

1 Pursuant to the court's invitation at the hearing on May 2, 2005, Petitioners identify
2 the following excerpts of the deposition of Adams County, taken pursuant to CR 30(b)(6),
3 to be offered in evidence by Petitioners in this action.
4

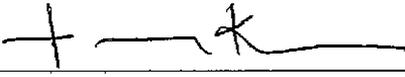
TOPIC	PAGE AND LINE CITATIONS
Witnesses' names and titles	3:21-22, 4:1-19 (Nancy McBroom, Auditor); 3:23-24 (Heidi Hunt, Elections Administrator)
Prior to counting provisional ballots, Adams County confirmed that provisional ballots were from lawfully registered by checking information on the envelope against voter records (including signature) on a computer screen	9:19-11:1; 16:8-17:7
Total number of provisional ballots cast in 2004 General Election	18:12-21
All provisional ballots counted in Adams County were checked to ensure the signatures on the provisional ballot envelopes matched the signatures on the voter registration records	48:12-25
Prior to certification, after a request from the Secretary of State's office, Adams County "double checked" the signatures on provisional ballots and confirmed they matched.	49:1-23
Describing several verifications of provisional ballots to confirm they were cast by lawfully registered voters	49:24-51:1

1 Adams County has no doubt whatsoever
2 that the provisional ballots that were
3 counted were from valid voters

51:2-15

4
5
6 DATED this 13th day of May, 2005.

7 Davis Wright Tremaine LLP
8 Attorneys for Petitioners

9
10 By 

11 Harry J. F. Korrell

12 WSBA #23173

13 Robert J. Maguire

14 WSBA #29909
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CHELAN

TIMOTHY BORDERS et al,

Petitioners,

v.

Case No.05-2-00027-3

KING COUNTY et al,

Respondents.

DEPOSITION OF NANCY MCBROOM and DEBBIE HUNT

Taken on behalf of the Respondents

WEDNESDAY, APRIL 20, 2005

-- -- --

BE IT REMEMBERED THAT, pursuant to the Washington Rules of Civil Procedure, the deposition of NANCY MCBROOM and DEBBIE HUNT was taken before Luke Jagot, Certified Shorthand Reporter for the State of Washington, on Wednesday, April 20, 2005, commencing at the hour of 2:00 p.m., at 207 Washington Street, Ritzville, Washington.

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1 APPEARANCES
 2
 3 JOHN STROHMAIER
 4 STROHMAIER LAW OFFICE
 5 207 Washington Street
 6 Ritzville, Washington 99169
 7 (509) 659-0609
 8 Appearing on Behalf of the Nancy McBroom and Debbie Hunt
 9
 10 BETH COLGAN
 11 PERKINS COIE
 12 Suite 4800, 1201 Third Avenue
 13 Seattle, Washington 98101
 14 (206) 359-8000
 15 Appearing on Behalf of the Respondents
 16
 17 DIANE TEBELIUS
 18 TEBELIUS LAW OFFICE
 19 P.O. BOX 50466
 20 Bellevue, Washington 98105
 21 (206) 696-4299
 22 Appearing on Behalf of the Petitioners
 23
 24
 25

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1 Q. And Ms. McBroom, how long have you been the Adams
 2 County Auditor?
 3 MS. MCBROOM: Since 1997.
 4 Q. Prior to becoming the auditor did you work for the
 5 Auditor's Office?
 6 MS. MCBROOM: Yes, I did.
 7 Q. In what capacity?
 8 MS. MCBROOM: I was the chief deputy auditor.
 9 Q. And how long were you the chief deputy auditor?
 10 MS. MCBROOM: Since 1987.
 11 Q. And prior to being the chief deputy auditor did you
 12 work for the Auditor's Office?
 13 MS. MCBROOM: No, I didn't.
 14 Q. And Ms. Hunt, I'll ask you the same question. How
 15 long have you been the elections administrator?
 16 MS. HUNT: Since December of '96.
 17 Q. And prior to being the elections administrator did
 18 you work for the Auditor's Office?
 19 MS. HUNT: No.
 20 Q. Now that we have that all on the record, have
 21 either of you been deposed before?
 22 MS. MCBROOM: Yes.
 23 MS. HUNT: Yes.
 24 Q. Well, I'm going to give you the very brief rundown
 25 then of some things you're probably aware of. The first is

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1 RITZVILLE, WASHINGTON
 2 WEDNESDAY, APRIL 20, 2005
 3 2:00 P.M.
 4
 5
 6
 7
 8 NANCY MCBROOM and DEBBIE HUNT
 9 having first been duly sworn, was examined
 10 and testified as follows:
 11
 12
 13 EXAMINATION
 14
 15
 16
 17
 18 MS. COLGAN: To get started I'm going to have each
 19 of you say your name and position with the county into the
 20 record.
 21 MS. MCBROOM: I'm Nancy McBroom. I'm the Adams
 22 County Auditor.
 23 MS. HUNT: I'm Heidi Hunt, and I'm the elections
 24 administrator.
 25 BY-MS.COLGAN:

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1 that there's a record being taken today, so we all have to be
 2 sure to say yes or no instead of nodding or shaking our
 3 heads, and also we need to be careful not to talk over the
 4 top of each other. Since there are two of you, if both of
 5 you have to answer one of you can go first and then the other
 6 one. That will help out our court reporter quite a bit. And
 7 then if I have asked you a question and you don't understand
 8 my question tell me. I'll rephrase it, and we'll try to make
 9 sure we're understanding each other. If at some point you
 10 need a break just let me know, whether it's to check on
 11 something, use the restroom, whatever.
 12 MS. MCBROOM: Okay.
 13 Q. And also before we get into the substantive portion
 14 is it your understanding today that you are testifying on
 15 behalf of Adams County?
 16 MS. MCBROOM: Yes.
 17 MS. HUNT: Yes.
 18 Q. Great. I'd like to start with getting some --
 19 MS. TEBELIUS: Can we get on the record who's in
 20 the room today for counsel?
 21 MS. COLGAN: Yes. Beth Colgan for Washington State
 22 Democratic Central Committee.
 23 MS. TEBELIUS: I'm Diane Tebelius, and that's
 24 T-E-B-E-L-I-U-S, and I'm representing the petitioners in this
 25 case.

1 MR. STROHMAIER: John Strohmaier, the special
 2 deputy prosecuting attorney for Adams County.
 3 BY MS. COLGAN:
 4 Q. The first thing I'd like to talk to you about is
 5 what happens or the process by which you become aware of new
 6 regulations that are passed with respect to elections. If
 7 you could tell me how you typically become of new
 8 regulations.
 9 MS. MCBROOM: Do I have to say who I am?
 10 Q. No, unless he asks.
 11 MS. MCBROOM: We usually get email attachments of
 12 the new WACs and/or RCWs.
 13 Q. And who do you receive those emails from?
 14 A. The Secretary of State's office.
 15 Q. And are the emails typically just the text of the
 16 regulation, or are they something above and beyond that?
 17 A. I would say something above and beyond that in that
 18 we get the initial, what would you say, suggested changes,
 19 proposed changes asking for feedback and/or corrections or
 20 whatever, and eventually when the finished product is done
 21 then we'll get copies of that.
 22 Q. And when you receive the finished version or the
 23 regulation is actually passed then do you -- Do those come
 24 with any sort of instructions on implementing them or any
 25 other direction?

1 A. We usually talk to Tracey Buckles.
 2 Q. Anyone else come to mind?
 3 A. Cheryl Moss, John Pearson, Nick Handy, anybody that
 4 -- We email Sam Reid.
 5 Q. Great. Give me just a second here.
 6 (Whereupon, Washington State Register, Issue 04-18
 7 was marked as Exhibit-1 to the deposition for identification
 8 purposes.)
 9 BY MS. COLGAN:
 10 Q. You've been handed Deposition Exhibit 1. Take a
 11 quick look at that and let me know when you're ready to
 12 answer questions about it.
 13 MS. MCBROOM: The new section? Is that what you're
 14 talking about?
 15 Q. I'll direct your attention to the section marked
 16 WAC 434-253-047.
 17 A. Okay. Just through the bottom?
 18 Q. Are you familiar with this document?
 19 A. Yes.
 20 Q. And when is it that you first saw this regulation?
 21 A. I have no idea.
 22 Q. Do you have a rough guess as whether it was this
 23 year, the summer?
 24 A. I really don't know. I honestly don't.
 25 Q. Do you recall -- Actually, let me direct your

1 A. Sometimes they're pretty self-explanatory, and
 2 sometimes if there's -- I guess I'm just not sure. Heidi, do
 3 you?
 4 MS. HUNT: Sometimes there will be a cover saying
 5 notice, here are the following Emergency WACs regarding the
 6 primary, and then there will be an attachment. The Emergency
 7 WACs will be as an attachment.
 8 Q. And apart from the cover letter or whatever that
 9 you receive with the regulation do you receive any other sort
 10 of training or oral communication about how it is to be
 11 implemented?
 12 MS. MCBROOM: We always -- Throughout the year we
 13 always receive training. We have a conference once a year,
 14 and then if it's felt like with our new primary that we had
 15 this last year there was meetings on that throughout the
 16 state, usually on the east side it's up in Spokane, presented
 17 or put on by the Secretary of State's office where there's
 18 questions asked and materials passed out, things like that.
 19 It's not done with every single new piece, but they do it,
 20 like I say, throughout the year.
 21 Q. If you had a question about a regulation that had
 22 been issued who would you direct those questions to?
 23 A. The Secretary of State's office.
 24 Q. Is there anyone in particular at the Secretary of
 25 State's office that you typically deal with?

1 attention to the last sentence of the first paragraph which
 2 reads, "A provisional ballot cannot be counted unless the
 3 voter's name, signature, and date of birth, if available,
 4 matches a voter registration record." Do you recall whether
 5 you ever received any specific instructions related to that
 6 amended provision from the Secretary of State's office?
 7 A. I do not recall receiving specific instructions.
 8 Q. And do you recall whether or not you had any
 9 training from anyone other than the Secretary of State
 10 regarding the implementation of this provision?
 11 A. No, certainly from no one else besides the
 12 Secretary of State's office.
 13 Q. Were you aware of the need to implement this
 14 provision for the 2004 general election?
 15 A. I believe wasn't it for the primary that it was
 16 written?
 17 Q. And did you implement it for the primary?
 18 A. Our procedures do follow this.
 19 Q. Perhaps maybe this will be easier. Why don't you
 20 walk me through the procedure that you use to verify whether
 21 or not a provisional ballot should be counted.
 22 A. First of all, at the poll site the voter is
 23 requested to sign. First of all, they are asked for ID if
 24 they're not known by the election worker, and then they're
 25 asked to sign in the back of the poll book. They are then

1 instructed to -- They're given a ballot, provisional ballot,
 2 instructed to vote it and bring it back. That's the same
 3 instructions any voter receives. When they bring it back
 4 then the stub is removed. They are then instructed to fold
 5 it, put it inside of a Privacy Envelope, seal that, and then
 6 insert that into the Provisional Envelope, and then they're
 7 instructed to fill out the outside of the Provisional
 8 Envelope which is their address, the reason why they're
 9 requesting the Provisional Envelope, their printed name, and
 10 then their signature, so they sign in front of the election
 11 worker. Then that is put into the ballot box, and then that
 12 ballot box comes to our office that night. When it's opened
 13 all provisional ballots are bundled together and put into
 14 another different locked ballot box. Then the next day that
 15 ballot box is opened, and those ballots are processed as all
 16 ballots are that come into our office by mail. First of all,
 17 their registration is verified, and depending on -- At that
 18 point those that aren't registered, of course, are set aside.
 19 Those that are registered and/or other counties, there are
 20 different sections. Those that are registered voters we then
 21 pull their record up. The record has their signature on the
 22 screen, their address on the screen, all their vital
 23 information, their voter number on the screen. We check that
 24 ballot -- not ballot, I'm sorry, the envelope against that
 25 screen, and verify that it's the same person, and from that

