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MOTION- 1 SEA 1648953v1 55441-4

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

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

Petitioners.

v.

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

Respondents.

and

Washington State Democratic Central Committee,

Intervenor-Respondent,

and

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-2-00027-3

PETITIONERS' REPLY IN SUPPORT OF ITS MOTION TO COMPEL

## I. INTRODUCTION

Petitioners filed its motion to compel King County to produce documents as a last resort after King County refused to produce documents in response to a subpoena duces tecum even though the parties are literally just days away from trial. King County's excuse for failing to respond to Petitioners' subpoena is that County officials have been too

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2600 Century Square · 1501 Fourth Avenue Seattle, Washington 98101-1688 (206) 622-3150 · Fax: (206) 628-7699 busy to respond. Although Petitioners can to some extent empathize with County officials

– all parties are stretched thin by this litigation and the demands of other work – the

County nonetheless is obligated to *respond*, and must do so fully and before trial begins.

## II. DISCUSSION

Petitioners seek pollbook pages, absentee ballot envelopes, and provisional ballot envelopes on which the names of approximately 244 individuals appear. To date King County has only produced about 80 pollbook signature pages. Petitioners need the remaining information immediately. Trial begins in four days, counting the weekend.

The WSDCC's Response focuses on minutiae: that some of the information sought by Petitioners' subpoena was available elsewhere; and that Petitioners requested information on one voter whom the WSDCC alleges did not vote in the 2004 General Election. The Response misses the point: while *some* information was received from King County prior to issuance of the subpoena (related *only* to absentee ballots), this information was extremely limited in scope, and did not encompass the full range of documents sought in the April 29, 2005 subpoena. With the exception of the few absentee ballots produced prior to issuance of the subpoena, King County has refused to produce any documents related to either provisional ballot envelopes or absentee ballot envelopes, and has produced only a very small proportion of the pollbook pages.

These red herring arguments leave unresolved the underlying problem: that King County has refused to respond to a valid and enforceable subpoena, seeking information Petitioners need for trial. King County's Response states that it "expects" to have its responses to Petitioners completed on Friday, May 20. With trial scheduled to begin the following Monday there is no room for error. Petitioners request that the Court grant the Motion to Compel to ensure King County's compliance.

Bv

Harry J. F. Korrell

WSBA #23173

Robert J. Maguire WSBA #29909

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

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

## DONNA L. ALEXANDER states as follows:

- 1. I am over the age of 18 years and am not a party to the within cause.
- 2. I am employed by the law firm of Davis Wright Tremaine LLP. My business and mailing addresses are 2600 Century Square, 1501 Fourth Avenue, Seattle, Washington 98101-1688.

CERTIFICATE OF SERVICE - 1

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

| 1                    | 3. On May 19, 2005, I caused the documents listed below:   |  |
|----------------------|--|--|
| 2                    | Petitioners' Reply in Support of its Motion to Compel  |  |
| 3                    | Certificate of Service   |  |
| 4                    | to be filed with the Clerk of Chelan County Superior Court via Electronic Filing Legal   |  |
| 5                    | Services (E-Filing.com) which sent notification of such filing to the following persons,   |  |
| 6                    | with this Certificate to follow:   |  |
| 7<br>8               | Kevin Hamilton, Esq. Perkins Coie LLP Attorneys for Washington State Democratic  | Thomas Ahearne For: Secretary of State Sam Reed Foster Pepper & Shefelman  |
| 9<br>10              | Central Committee 1201 Third Avenue, Suite 4800 Seattle, WA 98101  | 1111 Third Avenue, Suite 3400<br>Seattle WA 98101  |
| 11                   | Russell J. Speidel   | Richard Shepard<br>John S. Mills   |
| 12<br>13             | Speidel Law Firm 7 North Wenatchee Avenue, Suite 600 Wenatchee, WA 98807   | For: Libertarians Shepard Law Office, Inc. 818 S. Yakima Avenue, #200  |
| 14<br>15<br>16<br>17 | Dale M. Foreman Foreman, Arch, Dodge, Volyn & Zimmerman P.S. 124 North Wenatchee Avenue, Suite A P.O. Box 3125 Wenatchee WA 98807-3125 | Tacoma, WA 98405  Tim O'Neill  Klickitat County Prosecuting Attorney 205 South Columbus Ave., MS-CH18  Goldendale WA 98620 |
| 18                   | Gary Riesen  | L. Michael Golden  |
| 19<br>20             | Chelan County Prosecuting Attorney<br>PO Box 2596<br>Wenatchee WA 98807-2596   | Lewis County Senior Deputy Prosecuting<br>Attorney<br>345 West Main Street   |
| 21                   | Barnett N. Kalikow, Esq.   | Chehalis WA 98532  Jeffrey T. Even, Asst. Attorney General   |
| 22<br>23             | For: Klickitat County Auditor Kalikow & Gusa PLLC 1405 Harrison Avenue NW, Suite 207   | For: Secretary of State Sam Reed Attorney General's Office PO Box 40100  |
| 24                   | Olympia WA 98502   | Olympia WA 98504-0100  |
| 25                   |  |  |
| 26                   |  |  |

Gorden Sivley
Michael C. Held
Snohomish County Deputy Prosecuting
Attorneys
2918 Colby Avenue, Suite 203
Everett WA 98201-4011

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

DATED this 19<sup>th</sup> day of May, 2005, at Seattle, Washington.

Donna L. Alexander