

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, Dino Rossi, and Christopher Vance, Washington residents and electors, and the Rossi for Governor Campaign, a candidate committee,

Petitioners,

vs.

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

Respondents.

NO. 05-2-00027-3

PIERCE COUNTY AUDITOR'S OBJECTIONS TO WSDCC'S CR 30(b)(6) SUBPOENA DUCES TECUM

Pursuant to Civil Rules 30 and 45(d), the Pierce County Auditor hereby objects to intervenor's CR 30(b)(6) Subpoena Duces Tecum and the inspection or copying of certain materials designated in that subpoena duces tecum dated April 21, 2005, and returnable April 25, 2005, as follows:

1. The subpoena is untimely under CR 30(b)(1).
2. Though counsel for the Pierce County Auditor has been authorized to accept service of the subpoena on her behalf, to the extent the subpoena is instead directed more broadly to "Pierce County" in general, counsel is not so author-

1 ized and said subpoena has not been properly served to the extent it requests
2 documents or knowledge not in possession of the Pierce County Auditor. See
3 e.g. CR 45(c).

4 3. As to the first category of documents requested, to the extent the request seeks
5 working papers "evidencing Pierce County's attempts to reconcile," it seeks
6 voluminous election documents that cannot reasonably be produced at the lo-
7 cation demanded within the time period demanded. To assist petitioner during
8 the deposition, however, the Auditor at that time will provide copies of the
9 Abstract of Votes for the November 2, 2004 General Election, the machine re-
10 count, and the manual recount, as well as the Notes to the Abstract, the follow
11 up reconciliation report, the Ballot Accountability Forms for all Pierce County
12 polling places, and the Canvassing and Certification reports. As to the volu-
13 minous working papers also within the scope of this request, intervenor will be
14 provided an opportunity to review and copy the numerous described docu-
15 ments upon arrangement with counsel.

16 4. As to the second category of documents requested:

17 a. The Auditor will provide at the time of deposition the responsive Ab-
18 stract and the follow up reconciliation report as well as the requested
19 voter registration records. However, the information that pursuant to
20 statute is not part of the public record will be redacted from the materi-
21 als. See e.g. RCW 29A.08.710.

22 b. & c. The "envelopes of all such provisional ballots that were counted" are
23 voluminous election documents that must remain in the secure custody
24 and control of the Auditor and cannot reasonably be produced at the lo-
25 cation demanded. Intervenor however will be provided an opportunity
to review and copy the described documents at a secure and monitored
location upon arrangement with counsel.

e. The Pierce County Auditor has no record in response to this request.

5. As to the third category of documents requested, copies of "the ballots that
were not counted" will not be produced because ballots not included in previ-
ous counts must be sealed in containers and remain sealed unless and until or-
dered opened by a court pursuant to RCW 29A.60.110. Copies of all available
secrecy envelopes for those ballots however will be provided at time of depo-
sition.

6. As to the fourth category of documents requested:

a. Pursuant to RCW 29A.08.710, the Auditor cannot produce for inspec-
tion voter registration forms but may and will provide therefrom data
concerning the specified voters' names, genders, voting records, dates

1 of registration and registration numbers, as well as (subject to RCW
2 40.24) the voters' addresses and political jurisdictions.

3 d[2]. The Pierce County Auditor has no record in response to this request.

4 e. The Pierce County Auditor has no record in response to this request.

5 7. As to the fifth category of documents requested:

6 a. Pursuant to RCW 29A.08.710, the Auditor cannot produce for inspec-
7 tion voter registration forms but may and will provide therefrom data
8 concerning the specified voters' names, genders, voting records, dates
9 of registration and registration numbers, as well as (subject to RCW
10 40.24) the voters' addresses and political jurisdictions.

11 c & e[1] To the extent work product is included in the materials requested, such
12 will not be produced.

13 e[2]. The Pierce County Auditor has no record in response to this request.

14 DATED this 22nd day of April, 2005.

15 GERALD A. HORNE

16 Prosecuting Attorney

17 By

18 s/ DANIEL R. HAMILTON

19 DANIEL R. HAMILTON

20 Deputy Prosecuting Attorney

21 Attorneys for PIERCE COUNTY AUDITOR

22 PH: 798-7746 / WSB # 14658

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CERTIFICATE OF SERVICE

On April 22, 2005, I hereby certify to the following:

I electronically filed the foregoing Pierce County Auditor's Objections to WSDCC's CR 30(b)(6) Subpoena Duces Tecum with the Clerk of the Court using the E-Filing system, and I delivered true and correct copies of the foregoing to the following parties and in the manner indicated:

<p><u>Klickitat County</u> E-Service Timothy O'Neill Klickitat County Prosecuting Attorney 205 Columbus Ave. Goldendale, WA 98620</p>	<p><u>Secretary of State</u> E-Service Thomas Ahearne FOSTER PEPPER & SHEFELMAN 1111 Third Avenue, Suite 3400 Seattle, Washington 98101-3299</p>
<p><u>Scc'y of State/Assoc.</u> E-Service Jeff Even OFFICE OF THE ATTY GENERAL P.O. Box 40100 Olympia, Washington 98504-0100</p>	<p><u>Libertarian Party</u> E-Service Richard Shepard SHEPARD LAW OFFICE 818 S. Yakima Ave, Ste 200 Tacoma, Washington 98405</p>
<p><u>Democratic Party</u> E-Service & Fax William C. Rava Kevin J. Hamilton Jenny A. Durkan et al. PERKINS COIE LLP 1201 Third Avenue, Suite 4800 Seattle, Washington 98101-3099 Fax: 253-359-9741</p>	<p><u>Chelan County & Auditor</u> E-Service Gary Riesen Prosecuting Attorney P.O. Box 2596 Wenatchee, WA 98807-2596</p>
<p><u>Lewis County</u> E-Service L. Michael Golden Lewis County Prosecuting Attorney 360 NW North St Chehalis, WA 98532-1900</p>	<p><u>All Petitioners</u> E-Service Harry J.F. Korrell Robert J. Maguire DAVIS WRIGHT TREMAINE LLP 1501 Fourth Avenue, Suite 2600 Seattle, Washington 98101-1688</p>

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<p><u>Klickitat County Auditor E-Service</u> Barnett Kalikow Kalikow & Gusa 1405 Harrison Ave NW, Ste 207 Olympia, WA 98502-5327</p>	<p><u>Snohomish Co & Auditor E-Service</u> Gordon W. Sivley Senior Deputy Prosecuting Attorney 2918 Colby, MS 504 Everett, WA 98201</p>
<p><u>Kittitas County & Auditor E-Service</u> Greg Zempel James Hurson Kittitas County Prosecuting Attorney 205 W 5th Ave, Rm 213 Ellensburg, WA 98926</p>	

I DECLARE under penalty of perjury that the foregoing is true and correct. Executed at Tacoma, Washington, this 22nd day of April, 2005.

GERALD A. HORNE
Prosecuting Attorney

By s/ DANIEL R. HAMILTON
DANIEL R. HAMILTON / WSB# 14658
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