1 point then they are handled as all other ballots are handled.
 2 Q. That was a terrific overview.
 3 MS. HUNT: I have just one small other step. We
 4 also then verify if that person is noted on that record
 5 screen as having received an absentee ballot we make sure
 6 that no other ballot has been returned by that voter.
 7 MS. MCBROOM: One other thing let me interject. At
 8 the poll site the provisional voter is given a card and
 9 instructed that they can contact the person at that number to
 10 check on the status of their provisional ballot after the
 11 election.
 12 Q. Great. Let me step back to the very beginning.
 13 You mentioned that at the poll site people who are requesting
 14 a provisional ballot are asked for ID if they're not known by
 15 the election worker.
 16 MS. MCBROOM: That's right.
 17 Q. Do you have an idea of how often you ask for ID?
 18 A. Probably not very often. We are a small county.
 19 Our election workers, our poll site -- We only have one poll
 20 site in Adams County. That's in the city of Othello, and we
 21 have four precincts in the city of Othello that vote at the
 22 poll site. The poll workers have lived in Othello forever.
 23 It is a small community, so it doesn't happen very often.
 24 Q. Do you know whether anyone was turned away from
 25 receiving a provisional ballot if they didn't have their ID

1 with them?
 2 A. To my knowledge, no. We did have -- Did we have
 3 out of state? No, just out of county. We did have some out
 4 of counties that we asked for ID.
 5 Q. You were saying you did have out of counties, and
 6 they were asked for IDs.
 7 A. Yes.
 8 Q. And what happened to those people?
 9 A. We forwarded their ballot to the --
 10 Q. So they were allowed to vote by provisional ballot,
 11 and then the ballots were forwarded on.
 12 A. Yes.
 13 Q. And you mentioned that the people who were voting
 14 provisionally were asked to sign the back of the poll book.
 15 Is there anything else that they signed in?
 16 A. On the card itself, on the outside of the envelope,
 17 both places.
 18 Q. Did you receive any reports or become aware of
 19 anyone who was issued a provisional ballot, placed it into
 20 the Privacy Envelope, and forgot to put it into their -- the
 21 outer envelope?
 22 A. No.
 23 Q. Did you receive any reports or become aware of
 24 anyone who was issued a provisional ballot and then placed it
 25 directly into the ballot box without putting it into their

1 envelopes?
 2 A. Yes, two.
 3 Q. Were you able to identify who the individuals were
 4 that placed the ballots in?
 5 A. Yes.
 6 Q. And do you recall their names?
 7 A. No.
 8 Q. Is that on any reports that you have produced to
 9 either of the parties?
 10 A. We have it on our provisional ballots within that
 11 grouping.
 12 Q. And those are -- You pointed down there.
 13 A. Right.
 14 Q. Are those documents you're making available today
 15 A. That you can't see that I'm pointing at.
 16 Q. We'll get back to those later. Were you able to
 17 later confirm or determine whether or not those two
 18 individuals were properly registered voters?
 19 A. Yes.
 20 Q. So they were in fact registered?
 21 A. Yes.
 22 Q. And was that determination made prior to the
 23 certification of the election?
 24 A. Yes. A matter of fact, the poll workers called us
 25 immediately and told us what they had done, and we said all

1 right, put in a sample ballot, put it in the box immediately
2 so that we will know it's right on top of the ballots. At
3 that time we verified the names of the two people that voted
4 that they were registered.

5 Q. Are the people who are your poll workers
6 volunteers?

7 A. Yes.

8 Q. And are they -- Are they trained prior to -- with
9 respect to handling of provisional ballots prior to election
10 day?

11 A. Yes.

12 Q. Is the training all oral, or is there a written
13 pamphlet they're given?

14 A. We have written instructions for them, but before
15 every election we have -- I shouldn't say every because our
16 school elections we quite often don't have a class, but in
17 front of both the primary and general we always have classes.

18 Q. And then you talked about what happens at the end
19 of the day at the close of the election. It sounds like the
20 ballot boxes are locked off at that time.

21 A. Yes.

22 Q. And then transferred to the Auditor's Office?

23 A. That is correct.

24 Q. And provisional ballots if I understood you
25 correctly are not counted on election day.

1 MS. MCBROOM: Yes. I brought a copy of an example
2 of that screen. This is Heidi's records, so we felt that
3 that was --

4 MS. HUNT: I don't mind putting that on the record.

5 MS. TEBELIUS: Did you take off your date of birth?

6 MS. MCBROOM: I wanted to show it to you because
7 you can see how easily visible the signature is.

8 Q. And so when you're verifying an absentee ballot you
9 make an actual comparison between the signature that's on
10 this record and the signature that's on the envelope.

11 A. Right, and that's the only thing we're checking on
12 absentees because everything else is a given.

13 Q. And then when you check a provisional ballot you
14 check first to confirm they're registered and then pull up
15 this screen and check the number, all the rest of the
16 information.

17 A. Exactly.

18 Q. Do you do a signature-to-signature comparison at
19 that time?

20 A. To say that we do it specifically the way we do
21 absentees and by mails we probably don't, and yet it's so
22 visible on the envelope and on the screen we're checking the
23 whole record.

24 Q. And is there any sort of check-off sheet that you
25 use?

1 A. No.

2 Q. So they're sealed into a locked box and opened the
3 following day.

4 A. That is correct.

5 Q. And those ballots are then verified in the manner
6 that you described.

7 A. Yes.

8 Q. Are they kept separate from absentee ballots, or
9 are they all lumped into the same pile?

10 A. I'm not quite understanding. Do you mean before
11 they're opened?

12 Q. Yes, before they're opened.

13 A. I'm going to defer to Heidi here.

14 MS. HUNT: They're kept separate. They're locked
15 in a separate box, although people who deposited their
16 absentee ballot at the poll may have theirs in the same box,
17 but while we're working with those ballots we're working
18 exclusively with -- They will be sorted into different piles.

19 Q. So the verification process that you were
20 describing earlier, you do absentee ballots together and
21 provisional ballots together?

22 A. Uh-huh.

23 Q. And you mentioned that you pull up a screen in
24 which you can see the voter's identification number, address,
25 signature, et cetera.

1 A. No.

2 Q. So once you've determined that a provisional ballot
3 matches the record you're seeing on the screen what happens
4 then to this envelope?

5 A. The envelope then is taken, bundled, and then we
6 have actually kept under lock and key, and then we have an
7 observer -- We don't put that in the paper.

8 MS. HUNT: We just -- It's in the canvassing
9 minutes. We presented them to the Canvassing Board.

10 Q. So all provisional ballots are presented to the
11 Canvassing Board.

12 MS. HUNT: We did. We have been doing that, yes,
13 and we then tell the Canvassing Board that all are verified,
14 none have cast any other ballots.

15 Q. And who are the members of your Canvassing Board?

16 MS. MCBROOM: One of our commissioners, usually the
17 chairman of the board, our prosecuting attorney or an
18 appointee, and myself or an appointee.

19 Q. And in this case was Mr. Strohmaier on the Board?

20 A. Actually, no. It was Randy Flyckt who is our
21 prosecutor.

22 Q. Who?

23 A. Randy Flyckt.

24 Q. Can you spell the last name?

25 A. Yes. F-L-Y --

1 MS. HUNT: C-K-T.
 2 Q. And who's the representative of the commissioners?
 3 A. It was Jeff Stevens. He was not chairman at that
 4 time because the other commissioner was on the ballot.
 5 Q. And so they're presented with the actual
 6 provisional ballot envelopes?
 7 A. Uh-huh.
 8 Q. Are they presented with any other documents?
 9 A. No.
 10 Q. So you give an oral report.
 11 A. Yes.
 12 Q. In this case how many provisional ballots were cast
 13 in the 2004 general election?
 14 A. Counted?
 15 Q. Actually cast at the polls. How many people filled
 16 out and turned in provisional ballots?
 17 MS. HUNT: I believe it was 152 if I'm counting
 18 right here.
 19 Q. And so all 152 of those provisional ballots are
 20 presented to the Board.
 21 MS. MCBROOM: The Canvassing Board.
 22 Q. Did you recommend that all of them be counted?
 23 A. No. They were in groups with the 108 that were
 24 actually counted that we had verified their registration,
 25 they were registered voters in the County of Adams and that

1 Q. And is that included in the 108?
 2 A. No.
 3 Q. Do you recall how many provisional ballots you
 4 received in from other counties?
 5 A. We received 16. Nine were accepted and seven were
 6 not.
 7 Q. And were those 16 provisional ballots put through
 8 the same verification process you described earlier?
 9 A. Because they were received from out of county we
 10 knew that an election worker didn't observe the person at our
 11 poll site, so we verified -- They went through a signature
 12 verification also.
 13 Q. And those went through signature verification above
 14 and beyond what was done with the other provisional ballots?
 15 A. Yes.
 16 Q. Can you explain that signature verification
 17 process?
 18 A. Basically we look up their name and write down a
 19 voter number. We call it sounding them up because if you
 20 sounded up the last name of Hunt it would give you all the
 21 Hunts, and then you would try to locate the first name.
 22 That's what we do on the regulars also. So then we determine
 23 which voter number would be theirs. Then we pull up their
 24 record. It's much the same, although -- And I go over all of
 25 this in my mind. When I'm pulling up that envelope the first

1 these were not registered voters and these were from other
 2 counties.
 3 Q. And do you know how many were from other counties?
 4 MS. HUNT: 17.
 5 Q. You said 108 that were --
 6 MS. MCBROOM: Counted were registered voters.
 7 Q. And then the remainder were not registered.
 8 A. That is correct.
 9 MS. TEBELIUS: Which is how many as long as you're
 10 answering?
 11 MS. MCBROOM: 27.
 12 MS. TEBELIUS: I just wanted to make sure. Sorry
 13 Beth.
 14 BY MS. COLGAN:
 15 Q. No, that's fine. And were there any provisional
 16 ballots rejected because the signatures didn't match?
 17 A. No.
 18 Q. Were there any absentee ballots rejected because
 19 the signatures didn't match?
 20 A. Yes. I think we ended up with a total of three.
 21 Q. How many absentee ballots were cast?
 22 A. I didn't bring that number with me.
 23 Q. That's fine. Did you receive any provisional
 24 ballots in from other counties?
 25 MS. HUNT: Yes.

