civil Rule 56(f), a motion for summary judgment should be denied or continued when the party opposing the motion relies on information that it has sought in pending discovery requests, but which has not yet been produced. *Tellevik v. Real Property Known as 31641 West Rutherford Street*, 120 Wn.2d 68, 91 (1992), *clarified in other respects on rehearing*, 845 P.2d 1325 (1993). Here, Petitioners received the first indication that the spreadsheets set forth data regarding persons who were likely to have cast multiple ballots in the deposition of Mr. Huennekens on April 21. The spreadsheets were explained clearly for the first time—and the existence of many more multiple voters

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than had been suspected first revealed—in the deposition of Ms. Kwan on May 5, less than two weeks ago. Petitioners have moved promptly to seek the relevant evidence supporting the spreadsheets from King County REALS and are presently waiting to receive this evidence from King County REALS.

In light of the fact that Rules 56(c) and 56(f) would call for continuing WSDCC's motion in any event, and in light of the fact that trial commences on Monday, the most efficient resolution of this issue is (1) to require King County REALS to respond to the pending subpoenas and 30(b)(6) notice and (2) to then permit Petitioners to present the evidence thus received at trial.

II. THE REMEDY FOR CASTING ILLEGAL MULTIPLE VOTES IS TO INVALIDATE ALL SUCH VOTES

A. When a Voter Casts Multiple Votes, All Such Votes Are Illegal.

RCW 29A.68.020(5)(a) provides:

> (a) Illegal votes[1] include but are not limited to the following:
>
> (i) More than one vote cast by a single voter;
>
> . . . .

WSDCC would read clause (i) to say "***[The second vote cast when there has been]*** more than one vote cast by a single voter." That, however, is not what the statute says. The statute describes scenarios where illegal votes are cast. One of those scenarios is the case of an individual who casts more than one vote. The term "illegal votes" is properly understood as referring to all of the votes cast by that individual.

[1] WSDCC's motion, in quoting the statute, omits the "s" at the end of this word. WSDCC Motion at 5.

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The act of casting multiple votes is a crime, punishable by imprisonment of not more than one year and a fine of not more than $5,000. RCW 9A.20.021(2); RCW 29A.84.650. When a voter casts two votes, each of those votes is an element of that crime. Each such vote is, therefore, an illegal vote. Accordingly, the appropriate remedy when courts in election contests confront two ballots cast by the same voter is to disqualify both ballots.[2]

WSDCC contends that RCW 29A.84.650 supports its interpretation that only the second ballot cast by a single voter should count as an illegal vote because "[t]he punishment for casting more than one ballot is not for the person's initial vote to be declared unlawful, but for the individual 'dual voter' to be subjected to imprisonment for up to one year." WSDCC Motion at 6. This argument proves too much, for RCW 29A.84.650 does not address disqualifying the second vote either, yet WSDCC concedes that at least that vote should be rejected. WSDCC Motion at 1. RCW 29A.84.650 is within the chapter discussing crimes associated with illegal voting; it does not purport to

[2] *See, e.g., Tate-Smith v. Cupples*, 134 S.W.3d 535, 544 (Ark. 2003) ("we hold that the trial court did not abuse its discretion in ruling that Mr. Lewis voted twice and that Mr. Lewis's votes for appellant should be excluded"); *Bernardo v. Rue*, 146 P. 79, 81 (Cal. App. 1914); *In re Paikuli*, 8 Haw. 680, 1890 WL 1182 (1890) at *3 ("If two ballots are found enfolded, the voter is not allowed to select one of them and cast it, but the law prescribes that his vote shall be rejected."); *Kreitz v. Behrensmeyer*, 17 N.E. 232, 248-49 (Ill. 1888) ("The court refused to count either of such ballots; and this we think was right."); *Lisk v. Benjamin*, 433 N.E.2d 1154, 1157 (Ill. App. 1982) ("When a voter has voted more than once in the same election all of his ballots must be rejected."); *Wright v. Gettinger*, 428 N.E.2d 1212, 1224 (Ind. 1981) (invalidating all votes cast by voters who punched straight party tickets for multiple parties); *Otworth v. Bays*, 98 N.E.2d 812, 814-15 (Ohio 1951); *State ex rel. Guernsey v. Meilike*, 51 N.W. 875, 876 (Wis. 1892) ("According to their understanding, that these two votes were folded together and cast by the same person, they should have destroyed both of them, and not have counted either."). Even though the statutory language in the cases cited varies, the cases reflect a common understanding that when a voter casts two votes, both votes are to be disqualified.

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address the impact of illegal votes on election contests. RCW 29A.68.020(5)(a)(i) addresses that subject, and provides that such votes are illegal votes.[3]

Nor does RCW 29A.44.090 support WSDCC's argument. That statute merely sets forth a procedure to be followed at the polls to prevent the casting of multiple ballots in advance. It does not address the impact of multiple votes discovered after the fact during an election contest. Again, RCW 29A.68.020(5)(a)(i) covers that scenario.

B. Washington Does Not Permit Multi-State Voters.

According to WSDCC:

> [N]othing in Washington's election contest statute provides that an "illegal vote" includes a vote by a person who cast only one ballot in Washington, but who also cast a ballot in another state's election. Although such a "dual vote" would have implications in an election for nation-wide office such as the President, it has no impact on an election for state-wide office such as the Office of Governor. By definition, if the person cast a ballot in Washington and another ballot in, say, Oregon, the person could not have cast "more than one ballot" for the Office of Governor of Washington.

WSDCC Motion at 7. Of course, the same logic would permit a voter to cast votes in multiple counties in Washington, or multiple cities within a single county, so long as the voter was careful not to vote twice for the same office. WSDCC cites no authority for the remarkable proposition that a voter could have spent election day traveling from The Dalles, Oregon to Yakima to Cashmere to Wenatchee, casting ballots in each city along the way. And for good reason: the law does not permit such a practice. Different polling places notwithstanding, such a voter would still be casting multiple votes in the same

[3] WSDCC's argument that the first ballot should be counted and the second ballot invalidated presents a practical problem as well. If, for example, a voter mails in an absentee ballot on the day of the election and votes at the polling place on the same day, how does one determine which is the first ballot?

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general election, *see* RCW 29A.04.073 (defining "general election" as "an election required to be held on a fixed date recurring at regular intervals"), which is a crime. *See* RCW 29A.84.650 ("Any person who votes or attempts to vote more than once at any primary or general or special election is guilty of a gross misdemeanor."). The multiple votes cast by that voter are illegal votes under RCW 29A.68.020(5)(a)(i).

C. This Court Has Already Held That Petitioners Were Not Required to Challenge Multiple Voters Prior to or on Election Day.

WSDCC contends that "Petitioners were required to challenge the registration of any dual multi-state voters prior to or on election day under RCW 29A.08.810 and RCW 29A.08.820." WSDCC Motion at 7. On February 4, 2005, however, this Court held:

> The Court, however, believes that the only reasonable interpretation of section (5)(a) and (5)(b) of 29A.68.020 is that such a challenge as provided by 29A.08.810 and 29A.08.820 does not pertain to, nor exclude from consideration in an election contest those references in subsection (5)(a)(i) and (ii), that is, ***more than one vote cast by a single voter*** and/or votes cast by persons disqualified under Article VI, Section 3.

Verbatim Report of Proceedings, Court's Oral Decision (Feb. 4, 2005) at 22 (emphasis added).

CONCLUSION

For the reasons stated above, WSDCC's Motion should be denied.

RESPECTFULLY SUBMITTED this 18th day of May, 2005.

Davis Wright Tremaine LLP
Attorneys for Petitioners

By _____
Harry J.F. Korrell, WSBA #23173
Robert J. Maguire, WSBA #29909

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The Honorable John E. Bridges

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IN AND FOR THE COUNTY OF CHELAN

Timothy Borders, et al.,

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Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-00027-3

DECLARATION OF ROBERT J. MAGUIRE

ROBERT J. MAGUIRE declares as follows:

I am an attorney at Davis Wright Tremaine LLP, attorneys of record for Timothy Borders, et al. ("Petitioners"). I make the statements in this Declaration based on personal knowledge, and if called and sworn as a witness in any proceeding, could and would testify competently thereto.

1. During the week of May 9, 2005, I made at least two inquiries of counsel for King County Records, Elections and Licensing Services ("King County REALS") with

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respect to outstanding discovery requests including the April 29 subpoena duces tecum. Counsel for King County REALS indicated that his client was working on its response, that he would need to check on its progress, and that he would get back to me with an estimated time of response.

2. On May 16, 2005, I met and conferred with counsel for King County REALS with respect to outstanding discovery requests. On behalf of Petitioners, I offered to provide King County REALS people to assist with gathering and copying the responsive documents. Counsel for King County REALS stated that King County REALS could not promise to produce responsive documents prior to the close of discovery.

3. Again, on May 17, 2005, I reiterated Petitioners' offer to assist King County REALS in responding to the April 29 and May 10 subpoenas duces tecum. Counsel for King County REALS stated that King County would produce some responsive documents on May 18, but again could not promise that it would provide all responsive documents prior to the close of discovery.

4. Today, May 18, 2005, this office received a partial response to the April 29 subpoena, consisting of approximately 85 records. Our first review of those records indicates that only two concern the issue of multiple voters.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, this 18th day of May, 2005.

ROBERT J. MAGUIRE, WSBA No. 29909

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The Honorable John E. Bridges

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Intervenor-Respondent,

v.

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-00027-3

DECLARATION OF DAVID BOWMAN

DAVID BOWMAN declares as follows:

I am an attorney at Davis Wright Tremaine LLP, attorneys of record for Timothy Borders, et al. ("Petitioners"). I make the statements in this Declaration based on personal knowledge, and if called and sworn as a witness in any proceeding, could and would testify competently thereto.

1. On April 13, 2005, WSDCC filed a motion *in limine* to exclude evidence of "voter crediting" and to require Petitioners to introduce signed poll book pages, returned

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absentee ballot envelopes, and provisional ballot envelopes as the best evidence that an individual voted in the 2004 general election.

2. On the earliest date permitted by the Court, April 18, 2005, Petitioners questioned Dean Logan, Director of King County Records, Elections and Licensing Services ("King County REALS"), about a spreadsheet Petitioners had received from King County in February 2005 (the "348 Spreadsheet"). Mr. Logan was unable to explain the 348 Spreadsheet. A second spreadsheet was produced by King County REALS at the conclusion of Mr. Logan's deposition on April 18 (the "437 Spreadsheet").

3. On April 21, 2005, Petitioners then questioned Bill Huennekens, Elections Superintendent of King County REALS, regarding both the 348 Spreadsheet and the 437 Spreadsheet. Mr. Huennekens could not explain the spreadsheets with certainty, but his testimony was Petitioners' first indication (beyond speculation) that the spreadsheets reflected voters who had cast multiple ballots. At the time, it appeared that approximately 2-3 dozen individuals in King County had cast such ballots.

4. In light of WSDCC's motion *in limine* to exclude voter crediting, and in light of the depositions of King County REALS officials during the third and fourth weeks of April, Petitioners decided to issue a subpoena duces tecum to King County REALS for documents that might be needed for trial if the Court granted WSDCC's motion at the May 2, 2005 hearing.

5. On April 29, 2005, based upon the deposition testimony attempting to explain the 348 Spreadsheet, Petitioners issued a subpoena to King County REALS requesting all poll book pages, returned absentee ballot envelopes, and provisional ballot envelopes for voters suspected of having cast multiple ballots in the 2004 election. King County REALS was required to produce these documents by May 6, 2005. Attached as Exhibit 1 to this Declaration is a true and correct copy of the April 29 subpoena duces tecum directed to King County REALS.

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6. On May 2, this Court heard argument on WSDCC's motion and held that voter crediting records are not sufficient to prove that an individual voted in the 2004 general election and that additional proof must be provided.

7. On May 3, 2005, at the request of the representative for King County REALS, Petitioners re-served the April 29, 2005 subpoena.

8. On May 5, Petitioners deposed Colleen Kwan, an employee of King County REALS who was responsible for preparing the 348 Spreadsheet and the 437 Spreadsheet. Upon being questioned regarding both the 348 Spreadsheet and the 437 Spreadsheet, Ms. Kwan interpreted the spreadsheets and testified that they reflected a number of voters—many more than previously disclosed—whom King County had identified as having had both (1) provisional ballots counted and (2) additional votes counted via voting at the poll, via an absentee ballot or via another provisional ballot. Attached as Exhibit 2 to this Declaration is a true and correct copy of an excerpt from the Colleen Kwan Deposition and the spreadsheets.

9. On May 10, based upon Ms. Kwan's disclosure of the methodology that King County used to identify dual voters, Petitioners issued a subpoena to King County REALS, requesting all poll book pages, returned absentee ballot envelopes, and provisional ballot envelopes for 129 individuals believed to have cast more than one ballot. Attached as Exhibit 3 to this Declaration is a true and correct copy of the May 10 subpoena duces tecum directed to King County REALS.

10. On May 11, 2005, Petitioners issued a 30(b)(6) notice to King County, asking that the county produce a witness for deposition on May 19, 2005 to be deposed on the subject of "the number of provisional ballots that King County determined were cast by persons who cast more than one ballot." Attached as Exhibit 4 to this Declaration is a true and correct copy of the May 11 30(b)(6) deposition notice to King County REALS.

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11. With little time before trial, and in the absence of any alternative, on May 16, 2005, Petitioners' filed a Motion to Compel with the Court, seeking an Order compelling King County REALS to immediately comply with Petitioners' April 29 subpoena. Attached as Exhibit 5 to this Declaration is a true and correct copy of the Motion to Compel dated May 16, 2005.

12. As of the date of filing this Response, King County REALS has not yet provided the documents requested in the subpoenas of April 29 and May 10. The 30(b)(6) deposition relating to this subject is scheduled for May 19, 2005.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, this 18th day of May, 2005.

David M. Bowman

DAVID BOWMAN, WSBA No. 28523

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EXHIBIT 1

The Honorable John E. Bridges

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

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

Petitioners,

v.

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

Respondents.

and

Washington State Democratic Central Committee,

Intervenor-Respondent,

and

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-2-00027-3

SUBPOENA DUCES TECUM

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STATE OF WASHINGTON

To: Records Custodian
King County Division of Records, Elections, and Licensing Services
500 4th Avenue, Room 553
Seattle, WA 98104

GREETINGS:

YOU ARE HEREBY COMMANDED to be and appear as follows:

PLACE: Offices of Davis Wright Tremaine
1501 4th Avenue, Suite 2600
Seattle, WA 98101

DATE: Friday, May 6, 2005

TIME: 9:00 a.m. PST

To produce and permit inspection and copying of the documents or objects in accordance with attached Attachment A at the place, date, and time specified above, at the request of the Petitioners in the above-entitled cause. If documents or objects are received at the above specified location by the specified date and time, your attendance is waived.

DATED this 29th day of April, 2005.

Davis Wright Tremaine LLP
Attorneys for Petitioners

By _____
Harry J. F. Korrell, WSBA #23173
Robert J. Maguire, WSBA #29909
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ATTACHMENT "A"

I. DEFINITIONS

"Document" means, without limiting without limiting its generality, the original (or a copy when the original is not available) and each non identical copy (including those which are non identical by reason of notations and markings) of papers, writings and records of any nature whatsoever, including, but not limited to, electronic mail messages, contracts, agreements, correspondence, letters, telegrams, wires, cables, reports, schedules, diaries, statements, photographs, reproductions, maps, surveys, plats, drawings, blueprints, sketches, charts, models, invoices, purchase orders, ledgers, journals, checks, check stubs, notes, estimates, summaries, desk calendars, work papers, studies, appointment books, time sheets, logs, inventories, printouts, computer tapes, tape recordings, video recordings, microfilm, microfiche, recordings, or other data compilations from which information can be' obtained through detection devices into reasonably usable form, minutes of meetings, memoranda, including intercorporate, intracorporate, interoffice and intraoffice memoranda, memoranda regarding conferences, conversations or telephone conversations and any and all written, printed, typed, punched, or recorded matter of whatsoever kind of description, including drafts of any of the foregoing, as well as any computer disks, computer files, computer hard drives, computer backup tapes, archival media, or other electronic data, document or message storage of any kind or nature (whether on a disk, hard drive, file server, personal computer or other medium).

"You" or "your agents, servants, employees, attorneys, or representatives" includes but is not limited to all persons, professionals and/or associates, legal assistants and/or support staff who performed work as part of your team or under your supervision or at your direction in connection with the topics identified in this subpoena.

II. INSTRUCTIONS

1. Please produce all the documents, described below, wherever located, which are in the possession, custody or control of you or any of your agents, servants, employees, attorneys, or representatives.

2. Any copy of a document that varies in any way from the original or from any other copy of the document, whether by reason of handwritten or other notation or any omission, shall constitute a separate document and must produced.

3. The original of each document requested is to be produced. Each document requested is also to be produced for inspection in its original file folder, file jacket, or cover.

4. Documents are to be produced in such a fashion that the specific individual or entity from whom they were obtained can be readily determined.

5. If you do not produce any document herein requested under a claim of privilege, work produce, or other ground of non production, please submit in lieu of such document a written statement which:

(a) specifies the privilege, work product, or other asserted ground of non-production;

(b) describes the nature and general topic of the documents to the extent possible in a manner consistent with the privilege, work product, or other asserted ground of non production;

(c) identifies the person or persons who prepared the documents and, if applicable, the person or persons to whom the document was sent;

(d) identifies each other person who has seen or had possession of the documents; and

(e) specifies the date on which the document was prepared by the author and/or received by the addressees.

6. If any document was, but no longer is, in your custody or control, state whether it has been lost, destroyed, transferred, or otherwise disposed of, and in each instance, identify the document as completely as possible, including without limitation, the author(s), addressee(s), any person(s) who say the document, the date of the document and date when the document was received, the subject matter of the document, and the circumstances surrounding the disposition of the document and the date that disposition occurred.

III. DOCUMENTS REQUESTED

Provide copies of:

1. All poll book pages from the 2004 General Election containing the names of those individuals listed on the attached Exhibit 1, whether or not a signature appears next to the respective individual's name.

2. All absentee ballot envelopes from the 2004 General Election returned by those individuals listed on the attached Exhibit 1.

3. All provisional ballot envelopes from the 2004 General Election submitted by those individuals listed on the attached Exhibit 1.

LAST	FIRST	MIDDLE	VOTER ID	PRECINCT
FELONS				
Aitken	Stasha	S	990693672	2809
Anderson	Marcus	S	990681862	1779
Archie	Matthew	G	990640885	997
Armstrong	Jeffrey	Allen	10129052	1250
Austin	Willie	J	40199021	1748
Bailey	Thomas	Myron	970357131	1059
Ballard	Lester		30365488	911
Barnett	Myra	H	20043997	1932
Beck	William	H	990644823	2353
Bjornson	Gregory	T	960146221	1860
Blanton	Morris	Lee	880252089	1636
Bloomdahl	Stephen	E	950075970	2220
Boggs	Kail	A	990656526	2750
Bowman	Frances	Geneva	231053	2820
Brown	Veronica		930188506	1834
Brown	James		950540231	1896
Brown	Joann	L	990654147	3416
Brunnell	Donette	Suzanne	960469399	2510
Burke	Shane	Antone	950969563	510
Burns	Gloria	Jean	960928199	1481
Bush	A	C	921193777	3265
Bushnell	Keith	S	990620544	2932
Buxton	David	Harrison	950663952	1734
Cameron	Kenneth	M	40027203	1527
Cann	Robert	C	910139118	2845
Carrell	Curtis	Eugene	960599969	125
Chambers	Violeta	L	10341850	798
Charney	Ken	W	961057094	1247
Clack	Mario	Toure	950117117	1633
Clark	Lisa	Marie	920166768	1883
Clay	Willie	H	980204081	1215
Clemens	Tyron	M	990654061	508
Clewis	Valerie	Lynn	980171710	2842
Coleman	Atwell	Brady	683949	1473
Compton	Jack	Martin	980420264	3317
Cory	Oliver		40062548	1437
Crawford	Robert	A	40372717	2544
Davis	Mark	A	714577	2658
Dawson	Diana	I	990597129	31
Derrenger	Bryan	Scott	980369862	258
Dey	Teresa	Marie	970078568	2224
Diaz	Bianca	Jesse	20462833	2639

Dillard	John	T	10431166	1582
Doucette	David	H	990638883	1602
Dowell	Omisher		970006052	1618
Dudley	Roy	V	990685738	327
Edmon	Lorenzo		970299327	1574
Ellis	Richard	Jaime	970425349	584
Emanuel	Michael	J	990603804	3021
Erickson	John	W	930343722	945
Erlandson	Leigh	M	990501742	1450
Evans	Jeremy	R	40339761	2544
Evans	Beverly	J	720408031	1781
Evans	Lyle	G	961081181	272
Evans	Roger	Craig	990691858	2836
Foster	Herman	Glenn	960124774	1859
Frederick	Russell	L	990613996	1398
Frint	Dale	Ralph	950337729	1006
Furedy	Michael	J	201758	2467
George	Johnny	R	565202	1570
Gorman	David	Scott	990589004	3473
Graham	Anthony	R	950085223	145
Greer	Ronnie	T	990652249	1875
Gropper	Angela	M	30218621	1842
Guy	Marcus	L	990633389	2544
Haisley	Melvin		10290180	1927
Hall	Michael	Eugene	250813	658
Hamilton	Zachary		990657726	392
Harris	Justin	T	20423714	3081
Harris	Carmaletha	A	830405666	1616
Harrison	Sophia	A	30189868	1488
Haywood	Leonard	L	30212126	2549
Hendrix	Tina	L	30193296	1572
Hicks	Derek	Kalani	950862688	42
Hines	Julie	L	990598597	866
Houck	Jacqueline	E	990679267	2212
Howard	Gary	A	990598912	1823
Jackson	Edward	Isaac	950602716	880
Jackson	Steven	R	960291581	1947
Jacobson	Joseph	Shay	960084250	2466
Jamerson	Joyce		940206758	1638
Johnson	Heather	Jo	920065601	2277
Kalinowski	Paul	L	990631988	3267
Karpman	Steven	R	20168561	3326
Kellie	James	W	950771194	3112
Kidd	Ora	Otis	10147751	1593
Knox	Thomas		960880013	1895

Krassner	Krista	W	30305558	1559
Larsen	Gareth	B	930151645	2618
Larson	Kathleen	Marie	940397367	2540
Lasseson	Steven	J	644986	3238
Lawseth	Linda	M	40387251	2370
Leahy	Peter	Shannon	950432373	2317
Lealofi	Maleko	Tepatasi	960919491	3159
Lentz	Dawna	RC	30351487	2229
Liming	Robert	S	40327207	1855
Long	Lawrence	E	30125436	1278
Madsen	Perry	Jay	30007034	238
Marcoe	Scott	D	840307506	1480
Mason	Kenneth	L	20366401	1607
Mathews	Willie	Jo	960168798	1497
Mayo	Jeffrey	E	248479	2590
McDougall	Shane	Thomas	950622881	426
Meredith	Dean	James	960278330	149
Miller	Sara	A	30148606	3223
Miller	Andrew	A	40200843	2108
Miller	Karl	Shawn	920744931	28
Mills	Robert	Alexander	980076318	647
Monday	Kevin	L	40293981	3027
Moore	Royal	Ray	970695486	1430
Moore	Johnnie	L	990596326	2548
Morgan	Eagle	Bear	960442598	1360
Morrison	Paulette	Margurite	10203201	1643
Myles	Roger	A	30552130	2993
Mylle	Robert	Henry	950434597	1256
Neal	Peter	J	960189264	967
Nelson	Christopher	James	30400879	2330
Newby	Robert	B	940122988	1159
Newman	Terri	L	960381670	3395
North	Dennis	H	990626395	1844
Olson	Edgar	Paul	980099890	2719
Owens	Burte	T	880032933	789
Oyer	Michael	James	960731735	3060
Parker	Pamela	M	990610754	2365
Patrick	Otis	Charles	950952008	1488
Perez	Debra	M	990585417	1854
Pete	Regina	L	40203214	3036
Pine	Charles	W	990386463	543
Powell	Kenneth	Beirne	10274818	1018
Presnell	Carolyn	M	990604040	2033
Rama	Leighton	C	950815761	2677
Reasor	Angela	L	10255872	1520

Reynolds	Michael	Joseph	30538617	348
Richardson	Larry	F	980311201	86
Riggins	Joyce	M	960920261	1801
Roddy	James	J	910052454	2558
Rogers	Chris	Michael	960462203	3052
Sadler	Gary	W	921374038	3018
Savare	Barbara	A	990289522	1643
Schroeder	Rodney	Dale	960702310	981
Seegmiller	Gregg	Scott	860387913	1127
Sheehan	Patrick	Murphy	970561960	208
Simonton	Cathy	Jo	10256232	231
Skillings	Cheryl	M	276928	396
Snipes	Janice	Marie	347353	1903
Spruitenburg	Frederick	J	30344561	1834
Stapp	Terry	Lee	930406091	279
Stewart	Ricky	L	10438039	411
Stewart	Fred	Gregory	960260287	2363
Story	Kern	E	921842503	1824
Stringer	William	R	990435359	1714
Swain	Tyshon	C	990664227	1882
Taylor	Jeff	M	960564898	1475
Terrell	Alma	Simone	950565756	1488
Thomason	Glenn	J	40126317	1352
Thurston	Rickey	D	426857	1838
Tingelstad	Mark	Alan	10213355	2539
Travis	Edna	D	990651602	1600
Tymony	Jeffrey	Conrad	960285131	1910
Walz	John	Martin	950910542	25
Warren	Ronald	J	950722860	3141
Washington	Edward		990032513	25
Weatherly	Deshawn	L	30026551	1898
Welsh	Arthur	B	40144161	1749
West	Thomas	J	990653528	2326
Wetrick	Henry	W	40272259	1823
Wheeler	Ronald	E	881582384	610
Whitfield	Sylvester		940745748	3092
Wiley	Raymond	L	980501574	283
Williams	Richard	D	830118071	481
Williams	Lisa	J	910178075	1592
Williams	Teresa	M	990316252	1251
Williams	Larry	D	990651677	842
Williamson	Tammy	M	990664419	1639
Wollmuth	David	Aaron	10463254	1072

NON-CITIZENS				
Anderson	Ming	Y	30437420	2686
Chen	Chun	C	990598675	2052
DUAL IN-STATE				
Bligh	Shari	D	20273721	3281
Bligh	Shari	D	990650307	3281
Brown	Patricia	A	710327149	194
Brown	Patricia	A	710448825	224
Diaz	Darlene		157279	3321
Diaz	Darlene		990135789	3321
Fuller	George	R	40006249	1942
Fuller	George	R	40051368	1942
Harleman	Thomas	J	880400568	37
Harleman	Thomas	J	712220627	37
Mendiola	Jennifer	C	30055136	233
Mendiola	Jennifer	C	40325204	233
Nelson	Tara	B	245941	2371
Nelson	Tara	Brooke	10197813	2371
Prince	Michael	R	30267648	1759
Prince	Michael	R	20040467	1759
Sakimae	Sarah	M	30003861	2282
Sakimae	Sarah	M	30064071	2282
Ungrich	Frederick	B	40099921	1844
Ungrich	Frederick	B	720569	1844
DUAL MULTI-STATE				
Brooks	Brian	E	30331940	2358
Hartman	Artrese		940560390	3393
Heidmiller	John	William	990463921	1438
Shaffer	Judith	A	910389394	58

DECEASED				
Bartow	G	Horace	800585937	660
Burke	Larry	P	217051	213278
Carr	Shirley	A	49466	25143
Chalfa	Dulcie	Mae	870050909	2718
Coffey	Mary	S	880913000	2361
Convey	John	W	820312368	2377
Courneya	James	M	712609010	83
Cullen	Laurance	E	722732502	3153
Cuykendall	Betty	Lou	710848602	993
Dansby	James	W	214185	2038
Eberhardt	Elaine	A	20006773	3293
Engel	M	Jane	713135135	98
Englund	Eric	P	711582754	667
Fey	John	A	721418049	2540
Forward	Lola	M	900067925	1593
Foster	Charles	F	75041	2011
Fuda	Joseph		721356744	3310
Gilge	Vay	Jeanne	711740414	2748
Hayward	Charles	B	65204	28437
Holmgren	Charlette	M	800678862	1499
Irwin	Robert	J	721648303	1058
Jackson	John		20438363	2645
Johnson	George	E	12415503	89.1
Kershner	Thelma	P	339255	2011
Kinnune	Charles	H	710716803	546
Lane	Gertrude	B	159921	2461
Laplant	Clayton	R	760977136	2501
MacDonald	Joan	D	740356950	2767
McFarland	Earl	D	760385549	3334
Meacham	Alice	J	860277999	283
Peterson	Gary	G	950244186	3378
Price	Rosanna		723164460	2293
Raymond	Patricia	M	247628	213240
Richardson	Caroline	G	820158741	1740
Rogers	Robert	Frank	990505411	2217
Sivakumaran	Vimaladevi		20054697	444
Stretton	Gladys	H	721975908	1272
Stroupe	Martha	Cantrell	310090	395416
Swanson	Eric	B	801359329	201
Tracy	Mildred	L	239645	27324
Travis	Richard	E	721361063	1509
Turner	Eugene	E	237743	2019
Vego	Diana	L	970293159	937
Ware	Beverly	M	19263	114112

Waters	Donald	R	723088101	2304
Wickman	Torrey	L	10150	28419
Witte	Anne	M	710754357	3215
Yant	Philip	A	283051	25151
Zemko	Maxine	M	725426011	2512
Martin	Lawrence	E	921786093	2832

EXHIBIT 2

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

TIMOTHY BORDERS, et al,	)	
	)	
Petitioners,	)	No. 05-2-00027-3
v.	)	
	)	
KING COUNTY, et al,	)	
	)	
Respondents,	)	
and	)	
	)	
Washington State Democratic Central Committee,	)	
	)	
Intervenor Respondent,	)	
	)	
and	)	
	)	
Libertarian Party of Washington State, et al,	)	
	)	
Intervenor Respondents.	)	

DEPOSITION UPON ORAL EXAMINATION OF

COLLEEN KWAN

Thursday, May 5, 2005
9:15 a.m.
Davis Wright Tremaine
1501 Fourth Avenue, Suite 2600
Seattle, Washington

Laurie E.Heckel,CSR, RPR
Court Reporter
CSR License No. HE-CK-EL-E386DM

Q The subpoena requested that you bring certain documents to this deposition; is that correct?
A Uh-huh.
Q And today you have brought with you a box of documents responsive to that subpoena; is that correct?
A Yes.
Q Are you aware of any other documents responsive to that subpoena that have not been produced?
A No.

MR. MAGUIRE: Mark this as the next exhibit, please.

(Exhibit 3 marked for identification.)

Q The court reporter has just marked you a document marked as Exhibit 3 that was taken from the top of the box you brought with you today; is that right?
A Yes, actually, in the box. I guess the original one, that's the first thing that we discussed. Exhibit 1 was the first thing in the box.
Q I see.
A At the top of the box.

MR. EVEN: And this is the second thing?

THE WITNESS: This is the second thing, yes.

Q (By Mr. Maguire) Right. This is a document you brought with you today in response to the subpoena?
A Yes.
Q The first page has notes. The second page is entitled, Look-

Up Voters Who Were Issued Provisional Ballots But With No PB Labels.

A Yes.

Q And that is a two-page document or three-page document which is then followed by a five-page spreadsheet that is entitled, Lookup Of Provisional Ballots With No Labels 5/3/2005, which is then followed by a four-page spreadsheet entitled, Lookup Of Provisional Ballots With No Labels EXP; is that right?

A That is correct.

Q That's what we have for Exhibit 3. Earlier in the deposition, you mentioned that Mr. Huennekens asked you to conduct two tasks with respect to provisional ballots, and I think we talked about the first task as relating to the 348 earlier. What was the second task?

A The second task is to look up voters who were issued provisional ballots, but with no labels. And he provided us a list of highlighted polling places, and to -- and to look at those voters within those polling places.

Q It was Mr. Huennekens who identified the particular polling places --

A Yes.

Q -- for this project?

A Yes.

Q Do you know how he determined which polling places would be used for the project?

A I don't know specifically how he determines that, but it was something that he did after he went through certain reconciliation process.
Q That's reconciling the number of signatures in a poll book with the number of ballots tabulated at a precinct?
A That is correct.
Q And how do you know that he had done that prior to assigning you this second task?
A Because I asked him how he picked those highlighted polling places.
Q And what did he say?
A And that's what he told me.
Q He picked them based on his work --
A Work.
Q -- with the reconciliation?
A Yeah, after the reconciliation process.
Q Did he say anything more specific, that these were precincts where there was disparity in a certain magnitude or degree?
A No, no. I -- I didn't ask either.
Q Did Mr. Huennekens provide you any other instructions with respect to this second task?
A Actually, it was quite specific, and this is actually the purpose there was -- I clarified it with the director as to what the purpose of the assignment is, and --
Q Who is -- I'm sorry. Go ahead. I didn't mean to interrupt

you.

A And these are the three things that he indicated, to look up those provisional ballot voters with no label in those precincts, and to determine whether they're registered or not, whether they're valid registered voters, and next if they're registered voters, whether they were credited, and if they were credited for voting, what were they credited for.

(Witness conferring with her counsel.)

Q Who is the director?

A Dean Logan.

Q Mr. Logan provided you --

A Mr. --

Q -- with instructions on this task?

A Yeah, I believe Bill was not in the office at that time when I need to have that clarification.

Q All right. Let me make sure I understand. Initially, Mr. Huennekens came to you and asked you to undertake a task involving looking at voters who were issued provisional ballots with no labels at particular precincts that Mr. Huennekens had identified after his analysis of reconciliation issues.

A That is correct.

Q And after that conversation with Mr. Huennekens, you sought clarification of the purpose of the task and discussed that with Mr. Logan?

A That is correct.
Q Mr. Logan told you the purposes of the tasks are the three items identified on the second page of Exhibit 3?
A Yes.
Q And that's -- first one is to determine if an individual who was issued a provisional ballot and for whom there was no label was registered to vote?
A Yes. It was a valid registered voter.
Q With or without a signature in the original voter -- let me -- the exhibit says, with or without signature. What does that mean?
A That is, you know, if there is a name there --
Q Where?
A -- that we can -- on the poll book page, on that particular line that says. So with the name and the address there, and from that information were able to find that voter from the DIMS data base.
Q Okay. So the first purpose was determine whether no label provisional ballot voter is registered without regard to whether they had signed the poll book.
A Whether they're a signature to it or not.
Q And the second purpose was to determine if the person had signed the poll book, whether that signature matched the signature in the original voter registration file?
A In the DIMS image file.

Q All right. And the third purpose was to determine whether the individual who had the provisional ballot with no label had been credited with voting, and if so whether that person had been credited with having voted absentee, provisional, or poll; is that right?
A That is correct.
Q One of the purposes of this task was not to determine the number of provisional ballots cast directly into Accuvote machines on election day then?
A No.
Q Or to identify the individuals who cast provisional ballots directly into the Accuvote machine on election day?
A This task will not -- we will not know that.
Q Okay. Let's walk through this same document, the second page of Exhibit 3. This is a document you prepared, is it?
A Yes.
Q To give to the individuals on your team who were assisting you with this task?
A That's correct.
Q Under Procedures, the first items in bold and all caps and italics, it says, No Label PB Poll Book Listing. What does that mean?
A We were actually also given those copies of poll book provisional ballot pages in those highlighted precincts, and we're supposed to distribute them to the team, and then they

take a precinct or a polling place, and that from there, that's -- that's what it means.

Q Okay.

A That's the listing based on the poll book. It's actually a poll book provisional ballot page.

Q Who gave them to your team?

A It was all copied for us when we were given the highlighted spreadsheet, the stack of it, and also the copies were made for us.

Q Do you know who identified the highlighted precincts? Who chose to highlight those precincts?

A Mr. Huennekens.

Q Mr. Huennekens?

A Yes.

Q The second item under, Procedures, on Exhibit 3 says: You will be given provisional ballot pages from the poll book. Check voters on the provisional pages who were issued a provisional ballot (PB) but had no PB label returned. That is indicated by no label notation on page. They are highlighted.

Is that right?

A Yes.

Q And that means that somebody prior to your team had already highlighted the lines in the provisional ballot section of the poll book for no labels?

A Yes.
Q So your team did not make independent determinations of what was or wasn't a no label?
A The highlighted ones, that's what they focus on.
Q And Mr. Huennekens did the highlight?
A I don't know who did the highlight.
Q Okay. The next procedure, No. 3 says: If there are 3 "No labels" on the sheet, make 3 copies of the sheet using the reduced format "LGL-LTR" on the copier. (Each of the copied sheet is the "cover sheet" for each voter's docs.

Why do you make three copies of the sheet if there are three no labels on the sheet?
A Because, as we said, that the signature page, the history page, they don't really have the name of that voter there. So I want them after they review a voter, that that's the voter, and they staple that, so it's all one voter doc. Because if not, once you mix those pages, you really don't know. You have to go back in again to decide which voter history screen that belongs to.
Q I think I understand. So if there were three no labels on a single page of the provisional ballot section of the poll book, you'd make three copies of that so that you could attach each copy to an individual's DIMS printout?
A Individual voter and their records that you printed out from DIMS.

Q Okay. The next procedure: Please circle and initial on "LGL Master Sheet" the voter you processed.

What's the LGL master sheet?

A That's a legal master sheet that they were given that they're supposed to initial that they have processed that already.

Q What information was contained on the legal master sheet?

A The master sheet is actually that poll book page, the huge poll book page that they were given from which they are going to make three copies, reduced sized copies of whatever number of copies, and then they need to -- because those are highlighted, they have highlight on there, and then they're supposed to initial next to the ones --

Q Okay.

A -- that they have processed.

Q And if at any time as we're talking about this task you think it would be helpful to refer to any of the documents you brought today, please let me know, and we can use those as exhibits --

A Okay.

Q -- to identify them. The next procedure: You need to note whether there is a signature associated with the name and address of each voter with no label.

Where were those notations to be done?

A Where there was a signature, so in the signature column.

Q And the signature column on what document?

A On the poll page.
Q On the poll page?
A Yes.
Q Okay.
A Poll book page, provisional ballot page.
Q And then your task, or the procedures that your team were to undertake were to look up each of the voters in DIMS to determine registration, validity of signature, whether they were credited, and for what absentee, provisional ballot, poll, or failsafe, that were credited; is that right?
A Yeah, you know, at that time when I first wrote that, I didn't realize that the provisional ballot module does not work, and actually it's failsafe.
Q Okay.
A When I look at the voting history screen, I saw all these categories. So that's why I put that in there.
Q The next line of the procedure: Go into DIMS and access voter record. To access record, you might need to use name, and/or date of birth, and/or address, and/or your detective creativity, using wildcard"%" key.
A Yes.
Q Is that right?
A Yes.
Q What's the wildcard key?
A Which means it's kind of like the question mark or the star

for search, you know. It's anything that has these and anything that will fit the criteria.

Q So you instructed people to try different variations of --

A If they cannot. If there is -- if they cannot find that record, then they -- sometimes, it might be instead of the name, people use just the -- like, Colleen, they just use C. Kwan, instead of Colleen Kwan. So if you type Colleen in there for the first name, you won't find it, so --

Q And your team was instructed to do more than just look for an exact match?

A Yeah.

Q They were instructed to use wildcards, do whatever they could to see if someone -- whether that person was in the data base?

A Yes.

Q And there are many more procedures here. I don't want to take all of your time to go through all of them, but the substance of them appears to be that your team would compare the information in the poll book with the information in DIMS and determine whether the person was a registered voter who had been eligible to vote in the election, and then if they were, to determine whether they had been -- whether their signatures matched and whether they had already been credited with voting in the election.

A Yes.

Q And if they hadn't, to credit them?
A No, not to credit them.
Q No.
A To find out what is it that they are being credited for.
Q What they had already been credited for?
A Yes.
Q So part of this project you didn't credit somebody who hadn't already -- well, you didn't credit anybody as part of this project?
A That was not part of the project --
Q Okay.
A -- assignment.
Q And the third page of the Look-Up Voters Who Were Issued Provisional Ballots But With No PB Labels document, there is another form of a chart for your team to fill in; is that right?
A Yes.
Q And that includes the precinct -- DIMS Precinct Name Proof. What does that mean, proof?
A Proof means I want them to print out that sheet.
Q Print out the individual's voter record from DIMS?
A Yes, that's the precinct that they are -- because there is a possibility they're not -- they don't belong to that precinct where they were issued a provisional ballot.
Q All right. And then voter's name, address, city, zip code.

Then there is a column entitled PB SIG 1/0 Proof. What does that column mean?

A It means if that provisional ballot voter has a signature.

Q In the poll book?

A In the poll book.

Q You put a 1 if they did, a zero if they didn't?

A Yes.

Q Using the binary system? And the next column, SIG COMP 1/0 Proof, what does that column mean?

A That is the provisional -- the signature that is on the poll book page, provisional ballot poll book page, see if it match with a image, signature image in DIMS.

Q And if it matched, they'd write the number 1, if it didn't, they'd write zero; is that right?

A That is correct.

Q The next column, registered voter 1/0. That's if the person appeared in DIMS as a registered voter, they'd put the number 1, and if the person didn't, they'd put the number zero?

A If they were valid registered voter, 1. And if not, zero.

Q And in determining whether they were valid registered voters, that included determining whether they were valid registered voters at the time of the November 2004 election; is that right? You look to see when they registered and whether they were an active voter in November 2004?

A Yes. That is what it is intended.

Q You're smiling. Do you have some doubt as to whether that actually --
A No, this is because we're looking at the election, November 2nd, 2004. So that is supposed to check at the time whether they were valid registered voters.
Q As your team looks up the information in DIMS, can they see the date of registration?
A They see the date of registration, yes.
Q And they were supposed to check to make sure that that date was prior to the November 2004 election?
A Because as they go into a different -- the voting history, and the election does not show up, you know, because there is an option of eligible elections. If they -- if it doesn't show up November, you know, 2nd, 2004, included in those eligible elections, then they need to look at the date of registration and also transaction history.
Q Were they instructed to take those steps if that occurred?
A Yes. Instructed in a sense that those were issues that were being raised as they were going through that, and so we discussed that. And after discussion, that's what needs to be done in order -- because if they don't show up as election then you need to check out why weren't they eligible even though they are in DIMS as registered voters.
Q All right. When was this work done?
A I don't know the date to that, 5/3/23, 2005 March 23rd.

Q March -- March 23, 2005. My parents do the same thing, reverse the month and the year.
A The Chinese tend to do that.
Q True. My parents are Irish, so they do it as well. All right. Back to Exhibit 3. The next column on the spreadsheet or the form is VCREDIT 1/0. That's whether the person had been previously credited with voting; is that right?
A That's yes.
Q And then in the next column, your team was to record whether that person had been credited with absentee, provisional, or at the poll; is that right? Is that what the AVP?
A No. That column actually is if inside on the poll book page there is indication that the provisional ballot went through Accuvote machine, then they should put that there.
Q Is that an indication that that specific voter's provisional ballot went through the Accuvote machine?
A That is based on the notes from the poll worker or inspector, you know, who wrote the provisional ballot or ballot went through Accuvote.
Q And I'm trying to understand what that note would say. Would it say a provisional ballot went through the Accuvote machine, or I saw Ms. Smith's provisional ballot go through the Accuvote machine?
A Ballot went through Accuvote.