1 thing you do is say yes, that's them. You're looking at
 2 their signatures. That's what we do, and then we verify that
 3 they didn't return any other ballot, so it's much the same
 4 process.
 5 Q. So just to make sure that I'm clear on the
 6 distinction between the signature verification done with
 7 these 16 ballots and then the other provisional ballots, it
 8 sounds like you do it --
 9 A. It wasn't 16. Once we determine they're not
 10 registered we can't determine their signature.
 11 Q. So for the nine.
 12 A. Yes.
 13 Q. For those nine you received from other counties
 14 that were accepted you did an actual signature-to-signature
 15 comparison.
 16 A. Yes.
 17 Q. And that's slightly different than what you did
 18 with the other provisional ballots.
 19 A. Slightly.
 20 Q. I'm tracking you now. Now when -- Once the
 21 Canvassing Board votes to accept a provisional ballot and
 22 have it counted what happens with the envelope next?
 23 MS. MCBROOM: Heidi, I'm going to let you do this.
 24 MS. HUNT: The envelopes are opened. We open them
 25 all in groups to preserve the privacy of the voters. The

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1 MS. MCBROOM: And they put one in the number of
 2 spoiled or blanks. I see.
 3 MS. HUNT: Othello City Number 3, the 42
 4 provisionals that they have does match the 42 that I have.
 5 MS. TEBELIUS: It does match?
 6 MS. HUNT: It does. And I'm just going name for
 7 name, envelope for envelope.
 8 Q. Okay.
 9 A. Othello City 4, the 33 does match the 33 that I
 10 have.
 11 Q. Okay.
 12 A. And Othello City 5, there are 43 which means that
 13 they also totaled one. I wish I could tell you why, I do,
 14 but the 43 were ballot for ballot, envelope for envelope. I
 15 apologize.
 16 Q. So that adds up to 152.
 17 A. I believe it should.
 18 MS. MCBROOM: Election night the counts that were
 19 entered were in the ballots that were scanning, not the
 20 provisionals.
 21 MS. HUNT: And also let me explain, too, that if we
 22 say we should be scanning 78 ballots. Well, you have to
 23 remember that if there was an over-vote on one of those it
 24 will kick out to where we maybe won't come up with 78 that
 25 night because there are some that are out-sorted that will

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1 have to be dealt with in the Canvassing Board. So that might
 2 not be something -- This is my recollection I figure this is.
 3 Q. Okay.
 4 A. Thank you for your patience. I'm a little out of
 5 breath.
 6 Q. Thank you for checking. While you were out we were
 7 looking at the Provisional Ballot Envelopes that were brought
 8 in today. My understanding, and I want to make sure I'm
 9 clear on the record, is that those are the Provisional Ballot
 10 Envelopes for provisional ballots that were ultimately
 11 counted.
 12 A. Correct.
 13 Q. And is part of your business, your responsibility
 14 to maintain those Provisional Envelopes for a period of time
 15 after the election?
 16 A. That is correct.
 17 Q. And how long is that period of time?
 18 A. To my knowledge it's 22 months for a federal
 19 election. I would have to check a Retention Schedule. We do
 20 check that.
 21 Q. So these envelopes are kept in the course of that
 22 Retention Schedule.
 23 A. That would be correct.
 24 Q. And as we also discussed I have made a request that
 25 we receive a copy of those envelopes. The person that we

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1 talked about earlier, I believe, or the two people rather
 2 that had directly inserted their ballots, the provisional
 3 ballots into the boxes, if I'm recalling correctly your
 4 testimony was that you were able to determine those were
 5 registered voters.
 6 A. Yes.
 7 Q. And did you maintain their Provisional Ballot
 8 Envelopes as well?
 9 A. No. They did not complete an envelope, although
 10 they signed in the poll books, but they did not complete an
 11 envelope. There would be no envelope for them.
 12 Q. And then have you ever gone back through those
 13 Provisional Ballot Envelopes and done a verification of the
 14 signatures as compared to your registration records?
 15 A. Yes.
 16 Q. When did that happen?
 17 A. I'm uncertain of the date. It was prior to
 18 certification.
 19 Q. I'm sorry? So prior to the November 17th
 20 certification?
 21 A. Before certification.
 22 Q. Before certification you did an actual verification
 23 of the signatures on those ballots to the signatures in your
 24 database.
 25 A. Of the envelopes, yes.

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1 Q. And so that was something separate and apart from
 2 the verification process we were talking about earlier?
 3 A. Yes.
 4 Q. And what was the reason you did that?
 5 A. We received a call from the Secretary of State's
 6 office.
 7 Q. And who from the Secretary of State?
 8 A. I don't remember.
 9 Q. And what did the individual from the Secretary of
 10 State tell you?
 11 A. They just advised us, reminded us of the WAC and
 12 advised us we should check them.
 13 MS. MCBROOM: Double-check them.
 14 MS. HUNT: Double-check just to make sure.
 15 Q. And can you describe the process of doing that
 16 check for me?
 17 A. I used their voter number. I pulled up the same
 18 screen we were discussing before and specifically checked the
 19 signature for a match.
 20 Q. And each of those provisional ballots that were
 21 ultimately counted were verified that looking at those
 22 signatures.
 23 A. Yes.
 24 MS. TEBELIUS: I want to go through this
 25 verification. It looks to me like you really had two

1 verifications, separate verifications on the provisionals.
 2 Would you say that's a correct analysis?
 3 MS. HUNT: My analysis would say I had three,
 4 possibly even four. One was at the polls where the poll
 5 worker knew the provisional voter in 98 percent of the
 6 situation. The second check was my staff actually pulling up
 7 all of the possibilities by last name and then she submitting
 8 them to me. In most cases I think upon reviewing the
 9 envelopes you'll see that there is really only one option for
 10 voter number, and then I pulled up that number and did the
 11 verification of all of the person's vital statistics,
 12 address, all of that, and then checking to make sure that
 13 they had not returned any other ballot for this election, and
 14 then the final verification is then when we went back and
 15 verified the signatures again.
 16 Q. When you pulled up -- You, yourself, pulled up the
 17 numbers and you checked to make sure that the vital
 18 statistics. It's like checking a pulse beat or something.
 19 A. Sorry.
 20 Q. Whatever term you want to use. That was checking
 21 to see if they were registered, the name was right, the date
 22 of birth was right, and the address was correct, and then
 23 finally after that before certification you went back and
 24 checked the signature. A separate time you went back and
 25 checked it.

1 are they sealed in packages of like 100 or 200, or how are
 2 they sealed? Ms. Hunt?
 3 MS. HUNT: They're sealed by precinct, so 412 may
 4 only get 200 ballots, but they're all sealed together.
 5 Q. And you do not open them at that time at all.
 6 A. There have been times when I have opened them.
 7 Q. Did you open any at this election?
 8 A. I don't recall.
 9 Q. So if they're not -- Whether they're opened or not
 10 opened they go to the polling places of the election; is that
 11 correct?
 12 A. That is true.
 13 Q. Does someone open the box to see if they're sealed
 14 or anything at all, an inspector on site before they start
 15 voting?
 16 A. Wrapping in cellophane isn't part of a security
 17 process. That's just part of the shipping process just to
 18 keep the ballots separated by precinct. The only reason for
 19 me to open it is to verify because they'll put a sticky on
 20 saying 001 to 0200, and sometimes it will say missing 199,
 21 198. I would go through and verify and make sure that those
 22 ballots are actually there.
 23 Q. Now after ballots are voted is it fair of us to say
 24 that at precincts often there are unvoted ballots; is that
 25 correct?

1 A. That's correct.
 2 Q. It may well be that one of the parties will argue
 3 that you should have done the signature check at the time
 4 before you counted the provisionals, so my question to you
 5 is, and I'll ask that to each of you if you may. Let me ask
 6 the question first to Ms. McBroom and then to Ms. Hunt. Is
 7 there any doubt in your mind that those provisionals that you
 8 counted were -- any doubt in your mind that they were not --
 9 that they were not invalid voters or that they in fact were
 10 valid voters?
 11 MS. MCBROOM: None whatsoever.
 12 Q. You believe they were all valid voters.
 13 A. Exactly.
 14 Q. Ms. Hunt, would you have answered me any different?
 15 MS. HUNT: No, I have no doubt.
 16 Q. Now I'm going to ask you a series of questions that
 17 partially you've already answered, so I apologize for going
 18 back, but maybe you can help me. This is keeping track of
 19 the printed ballot, and frankly in your Exhibit 4 you've done
 20 part of that, and that is let me see if I can explain this
 21 process and help me understand it. You order a certain
 22 number of ballots for every election; is that correct Ms.
 23 McBroom?
 24 MS. MCBROOM: Yes.
 25 Q. And when those ballots come to you in your office

1 MS. MCBROOM: Yes.
 2 Q. Is it?
 3 A. Yes.
 4 Q. Ms. Hunt?
 5 MS. HUNT: Yeah.
 6 Q. So the question I have relates to your keeping
 7 track of these printed ballots because it's possible some of
 8 those printed ballots could disappear if you don't have a
 9 tracking system. It looks to me like what you did here is on
 10 your Exhibit 4, and if you check on pages what I have
 11 numbered as 30, 31, 32, 33, because they start at Othello
 12 City Number 2, Othello City Number 3.
 13 A. Right.
 14 Q. It shows that you sent 200 ballots, for instance,
 15 Precinct 412, or Othello City Number 2. It shows how many
 16 were voted, and it shows then how many were unused, and those
 17 totals the number used and the number unused should total the
 18 number that were sent.
 19 A. It should.
 20 Q. It should.
 21 MS. MCBROOM: Yes.
 22 Q. Did you check that to make sure in fact it was
 23 correct, that you weren't missing any ballots?
 24 A. We do not count the unused.
 25 Q. So you have no way of tracking the used or unused

<p>1 CERTIFICATE 2 . 3 I, Luke E. Jagot, do hereby certify that 4 pursuant to the Rules of Civil Procedure, the witness 5 named herein appeared before me at the time and place 6 set forth in the caption herein; that at the said 7 time and place, I reported in stenotype all testimony 8 adduced and other oral proceedings had in the 9 foregoing matter; and that the foregoing transcript 10 pages constitute a full, true and correct record of 11 such testimony adduced and oral proceeding had and of 12 the whole thereof. 13 . 14 IN WITNESS HEREOF, I have hereunto set my 15 hand this 9th day of May, 2005. 16 . 17 . 18 _____ 19 Signature Expiration Date 20 . 21 . 22 . 23 . 24 . 25 .</p>	

1
2 Pursuant to the court's invitation at the hearing on May 2, 2005, Petitioners identify
3 the following excerpts of the deposition of Stevens County, taken pursuant to CR 30(b)(6),
4 to be offered in evidence by Petitioners in this action.
5

TOPIC	PAGE AND LINE CITATIONS
Witnesses' names and titles	4:19-5:12 (Timothy Gray, Auditor); 29:17-19, 86:6-11(Beverly Lamm, Elections Coordinator)
Total number of provisional ballots cast in 2004 General Election	29:8-13
Stevens County confirmed that provisional ballots were from lawfully registered voters and did "some degree of signature matching" prior to counting such ballots	25:11-27:24
After the election, all provisional ballots counted in Stevens County were checked to ensure the signatures on the provisional ballot envelopes matched the signatures on the voter registration records	40:24-45:17; 87:18-89:11
Voter crediting is important to maintain accountability so that the number of ballots counted is what it should be according to the poll book.	94:12-95:6

1 DATED this 13th day of May, 2005.

2 Davis Wright Tremaine LLP
3 Attorneys for Petitioners

4
5 By 
6 Harry J. F. Korrell
7 WSBA #23173
8 Robert J. Maguire
9 WSBA #29909

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CHELAN COUNTY

Timothy Borders, et al.;;
Petitioners,

v. No. 05-2-00027-3

King County et al.,
Respondents,

and

Washington State Democratic Central
Committee

30(B)(6) DEPOSITIONS OF TIMOTHY GRAY and BEVERLY LAMM

APRIL 18, 2005

- - -

BE IT REMEMBERED THAT, pursuant to the Washington Rules of Civil Procedure, the depositions of TIMOTHY GRAY and BEVERLY LAMM, were taken before Mark Sanchez, Certified Shorthand Reporter and Notary Public, on April 18, 2005, commencing at the hour of 1:15 p.m., the proceedings being reported at 215 South Oak, Colville, Washington

Page 2

1 APPEARANCES:
 2
 3 FOR THE PETITIONERS(S)
 4
 5 TRAVIS L. SINES
 6 ATTORNEY AT LAW
 7 PO Box 890
 8 Mercer Island, WA 98040
 9 (206) 355-1549
 10
 11 ROBERT F. GREER
 12 FELTMAN, GEBHARDT, GREER & ZEIMANTZ
 13 1400 Paulsen Center
 14 Spokane, WA 99201
 15 (509) 838-6800
 16
 17 FOR THE RESPONDENT(S)
 18
 19 BETH A. COLGAN
 20 PERKINS COIE
 21 1201 Third Avenue, Ste. 4800
 22 Seattle, WA 98101-3099
 23 (206) 359-8000
 24
 25 ALSO PRESENT: Lloyd Nickel

Page 3

1 APRIL 18, 2005; COLVILLE, WASHINGTON
 2 1:15 P.M.
 3
 4 TIMOTHY GRAY
 5 having been first duly sworn, was
 6 examined and testified as follows:
 7
 8 DIRECT-EXAMINATION
 9
 10 BY-MS.COLGAN:
 11 Q. Good afternoon, Mr. Gray. My name is Beth Colgan,
 12 I'm an attorney for the Washington State Democratic Central
 13 Committee. And before we get going, have you ever been
 14 deposed before?
 15 A. Once.
 16 Q. Well let me --
 17 A. Several years ago.
 18 Q. Let me tell a few of the rules just to refresh your
 19 memory. One of -- the most important thing is that you and
 20 don't talk over the top of each other, so that he can take
 21 down a clean record. So if I start doing that, I'll try to
 22 stop and I appreciate you doing the same. If you need a
 23 break at any time, you should feel free to ask me for one.
 24 If there's a question pending, I will have you answer the
 25 question before we go on break. But please do feel free to

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1 ask. And if you -- if I ask you a question and you're not
 2 sure or you don't understand the question, please feel free
 3 to ask me to rephrase it and make it clearer for you. I want
 4 to make sure that we're understanding each other through the
 5 process. And are you -- actually, let's start with an
 6 exhibit.
 7 (Whereupon, a Subpoena was marked as Exhibit-1 for
 8 identification.)
 9 BY MS. COLGAN:
 10 Q. You've been handed what's been marked Exhibit No. 1
 11 to this deposition. Do you recognize this document?
 12 A. Looks different than this.
 13 Q. It is different than this. And you've been
 14 handed -- and I'll let you take a look at the title, but it's
 15 a CR 30(b)(6) subpoena duces tecum to Stevens County. Is it
 16 your understanding that you're here today to represent
 17 Stevens County in this deposition?
 18 A. Yes, that's my understanding.
 19 Q. And what is your position in Stevens County?
 20 A. I'm the Stevens County auditor.
 21 Q. Let me back up, I'm not sure if this is on the
 22 record. Could you please state your name.
 23 A. Tim Gray.
 24 Q. Great. Thank you, Mr. Gray. And you're the
 25 Stevens County auditor. How long have you been in that

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1 position?
 2 A. Since December 1st of 1992.
 3 Q. And have you worked for the auditor's office prior
 4 to that time?
 5 A. No.
 6 Q. And did you serve in that position continuously
 7 since December 1992?
 8 A. Yes, I have.
 9 Q. And again, your understanding is that you are here
 10 today testifying on behalf of Stevens County; is that
 11 correct?
 12 A. Correct.
 13 Q. And do you understand that your deposition will be
 14 the county's testimony in this matter?
 15 A. Yes.
 16 Q. Great. What did you do to prepare for today's
 17 deposition? If anything.
 18 A. I read over some materials that my staff prepared
 19 for me.
 20 Q. And are those materials included in the documents
 21 you handed us prior to the deposition?
 22 A. That I'm not...
 23 Q. Looks like -- is it the materials that are in front
 24 of you right now?
 25 A. Right.

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1 MS. COLGAN: I would suggest that if counsel has a
 2 concern about the exhibit, that he re-direct after my direct.
 3 MR. GREER: That's fine. I'm just gonna note the
 4 objection for the record, and I'll do that. I just -- I make
 5 a note of it because I think in all fairness, he should have
 6 the entire exhibit or entire discovery response in front of
 7 him if he's gonna answer the question.
 8 MS. COLGAN: I'm sorry. Could you read back the
 9 question, please.
 10 (Whereupon, the question was read back.)
 11 BY MS. COLGAN:
 12 Q. You can go ahead and answer.
 13 MR. GREER: And I'll maintain my same objection.
 14 THE WITNESS: We've been able -- we've reconciled
 15 the number of ballots cast to the number of records credited,
 16 and it would include those ballots that were counted but not
 17 assigned to a registered voter.
 18 BY MS. COLGAN:
 19 Q. I'm gonna ask a few clarifying questions about
 20 that.
 21 A. Sure.
 22 Q. So does -- does your crediting process include
 23 the -- giving a credit to a voter who cast a ballot but the
 24 ballot was not in fact counted in the election?
 25 A. Ballot was cast but...

Page 23

1 Q. Not ultimately counted. For example, would it
 2 include a provisional ballot that was cast, but ultimately
 3 not counted because the person was not registered?
 4 A. It would include the ballots that were counted from
 5 non-registered voters. I don't believe it would include
 6 voters whose -- that was not counted.
 7 Q. Let me ask you this. The first line of your
 8 answers, total ballot cast 20,606, would that include a
 9 ballot that was cast by a non-registered voter?
 10 A. In this -- yes. In this particular case it does.
 11 Q. And same --
 12 THE REPORTER: I'm sorry?
 13 THE WITNESS: Go ahead.
 14 BY MS. COLGAN:
 15 Q. So in this instance, total ballots cast includes a
 16 cast -- a ballot that was cast by a non-registered voter.
 17 A. Right.
 18 Q. And if that non-registered voter's ballot was not
 19 counted, ultimately, is that still included in the total
 20 ballots cast?
 21 MR. GREER: I'm gonna object to the form of the
 22 question; might be vague and ambiguous.
 23 MS. COLGAN: I'm happy to rephrase if you --
 24 MR. GREER: Oh, I mean, you can answer if you
 25 understand.

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1 THE WITNESS: I'm not sure if I do understand.
 2 BY MS. COLGAN:
 3 Q. Okay. Let's step back a moment. Let's say -- I'm
 4 giving you this example. I go to the polls and cast a ballot
 5 and I'm not a registered voter. Does my ballot appear in the
 6 number of total ballots cast in your answer?
 7 A. If the ballot was, in fact, dropped into the ballot
 8 box.
 9 Q. If I --
 10 A. Outside of the -- it was basically a ballot we
 11 could not retrieve, then we include that in the
 12 reconciliation of the ballots cast. If you are not a
 13 registered voter, and was put through the system properly,
 14 into the envelopes, and we determined you were not a
 15 registered voter, then we would have not counted the ballot
 16 and we would not have included that in the count of ballots
 17 cast.
 18 Q. And those -- that same vote you just described,
 19 that was -- went through the system properly, through the
 20 envelope, and was ultimately rejected, is also not included
 21 in total voter records credited/adjusted; is that correct?
 22 A. Correct.
 23 Q. What does it mean for a voter record to be
 24 adjusted?
 25 A. That would be to explain the difference between the

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1 voters that were credited and the ballots that were counted.
 2 Q. Is there a difference between being credited and
 3 being adjusted?
 4 A. Right. 'Cause we'll have non-registered military
 5 ballots that are counted, we'll have address confidentiality
 6 ballots that are counted, we'll have -- there is no ballots
 7 counted in error. Or the -- and so those number of ballots
 8 need to be included in how many ballots we counted in order
 9 to reconcile to the number of voters that were credited with
 10 voting.
 11 Q. I'm gonna have you turn to the second page of this
 12 exhibit. Top of that page of Interrogatory No. 4. And in
 13 part D of your response you read -- it begins, "All
 14 provisional ballots are presented and reviewed by the county
 15 canvassing board. The board will not review a provisional
 16 ballot unless it has been researched and verified." Do you
 17 see that section?
 18 A. Mmm-hmmm.
 19 Q. And can you tell me, first: Who are the members of
 20 the county canvassing board for the 2004 general election?
 21 A. They were Loyd Nickel, representing the prosecuting
 22 attorney, and Merrill Ott.
 23 Q. Can you spell Merrill Ott's first and last name?
 24 If you know it.
 25 A. M-E-R-R-I-L-L, and the last name is O-T-T.

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1 Q. Was there a third member of the canvassing board?
 2 A. Myself.
 3 Q. Okay. And do you know who does the research and
 4 verification that is referred to in the second sentence,
 5 Exhibit --
 6 A. That's done by my election staff.
 7 Q. And what is it that they do to research and verify
 8 a provisional ballot?
 9 A. They look up the name of the voter in the voter
 10 registration records, they compare the name of the voter, the
 11 birth date of the voter, the current residential address,
 12 current mailing address, former name, previous address, and
 13 reason for voting provisional.
 14 Q. And are your voter registration records in hard
 15 copy? Or are they in a database?
 16 A. They actually are in both.
 17 Q. Okay. And are you aware of whether or not your
 18 staff uses both to engage in this process? Or they rely on
 19 one versus the other?
 20 A. I'd say it's kind of a two-step process. They
 21 review the -- the database information. And then if there's
 22 still questions, then they would go to the actual
 23 registration card.
 24 Q. And apart from the steps that you have described
 25 that your staff takes to research and verify the provisional

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1 ballot, does your staff do anything else to research or
 2 verify those ballots?
 3 A. Not that I'm aware of.
 4 Q. And is there anyone else, outside of your staff,
 5 who takes any steps to research or verify those ballots?
 6 A. None that I know of.
 7 Q. So the canvassing board itself, for example, does
 8 not proactively --
 9 A. No. The canvass board relies on the information
 10 provided by the staff to make the decision.
 11 Q. And so based on your description, my understanding
 12 is that at no time does your staff do a signature -- engage
 13 in a signature verification process when researching and
 14 verifying provisional ballots; is that correct?
 15 A. That's correct. We didn't realize that until we
 16 were -- until the question was brought to our attention,
 17 actually.
 18 Q. Okay. Go ahead.
 19 A. They do -- in discussing that with them, they do --
 20 if they get to the point of looking at the actual
 21 registration card, there's probably -- I'm gonna say --
 22 they're looking at the card so I would think there's probably
 23 some degree of signature matching. But I don't believe that
 24 there was any conscious, specific effort to do that.
 25 Q. And they were not, at any time, directed to do that

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1 type of signature --
 2 A. No.
 3 Q. Okay.
 4 A. That's my fault.
 5 Q. And we just need to be -- you and I are starting to
 6 talk over the top of each other, so we need to be careful
 7 about that. Going on in that same paragraph, if I could
 8 direct your attention back. Following the sentence we've
 9 just discussed, it reads, "The initial count of provisional
 10 ballots in each precinct is balanced to the ballot
 11 accountability sheet for each precinct on election night. A
 12 visual inspection of the storage area was also made by the
 13 lead county observers for the Democratic and Republican
 14 parties to ensure that all ballots and provisional ballots
 15 were presented to the canvassing board." Is it your
 16 understanding that all ballots were, in fact, presented to
 17 the canvassing board?
 18 A. Yes.
 19 Q. And how many provisional ballots were there? Do
 20 you -- if you don't have a specific recollection...
 21 A. I believe it's 582 but -- excuse me.
 22 Q. Do you know where you would go to find out that
 23 information?
 24 A. I would go to the box kept by my staff.
 25 Q. And do you have those available today?