Q Written on the poll book cover, or --
A No, on the line, you know.
Q On the same line --
A Same line.
Q -- in the poll book --
A In the poll book.
Q -- as the person who was identified as no label?
A Yes.
MR. EVEN: Could we go off the record just a second.
(Off the record.)
(Mr. Even exits the room.)
Q (By Mr. Maguire) The next column, Comments/Codes, Absentee, Provisional Ballot, Poll, Failsafe, and there is the letter O.
A Others.
Q Others, Pre/Post G Change NR Canc. Name Add Proof.
What does all that mean?
A Trying to squeeze everything all in there. Okay. Comments, essentially, that's a comment column to clarify when that person is being credited whether they are credited for absentee, for provisional ballot, for poll ballot or failsafe ballot. In this case, it never should be PB, because it doesn't work, that module, and others, if there are any other ways, I don't know, just a catch-all category. And then the Pre/Post G change means any change noted before and after the

general election that's affecting their status.
Q What's an example of the --
A Somebody canceled before the election.
Q So that's a pre or post change in the status of a person's registration?
A That's the change, you know, that are there -- actually, they registered -- the registration date is after the deadline, the mail registration cutoff date. So those are the comments.
Q And then --
A And then NR means not registered, canceled, whether it has something to do with name change or address change, and then please provide proof.
Q What kind of proof would --
A Basically, what they can come up from the DIMS system to tell them, yes, their registration date is actually October the 4th or October the 7th which passed a 30-day mail-in registration deadline.
Q Okay. And then the next column is voter polling place in DIMS?
A Yes.
Q That's simply the polling place where their precinct is located?
A Originally, I actually have the first column -- the second column, DIMS actually should be the column indicating where

the ballot was issued, the provisional ballot was issued. But then they -- they decided, well, at the heading of it, there is the poll book precinct name already, so we don't need that. So let's put the DIMS precinct name there.

Q So the DIMS precinct name is where the person is registered to vote?

A Yes.

Q And the poll book or poll location where they cast the provisional ballot is indicated at the header of the document, poll book, polling place where there is a blank, people would just record there the name of the poll -- polling place where the ballot -- provisional ballot was issued.

A The poll book precinct name is based on the poll book page, you know, where that -- from what precinct those pages come from.

Q Where the provisional ballot was issued?

A Yes.

Q All right. Let's move to the next document in Exhibit 3, which is a spreadsheet, a five-page spreadsheet entitled, Lookup Of Provisional Ballots With No Labels, and has a date of May 3rd, 2005. Did you prepare this spreadsheet?

A Where does it say -- oh, yes.

Q This was a summary of the work your team had done --

A Yes.

Q -- to accomplish the three purposes outlined by Mr. Logan?
A Yes.
Q All right. Let's walk through the spreadsheet to understand each column. First column is the polling place. Second column is the precinct where provisional ballot was issued; is that right?
A Yes. That's the polling place in the precinct poll book from which we get the information of the voter's name.
Q Okay. And then -- the next column is very small. It looks like it had a letter in there.
A Yeah.
Q It was collapsed. What's that?
A Well, those are actually my working columns. It doesn't really answer any of the questions for the purposes that I, you know, set out to do.
Q Okay.
A But I provided a copy of that, an expanded. That's why there was an expanded version of it, and you'll see it actually means PB no label. And the second column is PB no label too.
(Mr. Even enters the room.)
Q So in Exhibit 3 there are two spreadsheets, one that has the May 3rd, 2005 date on it, and the second one, which is four pages long, does not have the date on it. And the second one was the --
A Expanded, it has the EXP there, so that was the expanded one.

Q To include columns that were useful to you?
A Yeah, you know, because when I e-mailed this page to them -- I mean, this spreadsheet to them, this is the way I have it set up.
Q When you e-mail it to whom?
A To Mr. Huennekens.
Q When the team finished this task, you created this spreadsheet based on their work and e-mailed it to Mr. Huennekens?
A Yes.
Q And the version you e-mailed had the expanded columns, or not?
A Well, actually, the columns were there, but I kind of squished them because those are not information that they actually asked me to collect. Those are just my own information.
Q Okay. Well, let's start with the expanded --
A Okay.
Q -- spreadsheet and walk through that. Column C, PB No Label. What information is contained in that column?
A That PB No Label, again, we go back to that summary sheet where we have the --
Q The summary sheet from Linda Sanchez?
A Yes. Where we -- it shows the number of provisional ballots no label on there.

Q And that's different than the AV notation on the summary sheet; is that right? You can go back. That's in Exhibit 2, Bates No. 656 through 678. So if we take, for example, the first one on the spreadsheet, expanded spreadsheet in Exhibit 3, the Bellevue Senior Center, Precinct 48-0227, and the spreadsheet indicates in Column C, PB No Label, 5, and the canvassing crew summary sheet that Linda Sanchez provided you on Bates No. 658 for this precinct has the notations, 58 PB, 5 No Label; is that right?

A Yes.

Q And so it's an indication on Ms. Sanchez's document as to the number of no labels that resulted in you recording the numbers for Column C on the expanded spreadsheet in Exhibit No. 3?

A That's right. But then you also remember that we were given those copied poll book page sheets, which was highlighted, and so that's the one that the team were asked to go -- looked at, and look up in DIMS. So that's why this is a column. It's just for my purpose.

Q And --

A And these are the actual ones that were actually looked at.

Q Column D is the actual --

A Column D, yes.

Q So Column C, PB No Labels, are numbers taken from Ms. Sanchez' summary report?

A Yes.
Q And Column D, which is entitled PBNL with a star --
A Star, it's the actual one based on the poll book pages that were given to us to --
Q Okay.
A -- to do that.
Q The number of highlighted lines on provisional ballot sections of the poll book page that you had been told were no label.
A Yes.
Q And the next column, PBAV.
A Is if they were provisional ballots that, you know, again, based on what work that I had done before, I just wanted to kind of look at were they in there as well.
Q And that --
A That's -- again, it is a column for myself.
Q Right. And the numbers from that column come from Ms. Sanchez' summary sheet?
A Yes.
Q So if -- unless Ms. Sanchez had indicated a number AV on the summary sheet, the number in Column E on the expanded spreadsheet should be zero?
A Yes.
Q Okay. Not to jump ahead, but on Line 87 of the expanded spreadsheet for Panther Lake School, it indicates the number

1, and the area is grayed out, and then there is a notation in the comments 1 in 348 PBAV.

A Yes. Because that one was actually being counted in the 348.

Q And the same with the line above it?

A The line above it is actually only one out of the -- because there were actually six, but one in 348.

Q Okay. I understand. The next column, Column F, PBAV R, what does that mean?

A Say it again.

Q Column F on the expanded spreadsheet, PBAV R, what does that column represent?

A That means it was being recorded already.

Q Recorded where?

A In the 348 project.

Q So if there is a number in that column, it means it's already reflected in the spreadsheet that we were looking at as Exhibit 1 for the 348 provisional ballots?

A That is correct.

Q And the next Column, P Place plus or minus, what is that column?

A Well, those numbers come from the spreadsheet. Again, that's not a number I really need to be concerned with. But just, you know, because it indicates the variance that was noted in the polling place and in the precinct.

Q The variance between what and what?
A I guess in the box, you will look at -- in the box there is highlighted spreadsheet down below.
MR. MAGUIRE: Can we go off the record for a second?
MR. PORTER: Sure
(Off the record.)
(Exhibit 4 marked for identification.)
Q (By Mr. Maguire) I've just handed you what's the court reporter has marked as Exhibit 4, Ms. Kwan.
A Yes.
Q This is the King County Polling Place Reconciliation Summary for the 2004 general election; is that right?
A Yes.
Q And can you describe what this document is?
A This is the document that we are going to use to find the highlighted polling places for us to look at.
Q So this is the document Mr. Huennekens gave you --
A Yes.
Q -- that identified the polling places for you to evaluate in conducting that task; is that right?
A One more time.
Q This Exhibit 4, the reconciliation summary, is the document that Mr. Huennekens provided to you with highlights on it that indicated which polling places he wanted you to look at to carry out this task?

	A	B	C	D	E	F	G
1							
2	PBAV348 ADJUSTMENTS TO ACTUAL PBAV REVIEWED						
3							
4							
5	PPLACE	PRECINCT	PBAV ORIG	PBAV ADJ	± DIFFERENCE	#CRED	ACCOUNT
6	AKI KUROSE	SEA 37-1618	4	3	-1	3	3
7	AKI KUROSE	SEA 37-1619	2	1	-1	1	1
8	AKI KUROSE	SEA 37-1620	0	3	3	3	3
9	BEACON HILL ELEMENTARY	SEA 37-1925	3	2	-1	2	2
10	BEACON TOWER	SEA 37-1840	4	3	-1	3	3
11	BELL SCHOOL	KIR 45-2962	3	2	-1	2	2
12	DUVALL CHURCH	BACUS	2	3	1	1	3
13	DUVALL CHURCH	DUV 45-0389	5	3	-2	1	3
14	DUVALL CHURCH	DUV 45-3219	7	8	1	4	8
15	EMMANUEL PRESBYTERIAN CHURCH	BOT 01-0255	2	3	1	0	3
16	FIRST CONGREGATIONAL CHURCH	BEL 41-0198	5	7	2	1	7
17	FIRST CONGREGATIONAL CHURCH	BEL 41-3166	5	4	-1	2	4
18	GRASSLAKE SCHOOL	DARWOOD	1	0	-1	0	0
19	HAWTHORNE SCHOOL	SEA 37-1585	1	0	-1	0	0
20	HAZELWOOD SCHOOL	NEW 41-3261	1	2	1	2	2
21	KING COUNTY ADMIN BLDG	SEA 37-3416	2	1	-1	1	1
22	MEANY MIDDLE SCHOOL	SEA 43-1868	1	3	2	3	3
23	MEANY MIDDLE SCHOOL	SEA 43-1889	2	3	1	3	3
24	PANTHER LAKE SCHOOL	FED 30-3002	1	5	4	4	5
25	PROVIDENCE MT ST VINCENT	SEA 34-1490	2	1	-1	1	1
26	SACRED HEART CHURCH VESTIBULE	BEL 41-0206	1	2	1	2	2
27	SEATTLE PACIFIC UNIVERSITY	SEA 36-1812	1	2	1	2	2
28	SHERWOOD FOREST SCHOOL	BEL 48-0125	1	2	1	2	2
29	SHERWOOD FOREST SCHOOL	BEL 48-0153	1	2	1	2	2
30	SNOQUALMIE ELEMENTARY	SNQ 05-3151	6	5	-1	4	5
31	SOMERSET SCHOOL	BEL 41-2714	2	1	-1	0	1
32	THE JOSEPHINUM	SEA 36-1775	26	20	-6	20	20
33	THE JOSEPHINUM	SEA 43-1776	9	1	-8	1	1
34	THE JOSEPHINUM	SEA 43-3230	1	2	1	2	2
35	TIFFANY PARK	RNT 11-0985	5	6	1	3	6
36	UNIVERSITY HOUSE	SEA 43-2065	2	4	2	1	4
37	WASHINGTON MIDDLE SCHOOL	SEA 37-1839	15	16	1	16	16
38	WILSON PACIFIC	SEA 48-2619	1	2	1	2	2
39	YESLER TERRACE COMMUNITY ROOM	SEA 37-1897	1	3	2	2	3
40							
41	TOTAL 25 PPLACE	34 PRECINCTS	125	125	0	96	125
42							
43	In some of the polling places confirmed by either the inspector or the poll worker that provisional ballots went through Accuvote, some of the precincts had a greater number of provisional ballots with no labels, they were processed as well, and credited accordingly. This resulted in some precincts with higher number of provisional ballots being credited than first indicated on the "canvassing crew sheet."						
44							
45	Despite the above adjustments, the total PBAV being processed/credited comes to 348.						
46							
47	NOTE: 93 POLLING PLACES AND 148 PRECINCTS.						

PB IN AV CR TO PB VTR W/ SIG BUT NO LABEL

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1	PPLACE	PRECINCT	PBAV	#CRED	PRIOR CR	NOT REG	CANC	SIG MISCOM	NO SIG	NO NAME	NAME CHNG	TOT COL E:K	TOT ACCOUNT	COMMENTS
2	AKI KUROSE	SEA 37-1618	4	3	0	0	0	0	0	0	0	0	3	
3	AKI KUROSE	SEA 37-1619	2	1	0	0	0	0	0	0	0	0	1	
4	AKI KUROSE	SEA 37-1620	0	3	0	0	0	0	0	0	0	0	3	
5	ARROWHEAD SCHOOL	KMR 32-0340	1	0	1	0	0	0	0	0	0	1	1	
6	BAGLEY SCHOOL	SEA 46-1285	1	1	0	0	0	0	0	0	0	0	1	
7	BAGLEY SCHOOL	SEA 46-1310	1	1	0	0	0	0	0	0	0	0	1	
8	BALLARD FREE METHOD CH	SEA 36-2147	3	3	0	0	0	0	0	0	0	0	3	
9	BALLARD FREE METHOD CH	SEA 36-2161	2	2	0	0	0	0	0	0	0	0	2	
10	BARTON PLACE	SEA 37-1558	1	0	0	1	0	0	0	0	0	1	1	
11	BARTON PLACE	SEA 37-1559	1	0	1	0	0	0	0	0	0	1	1	
12	BEACON HILL ELEMENTARY	SEA 37-1925	3	2	0	0	0	0	0	0	0	0	2	
13	BEACON TOWER	SEA 37-1834	7	7	0	0	0	0	0	0	0	0	7	
14	BEACON TOWER	SEA 37-1840	4	3	0	0	0	0	0	0	0	0	3	
15	BEACON TOWER	SEA 37-1841	2	2	0	0	0	0	0	0	0	0	2	
16	BEAVER LAKE MIDDLE SCHOOL	RANCH	2	0	2	0	0	0	0	0	0	2	2	
17	BEAVER LAKE MIDDLE SCHOOL	THRUSH	1	0	0	0	1	0	0	0	0	1	1	
18	BELL SCHOOL	KIR 45-2962	3	2	0	0	0	0	0	0	0	0	2	
19	BELLEVUE SENIOR CENTER	BEL 48-2558	2	1	0	1	0	0	0	0	0	1	2	
20	BELLEVUE SENIOR CENTER	BEL 48-2774	2	2	0	0	0	0	0	0	0	0	2	
21	BELMOR PARK CLUB HOUSE	FED 30-2990	3	3	0	0	0	0	0	0	0	0	3	
22	BELMOR PARK CLUB HOUSE	FED 30-3301	1	1	0	0	0	0	0	0	0	0	1	
23	BOTHELL UNITED METHOD CH	BOT 01-2865	1	1	0	0	0	0	0	0	0	0	1	
24	BROOKSIDE SCHOOL	LFP 32-0650	1	1	0	0	0	0	0	0	0	0	1	
25	BURIEN COMMUNITY CENTER	BUR 34-0311	1	0	0	1	0	0	0	0	0	1	1	
26	CASCADE MIDDLE SCHOOL	BEVERLY	1	1	0	0	0	0	0	0	0	0	1	
27	CASCADE MIDDLE SCHOOL	EVERGREEN	5	5	0	0	0	0	0	0	0	0	5	
28	CASCADE MIDDLE SCHOOL	SYLVAN	5	4	0	1	0	0	0	0	0	1	5	
29	CASCADE MIDDLE SCHOOL	WYNONA	1	1	0	0	0	0	0	0	0	0	1	
30	CHRIST LUTHERAN CHURCH	FED 30-3046	5	3	1	1	0	0	0	0	0	2	5	
31	CLARK ELEMENTARY SCHOOL	ISS 05-2602	1	1	0	0	0	0	0	0	0	0	1	
32	CLARK ELEMENTARY SCHOOL	ISS 05-3464	8	3	4	1	0	0	0	0	0	5	8	
33	COLUMBIA SCHOOL	SEA 37-1608	1	0	1	0	0	0	0	0	0	1	1	
34	COLUMBIA SCHOOL	SEA 37-1609	1	1	0	0	0	0	0	0	0	0	1	
35	COMMUNITY BIBLE FELLOWSHIP	SEA 37-1571	1	0	0	1	0	0	0	0	0	1	1	
36	COUGAR RIDGE ELEMENTARY	BEL 41-2944	6	6	0	0	0	0	0	0	0	0	6	
37	CRISTA SENIOR COMMUNITY	SHL 32-0606	1	0	0	1	0	0	0	0	0	1	1	
38	CROSSROADS COMMUNITY CTR	BEL 48-2777	1	1	0	0	0	0	0	0	0	0	1	
39	CROWN LUTHERAN CHURCH	SEA 36-2529	2	2	0	0	0	0	0	0	0	0	2	

PB IN AV CR TO PB VTR W/ SIG BUT NO LABEL

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1	PPLACE	PRECINCT	PBAV	#CRED	PRIOR CR	NOT REG	CANC	SIG MISCOM	NO SIG	NO NAME	NAME CHNG	TOT COL E:K	TOT ACCOUNT	COMMENTS
40	DECATUR SCHOOL	SEA 46-2272	2	1	0	1	0	0	0	0	0	1	2	
41	DENNY MIDDLE SCHOOL	SEA 34-1246	1	0	1	0	0	0	0	0	0	1	1	
42	DUVALL CHURCH	BACUS	2	1	0	1	0	1	0	0	0	2	3	
43	DUVALL CHURCH	CHERRY VALLEY	3	2	1	0	0	0	0	0	0	1	3	
44	DUVALL CHURCH	DUV 45-0389	5	1	1	0	0	0	0	1	0	2	3	
45	DUVALL CHURCH	DUV 45-2959	3	3	0	0	0	0	0	0	0	0	3	
46	DUVALL CHURCH	DUV 45-3218	2	2	0	0	0	0	0	0	0	0	2	
47	DUVALL CHURCH	DUV 45-3219	7	4	1	3	0	0	0	0	0	4	8	
48	DUVALL CHURCH	DUV 45-3481	0	0	0	0	0	0	0	0	0	0	0	
49	DUVALL CHURCH	NOVELTY	4	2	2	0	0	0	0	0	0	2	4	
50	EMMANUEL PRESBYTERIAN CHURCH	BOT 01-0255	2	0	2	0 10	0	0	0	0	0	2 3	3	
51	FIRE STATION 35, WOODINVILLE	COTTAGE LAKE	1	1	0	0	0	0	0	0	0	0	1	
52	FIRE STATION 35, WOODINVILLE	REINTREE	2	2	0	0	0	0	0	0	0	0	2	
53	FIRST CONGREGATIONAL CHURCH	BEL 41-0198	5	1	0	0 6	0	0	0	0	0	C 6	7	
54	FIRST CONGREGATIONAL CHURCH	BEL 41-3166	5	2	0	2	0	0	0	0	0	2	4	
55	GRASSLAKE SCHOOL	DARWOOD	1	0	0	0	0	0	0	0	0	0	0	
56	HALLER LAKE CLUBHOUSE	SEA 46-2145	1	1	0	0	0	0	0	0	0	0	1	
57	HAWTHORNE SCHOOL	SEA 37-1585	1	0	0	0	0	0	0	0	0	0	0	
58	HAZELWOOD SCHOOL	BEL 41-2386	8	3	2	3	0	0	0	0	0	5	8	
59	HAZELWOOD SCHOOL	NEW 41-1115	3	3	0	0	0	0	0	0	0	0	3	
60	HAZELWOOD SCHOOL	NEW 41-3228	1	1	0	0	0	0	0	0	0	0	1	
61	HAZELWOOD SCHOOL	NEW 41-3261	1	2	0	0	0	0	0	0	0	0	2	
62	HOLLYHILLS MOBILE ESTATE	BOT 01-2676	1	1	0	0	0	0	0	0	0	0	1	
63	INTERNATIONAL TERRACE	SEA 37-1825	1	0	0	1	0	0	0	0	0	1	1	
64	KELLOGG MIDDLE SCHOOL	LFP 32-0003	2	2	0	0	0	0	0	0	0	0	2	
65	KELLOGG MIDDLE SCHOOL	LFP 32-0397	1	0	0	1	0	0	0	0	0	1	1	
66	KENT MT VIEW ACADEMY	SET 33-1031	1	0	1	0	0	0	0	0	0	1	1	
67	KENT SCHOOL DISTRICT RESOURCE CTR	KEN 33-2567	2	2	0	0	0	0	0	0	0	0	2	
68	KING COUNTY ADMIN BLDG	SEA 37-3416	2	1	0	0	0	0	0	0	0	0	1	
69	KUBOTA GARDEN FOUNDATION	TUK 37-2946	1	0	1	0	0	0	0	0	0	1	1	
70	LAKE CITY COMMUNITY CENTER	SEA 46-2336	1	0	0	0	0	0	0	0	0	0	0	
71	LAKE CITY PRESBYTERIAN CHURCH	SEA 46-2320	1	1	0	0	0	0	0	0	0	0	1	
72	LAKE FOREST PARK SCHOOL	SHL 32-0001	1	0	1	0	0	0	0	0	0	1	1	
73	LAKE RIDGE SCHOOL	M-I 41-0781	2	2	0	0	0	0	0	0	0	0	2	
74	LUTHER MEMORIAL CHURCH	SEA 46-2217	1	0	1	0	0	0	0	0	0	1	1	
75	MAR VISTA SCHOOL	NPK 33-0857	2	2	0	0	0	0	0	0	0	0	2	
76	MARTIN SORTUN ELEMENTARY	KEN 47-2834	1	1	0	0	0	0	0	0	0	0	1	
77	MARTIN SORTUN ELEMENTARY	KEN 47-3184	2	2	0	0	0	0	0	0	0	0	2	

PB IN AV CR TO PB VTR W/ SIG BUT NO LABEL

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1	PPLACE	PRECINCT	PBAV	#CRED	PRIOR CR	NOT REG	CANC	SIG MISCOM	NO SIG	NO NAME	NAME CHNG	TOT COL E:K	TOT ACCOUNT	COMMENTS
78	MCCLURE MIDDLE SCHOOL	SEA 36-1744	2	1	0	0	0	0	0	0	0	0	1	
79	MEANY MIDDLE SCHOOL	SEA 43-1868	1	3	0	0	0	0	0	0	0	0	3	
80	MEANY MIDDLE SCHOOL	SEA 43-1889	2	3	0	0	0	0	0	0	0	0	3	
81	MIRROR LAKE SCHOOL	FED 30-2997	2	2	0	0	0	0	0	0	0	0	2	
82	MIRROR LAKE SCHOOL	FED 30-3395	1	1	0	0	0	0	0	0	0	0	1	
83	NEELY O'BRIEN ELEMENTARY	KEN 33-0581	1	0	0	1	0	0	0	0	0	1	1	REG IN PIERCE
84	NEELY O'BRIEN ELEMENTARY	KEN 33-2443	1	1	0	0	0	0	0	0	0	0	1	
85	NEELY O'BRIEN ELEMENTARY	KEN 33-3240	4	4	0	0	0	0	0	0	0	0	4	
86	NEELY O'BRIEN ELEMENTARY	KEN 33-3278	6	6	0	0	0	0	0	0	0	0	6	
87	NELSEN MIDDLE SCHOOL	AKERS	3	2	0	1	0	0	0	0	0	1	3	
88	NELSEN MIDDLE SCHOOL	MILDRED	2	1	1	0	0	0	0	0	0	1	2	
89	NELSEN MIDDLE SCHOOL	SPRING GLEN	3	2	0	1	0	0	0	0	0	1	3	
90	NORMAN ROCKWELL ELEMENTARY	RED 48-2641	2	2	0	0	0	0	0	0	0	0	2	
91	NORTH KIRKLAND COMMUNITY CTR	KIR 45-2930	1	1	0	0	0	0	0	0	0	0	1	
92	NORTH KIRKLAND COMMUNITY CTR	KIR 45-2932	9	7	1	1	0	0	0	0	0	2	9	
93	NORTH KIRKLAND COMMUNITY CTR	KIR 45-2933	1	1	0	0	0	0	0	0	0	0	1	
94	NORTH KIRKLAND COMMUNITY CTR	KIR 45-2934	1	1	0	0	0	0	0	0	0	0	1	
95	NORTH KIRKLAND COMMUNITY CTR	KIR 45-3109	1	1	0	0	0	0	0	0	0	0	1	
96	NORTH KIRKLAND COMMUNITY CTR	KIR 45-3198	1	1	0	0	0	0	0	0	0	0	1	
97	OUR LADY OF MT VIRGIN SCHOOL	SEA 37-1872	1	0	1	0	0	0	0	0	0	1	1	
98	PACIFIC SENIOR CENTER	PAC 30-2856	4	2	2	0	0	0	0	0	0	2	4	
99	PANTHER LAKE SCHOOL	FED 30-3002	1	4	0	1	0	0	0	0	0	1	5	
100	PANTHER LAKE SCHOOL	FED 30-3080	1	0	0	1	0	0	0	0	0	1	1	
101	PINEHURST SCHOOL	SEA 48-2326	1	1	0	0	0	0	0	0	0	0	1	
102	PROVIDENCE MT ST VINCENT	SEA 34-1490	2	1	0	0	0	0	0	0	0	0	1	
103	QUEEN ANNE BAPTIST CHURCH	SEA 36-1739	1	0	0	0	0	0	0	0	0	0	0	
104	RAINIER BEACH HIGH SCHOOL	SEA 37-1553	1	1	0	0	0	0	0	0	0	0	1	
105	SACRED HEART CHURCH VESTIBULE	BEL 41-0206	1	2	0	0	0	0	0	0	0	0	2	
106	SAINT JOHN LUTHERAN CHURCH	SEA 36-1343	1	0	0	0	0	0	0	0	0	0	0	
107	SAINT JOHN LUTHERAN CHURCH	SEA 36-1344	1	0	0	0	0	0	0	0	0	0	0	
108	SAINT JOSEPH CHURCH SOCIAL HALL	SEA 43-2028	2	0	0	0	0	0	0	0	0	0	0	
109	SAINT LUKE'S LUTHERAN CHURCH	BEL 48-0190	1	0	0	0	0	1	0	0	0	1	1	
110	SAINT PAUL UNITED CHURCH OF CHRIST	SEA 36-1321	2	0	2	0	0	0	0	0	0	2	2	
111	SAINT PAUL UNITED CHURCH OF CHRIST	SEA 36-1322	1	1	0	0	0	0	0	0	0	0	1	
112	SALMON CREEK SCHOOL	BERNICE	1	0	1	0	0	0	0	0	0	1	1	
113	SAMANTHA SMITH SCHOOL	SAM 05-3217	1	0	1	0	0	0	0	0	0	1	1	
114	SEATTLE PACIFIC UNIVERSITY	SEA 36-1812	1	2	0	0	0	0	0	0	0	0	2	
115	SEAVIEW METHODIST CHURCH	SEA 34-1477	2	2	0	0	0	0	0	0	0	0	2	

PB IN AV CR TO PB VTR W/ SIG BUT NO LABEL

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1	PPLACE	PRECINCT	PBAV	#CRED	PRIOR CR	NOT REG	CANC	SIG MISCOM	NO SIG	NO NAME	NAME CHNG	TOT COL E:K	TOT ACCOUNT	COMMENTS
116	SHERWOOD FOREST SCHOOL	BEL 48-0125	1	2	0	0	0	0	0	0	0	0	2	
117	SHERWOOD FOREST SCHOOL	BEL 48-0153	1	2	0	0	0	0	0	0	0	0	2	
118	SHORELINE FULL GOSPEL FELLOWSHIP	SHL 32-0378	1	0	0	0	0	0	0	0	0	0	0	
119	SKYKOMISH COMMUNITY CENTER	SKY 39-1091	1	1	0	0	0	0	0	0	0	0	1	
120	SNOQUALMIE ELEMENTARY	SI VIEW	6	5	0	0	1	0	0	0	0	1	6	
121	SNOQUALMIE ELEMENTARY	SNQ 05-3151	6	4	0	1	0	0	0	0	0	1	5	
122	SOMERSET SCHOOL	BEL 41-2714	2	0	1	0	0	0	0	0	0	1	1	
123	SOMERSET SCHOOL	BEL 41-2801	1	0	0	0	0	0	2	0	0	2	2	
124	SOMERSET SCHOOL	BEL 41-2936	1	1	0	0	0	0	0	0	0	0	1	
125	SOUTH CENTER COMMUNITY BAPTIST CH	TUK 11-2453	1	1	0	0	0	0	0	0	0	0	1	
126	SUNSET HILL COMMUNITY CLUB	SEA 36-1391	1	0	1	0	0	0	0	0	0	1	1	
127	SYLVESTER MIDDLE SCHOOL	BUR 34-0848	5	4	0	1	0	0	0	0	0	1	5	
128	THE CITY CHURCH	KIR 45-2913	1	0	0	1	0	0	0	0	0	1	1	
129	THE HEARTHSTONE	SEA 43-1406	1	1	0	0	0	0	0	0	0	0	1	
130	THE JOSEPHINUM	SEA 36-1775	26	20	3 0	0	0	0	0	0	0	30	24 20	
131	THE JOSEPHINUM	SEA 43-1776	9	0	0	0	0	0	0	0	1	1	1	
132	THE JOSEPHINUM	SEA 43-3230	1	2	0	0	0	0	0	0	0	0	2	
133	THE MARYMOOR	RED 48-2632	1	1	0	0	0	0	0	0	0	0	1	
134	THE NEIGHBORHOOD CHURCH	BEL 41-0128	1	1	0	0	0	0	0	0	0	0	1	
135	THORNDYKE SCHOOL	TUK 11-2956	1	0	0	0	0	0	0	0	0	0	0	
136	THORNDYKE SCHOOL	TUK 11-3393	1	1	0	0	0	0	0	0	0	0	1	
137	TIFFANY PARK	RNT 11-0985	5	3	1	2	0	0	0	0	0	3	6	
138	TIFFANY PARK	RNT 11-1008	1	2	1	2	0	0	0	0	0	3	5	
139	TRINITY METHODIST CHURCH	SEA 36-1325	6	5	0	1	0	0	0	0	0	1	6	
140	TRINITY UNITED PRESBYTERIAN CH	SHL 32-0692	2	2	0	0	0	0	0	0	0	0	2	
141	UNITED METHODIST CHURCH	SEA 34-1250	1	0	0	1	0	0	0	0	0	1	1	
142	UNITED METHODIST CHURCH	SEA 34-1252	1	1	0	0	0	0	0	0	0	0	1	
143	UNITED METHODIST CHURCH	SEA 34-3263	2	1	1	0	0	0	0	0	0	1	2	
144	UNIVERSITY HOUSE	SEA 43-2065	2	1	2	0	0	1	0	0	0	3	4	
145	VAN ASSELT SCHOOL	SEA 11-1641	1	1	0	0	0	0	0	0	0	0	1	
146	WASHINGTON MIDDLE SCHOOL	SEA 37-1839	15	16	0	0	0	0	0	0	0	0	16	
147	WHITWORTH ELEMENTARY SCHOOL	SEA 37-1610	1	1	0	0	0	0	0	0	0	0	1	
148	WILSON PACIFIC	SEA 46-2619	1	2	0	0	0	0	0	0	0	0	2	
149	YESLER TERRACE COMMUNITY ROOM	SEA 37-1897	1	2	0	1	0	0	0	0	0	1	3	
150	TOTAL POLLING PLACES 72-93	PRCNTS 147-145	349	262	40	48	2	3	2	1	1	92	344	
151												93		
152												92		
153	KEY:											91		

85

PB IN AV CR TO PB VTR W/ SIG BUT NO LABEL

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1	PPLACE	PRECINCT	PBAV	#CRED	PRIOR CR	NOT REG	CANC	SIG MISCOM	NO SIG	NO NAME	NAME CHNG	TOT COL E:K	TOT ACCOUNT	COMMENTS
154	PPLACE= POLLING PLACE; PRECINCT= PRECINCT; PBAV= PROVISIONAL BALLOT THRU ACCUVOTE													
155	#CRED= PBAV CREDITED; PRIOR CR= CREDITED PRIOR; NOT REG=NOT REGISTERED; CANC= CANCELED VTR; SIG MSICOM=SIG MISCOMPARES; NAME CHNG=NAME CHANGED													
156	TOT COL E:K= TOTAL OF COLUMNS E TO K; TOTAL ACCOUNT= TOTAL PBAV ACCOUNTED FOR (CREDITED AND COLUMN E:K)													

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January 20, 2005

CREDITING VOTERS FOR VOTING PROVISIONAL BALLOTS PUT THROUGH ACCUVOTE

1. Check the list given, and highlight all precincts with "(1AV, —4AV) etc. Please note their polling places as well.
2. Locate appropriate poll books for the precincts with ?AV highlighted.
3. Go through the poll book for that precinct and look in provisional ballot pages. Check voters with signature and who were issued a provisional ballot but had no PB label. Note signature as you will need to verify signature on file in DIMS.
4. Go into DIMS and access voter record.
   To access record, you might need to use name, and/or DOB, and/or address, and/or your detective creativity, using wildcard"%" key.
5. Once you locate the "possible" voter, open voter record, and click on image for signature. Verify pbook signature with DIMS signature.
6. **IF THE SIGNATURES MISCOMPARE, or DOBs NOT MATCH or you cannot find voter,** print the one or two record screen that shows:
   - Regnum, name, address, DOB (if available);
   - Signature image (if available);

   Then, make a copy of poll book page, highlight voter you "processed". THEN
7. Staple all printouts and copies for each voter.
8. Enter data on Excel sheet, and enter in comment column as "not registered" or "voter not located" or "no signature to compare", "signatures miscompare", "canceled". See attached Excel spreadsheet sample.
9. Staple Excel spread sheet to all voter sets (if you have more than 1 voter set) for each precinct. Start new spreadsheet for each new precinct.

10. **IF THE SIGNATURES MATCH,** open the following voter record screens
    - regnum, name, address and DOB screen (must);
    - signature screen (must),
    - precinct screen (optional to help you enter data into Excel spreadsheet),
    - poll place screen (optional to help you enter data into Excel spreadsheet),
    - then click on flags/misc, and voting history, and check if voter is being credited for having voted.
    - **If voter has already been credited for having voted,** make copy of all screens (min. 3 "must" screens), and poll book page with voter highlighted, staple them together AND THEN
    - Enter data on Excel sheet, and enter in comment column as 'credited prior". See attached Excel spreadsheet sample.
    - Staple Excel spread sheet to all voter sets (if more than 1 voter set) for that precinct. Start new spreadsheet for each new precinct.

    - **If voter has not been credited for having voted as indicated on the voting history screen, double click on the 11/2/2004 General Election row (make sure you check the election date, if 11/2/2004 Election is not showing, click the "All Election" box on the right bottom corner of the screen). A new screen will come up, and you credit the voter for VOTED by checking Voted Box, Fail Safe Ballot Requested box and Fail Safe Ballot Returned box. THERE SHOULD ONLY BE 4 BOXES CHECKED: Eligible, Voted, Fail Safe Ballot Requested, and Fail Safe Ballot Returned. If more than 4, please uncheck others like "AV Ballot Requested."**
    - Make copy of all the screens:
      Regnum, name, address and DOB screen (voter detail, MUST),
      Signature screen (MUST),
      Precinct screen (optional for own use to enter data in spreadsheet),
      Poll place screen (optional for own use to enter data in spreadsheet),
      Voting history screen reflecting credit given (must).
    - AND make a copy of the Poll book page, highlight the PB voter that you processed.
    - Staple all the paperwork for that voter into one set.
    - Enter data onto spread sheet, and when all data for that precinct is complete,
    - staple the Excel spread sheet for that precinct onto the set or sets of printout of the voter(s), whether the PB voters were credited for voting or not.

POLLING PLACE _____ NAME OF STAFF MEMBERS: _____ _____

ITEM	PRECINCT	VOTER LNAME	VOTER FNAME	ADDRESS	CITY	ZIP	COMMENTS	PPLACE REFERENCE
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								

Notes:

1. Discrepancies between PBNOLABEL and PBNL:
   PBNOLABEL, number as recorded in the canvassing crew worksheet. PBNL, number of PB voter info that were actually reviewed in the PBNL437 Project.

2. PBAV and PBAV R:
   PBAV number of PB estimated to have gone through the Accuvote.
   PBAV R, number of PB taken and recorded to have gone through the Accuvote. Included in 348 number.
   See, Panther Lake School FED 30-3002, and FED 30-3080.

3. PBNL L-U: Provisional Ballot No Label Look-up per shaded polling places in spreadsheet from Superintendent. 1=Shaded, selected for look-up, blank= not shaded and not selected for look-up. The polling places were looked up due to the significant difference as indicated in the PPLACE±.

4. PBNLR%: Percent of PBNL recorded. Since the actual number of PBNL is greater than the PBNOLABEL as indicated on the canvassing crew worksheet, this column is not used.

5. SIG XMAT: Signature cross matched. Spouse signing for one another or signing for self and spouse.

6. REGVTR: Based on information on the PBook PB page, the voter was determined to be a registered voter. Often with name and address would be sufficient. If more than one voter of the same name in DIMS, you might need signature verification to determine registration status of the voter.

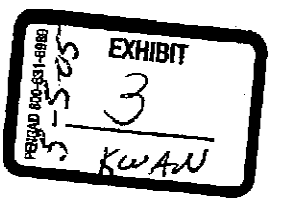
7. VCREDIT: Voter being credited for voted in Nov 2004 General Election.

8. PBAV: different from the prior PBAV. This is PBAV not accounted for in PBAV348. PB determined in this PBNL Project to have gone through Accuvote based on notes in poll book provisional ballot page.

9. ADDED TO PBAV TOTAL NCR: Should be added to PBAV, and it is not credited into the total of PBAV. Example 31 PB were indicated to have gone through Accuvote per pollworker notes. These were not indicated in the canvassing crew notes, and hence not processed in PBAV348 Project, but surfaced in PBNL437 Project. See Bothell Regional Library.

10. Voting history: Voter is absentee voter. Signed front of Poll book. Told to sign Provisional ballot page and issued a PB. In the "Wanding" process, the bar code with signature next to it was scanned. And then the provisional ballot signature envelope, was verified and credited. Wanda operator error.

11. PBSIG, SIG COMPARES, BUT LESSER NUMBER OF REG VOTERS BECAUSE: voter registered after cut off deadline for mail registration. Inactive, fatal pending for bad address,...etc.



King County Elections
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LOOK-UP VOTERS WHO WERE ISSUED PROVISIONAL BALLOTS BUT WITH NO PB LABELS

PURPOSE:

1. Determine if PB NO LABELVOTER is registered (with or without signature).
2. Determine if PB NO LABEL VOTER's signature on provisional page matches signature on file.
3. Determine if the PB NO LABEL VOTER on the provisional ballot page is credited, and if so, for WHAT? ABS, PROVSIONAL, POLL..

PROCEDURES:

1. *NO LABEL PB POLL BOOK LISTING*

2. You will be given provisional ballot pages from the poll book. Check voters on the provisional pages who were issued a provisional ballot (PB) but had no PB label returned. That is indicated by NO LABEL notation on page. They are highlighted.
3. If there are 3 "NO LABELS" on the sheet, make 3 copies of the sheet using the reduced format "LGL – LTR" on the copier. (Each of the copied sheet is the "cover sheet" for each voter's docs.
4. Please circle and initial on "LGL MASTER SHEET" the voter you processed. Do same for each copied sheet.
5. You need to note whether there is a signature associated with the name and address of each voter "WITH NO LABEL".
6. Look up each of the voters with no PB labels in DIMS to determine,
   - REGISTRATION,
   - VALIDITY OF SIGNATURE,
   - WHETHER THEY WERE CREDITED, AND
   - FOR WHAT (ABS, PB, POL, FAIL SAFE) THEY WERE CREDITED..
7. Go into DIMS and access voter record.
   To access record, you might need to use name, and/or DOB, and/or address, and/or your detective creativity, using wildcard"%" key.
8. Once you locate the "possible" voter, open voter record, CHECK DOB, PRINT BOTH FIND VOTER AND VOTER DETAIL PAGE. THEN COLOSE FIND VOTER SCREEN TO AVOID DUP PRINTING.
9. Go to Properties and check date of registration. AND/OR
10. Go to Flag/Misc screen, and click on LAST TRANSACTION to check on date of cancellation, address change, name change ...etc..
11. Check when those changes occurred on DIMS.
12. NOTE in COMMENT/CODE. Field, PRE/ POST GEN CHANGE. If it is after 2004 Genl Election, please ENTER PRE/POST GEN CHANGE
13. Specify what change, address, name, cancellation, new registration ... etc.
14. Print out PROPERTIES AND TRANSACTION LOG screens. Set them aside for later compilation.
15. If address in DIMS is different from address on PB page, please put down in comment, PRE or POST GEN CHANGE - ADDRESS.
16. If PB voter is not on DIMS, s/he is not a registered voter. Check "0" under REG VTR field.
17. If according to poll worker note, PB went into accuvote, enter "1" under AV field.
18. If you don't know whether PB went into AV, enter "0" under AV field.

19. *CHECK SIGNATURE.*

20. If there is no signature, under PB SIG on spreadsheet, enter "0".
21. If there is signature, under PB SIG on spreadsheet, enter "1".
22. For PB voter with signature, check signature to determine validity.
23. Click on image for signature. Verify poll book signature with DIMS signature. Determine if PB signature compares or miscompares with DIMS signature.
24. Under SIG COMP, enter "1" if it is a valid signature, and a "0" if PB signature miscompares with DIMS' signature. Print out DIMS signature screen as proof, set aside for later use in compilation.

25. *CHECK VOTER REGISTRATION.*

26. If PB voter is valid registered voter, under REGVTR, enter "1". Print out DIMS screen as proof, set aside for later use in compilation.
27. If PB voter is not a valid registered voter, under REGVTR, enter "0".
28. If you have not done so, Go to Properties to check date of registration, and/or Flag/Misc screen and select Last transaction, to check and print out last transaction history log, and set aside for later use in compilation.

29. Go to PRECINCT SCREEN (puzzle icon), print DIMS screen with Precinct number and name. Enter precinct name on spreadsheet for each voter under PRECINCT.
30. Go to POLL PLACE SCREEN (under "house with flag icon), print POLL PLACE screen. Enter poll place for each voter under PPLACE.

31. CHECK IF VOTE IS CREDITED.

32. Go to Flag/Misc screen, and click on voting history to check if voter is credited for having voted in the 2004 General Election.
33. If voter had been credited as indicated by a "Y" under VOTED field, in the spreadsheet under VCREDIT, enter "1". AND if voter is not credited, under VCREDT, enter "0".
34. If voter is credited for having voted, check why voter was credited: ABS, PB, POLL, FAIL SAFE (FS), OTHERS. Enter the appropriate CODE: ABS, POLL, FS, PB, OTHER under COMMENT/CODE field. If it is OTHER, please note in comment column, what it is.
35. Print the voting history screen as proof, set aside for later use in compilation.

36. PROOFS AND DOCUMENTS.

37. You should now have
    1. Spreadsheet of a PRECINCT within a POLLING PLACE, with all data of PB voters entered. Every field should be entered. If no data, place a dash in the cell.
    2. A copy of the provisional ballot page with the name of a PB NO LABEL VOTER highlighted with your initial next to it.
    3. All the "proof" sheets printed out from DIMS that show:
        a. Regnum, name, address, DOB (if available);
        b. Properties (if available);
        c. Transaction log screen (if available);
        d. Precinct name screen (if available);
        e. Poll place screen (if available);
        f. Signature image (if available);
        g. Last transaction history log (if available);
        h. Voting history screen indicating whether they were credited or not in the 2004 General Election, and showing why they were credited (if available). AND in addition

38. *STAPLE and BINDER CLIP.*

39. Staple all printouts and copies for EACH VOTER in the order listed above.
40. For each voter, the provisional ballot page should be on top .
41. Double check data entered on spreadsheet for each PRECINCT in the appropriate fields. PB SIG, SIG COMP, REGVOTR, VCREDIT, ABS, PB, POLL, FAIL SAFE, OTHERS.
42. GROUP DOCS BY PRECINCTS, AND CLIPPED WITH BLACK BINDER CLIPS.
43. For each precinct, staple Excel spread sheet to all voter sets (if more than 1 voter set) for that precinct. Start new spreadsheet for each new precinct.
44. Aggregate all precincts within a polling place. Use bigger black binder clip to AGGREGATE them.