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1 MS. LAMM: Can I answer?
 2 MS. COLGAN: No.
 3 MS. LAMM: Okay.
 4 MS. COLGAN: We can take a break for a minute if
 5 that would help. Why don't we do that.
 6 (Off the record.)
 7 BY MS. COLGAN:
 8 Q. When we took a break, I'd asked you just slightly
 9 before the break if you were aware of the number of
 10 provisional ballots -- the total number of provisional
 11 ballots that were cast in the 2004 general election. Are you
 12 now familiar with that?
 13 A. 568.
 14 Q. And may I ask how you just made that determination?
 15 A. Asked my staff.
 16 Q. Anyone in particular on your staff?
 17 A. Beverly Lamm.
 18 Q. And what is her position?
 19 A. She's the election coordinator.
 20 Q. Are you aware of how she made that determination?
 21 A. Not specifically. We have records that would show
 22 the numbers by precinct.
 23 Q. You aware of whether or not those records have
 24 previously been produced to the parties in this matter?
 25 A. I believe they have.

1 Q. In the next line down it reads, "One provisional
 2 ballot from Spokane County, one forwarded to Yakima County,
 3 one forwarded to Benton County." Was the provisional ballot
 4 from Spokane County forwarded to Spokane County?
 5 A. No; it came from Spokane County.
 6 Q. So in this exhibit where there's a reference to a
 7 provisional ballot from a county, it means there was one that
 8 was forwarded to Stevens County. Whereas if it reads one
 9 forwarded to a county --
 10 A. Right.
 11 Q. -- it's something you sent out.
 12 A. Right.
 13 Q. And that's correct for this entire exhibit?
 14 A. Mmm-hmmm. Yes.
 15 Q. If I can direct your attention down to the precinct
 16 Kelly Hill.
 17 A. Okay.
 18 Q. The entry states, "One paper ballot." Can you
 19 explain what that means?
 20 A. Kelly Hill is a mail-out precinct. It's a very
 21 small number of voters, so we send all their ballots out by
 22 mail. A paper ballot is normally a ballot voted very early
 23 by a voter before we have the actual punch card ballots ready
 24 to be used by voters. So it's -- this is -- this is somebody
 25 maybe came in, as an example, two or three days after the

1 any other ballots were rejected because of problem with the
 2 signature?
 3 A. It seems like there were a couple others, but I
 4 don't -- I know we looked at more than one, but couldn't tell
 5 you how many.
 6 Q. Do you have a rough estimate of how many?
 7 A. I would say something like three or four.
 8 Q. And just to make sure I understand your answer.
 9 Your testimony is that you -- throughout the canvassing
 10 process, you looked at approximately three to four signatures
 11 to determine whether or not they matched the registration.
 12 A. Normally what happens is the election staff does
 13 most of that work. If they get ones that they're not sure of
 14 themselves, then they refer 'em to the canvassing board and
 15 let us make that final decision.
 16 Q. Does your election staff have the authority to
 17 reject a ballot if they're not sure?
 18 A. If they're not sure?
 19 Q. Yes. Does your election staff have the authority
 20 to reject a ballot for any reason? Without canvassing board
 21 approval.
 22 A. No. They're all processed through the canvassing
 23 board.
 24 Q. Are you aware of whether or not any -- are you
 25 aware of whether or not your election staff reviewed any

1 primary and said, "We're gonna be out of the country. And I
 2 know who I want to vote for and I know who's gonna be on the
 3 ballot." If we have a -- in our process, we have a ballot
 4 layout that we send to the printers that go into the voting
 5 machines, and so we will have them vote that paper ballot.
 6 And then we treat it as a provisional because we then need to
 7 convert paper ballot into a punch card ballot. And that's
 8 done by the canvassing board.
 9 Q. I see there's a handwritten entry for Kelly Hill
 10 that reads, "Two not counted," I believe. Can you explain
 11 that entry to me?
 12 A. That's probably additional ballots that came in
 13 after this was typed but before the canvassing board met.
 14 Q. And do you have an understanding as to why those
 15 two ballots were not counted?
 16 A. Not -- I don't have a recollection of those
 17 specifically.
 18 Q. If I can direct your attention down to Mill Creek,
 19 it's an entry which reads, "One signature doesn't match."
 20 Can you explain that entry for me?
 21 A. Mill Creek is a mail-out precinct, so they do 'em
 22 all by mail. And so this would be a signature came back,
 23 it's essentially an absentee ballot envelope that didn't
 24 match the registration card.
 25 Q. Apart from this particular ballot, are you aware of

1 signatures, other than the three or four that were reviewed
 2 by the canvassing board?
 3 A. In terms of provisional ballots? Or in terms of
 4 absentee?
 5 Q. In terms of provisional ballots, thank you.
 6 A. No, I don't believe that we did do that. Let me
 7 add to that, please.
 8 Q. Sure.
 9 A. We -- after the election was final, actually,
 10 probably some time in March when we received an inquiry from
 11 a journalist about it, we were then asked to go back and, if
 12 we could, verify those provisional signatures. And we did do
 13 that.
 14 Q. Do you remember the name of the journalist?
 15 A. Oh. It's a Seattle PI, I don't recall his name.
 16 Q. Does Gregory Roberts sound familiar?
 17 A. Yeah. I think that -- that's possible.
 18 Q. When you stated that after being contacted by this
 19 journalist, that you went back and verified provisional
 20 signatures, can you explain what you did in that process?
 21 A. Actually we were -- after the article was printed,
 22 I received a call from the Washington Republican party asking
 23 if I would consider verifying those signatures.
 24 Q. Do you know who received that --
 25 A. And we --

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1 ordinary -- I believe counsel's already probably established
 2 it, but I just want to make sure that this is a document of
 3 record that was prepared in the ordinary course of the county
 4 auditor's business.
 5 A. Yes.
 6 Q. Oh, by the way. In your role has -- what is your
 7 position with Stevens County?
 8 A. I'm the Stevens County Election Coordinator.
 9 Q. And is that another way of saying you're the
 10 Stevens County election supervisor?
 11 A. Yes.
 12 Q. Okay. Now going -- looking at the document, can
 13 you tell me what that is? Exhibit No. 6.
 14 A. Oh, the election reconciliation. This would be --
 15 this is to detail and to account for voters' records being
 16 credited for every vote that was counted in Stevens County
 17 for the general election.
 18 Q. So you're looking at all votes that are cast at
 19 polling stations?
 20 A. Mmm-hmmm.
 21 Q. And you're looking at all absentee ballots?
 22 A. That's correct.
 23 Q. And all provisionals.
 24 A. That's correct.
 25 Q. Did you find any discrepancies in your

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1 reconciliation?
 2 A. In the course of my reconciliation?
 3 Q. Yes.
 4 A. I had a -- if you look at the top and you see the
 5 records credited for voting. The initial credit for voter
 6 records was 20,532. Then you see voters posted manually, so
 7 there was 49 records that I needed to go back and credit
 8 individually in order to get to 20,581. Then you see the
 9 adjustments, which are four voter registration records that
 10 basically there was a ballot counted, but there's no record
 11 to be able to credit in order to come up to the 20,606.
 12 Q. And so you go through that adjustment that's
 13 reflected in that document?
 14 A. Yes.
 15 Q. And taking into account the adjustments.
 16 Basically, you don't have any discrepancies.
 17 A. No.
 18 Q. Now, we talked about signature verifications on the
 19 provisional ballots. Now as I understood your testimony,
 20 following election night and before certification, there were
 21 some provisional ballots whose signatures were in fact
 22 verified?
 23 A. There was, yes.
 24 Q. You have any idea how many? Or could you --
 25 A. No, I don't.

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1 Q. At some point, all of these signatures on the
 2 provisional ballots that were in fact counted, all of
 3 those -- all of those signatures were in fact verified.
 4 A. Yes, they were.
 5 Q. And when you look at -- we're looking at Exhibit
 6 No. 7 and the envelopes that have been provided. It's, I
 7 believe, in the second yellow tab. Do you see that, Ms.
 8 Lamm?
 9 A. Yes, I do.
 10 Q. And it's got the provisional ballot information,
 11 it's got information for the poll worker. And then in the
 12 middle it has something that's filled -- the form or portion
 13 of the envelope that's filled out by the voter. Do you see
 14 that?
 15 A. Yes, I do.
 16 Q. And then you have -- as I understand, this is the
 17 disposition off to the right?
 18 A. That's correct.
 19 Q. Now, we look at this, would you agree with me that
 20 the voters, even though their signatures may or may not have
 21 been verified, at some point in time the voters have done
 22 everything correct. Is that true?
 23 A. That is correct.
 24 Q. In other words they filled out their name. You
 25 get --

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1 A. Yes, they did.
 2 Q. They have signed it.
 3 A. Yes.
 4 Q. They put their date of birth.
 5 A. Yes.
 6 Q. And they put their address.
 7 A. That's correct.
 8 Q. And under the stat or under the regulation, the
 9 voter has, in fact, did everything the voter was expected to
 10 do with respect to casting the provisional ballot.
 11 A. That's correct.
 12 Q. Looking at -- I'm trying to think. Can you look
 13 at -- take a look at Exhibit No. 6. And I just wanted to --
 14 there we go. Third page on Exhibit No. 6, Ms. Lamm. Those
 15 are the lists of the provisional ballots that were
 16 inadvertently counted. Is that my understanding?
 17 A. That's correct.
 18 Q. Now, that's broken out by precinct?
 19 A. That's correct.
 20 Q. So we could identify each precinct where those
 21 provisional ballots came from.
 22 A. That's correct.
 23 Q. How long have you worked for the Stevens County
 24 auditor's office?
 25 A. Since 1995.

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1 person's name on the database, so that's when we start to
 2 look for the name and all the information about that person.
 3 So we would immediately pull up a signature. If we had two
 4 names listed for the same individual, or similar to that,
 5 we'd immediately pull up the signatures to determine which
 6 signature matched the record that we have in our hand in the
 7 envelope.
 8 Q. And just even as a ballpark, did this happen five
 9 times? Did it happen 400 times? Do you have any sort of
 10 sense?
 11 A. I couldn't answer.
 12 Q. And then my other follow up was regarding the
 13 questions that counsel asked regarding voter crediting, and
 14 his description of them as that being a very important
 15 process in your county. Do you have any understanding as to
 16 whether or not that process is used for the same purpose in
 17 other counties in Washington?
 18 A. It's my understanding that they would credit their
 19 voters in order to be able to maintain the accountability of
 20 how many ballots had actually been counted versus what they
 21 should have according to their poll books. So yes.
 22 Q. Do you have an understanding as to whether or not
 23 counties do that as part of the certification process, as
 24 opposed to something they do after certification to resolve
 25 their records?