45. PLACE MATERIAS IN BOX.

46. SORT MATERIAS IN BOX IN DESCENDING ALPHABETICAL ORDER BY POLLING PLACE.

47. KEEP SORTED MATERIALS IN BOX.

TIPS to avoid printing the same DIMS screen over and over again, use the following procedure:

1. *Open up find voter screen;*
2. *Then open up Voter Detail screen;*
3. *Click on the printer icon in DIMS. These two screens will print.*
4. *Close Find Voter Screen.*
5. *Then from Voter Detail screen, click on Image to open signature screen,*
6. *Select puzzle icon on top to open the Precinct name screen.*
7. *Select the house with flag icon on top to open the Polling place name screen.*
8. *Select the Flag/Misc from Voter Detail, and click on Last transaction to open up transaction log screen.*
9. *Click on Flad/Misc screen, and click on Voting history to open up voting history screen.*
10. *Hit print, you will have all the screens you need all in one print run.*
11. *IF YOU NEED THE EXACT REGISTRATION DATE, YOU NEED TO GO BACK TO VOTER DETAIL AND SELECT PROPERTIES SCREEN TO GET THAT SPECIFIC PAGE. PRIOR TO PRINTING THAT PAGE, CLOSE ALL PAGES TO AVOID DUPLICATE PRINTING OF OTHER PAGES.*

IF QUESTIONS, PLEASE ASK AND CLARIFY. AFTER THE FIRST PRECINCT, GO OVER WITH TRAINER TO CONFIRM PROCEDURES WERE FOLLOWED. THANK YOU FOR YOUR HELP AND COOPERATION.

PB NO LABEL 5.3.23.3 POLL BOOK PRECINCT NAME _____

POLL BOOK POLLING PLACE _____ NAME OF STAFF MEMBERS: _____ _____

ITEM	DIMS PRECINCT NAME PROOF	VOTER LNAME	VOTER FNAME	ADDRESS	CITY	ZIP	PB SIG "1"/"0" PROOF	SIG COMP "1"/"0" PROOF	REG VTR "1"/"0" PROOF	VCREDIT "1"/"0" PROOF	A V P	COMMENTS/ CODES ABS, PB, POLL, FS, O PRE/POST G CHANGE NR, CANC,NAME,ADD PROOF	VOTER PPLACE IN DIMS PROOF
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
11													
12													

INSTR.PB NOLABEL CREDIT.5.3.23.R5.3.24.

LOOKUP OF PROVISIONAL BALLOTS WITH NO LABELS 5/3/2005

	A	B	D	G	J	K	M	N	O	P	Q	R	S	T	U
1	**PROVISIONAL BALLOTS WITH NO LABELS**														
2	KEY: PBNL= #PB WITH NO LABELS; PPLACE ±=DIFFERENCE AT PPLACE; PBSIG=# SIGS ON PB PAGE; SIG MATCH=#PB & DIMS SIG MATCH; REGVTR=REG VOTERS;														
3	VCREDIT=#PB VOTER CREDITED; VCPOLL=CREDITED FOR VOTING @POLL; VCAV=CREDITED FOR VOTED ABSENTEE; VCFS=CREDITED FOR PROV BALLOT.														
4	% REG= PERCENT PB VOTERS REGISTERED FOR THIS PRECINCT; % VCREDIT=PERCENT OF PB VOTERS CREDITED FOR THIS PRECINCT.														
5	ADDED TO PBAV NOT CREDITED, ADD TO TOTAL OF PB THAT WENT INTO ACCUVOTE MACHINE BUT NOT CREDITED IN MASTER SHEET.														
6	NOTE: **PROVISIONAL BALLOTS WITH NO LABELS ACCOUNTED FOR IN THE 348 ARE NOT INCLUDED IN THESE NUMBERS.**														
7															
8	PPLACE	PRECINCT	PBNL*	PPLACE±	PBSIG	SIG MATCH	REGVTR	VCREDIT	VC POLL	VC AV	VC FS	PBAV	% REG	% VCREDIT	COMMENTS
9	BELLEVUE SENIOR CENTER	BEL 48-0227	4	4	4	4	3	0					75%	0%	
10	BELLEVUE SENIOR CENTER	BEL 48-2958	2	1	2	1	2	0					100%	0%	
11	BLACK DIAMOND COMMUNITY CTR	B-D 05-0239	2	1	2	1	1	1			1		50%	50%	1FS
12	BLACK DIAMOND COMMUNITY CTR	B-D 05-0240	1	1	1	1	1	1	1				100%	100%	1POLL
13	BLAKELY MANOR	SEA 43-2087	1	0	1	1	1	1			1		100%	100%	1FS
14	BLAKELY MANOR	SEA 43-2088	2	2	2	2	2	0					100%	0%	
15	BLESSED SACRAMENT	SEA 43-2048	5	0	5	5	5	0					100%	0%	
16	BLESSED SACRAMENT	SEA 43-2049	2	2	2	0	0	0					0%	0%	
17	BOTHELL REGIONAL LIBRARY	BOT 01-0253	3	3	3	2	2	0	1				67%	0%	ADDED TO PBAV TOTAL NCR
18	BOTHELL REGIONAL LIBRARY	BOT 01-0254	5	7	5	4	4	1					80%	20%	1POLL ADDED TO PBAV TOTAL NCR
19	BOTHELL REGIONAL LIBRARY	BOT 01-0259	2	-1	2	2	2	0					100%	0%	ADDED TO PBAV TOTAL NCR
20	BOTHELL REGIONAL LIBRARY	BOT 01-0260	2	2	2	0	0	0					0%	0%	ADDED TO PBAV TOTAL NCR
21	BOTHELL REGIONAL LIBRARY	BOT 01-0262	1	1	1	1	1	1	1				100%	100%	1POLL
22	BOTHELL REGIONAL LIBRARY	BOT 01-3271	10	16	10	9	8	0					80%	0%	1 NREG POST GEN ADDED TO PBAV TOTAL NCR
23	BOTHELL REGIONAL LIBRARY	BOT 01-3398	10	4	10	6	6	0					60%	0%	ADDED TO PBAV TOTAL NCR
24	BRYN MAWR SCHOOL	SHAMROCK	7	7	7	6	7	0					100%	0%	
25	BRYN MAWR SCHOOL	STAR	1	-2	1	0	1	0					100%	0%	VOTER AT ADDRESS BUT DIMS SIG MIS MATCH
26	BRYN MAWR SCHOOL	WALLACE	2	2	2	2	2	1			1		100%	50%	1FS
27	COVINGTON COMM CHURCH	CLAY	3	3	3	3	2	0					67%	0%	
28	DENNY TERRACE	SEA 43-2541	12	13	11	8	9	2	2				75%	17%	2POLL
29	DENNY TERRACE	SEA 43-2545	3	1	3	3	2	1			1		67%	33%	1FS
30	DENNY TERRACE	SEA 43-2546	2	0	2	2	2	2			2		100%	100%	2FS
31	DENNY TERRACE	SEA 43-2547	12	12	12	12	12	1			1		100%	8%	1FS
32	DENNY TERRACE	SEA 43-2549	7	4	7	6	6	2			2		86%	29%	2FS
33	EASTGATE SCHOOL	BEL 41-2866	1	1	1	1	1	0					100%	0%	
34	EASTGATE SCHOOL	BEL 41-2970	1	1	1	1	1	0					100%	0%	
35	EASTGATE SCHOOL	HILLTOP	2	2	2	2	2	2	2				100%	100%	2POLL
36	EASTRIDGE BAPTIST CHURCH	SOOS CREEK	1	1	1	1	1	0				1	100%	0%	PBAV NOT CREDITED
37	GILDO REY SCHOOL	AUB 31-0046	2	2	2	2	2	0					100%	0%	
38	GILDO REY SCHOOL	AUB 31-3405	2	2	2	1	1	0					50%	0%	
39	GILDO REY SCHOOL	AUB 31-3477	1	1	1	1	1	0					100%	0%	
40	GLACIER PARK SCHOOL	M-V 05-2614	3	3	3	3	3	1	1				100%	33%	1POLL
41	GREENLAKE SCHOOL	SEA 43-1266	2	0	0	0	1	1			1		50%	50%	1FS

	A	B	C	D	E	F	G	H	J	K	L	M	N	O	P	Q	R	S	T	U
1										PROVISIONAL BALLOTS WITH NO LABELS										
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7																				
8	PPLACE		PRECINCT		PPBNL*		PPLACE±		PPBSIG	SIG MATCH		REGVTR	VCREDIT	VC POLL	VC AV	VC FS	PBAV	% REG	% VCREDIT	COMMENTS
42	GREENLAKE SCHOOL		SEA 43-1289		1		1		1	1		1	0					100%	0%	
43	HAZEN HIGH SCHOOL		MCCLAIN		1		1		1	1		1	1	1				100%	100%	1POLL
44	HAZEN HIGH SCHOOL		RNT 41-2815		3		2		3	2		2	0					67%	0%	
45	HORIZON ELEMENTARY		KEN 47-0498		1		1		1	1		1	1	1				100%	100%	1POLL
46	HORIZON ELEMENTARY		KEN 47-0799		1		1		1	1		0	0					0%	0%	NREG POST GEN
47	HORIZON ELEMENTARY		KEN 47-0910		4		6		4	4		4	0					100%	0%	
48	KELLER SCHOOL		CEDAR		6		6		6	5		4	0					67%	0%	CANC PRE GEN
49	KELLER SCHOOL		HANSELL		5		3		3	2		5	2		2			100%	40%	2AB
50	KELLER SCHOOL		JEAN		8		8		8	8		8	5	4	1			100%	63%	4POLL 1AB
51	KELLER SCHOOL		RYAN		1		1		1	1		1	0					100%	0%	
52	LAKERIDGE SCHOOL		M-I 41-0782		1		1		1	1		1	0					100%	0%	
53	LAKERIDGE SCHOOL		M-I 41-0793		2		0		2	2		2	0					100%	0%	
54	LAKERIDGE SCHOOL		M-I 41-2445		1		1		1	1		1	1	1				100%	100%	1POLL
55	LUTHER MEMORIAL CHURCH		SEA 46-2210		1		0		1	1		1	1			1		100%	100%	1FS
56	LUTHER MEMORIAL CHURCH		SEA 46-2217		2	1	1		2	2		2	2	2				100%	100%	2POLL (CREDITED AS POLL VOTES IN OFFICE)
57	LUTHER MEMORIAL CHURCH		SEA 46-2224		5		5		3	3		5	1	1				100%	20%	1POLL
58	MATTSON JR HI		COV 47-3279		1		-1		1	1		1	0					100%	0%	
59	MATTSON JR HI		HAM LAKE		1		1		1	1		1	0					100%	0%	
60	MEEKER HR HI		APOLLO		3		1		3	3		3	1			1		100%	33%	1FS
61	MEEKER HR HI		FULLER		1		0		1	1		1	1			1		100%	100%	1FS
62	MEEKER JR HI		POTLATCH		2		2		2	2		1	0					50%	0%	
63	MEEKER JR HI		RUSH		2		2		2	2		2	0					100%	0%	
64	MEEKER JR HI		WANDA		1		0		1	1		1	0					100%	0%	
65	MERCER ISLAND HIGH SCHOOL		M-I 41-0770		2		1		2	2		2	1			1		100%	50%	1FS
66	MERCER MIDDLE SCHOOL		SEA 11-1946		2		1		2	2		2	1			1		100%	50%	1FS
67	MERCER MIDDLE SCHOOL		SEA 11-1947		1		1		1	1		1	1			1		100%	100%	1FS
68	MINOR SCHOOL		SEA 37-1584		0		1													
69	MINOR SCHOOL		SEA 43-1853		1		-2		1	1		1	1			1		100%	100%	1FS
70	MINOR SCHOOL		SEA 43-1876		1		-1		1	1		1	1			1		100%	100%	1FS
71	MINOR SCHOOL		SEA 43-1877		9		10		9	8		7	1	1				78%	11%	1POLL
72	MOSHIER RECREATION CENTER		BUR 33-0281		4		3		4	4		4	0					100%	0%	
73	MOSHIER RECREATION CENTER		BUR 33-0515		4		3		4	4		4	1			1		100%	25%	1FS
74	MOSHIER RECREATION CENTER		BUR 33-0729		1		1		1	1		1	0					100%	0%	

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7															
8	PPLACE	PRECINCT	PBNL*	PPLACE±	PBSIG	SIG MATCH	REGVTR	VCREDIT	VC POLL	VC AV	VC FS	PBAV	% REG	% VCREDIT	COMMENTS
75	MOSHIER RECREATION CENTER	BUR 33-1067	2	1	2	2	2	0					100%	0%	
76	NEW HOLLY NEIGHBORHOOD CAMPUS	SEA 37-1637	3	1	3	2	2	1	1				67%	33%	1POLL
77	NEW HOLLY NEIGHBORHOOD CAMPUS	SEA 37-1648	2	5	2	1	1	0					50%	0%	
78	NORMAN ROCKWELL ELEMENTARY	RED 45-2410	3	2	3	1	1	1			1		33%	33%	1FS
79	NORMAN ROCKWELL ELEMENTARY	RED 45-2636	2	2	2	2	2	0					100%	0%	
80	NORMAN ROCKWELL ELEMENTARY	RED 45-3281	1	1	1	1	1	0					100%	0%	
81	NORMAN ROCKWELL ELEMENTARY	RED 45-3282	2	0	2	2	2	1			1		100%	50%	1FS
82	NORMAN ROCKWELL ELEMENTARY	RED 46-0934	1	0	1	1	1	1			1		100%	100%	1FS
83	PACIFIC MIDDLE SCHOOL	KEN 33-0585	1	0	1	1	1	0					100%	0%	
84	PACIFIC SENIOR CENTER	PAC 30-0887	5	5	5	4	4	0				1	80%	0%	1PBAV NOT IN 348 NOT CREDITED
85	PANTHER LAKE SCHOOL	FED 30-3001	3	0	3	1	1	0					33%	0%	
86	PANTHER LAKE SCHOOL	FED 30-3002	1	5	5	5	6	5			5		120%	100%	4FS, PBNL 6 BUT 1 IN 348PBAV
87	PANTHER LAKE SCHOOL	FED 30-3080	1	4	1	0	0	0					0%	0%	
88	PARK ORCHARD	ANTOINE	1	1	1	1	1	0					100%	0%	
89	PARK ORCHARD	MARDI GRAS	6	6	6	5	5	4	4				83%	67%	4POLL
90	PARK ORCHARD	ORCHARD	8	7	8	7	7	5	4		1		88%	63%	4POLL 1FS
91	PARK ORCHARD	STOCKTON	2	2	2	2	2	0					100%	0%	
92	PINE LAKE COVENANT CHURCH	SAM 05-0307	3	3	3	3	3	2	1		1		100%	67%	1POLL 1FS
93	PINE LAKE COVENANT CHURCH	SAM 05-0616	3	2	3	3	1	0					33%	0%	
94	PINE LAKE COVENANT CHURCH	SAM 05-2469	2	2	2	2	2	1			1		100%	50%	1FS
95	PINE LAKE COVENANT CHURCH	SAM 05-2491	4	4	4	4	3	0					75%	0%	
96	PINE LAKE COVENANT CHURCH	SAM 05-2690	2	0	2	2	2	1			1		100%	50%	1FS
97	PINE LAKE COVENANT CHURCH	SAM 05-2693	3	3	3	3	3	0					100%	0%	
98	PINE LAKE COVENANT CHURCH	SAM 05-3412	9	10	9	9	9	0					100%	0%	
99	PINE TREE SCHOOL	AUB 47-3455	6	1	6	6	6	0					100%	0%	
100	PINE TREE SCHOOL	HANK	1	1	1	1	1	0					100%	0%	
101	PINE TREE SCHOOL	KEN 47-0753	2	2	2	1	1	0					100%	0%	
102	PINE TREE SCHOOL	KEN 47-3323	3	3	3	2	3	0					50%	0%	
103	PINE TREE SCHOOL	OLSON	1	1	1	1	1	0					100%	0%	
104	PIONEER SCHOOL	AUB 31-0062	1	2	1	1	1	0					100%	0%	
105	PIONEER SCHOOL	AUB 31-0070	3	3	3	3	3	1		1			100%	33%	1AB
106	PIONEER SCHOOL	AUB 31-0082	4	4	3	3	4	1	1				100%	25%	1POLL
107	RAINIER VISTA COMMUNITY CENTER	SEA 37-1595	6	5	6	0	0	0					0%	0%	

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7																				
8		PPLACE	PRECINCT	F	PBNL*	F	PPLACE±	F	PBSIG	SIG MATCH	F	REGVTR	VCREDIT	VC POLL	VC AV	VC FS	PBAV	% REG	% VCREDIT	COMMENTS
108		SAINT JOSEPH CHURCH SOCIAL HALL	SEA 43-2021		1		0		1	1		1	0					100%	0%	
109		SAINT JOSEPH CHURCH SOCIAL HALL	SEA 43-2022		1		0		1	1		1	0					100%	0%	
110		SANISLO SCHOOL	SEA 34-1497		2		2		2	2		2	0					100%	0%	
111		SANISLO SCHOOL	SEA 34-1513		2		1		2	1		1	1	1				50%	50%	1POLL
112		SCOTTISH RITE MASONIC CENTER	SEA 43-2034		4		3		4	4		4	3	2		1		100%	75%	1FS 2POLL
113		SCOTTISH RITE MASONIC CENTER	SEA 43-2037		3		-2		3	1		1	1			1		33%	33%	1FS
114		SEATAC BIBLE CHURCH	CAMELOT		9		0		9	6		6	4			4		67%	44%	[illegible]
115		SEATAC BIBLE CHURCH	GALAHAD		5		1		5	5		5	3	3				100%	60%	3POLL
116		SEATAC BIBLE CHURCH	KNIGHTS		12		1		11	7		7	0					58%	0%	
117		SEATAC BIBLE CHURCH	MERLIN		7		4		7	6		5	2		1	1		71%	29%	[illegible]
118		SEATAC BIBLE CHURCH	ROUNDTABLE		7		0		7	6		5	3	2	1			71%	43%	1AB 2POLL
119		SEATAC BIBLE CHURCH	SERENIDAD		15		1		15	12		12	1	1				80%	7%	1POLL
120		SEATTLE CENTRAL COMMUNITY COLL	SEA 43-1848		2		0		2	2		2	2	1		1		100%	100%	[illegible]
121		SEATTLE CENTRAL COMMUNITY COLL	SEA 43-1849		2		2		2	1		1	0					50%	0%	
122		SEATTLE CENTRAL COMMUNITY COLL	SEA 43-2543		1		0		1	1		1	0					100%	0%	
123		SEATTLE CENTRAL COMMUNITY COLL	SEA 43-2550		13		13		13	13		13	1			1		100%	8%	1FS
124		SHERWOOD FOREST SCHOOL	FED 30-3031		8		5		8	5		5	4	2	1	1		83%	67%	2POLL 1FS 1AB
125		SHERWOOD FOREST SCHOOL	FED 30-3045		2		1		2	0		0	0					0%	0%	
126		SHERWOOD FOREST SCHOOL	FED 30-3094		1		1		1	1		1	0					100%	0%	
127		SHERWOOD FOREST SCHOOL	FED 30-3095		3		1		3	2		2	1			1		67%	33%	1FS
128		SHERWOOD FOREST SCHOOL	FED 30-3237		3		3		3	2		2	0					67%	0%	
129		SHERWOOD FOREST SCHOOL	FED 30-3392		3		1		3	1		1	1		1			33%	33%	1AB
130		SOUTHERN HEIGHTS SCHOOL	MCKINLEY		2		0		2	2		2	1			1		100%	50%	1FS
131		SOUTHERN HEIGHTS SCHOOL	MEATH		2		2		1	1		2	1		1			100%	50%	1AB
132		SOUTHERN HEIGHTS SCHOOL	MONTEREY		1		0		1	1		1	1			1		100%	100%	1FS
133		SPIRITRIDGE SCHOOL	BEL 46-3144		2		2		2	2		2	0					100%	0%	
134		TIMBERLAKE CHRISTIAN FELLOWSHIP	AMES LAKE		4		4		3	3		4	0					100%	0%	
135		TIMBERLAKE CHRISTIAN FELLOWSHIP	JAY		5		6		5	3		2	0					40%	0%	
136		TIMBERLAKE CHRISTIAN FELLOWSHIP	MICHAEL		1		1		1	1		1	0					100%	0%	
137		TIMBERLAKE CHRISTIAN FELLOWSHIP	QUAIL		2		2		2	1		1	0					50%	0%	
138		TIMBERLAKE CHRISTIAN FELLOWSHIP	SAM 05-3386		1		1		1	1		1	0					100%	0%	
139		TIMBERLAKE CHRISTIAN FELLOWSHIP	WEEKS		3		2		3	2		2	0					67%	0%	
140		UNIVERSITY TEMPLE UNITED METHODIS	SEA 43-2063		11		32		11	11		11	1		1			100%	9%	1AB

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7															
8	PPLACE	PRECINCT	PBNL*	PPLACE±	PBSIG	SIG MATCH	REGVTR	VCREDIT	VC POLL	VC AV	VC FS	PBAV	% REG	% VCREDIT	COMMENTS
141	UNIVERSITY WEST	SEA 43-2050	3	2	3	3	3	1			1		100%	33%	1FS
142															
143	TOTAL		437	337	426	355	358	97	42	10	45		84%	26%	PERCENT IN COL. "S" & "T" IS AV. OF COL
144	PERCENTAGE PB NO LABEL ACCTED		100%		97.5%	81.2%	81.9%	22.2%							
145	PERCENTAGE PB NO LABEL CREDIT							100%	43.3%	10.3%	46.4%				
146															
147	ADDED TO PBAV NOT CREDITED, ADD TO TOTAL OF PB THAT WENT INTO ACCUVOTE MACHINE BUT NOT CREDITED.														

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U
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7																					
8		PROVISIONAL BALLOTS WITH NO LABELS																			
9	PPLACE	PRECINCT	PBNOLAB	PBNL*	PBAV	PBAV R	PPLACE=	PBNL L-U	PBNLR%	PBSIG	SIG MATCH	SIG XMAT	REGVTR	VCREDIT	VC POLL	VC AV	VC FS	PBAV	% REG	% VCREDIT	COMMENTS
10	BELLEVUE SENIOR CENTER	BEL 48-0227	5	4	0		4	1		4	4		3	0					75%	0%	
11	BELLEVUE SENIOR CENTER	BEL 48-2958	2	2	0		1	1		2	1		2	0					100%	0%	
12	BLACK DIAMOND COMMUNITY CTR	B-D 05-0239	2	2	0		1	1		2	1		1	1			1		50%	50%	1FS
13	BLAKELY MANOR	SEA 43-2087	1	1	0		1	1		1	1		1	1	1				100%	100%	1POLL
14	BLAKELY MANOR	SEA 43-2088	3	2	0		2	1		2	2		2	0			1		100%	100%	1FS
15	BLESSED SACRAMENT	SEA 43-2048	0	5	0		0	1		5	5		5	0					100%	0%	
16	BLESSED SACRAMENT	SEA 43-2049	2	2	0		2	1		2	0		0	0					100%	0%	
17	BOTHELL REGIONAL LIBRARY	BOT 01-0253	3	3	0		3	1		3	2		2	0	1	0			0%	0%	
18	BOTHELL REGIONAL LIBRARY	BOT 01-0254	4	5	0		7	1		5	4		4	1					67%	0%	ADDED TO PBAV TOTAL NCR
19	BOTHELL REGIONAL LIBRARY	BOT 01-0259	2	2	0		-1	1		2	2		2	0					80%	20%	1POLL ADDED TO PBAV TOTAL NCR
20	BOTHELL REGIONAL LIBRARY	BOT 01-0260	2	2	0		2	1		2	0		0	0					100%	0%	ADDED TO PBAV TOTAL NCR
21	BOTHELL REGIONAL LIBRARY	BOT 01-0262	0	1	0		1	1		1	1		1	1	1				0%	0%	ADDED TO PBAV TOTAL NCR
22	BOTHELL REGIONAL LIBRARY	BOT 01-3271	10	10	0		18	1		10	9		8	0					100%	100%	1POLL
23	BOTHELL REGIONAL LIBRARY	BOT 01-3396	10	10	0		4	1		10	6		6	0					80%	0%	1 NREG POST GEN ADDED TO PBAV TOTAL NCR
24	BRYN MAWR SCHOOL	SHAMROCK	7	7	0		7	1		7	6		7	0					86%	0%	ADDED TO PBAV TOTAL NCR
25	BRYN MAWR SCHOOL	STAR	0	1	0		-2	1		1	0		1	0					100%	0%	
26	BRYN MAWR SCHOOL	WALLACE	3	2	0		2	1		2	2		2	1			1		100%	50%	1FS
27	COVINGTON COMM CHURCH	CLAY	3	3	0		3	1		3	3		2	0					67%	0%	
28	DENNY TERRACE	SEA 43-2541	13	12	0		13	1		11	6		9	2	2				75%	17%	2POLL
29	DENNY TERRACE	SEA 43-2545	3	3	0		1	1		3	3		2	1			1		67%	33%	1FS
30	DENNY TERRACE	SEA 43-2546	0	2	0		0	1		2	2		2	2			2		100%	100%	2FS
31	DENNY TERRACE	SEA 43-2547	12	12	0		12	1		12	12		12	1			1		100%	8%	1FS
32	DENNY TERRACE	SEA 43-2549	7	7	0		4	1		7	6		6	2			2		86%	29%	2FS
33	EASTGATE SCHOOL	BEL 41-2865	0	1	0		1	1		1	1		1	0					100%	0%	
34	EASTGATE SCHOOL	BEL 41-2970	0	1	0		1	1		1	1		1	0					100%	0%	
35	EASTGATE SCHOOL	HILLTOP	0	2	0		2	1		2	2		2	2	2				100%	100%	2POLL
36	EASTRIDGE BAPTIST CHURCH	SOOS CREEK	0	1	0		1	1		1	1		1	0				1	100%	0%	PBAV NOT CREDITED
37	GILDO REY SCHOOL	AUB 31-0048	2	2	0		2	1		2	2		2	0					100%	0%	
38	GILDO REY SCHOOL	AUB 31-3405	2	2	0		2	1		2	1		1	0					50%	0%	
39	GILDO REY SCHOOL	AUB 31-3477	1	1	0		1	1		1	1		1	0					100%	0%	
40	GLACIER PARK SCHOOL	M-V 05-2814	3	3	0		3	1		3	3		3	1	1				100%	33%	1POLL
41	GREENLAKE SCHOOL	SEA 43-1288	2	2	0		0	1		0	0		1	1			1		50%	50%	1FS
42	GREENLAKE SCHOOL	SEA 43-1289	1	1	0		1	1		1	1		1	0					100%	0%	
43	HAZEN HIGH SCHOOL	MCCLAIN	0	1	0		1	1		1	1		1	1	1				100%	100%	1POLL
44	HAZEN HIGH SCHOOL	RNT 41-2816	0	3	0		2	1		3	2		2	0					67%	0%	
45	HORIZON ELEMENTARY	KEN 47-0498	0	1	0		1	1		1	1		1	1	1				100%	100%	1POLL
46	HORIZON ELEMENTARY	KEN 47-0798	0	1	0		1	1		1	1		0	0					0%	0%	NREG POST GEN
47	HORIZON ELEMENTARY	KEN 47-0910	0	4	0		6	1		4	4		4	0					100%	0%	
48	KELLER SCHOOL	CEDAR	6	5	0		6	1		6	5		4	0					67%	0%	CANC PRE GEN
49	KELLER SCHOOL	HANSELL	3	5	0		3	1		3	2		0	2		2			100%	40%	2AB
50	KELLER SCHOOL	JEAN	8	8	0		8	1		8	8		8	5	4	1			100%	63%	4POLL 1AB
51	KELLER SCHOOL	RYAN	1	1	0		1	1		1	1		1	0					100%	0%	

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U
1																					
2	KEY:	PBNL= #PB WITH NO LABELS; PPLACE=DIFFERENCE AT PPLACE; PBSIG=# SIGS ON PB PAGE; SIG MATCH=#PB & DIMS SIG MATCH; REGVTR=REG VOTERS;																			
3		VCREDIT=#PB VOTER CREDITED; VCPOLL=CREDITED FOR VOTING @POLL; VCAV=CREDITED FOR VOTED ABSENTEE; VCFS=CREDITED FOR PROV BALLOT.																			
4		% REG= PERCENT PB VOTERS REGISTERED FOR THIS PRECINCT; % VCREDIT=PERCENT OF PB VOTERS CREDITED FOR THIS PRECINCT.																			
5		ADDED TO PBAV NOT CREDITED, ADD TO TOTAL OF PB THAT WENT INTO ACCUVOTE MACHINE BUT NOT CREDITED IN MASTER SHEET.																			
6	NOTE:	PROVISIONAL BALLOTS WITH NO LABELS ACCOUNTED FOR IN THE 348 ARE NOT INCLUDED IN THESE NUMBERS.																			
7																					
8		PPLACE	PRECINCT	PBNOLAB	PBNL*	PBAV	PBAV R	PPLACE±	PBNL L-U	PBNLR%	PBSIG	SIG MATCH	SIG XMAT	REGVTR	VCREDIT	VC POLL	VC AV	VC FS	PBAV	% REG	% VCREDIT	COMMENTS
52		LAKERIDGE SCHOOL	M-I 41-0782	0	1	0		1	1		1	1		1	0					100%	0%	
53		LAKERIDGE SCHOOL	M-I 41-0793	0	2	0		0	1		2	2		2	0					100%	0%	
54		LAKERIDGE SCHOOL	M-I 41-2445	0	1	0		1	1		1	1		1	1	1				100%	100%	1POLL
55		LUTHER MEMORIAL CHURCH	SEA 46-2210	0	1	0		0	1		1	1		1	1			1		100%	100%	1FS
56		LUTHER MEMORIAL CHURCH	SEA 46-2217	1	2	1	1	1	1		2	2		2	2	2				100%	100%	2POLL (CREDITED AS POLL VOTES IN OFFICE)
57		LUTHER MEMORIAL CHURCH	SEA 46-2224	0	5	0		5	1		3	3		6	1	1				100%	20%	1POLL
58		MATTSON JR HI	COV 47-3279	0	1	0		-1	1		1	1		1	0					100%	0%	
59		MATTSON JR HI	HAM LAKE	1	1	0		1	1		1	1		1	0					100%	0%	
60		MEEKER HR HI	APOLLO	0	3	0		1	1		3	3		3	1			1		100%	33%	1FS
61		MEEKER HR HI	FULLER	0	1	0		0	1		1	1		1	1			1		100%	100%	1FS
62		MEEKER JR HI	POTLATCH	2	2	0		2	1		2	2		1	0					50%	0%	
63		MEEKER JR HI	RUSH	2	2	0		2	1		2	2		2	0					100%	0%	
64		MEEKER JR HI	WANDA	1	1	0		0	1		1	1		1	0					100%	0%	
65		MERCER ISLAND HIGH SCHOOL	M-I 41-0770	0	2	0		1	1		2	2		2	1			1		100%	50%	1FS
66		MERCER MIDDLE SCHOOL	SEA 11-1948	0	2	0		1	1		2	2		2	1			1		100%	50%	1FS
67		MERCER MIDDLE SCHOOL	SEA 11-1947	0	1	0		1	1		1	1		1	1			1		100%	100%	1FS
68		MINOR SCHOOL	SEA 37-1534	0	0	0		1														
69		MINOR SCHOOL	SEA 43-1563	0	1	0		-2			1	1		1	1			1		100%	100%	1FS
70		MINOR SCHOOL	SEA 43-1578	0	1	0		-1			1	1		1	1			1		100%	100%	1FS
71		MINOR SCHOOL	SEA 43-1677	0	9	0		10			9	8		7	1	1				78%	11%	1POLL
72		MOSHIER RECREATION CENTER	BUR 33-0281	4	4	0		3	1		4	4		4	0					100%	0%	
73		MOSHIER RECREATION CENTER	BUR 33-0515	4	4	0		3	1		4	4		4	1			1		100%	25%	1FS
74		MOSHIER RECREATION CENTER	BUR 33-0729	1	1	0		1	1		1	1		1	0					100%	0%	
75		MOSHIER RECREATION CENTER	BUR 33-1067	2	2	0		1	1		2	2		2	0					100%	0%	
76		NEW HOLLY NEIGHBORHOOD CAMPUS	SEA 37-1937	3	3	0		1	1		3	2		2	1	1				67%	33%	1POLL
77		NEW HOLLY NEIGHBORHOOD CAMPUS	SEA 37-1946	2	2	0		5	1		2	1		1	0					50%	0%	
78		NORMAN ROCKWELL ELEMENTARY	RED 45-2410	3	3	0		2	1		3	1		1	1			1		33%	33%	1FS
79		NORMAN ROCKWELL ELEMENTARY	RED 45-2698	2	2	0		2	1		2	2		2	0					100%	0%	
80		NORMAN ROCKWELL ELEMENTARY	RED 45-3281	1	1	0		1	1		1	1		1	0					100%	0%	
81		NORMAN ROCKWELL ELEMENTARY	RED 45-3282	1	2	0		0	1		2	2		2	1			1		100%	50%	1FS
82		NORMAN ROCKWELL ELEMENTARY	RED 48-0634	1	1	0		0	1		1	1		1	1			1		100%	100%	1FS
83		PACIFIC MIDDLE SCHOOL	KEN 33-0585	0	1	0		0	1		1	1		1	0					100%	0%	
84		PACIFIC SENIOR CENTER	PAC 30-0857	5	5	0		5	1		5	4		4	0					80%	0%	1PBAV NOT IN 348 NOT CREDITED
85		PANTHER LAKE SCHOOL	FED 30-3001	0	3	0		0	1		3	1		1	0					33%	0%	
86		PANTHER LAKE SCHOOL	FED 30-3002	1	6	1	1	5	1		5	5		6	6			5		120%	100%	5FS, PBNL 6 BUT 1 IN 348PBAV
87		PANTHER LAKE SCHOOL	FED 30-3080	1	1	1	1	4	1		1	0		0	0					0%	0%	1 in 348 PBAV
88		PARK ORCHARD	ANTOINE	1	1	0		1	1		1	1		1	0					100%	0%	
89		PARK ORCHARD	MARDI GRAS	5	6	0		6	1		6	5		5	4	4		1		83%	67%	4POLL
90		PARK ORCHARD	ORCHARD	8	8	0		7	1		8	7		7	5	4		1		88%	63%	4POLL 1FS
91		PARK ORCHARD	STOCKTON	2	2	0		2	1		2	2		2	0					100%	0%	
92		PINE LAKE COVENANT CHURCH	SAM 05-0307	3	3	0		3	1		3	3		3	2	1		1		100%	67%	1POLL 1FS
93		PINE LAKE COVENANT CHURCH	SAM 05-0816	3	3	0		2	1		3	3		1	0					33%	0%	
94		PINE LAKE COVENANT CHURCH	SAM 05-2489	2	2	0		2	1		2	2		2	1			1		100%	50%	1FS

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U
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4		% REG= PERCENT PB VOTERS REGISTERED FOR THIS PRECINCT; % VCREDIT=PERCENT OF PB VOTERS CREDITED FOR THIS PRECINCT.																			
5		ADDED TO PBAV NOT CREDITED, ADD TO TOTAL OF PB THAT WENT INTO ACCUVOTE MACHINE BUT NOT CREDITED IN MASTER SHEET.																			
6	NOTE:	PROVISIONAL BALLOTS WITH NO LABELS ACCOUNTED FOR IN THE 348 ARE NOT INCLUDED IN THESE NUMBERS.																			
7																					
8	PPLACE		PRECINCT	PBNOLA	PBNL	PBAV	PBAV R	PPLACE±	PBNL L-U	PBNLR%	PBSIG	SIG MATCH	SIG XMAT	REGVTR	VCREDIT	VC POLL	VC AV	VC FS	PBAV	% REG	% VCREDIT	COMMENTS
95	PINE LAKE COVENANT CHURCH		SAM 05-2491	5	4	0		4	1		4	4		3	0					75%	0%	
96	PINE LAKE COVENANT CHURCH		SAM 05-2690	0	2	0		0	1		2	2		2	1			1		100%	50%	1FS
97	PINE LAKE COVENANT CHURCH		SAM 05-2693	3	3	0		3	1		3	3		3	0					100%	0%	
98	PINE LAKE COVENANT CHURCH		SAM 05-3412	9	9	0		10	1		9	9		9	0					100%	0%	
99	PINE TREE SCHOOL		AUB 47-3455	8	8	0		1	1		8	8		8	0					100%	0%	
100	PINE TREE SCHOOL		HANK	1	1	0		1	1		1	1		1	0					100%	0%	
101	PINE TREE SCHOOL		KEN 47-0763	2	2	0		2	1		2	1		1	0					100%	0%	
102	PINE TREE SCHOOL		KEN 47-3323	3	3	0		3	1		3	2		3	0					100%	0%	
103	PINE TREE SCHOOL		OLSON	1	1	0		1	1		1	1		1	0					100%	0%	
104	PIONEER SCHOOL		AUB 31-0062	1	1	0		2	1		1	1		1	0					100%	0%	
105	PIONEER SCHOOL		AUB 31-0370	3	3	0		3	1		3	3		3	1		1			100%	0%	
106	PIONEER SCHOOL		AUB 31-0062	4	4	0		4	1		3	3		4	1	1				100%	33%	1AB
107	RAINIER VISTA COMMUNITY CENTER		SEA 37-1595	6	6	0		5	1		6	0		0	0					100%	25%	1POLL
108	SAINT JOSEPH CHURCH SOCIAL HALL		SEA 43-2021	0	1	0		0	1		1	1		1	0					0%	0%	
109	SAINT JOSEPH CHURCH SOCIAL HALL		SEA 43-2022	0	1	0		0	1		1	1		1	0					100%	0%	
110	SANISLO SCHOOL		SEA 34-1467	0	2	0		2	1		2	2		2	0					100%	0%	
111	SANISLO SCHOOL		SEA 34-1513	0	2	0		1	1		2	1		1	1	1				100%	0%	
112	SCOTTISH RITE MASONIC CENTER		SEA 43-2034	0	4	0		3	1		4	4		4	3	2		1		50%	50%	1POLL
113	SCOTTISH RITE MASONIC CENTER		SEA 43-2037	0	3	0		-2	1		3	1		1	1			1		100%	75%	1FS 2POLL
114	SEATAC BIBLE CHURCH		CAMELOT	0	9	0		0	1		9	6		6	4			1		33%	33%	1FS
115	SEATAC BIBLE CHURCH		GALAHAD	0	5	0		1	1		5	5		5	3	3		4		67%	44%	1FS/2FS/2POLL
116	SEATAC BIBLE CHURCH		KNIGHTS	0	12	0		1	1		11	7		7	6					100%	60%	3POLL
117	SEATAC BIBLE CHURCH		MERLIN	7	7	0		4	1		7	6		6	2		1	1		58%	0%	
118	SEATAC BIBLE CHURCH		ROUNDTABLE	7	7	0		0	1		7	6		5	3	2	1			71%	29%	1FS/1POLL/2FS
119	SEATAC BIBLE CHURCH		SERENDAD	15	15	0		1	1		15	12		12	1	1				71%	43%	1AB 2POLL
120	SEATTLE CENTRAL COMMUNITY COLL		SEA 43-1846	3	2	0		0	1		2	2		2	2	1		1		80%	7%	1POLL
121	SEATTLE CENTRAL COMMUNITY COLL		SEA 43-1849	2	2	0		2	1		2	1		1	0					100%	100%	1POLL-1FS/1VC
122	SEATTLE CENTRAL COMMUNITY COLL		SEA 43-2543	1	1	0		0	1		1	1		1	0					50%	0%	
123	SEATTLE CENTRAL COMMUNITY COLL		SEA 43-2560	12	13	0		13	1		13	13		13	1			1		100%	0%	
124	SHERWOOD FOREST SCHOOL		FED 30-3031	0	6	0		5	1		6	5		5	4	2	1	1		100%	8%	1FS
125	SHERWOOD FOREST SCHOOL		FED 30-3045	0	2	0		1	1		2	0		0	0					83%	67%	2POLL 1FS 1AB
126	SHERWOOD FOREST SCHOOL		FED 30-3064	0	1	0		1	1		1	1		1	0					0%	0%	
127	SHERWOOD FOREST SCHOOL		FED 30-3095	0	3	0		1	1		3	2		2	1			1		100%	0%	
128	SHERWOOD FOREST SCHOOL		FED 30-3237	0	3	0		3	1		3	2		2	0					67%	33%	1FS
129	SHERWOOD FOREST SCHOOL		FED 30-3392	0	3	0		1	1		3	1		1	1		1			67%	0%	
130	SOUTHERN HEIGHTS SCHOOL		MCKINLEY	0	2	0		0	1		2	2		2	1			1		33%	33%	1AB
131	SOUTHERN HEIGHTS SCHOOL		MEATH	2	2	0		2	1		1	1		2	1		1			100%	50%	1FS
132	SOUTHERN HEIGHTS SCHOOL		MONTEREY	0	1	0		0	1		1	1		1	1			1		100%	50%	1AB
133	SPIRITRIDGE SCHOOL		SEL 48-3144	0	2	0		2	1		2	2		2	0			1		100%	100%	1FS
134	TIMBERLAKE CHRISTIAN FELLOWSHIP		AMES LAKE	4	4	0		4	1		3	3		4	0					100%	0%	
135	TIMBERLAKE CHRISTIAN FELLOWSHIP		JAY	5	5	0		6	1		5	3		2	0					100%	0%	
136	TIMBERLAKE CHRISTIAN FELLOWSHIP		MICHAEL	1	1	0		1	1		1	1		1	0					40%	0%	
137	TIMBERLAKE CHRISTIAN FELLOWSHIP		QUAIL	2	2	0		2	1		2	1		1	0					100%	0%	

LOOKUP OF PROVISIONAL BALLOTS WITH NO LABELS EXP

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U
1											PROVISIONAL BALLOTS WITH NO LABELS										
2	KEY:	PBNL= #PB WITH NO LABELS; PPLACE=DIFFERENCE AT PPLACE; PBSIG=# SIGS ON PB PAGE; SIG MATCH=#PB & DIMS SIG MATCH; REGVTR=REG VOTERS;																			
3		VCREDIT=#PB VOTER CREDITED; VCPOLL=CREDITED FOR VOTING @POLL; VCAV=CREDITED FOR VOTED ABSENTEE; VCFS=CREDITED FOR PROV BALLOT.																			
4		% REG= PERCENT PB VOTERS REGISTERED FOR THIS PRECINCT; % VCREDIT=PERCENT OF PB VOTERS CREDITED FOR THIS PRECINCT.																			
5		ADDED TO PBAV NOT CREDITED, ADD TO TOTAL OF PB THAT WENT INTO ACCUVOTE MACHINE BUT NOT CREDITED IN MASTER SHEET.																			
6	NOTE:	PROVISIONAL BALLOTS WITH NO LABELS ACCOUNTED FOR IN THE 348 ARE NOT INCLUDED IN THESE NUMBERS.																			
7																					
8	PPLACE		PRECINCT	PBNOLAB	PBNL*	PBAV	PBAV R	PPLACE±	PBNL L-U	PBNLR%	PBSIG	SIG MATCH	SIG XMAT	REGVTR	VCREDIT	VC POLL	VC AV	VC FS	PBAV	% REG	% VCREDIT	COMMENTS
138	TIMBERLAKE CHRISTIAN FELLOWSHIP		SAM 05-3386	1	1	0		1	1		1	1		1	0					100%	0%	
139	TIMBERLAKE CHRISTIAN FELLOWSHIP		WEEKS	3	3	0		2	1		3	2		2	0					67%	0%	
140	UNIVERSITY TEMPLE UNITED METHODIS		SEA 43-2053	0	11	0		32	1		11	11		11	1		1			100%	9%	1AB
141	UNIVERSITY WEST		SEA 43-2050	0	3	0		2	1		3	3		3	1			1		100%	33%	1FS
142																						
143	TOTAL			290	437	3	3	337	129		426	355		358	87	42	10	45		84%	26%	PERCENT IN COL. "S" & "T" IS AV. OF COL
144	PERCENTAGE PB NO LABEL ACCTED				100%						97.5%	81.2%		81.9%	22.2%							
145	PERCENTAGE PB NO LABEL CREDIT														100%	43.3%	10.3%	46.4%				
146																						
147	ADDED TO PBAV NOT CREDITED, ADD TO TOTAL OF PB THAT WENT INTO ACCUVOTE MACHINE BUT NOT CREDITED.																					

EXHIBIT 3

The Honorable John E. Bridges

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

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

Petitioners,

v.