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1 A. I can't answer for other counties. But it is
 2 supposed to be part of a step in the certification process.
 3 It is -- you should have a certain portion of your
 4 reconciliation done before you actually certified the
 5 election, and then you'll finish your reconciliation after
 6 certification is done.
 7 Q. And is that -- in Stevens County in the 2004
 8 general election, was that reconciliation process completed
 9 after certification of the election?
 10 A. The final portion of the reconciliation was
 11 completed after certification.
 12 MS. COLGAN: Thank you.
 13
 14 RE-CROSS-EXAMINATION
 15
 16 BY-MR.GREER:
 17 Q. I just had, for Mr. Gray, just a real brief
 18 question here. Mr. Gray, we've met earlier and you're still
 19 under oath and we're on the record. Just with respect to
 20 Exhibit No. 5, why don't you get that in front of you. Now
 21 as I understood your testimony earlier, is that what you'd
 22 characterize as some sort of estimate? Or was that a final
 23 figure on the numbers and dispositions of these provisional
 24 ballots?
 25 MS. COLGAN: Objection; asked and answered.

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1 BY MR. GREER:
 2 Q. And it may well be. I just want to make sure I get
 3 a clarification.
 4 A. (Gray) Yeah. They -- you're referring to the
 5 numbers at the back?
 6 Q. Or anything in there. Yes, certainly the numbers
 7 at the back.
 8 A. Yeah. It was -- they're basically just my own
 9 notes. I didn't reconcile them to any...
 10 MR. GREER: Okay. That's all I needed to know.
 11 Thank you very much, Mr. Gray.
 12 MS. COLGAN: Think we're done.
 13 MR. GREER: Yeah, we're done.
 14 MS. COLGAN: Okay. Thank you both very much. You
 15 have a right -- both of you have a right to reserve the
 16 ability to review the transcript and then sign off on it.
 17 MR. NICKEL: We want to sign. We want to review.
 18 MS. COLGAN: Okay. Oh, Deposition Exhibit -- let's
 19 see. Exhibit No. 6. Counsel for the county has pointed out
 20 that there is a fourth page to this record that was missing
 21 from the exhibit that's presented here today.
 22 MR. GREER: If you want to attach it the last page
 23 of that exhibit, would be great if you want to do that. Or
 24 how to you wanted handle it?
 25 MS. COLGAN: That's their original, I don't know if

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1 they want to --
 2 MR. NICKEL: We can either mail it to you or we can
 3 copy it right now if you want to wait and get copies now.
 4 MR. GREER: It's up to you.
 5 MS. COLGAN: If it'll take a second to get a copy,
 6 we can add it on. Great. Thank you.
 7
 8 (Whereupon, the deposition concluded at 4:10 p.m.)
 9 * * *
 10
 11
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 23
 24
 25

CERTIFICATE

1
2 I, Mark Sanchez, do hereby certify that
3 pursuant to the Rules of Civil Procedure, the
4 witness named herein appeared before me at the
5 time and place set forth in the caption herein;
6 that at the said time and place, I reported in
7 stenotype all testimony adduced and other oral
8 proceedings had in the foregoing matter; and that
9 the foregoing transcript pages constitute a full,
10 true and correct record of such testimony adduced
11 and oral proceeding had and of the whole thereof.
12

13 IN WITNESS HEREOF, I have hereunto set
14 my hand this 6th day of May, 2005.
15

16
17
18 _____
Signature Expiration Date

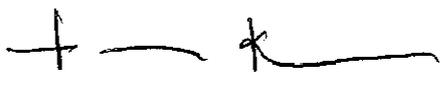
19
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24
25

1 Pursuant to the court's invitation at the hearing on May 2, 2005, Petitioners identify
2 the following excerpts of the deposition of Walla Walla County, taken pursuant to CR
3 30(b)(6), to be offered in evidence by Petitioners in this action.
4

TOPIC	PAGE AND LINE CITATIONS
Witnesses' names and titles	4:10-5:20; 7:12-23 (Karen Martin, Auditor and Katrina Manning, elections supervisor)
Prior to counting provisional ballots, Walla Walla County confirmed that provisional ballots were cast by lawfully registered voters by comparing the ballot envelopes with voter records (which include signatures) on computer screen; the records are examined 5 or 6 times and county would have noticed any discrepancy	12:12-14:17
Walla Walla County checked signatures for provisional ballots before counting them and checked the registration records for provisional ballots carefully several times before counting them	99:22-102:4

18
19
20 DATED this 13th day of May, 2005.

21
22 Davis Wright Tremaine LLP
Attorneys for Petitioners

23
24 By 

25 Harry J. F. Korrell
26 WSBA #23173
27 Robert J. Maguire
WSBA #29909

PETITIONERS' DESIGNATION OF DEPOSITION
EXCERPTS (WALLA WALLA COUNTY) - 2

SEA 1646977v1 55441-4

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

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CHELAN COUNTY

TIMOTHY BORDERS, et al.,
Petitioners,

vs.

Case No. 05-2-00027-3

KING COUNTY, et al.
Respondents,

and

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE,

Intervenor-Respondent.

DEPOSITION OF KAREN MARTIN and KATRINA MANNING
Taken on behalf of the Intervenor-Respondent
April 20, 2005

BE IT REMEMBERED THAT, pursuant to Washington Rules of Civil Procedure, the 30(b)(6) deposition of Karen Martin and Katrina Manning was taken before Jea H. Oh, a Certified Shorthand Reporter, CSR #29906, on April 20, 2005, commencing at the hour of 9:10 a.m., at the Walla Walla County Prosecutor's Office, 240 West Alder Street, Suite 201, Walla Walla, Washington.

Page 2

1 APPEARANCES
 2 BETH COLGAN
 3 PERKINS COIE, LLP
 4 1201 Third Avenue, Suite 4800
 5 Seattle, Washington 98101-3099
 6 (206) 359-3824
 7 Appearing on behalf of the Intervenor-Respondent
 8
 9 DIANE TEBELIUS
 10 LAW OFFICE OF DIANE TEBELIUS
 11 Post Office Box 50466
 12 Bellevue, Washington 98015-0466
 13 (206) 696-4299
 14 Appearing on behalf of the Petitioner
 15
 16 STEVE SHIN
 17 WALLA WALLA COUNTY PROSECUTOR'S OFFICE
 18 240 West Alder Street, Suite 201
 19 Walla Walla, Washington 99362
 20 (509) 527-3232
 21 Appearing on behalf of the Walla Walla County
 22
 23
 24
 25

Page 4

1 please ask.
 2 The other thing is that if I ask a question, and
 3 you don't understand the question that I've the asked, please
 4 ask me to rephrase it, and I'll try to make it clearer for
 5 you. I want to make sure that you're understanding me, and
 6 I'm understanding you as well.
 7 And before we get going, just if you could each,
 8 one at a time, state for the record, your name. Go ahead
 9 and -- you can go ahead.
 10 A. (Ms. Martin) Karen Martin, Walla Walla County
 11 Auditor.
 12 A. (Ms. Manning) Katrina Manning, elections
 13 supervisor, Walla Walla County.
 14 Q. Okay. And, Ms. Martin, how long have you been
 15 the county auditor?
 16 A. (Ms. Martin) I took office in 1999.
 17 Q. Okay. And prior to becoming the county auditor,
 18 did you work for the auditor's office?
 19 A. (Ms. Martin) Yes.
 20 Q. And in what position?
 21 A. (Ms. Martin) Administrative assistant. I worked
 22 in vehicle licensing and elections.
 23 Q. And how long were you in that position?
 24 A. (Ms. Martin) Couldn't tell you exactly. I started
 25 in '89, and probably about maybe four years after that was

Page 3

1 WALLA WALLA, WASHINGTON; WEDNESDAY, APRIL 20, 2005
 2 9:10 A.M.
 3 KAREN MARTIN and KATRINA MANNING
 4 having been first duly sworn, was examined and testified as
 5 follows:
 6 EXAMINATION
 7 BY-MS.COLGAN:
 8 Q. My name is Beth Colgan. I'm an attorney
 9 representing Washington State Democratic Central Committee,
 10 and I'm going to be asking you some questions today for the
 11 record. Have either of you been deposed before?
 12 A. (Ms. Martin) No.
 13 Q. Okay. Let me tell you a couple of the basic
 14 ground rules for a deposition, then. The most important one
 15 is that you give a verbal response rather than shaking your
 16 head up or down, because the court reporter isn't able to
 17 take that down.
 18 A. (Ms. Martin) Can't hear my head well?
 19 Q. Exactly. And the second rule is, and it's one
 20 I'm terrible at is, but we need to be careful about not
 21 talking over the top of each other so that she can keep a
 22 clean record as well. If you need a break at any time during
 23 the deposition, you should feel free to ask me. If you need
 24 to get up and get some water, feel free to do that. This
 25 isn't the third degree, so, you know, if you need a break,

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1 promoted to the administrative assistant.
 2 Q. And prior to 1989. Had you worked for the
 3 auditor's office?
 4 A. (Ms. Martin) No.
 5 Q. And, Ms. Manning, if I could ask you the same
 6 question. How long have you been in your current position?
 7 A. (Ms. Manning) Three years?
 8 A. (Ms. Martin) Two years. Probably two and a half.
 9 A. (Ms. Manning) Yeah. Two and a half.
 10 Q. Okay. And prior to becoming the elections
 11 supervisor, had you worked for the county auditor's office?
 12 A. (Ms. Manning) Yes.
 13 Q. And in what position?
 14 A. (Ms. Manning) Just office assistant.
 15 Q. Okay. And approximately how long were you in
 16 that position?
 17 A. (Ms. Manning) I started in '99, the middle of '99.
 18 A. (Ms. Martin) Her official start date would be like
 19 in 2000. She worked for us through an agency here in town, a
 20 work experience type program.
 21 Q. Okay. Great. I'd like to ask you a few
 22 questions about your interaction with the Secretary of State
 23 at times when new election regulations are issued. Could you
 24 tell me how you typically find out about a new regulation?
 25 A. (Ms. Martin) I would say either by e-mail or

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1 through -- I think, normally, it's always been through
 2 conferences -- or not conferences, but election meetings that
 3 they call together and a few by e-mail.
 4 Q. And the people who call the election meetings
 5 together, it's the Secretary of State's office?
 6 A. (Ms. Martin) Most of the time, yes.
 7 Q. Okay. Are there other groups or agencies that
 8 call up to get meetings together?
 9 A. (Ms. Martin) The Washington Association of County
 10 Auditors usually has a part in most of those meetings as
 11 well.
 12 Q. When you receive a new regulation or learn that a
 13 new regulation has been issued, do you typically receive
 14 anything other than just the text of the regulation?
 15 A. (Ms. Martin) I am not sure what you mean by that.
 16 Q. In other words, when you get a new regulation,
 17 does it come along with instructions on how to implement it,
 18 anything of that nature?
 19 A. (Ms. Martin) I wouldn't say so. I think that --
 20 you know, just lot of discussion about the regulation itself,
 21 and what we're supposed to do. But as far as implementing
 22 that regulation, it would be up to us.
 23 Q. And the discussions you have are at these
 24 conferences or election meetings?
 25 A. (Ms. Martin) Right.