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

Respondents.

and

Washington State Democratic Central Committee,

Intervenor-Respondent,

and

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-2-00027-3

SUBPOENA DUCES TECUM

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

STATE OF WASHINGTON

To: Records Custodian
King County Division of Records, Elections, and Licensing Services
500 4th Avenue, Room 553
Seattle, WA 98104

GREETINGS:

YOU ARE HEREBY COMMANDED to be and appear as follows:

PLACE: Offices of Davis Wright Tremaine
1501 4th Avenue, Suite 2600
Seattle, WA 98101

DATE: Wednesday, May 18, 2005

TIME: 9:00 a.m. PST

To produce and permit inspection and copying of the documents or objects in accordance with Attachment A at the place, date, and time specified above, at the request of the Petitioners in the above-entitled cause. If documents or objects are received at the above specified location by the specified date and time, or in advance at a mutually agreed upon time and place, your attendance is waived.

DATED this 10th day of May, 2005.

Davis Wright Tremaine LLP
Attorneys for Petitioners

By _____

Harry J. F. Korrell, WSBA #23173
Robert J. Maguire, WSBA #29909
1501 Fourth Avenue, Suite 2600
Seattle, Washington 98101-1688
Telephone: (206) 622-3150

Davis Wright Tremaine LLP
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ATTACHMENT "A"

I. DEFINITIONS

"Document" means, without limiting without limiting its generality, the original (or a copy when the original is not available) and each non identical copy (including those which are non identical by reason of notations and markings) of papers, writings and records of any nature whatsoever, including, but not limited to, electronic mail messages, contracts, agreements, correspondence, letters, telegrams, wires, cables, reports, schedules, diaries, statements, photographs, reproductions, maps, surveys, plats, drawings, blueprints, sketches, charts, models, invoices, purchase orders, ledgers, journals, checks, check stubs, notes, estimates, summaries, desk calendars, work papers, studies, appointment books, time sheets, logs, inventories, printouts, computer tapes, tape recordings, video recordings, microfilm, microfiche, recordings, or other data compilations from which information can be' obtained through detection devices into reasonably usable form, minutes of meetings, memoranda, including intercorporate, intracorporate, interoffice and intraoffice memoranda, memoranda regarding conferences, conversations or telephone conversations and any and all written, printed, typed, punched, or recorded matter of whatsoever kind of description, including drafts of any of the foregoing, as well as any computer disks, computer files, computer hard drives, computer backup tapes, archival media, or other electronic data, document or message storage of any kind or nature (whether on a disk, hard drive, file server, personal computer or other medium).

"You" or "your agents, servants, employees, attorneys, or representatives" includes but is not limited to all persons, professionals and/or associates, legal assistants and/or support staff who performed work as part of your team or under your supervision or at your direction in connection with the topics identified in this subpoena.

II. INSTRUCTIONS

1. Please produce all the documents, described below, wherever located, which are in the possession, custody or control of you or any of your agents, servants, employees, attorneys, or representatives.

2. Any copy of a document that varies in any way from the original or from any other copy of the document, whether by reason of handwritten or other notation or any omission, shall constitute a separate document and must produced.

3. The original of each document requested is to be produced. Each document requested is also to be produced for inspection in its original file folder, file jacket, or cover.

4. Documents are to be produced in such a fashion that the specific individual or entity from whom they were obtained can be readily determined.

5. If you do not produce any document herein requested under a claim of privilege, work produce, or other ground of non production, please submit in lieu of such document a written statement which:

(a) specifies the privilege, work product, or other asserted ground of non-production;

(b) describes the nature and general topic of the documents to the extent possible in a manner consistent with the privilege, work product, or other asserted ground of non production;

(c) identifies the person or persons who prepared the documents and, if applicable, the person or persons to whom the document was sent;

(d) identifies each other person who has seen or had possession of the documents; and

(e) specifies the date on which the document was prepared by the author and/or received by the addressees.

6. If any document was, but no longer is, in your custody or control, state whether it has been lost, destroyed, transferred, or otherwise disposed of, and in each instance, identify the document as completely as possible, including without limitation, the author(s), addressee(s), any person(s) who say the document, the date of the document and date when the document was received, the subject matter of the document, and the circumstances surrounding the disposition of the document and the date that disposition occurred.

III. DOCUMENTS REQUESTED

To the extent not already produced in response to the Subpoena Duces Tecum dated April 15, 2005, produce copies of:

1. All poll book pages from the 2004 General Election containing the names of those individuals listed on the attached Exhibit 1, whether or not a signature appears next to the respective individual's name.

2. All absentee ballot envelopes from the 2004 General Election returned by those individuals listed on the attached Exhibit 1.

3. All provisional ballot envelopes from the 2004 General Election submitted by those individuals listed on the attached Exhibit 1.

EXHIBIT 1

Last Name	First Name	Address	City	Zip	Vote ID
Kemmer	Robert	25327 Baker St	Black Diamond	98010	922149429
Ellingson	Christy	32117 Union Dr	Black Diamond	98010	730116284
Chlemo	Holy Elizabeth	612 NW 50th St	Seattle	98107	
Scranton	Mari	9525 NE 180th St #206	Bothell	98011	980554759
Steel (reg. as Saunders)	April	9406 NE 149th Ct Pl W	Bothell	98011	
Lociero	Mark	11911--87th Ave S	Seattle	98178	
Ferleman	Dennis	14906 SE 46th Ct	Bellevue	98006	
Hirsch	Doris	14831 Se 51st St	Bellevue	98006	
Holmes	James	1248 A St #328	Auburn	98002	
Carter	Sarah	28137--236th Ave	Seattle	98038	721288307
Turner	Kenneth	1612 N 55th St	Seattle	98103	877824
Demers	Michael	11605 140th Ave SE	Renton	98089	910189531
Flojo	Beatriz	14708 SE 274th Ct	Kent	98042	990698045
Bingham	Wendolowyn	11400 Ne 132nd St #102	Kirkland	98034	990626
Wallace	James	14324 109th Ave NE	Kirkland		10427185
Greiner	Brandy	14361 109th Ave NE	Kirkland		950025263
Yandila	Sara A.	11400 NE 132nd St #105	Kirkland	98034	99095530
Bukovcan	Samyr	11400 NE 132nd St k-204	Kirkland	98034	40048464
Bukovcan	Niknaz	16626 Jaunita Dr NE #201-D	Kirkland	98028	40002537
Coogan	Sean	11400 NE 132nd St	Kirkland	98034	30337344
Okane	Peter	7449 W Mercer Way	Mercer Island	98040	990600193
Martinez	Rebbeca	750 N 143rd St #102	Seattle	98133	30078012
Bauhofer	Brittnay	13717 Linden Ave N #227	Seattle	98133	20324325
Morales	Cynthia	13520 Linden Ave N #553	Seattle	98133	990671009
Swift	Timothy E.	13407 Greenwood Ave N	Seattle	98133	99060914
Koster	Krista	11032 NE 41st Dr	Mercer Island	98040	10215595
Walker	Jeffrey	20137 128th Ave SE	Kent	98031	99064488
Hunter	Phillip	18834 120th Ave SE	Renton	98058	990596589
O'Leary	K	4501 12th Ave S	Seattle	98108	920252800
Carlson	Eric	4152 13th Ave S	Seattle	98108	860245892
Welsh	Jeffrey Raymond	1301 E Madison St #1	Seattle	98122	960708121
Steen	Dirk	1412 Summitt Ave #570	Seattle	98122	960326032
shibuya	Tadao	922 20th Ave	Seattle	98122	720255235
Castillo	Danielle	15405 Des Moines Memorial. Dr. S #A204	Burien	98148	487872

Phan	Rang	30185 Holly St	Seattle	98108	961118506
Palmiter	Katherine	10825 178th Pl NE	Redmond	98052	990697452
Moore	Annette	11605 159th Ct NE	Redmond	98052	990698014
Timm	Danielle	15817 90th St	Redmond	98052	
Sjoberg	Erik	10206 179th Ave	Redmond	98052	990652863
Zhu	Cheng	17814 10st Ct	Redmond	98052	990690257
Tisdale	Vincent	127 S 331 St #310	Federal Way	98003	990691619
Mathews	Erica	451 S 328 St #25	Federal Way	98003	990677110
lougher	Robert Frances	516 S 331 St Pl	Federal Way	98003	730165
Watson	James T.	925 SW Campus Dr #12-D1	Federal Way	98023	40363262
Miller	Vannessa	125 S 330th St	Federal Way	98005	990606446
Brown	Kith or Kieth	11040 SE 224th Pl	Kent	98031	
Fraissinet	Jason	2240 Benson Rd	kent	98031	30236262
Kaur	Surinder	23353 105 Ave SE	Kent	98031	642282
Meyer	Travis	10531 SE 233 Pl	Kent	98031	9906542725
Kaur	Surjit	23353 105th Ave SE	Kent	98031	990681090
Gaudamuz	Marion	10811 SE 236th St	Kent	98031	20092866
Buttke	Jean	10531 SE 236th St	Kent	98031	820080254
Buttke	Duane	10531 SE 229th Pl	Kent	98031	820049403
Fiddler	Joseph	22410 Benson Rd SE	Kent	98031	3004329
Baker	Nathan	2804 R Lake Sammamish Pkwy NE	Sammamish	98074	990685393
Gibson	Martha	720 E Lake Sammamish Rd NE	Sammamish	98074	980601536
Brendal	Paul	13226 97th Ave	Kirkland	98034	40117865
Dykeman	Monica	402 21St SE #73	Auburn	98002	990652208
Engelhardt	Ron	2616 Pike St SE	Auburn	98002	921771584
Flynn	Margaret	942 19th Ave E	Seattle		930008915
Rehrmann	Peter	1154 21St	Seattle		10286522
Fletcher	Drew	7723 18th Ave SW	Seattle	98106	40204679
Bustos	Patricia	1200 Boylston Ave	Seattle	98101	880308980
Poust	Rachel	768 Bellevue Ave E	Seattle	98102	99680357
Hayes	Mathew	1336 Lakeview Blvd E	Seattle	98102	990687459
Stadtmiller	Trevor	1073 Summitt Ave E	Seattle	98102	33010152
Holland	Mary	6329 S 238th Pl	Kent	98032	30227743
Kuchmiy	Fedor	6329 S 41St Ct	Auburn	98001	20307463
Voellgren	Sara	29922 53rd Pl S	Auburn	98001	970536655
Hayes	Kelly	121st Pl SE	Auburn	98001	920747469
Solberg	Lance	22214 9th Ave S	Des Moines		20107197

Smith	Melissa	29913 53rd Pl S	Auburn	98001	99040481
Storms	Don	29854 45th Pl S	Auburn	98001	990651938
Wang	Rosa	5217 S 298th Ct	Auburn	98001	950179503
Fulmer	Terese	29311 33rd Ave	Auburn	98001	990638825
Danichuck	Yelizaveto	30058 41St Ave S	Auburn	98001	990642848
Metje	Michael	3321 S 300th Pl	Auburn	98001	10137454
Harris	Bryan	21032 Walnut Ave S	Seattle	98116	890253474
Rubio	Esteban	717 E Denny Way#3c	Seattle	98122	30447816
Graumans	Raissa	803 E Denny Way	Seattle	98122	970543091
Bailey	Katherine	2536 Angeline st	Seattle	98108	720922975
Humphrey	Jennifer	8446 84th Ave S	Seattle	98118	20252162
Goodrum	Damon	2434 SW 349th Pl	Federal Way	98023	950934468
Saini	Romesh	34621 8th Ave	Federal Way	98023	921515545
Naider	Annette				78006695
Sofie	Veronique	34414 28th Pl SW	Federal Way	98023	860394626
King	April	2412 S 116th	Seattle	98168	961022941
Diriye	Sahro	100 Melrose Ave 811	Seattle	98102	20131390
Swanberg	Diana	2043 S 244th	Des Moines	98198	880382411
Zhou	Jian-hua	4236 11th Ave NE	Seattle	98015	990668520
Jazayeri	Amann A.	4262 8th Ave	Seattle	98105	990654200
Vernon	Odessia	5017 30th Ave. S.	Seattle	98108	840388104
Kido	Nancy	22024 Military Rd S.	Sea-Tac	98198	990668350
Truly	Carol	10522 NE 187th St.	Bothell	98011	900411553
Day	Richard	10619 E. Riverside Dr.	Bothell	98011	990614694
Matthews	Ernest	10217 51 St Ave. S.	Tukwila	98178	10161916
Killgore	Gary	11006 Riviera Pl. NE	Seattle	98125	990690744
Flanagan	James	16125 4th Ave. NE	Duvall	98019	950576626
Calnan	Jeffrey	15323 287th Ave. NE	Duvall	98019	990679893
Milender	Charles	30832 NE 116th St.	Carnation	98014	970565345
Byer	Robin	14311 274th Pl. NE	Duvall	98019	980248496
Hong	Darryl	27327 NE Big Rock Road	Duvall	98019	921525141
McEnany	Mary	13032 291st Ave. NE	Duvall	98019	20433141
Wyles	Rick	7524 25th Ave. SW #S-307	Seattle	98126	990620805
Rehrmann	Pete	1154 21st Ave. E.	Seattle	98112	10288522
Taylor	Rosevelt	32207 11th Pl. S. #36	Federal Way	98003	40232273
Thorne	Douglas	28100 193rd Ave. SE	Kent	98042	710882860
Gamble	Irwin	2108 E. Pine St.	Seattle	98122	40128573

Burkholder	Devin	4822 252nd Pl.	Kent	98032	30167538
Hey	Kenneth	3209 SW Juneau St.	Seattle	98126	980035921
West	Cindy	3671 W. Lake Sammamish Pkwy. NE #145	Redmond	98052	711204717
Lin	Gary	1911 NE 176th Pl.	Shoreline	98155	30366531
Bayron	Christopher	104 Bent Tree Lane	Pacific	98047	960365089
Chen	Jerome	4746 11th Ave. NE, #409	Seattle	98105	20131349
Pazhavila	Angie	10011 NE 1st E310	Bellevue	98004	40329277
Mcfarlin	Robert	5612 34th Ave. SW	Seattle	98126	30411934
Sternberg	Corinne	2553 5th Ave. N.	Seattle	98109	860188961
Ross	Michael	2119 2nd Ave.	Seattle	98121	880279777
Bunker	Lon	1902 2nd Ave.	Seattle	98101	990643784
Sledzieski	Walter	4744 12th Ave. NE	Seattle	98105	850624
Porter	Jason	727 100th Ave. NE	Bellevue	98024	40218114
Flynn	Margaret	942 19th Ave. E.	Seattle	98112	930008915
Valencia	Hector, Jr.	11100 SE 176th St., #S304	Renton	98055	990672053
Morales	Cynthia	13520 Linden Ave. N.	Seattle	98133	990671009
Greenwood	Deanna	1754 26th Ave NE	Issaquah	98029	40025421
Kasprzak	Chris	1605 Huckleberry Circle	Issaquah	98029	970395865
Phillips	Karen	2657 Thorndyke Ave #2	Issaquah	98029	20159502
Woo Hysing	Dawn	1693 30th Ave NE	Issaquah	98020	990681644
Boyd	Ben	1509 2nd Ave. W.	Seattle	98119	30133058

EXHIBIT 4

The Honorable John E. Bridges

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

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

Petitioners,

v.

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

Respondents.

and

Washington State Democratic Central Committee,

Intervenor-Respondent,

and

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-2-00027-3

CR 30(B)(6) SUBPOENA AD TESTIFICATUM

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

STATE OF WASHINGTON

To: King County Division of Records, Elections, and Licensing Services
500 4th Avenue, Room 553
Seattle, WA 98104

Cc: Don Porter
King County Division of Records, Elections, and Licensing Services
500 4th Avenue, Room 553
Seattle, WA 98104

GREETINGS:

YOU ARE HEREBY COMMANDED, pursuant to this Subpoena and CR 30(b)(6), to designate and produce at a deposition a person or persons to testify on behalf of the King County Division of Records, Elections, and Licensing Services on the matters described below, at the following place, date, and time:

PLACE: Offices of Davis Wright Tremaine
1501 4th Avenue, Suite 2600
Seattle, WA 98101

DATE: Thursday, May 19, 2005

TIME: 9:00 a.m. PST

Then and there to testify as a witness at the request of Petitioners in the above-entitled cause, and to remain in attendance until discharged. The deposition shall take place before a deposition officer duly authorized to administer oaths, and shall be recorded by stenographic means. The following matters shall be examined at the deposition:

(1) the number of provisional ballots cast directly into AccuVote machines without first being verified, the precincts in which they were cast, and the identities of the individuals casting those ballots.

(2) the reconciliation and the number of discrepancies in the reconciliation of pollsite, provisional, and absentee ballots.

(3) the number of federal write-in ballots issued, returned by voters, and the crediting

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process with respect to those voters.

(4) the number of individuals in the address confidentiality program and the crediting process with respect to those voters.

(5) the contents of the voter files produced by King County and marked as the "12/29" release and modifications or updates, if any, contained in the "12/29" release as compared to the locked-down version used prior to certification.

(6) the number of absentee ballots issued to voters, returned by voters, processed by PSI, accounted for by verifiers, openers, and tabulators.

(7) the process of crediting absentee voters and any discrepancy between the number of individuals credited with voting by absentee and the number of absentee ballots tabulated.

(8) the number of provisional ballots counted for which King County did not have a voter registration signature on file, the identity of the individuals casting those ballots, and the precincts in which those ballots were cast.

(9) the number of provisional ballots that King County determined were cast by lawfully registered voters.

(10) the number of provisional ballots that King County determined were cast by persons who were not lawfully registered to vote.

(11) the number of provisional ballots that King County determined were cast by persons who cast more than one ballot.

DATED this 11th day of May, 2005.

Davis Wright Tremaine LLP
Attorneys for Petitioners

By _____
Harry J.F. Korrell, WSBA #23173
Robert J. Maguire, WSBA #29909
1501 Fourth Avenue, Suite 2600

Davis Wright Tremaine LLP
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EXHIBIT 5

THE HONORABLE JOHN BRIDGES

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

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

Petitioners,

v.

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

Respondents.

and

Washington State Democratic Central Committee,

Intervenor-Respondent,

and

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-2-00027-3

PETITIONERS' MOTION TO COMPEL

I. RELIEF REQUESTED

Petitioners respectfully request that the Court issue an order to compel King County to produce voting records. Despite numerous written and oral requests from Petitioners, King County has failed to produce many key voting records at issue in this election contest, including poll book pages, absentee envelopes, provisional ballot

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envelopes, and absentee ballot requests. Although reluctant to turn to the Court for resolution of a discovery dispute, Petitioners can no longer wait for these documents.

II. STATEMENT OF ISSUES

Whether King County has fully complied with Petitioner's subpoenas duces tecum dated April 29, 2005, and whether such compliance should now be compelled by the Court.

III. STATEMENT OF RELEVANT FACTS

On April 29, 2005, Petitioners served a subpoena duces tecum on the Records Custodian of King County Records, Elections and Licensing Services ("King County REALS"). Attachment A to the April 29, 2005 subpoena requested that the Records Custodian of King County REALS provide the following documents with respect to the individuals listed in Exhibit 1 to the subpoena:

1. All poll book pages from the 2004 General Election containing the names of those individuals listed on the attached Exhibit 1, whether or not a signature appears next to the respective individual's name.

2. All absentee ballot envelopes from the 2004 General Election returned by those individuals listed on the attached Exhibit 1.

3. All provisional ballot envelopes from the 2004 General Election submitted by those individuals listed on the attached Exhibit 1.

King County REALS was required to produce these documents by May 6 2005. They have failed to produce the requested documents in a timely manner, despite numerous requests from Petitioners that they do so.

At the request of the representative for King County REALS, Petitioners re-served the April 29, 2005 subpoena on May 3, 2005, yet the County's responses remain outstanding.

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IV. ANALYSIS

The county has failed to produce any of the requested records, including the poll book pages, absentee ballot envelopes, and provisional ballot envelopes in a timely manner, and its response is now more than a week overdue.

In general, decisions on discovery requests are within the trial court's discretion. *See Doe v. Puget Sound Blood Ctr.*, 117 Wash.2d 772, 777, 819 P.2d 370 (1991). Trial in this election contest is scheduled to begin on May 23, 2005, and Petitioners can no longer wait for King County REALS to comply with its obligations under the April 29, 2005 subpoena duces tecum.

Petitioners therefore respectfully ask the court to grant this motion to compel production of documents pursuant to Petitioner's April 29, 2005 subpoena duces tecum to King County REALS.

V. RULE 26 CERTIFICATION

Under Rule 26(i), a court may not entertain any motion or objection with respect to Rules 26 through 37 unless "counsel have conferred with respect to the motion or objection. Counsel for the moving or objecting party shall arrange for a mutually convenient conference in person or by telephone."

Petitioners certify through this motion that they have met the Rule 26(i) certification requirements. In addition to numerous other requests to representatives of King County REALS to fulfill its obligations under the April 29, 2005, counsel for Petitioners, Rob Maguire, most recently met and conferred with these representatives on May 16, 2005 with respect to outstanding discovery requests. Petitioners offered to provide King County REALS people to assist with gathering and copying the responsive documents. This offer was declined. Representatives for King County REALS informed Petitioners that King County REALS was unable to provide a date by which they would respond to Petitioners' request. With little time before trial, and in the absence of any

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alternative, Petitioners' move this Court to enter an Order compelling King County to immediately comply with Petitioners' subpoena.

DATED this 19 day of May, 2005.

Davis Wright Tremaine LLP
Attorneys for Petitioners

By _____ #32996
Harry J. F. Korrell
WSBA #23173
Robert J. Maguire
WSBA #29909

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LAWYERS

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May 18, 2005

VIA ELECTRONIC FILING

Hon. John Bridges
Chelan County Superior Court
Department No. 3
401 Washington Street
Wenatchee, WA 98807

Re: Borders v. King County *et al.*,
Chelan County Superior Court Cause No. 05-2-00027-3

Dear Judge Bridges:

Pursuant to LR 5(d)(5), enclosed please find out-of-state authorities referred to by Petitioners in their Opposition to WSDCC's Motion for Partial Summary Judgment.

Very truly yours,

Davis Wright Tremaine LLP

David Bowman

David Bowman

Enclosures

cc: Peter Schalestock, Esq.
Harry J. F. Korrell, Esq.
Robert J. Maguire, Esq.
All Partics

Briefs and Other Related Documents

Supreme Court of Arkansas.
Sherry TATE-SMITH
v.
H.E. CUPPLES, Jr.
No. 03-314.

Dec. 4, 2003.

Background: Defeated candidate brought election-contest action after successful candidate was declared winner of election for justice of peace. The Circuit Court, Crittenden County, David Burnett, J., determined that 10 votes should be disqualified, declared defeated candidate to be winner, and ordered county election commission to certify election and to effectuate order. Successful candidate appealed.

Holdings: The Supreme Court, Ray Thornton, J., held that:

(1) counsel's clarification of typographical error made in complaint did not invalidate pleading;

(2) sufficient evidence supported trial court's ruling disqualifying votes of nine voters; and

(3) trial court's ruling that votes of voter, who voted twice for successful candidate for justice of peace, should be excluded was not an abuse of discretion.

Affirmed.

West Headnotes

[1] Elections ⇐ 285(4)
144k285(4) Most Cited Cases
Election-contest complaint of defeated candidate for position of justice of peace complied with requirements established for stating cause of action; defeated candidate named all nine voters in question, defeated candidate satisfied "minimum requirement" for complaints by including number of votes received by each candidate so that subtraction of allegedly illegally cast votes would show that defeated candidate received more votes than successful candidate, and defeated candidate stated that disqualification of named voters' votes was sufficient to reverse election results. West's A.C.A. § 7-5-801.

[2] Elections ⇐ 285(3)
144k285(3) Most Cited Cases
To state a cause of action for affirmative relief in an election contest, the pleading must do more than merely state generalities or conclusions of law to the effect that illegal votes were cast. West's A.C.A. § 7-5-801.

[3] Elections ⇐ 285(4)
144k285(4) Most Cited Cases
To state a cause of action for affirmative relief in an election contest, one must name voters who allegedly cast invalid ballots, allege that they voted for other candidate, and allege that total of invalid votes is sufficient to change outcome of election; at a minimum, complaint for affirmative relief must include number of votes received by each candidate, so that it appears, after subtracting alleged invalid votes, that claimant has more votes than his opponent. West's A.C.A. § 7-5-801.

[4] Elections ⇐ 285(.5)
144k285(.5) Most Cited Cases
Counsel's clarification of typographical error made in complaint of defeated candidate for position of justice of peace, who brought election-contest action, did not invalidate pleading; although successful candidate contended that defeated candidate's complaint cited non-existent statute, at hearing opportunity was taken by counsel to clarify typographical error made in complaint, and mere clerical or typographical errors that could not have misled opposing party did not vitiate pleading. West's A.C.A. §§ 7-5-201, 7-5- 801.

[5] Elections ⇐ 227(8)
144k227(8) Most Cited Cases
Eight voters did not meet requirement of strict compliance with statutory provision dictating that one must vote in person for the first time, and thus, disqualification of their votes was warranted in runoff election for justice of peace; voters registered by mail to vote by absentee ballot and voted by absentee ballot for the first time, which was in clear violation of statute. West's A.C.A. § 7-5-801; A.C.A. § 7-5-201(d)(1) (2002).

[6] Elections ⇐ 293(3)
144k293(3) Most Cited Cases
Evidence of one voter's vote was properly allowed in election-contest action of defeated candidate for position of justice of peace; defeated candidate filed

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complaint alleging voter as one of eight voters who illegally cast their vote in election for justice of peace, and successful candidate should have been put on notice that defeated candidate was contesting vote of voter when copy of voter's application for absentee ballot was attached as exhibit to complaint.

[7] Elections ⇐ 295(1)
144k295(1) Most Cited Cases
Sufficient evidence supported trial court's ruling disqualifying votes of nine voters named in complaint of defeated candidate for position of justice of peace, who brought election-contest action; trial court determined that voters cast illegal votes in violation of statutory provision dictating that one must vote in person for the first time, since voters failed to vote in person for the first time after they made their applications to vote by absentee ballot, and evidence was supported by county clerk's testimony. West's A.C.A. § 7- 5-801; A.C.A. § 7-5-201(d)(1) (2002).

[8] Elections ⇐ 305(3)
144k305(3) Most Cited Cases
Supreme Court was precluded from considering issue on appeal in election-contest action, that trial court erred in disqualifying voter on grounds that she violated statutory provision dictating that one must vote in person for the first time, where issue was not presented to trial court, nor did trial court rule on issue. West's A.C.A. § 7-5-801; A.C.A. § 7-5-201(d)(1) (2002).

[9] Appeal and Error ⇐ 110
30k110 Most Cited Cases
When a motion for new trial has been deemed denied, the only appealable matter is the original judgment or order. Rules Civ.App.Proc., Rule 4(c).

[10] Elections ⇐ 227(8)
144k227(8) Most Cited Cases
Trial court's ruling that votes of one voter, who voted twice for successful candidate for justice of peace, should be excluded was not an abuse of discretion, in election-contest action brought by defeated candidate; sufficient evidence showed that voter voted twice since county clerk produced absentee ballot cast by voter, as well as sign-in sheet from polls that indicated that voter voted second time at polls, and even if voter's illegal vote at polls had not been excluded, defeated candidate would still have won by one vote. West's A.C.A. §§ 7-1-103(a)(19)(A), 7-5-801; A.C.A. § 7-5- 201(d)(1) (2002).

****536 *233** J.F. Valley, P.A., by: J.F. Valley, Helena, for appellant.

Rees Law Firm, by: Thomas A. Young, West Memphis, for appellee.

RAY THORNTON, Justice.

This appeal arises from an election-contest case. On November 26, 2002, a runoff election was held in Crittenden County for the position of Justice of the Peace, District 7. Appellant, Sherry Tate-Smith, and appellee, ***234** H.E. Cupples, Jr., were candidates for the office. Appellant was declared the winner of the election, and on December 6, 2002, the Crittenden County Election Commission ("Commission") certified appellant as the winner of the election with a total of 227 votes to 219 votes ****537** for appellee for an eight-vote margin. Based upon a complaint filed by appellee, the trial court considered the matter, heard the evidence, determined that ten votes should be disqualified, declared appellee to be the winner, and ordered the Commission to certify the election and to effectuate the trial court's order. Appellant brings this appeal, and we affirm.

Appellee's complaint alleged that (1) the Commission failed to enforce voting laws by allowing eight people to vote in violation of Ark.Code Ann. § 7-5- 201(6)(d)(1) (Repl.2000) [sic]; (2) that eight absentee ballots should have been disqualified; (3) that Elmo Lewis voted more than once and that his votes should be disqualified; and (4) that the disqualification of the illegal votes would be sufficient to reverse the election results and make appellee the winner. In his complaint, appellee sought to enjoin appellant from taking office until a hearing on the matter was held.

On December 31, 2002, the trial court entered a temporary restraining order that prohibited and restrained appellant and her co-defendants from administering or taking the oath of office until a hearing was held, which took place on February 5, 2002.

Appellant filed a motion to dismiss on January 7, 2002. In her motion, appellant, without citation to

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authority, averred that the complaint failed to state a cause of action upon which relief can be granted because it was insufficient, it failed to demonstrate that appellee would prevail, it did not name the persons who voted illegally, and it failed to state whether their votes were cast for appellant.

At the hearing, Ruth Trent, county clerk, testified as to the absentee ballots cast by the individuals named in the complaint. She testified that Tiffany Brown registered to vote by mail on October 7, 2002, that Kenneth Freeman registered by mail on October 7, 2002, that Broksie Hawthorne registered by mail on October 4, 2002, that Latonya Holmes registered by mail on September 24, 2002, that Candice Lytle registered by mail on September 24, 2002, that Ruby Tate registered by mail on October 7, 2002, that Carl Washington registered by mail on October 7, 2002, and that Michael Pruitt registered by mail on ***235** September 24, 2002. Ms. Trent also testified that these voters registered to vote and made an application for absentee ballots, and that all the named individuals voted for the first time by absentee ballot. Ms. Trent testified that all eight voters voted for appellant. Ms. Trent further testified that her records indicated that Elmo Lewis voted by absentee ballot for appellant, and also voted at the polls.

Appellant made a motion for directed verdict on the basis of *Womack v. Foster,* 340 Ark. 124, 8 S.W.3d 854 (2000). The trial court denied appellant's motion for directed verdict, and requested that the parties brief the issues. Thereafter, the trial court made the following findings of fact from the bench: (1) that the eight named persons voted by absentee ballot, (2) that they applied for voter registration by mail, and (3) that they failed to appear in person to vote. As to Mr. Lewis, the trial court found that he voted absentee for appellant and also voted at the polls, thereby voting twice in the same election.

After the trial court made these findings of fact, appellee was called as a witness, and he testified that he signed the complaint when he filed it with the trial court, and a clerk verified that he signed it.

After briefs were submitted, the trial court entered an order on February 28, 2003, with the following rulings:

3. That the court finds, after considering the pleadings, documents submitted into evidence, testimony, argument ****538** of counsel and the briefs submitted to the court that the plaintiff timely, properly and sufficiently filed, served, and pled the matter before the court.
4. That the court finds that Tiffany Brown, Kenneth Freeman, Broksie Hawthorne, Latonya Holmes, Candice Lytle, Ruby Tate, Carl Washington, and Michael Pruitt failed to qualify as legal voters under Ark.Code Ann. § 7-5- 201(1) and therefore their votes should never have been counted.
5. That since the eight above-named individuals voted illegally in the runoff election held on November 26, 2002, their votes are to be thrown out and not considered when calculating the final count and results of said election.
***236** 6. That Elmo Lewis voted two times in the runoff election in violation of Arkansas law; therefore, neither of his votes are to be counted or considered when calculating the final count.
7. That the evidence before the Court shows that Plaintiff, H.E. Cupples, Jr., received 219 votes.
8. That when the illegal votes are thrown out, the result of the election is that H.E. Cupples received two more votes than Defendant Smith, thus making H.E. Cupples the winner of the Justice of the Peace, District 7 race of November 26, 2002.
9. That the court declares H.E. Cupples the winner of the November 26, 2002 runoff election for the position of Justice of the Peace, District 7 of Crittenden County, Arkansas.
10. That the court hereby orders the Crittenden County Election Commission to certify H.E. Cupples, Jr. as the winner of the runoff election for Justice of the Peace, District 7 and take whatever steps necessary to see that the court's ruling and order are given full force and effect.

On March 6, 2003, appellant filed a motion for new trial and a motion for specific findings of fact and conclusions of law. On March 7, 2003, appellant filed her notice of appeal. From the record, it appears that the trial court did not make a ruling on appellant's motion for new trial.

Appellant now brings her appeal from the February 28, 2003, order. On appeal, she argues: (1) that the trial court erred in denying appellant's motion to dismiss, (2) that the trial court erred in interpreting Ark.Code Ann. § 7-5-201(d)(1), (3) that the trial court erred in its ruling regarding the Broksie Hawthorne evidence, (4) that the trial court erred in

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its remedy, (5) that the trial court erred in its ruling regarding Ruby Tate's vote, and (6) that the trial court erred in its ruling on Elmo Lewis's vote.

[1] For her first point on appeal, appellant argues that the trial court erred in denying her motion to dismiss. Specifically, citing *Womack, supra,* appellant contends that the complaint filed by appellee failed to state a cause of action because the complaint did not state the candidate for whom the named voters voted.

***237** At the outset, we note that an election contest is a statutory or special proceeding under Ark. R. Civ. P. 81. Rule 81 provides that the rules of civil procedure do not apply where a statute specifically creates a right, remedy, or proceeding that provides a different procedure. *See Rubens v. Hodges,* 310 Ark. 451, 837 S.W.2d 465 (1992). We have also held that contesting an election is purely statutory, and a strict observance of statutory requirements is essential to the exercise of jurisdiction by the court, as it is desirable that election results have a degree of stability and finality. *Reed v. Baker,* 254 Ark. 631, 495 S.W.2d 849 (1973). We have explained that the purpose of election contests is to ****539** aid the democratic processes upon which our system of government is based by providing a ready remedy whereby compliance with election laws may be assured to facilitate, not hinder by technical requirements, the quick initiation and disposition of such contests. *Id.*

[2] In construing Ark.Code Ann. § 7-5-801 (Repl.2000) (and its predecessor provision), we have required that an election complaint must state a *prima facie* case and plead sufficient facts to give the other party reasonable information as to the grounds of the contest. *Womack, supra* (citing *McClendon v. McKeown,* 230 Ark. 521, 323 S.W.2d 542 (1959)). The pleading must do more than merely state generalities or conclusions of law to the effect that illegal votes were cast. *Womack, supra* (citing *Jones v. Etheridge,* 242 Ark. 907, 416 S.W.2d 306 (1967)).

In *Womack, supra,* a defeated candidate in a special election to fill a vacancy in the office of Ouachita County Municipal Judge brought an election contest, seeking to cancel 600 absentee votes based upon allegations of noncompliance with absentee-voting laws. The trial court invalidated 518 absentee votes for the declared winner and one absentee vote for the defeated candidate, thus resulting in a victory for the apparently defeated candidate. The originally declared winner filed a counterclaim and an amended counterclaim. On appeal, we affirmed the dismissal of the counterclaim and the amended counterclaim, holding that neither pleading stated a cause of action for affirmative relief. *Id.*

[3] In *Womack, supra,* we stated:
***238** To state a cause of action for affirmative relief in an election contest, one must name the voters who allegedly cast invalid ballots, allege that they voted for the other candidate, and allege that the total of the invalid votes is sufficient to change the outcome of the election. *Id.* [, *Jones v. Etheridge,* 242 Ark. 907, 416 S.W.2d 306 (1067)]; *Files v. Hill,* 268 Ark. 106, 594 S.W.2d 836 (1980). We recently reaffirmed these requirements for stating a claim for affirmative relief in election-contest cases. *King v. Whitfield,* 339 Ark. 176, 5 S.W.3d 21 (1999). At a minimum, the complaint for affirmative relief must include the number of votes received by each candidate, so that it appears, after subtracting the alleged invalid votes, that the claimant has more votes than his opponent. *Id.*
Womack, supra. See also Simonetti v. Brick, 266 Ark. 551, 587 S.W.2d 16 (1979).

We based our decision in *Womack, supra,* on *Wheeler v. Jones,* 239 Ark. 455, 390 S.W.2d 129 (1965), where we required either an identification of the illegal voters or an allegation that the illegal votes were cast for appellee. In *Wheeler, supra,* the plaintiff omitted from his complaint which candidate benefited from the illegal votes. The complaint set out the total votes per candidate and then asserted that fifty-two named persons voted in an absentee box and were not qualified electors and that 196 named persons voted in precincts in which they did not reside. We held that *the complaint did not state a cause of action because the plaintiff did not allege whether the contested votes were cast for the other candidate or that the election results would be different if those votes were set aside. Id.* (emphasis added). *See also Files, supra* (holding that an election contestant's complaint without any identification of either the vote or the voters does not contain sufficient factual allegations to state a cause of action); *McClendon v. McKeown,* 230 Ark. 521, 323 S.W.2d 542 (1959) (holding that the

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complaint failed to state a cause of action because the contestant failed to allege he had received a majority of the legal votes cast or to name **540 the persons whose votes he claimed were illegal).

In the present case, appellee's complaint complied with the requirements established for stating a cause of action under *Wheeler, supra,* and *Womack, supra.* First, appellee named all nine voters in question. In paragraph six of his complaint, appellee named eight of the nine individuals who voted in violation of Ark.Code Ann. § 7-5-201(d)(1), and in paragraph nine, he also named Elmo Lewis who voted illegally by voting twice in the same *239 election. Second, although he did not allege in his complaint the candidate for whom those nine voters voted, as required by the second factor in *Womack, supra,* he nevertheless satisfied the "minimum requirement" for complaints established in *King, supra,* which we cited with approval in *Womack, supra,* by including the number of votes received by each candidate so that a subtraction of the illegally cast votes would show that the contestant received more votes than appellant. Third, in paragraph four of his complaint, appellee averred that the Commission certified appellant as the winner with a vote total of 227 to 219 for appellee for a difference of eight votes. In paragraph ten of the complaint, he states "[t]hat the disqualification of the [named voters'] votes is sufficient to reverse the election results and certify Cupples the true winner of said election." This statement satisfies the third factor in *Womack, supra,* as well as the requirement set forth in *Wheeler, supra.*

Therefore, we hold that the trial court correctly denied appellant's motion to dismiss because appellee's complaint was sufficient in meeting the "minimum requirement" discussed in *Womack, supra.*

[4] For her second point on appeal, appellant argues that the trial court erred in interpreting Ark.Code Ann. § 7-5-201(d)(1). Specifically, appellant contends that Appellee's complaint cites Ark.Code Ann. § 7-5- 201(6)(d)(1), a non-existent statute.

In paragraph six of Appellee's complaint, he states:

6. That the following persons voted in violation of the Arkansas Code 7-5- 201(6)(d)(1) and therefore, these votes should be disqualified and not counted:
2 Brown, Tiffany
4 Freeman, Kenneth
5 Hawthorne, Broksie
6 Latonya Holmes
8 Lytle, Candice
*240 # 9 Tate, Ruby
12 Washington, Carl
13 Pruitt, Michael

Citing *King, supra,* appellant further argues that the trial court erred in allowing appellant to amend the complaint at trial by correcting the code section. At the hearing, the following colloquy took place during open arguments:
The Court: What is Arkansas Code 7-5-201(6)(d)(1)?
MR. YOUNG [counsel for Appellee]: Apparently that's a typographical error.
THE COURT: What was it supposed to have been?
MR. YOUNG: Well, it's real simple, Your Honor. It's supposed to be 7-5- 201(d)(1). So I mean, for them to argue they didn't have any notice, I think that other than there not being a six in there and when you read it along with the allegations. They, number one, registered by mail and voted by mail on their first time. It was a violation of it. I don't think they can argue they were mystified as to what we were going under. The fact that there's not a six in the actual statute and the fact that there **541 is--I think they know exactly what statute we're going under and the reasons therefore.

Appellant's argument that the complaint is based upon a non-existent statute is untenable. Although appellant is correct that one cannot amend the complaint under *King, supra,* this was not a circumstance in which the complaint was amended. Rather, at the hearing, the opportunity was taken by counsel to clarify a typographical error made in the complaint. We have held that mere clerical or typographical errors that could not have misled the opposing party will not vitiate a pleading. *Edwards v. Brimm,* 236 Ark. 588, 367 S.W.2d 433 (1963).

[5] Next, appellant argues that because these voters voted for a second time in the runoff election on November 26, 2002, Ark.Code Ann. § 7-5-201(d)(1) is inapplicable and that their votes should count in the runoff election.

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***241** Arkansas Code Annotated § 7-5-201(d)(1) provides:

(d)(1) Any person registering to vote by mail shall appear in person to vote the first time he or she casts a ballot.

Id. [FN1]

FN1. We note that Act 994 of 2003 has recently amended this statute, but the new statute is not applicable to the present appeal because the facts here stem from an election that occurred in 2002.

Here, the following colloquy occurred during the redirect examination of Ruth Trent, county clerk:

Mr. Young: Everybody but Mr. Elmo Lewis, according to your records, registered by mail for the first time?
MS. TRENT: That's right.
MR. YOUNG: Everybody we discussed [the eight voters named in the complaint] voted absentee for the first time?
MS. TRENT: That's right.
MR. YOUNG: After having registered by mail?
MS. TRENT: Yes, sir.
MR. YOUNG: And that's a violation of the statute?
MS. TRENT: Yes, sir.

Ms. Trent's testimony reveals that these eight voters registered by mail to vote by absentee ballot and voted by absentee ballot for the first time. This practice is in clear violation of Ark.Code Ann. § 7-5-201(d)(1), which dictates that one must vote in person for the first time. [FN2] The named voters in this case did not do so. We have held that there must be strict compliance with statutory provisions regarding the application for and casting of ***242** absentee ballots, even if the challenge is brought after the election has occurred. *Womack, supra* (citing *Bingamin v. City of Eureka Springs,* 241 Ark. 477, 408 S.W.2d 607 (1966)). Based upon this well-established principle of law, we hold that the named voters did not meet the requirement of strict compliance with Ark.Code Ann. § 7-5-201(d)(1), and that the trial court did not err in its ruling.

FN2. There are exceptions to Ark.Code Ann. § 7-5-201(d)(1) (Repl.2000) found at Ark.Code Ann. § 7-5- 201(d)(2) (Repl.2000), but they are not applicable in the present case.

[6] For her third point on appeal, appellant argues that the trial court erred in permitting the introduction of evidence regarding Broksie Hawthorne, Jr. when the complaint merely named Broksie Hawthorne. Specifically, appellant contends that Appellee amended his complaint at trial by introducing evidence of Broksie Hawthorne, Jr.'s vote.

At trial, the following colloquy took place:

**542 Mr. Valley [counsel for appellant]: Yes, Your Honor. I think there's a pending motion to admit these documents here on Broksie Hawthorne. We would object. The pleading represents Broksie Hawthorne, and the application and the voter records show Broksie Hawthorne, Junior, and he's bound by his pleadings. He's not pled that person.

THE COURT: What does the list that they write out the voter--does it show Broksie Hawthorne, Junior?
THE WITNESS [Ruth Trent]: Broksie Hawthorne. She was pulled--I pull [sic] it up by the birth date on the application. That's how we got that--or him, whoever it is. I'm not sure whether it's a him or a her.
THE COURT: I'm going to receive it.

We said in *Edwards, supra* that, as a general rule, mere clerical or typographical errors that could not have misled the opposite party will not vitiate a pleading. Here, appellee filed a complaint alleging Broksie Hawthorne as one of the eight voters who illegally cast their vote in the election. However, at trial over appellant's objection, appellee presented evidence on Broksie Hawthorne, Jr. Appellant's argument is misplaced because she should have been put on notice that appellee was contesting the vote of Broksie Hawthorne, Jr.'s vote when a copy of his application ***243** for an absentee ballot was attached as an exhibit to his complaint. On the application, the name listed is Broksie Hawthorne, Jr. We conclude that the trial court did not err in its ruling.

[7] For her fourth argument on appeal, appellant argues that the trial court erred in disqualifying the votes of the nine voters named in appellee's complaint. Appellant relies on *Logan v. Moody,* 219 Ark. 697, 244 S.W.2d 499 (1952) for the proposition that the clerk failed to perform her duty of refusing those absentee ballots by any voter who had registered to vote for the first time by mail.

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Appellant claims that Ms. Trent testified that she and her staff failed to perform that duty, and that the voters should not be disenfranchised because of a mistake on the part of the county clerk.

Appellant's reliance upon *Logan, supra,* is misplaced. In *Logan,* we noted that "[t]he only defect ... claimed, in the entire procedure of obtaining and returning the absentee ballot, was the failure of the clerk to place on the application for the ballot the date such application was received in the clerk's office." *Id.* We concluded that the exclusion of the absentee ballots for the reason that the county clerk failed to perform his duty by marking the date showing that each application received by him within the period required by statute was in error, and we reversed and remanded the matter. *Id.*

The facts here are distinguishable. In *Logan, supra,* there was no dispute as to whether the votes in question were cast illegally. However, in the present case, the trial court determined that the voters in question cast illegal votes in violation of Ark.Code Ann. § 7-5-201(d)(1) because they failed to vote in person for the first time after they made their applications to vote by absentee ballot. This evidence was supported by Ms. Trent's testimony. For these reasons, we affirm the trial court's ruling.

[8] For her fifth argument on appeal, appellant argues that the trial court erred in disqualifying Ruby Mae Tate on the grounds that she violated Ark.Code Ann. § 7-5-201(d)(1). Specifically, appellant argues that Ms. Tate registered to vote before the statute came into existence.

This argument was not presented to the trial court, nor did the trial court ever rule on this issue. At trial, Ms. Trent testified ****543** that Ms. Tate registered to vote by mail on October 7, 2002. She also testified that Ms. Tate voted for appellant. It was not until ***244** appellant's motion for new trial, filed on March 6, 2003, that appellant raised this issue. Nothing in the record indicates that the trial court ruled upon appellant's motion for new trial. Therefore, the motion for new trial is deemed denied. *See* Ark. R. Civ. P. 59(b); Ark. R.App. P.--Civil 4(b)(1).

[9] When a motion for new trial has been deemed denied in accordance with Ark. R.App. P.--Civil 4(c), the only appealable matter is the original judgment or order. *Lee v. Daniel,* 350 Ark. 466, 91 S.W.3d 464 (2002). [FN3] Further, we have repeatedly held that an objection first made in a motion for new trial is not timely. *Id.; see also Selph v. State,* 264 Ark. 197, 570 S.W.2d 256 (1978). Because the issue was not presented at the hearing, we do not consider for the first time on appeal an argument that was not raised and ruled on below. *Ghegan & Ghegan, Inc. v. Barclay,* 345 Ark. 514, 49 S.W.3d 652 (2001). Therefore, we are precluded from reaching the issue on appeal, and we affirm the trial court's rulings.

FN3. A deemed-denied motion for new trial can be appealed if the notice of appeal is amended. *See* Ark. R.App. P.--Civil 4(b)(2). However, the notice of appeal in this case was not amended.

[10] For her sixth point on appeal, appellant argues that the trial court erred in ruling that Elmo Lewis voted two times in the runoff election and that neither of his votes were to be considered when calculating the final count. Specifically, appellant contends that, based upon Ms. Trent's testimony, only one ballot was produced at trial, and there is no proof to support the trial court's ruling.

Arkansas Code Annotated § 7-1-103(a)(19)(A) (Supp.2003) provides:

No person shall vote or offer to vote more than one (1) time in any election held in this state, either in person or by absentee ballot, or shall vote in more than one (1) election precinct in any election held in this state.

Id.

At the hearing, the following colloquy took place regarding Mr. Lewis's vote:

Q: Do you also have the voting records regarding Mr. Lewis?

***245** A: I have the--

Q: Do you have the voting records and ballots concerning Mr. Elmo Lewis as were cast in the November 26th election?

A: I have the absentee ballot, and I have a sign-in sheet that shows that Mr. Lewis voted at the polls and also voted absentee ballot.

MR. VALLEY [counsel for appellant]: Your Honor, we'd object to any further testimony if she doesn't have both ballots.

THE COURT: I'll have to have the other ballot, too. I mean, it will be disqualifying, whatever it

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is--whoever he cast a vote for. If he voted twice, that's also a crime.
MR. YOUNG: I need the ballot.
THE COURT: Do you have the ballot for the general election--ah, for when he signed in? You're going to have to go through and pull the whole ballot box, aren't you?
THE WITNESS: Pull the whole ballot box, yes, sir.
THE COURT: And then go through and find that number.
THE WITNESS: Would he not be eligible to vote one time?
****544** THE COURT: Yes, he would but--I'm not sure. If you vote twice, it disqualified both votes, I think, I'm not sure. I don't know what the law is.
MR. YOUNG: At any rate, even if we just take the one, you know--
THE COURT: How did he vote absentee?
THE WITNESS: He was mailed an absentee ballot and--I mean I've heard--I don't know. This is hearsay so I can't say it. He just--I don't know. He went to the polls and voted also.
THE COURT: How did he vote on the absentee ballot?
***246** THE WITNESS: Oh, I'm sorry. He voted for Sherry Tate.
MR. YOUNG: Your Honor, at this point in time, I guess we need to recess in order that she can get Ms. Hawthorne's record and get the other record on Mr. Lewis so that I can present them in evidence.
THE COURT: We'll get Ms. Hawthorne's business later. Let's go on and finish up with the rest of these.

* * *

THE COURT: Okay. Where is the proof that this is the first time they voted? I've got to have that.

* * *

THE COURT: All right, well, let's get it. How long will that take you, Ruth?
THE WITNESS: I'll just have to go downstairs and find the card.
MR. YOUNG: What about Elmo's?
THE COURT: Get it, too. Well, no. That will take forever to dig that out. I'm not interested in that right now. We know he voted twice.

Here, there is sufficient evidence to show that Mr. Lewis voted twice because Ms. Trent produced an absentee ballot cast by Mr. Lewis, as well as a sign-in sheet from the polls that indicated that Mr. Lewis voted a second time at the polls. Appellant does not contend that Mr. Lewis did not vote for her at the polling place, but objects that the ballot itself was not introduced into evidence. Based upon the evidence of the absentee ballot and the sign-in sheet at the polling place, we hold that the trial court did not abuse its discretion in ruling that Mr. Lewis voted twice and that Mr. Lewis's votes for appellant should be excluded.

***247** We note that disqualifying only Mr. Lewis's absentee vote because he voted twice would have resulted in the election of appellee. In its order, the trial court stated that appellee received two more votes than appellant. At the hearing, Ms. Trent testified that Mr. Lewis's absentee ballot reflected that he voted for appellant. Even if Mr. Lewis's illegal vote at the polls had not been excluded, appellee would still have won by one vote.

In *Phillips v. Melton,* 222 Ark. 162, 257 S.W.2d 931 (1953), we held that it was unnecessary to consider votes, the decision of which would not change the result in the case. In *Black v. Jones,* 208 Ark. 1011, 188 S.W.2d 626 (1945), we quoted from the early case of *Swepston v. Barton,* 39 Ark. 549 (1882):

> The remaining grounds of contest, if they are true in fact, are insufficient to change the result. It is no valid objection to an election that illegal votes were received, or legal votes rejected, if they were not numerous enough to overcome the majority.

To the same effect, *see Webb v. Bowden,* 124 Ark. 244, 187 S.W. 461, 465, where we said: 'But if the returns had been purged of all the illegal votes shown to have been cast in those precincts, it could not have affected the general result. 'It is no valid objection to the election that illegal votes were received or that legal votes ****545** were rejected if they were not numerous enough to overcome the majority.' '
Black, supra.

Based upon this well-established precedent, we affirm the trial court's rulings on this point.

Affirmed.

355 Ark. 230, 134 S.W.3d 535

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District Court of Appeal, First District, California.

BERNARDO

v.

RUE.

Civ. 1547.

Dec. 1, 1914.

Appeal from Superior Court, San Mateo County; George H. Buck, Judge.

Election contest by Frank J. Bernardo against Joseph Rue. Judgment for defendant, and plaintiff appeals. Reversed and remanded.

West Headnotes

Elections ⇐ 241
144k241 Most Cited Cases
On the close of the polls, Pol.Code, § 1253 (repealed. See Elections Code, § 7003), requires the board to count the votes cast and compare it with the list, and, if it appears that ballots folded together were cast by one elector, reject them.

Elections ⇐ 243
144k243 Most Cited Cases
On a school election, the board on closing the polls, is required by Pol.Code, § 1252 (repealed. See Elections Code, §§ 7003, 7004), to commence the count publicly and continue the same until completed without adjournment, and after the result is declared and recorded, and the ballots and returns filed, the board's jurisdiction is at an end.

Elections ⇐ 245
144k245 Most Cited Cases
Where the returns of a school district election have been duly filed with the clerk, any review or correction must be had under the direction of the board of trustees of the district or other canvassing board, under Pol.Code, § 1281a (repealed. See Elections Code, §§ 7929-7931).

Elections ⇐ 300
144k300 Most Cited Cases
In a high school trustee election contest, grant of a nonsuit held error.

Elections ⇐ 303
144k303 Most Cited Cases
Failure of the judge, trying an election contest, to file his findings and enter judgment within ten days after submission did not deprive him of further jurisdiction.

****79 *109** Ross & Ross, of San Mateo, for appellant. Barrett & Thomas and Fabian D. Brown, all of San Francisco, for respondent.

***110** RICHARDS, J.

This was a proceeding instituted to contest the election of the defendant to the office of high school trustee at Half Moon Bay, Union high school district, held within said district on April 3, 1914. The action was commenced on April 21, 1914, and came on for trial on the 8th day of May, 1914. The plaintiff's case was presented on that day; and, at the conclusion of the evidence offered in his behalf, a motion for nonsuit was on the same day made by the defendant and granted by the court. On the 28th day of May, 1914, the court filed its findings and caused its judgment to be entered in defendant's favor; and from the order granting said motion for nonsuit, and from the judgment affirming the election of the defendant to the office in question, the plaintiff prosecutes this appeal.

[1] The first point urged by the appellant is that the case having been submitted and the motion for nonsuit granted on May 8, 1914, it was the duty of the court under section 1118a of the Code of Civil Procedure to file its findings and enter its judgment within ten days after the submission of the case; and that the court, having failed to do so within said time, lost jurisdiction to render its decision or enter a judgment after the expiration of the ten-day period within which it was permitted by the statute to act; and hence that the judgment rendered and entered in this proceeding is a nullity and must be reversed. We incline to the opinion that the sections of the act governing the court's action upon the trial of proceedings of this character are directory, in the absence of an express provision of the statute declaring them to be mandatory, and that, while the recent amendment to the Code of Civil Procedure, by which section 1118a was added, was evidently intended to hasten the work of the courts in passing upon election contests, it was not intended thereby to provide the parties to an election contest should lose valuable rights because of the delay of the judge in making or filing his findings and judgment. We

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think therefore that this point of the appellant is not well taken.

[2] The appellant further contends that the court erred in granting the motion for nonsuit at the close of the plaintiff's case. **80 The practically undispued facts before the court, upon which such motion for nonsuit was made and granted, are these: On the 3d day of April, 1914, two elections were held in the town of Half Moon Bay, one for the election of a *111 grammar school trustee and one for the election of a high school trustee; the polls of each of these elections being in different places. During the progress of the high school election a voter was noticed to have inadvertently dropped a grammar school ballot into the box at the time of the deposit of his high school ballot. When the polls closed, the ballots cast were dumped out of the ballot box on a table and, with the exception of this particular grammar school ballot, were counted, when it was found that 287 ballots had been cast. The election board did not compare this count of the ballots with the poll list of voters, as required by section 1253 of the Political Code, but proceeded to open the ballots and announce the count of the names written thereon. In so doing, it was found that there were four additional grammar school ballots, which were cast aside. During the progress of the count two high school ballots, folded together as one, were found, which the inspector declared "a stuffed ballot," and which was laid aside without being unfolded or counted at the time. Presently two other ballots folded together as one were found, which were similarly laid aside without unfolding or counting. When the count was completed, it was found that the plaintiff Bernardo had received 164 votes and the defendant Rue 117, and that there were four grammar school votes not counted for either. After the completion of the count, as above set forth, and while the judges of the election were in the act of writing down on their official tally list how many votes had been cast for the respective candidates, the inspector took up one of the two sets of double ballots and opened it and separated the ballots and showed them to the defendant Rue, and then asked:

"What are we going to do with these two ballots? They could have slipped together very easily when they were thrown in together. I think it is right to give them to Mr. Rue."

The board so decided, over the protest of the plaintiff Bernardo, and credited Mr. Rue with the two extra votes, making his total number 119 votes, and also making the total number of votes counted tally with the initial count of the ballots before the canvass began, but leaving the other of the two double sets of votes unopened and uncounted and out of question for the time being. The board then proceeded to fill out the official sheet showing the returns of the election, and, after doing so, they gathered up all of the ballots, *112 including the four grammar school ballots, and also the remaining unopened and uncounted double set of ballots, and threw them into the ballot box, which they then delivered, together with their official returns of the election, to the clerk of the high school district, who was not a resident of this precinct nor a member of this election board, and thereupon the election board and the bystanders dispersed.

In the meantime the election had also proceeded in the seven other polling places of the high school district, with the result that the plaintiff Bernardo received in these 131 votes and the defendant Rue 176 votes; these, added to the votes of each in the polling place in question, would give to each of the candidates a total of 295 votes and create a tie election.

It is fairly inferable that this result was known to the members of the election board of the precinct in question at least by the following day; but, however this may be, the undisputed evidence shows that on the following night, at least 24 hours after the election of the previous day was closed, and the vote canvassed, and the result announced and recorded, and the ballot box and official returns deposited with the clerk of the district, the members of this election board reassembled in the back room of the saloon of one of their number, and which was a different place from that where the election had been held, and there, about 9 o'clock in the nighttime, and in the absence both of the public and of the contestants in the election, the members of the board proceeded to alter their formal official returns, which, in some way not revealed by the record, they had recovered from the clerk of the district, so as to add to the already recorded vote of the defendant Rue two additional votes, presumably those contained in the set of double ballots which, so far as the record discloses, they had never opened nor examined nor counted. The effect of this alteration was to give to the defendant Rue, upon the face of the altered

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returns, a majority of two votes in the election.

The foregoing undisputed facts were before the court in this proceeding at the time the motion for nonsuit was made. They show upon their face such a state of facts and such a repeated and willful disregard of the plain letter of the law regarding elections as would seem to render it perfectly plain ***113** that a motion for nonsuit ought not to have been granted in this case. Conceding the respondent's contention that the provisions of sections 1252-1260 of the Political Code are directory, and that, in the absence of insignia of fraud, election boards will not be held to a strict compliance with the statute, it would seem clear that, if this election board had followed the direction of the sections of the act above quoted, the result at which they arrived would have been impossible without a fraudulent purpose.

[3] It was the duty of the board, under section 1253 of the Political Code, to compare their count of the number of votes cast with the list of voters kept by the clerk. ****81** Had they done this, they would have found that the count of the votes cast either did or did not correspond with the poll list, and this knowledge would have guided that board in determining whether the two sets of votes folded together were each to be counted as one vote or as two; but, having disregarded this requirement of section 1253, the board also proceeded to disregard the succeeding section of the Code, which reads:

> "If two or more separate ballots are found so folded together as to present the appearance of a single ballot, they must be laid aside until the count of the ballots is completed; then, if upon comparison of the count with the number of names of electors on the lists which have been kept by the clerks, it appears that the two ballots thus folded together were cast by one elector, they must be rejected."

If the foregoing two sections of the Code had been followed and if the board were then still in doubt as to whether the two sets of double ballots should be counted each as one or as two votes, the succeeding section of the Code supplies the procedure by providing that, if the number of ballots is in excess of the names on the list, the ballots must be replaced in the box, and a number of ballots equaling such excess must be publicly drawn therefrom by one of the judges and destroyed unopened. It is evident that the election board were in some doubt as to whether these two sets of double ballots were illegal, and whether, if divided, they would cause the number of votes to exceed the number of voters, for they laid both of them aside during the regular count and did not in fact open or count one of these double sets of ballots at all. These repeated divergences from the plain letter of the statute, conceding it to be directory, nevertheless indicate the ***114** drift of this election board toward the precipice of a positive violation of the election laws, which of itself should suffice to invalidate this election.

[4] Section 1252 of the Political Code provides as follows:

> "As soon as the polls are finally closed the judges must immediately proceed to canvass the votes given at such election. The canvass must be public, in the presence of bystanders, and must be continued without adjournment until completed and the result thereof is declared."

It is the plain intendment of this section of the act that the election board shall commence their count of the votes at once upon the close of the election, and that they shall publicly and in the presence of the bystanders conduct the same without adjournment until such count is completed and the result declared and recorded. When this is done, and the ballots, together with their official returns, have been deposited with the clerk of the school district as other sections of the act require, the powers and duties of the election board are at an end: and their jurisdiction over any matter concerned in the election ceases.

[5] Thenceforth any review or correction of their returns must be done under the direction of the board of trustees of the school district, or other canvassing board, under the provisions of section 1281a of the Political Code. There was therefore no authority in law for the withdrawal by this board, on the day following the election, of their official returns from the custody of the clerk of the district for any purpose whatever; and, conceding their action in this regard to have been inspired by an honest motive, it was clearly beyond their lawful power. It is difficult, however, to make even this concession, in view of the circumstances under which this election board effected the alteration of their official returns. The conduct of the members of the board in reassembling in the night of the following day, 26 hours after the election, privately

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and in the back room of a saloon, and in there attempting to so alter their official returns as to change the result of an election, made up a series of improprieties which of themselves, and even in the absence of any other lapses in the course of the election, should have led the trial court to deny a motion for nonsuit and require affirmative proof justifying such a course of action and clearly establishing an integrity of motive as well as a rightfulness of result on the part of this board.

***115** Whether or not a motion for nonsuit is the proper proceeding in an election contest may be open to question, in view of the language of section 1221 et seq. of the Code of Civil Procedure, requiring the court to hear and determine the proofs and allegations of the parties, and to file its findings of fact and pronounce its judgment either confirming or annulling such election, and also in view of the fact that an election contest is not an ordinary adversary proceeding between private parties, but is a proceeding in which the public is vitally interested and concerned. However this may be, it appears that in the case at bar the court, in addition to granting the motion for nonsuit, made and filed its findings of fact and conclusions of law at the time of entering its judgment in the case. The findings of fact of the court are as follows:

"I. That all of the allegations of plaintiff's and contestant's complaint and petition are untrue, except the allegations contained in paragraphs I, II, III, and IV thereof, which are hereby found to be true, and except the allegations thereof admitted to be true by defendant's answer, which are hereby found to be true.

"II. That all of the allegations contained in the answer of defendant and respondent on file herein are true."

In order to test the correctness of the foregoing findings, it is necessary to examine the answer of the defendant. It is found to consist of several pages of specific denials of the averments of plaintiff's pleading and also of several more pages of affirmative matter set forth as a separate answer and defense to plaintiff's action. The defendant, having made a successful motion for nonsuit at the close of plaintiff's case, was not required to ****82** offer and in fact did not offer any evidence in support of the averments of his answer. One of the averments of defendant's answer was the affirmative allegation that the election officers "did publicly, correctly, and rightfully announce and declare that 164 votes had been cast in said school district for plaintiff and contestant and that 121 votes had been cast for said defendant and respondent herein." This affirmative averment of the defendant's answer was not only unsupported by any evidence in the case, but was positively negatived by the affirmative and undisputed evidence above set forth, showing that the only time and manner in which the election board ever declared that the defendant Rue had received 121 votes in the election was ***116** upon the occasion referred to, when, 26 hours after the election was over and after the functions and power of the board had ceased, they privately, illegally, and wrongfully, and in a place where they had no business to conduct any part of the official proceedings of the election, changed the official returns so as to show a different result from that recorded upon the day of the election, and so as to change the result of the election itself. This is but one of a number of affirmative allegations of the defendant's answer, which were not only not supported by the evidence, but were directly negatived by the undisputed proofs in the case. There are other alleged errors in the record; but the foregoing considerations render unnecessary their determination upon this appeal.

The order granting a nonsuit and the judgment confirming the respondent's election are reversed, and the cause remanded for a new trial.

We concur: LENNON, P. J.; KERRIGAN, J.

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Supreme Court of the Kingdom of Hawai'i.
IN THE MATTER OF J. N. PAIKULI.

DECISION RENDERED APRIL 8, 1890.
NOT HITHERTO REPORTED.

CONTESTED ELECTION.

Syllabus by the Court

*1 The legal requisite in a voter of the ability to "read" means the ability to read printed or written text with reasonable fluency and so as to comprehend the meaning; and the ability to "write" is the ability to express one's thoughts in writing legible to others.

Where the law provides that "if it appear that more than one ballot is enfolded," it shall be marked "rejected;" the mere fact that two are enfolded is conclusive ground for rejection, whether fraud be intended or not.

Where there might have been an equality of votes between two candidates, if certain votes improperly received had been rejected, the election is invalid.

A Justice of the Supreme Court has no jurisdiction, under the Statute of 1888, to try and determine, as grounds for vacating an election, the various offences denominated "illegal and corrupt practices."

BEFORE JUDD, C.J.

West Headnotes

Elections ⇐ 84
144k84 Most Cited Cases
The legal requisite in a voter of ability to "read" means ability to read printed or written text with reasonable fluency, and so as to comprehend the meaning, and the ability to "write" is ability to express one's thoughts in writing legible to others.

Elections ⇐ 84
144k84 Most Cited Cases
A voter who could write his own name, but who had never written a letter to anyone nor read a newspaper, and who was only able with difficulty to spell out and pronounce candidates' names from ballots was not entitled to vote.

Elections ⇐ 224
144k224 Most Cited Cases
Where voter presented two ballots, one having been slipped inside the other, his vote should have been rejected as a double vote and he should not have been permitted to vote again, notwithstanding that inspectors of election were of opinion after interrogating voter that he did not intend any fraud.

Elections ⇐ 228
144k228 Most Cited Cases
Where two votes cast at election at which winning candidate had majority of but two votes were improperly received, election was invalid.

Elections ⇐ 275
144k275 Most Cited Cases
A justice of Supreme Court was without jurisdiction of charges against candidate of illegal and corrupt practices as ground for vacating election or declaring seat in legislature vacant, where candidate had been tried on those charges in police court. Election Act 1888, §§ 75, 78.

Elections ⇐ 275
144k275 Most Cited Cases
The legislature and Supreme Court have concurrent jurisdiction to vacate an election or declare a seat vacant for any of causes set forth in statute, other than gross misconduct or neglect of business and unexcused absence from daily meetings of legislature. Election Act 1888, §§ 75, 76, 78, 82.

DECISION OF JUDD, C.J.

I find the following facts in this case.

A sworn petition signed by J. H. Barenaba, R. M. Makahalupa, William Henry, Kailiwai, J. N. Kaailua, David Watson, Kamalalo, Lono, D. Lena, Kia, A. Ku, D. Kama, and Keoho, residents of Koolaupoko, Oahu, persons who voted and were entitled to vote for representative to the Legislature from the Sixth Election District, in the Island of Oahu, to wit, the Koolau district, was filed in the office of the Clerk of the Supreme Court on the 4th day of March, 1890 within thirty days following the general election of 1890. Sufficient costs were deposited by the petitioners; the petition was addressed to me and set out causes why the election of J. N. Paikuli, the representative who received a

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certificate of election as representative for the said District of Koolau from the Inspectors of Election of said district, should be vacated and the seat of the said representative declared vacant. I set and appointed Tuesday the 25th day of March, 1890, at 10 A. M. at Chambers in the court room of the Supreme Court in Honolulu, as the time and place for hearing said petition, and caused notice of the same to be given to the Inspectors of Election for the Koolau District, and to J. N. Paikuli, the candidate who was returned as elected as representative for said district, by the marshal serving a copy of the petition upon M. Rose, Esq., chairman of the said inspectors, and upon the said J. N. Paikuli, and a summons to appear at the time and place aforesaid and show cause why the prayer of the said petition should not be granted, and besides such notices I also ordered the marshal to pnblish for three successive weeks in the Kuokoa, a newspaper circulating in said district, a notice of the hearing of the said petition, calling upon all persons whose rights or interests might be affected to appear at the said hearing and show cause why the said petition should not be granted; which was done accordingly, as appears by the return and affidavit of the marshal now on file in this case. At the time and place of the hearing, on the 25th March, M. Rose, James Olds and Asa Kaulia, the Inspectors of Election for the Koolau district, appeared but filed no answer; also appeared J. N. Paikuli, whose election as representative was contested by said petition, and filed his answer, being represented by counsel, Hon. A. Rosa and S. K. Kane, Esq. Copies of the said petition and answer, marked respectively "A" and "B," are hereto annexed The petitioners were represented by counsel, W. R. and H. N. Castle. Testimony was taken on behalf of the petitioners and the respondent J. N. Paikuli, on the 25th and 26th March, which evidence was fully reported by the stenographer of the Supreme Court and reduced to writing, and is annexed hereto in exhibit marked "C."

***2** It was proved before me that 258 votes were cast at the said election in the Koolau district, of which 130 were for J. N. Paikuli, respondent, and 128 were for one J. L. Kaulukou, and the respondent then being elected by a majority of two votes, the Inspectors duly declared the said J. N. Paikuli elected representative for the Koolau district and caused the said result to be forwarded to the Minister of Interior and thereafter delivered a certificate of election to the said J. N. Paikuli and sent a copy thereof to the Minister of the Interior.

I find established as facts in this case that one Kauli, of Waimanalo, Oahu, a native born Hawaiian, born since the year 1840, being about 25 years old, voted at said election in the Koolau district for representative of said district; that the said Kauli had not voted at the first election held in 1887 under the present Constitution, and that he presented himself before the Inspectors of Election at their session to register voters, held on the 28th January, 1890, and desired to be registered as a voter for representative; that after some examination by the said Inspectors they considered him qualified and entered his name as a voter for representative of said district, he then and there taking the oath to support the Constitution; that the said Kauli was, at the several times when he qualified as a voter and cast his vote for representative, not able to read and write the Hawaiian, English, or some European language, although he was able, with difficulty, hesitation and often making mistakes, to spell out short words and pronounce them, and although he was able to write his own name and to write easy words from copy or dictation. The said Kauli was produced as a witness before me at the said hearing, and being sworn, said among other things that he could not read nor write except that he could write his own name; that he had never written a letter to any one nor read a newspaper. I find, as a matter of law, that the legal requisite in a voter of the ability to "read," means the ability to read printed or written text with reasonable fluency and so as to comprehend the meaning, and the ability to "write" is the ability to express one's thoughts in writing legible to others. The said Kauli was able to spell out with difficulty and pronounce the candidates' names from the ballots, but I do not think the law intends that this rudimentary knowledge is sufficient. I therefore find that Kauli aforesaid was not entitled to vote, and that his vote was improperly received by the inspectors and should have been rejected.

I also find as facts in this case, that one Mahoe of Waikane, Koolau district aforesaid, a duly qualified voter, being an elderly Hawaiian, he stating his age to be 101 years, voted at the said election for Representative. He came to the polling place and presented to the chairman of the inspectors two ballots which appeared as one. They had been each

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folded separately twice, first across the middle, so as to form a rectangle, and again in the same manner and in the same direction; and when presented to the chairman, one ballot had been slipped inside of the other; they were not enfolded together for their entire length: nor were they entirely separate and merely held together by the voter's finger and thumb. They appeared, when held by the intending voter and taken by the chairman of the inspectors, as one ballot, and if the chairman had not examined the ends of the paper, the fact that there were two ballots presented might not have been discovered. The chairman announced that there two ballots, and proceeded to interrogate the voter Mahoe, and on the inspectors being satisfied that no fraud was intended by the voter, t9hey gave him his ballots back and allowed him to retire and to come to the polls again and vote.

***3** It is quite possible that the voter Mahoe did not intend to fraudulently deposit two ballots. He stated to the inspectors, on being asked, that the ballots had been given to him by one Kailaa, a runner or agent of the candidate J. N. Paikuli, and it may be that they were slipped in together when handed to him. He was not examined as a witness before me. The inspectors, as I have said, thought that the voter did not intend any fraud, and therefore did not fasten the ballots together and mark them "Double ballot rejected," with the name of the voter offering the same as required by the statute, but treated it as a mere mistake and allowed the voter to vote later.

I find as a matter of law that the vote of Mahoe should have been rejected as a double vote. The law is explicit: that "if it appear that more than one ballot is enfolded" *** "it shall be marked 'rejected."' I think the inspectors are not authorized to examine the voter and satisfy themselves whether fraud is intended. The law allows but one vote to each voter for Representative, and the offering by a voter of what appears by an inspection of the ends of the paper to be more than one ballot, makes it imperative upon the chairman to announce the fact, and he must then proceed to open the folds sufficiently to settle the question beyond dispute. If two ballots are found enfolded, the voter is not allowed to select one of them and cast it, but the law prescribes that his vote shall be rejected. The voter loses his vote without reference to whether he intended fraud or not. If fraud was in fact intended by the presenting of two ballots, separately folded as required by the statute, and one then slipped into the last fold of the other, so as to appear as but one ballot, on the fact being discovered by the chairman of the inspectors, the voter would undoubtedly say that no fraud was intended. But if on a hasty or imperfect inspection of the ends of the ballot presented, the fact of two ballots being enfolded should escape the notice of the chairman and it be deposited in the box, the voter would then have cast one more vote than the law allows him to, and a fraud would be in fact perpetrated. It is to be noticed that the statute does not say that a vote is to be rejected when more than one ballot is enfolded in such a way as to indicate that they were fraudulently intended to be deposited as the one vote allowed by the law to one voter. The bare fact that two are enfolded authorizes the rejection. It is a conclusive ground for rejection. The law is otherwise as regards the counting of votes. Here "if two or more ballots are folded together in such manner as to indicate that they were deposited together and fraudulently," such ballot must be rejected. This more liberal provision is evidently in order that no ballot shall be rejected because it has become in some way slipped into another without any fraudulent intent on the voter's part, after it has been deposited in the box.

***4** I know of no provision of the Statute by which, when a voter has once presented his vote, he may be allowed to withdraw and come again to the polls and vote. The Statute says that "in all cases," whether rejected or not, the vote "must be returned to the chairman."

I find, therefore, that the vote of Mahoe was improperly received whereas it should have been rejected. If the above named Kauli and Mahoe, whose votes I have found should have been rejected, voted for Mr. Paikuli, there were counted for him two more votes than he was entitled to have. Deducting these two votes from the total of 130 that he received, it would make his votes 128, the same number cast for Mr. Kaulukou, i. e., a tie. If Kauli's and Mahoe's votes had been rejected by the inspectors there would have been an equality of votes between the two candidates, and in that case the Statute obliges the chairman to give a casting vote.

Therefore I find and adjudge that there were two votes cast at the election in question contrary to the

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provisions of law and that they affected the result, and consequently I adjudge the election aforesaid to be invalid and declare the seat of Mr. Paikuli as Representative for the District of Koolau to be vacant.

During the progress of this investigation my attention was called to a matter not alleged in the petition, to wit, that all of Mr. Paikuli's ballots were folded parallel with the lines of printed matter on them, and all of Mr. Kaulukou's were folded at right angles to the lines. A partial opening of one leaf of the folded ballot would identify it to any one who knew the method of folding. There is nothing in the Statute prescribing whether the ballot should be folded in one method or the other. But the Statute requires the rejection of all ballots "folded contrary to the directions of the Statute and if such folding be for the evident purpose of identification." I am of the opinion that the ballots of one opposing candidate were folded differently from the other for the purpose of identification, but I cannot say that either set of ballots should be rejected as not being in accordance with the Statute.

The third cause alleged in the petition, for vacating the election in question, is that said candidate Paikuli was guilty of an "illegal practice" under an Act entitled an Act to amend and consolidate the election laws of the Kingdom, approved the 10th day of September. A. D. 1888, by engaging and hiring others as runners and canvassers to promote his election or by agreeing to pay others for such service.

The fourth cause alleged is that said candidate Paikuli was guilty of a corrupt practice and of bribing under the said Act by giving one F. R. Kahao, a duly qualified elector at said election for representative for said district, the sum of five dollars contrary to law in order to induce said elector to endeavor to pro cure the election of himself, the said Paikuli, and to procure the vote of said elector at said election.

***5** The fifth cause alleged is that said J. N. Paikuli was guilty of a corrupt practice and of bribing by giving John Paoa, a duly qualified elector for representative from said district, the sum of four dollars contrary to law in order to induce the said Paoa to endeavor to procure the election of himself, the said Paikuli, to the Legislature.

The sixth ground alleged is that respondent failed to furnish a sworn statement of his expenses, etc. Section 75 of the Act gives in detail the circumstances under which the seat of an elective member shall become vacant: they are (1) death, (2) resignation, (3) conviction of offenses which render a person ineligible to election, (4) by his being convicted of a violation of any of the provisions of this Act, (5) by falling below any of the requirements necessary for an elective member of the Legislature, (6) by reason of any bribery, fraud, miscarriage or default of such member or his agent, whereby his election might be vitiated, (7) by reason of the election of another to his seat and (8) gross misconduct or neglect of business for which he was elected, unexcused absence from the daily meetings of the Legislature--whereof the Legislature alone shall judge.

The next Section, 76, prescribes that the Legislature may take notice of any vacancy or alleged vacancy (meaning the vacancies caused by the circumstances mentioned in Section 75) and proceed accordingly with or without petition and may declare the seat vacant and order a new election.

Section 78 says that "in addition to the methods hereinbefore set forth for vacating any seat in the Legislature," a Justice of the Supreme Court with the right of appeal may entertain a petition to vacate an election or declare a seat vacant for any cause or causes; and as Section 82 of the Act declares that the judgment of either the Legislature or Supreme Court if adverse to the "member" shall be final and binding upon all parties, but not so if the judgment be in favor of the member, I think it follows that both tribunals have concurrent jurisdiction except on the eighth ground which the Legislature alone has the jurisdiction of. Neither of these tribunals can try and sentence a member to fine and imprisonment for "illegal or corrupt practices." This can only be done by the Court before whom the criminal charge is made and by whom the conviction is had.

The "conviction" of a member already obtained in a competent Court is one of the grounds upon which either the Legislature or the Supreme Court may declare a seat vacant. The respondent, Paikuli, has been tried in the Police Court of Honolulu on charges of "illegal and corrupt practices," precisely similar to those alleged as causes 3, 4, 5 and 6 in the petition before me and these cases on appeal are now

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pending in the Supreme Court. If he is convicted certain penalties are visited upon him, and among them his seat is vacated and the Legislature may so declare it. If he shall be acquitted, how can I declare his seat vacant or vacate his election on these grounds?

***6** The Statute does not give concurrent jurisdiction to a Justice of the Supreme Court with the District or Police Court to try an elected member for "illegal or corrupt practices." I am thus led to the opinion that I have under this Statute no jurisdiction to try and determine, as grounds for vacating an election or vacating the seat of an elected member of the Legislature, the various offenses denominated "illegal and corrupt practices." A conviction thereof by a competent Court is a cause upon which I should be authorized to vacate an election. This conclusion will relieve the Justices of the Supreme Court, trying a contested election, from being placed in the antagonistic position to which they might come, of finding the charges of "illegal or corrupt practices" proven against a member when, at the same time, upon the same evidence a Police or District Justice, or a jury, finds him not guilty. I doubt if the Legislature ever contemplated any such remarkable juxtaposition of events as a person acquitted of a criminal charge by a jury of the country, and at the same time the penalty of losing his seat in the Legislature visited upon him as being found guilty by the Court of the same criminal charge.

For these reasons I decline to entertain jurisdiction of charges 3, 4, 5 and 6, of the petition.

My judgment is, as above set forth, that upon the first and second causes, alleged in the petition, the election of the respondent, J. N. Paikuli, is invalid and his seat as a Representative for the District of Koolau is vacated.

8 Haw. 680, 1890 WL 1182 (Hawai'i King.)

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Supreme Court of Illinois.

KREITZ

v.

BEHRENSMEYER.

May 9, 1888.

Appeal from Adams county court; B. F. BERRIAN, Judge.

Election contest. Judgment for the contestant, from which the contestee appeals. One of the witnesses, August Bansman, testified that he was born in Germany, never obtained naturalization papers, but voted at the election contested. He came to America in 1855, at the age of two years, with his mother, his father having died in the old country; and his mother in the same year, or shortly afterwards, married a citizen of the United States.

West Headnotes

Abatement and Revival ⚿ 3
2k3 Most Cited Cases
On objection to county court's jurisdiction not because of subject-matter, but because summons was made returnable at probate instead of law term, defendant having answered at law term, the court had jurisdiction of his person, and, having jurisdiction of subject-matter, might proceed.

Aliens ⚿ 70
24k70 Most Cited Cases

Citizens ⚿ 9
77k9 Most Cited Cases
Minor children of foreign parents, whose mother, after the death of the father, marries a citizen, become citizens.

Trial ⚿ 59(1)
388k59(1) Most Cited Cases
Evidence by the contestee that certain legal voters voted, and that their names appeared on the poll list, but no ballots were returned in the box to correspond with the numbers opposite the names on the list objected to because in the order of trial, as marked out by the court, the evidence was not then admissible, is admissible where, under the rulings of the court, it would not have been admissible at any other time.

Elections ⚿ 180(6)
144k180(6) Most Cited Cases
The only candidates for treasurer being John B. Kreitz, Charles F. A. Behrensmeyer, and B. A. Dickerman, votes for John M. Kreitz, although that was the name of a brother of John B. Kreitz, who had, at a prior time, held the office of sheriff and some minor office, are properly counted for John B. Kreitz; he being ordinarily known as John, and his brother as Mat., and the vote being evidently intended for John B. Kreitz.

Elections ⚿ 181
144k181 Most Cited Cases
A ballot in which the name of the office is canceled, and the name of one of the candidates written immediately below, is properly not counted.

Elections ⚿ 181
144k181 Most Cited Cases
A ballot with a name substituted for one erased, viz.: (Written.) "Charles F. A. Behrensmeyer. "For county treasurer. (Printed.) (Erased in pencil.)-- is a vote for Behrensmeyer for treasurer.

Elections ⚿ 181
144k181 Most Cited Cases
A ballot with a name substituted for one erased, viz.: "For county treasurer, (Printed.) "Charles F. A. Behrensmeyer. (Written.) "John Jimison "For county superintendent of schools, (Printed.) (Erased in pencil.)--is a vote for Jimison for superintendent, and not two votes for treasurer.

Elections ⚿ 181
144k181 Most Cited Cases
A ballot bearing the names of both candidates, one printed and the other in writing, is properly rejected under S.H.A. ch. 46, § 17-16, providing that, "if more persons are designated for any office than there are candidates to be elected, * * * such part of the ticket shall not be counted for either candidate."

Elections ⚿ 181
144k181 Most Cited Cases
In a ballot with a name for treasurer erased, and another added, viz.: "For county treasurer, (Printed.) (Erased in pencil.) "For county superintendent of schools, (Printed.) "John Jimison. (Written.) "Charles F. A. Behrensmeyer."--parol evidence is not admissible to explain it to be a vote

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for
Behrensmeyer for treasurer.

Elections ⇐ 187
144k187 Most Cited Cases
The partial obliteration, in a ballot, of the printed name of the office by the name of the candidate written in may be orally explained as unintentional.

Elections ⇐ 188
144k188 Most Cited Cases
Although there were others of the name of the candidate Behrensmeyer resident in the county, votes for Behrensmeyer, were properly counted for him; no others of that name being candidates.

Elections ⇐ 190
144k190 Most Cited Cases
A ballot found in the ballot box, torn lengthwise into two pieces, will be presumed to have been torn accidentally, and, in the absence of rebutting proof, will not be held to be canceled.

Elections ⇐ 196
144k196 Most Cited Cases
Two ballots folded together, the outside one alone numbered, showing plainly an attempt to vote twice, are properly rejected.

Elections ⇐ 224
144k224 Most Cited Cases
A ballot offered by one whose residence is questioned, taken by the judge, who finally refuses to put it in the ballot box, the voter not insisting, or offering the evidence required by the statute, is properly rejected on recount.

Elections ⇐ 280
144k280 Most Cited Cases
Summons in an election contest is properly returnable to a probate term of the county court, under S.H.A. ch. 37, § 175, providing that matters cognizable by county courts, among which are contested elections, "except as hereinafter provided, shall be * * * cognizable at the probate terms"; it being otherwise provided only by section 177, which enacts that all that class of cases wherein justices of the peace have jurisdiction, when the amount involved shall not exceed $1,000, shall be cognizable at the law term of the county court.

Elections ⇐ 285(3)
144k285(3) Most Cited Cases
The petition need not state the names of the voters whose ballots are alleged to have been improperly counted.

Elections ⇐ 285(5)
144k285(5) Most Cited Cases
Petition contesting election, sworn to on information and belief, held sufficient.

Elections ⇐ 289
144k289 Most Cited Cases
Evidence that a ballot was voted which does not appear among the ballots in the recount is admissible, though not pleaded in the answer, to rebut the case made out in chief by contestant.

Elections ⇐ 289
144k289 Most Cited Cases
Evidence by the contestee that a ballot, after having been handed to the election officers, was changed, by having a name pasted over that of contestee, though no such matter is charged in the answer, is admissible on the issue raised by contestee's denial of the allegation that contestant was actually elected.

Elections ⇐ 289
144k289 Most Cited Cases
Under a petition alleging that contestant was actually elected to the office, it being incumbent on him to show a majority of votes cast, evidence by the contestee that certain persons who voted for contestant were not entitled to vote is admissible, although the answer does not state their names, especially when the answer, which was not excepted to, alleges that, in addition to the illegal votes named therein, there were 10 illegal votes counted for contestant.

Elections ⇐ 293(1)
144k293(1) Most Cited Cases
Where, on entering into the recount of the votes cast at a certain precinct, contestant stated that, if any question was to be raised as to the identity of the votes cast with those about to be recounted, he wished to send for the election officers of such precinct, the fact that contestee made no question as to the identity, and the recount proceeded, is not an admission on his part that a ballot was not changed after the recount was commenced, and does not exclude evidence denying the identity.

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Elections ⚖ 293(2)
144k293(2) Most Cited Cases
It is incompetent to ask a witness sought to be shown to be a minor, and unqualified to vote, what the family record says as to his age.

Elections ⚖ 293(2)
144k293(2) Most Cited Cases
Declarations of a voter, after the election, as to an intended change of domicile by him, are incompetent to prove that he was disqualified to vote.

Elections ⚖ 293(3)
144k293(3) Most Cited Cases
A voter whose ticket is alleged to have been tampered with after it had been cast may be asked for whom he voted.

Elections ⚖ 293(4)
144k293(4) Most Cited Cases
Testimony is admissible to explain that tickets poorly spelled, as for Kreitz or Critz, or even one omitting the "z," are intended for the candidate Kreitz; the names being idem sonans. The converse applies to a ticket for Dehbenmeyer, as intended for a candidate Behrensmeyer; the names not being idem sonans.

Elections ⚖ 299(4)
144k299(4) Most Cited Cases
There being, on the recount, one unnumbered ballot more than names on the poll list, the court destroyed the ballot. Held, error, under S.H.A. ch. 46, § 17-18, providing for rejection of unnumbered ballots found to be in excess of the number of names "on each of the poll lists," as it does not appear that the court ascertained the number on more than one list.

Elections ⚖ 303
144k303 Most Cited Cases
Under an answer admitting that the ballot boxes containing the ballots were forwarded to the county clerk, and opened by him, with two justices, within four days after the election, the preliminary showing that the ballots are unchanged supports a decree for a recount, as, after the recount, the contestee may show that the ballots have been changed, if such is the fact.

Evidence ⚖ 178(3)
157k178(3) Most Cited Cases
The contents of a lost or destroyed record may be proved by parol.

Courts ⚖ 37(1)
106k37(1) Most Cited Cases
On objection to jurisdiction of county court, because summons was returnable at probate instead of at law term, though objection be good, still, where defendant has answered at law term, court thereafter has jurisdiction of his person, and having jurisdiction of subject-matter, may proceed.