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1 Q. Okay. And, Ms. Martin, when you receive a new
 2 regulation, how do you typically inform your staff that it
 3 has been issued?
 4 A. (Ms. Martin) Our staff in the auditor's office
 5 basically consist of mostly Katrina, so she would get the
 6 same e-mails. The Secretary of State's office has us on a
 7 joint list, I guess, with election supervisors,
 8 administrators, as well as the auditors. So she would get
 9 that. The rest of our staff is pretty much temporary, so
 10 they just kind of do the handling of the day-to-day data
 11 entry and that sort of thing.
 12 Q. If you have a question about how to implement a
 13 regulation, who would you ask?
 14 A. (Ms. Martin) The Secretary of State's office.
 15 Q. Is there anyone in particular there that you talk
 16 to?
 17 A. (Ms. Martin) Usually there's Sheryl Moss or Tracy
 18 Buckles. They're the certification and training board.
 19 Q. And, Ms. Martin, have you been certified?
 20 A. (Ms. Martin) Yes.
 21 Q. And have you also?
 22 A. (Ms. Manning) Yes.
 23 A. (Ms. Martin) I've been certified twice.
 24 Q. Let me actually step back a moment, and I should
 25 have cleared this up at the beginning of the deposition. Do

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1 you both understand that today you're here as a 30(b)(6)
 2 witness; or, in other words, that you're testifying on behalf
 3 of the county?
 4 A. (Ms. Martin) Is that what we understand?
 5 Q. I'm just asking if you understand --
 6 A. (Ms. Martin) We're here to testifying. That's
 7 basically -- on whose behalf or -- or --
 8 Q. Okay. Great. I'm going to just put something in
 9 the record, then.
 10 (Whereupon, a CR 30(b)(6) Subpoena Duces Tecum to
 11 Walla Walla County was marked as Exhibit-1 for
 12 identification.)
 13 BY MS. COLGAN:
 14 Q. Ms. Martin and Ms. Manning, I'm handing what's
 15 you -- what's been marked Deposition Exhibit 1. If you could
 16 take a second and take a look at that and let me know when
 17 you're ready to answer questions.
 18 A. (Ms. Martin) This is the same as what we received
 19 copies of earlier.
 20 Q. Okay.
 21 A. (Ms. Martin) I believe.
 22 MS. TEBELIUS: Is there a stapler here?
 23 MS. COLGAN: Yes.
 24 MS. TEBELIUS: We got it stapled wrong.
 25 MS. COLGAN: Oh, sorry about that.

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1 BY MS. COLGAN:
 2 Q. So you have seen this exhibit before?
 3 A. (Ms. Martin) Yeah.
 4 Q. And, for the record, this is the 30 -- the CR
 5 30(b)(6) Subpoena Duces Tecum to Walla Walla County. Did you
 6 do anything to prepare for your deposition today?
 7 A. (Ms. Martin) Yes. We went over the questions and
 8 talked with Steve about it, what kind of answers, you know,
 9 we were looking for, and we were -- basically, just kind of
 10 general discussion.
 11 (Whereupon, a copy of the Washington
 12 Administrative Code 434-253-047 from the "Washington State
 13 Register", Issue 04-18, was marked as Exhibit-2 for
 14 identification.)
 15 BY MS. COLGAN:
 16 Q. Ms. Martin and Ms. Manning, I'm now handing you
 17 what's been marked as Deposition Exhibit No. 2. Again, if
 18 you could take a quick minute to look at that and let me know
 19 if you have any questions.
 20 A. (Ms. Manning) This right here?
 21 Q. Yes.
 22 A. (Ms. Martin) You're referring to the
 23 WAC 434-253-048 or just the --
 24 Q. The 047 on the left-hand side of the page.
 25 A. (Ms. Martin) Okay. I've got a copy of that here.

1 Q. Okay. And, Ms. Martin, can you identify this
 2 document, then, for the record?
 3 A. (Ms. Martin) Washington Administrative Code
 4 434-253-047 about provisional ballots.
 5 Q. And do you have a recollection of the first time
 6 you saw this provision?
 7 A. (Ms. Martin) As far as it being a new WAC in the
 8 amendment?
 9 Q. Yes.
 10 A. (Ms. Martin) Actually, it would have been November
 11 4th when I received an e-mail from the Secretary of State's
 12 office.
 13 Q. And that's November 4, 2004?
 14 A. (Ms. Martin) Yes.
 15 Q. Okay. And do you have a copy of the e-mail that
 16 you received?
 17 A. (Ms. Martin) Yes.
 18 MS. TEBELIUS: Do you have an extra copy?
 19 MS. COLGAN: We can make this the exhibit and
 20 then get copies after.
 21 MS. TEBELIUS: You want to make that Exhibit 3,
 22 then?
 23 MS. COLGAN: Yeah.
 24 MS. TEBELIUS: Okay.
 25 (Whereupon, a copy of an e-mail from Sheryl Moss,

1 Office of the Secretary of State, dated 11-4-2004, was marked
 2 as Exhibit-3 for identification.)
 3 BY MS. COLGAN:
 4 Q. Handing you back what's been marked as Exhibit
 5 No. 3. And is this the e-mail that you described a moment
 6 ago that you received from the Secretary of State with the
 7 amended WAC 434-253-047?
 8 A. (Ms. Martin) Yes.
 9 Q. And that, to your recollection, is the first time
 10 you'd seen the amendment to this WAC?
 11 A. (Ms. Martin) Yes.
 12 Q. Okay. And prior to November 4th, 2004, had you
 13 had any meetings or conferences with the Secretary of State
 14 in which the changes to the WACs related to the 2004 general
 15 election were discussed?
 16 A. (Ms. Martin) Yes.
 17 Q. And do you have any recollection of whether or
 18 not this particular amendment was discussed?
 19 A. (Ms. Martin) I don't for sure. I mean, I would
 20 have assumed it was, but there were a ton of new WACs that
 21 they went over. I think that was in Spokane that we went to
 22 that meeting.
 23 Q. Can I take a quick look at that again? Thank
 24 you.
 25 A. (Ms. Martin) That's the one -- They sent a copy of

1 it. That's the one that really didn't refer to the --
 2 MS. TEBELIUS: Can I take a look at that for a
 3 moment?
 4 MS. COLGAN: Yeah.
 5 MS. MARTIN: Yeah. There you go.
 6 MR. SHIN: Actually, you have -- Actually, you
 7 have copies of that.
 8 MS. TEBELIUS: Well, I need to -- Well, I can
 9 find that again.
 10 MR. SHIN: Okay.
 11 BY MS. COLGAN:
 12 Q. If I can direct your attention back to
 13 Exhibit No. 2. At the bottom of the first paragraph is a
 14 line which reads, "A provisional ballot cannot be counted
 15 unless the voter's name, signature, and the date of birth, if
 16 available, matches a voter registration record." Do you see
 17 that line?
 18 MS. TEBELIUS: Okay. She's on the wrong
 19 paragraph.
 20 MS. MARTIN: All right. Okay. Yeah, it's right
 21 there.
 22 BY MS. COLGAN:
 23 Q. Okay. And do you have a recollection of whether
 24 or not your county implemented that particular portion of the
 25 section in handling provisional ballots?

1 A. (Ms. Martin) I'm looking for the right way to say
 2 it. Not considering -- If you -- If you look at the way we
 3 do absentees and check signatures from absentees to the
 4 signature on file, I would say no. But if you look at the
 5 way that we do process the provisional ballots, yes, we
 6 probably did check those signatures.
 7 Q. How about this. Can you explain to me the
 8 process that you go through to check or verify a provisional
 9 ballot?
 10 MS. TEBELIUS: Provisional?
 11 MS. COLGAN: Yeah.
 12 MS. MANNING: Do you want me to answer that?
 13 MS. MARTIN: I wonder if I should -- Yeah. You
 14 might be able to -- I understand the process, but Katrina
 15 might be able to -- since she actually does it, could
 16 probably explain it. She's the one that researches them
 17 and verifies them.
 18 BY COLGAN:
 19 Q. That's great.
 20 A. (Ms. Manning) Okay. Usually, I bring up the
 21 registrant by the date of birth because there's nothing else
 22 on there. Bring up the date of birth, make sure that the
 23 name is the same; look at where they write where they live,
 24 the address, see if it's the same address; if it's not, then
 25 I see if there's been any changes; basically, look to see if

1 they're active, if they're cancelled; if they're cancelled,
2 what reason they were cancelled; where they're registered,
3 where they voted, and we make a note on that so we can make
4 up this list and make sure that the right issues are
5 counted -- the canvassing board approves them.

6 We see the signature in the screen when we're
7 doing all of this. But, like Karen said, with absentees, we
8 make a definite --

9 A. (Ms. Martin) That's all we're looking at.

10 A. (Ms. Manning) I mean, that's what we're looking at
11 on absentees, so we make like a little check mark with every
12 one that we check. Provisionals, we don't necessarily do
13 that. We're still seeing it. I think that we would notice
14 if there was any discrepancy because I look at these five or
15 six times before they ever go to canvassing board. But to
16 say that we make a check mark to verify it on signature, I
17 would say no.

18 Q. Okay. Did you reject any absentee ballots on the
19 basis of signature this year?

20 A. (Ms. Manning) Yes.

21 Q. In the 2004 general election?

22 A. (Ms. Manning) Yes.

23 Q. Okay. And did you reject any provisional ballots
24 on the basis of signature?

25 A. (Ms. Manning) No.

1 Q. Do you have a recollection of how many absentee
2 ballots you rejected?

3 A. (Ms. Manning) No, not off the top of my head.

4 Q. Okay. Do you know where we would look to find
5 that information out?

6 A. (Ms. Manning) Actually, the Democratic Party has
7 our canvassing board list.

8 Q. It would be on the canvassing board --

9 A. (Ms. Manning) Right, right. But the way they're
10 categorized, you might not understand which ones are
11 absentees and which ones aren't. But most of the them are
12 free and clear and categorized, but some you might not be
13 able to tell, so I can always provide that for you.

14 Q. Okay. I think we'll walk through that in a
15 little bit, and I'll have you explain to me what is what on
16 that.

17 A. (Ms. Manning) Okay.

18 A. (Ms. Martin) We also, with our provisionals, I
19 would sit -- you know, you probably should know that we
20 check -- the way we set up our polling place this year at the
21 community center, we had a provisional ballot table. So our
22 polling places, other than the outside areas and a few within
23 that polling place, did not issue the provisionals. They
24 were done by myself, Katrina, or my chief deputy; you know,
25 office staff, basically.

1 We checked ID. We pulled their ID, their
2 driver's license, their -- you know, whatever they had to
3 show us ID so that -- basically, it was just easier for us to
4 get the information that we needed to check to see, you know,
5 where they were registered, you know, why we didn't have them
6 in the book, that sort of thing. We do all that at the
7 polling place as well.

8 Q. You required people to show ID before being
9 issued a provisional ballot?

10 A. (Ms. Manning) Yeah.

11 A. (Ms. Martin) Probably. I would say on 90 percent
12 of them we had ID checked. You know, some of them we knew,
13 and I can't -- I'm saying probably 90 percent because there
14 are the outlying areas and a few polling workers that issued
15 the provisionals as well. But for what we issued, yeah, we
16 said, you know, "Give us your ID," because we're writing the
17 information down with the names and things like that. And
18 the amount that we were doing, it was a lot easier to
19 check -- just get the ID, and then write the information down
20 from there of what we needed.

21 Q. Did you turn away people who didn't have an ID?

22 A. (Ms. Martin) No.

23 Q. So if a person didn't have an ID, they were still
24 issued a provisional ballot and allowed to vote?

25 A. (Ms. Martin) Right.

1 Q. Do you have an idea of what percentage of people
2 didn't have an ID?

3 A. (Ms. Martin) No.

4 Q. Can you walk me through what happens when a
5 person arrives at your polling place and is needing to vote a
6 provisional ballot, the steps they have to go through in
7 order to be issued that ballot?