***159** **234** *C. A. Babcock* and *Carter & Govert*, for appellant.

***162** *Wm. McFadon*, for appellee.

***169** SCHOLFIELD, J.

***148** Charles F. A. Behrensmeyer filed his petition in the county court of Adams county on the 26th of November, 1886, to contest the election for the office of county treasurer of that county, to which John B. Kreitz had been declared elected by the canvassing board. It is alleged in the petition that the petitioner had been, and on that day was, and from thence hitherto has been, and he still is, an elector of Adams county, Ill.; that he was an elector of said county at the date of the election next hereafter mentioned; that on November 2, 1886, in pursuance of law, an election was held in said county for, among other offices, that of county treasurer of said county; that said election was held at the various election precincts and districts in said county,--the polls having been opened at each such precinct and district according to law; that, in the said several and respective precincts and districts, ballots were at said election received for said office of county treasurer; that, after the polls were closed, a count was made by the judges of election of and at the respective precincts and districts aforesaid of the votes and ballots at each of said election precincts and districts cast; that, upon such count, the judges of the respective precincts and districts aforesaid made certificate of the number of votes cast for the several and respective persons voted for for the different offices, including therein the said office of county treasurer, **235** as said votes were counted by said judges, and said judges of said respective precincts and districts thereupon caused the ballot-boxes containing the ballots voted in the said respective precincts and districts, with their said certificate of the number of votes cast last above

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named, to be forwarded to the county clerk of Adams county, Ill., who, together with two justices of said county, within four days of said election, opened the returns of said election, and canvassed *149 the same as required by law. It is further alleged that, at said election, your petitioner was the Republican candidate, John B. Kreitz was the Democratic, and B. L. Dickerman the Prohibition, candidate, for the office of county treasurer aforesaid; and that said Kreitz had 4,618 votes, your petitioner 4,604, and said Dickerman 272 votes, for the last-named office, as the result was declared by said canvassing board, and that, upon the result as last above named, the county clerk of said Adams county issued and delivered to said Kreitz a certificate of election to the office of treasurer aforesaid. That on information and belief, that the canvassing board reached result by adding together the votes for candidates for county treasurer as the same were stated in certificate of judges of the respective precincts and districts aforesaid, and that any errors in the count of the election judges entered into the result as declared by said canvassing board. The names of precincts in county of Adams, outside of Quincy, are then stated, and that the town of Quincy was divided into 16 election districts, numbered 1 to 16, inclusive, after which it is further alleged that, at Melrose precinct, 14 or more votes were cast at said election for, and intended for contestant, and which ought to have been counted for him, but which judges refused to count and did not count for him, and that said last-named judges counted for Kreitz 8 votes or upward cast for contestant, and which ought to have been counted for contestant for said treasurer. That William Childers voted at Melrose, and was an illegal voter. That at Burton 3 votes cast for contestant for said treasurer, and which ought to have been counted for petitioner, the judges of election refused to and did not count for him; and that they, by mistake, counted 5 or more votes for Kreitz for that office cast for contestant. That, at Ursa precinct, 16 legal votes, and at Mendon 9 legal votes, and McKee 5 legal votes, and Honey Creek 9 legal votes, and at Liberty 5 legal votes, and at Richfield 10 legal votes, and *150 at Third district of Quincy 10 legal votes, and at the Fifth district of Quincy 10 legal votes, and at the Sixth election district of Quincy 8 legal votes, and at the Tenth district of Quincy 12 legal votes, and at the Twelfth district of Quincy 12 legal votes, and that at the Fourteenth election district of Quincy 5 legal votes, and at the Fifteenth election district of Quincy 16 legal votes, and at the Sixteenth election district of Quincy 12 legal votes, were cast for contestant for said treasurer, which the judges of election of the respective precincts and districts ought to have counted for contestant, but refused to count and did not count for him for said office. And it is further alleged, on information and belief, that, at each of said last 14 precincts and districts, votes for contestant for said office were actually counted for Kreitz by the election judges, the precise number of which is unknown to contestant, but which he asks to have ascertained by a recount; that F. C. Inman voted illegally at Third district of Quincy for Kreitz for treasurer, and that he was not 21 years of age when he so voted; that at Liberty three persons voted illegally for Kreitz for treasurer, but contestant has not yet been able to ascertain their names; that at Liberty more ballots were in the ballot-box than on the poll-list, and that the judges of said precinct did not correctly count the ballots of the precinct; that, at the Tenth district of Quincy, the judges found among the ballots two folded together, both for contestant, one numbered and one not, and that the judges threw out both, and did not count either ballot; that, at each of the election precincts and districts of Adams county other than those above named there were cast divers legal votes for contestant for treasurer, which the judges of the respective precincts and districts **236 refused to count for him for treasurer, which ought to have been counted for him, and that, at each of the precincts and districts last named, votes cast for contestant for said treasurer were by the judges of election thereof counted by mistake for Kreitz for that office; *151 that, at some of the precincts and districts of said Adams county, other illegal votes than those above named were cast by persons not legal voters for Kreitz for said office of treasurer, and counted by the election judges for him; that the judges of election of the several election precincts in said Adams county made mistakes in counting the ballots cast for treasurer at the respective precincts as existing at said election.

And the answer of the defendant denies that petitioner, on January 1, 1886, and from that time to and inclusive of date of election, on November 2, 1886, was an elector of Adams county, Ill.; admits an election held for county treasurer of that county on November 2, 1886, in said county; and that at said election polls were open at each of the voting precincts of said county, and that ballots were cast

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and received thereat; admits that, after the polls were closed, a count was made, by the judges of the different precincts, of the votes cast thereat; and that, upon such count being made in each precinct, the judges thereof certified the number of votes cast for the different persons voted for the different offices, including therein the office of county treasurer, as the votes were counted by said judges; admits that said judges of said precincts, except in the case of the township of Ellington, thereupon caused the ballot-box containing the ballots voted at said respective precincts, with their said certificate of the number of votes cast thereat, to be forwarded to the county clerk of said Adams county, and that said clerk and two justices afterwards, and within four days of said election, opened the returns of said election from all said precincts, including Ellington, and canvassed same. It further admits petitioner was the Republican, and B. L. Dickerman the Prohibition, and respondent the Democratic, candidate for said county treasurer; and that the result of the election, as declared by said canvassing board, was 4,618 votes for Kreitz, 4,604 votes for contestant, and 272 votes for Dickerman; and that said county clerk issued respondent a certificate of election; that ***152** said canvassing board merely added together the result as certified by the judges of the different precincts as to county treasurer; denies that any errors and vices entering into the result, as certified by the judges, was preserved in the result as announced by canvassing board; avers that there were no errors or irregularities in said returns, as certified by election judges, except as hereinafter stated; admits that precincts and election districts of the county, or as set out in petition of contestant; denies that at Melrose precinct 14 or more legal votes were cast for Behrensmeyer which ought to have been counted for him, which judges refused to count for him; denies that at Melrose judges counted 8 or more votes for Kreitz which belonged to Behrensmeyer, and asserts that the judges of Melrose counted every vote there cast for him, and denies that William Childers was an illegal voter; denies that at Burton 3 or more votes were cast for Behrensmeyer which judges refused to count for him, and denies that the judges of Burton precinct counted 5 or more votes for Kreitz which were cast for contestant; denies that at Ursa, Mendon, McKee, Honey Creek, Liberty, Richfield, the Third, Fifth, Sixth, Tenth, Twelfth, Fourteenth, Fifteenth, Sixteenth districts of Quincy, legal votes were cast for Behrensmeyer, and not counted by the judges of election for him, and avers that, each of the last-named precincts, the judges counted for Behrensmeyer every vote cast for him, and certified the same correctly to the county clerk; denies that, at each of the 14 precincts last named, there were ballots cast for Behrensmeyer which the judges counted for Kreitz; denies that there should be a recount; denies that F. C. Inman, voting at Third district of Quincy, was an illegal voter under 21 years of age, but asserts he was 21 years of age; denies that at Liberty 3 illegal votes were cast and counted by the judges of Kreitz for said treasurer, and avers that no illegal ****237** votes were cast at Liberty precinct for Kreitz, and denies that there were more ballots in the box ***153** containing the ballots cast than shown on poll-books, and denies that the ballots were not correctly counted by the judges of that precinct; denies that at Tenth district of Quincy, on counting ballots cast, the judges found two ballots folded together, both for Behrensmeyer, the outside one numbered, and that the judges did not count either ballot; denies that, at each of the other election precincts of said Adams county than those specifically mentioned by petitioner in his petition, there were cast any legal votes for Behrensmeyer for said treasurer which ought to have been counted for Behrensmeyer, and which the judges of election refused to count for him, and denies that, at the last-named precincts or any other, there were cast for Behrensmeyer votes which the judges by mistake counted for Kreitz for said office; denies that at any precinct of said county and illegal votes were cast for Kreitz for treasurer; denies that judges at said respective election precincts counted any votes for Kreitz not legal votes; denies any mistake of election judges in counting, to prejudice of petitioner; avers that any mistakes of judges in counting votes were to Kreitz's prejudice; denies that a recount would disclose mistakes prejudicial to Behrensmeyer; denies that Behrensmeyer was at said election elected to said office of treasurer, and denies that Kreitz was not elected; avers Kreitz was elected by a plurality of the legal votes cast at said election, and avers that Behrensmeyer did not receive a larger number of votes than defendant; denies that petitioner is entitled to relief prayed.

It then avers that, at each precinct and district in said county, 10 legal votes were cast for defendant for treasurer which ought to have been counted for Kreitz, but which judges refused to count for him,

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and that at each precinct and district last aforesaid the judges of election counted 10 votes for petitioner which ought to have been counted for Kreitz; that, at each and every of the election precincts and districts last aforesaid, four unnumbered ballots were found, each folded within a numbered ballot, *154 and that each numbered and unnumbered ballot was for Kreitz; that in each of said ballot-boxes, in addition, four unnumbered ballots were found, two of said unnumbered ballots being inclosed within a numbered one, and the other two of said last-named four unnumbered ballots were folded within another numbered ballot, and that each numbered as well as unnumbered ballot was for Krietz for treasurer, and that, in addition, three additional unnumbered ballots were found in each ballot-box, said three unnumbered ballots being folded within a numbered ballot; that each of the numbered and unnumbered ballots were for Kreitz for treasurer; that the judges of election threw out the numbered ballots with the unnumbered, and not because of any excess of ballots over the names on poll-books, or because cast by persons not entitled to vote; avers that ballots so thrown out ought to have been counted for Kreitz; avers that, over and above the illegal votes hereinafter mentioned, 10 illegal votes were counted by the judges for Behrensmeyer for the said office of treasurer; avers that in Keene precinct, after the polls closed, on November 2, 1886, and its ballot-box had been opened, a person not a judge, clerk, or challenger was admitted to the room, and while then and there, unauthorized under statute, and unsworn, took the place of a clerk of the election, the clerk leaving the room; that such person participated in the count, and then and there made a tally sheet, and kept tally of the votes as called off by judges of the election, and that all the other tally sheets made by the judges and clerks of the precinct were made and copied from that one; alleges that said substitution for said clerk was unlawful, to the injury of defendant, and in fraud of his rights, and that the vote of this precinct should be excluded from the returns for treasurer; avers that in Ellington, after polls closed and ballot-box opened, a person not a judge or clerk or a challenger was admitted to the room, and, though unsworn, participated in the counting of ballots, and handled the **238 same, and read the names *155 therefrom, and assisted in stringing them; avers that after the ballots had been counted Fifth district of Quincy, to-wit, envelope for that purpose, and placed in possession of a judge of the precinct, that the returns from Ellington were not accompanied by the ballots, but that the ballots remained in the judge's possession one or two days after this certificate, tally sheet, poll-books, and other returns had been returned to the county clerk, and that, when the ballots were returned to said clerk, they were returned by a daughter of said judge, who was not an elector, and the ballots were then and there, with the envelope which had formerly inclosed them, wrapped in a newspaper, with the envelope torn and muddy,--said ballots, if all of them were trturned, were not returned as by law directed; avers that the person admitted to the room, and the judge having the ballots, were not friendly politically to defendant, and that Ellington township ought to be excluded from the returns for treasurer in consequence; avers that at Eleventh district of Quincy, when polls closed, some of the clerks and judges removed the ballot-box containing the votes cast in said precinct to the private house of one of the clerks of election, while the other judges and clerks went home, and, after an absence of some time, met at said house, and counted and canvassed the votes; that during said count the judges of election, or one of them, found two unnumbered ballots, each folded in a numbered ballot, and destroyed them, and did not take them into account at all; that said unnumbered and numbered ballots were not destroyed because of an excess of ballots over names of poll-list, nor for any legal or valid reason; avers that, while the election was being held, an elector presented his ballot, having name of defendant on it for treasurer,--presented his ballot to the judges,--for the purpose of putting it into the ballot-box; that a judge, instead of putting it in the box, laid it aside, and never did put it in the box, and that the elector was thereby deprived of his vote; that none of the judges and clerks of this precinct were friendly to defendant *156 politically; that, for acts last named, the returns of the precinct ought to be excluded; avers that, in the Tenth district of Quincy, the judges of election, after polls closed and ballot-box was opened, and the count entered on, found two unnumbered ballots, each folded in a numbered ballot, and all of the four ballots having defendant's name for treasurer, and the judges destroyed the four ballots, and did not take either into account, and that for this reason the votes of the precinct should be excluded from the returns for treasurer; avers that if the vote of the Tenth and Eleventh districts be not excluded, that in that event the numbered ballots inclosing the unnumbered ballots so destroyed should be counted

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for defendant; avers that, in each election district over and above the unnumbered ballots already mentioned, the judges found in each precinct two other unnumbered ballots, each folded within a numbered one, the numbered and unnumbered one being for defendant for treasurer, and that the judges of each precinct destroyed both the numbered and unnumbered ballots in each case, and not for any excess of ballots over names on poll-list, nor because cast by illegal voters; avers following illegal voters voting for Behrensmeyer in First district of Quincy, to-wit, Henry P. Williams, Ebenezer Barker, William Adcox, Sam Barnum, Edward Janes, James Kennedy, L. W. Bryson, Fred Brewer, William H. Euter, Lester Janes, and William Burrall; avers following illegal voters voting for Behrensmeyer in Second district of Quincy, to-wit, A. S. Sissiley; avers following illegal voters voting for Behrensmeyer in Third district of Quincy, to-wit, D. L. Lyons, Bernard Kessing; avers following illegal voters voting for Behrensmeyer, Fifth district of Quincy, towit, Thomas S. Kelly, G. C. Weisner; avers following illegal voters voting for Behrensmeyer in Sixth district of Quincy, to-wit, Fred Zang, Charles Wermker; avers following illegal voters voting for Behrensmeyer in Ninth district of Quincy, to-wit, T. W. Weishner, A. F. Boehne, Christ. Le Brosse, John Boll, Anton *157 Zatery, William Fenkhams, and Henry Knapheide; avers **239 following illegal voters voting for Behrensmeyer in Tenth district of Quincy, to-wit, Henry Zink, Frederick W. Sturhahan; avers following illegal voters voting for Behrensmeyer in Eleventh district of Quincy, to-wit, August Lucke, Philip Hocker, R. J. Crook, August Prante, Fred Prante, Gottlieb Bogy, Henry Graewe, Henry Buckmeyer, Henry Sunderman, H. Strottmeyer, and W. H. Hillborn; avers following illegal voters voting for Behrensmeyer in Fourteenth district of Quincy, to-wit, Silas Bogarth, Charles Sanders, R. V. McKinsons, Walter Terrill; avers following illegal voters voting for Behrensmeyer in Fifteenth district of Quincy, to-wit, Lea Jackson, John Mitchell, _____ Bassett, _____ Brown, Allen Crosby, _____ Craver, George Buehner, and Larkin Gardner; avers following illegal voters voting for Behrensmeyer in Ellington precinct, to-wit, Isaac Vorhies, William Phanschmidt, Louis Steffen, Mathias Wright, Louis Kruse, and Henry Luecke; avers following illegal voter voting for Behrensmeyer in Gilmer precinct, to-wit, William Ferguson; avers following illegal voters voting for Behrensmeyer in Ursa precinct, to-wit, August Ipperson and David Hess; avers the following illegal voter voting for Behrensmeyer in Honey Creek precinct, to-wit, T. A. Melvin; avers following illegal voter voting for Behrensmeyer in Payson precinct, to-wit, Fred Dickman; answer avers following illegal voter voting for Behrensmeyer in Richfield precinct, to-wit, Albert Moore; avers following illegal voter voting for Behrensmeyer in Concord precinct, to-wit, Henry Hoeckford; avers following illegal voters voting for Behrensmeyer in Clayton precinct, to-wit, James Lovegood, John Hassett, and John Mintz. The answer then denies that contestant was in fact elected treasurer, or that such fact would appear upon a recount; and avers that contestant and contestee, by returns of the canvassing board, received an equal number of votes for treasurer at First district of Quincy; that, in the Fifth precinct, contestant, by *158 said board's returns, had six more votes than contestee for treasurer, and in the Sixth district of Quincy 39 more votes than contestee, and in the Seventh district of Quincy contestant had 25 more votes than contestee, and in the Eighth district 9 more votes than defendant, and in the Ninth district 117 more votes, and in the Tenth district of Quincy contestant had 191 more votes than defendant, and in the Eleventh district 107 more votes, and in the Thirteenth district 11 more votes, than defendant for treasurer; that in Northeast contestant had 23 more votes, in Keene 21 more votes, in Ursa 13 more votes, in Mendon 57 more votes, in Camp Point 81 more votes, in Clayton 81 more votes, in Ellington 58 more votes, in Gilmer 3 more votes, in Beverly 26 more votes, than defendant for treasurer; and avers, besides, the inaccuracies in counting said votes, canvassing and reporting the same in this answer mentioned; that, in each of said last nine districts of Quincy and nine townships, the votes of the electors voting were, as to defendant, incorrectly, falsely, and fraudulently cast, counted, canvassed, and reported or returned; that in each of said nine townships and nine precincts last named, on the day of election, divers false and fraudulent tickets gotten up and designed by the friends, agents, and political partisans of contestant to deceive, and for the purpose of defrauding the electors of said precincts or district and townships out of, and in the expression of, their choice for candidates for said office of treasurer, were, by such friends, agents, and political partisans of petitioner, prepared and made to resemble and counterfeit the

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Democratic ticket used at said election, with the exception of the substitution of petitioner's name for that of defendant thereon for treasurer, and certain other slight but unnoticeable differences, and that such tickets were, on the day of election, by the friends, agents, and political partisans of contestant, distributed, circulated, and delivered ***159** to the voters in said nine townships and nine precincts, with intent to defraud the electors, and induce them to deposit tickets at the several polling places containing contestant's instead of defendant's name for county treasurer, and that many electors in said nine townships and nine precincts or ****240** district were induced to vote said false and fraudulent tickets, believing, and induced to believe by fraud and contrivance, that said false and fraudulent tickets were the tickets of, and authorized and distributed by, the Democratic party, through its authorized agents, for use at said election, and that said tickets contained the names of all the candidates for the respective offices thereon named of the Democratic party; that the name of defendant was not thereon; and defendant avers that, by reason of said false and fraudulent tickets and acts, the electors of said nine townships and each of them, and said nine precincts and each of them, were defrauded, and the expression of the will of said electors by their ballots cast at said election was falsified, and that, by reason thereof and thereby, the votes of the electors of said nine precincts or districts and said nine townships, and the count made thereof, and the return and report thereof, are not the vote of said elector, and a count and return of such vote; denies petitioner entitled to the relief prayed, and says petition is not brought and filed to proper term of court, and that summons issued to a probate term instead of law term of county court. There were no exceptions to the answer, but a general replication by contestant was filed January 13th.

***169** Before proceeding to the merits of the case, we must pass upon a question of jurisdiction and some questions of pleading and practice.

1. It is objected that the county court had no jurisdiction in the case, because the summons was returnable to a probate term, instead of to a law term. It is provided by section 5 of the county court act (Rev. St. 1874, p. 339, c. 37) that 'county courts shall have jurisdiction in all matters of probate settlements of estates of deceased persons, appointment of guardians and conservators, and settlement of their accounts, all matters relating to apprentices, proceeding for the collection of taxes and assessments, and in proceedings by executors, administrators, guardians and conservators for the sale of real estate for the purpose authorized by law, and such other jurisdiction as is or may be provided by law; all of which, excepts as hereinafter provided, shall be considered as probate matters, and be cognizable at the probate terms hereinafter mentioned.' It will be observed that the words 'and such other jurisdiction as is or may be provided by law' are unrestricted, and may therefore have application to matters to be considered at the probate as well as at the law term of the court; and the last sentence of the paragraph expressly provides that all of the matters of which the court may thus have jurisdiction shall be not matters of provate, but considered as probate matters, and be cognizable at the probate terms, except as thereinafter provided. Unless, therefore, it is in the statute expressly provided that contested elections shall be considered at law terms, it must follow, under this language, that they shall be considered at probate terms. It is provided, in section 7 of the same act, that the 'county courts shall have concurrent jurisdiction with the circuit court in all that class of cases wherein justices of the peace now ***170** have or may hereafter have jurisdiction, where the amount claimed or the value of the property in controversy shall not exceed one thousand dollars; concurrent jurisdiction in all cases of appeals from justices and police magistrates, * * * and in all criminal offenses and misdemeanors where the punishment is not imprisonment in the penitentiary or death; all which shall be cognizable at the law term hereinafter mentioned.' The words 'class of cases wherein justices of the peace now have or may hereafter have jurisdiction' clearly mean actions at law. This is clear both from the limitation of $1,000 on the 'amount claimed on the value of the property in controversy,' which can have no application where no amount in money and no property is sought to be recovered, and from the specific enumeration of the cases of which justices of the peace then had and still have jurisdiction, in section 13, c. 79, p. 639, Rev. St. 1874. Besides, from the very nature of chancery powers and jurisdiction, it would be absurd to assume that it would have been contemplated ****241** by the general assembly that they would ever be conferred upon justices of the peace. We had decided, previous to the date of this

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enactment, and then held, that a proceeding to contest an election was not a suit at law. *Moore* v. *Mayfield*, 47 Ill. 167; *People* v. *Smith*, 51 Ill. 177. There is plainly nothing in this section conferring general chancery powers upon the county court, and we know of no other section in which such powers are conferred and to be exercised at the law terms. The section 113, cap. 46, Rev. St. 1874, entitled 'Elections,' provides that a person desiring to contest an election, etc., shall 'file with the clerk of the proper court a statement in writing, * * * which statement shall be verified by affidavit in the same manner as bills in chancery may be verified.' Then sections 114, 115, and 116 provide for the issuing of summons, its service and return, the taking of evidence, and the trial of the case in like manner as in cases ***171** in chancery. And there is no other provision of the statute in regard to the term to which the writ shall be returnable. The section 98 of the act simply says, 'The county court shall hear and determine contests of election of all other county officers,'--and that includes this office; and says nothing about when the proceeding shall be heard. It must therefore inevitably follow that this proceeding shall be heard at the probate term, because there is no other term provided for its hearing. *East St. Louis* v. *Wittich*, 108 Ill. 449, is supposed by counsel for appellant to be opposed to this view. We think otherwise. That was a proceeding, under chapter 24 of the Revised Statutes 1874, to assess the cost of improvement of a certain street in East St. Louis, and the issues must be tried by a jury. See section 31, art. 9, of the chapter. And it is expressly provided that the hearing shall be conducted as in 'other cases at law;' and so we thought it followed it could only be tried at a law term. It may, moreover, be observed that this objection does not question the jurisdiction of the court over the subject-matter or the person, but simply denies that the court existed at the time to which the writ was returnable for the purpose of such adjudication. If we shall admit that to be true, what follows? Simply that the orders then made were a nullity. At the February term, appellant answered. That was a law term, and undoubtedly the court then might adjudicate if the parties were before it. Had appellant failed to answer, or failed to obey and order of the trial term, and the court had then coerced him into obedience to doing that which it could not have compelled him to do but for the prior order, the validity of the order at that term would be before us for investigation. But appellant might have answered without summons, and without any previous order; and, if the previous order is a nullity, he is to be assumed, in the absence of coercion, as having voluntarily answered. If he did so, the court thereafter had jurisdiction ***172** of his person; and, having jurisdiction of the subject-matters, it lawfully proceeded.

2. It is objected that the court was not authorized by the proceedings, nor by the preliminary proof of the identity of the ballots, to decree an examination of the ballots. We are of the opinion that it is not indispensable, in such cases, that the petition shall show the names of the persons whose ballots have been improperly counted. More particularity in pleading is not required than the nature of the subject is necessarily susceptible of, and it is obvious, in the very nature of things, that in most instances the candidate defeated by a miscount cannot know whose ballots were miscounted. All he can be expected to know is that about so many ballots were deposited for him at a given poll, and that the account does not agree therewith. If he knows more, it is accidental. Nor, in such case, is it of consequence whose ballot was miscounted; for the effect is the same, and the mode of proof os precisely the same, whether it was cast by one legal voter or another. It is, moreover, evident that the information upon which the contestant acts must, to a very great extent, bc hearsay. He cannot be expected to have been personally at each poll, much less to have known how each elector voted, nor can he be expected to have ****242** personally supervised the counting at each poll, and therefore, however grossly and palpably he may have been wronged at several polls, all that he can say truthfully, in respect to most of it, is that he is informed and verily believes. We are therefore of the opinion that as to the polls, count, etc., at Melrose, Burton, Ursa, Mendon, McKee, Honey Creek, Liberty, Richfield, and the Third, Fifth, Sixth, Tenth, Twelfth, Fourteenth, Fifteenth, and Sixteenth election districts of the city of Quincy, the petition is sufficient. As to the other polls, it clearly was not, had the objection been taken by demurrer and adhered to. It is a clear and most palpable violation of the right of a secret ballot to allow a party, on mere suspicion, to have the ballots exposed, and subjected to scrutiny, to enable ***173** him to find objections upon which to make a tangible charge. But appellant answered, and made issues of fact, and gave evidence upon the general and indefinite as well as the specific allegations of the bill, and thus

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waived the objection. As respects the preliminary proof of the identity of the ballots, it is alleged in the petition that 'said judges of said respective precincts and districts thereupon [*i. e.*, after counting the ballots at the several polls] caused the ballot-boxes containing the ballots voted in the said respective precincts and districts, with their said certificates of the numbers of votes last above named, to be forwarded to the county clerk of Adams county, Ill., who, together with two justices of said county, within four days of said election, opened the returns of said election, and canvassed the same as required by law.' Appellant, in his answer, admitted that, 'after the polls were closed, a count was made by the judges; * * * that said judges of said precincts, except in the case of the township of Ellington, thereupon caused the ballot-boxes containing the ballots voted at said respective precincts, with their certificate of the number of votes cast thereat, to be forwarded to the county clerk of Adams county, and that said clerk and two justices afterwards, and within four days of said election, opened the returns of said election from all said precincts, including Ellington, and canvassed the same. It is unnecessary to notice the answer as to Ellington, since appellant lost nothing by the recount of the vote at that poll, and was not, therefore, injured by it. We think, under the admissions of the answer, the preliminary proof was sufficient. It does not follow from the fact that ballots are ordered to be recounted that all question of whether they have been tampered with is concluded. If the petitioner makes a *prima facie* case that there is a necessity that they be recounted, and that they have not been tampered with, the order to that effect will be made; but an inspection of the ballots alone, upon a recount, might furnish ample evidence ***174** that they had been tampered with and changed since cast; and where one ballot is taken out, and another ballot of the same general appearance, but for a different candidate or candidates, is put in its place, it can only be learned, after an inspection of the ballots, upon a recount, by the voter declaring that it has been changed. Hence, after the recount, and consequent opportunity for inspection of ballots, it is competent for the incumbent to show that the ballots have been changed, if such is the fact, or that they are in any respect to be discredited for other cause.

3. Appellee contends that appellant was improperly allowed to introduce evidence proving that certain persons who had voted for appellee, whose names are not given in his answer, were not legal voters. Less particularity is required in the answer of the defendant than in the petition. 1 Daniell, Ch. Pr. (3d Amer. Ed.) 727. It is, among other things, alleged in the petition that appellee was actually elected to the office of treasurer; and, to sustain this allegation, it was incumbent upon him to prove that a majority of the legal votes cast at the election were cast for him. It is true that the production of ballots cast for him raised the presumption, *prima facie*, that they were legal; but the burden of proof, nevertheless, was upon him, and it was therefore incumbent upon him to introduce evidence of the ballots in the ****243 *175** first instance. Appellant denied that allegation, and under that denial, was entitled to rebut the presumptive case thus made by appellee, by disproving the *prima facie* case made by the ballots; and this he did by showing that they were not what they purported to be,--that they were not the ballots of legal voters. In *City of Beardstown* v. *City of Virginia*, 81 Ill. 544, Easem and Mains had each voted for removal, but the election judges refused to count them because they deemed them double ballots. On the trial, satisfactory evidence was introduced that they were in fact not liable to the objection, and the court then counted them for removal. It was objected that there was no allegation in the answer under which this could be done; but we said: 'The bill alleges that a majority of the legal votes cast at said election were not for removal, but against it. The answer denies the allegation. Under such allegation and denial, we regard the evidence as properly admitted.' Aside from this, however, there is a general allegation in the answer that, over and above the illegal votes mentioned specifically in the answer, 10 illegal votes were counted for appellee for the office of treasurer. Undoubtedly, this allegation is too indefinite; and, if the answer had been excepted to, an exception to that allegation should have been sustained; but it was not excepted to, and therefore what has been said in respect to the too general allegations of the bill in respect of a number of the polls is applicable here.

This brings us to specific rulings on the merits of the case. *First*. Appellant, after appellee had concluded evidence on his behalf as to the condition and in explanation of ballots cast at the election, introduced Joseph W. Davis, who testified that he voted at the election in Clayton township; and appellant then proposed to prove that the witness

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voted ballot numbered 143 at that poll, and that, when he voted it, it had the name of John B. Kreitz for county treasurer printed on the ticket, and that it did not then have a paster stuck on and placed over the name of John B. Kreitz, and that it was uncrossed, and plainly to be seen a ticket for John B. Kreitz for county treasurer; that the ticket, when recounted, had a paster, on which was printed the name of C. F. A. Behrensmeyer, pasted over the printed name of John B. Kreitz, and that the name of Behrensmeyer was not on the ticket at the time witness voted. Counsel for appellee objected to the admission of this evidence for the reason alleged 'that the evidence, if it ever could be admissible, presupposes fraud or improper conduct on the part of the election officers, and there is no charge of the kind in said Kreitz's answer herein filed as to the officers of the election of Clayton township; that hence the evidence ***176** is not now admissible; that a ballot, after once in the box, cannot be contradicted or changed by parol evidence, at least not without fraud charged, which is not done in the answer in this case; and because there is nothing in said Kreitz's said answer to found the evidence offered on; and because the identity of the ballots counted by the judges of election with those counted on the recount of Clayton township, of which this ballot was one, was admitted by contestee before proceeding to such recount.' The court sustained the objection, and refused to allow appellant to prove or to give evidence of the facts, or of any of them; and appellant excepted. It was at the same time proved that the witness was a legal voter at that poll. The witness was then asked for whom he voted for treasurer. This was objected to for the reason that the ballot is the best evidence of that fact; and the court sustained the objection, and appellant excepted. Following this objection in its order, it is manifestly not true that the evidence necessarily presupposes fraud in the election officers, for the paster may have been put on the ticket by a third party when their attention was absorbed by their official duties in taking in or counting other ballots, or in preparing and signing their returns; or it may have been put on the ticket, since the ballots left their hands, by stealth and artifice, and without the knowledge or gross neglect of any officer having custody of the ballots. But, even if it be admitted that it does presuppose fraud in the election officers, it ****244** is to be kept in mind that, the proper canvassing officers having found and declared Kreitz to be elected, the presumption is that he was elected until the contrary is clearly established; that Behrensmeyer, in alleging that he was elected, and that Kreitz was not elected, by a majority of the legal votes cast at the election, assumes the affirmative, and consequently that the burden is upon him to clearly prove that a majority of the legal votes cast at the election were for him. It is immaterial that the production of a ballot received by the ***177** judges of election is *prima facie* evidence that it is cast by a legal voter; for that affects only the order of giving evidence, and does not change the issue. As we have before insisted, appellant's denial of the allegation of the petition that Behrensmeyer was elected, and that Kreitz was not elected, by a majority of the legal votes cast at the election, simply closed the issue. It then devolved upon appellee to make out by evidence at least a *prima facie* case; and when he had done so, appellant was entitled to introduce evidence to show that the evidence thus introduced and relied upon by appellee was not what appellee claimed it to be, and consequently that what he introduced as legal ballots were not in fact legal ballots. Were appellant to raise a new issue, one not presented by the petition, the burden and order of introducing evidence would, of course, be directly the reverse. But that is irrelevant to the question before us. It is undoubtedly true that a voter cannot be allowed to say that he voted for one person when he admits that he cast a ballot, which has not since been changed, showing that he voted for another person. But this is merely upon the principle that a writing cannot be contradicted by parol. It is, however, always competent to show that even the most solemn writings are forgeries; and a ticket which has been changed by a paster to read as a vote for a man for a particular office, different from the man for whom it read as a vote in the condition in which it was then cast, is a forgery; and the same is true where the ballot, after it is cast, is destroyed, and another and a different ballot is put in its place. Quite clearly, therefore, this evidence would have proved that one ballot counted for appellee was not evidence of a lawful vote cast for him; but, on the contrary, that the vote should be counted as a vote cast by appellant, and was therefore directly responsive to the allegation of the petition.

What is relied upon as an admission of the identity of the ballots cast and recounted is thus recited in the record: 'And ***178** the recount of the ballots returned to the clerk of the county court next

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hereinafter named as cast at the said election for said office of county treasurer at the [here the poll is named,] in said Adams county, being about to proceed, the said Behrensmeyer, the said contestant, stated to said Kreitz and his attorneys that, if any question as to the identity of the ballots cast at said [naming the poll,] with those about to be produced and counted by said Haselwood, were made, the said contestant wanted a judge or clerk of said last-named district present, and would send for such judge or clerk, and have him present, before proceeding to a recount of said last-named ballots; and thereupon, the contestee making no question as to said identity, the recount of said last-mentioned ballots proceeded without the presence of such judge or clerk.' Very clearly, this cannot be construed into an admission that the ballot was not changed after the recount of the poll was commenced, and before that ballot was reached, which may have been the fact. In other words, it is not an admission that no ballot of that poll would be thereafter changed before recounted. But it is also further quite evident that it could not have been intended as an admission as to matters of which appellee could then know nothing. He doubtless then knew that the election officers supposed they had and that they intended to count the ballots as they received them, and placed them in the ballot-box, and that the same ballots were intended to be put up by them, and that they believed they were, and returned to the county clerk, as provided by statute. But the election officers could not know what was on the face of a ballot until they opened ****245** and read it; and since, in reading off the names of a ballot, and ascertaining the number of votes for the particular candidates for the respective offices, they are not required to take cognizance of the number which each ballot bears, but, on the contrary, they are, by section 87, c. 46, Rev. St. 1874, expressly forbidden, under severe penalties, from comparing the ballot with the poll-book, so as ***179** to ascertain by whom the ballot was cast, it is impossible that they could know whether a ballot bearing a particular number, as, for instance, that of this ballot, had an erasure or paster on it. And all that they could know is that the general appearance of the ballots, as a whole, is the same, or, by extreme possibility, that so many names for this office were erased and another name substituted, and so many pasters with one name upon it were pasted over another name. And waiving evidence simply waives that which is susceptible of evidence. But, aside from this, this admission was for the mere purpose of dispensing with preliminary proof. In order to recount the ballots, it was assumed, and properly so, a necessity should be shown, and the *prima facie* identity of the ballots to be recounted established. What the ballots might disclose, when re-examined, no one could know in advance; and, necessarily, the proof to be thereafter offered could not be anticipated. When the recount was gone into, the purpose of the preliminary proof, and, necessarily, this admission, was accomplished. And it violates the fundamental rule of construction that words are to be limited by their meaning as applicable to the object in view, when they are used to hold that this admission goes beyond the right to recount the ballots. It is not contended, and it cannot be reasonably, that the mere fact that ballots are recounted concludes all inquiry as to whether they are really the ballots cast, or that they have the same names upon them as when cast. The court therefore erred in excluding this evidence.

Appellant introduced Charles H. Matsenbacher, whose testimony proved that he was a lawful voter, and voted at this election, in the Ninth district of the city of Quincy; and appellant then offered to prove by him that he voted ballot numbered 330 at that poll, and that when he voted it the name of John B. Kreitz for county treasurer was upon it; that his name was not erased or scratched; that the name of Behrensmeyer ***180** was not then interlined upon the ballot under the name of John B. Kreitz; but the ballot was plainly a ballot for John B. Kreitz for county treasurer, and that the ballot was changed by erasing the name of Kreitz, and interlining the name of Behrensmeyer, after he voted it. Appellee objected to the introduction of the evidence, and the court sustained the objection, to which appellant excepted. This objection, we must assume, as the record discloses no reason, is predicated upon the same reasoning as the objection to the testimony of Davis. What we have said in respect to that objection is equally pertinent here. The court erred in excluding the evidence.

Appellant also offered to prove by J. T. Seehorn, whom he showed to have been a legal voter, and to have voted, at this election, at the Ninth election district in the city of Quincy, that he voted for John B. Kreitz for treasurer; that his ballot was numbered 28; and he offered to prove by other evidence that there was, at the time of the recount, no such ballot

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among the ballots of that precinct. Appellee objected generally, and because there is nothing in said Kreitz's answer herein as to any abstracting of ballots in the said Ninth precinct, or of any misconduct of election officers of such kind; that there is nothing in said answer to file such proof on. And the court sustained the objection, and refused to allow the evidence to be given, and appellant excepted. We have already shown that evidence of this kind is competent as rebutting the evidence given by appellee to make out his case in chief. Appellant could not have mentioned it in his answer, because he could not have known that the ballot was missing until the ballots were examined for recounting, which was long after the issues were made up. For aught that we ****246** can know, the ballot may have been inadvertently lost after the ballots were opened to be recounted, but before the recount of that poll was completed. Whether the ballot was lost by inadvertence, or stolen by design, appellant was entitled to the benefit of it. ***181** It was one of the lawful votes cast for him for treasurer. The court clearly erred in this ruling.

Appellant also offered to prove by Charles Henry Matsenbacher that he was acquainted with 25 different persons, whose names were given; that each and all were voters, at this election, in the Ninth precinct in the city of Quincy; that they all voted at that election, in that precinct, for John B. Kreitz for county treasurer; that the names of each and all appear upon the poll-books of that precinct as having voted; that each name on the poll-books has a number opposite to it; and that no ballots were returned in the box corresponding to these numbers on the poll-books. Appellee objected to the introduction of the evidence 'on the ground that the evidence was incompetent generally; that it related to ballots in a precinct where, at the time of the recount, the question of the identity of the ballots with those counted had been conceded; that in the order of trial, as marked out by the court, the evidence was not admissible at this time; that the evidence offered belonged to the case in chief; that the ballots and poll-books of the 9th precinct are the best evidence; that the evidence offered is secondary, and relates to ballots not declared ambiguous by the court; and because there is nothing in contestee's answer apprising contestant of any alleged change of ballots in this precinct, or any allegation therein on which to found the proof.' The court sustained the objection, and refused to allow the evidence to be given, and appellant excepted. The record does not disclose whether the court sustained the objection on all of these grounds, but it is to be inferred from the rulings upon the questions we have just been considering that it was on the ground that the identity of the ballots had been conceded, and that the objection had not been specially raised in the answer. This objection, however, as the one last before considered, could not have been set up in the answer, for it could not have been known when the answer was filed. But the same reasoning is applicable here that was applicable ***182** to the objection to the matters offered to be proved by Davis, except as to the suggestion that, 'in the order of trial marked out by the court, the evidence was not admissible at that time.' But, unfortunately, under the rulings of the court, it would have been admissible at no other time. It appears from the abstract before us that at the January term, 1887, of the court, the court fixed the 7th day of February, 1887, for the commencement of the hearing, and then 'held and announced that offers of testimony as to other ballots not held by him patently ambiguous might be made by the parties during the progress of the testimony, if they saw proper, but that he would not hear or admit any such testimony at any stage in the case.' This was, at the time, excepted to by appellant. The time, then, when this evidence was offered, was unimportant, because it was thus ruled out at the opening of the trial. It was equivalent to saying: 'It makes no difference when you offer it, I rule it out now.' The counsel had a right to assume that the time of offering it was of no consequence; that offering it was purely formal; and the court was notified, by the exception then taken, that appellant would stand upon his legal right to introduce such testimony. If the court ever changed this determination, the record fails to show it. If it was, in fact, changed, it was due to appellant's counsel to notify him of it in time to have procured and introduced his evidence. If it be true, as the offer supposes, and the objection by implication admits, that these parties voted, and numbers were placed opposite their names, but no corresponding ballots were in the box, the poll-books and ballot-box, already before the court, proved it; and appellant was entitled to have it considered on the hearing. While we held in *Hodge* v. *Linn*, 100 Ill. 402, that the failure to number any of the ballots cast at a particular poll was not sufficient reason for setting aside the ****247** return of that poll, it being proved

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that the omission was through a misapprehension of duty, and with no fraudulent intent, still the ***183** statute requires the ballots to be numbered; and, the presumption being that officers do their duty, it must be presumed, until the contrary is shown, that these ballots were numbered as they were cast, and that they have since been abstracted or lost from the ballot-box. It is provided by section 51, c. 46, Rev. St. 1874, each clerk of the election shall keep a poll-list, which shall contain a column headed 'Number;' and another headed, 'Names of voters.' The name of each elector voting shall be entered upon each of the poll-books by the clerks, in regular succession, under the proper headings. And it is provided by section 55 of the same act: 'The ballot shall be folded by the voter, and delivered to one of the judges of elections. * * * The clerks of the election shall enter the name of the voter, and his number, under the proper heading in the poll-books, and the judge shall indorse on the back of the ticket offered the number corresponding with the number of the voter on the books, and shall immediately put the ticket into the ballot-box.' And, this being done, the ballot must always bear the same number that is on the poll-books opposite the name of the voter. It is undoubtedly susceptible of explanation that ballots are omitted to be numbered, or are inaccurately numbered through mistake; and so here, had this evidence been admitted, as it should have been, the burden would then have been upon appellee to show, if such was the fact, that the ballots as cast were actually in the box, but by mistake either bearing no number, or a different number than that opposite the name of the voter; and, in the absence of such proof, it would have been presumed that appellant was fraudulently denied, in the count, the benefit of that many votes. *Prima facie*, therefore, the effect of this offer is to prove that the number of votes indicated were cast for appellant, and not counted for him on the recount of this poll, in addition to the number that were then actually counted for him; and, in that view, the court clearly erred in excluding the evidence offered.

***184** On the recount of the Sixteenth precinct, the court found two unnumbered ballots, both for appellant, and, by examining the poll-list returned with the ballot-box, it was determined that there was one more ballot than names on the poll-list. The court therefore destroyed one of these unnumbered ballots. The statute provides that each clerk of the election shall keep a poll-list; one of which is to be kept in the ballot-box, and the other returned to the county clerk. Sections 51-62, c. 46, Rev. St. 1874, and section 57 of the same chapter, require that the judges, after the polls are closed, shall count the ballots, and that they shall first court the whole number in the box. If the ballots shall be found to exceed the number of names entered on each of the poll-lists, they shall reject the ballots, if any be found upon which no number is marked. Now, this duty, it is to be presumed, was discharged by the judges of election; and assuming, as appellee does, that the ballots are the same, either the court made a mistake in counting, or the poll-lists did not agree. It is, however, quite as reasonable to assume that the poll-lists did not agree as that there was a mistake in any other respect; and it admits of no controversy that there was a mistake in omitting to number at least one of the ballots. The statute requires, it will be noted, before the ballot shall be destroyed, that it shall be ascertained that the number of the ballots in the box 'exceeds the number of names entered on each of the poll-lists,' and that was not here done. And the action of the court was therefore erroneous. It is contended by appellant that in no event was the court authorized to destroy the ballot, because, it is said, it was no fault of the voter that it was not numbered. If it be conceded that the unnumbered ballot was actually cast by a legal voter, this position will be true. But the statute contemplates that the ballots shall be correctly numbered, and hence that every ballot, as cast, will have the number of the voter indorsed upon it; and, this being **248 done, it must follow that the unnumbered ***185** ballot is improperly in the box, and it should therefore be destroyed.