8 A. (Ms. Martin) Okay. I guess in general they're all
9 the same. But, like I said, we went to one location at the
10 community center for 37 of our 59 precincts. Twelve of our
11 precincts are vote-by-mail, so --

12 MS. TEBELIUS: Thirty-seven out of -- I'm sorry.

13 MS. MARTIN: Thirty-seven.

14 MS. TEBELIUS: Out of 59?

15 MS. MARTIN: Out of 59. And then 12 out of the
16 59 are vote-by-mail, so those, basically, would not be down
17 there either. We've got --

18 MS. MANNING: There's like ten.

19 MS. MARTIN: Is that it? Ten outlying areas in
20 the county.

21 MS. MANNING: Ten outlying precincts, but only
22 seven poll sites? No.

23 MS. MARTIN: 1, 2, 3, 4, 5, 6.

24 MS. MANNING: Six poll sites.

25 MS. MARTIN: Six, yeah. Six other poll sites,

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1 name in your database?
 2 A. (Ms. Martin) Yes.
 3 Q. Is it fair enough to say that every provisional
 4 ballot that was accepted matched the date of birth in your
 5 database?
 6 A. (Ms. Martin) Yes.
 7 Q. And is it fair enough to say that every
 8 provisional ballot that was accepted had a voter registration
 9 record in your system?
 10 A. (Ms. Martin) Yes.
 11 Q. Is there --
 12 A. (Ms. Martin) I'm just going to clarify.
 13 A. (Ms. Manning) Well, they're the ones that we know.
 14 Q. Well, first of you all -- Hold on. Hold on.
 15 Hold on. I'm asking Ms. Martin. I can't have interruptions
 16 on it. I want to hear from you the answer to the question.
 17 Is it fair -- Is every provisional ballot that was accepted,
 18 did they have a voter registration record in your system?
 19 That was accepted.
 20 A. (Ms. Martin) I guess I would need to clarify it
 21 and ask to discuss that with Katrina on this point because
 22 she's the one there. There could be -- We did have some that
 23 were not registered, but we accepted them because they should
 24 not have been cancelled.
 25 Q. Okay.

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1 A. (Ms. Martin) So that would be probably kind of
 2 clarification, I assume.
 3 Q. But you would have had a vote registration
 4 record, right? No?
 5 A. (Ms. Martin) One that said that was cancelled,
 6 yeah.
 7 Q. One that said -- okay.
 8 A. (Ms. Martin) Yeah.
 9 Q. Okay. Well, then let me go -- I'll come back to
 10 you in a minute.
 11 A. (Ms. Martin) And the service voter. Sorry. Okay.
 12 Q. Okay. Let me go to Ms. Manning who's itching to
 13 give a response to this question.
 14 A. (Ms. Martin) Well -- I'm sorry. I know you want
 15 that to come from me, but in this case she's the one who's
 16 done the research and knows it more than I do on that.
 17 Q. That's fair enough. Okay. I'll ask Ms. Manning,
 18 then. Let me go through the whole question, then. Did every
 19 provisional ballot that got counted have a voter name in your
 20 database?
 21 A. (Ms. Martin) No.
 22 Q. Okay. And did every provisional ballot that got
 23 counted -- So they did not -- And did -- Every provisional
 24 ballot that got counted did not have a voter registration
 25 record in your database?

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1 A. (Ms. Manning) I'm going to rephrase my first
 2 answer because I'm thinking of service voters who are
 3 absentees that aren't in our system. But the not registered
 4 that were cancelled in error do have a record. So, yes, they
 5 do; provisionals do have records. All the provisionals we
 6 counted do have a record.
 7 Q. They have a record in your system?
 8 A. (Ms. Manning) Correct.
 9 Q. Okay. And in that system, they would have a
 10 name, and a date of birth, and a signature on your system?
 11 A. (Ms. Manning) Yes.
 12 Q. And the only thing that you -- I hear from you --
 13 from both of you today is while you didn't check the
 14 signatures in the method in which you checked absentee
 15 signatures, you nonetheless were looking at those signatures
 16 as you were going through approving the provisionals.
 17 A. (Ms. Martin) Correct. That would correct.
 18 Q. Is that correct?
 19 A. (Ms. Martin) Yes.
 20 Q. Because I want to get it -- I want to get this
 21 clear because one of the allegations is that there are
 22 provisionals that shouldn't have been counted, so I want to
 23 make sure that you have records on that. Because we -- Well,
 24 you know what it is.
 25 A. (Ms. Martin) I would feel very comfortable in

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1 saying yes. We checked -- We probably checked these
 2 provisionals better than we check our poll voters, and maybe
 3 to some extent, better than we check our absentees. Like I
 4 said, as far as visually sitting down and the only thing
 5 you're looking at is signature here versus signature in the
 6 system, no. But as far as in the course of your work, you're
 7 seeing the signature on the card because we -- you know, in
 8 most cases we're pulling their actual registration card, as
 9 well as having that ballot in front of us, because we're
 10 trying to find out why we cancelled, so we're pulling that
 11 voter registration card to look at any backup information
 12 that was attached to that cancellation -- to that card, and
 13 looking in the system. Yeah, it's there, and we're looking
 14 at it several times throughout, you know --
 15 Q. Okay. Then I will ask Ms. Manning the question.
 16 If you were asked to testify at trial, would you say that you
 17 are a hundred percent confident that every provisional ballot
 18 that was counted in your county is a ballot that should have
 19 been counted as a voter in the 2004 election?
 20 A. (Ms. Manning) My personal opinion? Would be yes.
 21 Q. Would you disagree with that?
 22 A. (Ms. Martin) No, I would not. I would agree that,
 23 yeah, I think they were all as valid as could be. As I
 24 explained earlier, we -- you know, and aside from the fact
 25 that we had the other out, they were -- probably 90 percent

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1 of those provisionals were produced by the -- where poll
 2 voters do not. So I would have more confidence in these
 3 provisionals than I would have in maybe somebody at the
 4 polls.
 5 MS. TEBELIUS: All right. Would you just hold
 6 one minute?
 7 MS. COLGAN: Sure.
 8 MS. TEBELIUS: I apologize.
 9 MS. COLGAN: That's okay.
 10 BY MS. TEBELIUS:
 11 Q. Ms. Martin, when you deal with the Secretary of
 12 State, did you deal with Nick Handy very much or at all?
 13 A. (Ms. Martin) Personally? No. We got a lot of
 14 e-mails from him. I think probably most of the e-mails were
 15 after the election and just status of things that were going
 16 on, but no advice from him at all.
 17 MR. TEBELIUS: I'm sorry to keep you waiting. I
 18 don't have any further questions. I thank you both for
 19 enduring this blast of questions.
 20 MS. COLGAN: I have two quick follow-ups.
 21 EXAMINATION
 22 BY-MS.COLGAN:
 23 Q. Just, again, to make sure we have a clear record,
 24 as Ms. Tebelius stated, you never actually verified that the
 25 signatures were the same. You may have viewed them, but

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1 didn't specifically verify them in the way you did absentee
 2 ballots, correct?
 3 A. (Ms. Martin) That would be correct.
 4 Q. Okay. And the only other thing I have is that my
 5 understanding is that you have compiled some materials in
 6 response to the subpoena that was issued today. Are those
 7 materials copies of provisional ballot envelopes?
 8 A. (Ms. Manning) Correct.
 9 Q. And do they also contain copies of poll book
 10 pages?
 11 A. (Ms. Martin) No.
 12 A. (Ms. Manning) No.
 13 Q. Okay. Is there anything other than copies of
 14 provisional ballot envelopes?
 15 A. (Ms. Manning) A list of all the provisional
 16 ballots that are here, all the yeses that are provisionals.
 17 Q. So all provisional ballots that were accepted?
 18 A. (Ms. Manning) Right, correct.
 19 Q. And are these documents that you keep in the
 20 normal course of your business?
 21 A. (Ms. Manning) Do we keep this?
 22 Q. Yes.
 23 A. (Ms. Manning) I keep the master canvassing board
 24 list, and that's it. We don't make copies of all this stuff.
 25 It's locked up, stored for two years, and destroyed.

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1 Q. Okay. So for at least a period of time, you keep
 2 the actual provisional ballots in the course of maintaining
 3 election records?
 4 A. (Ms. Manning) As soon as the election is
 5 certified, they are locked up and sealed, stored for two
 6 years, and then we destroy it. Once it's destroyed, we're
 7 over it.
 8 Q. Okay. And then the list that you've created
 9 here, is that something you typically do or is it something
 10 that was done just for the purposes of this litigation?
 11 A. (Ms. Manning) No. This one's done purposely for
 12 the litigation. The master list that's got yeses and nos,
 13 that's done for every election, and we keep on file.
 14 Q. Okay. And so this list that you've given us
 15 today is -- it's the same information that's on that master
 16 list; it's just it's shrunk down to be only those that were
 17 accepted?
 18 A. (Ms. Manning) Right.
 19 Q. Okay.
 20 A. (Ms. Manning) And the corresponding copies of the
 21 envelopes that you guys asked for are with it.
 22 Q. Okay.
 23 MS. TEBELIUS: So you have -- You make copies of
 24 all your provisionals? Are you taking those with you today?
 25 MS. MANNING: This is something they asked me

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1 for, so --
 2 BY MS. COLGAN:
 3 Q. My understanding is that these are copies of the
 4 provisional ballot envelopes that were accepted.
 5 A. (Ms. Manning) Correct.
 6 Q. But not those that were rejected.
 7 A. (Ms. Manning) Exactly.
 8 Q. Okay. And that the list is also a list of what
 9 was accepted rather than rejected?
 10 A. (Ms. Manning) Right.
 11 MS. TEBELIUS: And are you taking that list
 12 today?
 13 MS. COLGAN: No. I was going to ask him to make
 14 copies for you and then fax them to us.
 15 MS. TEBELIUS: Fax that? That would be great.
 16 That would be wonderful.
 17 BY MS. COLGAN:
 18 Q. Okay. Anything else?
 19 A. (Ms. Martin) And you have the e-mail, but that you
 20 entered that as an exhibit.
 21 Q. As an exhibit, exactly. We'll collect all the
 22 exhibits here before we're done.
 23 MS. TEBELIUS: And I think what we have,
 24 according to -- Beth, if you've got what I've got, is seven
 25 exhibits.

1 MS. COLGAN: I think we're on 8.
 2 MS. TEBELIUS: You're on 8? What's No. 8?
 3 MS. COLGAN: 8 was the last discovery set. Well,
 4 we can go off the record. Let's go off the record. All
 5 right. Thank you both very much for your time.
 6 (Whereupon, the deposition was concluded at 11:35
 7 a.m.)
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1 CERTIFICATE
 2
 3 I, Jea Oh, do hereby certify that
 4 pursuant to the Rules of Civil Procedure, the witness
 5 named herein appeared before me at the time and place
 6 set forth in the caption herein; that at the said
 7 time and place, I reported in stenotype all testimony
 8 adduced and other oral proceedings had in the
 9 foregoing matter; and that the foregoing transcript
 10 pages constitute a full, true and correct record of
 11 such testimony adduced and oral proceeding had and of
 12 the whole thereof.
 13
 14 IN WITNESS HEREOF, I have hereunto set my
 15 hand this 28th day of April, 2005.
 16
 17
 18
 19 Jea Oh Commission Expiration
 20
 21
 22
 23
 24
 25