Frederick C. Inman voted for appellant in the Third precinct of Quincy. The court held him to be an illegal voter, and rejected his vote, upon his own testimony. He testified: 'I thought I was twenty-one years old when I voted, but I find I was twenty-one the 6th of last February.' Being asked, 'This month?' he answered, 'Yes.' On cross-examination, question and answer proceeded thus: 'How did you come to believe that you were 21? My father had told me I was 21. Is your father living here? No, sir; he lives in Crown Point, Ind. Did he ever live here? Yes. Up to what time? The 8th of March last. And how long have you been informed by him that you were 21 years old? Since the primary election.' He was afterwards asked, 'What was your reputed birthday in the family?' and he answered, '1865,

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February 6.' He further said that he had never known to the contrary until after the last election; that from the time he could remember he always counted his birthday from that date; that he celebrated his sixteenth birthday 16 years after February 6, 1865. On redirect examination he was asked: 'Well, what does your family record say?' That was objected to, but the court overruled the objection, and permitted the witness to answer; and he said: 'The family record says I was born February 6, 1866.' This was clearly error. This family record, which he had never heard of until since the election, speaking directly contrary to his father's statements prior to the election, and to the reputation in the family before that time, should have been produced, or, if that was impossible, a proved copy should have been produced. It should have been shown when and by whom the record was made. It cannot be said this witness has any knowledge of his own confirmatory of the record, and his whole story looks extremely suspicious. For aught that appears, the record may have been made for the case. At all events, he may have misunderstood ***186** its language, and parol evidence of his conclusion of what it proves ought not to have been received.

Ballots, some claimed for one party, and some claimed for the other, were rejected by the court in a number of instances, because there were the name of both appellee and appellant, the one written and the other printed, in the same ballot for treasurer. Appellee contends, on the anthority of *People* v. *Saxton*, 22 N. Y. 309, that such ballots should have been counted as for the person whose name was written; that writing the one name was in effect canceling the other name printed. The reasoning of *People* v. *Saxton* only applies to cases where it is shown that the voter, with his own hand, writes the name of the candidate. Where a ballot is furnished a voter by another party, already having upon it a printed and a written name, as may quite often be the case, there can be no reason for saying that the ballot, as to him, is anywise different from one bearing both names written or both names printed upon it, for no act of his has caused it to be as it is. But our statute seems to us imperative. It says: 'If more persons are designated for any office than there are candidates to be elected, * * * such part of the ticket shall not be counted for either of the candidates.' And this was held obligatory, as to this class of tickets, in *Clark* v. *Robinson*, 88 Ill. 500.

In several instances two ballots were folded together, the one within the other, and the outside one alone numbered. The judges of the election omitted to count them, but fastened them together, marked 'Double Ballot;' and they were returned to the county clerk with the other ballots. The court refused to count either of such ballots; and this we think was right. The statute requires the names of the candidates voted for all to be written or printed on the same piece of paper. Section 54, c. 46, Rev. St. 1874. Inclosing one ballot within the other, with the names of the candidates on each, was plainly an attempt to vote twice, and therefore such a fraud ***187** upon the rights of other ****249** electors as required that his ballot should not be counted. *Webster* v. *Gilmore*, 91 Ill. 324.

August Sieckman proved by his own testimony that he was a legal voter in the Eleventh precinct of the city of Quincy; that he was then and for many years past had resided in that precinct, in the house which had belonged to his mother, but which, she dying, he and his sister had jointly inherited; that he took his meals in the Ninth precinct, but his home was and had been in this house in the Eleventh precinct. He gave his ballot to one of the judges, who took it, and said 'that he would see about it;' but he subsequently refused to deposit it in the ballot-box. Appellant insists that this ballot ought to have been counted for him. We think the court below properly refused to count it. The voter knew that the ballot was not accepted as a vote. He knew that it was not deposited in the ballot-box, and he should have furnished the evidence required by the statute to entitle his vote to have been received, and have insisted upon his rights. Whether the judges were culpable in not receiving his ballot is not pertinent here. It is sufficient that they did not receive it.

The question is presented, by rulings on ballots, some of which are counted for one party, and some of which are counted for the other party, to what extent is evidence admissible to explain a ballot, or show the intention of the voter in casting it. In *People* v. *Matteson*, 17 Ill. 167, it was held that votes designating the office voted for as 'police justices' should be counted as votes for 'police magistrates;' there being but one office coming within the reasonable contemplation of the words 'police justices,' and that designated by the statute, 'police magistrates.' The court said: 'In election contests, as in other cases, the question to be

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determined depends upon facts to be ascertained; and here we are simply called upon to determine, from the evidence before us, the simple fact of the intention of the voters who cast their votes. Did they intend ***188** to vote for the relators to fill the offices for which this election was ordered?' In *Clark* v. *Robinson*, 88 Ill. 508, it was said: 'There votes cast, respectively, for W. E. Robso, Robertson, and W. E. Robers, were counted for appellee, to which objection is made. These votes were cast for circuit clerk. The evidence shows that there were no candidates for circuit clerk at the election except appellant and appellee. We can have no doubt, from the evidence, that these three votes were intended for the appellee. 'Robso' and 'Robers,' no doubt, were abbreviations for the name of appellee, and the cause of the abbreviations is apparent, from the ballots alone.' Another ballot containing the name of 'Robbin' written on the margin to the left of 'for circuit clerk,' and with a continuation at the end with a light mark, having the name of Clark erased, it was held should be counted for Robinson. It may not be improper to observe, with reference to the ticket for Robertson, as to which nothing was said, that the court felt bound to take judicial cognizance that Robins and Robertson, as ordinarily pronounced, especially by unlettered and careless talkers, were *idem sonans*, being in accordance with the literal spelling of neither,--'Robeson.' In *McKinnon* v. *People*, 110 Ill. 305, ballots were cast for Henry Malzacher and for Joseph Malyacher for the office of town clerk. It was held competent to prove that Henry Malzacher was the Democratic candidate for that office, and Donald McKinnon the Republican candidate, and that there were no other candidates for the office; that no person resided within the town of the name of Joseph Malzacher, and that the name of Joseph Malzacher was printed on a number of Democratic tickets by mistake, supposing that Henry was named Joseph, and that such tickets got circulated, to some extent, and voted by mistake, supposing that Joseph and not Henry was the Democratic nominee for the office; and we held the votes thus cast for Joseph should be counted for Henry. ***189** An analogous case is *Carpenter* v. *Ely*, 4 Wis. 420, referred to and quoted from in that case. In laying down the rule in *McKinnon* v. *People*, we ****250** quoted with approval from Cooley, Const. Lim. (5th Ed.) *611, that 'evidence of such facts as may be called the circumstances surrounding the election, such as who were the candidates brought forward by the nominating conventions; whether other persons of the same name resided in the district from which the officer was to be chosen, and if so, whether they were eligible or had been named for the office; if a ballot was printed imperfectly, how it came to be so printed; and the like,--is admissible for the purpose of showing that an imperfect ballot was meant for a particular candidate, unless the name is so different that to thus apply it would be to contradict the ballot itself, or unless the ballot is so defective that it fails to show any intention whatever.' There is less difficulty in stating the rule in general terms than in applying it to particular cases. Manifestly, it would not be competent to hear the voter say that he intended a ballot plainly for a particular name, for one having no such similarity of sound, as that one might reasonably be intended for the other. And it is quite as obvious that it is competent to prove by the elector what he understood the names of the candidate to be, and how he reads his ballot. If he has used the letters of a foreign language to express the name, it is competent to prove by the voter, or by some one else versed in that language, what word or words they make. If the characters are so complex in their formation, or so imperfectly formed, or so obscurely impressed, as to make it difficult to read them, it is competent to prove by any one understanding them what they are. What is not admissible is to show that something was intended which is plainly contradictory of what was done; as, for instance, that a ballot cast with the name of Jones for a particular office upon it was intended to be a vote for Smith for the same office. And so, upon like principle, ***190** where it is shown that there has been what appears to be an erasure of a name, it may be shown that it was not done by the voter, or that it was the result of an accident, and not of intention; but, the fact of erasure being conceded to have been the deliberate act of the voter, it cannot be explained that by it he intended a different result than that which the law implies from it.

It was in proof that John B. Kreitz was the Democratic nominee, Charles F. A. Behrensmeyer the Republican nominee, and B. L. Dickerman the Prohibition nominee for the office of treasurer of Adams county, and that there were no other candidates for that office at the election in November, 1886. It was also in proof that some tickets bore the name of John M. Kreitz for the office of county treasurer, and that John B. Kreitz

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had a brother of that name, who had at a former time held the office of sheriff of said county, and, perhaps, also some minor office at a still prior time; but it was, on the other hand, proved that John B. Kreitz was ordinarily known and called 'John' Kreitz, and that John M. Kreitz was ordinarily known and called 'Mat.' Kreitz; that John M. Kreitz was not a candidate for any office at that election. Ordinarily, the middle letter is no part of the name, and, under the circumstances mentioned, the trial court properly attached no significance to it. The vote was evidently intended, as it was counted, for John B. Kreitz.

It was likewise in proof that there were other persons than appellee in Adams county of the name of Behrensmeyer; and appellant objected to many ballots counted for appellee which had merely 'Behrensmeyer' upon them for treasurer, without any designation of the Christian name. It was shown that no other Behrensmeyer eyer was a candidate at that election for the office of treasurer or any other office, and, we think, therefore, the court properly counted the ballots as cast for appellee.

Appellant also objects that parol evidence was admitted to explain what name was intended by certain obscurely and imperfectly ***191** written ballots which were counted for appellee. So far as those ballots could, by one able to read them, be given a sound which might be understood to be intended to express the name Behrensmeyer, or that name as it was pronounced by any number ****251** of people, we think the evidence was properly admitted. There was evidence that some person pronounced the name as 'Benmire,' and, perhaps, that others pronounced it by a still shorter name. Any evidence, therefore, proving that the voter had intended and attempted to express appellee's name as he understood it was properly admissible. Objections of a like character were made to tickets counted for appellee, and of course the same rule was properly applied there. It is evident that imperfect spellers might spell Kreitz, 'Krietz,' 'Kritz,' 'Critz,' or even omitting the 'z.' We recall only two instances in which we think the rule, in this respect, was misapplied. In certain ballots it was claimed the name written after 'treasurer' was 'John B. Krietz;' and in certain other ballots it was claimed the name written for treasurer was 'Dehbsnmeyer.' If these letters were really employed, we think these ballots could not be aided by extraneous proof, since we discover no such similarity in sound between these names and the names of the candidates as might induce the one to be mistaken for the other, and, plainly, neither can be introduced as a contradiction of the names of the candidate. It is not improbable, however, that this results from a misapprehension of the characters employed.

In many tickets the name of the candidate for treasurer, as printed, is erased, and the name of the other candidate is written over the name of the office, as thus:
(Written.)
'Charles F. A. Behrensmeyer.
'For county treasurer,
(Printed.)
(Erased in pencil.)

The same thing also frequently occurs with reference to the office next below, which is that of county superintendent of ***192** schools, for which John Jimison was the Democratic, and Newton J. Hinton the Republican, candidate, and there causes what at first flush seems to be, and appellant claims is, a ballot for two votes for county treasurer, as thus:
'For county treasurer,
(Print.)
'Charles F. A. Behrensmeyer.
(Written.)
'John Jimison.'
'For county superintendent of schools,
(Print.)
(Erased in pencil.)

We think, in the first-named instance, it may fairly be construed as a vote for county treasurer, as thus: 'Charles F. A. Behrensmeyer, for county treasurer.' McCrary, Elect. (2d Ed.) § 397. And in that view, in the last instance, the vote is for 'John Jimison for county superintendent of schools,' and not two votes for treasurer.

A different case, however, is presented in a few other ballots, where the printed name is stricken out of the ballot, and no name is written immediately above or immediately below the designation, 'For county treasurer,' but the name of one on the candidates for county treasurer is written below the designation, 'For county superintendent of schools,' and below the name of the candidate for that office.

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Here is, palpably, upon the face of the ballot, no vote for county treasurer, and two votes for the county superintendent of schools. The rule seems to admit of no evidence of what was the intention. Under the circumstances, there is no ambiguity. The facts present simply the question, may the voter do one thing, and say that he meant something entirely different? The court properly held that he could not.

Two ballots were found in the box of one of the polls, each torn from top to bottom, across all the names, into two distinct fragments, with ballot numbers on one of the fragments of each ballot. The question is, should that have been treated as a cancellation, or should they have been counted? Since ***193** voting a canceled ballot is a useless and senseless act, we think cancellation should not be presumed from the mere fact that a torn ballot is found in the box; but that, one the contrary, it should be presumed that the tearing was ****252** accidental. It may, however, be proved that the tearing was by the voter and intentional; and, upon such proof being made, the ballot will be held to be canceled. There was no such proof here, and the ballots were therefore properly counted. In one or more instances the name of the office was completely canceled, but the name of one of the candidates was written beneath the canceled name of office. On the authority of *Clark* v. *Robinson, supra* , such ballots were properly not counted.

In some ballots the name of the candidate was written into the title of the office, obscuring and partially obliterating the letters designating the name of the office. We think it was, at least, susceptible of explanation that this was accidental and unintentional, and hence no cancellation.

The question arises, on a number of ballots, (or some counted for each party,) what constitutes the 'permanent abode' of the elector, prescribed by the statute as an indispensable requisite to the right to vote? We held in *Dale* v. *Irwin*, 78 Ill. 170, that it 'means nothing more than a domicile,--a house which the party is at liberty to leave as interest or whim may dicate, but without any present intention to damage it,' and that ruling has been adhered to in other cases. This was sufficiently accurate as applied to the fact in those cases; but there is an obvious inaccuracy in the latter part of the quotation when considered with reference to some of the facts in the present record. And we cannot better state it, and our views thereon, than by quoting from the report made in the case of *Cessna* v. *Meyers*, App. McCreary, Elect. (2d Ed.) bottom page 489, and top of page 498. It is there said: 'A man may acquire a domicile, if he be personally present in a place, and elect that as his home, even if he never design to ***194** remain there always, but design, at the end of some short time, to remove and acquire another. A clergyman of the Methodist Church, who is settled for two years, may surely make his home for two years with his flock, although he means at the end of that period to remove, and gain another. And, again: 'Suppose a man, single, with no property, to come from Ireland, and be employed all his life on railroad or other like works at different places in succession. If he does not acquire a residence, he can never become a citizen, because he never would reside in this country at all. It seems to us that to such persons the general rule above stated, [*i. e.*, in substance, the rule as quoted from *Dale* v. *Irwin, supra*,] does not apply. Where a man who has no interest or relatives in life which afford a presumption that his home is elsewhere comes into an election district for the purpose of working on a railroad for a definite or indefinite time, being without a family, or having his family with him, expecting that the question whether he shall remain or go elsewhere is to depend upon the chances of his obtaining work, having abandoned, both in fact and intention, all former residences, and intends to make that his home while his work lasts, that will constitute his residence, both for the purpose of such jurisdiction over him as residence confers, and for the purpose of exercision his privileges as a citizen. Of course, the intent above supposed must be in good faith, and an intent to make such district the home for all purpose. The party's intent to vote in the district where he is, he knowing all the time that his home is elsewhere, will not answer the law.' It can, under our system, need no elucidation that a man cannot be entitled to votes at any one time in either of two places, as he shall elect; and it is, in one or more instances in this record, pertinent to keep in mind that it does not follow because a man must have a domicile somewhere, and that a domicile once gained remains until a new one is acquired, that a man must be entitled to vote somewhere, or that the ***195** right to vote at a particular poll, being once established, is presumed to continue until a right to vote elsewhere is shown. Permanent residence is but one of the requisites of the right to vote, and it must, in this state, always

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precede the election by an extended space of time,--in one respect for a year, in others for 90 and 30 days, respectively. Const. **253 art. 7, § 1. But abandonment of a residence is instantaneous; and if it be, by a voter, of a residence in one voting district at a date too near the election for the requisite intervening time of residence to be a voter in another voting district, to which he has removed, the voter will be entitled to vote in neither voting district. We have frequently held that when a party leaves his residence, or acquires a new one, it is the intention with which he does so that is to control. Hence the shortest absence, if, at the time, intended as a permanent abandonment, is sufficient, although the party may soon afterwards change his inention; while, on the other hand, an absence for months or even years, if all the while intended as a mere temporary absence for some temporary purpose, to be followed by a resumption of the former residence, will not be an abandonment. On the question of intention, the declaration of a party, though admissible, is not necessarily conclusive, because it may be disproved by his acts; as thus, if a party were to remove his family to a particular district, there build and furnish them a home, keep his property there, return there constantly as his leisure allowed, and remained there with his family during sickness and unemployed time, this would constitute his residence, notwithstanding he might be employed in laboring in another district, and claim that to be his residence. *People* v. *Holden*, 28 Cal. 124. For, on questions of domicile, less weight is given to, the party's declarations than to his acts. 3 Jac. Fish. Dig. (7th Ed.) 'Domicil,' p. 4225;Lessee of Butler v. *Farnsworth*, 4 Wash. C. C. 103. *196 The controlling inquiry would seem to be, where, if at all, does the party actually make his home, and claim, for the time, to exercise rights of property or of citizenship incident to or resulting from permanent residence? And therefore, if a party having no family leave, or having a family take it with him and leave, this state, and go to another state, and there make a home, and seek to acquire rights by virtue of its being a permanent residence, such as acquiring a homestead under the acts of congress, or exercising the rights of an elector, to which permanent residence is a requisite, his subsequently testifying that he had never intended to permanently abandon his residence here, but had all the time intended at some future day to return, could not control. There must be a present, continuous citizenship, with its attendant incidents and rights, subject, of course, to certain necessary guards against fraud, somewhere; and, if it be here, it cannot be abroad; and, if it be claimed and exercised abroad, that is conclusive that it had at that time ceased to be claimed here. The question is made material by objections raised upon the trial to what extent is evidence of the declarations of the voter competent to prove that he was disqualified to vote? In *City of Beardstown* v. *City of Virginia*, 81 Ill. 542, we refused to follow the Engligh rule, which permits any declaration of a voter tending to prove that he was not qualified to vote to be given in evidence in a contest, where his right to vote is drawn in question, and held that declarations of a voter subsequent to the elections were incompetent; and we have no inclination to now depart from that ruling. Since the question of the intention, as well as of the act of the party in leaving a particular abode, and adopting and retaining another, is the subject of proof, it must follow that evidence applicable to either is admissible; and that, although less weight is given to the party's declarations than to his acts, still, his declarations of his mental state, so long as that shall be the subject of inquiry, must be admissible. And so it is held that conversations and declarations, *197 in regard to present or future domicile, although not accompanying acts, are admissible in evidence, and must be weighted with the other evidence. Although the lowest species of evidence, they are competent. 3 Jac. Fish. Dig. (7th Ed.) 'Domicil,' 1, p. 4225. Upon this principle, in *Thorndike* v. *Boston*, 1 Metc. 242, it was held that a letter written from the plaintiff to his agent in Boston, before the controversy in litigation arose, in which he expressed his intention not to return to Boston, was admissible in evidence. And, again, in *Kilburn* v. *Bennett*, **254 3 Metc. 199, declarations of a party's future intentions to change his domicile were held admissible. It is obvious that a declaration that a party at a particular time was residing in one place would be negative evidence that he was not at that time residing in another, or a declaration that he was intending to change his residence would negative the idea that he was intending to remain, and so, also, the reverse.

Question was raised as to whether certain persons were citizens having been alien born, and also as to sufficiency of proof of naturalization. It was held in *Kelly* v. *Owen*, 7 Wall. 496, that the act of the 10th of February, 1855, which declares that, 'any woman who might lawfully be naturalized under the existing

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laws, married, or who shall be married, to a citizen of the United States, shall be deemed and taken to be a citizen,' confers the privileges of citizenship upon women married to citizens of the United States, if they are of the class of persons for whose naturalization the previous acts of congress privilege,--*i. e.*, that a free white person; that the terms 'married' or 'who shall be married' do not refer to the time when the ceremony of marriage is celebrated, but to a state of marriage; that they mean that whenever a woman who, under previous acts, might be naturalized, is in a state of marriage to a citizen, whether his citizenship existed at the time of the passage of the act or subsequently, or before or after the marriage, she becomes, by that fact, a citizen also. The citizenship of a woman thus ***198** acquired is not lost by the subsequent death of her husband, and her afterwards intermarrying with an alien, (sec 15 Op. Atty. Gen. 599;) and the children of such a woman, under the age of 21 years, become citizens by virtue of her citizenship, (*Dale* v. *Irwin*, 78 Ill. 186; *City of Beardstown* v. *Virginia*, 81 Ill. 543; *U. S.* v. *Kellar*, 11 Biss. 314, 13 Fed. Rep. 84; *Leonard* v. *Grant*, 6 Sawy. 603, 5 Fed. Rep. 11; *People* v. *Newell*, 38 Hun, 78.) We are, however, aware of no authority holding that the effect of this naturalization will entend to members of the family who are not children. Records of naturalization are nowise different from other records. When destroyed, secondary, evidence of their contents may be given, just as may secondary evidence of the contents of any other records be given.

The views expressed necessarily lead to a reversal of the judgment below; and, upon another trial, the rules herein stated will, we apprehend, enable the trial court to dispose of all the material controverted questions. The judgment is reversed, and the cause remanded for further proceedings consistent with this opinion.

125 Ill. 141, 17 N.E. 232, 8 Am.St.Rep. 349

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C

Appellate Court of Illinois, Second District.
Norbert M. LISK, Plaintiff-Appellant,
v.
George BENJAMIN & Grace Mary Stern, as Lake County Clerk & Edwin Schroeder, Defendants-Appellees.
No. 81-520.

March 25, 1982.

Unsuccessful candidate for village president appealed from an order of the Circuit Court, Lake County, Warren Fox, J., dismissing his petition challenging the election of winning candidate. The Appellate Court, Nash, J., held that: (1) where questioned ballots were received into evidence without restriction they became general evidence for the benefit of all parties, and therefore could properly be used as a basis for dismissing petition by unsuccessful candidate; (2) trial court improperly allowed assistant state's attorney to appear ex parte before trial judge and obtain permission to remove unsuccessful candidate's exhibits for a handwriting analysis; however, unsuccessful candidate failed to establish any prejudice from that oversight or that the outcome was affected and therefore the error was harmless; and (3) evidence established that three of the four ballots in question were cast by a single voter and therefore fact that county clerk erroneously caused the absentee ballots to be voted in different village election did not change results of the election.

Affirmed.

West Headnotes

[1] Elections 298(1)
144k298(1)
Once ballots are admitted in evidence for counting, sole question before court becomes whether those ballots are legal or illegal.

[2] Elections 290.1
144k290.1
(Formerly 144k290)
Where questioned ballots were received into evidence without restriction they became general evidence for the benefit of all parties, and therefore could properly be used as a basis for dismissing petition by unsuccessful candidate challenging election.

[3] Elections 281
144k281

[3] Elections 305(8)
144k305(8)
Trial court, in proceedings to consider petition by unsuccessful candidate challenging election, improperly allowed assistant state's attorney to appear ex parte before trial judge and obtain permission to remove petitioner's exhibits for a handwriting analysis, rather, the court should have required that notice be given to the other party; however, unsuccessful candidate failed to establish any prejudice from that oversight or that the outcome was affected and therefore the error was harmless.

[4] Elections 227(1)
144k227(1)
Errors or omissions by election officials in carrying out the duties imposed by the election code can cause an election to be invalidated; irregularities which do not affect the outcome of the election, however, will not be considered in an election contest.

[5] Elections 227(8)
144k227(8)
When a voter has voted more than once in the same election all of his ballots must be rejected.

[6] Elections 227(8)
144k227(8)
Evidence established that three of the four ballots in question were cast by a single voter and therefore fact that county clerk erroneously caused the absentee ballots to be voted in different village election did not change results of the election.

***52 **1155 ***917** Rawles, Katz & McKeown, Ltd., Peter F. LoMonaco, Waukegan, for plaintiff-appellant.

Magna, Brown & Hauser, Ltd., Rudolph F. Magna, Jr., Round Lake, Fred L. Foreman, State's Atty., Lake County, David Weidenfeld, Asst. State's Atty., Waukegan, for defendants-appellees.

NASH, Justice:

Petitioner, Norbert M. Lisk, appeals from an order of

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the circuit court of Lake County dismissing his petition challenging the election of defendant, George Benjamin, to the office of Village President of Hainesville. He contends that (1) the trial court considered improper evidence in denying the petition and (2) errors and omissions of the official conducting the election require that it be voided or that petitioner be declared the winner.

An election was conducted by the Lake County Clerk on April 7, 1981, to determine the office of Village President of Hainesville, and other offices. Petitioner and defendant Benjamin were each candidates for that office. Prior to the election the county clerk's office received applications for absentee ballots from Florence Lisk, Ralph Lisk and James Lisk, who were, respectively, petitioner's daughter-in-law and sons and also from Marvin Rogers, his son-in-law. Each of the applications listed these prospective voters' address as "Rte 1, Box 21B, Grayslake, Illinois". The clerk referred to a street address index kept for that purpose in order to determine the voting precinct represented by the address given, then changed that address to read "121 E. Belvidere Road, Grayslake, Illinois" and noted the voting precinct as "8D".

The street index, however, was in error and the correct precinct for the address listed on the applications for ballot should have been precinct 8A; precinct 8D was, in fact, in the adjoining Village of Grayslake while precinct 8A, where the applicants were alleged to have resided, was in the *53 Village of Hainesville. As a result of this error ballots to be voted in the Grayslake election, also being held at that time, were sent to the four applicants.

The absentee ballots sent to Florence, Ralph and James Lisk were duly returned to the county clerk with the name "Norbert Lisk" entered as a write-in candidate for "Mayor" and were delivered to the Grayslake polling place for precinct 8D where they were counted. The absentee ballot sent to Marvin Rogers was not returned to **1156 ***918 the county clerk for voting. The canvass of the election for the office of Village President of Hainesville determined that petitioner received 33 votes, defendant Benjamin received 36 votes, and Benjamin was declared the winner. The returns of the Grayslake election disclosed that petitioner there received three write-in votes for the office of Mayor of Grayslake.

Petitioner challenged the Hainesville election on the ground that the three absentee ballots voted in the Grayslake election should be counted in Hainesville and he declared the winner or that a tie resulted; he alternatively alleged that the Hainesville election for the office of Village President be declared null and void because of errors by the county clerk in conducting it.

Hearings were held on the petitions at which the ballots cast in both elections, the applications for absentee ballots, the canvass of the elections and the street index used by the county clerk were offered by petitioner and admitted into evidence by the trial court. They had all been in the custody of the clerk until produced in court. Attorney Rudolph Magna, who represented Benjamin at the hearing, apparently noticed a similarity in the handwriting on the three absentee ballots as in his cross-examination of petitioner he inquired:

Q. "Looking at the ballots in your hand, Group Exhibit Number 13, does that handwriting that appears on those ballots bear any resemblance to the handwriting of your daughter-in-law Florence?
A. It could be.
Q. And when you say it could be, you looked at all three of these ballots?
A. Yes.
Q. Do you have any personal knowledge of whether or not Florence cast the ballots, those three ballots in Group Exhibit 13?
A. No, I don't."

On one of the days the hearing was being conducted, but at a time when the other parties were not present, Weidenfeld appeared ex parte before the trial judge and requested permission to remove petitioner's exhibits (the applications for ballots and the write-in ballots cast) for a hand-writing analysis by an examiner at the Northern Illinois Police Crime Laboratory. His motion was granted and Weidenfeld placed the *54 exhibits in the custody of Joseph J. Lesk, a document examiner for the crime laboratory. They were returned to court on the next day when the hearing reconvened. Subsequently, Lesk testified to his opinion that the three ballots were written in the same hand and that based upon examples of her handwriting that Florence Lisk was the best suspect for having executed all of them. Lesk also testified that the ballots were in the same condition as when he received them, except for identification marks he had placed upon them.

The trial court found that the examination of the ballots under the court's direction did not cause them to become invalidated, but that it was apparent from the evidence and a look at the ballots they had been

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voted by the same person and were invalid on that ground. The court further found that the clerk's error in sending the wrong ballots had not affected the outcome of the election under these circumstances as the invalid ballots could not be counted in any event.

An election contest is governed by Article 23 of the Election Code (Ill.Rev.Stat.1979, ch. 46, par. 23-1.1 et seq.). Section 23-22 of the Code provides that "evidence may be taken in the same manner and upon the same notice as in other civil cases" and, after the hearing provided by Section 23- 23, the court "shall confirm or annul the election according to the right of the matter * * *." (Ill.Rev.Stat.1979, ch. 46, par. 23-26.) It has been said that election contests are limited to a determination of the election result. People ex rel. Meyer v. Kerner (1966), 35 Ill.2d 33, 38, 219 N.E.2d 617, 619; Breslin v. Warren (1977), 45 Ill.App.3d 450, 453, 4 Ill.Dec. 161, 162, 359 N.E.2d 1113, 1114.

Petitioner contends first that the trial court erred in considering evidence of the contents of the three questioned ballots (that each was written in the same hand) as a basis for dismissing the petition. He argues**1157 ***919 that in an election contest ballots may be received as the best evidence of the results of the election only if they have been preserved from access by unauthorized persons and from tampering, citing Rogers v. Meade (1936), 363 Ill. 630, 2 N.E.2d 924 and Sibley v. Staiger (1932), 347 Ill. 288, 179 N.E. 877, and as these ballots had been turned over to the assistant State's Attorney and others their evidentiary value was destroyed and the court could look only to the returns of the election as evidence of the results (Armbrust v. Starkey (1954), 3 Ill.2d 131, 133, 119 N.E.2d 910, 911).

The cases relied upon by petitioners are inapposite as the courts there considered circumstances wherein ballots were not protected from unauthorized access before being received in evidence. In the present case petitioner agrees the ballots were properly protected until after they had been admitted in evidence, but asserts that after these exhibits were withdrawn for testing purposes they lost their status as authentic ballots and may not be considered by the court.

(1)(2) *55 Once ballots are admitted in evidence for counting, the sole question before the court becomes whether those ballots are legal or illegal. (Wood v. Hartman (1942), 381 Ill. 474, 480, 45 N.E.2d 864, 867.) The questioned ballots in this case were received into evidence without restriction and became general evidence for the benefit of all parties and petitioner cannot be heard to complain that they were not evidence of the facts therein. (Dill v. Widman (1952), 413 Ill. 448, 452, 109 N.E.2d 765, 767; Wilkinson v. Mullen (1975), 27 Ill.App.3d 804, 808, 327 N.E.2d 433, 436.) In judging the competency of the ballots the trial court could consider all facts in evidence tending to prove or disprove the matter and to allow the ballots to be submitted to handwriting analysis at the request of a party. See generally Ill.Rev.Stat.1979, ch. 51, par. 50.

(3) We note that the ex parte hearing of the motion made by the assistant State's Attorney was improper. The trial court should have required that notice be given to the other parties; however, petitioner has failed to establish any prejudice from this oversight or that the outcome below was affected and the error is harmless. Hartigan v. Robertson (1980), 87 Ill.App.3d 732, 739, 42 Ill.Dec. 751, 756, 409 N.E.2d 366, 371; County of Cook v. Patka (1980), 85 Ill.App.3d 5, 15, 40 Ill.Dec. 284, 290, 405 N.E.2d 1376, 1382.

Having determined that the trial court did not err in its consideration of the questioned ballots and their validity, we turn to petitioner's further argument that the admitted error of the county clerk in sending the wrong ballots to the four absentee voters requires that the election be set aside.

(4) Errors or omissions by election officials in carrying out the duties imposed by the Election Code can cause an election to be invalidated. (Hester v. Kamykowski (1958), 13 Ill.2d 481, 485, 150 N.E.2d 196, 199.) Irregularities which do not affect the outcome of the election, however, will not be considered in an election contest. People v. City of Paris (1942), 380 Ill. 503, 516, 44 N.E.2d 154, 161.

(5)(6) In this case, one of the erroneous ballots was not voted at all and the evidence established that the other three ballots were cast by a single voter. When a voter has voted more than once in the same election all of his ballots must be rejected (Widmayer v. Davis (1907), 231 Ill. 42, 51, 83 N.E. 87, 91), and that consequence necessarily obtains here. The conduct of a voter who cast three ballots, two of them in the names of other persons, may not provide the basis to invalidate the election. Petitioner understandingly does not suggest that voter cast three ballots because of the clerk's error, and would not have done so if the correct ballots had been provided. That voter could at best, if provided with the correct

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ballot, vote once for petitioner; if so, the result of the election would have been 34 votes for petitioner and 36 for his opponent and would not change the results of the election.

We conclude that as the error by the county clerk in conducting the ***56** election did not affect its outcome, the trial court correctly****1158 ***920** dismissed the petition challenging the election.

Accordingly, the judgment of the circuit court of Lake County will be affirmed.

Affirmed.

HOPF and LINDBERG, JJ., concur.

105 Ill.App.3d 51, 433 N.E.2d 1154, 60 Ill.Dec. 916

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Supreme Court of Indiana.
Shirley A. WRIGHT, Appellant,
v.
Carl O. GETTINGER, Appellee.
No. 781S199.

Dec. 8, 1981.

In election contest, the Circuit Court, Randolph County, Zane E. Stohler, J., entered judgment in favor of first candidate, and second candidate appealed. The Supreme Court, Pivarnik, J., held that: (1) trial judge erred in permitting counting of electronic voting system ballots which were not endorsed with initials of polling clerks; (2) trial judge erred in permitting damaged ballots or purported duplicates to be counted where ballots had lost their true identity; (3) trial court justifiably rejected ballot on which voter had not sufficiently punched card; (4) ballots on which voter punched straight party ticket for multiple parties and also attempted to vote for individual candidate would not be counted; (5) ballots on which voter voted straight single-party ticket and crossed over to vote for individual candidate of opposite party were properly counted; marks appearing on face of ballots which were not "distinguishing marks" did not invalidate ballots; and (6) ballots having "hanging chads" were properly counted.

Remanded.

West Headnotes

[1] Statutes ⚿ 223.1
361k223.1 Most Cited Cases
When two statutes or two sets of statutes are apparently inconsistent in some respects and yet can be rationalized to give effect to both, it is court's duty to do so; it is only when there is irreconcilable conflict that court can interpret legislative intent to be that one statute gives way to the other.

[2] Elections ⚿ 177
144k177 Most Cited Cases
Purpose of requiring initials of poll clerks upon official ballots is to prevent counting of fraudulent votes to end that they can be identified when taken from ballot box. IC 3-1-23-12 (1976 Ed.).

[3] Elections ⚿ 197
144k197 Most Cited Cases
Equal to responsibility of protecting right of citizen to cast his vote and have it counted as cast is responsibility to provide that will of electorate is determined and followed so that franchise of all voters is protected by system that insures, as much as possible, lack of fraud and chicanery.

[4] Elections ⚿ 10
144k10 Most Cited Cases
Law must be interpreted to make every effort to prevent expression of will of electorate from being taking from them by fraudulent means.

[5] Elections ⚿ 186(3)
144k186(3) Most Cited Cases
Recount commission properly voided ballots utilized in electronic voting system which were not initialed by polling clerks. IC 3-1-23-12 (1976 Ed.).

[6] Elections ⚿ 186(1)
144k186(1) Most Cited Cases
If voter has fully complied with all legal requirements, placed ballot beyond his control and is not in any position to protect his vote, his ballot should not be rejected for, in essence, clerical error occurring afterwards.

[7] Elections ⚿ 186(1)
144k186(1) Most Cited Cases
Neither damaged original ballots or purported duplicate ballots for use in electronic voting system should have been counted where such ballots either had not been marked with serial numbers as required by statute or did not carry precinct designation. IC 3-2-4-5(c) (1976 Ed.).

[8] Elections ⚿ 186(1)
144k186(1) Most Cited Cases
Recount commission and trial court were justified in rejecting electronic voting system ballot card on which voter apparently attempted to vote straight Republican ticket but had not sufficiently punched card.

[9] Elections ⚿ 186(1)
144k186(1) Most Cited Cases
Trial court correctly did not count electronic voting system ballots on which voters punched straight party ticket for more than one different party and then attempted to vote individually on office of clerk

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of county circuit court. IC 3-2-4-4(c, e) (1976 Ed.).

[10] Elections ⚖ 186(1)
144k186(1) Most Cited Cases
Trial court properly counted electronic voting system ballots on which voters voted straight party ticket and then crossed over to vote for individual candidates for opposite party. IC 3-2-4-4(c) (1976 Ed.).

[11] Elections ⚖ 194(1)
144k194(1) Most Cited Cases
"Distinguishing mark" is mark or indication on face of ballot that appears to have been placed there by voter in order to identify ballot as one cast by that particular voter. IC 3-1-25-1, 3-2-4-1 et seq. (1976 Ed.).

[12] Elections ⚖ 194(1)
144k194(1) Most Cited Cases
Electronic Voting System Act was not intended to change law that voided ballots having apparent distinguishing marks. IC 3-2-4-1 et seq. (1976 Ed.).

[13] Elections ⚖ 194(1)
144k194(1) Most Cited Cases
Where no evidence was presented that tended to show in any way that markings on ballots could be considered to be distinguishing marks, such marks did not invalidate ballots. IC 3-1-25-1 (1976 Ed.).

[14] Elections ⚖ 180(1)
144k180(1) Most Cited Cases
Where, notwithstanding "hanging chads" indicating that electronic voting system ballots had been punched but that punched section or parts of it were hanging partially attached to card and underneath card, ballots showed that square was punched out of card and intention of voter could clearly be discerned, it was proper to count such ballots.
***1214** David W. Dennis, Dennis, Reinke & Vertesch, Richmond, for appellant.

John T. Cook and Peter D. Haviza, Winchester, for appellee.

PIVARNIK, Justice.

This is an appeal from a judgment of the Randolph Circuit Court in an election contest held in Randolph County. It involves the right and title to the office of Clerk of the Randolph County Circuit Court for the term beginning in January, 1982. The election in question was held in November, 1980, but the Clerk's office in Randolph County is a hold-over office and the one elected will not take office until January, 1982. The cause was originally filed in the Court of Appeals under No. 1-781 A 215, but was transferred to this Court pursuant to Ind.R.App.P. 4(A)(10) as a result of Appellant's Verified Petition and the granting thereof on July 27, 1981. It is docketed in this Court under No. 781 S 199.

There is very little dispute as to the facts in question. The legal questions growing out of these facts present the issues for our review.

The voting system used in Randolph County for the year 1980 was an electronic voting system (EVS), under which system the voter cast his vote by punching a ballot card with a stylus. These cards so voted in the various election precincts are thereafter counted by a computer at a central location. Enabling statutes were passed by our legislature to provide for voting under the EVS system and the state election board approved of the system employed. This cause represents the first time that legal questions involving the EVS voting system have been considered by this Court.

The election here was held on November 4, 1980, in which appellant Shirley A. Wright was the Republican candidate, and appellee Carl O. Gettinger was the Democratic candidate for Clerk of the Randolph Circuit Court. The official tallies on election night showed that Shirley A. Wright received six thousand one hundred twenty-six (6,126) votes and Carl O. Gettinger received six thousand one hundred forty-three (6,143) votes, a margin of seventeen (17) votes for Gettinger. On November 14, 1980, Shirley A. Wright filed her petition in Randolph Circuit Court for a recount and to contest said election. On December 4, 1980, the Randolph Circuit Court appointed a recount commission, which commission, on January 15, 1981, filed with the Randolph Circuit Court a certificate and report certifying that Shirley A. Wright, now the appellant, had received five thousand nine hundred eighty-five (5,985) votes and that Carl O. Gettinger, now the appellee, had received five thousand nine hundred sixty-six (5,966) votes, and that Shirley A. Wright had won

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the election by a plurality of nineteen (19) votes.

On January 21, 1981, appellee Gettinger filed in the Randolph Circuit Court his Verified Petition to contest said election, which was put in issue by the answer of Shirley A. Wright and by Gettinger's reply thereto. ***1215** The cause was tried by the regular judge of the Randolph Circuit Court. By written opinion entered March 11, 1981, the trial court found that Gettinger had received a total of six thousand one hundred three (6,103) votes and that Wright had received a total of six thousand ninety-one (6,091) legal votes. The trial court accordingly declared that Gettinger was elected to the office of Clerk of the Randolph Circuit Court by a plurality of twelve (12) votes.

Issues for our consideration concern the decision of the trial court in six general areas as follows: 1) permitting the counting of ballots which did not contain the initials of the poll clerks of both political parties; 2) permitting the counting of ballots which did not contain duplicate serial numbers on "re-made" ballot cards and did not contain the precinct designation on the duplicate card; 3) refusal of the court to count an absentee ballot where the punch made was insufficient to register on the electronic computer; 4) refusal of the court to permit counting of ballots where the voter voted for two opposing straight tickets and, in addition, voted for an individual candidate; 5) permitting the counting of ballots on which the voter voted one straight party ticket and then crossed over to vote for an individual candidate on the opposing ticket; and 6) consideration of ballots evidencing distinguishing marks.

I.

It is stipulated by the parties that sixty-six ballots were cast in the November 4, 1980, election in Randolph County on which the initials of only one of the poll clerks appeared. The initials of the clerk of the opposite party were missing on the sixty-six ballots. All other ballots cast in the county bore the initials of both poll clerks. The instructions given to the members of the precinct election boards by the county election board included the requirement that both clerks must initial each ballot. These sixty-six ballots were counted in the original canvass but were invalidated and not counted by the recount commission because of the omission of the initials of one of the clerks. They were, however, found to be valid and were counted by the trial judge of the Randolph Circuit Court. It was the position of the trial court that the legislative enactments authorizing the EVS system of voting vitiated the need for the initials of the poll clerks on each ballot.

It has long been a mandatory requirement under the general election laws of Indiana that the initials of both precinct polling clerks must appear upon the ballot cast by the voter. The law provided that if the initials of the clerks were not present on any ballot, that ballot was invalid and the vote was not to be counted. When this procedure was established, voting was done by paper ballot.

Ind.Code s 3-1-23-12 (Burns 1971) provided as follows:

"At the opening of the polls, after the organization of and in the presence of the election board, the inspector shall open the packages of ballots in such a manner as to preserve the seals intact. He shall then deliver to the clerk of the opposite political party from his own, twenty-five (25) each of the state and local ballots, and to the other clerk a blue pencil for marking the ballots. The clerks shall at once proceed to write their initials in ink on the lower left-hand corner of the back of each of said ballots in their ordinary handwriting, and without any distinguishing mark of any kind. As such successive elector calls for a ballot, the clerks shall deliver to him the first signed of the twenty-five (25) ballots of each kind; and the inspector shall immediately deliver to the clerks another ballot of each kind, which the clerks shall at once countersign as before, and add to the ballots already countersigned so that it shall be delivered for voting after all those theretofore countersigned."

Ind.Code s 3-1-23-21 (Burns 1971) provided as follows:

"(T)he clerk holding the ballots shall deliver to the voter one (1) of each of the ballots which he shall be entitled to vote at said election and the other clerk shall thereupon deliver to him a blue pencil.... ***1216** Before leaving the booth or compartment, the voter shall fold his ballot separately so that no part of the face thereof shall be exposed, and so that the initials of the clerk shall be exposed, and on leaving the booth or compartment, shall return the pencil to the clerk and deliver the ballots to the inspector, or to the

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judge ... who shall forthwith, in the presence of the voter and of the election board, deposit the same in the respective ballot boxes, ... If a voter shall offer to vote a ballot so folded as not to disclose the initials of the clerks and also not disclose the face of the ballot, the election board shall direct him to return to the booth and fold his ballot properly." (emphasis added)

Ind.Code s 3-1-32-26 (Burns Supp. 1980) makes it a class A misdemeanor for an election official to knowingly deposit a ballot not containing the initials of the clerks into the ballot box. Ind.Code s 3-1-25-1 (Burns 1971) on the subject of canvassing paper ballots after the polls have closed, provided:

"The precinct election boards except as otherwise herein provided shall, in canvassing the votes, begin first with the state ballots and complete them before proceeding with the local ballots, by laying each ballot upon the table in the order in which it is taken from the ballot box; and the inspector and the judge of election differing in politics from the inspector shall view the ballots as the names of the persons voted for are read therefrom. And in the canvass of the votes any member of the election board may protest as to the counting of any ballot, or any part thereof, and any ballot which is not indorsed with the initials of the clerks, as provided for in this act, and any ballot which shall bear any distinguishing mark or mutilation shall be void, and shall not be counted...."

These statutory provisions have, in substance, been a part of the paper ballot system since its enactment in 1880. The provisions of these sections have been construed by this Court to be mandatory, requiring any ballot not containing the signatures of both poll clerks to be determined to be void and not counted. Parvin v. Wimberg, (1891) 130 Ind. 561, 30 N.E. 790; Blue v. Allee, (1916) 184 Ind. 302, 111 N.E. 185; Werber v. Hughes, (1925) 196 Ind. 542, 148 N.E. 149; Conley v. Hile, (1935) 207 Ind. 488, 193 N.E. 95. In Parvin v. Wimberg, 130 Ind. at 571, 30 N.E. 790 we stated:

"The immediate purpose of the provisions of s 34 is to prevent the counting of fraudulent votes by requiring the poll clerks to endorse their initials upon the official ballots, to the end that they be identified when taken from the ballot box .... Of course so much of the statute as requires the ballots to be endorsed with the initials of the poll clerks is mandatory, ..."

There are, of course, two points at which the officials are to be alerted to a determination that only valid and proper ballots are being voted. The first is in the polling place at the time of voting. These statutes provide for a method to be employed so that the officials at the precinct can determine that only the official ballots are being voted and placed in the ballot box. The integrity of the ballot is then determined at each stage until the ballot reaches the ballot box. Under this system the initials were placed on the ballot by the poll clerks as they handed it to the voter. The voter was instructed to ascertain that the initials of the poll clerks did appear on his ballot, and he was further instructed to fold the ballot so that the face of it containing his votes was folded in and the corner on which the clerks' initials appeared was exposed. He was then to take the ballot to the inspector with the initials exposed and present it to him. The inspector was then to determine that the initials were on the ballot before placing it in the ballot box. If a ballot was presented to the inspector without the initials showing, he instructed the voter to return to the booth and fold the ballot so that the initials would be exposed. If the ballot had no initials on it, then the inspector would not permit that ballot to be placed in the box, and the determination could be made at that point whether a ***1217** mistake had been made or if an attempt was being made to deposit a fraudulent ballot. The next check point was during the counting of the ballots after they were removed from the ballot box. Since the paper ballots were counted by the polling officials at the polls, one of the duties of those counting at the precinct, was to determine that the initials of both poll clerks appeared on each ballot. If a ballot was found to come from the ballot box and did not contain both sets of initials, it was to be voided and was not to be counted by the poll officials.

The enabling statutes authorizing the EVS system provide in s 3-2-4- 3(c) (Burns 1971):

"The provisions of this Act (s 3-2-4-1-3-2-4-10) shall be controlling with respect to elections where electronic voting systems are used, and shall be liberally construed so as to carry out the purpose of this act. Any provisions of law relating to the conduct of elections which conflict with this act shall not apply to the conduct of elections with an approved electronic system...."

The question here then is: Does the settled election

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law of Indiana conflict with the provisions of the EVS Act? If requiring the initials of the polling clerks on the ballots creates a conflict with the EVS system of voting, then the EVS statutes would govern and the placing of the clerks' initials on the ballots would not be required. Conversely, of course, if there is no conflict, then the general prevailing provisions of the election law would be applied and those EVS ballots not containing initials of the poll clerks would be void.

There were some changes in the system of voting under the EVS system. It is apparent that this was necessary because of the nature of the equipment used to record and count the votes electronically. The pertinent sections of the EVS Act applicable to our consideration here are as follows. Ind.Code s 3-2-4- 4(d) (Burns 1971) provides:

"A sufficient number of ballots or ballot cards of the size, design and stock suitable for processing by automatic data processing machines shall be provided for each precinct where an electronic system is used. Each ballot card shall have two (2) attached perforated stubs on which is printed the same serial number. The top stub shall be bound or stapled in the package of ballot cards which is retained by the election officers in charge. The name of the governmental unit holding the election, the designation and date of the election, instructions to voters, and in primary elections the name of the political party shall be printed on the second stub, which shall be removed by the election officer in charge before the voted ballot card is deposited in the ballot box. The precinct number or designation shall be printed on the ballot card."

Ind.Code s 3-2-4-4(e) provides:

The county election board shall cause the marking devices to be put in order, set, adjusted and made ready for voting when delivered to the election precincts. Before the opening of the polls the precinct election officials shall compare the ballots used in the marking device with the sample ballots furnished, and see that the names, numbers and letters thereon agree and shall certify thereto on forms provided for this purpose. The certification shall be filed with the election returns. In addition to the instructions printed on the ballot or ballot labels, instructions to voters shall be posted in each voting booth or placed on the marking device. Each voter shall be instructed how to operate the voting device before he enters the voting booth. When a voter is handed a ballot or ballot card he shall be instructed to use only the marking device provided for punching or slotting the cards and that he is not to mark his ballot or ballot card in any other way, except for write-ins. He shall also be instructed to place his ballots in an envelope or other container after he has voted, or to fold his ballot card or cards in such manner, so that no card upon which a choice is indicated is exposed. If he needs additional instruction after entering the voting booth, an election officer may if necessary ***1218** enter the booth and give him such additional instructions. Where ballot cards are used, after the voter has marked his ballot card, he shall place it inside the envelope provided for this purpose and return it to the judge, who shall remove the stub and deposit the envelope with the ballot card inside the ballot box. No ballot card from which the stub has been detached shall be accepted by the judge in charge of the ballot box, but it shall be marked "SPOILED" and placed with the spoiled ballots."

Ind.Code s 3-2-4-5 (Burns 1971) gives the procedure to be followed after closing the polls in an EVS election as follows:

"(a) In precincts where an electronic voting system is used, as soon as the polls are closed, the inspectors shall secure the marking devices against further voting. They shall thereafter open the ballot box and count the number of ballots or envelopes containing ballots that have been cast to determine that the number of ballots does not exceed the number of voters shown on the poll or registry lists. If there is an excess, this fact shall be reported in writing to the appropriate election officer in charge with the reasons therefor if known. The total number of voters shall be entered on the tally sheets."

"(b) The inspector shall place all ballots that have been cast in the container provided for the purpose, which shall be sealed and delivered forthwith by the inspector and a judge of the opposite political faith to the counting location or other designated place, together with the unused, void and defective ballots and returns."

The method used for voting in the EVS system used a ballot card with two attached perforated stubs, each bearing the same serial number. The top stub was bound or stapled in the package of ballot cards which was to be retained by election officials. As

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voters presented themselves to the poll clerks, the clerks removed from such packs the computer ballot card and the wide stub attached to the ballot card, by tearing at the perforation line between the narrow stub and the wide stub. The narrow stub is about one inch wide and is bound and stapled and bears a serial number. When it is viewed vertically, it is the top stub. The ballot cards were placed in grey envelopes at the time they were handed to the voters by the clerks. These envelopes are just large enough to cover the computer ballot cards. The wide stub which remains attached to the ballot card remains fully exposed with the serial number on the stub visible. According to Ind.Code s 3-2-4-4(d) (Burns 1971) this second stub is also used to show the name of the governmental unit holding the election and the designation and date of the election. The voter is instructed to take the envelope and ballot into the voting booth. Voting is done by pushing the card into a slot provided for it and using a stylus to punch out numbered slots which identify the office or officer one wishes to vote for. The result of this is to leave a square hole in the card which will be read by the computerized counting equipment which registers the vote for that candidate. The voter is then to place his ballot in the envelope provided to him, which is designed to fold so that it completely covers the card and makes it impossible for anyone to visually determine how he voted. The second stub is fully exposed however. The voter then presents his ballot, in the envelope, to the judge, who removes the serial numbered stub, gives the stub to the voter, and deposits the ballot in the ballot box. If the second stub is missing from the ballot when presented to the judge, it is the duty of the judge to refuse to place that ballot in the ballot box.

It is apparent that the legislature has provided for a system in this new method of voting to trace a ballot within the polling place and into the ballot box which can be monitored by the officials there to determine that only proper and official ballots are being voted. Because of the nature of the automatic data processing machines used in this method, the card cannot be folded or bent in any manner. The secrecy envelope is provided so that the secrecy of the selections of the voter can be maintained. ***1219** The duplicate serial numbered stubs provide the means for the judge at the end of the line at the ballot box to determine that only valid and official ballots are being delivered to him for placement in the ballot box, as compared to the paper initialed ballots that were previously used for that purpose. The judge can check with the polling clerks at any point to determine that a ballot presented to him bearing a serial number was, in fact, issued by the polling clerks. At the same time, retention of the first, or top stub, gives a count to the polling officials as to the number of ballots given to voters which can be checked against the number of ballots in the ballot box when the polls have closed to give further assurance that only valid ballots have been voted and placed in the ballot box. The number of ballots in the ballot boxes reconciled with the number of ballots handed out by the polling clerks in the precincts in Randolph County in this election and there is no claim or inference that any fraud was committed.

The question remains as to whether or not the legislature intended, under the EVS system to remove the check on the validity of ballots after they are removed from the ballot box and counted. It is appellee Gettinger's contention that the legislature intended that the initialling of the ballots by the poll clerks was to be dispensed with. He points out that the voter was not instructed to check for polling clerks' initials so that the voter himself could determine that he had a proper ballot. He also points out that it was impossible for the judge to check the ballot and determine that poll clerks' initials were placed thereon without violating the secrecy of the ballot by opening the envelope. He further points out that the precinct boards were not required to check the ballots for initials of polling clerks and void them at the time of counting the ballots after the polls were closed. The only requirement of the precinct officials was to examine the ballots to determine whether or not they were bent or torn so that the data processing machine would not accommodate them. In addition, he argues that even though Ind.Code s 3- 2-4-1 (Burns 1971) grants the State Election Board rule-making authority respecting the use of EVS voting, no rules or regulations have been promulgated by the State Election Board requiring poll clerks' initials upon electronic voting cards. The Randolph County Election Board received no instructions or directives from the State Election Board mandating that poll clerks' initials were to be placed upon voting cards.

Appellant Wright claims that if the legislature had intended to dispense with the initialing of ballots by the poll clerks it could have and would have

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provided so in enabling statutes. Neither the fact that the county election board felt compelled to require poll clerks' initials, nor the directions of the State Election Board that omitted such directions is determinative as to the intent of the legislature. Ind.Code s 3-2-4-3(c) (Burns 1971) expressly provides that the general provisions of the Act relative to the conduct of elections shall be controlling and that any provisions of law which conflict with this act shall not apply. However, it is equally clear that all other provisions of law relating to the conduct of elections, which do not conflict, must apply.

[1] When two statutes or two sets of statutes are apparently inconsistent in some respects, and yet can be rationalized to give effect to both, then it is our duty to do so. It is only when there is irreconcilable conflict that we can interpret the legislative intent to be that one statute gives way to the other. Mims v. Commercial Credit Corp., (1974) 261 Ind. 591, 307 N.E.2d 867; Medias, et al., v. City of Indianapolis, (1939) 216 Ind. 155, 23 N.E.2d 590.

[2][3][4] We are again reminded of our holdings in Parvin v. Wimberg, supra, 130 Ind. at 571, 30 N.E. 790, where it was determined that the purpose of requiring initials was "to prevent the counting of fraudulent votes by requiring the poll clerks to endorse their initials upon the official ballots, to the end that they be identified when taken from the ballot box." We are aware too, of the well settled and sound law recognized and expressed in Brown v. ***1220** Grzeskowiak, (1951) 230 Ind. 110 at 131, 101 N.E.2d 639 at 648, quoting McArtor v. State, ex rel. Lewis, (1925) 196 Ind. 460, 148 N.E. 477 as follows:

> "The right of the voter is paramount and the neglect of the election officers or even their fraud should not be allowed to deprive the voter of his important right and duty as a citizen to cast his vote and have it counted as cast. Any other rule would, to a dangerous extent, leave the results of an election in the hands of election officers, when the intention of the statute is to promote the exercise of free government by all of the lawful voters of the county, and not to leave it in the hands of the officers selected under the law to serve them."

Our election laws and systems of collecting and counting votes are designed to protect the voter as expressed above. Equal to that responsibility, however, is a responsibility to provide that the will of the electorate is determined and followed so that the franchise of all voters is protected by a system that insures, as much as possible, a lack of fraud and chicanery. Again, we point out that there is no inference of such fraud or chicanery here. However, we must interpret the law to make every effort to prevent the expression of the will of the electorate from being taken from them by fraudulent means. In order to keep the integrity of the system it may happen that some individual voters will be disfranchised through no fault of their own, and in situations where they have made an honest effort to vote for the offices of their choice.

[5] In the election under consideration here, it is true that no voters in Randolph County were instructed that they should determine that the ballot they were using had clerks' initials on it. It is also true that the judge placing the ballot in the ballot box could not determine whether there were clerks' initials on the ballot without opening the envelope, which he was not to do. The polling clerks were not instructed to examine the ballots after removing them from the ballot box to determine whether or not they had been initialed. Neither were they to count the ballots or to examine them in any way except to determine that they were not mutilated so that they would be accommodated by the counting equipment. The serially numbered duplicate stubs did provide for a system that enabled those at the polls to check a ballot as it went from one station to the other and into the ballot box. They could determine from the stubs that only proper ballots were being used up to that point. However, the fact remains that when the two stubs had been removed and the ballot card had been placed in the ballot box, there was no way to determine that only proper ballots, passed out by the polling officials at the polls during the election, and no others were in the ballot box, unless the ballots were initialed. The EVS act did not provide otherwise for a method of determining, at this stage, that only those ballots in the ballot box which were being counted were proper ballots. The system of using clerks' initials can, however, provide the knowledge that only initialed official ballots are counted. There is no other way to distinguish an official ballot from a fraudulent one at this point. It is reasonable to assume that the legislature intended to retain the provision of initialling by the polling clerks for this purpose. If this results in an imperfect system

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which creates some conflict, then it is the responsibility of the legislature to correct those imperfections and not ours. We can see no conflict so irreconcilable that we must set aside one provision of the law for the other. The fact that the judge at the ballot box cannot look at the ballot to determine if it is initialed, and may be subject to a class A misdemeanor charge if it is not, could create some problems. However, that question is not before us, since no one here stands charged in that manner.

We accordingly find the trial judge erred in permitting the counting of these sixty-six ballots and find the recount commission properly voided them. Two of these sixty-six cards did not affect this election. Forty-six of these votes were counted in favor of Gettinger and eighteen were counted in ***1221** favor of Wright. Their totals will accordingly be reduced in those amounts.

II.

[6][7] There is a special provision in the EVS law regarding the handling of a valid card that has become bent or torn to such an extent that it will not be accommodated by the tabulating equipment. The section of the EVS Act covering this situation is Ind.Code 3-2-4-5(c) (Burns 1971) as follows:

"Notwithstanding the provisions of Acts 1945, Chapter 208, Section 289, all proceedings at the counting location shall be under the direction of the appropriate local government election officials, under the observation of at least two (2) election judges or other appropriate election officials who shall not be of the same political party and shall be open to the public, but no persons except those employed and authorized for the purpose shall touch any ballot, ballot container or return. Each container of ballot cards shall be opened and its contents removed. The cards shall be checked to ascertain if the cards are properly grouped and shall be arranged so that all similar cards from the precinct are together. If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, the officer in charge shall cause it to be prepared for processing so as to record accurately the intention of the voter insofar as it can be ascertained, and, if necessary, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a defective ballot which shall not include the invalid votes. All duplicate ballots shall be clearly labeled "duplicate, " shall bear a serial number which shall be recorded on the damaged or defective ballot and shall be counted in lieu of the damaged or defective ballot. If for any reason it becomes impracticable to count all or a part of the ballots or ballot cards with tabulating equipment, the board of elections may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots. (emphasis added)

There were apparently over one hundred ballot cards processed in this manner but only twenty-one of them have been questioned in this appeal. At the counting point in Randolph County during the processing of returns a team of six, consisting of three Republicans and three Democrats, were present. One Republican and one Democrat made a re-make team. The category with which we are concerned here involved twenty-eight ballot cards. One of them was an original for which no duplicate appeared, but which was disregarded as it had no effect on the election in contest. There was also a card which was re-made with no matching duplicate; and a duplicate for which no original was found. Of the twenty-seven under consideration, six fell into another category which is not presented to us here. This left a balance of twenty-one ballot cards which were not counted by the re-count commission, but were counted by the trial judge. It is the position of appellant Wright that these twenty-one ballots should not have been counted since no serial numbers appeared on them as the statute requires, which would make it possible to reconcile each original with its own duplicate, and that many of them did not carry the precinct designation. The recount commission did not count any of these ballots because of the lack of identifiable serial numbers and precinct designations in violation of the above statute. The trial judge counted the twenty-one votes in question by counting the original ballot cards rather than the duplicates. It was his belief that he could determine the intention of the voters on those twenty-one original cards by counting them manually. It is the contention of appellant Wright that since these cards were not handled properly under the mandatory language of the statute, the trial judge improperly counted these twenty-one ballots.

Appellee Gettinger claims that appellant Wright has

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not properly preserved this issue in that she did not identify which twenty-*1222 one ballots she was concerned with sufficiently for this Court to know which cards to review. We recognize the merit of this argument, however, in examining the record it appears that each of the twenty-one cards in question was identified by an exhibit number, which number was placed in the judgment of the trial court and was referred to by both of the parties in their briefs to the extent that the twenty-one in question can be readily identified. Because of the importance of this issue, we will consider the counting of these twenty-one ballots.

We are presented here with an unusual situation in the handling of ballots because of the nature of data processing systems. Since these machines will not accommodate bent, folded or torn cards, provision had to be made for processing those that were otherwise in proper order, but were so torn, bent or damaged that they could not be counted by the tabulating equipment. The legislature provided, therefore, that the officer in charge cause a duplicate to be re-made by punching out a duplicate card in the exact fashion that the original was punched. This duplicate card is then run through the processing equipment. Because of the very sensitive situation that is thereby created in that those counting the ballots are re-doing ballots of voters, the legislature provided for a very strict procedure to be followed by a re-make team, consisting of representatives of both parties, so that the will of the voter could be carried out and fraud prevented. It was therefore provided that when a ballot was re-made it was to be re-made exactly as the original was by punching out the identical spots. Immediately a corresponding serial number was to be placed on both the original and the re-make, plus the precinct from which it was cast, so that it could be thereafter determined which ballot card the re-made card represented. This procedure makes it possible to compare the two to see if the re-make is, in fact, exact. Unfortunately, the team re-making these ballots did not comply with the statute and failed to put on the serial numbers. On some cards, the precinct designations do not appear on either the originals or the re-makes. As noted by the trial judge, there were also in this grouping some ballots that had only an original marked "re-make" with no duplicate appearing, and duplicates that had no original with which to match them. Of the twenty-one originals the trial court counted here, all of them were marked re-made and showed evidence of having been bent, torn or folded. However, since they contained no serial numbers, it is impossible to assign them to any particular duplicate that represented them in the original count other than by guess and supposition. Further, the statute provides that when a duplicate is made of an original, that duplicate ballot shall be counted and not the damaged original. Although the reasoning used by the trial judge in permitting these twenty-one votes to be counted is persuasive, we are, nevertheless, of the opinion that they should not be counted. The trial judge pointed out that where a voter has properly cast his ballot and placed it in the hands of election officials, no voter should be deprived of his vote due to any mistake by election officials. He cites us to our own case of Werber v. Hughes, (1925) 196 Ind. 542, 553, 148 N.E. 149, wherein it was stated: "The principle follows that irregularities in elections which have nothing to do with the selection among candidates on the ticket, and the expression of the voter to the election officials of such election as required by law, shall not defeat the voter in such expression, and thereby the will and the majority of the electors. The merit of the case is what is to be most desired, and that is the will of the majority of those who have voted." It has always been of paramount concern when ballots are being considered, that, if the voter has fully complied with all legal requirements and placed the ballot beyond his control and he could not be in any position to protect his vote, his ballot should not be rejected for, in essence, clerical error occurring afterwards. Lorch v. Lohmeyer, (1969) 252 Ind. 182, 247 N.E.2d 61; Boone v. Smith, (1948) 255 Ind. 617, 77 N.E.2d 357, 359; Werber v. Hughes, (1925) 196 Ind. 542, 148 N.E. 149. We still *1223 adhere to this principle and confirm our positions in those cases, however, this principle must give way in a situation such as this. Counting the ballots here would ignore the clear written law on the subject, and create a situation that would authorize procedures that would frustrate the proper handling of ballots and even create methods for fraudulent mischief in the counting of the votes. We state this while again noting that there is not even an inference that there was any fraud or mischief in this case.

Since the ballots we consider here were in such a state that they had lost their true identity, the recount commission properly rejected them and the trial judge was in error in permitting them to be

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counted. The result of this finding is to reduce appellant Wright's count by nine votes and that of appellee Gettinger by twelve.

III.

[8] The ballot card under consideration in this issue was one identified at trial as Contester's Exhibit No. 41-Wayne H and was a card on which the voter apparently attempted to vote a straight Republican ticket but had not sufficiently punched the card. The trial court held this ballot invalid in that the black dot located above the number selected was not firmly punched out as the instructions required the voter to do. Neither the recount commission nor the trial court counted this card. Appellee points out that the card does not even show a punch mark or indentation. It is described by appellee as "if anything the number four slot may appear to be slightly irregular in shape." The recount commission and the trial court were justified in rejecting this card. Since this ballot was not counted the vote count for neither of these parties is affected.

IV.

[9] The ballot cards under consideration in this category concern situations where the voter has over-voted for straight parties and then punched for either Wright or Gettinger on the individual voting spaces. In other words, the voter punched a straight party ticket for two, three, or even four, different parties and then attempted to vote individually on the Clerk's office. It is clear the EVS Act in Ind.Code s 3-2-4-4(c) (Burns 1971) provides that: "In partisan elections the ballot labels shall include a voting square or position whereby the voter may, by one (1) mark or punch record a straight party vote for all of the candidates of one (1) party except as to offices for which he has voted individually for the candidates of his choice." Ind.Code s 3-2-4-4(e) (Burns 1971) further provides that the voter shall be instructed how to operate the voting device. The evidence was that the voters were instructed here and that the act of voting more than one straight party ticket plus additional individual candidates was a violation of those instructions as well as a violation of the statutes involved.

Some examples that illustrate the voting done on these ballots are represented by Exhibit No. 5-WR-2-S, in which the voter punched for the Republican ticket, the American Party ticket, and the Socialist Workers Party ticket; Exhibit 12- W-2A showed the voter punched for the Republican ticket, the American Party ticket, the Libertarian ticket, and the Communist Party ticket; Exhibit 56-J-K shows a vote for the Democratic Party ticket and the American Party ticket. Appellant claims that in some of these ballots it is apparent that the voter showed that even though he punched all of the straight party tickets, he individually punched a selection of either Wright or Gettinger for Clerk and that therefore the intention of the voter should be honored and that those votes should be counted. In considering a similar situation, in Sims v. George, (1968) 250 Ind. 595, 236 N.E.2d 820, at 824, this Court held: "This statute seems to us to be clear authority that any departure from the simple and direct statement of the statute constitutes a violation thereof, since the directions are explicit as to how to vote a straight party ticket or for individual candidates." In Sims, supra, the ballot was found to be invalid. The EVS law provides a specific procedure for voting one straight party and then cross-over voting ***1224** for individual candidates from another party. The counting machines used will then cancel the vote in that office from the straight party vote. This is provided for in the equipment used to cast ballots and count them and is consistent with the EVS law. The act of voting more than one straight party ticket or of voting more than one straight party ticket and then voting for individual candidates also, goes beyond the provisions of the electronic voting system and against the instructions given to the voters at the poll. The trial court correctly did not count such votes. Since these votes were not counted by the trial court, our judgment on this group of cards does not change the tally of either of these parties.

V.

[10] The ballot cards under consideration in this category involve situations where the voter voted a straight party ticket and then crossed over to vote for individual candidates for the opposite party. It is appellant's contention that the act of crossing over and voting for individual candidates invalidated that ballot card and therefore these ballots should not be counted. The trial court found that the EVS Act provides for cross-over voting in this manner and counted the votes in which this had been done. As we indicated above, Ind.Code s 3-2-4-4(c) (Burns 1971) does authorize cross-over voting where a voter votes for one straight party ticket and then crosses over to vote for individual candidates of the

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opposite party. Although this type of voting was not authorized previously where paper ballots were used, provision has been made for voting in this manner in both machine voting equipment and EVS equipment. Since the EVS Act provides that these statutes shall control the method of voting over the previous general voting laws where there is a conflict, then there is no reason not to permit the counting of these votes. Voting machines were set up so that a voter could pull a straight party lever and then, by manipulating the tabs for individual candidates, could cancel the vote for one of the candidates in the straight party vote and replace it with the candidate from the opposite party. Data processing equipment can also accommodate such procedure so that when a voter punches a straight party ticket and then punches a vote for an individual in a given office in the opposite party, the machine will not record the vote in that office on the straight party vote, but will record the vote given to the individual member of the opposite party. Voters were instructed in this election in Randolph County on how to follow this procedure. The trial court properly counted these ballots. Our finding here does not change the tally of either of the parties.

VI.

The category under this issue involves ballots containing distinguishing marks and hanging chads.

[11][12][13] A distinguishing mark is a mark or indication on the face of a ballot that appears to have been placed there by the voter in order to identify that ballot as the one cast by that particular voter. Since the institution of our voting laws, the distinguishing mark on the face of a ballot has rendered that ballot void. This has been found to be a mandatory provision of our law since Bechtel v. Albin, (1892) 134 Ind. 193, 33 N.E. 967, designated it so. This rule still appears in our law in Ind.Code s 3-1-25- 1 (Burns 1971). It was the trial court's opinion here, that since the ballots are no longer counted manually at the precinct level, but are counted mechanically by the data processing equipment, the EVS Act intended to change the law that voided ballots having apparent distinguishing marks. We disagree with the trial court in this regard. There is no expression by the legislature in the EVS Act of an intent to change the law with regard to distinguishing marks. The trial court further found here, however, that the marks appearing on the face of four ballots under consideration were not distinguishing marks under our general election laws and did not invalidate these four ballots. There were some marks ***1225** that were obviously put on the ballots by the polling clerks and there was a red stain on one that was very faint and could have been placed there at any point, even at the time the original card was printed. There was no evidence whatsoever presented by appellant Wright that tended to show in any way that any of these markings could be considered to be distinguishing marks. The trial judge decided that they were not, and we see no reason to question his judgment in this regard.

[14] The two remaining ballots in this category contained "hanging chads" which indicated that ballots had been punched but that the punched section, or parts of it, were hanging partially attached to the card and underneath the card. The trial judge found that since they did show that the square was punched out of the card, and the intention of the voter could clearly be discerned, it was proper to count these two votes. We see no reason to disturb the judgment of the trial judge in this regard. This is not a situation such as the one in Issue III above, where the ballot card did not show a punch mark or indentation. There was no evidence presented by appellant Wright that would guide the trial court in determining whether or not these two votes had actually been recorded by the data processing equipment. Without sufficient evidence being presented to the court to determine whether or not the data processing equipment even recorded these votes, the trial judge was justified in overruling the appellant in striking these two ballots. Our finding here does not change the tally of either of the parties.

Under our findings in Issue I, the total for Gettinger is to be reduced by forty-six (46) and the total for Wright is to be reduced by eighteen (18). Under Issue II, Gettinger's total is to be reduced by twelve (12) and Wright's by nine (9). Findings under Issues III, IV, V, and VI did not affect the vote count. Therefore, the result is a reduction in total for Gettinger of fifty-eight (58) and for Wright of twenty-seven (27) from the vote count determined by the trial court. This leaves a total vote for Gettinger of Five Thousand Nine Hundred forty-five (5,945) and a total for Wright of Six Thousand sixty-four (6,064).

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We remand this case to the trial court with instructions to enter judgment in accordance with this opinion.

GIVAN, C. J., and DeBRULER, HUNTER and PRENTICE, JJ., concur.

428 N.E.2d 1212

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Supreme Court of Ohio.

OTWORTH

v.

BAYS et al.

No. 32366.

May 2, 1951.

Action by Henry A. Otworth against one Bays and others, Board of Elections of Scioto County, and Wilbur C. Staker, contestee, to contest election of township trustees. The Common Pleas Court of Scioto County held that contester was entitled to election certificate and overruled contestee's motion for new trial, and contestee appealed. The Supreme Court, Hart, J., held that issuance of two ballots to each of first ten voters when results of election indicated that such ballots had been voted and when plurality between contester and contestee was less than ten was an irregularity creating doubt as to what would have been outcome of election but for such irregularity which required court to set aside election as void.

Judgment reversed.

West Headnotes

[1] Elections ⇐ 227(1)
144k227(1) Most Cited Cases
Where irregularities in election are so flagrant in character as to render it impossible to separate illegal from legal votes and doubt is thereby raised as to how election would have resulted in absence of such irregularities election is void and rejection of entire vote of election district is warranted. Gen.Code, §§ 4785-144, 4785-171.

[2] Elections ⇐ 227(8)
144k227(8) Most Cited Cases
Where two ballots were issued to each of first ten voters in township trustee election and contester and contestee of election were among first ten voters and results of election indicated that such ballots had been voted and there was plurality between contester and contestee which was less than number of duplicate ballots, both contester and contestee were estopped because of participation in irregularity from claiming an election. Gen.Code, §§ 4785-144, 4785-171.

[3] Elections ⇐ 227(8)
144k227(8) Most Cited Cases
Where two ballots were issued to each of first ten voters in township trustee election and results of election indicated that such ballots had been voted and plurality between contester and contestee of election was far less in number than number of duplicate ballots and such duplicate ballots were not subject to identification and rejection, there was irregularity of such magnitude as to raise doubt as to outcome of election but for irregularity and election was void and must be set aside. Gen.Code, §§ 4785-144, 4785-171.

***812** *Syllabus by the Court.*

***366** 1. Where irregularities in an election are so great and so flagrant in character as to render it impossible to separate the illegal from the legal votes and raise a doubt as to how the election would have resulted had such irregularities not occurred, they must be deemed fatal to the validity of the election and warrant the rejection of the entire vote of the election district.

****813** 2. Where, in an election contest, it appears that certain electors, in number several times greater than the plurality of votes awarded by the election authorities to the winning candidate over his opponent, were each delivered two identical ballots; that ***367** each such elector voted both ballots so delivered to him thus causing such ballots to be illegally cast; and that such illegal ballots were not subject to identification and rejection; such irregular and illegal voting is of such magnitude as to require the court to declare such election void and to set it aside.

This is an appeal from a judgment of the Common Pleas Court of Scioto County, in an action to contest the election of township trustees in Green township of that county, that Henry A. Otworth, the contester, was elected to the office of township trustee over Wilbur C. Staker, the contestee.

The territorial area of Green township was divided for election purposes into two precincts designated as precinct A and precinct B. At the November 1949 election, two township trustees were to be elected in that township. One Leonard Sloas received the largest number of votes for trustee and was declared elected, and a certificate of election

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was issued to him by the board of elections. The validity of his election is not here in controversy.

The board of elections declared that Staker was elected trustee by a plurality of four votes over Otworth. On demand of Otworth, a recount was had and as a result Staker was declared elected over Otworth by a plurality of two votes. Thereupon, Otworth instituted this action in the Common Pleas Court. Before the trial of the case, the board of elections, by mistake and inadvertence, destroyed the ballots cast for township trustee in precinct A, and only the ballots cast in precinct B were available for evidential purposes.

The trial court found that at the election in question ***368** 508 electors were eligible to vote and voted in precinct B, but that 520 ballots were actually cast in that precinct. The evidence tended to show that the discrepancy came about because two township-trustee ballots folded together were by error of the election judges delivered to each of the first 11 electors voting in that precinct; and that the error was not discovered until the first 10 of such electors had marked, folded together again and voted both of the two trustee ballots so delivered to each of them. Of these 10 electors, each voting two ballots, were the contester and the contestee. The error was not discovered until the eleventh elector, a blind man, voting in the precinct called one of the judges of election to assist him in marking his ballot when it was found that he likewise had received two ballots instead of one.

The evidence showed and the court found that there were three absent-voter ballots cast in precinct A. These ballots were rejected by the precinct judges of elections and, upon recount, by the county board of elections. After the recount, these absent-voter ballots were destroyed along with the other ballots cast in that precinct. At the trial the voters of these three ballots were called as witnesses and each testified that he voted for Otworth. One of these absent-voter ballots was cast by Mayme Skidmore, a sister of Otworth. The evidence tended to show that she had not resided in Green township since the year 1939 and for 10 years preceding the election had resided in Middletown and Dayton. She testified that she was temporarily absent from Green township. The court ordered this ballot to be counted for Otworth.

Although the 10 electors, who were issued duplicate ballots and who delivered them in turn to the election judges, testified at the trial for whom they had voted, only one of them positively admitted that he voted both ballots. However, that each of such voters voted ***369** both ballots may be inferred by the total number of votes cast and tabulated as voting for trustee at the election. The trial court made no determination with respect to the 12 excess ballots cast in precint B and made no finding for whom they had been cast in the voting for township trustees.

****814** The trial court, finding that the three absent-voter ballots were validly cast for Otworth, held that the three votes added to his total as found on the recount in effect erased the one-vote margin for Staker and gave Otworth a plurality of two votes. The court held that Otworth and not Staker was elected township trustee and ordered that an election certificate be issued to him by the county board of elections.

A motion for new trial was overruled and an appeal to this court was taken by Staker, a motion for leave to appeal having been allowed.

J. Alden Staker, J. Julian Snyder and Kimble, Kimble & Schapiro, all of Portsmouth, for appellant.

Emory F. Smith and Ernest G. Littleton, Portsmouth, for appellee.

HART, Judge.

Staker complains that the Common Pleas Court erred in allowing oral evidence to be introduced relative to the votes cast by the three absent voters; in making a finding of fact that the three absent-voter ballots were legally cast for Otworth; in finding that Otworth was duly elected to the office of township trustee; in not rendering final judgment for Staker; and in failing to render a judgment setting aside the election as to the second township trustee because of gross irregularity and illegal acts nullifying the election.

[1] Owing to the view which this court takes of the matter, it will be necessary to consider only one of these alleged errors. The duplicate ballots cast by the first 10 electors voting in precinct B were clearly

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illegal *370 and, if identifiable, should not have been counted. Under Section 4785-144, General Code, where 'two or more ballots are found folded together among the ballots removed from a ballot box, they shall be deemed to be fraudulent.' Since these illegal or fraudulent votes were largely in excess of the plurality of votes given to either candidate by the county board of elections or by the Common Pleas Court in this action, it was impossible for either the board or the court to determine which candidate was in fact elected. Under such circumstances the duty of the court is clear. It should declare the election void. Section 4785-171, General Code.

In 15 Ohio Jurisprudence 400, Section 72, it is stated: 'It may be stated, as a general rule, that honest mistakes or mere omissions on the part of election officers, or irregularities in directory matters, even though gross, if not fraudulent, will not render an election, or particular votes cast therein, invalid, unless they affect the result of the election, *or render it uncertain*.' (Italics supplied.)

In 18 American Jurisprudence 330, Section 224, the general rule is stated as follows: 'If, however, the irregularities are so widespread and general and of so flagrant a character as to raise a doubt as to how the election would have resulted had they not occurred, they are deemed to be fatal and will warrant the rejection of the entire vote of the election district, unless it is possible to separate the illegal from the legal votes.' See Johnson v. Little, 176 Ky. 505, 196 S.W. 156, Ann.Cas.1918A, 70; Harrison v. Stroud, 129 Ky. 193, 110 S.W. 828, 16 Ann.Cas. 1050; Glenn v. Gnau, 251 Ky. 3, 64 S.W.2d 168, 90 A.L.R. 1355; Poor v. Incorporated Town of Duncombe, 231 Iowa 907, 2 N.W.2d 294.

[2] *371 Here, both the contester and contestee participated in the irregularity and they are both estopped to claim an election, where such irregularity has made it impossible to ascertain the true result as would otherwise be expressed by those casting legal ballots. See Pendleton v. Pace, Tex.Civ.App., 9 S.W.2d 437; State, ex rel. LaFollette v. Kohler, 200 Wis. 518, 228 N.W. 895, 69 A.L.R. 348.

[3] It is the opinion of this court that where, in an election contest, it appears that certain electors, in number several times greater than the plurality of votes awarded by the election authorities to the winning candidate over his opponent, were each delivered two identical ballots; that each such elector voted both ballots so delivered to him thus causing such ballots to be illegally cast; and that such illegal ballots were not subject to identification and rejection; such irregular and illegal voting is **815 of such magnitude as to require the court to declare such election void and to set it aside.

The judgment of the Common Pleas Court is reversed and the certificate of election to the office of township trustee of Green township, Scioto county, heretofore issued to Otworth is hereby cancelled.

Judgment reversed.

WEYGANDT, C. J., and ZIMMERMAN, STEWART, MIDDLETON, TAFT and MATTHIAS, JJ., concur.

155 Ohio St. 366, 98 N.E.2d 812, 44 O.O. 344

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Supreme Court of Wisconsin.

STATE EX REL. GUERNSEY

v.

MEILIKE.

March 22, 1892.

Appeal from circuit court, Waupaca county; CHARLES M. WEBB, Judge.

Quo warranto by the state *ex rel.* F. M. Guernsey against Hasso A. Meilike to inquire by what authority he holds the office of mayor of the city of Clintonville. Judgment entered on a verdict that defendant had no right to the office. Defendant appeals. Affirmed.

West Headnotes

Officers and Public Employees ⇐ 54
283k54 Most Cited Cases
Where the candidates for an office have a tie vote, and there is no election, by reason of the refusal of one to draw cuts for the office, the incumbent of the office during the previous term is entitled to hold over till his successor is elected and qualified.

Elections ⇐ 196
144k196 Most Cited Cases
In quo warranto proceedings to inquire into defendant's right to hold the office of mayor, it appeared that the canvassing board had failed to enter the name of one who had voted; that, in counting the votes, they found two votes folded together as if cast by one person; that they counted one of the votes, which was for defendant; that they cast aside the other in order to make the number of votes agree with their defective list of names; that the vote cast aside was for defendant's rival candidate; and that they certified that defendant received 148 votes, and his rival 147 votes. Held, that there had been a tie vote, and neither candidate elected, as the board should have counted both votes, or, under Sanb. & B.Ann.St. § 42, should have destroyed, both, if they considered that the votes were folded together and cast by one person.

Quo Warranto ⇐ 57
319k57 Most Cited Cases
Where there has been a mistake in the canvass of votes by the board of canvassers, the remedy by a re-count is not exclusive, and the courts have jurisdiction in quo warranto proceedings to inquire into the facts and go behind the returns to determine the right to an office.

***875** *Charles Barber* and *Benj. M. Goldberg,* for appellant.

Thorn & Guernsey, for respondent.

ORTON, J.

This is an action in *quo warranto* to inquire by what warrant the defendant holds the office of mayor of the city of Clintonville. The jury found that the defendant has no right to said office, and that he be ousted and excluded therefrom, and that the relator is and has been entitled to said office since April 4, 1890. This appeal is taken from the judgment entered according to said verdict. The only facts necessary to be stated are as follows: At an election held April 7, 1891, in said city, the defendant and one Jacob Bentz, were rival candidates, and were voted for, for the office of mayor. Afterwards, at the proper time, on the 9th day of April following, the canvassing board of said city canvassed the returns of the ***876** inspectors of said election, and caused an entry thereof to be made upon the records of the city clerk, and certified, to the effect that the defendant received 148 votes, and the said Jacob Bentz received 147 votes, for the office of mayor at said election. Proceedings were subsequently taken for a recount of said vote, but, as we view the case, they are immaterial. It seems that, when the canvassing board was counting the votes, they found in the box what appeared to them double votes folded together, as if cast by the same person. If these two votes, so folded, had both been counted, there would be one more vote than on the list kept of the names of those who had voted. The board, therefore, supposing these two votes were cast by the same elector, threw aside one of them, and counted the other, which was a vote for the defendant. The vote laid aside was afterwards found to be a vote cast for said Bentz. The board made two mistakes,--one in supposing that these two votes were voted together by the same person and for the same candidate, and the other in omitting from the said list the name of one Thomas, who had voted at said election. These facts appeared afterwards. The board made another mistake in casting aside the vote for Bentz and counting the vote for the defendant.

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According to their understanding, that these two votes were folded together and cast by the same person, they should have destroyed both of them, and not have counted either. Section 42, Sanb. & B. St. If they had both been counted, or if they had both been cast aside, the defendant and Bentz would have had a tie vote. The said Bentz offered to draw cuts, as in case of a tie vote, but the defendant refused. The above facts are shown by abundant proof. The facts are not so much contested as the proof of them. It is claimed by the learned counsel of the appellant that these facts could not be shown to impeach the record and returns of the board. If this is so, there is at least one great private as well as public wrong that is without a remedy. This mistake was corrected on a recount, but that recount is assailed as not being strictly within the law. That remedy by a recount, however, is not exclusive. The court has jurisdiction in *quo warranto* to inquire into the facts and go behind the returns, to determine the right to an office. The recount is not more exclusive than the canvass and certificate of the inspectors are conclusive. The canvass was a grossly illegal one. The board might as well have thrown away half of the votes as one in such a case. It is not a canvass of the votes. The board either ignorantly or willfully put its hand in the box, and took out a vote, and laid it aside, without any right, and failed to count it. Their proceedings were full of mistakes. They failed to enter the name of one who had voted, and then cast aside one of the votes they supposed was folded up with another, and that both had been cast by the same person, in order to make the votes agree with their defective list of names, and then counted the other vote for the defendant, when they should both have been destroyed. Can this be called a canvass above impeachment? In Attorney General v. Ely, 4 Wis. 420, a double vote for senator, or with two names for senator, was not counted for district attorney on the same ballot; and so the votes were canvassed. The same objection was made, that the facts could not be shown to impeach the returns. The court said: "We are bound to go back and rectify this mistake or omission, and count the vote, for it is the election by a plurality of votes which constitutes the right to an office, and that right cannot be defeated by the mistake or negligence or misconduct of the canvassing boards." This is a case in point, as near as one case usually is like another. It was held in this case, and has since been so held in other cases, that the duties of a canvassing board are ministerial; and it has frequently been decided by this court that this canvass is only *prima facie* evidence of the facts, and that the right to an office must depend upon the votes actually cast. State v. Giles, 2 Pin. 166; Attorney General v. Barstow, 4 Wis. 567; State v. Avery, 14 Wis. 122; State v. Tierney, 23 Wis. 430; State v. Pierpont, 29 Wis. 608. Bentz and the defendant had a tie vote, and neither was elected, and they failed by the fault of the defendant from drawing cuts for the office, according to the statute. The relator, therefore, who had held the office by an election of the previous year, is entitled to hold over until his successor is elected and qualified, and has the right to the office as against the defendant. The judgment of the circuit court is affirmed.

81 Wis. 574, 51 N.W. 875

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THE HONORABLE JOHN E. BRIDGES

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

TIMOTHY BORDERS, et al., Petitioners, v. KING COUNTY, et al. Respondents. and WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE, Intervenor-Respondent, And Libertarian Party of Washington State et al., Intervenor-Respondents.	No. 05-2-00027-3 DECLARATION OF E-FILING AND SERVICE

HEATHER KLAPMEIER states as follows:

1. I am over the age of 18 years and am not a party to the within cause.

2. I am employed by the law firm of Davis Wright Tremaine LLP. My business and mailing addresses are 2600 Century Square, 1501 Fourth Avenue, Seattle, Washington 98101-1688.

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3. On May 18, 2005, I caused the documents listed below:

Letter to Judge Bridges with out-of-state authorities;

Petitioners' Brief in Response to WSDCC's Motion on Dual Votes;

Declaration of Robert J. Maguire;

Declaration of David Bowman; and

Certificate of Service

to be filed with the Clerk of Chelan County Superior Court via Electronic Filing Legal Services (E-Filing.com) which sent notification of such filing to the following persons, with this Certificate to follow:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 18th day of May, 2005, at Seattle, Washington.

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